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[redacted]

May 20, 2013

United States Securities and Exchange Commission
Attention: Ms. Elizabeth M. Murphy, Secretary
Station Place
100 F Street, NE
Washington, DC 20549-1090

Subj: File 81-939: W2007 Grace Acquisition I, Inc. ("W2007 Grace")

Ladies and Gentlemen:

White Bay Capital Management is a holder of W2007 Grace's 8.75% Series B Cumulative Preferred Stock and its 9.00% Series C Cumulative Preferred Stock (collectively, the "Grace Preferred Stock). I am responding to the Commission's Notice and request for public comments, dated April 30, 2013, regarding the April 4, 2013 application of W2007 Grace seeking an exemption from the requirement to file reports under the Securities and Exchange Act (the "Application").

As I describe in this letter, the circumstances contained in the Application are replete with critical omissions or contradictions which, in total, cause the Application to be viewed as materially misleading. Therefore, I respectfully recommend that the Commission should (i) deny the Application; (ii) order that W2007 Grace resume its SEC reporting obligations; and (iii) take appropriate action on the unlawful related-party activities described herein that have harmed public investors.

## Background

The predecessor of W2007 Grace was Equity Inns Inc. (NYSE: INN). In 2007, affiliates of the Goldman Sachs Group ("Goldman Sachs") purchased 100% of the common stock of Equity Inns and then merged Equity Inns into W2007 Grace (the "2007 Merger"). W2007 Grace is a Goldman Sachs company [1] and is under its complete corporate control (further described herein). This critical fact is conspicuously omitted in the Application (and there is no such public disclosure by W2007 Grace). In light of the Application's aggressive attempt to dissect Mr. Sullivan's investment holdings, it is noteworthy that the Application conceals W2007 Grace's role and control in Goldman Sachs.

[1] Goldman Sachs Group Inc. Organization Chart contained in Form N-4 filed by the Commonwealth Annuity and Life Insurance Company (a wholly-owned subsidiary of GS) with the SEC on April 25, 2012.

Before the 2007 Merger, Equity Inns had two classes of public preferred shares outstanding: the 8.75% Series B and the 8.0% Series C (collectively, the "ENN Preferred Stock"). The ENN Preferred Stock was issued between 2003 and 2006 in SEC registered public offerings in book-entry form through the Depository Trust Company ("DTC") and listed on the NYSE.[2] Before the 2007 Merger, Equity Inns was current in paying the dividends on the ENN Preferred Stock and current in its SEC filings under the Exchange Act. As part of the 2007 Merger, Goldman Sachs did not buyout the ENN Preferred Stock, but instead executed an impermissible conversion of the ENN Preferred Stock into Grace Preferred Stock and subsequently suspended contractual dividends (explained below).

## ANALYSIS OF APPLICATION FOR EXEMPTION FROM SEC FILING

The Commission's Notice states that the Application is based on four factors:

> Factor 1: That as of January 1, 2013 W2007 Grace had fewer than 300 holders of record;
>
> Factor 2: That there is limited trading activity and the absence of any regular market for W2007 Grace's securities;
>
> Factor 3: W2007 Grace is not directly engaged in active operations, with a small economic interest in 130 hotels and no employees;
>
> Factor 4: That not granting the order under the circumstances described in the Application would contravene the intent of the Exchange Act.

Contrary to Applicant's argument, each of these factors weighs heavily against exemption from SEC reporting obligations under Section 12(h) of the Exchange Act. While the Application claims that the W2007 Grace is acting in the best interest of investors, the facts indicate that the opposite is true: W2007 Grace is seeking exemptive relief to exploit public investors and to allow Goldman Sachs to plunder W2007 Grace's assets. As I describe below, the facts reinforce the necessity that the Application be denied to force W2007 Grace and Goldman Sachs to make accurate disclosures to the investing public.

