IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 12-034121 (04)

P &S ASSOCIATES, GENERAL PARTNERSHIP, *et al.*,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, *et al.*,

Defendants.
_____/

PLAINTIFFS' RESPONSE TO DEFENDANT CATHERINE SMITH'S MOTION FOR SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

Plaintiffs, P&S Associates, General Partnership ("P&S"), S&P Associates, General Partnership ("S&P" or the "Partnership") (collectively with P&S, the "Partnerships") and Philip Von Kahle as Conservator on behalf of P&S and S&P ("Conservator" or with the Partnerships, as the "Plaintiffs"), by and through their undersigned attorneys, file this Response and Memoranda in Opposition to Defendant Catherine Smith's ("Defendant") Motion for Summary Judgment and Incorporated Memorandum of Law (the "Motion").

INTRODUCTION

Four grounds compel denial of the Motion:

1. Plaintiffs' fraudulent transfer claim was brought within one year of when it reasonably could have been discovered by the Conservator, as required by statute.

2. The evidence shows that Defendant has not withdrawn from the Partnership and that she must contribute to the Partnership at winding down as required by Fla. Stat. § 620.8807.
3. Plaintiffs' claims were timely commenced in accordance with the Partnership Agreement, and they could not have been commenced sooner.
4. Defendant's receipt of distributions that she was not entitled to is a material breach of the Partnership Agreement.

STATEMENT OF FACTS

After approximately one year of litigation because of, *inter alia*, the fraudulent and improper activities of Michael Sullivan, the former Managing General Partner of the Partnerships, and others, a Conservator was appointed over the Partnerships.

Following Sullivan's removal in August 2012, this lawsuit was commenced, and Plaintiffs are now suing certain partners that received improper distributions from the Partnerships as a result of the bad acts of Sullivan and others. More specifically, this action names as defendants partners of the Partnerships who received, on a net basis, more money than they invested; i.e., 'Net Winners.' Defendant is one such partner.

On or about March 10, 2014, Defendant filed the Motion seeking summary judgment in its favor. The following disputed issues of material fact prevent granting the Motion:

- Defendant received amounts from the Partnership in excess of its capital contributions to the Partnership while other partners of the Partnership received amounts from the Partnership less than their capital contributions.
- The Conservator could not have reasonably discovered the transfer of the improper distributions to Defendant prior to his appointment.

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- A demand for the return of the amounts improperly received by Defendant could not have been made earlier than the appointment of Margaret Smith as Managing General Partner.
- The discovery of the Madoff fraud could not have reasonably lead to the discovery of the claims against the Defendant by the Conservator.
- The Partnership did not begin winding down until after the appointment of the Conservator.
- Defendant did not withdraw from the Partnership.

These disputed facts weigh in favor of denying Defendant's motion for summary judgment for the reasons set forth below.

I. LEGAL STANDARD

In deciding Defendant's motion for summary judgment, this Court must draw every possible inference in Plaintiffs' favor. *Bratt ex rel. Bratt v. Laskas,* 845 So.2d 964, 966 (Fla. 4th DCA 2003) ("All doubts and inferences must be resolved against the moving party, and if there is the slightest doubt or conflict in the evidence, then summary judgment is not available") (citation omitted).

Pursuant to Florida Rule of Civil Procedure 1.510, Summary Judgment may only be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c); *Major Leagues Baseball v. Morsani,* 790 So. 2d 1071 (Fla. 2001).

The required showing is initially borne by the moving party – here, Defendant –, and "only where the movant tenders competent evidence in support of his motion does the burden

shift to the other party to come forward with opposing evidence." *Id.* (citing *Lenhal Realty, Inc. v. Transamerica Comm. Fin. Corp.* 615 So. 2d 207 (Fla. 4th DCA 1993)). Further, it is not sufficient to merely assert that an issue does exist – a party must produce evidence to support its contention. *Noack v. B.L. Walters, Inc.,* 410 So. 2d 1375, 1376 (Fla. 5th DCA 1982); *Reflex N.V. v. UMET Trust,* 336 So. 2d 473, 475 n. 1 (Fla. 3d DCA 1976).

II. ARGUMENT

A. The Statute of Limitations Does Not Preclude Plaintiffs' Claim for Fraudulent Transfer

The crux of Defendant's argument that Plaintiffs' Fla. Stat. § 726.105(1)(a) claim is time barred is that the Partnerships discovered or could have discovered Defendant's receipt of improper distributions in December 2008 when Madoff was revealed as a fraud, or January 2009, at the latest, when Chad Pugatch, the alleged attorney for the Partnerships, was notified of the existence of net winners and net losers, and this action was not commenced within 1 year of that date. Defendant relies on an affidavit of Chad Pugatch, and a transcript of a meeting where it was suggested that there could be "net winners" and "net losers". Plaintiffs have now procured a counter affidavit of Chad Pugatch creating multiple issues of disputed materials facts precluding summary judgment. Additionally, Defendants' argument (i) misunderstands when a cause of action accrues under Fla. Stat. § 726.105(1)(a) and (ii) demonstrates that summary judgment is improper on this issue due to the numerous issues of material fact raised by Defendants' argument.

Although there was a meeting presided over by Pugatch (who also may have acted as Sullivan's attorney)[1] where it was stated that there could be net winners and losers in the

[1] At this juncture, it is unclear whether Pugatch represented Sullivan individually or as managing general partner, because Pugatch entered an appearance on Sullivan's behalf, and requested through an *ore tenus*

Partnerships (which could have been a reference to the Madoff fraud as a whole and not the Partnerships) he did not know the specific identity of any of "net winners" at that time. *See* Counter Pugatch Aff. at ¶¶ 5-7 (**Exhibit 2**). More importantly, Plaintiffs' Counter-Affidavit creates material issues of fact which preclude any entry of summary judgment on the basis of statute of limitations. Such issues of fact include:

- Whether Pugatch's statements could have led to the discovery of the fraudulent nature of the transfers because the transfers in and of themselves would not trigger the statute of limitations;
- Whether Pugatch in actuality represented Sullivan as opposed to the Partnerships (**Exhibit 1**);
- Whether Pugatch had access to the Partnerships' books and records; and thus
- Whether the fraudulent transfer claims could reasonably be discovered without Sullivan providing access to the books and records of the Partnerships, which did not occur until the Conservator's appointment.

In any case, the discovery of the Madoff fraud in December 2008 could not have reasonably led to the discovery of the transfers at issue in this action, and therefore the 1 year statute of limitations does not run from that date. This lawsuit is not based on the amounts that the Partnerships lost in conjunction with the Madoff fraud. Instead, it is based on the amounts that Defendant and others improperly received from the capital contributions of others, and so in actuality the statute of limitations runs from the date that those breaches could have been discovered – not the discovery of the Madoff fraud. Those claims could not have been discovered until Sullivan was compelled to turn over the complete books and records of the Partnerships, which did not occur until after the Conservator's appointment, and subsequent to several Orders of this Court. Mukamal Aff. at ¶¶ 3-5 (**Exhibit 3**); Von Kahle Aff. at ¶¶ 3-11

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motion to withdraw from representing Sullivan, as managing general partner. *See* **Exhibit 1.** However, as subsequently discussed, that fact is sufficient to establish a material issue of fact which justifies granting Defendants' Motion.

(**Exhibit 4**); Smith Aff. at ¶3 (**Exhibit 5**). Immediately after Sullivan's improper conduct came to light, the instant action was initiated.[2]

Sullivan may have known that he and some of his associates withdrew more money than they invested but there is no evidence that he knew the identities of net winners and losers within the Partnerships or the amounts they received. Although there is a chance that Sullivan was aware of the various net winners who benefitted through his breaches of fiduciary duties, he refused to bring claims against those net winners and it was not until he was removed and a Conservator, was appointed and then became a claimant that they could be pursued.

What Chad Pugatch or his client Sullivan (who breached his fiduciary duties and caused the improper distribution) knew in January 2009 is irrelevant because the determining fact for purposes of the statute of limitations on the fraudulent transfer claim is whether the transfer could have been discovered by "the claimant" – and in this case: the claimant is Conservator. *See* Fla. Stat. § 726.110 ("cause of action with respect to a fraudulent transfer or obligation under ss. 726.101-726.112 is extinguished unless action is brought: . . . within 1 year after the transfer or obligation was or could reasonably have been discovered *by the claimant*.") (emphasis added).

Prior to the appointment of the Conservator, the Partnerships could not have been claimants because they did not have standing to pursue their claims because they were not their own creditors. However, "after a corporation has been placed into a receivership, it becomes a

[2] The majority of courts that have interpreted statutes which are analogous to Fla. Stat. § 726.110(1), have held that the "one-year savings provision does not begin to accrue until the discovery of the *fraudulent nature* of the transfer[,]" as opposed to when the transfer occurred. *See Western Hay v. Laurel fin. Invs., Ltd.*, Fla. 4th DCA 2011) (emphasis in original). The basis for this holding is that the Uniform Fraudulent Transfer Act, was intended to "codify an existing but imprecise system whereby transfers that were intended to defraud creditors could be set aside." *Freeman*, 865 So. 2d at 1276. In other words, the "fraudulent act" in the context of fraudulent transfer actions, is "the clandestine act of hiding money . . . to the exclusion of [a] plaintiff." *See, e.g.*, *Steinberg ex rel. Lancer Management Group LLC v. Alpha Fifth Group*, 2010 WL 1332840, at *2 (S.D. Fla. Mar. 30, 2010) (quoting *Gulf Coast Produce, Inc. v. Am. Growers, Inc.*, 07-cv-80633, 2008 WL 660100, at *5 (S.D. Fla. Mar 7 2008)).

creditor with respect to assets which were fraudulently transferred away." *Sallah ex rel. MRT. LLC v. Worldwide Clearing LLC*, 860 F. Supp. 2d 1329, 1335 (S.D. Fla. 2011) (applying Florida law) (internal citations omitted); *Freeman v. Dean Witter Reynolds, Inc.*, 865 So. 2d 543, 551 (Fla. 2d DCA 2003) (citing *Scholes v. Lehmann*, 56 F. 3d 750, 754 (7th Cir. 1995); *Schacht v. Brown*, 711 F.2d 1343 (7th Cir. 1983)). As the Partnerships could not become claimants as defined by Fla. Stat. § 726.105 until after the Conservator's appointment, the fraudulent transfers could not have been reasonably discovered by the Partnerships as claimants until that time. *See Martin Marietta Corp. v. Gould, Inc.*, 70 F.3d 768, 772 (4th Cir.1995) ("[T]he wrongdoers' control results in the concealment of any causes of action from those who otherwise might be able to protect the corporation").

In other words, because Defendant has failed to conclusively demonstrate that *the claimaint* could have reasonably discovered those claims beginning in 2009 or earlier (and the Conservator could not!) it is therefore improper to grant summary judgment. *See DESAK v. Vanlandingham*, 98 So. 3d 710, 713-15 (Fla. 1st DCA 2012) (Reversing summary judgment because there was insufficient evidence to demonstrate discovery of transfer); *Bratt ex rel. Bratt v. Laskas,* 845 So.2d 964, 966 (Fla. 4th DCA 2003) ("All doubts and inferences must be resolved against the moving party, and if there is the slightest doubt or conflict in the evidence, then summary judgment is not available") (citation omitted).

Given that the Conservator did not become a claimant until his appointment and there are issues of material fact as to what was known when by Pugatch, summary judgment is improper.

B. Plaintiffs' Claims Under Fla. Stat. § 620.8807 (Counts I and II) Are Timely

Defendant alleges that Plaintiffs' Fla. Stat. § 620.8807 claims are time barred because Defendant received her last distribution more than four years prior to the filing of the complaint. This argument does not make sense because the Partnership was not winding down at that time.

Fla. Stat. § 620.8807 establishes a duty by Defendant to "contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account" upon the winding down of the Partnerships. Thus, the four year statute of limitations to bring any claim for breach of the statutory duty provided by Fla. Stat. § 620.8807 would not begin running until Defendant failed to contribute at the winding down of the Partnerships.

Here, the winding down began at the earliest when Margaret Smith was appointed Managing General Partner in 2012 or when the Conservator received Court approval to wind-down the Partnerships in 2013. Von Kahle Aff. at ¶ 7. However, even if the winding down began in January 2009 (as Defendant appears to contend (and which is contradicted by sworn affidavit by Chad Pugatch)), Plaintiffs timely brought their claim under Fla. Stat. § 620.8807 against Defendant within four years from the date that the Partnerships began winding down, and Defendant refused to contribute the amount due.

Based on the foregoing, Plaintiffs' claims under Fla. Stat. § 620.8807 are not time-barred and summary judgment should be denied.

C. Defendant Has Not Withdrawn From the Partnership and Thus Cannot Escape Plaintiffs' Claims related to Fla. Stat. § 620.8807.

The Motion should be denied because there is an issue of fact as to whether Defendant in fact withdrew from the Partnership. Defendant argues that she is entitled to summary judgment as to Plaintiffs' claims related to Fla. Stat. § 620.8807 because (i) she allegedly withdrew (or dissociated) from the Partnership and (ii) because Fla. Stat. § 620.8807 does apply because Fla.

Stat. § 620.8603(1) states that "[i]f a partner's dissociation results in dissolution and winding down of the partnership business, ss. 620.8801-620.8807 apply; otherwise ss. 620.8701-620.8705 apply" and Defendant's alleged withdrawal didn't cause the Partnerships to wind up. These arguments are meritless because disputed issues of fact exist as to Defendant's withdrawal and because Fla. Stat. § 620.8603(1) does not apply.[3]

Defendant claims that by virtue of a letter she sent on March 5, 2004, she disassociated from the Partnership. ***See* Exhibit 6.** However, even after Defendant received funds pursuant to its March 5 letter, Defendant continued to receive a distribution from the Partnership (***See* Exhibit 7**) which means that even if Defendant intended to disassociate from the Partnership by its letter, Defendant either changed its mind or waived that intent by continuing to receive a distribution. *See LeNeve v. Via South Fla., LLC*, 908 So. 2d 530, 535 (Fla. 4th DCA 2005) (waiver "'may be express, or implied from conduct or acts that lead a party to believe a right has been waived'") (internal citations omitted). This intent was further manifested by Defendant's assertion that she lacked knowledge as to whether she was a partner in the Partnerships in her answers to the Complaint and Fourth Amended Complaint in *P&S Associates v. Roberta Alves*,

[3] Although Defendant does not concede that a claim for breach of statutory duty exists under Fla. Stat. § 620.8807 (Count I), Defendant contends, without any legal basis, that there is no independent statutory cause of action under Fla. Stat. § 620.8807 (Count II). The legislature's intent to establish a cause of action under this statute is evidenced by the uniform comment to the statute which provides that "a partnership may enforce a partner's obligation to contribute." *See* Fla. Stat. § 620.8807 Unif. Comment 4. This intent is also established by Fla. Stat. § 620.8405 which provides in relevant part that "[a] partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership." There is no question that Fla. Stat. § 620.8807 establishes a duty to the Partnerships, and therefore can be enforced as a statutory cause of action. *See also Glick v. Retamar*, 922 So. 2d 1108 (Fla. 4th DCA 2006) (recognizing application of partnership agreement and Fla. Stat. § 620.8807 in arbitration.); *In re Kane*, 470 B.R. 902, 936n. 8 (Bankr. S.D. Fla. 2012) (noting that Fla. Stat. § 620.8807 limits an insolvent partnership's ability to make distributions.)

Case No. 12-028324.[4] *See* **Exhibit 8 at ¶ 158; Exhibit 9 at ¶ 158.** Moreover, because intent is not an issue properly disposed of through summary judgment, the Court should deny Defendant's motion. *See Hodge v. Cichon*, 78 So. 3d 719, 723 (Fla. 5th DCA 2012).

Furthermore, Defendant's citation to Section 4.05 of the Partnership Agreement as the section governing disassociation ignores that it is the requirements of Section 9.02 that govern the withdrawal of a partner, and under that section, even if Defendant intended to sell her investment, such an act does not equate with withdrawal because Defendant did not execute any required documents, or provide notice to the other partners of its withdrawal from the Partnership in accordance with Section 14.06, which means that the Court, cannot, at this juncture, enter summary judgment based on of Defendant's allegation that it withdrew.[5]

Irrespective of whether Defendant did withdraw (and it is disputed whether she did), the duties to make contributions at winding down imposed by Fla. Stat. § 620.8807 apply to Defendant because Defendant's duty to return the improper distributions to the Partnership under Fla. Stat. § 620.8807 is preserved by virtue of Section 10.02 of the Partnership Agreement.

Section 10.02 of the Partnership Agreement provides in relevant part that "[n]o assignment, transfer OR TERMINATION of a defaulting Partner's INTEREST as provided in this Agreement shall relieve the defaulting partner from any personal liability for outstanding indebtedness, liabilities, liens or obligations relating to the Partnership that may exist on the date of the assignment, transfer, OR TERMINATION."

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[4] If Smith affirmatively wished to withdraw from the Partnerships, she would have denied the allegation that she was a partner in that matter. Instead she claimed to lack knowledge as to the allegation and denied it on that basis.

[5] Section 9.02 of the Partnership Agreements states that "[a]ny partner may withdraw from the Partnership at any given time . . . provided, however, that the withdrawing partner shall give at least thirty days (30) written notice."

Here, Defendant's alleged withdrawal qualifies as an "assignment, transfer OR TERMINATION of a defaulting Partner's INTEREST" under Section 10.02 because Article Nine of the Partnership Agreements defines the circumstances where a partner's interest would be transferred or assigned, and explicitly includes the "Withdrawal of Partners" as a circumstance that constitutes a transfer or assignment. Additionally, Defendant is clearly a defaulting partner by virtue of her receipt of improper distributions and failure to remit payment to S&P after receiving notice of the fact that it was not entitled to retain funds received, and her alleged withdrawal does not affect its obligations to the Partnership at winding down. Thus Defendant is obligated to "contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account", as is required by Fla. Stat. § 620.8807 regardless if Defendant withdrew from the Partnership.

Moreover, Fla. Stat. § 620.8603 does not limit Defendant's obligations in this case because that statute was waived by Section 10.02 of the Partnership Agreements. Defendant cites Fla. Stat. § 620.8603 for the proposition that Fla. Stat. § 620.8807 is not applicable because the Partnership did not wind down as a result of her alleged withdrawal. However, pursuant to Fla. Stat. § 620.8103, "[t]o the extent that the partnership agreement does not provide otherwise, this act governs."

The plain language of Section 10.02 conflicts with Fla. Stat. § 620.8603, in that Section 10.02 preserves liability, so long as it was incurred at the time of dissociation. Thus, Section 10.02 prevails over Fla. Stat. § 620.8603(1) and governs the relationship between Defendant and the Partnerships. Defendant is obligated under Fla. Stat. § 620.8807 and Section 10.02 of the Partnership Agreements to contribute the amounts that she wrongfully received.

Defendant's duty under Fla. Stat. § 620.8807 is also supported by Fla. Stat. § 620.8703, which provides that a "partner's dissociation does not, by itself, discharge a partner's liability for partnership obligation incurred before dissociation." Because Defendant's obligation to the Partnership arose before Defendant's purported dissociation – due to the improper distributions that it received as a partner – Defendant is under a duty to return the improperly retained funds, and that duty is not affected by Defendant's claims that it withdrew or dissociated from the Partnerships by virtue of Section 10.02 of the Partnership agreement.

Accordingly, it is improper to grant Summary Judgment as to Counts I and II of the Second Amended Complaint.

D. Plaintiffs' Breach of Contract Claim is Timely

Defendant argues that she cannot be held liable for breach of contract because she received her last improper distribution on January 25, 2005.

Regardless of the dates that Defendant received the distributions at issue, Article 10.01 of the Partnership Agreement sets forth the instances when a partner materially breaches the Partnership Agreement. Among other events, Article 10.01(b) of the Partnerships states that "the violation of any of the other provisions of this Agreement and failure to remedy or cure that violation within (10) days after written notice of the failure from the Managing General Partners" shall be deemed to be a default by a Partner.

In other words, a material breach of the Partnership Agreements does not occur until a partner fails to remedy or cure the conduct specified by notice under Article 10.01(b), as they are under no obligation to remedy or cure their violation until they receive that notice.[6]

[6] "Default" is defined as "[t]he omission or failure to perform a legal or contractual duty[.]" *Black's Law Dictionary* 79, 188 (3d Pocket ed. 2006).

"[W]hen a default clause contains a notice provision, it must be strictly followed." *In re Colony Square Co*, 843 F.2d 479, 481 (11th Cir. 1988); *Abecassis v. Eugene M. Cummings, P.C.*, 09-81846-CIV, 2010 WL 9452252, at *5 (S.D. Fla. June 3, 2010) ("The Agreement specifically required notice of any alleged breach, as well as an opportunity to cure said breach. A party may not sue for breach of contract where the party failed to comply with the requirements of the contract's default provision").

"As a general rule of contract law, where the contract requires a demand as a condition to the right to sue, the statute of limitations does not commence until such a demand is made." *Greene v. Bursey*, 733 So. 2d 1111, 1115 (Fla. 4th DCA 1999). Although a plaintiff cannot unreasonably delay the provision of such a demand, whether the plaintiff's delay in making it was reasonable is a question of fact, which is addressed by the affirmative defense of laches. *Id.* at 1116. For that reason, the *Greene* Court reversed a trial court's order granting summary judgment.

In the same way that the statute of limitations does not commence until a demand is made for payment, the Florida Supreme Court held in *State Farm Mut. Auto. Ins. Co. v. Lee,* 678 So.2d 818, 821 (Fla.1996) that a breach of contract claim for recovery of insurance benefits did not accrue at the time of the accident, but accrued at the time that the insurer failed to pay. The Court's reasoning was that it is "apparent that, pursuant to the statute, the insurer has no obligation to pay benefits to the insured until thirty days after receipt of the insured's claim." *State Farm Mut. Auto. Ins. Co. v. Lee*, 678 So. 2d 818, 820 (Fla. 1996).

In this case, Plaintiffs' claim for breach of contract did not accrue until November 23, 2012 – when Defendant failed to correct its violations of the Partnership Agreements within 10 days of receiving notice of such violations – because Defendant previously was not required to

return the improper distributions as no demand was made for them. On November 13, 2012, and after succeeding Sullivan as Managing General Partner, Margaret J. Smith, in her capacity as Managing General Partner, sent Defendant a letter that stated Defendant's receipt of funds in excess of contributions constituted a violation of the Partnership Agreements. The letter further provided that Defendant had the opportunity to cure its violation of those Agreements by remitting payment within 10 days.[7] When Defendant refused to return the improper distributions it received within 10 days of receipt of the letter – which could not have been sent sooner because the Partnerships were under Sullivan's control – it materially breached the Partnership Agreements, and Plaintiffs' claims accrued from that date.

Finally, and another reason why Plaintiffs' claims accrued in November 2012, is that Defendant's refusal to return its improper distributions breached Article 10.01(g) of the Partnership Agreements. Article 10.01(g) provides in relevant part that a Partner is in default if it "COMMIT[S] OR PARTICIPATES IN ANY . . . INJURIOUS ACT OR OMISSION, WANTONLY, WILLFULLY, RECKLESSLY, OR IN A MANNER WHICH WAS GROSSLY NEGLIGENT AGAINST THE PARTNERSHIP[S], MONETARILY OR OTHERWISE." (Exhibits A and B to the Complaint at ¶ 10.05).

When Defendant failed to return within 10 days of Ms. Smith's November 13 letter the improper distributions that she received, she committed a willful act that caused monetary injury to the Partnership. That refusal caused a default under Article 10.05 and Plaintiffs' above claims accrued on November 23, 2012.

Accordingly, summary judgment should be denied because an issue of fact exists as to the timeliness of the demand that Defendant return the improper amounts that she received.

[7] The Demand letter also permitted Defendant to make a discounted payment to the Partnerships.

E. Plaintiffs' Causes of Action for Unjust Enrichment and Money Had and Received Did Not Accrue Until November 23, 2012.

Defendant's statute of limitations argument with respect to these two claims fails because it wrongly assumes that Plaintiffs' above claims accrued on the date that Defendant received her last improper distribution.

However, as set forth above, it was not until Defendant refused to return the improper distributions after she received Ms. Smith's demand letter that the last element necessary to complete a cause of action for unjust enrichment and money had and received occurred. *Bedwell v. Rucks*, 4D11-3532, 2012 WL 5349381 (Fla. 4th DCA Oct. 31, 2012) ("A cause of action accrues when the last element necessary to complete it occurs") (citing § 95.031(1), Fla. Stat. (2010)).

With respect to Plaintiffs' claim for unjust enrichment, Defendant did not accept and retain the improper distribution under circumstances that made it inequitable for Defendant to retain it without paying the value thereof until Defendant was notified by Ms. Smith that she received improper distributions and refused to return them. *See AMP Servs. Ltd. v. Walanpatrias Found.*, 73 So. 3d 346, 350 (Fla. 4th DCA 2011) ("The elements of an unjust enrichment claim are 'a benefit conferred upon a defendant by the plaintiff, the defendant's appreciation of the benefit, and the defendant's acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof.'"); *see also Banks v. Lardin*, 938 So. 2d 571, 574 (Fla. 4th DCA 2006) (holding that a claim for unjust enrichment accrues when the last element constituting a cause of action occurs.).

Similarly, Plaintiffs' money had and received claim accrued in November 2012 because Defendant was not required to return the improper distributions to the Partnerships in good conscience until she received the demand letter from Ms. Smith. *Calhoun v. Corbisello*, 100 So.

2d 171, 173 (Fla. 1958) (stating cause of action for money had and received as "the recovery of money which the appellees, in good conscience, should pay to appellant.")

Further, because the Partnerships were incapable of bringing a claim against themselves until after the Conservator's appointment, there was no delay in demanding the return of money, or commencing action against the Defendant, and any dispute as to the delay in seeking the return of those funds weighs in favor of denying Defendant's motion for summary judgment.

Accordingly, it is improper to grant summary judgment in favor of Defendant because an issue of fact exists as to the timeliness of the demand that Defendant return her improper distributions and because Plaintiffs' above claims were commenced within 4 years.

F. Defendant's Breach of Fiduciary Duty Claim is Not Time Barred.

Defendant alleges that Plaintiffs' breach of fiduciary duty claim is barred because it was commenced more than four years after the last distribution to Defendant. Incorrect.

The Third Amended Complaint provides that Defendant owed a fiduciary duty to the Partnerships to account for and hold in trust partnership property and that the distributions it received constitute partnership property. Compl. at ¶110. The Third Amended Complaint goes on to state that by failing to remit payment of those amounts in connection with the winding down of the Partnerships, Defendant breached its fiduciary duties. Compl. at ¶ 112. As that claim accrued upon the winding down of the Partnerships, and not at the time that the distributions were made, it is improper to grant summary judgment as to Count VII because that claim was properly commenced within four years of the Partnership winding down (which at the earliest was in August 2012 as the result of the appointment of Ms. Smith as Managing General Partner). [8]

[8] Defendant's fiduciary duty as a partner under Fla. Stat. § 620.8404 survives its purported dissociation.

G. There is an Issue of Fact as to Whether Section 14.03 Limits Defendant's Liability.

Defendant argues that Plaintiffs' claims for unjust enrichment and money had and received are barred by Section 14.03 of the Partnership Agreement because it provides that "THE PARTNERS SHALL BE LIABLE ONLY FOR ACTS AND OMISSIONS INVOLVING INTENTIONAL WRONGING, FRAUD, AND BREACHES OF FIDUCIARY DUTIES." Defendant's interpretation of the language in Section 14.03 is self-serving, and the ambiguous language of Section 14.03 should instead be interpreted "in the light most favorable to plaintiffs." *Hitt v. North Broward Hosp. Dist.*, 387 So. 2d 482, 483 (Fla. 4th DCA 1980).

Here, Plaintiffs' claims are not precluded by Section 14.03. The Complaint alleges that Defendant intentionally wronged the Plaintiffs and breached her fiduciary duties when she elected to retain distributions which it would not have otherwise been entitled to by refusing to comply with demand letters that it received in 2012 and 2013.[9]

Because, as previously discussed, Defendant did not produce a single piece of evidence that she has not breached its fiduciary duties by failing to contribute the required amounts, she is not entitled to the protection of Section 14.03 at this juncture.

III. CONCLUSION

All in all, it is worth emphasizing that this case is unlike any possible analogy offered by Defendant whereby she is being hauled into court after many years as a result of some unexpected and long gone obligation. Defendant signed a Partnership Agreement whereby she agreed that all distributions should be shared in accordance with the terms of that Partnership

[9] Further, Sullivan intentionally wronged the Partnerships, and breached his fiduciary obligations to the Partnerships, by making improper distributions to certain Partners, and that the damages sought against Defendant here arose from those breaches and wrongdoings. It was those breaches and wrongdoings that lead to the improper distributions received and retained by Defendant, and the plain text of Section 14.03 states that a Partner may be liable, regardless of who acted intentionally so long as the "acts and/or omissions" "involv[ed]" intentional wrongdoing, fraud, or a breach of fiduciary duties[,]" – as they do here.

Agreement. Furthermore, she agreed to a provision whereby Defendant would be given notice of any violation of that Partnership Agreement, and be given opportunity to cure it.

