

September 19, 2014

VIA HAND DELIVERY

Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F. St. N.E.  
Washington, D.C. 20549-1090

Re: Request for Hearing in Application of Advisors Series Trust and Vivaldi Asset Management, LLC for Manager of Managers Order; Investment Company Act Release No. 31226, File No. 812-14299

Dear Ms. Murphy:

I represent SkyView Investment Advisors, LLC (“SkyView”) located at 595 Shrewsbury Avenue, Shrewsbury, New Jersey. This letter is to formally request a hearing with respect to the application of the Advisors Series Trust (“AST”) and Vivaldi Asset Management, LLC (“Vivaldi”) for a Manager of Managers order from the Commission.

The nature of SkyView’s interest in this matter is as follows: SkyView is an investment adviser under the Investment Advisers Act of 1940. SkyView has served as the Lead Sub-Adviser with respect to both the Orinda SkyView Multi-Manager Hedged Equity Fund and the Orinda SkyView Macro Opportunities Fund (collectively the “Funds”), each a series of AST. At all relevant times, SkyView (directly or through its affiliates) has also been a shareholder of the Funds. The investment adviser with respect to both Funds has been Orinda Asset Management, LLC (“Orinda”), located in Orinda, California, operating under the May 21, 2012 Manager of Managers order previously approved by this Commission. *See In the Matter of Advisors Series Trust and Orinda Asset Management, LLC*, Investment Company Act Release No. 30065 (May 21, 2012). On March 20, 2014, Orinda recommended to the board of trustees of AST (the “Board”) that it be replaced by Vivaldi in connection with one or more transactions that would result in Orinda receiving undisclosed compensation. The Board ultimately agreed to the proposal (the “Orinda/Vivaldi Proposal”), contingent upon shareholder approval. In connection with its expected approval and subsequent assumption of the role of investment adviser to the Funds, the Funds and Vivaldi sought the approval by the Commission of a new Manager of Managers Order reflecting the replacement of Orinda with Vivaldi as investment adviser.

The reason for the request for a hearing is that SkyView has serious concerns about compliance with the requested Manager of Managers order given, as set forth below, the failure of AST and Orinda to comply with the existing May 21, 2012 Manager of Managers order with respect to maintenance of independent legal counsel for the independent trustees. These serious concerns have been brought to the attention of the Board, but have not been addressed. In addition, SkyView requested permission to address its concerns directly with the staff of the Commission (the "SEC Staff") as part of a routine examination but was refused that request. Moreover, SkyView, as further set forth below, has serious concerns about whether it is in the best interests of the public for Vivaldi to receive a Manager of Managers order in this case in light of its conduct. In connection with the proxy statement filed by AST with respect to the shareholder meeting at which shareholders voted on whether to approve Vivaldi to serve as investment adviser to the Funds, the largest shareholder of the Funds complained about Vivaldi's conduct to both AST and the SEC Staff. Vivaldi's response to these complaints included intimidation of the investor with threats of litigation. This is not the conduct one would expect of a registered investment adviser seeking (and expecting) to become a fiduciary to the Funds.

Furthermore, due to the two year look-back requirement of the independent counsel rule, if a new order is issued as requested by Vivaldi, that new order would immediately be violated by the continued representation by Paul Hastings, LLP ("Paul Hastings") of the Board and the independent trustees. The Rule states that a person qualifies as "independent legal counsel" if "[a] majority of the disinterested directors reasonably determine in the exercise of their judgment (and record the basis for that determination in the minutes of their meeting) that any representation by the person of the company's investment adviser, principal underwriter, administrator ("management organizations"), or any of their control persons, **since the beginning of the fund's last two completed fiscal years**, is or was sufficiently limited that it is unlikely to adversely affect the professional judgment of the person in providing legal representation to the disinterested directors." 17 C.F.R. § 270.0-1(a)(6)(i)(A). Paul Hastings, as the legal counsel in question, is required to provide the information necessary to make such a determination to the independent directors. 17 C.F.R. § 270.0-1(a)(6)(i)(B). Presumably, Paul Hastings has represented to the Board and the independent trustees that its simultaneous representation of Orinda did not violate this rule or the existing Manager of Managers order and that its continued representation of the Board and the independent trustees will not violate the new order. We do not understand how such a representation could be made in good faith given Paul Hastings' substantial and directly conflicting representation of Orinda. Additionally, the Board and the independent trustees are not entitled to rely on such representations when "they know or have reason to believe that the information is materially false or incomplete." 17 C.F.R. § 270.0-1(a)(6)(ii).