## FACTOR NO. 1 – NUMBER OF RECORD HOLDERS

The Application argues that, because there purportedly were less than 300 record holders of the ENN Preferred Stock, and there purportedly are less than 300 record holders of the (converted) Grace Preferred Stock (assuming that the holdings of the Trusts count as one holder), W2007 Grace should be exempt from SEC reporting requirements. The Application is wrong.

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[2] See Form 424B5 filed by Equity Inns Inc. with the SEC on July 11, 2003 as an example of the ENN Preferred Stock registered public offerings.

**The ENN Preferred Stock Was Issued In SEC Registered Public Offerings And Is Widely Held**

It was merely a few years before the 2007 Merger and deregistration that $146 million of capital was raised via widely dispersed SEC registered public offerings of the ENN Preferred Stock (the last offering was in 2006). Public investors – particularly those purchasing shares of preferred stock in SEC registered public offerings – cannot ascertain how many holders there will be following a public offering. But they do rely on the issuer to provide them with disclosure information afforded by SEC filings so they can monitor their investment. Withdrawing from SEC filing requirements so soon after SEC registered public offerings severely frustrates investor expectations and dampens the securities market to the detriment of all public participants.

The Application cites the matter of BF Enterprises, Inc. for the proposition that an issuer with 300 or fewer record holders should be entitled to such exemptive relief under these circumstances. Application at 9. W2007 Grace, however, is readily distinguishable from BF Enterprises and much more analogous to Bacardi Corporation (File No. 3-7019) (February 15, 1990).

The Application includes conflicting and unsubstantiated disclosures about the number of public investors in the Grace Preferred Stock. The Application states that, *"[a]s of November 5, 2007, the day prior to the filing of the Form 15, based on the records provided to [W2007 Grace], [it] disclosed on Form 15 that there were 66 holders of record of the Series B and 36 holders of record of Series C."* Application at 3. However, the Application later concedes that as of early 2008, after the Grace Preferred Stock was supposedly transferred to individual holders' accounts, there were 260 holders of record, and as of January 2013 there are 280 holders of record,[3] a substantial increase above the original 99 record holders, and very close to the 300-holder threshold (again, assuming Mr. Sullivan's shares are only counted as one record holder).

In BF Enterprises, the issuer had only 85 *beneficial* holders of its common stock and only 25 record holders. Here, the Application conspicuously avoids disclosing the number of beneficial holders of the Grace Preferred Stock, which raises the inference that there are substantially more than 300 such holders. In fact, Goldman Sachs has acknowledged that the Grace Preferred Stock remains dispersed among beneficial holders, contained in the "Frequently Asked Questions" appearing on W2007 Grace's website:

> *Q: "Are my shares of ENN/Grace Preferred frozen in my brokerage account?"*
>
> *A: "Your Grace Preferred shares are not frozen in your account. However, as the Grace Preferred shares are not listed or traded on a national securities exchange, your ability to dispose of the shares may be limited. Please consult with your broker or dealer regarding their trading policies with respect to delisted securities."*

[3] Application at 10. The Application does not provide any documentation or substantiation of the reported amounts of shareholders of record. Nothing herein is a concession that such amounts are accurate.

Moreover, as I describe below, initiatives implemented by Goldman Sachs to restrict the flow of information and restrict open market trading likely have suppressed the growth of the ownership base even further.

Here, public investors require comprehensive honest disclosure required by the Exchange Act. For this reason alone, the Commission should order W2007 Grace to resume SEC reporting.