Based on the foregoing, Defendant has been timely brought into this Court to account for a windfall that she received while other partners lost millions. As such, and because Defendant has failed to demonstrate, by competent evidence, that there is not a single issue of material fact, summary judgment is improper.

WHEREFORE, Plaintiffs respectfully requests that this Court enter an order denying Defendant Catherine Smith's Motion for Summary Judgment, and awarding such other appropriate relief as is just and proper.

Dated: April 11, 2014

By: s/ Leonard K. Samuels

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail on this 11th day of April, 2014 upon the following:

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By: s/Leonard K. Samuels
Leonard K. Samuels

5579994-1

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IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL
CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA

CASE NO. 12-24051(07)

MATTHEW CARONE, as Trustee for the Carone Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, Carone Family Trust, Carone Marital Trust #1 UTD 1/26/00 and Matthew D. Carone Revocable Trust, JAMES JORDAN, as Trustee for the James A. Jordan Living Trust, ELAINE ZIFFER, an individual, and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida corporation,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, individually,

Defendant.
_____/

- - -

HEARING BEFORE THE HONORABLE JEFFREY E. STREITFELD

- - -

Tuesday, December 18th, 2012
10:10 a.m. - 11:43 a.m.

201 Southeast Sixth Street
Courtroom 970
Fort Lauderdale, Florida 33301

Susan D. Fox, Florida Professional Reporter
Notary Public, State of Florida

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:
BERGER SINGERMAN
LEONARD K. SAMUELS, ESQUIRE
STEVEN D. WEBER, ESQUIRE
350 East Las Olas Boulevard
Suite 1000
Fort Lauderdale, Florida 33301

ON BEHALF OF THE DEFENDANTS:
SLATKIN & REYNOLDS, P.A.
ROBERT F. REYNOLDS, ESQUIRE
One East Broward Boulevard
Suite 609
Fort Lauderdale, Florida 33301

RICE PUGATCH ROBINSON & SCHILLER
CHAD PUGATCH, ESQUIRE
101 Northeast Third Avenue
Suite 1800
Fort Lauderdale, Florida 33301

ON BEHALF OF P&S AND S&P:
BECKER & POLIAKOFF, P.A.
GARY C. ROSEN, ESQUIRE
3111 Stirling Road
Fort Lauderdale, Florida 33312

BECKER & POLIAKOFF, P.A.
HELEN CHAITMAN, ESQUIRE
45 Broadway
Eighth Floor
New York, New York 10006

DEUTSCH ROTBART & ASSOCIATES, P.A.
ERIKA DEUTSCH ROTBART, ESQUIRE
4755 Technology Way
Suite 106
Boca Raton, Florida 33431

ALSO PRESENT:
BRETT STAPLETON
STEVE JACOB
BURT MOSS
SCOTT HOLLOWAY
MATTHEW CARONE
ELAINE ZIFFER

(Therefore, the following proceedings were had.)

THE COURT: Good morning, everybody.

Announce your appearances for me, please.

MR. SAMUELS: Leonard Samuels of Berger Singerman on behalf of the Plaintiffs.

THE COURT: With who?

MR. WEBER: Steven Weber on behalf of the Plaintiffs.

MR. SAMUELS: And with me is Brett Stapleton.

THE COURT: Thank you.

MR. REYNOLDS: Good morning, Your Honor.

Robert Reynolds, Slatkin & Reynolds. I represent a number of the partners in this case. They were all named as Defendants in the interpleader action that was initially filed in the Palm Beach Circuit Court. It was then transferred down here.

With me at Counsel's table is Steve Jacob and Burt Moss. They both represent

entities that are partners in these various partnerships.

THE COURT: Okay.

MR. REYNOLDS: Scott Holloway is in the courtroom as well, Judge. He's another of the -- Mr. Holloway is in the tan suit here, Your Honor.

THE COURT: Okay.

MR. REYNOLDS: He's another representative of some of the various partnerships.

Instead of going through the names, when I put them on the witness stand, assuming we get that far today, I'll ask them to identify all of the entities that they are here representing.

THE COURT: Okay.

MR. PUGATCH: Good morning, Your Honor. Chad Pugatch representing Mr. Sullivan.

Originally, when this lawsuit was originally filed, we entered into the agreed order. I'm not sure at this point if that's the focal point of what's going on or that he's the real party at interest

as to this motion, but I'm here because I'm still counsel of record.

THE COURT: Thank you, sir.

MR. ROSEN: Good morning, Your Honor.

Gary Rosen and Helen Chaitman of Becker & Poliakoff on behalf of P&S, S&P.

THE COURT: Okay.

MS. DEUTSCH ROTBART: And, Your Honor, Erika Deutsch Rotbart, who was hired by Becker & Poliakoff to represent P&S, S&P in the matter for disposition of the assets.

THE COURT: Okay.

All right. Mr. Samuels.

MR. SAMUELS: Yes, Your Honor.

If I may, I forgot to introduce two other folks who are here, Matthew Carone and Elaine Ziffer, who also are the Plaintiffs.

THE COURT: Thank you, sir.

The ball is in your court, Mr. Samuels.

MR. SAMUELS: Thank you, Your Honor.

We have a motion to appoint a receiver brought on behalf of certain

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 12-24051 (07)
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, Carone Family Trust, Carone Marital Trust #1 UTD 1/26/00 and Matthew D. Carone Revocable Trust, JAMES JORDAN, as Trustee for the James A. Jordan Living Trust, ELAINE ZIFFER, an individual, and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.
_____/

AGREED ORDER GRANTING *ORE TENUS* MOTION OF RICE PUGATCH ROBINSON & SCHILLER, P.A. TO WITHDRAW AS COUNSEL

THIS CAUSE having come on to be heard on Thursday, April 18, 2013 at 11:00 a.m. upon the *Ore Tenus* Motion of Rice Pugatch Robinson & Schiller, P.A. to Withdraw as Counsel of Record for Michael D. Sullivan as Managing Partner of S & P Associates, General Partnership and P & S Associates, General Partnership, and the parties having agreed thereto, and the Court being otherwise fully advised in the premises, and the Court finding that the interests of the Partnerships are being adequately protected in this litigation by the Conservator and his counsel, it is therefore,

ORDERED and ADJUDGED:

1. The *Ore Tenus* Motion of Rice Pugatch Robinson & Schiller, P.A. to Withdraw as Counsel is hereby GRANTED.

2. Rice Pugatch Robinson & Schiller, P.A. are relieved of any further responsibility as counsel in this action.

3. Service of any and all pleadings and papers on behalf of S & P Associates, General Partnership and P & S Associates, General Partnership shall be made on the Conservator, Philip J. von Kahle and his counsel, Thomas Messana, Esquire.

DONE AND ORDERED in Chambers in Broward County, Ft. Lauderdale, Florida, on this _____ day of April, 2013.

JEFFREY E. STREITFELD

APR 19 2013

A TRUE COPY

JEFFREY E. STREITFELD
CIRCUIT COURT JUDGE

Copies furnished to:
Chad Pugatch, Esq., RPRS, PA, 101 NE 3d Ave, #1800, Ft. Laud., FL 33301
Brett Lieberman, Esq., Messana, P.A., 401 E. Las Olas Blvd., #1400, Ft. Laud., FL 33301
Leonard Samuels, Esq., Berger Singerman, 350 E. Las Olas Blvd., #1000, Ft. Laud., FL 33301
William Salim, Esq., MMSS, PA, 800 Corporate Dr., #500, Ft. Laud., FL 33334
Domenica Frasca, Esq., 101 NE 3d Ave., #1250, Ft. Laud., FL 33301
Robert Reynolds, Esq., Slatkin & Reynolds, 1 E. Broward Blvd., #609, Ft. Laud., FL 33301
Michael Sullivan, 3696 North Federal Highway, Suite 301, Fort Lauderdale, Florida 33308

AFFIDAVIT OF CHAD PUGATCH

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared Chad Pugatch, who deposes and states:

1. I, Chad Pugatch, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated.

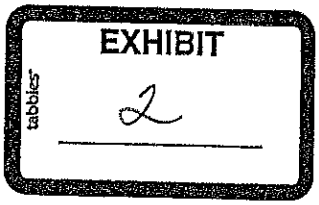
2. Prior to January 16, 2009, my law firm Rice Pugatch Robinson & Schiller, P.A. was retained as counsel for S&P Associates, General Partnership ("S&P") and P&S Associates, General Partnership ("P&S", and P&S and S&P collectively as the "Partnerships").

3. My law firm, Rice, Pugatch, Robinson & Schiller, P.A. was retained to provide certain representation on behalf of the Partnerships by Michael Sullivan as managing partner on December 18, 2008.

4. A wind-down of the Partnerships under Florida law was not commenced by me or my law firm Rice, Pugatch, Robinson & Schiller, P.A., at any time we were counsel for the Partnerships.

5. At no time prior to January 17, 2013, was I or Rice, Pugatch, Robinson & Schiller, P.A. specifically aware of the identity of any partner of S&P and/or P&S who received more money from P&S and/or S&P than that partner contributed to S&P and/or P&S.

6. Neither I nor any member my law firm had complete access to the Partnerships' books and records, and all account statements which were provided to partners of the Partnerships or my law firm, were prepared by Michael Sullivan or someone who was acting under his direction as managing partner.



7. Neither I nor any member of my law firm, Rice, Pugatch, Robinson & Schiller, P.A. independently verified the information stated in the Partnership account statements that were prepared for the partners of the Partnerships.

FURTHER AFFIANT SAYETH NAUGHT.

CHAD PUGATCH

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 10th day of April, 2014 by Chad Pugatch who is personally known to me ~~or has produced as identification~~ _____ and ~~did~~/did not take an oath.

Name: _____
(Notary Public)
(Affix Seal Below)

5581077-1

ROBIN GANLEY
MY COMMISSION # EE 845543
EXPIRES: November 11, 2016
Bonded Thru Notary Public Underwriters

AFFIDAVIT OF BARRY MUKAMAL

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

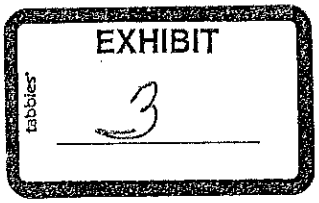
BEFORE ME, the undersigned authority, personally appeared Barry Mukamal, who deposes and states:

1. I, Barry Mukamal, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated.

2. On November 1, 2013, I was retained by legal counsel for Phillip J. Von Kahle, as Conservator (the "Conservator") of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (S&P and P&S are collectively the "Partnerships") to provide an opinion as to whether P&S and S&P were managed in accordance with the provisions of their respective partnership agreements, and to determine whether amounts with respect to new investment and distributions utilized by the Conservator in the calculation of distributions using the Net Investment Method were generally reliable. A copy of the expert report I drafted in conjunction with that engagement is attached hereto as **Exhibit A.**

3. As identified in the attached expert report, capital withdrawals (redemptions) received by the Partnerships from Madoff[1] were insufficient to fund disbursements for management fees and/or distributions to partners of the Partnerships. The resulting cash deficiency was funded by certain capital contributions retained by the Partnerships. I did not see any records which indicate or would have notified partners in the Partnerships that certain partner distributions were funded by capital contributions of other partners.

[1] Bernard L. Madoff Investment Securities, LLC



4. Beginning in at least 2003 for P&S and 2002 for S&P, a significant portion of the amounts that the defendants in *P&S Associates General Partnerships et al. v. Janet A. Hooker Charitable Trust et al.*, Case No. 12-034121 received from P&S and/or S&P in excess of their capital contributions to P&S and/or S&P came from the capital contributions of other partners in S&P and/or P&S, and not any profits of the Partnerships.

5. It was not until the books and records of the Partnerships were turned over by Michael Sullivan that it was possible for people other than Sullivan to discover that certain distributions received by partners of P&S and/or S&P were funded by capital contributions of other partners, and not the profits of the Partnerships.

FURTHER AFFIANT SAYETH NAUGHT.

BARRY MUKAMAL

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 10th day of April, 2014 by Barry Mukamal who is personally known to me or has produced as identification _____ and did/did not take an oath.

Name: _____
(Notary Public)
(Affix Seal Below)

KAREN G. MCGILL
MY COMMISSION # EE 855865
EXPIRES: January 24, 2017
Bonded Thru Notary Public Underwriters

5578607-4

CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL DISTRICT,
IN AND FOR BROWARD COUNTY, FLORIDA

Re:

P&S ASSOCIATES, GENERAL PARTNERSHIP
AND S&P ASSOCIATES, GENERAL PARTNERSHIP CASE NO.: 12-028324(07)

_____/

EXPERT REPORT OF
BARRY MUKAMAL, CPA/PFS/ABV/CFE/CFF

November 11, 2013

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Expert Report of Barry E. Mukamal, CPA/PFS/ABV/CFE/CFF ("Report")

I. Introduction

Pursuant to a court order entered on November, 1, 2013, Barry Mukamal and Marcum LLP (collectively "Marcum") have been retained by Messana, P.A., legal counsel for Phillip J. Von Kahle, as Conservator ("the Conservator") for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P"), to provide an opinion with respect to the following, which collectively are referred to as "the Issues":[1]

- Determine if P&S and S&P (collectively, the "Partnerships") were managed in strict accordance with all of the provisions of the P&S' Amended and Restated Partnership Agreement dated December 21, 1994 (the "P&S Partnership Agreement"), and S&P's Amended and Restated Partnership Agreement as of the same date (the "S&P Partnership Agreement").
- Using sampling methodology, determine whether amounts with respect to new investment and distributions utilized by the Conservator in the calculation of distributions utilizing the Net Investment Method are generally reliable.
- Using sampling methodology, determine whether amounts with respect to S&P general partner, Guardian Angels, new investment and distributions utilized by the Conservator in the calculation of distributions utilizing the New Investment Method are generally reliable (see Attachment 4, Affidavit of Expert Barry Mukamal).

I have not been requested to, nor have I performed analysis beyond that which was required to formulate my opinions related to the Issues and matters incidental to same. The information, analysis, and opinions contained in this Report are based upon the specific facts and circumstances in this proceeding. I reserve the right to supplement this Report as necessary, to the extent any other relevant information becomes available between the date of this Report and the date that I may testify in this matter.

II. Professional Qualifications of Barry Mukamal, CPA/PFS/ABV/CFE/CFF

I, Barry E. Mukamal, am a Partner in Marcum's Advisory Services Department. I am a Certified Public Accountant ("CPA") licensed in Florida. My Curriculum Vitae is attached hereto as **Attachment 1** and includes additional details of my professional qualifications and experience.

[1] S&P and P&S were formed as of the same date. It appears, based on our discussions with counsel and a "Memorandum" from Roxanne Beilly regarding "Sullivan and Powell", dated August 10, 1994 that the purpose of having two separate funds was to keep from having more than 150 partners in the Partnership so as to avoid reporting requirements of the Securities and Exchange Commission and the State of Florida.

I possess over 35 years of experience in the public accounting profession and financial services industry. I am accredited in business valuation ("ABV") and hold accreditation as a personal financial specialist ("PFS"), certified fraud examiner ("CFE"), and certified in financial forensics ("CFF"). Areas of expertise include financial accounting, business valuation, forensic (investigative) accounting in litigation proceedings, economic damages, bankruptcy and insolvency matters. I have been appointed and currently serve as a Bankruptcy Panel Trustee in the Southern District of Florida. My prior experience includes consulting and expert testimony in numerous arbitration and litigation matters. A list of cases in which I have previously provided expert testimony is also included in **Attachment 2.**

Other Marcum professionals have worked on this engagement under my supervision and direction. I have reviewed and am familiar with all such procedures performed and work product prepared. Marcum's fees for professional services provided are based on hours actually expended by each assigned staff member extended by the standard hourly billing rate for that individual. Hourly billing rates for professional staff working on this matter range from $150 to $475 Marcum has agreed to limit its fees to 85% of standard rates with a cap on total fees to complete this assignment through reporting, subject to approval of the court. Marcum's fees are not contingent on the outcome of this matter.

III. Documents Reviewed and Relied Upon

A listing of the information that I reviewed and relied upon in preparing this Report is attached hereto as **Exhibit 1.**

IV. Background

Both P&S and S&P were formed by Michael Sullivan ("Sullivan") and Greg Powell ("Powell") in 1992, with the stated purpose of investing in securities. In fact, P&S and S&P (collectively, the "Partnerships") invested exclusively in a Ponzi scheme perpetrated by the Bernard L. Madoff Investment Securities, LLC ("Madoff" or "BMIS"). As a consequence, profits as recorded by the Partnerships stemmed solely from investments in Madoff..

While the Partnerships themselves were victims of an investment scheme resulting in a net investment loss, losses sustained by general partners of the Partnerships ("Partners"[2]) were not

[2] For purposes of this Report, Partners include all general partners of the Partnerships but exclude the Partnerships' managing general partners Sullivan and Powell.

proportionate to their investment. While certain Partners received distributions in excess of their investment, other Partners either received no distributions or distributions that were lower than their investment.

At the commencement of the Partnerships, Sullivan and Powell were appointed as managing general partners of the Partnerships. Powell passed away in August 2003, and Sullivan continued as the sole managing general partner of the Partnerships.

In August of 2012, certain Partners of the Partnerships filed a lawsuit alleging that Sullivan had diverted millions of dollars from the Partnerships to himself and other insiders. In January 2013, the Conservator was appointed as conservator of the Partnerships to, among other things, wind down the affairs of the Partnerships; determine how the assets of the Partnerships are to be distributed, and to effect such distributions.

In his motion for summary judgment filed on May 31, 2013, the Conservator recommended that the Court approve the Net Investment Method for distributions to Partners, which presented proposed distributions to certain Partners and proposed objections to distributions to certain Partners. On October 7, 2013 the court approved the Net Investment Method of distribution and set for trial the other outstanding issues.

V. Management of P&S and S&P by Sullivan

Analysis of Management Fees Paid by P&S to Managing General Partners

Pursuant to the P&S Partnership Agreement, Article Five, Allocations and Distributions, 20% of the capital gains, capital losses, dividends, interest, margin interest expense and all other profits and losses attributable to the partnership are to be allocated to the managing general partners (the "P&S Management Fees"), and 80% to the Partners.[3] The Conservator's financial advisor, Michael Moecker and Associates ("Moecker"), provided us with spreadsheets that they prepared based on the P&S Partner Annual statements prepared by P&S (the "P&S Annual Partner Statements"), which annual statements include a summary of the annual activity for each P&S partner related to their new investments, distributions, gains/losses, management fees and expenses for each year from 1993 through 2008.

[3] P&S Associates GP Amended and Restated Partnership Agreement dated December 21, 1994, Article 5.01.

Moecker also provided us with the following: list compiled by Moecker of the checks disbursed by P&S for management fees (the "P&S Management Fee Check List"); list compiled by Moecker of the P&S cash receipts from, and cash disbursements to, Madoff from 1993 through 2008 (the "P&S Madoff Cash Receipts & Disbursements List"); quarterly calculations of management fees prepared by the managing general partner from the P&S books and records (the "P&S Quarterly Management Fee Calculations"); year-end statements from Madoff titled Portfolio Management Report for 1993 through 2007 and for the quarter ending September 30, 2008 (the "Madoff Portfolio Reports"); general ledgers and check registers from the P&S books and records for various periods during 1993 through 2008 and tax returns filed by P&S for the years 1993 through 2008.

Utilizing the documents listed above we performed the following:

- Compared the gains and losses allocated to P&S Partners, in the aggregate, as reported on the P&S Annual Partner Statements prepared by the Partnerships' managing general Partners, to the Madoff Portfolio Reports and tax returns filed by P&S for years ending 1993 through 2007.[4]
- Recreated the management fee to the managing general partners reported on the P&S Annual Partner Statements and compared management fees reported on the P&S Annual Partner Statements to P&S Quarterly Management Fee Calculations for the fourth quarter of the following years: 2002, 2004 through 2006 and 2008.
- Compared the cash receipts and cash disbursements from the P&S Madoff Cash Receipts & Disbursements List to the P&S Madoff Portfolio Reports for years ending 1993 through 2007 and for the quarter ending September 30, 2008
- Compared, on an annual basis, the total cash receipts from the P&S Madoff Cash Receipts & Disbursement List to the total of new investments reported for all partners in aggregate on the P&S Annual Partner Statements for years ending 1993 through 2008
- Compared, on an annual basis, the total cash disbursements from the P&S Madoff Cash Receipts & Disbursements List to the total of distributions reported for all partners in aggregate on the P&S Annual Partner Statements for years ending 1993 through 2008
- Traced a sample of the checks on the P&S Management Fee Check List to the general ledgers to identify how the checks were recorded by P&S.

[4] The gains/losses reported on the Madoff Portfolio Reports matched what was reported on the P&S tax returns. The gains/losses reported on the P&S Annual Partner Statements generally matched what was reported on the Madoff Portfolio Reports and P&S Tax returns, with a few immaterial exceptions.

Our observations are as follows:

- We were able to recreate the calculation of the management fees based on 20% of the gains/losses recorded[5] by the managing general partners on the P&S Annual Partner Statements, with the following exceptions: for 2003 Partner (Cong of the Holy Spirit Western Province Inc.) did not have management fees reported in the amount of $103 and for 2008 partner Moss was charged 10% management fees instead of 20%.
- The total amount actually paid for management fees during the period from 1993 through 2008 ("Review Period") in the amount of $3,178,451.97 listed on the P&S Management Fees Paid List is $34,252.61 greater than the amount that should have been paid under the calculation by P&S managing general partners on the P&S Quarterly Management Fee Calculations and on the P&S Annual Partner Statements in the amount of $3,144,199.36 (see Exhibit 2).[6]
- P&S paid a portion of the 20% management fee directly to Kelco Foundation (total paid from 1993 -2008 is $744,799), which fees were reported by P&S on its tax returns as charitable donations. The balance of the management fees were paid to Powell and Sullivan until Powell's death in August, 2003, and to Michael D. Sullivan & Associates from September 2003 forward.
- Each of the P&S Quarterly Management Fee Calculations (as prepared by the managing general partner(s)) indicate amounts earmarked for/or to be paid to "A&B". Moecker has informed us that based on their review of the P&S books and records and other records related to Powell and/or Sullivan's other entities, A&B refers to Frank J. Avellino ("Avellino") and Michael S. Bienes ("Bienes"), parties prohibited by the SEC to participate in the sale of securities. [7]
- Although Article 2.02 of the P&S Partnership Agreement stated that the general purpose of the partnership was to invest, in cash or on margin, in all types of marketplace securities, during the Review Period and especially beginning in 2003, P&S did not remit all capital contributions received from its Partners for new investments. Instead P&S retained significant monies, as tabulated below.

---

[5] Although certain gains were recorded by the Partnership, as previously discussed, as a consequence of exclusively investing in a Ponzi scheme, the Partnership recorded profits stemming solely from investments in Madoff.

[6] For purposes of comparing the management fees paid to the management fees calculated, we used the management fees calculated by the managing general partners on the P&S Annual Partner Statements.

[7] Although we identified that funds were being earmarked or paid to Avellino and Bienes from the P&S Quarterly Management Fee Calculations, investigation of amounts paid to Avellino and Bienes was beyond the scope of our engagement.

Table 1:

	Capital contributions from Partners into P&S	Monies remitted by P&S to Madoff for new investment	Monies retained by P&S for other purposes
1993 - 2002	10,278,825	(10,305,465)	(26,640)
2003 - 2008	17,376,000	(12,469,503)	4,906,497
	$ 27,654,825	$ (22,774,968)	$ 4,879,857

- Monies retained by P&S per Table 1 above, were utilized to fund cash requirements for payment of P&S Management Fees and for withdrawals by P&S' Partners, as demonstrated in Table 2 below. During the Review Period and particularly beginning in 2003, capital withdrawals (redemptions) received by P&S from Madoff were insufficient to fund disbursements for P&S Management Fees and to some extent, withdrawals by P&S' Partners. The resulting cash deficiency was funded by monies retained by P&S from Partner contributions.

Table 2

	Capital withdrawals received by P&S from Madoff	Partner withdrawals disbursed by P&S	Balance available	Management Fees paid by P&S	Cash Deficiency funded by new capital contributions
1993 - 2002	4,090,323	(3,038,258)	1,052,065	(950,050)	102,015
2003 - 2008	17,120,000	(18,845,020)	(1,725,020)	(2,228,402)	(3,953,422)
	$ 21,210,323	$ (21,883,278)	$ (672,955)	$ (3,178,452)	$ (3,851,407)

Analysis of Management Fees Paid by S&P to Managing General Partners

Pursuant to the S&P Partnership Agreement, Article Five, Allocations and Distributions, 20% of the capital gains, capital losses dividends, interest, margin interest expense and all other profits and losses attributable to the partnership are to be allocated to the managing general partners (the "S&P Management Fees") and 80% to the general partners.[8] Moecker provided us with spreadsheets they prepared based on the S&P Partner Annual statements (the "S&P Annual Partner Statements"), which spreadsheets included a summary of the annual activity (investments, distributions, gains/losses, management fees and expenses) for each general Partner from 1993 through 2008.

[8] S&P Partnership Agreement, Article 5.02

Moecker also provided us with the following: list compiled by them of checks disbursed by S&P for management fees (the "S&P Management Fee Check List"); list compiled by Moecker of the S&P cash receipts from and cash disbursements to Madoff from 1993 through 2008 (the "S&P Madoff Cash Receipts & Disbursements List"); quarterly calculations of management fees prepared by the managing general partner from the S&P books and records (the "S&P Quarterly Management Fee Calculations"); year-end statements from Madoff titled Portfolio Management Report for 1993 through 2007 and for the quarter ending September 30, 2008 (the "Madoff Portfolio Report"); general ledgers and check registers from the S&P books and records for various periods during 1993 through 2008, S&P Annual Partner Statements for 2008 prepared by the managing general partner and tax returns filed by S&P for the years 1993 through 2008.

Utilizing the documents listed above we performed the following:

- Compared the gains and losses reported, in the aggregate, as reported on the S&P Annual Partner Statements prepared by the Partnerships' managing general partners, to the Madoff Portfolio Reports and tax returns filed by S&P for the years 1993 through 2007.[9]
- Recreated the management fee to the managing general partners reported on the S&P Annual Partner Statements and compared management fees reported on the S&P Annual Partner Statements to S&P Quarterly Management Fee Calculations for the fourth quarter of the following years: 2001, 2002, 2005 and 2006.[10]
- Compared the cash receipts and cash disbursements from the S&P Madoff Cash Receipts & Disbursements List to the S&P Madoff Portfolio Reports for years ending 1993 through 2007 and for the quarter ending September 30, 2008.
- Compared, on an annual basis, the total cash receipts from the S&P Madoff Cash Receipts & Disbursement List to the total of new investments reported for all partners on the S&P Annual Partner Statements for years 1993 through 2008

[9] The gains/losses reported on the Madoff Portfolio Reports matched what was reported on the S&P tax returns. The gains/losses reported on the S&P Annual Partner Statements generally matched what was reported on the Madoff Portfolio Reports and S&P Tax returns, with the exception that in 2002 the amount reported on the S&P Annual Partner Statements was approximately $44,000 greater than what was reported on the Madoff Portfolio Report and P&S Tax Returns. Additionally, there were a few other immaterial exceptions.

[10] For year ending 2002, the S&P Quarterly Management Fee Calculation was $101,481 greater than what was reported on the S&P Annual Partner Statements. It appears the difference is related to the management fee reported on the S&P Annual Partner Statement for JSP, which reflects management fees at 10% instead of 20% for one of its partners, Stacy Foundation - see footnote number 8 below.

- Compared, on an annual basis, total cash disbursements from the S&P Madoff Cash Receipts & Disbursements List to the total of distributions to reported for all partners on the S&P Annual Investor Statements for years ending 1993 through 2008
- Traced a sample of the checks on the S&P Management Fee Check List to the general ledgers to identify how the checks were recorded by S&P

Our observations are as follows:

- We were able to recreate the calculation of the management fees based on 20% of the gains/losses recorded[11] by the managing general partners on the S&P Annual Partner Statements, with the following exceptions: certain partners' capital accounts reflected management fees at 10% not 20%. Investors that paid a 10% instead of 20% management fee included: Telcom Profit Sharing, Jolene & Philip Hocott and Stacy Foundation.
- The total amount actually paid for management fees during the period of 1993 through 2008 in the amount of $6,399,102.70 is **$318,687.64 greater** than the amount that should have been paid under the calculation on the S&P Quarterly Management Fee Calculations ("the Management Fee Overpayment"), prepared by the managing general partner and the S&P Annual Partner Statements prepared by the managing general partner in the amount of $6,080,415.06 (see Exhibit 4). [12]
- Based on the S&P Annual Partner Statements for 2008, after the Madoff Ponzi scheme was publicly known, distributions were recorded [13]for Partners Ann or Michael Sullivan on 12/31/08 in the amount of $300,465.51 and Michael D. & L. Gail Sullivan on 12/31/08 in the amount of $31,500, (collectively referred to as the "2008 Sullivan Distributions"), which when combined total $331,966.33. Moecker has advised us that based on its analysis of the S&P books and records, including the bank statements, canceled checks, check registers and general ledgers, the 2008 Sullivan Distributions were recorded simply as a book entry, which reduced the Management Fee Overpayment

[11] Although certain gains were recorded by the Partnership, as previously discussed, as a consequence of exclusively investing in a Ponzi scheme, the Partnership recorded profits stemming solely from investments in Madoff.

