

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20531

In the Matter of

**Horter Investment Management, LLC
and Drew K. Horter,**

Respondents.

Judge Carol Fox Foelak

DECLARATION OF NICHOLAS MAGINA
IN SUPPORT OF THE DIVISION'S MOTION FOR SANCTIONS

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

1. I am a Staff Accountant with the Division of Enforcement ("Division") at the United States Securities and Exchange Commission in its Chicago Regional Office, located at 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois, 60604. I have been employed as a Staff Accountant by the Division since August 16, 2021. My official duties include participating in fact-finding inquiries and investigations to determine whether the federal securities laws have been, are presently being, or are about to be violated, and assisting in the Division's prosecution of enforcement actions.

2. I received a B.A. degree in accounting from Michigan State University and a M.S. degree in accounting from Michigan State University. I have been a Certified Public Accountant in Illinois since November 5, 2009. Prior to joining the SEC, I was a Senior Manager at Ernst and Young for approximately 13 years.

3. As part of my duties, I was asked to prepare a summary chart listing 17 distributions of client funds Horter Investment Management, LLC (“HIM”) made to Hannan Properties, LLC (“Hannan Properties”) by wire from November 19, 2015 to March 8, 2017. The chart is attached hereto as Exhibit 1.

4. In order to complete this task, I analyzed voluminous HIM records, including client distribution request forms, the client distribution request log, and client account statements. These sources are listed on page 2 of Exhibit 1. It is my understanding that Division staff obtained all of the sources listed on Exhibit 1 from HIM, HIM clients, and other sources during the course of its investigation and produced them to Respondents.

5. For each of the 17 entries on Exhibit 1, I listed the client name, authorization name, authorization date, requested distribution amount, distribution method, adviser name, entity distributed to, whether the request was listed on the HIM client distribution request log, and the log date, all of which I obtained from the sources listed on page 2 of Exhibit 1.

6. I determined that the 17 wires of client funds HIM distributed to Hannan Properties by wire from November 19, 2015 to March 8, 2017 was \$728,001. I also determined that these 17 requests were made by three HIM clients, John and Mary Ruth (via J.R. Freedom Properties, LLC), Michael and Nanette Maletich, and David and Anne Heinzman. As reflected on Exhibit 1, the subtotals by HIM client are \$330,000 (Ruth), \$155,001 (Maletich), and \$240,000 (Heinzman).

7. I was also asked to review a claim brought against HIM by the Ruths, Maletichs, and Heinzmans, and HIM’s settlement agreement with those claimants and determine the amount these clients claimed against HIM for these third-party distributions to Hannan

Properties, and the amount HIM paid to these clients in settlement. The sources I reviewed are listed on page 2 of Exhibit 1.

8. I determined that the Ruths, Maletichs, and Heinzmans made claims against HIM for \$387,433.22, \$129,562.46, and \$136,499.20, respectively, for a total of \$653,494.88, arising out of the losses they incurred from HIM's distribution of their client funds to Hannan Properties. To settle these claims, HIM paid a total of \$360,000, which included \$199,482.75 to the Ruths, \$78,166.13 to the Maletichs, and \$82,351.12 to the Heinzmans. These figures are reflected on Exhibit 1.

9. I reviewed a lawsuit brought by Buddy and Gloria Scott against HIM and HIM's settlement agreement with the Scotts. These sources are listed in footnote 3 on Exhibit 1. I determined that the Scotts claimed HIM and Hannan misappropriated \$800,000 from them during Hannan's tenure at HIM and that HIM paid the Scotts \$380,500 in settlement of that claim. Those amounts are not reflected on Exhibit 1 because it is my understanding that the Scotts did not pay Hannan or Hannan Properties through HIM by making wire distribution requests.

10. Finally, Exhibits 2-5 to this Declaration are true and correct copies of the following documents:

- (a) Exhibit 2 - Feb. 27, 2017 TCA Distribution Requests for Heinzman Properties, LLC for \$45,000, HORTER-SECexam000702;
- (b) Exhibit 3 - Excerpt of HIM Client Distribution Request Log, SEC-InvTestimony-000220-Long - SEC-InvTestimony-000238-Long;
- (c) Exhibit 4 - Mar. 23, 2017 Email from Kimm Hannan to Drew Horter, *et al.*, re Resignation, HORTER-SEC052338; and

(d) Exhibit 5 - Excerpt of Drew Horter's May 25, 2022 Deposition
Transcript.

Executed on January 9, 2023
Chicago, Illinois

Magina,
Nicholas

Digitally signed by Magina,
Nicholas
Date: 2023.01.09 10:50:17
00:00'

Nicholas Magina

EXHIBIT 1

In the Matter of Horter Investment Management, LLC and Drew K. Horter, AP File No. 3-20531
Horter Investment Management ("HIM") Client Distribution Requests to Hannan Properties, LLC: November 19, 2015 to March 8, 2017

