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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File Nos. 3-17387

In the Matter of

DONALD F. ("JAY") LATHEN, EDEN ARC CAPITAL MANAGEMENT, LLC, and EDEN ARC CAPITAL ADVISERS, LLC

Respondents.

DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' MOTION FOR LEAVE TO MOVE FOR SUMMARY DISPOSTION

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September 16, 2016

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The Division of Enforcement ("Division") respectfully submits this memorandum of law in opposition to Respondents' letter motion for leave to move for summary disposition, dated September 9, 2016 ("Resp. Br.").[1]

PRELIMINARY STATEMENT

Respondents argue that, under New York State law, the mere fact that Lathen and the Participants set up accounts labelled "joint tenancy with right of survivorship" (the "Accounts"), without more, conferred that legal status upon them and, by extension, rendered Lathen's representations to the issuers that both he and the deceased Participants were "owners" of the bonds not misleading. (Resp. Br. at 1.) This argument is a smokescreen, which ignores the fact—critical for the securities law analysis at issue—that Respondents knew (or recklessly disregarded) that their claims to ownership failed to adequately depict the true nature of the arrangement between Respondents, the terminally ill individuals, and the Fund, and was therefore likely to be disputed by the issuers, to the extent the issuers could discover the truth. Thus, by representing himself and the participants as owners—without also disclosing the many caveats to that "ownership"—Respondents misled issuers into believing that the ownership structure was different than it was. Respondents, therefore, deprived the issuers of the ability to make an informed decision as to whether to redeem the bonds.

This case is not about the legal standards governing joint tenancy with right of survivorship ("JTWROS") under New York (or any State) law. Rather, it presents a straightforward question: whether—under the antifraud provisions of the federal securities laws—Respondents materially misled bond issuers by representing in their redemption request letter that the Participants were

[1] Capitalized terms not defined herein have the definition ascribed to them in the Securities and Exchange Commission's Order Instituting Proceedings against Respondents ("OIP"), instituted on August 15, 2016

"joint" or "joint and beneficial owners" and Lathen was the "surviving joint owner" without also disclosing to the issuers that (1) the Participants had signed away their rights to the bonds; and (2) Lathen had explicitly disclaimed his own ownership of the bonds in the Investment Management Agreement, telling his investors that he had "no legal or beneficial interest in the SO Investments" and that "[a]ll other attributes of the beneficial ownership of the SO Investments shall be and remain in Partnership" (Ex. 1 at SEC-SVF-E-00041906.) The answer here is yes. Respondents understood—indeed, they repeatedly warned their investors of the risk—that the issuers may disagree that Lathen was entitled to redeem the bonds and that, as a result, the issuers would want to know about the restrictions on Lathen's and the Participants' purported ownership in the bonds so that they could evaluate Respondents' redemption claims. That the issuers were misled by the misrepresentations and the lack of truthful disclosure is apparent from their actions following full disclosure. Once they learned of the decedent's disclaimer of ownership of any interest in the bonds, and/or the Fund's involvement in purchasing the bonds, many of the issuers refused to redeem the bonds under the survivor's option, telling Lathen that his scheme was contrary to the terms of the offering documents. This was, of course, exactly what Lathen feared might happen if the issuers learned the full picture of Respondents' ownership claims, and had warned his investors about.

Now, in an attempt to sidestep the Commission's fraud charges, Respondents claim that their false and misleading statements sound only in state law. This misses the point. Respondents could have avoided violating federal antifraud provisions entirely had they simply told the issuers the truth about the many caveats on Lathen's and the Participants' ownership rights. Indeed, had he made such disclosures, Lathen would have been free to argue that issuers were required to redeem the bonds under the terms of the offering documents because of his JTWROS, without

implicating the antifraud provisions of the federal securities laws. If the issuers had been armed with the full picture of Lathen's and the Participants' purported ownership, they would have been able to make an informed decision about whether to accept Respondent's arguments and redeem the bonds, or whether to dispute the redemptions. But instead—because he understood that the issuers would reject his ownership claims and therefore his redemptions—Lathen chose to mislead them by withholding material information. It is that choice, and not any issue of New York law, that makes this case a securities fraud.

STATEMENT OF THE CASE

A. The Initial Scheme

Respondents established and ran a hedge fund—Eden Arc Capital Partners, LP ("Eden Arc Hedge Fund")—that invested in instruments (bonds and CDs) that contained a so-called survivor's option ("SO"). (Ex.[2] 2 at SEC-EDENARC-E-0214469-70 (Eden Arc Hedge Fund's March 2011 Private Place Memorandum); OIP ¶ 9.) Where the bonds were jointly owned, this option allowed the investments to be redeemed, upon the death of a joint owner, at par value by the surviving joint owner. (Id.) Crucially, and as Respondents knew, the SO was only available to individuals, not corporations. (Ex. 3 (July 22, 2015 Testimony of Donald F. Lathen, Jr. ("Lathen Tr.") at 158:18-24 ("An entity cannot be a joint owner in a joint tenancy with rights of survivorship. . . . [A]n entity can't perish.")); OIP ¶ 30.) Thus, Respondents needed to convince the issuers that the bonds had been purchased by two human beings: (1) the Participant, who by dying created the redemption right; and (2) a "joint owner," a surviving human who would be able to cash in that redemption right.

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[2] "Ex. __" refers to the exhibits appended to the Declaration of Alexander J. Janghorbani, executed September 16, 2016, and submitted herewith.

To create this false appearance of human ownership, Respondents did two things. First, they canvassed hospices and other centers, to identify terminally-ill patients ("Participants"), whom a doctor had confirmed had less than six months to live, and paid them approximately $10,000 for the right to use their names to open the Accounts, purported joint tenancy with the right of survivorship accounts at various broker-dealers. (Ex. 4 (Lathen Tr. at 182:1-183:1); Ex. 5 (EndCare Brochure); OIP ¶¶ 12, 18-19.) Second, Respondents listed Lathen on the Accounts as "joint owner." (OIP ¶ 22.) When the Participants inevitably died, Lathen sent a redemption letter to the issuers (or their indenture trustees) stating, for example:

> [The Participant], a joint and beneficial owner on the above-referenced account, recently passed away. As the surviving joint owner on the account, I would like to exercise the survivor's option with respect to the following Notes in the account.

(Ex. 7 (emphasis added); see also OIP ¶ 37.)

However, Respondents failed to tell the issuers that both Lathen and the Participants had already explicitly disclaimed their ownership over the assets in the Accounts. In May 2011, Lathen entered into an Investment Management Agreement with his (1) Eden Arc Hedge Fund; and (2) his investment adviser, Eden Arc Capital Management, LLC ("Eden Arc Adviser"). (Ex. 1; OIP ¶¶ 15-17.) Under that Agreement, Lathen explicitly foreswore his ownership interest in the bonds held in the Accounts, noting that he:

- "[W]ill hold . . . the SO Investment, and all right, title and interest therein and benefit to be derived therefrom, as nominee for and on behalf of the Partnership only";
- "[H]as no legal or beneficial interest in the SO Investments"; and
- "All other attributes of the beneficial ownership of the SO Investments shall be and remain in Partnership".

(Ex. 1 at SEC-EDENARC-E-0041096; OIP ¶ 17.)[3]

And, to ensure that the Participants or their estates did not lay claim to the SO investments, Lathen had the Participants enter into Participant Agreements, which (much like the Investment Management Agreement) stripped them of all but the most theoretical ownership rights and responsibilities. (E.g., Exs. 8, 9.) Thus, under the Participant Agreements, signed by the Participants at or before Lathen opened the Accounts in their names, the Participants had already disavowed any interest in, or control over, the Accounts' assets:

- "Participant agrees that he/she is not permitted to pledge, borrow against, withdraw or exercise any right of ownership with respect to the Investments or other assets in the Account(s) without the express written permission of Lathen, which permission may be withheld in Lathen's sole discretion." (Ex. 8, § 3); and
- Lathen, however, could transfer "cash and securities into and out of the Account(s) without [the Participants'] prior consent, including to and from other accounts that Lathen and the Investors control". (Ex. 9, § 2(d).)

Lathen went even further to ensure that the Participants could have no access to, or ability to control, any of the assets in the JTWROS accounts. For example:

- Broker-dealers were instructed not to send account statements to the Participants. (Ex. 10 (June 19, 2015 Testimony of Michael Robinson) at 170:23 - 172:14);
- When asked by a prospective investor for assurances that the Participants' survivors would not be able access the Accounts, the response was that Participants "are not informed about any details of the JTWROS account (e.g. the name of the brokerage firm, the account number, etc.)" (Ex. 11 at SEC-ProtassH-E-0095457); and
- If a Participant tried to get access to the accounts, Lathen could simply move the assets to another account. (E.g., Ex. 9 § 2(d).)

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[3] Lathen sometimes added a third person (his stepfather) as an additional joint tenant on the account, but the Investment Management Agreement made clear that that person likewise had no ownership rights over the Accounts' assets. (Ex. 1 at SEC-EDENARC-E-0041096; OIP ¶¶ 16-17.) Indeed, the addition of Lathen's stepfather to the accounts was done to reduce even the theoretical risk that the Participants could access the accounts by ensuring that someone who worked for Respondents would outlive the Participants in the highly unlikely scenario that Lathen predeceased them. (Ex. 6 (July 22, 2016 Lathen Tr.) at 118:22 – 119:7; OIP ¶ 23.)

Further demonstrating the Participants' lack of control over the Accounts, Lathen transferred securities among various Accounts—without providing any notice or consideration to the Participants (his purported "joint owners")—in order (1) to place securities in an account in the name of a Participant whose health was quickly declining, or (2) to move securities away from a Participant who was recovering. (OIP ¶¶ 61-62.) For example, Lathen transferred the assets out of Joy Davis' accounts after he learned that she had been cured. (Ex. 12 (July 23, 2015 Lathen Tr.) at 219:15-220:21 (describing liquidation of Joy Davis's account of cured Participant)); OIP ¶ 62.) Likewise, when he discovered that another Participant's [redacted], Lathen transferred securities from other Accounts into hers. (Ex. 13 (July 23, 2015 Lathen Tr.) at 291:1-9 (describing transfers made into account because Participant [redacted] and we knew she [redacted] And so, there was a desire to move a significant amount of positions into her account before she perished."); OIP ¶ 61.)

B. Respondents Knew (or Recklessly Disregarded) That Their Redemption Letters Misled the Issuers

Lathen understood that his statements concerning his and the Participants' ownership in the brokerage accounts misled the bond issuers. While telling investors in the Eden Arc Hedge Fund that that he had no ownership interest—beneficial or otherwise—in the assets in the Accounts, he told the issuers just the opposite. And while telling the issuers that a "joint owner" or "joint and beneficial owner" of the Account had died, he knew that the Participants' had explicitly signed away their rights to the securities in the accounts both during and after their lifetimes.

In addition, Lathen understood that his ownership claim might be disputed by the issuers if they learned of all the facts. Lathen knew that issuers included the SO to entice retail investors—"mom and pops" as he has called them—and not to allow investment funds to take advantage of

the imminent death of someone who had ownership of the bonds in only the most nominal terms.[4] Lathen also knew that the SO bond offering documents set out that the decision to redeem bonds, pursuant to an exercise of the SO, lay with the issuers and/or their trustees. (See, e.g., Ex. 15 (General Electric Capital Corporation InterNotes Prospectus Supplement dated January 23, 2009) at S-22 ("All other questions regarding the eligibility or validity of any exercise of the Survivor's Option will be determined by us, in our sole discretion, which determination will be final and binding on all parties.").)

Indeed, Respondents candidly admitted to their investors that issuers might reject their strategy of buying bonds in the names of nominee Participants if the issuers understood all the facts. Respondents warned their investors that a "[r]isk[]" associated with their "[i]nvestment [s]trategy" was the possibility that the issuers would refuse to redeem the SO bonds if they understood Respondents' strategy:

> The prospectus for a particular SO Investment contains the guidelines, procedures and limitations which apply to the exercise of the survivor's option feature for a particular issuer and issue. It is unclear whether any of the issuers of the SO Investment ever contemplated the Partnership's investment strategy when they drafted their prospectuses. While the General Partner believes that its strategy conforms with the prospectus guidelines and represents a valid survivor's option redemption, there is a possibility that issuers and trustees may take a contrary view. If so, the Partnership could incur legal expenses to force issuers and trustees to redeem the SO Investments . . . The Partnership could also be exposed to an adverse judgment in favor of the issuers which might preclude or severely limit the ability of the Partnership to successfully redeem it[s] SO investments on an ongoing basis.

(Ex. 2 at SEC-EDENARC-E-0214486, 87.)

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[4] See, e.g., Ex. 14 at 2 (Respondents' Well Submission, Jan. 15, 2016, "Survivor's option bonds and CDs are marketed almost exclusively to retail investors, the vast majority of whom fall into the 'mom and pop' category."); Ex. 14A at 87:14-18 (Lathen testifying that SO investments "are fixed income instruments typically targeted towards retail investors.").

C. The Issuers Were Misled

When certain issuers learned of Respondents' scheme, they did exactly as Respondents had feared. They refused to redeem, telling Lathen on a number of occasions that that the Participants were neither beneficial, nor bona fide, owners of the bonds. (See, e.g., Ex. 16 (Letter from counsel to GE Capital rejecting note redemption because the Participant was neither a beneficial owner, nor a joint tenant); Ex. 17 at SEC-EDENARC-E-0041807 (Goldman Sachs Bank USA refusing to redeem CD's because "[n]one of the Accounts are *bona fide* joint tenant accounts, but rather were established exclusively to permit Mr. Lathen to acquire securities with survivor's options").) Moreover, certain of the issuers who, upon learning the truth, rejected Lathen's redemption request also rejected the reasoning he now puts forwards in this proceeding that there was a valid joint tenancy with right of survivorship under New York State law. (See Ex. 16 at GECC_EdenArc_000300, 302-303.) As counsel for U.S. Bank (acting as Trustee) noted in rejecting a request to redeem notes issued by Prospect Capital Corp,

> [y]our argument incorrectly assumes that a person who in reality had no right to proceeds of a note (*i.e.*, who was not a joint tenant) should nevertheless be paid the proceeds of a notes, simply because a determination of the adequacy of the form of an application was made at a time when evidence material to the determination (the Participant Agreement) had not been provided. This puts form (indeed, an incomplete form) over substance.

(Ex. 18 at SEC-SEC-E-0017687 – 88.)

Despite knowing that certain issuers objected to their ownership claims—and warning their investors about the risks posed by that position—Respondents continued to submit the redemption notices discussed in Section A supra, without notifying the issuers of the true nature of Lathen's and the Participants' purported ownership rights. (See, e.g., Ex.19 (Feb. 8, 2016 Lathen Tr.) at 572:8-10 (stating that Lathen has never provided an issuer the Investment Management

Agreement)); Id. at 570:13-16 (stating that he has only provided the Participant Agreement to issuers if they specifically ask for it).)

D. Respondents Purport to Alter Certain Features of Their Ownership Structure

Starting in approximately 2013, Respondents did away with the Investment Management Agreement to create the appearance that the Eden Arc Hedge Fund was lending money to Lathen to purchase the bonds, instead of outright purchasing the bonds in the Accounts. (OIP ¶ 46.) These new agreements purported to change the relationship among the parties to that of lender (the Eden Arc hedge Fund) and borrowers (Lathen and the Participants). (Ex. 20 (Discretionary Line Agreement); Ex. 21 (Profit Sharing Agreement); and Ex. 22 (Plecker Participant Agreement and related documents); OIP ¶ 47.) However, even under this new arrangement, the same restrictions applied to the Participants' and Lathen's enjoyment of (or ability to use) the bonds. In reality, as Respondents told their investors in their 2014 financial statements, the Fund's money was

> deposited into the Joint Accounts and used to acquire investments in securities which contain a 'survivor's option' or similar feature . . . . Under the Agreements it has executed . . . [the Eden Arc Hedge Fund] is entitled to receive all of the profits and/or losses from the Joint Accounts.

(Ex. 23 at SEC-EDENARC-E-0175825 (FY 2014 Audited Financial Statements for Eden Arc Capital Partners, LP); OIP ¶ 51.) In addition, even after this change in structure, Lathen continued to furnish the issuers with misleading confirmations of the Participant's alleged "ownership" of the bonds, and his status as alleged surviving "joint" owner, statements that misrepresented the true story of the beneficial ownership of the bonds. Thus, Respondent's representations to the issuers about his and the Participants "ownership" of the bonds remained, at a minimum, misleading. Indeed, as discussed in Section B supra, a number of these issuers refused to redeem bonds under Respondents' updated arrangement because Lathen's redemption letter did

not accurately (in their view) disclose that the Participants' were not "beneficial owners" as required for redemption.

ARGUMENT

Commission Rule of Practice 250(b) provides for summary disposition where there are no genuine disputes of material fact. 17 C.F.R. § 201.250(b). In consideration of such a motion, the facts set out in the OIP "shall be taken as true." 17 C.F.R. § 201.250(a). Moreover, "a motion for summary disposition shall be made only with leave of the hearing officer." Id. See also In the Matter of John P. Flannery, Rel. No. APR-662, 2011 WL 7791050, at *3 (Jan. 10, 2011). "Such leave shall be granted only for good cause shown, and if consideration of the motion will not delay the scheduled start of the hearing." Id., citing 60 Fed. Reg. 32738, 32768. In a contested fraud case such as this one—where issues of falsity, scienter, and materiality are disputed—summary disposition is rarely appropriate. See In the Matter of Joseph P. Doxey, Rel. No. 33-10077, 2016 WL 2593988, at *2 (S.E.C. May 5, 2016) (finding that summary disposition is inappropriate where the parties dispute whether the statements at issue were false and, if so, whether they were made with scienter).

Here, (1) the Division has set out facts demonstrating that Respondents' statements to the bond issuers were misleading; (2) Respondents' argument about the JTWROS is a smokescreen that entirely ignores the fact that Respondents made statements to the issuers that they knew (or recklessly disregarded) had the effect of misleading those issuers as to the reality of the bonds' ownership; and (3) summary disposition is likely to delay the hearing.[5]

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[5] Indeed, Respondents themselves presumably believe that this case is not amenable to summary disposition or they would not have insisted on holding the hearing immediately. The Court should therefore deny Respondents' leave to move for summary disposition or—in the alternative—adjourn the hearing date to allow the parties adequate time to brief the issue and for the Court to make a determination.

A. Lathen's Statements to the Issuers About Ownership Were Misleading

On their current motion, Respondents object only to the falsity element of the charged antifraud provisions.[6] (Resp. Br. at 2 ("Under well-established New York joint tenancy law, both such representations were true and accurate.").) However, the Division has put forth ample evidence to demonstrate that Respondents' statements to the issuers that Lathen and the Participants were owners of the bonds were, at least, misleading. As well as outright falsehoods, Section 10(b) also prohibits "half-truths—literally true statements that create a materially misleading impression." SEC v. Gabelli, 653 F.3d 49, 57 (2d Cir. 2011) (rev'd on other grounds by Gabelli v. SEC, 133 S. Ct. 1216 (2013)). Moreover, whether a statement is misleading is judged from the point of view of a hypothetical objective investor. See Omnicare, Inc. v. Laborers Dist. Counsel Const. Indus. Pension Fund, 135 S.Ct. 1318, 1327 (2015) ("whether a statement is 'misleading' depends on the perspective of a reasonable investor. The inquiry (like the one into materiality) is objective.").

Here, there is ample evidence from which to conclude that the statements—which falsely claimed ownership and omitted to disclose the many caveats to Lathen's and the Participants' purported ownership—were misleading: (1) Lathen's statements to the issuers were directly contradicted by the statements in Respondents' agreements, including in the Participant Agreement and the Investment Management Agreement; (2) Respondents flagged for their investors that the issuers may take issue with Lathen's statements (and still hid the truth from the issuers); and (3)

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[6] To prove its fraud claims, the Division must demonstrate that Respondents (1) made a material misrepresentation or a material omission as to which they had a duty to speak, or used a fraudulent device; (2) with scienter, or, in the case of Securities Act Sections 17(a)(2) and (a)(3), negligence; (3) in connection with the purchase, sale, or offer of securities. See SEC v. Monarch Funding Corp., 192 F.3d 295, 308 (2d Cir. 1999); see also SEC v. Goldman Sachs & Co., 790 F. Supp. 2d 147, 164 (S.D.N.Y. 2011) (holding "actual sales [are] not essential" for a Section 17(a) claim).

when they learned the truth of Respondents' ownership scheme, many of the issuers refused to redeem the bonds. (See Statement of the Case, supra.) Thus, the Division will plainly satisfy its burden on summary disposition.

B. Respondents' Argument Concerning New York State Law Ignores the Securities Law Violations

Respondents make one argument in favor of summary disposition. It is both erroneous as a matter of law and entirely beside the point in this securities fraud case. Respondents contend that New York State law imbues a JTWROS account holder with immutable characteristics of ownership—ones that, apparently, cannot be altered by the economic realities of Respondents' transactions, nor their own actions and statements disclaiming Lathen's and the Participants' ownership. Therefore, according to Respondents, the statements in the redemption notices were accurate and not misleading. This argument—that New York law renders this action dismissible as a matter of law—entirely ignores the securities law violation that is at the heart of the OIP, and is also wrong as a matter of law.

First, New York law cannot cure the securities law violation at issue here. Irrespective of (1) whether or not New York law applies, (2) whether it governs the interpretation of the issuers' offering documents, or (3) whether it—as Respondents argue—conclusively establishes that the Participants and Lathen were valid joint beneficial owners, Respondents still misled counter-parties to a securities transaction by making misrepresentations and intentionally or recklessly omitting material information. Respondents understood that the issuers did not necessarily agree with their view of New York law or the ownership rights it creates, as evidenced by the fact that Respondents disclosed it as a risk to their investors. Nonetheless, Lathen pointedly called himself and the Participants owners, and failed to disclose to the issuers, when they submitted the redemption notices, that Lathen and the Participants disclaimed ownership rights over the bonds. (See

Statement of the Case, A, supra.) Thus, the fraud here has nothing to do with whether New York law deems Lathen and the Participant to be owners for purposes of the Banking Law. Rather, the question is: did Respondents—by hiding from the issuers information necessary for them to reach their own conclusion about whether Lathen and the Participants were truly the "owners" of the bonds—misrepresent the bonds' ownership? The answer is yes as evidenced by issuers' reactions when they learned of the true nature of the arrangement: some disputed Respondents' view of New York law, just as Respondents feared they might. (See Statement of the Case, B and C, supra.) Thus, Respondents made false and misleading statements under the federal securities laws, and their arguments about New York law are simply beside the point.

Second—while they offer no explanation as to why New York law should apply to this case—Respondents are, in any event, incorrect that their opening of the Accounts, without more, created a true joint tenancy with right of survivorship under New York law. A joint tenancy is an estate held jointly by at least two persons "who have equal rights to share in its enjoyment during their lives, and where each joint tenant has a right of survivorship." Trotta v. Ollivier, 91 A.D.3d 8, 12, 933 N.Y.S.2d 66, 69 (2d Dep't 2011). Thus, in life, a key feature in a joint tenancy is that both tenants share an undivided interest in the property. See Brezinski v. Brezinski, 94 A.D.2d 969, 463 N.Y.S.2d 975, 976 (4th Dep't 1983) ("One incident of joint tenancy is that so long as both tenants are living, each has a 'present unconditional property interest in an undivided one-half of the money deposited.'"). "In a true joint account, each party has the right to withdraw one half of the funds during the lifetime of both tenants." Matter of Estate of Zecca, 152 A.D.2d 830, 831, 544 N.Y.S.2d 40, 41-2 (3d Dep't 1989).

> [I]n other words, at the time the account was opened, there must have been a present gift from the original donor to the cotenant of one half of the accounts which each could withdraw unilaterally while both were alive.

Id.; see also Goetz v. Slobey, 76 A.D.3d 954, 956, 908 N.Y.S.2d 237, 239 (2d Dep't 2010) ("A joint tenancy is an estate held by two or more persons jointly, with equal rights to share in its enjoyment during their lives, and creating in each joint tenant a right of survivorship.").

Here, these circumstances were not present because (1) the Participants did not share an unconditional property interest (indeed, held virtually no interest) in the accounts during their lives; and (2) Respondents (and their investors) plainly did not intend to make a gift of one half of their investments to the Participants. In these circumstances, the Accounts are deemed "convenience accounts," and New York courts do not apply the presumption that Respondents cite to under New York Banking Law § 675.[7] See, e.g., Estate of Zecca, 152 A.D.2d at 831, 544 N.Y.S.2d at 42; Matter of Friedman, 104 A.D.2d 366, 367, 478 N.Y.S.2d 695, 696-97 (2d Dep't 1984), aff'd sub nom. Matter of Estate of Friedman, 64 N.Y.2d 743, 475 N.E.2d 454 (1984) (holding that it was "clear from [the decedent's] actions vis a vis the subject accounts that she did not . . . intend to confer a present interest of one half on the objectant" and thus "the presumption of joint tenancy was effectively rebutted.") (quotations omitted); Fischedick v. Heitmann, 267 A.D.2d 592, 592, 699 N.Y.S.2d 508, 509 (3d Dep't 2012) (no presumption of joint tenancy where the depositor had no "intention of conferring a present beneficial interest" on the purported joint tenant).

At least one court has explicitly rejected Respondent's argument that the mere form of the accounts trumps the economic reality of the parties' relationship. In Viggiano v. Viggiano, claimant admitted that the intention in creating the account had not been to give both parties full access to it, but rather relied "only on the fact that because of the form of the account, the

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[7] A convenience account is one set up "in the name of a depositor and another person . . . 'for the convenience' of the depositor." NY Banking Law Section § 678. The creation of a convenience account, "shall not affect the title to such deposit or shares and the depositor shall not be considered to have made a gift of one-half the deposit. . . ." Id.

defendant husband had a present interest in the accounts and could at any time withdraw the entire sum." 136 A.D.2d 630, 630, 523 N.Y.S. 2d 874, 875 (2d Dep't 1988) (emphasis added). The court easily rejected this argument, noting that the facts demonstrated no intention "to give the defendant husband any interest in the account." Id. So it is here, where Respondents stripped Participants of rights to access the Accounts (indeed, hid the Accounts from them) and where Lathen disclaimed his own beneficial interest in the Accounts.[8]

C. The Custody Rule Claim Cannot Be Resolved on Summary Disposition Either

Respondents' arguments that resolution of the Custody Rule claims can be resolved on summary disposition fail because New York law (assuming for the sake of argument that it is applicable) does not supply the definitive answer on ownership that Respondents claim. As demonstrated above, New York law dictates that even assets held in JTWROS accounts may be deemed owned by only one of the account holders; if the facts evidence that one of the holders did not intend to make a gift to the other of one-half of the assets at the time the account was created, no joint ownership may be claimed, notwithstanding the title on the account. Matter of Estate of Zecca, 152 A.D.2d 830-31. The issue of ownership turns on intent, a factor that is rarely susceptible to determination on summary disposition.

Respondents' second argument in favor of resolution of the Custody Rule claim by summary disposition fares no better. Recognizing the weakness of their New York law claim, Respondents shift to the Division of Investment Management's "Staff Responses to Questions About the Custody Rule," and contend that once the Eden Arc Hedge Fund shifted its financing of the bonds' purchase to a loan structure (in 2013), it transformed those assets into neither

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[8] Finally, New York's presumption of joint tenancy is also refuted where, as here, the Accounts are established by fraud. Brezinski, 94 A.D.2d at 969.

"funds" nor "securities" and thus not assets that the Commission staff deems subject to the Custody Rule at all.

Respondents' argument proves too much. First, Respondents offer nothing to refute the fact that, at a minimum, prior to 2013 (before there was any purported loan agreement), Eden Arc Hedge Fund assets—the securities—were put directly in the name of Lathen which violated the Custody Rule. Second, Respondents have apparently forgotten that they told the Commission and investors that Eden Arc Adviser *did* have custody of client cash and "*securities*" in their March 2015 Form ADV, and that they put the value of those assets as the value of the securities they now insist are merely "loans." (Janghorbani Decl., Ex. 24 (Section 9 of Eden Arc Adviser's ADV).)[9]

Respondents cannot win summary disposition by ignoring their prior representations that the loans were securities. Just because designating them now as loans would serve their purposes, they cannot so easily ignore their own earlier designations when they are no longer useful.

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[9] That Respondents have previously viewed the loans as "securities" when it suited them is further evidenced by their submissions to the Commission to secure their Commission registration. In order to qualify under Section 203A of the Investment Advisers Act of 1940 ("Advisers Act"), Eden Arc Adviser had to list "assets under management" of a certain dollar value. Since Section 203A(3)'s definition of "assets under management" includes only "the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services" (id. (emphasis added)), the only way Eden Arc could have reached the necessary dollar value of assets under management to qualify for registration with the Commission would have been to include what they now call loans as securities. If Eden Arc Adviser truly believed that the purported loans in its managed fund were not securities, then no part of them should have been claimed as "assets under management" for the purposes of Advisers Act Section 203A(3).

CONCLUSION

Because their arguments are irrelevant under the federal securities laws, Respondents cannot show good cause as to why summary disposition is appropriate here, and their motion for leave to move should be denied.

Dated: September 16, 2016
New York, New York

DIVISION OF ENFORCEMENT

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Securities and Exchange Commission
New York Regional Office
Brookfield Place, 200 Vesey Street, Ste 400
New York, New York 10281
Tel. (212) 336-0177 (Janghorbani)
Fax (703) 813-9504
Email: JanghorbaniA@sec.gov

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17387

In the Matter of

DONALD F. ("JAY") LATHEN, EDEN ARC CAPITAL MANAGEMENT, LLC, and EDEN ARC CAPITAL ADVISERS, LLC

Respondents.

Certificate of Service

I hereby certify that I served (1) the Division of Enforcement's ("Division") Memorandum of Law in Opposition to Respondents' Motion for Leave to Move for Summary Disposition, dated September 16, 2016 ("Div. Opp. Br."); and (2) the Declaration of Alexander Janghorbani, dated September 16, 2016, and all exhibits attached thereto on this 16th day of September, 2016, on the below parties by the means indicated:

Harlan Protass
Clayman & Rosenberg LLP
305 Madison Avenue, Ste 1301
New York, New York 10165
Attorneys to Respondents
(By UPS and E-mail)

The Honorable James E. Grimes
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
(Courtesy copy by E-mail)

Brent Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-2557
(By facsimile and UPS (original and three copies))

In addition, I hereby certify that the Div. Opp. Br. complies with the length limitations set forth in Rule 154(c) and contains 5,954 words (as calculated by Microsoft Word's word-count feature).

Alexander Janghorbani
Senior Trial Counsel

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17387

In the Matter of

DONALD F. ("JAY") LATHEN, EDEN ARC CAPITAL MANAGEMENT, LLC, and EDEN ARC CAPITAL ADVISERS, LLC

Respondents.

DECLARATION OF ALEXANDER JANGHORBANI IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' MOTION FOR LEAVE TO MOVE FOR SUMMARY DISPOSTION

I, Alexander Janghorbani, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am Senior Trial Counsel in the Division of Enforcement (the "Division"). I submit this declaration in support of the Division's Memorandum of Law in Opposition to Respondents' Motion for Leave to Move for Summary Disposition, dated September 16, 2016. I am fully familiar with the facts and circumstances herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Investment Management Agreement, dated May 2, 2011.

3. Attached hereto as Exhibit 2 is a true and correct copy of a Confidential Private Placement Memorandum for Eden Arc Capital Partners, LP, dated March 2011.

4. Attached hereto as Exhibits 3-4, 6, and 14A are true and correct copies of excerpts of the transcript of investigative testimony of Donald Lathen, dated July 22, 2015.

5. Attached hereto as Exhibit 5 is a true and correct copy of an EndCare brochure.

6. Attached hereto as Exhibit 7 is a true and correct copy of a letter from Donald F. Lathen to First Southwest Company, dated May 20, 2014.

7. Attached hereto as Exhibit 8 is a true and correct copy of a Participant Agreement between Donald F. (Jay) Lathen and James McCord, dated May 11, 2011.

8. Attached hereto as Exhibit 9 is a true and correct copy of a Participant Agreement between Donald F. (Jay) Lathen and Joy M. Davis, signed June 28, 2011 and June 23, 2011, respectively.

9. Attached hereto as Exhibit 10 is a true and correct copy of excerpts of the transcript of investigative testimony of Michael Robinson, dated June 19, 2015.

10. Attached hereto as Exhibit 11 is a true and correct copy of an e-mail chain, Bates-numbered SEC-ProtassH-E-0095454-68.

11. Attached hereto as Exhibits 12-13 are true and correct copies of excerpts of the transcript of investigative testimony of Donald Lathen, dated July 23, 2015.

12. Attached hereto as Exhibit 14 is a true and correct copy of the Wells Submission on Behalf of Donald Lathen, Eden Arc Captial Management, LLC and Eden Arc Captial Advisers, LLC, dated January 15, 2016.

13. Attached hereto as Exhibit 15 is a true and correct copy of an excerpt of a Prospectus Supplement for General Electric Capital Corporation GE Capital InterNotes, dated January 23, 2009.

14. Attached hereto as Exhibit 16 is a true and correct copy of a letter from Corey Chivers to Kevin Galbraith, dated October 10, 2014.

15. Attached hereto as Exhibit 17 is a true and correct copy of a letter from William R. Massey to Andrea Burriesci, dated September 25, 2013.

16. Attached hereto as Exhibit 18 is a true and correct copy of a letter from Joseph W. Muccia to Kevin Galbraith, dated September 19, 2014.

17. Attached hereto as Exhibit 19 is a true and correct copy of excerpts of the transcript of investigative testimony of Donald Lathen, dated February 8, 2016.

18. Attached hereto as Exhibit 20 is a true and correct copy of the Discretionary Line Agreement Between Donald F. Lathen and Eden Arc Capital Partners, LP, dated January 24, 2013.

19. Attached hereto as Exhibit 21 is a true and correct copy the Profit-Sharing Agreement among Donald F. ("Jay") Lathen, Eden Arc Capital Partners, LP, and Eden Arc Capital Management, LLC.

20. Attached hereto as Exhibit 22 is a true and correct copy of the Participant Agreement between Donald F. (Jay) Lathen and Craig Alan Plecker, dated June 18, 2013.

21. Attached hereto as Exhibit 23 is a true and correct copy of the Financial Statements of Eden Arc Capital Partners, LP for the year ended December 31, 2014.

22. Attached hereto as Exhibit 24 is a true and correct of an excerpt of the Form ADV of Eden Arc Capital Management LLC, dated March 31, 2015.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 16, 2016
New York, NY

Alexander Janghorbani

INVESTMENT MANAGEMENT AGREEMENT

This Investment Management Agreement (this "***Agreement***") is made and entered into as of May 2, 2011 (the "***Effective Date***"), by and among Eden Arc Capital Management, LLC, a limited liability corporation incorporated under the laws of the State of Delaware, U.S.A (the "***Investment Manager***"), Eden Arc Capital Partners, LP, a limited partnership organized under the laws of the State of Delaware (the "***Partnership***") and Donald F. ("Jay") Lathen and David E. Jungbauer as nominees for the Investment Manager (the "***Nominees***") each a "***Party***" and together, the "***Parties***".

1. Definitions; Appointment.

(a) Capitalized terms used but not defined herein shall have the meanings specified in the Confidential Private Placement Memorandum of the Partnership, dated March, 2011 (the "***Memorandum***").

(b) The Partnership hereby appoints and retains the services of the Investment Manager as its exclusive investment manager, and the Investment Manager hereby accepts such appointment and agrees to perform such services set forth herein.

2. Investment Manager Duties. The Investment Manager's primary duty shall be to provide investment management services to the Partnership in connection with the Partnership's investment activities, subject to the policies and control of the Partnership's General Partner and in accordance with and subject to the restrictions and limitations contained in the Memorandum, including, but not limited to, (a) providing to the Partnership such investment research, advice and supervision of the Partnership's investments as it may, from time to time, consider appropriate for the proper management of its assets, (b) providing the Partnership with a continuous investment program, (c) determining which investments shall be purchased, sold or exchanged, deciding what portion of the assets of the Partnership shall be held in cash and the various instruments in which the Partnership invests, and executing all such transactions in its discretion, (d) determining the manner in which rights pertaining to investments shall be exercised, and (e) providing to the Partnership such reports regarding the Investment Manager's performance as the Partnership may reasonably request, from time to time. The Investment Manager has and shall maintain a professional staff trained and experienced in advising the Partnership regarding its investment activities. Such staff is and will be adequate for the performance of the Investment Manager's duties under this Agreement. The Investment Manager may, after consultation with the Partnership, arrange for and coordinate on behalf of the Partnership and at the Partnership's expense, the services of other investment professionals and experts, including consultants, accountants, appraisers, investment banking firms, financial advisers, legal counsel and other agents.

3. Investment Manager Authority. In connection with its obligations hereunder, the Investment Manager will have the authority for and in the name of the Partnership:

(a) to purchase, hold, sell, transfer, exchange, mortgage, pledge, hypothecate and otherwise act to acquire and dispose of, deal in and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to all securities or other assets held or owned by the Partnership, with the objective of the preservation, protection and increase in value thereof;

(b) to purchase securities or other assets for investment and to make such representations to the seller of such securities or other assets and to such other persons, that the Investment Manager may deem proper in such circumstances, including, without limitation, the representation that such securities or other assets are purchased by the Partnership for investment and not with a view to their sale or other disposition;

(c) to borrow or raise monies from time to time without limit as to amount or manner and time of repayment, and to issue, accept, endorse and execute promissory notes or other evidences of indebtedness, and to secure the payment of any such borrowings, and of the interest thereon, by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the properties of the Partnership whether at the time owned or thereafter acquired;

(d) to lend any of the securities or other assets;

(e) to issue orders and directions to any bank at which the Partnership maintains an account with respect to the disposition and application of monies, securities or other assets or property of the Partnership from time to time held by such bank;

(f) to open, maintain, conduct and close accounts, including, without limitation, margin accounts, with any broker, dealer or investment concern, to issue orders and directions to any broker, dealer or investment concern at which the Partnership maintains an account with respect to the disposition and application of monies or securities or other assets;

(g) to furnish data processing services, telephone and telecopy services, other utilities, computer services, clerical services, executive and administrative services, stationery and other office supplies and other general purpose office equipment in connection with the foregoing; and

(h) to provide such assistance to the Partnership, the General Partner, and the Partnership's counsel and auditors as generally may be required to properly carry on the business and operations of the Partnership.

4. Appointment of Nominees. For purposes of performing its duties and obligations hereunder, the Investment Manager hereby appoints, and the Partnership hereby acknowledges and agrees to the appointment of, the Nominees, who shall be authorized to act in behalf of the Investment Manager and/or the Partnership and shall further be authorized to purchase SO Investments (as defined in the Memorandum) and establish joint accounts with Participants (as defined in the Memorandum. In addition, the Nominees shall be free, in their sole discretion, to add one or more additional nominees, whether as persons or entities and agrees to provide reasonable prior written notice to the Partnership as to the identity of such other nominee and the terms and condition on which he/it will act on behalf of the Partnership and provide the services set forth herein. In performing its duties hereunder, the Nominees covenant and agree that:

(a) It will hold, as and from the date hereof, the SO Investment, and all right, title and interest therein and benefit to be derived therefrom, as nominee for and on behalf of the Partnership only;

(b) It has no legal or beneficial interest in the SO Investments;

(c) All other attributes of the beneficial ownership of the SO Investments shall be and remain in Partnership;

(d) Subject to the indemnity hereinafter provided, that it shall at all times and from time to time deal with the SO Investments as nominees for the Partnership only in accordance with the written or verbal instructions and directions of Partnership and/or the Investment Manager and not otherwise; and

(e) It shall enter into, execute and deliver in their capacity as nominees for Partnership, all such instruments and documents as may from time to time be requested by the Partnership in connection with the SO Investments.

5. Third Party Services. In addition to the services of the Nominees and the Investment Manager's own personnel, the Investment Manager shall, to the extent that it determines that it would be necessary or advisable in order to perform the services for the Partnership which are required hereunder, arrange for and coordinate the services of other professionals, experts and consultants (collectively, "***Third Parties***"), and the Investment Manager may compensate such Third Parties for such services. The Investment Manager may enter into contracts and transactions on behalf of the Partnership with any affiliate of the Investment Manager, *provided* that the terms of any such contract or transaction are fair and reasonable to the Partnership and are not less favorable than could be obtained in arms-length negotiations with unrelated Third Parties for similar services.

6. Indemnification of Investment Manager; Liability of Investment Manager.

To the fullest extent permitted by applicable law, the Investment Manager, the Nominees and any of the Investment Manager's respective members, officers, partners, directors, agents, representatives and employees (each, an "***Investment Manager Indemnified Person***") will be indemnified and held harmless solely out of the assets of the Partnership from and against any liability, loss, expense, judgment, settlement cost, fee and related expenses (including attorneys' fees and expenses), costs or damages, joint or several, suffered or sustained by reason of being or having been an Investment Manager Indemnified Person or arising out of or in connection with any action or failure to act on the part of such Investment Manager Indemnified Person in connection with or in any way relating to the Partnership unless such act or failure to act was fraud, willful misconduct, gross negligence, violation of applicable law, or violation of such higher standard as may be set forth in any agreement between the Partnership and such Investment Manager Indemnified Person ("***Disabling Conduct***").

No Investment Manager Indemnified Person shall be subject to any liability for any error of judgment, mistake of law, or any loss arising out of any investment or the act or omission in the performance by the Investment Manager Indemnified Person of its duties under this Investment Management Agreement or for any loss or damage resulting from liquidity of the Partnership's assets, or from acts or omissions of custodians or securities depositories or from any war or political act of any government to which such assets might be exposed, except for any liability, loss or damage resulting from Disabling Conduct.

7. Non-exclusivity; Other Activities.

(a) The services of the Investment Manager and the Nominees with respect to the Partnership are not to be deemed to be exclusive and the Nominees, the Investment Manager and any person controlling, controlled by or under common control with the Investment Manager (for purposes of this Section 6 referred to as an "affiliate") shall be free to render services to others, including affiliates. Such services may include furnishing investment management and advisory services to others who may have investment policies, objectives and strategies similar to those of the

Partnership. The Nominees and the Investment Manager will be free, in their discretion to make recommendations to affiliates or others, or effect transactions on behalf of itself or for affiliates or others which may be the same as or different from those recommended to or effected on behalf of the Partnership. Nothing contained in this Agreement shall prevent the Nominees or the Investment Manager or any of its affiliates, acting either as principal or agent on behalf of others, from buying or selling or from recommending to or directing any other account to buy or sell, at any time, securities of the same kind or class recommended to or directed by the Investment Manager to be purchased or sold for the Partnership. It is understood that the Nominees, the Investment Manager, its affiliates, and any officer, director, shareholder, partner, employee or member of their families may have an interest in a particular transaction or in securities or other assets of the same kind or class as those whose purchase or sale the Investment Manager may effect on behalf of the Partnership and that the Nominees and the Investment Manager may effect portfolio transactions on behalf of the Partnership with affiliates to the extent permitted by law. The Nominees and the Investment Manager shall not effect any portfolio transaction on behalf of the Partnership as principal or with its affiliates acting as principal. It is further understood that Limited Partners are or may become interested in the Investment Manager and its affiliates, as directors, officers, employees, partners, and shareholders or otherwise and that directors, officers, employees, partners, and shareholders of the Investment Manager and its affiliates are or may become similarly interested in the Partnership as Limited Partners or otherwise.

(b) The Investment Manager and the Nominees reserve the right to sponsor other funds or entities that issue securities or other assets that are similar to those of the Partnership.

(c) The Investment Manager and the Nominees shall not be obligated to undertake for the Partnership any particular investment opportunity which comes to it. The Investment Manager shall be entitled to refrain from purchasing on behalf of the Partnership or rendering any advice or services concerning securities or other assets of (i) issuers of which the Investment Manager, its affiliates or any of their officers, directors, or employees are directors or officers, (ii) issuers for which the Investment Manager or its affiliates act as financial adviser or underwriter, or (iii) issuers about which the Investment Manager or any of its affiliates have information which the Investment Manager deems confidential or non-public.

(d) The Investment Manager shall give or cause to be given concurrent notice to the Partnership with respect to the opening of any investment account for the purpose of holding assets on behalf of the Partnership.

8. Term. The term of this Agreement shall be the same as the term of the Partnership and shall terminate upon the complete liquidation of the Partnership pursuant to the Limited Partnership Agreement of the Partnership (the "***LPA***"), except that either Party may terminate this Agreement pursuant to Section 12 hereof. Upon such termination, all fees payable hereunder shall cease to accrue.

9. Management Fee. The Investment Manager is entitled to receive a quarterly management fee calculated at the rate of 0.5 % per annum of the Capital Account of each Limited Partner (the "***Management Fee***"), payable in advance, as of the first day of each Calendar Quarter. The Capital Account of a Limited Partner who makes a Capital Contribution or a withdrawal from their Capital Account on a date other than the first day of each Calendar Quarter will be charged a prorated Management Fee as of the date of such contribution. Notwithstanding anything to the contrary contained herein, the Investment Manager reserves the right, in its sole discretion, to reduce or waive the Performance Allocation or Management Fee to the General Partner, its Affiliates or strategic investors.

10. Allocation of Charges and Expenses. The Investment Manager assumes responsibility for, and shall pay all expenses associated with, providing the investment management services contemplated hereunder, including maintaining the staff, personnel and office space necessary to perform its obligations under this Agreement. In addition, the Investment Manager shall pay all compensation of its officers, employees and agents connected with the investment of the Partnership's assets, and shall provide all office space for its officers and employees connected with the investment and management of the Partnership's assets.

11. Certain Determinations by the Investment Manager. The Investment Manager shall determine which payments, amounts, damages, expenses, obligations and other items incurred, paid or received by the Investment Manager were in connection with any activities performed pursuant to the terms of this Agreement.

12. Independent Contractor. For all purposes herein, the Investment Manager, the Nominees and any person to which they may delegate their obligations hereunder shall each be deemed to be an independent contractor and, except as otherwise expressly provided in this Agreement or in the LPA, shall have no authority to represent the Partnership or act as an agent of the Partnership. The Parties further agree that neither the Investment Manager nor the Nominee is a sponsor of the Partnership.

13. Termination of this Agreement.

(a) Notwithstanding anything to the contrary contained in this Agreement, both the Investment Manager and the Nominees are free to terminate this Agreement upon reasonable prior notice to the Partnership for any reason or no reason whatsoever. In such event, the Investment Manager and/or the Nominees shall use reasonable best efforts to locate a replacement investment manger or nominee, whether or not controlling, controlled by or under common control with the Investment Manager and/or Nominees.

(b) Regardless of the cause of the termination of this Agreement, the Investment Manager shall be entitled to receive all accrued but unpaid fees and expenses incurred by the Investment Manager pursuant to Sections 8 hereof, through the date of termination.

14. Force Majeure. None of the Parties shall be responsible for failure or delay in performance under this Agreement when such failure or delay is due to a cause beyond the reasonable control of the non-performing party, including (a) labor disputes, difficulties or work stoppages or slowdowns of any kind, (b) hurricane, earthquake and other natural disasters or fires, (c) disruption of any exchange on which a substantial part of the Partnership's portfolio is traded, (d) a breakdown in the means of communication normally employed in determining the prices of a substantial part of the Partnership's portfolio, (e) there exists a state of affairs that, in the opinion of the Investment Manager or General Partner, constitutes a state of emergency or period

of extreme volatility as a result of which disposal of investments or other Partnership property would not be reasonably practicable or might seriously prejudice the Partnership, or (f) a state of emergency, declared or undeclared war, act of terrorism, rebellion, or civil disorder ("***Force Majeure***"). Performance of this Agreement shall be suspended during such time as any Force Majeure continues to the extent necessitated by such event of Force Majeure. Any of the Parties that is relieved of any obligation or duty imposed on it under this Agreement due to a Force Majeure shall take all reasonable and practical measures and shall make diligent efforts to remove or cause the removal of such Force Majeure as soon as practicable.

15. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES THEREOF RESPECTING CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK.

16. Dispute Resolution

a. The Parties agree that any dispute, disagreement or controversy ("Dispute") may be first be submitted to mediation which, by mutual agreement, may be either binding or non – binding and the persons serving as mediators may be freely chosen but shall be mutually agreed upon.

b. In the event that the mediation does not resolve the Dispute to the mutual satisfaction of the participating parties, the Dispute shall be submitted to the American Arbitration Association ("AAA") at its offices in New York City and a single arbitrator shall be appointed to hear and resolve the Dispute, all in accordance with the rule and regulations of the AAA.