[12] For purposes of comparing the amount paid for management fee during 1993 through 2008, we utilized the management fees reported by S&P on the S&P Annual Partner Statements, which statements include certain partners' capital accounts reflecting management fees at 10% not 20%. Investors that paid a 10% instead of 20% management fee included: Telcom Profit Sharing, Jolene & Philip Hocott and Stacy Foundation.

[13]Distributions were recorded within the partner accounts and reflected on the S&P Annual Partner Statements.

and reclassify the amount as distributions.[14]/[15] Each of the S&P Quarterly Management Fee Calculations (prepared by the managing general partner) indicates amounts earmarked for/or to be paid to "A&B". Moecker has informed us that based on their review of the P&S books and records and other records related to Powell and/or Sullivan's other entities, A&B refers to Frank J. Avellino ("Avellino") and Michael S. Bienes ("Bienes"), parties prohibited by SEC to participate in the sale of securities. [16]

- Although Article 2.02 of the S&P Partnership Agreement stated that the general purpose of the partnership was to invest, in cash or on margin, in all types of marketplace securities, during the Review Period and especially beginning in 2002, S&P did not remit all capital contributions received from its Partners for new investments. Instead S&P retained significant monies, as tabulated below in Table 3 and detailed for each year individually at Exhibit 5.

  Table 3:

	Capital contributions from Partners into S&P	Monies remitted by S&P to Madoff for new investment	Monies retained by S&P for other purposes
1993 - 2001	23,349,635	(22,713,255)	636,380
2002 - 2008	41,130,306	(19,058,371)	22,071,935
	$ 64,479,941	$ (41,771,626)	$ 22,708,316

- Monies retained by S&P per Table 3 above, were utilized to fund cash requirements resulting from payment of S&P Management Fees and withdrawals by S&P's Partners, as demonstrated in Table 4 below. During the Review Period and particularly beginning in 2002, capital withdrawals (redemptions) received by S&P from Madoff were insufficient to fund disbursements for S&P Management Fees and to some extent, withdrawals by

[14] Investigation of how Sullivan reported the $331,966.33 on his business and/or personal tax returns was not within the scope of our engagement.

[15] Based on the S&P general ledger for the period ending 12/31/08, there is a general journal entry dated 12/11/08 in the amount of $333,445.45, which decreased the management fee expense. It appears, based on our discussions with Moecker, that this book entry is related to the 2008 Sullivan Distributions reported on the S&P Annual Partner Statements.

[16] Although we identified the indication that funds were being earmarked or paid to Avellino and Bienes from the S&P Quarterly Management Fee Calculations, we have not investigated if any amounts were in fact actually paid.

S&P's Partners. The resulting cash deficiency was funded by monies retained by S&P from Partner contributions rather than by redemptions and withdrawals.[17]

Table 4

	Capital withdrawals received by S&P from Madoff	Partner withdrawals disbursed by S&P	Balance available	Management Fees paid by S&P	Cash Deficiency funded by new capital contributions
1993 - 2001	10,329,925	(9,264,491)	1,065,434	(1,657,952)	(592,518)
2002 - 2008	21,595,000	(40,893,472)	(19,298,472)	(4,741,151)	(24,039,623)
	$ 31,924,925	$ (50,157,963)	$ (18,233,038)	$ (6,399,103)	$ (24,632,141)

Overall Management of the Partnerships

Appointment of Managing Partners and death of Powell

Pursuant to Section 8.01 of the P&S Partnership Agreement and S&P Partnership Agreement (collectively, the "Partnership Agreements"), "day-to-day operations shall rest exclusively with the Managing General Partners, Michael D. Sullivan and Greg Powell." According to Section 5.01, the Managing General Partners were entitled to a total of twenty percent of the capital gains, capital losses, dividends, interest, margin interest expense and all other profits and losses attributable to the Partnerships.

Under Section 8.02 of the Partnership Agreements, the Managing General Partners were "authorized and empowered to carry out and implement any and all purposes of the Partnership." While the Partnerships could have, under Section 8.06 of the Partnership Agreements, "as many Managing General Partners as the partners ... shall determine to be in the best interest of the partnership," at the commencement of the Partnerships, two Managing General Partners were appointed suggesting that management by two Managing General Partners was in the best interest of the Partnerships.

Notwithstanding the Partnerships' initial structure noted above and the requirement of Section 8.04 that quarterly meetings be held, upon the death of Greg Powell in August of 2003, we are advised that no successor Managing General Partner was ever elected nor was any Partnership meeting called by

[17] As illustrated at Table 3 above, the total cash contributions from partners and monies remitted to S&P by Madoff is $22M. As illustrated at Table 4 the total cash deficiency is $24M. It is unclear as to if or how this difference was funded, which difference could be attributable to the differences between actual bank activity and amounts posted to the S&P Annual Partner Statements. For purposes of our analysis at sections vi and vii below, the S&P Annual Partner Statements were not relied upon and therefore reconciliation of same does not affect our analysis of net capital balances.

the Sullivan, the remaining Managing General Partner, to hold such election. While there does not appear to be a requirement for more than one general partner, it is unclear whether the majority of the partners must approve any changes of this nature.[18]

Following the death of Mr. Powell, Sullivan registered Michael D. Sullivan & Associates, Inc. ("Sullivan Inc.") in September of 2003, and, beginning in late 2003, allocated the entirety of the Managing General Partner's twenty percent share of profits to Sullivan Inc. As noted above, it is unclear whether Mr. Sullivan had this authority absent an affirmative vote of the majority of the Partners, or whether such vote was needed pursuant to section 8.06 of the Partnership Agreement(s)

Use of New Investments contributed by Partners

Section 5.02 provides that "Distributions of PROFITS shall be made at least once per year...[or] within ten (10) days after the end of each calendar quarter... " Therefore, it raises the issue of whether the Managing General Partners were required to distribute only actual 'profits'[19] to partners, and not fresh capital contributions of other Partners into the Partnerships.

As discussed above and illustrated in Tables 1 through 4, particularly after Powell's death in 2003, it would appear that Sullivan routinely withheld Partners' fresh investments that would have otherwise been invested into Madoff, for the purposes of funding management fees or distributions to other Partners, which may not be in accordance with the Partnership Agreements.

In connection with the funds withheld from Partners' new investments to fund distributions to other Partners, since there was no cash going to or coming from Madoff, Sullivan made accounting entries to record the activity in the Partners' capital accounts and related increase/reduction of investment in Madoff.

Payments made by P&S to Kelco and tax issues

P&S made direct payments to Kelco Foundation ("Kelco") during the years 1993 through 2008 totaling $744,799.08, comprising a portion of the total management fees paid to managing general

[18] Article 8.05 of the Partnership Agreements provides that an affirmative vote of 51% of the Partners (in interest, not in number) was required for the appointment of or removal of a managing general partner, and further, that the Partnerships shall have as many managing general partners as the Partners, by an affirmative vote of 51% (in interest, not in number) shall determine to be in the best interest of the Partnership.

[19] Although certain gains were recorded by the Partnership, as previously discussed, as a consequence of exclusively investing in a Ponzi Scheme, the Partnership recorded profits solely from its investment in Madoff.

partners. The payments made to Kelco were calculated based on a percentage of the gain related to certain Partners of P&S[20].

P&S reported the payments to Kelco on its tax returns as "Charitable Contribution" as opposed to their proper classification as a management fee expense. Although we have not analyzed the effect of this treatment to individual Partners, there may have been a negative tax consequence to some (or all) of the Partners for amounts that may not have been deductible due to their characterization as charitable contributions rather than management fees. Additionally, it is likely that Sullivan did not report the amounts paid to Kelco as management fee income and therefore would have received an inappropriate tax benefit in connection with the way P&S reported the payments to Kelco as charitable contributions.

Based on the foregoing analysis and observations, it appears that Sullivan did not manage P&S and S&P in strict accordance with all of Partnership Agreement'(s) provisions.

VI. Using sampling methodology to confirm amounts with respect to investment and distributions utilized in the calculation of the Net Investment Method for distribution of P&S partnership assets

Under the Net Investment Method, distributions are determined based on each Partner's net equity, which is calculated as investment less cash withdrawals or distributions. Moecker provided Marcum with a spreadsheet titled "1993-2008 by Partner Cash-In Cash-Out - Real Balance (Investment less distributions)", hereinafter referred to as the "P&S Spreadsheet". For each investor in P&S, the P&S Spreadsheet identified new investment, distributions, ending balance and cash balance carry forward, reported on an annual basis, as illustrated below:

[20] Based on the P&S Quarterly Management Fee Calculations, total management fees were calculated by P&S based on 20% of the total gains. Once the total management fee was calculated, a separate calculation was performed to determine the portion of the total management fee to be paid to Kelco, which calculation included 10% of the gains for the following investors: Bogaert, Bulger, HG Int'l #1, HG Int'l #2,HGF Ireland, Centro de Capacitacao, Costa, Crowley, HG Ire, Inc., Frank, HG Compassion, HG Ireland, HG Mombasa, HG Pastoral Juvenil, HG SW Brazil, Kelly, Kelly Trust, Molchan, Nickens, Paraoquia Santa Luz. See Exhibit 6 for an example of the P&S Quarterly Management Fee Calculations from the P&S books and records.

	Cash Balance Forward	New Investment	Distributions	Ending Balance
Carone Marital Trust No. 1				
2004	$ -	$ 534,000.00	$ (24,000.00)	$ 510,000.00
2005	$ 510,000.00	$ -	$ (64,000.00)	$ 446,000.00
2006	$ 446,000.00	$ 30,000.00	$ (32,000.00)	$ 444,000.00
2007	$ 444,000.00	$ -	$ (32,000.00)	$ 412,000.00
2008	$ 412,000.00	$ -	$ (24,000.00)	$ 388,000.00
Carone Marital Trust No. 1 Total		$ 564,000.00	$ (176,000.00)	$ 388,000.00

We employed the following methodology to validate the amounts of new investment and distributions as reported on the P&S Spreadsheet:

- Step 1: Selecting an appropriate sample for testing:
  - We assigned a sequential ID to each transaction within each investor's account history. The total count of such transactions was 630.
  - Utilizing 95% confidence levels and 10% confidence intervals, we calculated the appropriate sample size for this population of 630 transactions to be 79 using a statistical sampling formula.
  - Based on the above, the sample interval was determined to be 8. (630 / 79, rounded to the nearest integer).
  - Starting with transaction ID #1, we derived a sample of 79 transactions using an interval of 8. (i.e. ID #1, #9, #17 etc.)
  - Additionally, we extended our sample to include transactions exceeding $1,000,000. The P&S Spreadsheet included 6 such transactions; therefore our sample size was increased to 85.
  - Our selected sample of 85 transactions represented 40% of all new investments in terms of dollars (based on total new investments of $27,670,386 in the population) and 46% of all disbursements (based on total disbursements of $21,898,530 in the population).
- Step 2: For each transaction in our sample, we sought to validate the amount of new investment and/or distributions as follows:
  - Moecker provided Marcum with multiple boxes containing investor records. Specifically, these boxes were organized by year and contained bank statements, copies of checks from investors for new investment, confirmation letters to individual investors, and copies of cancelled checks with respect to investor distributions.
  - Moecker advised that since transactions on the P&S Spreadsheet were reported on an annual basis, each transaction recorded may in fact represent multiple transactions during the same year. Therefore, testing a single transaction on the P&S Spreadsheet often involved testing numerous component transactions and was more labor intensive than anticipated, especially since investor records were not organized by investor but only by year.

- The 85 transactions included in our sample represented new investment, distributions or both. With respect to new investment, we confirmed the amount on the P&S Spreadsheet by reviewing copies of investment check(s) from investors and corresponding deposit(s) per bank statements, further corroborated by confirmation letter(s) from P&S to individual investors.

- With respect to distributions, we confirmed the amount on the P&S Spreadsheet by reviewing copies of cancelled checks made payable to investors and corresponding disbursement per banking records.

- Our observations were as follows:

  - With respect to investor Acker's new investment of $100,000 in 2008, we were not able to locate a copy of his investment check or the confirmation letter from P&S.
  - Certain transactions represented transfers between multiple investment accounts owned by a single investor. These transactions were not supported by any documentation except transfer entries which reduced balances in the originating account and a corresponding increase in the transferee account. No exceptions were noted with respect to such transfer transactions.
  - Subject to the discussion above, no exceptions were noted in our testing of the 85 transactions comprising our sample.

- Based on our sampling methodology, we are 95% certain that the amounts reflecting new investment and distributions in the P&S Spreadsheet are accurate subject to a margin of error of 10%.

VII. Sampling to confirm investor amounts with respect to investment and distributions utilized in the calculation of the Net Investment Method for distribution of S&P partnership assets

Moecker provided Marcum with a spreadsheet titled "1993-2008 by Partner Cash-In Cash-Out - Real Balance (Investment less distributions)", hereinafter referred to as the "S&P Spreadsheet". For each investor in S&P, the S&P Spreadsheet identified new investment, distributions, ending balance and cash balance carry forward, reported on an annual basis, as illustrated below:

	Cash Balance Forward	New Investment	Distributions	Ending Balance
Eldridge - Terminated				
2003		$ 200,000.00	$ (4,000.00)	$ 196,000.00
2004	$ 196,000.00		$ (13,000.00)	$ 183,000.00
2005	$ 183,000.00		$ (209,000.00)	$ (26,000.00)
2006	$ (26,000.00)		$ (5,228.24)	$ (31,228.24)
2007	$ (31,228.24)			$ (31,228.24)
2008	$ (31,228.24)			$ (31,228.24)
Eldridge - Terminated Total		$ 200,000.00	$ (231,228.24)	$ (31,228.24)

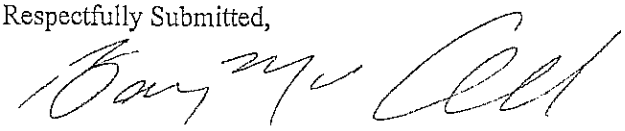
We employed the following methodology to confirm the amounts of new investment and distributions as reported on the S&P Spreadsheet:

- Step 1: Selecting an appropriate sample for testing:
  - We assigned a sequential ID to each transaction within each investor's account history. The total count of such transactions was 1,153.
  - Utilizing 95% confidence levels and 10% confidence intervals, we calculated the appropriate sample size for this population to be 89 using a statistical sampling formula.
  - Based on the above, the sample interval was determined to be 13. (1,153 / 89, rounded to the nearest integer).
  - Starting with transaction ID #1, we derived a sample of 89 transactions using an interval of 13. (i.e. ID #1, #14 etc.)
  - Additionally, we extended our sample to include transactions exceeding $1,000,000. The S&P Spreadsheet included 6 such transactions; therefore our sample size was increased to 95.
  - Our selected sample of 95 transactions represented 38% of all new investments in terms of dollars (based on total new investments of $61,974,156in the population) and 42% of all disbursements (based on total disbursements of $45,555,535 in the population).
- Step 2: For each transaction in our sample, we sought to validate the amount of new investment and/or distributions as follows:
  - Our methodology for testing the S&P Spreadsheet mirrored our testing methodology utilized for the P&S Spreadsheet, as discussed above.
  - Our observations were as follows:
    - Certain transactions represented transfers between multiple investment accounts owned by a single investor. These transactions were not supported by any documentation except transfer entries which reduced balances in the originating account and a corresponding increase in the transferee account. No exceptions were noted with respect to such transfer transactions, Subject to the discussion above, no exceptions were noted in our testing of the 95 transactions comprising our sample.
- Based on our sampling methodology, we are 95% certain that the amounts reflecting new investment and distributions in the S&P Spreadsheet are accurate subject to a margin of error of 10%.

To the extent that discovery in this matter is ongoing, additional information relative to issues addressed herein may be developed. As such, I expressly reserve the right to update, amend, supplement,

or replace this Report in the future if such additional information is provided and/or additional work is performed.

Respectfully Submitted,



Barry Mukamal, CPA/ABV/PFS/CFE/CFF
Partner
Marcum, LLP

EXHIBIT 1

S&P Associates, General Partnership
P&S Associates, General Partnership

Documents Relied Upon

1. S&P Amended and Restated Partnership Agreement, dated December 21, 1994
2. P&S Associates GP Amended and Restated Partnership Agreement, dated December 21, 1994
3. Conservator's Motion for Summary Judgment To: (i) Approve Determination Of Claims, (ii) Approve Plan of Distribution, And (iii) Establish Objection Procedure
4. Complaint filed by Margaret J. Smith, et al v. Michael D. Sullivan et al, on December 10, 2012
5. Spreadsheets prepared by Moecker based on analysis of S&P and P&S records:
   a. List of S&P and P&S checks for the payment of management fees
   b. List of checks from S&P and P&S to Bernard Madoff Investment Securities, LLC ("BMIS")
   c. List of deposits to S&P and P&S from BMIS
6. Spreadsheets prepared by Moecker that summarize information reported by S&P and P&S on partner annual statements as follows:
   a. Annual summary by general partner of each general partners capital account beginning balance, new investments, management fees, expenses, gain (loss) and ending capital balance.
   b. Cash-In Cash-Out annual total by partner and resulting net cash investment
7. S&P Tax Returns for the years ending 1993 through 2008
8. P&S Tax Returns for the years ending 1993 through 2008
9. S&P general ledgers, bank registers, financial statements and trial balances for certain periods during 1997 through 2008.
10. P&S general ledgers, bank registers, financial statements and trial balances for certain periods during 1997 through 2008.
11. S&P monthly accounting files for the period of 1993 through 2008
12. P&S monthly accounting files for the period of 1993 through 2008
13. S&P reports from BMIS titled "Portfolio Management Report" for each year end 12/31 from 1993 through 2008
14. P&S reports from BMIS titled "Portfolio Management Report" for each year end 12/31 from 1993 through 2008
15. S&P quarterly management fee calculations prepared by managing general partner
16. P&S quarterly management fee calculations prepared by managing general partner
17. S&P Annual Partners Statements for 2008
18. Conversations with Moecker associates

EXHIBIT 2

P&S Associates, General Partnership

Summary of Management Fee Calculation vs. Management Fee Paid

Notes	*1*	*2*	*3*	*3*		
Year	Realized Gain/(Loss) - Partner Annual Statements	Management Fee Based on Realized Gain Reported on Partner Annual Statement	Management Fee Paid (Powell & Sullivan)	Management Fee Paid (Kelco)	Total Management Fee Paid to Powell/Sullivan & Kelco	Difference Management Fee Paid v. Management Fees Partner Annual Statements
1993	167,660.01	33,532.00	11,232.90	-	11,232.90	(22,299.10)
1994	249,496.26	49,899.24	49,319.09	36,671.31	85,990.40	36,091.16
1995	297,200.68	59,440.14	26,439.66	27,186.22	53,625.88	(5,814.26)
1996	379,928.01	75,985.61	36,741.56	34,741.56	71,483.12	(4,502.49)
1997	502,880.67	100,576.13	52,066.89	51,644.90	103,711.79	3,135.66
1998	552,595.40	110,519.06	49,765.80	47,693.05	97,458.85	(13,060.21)
1999	674,580.88	134,916.21	66,653.12	70,433.85	137,086.97	2,170.76
2000	497,817.76	99,563.56	58,284.14	53,987.01	112,271.15	12,707.59
2001	572,736.66	114,547.33	62,000.00	40,580.47	102,580.47	(11,966.86)
2002	1,195,269.17	239,053.84	121,177.06	53,431.40	174,608.46	(64,445.38)
2003	1,312,064.93	262,309.76	217,946.75	46,411.10	264,357.85	2,048.09
2004	1,546,841.35	309,368.27	268,674.64	51,156.68	319,831.32	10,463.05
2005	1,587,361.73	317,472.36	237,576.60	47,800.24	285,376.84	(32,095.52)
2006	2,433,184.25	486,636.83	382,024.14	67,098.99	449,123.13	(37,513.70)
2007	2,060,694.19	412,138.83	470,398.97	60,952.51	531,351.48	119,212.65
2008	1,769,288.90	338,240.19	323,351.57	55,009.79	378,361.36	40,121.17
	$ 15,799,600.85	$ 3,144,199.36	$ 2,433,652.89	$ 744,799.08	$ 3,178,451.97	$ 34,252.61

Notes:

(1) Realized Gain (Loss) based on annual summary of partner activity prepared by Moecker based on P&S Annual Partner Statements.

(2) Management Fee based on annual summary of partner activity prepared by Moecker based on P&S Annual Partner

(3) Management Fee paid based on list prepared by Moecker from P&S bank statements, canceled checks, check registers, general ledgers and other books and records of the amounts paid by P&S for management fees.

EXHIBIT 3

P&S Associates, General Partnership

Investment Cash Activity

Notes:	*1*	*2*		*3*	*4*		*5*	
Year	Partner New Investments	Cash To BMIS	Difference - Partner New Investment & Cash To BMIS	Partner Distributions	Management Fees Paid	Total Partner Distributions & Management Fees Paid	Cash From BMIS	Difference - Total Partner Distributions & Management Fees Paid v. Cash From BMIS
1993	$ 1,391,480.00	$ (1,341,500.00)	$ 49,980.00	$ (83,409.57)	$ (11,232.90)	$ (94,642.47)	$ 94,642.47	$ -
1994	257,214.77	(257,214.77)	-	(165,551.28)	(85,990.40)	(251,541.68)	239,107.82	(12,433.86)
1995	295,589.53	(295,589.53)	-	(227,115.71)	(53,625.88)	(280,741.59)	282,121.40	1,379.81
1996	382,987.34	(381,000.00)	1,987.34	(185,632.13)	(71,483.12)	(257,115.25)	308,488.50	51,373.25
1997	139,560.97	(144,560.97)	(5,000.00)	(360,673.38)	(103,711.79)	(464,385.17)	413,054.46	(51,330.71)
1998	330,698.23	(330,698.23)	-	(160,291.33)	(97,458.85)	(257,750.18)	269,020.21	11,270.03
1999	62,069.00	(60,000.00)	2,069.00	(270,146.28)	(137,086.97)	(407,233.25)	399,520.39	(7,712.86)
2000	312,000.00	(382,000.00)	(70,000.00)	(522,498.67)	(112,271.15)	(634,769.82)	726,367.74	91,597.92
2001	829,150.02	(828,826.24)	323.78	(498,306.64)	(102,580.47)	(600,887.11)	623,000.00	22,112.89
2002	6,278,075.25	(6,284,075.25)	(6,000.00)	(564,632.53)	(174,608.46)	(739,240.99)	735,000.00	(4,240.99)
2003	4,337,325.89	(3,567,323.46)	770,002.43	(2,297,450.34)	(264,357.85)	(2,561,808.19)	1,875,000.00	(686,808.19)
2004	4,136,830.46	(3,000,179.19)	1,136,651.27	(3,345,198.24)	(319,831.32)	(3,665,029.56)	2,615,000.00	(1,050,029.56)
2005	3,955,493.32	(3,272,000.00)	683,493.32	(1,884,680.48)	(285,376.84)	(2,170,057.32)	1,565,000.00	(605,057.32)
2006	912,364.29	(480,000.00)	432,364.29	(2,498,903.61)	(449,123.13)	(2,948,026.74)	2,700,000.00	(248,026.74)
2007	2,197,884.70	(1,150,000.00)	1,047,884.70	(7,271,002.12)	(531,351.48)	(7,802,353.60)	6,940,000.00	(862,353.60)
2008	1,836,101.28	(1,000,000.00)	836,101.28	(1,547,785.46)	(378,361.36)	(1,926,146.82)	1,425,000.00	(501,146.82)
Total:	$ 27,654,825.05	$ (22,774,967.64)	$ 4,879,857.41	$ (21,883,277.77)	$ (3,178,451.97)	$ (25,061,729.74)	$ 21,210,322.99	$ (3,851,406.75)

Notes:

(1) Partner Contributions based on annual summary of partner activity prepared by Moecker based on P&S Annual Partner Statements.

(2) Cash to BMIS based on list prepared by Moecker of cash disbursements to BMIS from P&S bank statements, canceled checks, check registers and general ledgers.

(3) Partner Distributions based on annual summary of partner activity prepared by Moecker based on P&S Annual Partner Statements.

(4) Management Fees Paid based on list prepared by Moecker of disbursements by P&S for the payment of management fees.

(5) Cash to BMIS based on list prepared by Moecker of cash disbursements to BMIS from P&S bank statements, canceled checks, check registers and general ledgers.

EXHIBIT 4

S&P Associates, General Partnership

Summary of Management Fee Calculation vs. Management Fee Paid

Notes	*1*	*2 & 3*	*4*	
Year	Realized Gain/(Loss) - Partner Annual Statements	Management Fee Based on Realized Gain Partner Annual Statement	Management Fee Paid	Difference - Management Fee Partner Statement vs. Total Management Fee Paid
1993	118,118.92	23,491.31	5,121.71	18,369.60
1994	225,184.89	44,856.00	53,998.85	(9,142.85)
1995	353,714.30	70,742.83	63,267.10	7,475.73
1996	490,306.68	98,061.31	92,754.75	5,306.56
1997	820,204.72	162,557.27	162,471.51	85.76
1998	1,183,926.11	227,009.63	218,064.29	8,945.34
1999	1,672,037.67	324,941.65	290,885.36	34,056.29
2000	1,921,805.68	376,947.98	377,369.81	(421.83)
2001	2,549,797.86	433,730.29	394,018.29	39,712.00
2002	3,380,466.67	565,702.46	495,226.29	70,476.17
2003	3,363,023.66	557,598.76	581,818.33	(24,219.57)
2004	3,123,507.66	531,845.08	573,598.74	(41,753.66)
2005	3,209,248.03	542,994.93	646,954.54	(103,959.61)
2006	4,533,223.10	770,230.04	662,164.37	108,065.67
2007	4,222,857.00	719,229.16	791,388.76	(72,159.60)
2008	3,152,381.78	630,476.36	990,000.00	(359,523.64)
	$ 34,319,804.73	$ 6,080,415.06	$ 6,399,102.70	$ (318,687.64)

Notes:

(1) Realized Gain (Loss) based on annual summary of partner activity prepared by Moecker based on S&P Annual Partner Statements.

(2) Management Fee based on annual summary of partner activity prepared by Moecker based on S&P Annual Partner Statements.

(3) Marcum recreated the management fee by partner reported on the annual gain/losses reported on the summaries prepared by Moecker from the Partner's Annual Statements. Marcum noted that certain investors were allocated management fees in the amount of 10% instead of 20% - these investors include the following: Telcom Profit Sharing, Jolene & Philip Hocott, JS&P, Stacy Foundation and SPJ Investment.

(4) Management Fee paid based on list prepared by Moecker from S&P bank statements, canceled checks, check registers, general ledgers and other books and records of the amounts paid by S&P for management fees.

EXHIBIT 5

S&P Associates, General Partnership

Investment Cash Activity

Notes:	1	2		4	5		6	
Year	Partner New Investments	Cash To BMIS	Difference - Partner Contributions & Cash To BMIS	Partner Withdrawals	Management Fees Paid	Total Partner Withdrawals & Management Fees Paid	Cash From BMIS	Difference - Total Partner Withdrawals & Management Fees Paid v. Cash From BMIS
1993	$ 1,065,692.83	$ 1,158,627.83	$ (92,935.00)	$ (53,510.85)	$ (5,121.71)	$ (58,632.56)	$ 58,632.56	$ -
1994	775,628.14	755,628.14	20,000.00	(275,747.07)	(53,998.85)	(329,745.92)	341,460.75	11,714.83
1995	526,417.94	506,417.94	20,000.00	(181,757.01)	(63,267.10)	(245,024.11)	235,579.84	(9,444.27)
1996	859,576.92	889,399.39	(29,822.47)	(358,247.81)	(92,754.75)	(451,002.56)	462,004.83	11,002.27
1997	2,171,511.70	2,143,511.70	28,000.00	(388,046.95)	(162,471.51)	(550,518.46)	562,818.46	12,300.00
1998	3,176,477.86	2,625,702.77	550,775.09	(1,514,683.69)	(218,064.29)	(1,732,747.98)	1,157,692.90	(575,055.08)
1999	3,098,367.65	3,249,367.65	(151,000.00)	(1,106,106.13)	(290,885.36)	(1,396,991.49)	1,557,281.70	160,290.21
2000	8,412,775.60	8,397,503.54	15,272.06	(2,061,274.92)	(377,369.81)	(2,438,644.73)	2,447,453.76	8,809.03
2001	3,263,186.50	2,987,095.82	276,090.68	(3,325,116.45)	(394,018.29)	(3,719,134.74)	3,507,000.00	(212,134.74)
2002	22,959,950.83	9,713,271.43	13,246,679.40	(17,986,201.79)	(495,226.29)	(18,481,428.08)	3,505,000.00	(14,976,428.08)
2003	3,069,822.91	2,128,765.14	941,057.77	(4,073,745.54)	(581,818.33)	(4,655,563.87)	4,065,000.00	(590,563.87)
2004	4,461,291.73	2,326,334.26	2,134,957.47	(8,785,002.40)	(573,598.74)	(9,358,601.14)	7,100,000.00	(2,258,601.14)
2005	2,966,852.20	1,650,000.00	1,316,852.20	(1,953,138.90)	(646,954.54)	(2,600,093.44)	1,385,000.00	(1,215,093.44)
2006	2,622,286.71	750,000.00	1,872,286.71	(2,517,031.53)	(662,164.37)	(3,179,195.90)	1,175,000.00	(2,004,195.90)
2007	2,981,213.24	1,510,000.00	1,471,213.24	(2,954,982.39)	(791,388.76)	(3,746,371.15)	2,490,000.00	(1,256,371.15)
2008	2,068,888.36	980,000.00	1,088,888.36	(2,623,369.61)	(990,000.00)	(3,613,369.61)	1,875,000.00	(1,738,369.61)
Total:	$ 64,479,941.12	$ 41,771,625.61	$ 22,708,315.51	$ (50,157,963.04)	$ (6,399,102.70)	$ (56,557,065.74)	$ 31,924,924.80	$ (24,632,140.94)

Notes:

(1) Partner Contributions based on annual summary of partner activity prepared by Moecker based on S&P Annual Partner Statements.