## FACTOR 2: TRADING INTEREST IN W2007 GRACE

### Goldman Sach's Efforts To Restrict Open Market Trading Should Not Preclude Public Reporting

The Application claims that *"there is limited trading interest in the Company's Preferred Stock…..and….the Company does not believe that any significant interest is likely to develop in the future."* Application at 10. But the Application brazenly omits the fact that Goldman Sachs has implemented a policy to suspend contractual dividends and a policy designed to restrict open market trading. That policy mandates that a public investor must be a holder of the Grace Preferred Stock before becoming eligible to receive financial information of W2007 Grace and that the public investor must agree to W2007 Grace's confidentiality requirements. As stated in the "Frequently Asked Questions" appearing on W2007 Grace's website:

> *"The Company has elected to make certain Company materials and information available to the holders of Grace Preferred Stock. Interested holders of Grace Preferred Stock must complete, sign and mail to the Company a request form which is available on the Company's website (www.equityinns.com). Such holders will be required to confirm their status as a holder of Grace Preferred Stock, acknowledge their understanding that the materials provided must be kept confidential, and pay the reasonable cost of copying and shipping the materials."*

It is intellectually dishonest for Goldman Sachs to prevent *potential* investors from evaluating W2007 Grace's financial information and then misleadingly claim to the Commission that there is limited trading interest now, or in the future. Such behavior contravenes the Commission's public policy that investors require appropriate disclosure in order to make intelligent investment decisions. In light of this oppressive policy by Goldman Sachs, it is hardly surprising that open market trading has been sporadic (and potential expansion of record ownership limited), as claimed in the Application, since Goldman Sachs took control of W2007 Grace.

In BF Enterprises, the Commission noted in support of exemptive relief that the trading activity was limited because of appropriate SEC filing disclosure of an affirmative consent by shareholders to a reverse stock split and deregistration. BF Enterprises Order at 10.[4] Here, by contrast, Goldman Sachs unilaterally deregistered, without any vote or consent by the public investors of the ENN Preferred Stock.

**Goldman Sachs Group's Barred Purchase of Grace Preferred Stock**

While the termination of SEC public reporting and subsequent restriction of company information by Goldman Sachs have clearly deterred public trading, these actions also facilitated Goldman Sachs' substantial purchase of Grace Preferred Stock (presumably at a steep discount). On September 17, 2012, W2007 Grace posted a press release on its website containing the following announcement:

> *"[W2007 Grace] today announced that a sister company of the Company has recently acquired approximately 35% of the aggregate amount of issued and outstanding [Preferred Stock], which acquired shares remain outstanding. That sister company and its affiliates (including the Company) may also from time to time consider entering into one or more other transaction with respect to the Company, including the acquisition or disposition of securities of, or interests in, the Company (including additional transactions with respect to the Series B and Series C preferred shares of the Company)."*

While the press release did not disclose the purchasing entity or the dates or prices of the trades (as would be mandated in an SEC filing) it is reasonable to conclude that the *"sister company"* is an affiliate of Goldman Sachs. Most importantly, the ENN Preferred Stock and Grace Preferred Stock contain a restriction that prohibits its purchase while the contractual dividends are suspended [5] (as has been the status since Goldman Sachs commenced suspension):

> *"Subject to applicable law and the limitation on purchases when dividends on the Series B Preferred Stock are in arrears, we may, at any time and from time to time, purchase any shares of the [Preferred Stock] in the open market, by tender or by private agreement"*

[4] The BF Enterprises Order states that "the primary reason for the low level of trading may be the company's decision to effect the reverse/forward stock split and "go dark" does not, in our view, negatively impact an application under Section 12(h) where, as here, an issuer accomplishes deregistration after notice to its shareholders, including notice of the negative impact on the market for the issuer's securities."

[5] See Form 424B5 filed by Equity Inns Inc. with the SEC on July 11, 2003.

The fact that a "*sister company*", rather than W2007 Grace, was the reported purchasing entity may not be relevant as both companies are within Goldman Sachs and operate as such. In fact, the press release suggests that the *"sister company" and* W2007 Grace may together consider additional purchases of the Preferred Stock:

> *"That sister company and its affiliates (including the Company) may also from time to time consider entering into one or more other transaction…"*

Most troubling, in regard to Factor 1 and Factor 2, the Application claims that *"as of January 1, 2013 [W2007 Grace] had fewer than 300 holders of record…"* and that *"there is limited trading interest in the W2007 Grace Preferred Stock."* The Application further notes that:

> *"Of the 3,450,000 shares of Series B outstanding, 1,018,250 or approximately 29.5% are held beneficially by an affiliate, and of the 2,400,000 outstanding shares of Series C, 1,000,000 or approximately 41.7% are held beneficially by the affiliate."*

However, the Application omits the critical fact that the substantial shares held by "the Affiliate" were purchased during the very same time period relied upon in the Application. Specifically, the Application describes open market trading activity in the Grace Preferred Stock during the 12 months ended December 31, 2012, and characterizes the activity as infrequent. This is disingenuous because at an undisclosed time before September 17, 2012 (announcement date), Goldman Sachs completed its improper purchase of 35% of the total outstanding shares (approximately 2 million shares), and thus prevented those shares from being freely traded in the open market for the remainder of 2012. It remains unclear whether the improper 35% purchase by Goldman Sachs was conducted in the open market or in privately negotiated transactions.

Because Goldman Sachs's improper 35% purchase likely contributed to the low record ownership and the low open market trading characteristics that the Application relies upon (Factors 1 and 2) for an SEC reporting exemption (that would be harmful to public investors), I believe that this creates serious questions of self-dealing and the motives in seeking exemptive relief. While other issuers in need of relief from the burdens of the cost and the administration of public filings may be appropriate, in contrast, here, the issuer and its affiliates are using the exemption to restrict trading in a widely held security for their own benefit, such relief is clearly inappropriate.

Worse still, by preventing the flow of critical information to potential purchasers, Goldman Sachs has created a substantial and inappropriate advantage for itself – a virtual monopoly – on the purchase and sale of Grace Preferred Stock, because it prevents public access to all financial and operational information of W2007 Grace and allows itself to reap the improper benefit of the artificial liquidity discount created by it in the deregistration, delisting and suspension of contractual dividends of the Grace Preferred Stock (explained below). The Commission should not sanction this result of Goldman Sachs' violations.

## FACTOR 3: THE NATURE AND EXTENT OF THE ISSUER'S ACTIVITIES, INCOME AND ASSETS

### W2007 Grace Has Over $1 Billion Of Assets And Substantial Operations

The Application states that *"The Company is not directly engaged in extensive operations as it is simply a real estate investment firm with a small economic interest in 130 hotels and no employees."* This is false and misleading. I believe that W2007 Grace's assets are very similar to when the 2007 Merger was conducted, as disclosed in Equity Inns Inc.'s merger proxy statement filed with the SEC [6]:

> *"At August 20, 2007, through our operating partnership, we owned 133 hotel properties with a total of 15,822 rooms located in 35 states."*

*Equity Inns Inc.*

| | *June 30, 2007* |
|---|---|
| *Total assets* | *$1,190,103,000* |
| *Total equity* | *$430,207,000* |

Today, W2007 Grace reports that the Company's assets have a book value of $1.6 billion with ownership of the same 130 hotels. Furthermore, I believe that W2007 Grace's assets, operations and value are more substantial than a significant number of current SEC reporting issuers, including comparable public REITS such as Summit Hotel Properties Inc. (NYSE: INN), which maintains SEC registration of its common stock and its multiple series of preferred shares. Moreover, W2007 Grace's assets dwarf those of BF Enterprises, which only had $13.3 million of assets. The substantial amount of W2007 Grace's assets makes clear that SEC reporting will not impose an undue economic burden.

The Application also misleadingly claims that W2007 Grace has *"no employees,"* which suggests to the Commission that the company is an empty shell with no personnel. However, the Application conceals the fact that W2007 Grace is operated within Goldman Sachs, which has thousands of employees available to attend to W2007 Grace, and, in fact, a senior Goldman Sachs executive is the CEO/President of W2007 Grace (see below).

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[6] Equity Inns Inc. Schedule 14A, filed August 24, 2007, financial information incorporated by reference to Form 10-Q.