No.	Client Name	Authorization	Authorization Date	Requested Distribution Amount	Distribution Method	Adviser	Distribution To	Listed on Distribution Log	Date on Distribution Log	Client Claim Against HIM	HIM Settlement Payment
1	J R Freedom Properties, LLC	John and Mary Ruth	11/19/2015	\$ 150,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
2	J R Freedom Properties, LLC	John and Mary Ruth	1/7/2016	\$ 150,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
3	J R Freedom Properties, LLC	John and Mary Ruth	2/22/2016	\$ 9,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
4	J R Freedom Properties, LLC	John and Mary Ruth	2/22/2016	\$ 24,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
5	Total for J.R. Freedom, LLC			\$ 333,000.00						\$ 387,433.22	\$ 199,482.75
6	Michael Maletich Sr and Nanette Maletich	Michael and Nanette Maletich	6/23/2016	\$ 45,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	Yes	6/27/2016		
7	Michael Maletich Sr and Nanette Maletich	Michael and Nanette Maletich	6/23/2016	\$ 20,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	Yes	6/27/2016		
8	Michael Maletich Sr and Nanette Maletich	Michael and Nanette Maletich	8/11/2016	\$ 15,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	Yes	8/16/2016 ¹		
9	Michael Maletich Sr and Nanette Maletich	Michael and Nanette Maletich	8/18/2016	\$ 15,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
10	Michael Maletich Sr and Nanette Maletich	Michael and Nanette Maletich	11/3/2016	\$ 35,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
11	Michael Maletich Sr (Roth IRA)	Michael Maletich	2/6/2017	\$ 18,255 00	By Wire	Kimm Hannan	Hannan Properties, LLC	Yes	2/6/2017		
12	Michael Maletich Sr (Traditional IRA)	Michael Maletich	2/6/2017	\$ 6,746 00	By Wire	Kimm Hannan	Hannan Properties, LLC	Yes	2/5/2017		
13	Total for Maletich			\$ 155,001.00						\$ 129,562.46	\$ 78,166.13
14	Heinzman Properties LLC	David and Anne Heinzman	8/18/2016	\$ 50,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
15	Heinzman Properties LLC	David and Anne Heinzman	8/26/2016	\$ 50,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
16	Heinzman Properties LLC	David and Anne Heinzman	12/29/2016	\$ 4,500 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
17	Heinzman Properties LLC	David and Anne Heinzman	12/29/2016	\$ 45,500 00	By Wire	Kimm Hannan	Hannan Properties, LLC	No	N/A		
18	Heinzman Properties LLC	David and Anne Heinzman	2/27/2017	\$ 45,000 00	By Wire	Kimm Hannan	Hannan Properties, LLC	Yes	3/1/2017		
19	Heinzman Properties LLC	David and Anne Heinzman	3/8/2017	\$ 45,000 00	By Wire	Kimm Hannan ²	Hannan Properties, LLC	No	N/A		
20	Total for Heinzman Properties LLC			\$ 240,000.00						\$ 136,499.20	\$ 82,351.12
TOTAL HIM CLIENT FUNDS TO HANNAN PROPERTIES				\$ 728,001.00	^{1,3}					\$ 653,494.88	\$ 360,000.00

Note: Sources listed on page 2.

¹ This distribution was requested on 8/16/17 and reversed on 8/17/16 (HORTER-SEC036264). A separate distribution request for \$15,000 was made on 8/18/16 (#9 above). The total amount cleared from HIM client accounts for the distribution requests listed above was \$713,001.

² Per the Distribution Log (SEC-InvTestimony-00235-Long), Hannan is listed as Heinzman Properties LLC financial adviser for the 3/1/17 distribution (#18 above). Per Hannan's Form U5 (SEC-InvTestimony-000097-Long), Hannan was terminated from HIM on 3/24/17 and Dino J. LoPresti became Heinzman's financial adviser (HORTER-SEC191004).

³ Buddy and Gloria Scott (herein, "the Scotts") filed a complaint against HIM and Kimm Hannan on 3/22/2018 (HORTER-SEC028406) in which the Scotts claimed that HIM and Hannan misappropriated \$800,000. The Settlement Agreement between HIM and BG Scott Properties, LLC and Buddy and Gloria Scott, signed on 7/17/2019, indicates HIM agreed to pay \$380,500 (SEC-SECCORR-E-0002655). These amounts are not included in the above summary. It is my understanding the Scotts did not make any third-party distribution requests to Hannan Properties through HIM.

In the Matter of Horter Investment Management, LLC and Drew K. Horter, AP File No. 3-20531
HIM Client Distribution Requests to Hannan Properties, LLC: November 19, 2015 to March 8, 2017

No.	J.R. Freedom Properties, LLC Sources
1	Distribution Request: HORTER-SEC055463 - HORTER-SEC055464 Account Statement: HORTER-SEC191154 & HORTER-SEC191159
2	Distribution Request: HORTER-SEC042936 Account Statement: HORTER-SEC191206 & HORTER-SEC191210
3	Distribution Request: HORTER-SEC042937 Account Statement: HORTER-SEC191206 & HORTER-SEC191212
4	Distribution Request: HORTER-SEC042938 Account Statement: HORTER-SEC191206 & HORTER-SEC191211
5	Statement of Claim: HORTER-SEC046757 Settlement Agreement: SEC-SECCORR-E-0002663