17. Notices. Any notice or report to be given pursuant to the Agreement shall be deemed to have been duly given or made as of the date sent when delivered personally, mailed by registered or certified mail (postage prepaid, return receipt requested), sent by courier delivery, or provided by electronic mail or facsimile transmission, with each confirmed afterwards as soon as reasonably possible by telephone call, first class mail to the following addresses specified below:

To the Investment Manager at:

Eden Arc Capital Management, LLC
One Penn Plaza, 36th Floor
New York, NY 10019

Electronic mail address: [to be provided]

To the Partnership at:

Eden Arc Capital Partners, LP
One Penn Plaza, 36th Floor
New York, NY 10019

Electronic mail address: [to be provided]

To the Nominee at:

Electronic mail address: [to be provided]

The time to respond to any notice given hereunder shall run from the date of actual delivery to the addressee or refusal of delivery by the addressee during normal business hours on a business day.

18. Amendment. This Agreement may be amended from time to time only by the written agreement of the Parties. No provision shall be deemed to have been waived unless such waiver is contained in a written notice given by the Party claiming such waiver, and no such waiver shall be deemed to be a waiver of any other or further obligation or liability of the Party or Parties in whose favor the waiver was given.

19. Successors and Assigns. Except as otherwise specifically provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties and their legal representatives, heirs, administrators, executors, successors and permitted assigns; *provided* that (a) without the prior consent of the Parties, the Investment Manager may not assign any of its rights or delegate any of its obligations under this Agreement to any person other than an affiliate, and (b) without the prior consent of the Investment Manager, the Partnership may not assign any of its rights or delegate any of its obligations under this Agreement to any person other than an affiliate.

20. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but both of which shall constitute one and the same instrument. It shall not be necessary for all Parties to execute the same counterpart hereof.

21. Headings and Captions. Heading and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend or otherwise affect the scope or intent of this Agreement or any provision hereof.

22. Severability. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions of this Agreement, or the application of such provision in jurisdictions or to persons or circumstances other than those to which it is held invalid, illegal or unenforceable shall not be affected thereby.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties below have executed this Agreement as of the date first written above.

Eden Arc Capital Partners, LP

By: Managing Member of GP
Title: Donald Lathen

Eden Arc Capital Management, LLC

By: Donald Lathen
Title: Managing member

Donald F. Lathen
Nominee

David Jungbauer
Nominee

Offering By

EDEN ARC CAPITAL PARTNERS, LP

CONFIDENTIAL

PRIVATE PLACEMENT MEMORANDUM

General Partner

EDEN ARC CAPITAL ADVISORS, LLC

COUNTERPART NO.: _____ TO: _____

THESE SECURITIES ARE BEING OFFERED UNDER AN EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 4(2) OF THE SECURITIES ACT OF 1933, AS AMENDED, OR SECURITIES AND EXCHANGE COMMISSION REGULATION D PROMULGATED THEREUNDER. WHETHER THESE SECURITIES ARE EXEMPT FROM REGISTRATION PURSUANT TO REGULATION D OR OTHERWISE HAS NOT BEEN PASSED UPON BY THE SECURITIES AND EXCHANGE COMMISSION, THE ATTORNEY GENERAL OF ANY STATE OR ANY OTHER REGULATORY AGENCY, NOR HAS ANY SUCH AGENCY PASSED UPON THE MERITS OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY OR ANY REPRESENTATION THAT ANY REGULATORY AGENCY HAS PASSED UPON THE ACCURACY OR COMPLETENESS OF THIS PRIVATE PLACEMENT MEMORANDUM OR THE LIMITED PARTNERSHIP AGREEMENT ACCOMPANYING IT IS A CRIMINAL OFFENSE.

EDEN ARC CAPITAL PARTNERS, LP
(A Delaware Limited Partnership)

One Penn Plaza, 36th Floor
New York, NY 10019

CONFIDENTIAL

PRIVATE PLACEMENT MEMORANDUM

March 2011

for an offer of

Limited Partnership Interests

EDEN ARC CAPTIAL PARTNERS, LP (the "Partnership") is a private investment limited partnership formed under the laws of the State of Delaware. This Confidential Private Placement Memorandum (the "Memorandum") relates to an offering of limited partnership interests in the Partnership. Prospective Limited Partners should carefully read and retain this Memorandum.

IN NO EVENT SHALL THIS MEMORANDUM BE DEEMED TO BE AN OFFER TO ANY PERSON OTHER THAN THE PERSON TO WHOM IT IS ADDRESSED.

THIS MEMORANDUM IS SUBMITTED IN CONNECTION WITH THE PRIVATE PLACEMENT OF THESE LIMITED PARTNERSHIP INTERESTS AND MAY NOT BE REPRODUCED OR USED FOR ANY OTHER PURPOSE.

THE PARTNERSHIP IS NOT PRESENTLY, AND DOES NOT PROPOSE IN THE FUTURE TO BECOME, REGISTERED AS AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940. LIMITED PARTNERS WILL NOT, THEREFORE, BE ACCORDED THE PROTECTIONS EMBODIED IN SUCH LEGISLATION.

OWNERSHIP OF THE LIMITED PARTNERSHIP INTERESTS OFFERED HEREBY INVOLVES A SIGNIFICANT DEGREE OF RISK.

THE GENERAL PARTNER HAS AGREED TO MAKE AVAILABLE, PRIOR TO THE CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREIN, TO EACH OFFEREE OF INTERESTS AND ITS REPRESENTATIVE(S) THE OPPORTUNITY TO ASK QUESTIONS OF, AND RECEIVE ANSWERS FROM, THE GENERAL PARTNER OR ANY PERSON ACTING ON ITS BEHALF CONCERNING THE TERMS AND CONDITIONS OF THIS OFFERING, AND TO OBTAIN ANY ADDITIONAL INFORMATION, TO THE EXTENT IT POSSESSES SUCH INFORMATION OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE, NECESSARY TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH HEREIN.

THE GENERAL PARTNER MAY TAKE SHORT POSITIONS OR WRITE DERIVATIVE CONTRACTS ON BEHALF OF THE PARTNERSHIP. PROSPECTIVE LIMITED PARTNERS SHOULD BE AWARE THAT THE POTENTIAL RISKS INHERENT IN SHORT SELLING OF SECURITIES AND DERIVATIVE CONTRACTS ARE GREATER THAN THOSE ASSUMED IN CONNECTION WITH MANY OTHER TYPES OF SECURITIES INVESTMENTS.

THE LIMITED PARTNERSHIP INTERESTS MAY NOT BE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT OR AN OPINION OF COUNSEL THAT AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

THERE CAN BE NO ASSURANCE THAT THE INVESTMENT OBJECTIVES OF THE PARTNERSHIP WILL BE ACHIEVED. IN FACT, PRACTICES THAT MAY BE UTILIZED BY THE PARTNERSHIP, SUCH AS SHORT SELLING, LEVERAGE AND TAKING SIGNIFICANT

POSITIONS IN A LIMITED NUMBER OF SECURITIES, CAN, IN CERTAIN CIRCUMSTANCES, EXACERBATE THE ADVERSE IMPACT OF PARTICULAR TRANSACTIONS OR CONDITIONS ON THE PARTNERSHIP'S INVESTMENT PROGRAM.

THERE ARE NO TAX BENEFITS FROM AN INVESTMENT IN THE PARTNERSHIP AND ANY INVESTMENT SHOULD BE MADE SOLELY FOR ECONOMIC REASONS.

PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS MEMORANDUM OR ANY PRIOR OR SUBSEQUENT COMMUNICATION FROM THE PARTNERSHIP, GENERAL PARTNER, ITS AFFILIATES, OR ANY PROFESSIONAL ASSOCIATED WITH THIS OFFERING, AS LEGAL, TAX OR INVESTMENT ADVICE. EACH INVESTOR SHOULD CONSULT WITH AND RELY ON ITS OWN PERSONAL COUNSEL, ACCOUNTANT AND OTHER ADVISORS AS TO LEGAL, TAX AND ECONOMIC IMPLICATIONS OF THE INVESTMENT DESCRIBED HEREIN AND IT'S SUITABILITY FOR IT. NO REPRESENTATION OR WARRANTY IS OR CAN BE MADE AS TO THE ECONOMIC RETURN THAT MAY ACCRUE TO A LIMITED PARTNER, IF ANY.

NO DISTRIBUTION OF THIS MEMORANDUM IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS, IS PERMITTED UNLESS AUTHORIZED BY THE GENERAL PARTNER. NO OFFERING LITERATURE OR ADVERTISING IN WHATEVER FORM SHALL BE EMPLOYED IN THE OFFERING OF THESE LIMITED PARTNERSHIP INTERESTS, EXCEPT THE INFORMATION CONTAINED HEREIN OR AUTHORIZED BY THE GENERAL PARTNER. NO PERSON HAS BEEN AUTHORIZED TO MAKE REPRESENTATIONS, OR GIVE ANY INFORMATION, WITH RESPECT TO THESE LIMITED PARTNERSHIP INTERESTS, EXCEPT THE INFORMATION CONTAINED HEREIN.

THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER OR SOLICITATION TO ANYONE IN ANY STATE OR IN ANY JURISDICTION IN WHICH SUCH AN OFFER OR SOLICITATION IS NOT AUTHORIZED.

REFERENCE SHOULD BE MADE TO THE LIMITED PARTNERSHIP AGREEMENT, SUPPORTING DOCUMENTS AND OTHER INFORMATION FURNISHED HEREWITH FOR THE COMPLETE INFORMATION CONCERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES THERETO. CERTAIN PROVISIONS OF SUCH AGREEMENTS ARE SUMMARIZED IN THIS MEMORANDUM, BUT IT SHOULD NOT BE ASSUMED THAT THE SUMMARIES ARE COMPLETE.

FOR GEORGIA INVESTORS

THESE INTERESTS HAVE BEEN ISSUED OR SOLD IN RELIANCE ON PARAGRAPH THIRTEEN (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.

FOR FLORIDA INVESTORS

PURSUANT TO THE LAWS OF THE STATE OF FLORIDA, IF SALES ARE MADE TO FIVE (5) OR MORE INVESTORS IN FLORIDA, ANY FLORIDA INVESTOR MAY, AT ITS OPTION, WITHDRAW, UPON WRITTEN (OR TELEGRAPHIC) NOTICE, ANY PURCHASE HEREUNDER WITHIN A PERIOD OF THREE (3) DAYS AFTER (A) THE INVESTOR FIRST TENDERS OR PAYS TO THE PARTNERSHIP, AN AGENT OF THE PARTNERSHIP OR AN ESCROW AGENT THE CONSIDERATION REQUIRED HEREUNDER, (B) THE INVESTOR DELIVERS ITS EXECUTED SUBSCRIPTION AGREEMENT, OR (C) THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH INVESTOR, WHICHEVER OCCURS LATER

NASAA UNIFORM LEGEND

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY 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. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

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SUMMARY OF OFFERING

THIS SUMMARY OF CERTAIN PROVISIONS OF THE CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM (THE "MEMORANDUM") IS INTENDED ONLY FOR GENERAL REFERENCE. NOT ALL THE MATERIAL FACTS RELATING TO THIS INVESTMENT APPEAR IN THIS SUMMARY. THE MEMORANDUM AND EXHIBITS ATTACHED HERETO DESCRIBE IN DETAIL NUMEROUS ASPECTS OF THE TRANSACTION WHICH ARE MATERIAL TO PROSPECTIVE INVESTORS. THIS MEMORANDUM, THE LIMITED PARTNERSHIP AGREEMENT AND OTHER DOCUMENTS ATTACHED HERETO SHOULD BE READ AND UNDERSTOOD IN THEIR ENTIRETY BY EACH PROSPECTIVE INVESTOR.

PARTNERSHIP INTERESTS ARE SUITABLE ONLY FOR SOPHISTICATED INVESTORS FOR WHOM AN INVESTMENT IN THE PARTNERSHIP DOES NOT CONSTITUTE A COMPLETE INVESTMENT PROGRAM AND WHO FULLY UNDERSTAND AND ARE ABLE TO ASSUME THE RISKS INVOLVED IN THE PARTNERSHIP'S INVESTMENT PROGRAM. (SEE "CERTAIN RISK FACTORS" AND "LIMITATIONS ON TRANSFERABILITY; SUITABILITY REQUIREMENTS"). THE PARTNERSHIP'S INVESTMENT PRACTICES, BY THEIR NATURE, MAY BE CONSIDERED TO INVOLVE A SUBSTANTIAL DEGREE OF RISK.

TAX-EXEMPT ORGANIZATIONS CONSIDERING AN INVESTMENT IN THE PARTNERSHIP INTERESTS SHOULD CONSULT WITH THEIR OWN ADVISORS AS TO THE TAX IMPACT AND OTHER EFFECTS UPON THEM OF THE PARTNERSHIP'S INVESTMENT POLICIES, INCLUDING ITS USE OF LEVERAGE IN CONNECTION WITH ITS INVESTMENT ACTIVITY. (SEE "TAX ASPECTS.")

THE PARTNERSHIP:	EDEN ARC CAPITAL PARTNERS, LP, a Delaware limited partnership (the "Partnership"), is offering limited partnership interests (the "Limited Partnership Interests") in the Partnership to a limited number of qualified investors. The Limited Partnership Interests being offered have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), the securities laws of any state of the United States or the Investment Company Act of 1940, as amended (the "1940 Act").

INVESTMENT OBJECTIVE:	The Partnership will principally focus on making investments in securities which contain a "survivor's option" or similar feature. Survivor's option investments ("SO Investments") contain special redemption rights, typically in the form of a par put, which allows the investment to be sold back to the issuer at par prior to the maturity date in the event of the death of an owner. The Partnership will purchase the SO Investments in joint accounts with terminally ill individuals ("Participants"). The General Partner reserves the right to change or modify the Partnership's Investment Objective upon notice to each Limited Partner; provided however, that prior to the effectiveness of such change in Investment Objective, each Limited Partner shall be given the right to withdraw from the Partnership. See "Description of Investment Objectives and Strategy" for a more detailed discussion of the Partnership's investment objective.
GENERAL PARTNER AND INVESTMENT MANAGER:	EDEN ARC CAPITAL ADVISORS, LLC, a Delaware limited liability company, is the General Partner of the Partnership (the "General Partner"). EDEN ARC CAPITAL MANAGEMENT, LLC, a Delaware limited liability company, is the Investment Manager of the Partnership. Mr. Donald F. ("Jay") Lathen is the managing member of the General Partner and the Investment Manager (the "Managing Member"). Neither the General Partner or the Investment Manager is presently registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), but may so register in the future.
INITIAL CAPITAL CONTRIBUTIONS:	The minimum capital contribution required of a Limited Partner on an initial subscription for Limited Partnership Interests is five hundred thousand dollars ($500,000), subject to the General Partner's discretion to make exceptions ("Initial Capital Contribution"). Subsequent capital contributions shall not be less than one hundred thousand dollars ($100,000), subject to the General Partner's discretion to make exceptions. The Initial Capital Contribution, together with all subsequent contributions may be designated collectively as capital contributions ("Capital Contributions"). The General Partner may, in its absolute discretion, decline to accept the subscription of any prospective investor. A capital account (the "Capital Account") shall be established for each Limited Partner upon receiving such Limited Partner's Initial Capital Contribution. All Capital Contributions shall be available to the General Partner to carry out the objectives and purposes of the Partnership. The General Partner may, in its discretion, permit the Initial Capital Contribution to be made in securities.
INITIAL OFFERING PERIOD / INITIAL	The initial offering period (the "Initial Offering Period") for the Partnership shall be the period during which such Initial Capital Contributions have been received by the Partnership, as the General

CLOSING:	Partner shall determine in its sole discretion. Thereupon, the General Partner will declare that the Initial Offering Period has been closed ("Initial Closing"). Limited Partners who subscribe during such Initial Offering Period shall be referred to as the "Initial Limited Partners."
ADDITIONAL CLOSINGS:	After the Initial Closing, the General Partner may accept additional subscriptions on different terms, including, without limitation, by calculating the Net Asset Value of the Partnership at the end of the Calendar Month on which the subscription is accepted by the General Partner (the "Additional Closings") or by providing for a return on capital that is similar or different from that provided to Initial Limited Partners, as set forth in the second paragraph under "Performance Allocation" below.
PERFORMANCE ALLOCATION:	The General Partner is granted a Performance Allocation in the event that there is an appreciation in the Capital Account of Limited Partners in an amount in excess of the Limited Partner's capital contributions ("Capital Contributions"), as adjusted for contributions, withdrawals and any appreciation which has been previously credited to such Limited Partner's Capital Account and which has been subject to a Performance Allocation (the "Maximum Capital Account"). To the extent that: (i) at the end of a Calendar Quarter; (ii) upon a Limited Partner's complete withdrawal; or (iii) in the General Partner's discretion, upon a partial withdrawal, a Limited Partner's Maximum Capital Account reflects increases due to the performance of the Partnership, a Performance Allocation will be allocated to the General Partner's Capital Account. The Performance Allocation will be an amount equal to thirty percent (30%) of the increase in a Limited Partner's Maximum Capital Account. The General Partner's Performance Allocation will be computed each Calendar Quarter. In the event that an Initial Limited Partner has not realized an average annualized ten percent (10%) return during the earlier of two (2) years from the date of such Initial Limited Partner's Initial Capital Contribution or a complete withdrawal from the Partnership (the "Measuring Period"), computed at the rate of two and one – half percent (2.5%) per Calendar Quarter, net of all Partnership expenses, including the Management Fee (as defined herein) and thereafter the Performance Allocation and based upon the amount of such Initial Capital Contribution, the General Partner will reimburse the Performance Allocation received by the General Partner to the Capital Account of such Initial Limited Partner so that the Initial Limited Partner will have achieved an annualized ten percent (10%) return during such Measuring Period; provided however that the amount to be reimbursed to the Capital Account of a Limited Partner shall not exceed the total amount received by the General Partner as its Performance Allocation as of the date of such calculation.

The General Partner reserves the right, in its sole discretion, to reduce or waive the Performance Allocation or Management Fee set forth herein in connection with a Limited Partnership Interest acquired by the General Partner, its Affiliates (as defined below) or strategic investors. "Affiliates" shall refer to the principal(s), affiliate(s), manager(s), member(s), officer(s), and employee(s), and next of kin related to the Managing Member of the General Partner.

ADMISSION OF NEW LIMITED PARTNERS AND CAPITAL CONTRIBUTIONS:

The General Partner may, in its sole discretion, allow Limited Partners to make Capital Contributions and admit new Limited Partners to the Partnership on the first day of each calendar month or on such other dates as the General Partner may determine in its sole discretion (each an "Interim Date").

REDEMPTION BY A LIMITED PARTNER:

After entering the Partnership and for a period of twelve (12) months (the "Lock-Up Period"), a Limited Partner may not redeem its Capital Account or any portion thereof. On or after the Lock-Up Period, a Limited Partner may elect to redeem its Capital Account at the end of a Calendar Quarter by providing written notice to the General Partner ("Redemption Request').

A Limited Partner may make a partial redemption of its Capital Account upon written notice to the General Partner, and remain a Limited Partner, provided that such capital redemption does not reduce the Capital Account to less than the amount initially accepted, subject to the discretion of the General Partner to permit redemption of a greater amount.

Partial withdrawals must be made in minimum amounts of fifty thousand dollars ($50,000) and in multiples of ten thousand dollars ($10,000).

The General Partner will distribute ninety-five percent (95%) of the amount redeemed by a Limited Partner within ten business days of the end of the second calendar quarter following the Redemption Request (such quarter end being the "Redemption Valuation Date") and the balance within thirty (30) business days of receipt by the Partnership of its next succeeding annual audited financial statements.

If Redemption Requests received by the General Partner from Limited Partners after being subject to the Lock – Up Period, are in an aggregate amount more than ten percent (10%) of the Capital Accounts of all Limited Partners in the Partnership, the General Partner may, in its discretion, reduce each request for redemptions pursuant to such Redemption Notices pro-rata, so that redemptions are equal to ten percent (10%) of all of the Capital Accounts in the Partnership.

A redeeming Limited Partner whose Redemption Request is so reduced will be deemed to have submitted a Redemption Request to have the

remaining balance as specified in the original Redemption Request withdrawn on the next following redemption date, on a priority basis and without the need to submit a further Redemption Request; provided, however, that redemptions shall always be subject to the discretion of the General Partner to reduce each request for redemptions pursuant to each Redemption Request on a pro rata basis to ensure that no more than ten percent (10%) of the Capital Accounts of the Partnership shall be withdrawn during any next following redemption date, unless the General Partner otherwise determines.

The General Partner may also withhold taxes on any payment to a Limited Partner to the extent required by the Internal Revenue Code of 1986, as amended (the "Code") or other applicable law.

NET ASSET VALUE:

"Net Asset Value" shall mean the value of all of the assets of the Partnership determined in accordance with the Partnership's Limited Partnership Agreement (a copy of which is annexed hereto as Exhibit A), less all Partnership liabilities and reserves established by the General Partner in its sole discretion. The Net Asset Value shall be computed in accordance with Generally Accepted Accounting Principles ("GAAP"), except with respect to organizational expenses.

EXPENSES AND MANAGEMENT FEE:

Each Limited Partner shall pay a fee to the General Partner or its designee, on the first day of each Calendar Quarter, in advance (the "Management Fee"), to be debited from the Capital Account of such Limited Partner, in an amount equal to .125% per Calendar Quarter, or 0.5% on an annualized basis of the Capital Account of each Limited Partner as of such date.

The Capital Account of a Limited Partner who makes a Capital Contribution or a withdrawal from their Capital Account on a date other than the first day of each Calendar Quarter will be charged a prorated Management Fee as of the date of such contribution.

The Partnership will pay, in addition to the Management Fee, all expenses associated with the Partnership's operations ("Reimbursable Expenses"), including, without limitation: (i) expenses related to the evaluation, acquisition or disposition of investments; (ii) Partnership expenses such as brokerage commissions, custody charges, trustee fees, financing costs, payments to Participants; (iii) research and investment management related services and equipment (including, without limitation, third party research services, telephone lines, telephone equipment, telephone service, news and quotation equipment, computer facilities, computer software and terminals, professional fees including on – going accounting and legal fees and expenses and publications); (iv) interest and commitment fees on loans and debit balances; withholding and transfer taxes; governmental fees; marketing expenses, including travel and fees associated with research and professional conferences; and (v) such other necessary and appropriate costs and expenses necessary for the operation of the Partnership and its incurred

operations.

The General Partner may use "soft" or commission dollars to pay for expenses of the Partnership in accordance with the research-related safe harbor within Section 28(e) of the 1934 Act.

ACCESS TO INFORMATION

The address of the General Partner is One Penn Plaza, 36th Floor, New York, NY 10019, or such other places as the General Partner may designate from time to time, telephone: (212) 786 - 7414; fax: (646) 349 – 5964. Prospective investors are invited to review any materials available from the General Partner relating to the Partnership, the operations of the Partnership and this offering. The General Partner will answer all reasonable inquiries from prospective investors related thereto. The General Partner will provide prospective investors with any additional information necessary to verify the accuracy of any representations or information set forth in this Memorandum. Such review is limited by the proprietary and confidential nature of the investment analysis and strategy to be utilized by the General Partner and by the confidentiality of personal information relating to investors.

Due to the financial sophistication of the persons to whom this offering is directed, this Memorandum sets forth certain information material to evaluating the merits of an investment in the Partnership in summary form only. Prospective investors are urged to consult with their own advisors prior to deciding whether to invest in the Partnership.

SUBSCRIPTIONS-PROCEDURES AND PAYMENTS

A person desiring to invest as a Limited Partner is required to accept and adopt the provisions of the Limited Partnership Agreement and satisfy eligibility requirements by:

1. Completing and executing the applicable Subscription Agreement (a copy of which is annexed hereto as Exhibit B);

2. If required by the General Partner, having its purchaser representative complete and execute a Purchaser Representative Questionnaire which is contained in the Subscription Agreement; and

3. Delivering all such documents to the Partnership.

Except as provided by the securities laws of certain states, a subscription is irrevocable and may be accepted on behalf of the Partnership upon the countersignature of the General Partner.

The General Partner has the absolute right to reject any subscription which is tendered. In the event a subscription is rejected, all amounts paid to the Partnership will be promptly returned to the prospective subscriber without interest or deduction, together with all related documents duly canceled.

Eligible Subscribers

The Limited Partnership Interests offered hereunder will be offered pursuant to an exemption from registration provided in Paragraph 4(2) of the 1933 Act, as amended, or Regulation D promulgated thereunder.

Each investor acquiring such Limited Partnership Interests must represent, by executing the Subscription Agreement, that it is acquiring the Limited Partnership Interest for its own account for investment without any present intention to resell, distribute, or in any way transfer or dispose of its Limited Partnership Interest in the Partnership and, if the investor is an individual investor, the investor must be at least twenty-one (21) years of age. In addition, each Limited Partner must represent that he is an "accredited investor" as defined below.

EACH INVESTOR, BY SIGNING THE SUBSCRIPTION AGREEMENT, WILL AGREE TO BE BOUND BY THE LIMITED PARTNERSHIP AGREEMENT AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE PARTNERSHIP, THE GENERAL PARTNER AND ALL LIMITED PARTNERS FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, OR LIABILITY, INCLUDING REASONABLE ATTORNEYS' FEES THAT THE GENERAL PARTNER, PARTNERSHIP OR ANY OF THE LIMITED PARTNER(S) SUSTAINS OR INCURS, BY REASON OF, OR IN CONNECTION WITH, ANY MISREPRESENTATION OR BREACH OF ANY WARRANTY OR AGREEMENT BY SUCH INVESTOR UNDER THE SUBSCRIPTION AGREEMENT, THE QUESTIONNAIRE OR ANY OTHER DOCUMENT DELIVERED BY THE INVESTOR TO THE PARTNERSHIP IN CONNECTION WITH ITS INVESTMENT IN THE PARTNERSHIP, THE RESALE OR REDISTRIBUTION OF THE INTERESTS BY SUCH INVESTOR IN VIOLATION OF THE 1933 ACT OR ANY OTHER APPLICABLE FEDERAL OR STATE SECURITIES LAW.

Accredited Investors

In order to qualify as an "accredited investor[1]," an investor will be required to certify that it comes within any one of the categories of accredited investors set forth in Rule 501(a) of Regulation D promulgated under the 1933 Act, including, without limitation, any one of the following:

(i) any natural person whose individual net worth (or joint net worth with his or her spouse) exceeds one million dollars ($1,000,000) at the time of purchase (excluding primary residence);

(ii) any natural person with a yearly gross income above two hundred thousand dollars ($200,000) or joint income with his or her spouse in excess of three hundred thousand dollars ($300,000) in each of the two most recent years and who reasonably expects to reach the same income level in the current year;

(iii) any entity in which all of the equity owners are accredited investors under (i) or (ii) above;

(iv) an organization described in Section 501(c)(3) of the Code, a corporation, a Massachusetts or similar business trust, or a partnership, in each case not formed for the specific purpose of acquiring the securities being offered, and with total assets in excess of five million dollars ($5,000,000);

(v) a trust, with total assets in excess of five million dollars ($5,000,000), not formed for the specific purpose of acquiring the securities, whose purchase is directed by a person who, either alone or with a purchaser representative, has such knowledge and experience in business and financial matters that he is capable, as defined by the 1933 Act, of evaluating the merits and risks of the prospective investment;

[1]Pursuant to the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Securities and Exchange Commission ("SEC") is mandated to review the definition of "Accredited Investor" and therefore, the definition of "Accredited Investor" provided above may be modified, from time to time, by the SEC. However, the SEC may not increase the one million dollar ($1,000,000) threshold provided for the calculation of net worth under paragraph (i) above for a period of four (4) years from the date of the enactment of the Dodd-Frank Act, or until July 21, 2014.

(vi) a bank as defined in Section 3(a)(2) of the 1933 Act, acting in its fiduciary capacity as a trustee, or subscribing for the purchase of securities being offered on its own behalf;

(vii) an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA") where investment decisions are made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, savings and loan association, insurance company or registered investment advisor, or has total assets in excess of five million dollars ($5,000,000), or is a self-directed plan, with investment decisions made solely by persons that are accredited investors as defined under the 1933 Act; or

(viii) an individual retirement account established in the name(s) of a person or persons who is or are accredited investors.

Qualified Client

In order to qualify as a "Qualified Client," an investor must be:

(i) an individual or company with a net worth in excess of $1.5 Million. A natural person or company whose net worth (or, in the case of a natural person, joint net worth with his or her spouse) at the time of entering into this Agreement exceeds $1,500,000. (Explanation: In calculating net worth, you may include your equity in personal property and real estate, including your principal residence, cash, short-term investments, stock and securities. The inclusion of equity in personal property and real estate should be based on the fair market value of such property less debt secured by such property.)

(ii) an individual or company with $750,000 under management. A natural person or company who has at least $750,000 under the management of the General Partner immediately after entering into this Agreement.

(iii) an individual or company who is a Qualified Purchaser under 1940 Act. A natural person or company who is a qualified purchaser as defined in Section 2(a)(51)(A) of the 1940 Act at the time of entering into this Agreement.

(iv) an executive Officer, Director, Partner etc. of General Partner. A natural person who is an executive officer, director, trustee, general partner, or person serving in a similar capacity, of the General Partner.

(v) an employee of General Partner. A natural person who is an employee of the General Partner (other than an employee performing solely clerical, secretarial or administrative functions with regard to the General Partner) who, in connection with his or her regular functions or duties, participates in the investment activities of the General Partner, provided that such employee has been performing such functions and duties for or on behalf of the General Partner, or substantially similar functions or duties for or on behalf of another company, for at least 12 months.

THE GENERAL PARTNER

Mr. Donald F. ("Jay") Lathen is the Managing Member of the General Partner. Mr. Lathen's biography is set forth below.

Mr. Lathen was a Managing Director in the investment banking department at Citigroup from July 2007 until September 2008. While at Citigroup, he was a Managing Director and co-head of Citigroup's energy

mergers and acquisition business in the US. Prior to joining Citigroup, Mr. Lathen was a Managing Director at Lehman Brothers where he spent 11 years with its industry-leading Global Natural Resources investment banking group. Over the course of his 15 year investment banking career, Mr. Lathen has advised on over $100 billion worth of completed transactions. In July 2009, Mr. Lathen founded and has been the President and CEO of EndCare, a specialty investment company focused on survivor's option corporate bonds. Since the inception of Endcare, Mr. Lathen has invested his own capital and capital provided by outside investors in joint accounts with over 10 Participants. EndCare has successfully redeemed several million dollars worth of bonds in these accounts. Due to the success of these investments, Mr. Lathen has decided to form the Partnership in order to further scale its investment strategy. Mr. Lathen received his BA in Economics from Rice University in 1989 and his MBA with distinction from the University of Michigan in 1993.

DESCRIPTION OF INVESTMENT OBJECTIVES AND STRATEGY

The Partnership intends to focus on the purchase and subsequent "put" of SO Investments. SO Investments contain a provision known as a "survivor's option" or "death put," which allows the investment, typically a fixed income security, to be sold back or "put" to the issuer, at par plus accrued interest, upon the death of the holder. Instruments which contain a survivor's option or similar feature include corporate bonds, brokered certificates of deposit ("CDs"), certain retail tranches of mortgage backed securities ("MBS") and certain structured finance products which are marketed and sold to retail investors. Currently there are an estimated $75 to $100 billion face amount of survivor's option corporate bonds ("SO Bonds") outstanding from approximately 60 issuers and approximately $600 billion face amount of survivor's option brokered CDs ("SO CDs") from several hundred issuers. Many SO Investments trade at par or higher. However, at any given time, there are numerous opportunities to purchase SO Investments in the secondary market at a discount to par. These discounts exist for multiple reasons including low coupon, callability, lack of liquidity, small lot size, supply/demand imbalances, investor sentiment and underlying credit concerns of the issuers. By purchasing SO Investments at a discount to par, the Partnership hopes to generate superior uncorrelated risk-adjusted returns through an eventual exercise of the survivor's option put right.

DESCRIPTION OF "SO" INVESTMENTS

SO Investments are typically marketed to retail investors through underwritten offerings by securities brokers. The survivor's option feature is imbedded in the security and can be exercised by the holder regardless of whether it was purchased at issuance or in the secondary market. Retail investors like the survivor's option feature because it provides valuation certainty and a source of liquidity for survivor's and their heirs. Issuers of SO Investments typically enjoy lower funding costs because retail investors are willing to accept a lower yield on SO Investments than for investments which do not contain the survivor's option feature.

The key element of the Partnership's investment strategy is to acquire SO Investments in joint accounts ("Joint Accounts") with Participants. The Managing Member of the General Partner has developed a network of hospices and social workers who will help identify Participants for the Partnership's investment strategy. In order to receive hospice care in the United States, an individual must have a terminal diagnosis, must agree to receive only palliative care and must have a life expectancy of less than 6 months as determined by a physician. Participants will be compensated by the Partnership for agreeing to be an owner of a joint account. Mr. Lathen conducts or will conduct extensive due diligence on Participants to confirm medical prognosis and financial status prior to being selected and will also enter into a written agreement ("Participant Agreement") with the Participant, setting forth the terms and conditions of their ownership and rights to the Joint Accounts.

By owning SO Investments in a joint account with a Participant, the "survivor's option" feature of the bond, for which the market typically places no value, becomes potentially very valuable. Upon the death of a Participant, SO Investments in the joint account with that Participant will be liquidated, either through a secondary market sale or, more likely, a par redemption with the issuer through the exercise of the survivor's option feature. As Joint Accounts with existing Participants are liquidated, the Partnership will reinvest proceeds in Joint Accounts with new Participants.

The Joint Accounts will be structured as joint tenancies with rights of survivorship ("JTWROS") between the Participant and one or more nominee owners ("Nominees") acting on behalf of the Partnership. Mr. Lathen has agreed to serve as a Nominee for the Partnership on the Joint Accounts for no consideration. Employees of the General Partner and third party fiduciaries may also serve as Nominees for the Partnership on the Joint Accounts. The Partnership will enter into written nominee agreements with all Nominees who serve on the Partnership's behalf with respect to the Joint Accounts. In addition, strict governance protections and funds flow protocols will be placed on all Joint Accounts to protect the accounts from unauthorized trading or funds transfers.

Question - Account flow restricted?

The JTWROS ownership format is a common form of ownership utilized by two or more individuals to hold property in the United States. It is the default joint account structure utilized by the securities brokerage industry. JTWROS offers several advantages in the context of the Partnership's investment strategy. First, it is explicitly recognized by issuers of SO Investments as a valid form of ownership for purposes of exercising the survivor's option feature. Second, it is easily created through the account opening process at the brokerage firm. Third, it avoids probate of the Participant's estate because, by operation of law, the Participant's ownership of the Joint Account passes to the Partnership's Nominees as surviving owners.

The General Partner believes that SO Investments offer a very attractive investment opportunity for the Partnership. The Partnership, through the Joint Accounts, will principally invest in long-dated securities which are trading at a discount to par. These investments typically trade at higher yields than comparable institutionally traded securities of the same issuer due to small issue sizes, smaller trading lots, lower liquidity, opaque trading with few market makers, and call provisions which are common with SO Investments. Returns are further enhanced by recoupment of the purchase price discount prior to maturity through the exercise of the survivor's option. The average duration of the Partnership's SO Investments is expected to be 6 to 12 months. Finally, returns will be further enhanced through the use of leverage provided by the brokerage firm and/or third parties. The General Partner believes that the investment strategy can generate superior uncorrelated risk-adjusted returns in a broad variety of market environments.

The General Partner reserves the right to change or modify the Partnership's Investment Objectives and Strategy upon notice to each Limited Partner; provided however, that prior to the effectiveness of such change in Investment Objective, each Limited Partner shall be given the right to withdraw from the Partnership.

USE OF PROCEEDS

The proceeds from the sale of Limited Partnership Interests will be available for the Partnership's investment program. The Partnership will pay directly, or reimburse, the General Partner (or its designee) for advancing the legal, accounting and other expenses of the organization of the Partnership. In the event that the General Partner advances some or all of the Partnership's organization expenses, then such advance shall be treated as a contribution to the Partnership by the General Partner and shall be concomitantly credited to the General Partner's Capital Account. Over a sixty (60) month period [unless

otherwise accelerated by the General Partner], the General Partner shall cause the Limited Partners to make, on a pro rata basis based on the relative values of the Limited Partners' respective Capital Accounts, a special allocation of income, which allocation shall be prior to any other allocations of income, to the General Partner. On a monthly basis, this special allocation shall be one-sixth (1/60th) of the amount of the organization expenses. Such treatment may result in a qualification to the independent auditor's report relating to the Partnership's audited financials.

BROKERAGE COMMISSIONS

The General Partner is authorized to determine the broker-dealers that will effect transactions and clear securities for the Partnership. The General Partner does not have an obligation to seek the lowest bid or solicit competitive bids. Generally, the Partnership's portfolio transactions will be allocated by the General Partner to broker-dealers on the basis of best execution, price and brokerage services (e.g., special execution capabilities, clearance, settlement and custodial services) that are beneficial to the Partnership. In addition, while the General Partner may allocate brokerage business on the basis of best execution, price and brokerage services, the General Partner may also allocate business based, in part, upon the ability to make payment with "soft" or commission dollars, generally within the scope of Section 28(e) of the 1934 Act.

The Partnership will initially use one or two prime brokers, but may engage other brokers to provide similar services. A broker will not be excluded from receiving brokerage business merely because it has not been identified as providing research services.

The investment information received from brokers may be used by the General Partner in servicing other entities to which the General Partner provides investment advice and all such information need not be used by the General Partner in connection with the Partnership.

CERTAIN RISK FACTORS

Prospective Limited Partners should consider the following factors in determining whether an investment in the Partnership is a suitable investment:

General Risks

General

The transactions in which the Partnership will generally engage involve significant risks. No assurance can be given that Limited Partners will realize a profit on their investment. Moreover, each Limited Partner may lose some or all of its investment. Because of the nature of the Partnership's investment activities, the results of the Partnership's operations may fluctuate from month to month and from period to period. Accordingly, investors should understand that the results of a particular period will not necessarily be indicative of results in future periods.

Start-Up Period

The Partnership will encounter a start-up period during which it will incur certain risks relating to the investment of its assets and may commence trading operations at an unfavorable time. Moreover, the start-up period also represents a special risk because the level of diversification of the Partnership's

portfolio may be lower than in a fully committed portfolio. The General Partner may employ different strategies for moving to a fully committed portfolio. These strategies will be based in part on a judgment of market conditions. No assurance can be given that these strategies will be successful.

Operating History

The Managing Member of the General Partner, who is responsible for investing the Partnership's assets, has not previously operated an independent private investment fund. Furthermore, the Partnership is a newly formed entity and has no operating history upon which investors can evaluate the likely performance of the Partnership.

Limited Liquidity; No Current Income

Transfers of Limited Partnership Interests are restricted and require the General Partner's consent. In addition, there is no active market for the Limited Partnership Interests. Accordingly, the Limited Partnership Interests may generally only be disposed of through the redemption or assignment procedures set forth in the Limited Partnership Agreement, unless such redemption or assignment is pursuant to operation of law. Redemption requests by Limited Partners are subject to an initial twelve (12) month lock-up period ("Lock-Up Period") and for Redemption Requests thereafter, ninety - five (95%) of the amount so redeemed will be paid within 10 business days of the end of the second calendar quarter following the Redemption Request (such quarter end being the "Redemption Valuation Date") and the balance within thirty (30) business days of the receipt by the Partnership of its next succeeding annual audited statements.

However, if Redemption Requests received by the General Partner from Limited Partners, after being subject to the Lock - Up Period, are in an aggregate amount more than ten percent (10%) of the Capital Accounts of all Limited Partners in the Partnership, the General Partner may, in its discretion, reduce each request for redemptions pursuant to such Redemption Notices pro-rata, so that redemptions are equal to ten percent (10%) of all of the Capital Accounts in the Partnership.. A redeeming Limited Partner whose Redemption Request is so reduced will be deemed to have submitted a Redemption Request to have the remaining balance as specified in the original Redemption Request withdrawn on the next following redemption date, on a priority basis and without the need to submit a further Redemption Request; provided, however, that redemptions shall always be subject to the discretion of the General Partner to reduce each request for redemptions pursuant to each Redemption Request on a pro rata basis to ensure that no more than ten percent (10%) of the Capital Accounts of the Partnership shall be withdrawn during any next following redemption date, unless the General Partner otherwise determines.

Initial Offering Period and Initial Closing.

The Partnership will have an initial offering period (the "Initial Offering Period") which will be the period during which such initial capital contributions have been received by the Partnership, as the General Partner shall determine in its sole discretion. Thereupon, the General Partner will declare that the Initial Offering Period has been closed (the "Initial Closing"). After the Initial Offering Period, the General Partner may accept Capital Contributions on a different basis, including for example, by valuing those Capital Contributions at the Net Asset Value of the Partnership at the end of the calendar quarter (the "Calendar Quarter") on which they are received, which could mean that a Limited Partner entering the Partnership after the Initial Closing could have a different, and perhaps lower valuation on their Limited Partnership Interests than a Limited Partner entering the Partnership prior to commencement of the Initial Closing. In addition, in the event that a Limited Partner who subscribes to Limited Partnership Interests during the Initial Offering Period (the "Initial Limited Partner") has not realized an average annualized

ten percent (10%) during the earlier of two (2) years from the date of a Limited Partner's Initial Capital Contribution or a complete withdrawal from the Partnership (the "Measuring Period"), computed at the rate of two and one – half percent (2.5%) per Calendar Quarter, net of all Partnership expenses, including the Management Fee (as defined herein) and thereafter, the Performance Allocation and based upon the amount of such Initial Capital Contribution, the General Partner will reimburse the Performance Allocation received by the General Partner to the Capital Account of such Initial Limited Partner so that such Initial Limited Partner will have achieved an annualized ten percent (10%) return during such Measuring Period; provided however that the amount to be reimbursed to the Capital Account of a Limited Partner shall not exceed the total amount received by the General Partner as its Performance Allocation as of the date of such calculation. Therefore, there could be significant differences in the valuation of, and in the amount of distribution due on the Limited Partnership Interests issued to Limited Partners, depending on the date in which they subscribe to such Limited Partnership Interests.

Risk of Loss

An investment in the Partnership creates a risk of the loss of capital and is designed for sophisticated persons who are able to bear the risk of losing their entire investment. The General Partner believes that the Partnership's investment program and research techniques moderate this risk to some degree, but can make no warranty or representation in this regard. In addition, The Partnership's investment policies should be considered speculative, as there can be no assurance that the General Partner's assessments of the short-term or long-term prospects of its investments will generate a profit. In view of the fact that the Partnership will likely not pay dividends, and an investment in the Partnership is not suitable for investors seeking current income for financial or tax planning purposes.

Concentration of Investments

The Partnership's assets will be concentrated in SO Investments. Should SO Investments become subject to adverse financial conditions, the Partnership's assets would not be afforded the protection otherwise available through greater diversification of its investments. In addition, the Partnership's SO Investments may be concentrated within a particular group of issuers and if those issuers became subject to adverse financial conditions, then the Partnership could then be adversely affected.

Short Selling

The General Partner is authorized to enter into the short sale of securities on behalf of the Partnership. The Partnership may sell short securities of an issuer in the expectation of covering the short sale with securities purchased in the open market at a price lower than that received from the short sale. If the price of the issuer's securities declines, the Partnership will then cover its short position with securities purchased in the market, with the profit realized on the short sale being the difference between the prices received from the sale and the cost of the securities purchased to cover the sale.

The possible losses to the Partnership from selling securities short differ from losses that could be incurred from a cash investment in the securities; the former may be unlimited, whereas the latter can only equal the total amount of the cash investment. Short selling activities are also subject to restrictions imposed by United States securities laws and the various United States securities exchanges, which restrictions may adversely affect the investment activities of the Partnership.

Put and Call Options

Options trading is a highly specialized activity which entails greater than ordinary investment risk. Options may be more volatile than the underlying instruments, and therefore, on a percentage basis, an investment in options may be subject to greater fluctuation than an investment in the underlying instruments themselves. There are several additional risks associated with transactions in options. For example, there are significant differences between the securities, and options market that could result in an imperfect correlation between these markets, causing a given transaction not to achieve its investment objectives. In addition, a liquid secondary market for particular options, whether traded over-the-counter or on an exchange may be absent for reasons which include the following: there may be insufficient trading interest in certain options; restrictions may be imposed by an exchange on opening transactions or closing transactions or both; trading halts, suspensions or other restrictions may be imposed with respect to particular classes or series of options or underlying securities or currencies; unusual or unforeseen circumstances may interrupt normal operations on an exchange; the facilities of an exchange or the Options Clearing Corporation may not at all times be adequate to handle current trading value; or one or more exchanges could, for economic or other reasons, decide or be compelled at some future date to discontinue the trading of options (or a particular class or series of options) causing such market to cease to exist, although outstanding options that had been issued by the Options Clearing Corporation as a result of trades on that exchange would continue to be exercisable in accordance with their terms.

Credit Default Swaps

The Partnership has the ability to buy or sell credit derivatives, examples of which include credit default swap agreements and credit-linked notes. Credit derivatives are contracts that transfer price, spread and/or default risks of debt and other instruments from one party to another. Such instruments may include one or more debtors. Payments under credit derivatives may be made during the exercise period of the contracts. Payments under many credit derivatives are triggered by credit events such as bankruptcy, default, restructuring, failure to pay, cross default or acceleration, etc. Such payments may be for notional amounts, actual losses or amounts determined by formula.

A credit default swap agreement is structured as a swap agreement. The "buyer" in a credit default swap agreement is obligated to pay the "seller" a periodic stream of payments over the term of the contract in return for a contingent payment upon the occurrence of a credit event with respect to an underlying reference obligation. Generally, a credit event means bankruptcy, failure to pay, obligation acceleration or modified restructuring. If a credit event occurs, the seller typically must pay the contingent payment to the buyer, which is typically the "par value" (full notional value) of the reference obligation. The contingent payment may be a cash settlement or by a physical delivery of the reference obligation in return for payment of the face amount of the obligation. The Partnership may be either the buyer or seller in the transaction. If the Partnership is a buyer and no credit event occurs, the Partnership may lose its investment and recover nothing. However, if a credit event occurs, the buyer typically receives full notional value for a reference obligation that may have little or no value. As a seller, the Partnership receives a fixed rate of income throughout the term of the contract, which typically is between one month and several years, provided that no credit event occurs. If a credit event occurs, the seller must pay the buyer the full notional value in exchange for a reference obligation that may have little or no value.

The market for credit derivatives may be illiquid and there are considerable risks that it may be difficult to either buy or sell the instruments as needed or at reasonable prices. Sellers of credit derivatives carry the inherent price, spread and default risks of the debt instruments covered by the derivative instruments. Buyers of credit derivatives carry the risk of non-performance by the seller due to inability to pay. There are also risks with respect to credit derivatives in determining whether an event will trigger payment

under the derivative and whether such payment will offset the loss or payment due under another instrument. In the past, buyers and sellers of credit derivatives have found that a trigger event in one contract may not match the trigger event in another contract, exposing the buyer or the seller to further risk.

Leverage

The General Partner is authorized to use leverage on behalf of the Partnership. The Partnership may borrow from banks, brokerage firms and other institutions, commonly known as margin, at prevailing interest rates and invest such funds in additional securities. The Partnership may also borrow money from other sources, both secured and unsecured. Gains made with additional funds borrowed will generally cause the Net Asset Value of the Partnership's portfolio to rise faster than would be the case without borrowing. Conversely, if investment results fail to cover the cost of borrowing, the Net Asset Value of the Partnership's portfolio could decrease faster than if there had been no borrowing. In connection with borrowing limited by applicable margin limitations imposed by the Federal Reserve Board and margin limitations imposed by the brokerage firms themselves, the Partnership may be required to reduce such borrowing on a timely basis in the event the value of the Partnership's assets falls below the coverage requirement of the margin limitations. In the event of such a required reduction of borrowing, the Partnership could be required to liquidate securities positions at times when it might not be desirable or advantageous from the Partnership's standpoint to do so.

Changes in Investment Strategies

The General Partner reserves the right to change or modify the Partnership's Investment Objective upon notice to each Limited Partner; provided however, that prior to the effectiveness of such change in Investment Objective, each Limited Partner shall be given the right to withdraw from the Partnership. Thus, the investment strategies of the General Partner may be altered without the prior approval of the Limited Partners if the General Partner determines that such change is in the best interests of the Partnership. Any such decision to engage in a new activity could result in the exposure of the Partnership's capital to additional risks that may be substantial.