## FACTOR 4: GRANTING EXEMPTIVE RELIEF WOULD CONTRAVENE THE INTENT OF THE EXCHANGE ACT

Goldman Sachs and W2007 Grace have been able to consummate and conceal a number of inappropriate transactions without notice or disclosure, and to the severe detriment of public investors, because W2007 Grace is no longer an SEC reporting company. Some of these wrongful acts are catalogued below.

### Goldman Sachs Improperly Exchanged the ENN Preferred Stock To Deregister It

As the Application states, upon the 2007 Merger, the ENN Preferred Stock *"was converted into the right to receive one share of Series B and Series C [Grace Preferred Stock], respectively."* Application at 3. However, the terms of the ENN Preferred Stock, as memorialized in their SEC public offerings, stated that these shares were *"not convertible into or exchangeable for any [of our] other property or securities"*.[7]

This impermissible and involuntary conversion was harmful to public investors of the ENN Preferred Stock, because the Grace Preferred Stock provided to them in the involuntary conversion was intentionally not registered with the SEC nor listed on the NYSE. Following the involuntary and impermissible conversion, Goldman Sachs delisted the ENN Preferred Stock from the NYSE and filed a notice to terminate SEC reporting under the Exchange Act.

### Commencement of Wrongful Related-Party Transactions That Harmed Public Investors

Following the 2003-2006 registered public offerings of the ENN Preferred Stock, Equity Inns was required to maintain a Board of Directors comprised of a majority of independent directors. Upon the 2007 Merger, Goldman Sachs altered the Bylaws to remove the requirement that the majority of the directors be independent, thereby setting the stage to fill the Board of Directors of W2007 Grace with Goldman Sachs employees. Upon the 2007 Merger, the headquarters of W2007 Grace was moved to a Goldman Sachs office in Irving, Texas, and Goldman Sachs appointed its employees to all of W2007 Grace's officer and director positions. In fact, the President and CEO of W2007 Grace, Mr. Todd Giannoble, is a Managing Director of Goldman Sachs.[8] W2007 Grace makes no disclosure of these facts (in addition to withholding disclosure that it is a Goldman Sachs affiliate). Mr. Giannoble is also a member of the Board of Directors of W2007 Grace.

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[7] See Form 424B5 filed by Equity Inns Inc. with the SEC on July 11, 2003

[8] Mr. Giannoble is listed as a Managing Director in the 2012 annual report of the Goldman Sachs Group. Mr. Giannoble likely receives his compensation from Goldman Sachs, not from W2007 Grace. Additionally, as stated in GS's SEC filings, Mr. Giannoble and other Goldman Sachs officers and directors of W2007 Grace may have participated in the Goldman Sachs Group's Employee Stock Incentive Plans.

Following the 2007 Merger, and then no longer under SEC reporting on related-party transactions, Goldman Sachs suspended the contractual cumulative dividends owed on the Grace Preferred Stock. Contemporaneously with the suspension, Goldman Sachs commenced inappropriate self-interested related-party transactions. These include:

- Improper Dividends. The payment of [redacted] [9]. The terms of the Preferred Stock contain the restriction on the payment of common stock dividends while dividends on the ENN Preferred Stock and Grace Preferred Stock are suspended.[10]

> *"Unless full cumulative dividends on the [Preferred Stock] have been paid or declared and set apart for payment for all past dividend periods, no dividends ….. shall be declared or paid or set apart for payment by us with respect to any shares of [common stock]"*

Any related-party payments from W2007 Grace to entities within Goldman Sachs are, in substance, dividends on W2007 Grace's common stock, and thus violate the terms of the Grace Preferred Stock, and hence directly harm public investors. The Application omits disclosure of this activity.

- Improper Self-Issuance of Senior Securities. In 2009, W2007 Grace completed [redacted] bypass public investors. It is troubling that material disclosure of the [redacted] [9] was not made externally of Goldman Sachs until 2012 when it was published in W2007 Grace's 2011 annual report, which was distributed to public investors only upon request and pursuant to confidentiality (as discussed in this letter).