No.	Michael and Nanette Maletich Sources
6	Distribution Request: HORTER-SEC048599 - HORTER-SEC048600 Distribution Log: SEC-InvTestimony-000238-Long (line 12) Account Statement: HORTER-SEC035995
7	Distribution Request: HORTER-SEC048601 to HORTER-SEC048602 Distribution Log: SEC-InvTestimony-000238-Long (line 11) Account Statement: HORTER-SEC035995
8	Distribution Request: HORTER-SEC054878 Distribution Log: SEC-InvTestimony-000237-Long (line 8) Account Statement: HORTER-SEC036264
9	Distribution Request: HORTER-SEC045993 Account Statement: HORTER-SEC036256 & HORTER-SEC036265
10	Distribution Request: HORTER-SEC035532 Account Statement: HORTER-SEC036603 & HORTER-SEC036610
11	Distribution Request: HORTER-SEC067859 - HORTER-SEC067861 Distribution Log: SEC-InvTestimony-000235-Long (line 2) Account Statement: HORTER-SEC-036871
12	Distribution Request: HORTER-SEC051749 - HORTER-SEC051751 Distribution Log: SEC-InvTestimony-000235-Long (line 1) Account Statement: HORTER-SEC036851
13	Statement of Claim: HORTER-SEC046757 Settlement Agreement: SEC-SECCORR-E-0002646

No.	David and Anne Heinzman Sources
14	Distribution Request: HORTER-SEC044920 Account Statement: HORTER-SEC190954 & HORTER-SEC-190962
15	Distribution Request: HORTER-SEC027940 Account Statement: HORTER-SEC190954 & HORTER-SEC-190962
16	Distribution Request: HORTER-SEC068430 Account Statement: HORTER-SEC028013 & HORTER-SEC028026
17	Distribution Request: HORTER-SEC068431 Account Statement: HORTER-SEC028013 & HORTER-SEC191008
18	Distribution Request: HORTER-SECexam000702 Distribution Log: SEC-InvTestimony-000235-Long (line 4) Account Statement: HORTER-SEC191014
19	Distribution Request: HORTER-SEC076963 Account Statement: HORTER-SEC191004 & HORTER-SEC191015 Hannan U5: SEC-InvTestimony-000097-Long
20	Statement of Claim: HORTER-SEC046757 Settlement Agreement: SEC-SECCORR-E-0002637

EXHIBIT 2

Call Anne AT

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NON-RETIREMENT ACCOUNT DISTRIBUTION REQUEST

Institutional Advisor Services



SECTION 1: Account Owner

TCA Account Number [REDACTED]	Account Type LLC
Account Title Heinzman Properties, LLC	
Last 4 Digits of Social Security or Tax Identification Number 9203	

SECTION 2: Distribution Amount

Select a full or partial distribution:

- Full distribution and close my account, select one:
 Liquidate In-Kind
- Partial distribution, select all that apply:
 Partial cash, list amount:

Gross Cash Amount \$45,000

- Partial securities in-kind, list securities:

Number of Shares	Security Description / Symbol
Number of Shares	Security Description / Symbol
Number of Shares	Security Description / Symbol

- Additional securities information attached

SECTION 3: Distribution Method

Select Method:

- By check or security delivery:

Select if applicable:

- Send check via overnight delivery (not available for a P.O. Box address). Fee may apply.

Select one (check fee may apply):

- To the account owner and mailed to the address on record
 To the account owner and mailed to the address below
 To the third party payee at the address below

Third Party Payee if applicable		
For the Benefit Of (FBO) if applicable		
Mailing Address		
City	State	Zip
DTC security delivery information if applicable		

[REDACTED]
TCA Account Number

SECTION 3: Distribution Method Continued

- By electronic transfer. Note: Allow 1-2 business days for delivery from the processed date for ACH, and the same or next business day for wires.

- Select one: By ACH By Wire

- Select one: Checking account Savings account

- Voided check provided in lieu of bank information

Bank Name Key Bank
ABA (Routing) Number [REDACTED]
Name on Bank Account Hannan Properties, LLC
Account Number [REDACTED]

- By internal transfer, transfer to:

TCA Account Number	Account Type
Account Title	
Contribution Year	

SECTION 4: Signature

I/we authorize Trust Company of America (TCA) to disburse or transfer assets from my/our TCA account according to the above instructions. I/we acknowledge that the origination of ACH transactions to my/our account must comply with the provisions of U.S. Law, and that in the event an ACH entry is incorrect, TCA reserves the right to submit correcting entries. By signing, I/we hereby agree to indemnify and hold harmless TCA, its successors and assigns, from and against any losses, claims, liabilities, damages, actions, charges, and expenses including attorney fees, resulting from your compliance with this request, including but not limited to transfer to another party.

