UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94441/March 14, 2022

INVESTMENT ADVISORS ACT OF 1940
Release No. 5977/March 14, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20795

In the Matter of

LAURENCE G. ALLEN,

Respondent.

RESPONDENT LAURENCE G. ALLEN'S MOTION FOR SUMMARY DISPOSITION

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I. INTRODUCTION.

Pursuant to Rule 250 of the Rules of Practice of the Securities and Exchange Commission ("SEC" or the "Commission"), Respondent Laurence G. Allen ("Mr. Allen" or "Respondent") moves for summary disposition in this follow-on proceeding initiated by the SEC's Division of Enforcement ("Division"). Mr. Allen submits that this proceeding may be resolved as a matter of law because there is no proper legal basis for this action under Section 15(b) of the Securities Exchange Act of 1934 or Section 203(f) of the Investment Advisers Act of 1940. Alternatively, a disciplinary sanction against Mr. Allen is not in the public interest for the reasons discussed herein. Accompanying this brief is the Declaration of John K. Wells, which, with attached exhibits, provides all facts necessary for a determination by summary disposition.

On its face, this action might appear similar to any other follow-on administrative proceeding in which a respondent has been enjoined from violating the securities laws by a court of law in a civil action. However, this action is unique in that the Division is requesting that the Commission impose a sanction against Mr. Allen under federal law based on an injunction entered by a state court under state law, and which does not enjoin him from acting as an investment adviser or broker or otherwise prohibit him from engaging in his normal and ordinary securities business. As discussed more fully below, this is improper, unprecedented and unconstitutional. Summary disposition in favor of Mr. Allen is appropriate, and this action should be dismissed.

II. PROCEDURAL BACKGROUND.

The Commission instituted this action on March 14, 2022, with an Order Instituting Proceedings ("OIP") pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. The OIP is based solely on the findings and injunction entered by the Supreme Court of New York (the "Court") in *NYAG v. Laurence G. Allen, ACP Investment Group, LLC, NYPPEX Holdings, LLC, ACP Partners X, LLC and ACP X,*

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LP ("Defendants") and NYPPEX, LLC, LGA Consultants, LLC, Institutional Internet Ventures, LLC, Equity Opportunity Partners, LP and Institutional Technology Ventures, LLC ("Relief Defendants"), No. 452378/201913 (the "New York Action"). The New York Action was a civil action brought by the New York Attorney General ("NYAG") against Mr. Allen and others. Wells Decl., Ex. A. The New York Action was based solely upon New York state law.

The New York court made factual findings and imposed injunctive relief, including enjoining Mr. Allen from violating New York General Business Law Article 23-A, §§ 352–353, a provision of New York state law known as the Martin Act. Wells Decl., Ex. B. The injunction merely made permanent an earlier preliminary injunction which preserved the status quo with regard to a private equity fund, ACP X, LP, pending agreement by the parties as to the appropriate allocation of fund assets and appointment of a provisional receiver. *Id.*, p. 15 ("a permanent injunction shall be issued identical to the preliminary injunction…"). The court did not enjoin Mr. Allen from acting as an investment adviser or broker, or from engaging in a securities business or from engaging in the purchase or sale of securities. In fact, the court specifically noted that it "declines the [NYAG's] request to bar Allen from the securities industry." *Id.*, p. 16.

Mr. Allen served his Answer and Defenses to the OIP on April 4, 2022.

III. LEGAL ARGUMENT.

A. Standard of Review.

Rule of Practice 250 (17 C.F.R. § 201.250) provides that a party may move for summary disposition as to any or all allegations of an OIP after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying. The Commission or a hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. *See* Rule of Practice 250(b).

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B. There is No Proper Legal Basis for this Action Under Federal Law.

1. Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 Are Provisions of Federal Law and Are Addressed to Civil Injunctions Issued by Federal Courts Under Federal Law.

This proceeding was brought by the Division pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), *see* OIP at 1, which permit the Commission to impose sanctions against a broker or advisor for, among other things, violating federal securities laws, willfully making false statements in any application for registration or report required to be filed with the Commission, or conviction of a felony or certain misdemeanors. *See* 15 U.S.C. § 78o(b)(4); 15 U.S.C. § 80b-3(e). In addition, Section 15(b)(4)(C) of the Exchange Act provides that the Commission may impose a disciplinary sanction if it finds that the respondent:

> is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer municipal advisor, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

15 U.S.C. § 78o(b)(4)(C). Section 203(e) of the Advisers Act contains nearly identical language. *See* 15 U.S.C. § 80b-3(e)(4).

This particular type of administrative proceeding, in which the Division seeks to impose sanctions based on an injunction entered by a court in an underlying civil action, "is commonly

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called a 'follow-on' proceeding." *Gibson v. SEC*, 2009 U.S. App. LEXIS 5243, *3, fn. 1 (6th Cir. 2009).

Here, Mr. Allen has not been enjoined from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, municipal advisor, etc. The only language even arguably pertinent to this action appears at the end of the provision: the respondent must be enjoined "from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." 15 U.S.C. § 78o(b)(4)(C); 15 U.S.C. § 80b-3(e)(4). As noted previously, the OIP alleges that Mr. Allen was enjoined in the New York action from future violations of New York law, but he was not enjoined from acting as an investment adviser or broker or from engaging in the purchase or sale of securities. *See* Wells Decl., Ex. B, p. 15.[1]

Section 15(b) of the Exchange Act and Sections 203(e) and (f) of the Advisers Act are provisions of federal securities law. Although not explicit in the text, those provisions apply to injunctions entered by federal courts under federal law. By way of example, the phrase "such activity" in the last sentence of Section 15(b)(4)(C) refers to the list of activities immediately preceding the phrase, all of which arise under and are governed by federal securities laws. Further, the terms "investment adviser," "broker," "dealer," "purchase," "sale" and "security" are all

[1] The injunction enjoins certain activities in connection with the ACP X, LP fund, including transfers, withdrawals, distributions, investments, loans, lines of credit, sales or transfers of partnership interests, etc. Wells Decl., Ex. B., p. 14-15. Those provisions were clearly intended to protect the status quo with regard to the fund, not to restrict Mr. Allen's ability to engage in the securities business. Had the trial court intended to enjoin Mr. Allen from acting as an investment adviser or broker in New York, or from engaging in a securities business or in connection with the purchase or sale of securities, it could have said so clearly and unmistakably. *See e.g.*, *Anthony C. Zufelt*, Initial Decision Rel. No. 3-17907 (Apr. 22, 2019) (respondent enjoined by trial court from "acting as an officer or director of an issuer and participating directly or indirectly in the issuance, offer, or sale of securities"); *Robert Seibert*, Initial Decision Rel. No. 1087 (Dec. 12, 2016) (respondent enjoined by trial court from "participating in the issuance, purchase, offer, or sale of any security except for his personal account"). The absence of clear language in the injunction demonstrates that the court did not intend to enjoin Mr. Allen from engaging in a securities business, and, as discussed herein, Mr. Allen has continued to conduct business since the injunction was entered.

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defined under federal law, and, for purposes of Section 15(b) and Section 203(e), have the meanings ascribed to them by federal law.[2]

Nothing in the text of Section 15(b) of the Exchange Act or Sections 203(e) and (f) of the Advisers Act explicitly refers to an injunction entered by a state court under state law. Nor is there any such implication, as these are federal laws addressing matters subject to or arising under the same or other federal laws (*e.g.*, the Securities Act of 1933, the Commodity Exchange Act and other federal laws pertaining to investment advisers, underwriters, brokers, dealers, etc.), or concerning activities or terms defined under federal law. Had Congress intended for Section 15(b) of the Exchange Act or Sections 203(e) and (f) of the Advisers Act to apply to injunctions entered by state courts based on the application of state law, it could have said so. Yet it did not.[3]

To the extent that Section 15(b) of the Exchange Act and Sections 203(e) and (f) of the Advisers Act permit the Commission to impose a sanction against an individual based on the entry of an injunction against him in a prior civil action, those provisions refer implicitly to injunctions entered by federal courts based on violations of federal securities laws. That is the only reasonable interpretation of the provisions, as any contrary reading makes no sense. The Commission exists under federal law to regulate, enforce and administer the federal securities laws, not the individual laws of fifty different states, each of which may differ materially from federal securities laws.[4] A

[2] *See e.g.* 15 USC § 78c(a)(20) ("investment adviser," with reference to 15 USC § 80b-2(a)(11)); (c)(a)(4) ("broker"); (c)(a)(5) ("dealer"); (c)(a)(30) ("municipal securities dealer"); (c)(a)(43) ("government securities broker"), (c)(a)(19) ("affiliated person" and "investment company"); 15 USC § 78c-2(b) ("purchase" and "sale"); 15 USC § 78c(a)(10) ("security").

[3] In comparison, Section 15(b)(4)(H) of the Exchange Act permits the Commission to impose sanctions if a respondent "is subject to any final order of a State securities commission" under certain enumerated circumstances. This is the specificity which Section 15(b)(4)(C) is lacking.

[4] By way of example, the New York law which Mr. Allen was found to have violated differs significantly from federal securities law, as the state law requires no proof of scienter, reliance or damages – all elements of federal securities law under Section 10b-5 of the Exchange Act, 15 USC § 78j(b). *See Schneiderman v. Eichner*, 2016 N.Y. Misc. LEXIS 2003, 2016 WL 3057994, at *7 (Sup. Ct. N.Y. Cty. May 26, 2016) (Martin Act "is broader than federal

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sanction under federal law based on a violation of a state law which may be materially different than federal law on the same subject matter – as in this case – is wholly improper.

2. Case Law Supports the Position that Section 15(b) of the Exchange Act and Sections 203(e) and (f) of the Advisers Act Are Addressed to Civil Injunctions Issued by Federal Courts Under Federal Law.

The available legal authority supports this position. For example, *Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017), was an appeal from a Commission order in a follow-on proceeding similar to the instant action. At the outset, the D.C. Circuit Court of Appeals addressed the statutory landscape concerning administrative disciplinary proceedings before the Commission. In pertinent part, the Court wrote:

> With the enactment of section 203(f) of the Investment Advisers Act of 1940 … and sections 15(b), 15B(c) and 17A(c) of the Securities Exchange Act of 1934 … the Congress authorized the SEC to oversee the registration and licensing of four different classes of participants in the securities markets: brokers and dealers, municipal securities dealers, transfer agents and investment advisers. As relevant here, these statutory provisions also authorized the Commission to suspend or bar a participant from specific classes if certain conditions were met. Generally, to impose such a sanction, the Commission had to first demonstrate that the penalty was in the public interest. Second, the Commission had to show that the participant was, *inter alia*, convicted of a specified offense within the last ten years ***or had been enjoined by the SEC from working in the industry***. …

845 F.3d at 1219-1220 (emphasis added) (internal citations omitted). The Court was explicit in stating that the injunction provisions of the Exchange Act and the Advisers Act apply to injunctions under federal law, as the SEC only enforces federal securities laws. Implicitly, the decision recognizes that follow-on administrative proceedings such as this one are based on an earlier civil action by the SEC to prove a violation of federal securities laws; otherwise the language "enjoined by the SEC" has no meaning.

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securities statutes in that it permits the Attorney General to take action against fraudulent conduct considered detrimental to the public without requiring proof of either scienter or intentional fraud, reliance, or damages").

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Similarly, *SEC v. Credit Bancorp, Ltd.*, 2011 U.S. Dist. LEXIS 13738 (S.D.N.Y. Feb. 10, 2011), concerned, among other things, an attempt by a respondent to enjoin an administrative proceeding following the entry of a civil injunction against him. The court noted that "Section 15(b)(6) of the Securities Exchange Act of 1934 empowers the Commission to place limitations on an individual's activities or to suspend or bar an individual from association with any broker or dealer." Citing 15 U.S.C. § 78o(b)(6)(A)(iii), the court noted further that, "[i]n particular, the SEC has statutory authority to file a follow-on administrative proceeding ***after it receives injunctive relief in related civil proceedings***." *Id.* at *9 (emphasis added). "It," of course, refers to the SEC. In other words, like the D.C. Court of Appeals in *Bartko*, the district court in *Credit Bancorp* recognized implicitly that an administrative disciplinary proceeding follows a related civil proceeding brought by the SEC under the federal securities laws.

Lastly, *Gibson v. SEC*, 2009 U.S. App. LEXIS 5243, *3 (6th Cir. 2009), concerned a challenge by a respondent to sanctions imposed by the Commission in a follow-on proceeding based on Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. The court noted in a footnote that "[t]his type of administrative proceeding, in which the Division seeks to impose sanctions after an individual is ***enjoined from acts involving securities or investment fraud in federal court***, is commonly called a 'follow-on' proceeding.'" *Id.* at *3, fn. 1 (emphasis added). Again, there is no ambiguity in the court's language; a follow-on administrative proceeding is based on an injunction entered by a federal court.

None of these cases states explicitly that Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act specifically require that the injunction be issued by a federal court under federal law. But that is the clear implication. Reference to actions "*by the SEC*," "*federal courts"* and "*related proceedings"* demonstrate implicitly that the pertinent language of

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those statutes – "permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction" – refers to federal court injunctions based on violations of federal securities laws. This only makes sense, as the statutes are federal laws which apply to federal regulation of the securities industry. In other words, the statutes need not specify that a "court of competent jurisdiction" is a federal court, as the implication is clear from the context: the federal securities laws are enforced in federal courts.[5]

3. The Division Has Repeatedly Taken the Position That it is Required to Prove That a Respondent Has Been Enjoined From Violating the Federal Securities Laws.

For the avoidance of doubt, the Division itself has taken the same position on numerous occasions, as reflected by motions and briefs filed with the Commission in follow-on administrative proceedings similar to this one. Indeed, the Division has described proof of a violation of federal securities laws as an essential element of its burden in a follow-on proceeding. For example, in *Mark Feathers*, Admin. Proceeding 3-15755 (Apr. 7, 2014), the Division wrote in its motion for summary disposition that "Section 15(b)(6) of the Exchange Act… provides that the Commission may bar a person from being associated … if the Commission finds, on the record and after notice and opportunity for a hearing, that such bar is 'in the public interest' and that the person ***is enjoined from certain violations of the federal securities laws***[.]" (Div. Motion for Summary Disposition at pp. 4-5) [6] As to its burden of proof, the Division wrote that: "to prevail on this motion for summary disposition, the Division must establish that: (1) ***Feathers has been***

[5] The Commission's own administrative rules of procedure are also consistent in this regard. For example, Rule 323 ("Evidence: Official notice") provides that "Official notice may be taken of any material fact which might be judicially noticed ***by a district court of the United States***, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body." (Emphasis added). There is no reference in this rule to a state court proceeding.

[6] https://www.sec.gov/litigation/apdocuments/3-15755-event-15.pdf (emphasis added).

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enjoined from violating the federal securities laws, and (2) it is in the public interest to impose a bar against Feathers." *Id.* (emphasis added).

The Division used the same language in a subsequent motion for summary disposition in the same case six years later. *See Mark Feathers*, Admin. Proceeding 3-15755 (July 14, 2020), (Div. Motion for Summary Disposition, p. 4) ("[t]o prevail on this motion for summary disposition, the Division must establish that … Feathers has been enjoined from violating the federal securities laws").[7] Likewise, it used the same language in *Joshua D. Mosshart*, Admin. Proceeding No. 3-18422 (May 22, 2018) (Div. Motion for Summary Disposition, pp. 5-6) ("to prevail on this proceeding, the Division must establish that … Mosshart has been enjoined from violating the federal securities laws").[8]

In *Charles George Cody Price*, Admin. Proceeding No. 3-16946 (Dec. 21, 2015), the Division wrote in its Motion for Summary Disposition that:

> Section 203(f) of the Advisers Act, as amended by Section 925(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of2010, Pub. L. No. 111-203, § 925(b), 124 Stat. 1376 (2010) [codified at 15 U.S.C. § 80b-3(f)]("Dodd-Frank"), provides that the Commission may bar a person from being associated with a "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," if the Commission finds, on the record after notice and opportunity for a hearing, that such a bar "is in the public interest" ***and that the person is enjoined from certain violations of the federal securities laws, including, for the purposes of this proceeding, violations of the antifraud provisions.*** … Accordingly, ***to prevail on this proceeding, the Division must establish that: (1) Price has been enjoined from violating the federal securities laws***, and (2) it is in the public interest to impose a bar against him.

[7] https://www.sec.gov/litigation/apdocuments/3-15755-event-2020-07-14-divisions-motion-for-summary-disposition.pdf

[8] https://www.sec.gov/litigation/apdocuments/3-18422-event-6.pdf

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Div. Motion for Summary Disposition, p. 4 (emphasis added) (internal citations omitted).[9]

In *Duncan J. MacDonald III*, Admin. Proceeding 3-16181 (Feb. 9, 2015), the Division wrote in its motion for summary disposition that "The Commission has a statutory mandate to bar, if in the public interest, any person from (1) associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization ("collateral bar") … ***if such person has been enjoined from violating federal securities laws*** or, within the last ten years, convicted of a felony involving the purchase or sale of any security."[10]

Having taken the position in official filings with the Commission numerous times over the years that it must establish in a follow-on proceeding that a respondent has been "enjoined from violating the federal securities laws," the Division is estopped from arguing otherwise here. In this case, Mr. Allen has not been enjoined from violating any federal securities law.

4. A Follow-On Administrative Proceeding Based Solely on a State Court Injunction is Virtually Unprecedented.

Were this not enough, a review of available published Opinions of the Commission ("Opinions") demonstrates that follow-on administrative proceedings before the Commission arising from the entry of injunctive relief are based exclusively on injunctions issued by federal courts under federal law. Opinions dating from 1996-2022 are available online on the Commission's website; Respondent has reviewed that database and has discovered fifty-four (54) Opinions in follow-on proceedings based on civil injunctions. Wells Decl., Ex. C.[11] Every single one of those proceedings – over the course of nearly three decades – was based on the entry of an

[9] https://www.sec.gov/litigation/apdocuments/3-16946-event-12.pdf
[10] https://www.sec.gov/litigation/apdocuments/3-16181-event-10.pdf

[11] Opinions of the Commission are published at https://www.sec.gov/litigation/opinions.htm.

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injunction by a ***federal district court*** enjoining future violations of ***federal securities laws***. *Id.* Not one single Opinion was based on a state court injunction.

Initial Decisions issued by SEC Administrative Law Judges tell a similar story. Respondent has reviewed the Commission's online database of Initial Decisions dating back to 1996 and has discovered 145 non-duplicative decisions in follow-on proceedings based on civil injunctions. Wells Decl., Ex. C.[12] Of those, 99% of Initial Decisions (143 out of 145) were based on the entry of an injunction by a federal district court enjoining violations of federal securities laws. The two exceptions are distinguishable. In *Robert Burton,* Initial Decision Rel. No. 1014 (May 27, 2016)[13], the respondent was enjoined by a state court from providing financial and investment advising services in Massachusetts, but was also convicted in federal court on five counts of securities fraud in violation of Section 10(b) of the Exchange Act. In its motion for summary disposition, the Division argued that, in addition to the criminal conviction, "a court-ordered injunction prohibiting a person from acting as an investment adviser can also be the basis for the Commission issuing the industry bar sought as relief in this matter" and therefore "[t]he permanent injunction issued against Burton, enjoining him from engaging in investment advising services, satisfies this criterion, and … provides an independent basis for this action."[14] The respondent did not oppose the motion for summary disposition and the ALJ found, in conclusory fashion and without discussion or citation to any authority, that the injunction was "within the meaning of Sections 203(e)(4) and 203(f) of the Advisers Act." *Id.* at p. 4.

[12] Initial Decisions are published at https://www.sec.gov/alj/aljdec htm. "Non-duplicative decisions" means that Respondent has counted only one adjudicative decision per respondent.

[13] https://www.sec.gov/alj/aljdec/2016/id1014cff.pdf

[14] https://www.sec.gov/litigation/apdocuments/3-16926-event-17.pdf

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George Bussanich, Jr., Initial Decision Rel. No. 967 (February 29, 2016)[15] was based on a consent order and injunction entered by the Superior Court of Essex County, New Jersey which permanently enjoined the respondent from, among other things, violating the New Jersey Uniform Securities Law, including its anti-fraud provisions; acting in the securities business in New Jersey as an agent, broker, dealer, investment adviser, or investment adviser representative; and issuing, offering for sale or selling, offering to purchase or purchasing, or advising regarding the sale of any securities in any manner to, from, or within New Jersey. The respondent did not file an answer to the OIP, nor did he respond to a show cause order (presumably because he had previously consented to the underlying state court order and injunction). The ALJ found (again in conclusory fashion without discussion or citation to any authority) that sanctions were appropriate because "the consent judgment enjoined him from acting as an investment adviser and broker-dealer, conduct that falls within Exchange Act Section 15(b)(4)(C)."

Thus, in neither of the two outlier cases did the respondent oppose summary disposition or challenge the legal basis for sanctions, nor did the ALJ provide any independent legal analysis regarding the legal basis for sanctions, other than stating in conclusory fashion that the requirements of Section 15(b)(6) of the Exchange Act had been met. Nor did the Commission itself consider the merits or address the legal basis for sanctions, as in each case the Initial Decision became subject to an order of finality by virtue of the expiration of time for filing a petition for review.[16] [17]

[15] https://www.sec.gov/alj/aljdec/2016/id967ce.pdf

[16] https://www.sec.gov/alj/aljdec/2016/ia-4464.pdf; https://www.sec.gov/alj/aljdec/2016/34-77655.pdf.

[17] Mr. Allen is aware that the Division has also brought actions based on state court injunctions that have resulted in settlements. *See e.g.*, *Robert H. Zan Zandt*, Exchange Act Rel. No. 94477 (Mar. 18, 2022). That the Division brings an action and then settles it does not make the action proper. The one common theme in the few cases involving state court injunctions is that none of them have been challenged by the respondents or adjudicated by the Commission. Additionally, and similar to *Burton* and *Bussanich*, the respondent in *Zan Vandt* was enjoined by the trial court "from

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5. Alternatively, the Injunction in the New York Action Does Not Provide the Proper Basis for a Sanction Against Mr. Allen.

Based on the foregoing, Mr. Allen respectfully submits that Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act do not authorize the Commission to impose a sanction on a respondent based on a civil injunction entered by a state court under state law. In the alternative, however, and to the extent that the Commission determines that it does have such authority, Mr. Allen respectfully submits that the injunction entered against him in the New York Action does not provide the proper basis for a sanction under Section 15(b) of the Exchange Act or Section 203(f) of the Advisers Act based on a state court injunction.

As discussed above, Mr. Allen has discovered only two instances in the past twenty-seven years (less than 1% of cases) in which a sanction under Section 15(b) of the Exchange Act or Section 203(f) of the Advisers Act was based on a state court injunction. In each instance, the underlying injunction enjoined the respondent from acting as an investment adviser and/or as a broker, and, specifically, the ALJ in the *Burton* case held that "a court-ordered injunction prohibiting a person from acting as an investment adviser can also be the basis for the Commission issuing the industry bar sought as relief in this matter" and "[t]he permanent injunction issued against Burton, enjoining him from engaging in investment advising services, satisfies this criterion, and therefore provides an independent basis for this action." However, that circumstance does not exist here, as the injunction in the New York Action does not restrict Mr. Allen's ability to conduct a securities business in any meaningful manner, such as enjoining him from acting as an adviser or broker or engaging in the purchase or sale of securities. In fact, the court pointedly

directly or indirectly engaging or attempting to engage in any manner in the securities business within or from the State of New York as a broker, dealer, issuer, investment adviser or investment manager, or as an officer, director, principal, controlling person, agent, affiliate person, consultant or salesperson of a broker, dealer, issuer, investment adviser or investment manager" – a broad injunction utterly unlike the one in the present case.

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refused to restrict Mr. Allen's ability to conduct a securities business. *See* Wells Decl., Ex. B, p. 16 ("the Court further declines [NYAG's] request to bar Allen from the securities industry [as] [t]he various entities that Allen controls are all highly regulated by FINRA and other regulators which are better suited than the Court to address the future status of those entities and Allen's future role in those entities"). In fact, Mr. Allen continues to conduct his regular securities business (which is limited to private and secondary market investments and includes no retail or public business) as of the date of this motion.[18]

Put simply, even if the Commission is empowered to impose a sanction based on a state court injunction, the basis for doing so does not exist here, as Mr. Allen has not been enjoined from any of the acts or circumstances set forth in Section 15(b) of the Exchange Act or Section 203(f) of the Advisers Act. To the extent that the Division might argue that Mr. Allen has been enjoined in the New York Action from future violations of New York law, that aspect of the injunction is merely an "obey-the-law" provision which imposes no duties on Mr. Allen other than his existing duty to follow the law, and is of the type that has been described by some courts as "unenforceable." *See e.g. SEC v. Smyth*, 420 F.3d 1225, 1233 n.14 (11th Cir. 2005).[19]

It would be highly improper, prejudicial and unprecedented for the Commission to sanction Mr. Allen – particularly with a bar from the industry, which one federal appellate court has described as "the securities industry equivalent of capital punishment"[20] – based a state court injunction which contains no meaningful securities-related restraint on him other than a mere

[18] *See* https://files.brokercheck.finra.org/individual/individual_1063970.pdf, which reflects that Mr. Allen is "currently registered" with FINRA as a broker and associated with NYPPEX, LLC. (Mr. Allen ceased registration as an investment adviser in 2014; *see* https://reports.adviserinfo.sec.gov/reports/individual/individual_1063970.pdf.)

[19] Such an argument by the Division would also be fundamentally inconsistent with its oft-repeated position that it must prove that a respondent "has been enjoined from violating the federal securities laws." *See e.g.*, *Mark Feathers*, Admin. Proceeding 3-15755 (July 14, 2020).

[20] *Paz Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

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instruction to follow the law, which itself is a controversial type of provision disfavored by some courts.

In summary, this is a follow-on proceeding based on the entry of an injunction against Mr. Allen by a court in a prior civil action, but it is unlike any other similar proceeding before the Commission in that it arises from a state court order based on state law and does not enjoin Mr. Allen from acting in any capacity in the securities industry. The injunction merely preserves the status quo of a private equity fund so that the fund may be liquidated or the benefit of its investors, and it requires little more of Mr. Allen than that he obey New York law and not engage in improper conduct. The basis for a sanction under Section 15(b) of the Exchange Act or Section 203(f) of the Advisers Act simply does not exist in this case.

6. A Sanction Against Mr. Allen Would Violate His Constitutional Rights.

The remedy which the Division seeks is unprecedented in recent history, and if imposed by the Commission it would reflect a clear effort to single Mr. Allen out for disparate treatment, with no rational basis for doing so and in violation of his right to equal protection under the Fourteenth Amendment to the Constitution. *See e.g. Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (recognizing "successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment"). Mr. Allen is not aware of any instance in the past several decades in which the Commission has imposed a sanction under similar circumstances, or based on an injunction similar to the one entered in the New York Action. There is no rational basis for treating him differently than any other registered person.

Further, this action violates Mr. Allen's Constitutional right to due process. "It is a basic principle that a law or regulation 'is void for vagueness if its prohibitions are not clearly defined.'"

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Fox TV, Inc. v. FCC, 613 F.3d 317, 327 (2nd Cir. 2010), *quoting Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). "A law or regulation is impermissibly vague if it does not 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.'" *Fox TV*, *supra*, *quoting Grayned*, 408 U.S. at 108. A statute violates the Due Process Clause if it does not notify regulated parties what conduct is prohibited or if it authorizes enforcers to engage in arbitrary or discriminatory enforcement. *See Grayned*, 408 U.S. 108–09.

Here, Section 15(b) of the Exchange Act and Sections 203(e) and (f) of the Advisers Act are impermissibly vague as applied to this proceeding, as they fail to provide notice to Mr. Allen, a regulated person, that he might face disciplinary sanctions under federal law – including a complete bar from the securities industry – based on an injunction entered by a state court under state law (and one that does not even prohibit him from acting as an investment adviser or broker). Nothing in the federal statutes expressly provides that disciplinary sanctions may be based on a state court injunction, and, as indicated herein, the Commission's historical application of the statutes demonstrates that use of the statutes against Mr. Allen is arbitrary and discriminatory, as no other registered person in recent history has been held to a similar standard in an Opinion of the Commission. Put bluntly, there is no clear authority which would alert Mr. Allen to the fact that a federal agency might bar him from the securities industry – effectively a nationwide ban on his securities practice – based on an injunction issued by one state court. Likewise, Mr. Allen is aware of no instances in recent history in which the Commission has imposed a sanction against an individual based on a state court injunction which does not include a prohibition on acting as an investment adviser or broker. Section 15(b) of the Exchange Act and Sections 203(e) and (f) of the Advisers Act fail to provide notice to Mr. Allen that he could face a sanction by the Commission based solely on a state court injunction which does little more than require him to

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obey state law, and, as such those statutes are unconstitutionally void for vagueness as applied here.

Moreover, the application of federal administrative sanctions based on a state court injunction is particularly problematic in this case, as there continues to be a live dispute as to what state law even applies in the underlying civil action. The New York Action is currently on appeal to the New York Court of Appeals, and one argument advanced by Mr. Allen on appeal is that the New York court improperly applied New York law to disputes concerning a Delaware limited partnership which is governed by extensive agreements specifying that they are to be construed in accordance with Delaware law. In fact, NYAG's case was premised on the notion that Mr. Allen, acting on behalf of the general partner of ACP X, LP, exceeded the general partner's contractual authority and "violated" the fund's limited partnership agreement and private placement memorandum in multiple ways. Wells Decl., Ex. A. Whether the general partner violated the operative contracts is a question that can only be decided under Delaware law, as the parties to those contracts specified that the contracts would be "governed by and construed in accordance with the laws of the State of Delaware." Wells Decl., Ex. D, § 12.06; Ex. A, p. 78. Yet the New York court conducted no conflict of law analysis and simply applied New York law as if the operative contracts (and choice of law provisions) did not exist.

This choice of law dispute has significant ramifications, as NYAG effectively turned a case which should have been subject to Delaware law into an "investor fraud" case under New York's broad fraud statute, the Martin Act, which differs materially from Delaware law. Now the Division seeks to have the Commission sanction Mr. Allen based on a New York state court injunction

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notwithstanding that disputes remain as to whether the application of New York law was even proper in the court below.[21]

In conclusion, no court has enjoined Mr. Allen from acting as a broker or adviser or from purchasing or selling securities or from engaging in any of the activities described at Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act. Nor has any court found that he has violated federal securities laws or enjoined him from violation of federal securities laws. Accordingly, Section 15(b) of the Exchange Act and Sections 203(e) and (f) of the Advisers Act are inapplicable here. There is no legal basis for application of those statutes to a state court injunction entered pursuant to New York law, and any such application would violate Mr. Allen's rights under the U.S. Constitution to equal protection and due process. Mr. Allen is entitled to judgment as a matter of law.[22]

C. A Sanction is Not in the Public Interest.

In the alternative, even if the Commission determines that Section 15(b) of the Exchange Act and/or Section 203(f) of the Advisers Act apply in this action, a sanction is not appropriate because it is not in the public interest.

1. Legal Standard.

In considering the appropriateness of sanctions, the Commission is guided by the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). Those factors include: (1) the egregiousness of the respondent's actions; (2)

[21] Again, this demonstrates why basing a follow-on administrative proceeding on a state court injunction is improper, as differing state laws give rise to issues that do not exist under federal securities law, which is applied uniformly throughout the country.

[22] Mr. Allen is also aware that the Fifth Circuit Court of Appeals recently held that an SEC administrative proceeding violated the U.S. Constitution in three distinct respects, including the right to a jury trial. *Jarkesy v. SEC*, No. 20-61007, 2022 U.S. App. LEXIS 13460 (5th Cir. May 18, 2022). While Mr. Allen continues to evaluate that decision, he reserves all rights arising from it that may accrue to his benefit.

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the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. *Id.* at 1140. The *Steadman* factors are flexible and no one factor is dispositive. *See Gary M. Kornman*, Exchange Act Rel. No. 59403, *10 (Feb. 13, 2009). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *See Marshall E. Melton*, Exchange Act Rel. No. 48228 (July 25, 2003). When there is no genuine issue with regard to any material fact in a follow-on proceeding like this one, the weighing of factors relating to the choice of the appropriate sanction is an issue committed to the Commission's discretion and does not require a hearing. *See Seghers v. SEC*, 548 F. 3d 129, 134-36 (D.C. Cir. 2008).

"Each case must be considered on its own facts" in assessing sanctions. *McCarthy v. SEC*, 406 F.3d 179, 190 (2d Cir. 2005). A respondent in a follow-on proceeding "may introduce evidence regarding the 'circumstances surrounding' the conduct that forms the basis of the underlying proceeding as a means of addressing 'whether sanctions should be imposed in the public interest.'" *Gary L. McDuff*, Exchange Act Release No. 78066, at *7 (June 14, 2016). The Commission "must consider mitigating facts," *Saad v. SEC*, 718 F.3d 904 (June 11, 2013), and "the totality of the circumstances." *Blinder, Robinson & Co. Inc. v. SEC*, 837 F.2d 1099, 1109-1111 (D.C. Cir. 1988). The Commission must be particularly careful to address potentially mitigating factors before it bars an individual from associating with a member firm, as a bar is "the securities industry equivalent of capital punishment." *Paz Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

Lastly, "a sanction may be used to protect investors but not to punish a regulated person or firm." *Paz Sec.,* 494 F.3d at 1065, quoting *Wright v. SEC*, 112 F.2d 89, 94 (2d Cir. 1940). The

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purpose of a sanction is not to punish a respondent for past misconduct, but because he or she presents a present danger to the public. *Johnson v. Securities and Exchange Commission*, 87 F.3d 484 (D.C. Cir. 1996).

Mr. Allen respectfully submits that it is not "in the public interest" to impose a disciplinary sanction against him. While Mr. Allen acknowledges that the Commission finds a public interest in nearly every similar action, this case is unique, and it must be decided on its own facts and circumstances. Notably – as discussed above – there has been no finding by any court that Mr. Allen violated any federal securities laws, nor is he enjoined from acting as an investment adviser or broker or from conducting a securities business, which renders this case materially different from the typical follow-on administrative proceeding arising from a civil injunction. Moreover, because the state court proceeding in the underlying case was based on a New York law which differs materially from federal securities law, several of the public interest factors – principally "degree of scienter" and "harm to investors" – are noticeably absent in this case, as the New York court was not required to consider scienter, reliance or damages.

Because the *Steadman* and other public interest factors are flexible and no one factor is dispositive, Mr. Allen will address below the factors most pertinent to this case. And, because Mr. Allen anticipates that the Division will file its own motion for summary disposition arguing that a sanction *is* in the public interest, he reserves the right to address the public interest factors in additional detail in response to the Division's motion.

2. Notwithstanding the Court's Findings in the New York Action, There Was No Wrongful Conduct, Infraction or Violation.

Several of the *Steadman* factors focus on the wrongful conduct as determined by the court in the underlying civil litigation, *e.g.*, the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction(s), the sincerity of the respondent's assurances against

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future violations, the respondent's recognition of the wrongful nature of his conduct, the likelihood of future violations. This case is different – and not because Mr. Allen refuses to take responsibility for his alleged actions, but because he believes emphatically that the New York court viewed the evidence in the wrong context and simply got the case wrong. Mr. Allen offers his sincere assurances against future violations of the securities laws because he is adamant that there were no violations in the first place. In order for the Commission to consider the public interest, it must understand the facts and circumstances at issue in the underlying case, and not merely what appears in the court's orders (which omit much of the exculpatory evidence presented at trial).[23]

The New York Action concerned ACP X, LP ("ACP X" or the "Fund"), a private equity limited partnership consisting of seventy-six limited partner investors (the "Limited Partners"), all of whom are qualified purchasers as defined under federal law – the most sophisticated of investors. Mr. Allen is the managing member of the general partner ("General Partner") of the Fund. As with any private fund, ACP X is governed by contracts, in this case a Private Placement Memorandum ("PPM"), Limited Partnership Agreement ("LPA") and six amendments to the LPA approved by votes of a majority of the Limited Partners. Those extensive contractual agreements spell out how the Fund will be managed and address the scope of the General Partner's authority in making investments and otherwise operating the Fund.

In its complaint, NYAG alleged that Mr. Allen exceeded the General Partner's contractual authority and committed fraud in violation of the Martin Act in several different ways, including making investments in an affiliate of the Fund (NYPPEX Holdings, LLC), distributing

[23] Mr. Allen understands that he cannot re-litigate issues that were addressed in a previous civil action proceeding against him. However, the Commission must examine and consider the facts and circumstances underlying the injunction in making a public interest determination. *See Mark Feathers*, Initial Decision Release No. 605, 2014 WL 2418472 (May 30, 2014); *Marshall E. Melton*, Exchange Act Release No. 48228 (July 25, 2003). This includes potential mitigating evidence and circumstances as discussed herein.

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carried interest to the General Partner, and paying operating expenses. Wells Decl., Ex. A. NYAG described these actions as "self-dealing" on the part of Mr. Allen, all part of an effort to divert Fund assets for his own benefit, and it characterized the action as an "investor fraud" case. *Id.* The court ultimately agreed. Wells Decl., Ex. B. However, in adopting NYAG's fraud narrative, the court skipped an essential step in the analysis and effectively missed the forest for the trees. In our view, the court failed to conduct the basic contractual analysis necessary to determine whether Mr. Allen's alleged actions were in fact improper. This is not a characterization or an argument; it is self-evident from the decision itself, which reflects a total lack of discussion or analysis regarding any provisions of the operative contracts, or of any mitigating evidence. *Id.*

Importantly, the actions which NYAG alleged were improper – investments in affiliate entities, carried interest distributions, payment of operating expenses, valuations – were all subject to the PPM and LPA. The gist of NYAG's complaint is that Mr. Allen engaged in self-dealing and committed fraud by acting contrary to those agreements. As a result, reference to the PPM and LPA (as amended) is critical to any analysis of Mr. Allen's actions, as those contracts define what he (on behalf of the General Partner) could and could not do. But the court's orders contain no specific reference to any provision of the PPM or LPA, nor any effort to analyze those contracts to determine whether Mr. Allen did in fact exceed the General Partner's contractual authority in connection with any particular allegation. But the PPM and LPA are in the record, and the Commission may review them in undertaking a public interest analysis. The Commission will give great deference to a court order, but it is not required, for public interest purposes, to accept blindly the findings in an order if it has evidence before it which casts doubt on those findings.

One example will illustrate the point. The primary claim in the NYAG complaint is that Mr. Allen caused the Fund to make investments in an affiliate entity also controlled by Mr. Allen,

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NYPPEX Holdings, LLC. At Paragraph 4 of the Complaint, NYAG alleges that "[t]he offering documents limited transactions between Allen's affiliated entities" and "the offering documents do not disclose or contemplate an investment by ACP into any of its affiliates." Wells Decl., Ex. A. Consistent with these allegations, the court found that Mr. Allen "provided fraudulent investment advice to ACPX by advising ACPX to invest in NYPPEX" and "fraudulently caused ACPX to make oversized investments in NYPPEX." Wells Decl., Ex. B.

In fact, and contrary to NYAG's allegations and the court's findings, the PPM and LPA contain numerous provisions which specifically provide that the General Partner may invest Fund assets in affiliates. Among other provisions, Section 2.09 of the LPA, in a section entitled "Transactions With Affiliates," provides that the "General Partner … is hereby authorized, on behalf of the Partnership, to purchase property in or obtain services from … any Affiliate of the General Partner, any Limited Partner, any Private Fund, any Portfolio Company or any Related Person [], or any Affiliate of any of the foregoing Persons." Wells Decl., Ex. D. That disclosure also appears on pages 19 and 61 of the PPM (under a heading entitled "Related Party Transactions; Conflicts of Interest") and similar provisions appear throughout the LPA and PPM. Wells Decl., Ex. E.

Securities are "property." Thus, any provision of the PPM or LPA which permits the General Partner to "purchase property in" an Affiliate is a clear authorization for the General Partner to purchase securities issued by an Affiliate of the Fund such as NYPPEX Holdings, LLC. Likewise, an investment is a "transaction." Any provision of the PPM or LPA which permits the General Partner to engage in "transactions with affiliates" (which is a subject heading of an entire section of the LPA) is a clear authorization for the General Partner to invest Fund assets in an affiliate entity. Further, a majority of the Limited Partners voted to approve the Fourth and Fifth

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Amendments to the LPA in 2015 and 2017, respectively. Those amendments provide, in pertinent part, that Section 3.03 of the LPA is amended to reflect that "the General Partner is permitted to make follow-on investments in portfolio companies and funds *including affiliates* without requiring the consent of Limited Partners as deemed appropriate by the General Partner." (Emphasis added.) Wells Decl., Ex. F.

The court's decision contains no reference to these or other similar provisions of the operative contracts. Wells Decl., Ex. B. In finding that the General Partner's investments in NYPPEX Holdings, LLC were "fraudulent," the court ignored the plain language of the PPM, LPA and Fourth and Fifth Amendments, all of which specifically authorized the General Partner to make investments in affiliate entities. For the avoidance of doubt, numerous Limited Partners testified that the PPM and LPA authorized the General Partner to invest in NYPPEX Holdings. Wells Decl., Ex. G ("I understood the PPM and LPA authorized the GP to invest in affiliates;" "the offering documents clearly contemplated that the fund would invest in companies in which the General Partner, Laurence Allen, had an affiliation;" Mr. Allen "was within the GP's rights to make [affiliate] investments under both the" PPM and LPA).[24] Yet, again, the court's decision reflects none of this testimony. Wells Decl., Ex. B.

The same problem persists throughout the court's orders. All of the allegations in the NYAG complaint are based on actions that are governed by contract, yet the court made no apparent effort (at least none that is reflected in its decisions) to review the relevant provisions of the PPM or LPA to determine whether Mr. Allen's alleged actions were (a) covered by the contracts, and, if so, (b) proper under the contracts. Mr. Allen respectfully submits that if the court

[24] Direct testimony was presented by affidavit and subject to cross-examination at trial. NYAG chose to cross-examine only two of the six Limited Partners who provided direct testimony by affidavit.

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had conducted a thorough analysis of the contracts in connection with each allegation of wrongdoing, it could not have reached the result that it did.

3. There is No Evidence of Scienter.

The "degree of scienter" is a relevant factor in the public interest analysis. *Steadman*, *supra*. Further, in *Marshall E. Melton*, Exchange Act Rel. No. 48228, *supra*, the Commission noted that "the respondent's state of mind" is one of "a range of factors relevant to that determination." In the typical follow-on proceeding, the Commission may take notice of a federal district court's findings, including as to scienter, as scienter is an essential element in most federal securities fraud cases. Not so in this case, though. Here, the underlying action was based on New York's Martin Act, which differs significantly from federal law. *See e.g. People v. Barysh*, 408 N.Y.S.2d 190, 193 (Sup. Ct. N.Y. County 1978) (Martin Act "clearly does not require several of the common-law elements of fraud, namely, reliance and scienter"); *Schneiderman v. Eichner*, 2016 N.Y. Misc. LEXIS 2003, 2016 WL 3057994, at *7 (Sup. Ct. N.Y. Cty. May 26, 2016) (Martin Act "is broader than federal securities statutes in that it permits the Attorney General to take action against fraudulent conduct considered detrimental to the public without requiring proof of either scienter or intentional fraud, reliance, or damages).

Because the Martin Act does not require proof of scienter, the New York court was not required to find that Mr. Allen acted with an intent to defraud. Mr. Allen's mental state was not at issue in the New York Action. As a result, the Commission can draw no conclusions regarding scienter based on the court's findings in the New York Action. Moreover, it would be highly improper and extremely prejudicial to Mr. Allen for the Division or the Commission to attempt to infer scienter from that action, given that scienter was not an essential element of the case below. Mr. Allen is collaterally estopped from re-litigating the New York Action, but by the same token the Division and the Commission are bound by the record there and cannot create findings that did

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not exist in that action. If the Division wanted to prove that Mr. Allen acted with an intent to deceive, it could bring a case against him under the federal securities laws and attempt to make such a showing. It has not done so. What it cannot do is use a state court action based on a "watered-down" fraud law to suggest or imply to the Commission that scienter exists.

No court has made a determination that Mr. Allen acted with scienter, or that he intentionally deceived any investors. As a result, there is no basis for the Commission to make a finding, for public interest purposes, as to the "degree of scienter," as there is no basis for a finding of scienter at all.

4. <u>There is No Evidence That Any Investor Has Been Harmed.</u>

Similarly, the New York court was not required to find that any investor relied on any purported misstatement by Mr. Allen to his or her detriment, or that any investor was harmed. As a result, the Commission has before it no evidence that any investor suffered any actual damage based on anything that Mr. Allen was alleged to have done. In fact, the Fund remains active, meaning that there has been no final determination as of yet regarding its performance. Operations of the fund – including liquidation of assets and distributions to Limited Partners – were halted by an injunction sought by NYAG in December 2018, more than three years ago. Thus, the Commission cannot evaluate harm to investors because there is no evidence – and there can be no evidence as of yet – that any Limited Partner in ACP X has actually lost money or will lose money. To the contrary, Mr. Allen testified at trial (in testimony that was not challenged or rebutted by NYAG) that all Limited Partners stand to be redeemed in full at somewhere between 119% and 184% of their initial investment upon liquidation, depending on the value of assets at the time of liquidation. Wells Decl., Ex H.

In short, there is no basis for the Commission to conclude that any investor has been harmed or is likely to be harmed in the future. No Limited Partner has sued for damages, or alleged

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that he or she has lost money in the ACP X, LP investment. All of the Limited Partners stand to receive a full return on investment, with additional gains depending on market conditions, at such time as the Partnership is finally liquidated and distributions are made.

5. Mr. Allen Poses No Present Danger to the Public.

A key inquiry under the public interest standard is whether additional remedies are "necessary or appropriate to protect investors and markets." *Steven R. Markusen & Jay C. Cope*, Release No. 1079 (Nov. 9, 2016). The purpose of sanctions is to protect the public, not to punish a respondent for past conduct. *Johnson v. Securities and Exchange Commission*, 87 F.3d 484 (D.C. Cir. 1996). *See also John W. Lawton*, 2012 WL 6208750, at *9 ("the Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors"). In this case, it is abundantly clear that Mr. Allen poses no present danger or risk to the public, and that a sanction will do nothing to protect investors and markets going forward.

First, Mr. Allen has been active in the financial services industry for over thirty-six (36) years, and, prior to the New York Action, he had never been the subject of any disciplinary action or customer complaint. He has an admirable record of regulatory compliance, and his past record weighs strongly against sanctions. *See Joseph S. Amundsen, CPA, et al*, Release No. 1391 (Dec. 5, 2019) (finding respondent's prior record of compliance to be a mitigating factor); *Vfinance Invs., Inc., Nicholas Thompson & Richard Campanella*, 94 S.E.C. Docket 1689 (Nov. 7, 2008) (declining to suspend respondent in part because he "has never faced any disciplinary action from any regulatory agency").

Second, Mr. Allen does not interact with the retail investing public and thus poses no risk to the general public or the marketplace. ACP X is a private fund consisting of seventy-six limited partners, all of whom are qualified investors. Mr. Allen's broker dealer, NYPPEX, LLC, provides secondary market liquidity and private capital for alternative investment funds, and operates solely

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as an intermediary to execute secondary transfers of interests in both private equity funds and private companies. It does not have a retail securities business and does not interact with retail investors.

Third, the timing of this proceeding demonstrates that Mr. Allen poses no danger to the public. The events forming the basis of the New York Action occurred between approximately 2013-2018. An *ex parte* injunction was entered against Mr. Allen in December 2018. A preliminary injunction was entered in February 2020. The permanent injunction was entered in February 2021. Yet the Division did not bring this action until March 2022 – more than three years after the *ex parte* injunction, two years after the preliminary injunction, and more than a year after the permanent injunction. During that time, Mr. Allen has continued to conduct business. Had the Division truly believed that Mr. Allen posed a danger to the public such that a sanction was warranted, it would have acted with more urgency in filing the OIP. The fact that it did not do so – when it could have initiated this action years ago – reveals that this proceeding is more about punishing Mr. Allen based on the allegations in the New York Action than protecting investors from future harm.

Lastly, Mr. Allen is already subject to a sanction in the form of the state court injunctions, which have been in effect in some form for three and a half years, since December 2018, and there is no allegation here (nor any evidence) that he has failed to comply with those injunctions. His sincere assurance that he will not violate the securities laws is substantiated by his record of compliance in the years since the New York Action was initiated. This case bears no resemblance to those in which a bar was imposed where the Commission had no assurance against of future misconduct. *See e.g. Richard P. Sandru*, Release No. 3646 (Aug. 12, 2013) (issuing sanctions where there was no assurance that the respondent would refrain from further violations).

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6. None of the Purported Misconduct is Recent.

NYAG's complaint alleges misconduct which allegedly occurred between 2013 and 2018. Wells Decl. Ex. A, ¶ 11. It is now June 2022. None of the purported misconduct is recent. None of it is current or ongoing. A sanction that is based not on present risk to the public but on alleged misconduct that allegedly took place between three and ten years ago would punish Mr. Allen for alleged past misconduct, which is improper and inconsistent with the purpose of administrative sanctions. *See Johnson v. SEC*, 87 F.3d 484 (D.C. Cir. 1996).

CONCLUSION

For the reasons discussed herein, Respondent Laurence G. Allen respectfully requests that the Commission GRANT his Motion for Summary Disposition and dismiss the action against him.

Dated: June 3, 2022

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: /s/ John K. Wells

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Attorneys for Respondent

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, I caused a copy of the foregoing document to be served on counsel of record by electronic mail to Jack Kaufman at KaufmanJa@sec.gov and Rhonda L. Jung at jungr.@sec.gov.

/s/ John K. Wells
John K. Wells

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94441/March 14, 2022

INVESTMENT ADVISORS ACT OF 1940
Release No. 5977/March 14, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20795

In the Matter of

LAURENCE G. ALLEN,

Respondent.

DECLARATION OF JOHN K. WELLS, ESQ. IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

I, John K. Wells, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am counsel for Respondent Laurence G. Allen in the above-captioned matter. I make this declaration based upon my personal knowledge and in support of Respondent's Motion for Summary Disposition.

2. Mr. Allen was a named defendant in *NYAG v. Laurence G. Allen, ACP Investment Group, LLC, NYPPEX Holdings, LLC, ACP Partners X, LLC and ACP X, LP ("Defendants") and NYPPEX, LLC, LGA Consultants, LLC, Institutional Internet Ventures, LLC, Equity Opportunity Partners, LP and Institutional Technology Ventures, LLC ("Relief Defendants")*, No. 452378/201913, in the Supreme Court of New York (the "New York Action"). Attached hereto

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as Exhibit A is a true and correct copy of the complaint filed by the New York Attorney General in the New York Action.

3. Attached hereto as Exhibit B is a true and correct copy of the court's Decision After Trial in the New York Action, dated February 4, 2021 and amended on February 26, 2021.

4. In connection with this proceeding, my office conducted a search of all publicly-available Opinions of the Commission, as well as all Initial Decisions of Administration Law Judges, both of which are published on the Commission's website. See https://www.sec.gov/litigation/opinions.htm and https://www.sec.gov/alj/aljdec.htm. Opinions of the Commission date back to 1996, while Initial Decisions date back to 1960. For purposes of this research, we did not search Initial Decisions older than 1996, as that is the date of the oldest available Opinions of the Commission. These databases provide approximately twenty-seven (27) years of data regarding administrative proceedings, including "follow-on" proceedings such as this one which are based on injunctive relief entered by a court of law in a prior civil action. A chart summarizing this research is attached hereto as Exhibit C.

5. Attached hereto as Exhibit D is a true and correct copy of the Private Placement Memorandum of ACP X, LP.

6. Attached hereto as Exhibit E is a true and correct copy of the Limited Partnership Agreement of ACP X, LP (as amended).

7. Attached hereto as Exhibit F are true and correct copies of the Fourth and Fifth Amendments to the Limited Partnership Agreement of ACP X, LP, dated June 15, 2015 and March 31, 2017, respectively.

8. Attached hereto as Exhibit G are true and correct copies of direct testimony affidavits

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of Robert Schubert, Vernon Sumnicht, Christian Erdman, James Johnson, David Rubis and Bassam Shihadeh, all Limited Partners in ACP X, LP, which were introduced at trial in the New York Action on behalf of the defendants in that Action.

9. Attached hereto as Exhibit H is a true and correct copy of select pages of trial testimony of Mr. Allen in the New York Action on January 14, 2021.

Executed under the pains and penalties of perjury this 2nd day of June, 2022 at Boston, Massachusetts.

/s/ John K. Wells
John K. Wells, Esq.

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EXHIBIT A

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, v. LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X, LP, Defendants, - and - NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC, Relief Defendants.	**VERIFIED COMPLAINT** Index No.:

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Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York (the "Attorney General" or the "OAG"), alleges the following against: (a) Defendants Laurence G. Allen, ACP Investment Group, LLC, NYPPEX Holdings, LLC, ACP Partners X, LLC, and ACP X, LP (together, the "Defendants"); and (b) Relief Defendants NYPPEX, LLC, LGA Consultants, LLC, Institutional Internet Ventures, LLC, Equity Opportunity Partners, LP, and Institutional Technology Ventures, LLC (together, the "Relief Defendants").

NATURE OF THE ACTION

1. Defendant Laurence G. Allen is the Chief Executive Officer of a 15-person broker-dealer (NYPPEX, LLC) owned by NYPPEX Holdings, LLC ("NYPPEX"), which he founded more than 20 years ago. The broker-dealer specializes in transfer administration services—matching buyers and sellers and transferring securities between them—for private partnership interests offered on the secondary market. Allen controls NYPPEX and the broker-dealer, which are effectively the same company, and is responsible for every aspect of their business operations.

2. With Allen at the helm, NYPPEX has consistently lost money, underperformed, and failed to meaningfully grow. Allen directly oversaw NYPPEX's corporate stagnation and failed to lift the company into profitability. All the while, Allen exploited the finances of the company for his personal gain, paying himself a salary dramatically out of line with NYPPEX's performance.

3. To compensate for his failures at NYPPEX, Allen turned to ACP X, LP ("ACP"), a private equity fund he launched in 2004 that was scheduled to wind down by December 31, 2018. Allen represented to investors that ACP would invest primarily in discounted private equity interests on the secondary market, including interests sourced through Allen's broker-dealer, and that investors could expect prompt and consistent distributions from the fund.

4. In the ACP offering documents Allen spelled out the permissible scope of the fund's relationship with affiliates, such as the broker-dealer, to account for conflicts of interest associated with Allen's overarching control and ownership of entities responsible for managing ACP and sourcing many of the fund's investments.

5. The offering documents limited transactions between Allen's affiliated entities, providing that ACP could compensate the affiliates for services provided but that Allen, as the managing principal of the fund's general partner, could not "actively participate in the day-to-day operations" of any of ACP's portfolio investments. To that end, the offering documents do not disclose or contemplate an investment by ACP into any of its affiliates.

6. In 2008, when Allen saw NYPPEX's cash flow tightening and his ability to pay himself threatened, he began abusing his unchecked control over ACP's accounts to divert millions of dollars of the fund's money directly to NYPPEX, in violation of the offering documents, the representations made to ACP investors, and his fiduciary duties.

7. Allen leveraged his control over an enterprise of corporate affiliates and commenced a decade-long effort to take from ACP in order to enrich himself and NYPPEX at the expense of ACP investors. Allen perpetrated his fraudulent scheme in a variety of ways that he concealed from and materially misrepresented to investors.

8. Allen funneled nearly $6 million in ACP returns directly to NYPPEX in the form of investments. Allen used the money ACP invested to both pay his own NYPPEX salary and stop NYPPEX from going under. Allen failed to accurately disclose the terms and nature of these transactions to ACP investors.

9. Since 2008, Allen has invested approximately $5.7 million from ACP into NYPPEX; during that same period, Allen paid himself $5.7 million in salary from NYPPEX,

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concretely demonstrating that the primary beneficiary of Allen's decision to compel ACP to invest in NYPPEX was Allen himself.

10. Allen further sought to cover up his fraud by reporting inflated valuations of NYPPEX securities to ACP's investors, valuations that he himself determined and that failed to account for NYPPEX's stagnant revenue and dependence on ACP. The disclosures were intended to obscure the true value of ACP's investment in NYPPEX and to lull ACP's investors into believing ACP's investment in NYPPEX was performing well when, in reality, it was not. When confronted with questions from investors about the conflicted and suspicious nature of the investments in NYPPEX, and the valuation of NYPPEX, Allen refused to respond to the inquiries and ultimately threatened certain investors with personal liability should they continue to seek information.

11. Not satisfied with the substantial sums he diverted from ACP to invest in NYPPEX, in 2013 Allen fraudulently began to distribute what he characterized as carried interest—*i.e.* profits over and above certain investor distribution hurdles—in ACP to himself, depriving investors of distributions to which they were entitled. Through omissions and misleading disclosures, Allen manipulated investors into approving amendments to ACP's operating agreement and then, leveraging the results of his scheme, unlawfully distributed at least $3.4 million to himself and entities under his control.

12. Finally, in direct violation of the terms of ACP's partnership, Allen caused ACP to pay for millions of dollars in NYPPEX's operating expenses, even though such payments were expressly prohibited. Allen did not disclose the true nature and significance of these payments to investors.

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13. Although ACP, NYPPEX, and the other of Allen's affiliated companies are separate in corporate form, Allen has, through his domination and control of Defendants and Relief Defendants, merged the companies into a single fraudulent enterprise. Allen exploited his access to ACP, his control over NYPPEX, the fund's general partner, and the fund's investment adviser, and the lack of any oversight of his activities, to raid ACP's accounts, pay himself handsomely, and prop up his other ventures.

14. The Attorney General's investigation preceding this complaint did not deter Allen from continuing to engage in persistent fraudulent activity. In March 2019, after the Attorney General commenced a pre-action proceeding and secured a preliminary injunction pursuant to General Business Law § 354 restraining Allen's access to ACP's bank and brokerage accounts, Allen commenced efforts to quickly raise capital for NYPPEX from outside sources. The solicitations advised potential investors that NYPPEX planned to raise new capital "to finance [NYPPEX's] 2019 growth plans" but made no mention of the injunction or 354 proceeding—in which NYPPEX was a party—or the Attorney General's investigation.

15. Allen also advised the Attorney General during the investigation that he intended to raise $10 million dollars for NYPPEX from investors and direct up to $3 million of those funds to buy out ACP's position in NYPPEX. Summaries of the recent NYPPEX offering omitted any reference to Allen's plan to use capital raised to buy back shares from ACP. Left unchecked, Allen will continue to move money into NYPPEX to benefit himself and conceal his previous misconduct.

16. Allen and the corporate entities he controlled manipulated investors through a web of misrepresentations and omissions. In doing so, Allen and the corporate Defendants violated the Martin Act, Executive Law § 63(12), and their fiduciary duties, and engaged in a decade-long

fraud on the investors of ACP. To date, Allen has looted ACP of more than $13 million. There is a high likelihood that unless immediately enjoined, Defendants will continue to engage in the fraudulent practices the Attorney General has identified, irreparably harming investors.

17. In light of the foregoing, and as set forth herein, the Attorney General seeks to permanently bar Allen from engaging in the offer or sale of securities in the State of New York, to obtain damages, restitution and disgorgement on behalf of investors in ACP and the State of New York, and to appoint a receiver to wind down ACP.

PARTIES

18. Plaintiff brings this action by and through Attorney General Letitia James.

19. As the State of New York's chief legal officer, the Attorney General brings this action pursuant to her *parens patriae* authority. Where, as here, the interests and well-being of the people of the State of New York are implicated, the Attorney General possesses *parens patriae* authority to commence legal actions for violations of state law. The State of New York has a sovereign and quasi-sovereign interest in upholding the rule of law, in protecting the economic well-being of its residents and, with specific reference to the present action, in ensuring that the marketplace for securities and other financial products functions honestly and fairly with respect to all who participate or consider participating in it.

20. Defendant Laurence G. Allen ("Allen") is a resident of Connecticut who has been working in the financial services field since at least 1985. Allen is a registered broker with the New York Department of Law. At all relevant times, Allen controlled and continues to control each of the corporate Defendants and Relief Defendants.

21. Defendant ACP X, LP ("ACP") is a Delaware limited partnership with its principal place of business in Rye Brook, New York. ACP is a private equity fund that does business within and from the State of New York. "ACP" stands for Allen Capital Partners.

22. Defendant ACP Investment Group, LLC (the "Investment Adviser") is a Connecticut limited liability company with its principal place of business in Rye Brook, New York that is an investment adviser registered with the Securities and Exchange Commission. ACP Investment Group, LLC is the investment adviser to ACP and offers investment advice within and from the State of New York. Allen is also the managing principal of the Investment Adviser. The Investment Adviser owns 100 percent of Defendant ACP Partners X, LLC.

23. Defendant ACP Partners X, LLC (the "General Partner") is a Delaware limited liability company with its principal place of business in Rye Brook, New York. ACP Partners X, LLP is the general partner of ACP and manages ACP within and from the State of New York. Allen is the managing member and managing principal of the General Partner.

24. Defendant NYPPEX Holdings, LLC ("NYPPEX" or the "Company") is the parent company to, and owns 100 percent of, the Investment Adviser and Relief Defendant NYPPEX, LLC, *infra*. NYPPEX has engaged in the offering and selling of securities within and from the State of New York. Allen is the Chief Executive Officer and managing member of NYPPEX.

25. Relief Defendant NYPPEX, LLC is a broker-dealer (the "Broker-Dealer") registered with the New York Department of Law with its principal place of business in Rye Brook, New York. The Broker-Dealer specializes in transfer administration services for interests in private funds, special purpose vehicles, trusts, and unregistered securities in private companies and their respective derivative instruments on the secondary market.

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26. Relief Defendant Institutional Internet Ventures, LLC is a Delaware limited liability company. Upon information and belief, the principal place of business of Institutional Internet Ventures, LLC is in Rye Brook, New York. Allen owns more than 50 percent of the interests in NYPPEX through Institutional Internet Ventures, LLC.

27. Relief Defendant LGA Consultants, LLC, of which Allen is the managing member, is a Delaware limited liability company with its principal place of business in Rye Brook, New York. Allen holds interests in, and provides services to, certain of the Defendants and Relief Defendants through LGA Consultants, LLC.

28. Relief Defendant Equity Opportunity Partners, LP, is a Delaware limited partnership with its principal place of business in Rye Brook, New York.

29. Relief Defendant Institutional Technology Ventures, LLC is a Delaware limited liability company. Upon information and belief, the principal place of business of Institutional Technology Ventures, LLC is Rye Brook, New York.

30. Each of the corporate Defendants and Relief Defendants share the same office, equipment, and employees in Rye Brook, New York.

31. Allen exercises complete domination and control over each of the Defendants and Relief Defendants. The corporate Defendants and Relief Defendants are Allen's alter egos. Allen controlled the financial accounts of all Defendants and Relief Defendants and used those accounts to effect the schemes alleged herein.

JURISDICTION AND VENUE

32. The Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendants and Relief Defendants, and authority to grant the relief requested

pursuant to General Business Law § 352 *et seq*. (the "Martin Act"), Executive Law § 63(12), and the common law.

33. The Attorney General is authorized to bring this action and to assert the causes of action set forth below pursuant to the Martin Act, Executive Law § 63(12), and under the common law.

34. Substantially all of Allen's misconduct and misrepresentations took place within or from the State of New York.

35. Pursuant to C.P.L.R. §§ 503 and 505, venue is proper in New York County because Plaintiff, a public authority, maintains her office in this county.

PROCEDURAL HISTORY

36. On December 20, 2018, the Attorney General obtained a court order pursuant to General Business Law § 354 (the "354 Order," Index No. 452346/2018) that required Allen and other Defendants and Relief Defendants to produce documents and appear for examinations. The 354 Order also imposed preliminary injunctive relief preventing Allen from making distributions from ACP, except to ACP's limited partners on a pro rata basis, and prohibited Allen from making distributions to himself, his family members, or any corporate entity that he controlled or in which he had an ownership interest. The 354 Order restrained the accounts of the Investment Adviser, the General Partner, and ACP to prevent Allen from further dissipating ACP's assets.

37. The 354 Order does not restrain or otherwise enjoin the accounts of any other Defendants or Relief Defendants, including Allen's personal accounts and assets.

FACTUAL ALLEGATIONS

I. Allen Founded, Managed and Controlled NYPPEX

38. NYPPEX is a 15-person private company that Allen founded in 1998. Shares of NYPPEX are highly illiquid. Upon information and belief, Allen has not offered, and the Company has not sold, any of its shares to outside, unaffiliated parties since 2009.

39. NYPPEX does not generate any independent revenue, and is effectively the same company as the Broker-Dealer; revenue from the Broker-Dealer is transferred to NYPPEX, and NYPPEX manages the affairs of the Broker-Dealer. NYPPEX pays Allen's salary, as well as those of the Broker-Dealer's employees. Allen exercises total control over the business decisions, management, and development of NYPPEX, receives a commission from every transaction the Broker-Dealer facilitates, and is ultimately responsible for every facet of the Company's operations. Allen possesses the exclusive authority to enter into agreements on behalf of NYPPEX, hire and fire employees, establish employee compensation, and allocate Company resources, including capital and staff.

40. Under Allen's stewardship, NYPPEX has consistently lost money and has been largely unprofitable since its founding, with only one profitable year since 2008:

NYPPEX'S REVENUE, PROFITS AND LOSS

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Actual Revenue*	$2.2	$1.5	$2.4	$2.7	$3.5	$4.2	$1.4	$1.5	$2.3	$3.3
Operating Profit/(Loss)*	($2.3)	($2.7)	($1.4)	($0.7)	($0.2)	$0.0	($1.4)	($0.7)	($0.8)	$1.3

* in millions

41. In 2017, Allen caused NYPPEX and the Investment Adviser to merge. The Investment Adviser is now a subsidiary of NYPPEX. NYPPEX's 2017 profit stemmed from the consolidation of the Investment Adviser's assets into NYPPEX. In turn, the Investment Adviser

derived a vast majority of its revenue from management fees paid by ACP and other distributions from ACP's accounts.

42. NYPPEX's most significant operating costs are compensation and benefits. Allen's salary is NYPPEX's single largest expense.

43. Though Allen claimed for years that NYPPEX has been on the verge of monetizing an online trading "platform" used in connection with the Broker-Dealer's trading activities, the Company has failed to realize any revenue from the tool. Users of the platform do not pay an access fee, the Company does not collect licensing fees, and the Company owns no patents on its products. Users still complete trades offline with the assistance of registered Broker-Dealer representatives, the Company employs no software developers and has no technology officer. As has been the case since Allen founded NYPPEX 20 years ago, the Company's revenue is limited to commissions generated through its broker-dealer activities.

44. Notwithstanding the Company's losses, inability to generate profit-sustaining income, and failure to create an online trading platform, Allen awarded himself annual compensation from NYPPEX that regularly exceeded $400,000 and has reached more than $900,000 in recent years. For example, in 2016, Allen paid himself $909,000 from NYPPEX, although that same year the Company generated revenues of only $2.3 million and incurred $870,000 in operating losses.

45. Like at NYPPEX, Allen controls all substantive decisions of the Investment Adviser, including all investment recommendations made to clients. The Investment Adviser's only advisory clients are a handful of private funds that it sponsors, the largest of which is ACP, for which it has received millions of dollars in management and incentive fees. Allen controls each

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of the Investment Adviser's sponsored funds through his control of the Investment Adviser and the funds' respective general partners.

46. All employees of the Investment Advisor and General Partner are also employees of NYPPEX.

II. Allen Launched ACP in 2004 and Managed Its Investments

47. Allen launched ACP in 2004 ostensibly to allow investors an opportunity to invest in other private equity funds available for a discount on the secondary market. Approximately 75 investors ("Limited Partners") collectively purchased nearly $17 million in securities from ACP in the form of limited partnership interests.

48. ACP's Private Placement Memorandum ("PPM") represented that the fund would create a diversified portfolio of private equity interests through acquisitions on the secondary market and would make cash distributions to its partners within the first year of its final closing in 2008. The terms of the ACP partnership (the "Partnership") are set forth in the PPM, the Limited Partnership Agreement ("LPA"), and amendments to the LPA.

49. The PPM represented the core objectives and strategy of ACP as follows:

- "The Partnership is being formed to make investments in private equity interests through special situation secondary transactions. ACP believes that special situation secondary private equity provides significant benefits as compared to traditional primary and secondary private equity, namely superior returns with less risk."

- "The Partnership's primary objective is to assemble a portfolio of private equity fund interests at a low cost basis, by providing a comprehensive menu of liquidity-related services to special situation transactions; and thereby, achieve superior returns with less risk for comparable quality holdings."

- "The Partnership will seek to acquire established private equity partnerships at a point in time when the nonperforming assets have been written off, yet the performing assets are still held at conservative valuations, often times at cost. A basket of growing, conservatively

> valued private equity assets, having a limited holding period, acquired at a discount to the stated market valuation, provides investors with a cushion of value and reduced risk."
>
> - "The Partnership will seek to acquire interests in established private equity partnerships, which protects investors from this highest risk period. ACP believes that this also provides for the opportunity to better analyze asset valuations and the risk/return profile of a seasoned basket of assets."
>
> - "[T]he Partnership expects to begin generating distributions to investors, on average, within 12 months of an investment made by the Partnership. Over time, the Partnership expects to generate distributions on a semi-annual basis, providing consistent cash flow to investors over the life of the Partnership."

50. Allen, directly and through employees acting at his direction, represented to investors that ACP would operate as a "fund-of-funds," investing in other established private equity funds that Allen identified, through the Broker-Dealer, were available for a discounted price on the secondary market and which had more immediate upside compared to interests acquired through a fund's initial launch. Although the PPM permitted ACP to invest in certain private companies, purchasing interests in other funds on the secondary market was supposed to drive the fund's investment strategy. As one investor wrote to Allen in September 2011: "I am most desirous to start to see distributions resume especially as realizations occur. One of the reasons I bought this investment was that most of the underlying partnerships were of an age and nature that realizations should start to occur so that cash flow could be received each year after all capital had been called."

51. Through his control of both the Investment Adviser and General Partner, Allen made all decisions for ACP, including which investments to make, when to exit and realize investments, and when to write-off investments.

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52. The General Partner and the Investment Adviser are fiduciaries to ACP and owe fiduciary duties to Limited Partners. Allen also owes fiduciary duties to Limited Partners as the alter ego of the General Partner and the Investment Adviser. The fiduciary relationships between the General Partner, the Investment Adviser, and Allen on the one hand, and Limited Partners on the other, have been ongoing since ACP's inception.

III. The PPM Prohibited ACP From Investing in NYPPEX

53. Investors understood, and NYPPEX employees emphasized when offering subscriptions in ACP, that the fund's value would be derived from secondary purchases of private equity partnership interests through its access to the Broker-Dealer.

54. The PPM represented that although the fund might rely on the Broker-Dealer to facilitate ACP's investments, ACP could not invest in any private company that Allen controlled or managed. In particular, the PPM stated: "The General Partner will not actively participate in the day-to-day operations of a Portfolio Investment."

55. The PPM further provided:

> [A]lthough the Partnership may be represented on certain advisory boards of Portfolio Funds and Companies, the Partnership will not be able to participate in the management and control of the Portfolio Funds and Companies. *The Partnership will not have an active role in the day-to-day management of the Portfolio Funds and Companies.* (Emphasis added.)

56. The LPA disclosed the permissible scope of transactions between ACP and its affiliates in Section 2.09 "Transactions with Affiliates," a provision identical to the PPM's disclosure of "Certain Activities of ACP and its Affiliates." While compensation for services provided by affiliates was permitted, neither the LPA nor the PPM disclosed or contemplated an *investment* by ACP in one of its affiliates, much less an entity completely controlled by Allen. NYPPEX Holdings, LLC is not referenced in the PPM or LPA.

57. Limited Partners relied upon the PPM and LPA and reasonably expected that Allen, the General Partner and the Investment Adviser, all fiduciaries to the investors, would adhere to their terms.

58. During the first few years after ACP launched, Allen made investments in long-running, established private equity funds and quickly realized certain of those investments for a profit.

59. However, in 2008, with NYPPEX facing a cash flow shortage, Allen caused ACP to begin directly investing in NYPPEX, violating the PPM, his fiduciary duties, and the representations made to ACP's investors. Allen then commenced a decade of taking from ACP to enrich himself and his corporate interests.

60. Allen misappropriated the assets of ACP for his personal and professional benefit in multiple ways, primarily through (a) investing ACP's proceeds into NYPPEX; (b) misappropriating distributions of purported carried interest; and (c) improperly paying NYPPEX's operating expenses by taking additional funds from ACP. The ACP assets that Allen misused for his own purposes belonged to Limited Partners, and should have been distributed to them accordingly.

IV. Allen Invested ACP's Assets in NYPPEX and Perpetrated a Fraud on Investors

61. In October 2008, at the height of the financial crisis, Allen used proceeds of realizations from other, profitable investments the fund previously made to invest approximately $1.25 million of ACP's assets into NYPPEX. This investment was in violation of the PPM provisions barring ACP from investing in companies Allen controlled (*see, supra,* ¶¶ 54-55), and conflicted with the fund's disclosed investment strategy and objectives.