(2) Cash to BMIS based on list prepared by Moecker of cash disbursements to BMIS from S&P bank statements, canceled checks, check registers and general ledgers.

(3) Partner Distributions based on annual summary of partner activity prepared by Moecker based on S&P Annual Partner Statements.

(4) Management Fees Paid based on list prepared by Moecker of disbursements by S&P for the payment of management fees.

(5) Cash to BMIS based on list prepared by Moecker of cash disbursements to BMIS from S&P bank statements, canceled checks, check registers and general ledgers.

EXHIBIT 6

S&P

2008 S1 Mgt. Fees Calculation

4/23/08

1st QUARTER	2008	
Realized P/L		587,984.27
Unrealized P/L		123,079.25
sub-total		711,063.52
		x 20%
sub-total		142,212.70
less J Hocott IRA 10%	SPJ Ltd	-7.03
less P Hocott IRA 10%	SPJ Ltd	-1,209.79
less P/J Hocott 10%	S&P	-2.23
less Festus 10%	S&P	-19,903.26
less Moss IRA 10%	SPJ	-676.65
TOTAL DUE YTD		120,413.74

Fees Due YTD	120,413.74
Less Fees pd YTD	-305,000.00
Sub-Total	-184,586.26
Less Accrued to A&B	-4,324.42
TOTAL accrued to MDS	-188,910.68

A&B fees acccrued	4,324.42
less payments to Wills	-3,000.00
net fees owed	1,324.42

Accured fees from 2007

Check #	Date	Amount
	Balance	0.00

Management fees 2008

Check #	Date	Amount
5789	1/2/0	20,000.00
5792	1/7/08	40,000.00
5795	1/10/08	15,000.00
5796	1/16/07	100,000.00
5810	2/11/08	50,000.00
5812	2/22/08	25,000.00
5819	3/3/08	10,000.00
5821	3/6/08	30,000.00
5830	3/26/08	15,000.00
TOTAL		305,000.00

thru 1st QTR earnings	120,413.74
projected	120,413.74
2007 deficit	-26,937.60

Based on 1st Quarter

Fees projected thru 1Q	120,413.74
Less mang. fees paid YTD	-305,000.00
Projected fees due	-211,523.86
ProjectedAccrued to A&B	-1,324.42
less commission 1st Qtr	-30,313.32
net income avail	-239,785.88

2006 S&P Mgt. Fees Calculation

10/17/07

	A	B	C	D	E	F
1	3rd QUARTER	2,007			Fees Due YTD	538,926.34
2	Realized P/L		3,144,774.26		Less Fees pd YTD	-560,372.76
3	Unrealized P/L		21,974.25		Sub-Total	-21,446.42
4	sub-total		3,166,748.51		Less Accrued to A&B	-22,114.92
5			x 20%		TOTAL accrued to MDS	-43,561.34
6	sub-total		633,349.70			
7	less J Hocott IRA 10%	SPJ Ltd	-1,737.67			
8	less P Hocott IRA 10%	SPJ Ltd	-5,501.46		A&B fees accrued	39,269.13
9	less P/J Hocott 10%	S&P	-9.78		less payments to Wills	-9,000.00
10	less Festus 10%	S&P	-87,174.45		net fees owed	30,269.13
11	TOTAL DUE YTD		538,926.34			
12						
13						
14	Accured fees from 2006 $62,516.00					
15	Check #	Date	Amount			
16	5573	1/23/07	$54,053.98			
17	*5588 split ck	3/1/07	8,462.02			
18						
19						
20						
21		Balance	62,516.00			
22						
23	Management fees 2007					
24	Check #	Date	Amount			
25	5569	1/3/07	20,000.00			
26	5585	2/22/07	25,000.00			
27	5589	3/1/07	25,000.00			
28	*5588-split ck	3/1/07	35,372.76		thru 3rd QTR earnings	538,926.34
29	5591	3/5/07	20,000.00		projected	538,926.34
30	5600	3/22/07	15,000.00			
31	5627	3/28/07	20,000.00			
32	5630	4/5/07	20,000.00			
33	5632	4/16/07	15,000.00			
34	5634	4/20/07	45,000.00			
35	5636	4/30/07	20,000.00			
36	5640	5/8/07	20,000.00			
37	5645	6/7/07	35,000.00			
38	5649	6/13/07	20,000.00			
39	5653	6/25/07	20,000.00			
40	5679	7/5/07	20,000.00		Based on 2nd Quarter	
41	5681	7/12/07	15,000.00		Fees projected thru 2Q	538,926.34
42	5683	7/17/07	60,000.00		Less mang. fees paid YTD	-560,372.76
43	5686	7/23/07	15,000.00		Projected fees due	-21,446.42
44	5690	8/7/07	25,000.00			
45	5698	8/27/07	25,000.00			
46	5702	9/12/07	25,000.00		ProjectedAccrued to A&B	-30,269.13
47	5706	9/24/07	20,000.00			
48					less commission 3rd Qtr	-45,324.72
49					Paid 3rd Qtr	
50					net income avail	-51,715.55
51						
52						
53	TOTAL		560,372.76			
54						
55						

&P Mgt. Fees Calculation

7/18/07

	A	B	C	D	E	F
1	2nd QUARTER	2,007			Fees Due YTD	383,672.31
2	Realized P/L		2,233,428.40		Less Fees pd YTD	-355,372.76
3	Unrealized P/L		21,841.25		Sub-Total	28,299.55
4	sub-total		2,255,269.65		Less Accrued to A&B	-22,114.92
5			x 20%		TOTAL accrued to MDS	6,184.63
6	sub-total		451,053.93			
7	less J Hocott IRA 10%	SPJ Ltd	-1,240.02			
8	less P Hocott IRA 10%	SPJ Ltd	-3,925.91		A&B fees acccrued	28,114.92
9	less P/J Hocott 10%	S&P	-6.98		less payments to Wills	-6,000.00
10	less Festus 10%	S&P	-62,208.71		net fees owed	22,114.92
11	TOTAL DUE YTD		383,672.31			
12						
13						
14	Accured fees from 2006 $62,516.00					
15	Check #	Date	Amount			
16	5573	1/23/07	$54,053.98			
17	*5588 split ck	3/1/07	8,462.02			
18						
19						
20						
21		Balance	62,516.00			
22						
23	Management fees 2007					
24	Check #	Date	Amount			
25	5569	1/3/07	20,000.00			
26	5585	2/22/07	25,000.00			
27	5589	3/1/07	25,000.00			
28	*5588-split ck	3/1/07	35,372.76		thru 2nd QTR earnings	383,672.31
29	5591	3/5/07	20,000.00		projected	383,672.31
30	5600	3/22/07	15,000.00			
31	5627	3/28/07	20,000.00			
32	5630	4/5/07	20,000.00			
33	5632	4/16/07	15,000.00			
34	5634	4/20/07	45,000.00			
35	5636	4/30/07	20,000.00			
36	5640	5/8/07	20,000.00			
37	5645	6/7/07	35,000.00			
38	5649	6/13/07	20,000.00			
39	5653	6/25/07	20,000.00			
40					Based on 2nd Quarter	
41					Fees projected thru 2Q	383,672.31
42					Less mang. fees paid YTD	-355,372.76
43					Projected fees due	28,299.55
44						
45						
46					ProjectedAccrued to A&B	-22,114.92
47						
48					less commission 2nd Qtr	-58,132.59
49					Paid 3rd Qtr	
50					net income avail	+ 6,184.63
51						
52					net after 2nd Qtr Comm.	-51,947.96
53	TOTAL		355,372.76			
54						
55						

2006 S&P Mgt. Fees Calculation

4/20/07

	A	B	C	D	E	F
1	1st QUARTER	2,007			Fees Due YTD	170,262.76
2	Realized P/L		984,404.53		Less Fees pd YTD	-160,372.76
3	Unrealized P/L		17,060.75		Sub-Total	9,890.00
4	sub-total		1,001,465.28		Less Accrued to A&B	-9,493.29
5			x 20%		TOTAL accrued to MDS	396.71
6	sub-total		200,293.06			
7	less J Hocott IRA 10%	SPJ Ltd	-552.65			
8	less P Hocott IRA 10%	SPJ Ltd	-1,749.68		A&B fees accrued	12,493.29
9	less P/J Hocott 10%	S&P	-3.11		less payments to Wills	-3,000.00
10	less Festus 10%	S&P	-27,724.86		net fees owed	9,493.29
11	TOTAL DUE YTD		170,262.76			
12						
13						
14	Accured fees from 2006 $62,516.00					
15	Check #	Date	Amount			
16	5573	1/23/07	$54,053.98			
17	*5588 split ck	3/1/07	8,462.02			
18						
19						
20						
21		Balance	62,516.00			
22						
23	Management fees 2007					
24	Check #	Date	Amount			
25	5569	1/3/07	20,000.00			
26	5585	2/22/07	25,000.00			
27	5589	3/1/07	25,000.00			
28	*5588-split ck	3/1/07	35,372.76		thru 1st QTR earnings	170,262.76
29	5591	3/5/07	20,000.00		projected	170,262.76
30	5600	3/22/07	15,000.00			
31	5627	3/28/07	20,000.00			
32						
33						
34						
35						
36						
37						
38						
39						
40					Based on 2nd Quarter	
41					Fees projected thru 4Q	170,262.76
42					Less mang. fees paid YTD	-160,372.76
43					Projected fees due	9,890.00
44						
45						
46					ProjectedAccrued to A&B	-9,493.29
47						
48					less commission 1st Qtr	-45,697.32
49						
50					net income avail	-45,300.61
51						
52						
53	TOTAL		160,372.76			
54						
55						

2006 S&P Mgt. Fees Calculation

3/1/07

	A	B	C	D	E	F
1	4th QUARTER				Fees Due YTD	770,230.11
2	Realized P/L		4,533,223.15		Less Fees pd YTD	-598,000.00
3	Unrealized P/L		0.00		Sub-Total	172,230.11
4	sub-total		4,533,223.15		Less Accrued to A&B	-43,834.78
5			x 20%		TOTAL accrued to MDS	128,395.33
6	sub-total		906,644.63			
7	less J Hocott IRA 10%	SPJ Ltd	-2,510.43			
8	less P Hocott IRA 10%	SPJ Ltd	-7,948.02		A&B fees accrued	55,834.78
9	less P/J Hocott 10%	S&P	-14.14		less payments to Wills	-12,000.00
10	less Festus 10%	S&P	-125,941.93		net fees owed	43,834.78
11	TOTAL DUE YTD		770,230.11			
12						
13						
14	Accured fees from 2005					
15	Check #	Date	Amount		Year End Adjustments to cash	
16	5390	2/23/06	29,164.37	A&B	cash owed to MDS as of 12/31	62,516.00
17					owed to A&B	-43,834.78
18					owed 4th Qtr Commisssions	-55,053.98
19					net fees owed MDS	-35,372.76
20						
21		Balance	29,164.37			
22						
23	Management fees 2006					
24	Check #	Date	Amount			
25	5374	1/9/06	25,000.00			
26	5375	1/11/06	20,000.00			
27	5385	1/31/06	25,000.00		2005 deficit	-78,815.27
28	5386	2/13/06	25,000.00		thru 4th QTR earnings	770,230.11
29	5431	4/3/06	30,000.00		projected	691,414.84
30	5436	4/25/06	40,000.00			
31	5437	5/3/06	10,000.00			
32	5442	5/30/06	20,000.00			
33	5446	6/8/06	25,000.00			
34	5477	6/29/06	20,000.00			
35	5480	7/17/06	10,000.00			
36	5482	7/25/06	45,000.00			
37	5485	8/14/06	15,000.00			
38	5488	8/24/06	20,000.00			
39	5489	9/12/06	25,000.00			
40	5493	9/21/06	15,000.00		Based on 2nd Quarter	
41	5518	10/2/06	15,000.00		Fees projected thru 4Q	691,414.84
42	5520	10/11/06	15,000.00		Less mang. fees paid YTD	-598,000.00
43	5521	10/11/06	58,000.00		Projected fees due	93,414.84
44	5522	10/18/06	50,000.00			
45	5531	11/21/06	20,000.00			
46	5537	12/5/06	20,000.00		ProjectedAccrued to A&B	-43,834.78
47	5543	12/20/06	30,000.00			
48	5567	12/28/06	20,000.00		less commission 4th Qtr	-54,053.98
49						
50					net income avail	-35,372.76
51						
52						
53	TOTAL		598,000.00			
54						
55						

2005 S&P Mgt. Fees Calculation (corrected)

1/31/06

	A	B	C	D	E	F
1	4th Quarter				Fees Due YTD	543,015.14
2	Realized P/L		3,209,349.82		Less Fees pd YTD	-592,954.54
3	Unrealized P/L		0.00		Sub-Total	-49,939.40
4	sub-total		3,209,349.82		Less Accrued to A&B	-29,164.37
5			x 20%		TOTAL accrued to MDS	-79,103.77
6	sub-total		641,869.96			
7	less J Hocott IRA 10%	SPJ Ltd	-1,819.22			
8	less P Hocott IRA 10%	SPJ Ltd	-5,759.65		A&B fees acccrued	41,164.37
9	less P/J Hocott 10%	S&P	-10.24		less payments to Wills	-12,000.00
10	less Festus 10%	S&P	-91,265.71		net fees owed	29,164.37
11	TOTAL DUE YTD		543,015.14			
12						
13						
14						
15	Check #	Date	Amount			
16						
17						
18						
19						
20						
21		Balance	0.00			
22						
23						
24	Check #	Date	Amount			
25		2/23/05	47,954.54			
26	5188	2/24/05	25,000.00			
27	5189	3/7/05	10,000.00		2004 deficit	0.00
28	5196	3/29/05	20,000.00		thru 4th QTR earnings	543,015.14
29	5226	4/5/05	10,000.00		projected	543,015.14
30	5230	4/20/05	45,000.00			
31	5253	5/11/05	15,000.00			
32	5256	5/25/05	20,000.00			
33	5258	6/2/05	20,000.00			
34	5259	6/14/05	20,000.00			
35	5261	6/27/05	25,000.00			
36	5288	7/6/05	15,000.00			
37	5292	7/14/05	35,000.00			
38	5295	7/26/05	15,000.00			
39	5296	8/1/05	15,000.00			
40	5303	9/6/05	10,000.00		Based on 3rd Quarter @ 80% *	
41	5304	9/12/05	25,000.00		Fees projected thru 4Q	543,015.14
42	5308	9/27/05	30,000.00		Less fees paid YTD	-592,954.54
43	5332	10/3/05	10,000.00		Projected fees due	-49,939.40
44	5337	10/18/05	25,000.00			
45	5338	11/2/05	20,000.00			
46	5341	11/14/05	20,000.00		ProjectedAccrued to A&B	-29,164.37
47	5343	11/22/05	20,000.00			
48	5345	12/8/05	20,000.00		less commission 4th Qtr	0.00
49	5346	12/12/05	20,000.00			
50	5373	12/28/05	20,000.00		net income avail	-79,103.77
51	5379	1/25/06	35,000.00			
52						
53	TOTAL		592,954.54			
54						
55						

S & I SSOCIATES GENERAL PARTNERS

Trial Balance

Account	T	Account Description	1 Year Ended Dec 31, 2005	1 Year Ended Dec 31, 2005	
101	A	Cash-Savings of America	91,619.49	373,468.20	
135	A	Investments-Madoff	3,474,349.34	34,482,988.00	
220	L	Accrued Expenses	78,939.40	11,948.90	
221	L	Unknown difference	31,639.58	31,639.58	Tuttas Due to yours.
286	L	Partners' Capital	(1,020,713.13)	(32,244,210.00)	
4010	R	Dividend Income	(292,609.97)	(292,609.97)	
4020	R	Short Term Capital Gain/Loss	(3,534,095.00)	(3,534,095.00)	
4030	R	OPTIONS GAIN/LOSS	617,355.15	617,355.15	
5050	E	Management Fees (S&P)	543,015.14	543,015.14	
5070	E	Office Expense	10,500.00	10,500.00	
		Total	0.00	0.00	
		Period Profit/(Loss)	2,655,834.68	2,655,834.68	

S & P

PARTNER'S CAPITAL

Beginning per tax return/prior year schedule 12/31/04			31,223,496
Capital Additions:			2,973,852
Capital Withdrawals:			(1,953,139)
Net before income			32,244,210
Income:			
Straddles:	60% long	(370,413)	
	40% short	3,287,153	
	Dividends	292,610	3,209,350
Expense	Management fee	543,015	
	Acctng		
	Other (adj accr exp)	10,500	(553,515)
Net inc			2,655,835
Expected ending balance			34,900,044
	Per Summary Sheet		34,811,931
	Difference		88,113

S & P 2005 CAP GAIN WORKSHEET

	SALE	PURCHASE	COMMM	TOTAL COST	GAIN/LOSS
TOTAL GAIN OPTIONS	342,760	186,750	830	187,580	155,180
	802,860	474,580	1,934	476,514	326,346
	511,520	192,310	2,224	194,534	316,986
	1,586,530	360,445	5,699	366,144	1,220,386
				-	-
				-	-
	3,243,670	1,214,085	10,687	1,224,772	2,018,898
LONG - 60%	1,946,202	728,451	6,412	734,863	1,211,339
SHORT - 40%	1,297,468	485,634	4,275	489,909	807,559
TOTAL LOSS OPTIONS	213,760	911,010	3,001	914,011	(700,251)
	26,505	159,510	853	160,363	(133,858)
	62,160	727,740	2,754	730,494	(668,334)
	685,450	1,816,215	3,045	1,819,260	(1,133,810)
				-	-
				-	-
	987,875	3,614,475	9,653	3,624,128	(2,636,253)
LONG - 60%	592,725	2,168,685	5,792	2,174,477	(1,581,752)
SHORT - 40%	395,150	1,445,790	3,861	1,449,651	(1,054,501)
TOTAL LONG	2,538,927	2,897,136	12,204	2,909,340	(370,413)
TOTAL SHORT	1,692,618	1,931,424	8,136	1,939,560	(246,942)
TOTAL G/L FROM OPTIONS	4,231,545	4,828,560	20,340	4,848,900	(617,355)
1099-B ST CAP GAIN	348,784,174	345,250,079			3,534,095
Total short term					3,287,153
Total long term					(370,413)
Total Cap gain from all sources					2,916,740

S& P 2005
Accrued Expenses

	Due MDS*
12/31/04 Balances	66,991.50
1/4/2005	(25,000.00)
1/25/2005	(39,000.00)
Accrued 2005	543,015.14
Paid 2005	(557,954.54)
Balance 12/31/05 Overpaid.	(11,947.90)

2003 S&P Mgt. Fees Calculation (corrected)

7/14/03

	A	B	C	D	E	F
1	2nd Quarter				Fees Due YTD	255,421.09
2	Realized P/L		1,541,554.85		Less Fees pd YTD	-240,000.00
3	Unrealized P/L		-3,069.75		Sub-Total	15,421.09
4	sub-total		1,538,485.10		Less Accrued to A&B	22,943.24
5			x 20%		TOTAL accrued to S&P	-7,522.15
6	sub-total		307,697.02			
7	less J Hocott IRA 10%	SPJ Ltd	-735.07			
8	less P Hocott IRA 10%	SPJ Ltd	-2,355.85			
9	less P/J Hocott 10%	S&P	-4.05			
10	less Festus 10%	S&P	-49,180.96			
11	TOTAL DUE YTD		255,421.09			
12						
13						
14						
15	Check #	Date	Amount			
16	Accrued from 2002		131,818.33			
17	4559	1/14	-50,000.00			
18	4575	1/22	-34,005.81			
19	4598	2/25	-30,000.00			
20	4599	2/26	-17,812.52			
21		Balance	-0.00			
22						
23						
24	Check #	Date	Amount			
25	4587	2/10	75,000.00			
26	4651	4/15	30,000.00			
27	4662	5/5	10,000.00			
28	4669	5/22	10,000.00			
29	4671	5/27	10,000.00			
30	4673	6/10	5,000.00			
31	4676	6/19	15,000.00			
32	4709	6/26	25,000.00			
33	4712	6/30	25,000.00			
34	4716	7/14	35,000.00			
35						
36						
37						
38						
39						
40					Based on 2nd Quarter @ 90%	
41					Fees projected thru 1Q	344,818.47
42					Less fees paid YTD	-240,000.00
43					Projected fees due	104,818.47
44						
45						
46					Accrued to A&B	22,943.24
47						
48						
49						
50						
51						
52						
53	TOTAL		240,000.00			
54						
55						

S&P Mgt. Fees Calculation 2002

1/22/03

	A	B	C	D	E	F
1	4th Quarter				Net fees due YTD	604,303.51
2	Realized P/L		3,335,920.89		Less Comm. pd. 1st qtr.	-18,057.57
3	Unrealized P/L		0.00		2nd qtr.	-54,072.21
4	sub-total		3,335,920.89		3rd qtr.	-54,767.71
5			x 20%		4th qtr.	-18,400.21
6	sub-total		667,184.18		Net fees due YTD	459,005.81
7	less J Hocott IRA 10%		-1,691.46		Less Fees paid YTD	-425,000.00
8	less P Hocott IRA 10%		-5,804.09		TOTAL NET FEES DUE	34,005.81
9	less P/J Hocott 10%		-9.37			
10	less A&B fees (1/2??)		-55,375.75			
11	TOTAL DUE YTD		604,303.51			
12						
13						
14	Check #	Date	Amount		Based on 3rd Quarter	
15	4214	1/1	30,000.00		Net fees projected thru 4Q	520,206.58
16	4214	1/3	8,000.00		Less fees paid YTD	-425,000.00
17	4226	1/14	8,000.00		Projected net fees due	95,206.58
18	4237	1/23	22,000.00			
19	4261	3/15	20,000.00			
20	4330	4/16	25,000.00			
21	4334	4/23	15,000.00			
22	4348	5/16	10,000.00			
23	4352	5/30	10,000.00			
24	4361	6/17	10,000.00			
25	4365	6/25	16,000.00			
26	4407	6/27	10,000.00			
27	4412	7/16	24,000.00			
28	4417	7/24	10,000.00			
29	4420	7/29	10,000.00			
30	4427	8/26	10,000.00			
31	4438	9/19	15,000.00			
32	4476	9/26	12,000.00			
33	4478	10/2	10,000.00			
34	4483	10/17	40,000.00			
35	4487	10/21	15,000.00			
36	4492	10/30	15,000.00			
37	4496	11/7	10,000.00			
38	4506	11/20	10,000.00			
39	4508	12/2	15,000.00			
40	4517	12/23	25,000.00			
41	4554	12/30	20,000.00			
42						
43						
44					Accrued to A&B from 2000 & 2001	6,761.35
45						
46						
47						
48						
49						
50						
51	TOTAL		425,000.00			
52						
53	NOTE: $70,226.29 DUE for balance of 2001 fees.					
54	(paid 1/28/02 #4241)					
55						

S&P Mgt. Fees Calculation 2003

1/22/03

	A	B	C	D	E	F
1	1st Quarter				Net fees due YTD	0.00
2	Realized P/L				Less Comm. pd. 1st qtr.	
3	Unrealized P/L		0.00		2nd qtr.	
4	sub-total		0.00		3rd qtr.	
5			x 20%		4th qtr.	
6	sub-total		0.00		Net fees due YTD	0.00
7	less J Hocott IRA 10%				Less Fees paid YTD	-50,000.00
8	less P Hocott IRA 10%				TOTAL NET FEES DUE	-50,000.00
9	less P/J Hocott 10%					
10	less A&B fees (1/2)					
11	TOTAL DUE YTD		0.00			
12						
13						
14	Check #	Date	Amount		Based on 4th Quarter	
15	4559	1/14	50,000.00		Net fees projected thru 1Q	127,501.61
16					Less fees paid YTD	-50,000.00
17					Projected net fees due	77,501.61
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29					2002 Fees Due SIT/S&P	
30					Accrued to A&B from 2000 & 2001	6,761.35
31					Due from 2002	48,614.40
32					TOTAL accrued A&B 2000-2002	55,375.75
33						
34						
35					2002 fees allocated for A&B	55,375.75
36					2002 Fees due S&P	34,005.81
37					TOTAL 2002 Fees Due S&P	89,381.56
38					less ck#4575 dtd 1/22/03	-34,005.81
39					sub-total 2002 fees due S&P	55,375.75
40					(reserved for S&B)	
41						
42						
43						
44						
45						
46						
47						
48						
49						
50						
51	TOTAL		50,000.00			
52						
53						
54						
55						

2002

S&P Mgt. Fees Calculatic.. 2001

1/22/02

4th Quarter

Realized P/L	2,549,777.55
Unrealized P/L	0.00
sub-total	2,549,777.55
	x 20%
sub-total	509,955.51
less J Hocott IRA 10%	-1,673.71
less P Hocott IRA 10%	-5,973.15
less P/J Hocott 10%	-9.25
less Festus Stacy 10%	-68,573.11
TOTAL DUE YTD	433,726.29

Gross fees due YTD	433,726.29
Less Comm. pd. 1st qtr.	-32,758.46
2nd qtr.	-26,296.93
3rd qtr.	-26,769.92
4th qtr.	-35,729.56
Accrued to A&B Grand Total	-4,270.14
Net fees due YTD	307,901.28
Less Net Fees paid YTD	-307,901.28
TOTAL NET FEES DUE	0.00

Gross Fees paid YTD	433,726.29
less comm. paid YTD & accrued TOTAL	-125,825.01
Net fees paid YTD	307,901.28

Check #	Date	Amount
3843	1/1	25,000.00
3847	1/10	5,000.00
3852	1/19	15,000.00
3864	2/23	15,000.00
3924	4/1	20,000.00
3938	4/13	40,000.00
3945	4/19	5,000.00
3947	4/20	10,000.00
3956	5/10	10,000.00
3965	5/17	8,000.00
3974	5/30	10,000.00
3976	6/5	10,000.00
4033	6/21	7,000.00
4039	6/28	6,500.00
4043	7/13	30,000.00
4048	7/23	10,000.00
4053	8/6	10,000.00
4056	8/20	15,000.00
4064	8/27	5,000.00
4072	9/10	10,000.00
4122	9/26	15,000.00
4125	10/1	5,000.00
4130	10/10	10,000.00
4132	10/14	25,000.00
4134	10/22	6,000.00
4138	10/30	6,000.00
4139	11/5	6,000.00
4146	11/9	5,000.00
4150	11/16	6,000.00
4157	11/27	8,000.00
4161	12/4	5,000.00
????	Jan '02	70,226.29
sub-total		433,726.29

Net % to S&P of total P/L	0.12

Based on 0109 @ 90%

Net fees projected thru 0112	
Less net fees paid & accrued YTD	
Projected net fees due	0.00

Gross fees due YTD	433,726.29
Gross Fees paid YTD	433,726.29
Gross Fees payable S&P	0.00

NOTE: $24,018.29 pd. 1/19/01 for 0012 qtr.