Account Owner or Authorized Party Signature <i>David Heinzman</i> member	Date 2/27/2017
Note: For custodial and legal accounts, the custodian, guardian, or conservator must sign.	
Print Name David Heinzman, member	
Joint Owner Signature, if applicable <i>Anne M. Heinzman</i> member	Date 2/27/2017
Print Name Anne Heinzman, member	

- End of Form -



EXHIBIT 3

Horter Investment Management
 Client Distribution Request Log
 Third Party Distributions

Date	Client Name	Account #	Advisor	Amount	3rd Party Payee	Processor	Authorization
2/5/17	Michael Maletich	[REDACTED]	Hannan	\$6,746.00	Hannan Properties	Jessica	K. Hoff
2/16/17	Michael Maletich	[REDACTED]	Hannan	\$18,225.00	Hannan Properties	Jessica	K. Hoff
2/9/17	Bence Peterson	[REDACTED]	B. Gray	\$38,000.00	Organic Aloe Vera	Jessica	K. Hoff
3/1/17	Heinzman Properties	[REDACTED]	Hannan	\$45,000.00	Hannan Properties	Jessica	K. Hoff
3/20/17	Randy Dallas	[REDACTED]	Thurgood	\$20,000.00	Donna Dallas	Jessica	K. Hoff
3/22/17	John O'Hilmi MD PLLC Retirement	[REDACTED]	M. Beatrice	\$2,075.49	Mass Mutual / JP Morgan	Jessica	K. Hoff
3/22/17	John O'Hilmi MD PLLC Retirement	[REDACTED]	M. Beatrice	\$22,924.51	Mass Mutual / JP Morgan	Jessica	K. Hoff
3/29/17	Jay Nelson	[REDACTED]	D. Bergen	\$1,000.00	Crown of Life Lutheran Church	Jessica	K. Hoff
4/4/17	Michael Downie	[REDACTED]	B. Gray	\$100,000	Minnesota Mutual Life	Jessica	K. Hoff
4/6/17	Terey & Anne Huddleston	[REDACTED]	K. Morris	\$41,614.26	Foundation Title & Escrow Series	Jessica	K. Hoff
4/6/17	Lis B. Baskin Trust	[REDACTED]	R. Thompson	\$5,000.00	Baskin Living Trust	Jessica	J. Hoff
4/13/17	Jean Pappas Supplemental TR.	[REDACTED]	G. Jensen	\$2,000.00	Alexandria Walsh	Jessica	K. Hoff
4/17/17	Dzer Cuthagil	[REDACTED]	P. Sabapathi	\$26,000.00	Retirement Planning Services	Jessica	K. Hoff

Horter Investment Management
 Client Distribution Request Log
 Third Party Distributions

Date	Client Name	Account #	Advisor	Amount	3 rd Party Payee	Processor	Authorization
10/27/16	Hohman Living Trust	[REDACTED]	Snyder	\$280,000	Doris Hohman	Jessica	K-Calt
11/2/16	Ronald Muller	[REDACTED]	Innerbichler	\$4,000	Dartmouth College (c)	Jessica	K-Calt
11/2/16	Ronald Muller	[REDACTED]	Innerbichler	\$4,000	Hope Lutheran Church (c)	Jessica	K-Calt
11/16/16	Catherine Bross	[REDACTED]	Reens	\$100,000	Athene	Jessica	K-Calt
12/13/16	SP Forward Reinsurance	[REDACTED]	C Payne	\$296,210	Young Chevrolet	Jessica	K-Calt
	SP Forward Reinsurance	[REDACTED]	C Payne	\$296,210		Jessica	K-Calt
	Open RE Limited	[REDACTED]	C Payne	\$387,503		Jessica	K-Calt
	BS Forward Reinsurance	[REDACTED]	C Payne	\$608,175		Jessica	K-Calt
	BT Forward Reinsurance	[REDACTED]	C Payne	\$296,212		Jessica	K-Calt
	BL Forward Reinsurance	[REDACTED]	C Payne	\$296,200		Jessica	K-Calt
1/18/17	Joseph Wilson	[REDACTED]	B. Gray	\$7,000	Elaine Wilson	Jessica	K-Calt
2/2/17	Michael Maletich	[REDACTED]	K. Hannan	\$5,000	Todd + Brooke Maletich	Jessica	K-Calt
2/2/17	Michael Maletich	[REDACTED]	K. Hannan	\$9,000	Todd + Brooke Maletich	Jessica	K-Calt

**Horter Investment Management
Client Distribution Request Log
Third Party Distributions**

Date	Client Name	Account #	Advisor	Amount	3 rd Party Payee	Processor	Authorization
7/10/10	Robert L Dewdney Trust		Eichmann	\$300,000.00	Robert Dewdney	Jessica	<i>[Signature]</i>
7/11/10	F Cardone Trust / Roger		TARNO	\$7,000.00	Roger + Miriam TARNO	Jessica	<i>[Signature]</i>
7/12/10	Jessica TARNO UTMA		TARNO	\$1,800.00	Roger + Miriam TARNO	Jessica	<i>[Signature]</i>
7/19/10	K2MC, Kinnison		Luebke	\$17,500.00	City National Bank	Jessica	<i>[Signature]</i>
7/28/10	James Taylor		B. Smith	\$27,274.00	California Bank + Trust	Jessica	<i>[Signature]</i>
8/5/10	Michael Dressander Trust		D. Horter	\$481,958.77 - Full	Michael Dressander	Jessica	<i>[Signature]</i>
8/11/10	F Cardone Trust / Roger		TARNO	\$8,000.00	Roger + Miriam TARNO Trust	Jessica	<i>[Signature]</i>
8/16/10	Michael + Nanette Malachuk		Hannan	\$15,000.00	Hannan Properties, LLC	Jessica	<i>[Signature]</i>
8/29/10	F Cardone Trust / Roger		TARNO	\$11,000.00	Roger + Miriam TARNO Trust	Jessica	<i>[Signature]</i>
9/7/10	Geoffrey Miller		R. Perez	\$70,000.00	Jones, Childers, McTurkin + Donaldson	Jessica	<i>[Signature]</i>
9/21/10	K2mc, Kinnison		Luebke	\$50,000	Karen Kinnison	Jessica	<i>[Signature]</i>
9/21/10	K2MC, Kinnison		Luebke	\$189,040.38	North Coast Escrow	Jessica	<i>[Signature]</i>
10/11/10	Dorothy Thrasher		Redaelli	\$113,166.37	E-Trade	Jessica	<i>[Signature]</i>