62. NYPPEX generated only $2.2 million in revenue and incurred a $2.3 million operating loss in 2008. NYPPEX's poor performance then repeated year after year as Allen continued to transfer ACP proceeds into the Company to keep it afloat.

63. Over the course of the next 10 years, Allen transferred millions of dollars from ACP into NYPPEX. To date, ACP has invested more in NYPPEX than in any other single investment the fund made by more than $3 million. Other funds that Allen manages and controls also invested heavily in NYPPEX.

64. Since 2008, Allen has invested approximately $5.7 million from ACP into NYPPEX; during that same period, Allen paid himself nearly $5.7 million in salary from NYPPEX.

65. Allen's continued multi-million dollar investments rendered the representations in the PPM that ACP would invest primarily in low-risk, secondary private equity interests materially false and misleading.

66. Allen has not solicited any outside capital or financing for NYPPEX since 2009, and ACP is NYPPEX's largest investor by millions of dollars. NYPPEX has not generated any positive return on ACP's investment.

67. Allen also drafted sham transaction documents related to ACP's investments in NYPPEX to add legitimacy to the prohibited transactions if ever questioned. For instance, when the Attorney General asked Allen to provide evidence of a 2017 credit facility agreement between ACP and NYPPEX, Allen produced multiple executed "agreements" that contained inconsistent signatures, varying draw-down amounts, and different dates on which NYPPEX purportedly accessed the line of credit.

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68. ACP's investments into NYPPEX allowed Allen to personally benefit from both ends of the transactions by (i) taking fees from ACP for "managing" ACP's investment in the Company, and (ii) using the proceeds of the investments to enrich himself in the form of his substantial NYPPEX salary and the continued operation of his business.

A. Allen Invested Heavily in NYPPEX During ACP's Wind-Down

69. Pursuant to the terms of the Partnership, as amended, ACP was scheduled to complete its wind-down on or before December 31, 2018. Wind-down of the fund entailed the General Partner selling off fund assets and distributing the proceeds, winnowing the portfolio down slowly until all assets were sold, written off, or distributed in-kind to investors.

70. From 2013 through the middle of 2018, the General Partner disclosed to Limited Partners in quarterly reports and notices that ACP had entered its wind-down period. During this time Allen, through the General Partner, represented in written reports to investors that he was in the process of selling off ACP assets to "help facilitate the wind down of the Partnership," and, beginning in 2014, would "make a reasonable best effort to exit remaining holdings in the Portfolio at prices deemed acceptable by the General Partner and make cash distributions to Limited Partners."

71. Notwithstanding Allen's representations, Allen continued heavily investing ACP funds into NYPPEX, transferring approximately $4 million more into the Company during ACP's final years. Instead of exiting positions and returning capital to Limited Partners, Allen made investments in NYPPEX from ACP proceeds in each of 2014, 2015, 2016, and 2018, investing at least $500,000 in March 2018.

72. For instance, in December 2017, one year before ACP's term was to end, Allen caused ACP, as lender, to enter into a $1 million credit facility agreement with NYPPEX, as

borrower. As with prior investments, Allen sat on all sides of the transaction and did not utilize any controls or processes to avoid the inherent conflicts of interest attendant to the investment.

73. Upon information and belief, Allen has drawn down the entire $1 million line of credit, though he has only advised investors of accessing $700,000. Allen did not disclose the loan to Limited Partners until approximately September 2018, nine months after initially closing the transaction.

74. Allen also retained cash and liquid securities in ACP's accounts during the wind-down instead of distributing the proceeds to investors. Allen did so to ensure that if NYPPEX needed additional capital infusions, ACP would be able to provide capital.

75. Allen's recent investments in NYPPEX also directly conflicted with representations he made to investors during a July 2015 conference call. During the call, Allen told Limited Partners that investments made during ACP's wind-down period would be for specific, limited purposes. He explained:

> The point we're making here is a disclosure point that although we're in a wind down period that there are certain holdings that we have, for example, private partnership interests, that might have uncalled commitments where we're obligated to make the capital call, so you might see us making certain investments during this time period over the next four years, even though we're in a wind down period. We just want to disclose that to you and make sure everybody understands that.

76. ACP had no such capital call obligation for NYPPEX, yet Allen invested substantial ACP assets in NYPPEX during the wind-down period. This rendered Allen's representations on the July 2015 conference call false and misleading. During the call Allen did not disclose that in or about June 2015, one month prior, he executed two subscription agreements obligating ACP to invest to invest an additional $1.65 million of ACP's money into NYPPEX, a material fact of

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which he did not advise investors until sometime in 2016, when they received copies of ACP's quarterly report.

77. In the absence of public demand for NYPPEX shares, which has not previously materialized, it is very possible that ACP's shares will be rendered essentially worthless, to the detriment of Limited Partners, materially diminishing the net asset value of the fund.

B. Allen Made Material Misrepresentations to, and Withheld Material Information from, ACP Investors

i. Allen Misrepresented How ACP Would be Managed

78. Allen misrepresented how the General Partner and Investment Adviser would manage the fund.

79. The PPM disclosed that other members of the General Partner and Investment Adviser would substantively participate in managing ACP. While the General Partner and Investment Adviser do technically have members apart from Allen, Allen is, and at all relevant times has been, the General Partner's and Investment Adviser's sole decision maker.

80. Although the PPM identifies five (5) members of the ACP Investment Committee "which will formulate investment guidelines for the Partnership and approve investments," apart from Allen none of the other individuals identified ever had any role in the investment decisions of ACP.

81. Further, although quarterly and annual reports to investors identified NYPPEX as an "affiliate" of ACP in a footnote, Allen omitted any reference to the fact that he managed NYPPEX's day-to-day operations, and that he used substantial amounts of the proceeds from ACP's investments to pay his own salary at the Company.

82. To further facilitate his fraud, Allen purposefully delayed sending quarterly reports to investors that disclosed ACP's holdings, depriving Limited Partners of timely information concerning Allen's use of fund proceeds to invest in NYPPEX.

83. For instance, in June 2014 Allen invested at least $1 million of ACP's money from realizations of other fund investments and made a follow-on investment into NYPPEX. Allen should have disclosed the investment in the Second Quarter 2014 report sent to Limited Partners. Instead, Allen waited until November 2015 to disclose the transfer, one and half years later.

84. Allen also failed to distribute audited financials to Limited Partners in a timely manner, notwithstanding the requirement in the LPA that the General Partner do so "[a]s soon as practicable after the end of each fiscal year." The audited financials included material information about the ACP's investments in NYPPEX and how Allen would address the conflicts of interest associated with those investments.

85. For example, Allen did not complete the 2010 ACP audited financials until May 30, 2013, nearly two and half years after the end of the 2010 fiscal year. The 2011 audited financials were not complete until July 2013, the 2014 audited financials were not complete until February 29, 2016, and the 2016 audited financials were not complete until May 2018. Limited Partners have to date not received audited financial statements for 2017 or 2018.

86. Certain Limited Partners expressed concerns about ACP's failure to respond to basic inquiries about investments, the expectation for exit, and the calculation of certain fees and expenses.

87. For example, a Limited Partner emailed the General Partner in February 2017: "I would appreciate hearing from you or (Allen) with an explanation of why the reporting is so infrequent and out dated. Also, are there any plans to conduct another call to explain what is

happening. I remain concerned about the liquidity of the portfolio, particularly the 'private deals.'"

Neither Allen nor representatives of the General Partner responded to such questions.

ii. Allen Used ACP Proceeds to Preferentially Redeem At Least One Investor

88. As a result of Allen's issues in managing ACP, some investors requested that the General Partner buy out their interests in ACP. In 2017, two Limited Partners sought liquidity for their interests. Allen responded:

> We cannot redeem your investment as per the terms of the operating agreement of ACP X. ACP X is a private equity partnership (and not a hedge fund some of which redeem investments). Otherwise, we would have to provide the same opportunity to all LPs.

89. Allen's response omitted material information concerning his prior practice of giving preferential treatment to certain Limited Partners.

90. In 2014, a Limited Partner demanded that Allen redeem its Partnership interests ("Limited Partner 1") or it would proceed with filing a complaint about Allen's mismanagement of ACP.

91. Limited Partner 1 hired counsel and made a formal books and records demand, specifically requesting a full list of Limited Partners.

92. To avoid the filing of complaint and further inquiries from Limited Partner 1, Allen ultimately bought out Limited Partner 1 in mid-2014 for approximately $712,000. Allen satisfied Limited Partner 1's redemption using ACP assets by wiring cash from an ACP bank account directly to Limited Partner 1.

93. Allen did not offer any other Limited Partner the redemption opportunity he granted to Limited Partner 1, nor did he disclose the redemption or the source of the funds used to complete the transaction to other investors in ACP.

94. To the contrary, Allen concealed his buy-out of Limited Partner 1 in disclosures to Limited Partners. Allen combined the $712,000 redemption price with the total amount of distributions to Limited Partners when he disclosed the information in the 2014 audited financials, consolidating the disproportionate payment to Limited Partner 1 with the pro rata distributions made to the remaining investors.

iii. Allen Misrepresented Conflicts of Interests Policy to Investors

95. Allen also misrepresented the process he claimed the General Partner implemented to protect the Partnership against conflicts of interest arising in connection with "affiliated" investments.

96. Allen disclosed in quarterly and annual reports that he put in place strict procedures to ensure the propriety of "affiliated" investments, such as those in NYPPEX. Those processes purportedly included the formation of a committee to evaluate the merits of any affiliated investment and to ensure the best interests of the Partnership were represented in the transaction, as well as the execution of a certification memorializing the terms and rationale for the investment were it ultimately made.

97. In practice, however, neither the General Partner nor the Investment Adviser—themselves nothing more than Allen represented in corporate form—ever formed any actual committee and the certifications Allen referenced were fraudulent.

98. Although internal documents identified NYPPEX employees as committee "members," that designation was a sham. The "committees" held no meetings, followed no agenda, took no minutes, and held no votes.

99. Allen created a paper trail of internal, self-serving certifications that he caused various NYPPEX employees to execute in his effort to legitimize ACP's investments in NYPPEX.

100. Allen did this to create the impression that the decision to invest was the product of substantial consultation and ultimate agreement among members of the General Partner.

101. In truth, the employees had no actual role in evaluating ACP's investments in NYPPEX and no authority or discretion to stop such transactions, as such decisions resided entirely with Allen.

102. Allen used the certifications—referred to as "CYA" certifications by at least one employee—as leverage by forcing employees to sign the documents as a condition of their employment, including as stated terms in their employment agreements. Employees believed that if they did not sign the certifications they would be fired or that their compensation would be withheld.

103. Allen gave the certifications to auditors and government agencies as evidence of the purported consensus among members of the General Partner to invest ACP's money into NYPPEX.

C. Allen Fraudulently Inflated the Valuation of NYPPEX

104. Allen presented inflated and fraudulent valuations of NYPPEX to investors and did not adhere to the valuation methodology disclosed to investors in the PPM, LPA, audited financials or ACP quarterly reports.

105. The PPM disclosed that the General Partner would value non-freely tradeable securities, such as shares in NYPPEX, as follows: "All other non-freely tradeable securities will be initially valued at cost, with subsequent adjustments to values that reflect selected comparable

investments, third party transactions in the private market, or third party appraisals." The LPA disclosed the same valuation method.

106. ACP's audited financials further specified how the General Partner, *i.e.* Allen, would mark ACP's holdings in private companies: "For securities in private companies, our fair values follow the implied valuations for such companies based on (i) a closing for their most recent capital round or (ii) a scheduled closing for a subsequent capital round if we deem the company has a credible track record attaining closings."

107. Quarterly reports to investors from at least as early as 2009 likewise disclosed that private companies would be valued using capital rounds, selected comparable investments, third party transactions in the private market, or third party appraisals.

108. Instead of adhering to the valuation methodology provided to investors, Allen valued NYPPEX using his own internal analysis that did not take into account any of the disclosed valuation metrics.

109. Allen created analyses, without substantive assistance from other employees or independent parties, reflected in one-page documents called "Fair Valuation Analyses" ("FVA") to value NYPPEX's per share price and total valuation. Allen then relied upon the analyses when reporting the value of ACP's shares in NYPPEX to Limited Partners in quarterly and annual reports and incorporated the information into audited financials. Allen did not provide the analyses themselves to investors.

110. The Fair Valuation Analyses reference, among other things, NYPPEX's past revenues, expenses, and earnings as well as projected future revenues and profits. Allen selected all data metrics used in the analyses. The FVAs did not rely upon a recognized or consistent valuation methodology, lacked an objective basis, ignored material facts including two decades of

NYPPEX's operating history, and were based upon unachievable future revenue and corporate growth.

111. Neither did the analyses take into account the valuations of comparable companies. Instead, Allen relied upon metrics from companies that bore no resemblance to the market capitalization, business objectives, growth strategy, employee headcount, revenue history, or capital rounds of NYPPEX. For example, in an effort to provide credibility to his valuations to outside parties, including ACP's auditor, Allen falsely compared NYPPEX to growth stage financial technology firms that generated increasing revenue derived from disruptive technology products, even though NYPPEX had been in business for 20 years and had not developed any such product.

112. Allen's analyses projected revenue growth that routinely tripled or quadrupled NYPPEX's revenues year-over-year, from $2 million to $7 million to $14 million. Over NYPPEX's 20-year history, it never generated, or came close to generating, revenue in line with Allen's forecasts, although Allen valued NYPPEX as high as $75-100 million in recent years.

113. The revenue projections from the 2013 and 2015 FVAs are below, compared to the actual revenue NYPPEX earned during the relevant period:

2013 FVA

	2013	2014	2015	2016
PROJECTED*	N/A	$15.1	$24.5	$39.2
ACTUAL*	$4.2	$1.4	$1.5	$2.3

2015 FVA

	2015	2016	2017	2018
PROJECTED*	N/A	$7.5	$14.5	$24.3
ACTUAL*	$1.5	$2.3	$3.3	$1.1

*in millions

114. As CEO of NYPPEX, Allen knew that the Company's actual business prospects could not reasonably result in the projected outcomes reflected in his valuation models, yet he failed to adjust the projections to account for NYPPEX's continued poor performance and losses.

115. Allen has acknowledged his failure to adhere to any recognized methodology in connection with his valuation of NYPPEX. Concerning the 2012 Fair Valuation Analysis, Allen explained during the Attorney General's investigation: "[I]t was just a ballpark number." Likewise, in connection with his calculation of NYPPEX's 2016 valuation, he emailed the Company's former treasurer and said "my gut is to make 'minor' adjustments" to the valuation, but he utilized no recognized valuation methodology to modify the appraisal.

116. Because Allen incorporated his fraudulent calculations into the net asset value of ACP, capital account balances sent to Limited Partners were inflated, inaccurate, and misleading. Accordingly, Limited Partners relied on material information Allen knew to be false in connection with managing their investments in ACP, deciding how to vote in connection with proposed amendments to the fund, and evaluating whether the General Partner and Investment Advisor had acted in their best interests.

117. Limited Partners also relied on NYPPEX's valuation in connection with their decision to participate in early withdrawals ("Early Withdrawals") from ACP, which were partial redemption opportunities from the fund that Allen offered to investors in 2013, 2015 and 2017.

118. Allen calculated the price paid to Limited Partners that opted to seek an Early Withdrawal by (i) determining a partner's capital account balance based on its proportional share of the net asset value ("NAV") of ACP, then (ii) discounting that balance by some specified percentage, (iii) resulting in a reduced capital account balance. Allen then distributed ACP assets ratably in proportion to the Limited Partner's discounted account balance and Limited Partners' interests were purportedly reallocated to reflect the partial redemptions.

119. Because Allen determined an investor's Early Withdrawal distribution based on its share of an NAV inflated by an artificially high valuation of NYPPEX, Limited Partners that

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participated in Early Withdrawal redemptions received more than they were actually entitled to, to the detriment of Limited Partners that elected to forego the redemption opportunity. Certain Limited Partners therefore redeemed out of ACP at an inflated NAV, diluting the remaining investors' interests.

120. Allen advised Limited Partners that remained fully invested in ACP that they would purportedly benefit more from an increase in ACP's value, anchored by the fund's disproportionate investment in NYPPEX, because their partnership interests grew as other investors partially exited the fund.

121. In March 2017, a Limited Partner requested information about the valuation of the underlying assets, and explained its need to understand that information before deciding whether to elect to participate in the Early Withdrawal opportunity. The partner stated in an email: "I'd like to exercise my right as an investor to understand the valuations. The fund is down to a hand full of key holdings in individual companies. If the fund can explain, we value company ABC at X for these reasons *then I can decide if I want an early withdrawal or not*." (Emphasis added.)

122. Allen responded in an email that, "for privately held company holdings" such as NYPPEX, "we generally use the valuation implied from its last capital round. If it has been awhile since the last capital round, then we adjust the valuation based on company's performance for the recent year and its prospects ahead." Allen's valuation of NYPPEX, however, did not actually account for the Company's performance over the prior years or reasonably assess the Company's "prospects" going forward. Allen did not disclose his complete discretion over the NYPPEX valuation in his response, or the fact that NYPPEX had been unable to secure outside capital—*i.e.* from any entity not controlled by Allen—since approximately 2009.

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123. Internal emails at the Investment Advisor and NYPPEX reflect that Limited Partners emailed Allen and employees of the Investment Adviser and General Partner with questions specifically about the "uptick in the size of the NYPPEX investment" and "how NYPPEX['s] valuation is calculated and who calculates it." Allen met Limited Partners' concerns and questions with misleading responses that did not respond directly to the inquiries. Oftentimes Allen, directly or through employees acting at his direction, told Limited Partners that they were not entitled any additional information regarding the fund other what was that contained in quarterly and annual reports.

124. For example, with the December 31, 2018 wind-down date rapidly approaching, a Limited Partner emailed Allen on October 29, 2018, asking for information about the valuations of the underlying assets, the limited distributions in the fund, and the concentration of fund assets:

> As you know, I am very concerned about the limited distributions coming from ACP X. I do not understand how you can claim the valuations are as high as you say yet only a small percentage of the value of the fund has been distributed to investors (not counting the investors who took a big haircut to get out (through Early Withdrawals) - which I think is outrageous that they felt the need to do that). I also do not understand how the majority of the Fund now consists of individual company positions rather than secondary interests in PE funds - which was supposed to be the primary investment that ACP X was making. Are the marks on these positions valid? If so, why can't NYPPEX distribute these private company positions through their network? I am troubled by the marks on NYPPEX. . .in particular. Are they really correct?

125. Allen responded two weeks later by reprimanding the Limited Partner for distracting him from other ACP business, and advised the investor that "decisions about whether to distribute or reinvest realizations are at the discretion of the General Partner" without providing any further information.

126. Allen never disclosed to Limited Partners that he was solely responsible for the valuation of NYPPEX and that the General Partner did not obtain independent appraisals. As of

June 2018, Allen reported to investors that ACP's investment in NYPPEX had generated approximately $2.6 million in unrealized gains.

D. ACP's Auditor Objected to Allen's Valuation of NYPPEX, Advised Allen to Obtain Independent Appraisal

127. Although Allen withheld the Fair Valuation Analyses from investors, he provided the documents to ACP's third party, independent auditor (the "Auditor") in connection with audits of ACP's financial statements.

128. The Auditor simply accepted the Fair Valuation Analyses that Allen provided to it to test the value of NYPPEX and acquiesced to Allen's valuation determinations in certifying ACP's financials. However, the Auditor repeatedly expressed substantial concerns about the self-interested nature of Allen's valuations.

129. The Auditor's objections to Allen's valuation began as early as 2011. In a December 2011 email exchange, the Auditor advised Allen that it could not accept his NYPPEX valuation for the purposes of issuing ACP audited financials and threatened to issue a qualified audit opinion letter. Allen responded in an email asking "[w]hy do you insist on debating ACP X on this topic (of NYPPEX's valuation)? Is it worth losing the relationship over an issue where there is definitive answer."

130. The audit engagement partner wrote to Allen 30 minutes later: "[Y]ou have not been providing the valid inputs that I need to be able to rely on. Input from ACP X is not acceptable fom us and I can't rely on skewed numbers. Please send me something that I can use as reliable input."

131. A contemporaneous email from the Auditor in March 2012 reflecting minutes of a meeting held with Allen reflect that the Auditor advised Allen to obtain an independent valuation of NYPPEX, and that Allen agreed:

> [The Auditor] feels strongly that because ACP X and (NYPPEX) Holdings are related parties through common management, a more independent approach is desirable. [The Auditor] reminded Larry (Allen) and [the ACP treasurer] that using the K-1 book value was the most conservative route of all. . . .
>
> Larry stated he has already identified a valuation company to use and will make this high priority with a possible two week turn around.

132. Notwithstanding Allen's agreement to obtain an outside appraisal of NYPPEX, he did no such thing.

133. The Auditor became increasingly concerned about the integrity and sufficiency of the valuations in light of Allen's inconsistent methodology, NYPPEX's repeated failure to meet revenue projections or raise outside capital, and Allen's refusal to obtain independent validation of NYPPEX's value.

134. In 2015, the Auditor continued to demand that Allen obtain additional audit support evidence backing up his valuations of NYPPEX. In November 2015, a member of the audit team wrote to Allen:

> For years there has been a discussion as to how the value of [NYPPEX] stock has been valued. There is no third party value here and based on the time of the year it is probably too late to try and have someone value it. As I explained today, there seems to be a high jump in revenue from 2014 to 2016. I asked [the ACP treasurer] approximately a month ago for some sort of support as to how he increased [NYPPEX]'s revenue projections by approximately 10 million in both 2015 and 2016. We wanted to feel comfortable that it was reasonable that there could be such a big jump to those numbers. . .[W]e have not seen any real projection of revenue in 2015/2016 that would come close to matching the amounts used to value the Holding shares.

135. Allen avoided addressing the issue and instead responded in an email: "These audits are just taking up too much of our time."

136. After multiple requests for additional audit support evidence, and Allen's continued refusals to provide such evidence, the Auditor advised Allen that it would not release ACP's 2014

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audited financials until Allen agreed to obtain an independent valuation for future audits. Allen finally agreed, mollifying the Auditor into releasing the 2014 ACP audit.

137. In May 2016, the Auditor emailed Allen and asked about the status of the independent valuation. The Auditor referenced the earlier agreement to release the 2014 audits on the condition that Allen subsequently obtain an independent valuation:

> [Obtaining an independent valuation] was something that we all agreed was best for all parties and was why [the engagement partner] went along and released the 2014 audits. This valuation was the reason for the holdup of the applicable 2014 audits. Once we agreed to use an independent valuation, we then released the audits.

138. Later that same day, the Auditor wrote again:

> [The engagement partner] said that everyone agreed the independent valuation would be the best way to protect everyone and it was agreed to be completed in order to release the 2014 audits.

139. Allen responded that the requirement was a non-starter, despite his prior agreement, and that he was reconsidering whether to continue adhering to the General Partner's obligation in the LPA to obtain audited financials at all.

140. The audit engagement partner reiterated the importance of obtaining an independent appraisal:

> . . .[W]e are recommending the use of a third party appraiser as it averts potential reputational damage from flawed or heavily scrutinized valuations. The cost for an independent valuation is more than offset by the additionally (sic) auditing costs now required.

141. The audit engagement partner continued in a subsequent email later that same day after Allen alleged the Auditor was being "too risk adverse" in refusing to accept Allen's valuation:

> [T]his would be a prudent action to avoid the costly consequences of investigations, legal fees, and possible remediation. I like to think that you have looked upon us as advisors with your best interests at heart. It is interesting that we are being charged as being "too risk adverse". Each year more ACP entities invest in these shares and are owned by more investors. Your exposure is broadening. The issue here is that this involves

> a level 3 investment which is subject to the greatest scrutiny and a related entity. It is imperative for many reasons to present a sound and pro-active course of action.

142. Allen thereafter again threatened to terminate the Auditor because of its continued insistence that Allen obtain independent support for his flawed valuations.

143. Allen maintained his refusal to engage an independent valuation firm. In February 2019, after the Attorney General obtained a court order limiting Allen's ability to access ACP assets, Allen obtained a valuation report from an outside appraisal company. However, the company Allen hired merely incorporated Allen's flawed projections into a report.

144. The report did not undertake an independent assessment or analysis with respect to the accuracy of the revenue projections Allen provided, which formed the basis of the valuation conclusions. As the report disclosed: "All data provided for our use in this analysis has been accepted as accurate and reflective of actual business operations and conditions."

V. Allen Misappropriated Carried Interest to Which Limited Partners Were Entitled

145. In marketing ACP to investors, Allen and representatives of NYPPEX and the Investment Adviser stressed the consistency and promptness of future distributions. By 2013, however, Allen had begun to limit distributions to investors in the ordinary course. After nine years in ACP, many investors became disturbed with the delay.

146. Allen took advantage of investors' concerns—which were caused by Allen's own misconduct—by proposing amendments to ACP's partnership agreement that would give investors Early Withdrawal opportunities (*supra*, ¶¶ 117-120). Investors understood the amendments as the most direct path towards receiving material distributions; indeed, in notices to investors Allen highlighted the purpose of the amendments as a means of providing "liquidity event(s)" to investors, *i.e.* distributing cash to investors from ACP's accounts. The partnership agreement,

however, already permitted Allen to make distributions at the General Partner's discretion, and the amendments were not necessary to allow Allen to return capital to investors.

147. Allen's true purpose in proposing the amendments was to use the promise of investor distributions as a means of deceiving Limited Partners into passing the proposals that Allen then improperly relied upon to direct additional ACP assets to himself that he fraudulently characterized as "carried interest."

148. In notices accompanying the amendments, Allen misrepresented that the General Partner was already authorized to distribute carried interest when, in fact, the terms of the partnership expressly prohibited such distributions. Allen also drafted the amendments in a highly deceptive and misleading manner by seeking to amend a provision of the partnership agreement dealing with the return of excess carried interest payments after the fund dissolved.

149. In reality, Allen intended to use the amendments to dramatically alter investors' rights to prioritized distributions during the life of the fund.

150. Allen fraudulently obtained investors' agreement to the proposed amendments and then proceeded to distribute millions of dollars in carried interest to himself and entities under his control.

A. Allen Misrepresented the General Partner's Right to Distribute Carried Interest

151. One of the most material terms of the Partnership was the process by which Limited Partners received distributions of investment realizations from ACP, *i.e.* the distribution waterfall. The distribution waterfall, set forth in the PPM and Section 6.02 of the LPA, established the order in which investment proceeds and carried interest would be distributed to Limited Partners and the General Partner and specified that "net cash proceeds from the sale or other disposition of

securities or other property held by the Partnership will be distributed as soon as practicable after receipt."

152. "Carried interest" is the portion of ACP's profits over and above certain distribution hurdles set forth in the distribution waterfall.

153. Investors described the distribution waterfall as a "selling point," and it was featured prominently in the PPM. Pursuant to the representations Allen made to them, investors expected realizations to occur and distributions to be made to them on a regular basis.

154. ACP's distribution waterfall required that the General Partner first (i) distribute 100 percent of the investors' capital contributions and (ii) an eight (8) percent preferred return to Limited Partners, *prior* to making any distribution of carried interest to the General Partner. The General Partner, therefore, did not earn carried interest until fully satisfying the first two steps of the waterfall.

155. The LPA emphasized the priority granted to Limited Partners by confirming that the General Partner could not receive *any* distribution of carried interest until ACP had distributed available sums in accordance with the waterfall:

> The General Partner shall receive a distribution of its carried interest only upon the complete return of the Capital Commitments funded by the [Limited] Partners.

156. The distribution waterfall has never been modified.

157. To date, the General Partner has not distributed all of the Limited Partners' contributed capital, and has made no distribution towards the preferred return.

158. Nevertheless, in 2013 Allen began to fraudulently access what he characterized as carried interest from ACP, money that should have been distributed to Limited Partners towards the return of capital and preferred return.

159. In an attempt to paper over and circumvent the clear directives in the LPA regarding the priority of distributions, Allen proposed and subsequently represented that a sufficient percentage of eligible partnership interests consented to the Third, Fourth, and Fifth Amendments to the LPA.[1] These amendments modified Section 9.04, a provision known as the "Clawback," which as set forth in the LPA required the General Partner, "upon dissolution" of ACP, to return any excess distributions of carried interest it may have received over the life of the fund *after the General Partner first distributed to Limited Partners their capital commitments and preferred return*.

160. Such a situation would most commonly occur if the General Partner calculated and distributed carried interest to itself *after* satisfying the first two steps of the distribution waterfall based on ACP's unrealized investment gains, prior to dissolution of the fund. "Upon dissolution," if an investment had ultimately yielded a less valuable return than previously calculated, or the General Partner wrote off investments completely, the General Partner's previously distributed share of carried interest may have exceeded that to which it was entitled. The Clawback protected Limited Partners against the General Partner receiving too much carried interest and reinforced their entitlement to prioritized distributions.

161. The amendments changed the Clawback by limiting the total percentage of excess carried interest otherwise subject to return after ACP's dissolution; however, the amended language also included a line of text briefly noting the General Partner's intention to distribute a portion of its "allocated" carried interest, which amount was not disclosed.

162. The amendments also offered Limited Partners Early Withdrawal opportunities.

[1] The First Amendment to the LPA, passed in December 2005, did not concern the Clawback. The General Partner advised the Attorney General that there was no Second Amendment to the LPA.

163. At the time Allen proposed each of the amendments, however, the General Partner was not authorized to distribute *any* carried interest to itself because ACP had not yet distributed the requisite amounts of capital and preferred return to Limited Partners. In emails between and among Allen, the Auditor, and counsel on December 27, 2013, counsel confirmed that "allocations follow distributions" to investors and that, while the Third Amendment referenced an intention to "allocate" carried interest, the distribution waterfall prevented the General Partner from "allocating" carried interest until first satisfying the prioritized distribution obligations to Limited Partners.

164. In notices to Limited Partners included with the Third Amendment, Allen misrepresented that the General Partner was, at the time of the amendment, already entitled to distributions of carried interest. The notices included the following text:

> Note: The General Partner is *currently* permitted to distribute up to 100% of its Carried Interest balance, subject to the Clawback provision. (Emphasis added.)

165. These statements in the notices were false and misleading: At the time Allen proposed the Third Amendment, the General Partner was not entitled to distribute any of its carried interest balance because it had not yet satisfied the distribution hurdles. The Clawback did not relate to or otherwise influence the distribution waterfall.

166. By conflating the Clawback, which was only applicable after dissolution of ACP, with the distribution of carried interest to the General Partner, which could only occur after satisfying the applicable distribution hurdles, and by misrepresenting that Allen was entitled to distribute carried interest at the time he proposed the amendments when he was not, Allen misled investors.

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167. Through these actions, Allen created the false and misleading impression that investors had authorized material amendments allowing him to step in front of them for the distribution of ACP's assets when, in fact, they had done no such thing. As drafted, the terms of the amendments did not modify the distribution waterfall, which continued to govern the priority of distributions to investors and of carried interest.

168. At least one investor expressed confusion to the General Partner concerning the reference to carried interest in the Third Amendment. The investor described its concern in an email on January 14, 2014, after passage of the amendment, which referenced a November 27, 2013 email sent prior to the passage of the amendment:

> As discussed, please send me the original LPA, the two previous amendments and the related solicitation materials. As stated in my 11/27/13 e-mail to [an ACP Employee] and you, to which I received no reply:
>
> *Separately, I am confused by the proposal language regarding carried interest and clawback, especially in light of Note 8 to ACP's 6/30/2013 financial statements. Note 8 states that no carried interest is payable until the LPs have received a return of 100% of their capital, plus an 8% per annum preferred return, whereas the Notice of Proposal states "The General Partner is currently permitted to distribute up to 100% of its Carried Interest balance, subject to the Clawback provision." Please clarify this apparent discrepancy.*
>
> *Section 6 of the third amendment (the new clawback language) also confused me. It omits any reference to the 8% per annum preferred return. How, if at all, would adoption of the third amendment affect the current 8% per annum preferred return?*
>
> My understanding is that no carry is payable unless and until LPs have received return of 100% of their invested capital plus an 8% per annum cumulative preference. I see nothing adequate in the disclosures soliciting the third amendment or the purported clarification that would authorize change of the carry treatment memorialized in the original PPM or Note 8 to ACP's financial statements. If you have a different view, please state the basis for it and summarize how you believe the preferred return, carry and waterfall now operate.
>
> (Emphasis in original.)

169. Internal discussions among Allen, his employees, the Auditor, and counsel confirmed that the terms of the Third Amendment and disclosures to investors related to amendment were misleading, violated the LPA, and were contrary to what Limited Partners agreed to when they invested. Allen knew that even after passage of the Third Amendment he was not permitted to distribute carried interest to the General Partner, and that in fact, no carried interest had been earned such that it could be "allocated."

170. Allen then distributed $1.1 million to the General Partner as a payment of carried interest in February 2014.

171. Allen continued to intentionally disregard the distribution waterfall and simply repeated his misrepresentations in connection with subsequent amendments.

172. The Fourth Amendment, proposed in June 2015, again sought to amend the Clawback and offer an Early Withdrawal opportunity. The summary of the terms of the Fourth Amendment included the same false representation regarding the distribution of carried interest: "Note: The General Partner is currently permitted to distribute up to 100% of its Carried Interest balance, subject to the Clawback provision."

173. In July 2015, Allen held a conference call for Limited Partners to discuss the proposed Fourth Amendment. During the call, and aware of the misrepresentations made in connection with the Third Amendment, Allen described the modification to the Clawback and distribution of carried interest as routine and already permitted:

> [W]e will take a sliver of whatever the carried interest balance is and be able to pay that out to certain parties of the general partner. *We're able to do that now*, it's just that there's a clawback to that and if the fund fails to generate at least a certain return then the General Partner would have to come out of pocket and pay that back.

(Emphasis added.)

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174. Allen's representation that he could distribute carried interest at the time he proposed the Fourth Amendment was false.

175. Limited Partners continued to raise questions about the General Partner's purported distribution of carried interest. For example, in November 2016, a Limited Partner asked for clarification on the carried interest calculation and distribution to the General Partner:

> How is carried interest calculated?. . . .Neither the Annual Report nor the purported amendments to the ACP partnership agreement discloses modifications to the original carried interest formula (also specified in note 8 [to the audited financials]) that no carried interest is due until LPs have received cumulative distributions equal to the sum of their funded commitments plus an 8% cumulative annual rate of return. Please explain your calculations and provide underlying support.

176. Allen ignored the investor, even when it followed up several days later reiterating the request for clarification explaining how the General Partner could distribute carried interest to itself when Limited Partners had not yet received the requisite distributions.

177. Although the amendments may have modified the Clawback, Limited Partners did not approve any modification to Section 6.02 of the LPA or distribution priority set forth therein remains, despite Allen's representations to the contrary.

178. Allen paid himself, other members of the General Partner, and additional entities under his control carried interest pursuant to each of the Third, Fourth and Fifth Amendments to the LPA, totaling more than $3.4 million. Allen received more than half of the carried interest ACP distributed to the General Partner and received additional amounts through distributions made to the Investment Adviser and Broker-Dealer.

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AMENDMENT	AMOUNT OF DISTRIBUTED CARRIED INTEREST	DATE OF DISTRIBUTION
THIRD	$1,187,947	February 28, 2014
FOURTH	$594,526	November 17, 2014
FIFTH	$1,657,025	May 2, 2017
TOTAL	**$3,439,498**	

179. In 2017, when ACP did not have sufficient funds to satisfy Allen's improper claim of carried interest pursuant to the Fifth Amendment, he forced ACP to sell off at least $1.6 million of its liquid assets and then distributed the proceeds to himself and his various businesses, even though such proceeds belonged exclusively to Limited Partners.

180. Further, because the calculation of carried interest is dependent on the value of ACP's underlying assets, by relying upon a fraudulent valuation for NYPPEX, Allen ensured that ACP's books reflected an unrealized profit which did not actually exist, thereby artificially inflating the amount of carried interest Allen claimed the General Partner had earned.

181. Upon distribution from ACP to the General Partner, Allen transferred the money to Relief Defendant Equity Opportunity Partners, LP ("EOP") for subsequent distribution to EOP members and Allen alone determined the amount each respective member would receive, awarding himself a vast majority of the proceeds.

VI. Allen Misappropriated Money from ACP to Pay NYPPEX's Operating Expenses

182. Allen also misappropriated the assets of ACP to pay NYPPEX's operating expenses.

183. The PPM and LPA both expressly prohibited the General Partner from using assets of ACP to pay overhead expenses, including wages, salaries, rent, utilities, and bookkeeping, and

provided that the General Partner was solely responsible for paying such expenses. The General Partner charged ACP an annual management fee to cover its operating expenses.

184. Notwithstanding this clear prohibition, since at least 2008, Allen has used hundreds of thousands of dollars from ACP's accounts to pay NYPPEX's operating expenses on an annual basis.

185. To effectuate the unlawful payment of expenses, Allen first transferred money out of ACP to the Investment Adviser. The Investment Adviser in turn transferred ACP's funds to NYPPEX.

186. For example, in August 2018, Allen transferred $755,000 from ACP's brokerage account to the Investment Adviser's account. As reflected in bank statements, Allen then transferred the money directly into NYPPEX's operating account over the next two months as follows:

DATE	PURPOSE	AMOUNT
August 10	"To cover expenses"	$20,000
August 13	"Transfer for 401k distributions"	$10,377
August 14	"To fund payroll"	$60,000
August 27	unknown	$5,000
September 13	"Transfer to fund payroll"	$85,000
September 27	"Fund payroll"	$55,000
October 5	"To cover overdraft"	$10,000
October 5	"LGA Recommended transfer"	$500,000
TOTAL		**$745,277**

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187. In the last six months of 2018 prior to entry of the 354 Order, Allen transferred approximately $862,000 from ACP's accounts to the Investment Adviser.

188. Allen concealed ACP's payment of NYPPEX's operating expenses. While quarterly and annual reports to Limited Partners included a reference to amounts "due to affiliates" and audited financials noted various "Partnership expenses," the documents omitted any reference to ACP's payment of NYPPEX's rent, employee salaries (including Allen's), or other operating expenses.

189. Upon information and belief, since at least 2008, Allen has caused ACP to allocate to NYPPEX and the Investment Adviser more than $2.5 million in funds to cover operating expenses.

VII. Allen's Recent Misconduct Compelled the Attorney General to Seek and Obtain Preliminary Relief to Protect Against Allen's Further Fraud

190. In early December 2018, during the pendency of the Attorney General's investigation, Allen proposed another amendment to the LPA (the "Seventh Amendment").[2] The terms of the Seventh Amendment sought to materially and adversely affect Limited Partners in a number of ways.

191. The amendment threatened Limited Partners with individual liability if they participated "directly or indirectly" in any "formal proceeding." Styled as an "indemnification" clause, the proposed provision dramatically amplified the categories of indemnified expenses provided for in the LPA and sought to punish Limited Partners that participated in the Attorney General's investigation, threatening obstruction of an ongoing law enforcement proceeding. The provision further infringed on Limited Partners' rights under the LPA and the common law to

[2] The Sixth Amendment, passed in September 2017, proposed a plan to make ACP public and did not modify the Clawback.

exercise their information rights and/or seek appropriate relief for misconduct by Allen, the General Partner, or the Investment Adviser.

192. The summary Allen prepared of the amendment that he sent to Limited Partners did not reference this change or the purported imposition of personal liability on cooperating investors.

193. The Seventh Amendment also proposed the elimination of nearly all of the General Partner's disclosure obligations, including the requirement to obtain audited financials, dramatically interfering with Limited Partners' ability to understand the status of their remaining investments in private companies and leaving them unable to determine whether Allen would continue making follow-on investments in NYPPEX and other companies instead of distributing money to Limited Partners.

194. The Auditor advised Allen that eliminating audits would be against the best interests of Limited Partners.

195. To ensure that Limited Partners could not recover excess carried interest Allen previously paid to himself and others, Allen drafted the Seventh Amendment to eliminate the entirety of the Clawback. He further revised Section 9.04 to allow for the immediate distribution of all "earned" but unpaid carried interest without disclosing the amount of carried interest he claimed to have earned.

196. The proposed Seventh Amendment did not disclose the pendency of the Attorney General's investigation, the singular role Allen played in calculating ACP's valuation of its position in NYPPEX, or the lack of any viable exit strategy to redeem ACP's interests in NYPPEX.

197. Allen misrepresented to Limited Partners that the amendment was necessary for winding down ACP, and suggested that any future distributions from the fund were tied to passage of the amendment. The LPA, however, already empowered the General Partner to take all steps

necessary to effectuate dissolution and liquidation of ACP without aid of the Seventh Amendment, rendering it unnecessary except as a means for Allen to further his fraud. Allen fraudulently led investors to believe that unless they voted in favor of the amendment, the fund could not promptly wind down and assets that belonged to them would not be distributed.

198. Allen advised Limited Partners that even if they did not approve the Seventh Amendment, the terms of the LPA would nonetheless be amended without consent from investors. Specifically, in the notice accompanying the Seventh Amendment Allen advised that if investors did not vote in favor of the amendment he would unilaterally extend ACP's term for one additional year and "be entitled to earn and distribute [the General Partner's] management and carried interest fees and the Clawback provision in Section 9.04(d) of the [LPA] shall be rescinded and no longer apply."

199. Multiple Limited Partners objected to the terms of the Seventh Amendment and made inquiries, *inter alia*, regarding the calculation and distribution of carried interest and the valuation of NYPPEX. Allen refused to provide substantive responses to these inquiries and, in many cases, provided no responses at all.

200. Allen's attorneys also sent threatening letters to a Limited Partner who had asked questions about the status of the ACP, the valuations of NYPPEX, and Allen's self-interested positions in the affiliated companies managing the fund.

201. Allen did not disclose the proposal for the Seventh Amendment to the Attorney General and, one week after sending the proposal to investors, failed to appear for scheduled testimony pursuant to a subpoena, in violation of General Business Law § 352[4].

202. The General Partner advised Limited Partners in mid-December that a sufficient amount of partnership interests consented to the Seventh Amendment.

203. In light of the provisions of the Seventh Amendment, Allen's continued use of ACP funds for his own personal and professional enrichment, and his unilateral decision to cancel his testimony, the Attorney General obtained the 354 Order (*supra*, ¶ 36) on December 20, 2018.

204. Allen sought to interfere with the Attorney General's investigation even after the 354 Order went into effect by sending numerous communications to Limited Partners of ACP referring to the Attorney General's investigation—which now included the 354 Order and its attendant asset restraints—as a non-controversial "review."

205. In these communications, Allen mischaracterized his interactions with the Attorney General and the purpose of the 354 Order. Allen misrepresented the Attorney General's fraud investigation and court ordered injunction as an exercise of "exam powers" by a "regulator [that] is new at their position and is conducting a review that our attorneys believe is 'over the top', and now, damaging our investors in ACP X" in emails with certain investors in February 2019.

A. Allen Continued to Mislead Investors about NYPPEX After Entry of the 354 Order

206. As recently as March 2019, Allen represented to investors in email solicitations that he intended to promptly take NYPPEX public via an initial public offering and was seeking bridge financing. Allen further advised the Attorney General during its investigation that he planned to raise new private equity funds.

207. During the investigation, Allen disclosed to the Attorney General that he planned to use proceeds from a planned NYPPEX capital raise from investors to partially buy out ACP's nearly $6 million position in the Company, taking money from new investors to pay off ACP investors already damaged by Allen's fraudulent conduct. Specifically, Allen sought to raise $10 million dollars for NYPPEX and advised the Attorney General that he would direct up to $3 million of that raise to buy out ACP's position in the Company.

208. After the 354 Order cut off Allen's ability to access the assets of ACP to further fund NYPPEX's operations, he quickly commenced efforts to raise new capital from outside sources. The solicitations advised investors that NYPPEX planned to raise $2.5 million in capital in advance of an IPO "to finance [NYPPEX's] 2019 growth plans," as well as effectuate a stock split in the Company that Allen claimed would supposedly drive NYPPEX's share price to $10 "or more."

209. Summaries sent to potential investors of the recent offering for the NYPPEX bridge financing round, however, omitted any reference to Allen's plan to use capital raised from the NYPPEX offering to buy back shares from ACP. The "Use of Proceeds" in one of the summaries disclosed that the funds raised would be used "[p]rimarily for the development of technology, hiring key talent, marketing and general corporate purposes" and omitted Allen's plan to distribute the money to ACP.

210. The disclosures also highlighted various key management employees Allen claimed were working with NYPPEX. Notably, the individual identified as the "Head, Software/AI Development" had provided no services to NYPPEX for the last 10 years, had received no payment from the Company, had not reviewed the current state of NYPPEX's online trading platform, did not possess log-in credentials for any NYPPEX programs, and had no understanding of the current user base or development status.

211. On multiple occasions after entry of the 354 Order, Allen claimed in legal filings, conferences, and disclosures to the Attorney General that NYPPEX's business was severely impacted by the asset freeze imposed on ACP's accounts and that without access to ACP's funds, NYPPEX could not pay its bills. Allen, on behalf of Defendants, including himself, failed to pay counsel in the 354 proceeding in part because, as he claimed in a November 2019 conference in

the proceeding, the asset freeze caused a "budget problem" at NYPPEX; Defendants currently owe hundreds of thousands of dollars in outstanding legal fees to three different law firms that provided representation during the Investigation and 354 proceeding. Allen's admissions that the health of NYPPEX depended on free access to ACP's assets further confirms that Allen relied on and exploited his access to ACP to keep NYPPEX afloat.

212. Allen's recent conduct, coupled with the prior ten years of improper, deceptive and unlawful conduct in connection with the management of ACP, and the issuance of securities in NYPPEX based on materially misleading and deceptive information, renders him unfit to continue operating as an investment adviser or broker-dealer in the State of New York. Neither can Allen be entrusted to faithfully wind-down ACP as provided for in the LPA and pursuant to his fiduciary duties, which duties he has disregarded and exploited for a decade.

FIRST CAUSE OF ACTION

Martin Act Securities Fraud – General Business Law §§ 352 *et seq.* (Against All Defendants)

213. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

214. Defendants together, and each of them individually, made materially false and misleading representations, statements, and promises, and omitted material information in disclosures to investors, about the nature of ACP's securities, investment advice relating to the operation, management and investment objectives of ACP, and distribution of ACP's securities and assets.

215. Allen and NYPPEX made materially false and misleading representations, statements and promises, and omitted material information in disclosures to investors, about the nature and value of NYPPEX securities in connection with the offer, purchase, sale, and issuance of NYPPEX securities.

216. The foregoing acts and practices of Defendants and their agents and employees, consisting of materially false and misleading oral and written representations, statements, promises and omissions, constitute fraudulent acts and practices as defined in GBL §§ 352 *et seq*., and are subject to the equitable remedies of permanent injunctive relief and restitution set forth in GBL § 353.

217. Plaintiff and the public have been, and are being, irreparably harmed by the aforesaid acts and practices and have no adequate remedy at law.

SECOND CAUSE OF ACTION

Repeated and Persistent Fraud and Illegality – Executive Law § 63(12) (Against All Defendants)
Martin Act Securities Fraud, General Business Law §§ 352 *et seq.*

218. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

219. The acts and practices alleged herein of each Defendant constitute conduct proscribed by Executive Law § 63(12), in that Defendants engaged in repeated fraudulent acts, in violation of GBL §§ 352(1) and/or 352-c, or repeated illegal acts, or persistent fraud or illegality in the carrying on, conducting, or transaction of business. These misrepresentations and omissions were part of a single continuing scheme to defraud investors.

THIRD CAUSE OF ACTION

Breach of Fiduciary Duty (Against Defendants Allen, ACP Investment Group, LLC and ACP Partners X, LLC)

220. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

221. Allen, individually and through ACP Investment Group, LLC and ACP Partners X, LLC, owed fiduciary duties to Limited Partners as their investment adviser and general partner to ACP.

222. By engaging in the acts and conduct described in this complaint, Defendants Allen, ACP Investment Group, LLC and ACP Partners X, LLC breached these fiduciary duties. Defendants' breaches caused economic injury to the Limited Partners.

FOURTH CAUSE OF ACTION
Equitable Fraud (Against Defendants Allen, NYPPEX Holdings, LLC, ACP Investment Group, LLC, ACP Partners X, LLC)

223. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

224. Defendants made material misrepresentations and omitted material facts as part of a single, continuing scheme to deceive Limited Partners.

225. Upon information and belief, investors relied on the above-referenced Defendants' misrepresentations and omissions in making their investment and business decisions and such reliance was justifiable and reasonable.

226. These misrepresentations and omissions of material facts as alleged herein constitute equitable fraud under New York common law.

227. Plaintiff and the public have been, and continue to be, irreparably harmed by the aforesaid acts and practices and have no adequate remedy at law.

FIFTH CAUSE OF ACTION
Repeated and Persistent Fraud and Illegality – Executive Law § 63(12) (Against Defendants Allen, NYPPEX Holdings, LLC, ACP Investment Group, LLC, ACP Partners X, LLC)
Equitable Fraud

228. Plaintiff repeats and realleges the paragraphs above as if fully set forth herein.

229. The acts and practices alleged herein of each Defendant constitute conduct proscribed by Executive Law § 63(12), in that Defendants engaged in repeated fraudulent acts, or repeated illegal acts, or persistent illegality in the carrying on, conducting, or transaction of business. These fraudulent acts, misrepresentations and omissions were part of a single continuing scheme to defraud investors.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General demands judgment against Defendants and Relief Defendants as follows:

A. Directing Defendants and Relief Defendants, pursuant to General Business Law § 353(3) and Executive Law § 63(12), to disgorge profits obtained from Defendants' fraudulent practices; pay restitution of any monies obtained directly or indirectly from the fraudulent practices; and pay damages cause by the fraudulent practices complained of here;

B. Directing Defendants and Relief Defendants to pay damages caused, directly or indirectly, by the fraudulent and deceptive acts and repeated fraudulent acts and persistent illegality complained of herein, including punitive damages, plus pre-judgment interest;

C. Directing Defendants to pay costs and additional allowances in the maximum amount allowable under General Business Law § 353(1) and Civil Practice Law and Rules § 8303(a)(6);

D. Directing that Allen be permanently barred from engaging in the issuance, offer, exchange, sale, promotion, negotiation, advertisement, investment advice, or distribution of securities within or from the State of New York;

E. Pursuant to GBL § 353-a or otherwise, directing the appointment of a receiver to ACP X, LP, ACP Investment Group, LLC, and ACP Partners X, LLC, to receive, for the benefit of defrauded investors, all payments of restitution and damages made by the Defendants and Relief Defendants, and all moneys and property obtained from the Relief Defendants, and to take title to, and liquidate for the benefit of defrauded investors, all moneys and property derived by the Defendants and Relief Defendants, or any of them, by means of any of the fraudulent acts and practices alleged herein, including also all moneys and property with which such moneys and

property have been mingled, because such moneys and property cannot be identified in kind because of such commingling, together with any or all books of account and papers relating to such moneys and property;

F. Directing that Defendants pay Plaintiff's costs and fees;

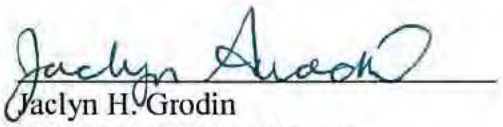
G. Directing such other equitable relief as may be necessary to redress Defendants' violations of New York Law;

H. Permitting Plaintiff to make further applications for such other and further relief as it appears to Plaintiff is proper and necessary for the enforcement of the judgment; and

I. Awarding such other and further relief to Plaintiff as the Court may deem just and proper.

Dated: New York, New York
December 4, 2019

LETITIA JAMES
Attorney General of the State of New York

By: 

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Acting Bureau Chief
Investor Protection Bureau

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VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

I, JACLYN H. GRODIN, being duly sworn, deposes and says:

I am an Assistant Attorney General in the Investor Protection Bureau in office of Letitia James, Attorney General of the State of New York, and am duly authorized to make this verification.

I have read the foregoing complaint and know the contents thereof, which are to my knowledge true, except as to those matters stated to be alleged on information and belief, and to these matters, I believe them to be true. The grounds of my belief as to all matters stated upon information and belief are investigative materials contained in the files of the Attorney General's office.

The reason this verification is not made by Plaintiff is that Plaintiff is a body politic and the Attorney General is its duly authorized representative.

Jaclyn Grodin

Sworn to before me this 4th
day of December, 2019.

Notary Public

RENATA BODNER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BO6250373
Qualified in Kings County
My Commission Expires October 24, 2023

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EXHIBIT B

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: **HON. BARRY R. OSTRAGER** **PART IAS 61EF**

Justice

----------X

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

- v -

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X LP,

Defendants,

and

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURE, LLC,

Relief Defendants.

INDEX NO.	452378/2019
MOTION DATE	
MOTION SEQ. NO.	

DECISION AFTER TRIAL

----------X

HON. BARRY R. OSTRAGER

The New York Office of the Attorney General ("OAG") commenced this action by Summons and Verified Complaint on December 4, 2019 (NYSCEF Doc. Nos. 1 and 2). This action followed an extended investigation in a separate proceeding supervised by Special Referee Steven Liebman, during which time a preliminary injunction remained in effect pursuant to General Business Law § 354 enjoining defendant Laurence G. Allen and his related entities from engaging in "fraudulent, deceptive, and illegal acts" and other wrongful conduct (*see* Index No. 452346/18, NYSCEF Doc. No. 18). The Complaint in this action asserts five causes of action: (1) Martin Act Securities Fraud – General Business Law §§ 352 et seq (Against all Defendants); (2) Repeated and Persistent Fraud and Illegality – Executive Law § 63(12) (Against all Defendants); (3) Breach of Fiduciary Duty (Against Defendants Allen, ACP Investment Group, LLC and ACP Partners X, LLC); (4) Equitable Fraud (Against Defendants Allen, NYPPEX

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Holdings, LLC, ACP Investment Group, LLC, ACP Partners X, LLC); and (5) Repeated and Persistent Fraud and Illegality – Executive Law § 63(12) (Against Defendants Allen, NYPPEX Holdings, LLC, ACP Investment Group, LLC, ACP Partners X, LLC) Equitable Fraud. The OAG seeks various remedies against the Defendants and the Relief Defendants named in the Complaint, including injunctive relief, disgorgement of funds, and the appointment of a Receiver.

Defendant ACP X, LP ("ACPX") is a limited partnership formed in 2004 with over 75 limited partners ("Limited Partners"). Defendant ACP Investment Group, LLC (the "Investment Advisor") is the investment advisor to ACPX. Defendant Laurence G. Allen ("Allen") is the managing principal of the Investment Advisor. The Investment Advisor owns 100% of Defendant ACP Partners X, LLC, which is the general partner of ACPX. Allen is the managing member and managing principal of the General Partner. Allen, the Investment Advisor, and the General Partner are each fiduciaries to the Limited Partners in ACPX.

Defendant NYPPEX Holdings, LLC ("NYPPEX") is the parent company and 100% owner of the Investment Advisor and Relief Defendant NYPPEX, LLC, a registered broker-dealer. Allen is the CEO and managing member of NYPPEX and the majority shareholder of NYPPEX through his ownership interest in Relief Defendant Institutional Internet Ventures, LLC.

In January 2020, the OAG moved for a preliminary injunction enjoining Allen and the various Allen-controlled entities from taking further actions with respect to ACPX (mot. seq. 001). The Court conducted a five-day evidentiary hearing on the OAG's motion during which the Court heard the live testimony of eleven witnesses. Thereafter, the Court issued a preliminary injunction on February 4, 2020. (*See* NYSCEF Doc. No. 94). Among the Court's findings in its February 4, 2020 decision were the following:

The evidence adduced at the preliminary injunction hearing revealed a shocking level of self-dealing, breaches of fiduciary duty, misappropriation of enormous sums of ACP capital, and outright fraud. ACP was established in 2004 pursuant to a Private Placement Memorandum ("PPM"), a Limited Partnership Agreement, and a Subscription Agreement. The ACP Partners limited partnership was capitalized with approximately $17 million and was established for the purpose of acquiring a diversified portfolio of distressed private equity limited partnership interests.

The Limited Partnership Agreement contains a relatively standard distribution waterfall that provides that the General Partner, while vested with substantial investment discretion, cannot receive any "carried interest" payments until the limited partners have received the return of their entire capital plus an 8% annual preferred interest return. The Limited Partnership Agreement expands the discretion of the General Partner from the description in the PPM but retains significant restrictions on the General Partner's ability to earn carried interest. It is undisputed that to the extent the PPM conflicts with the Limited Partnership Agreement, the terms of the Limited Partnership Agreement control.

Among the most significant features of both the PPM and the Limited Partnership Agreement was the disclosure that NYPPEX, LLC ("NYPPEX"), a broker dealer controlled by Allen that specializes in matching buyers and sellers of private equity interests in the secondary market, would be paid for broker dealer services it provided for the ACP partners. Other than such payments, ACP had no obligation to pay any administrative or overhead expenses. NYPPEX was, in turn, owned by NYPPEX Holdings, LLC ("NYPPEX Holdings"), another entity controlled by Allen.

ACP never returned the entirety of the original investments of any of the 75 limited partners of ACP. And the evidence established that neither NYPPEX nor NYPPEX Holdings ever earned a profit except, perhaps, during one year when these entities generated a marginal profit. During the period between the fourth quarter of 2008 and the fourth quarter of 2016, Allen invested $5 million of ACP cash in NYPPEX Holdings. Subsequent to 2016, Allen caused ACP to provide NYPPEX Holdings with an additional $1 million credit line, all of which was drawn down before an Ex Parte Order preserving the status quo was signed by Justice Lori S. Sattler on December 20, 2018 (Index No. 452346/18, NYSCEF Doc. No. 18). During the period 2008 to 2018 Allen's total compensation from NYPPEX Holdings exceeded $6 million.

Allen has offered the fanciful explanation of the suspicious circumstances described in the preceding paragraphs by testifying that ACP's investment in NYPPEX Holdings will produce windfall profits for the ACP limited partners because the value of NYPPEX Holdings exceeds $100 million. The Court does not credit any of this testimony and finds that ACP was essentially utilized as a piggy bank to fund a failing broker-dealer, its failing parent, and Allen.[Robert] Zimmel [an employee of NYPPEX] apparently made "whistleblower" complaints about the administration of ACP and NYPPEX to the Securities and Exchange

> Commission and FINRA, but no action was taken with respect to these complaints.
>
> But, there is more. In 2013, 2014, and 2015, with ACP limited partners wondering where their return on investment was, Allen secured passage of Amendments 3, 4, and 5 to the Limited Partnership Agreement. The solicitations for amendments 3, 4 and 5 included a provision falsely stating that the General Partner was entitled to 100% of his carried interest and further offering those voting in favor of the amendments immediate payment of a portion of their investments at a discounted rate, while reaffirming the General Partner's right to claim carried interest. These amendments were approved. Subsequent amendments to the Limited Partnership Agreement purported to have ACP indemnify Allen and limit legal action by the limited partners against Allen. There was no basis for the assertion that the General Partner was entitled to receive carried interest without amendments 3, 4 and 5, and after these amendments passed Allen distributed to himself (and, perhaps, others) a total of $3,404,466.87 in carried interest.

The plenary trial on the merits was delayed until January 11, 2021 largely due to a number of withdrawals by various counsel for the defendants. The defendants secured excellent counsel in early December 2020, and a plenary bench trial was conducted on Microsoft Teams on January 11, 12, 13, and 14, 2021. Direct testimony was submitted by affidavit, and each affiant whose testimony was considered by the Court was subjected to cross-examination. Prior to the commencement of the trial, defendants stipulated that the entire record of the preliminary injunction hearing would be deemed part of the trial record of the plenary trial (NYSCEF Doc. No. 294), which greatly reduced the duration of the four-day plenary trial.

Fourteen witnesses testified at the four-day plenary trial, including some of the witnesses who had testified at the preliminary injunction hearing, including Robert Zimmel (the former corporate treasurer of NYPPEX), Allen, and defendants' expert witnesses who were ostensibly called to express opinions on the value of NYPPEX. Despite truly heroic efforts by newly retained counsel for the defendants to undo the record of the preliminary injunction hearing, the four days of trial testimony confirmed all of the facts established at the preliminary injunction hearing. In short, nothing in the four days of trial in any way undercuts the factual findings made

by the Court after the five days of testimony that supported the issuance of the February 4, 2020 preliminary injunction order.

Specifically, the testimonial and documentary evidence adduced during nine days of testimony in this case established that, through a maze of entities owned and /or controlled by defendant Allen, a significant portion of the capital contributed to the ACPX limited partnership was substantially diverted by a hopelessly conflicted Allen toward funding NYPPEX – the broker-dealer entity controlled by Allen. NYPPEX, in turn, utilized these funds to pay Allen exorbitant NYPPEX annual salaries totaling approximately $6 million, as well as to pay the salaries of his staff. ACPX capital was also used to pay NYPPEX operating expenses. NYPPEX itself is not, as Allen claims, a technology startup with either a present or potential centi-million dollar valuation. Rather, based upon the Court's assessment of the credibility of witnesses and a review of relevant documents, NYPPEX is, and always has been, a failing broker-dealer that has a $44,000 software package purchased from a third-party vendor that supposedly allows NYPPEX to execute secondary market trades of private equity interests. ACPX's investment in NYPPEX is in no way consistent with the investment thesis contained in the ACPX Private Placement Memorandum and in the ACPX Limited Partnership Agreement.

The OAG has Stated Martin Act and Executive Law Claims

Throughout the trial, defendants stridently argued both that the acts complained of by the OAG are not actionable either under the Martin Act or Executive Law § 63(12) and that, in all events, any Martin Act claim would be time-barred. Specifically, defendants argued that the 2004 Private Placement Memorandum and the ACPX Limited Partnership Agreement contained no false and misleading statements and that anything that occurred a decade or more later constitutes "fraud by hindsight" and is non-actionable for both of the aforementioned reasons.

Defendants also argue that the OAG's claims, if anything, state a claim for breach of contract rather than Martin Act and Executive Law violations.

One of defendants' principal arguments is that the specific claims alleged by the OAG constitute non-actionable "fraud by hindsight." In support of this argument, defendants cite *People ex rel. Cuomo v. Charles Schwab & Co*., 33 Misc. 3d 1221(A), 939 N.Y.S.2d 742 (Sup. Ct. N.Y. Cnty. 2011), *aff'd in part, modified in part,* 109 A.D.3d 445, 971 (First Dept. 2013). In *Schwab*, the trial court dismissed Martin Act claims because it found the alleged misrepresentations were true when made and the complaint alleged "fraud by hindsight." But, on appeal, the First Department reversed and reinstated the Martin Act claims, holding that the trial court had erred by addressing the merits of the complaint on a motion to dismiss and that the trial court should have only looked at the sufficiency of the pleading.

Defendants misinterpret the *Schwab* case as a holding by the First Department that the Martin Act cannot cover representations that were true when made but rendered untrue by fraudulent conduct that takes place after the expiration of a statute of limitations. However, that is not a fair reading of the *Schwab* decision because the First Department reversed the dismissal of the case. In any event, *Schwab* is inapposite. The present action is not based on offering documents which may have been true when issued. As discussed below, the present action is based on conduct that violated the representations made in the offering documents (and subsequent amendments) as well as other fraudulent conduct within the statute of limitations period. Moreover, in *Schwab*, the statements in the offering documents were later rendered misleading by changes to the market, not due to changes in the conduct of the defendants, as alleged here.

Defendants also rely upon this Court's decision in *Exxon Mobil Corp.*, 65 Misc. 3d 1233 A) (N.Y. Cnty. 2019) at *20 for the proposition that a Martin Act claim only lies where a

statement is false when made. *Exxon* made no such finding. *Exxon* held that the alleged misstatements were not misrepresentations because they were not sufficiently definite, and the defendant had provided only general, forward-looking information about the overall state of affairs of its business.

While the zealousness with which counsel has advocated for his client is both refreshing and commendable, a review of the case law demonstrates that future conduct that renders prior representations false **can** serve as the basis for a Martin Act claim **and** that a Martin Act violation accrues at the time of the wrongful conduct. *See State v. 7040 Colonial Rd. Assocs. Co.,* 176 Misc. 2d 367, 372-74 (Sup. Ct. N.Y. Cnty. 1998) (a new cause of action under the Martin Act accrues each time a defendant engages in a fraudulent practice). *See also People v. Merkin,* 26 Misc. 3d 1237(A), 2010 N.Y. Misc. LEXIS 523, *8-12, *24-27, *33-34 (Sup. Ct. N.Y. Cnty. 2010). In *Merkin*, as here, the alleged Martin Act violations did not occur until years after the offering documents were issued, and the offering documents were not "misleading" until the defendant engaged in conduct that contradicted them. *Cf., SEC v. Pittsford Capital Income Partners, L.L.C.,* No. 06 Civ 6353 T(P), 2007 U.S. Dist. LEXIS 62338 (W.D.N.Y. Aug. 23, 2007) (granting summary judgment to the SEC when a fund invested in an affiliate in a manner contrary to its investment thesis).

Moreover, the OAG's claims are not just about misrepresentations, but are also about defendants' independent fraudulent conduct (unrelated to any specific representation). For example, defendants provided fraudulent investment advice to ACPX by advising ACPX to invest in NYPPEX, Allen's failing broker-dealer. In addition, defendants caused NYPPEX to merge with the Investment Advisor in a clear conflict of interest pursuant to which ACPX's investment advisor was directing ACPX to, in essence, invest in itself.

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Finally, defendants argue that their alleged conduct at most constitutes a breach of contract but not Martin Act and Executive Law violations. However, nothing precludes defendants from being liable for both breach of contract and other violations, including Martin Act fraud and breaches of fiduciary duty. *See Assured Guar. (UK) Ltd. v. J.P. Morgan Inv. Mgmt. Inc*., 18 N.Y.3d 341, 353 (2011) ("[m]ere overlap between the common law and the Martin Act is not enough to extinguish common-law remedies," and both types of claims can proceed on "independent" legal bases to "further the same goal—combating fraud and deception in securities transactions"); *See Merkin ,* 2010 N.Y. Misc. LEXIS 523, *28 ("that some private investors may choose to pursue or not to pursue claims on their own behalf does not detract from the substantial public interest at stake" in OAG's breach of fiduciary duty claim). In the latter connection, the OAG may assert common law claims under its *parens patriae* authority. *See id* at 25. Courts have upheld claims brought under *parens patriae* to protect investors in a fund, because New York "has a quasi-sovereign interest in protecting the integrity of the marketplace," [*People v. Grasso*, 11 N.Y.3d 64, 69, n. 4 (2008)[1]] and ensuring that "financial markets . . . operate honestly and transparently" (*Merkin,* 2010 N.Y. Misc. LEXIS 523, *25). *See also People v. H&R Block, Inc*., 16 Misc 3d 1124(A) (Sup. Ct. N.Y. Cnty. 2007) (upholding *parens patriae* claim for breach of fiduciary duty), *aff'd in relevant part,* 58 A.D.3d 415, 416-17 (1st Dept. 2009).

[1] Defendants' objections to the OAG's assertion of *parens patriae* authority lack merit. First, the OAG was not obligated to plead this authority. To the extent defendants cite the First Department's decision in *People v Grasso,* 54 AD3d 180 (2008), the OAG correctly notes that the appellate court there recognized the State's "quasi-sovereign interest in protecting the integrity of the marketplace." Although the court found no such interest in the *Grasso* case, the case is distinguishable because the OAG was relying there on the Not-For-Profit Corporation Law to prosecute claims on behalf of a not-for-profit corporation that had been converted into a for-profit entity. Thus, *Grasso,* where the OAG was acting only on behalf of private interests, stands in contrast to this case where the OAG is acting to promote the public purpose of the Martin Act to ensure that financial markets operate honestly and transparently. The 1874 decision by the Court of Appeals in *People v Ingersoll,* 58 NY 1, involving claims on behalf of a municipal corporation, does not provide otherwise.

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The Action is Not Barred by the Statute of Limitations

As indicated earlier, this action was commenced on December 4, 2019 following an extended investigation. A six-year statute of limitations applies to claims brought under the Martin Act under CPLR § 213(9), which became law in August 2019. CPLR § 213(9) was an amendment to the CPLR that directly responded to the decision by the Court of Appeals in *People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622 (2018), which overturned long-standing First Department precedent holding that a three-year statute of limitations applied to Martin Act claims. Accordingly, conduct from December 4, 2013 onward is within the statute of limitations period.[2]

Defendants argue that although the six-year statute of limitations is now codified, it does not apply retroactively to capture conduct before the enactment of the legislation in 2019. The Court disagrees. Where an amendment to the law is "remedial legislation" it "should be given retroactive effect in order to effectuate its beneficial purpose." *See Gleason v. Michael Vee, Ltd.*, 96 N.Y.2d 117, 122-23 (2001). The Court of Appeals has held that, where the Legislature "conveyed a sense of immediacy" because it "acted swiftly" after a Court of Appeals decision and "directed that the amendment was to take effect immediately" and "the purpose of the amendment was to clarify what the law was always meant to do and say", the legislation should be applied retroactively. *Id.* That is precisely the case here. The Court of Appeals decided *Credit Suisse* in 2018 and the Legislature codified CPLR § 213(9) in 2019 in direct response to the ruling. Accordingly, a six-year statute of limitations applies to the Martin Act claims brought in this action. And, even if a three-year statute of limitations applies, defendants continuing wrongdoing, including the undisclosed 2017 merger of NYPPEX and ACPX's Investment

[2] A Tolling Agreement was entered for a short period of time before December 2019. The Tolling Agreement was offered at trial as Ex. 203 and objected to by Defendants. However, the Tolling Agreement has no bearing on the Court's decision here.

Advisor, would bring all of defendants' conduct within a three-year statute of limitations. *See 7040 Colonial Rd. Assocs. Co*., 176 Misc. 2d 367 (N.Y. Cnty.1998) (holding that "a new cause of action accrued" under the Martin Act "each time" the defendant engaged in fraudulent practices, "even if the new act or practice simply repeated the misrepresentations or omissions made previously").

In short, in the context of limited partnership interests marketed as long-term investments, the general partner cannot make disclosures calculated to attract investors, wait six years, and then defraud the limited partners. Indeed, because the Martin Act is remedial legislation, accrual of a Martin Act claim must begin when the wrongful conduct occurs, and continued wrongful conduct tolls the statute of limitations. *See 7040 Colonial Rd. Assocs. Co*., 176 Misc. 2d 367 (N.Y. Cnty. 1998); *Butler v. Gibbons*, 173 A.D.2d 352, 353 (1st Dep't 1991); *see also Merine ex rel. Prudential-Bache Util. Fund v. Prudential-Bache Util. Fund*, 859 F. Supp. 715, 725 (S.D.N.Y. 1994). Here, the OAG demonstrated that false and misleading statements were made in connection with the 3rd, 4th, and 5th amendments to the Limited Partnership Agreement in, respectively, November 2013, June 2015, and March 2017. At a minimum, the 4th and 5th amendments, as well as other instances of defendants' fraudulent conduct (*e.g.* the 2017 merger of NYPPEX and the Investment Advisor) are within the statute of limitations period.

Additionally, the Martin Act explicitly prohibits providing fraudulent or misleading investment advice and, as discussed above and below, defendants, through the thoroughly conflicted Investment Advisor, advised the ACPX limited partnership to make indefensible investments which is an independent Martin Act violation. These acts, including the improper taking of carried interest by reason of the successful solicitation of amendments to the ACPX

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limited partnership agreement by means of patently misleading statements, establishes that the OAG's Martin Act claims are both appropriate and timely.

The OAG has Established its Right to Relief

The Martin Act prohibits fraudulent practices relating to the "purchase, exchange, investment advice or sale of securities," GBL § 352. As stated above, defendants' fraudulent conduct concerned the purchase and sale of securities, the misappropriation of carried interest, as well as fraudulent and self-serving investment advice.

The Court finds that the OAG has proven by a preponderance of the evidence that Defendants: (1) made frequent, material misrepresentations and misleading omissions in communications to the limited partners of ACPX; (2) fraudulently caused ACPX to make oversized investments in NYPPEX; (3) gave false and misleading investment advice to ACPX to purchase NYPPEX stock; (4) made false and misleading reports on the value ACPX's interest in NYPPEX to the limited partners and caused ACPX to purchase NYPPEX stock at a wildly inflated prices; (5) made false and misleading statements concerning the wind-down of ACPX; (6) concealed the merger of NYPPEX and ACPX's Investment Advisor to the ACPX limited partners; (7) fraudulently took carried interest to which they were not entitled, pursuant to amendments to the limited partnership agreement that were procured by means of material misrepresentations; and (8) fraudulently caused ACPX to cover significant NYPPEX operating expenses, without fairly disclosing any of these wrongdoings to ACPX's investors.

The Court finds that Allen fraudulently caused ACPX to purchase equity in NYPPEX in each of 2014, 2015, 2016, and 2017-18, including a $1 million investment on August 29, 2016, and a $1 million convertible note in December 2017. These investments were contrary to defendant Allen's repeated statements that ACPX was in "wind-down" mode, and that any new investments would be for specific, limited purposes, such as to meet capital calls.