(Balance of 2000 Mgt. fees)

S&P Associates G/P 2001

Port Royale Financial Center
6550 N. Federal Hwy.
Suite 210
Ft. Lauderdale, FL 33308-1404

Account Inquiry

1/1/01 To 12/31/01

1/22/02
4:47:39 PM

Account	ID#	Src	Date	Memo	Debit	Credit	Job
6-1400 Mgt. Fees (S&P)							
	3843	CD	1/1/01	Sullivan & Powell	25,000.00		
	3847	CD	1/10/01	Sullivan & Powell	5,000.00		
	3851	CD	1/19/01	Sullivan & Powell	24,018.29		
	3852	CD	1/19/01	Sullivan & Powell	15,000.00		
	3864	CD	2/23/01	Sullivan & Powell	15,000.00		
	3924	CD	4/1/01	Sullivan & Powell	20,000.00		
	3938	CD	4/13/01	Sullivan & Powell	40,000.00		
	3945	CD	4/19/01	Sullivan & Powell	5,000.00		
	3947	CD	4/20/01	Sullivan & Powell	10,000.00		
	3956	CD	5/10/01	Sullivan & Powell	10,000.00		
	3965	CD	5/17/01	Sullivan & Powell	8,000.00		
	3974	CD	5/30/01	Sullivan & Powell	10,000.00		
	3976	CD	6/5/01	Sullivan & Powell	10,000.00		
	4033	CD	6/21/01	Sullivan & Powell	7,000.00		
	4039	CD	6/28/01	Sullivan & Powell	6,500.00		
	4043	CD	7/13/01	Sullivan & Powell	30,000.00		
	4048	CD	7/23/01	Sullivan & Powell	10,000.00		
	4053	CD	8/6/01	Sullivan & Powell	10,000.00		
	4056	CD	8/20/01	Sullivan & Powell	15,000.00		
	4064	CD	8/27/01	Sullivan & Powell	5,000.00		
	4072	CD	9/10/01	Sullivan & Powell	10,000.00		
	4122	CD	9/26/01	Sullivan & Powell	15,000.00		
	4125	CD	10/1/01	Sullivan & Powell	5,000.00		
	4130	CD	10/10/01	Sullivan & Powell	10,000.00		
	4132	CD	10/14/01	Sullivan & Powell	25,000.00		
	4134	CD	10/22/01	Sullivan & Powell	6,000.00		
	4138	CD	10/30/01	Sullivan & Powell	6,000.00		
	4139	CD	11/5/01	Sullivan & Powell	6,000.00		
	4146	CD	11/9/01	Sullivan & Powell	5,000.00		
	4150	CD	11/16/01	Sullivan & Powell	6,000.00		
	4157	CD	11/27/01	Sullivan & Powell	8,000.00		
	4161	CD	12/4/01	Sullivan & Powell	5,000.00		
					387,518.29	0.00	

(24,018.29) ← year 2000

363,500 ≈

S&P Mgt. Fees Calculatic 2000

1/19/01

3rd Quarter		
Realized P/L		1,921,805.71
Unrealized P/L		0.00
sub-total		1,921,805.71
		Custodian...
sub-total		384,361.14
less J Hocott IRA 10%		-1,632.62
less P Hocott IRA 10%		-5,732.87
less P/J Hocott 10%		-47.64
less Festus Stacy 10%		-27,901.47
less Judd 2/3		-1,028.25
TOTAL DUE YTD		348,018.29

Check #	Date	Amount
3490	2/28	10,000.00
3496	3/13	16,000.00
3499	3/21	5,000.00
3502	3/28	15,000.00
3569	4/19	15,000.00
3571	4/21	35,000.00
3575	5/2	8,000.00
3585	5/15	8,000.00
3595	5/30	10,000.00
3600	6/5	7,000.00
3604	6/13	8,000.00
3660	6/30	20,000.00
3670	7/18	30,000.00
3675	7/26	10,000.00
3678	8/3	10,000.00
3685	8/17	8,000.00
3694	8/28	20,000.00
3759	10/4	15,000.00
3766	10/17	25,000.00
3768	10/30	20,000.00
3779	11/13	15,000.00
3782	11/29	10,000.00
3793	12/19	4,000.00
3851	1/19/01	24,018.29
sub-total		348,018.29

Gross fees due YTD	348,018.29
Less Comm. pd. 1st qtr.	-29,819.76
2nd qtr.	-18,330.23
3rd qtr.	-18,961.81
4th qtr.	-30,341.39
Net fees due YTD	250,565.10
Less Net Fees paid YTD	-250,565.10
TOTAL NET FEES DUE	0.00
Gross Fees paid YTD	348,018.29
less comm. paid YTD	-97,453.19
Net fees paid YTD	250,565.10
Net % to S&P	0.72
Based on 0009:	
Net fees projected thru 0012	300,678.12
Less net fees paid YTD	-250,565.10
Projected net fees due	50,113.02
Gross fees due YTD	348,018.29
Gross Fees paid YTD	348,018.29
Gross Fees payable S&P	0.00

EXHIBIT 7

AMENDED AND RESTATED PARTNERSHIP AGREEMENT

This AMENDED & RESTATED Partnership Agreement (the "Agreement") is MADE AND ENTERED INTO THIS 21ST DAY OF DECEMBER, 1994 by and among the party or parties whose names and signatures appear personally or by power of attorney at the end of this Agreement and whose addresses are listed on Exhibit "A" annexed hereto (information regarding other Partners will be furnished to a Partner upon written request) (COLLECTIVELY, THE "PARTNERS"). THE TERM "PARTNER" SHALL ALSO APPLY TO ANY INDIVIDUAL WHO, SUBSEQUENT TO THE DATE OF THIS AGREEMENT, JOINS IN THIS AGREEMENT OR ANY ADDENDUM TO THIS AGREEMENT.

WHEREAS, THE PARTNERS, ENTERED A PARTNERSHIP AGREEMENT DATED DECEMBER 11, 1992, ("PARTNERSHIP AGREEMENT"); AND

WHEREAS, PURSUANT TO ARTICLE THIRTEEN OF THE PARTNERSHIP AGREEMENT, THE PARTNERS RESERVED THE RIGHT TO AMEND OR MODIFY IN WRITING AT ANY TIME THE PARTNERSHIP AGREEMENT; AND

WHEREAS, THE PARTNERS BELIEVE IT TO BE IN THEIR BEST INTEREST AND ALSO THE BEST INTEREST OF THE PARTNERSHIP TO AMEND, REVISE AND RESTATE THE TERMS AND CONDITIONS OF THE PARTNERSHIP AGREEMENT.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES MADE HEREIN AND IN CONSIDERATION OF THE BENEFIT TO BE RECEIVED FROM THE MUTUAL OBSERVANCE OF THE COVENANTS MADE HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTNERS AGREE AS FOLLOWS:

Background

The Partners desire to form a general partnership for the purpose of engaging in the business of investing. For and in consideration of the mutual covenants contained herein, the Partners hereby form, create and agree to associate themselves in a general partnership in accordance with the Florida Uniform Partnership Law, on the terms and subject to the conditions set forth below:

ARTICLE ONE

ORGANIZATION

Name

1.01 The activities and business of the partnership shall be conducted under the name S & P Associates, General Partnership (the "Partnership") in Florida, and under any variations of this name that may be necessary to comply with the laws of other states within which the Partnership may do business or make investments.

Organization

1.02 The Partnership shall be organized as a general partnership under the Uniform Partnership Law of the state of Florida. Following the execution of this Agreement, the partners shall execute or cause to be executed and filed any documents or instruments with such authorities that may be necessary or appropriate from time to time to comply with all requirements for the qualification of the Partnership as a general partnership in any jurisdiction.

Place of Business and Mailing Address

1.03 The principle place of business and mailing address of the Partnership shall be located at 6550 North Federal Highway, Suite 210, Ft. Lauderdale, FL 33308, or any such place or places of business that may be designated by the Managing General Partners.

ARTICLE TWO

PURPOSE OF THE PARTNERSHIP

By Consent of Partners

2.01 The Partnership shall not engage in any business except as provided in this Agreement without prior written consent of all Partners.

2.02 The general purpose of the Partnership is to invest, in cash or on margin, in all types of marketplace securities, including, without limitation, the purchase and sale of and dealing in stocks, bonds, notes and evidences in indebtedness of any person, firm, enterprise, corporation or association, whether domestic or foreign; bills of exchange and commercial paper; any and all other securities of any kind, nature of description; and gold, silver, grain, cotton or other commodities and provisions usually dealt in on exchanges, on the over-the-counter market or otherwise. In general, without limitation of the above securities, to conduct any commodities, future contracts, precious mental, options and other investment vehicles of whatever nature. The Partnership shall have the right to allow OR TERMINATE a specific broker, or brokers, as selected by fifty-one (51) Percent in interest, not in numbers, of the Partners, and allow such broker, or brokers, AS SELECTED BY FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS, to have discretionary investment powers with the investment funds of the Partnership.

ARTICLE THREE

DURATION

Date of Organization

3.01 The Partnership shall begin on January 1, 1993 and shall continue until dissolved as specifically provided in this Agreement or by applicable law.

ARTICLE FOUR

CAPITAL CONTRIBUTIONS

Initial Contributions

4.01 The Partners acknowledge that each Partner shall be obligated to contribute and will, on demand, contribute to the Partnership the amount of cash set out opposite the name of each Partner on Exhibit A as an initial capital contribution.

Additional Contributions

4.02 No Partner shall be required to contribute any capital or lend any funds to the Partnership except as provided in Section 4.01 or as may otherwise be agreed on by all of the Partners.

Contributions Secured

4.03 Each Partner grants to the Managing General Partners a lien on his or her interest in the Partnership to secure payment of all contributions and the performance of all obligations required or permitted under this agreement.

No Priority

4.04 No Partner shall have any priority over any other Partner as to allocations of profits, losses, dividends, distributions or returns of capital contributions, and no Partner shall be entitled to withdraw any part of their capital contribution without at least THIRTY (30) DAYS written notice.

Capital Accounts

4.05 An individual capital account shall be maintained for each Partner. The capital account shall consist of that Partner's initial capital contribution:

a. increased by his or her additional contributions to capital and by his or her share of Partnership profits transferred to capital; and

b. decreased by his or her share of partnership losses and by distributions to him or her in reduction of his or her capital.

No Interest on Capital

No Partner shall be entitled to interest on his or her contribution to capital of the Partnership.

ARTICLE FIVE

ALLOCATIONS AND DISTRIBUTIONS

Allocation of Profits and Losses

5.01 The capital gains, capital losses, dividends, interest, margin interest expense, and all other profits and losses attributable to the Partnership shall be allocated among the Partners IN THE RATIO EACH PARTNER'S CAPITAL ACCOUNT BEARS TO THE AGGREGATE TOTAL CAPITAL CONTRIBUTION OF ALL THE PARTNERS ON AN ACTUAL DAILY BASIS COMMENCING ON THE DATE OF EACH PARTNER'S ADMISSION INTO THE PARTNERSHIP AS FOLLOWS: TWENTY PERCENT (20%) TO THE MANAGING GENERAL PARTNERS AND EIGHTY PERCENT (80%) TO THE PARTNERS.

DISTRIBUTIONS

5.02 Distributions of PROFITS shall be made at least once per year, and may be made at such other time as the Managing General Partners shall in their sole discretion determine, and upon the Partnership's termination. Partners shall also have the election to receive such distributions within ten (10) days after the end of each calender quarter, or to have such distributions remain in the Partnership, thus increasing the Partner's capital contribution. CASH FLOW SHALL BE DISTRIBUTED AMONG ALL THE PARTNERS, IN THE RATIO EACH PARTNER'S CAPITAL ACCOUNT BEARS TO THE AGGREGATE TOTAL CAPITAL CONTRIBUTION OF ALL THE PARTNERS ON AN ACTUAL DAILY BASIS COMMENCING ON THE DATE OF EACH PARTNER'S ADMISSION INTO THE PARTNERSHIP, FOR ANY FISCAL YEAR AS FOLLOWS: TWENTY PERCENT (20%) TO THE MANAGING GENERAL PARTNERS AND EIGHTY PERCENT (80%) TO THE PARTNERS.

ARTICLE SIX

OWNERSHIP OF PARTNERSHIP PROPERTY

Title to Partnership Property

6.01 All property acquired by the Partnership shall be owned by and in the name of the Partnership, that ownership being subject to the other terms and conditions of this Agreement. Each Partner expressly waives the right to require partition of any Partnership property or any part of it. The Partners shall execute any documents that may be necessary to reflect the Partnership's ownership of its assets and shall record the same in the public offices that may be necessary or desirable in the discretion of the Managing General Partner.

ARTICLE SEVEN

FISCAL MATTERS

Title to Partnership Property
Accounting

7.01 A complete and accurate inventory OF THE PARTNERSHIP shall be taken BY THE MANAGING GENERAL PARTNERS, and a complete and accurate statement of the condition of the Partnership shall be made and an accounting among the Partners shall be MADE ANNUALLY per fiscal year BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTING FIRM. NOT LATER THAN NINETY (90) DAYS AFTER THE END OF THE PARTNERSHIP'S FISCAL YEAR THE PARTNERSHIP'S INDEPENDENT PUBLIC ACCOUNTING FIRM SHALL TRANSMIT TO THE PARTNERS A COPY OF THE CURRENT PARTNERSHIP TAX RETURN TOGETHER WITH FORM K-1. The profits and losses of the preceding year, to the extent such shall exist and shall not have been divided and paid or distributed previously, shall then be divided and paid or distributed, or otherwise retained by the agreement of the Partners, Distributions SHALL BE made at such time(s) as the General Managing Partners shall in their discretion deem necessary and appropriate.

Fiscal Year

7.02 The fiscal year of the Partnership for both accounting and Federal income tax purposes shall begin on January 1 of each year.

Books and Records

7.03 PROPER AND COMPLETE BOOKS OF ACCOUNT OF THE BUSINESS OF the Partnership shall be KEPT BY THE MANAGING GENERAL PARTNERS AND maintained at the offices of the Partnership. Proper books and records shall be kept with reference to all Partnership transactions. Each Partner or his or her authorized representative shall have access to AND THE RIGHT TO AUDIT AND / OR REVIEW the Partnership books and records at all reasonable times during business hours.

Method of Accounting

7.04 The books of account of the Partnership shall be kept on a cash basis.

Expenses

7.05 All rents, payments for office supplies, premiums for insurance, professional fees and disbursements, and other expenses incidental to the Partnership business shall be paid out of the Partnership profits or capital and shall, for the purpose of this Agreement, be considered ordinary and necessary expenses of the Partnership deductible before determination of net profits.

ARTICLE EIGHT
MANAGEMENT AND AUTHORITY

Management and Control

8.01 Except as expressly provided in the Agreement, the management and control of the day-to-day operations of the Partnership and the maintenance of the Partnership property shall rest exclusively with the Managing General Partners, Michael D. Sullivan and Greg Powell. Except as provided in Article FIVE Section 5.01, the Managing General Partners shall receive no salary or other compensation for their services as such. The Managing General Partners shall devote as much time as they deem necessary or advisable to the conduct and supervision of the Partnership's business. The Managing General Partners may engage in any activity for personal profit or advantage without the consent of the Partners.

Powers of Managing General Partners

8.02 The Managing General Partners are authorized and empowered to carry out and implement any and all purposes of the Partnership. In that connection, the powers of the General Managing Partners shall include but shall not be limited to the following:

a. to engage, fire or terminate personnel, attorneys, accountants or other persons that may be deemed necessary or advisable

b. to open, maintain and close bank or investment accounts and draw checks, drafts or other orders for the payment of money

c. to borrow money; to make, issue, accept, endorse and execute promissory notes, drafts, loan agreements and other instruments and evidences of indebtedness on behalf of the Partnership; and to secure the payment of indebtedness by mortgage, hypothecation, pledge or other assignment or arrangement of security interests in all or any part of the property then owned or subsequently acquired by the Partnership.

d. to take any actions and to incur any expense on behalf of the Partnership that may be necessary or advisable in connection with the conduct of the Partnership's affairs.

e. to enter into, make and perform any contracts, agreements and other undertakings that may be deemed necessary or advisable for the conducting of the Partnership' s affairs

f. to make such elections under the tax laws of the United Stated and Florida regarding the treatment of items of Partnership income, gain, loss, deduction or credit and all other matters as they deem appropriate or necessary.

g. TO ADMIT PARTNERS INTO THE PARTNERSHIP NOT EXCEEDING ONE HUNDRED AND FIFTY (150) PARTNERS UNLESS THE PARTNERS HAVE APPROVED PURSUANT TO SECTION 14.04 THE ADMISSION INTO THE PARTNERSHIP OF MORE THAN ON HUNDRED AND FIFTY (150) PARTNERS.

Restrictions on Partners

8.03 Without the prior consent of the Managing General Partners or all of the other partners, no other Partner may act on behalf of the Partnership to: (i) borrow or lend money; (ii) make, deliver or accept any commercial paper; (iii) execute any mortgage, security agreement, bond or lease; or (iv) purchase or sell any property for or of the Partnership.

Meetings of the Partners

8.04 The Partners shall hold regular quarterly meetings on the 3rd Tuesday during the months of January, April, July, and October at 1:00 p.m. at the principle office of the Partnership. In the event such Tuesday falls on a declared Holiday, such meeting will take place the next following business day. In addition fifty-one percent (51%) in interest, not in numbers, of the Partners may call a special meeting to be held at any time after the giving of twenty (20) days' notice to all of the Partners. Any Partner may waive notice of or attendance at any meeting of the Partners, may attend by telephone or any other electronic communication device, or may execute a signed written consent to representation by another Partner or representative. At the meeting, Partners WILL REVIEW THE ENGAGEMENT WITH THE PARTNERSHIP OF ANY BROKER OR BROKERS AND shall transact any business that may properly be brought before the meeting. the Partners shall designate someone to keep regular minutes of all the proceedings. the minutes shall be placed in the minute book of the Partnership.

Action without Meeting

8.05 Any action required by statute or by this Agreement to be taken at a meeting of the Partners or any action that may be taken at a meeting of the Partners may be taken without a meeting if a consent in writing, setting forth the action taken or to be taken, shall be signed by all of the Partners entitled to vote with respect to the subject matter of the consent. That consent shall have the same force and effect as a unanimous vote of the Partners. Any signed consent, or a signed copy thereof, shall be placed in the minute book of the Partnership.

Death, Removal or Appointment of Managing General Partner

8.06 ANY MANAGING GENERAL PARTNER MAY BE REMOVED WITH OR WITHOUT CAUSE AS DETERMINED BY THE AFFIRMATIVE VOTE OF FIFTY-ONE PERCENT (51%) in interest, not in numbers, of Partners. In the event of any such removal, the removed Managing General Partner shall not be relieved of his obligations OR LIABILITIES to the Partnership and to the other Partners resulting from the events, actions, or transactions occurring during the period in which such remove Managing General Partner served as a Managing General Partner. From and after the effective date of such removal, however, the removed Managing General Partner may be deemed to be a Partner, shall forfeit all rights and obligations of a Managing General Partner, and thereafter shall have the same rights and obligations as a Partner. A MANAGING GENERAL PARTNER SHALL BE APPOINTED BY THE AFFIRMATIVE VOTE OF FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS. THE PARTNERSHIP SHALL HAVE AS MANY MANAGING GENERAL PARTNERS AS THE PARTNERS BY THE AFFIRMATIVE VOTE OF FIFTY-ONE (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS SHALL DETERMINE TO BE IN THE BEST INTEREST OF THE PARTNERSHIP. ON THE DEATH OR INCOMPETENCY OF A MANAGING GENERAL PARTNER, ANY CO-MANAGING GENERAL PARTNER SHALL CONTINUE AS THE MANAGING GENERAL PARTNER OR, IF THERE SHALL BE NO CO-MANAGING GENERAL PARTNER, THEN THE PARTNERS SHALL, WITHIN TEN (10) DAYS OF SUCH DEATH OR DECLARATION OF INCOMPETENCY, APPOINT A NEW MANAGING GENERAL PARTNER IN ACCORDANCE WITH THE TERMS PROVIDED IN THIS AGREEMENT.

ARTICLE NINE

TRANSFERS AND ASSIGNMENTS

No Transfer of Assignment Without Consent

9.01 No Partner's interest may be transferred or assigned without the express written consent of fifty-one percent (51%) in interest, not in number, of the Partners provided, however, that a Partner's interest may be transferred or assigned to a party who at the time of the transfer or assignment is a Partner. Any transferee or assignee to whom an interest in the Partnership has been transferred or assigned and who is not at the time of the transfer or assignment to a party to this Agreement shall be entitled to receive, in accordance with the terms of the transfer or assignment, the net profits to which the assigning Partner would otherwise be entitled. Except as provided in the preceding sentence, the transferee or assignee shall not be a Partner and shall not have any of the rights of the Partner, unless and until the transferee or assignee shall have (i) received the approval of the Partners as provided IN THIS AGREEMENT, and (ii) accepted and assumed, in writing, the terms and conditions of this Agreement.

Death or Incompetency of Partner

9.02 Neither the death or incompetency of a Partner shall cause the dissolution of the Partnership. On the death or incompetency of any Partner, the Partnership business shall be continued and the surviving Partners shall have the option to allow the assets of the deceased or incompetent Partner to continue in the deceased or incompetent Partner's HEIR'S OR SUCCESSOR'S place, or to terminate the deceased or incompetent partner's interest and return to the estate his or her interest in the partnership.

B. If the surviving Partners elect to allow the estate of a deceased Partner to continue in the deceased Partner's place, the estate shall be bound by the terms and provisions of this Agreement. However, in the event that the interest of a deceased Partners does not pass in trust or passes to more than one heir or devices or, on termination of a trust, is distributed to more than one beneficiary, then the Partnership shall have the right to terminate immediately the deceased Partner's Interest in the Partnership. In that event, the Partnership shall return to the deceased Partner's heirs, devises or beneficiaries, in cash, the value of the Partnership interest as calculated in ARTICLE ELEVEN as of the date of termination.

Withdrawals of Partners

9.03 Any Partner may withdraw from the Partnership at any given time; provided, however, that the withdrawing Partner shall give at least thirty (30) days written notice. THE PARTNERSHIP SHALL, WITHIN THIRTY (30) DAYS OF RECEIVING NOTICE OF THE PARTNER'S WITHDRAWAL,

PAY the withdrawing Partner, in cash, the value of his or her Partnership interest as calculated in ARTICLE ELEVEN as of the date of withdrawal. the withdrawing Partner or his or her legal representative shall execute such documents and take further actions as shall reasonable be required to effectuate the termination of the withdrawing Partner's interest in the Partnership.

ARTICLE TEN

TERMINATION OF PARTNERS

Events of Default

10.01 The following events shall be deemed to be defaults by a Partner:

a. the failure to make when due any contribution or advance required to be made under the terms of this agreement and continuing that failure for a period of ten (10) days after written notice of the failure from the Managing general Partners.

b. the violation of any of the other provisions of this Agreement and failure to remedy or cure that violation within (10) days after written notice of the failure from the Managing General Partners.

c. THE INSTITUTION OF PROCEEDINGS UNDER ANY LAW OF THE UNITED STATES OR OF ANY STATE FOR THE RELIEF OF DEBTORS, FILING A VOLUNTARY PETITION IN BANKRUPTCY OR FOR AN ARRANGEMENT OR REORGANIZATION OR ADJUDICATION TO BE INSOLVENT OR A BANKRUPT, MAKING AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

d. SUFFERING TO BE SEIZED BY A RECEIVER, TRUSTEE, OR OTHER OFFER APPOINTED BY ANY COURT OR ANY SHERIFF, CONSTABLE, MARSHALL OR OTHER SIMILAR GOVERNMENT OFFICER, UNDER LEGAL AUTHORITY, ANY SUBSTANTIAL PORTION OF ITS ASSETS OR ALL OR ANY PART OF ANY INTEREST THE PARTNER MAY HAVE IN THIS PARTNERSHIP AND SUCH IS HELD IN SUCH OFFICER'S POSSESSION FOR A PERIOD OF THIRTY (30) DAYS OR LONGER.

e. the appointment of a receiver for all or substantially all of the Partner's assets and the failure to have the receiver discharged within ninety (90) days after the appointment.

f. the bringing of any legal action against the Partner by his or her creditor(s), resulting in litigation that, in the opinion if the General Managing Partners or fifty-one (51) percent in interest, not in numbers, of the other Partners, creates a real and substantial risk of involvement of the Partnership property.

g. THE COMMITTING OR PARTICIPATION IN AN INJURIOUS ACT OF FRAUD, GROSS NEGLECT, MISREPRESENTATION, EMBEZZLEMENT OR DISHONESTY AGAINST THE PARTNERSHIP, OR COMMITTING OR PARTICIPATING IN ANY OTHER INJURIOUS ACT OR OMISSION WANTONLY, WILLFULLY, RECKLESSLY, OR IN A MANNER WHICH WAS GROSSLY NEGLIGENT AGAINST THE PARTNERSHIP, MONETARILY OR OTHERWISE, OR BEING CONVICTED OF ANY ACT OR ACTS CONSTITUTING A FELONY OR MISDEMEANOR, OTHER THAN TRAFFIC VIOLATIONS, UNDER THE LAWS OF THE UNITED STATES OR ANY STATE THEREOF.

10.02 On the occurrence of an event of a default by a Partner, fifty-one (51) percent in interest, not in numbers, or more of the other Partners shall have the right to elect to terminate the interest of the defaulting Partner without affecting a termination of the Partnership. This election may be made at any time within one (1) year from the date of default, on giving the defaulting Partner five (5) days written

notice of the election, provided the default is continuing on the date the notice is given. The defaulting Partner's interest shall be returned to him or her in accordance with the provisions of ARTICLE ELEVEN OF THIS AGREEMENT.

The defaulting Partner's Partnership interest shall be reduced by the aggregate amount of any outstanding debts of the defaulting Partner to the Partnership and also by all damages caused to the Partnership by the default of the defaulting Partner.

On return to the defaulting Partner of his or her interest in the Partnership, the defaulting Partner shall have no further interest in the Partnership or its business or assets and the defaulting Partner shall execute and deliver as required any assignments or other instruments that may be necessary to evidence and fully AND effectively transfer the interest of the defaulting Partner to the non-defaulting Partners. If the appropriate instruments are not delivered, after notice by the Managing General Partner that the interest is available to the defaulting Partner, the Managing General Partner may tender delivery of the interest to the defaulting Partner and execute, as the defaulting Partner's POWER OF ATTORNEY, any instruments AS ABOVE REFERENCED. All parties agree that the General Managing Partners shall not have any individual liability for any actions taken in connection HERETO.

No assignment, transfer OR TERMINATION of a defaulting Partner's INTEREST as provided in this Agreement shall relieve the defaulting Partner from any personal liability for outstanding indebtedness, liabilities, liens or obligations relating to the Partnership that may exist on the date of the assignment, transfer OR TERMINATION. The default of any Partner under this Agreement shall not relieve any other Partner from his, her or its interest in the Partnership.

Foreclosure for Default

10.03 If a Partner is in default under the terms of this Agreement, the lien provided for in Article four, Section 4.03 may be foreclosed by the Managing General Partner at the option of fifty-one (51) percent IN INTEREST, NOT IN NUMBERS, of the non-defaulting Partners.

Transfer by Attorney-in-Fact

10.04 Each Partner makes, constitutes, and appoints the Managing General Partners as the Partner's attorney-in-fact in the event that the Partner becomes a defaulting Partner whose interest in the Partnership has been foreclosed in the manner prescribed in this Article Ten. On foreclosure, the Managing General Partners are authorized and allowed to execute and deliver a full assignment or other transfer of the defaulting partner's interest in the Partnership and at the Managing General Partners shall have no liability to any person for making the assignment or transfer.

Additional Effects of Default

10.05 Pursuit of any of the remedies permitted by this Article Ten shall not preclude pursuit of any other remedies allowed by law, nor shall pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any amount due to the PARTNERSHIP OR remaining partners or of any damages accruing to IT OR them by reason of the violation of any of the terms, provisions and covenants contained in this Agreement.

ARTICLE ELEVEN
VALUATION OF PARTNERSHIP INTERESTS
Purchase Price of Partnership Interests

11.01 The full purchase price of the Partnership interest of a deceased, incompetent, withdrawn or terminated Partner shall be an amount equal to the Partner's capital and income accounts as the appear on the Partnership books on the date of death, incompetence, withdrawal or termination and adjusted to include the Partner's distributive share of any Partnership net profits or losses not previously credited to or charged against the income and capital accounts. In determining the amount payable under this Section, no value shall be attributed to the goodwill of the Partnership, and adequate provision shall be make for any existing contingent liabilities of the Partnership.

ARTICLE TWELVE

TERMINATION OF THE PARTNERSHIP

Termination Events

12.01 The Partnership SHALL be terminated AND DISSOLVED UPON THE FIRST TO OCCUR OF THE FOLLOWING:

a. UPON THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE PARTNERSHIP, UNLESS SUCH ASSETS ARE REPLACED BY SIMILAR ASSETS WITHIN A REASONABLE TIME FOR THE PURPOSE OF CONTINUING THE PARTNERSHIP BUSINESS;

b. at any time on the WRITTEN affirmative vote of AT LEAST fifty-one (51) percent in interest, not in numbers, of the Partners; AND

c. except as otherwise provided in this Agreement, on the occurrence of any other event that under the Uniform Partnership Law would require the dissolution of general Partnership.

Distribution of Assets

12.02 On termination, the Partnership' business shall be wound up as timely as in practical under the circumstances; the Partnership's assets shall be applied as follows: (i) first to payment of the outstanding Partnership liabilities; (ii) then to a return of the Partner's capital in accordance with their Partnership interests, Any remainder shall be distributed according to the terms of Article Five; provided, however, that the Managing General Partners may retain a reserve in the amount they determine advisable for any contingent liability until such time as that liability is satisfied or discharged. If the Partner's capital has been returned, them the balance of the reserve shall be distributed in accordance with Article Five, otherwise, capital shall be returned in accordance with their Partnership interests, and then any remaining sums shall be distributed in accordance with Article Five.