**Horter Investment Management
Client Distribution Request Log
Third Party Distributions**

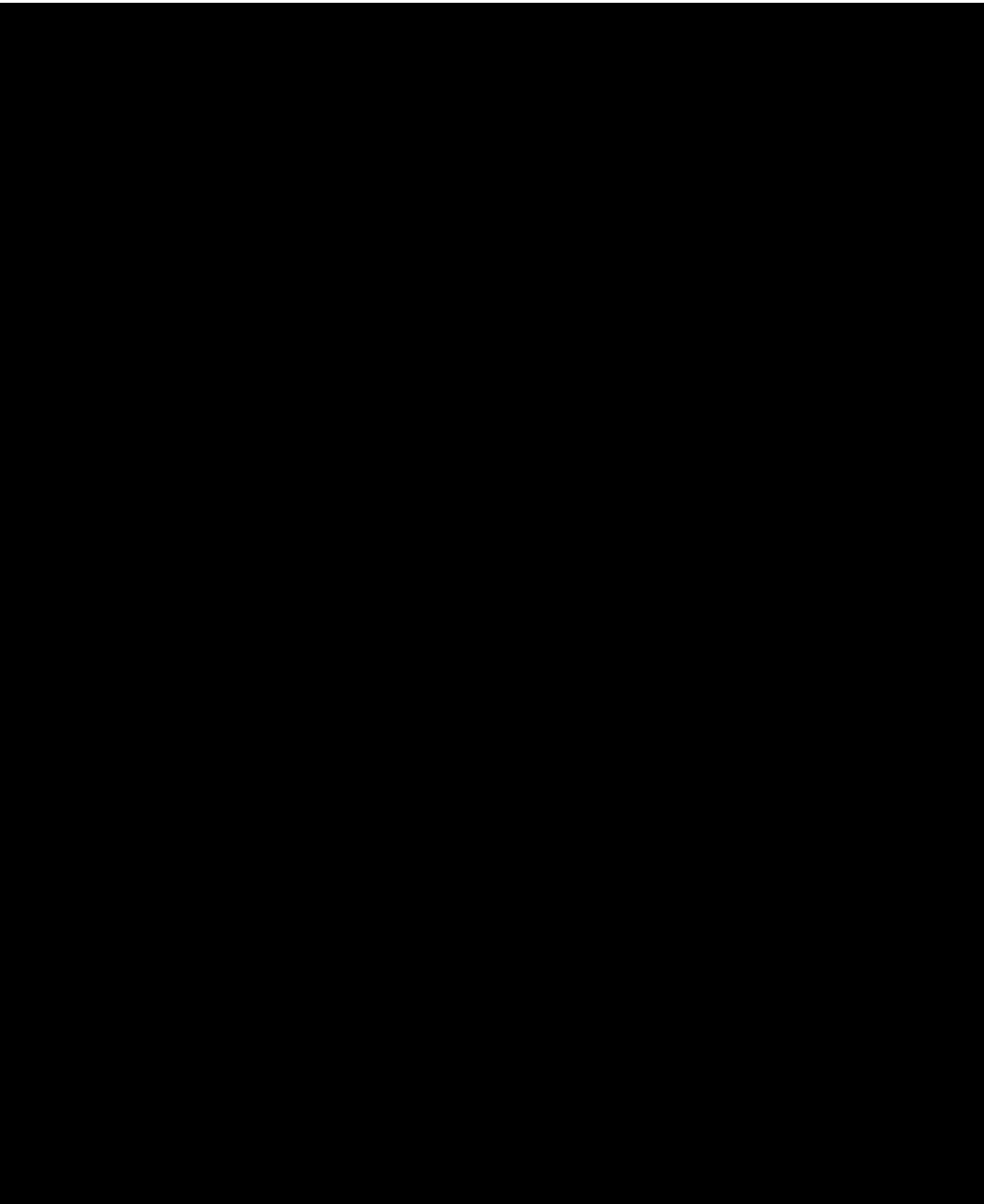
Date	Client Name	Account #	Advisor	Amount	3 rd Party Payee	Processor	Authorization
6/3/16	G4 Forward Reinsurance		Cory Payne	\$18,306.34	YAG Management	Jessica	
6/3/16	G5 Forward Reinsurance		Cory Payne	\$12,367.52	YAG Management	Jessica	
6/3/16	G6 Forward Reinsurance		Cory Payne	\$25,797.01	YAG Management	Jessica	
6/3/16	G7 Forward Reinsurance		Cory Payne	\$25,796.89	YAG Management	Jessica	
6/3/16	G8 Forward Reinsurance		Cory Payne	\$11,247.57	YAG Management	Jessica	
6/3/16	Ompen Reinsurance		Cory Payne	\$34,164.31	YAG Management	Jessica	
6/3/16	SP Forward Reinsurance		Cory Payne	\$14,541.84	YAG Management	Jessica	
6/3/16	YAG Reinsurance		Cory Payne	\$47,033.01	YAG Management	Jessica	
6/16/16	Eryn Donnalley		V. Taylor	\$100,000.00	Gill & Tobias, LLP Trust Account	Jessica	
6/17/16	F Cardone Trust / ERIC		R. Tarno	\$3,500.00	ERIC Tarno	Jessica	
6/27/16	Michael & Nanette Maletch		Kimm Hannan	\$20,000.00	Hannan Properties	Jessica	
6/27/16	Michael & Nanette Maletch		Kimm Hannan	\$45,000.00	Hannan Properties	Jessica	
6/28/16	Karen Kinnison		R. Wiedke	\$30,000.00	Karen L Kinnison Family Living Trust	Jessica	