Therefore, the contested issues are as follows:

1. **Should the application issue where condition 7 of that application, requiring independent legal counsel as defined in rule 0-1(a)(6) under the Investment Company Act of 1940 to represent the independent trustees, has been consistently violated by AST and Orinda in the existing May 21, 2012 Manager of Managers order approved by this Commission, and where that rule will immediately be violated upon issuance of a new order pursuant to the application?**

The basis for this issue is as follows: The law firm of Paul Hastings, at all relevant times, has represented the Board, Orinda, and the independent Board trustees of the Board. This was in violation of the May 21, 2012 Manager of Managers order requiring independent legal counsel. This representation occurred despite the existence of direct conflicts of interest, in which Paul Hastings represented Orinda while it was an investment adviser to the Funds and, as a result, advocated for positions which may have been in the best interests of Orinda but not the Funds, while the Board received no independent counsel. SkyView believes that the Board's approval of the Vivaldi proposal was a product of such a conflict of interest. After SkyView expressed concerns about the Vivaldi proposal and Paul Hastings' assertion that it was qualified to serve as independent legal counsel due to its continuing representation of Orinda, Paul Hastings continued to represent the independent trustees of the Board and ultimately informed SkyView that it was serving as counsel to a special committee of the Board whose purpose was to review the proposal, creating yet another layer of conflict – advising Orinda, advising the Board, advising the independent trustees, and advising the special committee.

On July 14, 2014, SkyView notified the Board of its concerns regarding violations of the May 21, 2012 Manager of Managers order. (Exhibit A). No response was received. On August 12, 2014, after being informed by the Chief Compliance Officer (CCO) of the Funds that the Commission's examination staff would be conducting an examination of AST and the Funds, Steve Turi, Managing Partner of SkyView, requested permission from the CCO to discuss his concerns with the SEC examiners. That request was refused. That request was reiterated on August 15, 2014, in a letter sent to Paul Hastings in its capacity as counsel for the Board. Again, it was refused. On August 26, 2014, a call was received from another attorney at Paul Hastings, this time representing Orinda, asserting, among other things, that if SkyView instigated a proxy fight over the Orinda/Vivaldi proposal, SkyView would find it difficult to be a sub-adviser for mutual funds in the future.

Given the clear violations of the May 21, 2012 Manager of Managers Order, and Paul Hastings' continued representation of the Board and the independent trustees, an application for a new such order should not be allowed. If the application is granted under these circumstances, it is not clear when, if ever, the requirement for independent counsel under rule 0-1(a)(6) would have any meaning or effect.

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2. **Should the application issue where AST received complaints of misrepresentations during the shareholder approval process to which it never responded, Vivaldi sought to stifle opposition to approval by intimidating a major shareholder who complained to the SEC Staff and legal counsel for the Funds and Orinda made misrepresentations in a proxy filing.**

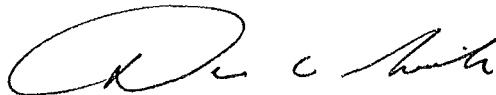
The basis for this issue is as follows: First, the largest investor in both Funds was Blue Water Capital Management LLC (“Blue Water”) of New York. On July 9, 2014, Blue Water complained to the SEC Staff regarding, among other things, “contradictory and misleading” information received from Orinda relating to the proxy. (Exhibit B). Blue Water also directed two letters to the Board complaining about the failure to disclose material terms in the proxy, including the compensation that Orinda was to receive from Vivaldi. (Exhibits C and D). The Board never responded. However, Vivaldi did. In an effort to intimidate Blue Water, on or about July 14, 2014, Peter Shea of Katten Muchin Rosenman, LLP, representing Vivaldi, threatened litigation against Blue Water for allegedly improper telephone solicitations in violation of federal securities laws for allegedly falsely “asserting that the Funds’ proxy statement dated June 24, 2014 improperly fails to disclose all payments between [Vivaldi] and Orinda Asset Management LLC.” (Exhibit E). The letter was, in fact nonsensical, as Blue Water’s concern was only that the proxy failed to disclose the amount of payments that would be made to Orinda, which the proxy failed to do. Blue Water reported Vivaldi’s intimidation to the SEC.