[9] This statement is based on review of W2007 Grace financial statements and is redacted due to the fact that I signed a confidentiality agreement to receive the financial statements. I will provide the Commission with an unredacted version of this letter upon request.

[10] See Form 424B5 filed by Equity Inns Inc. with the SEC on July 11, 2003.

The SEC registered public offering terms of the ENN Preferred Stock make clear that issuance of any equity that would be senior to the ENN Preferred Stock would not be permitted without consent:[11]

> *"All references to "we," "our" and "us" in this prospectus supplement means Equity Inns, Inc. and all entities owned or controlled by us….."*
>
> *"The affirmative vote or consent of ….holders of the outstanding shares of Series B Preferred Stock and the holders of all other classes or series of preferred stock entitled to vote on such matters, voting as a single class, will*
>
> *be required to (1) authorize the creation of, the increase in the authorized amount of, or issuance of any shares of any class of stock ranking senior to the Series B Preferred Stock or any security convertible into shares of any class of such senior stock"*

Notwithstanding the fact that there was no request for consent of the public investors, it appears that the only board authorization of this [redacted][12] at W2007 Grace was by the utterly conflicted employees of Goldman Sachs who acted on behalf of their employer. In combination with the withholding of timely public notice and material disclosure of this self-interested activity, the actions of Goldman Sachs are egregious. The Application omits disclosure of this wrongful activity.

**Goldman Sachs Group Does Not Respond to Questions Regarding the Troubling Activities Discussed in this Letter**

As shown in Exhibit A, I submitted a letter, dated April 2, 2013, to Ms. M. Michelle Burns, Chair of the Audit Committee of the Board of Directors of Goldman Sachs.[13] The letter to Ms. Burns questioned many of the activities discussed in this letter to the Commission. As of this date, there has been no response to me from Ms. Burns or from anyone in Goldman Sachs.

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[11] See Form 424B5 filed by Equity Inns Inc. with the SEC on July 11, 2003.

[12] This statement is based on review of W2007 Grace financial statements and is redacted due to the fact that I signed a confidentiality agreement to receive the financial statements. I will provide the Commission with an unredacted version of this letter upon request.

[13] Many details in my letter to Ms. Burns are based on review of W2007 Grace financial statements and are redacted due to the fact that I signed a confidentiality agreement to receive the financial statements. I will provide the Commission with an unredacted version of the Burns letter upon request.

**Conclusion**

W2007 Grace claims in the Application that the Exchange Act and Commission rules allow for W2007 Grace to be exempt from SEC reporting. I view as puzzling such claims that our laws and government regulations are available to shield the execution of harmful acts against the investing public. Our laws and regulations are intended to protect the public from such acts.

Furthermore, in light of the fact that most of the questionable and possible unlawful actions described in this letter occurred between 2007 and 2012, I believe it is reprehensible that Goldman Sachs received approximately $10 billion dollars in public assistance through programs such as TARP, while it was concurrently undertaking intentional steps to harm public investors.

I reiterate my recommendation that the Commission should (i) deny the Application; (ii) order that W2007 Grace resume its SEC reporting obligations; and (iii) take appropriate action on the unlawful related-party activities described herein that have harmed public investors.

I support a public hearing on this matter and would be willing to participate if the Commission schedules a hearing.

Sincerely,

Andrew R. Siegel
Managing Member

Enc: Exhibit A – Letter to Ms. M. Michelle Burns, Chair of the Audit Committee of the Board of Directors of Goldman Sachs, dated April 2, 2013.

# Exhibit A

White Bay Capital Management, LLC
100 Park Avenue, 16th FL
New York, NY 10017
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asiegel@wbcapital.net

April 2, 2013

Ms. M. Michele Burns
Chair, Audit Committee
Board of Directors
c/o Gregory K. Palm, Secretary
The Goldman Sachs Group, Inc.
200 West Street
New York, N.Y. 10282

Subj: W2007 Grace Acquisition I, Inc. ("Grace")

Dear Ms. Burns:

As you may be aware, Grace is a member company of The Goldman Sachs Group Inc. ("GS") and is under GS's control [1].