EXHIBIT 4

OS Received 01/23/2023

CONFIDENTIAL

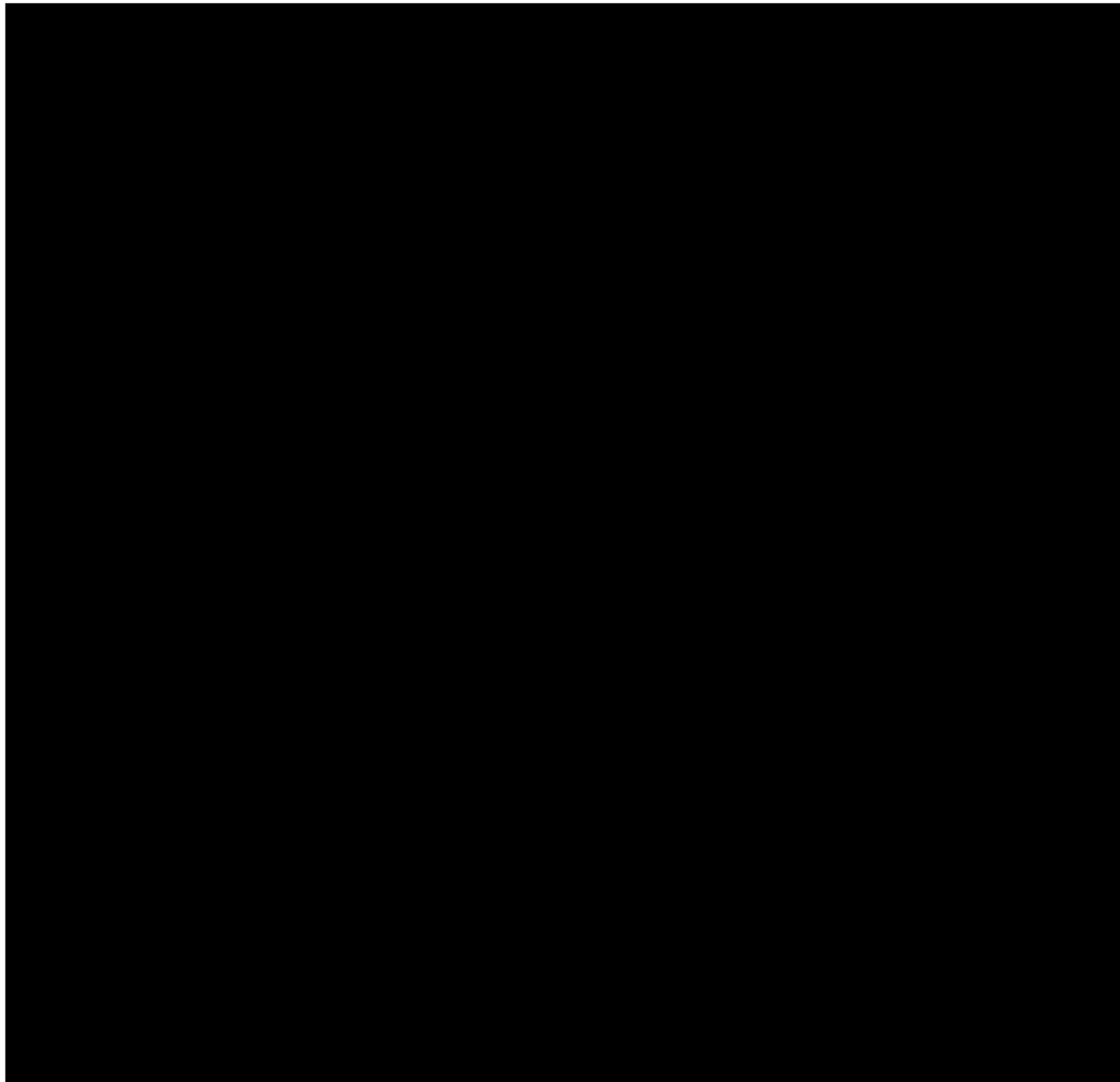
HORTER-SEC052338



OS Received 01/23/2023

CONFIDENTIAL

HORTER-SEC052339



OS Received 01/23/2023

CONFIDENTIAL

HORTER-SEC052340

EXHIBIT 5

1 UNITED STATES OF AMERICA
2 before the
3 SECURITIES AND EXCHANGE COMMISSION
4 ADMINISTRATIVE PROCEEDING
5 FILE NO. 3-20531
6 IN THE MATTER OF)
7)
8 Horter Investment)
9 Management, LLC and)
10 Drew K. Horter,)
11)
12 Respondents.)
13 _____)
14 VIDEOTAPED REMOTE DEPOSITION OF DREW K. HORTER
15 Wednesday, May 25, 2022
16
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19
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21
22
23 Reported By:
24 Denise Sankary, RPR, RMR, CRR,
25 Job No. 220525DSA

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1 UNITED STATES OF AMERICA
2 before the
3 SECURITIES AND EXCHANGE COMMISSION
4 ADMINISTRATIVE PROCEEDING
5 FILE NO. 3-20531
6 IN THE MATTER OF)
7)
8 Horter Investment)
9 Management, LLC and)
10 Drew K. Horter,)
11)
12 Respondents.)
13 _____)
14
15 Remote videotaped deposition of DREW K. HORTER,
16 taken on behalf of Plaintiff beginning at 10:11 a.m.
17 and ending at 12:50 p.m. on Wednesday, May 25, 2022,
18 before Denise Sankary, Certified Realtime Reporter.
19
20
21
22
23
24
25

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1 REMOTE APPEARANCES:
2 On behalf of the Securities and Exchange Commission:
3 UNITED STATES SECURITIES and EXCHANGE COMMISSION
4 ALYSSA A. QUALLS, ESQUIRE
5 JONATHAN EPSTEIN, ESQUIRE
6 175 West Jackson Boulevard, Suite 1450
7 Chicago, Illinois 60604
8 Phone: 312-886-2542
9 Email: quallsa@sec.gov
10 Email: epsteinj@sec.gov
11
12 On behalf of the Respondents:
13 NICOLE WOODS, ESQUIRE
14 ICE MILLER
15 250 West Street, Suite 700
16 Columbus, Ohio 43215
17 Phone: 317-236-2100
18 Email: nicole.woods@icemiller.com
19
20 ALSO PRESENT:
21 Tim Hunter, Videographer
22 Lynette Nichols, SEC Paralegal
23
24
25

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13 Desist Proceedings Pursuant to
14 Sections 203(e), 203(f) and 203(k)
15 of the Investment Advisers Act
16 of 1940 and Notice of Hearing
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19 Defenses of Respondents Horter
20 Investment Management, LLC and
21 Drew K. Horter to the Order
22 Instituting Administrative and
23 Cease and Desist Proceedings
24 Pursuant to Sections 203(e),
25 203(f) and 203(k) of the
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Horter-SEC000558 - Horter-SEC000566