Secondly, on August 11, 2014 AST issued a Definitive Additional Proxy Solicitation Statement in relation to the Orinda/Vivaldi Proposal. In those materials it stated that “[o]nce it became apparent that there was a disagreement between Orinda and SkyView with regard to the future management of the Funds, Paul Hastings discontinued its representation of Orinda in these matters.” The statement was patently false. By April 2014, it was abundantly clear there was a disagreement between Orinda and SkyView. However, Paul Hastings continued to communicate as counsel for Orinda through at least August 26, 2014.

The requested application should not issue where it was the product of the kind of intimidation and misconduct which the securities laws are designed to prevent.

I appreciate your consideration of this request.

Sincerely,



David C. Smith

DCS/sdm

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Enclosures

c: Jeffrey T. Skinner (w/o Encl.)  
Kay French, Branch Chief, SEC (w/ Encl.)

# EXHIBIT A

July 14, 2014

direct dial 336 607 7512  
direct fax 336 734 2608  
jskinner@kilpatricktownsend.com

Mr. Doug Hess, President  
Mr. Joe D. Redwine, Chairman and Chief Executive Officer  
Mr. Donald E. O'Connor, Independent Trustee  
Mr. George J. Rebhan, Independent Trustee  
Mr. George T. Wofford III, Independent Trustee  
Ms. Gail C. Duree, Independent Trustee  
Advisors Series Trust  
c/o Mr. Domenick Pugliese, Esq.  
Paul Hastings LLP  
75 East 55th Street  
New York, NY 10022

Re: Independent Counsel Requirements Applied to the Advisors Series Trust (the "Trust")

Dear Sirs and Madam:

We have prepared this letter to provide you written notice of the concerns of SkyView Investment Advisors, LLC ("SkyView") and Steven Turi, as Senior Managing Director and Managing Member of SkyView, regarding the Trust's compliance with the terms of its Order from the Securities and Exchange Commission dated May 21, 2012 (the "Manager of Managers Order"). The Manager of Managers Order is intended to permit the Orinda-Skyview mutual funds (the "Funds") to replace sub-advisers to those Funds without obtaining the approval of shareholders of the Trust, as would normally be required under Section 15(a) of the Investment Company Act of 1940 (the "1940 Act"). As you know, SkyView serves as the Lead Subadviser for the Funds and, in that role, serves as a fiduciary to the Trust and the Funds with responsibility for the recommendation of sub-advisers for the Funds. If the Trust is not complying with all of the terms of the Manager of the Managers Order, some of the Trust's previous actions may be in violation of the 1940 Act, and the Trust's disclosures to shareholders of the Funds may be inaccurate, incomplete or misleading.

Under the seventh condition of the Manager of Managers Order, the Trust is obligated to retain independent legal counsel (as that term is defined in the 1940 Act). During the Orinda/Vivaldi proxy proposal discussions, SkyView learned, much to its surprise, that Paul Hastings LLP, which also serves (and has served for at least several years) as Orinda's counsel, serves as the "independent" counsel for the Trust. When SkyView and Mr. Turi questioned this arrangement, they were told that the Board is aware of this conflict and "is okay with it." When I inquired later about the arrangement, I was told by Domenick Pugliese (as the Board's and

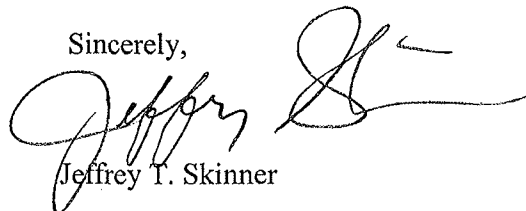
independent trustees' lead Paul Hastings attorney) that he and his partner David Hearth (as Orinda's lead Paul Hastings attorney) maintain a "Chinese Wall" with respect to the Trust.

Having reflected on the Trust's arrangement with Paul Hastings, SkyView and Mr. Turi do not believe that Paul Hastings qualifies as "independent legal counsel" to the Trust, as such term is defined in Rule 0-1(6) under the 1940 Act (the "Rule"). Not only has Paul Hastings served as counsel to Orinda for years, but Orinda and the Trust have recently (and in the past) been involved in matters that constitute substantial conflicts of interest for Paul Hastings. This concern was brought into sharp focus during the recent Orinda/Vivaldi proxy proposal discussions, where Paul Hastings continued to represent Orinda, the Trust, the independent trustees and the "Special Committee" appointed by the Board of the Trust to look into the Orinda-SkyView debate, even after SkyView, Mr. Turi and I questioned how a single law firm could represent so many parties with conflicting interests.