White Bay Capital Management is a holder Grace's 8.75% Series B Cumulative Preferred Stock and its 9.00% Series C Cumulative Preferred Stock (collectively, the "Preferred Stock). I am writing to you to bring certain Grace matters to your attention and to ask for your view on the apparent conflicts that I explain below.

## Background

The predecessor of Grace was Equity Inns Inc. (NYSE: INN). In 2007, entities of GS purchased 100% of the common stock of Equity Inns and merged Equity Inns into Grace. The merger was financed with GS equity and GS debt, via Goldman Sachs Mortgage Company ("GSMC"). Prior to the merger, Equity Inns had two classes of preferred shares outstanding: the 8.75% Series B and the 8.0% Series C, both listed on the NYSE. Equity Inns was current in paying the contractual dividends on these preferred shares. As part of the merger, GS did not redeem the preferred shares and allowed the shares to remain outstanding.

## Initial Conflicts

The terms of the Equity Inns preferred shares stated that these shares were *"not convertible into or exchangeable for any [of our] other property or securities."* [2] Despite these clear terms, at the time of the merger GS conducted an involuntary and impermissible exchange of the Equity Inns preferred shares for the Preferred Stock issued by Grace.

[1] GS Organization Chart contained in Form N-4 filed by the Commonwealth Annuity and Life Insurance Company (a wholly-owned subsidiary of GS) with the SEC on April 25, 2012.
[2] See Form 424B5 filed by Equity Inns Inc. with the SEC on July 11, 2003.

To the detriment of the Preferred Stock, GS did not register it with the SEC, which resulted in the termination of public reporting and GS did not list it on the NYSE. Beginning in early 2008, GS suspended the payment of the contractual dividends of Preferred Stock, under the claim that payments of dividends on the Preferred Stock were not permitted by GS (GSMC). Disturbingly, GSMC has received subsequent large monetary fees from Grace.

**Continuing Conflicts**

Since the 2007 merger, Grace has been managed by GS, via Archon, and has been headquartered in GS's Irving, Texas office. It is also my understanding that all of Grace's directors and officers have been employees, either directly or indirectly, of GS. According to GS's SEC filings, some of these individuals may have participated in GS's Stock Incentive Plans. Furthermore, Grace has continued to pay [redacted] while contractual dividends of the Preferred Stock have been suspended by GS. As GS is the sole owner of Grace's common equity and maintains exclusive fiduciary control of Grace though the appointment of GS employees to all of Grace's officer and director positions, these [redacted] are very troubling.

**The 2009 Issuance of Equity of Grace's Subsidiaries to GS**

In 2009 Grace completed a recapitalization of the GS debt (mentioned above). This entailed [redacted] It is troubling that material disclosure of the 2009 [redacted] was not made externally of GS until 2012 when it was published in Grace's 2011 annual report to holders of the Preferred Stock.

The terms of the Equity Inns preferred shares, adopted by GS in its involuntary exchange to Grace Preferred Shares, make clear that issuance of <u>any</u> equity that would be senior to the preferred shares would not be permitted without consent [3]:

> *"All references to "we," "our" and "us" in this prospectus supplement means Equity Inns, Inc. and <u>all entities owned or controlled by us</u>….."*
>
> *"The Series B Preferred Stock will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of <u>our</u> company, rank (a) prior or senior to <u>any</u> class or series of <u>our</u> common stock and <u>any</u> other class or <u>series of equity securities</u>"*
>
> *"The affirmative vote or consent of ….holders of the outstanding shares of Series B Preferred Stock and the holders of all other classes or series of preferred stock entitled to vote on such matters, voting as a single class, will be required to (1) authorize the creation of, the increase in the authorized*

[3] Ibid.