Investments in "New Issues"

The Partnership may invest in new issues, as defined in the Conduct Rules of the Financial Industry Regulatory Authority (the "FINRA"). Subject to certain ten percent (10%) de minimis restrictions, those Limited Partners that are not "restricted," as defined by the FINRA, may participate in the receipt of new issues. To the extent that a potential Limited Partner is restricted, an investment in the Partnership may not yield the same performance results as may be achieved by investors who are entitled to receive new issues.

Counterparty and Broker Credit Risk

Certain assets of the Partnership will be exposed to the credit risk of the counterparties with whom, or the dealers, brokers and exchanges through which, the General Partner deals, or of parties which have general custody of the assets of the Partnership, whether the General Partner engages in exchange-traded or off-exchange transactions. The Partnership may be subject to the risk of loss of its assets on deposit with or in the custody of a broker in the event of the broker's bankruptcy, the bankruptcy of any clearing broker through which the broker executes and clears transactions on behalf of the Partnership, or the bankruptcy of an exchange clearing house. In the case of any such bankruptcy, the Partnership might recover, even in

respect of property specifically traceable to the Partnership, only a pro rata share of all property available for distribution to all of the broker's customers. Such an amount may be less than the amounts owed to the Partnership. Such events would have an adverse effect on the Partnership's Net Asset Value.

With respect to the General Partner's trading of securities, option contracts or other principal transactions, the General Partner will be subject to the risk of the inability or refusal to perform with respect to such transactions on the part of the principals with which the General Partner trades. Any such failure or refusal, whether due to insolvency, bankruptcy or other causes, could subject the Partnership to substantial losses. The Partnership may not be excused from performance on any such transactions due to the default of third parties in respect of other trades which in the General Partner's trading strategy were to have substantially offset such transactions.

Performance Allocation and Management Fee

The Performance Allocation allocable to the General Partner may create an incentive for the General Partner to cause the Partnership to make investments that are riskier or more speculative than would be the case if this Performance Allocation were not available. In addition, since the Performance Allocation is calculated on a basis that includes unrealized appreciation of the Partnership's assets, it may be greater than if such allocation were based solely on realized gains.

The General Partner reserves the right, in its sole discretion, to reduce or waive the Performance Allocation or Management Fee to the General Partner, its Affiliates or strategic investors.

Investment Restrictions on Certain Limited Partners

Certain prospective Limited Partners (such as tax-exempt foundations and employee benefit plans) may be subject to federal and state laws, rules and regulations which may regulate their participation in the Partnership, or their engaging directly, or indirectly through an investment in the Partnership, in investment strategies of the types which the Partnership may utilize from time to time (e.g., short sales of securities, the use of leverage, the purchase and sale of options and limiting the diversification of assets). Such investors should consult with their professional advisors prior to making an investment in the Partnership.

Tax Risks and Payment of Taxes

There are a number of tax risks associated with an investment in the Partnership. In particular, Limited Partners should be aware that they will be taxed annually on the Partnership's income and realized gains, if any, whether or not they receive any distributions from the Partnership and whether or not their investment has increased in value. The General Partner does not intend to make regular annual cash distributions to the Limited Partners. In addition, the Partnership's tax treatment could be challenged and if any such challenge were successful, it may result in adverse tax consequences to the Limited Partners.

Audit Risks

An audit of a tax return of the Partnership by a Federal or State tax authority for any given year might result in an adjustment to a Limited Partner's tax liability for the year in question. Furthermore, such an audit might result in the audit of the tax return of each Limited Partner and could result in the adjustment of items not related to the Partnership as well as items related to the Partnership. The cost of an audit, if

any, at the Partnership level will be borne by the Partnership. However, the cost of any resulting audits of a Limited Partner will be borne solely by the affected Limited Partner.

Reliance on the General Partner

The success of the Partnership is heavily dependent on the activities, judgment and availability of the members of the General Partner, including the Managing Member. An investor in the Partnership must rely upon the ability of the General Partner to make investment decisions consistent with the Partnership's investment objectives and policies. Investors may not have the opportunity to personally evaluate the relevant economic, financial and other information that the General Partner will use when selecting and monitoring investments.

Non-Disclosure of Positions

In an effort to protect the confidentiality of its positions, the Partnership generally may not disclose its positions to partners on an ongoing basis, except as may be required under GAAP, although the General Partner, in its sole discretion, may permit such disclosure on a selected basis to certain partners, if the General Partner determines that there are sufficient confidentiality agreements and disclosures in place.

Other Activities

The Managing Member of the General Partner will devote such time to manage the Partnership as he, in his sole discretion, deems necessary. Any members of the General Partner, including the Managing Member may invest in, have investment responsibilities for, render investment advice to or perform other services, including investment advisory services, for personal and family accounts, house accounts, managed accounts for individuals or entities, including, without limitation, other investment partnerships. The activities of such other accounts may be similar to or may differ from the activities of the Partnership, and neither the Partnership nor the Limited Partners shall have any rights in respect of investments for, and profits or other income earned from, such accounts.

As a result of the foregoing, the General Partner and/or its Affiliate(s) may have conflicts of interest in: (i) allocating their time and activity among the Partnership and other entities; (ii) allocating investments among the Partnership and other entities; and (iii) effecting transactions among the Partnership and other entities, including ones in which the General Partner and/or its Affiliate(s) may have a greater financial interest.

The General Partner and/or its Affiliate(s) may give advice or take action with respect to such other entities or accounts that differs from the advice given with respect to the Partnership. To the extent a particular investment is suitable for both the Partnership and other clients of the General Partner and/or its Affiliate(s), such investments will be allocated between the Partnership and the other clients in a manner that the General Partner determines to be fair and equitable under the circumstances to all clients, including the Partnership.

The General Partner evaluates, for the Partnership and any other entities it may be involved with, a variety of factors that may be relevant in determining whether a particular situation or strategy is appropriate or feasible for the Partnership or a particular entity at a particular time, including the nature of the investment opportunity taken in the context of other available investment opportunities, the investment or regulatory limitations on the Partnership or particular entity and the transaction costs involved. Because these considerations may differ for the Partnership and other entities in the context of

any particular investment opportunity, investment activities of the Partnership and other entities may differ considerably from time to time.

No Authority by Limited Partners

Decisions with respect to the management of the Partnership's assets and the overall management of the Partnership will be made by the General Partner. Limited Partners will have no right or power to take part in the management of the Partnership. As a result, the success of the Partnership for the foreseeable future depends largely upon the abilities of the General Partner and its Affiliates.

RISKS ASSOCIATED WITH THE PARTNERSHIP'S INVESTMENT STRATEGY

Limited Track Record. Unproven Investment Strategy

The Partnership's investment strategy is unique, unusual and unproven. Upon the commencement of the Partnership, the General Partner was not aware of any other fund that is pursuing the same investment strategy as the Partnership. There can be no assurance that the investment strategy of the Partnership will be realized, in whole or in part, or that any gains will be made by the Partnership as a result of its investment strategy. In fact, losses in whole or in part, whether or not anticipated, could and may occur. In addition, objections to the Partnership's strategy and its implementation, whether or not presently anticipated, could arise by various third persons or parties, federal, state or local regulatory or similar bodies or otherwise, which could frustrate or defeat the Partnership's investment strategy.

Availability of SO Investments

SO Investments are predominantly held by retail investors. The availability of SO Investments at any given time is unpredictable and subject to significant variation. The secondary market for SO Investments, which represents the primary focus of the Partnership's Investment Strategy, is characterized by a lack of liquidity, small lot sizes, opaque trading with few market makers, wide bid-offer spreads and sporadic trading volumes and availability of supply, often driven by retail investor sentiment. The Partnership's ability to access SO Investments for investment purposes may be limited.

Supply of SO Investments Trading at a Discount to Par

The success of the Partnership's investment strategy depends on its ability to purchase securities at a price which yields an attractive return to the expected redemption date. A major driver of returns is the ability to purchase SO Investments at a discount to par. If the Partnership is unable to purchase a sufficient quantity of SO Investments at a discount to par, its returns would suffer.

Availability of Participants

The Partnership's investment strategy hinges on purchasing SO Investments in Joint Accounts with terminally ill Participants. Issuers of SO Investments, including all issuers of survivor's option corporate bonds, sometimes place restrictions on the amount that can be put back to the issuer on behalf of any single decedent ("Individual Put Limitation") in a particular year. The Individual Put Limitation has the effect of limiting the amount of capital that can be invested in a joint account with a single participant. As such, the Partnership will need to find multiple Participants to fully deploy its capital. There is no assurance that there will be sufficient availability of Participants for the Partnership to fully deploy its capital. If the Partnership is unable to find a suitable number of Participant's, its returns could be adversely affected.

Longevity of Participants

The duration of the Partnership's investments and the underlying returns generated through its investment strategy are impacted by the longevity of Participants. Participants may live longer than expected, which could delay the Partnership's realization on its investments and adversely impact the Partnership's returns.

The investment strategy for the Partnership is to acquire the SO Investments in Joint Accounts with the Managing Member and others serving as nominee owners on the Joint Accounts on behalf of the Partnership. If a Participant outlives any Nominee, there is an increased risk that the investments in that particular joint account may be lost by the Partnership.

Posture of Issuers, Trustees and Brokerage Firms toward the Investment Strategy

The prospectus for a particular SO Investment contains the guidelines, procedures and limitations which apply to the exercise of the survivor's option feature for a particular issuer and issue. It is unclear whether any of the issuers of the SO Investments ever contemplated the Partnership's investment strategy when they drafted their prospectuses. While the General Partner believes that its strategy conforms with the prospectus guidelines and represents a valid survivor's option redemption, there is a possibility that issuers and trustees may take a contrary view. If so, the Partnership could incur legal expenses to force issuers and trustees to redeem the SO Investments. This would have the effect of extending the timing of redemptions and lowering the Partnership's returns. The Partnership could also be exposed to an adverse judgment in favor of the issuers which might preclude or severely limit the ability of the Partnership to successfully redeem it SO Investments on an ongoing basis. This would have an adverse impact on the Partnership.

In addition to legal actions which issuers might undertake, it is also possible that issuers may elect to modify the prospectus language related to the survivor's option provision with respect to new issues going forward. Such a step would have the effect of reducing the supply of SO Investments which the Partnership could purchase, could limit the time period over which the investment strategy could be effectively implemented and/or could limit the Partnership's opportunity for continuing purchases.

It is possible that brokerage firms with whom the Partnership does business may not wish to be associated with the Partnership's investment strategy due to perceived adverse publicity risks. This could have the effect of limiting the number of brokerage firms available to the Partnership and may create disruptions to the Partnership's investment strategy to the extent the Partnership has difficulty finding alternative brokerage firms willing to carry the Joint Accounts.

Participant Counterparty Risk

The Participant Agreement fully discloses the transaction to the Participant and includes certain provisions to protect and indemnify the Partnership from certain actions taken by the Participant. A breach by a Participant of the terms of the Participant Agreement could adversely affect the Partnership. A Participant usually has limited financial resources and, accordingly, no assurance can be given that the Partnership will be able to successfully impose such indemnity provision and collect from the Participant based thereon in the event that the Participant breaches any provision in the Participant Agreement intended to protect the Partnership. In addition, the Participant or Participant's estate may seek to contest the Participant Agreement in order to receive additional compensation from the Partnership. If so, the Partnership could incur legal expenses to defend such claims and could also be exposed to an adverse judgment in favor of the Participant.

Redemption Timing

Some issuers of SO Investments, and all issuers in the survivor's option corporate bond market, place certain restrictions on the amount of SO Investments that can be redeemed in a given year on behalf of an individual decedent ("Individual Put Limitation") and on behalf of all decedents ("Aggregate Put Limitation"). These limitations, if hit, would have the effect of lengthening the duration of the Partnership's investments, increasing the risk associated with its investments (because the Partnership would be exposed to credit risk, interest rate risk and other risks for a longer duration than expected) and lowering the annualized return from its investment strategy.

Lack of Liquidity of SO Investments

SO Investments are largely held by retail investors and secondary market liquidity is usually low as compared to institutionally held securities. The secondary market for SO Investments is characterized by limited liquidity, few market makers, fluctuating supply and demand, and wide bid-ask spreads. The Partnership's investment strategy mitigates this lack of liquidity since SO Investments are redeemed for cash by the issuer rather than sold into the market. However, there may be certain instances where the Partnership may need to liquidate SO Investments in the market due to, among other things, issuer-specific credit concerns, Aggregate Put Limits, margin calls from lenders, disputes with issuers and trustees and/or adverse actions taken by Participants. If the Partnership sold SO Investments into the market, its returns could be adversely affected.

Public Relations Risk Associated with the Investment Strategy

Because of the nature of the Partnership's investment strategy, there is a risk that the Partnership could receive unflattering media attention. Such exposure increases the likelihood that the Partnership's investment strategy could undergo greater scrutiny by issuers, trustees, brokerage firms and others. This could have an adverse impact on the Partnership.

RISKS ASSOCIATED WITH JTWROS ACCOUNTS

The investment strategy for the Partnership is to acquire the SO Investments in joint tenancy accounts with rights of survivorship ("JTWROS") which will be managed by Nominees on behalf of the Partnership. In the United States, assets that are titled JTWROS generally pass directly to the surviving joint owners and are not part of the decedent's estate. The Partnership will generally conduct due diligence on the financial position and credit-worthiness of Participants and will generally select Participants who have a limited amount of assets and debts.

Exposure to Debts of Participant

The Participant may have debts which cannot be satisfied out of the assets of the Participant's estate. Various states provide differing rights with respect to third – party creditors of joint tenants, including the ability to exercise rights against joint property in which a Participant had rights during their lifetime. This area is complex and will depend upon differing state interpretations with respect to creditor rights, and debtor/creditor relationships. As such, there is a possibility that a creditor or creditors of the Participant may seek repayment of a Participant's debt out of Participant's share of the joint account value. The General Partner believes that such claims would be meritless because the Participant provided no consideration for their share of the joint account and the Participant's creditors benefitted from the arrangement. However, there have been limited situations where creditors have successfully collected on

a debt from a surviving owner of a joint account. While the General Partner believes that risks associated with an exposure to a Participant's creditors are extremely low, no assurance can be given that a creditor would not be successful in obtaining a judgment ordering that a Participant's debt be satisfied out of the proceeds of the joint account. No assurance can be given that under state law, preference will not be given to a Participant's creditors with respect to the properties subject to the JTWROS structure. Any judgment in favor of a Participant's creditors could adversely affect the Partnership and any preference given under state law to third party creditors could cause the Partnership's claim with respect to proceeds of the JTWROS to be defeated, either in whole or in part. In addition, despite the General Partner's due diligence associated with a particular Participant, there could be a wide variety of financial obligations that are unknown to the Participant or known but not disclosed to the Partnership at the time of entering into the JTWROS with the Participant.

Claims by the Internal Revenue Service ("IRS") and/or state or local governments

The IRS or state or local taxing authority may require proof that a Participant did not provide some of the consideration for the investments in the JTWROS before determining that any portion of the JTWROS should not be included in a Participant's taxable estate at the federal, state or local level. If it is determined that consideration was provided, such could result in a dispute between the estate of a Participant, the Partnership and the taxing authority relating to the ownership of the assets owned by the JTWROS. Any such dispute may be difficult to resolve and may defeat the Partnership claim to the proceeds of the JTWROS.

Unknown Obligations on the JTWROS Account

There will be an executed agreement between the Participant, the Partnership and the Nominees with respect to the terms, conditions and operation of their overall relationship, including with respect to the JTWROS. Notwithstanding any prior admonition against such conduct by the Participant, there can be no assurance that a Participant will not create obligations with respect to the JTWROS which are unknown to the General Partner and which arise after the death of the Participant, and which would cause to defeat or reduce the Partnership's claim with respect to the JTWROS.

ADDITIONAL UNFORESEEN RISKS

THE DISCUSSION OF RISKS ABOVE IS NOT INTENDED TO BE AN ALL INCLUSIVE DISCUSSION OF ALL RISKS ASSOCIATED WITH AN INVESTMENT IN THE PARTNERSHIP AND INCLUDE ONLY POSSIBLE RISKS KNOWN TO THE PARTNERSHIP AND THE GENERAL PARTNER AT THIS TIME. THE GENERAL PARTNER BELIEVES THAT THE PARTNERSHIP IS THE FIRST FUND TO PURSUE THE INVESTMENT STRATEGY. THE GENERAL PARTNER HAS MADE A GOOD FAITH EFFORT TO DISCLOSE ALL OF THE MATERIAL RISKS ASSOCIATED WITH THE PARTNERSHIP'S INVESTMENT STRATEGY. HOWEVER, AS IS THE CASE WITH ANY NEW AND UNPROVEN INVESTMENT STRATEGY, THERE CAN BE NO ASSURANCE THAT THE FORGOING DISCUSSION OF RISK FACTORS IS COMPREHENSIVE OR COMPLETE. THERE MAY BE OTHER RISKS, WHETHER OR NOT FORESEEN, TO THE PARTNERSHIP'S INVESTMENT STRATEGY. THESE RISKS MAY BE SIGNIFICANT AND THEY COULD HAVE AN ADVERSE AFFECT ON THE PARTNERSHIP.

REGULATORY MATTERS

The Partnership is neither registered as an investment company under the 1940 Act nor is the General Partner registered as investment advisors under the Advisers Act, but may so register in the future.

TAX ASPECTS

The General Partner believes that the Partnership will be treated as a partnership and not a corporation for federal income tax purposes. The tax discussion below relates to rules and regulations which are currently in effect and which are subject to change.

Filing of Tax Returns

The Managing Member of the General Partner will be the "Tax Matters Partner" and will determine, among other things, how to report the Partnership items on the Partnership's tax returns. All Limited Partners will be required under the Code to treat the items consistently on their own returns, unless they file a statement with the Internal Revenue Service disclosing the inconsistency. In the event the income tax returns of the Partnership are audited, the Partnership's income and deductions will generally be determined at the Partnership level in a single proceeding rather than by individual audits of the Limited Partners. The General Partner will have considerable authority to make decisions affecting the tax treatment and procedural rights of all of the Limited Partners. In addition, the Managing Member, acting as the Tax Matters Partner, will have the right, on behalf of all of the Limited Partners, to extend the statute of limitations relating to the Limited Partners' tax liability with respect to the Partnership items.

The Partnership will file an annual federal partnership information tax return. Following the end of each fiscal year of the Partnership, each Limited Partner will be sent a report setting forth its share for tax purposes of, among other things, the Partnership's capital gain or loss, and all other items of operating profit or loss and dividend income.

Allocation for Tax and Related Purposes

All allocations for tax purposes shall be made pursuant to the principles of the Code and in conformity with Treasury regulations promulgated thereunder or the successor provisions to any section or regulation.

In the event a Limited Partner withdraws all of its Capital Account, the General Partner may, in its sole discretion, make a special allocation to said Limited Partner for Federal income tax purposes of the capital gains or capital losses realized by the Partnership in such a manner as will reduce the amount, if any, by which such Limited Partner's Capital Account exceeds or is less than, as applicable, its Federal income tax basis in its interest in the Partnership before such allocation.

Partnership Engaged in Trade or Business

If the Partnership is deemed to be engaged in a trade or business for US federal income tax purposes, a Limited Partner who is an individual will be able to deduct his share of the Partnership's expenses without regard to a limitation on miscellaneous itemized deductions. If the Partnership is instead considered to be engaged in an investment activity, a Limited Partner who is an individual will be able to deduct his share of the Partnership's expenses only to the extent that these expenses (together with other miscellaneous itemized deductions of an individual Limited Partner) exceed two percent (2%) of that

Limited Partner's adjusted gross income. In addition, these expenses will not be deductible in computing the alternative minimum taxable income for purposes of the alternative minimum tax.

Whether the Partnership is deemed to be engaged in a trade or business or in an investment activity depends on the nature and extent of the Partnership's trading activity in any taxable year. Based upon the Partnership's planned investment program, the Partnership may take the position that it is engaged in a trade or business.

However, because the issue will largely be resolved on an analysis of facts, many of which will be known only in the future, and because the legal standards that would be applied in assessing these facts are unclear, there can be no assurance that the Partnership will be considered to be engaged in a trade or business in future periods or that the position would be sustained in the event of an audit by the Internal Revenue Service. Should the Partnership's planned investment program change significantly, however, the Partnership may take the position that it is not engaged in a trade or business but is engaged in an investment activity.

Contribution of Securities

The General Partner may, in its discretion, permit the Initial Capital Contribution to be made in securities. In general, contributions of appreciated securities to investment partnerships that result in a diversification of the transferor's interest generate taxable gain to the transferor. The Internal Revenue Service has issued regulations that contain a safe harbor test for determining when diversification exists. The regulations provide that contributions of already diversified portfolios would not violate the diversification test. Already diversified portfolios are those portfolios where no more than twenty-five percent (25%) of the value of the portfolio is composed of the stock and securities of any one issuer and no more than fifty one percent (51%) of the value of the portfolio is invested in the stock and securities of five (5) or fewer issuers. The safe harbor exception is available to corporate and non-corporate transferors.

Non-US Investors

A non-US individual or entity which becomes a Limited Partner in the Partnership will be subject to US income tax withholding with respect to dividends and certain interest income applicable to such Limited Partner.

A non-US person or entity considering an investment in the Partnership should consult his/her or its own tax advisors with respect to the specific tax consequences to such person of such an investment under United States federal, state and local income tax laws, and with respect to the treatment of income and gain from such investment under the tax laws of any foreign jurisdiction in which such person is subject to tax.

THIS CONFIDENTIAL OFFERING MEMORANDUM DOES NOT SET FORTH COMPLETE INFORMATION RELATING TO THE TAX EFFECTS OF AN INVESTMENT IN THE PARTNERSHIP.

EACH PROSPECTIVE LIMITED PARTNER SHOULD CONSULT WITH ITS OWN COUNSEL, ACCOUNTANTS AND OTHER ADVISORS AS TO THE FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF ITS INVESTMENT IN THE PARTNERSHIP, WHICH MAY DIFFER SUBSTANTIALLY FOR DIFFERENT TYPES OF TAX PAYERS (INDIVIDUALS, CORPORATIONS, ETC.) IN PARTICULAR, INVESTMENT IN THE PARTNERSHIP BY ENTITIES

SUBJECT TO ERISA AND BY OTHER TAX EXEMPT ENTITIES REQUIRES SPECIAL CONSIDERATION. TRUSTEES OR ADMINISTRATORS OF SUCH ENTITIES ARE URGED TO CAREFULLY REVIEW THE MATTERS DISCUSSED IN THIS MEMORANDUM. SINCE THE PARTNERSHIP IS PERMITTED TO BORROW, TAX EXEMPT LIMITED PARTNERS MAY INCUR SOME INCOME TAX LIABILITY TO THE EXTENT OF THEIR SHARE OF "UNRELATED BUSINESS TAXABLE INCOME."

FISCAL YEAR

The Partnership will close its fiscal year on December 31 of each calendar year.

ERISA CONSIDERATIONS

General

When deciding whether to invest a portion of the assets of a qualified profit-sharing, pension or other retirement trust in the Partnership, a fiduciary should consider whether: (i) the investment is in Compliance with the documents governing the particular plan; (ii) the investment satisfies the diversification requirements of Section 404(a)(1)(c) of Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and (iii) the investment is prudent and in the exclusive interest of participants and beneficiaries of the plan.

Plan Assets

Under ERISA, whether the assets of the Partnership are considered "plan assets" is also critical. ERISA generally requires that "plan assets" be held in trust and that the trustee or a duly authorized investment manager have exclusive authority and discretion to manage and control the assets.

ERISA also imposes certain duties on persons who are "fiduciaries" of employee benefit plans and prohibits certain transactions between such plans and parties in interest (including fiduciaries) with respect to the assets of such plans. Under ERISA and the Code, "fiduciaries" with respect to a plan include persons who: (i) have any power of control, management or disposition over the funds or other property of the plan; (ii) actually provide investment advice for a fee; or (iii) have discretion with regard to plan administration.

If the underlying assets of the Partnership are considered to be "plan assets," then the General Partner could be considered a fiduciary with respect to an investing employee benefit plan, and various transactions between the General Partner or any affiliate and the Partnership, such as the payment of fees to the General Partner, might result in prohibited transactions. A regulation adopted by the Department of Labor generally defines plan assets as not to include the underlying assets of the issuer of the securities held by a plan. However, where a plan acquires an equity interest in an entity that is neither a publicly offered security nor a security issued by certain registered investment companies, the plan's assets include both the equity interest and an undivided interest in each of the underlying assets of the entity unless: (i) the entity is an operating company, or; (ii) equity participation in the entity by benefit plan investors (as defined in the regulations) is not significant (i.e., less than twenty-five percent (25%) of any class of equity interests in the entity is held by benefit plan investors). Benefit plan investors are not expected to acquire twenty-five percent (25%) or more of the Limited Partnership Interests. The General Partner may preclude significant investment in the Partnership by such plans. Employee benefit plans (including

IRAs), however, are urged to consult with their legal advisors before subscribing for the purchase of Limited Partnership Interests.

Unrelated Business Taxable Income

The Partnership may derive income that would be considered unrelated business taxable income, as defined in Section 512(a) of the Code, if derived directly by a Limited Partner exempt from taxation. Under Section 511(a) of the Code, such Limited Partner's allocable share of such income is taxable. In addition, a Limited Partner that is a tax-exempt organization described in Section 511(a) will be taxed with respect to its "unrelated debt financed income" pursuant to Section 514 of the Code. If, and to the extent the Partnership borrows to finance its securities transactions, a tax-exempt investor will be taxed on all the debt-financed portion of its income from an investment in the Partnership. Each such potential investor is urged to consult its own tax advisor with respect to the tax consequences of an investment in the Partnership.

ACCEPTANCE OF SUBSCRIPTIONS ON BEHALF OF EMPLOYEE BENEFIT PLANS IS IN NO RESPECT A REPRESENTATION BY THE GENERAL PARTNER OR THE PARTNERSHIP THAT THIS INVESTMENT MEETS ALL RELEVANT LEGAL REQUIREMENTS WITH RESPECT TO INVESTMENTS BY ANY PARTICULAR PLAN OR THAT THIS INVESTMENT IS APPROPRIATE FOR ANY PARTICULAR PLAN.

OUTLINE OF SELECTED ITEMS IN THE LIMITED PARTNERSHIP AGREEMENT

The following outline of the Limited Partnership Agreement briefly summarizes certain major provisions, some of which are not discussed elsewhere in this Memorandum. This outline is not definitive and each prospective Limited Partner should carefully read the Limited Partnership Agreement, annexed hereto as Exhibit A, in its entirety. Terms used in the following outline that are not otherwise defined shall have the meanings ascribed to them in the Limited Partnership Agreement.

Limited Liability

A Limited Partner will be liable for debts and obligations of the Partnership only to the extent of its Limited Partnership Interest in the Partnership in the Fiscal Period (as defined below) to which such debts and obligations are attributable. A Limited Partner who withdrew funds or received distributions from the Partnership representing, in whole or in part, a return of its Capital Contribution, is liable to the Partnership for any sum (but only to the extent of such returned amount, plus interest) necessary to discharge the liabilities of the Partnership to creditors who have extended credit or whose claims have arisen before such return.

For purposes of the Partnership Agreement, a "Fiscal Period" shall be the interval between the first day of a fiscal year or any Interim Date and the: (i) earlier of the date before the next Interim Date; (ii) the date of the complete or partial withdrawal of a Limited Partner; or (iii) the beginning of the next Fiscal Year . An "Interim Date" shall be the first day of each calendar month or such other dates as the General Partner may determine in its sole discretion to accept additional Capital Contributions or to admit new Limited Partners.

Term

The Partnership will terminate on the earlier of: (i) January 2060; (ii) a determination by the General Partner that the Partnership should dissolve; (iii) the insolvency, bankruptcy or dissolution of the General Partner; (iv) the death or disability of all principal(s) of the General Partner; (v) the withdrawal of the General Partner unless, upon said withdrawal, the Limited Partners select a General Partner to continue the Partnership; or (vi) any other event causing the dissolution under the laws of the State of Delaware.

Capital Accounts

Each Partner will have a Capital Account maintained by the Partnership that will be credited with its Capital Contributions. A Partnership Percentage will be determined for each Partner for each Fiscal Period, by dividing its Capital Account, as of the beginning of such fiscal period by the aggregate Opening Capital Accounts of all Partners as of the beginning of such Fiscal Period.

Each Partner's Closing Capital Account will be calculated as of the last day of each Fiscal Period by crediting or debiting to such Capital Account, according to its respective Partnership Percentage, the difference between the total capital of all Partners at the beginning of such Fiscal Period and the total capital of all Partners as of the last day of such Fiscal Period, then making any Performance Allocation re-allocation (see below), if applicable: (i) on the last date of each Fiscal Period; or (ii) on an Interim Date; and then deducting any withdrawals made by each Partner.

Each Limited Partner will have a Maximum Capital Account maintained by the Partnership in order to calculate the Performance Allocation to which the General Partner is entitled (see below). Sometimes referred to as a "high water mark" for purposes of computing the General Partner's Performance Allocation, the Maximum Capital Account shall reflect a Limited Partner's actual Capital Contributions, reduced for any withdrawals and increased by any net appreciation.

Performance Allocation

The General Partner is granted a Performance Allocation in the event that there is an appreciation in the Capital Account of Limited Partners in an amount in excess of the Limited Partner's Capital Contributions, as adjusted for contributions, withdrawals and any appreciation which has been previously credited to such Limited Partner's Capital Account and which has been subject to a Performance Allocation (the "Maximum Capital Account"). To the extent that: (i) at the end of a Calendar Quarter; (ii) upon a Limited Partner's complete withdrawal; or (iii) in the General Partner's discretion, upon a partial withdrawal, a Limited Partner's Maximum Capital Account reflects increases due to the performance of the Partnership, a Performance Allocation will be allocated to the General Partner's Capital Account. The Performance Allocation will be an amount equal to thirty percent (30%) of the increase in a Limited Partner's Maximum Capital Account.

The General Partner's Performance Allocation will be computed each Calendar Quarter. In the event that an Initial Limited Partner has not realized an average annualized ten percent (10%) return during the Measuring Period, computed at the rate of two and one – half percent (2.5%) per Calendar Quarter, net of all Partnership expenses, including the Management Fee (as defined herein) and thereafter the Performance Allocation and based upon the amount of such Initial Capital Contribution, the General Partner will reimburse the Performance Allocation received by the General Partner to the Capital Account of such Initial Limited Partner so that the Initial Limited Partner will have achieved an annualized ten percent (10%) return during such Measuring Period; provided however that the amount to

be reimbursed to the Capital Account of a Limited Partner shall not exceed the total amount received by the General Partner as its Performance Allocation as of the date of such calculation.

The allocation will be based upon the Limited Partner's Maximum Capital Account from the date of the Initial Capital Contribution or prior calculation to the date of the current calculation. The General Partner reserves the right, in its sole discretion, to reduce or waive the Performance Allocation or Management Fee set forth herein in connection with a Limited Partnership Interest acquired by the General Partner, its Affiliates (as defined below) or strategic investors. "Affiliates" shall refer to the principal(s), affiliate(s), manager(s), member(s), officer(s), and employee(s), and next of kin related to the Managing Member of the General Partner.

Partnership Expenses and Management Fee

Each Limited Partner shall pay a fee to the General Partner or its designee, on the first day of each Calendar Quarter, in advance (the "Management Fee"), to be debited from the Capital Account of such Limited Partner, in an amount equal to .125% per Calendar Quarter, or 0.5% on an annualized basis of the Capital Account of each Limited Partner as of such date.

The Capital Account of a Limited Partner who makes a Capital Contribution or a withdrawal from their Capital Account on a date other than the first day of each Calendar Quarter will be charged a prorated Management Fee as of the date of such contribution.

The Partnership will pay, in addition to the Management Fee, all expenses associated with the Partnership's operations ("Reimbursable Expenses"), including, without limitation: (i) expenses related to the evaluation, acquisition or disposition of investments; (ii) Partnership expenses such as brokerage commissions, custody charges, trustee fees, financing costs, payments to Participants; (iii) research and investment management related services and equipment (including, without limitation, third party research services, telephone lines, telephone equipment, telephone service, news and quotation equipment, computer facilities, computer software and terminals, professional fees including on – going accounting and legal fees and expenses, overhead, rent, supplies, clerical services and salaries, and publications); (iv) interest and commitment fees on loans and debit balances; withholding and transfer taxes; governmental fees; marketing expenses, including travel and fees associated with research and professional conferences; and (v) such other necessary and appropriate costs and expenses necessary for the operation of the Partnership and its incurred operations.

The General Partner may use "soft" or commission dollars to pay for expenses of the Partnership in accordance with the research-related safe harbor within Section 28(e) of the 1934 Act.

The Capital Account of a Limited Partner who makes a Capital Contribution on a date other than the first day of each Calendar Quarter will be charged a prorated Management Fee as of the date of such contribution.

Purchase of "New Issues"

The Partnership has the right to invest in New Issues, as defined in the Conduct Rules of FINRA. Subject to certain ten percent (10%) de minimis restrictions, only those Limited Partners that are not "restricted," as defined by the FINRA, may participate in the receipt of New Issues. To the extent that a potential Limited Partner is restricted, an investment in the Partnership may not yield the same performance results as may be achieved by investors who are entitled to receive New Issues.

Valuation of Partnership Assets

The assets of the Partnership will be valued in accordance with the following policies and principles:

(a) securities listed on a national securities exchange or national market will be valued at their last sale price on its principal exchange or market on the date of determination, or if no sales occurred on such day, at the mean between the "bid" and "asked" prices on such day;

(b) any security which is not listed or quoted on any securities exchange or similar electronic system which are dealt in or traded through a clearing firm or through a financial institution and reported through FINRA's Trade Reporting and Compliance Engine (TRACE) or similar system will be valued at their last sale price on such day. If there were no sales on such day, then the General Partner will assign a fair value to the security based upon (a) sales of the security which occurred within the previous 5 trading days; (b) recent "bids" and "asks" for the security using market data sources deemed appropriate by the General Partner; (c) the most recent official price quoted by a clearing house or financial institution and (d) reviewing recent sales, "bids" and "asks" of similar securities of the same issuer .

(c) securities without an active trading market, will be assigned fair value by the General Partner based upon: (a) a comparison with market value for securities of similar companies; (b) recent sale prices; (c) investment risk and/or potential; (d) opinions of qualified investment bankers; (e) marketability (if any); and/or (f) such other factors as the General Partner, in its sole discretion, deems appropriate.

(d) Notwithstanding the forgoing, securities which are held in a joint account with a Participant who is deceased and for which the Partnership expects to redeem the security with the issuer in the ensuing twelve months, shall be valued at the higher of its market value as determined above or the redemption price.

(e) For securities whose settlement terms provide for the payment or receipt of accrued interest, the valuation as determined above will include accrued interest to the valuation date.

For purposes of the Limited Partnership Agreement, an "active trading market" will be deemed to be one for which prices are available for that security or substantially similar securities of the same issuer on NASDAQ, a national securities exchange, TRACE or similar system, or if not available from any of the above, from one or more dealers in the pink or yellow sheets or over the counter bond market on a reasonably consistent basis.

The General Partner's good faith determination, made in accordance with the terms of this Agreement, of the value of a security will be final and binding upon the Limited Partners and their representatives.

For financial statement purposes, the General Partner is permitted to make certain adjustments to the foregoing in order to comply with current or future provisions of GAAP.

Redemptions of Capital from the Capital Account of a Limited Partner

After entering the Partnership and for a period of twelve (12) months (the "Lock-Up Period"), a Limited Partner may not redeem its Capital Account or any portion thereof. On or after the Lock-Up Period, a Limited Partner may elect to redeem its Capital Account at the end of a Calendar Quarter by providing written notice to the General Partner ("Redemption Request").

A Limited Partner may make a partial redemption of its Capital Account upon written notice to the General Partner, and remain a Limited Partner, provided that such redemption does not reduce such

Limited Partner's the Capital Account to less than the amount initially accepted, subject to the discretion of the General Partner to permit redemption of a greater amount.

The withdrawing Limited Partner may remain a Limited Partner provided that such withdrawal does not, unless otherwise agreed to by the General Partner, reduce the Capital Account to less than the amount of the Initial Capital Contribution. Partial withdrawals must be made in minimum amounts of fifty thousand dollars ($50,000) and in multiples of ten thousand dollars ($10,000).

The General Partner will distribute ninety-five percent (95%) of the amount redeemed by a Limited Partner within ten business days of the end of the second calendar quarter following the Redemption Request (such quarter end being the "Redemption Valuation Date") and the balance within thirty (30) business days of receipt by the Partnership of its next succeeding annual audited financial statements.

If Redemption Requests received by the General Partner from Limited Partners after being subject to the Lock – Up Period, are in an aggregate amount more than ten percent (10%) of the Capital Accounts of all Limited Partners in the Partnership, the General Partner may, in its discretion, reduce each request for redemptions pursuant to such Redemption Notices pro-rata, so that redemptions are equal to ten percent (10%) of all of the Capital Accounts in the Partnership. A redeeming Limited Partner whose Redemption Request is so reduced will be deemed to have submitted a Redemption Request to have the remaining balance as specified in the original Redemption Request withdrawn on the next following redemption date, on a priority basis and without the need to submit a further Redemption Request; provided, however, that redemptions shall always be subject to the discretion of the General Partner to reduce each request for redemptions pursuant to each Redemption Request on a pro rata basis to ensure that no more than ten percent (10%) of the Capital Accounts of the Partnership shall be withdrawn during any next following redemption date, unless the General Partner otherwise determines.

The General Partner may also withhold taxes on any payment to a Limited Partner to the extent required by the Internal Revenue Code of 1986, as amended (the "Code") or other applicable law.

"**Net Asset Value**" shall mean the value of all of the assets of the Partnership determined in accordance with the Partnership's Limited Partnership Agreement (a copy of which is annexed hereto as Exhibit A), less all Partnership liabilities and reserves established by the General Partner in its sole discretion. The Net Asset Value shall be computed in accordance with Generally Accepted Accounting Principles ("GAAP"), except with respect to organizational expenses.

Admission of New Limited Partners

New Limited Partners may be admitted on the first day of each calendar month during each fiscal year or on such other dates as the General Partner shall determine. Each new Limited Partner will be required to execute the appropriate subscription documentation, pursuant to which it becomes bound by the terms of the Limited Partnership Agreement.

Substitute General Partner

The General Partner will have the right by written notice to the Limited Partners, without any action by the Limited Partners, to add or delete members of the General Partner or to substitute for itself a new General Partner, if such new General Partner is affiliated with, controls, is controlled by, or is under common control with the General Partner herein.

Amendments to Agreement

The Limited Partnership Agreement may be amended by the General Partner pursuant to its Power of Attorney in any manner that does not adversely affect the Limited Partners, including any amendment to reflect changes validly made in the membership of the Partnership and the Capital Contributions of the Limited Partners.

The Limited Partnership Agreement may also be modified or amended at any time in writing, signed by the General Partner and by Partners who hold Limited Partnership Interests representing in the aggregate a Majority in Interest of the Capital of all Partners relating to the applicable fiscal period in which the vote takes place. However, without the specific consent of each Partner, no such modification or amendment will reduce the Capital Account of any Partner or its rights of contributions or withdrawal with respect thereto.

Reports to Limited Partners

The General Partner will use its best efforts to have prepared and mailed to each Limited Partner, as soon as practicable after the close of each Fiscal Year: (i) any information necessary to enable such Limited Partner to prepare its individual income tax returns; and (ii) commencing in relation to the Fiscal Year ended December 31, 2011, financial statements audited by the Accountant and prepared in accordance with GAAP. In general, the Partnership's financial statements will be prepared in accordance with GAAP.

The "books of account" of the Partnership will be kept in accordance with GAAP, by or under the supervision of the General Partner at the principal place of business of the Partnership, and will be open to inspection, no more frequently than once per year, by any Limited Partner or its representative at any reasonable time during regular business hours upon no less than sixty (60) days prior written notice. Such inspection, however, shall be limited to information reasonably related to such Limited Partner's interest in the Partnership.

In general, the Partnership's financial statements will be prepared in accordance with GAAP. However, in the event that the General Partner advances some or all of the Partnership's organization expenses, then such advance shall be treated as a contribution to the Partnership by the General Partner and shall be concomitantly credited to the General Partner's Capital Account. Over a sixty (60) month period, (unless otherwise accelerated by this General Partner) the General Partner shall cause the Limited Partners to make, on a pro rata basis based on the relative values of the Limited Partners' respective Capital Accounts, a special allocation of income, which allocation shall be prior to any other allocations of income, to the General Partner. On a monthly basis, this special allocation shall be one-sixth (1/60th) of the amount of the organization expenses. Such treatment may result in a qualification to the independent auditor's report relating to the Partnership's audited financials.

The General Partner may also prepare and deliver to each Limited Partner, a monthly unaudited report on the overall performance of the Partnership, together with any other information the General Partner deems pertinent.

Limited Partner's Indemnification of the Partnership

Nothing in the Limited Partnership Agreement, nor any action taken under the Limited Partnership Agreement, including the withdrawal by a Limited Partner of some or all of its Capital Contributions, shall affect the right of the Partnership to claim a return of that part of a withdrawn Limited Partner's

Capital Contribution up to the maximum of such Contribution necessary to discharge applicable debts, taxes, and obligations which arose prior to any such withdrawal from the Partnership. All rights of the Partnership will be exercised in accordance with applicable statutes and regulations applying to the Partnership.

No waiver of a provision of the Limited Partnership Agreement will be deemed a waiver of any other provisions nor will a waiver of the performance of a provision in one or more instances be deemed a waiver of future performance thereof.

In the event the Partnership is made a party to any claim, dispute or litigation or otherwise incurs any loss or expense, including reasonable attorneys' fees, as a result of, or in connection with, any Limited Partner's (or Limited Partner's assignee's) obligations or liabilities unrelated to the Partnership business, such Limited Partner (or assignees cumulatively) will indemnify and reimburse the Partnership for all loss and expense incurred, including attorneys' fees.

Standard of Liability and Indemnification

None of the General Partner or its principal(s), affiliate(s), manager(s), member(s), stockholder(s), director(s), partner(s), officer(s), employee(s), agent(s), and/or the General Partner's designated person(s) (collectively "Indemnified Persons") will be liable to the Partnership or any Limited Partner for: (i) mistakes of judgment or for any act taken, or omission suffered by it or by him or her, or for any "Losses," defined herein, arising out of or relating to any mistakes, action or inaction, except to the extent of the willful misconduct or gross negligence of such Indemnified Person as determined by a final judgment (after all appeals and the expiration of time to appeal) of a court of competent jurisdiction; or (ii) the willful misconduct or gross negligence of any officer, director, employee, representative, consultant, independent contractor, broker or agent of the Partnership or any Indemnified Person, provided that such officer, director, employee, representative, consultant, independent contractor, broker or agent (including any who may be a Limited Partner), was selected, engaged or retained in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Partnership. Each Indemnified Person will be entitled to rely in good faith on the advice of counsel, accountants or other such independent persons experienced in the matter at issue and (subject to the immediately preceding sentence) any act or omission of any Indemnified Person in reasonable reliance on such advice will in no event subject any Indemnified Person to any liability to the Partnership or to any Limited Partner.

The Partnership will, out of Partnership assets, including, without limitation, any insurance proceeds, to the fullest extent permitted by applicable laws, indemnify and hold harmless each Indemnified Person from and against any and all claims, damages, losses, expenses, penalties, judgments or liabilities of any nature whatsoever and regardless of which governmental body imposes the same, including, but not limited to, legal fees, expenses and costs associated with investigating or preparing the defense of any proceeding or investigation, giving testimony or furnishing documents in response to a subpoena (collectively, the "Losses") to which any such Indemnified Person may become subject in connection with, rising out of or related to this Agreement or to the operation and affairs of the Partnership provided, however, that foregoing indemnification will not apply to any Losses that are determined by final judgment (after all appeals and the expiration of time to appeal) of a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of such Indemnified Person.

LIMITATIONS ON TRANSFERABILITY; SUITABILITY REQUIREMENTS

Each purchaser of a Limited Partnership Interest must bear the economic risk of its investment for an indefinite period of time (subject to its right to withdraw capital from the Partnership) because the

Limited Partnership Interests have not been registered under the 1933 Act and, therefore, cannot be sold unless they are subsequently registered under the 1933 Act or an exemption from such registration is available. It is not contemplated that any such registration would ever be affected, or that certain exemptions provided by rules promulgated under the 1933 Act (such as Rule 144) will ever be available. The Limited Partnership Agreement provides that a Limited Partner may not assign or encumber its Limited Partnership Interest (except by operation of law), nor substitute another person as a Limited Partner, without the prior consent of the General Partner, which consent may be withheld for any reason. The Limited Partnership Agreement also restricts substantial withdrawals from the Partnership and withdrawals of capital by the Limited Partners. The foregoing restrictions on transferability must be regarded as substantial, and will be clearly reflected in the Partnership's records.

Each purchaser of a Limited Partnership Interest will be required to represent that the Limited Partnership Interest is being acquired for its own account, for investment, and not with a view to resale or distribution. The Limited Partnership Interests are suitable investments only for sophisticated investors for whom an investment in the Partnership does not constitute a complete investment program and who fully understand, are willing to assume and have the financial resources necessary to withstand the risks involved in the Partnership's specialized investment program, and who are able to bear the potential loss of their investment in the Limited Partnership Interests.

Each prospective purchaser is urged to consult with its own advisors to determine the suitability of an investment in the Limited Partnership Interests, and the relationship of such an investment to the purchaser's overall investment program and financial and tax position. Each purchaser of a Limited Partnership Interest will be required to further represent that, after all necessary advice and analysis, its investment in a Limited Partnership Interest is suitable and appropriate, in light of the foregoing considerations.

FINANCIAL STATEMENTS

Audited financial statements for the Partnership, when available, can be obtained from the General Partner.

LITIGATION

The General Partner and the Managing Member has not been involved in any material litigation.

ACCOUNTING / LEGAL COUNSEL/ADMINISTRATOR

Citrin Cooperman & Co., LLP, 529 Fifth Avenue, New York, NY 10017 will act as the independent certified public accountants for the Partnership.

Gersten Savage LLP, 600 Lexington Avenue, 9th Floor, New York, New York 10022 acts as counsel to the Partnership.

Integrated Investment Solutions LLC, 121 Summit Ave., Suite 205, Summit, New Jersey 07901 will act as independent administrator for the Partnership.

ADDITIONAL INFORMATION

The General Partner will make available to any prospective Limited Partner any additional information which it possesses, or which it can acquire without unreasonable effort or expense, necessary to verify or supplement the information set forth herein.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-09197-A

EDEN ARC CAPITAL)

WITNESS: Donald Lathen

PAGES: 1 through 211

PLACE: Securities and Exchange Commission

200 Vesey Street, Suite 400

New York, New York 10281

DATE: Wednesday, July 22, 2015

The above-entitled matter came on for hearing, pursuant to notice, at 9:41 a.m.

A Well, because Eden Arc is not the owner of the securities. The securities are held in a joint tenancy between myself and the participant.

Q But wouldn't it have been simpler to have the -- the securities in the name of Eden Arc?

A Well, no. For the simple reason that; A, that wouldn't reflect the economic reality of the transaction; and, B, the whole point of establishing the joint tenancy is so that you conform with the prospectus language in the marketplace as it relates to being able to put back the securities to the issuers.

Q But -- but why not Eden Arc and the terminally ill person together?

A Oh, I see -- I see your question.

MR. PROTASS: I got it the first time.

A An entity cannot be a joint owner in a joint tenancy with rights of survivorship. A joint tenancy with rights of survivorship is an ownership arrangement with two or more individuals. The obvious reason being that survivorship can't be conferred to an entity or -- well, stated differently, an entity can't perish.

MR. PROTASS: Die?

Q Can you tell us about other relationships that Eden -- any of the Eden Arcs had with other entities? For example, marketers, trustees --

MR. PROTASS: Other than the --

Q Other than the broker-dealers and the issuers.

MR. PROTASS: And the sort of --

Q -- the auditors, the accountants.

MR. PROTASS: Yeah. The service people you mentioned earlier.

A When you say "marketers," what do you mean by "marketer"?

Q Was Blue Sand a marketer for you?

A Yes. Blue Sand is a third-party marketer by which I mean I have an arrangement with them where they're helping me raise capital for my fund. That is the only marketing arrangement that I have.