SkyView and Mr. Turi do not understand how a "Chinese Wall" arrangement comports with part (6)(iv)(A) of the Rule (which, among other things, indicates that the Rule applies to the lawyer representing the independent trustees and any "partner" of that lawyer) or, generally, how Paul Hastings' representation of these various parties "was sufficiently limited that it is unlikely to adversely affect the professional judgment of the person in providing legal representation to the disinterested directors".

In light of the foregoing, SkyView and Mr. Turi feel they have no choice but to bring these matters to the direct attention of the full Board of Trustees and, in particular, the independent trustees. Their concerns relate to whether Paul Hastings' actions have jeopardized the ability of the Trust, Orinda and SkyView to rely on the Manager of Managers Order; whether the Manager of Managers Order has already been violated; whether shareholders have received inaccurate, incomplete or misleading disclosures; and whether the independent trustees have received the objective guidance that the independent legal counsel requirement is intended to ensure.

If you have any questions regarding the matters above, or you would like to discuss these matters, please contact me.

Sincerely,  
  
Jeffrey T. Skinner

cc: Jeanine Bajczk, Esq.  
Mr. Doug Hess  
Mr. Steven Turi



# EXHIBIT B

The Board of the Advisers Series Trust has approved a transaction in which Orinda Asset Management will resign as the adviser to the Orinda SkyView Multi-Manager Hedged Equity and Orinda SkyView Macro Opportunities Funds with Vivaldi Asset Management becoming the Funds' new adviser. While the accompanying proxy strongly suggests that this proposal is in the best financial interest of Orinda, and possibly Vivaldi, it is not at all clear that this transaction benefits shareholders.

First, the proxy describes the transaction as a simple change of adviser, yet it notes that Orinda will be paid a lump sum upon its resignation and the successful appointment of Vivaldi. It further explains that Orinda will receive subsequent payments thereafter based on fund assets. This looks very much like a sale of assets, but details of the sale, i.e. the size of the lump sum and the calculation of future payments, have not been disclosed to shareholders. How then can they be expected to approve the transaction?

Further, the proxy discloses that Orinda is exiting its role as adviser due to the costs and resources involved. Craig Kirkpatrick, Orinda President, has stated to me directly that while Orinda is technically the adviser, the firm is in charge of marketing the funds while SkyView Investment Advisors, the lead sub adviser, is tasked with managing the portfolios. Indeed, our decision to invest in these funds was due to the many hours of due diligence we performed on SkyView. The proxy states that the board also reviewed a proposal by SkyView to become adviser to the Funds, noting that SkyView's proposal was rejected due to "substantial risk of significant shareholder redemptions...as Orinda was not likely to retain a shareholder servicing relationship with the Funds." This concern is misplaced. First, it is a marketing concern while the appointment of an adviser is the board's primary fiduciary responsibility. Secondly, Blue Water Capital Management, as beneficial owner for our clients, is the largest single investor in each fund. On April 21, 2014, we notified the board that we would vote against their proposals. On June 24, 2014, we sent a second letter to the board noting that during further discussions with Craig Kirkpatrick we had received contradictory and misleading information that deepened our concerns. In response, we received an email from Doug Hess, President of AST Trust, acknowledging receipt of our letters and confirming that he had forwarded our first letter to the entirety of the board. Yet beyond that acknowledgment, our concerns have never been addressed. If redemptions are a legitimate concern, why then has the board ignored the concerns of the Funds' largest shareholder?

In short, this proposal appears to benefit Orinda Asset Management at the expense of the Funds' shareholders. Unless the board has information regarding the sale of assets to Vivaldi that it failed to disclose in the proxy, then it lacked the information required to make a sound judgment on this proposal and have failed to act in the best interest of shareholders. We request, at a minimum, that this transaction be delayed until shareholders have been apprised of the value of the lump sum being paid to Orinda, the method by which future payments to the firm will be calculated, and that the transaction is indeed a sale of assets.

In advance, I thank you for your prompt attention to this matter.