ARTICLE THIRTEEN

AMENDMENTS

In Writing

13.01 Subject to the provisions of Article 8.01 and 8.02, this Agreement, except with respect to vested rights of any Partner, may be amended or modified in writing at any time by the agreement of Partners owning collectively at least fifty-one (51) percent in interest, not in numbers, in the Partnership.

ARTICLE FOURTEEN

MISCELLANEOUS

Partners

14.01 THE PARTNERSHIP MAY ADMIT AS A PARTNER ANY CORPORATION, INCLUDING AN ELECTING SMALL BUSINESS CORPORATION ("S CORPORATION") AS THAT TERM IS DEFINED IN THE INTERNAL REVENUE CODE OF 1986, AS AMENDED ("IRC"), CERTAIN EMPLOYEE BENEFIT PLANS INCLUDING PENSION PLANS, AND CERTAIN TAX EXEMPT ORGANIZATIONS, INCLUDING INDIVIDUAL RETIREMENT ACCOUNTS ("IRA"), AS DEFINED IN

THE IRC. IT WILL BE THE OBLIGATION OF ANY CORPORATE, BENEFIT PLAN, OR TAX EXEMPT ENTITY PARTNER TO COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES AND REGULATIONS GOVERNING ITS EXISTENCE AS IT RELATES TO BECOMING A PARTNER IN THE PARTNERSHIP. WHETHER OR NOT AN ENTITY CAN BECOME A PARTNER OF THE PARTNERSHIP, WILL DEPEND UPON ITS CHARACTER AND LOCAL LAW. EACH PARTNER, IF NOT AN INDIVIDUAL, SHOULD CONSULT WITH THEIR OWN ATTORNEY AS TO ANY LIMITATIONS OR QUALIFICATIONS OF BEING A PARTNER IN THE PARTNERSHIP. THE PARTNERSHIP SHALL HAVE NO DUTY TO INQUIRE AND SHALL HAVE THE RIGHT TO ASSUME THAT ANY ENTITY APPLYING AND BECOMING A PARTNER IN THE PARTNERSHIP IS IN FACT UNDER ITS GOVERNING LAWS, ENTITLED TO BE A PARTNER IN THE PARTNERSHIP. THE PARTNERSHIP SHALL HAVE NO DUTY TO INQUIRE AND SHALL HAVE THE TIGHT TO ASSUME THAT ANY ENTITY APPLYING AND BECOMING A PARTNER IN THE PARTNERSHIP IS IN FACT UNDER ITS GOVERNING LAWS, ENTITLED TO BE A PARTNER IN THE PARTNERSHIP.

FURTHERMORE, A PARTNER , IF OTHER THAN AN INDIVIDUAL, WILL BE REQUIRED TO DESIGNATE TO THE MANAGING GENERAL PARTNER PRIOR TO ADMITTANCE IN THE PARTNERSHIP, A PERSON UPON WHOM ALL NOTICES RELATING TO THE PARTNERSHIP AND SHALL BE THE ONLY PERSON ON BEHALF OF THE PARTNER THE PARTNERSHIP WILL BE REQUIRED TO BE BOUND BY AND COMMUNICATE WITH WHEN NECESSARY. FURTHERMORE, AND IN THIS REGARD, ALL DISTRIBUTIONS TO BE MADE TO THE PARTNER PURSUANT TO THIS SECTION AND THIS AGREEMENT SHALL BE MADE ONLY TO THE PARTNER'S REPRESENTATIVE, IF NOT AN INDIVIDUAL, AND THE PARTNERSHIP SHALL NOT BE OBLIGATED TO MAKE DISTRIBUTIONS TO ANY OTHER PERSON WHO HAS AN INTEREST IN A PARTNER. PAYMENT TO SUCH PARTNER'S REPRESENTATIVE SHALL EXTINGUISH ALL LIABILITIES THE PARTNERSHIP MAY HAVE TO SUCH PARTNER.

IRA ACCOUNTS

14.02 NOTICE IS HEREBY GIVEN TO ANY PARTNER CONSISTING OF AN IRA ACCOUNT THAT THE PARTNERSHIP IS NOT ACTION AS A FIDUCIARY ON BEHALF OF THE IRA ACCOUNT.

LIMITATIONS ON LIABILITY

14.03 THE PARTNERS SHALL HAVE NO LIABILITY TO THE PARTNERSHIP OR TO ANY OTHER PARTNER FOR ANY MISTAKES OR ERRORS IN JUDGMENT, NOR FOR ANY ACT OR OMISSIONS BELIEVED IN GOOD, FAITH TO BE WITHIN THE SCOPE OF AUTHORITY CONFERRED BY THIS AGREEMENT. THE PARTNERS SHALL BE LIABLE ONLY FOR ACTS AND/OR OMISSIONS INVOLVING INTENTIONAL WRONGDOING, FRAUD, AND BREACHES OF FIDUCIARY DUTIES OF CARE AND LOYALTY. ACTIONS OR OMISSIONS TAKEN IN RELIANCE UPON THE ADVICE OF LEGAL COUNSEL APPROVED BY FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS AS BEING WITHIN THE SCOPE CONFERRED BY THIS AGREEMENT SHALL BE CONCLUSIVE EVIDENCE OF GOOD FAITH; HOWEVER, THE PARTNERS SHALL NOT BE REQUIRED TO PROCURE SUCH ADVICE TO BE ENTITLED TO THE BENEFIT OF THIS SECTION. THE PARTNERS HAVE THE RESPONSIBILITY TO DISCHARGE THEIR FIDUCIARY DUTIES OF CARE AND LOYALTY AND THOSE ENUMERATED IN THIS AGREEMENT CONSISTENTLY WITH THE OBLIGATION OF GOOD FAITH AND FAIR DEALING.

Additional Partners

14.04 THE PARTNERSHIP MAY ADMIT UP TO ONE HUNDRED AND FIFTY (150) PARTNERS INTO THE PARTNERSHIP IN ACCORDANCE WITH SECTION 8.02. THE PARTNERSHIP SHALL HAVE THE RIGHT TO ADMIT MORE THAN ONE HUNDRED AND FIFTY (150) PARTNERS INTO THE PARTNERSHIP ONLY BY THE EXPRESS WRITTEN CONSENT OF FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBER, OF THE PARTNERS. ANY NEW OR ADDITIONAL PARTNER SHALL ACCEPT AND ASSUME IN WRITING THE TERMS AND CONDITIONS OF THIS AGREEMENT.

SUITABILITY

14.05 EACH PARTNER REPRESENTS TO THE PARTNERSHIP THAT IF THE PARTNER IS NOT AN ACCREDITED INVESTOR, AS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") (AS DEFINED BELOW), THAT THEY WILL NOTIFY THE MANAGING GENERAL PARTNERS IN WRITING WITHIN TEN (10) DAYS FROM THE DATE OF THAT PARTNER'S ADMISSION INTO THE PARTNERSHIP. AN ACCREDITED INVESTOR AS DEFINED IN THE ACT IS: A NATURAL PERSON WHO HAD INDIVIDUAL INCOME OF MORE THAN $200,000.00 IN EACH OF THE MOST RECENT TWO (2) YEARS OR JOINT INCOME WITH THEIR SPOUSE IN EXCESS OF $300,000.00 IN EACH OF THE MOST RECENT TWO (2) YEARS AND REASONABLY EXPECTS TO REACH THAT SAME INCOME LEVEL FOR THE CURRENT YEAR; A NATURAL PERSON WHOSE INDIVIDUAL NET WORTH (I.E., TOTAL ASSETS IN EXCESS OF TOTAL LIABILITIES), OR JOINT NET WORTH WITH THEIR SPOUSE, AT THE TIME OF ADMISSION INTO THE PARTNERSHIP IS IN EXCESS OF $1,000,000.00; A TRUST, WHICH TRUST HAS TOTAL ASSETS IN EXCESS OF $5,000,000.00, WHICH IS NOT FORMED FOR THE SPECIFIC PURPOSE OF ACQUIRING THE PARTNERSHIP INTEREST HEREIN AND WHOSE INVESTMENT IS DIRECTED BY A SOPHISTICATED PERSON WHO HAS SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT HE IS CAPABLE OF EVALUATING THE MERITS AND RISKS INVOLVED IN BECOMING A PARTNER; ANY ORGANIZATION DESCRIBED IN SECTION 501(c)(3) OF THE IRC, CORPORATION, MASSACHUSETTS OR SIMILAR BUSINESS TRUST, OR PARTNERSHIP, NOT FORMED FOR THE SPECIFIC PURPOSE OF ACQUIRING THE PARTNERSHIP INTEREST HEREIN, WITH TOTAL ASSETS IN EXCESS OF $5,000,000.00; ANY PRIVATE BUSINESS DEVELOPMENT COMPANY AS DEFINED IN SECTION 3(a)(2) OF THE ACT OR ANY SAVINGS AND LOAN ASSOCIATION OR OTHER INSTITUTION AS DEFINED IN SECTION 3(a)(5) (A) OF THE ACT, WHETHER ACTING IN ITS INDIVIDUAL OR FIDUCIARY CAPACITY; ANY BROKER-DEALER REGISTERED PURSUANT TO SECTION 15 OR SECTION 2(13) OF THE ACT; ANY INVESTMENT COMPANY REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 OR A BUSINESS DEVELOPMENT COMPANY AS DEFINED IN SECTION 2(a)(48) OF THE ACT; ANY SMALL BUSINESS INVESTMENT COMPANY LICENSED BY THE U.S. SMALL BUSINESS ADMINISTRATION UNDER SECTION 301(c) OR (d) OF THE SMALL BUSINESS INVESTMENT ACT OF 1958; ANY PLAN ESTABLISHED AND MAINTAINED BY A STATE, ITS POLITICAL SUBDIVISION, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR ITS POLITICAL SUBDIVISIONS, FOR THE BENEFIT OF ITS EMPLOYEES, IF SUCH PLAN HAS TOTAL ASSETS IN EXCESS OF $5,000,000; ANY EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF THE EMPLOYEE RETIREMENT INCOME SECURITIES ACT OF 1974, IF THE INVESTMENT DECISION IS MADE BY A PLAN FIDUCIARY, AS DEFINED IN SECTION 3(21) OF SUCH ACT, WHICH IS EITHER A BANK, SAVINGS AND LOAN ASSOCIATION, INSURANCE COMPANY, OR REGISTERED INVESTMENT ADVISOR, OR IF THE EMPLOYEE BENEFIT PLAN HAS TOTAL ASSETS IN EXCESS OF $5,000,000.00, OR, IF A SELF-DIRECTED PLAN, WITH INVESTMENT DECISIONS MADE SOLELY BY PERSONS THAT ARE ACCREDITED INVESTORS; AND, ANY ENTITY WHICH ALL OF THE EQUITY OWNERS ARE ACCREDITED INVESTORS AS DEFINED ABOVE.

Notices

14.06 Unless otherwise provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopies, telexed or sent by United States mail and shall be deemed t have been given when delivered in person, or upon receipt of telecopy or telex or three (3) business days after depositing it in the United States mail, registered or certified, when postage prepaid and properly addressed. For purposes thereof, the addresses of the parties hereto are as set forth in Exhibit "A" and may be changed if specified in writing and delivered in accordance with the terms of this Agreement.

FLORIDA LAW TO APPLY

14.07 THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS.
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Disputes

14.08 The Partners shall make a good faith effort to settle any dispute or claim arising under this Agreement. If, however, the Partners shall fail to resolve a dispute or claim, the Partners shall submit it to arbitration before the Florida office of the American Arbitration Association. In any arbitration, the Federal rules of Civil Procedure and the Federal rules of Evidence, as then existing, shall apply. Judgment on any arbitration awards may be entered by any court of competent jurisdiction.

Headings

14.09 Section headings used in this Agreement are included herein for convenience or reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

Parties Bound

14.10 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

Severability

14.11 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, that invalid, illegal or unenforceable provisions shall not affect any other provision contained IN THIS AGREEMENT.

Counterparts

14.12 This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute by one and the same instrument.

Gender and Number

14.13 Whenever the context shall require, all words in this Agreement in the male gender shall be deemed to include the female or neuter gender AND VICE VERSA, AND all singular words shall include the plural, and all plural works shall include the singular.

Prior Agreements Superseded

14.14 This Agreement supersedes any prior understandings or written or oral agreements among the parties respecting the subject matter contained herein.

Complete #1, #2, #3 and Exhibit A and mail this page only with check made payable to "S&P Associates, G/P" to:

S & P ASSOCIATES, General Partnership
c/o SULLIVAN & POWELL
6550 N. Federal Hwy., Suite 210
Ft. Lauderdale, FL 33308-1404

1) The Parties hereto have executed this Agreement by the signature and date set forth below. Each party signing below hereby represents and warrants that such party is sophisticated and experienced in financial and business matters and, as a result, is in a position to evaluate and participate in the business and administration of the Partnership.

_____ Date:_____

_____ Date:_____

2) Distributions:

_____ I elect to receive distributions on a quarterly basis in the amount of $_____.

_____ I elect to have my quarterly distribution reinvested in the Partnership.

3) Please check one of the following accredited investor choices:

_____ I am an accredited investor as defined below.

_____ I am not an accredited investor.

The following would qualify as an "accredited investor:"

(i) A person with an individual net worth, or together with his or her spouse a combined net worth, in excess of $1,000,000. Net worth means the excess of total assets at fair market value, including home, home furnishings and automobiles, over total liabilities.

(ii) A person with an individual income (exclusive of any income attributable to his or her spouse) in excess of $200,000 in each of the past two years, and that he or she reasonably expects to have

an individual income in excess of $200,000 during this year. Individual income means adjusted gross income, as reported for federal income tax purposes, less any income attributable to a spouse or to property owned by a spouse, increased by the following amounts (but not including any amounts attributable to a spouse or to property owned by a spouse): (i) the amount of any tax-exempt interest income received under Section 103 of the United States Internal Revenue Code of 1986, as amended (the "Code"), (ii) the amount of losses claimed as a limited partner in a limited partnership as reported on Schedule E of form 1040, (iii) any deduction claimed for depletion under Section 611 et seq. of the Code and (iv) any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income pursuant to the provisions of Section 1202 of the Code.

(iii) A person that together with his or her spouse, had a combined income in excess of $300,000 in each of the past two years, and reasonably expects to have a combined income in excess of $300,000 during this year.

EXHIBIT A (How you would like your account titled)

IMPORTANT - Please indicate your beneficiary. Please include address & phone #.

Name, Address Telephone No. and Fax No.	Social Security No. or Federal ID No.	Capital Contribution

IMPORTANT - Please indicate your beneficiary. Please include address & phone #.

BERNARD L. MADOFF
Investment Securities
885 Third Avenue New York, NY 10022-4834

212 230-2424
800 221-2242
Telex 235130
Fax 212 486-8178

TAX ID NO. 65-0371258

ACCT# ASSIGNED _____

~~Mr. Mrs. Ms.~~ NAME P & S ASSOCIATES, GENERAL PARTNERSHIP

STREET 225 N. FEDERAL HWY., SUITE 600

CITY POMPANO BEACH, STATE FL ZIP 33062

TEL. NUMBER BUSINESS 305-782-3500 RESIDENCE FAX 305-782-3602

REG. REP Michael Sullivan & Grey Powell, Managing Partners

WE DEEM THE QUESTIONS CONTAINED IN THIS SECTION TO BE REQUIRED BY THE "KNOW YOUR CUSTOMER" RULE OF THE NATIONAL ASSOCIATION OF SECURITY DEALERS, AND, THEREFORE, MUST BE ANSWERED IN FULL.

RESIDENCE _____

NAME OF EMPLOYER (IF HOUSEWIFE, NAME THE HUSBAND'S EMPLOYER)

EMPLOYER'S ADDRESS _____

OCCUPATION _____

BANK REFERENCE AND ADDRESS

OTHER BROKERAGE ACCOUNTS WITH _____

CLIENT INTRODUCED BY _____

FOR OFFICE USE ONLY

R. R.'S ESTIMATE OF CLIENTS NET WORTH _____

IS CLIENT OVER 21 YEARS OF AGE YES_____ NO_____

HOW LONG HAVE YOU KNOWN CLIENT _____

CLIENT IS CITIZEN OF _____

APPROVED BY _____

	DATE SENT TO CLIENT		DATE SENT TO CLIENT
MARGIN AGREEMENT	_____	MAIL WAIVER FORM	_____
JOINT AGREEMENT	_____	MULTIPLE A/C FORM	_____
CORPORATE ACCOUNT FORM	_____	CORPORATE RESOLUTION	_____
CO-PARTNERSHIP FORM	_____		

FILE COPY

BERNARD L. MADOFF
Investment Securities
885 Third Avenue New York, NY 10022-4834

212 230-2424
800 221-2242
Telex 235130
Fax 212 486-8178

Congress has mandated that all interest and dividend payors including banks, corporations and funds must withhold 1 of all dividends or interest paid UNLESS you complete and return the form at the bottom of this page.

Important New Tax Information

"Under the Federal income tax law, you are subject to certain penalties as well as with-holding of tax at a 20% rate if you have not provided us with your correct social security number or other taxpayer identification number. Please read this notice carefully.

You (as a payee) are required by law to provide us (as payor) with your correct taxpayer identification number. If you are an individual, your taxpayer identification is your social security number. If you have not provided us with your correct taxpayer identification number, you may be subject to a $50 penalty imposed by the Internal Revenue Service. In addition, divided payments that we make to you may be subject to backup withholding starting on January 1, 1984.

Backup withholding is different from the 10% withholding on interest and dividends that was repealed in 1983. If backup withholding applies, payor is required to withhold 20% of dividend payments made to you. Backup withholding is not an additional tax. Rather, the tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained".

Please sign the form and return it to us.

Even if you have already provided this information it is required by the IRS that all information requested below be provided again.

Thank you for your cooperation.

(Corporations are exempt from this requirement and should not return this form.)

SUBSTITUTE INTERNAL REVENUE SERVICE FORM W-9

Account Number(s): _____

Taxpayer Identification Number:

65-0371258

Name: P & S Associates, General Partnership

Address: 225 N. Federal Hwy., Suite 600, Pompano Beach, FL 33062

(Signature) Barry Bonell, Managing Ptr

"Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Numbe

Please fill in your name, address, taxpayer identification number, and sign above.

Affiliated with:
Madoff Securities International Ltd.

BERNARD L. MADOFF
Investment Securities
New York □ London

IN ACCOUNT WITH

885 Third Avenue
New York, NY 10022
(212) 230-2400
(800)334-1343
TELEX 235 130
FAX (212) 486-8178

P & S ASSOCIATES GEN PTNRSHIP

225 N FEDERAL HIGHWAY STE 600
POMPANO BEACH FL 33062

PERIOD ENDING: 12/31/94

PAGE: 1

YOUR ACCOUNT NUMBER: 1-ZA873-4-0

YOUR TAX PAYER IDENTIFICATION NUMBER: 65-0371258

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				BALANCE FORWARD			161,347.00
12/09	46		52660	S & P 100 INDEX DECEMBER 430 CALL	1/2	2,346.00	
12/09		46	59563	S & P 100 INDEX DECEMBER 420 PUT	4 7/8		22,379.00
12/30				TRANS TO 30 ACCT	JRNL	181,380.00	
				NEW BALANCE			

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

BERNARD L. MADOFF
Investment Securities
885 Third Avenue New York, NY 10022-4834

212 230-2424
800 221-2242
Telex 235130
Fax 212 486-8178

TRADING AUTHORIZATION LIMITED TO PURCHASES AND SALES OF SECURITIES

Gentlemen:

The undersigned hereby authorizes Bernard L. Madoff (whose signature appears below) as his agent and attorney in fact to buy, sell and trade in stocks, bonds and any other securities in accordance with your terms and conditions for the undersigned's account and risk and in the undersigned's name, or number on your books. The undersigned hereby agrees to indemnify and hold you harmless from, and to pay you promptly on demand any and all losses arising therefrom or debit balance due thereon. However, in no event will the losses exceed my investment.

In all such purchases, sales or trades you are authorized to follow the instructions of Bernard L. Madoff in every respect concerning the undersigned's account with you; and he is authorized to act for the undersigned and in the undersigned's behalf in the same manner and with the same force and effect as the undersigned might or could do with respect to such purchases, sales or trades as well as with respect to all other things necessary or incidental to the furtherance or conduct of such purchases, sales or trades.

The undersigned hereby ratifies and confirms any and all transactions with you heretofore or hereafter made by the aforesaid agent or for the undersigned's account.

This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which you may have under any other agreement or agreements between the undersigned and your firm.

This authorization and indemnity is also a continuing one and shall remain in full force and effect until revoked by the undersigned by a written notice addressed to you and delivered to your office at 885 Third Avenue but such revocation shall not affect any liability in any way resulting from transaction initiated prior to such revocation. This authorization and indemnity shall enure to the benefit of your present firm and any successor firm or firms irrespective of any change or changes at any time in the personnel thereof for any cause whatsoever, and of the assigns of your present firm or any successor firm.

Dated, 12/28/92

Pompano Beach (City) FL (State)

Very truly yours, [signature] Mg. Ptr. P+S Associates, Gen. Partn.
(Client Signature)

Signature Of Authorized Agent: _____

P&S ASSOCIATES, G/P AMENDED AND RESTATED PARTNERSHIP AGREEMENT

This AMENDED & RESTATED Partnership Agreement (the "Agreement") is MADE AND ENTERED INTO THIS 21ST DAY OF DECEMBER, 1994 by and among the party or parties whose names and signatures appear personally or by power of attorney at the end of this Agreement and whose addresses are listed on Exhibit "A" annexed hereto (information regarding other Partners will be furnished to a Partner upon written request) (COLLECTIVELY, THE "PARTNERS"). THE TERM "PARTNER" SHALL ALSO APPLY TO ANY INDIVIDUAL WHO, SUBSEQUENT TO THE DATE OF THIS AGREEMENT, JOINS IN THIS AGREEMENT OR ANY ADDENDUM TO THIS AGREEMENT.

WHEREAS, THE PARTNERS, ENTERED A PARTNERSHIP AGREEMENT DATED DECEMBER 11, 1992, ("PARTNERSHIP AGREEMENT"); AND

WHEREAS, PURSUANT TO ARTICLE THIRTEEN OF THE PARTNERSHIP AGREEMENT, THE PARTNERS RESERVED THE RIGHT TO AMEND OR MODIFY IN WRITING AT ANY TIME THE PARTNERSHIP AGREEMENT; AND

WHEREAS, THE PARTNERS BELIEVE IT TO BE IN THEIR BEST INTEREST AND ALSO THE BEST INTEREST OF THE PARTNERSHIP TO AMEND, REVISE AND RESTATE THE TERMS AND CONDITIONS OF THE PARTNERSHIP AGREEMENT.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES MADE HEREIN AND IN CONSIDERATION OF THE BENEFIT TO BE RECEIVED FROM THE MUTUAL OBSERVANCE OF THE COVENANTS MADE HEREIN; AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTNERS AGREE AS FOLLOWS:

Background

The Partners desire to form a general partnership for the purpose of engaging in the business of investing. For and in consideration of the mutual covenants contained herein, the Partners hereby form, create and agree to associate themselves in a general partnership in accordance with the Florida Uniform Partnership Law, on the terms and subject to the conditions set forth below:

ARTICLE ONE

ORGANIZATION

Name

1.01 The activities and business of the partnership shall be conducted under the name P & S Associates, General Partnership (the "Partnership") in Florida, and under any variations of this name that may be necessary to comply with the laws of other states within which the Partnership may do business or make investments.

Organization

1.02 The Partnership shall be organized as a general partnership under the Uniform Partnership Law of the state of Florida. Following the execution of this Agreement, the partners shall execute or cause to be executed and filed any documents or instruments with such authorities that may be necessary or appropriate from time to time to comply with all requirements for the qualification of the Partnership as a general partnership in any jurisdiction.

Place of Business and Mailing Address

1.03 The principle place of business and mailing address of the Partnership shall be located at 6550 North Federal Highway, Suite 210, Ft. Lauderdale, FL 33308, or any such place or places of business that may be designated by the Managing General Partners.

EXHIBIT B

ARTICLE TWO

PURPOSE OF THE PARTNERSHIP

By Consent of Partners

2.01 The Partnership shall not engage in any business except as provided in this Agreement without prior written consent of all Partners.

2.02 The general purpose of the Partnership is to invest, in cash or on margin, in all types of marketplace securities, including, without limitation, the purchase and sale of and dealing in stocks, bonds, notes and evidences in indebtedness of any person, firm, enterprise, corporation or association, whether domestic or foreign; bills of exchange and commercial paper; any and all other securities of any kind, nature of description; and gold, silver, grain, cotton or other commodities and provisions usually dealt in on exchanges, on the over-the-counter market or otherwise. In general, without limitation of the above securities, to conduct any commodities, future contracts, precious mental, options and other investment vehicles of whatever nature. The Partnership shall have the right to allow OR TERMINATE a specific broker, or brokers, as selected by fifty-one (51) Percent in interest, not in numbers, of the Partners, and allow such broker, or brokers, AS SELECTED BY FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS, to have discretionary investment powers with the investment funds of the Partnership.

ARTICLE THREE

DURATION

Date of Organization

3.01 The Partnership shall begin on January 1, 1993 and shall continue until dissolved as specifically provided in this Agreement or by applicable law.

ARTICLE FOUR

CAPITAL CONTRIBUTIONS

Initial Contributions

4.01 The Partners acknowledge that each Partner shall be obligated to contribute and will, on demand, contribute to the Partnership the amount of cash set out opposite the name of each Partner on Exhibit A as an initial capital contribution.

Additional Contributions

4.02 No Partner shall be required to contribute any capital or lend any funds to the Partnership except as provided in Section 4.01 or as may otherwise be agreed on by all of the Partners.

Contributions Secured

4.03 Each Partner grants to the Managing General Partners a lien on his or her interest in the Partnership to secure payment of all contributions and the performance of all obligations required or permitted under this agreement.

No Priority

4.04 No Partner shall have any priority over any other Partner as to allocations of profits, losses, dividends, distributions or returns of capital contributions, and no Partner shall be entitled to withdraw any part of their capital contribution without at least THIRTY (30) DAYS written notice.

Capital Accounts

4.05 An individual capital account shall be maintained for each Partner. The capital account shall consist of that Partner's initial capital contribution:

a. increased by his or her additional contributions to capital and by his or her share of Partnership profits transferred to capital; and

b. decreased by his or her share of partnership losses and by distributions to him or her in reduction of his or her capital.

No Interest on Capital

No Partner shall be entitled to interest on his or her contribution to capital of the Partnership.

ARTICLE FIVE

ALLOCATIONS AND DISTRIBUTIONS

Allocation of Profits and Losses

5.01 The capital gains, capital losses, dividends, interest, margin interest expense, and all other profits and losses attributable to the Partnership shall be allocated among the Partners IN THE RATIO EACH PARTNER'S CAPITAL ACCOUNT BEARS TO THE AGGREGATE TOTAL CAPITAL CONTRIBUTION OF ALL THE PARTNERS ON AN ACTUAL DAILY BASIS COMMENCING ON THE DATE OF EACH PARTNER'S ADMISSION INTO THE PARTNERSHIP AS FOLLOWS: TWENTY PERCENT (20%) TO THE MANAGING GENERAL PARTNERS AND EIGHTY PERCENT (80%) TO THE PARTNERS.

DISTRIBUTIONS

5.02 Distributions of PROFITS shall be made at least once per year, and may be made at such other time as the Managing General Partners shall in their sole discretion determine, and upon the Partnership's termination. Partners shall also have the election to receive such distributions within ten (10) days after the end of each calendar quarter, or to have such distributions remain in the Partnership, thus increasing the Partner's capital contribution. CASH FLOW SHALL BE DISTRIBUTED AMONG ALL THE PARTNERS, IN THE RATIO EACH PARTNER'S CAPITAL ACCOUNT BEARS TO THE AGGREGATE TOTAL CAPITAL CONTRIBUTION OF ALL THE PARTNERS ON AN ACTUAL DAILY BASIS COMMENCING ON THE DATE OF EACH PARTNER'S ADMISSION INTO THE PARTNERSHIP, FOR ANY FISCAL YEAR AS FOLLOWS: TWENTY PERCENT (20%) TO THE MANAGING GENERAL PARTNERS AND EIGHTY PERCENT (80%) TO THE PARTNERS.

ARTICLE SIX

OWNERSHIP OF PARTNERSHIP PROPERTY

Title to Partnership Property

6.01 All property acquired by the Partnership shall be owned by and in the name of the Partnership, that ownership being subject to the other terms and conditions of this Agreement. Each Partner expressly waives the right to require partition of any Partnership property or any part of it. The Partners shall execute any documents that may be necessary to reflect the Partnership's ownership of its assets and shall record the same in the public offices that may be necessary or desirable in the discretion of the Managing General Partner.

