

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5074 / December 13, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18930

In the Matter of

**YUCAIPA MASTER
MANAGER, LLC**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS, PURSUANT
TO SECTION 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Yucaipa Master Manager, LLC (“Yucaipa” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

SUMMARY

1. Respondent Yucaipa is a registered investment adviser that provides advisory services to certain private equity funds as well as some personal investments of Yucaipa's principal ("Principal"). This matter arises from Yucaipa's negligent failure to disclose several financial conflicts of interest to the funds, as well as Yucaipa's misallocation of fees and expenses between the funds, the funds' portfolio investments, Yucaipa, and the Principal's personal investments.

2. First, Yucaipa did not disclose to the funds its practice of charging the funds for the cost of certain in-house employees who assisted in preparing the funds' tax returns.

3. Second, Yucaipa did not disclose its arrangements with two third-party service providers that resulted in expense allocation decisions that posed actual or potential conflicts of interest:

- (1) Consulting Firm A provided services to two of the funds and also provided general deal sourcing services to Yucaipa. Yucaipa's Principal also made a personal loan to Consulting Firm A's principal that was secured by money owed by Yucaipa or its affiliates, including the funds, and repaid through consulting fees paid by one of the funds to Consulting Firm A. These undisclosed conflicted arrangements resulted in the misallocation of a portion of Consulting Firm A's fees.
- (2) Consulting Firm B provided services to one of the funds, a portfolio investment of the fund, and two of the Principal's personal investments. Yucaipa's Principal also made a personal investment in Consulting Firm B while it was providing services to the portfolio investment. These undisclosed conflicted arrangements resulted in the misallocation of Consulting Firm B's fees, the failure to credit funds received by Yucaipa's Principal from Consulting Firm B to the fund, and the failure to offset fees received by Consulting Firm B against Yucaipa's advisory fee after the Principal made a minority investment in Consulting Firm B.

4. Based on the foregoing conduct, Yucaipa violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

5. Yucaipa also violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt written policies and procedures reasonably designed to prevent violations of the Advisers Act.

RESPONDENT

6. **Yucaipa Master Manager, LLC ("Yucaipa" or Respondent)** is a Delaware limited liability company with its principal place of business in Los Angeles, California. Yucaipa is an investment adviser registered with the Commission since March 2012. Yucaipa had approximately \$2.67 billion of assets under management as of March 2018. Yucaipa manages several private equity funds, as well as the Principal's personal investments.

RELEVANT ENTITIES

7. **Yucaipa American Alliance Fund I, L.P.** and its parallel investment fund **Yucaipa American Alliance (Parallel) Fund I, LP** (collectively, “YAAF I”), are Delaware limited partnerships formed in 2004 to pursue a “buyout fund” strategy, focusing on private company investments in certain core industry groups, including logistics, distribution, grocery/food, retail, and hospitality. A Yucaipa affiliate advises YAAF I, and Yucaipa affiliates serve as the general partners of YAAF I. YAAF I is not registered with the Commission.

8. **Yucaipa American Alliance Fund II, L.P.** and its parallel investment fund **Yucaipa American Alliance (Parallel) Fund II, LP** (collectively, “YAAF II”), are Delaware limited partnerships formed in 2008 to pursue a “buyout fund” strategy, focusing on private company investments in certain core industry groups, including logistics, distribution, grocery/food, retail, and hospitality. A Yucaipa affiliate advises YAAF II, and Yucaipa affiliates serve as the general partners of YAAF II. YAAF II is not registered with the Commission.

9. **Yucaipa Corporate Initiatives Fund I, L.P.** (“YCI I”) is a Delaware limited partnership formed in 2001 to invest in underserved communities such as urban, minority, and women-owned companies. A Yucaipa affiliate advises YCI I, and a Yucaipa affiliate serves as the general partner of YCI I. YCI I is not registered with the Commission.

10. **Yucaipa Corporate Initiatives Fund II, L.P.** and its parallel investment fund **Yucaipa Corporate Initiatives (Parallel) Fund II, LP** (collectively, “YCI II”), are Delaware limited partnerships formed in 2007 to invest in underserved communities such as urban, minority, and women-owned companies. A Yucaipa affiliate advises YCI II, and Yucaipa affiliates serve as the general partners of YCI II. YCI II is not registered with the Commission.

11. **Yucaipa American Special Situations Fund, L.P.** (“YASSF”) is a Delaware limited partnership formed in 2002 to invest in so-called “special situations,” including financial reorganization transactions and similar opportunities. A Yucaipa affiliate advises YASSF, and a Yucaipa affiliate serves as the general partner of YASSF. YASSF is not registered with the Commission.