Sincerely,

**John S. Lombardo**  
**Partner**  
**Blue Water Capital Management**

# EXHIBIT C

April 21, 2014

Mr. Douglas G. Hess  
President  
Advisors Series Trust  
c/o US Bancorp Fund Services, LLC  
777 East Wisconsin Ave, 5<sup>th</sup> Floor  
Milwaukee, Wisconsin, 53202

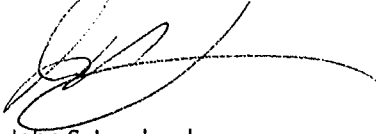
Dear Mr. Hess:

I request that you, as the President of the Advisors Series Trust, forward this letter to the entirety of the Trust's board. As the partner in charge of portfolio management and research for Blue Water Capital Management, I am writing to express our objections to the proposed engagement of Vivaldi Asset Management, LLC as the adviser to the Orinda SkyView Hedged Equity Fund and the Orinda SkyView Macro Opportunities Fund. We object to this transaction on several grounds.

- There is an enormous gulf of experience between the team at Vivaldi and that of SkyView Investment Advisors that strongly favors SkyView. Simply put, the SkyView team's knowledge of, and experience with, sophisticated investment strategies and those that manage them, is significantly deeper than that of Vivaldi. They also have significant experience managing these strategies within the confines of the Investment Company Act of 1940, which differs substantively from their management within limited partnerships.
- In a conference call with Craig Kirkpatrick and Vivaldi, both Craig and the Vivaldi representatives expressed the desire to change the funds "at the margin." Hiring Vivaldi will not, in my view, enhance the investment management of the funds and by their own admission they plan to make changes at the margin of the funds. Why then are they being hired to replace SkyView and how is this in shareholders' best interest?
- We have spent an enormous amount of time with SkyView, discussing their due diligence process, the funds' individual sub-advisers, and the positioning and characteristics of the funds. I have developed an immense trust and confidence in the abilities of the SkyView team. While assets can be quickly moved from one adviser to another, trust, confidence, and respect are hard earned and take substantial time to develop. Simply put, such time would be ill spent for marginal changes in the funds.
- By their own admission on the conference call, Vivaldi does not currently have daily look-through into the portfolios of the 18 managers on their platform. SkyView has maintained such ability, which enables them to monitor portfolios in real-time, since the funds' inceptions. While Vivaldi has indicated that they will institute such practices once they become adviser to the funds, the fact remains that they do not currently conduct their business in this manner.

Blue Water Capital Management's clients are significant investors in both funds. We will act in our clients' best interest and vote against the proposed change in the funds' adviser.

Sincerely,

A handwritten signature in black ink, appearing to read 'John S. Lombardo', with a long horizontal flourish extending to the right.

John S. Lombardo  
Partner, Portfolio Management and Research  
Blue Water Capital Management, LLC  
1001 James Street  
Syracuse, NY 13203  
(315) 438-8690, x14  
[jlombardo@bluewatercm.com](mailto:jlombardo@bluewatercm.com)

# EXHIBIT D

June 24, 2014

Mr. Douglas G. Hess  
President  
Advisors Series Trust  
c/o US Bancorp Fund Services, LLC  
777 East Wisconsin Ave, 5<sup>th</sup> Floor  
Milwaukee, Wisconsin, 53202

Dear Mr. Hess:

On April 21, 2014 I wrote you detailing my concerns regarding the proposed engagement of Vivaldi Asset Management, LLC as the adviser to the Orinda SkyView Hedged Equity and Macro Opportunities funds, requesting that you share my concerns with the entirety of the Trust's board. We are a sizeable shareholder and I trust you have honored that request.

I have had further discussions with Craig Kirkpatrick during which he has provided me with contradictory and apparently inaccurate information that has left me even more deeply troubled regarding this transaction than I was two months ago. The proposal is not in shareholders' best interest and, frankly, I am at a loss as to why the board has approved it. Furthermore, I strongly suspect other stewards of client assets are just as deeply troubled by this proposal.

Blue Water Capital Management has a fiduciary responsibility to act in the best interests of its clients. To that end, we will oppose this transaction in the strongest possible manner.