You mentioned trustees. I'm not -- do you mean, like, bond trustees or --

Q Yes.

A The bond trustees are -- we don't have a contractural relationship with them. We have -- have had dealings with some of them. In

many cases, indirectly through the brokerage firms. Because one of the things about this whole marketplace is the brokerage firms are the ones that are interfacing with the trustee and with DTC. Not the account owners. And so, it's very unusual for an account owner to have direct contact with a trustee or an issuer. It usually only happens when something's gone wrong.

So, our dealings with trustees are related to providing information that, you know, we may get something from our brokerage firm saying, the trustee is looking for this additional piece of information. Can you please provide it? Or in many cases the trustee, you know -- 'cause the -- the request comes into the brokerage firm. So if the -- so if the trustee says, we'd like to see the July 2013, you know, account statement, can you provide that? The brokerage firm is probably just going to comply with the request. They're not going to call us and say, can you send the account statement. They have the account statement themself. That would sort of be silly.

But in the -- when there are instances when the trustee is looking for something that the brokerage firm doesn't have, you know, we

may provide that information. And again, we usually provide it to our brokerage firm who then provides it to the trustee.

Q Now, you mentioned earlier that you didn't provide the participant agreement to the issuers unless they asked for it; is that correct?

A Yes.

Q How often did they ask for it?

A They've asked for it and the issuers themselves that have asked for it are Goldman Sachs, Barclay's, General Electric Capital Corp., U.S. Bank, which is the trustee for Prospect, Prospect and CIT which is a -- a bank that's issued CDs. We've provided our participant agreements to all of those issuers.

Q And approximately how many issuers have you dealt with total?

A Oh.

Q Dealt with the wrong word?

A How many have we successfully redeemed bonds or CDs?

Q Correct.

A Dozens.

Q Not hundreds?

A It might be approaching triple

What is EndCare?

Caring for individuals near the end of their lives can be stressful and emotionally challenging for families. Yet even as loved ones struggle to cope emotionally with the prospect of loss, significant financial challenges often exist. How will the family afford quality care? Can family members afford to take time off from work to care for their loved one? Will the family be able to afford a dignified and appropriate burial? EndCare can help.

EndCare provides financial assistance of up to $10,000 to individuals near the end of life. This assistance comes at absolutely no cost to the individual.

Financial assistance comes in the form of a one-time cash payment at the time of enrollment. **The payment is made directly to the individual or their family and proceeds can be used for <u>any</u> purpose**, including hospice, medical and non-medical home care, family travel, and funeral expenses.

Is There Any Cost or Risk to the Participant?

There is no cost or risk to the participant. The payment from EndCare is not a loan and the participant has no further obligation. There are no fees, premiums or charges of any kind. The payment does not impact private insurance, Medicare, or Medicaid benefits. Special arrangements may be necessary for Medicaid participants in certain cases.

EndCare

How Does It Work?

Payments to families are made possible due to a proprietary investment strategy developed by EndCare. The investment strategy focuses on "survivor's option" investments, a type of investment which provides for accelerated repayment upon the death of the owner.

EndCare sets up and funds a brokerage account to purchase these investments. The participant, without contributing any money, is added as an additional owner on the account. In return, the participant receives an immediate cash payment from EndCare.

EndCare expects to make a profit on the investments and the up-front payment to the participant represents a share of those expected profits.

Who is Eligible?

To qualify for EndCare, applicants must meet the following criteria:

- U.S. residents 18 years or older
- Enrolled in hospice or have life expectancy of less than 6 months as verified by physician
- Mentally fit or have delegated durable power of attorney
- **All income and asset levels are accepted**

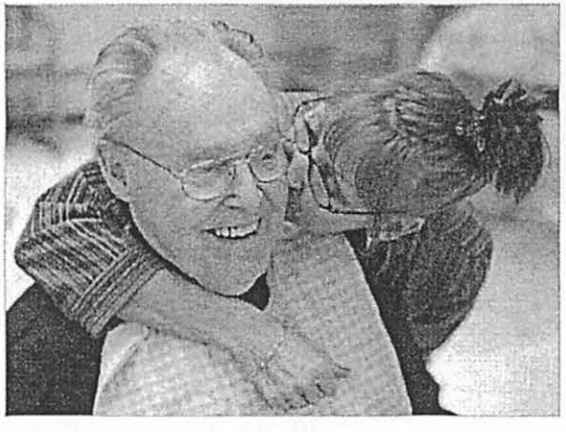
How to Apply

Applying for the program is extremely easy and fast. Applicants fill out a short enrollment form and fax or email it to EndCare. Final approval, documentation and payment usually occur within a week of the initial contact.

What People Are Saying About EndCare

"EndCare helped relieve some of the financial strain on our family when my stepfather was diagnosed with terminal cancer."
-- *EndCare Participant*

"EndCare was a real blessing for us in time of sorrow."
-- *EndCare Participant*



"EndCare could not have been easier. If you're rich, you probably don't need EndCare. But for the rest of us, EndCare is a great help"
-- *EndCare Participant*

"This is really a wonderful thing that you are doing."
-- *Hospice Administrator*

Commitment to Community

EndCare was founded by a retired finance executive and his wife, a former healthcare executive. EndCare has pledged to donate 15% of its profits to charities in the markets it serves. Participants and their families will have an opportunity to nominate charities for inclusion in EndCare's annual giving programs.

For further information, please call us.
Strict confidentiality will be maintained.
References available upon request.

EndCare

One Penn Plaza
36th Floor
New York, NY 10119
212-786-7407 Phone
646-349-5964 Fax

EndCare

Financial Assistance Program

Helping Families Cope With The Financial Burdens of End-of-Life Care

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-09197-A

EDEN ARC CAPITAL)

WITNESS: Donald Lathen

PAGES: 1 through 211

PLACE: Securities and Exchange Commission

200 Vesey Street, Suite 400

New York, New York 10281

DATE: Wednesday, July 22, 2015

The above-entitled matter came on for hearing, pursuant to notice, at 9:41 a.m.

it would be, a three-person joint tenancy automatically converts, in that instance when one person dies, to a two-person joint tenancy. So my wife would have a two-person joint tenancy with that individual.

And the expectation is that if the participant at that point -- if my wife dies before the participant then it passes to the participant and if the participant dies before my wife it passes to my wife.

MR. PROTASS: If I could just add, I think what you're driving at here is, I don't want to testify, but the likelihood of both Mr. Lathen and his wife predeceasing the participant is lower than the likelihood of Mr. Lathen predeceasing the participant.

MS. WEINSTOCK: Yeah. I don't think that was my question, but I don't know. That wasn't my question.

MR. PROTASS: I thought that's what your question was.

Q Was the third person on the account, either your wife, Mr. Rosenbach, Mr. Jungbauer, on the account to provide additional assurance that the terminally ill person wouldn't get access to the

money or securities after you died?

MR. PROTASS: Objection.

A The advantage of a third -- of a three-person joint tenancy is -- the effect of that is, yes. I mean, it -- it obviously increases, or reduces rather, the likelihood of that event happening.

Q And why did you switch from your wife to Mr. Rosenbach as to who would be on the joint accounts?

A Because -- I can't remember exactly if -- if Gary and I discussed this, but there were at least a couple of factors that drove that. Number one, you know, he was providing, you know, money for the account and so it would be natural in that circumstance for him to want to be on the account. And, secondly, you know, it -- just having a third person on the account is -- is helpful.

Q And what about switching to Mr. Jungbauer, why was that switch made?

A You know, I mean, it wasn't any -- we wanted to have a third person. I think that the -- the sense was that from the standpoint of the investors in the fund there would be a lower likelihood of both my stepfather and I predeceasing

the participant than my wife and I. For instance, if we had the arrangement where my wife was the joint tenant on the account, investors in the fund would be asking questions like, do your wife and you fly separately when you go on vacation. So that was the -- the rational for having David on the account versus Kathy.

Q But did it go -- did it go Kathy, Mr. Rosenbach, Mr. Jungbauer?

A Yes.

Q Was that the sequence?

A Yes, that was the sequence.

Q And so why did you switch from Mr. Rosenbach to Mr. Jungbauer?

A You know, there wasn't any real discussion on it. I mean, I assumed that Gary would probably -- he was an investor in the fund and he was going to be getting a share of the economics from the fund's financing of these -- of these joint accounts. And either I assumed he wouldn't want to be on the account or I asked him. I don't even really remember to be honest, but for whatever reason we -- we selected my stepfather.

Q And was your stepfather on every account once the fund opened?

A He was while we had participant agreement number three from May of 2011 through approximately December of 2012. So for about a year-and-a-half.

Q And was there a third individual after that?

A No.

Q And why is that?

A Because the -- excuse me. With participant agreement number four and number five the fund is better secured against the eventuality that I predecease the participant. And so we felt like -- including a security interest in the account in that it was, you know, not -- no longer necessary for David to be on the account or any third party to be on the account.

Q When -- prefund, when you were on the accounts with Mr. Rosenbach, what was the arrangement with respect to profits?

A I think we had agreed he would fund 95 percent of the account. I would fund five percent of the account and then I would get effectively a carry on his share of profits in the account, a 20 percent carry and no management fee.

Q When you say "a 20 percent carry," do

Donald F. Lathen

One Penn Plaza, Suite 3671
New York, NY 10119
212-786-7407 Phone
718-504-3934 Fax

May 20, 2014

First Southwest Company
Attn: Reorg Dept.
911 W. Loop 281, Suite 116
Longview TX 75604

Re: Survivor's Option Election - Account #[redacted]

To Whom It May Concern:

Mr. Raymond Ashton, a joint and beneficial owner on the above-referenced account, recently passed away. As the surviving joint owner on the account, I would like to exercise the survivor's option with respect to the following Notes in the account. Attached is the death certificate supporting this request.

Quantity	Security Description	CUSIP
110,000	TENNESSEE VALLEY AUTH ELECTRONOTES SEMI SURVIVOR OPTION CPN 2.375% DUE 02/15/25 DTD 02/28/13 FC 08/15/13 CALL1 02/15/15 @ 100.000	88059TFN6

Regards,

Donald F. Lathen

Attachment

EA17630

Participant Agreement

1. Donald F. (Jay) Lathen ("Lathen"), pursuant to the terms of this agreement ("Agreement"), agrees to pay to James McCord ("the Participant"), or Participant's designee(s), the sum of ten thousand dollars ($10,000.00) (the "Payment") subject to the full and complete compliance by Participant with the terms and conditions contained in this Agreement. The Payment will be made as soon as is reasonably practicable after the Effective Date, as described in paragraph 2 below. By signing this Agreement, Participant expressly acknowledges that this Agreement and the documentation for opening the brokerage accounts described below ("Account(s)") is part of a business ("Business") conceived and executed by Lathen with financing either provided by Lathen or being arranged from various third party investors ("Investors") and in differing formats, including one or more limited partnerships organized by Lathen, to finance the Business.

2. Participant agrees to become a joint owner with Lathen and/or one or more designee(s) (individually a "Designee" or collectively "Designees") appointed by Lathen on one or more brokerage Account(s). The Participant acknowledges and agrees:

a. That the Account(s) will be titled as a joint tenancy with rights of survivorship ("JTWROS") consisting of the Participant, Lathen and/or, in Lathen's discretion, with one or more Designee(s).

b. That the Account(s) will purchase certain investments ("Investments") which contain what is known as a "survivor's option" or "death put," which allows the investment, typically a fixed income security, to be sold back or "put" to the issuer, at par plus accrued interest, upon the death of the holder.

c. to execute paperwork ("Paperwork") required by the brokerage firms and to cooperate with the brokerage firms and Lathen to create and establish the Account(s) in the JTWROS format. The Paperwork has been included with this Agreement. The Participant is encouraged to ask any questions and request any clarification regarding the contents and effects or consequences of the Paperwork prior to signing this Agreement.

d. to cooperate with Lathen and the brokerage firms, as necessary, to facilitate transfers of cash and securities into and out of the Account(s) and to modify the Account(s) except that the Participant understands and agrees that Lathen and Investors are solely responsible for funding the Account(s), including funding the purchase of any securities transferred into the Account(s) or subsequently purchased in or from the Account(s). Participant shall have absolutely no responsibility for funding the Account(s) and the Participant affirms that no such consideration has been provided to or by Participant for such purpose.

e. the Effective Date shall be defined as the earliest date that an Account(s) has been established and Investments in the Account(s) have been purchased and settled in the Account(s) or, if applicable, Investments have otherwise been transferred into the Account(s). Participant acknowledges that there may be a delay of up to fifteen (15) business days between the execution of this Agreement and the Effective Date, due to brokerage firms' internal processing times and the availability of Investments.

3. Participant agrees that he/she is not be permitted to pledge, borrow against, withdraw or exercise any right of ownership with respect to the Investments or other assets in the Account(s) without the express written permission of Lathen, which permission may be withheld in Lathen's sole discretion. It is specifically understood by Participant that upon Participant's death, the Account(s) and all assets and

proceeds from such Account(s) will pass directly to Lathen and the Investors and that such will not be part of Participant's estate.

4. Participant represents that he/she is not currently an owner of any Investments as described above. Participant further agrees that he/she will not purchase any such Investments or permit, allow or authorize any party other than Lathen and Investors to purchase such Investments on his/her behalf.

5. Participant acknowledges and agrees that:

a. He/she understands the nature and terms of this Agreement and is over the age of 18 years. competent and of sound mind, memory and also understands the nature of the Business described above, or, if applicable, Participant's attorney-in-fact is over the age of 18, competent and of sound mind, memory, and understands the nature and terms of this Agreement and nature of the Business described above.

b. Neither Lathen nor any Investor is providing financial advice in connection with this Agreement and is solely acting with Participant in accordance with the terms and conditions of this Agreement and of the Account(s) and not in any fiduciary or other such capacity to the Participant;

c. He/she has been given the full opportunity to ask questions from Lathen and understands the nature of the Business described above and also has been given the opportunity to consult with a financial advisor, legal or other qualified representative prior to executing this Agreement;

d. He/she understands that the reason that this Agreement will not be countersigned by Lathen for a period of 3 days from the date of its return by Participant is for the express purpose of giving the Participant the opportunity to exercise a right of rescission and cancellation of participation herein by providing written notification to Lathen.

e. Lathen is not providing tax advice with respect to the Agreement, the establishment of the Account(s) or the Payment and the Participant acknowledges and is aware that there may be federal, state or local tax consequences to the Participant which are unknown to Lathen concerning this Agreement. As such, Participant is required to seek advice from his/her accountant or tax advisor prior to executing this Agreement.

f. Participant understands that any Payment he/she received under this Agreement could be considered income or assets by Medicaid and could have an adverse impact on Participant's eligibility to receive Medicaid benefits.

g. Participant will, upon request by Lathen, provide the following on an entirely confidential and need to know basis: (i) his/her social security number and a copy of a drivers license or other government issued ID solely for the purpose of allowing a "background/credit check" to be made and to facilitate opening the Account(s); and/or (ii) such permission as shall be necessary for Lathen to consult with the Participant's physician in order to discuss and verify the medical condition of Participant.

6. Participant represents that he/she is not subject to a current bankruptcy proceeding nor is he/she considering a bankruptcy filing. Participant represents that he/she is not subject to any existing or pending judgments in favor of creditors. Participant agrees to notify Lathen promptly regarding any adverse changes to his/her credit, including a potential bankruptcy proceeding or judgment in favor of creditors.

7. Participant agrees to indemnify Lathen and Investors for damages caused by Participant's breach of any of the terms of this Agreement.

8. Scott McCord, ("Participant's Agent"), agrees to promptly notify Lathen in the event of Participant's death and, if requested, to assist Lathen in obtaining death certificates of the Participant. Lathen shall reimburse Participant's Agent for any expense associated with procuring and delivering the requested death certificates to Lathen.

9. Lathen shall have a right to terminate this Agreement if Participant dies prior to the Effective Date.

10. If applicable, _____, Participant's spouse hereby waives any right or claim to the Account(s) arising now or in the future.

11. Participant and Participant's Agent acknowledge that this Agreement and its terms, as well as all Paperwork, are private and confidential and that the Participant will not disclose the terms of this Agreement and the Paperwork to any person without the prior written consent of Lathen.

12. This Agreement shall be governed and construed as to its validity, interpretation and effect by the laws of the State of New York without giving effect to the principals thereof regarding the conflicts of law.

13. Lathen's failure to enforce strictly any provision of this Agreement shall not be construed as a waiver thereof or as excusing the Participants future performance. Any waiver, to be effective in favor of the Participant, must be in writing and signed by Lathen.

14. This Agreement shall be binding upon the successors and heirs of the respective parties hereto.

15. This Agreement shall not be changed, modified or terminated orally or in any manner other than by an agreement in writing signed by each of the parties hereto.

Donald F. (Jay) Lathen	James McCord	Scott McCord
	James McCord	Scott McCord I Scott F. McCord am signing as James M. McCord attorney in fact and have complete power of attorney
Date: 5-11-11	Date: 5-6-2011	Date: 5-6-2011

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-09197-A

EDEN ARC CAPITAL)

WITNESS: Michael Robinson

PAGES: 1 through 174

PLACE: Securities and Exchange Commission

200 Vesey Street, Suite 400

New York, New York 10281

DATE: Friday, June 19, 2015

The above-entitled matter came on for hearing, pursuant to notice, at 9:48 a.m.

now with Wedbush?
A I would – I would say that is correct.
Q In terms of the 1099s, so were the terminally ill individuals or their agents required to pay taxes on the profits?
A Well, we –
MR. PROTASS: Objection. I'm not sure what you mean by "profits." On the receipt of the 10,000?
MS. WEINSTOCK: No. Profits from the fund.
Q Or profits from the broker.
A No, they would not – they would not be receiving 1099s on the profits because – yeah, I think not.
Q So the 1099s we're referring to, those are for the $10,000.00 payments?
A Yes.
Q Okay. But they didn't receive 1099s from any profits from the brokerage accounts?
A To the best of my knowledge, they did not.
Q Did they receive statements from the broker-dealers?
A Generally not.

Q Can you think of an instance where they did?
A I could think of a couple of instances.
Q And what were those?
A You know, I just know that there have been a couple, in general, that – that they did not receive them.
Q Did – I'm sorry. Did the participants receive copies of the brokerage statements?
A Generally – I said, no, generally not.
Q But you said there were a couple of instances where they did?
A Yes.
Q And what were the circumstances behind those?
A The – the – just to say that, in general, you know, when the – the joint tenant brokerage account application is made, there's a box or some – someplace on there where you say, where do you want the statements sent? And normally we sent them – they are sent to our office, the paper copies. And – and, you know, and if you – if you don't say that, if you don't check that box, they may be sent to both parties or to multiple parties and we – so when that's

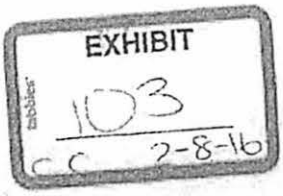
happened sometimes we kind of just say, no, we really want them to come here and they come to the office. So that's why a couple of times I know that they've gone out to broader distribution.
Q Because the agent called you to say, we got these brokerage statements?
A Yes.
Q Okay. And did you then call the broker-dealer and say, just send them to Eden Arc?
A Yeah. I have said, you know, I've looked – I've looked at the paperwork and said, oh, that wasn't – you know, they were supposed to go – they say, where do you want them sent? They're supposed to go to One Penn Plaza.
Q Did Jay or any of the Eden Arc entities ever attempt to open accounts with BNP Paribas?
A Not that I'm aware.
Q Okay. All right, I don't have any other questions.
MS. WEINSTOCK: It's 2:38. We're going off the record now. Thank you.
(Whereupon, at 2:38 p.m., the examination was concluded.)
* * * * *

PROOFREADER'S CERTIFICATE

In The Matter of: EDEN ARC CAPITAL
Witness: Michael Robinson
File Number: NY-09197-A
Date: Friday, June 19, 2015
Location: New York, NY

This is to certify that I, Maria E. Paulsen, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

_____ _____
(Proofreader's Name) (Date)



To: trevor.simon@hilltop.co.uk[trevor.simon@hilltop.co.uk]
Cc: Jay Lathen[Jaylathen@edenarccapital.com]
From: Michael Robinson
Sent: Thur 9/26/2013 10:21:45 AM
Importance: Normal
Subject: Due Diligence Questions from Hilltop
EdenArc ODD Q cut for J Lathen - v1 - TS - 1109013_Revised.docx

Hello, Trevor.

We met briefly when you visited us earlier this month. Jay has asked me to respond to you on your due diligence questionnaire and related matters.

I have attached our copy of your due diligence questions with our responses. In a few cases, there are open brackets "[ ]" indicating that we are uncertain about the question or where we feel we need to discuss the point further.

Separately, you will see a reference to a "shared Dropbox folder." The documents that we are providing in response to your due diligence process are placed there.

--

Regards,

Michael

Michael D. Robinson
VP, Marketing & Administration
Eden Arc Capital Management LLC
Email: michaelrobinson@edenarccapital.com
(212) 786-7407 (Phone)
[redacted]
(718) 504-3934 (Fax)
Web Site: www.endcare.com

EdenArc preliminary ODD questions

Sep 11th 2013

PPM

May Hilltop invest in this? Who should we speak to formally for advice?

- Based on what we know about Hilltop, it eligible to subscribe to Eden Arc Capital Partners, LP. From our reading of the facts, Hilltop falls into the category of "Accredited Investor." Its non-US nationality is not a problem; however, we cannot make any representations about any tax issues.
- You should seek advice from a US-based attorney with expertise in US securities law.

Dont understand wording on page 3 – pls explain

- There are (parts of) two Sections on Page 3, so I will attempt to clarify each section in turn.
    - Performance Allocation.
        - This section defines the basis on which the General Partner earns his performance fee. Basically, it says that there is a "high water mark" that is reset each quarter. In the simplest case, if an investor has been in the Fund for several quarters and has not added to, nor subtracted from, his initial investment and the value of his account has increased each quarter, then at the end of each quarter the GP will earn a performance fee equal to the quarterly increase in value x 20%. If there is a flat or down quarter, the GP's Performance Fee = 0%.
    - Admission of New Limited Partners and Capital Contributions.
        - The GP normally admits new Limited Partners at the beginning of any calendar month. However, the GP has discretion to waive this requirement.

Perf allocation calculated quarterly — not monthly..? Paid annually in arrears..?

- Yes, it is calculated monthly. It crystallizes on a quarterly basis.

Pls confirm per note at top of p.5 that the GP currently knows of no reason why it should withhold tax from Hilltop investment (save as discovered needful per FATCA)..?

- That statement at the top of page 5 regarding tax withholding was made with the then-current understanding that no such taxes are currently required since the income of the Fund is portfolio income. Given Hilltop's status as a non-US-domiciled entity, this matter should be reviewed and confirmed by Hilltop's counsel. You can also confer with Bruce Hood at Wiggin & Dana, who gave an opinion to the Fund back in 2011. His number is [redacted]
- See also the section titled: "Tax Risks and Payment of Taxes" on Page 16 of the PPM.

By what time subdocs and monies required? Directors have discretion to waive?

- As stated in the PPM, the GP may "admit new Limited Partners to the Partnership on the first day of each calendar month or on such other dates as the General Partner may determine in its sole discretion (each an "Interim Date"). It is current practice that subdocs and funds shall be delivered on the first day of the calendar month in which the new Limited Partner wished to (a) subscribe for the first time or (b) increase the size of his investment.

No independent Directors -- an onshore fund so TS unfamiliar – is the GP the thing?

- Correct. There are no independent directors.

Must HT be an accredited investor... is it...? Isnt it a Qualified Client – does this make a diff..?

- Hilltop is, according to the criteria stated in the "Eligible Subscribers" section, an Accredited Investor. If, in fact, Hilltop is not an Accredited Investor, it most likely will fit the definition of a Qualified Client. Either classification is acceptable.

Do you have a Flow Diagram as to money movement in the trade ie between the Fund and Jay and the JTWROS and back to the Fund etc..?

- Yes. Please see the attachment.

Is it 51% for material rights change?

- This question requires clarification. Note, however, that per "Changes in Investment Strategies" on Page 15, the GP (or GP + IM) may change the Fund's investment strategy, provided that the LPs are given notice and the right to withdraw prior the effectuation of such a change.

What is individual put limit, is it per state, federal, per issuer, per security?

- "Individual put limit" is defined generically as the face value of SO securities that any one deceased beneficial owner may "put" to the issuer under the SO provisions governing that particular issue.
    - For bonds, the Individual Put Limit is typically $200,000 - $250,000 per decedent per issuer.
    - The Individual Put Limit calculations may be based on the aggregate size of the entire outstanding issuance of SO bonds issued by one obligor or on a CUSIP-by-

CUSIP basis. It is worth mentioning that, in some circumstances, the "deal documents" are not crystal-clear about this matter.

We want to be informed in writing of any litigation or legal enforcement action or any legal cost to be incurred by the Fund in excess of $5,000 to recover gains from a JTWROS account or in respect of an issuer reluctant to pay up... EACH instance of such cost occurrence to be communicate to Hilltop... and flagged in as far as advance as possible... actually we would like the GP to halt is performance fee once this excess 0.25% of nav...?

- The GP is willing to make a reasonable effort to provide information to Hilltop regarding legal expenditures over $5,000.0. The GP is not willing to halt its Performance Fee.

How offset risk of contention by Participants survivor – just that they have little resources and have signed up to this in advance...? any cause for concern...? could there be a massive gain eg $100k+ or $1m+ (??) that accrues to a joint account making it seductive for 'new' owners albeit they are un-entitled...? (p22 of the PPM)

- As a matter of law, the Participants' survivors have extremely limited rights vis-à-vis the assets in their particular JTWROS account. Moreover, as a practical matter, the Participants are not informed about any details of the JTWROS account (e.g., the name of the brokerage firm, the account number, etc.)
- We do not believe that this is a cause for significant concern.
- We cannot add any further assurances beyond those stated on Page 22 of the PPM.

How reduce risk that debts of Participant can be sought to be offset by gains in the joint account by survivors? (p22 of the PPM)

- Refer to the response to the question above.
- The Fund has a secured interest in the JTWROS account(s) and would have priority status over unsecured creditors of the Participant(s).

How reduce risk the Participant pledges the gains of the joint account to another interest? (p22 of the PPM)

- The Participation Agreement prohibits the Participants from pledging their interest in the JTWROS accounts.
- The Fund files a UCC-1 perfecting its security interest in the JTWROS accounts and giving it priority over other potential creditors of the Participants.

Are securities bought only US listed ones?

- The answer to this question has several parts:
    - The "securities" bought by the Fund are issued in the USA and are governed by US securities law.
    - The securities include both bonds and brokered certificates of deposit issued by banks operating in the USA.
    - Notwithstanding the above, the securities purchased by the Fund are typically not listed on an exchange. They trade in the over-the-counter market.

UBTI issues for Hilltop (p.27)

- This section "Unrelated Business Taxable Income" relates to Limited Partners that are tax-exempt entities for US federal tax purposes. It should not apply to Hilltop; however, if this is a concern to you, please consult appropriate counsel.

What % of NAV and of SO investments generally are illiquid and have wide spreads — the concern is the valuation being done properly and fairly... what register do you have for disputes between administrator valuation and yours... how ensure fairness and documentation.

- The SO securities are purchased in both the new-issue and secondary markets.
    - Some issues of such size and perceived credit quality that they are very liquid. That is, quotes are abundant and the bid/asked spreads are relatively low.
    - Other issues, such as CDs issued by regional banks, may be less liquid.
- The monthly valuation exercise for the portfolio relies upon several sources of information.
    - IIS obtains its quotes from a pricing database provided by Interactive Data Corp. and also has access to TRACE data for completed trades.
    - The GP also has access to market information and dealer quotes from Bloomberg, other on-line services, and traders active in the market.
    - Valuation differences between the Administrator (IIS) and the GP are rare and are fully documented.

Has there been an audit of the LP i.e. to Dec 2011 (inception was May 2011)..? Pls provide

- Yes, there is an audit for 2011 and 2012.

Seems to be a claw-back right to recapture capital post redemption (p33 at top) –pls comment

- This language in the "Limited Partner's Indemnification of the Partnership" section on Page 33 is conventional for business arrangements of this type in the USA. The meaning is plain: The withdrawal by one or more of the Limited Partner(s) of all or a portion of their capital on a particular date does not shield such Limited Partner(s) from financial exposure to the expense of litigation nor from actual expenses that were incurred prior to such withdrawal. As you are aware, sometimes lawsuits or other regulatory decisions that impose penalties on a business may not be known about until after a significant passage of time. If the matters

giving rise to litigation, penalties, fines, etc. arose during the time that a Limited Partner was invested in the Fund, this Limited Partner is not excused from contributing to such expenses simply because he "pulled out" before the problem was discovered. Under limited partnership law, an LP investors' liability is limited to his capital contributions to the partnership.

Litigation and compliance and regulatory history of Jay – pls comment... any issues? clean history?

- Clean history.

DDQ

How much was the (your) initial capital that you began with in July 2009..?

- Approximately $1 million.

Has track record since July 2009 been audited.. how was it documented? Was it real investments? Is there a brokerage account record we can look to?

- The track record prior to 2011 was not audited. It was documented through my own personal tax returns. Yes, these were "real" investments. Brokerage account records exist.

When third party investors came in in Sept 2010 how much money did they contribute... was it really invested..?

- Approximately $2.4 million. Yes, it was invested.
- When third-party investors first invested in my strategy, they were investing as individuals in the form of separate accounts.

Asset verification.... TS will take to referrals and service providers

- We have given you the contact information for the relevant external service providers.

Any redemptions thus far? How much? Why? Contact details of redeemer pls?

- To date, there have been no redemptions by investors in the Fund.

TER — breakdown pls ... show the non-brokerage transaction costs too.

- See the audited financial statements for this information.

How much nominal subscribed investment does Jay have in the LP..?

- Zero capital contribution.

At what level of AUM does the GP break even..? Is there a burn rate? For how long will you fund it..?

- The management company and the GP are currently profitable.

Pls can I have your ADV Form 2A & B

- Yes. You will find these documents in the shared Dropbox folder.

Top 1 is 3% of aum, how about top 3. Who is the top 1..?

- The three largest investors comprise approximately 2/3 of AUM.
- We do not reveal the names of our investors.

Any side letters, preferential terms – esp liquidity?

- No side letters or preferential terms, except for reduced fees for Blue Sand principals.

All L1 securities?

- Securities are mostly Level II.

- Risk management and concentration controls? By issuer, by credit rating, by instrument type...? How do you think about risk management – pls explain your paradigm.

- Although we do not currently operate a formal, quantitative risk management model, we are very risk-conscious in our approach. The Fund's portfolio consists almost exclusively of bonds and brokered CDs issued by investment-grade entities. In addition, the length of time that we hold a particular position is less than one year. I would say that our risk profile is very low.

Collateral management and control:.... What cash levels does fund maintain? What leverage level? What unutilised margin level do you maintain?

- We try to maintain cash and excess margin to withstand a 5% drop in the value of the portfolio.
- In addition, we have cash coming in regularly from put-back activities, which positions us to withstand larger declines.

Is CL King the primary broker for all JTWROS accounts? Are all accounts in Jay's name

- Yes, CL King is our primary broker.
- All of the JTWROS accounts are in the name of Jay Lathen and a Participant.

Why CL King chosen

- CL King was chosen because, after we had worked with several other firms, we found a level of operational capacity and comfort with our strategy. It was, in essence, a "good fit."

Counterparty risk of CL King...? Why not have two PB's...?

- We are aware that we need more brokerage capacity. We are currently exploring relationships with other PBs.

Is money at CL King segregated / insured.. pls comment..? They may provide a note explaining their segregation processes for customer assets .. I would like a copy of that doc if they provide such a thing. Also of their brochure.

- • Nothing that exactly fits this description exists, per CL King.
- • As for a brochure, you may find it useful to visit the part of the CL King Website that describes their services for investment firms (http://www.clking.com/InvestorServices/BrokerageClearingServices).

Docs sought

  - CL King agreement as broker and PB (We do not have a written agreement with them.)
  - Integrated Investment Solutions as administrator
  - HSBC as banker
  - IMA with the GP
  - Nominee agreement with Jay
  - Agreement covering the borrowing of monies from the fund by Jay
  - Account Control Agreement docs (PPM, top of p11)

Pls confirm that the CL King relationship arm's length bona fide i.e. Jay Lathen nor the GP doesnt benefit in any manner not otherwise passed fully through back to LP shareholders..?

- That is correct. The relationship between CL King and Jay is strictly arms-length. The terms on which we transact with CL King (trading fees, margin interest, etc.) are strictly by-the-book.
- Jay does not transact any personal business with CL King.

Does CL King acknowledge that the LP (and Jay as nominee) indemnifies the participants from losses... and does this say this in the account agreements with the Participants...?

- CL King has copies of all of our Participant Agreements.

Need a former employee reference for Jay, not just business ones pls

- Grant Porter, Vice Chairman of Lehman Brothers. (Contact info to follow.)

Can the 25% investor level gate BE WAIVED for us else have to treat as a one year lock and hard to own except in 10% of CSF allowed for this which is anyhow filling up per Dutchess etc...??.....

- As discussed, we will modify the language to require 25% Fund level redemption as a condition precedent to an investor level sale.

Why does the soft lock need to be there? (ie 5/4/3/2% per quarter in yr 1)... can this be waived for us..?

- No. Soft lock is to deter short-term investors.

Does the Administrator value the securities using independently gathered pricing rather than take from the GP.... ?

- GP prices the book. Administrator runs separate valuation and discrepancies are discussed.

Let's review the valuation basis / treatment ... (page 7 of DDQ)

- [ ]

Two pronged valuation wording is not found in the PPM... why not? Is it in the admin agreement?

- It is there. Please see paragraph (d) in the Valuation section.

Withdrawals from the Fund by Jay per Incentive allocations per p9 of DDQ – are these for tax or to fund the GP or because the perf fee doesn't get paid out unless called for and is otherwise just reinvested...? what does PPM say...?

- Withdrawals of performance fee are to fund GP's living expenses. He does not take a salary from the management company.

What conditions other than death renders the SO investment bonds un-excercisaeable..?

- There are several conditions that affect SO puts. The most significant ones are terms that:
  - limit SO redemptions to a fixed percentage of an entire securities issuance
  - limit SO redemptions to a fixed percentage of a particular CUSIP
  - limit SO redemptions to a fixed face amount per decedent.

- place time limits on redemptions; that is, if the survivor waits too long, the SO redemption right may lapse.
- Requires a holding period before the put can be exercised.

Patrick said you can transfer tenancy to the soonest-to-die person and realise all the value on their death from whole ownership of the fund but this isn't true to individual put limits, correct?

- Yes, there are limits to this for issuers who have individual put limits.
- Also may not do it if there is a holding requirement on the securities because it would reset to the transfer date.
-

Why capacity only $200m when mkt size is $5bn – to do with features of the sweetspot of needful securities?

- This is our subjective evaluation of the market capacity for this product. In order to be successful, the Fund has to be able to buy assets at an attractive discount, while not violating any of the quantitative constraints (e.g., put limits). In addition, it may not be in the best interest of the Fund to have too high a profile in the market.
- It is imprecise, but likely understates the true capacity of the strategy, especially if interest rates rise further.

How many Participants currently, typically, optimally – why? How does this change with each $10m of aum, why?

- There are currently 8 "active" (i.e., living) Participants
- There are 11 deceased Participant accounts in various stages of redemption/liquidation.
- These are "typical" numbers.
- An active account may have anywhere from $500,000 to $10,000,000 of positions.
- The number and size of accounts, while not unaffected by $10MM of changes in AUM, is not directly proportional to the level of AUM.

Says 30day for liquidation- why is this.. is it for orderly reasons? If so then why 90 days notice?

-
- Assets can be liquidated quickly; it's just a question of price.
- 90-day notice is to permit SO put-backs at par rather than selling securities at a discount to par in the secondary market.

DDQ p13 mentions short holding period but 1yr hold needed for tax purposes according to the Opinion? What is avg holding period? Target holding period? Why?

- We try to turn the portfolio twice per year. Hold times on individual securities may vary significantly based on their terms.

End of day reconciliation with broker and end of month with Administrator... pls show me your process on desk...

- Trades are reconciled daily.

By what day each month should we expect to get the formal NAV styatemnt form the Administrator?

- The formal NAV statement is typically distributed between the 15th and 20th of the month.

Do you produce a mid-month and end of month estimate email (ie from GP not administrator)..?

- No.

Allocations across various JTWROS accounts should pose no conflict since all are for the benefit of the Fund it seems....?.... BUT where there is risk of claim beyond $10k by joint tenant can you allocate out of the account without their consent to ameliorate the risk of successful claim?

- Jay Lathen has full discretion to move assets from one JTWROS account to another at any time.

Do you or Michael Robinson ever buy SO investment for your own account?

- No.

Tax Opinion – Memorandum, Jan 12th 2011

Sent by Bruce Hood – if he is primary author pls can we have his contact details as we wish to talk to him about the note plus assure ourselves it is formal and be on his headed paper and valid.

- Provided earlier.

Is Bruce Hood (i.e. his firm) the tax accountant to the GP or to the LP, or neither?

- No. The tax accountant to the Partnership is Citrin Cooperman, the Fund's auditor.

We need take advice to Hilltop that it is ok to invest in this from a tax withholding point of view

Is this Opinion per the current PPM or has it had new wording that may obviate or impact the opinion or the ability of a non-US entity to invest in the Fund without adverse tax consequences i.e. (i) any withholding tax (ex FACTA) or (ii) the need to file a return to IRS..?

- The structure has changed. A new opinion would be prudent.

Confusing per the language in the opinion suggesting that the Fund can be treated as a corporation though isn't in the PPM and shouldn't be.... which is it?

- [?]

Limitation of 2% (of gross income) deduction for tax offset is felt to or not-to apply..? – do the returns shows reflect this treatment to the downside ie fully factoring..? what potential impact come if this limitation bites? Have the accountants to the Fund in its first audit past comment on this..?

- 2% limit does not apply per Citrin Cooperman.

Note says "significant risk that the Fund will not be deemed to be engaged in a trade or business for tax purposes" — this seems a good thing but the language expresses it in terms of concern... is this just accountant defensive wording?

- Yes.

Why needful for Jay to act as nominee? Why can't the Fund be the joint tenant?

- This is an obsolete provision. Jay no longer acts as "nominee" pursuant to changes in the Fund's documentation effective 1/1/13.
- Jay is a borrower from the Fund and pledges the account as collateral for the loan.
- An entity cannot be an owner of a JTWROS account.

Pls can i have copies of the nominee agreement between Jay and the Fund confirming he will pass back all the gains of the accounts for the benefit of the Fund?

- Yes. This is the "Profit Sharing Agreement."

What payment to Jay for services as nominee / loan officer-representative-borrower if any...?

- Jay receives no compensation tied to these services.

GP no longer paid mgt fee only account of profits (as the Opinion suggests)... this was struck out when wording the PPM I presume? And now conceived and paid as a typical potential loan vs an agency (%) payment...?

- [?]

Opinion says the securities have to be held for more than a year in order to qualify for long term capital gains..... is this valid...? what are consequences of not holding for a year...

- This has to do entirely with US federal tax law pertaining to long-term vs. short-term capital gains.

- Short-term capital gains are taxed in the US at a different (higher) rate than long-term capital gains.

Do the monthly returns shown in the Monthly reflect fully discounted returns for tax purposes?

- They are pre-tax returns, net of fees and expenses of the Fund.

For a Foreign Person we may not own >10% of the LP else our interest is not treated as Portfolio Interest (which doesn't have withholding tax)... Is this omnibus or at level of subscriber?

- [?]

Is the Foreign Person / Portfolio Interest designation valid to Hilltop PCC funds..?

- [?]

Legal Opinion per Caramadre Indictment

Cooling off period is three days – is this business or calendar?

- Three calendar days. (Paragraph 12 of the Participant Agreement?)

Are all the docs with the Participant signed as witnessed or notarised..?

- The Participant signs two documents: the Participant Agreement and the Limited Power of Attorney. These are both required to be notarized.

Any difficulties obtaining Death Certificates? Any expect... why/why not?

- This is a potential vulnerability that we recognize. So far, we have never failed to obtain death certificates in a "reasonable" amount of time. However, some jurisdictions have procedures that are more burdensome than others and this can affect the amount of time required to obtain death certificates.

Where does documentation say the Participant is indemnified as to margin call / losses..?

- See Paragraph 2(h) of the Participant Agreement. (This deals with margin calls, not "losses" on the securities.)

PPT

What % of LP &/or GP profits go to charity?

- No LP profits go to charity.
- GP contributes to charity, but not a fixed percentage.

Independent corroboration of doc quality with Participants – who provides this?

- The Fund's counsel reviews our documentation from time-to-time.

How come there are losses... are these urealised MTM bond movements or crystallised losses?

- These are MTM bond price movements.

Rapid Review (Hilltop doc)

Liquidity is 3mths vs 6mths in RH notes – can we have better eg 30 days?

- Liquidity is 3 months. Will not do shorter than 3 months.

AuM at $16m -- tax advice suggests not being >10% of AuM. Hilltop needs to know if this is valid and the consequences and whether this is omnibus at fund group level of per fund (eg CSF vs HDF)..?

- [?]

What is the individual put limit per Participant and does it shift per issuer?

- As discussed elsewhere, certain securities may impose quantitative "per Participant" put limits. Some securities are very strict; e.g., $250,000 per bond per owner. Others are aggregate limits. That is, in some cases, only 10% of an entire security issuance is subject to SO redemption.
- As part of managing the portfolio, we keep track of the securities that impose put limits.
- Many CDs contain no limits, either individual or aggregate.

Is there any legislation going through anyplace that you know of to threaten the levels and strategy? Why would there be an uptick in such prospective legislation?

- As of this time, we are aware of no such legislation or regulatory proposals.

Pls confirm you will inform us in writing when any single instance of threatening legislation becomes known to you

- We will communicate this promptly.

Do you have any concentration limits by % of NAV for bond purchases eg by issuer, by credit rating?

- We are working on developing formal risk management policy guidelines.
- We limit single-issuer concentration for anything rated lower than A-/A3 to 30% of the portfolio.

Leverage: pls explain the level, the mechanism, the collateral management, the controls.

- Leverage takes the form of margin provided by CL King. It is governed by a margin agreement that is imbedded in the documentation required in order to open an account at CL King.

Annual turnover is 150% to 200% – is this of the portfolio i.e. the bonds

- Yes.

How many Participants do you seek to have on Register at any one time? What is optimal? Why? You have to manage upfront cost with indivudal put limits and navigate terms of SO investments

- There is no fixed number. The number of Participants depends on the level of inquiry from social workers and other outside parties and on the mortality rate.
- Generally, we like to have at least 5 Participants who are currently alive.

g. Participant will, upon request by Lathen, provide the following on an entirely confidential and need to know basis: (i) his/her social security number and a copy of a drivers license or other government issued ID solely for the purpose of allowing a "background/credit check" to be made and to facilitate opening the Account(s); and/or (ii) such permission as shall be necessary for Lathen to consult with the Participant's physician in order to discuss and verify the medical condition of Participant.

6. Participant represents that he/she is not subject to a current bankruptcy proceeding nor is he/she considering a bankruptcy filing. Participant represents that he/she is not subject to any existing or pending judgments in favor of creditors. Participant agrees to notify Lathen promptly regarding any adverse changes to his/her credit, including a potential bankruptcy proceeding or judgment in favor of creditors.

7. Participant agrees to indemnify Lathen and Investors for damages caused by Participant's breach of any of the terms of this Agreement.

8. Lindsey Smith ("Participant's Agent"), agrees to promptly notify Lathen in the event of Participant's death and, if requested, to assist Lathen in obtaining death certificates of the Participant. Lathen shall reimburse Participant's Agent for any expense associated with procuring and delivering the requested death certificates to Lathen.

9. Lathen shall have a right to terminate this Agreement if Participant dies prior to the Effective Date.

10. If applicable, Lindsey Smith, Participant's spouse hereby waives any right or claim to the Account(s) arising now or in the future.

11. Participant and Participant's Agent acknowledge that this Agreement and its terms, as well as all Paperwork, are private and confidential and that the Participant will not disclose the terms of this Agreement and the Paperwork to any person without the prior written consent of Lathen.

12. This Agreement shall be governed and construed as to its validity, interpretation and effect by the laws of the State of New York without giving effect to the principals thereof regarding the conflicts of law.

13. Lathen's failure to enforce strictly any provision of this Agreement shall not be construed as a waiver thereof or as excusing the Participants future performance. Any waiver, to be effective in favor of the Participant, must be in writing and signed by Lathen.

14. This Agreement shall be binding upon the successors and heirs of the respective parties hereto.

15. This Agreement shall not be changed, modified or terminated orally or in any manner other than by an agreement in writing signed by each of the parties hereto.

Donald F. (Jay) Lathen	Joy Davis	Participant's Agent	Participant's Spouse
	Joy Davis	Lindsey Smith	
Date:	Date:	Date:	Date:
6/28/11	6/23/11	6/23/11	

Participant Agreement

1. Donald F. (Jay) Lathen ("Lathen"), pursuant to the terms of this agreement ("Agreement"), agrees to provide payment to Joy M. Davis ("the Participant") or Participant's designees pursuant to the terms of paragraph 2(f) below and subject to the full and complete compliance by Participant with the terms and conditions contained in this Agreement. By signing this Agreement, Participant expressly acknowledges that this Agreement and the documentation for opening the brokerage accounts described below ("Account(s)") is part of a business ("Business") conceived and executed by Lathen with financing either provided by Lathen or being arranged from various third party investors ("Investors") and in differing formats, including one or more limited partnerships organized by Lathen, to finance the Business.

2. Participant agrees to become a joint owner with Lathen and/or one or more designee(s) (individually a "Designee" or collectively "Designees") appointed by Lathen on one or more brokerage Account(s). The Participant acknowledges and agrees:

a. That the Account(s) will be titled as a joint tenancy with rights of survivorship ("JTWROS") consisting of the Participant, Lathen and/or, in Lathen's discretion, with one or more Designee(s).

b. That the Account(s) will purchase certain investments ("Investments") which contain what is known as a "survivor's option" or "death put," which allows the investment, typically a fixed income security, to be sold back or "put" to the issuer, at par plus accrued interest, upon the death of the holder.

c. to execute paperwork ("Paperwork") required by the brokerage firms and to cooperate with the brokerage firms and Lathen to create and establish the Account(s) in the JTWROS format. The Paperwork has been included with this Agreement. The Participant is encouraged to ask any questions and request any clarification regarding the contents and effects or consequences of the Paperwork prior to signing this Agreement.

d. you hereby authorize Lathen to make transfers of cash and securities into and out of the Account(s) without your prior consent, including to and from other accounts that Lathen and the Investors control. You agree to cooperate with Lathen to facilitate these transfers if necessary and to facilitate modifications to the Account(s) as necessary except that the Participant understands and agrees that Lathen and Investors are solely responsible for funding the Account(s), including funding the purchase of any securities transferred into the Account(s) or subsequently purchased in or from the Account(s). Participant shall have absolutely no responsibility for funding the Account(s) and the Participant affirms that no such consideration has been provided to or by Participant for such purpose.

e. the Effective Date shall be defined as the earliest date that an Account(s) has been established and a sufficient quantity of Investments have been purchased and settled in the Account(s) or, if applicable, have otherwise been transferred into the Account(s). Lathen shall have sole discretion with respect to determining what constitutes a sufficient quantity of Investments for purposes of this paragraph 2(e). Participant acknowledges that there may be a delay of up to fifteen (15) business days between the execution of this Agreement and the Effective Date, due to brokerage firms' internal processing times and the availability of Investments.

f. The Participant shall be entitled to 5% of the net profits in the Accounts during the term of the joint tenancy, subject to a minimum of $10,000 and a maximum of $15,000. Participant shall receive a

$10,000 payment as soon as practicable following the Effective Date. Payments with respect to additional net profits in the Accounts, if any, will be payable upon realization of such profits. Participant expressly acknowledges that there is no assurance that he/she or his/her estate will receive additional payments under this Agreement.

3. Participant agrees that he/she will not be permitted to pledge, borrow against, or withdraw funds from the Account(s) without the express written permission of Lathen, which permission may be withheld in Lathen's sole discretion. It is specifically understood by Participant that upon Participant's death, the joint tenancy between Lathen, the Participant and (if applicable) the Designees, will terminate and the Account(s) and all assets and proceeds from such Account(s) will pass directly to Lathen and the Investors and that the Account(s) will not be part of Participant's estate.