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In all, Allen caused ACPX to invest approximately $4 million in NYPPEX during the wind-down period. This conduct concerned the "purchase" of securities, as defendant Allen caused ACPX to purchase NYPPEX equity. It also concerned "investment advice" to invest in NYPPEX by ACP Investment Group, ACPX's conflicted investment advisor, which Allen controlled and ultimately merged into NYPPEX Holdings. The 2017 merger of ACPX's investment advisor with NYPPEX Holdings, which was never disclosed to the ACPX Limited Partners, resulted in Allen - wearing his investment advisor hat - directing ACPX capital into NYPPEX with no independent controls. In the latter connection, Zimmel, whose testimony the Court credited, testified that he and others working for Allen blindly signed each and every "certification" Allen required to effect transfers from ACPX to NYPPEX. These certifications are required to confirm that duly constituted committees have signed off on the appropriateness of investments.

Further, while the ACPX limited partnership agreement allows a non-conflicted general partner to make investments in affiliates, during the entire 2013-2018 period, Allen's reports to investors grossly overstated the value of the NYPPEX investment.[3] Those reports stated that investments in affiliates would generally total "15% or less" of ACPX assets "measured at the time such investments were made." However, NYPPEX constituted approximately 28% of ACPX's portfolio after an August 2016 investment, and ultimately reached approximately 40%

[3] At the trial defendants produced experts who provided valuations of NYPPEX that expressly accepted as true fanciful forecasts of NYPPEX's future income which were higher by multiples of 25 times than any actual results NYPPEX ever achieved or likely could ever achieve. The Court completely rejects as entirely nonprobative the testimony of defendants' expert witnesses that was explicitly and exclusively based on the assumptions provided to them by Allen. For example, an opinion based on the assumption that NYPPEX's 2019 base case income would rise to $34 million when it was in fact a tiny fraction of that sum can hardly support the assertion that it was proper for Allen to advance millions of dollars of ACPX's assets to ongoing investments in NYPPEX, virtually all of which were used to pay Allen and his staff.

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of ACPX's total investments. *See* Ex. 85 (NYSCEF Doc. No. 461) (summary exhibit identifying each investment ACPX made into NYPPEX).

Defendants also made material misrepresentations during the limitations period in connection with amendments permitting "early withdrawals" (at a severe discount)—which are "sales" of investor interests under the Martin Act—even as ACPX failed to make the regular distributions Defendants had promised. In November 2013, the General Partner sent a Notice of Proposal for the Third Amendment to the Limited Partnership Agreement which stated: "Note: The General Partner is currently permitted to distribute up to 100% of its Carried Interest balance…." Ex. 3 (NYSCEF Doc. No. 129) at 3-4. In June 2015, the General Partner sent an identical representation with the Fourth Amendment to the Limited Partnership Agreement. Ex. 4 (NYSCEF Doc. No. 130) at 3. A month later on a July 2015 conference call with ACPX investors, Allen stated: [W]e (the General Partner and Investment Advisor) will take a sliver of whatever the carried interest balance is and be able to pay that out to certain parties of the general partner. We're able to do that now…" Exs. 12 (audio recording), 288 (NYSCEF Doc. No. 203) (transcript) at 5:13-25.

Following those amendments and the Fifth Amendment in 2017, Allen distributed to himself and the related defendants approximately $3.4 million in carried interest, including over $1.6 million on May 2, 2017. As this Court found in its February, 4, 2020 opinion, Allen's appropriation of $3.4 of carried interest was procured by the fraudulent representation to ACPX investors that Allen was always entitled to carried interest when in reality the controlling provisions of the Private Placement Memorandum and the original Limited Partnership Agreement provide that the ACPX general partner - Allen - was not entitled to receive carried interest until the Limited Partners had received a return of their capital and a preferred 8% return on their investment.

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Additionally, Allen caused ACPX to pay approximately $750,000 in NYPPEX's operating expenses in August-October 2018, even though such expenses were the General Partner's responsibility. In short, as the Court found after the preliminary injunction hearing, Allen used ACPX as his private piggy bank.

In sum, the Court finds: the testimony of defendants' valuation experts to be based on incredible assumptions supplied by Allen that bear no relationship to reality; the testimony by the defendants' experts about the general provisions of private equity funds is irrelevant; Zimmel's testimony about defendants' various defalcations is entirely credible; and the defendants' other witnesses were either incompetent to offer the testimony they offered or, in Mr. Allen's case, unworthy of belief.

Executive Law § 63(12) prohibits "repeated fraudulent or illegal acts or . . . persistent fraud or illegality." Because the Court has found that defendants repeatedly violated the Martin Act, it also finds that defendants have violated Executive Law § 63(12).

Conclusion

The OAG has proven its case by a preponderance of the evidence and a permanent injunction shall be issued identical to the preliminary injunction as follows: Defendants and Relief Defendants, together with their employees, representatives, agents and all others acting under their direction or authority, are permanently enjoined from directly or indirectly:

1. Taking any action pursuant to the Seventh Amendment to the Amended and Restated Agreement of the Limited Partnership Agreement of ACP X, LP;

2. Making distributions from ACP X, LP, except to limited partners of ACP X, LP on a pro-rata basis to their limited partnership interest in ACP X, LP, which distributions must first be approved by the Court;

3. Making any investments, extending any loans or lines of credit or entering into any agreements on behalf of ACP X, LP to or with Laurence G. Allen, NYPPEX Holdings, LLC, ACP Partners X, LLC, or any other entity in which Allen directly or indirectly exercises control or has an ownership interest;

4. Facilitating, allowing or participating in the purchase, sale or transfer of any limited partnership interest in ACP X, LP;

5. Making any payments or distributions from ACP X, LP, ACP Investment Group, LLC or ACP Partners X, LLC, to Defendants, Relief Defendants, Tyler Allen, Michelle Allen, and/or LGA Investments Family Limited Partnership;

6. Withdrawing, converting, transferring, selling or otherwise disposing of funds and assets held by ACP Investment Group, LLC, ACP X, LP, and ACP Partners X, LLC, wherever they may be situated, for purposes other than that provided for in Paragraph 2, *supra*;

7. Violating Article 23-A of the GBL, and from engaging in fraudulent, deceptive and illegal acts, and further employing any device, scheme or artifice to defraud or to obtain money or property by means of false pretense, representation or promise

The Court is reluctant to appoint a receiver to liquidate ACPX's remaining assets if, as the parties intimated, they can agree on the appropriate allocation of those assets. Nevertheless, the Court appoints Hon. Melanie L. Cyganowski (Ret.) as the provisional receiver subject to the preparation of a proposed order narrowly prescribing the powers and responsibilities of the receiver.

Defendants must disgorge the fraudulent investment of limited partners' funds into NYPPEX. The total investment into NYPPEX was $6,000,146.00 ($5,00,146.00 plus a $1M convertible note). However, the Court excludes early and pre-limitations period investments in NYPPEX totaling $2,287,708.00. Accordingly, defendants must disgorge $2,712,438.00.

Defendants must also disgorge the fraudulent payment of $3,404,466.87 in carried interest from ACPX to its general partner that was distributed to Allen and others.

Defendants must also disgorge $755,000 in additional fraudulent transfers from ACPX to NYPPEX (via ACP Investment Group) in 2018. As the OAG's accounting expert Joseph Pope concluded, these funds were used to pay NYPPEX's operating expenses such as compensation and rent. The receiver shall allocate disgorged funds equitably among the ACPX limited partners and subject to the Court's approval.

The Court declines to impose prejudgment interest on any of the sums Allen and the other defendants must disgorge. Under CPLR 5001, the Court, in its discretion, may decline to award prejudgment interest in circumstances such as these. The Court further declines the OAG's request to bar Allen from the securities industry. The various entities that Allen controls are all highly regulated by FINRA and other regulators which are better suited than the Court to address the future status of those entities and Allen's future role in those entities.

Accordingly, defendants are directed, jointly and severally, to disgorge the following sums: $2,712,438.00; $3,404,466.87; and $755,000, and the OAG is further granted the injunctive relief and the appointment of a receiver in accordance with the terms of this decision.

Dated: February 4, 2021

BARRY R. OSTRAGER, J.S.C.

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: **HON. BARRY R. OSTRAGER** **PART IAS 61EF**

Justice

----------X

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

- v -

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X LP,

Defendants,

and

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURE, LLC,

Relief Defendants.

INDEX NO.	452378/2019
MOTION DATE	
MOTION SEQ. NO.	008

ORDER & DECISION ON MOTION

----------X

HON. BARRY R. OSTRAGER

Before the Court is a motion by plaintiff for an Order, pursuant to CPLR § 5019(a), amending the Decision After Trial in this matter (NYSCEF No. 538) to correct a typographical error by replacing the number "$2,712,438.00" with the number "$3,712,438.00" on pages 15 and 16. Defendants have opposed the motion, arguing that the error is not a mere typographical error but is instead a "judicial error" that affects defendants' substantive rights. Detailed oral argument was held via Microsoft Teams with all counsel participating.

Plaintiff's motion is granted in accordance with the proceedings on the record on February 26, 2021 and the terms of this decision. The evidentiary record at the trial established that the defendants fraudulently invested $6,000,146.00 of the limited partners' funds in NYPPEX, LLC in the form of cash and a note that was fully converted. The Court held that defendants must disgorge all of these funds except for the sums invested in the pre-statute of

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limitations period, which the Court calculated to be $2,287,708.00 based on the evidence adduced during nine days of trial testimony.

The Court's opinion contains a typographical error. The Court clearly intended to deduct the pre-limitations investment of $2,287,708.00 from the total $6,000,146.00 investment, which results in disgorgement of $3,712,438.00, not $2,712,438.00 as mistakenly noted in the decision. The incorrect disgorgement number was simply a typographical error caused when the Court typed a "2" instead of a "3" as the first number of the sum that must be disgorged. The correction may therefore be made pursuant to CPLR Section 5019(a).

Accordingly, it is hereby

ORDERED that plaintiff's motion to correct the above-described typographical error on pages 15 and 16 of the decision is granted, and the Court will issue an Amended Decision and Order after trial accordingly.

Dated: February 26, 2021

BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

EXHIBIT C

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Table A – Opinions of the Commission

Year	Action	Description
2022	*Joseph A. Meyer, Jr.*, Exchange Act Rel. No. 94822, Advisers Act Rel. No. 6009 (Apr. 29, 2022)	Respondent permanently enjoined by federal district court from violating Section 17(a) of the Securities Act of 1933, Exchange Act Section 10(b) and Rule 10b-5 and Advisers Act Sections 206(1) and 206(2)
	Sean Kelly, Exchange Act Rel. No. 94808, Advisers Act Rel. No. 6006 (Apr. 28, 2022)	Respondent permanently enjoined by federal district court from violating the antifraud provisions of the federal securities laws
	Patrick S. Carter, Exchange Act Rel. No. 94770 (Apr. 21, 2022)	Respondent permanently enjoined by federal district court from violating Sections 5 and 17(a) of the Securities Act of 1933, and Exchange Act Sections 10(b) and 15(a) and Rule 10b-5
	Eldrick E. Woodly, d/b/a Woodley & Co. Wealth Strategies, Advisers Act Rel. No. 5981 (Mar. 21, 2022)	Respondent permanently enjoined by federal district court from future violations of Sections 206(1) and 206(2) of the Advisers Act
2021	*Jonathan Morrone*, Exchange Act Rel. No. 93847 (Dec. 21, 2021)	Respondent permanently enjoined by federal district court from violating Sections 5 and 17(a) of the Securities Act of 1933 and Exchange Act Sections 10(b) and 15(a)
	Paul Jurberg, Exchange Act Rel. No. 93846 (Dec. 21, 2021)	Respondent permanently enjoined by federal district court from violating Sections 5 and 17(a) of the Securities Act of 1933 and Exchange Act Sections 10(b) and 15(a)
	Brett Hamburger, Exchange Act Rel. No. 93844 (Dec. 21, 2021)	Respondent permanently enjoined by federal district court from violating Sections 5 and 17(a) of the Securities Act of 1933 and Exchange Act Sections 10(b) and 15(a)
	Jaswant Gill, Advisors Act Rel. No. 5858 (Sept. 10, 2021)	Respondent permanently enjoined by federal district court from violations of the antifraud provisions of the federal securities laws
	Marc Jay Bryant, Exchange Act Rel. No. 91531 (Apr. 12, 2021)	Respondent permanently enjoined by federal district court from violating Section 5 of the Securities Act of 1933 and Sections 15(a) and 20(b) of the Exchange Act

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	Salvadore D. Palmero, Exchange Act Rel. No. 91301 (Mar. 11, 2021)	Respondent permanently enjoined by federal district court from future violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5
2020	*Mark Morrow*, Exchange Act Rel. No. 90472 (Nov. 20, 2020)	Respondent permanently enjoined by federal district court from violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5
2019	None	
2018	None	
2017	*Shreyans Desai*, Exchange Act Rel. No. 80129, Advisers Act Rel. No. 4656 (Mar. 1, 2017)	Respondent permanently enjoined by federal district court from future violations of the provisions of the federal securities laws
	George Charles Cody Price, Exchange Act Rel. No. 4631 (Jan. 30, 2017)	Respondent permanently enjoined by federal district court from violating the antifraud provisions of the federal securities laws
2016	*Gary L. McDuff*, Exchange Act Rel. No. 78066 (June 14, 2016)	Respondent enjoined by federal district court from future violations of certain registration, antifraud, and broker-dealer provisions of the federal securities laws (action dismissed on separate grounds, Exchange Act Rel. No. 80110)
2015	None	
2014	*Toby G. Scammell*, Advisers Act Rel. No. 3961 (Oct. 29, 2014)	Respondent permanently enjoined from violating Exchange Act Section 10(b) and Exchange Act Rule 10b-5
2013	*Peter Siris*, Exchange Acct Rel. No. 71068, Advisers Act Rel. No. 3736 (Dec. 12, 2013)	Respondent enjoined by federal district court from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933; Sections 10(b) and 15(a) of the Securities Exchange Act of 1934, and Rule 10b-5 5 and Rule 105 of Regulation M thereunder; and Section 206(4) of the Investment Advisers Act of 1940, and Rule 206(4)-8 thereunder
	Tzemach David Netzer Korem, Exchange Act Release No. 70044 (July 26, 2013)	Respondent permanently enjoined by federal district court from violating the antifraud provisions of the federal securities laws

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2012	*John W. Lawton*, Advisers Act Rel. No. 3513 (Dec. 13, 2012)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
	Vladimir Boris Bugarski, Exchange Act Rel. No. 66842 (Apr. 20, 2012)	Respondent permanently enjoined by federal district court from violating the antifraud provisions of the federal securities laws
2011	*Don Warner Reinhard*, Exchange Act Rel. No. 63720, Advisers Act Rel. No. 3139 (Jan. 14, 2011)	Respondent permanently enjoined by federal district court from violating the antifraud provisions of the federal securities laws, namely Section 17(a) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5; Sections 206(1), (2) and 207 of the Investment Advisers Act of 1940; and aiding and abetting violations of Advisers Act Section 204 and Advisers Act Rule 204-2(a)(7)
2010	*James C. Dawson*, Advisers Act Rel. No. 3057 (July 23, 2010)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
	Phillip J. Milligan, Exchange Act Rel. No. 61790 (Mar. 26, 2010)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
2009	*Martin A. Armstrong*, Advisers Act Rel. No. 2926 (Sept. 17, 2009)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
	Scott B. Gann, Exchange Act Rel. No. 59729, Advisers Act Rel. No. 2684 (Apr. 8, 2009)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
2008	*Justin F. Ficken,* Exchange Act Rel. No. 58802, Advisers Act Rel. No. 2803 (Oct. 17, 2008)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
	Robert Radano, Advisers Act Rel. No. 2750 (June 30, 2008)	Respondent enjoined by federal district court from committing future violations of the antifraud and investment adviser provisions of the Advisers Act
	Jeffrey L. Gibson, Exchange Act Rel. No. 57266, Advisers Act Rel. No. 2700 (Feb. 4, 2008)	Respondent permanently enjoined by federal district court from violations of the federal securities laws

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2007	*James E. Franklin*, Exchange Act Rel. No. 56649 (Oct. 12, 2007)	Respondent permanently enjoined by federal district court from violations of the federal securities laws
	Conrad P. Seghers, Advisers Act Rel. No. 2656 (Sept. 26, 2007)	Respondent permanently enjoined by federal district court from violations of the federal securities laws
	Bradley T. Smith, Exchange Act_Rel. No. 55771, Advisers Act Rel. No. 2604 (May 16, 2007)	Respondent permanently enjoined by federal district court from violating Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5
	Jose P. Zollino, Exchange Act_Rel. No. 55107, Advisers Act Rel. No. 2579 (Jan. 16, 2007)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
2006	*Marshall L. Sheild*, Exchange Act Rel. No. 53201, Advisers Act Rel. No. 2477 (Jan. 31, 2006)	Respondent permanently enjoined by federal district court from violations of the federal securities laws
	Harold F. Harris and Ronald E. Crews, Exchange Act Rel. No. 53122 A (Jan. 13, 2006)	Respondents permanently enjoined by federal district court from violations of the federal securities laws
2005	*Thomas J. Donovan*, Exchange Act Rel. No. 52883 (Dec. 5, 2005)	Respondent permanently enjoined by federal district court from violating Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5
	Vladislav Steven Zubkis, Exchange Act Rel. No. 52876 (Dec. 2, 2005)	Respondent permanently enjoined by federal district court from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b), 15(b), and 15(c)(1) of the Securities Exchange Act of 1934, and Rules 10b-5, 15c1-2, 15c1-5, and 15c1-6 thereunder
2004	*Michael Batterman and Randall B. Batterman, III, Advisers Act* Rel. No. 2334 (Dec. 3, 2004)	Respondents permanently enjoined by federal district court from violating the antifraud provisions of the federal securities laws
	Michael T. Studer, Exchange Act Rel. No. 50411 (Sept. 20, 2004)	Respondent permanently enjoined by federal district court from violating registration, antifraud, and anti-manipulative provisions of the federal securities laws

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2003	*Alfred E. Barr*, Advisers Act Rel. No. 2179 (Oct. 2, 2003)	Respondent permanently enjoined by federal district court from violating Advisers Act Section 204 and regulations thereunder
	Ralph W. Leblanc, Exchange Act Rel. No. 48254 (July 30, 2003)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
	Nolan Wayne Wade, Exchange Act Rel. No. 48245 (July 29, 2003)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
	Marshall E. Melton, Exchange Act Rel. No. 48228, Advisers Act Rel. No. 2151 (July 25, 2003)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the securities laws
2002	*Christopher A, Lowry*, Advisers Act Rel. No. 2052 (Aug. 30, 2002)	Respondent permanently enjoined by federal district court from violating the federal securities laws
	Joseph P. Galluzzi, Exchange Act Rel. No. 46405 (Aug. 23, 2002)	Respondent enjoined by federal district court from violating antifraud provisions of the federal securities laws
2001	*Michael Markowski*, Exchange Act Rel. No. 44086 (Mar. 20, 2001)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the federal securities laws
	Eugene W. Hanson, Advisers Act Rel. No. 1918 (Jan. 10, 2001)	Respondent permanently enjoined by federal district court from violating Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 and Advisers Act Rule 206(4)-1(a)(5) and from violating an earlier Commission Order Making Findings and Imposing Remedial Sanctions and Cease and Desist Order
2000	None	
1999	*Robert Sayegh*, Exchange Act Rel. No. 34-41226 (Mar. 30, 1999)	Respondent permanently enjoyed by federal district court from violations of Exchange Act Section 10(b)and Rule 10b-5
	Ted Harold Westerfield, Exchange Act Rel. No. 41126 (Mar. 1, 1999)	Respondent permanently enjoined by federal district court from violating Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, from violating, or aiding, abetting, counseling, commanding, inducing, or procuring violations of

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		Section 204 of the Advisers Act and Advisers Act Rule 204-1(b), and from violating or conspiring to violate Section 17(e)(1) of the Investment Company Act of 1940
1998	*Ross Frankel*, Exchange Act Rel. No. 40010, Advisers Act Rel. No. 1722 (May 20, 1998)	Respondent permanently enjoined by federal district court from further violations of Section 10(b) of the Exchange Act and Rule 10b-5
	John Francis D'Acquisto, Advisers Act Rel. No. 1696 (Jan. 21, 1998)	Respondent permanently enjoined by federal district court from violating the antifraud provisions of the federal securities laws
1997	*Meyer Blinder*, Exchange Act Rel. No. 39180 (Oct. 1, 1997)	Respondent permanently enjoined by federal district court from violations and aiding and abetting violations of the antifraud, antimanipulation, and recordkeeping provisions of the federal securities laws
	Russell G. Koch, Exchange Act Rel. No. 38658 (May 20, 1997)	Respondent permanently enjoined by federal district court from the offer and sale of unregistered securities and from violating the antifraud provisions of the federal securities laws
	Demitrios Julius Shiva, Exchange Act Rel. No. 38389 (Mar. 12, 1997)	Respondent permanently enjoined by federal district court from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5
	Martin B. Sloate, Exchange Act Rel. No. 38373 (Mar. 7, 1997)	Respondent permanently enjoined by federal district court from violating antifraud provisions of the Securities Exchange Act
1996	*Richard J. Puccio*, Exchange Act Rel. No. 37849 (Oct. 22, 1996)	Respondent permanently enjoined by federal district court from violating the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act and Rule 10b-5

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Table B – Initial Decisions

Year	Action[1]	Description
2022	None as of 6/3/22	
2021	*Joshua D. Mosshart*, Initial Decision Rel. No. 1408 (Feb. 11, 2021); Notice of Finality at Exchange Act Rel. No. 91438, Advisors Act Release No. 5709 (Mar. 29, 2021)	Respondent enjoined by federal district court from violating the registration provisions of the federal securities laws
2020	*Mark D. Feathers*, Initial Decision Rel. No. 1403 (Sept. 25, 2020)	Respondent enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5
	Talman Harris and Victor Alfaya, Initial Decision Rel. No. 1402 (Sept. 2, 2020);	Respondents enjoined by federal district court from violating the antifraud provisions of the federal securities laws
	Sean P. Finn, Initial Decision Rel. No. 1396 (Feb. 18, 2020); Notice of Finality at Exchange Act Release No. 90871 (Jan. 7, 2021)	Respondent permanently enjoined by federal district court from violating Sections 5 and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5
2019	*Karen Bruton*, Initial Decision Rel. No. 1386 (Sept. 16, 2019); Notice of Finality at Advisors Act Rel. No. 5419 (Dec. 19, 2019)	Respondent enjoined by federal district court from violating the antifraud provisions of the Advisers Act
	Gary C. Snisky, Initial Decision Rel. No. 1379 (June 5, 2019); Notice of Finality at Exchange Act Release No. 86968 (Sept. 13, 2019)	Respondent enjoined by federal district court from violating registration and antifraud provisions of the federal securities laws
	Jason A. Halek, Initial Decision Rel. No. 1376 (May 9, 2019)	Respondent enjoined by federal district court from committing any future violations of Sections 5 and 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5

[1] This summary excludes as duplicative any Initial Decisions which were subsequently appealed to the Commission and became the subject of Opinions of the Commission as reflected in Table A, as well as any prior Initial Decisions involving the same individual (e.g., if an Initial Decision was issued but a new ALJ was later appointed and issued a subsequent Initial Decision in the same matter).

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	Anthony C. Zufelt, Initial Decision Rel. No. 1374 (Apr. 22, 2019)	Respondent enjoined by federal district court from future violations of Sections 10(b) and 15(a) of the Exchange Act, and Rule 10b-5; Sections 17(a), 5(a) and 5(c) of the Securities Act; and from participating in the issuance, offer, or sale of certain securities
	Gregory Reyftmann, Initial Decision Rel. No. 1370 (Mar. 25, 2019)	Respondent enjoined by federal district court from future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
	Shervin Neman, Initial Decision Rel. No. 1369 (Mar. 18, 2019)	Respondent enjoined by federal district court from violating the antifraud, recordkeeping, and registration provisions of the federal securities laws
	Jeffrey D. Smith, Joseph Carswell, and Michael W. Fullard, Initial Decision Rel. No. 1362 (Mar. 5, 2019)	All respondents enjoined by federal district court from violating Section 15(a) of the Exchange Act, and Respondents Smith and Carswell enjoined from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b5 thereunder
	Christopher M. Lee, a/k/a Rashid K. Khalfani, Initial Decision Rel. No. 1360 (Mar. 4, 2019)	Respondent permanently enjoined by federal district court from violating Exchange Act Section 10(b) and Rule 10b-5, Securities Act Sections 5 and 17(a), and Advisers Act Section 207 and from soliciting, accepting or depositing any monies from actual or prospective investors in connection with any offering of securities and from aiding and abetting violations of Section 203A of the Advisers Act
	Demitrios Hallas, Initial Decision Rel. No. 1358 (Feb. 22, 2019)	Respondent enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5
	Lawrence E. Penn III, Initial Decision Rel. No. 1357 (Feb. 22, 2019)	Respondent enjoined by federal district court from violating Section 10(b) of the Securities Exchange Act of 1934, Advisers Act Sections 204 and 206, Exchange Act Rule 10b-5, and Advisers Act Rule 204-2
	Andrew Stitt, Initial Decision Rel. No. 1348 (Feb. 6, 2019)	Respondent permanently enjoined by federal district court from violating Sections 5(a), 5(c),

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		and 17(a) of the Securities Act of 1933, Section 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5
2018	*Joe Lawler*, Initial Decision Rel. No. 1340 (Dec. 21, 2018)	Respondent enjoined by federal district court from violating Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder
	David Alcorn, Initial Decision Rel. No. 1338 (Dec. 11, 2018)	Respondent enjoined by federal district court from violating the antifraud and registration provisions of the federal securities laws
	Roy Dekel, Initial Decision Rel. No. 1298 (Nov. 7, 2018)	Respondent enjoined by federal district court from violating Section 17(a) of the Securities Act of 1933, Exchange Act Sections 10(b) and 20(a), and Exchange Act Rule 10b-5
	Mark Megalli, Initial Decision Rel. No. 1253 (May 31, 2018)	Respondent enjoined by federal district court from violations of the antifraud provisions of the federal securities laws
	Patric Ken Baccam a/k/a Khanh Sengpraseuth, Initial Decision Rel. No. 1246 (Mar. 23, 2018)	Respondent enjoined by federal district court from violating Section 17(a) of the Securities Act of 1933, Exchange Act Sections 10(b) and 15(a), and Exchange Act Rule 10b-5
2017	*Jeffrey Gainer*, Initial Decision Rel. No. 1221 (Nov. 2, 2017)	Respondent enjoined by federal district court from violating the registration and antifraud provisions of the federal securities laws
	Warren D. Nadel, Initial Decision Rel. No. 1158 (Aug. 4, 2017)	Respondent permanently enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933; Section 10(b) of the Exchange Act and Rule 10b-5 2 thereunder; Section 206(1), (2), and (3) of the Advisers Act; and from aiding and abetting any violations of Exchange Act Section 10(b) and Rule 10b-10 thereunder
	James Y. Lee, Initial Decision Rel. No. 1140 (May 22, 2017)	Respondent enjoined by federal district court from future violations of the antifraud provisions of the federal securities laws
2016	*Christopher A.T. Pedras*, Initial Decision Rel. No. 1092 (Dec. 16, 2016); Finality	Respondent enjoined by federal district court from committing violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and of

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	Order at Exchange Act Rel. No. 79970 (Feb. 3, 2017)	Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5
	Robert Seibert, Initial Decision Rel. No. 1087 (Dec. 12, 2016); Finality Order at Exchange Act Rel. No. 79789 (Jan. 13, 2017)	Respondent enjoined by federal district court from committing violations of the federal securities laws and from participating in the issuance, purchase, offer, or sale of any security except for his personal account
	Steven R. Markusen and Jay C. Cope, Initial Decision Rel. No. 1079 (Nov. 9, 2016); Finality Order at Advisers Act Rel. No. 4606 (Jan. 11, 2017)	Respondent enjoined by federal district court from violating Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and Section 206(1) and (2) of the Advisers Act; Respondent Cope enjoined from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5, and aiding and abetting any violations of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and Section 206(1) and (2) of the Advisers Act
	Daniel Christian Stanley Powell, Initial Decision Rel. No. 1075 (Nov. 1, 2016); Finality Order at Exchange Act Rel. No. 79647 (Dec. 21, 2016)	Respondent permanently enjoined by federal district court from committing future violations of Sections 5 and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5
	Stephan von Hase, Initial Decision Rel. No. 1061 (Sept. 16, 2016); Finality Order at Exchange Act Rel. No. 34-79426	Respondent enjoined against violations of the antifraud provisions of the Exchange Act and the Securities Act of 1933 (Securities Act) and against violations of the registration provisions of the Exchange Act
	Louis V. Schooler, Initial Decision Rel. No. 1052 (Aug. 23, 2016)	Respondent enjoined from violations of the antifraud provisions of the Exchange Act and the Securities Act of 1933 (Securities Act) and against violations of the registration provisions of the Securities Act
	Deven Sellers and Roland Barrera, Initial Decision Rel. No. 1036 (July 14, 2016); Finality Order at Exchange Act Rel. No. 34-78706	Respondents permanently enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 and Rule 10b-5

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	Peter J. Eichler, Jr., Initial Decision Rel. No. 1032 (July 8, 2016); Finality Order at Exchange Act Release No. 34-78672	Respondent enjoined against violations of the antifraud provisions of the Exchange and Advisers Acts
	Wayne L. Palmer, Initial Decision Rel. No. 1025 (June 13, 2016); Finality Order at Exchange Act Rel. No. 34-78488	Respondent permanently enjoined by federal district court from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5
	Vinay Kumar Nevatia, Initial Decision Rel. No. 1021 (June 7, 2016); Finality Order at Exchange Act Rel. No. 34-78489	Respondent permanently enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
	Brett A. Cooper, Initial Decision Rel. No. 1020 (June 6, 2016); Finality Order at Exchange Act Rel. No. 34-78487	Respondent permanently enjoined by federal district court from committing future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5, and from "participating directly or indirectly in the issuance, offer, or sale of certain securities."
	George Charles Cody Price, Initial Decision Rel. No. 1018 (June 3, 2016)	Respondent permanently enjoined by federal district court from future violations of the antifraud provisions of the federal securities laws
	Robert Burton, Initial Decision Rel. No. 1014 (May 27, 2016); Finality Order at Advisers Act Rel. No. 4464	Respondent convicted of securities fraud and other crimes in federal district court, and enjoined by state court against violations of state law related to investment related services and from acting as a broker or investment adviser
	James A. Evans, Initial Decision Rel. No. 1006 (April 29, 2016); Finality Order at Advisers Act Rel. No. 4436	Respondent permanently enjoined from future violations of Sections 5 and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.
	Paul D. Crawford, Initial Decision Rel. No. 1001 (April 18, 2016); Finality Order at Exchange Act Rel. No. 34-77998	Respondent enjoined by federal district court from violating Section 15(a) of the Exchange Act

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	Gilles T. De Charsonville, Initial Decision Rel. No. 996 (April 5, 2016); Finality Order at Exchange Act Rel. No. 34-77937	Respondent enjoined by federal district court against violations of the antifraud provisions of the Exchange Act and Advisers Act
	Lonny S. Bernath, Initial Decision Rel. No. 993 (April 4, 2016); Finality Order at Advisers Act Rel. No. 4393	Respondent enjoined from violations of certain securities laws
	Gedrey Thompson, Initial Decision Rel. No. 980 (March 21, 2016); Finality Order at Advisers Act Rel. No. 4381	Respondent enjoined by federal district court from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(1), (2), and (4) of the Advisers Act
	Maher F. Kara, Initial Decision Rel. No. 979 (March 15, 2016); Finality Order at Exchange Act Rel. No. 34-77731	Respondent enjoined by federal district court against violations of the antifraud provisions of the Exchange Act, and convicted of securities fraud and conspiracy to commit securities fraud
	Garfield M. Taylor, Initial Decision Rel. No. 971 (March 1, 2016); Finality Order at Exchange Act Rel. No. 34-77664	Respondent permanently enjoined by federal district court from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a)(1) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder
	George Bussanich, Jr., Initial Decision Rel. No. 967 (February 29, 2016); Finality Order at Exchange Act Rel. No. 34-75652	Respondent permanently enjoined via state court-issued consent order from (1) violating the New Jersey Uniform Securities Law, including its anti-fraud provisions; (2) acting in the securities business in New Jersey as an agent, brokerdealer, investment adviser, or investment adviser representative; (3) issuing, offering for sale or selling, offering to purchase or purchasing, distributing, promoting, advertising, soliciting, negotiating, advancing the sale of and/or promoting securities, or advising regarding the sale of any securities in any manner to, from, or within New Jersey, except to buy or sell securities for their own accounts through registered broker-dealers; (4) engaging in the conduct set forth in the NJBOS complaint; and (5) controlling and acting as an officer and/or director of an issuer offering for sale or selling any security.

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2015	*Craig Danzig,* Initial Decision Rel. No. 903 (October 20, 2015); Finality Order at Exchange Act Rel. No. 34-76682	Respondent permanently enjoined by federal district court from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 as well as Sections 15(a)(1) and 10(b) of the Exchange Act and Rule 10b-5 thereunder
	Charles R. Kokesh, Initial Decision Rel. No. 876 (September 9, 2015)	Respondent enjoined by federal district court from violating Investment Company Act of 1940 Section 37, and from aiding and abetting violations of Securities Exchange Act of 1934 Sections 13(a) and 14(a), Exchange Act Rules 12b-20, 13a-1, 13a-13, and 14a-9, and Investment Advisers Act of 1940 Sections 205(a), 206(1), and 206(2)
	Erick Laszlo Mathe, Initial Decision Rel. No. 874 (August 25, 2015); Finality Order at Exchange Act Rel. No. 34-76255	Respondent enjoined against violations of the antifraud and registration provisions of the federal securities laws
	Eric W. Johnson, Initial Decision Rel. No. 845 (July 30, 2015); Finality Orders at Exchange Act Rel. No. 34-75892, Advisers Act Rel. No. 4192	Respondent permanently enjoined from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206 of the Advisers Act
	Siming Yang, Initial Decision Rel. No. 788 (May 6, 2015); Finality Order at Exchange Act Rel. No. 34-75194	Respondent enjoined against violations of the antifraud and reporting provisions of the federal securities laws
	Stuart E. Rawitt, Initial Decision Rel. No. 782 (April 28, 2015); Finality Order at Exchange Act Rel. No. 34-75133	Respondent permanently enjoined via federal court-issued consent order from violating Sections 5(a) and 5(c) of the Securities Act of 1933 (Securities Act) and Section 15(a) of the Exchange Act; permanently enjoined by federal district court from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 15(a)(1) and 15(b)(6)(B)(i) of the Exchange Act; and convicted in federal district court of one count of mail fraud
	Gaeton S. Della Penna, Initial Decision Rel. No. 757 (March 27, 2015); Finality Order at Advisers Act Rel. No. 4080	Respondent permanently enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and

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		206(4) of the Advisers Act and Rule 206(4)-8 thereunder
	Marlon Quan and Stewardship Investment Advisors, LLC, Initial Decision Rel No. 741 (January 30, 2015); Finality Order at Advisers Act Rel. No. 4048	Federal district court permanently enjoined Respondents from future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Advisers Act Section 206(4) and Rule 206(4)-8
	Roy Dixon, Jr., Initial Decision Rel No. 740 (January 27, 2015); Finality Order at Exchange Act Rel. No. 34-74466	Respondent enjoined against violations of the antifraud provisions of the federal securities laws
	John J. Bravata, Richard J. Trabulsy, and Antonio M. Bravata, Initial Decision Rel. No. 737 (January 16, 2015); Finality Order at Exchange Act Rel. No. 34-74396	Respondents enjoined by federal district court against violations of the antifraud and registration provisions of the securities law
2014	*Nicholas D. Skaltsounis*, Initial Decision Rel. No. 729 (December 31, 2014); Finality Order at Exchange Act Rel. No. 34-74242	Respondent enjoined by federal district court from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
	Delsa U. Thomas and The D. Christopher Capital Management Group, LLC, Initial Decision Rel. No. 705 (November 4, 2014). Finality Order at Advisers Act Rel. No. 3989	Federal district court enjoined respondents from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (Exchange Act), and Section 203A of the Advisers Act, and from aiding and abetting violations of Sections 206(1), (2), and (4) and Rule 206(4)-8 of the Advisers Act
	Armand R. Franquelin, Initial Decision Rel. No. 698 (October 22, 2014); Finality Order at Exchange Act Rel. No. 34-73887	Respondent permanently enjoined by federal district court from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5
	Alicia Bryan, Initial Decision Rel. No. 697 (October 22, 2014); Finality Order at Exchange Act Rel. No. 34-73920	Respondent permanently enjoined from future violations of Sections 5(a), 5(c), and 17(a)(2) of the Securities Act of 1933 (Securities Act), and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5(b) thereunder

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	Joel I. Wilson, Initial Decision Rel. No. 648 (August 5, 2014); Finality Orders at Exchange Act Rel. No. 34-73387, Advisers Act Rel. No. 3956	Respondent enjoined from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act); Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-13, and 13a-14; and Section 206(4) of the Investment Advisers Act of 1940
	Robert G. Bard, Initial Decision Rel. No. 640 (July 24, 2014); Finality Order at Advisers Act Rel. No. 3934	Respondent enjoined against violation of the antifraud provisions of the federal securities laws
	Patrick G. Rooney, Initial Decision Rel. No. 638 (July 22, 2014); Finality Order at Advisers Act Rel. No. 3916	Respondent enjoined against violations of the antifraud and other provisions of the federal securities laws
	Daniel Imperato, Initial Decision Rel No. 628 (July 7, 2014)	Federal district court enjoined respondent from future violations of Sections 5 and 17 of the Securities Act of 1933 (Securities Act); Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), and 15(a), and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, 13b2-1, 13b2-2, and 13a-14 thereunder; and Section 34(b) of the Investment Company Act of 1940
	Waldyr Da Silva Prado Neto, Initial Decision Rel. No. 600 (May 20, 2014); Finality Order at Exchange Act Rel. No. 34-72513	Respondent enjoined against violation of the antifraud provisions of the federal securities laws
	Jenny E. Coplan, Initial Decision Rel. No. 595 (May 1, 2014); Finality Order at Exchange Act Rel. No. 34-72383	Respondent enjoined against violations of the antifraud and registration provisions of the federal securities laws
	Anthony Chiasson, Initial Decision Rel. No. 589 (April 18, 2014)	Federal district court enjoined respondent from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), and Exchange Act Rule 10b-5
	Alan Smith, Initial Decision Rel. No. 575 (March 14, 2014); Finality Order at Exchange Act Rel. No. 34-72038	Respondent enjoined by federal district court from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rule 10b-5, and from aiding and abetting future violations of Section 15(a) of the Exchange Act

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	Corbin Jones, Initial Decision Rel. No. 568 (February 21, 2014); Finality Order at Exchange Act Rel. No. 34-71877	Respondent permanently enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b), 13(d), and 15(a) of the Exchange Act, and Exchange Act Rules 10b-5, 13d-1, and 13d-2
	Todd Newman, Initial Decision Rel. No. 562 (February 10, 2014); Finality Order at Exchange Act Rel. No. 34-71787	Respondent enjoined by federal district court from violations of Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5
2013	*Kiavanni Pringle,* Initial Decision Rel. No. 539 (December 4, 2013); Finality Order at Exchange Act Rel. No. 34-71336	Respondent enjoined against violations of the antifraud and registration provisions of the federal securities laws
	Frank Bluestein, Initial Decision Rel. No. 534 (November 26, 2013); Finality Order at Exchange Act Rel. No. 34-71316	Federal district court enjoined respondent from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), and Sections 10(b) and 15(a) of the Exchange Act and Exchange Act Rule 10b-5
	Edmund E. Wilson, Initial Decision Rel. No. 526-A (November 19, 2013); Finality Order at Exchange Act Rel. No. 34-71313	Respondent enjoined against violations of the antifraud and registration provisions of the federal securities laws
	Christopher A. Seeley, Initial Decision Rel. No. 508 (October 9, 2013); Finality Order at Exchange Act Rel. No. 34-70941	Respondent permanently enjoined by federal district court from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), and Sections 10(b) and 15(a)(1) of the Exchange Act and Rule 10b-5 thereunder
	Joshua Constantin and Brian Solomon, Initial Decision Rel. No. 505 (October 4, 2013); Finality Order at Exchange Act Rel. No. 34-70960	Respondent enjoined from violating the antifraud provisions of the federal securities laws
	Joseph Contorinis, Initial Decision Rel. No. 503 (August 22, 2013)	Respondent permanently enjoining by federal district court from violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
	Mark A. Gelazela and Steven E. Woods, Initial Decision Rel. No. 500 (July 30, 2013); Finality Order at Exchange Act Rel. No. 34-70476	Respondents were enjoined from violating the antifraud and registration provisions of the federal securities laws

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	Stefan H. Benger, Initial Decision Rel. No. 499 (July 25, 2013); Finality Order at Exchange Act Rel. No. 34-70667	Respondent enjoined from violating the antifraud and registration provisions of the federal securities laws
	Jeffrey A. Liskov, Initial Decision Rel. No. 498 (July 24, 2013); Finality Orders at Exchange Act Rel. No. 34-70478, Advisers Act Rel. No. 3676	Respondent enjoined by federal district court from future violations of Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder and Sections 204, 206(1), and 206(2) of the Advisers Act and various provisions under Rule 204-2 thereunder
	Guy W. Gane, Jr., Initial Decision Rel. No. 493 (June 19, 2013); Finality Order at Exchange Act Rel. No. 34-70249	Respondent permanently enjoined from future violations of various provisions of the securities statutes
	David E. Ruskjer, Initial Decision Rel. No. 489 (June 3, 2013); Finality Order at Exchange Act Rel. No. 34-69803	Respondent permanently enjoined by federal district court from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act), and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder
	Alero Odell Mack, Jr., Initial Decision Rel. No. 482 (February 13, 2013); Finality Orders at Exchange Act Rel. No. 34-69455, Advisers Act Rel. No. 3593	Respondent permanently enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder
	Andrew J. Franz, Initial Decision Rel. No. 480 (January 18, 2013); Finality Orders at Exchange Act Rel. No. 34-69145, Advisers Act Rel. No. 3567	Respondent permanently enjoined by federal district court from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act
	Omar Ali Rizvi, Initial Decision Rel. No. 479 (January 7, 2013); Finality Orders at Exchange Act Rel. No. 34-69019, Advisers Act Rel. No. 3561	Respondent permanently enjoined by federal district court from violating Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
2012	*Stanley C. Brooks and Brookstreet Securities Corp.,* Initial Decision Rel. No. 475 (December 11, 2012); Finality Orders at Exchange Act Rel. No. 34-68773, Advisers Act Rel. No. 3542	Respondents permanently enjoined by federal district court from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

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	John Jantzen, Initial Decision Rel. No. 472 (November 6, 2012); Finality Order at Exchange Act Rel. No. 34-68396	Respondent permanently enjoined by federal district court future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3(a) thereunder
	Ran H. Furman, Initial Decision Rel. No. 459-A (June 20, 2012); Finality Order at Exchange Act 34-67549	Respondent permanently enjoined by federal district court from future violations of Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder
	Leila C. Jenkins, Initial Decision Rel. No. 451 (February 10, 2012); Finality Order at Exchange Act 34-66548	Respondent permanently enjoined by federal district court from violating Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 207 of the Investment Advisers Act of 1940 (Advisers Act), and from aiding and abetting violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16), and 206(4)-1(a)(5) thereunder
	Alfred Clay Ludlum III, Initial Decision Rel. No. 447 (January 4, 2012)	Respondent enjoined by federal district court from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, and from aiding and abetting violations of Sections 203, 204, and 207 of the Advisers Act
2011	*Benjamin W. Young, Jr.,* Initial Decision Rel. No. 445 (December 16, 2011); Finality Order at Exchange Act Rel. No. 34-66504	Respondent permanently enjoined, by consent, from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), and Sections 10(b) and 15(a)(1) of the Exchange Act and Exchange Act Rule 10b-5
	Vladimir Boris Bugarski, Vladislav Walter Bugarski, and Aleksander Negovan Bugarski, Initial Decision Rel. No. 444 (December 8, 2011)	Respondents enjoined by federal district court from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act),

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		Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5
	Dale E. St. Jean, Initial Decision Rel. No. 442 (November 17, 2011); Finality Order at Advisers Act Rel. No. 3334	Respondent permanently enjoined, by default, from violating Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and from violating Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder
	Lodavina Grosnickle, Initial Decision Rel. No. 441 (November 10, 2011); Finality Order at Exchange Act Rel. No. 34-65949	Respondent permanently enjoined from violating Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (Exchange Act), Exchange Act Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933
	Glenn M. Barikmo, Initial Decision Rel. No. 436 (October 13, 2011); Finality Order at Exchange Act Rel. No. 34-65782	Respondent permanently enjoined, by default, from violating Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and from aiding and abetting any violation of Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 (Advisers Act) and Rule 206(4)-8 thereunder
	Richard L. Goble, Initial Decision Rel. No. 435 (October 5, 2011)	Respondent permanently enjoined in federal district court from violating Sections 10(b), 15(c)(3), and 17(a) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rules 10b-5, 15c3-3, and 17a-3
	Gordon A. Driver, Initial Decision Rel. No. 432 (September 22, 2011); Finality Order at Exchange Act Rel. No. 34-65707	Respondent permanently enjoined from future violations of the federal securities laws
	Tom Hirsch, Berta Walder, Howard Walder, and Harish P. Shah, Initial Decision Rel. No. 431 (September 15, 2011); Finality Order at Exchange Act Rel. No. 34-65738	Respondents enjoined by federal district court from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), and Sections 10(b) and 15(a) of the Exchange Act and Exchange Act Rule 10b-5
	Thomas Michael Rittweger, Initial Decision Rel. No. 417 (April 15, 2011); Finality Order at Exchange Act Rel. No. 34-64515	Respondent enjoined from violating the antifraud provisions of the federal securities laws

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2010	*Eric R. Majors,* Initial Decision Rel. No. 409 (December 1, 2010); Finality Order at Advisers Act Rel. No. 3131	Respondent permanently enjoined from future violations of the federal securities laws
	Aaron Tsai, Initial Decision Rel. No. 403 (September 10, 2010); Finality Order at Exchange Act Rel. No. 34-63209	Respondent enjoined from violating the registration and reporting provisions of the federal securities laws
	Edward J. Driving Hawk, Sr., Initial Decision Rel. No. 399 (July 7, 2010); Finality Order at Exchange Act Rel. No. 34-62659	Respondent permanently enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder
2009	*Stanley Johnson,* Initial Decision Rel. No. 384 (August 7, 2009); Finality Order at Exchange Act Rel. No. 34-60617	Federal district court permanently enjoined respondent from violating Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b) and 15(a) of the Exchange Act, and Rule 10b-5 thereunder
	Matthew La Madrid, Initial Decision Rel. No. 383 (July 17, 2009); Finality Order at Advisers Act Rel. No. 2915	Federal district court permanently enjoined respondent from violating Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 204(6)-8 thereunder
	Michael W. Crow and Robert David Fuchs, Initial Decision Rel. No. 376 (April 22, 2009); Finality Order at Exchange Act Rel. No. 34-59982	Federal district court permanently enjoined respondents from aiding and abetting violations of certain sections of the Exchange Act and Exchange Act rules
	Michael Lauer, Initial Decision Rel. No. 369 (January 29, 2009); Finality Order at Advisers Act Rel. No. 2848	Respondent permanently enjoined from violating Section 17(a)(1)-(3) of the Securities Act, Section 10(b) and Rule 10b-5 of the Exchange Act, and Sections 206(1) and 206(2) of the Advisers Act
2008	*Steven Sirianni*, Initial Decision Rel. No. 362 (November 19, 2008); Finality Order at Advisers Act Rel. No. 2823	Respondent permanently enjoined from violating Section 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 15(a)(1) of the Exchange Act, and Exchange Act Rule 10b-5
	Jamie L. Solow, Initial Decision Rel. No. 357 (September 15, 2008); Finality Order at Exchange Act Rel. No. 34-58831	Respondent enjoined from violating the antifraud provisions of the federal securities laws
	Douglas G. Frederick, Initial Decision Rel. No. 356 (September 9, 2008); Finality Order at Exchange Act Rel. No. 34-58751	Respondent permanently enjoined from violations of the antifraud provisions of the securities statutes

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	Clarence Friend, Initial Decision Rel. No. 352 (July 14, 2008); Finality Order at Exchange Act Rel. No. 34-58370	Respondent enjoined from violating the antifraud and registration provisions of the federal securities laws
	Jonathan Carman, Initial Decision Rel. No. 343 (January 25, 2008); Finality Order at Exchange Act Rel. No. 34-57437	Federal district court permanently enjoined respondent from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5
2007	*Chris G. Gunderson, Esq.,* Initial Decision Rel. No. 339 (December 20, 2007)	Federal district court permanently enjoined respondent from violating, directly or indirectly, Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) and Rule 10b-5 thereunder of the Securities Exchange Act of 1934
	Terrence J. O'Donnell, Initial Decision Rel. No. 334 (September 20, 2007); Finality Order at Exchange Act Rel. No. 34-56670	Federal district court enjoined respondent from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
2006	*Connie S. Farris,* Initial Decision Rel. No. 321 (November 7, 2006); Finality Order at Exchange Act Rel. No. 34-54894	Respondent permanently enjoined from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act and Rules 10b-5 and 15d-14 thereunder, and from aiding and abetting violations of Section 15(d) of the Exchange Act and Rules 12b-20 and 15d-13 thereunder
	Michael V. Lipkin and Joshua Shainberg, Initial Decision Rel. No. 317 (August 21, 2006); Finality Order at Exchange Rel. No. 34-54460	Federal district court permanently enjoined respondents from committing future violations of and Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
	Dominick J. Savino, Initial Decision Rel. No. 313 (June 20, 2006); Finality Orders at Securities Act Rel. No. 33-8725; Exchange Act Rel. No. 34-54176	Respondent permanently enjoined by federal district court from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
2005	*Joseph Catapano, Aaron Andrzejewski, and Michael Kordich,* Initial Decision Rel. No. 300 (November 10, 2005); Finality Order at Exchange Act Rel. No. 34-52980	Federal district court permanently enjoined respondent from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and

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		15(a) of the Exchange Act, and Exchange Act Rule 10b-5
	Schield Management Company and Marshall L. Schield, Initial Decision Rel. No. 284 (May 24, 2005)	Respondents permanently enjoined from committing future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder
	Richard S. Kern and Charles Wilkins, Initial Decision Rel. No. 281 (April 21, 2005); Finality Order at Exchange Act Rel. No. 34-51712	Respondents permanently enjoined from violating the securities registration and antifraud provisions of the federal securities laws
	Derrick N. McKinney and Rick R. Malizia, Initial Decision Rel. No. 278 (March 22, 2005); Finality Order at Exchange Act Rel. No. 34-51578	Respondents permanently enjoined from violating the antifraud and other provisions of the federal securities laws
	Daniel E. Charboneau, Initial Decision Rel. No. 276 (February 28, 2005); Finality Order at Exchange Act Rel. No. 34-51436	Respondent enjoined from violating the antifraud provisions of the federal securities laws
	Robert Cord Beatty, Initial Decision Rel. No. 271 (January 14, 2005); Finality Order at Securities Act Rel. No. 33-8554	Respondent enjoined from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-2 thereunder, and from aiding and abetting future violations of Section 13(b)(2)(A) of the Exchange Act
2004	*Joseph L. Lents*, Initial Decision Rel. No. 267 (December 15, 2004); Finality Order at Exchange Act Rel. No. 34-51040	Respondent enjoined from violating the antifraud and registration provisions of the federal securities laws
	Herbert M. Campbell II, Esq., Initial Decision Rel. No. 266 (October 27, 2004); Finality Order at Exchange Act Rel. No. 34-50906	Respondent permanently enjoined from violating Section 17(a) of the Securities Act of 1933 (Securities Act), Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 (Exchange Act), and Rule 10b-5 thereunder
	Currency Trading International, Inc., Craig A. Cunningham, James R. Kelsall, and Christian J. Weber, Initial Decision Rel. No. 263 (October 12, 2004); Finality Order at Exchange Act Rel. No. 34-50693	Respondents permanently enjoined from violating the antifraud provisions of the federal securities laws
	Ian L. Renert, Initial Decision Rel. No. 254 (July 27, 2004); Finality Order at Advisers Act Rel. No. 2283	Respondent permanently enjoined from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act)

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		and Rule 10b-5 thereunder, Sections 206(1) and 206(2) of the Advisers Act, and Section 7(d) of the Investment Company Act of 1940
	Larry R. Crowder and John R. Powell, Initial Decision Rel. No. 245 (January 30, 2004); Finality Order at Exchange Act Rel. No. 34-50411	Respondent permanently enjoined from committing future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder
2003	*Roger M. DeTrano,* Initial Decision Rel. No. 242 (December 4, 2003); Finality Orders at Securities Act Rel. No. 33-8354, Exchange Act Rel. No. 34-49062	Federal district court permanently enjoined respondent from violating the securities registration, reporting, and antifraud provisions of the Securities Act of 1933 (Securities Act), the Exchange Act, and various rules thereunder
	Peter C. Lybrand f/k/a Peter C. Tosto, Initial Decision Rel. No. 234 (September 3, 2003); Finality Order at Exchange Act Rel. No. 34-48757	Respondent permanently enjoined by federal district court from committing future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
	Michael D. Richmond, Initial Decision Rel. No. 224 (February 25, 2003); Finality Orders at Securities Act Rel. No. 33-8214, Exchange Act Rel. No. 34-47576	Respondent permanently enjoined from committing further violations of the federal securities laws
2002	*Brett L. Bouchy and Richard C. Whelan*, Initial Decision Rel. No. 209 (July 9, 2002); Finality Order at Exchange Act Rel. No. 34-46330	Respondents permanently enjoined from any future violations of the securities laws
	The Barr Financial Group, Inc. and Alfred E. Barr, Initial Decision Rel. No. 206 (June 21, 2002)	Respondents enjoined from violating or aiding or abetting violations of Section 204 of the Advisers Act and the rules and regulations promulgated thereunder
2001	*Jerome M. Wenger,* Initial Decision Rel. No. 192 (September 24, 2001); Finality Order at Exchange Act Rel. No. 34-45015	Respondent permanently enjoined from committing any further violations of the securities laws
	Jerry W. Anderson and Robert M. Kerns, Initial Decision Rel. No. 166 (May 31, 2000); Finality Order at Exchange Act Rel. No. 34-43015	Respondents permanently enjoined by federal district court from violating Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder

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1999	*Ronnie R. Neihart,* Initial Decision Rel. No. 154 (December 8, 1999); Finality Order at Exchange Act Rel. No. 34-42324	Federal district court permanently enjoined respondent from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from causing violations, as a controlling person, of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder
	First Jersey Securities, Inc. and Robert E. Brennan, Initial Decision Rel. No. 126 (May 29, 1998); Finality Order at Exchange Act Rel. No. 34-40153	Respondents permanently enjoined by federal district court from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder
	Martin Kaiden, Initial Decision Rel. No. 124 (March 24, 1998)	Respondent permanently enjoined by federal district court from further violations of Section 17(a) of the Securities Act of 1933 (Securities Act), and from further conduct giving rise to controlling person liability for violations of Section 15(c)(1)(A) of the Exchange Act and Rule 15c1-2 thereunder
1997	*Robert Sayegh, Thomas Core, and John J. Cranley, Jr.*, Initial Decision Rel. No. 118 (October 1997); Finality Order at Exchange Act Rel. No. 34-39339	Respondents permanently enjoined by federal district court from violations of Section 10(b) of the Exchange Act and Rule 10b-5
	Matt Matson, Initial Decision Rel. No. 117 (September 25, 1997); Finality Order at Exchange Act [no Rel. No. given]	Respondent permanently enjoined by federal district court in connection with his participation in a penny stock offering
	Douglas W. Osborne, Initial Decision Rel. No. 114 (August 18, 1997); Finality Order at Exchange Act Rel. No. 34-39195	Respondent enjoined by federal district court from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5, 15c1-2, and 15c1-8 thereunder
	Kenneth J. Schulte, Initial Decision Rel. No. 110 (April 10, 1997); Finality Order at Exchange Act Rel. No. 34-38583	Respondent permanently enjoined from violating the antifraud provisions of the federal securities law
	Daniel D. Dietrich and Robert J. Judge, Initial Decision Rel. No. 100 (November 7, 1996); Finality Order at Exchange Act Rel. No. 34-38040	Respondent permanently enjoined by federal district court from violating Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

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	James A. Sehn and Samuel O. Forson, Initial Decision Rel. No. 99 (November 4, 1996)	Respondent was permanently enjoined by federal district court from violating certain of the federal securities laws, specifically Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"); Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder
	Greg M. Anderson, Russell G. Koch, Initial Decision Rel. No. 97 (September 27, 1996)	Respondent permanently enjoined by federal district court from violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (Securities Act), and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
	Milton Puryear, Initial Decision Rel. No. 95 (August 12, 1996); Finality Order at Advisers Act Rel. No. 1586	Respondent permanently enjoined from future violations of Sections 5(a), 5(b), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rules 10b-5 and 10b-9 thereunder
	William Edwin Somdahl, Initial Decision Rel. No. 93 (July 22, 1996); Finality Order at Exchange Act Rel. No. 34-37785	Federal district court enjoined Respondent from further violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"); Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder
	Robert I. Moses, Initial Decision Rel. No. 89 (May 28, 1996)	Federal district court permanently enjoined respondent from violations of Sections 5 and 17(a) of the Securities Act of 1933 (Securities Act) and of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

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EXHIBIT D

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ALLEN CAPITAL PARTNERS X, L.P.

AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

DECEMBER 1, 2018

THE LIMITED PARTNER INTERESTS EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933 OR UNDER THE SECURITIES LAWS OF ANY U.S. STATE OR NON-U.S. JURISDICTION AND MAY NOT BE SOLD OR TRANSFERRED WITHOUT COMPLIANCE WITH APPLICABLE U.S. FEDERAL OR STATE OR NON-U.S. SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. IN ADDITION, TRANSFER OR OTHER DISPOSITION OF THE LIMITED PARTNER INTERESTS IS RESTRICTED AS PROVIDED IN THIS AGREEMENT.

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INDEX OF AMENDMENTS

1. A proposed second amendment was not approved by the requisite majority of limited partners.

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AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

ALLEN CAPITAL PARTNERS X, L.P.

This is the AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP dated as of January 15, 2004 (the "**Limited Partnership Agreement**" or the "**Agreement**") of Allen Capital Partners X, L.P. (the "**Partnership**" or "**ACP X, LP**").

W I T N E S S E T H :

WHEREAS, ALLEN PARTNERS X, L.L.C., a Delaware limited liability company (the "**General Partner**"), as general partner, and Laurence G. Allen as initial limited partner (the "**Initial Limited Partner**"), have heretofore entered into the Agreement of Limited Partnership dated as of December 15, 2003 (the "**Original Agreement**") and formed a limited partnership pursuant to the Delaware Revised Uniform Limited Partnership Act, *6 Del. C. § 17- 10 1 et seq.*, as amended from time to time (the "**Delaware Act**"); and

WHEREAS, the General Partner and the Initial Limited Partner desire to continue the limited partnership and to amend and restate the Original Agreement in its entirety.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1
GENERAL PROVISIONS

SECTION 1.01. ***Definitions.*** The defined terms used in this Agreement shall, unless the context otherwise requires, have the meanings specified in Appendix A. Certain additional defined terms are set forth elsewhere in this Agreement.

SECTION 1.02. ***Partnership Name.*** The name of the Partnership is Allen Capital Partners X, L.P.

SECTION 1.03. ***Continuation of the Partnership.*** The General Partner and the Limited Partners hereby continue the Partnership as a limited partnership under and pursuant to the Delaware Act.

SECTION 1.04. ***Office; Registered Representative***. (a) The name and address of the Partnership's registered agent in the State of Delaware is The Corporation Service Company, Corporation Trust Center, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The General Partner may at any time change the location of the Partnership's business offices and registered office or its registered agent. If the General Partner makes any such changes, the Limited Partners shall be promptly notified.

(b) The business address of the General Partner is 55 Old Field Point Road, Greenwich, CT 06830, or such other place as may be designated by the General Partner.

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SECTION 1.05. ***Purposes of the Partnership.*** The purposes of the Partnership are (a) to identify, acquire, hold and dispose of Investments, (b) pending utilization or disbursement of funds, to invest such funds in accordance with the terms of this Agreement and (c) to do everything necessary or desirable for the accomplishment of the above purposes or the furtherance of any of the powers herein set forth and to do every other act and thing incident thereto or connected therewith. The Partnership shall have the power to do any and all acts necessary, appropriate, desirable, incidental or convenient to or for the furtherance of the purposes described in this Section 1.05.

SECTION 1.06. ***Liability of the Partners Generally.*** Except as otherwise provided in this Agreement or the Delaware Act, no Limited Partner (or former Limited Partner) shall be obligated to make any contribution of capital to the Partnership or have any liability for the debts and obligations of the Partnership.

SECTION 1.07. ***Admission of Limited Partners.*** (a) On the Partnership's initial Closing Date, each Person whose subscription for a Limited Partner interest in the Partnership has been accepted by the General Partner shall become a Limited Partner (and shall be shown as such on the financial statements and capital account records of the Partnership) upon (i) execution and delivery by (or, pursuant to a power of attorney, on behalf of) such Person and the General Partner of counterparts of this Agreement and (ii) the making of an initial Capital Contribution equal to ten percent (10%) of such Person's Capital Commitment. Notwithstanding any other provision of this Agreement, the General Partner shall not hold an initial closing to admit Limited Partners, and the initial Closing Date shall not occur, until such time as the Partnership has received subscriptions from investors (other than from the General Partner and its Affiliates) that would, if accepted, constitute aggregate Capital Commitments of at least two million five hundred thousand dollars ($2,500,000).

(b) On the Partnership's initial Closing Date, following the admission of any other Limited Partner to the Partnership, the Initial Limited Partner shall withdraw from the Partnership and shall be entitled to receive the return of its Capital Contribution without interest or deduction.

SECTION 1.08. ***Additional Limited Partners; Increase of Capital Commitments.*** (a) At any time during the Admission Period, the General Partner in its discretion may cause the Partnership to admit additional Limited Partners or allow a Limited Partner who has previously been admitted to the Partnership (an "**Existing Limited Partner**") to increase its Capital Commitment. A Person may become such an additional Limited Partner or increase its Capital Commitment upon execution and delivery by (or, pursuant to a power of attorney, on behalf of) such Person and the General Partner of counterparts of this Agreement, subject to the terms of this Section 1.08. However, the General Partner shall be under no obligation to approve an additional Limited Partner or increase in Capital Commitment. Neither the admission of any additional Limited Partner to the Partnership nor the increase in the Capital Commitment of any Existing Limited Partner pursuant to this Section 1.08 shall require the approval of any Existing Limited Partner.

(b) Any additional Limited Partner admitted to the Partnership on any Closing Date after April 1, 2004 and any Existing Limited Partner increasing its Capital Commitment on any such subsequent Closing Date (each such Limited Partner, a "**New Commitment Partner**," to the extent of its new or increased Capital Commitment, and each such Limited Partner's new or increased Capital Commitment, a "**New Commitment**") shall, subject to this Section 1.08, be on the same terms as the Limited Partners admitted at the initial Closing Date of April 1, 2004, except that each New Commitment Partner shall pay an amount to the Partnership on such

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subsequent Closing Date equal to the sum of (A) that percentage of its New Commitment which is equal to the percentage of all previously drawn Capital Commitments of Existing Limited Partners admitted on prior Closing Dates plus (B) a fee (which shall be treated as income of the Partnership, and not as a Capital Commitment or Capital Contribution) equal to the amount of interest that would be charged on the amount contributed pursuant to clause (A) computed from the date such Capital Commitments were previously drawn to the date of such subsequent Closing Date at an annual rate equal to the Prime Rate. To the extent New Commitment Partners are admitted, Existing Partners will be diluted with respect to all existing Investments, and as a result may see revisions to their Capital Account statements from prior quarters.

(c) As promptly as practicable after any Closing Date occurring after April 1, 2004, the Partnership shall pay to the Investment Advisor that portion of the Capital Contributions made by all New Commitment Partners pursuant to Section 1.08(b) on such subsequent Closing Date that represents the Investment Advisor Fees that would have been paid by all such New Commitment Partners had such New Commitment Partners been admitted on the first Closing Date with their New Commitments.

(d) In the event the Partnership revalues its assets (as permitted hereunder) upon the admittance of a New Commitment Partner, such New Commitment Partner will not, with respect to its New Commitment, participate in any appreciation or depreciation with respect to existing Investments that occurred prior to such New Commitment Partner's admittance. In addition, a New Commitment Partner will not, with respect to its New Commitment, be entitled to participate or receive any sort of credit for distributions which occurred prior to its admission to the Partnership.

(b) References to Section 1.08 throughout the Agreement shall be deemed adjusted as need be, as determined by the General Partner in its sole discretion, in order to comply with the amended and restated Section 1.08 set forth above.

(c) The distribution and allocation provisions set forth in Article 6 of the Agreement shall be subject to the provisions set forth in Section 1.08, as amended and restated above.

SECTION 1.09. ***Offering, Organizational and Start-Up Expenses.*** (a) The Partnership will make a lump-sum payment of up to a maximum of two hundred fifty thousand dollars ($250,000) for all legal and other offering, organization and start-up expenses, including, without limitation, placement compensation fees and out-of-pocket expenses incurred in connection with the formation of the Partnership and any parallel funds (the **"Partnership Organizational Expenses"**). For accepted Capital Commitments of two million five hundred thousand dollars ($2,500,000) or less from a Limited Partner, there will be an additional one-time administrative fee of two percent (2%) applied at the first closing of the Limited Partner that the Partnership will pay to the Investment Advisor. For accepted Capital Commitments in excess of two million five hundred thousand dollars ($2,500,000) from a Limited Partner, there will be an additional one-time administrative fee of one percent (1%) applied at the first closing of the Limited Partner (or retroactively applied if it was not applied at such first closing) that the Partnership will pay to the Investment Advisor (both the 2% and the 1% fee being referred to as the **"Administrative Fee"**). The deduction attributable to the 2% Administrative Fee will be specially allocated to those Limited Partners with a Capital Commitment of two million five hundred thousand dollars ($2,500,000) or less in proportion to their respective Capital Commitments. The deduction attributable to the 1% Administrative Fee will be specially allocated to those Limited Partners

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with a Capital Commitment in excess of two million five hundred thousand dollars ($2,500,000) in proportion to their respective Capital Commitments.

(b) Each Limited Partner shall be allocated a pro rata share of the Partnership Organizational Expenses based on its respective Capital Commitment, regardless of when such Limited Partner is admitted to the Partnership.

ARTICLE 2
MANAGEMENT AND OPERATIONS OF THE PARTNERSHIP

SECTION 2.01. ***Management.*** The General Partner shall have the sole and exclusive right to manage, control and conduct the business of the Partnership and to do any and all acts on behalf of the Partnership. The Limited Partners shall have no part in the management or control of the Partnership and shall have no authority or right to act on behalf of the Partnership in connection with any matter, except as may be expressly set forth in this Agreement.

SECTION 2.02. ***Authority of the General Partner.*** The General Partner shall have the power on behalf and in the name of the Partnership to carry out any and all of the objectives and purposes of the Partnership in accordance with, and subject to the limitations contained in, this Agreement and to perform all acts that it may, in its discretion, deem necessary or desirable, including, but not limited to, the power to:

(a) identify Investment opportunities for the Partnership;

(b) determine the timing and amounts of distributions;

(c) reinvest proceeds from the disposition of Investments;

(d) acquire, hold, manage, own, sell, transfer, convey, assign, exchange, pledge or otherwise dispose of any Investment made or held by the Partnership;

(e) open accounts with banks, brokerage firms or other financial institutions (including any institution that may be an Affiliate of the General Partner or ACP), and deposit, maintain and withdraw funds in the name of the Partnership and draw checks or other orders for the payment of monies;

(f) enter into, and take any action under, any contract, agreement or other instrument as the General Partner shall determine, in its discretion, to be necessary or desirable to further the purposes of the Partnership, including side letters or agreements (including subscription agreements) with any Limited Partner or prospective Limited Partner, and including granting or refraining from granting any waivers, consents and approvals with respect to any of the foregoing and any matters incident thereto;

(g) bring and defend actions and proceedings at law or in equity and before any governmental, administrative or other regulatory agency, body or commission;

(h) employ, on behalf of the Partnership, any and all financial advisors, underwriters, attorneys, accountants, consultants, appraisers, custodians of the assets of the Partnership, or other agents, on such terms and for such compensation as the General Partner may determine, whether or not such Person may be an Affiliate of the General Partner or ACP

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or may also be otherwise employed by any such Affiliate, and terminate such employment;

(i) make all elections, investigations, evaluations and decisions, binding the Partnership thereby, that may, in the discretion of the General Partner, be necessary or desirable for the acquisition, management or disposition of Investments by the Partnership;

(j) enter into and perform any agency cross transaction in which the General Partner, ACP or any of their Affiliates acts as broker for both the Partnership and a party on the other side of the transaction;

(k) subject to Sections 2.07, arrange financing for or on behalf of the Partnership, on such terms as the General Partner shall determine in its discretion, to pay Partnership Expenses or to make Investments;

(l) incur expenses and other obligations, and make payments, on behalf of the Partnership in its own name or in the name of the Partnership;

(m) advance funds to the Partnership in accordance with Section 2.08;

(n) establish reserves in accordance with this Agreement for contingencies and for any other Partnership purpose;

(o) decide when and if distributions shall be made to Partners in cash or otherwise;

(p) prepare and cause to be prepared reports, statements, valuations of Portfolio Investments, and other information for distribution to the Partners;

(q) prepare and file all necessary U.S. and, if appropriate, non-U.S. tax returns and statements of the Partnership, pay all taxes, assessments and other impositions applicable to the assets of the Partnership, and withhold amounts with respect thereto from funds otherwise distributable to the General Partner or any Limited Partner;

(r) maintain records and accounts of all operations and expenditures of the Partnership;

(s) adjust the tax basis of the Partnership's assets, revoke such elections, and make such other tax elections;

(t) determine the accounting methods and conventions to be used in the preparation of any accounting or financial records of the Partnership;

(u) convene meetings of the Limited Partners for any purpose;

(v) effect a dissolution of the Partnership as provided herein;

(w) enter into any hedging transaction (including, without limitation, hedging for interest rate, currency and other market and investment risks) as the General Partner shall determine to be necessary or desirable to further the purposes of the Partnership;

(x) form ACP X Investors in order to comply with the Investment Company Act, which limited partnership will invest in parallel with the Partnership in Investments made by the Partnership. Prior to the final closings of these entities, such Investments will be allocated

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between ACP X Investors and the Partnership based on the General Partner's good-faith estimate of the respective capital available for investment in each entity as of such final closing. On the effective date of such final closing, the holdings of Investments of the Partnership and ACP X Investors shall be adjusted by appropriate transfers, at cost, so that the ratio of such holdings is in proportion to the respective available capital of each entity. Thereafter, all investment opportunities shall be allocated between the Partnership and ACP X Investors in proportion to their respective available capital as of the time such investment is made. Notwithstanding the preceding sentence, the General Partner shall be authorized to adjust the holdings of Investments of the Partnership and ACP X Investors at any time by appropriate transfers, at cost, to account for any adjustments in the respective available capital of each entity. All investments in and divestitures and distributions of the Partnership and ACP X Investors shall be made at the same time and on the same terms and conditions. The General Partner shall be further authorized to form an entity to act on behalf of or as nominee for the Partnership and ACP X Investors collectively to acquire and hold Investments for the benefit of such entities. If ACP X formed, all Partnership Organizational Expenses will be appropriately allocated between the Partnership and ACP X Investors, and all matters upon which Limited Partners can vote will be voted upon by the Limited Partners of the Partnership and the limited partners of ACP X Investors on an aggregate basis to ensure that the terms of the Partnership and ACP X Investors are consistent with one another;

(y) act for and on behalf of the Partnership in all matters incidental to the foregoing.

SECTION 2.03. ***Other Authority.*** The General Partner is hereby authorized to take any action it has determined in good faith to be necessary or desirable in order for (i) the Partnership not to be in violation of the Investment Company Act, (ii) the Partnership's assets not to be deemed to be "plan assets" for purposes of ERISA, (iii) the Partnership to collect any and all outstanding Capital Call amounts due, (iv) the General Partner not to be in violation of the Advisors Act, or (iv) each of the Partnership, the General Partner, ACP or any of their Affiliates not to be in violation of any other material law, regulation or guideline applicable to the Partnership, the General Partner, ACP or such Affiliate, including (A) making structural, operating or other changes in the Partnership by amending this Agreement or otherwise (provided that any such amendment to cure any violation of law, regulation or guideline may only be made if, in the reasonable determination of the General Partner, the making of such amendment is necessary or advisable to cure such violation), (B) requiring the sale in whole or in part of any Investment or other asset, (C) canceling or reducing the Capital Commitment or Available Capital Commitment of any Limited Partner, (D) requiring the sale in whole or in part of any Limited Partner's interest in the Partnership or otherwise causing the withdrawal of any Limited Partner from the Partnership, or (E) dissolving the Partnership. Any action taken by the General Partner pursuant to this Section 2.03 shall not require the approval of any Limited Partner.