ARTICLE SEVEN

FISCAL MATTERS

Title to Partnership Property
Accounting

7.01. A complete and accurate inventory OF THE PARTNERSHIP shall be taken BY THE MANAGING GENERAL PARTNERS, and a complete and accurate statement of the condition of the Partnership shall be made and an accounting among the Partners shall be MADE ANNUALLY per fiscal year BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTING FIRM. NOT LATER THAN NINETY (90) DAYS AFTER THE END OF THE PARTNERSHIP'S FISCAL YEAR THE PARTNERSHIP'S INDEPENDENT PUBLIC ACCOUNTING FIRM SHALL TRANSMIT TO THE PARTNERS A COPY OF THE CURRENT PARTNERSHIP TAX RETURN TOGETHER WITH FORM K-1. The profits and losses of the preceding year, to the extent such shall exist and shall not have been divided and paid or distributed previously, shall then be divided and paid or distributed, or otherwise retained by the agreement of the Partners, Distributions SHALL BE made at such time(s) as the General Managing Partners shall in their discretion deem necessary and appropriate.

Fiscal Year

7.02. The fiscal year of the Partnership for both accounting and Federal income tax purposes shall begin on January 1 of each year.

Books and Records

7.03. PROPER AND COMPLETE BOOKS OF ACCOUNT OF THE BUSINESS OF the Partnership shall be KEPT BY THE MANAGING GENERAL PARTNERS AND maintained at the offices of the Partnership. Proper books and records shall be kept with reference to all Partnership transactions. Each Partner or his or her authorized representative shall have access to AND THE RIGHT TO AUDIT AND / OR REVIEW the Partnership books and records at all reasonable times during business hours.

Method of Accounting

7.04. The books of account of the Partnership shall be kept on a cash basis.

Expenses

7.05. All rents, payments for office supplies, premiums for insurance, professional fees and disbursements, and other expenses incidental to the Partnership business shall be paid out of the Partnership profits or capital and shall, for the purpose of this Agreement, be considered ordinary and necessary expenses of the Partnership deductible before determination of net profits.

ARTICLE EIGHT
MANAGEMENT AND AUTHORITY

Management and Control

8.01. Except as expressly provided in the Agreement, the management and control of the day-to-day operations of the Partnership and the maintenance of the Partnership property shall rest exclusively with the Managing General Partners, Michael D. Sullivan and Greg Powell. Except as provided in Article FIVE Section 5.01, the Managing General Partners shall receive no salary or other compensation for their services as such. The Managing General Partners shall devote as much time as they deem necessary or advisable to the conduct and supervision of the Partnership's business. The Managing General Partners may engage in any activity for personal profit or advantage without the consent of the Partners.

SUSAN

Powers of Managing General Partners

8.02. The Managing General Partners are authorized and empowered to carry out and implement any and all purposes of the Partnership. In that connection, the powers of the General Managing Partners shall include but shall not be limited to the following:

a. to engage, fire or terminate personnel, attorneys, accountants or other persons that may be deemed necessary or advisable

b. to open, maintain and close bank or investment accounts and draw checks, drafts or other orders for the payment of money

c. to borrow money; to make, issue, accept, endorse and execute promissory notes, drafts, loan agreements and other instruments and evidences of indebtedness on behalf of the Partnership; and to secure the payment of indebtedness by mortgage, hypothecation, pledge or other assignment or arrangement of security interests in all or any part of the property then owned or subsequently acquired by the Partnership.

d. to take any actions and to incur any expense on behalf of the Partnership that may be necessary or advisable in connection with the conduct of the Partnership's affairs.

e. to enter into, make and perform any contracts, agreements and other undertakings that may be deemed necessary or advisable for the conducting of the Partnership's affairs

f. to make such elections under the tax laws of the United Stated and Florida regarding the treatment of items of Partnership income, gain, loss, deduction or credit and all other matters as they deem appropriate or necessary.

g. TO ADMIT PARTNERS INTO THE PARTNERSHIP NOT EXCEEDING ONE HUNDRED AND FIFTY (150) PARTNERS UNLESS THE PARTNERS HAVE APPROVED PURSUANT TO SECTION 14.04 THE ADMISSION INTO THE PARTNERSHIP OF MORE THAN ON HUNDRED AND FIFTY (150) PARTNERS.

Restrictions on Partners

8.03 Without the prior consent of the Managing General Partners or all of the other partners, no other Partner may act on behalf of the Partnership to: (i) borrow or lend money; (ii) make, deliver or accept any commercial paper; (iii) execute any mortgage, security agreement, bond or lease; or (iv) purchase or sell any property for or of the Partnership.

Meetings of the Partners

8.04 The Partners shall hold regular quarterly meetings on the 3rd Tuesday during the months of January, April, July, and October at 1:00 p.m. at the principle office of the Partnership. In the event such Tuesday falls on a declared Holiday, such meeting will take place the next following business day. In addition fifty-one percent (51%) in interest, not in numbers, of the Partners may call a special meeting to be held at any time after the giving of twenty (20) days' notice to all of the Partners. Any Partner may waive notice of or attendance at any meeting of the Partners, may attend by telephone or any other electronic communication device, or may execute a signed written consent to representation by another Partner or representative. At the meeting, Partners WILL REVIEW THE ENGAGEMENT WITH THE PARTNERSHIP OR ANY BROKER OR BROKERS AND shall transact any business that may properly be brought before the meeting. the Partners shall designate someone to keep regular minutes of all the proceedings. the minutes shall be placed in the minute book of the Partnership.

Action without Meeting

8.05 Any action required by statute or by this Agreement to be taken at a meeting of the Partners or any action that may be taken at a meeting of the Partners may be taken without a meeting if a consent in writing, setting forth the action taken or to be taken, shall be signed by all of the Partners entitled to vote with respect to the subject matter of the consent. That consent shall have the same force and effect as a unanimous vote of the Partners. Any signed consent, or a signed copy thereof, shall be placed in the minute book of the Partnership.

Death, Removal or Appointment of Managing General Partner

8.06 ANY MANAGING GENERAL PARTNER MAY BE REMOVED WITH OR WITHOUT CAUSE AS DETERMINED BY THE AFFIRMATIVE VOTE OF FIFTY-ONE PERCENT (51%) in interest, not in numbers, of Partners. In the event of any such removal, the removed Managing General Partner shall not be relieved of his obligations OR LIABILITIES to the Partnership and to the other Partners resulting from the events, actions, or transactions occurring during the period in which such removed Managing General Partner served as a Managing General Partner. From and after the effective date of such removal, however, the removed Managing General Partner may be deemed to be a Partner, shall forfeit all rights and obligations of a Managing General Partner, and thereafter shall have the same rights and obligations as a Partner. A MANAGING GENERAL PARTNER SHALL BE APPOINTED BY THE AFFIRMATIVE VOTE OF FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS. THE PARTNERSHIP SHALL HAVE AS MANY MANAGING GENERAL PARTNERS AS THE PARTNERS BY THE AFFIRMATIVE VOTE OF FIFTY-ONE (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS SHALL DETERMINE TO BE IN THE BEST INTEREST OF THE PARTNERSHIP. ON THE DEATH OR INCOMPETENCY OF A MANAGING GENERAL PARTNER, ANY CO-MANAGING GENERAL PARTNER SHALL CONTINUE AS THE MANAGING GENERAL PARTNER OR, IF THERE SHALL BE NO CO-MANAGING GENERAL PARTNER, THEN THE PARTNERS SHALL, WITHIN TEN (10) DAYS OF SUCH DEATH OR DECLARATION OF INCOMPETENCY, APPOINT A NEW MANAGING GENERAL PARTNER IN ACCORDANCE WITH THE TERMS PROVIDED IN THIS AGREEMENT.

ARTICLE NINE

TRANSFERS AND ASSIGNMENTS

No Transfer of Assignment Without Consent

9.01 No Partner's interest may be transferred or assigned without the express written consent of fifty-one percent (51%) in interest, not in number, of the Partners provided, however, that a Partner's interest may be transferred or assigned to a party who at the time of the transfer or assignment is a Partner. Any transferee or assignee to whom an interest in the Partnership has been transferred or assigned and who is not at the time of the transfer or assignment to a party to this Agreement shall be entitled to receive, in accordance with the terms of the transfer or assignment, the net profits to which the assigning Partner would otherwise be entitled. Except as provided in the preceding sentence, the transferee or assignee shall not be a Partner and shall not have any of the rights of the Partner, unless and until the transferee or assignee shall have (i) received the approval of the Partners as provided IN THIS AGREEMENT, and (ii) accepted and assumed, in writing, the terms and conditions of this Agreement.

Death or Incompetency of Partner

9.02 Neither the death or incompetency of a Partner shall cause the dissolution of the Partnership. On the death or incompetency of any Partner, the Partnership business shall be continued and the surviving Partners shall have the option to allow the assets of the deceased or incompetent Partner to continue in the deceased or incompetent Partner's HEIR'S OR SUCCESSOR'S place, or to terminate the deceased or incompetent partner's interest and return to the estate his or her interest in the partnership.

B. If the surviving Partners elect to allow the estate of a deceased Partner to continue in the deceased Partner's place, the estate shall be bound by the terms and provisions of this Agreement. However, in the event that the interest of a deceased Partners does not pass in trust or passes to more than one heir or devisee or, on termination of a trust, is distributed to more than one beneficiary, then the Partnership shall have the right to terminate immediately the deceased Partner's interest in the Partnership. In that event, the Partnership shall return to the deceased Partner's heirs, devisee or beneficiaries, in cash, the value of the Partnership interest as calculated in ARTICLE ELEVEN as of the date of termination.

Withdrawals of Partners

9.03 Any Partner may withdraw from the Partnership at any given time; provided, however, that the withdrawing Partner shall give at least thirty (30) days written notice. THE PARTNERSHIP SHALL, WITHIN THIRTY (30) DAYS OF RECEIVING NOTICE OF THE PARTNER'S WITHDRAWAL,

PAY the withdrawing Partner, in cash, the value of his or her Partnership interest as calculated in ARTICLE ELEVEN as of the date of withdrawal. the withdrawing Partner or his or her legal representative shall execute such documents and take further actions as shall reasonable be required to effectuate the termination of the withdrawing Partner's interest in the Partnership.

ARTICLE TEN

TERMINATION OF PARTNERS

Events of Default

10.01 The following events shall be deemed to be defaults by a Partner:

a. the failure to make when due any contribution or advance required to be made under the terms of this agreement and continuing that failure for a period of ten (10) days after written notice of the failure from the Managing general Partners.

b. the violation of any of the other provisions of this Agreement and failure to remedy or cure that violation within (10) days after written notice of the failure from the Managing General Partners.

c. THE INSTITUTION OF PROCEEDINGS UNDER ANY LAW OF THE UNITED STATES OR OF ANY STATE FOR THE RELIEF OF DEBTORS, FILING A VOLUNTARY PETITION IN BANKRUPTCY OR FOR AN ARRANGEMENT OR REORGANIZATION OR ADJUDICATION TO BE INSOLVENT OR A BANKRUPT, MAKING AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

d. SUFFERING TO BE SEIZED BY A RECEIVER, TRUSTEE, OR OTHER OFFER APPOINTED BY ANY COURT OR ANY SHERIFF, CONSTABLE, MARSHALL OR OTHER SIMILAR GOVERNMENT OFFICER, UNDER LEGAL AUTHORITY, ANY SUBSTANTIAL PORTION OF ITS ASSETS OR ALL OR ANY PART OF ANY INTEREST THE PARTNER MAY HAVE IN THIS PARTNERSHIP AND SUCH IS HELD IN SUCH OFFICER'S POSSESSION FOR A PERIOD OF THIRTY (30) DAYS OR LONGER.

e. the appointment of a receiver for all or substantially all of the Partner's assets and the failure to have the receiver discharged within ninety (90) days after the appointment.

f. the bringing of any legal action against the Partner by his or her creditor(s), resulting in litigation that, in the opinion if the General Managing Partners or fifty-one (51) percent in interest, not in numbers, of the other Partners, creates a real and substantial risk of involvement of the Partnership property.

g. THE COMMITTING OR PARTICIPATION IN AN INJURIOUS ACT OF FRAUD, GROSS NEGLECT, MISREPRESENTATION, EMBEZZLEMENT OR DISHONESTY AGAINST THE PARTNERSHIP, OR COMMITTING OR PARTICIPATING IN ANY OTHER INJURIOUS ACT OR OMISSION WANTONLY, WILLFULLY, RECKLESSLY, OR IN A MANNER WHICH WAS GROSSLY NEGLIGENT AGAINST THE PARTNERSHIP, MONETARILY OR OTHERWISE, OR BEING CONVICTED OF ANY ACT OR ACTS CONSTITUTING A FELONY OR MISDEMEANOR, OTHER THAN TRAFFIC VIOLATIONS, UNDER THE LAWS OF THE UNITED STATES OR ANY STATE THEREOF.

10.02 On the occurrence of an event of a default by a Partner, fifty-one (51) percent in interest, not in numbers, or more of the other Partners shall have the right to elect to terminate the interest of the defaulting Partner without affecting a termination of the Partnership. This election may be made at any time within one (1) year from the date of default, on giving the defaulting Partner five (5) days written notice of the election, provided the default is continuing on the date the notice is given. The defaulting Partner's interest shall be returned to him or her in accordance with the provisions of ARTICLE ELEVEN OF THIS AGREEMENT.

The defaulting Partner's Partnership interest shall be reduced by the aggregate amount of any outstanding debts of the defaulting Partner to the Partnership and also by all damages caused to the Partnership by the default of the defaulting Partner.

On return to the defaulting Partner of his or her interest in the Partnership, the defaulting Partner shall have no further interest in the Partnership or its business or assets and the defaulting Partner shall execute and deliver as required any assignments or other instruments that may be necessary to evidence and fully AND effectively transfer the interest of the defaulting Partner to the non-defaulting Partners. If the appropriate instruments are not delivered, after notice by the Managing General Partner that the interest is available to the defaulting Partner, the Managing General Partner may tender delivery of the interest to the defaulting Partner and execute, as the defaulting Partner's POWER OF ATTORNEY, any instruments AS ABOVE REFERENCED. All parties agree that the General Managing Partners shall not have any individual liability for any actions taken in connection HERETO.

No assignment, transfer OR TERMINATION of a defaulting Partner's INTEREST as provided in this Agreement shall relieve the defaulting Partner from any personal liability for outstanding indebtedness, liabilities, liens or obligations relating to the Partnership that may exist on the date of the assignment, transfer OR TERMINATION. The default of any Partner under this Agreement shall not relieve any other Partner from his, her or its interest in the Partnership.

Foreclosure for Default

10.03 If a Partner is in default under the terms of this Agreement, the lien provided for in Article four, Section 4.03 may be foreclosed by the Managing General Partner at the option of fifty-one (51) percent IN INTEREST, NOT IN NUMBERS, of the non-defaulting Partners.

Transfer by Attorney-in-Fact

10.04 Each Partner makes, constitutes, and appoints the Managing General Partners as the Partner's attorney-in-fact in the event that the Partner becomes a defaulting Partner whose interest in the Partnership has been foreclosed in the manner prescribed in this Article Ten. On foreclosure, the Managing General Partners are authorized and allowed to execute and deliver a full assignment or other transfer of the defaulting partner's interest in the Partnership and at the Managing General Partners shall have no liability to any person for making the assignment or transfer.

Additional Effects of Default

10.05 Pursuit of any of the remedies permitted by this Article Ten shall not preclude pursuit of any other remedies allowed by law, nor shall pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any amount due to the PARTNERSHIP OR remaining partners or of any damages accruing to IT OR them by reason of the violation of any of the terms, provisions and covenants contained in this Agreement.

ARTICLE ELEVEN
VALUATION OF PARTNERSHIP INTERESTS

Purchase Price of Partnership Interests

11.01 The full purchase price of the Partnership interest of a deceased, incompetent, withdrawn or terminated Partner shall be an amount equal to the Partner's capital and income accounts as the appear on the Partnership books on the date of death, incompetence, withdrawal or termination and adjusted to include the Partner's distributive share of any Partnership net profits or losses not previously credited to or charged against the income and capital accounts. In determining the amount payable under this Section, no value shall be attributed to the goodwill of the Partnership, and adequate provision shall be made for any existing contingent liabilities of the Partnership.

ARTICLE TWELVE

TERMINATION OF THE PARTNERSHIP

Termination Events

12.01 The Partnership SHALL be terminated AND DISSOLVED UPON THE FIRST TO OCCUR OF THE FOLLOWING:

a. UPON THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE PARTNERSHIP, UNLESS SUCH ASSETS ARE REPLACED BY SIMILAR ASSETS WITHIN A REASONABLE TIME FOR THE PURPOSE OF CONTINUING THE PARTNERSHIP BUSINESS;

b. at any time on the WRITTEN affirmative vote of AT LEAST fifty-one (51) percent in interest, not in numbers, of the Partners; AND

c. except as otherwise provided in this Agreement, on the occurrence of any other event that under the Uniform Partnership Law would require the dissolution of general Partnership.

Distribution of Assets

12.02 On termination, the Partnership' business shall be wound up as timely as in practical under the circumstances; the Partnership's assets shall be applied as follows; (i) first to payment of the outstanding Partnership liabilities; (ii) then to a return of the Partner's capital in accordance with their Partnership Interests. Any remainder shall be distributed according to the terms of Article Five; provided, however, that the Managing General Partners may retain a reserve in the amount they determine advisable for any contingent liability until such time as that liability is satisfied or discharged. If the Partner's capital has been returned, them the balance of the reserve shall be distributed in accordance with Article Five, otherwise, capital shall be returned in accordance with their Partnership interests, and then any remaining sums shall be distributed in accordance with Article Five.

ARTICLE THIRTEEN

AMENDMENTS

In Writing

13.01 Subject to the provisions of Article 8.01 and 8.02, this Agreement, except with respect to vested rights of any Partner, may be amended or modified in writing at any time by the agreement of Partners owning collectively at least fifty-one (51) percent in interest, not in numbers, in the Partnership.

ARTICLE FOURTEEN

MISCELLANEOUS

Partners

14.01 THE PARTNERSHIP MAY ADMIT AS A PARTNER ANY CORPORATION, INCLUDING AN ELECTING SMALL BUSINESS CORPORATION ("S CORPORATION") AS THAT TERM IS DEFINED IN THE INTERNAL REVENUE CODE OF 1986, AS AMENDED ("IRC"), CERTAIN EMPLOYEE BENEFIT PLANS INCLUDING PENSION PLANS, AND CERTAIN TAX EXEMPT ORGANIZATIONS, INCLUDING INDIVIDUAL RETIREMENT ACCOUNTS ("IRA"), AS DEFINED IN THE IRC. IT WILL BE THE OBLIGATION OF ANY CORPORATE, BENEFIT PLAN, OR TAX EXEMPT ENTITY PARTNER TO COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES AND REGULATIONS GOVERNING ITS EXISTENCE AS IT RELATES TO BECOMING A PARTNER IN THE PARTNERSHIP. WHETHER OR NOT AN ENTITY CAN BECOME A PARTNER OF THE PARTNERSHIP, WILL DEPEND UPON ITS CHARACTER AND LOCAL LAW. EACH PARTNER, IF NOT AN INDIVIDUAL, SHOULD CONSULT WITH THEIR OWN ATTORNEY AS TO ANY LIMITATIONS OR QUALIFICATIONS OF BEING A PARTNER IN THE PARTNERSHIP. THE PARTNERSHIP SHALL HAVE NO DUTY TO INQUIRE AND SHALL HAVE THE RIGHT TO ASSUME THAT ANY ENTITY APPLYING AND BECOMING A PARTNER IN THE PARTNERSHIP IS IN FACT UNDER ITS GOVERNING LAWS, ENTITLED TO BE A PARTNER IN THE PARTNERSHIP. THE PARTNERSHIP SHALL HAVE NO DUTY TO INQUIRE AND SHALL HAVE THE TIGHT TO ASSUME THAT ANY ENTITY APPLYING AND BECOMING A PARTNER IN THE PARTNERSHIP IS IN FACT UNDER ITS GOVERNING LAWS, ENTITLED TO BE A PARTNER IN THE PARTNERSHIP.

FURTHERMORE, A PARTNER , IF OTHER THAN AN INDIVIDUAL, WILL BE REQUIRED TO DESIGNATE TO THE MANAGING GENERAL PARTNER PRIOR TO ADMITTANCE IN THE PARTNERSHIP, A PERSON UPON WHOM ALL NOTICES RELATING TO THE PARTNERSHIP AND SHALL BE THE ONLY PERSON ON BEHALF OF THE PARTNER THE PARTNERSHIP WILL BE REQUIRED TO BE BOUND BY AND COMMUNICATE WITH, WHEN NECESSARY. FURTHERMORE, AND IN THIS REGARD, ALL DISTRIBUTIONS TO BE MADE TO THE PARTNER PURSUANT TO THIS SECTION AND THIS AGREEMENT SHALL BE MADE ONLY TO THE PARTNER'S REPRESENTATIVE, IF NOT AN INDIVIDUAL, AND THE PARTNERSHIP SHALL NOT BE OBLIGATED TO MAKE DISTRIBUTIONS TO ANY OTHER PERSON WHO HAS AN INTEREST IN A PARTNER. PAYMENT TO SUCH PARTNER'S REPRESENTATIVE SHALL EXTINGUISH ALL LIABILITIES THE PARTNERSHIP MAY HAVE TO SUCH PARTNER.

IRA ACCOUNTS

14.02 NOTICE IS HEREBY GIVEN TO ANY PARTNER CONSISTING OF AN IRA ACCOUNT THAT THE PARTNERSHIP IS NOT ACTING AS A FIDUCIARY ON BEHALF OF THE IRA ACCOUNT.

LIMITATIONS ON LIABILITY —

14.03 THE PARTNERS SHALL HAVE NO LIABILITY TO THE PARTNERSHIP OR TO ANY OTHER PARTNER FOR ANY MISTAKES OR ERRORS IN JUDGMENT, NOR FOR ANY ACT OR OMISSIONS BELIEVED IN GOOD FAITH TO BE WITHIN THE SCOPE OF AUTHORITY CONFERRED BY THIS AGREEMENT. THE PARTNERS SHALL BE LIABLE ONLY FOR ACTS AND/OR OMISSIONS INVOLVING INTENTIONAL WRONGDOING, FRAUD, AND BREACHES OF FIDUCIARY DUTIES OF CARE AND LOYALTY. ACTIONS OR OMISSIONS TAKEN IN RELIANCE UPON THE ADVICE OF LEGAL COUNSEL, APPROVED BY FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBERS, OF THE PARTNERS AS BEING WITHIN THE SCOPE CONFERRED BY THIS AGREEMENT SHALL BE CONCLUSIVE EVIDENCE OF GOOD FAITH; HOWEVER, THE PARTNERS SHALL NOT BE REQUIRED TO PROCURE SUCH ADVICE TO BE ENTITLED TO THE BENEFIT OF THIS SECTION. THE PARTNERS HAVE THE RESPONSIBILITY TO DISCHARGE THEIR FIDUCIARY DUTIES OF CARE AND LOYALTY AND THOSE ENUMERATED IN THIS AGREEMENT CONSISTENTLY WITH THE OBLIGATION OF GOOD FAITH AND FAIR DEALING.

Additional Partners

14.04 THE PARTNERSHIP MAY ADMIT UP TO ONE HUNDRED AND FIFTY (150) PARTNERS INTO THE PARTNERSHIP IN ACCORDANCE WITH SECTION 8.02. THE PARTNERSHIP SHALL HAVE THE RIGHT TO ADMIT MORE THAN ONE HUNDRED AND FIFTY (150) PARTNERS INTO THE PARTNERSHIP ONLY BY THE EXPRESS WRITTEN CONSENT OF FIFTY-ONE PERCENT (51%) IN INTEREST, NOT IN NUMBER, OF THE PARTNERS. ANY NEW OR ADDITIONAL PARTNER SHALL ACCEPT AND ASSUME IN WRITING THE TERMS AND CONDITIONS OF THIS AGREEMENT.

SUITABILITY

14.05 EACH PARTNER REPRESENTS TO THE PARTNERSHIP THAT IF THE PARTNER IS NOT AN ACCREDITED INVESTOR, AS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") (AS DEFINED BELOW), THAT THEY WILL NOTIFY THE MANAGING GENERAL PARTNERS IN WRITING WITHIN TEN (10) DAYS FROM THE DATE OF THAT PARTNER'S ADMISSION INTO THE PARTNERSHIP. AN ACCREDITED INVESTOR AS DEFINED IN THE ACT IS: A NATURAL PERSON WHO HAD INDIVIDUAL INCOME OF MORE THAN $200,000.00 IN EACH OF THE MOST RECENT TWO (2) YEARS OR JOINT INCOME WITH THEIR SPOUSE IN EXCESS OF $300,000.00 IN EACH OF THE MOST RECENT TWO (2) YEARS AND REASONABLY EXPECTS TO REACH THAT SAME INCOME LEVEL FOR THE CURRENT YEAR; A NATURAL PERSON WHOSE INDIVIDUAL NET WORTH (I.E., TOTAL ASSETS IN EXCESS OF TOTAL LIABILITIES), OR JOINT NET WORTH WITH THEIR SPOUSE, AT THE TIME OF ADMISSION INTO THE PARTNERSHIP IS IN EXCESS OF $1,000,000.00; A TRUST, WHICH TRUST HAS TOTAL ASSETS IN EXCESS OF $5,000,000.00, WHICH IS

NOT FORMED FOR THE SPECIFIC PURPOSE OF ACQUIRING THE PARTNERSHIP INTEREST HEREIN AND WHOSE INVESTMENT IS DIRECTED BY A SOPHISTICATED PERSON WHO HAS SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT HE IS CAPABLE OF EVALUATING THE MERITS AND RISKS INVOLVED IN BECOMING A PARTNER; ANY ORGANIZATION DESCRIBED IN SECTION 501(c)(3) OF THE IRC, CORPORATION, MASSACHUSETTS OR SIMILAR BUSINESS TRUST, OR PARTNERSHIP, NOT FORMED FOR THE SPECIFIC PURPOSE OF ACQUIRING THE PARTNERSHIP INTEREST HEREIN, WITH TOTAL ASSETS IN EXCESS OF $5,000,000.00; ANY PRIVATE BUSINESS DEVELOPMENT COMPANY AS DEFINED IN SECTION 3(a)(2) OF THE ACT OR ANY SAVINGS AND LOAN ASSOCIATION OR OTHER INSTITUTION AS DEFINED IN SECTION 3(a)(5) (A) OF THE ACT, WHETHER ACTING IN ITS INDIVIDUAL OR FIDUCIARY CAPACITY; ANY BROKER-DEALER REGISTERED PURSUANT TO SECTION 15 OR SECTION 2(13) OF THE ACT; ANY INVESTMENT COMPANY REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 OR A BUSINESS DEVELOPMENT COMPANY AS DEFINED IN SECTION 2(a)(48) OF THE ACT; ANY SMALL BUSINESS INVESTMENT COMPANY LICENSED BY THE U.S. SMALL BUSINESS ADMINISTRATION UNDER SECTION 301(c) OR (d) OF THE SMALL BUSINESS INVESTMENT ACT OF 1958; ANY PLAN ESTABLISHED AND MAINTAINED BY A STATE, ITS POLITICAL SUBDIVISION, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR ITS POLITICAL SUBDIVISIONS, FOR THE BENEFIT OF ITS EMPLOYEES, IF SUCH PLAN HAS TOTAL ASSETS IN EXCESS OF $5,000,000; ANY EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF THE EMPLOYEE RETIREMENT INCOME SECURITIES ACT OF 1974, IF THE INVESTMENT DECISION IS MADE BY A PLAN FIDUCIARY, AS DEFINED IN SECTION 3(21) OF SUCH ACT, WHICH IS EITHER A BANK, SAVINGS AND LOAN ASSOCIATION, INSURANCE COMPANY, OR REGISTERED INVESTMENT ADVISOR, OR IF THE EMPLOYEE BENEFIT PLAN HAS TOTAL ASSETS IN EXCESS OF $5,000,000.00, OR, IF A SELF-DIRECTED PLAN, WITH INVESTMENT DECISIONS MADE SOLELY BY PERSONS THAT ARE ACCREDITED INVESTORS; AND, ANY ENTITY WHICH ALL OF THE EQUITY OWNERS ARE ACCREDITED INVESTORS AS DEFINED ABOVE.

Notices

14.06 Unless otherwise provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, telexed or sent by United States mail and shall be deemed t have been given when delivered in person, or upon receipt of telecopy or telex or three (3) business days after depositing it in the United States mail, registered or certified, when postage prepaid and properly addressed. For purposes thereof, the addresses of the parties hereto are as set forth in Exhibit "A" and may be changed if specified in writing and delivered in accordance with the terms of this Agreement.

FLORIDA LAW TO APPLY

14.07 THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS.
11.

Disputes

14.08 The Partners shall make a good faith effort to settle any dispute or claim arising under this Agreement. If, however, the Partners shall fail to resolve a dispute or claim, the Partners shall submit it to arbitration before the Florida office of the American Arbitration Association. In any arbitration, the Federal rules of Civil Procedure and the Federal rules of Evidence, as then existing, shall apply. Judgment on any arbitration awards may be entered by any court of competent jurisdiction.

Headings

14.09 Section headings used in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

Parties Bound

14.10 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.

Severability

14.11 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, that invalid, illegal or unenforceable provisions shall not affect any other provision contained IN THIS AGREEMENT.