FACTS

Yucaipa’s Investment Advisory Business

12. Yucaipa provides investment advisory services to YAAF I, YAAF II, YCI I, YCI II, and YASSF (individually, “the Fund”, and collectively, “the Funds”), which are organized as limited partnerships. Substantially all of the limited partner investors in the Funds are large institutional investors, including public and private pension funds, corporations, insurance companies, and other private funds.

13. Each Fund is governed by a limited partnership agreement setting forth the rights and obligations of its limited partners (the “LPA”). The LPAs vest management, control, and operation of the Funds to Yucaipa or its affiliates. Pursuant to the LPAs, Yucaipa “shall manage the day-to-day and other routine operations of the Partnership, including by (a) identifying, originating, recommending and structuring investment opportunities for the Partnership,

including by screening and evaluating promising investment proposals, [and by] (b) structuring and arranging the consummation of Portfolio Investments”²

14. The LPAs set forth the fees charged by Yucaipa, including its annual advisory or management fee. The LPAs also enumerate the specific expenses that can be charged to the Partnership. The Partnership Expenses set forth in the LPAs include, among other things, (i) “reasonable fees and expenses relating to Temporary Investments, Portfolio Investments and potential investments that are not consummated, including the investigation, evaluation, acquisition, holding and disposition thereof, to the extent that such fees and expenses are not reimbursed by a Portfolio Company or other third person”; (ii) “reasonable legal, custodial and accounting expenses (including expenses associated with the preparation of the Partnership’s financial statements, tax returns and schedules K-1)”; and (iii) “reasonable consulting expenses for the services different from the type, or beyond the level, ordinarily provided by the Manager.”

15. Each Fund’s LPA also established a Limited Partnership Advisory Board (“Advisory Board”) consisting of a number of limited partners. The functions of the Advisory Board include, among other things, the review and approval of any material conflicts of interest. The LPAs provide that on any issue “involving material conflicts of interest... of which the General Partner or the Manager ... is actually aware, each of the Manager and the General Partner (i) shall be guided by its good faith judgment as to the best interests of the Partnership and the Partners, (ii) shall consult with, and propose an appropriate course of action to, the Advisory Board with respect to such conflict of interest, and (iii) shall take such proposed actions with respect to such conflict of interest as are approved by the Advisory Board.”

16. Beginning in late 2013, staff from the Commission’s Office of Compliance Inspections and Examinations (“OCIE”) conducted an examination of Yucaipa. In 2015, OCIE staff raised concerns about certain undisclosed conflicts of interest and expenses that Yucaipa had allocated to the Funds, as described below.

Fund Tax Preparation

17. From 2010 to 2015, Yucaipa had the Funds pay \$570,198, which represented a portion of the costs of two Yucaipa employees: Yucaipa’s in-house tax partner and its in-house tax manager, an independent contractor from 2013 to 2015. Yucaipa used these in-house resources to supplement the tax preparation work of more costly outside providers. Both the tax manager and the tax partner assisted in the preparation of the Funds’ tax returns, as well as the tax returns for Yucaipa, its affiliates, and some of the Principal’s personal investments.

18. Although the LPAs for all of the Funds provide that the Funds would bear the costs for the “preparation of the Partnership’s financial statements, tax returns and schedules K-1,” the LPAs further provided that Yucaipa would bear “the costs and expenses incurred by the Manager in providing for its or the General Partner’s normal operating overhead, including salaries, other compensation and benefits of the Manager’s employees.” Yucaipa failed to disclose that it was charging the Funds for a portion of the cost of its adviser employees who

² While the specific wording varies, the LPA provisions described in this Order are materially the same across the Funds’ LPAs.

were assisting in the preparation of the Funds' tax returns. Yucaipa also failed to adequately disclose how it allocated the costs of its in-house tax personnel across the Funds, Yucaipa, and Yucaipa's affiliates to the Funds' investors or the Fund Advisory Boards.

Consulting Firm A

19. Consulting Firm A is an investment consulting firm based in New York with expertise in restructurings and similar types of distressed investments. Consulting Firm A provided general deal sourcing services to Yucaipa, and it advised on specific investments held by YAAF I, YAAF II, and YCI II across several consulting agreements.

2011 Services Agreement

20. In January 2011, Yucaipa and Consulting Firm A executed a services agreement under which Consulting Firm A was to receive quarterly payments for operating expenses in exchange for providing bankruptcy consulting on Fund investments and deal sourcing services. In two separate instances in 2011 and 2012, Yucaipa failed to disclose the allocation of fees associated with these services.