Sincerely,



John S. Lombardo  
*Partner, Portfolio Management and Research*  
Blue Water Capital Management, LLC  
1001 James Street  
Syracuse, NY 13203  
Direct: 315-438-8690 x 14  
[jlombardo@bluewatercm.com](mailto:jlombardo@bluewatercm.com)



# EXHIBIT E

# Katten

Katten Muchin Rosenman LLP

575 Madison Avenue  
New York, NY 10022-2585  
212.940.8800 tel  
212.940.8776 fax  
www.kattenlaw.com

PETER J. SHEA  
peter.shea@kattenlaw.com  
(212) 940-6447 direct  
(212) 894-5724 fax

July 14, 2014

**Via U.S. Mail & Email**

Blue Water Capital Management, LLC  
1001 James Street  
Syracuse, New York 13203  
Attention: Stephen D. Swift  
John S. Lombardo  
John A. Paganelli  
R. Bruce Bachman

*Advisors Series Trust (the "Trust")  
Orinda SkyView Multi-Manager Hedged Equity Fund  
and  
Orinda SkyView Macro Opportunities Fund (collectively, the "Funds")  
Improper Solicitation Activities*

Dear Ladies and Gentlemen:

We serve as counsel to Vivaldi Asset Management, LLC ("VAM"). VAM has been informed by Fund shareholders that John Lombardo of Blue Water Capital Management, LLC ("BWCM") is engaging in telephone solicitation efforts seeking the withholding of proxies by Fund shareholders for the Funds' special shareholder meeting scheduled for July 25, 2014. Certain of Mr. Lombardo's statements made in connection with his efforts may raise serious issues under the prohibition against false and misleading statements made in a proxy solicitation context under Rule 14a-9 promulgated under the Securities Exchange Act of 1934. In particular, we have been informed that Mr. Lombardo is allegedly asserting that the Funds' proxy statement dated June 24, 2014 improperly fails to disclose all payments between VAM and Orinda Asset Management, LLC, which assertion, if made, is false and misleading with respect to a material fact.

Accordingly, we demand, on behalf of VAM, that BWCM and its partners, managers, officers, employees, affiliates and associates (as those terms are defined in the federal securities

Blue Water Capital Management, LLC

July 14, 2014

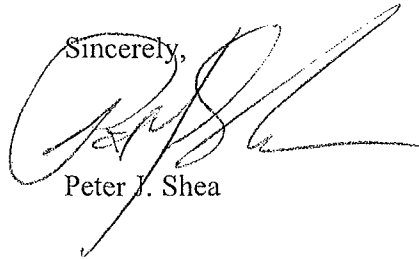
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laws and regulations) cease and desist from making any and all false statements and misleading statements, including those misleading statements made without a factual foundation, in your solicitation efforts regarding the Funds' forthcoming meeting. Your failure to comply will cause VAM to seek remedies it deems appropriate.

VAM hereby expressly reserves all of its rights and remedies available under applicable law and it further reserves its right at any time to take any action available as it deems necessary or appropriate under the circumstances to protect VAM's interests and the interests of shareholders of the Funds.

Please take notice that in light of the foregoing you are required to preserve all relevant electronic and/or hard copy documents in your possession, custody or control, including, without limitation, all documents and records concerning your written or oral solicitations of Fund shareholders and their advisors and agents.

Sincerely,

A handwritten signature in black ink, appearing to read "PJS", with a long horizontal flourish extending to the right.

Peter J. Shea

PJS:sd

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was this day served upon the below by U.S. mail and email (where available) as follows:

Domenick Pugliese  
Paul Hastings, LLP  
75 East 55th Street  
New York, NY 10022  
domenickpugliese@paulhastings.com  
*Attorney for Advisors Series Trust*

Vivaldi Asset Management, LLC  
c/o Chad Eisenberg  
1622 Willow Rd., Suite 101  
Northfield, IL 60093

And a copy was sent to counsel Vivaldi Asset Management, LLC by U.S. mail and email as follows:

Peter J. Shea  
Katten Muchin Rosenman, LLP  
575 Madison Avenue  
New York, NY 10022-2585  
peter.shea@kattenlaw.com  
*Attorney for Vivaldi Capital Management, LLC*

This the 19th day of September 2014.



David C. Smith  
DC Bar No. 998932  
*Attorney for SkyView Investment Advisors,  
LLC*

Kilpatrick Townsend & Stockton LLP  
Suite 900, 607 14th Street, NW  
Washington, DC 20005-2018  
Telephone: 202-508-5800  
Facsimile: 202-508-5858