SECTION 2.04. ***Investment Advisor Fee.*** (a) In consideration for the investment advisor services rendered pursuant to this Agreement, for each 12-month period from and after the initial Closing Date (each an **"Investment Advisor Fee Year"**), the Partnership shall pay to the Investment Advisor an annual investment advisor fee (the **"Investment Advisor Fee"**) payable semi-annually in advance, calculated as follows:

(i) For each Investment Advisor Fee Year commencing prior to the expiration of the Investment Period, two percent (2%) of the aggregate Capital Commitments of the Partners;

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(ii) For each Investment Advisor Fee Year commencing after the expiration of the Investment Period and until December 31, 2014, the Investment Advisor Fee will be two percent (2%) of the Net Invested Capital of the Partners, measured as of the end of the immediately preceding semi-annual period; and

(iii) For each Investment Advisor Fee Year commencing after December 31, 2014, the Investment Advisor Fee will be reduced to one and one-quarter percent (1.25%) of the Net Invested Capital of the Partners, measured as of the end of the immediately preceding semi-annual period.

(b) The Investment Advisor Fee will be paid by the Partnership and will not constitute an obligation of any Limited Partner in addition to its Capital Commitment.

(c) The General Partner may, in its discretion, satisfy all or any portion of the Investment Advisor Fee due and payable by the Partnership under this Section 2.04 from funds set forth in Section 4.04. Each Limited Partner acknowledges and agrees that the amount of any Investment Advisor Fees paid out of funds constituting Capital Contributions made by such Limited Partner shall be taken into account in determining such Limited Partner's Available Capital Commitment and the amount of any Investment Advisor Fees paid out of funds constituting such Partner's share of any Proceeds shall not be taken into account, and shall not reduce, such Limited Partner's Available Capital Commitment.

SECTION 2.05. ***Investment Authority.*** (a) The General Partner hereby delegates the authority to approve all Investment and disposition decisions of the Partnership to the Investment Advisor. The authorization of an Investment or a disposition by the Investment Advisor shall authorize the Partnership to make such Investment or disposition.

(b) All determinations made pursuant to this Agreement by the General Partner or the Investment Advisor shall be made in the exercise of their good-faith discretion and shall be final, binding and conclusive for all purposes and binding upon all Partners and each of their respective successors, assigns, heirs or personal representatives. In the performance of their functions with respect to this Agreement, the General Partner and the Investment Advisor shall be entitled to rely upon information and advice furnished by the officers, accountants or legal counsel of ACP or any of its respective Affiliates, or by any other Person that the General Partner or the Investment Advisor deems necessary or appropriate as to matters each reasonably believes are within such other Person's professional competence and who has been selected by or on behalf of the Partnership, and the General Partner and the Investment Advisor shall not be liable to the Partnership or the Partners for any action taken or not taken in good faith reliance upon any such advice. The General Partner, and the Investment Advisor may delegate such of their responsibilities hereunder as they deem appropriate to one or more Persons of ACP or any of its respective Affiliates (specifically including the Investment Committee) and, in performing such delegated responsibilities, such Persons shall have the benefit of all the protections afforded the General Partner and the Investment Committee under this Section 2.05 and Article 8.

(c) In order to facilitate the ability of the Partnership to (i) make bids on potential Investments, (ii) close on such Investments where such bids are successful, and (iii) dispose of such Investments when appropriate opportunities arise, all in a timely and competitive manner, no

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specific due diligence, investment decision, investment monitoring, underwriting, evaluation, post acquisition or documentation process shall be required of the General Partner or the Investment Advisor, but rather the existence and extent of the foregoing processes shall be as determined by the General Partner and the Investment Advisor in their sole discretion, and may vary from Investment to Investment.

SECTION 2.06. ***Title to Partnership Property.*** All real property of the Partnership shall be owned by the Partnership, as an entity, and no Partner, individually, shall have any direct ownership interest in such real property. Title to all such property shall be held in the name of the Partnership and all securities shall be registered in the name of the Partnership. Certain intangible property, such as licensing the use of the name "Allen," may be owned by ACP, its Affiliate or individuals.

SECTION 2.07. ***Borrowings***. (a) The General Partner may, on behalf of the Partnership, guarantee indebtedness of companies or funds which are, or are expected to become, Portfolio Companies or Portfolio Funds in the Partnership, and (b) the Partnership may otherwise borrow money or incur indebtedness on behalf of the Partnership.

SECTION 2.08. ***Commitment and Advances by the General Partner.*** (a) One percent (1%) of the aggregate Capital Commitments contributed by the Partners will be contributed by the General Partner in cash on the same schedule as the Limited Partners' contributions.

(b) The General Partner or any Affiliate of the General Partner may, but shall not be obligated to, advance its own funds to the Partnership in the circumstances where the Partnership may borrow funds pursuant to Section 2.07. If the General Partner or such Affiliate advances funds to the Partnership, such funds shall accrue interest, on the unpaid principal amount thereof for each day until repaid in full, at a rate determined by the General Partner to be commercially reasonable; provided that in no event shall the rate of interest charged by the General Partner or such Affiliate exceed the maximum rate permitted under the laws of the State of Delaware. The General Partner or such Affiliate shall be repaid for any such advances, together with interest, as promptly as practicable out of funds of the Partnership, in each case as determined by the General Partner, in its discretion, to be available for such purpose.

SECTION 2.09. ***Transactions With Affiliates.*** In addition to transactions specifically contemplated by this Agreement, the General Partner, when acting in its capacity as general partner of the Partnership, is hereby authorized, on behalf of the Partnership, to purchase property in or obtain services from, to sell property or provide services to, or otherwise to deal with the General Partner, any Affiliate of the General Partner, any Limited Partner, any Private Fund, any Portfolio Company or any Related Person (whether before or after or in connection with the making of the applicable Investment), or any Affiliate of any of the foregoing Persons. In connection with any services performed by any Affiliate of the General Partner for the Partnership, such Affiliate shall be entitled to be compensated by the Partnership for such services, and the amount of such compensation shall be determined by the General Partner in its discretion. Each Limited Partner acknowledges and agrees that the purchase or sale of property, the performance of such services, other dealings or the receipt of such compensation may give rise to conflicts of interest between the Partnership and the Limited Partners, on the one hand, and the General Partner or such Affiliate, on the other hand. ACP and its Affiliates may act as a lender, principal or investor in the Portfolio Investments and may acquire, hold, sell, issue or dispose of securities issued by or to the Portfolio Investments or the Partnership, including

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securitizations, in principal or agency transactions. Such loans or securities may be pari passu, senior or junior in ranking to the Partnership's investment.

All fees described above and paid by Portfolio Investments or by the Partnership (excluding the Investment Advisor Fee) to ACP or its Affiliates will first be used to offset the expenses associated with such services as solely determined by the General Partner. Thereafter, fifty-percent (50%) of any remaining net profit in excess of such associated expenses will, at the election of the General Partner, be either (i) contributed to the Partnership as an additional Capital Commitment, notwithstanding the fact that such contribution may occur after the Final Closing Date, (ii) paid as compensation to the Partnership, or (iii) used to offset future Investment Advisor Fees otherwise payable by the Partnership.

SECTION 2.10. ***Other Activities.*** (a) Each Limited Partner (i) represents and warrants that such Limited Partner has carefully reviewed and understood the information contained in the Private Placement Memorandum, and (ii) acknowledges and agrees that ACP or any of its Affiliates may engage, without liability to the Partnership or the Limited Partners to the extent specified in Section 8.01(a), in any and all of the activities of the type or character described or contemplated in Section 2.09 and this Section 2.10 and in the Private Placement Memorandum under "Risk Factors and Potential Conflicts of Interest," or elsewhere therein, whether or not such activities have or could have an effect on the Partnership's affairs or on any Investment, and that no such activity shall in and of itself constitute a breach of any duty owed by any Indemnified Person to the Limited Partners or the Partnership. Without limiting the generality of any of the foregoing, the General Partner and each Limited Partner acknowledge and agree that:

(A) Although the General Partner and the Investment Committee intend generally to identify appropriate investment opportunities for the Partnership, none of the General Partner, the Investment Committee, ACP or any of their respective Affiliates shall have any obligation under this Agreement to offer to the Partnership or any Limited Partner any particular investment opportunity.

(B) The General Partner will cause each of its principals, for so long as such person remains a principal of the General Partner, to devote so much of his time to the conduct of the affairs of the Partnership as is appropriate in the judgment of the General Partner to manage effectively. Each principal has existing commitments to other entities. Such commitments will continue during the term of the Partnership and additional commitments may be added during the term of the Partnership. Each Partner hereby acknowledges and agrees to such commitments.

(C) In addition to the transactions specifically contemplated by this Agreement, ACP and any of its Affiliates shall have the right to perform corporate and investment banking and other services for, and to receive compensation from, the Partnership, any Partner, any Private Fund, any Portfolio Company or any Related Person (whether before or after or in connection with the making of the applicable Investment). Such compensation may include, without limitation, financial advisory fees, fees in connection with restructurings and mergers and acquisitions, underwriting or placement fees, financing or commitment fees and brokerage fees. In addition, ACP and each such Affiliate shall have the right to purchase property (including securities) from, to sell property (including securities) or lend funds to, or otherwise to deal with, the Partnership, any Limited Partner, any Private Fund, any Portfolio Company or any Related Person (whether before or after or in connection with the making of the applicable Investment). Each Limited Partner further acknowledges and agrees that the performance of such services, the purchase or sale of

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such property, the lending of such funds, other dealings, or the receipt of such compensation may give rise to conflicts of interest between the Partnership and the Limited Partners, on the one hand, and ACP or such Affiliate, on the other hand. All fees described above and paid by Portfolio Investments or the Partnership to ACP and its Affiliates will first be used to offset the expenses associated with such services. Thereafter, fifty-percent (50%) of any remaining net profit in excess of such associated expenses will, at the election of the General Partner, be either (i) contributed to the Partnership as an additional Capital Commitment, notwithstanding the fact that such contribution may occur after the Final Closing Date, (ii) paid as compensation to the Partnership, or (iii) used to offset future Investment Advisor Fees otherwise payable by the Partnership.

(b) Nothing contained in this Agreement shall be deemed to limit in any respect the ability of any Partner (or Affiliate thereof), in its individual capacity, from making investments in any Private Fund or Portfolio Company or in any Affiliate of any such Person or from providing financing thereto, in addition to such Partner's Capital Contributions, if any, pursuant to this Agreement.

SECTION 2.11. ***Inspections; Accounting Method; Fiscal Year*.** (a) The General Partner shall keep or cause to be kept at the address of the General Partner (or at such other place as the General Partner shall advise the other Partners in writing) financial statements and capital account records of the Partnership. Subject to Section 2.13(b), financial statements and capital accounts shall be available, upon thirty (30) Business Days' written notice to the General Partner, for inspection at the offices of the General Partner (or such other location designated by the General Partner, in its discretion) on March 31 and August 31. Each Limited Partner agrees that (i) such financial statements and capital account records contain confidential information relating to the Partnership and its affairs and the affairs of each Limited Partner, and (ii) the General Partner shall have the right pursuant to Section 17-305 of the Delaware Act to prohibit or otherwise limit, in its reasonable discretion, the making of any copies of such financial statements and capital account records.

(b) Except as otherwise provided in this Agreement, the Partnership's accounting methods shall be according to U.S. generally accepted accounting principles.

(c) Unless otherwise required by law, the fiscal year of the Partnership for financial statement and federal income tax purposes shall end on December 31. The fiscal semi-annual periods of the Partnership shall end on June 30 and December 31 of each year.

SECTION 2.12. ***Partnership Tax Returns*.** (a) The General Partner shall cause to be prepared and filed all U.S. and, if appropriate, non-US tax returns required to be filed for the Partnership. The General Partner may, in its discretion, make, or refrain from making, any income or other tax elections for the Partnership that it deems necessary or advisable, including an election pursuant to Section 754 of the Code. The General Partner will make a reasonable effort to report upon the financial statements of the Partnership within one hundred twenty (120) days of the end of each fiscal year. Partners should plan to file tax returns with an estimated K-1 report with respect to the Partnership and thereafter make amended tax filings, as the Partnership can only prepare final K-1 reports for Partners after receiving reports from all of the Portfolio Funds. Tax returns with respect to the Partnership will be automatically extended pursuant to the Internal Revenue Services' initial extension period for a limited partnership. The General Partner shall not be liable for any late fees, accounting fees or other expenses incurred by the Limited Partner resulting from a delay in the Partnership completing its financial reports, K-1 reports and other statements.

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(b) The General Partner is hereby designated as the Partnership's "Tax Matters Partner" under Section 623l(a)(7) of the Code and the applicable Treasury Regulations and shall have all of the powers and responsibilities of such position as provided in the Code. The General Partner is specifically directed and authorized to take whatever steps the General Partner, in its discretion, deems necessary or desirable to perfect such designation, including filing any forms or documents with the U.S. Internal Revenue Service and taking such other action as may from time to time be required under Treasury Regulations. Expenses incurred by the Tax Matters Partner, in its capacity as such, shall be Partnership Expenses.

(c) The General Partner may, in its discretion, take appropriate steps on behalf of the Partnership that it deems necessary or advisable to comply with the tax laws of non-U.S. jurisdictions.

SECTION 2.13. ***Confidentiality.*** (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes of filing such Limited Partner's tax returns or for other routine matters required by law) or to disclose to any Person, any information or matter relating to the Partnership and its affairs, including the identities of the other Limited Partners, all quarterly and annual reports, offering materials used in connection with the marketing and private placement of interests in the Partnership including, without limitation, the Private Placement Memorandum, the Limited Partnership Agreement and any information or matter related to any Investment (other than disclosure to such Limited Partner's employees, agents, advisors including financial and legal advisors, of which the Limited Partner shall be solely responsible to notify such parties of the confidential nature of the information and be responsible for the actions of such parties (together, the "**Confidential Information**"), or representatives responsible for matters relating to the Partnership (each such Person being hereinafter referred to as an **"Authorized Representative"**). However, if the Limited Partner, upon submitting a written opinion of legal counsel acceptable to the General Partner, is required by any regulatory authority organization having jurisdiction over such Limited Partner, may disclose such Confidential Information to such regulatory authority organizations. Prior to any disclosure to any Authorized Representative, each Limited Partner shall advise such Authorized Representative of the obligations set forth in this Section 2.13. However, prior to making any disclosure required by law, regulation, regulatory authority or self-regulatory organization, each Limited Partner shall notify the General Partner of such disclosure and deliver to the General Partner a copy of the opinion referred to above. The Limited Partner shall then provide the General Partner at least sixty (60) days to respond to such organization to prevent disclosure of the Confidential Information if the General Partner agrees to do so. During the sixty (60) day period, the Limited Partner will inform such organization that the Limited Partner would be in violation of this Agreement if the Limited Partner were to disclose the requested Confidential Information.

(b) The General Partner may, to the maximum extent permitted by applicable law, keep confidential from any Limited Partner any information (including information requested pursuant to Section 2.11, but excluding information required to be furnished in a Capital Call Notice or pursuant to Section 7.01) the disclosure of which the Partnership, the General Partner, ACP or any of their respective Affiliates is required by law, agreement or otherwise to keep confidential, or the General Partner reasonably believes may have an adverse effect on (i) the ability to entertain, negotiate or consummate any proposed Investment or any transaction directly or indirectly related to, or giving rise to, such Investment, (ii) the Partnership, the General Partner, ACP or any of their respective Affiliates, or any Private Fund, or (iii) any Portfolio Company, Portfolio Fund or any Related Person with respect to any Investment or proposed Investment.

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(c) No books, records, or financial information of the Partnership or its subsidiaries or affiliates may be disclosed to any outside parties, other than for the ordinary course of business as determined in the sole discretion of the General Partner, without the express written consent of all the Limited Partners. No personal or financial information about any of the Partners may be disclosed without the express written consent of that Partner except as stated herein. It is understood that the Limited Partners are merely passive investors in the Partnership and shall be playing no active role whatsoever in the conduct of the business of the Partnership.

SECTION 2.14. ***Reliance by Third Parties*.** Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth. The Partnership, and the General Partner on behalf of the Partnership, may enter into and perform subscription agreements with each Person subscribing for a Limited Partner interest in the Partnership without any further act, vote or approval of any Person, including any Partner, notwithstanding any other provision of this Agreement. The General Partner is hereby authorized to enter into the agreements described in the preceding sentence on behalf of the Partnership, but such authorization shall not be deemed a restriction on the power of the General Partner to enter into other agreements on behalf of the Partnership.

SECTION 2.15. ***Advisory Committee*.** The General Partner will establish an Advisory Committee comprised of one or more designees of the Limited Partners. The Advisory Committee will provide such advice as is requested by the General Partner in connection with investment strategy, potential conflicts of interest, portfolio valuation and other Partnership matters. The General Partner will retain ultimate responsibility for all decisions relating to the operating and management of the Partnership, including investment decisions. Notwithstanding anything contained in this Section 2.15, (i) the Advisory Committee shall not possess or exercise any power that, if possessed or exercised by a Limited Partner, would constitute participation in the control of the business of the Partnership (within the meaning of the Delaware Act), and (ii) members of the Advisory Committee shall be an Indemnified Person for purposes of Article 8.

ARTICLE 3
PARTNERSHIP INVESTMENTS

SECTION 3.01. ***Investments Generally.*** The assets of the Partnership shall, to the extent not required for the payment of Partnership Expenses or otherwise necessary for the conduct of the Partnership's business (as determined by the General Partner in its discretion), and subject to Sections 3.02, 3.03, 3.04 and Article 6, be invested in such Investments as the General Partner shall determine in accordance with the terms of this Agreement.

SECTION 3.02. ***Pre-Closing Investments.*** The General Partner may determine in its discretion to cause the Partnership to acquire an Investment that was acquired or committed to be made by the General Partner or one of its Affiliates prior to the initial Closing Date specifically in contemplation of, and on behalf of, the Partnership and so authorized by the Investment Committee or any other Person as provided in Section 2.05(a) (each such Investment, a **"Pre-Closing Investment"**). Upon the execution of any required consents and transfer documentation, the General Partner or such Affiliate shall transfer its ownership rights in each Pre-Closing Investment to the Partnership.

SECTION 3.03. ***Investment Limitations.*** (a) The "**Investment Period**" will end no later than three years from the date of the Final Closing. At the end of the Investment Period, the Limited

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Partner will be released from any further obligation with respect to its undrawn Capital Commitment, except to the extent necessary to i) pay ongoing Investment Advisor Fees and other Partnership Expenses, ii) complete investments by the Partnership in transactions that were in process as of the end of the Investment Period, iii) effect follow-on investments in existing portfolio companies ("**Portfolio Companies**") and iv) satisfy obligations to make capital commitments to portfolio funds ("**Portfolio Funds**") (together referred to as the "**Portfolio Investments**").

(b) ***Follow-on Investments.*** It is hereby reiterated that the General Partner is permitted to make follow-on investments in portfolio companies and funds including affiliates without requiring the consent of Limited Partners as deemed appropriate by the General Partner. During the Wind Down Period, concentrated positions will develop in single funds and companies, and measurements for diversification and exposure expressed as a percentage of total assets shall no longer apply or be provided.

SECTION 3.04. ***Temporary Investments.*** The General Partner may invest all cash held by the Partnership in interest bearing or non-interest bearing instruments, accounts or investments, including (a) debt instruments issued or guaranteed by the United States or its agencies or instrumentalities (or repurchase agreements covering such instruments), (b) commercial paper, (c) interest-bearing deposits in commercial banks, savings and loan associations, brokerage firms or other financial institutions, (d) bankers' acceptances or overnight time deposits (whether or not insured), (e) taxable or tax-exempt money market or intermediate maturity funds, (f) closed-end funds, (g) mutual funds, (h) business development companies, and (i) publicly-traded or private company equity, debt, convertible, and preferred securities, mortgaged-backed and asset-backed securities, municipals, currencies, commodities, swaps and derivatives, investment grade and below investment grade rated securities, and other securites as solely determined by the General Partner including loans and repurchase agreements between the Partnership and ACP or its Affiliates, and deposits with the various branches of ACP and its Affiliates (together as "**Temporary Investments**"). Temporary Investments may include, without limitation, investments managed by ACP or its Affiliates. In addition, ACP or its Affiliates may earn fees based on the performance of Temporary Investments. Cash held by the Partnership includes all amounts being held by the Partnership for future investment in Investments, payment of Partnership Expenses or distribution to the Partners.

SECTION 3.05. ***Non-US. Currency Considerations.*** (a) At the time any cash is received in a currency other than U.S. dollars for payment (as distributions or otherwise) to Partners in connection with any Investment:

(i) if such cash is to be paid or distributed in U.S. dollars, the General Partner shall effect the conversion of such cash into U.S. dollars at the applicable exchange rate then in effect, as soon as practicable after such cash is received; and

(ii) if, pursuant to Section 6.04(a), such cash is to be paid or distributed in the currency in which it is received, the General Partner shall determine the U.S. dollar equivalent of such cash, based upon the applicable exchange rate in effect on the date such cash is received, for purposes of Article 6.

(b) Currency translations in connection with the valuation of non-cash property that is to be distributed in kind shall be made in the manner set forth in Section 6.04(b) for purposes of Article 6.

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SECTION 3.06. ***Source of Funds for Investments***. The Partners agree that any Investment shall be funded by or for the account of the Partners through any one or more of the following sources of funds of the Partnership, determined by the General Partner in its discretion:

(a) Capital Contributions in accordance with Article 5;

(b) borrowings or advances in accordance with Sections 2.07 or 2.08;

(c) the withholding, pursuant to Section 6.04, of amounts (whether realized through the sale of, or distributions from, Investments, income from Temporary Investments or otherwise) distributable to the Partners; or

(d) reserves set aside pursuant to Section 6.04.

SECTION 3.07. ***Disposition of Investments.*** Consistent with the authority set forth in Sections 2.01 and 2.02, the General Partner has the sole and exclusive right, power and authority to determine when and under what terms and conditions the Partnership will dispose of any or all of its Investments. The General Partner shall not be obligated to hold a particular Investment for any given period or dispose of an Investment by any given date, and shall have no liability to the Partnership or the Limited Partners in the event the IRS classifies the Partnership as a dealer in securities under Section 475 of the Code.

SECTION 3.08. ***Investment Discounts.*** Consistent with the authority set forth in Sections 2.01 and 2.02, the General Partner has the sole and exclusive right, power and authority to determine the timing and the terms and conditions attributable to any Investment, including whether or not, and to what extent, the Partnership is able to acquire an Investment at a discounted price. The General Partner shall not, however, be obligated to negotiate or secure any specific discount with respect to the acquisition price of an Investment as a condition to making such Investment. In some instances, the Partnership may even have to pay a premium to acquire a particular Investment, which the General Partner is hereby authorized to do in its discretion on behalf of the Partnership.

ARTICLE 4
PARTNERSHIP EXPENSES

SECTION 4.01. ***Definition and Payment of Operating Expenses.*** As between the General Partner and the Partnership, the General Partner shall be solely responsible for and shall pay all Operating Expenses. As used herein, the term **"Operating Expenses"** means all of the normal overhead expenses, including wages, salaries, rent, utilities, bookkeeping and other such expenses.

SECTION 4.02. ***Definition and Payment of Partnership Expenses*.** (a) The Partnership will make a lump sum payment of up to a maximum of one million five hundred thousand dollars ($1,500,000) for all legal and other offering, organization, and start-up expenses, including, without limitation, placement compensation fees and out-of-pocket expenses incurred in connection with the formation of the Partnership and any parallel funds, and will be responsible for all expenses of the Partnership that are not reimbursed by the Portfolio Investments, including legal, audit, consulting, financing, accounting fees and other expenses associated with the Partnership's financial statements, tax returns, and K-1s, out-of-pocket expenses of transactions not consummated; other expenses associated with the acquisition, investment, holding and

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disposition of the Partnership's investments such as litigation, if any; expenses of Partner meetings; expenses in connection with liability and other insurance premiums; and any taxes, fees, or other governmental charges levied against the Partnership. For accepted Commitments of two million five hundred thousand dollars ($2,500,000) or less from a Limited Partner, there will be an additional one-time administrative fee of two percent (2%) applied at the first closing of the Limited Partner.

Annual K-1 Statement. A Schedule K-1 Statement shall be issued annually to each Limited Partner by an independent auditor to the Liquidation Trust. The Schedule K-1 Statement will include the beginning and ending capital account balance for each Limited Partner.

Together, these fees shall be known as "**Partnership Expenses**" and shall include:

(i) all Partnership Organizational Expenses;

(ii) all expenses attributable to any Investment or proposed Investment that is ultimately not made by the Partnership, including all unreimbursed expenses incurred in connection with the making, holding, refinancing, pledging, sale or other disposition or proposed refinancing, pledging, sale or other disposition of all or any portion of such Investment and any Indemnification Obligation arising with respect to such Investment (collectively, "**Partnership Investment Expenses**"); and

(iii) all other expenses of the Partnership incurred in connection with the ongoing operation and administration of the Partnership (collectively, "**Partnership Administrative Expenses**"), including (A) expenses incurred in connection with the dissolution and liquidation of the Partnership, (B) any Indemnification Obligation arising other than with respect to any Investment, (C) the Investment Advisor Fee, (D) any Borrowing Costs, and (E) any fees and expenses of the Advisory Committee.

(b) The parties agree that all of the following (to the extent not constituting Operating Expenses) constitute Partnership Expenses, and are some, but not necessarily all, of the types of expenses that constitute Partnership Organizational Expenses, Partnership Investment Expenses or Partnership Administrative Expenses:

(i) travel and entertainment expenses incurred in connection with the Partnership's affairs;

(ii) expenses incurred in connection with the maintenance of the Partnership's financial statements and capital accounts, and the preparation and delivery to the Limited Partners of checks, financial reports, tax schedules, notices and other information pursuant to this Agreement;

(iii) expenses incurred in connection with obtaining legal, tax and accounting advice and the advice of other consultants and experts on behalf of the Partnership;

(iv) expenses incurred in connection with the registration, qualification or exemption of the Partnership under any applicable federal, state or non-U.S. laws;

(v) out-of-pocket expenses incurred in connection with the collection of amounts due to the Partnership from any Person;

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(vi) expenses incurred in connection with the preparation of amendments to this Agreement;

(vii) any taxes imposed on the Partnership as an entity, including any taxes imposed on the Partnership or the General Partner in the capacity of withholding agent with respect to a Limited Partner (and any interest, penalties or expenses relating to any such taxes);

(viii) expenses incurred in connection with any Proceeding involving the Partnership (including the cost of any investigation and preparation) and the amount of any judgment or settlement paid in connection therewith, provided that any such expenses which, if incurred by any Indemnified Person, would not be indemnifiable under Article 8, shall not constitute Partnership Expenses;

(ix) any Indemnification Obligation and any other indemnity, contribution, or reimbursement obligations of the Partnership with respect to any Person, whether payable in connection with a Proceeding involving the Partnership or otherwise;

(x) any cost incurred in connection with the transfer of an interest; and

(xi) any cost incurred in connection with a Default.

SECTION 4.03. ***Responsibility for Partnership Expenses.*** (a) The Partners agree that, as among the Partners, responsibility for Partnership Expenses shall be determined as set forth in this Section 4.03 and shall be paid out of the funds set forth in Section 4.04 at such time after such Partnership Expenses arise as the General Partner determines in its sole discretion. Except as set forth in Section 4.03(b), any Partnership Expense shall be funded by the Partners pro rata in accordance with their respective Commitment Percentages.

(b) Notwithstanding Section 4.03(a):

(i) in the event that any Limited Partner initiates any Proceeding against the Partnership or any Indemnified Person and a judgment or order not subject to further appeal or discretionary review is rendered in respect of such Proceeding in favor of the Partnership or such Indemnified Person, as the case may be, such Limited Partner shall be solely liable for all costs and expenses of the Partnership or such Indemnified Person, as the case may be, attributable thereto;

(ii) any Partnership Investment Expenses attributable to a Hot Issues Investment, as determined by the General Partner in its discretion, shall be borne by the Partners participating in such Hot Issues Investment pro rata in accordance with their respective Hot Issues Percentages in such Hot Issues Investment; and

(iii) the General Partner may determine that any Partnership Expense shall be funded by the Partners on a basis other than Commitment Percentages and/or by certain (but not all) Partners if the General Partner determines in its discretion that such other basis is clearly more equitable.

SECTION 4.04. ***Source of Funds for Partnership Expenses.*** The Partners agree that any Partnership Expenses shall be funded by or for the account of the Partners, to the extent provided in Section 4.03, through any one or more of the following sources of funds of the Partnership,

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determined by the General Partner in its discretion: (a) Capital Contributions or other amounts paid by the Partners in accordance with Article 5; (b) borrowings or advances in accordance with Section 2.07; (c) the withholding, pursuant to Section 6.04, of amounts (whether realized through the sale of, or distributions from, Investments, income from Temporary Investments or otherwise) distributable to the Partners; (d) reserves set aside pursuant to Section 6.04; or (e) amounts required to be contributed by the Partners pursuant to Section 8.03 in the case of Partnership Expenses arising from any Indemnification Obligation.

ARTICLE 5
CAPITAL COMMITMENTS AND CAPITAL CONTRIBUTIONS

SECTION 5.01. ***Capital Commitments.*** (a) Subject to Section 3.03, each Partner agrees to make Capital Contributions to the Partnership by the due date upon receipt of a Capital Call Notice from the General Partner in respect of Investments and Partnership Expenses from time to time as hereinafter set forth. Notwithstanding anything contained in this Agreement (except as provided otherwise in Sections 5.01(c), 5.05(f)(ii) and 9.05), no Limited Partner shall be required to make any Capital Contribution to the Partnership to the extent that, at the time such Capital Contribution is to be made, such Capital Contribution exceeds such Partner's then available Capital Commitment, as determined pursuant to Section 5.01(b) (the "**Available Capital Commitment**").

(b) A Partner's Available Capital Commitment shall be, at any time, the excess, if any, of (i) such Partner's Capital Commitment at such time over (ii) such Partner's aggregate Capital Contributions made prior to such time, each subject to adjustment as provided in this Agreement. For purposes of calculating a Partner's Available Capital Commitment, such Partner's aggregate Capital Contributions taken into account pursuant to Section 5.01(b)(ii) at any time shall be reduced by any amounts distributed to such Partner subject to the General Partner's right to redraw such amounts as Capital Contributions in the future pursuant to Section 5.01(c).

(c) Notwithstanding anything contained in this Agreement to the contrary, with respect to any distributions from a Private Fund that were in turn distributed by the Partnership to the Limited Partners, the General Partner may require the Limited Partners to return such distributions to the extent any Private Fund (or the general partner or manager thereof) requires the Partnership to return such distributions to such Private Fund. In addition, the General Partner may redraw in the future as Capital Contributions from the Limited Partners amounts that have been distributed to the Limited Partners in connection with an Investment if the Private Fund that is the subject of such Investment has retained a right to require such capital contributions from its investors pursuant to the terms of such Private Fund's governing documents.

(d) Notwithstanding anything in the Agreement to the contrary, there shall be no minimum amount of Capital Commitments that the Partnership must attain or maintain and there shall likewise be no maximum cap on the amount of Capital Commitments that the Partnership may accept from Partners.

SECTION 5.02. ***Capital Call Procedures.*** (a) Subject to Section 3.03, each Limited Partner shall make Capital Contributions to the Partnership in such amounts and at such times as the General Partner shall specify in notices ("**Capital Call Notices**") delivered from time to time to such Limited Partner. Capital Calls (each, a "**Capital Call**") shall generally be made in increments equal to five percent (5%) of such Partner's Capital Commitment (or any multiple thereof). All Capital Contributions shall be paid in immediately available funds in U.S. dollars by 11:00 A.M.

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(New York City time) on the date specified in the applicable Capital Call Notice. Capital Contributions may include amounts that the General Partner determines in its reasonable discretion are necessary or desirable to make Investments hereunder or to satisfy obligations with respect to, or establish reasonable reserves in respect of, Investments or Partnership Expenses. The General Partner shall make Capital Contributions to the Partnership in such amounts as herein set forth and at the same times and in the same manner as the Limited Partners who are required to make Capital Contributions pursuant to any Capital Call Notice.

(b) Each Capital Call Notice for a Capital Contribution shall specify (i) the amount of the required Capital Contribution to be made by the Partner receiving such Capital Call Notice, (ii) the due date (the **"Capital Call Due Date"**) by which such Capital Contribution is to be received by the Partnership, which shall be a minimum of ten (10) Business Days from the date of the Capital Call Notice, and (iii) any other details that the General Partner, in its discretion, may determine.

SECTION 5.03. ***Participation in Investments.*** Each Partner's share of any Investment shall be determined by the General Partner, in its discretion, based upon the following principles:

(a) subject to Sections 5.05 and 6.08, all Partners shall participate in all Investments as is practical to allocate;

(b) any Investment shall be funded by the Partners pro rata in accordance with their respective Commitment Percentages; and

(c) the Commitment Percentages of the Partners in an Investment shall be adjusted in connection with any New Commitment Partner or any Event of Default by a Partner, at the discretion of the General Partner, as provided in Section 1.08 or 5.05, respectively.

SECTION 5.04. ***Borrowings to Fund Capital Calls.*** (a) If the General Partner shall determine, in its discretion, that funds are necessary to make a Direct Investment, to fund obligations with respect to a Private Fund or to pay a Partnership Expense, in each case prior to the time all or a portion of such funds are otherwise made available by the Partners in accordance with this Article 5, the General Partner may borrow such finds or otherwise arrange financing in respect of such funds on behalf of a Partner or the Partnership (such funds so borrowed or in respect of which financing is arranged on any Partner's or the Partnership's behalf being referred to herein as "**Borrowed Funds**").

(b) The principal amount of Borrowed Funds attributable to any Partner pursuant to Section 5.04(a) shall be deemed to constitute such Partner's Capital Contribution in respect of the applicable Capital Call Notice for purposes of this Agreement. In the event that a Partner fails to make all or any portion of its required payment within five (5) Business Days of a due date in respect of such Borrowed Funds (a "**Post-Borrowing Payment**") if a Capital Call Notice is delivered pursuant to Section 5.02, such failure shall be treated as if it were a Default pursuant to Section 5.05(a), and if such failure has not been cured by such Partner within ten (10) Business Days of the due date, such failure shall be treated as if it were an Event of Default. The General Partner shall not be required to notify the Limited Partner of the Default or Event of Default, and the provisions of Section 5.05 shall apply. Each Post-Borrowing Payment by a Partner (i) shall be deemed not to constitute either a Capital Contribution or an asset of the Partnership for purposes of this Agreement and (ii) shall be applied by the General Partner to repay the principal amount of Borrowed Funds attributable to such Partner.

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(c) Borrowing Costs arising from any borrowings pursuant to Section 5.04(a) with respect to any Partner shall be attributed to and paid by such Partner.

SECTION 5.05. ***Default by Limited Partners.*** (a) Each of the General Partner and each Limited Partner agree that payment of its required Capital Contributions and amounts required pursuant to Sections 2.04 and 5.04 when due is of the essence, that any Default by any Limited Partner would cause injury to the Partnership and to the General Partner and the other Limited Partners and that the amount of damages caused by any such injury would be extremely difficult to calculate. Accordingly, if at any time any Limited Partner shall Default, the amount of such Default (the "**Default Amount**") shall, unless the General Partner determines otherwise in its discretion, accrue interest commencing on the Capital Call Due Date or other applicable due date at the lesser of (i) the Prime Rate plus two percent (2%) and (ii) the maximum rate permitted by applicable law. Interest paid or otherwise recovered on the Default Amount shall be paid to any Person or Persons who fund the Default Amount pursuant to Section 5.05(c) or, in the case of any Limited Partner who cures its Default but is nevertheless required to pay an interest charge with respect to its Default Amount, to the non-Defaulting Partners.

Upon the occurrence of any Default, and if such failure has not been cured by such Partner within ten (10) Business Days of the due date, such failure shall be treated as if it were an Event of Default, the General Partner shall <u>not</u> be required to notify the Limited Partner of the Default of Event of Default. The GP may handle such sale or cause the Defaulting Partner to sell their Interest if the Partner becomes a Defaulting Partner in the future..

(b) Upon the occurrence of an Event of Default following any Default, the General Partner, in its discretion, may exercise any or all of the rights set forth in this Section 5.05(b):

(i) cause the Defaulting Partner to not have allocated to its Capital Account any portion of the Partnership's income, profits or gains arising after such Event of Default, which shall be credited to the Capital Accounts of the other Partners;

(ii) cause the Defaulting Partner to forfeit all or any portion of distributions from the Partnership made or to be made after such Event of Default;

(iii) cause distributions that would otherwise be made to the Defaulting Partner to be applied against the Default Amount pursuant to Section 6.04;

(iv) cause the Defaulting Partner to have allocated to its Capital Account such Defaulting Partner's share of expenses, deductions or losses arising after such Event of Default;

(v) cause the Defaulting Partner to forfeit its right to participate in all or any portion of any Investments made after such Event of Default;

(vi) cause a forced sale of the Defaulting Partner's interest in the Partnership to any Person (including, in the discretion of the General Partner, one or more Limited Partners) at any price, including zero percent (0%) of net asset value, to preclude the Default Partner's Capital Account and unpaid Capital Commitment; furthermore, the Defaulting Partner shall continue to be liable for unpaid commitments in the event a buyer becomes a Defaulting Partner in the future;

(vii) debit the Capital Account of such Defaulting Partner for any amount including one hundred percent (100%) of such Defaulting Partner's Capital Account on the date of

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such Event of Default, and the amount of such reduction may be credited to the Capital Accounts of the other Limited Partners (other than any other Defaulting Partner) either (x) pro rata in accordance with their respective Commitment Percentages (calculated without giving effect to the Capital Commitment of any Defaulting Partner) at such time or (y) on any other equitable basis that the General Partner determines in its discretion; or

(viii) institute Proceedings to recover the Default Amount.

(c) Upon the occurrence of any Event of Default in connection with any Capital Call to be applied to make or fund an Investment, the General Partner may, in its discretion, take any or all of the following actions with respect to the amount in default that remains to be funded:

(i) increase the required Capital Contributions of the other Limited Partners;

(ii) obtain the agreement of one or more Limited Partners to increase their respective Capital Contributions; or

(iii) increase its own Capital Contribution.

(d) Upon the occurrence of any Event of Default in connection with a Capital Call to be applied to pay Partnership Expenses, the General Partner may, in its discretion, increase the required Capital Contributions of the other Limited Partners with respect to the amount in default that remains to be funded.

(e) If the General Partner elects to take the action specified in Section 5.05(c)(i) or Section 5.05(d) with respect to any portion of the amount that is in default in respect of the applicable Investment or Partnership Expense, as the case may be, the General Partner shall deliver an additional Capital Call Notice in accordance with Section 5.02(b) to the Limited Partners who are required to make Capital Contributions in respect of such Investment or Partnership Expense (other than any Defaulting Partner in respect of which the Event of Default arose).

(f) The General Partner may take either or both of the following actions in respect of the Available Capital Commitment of any Defaulting Partner:

(i) seek commitments of capital from additional investors (which may in the discretion of the General Partner include Existing Limited Partners) up to the amount of the Defaulting Partner's Available Capital Commitment. If any such commitment is received from any Existing Limited Partner, such Limited Partner's Capital Commitment and Available Capital Commitment shall be increased accordingly. If any such commitment is received from an investor that is not an Existing Limited Partner, such investor shall, after executing such instruments and delivering such opinions and other documents as are in form and substance satisfactory to the General Partner, may be admitted to the Partnership upon the approval of the General Partner as a Substituted Limited Partner and shown as such on the financial statements and capital accounts of the Partnership and shall be deemed to have a Capital Commitment and an Available Capital Commitment equal to the commitment for which such investor has subscribed. After the appropriate adjustment of the Capital Commitment and the Available Capital Commitment of the Limited Partner or admission of the Substituted Limited Partner, the Capital Commitment and

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Available Capital Commitment of the Defaulting Partner shall be decreased accordingly; and

(ii) reduce or cancel the Available Capital Commitment of the Defaulting Partner on such terms as the General Partner determines in its discretion (which may include leaving such Defaulting Partner obligated to make Capital Contributions with respect to Partnership Expenses up to the amount of such Partner's Available Capital Commitment immediately prior to the time such Available Capital Commitment is so reduced or canceled).

(g) The rights and remedies referred to in this Section 5.05 shall be in addition to, and not in limitation of, any other rights available to the General Partner or the Partnership under this Agreement or at law or in equity. An Event of Default by any Partner in respect of any Capital Contribution shall not relieve any other Partner of its obligation to make Capital Contributions under this Agreement. In addition, unless the Available Capital Commitment of any Defaulting Partner is decreased to zero as evidenced by written notice by the General Partner pursuant to Section 5.05(f), an Event of Default by such Defaulting Partner shall not relieve such Partner of its obligation to make Capital Contributions subsequent to such Event of Default.

(h) Notwithstanding anything else to the contrary in this Agreement, in the case of a Default by any Offshore Fund Investor under the Offshore Fund Agreement that results or would result in a Default or an Event of Default hereunder by the Offshore Fund, the provisions of this Section 5.05 shall be applied as if such Offshore Fund Investor (the "**Defaulting Offshore Fund Investor**"), rather than the Offshore Fund itself, were a Limited Partner in Default and each Offshore Fund Investor that is not a Defaulting Offshore Fund Investor were a Limited Partner that is not a Limited Partner in Default.

By way of example and without limiting the foregoing, (i) the provisions of Section 5.05(b) regarding forfeited distributions shall be applied solely with respect to the Defaulting Offshore Fund Investor individually as if it were a Defaulting Partner, and not to the Offshore Fund in its entirety, (ii) the provisions regarding any credit of such forfeited items shall be applied such that each Offshore Fund Investor that is not a Defaulting Offshore Fund Investor participates (through its participation in the Offshore Fund) in such amounts, as appropriate, with the Partners (other than the Defaulting Partners) as if each were a Partner that is not a Defaulting Partner, and (iii) the provisions in Sections 5.05(c) and 5.05(d) (and the corresponding provisions, if any, of the Offshore Fund Agreement) regarding any permitted or required increase in Capital Contributions (to cover the shortfall resulting from the default of any Defaulting Offshore Fund Investor) shall be applied such that (A) each other Offshore Fund Investor contributes (through the Offshore Fund), as appropriate, as if it were a Partner that is not a Defaulting Partner and (B) each Partner contributes, in each case, towards such shortfall. The General Partner is hereby authorized to make such allocations and distributions, deliver such Capital Call Notices and take all such other actions as it deems appropriate to implement the foregoing.

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ARTICLE 6
DISTRIBUTIONS; ALLOCATIONS; CAPITAL ACCOUNTS

SECTION 6.01. ***Distributions Generally.*** (a) The amount and timing of distributions by the Partnership shall be at the discretion of the General Partner, and the General Partner's determinations shall be conclusive and binding upon the Partners. Although the General Partner intends to make distributions as soon as practicable after receipt, the General Partner also intends to turn over capital through securitization transactions for the purpose of creating exit events and increasing internal rates of return to Limited Partners. Therefore, the General Partner may elect to reinvest proceeds from securitization transactions, thereby delaying distributions to Limited Partners, for such periods of time as the General Partner may determine.

(b) To the extent that the Partnership receives Proceeds from a Direct Investment within one year of the Partnership acquiring an interest in such Direct Investment, an amount up to the amount of the Partnership's Invested Capital in such Direct Investment may be retained by the Partnership for reinvestment in future Investments.

(c) Notwithstanding anything in the Agreement to the contrary, prior to the dissolution and liquidation of the Partnership, the amount and timing of distributions, if any, by the Partnership shall be at the sole discretion of the General Partner. Consistent therewith, the Partnership shall not be obligated to make distributions on a quarterly or annual basis, following the disposition of an Investment or at any other specific times prior to the dissolution and liquidation of the Partnership.

SECTION 6.02. ***Priority of Distributions.*** Subject to Section 6.03 and Section 6.04, net cash proceeds from the sale or other disposition of securities or other property held or received by the Partnership will be distributed as soon as practicable after receipt. The General Partner will be entitled to withhold from any distributions, in its discretion, appropriate reserves for expenses and liabilities of the Partnership, as well as for any required tax withholdings.

Sums available for distribution will be distributed by the Partnership in the following order of priority:

a) First, one hundred percent (100%) to all Partners of the Partnership, in proportion to their funded Capital Commitment until they have received cumulative distributions equal to the aggregate of the following (to the extent not previously distributed pursuant to this paragraph):

   i) such Partner's aggregate capital contributions as actually made to the Partnership; and

   ii) a preferred return equal to an 8% cumulative, non-compounded annual rate of return on such Partner's Unreturned Capital Contributions (see definition of "Preferred Return" in Appendix A).

b) Second, one hundred percent (100%) to the General Partner until the General Partner has received an amount equal to twenty percent (20%) of the cumulative distributions made to the Partners in paragraph (a)(ii) above and this paragraph (b); and

c) Thereafter, eighty percent (80%) to all Partners in proportion to their funded Capital Commitments and twenty percent (20%) to the General Partner.

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The General Partner shall receive a distribution of its carried interest only upon the complete return of the Capital Commitments funded by the Partners. Distributions prior to the termination of the Partnership generally will take the form of cash or marketable securities. Upon termination of the Partnership, distributions may typically include restricted securities or other assets of the Partnership. Subject to the foregoing, the Partnership intends to liquidate all securities received as distributions from the Portfolio Investments in an expeditious manner, taking into account market conditions and restrictions on transfer applicable to such securities.

The General Partner, in its sole discretion, may cause part or all of any amounts otherwise distributable to it under the distribution provisions described above to be distributed instead to all Partners in proportion to their funded Capital Commitments. If such special distributions are made, the General Partner may cause subsequent distributions to be made first to it until it has received in distributions an amount equal to the distributions it would have received if no such special distribution to all Partners had been made.

SECTION 6.03. ***Other Income.*** (a) Distributions of each Limited Partner's Hot Issues Percentage of Proceeds from a Hot Issues Investment shall be made in accordance with the principles set forth in Section 6.02 and based on each Limited Partner's representations in its subscription agreement as to whether or not such Limited Partner is a "restricted person" for Hot Issues.

(b) All other items of income of the Partnership that are not distributed pursuant to any other provision of this Article 6 shall be distributed to the Partners pro rata in accordance with their Commitment Percentages (or such other allocation as the General Partner determines is appropriate in its discretion).

SECTION 6.04. ***Other Provisions Relating to Distributions.***

(a) ***Cash Distributions***. All cash distributions shall be made in U.S. dollars, except to the extent that distributions in U.S. dollars would be illegal under applicable U.S. law, in which case, to such extent, distributions shall be made in the currency in which cash is received by the Partnership.

(b) ***Distributions in Kind.*** The Partnership may distribute in kind any securities (whether or not Marketable Securities) or other property constituting all or any portion of an Investment in such amounts and at such times as the General Partner shall in its discretion determine. In any distribution of property in kind, the General Partner shall (i) distribute to the applicable Partners property of the same type and (ii) if cash and property in kind are to be distributed simultaneously in respect of any Investment, distribute cash and property in kind in different proportions or distribute cash to certain Partners and property to other Partners. If any Limited Partner notifies the General Partner (or other liquidator described in Section 9.03) that such Limited Partner is prohibited by applicable law or regulation from holding directly the property to be distributed in kind or the holding of such property by such Limited Partner would have a material adverse effect on such Limited Partner, subject to compliance with applicable law, such Limited Partner may designate any other Person to receive such distribution or the General Partner (or such liquidator) shall, in lieu of making such distribution in kind to such Limited Partner and to the extent permitted by applicable law, use its reasonable efforts to sell such property on such Limited Partner's behalf on terms acceptable to such Limited Partner and, upon such sale, the General Partner shall promptly distribute to such Limited Partner the net

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proceeds of such sale. The amount of such net proceeds received in any such sale shall not affect the value of such property for purposes of any calculation under Article 6 or Article 9, which value for purposes of Article 6 or Article 9 shall be determined pursuant to this Section 6.04(b) or Section 9.04. If such property cannot be sold by the General Partner on terms acceptable to such Limited Partner, the General Partner may sell such property at the best available price and distribute the cash or other in-kind property to the Limited Partner.

(c) ***Withholding of Certain Amounts.*** Notwithstanding anything else contained in this Agreement, the General Partner may, in its sole discretion, withhold from any distribution of cash or property in kind to any Partner pursuant to this Agreement, the following amounts:

i. any amounts due from such Partner to the Partnership or the General Partner or attributable to such Partner pursuant to this Agreement to the extent not otherwise paid (including, without limitation, such Partner's share of Partnership Expenses and any Default Amounts);

ii. any amounts due from such Partner to the Partnership or the General Partner pursuant to this Agreement or to any Person (including the General Partner or its Affiliates) in respect of the principal amount of (and any interest, fees or other expenses with respect to) any borrowing incurred or advances made as contemplated in Section 5.04, in each case to the extent not otherwise paid; and

iii. any amounts required to pay, or to reimburse (on a net after-tax basis) any Indemnified Person for the payment of, any taxes and related expenses that the General Partner in good faith determines to be properly attributable to such Partner (including, without limitation, withholding taxes and interest, penalties and expenses incurred in respect thereof).

(d) ***Treatment of Certain Amounts Withheld.*** Notwithstanding anything else in this Agreement, all amounts withheld by the General Partner pursuant to Section 6.04(c) and all amounts that the General Partner determines in good faith to be properly withheld or otherwise paid by any Person on behalf of any Limited Partner pursuant to the Code or any provision of any state, local or non-U.S. tax law, shall be treated as if such amounts were realized and recognized by the Partnership and distributed to such Partner pursuant to Section 6.02.

(e) ***Amounts Held in Reserve.*** In addition to the rights set forth in Section 6.04(c), the General Partner shall have the power, in its discretion, to withhold amounts otherwise distributable to a Partner in order to maintain the Partnership in sound financial and cash position and to make such provisions as the General Partner, in its discretion, deems necessary or advisable for any and all liabilities and obligations, contingent or otherwise, of the Partnership.

(f) ***Delaware Act.*** Notwithstanding anything in this Agreement to the contrary, the Partnership shall not make any distributions pursuant to this Agreement except to the extent permitted by the Delaware Act.

SECTION 6.05. ***Loans and Withdrawal of Capital***.

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No Partner shall be permitted to borrow any portion of its Capital Account.

(b) In general, no Partner shall be permitted to withdraw any portion of its Capital Account.

(c) Notwithstanding the foregoing, the General Partner will be permitted to offer Limited Partners an annual opportunity (each, on an "**Early Withdrawal Date**") to request an early withdrawal from the Partnership (an "**Early Withdrawal**"), at the election of the Limited Partner, at an estimated price based on an evaluation of secondary market conditions by the General Partner in accordance with the Agreement.

(d) Each such request for an Early Withdrawal (each, a "**Withdrawal Request**") must be submitted in writing to the General Partner within such period as may be designated by the General Partner, in its reasonable discretion, in a notice to the Limited Partners that the General Partner has designated an Early Withdrawal Date.

(e) In the event that the aggregate amount of withdrawal proceeds attributable to Withdrawal Requests submitted by the Limited Partners with respect to any Early Withdrawal Date is greater than the aggregate amount of cash balances allocated towards the Early Withdrawal (the "**Aggregate Available Withdrawal Proceeds**"), then the Limited Partners who have submitted Withdrawal Requests with respect to such Early Withdrawal Date shall redeem a pro rata share of their interests and receive redemption proceeds of their respective pro rata share of the Aggregate Available Withdrawal Proceeds; with respect to the remainder of their interest, they shall remain invested in the Partnership. At the next opportunity for an Early Withdrawal, if any, such Limited Partners may again submit a Withdrawal Request; provided, however, that such Limited Partners will be treated identically with, and not be given priority over, any other Limited Partner submitting a Withdrawal Request with respect to such later Early Withdrawal Date.

(f) Limited Partners who do not submit a Withdrawal Request or whose Withdrawal Requests cannot be satisfied or satisfied in full will remain Limited Partners in the Partnership.

(g) In 2017, Limited Partners will be provided an opportunity to subscribe to withdraw from the Partnership, subject to the availability of Aggregate Available Withdrawal Proceeds, and at a price established by the General Partner ("Alternative 1"). In the event that subscriptions for Early Withdrawal are greater than Aggregate Available Withdrawal Proceeds allocated to this Early Withdrawal Date, then such Limited Partners will be allocated liquidity on a pro rata basis and the remainder of their interest shall remain invested in the Partnership ("Alternative 2"). At the next opportunity for an Early Withdrawal, if any, such Limited Partners may again submit a Withdrawal Request; provided, however, that such Limited Partners will be treated identically with, and not be given priority over, any other Limited Partner submitting a Withdrawal Request with respect to such later Early Withdrawal Date .

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(h) Limited Partners hereby acknowledge that they have had the opportunity to ask questions and have received answers from the General Partner regarding the terms of the Fifth Amendment, and that at least the Required Limited Partners consented to the terms of the Fifth Amendment and deemed its terms fair and reasonable, and in the best interests of the Partnership.

Fourth Amendment Reference:

In 2015, Limited Partners were provided an opportunity to subscribe to withdraw from the Partnership subject to such allocation amounts and at a price established by the General Partner ("Alternative 1"). In the event that subscriptions are greater than available cash and marketable securities, then such Limited Partners will be allocated liquidity on a pro rata basis and the remainder of their capital account balance shall be allocated to Alternative 2. At the next opportunity to withdraw early from the Partnership, if any, such Limited Partners may again subscribe to withdraw early; however, they will be treated equally as other Limited Partners that subscribe to withdraw early at such time from the Partnership.

Third Amendment Reference:

In 2013, Limited Partners were provided an opportunity to subscribe to withdraw from the Partnership subject to such allocation amounts and at a price established by the General Partner ("Alternative 1"). In the event that subscriptions are greater than available cash and marketable securities, then such Limited Partners will be allocated liquidity on a pro rata basis and the remainder of their capital account balance shall be allocated to Alternative 2. At the next opportunity to withdraw early from the Partnership, if any, such Limited Partners may again subscribe to withdraw early; however, they will be treated equally as other Limited Partners that subscribe to withdraw early at such time from the Partnership.

SECTION 6.06. ***Capital Accounts; Allocations; and Portfolio Valuations***

(a) ***Capital Accounts.*** There shall be established for each Partner on the financial statements of the Partnership a capital account (a "**Capital Account**"), which shall initially be zero. The Capital Account of each Partner shall be: credited with any allocations of income, profit or gain of the Partnership to such Partner;

(i) credited with the amount of cash contributed to the Partnership by such Partner;

(ii) debited by the amount of cash (or the fair market value of other property as determined by the General Partner pursuant to Section 6.04(b)) distributed by the Partnership to such Partner; and

(iii) debited by any allocations of expense, deduction or loss of the Partnership to such Partner.

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(1) In order to preserve the economic interest of each Partner in the Partnership, the General Partner may (but shall not be required to) adjust the book values of all Partnership assets to equal their respective gross fair market values, as determined by the General Partner immediately prior to the following times: (i) the acquisition of additional interests in the Partnership by any new or existing Partner; (ii) the distribution by the Partnership to a Partner of more than a de minimis amount of Partnership property as consideration for all or a portion of the Partner's interest in the Partnership; (iii) the withdrawal of a Partner; and (iv) the liquidation of the Partnership. Upon such adjustment, the Capital Accounts of the Partners shall be adjusted to reflect the manner in which the unrealized income, gain, loss or deduction inherent in such assets would be allocated among the Partners pursuant to the terms of this Agreement if there were a taxable disposition of such assets for their gross fair market values on that date. Furthermore, the Partnership, in a manner consistent with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), shall adjust the Capital Accounts as necessary to reflect any items of income, gain, loss or deduction that are computed based on the adjusted book value of the Partnership's assets.

(2) In accordance with Section 704(c) of the Code, income, gain, loss and deduction with respect to any property contributed to the capital of the Partnership shall be allocated among the Partners, solely for federal income tax purposes, so as to take account of any variation between the adjusted basis of the property to the Partnership for federal income tax purposes and the initial book value of the property as of the date of contribution of the property to the Partnership. In the event that the book values of Partnership assets are adjusted pursuant to the terms of the Agreement, subsequent allocations of income, gain, loss and deduction with respect to such assets shall take into account any variation between the adjusted basis of such assets for federal income tax purposes and their adjusted book values in a manner consistent with the Code Section 704(c) using such methods as the General Partner may determine from time to time in its sole discretion.

(b) ***Hot Issues Investments.*** Net income or net loss, and each item of income, gain, loss, deduction or expense included in such net income or net loss (including unrealized gains and losses with respect to assets distributed in kind pursuant to Section 6.04(b), but excluding Partnership Expenses that are borne by the Partners in accordance with Section 4.03(b)(ii)), shall, to the extent that such amounts are attributable to a Hot Issues Investment, be allocated among the Partners in a manner consistent with the corresponding distributions made or to be made pursuant to Section 6.03(a).

(c) ***Partnership Expenses.*** Partnership Expenses funded by or for the account of any Partner in accordance with Section 4.03 shall be debited against the Capital Account of such Partner.

(d) ***Investment Advisor Fees; Administrative Fees.*** Any expense related to the Investment Advisor Fees and the Administrative Fees pursuant to Sections 2.04 and 1.09, shall be allocated among the Partners in accordance with the amounts payable by such Limited Partners in proportion to their Capital Commitments and shall be debited against their respective Capital Accounts. Interest income attributable to amounts paid to the Partnership pursuant to Section 1.08(b)(ii) shall be allocated to the Existing Limited Partners entitled to receive distributions of such amounts pursuant to Section 1.08(d).

(e) ***Adjustments Upon an Event of Default.*** Upon an Event of Default by a Limited Partner, if the General Partner elects to exercise the right provided for under Section 5.05(b)(i), any income, profit or gain that would have been allocated to the Capital Account of such Partner

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but for the operation of Section 5.05(b)(i) shall be credited to the Capital Accounts of all the other Partners (other than any other Defaulting Partner) pro rata in accordance with their respective Commitment Percentages (calculated without giving effect to the Capital Commitment of any Defaulting Partner) with respect to the Investment giving rise to such income, profit or gain.

(f) ***Residual Allocations.*** Prior to dissolution of the Partnership, the Partnership's remaining net income or net loss (after giving effect to Sections 6.06(b), 6.06(c), 6.06(d), and 6.06(e) above), and each item of income, gain, loss, deduction or expense included in the determination of such net income or net loss, including unrealized gains and losses with respect to assets distributed in kind pursuant to Section 6.04(b), shall be allocated among the Partners in a manner consistent with the corresponding distributions made or to be made pursuant to this Article 6.

(g) ***Allocations Upon Dissolution.*** Upon the dissolution of the Partnership, the realized gains and losses of the Partnership attributable to sales of assets pursuant to Section 9.04 and the unrealized gains and losses of the assets to be distributed pursuant to Section 9.04 shall be allocated among the Partners in a manner consistent with the distribution provisions of this Article 6.

(h) ***Timing of Allocations on Dispositions of Investments.*** In connection with the disposition of Investments, allocations of profit and loss shall be made from time to time within any fiscal year to the extent necessary to effect the intent of the distribution provisions of this Article 6 and Article 9.

(i) ***Special Allocation in Case of Adjusted Deficit.*** Notwithstanding anything else contained in this Article 6, if any Partner has an Adjusted Deficit for any fiscal period as a result of any adjustment of the type described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4) through (6), then the Partnership's income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate such deficit as quickly as possible. Such allocation is intended to be a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(3). Any special allocation of items of income or gain pursuant to this paragraph shall be taken into account in computing subsequent allocations pursuant to this Article 6 so that the cumulative net amount of all items allocated to each Partner shall, to the extent possible, be equal to the amount that would have been allocated to such Partner if there had never been any allocation pursuant to this paragraph.

(j) ***Compliance With Applicable Regulations.*** It is intended that the Capital Accounts shall be maintained at all times in accordance with Section 704 of the Code and applicable Treasury Regulations thereunder, and that the provisions hereof relating to the Capital Accounts be interpreted in a manner consistent therewith. The General Partner shall be authorized in its discretion to make appropriate adjustments to the allocations of items to comply with Section 704 of the Code or applicable Treasury Regulations thereunder; provided that no such change shall have an adverse effect upon the amount distributable to any Partner hereunder.

(k) ***Portfolio Valuations.*** For purposes of valuations of Portfolio Investments, including allocations pursuant to Section 6.06, Marketable Securities that are acquired or received as distributions by the Partnership from the Portfolio Investments will be valued at market value as established on the principal securities exchange of the security. If such securities are not primarily traded on a securities exchange, then the valuation assigned shall be the market value as shown by the National Association of Securities Dealers Automated Quotation system or comparable over-the-counter quotation system.

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(1) Securities that are not Marketable Securities will be valued as follows: non-freely tradable securities acquired or received as distributions from a Portfolio Fund or Portfolio Company will be given the value as stated by the Portfolio Fund or as established by the Portfolio Company, with subsequent adjustments to values that reflect selected comparable investments, third party transactions in the private market, or third party appraisals.

(2) All other non-freely tradable securities will be valued initially at cost, with subsequent adjustments to values that reflect selected comparable investments, third party transactions in the private market, or third party appraisals. All securities will be valued by the General Partner in its discretion, on dates that are as near as reasonably practical to the portfolio valuation date. Fair market values may vary among investments depending on the dates that reports regarding specific investments were made available to the General Partner.

(3) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding valuations of the investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's estimated fair values of the investments through June 30, 2013.

(4) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding the selection of and valuations of the investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's selections and estimated fair values of the investments through June 30, 2014.

Portfolio Disclosures and Valuations

(i) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding the adequacy of disclosures, distributions to the General Partner and Limited Partners, and valuations of the investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's disclosures, distributions to the General Partner and Limited Partners and estimated fair values of the investments, including affiliated investments and transactions, through the later of the Fifth Amendment or March 31, 2017.

(ii) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding the selection of investments, fees paid to affiliates in connection with affiliate transactions and investments, compensation paid to employees of affiliates, common equity ownership in affiliates and valuations of the investments including affiliated investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's selections, disclosures in connection herewith, and estimated fair values of the investments through the later of the Fifth Amendment or March 31, 2017.

(iii) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding the adequacy of disclosures and valuations of the investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's disclosures and estimated fair values of the investments, including affiliated investments and transactions, through December 31, 2016.

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(iv) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding the selection of investments, fees paid to affiliates in connection with affiliate transactions and investments, compensation paid to employees of affiliates, common equity ownership in affiliates and valuations of the investments including affiliated investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's selections, disclosures in connection herewith, and estimated fair values of the investments through December 31, 2016.

SECTION 6.07. ***Tax Allocations.*** For federal, state and local income tax purposes, each item of income, gain, loss, deduction and credit of the Partnership shall be allocated among the Partners as nearly as possible in the same manner as the corresponding item of income, expense, gain or loss is allocated pursuant to the other provisions of this Article 6.

SECTION 6.08. ***Hot Issues.*** (a) To enable the Partnership to participate, directly (in the case of a Direct Investment) or indirectly (in the case of an investment made by a Private Fund), in public offerings of securities that trade at a premium in the secondary market whenever such secondary market begins ("**Hot Issues**"), the General Partner may establish at any brokerage firm or firms one or more trading accounts (each, a "**Hot Issues Account**") through which the Partnership may invest in, hold and sell, transfer or otherwise dispose of, one or more Hot Issues that shall comply with IM-2110-1 (entitled Free-Riding and Withholding) of the Conduct Rules of the National Association of Securities Dealers, Inc. (the "**NASD**"), promulgated by the Board of Governors of the NASD (the "**Hot Issues Rule**"), as the Hot Issues Rule may be amended from time to time.

(b) Only those Partners who do not fall within the proscription of the Hot Issues Rule as such Partners have represented themselves on their subscription agreement (the "**Unrestricted Partners**") shall have any "beneficial interest" (as such term is interpreted by the NASD) in Direct Investments that are Hot Issues or in investments made by any Private Fund that are Hot Issues ("**Hot Issues Investments**"). The determination of the General Partner as to whether a particular Partner falls within the proscription of the Hot Issues Rule shall be binding upon the Partnership and each Partner.

(c) The percentage interest of each Unrestricted Partner in a Hot Issues Investment (such Unrestricted Partner's "**Hot Issues Percentage**") shall be such Unrestricted Partner's Commitment Percentage, calculated without giving effect to the Capital Commitment and placement and service fees of any Partner who is not an Unrestricted Partner.

ARTICLE 7
REPORTS TO LIMITED PARTNERS

SECTION 7.01. ***Reports.*** (a) The books of account and records of the Partnership shall be audited as of the end of each fiscal year (other than the fiscal year ending December 31, 2003) by the Partnership's independent public accountants. All reports provided to the Limited Partners pursuant to this Section 7.01 shall be prepared in accordance with U.S. generally accepted accounting principles. The Partnership's independent public accountants shall initially be Halpern & Associates, LLC. The General Partner may, in its discretion, change the Partnership's independent public accountants.

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(b) As soon as practicable after the end of the first semi-annual period of each fiscal year, the General Partner shall prepare and mail to each Person who was a Partner during such fiscal period unaudited summary information regarding the Partnership's portfolio as of the end of such fiscal semi-annual period.

(c) As soon as practicable after the end of each fiscal year (other than the fiscal year ending December 31, 2003), the General Partner shall deliver to each Limited Partner audited financial statements setting forth as of the end of such fiscal year:

(i) a balance sheet of the Partnership;

(ii) an income statement of the Partnership for such fiscal year;

(iii) a statement of such Partner's closing Capital Account balance for such fiscal year; and

(iv) an annual overview of the Partnership's portfolio of Investments.

(d) After the end of each fiscal year, the General Partner shall cause the independent certified public accountants to prepare and transmit, as promptly as possible, a U.S. federal income tax form K-1 for each Partner. The General Partner shall mail such materials to (i) each Partner and (ii) each former Partner (or its successors, assigns, heirs or personal representatives) who may require such information in preparing its U.S. federal and state or non-U.S. income tax returns. Each Limited Partner acknowledges and agrees that it is aware of the likely need to file for extensions of time from the applicable tax authorities in order to complete its tax returns.

(e) Notwithstanding anything in the Agreement to the contrary, in order to permit the Partnership to take advantage of cost efficiencies, the timing of the audit of the Partnership's books and records for the partial fiscal year which ended on December 31, 2004 shall be deferred so as to be performed at the same time as the audit of the Partnership's books and records for the fiscal year ending on December 31, 2005. As soon as practicable following the completion of the audit for such combined fiscal years, the Partnership will deliver to each Limited Partner audited financial statements for such periods.

ARTICLE 8
EXCULPATION AND INDEMNIFICATION; DISPUTE RESOLUTION

SECTION 8.01. ***Exculpation and Indemnification.*** (a) No Indemnified Person shall be liable to the Partnership or to the Partners for any losses, claims, damages or liabilities arising from, related to, or in connection with this Agreement or the Partnership's business or affairs (including any act or omission by any Indemnified Person and any activity of the type or character disclosed or contemplated in Sections 2.08 and 2.09 and in the Private Placement Memorandum under "Risk Factors and Potential Conflicts of Interest," or elsewhere therein (such disclosure being incorporated herein by reference) and no such activity shall in and of itself constitute a breach of any duty owed by any Indemnified Person to the Limited Partners or the Partnership), except for any losses, claims, damages or liabilities resulting from such Indemnified Person's willful misfeasance, as proven in a court of law. The foregoing provision shall not affect the General Partner's obligation to correct any allocations to the Capital Accounts of the Partners pursuant to Section 6.06 or distributions to the Partners pursuant to Section 6.02 or 6.03 if such allocations or distributions were not made in accordance with this Agreement. In addition, no Indemnified Person shall be liable to the Partnership or to the Limited Partners with respect to the accuracy or

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completeness of any information furnished by such Indemnified Person or any other Indemnified Person regarding any Private Fund or any Portfolio Company where such information is obtained from a third party (including, without limitation, a Private Fund or Portfolio Company) and not prepared by an Indemnified Person. Notwithstanding the foregoing provisions of this Section 8.01(a), no provision of this Agreement shall constitute a waiver or limitation of any Limited Partner's rights under the U.S. federal or state securities laws.

(b) The Partnership shall, to the fullest extent permitted by applicable law, indemnify and hold harmless each Indemnified Person from and against any losses, claims, damages or liabilities arising out of, related to, or in connection with, this Agreement or the Partnership's affairs, except for any such losses, claims, damages or liabilities that are determined to have resulted from such Indemnified Person's willful misfeasance, as proven in a court of law. Subject to the immediately succeeding sentence, the Partnership shall periodically reimburse each Indemnified Person for all expenses (including fees and expenses of counsel) as such expenses are incurred in connection with insuring, investigating, preparing, pursuing or defending any Proceeding related to, arising out of or in connection with this Agreement or the Partnership's business or affairs, whether or not pending or threatened and whether or not any Indemnified Person is a party thereto. If, for any reason, the foregoing indemnification is unavailable to any Indemnified Person, or insufficient to hold it harmless, then the Partnership shall contribute to the amount paid or payable by such Indemnified Person as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative benefits received by the Partnership, on the one hand, and such Indemnified Person, on the other hand, or, if such allocation is not permitted by applicable law, to reflect not only the relative benefits referred to above but also any other relevant equitable considerations. Each Partner covenants for itself and its successors, assigns, heirs and personal representatives that such Person shall, to the maximum extent permitted by law, at any time prior to or after dissolution of the Partnership, whether before or after such Person's withdrawal from the Partnership, pay to the Partnership or the General Partner on demand any amount which the Partnership or the General Partner, as the case may be, properly pays in respect of taxes (including withholding taxes) imposed upon income of, or distributions in respect of Investments made to, such Partner.

(c) Notwithstanding anything else contained in this Agreement, the exculpation provisions under Section 8.01(a) and the reimbursement, indemnity and contribution obligations of the Partnership under Section 8.01(b) (the "**Indemnification Obligations**") shall:

(i) be in addition to any liability which the Partnership may otherwise have;

(ii) extend upon the same terms and conditions to the officers, directors, members, employees, contractors, stockholders, agents, partners and representatives of each Indemnified Person (whether or not any such Person, at the time such Indemnification Obligation arises, is or serves in such capacity);

(iii) be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of each Indemnified Person; and

(iv) be limited to the sum of (A) the assets of the Partnership, plus (B) the amount of the Partners' aggregate Available Capital Commitments, plus subject to Section 8.03, the aggregate amount of all distributions previously made by the Partnership to the Partners.

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(d) To the extent that, at law or in equity, any Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or to the Limited Partners, the General Partner and any other Indemnified Person acting in connection with the Partnership's affairs shall not be liable to the Partnership or to any Limited Partner for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of any Indemnified Person otherwise existing at law or in equity, are agreed by the Limited Partners to replace such other duties and liabilities of such Indemnified Person.

(e) Whenever in this Agreement the General Partner is permitted or required to make a decision in its "discretion," or under a grant of similar authority or latitude, the General Partner shall be entitled to consider only such interests and factors as it desires to consider (including its own interests) and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting any Limited Partner.

SECTION 8.02. ***Forum Selection.*** (a) To the fullest extent permitted by applicable law, the General Partner and each Limited Partner hereby agree that any claim, action or proceeding by any Limited Partner seeking any relief whatsoever against any Indemnified Person based on, arising out of or in connection with this Agreement or the Partnership's affairs shall be brought to binding arbitration in the State of Connecticut in a venue selected by the General Partner, and not in any other state or federal court in the United States of America or any court in any other country. The General Partner and each Limited Partner acknowledge that, in the event of any breach of this provision, the Indemnified Persons have no adequate remedy at law and shall be entitled to injunctive relief to enforce the terms of this Section 8.02.

(b) EACH PARTNER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A COURT TRIAL IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND AGREES TO BINDING ARBITRATION AS STATED HEREIN.

SECTION 8.03. ***Return of Distributions.*** (a) Notwithstanding anything else contained in this Agreement, if the Partnership incurs an Indemnification Obligation and the amount of reserves, if any, specifically identified by the Partnership with respect to such Indemnification Obligation is less than the amount of such Indemnification Obligation, the General Partner may require each Limited Partner to repay to the Partnership, at any time or from time to time, whether before or after dissolution of the Partnership or before or after such Person's withdrawal from the Partnership, in satisfaction of such Limited Partner's share of such Indemnification Obligation, all or any portion of the amount of the distributions previously made by the Partnership to such Limited Partner to the extent of such Limited Partner's share of such Indemnification Obligation as determined in accordance with Section 4.03; provided that no Partner shall be required to make a repayment pursuant to this Section 8.03 at any time after the third anniversary of the dissolution of the Partnership, or to repay any amount which, together with all such amounts previously repaid pursuant to this Section 8.03, would exceed the total amount of distributions previously received by such Partner (or the predecessor-in-interest to such Partner) from the Partnership.