21. First, as part of its deal sourcing work, Consulting Firm A identified and arranged the acquisition of outstanding debt held by Portfolio Company A on behalf of YCI II in 2011. Yucaipa agreed to pay Consulting Firm A a \$660,000 success fee for sourcing and closing the Portfolio Company A deal. At the same time Consulting Firm A was advising on the Portfolio Company A investment opportunity, it was also investigating and identifying other investment opportunities. Yucaipa, however, allocated the entire expense to YCI II instead of to Yucaipa without disclosure to the YCI II Advisory Board or its investors.

22. Second, YAAF II paid Consulting Firm A \$425,000 to cover Consulting Firm A's operating expenses through the first quarter of 2012, during which time Consulting Firm A researched and submitted several new investment proposals to Yucaipa, in addition to providing bankruptcy consulting on a YAAF II investment. Yucaipa did not require Consulting Firm A to keep records of its projects by project, portfolio company, or Fund, and some portion of the \$425,000 fee was properly allocable to Yucaipa. However, Yucaipa allocated the entirety of the \$425,000 payment to YAAF II without disclosing the payment to the YAAF II Advisory Board or its investors.

2012 Consulting Agreement

23. In August 2012, Yucaipa executed a new agreement with Consulting Firm A. The 2012 agreement was for bankruptcy consulting services to YAAF I. On two occasions, Yucaipa failed to disclose arrangements that posed potential conflicts that arose in connection with the 2012 consulting agreement.

24. First, prior to executing the 2012 consulting agreement with Consulting Firm A, Yucaipa's Principal had agreed to personally loan \$215,000 to Consulting Firm A's principal. Under the terms of the loan agreement, the loan was secured by money that might be owed to Consulting Firm A by Yucaipa or its affiliates, including the Funds. Yucaipa used payments YAAF I owed to Consulting Firm A under the 2012 consulting agreement to pay off the loan, and it accelerated payments from YAAF I to Consulting Firm A by one month. Yucaipa's

Principal earned \$1,554 in interest on the personal loan. Yucaipa failed to disclose the loan agreement or the acceleration of fees to the YAAF I Advisory Board or its investors.

25. Second, in May 2013, when YAAF I did not have sufficient funds to pay its obligations to Consulting Firm A, Yucaipa used funds reserved in YAAF II in connection with Consulting Firm A's work on a 2012 YAAF II project to make payments to Consulting Firm A on behalf of YAAF I and failed to disclose the payments to the YAAF II Advisory Board or its investors.

Consulting Firm B

26. Consulting Firm B is a talent management and marketing company that specializes in the music and entertainment industries.

27. For the first three quarters of 2012, Yucaipa engaged Consulting Firm B to provide consulting services to YAAF II, including marketing and advisory services to Portfolio Company B, a nightclub that was a joint venture between YAAF II and an unaffiliated third party. YAAF II paid Consulting Firm B \$375,000 for its services. From the last quarter of 2012 through 2014, Consulting Firm B acted as a direct consultant to Portfolio Company B. During this period, Consulting Firm B received consulting fees and expenses from Portfolio Company B, including \$566,376.63 that was ultimately paid by YAAF II.

28. During the period of time when Consulting Firm B was providing services to YAAF II and Portfolio Company B, Consulting Firm B was also providing services to certain personal investments of Yucaipa's Principal held outside the Funds and operated by third parties, including a pool club in which the Principal held a minority interest alongside unaffiliated third parties and a venture focused on the marketing of alcoholic beverages. While there are no records of the amount of time Consulting Firm B spent on non-Fund ventures, some portion of the fees and expenses paid by YAAF II, either directly or through payments made by Portfolio Company B, should have been borne by the non-Fund ventures. Yucaipa failed to disclose the misallocated fees and expenses to the YAAF II Advisory Board or its investors.

29. In May 2014, while Consulting Firm B continued to provide services to Portfolio Company B, Yucaipa's Principal made a personal investment in Consulting Firm B, receiving a right to 25% of its profits. In recognition for services the Principal rendered to Consulting Firm B, Consulting Firm B sold Yucaipa's Principal the interest at a discount. Yucaipa failed to disclose the terms of the investment to the YAAF II Advisory Board or its investors.

30. The YAAF II LPA requires Yucaipa or its affiliates to reduce the advisory fees payable by the Funds to Yucaipa by 70% of "consulting fees" received by Yucaipa affiliates that were not used to reimburse Yucaipa's expenses. Yucaipa did not offset the consulting fees Consulting Firm B received from Portfolio Company B against the advisory fees Yucaipa received from YAAF II after the Principal's minority investment in Consulting Firm B in May 2014. Yucaipa did not disclose its failure to offset the fees to the YAAF II Advisory Board or its investors.