4. Participant represents that he/she is not currently an owner of any Investments as described above. Participant further agrees that he/she will not purchase any such Investments or permit, allow or authorize any party other than Lathen and Investors to purchase such Investments on his/her behalf.

5. Participant acknowledges and agrees that:

a. He/she understands the nature and terms of this Agreement and is over the age of 18 years, competent and of sound mind, memory and also understands the nature of the Business described above, or, if applicable, Participant's attorney-in-fact is over the age of 18, competent and of sound mind, memory, and understands the nature and terms of this Agreement and nature of the Business described above.

b. Neither Lathen nor any Investor is providing financial advice in connection with this Agreement and is solely acting with Participant in accordance with the terms and conditions of this Agreement and of the Account(s) and not in any fiduciary or other such capacity to the Participant;

c. He/she has been given the full opportunity to ask questions from Lathen and understands the nature of the Business described above and also has been given the opportunity to consult with a financial advisor, legal or other qualified representative prior to executing this Agreement;

d. He/she understands that the reason that this Agreement will not be countersigned by Lathen for a period of 3 days from the date of its return by Participant is for the express purpose of giving the Participant the opportunity to exercise a right of rescission and cancellation of participation herein by providing written notification to Lathen.

e. Lathen is not providing tax advice with respect to the Agreement, the establishment of the Account(s) or any payments received by the Participant under this Agreement. Participant acknowledges and is aware that there may be federal, state or local tax consequences to the Participant which are unknown to Lathen concerning this Agreement. As such, Participant is required to seek advice from his/her accountant or tax advisor prior to executing this Agreement.

f. Participant understands that any payments he/she receives under this Agreement could be considered income or assets by Medicaid and could have an adverse impact on Participant's eligibility to receive Medicaid benefits.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-09197-A

EDEN ARC CAPITAL)

WITNESS: Michael Robinson

PAGES: 1 through 174

PLACE: Securities and Exchange Commission

200 Vesey Street, Suite 400

New York, New York 10281

DATE: Friday, June 19, 2015

The above-entitled matter came on for hearing, pursuant to notice, at 9:48 a.m.

now with Wedbush?
A I would – I would say that is correct.
Q In terms of the 1099s, so were the terminally ill individuals or their agents required to pay taxes on the profits?
A Well, we –
MR. PROTASS: Objection. I'm not sure what you mean by "profits." On the receipt of the 10,000?
MS. WEINSTOCK: No. Profits from the fund.
Q Or profits from the broker.
A No, they would not – they would not be receiving 1099s on the profits because – yeah, I think not.
Q So the 1099s we're referring to, those are for the $10,000.00 payments?
A Yes.
Q Okay. But they didn't receive 1099s from any profits from the brokerage accounts?
A To the best of my knowledge, they did not.
Q Did they receive statements from the broker-dealers?
A Generally not.

Q Can you think of an instance where they did?
A I could think of a couple of instances.
Q And what were those?
A You know, I just know that there have been a couple, in general, that – that they did not receive them.
Q Did – I'm sorry. Did the participants receive copies of the brokerage statements?
A Generally – I said, no, generally not.
Q But you said there were a couple of instances where they did?
A Yes.
Q And what were the circumstances behind those?
A The – the – just to say that, in general, you know, when the – the joint tenant brokerage account application is made, there's a box or some – someplace on there where you say, where do you want the statements sent? And normally we sent them – they are sent to our office, the paper copies. And – and, you know, and if you – if you don't say that, if you don't check that box, they may be sent to both parties or to multiple parties and we – so when that's

happened sometimes we kind of just say, no, we really want them to come here and they come to the office. So that's why a couple of times I know that they've gone out to broader distribution.
Q Because the agent called you to say, we got these brokerage statements?
A Yes.
Q Okay. And did you then call the broker-dealer and say, just send them to Eden Arc?
A Yeah. I have said, you know, I've looked – I've looked at the paperwork and said, oh, that wasn't – you know, they were supposed to go – they say, where do you want them sent? They're supposed to go to One Penn Plaza.
Q Did Jay or any of the Eden Arc entities ever attempt to open accounts with BNP Paribas?
A Not that I'm aware.
Q Okay. All right, I don't have any other questions.
MS. WEINSTOCK: It's 2:38. We're going off the record now. Thank you.
(Whereupon, at 2:38 p.m., the examination was concluded.)
* * * * *

PROOFREADER'S CERTIFICATE

In The Matter of: EDEN ARC CAPITAL
Witness: Michael Robinson
File Number: NY-09197-A
Date: Friday, June 19, 2015
Location: New York, NY

This is to certify that I, Maria E. Paulsen, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

_____ _____
(Proofreader's Name) (Date)

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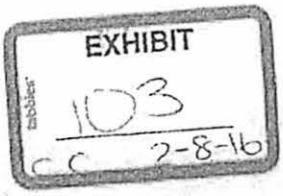

To: trevor.simon@hilltop.co.uk[trevor.simon@hilltop.co.uk]
Cc: Jay Lathen[Jaylathen@edenarccapital.com]
From: Michael Robinson
Sent: Thur 9/26/2013 10:21:45 AM
Importance: Normal
Subject: Due Diligence Questions from Hilltop
EdenArc ODD Q cut for J Lathen - v1 - TS - 1109013_Revised.docx

Hello, Trevor.

We met briefly when you visited us earlier this month. Jay has asked me to respond to you on your due diligence questionnaire and related matters.

I have attached our copy of your due diligence questions with our responses. In a few cases, there are open brackets "[ ]" indicating that we are uncertain about the question or where we feel we need to discuss the point further.

Separately, you will see a reference to a "shared Dropbox folder." The documents that we are providing in response to your due diligence process are placed there.

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Regards,

Michael

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EdenArc preliminary ODD questions

Sep 11th 2013

PPM

May Hilltop invest in this? Who should we speak to formally for advice?

- Based on what we know about Hilltop, it eligible to subscribe to Eden Arc Capital Partners, LP. From our reading of the facts, Hilltop falls into the category of "Accredited Investor." Its non-US nationality is not a problem; however, we cannot make any representations about any tax issues.
- You should seek advice from a US-based attorney with expertise in US securities law.

Dont understand wording on page 3 – pls explain

- There are (parts of) two Sections on Page 3, so I will attempt to clarify each section in turn.
    - Performance Allocation.
        - This section defines the basis on which the General Partner earns his performance fee. Basically, it says that there is a "high water mark" that is reset each quarter. In the simplest case, if an investor has been in the Fund for several quarters and has not added to, nor subtracted from, his initial investment and the value of his account has increased each quarter, then at the end of each quarter the GP will earn a performance fee equal to the quarterly increase in value x 20%. If there is a flat or down quarter, the GP's Performance Fee = 0%.
    - Admission of New Limited Partners and Capital Contributions.
        - The GP normally admits new Limited Partners at the beginning of any calendar month. However, the GP has discretion to waive this requirement.

Perf allocation calculated quarterly — not monthly..? Paid annually in arrears..?

- Yes, it is calculated monthly. It crystallizes on a quarterly basis.

Pls confirm per note at top of p.5 that the GP currently knows of no reason why it should withhold tax from Hilltop investment (save as discovered needful per FATCA)..?

- That statement at the top of page 5 regarding tax withholding was made with the then-current understanding that no such taxes are currently required since the income of the Fund is portfolio income. Given Hilltop's status as a non-US-domiciled entity, this matter should be reviewed and confirmed by Hilltop's counsel. You can also confer with Bruce Hood at Wiggin & Dana, who gave an opinion to the Fund back in 2011. His number is [redacted]
- See also the section titled: "Tax Risks and Payment of Taxes" on Page 16 of the PPM.

By what time subdocs and monies required? Directors have discretion to waive?

- As stated in the PPM, the GP may "admit new Limited Partners to the Partnership on the first day of each calendar month or on such other dates as the General Partner may determine in its sole discretion (each an "Interim Date"). It is current practice that subdocs and funds shall be delivered on the first day of the calendar month in which the new Limited Partner wished to (a) subscribe for the first time or (b) increase the size of his investment.

No independent Directors -- an onshore fund so TS unfamiliar – is the GP the thing?

- Correct. There are no independent directors.

Must HT be an accredited investor... is it...? Isnt it a Qualified Client – does this make a diff..?

- Hilltop is, according to the criteria stated in the "Eligible Subscribers" section, an Accredited Investor. If, in fact, Hilltop is not an Accredited Investor, it most likely will fit the definition of a Qualified Client. Either classification is acceptable.

Do you have a Flow Diagram as to money movement in the trade ie between the Fund and Jay and the JTWROS and back to the Fund etc..?

- Yes. Please see the attachment.

Is it 51% for material rights change?

- This question requires clarification. Note, however, that per "Changes in Investment Strategies" on Page 15, the GP (or GP + IM) may change the Fund's investment strategy, provided that the LPs are given notice and the right to withdraw prior the effectuation of such a change.

What is individual put limit, is it per state, federal, per issuer, per security?

- "Individual put limit" is defined generically as the face value of SO securities that any one deceased beneficial owner may "put" to the issuer under the SO provisions governing that particular issue.
    - For bonds, the Individual Put Limit is typically $200,000 - $250,000 per decedent per issuer.
    - The Individual Put Limit calculations may be based on the aggregate size of the entire outstanding issuance of SO bonds issued by one obligor or on a CUSIP-by-

CUSIP basis. It is worth mentioning that, in some circumstances, the "deal documents" are not crystal-clear about this matter.

We want to be informed in writing of any litigation or legal enforcement action or any legal cost to be incurred by the Fund in excess of $5,000 to recover gains from a JTWROS account or in respect of an issuer reluctant to pay up... EACH instance of such cost occurrence to be communicate to Hilltop... and flagged in as far as advance as possible... actually we would like the GP to halt is performance fee once this excess 0.25% of nav...?

- The GP is willing to make a reasonable effort to provide information to Hilltop regarding legal expenditures over $5,000.0. The GP is not willing to halt its Performance Fee.

How offset risk of contention by Participants survivor – just that they have little resources and have signed up to this in advance...? any cause for concern...? could there be a massive gain eg $100k+ or $1m+ (??) that accrues to a joint account making it seductive for 'new' owners albeit they are un-entitled...? (p22 of the PPM)

- As a matter of law, the Participants' survivors have extremely limited rights vis-à-vis the assets in their particular JTWROS account. Moreover, as a practical matter, the Participants are not informed about any details of the JTWROS account (e.g., the name of the brokerage firm, the account number, etc.)
- We do not believe that this is a cause for significant concern.
- We cannot add any further assurances beyond those stated on Page 22 of the PPM.

How reduce risk that debts of Participant can be sought to be offset by gains in the joint account by survivors? (p22 of the PPM)

- Refer to the response to the question above.
- The Fund has a secured interest in the JTWROS account(s) and would have priority status over unsecured creditors of the Participant(s).

How reduce risk the Participant pledges the gains of the joint account to another interest? (p22 of the PPM)

- The Participation Agreement prohibits the Participants from pledging their interest in the JTWROS accounts.
- The Fund files a UCC-1 perfecting its security interest in the JTWROS accounts and giving it priority over other potential creditors of the Participants.

Are securities bought only US listed ones?

- The answer to this question has several parts:
    - The "securities" bought by the Fund are issued in the USA and are governed by US securities law.
    - The securities include both bonds and brokered certificates of deposit issued by banks operating in the USA.
    - Notwithstanding the above, the securities purchased by the Fund are typically not listed on an exchange. They trade in the over-the-counter market.

UBTI issues for Hilltop (p.27)

- This section "Unrelated Business Taxable Income" relates to Limited Partners that are tax-exempt entities for US federal tax purposes. It should not apply to Hilltop; however, if this is a concern to you, please consult appropriate counsel.

What % of NAV and of SO investments generally are illiquid and have wide spreads — the concern is the valuation being done properly and fairly... what register do you have for disputes between administrator valuation and yours... how ensure fairness and documentation.

- The SO securities are purchased in both the new-issue and secondary markets.
    - Some issues of such size and perceived credit quality that they are very liquid. That is, quotes are abundant and the bid/asked spreads are relatively low.
    - Other issues, such as CDs issued by regional banks, may be less liquid.
- The monthly valuation exercise for the portfolio relies upon several sources of information.
    - IIS obtains its quotes from a pricing database provided by Interactive Data Corp. and also has access to TRACE data for completed trades.
    - The GP also has access to market information and dealer quotes from Bloomberg, other on-line services, and traders active in the market.
    - Valuation differences between the Administrator (IIS) and the GP are rare and are fully documented.

Has there been an audit of the LP i.e. to Dec 2011 (inception was May 2011)..? Pls provide

- Yes, there is an audit for 2011 and 2012.

Seems to be a claw-back right to recapture capital post redemption (p33 at top) –pls comment

- This language in the "Limited Partner's Indemnification of the Partnership" section on Page 33 is conventional for business arrangements of this type in the USA. The meaning is plain: The withdrawal by one or more of the Limited Partner(s) of all or a portion of their capital on a particular date does not shield such Limited Partner(s) from financial exposure to the expense of litigation nor from actual expenses that were incurred prior to such withdrawal. As you are aware, sometimes lawsuits or other regulatory decisions that impose penalties on a business may not be known about until after a significant passage of time. If the matters

giving rise to litigation, penalties, fines, etc. arose during the time that a Limited Partner was invested in the Fund, this Limited Partner is not excused from contributing to such expenses simply because he "pulled out" before the problem was discovered. Under limited partnership law, an LP investors' liability is limited to his capital contributions to the partnership.

Litigation and compliance and regulatory history of Jay – pls comment... any issues? clean history?

- Clean history.

DDQ

How much was the (your) initial capital that you began with in July 2009..?

- Approximately $1 million.

Has track record since July 2009 been audited.. how was it documented? Was it real investments? Is there a brokerage account record we can look to?

- The track record prior to 2011 was not audited. It was documented through my own personal tax returns. Yes, these were "real" investments. Brokerage account records exist.

When third party investors came in in Sept 2010 how much money did they contribute... was it really invested..?

- Approximately $2.4 million. Yes, it was invested.
- When third-party investors first invested in my strategy, they were investing as individuals in the form of separate accounts.

Asset verification.... TS will take to referrals and service providers

- We have given you the contact information for the relevant external service providers.

Any redemptions thus far? How much? Why? Contact details of redeemer pls?

- To date, there have been no redemptions by investors in the Fund.

TER — breakdown pls ... show the non-brokerage transaction costs too.

- See the audited financial statements for this information.

How much nominal subscribed investment does Jay have in the LP..?

- Zero capital contribution.

At what level of AUM does the GP break even..? Is there a burn rate? For how long will you fund it..?

- The management company and the GP are currently profitable.

Pls can I have your ADV Form 2A & B

- Yes. You will find these documents in the shared Dropbox folder.

Top 1 is 3% of aum, how about top 3. Who is the top 1..?

- The three largest investors comprise approximately 2/3 of AUM.
- We do not reveal the names of our investors.

Any side letters, preferential terms – esp liquidity?

- No side letters or preferential terms, except for reduced fees for Blue Sand principals.

All L1 securities?

- Securities are mostly Level II.

- Risk management and concentration controls? By issuer, by credit rating, by instrument type...? How do you think about risk management – pls explain your paradigm.

- Although we do not currently operate a formal, quantitative risk management model, we are very risk-conscious in our approach. The Fund's portfolio consists almost exclusively of bonds and brokered CDs issued by investment-grade entities. In addition, the length of time that we hold a particular position is less than one year. I would say that our risk profile is very low.

Collateral management and control:.... What cash levels does fund maintain? What leverage level? What unutilised margin level do you maintain?

- We try to maintain cash and excess margin to withstand a 5% drop in the value of the portfolio.
- In addition, we have cash coming in regularly from put-back activities, which positions us to withstand larger declines.

Is CL King the primary broker for all JTWROS accounts? Are all accounts in Jay's name

- Yes, CL King is our primary broker.
- All of the JTWROS accounts are in the name of Jay Lathen and a Participant.

Why CL King chosen

- CL King was chosen because, after we had worked with several other firms, we found a level of operational capacity and comfort with our strategy. It was, in essence, a "good fit."

Counterparty risk of CL King...? Why not have two PB's...?

- We are aware that we need more brokerage capacity. We are currently exploring relationships with other PBs.

Is money at CL King segregated / insured.. pls comment..? They may provide a note explaining their segregation processes for customer assets .. I would like a copy of that doc if they provide such a thing. Also of their brochure.

- • Nothing that exactly fits this description exists, per CL King.
- • As for a brochure, you may find it useful to visit the part of the CL King Website that describes their services for investment firms (http://www.clking.com/InvestorServices/BrokerageClearingServices).

Docs sought

  - CL King agreement as broker and PB (We do not have a written agreement with them.)
  - Integrated Investment Solutions as administrator
  - HSBC as banker
  - IMA with the GP
  - Nominee agreement with Jay
  - Agreement covering the borrowing of monies from the fund by Jay
  - Account Control Agreement docs (PPM, top of p11)

Pls confirm that the CL King relationship arm's length bona fide i.e. Jay Lathen nor the GP doesnt benefit in any manner not otherwise passed fully through back to LP shareholders..?

- That is correct. The relationship between CL King and Jay is strictly arms-length. The terms on which we transact with CL King (trading fees, margin interest, etc.) are strictly by-the-book.
- Jay does not transact any personal business with CL King.

Does CL King acknowledge that the LP (and Jay as nominee) indemnifies the participants from losses... and does this say this in the account agreements with the Participants...?

- CL King has copies of all of our Participant Agreements.

Need a former employee reference for Jay, not just business ones pls

- Grant Porter, Vice Chairman of Lehman Brothers. (Contact info to follow.)

Can the 25% investor level gate BE WAIVED for us else have to treat as a one year lock and hard to own except in 10% of CSF allowed for this which is anyhow filling up per Dutchess etc...??.....

- As discussed, we will modify the language to require 25% Fund level redemption as a condition precedent to an investor level sale.

Why does the soft lock need to be there? (ie 5/4/3/2% per quarter in yr 1)... can this be waived for us..?

- No. Soft lock is to deter short-term investors.

Does the Administrator value the securities using independently gathered pricing rather than take from the GP.... ?

- GP prices the book. Administrator runs separate valuation and discrepancies are discussed.

Let's review the valuation basis / treatment ... (page 7 of DDQ)

- [ ]

Two pronged valuation wording is not found in the PPM... why not? Is it in the admin agreement?

- It is there. Please see paragraph (d) in the Valuation section.

Withdrawals from the Fund by Jay per Incentive allocations per p9 of DDQ – are these for tax or to fund the GP or because the perf fee doesn't get paid out unless called for and is otherwise just reinvested...? what does PPM say...?

- Withdrawals of performance fee are to fund GP's living expenses. He does not take a salary from the management company.

What conditions other than death renders the SO investment bonds un-excercisaeable..?

- There are several conditions that affect SO puts. The most significant ones are terms that:
  - limit SO redemptions to a fixed percentage of an entire securities issuance
  - limit SO redemptions to a fixed percentage of a particular CUSIP
  - limit SO redemptions to a fixed face amount per decedent.

- place time limits on redemptions; that is, if the survivor waits too long, the SO redemption right may lapse.
- Requires a holding period before the put can be exercised.

Patrick said you can transfer tenancy to the soonest-to-die person and realise all the value on their death from whole ownership of the fund but this isn't true to individual put limits, correct?

- Yes, there are limits to this for issuers who have individual put limits.
- Also may not do it if there is a holding requirement on the securities because it would reset to the transfer date.
-

Why capacity only $200m when mkt size is $5bn – to do with features of the sweetspot of needful securities?

- This is our subjective evaluation of the market capacity for this product. In order to be successful, the Fund has to be able to buy assets at an attractive discount, while not violating any of the quantitative constraints (e.g., put limits). In addition, it may not be in the best interest of the Fund to have too high a profile in the market.
- It is imprecise, but likely understates the true capacity of the strategy, especially if interest rates rise further.

How many Participants currently, typically, optimally – why? How does this change with each $10m of aum, why?

- There are currently 8 "active" (i.e., living) Participants
- There are 11 deceased Participant accounts in various stages of redemption/liquidation.
- These are "typical" numbers.
- An active account may have anywhere from $500,000 to $10,000,000 of positions.
- The number and size of accounts, while not unaffected by $10MM of changes in AUM, is not directly proportional to the level of AUM.

Says 30day for liquidation- why is this.. is it for orderly reasons? If so then why 90 days notice?

-
- Assets can be liquidated quickly; it's just a question of price.
- 90-day notice is to permit SO put-backs at par rather than selling securities at a discount to par in the secondary market.

DDQ p13 mentions short holding period but 1yr hold needed for tax purposes according to the Opinion? What is avg holding period? Target holding period? Why?

- We try to turn the portfolio twice per year. Hold times on individual securities may vary significantly based on their terms.

End of day reconciliation with broker and end of month with Administrator... pls show me your process on desk...

- Trades are reconciled daily.

By what day each month should we expect to get the formal NAV styatemnt form the Administrator?

- The formal NAV statement is typically distributed between the 15th and 20th of the month.

Do you produce a mid-month and end of month estimate email (ie from GP not administrator)..?

- No.

Allocations across various JTWROS accounts should pose no conflict since all are for the benefit of the Fund it seems....?.... BUT where there is risk of claim beyond $10k by joint tenant can you allocate out of the account without their consent to ameliorate the risk of successful claim?

- Jay Lathen has full discretion to move assets from one JTWROS account to another at any time.

Do you or Michael Robinson ever buy SO investment for your own account?

- No.

Tax Opinion – Memorandum, Jan 12th 2011

Sent by Bruce Hood – if he is primary author pls can we have his contact details as we wish to talk to him about the note plus assure ourselves it is formal and be on his headed paper and valid.

- Provided earlier.

Is Bruce Hood (i.e. his firm) the tax accountant to the GP or to the LP, or neither?

- No. The tax accountant to the Partnership is Citrin Cooperman, the Fund's auditor.

We need take advice to Hilltop that it is ok to invest in this from a tax withholding point of view

Is this Opinion per the current PPM or has it had new wording that may obviate or impact the opinion or the ability of a non-US entity to invest in the Fund without adverse tax consequences i.e. (i) any withholding tax (ex FACTA) or (ii) the need to file a return to IRS..?

- The structure has changed. A new opinion would be prudent.

Confusing per the language in the opinion suggesting that the Fund can be treated as a corporation though isn't in the PPM and shouldn't be.... which is it?

- [?]

Limitation of 2% (of gross income) deduction for tax offset is felt to or not-to apply..? – do the returns shows reflect this treatment to the downside ie fully factoring..? what potential impact come if this limitation bites? Have the accountants to the Fund in its first audit past comment on this..?

- 2% limit does not apply per Citrin Cooperman.

Note says "significant risk that the Fund will not be deemed to be engaged in a trade or business for tax purposes" — this seems a good thing but the language expresses it in terms of concern... is this just accountant defensive wording?

- Yes.

Why needful for Jay to act as nominee? Why can't the Fund be the joint tenant?

- This is an obsolete provision. Jay no longer acts as "nominee" pursuant to changes in the Fund's documentation effective 1/1/13.
- Jay is a borrower from the Fund and pledges the account as collateral for the loan.
- An entity cannot be an owner of a JTWROS account.

Pls can i have copies of the nominee agreement between Jay and the Fund confirming he will pass back all the gains of the accounts for the benefit of the Fund?

- Yes. This is the "Profit Sharing Agreement."

What payment to Jay for services as nominee / loan officer-representative-borrower if any...?

- Jay receives no compensation tied to these services.

GP no longer paid mgt fee only account of profits (as the Opinion suggests)... this was struck out when wording the PPM I presume? And now conceived and paid as a typical potential loan vs an agency (%) payment...?

- [?]

Opinion says the securities have to be held for more than a year in order to qualify for long term capital gains..... is this valid...? what are consequences of not holding for a year...

- This has to do entirely with US federal tax law pertaining to long-term vs. short-term capital gains.

- Short-term capital gains are taxed in the US at a different (higher) rate than long-term capital gains.

Do the monthly returns shown in the Monthly reflect fully discounted returns for tax purposes?

- They are pre-tax returns, net of fees and expenses of the Fund.

For a Foreign Person we may not own >10% of the LP else our interest is not treated as Portfolio Interest (which doesn't have withholding tax)... Is this omnibus or at level of subscriber?

- [?]

Is the Foreign Person / Portfolio Interest designation valid to Hilltop PCC funds..?

- [?]

Legal Opinion per Caramadre Indictment

Cooling off period is three days – is this business or calendar?

- Three calendar days. (Paragraph 12 of the Participant Agreement?)

Are all the docs with the Participant signed as witnessed or notarised..?

- The Participant signs two documents: the Participant Agreement and the Limited Power of Attorney. These are both required to be notarized.

Any difficulties obtaining Death Certificates? Any expect... why/why not?

- This is a potential vulnerability that we recognize. So far, we have never failed to obtain death certificates in a "reasonable" amount of time. However, some jurisdictions have procedures that are more burdensome than others and this can affect the amount of time required to obtain death certificates.

Where does documentation say the Participant is indemnified as to margin call / losses..?

- See Paragraph 2(h) of the Participant Agreement. (This deals with margin calls, not "losses" on the securities.)

PPT

What % of LP &/or GP profits go to charity?

- No LP profits go to charity.
- GP contributes to charity, but not a fixed percentage.

Independent corroboration of doc quality with Participants – who provides this?

- The Fund's counsel reviews our documentation from time-to-time.

How come there are losses... are these urealised MTM bond movements or crystallised losses?

- These are MTM bond price movements.

Rapid Review (Hilltop doc)

Liquidity is 3mths vs 6mths in RH notes – can we have better eg 30 days?

- Liquidity is 3 months. Will not do shorter than 3 months.

AuM at $16m -- tax advice suggests not being >10% of AuM. Hilltop needs to know if this is valid and the consequences and whether this is omnibus at fund group level of per fund (eg CSF vs HDF)..?

- [?]

What is the individual put limit per Participant and does it shift per issuer?

- As discussed elsewhere, certain securities may impose quantitative "per Participant" put limits. Some securities are very strict; e.g., $250,000 per bond per owner. Others are aggregate limits. That is, in some cases, only 10% of an entire security issuance is subject to SO redemption.
- As part of managing the portfolio, we keep track of the securities that impose put limits.
- Many CDs contain no limits, either individual or aggregate.

Is there any legislation going through anyplace that you know of to threaten the levels and strategy? Why would there be an uptick in such prospective legislation?

- As of this time, we are aware of no such legislation or regulatory proposals.

Pls confirm you will inform us in writing when any single instance of threatening legislation becomes known to you

- We will communicate this promptly.

Do you have any concentration limits by % of NAV for bond purchases eg by issuer, by credit rating?

- We are working on developing formal risk management policy guidelines.
- We limit single-issuer concentration for anything rated lower than A-/A3 to 30% of the portfolio.

Leverage: pls explain the level, the mechanism, the collateral management, the controls.

- Leverage takes the form of margin provided by CL King. It is governed by a margin agreement that is imbedded in the documentation required in order to open an account at CL King.

Annual turnover is 150% to 200% – is this of the portfolio i.e. the bonds

- Yes.

How many Participants do you seek to have on Register at any one time? What is optimal? Why? You have to manage upfront cost with indivudal put limits and navigate terms of SO investments

- There is no fixed number. The number of Participants depends on the level of inquiry from social workers and other outside parties and on the mortality rate.
- Generally, we like to have at least 5 Participants who are currently alive.

g. Participant will, upon request by Lathen, provide the following on an entirely confidential and need to know basis: (i) his/her social security number and a copy of a drivers license or other government issued ID solely for the purpose of allowing a "background/credit check" to be made and to facilitate opening the Account(s); and/or (ii) such permission as shall be necessary for Lathen to consult with the Participant's physician in order to discuss and verify the medical condition of Participant.

6. Participant represents that he/she is not subject to a current bankruptcy proceeding nor is he/she considering a bankruptcy filing. Participant represents that he/she is not subject to any existing or pending judgments in favor of creditors. Participant agrees to notify Lathen promptly regarding any adverse changes to his/her credit, including a potential bankruptcy proceeding or judgment in favor of creditors.

7. Participant agrees to indemnify Lathen and Investors for damages caused by Participant's breach of any of the terms of this Agreement.

8. Lindsey Smith ("Participant's Agent"), agrees to promptly notify Lathen in the event of Participant's death and, if requested, to assist Lathen in obtaining death certificates of the Participant. Lathen shall reimburse Participant's Agent for any expense associated with procuring and delivering the requested death certificates to Lathen.

9. Lathen shall have a right to terminate this Agreement if Participant dies prior to the Effective Date.

10. If applicable, Lindsey Smith, Participant's spouse hereby waives any right or claim to the Account(s) arising now or in the future.

11. Participant and Participant's Agent acknowledge that this Agreement and its terms, as well as all Paperwork, are private and confidential and that the Participant will not disclose the terms of this Agreement and the Paperwork to any person without the prior written consent of Lathen.

12. This Agreement shall be governed and construed as to its validity, interpretation and effect by the laws of the State of New York without giving effect to the principals thereof regarding the conflicts of law.

13. Lathen's failure to enforce strictly any provision of this Agreement shall not be construed as a waiver thereof or as excusing the Participants future performance. Any waiver, to be effective in favor of the Participant, must be in writing and signed by Lathen.

14. This Agreement shall be binding upon the successors and heirs of the respective parties hereto.

15. This Agreement shall not be changed, modified or terminated orally or in any manner other than by an agreement in writing signed by each of the parties hereto.

Donald F. (Jay) Lathen	Joy Davis	Participant's Agent	Participant's Spouse
	Joy Davis	Lindsey Smith	
Date:	Date:	Date:	Date:
6/28/11	6/23/11	6/23/11	

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-09197-A

EDEN ARC CAPITAL)

WITNESS: Donald Lathen

PAGES: 212 through 398

PLACE: Securities and Exchange Commission

200 Vesey Street, Suite 400

New York, New York 10281

DATE: Thursday, July 23, 2015

The above-entitled matter came on for hearing, pursuant to notice, at 9:42 a.m.

were a continuation from yesterday.
MS. WEINSTOCK: Okay.
MR. PROTASS: Regarding the rules-of-the-road.
MS. WEINSTOCK: Right. And for the record, this is an investigation by the Commission in the matter of Eden Arc Capital Management, LLC, NY-9197, to determine whether there have been violations of the Federal Securities Laws. However, the facts developed in this investigation might constitute violations of other federal or state, civil or criminal laws.
Whereupon,
DONALD FRANK LATHEN
was recalled as a witness and, having been previously sworn, was examined and testified as follows:
EXAMINATION
Q So yesterday you had talked about that you were named as a defendant in the Prospect matter; is that correct?
A Yes.
Q What about any of the Eden Arc entities, have they been named any in any litigations?
A Yes.

Q Which ones?
A The Prospect litigation.
Q Any others?
A No.
Q What happens when the participants die, specifically to the securities and to the accounts?
A We, Michael and I, usually Michael, procures a copy of the death certificate, a certified copy of the death certificate, from one of the family members of the participant. We then prepare the package of materials that are required under the relevant deal documentation to substantiate the survivor's option election which includes, as we discussed yesterday, a letter of authorization from me as the surviving joint owner on the account, a copy of the death certificate, account statements showing that the registration of the account and the securities in the account and, if there's a holding requirement, perhaps multiple account statements to demonstrate that the holding requirement has been met. And then, that is sent to -- usually overnighted to the brokerage firm.
And then, the brokerage firm then forwards that information, along with perhaps some

other information, to either DTC in the case of CDs or to the trustee in the case of bonds. So however the -- whoever the party is that is supposed to receive the documentation and review the documentation and that various issuer or issuers, that brokerage firm sends that information on.
Q And then what happens once the securities are redeemed?
A They're deemed into the account. And then the account transfers funds to Eden Arc Capital Partners and ultimately the account is liquidated and the funds go to Eden Arc Capital Partners.
Q And is the account then closed?
A Yes.
Q There was at least one participant that was cured; is that right?
A Yes.
Q Can you tell us about that?
A Her name was -- what was her name? Joy Davis I think. She -- [redacted].
Q So what happened to her account and the securities in the account?
A We liquidated the account.
Q How did you do that? What do you

mean by "liquidated"?
A We sold the securities in the account.
Q To whom?
A I don't recall. Either to -- either to the open market or we may have cross traded it into another joint account. I don't recall.
Q And when you say "cross traded," what do you mean by that?
A Meaning being sold from one account that we control and -- and going into another account that we control.
Q But if you closed down the Joy Davis account then it wouldn't have been a sale because -- because then you would have had cash in the Joy Davis account; is that right?
A I don't recall the details. If there was cash in the Joy Davis account then ultimately it would have needed to have been moved out.
Q To where?
A To Eden Arc.
Q So were there other circumstances in which you executed cross trades?
A Yes.
Q What were those circumstances?

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-09197-A

EDEN ARC CAPITAL)

WITNESS: Donald Lathen

PAGES: 212 through 398

PLACE: Securities and Exchange Commission

200 Vesey Street, Suite 400

New York, New York 10281

DATE: Thursday, July 23, 2015

The above-entitled matter came on for hearing, pursuant to notice, at 9:42 a.m.

to take a look at them and to tell us about how Ms. Kilgus' account was funded.

A Okay.

Q How was Carol Kilgus' account funded?

A I don't recall. Let me just see what the account number -- see if I can figure this out.

It appears that it was done by journal transfer of positions into the account. At least in significant part.

Q From other participants?

A Yes.

Q And was there consideration paid for that transfer or was it just a straight transfer?

A In the instance of -- in the instance of two of the transfers from 28 and 30, I'm referencing the accounts that were part of the transfer, those would have been accounted for as a reduction in the loan balance owed by that account similar to the discussion that we were having earlier. If you moved positions with a certain value from one account to another in a transfer that would be a reduction in the loan on one account and an increase in the loan on the other account and that's with respect to 28 and 30.

With respect to the other transfers,

those are older versions. Not older versions, but a prior version of the participant agreement, specifically participant agreement number three which you recall has the 95 -- has the five percent profits language and then the 95/5 in the event of my premature demise. There was no consideration on those transfers.

Q And why is that?

A Well, under the terms of this agreement -- under the terms of the participant agreement I have the right to transfer securities into and out of accounts and -- and I was a joint tenant on both accounts. And there's no requirement that in a transfer of securities from one account to another that there necessarily be consideration.

Q What version of the participant agreement did Carol Kilgus sign?

A Version three -- I'm sorry, version four.

Q And as you stated, that version had the three-day recision period?

A Correct.

Q Okay. Which wasn't honored in this case, correct?

A Correct.

Q What was the date in which the transfers into Ms. Kilgus' account were made?

A May 30th.

Q And why were the transfers made on May 30th specifically?

A Because Carol Kilgus [redacted] And so, there was a desire to move a significant amount of positions into her account before [redacted]

Q Please take a look at the account statements. And can you tell us whether there was a Citibank position that was canceled out of Lavina Blair's account and purchased in Carol Kilgus' account?

A Are you referencing a particular e-mail chain or are you just asking a question?

Q I'm asking you to look at the statements for Lavina Blair.

A Okay. So let me look at the Blair account.

Q And the Carol Kilgus account.

A Okay.

MR. GOSNELL: These are Exhibits E and D?

MS. WEINSTOCK: D and E.

MR. VITALE: Yeah.

A Blair and Kilgus. So, what appears to -- what appears to have happened is that the Citibank purchase, which had initially been allocated to six different accounts, it appears, per an e-mail that I sent to Chris Curvin on the 23rd, at some point likely, and since the deal had not actually closed yet, we made a decision to change the allocation on that trade and have it all go into the Kilgus account under the -- under the view that if we have someone who's about to expire, we should put it all in that person's account not in six other accounts.

Q But why was that particular position, the purchase, canceled and then purchased in another account as opposed to just transferring it from one account to another?

A Well, the Citibank -- first of all, I don't think the trade had actually settled as of yet. So, you can't transfer a position that hasn't fully settled. It has to be fully settled before it can be transferred. And I don't recall what the settlement details are around this particular security. Typically they settle towards the end of the month. If not on the end of the month or even

BEFORE THE
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of Eden Arc Capital Management, LLC	File No. NY-9197

WELLS SUBMISSION ON BEHALF OF DONALD LATHEN, EDEN ARC CAPITAL MANAGEMENT, LLC AND EDEN ARC CAPITAL ADVISERS, LLC

FOIA CONFIDENTIAL TREATMENT REQUESTED

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Introduction

The Staff has informed us that they have preliminarily decided to recommend an enforcement action against Donald "Jay" Lathen, Eden Arc Capital Management ("EACM") and Eden Arc Capital Advisors, LLC ("EACA" and, together with EACM, "Eden Arc") for violations of Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Investment Advisers Act and Rule 206(4)-2 thereunder.

The Staff urges that the facts add up to a fraudulent attempt to paper over a reality that Eden Arc Capital Partners, LP ("EACP" or the "Fund") is the true owner of certain "survivor's option" bonds and CDs. The actual reality, though, is that individuals and not the Fund bought the instruments and opened the joint brokerage accounts (the "Joint Tenancy Accounts") holding them. As is amply documented, the Fund was not the owner of the bonds and CDs, but instead provided financing for the investments and held loans and profit-sharing rights.

In about 2009, Mr. Lathen learned of a retail market for bonds and CDs with survivor's options that could be redeemed at face value upon the death of a joint tenant. To profit from the survivor's option feature, Mr. Lathen sought out individuals likely to predecease him, paid them a $10,000 fee, formed joint brokerage accounts with rights of survivorship with those individuals (and sometimes other parties), and purchased for the accounts survivor's option bonds or CDs, acquiring the instruments at a discount in the secondary market. When the individuals died, Mr. Lathen redeemed the bonds or CDs at face value, profiting from the delta between par and the price he had paid. Initially, Mr. Lathen personally provided the financing for the Joint Tenancy Accounts. Since May 2011, the Fund has provided the financing for the Joint Tenancy Accounts.

It is clear from the tone of the questioning that the Staff finds the investment strategy repugnant.[1] But that does not mean that it was a fraud. Mr. Lathen's joint tenants were selected because they were terminally ill; there is no dispute about that. But there is no law prohibiting creating a joint tenancy with someone you expect to outlive. The joint tenants were not victims – they participated freely and willingly, and on a fully informed basis – and received a $10,000 payment that helped to pay for end-of-life costs. This was a legitimate investment strategy, the outcome of which depended – and, indeed, still depends – in significant part, on how state law issues concerning joint tenancy ultimately are resolved.

Survivor's option bonds and CDs are marketed almost exclusively to retail investors, the vast majority of whom fall into the "mom and pop" category. These retail investors tend to overvalue the survivor's option feature at the issue date, allowing the issuers to pay a lower coupon. And the survivors do not always exercise the options. As a result, the banks and other large institutions that issue these instruments benefit from a lower cost of funding, funding that is almost exclusively provided by retail investors.

Mr. Lathen's strategy disrupts that status quo – Mr. Lathen knows that the survivor's option is most attractive when co-owned by someone with a limited life expectancy. Moreover, Mr. Lathen always exercises the survivor's option when it is in the money.

The issuers – which the Staff has identified as the victims of Mr. Lathen's supposed fraud – are among the most sophisticated parties in the nation's capital markets. These issuers set forth in the instruments' governing documents the specific and exhaustive requirements as to what

[1] This investigation began in 2014, during a routine examination of EACM pursuant to Section 204 of the Investment Advisers Act of 1940. Since then, the Staff has sent multiple subpoenas for documents and/or testimony to Mr. Lathen, his employees and an unknown number of third parties. To date, the Staff has permitted counsel for Mr. Lathen and Eden Arc to review the transcript of one third-party deposition. The Staff has refused counsel's requests to review the rest of the investigative file. (See email from J. Weinstock, attached as Exhibit A.)

information has to be conveyed in support of a redemption request and historically have not placed any limitations on who may be joint tenants or on what contractual arrangements they may make among themselves.

When seeking to redeem, Mr. Lathen provided the information specified and, when asked, provided even more, including the agreements he entered into with his joint tenants concerning the funding of the accounts holding the instruments and the disposition of the proceeds. Most issuers honored Mr. Lathen's redemption requests. Some, most notably Goldman Sachs and Prospect Capital, refused. Prospect Capital and Mr. Lathen are currently litigating in state court. To the extent the lower court rules against Mr. Lathen and concludes that the redemption requests need not be honored, the case is likely to be appealed.

Mr. Lathen made every effort to create valid joint tenancies under New York law and indeed the very success of his strategy depended on it. But the specific features of Mr. Lathen's strategy – joint accounts formed for the purpose of acquiring survivor's option bonds and CDs, funded through a financing arrangement, and accompanied by agreements affecting the rights of both account holders to the assets – are new and therefore necessarily untested.[2]

New York Banking Law Section 675 provides that if an account is on its face established as a joint tenancy with rights of survivorship ("JTWROS"), then it constitutes a valid joint tenancy. Under decades of well-established New York case law interpreting Section 675, the validity of a joint tenancy can be overcome only in very limited circumstances and, even then, only when the challenging party has rebutted with "clear and convincing evidence" the statutory presumption that the parties did not intend to form a JTWROS.

[2] Notably, this risk (and others) were fully disclosed to investors in the Fund's Private Offering Memorandum.

To conclude, as the Staff preliminarily has, that these were not valid joint tenancies would be to go far ahead of the New York State court system and to exceed the bounds of case law precedents. As it is now, it is up to issuers to honor the redemption requests or refuse them, and, where there is a dispute, it is up to New York state courts to decide whether or not the Joint Tenancy Accounts are valid. If the law evolves to make clear that establishing an account that is on its face a JTWROS and at the same time providing via contract what the joint tenants' rights are means that the JTWROS is not valid, then this strategy will no longer be valid, and a future representation that an arrangement of the type Mr. Lathen has is a JTWROS may be fraudulent. As the case law stands now, though, there was no misrepresentation or material omission and thus no proper enforcement case for fraud.

Moreover, Mr. Lathen and Eden Arc have not, as the Staff contemplates alleging, violated the Custody Rule. The assets are not held in the name of the Fund because the Fund is not the owner of the assets. The Fund, as is unremarkable in the world of private equity and hedge funds, holds loans and profit-sharing rights, not the Joint Tenancy Accounts or the assets in them. As a result, there has been no violation of the Custody Rule.

No enforcement action should be brought.

I. Factual Background

A. Mr. Lathen's Education and Professional Experience

Mr. Lathen, age 48, graduated from Rice University in 1989 with a B.A. in Economics and earned an M.B.A. with distinction from the University of Michigan in 1993. (DL 21:3-13.)[3] Before starting his current business, Mr. Lathen worked as an investment banker for fifteen years, primarily as a mergers and acquisitions specialist. (*Id.* 21:15-23:4.) From 1996 to 2007

[3] References to "DL" are references to Donald Lathen's SEC testimony on July 22, 2015, July 23, 2015 and August 6, 2015.

he was a member of the natural resources investment banking team at Lehman Brothers, ultimately rising to the level of Managing Director. (*Id.*) In June 2007 he accepted a position at Citigroup as a Managing Director and co-head of that firm's energy mergers and acquisitions business in the United States. (*Id.*) He left Citigroup in the fall of 2008 in the midst of the financial crisis. Since then he has been a full-time investor and fund manager.

B. Survivor's Option Bonds and CDs

Survivor's option bonds are bonds that include a put option that is triggered upon the death of a holder that allows a survivor to redeem the bond at face value. Survivor's option CDs have the same feature.[4] Both the bonds and CDs pay a coupon and repay at maturity. The put is in essence an insurance policy tacked onto an ordinary bond or CD, which provides the investor a guarantee, sometimes subject to certain restrictions, that he will be able to sell the instrument back to the issuer at par upon the holder's death.

There is a perhaps common misconception in the market that the survivor's option feature is a free "sweetener" offered by the issuer. In reality, issuers enjoy lower funding costs as a result of the inclusion of the feature into their securities. Various experts have estimated that issuers are able to pay a coupon 15 to 20 basis points lower than they would on instruments

[4] Brokered CDs, as a general matter, are not considered securities under the securities laws. *See, e.g., Marine Bank v. Weaver*, 455 U.S. 551, 558-59 (1982). The determination of whether particular CDs are securities depends on "the basis of the content of the instruments in question, the purposes intended to be served, and the factual setting as a whole." *Id.* at 560 n.11 (emphasis added); *see also Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230, 240 (2d Cir. 1985). Notably, brokered CDs are offered under "Disclosure Statements" which is the same nomenclature used for bank-bought CDs. In contrast, corporate bonds are offered under prospectuses and are universally considered to be securities. For purposes of this Wells submission only, we refer to the survivor's bonds and CDs interchangeably. If Mr. Lathen and/or Eden Arc were to be charged, however, no CD redeemed by Mr. Lathen could be used as the basis for a securities fraud claim without the court's determination that the CD was a security.

without a survivor's option. Based on an estimated aggregate outstanding issuance of survivor's option paper in the market of $800 billion, issuers collectively enjoy interest savings of approximately $1.2 billion per annum – savings to issuers that comes out of the pockets of retail mom-and-pop investors.

When investors purchase these securities and hold them to maturity, to use the insurance analogy, they will have paid their premiums and never had a claim. And even when a holder of the instrument does die, the survivor or whoever is managing the survivor's finances may not recall or may not be aware that the survivor's option exists. Moreover, issuers often place restrictions on the exercise of the feature which have the effect of limiting put-back requests.[5] Whenever a survivor's option instrument is not redeemed, the lower cost of capital associated with the survivor's option is essentially free money for the issuer.

The terms of the survivor's option feature are typically set forth in the issuer's governing documents. Most permit either the estate or a surviving joint owner of a JTWROS account to exercise the survivor's option feature. With respect to JTWROS accounts, there has historically been no requirement that a survivor be a spouse or even a relative of the decedent.

The bonds' and CDs' governing documents set forth the specific and exhaustive information that must be submitted in support of a redemption request. This list typically includes: (A) a redemption request letter from the account holder or his/her authorized

[5] These restrictions consist principally of holding periods, individual put limits and aggregate put limits. Such limits have the effect of protecting issuers from put-back activity, thereby virtually eliminating the risk that the issuer could lose money from the provision. The investor has no way of knowing the mortality profile of that issuer's bond investor base. In a sense, each investor is playing an actuarial lottery, their put rights ultimately contingent on factors outside their control. Several bond issuers, including Sallie Mae, Barclays, TVA, Societe Generale, Goldman Sachs, American General and MBIA, have invoked the annual aggregate put limit. Were aggregate put limits permitted in the analogous insurance context, one could imagine the following conversation between an insurance company and an unfortunate policy holder: "We're very sorry but someone else's house burned down before yours."

representative; (B) a certified death certificate; (C) a brokerage account statement from the date of death of one of the joint tenants demonstrating that the deceased joint tenant owned the instrument at the time of death; (D) the most recent month's account statement demonstrating that the bond and/or CD is still held in the account and that the deceased joint tenant's name is still on the account; (E) an older account statement demonstrating that the holding period for the bond and/or CD has been met if a holding period requirement for such instrument exists; and (F) a letter from the brokerage firm attesting to the requestor's authority to make the request. (DL 142:19-148:25, 152:1-153:5, 177:5-17, 218:5-219:6; MR 47:10-50:11.[6]) This information is provided to the brokerage firm at which the joint account exists, and that brokerage firm, in turn, presents that information to the relevant instrument's issuer, trustee and/or the DTCC as required under such security's governing documents. (DL 142:19-148:25, 218:5-219:6.)

C. The Overall Strategy

Mr. Lathen's investment strategy stemmed from an arbitrage opportunity he saw in instruments with survivors' options trading at a discount to par. Mr. Lathen realized he could profit by buying them, often on the secondary market, and then putting them back at full price when his joint tenant died.

Mr. Lathen would offer financial assistance (typically $10,000) to terminally ill individuals (who would come to be known as "Participants") in return for an agreement to participate in the Joint Tenancy Accounts. (DL 87:14-88:8, 170:6-20.) Mr. Lathen, in turn, would fund the Joint Tenancy Accounts through which the bonds and/or CDs would be purchased. (DL 87:14-88:8.) Upon the Participants' deaths, Mr. Lathen (and, in some

[6] References to "MR" are references to Michael Robinson's June 19, 2015 SEC testimony.

circumstances, other individuals), as the surviving joint tenant(s) on that Joint Tenancy Account, would seek to redeem the bonds or CDs at par. (DL 87:14-88:8, 197:11-198:15.)

Notably, the bonds' and CDs' governing documents do not have catchall provisions of what information must be provided. There is, for example, no provision requiring a redeemer to provide any other information beyond what is specified in the issuer-generated list of items and information required to be provided. Where an issuer requested additional information not specified in the governing documents, though, Mr. Lathen always provided it. (DL 142:19-148:25, 161:4-15, 162:3-13, 172.)