(b) The provisions of this Section 8.03 shall be in addition to and not affect the obligations of the Limited Partners under Section 17-607 of the Delaware Act or any other provision of applicable law. Nothing in this Section 8.03 is intended to expand the rights of Indemnified Parties to indemnification, contribution or reimbursement under Section 8.01.

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ARTICLE 9
TERM AND DISSOLUTION OF THE PARTNERSHIP

SECTION 9.01. ***Term.*** The General Partner of the Partnership will make a commercially reasonable best effort to complete an initial public offering of the Partnership at the anticipated terms described in the Notice of Proposed IPO Exit Opportunity to Limited Partners dated September 7, 2017 and other terms as amended in good faith at the sole discretion of the General Partner.

SECTION 9.02. ***Dissolution.*** Subject to the Delaware Act, the Partnership shall be dissolved and its affairs shall be wound up upon the earliest to occur of

(a) the expiration of the term of the Partnership as provided in Section 9.01;

(b) the written approval of the General Partner and the Required Limited Partners;

(c) the determination by the General Partner, in its discretion, to dissolve the Partnership because it has determined in good faith that changes in any applicable law or regulation, or any interpretation thereof, would have a material adverse effect on the continuation of the Partnership, or such action is necessary or desirable as provided in Section 2.03;

(d) an event of withdrawal of the General Partner (within the meaning of the Delaware Act) unless (i) at the time there is at least one remaining general partner of the Partnership and all remaining principals shall agree to continue the business of the Partnership without dissolution, or (ii) if there is no remaining principal of the Partnership, the Required Limited Partners agree in writing within ninety (90) days of such event of withdrawal to continue the business of the Partnership and to the appointment of a successor principal of the Partnership, effective as of the date of such event;

(e) the entry of a decree of judicial dissolution under Section 17-802 of the Delaware Act; and

(f) at any time that there are no Limited Partners of the Partnership, unless the business of the Partnership is continued in accordance with the Delaware Act. Laurence G. Allen, the managing principal of the General Partner, shall be offered a first right of refusal to be the liquidator of the Partnership at his sole option to agree or disagree at a fee of five percent (5%) of the cash proceeds of any sales for a twelve (12) month term. This provision is due to the belief that the Managing Principal of the General Partner will likely be the most knowledgeable about the Partnership's Investments and will have greatest incentive to generate the maximum in sale proceeds to preserve the brand value of the General Partner.

(g) The General Partner will commence to wind-up the Partnership on or about January 15, 2019 in the following manner (the "Wind-Up Plan"):

(h) The General Partner hereby clarifies and amends certain provisions' identified as (1) and (2) below as of January 21, 2019.

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SECTION 9.03. ***Liquidation of the Partnership.*** Upon dissolution, the Partnership's business shall be liquidated in an orderly manner. Except as provided in the immediately succeeding sentence, the General Partner shall be the liquidator to wind up the affairs of the Partnership pursuant to this Agreement. If there shall be no General Partner or if the Partnership shall be dissolved pursuant to Section 9.02(d), the Limited Partners, upon the approval of the Required Limited Partners, may approve one or more liquidators to act as the liquidator in carrying out such liquidation. In performing its duties, the liquidator is authorized to sell, distribute, exchange or otherwise dispose of the assets of the Partnership in any reasonable manner that the liquidator shall determine to be in the best interest of the Partners.

SECTION 9.04. ***Distribution Upon Dissolution of the Partnership.*** (a) Upon dissolution of the Partnership, the liquidator winding up the affairs of the Partnership shall determine in its discretion which assets of the Partnership shall be sold and which assets of the Partnership shall be retained for distribution in kind to the Partners. Subject to Section 6.04(b), assets to be distributed in kind shall be valued by the liquidator in its discretion. Subject to the Delaware Act, after all liabilities of the Partnership have been satisfied or duly provided for, the remaining assets of the Partnership shall be distributed to the Partners in accordance with the distribution provisions contained in Article 6. The Partnership shall terminate when all of the assets of the Partnership shall have been distributed to the Partners in accordance with this Section 9.04, and the Certificate of Limited Partnership of the Partnership shall have been canceled in the manner required by the Delaware Act.

(b) In the discretion of the liquidator, and subject to the Delaware Act, a portion of the distributions that would otherwise be made to the Partners pursuant to this Section 9.04 may be:

(i) distributed to a trust established for the benefit of the Partners for purposes of liquidating Partnership assets, collecting amounts owed to the Partnership and paying any liabilities or obligations of the Partnership or of the General Partner arising out of, or in connection with, this Agreement or the Partnership's affairs; or

(ii) withheld, with respect to any Partner, to provide a reserve for the payment of such Partner's share of future Partnership Expenses; provided that such withheld amounts shall be distributed to the Partners as soon as the liquidator determines, in its discretion, that it is no longer necessary to retain such amounts. The assets of any trust established in connection with Section 9.04(b)(i) above shall be distributed to the Partners from time to time, in the discretion of the liquidator, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the Partners pursuant to this Agreement.

(d) Each Partner shall look solely to the assets of the Partnership for the return of such Partner's Capital Contributions to the Partnership, and no Partner shall have priority over any other Partner as to the return of such Capital Contributions.

(1) Distributions as per the Seventh Amendment ("Wind-Up Plan"):

(i) Publicly-traded securities held by the Partnership ("Publicly-Traded Securities"), in general, will be distributed to each Partner on a pro-rata percentage based on their estimated ending capital account

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balances as of December 31, 2018; except that warrants, royalty rights and other restricted related securities (together as "Restricted Securities") shall be exercised and/or registered (to protect values and to receive stock certificates) and distributed at the earliest reasonable opportunity as determined by the General Partner.

Each Partner shall elect when to sell their Publicly-Traded Securities, which provides the opportunity for each Partner to manage their liquidity needs, when to incur tax liabilities and the opportunity to seek to optimize returns.

(ii) Private securities held by the Partnership (including the Restricted Securities stated above), in general, will be transferred to a liquidation trust (the "Liquidation Trust" or tentatively referred to the "ACP X Liquidation Trust") which shall be held on behalf of each Partner on a pro-rata percentage based on their estimated ending capital account balances as of December 31, 2018.

Cash received from realizations, the exercise of warrants and sales by the General Partner as well as registered stock certificates (i.e. publicly-traded securities) received by the Liquidation Trust shall be distributed to each Partner based on their pro-rata percentage at the earliest reasonable opportunity as determined by the General Partner.

Therefore, Partners should expect to receive distributions of cash and Publicly-Traded Securities from the Liquidation Trust.

An affiliate of the General Partner will serve as the managing trustee of the Liquidation Trust ("Managing Trustee"). The Managing Trustee shall have sole discretion regarding the timing and amounts in connection with the exercise of warrants, sales of royalty rights, follow-on investments and other related activities.

A trustee advisory committee comprised of Limited Partners shall be appointed by the Managing Trustee (the "Trustee Advisory Committee") to provide advice on various matters as requested by the Managing Trustee. Initially, current members of the Limited Partners Advisory Committee shall serve as the members of the Trustee Advisory Committee.

(2) Expenses as per the Seventh Amendment

To minimize expenses, expedite the wind-up process and optimize prospective returns to Limited Partners:

(i) the General Partner, Partnership and the Liquidation Trust shall not be required by Limited Partners to:

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(a) complete pending or conduct any further annual audits of the Partnership; and

(b) seek independent appraisals of the Partnership's investments or the General Partner's estimated fair values of investments; and

(c) provide annual reports, except for the final year of dissolution of the Liquidation Trust; and

(d) file or pay to file any reports or forms to the SEC, any state or other securities regulators, unless required by law to do so; and

(e) provide a 30 day notice for this 7th Amendment, and rather a 10 day notice shall be sufficient

(ii) the General Partner, Partnership and the Liquidation Trust shall:

(a) provide a Schedule K-1 to Limited Partners for those years in which distributions are made in the future to Limited Partners; and

(b) upon full liquidation, provide a final annual report to Limited Partners; and

(c) establish cash reserves as determined by the General Partner not to exceed 10% of the total assets of the Partnership as of December 31, 2018 to pay for the exercise of warrants held by the Partnership and accounting, administrative, insurance, tax, legal and other related services; and

(d) not charge management fees to Limited Partners after December 31, 2018; however, the balance of carried interest earned (if any) may be distributed at any time at the election of the General Partner and the Clawback provision in Section 9.04(d) of the Agreement shall be rescinded and no longer apply; and

(e) be authorized to incur standard execution and related fees to sell assets, exercise warrants and other transactions in connection with the Partnership and Liquidation Trust after December 31, 2018, which may include fees paid to ACP

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affiliates and compensation earned by their employees and consultants

(d) ***Carried Interest Distributions***. As per the Seventh Amendment, the General Partner has determined that the carried interest balance is $0.00 as of December 31, 2018. Therefore, there shall be no further distribution of carried interest to the General Partner.

In the event that after the final distribution made by the Partnership, the General Partner will have received carried interest distributions pursuant to paragraphs (b) and (c) of Section 6.02 (the "**Carried Interest Distributions**") in an amount greater than twenty percent (20%) of the aggregate net profits of the Partnership over the life of the Partnership, then the General Partner shall immediately return to the Partnership for payment to the Limited Partners an amount equal to the amount by which the Carried Interest Distributions received by the General Partner exceed twenty percent (20%) of the aggregate net profits of the Partnership over the life of the Partnership, *reduced by* the sum of:

(i) the actual income tax liability of the members of the General Partner with respect to the income associated with Carried Interest Distributions;

(ii) forty-one and one quarter percent (41.25%) of the amount of accrued Carried Interest allocated to the General Partner through June 30, 2013 (as provided by the Third Amendment),

(iii) twenty five (25%) of the amount of accrued Carried Interest allocated to the General Partner through December 31, 2014 (as provided by the Fourth Amendment), and

(iv) forty five (45%) of the amount of accrued Carried Interest allocated to the General Partner through December 31, 2016 (as provided by the Fifth Amendment) ((ii)-(iv), together the "**Carried Interest Balance"**).

The Carried Interest Balance is intended to be distributed to the General Partner at times as elected by the General Partner in its sole discretion. This Section 9.04(d) shall supercede, restate and amend any conflicting provisions of Section 6.02 (Priority of Distributions), Section 6.06 (Capital Accounts, Allocations and Portfolio Valuations) and Section 8.01 (Exculpation and Indemnification) of the Agreement.

(e) ***Other Terms as per the Seventh Amendment***

(A) ***Wind-up Plan***. The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to and have received sufficient answers from the General Partner regarding the fairness of the terms of the proposed Wind-Up Plan for the Partnership, and that, further, the Limited Partners hereby represent and warrant they have reviewed and approved the terms of the Wind-Up Plan and believe such terms are fair, reasonable and in the best interests of the Partnership.

(B) ***Disclosures, Valuations, Distributions***. The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to and have received sufficient answers from the General Partner regarding the adequacy of disclosures regarding the Partnership, distributions to the Limited Partners and the General Partner, and

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valuations of the investments held by the Partnership and that, further, the Limited Partners hereby represent and warrant they have reviewed and approved of the General Partner's disclosures regarding the Partnership, distributions to the Limited Partners and the General Partner and the General Partner's estimated valuations of the investments, including affiliated investments and transactions through June 30, 2018.

(C) ***Selection of Investments, Use of Funds, Fees***. The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to and have received sufficient answers from the General Partner regarding the selection of investments, the use of the Partnership's funds, fees paid to the General Partner's affiliates in connection with affiliated transactions and investments, compensation paid to employees and consultants of such affiliates, the common equity ownership in affiliates and that, further, the Limited Partners hereby represent and warrant they have reviewed and approved of the General Partner's selection of investments, the Partnership's use of funds, fees paid to the General Partner's affiliates, compensation paid to employees and consultants of such affiliates through June 30, 2018.

(D) ***Power of Attorney, Indemnification.*** The Limited Partners hereby provide a Power of Attorney to the General Partner to create the Liquidation Trust and to commence the wind-up of the Partnership in the manner it deems appropriate to seek the objectives of this 7th Amendment. The Limited Partners hereby agree to hold harmless and indemnify the General Partner, its affiliates and their respective successors, employees, consultants and agents (the "Indemnified Persons") in connection with any matters, actual or threatened, that may arise in connection with the Partnership. In the event that any Limited Partner, directly or indirectly initiates or participates in any formal proceeding against the Indemnified Persons or directly or indirectly causes excessive legal expenses to the Indemnified Persons, such Limited Partner shall be liable for legal and other related expenses incurred by the Indemnified Persons and/or the Partnership which may be deducted from prospective distributions due to and/or capital account balances of such Limited Partner as a set off at the determination of the General Partner. Set off amounts shall be allocated to Indemnified Persons and/or the Partnership as reimbursement at the determination of the General Partner.

(E) ***Full Force and Effect.*** Except as otherwise amended hereby, the terms and provisions of the Agreement shall remain in full force and effect, and any conflict between the terms of the Agreement and the 7th Amendment shall be construed in favor of the 7th Amendment as determined by the General Partner.

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(F) ***Governing Law.*** This 7th Amendment and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Delaware.

(G) ***Disputes, Venue.*** Any and all disputes, controversies or claims arising out of or relating to this 7th Amendment and the Agreement, or the breach, termination or invalidity thereof, shall be finally and exclusively settled by AAA arbitration in Westchester County, New York. Such arbitration shall be commenced within one year after the party requesting arbitration obtains knowledge of the cause of action forming the basis of the controversy or claim accrued.

(H) ***3rd Party Beneficiaries***. The Limited Partners acknowledge and agree that the General Partner and its' affiliates including their respective employees, consultants and agents shall be beneficiaries of each and every provision of the 7th Amendment and the Agreement.

SECTION 9.05. ***Withdrawal, Death or Incompetency of a Limited Partner.*** Except as otherwise provided in Section 1.07(b) or Article 11, a Limited Partner may not withdraw from the Partnership prior to its dissolution and winding up. Upon receipt by the General Partner of written notice of withdrawal of an individual Limited Partner due to the death or incompetency of such individual Limited Partner, such Limited Partner shall not be entitled to receive the fair value of his or her interest in the Partnership in accordance with Section 17-604 of the Delaware Act, and shall continue to be fully responsible for their Available Capital Commitment and Partnership Expenses. If an Event of Default occurs, the General Partner may proceed according to Section 5.05. Upon the death or incompetency of an individual Limited Partner, such Limited Partner's executor, administrator, guardian, conservator or other legal representative may exercise all of such Limited Partner's rights for the purpose of settling such Limited Partner's estate or administering such Limited Partner's property, except that the General Partner may in its discretion reduce or cancel the Available Capital Commitment of such Limited Partner (on such terms as the General Partner determines in its discretion (which may include leaving such Limited Partner obligated to make Capital Contributions with respect to Partnership Expenses up to the amount of such Limited Partner's Available Capital Commitment immediately prior to the time such Available Capital Commitment is so reduced or canceled)) or to force a sale of such Limited Partner's interest at the market price. Except as expressly provided in this Agreement, no other event affecting a Limited Partner (including bankruptcy or insolvency) shall in and of itself affect its obligations under this Agreement or affect the Partnership.

ARTICLE 10
TRANSFERABILITY OF GENERAL PARTNER'S INTEREST

SECTION 10.01. ***Transferability of General Partner's Interest.*** (a) The General Partner may not sell all or any portion of its interest in the Partnership to any Person; provided that the General Partner may make a transfer of all or any portion of its interest to any of its Affiliates without the consent of any other Partner. The General Partner may admit any Person to whom the General Partner is permitted to make a transfer pursuant to the immediately preceding sentence as an additional general partner of the Partnership, and such transferee shall be deemed admitted to the Partnership as a general partner of the Partnership immediately prior to such transfer and shall continue the business of the Partnership without dissolution.

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(b) Notwithstanding the foregoing provisions of Section 10.01(a), the General Partner shall not otherwise assign (as such term is defined in the Advisors Act) any of its rights or duties hereunder except with such approval of the Limited Partners as required under the Advisors Act or as otherwise provided herein.

(c) Except as otherwise provided in this Section 10.01, the General Partner may not withdraw from the Partnership or be removed as general partner of the Partnership.

ARTICLE 11
TRANSFERABILITY OF A LIMITED PARTNER'S INTEREST

SECTION 11.01. ***Restrictions on Transfer.*** (a) Subject to Section 9.05 and the balance of this paragraph, a Limited Partner may not, directly or indirectly, sell, exchange, assign, pledge, hypothecate, dispose of, or transfer all or any portion of its interest in the Partnership (to sell, exchange, assign, pledge, hypothecate, dispose or transfer herein, collectively called a "**Transfer**") without the prior written approval of the General Partner, which approval may be granted or withheld by the General Partner in its discretion. Notwithstanding the foregoing, the General Partner will not unreasonably withhold its approval of a sale by a Limited Partner of its interest, provided that any prospective purchaser (i) is reasonably believed by the transferring Limited Partner to be a Qualified Purchaser, as defined in Section 2(a)(51) of the Investment Company Act and otherwise to be an eligible investor, including with respect to Section 11.01(b) below; (ii) executes and delivers to the General Partner the Partnership's non-disclosure agreement, as set forth below in Section 11.01(c); and (iii) is preliminarily screened and approved by the General Partner. If a Limited Partner determines that it must withdraw from the Partnership for any reason, such Limited Partner shall be solely responsible to Transfer its interest and follow provisions of this Section 11.01.

(b) In no event may a Limited Partner Transfer any portion of its interest in the Partnership, nor may a Substituted Limited Partner be admitted to the Partnership if such Transfer or such admission would, in the judgment of the General Partner, cause a dissolution of the Partnership under the Delaware Act, cause the Partnership's assets to be deemed to be "plan assets" for purposes of ERISA, cause the Partnership to be an "investment company" within the meaning of the Investment Company Act, cause the General Partner to be in violation of the Advisors Act, or would, in the judgment of the General Partner, violate, or cause the Partnership or the General Partner to violate, any applicable law or regulation, including any applicable U. S. federal or state or non-U.S. securities laws. In no event shall the Partnership participate in the establishment of a secondary market or the substantial equivalent thereof as defined in Treasury Regulation Section 1.7704-1(c) or the inclusion of its interests on such a market or on an established securities market as defined in Treasury Regulations Section 1.7701-1(b), or recognize any transfers made on any of the foregoing by admitting the purported transferee as a Partner or otherwise recognizing the rights of such transferee.

c) ***Procedure to Request a Transfer.*** A Limited Partner seeking the General Partner's permission prior to solicitation of a prospective buyer of its interest shall make a written request for consent by the General Partner and include a list of up to ten (10) prospective buyers. Each prospective buyer must sign the Partnership's current non-disclosure agreement after being approved by the General Partner and prior to the Limited Partner making available any non-public documents regarding the Partnership, such as the Private Placement Memorandum, quarterly and annual reports, and the Limited Partnership Agreement. The General Partner's written consent must be granted at least sixty (60) days prior to the end of the quarter in which the

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Interest shall be effective in the Capital Accounts of the transferor, transferee and the Partnership. The Limited Partner shall be responsible for any disclosures of non-public information by any party which was provided such non-public information by the Limited Partner pursuant to Section 2.13.

SECTION 11.02. ***Expenses of Transfer; Indemnification.*** All expenses, including attorneys' fees and expenses, incurred by the General Partner or the Partnership in connection with any Transfer shall, unless otherwise determined by the General Partner in its discretion, be borne by the transferring Limited Partner (any such transferee, when admitted and shown as such on the financial statements and Capital Accounts of the Partnership, being hereinafter called a "**Substituted Limited Partner**"). In addition, the transferring Limited Partner and such transferee shall indemnify the Partnership and the General Partner in a manner satisfactory to the General Partner against any losses, claims, damages or liabilities to which the Partnership or the General Partner may become subject arising out of, related to or in connection with any false representation or warranty made by, or breach or failure to comply with any covenant or agreement of, such transferring Limited Partner or such transferee.

SECTION 11.03. ***Recognition of Transfer; Substituted Limited Partners.*** (a) No purchaser, assignee, or other recipient of all or any portion of a Limited Partner's interest in the Partnership may be admitted to the Partnership as a Substituted Limited Partner without the prior written approval of the General Partner, which may, in the General Partner's discretion, be withheld. If the General Partner approves the admission of any Person to the Partnership as a Substituted Limited Partner, such Person, as a condition to its admission as a Limited Partner, shall execute and acknowledge the Partnership's Transfer documents (including a counterpart of this Agreement), in form and substance satisfactory to the General Partner, as the General Partner reasonably deems necessary or desirable to effectuate such admission and to confirm the agreement of such Person to be bound by all the terms and provisions of this Agreement with respect to the interest in the Partnership acquired by such Person.

(b) The Partnership shall not (subject to Section 9.05) recognize for any purpose any purported Transfer of all or any part of a Limited Partner's interest in the Partnership, and no purchaser, assignee, transferee or other recipient of all or any part of such interest shall become a Substituted Limited Partner hereunder unless:

(i) the provisions of Sections 11.01, 11.02 and 11.03(a) shall have been complied with;

(ii) the General Partner shall have been furnished with the documents effecting such Transfer, in form reasonably satisfactory to the General Partner, executed and acknowledged by both the seller, assignor or transferor and the purchaser, assignee, transferee or other recipient;

(iii) such purchaser, assignee, transferee or other recipient shall have represented that such Transfer was made in accordance with all applicable laws and regulations;

(iv) the transferor shall be responsible for all state and regulatory filings, including Blue Sky filings, when making a private offering and Transfer of any Interest; all necessary governmental consents, including those required by Code Section 7704 and the accompanying Treasury Regulations, shall have been obtained or requirements have been met in respect of such Transfer;

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(v) the financial statements and capital accounts of the Partnership shall have been changed to reflect the admission of such Substituted Limited Partner at the end of each calendar quarter; and

(vi) all necessary instruments reflecting such admission shall have been filed in each jurisdiction in which such filing is necessary in order to qualify the Partnership to conduct business or to preserve the limited liability of the Limited Partners. Upon the satisfaction of the conditions set forth in this Section 11.03, any such purchaser, assignee, or other recipient may qualify for consent by the General Partner as a Substituted Limited Partner.

SECTION 11.04. ***Transfers During a Fiscal Year.*** If any Transfer (other than a pledge or hypothecation) of a Partner's interest in the Partnership shall occur at any time other than the end of the Partnership's fiscal year, the distributive shares of the various items of Partnership income, gain, loss and expense as computed for tax purposes and the related cash distributions shall be allocated between the transferor and the transferee at the end of the calendar quarter or on such date as selected by the General Partner; provided that no such allocation shall be effective unless (a) the General Partner shall have consented to such allocation, and (b) the transferor and the transferee shall have agreed to reimburse the General Partner for any incremental accounting fees and other expenses incurred by the General Partner in making such allocation. If the transferor and transferee fail to give notice to the Partnership in accordance with the proviso to the immediately preceding sentence, all allocations shall be made by the General Partner, in its discretion, in accordance with the applicable requirements of Section 706 of the Code.

SECTION 11.05. ***Mandatory Withdrawals.*** (a) Notwithstanding anything to the contrary contained in this Agreement, the General Partner may cause a partial or a complete withdrawal by a Limited Partner by giving written notice to such Limited Partner if the General Partner determines or has reason to believe that: (i) such Limited Partner has transferred or attempted to transfer any portion of its interest in violation of the provisions of this Article 11; (ii) such Limited Partner's continued ownership of its interest may cause the Partnership to be in violation of, or require registration of any interest under, or subject the Partnership or the General Partner to additional regulation under, the securities or commodities laws of the United States or any other relevant jurisdiction or the rules of any self-regulatory organization; (iii) such Limited Partner's continued ownership of its interest may be harmful or injurious to the business or reputation of the Partnership or the General Partner, or may subject the Partnership or any Partner to risk of adverse tax or other fiscal consequences (including adverse consequences under ERISA); (iv) any of the representations and warranties made by such Limited Partner in connection with the acquisition of its interest were not true when made or have ceased to be true; or (v) it is otherwise in the best interests of the Partnership, as determined in the sole discretion of the General Partner, to cause such a withdrawal.

(b) The effective date of any mandatory withdrawal pursuant to this Sectio11.05 shall be the 30th day following delivery of the required notice pursuant to Section 11.05(a), or such later date as the General Partner may designate.

(c) The consideration required to be paid by the Partnership to a Limited Partner upon a mandatory withdrawal shall be an amount equal to the Unreturned Capital Contribution of such Limited Partner. Payment of such consideration shall occur on the effective date of such mandatory withdrawal. The Partnership may pay such consideration in cash and/or securities (with such mix and the selection of such securities to be determined in the sole discretion of the

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General Partner). Costs arising out of the liquidation or transfer of securities as determined by the General Partner necessary to effect any such withdrawal will be borne by the Partnership.

(d) A Limited Partner who is forced to withdraw pursuant to this Section 11.05 shall no longer be considered a Partner for any purpose after the effective date of such withdrawal.

ARTICLE 12
MISCELLANEOUS

SECTION 12.01. ***Amendments; Waivers.*** (a) Except as otherwise provided in Section 12.01 (b), any provision of this Agreement may be amended or waived by the General Partner with the approval of the General Partner and the Required Limited Partners or by notice of such amendment or waiver to each Limited Partner which is not objected to by the Required Limited Partners in writing within thirty (30) days of mailing of such notice; provided that, except as provided in Section 12.01(b):

(i) the provisions of this Section 12.01 may not be amended or waived without the approval of the General Partner and all of the Limited Partners (other than any Defaulting Partners); and

(ii) no amendment or waiver of the provisions of this Agreement may, without the approval of the General Partner, the Required Limited Partners and the affected Limited Partner, (A) modify or affect the limited liability of such Partner, or (B) change the Capital Commitment of such affected Limited Partner (other than as provided in this Agreement).

(b) The General Partner may, without the approval of any Limited Partner, amend or waive any provision of this Agreement (including without limitation any amendment that the General Partner determines in its discretion is necessary or desirable to cure any ambiguity, to correct or supplement any provision of this Agreement, or to make any other provision with respect to matters or questions arising under this Agreement that is not inconsistent with the provisions of this Agreement); provided that such amendment or waiver shall not, in the reasonable opinion of the General Partner, be materially adverse to any Limited Partner. The General Partner shall mail a current Limited Partnership Agreement with financial statements each year to the Limited Partners.

(c) Except as otherwise amended hereby, the terms and provisions of the Agreement shall remain in full force and effect and any conflict between the terms of the Agreement and an Amendment shall be construed in favor of the Amendment.

SECTION 12.02. ***Approvals.*** (a) Each Limited Partner agrees that, to the extent permitted by applicable law and except as otherwise provided in this Agreement, for purposes of obtaining or granting the approval or consent of the Limited Partners (including any such approval or consent required under the Advisors Act) with respect to any proposed action (other than pursuant to Section 12.01) by the Partnership, the General Partner or any of its Affiliates, any of the following shall bind the Partnership, the General Partner and each Limited Partner and shall have the same legal effect as the written approval of the General Partner and each Limited Partner:

(i) the written approval of the General Partner and the Required Limited Partners; and

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(ii) the written approval of the General Partner and notice of such approval to each Limited Partner which is not objected to by the Required Limited Partners in writing within thirty (30) days of mailing of such notice; and

(iii) approvals or waivers by the Advisory Committee with respect to certain matters, as described in Section 2.15(b).

(b) Notwithstanding anything else contained in this Agreement, with respect to any provision of this Agreement (including Sections 10.01 and 12.01) requiring the approval of Limited Partners having a specified percentage of Capital Commitments, (i) for purposes of calculating the arithmetic fraction represented by such percentage, there shall be excluded from both the numerator and denominator of such fraction the Capital Commitments of any Defaulting Partner, and (ii) the approval of any Defaulting Partner (except in connection with Section 12.01 (a)(ii)) shall not be required.

SECTION 12.03. ***Acquisitions; Mergers; Consolidations.*** The Partnership may acquire, merge or consolidate with or into one or more business entities upon the approval of the General Partner; provided that (a) in connection with any such merger or consolidation, no amendment of any provision of this Agreement may, directly or indirectly, be effected without the approval required for an amendment of such provision in accordance with Section 12.01, (b) no such merger or consolidation shall, without the approval of the General Partner, increase the liability of a Limited Partner beyond the liability of such Limited Partner expressly set forth in this Agreement, (c) no such acquisition, merger or consolidation shall materially affect the duties owed by the General Partner to the Limited Partners hereunder in a manner adverse to the Limited Partners, and (d) the surviving entity of such acquisition, merger or consolidation shall be a Delaware limited partnership or a Delaware limited liability company. Notwithstanding anything else contained in this Agreement (but subject to the immediately preceding sentence), any agreement of merger or consolidation approved in accordance with this Section 12.03 may (A) effect any amendment to this Agreement or (B) effect the adoption of a new partnership agreement for the Partnership if it is the surviving or resulting entity in such merger or consolidation.

SECTION 12.04. ***Investment Representations.*** Each Partner, by executing this Agreement, represents and warrants that its interest in the Partnership has been acquired by it for its own account, or for the account of a commingled pension trust or other institutional investor previously specified in writing to the Partnership, with respect to whom it has full investment discretion, for investment and not with a view to resale or distribution thereof and that it is fully aware that in agreeing to admit it as a Partner, the General Partner and the Partnership are relying upon the truth and accuracy of this representation and warranty.

SECTION 12.05. ***Certain FCC Matters.*** In addition to and not in derogation of other limitations in this Agreement on the powers and activities of the Limited Partners, at any time when the Partnership has an "attributable ownership interest" within the meaning of the rules and regulations of the U.S. Federal Communications Commission, no Limited Partner (and if such Limited Partner is not an individual, no officer, director, partner or equivalent non-corporate official of such Limited Partner) shall:

(a) act as an employee of the Partnership if such Limited Partner's functions directly or indirectly relate to any media-related activities of the Partnership;

(b) serve, in any material capacity, as an independent contractor or agent with respect to any media-related activities of the Partnership;

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(c) communicate with the General Partner on matters pertaining to the day-to-day media-related activities of the Partnership;

(d) perform any services for the Partnership materially relating to media-related activities of the Partnership;

(e) subject to the Delaware Act, vote to admit any additional or replacement General Partner to the Partnership unless such additional or replacement General Partner has been approved by each General Partner then existing;

(f) vote on the removal of a General Partner; or

(g) become actively involved in the management or operation of any media-related activities of the Partnership.

SECTION 12.06. ***Successors; Counterparts; Beneficiaries.*** This Agreement (a) shall be binding as to the executors, administrators, estates, heirs and legal successors of the Partners and (b) may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart. Except as otherwise set forth in Section 8.01, no provision of this Agreement is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

SECTION 12.07. ***Governing Law; Severability; Certain Matters as to the General Partner.*** (a) **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS**. In particular, it shall be construed to the maximum extent possible to comply with all of the terms and conditions of the Delaware Act. If it shall be determined by a court of competent jurisdiction that any provision or wording of this Agreement shall be invalid or unenforceable under the Delaware Act or other applicable law, such invalidity or unenforceability shall not invalidate this entire Agreement, in which case this Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid or unenforceable provisions. The parties agree to waive any and all rights to a court trial and to settle any and all disputes through binding arbitration in a **venue in Connecticut** selected by the General Partner.

(b) The execution and delivery by the General Partner of and the performance by the General Partner of its obligations under this Agreement have been duly authorized by all necessary partnership action on the part of the General Partner. The General Partner has the requisite power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by the General Partner, constitutes a valid and binding agreement of the General Partner, and is enforceable against the General Partner, in its capacity as general partner of the Partnership, in accordance with its terms.

SECTION 12.08. ***Further Assurance.*** Each Limited Partner, upon the request of the General Partner, agrees to perform all further acts and to execute, acknowledge and deliver any documents that may reasonably be necessary to carry out the provisions of this Agreement.

SECTION 12.09. ***Filings.*** The General Partner shall promptly prepare, following the execution and delivery of this Agreement, any documents required to be filed and recorded, or which the General Partner determines, in its discretion, are appropriate for filing and recording, under the

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Delaware Act, and the General Partner shall promptly cause each such document to be filed and recorded in accordance with the Delaware Act and, to the extent required by local law, to be filed and recorded or notice thereof to be published in the appropriate place in each state in which the Partnership may hereafter establish a place of business. The General Partner shall also promptly cause to be filed, recorded and published such statements of fictitious business name and other notices, certificates, statements or other instruments required by any provision of any applicable law of the United States or any State or other jurisdiction which governs the conduct of the Partnership's or the General Partner's business from time to time.

SECTION 12.10. ***Power of Attorney.*** (a) Each Limited Partner does hereby constitute and appoint the General Partner and its principals as its true and lawful representative and attorney-in-fact, in its name, place and stead to make, execute, sign, deliver and file: (i) a Certificate of Limited Partnership of the Partnership and any amendment thereof required because of an amendment to this Agreement or in order to effectuate any change in the membership of the Partnership; (ii) any amendments to this Agreement in accordance with Section 12.01; and (iii) all such other instruments, documents and certificates which may from time to time be required by the laws of the United States of America, the State of Delaware or any other State, or any political subdivision or agency thereof, or any non-U.S. jurisdiction, to effectuate, implement and continue the valid and subsisting existence of the Partnership or to dissolve the Partnership. Such representatives and attorneys-in-fact shall not have any right, power or authority to amend or modify this Agreement when acting in such capacities.

(b) The power of attorney granted pursuant to this Section 12.10 is coupled with an interest and shall (i) survive and not be affected by the subsequent death, incapacity, disability, dissolution, termination or bankruptcy of the Limited Partner granting such power of attorney or the transfer of all or any portion of such Limited Partner's interest in the Partnership, and (ii) extend to such Limited Partner's successors, assigns and legal representatives.

(c) ***Power of Attorney, Indemnification***. The Limited Partners hereby provide a Power of Attorney to the General Partner to create the Liquidation Trust and to commence the wind-up of the Partnership in the manner it deems appropriate to seek the objectives of this 7th Amendment. The Limited Partners hereby agree to hold harmless and indemnify the General Partner, its affiliates and their respective successors, employees, consultants and agents (the "Indemnified Persons") in connection with any matters, actual or threatened, that may arise in connection with the Partnership. In the event that any Limited Partner, directly or indirectly causes excessive legal expenses to the Indemnified Persons, such Limited Partner shall be liable for legal and other related expenses incurred by the Indemnified Persons and/or the Partnership which may be deducted from prospective distributions due to and/or capital account balances of such Limited Partner as a set off at the determination of the General Partner. Set off amounts shall be allocated to Indemnified Persons and/or the Partnership as reimbursement at the determination of the General Partner.

SECTION 12.11. ***No Bill for Partnership Accounting.*** Subject to mandatory provisions of law applicable to a Limited Partner and to circumstances involving a breach of this Agreement, each of the Partners covenants that it shall not (except with the consent of the General Partner) file a bill for Partnership accounting.

SECTION 12.12. ***Goodwill.*** No value shall be placed on the name or goodwill of the Partnership.

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SECTION 12.13. ***Notices.*** Except as otherwise provided in Section 5.02, all notices, requests and other communications to any party hereunder shall be in writing (including email, facsimile or similar writing) and shall be given to such party at its address or facsimile number or email address set forth in a schedule filed with the records of the Partnership or such other address or facsimile number or email address as such party may hereafter specify for the purpose by notice in like manner to the General Partner (if such party is a Limited Partner) or to all the Limited Partners (if such party is the General Partner). Each such notice, request or other communication shall be effective (a) if given by facsimile or email, when such facsimile or email is transmitted to the facsimile number or email address specified pursuant to this Section 12.13 and the appropriate written confirmation is received, (b) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (c) if given by any other means, when delivered at the address specified pursuant to this Section 12.13; provided that (i) notices to the General Partner under Article 5 shall not be effective until received and (ii) Capital Call Notices to Limited Partners shall be given by facsimile, email, certified or express mail, or special courier service at the determination of the General Partner.

SECTION 12.14. ***Headings.*** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope or intent of this Agreement or any provision hereof.

[This section intentionally left blank.]

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IN WITNESS WHEREOF, this revised and amended agreement is effective as of the date first written above.

GENERAL PARTNER:

ALLEN PARTNERS X, L.L.C., a
Delaware limited liability company

By: _____
Laurence G. Allen
Managing Principal

LIMITED PARTNERS:

ACP PARTNERS X, L.L.C., a Delaware limited liability company, as attorney-in-fact for each of the Limited Partners

By: _____

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APPENDIX A

DEFINITIONS

"***ACP***" means Allen Capital Partners, L.L.C., a Delaware limited liability company, and its successors.

"***Adjusted Deficit***" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) The Capital Account shall be increased by any amounts that such Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) The Capital Account shall be decreased by the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of "Adjusted Deficit" is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Admission Period" means the period commencing on the April 1, 2004 and ending on the Final Closing Date, as such dates are determined by the General Partner. However, the Final Closing Date shall occur no later than December 31, 2005, unless extended at the sole discretion of the General Partner.

"***Advisors Act***" means the Investment Advisors Act of 1940, as amended from time to time, and the rules and regulations promulgated thereunder.

"***Advisory Committee***" has the meaning set forth in Section 2.15.

"***Affiliate***" of any Person means any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Each principal, director, manager and officer of the General Partner and the Investment Advisor shall be treated as an "Affiliate" of one another, the Partnership, the General Partner and the Investment Advisor for purposes of this definition.

"***Agreement***" means this Amended and Restated Agreement of Limited Partnership, as amended from time to time.

"***Aggregate Available Withdrawal Proceeds***" has the meaning ascribed to that term in Section 6.05(e).

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"***ACP X Investors***" means ACP X Investors, L.P., a Delaware limited partnership that may be formed as a parallel fund in order to comply with exemptions under the Investment Company Act and operated on substantially the same terms as this Partnership to invest in parallel with the Partnership as described in Section 2.02(x).

"***Authorized Representative***" has the meaning set forth in Section 2.13(a).

"***Available Capital Commitment***" has the meaning set forth in Section 5.01(a).

"***Borrowed Funds***" has the meaning set forth in Section 5.04(a).

"***Borrowing Costs***" means, with respect to any borrowing, any interest, fees or other expenses attributable to such borrowing, but shall not include any repayment of the principal amount of such borrowing.

"***Business Day***" means any day except a Saturday, Sunday or any other day on which banks in New York City are authorized by law to close.

"***Capital Account***" has the meaning set forth in Section 6.06(a).

"***Capital Call***" has the meaning set forth in Section 5.02(a).

"***Capital Call Due Date***" has the meaning set forth in Section 5.02(b).

"***Capital Call Notice***" has the meaning set forth in Section 5.02(a).

"***Capital Commitment***" means, with respect to any Partner at any time, the dollar amount specified as such Partner's capital commitment at the time such Partner was admitted to the Partnership (as adjusted as provided in this Agreement), which amount shall be set forth on the financial statements and Capital Accounts of the Partnership.

"***Capital Contribution***" means, except as otherwise specifically provided in this Agreement, any cash contributions made by a Partner pursuant to Section 1.07, 1.08, 1.09, 5.02 or 5.05 or deemed made by a Partner pursuant to Section 5.04.

*"**Carried Interest Balance'*** has the meaning ascribed to that term in Section 9.04(d).

"***Closing Date***" means any date established by the General Partner for the admission to the Partnership of one or more Limited Partners (other than the Initial Limited Partner or a Substituted Limited Partner) or the increase of a Limited Partner's Capital Commitment pursuant to Section 1.07 or 1.08.

"***Code***" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder.

"***Commitment Percentage***" means, with respect to any Partner at any time except as otherwise specifically provided in this Agreement, the percentage derived by dividing (i) an amount equal to (x) such Partner's Capital Commitment at such time by (ii) an amount equal to (x) the aggregate Capital Commitments of all Partners at such time.

"***Default***" means (i) any failure of any Limited Partner to make all or a portion of its required Capital Contribution on the applicable Capital Call Due Date, (ii) any failure of any Limited

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Partner to pay all or a portion of the Investment Advisor Fee or Partnership Expenses payable by it pursuant to Section 2.04 or (iii) any failure of any Limited Partner to pay all or a portion of the principal amount of Borrowed Funds payable by it pursuant to Section 5.04.

"***Default Amount***" has the meaning set forth in Section 5.05(a).

"***Defaulting Offshore Fund Investor***" has the meaning set forth in Section 5.05(h).

"***Defaulting Partner***" means, at any time, each Limited Partner who, at or prior to such time, has committed a Default that has become an Event of Default.

"***Delaware Act***" has the meaning set forth in the recitals to this Agreement.

"Direct Investment" means an investment made by the Partnership in debt or equity securities of any U.S. or non-U.S. private or public company or any governmental agency, specifically including, but not limited to, new issues, preferred and common equity, convertible and straight debt, warrants, joint ventures, trusts, securitizations, collateralized obligations, bonds (including high yield bonds), special purpose entities, closed-end funds, mutual funds, business development companies or any other direct investments, securities or structures deemed appropriate by the General Partner. For clarity, Direct Investments shall not include investments in Private Funds or Temporary Investments.

"Early Withdrawal" has the meaning ascribed to that term in Section 6.05(c).

"*Early Withdrawal Date"* has the meaning ascribed to that term in Section 6.05(c).

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"***Event of Default***" means any Default that shall not have been (i) cured by the Limited Partner who committed such Default within ten (10) Business Days of the original due date, whether pertaining to a Capital Call, Borrowed Funds, or other expenses defined by the General Partner, or (ii) waived by the General Partner on such terms as determined by the General Partner in its discretion before such Default has otherwise become an Event of Default pursuant to clause (i) hereof.

"***Existing Limited Partner***" has the meaning set forth in Section 1.08(d).

"Exit" has the meaning ascribed to that term in Section 9.01.

"Final Closing Date" means the date of the last Closing Date of the Partnership, which shall occur no later than December 31, 2005, unless extended at the sole discretion of the General Partner.

"***General Partner***" means, at any time, Allen Partners X, L.L.C., a Delaware limited liability company, or any other Person who, at such time, has been admitted as the general partner of the Partnership, in such Person's capacity as general partner of the Partnership.

"***Hot Issues***" has the meaning set forth in Section 6.08(a).

"***Hot Issues Account***" has the meaning set forth in Section 6.08(a).

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"***Hot Issues Investment***" has the meaning set forth in Section 6.08(a).

"***Hot Issues Percentage***" has the meaning set forth in Section 6.08(c).

"***Hot Issues Rule***" has the meaning set forth in Section 6.08(a).

"***Indemnification Obligation***" has the meaning set forth in Section 8.01.

"***Indemnified Person***" means each of (i) the General Partner, ACP, the members of the Investment Committee, the Advisory Committee (if any), any Affiliate of the General Partner or ACP, and any director, officer, stockholder, employee, member, partner, contractor, agent or representative of any of the foregoing Persons, and (ii) any liquidator of the Partnership.

"***Investment Advisor***" means ACP.

"***Initial Limited Partner***" has the meaning set forth in the recitals to this Agreement.

"***Invested Capital***" means, with respect to any Partner, that portion of such Partner's Capital Contributions or other funds attributable to such Partner, as determined in the reasonable judgment of the General Partner, that has been used to fund obligations of the Partnership to make capital contributions to such Private Fund, or (iii) in the case of a Direct Investment, has been invested by the Partnership in such Direct Investment.

"***Investment***" means a Private Fund or a Direct Investment.

"***Investment Advisor Fee***" has the meaning set forth in Section 2.04(a).

"Investment Committee" shall mean that internal committee of Allen Capital Partners, LLC ("ACP") composed of officers or contractors of ACP or its Affiliates to which Investment and disposition authority may be delegated by the General Partner and the Investment Advisor pursuant to Section 2.05. The General Partner may, in its discretion at any time, change the composition of or the number of Persons serving on the Investment Committee, and all such decisions by the General Partner shall be conclusive and binding upon the Partnership and all of the Limited Partners. The Investment Committee shall have the authority to adopt rules and procedures regarding the performance of its duties under this Agreement.

"***Investment Company Act***" means the Investment Company Act of 1940, as amended from time to time, and the rules and regulations promulgated thereunder.

"***Investment Period***" means the period beginning on the initial Closing Date and ending upon the third anniversary of the Final Closing Date; provided that the General Partner may, in its discretion, terminate the Investment Period at any time.

"***Limited Partner***" means, at any time, any Person that is admitted to the Partnership by the General Partner as a limited partner of the Partnership in accordance with this Agreement, in such Person's capacity as a limited partner of the Partnership.

"***Marketable Securities***" mean securities that are (i) traded on a securities exchange, reported through the National Association of Securities Dealers Automated Quotation System or comparable established non-U.S. over-the-counter trading system or otherwise traded over-the

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counter for which quotations of market prices are readily available, and (ii) not subject to legal or contractual restrictions on transferability.

"***NASD***" has the meaning set forth in Section 6.08(a).

"***Net Invested Capital***" means the investment cost of all Investments less (a) cumulative distributions and (b) investments written down to zero.

"***New Commitment***" has the meaning set forth in Section 1.08(b).

"***New Commitment Partner***" has the meaning set forth in Section 1.08(b).

"***Offshore Fund***" means any offshore fund organized by ACP or any of its Affiliates for the purpose of investing in the Partnership.

"***Offshore Fund Agreement***" means the governing document of the Offshore Fund.

"***Offshore Fund Investor***" means any investor in the Offshore Fund.

"***Original Agreement***" has the meaning set forth in the recitals of this Agreement.

"***Partner***" means the General Partner or any Limited Partner, and "***Partners***" means, collectively, the General Partner and the Limited Partners.

"***Partnership***" means Allen Capital Partners X, L.P., a Delaware limited partnership, as such limited partnership may from time to time be constituted.

"***Partnership Administrative Expenses***" has the meaning set forth in Section 4.02(a)(iii).

"***Partnership Expenses***" means Partnership Organizational Expenses, Partnership Administrative Expenses or Partnership Investment Expenses as set forth in Section 4.02(a).

"***Partnership Investment Expenses***" has the meaning set forth in Section 4.02(a)(ii).

"***Partnership Organizational Expenses***" has the meaning as set forth in Section 1.09.

"***Person***" means any individual, partnership, corporation, trust, limited liability company or other legal or governmental entity.

"***Portfolio Company***" means (i) with respect to any Direct Investment, any Person that is the issuer of any securities or other interests that are the subject of such Direct Investment, or (ii) with respect to any Private Fund, any Person that is the issuer of any securities or other interests that are the subject of an investment by such Private Fund.

"***Portfolio Funds***" has the meaning set forth in Section 3.03.

"***Portfolio Investments***" has the meaning set forth in Section 3.03.

"***Post-Borrowing Payment***" has the meaning set forth in Section 5.04(b).

"***Pre-Closing Investment***" has the meaning set forth in Section 3.02."***Preferred Return***" means, with respect to each Partner, a non-compounded return equal to eight percent (8%) per annum,

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determined on the basis of a year of three hundred sixty-five (365) or three hundred sixty-six (366) days, on the average daily balance of the Unreturned Capital Contribution of such Partner, as determined from time to time, from the applicable dates of Capital Contributions made by such Partner through the date on which such calculation is to be made.

"***Preferred Return***" means, with respect to each Partner, a cumulative, non-compounded return equal to eight percent (8%) per annum, determined on the basis of a year of three hundred sixty-five (365) or three hundred sixty-six (366) days, on the average daily balance of the Unreturned Capital Contribution of such Partner, as determined from time to time, from the applicable dates of Capital Contributions made by such Partner through the date on which such calculation is to be made.

"***Prime Rate***" means the prime rate as published in the Wall Street Journal as of such date.

"Private Fund" means an investment made by the Partnership in an interest in a limited partnership, limited liability company or similar pooled investment vehicle, in each case, organized for the purpose of making, holding and disposing of investments in equity or debt securities or any other assets, including any commitment to make capital contributions or to pay obligations with respect to such interest. Private Funds may include U.S. and non-U.S. private equity funds, venture capital funds, leveraged buyout funds, mezzanine funds, hedge funds, natural resource funds, real estate funds, fund of funds, distressed funds and other private equity vehicles.

"***Private Placement Memorandum***" means the current Confidential Private Placement Memorandum, as amended and supplemented, relating to the offering of limited partner interests in the Partnership.

"***Proceeding***" means any action, claim, suit, investigation or proceeding by or before any court, arbitrator, governmental body or other agency.

"***Proceeds***" means, with respect to the Investments, (i) all cash and non-cash distributions or proceeds (including dividends, interest or other income) received by the Partnership from such Investments, less (ii) any commissions, fees or other expenses incurred, directly or indirectly, by the Partnership in connection with such receipt or in distributing to the Partners such proceeds.

"***Related Person***" means, with respect to any Investment, any Person (other than the Partnership) that is, directly or indirectly, involved in any transaction related to, or giving rise to, such Investment, or any Affiliate of the Private Fund or Portfolio Company that is the subject, directly or indirectly, of such Investment.

"***Required Limited Partners***" means, at any time, Limited Partners (other than Defaulting Partners) representing at least a majority of the amount equal to the aggregate Capital Commitments of all Limited Partners (other than Defaulting Partners) at such time.

"***Substituted Limited Partner***" has the meaning set forth in Section 11.02.

"***Tax Matters Partner***" has the meaning set forth in Section 2.12(b).

"***Temporary Investments***" has the meaning set forth in Section 3.04.

"***Transfer***" has the meaning set forth in Section 11.01(a).

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"***Transfer Dates***" means the eligible dates that a transferred interest shall be effective on the financial statements and Capital Account records of the transferor, transferee, and Partnership, which may only be at the end of a calendar quarter, which dates are December 31, March 31, June 30 or September 30.

"***Unrestricted Partner***" has the meaning set forth in Section 6.08(b).

"***Unreturned Capital Contribution***" means, with respect to any Partner, the aggregate amount of such Partner's Capital Contributions, as of any given point in time, reduced by the cumulative distributions of cash and property to such Partner from time to time pursuant to paragraph (a)(i) of Section 6.02.

"Withdrawal Request" has the meaning ascribed to that term in Section 6.05(d).

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EXHIBIT E

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Name: _____

Number: _____

PRIVATE PLACEMENT MEMORANDUM **CONFIDENTIAL**

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ALLEN CAPITAL PARTNERS X, L.P.

$250,000,000

Limited Partnership Interests

This Confidential Placement Memorandum (the "**Memorandum**") is furnished on a confidential basis to a limited number of sophisticated investors for the purpose of providing certain information about an investment in limited partnership interests (the "**Interests**") in Allen Capital Partners X, L.P., a Delaware limited partnership (the "**Partnership**"). This Memorandum is to be used by the recipient to whom it is furnished solely in connection with the consideration of the purchase of the Interests described herein. **THIS MEMORANDUM SUPERCEDES AND REPLACES ALL PRIOR VERSIONS OF THE MEMORANDUM AND THE RECIPIENT HEREOF SHALL NOT RELY UPON ANY PRIOR VERSION OF THIS MEMORANDUM.**

By accepting the Memorandum, the recipient agrees to keep confidential the information contained herein. The information contained in the Memorandum may not be provided to persons who are not directly concerned with an investor's decision regarding the investment offered hereby. The Memorandum may not be reproduced or redistributed.

The Interests have not been approved or disapproved by the U.S. Securities and Exchange Commission (the "SEC") or by the securities regulatory authority of any state or of any other jurisdiction, nor has the SEC or any such securities regulatory authority passed upon the accuracy or adequacy of this Memorandum. The Memorandum is based on information as of August 31, 2005; however, prior ACP Funds' information is as of December 1, 2003.

The Interests have not been registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), the securities laws of any state or the securities laws of any other jurisdiction, nor is such registration contemplated. The Interests will be offered and sold in the United States under the exemption provided by Section 4(2) of the Securities Act and Regulation D promulgated thereunder and other exemptions of similar import in the laws of the states and jurisdictions where the offering will be made. The Interests will be offered and sold outside the United States under the exemption provided by Regulation S under the Securities Act. The Partnership will not be registered as an investment company under the U.S. Investment Company Act of 1940, as amended (the "1940 Act"). There is no public market for the Interests and no such market is expected to develop in the future. The Interests may not be sold or transferred except as permitted under the limited partnership agreement of the Partnership (as amended, restated or otherwise modified from time to time, the "Limited Partnership Agreement") and unless they are registered under the 1933 Act or an exemption from such registration thereunder and under any other applicable securities law registration requirements is available.

Potential investors should pay particular attention to the information under the caption "Certain Investment Considerations" of this Memorandum. Investment in the Partnership is suitable only for sophisticated investors and requires the financial ability and willingness to accept the high risks and lack of liquidity inherent in an investment in the Partnership. Investors in the Partnership must be prepared to bear such risks for an extended period of time. No assurance can be given that the Partnership's investment objective will be achieved or that investors will receive a return of their capital.

In making an investment decision, investors must rely on their own independent examination of the Partnership and the terms of the offering of Interests, including the merits and risks involved. Prospective investors should not construe the contents of this Memorandum as legal, tax, investment or accounting

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advice, and each prospective investor is urged to consult with its own advisers with respect to legal, tax, regulatory, financial and accounting consequences of its investment in the Partnership.

The Interests offered hereby will involve significant risks. Investors should have the financial ability and willingness to accept the risk characteristics of the types of investments proposed herein. It should not be assumed that investments made in the future will be profitable or will equal the performance of previous investments.

The Interests offered hereby are subject to restrictions on transferability and resale as described in the Limited Partnership Agreement and may not be transferred or resold except as permitted under the Securities Act and applicable state securities laws, pursuant to registration or exemption thereupon. Investors should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time.

This Memorandum contains a summary of the Limited Partnership Agreement and certain other documents referred to herein. However, the summaries set forth in this Memorandum do not purport to be complete and they are subject to and qualified in their entirety by reference to the Limited Partnership Agreement and such other documents, copies of which will be provided to any prospective investor upon request and which should be reviewed for complete information concerning the rights, privileges and obligations of investors in the Partnership. In the event that the descriptions or terms in this Memorandum are inconsistent with or contrary to the descriptions in or terms of the Limited Partnership Agreement, the Limited Partnership Agreement shall control.

Each prospective investor is invited to meet with representatives of the Partnership and to discuss with, ask questions of and receive answers from such representatives concerning the terms and conditions of the offering of Interests, and to obtain any additional information, to the extent that such representatives possess such information or can acquire it without unreasonable effort or expense, necessary to verify the information contained herein.

No person has been authorized in connection herewith to give any information or make any representations other than as contained in this Memorandum and any representation or information not contained herein must not be relied upon as having been authorized by the Partnership, Allen Partners X, LLC, Allen Capital Partners, LLC, and Affiliates and their perspective or any of their directors, officers, employees, independent contractors, partners, shareholders or agents. The delivery of this Memorandum does not imply that any information contained herein is correct as of any time subsequent to the date of this Memorandum.

In considering the prior performance information contained herein, prospective investors should bear in mind that past performance is not necessarily indicative of future results, and there can be no assurance that the Partnership will achieve comparable results.

The distribution of this Memorandum and the offer and sale of the Interests in certain jurisdictions may be restricted by law. This Memorandum does not constitute an offer to sell or the solicitation of an offer to buy in any state or other jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such state or jurisdiction. Prospective non-U.S. investors should inform themselves and shall be solely responsible for complying with the legal requirements and tax consequences within the countries of their citizenship, residence, domicile and place of business with respect to the acquisition, holding or disposal of Interests, and any foreign exchange restrictions that may be relevant thereto.

The Partnership is a collective investment scheme as defined in the Financial Services Act 1986 (the "**U.K. Act**") of the United Kingdom (the "**U.K.**"). The Partnership has not been authorized or otherwise approved by the Securities and Investments Board and, as an unregulated scheme, it accordingly cannot be marketed in the U.K. to the general public. This Memorandum can therefore be issued in the U.K. only by persons

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authorized under the U.K. Act to carry on investment business in the U.K. and only to restricted categories of recipients, namely authorized persons, persons whose ordinary business it is to buy or sell securities of the same kind as the property to which the scheme relates, qualifying institutional investors and other categories of investors to whom unregulated collective investment schemes can be marketed without contravening Section 76 (1) of the U.K. Act. Transmission of this Memorandum to any other person in the U.K. is unauthorized and may contravene the U.K. Act.

The Interests are offered subject to prior sale, and the right of the General Partner of the Partnership to reject any subscription in whole or in part.

In this Memorandum, **"private assets, private equity interests or interests**" are defined as single interests and portfolios of U.S. and non-U.S. private partnerships and direct investments in private and publicly-held companies. The term "private partnerships" includes venture, private equity, buyout, real estate, energy, commodities, commodities, currencies, hedge funds, structures that seek to replicate such interests or portfolios thereof such as private swaps, and other types of partnership-like structures including but not limited to limited liability companies, business development companies, and trusts as deemed appropriate for investment by the General Partner. Direct investments include restricted and unrestricted securities in private and publicly-held companies such as common, preferred, convertibles, debt, warrants, structures that seek to replicate such securities or portfolios thereof such as private swaps, and other types of securities deemed appropriate for investment by the General Partner. When the Memorandum discusses terms relevant to investments in private partnerships, the reader should interpret such statements to also include direct investments in private and publicly-held companies. The Partnership will allocate at least 51% of capital commitments to interests in private partnerships through acquisitions in the secondary market.

ACP and its Affiliates (together as "**We**", "**Us**", "**Our**") include NYPPE, LLC ("**NYPPE**"), a private agent that transfers secondary interests in private partnerships and restricted securities in private and publicly-held companies, and OffRoad Capital **("OffRoad"),** the brand under which it provides investment banking services such as private capital raises and merger and acquisition advisory to companies and funds.

NYPPE, LLC has been engaged as the placement agent in connection with the formation of the Partnership and may use its Affiliates and selling group members to assist it in its placing activities. The Placement Agent is an affiliate of the General Partner. Reference in this Memorandum to NYPPE shall be deemed to include NYPPE, LLC and, where the context so permits, its Affiliates and selling group members that assist in its placing activities.

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ALLEN CAPITAL PARTNERS X, L.P.

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I. Executive Summary

OVERVIEW

Allen Capital Partners X, L.P., a Delaware limited partnership, is being formed primarily to acquire interests in established private equity partnerships through special situation transactions in the secondary market. The Partnership will provide investors an opportunity to achieve superior returns at lower levels of risk as compared to traditional investments in comparable private equity assets. The Partnership intends to create a diversified portfolio of private partnership interests and generate cash distributions to its partners within the first year of its final closing.

Since inception on April 1, 2004 through June 30, 2005, the Partnership has generated net cash distributions of approximately 17.3%[1], a net investment multiple of 1.33x[2], and a net IRR of 34.5%[3]. For the same period, the S&P 500 Index returned 6.95%[4]. For the period April 1, 2004 through March 31, 2005, buyout funds with a 2004 vintage that ranked in the top quartile, generated net cash distributions of approximately 0.00%, a net investment multiple of 0.92x, and a net IRR of –18.40%.[5]

Our core strategy is to originate proprietary and recurring secondary deal flow consisting of single interests of private equity partnerships and direct investments in private companies from general partners, private clients, and their respective advisors. A portion of our deal flow is expected to consist of special situations, which we define as including a) distressed sellers, such as limited partners with delinquent capital calls, b) out-of-favor structures, such as trusts or funds-of-funds, c) general partners requiring special services, such as a qualified matching service so that 10% of a fund may be transferred in a single year, versus the 2% standard, under IRS Regulation 1.7704 and, d) sellers requesting immediate firm bids, to quickly access liquidity or rebalance portfolios.

We believe we have significant competitive advantages for identifying and valuing such investment opportunities due to a) the experience of our principals in the secondary private equity market since 1998, b) our proprietary valuation analytics and historical secondary market price data and, c) our comprehensive menu of private transfer-related services which has resulted in established relationships with numerous general partners, limited partners, and advisors worldwide.

The General Partner believes there are abundant investment opportunities with valuation inefficiencies in our special situation sectors that remain underexploited by the traditional secondary private equity funds. Our experience is that sellers of single interests, particularly in special situations, typically do not understand how to value their private asset holdings and also lack access to secondary market price information.

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[1] Cash distributions is the estimated cumulative cash amount distributed to a representative $1,000,000 capital commitment by a limited partner since the Partnership's inception on April 1, 2004 through the period, as a percentage of that limited partner's contributed capital as of the beginning of the period.

[2] Net investment multiple is the estimated cumulative net increase (decrease) in total value for a representative $1,000,000 capital commitment by a Limited Partner since the Partnership's inception on April 1, 2004 through the period, as a percentage of that Limited Partner's contributed capital as of the beginning of the period, net of advisor and other expenses incurred.

[3] IRR is an estimated annualized internal rate of return of the change in total value for a representative $1,000,000 capital commitment by a Limited Partner since the Partnership's inception on April 1, 2004 through the period as a percentage of that Limited Partner's contributed capital as of the beginning of the period, net of advisor and other expenses incurred.

[4] Source: Bloomberg. S&P 500 Index return is the annualized total gross return assuming dividends reinvested in the index for the period.

[5] Source: Venture Economics.

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We believe, ACP and its Affiliates currently have a substantial opportunity to generate superior returns on a larger scale. Therefore, Allen Capital Partners X, L.P. is being formed, which is the first fund sponsored by ACP available to institutional investors.

BENEFITS

When compared to traditional investments in private equity funds, the Partnership's special situation approach provides significant benefits including:

Higher Returns

The Partnership has generated superior returns to date. Since inception on April 1, 2004 through June 30, 2005, the Partnership has generated net cash distributions of approximately 17.3%[1], a net investment multiple of 1.33x[2], and a net IRR of 34.5%[3]. For the same period, the S&P 500 Index returned 6.95%[4]. For the period April 1, 2004 through March 31, 2005, buyout funds with a 2004 vintage that ranked in the top quartile, generated net cash distributions of approximately 0.00%, a net investment multiple of 0.92x, and a net IRR of –18.40%.[5] In addition, the Partnership will generate incremental returns as a result of its fee sharing arrangement with NYPPE, an affiliate. (Note: The Partnership's future performance may differ from its past performance.)

Reduced Risk

The Partnership expects to reduce risk through i) its ability to make opportunistic secondary sales of portfolio holdings, ii) a lower average acquisition cost basis and, iii) shorter average holding periods to exit. Greater diversification is expected as a result of acquiring interests in funds-of-funds. The Partnership currently holds or has commitments to acquire interests in approximately 113 unique private partnerships, representing over 1,100 company-level investments. This represents a high level of portfolio diversification by geography, industry, stage of investment, manager and vintage year. Lower average acquisition costs (and a higher margin of safety) are expected as a result of providing a variety of private transfer-related services, which attracts special situation deal flow. Shorter average investment holding periods are expected as a result of acquiring interests in established private partnerships and companies.

Lower Correlation to the Public Equity Markets

The Partnership intends to have a lower correlation to the public equity markets as a result of its ability to make opportunistic secondary sales of portfolio holdings, to ensure or create exit events. For example, the Partnership has already assigned several commitments to acquire secondary interests to other secondary investors prior to settlement date, at marked-up prices. The Partnership refers to such transactions as Principal Activities**,** which generate incremental returns for being a willing liquidity provider to sellers requesting immediate firm bids.

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Rapid Deployment of Capital

The Partnership has an attractive pipeline of prospective acquisition opportunities. Since inception on April 1, 2004, the Partnership has called 40% of current capital commitments, of which, approximately 30% have been committed to investments. In general, depending on the dollar amount of capital commitments from new limited partners in the future, the Partnership expects to be fully invested within 3 years of its final closing.

Early Return Of Capital

The Partnership has generated net cash distributions of approximately 17.3%[1] since inception on April 1, 2004 through June 30, 2005. For the period April 1, 2004 through March 31, 2005, buyout funds with a 2004 vintage that have ranked in the top quartile, have generated 0.00% in cash distributions.[5] The Partnership expects to completely return contributed capital within 3 to 5 years of capital call dates.

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High Asset Quality

The Partnership holds or has commitments to acquire interests in numerous tier I and tier II private partnerships, which include: [6]

- ABRY Partners III, L.P. (1997)
- American Industrial Partners Capital Fund III, L.P. (1999)
- American Securities Partners II, L.P. (1998)
- APAX Europe V-A, L.P. (2001)
- APAX France V-A, L.P (1998)
- Apollo Investment Fund IV, L.P. (1998)
- Arch Venture IV, L.P. (1999)
- Atlantic Equity Partners III, L.P. (1999)
- Aurora Equity Partners II, L.P. (1998)
- Austin Ventures VIII, L.P. (2001)
- Bain Capital VIII Coinvestment Fund, L.P. (2004)
- Blackstone Capital Partners IV, L.P. (2001)
- Brentwood Associates Private Equity III, L.P. (1999)
- Brera Capital Partners Limited Partnership
- Bridgepoint Europe I B (1999)
- Broadview Capital Partners, L.P. (1999)
- Brockway Moran & Partners Fund, L.P. (1998)
- Bruckman, Rosser, Sherrill & Co. II, L.P. (1999)
- Bruckmann, Rosser, Sherrill & Co., L.P. (1995)
- Catterton Partners IV A, L.P. (1999)
- Charterhouse Equity Partners III, L.P.
- Chartwell Investments II, L.P. (1999)
- Clayton, Dubilier & Rice Fund VI, L.P. (1998)
- Columbia Capital Equity Partners II (QP), L.P.
- Cypress Merchant Banking Partners II, L.P. (1999)
- DLJ Merchant Banking Partners II, L.P. (1997)
- DLJ Merchant Banking Partners III, L.P. (2000)
- First Reserve Fund VIII, L.P. (1998)
- Francisco Partners, L.P. (2000)
- Genstar Capital Partners III, L.P. (2000)
- Great Hill Equity Partners, L.P. (1999)
- Green Equity Investors III, L.P. (1998)
- H.I.G. Capital Partners II, L.P. (1998)
- Hellman & Friedman Capital Partners IV, L.P. (1999)
- Heritage Fund III, L.P. (1999)
- Hicks, Muse, Tate & Furst Equity Fund III, L.P. (1996)
- Hicks, Muse, Tate & Furst Equity Fund IV, L.P. (1998)
- Hicks, Muse, Tate & Furst Latin America Fund, L.P. (1998)
- Interwest Partners VIII, L.P. (2000)
- J.W. Childs Equity Partners II, L.P. (1998)
- Kelso Investment Associates VI, L.P. (1998)
- Madison Dearborn Capital Partners III, L.P. (1999)
- Madison Dearborn Capital Partners IV, L.P. (2001)
- Marquette Venture Partners III, L.P. (1997)
- New Enterprise Associates 10, L.P. (2000)
- Newbridge Asia II, L.P. (1999)
- North Castle Partners II, L.P. (1999)
- Oak Hill Capital Partners, L.P. (1999)
- Oak Investment Partners IX, L.P. (1999)
- Oak Investment Partners VIII, L.P. (1998)
- Odyssey Investment Partners Fund, L.P. (1998)
- Olympus Real Estate Fund II, L.P. (1998)
- Providence Equity Partners III, L.P. (1998)
- Providence Equity Partners IV, L.P. (2000)
- Providence Equity Partners V, L.P. (2004)
- Provident CBO I, Ltd. (1998)
- Sapient Capital, L.P. (1999)
- Softbank Technology Ventures IV, L.P. (1997)
- Sprout Capital IX, L.P. (2000)
- TCV III (Q), L.P. (1999)
- TCV IV (Q), L.P. (1999)
- TH Lee Putnam Ventures, L.P. (2000)
- Thayer Equity Investors IV, L.P. (1998)
- The Resolute Fund, L.P. (2002)
- Thomas H. Lee Equity Fund III, L.P. (1995)
- Thomas H. Lee Equity Fund V, L.P. (2000)
- Trident II, L.P. (1999)
- Trident III, L.P. (2004)
- Trinity Ventures VI, L.P. (1998)
- Trinity Ventures VIII, L.P. (2000)
- Vestar Capital Partners IV, L.P. (1999)
- Viventures Capital Mutual Investment Fund (1999)
- VS & A Communications Partners III, L.P.
- Warburg Pincus International Partners, L.P. (2000)
- Warburg Pincus Private Equity VIII, L.P. (2001)
- Warburg Pincus Ventures International, L.P. (2004)
- Welsh, Carson, Anderson & Stowe VIII, L.P. (1998)
- Westbrook Real Estate Fund III, L.P. (1998)
- Willis Stein & Partners II, L.P. (1998)
- Willis Stein & Partners III, L.P. (2000)
- Windward Capital Partners II, L.P. (1998)
- Worldwide Technology Partners IV, L.P. (2000)

[6] We define a Tier I rated private fund as having maximum secondary market investment demand, while a Tier V rated private fund as having minimal secondary market investment demand.

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COMPETITIVE STRENGTHS

When compared to other private equity funds, the Partnership has several important competitive strengths, which include:

A Demonstrated Ability to Generate Superior Returns

The Partnership and the prior ACP Funds have generated superior returns. Since inception on April 1, 2004 through June 30, 2005, the Partnership has generated net cash distributions of approximately 17.3%[1], a net investment multiple of 1.33x[2], and a net IRR of 34.5%[3]. For the same period, the S&P 500 Index returned 6.95%[4]. For the period April 1, 2004 through March 31, 2005, buyout funds with a 2004 vintage that ranked in the top quartile, generated net cash distributions of approximately 0.00%, a net investment multiple of 0.92x, and a net IRR of –18.40%. Since the inception of Allen Capital Partners I, LLC on March 31, 2000, the prior ACP Funds have generated superior returns through June 30, 2003. (Please see Summary of Investment Performance.)

Stable Portfolio Management

The General Partner team includes 10 experienced professionals and support staff in the areas of origination, valuation analysis, portfolio management, accounting, finance, administration and compliance. The senior principals have worked together for over 9 years and include Laurence G. Allen, Managing Principal, and Dexter B. Blake III, Principal, having met and worked together in Mr. Allen's group at Bear Stearns and Co., Inc. Michael J. Portera, Principal, and MaryAnn Sapione, Vice President, have worked together with the senior principals for over 6 years. John J. DeMartino, CFO, George M. Regnery, Principal, Craig K. Blitz, Principal, and Craig C. White, Senior Vice President, have worked together with the senior principals for over 3 years.

Proprietary and Recurring Deal Flow

ACP and its Affiliates originate proprietary and recurring secondary deal flow by providing valuable private transfer-related services on an outsourced and subscription basis to general partners, private clients, and their respective financial, legal, and tax advisors. For example, NYPPE serves as an outsourced private transfer department to numerous general partners. As limited partners become delinquent on capital calls or request permission to sell their interests, the general partner introduces NYPPE as a private agent that understands the fund's transfer policies and maintains its non-public transfer documents, quarterly and annual reports. Further, NYPPE's transfer services are provided at no cost to the general partner, as NYPPE's transfer fee is expensed to either the transferor or transferee.

Our targeted deal flow consists of single interests of private equity partnerships and direct investments in private companies in commitment amounts of under $5 million ("**Odd-Lots**") and $5 million or greater ("**Block Trades**"). Historically, a portion of our deal flow consists of special situations, which we define as including a) distressed sellers, such as limited partners with delinquent capital calls, b) out-of-favor structures, such as trusts or funds-of-funds, c) general partners requiring special services, such as a qualified matching

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service so that 10% of a fund may be transferred in a single year versus the 2% standard under IRS Regulation 1.7704 and, d) sellers requesting immediate firm bids, to quickly access liquidity or rebalance portfolios.

High Barriers to Entry

Our experience is that once NYPPE serves as the private transfer agent for a general partner, it is likely that NYPPE will handle future interest transfers, thereby in effect serving as the outsourced private transfer department for the general partner. Typically, general partners are very sensitive about outside parties obtaining non-public information about their fund, including the fact there are selling limited partners. Therefore, there is little incentive for general partners to consider alternatives to NYPPE's private transfer services. To date, NYPPE has transferred two or more limited partner interests for over 220 venture, private equity, and buyout partnerships.

Proprietary Insights on Fair Values of Numerous Private Partnerships and Companies

Our experience is that sellers of single interests, particularly in special situations, typically do not understand how to value their private asset holdings and also lack access to secondary market price information. We have significant competitive advantages when valuing investment opportunities to generate superior returns, due to our proprietary valuation analytics, historical secondary market price data, and private market news search engine.

For a prospective investment, the General Partner can access proprietary resources to a) review historical secondary transaction prices, b) estimate secondary market fair values from our proprietary pricing algorithms, c) evaluate recent news about a fund or company through our private market news search engine technology and, d) estimate cash flows, net IRRs and investment multiples in various scenarios based on our analytic models.

Few Competitors in Our Sectors

The General Partner believes there are abundant opportunities to acquire secondary single interests with valuation inefficiencies in our special situation sectors that remain underexploited by the traditional secondary private equity funds. Our experience is that special situation opportunities are a subtle component of recurring deal flow, which is best attracted by providing a comprehensive menu of valuable liquidity and transfer-related services to general partners. We believe that our opportunities will grow significantly over time as both general partners and limited partners become aware of ACP and its Affiliates' services and willingness to provide immediate liquidity in single interests of private partnerships at confidential indicated prices.

In comparison, traditional secondary private equity funds typically seek to acquire private equity portfolios in order to deploy a significant amount of capital per investment. We believe, this typically results in assets being acquired through competitively bid auctions and inconsistent return performance.