> *amount of, or issuance of <u>any</u> shares of <u>any</u> class of stock ranking senior to the Series B Preferred Stock or <u>any</u> security convertible into shares of <u>any</u> class of such senior stock"*
>
> *"In addition to the above, under Tennessee law, the Series B Preferred Stock will be entitled to vote…..[to] create a new class…..having rights or preferences with respect to distributions or dissolution that are prior, superior, or substantially equal to the shares of the [Series B Preferred Stock]."*

Notwithstanding the fact that there was no request for consent of the holders of the Preferred Stock, it appears that the only board authorization of this [redacted] at Grace was by GS employees. In combination with GS's withholding of material disclosure of this self-interested activity, GS's actions are very concerning.

**<u>GS Barred Purchase of Preferred Stock</u>**

On September 17, 2012, Grace issued a press release containing the following announcement:

> *"[Grace] today announced that a sister company of the Company has recently acquired approximately 35% of the aggregate amount of issued and outstanding [Preferred Stock], which acquired shares remain outstanding. That sister company and its affiliates (including the Company) may also from time to time consider entering into one or more other transaction with respect to the Company, including the acquisition or disposition of securities of, or interests in, the Company (including additional transactions with respect to the Series B and Series C preferred shares of the Company)."*

While the press release did not disclose the purchasing entity, it is reasonable to conclude that the "sister company" is another member company within the GS control group. The Preferred Stock contains a restriction that prohibits its purchase while the contractual dividends are in arrears [4]:

> *"Subject to applicable law and the <u>limitation on purchases when dividends on the Series B Preferred Stock are in arrears</u>, we may, at any time and from time to time, purchase any shares of Series B Preferred Stock in the open market, by tender or by private agreement"*

The fact that a "sister company", rather than Grace, was the reported purchasing entity may not be relevant as both companies are within the GS control group, and GS employees fill all of Grace's officer and directors positions and Grace is managed in a GS office. Indeed, the press release suggests that the sister company <u>*and*</u> Grace together (eg: Alter Ego Doctrine) may together consider additional purchases of the Preferred Stock:

> *"That sister company <u>and</u> its affiliates (including the Company) may also from time to time consider entering into one or more other transaction…"*

[4] Ibid.

The terms of the Preferred Stock are clear that purchases are prohibited, since the dividends on the Preferred Stock have been in arrears since 2008.

**Corporate Legality of Related Party Transactions**

As you may be aware, corporate law is well developed on the topic of related-party transactions. Transactions such as those described in this letter in which GS, or a company under common control of GS, was a party to a transaction with Grace are likely to be considered related-party transactions. Generally, corporate law permits a related-party transaction when it is approved by a majority of directors who have no interest in the transaction. Since all of Grace's directors have been contemporaneously employees of GS, either directly or indirectly, it is highly questionable that Grace's transactions with GS, or with companies under common control of GS, were legally authorized.

I understand that as Chair of GS's Audit Committee you are very busy. I would appreciate it if you could provide answers to the following questions:

1. Please explain how related-party transactions such [redacted] were legally approved in light of the untenably-conflicted board of directors at Grace?

2. Please explain how "*<u>any</u> equity securities*" within *"all entities owned or controlled by [Grace]"* ranking structurally senior to the Preferred Stock were legally issued [redacted] despite the specific requirement for consent by the Preferred Stockholders?

3. Please explain how the 35% purchase of the Preferred Stock within the GS control group was legally permissible, in view of precedents such as the Alter Ego Doctrine and despite restrictions on purchases while the dividends on the Preferred Stock are in arrears?

4. Is the fiduciary duty owed by GS and its employees to holders of the Preferred Stock any different from the fiduciary duty owed to other preferred shares issued within the GS control group, such as preferred shares issued to (and subsequently redeemed from) Berkshire Hathaway Inc.?

Thank you for your time and attention to this matter.

Sincerely,

Andrew R. Siegel