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<p>1 Exhibit 49 12/10/16 E-mail from Kimm Hannan to Drew Horter and others 52 2 Subject: Update with attachment 3 Exhibit 32 11/14/14 Form U5 for Kimm C. Hannan 56 4 5 Exhibit 55 04/01/16 Horter Investment Management, LLC Policies and Procedures Manual 83 6 7 Exhibit 54 05/01/15 Horter Investment Management, LLC Policies and Procedures Manual 85 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">5</p>	<p>1 MS. WOODS: Good morning. My name is 2 Nicole Woods. I am a partner here at 3 Ice Miller. I am counsel for respondents, 4 Horter Investment Management, LLC, and the 5 witness, Drew K. Horter. 6 THE COURT REPORTER: Mr. Horter, would you 7 raise your right hand, please? 8 Do you swear the testimony you're about to 9 give today will be the truth, the whole truth, 10 and nothing but the truth? 11 THE WITNESS: Yes. 12 THE COURT REPORTER: Thank you. 13 Thereupon: 14 DREW K. HORTER 15 having been first duly sworn, was examined and 16 testified as follows: 17 EXAMINATION 18 BY MS. QUALLS: 19 Q. Okay. Good morning. Mr. Horter, could 20 you state and spell your name for the record? 21 A. Drew K. Horter, D-R-E-W, K., H-O-R-T-E-R. 22 Q. Thank you. 23 What is your occupation? 24 A. Financial adviser. 25 Q. Okay. And are you a respondent in this</p> <p style="text-align: center;">7</p>
<p>1 Wednesday, May 25, 2021 2 10:11 a.m. - 12:50 p.m. 3 4 THE VIDEOGRAPHER: And here begins the 5 videotaped deposition of Drew Horter in the 6 matter of the Horter Investment Management, 7 LLC, and Drew K. Horter. 8 This case is being heard in the United 9 States of America for the Securities and 10 Exchange Commission. This deposition is being 11 held via WebEx. Today's date is May 25, 2022, 12 and the time on the record is 10:11 a.m. 13 My name is Tim Hunter, I'm your legal 14 videographer. Our court reporter today is 15 Denise Sankary, both here on behalf with 16 Gradillas Court Reporting. 17 Counsel, would you please introduce 18 yourselves and state whom you represent for the 19 record, starting with the noticing counsel, and 20 the witness will be sworn. 21 MS. QUALLS: Good morning. My name is 22 Alyssa Qualls. I am a trial attorney at the 23 United States Securities and Exchange 24 Commission. And with me today is Jonathan 25 Epstein and our paralegal, Lynette Nichols.</p> <p style="text-align: center;">6</p>	<p>1 case? 2 A. Yes. 3 Q. These proceedings are taking place 4 remotely via WebEx, and each representative of the 5 SEC is at a location in Illinois. 6 Mr. Horter, are you participating from 7 Ohio? 8 A. Yes. 9 MS. QUALLS: Okay. And, Ms. Woods, are 10 you participating also from Ohio? 11 MS. WOODS: Yes. 12 BY MS. QUALLS: 13 Q. And I take it you're not in the same 14 location; is that correct, Mr. Horter? 15 A. Correct. 16 Q. Is anyone else with you in the room, 17 Mr. Horter? 18 A. No. 19 Q. If anyone else leaves or enters the room, 20 could you identify them promptly for the record? 21 A. Yes. 22 Q. Thank you. 23 Mr. Horter, are there any reasons or 24 circumstances that would prevent you from providing 25 complete and truthful testimony today?</p> <p style="text-align: center;">8</p>