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Partnership-Based Incentives Among ACP and its Affiliates

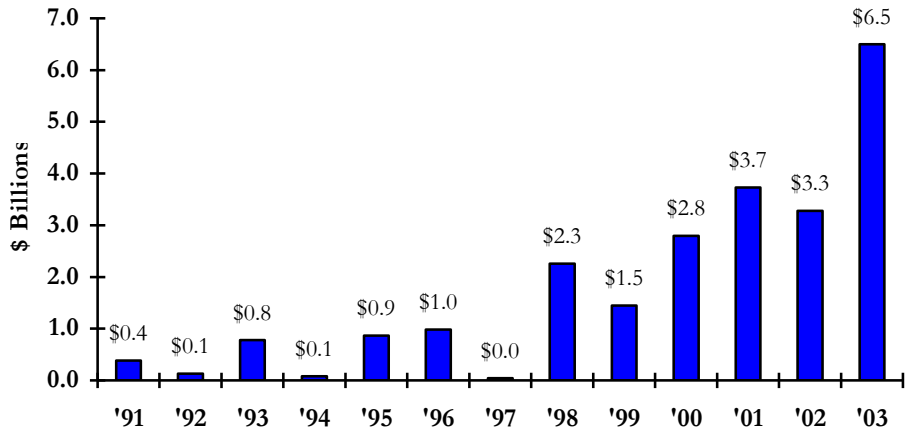
ACP and its Affiliates have created an incentive program focused on the performance of the Partnership. Our performance-based approach reflects our entrepreneurial, yet disciplined culture. A significant portion of each Principal's compensation is based on the success of the Partnership through an allocation of carried interest that vests only upon the complete return of capital contributed by the limited partners. In addition, ACP and its Affiliates have established a finder's incentive program to reward employees who source investments that are made by the Partnership. Employees who source an opportunity that results in an investment by the Partnership will be awarded up to 10% of the carried interest in that investment.

Summary

The Partnership has demonstrated that superior returns can be generated by acquiring interests in established private partnerships through special situation transactions in the secondary market as compared to traditional investments in comparable private equity assets. We believe that special situation secondary private equity is an attractive compliment to traditional private equity asset allocations and an important component of an institutional investor's alternative asset portfolio.

TABLE 1

Capital Raised for Secondary Private Equity Funds



Source: Venture Economics

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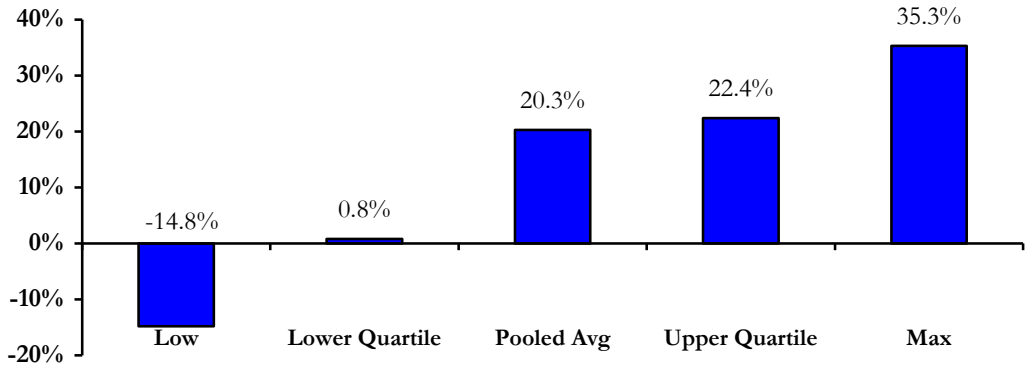
TABLE 2

Historical IRRs of Secondary Private Equity
December 31, 1992 to December 31, 2002



Source: Venture Economics. Returns are annualized and net of management fees, partnership expenses, and carried interest. Sample contains 6 secondary private equity funds and $2.2 billion in committed capital.

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II. SUMMARY OF INVESTMENT PERFORMANCE

Since 2000, ACP has sponsored three special situation private equity funds (e.g. ACP I, ACP IV, and ACP VI); (together referred to as the "**ACP Funds**"), one private exchange fund ("**ACP IX**"), and has structured or reserved five securitization facilities (the **"Securitization Facilities**") to meet certain objectives for specific clients. Each of the prior ACP Funds terminated on or before June 30, 2003. The Securitization Facilities and ACP IX, the private exchange fund, were not actively- managed by ACP. Since the inception of Allen Capital Partners I, LLC on March 31, 2000, the ACP Funds generated superior returns through June 30, 2003.

PERFORMANCE OF THE ACP FUNDS

Inception through June 30, 2003 [1] [2] [3]

Fund	Date Formed	Invested Capital	Net Distributions	Unrealized Value [3]	Total Value	Net Investment Multiple[6]	Net IRR[3]	Cambridge Venture Capital Index[5]
ACP I [7]	2000	$0.13	$0.57	n/a	$0.57	4.6x	58.4%	-11.2%
ACP IV [8]	2000	$1.30	$2.24	n/a	$2.24	1.7x	17.9%	-11.2%
ACP VI [9]	2000	$0.42	$0.47	n/a	$0.47	1.1x	106.4%	-39.1%

Footnotes:

1 Return performance is calculated from the date of each fund's closing to the earlier of the fund's termination date or June 30, 2003 Amounts are expressed in millions Past performance is not necessarily indicative of future results

2 ACP has participated in the formation of 5 securitization facilities to meet specific clients' private objectives, 3 private equity funds, and 1 private exchange fund

3 IRR represents a fund's effective compounded annual internal rate of return to investors net of management fees, partnership expenses, and carried interest based on the actual daily net cash flows and assuming liquidation of the remaining assets at their unrealized value as of the earlier of a fund's termination date or June 30, 2003 (the "End Date") The ACP Funds are not represented as venture capital funds or funds of funds, and therefore, their historical returns should not be evaluated versus the Cambridge Venture Capital Index

4 Source: Venture Economics IRR represents the aggregate pooled average effective compounded annual internal rate of return to investors, net of management fees, partnership expenses, and carried interest, based on the actual daily net cash flows and assuming liquidation of the remaining assets at their unrealized value as of the earlier of a fund's termination date or June 30, 2003 (the "End Date")

5 Source: Cambridge Associates The Cambridge Venture Capital Index is the average net internal rate of return compiled on venture capital funds representing more than three-fourths (75%) of venture capital dollars raised in the industry, for the comparable time period of a fund's performance Cambridge has tracked private equity and venture capital returns since 1981 The Cambridge Venture Capital Index is presented for informational purposes only

6 Net Investment Multiple represents the total net dollars returned on an investment and is calculated by dividing Total Value by Invested Capital

7 ACP I is a special situation secondary private equity fund formed to make a single special purpose investment

8 ACP IV is a special situation secondary private equity fund formed to make a single special purpose investment

9 ACP VI is a special situation secondary private equity fund formed to make a single special purpose investment

10 ACP IX is a private equity exchange fund focused on providing a facility for diversification and/or liquidity to sellers of direct investments in private companies ACP IX exchanged its interests for equivalently-valued direct investments in private companies with sellers

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III. SUMMARY OF PRINCIPAL TERMS

The following is a summary of certain information about Allen Capital Partners X, L.P. It is qualified in its entirety by reference to the current Amended and Restated Agreement of Limited Partnership of Allen Capital Partners X, L.P. and any amendments thereto (the "**Limited Partnership Agreement**") and the subscription agreements relating to the purchase of interests in the Partnership (the "**Subscription Agreements**"). Prior to making an independent decision whether to invest in the Partnership, prospective investors should carefully review the Limited Partnership Agreement. If the terms described in this Memorandum are inconsistent with or are contrary to the Limited Partnership Agreement, the Limited Partnership Agreement will control.

The Partnership	Allen Capital Partners X, L.P., a Delaware limited partnership (the "**Partnership**").
General Partner and Investment Advisor	The general partner of the Partnership will be Allen Partners X, L.L.C., a Delaware limited liability company (the "General Partner"). Allen Capital Partners, LLC, a registered investment adviser under the Investment Advisers Act of 1940 (the "Investment Advisor"), will be the Investment Advisor of the Partnership. The Investment Adviser, acting through the General Partner, will make all investment decisions for the Partnership. The Investment Adviser will be paid an Investment Advisor Fee (see below) for investment advisory services rendered to the Partnership. The Limited Partners and the General Partner of the Partnership are referred to collectively as **"Partners".**
Investment Objective	The Partnership's primary objective is to achieve superior returns at lower levels of risk as compared to traditional investments in comparable private equity assets.
Offering Size	The Partnership is seeking aggregate capital commitments from qualified investors (the "**Capital Commitments**") of two hundred fifty million dollars ($250,000,000) including the General Partner's Capital Commitment, but may accept total Capital Commitments of a greater or lesser amount.
Capital Commitment of the General Partner	One percent (1%) of the aggregate Capital Commitments of the Partners will be contributed by the General Partner on the same schedule as the Limited Partners' contributions.
Minimum Capital Commitment	The minimum Capital Commitment by a Limited Partner to the Partnership will be five million dollars (5,000,000), although the General Partner reserves the right to accept Capital Commitments of lesser amounts and, at its sole discretion, to reject any tendered subscription for interests in the Partnership.
Additional Limited Partners	Each Limited Partner admitted at any closing subsequent to the initial

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Closing Date will be required to contribute and pay to the Partnership at such subsequent closing an amount equal to the excess of (i) the sum of (A) such Limited Partner's pro rata share of all previously drawn Capital Commitments from existing Limited Partners admitted on prior Closing Dates plus (B) a fee (which shall be treated as income of the Partnership, and not as a Capital Commitment or Capital Contribution) equal to the amount of interest that would be charged on the amount contributed pursuant to clause (A) computed from the date such Capital Commitments were previously drawn to the date of such subsequent Closing Date at an annual rate equal to the prime rate over (ii) such Limited Partner's pro rata share of all Capital Commitments used to fund precluded investments (as described below). The fee described in clause (B) above will be credited to the capital accounts of the existing Limited Partners and subsequently distributed to the existing Limited Partners or used to offset future capital calls.

For those Limited Partners who are admitted subsequent to the initial Closing Date, the General Partner will preclude such Limited Partners from participating in specified investments made by the Partnership prior to their admittance if there has been a prior distribution with respect to such specified investments, and may preclude such Limited Partners from participating in other specified investments if the General Partner determines, in its sole discretion, that there has been a material increase in the value and liquidity potential of such specified investments such that permitting those newly admitted Limited Partners to participate in the such investments would be materially detrimental to the interests of the existing Limited Partners.

"**Closing Date**" shall mean any date established by the General Partner for admission to the Partnership of one or more Limited Partners (other than the Initial Limited Partner or a Substituted Limited Partner) or the increase of a Limited Partner's Capital Commitment. The Final Closing Date shall be no later than December 31, 2005 unless extended at the sole discretion of the General Partner.

Capital Calls

Capital Commitments will be drawn down pro-rata on an as-needed basis, as set forth in capital call notices from the General Partner (the "**Capital Call Notices**"), with a minimum of ten (10) business days prior notice to Partners. On the initial Closing Date, each Limited Partner will make an initial capital contribution ("**Capital Contribution**") to the Partnership of ten percent (10%) of such Limited Partner's total Capital Commitment. Liquid assets held by the Partnership pending investment ("**Temporary Investments**") will be invested in liquid securities as determined by the General Partner. All Capital Commitments and capital calls shall be denominated and remitted in U.S. Dollars.

For accepted Capital Commitments of two million five hundred thousand dollars ($2,500,000) or less from a Limited Partner, the Limited Partner may be required to establish (or maintain) a brokerage account custodied at a financial institution designated by the General Partner (the "**Brokerage Account**"), from which all of such Limited Partner's capital

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contributions will be transferred to the Partnership. Payment by a Limited Partner of the amount specified in any Capital Call Notice must be made by wiring federal funds not later than the date specified in the Capital Call Notice to such Limited Partner's Brokerage Account. Each Limited Partner hereby agrees to the withdrawal by the General Partner of funds from such Limited Partner's Brokerage Account in such amounts as are available and necessary to meet capital calls. Capital will not be considered contributed to the Partnership by a Partner until the later of (1) when actually received by the Partnership from such Partner and (2) the date specified in the Capital Call Notice.

Investment Period

The "**Investment Period**" will be the period beginning on the Initial Closing Date of April 1, 2004 and ending on the third anniversary of the Final Closing Date to be determined. The Final Closing Date shall occur no later than December 31, 2005. At the end of the Investment Period, the Limited Partner will be released from any further obligation with respect to its undrawn Capital Commitment, except to the extent necessary to i) pay ongoing Investment Advisor Fees and expenses of the Partnership, ii) complete investments by the Partnership in transactions that were in process as of the end of the Investment Period, iii) effect follow-on investments in existing portfolio companies ("**Portfolio Companies**"), iv) satisfy obligations to make Capital Commitments to portfolio funds ("**Portfolio Funds**") (together the Portfolio Companies and Portfolio Funds are referred to as "**Portfolio Investments**", **"Holdings",** or "**Investments")** and, v) satisfy obligations of the Partnership.

Term

The term of the Partnership will be ten years from the Final Closing Date, but may be extended for two consecutive one year periods at the discretion of the General Partner.

Distributions

Distributions from the Partnership may be made at any time as determined by the General Partner, subject to the General Partner's decision to cause the Partnership to reinvest such proceeds in its sole discretion. Although the General Partner intends to make distributions as soon as practicable after receipt, the Partnership shall not be obligated to make distributions on a quarterly or annual basis, following the disposition of an investment or at any other specific times prior to the dissolution and liquidation of the Partnership. The General Partner also intends to consider secondary sales of portfolio holdings for the purpose of creating exit events, redeploying capital, or increasing internal rates of return. Therefore, the General Partner may elect to reinvest proceeds from transactions, thereby delaying distributions to Limited Partners, for such periods of time as the General Partner may determine. The General Partner will be entitled to withhold from any distributions, in its discretion, appropriate reserves for expenses and liabilities of the Partnership, as well as for any required tax withholdings (the "**Distribution Formula**").

Sums available for distribution will be distributed by the Partnership in the following order of priority:

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(a) First, one hundred percent (100%) to all Partners of the Partnership, in proportion to their contributed capital until they have received cumulative distributions equal to the aggregate of the following:

i. such Partners' aggregate capital contributions as actually made to the Partnership; and
ii. a preferred return equal to an eight percent (8%) cumulative, non-compounded annual rate of return on such Partner's Unreturned Capital Contributions.

(b) Second, one hundred percent (100%) to the General Partner until the General Partner has received an amount equal to twenty percent (20%) of the cumulative distributions made to the Partners in paragraph (a)(ii) above and this paragraph (b); and

(c) Thereafter, eighty percent (80%) to all Partners in proportion to their contributed capital and twenty percent (20%) to the General Partner.

The General Partner shall receive its carried interest only upon the complete return of the aggregate Capital Commitments funded by the Limited Partners.

Clawbacks

In the event that after the final distribution made by the Partnership, the General Partner will have received carried interest distributions (the "**Carried Interest Distributions**") in an amount greater than twenty percent (20%) of the aggregate net profits of the Partnership over the life of the Partnership, then the General Partner shall immediately return to the Partnership for payment to the Limited Partners an amount equal to the amount by which the Carried Interest Distributions received by the General Partner exceed twenty percent (20%) of the aggregate net profits of the Partnership over the life of the Partnership; provided, however, that the amount which must be returned by the General Partner to the Partnership shall not exceed the Carried Interest Distributions received by the General Partner after deducting from such amount the actual income tax liability of the members of the General Partner with respect to the income associated with such distributions.

In the event a Portfolio Fund calls back a distribution or a distribution is required to be returned for any reason, the Partnership shall have the right to call back an equivalently valued distribution from the Limited Partners.

Allocation of Profits and Losses

Net Profits or losses of the Partnership generally will be allocated among the Partners in a manner consistent with the distribution of proceeds described above.

Investment Advisor Fee

The Partnership will contract with the Investment Advisor to provide investment advisory services to the Partnership. In consideration for the

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investment adviser services rendered, for each 12-month period from and after the initial Closing Date (each an "**Investment Advisor Fee Year**"), the Partnership shall pay to the Investment Adviser an annual investment advisor fee (the "**Investment Advisor Fee**") payable semi-annually in advance, calculated as follows:

(i) For each Investment Advisor Fee Year commencing prior to the expiration of the Investment Period, two percent (2%) of the aggregate Capital Commitments of the Partners;

(ii) For each Investment Advisor Fee Year commencing after the expiration of the Investment Period, the Investment Advisor Fee will be reduced to two percent (2%) of the Net Invested Capital of the Partners measured as of the end of the immediately preceding semi-annual period.

The Investment Advisor Fee will be paid by the Partnership and will not constitute an obligation of any Limited Partner above its capital commitment.

"**Net Invested Capital**" means the investment cost of all Investments less (a) cumulative distributions and (b) investments written down to zero.

Certain Activities of ACP and its Affiliates

The General Partner, when acting in its capacity as general partner of the Partnership, is hereby authorized, on behalf of the Partnership, to purchase property or obtain services from, to sell property or provide services to, or otherwise to deal with the General Partner, any Affiliate of the General Partner, any Limited Partner, any Private Fund, any Portfolio Company or any Related Person (whether before or after or in connection with the making of the applicable Investment), or any Affiliate of any of the foregoing Persons. In connection with any services performed by any Affiliate of the General Partner for the Partnership, such Affiliate shall be entitled to be compensated by the Partnership for such services, and the General Partner in its sole discretion shall determine the amount of such compensation. Each Limited Partner acknowledges and agrees that the purchase or sale of property, the performance of such services, other dealings, or the receipt of such compensation may give rise to a variety of conflicts of interest including but not limited to between the Partnership and the Limited Partners, on the one hand, and the General Partner or such Affiliate, on the other hand. ACP and its Affiliates may act as a lender, principal, or investor in the Portfolio Investments and may acquire, hold, sell, issue, or dispose of securities issued by or to the Portfolio Investments or the Partnership including securitizations, in principal or agency transactions. Such loans or securities may be *pari passu*, senior or junior in ranking to the Partnership's investment.

All fees described above and paid by Portfolio Investments or by the Partnership (excluding the Investment Advisor Fee) to ACP or its Affiliates will first be used to offset the expenses associated with such

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services as solely determined by the General Partner. Thereafter, fifty-percent (50%) of any remaining net profit in excess of such associated expenses will, at the election of the General Partner, be either (i) contributed to the Partnership as an additional Capital Commitment, notwithstanding the fact that such contribution may occur after the Final Closing Date, (ii) paid as compensation to the Partnership, or (iii) used to offset future Investment Advisor Fees otherwise payable by the Partnership.

Operating Expenses

The General Partner will be responsible for all of their normal overhead expenses, including wages, salaries, rent, utilities, bookkeeping, and other such expenses (the "**Operating Expenses**").

Partnership Expenses

The Partnership will make a lump sum payment of up to a maximum of $250,000 for legal and other offering, organization, and start-up expenses, including, without limitation, placement compensation fees and out-of-pocket expenses incurred in connection with the formation of the Partnership and any parallel funds (the "**Partnership Organizational Expenses**"). In addition, the Partnership will be responsible for all expenses of the Partnership which are not reimbursed by the Portfolio Investments, including, legal, audit, consulting, financing, accounting fees, and other expenses associated with the Partnership's financial statements, tax returns, and K-1s, out-of-pocket expenses of transactions not consummated; other expenses associated with the acquisition, investment, holding, and disposition of the Partnership's investments such as litigation, if any; expenses of Partner's meetings; expenses in connection with liability and other insurance premiums; and any taxes, fees, or other governmental charges levied against the Partnership. For accepted Commitments of two million five hundred thousand dollars (**$2,500,000**) or less from a Limited Partner, there will be an additional one-time administrative fee of two percent (2%) applied at the first closing of the Limited Partner (the "**Administrative Fee**"). For accepted Commitments of greater than two million five hundred thousand dollars (**$2,500,000**) from a Limited Partner, there will be an additional one-time administrative fee of one percent (1%) applied at the first closing of the Limited Partner. (together, the fees stated in this section shall be known as "**Partnership Expenses**").

Eligible Investments

The Partnership will primarily acquire interests in established private equity partnerships through special situation transactions in the secondary market. Eligible investments include U.S. and non-U.S. a) private partnerships such as venture, private equity, buyout, real estate, energy, commodities, commodities, currencies, hedge funds, structures that seek to replicate such interests or portfolios thereof such as private swaps, and other types of partnership-like structures including but not limited to limited liability companies, business development companies, and trusts as deemed appropriate for investment by the General Partner and b) direct investments in restricted and unrestricted securities of private and publicly-held companies and government agencies such as common, preferred, convertibles, debt, warrants, structures that seek to replicate

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	such securities or portfolios thereof such as private swaps, and other types of securities deemed appropriate for investment by the General Partner. The Partnership may make investments in the primary or secondary markets. However, the Partnership will allocate at least 51% of capital commitments to interests in private partnerships through acquisitions in the secondary market.
Co-Investment Policy	The General Partner may, but will be under no obligation to, provide co-investment opportunities to Limited Partners.
Possible Pre-Closing Investments	The General Partner may, prior to any closing, enter into agreements or letter of intent with respect to or make one or more investments of the Partnership. Such investments may be described in supplements to this Memorandum.
Ability to Borrow; Ability to Guarantee Obligations	The General Partner may, on behalf of the Partnership, borrow without limitation and guarantee such obligations with the holdings of the Partnership.
Alternative Investment Vehicles	If the General Partner determines that for legal, tax, regulatory, securitization, or reasons it is desirable for all or one or more of the Limited Partners to participate in a Portfolio Investment through an alternative investment vehicle, the General Partner shall be permitted to structure the making of all or any portion of such investment outside the Partnership through a separate entity that will substantially invest with or in lieu of the Partnership. In addition, the General Partner may structure Portfolio Investments through newly formed entities for a variety of reasons including but not limited to legal, tax, regulatory, securitization, different terms for certain investors, or other reasons (together as "**Alternative Investment Vehicles**").
Parallel Funds	In order to facilitate investments by foreign and certain other investors, the General Partner may establish one or more entities, each of which are included in the term Partnership (each a "**Parallel Fund**"), the structures and terms of which may differ from that of the Partnership, but which will invest proportionately with the Partnership on a parallel basis to the extent practicable. The General Partner may establish one or more Parallel Funds for certain parties, including its members, employees, consultants, service providers, key industry executives, members of the Advisory Committee, family members of the General Partner, and investors with total commitment amounts less than the required minimum commitment amount or for other reasons including joint ventures which may have different economic terms from the Partnership such as ownership, fees and carried interest distributions.
Portfolio Valuations	Marketable securities that are acquired or received as distributions by the Partnership from Investments will be valued as established on the principal securities exchange of the security. If such securities are not primarily traded on a securities exchange, then the valuation assigned shall be the market value as shown by the National Association of Securities Dealers Automated Quotation system or comparable over-the- counter

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system.

Securities that are not marketable securities will be valued as follows: non-freely tradable securities acquired or received as distributions from an Underlying Fund or an Underlying Company will initially be given the value as stated by the Underlying Fund or as established by the Underlying Company, with subsequent adjustments to values that reflect selected comparable investments, third party transactions in the private market, or third party appraisals.

All other non-freely tradable securities will be valued initially at cost, with subsequent adjustments to values that reflect selected comparable investments, third party transactions in the private market, or third party appraisals.

Advisory Committee

The General Partner will establish an Advisory Committee comprised of designees of the Limited Partners. The Advisory Committee will provide such advice as is requested by the General Partner in connection with investment strategy, potential conflicts of interest, portfolio valuation and other Partnership matters. The General Partner will retain sole authority for all decisions relating to the operating and management of the Partnership, including investment decisions.

Powers and Duties of the General Partner

The General Partner will have the sole and exclusive right to manage, control, and conduct the business of the Partnership.

The General Partner will cause each of its Principals, employees, and contractors for so long as such person remains with the General Partner, to devote so much of his time to the conduct of the affairs of the Partnership, Parallel Funds, Alternative Investment Vehicles, Successor Partnerships, the General Partner, and ACP and its Affiliates as is appropriate in the judgment of the General Partner to manage effectively. Each such person has existing commitments to other entities and those commitments will continue during the term of the Partnership, plus additional commitments may be added during the term of the Partnership.

Reports to Limited Partners

In general, Limited Partners will receive annual reports containing audited financial statements of the Partnership, and a summary of activities for the year; and quarterly reports containing un-audited financial statements of the Partnership, and a summary of activities for the prior quarter. The audit of the 2004 partial fiscal year shall take place at the same time as the audit of the 2005 fiscal year.

Limited Partner Meetings

The Partnership will seek to hold annual meetings, providing Limited Partners the opportunity to review and discuss the investment activities of the Partnership.

Excuse, Exclusion from Funding

Each Limited Partner will be obligated to fund each capital call; and no exception will be permitted for any reason, including non-compliance with local laws or regulations.

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Default

Each Limited Partner agrees that the timely payment of its obligations when due is of the essence.

If any Limited Partner fails to make all or any portion of any capital contribution on the due date required to be made by such Limited Partner as set forth in a capital call notice, and such failure continues for five (5) business days (a "**Default**") then such Limited Partner may be designated by the General Partner as in default (a "**Defaulting Partner**"). A variety of remedies as described in the Limited Partnership Agreement may then be exercised at the sole discretion of the General Partner.

Transfers and Withdrawals

A Limited Partner may not solicit prospective buyers, including other Limited Partners; offer for sale, sell, assign, or transfer all or any part of any interest in the Partnership without the prior written consent of the General Partner, which consent may be granted or withheld by the General Partner in its sole discretion. A Limited Partner may not withdraw from the Partnership.

Indemnification

The Partnership will indemnify the General Partner, the Investment Adviser and its Affiliates and their respective officers, directors, agents, stockholders, members, employees, consultants, and any other persons and entities that serve at the request of the General Partner or the Investment Adviser on behalf of the Partnership including members of the Advisory Committee (together, as the "**Indemnified Persons**") for any loss, damage, liability or expense, whether actual or threatened, incurred by such Indemnified Person or to which such Indemnified Person may be subject by reason of its activities on behalf of the Partnership or in furtherance of the interest of the Partnership or otherwise arising out of or in connection with the Partnership and its Portfolio Investments and investments not consummated, except that this indemnity will not apply to (i) losses arising from any Indemnified Person's willful malfeasance, as concluded by a court of law, or (ii) economic losses incurred by any Indemnified Person as a result of such Indemnified Person's ownership of an interest in the Partnership or in Portfolio funds or Portfolio Companies. In addition, the Partnership may pay the expenses incurred by any Indemnified Person in defending a civil or criminal action in advance of the final disposition of such action, provided such defendant undertakes to repay such expenses over time if he is adjudicated not to be entitled to indemnification. Limited Partners will not be obligated in respect of such indemnification beyond their respective Commitments. (iii) (b) the conduct did not, as determined by a final, non-appealable order of a court of competent jurisdiction, (i) in the case of any member of the Advisory Committee, willful malfeasance, and (ii) in the case of any other Indemnified Person, constitute willful malfeasance of the Indemnified Person's material obligations or duties under this Agreement. The termination of a Proceeding will not create a presumption that any Indemnified Person acted improperly. In addition, the Partnership may pay the expenses incurred by any Indemnified Person in defending a civil or criminal action in advance of the final disposition of such action, provided such defendant undertakes to repay such expenses over time if he is adjudicated not to be entitled to indemnification. Limited

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Partners will not be obligated in respect of such indemnification beyond their respective Commitments.

The General Partner is a Delaware limited liability company, and as such, its obligations to the Partnership, whether arising from contract or otherwise, will be solely its responsibility. No member of the General Partner, including without limitation any member, will be obligated personally for any obligation of the General Partner solely by reason of being, or acting as, such a member, and each member will disclaim any fiduciary or other similar obligation to the Partnership or any Limited Partner thereof. The Limited Partnership Agreement will contain exculpatory provisions in favor of the members of the General Partner, and their Affiliates, consistent with the above indemnification provisions and these provisions.

The General Partner, Investment Adviser, and Partnership shall rely upon current interpretations by the Securities and Exchange Commission and the Courts of Section 4(2) of the Securities Act of 1933, as amended, rule 144a, Rule 144, Regulation D, and IRS Code 1.7704 and other regulations (the "**Applicable Regulations**") to conduct its business. Should such interpretations change at any time regarding the Applicable Regulations, the Limited Partners in the Partnership hereby agree to assume such risk and hold harmless the Indemnified Person for any real or potential damages.

If a secondary transfer is permitted by the General Partner for a Limited Partner's interest in the Partnership, the General Partner shall exercise reasonable efforts to have the transfer meet the requirements of a safe-harbor of IRS code 1.7704; however, shall not be required to obtain a legal opinion stating that the transfer met the requirements of IRS code 1.7704. Furthermore, it shall be the sole responsibility of each selling Limited Partner to learn of and meet any and all securities regulations for offering for private sale their interest including without limitation any registration required by state securities or banking authorities to conduct a private placement offering. Selling Limited Partners are strongly encouraged to retain their own legal counsel regarding their transfers. The Limited Partners in the Partnership hereby agree to assume the tax, regulatory, and any other risks associated with secondary transfers of interests in the Partnership and to hold harmless the Indemnified Persons for any real or potential damages regarding any prospective or actual transfers of interests in the Partnership.

Conflicts of Interest; Other Activities

None of the General Partner, the Investment Advisor or any of their respective affiliates shall have any obligation to offer to the Partnership any particular investment opportunity. The General Partner will cause each of its principals, employees, and contractors for so long as such person remains with the General Partner, to devote so much of his time to the conduct of the affairs of the Partnership as is appropriate in the judgment of the General Partner to manage effectively. Each such person has existing commitments to other entities, which will continue during the term of the Partnership, plus additional commitments may be added

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	during the term of the Partnership. Each Limited Partner hereby acknowledges and agrees to such other commitments.
Tax Considerations	The Partnership will receive advice from legal counsel to the effect that, under the existing provisions of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the regulations promulgated thereunder, the Partnership will be treated as a partnership, and not an association taxable as a corporation, for federal income tax purposes. Each prospective investor should carefully review the tax matters discussed under Certain Investment Considerations and is advised to consult its own tax adviser as to the tax consequences of an investment in the Partnership.
ERISA Investors	The General Partner will use reasonable efforts to conduct the affairs and operations of the Partnership so that the assets of the Partnership will not be considered "**plan assets**" under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"). Investors subject to ERISA should carefully review the ERISA matters discussed under Certain Investment Considerations and should consult with their own ERISA advisers as to the consequences of making an investment in the Partnership.
Tax-Exempt Limited Partners: UBTI	With respect to the activities of the Partnership and the subject matter generally, see sections entitled Certain Investment Considerations; United States Federal Income Tax Matters; United States Tax-Exempt Limited Partners below.
Foreign Investors	Each prospective foreign investor should carefully review the discussion of certain tax considerations for non-U.S. Limited Partners set out in Certain Investment Considerations and should consult its own tax and other advisers in determining the possible tax, exchange control or other consequences to it under the laws of the jurisdictions of which it is a citizen, resident or domiciliary, in which it conducts business or in which it otherwise may be subject to tax, on the purchase and ownership of interests in the Partnership.
Counsel for the General Partner	Perkins Coie, LLP
Independent Accountants	Halpern & Associates, LLP

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IV. THE INVESTMENT OPPORTUNITY

OVERVIEW

The secondary private equity market has grown rapidly and is evolving as an asset class. This is the result of changing economic conditions, shifts in investor strategies, and expansive capital inflows.

The General Partner believes that certain structural shifts are currently occurring in private equity asset class that are creating new investment opportunities such as special situations in single interests. These structural developments should provide the Partnership with numerous opportunities to generate superior returns, and include the following themes:

Significant Growth Expected for the Secondary Market in Alternative Assets

The size of the alternative asset class is substantial and has a current market value of approximately $3.3 trillion[7]. This ranks as among the largest equity sectors worldwide and the only such equity class without market quotes, standard transaction and settlement procedures, and reliable access to liquidity. (Please see Table 3) In 2004, secondary transactions in private equity partnership interests and direct investments in private companies increased approximately 87% to $7.5 billion from $4.0 billion in 2004. However, this represented asset turnover of less than ½ of 1% (e.g. $7.5 billion divided by $3.3 trillion or 0.2%) as compared to asset turnover rates of approximately 75% for the NYSE and 115% for the NASDAQ in 2004[8].

The General Partner estimates that asset turnover for alternative assets will reach 2.5% annually in the coming years, which equates to secondary transaction dollar volume of approximately $82 billion per year (2.5% x $3.3 trillion) or a growth rate of over 10x as compared to the $7.5 billion in secondary transactions for 2004.

[7] Source: World Federation of Exchanges. April 30, 2004.
[8] Source. SIA

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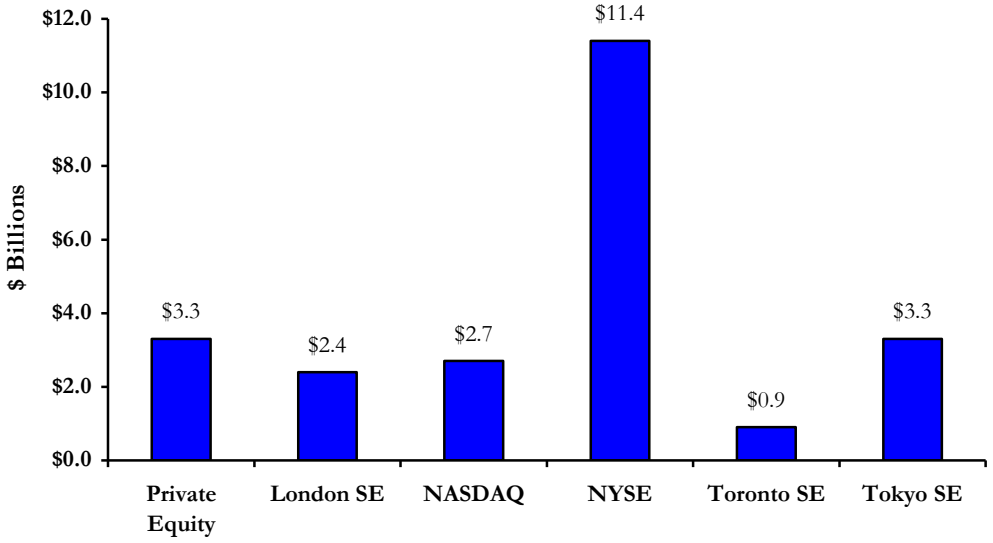
TABLE 3

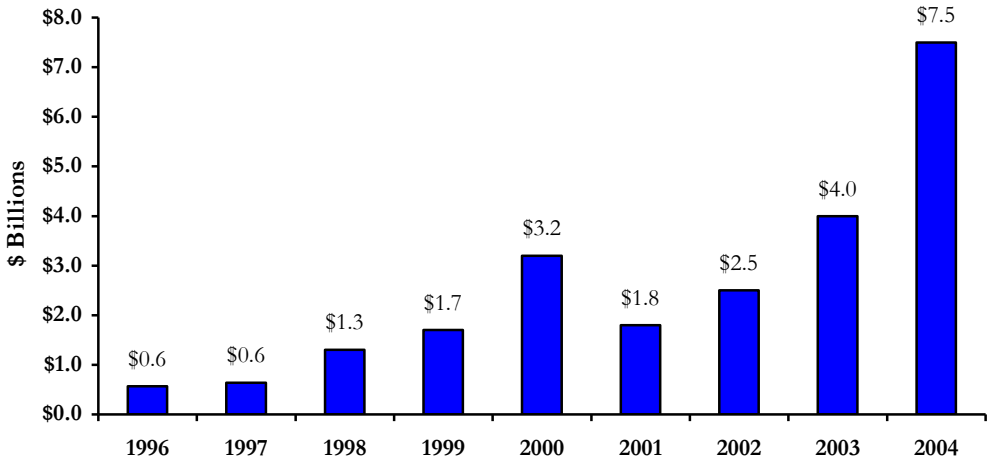
Equity Markets Worldwide



Source: World Federation of Exchanges April 30, 2004. Private Equity is defined as outstanding private partnerships in buyout, private equity, venture, energy, commodities, currencies, real estate and hedge funds worldwide, plus the estimated market value of the 500 largest private companies in the U.S.

TABLE 4

Secondary Market Private Equity Transaction Volume



Source: NYPPE, LLC

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Weak IPO Market Causing GPs to Seek Exits Through the Secondary Market

Venture-backed IPO volume declined to approximately $714 million in the second quarter of 2005, as compared to $2.07 billion in the second quarter of 2004, which followed the weak venture-backed IPO market for the first quarter of 2005 of approximately $720 million, as compared to $2.7 billion in the first quarter of 2004. Increasingly, general partners are seeking to create exit events by selling into the secondary market.

Over-Supply of Venture-Backed Private Companies to Seek Exits Through the Secondary Market

The General Partner estimates there are over 2,200 profitable, venture-backed private companies that were started-up during the 1998 to 2002 period that are unlikely to achieve traditional IPO or merger and acquisition exit events in the coming years due to capacity constraints in the capital markets. Holders of minority stakes in such companies are increasingly seeking liquidity from the secondary market.

LPs Seeking Immediate Access to Liquidity and the Ability to Rebalance Portfolios

The secondary private equity market is evolving as evidenced by declining discounts to net asset values and the increasing willingness of investors to shed underperforming private partnerships and direct investments in private companies as a result of co-investment programs.

An increasing volume of sellers of single interests seek immediate firm bids at indicated prices, whether to access liquidty or to rebalance portfolios. The General Partner believes there is an abundance of such opportunities with valuation inefficiencies for the Partnership, which remain underexploited by traditional secondary private equity funds. Many sellers of single interests in private partnerships do not understand how to value their holdings and lack historical secondary market price information.

Further, an increasing volume of requests to sell and secondary transaction volume by limited partners is creating burdens on the resources of funds, who increasingly seek to outsource investor relations for departing limited partners and the private transfer function and administration to firms such as NYPPE.

Secondary Offerings Increase from Hedge Funds

Hedge funds increasingly are investing in alternative assets, to generate superior returns, and simultaneously, are extending their investor's lockup periods to two years or more, to minimize registration requirements with the SEC. This is causing increased tension between hedge funds and their investors that periodically seek liquidity. As a result, we are seeing more secondary offerings of direct investments by hedge funds and of interests in hedge funds.

Increasing Motivations to Sell Private Equity

In a maturing private equity asset class, the secondary market is increasingly viewed as a tool for private equity portfolio managers. As motivations to sell increase, the volume of secondary investment opportunities is also expected to increase.

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Traditionally, the primary motivations to sell were due to the need for liquidity or to conserve cash by avoiding further capital calls. However, in recent years, there are a variety of motivations to sell private equity such as a) to rebalance portfolios, due to changes or opportunities in other markets (e.g. reduce allocations to venture and increase allocations to energy), b) to eliminate underperforming private partnerships, as holding top quartile performing funds are key to generating superior returns, c) to reduce portfolio monitoring time requirements, by consolidating the number of funds and eliminating older private partnerships with low remaining capital account balances (e.g. "tag ends"); d) to reduce volatility risk to earnings, due to mark to market accounting for changes in the fair values of private assets, e) changes in capital allocation priorities, by management, f) the effects of mergers and acquisitions, to downsize portfolio management staffs and to sell non-core assets, and f) regulatory changes such as increased risk-based capital requirements and FIN 46, which have caused banks and insurance companies to reduce private equity asset holdings.

Asset Allocations Increasing to Secondary Private Equity Investment Styles

In recent years, capital committed to secondary private equity funds has increased significantly as institutions have recognized that secondary private equity is a distinct investment style with a different risk-return profile, namely superior returns with less risk, than traditional investments in comparable private equity interests. The General Partner believes that as capital available for investment increases for secondary offerings, investor confidence to sell at a fair price also increases, and therefore, additional secondary opportunities and transaction volumes will occur. (Please see Table 5)

According to Columbia Strategy, "while secondaries are clearly an attractive playing field in a weak economy, we believe that they will continue to offer above average returns across economic cycles longer term, as the market matures. Many investors believe that this is an unprecedented period to be involved in secondaries as demonstrated by the vast amount of capital raised recently by secondary funds. Secondaries offer a better risk-management profile without sacrificing upside. The rationale is that investments have had time to season. Primary investors invest for a 10 year horizon, but secondary funds are able to skip the first 5 years (the highest risk period) and get to the distribution phase of the cycle much more quickly."[9]

Private Equity Continues to Outperform and Attract Capital

The volume of investment opportunities in the secondary market are in part, a function of the volume of capital committed to private equity and its relative performance. Private equity has outperformed the S&P 500 over the prior 20-year, 10-year, and 5-year periods ending December 31, 2004. For the 10-year period ending December 31, 2004, the Cambridge Venture Capital Index generated a net IRR of 26.0% and the Cambridge Private Equity Index generated a net IRR of 12.7% as compared to 10.2% for the S&P 500 Index.

Private equity returns over the last 10 to 20 years have resulted in substantially broader acceptance of private equity as a core portfolio holding among institutional and individual investors. This underscores one the reasons why institutions and individuals invest in private equity: superior returns.

As a result, 2004 was the most active year for capital commitments to venture capital since 2001 according to Thomson Venture Economics and the National Venture Capital Association. In 2004, 170 funds raised approximately $17.6 billion or $3.4 billion more than the previous two years combined. Buyout and mezzanine funds attracted $45.8 billion for 170 funds, the highest level of private equity commitments since 2000.[5]

[9] Source: Columbia Strategy, LLC. 2nd Quarter 2003 Report

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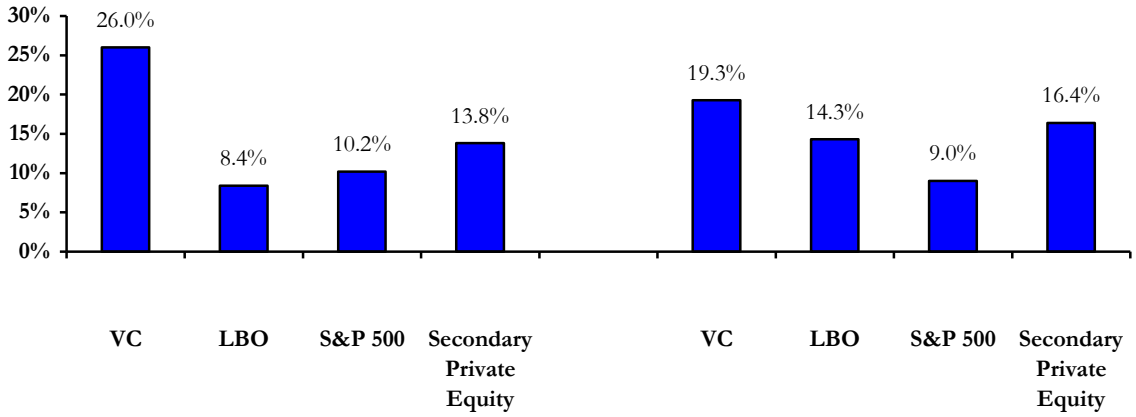
Private equity has also performed well recently. For the 12 month period ended December 31, 2004, the Cambridge Venture Capital Index generated a net IRR of 19.3% and the Cambridge Private Equity Index generated a net IRR of 14.3% as compared to 9.0% for the S&P 500 Index. For the comparable period, the General Partner estimates that secondary private equity generated a net IRR of approximately 16.4%.

Summary

We believe there is currently a substantial opportunity to achieve superior returns by acquiring single interests in established private partnerships through special situation transactions in the secondary market. Based on these circumstances, ACP believes this is an opportune time to form Allen Capital Partners X, L.P.

TABLE 5
Relative Returns of Private Equity



Source: Cambridge Associates. Allen Capital Partners for returns of Secondary Private Equity. Returns are annualized and net of management fees, partnership expenses, and carried interest.

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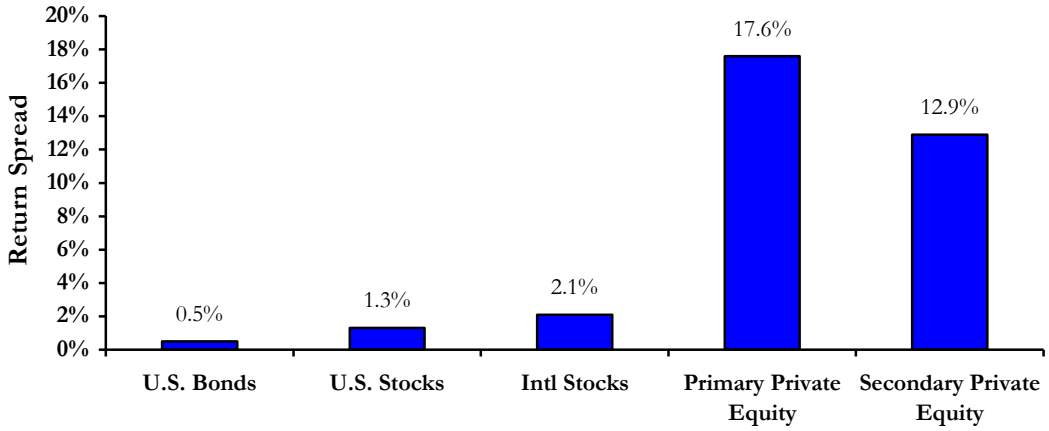
TABLE 6

Average Spread Between Top Quartile and Median Performing Funds of Various Asset Classes



Source: Wilshire Associates and Venture Economics for 10-year period 1992 to 2002. Return spreads are annualized and net of management fees, partnership expenses, and carried interest.

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V. ALLEN CAPITAL PARTNERS X, L.P.

Background

Allen Capital Partners X, L.P. is being formed primarily to acquire interests in established private equity partnerships through special situation transactions in the secondary market. Accordingly, the Partnership's strategy is based on the premise that an investor with proprietary and recurring deal flow of single interests in private partnership and private companies, proprietary valuation models and historical secondary market price data, professionals experienced in the secondary market with established relationships, and that provides a comprehensive menu of liquidity-related services to general partners and limited partners will have significant competitive advantages to generate special situation transaction opportunities, make attractive acquisitions and create superior returns.

The Partnership will provide investors an opportunity to achieve superior returns at lower levels of risk as compared to traditional investments in comparable private equity assets. The Partnership will create a diversified portfolio of private partnership interests and generate cash distributions to its partners within the first year of its final closing.

An experienced team of private equity professionals will lead the Partnership. The Principals have experience in originating and creating liquidity solutions for general partners, private clients, and institutions with special situations. Since 2000, the Principals have made private equity investments in special situations and have generated superior returns. The Principals intend to employ, and expand upon, the same investment strategies that they have successfully implemented in the past to identify, evaluate, and structure investments.

Business Principles

ACP is committed to closely aligning the incentives of the General Partner with those of the Limited Partners, which will result in superior returns to the Limited Partners. First, a preferred return will be paid to the Limited Partners. Second, the General Partner will only receive a carried interest after i) a period of time of continuous employment to achieve vesting and ii) the Limited Partners have received back their contributed capital. Third, the General Partner will make an investment in the Partnership in an amount equal to one percent (1%) of the capital committed by the Limited Partners.

The General Partner's business principles emphasize the following points:

- **Our investor's interests always come first.** Our long-term success will follow the success of our investors.
- **Be the best-of-breed portfolio manager** for acquiring single interests in established private partnerships from general partner introductions to limited partners and from private clients, through special situation transactions in the secondary market.
- **Generate superior returns with lower levels of risk** for comparable private equity assets.

Investment Strategy

The Partnership's core investment strategy is as follows:

- **Achieve a low cost basis** by focusing on single interests in special situation transactions

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- **Originate proprietary and recurring deal flow** from general partners, private clients, and their respective financial, legal, and tax advisors by providing them with valuable transfer-related services
- **Maintain proprietary insights** on fair values of numerous private partnerships and companies through our established relationships, analytics, secondary market price data, and private market news search engine
- **Reduce risk and enhance returns** through opportunistic secondary sales of portfolio holdings, maintaining high quality assets, principal activities, and fee sharing arrangements

Investment Process

Each potential investment opportunity is assigned to a Principal of the Investment Committee. The Principal may also coordinate with and obtain information from professionals at the General Partner, Affiliates or outside professionals such as investment advisers, pension consultants, attorneys, and accountants. The General Partner will not actively participate in the day-to-day operations of a Portfolio Investment. However, one or more Principals will be accountable for each Portfolio Investment. The General Partner will continue to offer the resources and relations of ACP and its Affiliates to assist each Portfolio Investment to attain its strategic plan.

Deal Flow

ACP and its Affiliates generate proprietary and recurring deal flow in single interests of established private partnerships and private companies by providing special services to general partners, private clients, and their respective financial, legal, and tax advisors. Although we utilize a variety of methods to source deals, our primary approach is to provide a comprehensive menu of transfer-related services to general partners and financial advisors to private clients.

Due Diligence

For prospective investments, the General Partner's due diligence typically includes, a) a review of the fund or company's most recent quarterly and annual reports, financial statements, partnership or operating agreement, and the original private placement memorandum, as they are available, b) a discussion with the general partner, company or industry participants about the prospects of the fund or company, c) a review of historical secondary transaction prices and/or the secondary market fair value transfer price from our proprietary pricing algorithms d) estimate cash flows, net IRRs and investment multiples in various scenarios and, e) evaluate recent news about the fund or company through our private market news search engine technology.

Negotiation and Closing

In general, the General Partner privately negotiates price and terms with Sellers through signed buy and sell order tickets entered through NYPPE. Upon achieving a price match, each party reviews and executes transfer documents. Settlement typically occurs in two to four weeks, through a modified escrow account process held at a commercial bank. The modified escrow account facilitates a simultaneous transfer and settlement of funds and documents, and reduces the risk of a failed settlement and litigation.

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Post-Acquisition

Portfolio management requires significant effort, consistency, and expertise. For the portfolio's holdings typically, the General Partner will a) collect and review quarterly reports, b) independently calculate net IRRs and investment multiples of Investments and compare to budgeted amounts, c) consider secondary sale opportunities, d) review future funding requirements, e) monitor news, e) prepare reports to the Limited Partners, f) manage Temporary Investments, and g) manage cash and securities distributions received by the Partnership. The General Partner will typically seek to attend the annual meetings and maintain an ongoing dialogue with each Investment.

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VI. MANAGEMENT OF THE PARTNERSHIP

OVERVIEW

The General Partner of the Partnership will be Allen Partners X, LLC, the Managing Member of which is Allen Capital Partners, LLC ("**ACP**"), a registered investment adviser. The Partnership will contract with Allen Capital Partners, LLC, the Investment Adviser, to provide investment advisory services to the Partnership. ACP is headquartered in Greenwich, Connecticut.

The ACP team includes 10 experienced professionals and support staff in the areas of investment origination, analysis, portfolio management, accounting, administration, operations, and technology systems. The firm has developed proprietary valuation models, report-generating software, transaction documents, and historical secondary market price databases that provide a competitive advantage in deal origination, analysis, structuring, and processing for private equity transactions.

For federal income tax purposes, the professionals and staff of ACP and the General Partner may elect to serve as independent contractors for tax or other reasons. This may result in some or even all of the professionals and staff with ACP and the General Partner serving as independent contractors.

Investment Committee

The members of the Investment Committee, which will formulate investment guidelines for the Partnership and approve investments, include the following persons.

Laurence G. Allen (48). Mr. Allen serves as the Managing Principal of Allen Capital Partners, LLC and Chairman of the Investment Committee. Mr. Allen is responsible for managing the senior client relationships and investment activities of the General Partner. Mr. Allen has served as a guest speaker at leading private equity conferences and has been featured in numerous articles regarding trends in secondary private equity. Mr. Allen has over 23 years experience in financial services. Previously, Mr. Allen served as a Managing Director with Bear Stearns from 1993 to 1998 and as a Vice President with Merrill Lynch from 1982 to 1993 where he participated in the development of the secondary market for mortgage-backed securities. Mr. Allen has served on a variety of boards including the Congressional Business Advisory Council under House Oversight and Investigations Committee Chairman James C. Greenwood, the Wharton School's Entrepreneurial Center and the Police Activities League. Mr. Allen is a NASD licensed Series 65 investment adviser and Series 24 principal. Mr. Allen received his M.B.A. in Finance and B.S. in Economics with honors from the Wharton School at the University of Pennsylvania.

Dexter B. Blake, III (35). Mr. Blake serves as a Principal of Allen Capital Partners, LLC and is a member of the Investment Committee. Mr. Blake is responsible for the day to day management of client relationships, investment negotiations, and portfolio management of the General Partner. Mr. Blake has over 13 years experience in financial services. Previously, Mr. Blake served in Mr. Allen's group at Bear Stearns from 1994 to 1998 and with Lehman Brothers from 1992 to 1994. Mr. Blake is a NASD licensed Series 65 investment adviser and Series 24 principal. Mr. Blake received his B.S. in Business Management from the University of Vermont.

Allan P. Shenoy (46)**.** Mr. Shenoy serves as a Principal of Allen Capital Partners, LLC and is a member of the Investment Committee. Mr. Shenoy is responsible for technology due diligence and systems. Mr. Shenoy has over 20 years experience in information technology. Previously, Mr. Shenoy served as Chief Architect for

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Information Technology with Morgan Stanley Asset Management from 1996 to 2000; as Head of Trading Technology with Swiss Bank Corporation (UBS Warburg) from 1994 to 1996; and as a Managing Director and Head of Market Surveillance Technology with the New York Stock Exchange from 1989 to 1994. Mr. Shenoy has authored or co-authored numerous papers on Computer Aided Design while serving in various positions with AT&T Bell (Lucent) from 1984 to 1989. Mr. Shenoy received his M.S. in Mechanical Engineering from Villanova University and B.S. in Mechanical Engineering from Bangalore University, India.

John J. DeMartino, CPA (50). Mr. DeMartino serves as a Principal and Chief Financial Officer of Allen Capital Partners, LLC, and is a member of the Investment Committee. Mr. DeMartino is responsible for financial reporting, administration, and operations. Mr. DeMartino has over 28 years experience in finance, accounting or administration. Previously, Mr. DeMartino served as Chief Financial Officer of Excel Bank, N.A. from 1988 to 1998; as a Vice President of Finance and Administration with Donaldson, Lufkin and Jenrette Securities Corp. from 1986 to 1988; as Chief Financial Officer of Citicorp Investment Management Inc., the asset management division of Citibank, from 1982 to 1986; and as a Supervisor in the Audit Department of KPMG from 1977 to 1982. Mr. DeMartino is a member of AICPA, the NYSSCPA and The Institute of Management Accountants. Mr. DeMartino serves as Vice Chairman of the NYSSCPA's Small Business Cooperation with Community Committee. Mr. DeMartino received his B.S. in Accounting from Fordham University.

George M. Regnery (35). Mr. Regnery serves a Principal of Allen Capital Partners, LLC and is a member of the Investment Committee. Mr. Regnery is responsible for research and analytics. Mr. Regnery has over 10 years experience in securities research. Previously, Mr. Regnery served as CEO of CorporateInformation.com from 1997 to 2001. Mr. Regnery received his M.B.A. from the University of Rochester and his B.S. in Operations Research from Worcester Polytechnic Institute.

Other Principals and Key Staff:

Michael J. Portera (47). Mr. Portera serves as a Principal of Allen Capital Partners, LLC and is the relationship manager to numerous clients for investment originations. Mr. Portera has over 21 years experience in financial services. Previously, Mr. Portera held various positions with Salomon Smith Barney and Paine Webber from 1985 to 1999. Mr. Portera is a NASD licensed Series 65 investment adviser and Series 24 principal. Mr. Portera received his B.S. in Accounting from the Wharton School at the University of Pennsylvania.

Craig K. Blitz (43). Mr. Blitz serves as a Principal of Allen Capital Partners, LLC and is relationship manager to numerous clients for investment originations. Mr. Blitz has over 21 years experience in financial services. Previously, Mr. Blitz served in various positions with Commonwealth Associates and Lipper Analytical Services from 1985 to 1998. Mr. Blitz is a NASD licensed Series 24 principal. Mr. Blitz received his M.B.A. in Finance from Bernard Baruch College and B.S. in Economics from the State University of New York at Binghamton.

Craig C. White (26). Mr. White serves as a Senior Vice President of Allen Capital Partners, LLC and supervises document management, operations and settlements. Mr. White has over 5 years experience in financial services. Previously, Mr. White served in various positions with Triage Capital Management, L.P., a hedge fund specializing in distressed securities. Mr. White received his B.B.A. in Business Administration from the Wharton School at the University of Pennsylvania.

Karen J. Miro (48). Ms. Miro serves as a Vice President of Allen Capital Partners, LLC and supervises accounting and distributions. Ms. Miro has over 23 years experience in accounting. Previously, Ms. Miro served as an independent accountant to various private companies from 1993 to 2002, and held various

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positions in the audit and tax departments for Ernst & Whinney as well as other public accounting firms from 1980 to 1993. Ms. Miro serves on the board of the Association of Oakridge Condominiums. Ms. Miro received her M.S. in Accounting from C.W. Post College and B.A. in Economics from the State University of New York at Stony Brook.

MaryAnn Sapione (52). Ms. Sapione serves as a Vice President of Allen Capital Partners, LLC and is responsible for investor relations. Ms. Sapione has over 25 years experience in financial services. Previously, Ms. Sapione held various positions with A.G. Edwards and Lehman Brothers from 1982 to 1999. Ms. Sapione is a graduate of the Westchester Business Institute.

Michael J. Schunk (57). Mr. Schunk serves as a Senior Vice President of Allen Capital Partners, LLC and is responsible for regulatory compliance. Mr. Schunk has over 30 years experience in financial services. Previously, Mr. Schunk served in various financial and regulatory positions with Westport Partners, Kidder Peabody & Company, and other financial services firms from 1974 to 2002. Mr. Schunk holds NASD licenses 27, 24, 53, 7, and 63. Mr. Schunk served in the US Army and was appointed to the Officer Candidate School. Mr. Schunk received his M.B.A. from Pace University and B.A. Cum Laude from the State of New York University College at New Paltz.

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VII. SELECTED TRANSACTIONS

The following selected transactions are examples of prior special situation investments, completed by an ACP Fund or transferred through NYPPE to an outside investor.

The reader is reminded of their serious obligation to keep confidential the information contained in this Memorandum, and in particular, this section's information regarding the identities of funds or companies.

The selected transactions illustrate some types of interest profiles in funds and companies that may be acquired by the Partnership. Such transactions do not include all of ACP's prior investments and may not be indicative of the future investment activities, prices or future returns of the Partnership.

Selected special situation transaction types are categorized as follows:

1. **Distressed Situations**
   - a. Distressed LP Seller ..... Media Technology Ventures, L.P.
   - b. Distressed GP ..... Draper Fisher Jurvetson ePlanet, L.P.
   - c. Distressed Company Issuer ..... iClick, Inc.

2. **Out-of-Favor Structures**
   - a. Funds of Funds ..... Goldman Sachs Private Equity Partners II, L.P.
   - b. Trust ..... Merrill Lynch Trust: Silver Lake Partners L.P.
   - c. Mezzanine Security/Other ..... Tech Rx, Inc.

3. **Special Transfer-Related Services**
   - a. Qualified Matching Service for GP ..... Bain Capital VI, L.P.
   - b. Structured Transaction for Shareholders ..... Health Dialog, Inc.
   - c. Analytics for Selling LP ..... Bear Stearns Merchant Banking Partners II, L.P.
   - d. Immediate Firm Bid for Selling LP ..... JP Morgan: Blackstone Communications Fund, L.P.
   - e. Legal Opinion for GP ..... Deutsche Banc Alex Brown Venture Partners, L.P.
   - f. Transfer Management for GP ..... Clarity Partners, L.P.

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FUND:	Media Technology Ventures, L.P.
SELLER:	A Fortune 100 U.S. corporation
SPECIAL SITUATION TYPE:	Distressed LP Seller
SECURITY TYPE:	Single interest in a venture partnership.
TRANSACTION TYPE:	Transfer where NYPPE served as the private transfer agent.
COMMITMENT AMOUNT:	$5,000,000
FUNDED AMOUNT:	$5,000,000
UNFUNDED AMOUNT:	$0
ACQUISITION PRICE:	65% of Net Asset Value
ACP's FMV ESTIMATE: [10]	90% of Net Asset Value
BACKGROUND:	The corporate seller sought immediate liquidity for a single interest.

[10] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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FUND:	Draper Fisher Jurvetson ePlanet, L.P.
SELLER:	A publicly-held corporation headquartered in Europe
SPECIAL SITUATION TYPE:	Distressed General Partner
SECURITY TYPE:	Single interest in a venture partnership
TRANSACTION TYPE:	Transfer where NYPPE served as the private transfer agent.
COMMITMENT AMOUNT:	$10,000,000
FUNDED AMOUNT:	$4,900,000
UNFUNDED AMOUNT:	$5,100,000
NET ASSET VALUE:	$1,905,000
CAPITAL CALL DUE:	$1,100,000
ACQUISITION PRICE:	29% of Net Asset Value
ACP's FMV ESTIMATE: [11]	60% of Net Asset Value
BACKGROUND:	The fund sought to replace a delinquent and difficult limited partner. Note: Subsequently, this fund generated a substantial IPO exit event for **Baidu, Inc**., a leading Internet search engine headquartered in China.

[11] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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COMPANY:	iClick, Inc.
ISSUER:	A private technology company in the U.S.
SPECIAL SITUATION TYPE:	Distressed Company Issuer
SECURITY TYPE:	Senior debt to a private company
TRANSACTION TYPE:	Follow-on senior bridge loan by Allen Capital Partners VI, LLC.
COMMITMENT AMOUNT:	$415,000
GROSS PRICE:	9% coupon, 10% warrant coverage, 1 year term.
ACP's FMV ESTIMATE:	7% coupon, 10% warrant coverage, 3 year term.
IRR: [12]	63.9%
BACKGROUND:	The company issuer sought immediate cash to negotiate from strength its exit event.

[12] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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FUND:	Goldman Sachs Private Equity Partners II, L.P.
SELLER:	Family Office
SPECIAL SITUATION TYPE:	Out-of-Favor Structure: Fund of Funds
SECURITY TYPE:	Single interest in a fund of funds with holdings in buyout, private equity, and venture partnerships.
TRANSACTION TYPE:	Transfer where NYPPE served as the private transfer agent.
COMMITMENT AMOUNT:	$1,900,000
FUNDED AMOUNT:	$400,000
UNFUNDED AMOUNT:	$1,500,000
NET ASSET VALUE:	$300,000
CAPITAL CALL DUE:	$275,000
ACQUISITION PRICE:	20% of Net Asset Value
ACP's FMV ESTIMATE: [13]	65% of Net Asset Value
COMMENT:	Selected traditional secondary funds were not interested in bidding on this fund of funds interest due to its extra layer of fees.

[13] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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FUND:	Merrill Lynch Trust: Silver Lake Partners, L.P.
SELLER:	Investment Adviser
SPECIAL SITUATION TYPE:	Out-of-Favor Structure: Trust
SECURITY TYPE:	Single interest in a trust with its sole holding in Silver Lake Partners, a private equity fund.
TRANSACTION TYPE:	Transfer where NYPPE served as the private transfer agent.
COMMITMENT AMOUNT:	$375,000
FUNDED AMOUNT:	$250,000
UNFUNDED AMOUNT:	$125,000
NET ASSET VALUE:	$250,000
CAPITAL CALL DUE:	$0
ACQUISITION PRICE:	80% of Net Asset Value
ACP's FMV ESTIMATE: [14]	125% of Net Asset Value.
COMMENT:	Selected traditional secondary funds were not interested in bidding on this trust interest due to its extra layer of fees.

[14] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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COMPANY:	TechRx, Inc.
ISSUER:	A private company
SPECIAL SITUATION TYPE:	Out-of-Favor Structure: Mezzanine Security / Other
SECURITY TYPE:	Convertible security in a private healthcare technology company
TRANSACTION TYPE:	Follow-on investment by Allen Capital Partners, IV, L.P.
COMMITMENT AMOUNT:	$1,300,000
ACQUISITION PRICE:	12% coupon, 10% warrant coverage, convertible to common shares with a three-year term.
ACP's FMV ESTIMATE:	8% coupon, 5% warrant coverage, non-convertible 3-year term.
NET IRR: [15]	17.7%
BACKGROUND:	The private company issuer sought immediate cash to grow and negotiate from strength its exit event.

[15] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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BainCapital

FUND:	Bain Capital VII, L.P.
SELLER:	Family Office
SPECIAL SITUATION TYPE:	Qualified Matching Service for General Partner
SECURITY TYPE:	Single interest in a private equity partnership
TRANSACTION TYPE:	Transfer where NYPPE served as the Qualified Matching Service.
COMMITMENT AMOUNT:	$9,700,000
FUNDED AMOUNT:	$3,800,000
UNFUNDED AMOUNT:	$5,900,000
NET ASSET VALUE:	$3,200,000
CAPITAL CALL DUE:	$0
ACQUISITION PRICE:	100% of Net Asset Value.
ACP's FMV ESTIMATE: [16]	125% of Net Asset Value
BACKGROUND:	The fund sought to permit an interest transfer for a limited partner, but was at its 2% transfer limit for the year.

[16] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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Health Dialog

COMPANY:	Health Dialog, Inc.
SELLER:	Various Individual Investors.
SPECIAL SITUATION TYPE:	Structured Transaction for Shareholders
SECURITY TYPE:	Warrants in a private healthcare services company
TRANSACTION TYPE:	Securitization facility sponsored by ACP.
COMMITMENT AMOUNT:	$29,376
ACQUISITION PRICE:	$29,376
ACP's FMV ESTIMATE: [17]	$35,250
BACKGROUND:	Numerous individual investors sought liquidity for a variety of odd-lot direct investments in private companies. ACP sponsored ACP IX, a private exchange fund, where such investors could swap their securities for an equivalently valued interest in ACP IX to achieve diversification, and thereafter, could enter a sell order in their ACP IX interest to achieve liquidity.

[17] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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BEAR STEARNS

FUND:	Bear Stearns Merchant Banking Partners II, L.P.
SELLER:	Family Office
SPECIAL SITUATION TYPE:	Analytics for Selling LP
SECURITY TYPE:	Single interest in a buyout fund
TRANSACTION TYPE:	Transfer where NYPPE served as the private transfer agent and valuation and ACP Advisors provided analytics to perspective investors.
COMMITMENT AMOUNT:	$6,000,000
FUNDED AMOUNT:	$1,500,000
UNFUNDED AMOUNT:	$4,500,000
NET ASSET VALUE:	$975,000
CAPITAL CALL DUE:	$0
ACQUISITION PRICE:	17% of Net Asset Value
ACP's FMV ESTIMATE:[18]	60% of Net Asset Value
BACKGROUND:	Selling LP (and investor) required fair value analysis on fund's portfolio companies to determine price.

[18] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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The Blackstone Group®

FUND:	JP Morgan Chase Trust: Blackstone Communications Fund L.P.
SELLER:	Individual Investor
SPECIAL SITUATION TYPE:	Immediate Firm Bid for Selling LP
SECURITY TYPE	Single interest in a trust with its sole holding in Blackstone Communications Fund, a buyout fund.
TRANSACTION TYPE:	Transfer where NYPPE served as the private transfer agent.
COMMITMENT AMOUNT	$1,000,000
FUNDED AMOUNT	$760,000
UNFUNDED AMOUNT	$240,000
NET ASSET VALUE	$190,000
CAPITAL CALL DUE:	$56,000
ACQUISITION PRICE:	15% of Net Asset Value
ACP's FMV ESTIMATE: [19]	65% of Net Asset Value
BACKGROUND:	Selling limited partner was delinquent and faced a deadline in several days to pay capital call or risk default (and potential loss capital account balance plus still be liable for unfunded capital commitment).

[19] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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Deutsche Bank Alex. Brown
A Division of Deutsche Bank Securities Inc.

FUND:	Deutsche Banc Alex Brown Venture Investors, L.P.
SELLER:	Various Individual Investors and Family Offices
SPECIAL SITUATION TYPE:	Legal Opinion for General Partner
SECURITY TYPE:	Single interest in a fund of funds with holdings in venture partnerships and direct investments in private companies
TRANSACTION TYPE:	Transfer where NYPPE served as the private transfer agent.
COMMITMENT AMOUNT:	$2,375,000
FUNDED AMOUNT:	$2,100,000
UNFUNDED AMOUNT:	$1,275,000
NET ASSET VALUE:	$1,535,000
CAPITAL CALL DUE:	$0
ACQUISITION PRICE:	31% of Net Asset Value
ACP's FMV ESTIMATE: [20]	62.5% of Net Asset Value
BACKGROUND:	The fund required a legal opinion that the interest transfers met the requirements for IRS Regulation 1.7704.

[20] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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FUND:	Clarity Partners, L.P.
SELLER:	Mutual Fund
SPECIAL SITUATION TYPE:	Transfer Management for GP
SECURITY TYPE:	Single interest in a private equity partnership
TRANSACTION TYPE:	Transfer where NYPPE served as the private transfer administration manager
COMMITMENT AMOUNT:	$7,000,000
FUNDED AMOUNT:	$2,370,000
UNFUNDED AMOUNT:	$4,620,000
NET ASSET VALUE:	$1,670,000
CAPITAL CALL DUE:	$750,000
ACQUISITION PRICE:	24.5% of Net Asset Value
ACP's FMV ESTIMATE: [21]	68.5% of Net Asset Value
BACKGROUND:	The fund provided the transferor and transferee, and NYPPE managed the final negotiations, processing of documents, and closing process.

[21] ACP's FMV (Fair Market Value) estimates the average transfer price in the secondary market for a $1,000,000 to $5,000,000 commitment amount in the specific private partnership or for a $250,000 to $1,000,0000 principal amount of a direct investment in the specific private company.

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VIII. FINANCIAL STATEMENTS

The following are unaudited financial statements and notes for Allen Capital Partners X, L.P. for the three month period ended June 30, 2005.

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ALLEN CAPITAL PARTNERS X, L.P.

STATEMENT OF ASSETS, LIABILITIES AND PARTNER'S CAPITAL

June 30, 2005

(Unaudited)

ASSETS	
Cash and cash equivalents	$1,816,320
Investment in Underlying Partnerships, at fair value (Cost $2,464,245)	$2,892,208
Direct Investments in Underlying Companies, at fair value (Cost $157,275)	$239,250
Contributions receivable	$6,647,820
Prepaid expenses	$203,581
Other assets	$47,162
TOTAL ASSETS	$11,846,342

LIABILITIES AND PARTNER'S CAPITAL	
LIABILITIES:	
Advisor fees payable[12]	$178,423
Distributions payable	$202,319
Accrued expenses	$118,794
TOTAL LIABILITIES	$499,537
Commitments (See note 4 and Schedule of Investments)	$6,647,820
PARTNER'S CAPITAL	$4,698,985
TOTAL LIABILITIES AND PARTNER'S CAPITAL	$11,846,342

See accompanying notes to financial statements

[12] Advisor fees payable from inception through June 30, 2005

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ALLEN CAPITAL PARTNERS X, L.P.

STATEMENT OF OPERATIONS

For the 3 month period ended June 30, 2005

(Unaudited)

OPERATING INCOME:	
Interest income	$951
OPERATING EXPENSES:	
Advisor fees	$54,850
Professional fees	$12,409
Accrued expenses	$18,066
Total operating expenses	$85,325
Net operating loss	($84,375)
NET GAIN FROM INVESTMENTS:	
Net unrealized appreciation on Investments	$317,712
Net realized gain on Investments	$16,252
Net distributions from Investments	$183,619
Net fee sharing	$2,448
Net income	$435,657

See accompanying notes to financial statements.

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ALLEN CAPITAL PARTNERS X, L.P.

STATEMENT OF CHANGES IN PARTNER'S CAPITAL

For the 3 month period ended June 30, 2005

(Unaudited)

	Limited Partners	General Partner	Total
BEGINNING BALANCE, March 31, 2005	$8,301,746	$130,613	$8,432,359
Capital contributions	$2,734,100	$17,140	$2,751,240
Capital distribution	($200,316)	($2,003)	($202,319)
Increase/Decrease in contributions receivable	($88,132)	$18,000	($70,132)
Net capital contributions	$2,445,652	$33,137	$2,478,789
Net income	$430,907	$4,750	$435,657
ENDING BALANCE, June 30, 2005	$11,178,305	$168,500	$11,346,805

See accompanying notes to financial statements.

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ALLEN CAPITAL PARTNERS X, L.P.

STATEMENT OF CASH FLOWS

For the 3 month period ended June 30, 2005

(Unaudited)

CASH FLOWS FROM OPERATING ACTIVITIES:	
Net Income	$435,657
Adjustments to reconcile net loss to net cash used in operating activities:	
Decrease in prepaid expenses	($30,848)
Increase in advisor fees payable	$54,850
Decrease in distribution payable	($7,316)
Increase in other assets	$39,725
Increase in accrued expenses	($602,913)
Net cash used in operating activities	($110,845)
CASH FLOWS FROM FINANCING ACTIVITIES:	
Capital contributions	$2,765,319
Capital distributions	($202,319)
Net cash provided by financing activities	$2,563,000
CASH FLOWS FROM INVESTING ACTIVITIES:	
Investments in Underlying Partnerships	($1,820,182)
Direct Investments in Underlying Companies	$356,563
Net cash provided by investing activities	($1,463,619)
Net increase in cash and cash equivalents	$988,536
Cash and cash equivalents, April 1, 2005	$827,784
Cash and cash equivalents, June 30, 2005	$1,816,320
SUPPLEMENTAL DISCLOSURE OF NON-CASH FINANCING ACTIVITIES:	
Increase in non-cash contributions receivable	$18,000

See accompanying notes to financial statements.