D. Opening the Joint Accounts and Funding the Investments

Given that he was dealing with the terminally ill and their families, Mr. Lathen realized that it was proper to carefully vet, and make ample disclosures to, individuals with whom he would be opening the Joint Tenancy Accounts. He therefore developed a standard process for assuring that prospective joint tenants (or their legal representatives) were legally capable of entering into such a transaction and fully understood the arrangements. (DL 183:15-193:15.) In particular, before entering into a transaction, Mr. Lathen or his assistant explained the investment to prospective joint tenants. All of the relevant details were then more formally disclosed in writing to Participants and memorialized in a written contract (the "Participant Agreement").

Once a prospective joint tenant had been fully vetted and he/she had decided to move forward with a transaction, Mr. Lathen or his assistant sent him or her a Participant Agreement. Pursuant to the terms of the Participant Agreement, the Participant was required to execute a limited power of attorney authorizing Mr. Lathen to open and manage one or more Joint Tenancy Accounts using the account opening documents provided by the brokerage firm (the "Account Agreement"). Both the Participant Agreement and the Account Agreement clearly stated that

Mr. Lathen and the Participant were establishing a "joint tenancy with rights of survivorship" account.

After the Participant Agreement was signed and the Joint Tenancy Account opened (and certain other conditions satisfied), Mr. Lathen or the Fund (depending on the time of the transaction) paid the Participant (or any person or entity the Participant designated) an agreed-upon amount (typically $10,000).

Following execution of the Participant Agreement, Mr. Lathen, on behalf of both joint tenants (pursuant to the authority granted to him by the limited power of attorney) bought survivor's option bonds and/or CDs in the Joint Tenancy Account, using funding provided by Mr. Lathen or, later, by the Fund.

The Fund was never an owner of the instruments when they were put back to issuers. Because only natural persons can be joint tenants with survivorship rights, the Fund was only the provider of the financing.

E. The Participant Agreement

The Participant Agreement was modified over time, as the strategy evolved. Mr. Lathen used the first two versions of the Participant Agreement before he had formed the Fund, and pursuant to their terms these Participant Agreements gave the Participants a full, unencumbered right to the assets of the Joint Tenancy Account should they outlive Mr. Lathen (and sometimes a third-party joint tenant).

After the Fund was established and contributions from outside investors were at stake, Mr. Lathen changed the Participant Agreements. Notably, the third version of the Participant Agreement provided that if Mr. Lathen predeceased a Participant, the Participant agreed to repay funds advanced to purchase the survivor's bonds and/or CDs, and also agreed that the Fund would be entitled to 95% of any residual value in the account. Recognizing that giving the

Participant only 5% of the residual value in the account might be used to argue in a state litigation against the validity of the JTWROS, Mr. Lathen did not include that provision in the fourth and fifth versions of the Participant Agreement. In addition, Mr. Lathen formalized the funding arrangement as a loan plus interest. After repaying the loan to the Fund, a Participant who outlived Mr. Lathen was entitled to the entire residual value of the assets in the Joint Tenancy Accounts.

F. Issuers Are Aware of the Investment Strategy

Issuers of survivor's option bonds and CDs were well aware of Mr. Lathen's investment strategy, even if they were not specifically aware of Mr. Lathen. The strategy was highlighted in a March 10, 2010 front-page story in *The Wall Street Journal*, which reported that "[i]n a little-known practice, investors can recruit a terminally ill person and together they can scoop up these bonds on the open market at a discount. When the ailing bondholder dies, the surviving co-owner can then redeem them at face value and potentially turn a quick profit . . . . Legal and financial experts say there is nothing to prevent investors from buying the bonds with a dying relative or even a stranger who is terminally ill." *See* Mark Maremont and Aparajita Saha-Bubna, "Investors Tap Into Deathbed Bond Deal," *The Wall Street Journal* (March 10, 2010). *The New York Times* mentioned *The Wall Street Journal* story in its own coverage of the investment strategy. *See* "Making a Killing on 'Death Bonds'?," *The New York Times* (March 10, 2010). A number of other publications have also highlighted the investment strategy, including *CNN Money*, *ProPublica* and *Index Fund Advisors*.

G. There Is a Live State Law Dispute About the Validity of the JTWROS

While some issuers declined to honor Mr. Lathen's redemption requests, the vast majority of issuers have honored the redemption requests, including issuers who have reviewed the Participant Agreements.[7]

One issuer that is disputing Mr. Lathen's right to redeem bonds is Prospect Capital, which sued Mr. Lathen (and EACM, EACP and others) in New York state court. Mr. Lathen fully expects to win that lawsuit and to redeem the Prospect survivor's option bonds that are at issue. But the resolution of that case at the lower level by a single judge, even if adverse to him, will not be determinative of state law, given that there can be an appeal or other lower court decisions on other redemption requests. Indeed, the relevant state law issues may not be fully and finally resolved until the New York State Court of Appeals grants cert and decides.

It is notable that several issuers have changed the language in their governing documents – a tacit acknowledgement that Mr. Lathen had the right to redeem under the previous language. For example, in early 2014, Goldman Sachs Bank changed the terms in certain of its CD offerings to require that a surviving joint tenant be a relative or member of the same household as the deceased bond holder. (*See, e.g.*, Exhibit B at S-10.) Barclays too changed its language to allow redemption only in the event that the deceased holder had not encumbered or otherwise relinquished their interest in the CD for consideration. (*See* Exhibit C at S-3.)

[7] Given the issuers' financial incentive to deny redemption requests, these disputes are hardly probative of fraud.

II. Argument

A. The Fund Is Not the "True Owner" of the Assets in the Joint Tenancy Accounts

The Staff is considering filing a complaint alleging that the Fund was the true owner of the assets and that the Joint Tenancy Accounts, loan agreements, Participation Agreements and everything else were mere "window dressing" disguising the true nature of the accounts. But there is no valid reason for disregarding the legal form. Such an approach would be akin to saying that, where a corporation has a sole shareholder, it is mere window dressing to call it a corporation. Or, to saying that, where a private equity firm has lent money to a company to hire new employees, those employees actually work for the private equity firm rather than the company.

Individuals have every right to use contractual arrangements and corporate and other entities to arrange their business affairs. *See* Neill A. Helfman, *Establishing Elements for Disregarding Corporate Entity and Veil Piercing*, 114 Am. Jur. Proof of Facts 3d 403 ("A fundamental principle of Anglo-American law is that a business operating as a legally recognized entity is separate and distinct from its owners."); *Krivo Indus. Supply Co. v. Nat'l Distillers and Chem. Corp.*, 483 F.2d 1098, 1102 (5th Cir. 1973) ("Basic to the theory of corporation law is the concept that a corporation is a separate entity, a legal being having an existence separate and distinct from that of its owners.").

Here, it was Mr. Lathen and the Participants (occasionally with a third individual) who opened the brokerage accounts into which the bonds and CDs were purchased. Mr. Lathen himself, pursuant to the limited power of attorney granted to him by the Participants, purchased the bonds and CDs. In doing so, Mr. Lathen did not simply withdraw money from the Fund's bank account to purchase the instruments. The money was lent to him under a written agreement

and secured by the assets themselves. These secured loans from the Fund to Mr. Lathen were fully documented. Profits from the transactions were shared with the Fund pursuant to the terms of a written agreement, and not directly deposited into a Fund bank account.

The Staff has contended that the Fund's financial statements record the assets held in the Joint Tenancy Accounts as the Fund's assets. That particular line item in the Fund's financials, in fact, is stated as "Due from Joint accounts, at fair value"—not as the underlying bond or CD itself. And this accounting treatment simply reflects the fair value expected to be realized by the Fund from its loans and profit-sharing arrangements with Mr. Lathen, coupled with the fact that Mr. Lathen was expected to outlive the Participant. Likewise, the fact that terms of the Investment Advisory Agreement provide that Mr. Lathen is a "nominee" for the Fund simply reflects the most likely outcome of the contractual arrangements – that the Participant will predecease Mr. Lathen and the proceeds of the Joint Accounts will flow by contract to the Fund. This accounting method has been approved by the Fund's outside auditors and the Fund has received unqualified audit opinions for each of its yearly audited financial statements since inception.

These facts do not support an alter ego, veil piercing or other theory that would permit a court to ignore the corporate form. There is no evidence that Mr. Lathen and Eden Arc commingled Fund assets, failed to adhere to corporate formalities or otherwise abused the corporate form. Absent any of these legal or equitable bases to disregard the corporate form chosen by Mr. Lathen and his investors, it is Mr. Lathen and the Participants – and not the Fund – who own the bonds and CDs in the Joint Tenancy Accounts. *See Pearson v. Component Tech. Corp.*, 80 F. Supp. 2d 510, 524 (W.D. Pa. 1999) (no disregarding of corporate form absent allegations of commingling of funds or failure to follow corporate formalities); *Island Seafood*

Co. v. Golub Corp., 303 A.2d 892, 895 (3d. Dep't 2003) (no evidence of owner's "personal use of corporate funds" or that company was undercapitalized with alleged "purpose of rendering uncollectable any money judgment").

The fact that the Fund has received the profits from Mr. Lathen's investment strategy does not change the analysis. The existence of the Profit Sharing Agreement is not a basis to disregard the corporate form. *See, e.g., Goodman v. H.I.G. Capital, LLC (In re Gulf Fleet Holdings, Inc.)*, 491 B.R. 747 (Bankr. W.D. La. 2013) (funds paid to secured lender pursuant to contractual arrangement could not as a matter of law count as "siphoning of funds" under corporate veil piercing test).

This was a classic secured lending arrangement, akin to where a private equity firm owns and funds a portfolio company through secured loans. A court will not disregard the corporate separateness of a secured lender and borrower absent some showing of a fraudulent use of the corporate form. *See, e.g., In re Fundamental Long Term Care*, 507 B.R. 359 (Bankr. M.D. Fla. Mar. 14, 2014); *Pearson*, 80 F. Supp. 2d at 522.

Moreover, the assertion that the Fund is the true owner of the Joint Tenancy Accounts and/or securities therein is belied by the scenario where Mr. Lathen predeceases the Participant. In that scenario, the Participant does not turn over the assets or even all of the proceeds from the Joint Tenancy Account to the Fund, as would be the case if the Fund were the owner. Rather, the Joint Tenancy Account passes to the Participant and they owe a contractual sum (*e.g.*, principal plus interest) to the Fund.

B. Mr. Lathen Made No Misstatements to the Issuers

The Staff contemplates alleging that Mr. Lathen and Eden Arc defrauded issuers by misrepresenting that he was entitled to redeem bonds and CDs as a surviving joint tenant. Mr. Lathen, however, made no misstatements to the issuers. Rather, the issuers required certain

information, which Mr. Lathen duly provided. The information provided was accurate and responsive to the issuers' specific requirements. If the issuers requested additional information, Mr. Lathen provided that information, too.

The issuers made clear what information was necessary and material – they each gave a list of what they wanted to review, that is, what was material to their determination. It is well established that "an omission is actionable under the securities laws only when the [party] is subject to a duty to disclose the omitted facts." *Stratte-McClure v. Morgan Stanley*, 776 F.3d 94, 101 (2d Cir. 2015); *see also Chiarella v. U. S.*, 445 U.S. 222, 230 (1980). As Mr. Lathen had no such fiduciary duty to the issuers, he had no affirmative duty to disclose details about his relationship with the Participants, including the Participant Agreements or other details regarding the Joint Tenancy Accounts or the financing arrangement with the Fund. *See Chiarella*, 445 U.S. at 235.

That Mr. Lathen did not disclose all the circumstances of his relationship with the Participants where he was not required to do so does not render the information he provided to the issuers misleading. Disclosure is required under § 10(b) and Rule 10b-5 "only when necessary 'to make . . . statements made, in the light of the circumstances under which they were made, not misleading.'" *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 44–45 (2011) (citing 17 CFR § 240.10b–5(b)). Here, the information provided by Mr. Lathen was tailored to the particular information requested by the issuers.

Given these facts, it is perhaps unnecessary to note that Mr. Lathen never tried to hide or disguise his ownership in the Joint Tenancy Accounts when redeeming. Mr. Lathen's name, address and social security number were on all of the accounts. The account statements and letters of authorization were in his name. His profile and professional background as a Wall

Street investor and fund professional have been readily available through basic Internet research or social media. He has made multiple redemption requests to multiple issuers, representing that he was a surviving joint owner. Over the years, he held multiple joint accounts with multiple deceased joint owners, none of whom shared his last name. There was no artifice, here; Mr. Lathen gave the information that the issuers specified in full and accurately.

C. The Proposed Case Would Rest on Unsound Ground – Unsettled Conclusions of New York State Case Law

An enforcement case would rest on the premise that the joint tenancy accounts are invalid under New York law. But virtually all of the case law on joint tenancies arises in the context of probate and estate disputes. These probate cases involve factual situations bearing little resemblance to this one and thus provide no definitive guidance. Were a case to be brought now, then, the SEC would in essence be putting itself in the place of New York courts to decide an issue of first impression under New York law. And it would necessarily be taking the position that its own interpretation of New York law is correct – and not only correct, but so clearly correct as to support the conclusion that Mr. Lathen engaged in fraud when he advanced a contrary interpretation.

For the sake of completeness, we will discuss the New York state case law in a moment. But it is important to underscore here that even if the Staff is correct in predicting how New York law should be applied, that would not be enough to support a fraud claim. The plain language of Section 675 of the New York banking law strongly applies in favor of Mr. Lathen's position that he was a surviving owner of a JTWROS, entitled to redeem the survivor's option instruments, undermining the Staff's ability to prove that Mr. Lathen had the requisite level of scienter or made a statement that was at the time it was made false or misleading.

D. The Joint Tenancy Accounts Are Valid and Lawful

Mr. Lathen is not alone in his belief in the validity of the Joint Tenancy Accounts. Indeed, the vast majority of issuers have honored Mr. Lathen's redemption requests, including issuers that requested and reviewed the Participant Agreements. Given the current state of the law, it is no wonder.

1. There Is a Presumption of Validity Under New York Law

In accordance with the Participant Agreements, Mr. Lathen and the Participants (and sometimes others) entered into joint brokerage accounts with rights of survivorship, creating a presumption of validity.

Pursuant to § 675 of the New York Banking Law, a joint tenancy account is formed:

> When a deposit of cash . . . has been made . . . in the name of [the] depositor . . . and another person and in form to be paid or delivered to either, or the survivor of them, such deposit . . . and any additions thereto made, by either of such persons, . . . shall become the property of such persons as joint tenants and the same, together with all additions and accruals thereon, . . . may be paid or delivered to either during the lifetime of both or to the survivor after the death of one of them.

N.Y. Banking Law § 675(a). It is well established that under New York Law, "[w]here an account has been formed in compliance with [§ 675], it is presumed, absent a showing of fraud or undue influence, that the depositors intended to create a joint tenancy with rights of survivorship." *In re Est. of Farrar*, 129 A.D.3d 1261, 1263 (3d Dep't 2015) (quoting *In re Est. of Stalter*, 270 A.D.2d 594, 595 (3d Dep't 2000), *leave to appeal denied*, 95 N.Y.2d 760 (N.Y. 2000)). This presumption applies equally whether the account is a standard joint savings account or a joint brokerage or investment account. *In re Est. of Corcoran*, 63 A.D.3d 93, 97 (3d Dep't 2009). In sum, there are only very limited – indeed the case law enumerates only four – bases by

which a litigant can overcome the presumption and a litigant has to do so by clear and convincing evidence.

Here, there is ample evidence to show that the joint accounts at issue were created and funded in the names of both Mr. Lathen and the Participant with the intent that the surviving joint tenant – either Mr. Lathen or the Participant – would be entitled to the assets of the account upon the death of the other joint tenant. The parties entered into the Participant Agreement, which expressly provided that the account would be created as a JTWROS. Moreover, the brokerage accounts were held as joint on the face of the accounts.

Once the facts giving rise to the presumption are established, "the burden then shifts to the party challenging the survivorship rights 'to establish – by clear and convincing evidence – fraud, undue influence, lack of capacity or . . . that the account[] [was] only opened as a matter of convenience and [was] never intended to be [a] joint account[].'" *In re Est. of Farrarr*, 129 A.D.3d at 1264 (quoting *In re Est. of Corcoran*, 63 A.D.3d at 93). The concept of convenience accounts in the case law is unrelated to issues of how the joint tenants funded their accounts or how, if at all, they agreed to monitor the accounts or dispose of their proceeds. The contemplated arguments about why these joint tenancies are supposed to be invalid are not reflected in the existing case law.

With respect to the formation of Mr. Lathen's joint tenancies, there is no evidence, and to our knowledge the Staff does not assert, that there has been fraud, undue influence or lack of capacity in the formation of the Joint Tenancy Accounts. Therefore, proving invalidity would hinge on proving that the Joint Tenancy Accounts were in fact convenience accounts.

2. The Accounts Were Not Convenience Accounts

The accounts were not "convenience accounts." A convenience account is an account established for the convenience of the holders – typically, for example, a grandparent, say,

adding a grandson for the convenience of having the grandson write checks and pay bills on the grandparent's behalf – and not intended to create a true joint tenancy with the right of survivorship. Here, there is the opposite situation. The Participant Agreements expressly provided for rights of survivorship and those survivorship rights were integral to why the accountholders established the accounts. Moreover, in the "convenience account" cases, there is no document specifying survivorship, not the situation here. *See, e.g., In re Est. of Farrar*, 129 A.D.3d at 1264; *In re Stalter*, 270 A.D.2d at 597.

As Mr. Lathen testified, he intended for the joint accounts and the assets therein to pass to Participants upon his death, subject only to the contractual obligation to repay loans to the Fund. (*See* D.L. 278:25-284:9.) Mr. Lathen also disclosed this survivorship intention (and the risk associated with it) to the Fund's investors. For instance, the July 2013 Private Placement Memorandum for the Fund states in relevant part:

> If [Mr. Lathen] predeceases one or more Participants any profits in those Joint Accounts would go to the Participant and not the Partnership. The Partnership would only be entitled to receive funds loaned to those Joint Accounts plus interest. As such, the Partnership's returns would be adversely affected by the death of the [Mr. Lathen] and there is an increased risk of loss on any Joint Accounts where the Participant has outlived [Mr. Lathen].

There is no legal precedent for the proposition that a separate contract between two joint owners of a JTWROS specifying survivorship eviscerates the presumption of validity or otherwise vitiates the intent of the parties to create a JTWROS. And although New York courts have not squarely addressed these facts, one consistent theme in the case law is that without clear and convincing evidence to rebut an expressed intent to create a lawful JTWROS, the presumption of validity prevails.

This is true regardless of the particular details of how the accounts were funded. *See In re Corcoran*, 270 A.D.2d at 596 (concluding that circumstantial proof such as the fact that only

one tenant contributed money to the account "hardly is conclusive" as to the intent of the parties); *In re Est. of Grancaric*, 91 A.D.3d 1104, 1105-06 (3d Dep't 2012) (finding no convenience account where third party funded the account, and neither joint owner had true economic interest in account, because intent to create JTWROS was demonstrated). Indeed, the "distinguishing feature" of cases in which courts have found sufficient proof to rebut the statutory presumption is "record evidence that the [party] in question did not intend to create a joint tenancy." *In re Corcoran*, 270 A.D.2d at 596 (collecting cases). Here, the evidence points strongly in the other direction: Mr. Lathen surely intended to create a JTWROS (the success of his strategy depended on it) and so did his joint account holders (who so specified by contract).

3. The Participants' Interests in the Accounts Are Real

The Participants' rights to the assets in the accounts are not, as the Staff is contemplating alleging, hypothetical. Although the assets held by the Joint Tenancy Accounts were financed by the Fund, the account – and the assets therein – were jointly held by Mr. Lathen and the Participant from when the account was opened to when one of the joint owners died. The Participant Agreements, in their various forms, provided for the disposition of the assets after one of the joint owners died. Until that point, however, title to the account was held jointly by both Mr. Lathen and the Participant (and occasionally a third joint tenant). This was made no less so by the fact that the Fund lent money to the account to purchase the securities or by the fact that the Participant Agreement provided that the Fund's loan be repaid prior to the disposition of any profits to the account owners. The same arrangements applied whether it was Mr. Lathen or the Participant who died first.

In every conceivable joint account, one owner's having the benefits that flow from survivorship is necessarily hypothetical. That is so because there is no way to know with complete certainty which joint tenant will die first. This is true whether the account is opened by

a husband and wife or by two people who are not related. The New York case law on joint tenancies does not have any concept of "hypothetical" survivorship, and it makes no difference which of the joint tenants is more likely to die first.

There is no requirement in the case law that there be only two joint tenants or that joint tenants be related or have any particular health status. These are matters that the state courts could refine in the future, but there is nothing established in the state case law now that would support an enforcement case on such a basis.

4. Mr. Lathen's Management of the Assets in the Accounts Does Not Belie that the Participants Retained Ownership Interests

The Staff argues that because Mr. Lathen moved assets into and out of accounts based on the relative health of the various Participants and because the Participants were not informed about the particular investments made or given updates on the accounts, the Participants never had an ownership interest. In fact, the Participants were informed in writing at the outset via the Participant Agreement that Mr. Lathen would use the accounts as part of an investment strategy, which he was entitled to do as a joint owner. The Participants had no expectation of receiving updates via monthly statements or otherwise as to the particular investments made or account balances. Moreover, joint tenancy law does not require that both joint tenants be equally active in the management of the account. Even where two spouses own the account, often only one is likely to play the role of managing the accounts' assets – that does not undermine the validity of the joint tenancy. If it did, the surviving spouse on a joint tenancy account would never be entitled to the assets of the account unless both spouses had been fully involved their management. That is simply not the law.[8]

[8] In fact, the circumstances present here starkly contrast with the typical convenience account scenario, in which the decedent had primary control of the account and the court is tasked with determining whether the decedent intended to have the assets of the account flow to the

5. The Other Attributes of the Accounts Are Consistent With a Lawful Joint Tenancy

That Mr. Lathen never disbursed any profits to Participants, never issued 1099s to them or sent them account statements, and never discussed or advised them of the impact that additional income from the Joint Tenancy Accounts could have on their Medicaid eligibility does not mean that these were not valid joint tenancies. The Participant Agreements informed Participants that investments would be made with the accounts and that Participants were unlikely to receive additional distributions unless they outlived Mr. Lathen. There is no case law requiring that each joint tenant notify the other any time there is a change in the account balance or that both joint tenants have equal involvement in the management of the account in order to preserve their clearly expressed intent to form a joint tenancy.

In any event, the facts are these:

- Participants did receive a 1099 with respect to the up-front $10,000 payment. Issuing them a 1099 for additional income beyond the $10,000 would make little sense because receipt of additional distributions from the account would be conditioned on them outliving Mr. Lathen. Issuing Participants a 1099 in such a circumstance would improperly impose a tax liability on them for income that they had not yet received.
- As set forth above, the fact that the Participants did not actively monitor the accounts or make investments themselves does not mean that they had no ownership interests in the assets. Even though the Participant Agreements limited the Participants' involvement in

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purported joint owner or to the decedent's estate. *See In re Est. of Corcoran*, 63 A.D.3d at 97; *c.f. In re Est. of Stalter*, 270 A.D.2d at 597–98. Here, however, there is no claim that Mr. Lathen or Eden Arc attempted to lay claim to assets rightfully belonging to the Participants or their estates. Moreover, the Participants' intent to convey survivorship to Mr. Lathen was manifestly clear in both the Participant Agreement and the Account Agreement.

the investment strategy, the agreements also expressly preserved the Participants' survivorship rights as joint tenants of the accounts.

- The Participants were advised that the payments they received under the agreement could affect Medicaid eligibility. As a practical matter, we do not dispute that it was unlikely that the Participants would receive any further payments – as Mr. Lathen disclosed in the Participant Agreement. It is therefore irrelevant that Mr. Lathen did not warn Participants of the risk that, in the unlikely event that Mr. Lathen predeceased them, their Medicaid eligibility could be affected.

6. Changes to the Participant Agreements Reflected the Normal Evolution of the Business

From the time he first implemented his investment strategy, Mr. Lathen sought legal advice in connection with many aspects of the strategy, including the Participant Agreements. The regularity with which he consulted legal counsel demonstrates Mr. Lathen's best efforts to conduct his business lawfully.[9]

That Mr. Lathen changed the form of the Participant Agreement over time does not support the conclusion that the Participants were not rightful owners of the accounts. In actuality, the Participant Agreements changed over time to reflect various changes to the investment strategy, including attempts to further strengthen his joint tenancies in order to more forcefully rebut potential challenges from issuers should they occur. At the same time, the Participant Agreements evolved to protect the Fund, which came to provide the financing for the Joint Tenancy Accounts. These changes are evidence only of Mr. Lathen's intent to preserve and strengthen the validity of the Joint Tenancy Accounts and the investment strategy overall.

[9] Mr. Lathen has not asserted an advice-of-counsel defense.

The basic features of the Participant Agreement – *i.e.* that the investments are financed by the investment loan and are made through the joint accounts without the involvement of the Participants – do not negate the Participants' interests in the accounts as joint owners with rights of survivorship. The agreement advises the Participant of both the risks and potential benefits of the Joint Tenancy Accounts, including the potential for margin call liability and the fact that the account will pass to the Participant if he or she is pre-deceased by Mr. Lathen.

7. Providing for the Repayment of the Investment Loan Does Not Vitiate the Validity of the Joint Tenancy Accounts

Nor are the Joint Tenancy Accounts invalid because Mr. Lathen's assistant would be responsible for making sure all funds were repaid to the Fund in the event that Mr. Lathen predeceased a Participant. Under the terms of the Participant Agreements, the Fund was entitled to be repaid out of the proceeds of the redemption of the bonds or CDs purchased with the account. The repayment provision, however, applied equally to Mr. Lathen and the Participant. The provision does not negate the Participant's right to the ultimate residual of the account should Mr. Lathen die first. In this way the provision is akin to a mortgage or other contractual encumbrance on any asset held in joint tenancy; the loan is repaid first and then the remaining assets are disbursed to the surviving joint tenant. That encumbrance, however, does not vitiate or invalidate the joint tenancies. *See Smith v. Bank of America*, 103 A.D.3d 21, 27 (2d Dep't 2012) (holding that mortgage encumbrance does not invalidate a joint tenancy); *Ehrlich v. Wolf*, 2011 WL 197821 (N.Y. Sup. Ct. Jan. 11, 2011) (finding side agreement insufficient to invalidate a joint tenancy). It is of no matter whether an Eden Arc employee ensures that the loan repayment requirement is fulfilled.

8. Mr. Lathen Is a True Owner of the Accounts

Finally, it has been urged that not even Mr. Lathen owns the assets in the accounts because the terms of the Investment Advisory Agreement provide that he is a nominee for the Fund. Mr. Lathen has indeed contractually agreed to nominee the gains and taxes to the Fund pursuant to the Investment Advisory Agreement and the Profit Sharing Agreement. That does not change the fact, however, that it was Mr. Lathen, and not the Fund, that has an ownership interest in the accounts and the right to survivorship. This aspect of the investment strategy has been consistent from the beginning – even before the Fund was involved.

E. There was no Violation of the Custody Rule

Rule 206(4)-2 prohibits investment advisers from having custody of client funds or securities unless the adviser maintains those assets "[i]n a separate account for each client under that client's name" or "[i]n accounts that contain only [his] clients' funds and securities, under [his] name as agent or trustee for the clients." 17 C.F.R. § 275.206(4)-2(a). Custody is defined as "holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them." 17 C.F.R. § 275.206(4)-2. Additionally, Rule 206(4)-2 prescribes a variety of other requirements pertaining to matters such as bookkeeping, provision of notice to clients and auditing, which are meant to ensure effective safekeeping of client funds and securities.

Rule 206(4)-2(a)(1) does not apply to the Joint Tenancy Accounts. As addressed above, the Fund does not own these accounts or the securities in them. Rather, the Fund owns secured loans made to Mr. Lathen in his personal capacity (and in some cases to Mr. Lathen and Participants jointly) and profit-sharing rights in the Joint Tenancy Accounts. The accounts themselves and the assets therein are merely collateral to secure the Fund's loans and the profit-sharing rights, not assets owned by the Fund. As such, from the Fund's perspective, the Custody Rule does not require that the Joint Tenancy Accounts, or the bonds and CDs in them, be held in the name of the Fund.

Notwithstanding the inapplicability of the Custody Rule to the Joint Tenancy Accounts, EACM does nonetheless employ numerous safekeeping procedures consistent with the Custody Rule, including the following:

- All accounts are maintained at a Qualified Custodian.
- They are reconciled on a monthly basis by the Fund's administrator, Integrated Investment Solutions.
- They are audited on an annual basis by Eisner Amper, a PCAOB registered accounting firm, with such audited financials delivered to Fund investors within 120 days of year end.
- They are subject to a perfected security interest as evidenced by a UCC-1 filing for each account.
- No EACM employee other than Mr. Lathen, a joint owner of the accounts, has access to the accounts.

Furthermore, we note that Mr. Lathen's access to the underlying Joint Tenancy Accounts' collateral by virtue of his individual ownership in the accounts is not substantively different from a risk perspective than his deemed custody of the entirety of the Fund's assets by virtue of his role as general partner of the Fund. Under the Custody Rule, the annual audit requirement is deemed a cure for this risk with respect to pooled investment vehicles such as the Fund. So regardless of whether the Custody Rule is deemed applicable to the JTWROS Accounts, EACM is substantively complying with it in any event.

Conclusion

For these reasons no enforcement action should be brought against Mr. Lathen or Eden Arc.

Dated: New York, New York
January 15, 2016

Respectfully submitted,

BRUNE LAW P.C.

By: _____

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-09197-A

EDEN ARC CAPITAL)

WITNESS: Donald Lathen

PAGES: 1 through 211

PLACE: Securities and Exchange Commission

200 Vesey Street, Suite 400

New York, New York 10281

DATE: Wednesday, July 22, 2015

The above-entitled matter came on for hearing, pursuant to notice, at 9:41 a.m.

redemption request pending? So they've put in for a redemption, but it hasn't been paid for?

A Yes.

Q Who is that?

A Gary Rosenbach.

Q And what is the amount of redemption?

A A full redemption.

Q What is the approximate amount?

A Five million bucks. Something like that.

Q And why is it that he hasn't been paid out?

A Under the terms of the limited partnership agreement the -- the fund has 90 days to redeem an investor's redemption request subject to a gating provision which the gating provision is 25 percent of that investor's request. So at my discretion, if someone asks for two million -- had a $2 million investment in the fund then we would have to pay -- if we did a -- if we invoked the gating provision we would have to pay 500,000 three months from now, 500,000 the next quarter and so on down. That's at our discretion. Historically we've honored the -- the redemption requests within the three-month period.

Q So -- so the gate provides a delay essentially; is that right?

A Yes.

Q And you've invoked the gate for Mr. Rosenbach?

A I have not invoked the gate yet.

Q Are you going --

A I'll make a decision on September 30th, or thereabouts, whether I will invoke the gate.

Q Obviously, we've been talking about this for quite some time, but if you could just summarize the strategy of Eden Arc Capital Partners.

A Okay. The strategy involves survivor option bonds and CDs. These are fixed income instruments typically targeted towards retail investors that contain a contingent put feature embedded in the security. That put feature provides that upon the death of an owner of that security, the security can be sold back or put back to the issuer. Typically at par, plus accrued interest.

The fund strategy is to finance joint accounts established by me with participants, multiple terminally ill individuals, that we set up joint tenancy with rights of survivorship accounts

with those individuals after disclosing to them the nature of what we're doing. And we compensate the individuals, as we've discussed and then we purchase these securities in the market and in the joint account. And then when the person passes away we submit redemption requests through the brokerage firms and they wind their way to the issuers who -- who then pay the claims.

Q Does Eden Arc Capital Partners currently have in its portfolio both bonds and brokered CDs?

A Eden Arc Capital Partners has -- their assets are loans and profit sharing rights. The securities themselves reside in joint tenancies that I've created. So the joint tenancies own both bonds and CDs.

Q And you mentioned -- did you mention earlier two different types of CDs?

A Yes.

Q Can you go over the difference between those two?

A Sure. So the plain, vanilla CD, what I -- my term, the plain, vanilla CD is a instrument that has a fixed coupon and a maturity date in the future. That coupon might be monthly or quarterly

or semiannual pay, but for all intensive purposes, it's a pretty straightforward security. You're agreeing to receive interest over a period of time and, ultimately, at the end you get your -- you get your money back.

Structured CDs, which are the other variety of CDs, are -- are more exotic instruments. Issuers have issued structured CDs because CDs are a low risk, FDIC-insured asset and the structured CDs all incorporate a maturity of the -- of the CD at some point in the future at 100 cents on the dollar, but the coupon that's paid between now and the security -- and the maturity of the security, instead of being fixed, as in the case with the plain, vanilla CD is variable. And it can vary all the way down to zero. It could be zero. It could also be something like ten percent. That variability is all of these structured CD products define in the disclosure statements, how will the coupon be determined? What is it that's going to determine the value of that coupon? And so, there will be a formula defining what that coupon is.

The structured CDs, because they're more exotic and have more risk for the investor, are sold through a more prospectus type document. You

Filed pursuant to Rule 424(b)(2)
Registration Statement No. 333-156929

PROSPECTUS SUPPLEMENT
(To Prospectus dated January 23, 2009)

General Electric Capital Corporation

GE Capital* InterNotes®

Due From 9 Months to 60 Years From Date of Issue

We may offer to sell our GE Capital* InterNotes® from time to time. The specific terms of the notes will be set prior to the time of sale and described in a pricing supplement. You should read this prospectus supplement, the accompanying prospectus, the applicable pricing supplement and any written communication by us or the agents carefully before you invest.

We may offer the notes to or through agents for resale. We also may offer the notes directly. We have not set a date for termination of our offering.

The agents have advised us that from time to time they may purchase and sell notes in the secondary market, but they are not obligated to make a market in the notes and may suspend or completely stop that activity without notice and at any time. Unless otherwise specified in the applicable pricing supplement, we do not intend to list the notes on any stock exchange.

Investing in the notes involves certain risks, including those described in the "Risk Factors" section beginning on page S-7 of this prospectus supplement and page 1 of the accompanying prospectus.

This debt is not guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program. The notes offered hereby are not insured by the Federal Deposit Insurance Corporation or any other governmental agency.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these notes or passed on the adequacy or accuracy of this prospectus supplement, the accompanying prospectus or any pricing supplement. Any representation to the contrary is a criminal offense.

Joint Lead Managers and Lead Agents

Banc of America Securities LLC — Incapital LLC

Agents

Charles Schwab & Co., Inc — Citi
Morgan Stanley — Merrill Lynch & Co.
Wachovia Securities — UBS Investment Bank

Prospectus Supplement dated January 23, 2009

* GE Capital is a registered trademark of General Electric Company
InterNotes® is a registered servicemark of Incapital Holdings LLC

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Prospectus Supplement

Prospectus

You should rely only on the information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus and any pricing supplement. We have not authorized any other person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. We are not making an offer to sell these securities or soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, any pricing supplement in connection with the offering of the notes, as well as information filed by us with the Securities and Exchange Commission and incorporated by reference in these documents, is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since then.

Unless otherwise indicated or the context requires otherwise, references in this prospectus supplement to "we," "us," "our" and "GECC" are to General Electric Capital Corporation.

irrevocable. In addition, we will not permit you to exercise the repayment option except in principal amounts of $1,000 and multiples of $1,000.

Since the notes will be represented by a global note, DTC or its nominee will be treated as the holder of the notes; therefore DTC or its nominee will be the only entity that receives notices of redemption of notes from us, in the case of our redemption of notes, and will be the only entity that can exercise the right to repayment of notes, in the case of optional repayment. See "Registration and Settlement" on page S-23.

To ensure that DTC or its nominee will timely exercise a right to repayment with respect to a particular beneficial interest in a note, the beneficial owner of the interest in that note must instruct the broker or other direct or indirect participant through which it holds the beneficial interest to notify DTC or its nominee of its desire to exercise a right to repayment. Because different firms have different cut-off times for accepting instructions from their customers, each beneficial owner should consult the broker or other direct or indirect participant through which it holds an interest in a note to determine the cut-off time by which the instruction must be given for timely notice to be delivered to DTC or its nominee. Conveyance of notices and other communications by DTC or its nominee to participants, by participants to indirect participants and by participants and indirect participants to beneficial owners of the notes will be governed by agreements among them and any applicable statutory or regulatory requirements.

The redemption or repayment of a note normally will occur on the interest payment date or dates following receipt of a valid notice. Unless otherwise specified in the pricing supplement, the redemption or repayment price will equal 100% of the principal amount of the note plus unpaid interest accrued to the date or dates of redemption or repayment.

We may at any time purchase notes at any price or prices in the open market or otherwise. We may also purchase notes otherwise tendered for repayment by a holder or tendered by a holder's duly authorized representative through exercise of the Survivor's Option described below. If we purchase the notes in this manner, we have the discretion to either hold, resell or surrender the notes to the trustee for cancellation.

Survivor's Option

The "Survivor's Option" is a provision in a note pursuant to which we agree to repay that note, if requested by the authorized representative of the beneficial owner of that note, following the death of the beneficial owner of the note, so long as the note was owned by that beneficial owner or the estate of that beneficial owner at least six months prior to the request. The pricing supplement relating to each offering of notes will state whether the Survivor's Option applies to those notes.

If a note is entitled to a Survivor's Option, upon the valid exercise of the Survivor's Option and the proper tender of that note for repayment, we will repay that note, in whole or in part, at a price equal to 100% of the principal amount of the deceased beneficial owner's interest in that note plus unpaid interest accrued to the date of repayment.

To be valid, the Survivor's Option must be exercised by or on behalf of the person who has authority to act on behalf of the deceased beneficial owner of the note (including, without limitation, the personal representative or executor of the deceased beneficial owner or the surviving joint owner with the deceased beneficial owner) under the laws of the applicable jurisdiction.

The death of a person holding a beneficial ownership interest in a note as a joint tenant or tenant by the entirety with another person, or as a tenant in common with the deceased holder's spouse, will be deemed the death of a beneficial owner of that note, and the entire principal amount of the note so held

will be subject to repayment by us upon request. However, the death of a person holding a beneficial ownership interest in a note as tenant in common with a person other than such deceased holder's spouse will be deemed the death of a beneficial owner only with respect to such deceased person's interest in the note.

The death of a person who, during his or her lifetime, was entitled to substantially all of the beneficial ownership interests in a note will be deemed the death of the beneficial owner of that note for purposes of the Survivor's Option, regardless of whether that beneficial owner was the registered holder of that note, if entitlement to those interests can be established to the satisfaction of the trustee and us. A beneficial ownership interest will be deemed to exist in typical cases of nominee ownership, ownership under the Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, community property or other joint ownership arrangements between a husband and wife. In addition, a beneficial ownership interest will be deemed to exist in custodial and trust arrangements where one person has all of the beneficial ownership interests in the applicable note during his or her lifetime.

We have the discretionary right to limit the aggregate principal amount of notes as to which exercises of the Survivor's Option shall be accepted by us from authorized representatives of all deceased beneficial owners in any calendar year to an amount equal to the greater of $2,000,000 or 2% of the principal amount of all GE Capital* InterNotes® outstanding as of the end of the most recent calendar year. We also have the discretionary right to limit to $250,000 in any calendar year the aggregate principal amount of notes as to which exercises of the Survivor's Option shall be accepted by us from the authorized representative of any individual deceased beneficial owner of notes in such calendar year. In addition, we will not permit the exercise of the Survivor's Option except in principal amounts of $1,000 and multiples of $1,000.

An otherwise valid election to exercise the Survivor's Option may not be withdrawn. Each election to exercise the Survivor's Option will be accepted in the order that elections are received by the trustee, except for any note the acceptance of which would contravene any of the limitations described in the preceding paragraph. Notes accepted for repayment through the exercise of the Survivor's Option normally will be repaid on the first interest payment date that occurs 20 or more calendar days after the date of the acceptance. Each tendered note that is not accepted in any calendar year due to the application of any of the limitations described in the preceding paragraph will be deemed to be tendered in the following calendar year in the order in which all such notes were originally tendered. If a note tendered through a valid exercise of the Survivor's Option is not accepted, the trustee will deliver a notice by first-class mail to the authorized representative of the deceased beneficial owner that states the reason that note has not been accepted for repayment.

With respect to notes represented by a global note, DTC or its nominee is treated as the holder of the notes and will be the only entity that can exercise the Survivor's Option for such notes. To obtain repayment pursuant to exercise of the Survivor's Option for a note, the deceased beneficial owner's authorized representative must provide the following items to the broker or other entity through which the beneficial interest in the note is held by the deceased beneficial owner:

- a written instruction to such broker or other entity to notify DTC of the authorized representative's desire to obtain repayment pursuant to exercise of the Survivor's Option;
- appropriate evidence satisfactory to the trustee and us (a) that the deceased was the beneficial owner of the note at the time of death and his or her interest in the note was owned by the deceased beneficial owner or his or her estate at least six months prior to the request for repayment, (b) that the death of the beneficial owner has occurred, (c) of the date of death of the beneficial owner, and (d) that the representative has authority to act on behalf of the beneficial owner;

- if the interest in the note is held by a nominee of the deceased beneficial owner, a certificate or letter satisfactory to the trustee and us from the nominee attesting to the deceased's beneficial ownership of such note;

- a written request for repayment signed by the authorized representative of the deceased beneficial owner with the signature guaranteed by a member firm of a registered national securities exchange or of the Financial Industry Regulatory Authority, Inc. or a commercial bank or trust company having an office or correspondent in the United States;
- if applicable, a properly executed assignment or endorsement;
- tax waivers and any other instruments or documents that the trustee and we reasonably require in order to establish the validity of the beneficial ownership of the note and the claimant's entitlement to payment; and
- any additional information the trustee or we reasonably require to evidence satisfaction of any conditions to the exercise of the Survivor's Option or to document beneficial ownership or authority to make the election and to cause the repayment of the note.

In turn, the broker or other entity will deliver each of these items to the trustee, together with evidence satisfactory to the trustee from the broker or other entity stating that it represents the deceased beneficial owner.

We retain the right to limit the aggregate principal amount of notes as to which exercises of the Survivor's Option applicable to the notes will be accepted in any one calendar year as described above. All other questions regarding the eligibility or validity of any exercise of the Survivor's Option will be determined by us, in our sole discretion, which determination will be final and binding on all parties.

The broker or other entity will be responsible for disbursing payments received from the trustee to the authorized representative. See "Registration and Settlement" on page S-23.

If applicable, we will comply with the requirements of Section 14(e) of the Securities Exchange Act of 1934, and the rules promulgated thereunder, and any other securities laws or regulations in connection with any repayment of notes at the option of the registered holders or beneficial owners thereof.

Weil, Gotshal & Manges LLP

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BY E-MAIL

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October 10, 2014

Kevin Galbraith, Esq.
The Law Offices of Kevin Galbraith, LLP
236 W. 30th Street; 5th Floor
New York, New York 10001

Re: GE Capital Internotes

Dear Mr. Galbraith:

We are writing as a follow-up to our discussion on October 2, 2014 regarding Mr. Jay Lathen's request to exercise the Survivor's Option for GE Capital Internotes (the "Notes"). We have considered the arguments and authorities you raised on our October 2, 2014 call and in your follow-up email, and we continue to believe that GE is entitled under the terms of the Notes to reject the redemption request.

Let me reiterate from the outset that GE has always been (and continues to be) prepared to honor the terms of the Notes. In this case, we do not believe anyone reasonably believes that the spirit of the Survivor's Option intended for it to be used in these circumstances, but GE has nevertheless always been prepared to honor the provision if the language itself does require it to do so in this case. In light of a recent and ongoing SEC fraud action involving a similar arrangement, as well as our analysis of the documents Mr. Lathen provided, which are attached hereto, Mr. Lathen has no right of redemption.

For Mr. Lathen to validly request redemption under the Suvivor's Option, he must demonstrate among other things that the case involves the "death of a person holding a beneficial ownership interest in the note as a joint tenant." This requires two separate and independent conclusions: first, that the deceased person held a beneficial ownership interest in the note, and second, that the deceased person held that interest as a joint tenant.

No Beneficial Ownership

In our discussions with you, you focused on whether or not there was a valid joint tenancy, which we will address further below, but more fundamentally under the terms of the Suvivor's Option Mr. Lathen needs to show that the deceased person held a beneficial ownership interest in the note.

The prospectus disclosure relating to the Notes makes it abundantly clear that the Survivor's Option can only be exercised following the death of the beneficial owner of the note.

> The "Survivor's Option" is a provision in a note pursuant to which we agree to repay that note, if requested by the authorized representative of the *beneficial owner* of that note, following the death of the *beneficial owner* of the note, so long as the note was owned by that *beneficial owner* or the estate of that *beneficial owner* at least six months prior to the request. (emphasis added)

In order to exercise the Survivor's Option for a note, the deceased beneficial owner's representative must provide "appropriate evidence satisfactory to . . . us (a) that the deceased was the *beneficial owner* of the note at the time of death . . . " (emphasis added). This includes "any additional information . . . we reasonably require . . . to document *beneficial ownership*" (emphasis added). We had reviewed the materials Mr. Lathen provided, including a sample brokerage account application and a sample participant agreement with respect to one of the deceased persons. You have represented that similar arrangements were entered into with respect to the other deceased persons (which GE reserves the right to confirm).

Based on our review of the materials, attached hereto, the arrangements appear in fact to be carefully designed to strip the deceased person of all rights that are indicia of beneficial ownership.

It appeared that effectively the deceased person had simply been paid a $10,000 fee to lend her name to an investment account solely for the purpose of attempting a scheme to exercise the Suvivor's Option.

Although the term "beneficial owner" is not defined in the disclosure itself, it is a well known concept under federal securities laws. We also looked by way of analogy to New York state statutory uses of the term in relation to ownership of securities. In each case, at a minimum, beneficial ownership entails certain basic rights, such as the right to vote or dispose of securities. It also entails under New York statutory provisions holding an economic interest in the securities and bearing the risk of loss.

Under the arrangements we reviewed, we saw none of these indicia that would be sufficient to suggest a bona fide beneficial ownership interest by the deceased person in the Notes.

The sample participation agreement your client provided to us demonstrates that the participant did not have any ownership interest in the joint account used to purchase the notes. Specifically, the participation agreement—entered into the day before the brokerage account was opened—relinquished the participant's economic interests in the account. The participant was not permitted to "pledge, borrow against, or withdraw funds from the Account(s)" and waived the rights of the participant's estate to "participate in the profits in the Account(s) following the death of the participant." It provided Mr. Lathen with all of the power to control the account, including granting Mr. Lathem a "limited power of attorney" to establish and set up the account and to "make transfers of cash and securities into and out of the "Accounts" without the participant's "prior consent." Mr. Lathen and his investors were "solely responsible for funding the account."

Our position is supported by the SEC (the primary regulator that interprets the meaning of "beneficial ownership" under federal securities laws) in a case that is very similar to this one. *See U.S. SEC v. Staples*, 2014 WL 4792115 (D.S.C. Sept. 24, 2014). There the SEC brought an action for securities fraud against the Staples, arising out of their attempts to seek redemption under a survivor's option similar to ours. The SEC's position is that the deceased person had contracted away its ownership interest through a participant agreement similar to the participant agreement involved here, and therefore, the defendants' assertions that the decedents were owners of the bonds (as joint tenants) were false and misleading. The defendants claimed that the decedent, as a joint tenant to the brokerage account used to purchase the notes, was the beneficial owner and moved to dismiss the SEC's complaint. The U.S. District Court for South Carolina denied the defendants' motion to dismiss.

In our view, therefore, regardless of the effect or validity of the alleged joint tenancy, because the arrangements stripped the deceased person from any beneficial interest in the Notes, we do not believe that Mr. Lathen is entitled to exercise the Survivor's Option. In other words, even if Mr. Lathen through a valid joint tenancy was entitled to the deceased person's interest in the account, there was no beneficial interest held by the deceased person to begin with in the Notes, which is a condition for the Survivor's Option to be exercised. Mr. Lathen at all times was the sole beneficial owner of the Notes.

No Joint Tenancy

With respect to the question of joint tenancy, we have also reviewed the authorities you cited and we continue to believe that no bona fide joint tenancy was ever intended or achieved. While there is no dispute that "[g]enerally, the deposit of funds into a joint account constitutes prima facie evidence of an intent to create a joint tenancy. . . [t]he presumption created by Banking Law § 675 can be rebutted by providing direct proof *that no joint tenancy was intended* or substantial circumstantial proof that the joint account had been opened for convenience only." *In re Richichi*, 38 A.D.3d 558, 559 (2d Dep't 2007) (emphasis added) (citations and internal quotation marks omitted).