Compliance Policies and Procedures

31. As a registered investment adviser, Yucaipa is subject to Advisers Act rules, including the requirement to adopt and implement written policies and procedures that are reasonably designed to prevent violations of the Advisers Act and its rules.

32. The nature of Yucaipa's business as a private equity fund adviser involves the use of common service providers by Yucaipa, the Funds, the Funds' investments, and the Principal's personal investments. The nature of Yucaipa's business also involves the allocation of fees, expenses, and payments among Yucaipa, the Funds, the Funds' investments, and the Principal's personal investments. Despite the potential risks surrounding the use of common service providers as well as the allocation of related expenses, Yucaipa failed to adopt written policies and procedures reasonably designed to prevent conflicts of interest arising from the allocations of these expenses and payments.

VIOLATIONS

33. As a result of the negligent conduct described above, Respondent violated Section 206(2) of the Advisers Act which prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195) (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

34. As a result of the negligent conduct described above, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder which make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act, and a violation may rest on a finding of negligence. *Steadman*, 967 F.2d at 647.

35. As a result of the negligent conduct described above, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act, and a violation may rest on a finding of negligence. *Id.*

YUCAIPA'S COOPERATION AND REMEDIAL EFFORTS

36. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. Specifically, Yucaipa voluntarily reimbursed the Funds a total of \$940,244 for expenses

improperly charged to the funds, expanded the size of its compliance department, and enhanced its written policies and procedures.

UNDERTAKINGS

37. Independent Compliance Consultant. Yucaipa undertakes to retain, at its own expense, one or more qualified independent consultants not unacceptable to the Commission staff (the “Consultant”). Yucaipa further undertakes to:

- (1) Require that the Consultant:
 - a. Conduct a comprehensive review of Respondent’s current policies and procedures relating to conflicts of interest and expense allocation (collectively, the “Policies”);
 - b. Provide recommendations for changes or improvements to the Policies and a procedure for implementing the recommended changes or improvements (the “Initial Report”);
 - c. Conduct one annual review to assess whether Respondent is complying with its revised Policies and whether the revised Policies are effective in achieving their stated purposes (the “Annual Review”); and
 - d. Provide additional recommendations for changes or improvements to the Policies recommended in the Initial Report and a procedure for implementing the additional changes or improvements, if needed (the “Annual Review Report”).
- (2) Provide, within sixty (60) days of the issuance of this Order, a copy of the engagement letter detailing the Consultant’s responsibilities, which shall include the review described above, to Alka Patel, Associate Regional Director, Los Angeles Regional Office, with a copy to Marc Blau, Assistant Regional Director, Los Angeles Regional Office.
- (3) To ensure the independence of the Consultant, Respondent shall not have the authority to terminate the Consultant without prior written approval of the Commission’s staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- (4) Cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records, and personnel (and the files, books, records and personnel of Respondent’s affiliated entities), as reasonably requested for the Consultant’s review, and obtaining the cooperation of respective employees or other persons under Respondent’s control.

- (5) Respondent shall not invoke the attorney-client privilege or any other doctrine or privilege to prevent the Consultant from transmitting any information, reports, or documents to the Commission staff.
- (6) Arrange for the Consultant to issue the Initial Report within ninety (90) days after the date of the engagement and to provide a copy to Respondent and the Commission staff. Respondent shall require that the Initial Report include a description of the review performed by the Consultant, the names of the individuals who performed the review, the conclusions reached, the Consultant's recommendations for any changes or improvements, and the plan for implementing any such recommended changes or improvements.
- (7) Arrange for the Consultant to issue the Annual Review Report eighteen (18) months following the Initial Report and to provide a copy to Respondent and the Commission staff. Respondent shall require that the Annual Review Report include a description of the review performed by the Consultant, the conclusions reached, the names of the individuals who performed the review, the Consultant's recommendations for any changes or improvements, and the plan for implementing any such recommended changes or improvements.
- (8) Within sixty (60) days of receipt of each of the Consultant's reports, adopt all recommendations contained in the reports and remedy any deficiencies; provided, however, that as to any recommendation that Respondent considers to be, in whole or in part, unduly burdensome or impractical, Respondent may submit in writing to the Consultant and the Commission staff a proposed alternative reasonably designed to accomplish the same objectives within thirty (30) days of the Consultant's issuance of the report. Respondent shall then attempt in good faith to reach an agreement with the Consultant relating to each disputed recommendation. In the event that Respondent and Consultant are unable to agree on an alternative proposal within sixty (60) days of Respondent's written notice, Respondent will abide by the final determination of the Consultant with respect to any disputed recommendation. Within fifteen (15) days after the conclusion of the discussion of any disputed recommendation by Respondent and the Consultant, Respondent shall inform the Commission staff in writing of the final determination concerning any disputed recommendation. Within sixty (60) days after a final determination by the Consultant with respect to any disputed recommendation, Respondent shall adopt and implement the final recommendation of the Consultant.
- (9) Require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also

provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

- (10) Respondent may apply to the Commission staff for an extension of the deadlines described above before their expiration and, upon a showing of good cause by Respondent, the Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.
- (11) Within sixty (60) days after the Consultant's Annual Review Report, certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted no later than sixty (60) days from the date of the Consultant's Annual Review Report to Alka Patel, Associate Regional Director, Los Angeles Regional Office, with a copy to Marc Blau, Assistant Regional Director, Los Angeles Regional Office.
- (12) The Commission's acceptance of Respondent's offer of settlement and entry of this order shall not be construed as its approval of any Policies reviewed by the Consultant or implemented based on the Consultant's recommendations.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Yucaipa's Offer.

Accordingly, pursuant to Sections 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder.
- B. Respondent shall pay disgorgement and prejudgment interest as follows:
 - a. Respondent shall pay a total of \$1,934,312, consisting of disgorgement of \$1,863,242 and prejudgment interest of \$71,070 (collectively, the

“Disgorgement Fund”), consistent with the provisions of this Subsection B.

- b. Within fourteen (14) days of the entry of this Order, Respondent shall deposit the full amount of the Disgorgement Fund into an escrow account at a financial institution not unacceptable to the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.
- c. Respondent shall distribute the amount of the Disgorgement Fund to the applicable Funds as a credit against or other effective reduction of fees or other amounts that the limited partners would otherwise be obligated to pay to Respondent or that Respondent would otherwise be entitled to receive. Under no circumstances shall any distribution to the applicable Fund be made to the general partner or any limited partner affiliated with Respondent.
- d. Within thirty (30) days of the entry of this Order, Respondent shall submit a proposed distribution to the Commission staff for review and approval. The proposed distribution will include the names of the applicable Funds and limited partners and their respective payment amounts and a description of the methodology used to determine the exact amount of payment or credit for each Fund or limited partner that will receive a distribution.
- e. The distribution of the Disgorgement Fund shall be made in the next fiscal quarter immediately following the entry of this Order but no later than within ninety (90) days of the date of the Order. If Respondent does not distribute any portion of the Disgorgement Fund for any reason, including factors beyond Respondent’s control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury. Any such payment shall be made in accordance with Subsection C below.
- f. Within one hundred and twenty (120) days after the date of entry of this Order, Respondent shall submit for Commission staff approval a final accounting and certification of the disposition of the Disgorgement Fund, which shall be in a format to be provided by the Commission staff. The final accounting shall include: (i) the amount paid or credited to each Fund and limited partner; (ii) the date of each payment or credit; (iii) the check number or other identifier of money transferred or credited to the Fund; and (iv) any amounts not distributed to be forwarded to the Commission for transfer to the United States Treasury. In addition, Respondent shall provide to Commission staff a cover letter representing that all of the requirements of this Subsection B have been completed and that the information requested has been accurately reported to the Commission (“the certification”). Respondent shall submit the final accounting and

certification, together with proof and supporting documentation of such payments and credits, under a cover letter that identifies Yucaipa as the Respondent in these proceedings and the file number of these proceedings to Alka Patel, Assistant Regional Director, Los Angeles Regional Office, with a copy to Marc Blau, Associate Regional Director, Los Angeles Regional Office. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

- g. Respondent shall be responsible for administering the Disgorgement Fund. The costs and expenses of administering the Disgorgement Fund shall be borne by Respondent and shall not be paid out of the Disgorgement Fund.
- h. Respondent shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid out of the Disgorgement Fund.
- i. The Commission staff may extend any of the procedural dates set forth in this Subsection B for good cause shown.

- C. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$1,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and/or 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center Accounts Receivable
Branch HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Yucaipa as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be

sent to Alka Patel, Associate Regional Director, Los Angeles Regional Office, with a copy to Marc Blau, Assistant Regional Director, Los Angeles Regional Office.

- D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.
- E. Respondent shall comply with the undertakings set forth in paragraph 37.

By the Commission.

Brent J. Fields
Secretary