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ALLEN CAPITAL PARTNERS X, L.P.

SCHEDULE OF INVESTMENTS IN PARTNERSHIPS

June 30, 2005

PRIVATE PARTNERSHIP (VINTAGE)	Initial Invest Date	COMMITMENT	Funded Amount	Cost (1)	Fair Value (2)	Cumulative Distributions (3)	Total Value (2 + 3)	Investment Multiple (2+3) / (1)	Appreciation (Depreciation) (2+3) – (1)
Portfolio 2005-2	6/05								
APAX Europe V-A, L.P. (2001)									
Austin Ventures VIII, L.P. (2001)									
Bain Capital VIII Coinvestment Fund, L.P. (2004)									
Blackstone Capital Partners IV, L.P. (2001)									
DLJ Growth Capital Partners, L.P. (2001)									
DLJ Merchant Banking Partners III, L.P. (2000)									
Francisco Partners, L.P. (2000)									
GRP II, L.P. (2001)									
Interwest Partners VIII, L.P. (2000)									
Madison Dearborn Capital Partners IV, L.P. (2001)									
New Enterprise Associates 10. L.P. (2000)									
Oak Investment Partners IX, L.P. (1999)									
Providence Equity Partners IV, L.P. (2000)									
Sprout Capital IX, L.P. (2000)									
The Resolute Fund, L.P. (2002)									
Thomas H. Lee Equity Fund V, L.P. (2000)									
TH Lee Putnam Ventures, L.P. (2000)									
Trinity Ventures VIII, L.P. (2000)									
Vestar Capital Partners IV, L.P. (1999)									
Warburg Pincus International Partners, L.P. (2000)									
Warburg Pincus Private Equity VIII, L.P. (2001)									
Willis Stein & Partners III, L.P. (2000)									
Worldwide Technology Partners IV, L.P. (2000)									
Totals for Portfolio 2005-2		$2,000,000	$1,425,000	$1,119,090	$1,263,736	$0	$1,263,736	1.13x	$144,646
Portfolio 2005-3	6/05								
Brera Capital Partners Limited Partnership (1999)									
Charterhouse Equity Partners III, L.P. (1998)									
M.D. Sass Corporate Resurgence Partners L.P. (1998)									
Warburg Pincus Ventures International, L.P. (2000)									
Totals for Portfolio 2005-3		$1,000,000	$900,000	$496,226	$679,500	$0	$679,500	1.37x	$183,274
Portfolio 2005-1	3/05								
ABRY Partners III, L.P. (1997)									
Bruckmann, Rosser, Sherrill & Co., L.P. (1995)									
DLJ Merchant Banking Partners II, L.P. (1997)									
Hicks, Muse, Tate & Furst Equity Fund III, L.P. (1996)									
Thomas H. Lee Equity Fund III, L.P. (1995)									
Totals for Portfolio 2005-1		$1,500,000	$1,500,000	$564,441	$590,354	$171,886	$762,240	1.35x	$197,799
Sprout CEO Fund, L.P. (1996)	3/05	$100,000	$100,000	$41,210	$48,698	$11,733	$60,431	1.47x	$19,221
BlueStream Ventures, L.P. (2000)	8/04	$1,000,000	$680,000	$243,278	$309,920	$24,294	$334,214	1.37x	$90,936
Total Investments in Partnerships		**$5,600,000**	**$4,605,000**	**$2,464,245**	**$2,892,208**	**$207,913**	**$3,100,121**	**1.26x**	**$635,876**

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ALLEN CAPITAL PARTNERS X, L.P.

SCHEDULE OF DIRECT INVESTMENTS IN COMPANIES

June 30, 2005

COMPANY (SECURITY)	Initial Invest Date	PUBLIC OR PRIVATE	Shares or $Face Amount	Cost (1)	Fair Value (2)	Cumulative Distributions (3)	Total Value (2 + 3)	Investment Multiple (2+3) / (1)	Appreciation (Depreciation) (2+3) – (1)
Health Dialog, Inc. Series A Conv. Pfd.	6/04	Private	72,500 shs	$157,275	$239,250	$0	$239,250	1.52x	$81,975
Total Direct Investments in Companies				**$157,275**	**$239,250**	**$0**	**$239,250**	**1.52x**	**$81,975**

See accompanying notes to financial statements.

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ALLEN CAPITAL PARTNERS X, L.P.

NOTES TO FINANCIAL STATEMENTS

June 30, 2005

(Unaudited)

1. ORGANIZATION AND GENERAL

Allen Capital Partners X, L.P. (the "Partnership") was legally formed on January 15, 2004 as a Delaware limited partnership pursuant to a limited partnership agreement (the "Agreement"). The Partnership's primary objective is to assemble a portfolio of private equity fund interests through special situation transactions and achieve superior returns with less risk for comparable holdings. The Partnership will dissolve and terminate on the later of July 15, 2015 or two years after the date on which all Underlying Funds and Companies have been liquidated.

The General Partner of the Partnership is Allen Partners X, LLC (the "General Partner"), a Delaware limited liability company and an affiliate of NYPPE, LLC. The Investment Advisor ("Investment Advisor") of the Partnership is Allen Capital Partners, LLC, a registered investment advisor under the Investment Advisors Act of 1940.

For purposes of this report, Underling Funds, Underlying Partnerships, Portfolio Funds, and Portfolio Partnerships shall have the same meaning; and Underlying Companies, Portfolio Companies, and Direct Investments shall have the same meaning. Portfolio Investments and Investments shall have the same meaning and will include the defined terms in this paragraph.

2. SIGNIFICANT ACCOUNTING POLICIES

The following is a summary of significant accounting policies followed by the Partnership.

(a) VALUATION OF INVESTMENTS

- Marketable securities that are acquired or received as distributions by the Partnership from Investments will be valued as established on the principal securities exchange of the security. If such securities are not primarily traded on a securities exchange, then the valuation assigned shall be the market value as shown by the National Association of Securities Dealers Automated Quotation system or comparable over-the- counter system.
- Securities that are not marketable securities will be valued as follows: non-freely tradable securities acquired or received as distributions from an Underlying Fund or an Underlying Company will initially be given the value as stated by the Underlying Fund or as established by the Underlying Company, with subsequent adjustments to values that reflect selected comparable investments, third party transactions in the private market, or third party appraisals.
- All other non-freely tradable securities will be valued initially at cost, with subsequent adjustments to values that reflect selected comparable investments, third party transactions in the private market, or third party appraisals.

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All investments will be valued by the General Partner in its discretion, on dates that are as near as reasonably practical to the portfolio valuation date. Fair values may vary among investments depending on the dates that reports regarding specific investments were made available to the General Partner.

(b) FINANCIAL INSTRUMENTS

The fair value of the Partnership's assets and liabilities that qualify as financial instruments under Statement of Financial Accounting Standards No. 107, Disclosures About Fair Value of Financial Instruments, approximates the carrying amounts presented in the Statement of Assets, Liabilities, and Partner's Capital.

(c) CASH AND CASH EQUIVALENTS

The Partnership considers all highly liquid investments with a maturity of three months or less when purchased to be cash or cash equivalents. The cash and cash equivalents at June 30, 2005 consist of interest bearing cash accounts maintained at a non-affiliated banking institution.

(d) INTEREST INCOME AND OPERATING EXPENSES

Interest income and operating expenses are recorded on the accrual basis.

(e) USE OF ESTIMATES

The preparation of financial statements in conformity with accounting principals generally accepted in the United States of America requires the General Partner to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. The General Partner believes that the estimates utilized in preparing its financial statements are reasonable and prudent; however, actual results could differ from these estimates.

Due to the nature of the secondary private equity business and the investment holding period uncertainty by the Partnership, a) an interest in an Underlying Fund that is acquired at a discount to the net asset value stated by the Underlying Fund, will be assigned a fair value equal to such stated net asset value and any immediate gain shall be considered an unrealized gain and, b) a security in an Underlying Company that is acquired at a discount to the corporate valuation stated by the Underlying Company will be assigned a fair value equal to such stated corporate valuation and any immediate gain shall be considered an unrealized gain.

(f) U.S. INCOME TAXATION

The Partnership is treated as a partnership for U.S. federal income tax purposes. No provision has been made in the accompanying financial statements for United States federal, state, or local income taxes. As such, the partners are individually liable for their distributable share of taxable income or loss.

(g) UNDERLYING FUNDS' INVESTMENT EXPENSES

The Partnership records expenses (including outside management fees) paid to its Underlying Funds, that are not included in the capital commitments to such Underlying Funds, as realized losses. The Partnership may not expense certain items until the Partnership is closed.

Underlying Funds that are funds of funds, trusts, portfolios, or other holding entities shall be referred to as Portfolios. For competitive reasons, the Partnership does not intend to disclose the names of funds of funds

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and trusts. Additional fees, in any, associated with Portfolios shall be paid by the Partnership. An example of additional fees for a typical Portfolio is a 1% annual management fee based on net commitments (commitments less cumulative distributions) plus a 5% carried interest based on profits.

3. INVESTMENTS

For the quarter ended June 30, 2005, the Partnership held net investments at a cost of $2,464,245 in Underlying Partnerships and Direct Investments in companies at a cost of $157,275 acquired through NYPPE, LLC, an affiliated placement agent and investment bank.

4. COMMITMENTS

The minimum capital commitment to the Partnership ("Capital Commitment") is $5,000,000, although the General Partner reserves the right to accept Capital Commitments of lesser amounts and at its sole discretion to reject any subscription for interests in the Partnership. One percent (1%) of the aggregate capital commitments by the Limited Partners will be contributed by the General Partner.

A summary of the capital commitments to the Partnership at June 30, 2005 is shown below:

Capital contributions	$ 4,431,880
Uncalled capital commitments	$ 6,647,820
Aggregate capital commitments	$11,079,700

Of the $11,079,700 aggregate capital commitments to the Partnership, $2,464,245 was committed to underlying partnerships and $157,275 was committed to direct investments in companies.

5. ADVISOR FEE

Pursuant to the provisions of the Agreement, the Partnership will contract with the Investment Advisor to provide investment advisory services to the Partnership. In consideration for the investment adviser services rendered, for each 12-month period from and after the initial Closing Date, (each an Investment Advisor Fee Year") the Partnership shall pay to the Investment Adviser an annual investment advisor fee payable semi-annually in advance calculated as follows:

(i) For each Investment Advisor Fee Year commencing prior to expiration of the Investment Period, two percent (2%) of the aggregate capital commitments of the Partners payable semi-annually in advance;

(ii) For each Investment Advisor Fee Year commencing after the expiration of the Investment Period, the Investment advisor Fee will be reduced to two percent (2%) of the net invested capital of the Partners measured as of the end of the immediately preceding semi-annual period.

6. ALLOCATIONS OF PROFITS, LOSSES, AND DISTRIBUTIONS

Net profits or losses of the Partnership generally will be allocated among the Partners in a manner consistent with the distribution of proceeds.

Distributions from the Partnership may be made at any time as determined by the General Partner.

Net cash proceeds from the sale or other disposition of securities or other property held or received by the Partnership generally will be distributed as soon as practicable after receipt, subject to the General Partner's

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ability to cause the Partnership to reinvest such proceeds in its sole discretion. Although the General Partner intends to make distributions as soon as practicable after receipt, the General Partner also intends to turn over capital through securitization or other transactions for the purpose of creating exit events and increasing internal rates of return to Limited Partners. Therefore, the General Partner may elect to reinvest proceeds from such securitization or other transactions, thereby delaying distributions to Limited partners, for such periods of time as the General Partner may determine. The General Partner will be entitled to withhold from any distributions, in its discretion, appropriate reserves for expenses and liabilities of the Partnership, as well as for any required tax withholdings.

Since the first closing date of April 1, 2004 (the "Inception Date") cumulative cash distributions through June 30, 2005 were $287,531.

Sums available for distribution will be distributed by the Partnership in the following order of priority:

(d) First, one hundred percent (100%) to all Partners of the Partnership, in proportion to their contributed capital until they have received cumulative distributions equal to the aggregate of the following:

   i. such Partners' aggregate capital contributions as actually made to the Partnership; and
   ii. a preferred return equal to an eight percent (8%) cumulative, non-compounded annual rate of return on such Partner's Unreturned Capital Contributions.

(e) Second, one hundred percent (100%) to the General Partner until the General Partner has received an amount equal to twenty percent (20%) of the cumulative distributions made to the Partners; and
(f) Thereafter, eighty percent (80%) to all Partners in proportion to their contributed capital and twenty percent (20%) to the General Partner.

The General Partner shall receive its carried interest only upon the complete return of the aggregate Capital Commitments funded by the Limited Partners.

7. RISK OF INVESTMENTS

Investment in the Partnership is speculative and entails significant risks including market risks, credit risk, currency risk, and interest rate risk. Many of the Partnership's investments may be highly illiquid. There is no assurance that the Partnership will be able to realize such investments in a timely manner. Since the Partnership may make a limited number of investments and since many of the Partnership's investments may involve a high degree of risk, poor performance by a few of the investments could severely affect the total returns to the Partnership.

8. RELATED PARTY TRANSACTIONS; POTENTIAL CONFLICTS OF INTEREST

For accepted capital commitments from Limited Partners, some portion of the Partnership's expenses shall be allocated to NYPPE, LLC an Affiliate, for placement agent services. In addition to transactions specifically contemplated by this Agreement, the General Partner, when acting in its capacity as general partner of the Partnership, is authorized, on behalf of the Partnership, to purchase property or obtain services from, to sell property or provide services to, or otherwise to deal with the General Partner, any Affiliate of the General Partner, any Limited Partner, any private fund, any portfolio company or any related person (whether before or after or in connection with the making of the applicable Investment), or any date of any of the foregoing Persons. In connection with any services performed by any Affiliate of the General Partner for the Partnership, such Affiliate shall be entitled to be compensated by the Partnership for such services,

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and the amount of such compensation shall be determined by the General Partner in its discretion. Each Limited Partner acknowledges and agrees that the purchase or sale of property, the performance of such services, other dealings, or the receipt of such compensation may give rise to conflicts of interest between the Partnership and the Limited Partners, on the one hand, and the General Partner or such Affiliate, on the other hand. Allen Capital Partners, LLC and its Affiliates may act as a lender, principal, or investor in the Portfolio Investments and may acquire, hold, sell, issue, or dispose of securities issued by or to the Portfolio Investments or the Partnership including securitizations, in principal or agency transactions. Such loans or securities may be pari passu, senior or junior in ranking to the Partnership's investment.

9. FINANCIAL HIGHLIGHTS

The Accounting Standards Executive Committee of the American Institute of Certified Public Accountants has issued a revised Audit and Accounting Guide of Investment Companies (the "Revised Guide"). The Revised Guide requires disclosure of an investment partnership's return, as well as ratios of expenses and net investment income to net assets (the "Financial Highlights"). The Partnership has adopted the disclosures required by the Revised Guide.

The following are the Financial Highlights of the Partnership as of June 30, 2005. An individual limited partner's return and ratios may differ from these amounts. The first closing date of the Partnership was April 1, 2004.

RETURNS:	
Limited Partner Investment Multiple (a)	1.33x
Limited Partner IRR (b)	34.51%
RATIOS TO CONTRIBUTED CAPITAL:	
Expenses (c)	1.93%
Net gains from investments (d)	11.73%
Net operating loss (e)	-1.90%
Net income (f)	9.83%
RATIO TO AGGREGATE CAPITAL COMMITMENTS:	
Expenses (g)	0.77%

(a) Net Investment Multiple is the estimated cumulative net increase (decrease) in total value for a representative $1,000,000 capital commitment by a Limited Partner since the Partnership's inception on April 1, 2004 through the period, as a percentage of that Limited Partner's contributed capital as of the beginning of the period, net of advisor and other expenses incurred.

(b) IRR is an estimated annualized internal rate of return of the change in total value for a representative $1,000,000 capital commitment by a Limited Partner since the Partnership's inception on April 1, 2004 through the period as a percentage of that Limited Partner's contributed capital as of the beginning of the period, net of advisor and other expenses incurred.

(c) Expense ratio is the estimated total operating expenses incurred for the period as a percentage of capital contributed as of the end of the period.

(d) Net gains from investments ratio is the estimated net unrealized appreciation plus net realized gains on investments for the period as a percentage of capital contributed as of the end of the period.

(e) Net operating loss ratio is the estimated net loss for the period as a percentage of capital contributed as of the end of the period.

(f) Net income ratio is the estimated net income for the period as a percentage of capital contributed as of the end of the period.

(g) Expense ratio is the estimated total operating expenses incurred for the period as a percentage of aggregate capital commitments as of the end of the period.

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10. LEGAL CONTINGENCIES

Except as disclosed below, the Partnership is not presently involved in any legal or regulatory proceeding. Nonetheless, the Partnership may in the future, from time to time, be named in or become a party to legal or regulatory proceedings in connection with or arising out of its activities. Such proceedings, if they were to arise, may involve claims for substantial or unspecified damages and may result in adverse judgments, fines or penalties. It is inherently difficult to predict the ultimate outcome of any such legal and regulatory matters, should they arise, and a substantial judgment, settlement or penalty could be materially adverse to the Partnership's operating results.

The Partnership has been named as a defendant in a legal proceeding arising from its acquisition of Portfolio 2005-1. The selling party is claiming that the cash distribution of $171,886 made to the Partnership on June 14, 2005, which was after the effective transfer date of April 1, 2005, is the property of the selling party. Based on current information, it is the belief of the General Partner, after consultation with counsel, that the Partnership has meritorious defenses to the claims of the selling party.

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IX. ALLEN CAPITAL PARTNERS AND ITS AFFILIATES

ACP believes that the secondary private equity asset class has rapidly evolved and currently offers significant investment opportunities for investors in special situations. However, sellers and funds with special situations rarely openly market their situation in venues such as auctions. Rather, our experience is that special situations are best identified within recurring deal flow.

ACP and its Affiliates generate recurring and proprietary deal flow by providing a comprehensive menu of valuable transfer-related services to general partners, private clients, and their respective financial, legal and tax advisors.

Our approach is similar to certain successful private equity funds that have affiliations with leading management consulting firms, executive recruiting firms, and merchant banks to source proprietary deal flow. For ACP, this has typically resulted in privately negotiated investments at attractive prices.

ACP and its Affiliates believe they are well positioned to continue to attract special situation transaction opportunities as a result of their ability to provide sellers and funds a comprehensive menu of transfer and liquidity-related services. The following is a summary of services provided by ACP and its Affiliates:

Allen Capital Partners ("ACP")

- Asset Management
- Advisory Services
- Analytic Models
- Fair Market Value Pricing Algorithms
- Securitization Facilities
- Outsourced Administration Services

ACP provides advisory, analytics and securitization services to prospective sellers on how to structure transactions to achieve a variety of objectives in accounting, tax, and regulatory areas.

For example, financial institutions such as banks and insurance companies, typically seek to minimize the amount of loss on sales of their private equity investments, yet may also seek to participate in the future returns. Such sellers may benefit by contributing their private equity investments to a newly-formed joint venture structure where the seller receives sale treatment without recognizing a loss, yet participates in the future upside return through a distribution sharing agreement with the new investor.

ACP can sponsor the joint venture or securitization facility, and also provide the ongoing administration for the assets. This process is similar to how mortgage loans are contributed or sold to a mortgage conduit, from which securities are issued.

NYPPE ("NYPPE")

- Global Private Transfer Agent (e.g. serves as an outsourced transfer department to general partners and limited partners)
- Qualified Matching Service (QMS under IRS 1.7704)
- Proprietary Market Data on Secondary Transfers of Private Partnerships and Companies

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- Private Market News Search Engine
- The NYPPE Terminal (e.g. a subscription based online work station for financial advisors to view secondary market data and enter sell orders for private clients, and general partners or limited partners to monitor pending secondary transfers of interests)
- Rare IRS Private Letter Ruling (PLR- 111165-04)
- Outsourced Transfer Management Services

NYPPE (www.nyppe.com) provides liquidity solutions to the alternative asset class worldwide. NYPPE serves as a private transfer agent for secondary transfers of single interests and portfolio divestitures of alternative assets; and as a placement agent for secondary private placements of minority stakes in private companies. NYPPE serves as the outsourced private transfer department to numerous private partnerships. As of June 30, 2005, NYPPE has transferred two or more interests for over 220 venture, private equity, and buyout funds.

NYPPE also has numerous limited partner clients, which include insurance companies, banks and trusts, governments and corporations, foundations and endowments, public and private pension funds, wealthy families and their respective financial, legal, and tax advisors worldwide.

OffRoad Capital is the brand under which NYPPE provides investment banking services to general partners to help achieve exit events. OffRoad Capital raises private capital for private companies typically in amounts of $5 to $50 million; and provides merger and acquisition advisory services typically to private companies with valuations under $150 million.

In 2004, the U.S. Internal Revenue Service granted a private letter ruling to NYPPE, which, in effect, states that private partnerships whose interests are offered for purchase and transferred at NYPPE will not be considered to be publicly-traded as per IRS regulation 1.7704. This letter provides substantial peace of mind to general partners and serves as an incentive to seek NYPPE to handle their transfers of interests.

NYPPE has led the consolidation of its sector by acquiring OffRoad Capital, Inc.; Private Trade, Inc.; and US Venture Exchange, Inc. Forbes has named NYPPE the Best of the Web for investing online in private equity, each year from 2000 through 2005. NYPPE was founded in 1998 by former executives of Bear Stearns and is headquartered in Greenwich, CT.

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X. CERTAIN INVESTMENT CONSIDERATIONS

The purchase of limited partnership interests in the Partnership involves a number of significant risks, including, but not limited to, those summarized below and referred to elsewhere in this Memorandum.

IMPORTANT INFORMATION

The preparation of this Memorandum requires the General Partner to make estimates and assumptions that affect the reported valuations, returns, and amounts of assets and liabilities as of the report's date. Actual results could differ from those estimates.

Please note that the information presented in this Memorandum reflects the views of the underlying fund managers or companies and as such, is not endorsed or approved by the General Partner. Fair values may vary among investments depending on the dates that reports regarding specific investments were made available to the General Partner. This Memorandum is provided for informational purposes only and is subject to change without notice. It may not be complete and cannot be relied upon for any purpose other than for discussion. The General Partner believes the information to be reliable, but neither makes any representation as to its accuracy or completeness. You assume full responsibility for all conclusions you derive from any information contained herein, on web sites, or information furnished verbally or in writing by the General Partner, its Affiliates, any third party and their respective employees, contractors, officers, and agents who together shall not have any liability with respect thereto.

Past performance or projected performance is not indicative of future results. Past performance, which includes investment multiples, internal rates of return, and cash distribution returns, may fluctuate from quarter to quarter and may differ among the Limited Partners for a variety of reasons including changes in the amount of contributed capital, adjustments to the fair valuations of investments, and the first closing date for each Limited Partner. Please read carefully the footnotes to this Memorandum. There are no assurances that the investments discussed herein will achieve stated or target results. Cash distributions made by the Partnership may be recallable by the Partnership if an underlying fund recalls distributions made to the Partnership. Certain information constitutes "forward-looking statements" and due to various risks and uncertainties, actual events or results may vary materially from those reflected or contemplated in such forward-looking statements. Further, as the Partnership grows in size, we are likely to have difficulty generating the same level of returns as achieved in the past.

Please note that Limited Partners are not direct investors in the underlying funds or companies discussed in this Memorandum. Limited Partners are investors in Allen Capital Partners X, L.P., a managed private partnership, which invests in the underlying funds and companies.

Please note that if you elect to make a capital commitment to the Partnership, your estimated capital account balance is an estimated measurement of your ownership in the Partnership and does not purport to represent the current realizable or liquidation value of your investment in the Partnership. The General Partner has not reduced the fair value for illiquidity, transaction costs, the General Partner's carried interest, or the time, risks, and transaction costs required to achieve a realization. A Limited Partner's interest in each underlying fund or company may not be valued as highly as its pro rata share of the Partnership's holding, due to the minority position held indirectly by each Limited Partner and due to the highly illiquid nature of the interest in the Partnership held by the Limited Partner.

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This Memorandum is confidential and is intended only for prospective investors in Allen Capital Partners X, L.P. The disclosure of information about the Partnership, Underlying Funds and Companies could significantly compromise their performance and put the Partnership at serious risk. Please immediately notify Allen Capital Partners X, L.P. at member-relations@allencapitalpartners.com or MaryAnn Sapione, Vice President, at 203-422-5150 x200 if you have received this Memorandum by mistake. Unauthorized, duplication, distribution, or public display of any portion of this Memorandum is strictly prohibited by federal law.

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Nature of Investment

Investment in the Partnership requires a commitment by the investors, extending up to 12 years, or more, to contribute substantial amounts of capital to the Partnership, if and when called, upon short notice. Investors that are unable or unwilling to comply with their capital contribution obligations risk forfeiture of a portion, and possibly all, of their investment in the Partnership. Accordingly, prospective investors should assure themselves that they have sufficient available capital assets to support their capital commitments.

Long-Term Nature of Investment in the Partnership

Prospective Investors should be aware of the long-term nature of an investment in the Partnership. There is not now nor will there be a public market for the interests in the Partnership. Accordingly, an investor may not be able to liquidate its investment and its interest in the Partnership may not be acceptable as collateral for loans. In addition, interests in the Partnership have not been registered under the Securities Act or under the "Blue Sky" or securities laws of any state or jurisdiction. Interests in the Partnership are being offered and will be sold only to selected "accredited investors" (as such term is defined in Rule 501 of Regulation D under the Securities Act), pursuant to the exemption in Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act"), the rules of the Securities and Exchange Commission thereunder and exemptions in the various applicable "Blue Sky" and securities laws. In that connection, investors will be required to make certain representations to the Partnership, including that they are making an investment for their own account for investment purposes only and not with a view to distribution, and that they have the ability to bear the economic risk of an investment in the Partnership. The interests that are acquired by investors will be considered "restricted securities" and cannot be resold without registration under the Securities Act or an exemption from the registration requirements thereof.

Investment in the Partnership requires a long-term commitment, with no certainty of return. In the near-term, cash flow available to the Limited Partners is likely to be limited. Most of the Partnership's investments will be highly illiquid, and there can be no assurance that the Partnership will be able to realize on such investments in a timely manner. Dispositions of such investments may require a lengthy time period or may result in distributions in kind to the Partners. There can be no assurance that the Limited Partners would be able to dispose of these investments or that the value of these investments, as determined by the Partnership for purposes of the determination of the distributions and calculation of the General Partner's carried interest, will ultimately be realized.

High Risk Investment

An investment in the Partnership involves a substantial degree of risk and should be regarded as speculative. As a result, an investment in the Partnership should be considered only by institutions and individuals who can reasonably afford a loss of their entire investment.

Restrictions on Transfer and Withdrawal

There will be no public market for the Interests in the Partnership. In addition, Interests are not transferable except with the consent of the General Partner, which may be withheld in its sole discretion. Limited Partners may not withdraw capital from the Partnership. Consequently, investors may not be able to liquidate their investments prior to the end of the Partnership's term.

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Success of the Portfolio Funds

The success of each of the Portfolio Funds depends on many factors including but not limited to the availability of appropriate investment opportunities and the ability of the managers of each fund to identify, select, develop, consummate and exit investments. The availability of investment opportunities generally will be subject to market conditions. There can be no assurance that suitable investments will be available or selected by the managers of Portfolio Funds or that Portfolio Funds will be able to invest fully their committed capital within their respective investment periods. While the managers of Portfolio Funds may have experience in certain markets and investments, the Portfolio Funds may make investments in markets in which they have relatively little or no experience. Portfolio Funds may have operating problems and may cease to be going concerns, which may result from a variety of causes including delinquent capital calls, defaulted interests, litigation, and/or the departure of key employees. To the extent that any of the above factors have an adverse impact on an Portfolio Fund, the Partnership's potential for return will be reduced.

Reliance on Managers of Portfolio Funds and Companies

Although the Partnership may be represented on certain advisory boards of Portfolio Funds and Companies, the Partnership will not be able to participate in the management and control of the Portfolio Funds and Companies. The Partnership will not have an active role in the day-to-day management of the Portfolio Funds and Companies. Furthermore, the Partnership will not have the opportunity to evaluate the specific investments made by an Portfolio Fund and Company, and accordingly, the returns of the Partnership will to a large extent, rely on the performance of the managements of the Portfolio Funds and Companies; and the Partnership's return performance could be substantially adversely affected by the unfavorable performance of such managers.

Direct Investments in Companies

The Partnership may also make Direct Investments in restricted securities of private and publicly-held companies. The number of company issuers in which direct investments are made is likely to be limited and the Partnership will not attempt to diversify such investments by size of issuer, industry sector, or otherwise. Moreover, securities in which direct investments are made may be subject to transfer restrictions and, even if not restricted, may not be readily saleable because the trading market for such securities may be limited. Direct investments may be expected to involve a high degree of risk and uncertainty. There is generally no publicly available information regarding the privately-owned companies in which the Partnership expects to invest directly. The Partnership will have to rely on the diligence of the Investment Adviser, either alone or in conjunction with co-investors with whom the Partnership invests, in order to obtain information for the Partnership's investment decisions. There can be no assurance that the returns on the Partnership's investments will be commensurate with the risk of investment in the Partnership.

Leveraged Investments

The private funds in which the Partnership invests may use leverage and may acquire securities issued by companies with leveraged capital structures. The Partnership may make Direct Investments in companies with leveraged capital structures. These Direct Investments may be subject to increased exposure to adverse

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economic factors such as significant rise in interest rates, a severe downturn in the economy or deterioration in the condition of such portfolio company or its industry. In addition, the Partnership may use leverage in situations including but not limited to when capital calls are made by the Partnership and when capital calls are due from the Partnership.

Foreign Investments

The Partnership intends to invest a portion of the aggregate Commitments outside of the United States. Foreign securities involve certain factors not typically associated with investing in U.S. securities, including risks relating to: (i) currency exchange matters, including fluctuations in the rate of exchange between the U.S. dollar and the various foreign currencies in which the Partnership's foreign investments are denominated, and costs associated with conversion of investment principal and income from one currency into another; (ii) differences between the US. and foreign securities markets, including potential price volatility in and relative liquidity of some foreign securities markets, the absence of uniform accounting, auditing and financial reporting standards, practices and disclosure requirements and less government supervision and regulation; (iii) certain economic, social and political risks, including potential exchange control regulations and restrictions on foreign investment and repatriation of capital, the risks of political, economic or social instability and the possibility of expropriation or confiscatory taxation; and (iv) the possible imposition of foreign taxes on income and gains recognized with respect to such securities.

Laws and regulations of other countries may impose restrictions that would not exist in the United States. A non-U.S. investment may require significant government approvals under corporate securities, exchange control, foreign investment and other similar laws and may require financing and structuring alternatives that differ significantly from those customarily used in the United States. In addition, some governments from time to time impose restrictions intended to prevent capital flight, which may for example involve punitive taxation (including high withholding taxes) on certain securities transfers or the imposition of exchange controls making it difficult or impossible to exchange or repatriate the local currency. In addition, the repatriation of currency and other restrictions may make it impracticable for the Partnership to distribute the full amount of the Limited Partners' capital accounts in U.S. dollars, and therefore a portion of the distribution may be made in non-U.S securities or currency.

Natural Resource, Real Estate and Other Investments

The Partnership may invest in private funds and companies that invest in real estate, oil and gas, timber, commodities, or other natural resource interests. Such investments may involve additional risks as compared with investing in operating entities, including risks associated with inflation, supply and demand imbalances, commodities, interest rates, tax rates, natural resource prices, wars and terrorism, political uncertainties, environmental or other risks.

Limited Diversification; Industry Concentration

The Partnership expects to invest in a number of funds and companies, however, this cannot be assured and is subject to a variety of factors such as the amount of capital committed to the Partnership. Thus, its investment return could be substantially adversely affected by the unfavorable performance of any one of those investments. In addition, the concentration of the Partnership's investments in the communications and Internet sectors may involve greater risks than those commonly associated with diversified private equity

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funds. Certain sectors targeted by the Partnership are particularly susceptible to the vagaries of Federal and State regulation, rapidly changing market conditions and participants, as well as competing products and technologies which could affect the performance of the companies and funds in which the Partnership invests. In addition, while many Portfolio Companies in the targeted sub-sectors may have grown in terms of revenue, many will not be profitable. The Partnership's Portfolio Companies may have histories of losses and may expect losses for the foreseeable future.

Competition for Investments

The Partnership will compete for attractive investments with many other investors. Strong competition could adversely impact returns and/or prevent the Partnership from investing all of its available capital.

Unspecified Investments

The Partnership has not identified the particular investments it will make. Investors will not be able to evaluate personally the relevant economic, financial and other information that the General Partner will use to select investments.

Availability of Suitable Investments

The identification of attractive investment opportunities is difficult and involves a high degree of uncertainty. There can be no assurance that the Partnership will be able to invest its capital fully or that suitable investment opportunities will be identified which satisfy the Partnership's investment objectives.

Possibility of Delayed Returns

The Partnership could take five or more years to complete its investments. It could take an additional three to seven years or more to identify and implement exit strategies for all investments. Consequently, the Partnership may not realize any significant return from the disposition of its investments until three and possibly ten or more years from the initial closing. In addition, there can be no assurance that the Portfolio Funds and Companies in which the Partnership invests will provide the Partnership with any significant cash distributions other than in connection with the liquidation of the Partnership's investment in Portfolio Funds or Companies.

Illiquidity

The Partnership's investments will entail a high degree of risk, and in most cases will be highly illiquid and difficult to value. Until and unless certain of the Partnership's investments mature into marketable securities, there will be no public market for most of the Partnership's investments. In addition, Interests in the Partnership will be issued in reliance upon certain exemptions from registration or qualification under applicable Federal and State securities laws and, therefore, will be subject to certain restrictions on transferability. There will be no public or other market for such Interests in the Partnership, and none is expected to develop. In addition, the Limited Partners will not be entitled to withdraw their capital contributions, and interests in the Partnership may not be assigned or transferred without the prior written consent of the General Partner. Accordingly, Limited Partner Interests constitute illiquid investments and

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should only be purchased by entities and persons that are able to bear the risk of an entire loss on their investment and/or holding their interests for an indefinite long-term period of time.

No Assurance of Investment Return

While equity investments of the type targeted by the Partnership offer the opportunity for substantial capital appreciation, they can also involve a high degree of risk. The value of the Partnership's investments, and its ability to implement favorable exit strategies on a timely basis, can be adversely affected by a variety of factors, including portfolio fund or company portfolio company operating problems, industry developments and general business and economic developments. An investment in the Partnership should only be considered by persons who can afford a loss of their entire investment. Past performance of investment entities associated with the Principals is not necessarily indicative of future results. There is no assurance of any particular rate of return or that losses will not occur.

Lack of Operating History

The Partnership is a newly formed entity and has minimal operating history. Although the Principals have experience in private equity investing, the past performance of investments with which they have been associated cannot be relied on as an indication of the Partnership's future success. There can be no assurance, for example, that any of the Partnership's investments will perform as well as the investments made by the ACP Funds shown in this Memorandum.

The ACP Funds that have previously been established are not represented as venture capital funds or funds of funds, and therefore, their historical returns should not be evaluated versus the Cambridge Venture Capital Index or other indexes such as the S&P 500. The Cambridge Venture Capital Index and S&P 500 Index are presented in this memorandum for informational purposes only.

Lack of Management Rights

The General Partner will make all decisions with respect to the management of the Partnership. Limited Partners will have no right or power to take part in managing the Partnership.

Consequences of Default

Each Limited Partner that does not contribute all of its capital contributions as required by the Limited Partnership Agreement could be subject to reduction of its capital account balance and various other consequences described in the Limited Partnership Agreement.

Financial Market Fluctuations

General fluctuations in the market prices of securities may affect the value of the investments held by the Partnership. Instability in the securities markets may also increase the risks inherent in the Partnership's investments.

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Indemnification

The Partnership will be required to indemnify the General Partner, the Investment Adviser, the Advisory Board and their respective Affiliates, officers, directors, agents, stockholders, members and partners for liabilities incurred in connection with the affairs of the Partnership. Such liabilities may be material and have an adverse effect on the returns to the Limited Partners.

Board Participation

In general, the Partnership will seek to be represented on the advisory boards or boards of directors of a number of the funds and companies in which it makes investments. While such representation is important to the Partnership's investment philosophy and would be necessary if the Partnership seeks to qualify as a "venture capital operating company" under ERISA, it may also have the effect of impairing the ability of the Partnership to sell the related securities when, and upon the terms, it might otherwise desire, including as a result of applicable securities laws.

Third Party Litigation

The Partnership's investment activities will subject it to the normal risk of becoming involved in litigation by third parties. This risk is somewhat greater where the Partnership enjoys board representation or otherwise exercises significant influence over a fund or company's management or direction. The expense of defending against claims by third parties and paying any amounts pursuant to settlements or judgments generally would be borne by the Partnership.

Diverse Limited Partner Group

The Limited Partners may have conflicting investment, tax and other interests with respect to their investments in the Partnership. The conflicting interests of individual Limited Partners may relate to or arise from, among other things, the nature of investments made by the Partnership, the structuring of the acquisition of investments and the timing of disposition of investments. In selecting and structuring investments appropriate for the Partnership, the General Partner will consider the investment and tax objectives of the Partnership and its Partners as a whole, not the investment, tax or other objectives of any Limited Partner individually.

Recourse to the Partnership's Assets

The Partnership's assets, including any investments made by the Partnership and any capital held by the Partnership, are available to satisfy all liabilities and other obligations of the Partnership. If the Partnership becomes subject to a liability, parties seeking to have the liability satisfied may have recourse to the Partnership's assets generally and not be limited to any particular asset, such as the investment giving rise to the liability.

Tax Risks

Tax consequences to Limited Partners from an investment in the Partnership are complex. Potential Limited Partners are strongly urged to review the discussion in the section “Federal Tax Considerations" and to consult their own professional advisers in this regard.

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Lack of Separate Representation

Perkins Coie, LLP represents the General Partner and the Investment Adviser in connection with the organization and operation of the Partnership. It does not represent the Limited Partners, either individually or collectively, nor is it anticipated that the Partnership will engage its own separate counsel with respect to these matters. Perkins Coie, LLP will not furnish Limited Partners any legal opinions except those specifically referred to herein and has not passed upon the adequacy of this Memorandum or the fairness of the disclosure herein. Prospective investors must consult with their own counsel with regard to all of these matters.

Potential Conflicts of Interest

There are numerous potential conflicts of interest including but not limited to ACP and the Partnership; between the Partnership and other investment funds (including without limitation Additional Investment Vehicles) managed by ACP Principals and the Partnership, between the Affiliates and the Partnership, the Portfolio Funds, and the Portfolio Companies.

Prospective investors should understand that a key premise in the investment strategy of the Partnership is the importance of providing a comprehensive menu of liquidity-related services to sellers and funds in special situations. Providing such services can result in certain conflicts of interest. ACP and its Affiliates have implemented numerous policies to base incentives on the success of the Partnership. ACP and its Affiliates believe they have in place appropriate incentives and policies regarding conflicts of interest, based on the fact that the ACP Funds have previously utilized substantially similar incentives and policies and have generated superior returns.

The Partnership may invest in opportunities that have been declined by ACP, its Affiliates, or related investment entities. The Partnership may sell or make investments in entities created by or investments held by ACP or its Affiliates at prices established by the General Partner in its sole discretion. The Partnership, its Portfolio Funds, and Portfolio Companies may utilize the services of ACP and its Affiliates, for which they will pay customary fees and expenses. Competitors of the Partnership, its Portfolio Funds, and Portfolio Companies may utilize the services of ACP and its Affiliates. Services provided by ACP and its Affiliates may be adverse to the Partnership's interests. Conflicts of interest between the Partnership and ACP and its Affiliates will be resolved by the Investment Adviser in its sole discretion, and in certain instances may have an adverse impact on the Partnership and its ability to achieve its investment objective.

The Partnership generally will have no control over the management of the Partnership's investments and other decisions. ACP and its Affiliates are not obligated to share any investment opportunity with the Partnership. Nothing contained herein includes, restricts, or limits in any way the activities of ACP and its Affiliates, including, without limitation, i) the making of Partnership investments, direct investments, or other principal investments for its own account, the account of other investments funds, the Principals, personal accounts, or third parties, and ii) the ability of ACP and its Affiliates to receive fees or other compensation of any kind from any activity, including, without limitation, activities in which the interests of the Partnership may be different or adverse to the Interests of ACP and its Affiliates or third parties.

To the extent the General Partner determines that an investment is not prudent for the Partnership, it may offer all or any portion of such investment to other entities, including the Principals and the Affiliates. ACP and its Affiliates may in the future manage successor partnerships or other partnerships or accounts ("Other Investment Partnerships") that invest in assets eligible for investment by the Partnership. An example of when this may be appropriate is when a prospective investment is considered too early stage for the

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Partnership, but a Principal, ACP or an Affiliate may be willing to make an investment and incubate it until such time as it may be appropriate for consideration by the Partnership.

The investment policies, fee arrangements and other circumstances of the Partnership may vary from those of the Other Investment Partnerships. In general, the General Partner, ACP and its Affiliates will allocate investment opportunities among the Partnership and Other Investment Partnerships (assuming the investment satisfies the objectives of each) in a manner that they believe in their judgment and based upon their fiduciary duties to be appropriate given the investment objectives, liquidity, diversification and other limitations of the Partnership and Other Investment Partnerships. Under certain circumstances, the Partnership may invest in a company in which one or more of the Principals or ACP and its Affiliates has an existing investment. While any Principal who has such an existing investment would have a conflict of interest in setting the price at which the Partnership would make such investment, the Partnership's Investment Committee would be one of a group of investors that would validate the price paid by the Partnership.

Reports

The Partnership will use reasonable efforts to send annual audited statements within ninety (90) days after the end of each fiscal year, as the Partnership depends on receiving timely reports from the Portfolio Funds and Companies. Limited Partnerships should expect to file for extensions for the completion of their income tax returns.

Federal Securities Regulation

Although the Partnership does not intend to invest extensively in publicly- held securities, the Partnership can invest limited amounts in such securities. In addition, the implementation of its exit strategies could result in the Partnership owning such securities. Depending on the circumstances, including the amount of securities held, the Partnership could have various reporting and disclosure obligations, or become subject to short swing profit provisions.

Small Amount of Assets Under Management

The ACP Funds have to date intentionally managed a small dollar amount of investments in order to gain proprietary knowledge and to limit mistakes in the special situation secondary private equity sector at early stages of development of the special situation secondary private equity sector. The total amounts managed by the ACP Funds are less than $10,000,000. A prospective investor in the Partnership may deem such a small dollar amount of assets under management as insignificant in order to provide a meaningful indication of the prospects for performance of the Partnership. Therefore, such prospective investors are encouraged to evaluate the merits of an investment in the Partnership as similar to an investment in a first-time fund. Furthermore, the Partnership's organization may not be adequately equipped to manage a large amount of investments.

High Concentrations of Risk

Certain ACP Funds did not seek to assemble diversified portfolios, but rather, made a single special purpose investment. This is in line with the objectives of such funds, which was to gain proprietary knowledge and to limit mistakes in the special situation secondary private equity sector. Certain ACP Funds made an

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investment in the same private company, however, with a different investment structure, in order to test various risk/return investment profiles. As a result, the ACP Funds had high concentrations of risk and returns correlated to few investments.

Reliance on Independent Contractors

The General Partner has successfully utilized, and intends to continue to utilize, the services of independent contractors in key positions, including as Principals. Certain independent contractors may only available to the General Partner on such a basis due to tax or other considerations. Each independent contractor is required to sign a non-disclosure agreement and non-compete agreement with the General Partner. The Employees and independent contractors of the General Partner may also serve as employees and independent contractors of NYPPE, LLC and other Affiliates. Although the General Partner believes such independent contractors have the potential to perform in a satisfactory manner, there can no assurances that they will do so, and their part-time status may be a contributing factor. There may be conflicts of interests and a higher risk of maintaining confidentiality and to not compete with the Partnership with such personnel. Furthermore, the loss of such Independent Contractors may have a material adverse affect on the Partnership.

Reliance on Key Personnel

The success of the Partnership is substantially dependent upon the participation of Laurence G. Allen, the Principals, and other key employees of the General Partner. The loss of the services of one or more of these individuals could have an adverse impact on the Partnership's ability to realize its investment objectives.

Although the Partnership believes its professionals will devote such time to the Partnership as is appropriate to achieve its objectives, there can be no assurances that they will remain, and are under no obligation to remain with the General Partner.

Investment Company and Investment Advisers Act

The Partnership will not be registered as an investment company under the Investment Company Act of 1940. The Investment Adviser is registered as an investment adviser under the Advisers Act of 1940 (the "Advisers Act") and will qualify as an "investment manager" to any of the Partnership's Limited Partners that are subject to ERISA with respect to their investments in the Partnership.

Investors should be aware that, as a result of the allocation and distribution provisions of the Limited Partnership Agreement, Limited Partners may receive proportionately smaller distributions from the Partnership than the General Partner relative to their capital contributions. In order to comply with Section 205(a)(l) of the Advisers Act, the General Partner will require that each Limited Partner is a "qualified purchaser," as that term is defined in the Investment Company Act of 1940.

Employee Benefit Plans and Certain ERISA Considerations

It is anticipated that some employee benefit plans subject to ERISA, and some governmental retirement plans subject to similar regulation, will invest in the Partnership. Therefore, the Partnership may be restricted or precluded from making certain investments. In addition, such avoidance could require the General Partner to

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liquidate Partnership investments at a disadvantageous time, resulting in lower proceeds to the Partnership than might have been the case without the need for such compliance. In considering an investment in the Partnership, fiduciaries of employee benefit plans subject to ERISA should consider their basic fiduciary duty under ERISA, which requires them to discharge their investment duties prudently and solely in the interest of plan participants and beneficiaries. Plan fiduciaries should consider the role that an investment in the Partnership would play in the plan's overall investment portfolio. In particular, ERISA investors that have a pre-existing fiduciary relationship with ACP and its Affiliates must make an independent investment decision with respect to their participation in the Partnership and must not rely upon ACP or its Affiliates for investment advice regarding such participation.

Under the Department of Labor's plan asset regulations (the "Plan Asset Regulations"), if 25% or more of the value of limited partnership interests in the Partnership (or in a parallel fund to the partnership) is held by benefit plan investors, the assets of the Partnership (or the parallel fund) will be deemed to be "plan assets" ("benefit plan investors" include employee benefit plans as defined by ERISA (whether or not subject to ERISA), plans described in Code Section 4975(e)(1), and other entities holding plan assets). In that case, each employee benefit plan subject to ERISA that invests in the Partnership will be treated as though it directly owned a pro rata share of the Partnership's assets, and each such investor would be required to appoint the Investment Adviser as its investment manager. The Investment Adviser is registered as an investment adviser under the Advisers Act and will acknowledge its appointment as a fiduciary to the investing plans.

Certain investments may be precluded from the Partnership by reason of the "prohibited transaction" rules of ERISA, which prohibit the Investment Adviser from engaging in certain transactions involving plan assets with any "party in interest" (as defined under Section 3(14) of ERISA) with respect to an employee benefit plan subject to ERISA. The scope of this latter restriction, however, is likely to be relatively limited.

ERISA and its accompanying regulations are complex and, to a great extent, have not yet been interpreted by the courts or administrative agencies. This discussion does not purport to constitute a thorough analysis of ERISA.

Prospective Limited Partners that are subject to the provisions of ERISA should consult with their own ERISA advisers with specific reference to their own ERISA situations and the provisions of ERISA applicable to an investment in the Partnership.

Perkins Coie, LLP serves as legal counsel to the General Partner.

Halpern & Associates, LLP, or another accounting firm selected by the General Partner, will make a reasonable effort to report upon the financial statements of the Partnership within one hundred twenty (120) days of the end of each fiscal year. Partners should plan to file tax returns with an estimated K-1 report with respect to the Partnership and thereafter, make amended tax filings as the Partnership can only prepare final K-1 reports for Partners after receiving reports from all of the Portfolio Funds. Tax returns with respect to the Partnership will be automatically extended pursuant to the Internal Revenue Services' initial extension period for a limited partnership. The General Partner shall not be liable for any late fees, accounting fees, or other expenses incurred by the Limited Partner resulting from a delay in the Partnership completing its financial reports, K-1 and other statements.

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Additional Information

This Memorandum is intended to present a general outline of the policies and structure of the Partnership. The section entitled Summary of Principal Terms, which contains a summary of certain provisions of the Limited Partnership Agreement, is necessarily incomplete and is qualified by reference to the Limited Partnership Agreement.

Prior to the consummation of the offering, the Partnership will provide to each prospective investor and such investors' representatives and advisers, if any, the opportunity to ask questions and receive answers concerning the terms and conditions of this offering and to obtain any additional information that the Partnership may possess or can obtain without unreasonable effort or expense. Any such questions or requests should be directed to Dexter B. Blake, III, Principal, Allen Capital Partners, LLC, 55 Old Field Point Road, Greenwich, CT, 06830. (Phone: 203-422-5000 x204). No other persons have been authorized to give information or to make any representations concerning this offering, and if given or made, such other information or representations must not be relied upon as having been authorized by the Partnership.

Copies of the Limited Partnership Agreement, the Subscription Agreement for purchase of an interest in the Partnership, and the Investment Advisory Agreement, as well as Part II of the Investment Adviser's Investment Adviser Registration on Form ADV, will be made available upon request.

Jurisdiction

This Memorandum shall be governed by and construed in accordance with the State of Delaware, with regard to principles of conflicts of law. The parties agree that any disputes will be submitted to binding arbitration only in the jurisdiction of the NASDR in New York, N.Y. Please see the Limited Partnership Agreement for further information.

XI. CERTAIN REGULATORY AND TAX MATTERS

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Federal Tax Considerations

The Partnership will receive, at the final Closing, legal advice that under the current provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, the Partnership will be classified as a partnership and not as a corporation for United States federal income tax purposes. No ruling has been or will be requested from the Internal Revenue Service with respect to any tax issue affecting the Partnership, and no assurance can be given that the Internal Revenue Service will concur with the discussion of tax considerations relating to an investment in the Partnership set forth below.

Each prospective investor is advised to consult its own tax counsel as to the United States federal income tax consequences of an investment in the Partnership and as to applicable state, local, and foreign taxes. The discussion below summarizes certain of the United States federal income tax aspects of participation in the Partnership. It is based upon the provisions of the Internal Revenue Code of 1986, as amended (the "Code") existing Treasury regulations promulgated thereunder ("Regulations") and judicial decisions, and on current administrative rules, practices and interpretations of law of the Internal Revenue Service (the "Service"). It is possible that changes in the law may be effected by future legislation and that interpretations of the law may be changed or modified by judicial decisions and by the Service in its Regulations, rules and practices. Any such change may or may not be retroactively applied. This summary does not purport to deal with all aspects of federal income taxation that may affect Partners, particularly in light of their individual circumstances, nor with certain types of Partners subject to special treatment under the federal income tax laws. Consequently, each prospective Partner is urged to consult its own tax adviser with regard for all of the federal, state, local and foreign income and other tax consequences of participating in the Partnership.

Classification of the Partnership

The Partnership will receive advice, that, based on various assumptions and representations noted therein, the Partnership will be treated as a partnership for federal income tax purposes. Opinions of counsel are not, however, binding on the Service or the courts. If the Partnership were classified as an association taxable as a corporation for federal income tax purposes, the Partnership's taxable income would be subject to tax at regular corporate rates and would not flow through to the Partners for reporting on their own returns, and distributions by the Partnership to Partners would be taxable to them as dividends, to the extent of the Partnership's earnings and profits, and would not be deductible by the Partnership.

Tax Treatment of the Partnership

Entities qualifying under the Code as partnerships are not subject to federal income tax, but are required to submit annual federal information returns identifying all the partners and stating the amount of each partner's distributive share of the partnership's income, gain, loss, deduction or credit for the taxable year.

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Tax Treatment of Partners

Each Partner in the Partnership must report on its federal income tax return its distributive share of the Partnership's income, gain, loss, deductions and credits in its taxable year in which or with which the taxable year of the Partnership ends, whether or not cash distributions with respect to such items are made to the Partners. In addition, certain of the investments held by the Partnership may, by reason of imputed "discount" or "pay-in-kind" features and possibly by reason of not paying accrued dividends currently, give rise to taxable dividends or interest even though there has been no corresponding cash distribution to the Partnership. Furthermore, investments by the Partnership in foreign entities may, in certain circumstances (e.g., pursuant to the controlled foreign corporation ("CFC") or the passive foreign investment company ("PFIC") provisions), cause a Partner to recognize income subject to tax prior to the receipt by the Partnership of any distributable proceeds (or to pay an interest charge on taxable income that is treated as having been deferred). Accordingly, a Partner's tax liability related to the Partnership could exceed amounts distributed by the Partnership to such Partner in a particular year. In addition, Partners may recognize income or gain as a result of receiving cash distributions upon the admission of additional investors after the initial closing.

United States Limited Partners

The Partnership will not pay United States federal income taxes, but each Partner thereof will be required to report its distributive share (whether or not distributed) of the income, gains, losses, deductions and credits earned or realized by the Partnership. It is possible that the Partners of the Partnership could incur income tax liabilities without receiving sufficient distributions from the Partnership to defray such tax liabilities. Tax information will be distributed to each Partner as soon as possible after the end of the year.

Under Section 67 of the Code, non-corporate taxpayers may deduct certain miscellaneous expenses not related to the active conduct of a trade or business only to the extent such deductions exceed, in the aggregate, 2% of the taxpayer's adjusted gross income. Each Partner's share of the Investment Advisor Fee paid by the Partnership to the Investment Adviser, as well as certain other expenses of the Partnership, will be included among the miscellaneous expenses potentially subject to the 2% floor. However, corporate Limited Partners and tax-exempt organizations are not affected by the 2%
floor.

The purchase price paid by the Partnership for its interest in any Portfolio Fund acquired in a secondary transaction generally will not be reflected in the tax basis of the securities and other assets held by the Portfolio Fund unless the Portfolio Fund has in effect an election under Section 754 of the Code. If no such election is in effect and the Partnership pays a price for its interest in the Portfolio Fund that exceeds its proportionate share of the Portfolio Fund' s tax basis in its assets, the Partnership and its Partners may realize taxable gains on later sales of those assets even though they would have realized smaller gains (or even losses) if the Portfolio Fund's tax basis in the assets sold had reflected the price paid by the Partnership. The Partners of the Partnership subsequently might be able to claim a tax loss deduction to offset the "artificial" gains they realized earlier, but only at the time of the Portfolio Fund's final liquidating distributions and provided that those distributions were made in cash. If the final liquidating distributions of the Portfolio Fund consisted in part of an in-kind distribution of securities or other assets, the Partners would not be allowed an immediate loss deduction, and any taxable gain otherwise reportable on a later sale of those assets generally would be reduced correspondingly.

If the Portfolio Fund had a Section 754 election in effect for the year during which the Partnership acquired

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its interest, the Partnership's share of the Portfolio Fund's tax basis in its assets would be increased to reflect the purchase price paid by the Partnership for its interest. In that event, taxable gains realized by the Partnership (and reported by its Partners) on later sales of those assets generally would be limited to the appreciation occurring after the Partnership's acquisition of its interest in the Portfolio Fund, and no acceleration of the Partners' tax liability would occur. The General Partner will ascertain whether any Portfolio Funds have Section 754 elections in effect, and will make that information available to investors on request. The General Partner does not anticipate that the Partnership will be entitled to cause Portfolio Funds to make Section 754 elections.

United States Tax-Exempt Limited Partners

Under Section 511 of the Code, most otherwise tax-exempt organizations are subject to United States federal income tax on unrelated business taxable income ("UBTI"). Generally, UBTI is defined as gross income from any trade or business unrelated to the organization's tax-exempt purpose, if such business is "regularly carried on," less the deductions directly connected with such gross income. Most types of passive investment income are excluded from UBTI. However, any passive investment income from "debt-financed property" will be treated, at least in part, as UBTI. Tax-exempt organizations or entities which are Limited Partners of the Partnership will be subject to federal income tax on their allocable shares of any income of the Partnership (including the Partnership's allocable shares of the income of any Portfolio Funds) that would be UBTI if realized directly by such tax-exempt organizations or entities. As described below, Limited Partners of the Partnership may incur UBTI as a result of the activities of one of more Portfolio Funds.

The General Partner intends to organize and conduct the affairs of the Partnership in such a way that the Partnership will not be deemed to be regularly carrying on a trade or business. Notwithstanding this intention, however, one or more of the Portfolio Funds in which the Partnership has invested may be deemed to be regularly carrying on a trade or business. Any income realized from such trade or business by such Portfolio Fund will in turn be allocated to the Partners of the Partnership, including tax-exempt Limited Partners. In addition, any portion of any fees the Investment Advisor earns from Portfolio Investments or the Partnership which are remitted back to the Partnership will likely constitute UBTI.

If the Partnership makes an investment in an Portfolio Fund, which, in turn, acquires assets with the proceeds of borrowings, a proportionate part of the income realized by the Partnership from the Portfolio Fund will be treated as UBTI, and each tax-exempt Limited Partner may be subject to federal income tax on its proportionate share of such UBTI. While the Partnership does not expect to incur indebtedness in connection with making any investments in Portfolio Companies or Portfolio funds, it is permitted to do so at the sole discretion of the General Partner. In such cases, income realized by the Partnership from such investments will be treated as UBTI. In addition, if a tax-exempt Limited Partner borrows to fund its Commitment, some or all of its distributive share of income from the Partnership could be subject to federal income tax as UBTI.

Non-U.S. Limited Partners

The United States federal income tax treatment of a nonresident alien, foreign corporation, foreign partnership, foreign estate or foreign trust ("non-U.S. Partner") investing as a Limited Partner in the Partnership will depend on whether the Partnership is deemed to be engaged in a United States trade or business. The General Partner intends to organize and conduct the affairs of the Partnership so that the

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Partnership will not be treated as engaged in a trade or business in the United States. Notwithstanding this intention, however, one or more of the Portfolio Funds may take the position that such Portfolio Funds are engaged in a trade or business in the United States. Any United States trade or business income allocated to the Partnership by such Portfolio Funds will, in turn, be allocated to the Partners of the Partnership, including non-U.S. Partners. In addition, any portion of any fees the Investment Advisor earns from Portfolio Investments or the Partnership which are remitted back to the Partnership will likely constitute income from a United States trade or business.

If it were ultimately established that the Partnership had incurred United States trade or business income, the Partnership would be required to withhold and pay over to the United States government *35%* of the Partnership's net trade or business income and gains allocated to non-U.S. Partners that are corporations and 35% of such income and gains with respect to other non-U.S. Partners, and would be liable for interest and penalties with respect to amounts that were not so withheld. Moreover, in that case, non-U.S. Partners would be required to file United States federal income tax returns and pay federal income tax in respect of their shares of such income, including capital gains; such non-U.S. Partners would be allowed a credit against United States federal income tax liability for amounts withheld by the Partnership on their behalf. Non-U.S. Partners that are corporations might also be subject to a "branch profits" tax on their distributive shares of a Partnership's United States trade or business income and gains.

Assuming that the Partnership does not incur United States trade or business income, the Partnership generally will not be required to withhold United States federal income tax on each non-U.S. Partner's allocable share of (i) gain from the sale of portfolio securities and (ii) portfolio interest income, and the non-U.S. Partners will not be subject to federal income tax in respect of such income. However, the Partnership may be required to withhold United States federal income tax at the rate of 30% (or lower treaty rate, if applicable) on each non-U.S. Partner's allocable share of other interest, dividends, and certain other income.

Capital gains attributable to the sale of securities of a United States real property holding corporation ("USRPHC") (other than debt securities with no equity component) may be subject to United States federal income tax, collected by withholding, when allocated to a non-U.S. Partner. The Partnership will use its best efforts to avoid holding the securities of any corporation that is a USRPHC if the General Partner determines that any non-U.S. Partner otherwise would become subject to additional United States federal income tax. One or more of the Portfolio Funds in which the Partnership has invested, however, may hold equity securities of corporations that are USRPHC's, and the non-U.S. Partners of the Partnership will be subject to United States federal income tax on their distributive shares of any gains realized on the disposition of such securities. In addition, it is possible that a corporation in which the Partnership holds an investment may become a USRPHC.

The federal income tax treatment of a nonresident alien, foreign corporation, foreign partnership, foreign estate or foreign trust ("non-U.S. investor") investing as a Limited Partner in the Partnership is complex and will vary depending upon the circumstances of the Limited Partner and the activities of the Partnership. Special rules may apply in the case of certain non-U.S. investors, including, without limitation, a non-U.S. investor that (i) has an office or fixed place of business in the United States to which distributions or gain in respect of limited partnership interests are attributable or (ii) is a former citizen of the United States, a foreign insurance company or a corporation that accumulates earnings to avoid United States federal income tax. Each non-U.S. investor is urged to consult with its own tax adviser regarding the federal, state, local and foreign tax treatment of its investment in the Partnership.

A non-U.S. investor will be subject to United States federal income tax on its allocable share of income of the Partnership that is effectively connected with a trade or business in the United States or that consists of

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certain specific types of income from sources within the United States. Although the Partnership generally anticipates that it will conduct its affairs such that it will not directly be engaged in a trade or business in the United States, the Partnership may be considered to be so engaged as a result of its ownership of funds or companies that are tax transparent entities. In such instance, if a fund or portfolio company is engaged in a US. trade or business, a non-U.S. investor will be subject to U.S. federal income tax and possibly other taxes on its share of the Partnership's income that is effectively connected with such trade or business and will be obligated to file a U.S. income tax return reporting such income. If the Partnership decides to invest in a tax-transparent entity engaged in a U.S. trade or business, the General Partner will, subject to certain conditions, offer non-U.S. investors the option of having their participation in such investment structured through a corporation so that income and gains payable to such non-U.S. investors in respect of such investment should not constitute income effectively connected with a U.S. trade or business. Such corporation would, however, be required to pay federal and state income taxes on income it realizes from the investment, which would reduce the amounts payable to the non-U.S. investors participating through such fund or corporation.

It is possible that the Service may assert that any reduction in investment advisory fees resulting from the receipt of consulting fees, transaction fees, and break-up fees earned by the ACP and its Affiliates may be deemed income attributable to a trade or business conducted by the Partnership within the United States. The Partnership intends to take the position that the reductions should not be so viewed. However, if the reductions were so viewed, non-US. investors would be subject to U.S. federal income taxation (plus, in the case of a foreign corporation, the branch profits tax) on their allocable share of that income and obligated to file US. income tax returns reporting such income.

Assuming the Partnership is not engaged in a trade or business in the United States, capital gains derived by the Partnership from the disposition of investments other than those involving tax-transparent entities, interest income which qualifies for the "portfolio" interest exemption and income from sources outside the United States derived by the Partnership generally will be exempt from United States federal income and withholding taxes. However, a 30% United States withholding tax will apply to United States source dividends and interest (other than qualifying "portfolio" interest) received by the Partnership that are allocable to non-U.S. investors, which is required to be withheld by the General Partner. Treaties between the country of residence and the United States may reduce or eliminate United States withholding tax on certain United States source income. A non-U.S. investor may be required to satisfy certain certification requirements in order to claim treaty benefits.

In the event the General Partner is required to withhold, the Limited Partnership Agreement provides that the General Partner shall deduct from amounts distributable to each non-U.S. investor all amounts, including taxes, interest and penalties, that the Partnership or the General Partner is required to withhold or pay under applicable law. In addition, if such taxes, interest and penalties exceed the amount distributable, the Limited Partnership Agreement requires non-U.S. investors to promptly pay over to the General Partner an amount of cash equal to such excess.

The General Partner is willing to discuss with potential non-U.S. investors approaches for mitigating the risk that such investors might have income effectively connected with a U.S. trade or business as a result of an investment in the Partnership. Because a foreign investor's particular tax situation may be affected by the specific country or countries in which it is, or may be deemed for United States tax purposes to be, a resident, by treaties between those countries and the United States, by the internal tax laws of those countries, by its United States income from sources other than the Partnership and by numerous other factors, it is imperative that each prospective foreign investor satisfy itself as to the United States income tax, state income tax, foreign income tax and other tax aspects of an investment in the Partnership by obtaining advice from tax and financial professionals who are familiar with the foreign investor's financial, tax and legal situation.

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Hong Kong Taxes

The Partnership will only be subject to tax in Hong Kong if it carries on a business in Hong Kong and its profits have a Hong Kong source. In such case, it will be subject to profits tax, currently imposed at a rate of 16% on any profits (including interest) that arise in or are derived form Hong Kong. In this regard, profits derived from the offshore disposal of shares listed or registered outside Hong Kong should be considered as derived from outside Hong Kong and should, therefore, not attract a Hong Kong profits tax liability. For profits derived from the onshore disposal of shares listed or registered in Hong Kong, if such investment is a long term investment, the related profits would be capital in nature and not subject to Hong Kong profits tax liability. The General Partner intends that, to the extent practicable, the business of the Partnership will be conducted in such a manner that the Partnership will not be liable to tax in Hong Kong.

Singapore Taxes

The Partnership intends to conduct its affairs with respect to Singapore in such a way so as to attempt to avoid being deemed or treated, for Singapore tax purposes as either having a permanent establishment/taxable presence or carrying on a trade, profession or business in Singapore. The Partnership believes that it will not be treated as carrying on a trade or business in Singapore by reason of utilizing the services of investment advisors who are not authorized to commit the Fund in any transactions. However, no assurance can be given in this regard. This discussion is based on the Singapore tax laws now in effect and on administrative and judicial interpretations thereof, as of the date hereof, all of which are subject to change, possibly on a retroactive basis, or different interpretations. No assurance can be given that future legislation, administrative rulings or court decisions will not modify the conclusions set forth in this summary.

Dividends and interest. Dividends and interest income are taxable in Singapore only if they are sourced or received in Singapore. Singapore adopts an imputation system whereby tax on dividends is collected at source as the corporate tax on a company's profits and no further tax arises on distributions of previously taxed income to the company's shareholders such as the Fund. The current rate of corporate tax in Singapore is 26%. Interest payable to non-residents of Singapore such as the Fund is subject to withholding tax of 15% if the non-resident does not have a branch or permanent establishment in Singapore. However, in some cases the interest may be specifically exempt under the Singapore Income Tax Act. For example, interest from deposits placed by a non-resident person with approved banks in Singapore is tax exempt, where the non-resident does not, by himself or in association with others, carry on a business in Singapore and does not have a permanent establishment in Singapore.

Income from Sales of Securities. Singapore does not impose tax on capital gains. However, gains may be construed to be of an income nature and hence subject to tax if they arise from activities, which the Inland Revenue Authority of Singapore regards as the carrying on of a trade. The Partnership intends to conduct its affairs in a manner that it will not be treated as carrying on a trade or business in Singapore. Consequently, other than the gains specifically described below, the Partnership should not be subject to tax in Singapore on any gains from the sale of shares and securities of Singapore companies. Part or all of the gains from the disposal (excluding shares which are trading stock of the owner of the shares) of shares in a private (unlisted) company which is a "**relevant company**" (as defined below) at the time of disposal of such shares will be deemed to be income chargeable to tax if such disposition is within 3 years of the acquisition date. Further, part or all of the gains from the disposal of shares in such a company which have been held for more than 3 years will also be deemed to be income chargeable to tax if the company holds real property acquired within the 3 years prior to the date of disposal of the shares.

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A "**relevant company**" is defined as any private company (i.e., unlisted company) which has shares (including shares which are trading stock of the private company) in one or more relevant investment companies or real property, the aggregate value of which comprises at least 75% of the market value of its total tangible assets at the end of the accounting period of the private company immediately before the disposal of shares in the private company. A relevant investment company is defined as any private company which has real property the value of which comprises at least 75% of the market value of its total tangible assets as at the end of the accounting period of the private company immediately before the disposal of shares in the relevant company.

United Kingdom Taxes

The General Partner has been advised that neither the General Partner nor the Partnership should be treated as resident for tax purposes in the UK. In addition neither should be treated as having a permanent establishment in the UK. Furthermore, no liability to UK income tax or capital gains tax should arise on the Partnership itself as the Partnership should be treated as tax transparent for UK tax purposes.

A partner should not be assessable to UK tax in respect of income or capital gains realized by the Partnership unless the partner is resident or ordinarily resident in the UK or carries on a trade through a UK branch or agency.

Dividends paid by a UK company are not subject to withholding tax. In certain circumstances a repayment of tax credit may arise under an applicable double taxation agreement but the quantum of the repayment is likely to be immaterial.

Withholding tax at a rate of 20% may be deducted where interest is paid by a UK company. The partners to whom the interest is allocated in the Partnership Accounts may recover such withholding tax to the extent it exceeds the rate permitted by any applicable double taxation treaty.

Allocations of the Partnership's Profits and Losses

Under the Code, a Partner's distributive share of an item of Partnership income, gain, loss or deduction is respected, so long as the allocations of such items under the Limited Partnership Agreement have "substantial economic effect" or are otherwise in accordance with such Partner's interest in the Partnership (determined by taking into account all facts and circumstances). The allocations of income, gain, loss and deduction under the Limited Partnership Agreement are intended to reflect each Partner's interest in the Partnership. Nonetheless, it is possible that the Service could assert that, for federal income tax purposes, such allocations should not be given effect. If the allocations that are made pursuant to the Limited Partnership Agreement were successfully challenged by the Service, the redetermination of the allocations to a particular Partner for federal income tax purposes may be less favorable than the allocations set forth in the Limited Partnership Agreement.

Partnership Level Audits

Partners are required to treat Partnership items on their tax returns consistent with the treatment of the items on the Partnership's tax return or notify the Service of any inconsistent position. It is possible that the federal information tax returns the Partnership is required to file with the Service will be audited. Such an audit would generally be conducted at the Partnership level in a single proceeding rather than in separate

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proceedings with each Partner. In any Partnership level audit, the Partnership will be represented by the General Partner as "tax matters partner," who would have the authority, among other things, to extend the applicable statute of limitations and enter into an administrative settlement with the Service with regard to all Partnership items. The Partnership would bear the cost of any such audit. Any such settlement would not be binding upon any Partner who timely objects thereto.

Limitations on Deductibility of Certain Losses and Expenses

Prospective investors who are individuals or certain closely held corporations should be aware that they could be subject to various limitations on their ability to use their allocable share of deductions and losses of the Partnership against other income. Such limitations include those relating to "passive losses," amounts "at risk," "investment interest," and "miscellaneous itemized investment expenses." Prospective investors should consult their own tax advisers regarding the application of these rules to their investment in the Partnership.

Syndication and Organizational Expenditures

Amounts paid by the Partnership (directly or indirectly through reimbursement of the Investment Adviser or General Partner) for organizational and syndication expenses are not deductible in the year in which they are paid or accrued. The amounts paid for syndication expenses and placement agent fees are not deductible.

Treatment Of Foreign Taxes

A Partner's allocable share of any foreign income or withholding tax imposed on the Partnership in respect of dividends, interest, capital gains or other income generally will be treated as a foreign income tax which the Partner may elect to deduct in computing its taxable income or, subject to general applicable limitations and conditions under the Code, to credit against its U.S. federal income tax liability. These limitations include a rule limiting the amount of the credit to the U.S. tax liability that otherwise would be imposed on foreign source income of the Partner in the same category as the income giving rise to the foreign tax (as determined after deducting related expenses, including an allocable portion of the Partner's overall interest expense). In many cases, capital gains of the Partnership will be treated as U.S. source income and therefore a Partner might not be able to use a foreign tax credit for any foreign tax that might be imposed on the gains.

State and Local Taxes

The Partnership, as well as the Partners, may be subject to various state and local taxes. Prospective investors are urged to consult their own tax advisers regarding the state and local tax consequences of investing in the Partnership.

Summary; Laws Subject to Change

The foregoing discussion is intended as a summary of certain United States federal income tax consequences of an investment in the Partnership. Because many of these consequences will vary from one Limited Partner to another, this summary does not attempt to discuss all of the provisions of the Code which might be applicable to a particular Limited Partner. Moreover, changes in applicable tax laws after the date hereof may alter anticipated tax consequences. The foregoing discussion does not address any state, local, or foreign tax

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laws that may be applicable to Limited Partners. Neither the General Partner, the Investment Adviser, the Partnership, nor any of their counsel or consultants assume any responsibility for the tax consequences to any Limited Partner of an investment in the Partnership.

Prospective Limited Partners are urged to consult their own tax advisers with specific reference to their own tax situations and potential changes in the tax laws applicable to an investment in the Partnership.

ERISA Considerations

Each prospective investor which is an employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (such plans referred to herein as "ERISA Plans"), or which is a plan within the meaning of Section 4975(e)(l) of the Code (including individual retirement accounts ("IRAs") or Keogh plans covering only self-employed individuals ("Keogh Plans") or an entity whose assets are deemed to include plan assets, should consider, among other things, the matters described below in determining whether to invest in the Partnership. Such ERISA Plans, plans and entities are referred to herein as "Plans."