When Mr. Lathen opened the brokerage account, he checked a box on the application stating: "Joint Tenants with Right of Survivorship. If one owner dies his/her interest passes to the surviving owners." This was simply not true. Just like the defendants in the SEC action, it appears to us that Mr. Lathen made a false representation on the brokerage account application when he checked that box.

The terms of the participation agreement itself demonstrate that there was no intention to establish a joint tenancy. A joint tenancy requires that each joint tenant have an equal and identical interest in the entire *property*. *Goetz v. Slobey*, 76 A.D.3d 954, 956 (2d Dep't 2010) ("A joint tenancy is an estate held by two or more persons jointly, with *equal rights to share in its enjoyment during their lives*, and creating in each joint tenant a *right of survivorship*") (emphasis added) (internal citations and quotation marks omitted). In a true joint account, any joint tenant "has the right to withdraw one half of the funds during the lifetime of both tenants; in other words, at the time the account was opened, there must have been a present gift from the original donor to the cotenant of one half of the account which each could withdraw unilaterally while both were alive." *In re Estate of Zecca*, 152 A.D.2d 830, 830-831 (3d Dep't 1989) (citations omitted). Here, the participant did not possess any such rights. The participant

agreement limited the participant's interest in the account to a nominal amount (which was clearly less than 50% of the value); prevented the participant from withdrawing the funds without Mr. Lathen's permission; and restricted the participant from pledging or encumbering the assets in the account.

Furthermore, the fact that Mr. Lathen maintained control over the account and limited the participant's ability to access the funds in the account is further evidence that there was no intent to establish a joint tenancy. *Ehrlich v. Wolf*, 2011 WL 197821 (N.Y. Sup. Ct. Jan. 11, 2011), one of the cases you rely upon, supports the position that no joint tenancy was intended because unlike the party in the *Ehrlich* case, Mr. Lathen "retained control of the account such that [he] did not intend that [the participant] have access without [his] permission." *Id. See also In re Yaros*, 90 A.D.3d 1063, 1064 (2d Dep't 2011) (evidence, such as an agreement requiring permission from the other party before withdrawing funds from the account, demonstrates that the party "did not intend to make a present gift of one-half of the account," which was sufficient to demonstrate, prima facie, that there was no intent to create a joint tenancy); *Wacikowski v. Wacikowski,* 93 A.D.2d 885 (2d Dep't 1983) (factors establishing that there was no intent to give the other party a "beneficial interest in [the] account during her lifetime" sufficient to rebut the presumption that the account was a joint tenancy included: "all the money in the account had been solely her own, that she always had exclusive possession of the account passbook and that her son has never made any deposits or withdrawals from the account").

GE's Right to Exercise Discretion

Based on the operative documents, attached hereto, and the foregoing cases, our view continues to be that Mr. Lathen does not hold a valid claim for a payment under the Survivor's Option because the deceased was not a "person holding a beneficial ownership interest in the note as a joint tenant."

Finally, as clearly stated in the disclosures for the Notes, "questions regarding the eligibility or validity of any exercise of the Survivor's Option will be determined by [GE], in [its] sole discretion, which determination will be final and binding on all parties." We believe our analysis of the terms of the Notes and the relevant case law (including the authorities you have cited), as well as our conclusions with respect thereto, which we have shared with you, provide GE with an appropriate basis to exercise that discretion.

We look forward to discussing this further with you on our call this Monday.

Sincerely,

Corey Chivers

Enclosure(s)

cc: Fred Robustelli, Esq.
Miranda Schiller, Esq.

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September 25, 2013

BY EMAIL

Andrea Burriesci
C.L. King & Associates, Inc.
410 Park Ave, 17th Floor
New York, NY 10022
(abb@clking.com)

Re: Account # 7090-0028, Donald Lathen and Frederick Jackson; Account # [redacted]
Donald Lathen and Emily Josephine Servider; Account # [redacted]
Donald Lathen and Carol Marie Kilgus (together, the "Accounts")

Dear Ms. Burriesci,

I am writing on behalf of Goldman Sachs Bank USA ("GS Bank") in connection with the request by C.L. King & Associates, Inc. ("CL King"), on behalf of Donald Lathen, that GS Bank redeem certain callable certificates of deposit issued by GS Bank (the "Callable CDs") that are held in the above-referenced Accounts. GS Bank understands that, with respect to each of the Callable CDs, Mr. Lathen asserts that he is entitled to exercise a survivor's option upon the death of the other owner of the applicable Account.

GS Bank appreciates Mr. Lathen providing the information requested to enable it to evaluate his redemption requests. Based on a review of the information, GS Bank has concluded that the provisions of the Callable CDs do not allow for redemption by Mr. Lathen. None of the Accounts are *bona fide* joint tenant accounts, but rather were established exclusively to permit Mr. Lathen to acquire securities with survivor's options. Accordingly, GS Bank is under no obligation to honor the redemption requests as Mr. Lathen's status as a joint tenant with rights of survivorship is not legally cognizable. GS Bank thus is declining each redemption request.

GS Bank reserves any and all rights and remedies in connection with the foregoing.

Sincerely,

William R. Massey

cc: Donald Lathen
(jaylathen@edenarccapital.com)

September 19, 2014

BY E-MAIL

Kevin Galbraith, Esq.
Law Office of Kevin Galbraith LLC
236 West 30th Street, 5th Floor
New York, NY 10001

Re: Prospect Capital Corp. Survivor's Option Submissions

Dear Mr. Galbraith,

While there is no obligation to do so, we will respond herein, briefly, to your letter dated September 2, 2014 concerning Prospect Capital Corp. ("Prospect") Survivor's Option submissions made on behalf of an agent of Eden Arc Capital Management, LLC ("Eden Arc"), in the expectation that this will bring the matter to a conclusion.

In short, your letter and the conclusions it asserts are inaccurate as regards various facts and the applicable law.

1. In the first part of your letter (pp. 2-6), you assert that U.S. Bank National Association (the "Bank") breached a duty allegedly owed to an agent of Eden Arc with respect to determinations made relative to applications on behalf of that agent for payment of Survivor's Options. The analysis is flawed in several respects.

-- First, the analysis is based on factual surmise that is unfounded. It mischaracterizes conversations, and draws unfounded conclusions as to what the "Bank *seemed* to not take seriously" (emphasis added) or based upon what Eden Arc's agent thought was "indicated." There is no evidentiary basis for any of this.

-- Second, Eden Arc's agent (who, of course, was the party that possessed the evidence on this issue) was obligated to provide satisfactory evidence that he was authorized to act on behalf of a deceased "joint tenant," and yet failed until recently to provide evidence material to that issue, in the form of the Participant Agreement.

-- Third, most fundamentally, the Bank as Trustee did not owe the duty you have alleged to a person who was not a joint tenant of a deceased note holder. Your argument incorrectly assumes that a person who in reality had no right to proceeds of a note (*i.e.*, who was not a joint tenant) should nevertheless be paid the proceeds of a note, simply because a determination of the adequacy of the

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form of an application was made at a time when evidence material to the determination (the Participant Agreement) had not been provided. This puts form (indeed, an incomplete form) over substance.

In sum, (a) the predicate of this part of your argument is unfounded surmise, not fact, and (b) in any event, inasmuch as Eden Arc's agent was not a joint tenant with the deceased note holders, he had no right and was owed no duty under the Supplemental Indenture.

2. In the second part of your letter (p. 6 *et seq*), you misstate the holdings of authorities upon which you rely, and overlook controlling principles, in contending that Eden Arc's agent was a "joint tenant."

New York law defines a joint tenancy as "an estate held by two or more persons jointly, with ***equal*** rights to ***share*** in its enjoyment during their lives ... with a right of survivorship." *Smith v. Bank of Am.*, 103 A.D.3d 21, 23 (2d Dep't 2012) (emphasis added); *accord, Cortelyou v. Dinger*, 62 Misc.2d 1007, 1010 (S. Ct. Richm. Co. 1970). There are several essential "unities" necessary for a joint tenancy to exist, including the unity of "interest – that each [joint tenant] have an interest ***identical*** with the interest of each of the other co-tenants," and the unity of "possession – that they each be entitled to the common possession of the ***entire*** property." *Bankr. Exch., Inc. v. Langlands*, 2009 U.S. Dist. LEXIS § 4005, 7 (W.D.N.Y. 2009) (emphasis added); *accord, Cortelyou, supra.*

Each of these factors is missing in the relationship created by the Participant Agreement. Section 2(f) of that Agreement describes the full universe of benefits that the Participant can derive during his/her lifetime from the relationship with Eden Arc's agent, *i.e.*, "[t]he Participant shall be entitled to 5% of the net profit in the Accounts .... subject to a minimum of $10,000 and a maximum of $15,000," and specifies that the profits accruing to Eden Arc's agent likely will be "substantially in excess" of that which accrues to the Participant. And Section 3 of the Agreement makes clear that the Participant shall have ***no*** right of access to any of the ***principal*** in an account without the written consent of Eden Arc's agent. In sum, the Participant is provided a token payment, from a small fraction of the profit in an account, while Eden Arc's agent maintains complete control over all of the account's principal and a vast majority of its profit.

Similarly, there is a lack of unity in rights of survivorship provided under the Participant Agreement. While Section 3 of the Agreement provides that "***all assets and proceeds*** from such Account(s) will pass directly" to Eden Arc's agent and his investors upon the Participant's death (emphasis added), Section 4 of the Agreement provides that, in the event Eden Arc's agent should pre-decease the Participant, the account(s) shall be liquidated and only 5% of certain of the proceeds shall pass to the Participant.

This is all overlooked in your letter. Rather, you focus exclusively on N.Y. Banking Law § 675, as if it overrides the foregoing principles, and you also misstate the holdings of cases construing § 675.

You assume, for example, that under § 675 a mere recitation of the term "joint tenant" in relation to an account, of itself, creates a presumption that an account in reality is a joint tenancy, without regard to the fundamental principles cited above. Section 675, however, applies by its terms only where:

> [S]uch deposit or shares and any additions thereto made, by either of such persons, after the making thereof, shall become the property of such persons as joint tenants and the same, together with all additions and accruals thereon, shall be held for the exclusive use of the persons so named, and may be paid or delivered to either during the lifetime of both or to the survivor after the death of one of them[.]

The statutory requirement is that the ***entirety*** of an account's principal, regardless of which party made the deposits (and inclusive of any accruals), shall be subject to the use of and payable to ***either*** party in their lifetime ***and*** delivered to the survivor (regardless which party is the survivor) upon death of the other. If these criteria are not met, § 675's presumption of joint tenancy does not apply. That is clear from the words of the statute, and from the courts' construction of it, *e.g., In re Estate of Stalter*, 270 A.D. 2d 594, 595 (3d Dep't 2000); *In re Estate of Camarda*, 63 A.D. 2d 837, 838 (4th Dep't 1978). In contrast, as shown above, the Participant Agreement denied Participants ***any*** access to an account's principal during their lives without written consent of Eden Arc's agent, entitled Participants only to a ***very limited portion*** of an account's profits and, rather than a right to survivorship upon the death of Eden Arc's agent, created an obligation to liquidate an account, from which Participants would receive only 5% of certain proceeds. The § 675 presumption therefore is not reached in this case. *See also, Marrow v. Moskowitz*, 255 N. Y. 219 (1931); *In re Estate of Magacs*, 227 A.D. 2d 760, 761 (3d Dep't 1996); *Roth v. Panessa*, 62 Misc. 2d 896 (City Ct. 1970); *In re Palecek's Estate*, 9 Misc.2d 789 (Sur. Ct. Suffolk Co. 1958).

Moreover, even if a presumption of joint tenancy could arise merely from use of the label "joint tenants," you incorrectly state (at p 8 of your letter) that New York state courts have narrowly limited the evidentiary bases for overcoming that presumption to "fraud, undue influence, lack of capacity or a determination by the court based on the facts of the case, that the joint tenancy was instead a so-called 'convenience account.'" The case law you have cited does ***not*** limit the rebuttal of a statutory presumption of joint tenancy to those grounds. *Estate of Ehrlich v. Wolf*, No. 113413/10, 2011 N.Y. Misc. LEXIS 630 (Sup. Ct. N. Y. Co. Jan. 11, 2001),

discusses only whether an account was a "convenience" account, and neither it, nor *Estate of Stalter*, *supra*, limit grounds for challenge to a joint tenancy in the way you contend.

In any event, your emphasis on these being the "only grounds" is inconsequential, as the last of your stated four bases to invalidate a presumption of joint tenancy, the maintenance of a "convenience account," is present here. You contend (at pp. 9-11 of your letter) that the accounts in question were not "convenience accounts", and therefore that there is no basis to invalidate a conclusion of joint tenancy, because Participants held ***some*** survivorship rights, albeit ones that were far from equal to those held by Eden Arc's agent. That, however, misstates the evidentiary requirements for showing a "convenience account." The decision in the *Corcoran* case to which you refer (letter p. 10) holds that a party challenging the statutory presumption also may defeat a finding of joint tenancy by "direct or circumstantial proof 'that the joint account was established as a convenience and not with the intention of conferring a ***present*** beneficial interest on the other party to the account.'" (63 A.D.3d at 96) (emphasis added). That is precisely the case presented by the Participant Agreement – it did not confer to the Participant a present joint interest in the content of an account.

You assert (letter pp. 10-11) that "[t]he central feature of a convenience account is that the account holders simply do not intend survivorship rights to pertain to the account" and, therefore, that the Participant's survivorship benefit, however limited, of itself establishes the existence of joint tenancy. New York courts, however, do ***not*** look ***only*** for the existence of a survivorship benefit, but instead also look to whether both parties had a ***present*** beneficial interest in an account, to determine if joint tenancy is present. *Corcoran, supra.*

Finally, even accepting the flawed premise that an account's survivorship benefit to a Participant of itself demonstrates the Participant was a true joint tenant, it is a significant stretch to argue that a Participant's right to 5% of certain of an account's liquidation value upon the death of the Eden Arc agent was the requisite "survivorship benefit." A survivorship benefit consisting of anything less than the entire account is antithetical to the notion of joint tenancy.

The arguments and case law presented in your letter do nothing to disturb the conclusion of the Bank that the accounts at issue are not joint tenancies under New York law.

Very truly yours,

Joseph V. Maccia

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-09197-A

EDEN ARC CAPITAL)

WITNESS: Donald Frank Lathen, Jr.

PAGES: 522 through 620

PLACE: Securities and Exchange Commission

200 Vesey Street, Suite 400

New York, NY 10281

DATE: Monday, February 8, 2016

The above entitled matter came on for hearing, pursuant to notice, at 2:04 p.m.

A I think just various expenses of the fund.
Q Okay. Let's take a look at page 30. Where it says "other interest income," and under that where it says "market discount."
A Yes.
Q Can you tell us what market discount is?
A Yes. When you purchase a bond at a discount to par, if that discount is large enough, the IRS may require you to amortize that discount over the life of the bond as opposed to realizing it at the end, realizing a gain at the end. That's my understanding of what it is.
Q Okay.
MS. WEINSTOCK: I'll take those back from you.
BY MS. WEINSTOCK:
Q Did anyone else work at Eden Arc Capital Management, Eden Arc Capital Advisors, Eden Arc Capital Partners besides you and Michael Robinson?
A No.
Q And who submits the redemption requests?
A Michael generates the letters on his computer and then I sign them.
Q When you say "letters," you're talking about letters of authorization?
A Yes, letters of authorization.

Q And do you sign each of those?
A Yes, although he has my signature electronically and I've authorized him to use that on occasion. So there may be instances where I literally didn't physically sign but he, you know, populated the signature electronically.
Q And what are the circumstances in which he would populate the signature electronically?
A Maybe if I wasn't there, if I was away somewhere and not able to sign it.
Q And how frequently did that happen?
A Not very often.
Q And those letters of authorization, those go to the issuer; is that correct?
A They actually go to the brokerage firm.
Q And then what does the brokerage firm do with that?
A My understanding is that the brokerage firm then sends that information, along with other information, to either the DTC or the trustee for the issue, if there is a trustee.
Q And does that information ultimately get forwarded on to the issuer?
A My understanding is that it does on occasion. I'm not sure how often.

Q And what does that depend on, if you know?
A It depends on whatever the processes that had been worked out between the DTC or the trustee and the issuer, and whether the issuer wishes to see it or not.
Q And what is the DTCC's (sic) role in this?
A I -- my understanding is they're basically a -- they're a processing agent.
Q What about the trustee? Does the trustee --
A Sort of the same thing.
Q And you mentioned that on occasion the issuers have asked for additional information aside from what was originally sent to the broker-dealer to redeem; is that correct?
A Yes.
Q And have they been specific in terms of what other information they require or have they just generally said is there any more information about this investment?
A It's just that usually it's -- in all times that I remember, it's a specific request.
Q And what do they ask for specifically?
A Sometimes they've asked for trade confirmations for the trades. Sometimes they asked for the account opening documentation. Sometimes they ask whether or not a -- what the relationship is between myself and the

other joint owner. Some have asked whether there is a contractual arrangement with -- between myself and the joint owner, whether the joint owner was compensated or not. That's just some of the things that come off the top of my head. I'm sure there are other questions that they've asked.
Q And when they've asked those questions around the relationship between you and the other joint owner and payment, what, if any, documents have you sent them in answer to those questions?
A Well, we've sent copies of the account opening and whatever they've requested, we have sent.
Q But they wouldn't know what -- to ask for a participant agreement, for example; is that right?
A Yeah. I mean, if they don't ask for a participant agreement, we don't provide it to them.
Q But my question is, if they are asking about the relationship between you and the other joint, joint tenant, do you send them the participant agreement?
A I don't know that there's been a -- there's been a time where someone has asked about the relationship that didn't also ask if there was a written arrangement. So I don't recall a situation where we would have just answered that very limited question.
Q And when they've asked for the written

arrangement, have you sent the participant agreement?
A Yes.
Q And have you sent any other documents, aside from the participant agreement, related to that particular question?
A If they asked for the participant agreement, I don't think I would have sent them anything but the participant -- what they asked for.
Q Have you ever sent the issuer a copy of the discretionary line agreement?
A Some -- only one issuer I think has ever asked for that --
Q And who --
A -- and --
Q -- was that?
A It was actually a trustee. It was U.S. Bank. And --
Q How did --
A -- and we provided it.
Q How did they ask for it?
A They said, "Could we see a copy of the discretionary line agreement?"
Q And that's because it was mentioned in the participant agreement?
A Yes, it was mentioned in the participant

agreement.
Q And has anyone asked -- ever asked for the profit-sharing agreement?
A No.
Q And have you ever provided an issuer the profit-sharing agreement?
A Not to my recollection.
Q What about the investment management agreement, have you ever provided that to an issuer?
A No.
Q And if you could turn to your fee structure, is the fee structure still .5 percent non-trustee and 30 percent performance fee?
A There are some investors that have that arrangement. Other investors have a different arrangement.
Q What's the different arrangement?
A Some investors are 2 percent and 20 percent. Some are 1.6 percent and 16 percent. Some are zero and zero. And I believe that's the total. I think everybody's in one of those categories.
MR. BIRNBAUM: How would you determine how any particular investor got which of the arrangements you just described?
THE WITNESS: So when we did our initial

fundraise for the fund in May of 2011, the fee structure that was agreed was a half a percent at 30. When we -- we -- I'm sorry. We did at one point have some investors that were at one-and-a-half and twenty-five. That was -- but I don't believe we have anybody that's currently at one-and-a-half and twenty-five.
But to answer your question -- sorry to interrupt -- when we started raising more capital in sort of the mid-2013 time frame, in consultation with our third-party marketers, they suggested that we have a more standard fee arrangement, 2 and 20. So we raised capital.
From that point forward, it's been at 2 and 20. I went to all of my original investors at the time that we were changing the fee structure and I said, "We are raising capital again with the fund and it's going to be at 2 and 20. You will have the option, with respect to your existing investment, do you want to stay at a half a percent and thirty or do you want to be at 2 and 20?" And some investors said they wanted to be at two and twenty, some wanted to stay at a half and thirty.
MR. BIRNBAUM: I believe you mentioned some other numbers, too. A zero and zero arrangement?
THE WITNESS: Zero and zero, the third-party marketers that were raising capital for us, I agreed to

let them invest some funds at zero and zero.
MR. BIRNBAUM: Only them?
THE WITNESS: Only them, yes.
MR. BIRNBAUM: And the 1.6, 16?
THE WITNESS: With respect to those investors that I mentioned, the Blue Sands investors, that zero and zero only applied to a limited amount of investment. It wasn't an unlimited amount. So they wanted to add additional money to the fund, and with respect to that money, it was 1.6 and 16 which is a 20 percent reduction off of 2 and 20, which is what their compensation would be as a third-party marketer if they raised funds. So in effect, they were getting the same -- from my perspective, I was getting the same economics from that 1.6 and 16 as I would get if they referred an investor into my fund.
BY MS. WEINSTOCK:
Q What documents do the participants themselves sign?
A The participant agreement and the limited power of attorney agreement, and I believe that's it.
Q And as far as the discretionary line agreement, is that something that you sign for the participant as power of attorney?
A Yes, it is.

DISCRETIONARY LINE AGREEMENT

BETWEEN

DONALD F. LATHEN

AND

EDEN ARC CAPITAL PARTNERS, LP

January 24, 2013

DISCRETIONARY LINE AGREEMENT

THIS DISCRETIONARY LINE AGREEMENT is dated as of January 24, 2013 between DONALD F. LATHEN, an individual with an address of 670 West End Avenue, #11F, New York, NY 10025 ("**Borrower**"), and EDEN ARC CAPITAL PARTNERS, LP, a Delaware limited partnership (with its successors in such capacity, "**Lender**").

RECITALS

WHEREAS, Borrower has requested that Lender provide a discretionary line of credit in order to finance the purchase of certain securities to be owned by Borrower as a joint tenant with rights of survivorship pursuant to agreements between Borrower and certain identified Participants (as defined herein);

WHEREAS, Lender has agreed to make such facility available to Borrower, subject to the satisfaction of the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions.* The following terms, as used herein, have the following meanings:

"Advance" means an advance by Lender to Borrower with respect to an Eligible Investment or Participant Payment or to cover a "margin call" with respect to the Inventory Account or a Securities Account.

"**Agreement**" means this Discretionary Line Agreement as originally executed, or if amended, restated, supplemented, or otherwise modified from time to time, as so amended, restated, supplemented or modified.

"**Applicable Rate**" means, for any day, the floating rate of interest per annum designated from time to time by The Wall Street Journal as being the "prime rate" of interest, such interest rate to be adjusted on the effective date of any change thereof.

"**Bankruptcy Proceeding**" means, with respect to any Person, a case or other proceeding seeking liquidation, reorganization or other relief with respect to such Person or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of such Person or any substantial part of its property.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"**Collateral**" means each and any other property given as security for the Obligations. Each Securities Account in which an Eligible Investment is held shall be pledged as security only for the Advance(s) made by Lender to purchase such Eligible Investment and shall not secure any Advance made to purchase Eligible Investments owned as a joint tenant by any other Participant. The Inventory Account shall be pledged as security for all Advances made to purchase the Eligible Investments held therein.

"**Default**" means any condition or event which constitutes an Event of Default or which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Default Rate**" means the rate specified in Section 2.09.

"**Effective Date**" means the date this Agreement becomes effective in accordance with Article 3.

"**Eligible Investments**" means fixed income securities that contain what is known as a "survivor's option" or "death put," which allows the security to be sold back or "put" to the issuer, at par plus accrued interest, upon the death of the holder, and such other securities as may be approved by Lender from time to time, which are held in either the Inventory Account or a Securities Account and subject to a Security Agreement in favor of Lender.

"**Funded Amount**" means, with respect to any Securities Account, (a) the amount of any Advance made with respect to the securities that were purchased and initially held by such Securities Account (inclusive of any amounts that were funded to pay the Participant Payment pursuant to the terms of the relevant Participant Agreement) plus (b) the purchase price initially paid for any securities that were transferred from the Inventory Account into the Securities Account, less any margin debt transferred from the Inventory Account.

"**Inventory Account**" means that certain investment account solely owned by Borrower (or by Borrower and a non-Participant) in which securities may be held and may permissively be transferred into a Securities Account co-owned by Borrower and a Participant or converted into a Securities Account by modifying the account registration to include one or more Participants.

"**Lien**" means any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, including, without limitation, the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

"**Line Maturity Date**" means (a) if no Event of Default shall have occurred and be continuing, sixty (60) days after the date on which Lender shall by notice to Borrower make demand for payment in full of all Advances then outstanding hereunder, or (b) if an Event of Default shall have occurred and be continuing, the date on which any such demand is made.

"**Loan Account**" means the general ledger account on the books of Lender in which Lender may elect to record all Advances made to Borrower hereunder, plus interest, charges, expenses and other items chargeable to Borrower hereunder or under any other Loan Document, payments made on the Advances by Borrower, and other appropriate debits and credits as provided herein.

"**Loan Documents**" means this Agreement, the Note, each Security Agreement and all other supplemental or additional agreements and instruments delivered pursuant hereto or thereto.

"**Margin Indebtedness**" means any indebtedness owing by Borrower, or owing jointly by Borrower and any Participant, which was extended by a financial services firm to finance the purchase of securities held in the Inventory Account or a Securities Account.

"**Margin Liens**" means Liens securing any Margin Indebtedness.

"**Maximum Line Amount**" means such amount as may be established by Lender from time to time.

"**Note**" or "**Line Note**" means the promissory note evidencing the Advances, together with any extension, renewal, or amendment thereof, or replacements or substitutions therefore.

"**Notice of Borrowing**" has the meaning set forth in Section 2.04(a) and Section 2.04(b).

"**Obligations**" means the unpaid principal of and interest on the Advance(s), as applicable (including, without limitation, interest accruing after the Line Maturity Date and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), and all other obligations and liabilities of every kind (including obligations to perform acts and refrain from taking action as well as obligations to pay money) of Borrower to Lender under this Agreement or any other Loan Document, whether on account of principal, interest, fees, charges and disbursements of counsel to Lender that are required to be paid by Borrower pursuant to this Agreement, or otherwise, direct or indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter acquired or arising.

"**Participant**" means each counterparty to a Participant Agreement with Borrower providing for the ownership as joint tenants with rights of survivorship of certain securities which shall be held in a Securities Account, as well as providing for the disposition of certain distributable amounts.

"**Participant Payment**" means the amount of the up-front payment to be made to a Participant pursuant to the applicable Participant Agreement.

"**Permitted Indebtedness**" has the meaning set forth in Section 5.05.

"**Permitted Liens**" means the following:

(a) Liens for taxes, assessments or other governmental charges not yet due or which are being contested in good faith and by appropriate proceedings;

(b) Margin Liens; and

(c) judgment Liens that shall not have been in existence for a period longer than thirty (30) days after the creation thereof, or if a stay of execution shall have been obtained, for a period longer than thirty (30) days after the expiration of such stay provided that such periods shall be extended by an additional thirty (30) days if, within any such initial thirty (30) day period, action shall have been commenced to have any such Lien bonded off or otherwise removed or discharged or to obtain a stay of execution and thereafter such action is being pursued diligently to completion.

"**Person**" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"**Release Price**" has the meaning set forth in Article 6.

"**Released Collateral**" has the meaning set forth in Article 6.

"Securities Account" means an investment account owned by Borrower and Participant as joint tenants with rights of survivorship at an institution acceptable to Lender and subject to a mutually agreeable Security Agreement.

"**Security Agreement**" means an investment account control agreement delivered by Borrower to Lender in connection with each Advance pursuant to which Lender is granted a security interest in the Securities Account into which the proceeds of such Advance are invested.

"**UCC**" means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York.

"**Unused Line Amount**" means, on any date of determination, an amount equal to (i) the Maximum Line Amount *minus* (ii) the aggregate amount of Advances then outstanding.

ARTICLE 2
THE ADVANCES

Section 2.01. *Description of the Advances.* Subject to the terms and conditions set forth herein, and so long as no Default or Event of Default has occurred which is continuing, Lender shall make advances (each, an "**Advance**") to Borrower from time to time on any Business Day prior to the Line Maturity Date. Advances shall be used solely to finance (i) the purchase of

Eligible Investments, which shall be held either in the Inventory Account or in a Securities Account (and pledged to secure such Advance) and (ii) the Participant Payment to the co-owner of the Securities Account in which such Eligible Investments are held.

Section 2.02. *Interest Rates and Repayments of Advances.*

(a) *Advances.* All Advances shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the Applicable Rate plus three percent (3%)].Such interest shall be payable in arrears when such Advance is due (whether upon demand, at maturity, by reason of acceleration or otherwise).

(b) *360 Days.* All interest due hereunder or under the Note or any other Loan Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed.

Section 2.03. *The Note.*

(a) *Schedules to Note.* Lender may, and is hereby irrevocably authorized by Borrower to, enter on any schedule forming a part of the Note, or otherwise in its records, appropriate notations evidencing the date and the amount of each Advance and the date and amount of each payment of principal made by Borrower with respect thereto; and such notations shall constitute prima facie evidence thereof. Lender is hereby irrevocably authorized by Borrower to attach to and make a part of any Note a continuation of any such schedule as and when required. No failure on the part of Lender to make any notation as provided in this subsection shall in any way affect any Advance or the rights or obligations of Lender or Borrower with respect thereto; and

(b) *Lost Note.* In the event that Lender delivers to Borrower an affidavit and indemnity executed by Lender stating under oath that the Note has been lost, stolen, destroyed or mutilated and indemnifying Borrower for any losses as a result thereof, Borrower hereby agrees to execute and deliver a new Note as a replacement therefor, in the same principal amount and otherwise of like tenor, promptly upon receipt of such affidavit.

Section 2.04. *Notice and Manner of Borrowing; Conditions Precedent to Funding or Transfers.*

(a) Lender's Funding Account Lender shall establish a funding account which shall be used to provide Advances to Borrower. Borrower shall make periodic withdrawals from Lender's funding account to be deposited into the Inventory Account or a Securities Account.

(b) *Notice of Borrowing for Eligible Investment Purchases and Participant Payments.* Borrower shall provide the following to Lender in connection with such Advances from the Funding Account:

(i) a written identification of the Inventory Account or Securities Account to be funded with the proceeds of such Advance;

(ii) if he has not done so already, provide a copy of the relevant Participant Agreement governing such Securities Account; and

(iii) if he has not done so already, provide an executed Security Agreement pursuant to which Borrower and Participant grant a security interest in the Securities Account or Inventory Account where Advance is being deposited.

(c) *Notice of Borrowing for "Margin Calls".* Borrower shall provide Lender with a notice of borrowing which shall attach as an exhibit a copy of the broker demand for additional collateral for the Inventory Account or Securities Account, as applicable (a "**margin call**").

(d) *Conditions Precedent to Funding.* Prior to Lender making any Advance hereunder, the following conditions must be satisfied:

(i) Lender shall have received the applicable notice of borrowing;

(ii) no Default or Event of Default shall have occurred and be continuing, or will result after the making of such Advance;

(iii) the representations and warranties of Borrower contained in each Loan Document to which it is a party shall be true on and as of the date of such Advance (unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true as of such earlier date); and

(iv) Lender shall be satisfied that all Eligible Investment criteria have been met.

The acceptance of each Advance hereunder shall be deemed to be a representation and warranty by Borrower on the date of such Advance as to the facts specified above.

(e) *Transfers from Inventory Account.* Borrower may transfer Eligible Investments held in an Inventory Account into a Securities Account or may convert an Inventory Account into a Securities Account, upon delivery to Lender of the following:

(i) a written identification of the Eligible Investment(s) and, if applicable, related margin indebtedness to be transferred from the Inventory Account to the Securities Account;

(ii) if he has not done so already, provide a copy of the relevant Participant Agreement governing such Securities Account;

(iii) if he has not done so already, provide a copy of the executed Security Agreement pursuant to which Borrower and Participant grant a security interest in the Securities Account in which the Eligible Investment transferred from the Inventory Account shall be held; and

(iv) with respect to a conversion of an Inventory Account into a Securities Account, a copy of Participant Agreements related to Participants who become owners on the Securities Account.

Section 2.05. *Prepayments.*

(a) *Optional Prepayments.* The principal amount of any Funded Amount may be prepaid in whole or in part at any time without premium or penalty (other than interest that has accrued and remains unpaid at the time of such repayment) and may be reborrowed.

(b) *Mandatory Prepayments.* Any Funded Amount shall be repayable at the discretion of the Lender upon the occurrence of:

(i) an Event of Default;

(ii) the Participant who co-owns the Securities Account securing such Advance: (A) dies; or (B) becomes subject to any Bankruptcy Proceeding; or

(iii) the Eligible Investment securing such Advance is sold, transferred, liquidated or otherwise disposed of by Borrower and/or Participant and the proceeds of such disposition are no longer maintained in the Securities Account or re-invested into securities that are held in this Securities Account.

Section 2.06. *General Provisions as to Payments.*

(a) All payments hereunder and under the Note shall be made by Borrower to Lender at such place as Lender may from time to time specify in writing, in lawful currency of the United States of America in immediately available funds, without counterclaim or setoff and free and clear of, and without any deduction or withholding for, any taxes or other payments.

(b) If any payment hereunder or under any Note or other Loan Document becomes due on a day which is not a Business Day, such date shall be extended to the next succeeding Business Day, and such extension of time shall be included in computing interest and fees in connection with such payment.

Section 2.07. *Maximum Interest Rate.*

(a) Nothing contained in this Agreement or the Note shall require Borrower to pay interest at a rate exceeding the maximum rate permitted by applicable law. This Section 2.07 is not intended to limit the rate of interest payable for the account of Lender to the maximum rate permitted by the laws of the State of New York if a higher rate is permitted with respect to Lender by supervening provisions of United States federal law.

(b) If the amount of interest payable for the account of Lender on any interest payment date in respect of the immediately preceding interest computation period, computed pursuant to Section 2.02, would exceed the maximum amount permitted by applicable law to be charged by such Lender, the amount of interest payable for its account on such interest payment date shall be automatically reduced to such maximum permissible amount.

(c) If the amount of interest payable for the account of Lender in respect of any interest computation period is reduced pursuant to Section 2.07(b) and the amount of interest payable for its account in respect of any subsequent interest computation period, computed pursuant to Section 2.02, would be less than the maximum amount permitted by applicable law to be charged by Lender, then the amount of interest payable for its account in respect of such subsequent interest computation period shall be automatically increased to such maximum permissible amount; *provided* that at no time shall the aggregate amount by which interest paid for the account of Lender has been increased pursuant to this Section 2.07(c) exceed the aggregate amount by which interest paid for its account has theretofore been reduced pursuant to Section 2.07(b).

Section 2.08. *The Loan Account.* Lender may elect to maintain on its books the Loan Account to evidence the Advances and may also record in the Loan Account all payments made on account of indebtedness evidenced by the Note or any other Loan Document, and may record therein, in accordance with customary accounting practice, other debits and credits, including all charges and expenses properly chargeable to Borrower and any other Obligation. The debit balance of the Loan Account shall reflect the amount of the Obligations from time to time by reason of Advances and other appropriate charges hereunder; and

Section 2.09. *Late Fee; Default Rate.* At the discretion of Lender, if any amount due hereunder or under the Note is not paid in full within ten (10) days after the same is due, Borrower shall pay to Lender a late fee equal to one percent (1%) of such late payment. All principal not paid when due, or within any grace period provided therefor, (whether at the scheduled or any accelerated maturity or otherwise) and, to the extent permitted by law, overdue interest thereon, all fees not paid when due hereunder, or within any grace period provided therefor, shall, at the option of Lender, bear interest, payable monthly in arrears, for each day until paid at a rate per annum equal to the Applicable Rate plus five percent (5%) (the "**Default Rate**"). Nothing in this Section, or Lender's exercise of any of its rights hereunder, shall affect or otherwise impair Lender's right to exercise any of its rights or remedies if any Event of Default has occurred.

ARTICLE 3
CONDITIONS TO EFFECTIVENESS

This Agreement shall become effective on the date (the "**Effective Date**") that all of the following conditions shall have been satisfied (or waived by Lender):

(a) receipt by Lender of this Agreement, the Note, and the other Loan Documents signed by each of the parties thereto;

(b) Lender's satisfaction in its sole good faith discretion as to the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of Borrower, or any event or condition that is reasonably likely to result in such a material adverse change; and

(c) satisfaction of any other condition or delivery of any other document reasonably required by Lender to effect the transactions contemplated hereby.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants that:

Section 4.01. *Authorization; No Contravention.* The execution, delivery and performance by Borrower of the Loan Documents require no action by or in respect of, or filing with, any governmental body, agency or official and do not contravene, or constitute a default under, any provision of applicable law or regulation or of the certificate of incorporation, by laws or declaration of trust of Borrower or of any agreement, judgment, injunction, order, decree or other instrument binding upon Borrower or result in the creation or imposition of any Lien, except Liens created by the Loan Documents, on any asset of Borrower.

Section 4.02. *Binding Effect.* Each of the Loan Documents to which Borrower is a party constitutes a valid and binding agreement of Borrower and will constitute valid and binding obligations of Borrower, enforceable in accordance with their terms, except as such enforceability is limited by bankruptcy and insolvency laws and other legal and equitable principles affecting creditors' rights generally.

Section 4.03. *No Burdensome Restrictions; Certain Existing Agreements.* No contract, lease, agreement or other instrument to which Borrower is a party or by which any of its property is bound or affected, no charge, corporate restriction, judgment, decree or order and no provision of applicable law or governmental regulation has or is reasonably expected to materially and adversely affect the business, operations or financial condition of Borrower, or the ability of Borrower to perform its obligations under this Agreement.

Section 4.04. *Representations and Warranties Incorporated from Other Loan Documents.* As of the Effective Date, each of the representations and warranties made in this Agreement and any other Loan Document is true and correct in all material respects, and such representations and warranties are hereby incorporated herein by reference with the same effect as though set forth in their entirety herein, as qualified therein.

ARTICLE 5
COVENANTS

Borrower agrees that, so long as this Agreement has not been terminated or any amount payable under any Note remains unpaid:

Section 5.01. *Information.* Borrower will deliver, or caused to be delivered, to Lender:

(a) *Monthly Reports of Investment Account.* As soon as available and in any event within thirty (30) days after the end of each month of Borrower, reports, in form and substance acceptable to Lender, reflecting the current balances and activity in each Securities Account.

(b) *Additional Information.* From time to time such additional information regarding the financial position or business of Borrower as Lender may reasonably request.

Section 5.02. *Compliance with Laws.* Borrower will comply in all material respects with all applicable laws, ordinances, rules, regulations, and requirements of governmental authorities except where the necessity of compliance therewith is contested in good faith by appropriate proceedings.

Section 5.03. *Indebtedness.* After the date hereof, Borrower will not incur or suffer to exist any indebtedness other than the following ("**Permitted Indebtedness**"):

(a) indebtedness of Borrower hereunder to Lender;

(b) Margin Indebtedness; and

(c) indebtedness for borrowed money owing to other lenders (so long as such indebtedness is not secured by any of the Collateral).

Section 5.04. *Liens.* Other than Margin Liens, Borrower will not create, assume or suffer to exist any Lien on the Collateral.

Section 5.05. *Use of Proceeds.* The proceeds of the Advances made under this Agreement will be used by Borrower solely in accordance with Section 2.01.

Section 5.06. *Further Assurances.* Borrower will, at its sole cost and expense, do, execute, acknowledge and deliver all such further acts, assignments, notices of assignment, transfers and assurances as Lender shall from time to time request, which may be necessary or desirable in the reasonable judgment of Lender to protect the rights of the Lender hereunder.

ARTICLE 6
RELEASE OF COLLATERAL

Borrower may request the release of Collateral from the Lien of the applicable Security Agreement and Lender shall release and discharge Lender's Lien on such Collateral (the

"**Released Collateral**") upon receipt of a payment to Lender of all Obligations secured by such Collateral (the "**Release Price**").

ARTICLE 7
DEFAULTS

Section 7.01. *Event of Defaults.* If one or more of the following events ("Events of Default") shall have occurred and be continuing:

(a) failure by Borrower to pay (i) any amount of principal due hereunder or under any Note when due, or (ii) any amount of interest due hereunder or under any Note or fees due hereunder or any other Loan Document within two (2) Business Days after the date when due;

(b) any material written representation, warranty, covenant or statement of Borrower to Lender is found to have been false or misleading in any material respect as of the time when made;

(c) Borrower shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar official of itself or of all or a substantial part of its property, (ii) be generally not paying its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) take any action or commence any case or proceeding under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, or any other law providing for the relief of debtors, (vi) fail to contest in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under such Bankruptcy Code or other law, or (vii) take any action under the laws of its jurisdiction of incorporation or organization similar to any of the foregoing;

(d) a proceeding or case shall be commenced, without the application or consent of Borrower, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding up, or composition or readjustment of its debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of it or of all or any substantial part of its assets, or (iii) similar relief in respect of it, under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts or any other law providing for the relief of debtors, and such proceeding or case shall continue undismissed, or unstayed and in effect, for a period of sixty (60) days; or an order for relief shall be entered in an involuntary case under such Bankruptcy Code, against the Borrower, or action under the laws of the jurisdiction of incorporation or organization of the Borrower, similar to any of the foregoing shall be taken with respect to the Borrower;

(e) service upon Lender of a writ of levy or attachment, or naming Lender as trustee for the Borrower, or of any other similar process of attachment (collectively, an "**Attachment**") the result of which would be to attach any of the Collateral;

(f) attachment of any lien, security interest or other encumbrance against any Collateral other than Margin Liens;

(g) Borrower dies or is adjudicated incompetent; or

(h) entry of any court order that enjoins, restrains or in any way prevents Borrower materially from conducting a substantial portion of his business;

then, immediately and automatically, in the case of an Event of Default described in (c) or (d) above, and, in the case of any other Event of Default, at any time thereafter while such Event of Default is continuing, Lender may, by written notice to Borrower, terminate this Agreement, whereupon the unpaid principal amount of the Advances together with accrued interest thereon and all other Obligations shall become immediately due and payable and Lender may exercise any and all rights it has under the Note, or at law or in equity, and proceed to protect and enforce each Lender's rights by any action at law, in equity or other appropriate proceeding.

ARTICLE 8
MISCELLANEOUS

Section 8.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including bank wire, overnight delivery, facsimile transmission or similar writing) and shall be given to such party at its address or telex or facsimile number set forth on the signature pages hereof.

Section 8.02. *No Waivers.* No failure or delay by Lender in exercising any right, power or privilege under any Loan Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies therein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 8.03. *Amendments and Waivers.* Neither this Agreement nor any provision hereof shall be amended, modified, waived, discharged, nor any non-compliance therewith deemed to have been consented to, orally or by course of conduct, but only by a written agreement signed by an authorized officer of Lender, and as to amendments, as also signed by an authorized officer of Borrower. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of any right of Lender to take action without notice or demand. No failure or delay on the part of Lender in exercising any right hereunder shall operate as a waiver thereof or of any other right, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or of any other right or remedy.

Section 8.04. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Borrower may not assign or otherwise transfer any of his rights under this Agreement without the prior written consent of Lender.

Section 8.05. *Governing Law; Submission to Jurisdiction.* This Agreement and each Note shall be construed in accordance with and governed by the laws of the State of New York without regard to its conflicts of law rules. Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the District of New York and of any New York State court for purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which he may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

Section 8.06. *Counterparts; Integration.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 8.07. *Nonrecourse Nature.* Notwithstanding any provision contain in this Agreement or any other Loan Document to the contrary, neither the Borrower, nor any Participant, shall be personally liable for indebtedness owing to Lender hereunder, or evidenced by the Note or any other Loan Document. The Lender will look solely to the Collateral as security for the repayment of such indebtedness and will have no recourse against any other property of the Borrower or any Participant under any circumstances.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as an instrument under seal as of the day and year first above written.

BORROWER:

WITNESS:

Name: Michael D. Robinson

By: _____
Donald F. Lathen

Address for Notices:

One Penn Plaza
Suite 3671
New York, NY 10119

LENDER:

EDEN ARC CAPITAL PARTNERS, LP

Name: Michael D. Robinson

By: _____
Name: Donald Lathen
Title: Managing Member of GP

Address for Notices:

One Penn Plaza
Suite 3671
New York, NY 10119

Profit-Sharing Agreement

Introduction and Summary

This Profit Sharing Agreement (the "Agreement") is part of a general business arrangement between Donald F. ("Jay") Lathen ("Lathen"), Eden Arc Capital Partners, LP ("EACP") and Eden Arc Capital Management, LLC ("EACM") (collectively the "Parties"). EACP is a Delaware private limited partnership organized by Lathen. EACP commenced investment activities on May 1, 2011. Lathen is the Founder, Chief Investment Officer and sole owner of EACM. EACM is an SEC-registered investment advisor and is the investment manager for EACP. Mr. Lathen is also the sole owner of Eden Arc Capital Advisors, LLC ("EACA"), which is the General Partner of EACP.

EACP's investment strategy is to invest in fixed-income securities which contain a "survivor's option." A survivor's option is a provision in a security which gives the holder the right but not the obligation to sell the security back to the issuing company at par value upon the death of the owner or co-owner of the security. EACP's investments are facilitated by Lathen, who has opened several joint brokerage accounts with terminally ill individuals ("Participants"). EACP has provided the funding for those accounts and Lathen has used the funds provided by EACP to purchase survivor's option securities in the accounts. The business arrangement between EACP and Lathen is governed by an Investment Management Agreement ("IMA") dated May 1, 2011. The business arrangements between Lathen and the Participants are governed by a series of written contracts entered into between Lathen and each Participant.

The parties hereby wish to amend the contractual arrangement between Lathen and EACP as it relates to the conduct of the business after the date herein. Specifically, new brokerage accounts formed with new Participants after the date herein, will be governed by this Agreement rather than the previously executed IMA. For the avoidance of doubt, accounts opened with Participants prior to the date herein will continue to be governed by the IMA.

Line of Credit

In connection with this Agreement, Lathen and EACP have entered into a Discretionary Line Agreement (the "Credit Agreement") dated [ ]. Under the Credit Agreement, Lathen will borrow money from EACP to invest in a series of brokerage accounts. In those brokerage accounts, survivor's option securities will be purchased. The brokerage accounts will consist of joint brokerage accounts with Participants as well as one or more "inventory" accounts formed by Lathen individually or jointly with a non-Participant (collectively the "Accounts"). Under the Credit Agreement, Lathen will pledge the Accounts as collateral to secure the borrowings under the Credit Agreement. Borrowings under the Credit Agreement by Lathen will be "non-recourse" to Lathen and the Accounts shall be the sole source of funds for purposes of repaying the borrowings under the Credit Agreement. Each Account will be established as a joint tenancy with rights of survivorship ("JTWROS") consisting of Lathen and one or more individuals who are terminally ill (the "Participants"). As before, Lathen will enter into written contracts with each new Participant which will govern the business arrangement between Lathen and the Participant.

contracts with each new Participant which will govern the business arrangement between Lathen and the Participant.

Profit Sharing Agreement

Under the terms of EACP's Limited Partnership Agreement ("LPA"), EACM is entitled to receive management fees from EACP as the investment manager of EACP. In addition, EACA as the general partner of EACP, receives a performance allocation based on a share of profits derived from EACP's investment activities. Lathen is the sole owner of both EACA and EACM and therefore he is the sole beneficiary of these provisions in the LPA. Lathen acknowledges that the economic benefits he derives through his ownership of EACA and EACM are facilitated and sustained by his willingness to enter into the Participant Agreements, open JTWROS accounts with Participants and borrow funds from EACP to fund the Accounts.

As such, in consideration for the benefits Lathen derives through his ownership of EACA and EACM, Lathen hereby agrees to assign all profits and losses from the Accounts to EACP. Furthermore, the parties agree that this Agreement shall be treated as a partnership for tax purposes. As such, the character of the income from the Accounts for federal income tax purposes shall pass through to EACP, which will then allocate such income (or loss) to its partners pursuant to the terms of the LPA.

By signing below, the parties so agree.