1 recently.
2 **Q.** How often do they meet?
3 **A.** Once a quarter is the general rule or as
4 needed.
5 **Q.** And are there -- in their review of all of
6 Horter's existing policies and procedures, how are
7 they prioritizing what -- which ones to look at
8 first?
9 **A.** I guess as a group, they're deciding that.
10 **Q.** Okay. So you don't have any knowledge of
11 that?
12 **A.** Not of the process or the priority.
13 **Q.** So now with the existence of this group,
14 you have stepped away from all compliance-related
15 functions; is that right?
16 **A.** Yes. Except for when they need any
17 questions of me.
18 **Q.** And you don't have a vote on the
19 committee.
20 **A.** Correct.
21 **Q.** And I think in your answer, I think you
22 said there were 55 IARs currently at Horter; is that
23 right?
24 **A.** Yes.
25 **Q.** Is that still true today?

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1 **A.** Slightly less than that now.
2 **Q.** Do you know how many there are now?
3 **A.** I would be approximating. About 45.
4 **Q.** And what percentage of those are off-site?
5 **A.** All but one.
6 **Q.** Okay. And so the branch office group will
7 be overseeing the supervision of all of those 44
8 off-site IARs; is that right?
9 **A.** Correct.
10 **Q.** Do you have any role currently in
11 supervising IARs?
12 **A.** Not now.
13 **Q.** When did you step away from that?
14 **A.** When they formed that committee, that
15 program.
16 **Q.** Okay. Now, during the 2014 to 2017 time
17 frame, is it true that you had the ultimate
18 authority over Horter's investments policies and
19 procedures; is that right?
20 **A.** Yes.
21 **Q.** And that continued up until this Calfee
22 firm was retained in October 2021?
23 **A.** When they actually formed the committee
24 and the branch office supervisory program is when
25 they removed me from those responsibilities.

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1 **Q.** So it continued until February 2022?
2 **A.** Yes.
3 **Q.** Now, during the time period from 2014
4 through 2017, you had overall supervisory
5 responsibility for Horter Investment; is that right?
6 **A.** Correct.
7 **Q.** And in 20 -- and now -- well, withdraw
8 that.
9 Who currently has the overall supervisory
10 authority for Horter Investments' IARs?
11 **A.** That would be Leslie Green with her
12 committee.
13 **Q.** Okay. And back in 2014 to 2017, you had
14 the final authority to hire, fire, and discipline
15 IARs, right?
16 **A.** Correct.
17 **Q.** And now currently, who at Horter
18 Investment has the final authority to hire, fire,
19 and discipline IARs?
20 **A.** That would be Leslie Green with Jason Long
21 and the committee.
22 **Q.** And from the 2014 to 2017 time frame, you
23 were -- who had oversight of Horter Investment's
24 daily operations?
25 **A.** For compliance or overall of the company?

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1 **Q.** Let's go with compliance.
2 **A.** Well, Jason Long had the day-to-day
3 operations, and I managed Jason Long as CCO.
4 **Q.** And what about operations?
5 **A.** During that time period, Kirk Horter was
6 in charge of operations with Kevin Hetzer as his
7 assistant.
8 **Q.** And now in 2022, who has oversight of
9 Horter Investment's daily operations?
10 **A.** For compliance would be Leslie Green,
11 Jason Long, Becky Hartsuck, and Kevin Hetzer. For
12 operations, it would be Kevin Hetzer.
13 **Q.** So what is -- what is your current role at
14 Horter Investment Management?
15 **A.** I'm still the CEO and president of the
16 overall management of the business.
17 **Q.** You're not responsible for the day-to-day
18 operations; is that right?
19 **A.** I'm not -- the department heads have the
20 day-to-day operations, and they report to me on a
21 weekly basis, if not daily. But on a regular basis
22 we have meetings, manager meetings.
23 **Q.** So Kevin Hetzer reports to you?
24 **A.** Correct.
25 **Q.** And do you -- and are you ultimately --

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