General Fiduciary Rules

ERISA imposes certain general and specific responsibilities on fiduciaries with respect to an ERISA Plan. Those responsibilities include satisfaction of the prudence and diversification requirements of ERISA and compliance with prohibited transaction and other rules and standards. In determining whether a particular investment is appropriate for an ERISA Plan, Department of Labor regulations provide that the fiduciaries of an ERISA Plan must give appropriate consideration to, among other things, the role that the investment plays in the ERISA Plan's portfolio, taking into consideration whether the investment is designed reasonably to further the ERISA Plan's purposes, an examination of the risk and return factors, the portfolio's composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the ERISA Plan, and the projected return of the total portfolio relative to the ERISA Plan's funding objectives. Before investing the assets of an ERISA Plan in the Partnership, a fiduciary should determine whether such an investment is consistent with its fiduciary responsibilities and the foregoing regulations. Keogh Plans and IRA investors should also consider whether an investment in the Partnership is appropriate for their Keogh Plans and IRA'S.

Prohibited Transactions

ERISA generally prohibits a fiduciary from causing an ERISA Plan to engage in a broad range of transactions involving the assets of the ERISA Plan and persons having a specified relationship to the ERISA Plan ("parties in interest") unless a statutory or administrative exemption applies. Similar prohibitions are contained in Section 4975 of the Code and generally apply with respect to ERISA Plans, Keogh Plans, IRAs and certain other plans described in Section 4975 of the Code (a "Section 4975 Plan"). An excise tax may be imposed pursuant to Section 4975 of the Code on persons having a specified relationship with a Section 4975 Plan ("disqualified persons") in respect of prohibited transactions involving the assets of the Section 4975 Plan. Generally speaking, parties in interest for purposes of ERISA would be disqualified persons under Section 4975 of the Code.

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If the assets of the Partnership are treated for purposes of ERISA and Section 4975 of the Code as the assets of the Plans that invest in the Partnership, certain transactions that the Partnership might enter into in the ordinary course of its business might constitute "prohibited transactions" under ERISA and the Code, thereby potentially subjecting fiduciaries of the Plans to personal liability and civil penalties and potentially resulting in the imposition of an excise tax under Section 4975 of the Code upon the disqualified person that is party to the transaction with the Partnership.

Plan Assets

The U.S. Department of Labor has issued regulations (the "Plan Asset Regulations") describing what constitutes the assets of a Plan for purposes of various provisions of ERISA and Section 4975 of the Code when a Plan makes an equity investment in an entity such as the Partnership. Under the Plan Asset Regulations, an investment by a Plan in an entity such as the Partnership, generally, will not, solely by reason of such investment, be considered to be an investment in the portfolio assets of such entity if participation in the Partnership by Plans is not "significant" (i.e., such participation is less than 25% of the Limited Partner's total committed capital) or the Partnership is a "venture capital operating company" (a "VCOC"). The Partnership does not intend to qualify as a VCOC.

The foregoing discussion of ERISA and code issues should not be construed as legal advice. Fiduciaries of ERISA plans should consult their own counsel with respect to issues arising under ERISA and the code and make their own independent decision regarding an investment in the partnership.

Governmental Plans

Although federal, state and local governmental pension plans are not subject to ERISA, applicable provisions of federal and state law may restrict the type of investments such a plan may make or otherwise have an impact on such a plan's ability to invest in the Partnership. Accordingly, state and local governmental pension plans considering an investment in the Partnership should consult with their counsel regarding their proposed investment in the Partnership.

US Securities Laws

Securities Act of 1933.

The offer and sale of limited partnership interests in the Partnership will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or any other federal or state securities law, including state blue sky laws. Limited partner interests will be offered without registration in reliance upon the exemption contained in Section 4(2) of the Securities Act and regulations of the Securities and Exchange Commission (the "SEC") applicable to transactions not involving a public offering. Each Limited Partner will be required in the Subscription Agreement pursuant to which it subscribes for an interest in the Partnership, to make customary private placement representation and warranties.

Limited partner interests may not be transferred or resold except as permitted under the Securities Act and any applicable state or non-U.S. securities laws, pursuant to registration or exemption therefrom. As described elsewhere in this Memorandum, the transferability of the Interests will be further restricted by the terms of the Limited Partnership Agreement.

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It is anticipated that all or a substantial portion of the Partnership's investments will consist of securities that are subject to restrictions on sale by the Partnership because they were acquired from the issuer in "private placement" transactions or because the Partnership is deemed to be an affiliate of the issuer. Generally, the Partnership will not be able to sell these securities publicly without the expense and time required to register the securities under the Securities Act or will be able to sell the securities only under Rule 144 or other rules under the Securities Act which permit only limited sales under specified conditions. When restricted securities are sold to the public, the Partnership may be deemed an "underwriter," or possibly a "controlling person," with respect thereto for the purpose of the Securities Act and be subject to liability as such under the Act.

Investment Company Act of 1940.

It is anticipated that the Partnership will be exempt from the registration requirements of Section 2(a)(51) of the Investment Company Act. The Partnership will rely on the recently adopted exemption contained in Investment Company Act of 1940, which exempts an issuer (i) whose outstanding securities are owned by "Qualified Purchasers." Qualified Purchasers are natural persons who own more than $5 million in net investments; Any person, acting for his own account or for the accounts of other qualified purchasers who, in the aggregate, owns and invests on a discretionary basis, not less than $25,000,000 in net investments; Any family-owned organization or entity that owns $5,000,000 or more in net investments; and any trust that was not formed for the specific purpose of acquiring the securities offered, as to which each trustee and person who contributed assets to the trust meets the requirements under the abovementioned provisions.

Other Regulatory Considerations

The Partnership may invest in media and telecommunications companies that are subject to regulation in whole or in part by the Federal Communications Commission ("FCC"), state public utility commissions, county franchising authorities, and/or various other federal, state and local regulatory bodies. There can be no assurance that federal, state or local regulatory requirements will not prevent otherwise advantageous investments from being made under certain circumstances, or that they will not negatively impact the performance of specific investments.

With regard to initial investment, the Communications Act of 1934, as amended (the "Act"), imposes a variety of cross-ownership and aggregate ownership requirements on media and telecommunications companies, which are enforced by the FCC. For example, the Act does not allow television broadcast stations and cable systems in the same market to be affiliated, nor does it allow a newspaper and a television or radio broadcast station to be affiliated. Absent the FCC's waiver of specific legal requirements, a single entity is restricted as to the number of radio and televisions stations it may acquire in a given market, the percentage of audience it may reach nationwide, and the amount of wireless spectrum it may own in any given market. The foregoing is a demonstrative, but not complete, list of ownership restrictions imposed by the Act and the FCC. Thus, depending on the investments made by the Partnership, it may be restricted from making certain other investments in a given market depending on the application of the FCC's ownership restrictions.

Additionally, if the Partnership acquires a controlling interest in a media or telecommunications company that holds a license from the FCC, or is deemed to have acquired control of such a company even if it does not acquire a de facto controlling interest, the FCC must, in many cases, approve the transfer of control or license. This process may delay the closing of an acquisition, and may prevent it if the FCC does not approve the transfer. Similarly, an acquisition of a media or telecommunications company that holds licenses or other permits from state public utility commission or local authority may impose delays on an acquisition of the company, or prohibit the acquisition entirely.

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Aside from specific ownership restrictions and the power to approve license transfers, federal, state and local regulatory authorities impose a broad range of regulatory requirements on different lines of media and telecommunications business. The telephone, wireless, terrestrial and satellite broadcasting, and cable/wireless cable television industries are all subject to varying degrees of regulation as to market entry, rates charged, competitive behavior, use of essential facilities, reporting and disclosure requirements, quality of service, technical standards and so on. Internet and data businesses, while comparatively less regulated at the present time, may be subject over the long term to increasing regulation of operations. Federal, state and local authorities thus have the ability to significantly impact the value of assets used by media and telecommunications companies, their operations, their cash flows and their ability to compete in the market. While the Partnership will carefully consider such regulatory risks when making investments, there can be no assurance that regulatory actions taken by federal, state or local authorities will not adversely and materially impact the return on any given investment.

FLORIDA INVESTORS

THE INTERESTS IN THE PARTNERSHIP HAVE NOT BEEN REGISTERED UNDER THE FLORIDA SECURITIES ACT. IF SALES ARE MADE TO FIVE (5) OR MORE INVESTORS IN FLORIDA, ANY FLORIDA INVESTOR MAY, AT HIS OPTION, VOID ANY PURCHASE HEREUNDER WITHIN A PERIOD OF THREE (3) DAYS AFTER HE (A) FIRST TENDERS OR PAYS TO THE PARTNERSHIP AN AGENT OF THE PARTNERSHIP OR AN ESCROW AGENT THE CONSIDERATION REQUIRED HEREUNDER OR (B) DELIVERS HIS EXECUTED SUBSCRIPTION AGREEMENT, WHICHEVER OCCURS LATER. TO ACCOMPLISH THIS, IT IS SUFFICIENT FOR A FLORIDA INVESTOR TO SEND A LETTER OR TELEGRAM TO THE PARTNERSHIP WITHIN SUCH THREE (3) DAY PERIOD, STATING THAT HE IS VOIDING AND RESCINDING THE PURCHASE. IF AN INVESTOR SENDS A LETTER, IT IS PRUDENT TO DO SO BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ENSURE THAT THE LETTER IS RECEIVED AND TO EVIDENCE THE TIME OF MAILING.

GEORGIA INVESTORS

THE INTERESTS IN THE PARTNERSHIP HAVE BEEN ISSUED OR SOLD IN RELIANCE ON PARAGRAPH (13) OF CODE SECTION 10-5-9 OF THE "GEORGIA SECURITIES ACT OF 1973", AND MAY NOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION UNDER SUCH ACT.

INVESTORS IN ALL STATES

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PARTNERSHIP AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY UNITED STATES FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A
CRIMINAL OFFENSE.

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THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

AUSTRALIA

THE PARTNERSHIP IS NOT A REGISTERED MANAGED INVESTMENT SCHEME, AND THIS MEMORANDUM IS NOT A PROSPECTUS WHICH HAS BEEN LODGED OR IS REQUIRED TO BE LODGED WITH THE AUSTRALIAN SECURITIES COMMISSION. OFFERS OF INTERESTS IN THE PARTNERSHIP WILL ONLY BE MADE TO PERSONS TO WHOM EXCLUDED OFFERS OR EXCLUDED INVITATIONS MAY BE MADE IN ACCORDANCE WITH SECTION 66 OF THE CORPORATIONS LAW. UNLESS THE APPLICANT IS A PERSON TO WHOM EXCLUDED OFFERS MAY BE MADE, THE MINIMUM APPLICATION IS THE US DOLLAR EQUIVALENT OF A$500,000.

THE INTERESTS IN THE PARTNERSHIP SUBSCRIBED BY AUSTRALIAN RESIDENTS MUST NOT BE OFFERED FOR RESALE IN AUSTRALIA FOR SIX MONTHS FROM ALLOTMENT EXCEPT PURSUANT TO EXCLUDED OFFERS OR INVITATIONS. AUSTRALIAN RESIDENTS SHOULD CONFER WITH THEIR PROFESSIONAL ADVISERS IF IN ANY DOUBT ABOUT THEIR POSITION.

AUSTRIA

THE PARTNERSHIP HAS NOT BEEN REGISTERED FOR PUBLIC OFFER IN AUSTRIA. CONSEQUENTLY LP INTERESTS MAY NOT BE OFFERED, DIRECTLY OR INDIRECTLY, TO THE PUBLIC IN AUSTRIA. NO PUBLIC ADVERTISEMENT MUST BE MADE FOR THE PARTNERSHIP OR LP INTERESTS THEREIN. THIS MEMORANDUM IS NOT A PROSPECTUS UNDER THE AUSTRIAN INVESTMENT FUNDS ACT OR UNDER THE AUSTRIAN CAPITAL MARKET ACT AND IT DOES NOT CONSTITUTE AN OFFER TO SELL ANY LP INTERESTS.

BAHRAIN

AN INVESTMENT IN THE PARTNERSHIP HAS NOT BEEN APPROVED BY THE BAHRAIN MONETARY AGENCY, NOR HAS NYPPE OR ALLEN CAPITAL PARTNERS RECEIVED APPROVAL FROM THE BAHRAIN MONETARY AGENCY TO MARKET AN INVESTMENT IN BAHRAIN AND THEREFORE NO SERVICES MAY BE RENDERED BY THEM IN BAHRAIN. ALL APPLICATIONS FOR INVESTMENT SHOULD BE RECEIVED, AND ANY ALLOTMENTS MADE, FROM OUTSIDE BAHRAIN. THE PARTNERSHIP IS NOT A COLLECTIVE INVESTMENT SCHEME WITHIN THE MEANING OF BAHRAIN MONETARY AGENCY CIRCULAR NO. 0G/356/92 DATED NOVEMBER 18, 1992.

BELGIUM

OS Received 06/03/2022

INTERESTS IN THE PARTNERSHIP ARE BEING OFFERED FOR SALE IN BELGIUM (1) ONLY TO INSTITUTIONAL AND OTHER INVESTORS REFERRED TO IN ARTICLE 3.2 OF THE BELGIAN ROYAL DECREE OF JULY 7, 1999, ACTING FOR THEIR OWN ACCOUNT OR (2) SUBJECT TO A MINIMUM INVESTMENT OF €250,000 PER INVESTOR PURSUANT TO SUCH ARTICLE 3.1 OF THE BELGIAN ROYAL DECREE OF JULY 7, 1999. THIS MEMORANDUM HAS NOT BEEN SUBMITTED TO OR APPROVED BY THE BELGIAN BANKING AND FINANCE COMMISSION.

BRUNEI

THIS MEMORANDUM AND THE INTERESTS HAVE NOT BEEN DELIVERED TO, REGISTERED WITH OR APPROVED BY THE BRUNEI DARUSSALAM REGISTRAR OF COMPANIES.

DENMARK

THE INTERESTS IN THE PARTNERSHIP ARE OFFERED TO A LIMITED NUMBER OF INSTITUTIONAL INVESTORS AND THEREFORE NO ACTION HAS OR WILL BE TAKEN THAT WOULD ALLOW AN OFFERING OF LP INTERESTS TO THE PUBLIC IN DENMARK. FURTHER, THIS MEMORANDUM HAS NOT BEEN AND WILL NOT BE REGISTERED WITH THE DANISH FINANCIAL SUPERVISORY AUTHORITY OR THE DANISH COMMERCE AND COMPANIES AGENCY UNDER THE RELEVANT DANISH ACTS AND REGULATIONS ON THE OFFERING IN DENMARK OF LP INTERESTS AND LP INTERESTS/UNITS IN INVESTMENT FUNDS. FURTHER, NO SINGLE INVESTOR WILL INVEST AN AMOUNT LESS THAN DKK 300,000. ACCORDINGLY, THIS MEMORANDUM MAY NOT BE MADE AVAILABLE NOR MAY LP INTERESTS OTHERWISE BE MARKETED AND OFFERED FOR SALE IN DENMARK OTHER THAN IN CIRCUMSTANCES WHICH ARE DEEMED NOT TO BE A MARKETING OR AN OFFER TO THE PUBLIC IN DENMARK.

FINLAND

THIS PPM HAS BEEN PREPARED FOR PRIVATE INFORMATION PURPOSES OF INTERESTED INVESTORS ONLY. IT MAY NOT BE USED FOR AND SHALL NOT BE DEEMED A PUBLIC OFFERING OF INTERESTS. THE RAHOITUSTARKASTUS HAS NOT AUTHORIZED ANY OFFERING OF THE SUBSCRIPTION OF INTERESTS IN THE PARTNERSHIP; ACCORDINGLY, INTERESTS MAY NOT BE OFFERED OR SOLD IN FINLAND OR TO RESIDENTS THEREOF EXCEPT AS PERMITTED BY FINNISH LAW. THIS PPM IS STRICTLY FOR PRIVATE USE BY ITS HOLDER AND MAY NOT BE PASSED ON TO THIRD PARTIES.

FRANCE

INTERESTS IN THE PARTNERSHIP MAY NOT BE OFFERED OR SOLD, DIRECTLY OR INDIRECTLY, TO THE PUBLIC IN THE REPUBLIC OF FRANCE. NEITHER THIS MEMORANDUM, WHICH HAS NOT BEEN SUBMITTED TO THE CLEARANCE PROCEDURES OF THE FRENCH AUTHORITIES, INCLUDING THE COMMISSIONS DES OPERATIONS DES BOURSE, NOR ANY OFFERING MATERIAL OR INFORMATION CONTAINED THEREIN RELATING TO THE OFFER OF INTERESTS, MAY BE RELEASED OR ISSUED TO THE PUBLIC

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IN FRANCE OR USED IN CONNECTION WITH ANY SUCH OFFER. THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL SECURITIES UNDER THE SECURITIES LAWS OF FRANCE. THE INFORMATION CONTAINED HEREIN IS PRIVATE AND DIRECTED SOLELY AT QUALIFIED INVESTORS AND/OR A RESTRICTED CIRCLE OF INVESTORS WHO ARE ACTING FOR THEIR OWN ACCOUNT.

GERMANY

THE INTERESTS HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES LAWS OF GERMANY AND ANY PUBLIC OFFER, SALE OR ADVERTISEMENT IN GERMANY CONSTITUTES A VIOLATION OF APPLICABLE LAW. THIS MEMORANDUM MAY ONLY BE CIRCULATED IN GERMANY TO A PREDETERMINED, LIMITED NUMBER OF INVESTORS.

HONG KONG

THE INVESTOR ACKNOWLEDGES THAT THE PARTNERSHIP HAS NOT BEEN AUTHORIZED IN HONG KONG BY THE HONG KONG SECURITIES AND FUTURES COMMISSION PURSUANT TO SECTION 15 OF THE HONG KONG SECURITIES ORDINANCE, NOR HAS THE MEMORANDUM BEEN REGISTERED BY THE REGISTRAR OF COMPANIES IN HONG KONG. ACCORDINGLY, INTERESTS WILL BE OFFERED ONLY TO PERSONS IN HONG KONG WHOSE BUSINESS INCLUDES THE ACQUISITION, DISPOSAL OR HOLDING OF SECURITIES, WHETHER AS PRINCIPAL OR AGENT WITHIN THE MEANING OF THE COMPANIES ORDINANCE (CAP 32 OF THE LAWS OF HONG KONG) OR IN CIRCUMSTANCES WHICH DO NOT CONSTITUTE AN OFFER TO THE PUBLIC FOR THE PURPOSES OF THAT ORDINANCE. THIS MEMORANDUM IS DELIVERED ONLY TO THE RECIPIENT AND MAY NOT BE USED, COPIED, REPRODUCED OR DISTRIBUTED, IN WHOLE OR IN PART, TO ANY OTHER PERSON.

IRELAND

THIS MEMORANDUM AND THE INFORMATION CONTAINED HEREIN ARE PRIVATE AND CONFIDENTIAL AND ARE FOR THE USE SOLELY OF THE PERSON, TO WHOM THIS MEMORANDUM IS ADDRESSED. IF A PROSPECTIVE INVESTOR IS NOT INTERESTED IN MAKING AN INVESTMENT, THIS MEMORANDUM SHOULD BE PROMPTLY RETURNED TO THE PLACEMENT AGENT. THIS MEMORANDUM DOES NOT, AND SHALL NOT BE DEEMED TO, CONSTITUTE AN INVITATION TO THE PUBLIC IN IRELAND TO PURCHASE INTERESTS IN THE PARTNERSHIP.

ITALY

THIS MEMORANDUM IS SOLELY INTENDED FOR THE INDIVIDUALS TO WHOM IT IS DELIVERED AND MAY NOT BE CONSIDERED OR USED AS A PUBLIC OFFERING IN THE MEANING OF, AND FOR THE PURPOSE OF, THE ART. 1/18 TER L.N. 216/74. IN ADDITION, ANY PERSON WHO IS IN POSSESSION OF THIS MEMORANDUM UNDERSTANDS THAT NO ACTION HAS OR WILL BE TAKEN THAT WOULD ALLOW AN OFFERING OF INTERESTS TO THE PUBLIC IN ITALY. ACCORDINGLY, THE INTERESTS MAY NOT BE OFFERED, SOLD OR

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DELIVERED AND NEITHER THIS MEMORANDUM NOR ANY OTHER OFFERING MATERIAL RELATING TO THE INTERESTS MAY BE DISTRIBUTED OR MADE AVAILABLE TO THE PUBLIC IN ITALY. INDIVIDUAL SALES OF THE INTERESTS TO ANY PERSON IN ITALY MAY ONLY BE MADE ACCORDING TO ITALIAN SECURITIES, TAX AND OTHER APPLICABLE LAWS AND REGULATIONS. LP INTERESTS ARE BEING OFFERED FOR SALE IN ITALY (1) ONLY TO QUALIFIED INVESTORS AS DEFINED UNDER ARTICLE 31 OF CONSOB REGULATION NO. 11522 OR (2) SUBJECT TO A MINIMUM INVESTMENT OF EURO 250,000 PURSUANT TO ARTICLE 33 OF CONSOB REGULATION NO. 11971. THEREFORE, IN ACCORDANCE WITH ARTICLE 100 OF LEGISLATIVE DECREE NO. 58 OF 1998, THIS MEMORANDUM HAS NOT BEEN AND WILL NOT BE REGISTERED WITH THE COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA UNDER PART IV, TITLE II, HEADING I OF LEGISLATIVE DECREE NO. 58 OF 1998.

JAPAN

THE LIMITED PARTNERSHIP INTERESTS MAY NOT BE OFFERED OR SOLD DIRECTLY OR INDIRECTLY TO THE PUBLIC IN JAPAN AND NEITHER THIS MEMORANDUM, WHICH HAS NOT BEEN SUBMITTED TO THE MINISTRY OF FINANCE, NOR ANY OFFERING MATERIAL OR INFORMATION CONTAINED THEREIN RELATING TO THE INTERESTS, MAY BE SUPPLIED TO THE PUBLIC IN JAPAN OR USED IN CONNECTION WITH ANY OFFER FOR SUBSCRIPTION OR SALE OF INTERESTS TO THE PUBLIC IN JAPAN. JAPANESE INVESTORS MAY BE SUBJECT TO FILING REQUIREMENTS UNDER THE FOREIGN EXCHANGE AND CONTROL LAW OF JAPAN. IT IS, THEREFORE, ADVISABLE FOR JAPANESE INVESTORS TO CONSULT THEIR PROFESSIONAL ADVISERS IN THIS RESPECT.

LUXEMBOURG

THIS MEMORANDUM IS STRICTLY PRIVATE AND CONFIDENTIAL, IS BEING ISSUED TO A LIMITED NUMBER OF SOPHISTICATED INVESTORS, AND MAY NOT BE REPRODUCED OR USED FOR ANY OTHER PURPOSE, NOR PROVIDED TO ANY PERSON OTHER THAN THE RECIPIENT THEREOF.

MONACO

THE INTERESTS IN THE PARTNERSHIP IN THE PARTNERSHIP MAY NOT BE OFFERED OR SOLD, DIRECTLY OR INDIRECTLY, TO THE PUBLIC IN MONACO OTHER THAN BY AN AUTHORIZED INTERMEDIARY. NEITHER THIS MEMORANDUM, WHICH HAS NOT BEEN SUBMITTED TO THE CLEARANCE PROCEDURE OF THE MONEGASQUE AUTHORITIES, INCLUDING THE COMMISSION DE CONTROLE, NOR ANY OFFERING MATERIAL RELATING TO THE OFFER OF INTERESTS, MAY BE RELEASED OR ISSUED TO THE PUBLIC IN MONACO IN ACCORDANCE WITH ANY SUCH OFFER. THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL SECURITIES UNDER THE SECURITIES LAWS OF MONACO.

THE NETHERLANDS

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THE INTERESTS IN THE PARTNERSHIP MAY NOT BE OFFERED, TRANSFERRED, DELIVERED OR SOLD, WHETHER DIRECTLY OR INDIRECTLY, TO ANY INDIVIDUAL OR LEGAL ENTITY IN THE NETHERLANDS AS PART OF THE INITIAL DISTRIBUTION, OR AT ANY TIME THEREAFTER, OTHER THAN TO INDIVIDUALS OR LEGAL ENTITIES WHO OR WHICH TRADE OR INVEST IN INVESTMENT PRODUCTS IN THE CONDUCT OF THEIR PROFESSION OR TRADE WITHIN THE MEANING OF SECTION 1 OF THE REGULATION DATED OCTOBER 9, 1990 REGARDING THE IMPLEMENTATION OF SECTION 14 OF THE WET TOEZICHT BELEGGINGSINSTELLINGEN (ACT ON THE SUPERVISION OF INVESTMENT INSTITUTIONS), SUCH AS BANKS, BROKERS, DEALERS, INSURANCE COMPANIES, PENSION FUNDS, OR OTHER INSTITUTIONAL INVESTORS AND COMMERCIAL ENTERPRISES WHICH REGULARLY, AS AN ANCILLARY ACTIVITY, INVEST IN INVESTMENT PRODUCTS, WHICH INCLUDES TREASURIES OF LARGE INSTITUTIONS.

NORWAY

THE MEMORANDUM HAS NOT BEEN FILED WITH THE OSLO STOCK EXCHANGE IN ACCORDANCE WITH THE NORWEGIAN SECURITIES TRADING ACT, SECTION 5-1, AND MAY THEREFORE NOT BE DISTRIBUTED TO MORE THAN FIFTY POTENTIAL INVESTORS IN NORWAY.

SAUDI ARABIA

THIS MEMORANDUM IS BEING PROVIDED SOLELY FOR INFORMATIONAL PURPOSES; RECEIPT OF THIS MEMORANDUM THEREFORE DOES NOT CONSTITUTE AN OFFER TO BUY THE SECURITIES REFERRED TO THEREIN.

SINGAPORE

THE INTERESTS MAY NOT BE OFFERED OR SOLD, NOR MAY ANY DOCUMENT OR OTHER MATERIAL IN CONNECTION WITH THE INTERESTS BE ISSUED, CIRCULATED OR DISTRIBUTED, EITHER DIRECTLY OR INDIRECTLY, TO PERSONS IN SINGAPORE OTHER THAN (I) UNDER CIRCUMSTANCES IN WHICH SUCH OFFER OR SALE DOES NOT CONSTITUTE AN OFFER OR SALE OF THE INTERESTS TO THE PUBLIC IN SINGAPORE OR (2) TO PERSONS WHOSE ORDINARY BUSINESS IT IS TO BUY OR SELL SHARES OR DEBENTURES, WHETHER AS PRINCIPAL OR AGENT.

SPAIN

THIS MEMORANDUM HAS NOT BEEN AND WILL NOT BE REGISTERED WITH THE COMISIÓN NACIONAL DEL MERCADO DE VALORES (SPANISH SECURITIES MARKET COMMISSION) ACCORDING TO THE GENERAL PROCEDURE ESTABLISHED UNDER ACT 24/1988 AND R.D. 291/1992. CONSEQUENTLY, THE PARTICIPATIONS MAY NOT BE OFFERED, SUBSCRIBED OR SOLD AND THIS MEMORANDUM MAY NOT BE DISTRIBUTED WITHIN SPAIN EXCEPT FOR THE PARTIAL EXCEPTION PROCEDURE PROVIDED UNDER SECTION 7.1 OF R.D. 291/1992, WHICH SHOULD BE OBTAINED STRICTLY FOLLOWING THE REQUIREMENTS AND CONDITIONS STIPULATED THEREIN.

OS Received 06/03/2022

SWEDEN

THE INTERESTS IN THE PARTNERSHIP ARE BEING OFFERED TO A LIMITED NUMBER OF INSTITUTIONAL INVESTORS AND THEREFORE THIS MEMORANDUM HAS NOT BEEN, AND WILL NOT BE, REGISTERED WITH THE SWEDISH FINANCIAL SUPERVISORY AUTHORITY UNDER THE SWEDISH FINANCIAL INSTRUMENTS TRADING ACT (1991:980). FURTHER, NO SINGLE INVESTOR WILL INVEST AN AMOUNT LESS THAN SEK 300,000. ACCORDINGLY, THIS MEMORANDUM MAY NOT BE MADE AVAILABLE, NOR MAY INTERESTS OTHERWISE BE MARKETED AND OFFERED FOR SALE IN SWEDEN, OTHER THAN IN CIRCUMSTANCES WHICH ARE DEEMED NOT TO BE AN OFFER TO THE PUBLIC IN SWEDEN UNDER THE FINANCIAL INSTRUMENTS TRADING ACT. THE RECIPIENTS OF THIS MEMORANDUM MAY NOT FORWARD ANY OFFER TO, OR REPLACE THEMSELVES WITH, ANY OTHER INVESTOR/INVESTORS IN SWEDEN WITHOUT COMPLYING WITH THE RELEVANT LAWS.

SWITZERLAND

THE PARTNERSHIP HAS NOT BEEN AUTHORIZED BY THE SWISS FEDERAL BANKING COMMISSION AS A FOREIGN INVESTMENT FUND UNDER ARTICLE 45 OF THE SWISS FEDERAL LAW ON INVESTMENT FUNDS OF MARCH 18, 1994. ACCORDINGLY, INTERESTS MAY NOT BE OFFERED OR DISTRIBUTED ON A PROFESSIONAL BASIS IN OR FROM SWITZERLAND, UNLESS THE OFFER OR DISTRIBUTION IS EXCLUSIVELY ADDRESSED TO SWISS INSTITUTIONAL INVESTORS, WITHOUT ANY PUBLIC OFFERING.

TAIWAN (REPUBLIC OF CHINA)

THE OFFER OF THE INTERESTS HAS NOT BEEN, AND WILL NOT BE, REGISTERED WITH THE SECURITIES AND FUTURES COMMISSION OF THE REPUBLIC OF CHINA PURSUANT TO RELEVANT SECURITIES LAWS AND REGULATIONS AND MAY NOT BE OFFERED OR SOLD WITHIN THE REPUBLIC OF CHINA THROUGH A PUBLIC OFFERING OR IN CIRCUMSTANCES WHICH CONSTITUTE AN OFFER WITHIN THE MEANING OF THE SECURITIES LAWS OF THE REPUBLIC OF CHINA, WHICH REQUIRE REGISTRATION OR THE APPROVAL OF THE SECURITIES AND FUTURES COMMISSION OF THE REPUBLIC OF CHINA.

UNITED ARAB EMIRATES

NO OFFERS OR SALES OF THE INTERESTS AS DESCRIBED IN THE MEMORANDUM MAY TAKE PLACE WITHIN THE UNITED ARAB EMIRATES.

UNITED KINGDOM

THE PARTNERSHIP IS A COLLECTIVE INVESTMENT SCHEME AS DEFINED IN THE FINANCIAL SERVICES ACT 1986 (THE "UK ACT") OF THE UNITED KINGDOM (THE "UK"). THE PARTNERSHIP HAS NOT BEEN AUTHORIZED OR OTHERWISE APPROVED BY THE SECURITIES AND INVESTMENTS BOARD FOR THE PURPOSE OF SECTION 57 OF THE ACT AND, AS AN UNREGULATED SCHEME, IT ACCORDINGLY CANNOT BE MARKETED IN THE

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UK TO THE GENERAL PUBLIC. THIS MEMORANDUM IS BEING ISSUED IN THE UK ONLY TO PERSONS OF A KIND DESCRIBED IN ARTICLE 11(3) OF THE FINANCIAL SERVICES ACT 1986 (INVESTMENT ADVERTISEMENTS) (EXEMPTIONS) ORDER 1996 OR ANY OTHER PERSON TO WHOM SUCH DOCUMENT MAY OTHERWISE LAWFULLY BE ISSUED OR PASSED ON. TRANSMISSION OF THIS MEMORANDUM TO ANY OTHER PERSON IN THE UK IS UNAUTHORIZED AND MAY CONTRAVENE THE UK ACT.

OS Received 06/03/2022

EXHIBIT F

OS Received 06/03/2022

FOURTH AMENDMENT

TO THE

AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP

OF
ACP X, L.P.

THIS FOURTH AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF ACP X, L.P. (this "Amendment") is made effective as of June 15, 2015 (the "Effective Date"), by and among ACP Partners X, L.L.C., a Delaware limited liability company, as the general partner (the "General Partner") of ACP X, L.P., a Delaware limited partnership (the "Partnership"), and the Persons listed as limited partners in the books and records of the Partnership (the "Limited Partners"), for the purpose of making certain amendments to the Partnership's Amended and Restated Agreement of Limited Partnership dated April 26, 2004 (the "Agreement"). All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

RECITALS

A. The Agreement was previously amended, and the Partners now desire to amend the Agreement further. Revisions from the Third Amendment as applicable will be restated herein for ease of review.

B. Pursuant to Section 12.01(a) of the Agreement, the Agreement may be amended by the General Partner with the written consent of at least the Required Limited Partners.

C. At least the Required Limited Partners have previously consented to this Fourth Amendment.

NOW, THEREFORE, in consideration of the mutual premises provided herein, the parties agree as follows:

AGREEMENT

1. Certain Definitions

The following definitions are hereby added to Appendix A as per the Third Amendment and Fourth Amendment to read as follows:

"Aggregate Available Withdrawal Proceeds" has the meaning ascribed to that term in Section 6.05(e).

"**Carried Interest Balance'** has the meaning ascribed to that term in Section 9.04(d).

"Early Withdrawal" has the meaning ascribed to that term in Section 6.05(c).

"Early Withdrawal Date" has the meaning ascribed to that term in Section 6.05(c).

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"Withdrawal Request" has the meaning ascribed to that term in Section 6.05(d).

2. Investment Advisor Fee

Section 2.04 of the Agreement is hereby amended as per the Third Amendment by deleting Section 2.04(a)(ii) in its entirety and replacing it to read as follows:

(ii) For each Investment Advisor Fee Year commencing after the expiration of the Investment Period and until December 31, 2014, the Investment Advisor Fee will be two percent (2%) of the Net Invested Capital of the Partners, measured as of the end of the immediately preceding semi-annual period; and

Section 2.04 of the Agreement is hereby amended further as per the Third Amendment, by adding the following immediately after Section 2.04(a)(ii) to read as follows:

(iii) For each Investment Advisor Fee Year commencing after December 31, 2014, the Investment Advisor Fee will be reduced to one and one-quarter percent (1.25%) of the Net Invested Capital of the Partners, measured as of the end of the immediately preceding semi-annual period.

3. Early Withdrawals

Section 6.05 of the Agreement is hereby amended commencing with a new sub-section (g) as per the Fourth Amendment and retaining sub-sections' (a) through (f) as per the Third Amendment, to read as follows:

SECTION 6.05. ***Loans and Withdrawal of Capital***.

(a) No Partner shall be permitted to borrow any portion of its Capital Account.

(b) In general, no Partner shall be permitted to withdraw any portion of its Capital Account.

(c) Notwithstanding the foregoing, the General Partner will be permitted to offer Limited Partners an annual opportunity (each, on an "**Early Withdrawal Date**") to request an early withdrawal from the Partnership (an "**Early Withdrawal**"), at the election of the Limited Partner, at a price based on a survey of bid indications from secondary investors selected by the General Partner.

(d) Each such request for an Early Withdrawal (each, a "**Withdrawal Request**") must be submitted in writing to the General Partner within such period as may be designated by the General Partner, in its reasonable discretion, in a notice to the Limited Partners that the General Partner has designated an Early Withdrawal Date.

(e) In the event that the aggregate amount of withdrawal proceeds attributable to Withdrawal Requests submitted by the Limited Partners with respect to any Early Withdrawal Date is greater than the aggregate amount of available cash and marketable securities that may be sold at prices deemed acceptable by the General Partner, in its sole discretion, to satisfy such Withdrawal Requests (the "**Aggregate Available Withdrawal Proceeds**"), then the Limited Partners who have submitted

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Withdrawal Requests with respect to such Early Withdrawal Date shall redeem a pro rata share of their interests and receive redemption proceeds of their respective pro rata share of the Aggregate Available Withdrawal Proceeds; with respect to the remainder of their interest, they shall remain invested in the Partnership. At the next opportunity for an Early Withdrawal, such Limited Partners may again submit a Withdrawal Request; provided, however, that such Limited Partners will be treated identically with, and not be given priority over, any other Limited Partner submitting a Withdrawal Request with respect to such later Early Withdrawal Date.

(f) Limited Partners who do not submit a Withdrawal Request or whose Withdrawal Requests cannot be satisfied or satisfied in full will remain Limited Partners in the Partnership.

(g) In 2015, Limited Partners will be provided an opportunity to subscribe to withdraw from the Partnership subject to such allocation amounts and at a price established by the General Partner ("Alternative 1"). In the event that subscriptions are greater than available cash and marketable securities, then such Limited Partners will be allocated liquidity on a pro rata basis and the remainder of their capital account balance shall be allocated to Alternative 2. At the next opportunity to withdraw early from the Partnership, if any, such Limited Partners may again subscribe to withdraw early; however, they will be treated equally as other Limited Partners that subscribe to withdraw early at such time from the Partnership.

4. Portfolio and Valuations

Section 6.06(k) of the Agreement is hereby amended as per the Third Amendment and Fourth Amendment to include the following:

(k) ***Portfolio and Valuations.***

(i) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding valuations of the investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's estimated fair values of the investments through June 30, 2013.

(ii) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding the selection of and valuations of the investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's selections and estimated fair values of the investments through June 30, 2014.

5. Term

Section 9.01 of the Agreement is hereby amended and restated in its entirety as per the Third Amendment to read as follows:

SECTION 9.01. ***Term.*** Unless the Partnership is sooner dissolved pursuant to Section 9.02, the term of the Partnership shall continue until December 31, 2018.

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6. Carried Interest Distributions

Section 9.04(d) of the Agreement is hereby amended as per the Third Amendment and Fourth Amendment to read as follows:

(d) In the event that after the final distribution made by the Partnership, the General Partner will have received carried interest distributions pursuant to paragraphs (c) and (d) of Section 6.02 (the "**Carried Interest Distributions**") in an amount greater than twenty percent (20%) of the aggregate net profits of the Partnership over the life of the Partnership, then the General Partner shall immediately return to the Partnership for payment to the Limited Partners an amount equal to the amount by which the Carried Interest Distributions received by the General Partner exceed twenty percent (20%) of the aggregate net profits of the Partnership over the life of the Partnership, *reduced by* the sum of (i) the actual income tax liability of the members of the General Partner with respect to the income associated with Carried Interest Distributions; and (ii) forty-one and one quarter percent (41.25%) of the amount of accrued carried interest balance ("**Carried Interest Balance"**) allocated to the General Partner through June 30, 2013 and (iii) twenty five (25%) of the amount of accrued Carried Interest Balance allocated to the General Partner through December 31, 2014, which is intended to be distributed to the General Partner on or before December 31, 2015 at the election of the General Partner, which shall supercede, restate and amend Section 6.02 (Priority of Distributions), Section 6.06 (Capital Accounts, Allocations and Portfolio Valuations) and Section 8.01 (Exculpation and Indemnification) of the Agreement.

7. Transfers

As per the Third Amendment, Section 11.01(a) of the Agreement is hereby replaced and revised as follows:

SECTION 11.01. ***Restrictions on Transfer.*** (a) Subject to Section 9.05 and the balance of this paragraph, a Limited Partner may not, directly or indirectly, sell, exchange, assign, pledge, hypothecate, dispose of, or transfer all or any portion of its interest in the Partnership (to sell, exchange, assign, pledge, hypothecate, dispose or transfer herein, collectively called a "Transfer") without the prior written approval of the General Partner, which approval may be granted or withheld by the General Partner in its discretion. Notwithstanding the foregoing, the General Partner will not unreasonably withhold its approval of a sale by a Limited Partner of its interest, provided that any prospective purchaser (i) is reasonably believed by the transferring Limited Partner to be a Qualified Purchaser, as defined in Section 2(a)(51) of the Investment Company Act and otherwise to be an eligible investor, including with respect to Section 11.01(b) below; (ii) executes and delivers to the General Partner the Partnership's non-disclosure agreement, as set forth below in Section 11.01(c); and (iii) is preliminarily screened and approved by the General Partner. If a Limited Partner determines that it must withdraw from the Partnership for any reason, such Limited Partner shall hold harmless the General Partner as consideration for the right to transfer and shall be solely responsible to Transfer its interest and follow provisions of this Section 11.01.

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8. Follow-on Investments

Section 3.03 of the Agreement shall be revised as per the Fourth Amendment to include the following:

SECTION 3.03. ***Investment Limitations.*** It is hereby reiterated that the General Partner is permitted to make follow-on investments in portfolio companies and funds including affiliates without requiring the consent of Limited Partners as deemed appropriate by the General Partner. During the Wind Down Period, concentrated positions will develop in single funds and companies, and measurements for diversification and exposure expressed as a percentage of total assets shall no longer apply or be provided.

9**. Full Force and Effect**

Except as otherwise amended hereby, the terms and provisions of the Agreement shall remain in full force and effect, and any conflict between the terms of the Agreement and this Amendment shall be construed in favor of this Amendment.

10. Governing Law

This Amendment and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Delaware.

[This section intentionally left blank.]

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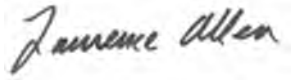
IN WITNESS WHEREOF, this Fourth Amendment is effective as of the date first written above.

GENERAL PARTNER:

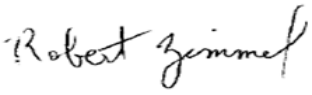
ACP PARTNERS X, L.L.C., a Delaware limited liability company

By: 

Laurence G. Allen
Managing Principal

LIMITED PARTNERS:

By: ACP PARTNERS X, L.L.C., a Delaware limited liability company, as attorney-in-fact for each of the Limited Partners

By: 

Robert P. Zimmel
Treasurer

[This section intentionally left blank.]

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FIFTH AMENDMENT

TO THE

AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP

OF

ACP X, L.P.

THIS FIFTH AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF ACP X, L.P. (this "Fifth Amendment") is made effective as of March 31, 2017 (the "Effective Date"), by and among ACP Partners X, L.L.C., a Delaware limited liability company, as the general partner (the "General Partner") of ACP X, L.P., a Delaware limited partnership (the "Partnership"), and the Persons listed as limited partners in the books and records of the Partnership (the "Limited Partners"), for the purpose of making certain amendments to the Partnership's Amended and Restated Agreement of Limited Partnership originally dated April 26, 2004, as amended (the "Agreement"). All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

RECITALS

A. The Agreement was previously amended, and the Partners now desire to amend the Agreement further. Revisions from the Third Amendment and Fourth Amendment as applicable will be restated herein for ease of review.

B. Pursuant to Section 12.01(a) of the Agreement, the Agreement may be amended by the General Partner with the written consent of at least the Required Limited Partners.

C. At least the Required Limited Partners have previously consented to this Fifth Amendment.

NOW, THEREFORE, in consideration of the mutual premises provided herein, the parties agree as follows:

AGREEMENT

1. Certain Definitions

The following definitions are hereby added to Appendix A as per the Third, Fourth and Fifth Amendments to read as follows:

"Aggregate Available Withdrawal Proceeds" has the meaning ascribed to that term in Section 6.05(e).

"Carried Interest Balance' has the meaning ascribed to that term in Section 9.04(d).

"Early Withdrawal" has the meaning ascribed to that term in Section 6.05(c).

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"Early Withdrawal Date" has the meaning ascribed to that term in Section 6.05(c).

"Withdrawal Request" has the meaning ascribed to that term in Section 6.05(d).

2. Investment Advisor Fee

Section 2.04 of the Agreement is hereby amended as per the Third Amendment by deleting Section 2.04(a)(ii) in its entirety and replacing it to read as follows:

(ii) For each Investment Advisor Fee Year commencing after the expiration of the Investment Period and until December 31, 2014, the Investment Advisor Fee will be two percent (2%) of the Net Invested Capital of the Partners, measured as of the end of the immediately preceding semi-annual period; and

Section 2.04 of the Agreement is hereby amended further as per the Third Amendment, by adding the following immediately after Section 2.04(a)(ii) to read as follows:

(iii) For each Investment Advisor Fee Year commencing after December 31, 2014, the Investment Advisor Fee will be reduced to one and one-quarter percent (1.25%) of the Net Invested Capital of the Partners, measured as of the end of the immediately preceding semi-annual period.

3. Early Withdrawals

Section 6.05 of the Agreement is hereby amended commencing with a new sub-section (c), (e), (g) and (h) as per the Fifth Amendment and retaining the remaining sub-sections as per the Third and Fourth Amendments, to read as follows:

SECTION 6.05. ***Loans and Withdrawal of Capital.***

(a) No Partner shall be permitted to borrow any portion of its Capital Account.

(b) In general, no Partner shall be permitted to withdraw any portion of its Capital Account.

(c) Notwithstanding the foregoing, the General Partner will be permitted to offer Limited Partners an annual opportunity (each, on an **"Early Withdrawal Date"**) to request an early withdrawal from the Partnership (an **"Early Withdrawal"**), at the election of the Limited Partner, at an estimated price based on an evaluation of secondary market conditions by the General Partner in accordance with the Agreement.

(d) Each such request for an Early Withdrawal (each, a **"Withdrawal Request"**) must be submitted in writing to the General Partner within such period as may be designated by the General Partner, in its reasonable discretion, in a notice to the Limited Partners that the General Partner has designated an Early Withdrawal Date.

(e) In the event that the aggregate amount of withdrawal proceeds attributable to Withdrawal Requests submitted by the Limited Partners with respect to any Early Withdrawal Date is greater than the aggregate amount of cash balances allocated towards the Early Withdrawal (the **"Aggregate Available Withdrawal Proceeds"**),

then the Limited Partners who have submitted Withdrawal Requests with respect to such Early Withdrawal Date shall redeem a pro rata share of their interests and receive redemption proceeds of their respective pro rata share of the Aggregate Available Withdrawal Proceeds; with respect to the remainder of their interest, they shall remain invested in the Partnership. At the next opportunity for an Early Withdrawal, if any, such Limited Partners may again submit a Withdrawal Request; provided, however, that such Limited Partners will be treated identically with, and not be given priority over, any other Limited Partner submitting a Withdrawal Request with respect to such later Early Withdrawal Date.

(f) Limited Partners who do not submit a Withdrawal Request or whose Withdrawal Requests cannot be satisfied or satisfied in full will remain Limited Partners in the Partnership.

(g) In 2017, Limited Partners will be provided an opportunity to subscribe to withdraw from the Partnership, subject to the availability of Aggregate Available Withdrawal Proceeds, and at a price established by the General Partner ("Alternative 1"). In the event that subscriptions for Early Withdrawal are greater than Aggregate Available Withdrawal Proceeds allocated to this Early Withdrawal Date, then such Limited Partners will be allocated liquidity on a pro rata basis and the remainder of their interest shall remain invested in the Partnership ("Alternative 2"). At the next opportunity for an Early Withdrawal, if any, such Limited Partners may again submit a Withdrawal Request; provided, however, that such Limited Partners will be treated identically with, and not be given priority over, any other Limited Partner submitting a Withdrawal Request with respect to such later Early Withdrawal Date .

(h) Limited Partners hereby acknowledge that they have had the opportunity to ask questions and have received answers from the General Partner regarding the terms of the Fifth Amendment, and that at least the Required Limited Partners consented to the terms of the Fifth Amendment and deemed its terms fair and reasonable, and in the best interests of the Partnership.

4. Portfolio Disclosures and Valuations

Section 6.06(k) of the Agreement is hereby amended by the Fifth Amendment to include the following:

(k) ***Portfolio Disclosures and Valuations.***

(i) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding the adequacy of disclosures and valuations of the investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's disclosures and estimated fair values of the investments, including affiliated investments and transactions, through December 31, 2016.

(ii) The Limited Partners hereby acknowledge that they have had the opportunity to ask questions to the General Partner regarding the selection of investments, fees paid to affiliates in connection with affiliate transactions and investments, compensation paid to employees of affiliates, common equity ownership in affiliates and valuations of the

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investments including affiliated investments held by the Partnership and that, further, the Limited Partners have reviewed and approved the General Partner's selections, disclosures in connection herewith, and estimated fair values of the investments through December 31, 2016.

5. Term

Section 9.01 of the Agreement is hereby amended and restated in its entirety as per the Third Amendment to read as follows:

SECTION 9.01. ***Term.*** Unless the Partnership is sooner dissolved pursuant to Section 9.02, the term of the Partnership shall continue until December 31, 2018.

6. Carried Interest Distributions

Section 9.04(d) of the Agreement is hereby amended as per the Fifth Amendment to read as follows:

(d) In the event that after the final distribution made by the Partnership, the General Partner will have received carried interest distributions pursuant to paragraphs (b) and (c) of Section 6.02 (the "**Carried Interest Distributions**") in an amount greater than twenty percent (20%) of the aggregate net profits of the Partnership over the life of the Partnership, then the General Partner shall immediately return to the Partnership for payment to the Limited Partners an amount equal to the amount by which the Carried Interest Distributions received by the General Partner exceed twenty percent (20%) of the aggregate net profits of the Partnership over the life of the Partnership, *reduced by* the sum of (i) the actual income tax liability of the members of the General Partner with respect to the income associated with Carried Interest Distributions; (ii) forty-one and one quarter percent (41.25%) of the amount of accrued Carried Interest allocated to the General Partner through June 30, 2013 (as provided by the Third Amendment), (iii) twenty five (25%) of the amount of accrued Carried Interest allocated to the General Partner through December 31, 2014 (as provided by the Fourth Amendment), and (iv) forty five (45%) of the amount of accrued Carried Interest allocated to the General Partner through December 31, 2016 (as provided by the Fifth Amendment) ((ii)-(iv), together the "**Carried Interest Balance**"). The Carried Interest Balance is intended to be distributed to the General Partner at times as elected by the General Partner in its sole discretion. This Section 9.04(d) shall supercede, restate and amend any conflicting provisions of Section 6.02 (Priority of Distributions), Section 6.06 (Capital Accounts, Allocations and Portfolio Valuations) and Section 8.01 (Exculpation and Indemnification) of the Agreement.

7. Transfers

As per the Third Amendment, Section 11.01(a) of the Agreement is hereby replaced and revised as follows:

SECTION 11.01. ***Restrictions on Transfer.*** (a) Subject to Section 9.05 and the balance of this paragraph, a Limited Partner may not, directly or indirectly, sell, exchange, assign, pledge, hypothecate, dispose of, or transfer all or any portion of its interest in the Partnership (to sell,

exchange, assign, pledge, hypothecate, dispose or transfer herein, collectively called a "Transfer") without the prior written approval of the General Partner, which approval may be granted or withheld by the General Partner in its discretion. Notwithstanding the foregoing, the General Partner will not unreasonably withhold its approval of a sale by a Limited Partner of its interest, provided that any prospective purchaser (i) is reasonably believed by the transferring Limited Partner to be a Qualified Purchaser, as defined in Section 2(a)(51) of the Investment Company Act and otherwise to be an eligible investor, including with respect to Section 11.01(b) below; (ii) executes and delivers to the General Partner the Partnership's non-disclosure agreement, as set forth below in Section 11.01(c); and (iii) is preliminarily screened and approved by the General Partner. If a Limited Partner determines that it must withdraw from the Partnership for any reason, such Limited Partner shall hold harmless the General Partner as consideration for the right to transfer and shall be solely responsible to Transfer its interest and follow provisions of this Section 11.01.

8. Follow-on Investments

Section 3.03 of the Agreement shall be revised as per the Fourth Amendment to include the following:

SECTION 3.03. ***Investment Limitations.*** It is hereby reiterated that the General Partner is permitted to make follow-on investments in portfolio companies and funds including affiliates without requiring the consent of Limited Partners as deemed appropriate by the General Partner. During the Wind Down Period, concentrated positions will develop in single funds and companies, and measurements for diversification and exposure expressed as a percentage of total assets shall no longer apply or be provided.

9. Full Force and Effect

Except as otherwise amended hereby, the terms and provisions of the Agreement shall remain in full force and effect, and any conflict between the terms of the Agreement and this Fifth Amendment shall be construed in favor of this Fifth Amendment.

10. Governing Law

This Fifth Amendment and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Delaware.

[This section intentionally left blank.]

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IN WITNESS WHEREOF, this Fifth Amendment is effective as of the date first written above.

GENERAL PARTNER:

ACP PARTNERS X, L.L.C., a Delaware limited liability company

By: _____
Laurence G. Allen
Managing Principal

LIMITED PARTNERS:

ACP PARTNERS X, L.L.C., a Delaware limited liability company, as attorney-in-fact for each of the Limited Partners

By: _____

[This section intentionally left blank.]

EXHIBIT G

OS Received 06/03/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, *Plaintiff-Respondent,* -against- LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X, LP, *Defendants-Appellants,* NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC, *Relief Defendants.*	Index No: 452378/2019 **AFFIDAVIT OF ROBERT SCHUBERT, JR. IN SUPPORT OF THE GENERAL PARTNER OF ACP X, LP**

AFFIDAVIT OF ROBERT SCHUBERT, JR.

Robert Schubert, Jr., being duly sworn, deposes and say:

1. I am over 18 years of age, and I submit this affidavit for purposes of the above-captioned case.

2. The statements made herein are based upon my own personal knowledge and observations, and I make this affidavit voluntarily and on my own accord.

3. I am a graduate from the Columbia University School of Engineering and Science with a degree in Mechanical Engineering as well as an MBA from Xavier Univ. I have a 44-year career in the energy industry in engineering, service, customer service, sales, marketing and management with companies such as General Electric, Teleflex and Siemens.

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4. I have been investing since my grandparents gave me stocks at birth. I currently hold positions in equities, bonds, mutual funds, ETFs and private equity.

5. I have been an investor in ACP X, LP ("ACP X") since 2004. I began trading in private equity funds in 2004 and have invested in at least 7 since then.

6. I am a sophisticated investor. I read and fully understood the offering documents for ACP X, along with the Limited Partnership Agreement ("LPA") and subsequent amendments to the LPA. Following such review, I knowingly proceeded to invest in ACP X and its affiliated companies.

7. As alluded to above, I am currently a limited partner ("LP") in ACP X.

8. I have been an investor since on or about March 8, 2004. When I first invested in ACP X, I read the offering documents, including the Private Placement Memorandum ("PPM") for ACP X, along with the LPA, which specifically contemplated that the fund would invest in companies in which the General Partner ("GP"), Laurence Allen ("Mr. Allen"), had an affiliation.

9. Accordingly, I had full knowledge that ACP X would be investing in affiliates or better stated, companies that the GP had an interest in. As this was clearly stated in the offering documents.

10. To date I fully support the investment decisions and other business decisions made by the GP.

11. I read and understood the terms of the Third ("3rd Amendment"), Fourth ("4th Amendment") and Fifth Amendments ("5th Amendment").

12. I understood that the 3rd Amendment was drafted due to requests by certain LPs who were having liquidity problems.

13. I understood the 3rd Amendment would offer all LPs an opportunity for an early

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withdrawal at an approximate 20% discount from their then current capital balance.

14. I understood the 3rd Amendment would increase allocations to the capital balances of LPs who did not elect to take an early withdrawal under this amendment.

15. I understood the 3rd Amendment reduced the annual investment advisor fee from 2.00% to 1.25%.

16. I understood the 3rd Amendment provided for a partial distribution of carried interest that would not be subject to claw back.

17. I understand that the 3rd Amendment only became effective after being approved by a majority of LPs, pursuant to the terms of the PPM and LPA. I also understood that either the PPM or LPA were now changed pursuant to the 3rd Amendment.

18. I understood that the 3rd Amendment required the premature sale of certain investments held by ACP X and that the sales were necessary because ACP X lacked sufficient net cash balances. I understood net cash balances were defined as cash balances les reserves for capital calls for underlying fund investments, follow on investments for underlying private company investments and certain expenses.

19. I understood much of the same to be true for the 4th Amendment and the 5th Amendment with respect to early withdrawal discounts, allocations to capital balances for LPs who did not participate in the early withdrawal, carried interest, changing the terms of the PPM & LPA pursuant to the amendments and the premature sale of investments to fulfil the early withdrawal requests.

20. I read and understood the terms of the Seventh Amendment ("7th Amendment") in December 2018. I understood the 7th Amendment to outline how ACP X would liquidate and distribute assets to LPs.

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21. I am pleased with my investment as a LP into ACP X. I am concerned by the interference of the Office of the New York Attorney General ("NYAG") and how it is negatively impacting the value of my investment.

22. I am concerned that due to the NYAG's preliminary injunction, ACP X's bank accounts have been frozen, preventing ACP X from making normal payments to accounting and other professionals to create reports for LPs.

23. I am concerned that the NYAG's preliminary injunction is causing me damage because of the restriction it has put on ACP X's bank accounts.

24. I am concerned with the NYAG's action due to the NYAG not allowing the GP to allocate certain publicly traded companies by the January 19, 2019 distribution date, including Corbus Pharmaceuticals (NASDAQ: CRBP), which I understand was valued as high as $9.25 per share on or about September 4, 2020 and was down to $0.94 on October 2020.

25. Because of the NYAG's preliminary injunction, I have not been able to receive distributions pursuant to the 7th Amendment, which is damaging to me.

26. The delay is also causing for additional custodial fees and making RMD planning difficult due to some uncertainties.

27. I want the court to dismiss the NYAG action against the GP and ACP X and all other defendants. I would like for ACP X and the GP to pursue damages against the NYAG.

28. I attest that these statements are true to the best of my knowledge.

Dated: December 16, 2020

Robert Schubert, Jr.

State of ~~New York~~ Pennsylvania
County of Delaware

Commonwealth of Pennsylvania-Notary Seal
Christina M Kaltsidis, Notary Public
Delaware County
My Commission Expires February 3, 2024
Commission Number 1233285

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff-Respondent,

-against-

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X, LP,

Defendants-Appellants,

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC,

Relief Defendants.

Index No: 452378/2019

AFFIDAVIT OF VERNON C. SUMNICHT IN SUPPORT OF THE GENERAL PARTNER OF ACP X, LP

AFFIDAVIT OF VERNON C. SUMNICHT

Vernon C. Sumnicht, being duly sworn, deposes and say:

1. I am over 18 years of age, and I submit this affidavit for purposes of the above-captioned case.

2. The statements made herein are based upon my own personal knowledge and observations, and I make this affidavit voluntarily and on my own accord.

3. I am CEO of Sumnicht & Associates, LLC., which I founded in November of 1988. Sumnicht & Associates, LLC is an RIA, a fiduciary that manages investments for families, foundations, trusts and institutions. We offer our clients access to a full complement of asset classes and investment alternatives. Our services, while diverse, are driven by a single priority, the

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integrated wealth management needs of our clients. You can learn more at www.sumnicht.com

4. I am also CEO of iSectors, LLC, which I founded in January 2005. iSectors serves investment advisors interested in outsourcing their investment management to strategists that create and maintain ETF based allocation models. iSectors is an RIA that manages Exchange Trades Fund, Index based, Asset Allocation Models on a Turn Key Asset Management Platform. For other RIAs to use for their clients on an outsourced basis. That is, iSectors provides other advisors with a turn key platform to outsource their asset management and administration work. iSectors offers 21 various ETF based asset allocation models to meet the various risk/return needs of their clients. You can learn more on our website at www.iSectors.com.

5. I am also CEO of Sumnicht Alternatives Management, LLC, Managing Member of SA Alternatives Opportunities Fund, LLC, a Series LLC of 8 Private Equity Funds, and Fund-of-Funds.

6. I was previously a stockbroker from October 1983 to January 1988 for Howe Barnes Investments in Appleton, WI.

7. I am also currently a Certified Financial Planner and have been since 1988.

8. I am a graduate of the University of Wisconsin-Whitewater with a degree in Finance in 1979. I have also completed my Masters of Business Administration in 1981. I carried a 3.9 GPA and am a member of Beta Gama Sigma.

9. I began making investments in 1980 and began investing in private equity funds in 1985.

10. I know Laurence G. Allen (Mr. Allen") the managing principal of the General Partner ("GP") of the private equity fund ACP X, LP ("ACP X") in a professional capacity. My only personal interaction with Mr. Allen has been since the Office of the New York Attorney

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General ("NYAG") became involved with ACP X.

11. I read and fully understood the offering documents for ACP X, including the Private Placement Memorandum ("PPM") and the Limited Partnership Agreement ("LPA"). Following such review, I knowingly proceeded to invest in ACP X.

12. As I mentioned, I decided to invest in ACP X and I am currently a limited partner ("LP") in ACP X.

13. I understood the PPM and LPA authorized the GP to invest in affiliates. I understood that the GP could invest in companies that the GP was affiliated with, controlled, or owned. I considered this an additional opportunity. There (in my opinion) is a huge and growing demand for secondary private equity liquidity. There are few if any opportunities to own an equity position in secondary private equity market makers. There is also a huge barrier to entry in this type of business.

14. I fully support the investment decisions and business decisions made by the GP; this is why I invested in ACP X. I have been happy with ACP X's performance, at least until the NYAG became involved.

15. I read and understood that the Third ("3rd Amendment"), Fourth ("4th Amendment") and Fifth Amendment ("5th Amendment") were early withdrawal amendments. In other words, they allowed for a voluntary early withdrawal opportunity for LPs.

16. I understood that the 3rd Amendment came about after certain LPs were requesting liquidity.

17. I understood the 3rd, 4th, and 5th Amendments would offer all LPs an opportunity for an early withdrawal at an approximate 20% discount from their then-current capital balance.

18. I understood the 3rd, 4th, and 5th Amendments would increase allocations to the

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capital balances of LPs who did not elect to take an early withdrawal under the amendments. I would note that I participated in taking early withdrawals.

19. I also understood that the 3rd Amendment reduced the annual investment advisor fee from 2.00% to 1.25%.

20. I understood the 3rd, 4th, and 5th Amendments provided for a partial distribution of carried interest that would not be subject to clawback.

21. To be clear, I'm a sophisticated private equity investor. These were only partial distributions, not 100% distributions, relatively small pieces done over some time. I considered the 20% discount normal (actually, it was a small discount) in the secondary market for private equity. It is quite normal to incur a discount to get out of any private equity investment early. The investors staying in the partnership (not taking a distribution) were, in effect, buying us out; they take on illiquidity and receive a discounted price as consideration. It wouldn't be fair otherwise.

22. The partial carried interest is also fair; I was taking profits; why shouldn't the GP get paid on the gains I was withdrawing? Why should there be a clawback on that? Besides, the carried interest was being accrued anyway; it didn't affect the value of my investment. I regularly value private equity and sell private equity in the secondary market. No investor ignores accrued carried interest. The accrued carried interest reduces the value of the partnership interest. Therefore, paying out the carried interest or continuing to accrue carried interest didn't affect what I could sell my partnership interest for anyway.

23. I'd also like to point out that the annual investment advisory fee reduction to 1.25% annually from 2.00% annually is an additional consideration received by the partners in exchange for paying some of the carried interest early without clawback. Obviously, the partners determined that all of the consideration received was adequate.

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24. I understand that the 3rd, 4th, and 5th Amendments only became effective after being approved by a majority of LPs, pursuant to the terms of the PPM and LPA. I also understood that either the PPM or LPA were now changed pursuant to the 3rd, 4th, and 5th Amendments.

25. I understood that the 3rd, 4th, and 5th Amendments required the premature sale of certain investments held by ACP X and that the sales were necessary because ACP X lacked sufficient net cash balances. I understood net cash balances were defined as cash balances less reserves for capital calls for underlying fund investments, follow on investments for underlying private company investments, and certain expenses.

26. I also read and understood the terms of the Seventh Amendment ("7th Amendment") in December 2018. I understood the 7th Amendment outlined how ACP X would liquidate and distribute assets to LPs.

27. I want to reiterate that I was pleased with my investment as an LP into ACP X. My displeasure with my investment in ACP X comes from the interference of the NYAG with the wind-down of ACP X. I believe it is negatively impacting the value of ACP X and, likewise, my investment. Although I understand that the NYAG believes they are protecting the partners, in this case, the NYAG is harming the other LPs and me with this action. Therefore, this action should be dismissed.

28. One example of how the NYAG's actions have harmed me is that I was not given the opportunity to decide whether to sell my shares in Corbus Pharmaceuticals (NASDAQ: CRBP), which I understand was valued as high as $9.25 per share on or about September 4, 2020 and was down to $0.94 on October 2020. I should have received my allocation of shares on January 15, 2019 but was not able to because of the NYAG's action.

29. Similarly, I have not been able to receive any distributions pursuant to the 7th

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Amendment, which is damaging to me because of the NYAG's preliminary injunction.

30. I would respectfully ask the court to dismiss the NYAG action to allow the GP to liquidate ACP X and distribute the remaining investments held by ACP X to the LPs.

31. I attest that these statements are true to the best of my knowledge.

Dated: December 17, 2020

Vernon C. Sumnicht

State of Wisconsin
County of Outagamie

Sworn to before me this
17 day of December, 2020

Camilla S. Miller
(Notary Public)
Camilla S. Miller

CAMILLA SUE MILLER NOTARY PUBLIC STATE OF WISCONSIN

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, *Plaintiff-Respondent,* -against- LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X, LP, *Defendants-Appellants,* NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC, *Relief Defendants.*	Index No: 452378/2019 **AFFIDAVIT OF CHRISTIAN P. ERDMAN**

AFFIDAVIT OF CHRISTIAN P. ERDMAN

1. I am over 18 years of age, and I submit this affidavit for purposes of the above-captioned case.

2. The statements made herein are based upon my own personal knowledge and observations, and I make this affidavit voluntarily and on my own accord.

3. I am a resident of the State of Wyoming. I am fifty-nine years old.

4. My primary profession is that of a private investor. In addition I have been, and continue to be, involved in several family companies primarily focused on agriculture, natural resources, and real estate. I have invested in several limited partnerships.

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5. I have been invested in ACP X, LP ("ACP X") since its inception in 2004. I am also an investor in NYPPEX Holdings, LLC ("NYPPEX"). At the time of these investments I felt, and I continue to feel, that the concept of purchasing positions in private equity funds on the secondary market at a discount is an interesting idea that, while risky, has the potential for above average returns.

6. In 2008, I also invested in a private equity fund where Larry Allen was the General Partner. That fund has since closed.

7. I would categorize these investments as risk capital investments, i.e. investments in which the investor should be prepared to lose their entire investment due to the risk involved. As limited partnerships, a substantial part of this risk is the control and discretion given to the general partner ("GP"). Investment decisions are made by the GP, and the GP often has wide latitude in the type and nature of the investments that the fund can make. In the case of ACP X, that latitude was particularly broad; this should have been a clear risk factor to any limited partner ("LP") at the time of their investment.

8. In my time as a LP in ACP X, I have had some mixed feelings about Larry Allen as the GP, particularly in regard to the investments made in private placements and affiliates. I do, however, understand that he was within as the GP's rights to make such investments under both the Private Placement Memorandum and the Limited Partnership Agreement.

9. While I understand the rationale of APC X's original investment in NYPPEX, I do not view the follow-on investments in NYPPEX as particularly good or wise ones. However, in my opinion the GP was perfectly within his right in making these investments.

10. I also would have preferred that the fund had kept its main focus on secondary private market investments, particularly the secondary investments in private equity funds, even

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though this may have resulted in a lower return. But again, the GP has a broad right to make investment decisions, and to change the nature of these investments, within certain limits, in response to what he felt were changing market conditions. In this case I do not see that the GP did anything outside of his rights.

11. As the ACP X is winding down, I have recommended that the fund's interests in any remaining publicly listed companies, be distributed to the LP's so they can make their own decisions as to whether to retain the investments or to sell them, realizing any gains or losses as they see fit; though I realize the decision as when and how to make any such distributions is entirely up to the GP. It is my understanding that the GP has attempted to distribute at least some of these positions and that the NYAG's actions have prevented the GP from being able to do so. In this case, I feel that the NYAG's actions are counter to the interests of the LPs and not in keeping with their stated role of trying to protect the LPs.

12. Furthermore, I believe that the dispute between NYAG and the General Partner has highly diminished the value of NYPPEX, a significant holding of the fund.

13. I would request that the court allow the GP to distribute to the non-affiliated LP's their pro rata share of stock of any public companies; and, to the extent possible, any restricted stock and stock in unaffiliated private companies.

14. I would also like to request that the court makes sure that all unaffiliated LPs are treated in an equal manor, and that no LPs be given the opportunity for an early or preferential exit without that opportunity being offered to all LPs. It is my understanding that the desire for a preferential exit by one or more LPs was the triggering event for the dispute between the NYAG and the GP.

15. I do not agree with what I understand to be the NYAG's position that the GP

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engaged in malfeasance through ACP X's investments in private and affiliated companies. Furthermore, I believe that the continuing dispute between the NYAG and the GP harms the LPs.

16. I attest that these statements are true to the best of my knowledge.

Dated: December 29, 2020

Christian Erdman

State of Wyoming
County of Teton

Sworn to before me this
29 day of Dec, 2020

Barbara B. Gentry
(Notary Public)

BARBARA B. GENTRY NOTARY PUBLIC TETON COUNTY, WYOMING My Commission Expires March 2, 2024

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EXHIBIT H

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Q Okay. Thank you.

MR. D'ANGELO: May we put it back up, your Honor?

THE COURT: Mr. Allen, you don't know how much money is in the fund at this moment in time?

THE WITNESS: I have a general idea.

THE COURT: Okay. What's your general idea of how much money is in the fund?

THE WITNESS: I understand that the fund size was approximately 17.3 million. That cumulative distributions have been approximately $13 million. So that's about 73 percent. The pending distribution of public stock in cash is approximately $7.8 million. That would bring the limited partners to 119 percent of their original commitments. And then if the private securities get distributed at their current fair values, that would be an additional $11 million, and that would be 184 percent return. And if NYPPEX was eliminated from that analysis, the private securities would only be $3.5 million, and the limited partner would get 139 percent. However, there are some discrepancies with Mr. Mincberg's recollection of what his distributions are and some other facts that I think that document would address.

I would also add for Ms. Grodin, the Office of the Attorney General has asked for a cash in, cash out analysis of --

MS. GRODIN: This is not appropriate.

MR. D'ANGELO: Excuse me. Can you let the witness conclude his sentence?

MS. GRODIN: He's asking me a question.

THE COURT: No, he's not. Let him finish.

MS. GRODIN: Sorry, your Honor.

A My recollection is for some time the Office of the New York Attorney General has asked for a cash in, cash out analysis of every limited partner, every dollar, and that has taken a substantial amount of time to complete, but we finally completed it a few days ago. That's what this document is. It's based on K-1 statements and we're proud of that document.

Q Does that document show the return on capital for each limited partner in the fund?

A Yes.

Q Will that document help you refresh your recollection as to what the percentage return is for each LP?

A Yes.

MR. D'ANGELO: Your Honor, may we put that up to refresh his recollection?

THE COURT: I'm not going to have that document. Mr. Allen, just out of curiosity, have the private securities that were frozen a year ago appreciated during the year in which they were frozen and unavailable for liquidation to support further activity of ACP X

investments?

THE WITNESS: I would say in general those securities are about the same estimated fair value as they were at that time.

THE COURT: All right. So then if the private securities are the same value approximately that they were at the time of the preliminary injunction, which was a year ago, then you've had a year to calculate what interests the ACP X Limited partners have and the returns that they have received, correct?

THE WITNESS: Yes.

THE COURT: And whatever the state of affairs was with respect to the private securities a year ago, you've just told me it's essentially the same today, correct?

THE WITNESS: Yes.

THE COURT: All right. So, any appreciation that the limited partners could have received would have come from their investment in NYPPEX, correct?

THE WITNESS: Your Honor, I don't follow that question.

THE COURT: Well, the ACP X Limited partners have a very significant investment in NYPPEX, correct?

THE WITNESS: Yes.

THE COURT: And part of your testimony about the extent to which the value of the limited partnership

interests are and the return on capital turns in part on the value of the ACP X partners' interest in NYPPEX, correct?

MR. D'ANGELO: Just note my objection that the return on capital analysis was never done for the preliminary injunction hearing and to this day has never been done. We're trying to refresh the witness' recollection of the return on capital for all LPs with this document, your Honor, that is supported by the K-1s.

THE COURT: I'm not going to have it. Let's move on. Do you have other questions?

MR. D'ANGELO: I do, your Honor.

(Continue on the next page.)

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Q Okay. And we're talking about Mr. Pope's testimony, Mr. Allen. Did you read the section of Mr. Pope's testimony where he states that the LPs were redeemed, some at 100 percent, notwithstanding the Court's current injunction and NYPPEX's potential IPO?

A Yes.

Q And you recall hearing Mr. Erdman's testimony?

A Yes.

Q Did you also read Mr. Erdman affidavit?

A Yes.

Q Did you hear Mr. Erdman when said that, you know, you give a lot of control to the general partner and they have the right to do that. It is like -- they have the right to make bad investments. Do you recall him saying that?

A In general, yes.

Q Did the PPM and LPA here give the GP wide latitude in managing the fund's investment strategies?

A Yes.

Q Is LP Erdman in a position to be fully redeemed at this time?

A Yes.

Q Did you hear LP Jim Johnson's testimony yesterday?

A Yes.

Q And when speaking about his expectations about his