By: _____
Donald F. Lathen

By: _____
Eden Arc Capital Partners, LP

By: _____
Eden Arc Capital Management, LLC

Participant Agreement

1. Donald F. (Jay) Lathen ("Lathen"), pursuant to the terms of this agreement ("Agreement"), agrees to make the payment to Craig Alan Plecker ("Participant") or Participant's designees pursuant to the terms of paragraph 2(f) below and subject to the full and complete compliance by Participant with the terms and conditions contained in this Agreement and the additional documents referenced herein. By signing this Agreement, Participant expressly acknowledges that this Agreement and the documentation for opening the brokerage accounts described below is part of a business ("Business") conceived and executed by Lathen with financing provided by Eden Arc Capital Partners, LP (the "Partnership"), a limited partnership organized by Lathen to fund the Business.

2. Establishment of the Accounts. Participant agrees to become a joint owner with Lathen and, at Lathen's discretion, one or more additional owners, on one or more brokerage account(s) (the "Account(s)"). To accomplish this objective, Participant acknowledges and agrees that:

a. The Account(s) will be titled as a joint tenancy with rights of survivorship ("JTWROS") consisting of Participant, Lathen and/or, in Lathen's discretion, one or more additional owners.

b. The Account(s), at Lathen's direction, will purchase certain investments ("Investments") which contain what is known as a "survivor's option" or "death put," which allows the investment, typically a fixed income security, to be sold back or "put" to the issuer, at par plus accrued interest, upon the death of the holder.

c. Participant agrees to execute a limited power of attorney (the "POA") to grant Lathen and Eden Arc Capital Management, LLC, the investment manager of the Partnership, limited power of attorney to execute any paperwork (the "Paperwork") required by brokerage firms to set up the Account(s) and, if necessary, to cooperate with these brokerage firms and Lathen to create and establish the Account(s) in the JTWROS format. Participant, and Participant's attorney-in-fact, if applicable, is encouraged to ask any questions and request any clarification regarding the contents and effects or consequences of the POA and the Paperwork prior to signing this Agreement.

d. Participant agrees to cooperate with Lathen to facilitate modifications to the Account(s) as necessary, except that Participant understands and agrees that Lathen and the Partnership are solely responsible for funding the Account(s), including funding the purchase of any securities transferred into the Account(s), or subsequently purchased in or from the Accounts(s), or satisfying any loans or liabilities arising with respect to the Account(s). Participant shall have absolutely no responsibility for funding the Account(s) and Participant affirms that no such funds or other consideration has been provided by Participant for such purpose.

e. The "Effective Date" shall be defined as the earliest date that an Account has been established and a sufficient quantity of Investments have been purchased and settled in the Account or, if applicable, have otherwise been transferred into the Account(s). Lathen shall have sole discretion with respect to determining what constitutes a sufficient quantity of Investments for purposes of this paragraph 2(e). Participant acknowledges that there may be a delay of up to fifteen (15) business days between the execution of this Agreement and the Effective Date (the "Investment Purchase Period"), due to brokerage firms' internal processing times and the availability of Investments.

f. In consideration of entering into this Agreement, Lathen shall pay Participant $10,000 as soon as practicable following the Effective Date. Participant shall receive no additional payments with respect to the

Account(s) unless the Account(s) are terminated and the funds in the Account(s) are disbursed prior to Participant's death. Participant, and Participant's attorney-in-fact, if applicable, ("Participant's Representative" and together, the "Participant Parties") expressly acknowledge that Lathen does not intend to terminate the Account(s) during Participant's lifetime and, therefore, it is unlikely that Participant or Participant's estate will receive any additional amounts under this Agreement or with respect to the Account(s). Participant Parties further acknowledge that neither Participant nor Participant's estate will participate in profits in the Account(s) following Participant's death, and that profits accruing to Lathen and the Partnership pursuant to this Agreement are likely to be substantially in excess of the payment to Participant.

g. The Account(s) will be pledged to secure a loan (the "Investment Loan") provided to Lathen by the Partnership to cover the payment to Participant and to finance the purchase of the Investments in the Account(s). The Investment Loan must be repaid prior to any other distribution from the Account(s).

h. Lathen may purchase Investments in the Account(s) on margin (i.e., with funds lent by the brokerage firm). While such investment practice could expose Account holders, including Participant, to liability for so-called "margin calls," if the value of the securities in the Account(s) declines, Lathen hereby assumes sole responsibility to fund any such liabilities.

3. Termination of Joint Tenancy. Participant Parties hereby acknowledge and understand that upon Participant's death, the joint tenancy between Participant, Lathen and, if applicable, one or more additional owners, will terminate and the Account(s) and all assets and proceeds from such Account(s) will pass directly to Lathen and, if applicable, additional owners. The Account(s) will not be part of Participant's estate.

4. Pre-Decease Consequences. In the event that Lathen pre-deceases the Participant, the Investment Loan shall become immediately due and payable. The Partnership will have authority to liquidate the Account(s) to satisfy the outstanding balance due under the Investment Loan. Once the Investment Loan is satisfied with respect to such liquidated Account(s), any remaining proceeds shall be paid to Participant, or if applicable, to Participant's estate. It is not expected that Lathen will predecease Participant and therefore it is unlikely that Participant or Participant's estate will receive any distributions from the Account(s) upon the death of Lathen.

5. Participant Representations. Each of the Participant Parties represents and warrants to Lathen that:

a. Participant is not currently an owner of any investments as described above and that Participant will not purchase any such investments or permit, allow or authorize any individual or entity other than Lathen to purchase such Investments on Participant's behalf.

b. Participant , or, if applicable, Participant's Representative, understands the nature and terms of this Agreement and of the Business, and is over the age of 18 years, competent and of sound mind.

c. Participant Parties, prior to executing this Agreement, have been given the full opportunity to ask questions from Lathen and have been given the opportunity to consult with a financial advisor, legal or other qualified representative.

d. Participant is not (i) subject to a current bankruptcy proceeding nor is the Participant considering a bankruptcy filing; or (ii) subject to any existing or pending judgments in favor of creditors. Participant Parties agree to notify Lathen promptly regarding any adverse changes to Participant's credit, including a potential bankruptcy proceeding or judgment in favor of creditors.

e. Each of the Participant Parties understands that neither Lathen nor Eden Arc Capital Management nor the Partnership are providing financial advice in connection with this Agreement and that neither Lathen nor Eden Arc Capital Management nor the Partnership are acting in any fiduciary or other similar capacity in connection with this Agreement.

6. Taxes. Lathen is not providing tax advice with respect to this Agreement, the establishment of the Account(s) or any payments received by Participant under this Agreement, and Participant Parties are encouraged to seek advice from an accountant or tax adviser prior to executing this Agreement. Notwithstanding the foregoing, Participant Parties acknowledge and understand that payments made pursuant to this Agreement are taxable income and that Participant will receive Form 1099 (a copy of which will be filed with the Internal Revenue Service) reporting Participant's receipt of payments made pursuant to this Agreement.

7. Governmental Benefit Programs. Lathen is not providing legal advice with respect to this Agreement, the establishment of the Account(s) or any payments received by Participant under this Agreement. Participant Parties are advised to seek legal advice from an attorney prior to executing this Agreement. Notwithstanding the foregoing, Participant Parties acknowledge and understand that any payments Participant receives pursuant to this Agreement could be considered income or assets for Medicaid and could have an adverse impact on Participant's eligibility for Medicaid.

8. Participant's Personal Information. In connection with executing this Agreement, Participant shall complete and deliver to Lathen an enrollment form (the "Enrollment Form"). The Enrollment Form requires Participant to disclose certain identifying information (the "Identifying Information") that will be used by Lathen for the sole and exclusive purpose of setting up and opening the Account(s), including for the purpose of a "background/credit check" to facilitate opening the Account(s). The Identifying Information includes without limitation Participant's name, address, telephone number, social security number, employer information, and certain investment experience. Participant may also be asked to deliver to Lathen a copy of Participant's driver's license or other government issued ID, also for the sole and exclusive purpose of setting up and opening the Accounts.

9. Release of Medical Information. In connection with executing this Agreement, Participant shall complete and deliver to Lathen an Authorization to Release Medical Information (the "Release"). Lathen shall use this Release for the sole and exclusive purpose of requesting Participant's medical records (the "Medical Records") from Participant's physician(s) as necessary for Lathen to determine and verify Participant's medical history. Lathen shall use the Medical Records for no other purpose other than to determine, in his sole discretion, whether to countersign this Agreement.

10. Indemnification. Participant hereby agrees to indemnify Lathen and the Partnership and to hold Lathen and the Partnership safe and harmless for damages caused by Participant's breach of any of the terms of this Agreement.

11. Participant's Agent. Participant hereby appoints Kimberly McCleery as "Participant's Agent" to promptly notify Lathen in the event of Participant's death and, if requested, to assist Lathen in obtaining Participant's death certificates. This Agreement is expressly conditioned upon the Participant's Agent executing a Participant's Agent Agreement, whereby the Participant's Agent shall agree to cooperate with Lathen pursuant to this Section 11. Lathen shall reimburse the Participant's Agent for any expenses associated with procuring and delivering the requested death certificates to Lathen.

12. Participant's Right to Cancel. This Agreement will not be countersigned by Lathen for a period of three (3) days from the date of its return by Participant to Lathen (the "Participant Cancelation Period") for the express purpose of giving Participant Parties the opportunity to exercise a right of rescission and cancellation of participation herein. Participant or Participant's Representative may exercise such right by providing written notification of rescission and cancellation to Lathen prior to the expiration of such 3-day period. Upon receipt of such notification, this Agreement shall be canceled and shall be of no further force and effect.

12. Termination; Cancelation.

a. Lathen shall have the right to terminate this Agreement if the Participant dies prior to the Effective Date.

b. Pursuant to Section 2(e) hereof, if the Account(s) are not set up and a sufficient quantity of investments have not been made prior to the end of the Investment Purchase Period, this Agreement shall terminate and be of no further force and effect unless otherwise agreed to in writing by the parties.

c. Lathen shall countersign this Agreement within 7 days of the end of the Participant Cancelation Period. This Agreement shall terminate and be of no further force and effect if not executed by Lathen before the end of such 24-hour period unless otherwise extended in writing by the parties.

d. Immediately upon execution or termination of this Agreement by Lathen pursuant to this Section 13, Lathen shall provide written notice of such execution or termination to Participant.

14. Spousal Waiver. This Agreement is expressly conditioned upon Participant's spouse waiving any right or claim to the Account(s) arising now or in the future.

15. Confidentiality. Participant Parties hereby acknowledge that this Agreement and its terms, as well as all Paperwork, are private and confidential and that Participant Parties will not disclose the terms of this Agreement and the Paperwork to any person without the prior written consent of Lathen.

16. Notices. Any notice required or permitted to be given under this Agreement shall be given in writing and sent by an overnight express delivery service provider such as UPS or Federal Express, certified mail or fax to the party at the address set forth on the signature pages hereto or to such other address as such party shall have designated in writing.

17. Governing Law. This Agreement shall be governed and construed as to its validity, interpretation and effect by the laws of the State of New York without giving effect to the principles thereof regarding conflicts of law.

18. General Waiver. Lathen's failure to enforce strictly any provision of this Agreement shall not be construed as a waiver thereof or as excusing Participant's or Participant's Representative's future performance. Any waiver, to be effective in favor of Participant, must be in writing and signed by Lathen.

19. Successors and Assigns. This Agreement shall be binding upon the successors and heirs of the respective parties hereto.

20. Amendment. This Agreement shall not be changed, modified or terminated orally or in any manner other than by an agreement in writing signed by each of the parties hereto.

21. Headings. The headings of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement.

22. Counterparts. This Agreement may be executed in one or more counterparts, and by any of the parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

23. Authorization. If this Agreement is being executed by Participant's Representative, the undersigned hereby represents and warrants to Lathen that he/she (i) has the power and authority to execute this Agreement on behalf of Participant, (ii) Participant has executed a power of attorney (the "Participant's POA") granting such power to the undersigned, and (iii) the undersigned has provided Lathen a true and complete copy of the Participant's POA and the Participant's POA is valid, binding and in full force and effect as of the date hereof.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned have duly executed this Participant Agreement as of this 12 day of June, 2013.

Donald F. (Jay) Lathen

Address: One Penn Plaza, Suite 3671
New York, NY 10119
Facsimile: 718-504-3934

PARTICIPANT:

By: Craig Alan Plecker
Name: Craig Alan Plecker

Address: [redacted]
Gloucester City, NJ [redacted]

PARTICIPANT SPOUSE (IF APPLICABLE):

By: _____
Name:
Address:

STATE OF NJ)
) ss
COUNTY OF Camden)

On June 13, 2013 before me a Notary Public in and for said State, duly commissioned and sworn, personally appeared Craig Plecker personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signatures on the instrument the persons, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: _____

Name: Devon Lopez

DEVON LOPEZ
Notary Public
State of New Jersey
My Commission Expires Dec 10, 2017

Limited Power of Attorney

The undersigned, Craig Alan Plecker, residing at 825 Bergen Street, Gloucester City, NJ 08030 ("Grantor"), has made, constituted, and appointed, and by these presents does constitute and appoint Donald F. (Jay) Lathen and Eden Arc Capital Management, LLC, and either of them, the true and lawful attorney to:

1. open, manage, handle, and direct brokerage accounts titled in the undersigned's name either individually or jointly;
2. to buy, sell, exchange, convert, tender, trade, lend, and in any and every other way it sees fit to handle, dispose of, acquire, and deal in stocks, bonds, shares of mutual funds and money-market funds, other securities, and contracts relating thereto (including without limitation derivatives, commodities, and futures contracts) with or through a brokerage firm ("Broker") or custodian ("Custodian");
3. to pledge and grant a security interest in the Account(s) and Grantor's interest therein;
4. to execute agreements relating thereto in their name or otherwise on their behalf;
5. to make, execute, and deliver assignments and transfers of any and all stocks, bonds, cash and other securities;
6. to sign their name to any and all written instruments of assignment or otherwise that may be required in connection with such assignment;
7. to transfer funds into and out of such accounts.

This limited power of attorney applies to and covers the accounts until written notice of revocation hereof is given by the undersigned to the Broker or Custodian, and the undersigned hereby ratifies and confirms any and all acts heretofore done, or that may hereafter be done or caused to be done, by virtue hereof by the attorney of the undersigned, giving and granting unto said attorney limited power and authority to do and perform each and every act and thing whatsoever requisite or necessary to be done with respect to the accounts as fully to all intents and purposes as the undersigned might or could do if personally present.

This authorization is continuing and remains in full force and effect until revoked by the undersigned. This authorization shall not be affected by the subsequent incapacitation, disability or incompetence of the undersigned.

X Craig Alan Plecker (GRANTOR): 6-13-13 Date

STATE OF NJ)
) ss
COUNTY OF Camden)

On the 13 day of June in the year 2013, Grantor or representative of Grantor, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

DEVON LOPEZ
Notary Public
State of New Jersey
My Commission Expires Dec 10, 2017

WITNESS my hand and official seal.
Signature:
Name: Devon Lopez

AGREED AND ACCEPTED:

Donald F. (Jay) Lathen

EDEN ARC CAPITAL MANAGEMENT, LLC

By:
Name: Donald F. (Jay) Lathen
Title: Managing Member

Participant's Agent Agreement

The undersigned, Kimberly McCleery (the "Participant's Agent") hereby acknowledges that Craig Alan Plecker ("Participant") has enrolled in EndCare's financial assistance program. In connection with such enrollment, Participant executed a Participant's Agreement by and between Participant and Donald F. (Jay) Lathen ("Lathen"), wherein Participant named the undersigned as his/her "Participant's Agent." In consideration of the mutual promises contained herein, the Participant's Agent hereby agrees to promptly notify Lathen in the event of Participant's death and, if requested, to assist Lathen in obtaining Participant's death certificates. Lathen shall reimburse the Participant's Agent for any expenses associated with procuring and delivering the requested death certificates to Lathen.

This agreement shall be governed and construed as to its validity, interpretation and effect by the laws of the State of New York without giving effect to the principles thereof regarding conflicts of law. This Agreement may be executed in one or more counterparts, and by any of the parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Any notice required or permitted to be given under this agreement shall be given in writing and sent by overnight courier service such as Federal Express or UPS, certified mail or fax to the party at the address set forth on the signature pages hereto or to such other address as such party shall have designated in writing.

IN WITNESS WHEREOF, the undersigned have duly executed this Participant's Agent Agreement as of this 13 day of June, 2013.

DEVON LOPEZ
Notary Public
State of New Jersey
My Commission Expires Dec 10, 2017

PARTICIPANT'S AGENT:

By: _____

Name: [redacted]

Address: [redacted]
Gloucester NJ
[redacted]

By: _____
Donald F. (Jay) Lathen

Address: c/o Eden Arc Capital Management, LLC
One Penn Plaza, Suite 3671
New York, NY 10119
Facsimile: 718-504-3934

Death Certificate Consent

The undersigned, Craig Alan Plecker, residing at [redacted], Gloucester City, NJ [redacted] ("Grantor"), hereby grants to Donald F. (Jay) Lathen and Eden Arc Capital Management, LLC, and either of them, the right to obtain certified copies of my death certificate after my demise.

This document certifies that I have a legal and business relationship with Donald F. (Jay) Lathen and Eden Arc Capital Management, LLC, and that they are entitled to receive certified copies of my death certificate.

This authorization is irrevocable and shall not be affected by the subsequent incapacitation, disability, incompetence, or death of the undersigned.

X Craig Alan Plecker 10-13-13
Craig Alan Plecker (GRANTOR): Date

STATE OF NJ)
) ss
COUNTY OF Camden)

On the 13 day of June in the year 2013, Grantor or representative of Grantor, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

DEVON LOPEZ
Notary Public
State of New Jersey
My Commission Expires Dec 10, 2017

WITNESS my hand and official seal.
Signature:
Name: Devon Lopez

AGREED AND ACCEPTED:

Donald F. (Jay) Lathen

EDEN ARC CAPITAL MANAGEMENT, LLC

By:
Name: Donald F. (Jay) Lathen
Title: Managing Member

EDEN ARC CAPITAL PARTNERS, LP
(A Delaware Limited Partnership)

Financial Statements

December 31, 2014

EDEN ARC CAPITAL PARTNERS, LP
(A Delaware Limited Partnership)

December 31, 2014

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EISNERAMPER
ACCOUNTANTS & ADVISORS

EisnerAmper LLP
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www.eisneramper.com

INDEPENDENT AUDITORS' REPORT

To the General Partner of
Eden Arc Capital Partners, LP

Report on the Financial Statements

We have audited the accompanying financial statements of Eden Arc Capital Partners, LP (the "Partnership"), which comprise the statement of assets and liabilities and partners' capital as of December 31, 2014, and the related statements of operations, changes in partners' capital and cash flows for the year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Partnership's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Eden Arc Capital Partners, LP as of December 31, 2014, and the results of its operations, changes in net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

EisnerAmper LLP

New York, New York
April 28, 2015

EDEN ARC CAPITAL PARTNERS, LP
(A Delaware Limited Partnership)
Statement of Assets, Liabilities and Partners' Capital
December 31, 2014

ASSETS

Assets:	
Due from Joint accounts, at fair value	$ 16,187,189
Cash	4,189,846
Prepaid management fees	32,637
Other assets	34,381
Total Assets	$ 20,444,053

LIABILITIES AND PARTNERS' CAPITAL

Liabilities:	
Capital withdrawals payable	$ 1,029,109
Accrued expenses	113,638
Total Liabilities	1,142,747
Partners' Capital	19,301,306
Total Liabilities and Partners' Capital	$ 20,444,053

The accompanying notes are an integral part of these financial statements.

EDEN ARC CAPITAL PARTNERS, LP
(A Delaware Limited Partnership)
Statement of Operations
Year Ended December 31, 2014

Investment income:		
Income:		
Interest	$	2,387,163
Expenses:		
Interest		1,374,606
Professional fees		294,640
Management fees		259,628
Market data		27,025
Other		88,927
Total expenses		2,044,826
Net investment income		342,337
Realized and unrealized gain (loss) on joint accounts:		
Net realized gain in joint accounts		2,914,740
Net change in unrealized appreciation or depreciation on joint accounts		(1,401,538)
Net realized and unrealized gain		1,513,202
Net increase in partners' capital resulting from operations	$	1,855,539

The accompanying notes are an integral part of these financial statements.

EDEN ARC CAPITAL PARTNERS, LP
(A Delaware Limited Partnership)
Statement of Changes in Partners' Capital
Year Ended December 31, 2014

	General Partner	Limited Partners	Total
Partners' capital, beginning of year	$ 11,550	$ 18,968,446	$ 18,979,996
Capital contributions	-	1,350,000	1,350,000
Capital withdrawals	(602,050)	(2,282,179)	(2,884,229)
Allocation of net increase in partners' capital resulting from operations			
Pro rata allocation	1,389	1,854,150	1,855,539
Reallocation to General Partner	590,275	(590,275)	-
	591,664	1,263,875	1,855,539
Partners' capital, end of year	$ 1,164	$ 19,300,142	$ 19,301,306

The accompanying notes are an integral part of these financial statements.

EDEN ARC CAPITAL PARTNERS, LP
(A Delaware Limited Partnership)
Statement of Cash Flows
Year Ended December 31, 2014

Cash flows from operating activities:		
Net increase in partners' capital resulting from operations	$	1,855,539
Adjustments to reconcile net increase in partners' capital resulting from operations to net cash provided by operating activities:		
Net realized gain in joint accounts		(2,914,740)
Net change in unrealized appreciation or depreciation on joint accounts		1,401,538
Changes in assets and liabilities:		
Due from Joint accounts, at fair value		4,110,243
Prepaid management fees		(32,637)
Other assets		29,041
Management fees payable		(5,536)
Accrued expenses		91,149
Net cash provided by operating activities		4,534,597
Cash flows from financing activities:		
Proceeds from capital contributions		1,350,000
Payments for capital withdrawals		(2,050,120)
Net cash used in financing activities		(700,120)
Net increase in cash		3,834,477
Cash:		
Beginning of year		355,369
End of year	$	4,189,846
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	$	610,525
2013 Capital withdrawals payable, paid in 2014	$	195,000

The accompanying notes are an integral part of these financial statements.

EDEN ARC CAPITAL PARTNERS, LP
(A Delaware Limited Partnership)
Notes to Financial Statements
December 31, 2014

(1) Organization

Eden Arc Capital Partners, LP (the "Partnership"), a Delaware limited partnership, commenced operations on April 19, 2011. The managing member ("Managing Member") of the Partnership's general partner establishes joint accounts (the "Joint Accounts") with terminally ill individuals ("Participants"). The Partnership provides funding to the Joint Accounts under agreements (the "Agreements") it has executed with the Managing Member and, on certain of the Joint Accounts, agreements it has executed with the Managing Member and an additional joint owner ("Nominee") acting on behalf of the Partnership. Funding provided by the Partnership under the Agreements is deposited into the Joint Accounts and used to acquire investments in securities which contain a "survivor's option" or similar feature. Survivor's option investments ("SO Investments") contain special redemption rights, typically in the form of a par put, which allows the investment to be "put" or sold back to the issuer at par prior to the maturity date in the event of the death of an owner. Under the Agreements it has executed with the Managing Member and Nominee, the Partnership is entitled to receive all of the profits and/or losses from the Joint Accounts.

The Managing Member enters into agreements with each Participant (the "Participant Agreement") whereby the Participant agrees to establish a joint brokerage account with the Managing Member and, if applicable, the Nominee. In return, the Partnership compensates the Participant with an up-front payment once the joint account has been opened, funded and SO Investments have been purchased in the joint account. For the year ended December 31, 2014, this amounted to $38,333 and is included in net realized gain in joint accounts on the Statement of Operations.

The trading activity within the Joint Accounts is the responsibility of Eden Arc Capital Advisors, LLC (the "General Partner"). The Partnership will terminate upon the withdrawal of the General Partner or the withdrawal of Mr. Donald F. Lathen, the Managing Member, from the General Partner or Eden Arc Capital Management, LLC (the "Investment Advisor").

(2) Significant Accounting Policies

The financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") that require the General Partner to, among other things, make estimates and assumptions that affect the reported amounts in the financial statements. Actual results could differ from those estimates. The Partnership is considered an investment company under GAAP and follows the accounting and reporting guidance applicable to investment companies in the Financial Accounting Standards Board Accounting Standards Codification 946, "Financial Services – Investment Companies." The following is a summary of significant accounting policies consistently followed by the Partnership:

(a) Fair Value Measurement

GAAP establishes a disclosure hierarchy that categorizes the inputs to valuation techniques used to value assets and liabilities at measurement date. Fair value is defined as the price that the Partnership would receive under the Nominee agreements upon selling an investment held in the joint accounts in an orderly transaction to an independent buyer in the principal or most advantageous market of the investment. The accounting rules establish a three-tier hierarchy to maximize the use of observable market data and minimize the use of unobservable inputs and to establish classification of fair value measurements for disclosure purposes. Inputs refer broadly to the assumptions that market participants would use in pricing the asset, including assumptions about risk, for example, the risk inherent in a particular valuation technique used to measure fair value including a pricing model

(2) **Significant Accounting Policies (continued)**

(a) Fair Value Measurement (continued)

and/or risk inherent in the inputs to the valuation technique. Inputs may be observable or unobservable. Observable inputs are inputs that reflect the assumptions market participants would use in pricing the asset and liability developed based on market data obtained from sources independent of the Partnership. Unobservable inputs are inputs that reflect the Partnership's own assumptions about the assumptions market participants would use in pricing the asset or liability developed based on the best information available in the circumstance. Each investment is assigned a level based upon the observability of the inputs, which are significant to the overall situation.

The three- tier hierarchy of inputs is summarized below:

Level 1: Quoted prices in active markets for identical investments.

Level 2: Other significant observable inputs (including quoted prices for similar investments, interest rates, prepayment speeds, credit risk, etc.). If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

Level 3: Inputs are unobservable for the asset or liability and include situations where there is little, if any market activity for the asset or liability. The inputs into the determination of fair value are based upon the best information in the circumstances and may require significant management judgment or estimation. Investments that are included in this category generally include equity and debt positions in private companies.

The Fund records the Due from Joint Accounts at fair value determined by the valuation techniques discussed in Note 3.

(b) Cash

In the normal course of business, the Partnership maintains its cash balances in financial institutions, which at times may exceed the federally insured limits. The Fund is subject to credit risk to the extent any financial institution with which it conducts business is unable to fulfill contractual obligations on its behalf. Management monitors the financial condition of such financial institutions and does not anticipate any losses from these counterparties. In the event of a financial institutions insolvency, the recovery of cash may be limited.

(c) Joint Account Transactions

Transactions in securities held in joint accounts are recorded on a trade-date basis. Realized gains and losses are recorded on specific identification basis. Interest income and expense are recognized on an accrual basis.

(2) Significant Accounting Policies (continued)

(d) Taxes

The Partnership does not record a provision for U.S. federal, state or local income taxes because the partners report their share of the Partnership income or loss on their income tax return.

The Partnership recognizes the tax benefits of certain tax positions only when the position is "more likely than not" to be sustained assuming examination by federal, state, or local taxing authorities. The tax benefit recognized is the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. As of and during the year ended December 31, 2014, the Partnership did not have any liabilities for any uncertain tax positions.

(e) Administrative Agreement

The Partnership has engaged the service of Integrated Investment Solutions LLC (the "Administrator") to provide certain administrative and accounting services. The Administrator receives customary fees based upon the nature and extent of the service provided.

(f) Withdrawals payable

GAAP requires withdrawals, to be recognized as liabilities when the amounts requested in the withdrawal notice becomes fixed, which generally occurs on the last day of the month. As a result, withdrawals paid after the end of the year, but based upon year-end net capital values, are reflected as withdrawals payable at December 31, 2014.

(3) Due from Joint Accounts at Fair Value

The Partnership's assets recorded at fair value have been categorized based upon the fair value hierarchy as described in the Partnership's significant accounting policies in Note 2. All of the positions held in the joint accounts are classified as level 2 in the fair value hierarchy. There were no transfers in or out of level 1, 2 or 3 during the year ended December 31, 2014.The following table presents information about the Partnership's assets measured at fair value as of December 31, 2014:

(3) Due From Joint Accounts at Fair Value (continued)

Principal Amount	Description	Fair value	Percentage of partners' capital
	Due from Joint accounts, at fair value:		
	Corporate bonds:		
	United States:		
	Financial Services:		
$ 250,000	Caterpillar Financial Se, 2.25% to 2.45% with maturities ranging from 08/15/22 to 04/15/23	$ 242,369	1.26 %
678,000	Federal Farm Credit Bank, 1.75% to 2.20% with maturities ranging from 09/15/22 to 03/15/24	678,000	3.51
1,260,000	General Electric Capital Corp, 3.50% to 3.55% with maturities ranging from 09/15/29 to 12/15/32	1,214,455	6.29
438,000	Natural Rural Utilities Coop, 2.00% to 3.00% 04/15/21 to 10/15/26	438,000	2.27
2,260,000	Prospect Capital Corp, 4.50% to 6.13% with maturities ranging from 12/15/30 to 03/15/36	2,161,463	11.20
965,000	Tennessee Valley Authority, 2.38% to 3.63% with maturities ranging from 02/15/25 to 02/15/36	933,037	4.83
326,000	Wells Fargo & Company, 0.74% to 3.00% with maturities ranging from 11/29/24 to 04/30/30	314,522	1.63
	Total corporate bonds: (cost $5,862,967)	5,981,846	30.99
	Certificates of deposit:		
	United States:		
	Financial Services:		
500,000	Bank of America, 0.00% to 1.25% with maturities ranging from 12/28/22 to 08/26/30	476,250	2.47
36,000	Bank Of Oak Ridge NC, 2.20% 02/28/23	34,560	0.18
30,000	Bank Of Santa Clarita CA, 0.00% 05/25/22	29,400	0.15
345,000	Bank Of The West SF CA, 0.00% with maturities ranging from 08/30/19 to 10/30/19	332,600	1.72
170,000	Bankwest Inc Pierre SD, 2.00% 02/15/23	160,650	0.83
309,000	Barclays Bank/Delaware, 0.00% with maturities ranging from 01/27/17 to 12/27/19	295,115	1.53
1,118,000	BMO Harris Bank NA, 0.00% to 2.60% with maturities ranging from 12/31/13 to 05/15/28	1,067,770	5.53
263,000	BOFI Federal Bank, 2.00% to 2.35% with maturities ranging from 07/11/22 to 04/26/23	251,700	1.30
20,000	BOKF NA, 2.75% 04/26/28	19,400	0.10
116,000	Celtic Bank, 1.70% to 1.75% with maturities ranging from 6/7/22 to 11/28/22	107,220	0.56
101,000	Chesapeake Bank, 2.70% to 2.75% with maturities ranging from 03/15/28 to 11/30/32	97,265	0.50
2,000,000	Cit Bank, 2.00% to 2.40% with maturities ranging from 10/11/22 to 06/12/23	1,967,930	10.20

(3) Due From Joint Accounts at Fair Value (continued)

Principal Amount	Description	Fair value	Percentage of partners' capital
	Due from Joint accounts, at fair value (continued):		
	Certificates of deposit (continued):		
	United States (continued):		
	Financial Services (continued):		
$ 1,500,000	Citibank NA, 10.00% maturity 3/12/34	$ 1,395,000	7.23 %
1,750,000	Citibank NA Other, 1.45% to 4.51% with maturities ranging from 5/30/33 to 11/15/33	1,441,500	7.47
80,000	Crescom Bank, 1.50% 05/15/23	78,000	0.40
620,000	East West Bank, 2.25% to 10.00% with maturities ranging from 02/22/33 to 09/10/36	594,038	3.08
245,000	Farmers & Merchants Bank, 2.50% with maturities ranging from 10/30/37 to 2/26/38	235,200	1.22
240,000	First Business Bank, 2.40% 07/25/25	228,000	1.18
240,000	First Eagle Bank, 1.50% 03/20/20	229,200	1.19
211,000	First Financial Bank USA, 2.35% to 2.95% with maturities ranging from 7/25/29 to 11/07/33	201,843	1.05
326,000	First National Bank America, 2.15% to 2.65% with maturities ranging from 03/06/23 to 05/10/33	309,337	1.60
42,000	First Trust and Savings Bank, Albany 2.60% 12/15/27	40,110	0.21
180,000	Five Points Bank, 2.20% 02/27/23	171,900	0.89
25,000	Frontier Bank Madison NB, 2.85% 11/28/31	24,125	0.12
25,000	Gateway Bank of Florida, 2.70% 05/02/33	23,500	0.12
140,000	Goldman Sachs Bank USA, 0.00% to 2.25% with maturities ranging from 03/26/20 to 04/26/28	136,768	0.71
1,236,000	JP Morgan Chase Bank, 10.00%, maturity 3/12/34	1,186,560	6.15
1,107,000	JP Morgan Chase Bank, 10.00%, maturity 3/24/29	1,062,720	5.51
6,085,000	JP Morgan Chase Bank Other, 0.00% to 11.00% with maturities ranging from 11/30/17 to 7/21/34	5,827,751	30.19
80,000	Kansas State Bank Manhattan, 2.00% 10/28/22	75,720	0.39
50,000	Landmark Bank NA MO, 2.35% 02/16/24	48,000	0.25
52,000	Mizrahi Tefahot Bank, 2.00% 06/30/22	49,530	0.26
70,000	MUFG Union Bank NA, 0.00% with maturities ranging from 3/28/18 to 7/31/18	67,200	0.35
154,000	Safra National Bank, 2.00% to 2.13% with maturities ranging from 08/15/22 to 09/27/22	146,955	0.76
20,000	Security Bank, 2.10% 05/26/23	18,950	0.10
106,000	Suntrust Bank, 0.00% 03/20/17	103,350	0.54
438,000	Synchrony Bank, 2.20% to 2.65% with maturities ranging from 7/27/22 to 12/7/22	428,753	2.22
50,000	Union National B&T Sparta WI, 2.90% 6/1/37	48,000	0.25
2,143,000	United Community Bank, 1.50% to 10.00% with maturities ranging from 09/23/27 to 09/30/33	1,853,351	9.60
227,000	Valley Natl Bank Wayne NJ, 10.00% 05/09/34	217,920	1.13
86,000	Vision Bank Of West Des Moines IA, 2.40% 03/20/28	81,270	0.42
688,000	Wells Fargo Bank NA, 0.00% to 4.48% with maturities ranging from 9/10/18 to 03/22/33	665,320	3.45
	Total certificates of deposit: (cost $22,027,973)	21,829,731	113.11
	Total corporate bonds and certificates of deposit, at fair value (cost $27,890,940)	27,811,577	144.10
	Interest receivable	150,864	0.78
	Margin balance in Joint accounts	(11,775,252)	(61.01)
	Total due from Joint accounts, at fair value	$ 16,187,189	83.87 %

(3) Due from Joint Accounts at Fair Value (continued)

Securities which are held in a joint account where the Participant is deceased and the Partnership expects to redeem the security with the issuer pursuant to the terms of the survivor's option feature, are valued at par.

All other securities are valued based on the market approach based on prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities. Management uses the following guidelines for determining market prices for securities valued under the market based approach:

- Securities listed on a national securities exchange or national market are valued at their last sale price on their principal exchange or market on the date of determination, or if no sales occurred on such day, at the mean between the "bid" and "asked" prices on such day.

- Securities which are not listed or quoted on any securities exchange or similar electronic system which are dealt in or traded through a clearing firm or through a financial institution and reported through FINRA's Trade Reporting and Compliance Engine ("TRACE") or similar system are valued at their last sale price on such day. If there were no sales on such day, then the General Partner assigns a fair value to the security based upon (a) sales of the security which occurred within the previous five trading days; (b) recent "bids" and "asks" for the security using market data sources deemed appropriate by the General Partner; (c) the most recent official price quoted by a clearing house or financial institution and (d) reviewing recent sales, "bids" and "asks" of similar securities of the same issuer.

- Securities without an active trading market, are assigned a fair value by the General Partner based upon; (a) a comparison with market value for securities of similar companies; (b) recent sales prices; (c) investment risk and/or potential; (d) opinions of qualified investment bankers; (e) marketability (if any); and/or (f) such other factors as the General Partner, in its sole discretion, deems appropriate.

Under the Partnership agreement, an "active trading market" will be deemed to be one for which prices are available for that security or substantially similar securities of the same issuer on NASDAQ, a national securities exchange, TRACE or similar system, or if not available from any of the above, from one or more dealers in the pink or yellow sheets or over the counter bond market on a reasonably consistent basis.

For securities whose settlement terms provide for the payment or receipt of accrued interest, the valuation as determined above will include accrued interest to the valuation date.

The margin balance in the Joint Accounts represent margin borrowings that are collateralized by certain marketable securities in the Joint Accounts. The Partnership utilized CL King and Associates, Inc., First Southwest, and Wedbush Securities as its brokers. The clearing and depository operations for the Partnership's securities transactions are provided by the brokers. At December 31, 2014, substantially all of the securities owned and the margin balance in the Joint Accounts reflected in the statement of assets, Liabilities and Partner's capital are positions with and amounts due from the clearing broker. Investments in securities are subject to margin requirements.

(4) Derivative Contracts

In the normal course of business, the Partnership may enter into trading activities which include foreign currency forwards, futures, options, swaps and other derivatives. Derivative instruments may be used as substitutes for securities in which the Partnership can invest; to hedge portfolio investments or to generate income or gain to the Partnership. The Partnership may also use derivatives to manage duration; sector and yield curve exposures and credit and spread volatility.

Derivative financial instruments base their value upon an underlying asset, index or reference rate. These instruments are subject to various risks, including leverage, market, credit, liquidity and operational risks. Changes in the market value of these instruments, subsequent to year-end, may be in excess of amounts recognized in the Partnership's statement of financial position. The Partnership manages the risks associated with derivatives on an aggregate basis, along with the risks associated with its trading and as part of its overall risk management policies. During the year ended December 31, 2014, the Partnership did not hold any derivatives contracts.

(5) Related-Party Transactions

The Partnership Agreement provides for management fees payable to the General Partner at a rate ranging from 0.5% to 2.00% per annum of the total partners' capital balance on the first day of each calendar quarter. For the year ended December 31, 2014, management fees amounted to $259,628.

Mr. Lathen, the Managing Member, is currently a joint owner on all of the Joint Accounts. A family member of Mr. Lathen serves as a Nominee on some of the Joint Accounts. With respect to all of the Joint Accounts, Mr. Lathen has entered into Agreements with the Partnership which provide for the Partnership to receive all of the profits and/or losses associated with the Joint Accounts. With respect to the Joint Accounts where the Nominee is an additional owner, the Nominee has entered into Agreements with the Partnership which provide that the Partnership receive all of the profits and/or losses associated with those joint accounts. Neither Mr. Lathen nor the Nominee receive any compensation for the provision of these services.

(6) Partnership Capital

Allocation of net income / loss

The net profits and net losses, as defined in the partnership agreement of the Partnership are allocated to the partners in proportion to their respective capital accounts. However, the General Partner is entitled to a reallocation ranging from 16% to 30% of net income, as defined in the partnership agreement, to be credited at the end of each calendar quarter. This reallocation reduces a limited partner's share of net profits. If there is a net loss for an accounting period, the reallocation will not apply to future periods until such loss has been recovered. During the year ended December 31, 2014, reallocation to the General Partner amounted to $590,275.

(6) Partnership Capital (continued)

Admission and withdrawal of Partners

The General Partner may, in its sole discretion, allow limited partners to make capital contributions and admit new limited partners to the Partnership on the first day of each calendar month or on such other dates as the General Partner may determine in its sole discretion.

A limited partner may withdraw all or a portion of its capital account balance without penalty after the expiration of a one year lock-up period following the limited partner's investment. After the lock-up has expired, a limited partner may elect to redeem its capital account (in whole or in part) at the end of any calendar quarter by providing written notice to the General Partner ("Redemption Request'). During the lock-up period, limited partners may request redemptions but such redemptions are subject to redemption penalties ranging from 2% to 5% of the withdrawn amount depending on the elapsed time between the investment date and the Redemption Request. The redemption penalty is payable to the Partnership. Following a Redemption Request by a limited partner, the Partnership will have up to 3 months to redeem the limited partner's interest in the Partnership, subject to certain restrictions in the limited partnership agreement ("Gating Provision") which permits the Partnership to delay a Redemption Request if total Redemption Requests exceed 10% of limited partner capital account balances for any calendar quarter. In the event a limited partner elects to withdraw its investment in full, 95% of the Redemption Request will be paid within 90 days (unless delayed due to the Gating Provision) and the remaining 5% will be paid upon completion of the Partnership's audited financial statements for the fiscal year when the Redemption Request was made.

(7) Financial Highlights

The information presented below represents the financial highlights for the year ended December 31, 2014.

Total return	
Total return before reallocation to General Partner	9.20 %
Reallocation to General Partner	(2.93)
Total return after reallocation to General Partner	6.27 %
Expenses (excluding interest)	3.17 %
Interest expense	6.51
Reallocation to General Partner	2.80
Total expenses and reallocation to General Partner	12.48 %
Net investment income	1.62 %

Total return and ratios to average limited partners' capital are calculated for the limited partner class taken as a whole. An individual limited partner's rate of return and ratios may vary based on the timing of capital transactions. The net investment income ratio does not reflect the effects of the reallocation to the General Partner.

(8) Commitments and Contingencies

On June 30, 2014, Prospect Capital Corporation ("Prospect") filed a complaint in New York State Supreme Court, New York County against the Managing Member, the Investment Manager and the Partnership. In the complaint, Prospect alleged that the Managing Member had improperly and fraudulently put back certain securities held in certain joint accounts to Prospect and that Prospect had been damaged as a result of redeeming these securities. Specifically, Prospect alleged that the deceased joint owners did not have a true ownership interest in the joint accounts at the time of their death. The Managing Member disputes this allegation in full and intends to vigorously defend against the allegations made in the complaint. Prospect has also refused to honor certain redemption requests made by the Managing Member during 2014. In its response to Prospect's complaint, the Managing Member intends to ask the court to dismiss the Prospect complaint and issue a ruling on the validity of the joint tenancies. As a result of the uncertainty regarding whether the remaining Prospect positions in the joint accounts can be successfully redeemed at par, all Prospect securities have been valued at market as of December 31, 2014.

Bonds issued by Caterpillar and CDs issued by Citibank which are held in deceased joint accounts are also carried at market value at December 31, 2014. The trustee for Caterpillar and Citibank is US Bank, the same trustee as the Prospect bonds. While US Bank has not opined on whether it will approve the Caterpillar and Citibank paper for redemption at par, the Managing Member believes, based on the posture US Bank has taken with respect to the Prospect dispute, that it may contest the validity of those redemption requests as well.

(8) Commitments and Contingencies (continued)

As described in Note 3, the Partnership values securities in joint accounts where the participant is deceased at par as long as the Managing Member expects to redeem these securities with the issuer at par pursuant to the survivor's option feature. In cases where the Managing Member believes that a successful redemption is in doubt, as is the case with the Prospect, Caterpillar and Citibank positions, the Partnership will make a valuation adjustment to revalue those securities using the market-based approach described in Note 3. At December 31, 2014, approximately 11.86% of the Partnership's portfolio value consists of securities currently valued at par.

(9) Subsequent Events

These financial statements were approved by management and available for issuance on April 28, 2015. Subsequent events have been evaluated through this date.

From January 1, 2015 through April 28, 2015, the Partnership received additional capital contributions of $200,000.

On December 31, 2014, the Partnership received a withdrawal request for approximately $2.2 million. This request was fulfilled on April 9, 2015. Since January 1, 2015, the Partnership has received additional withdrawal requests totaling approximately $4.9 million. Under the terms of the LPA, all of these withdrawal requests have an effective request date of March 31, 2015. The Partnership expects to fulfill these withdrawal requests on or before June 30, 2015. All of these withdrawal requests were received from limited partners.

On February 19, 2015, Eden Arc received a letter from the SEC. In the letter, the SEC requested certain information and documents related to Eden Arc Capital Partners and Eden Arc Capital Management. Since its receipt of the letter from the SEC, Eden Arc has begun producing and sharing the requested information with them. Eden Arc expects to complete the fulfilment of the SEC's information request by the end of April 2015. The SEC has characterized its interest in Eden Arc as a "non-public fact-finding inquiry." Eden Arc is cooperating fully with the SEC's inquiry.

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND REPORT BY EXEMPT REPORTING ADVISERS

Primary Business Name: EDEN ARC CAPITAL MANAGEMENT LLC **CRD Number: 159371**

Annual Amendment - Item 9 Custody **Rev. 10/2012**

3/31/2015 1:18:28 PM

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* (other than *clients* that are investment companies registered under the Investment Company Act of 1940) assets and about your custodial practices.

		Yes	No
A. (1)	Do you have *custody* of any advisory *clients'*:		
	(a) cash or bank accounts?	◉	○
	(b) securities?	◉	○

If you are registering or registered with the SEC, answer "No" to Item 9.A.(1)(a) and (b) if you have custody solely because (i) you deduct your advisory fees directly from your clients' accounts, or (ii) a related person has custody of client assets in connection with advisory services you provide to clients, but you have overcome the presumption that you are not operationally independent (pursuant to Advisers Act rule 206(4)-(2)(d)(5)) from the related person.

(2) If you checked "yes" to Item 9.A.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which you have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) ~~$ 44,000,000~~ $ 31,713,632	(b) 1

If you are registering or registered with the SEC and you have custody solely because you deduct your advisory fees directly from your clients' accounts, do not include the amount of those assets and the number of those clients in your response to Item 9.A.(2). If your related person has custody of client assets in connection with advisory services you provide to clients, do not include the amount of those assets and number of those clients in your response to 9.A.(2). Instead, include that information in your response to Item 9.B.(2).

		Yes	No
B. (1)	In connection with advisory services you provide to *clients*, do any of your *related persons* have *custody* of any of your advisory *clients'*:		
	(a) cash or bank accounts?	◉	○
	(b) securities?	◉	○

You are required to answer this item regardless of how you answered Item 9.A.(1)(a) or (b).

(2) If you checked "yes" to Item 9.B.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which your *related persons* have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) ~~$ 44,000,000~~ $ 31,713,632	(b) 1

C. If you or your *related persons* have *custody* of *client* funds or securities in connection with advisory services you provide to *clients*, check all the following that apply:

(1) A qualified custodian(s) sends account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage. ☐

(2) An *independent public accountant* audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to the investors in the pools. ☑

(3) An *independent public accountant* conducts an annual surprise examination of *client* funds and securities. ☐

(4) An *independent public accountant* prepares an internal control report with respect to custodial services when you or your *related persons* are qualified custodians for *client* funds and securities. ☐

If you checked Item 9.C.(2), C.(3) or C.(4), list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit or examination or prepare an internal control report. (If you checked Item 9.C.(2), you do not have to list auditor information in Section 9.C. of Schedule D if you already provided this information with respect to the private funds you advise in Section 7.B.(1) of Schedule D).

D. Do you or your *related person(s)* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients*?	**Yes**	**No**
(1) you act as a qualified custodian	○	◉
(2) your *related person(s)* act as qualified custodian(s)	○	◉

If you checked "yes" to Item 9.D.(2), all related persons that act as qualified custodians (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)) must be identified in Section 7.A. of Schedule D, regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

E. If you are filing your *annual updating amendment* and you were subject to a surprise examination by an *independent public accountant* during your last fiscal year, provide the date (MM/YYYY) the examination commenced:

F. If you or your *related persons* have *custody* of *client* funds or securities, how many persons, including, but not limited to, you and your *related persons,* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients?*

~~3~~
4

SECTION 9.C. *Independent Public Accountant*

You must complete the following information for each *independent public accountant* engaged to perform a surprise examination, perform an audit of a pooled investment vehicle that you manage, or prepare an internal control report. You must complete a separate Schedule D Section 9.C. for each *independent public accountant*.

(1) Name of the *independent public accountant*:
EISNERAMPER LLP

(2) The location of the *independent public accountant's* office responsible for the services provided:

Number and Street 1:		Number and Street 2:	
750 3RD AVENUE			
City:	State:	Country:	ZIP+4/Postal Code:
NY	New York	United States	10017

	Yes	No
(3) Is the *independent public accountant* registered with the Public Company Accounting Oversight Board?	◉	○
(4) If yes to (3) above, is the *independent public accountant* subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules?	◉	○

(5) The *independent public accountant* is engaged to:
A. ☑ audit a pooled investment vehicle
B. ☐ perform a surprise examination of *clients'* assets
C. ☐ prepare an internal control report

(6) Does any report prepared by the *independent public accountant* that audited the pooled investment vehicle or that examined internal controls contain an unqualified opinion?

◉ Yes

○ No

○ Report Not Yet Received

If you check "Report Not Yet Received", you must promptly file an amendment to your Form ADV to update your response when the accountant's report is available.