Counterparts

14.12 This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute by one and the same instrument.

Gender and Number

14.13 Whenever the context shall require, all words in this Agreement in the male gender shall be deemed to include the female or neuter gender AND VICE VERSA, AND all singular words shall include the plural, and all plural words shall include the singular.

Prior Agreements Superseded

14.14 This Agreement supersedes any prior understandings or written or oral agreements among the parties respecting the subject matter contained herein.

Complete #1, #2, #3 and Exhibit A and mail this page only with check made payable to "T&S Associates, GP" to:

P & S ASSOCIATES, General Partnership
c/o SULLIVAN & POWELL
6358 N. Federal Hwy., Suite 210
Ft. Lauderdale, FL 33308-1604

1) The Parties hereto have executed this Agreement by the signature and date set forth below. Each party signing below hereby represents and warrants that such party is sophisticated and experienced in financial and business matters and, as a result, is in a position to evaluate and participate in the business and administration of the Partnership.

_____ Date_____

_____ Date_____

2) Please check one of the following distribution options:

_____I elect to receive distributions on a quarterly basis in the amount of $:_____.

_____I elect to have my quarterly distribution reinvested in the Partnership.

3) Please check one of the following accredited investor choices:

_____ I am an accredited investor as defined below.

_____I am not an accredited investor.

The following would qualify as an "accredited investor":

(i) A person with an individual net worth, or together with his or her spouse a combined net worth, in excess of $1,000,000. Net worth means the excess of total assets at fair market value, including home, home furnishings and automobiles, over total liabilities.

(ii) A person with an individual income (exclusive of any income attributable to his or her spouse) in excess of $200,000 in each of the past two years, and that he or she reasonably expects to have an individual income in excess of $200,000 during this year. Individual income means adjusted gross income, as reported for federal income tax purposes, less any income attributable to a spouse or to property owned by a spouse, increased by the following amounts (but not including any amounts attributable to a spouse or to property owned by a spouse): (i) the amount of any tax-exempt interest income received under Section 103 of the United States Internal Revenue Code of 1986, as amended (the "Code"), (ii) the amount of losses claimed as a limited partner in a limited partnership as reported on Schedule E of form 1040, (iii) any deduction claimed for depletion under Section 611 et seq. of the Code and (iv) any amount by which income from long-term capital gains has been reduced in striving at adjusted gross income pursuant to the provisions of Section 1202 of the Code.

(iii) A person that together with his or her spouse, had a combined income in excess of $300,000 in each of the past two years, and reasonably expects to have a combined income in excess of $300,000 during this year.

EXHIBIT A (How you would like your account titled)

IMPORTANT - Please indicate your beneficiary. Please include address & phone #.

Name, Address Telephone No. and Fax No.	Social Security No. or Federal ID No.	Capital Contribution

IMPORTANT - Please indicate your beneficiary. Please include address & phone #.

ATTACHMENTS 1 & 2

Barry E. Mukamal, CPA*/PFS/ABV/CFE/CFF Curriculum Vitae

Education & Designations

CPA – Certified Public Accountant (1978), *regulated by the State of Florida

PFS – Personal Financial Specialist (1999), conferred by the American Institute of Certified Public Accountants

ABV – Accredited in Business Valuation (2000), conferred by the American Institute of Certified Public Accountants

CFE – Certified Fraud Examiner (1994), conferred by the Association of Certified Fraud Examiner

CFF – Certified in Financial Forensics (2009), conferred by the American Institute of Certified Public Accountants

M.B.A., Accounting and Business Administration, University of Buffalo,
B. S., Accounting, University of Buffalo

Extensive continued education in the areas of business valuation, forensic accounting, accounting and auditing, as well as meeting bi-annual requirements for all designations of AICPA and ACFE for continued professional education.

Professional History

Marcum LLP, *January 1997-present*

Mukamal, Appel, Fromberg & Margolies, P.A., *1982-1997*

Laventhal and Horwath, *1981*

American Assurance Group, Treasurer, Insurance Conglomerate, *1980*

Peat, Marwick, Mitchell & Company, *1977-1980*

Articles, Seminars & Presentations

- "Chapter 7 - Panel Discussion", University of Miami School of Law, 23rd Annual Bankruptcy Skills Workshop, 2013.
- Bankruptcy Bar Association - Southern District of Florida: "Bankruptcy Skills Workshop" - June 2013 "Chapter 7 - Panel Discussion on the proper use of exeptions, lien stripping of second mortgages, preparation of bankruptcy schedules, and the sale of underwater real property by Trustees."
- American Bankruptcy Institute: "Timeshare and Hotel Bankruptcies" - February 2013
- "Handicapping The Playing Field: Addressing Frequent Issues In Bankruptcy Litigation", presented at the ACCA-SFL's Third Annual CLE Conference
- "Symposium I - Protecting Asset Protection: What Works, What Doesn't and Why", presented at the ACTEC 2012 Annual Meeting
- "Fiduciary Responsibilities of Professionals in Bankruptcy", presented at the 2011 Central Florida Bankruptcy Law Association Annual Seminar.
- The Institute 33rd Annual - Florida Chapter - "The Financial Distressed Client: Positioning the Client for Modification, Bankruptcy and/or Foreclosure".
- Florida Fiduciary Forum - Ethics Presentation, 2011.
- "The Bankruptcy Process and Bankruptcy Restructuring for Lawyers", AAJ Winter Convention, 2010, 2011.
- "Top Ten DSO Issues in Bankruptcy", Bankruptcy Trustee Association Training Seminars, 2010.
- "Top Ten DSO Issues in Bankruptcy", Continuing Legal Education (CLE) Fall Conference, 2009.
- "Bankruptcy and Marital Debts; Is it Enforceable or Dischargeable?", ABA Section of Family Law, 2009, 2010.
- "Privacy and Security Issues", 2009 National Association of Bankruptcy Trustees (NABT) Spring Seminar.
- "Taxation Issues Facing The Domestic Relations Practitioner", Palm Beach County Bar Association, Family Law CLE Committee presentation.
- "Privacy and Security Issues in a Trustee's Office and ECF Environment", National Association of Bankruptcy Trustees.
- "Keep Your Client From Drowning: How to Deal with Bankruptcies and Foreclosures", AAML 32nd Annual Institute - SA Symposium, 2010.

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- "Understanding Financial Discovery", Florida Board, Family Law Financial Accounting and Cross Examination Seminar.
- "Federal Tax Filing Requirements", Regional 21 Bankruptcy Trustee Association.
- Topics involving financial controls and risk management presented to financial institutions and organizations involved with distressed properties.
- "The Chapter 7 Debtor From the Perspectives of a Chapter 7 Trustee, v.s. Trustee, and Counsel for a Debtor or a Creditor", University of Miami School of Law and Bankruptcy Bar Association, 2010.

Range of Experience

A Partner at Marcum LLP, Barry Mukamal brings more than 30 years of multidisciplinary experience to the firm's Advisory Services division. Experienced in some 30 industries, he successfully addresses complex issues in bankruptcy and insolvency, capital recovery, fraud, business valuation and economic damages.

Mr. Mukamal is a Chapter 7 Panel Trustee in the Southern District of Florida. He has extensive experience operating businesses and liquidating their assets in the U.S. Bankruptcy Court system as well as in state court proceedings. He has been appointed as liquidating trustee and/or plan administrator in numerous complex cases requiring administration and resolution of litigation, quantification of economic damages and resolution of claims. As plan administrator or trustee on several failed commercial real estate projects, Mr. Mukamal has managed and marketed the completion of construction projects including resolving related creditor claims and construction contractor claims.

Mr. Mukamal has represented debtors, creditors and creditors' committees in matters of insolvency fraud and abuse, and has assisted trustees in their asset recovery efforts. He has served as a court appointed receiver and mediator, and has testified as an expert witness at the local, state and federal level. He has extensive experience in litigation involving preference transfers and fraudulent conveyances in the context of bankrupt entities.

Mr. Mukamal's extensive litigation support experience includes matrimonial dissolution, lost profits litigation, fraud investigations and business valuations. He has been involved in numerous high profile, high-net-worth divorces involving assets in the U.S. and abroad. In addition, he has been retained in investigations and embezzlement issues associated with financial fraud schemes such as Ponzi schemes and occupational fraud. His experience also extends to lost profits litigation, damages in relation to breach of contract, and personal injury and wrongful death actions. Mr. Mukamal's testimony for the plaintiff in a patent damage action facilitated a multi million dollar award for the client.

Mr. Mukamal's involvement with audit and review engagements make him particularly qualified to address issues of accounting malpractice and to testify in such areas. He has been involved in audit, review, accounting and tax engagements ranging from small, closely-held entities to SEC clients in various industries, including insurance, manufacturing, distribution, real estate, health care, publishing, agriculture, seafood and aviation.

Professional & Civic Affiliations

- American Institute of Certified Public Accountants (AICPA)
- Florida Institute of Certified Public Accountants (FICPA)
- Association of Certified Fraud Examiners
- Chapter 7 Panel Trustee, Southern District of Florida

Awards & Recognitions

- 2006 Litigation Key Partner Award Winner, *South Florida Business Journal*
- 2009, 2010, 2011 & 2012 Top CPAs in Litigation Support in South Florida – *South Florida Legal Guide*

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Four Year Case History

Case Name	Court	Case Number	Judge	Type of Testimony
MORTGAGES, LTD.	DISTRICT OF ARIZONA	CASE NO. 2-08-BK-07465-RJH		DEPOSITION
INTEC INC. AND MARC IACOVELLI V CLAUDIO OSORIO, ET AL	MIAMI-DADE	04-09791 CA 08		DEPOSITION
C & M OIL COMPANY V CITGO PETROLEUM CORPORATION, SUNSHINE GASOLINE DISTRIBUTORS, INC.	SOUTHERN DISTRICT OF FLORIDA	04-22901-CIV	HIGHSMITH	TRIAL TESTIMONY
CLAUDIA GOETZ V. RALPH GOETZ	BROWARD	FMCE07015613	MICHAEL KAPLAN	TRIAL TESTIMONY
MARIO'S ENTERPRISES PAINTING & WALLCOVERING, INC. V VEITIA PADRON INCORPORATED	MIAMI-DADE	07-21502 CA 20		TRIAL
CLAUDIA POTAMKIN V ALAN POTAMKIN	MIAMI-DADE	07-27291 FC-04	ROBERT M. PINEIRO	TESTIMONY
ELAINE R. BEAME V LAWRENCE BEAME	MIAMI-DADE	07-29667 FC (07)	BAGLEY	TESTIMONY
MARIA FERNANDA KEELER V. JOHN R. KEELER	MIAMI-DADE	07-29085-FC	BERNSTEIN	TESTIMONY
KEVIN McCARTHY V AMERICAN AIRLINES, INC,, AMERICAN EAGEL AIRLINES AND EXECUTIVE AIRLINES INC.	MIAMI-DADE	07-61016-CIV-COHN /HOPKINS		DEPOSITION
CREATIVE DESPERATION INC.	MIAMI-DADE	08-19067		DEPOSITION
BARRY E. MUKAMAL, AS LIQUIDATING & D & O TRUSTEE FOR FAR & WIDE CORP V ERNST & YOUNG LLP	MIAMI-DADE	08-14346-H		TRIAL
STEPHENSON OIL COMPANY V CITGO PETROLEUM CORPORTION	NORTHERN DISTRICT OF OKLAHOMOA	08-CV-380 TCK-TLW	TERENCE KERN	TESTIMONY

Four Year Case History cont'd

Case Name	Court	Case Number	Judge	Type of Testimony
C & M OIL COMPANY INC. V CITGO PETROLEUM CORPORATION	NORTHERN DISTRICT OF OKLAHOMOA	09-CV-36-TCK-TLW	TERENCE KERN	TESTIMONY
STEPHEN M. FULLER V DARYL FULLER	MIAMI-DADE	09-00957-FC-07		DEPOSITION
AGUSTIN R. ARELLANO, JR. V ELIZABETH RAMIREZ ARELLANO	MIAMI-DADE	09-026846 FC (12)		DEPOSITION
GRAND SEAS RESORT PARTNERS - CHAPTER 11	MIAMI-DADE	09-28973 BKC-LMI / CHAPTER 11	LAUREL M. ISICOFF	TRIAL
ROBERT K. BLAKE, ET AL V JAMES F. ELLIS, ET AL	BROWARD	09-036447 (07)		DEPOSITION /TRIAL
MERENDON MINING (NEVADA, INC. (DEBTOR) V MILOW BROST, ELIZABETH BROST ET AL	MIAMI-DADE	09-11958-BKC-AJC	A. JAY CRISTOL	DEPOSITION
HOWARD M. EHRENBERG, CHAPTER 7 TRUSTEE V BDO SEIDMAN, LLP ET AL	MIAMI-DADE			DEPOSITION/ TESTIMONY
GERALD HESTER V VISION AIRLINES INC.	DISTRICT OF NEVADA	2:09-CV-001170RLH-RJJ		TRIAL TESTIMONY
THE FLORIDA BAR V MARK ENRIQUE ROUSSO AND LEONARDO ADRIAN ROTH	SUPREME COURT OF FLORIDA	SC11-15 & SC11-16 / FLORIDA BAR FILE #2011-70,598(11A) & 2011-70,408(11A)	JUDGE EDWARD NEWMAN, REFEREE	DEPOSITION
DAVID C. ARNOND V ASSOCIATION LAW GROUP, ET AL	MIAMI-DADE	12-13962 CA 40		TESTIMONY
MAURY ROSENBERG V DVI RECEIVABLES, XIV, LLC, U. S. BANK N. A., ET AL	MIAMI-DADE	09-13196 BKC-AJC		DEPOSITION

Four Year Case History cont'd

Case Name	Court	Case Number	Judge	Type of Testimony
MAURY ROSENBERG V DVI RECEIVABLES, XIV, LLC, U. S. BANK N. A., ET AL	MIAMI-DADE	09-13196 BKC-AJC		TRIAL
JOHN CAMPION V ESTHER CAMPION	MIAMI-DADE	16-2012-DR-000297 FMC		TESTIMONY & DEPOSITION
FUSIONSTORM INC. V PRESIDIO NETWORKED SOLUTIONS, INC., MICHAEL LYTOS, DAVID DUFF, JOHN LOTZE, GINA KING & YANDY RAMIREZ		1400013677	ARBITRATION	TESTIMONY
CREATIVE DESPERATION INC. V MGSI INC., THOMAS JOHN KARAS, BARBARA FAWCETT, ET AL	FT. LAUDERDALE	08-019067		TESTIMONY
CAPITAL INVESTMENTS USA INC./JOEL TABAS - TRUSTEE V EDWIN EATON TRUST, EDWIN H. ETON JR INT TAX TRUST, ET AL	MIAMI DIVISION	09-36408 BKC- LMI/09-35418 BKC-LMI		DEPOSITION
CAPITAL INVESTMENTS USA INC./JOEL TABAS - TRUSTEE V JOSEPH M. LEHMAN	MIAMI DIVISION	09-36408 BKC- LMI/09-35418 BKC-LMI		DEPOSITION
ANNA INGHRAM V SAMER TAWFIK	MIAMI-DADE	10-035020 FC (16)		DEPOSITION
DAVID C ARNOLD V ASSOCIATION LAW GROUP, ET AL-	MIAMI-DADE	12-13962 ca 40		DEPOSITION / TESTIMONY
MOLINA HEALTHCARE OF FLORIDA INC. V PHYSICIAN CONSORTIUM SERVICES LLC	MIAMI-DADE	32-193-00516-10		DEPOSITION
STEVEN EDWARD RUFFE V LINDA RUTH RUFFE	MIAMI-DADE	11-36218 FC 07		DEPOSITION

Four Year Case History cont'd

Case Name	Court	Case Number	Judge	Type of Testimony
DDS HOLDINGS INC. V SANARE LLC AND DOCTOR DIABETIC SUPPLY LLC	MIAMI-DADE	11-26481-CA-40		TRIAL
TODD LARY/STARBRIGHT V BOSTON SCIENTIFIC CORPORATION	SOUTHERN DISTRICT OF FLORIDA	1:11 CV 23820		TESTIMONY
OCALA FUNDING LLC V DELOITTE & TOUCHE LLP	MIAMI-DADE	11-30957 CA 30		TESTIMONY
DEUTSCHE BANK AG V DELOITTE & TOUCHE LLP	MIAMI-DADE	11-43773 CA 40		TESTIMONY
AAMG MARKETING GROUP LLC DBA AIRLINE ALTERNATIVE MARKETING GROUP V ALLEGIANT AIR LLC, ET AL	DISTRICT COURT OF CLARK COUNTY, NEVADA	A-11-640358-C		TRIAL
AMERICAN EDUCATIONAL ENTERPRISES, LLC V THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND	MIAMI-DADE COUNTY	CASE #02-23922 CA 09		DEPOSITION

ATTACHMENT 3

S&P Associates, General Partnership
P&S Associates, General Partnership

Glossary of Terms	
Defined Term	**Description**
2008 Sullivan Distributions	Distributions recorded by S&P to partners Ann or Michael Sullivan on 12/31/08 in the amount of $300,465.51 and partners D.& L. Gail Sullivan on 12/31/08 in the amount of $31,500.
Avellino	Frank J. Avellino
Bienes	Michael S. Bienes
Conservator	Phillip J. Von Kahle
Kelco	Kelco Foundation
Madoff or BMIS	Bernard L. Madoff Investment Securities, LLC
Marcum	Marcum LLP
Moecker	Michael Moecker and Associates
P&S	P&S Associates, General Partnership
P&S Annual Partner Statements	Spreadsheets prepared by Moecker that summarize the activity (capital account beginning balance, new investments, management fees, expenses, distributions, gains/losses and ending capital account balance) for all partners on an annual basis based on information reported by P&S managing general partner on the annual partner statements.
P&S Madoff Cash Receipts & Disbursements List	Excel spreadsheets prepared by Moecker of the cash receipts from and cash disbursements to Madoff for each year from 1993 through 20008, which spreadsheets are based on Moeckers analysis of P&S books and records.
P&S Madoff Portfolio Reports	Summary report prepared by Madoff for P&S titled "Portfolio Management Report
P&S Management Fee Checklist	Excel spreadsheet list prepared by Moecker of the management fee's paid by P&S, which Moecker identified through their analysis of P&S books and records.
P&S Management Fees	Pursuant to Article 5.01 of the Partnership agreement, 20% of the capital gains, capital losses, dividends, interest, margin interest expense and all other profits and losses attributable to the partnership are to be allocated to the managing general partners.
P&S Partnership Agreement	P&S Amended and Restated Partnership Agreement, dated December 21, 1994
P&S Quarterly Management Fee Calculations	Quarterly calculations of management fee's prepared by P&S managing general partner
P&S Spreadsheets	Excel spreadsheets titled 1993-2008 by Partner Cash-In Cash-Out Real Balance
Partners	the general partners of P&S and S&P
Partnerships	P&S and S&P collectively
Powell	Greg Powell
Review Period	1993 through 2008
S&P	S&P Associates, General Partnership
S&P Annual Partner Statements	Spreadsheets prepared by Moecker that summarize the activity (capital account beginning balance, new investments, management fees, expenses, distributions, gains/losses and ending capital account balance) for all partners on an annual basis based on information reported by S&P managing general partner on the annual partner statements.
S&P Madoff Cash Receipts & Disbursements List	Excel spreadsheets prepared by Moecker of the cash receipts from and cash disbursements to Madoff for each year from 1993 through 20008, which spreadsheets are based on Moeckers analysis of P&S books and records.
S&P Madoff Portfolio Reports	Summary report prepared by Madoff for S&P titled "Portfolio Management Report
S&P Management Fee Check List	Excel spreadsheet list prepared by Moecker of the management fee's paid by P&S, which Moecker identified through their analysis of S&P books and records.
S&P Management Fees	Pursuant to Article 5.01 of the Partnership agreement, 20% of the capital gains, capital losses, dividends, interest, margin interest expense and all other profits and losses attributable to the partnership are to be allocated to the managing general partners.
S&P Partnership Agreement	S&P Amended and Restated Partnership Agreement, dated December 21, 1994
S&P Quarterly Management Fee Calculations	Quarterly calculations of management fee's prepared by S&P managing general partner
S&P Spreadsheets	Excel spreadsheets titled 1993-2008 by Partner Cash-In Cash-Out Real Balance
Sullivan	Michael D. Sullivan
Sullivan Inc.	Michael D. Sullivan & Associates, Inc.

ATTACHMENT 4

P & S ASSOCIATES, GENERAL PARTNERSHIP and S & P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiff,

v

ROBERTA P ALVES, ET AL.,

Defendants.
_____/

IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA
CASE NO 12-028324 (07)
Complex Litigation Unit

AFFIDAVIT OF EXPERT BARRY MUKAMAL, CPA

STATE OF FLORIDA)
)
COUNTY OF MIAMI DADE)

BEFORE ME, the undersigned authority, duly authorized to administer oaths and take acknowledgments, personally appeared Barry Mukamal, who, upon being first duly sworn, deposes and says as follows:

1 I am a certified public accountant, and a Partner with the firm Marcum, LLP ("Marcum"). On January 17, 2013 this Court entered its Order Appointing Conservator (the "Order of Appointment") Philip J Von Kahl (the "Conservator") as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (collectively, the "Partnerships"). Among other things, the Order of Appointment directed the Conservator to make recommendations with regard to the method of distribution of the Partnerships assets to the partners.

2. On October 30, 2013, this court entered an Order approving the Conservators Motion to Retain and Compensate Barry Mukamal and Marcum LLP as an Expert Witness, nun pro tunc to October 1, 2013 As such, I am familiar with the matters set forth herein and submit this Affidavit of Expert.

3 In connection with our employment as an Expert Witness, we were provided with a spreadsheet for S&P that was prepared by the Conservators financial advisor, Michael Moecker and Associates ("Moecker"), titled "1993-2008 by Partner Cash In Cash Out – Real Balance (Investment less distributions"), hereinafter referred to as the "S&P Annual Cash In Cash Out Spreadsheet" The S&P Cash-In Cash-Out Spreadsheet summarized the annual cash contributions and withdrawals by partner for each year for the life of S&P, including partner Guardian Angel. Based on the S&P Cash-In Cash-Out Spreadsheet, partner Guardian Angel made investments in the amount of $5,188,103 52 and received total distributions in the amount of $1,298,357.21

4. We were also provided with a second spreadsheet for S&P that was prepared by Moecker, titled "Summary of Investments and Distribution" (the "S&P Detail Investment & Distribution Spreadsheet"), which spreadsheet included the detail for the new investments in the amount of $5,188,103.52 and distributions in the amount of $1,298,357.21 related to partner Guardian Angel.

5 Using the S&P Detail Investment & Distribution Spreadsheet, we selected a statistical sample of the new investments and distributions related to partner Guardian Angel to achieve a 95% confidence level and 90% confidence intervals. We determined a sample size for testing of 68 transactions. For each transaction in our sample, we proceeded to confirm the amount of the investments and distributions listed on the S&P Detail Investment & Distribution Spreadsheet as follows.

a. Moecker provided Marcum with multiple boxes containing investor records. Specifically, these boxes were organized by year and contained bank statements, copies of checks from investors for new investment, confirmation letters to individual investors, and copies of cancelled checks with respect to investor distributions. [1]

b. With respect to investments, we agreed the amount on the S&P Detail Investment & Distribution Spreadsheet to copies of investment check(s) from investors and corresponding deposit(s) per bank statements, further corroborated by confirmation letter(s) from S&P to individual investors.

c. With respect to distributions, we agreed the amounts detailed on the S&P Detail Investment & Distribution Spreadsheet by reference to copies of cancelled checks to investors and corresponding disbursement per banking records.

d. The S&P Annual Cash-In Cash-Out and S&P Detailed Investment & Distribution Spreadsheet exclude false profit, including the false profit related to the partners that were transferred to Guardian Angel through journal entries.[2]

6 As a result of the testing described above, no exceptions were noted.

7 Based upon my analysis and testing, in my opinion the amounts included for investments of $5,188,103.52 and distributions of $1,298,357.21 in the S&P Annual Cash-In Cash-Out Spreadsheet and S&P Detail Investment & Distribution Spreadsheet for partner Guardian Angel are reliable.

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[1] JS&P banking was conducted through S&P bank accounts, therefore we were provided with S&P bank records. Additionally, we were also provided with Guardian Angel bank statements for the following periods, 6/1/06 – 4/30/13, which statements were incomplete in that the majority of the periods did not include canceled checks or deposit detail Guardian Angel did not provide bank statements for periods before June 1, 2006.

[2] During 2002 certain partners of S&P and JS&P had their entire investment position (including false profit) transferred via a journal entry from S&P and JS&P to Guardian Angel.

FURTHER AFFIANT SAYETH NAUGHT

Respectfully submitted,

Barry E. Mukamal, CPA/PFS/ABV/CFE/CFF
Partner
Marcum, LLP

The foregoing instrument was acknowledged before me this 31st day of October 2013 by Barry Mukamal, who is personally known to me and who did take an oath.

Deborah L. Richards
Notary Public State of Florida at Large

My Commission Expires: Mar 31, 2017

DEBORAH L. RICHARDS
Notary Public - State of Florida
My Comm. Expires Mar 31, 2017
Commission # EE 857500
Bonded Through National Notary Assn.

AFFIDAVIT OF PHILIP VON KAHLE

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared Philip von Kahle, who deposes and states:

1. I, Philip von Kahle, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated.

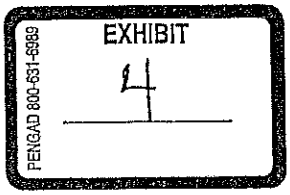
2. On January 17, 2013, I was appointed as Conservator (the "Conservator") of P&S, General Partnership ("P&S") and S&P General Partnership ("S&P") (collectively, the "Partnerships").

3. I was appointed as successor to Margaret Smith, who did not have a complete copy of the books and records of the Partnerships. Instead Michael D. Sullivan ("Sullivan") possessed all of the Partnerships' books and records and refused to turn them over.

4. As a result of Sullivan's conduct, I did not have complete access to the books and records of the Partnerships when I was appointed by the Court, and did not receive all of the books and records of the Partnerships from Sullivan until 2013. I did not receive a significant portion of the Partnerships' books and records until after May 16, 2013.

5. However, I did not receive a complete production of documents until after August 19, 2013, when the Court entered an *Order Compelling Michael Sullivan to Authorize the Conservator Access to Financial and Insurance Information.* A true and correct copy of that Order is attached hereto as **Exhibit A.**

6. It took several months, after receipt of the Partnerships' books and records, from Sullivan to determine the exact amount that the partners who received more than their capital contributions retained.



7. In May of 2013, after reviewing and reconstructing the Partnerships' books and records, in furtherance of my appointment as Conservator of the Partnerships I elected to begin the process of winding the Partnerships down under Florida law.

8. To that end, I filed a *Motion to Approve Plan and Distribution and Establish Objection Procedure*, seeking Court authorization to wind-down the Partnerships, and Court approval of the net-investment method for the distribution of the Partnerships assets. A true and correct copy of the *Motion to Approve Plan and Distribution and Establish Objection Procedure*, is attached hereto as **Exhibit B.**

9. On October 7, 2013, the Court entered an *Order on Motion for Summary Judgment*, which approved of the "net-investment" method of distribution assets, and permitted me to start the process of winding down the Partnerships.

10. Thus, after October 7, 2013, and I began the process of winding down the Partnerships, because I obtained Court approval to wind down the Partnerships.

11. The Partnerships were never limited partnerships, but were general partnerships.

12. The documents attached to the Responses to the Motions for Summary Judgment are business records which were kept and maintained in the ordinary course of business.

FURTHER AFFIANT SAYETH NAUGHT.

PHILIP VON KAHLE

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 11th day of April, 2014 by Philip Von Kahle who is personally known to me or has produced as identification _____ and did/did not take an oath.

Name: _____
(Notary Public)
(Affix Seal Below)

GISELLE CROMER
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE081838
Expires 4/8/2015

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 12-24051 (07)
COMPLEX LITIGATION UNIT

MATTHEW CARONE, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.
_____/

ORDER COMPELLING MICHAEL SULLIVAN TO AUTHORIZE THE CONSERVATOR ACCESS TO FINANCIAL AND INSURANCE INFORMATION

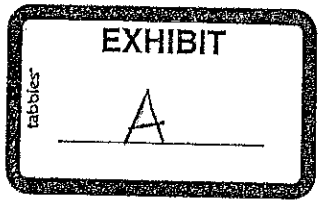
THIS MATTER came before the Court on August 2, 2013 at 1:30 p.m. upon the court-appointed Conservator of S&P Associates General Partnership and P&S Associates General Partnership (the "Partnerships"), Philip von Kahle's (the "Conservator") *Conservator's Renewed Motion for Contempt and to Compel Turnover of Partnerships' Books, Records and Electronically Stored Information* (the "Renewed Motion").

The Court having reviewed the Renewed Motion, having heard proffer of counsel, having been advised of the agreement of the parties to the entry of the instant order, finding that sufficient notice has been given to all partners and parties-in-interest, and otherwise finding sufficient cause to enter the relief granted herein, for the reasons stated on the record, it is

ORDERED and **ADJUDGED** as follows:

1. The Renewed Motion is Granted as follows:

2. Michael D. Sullivan ("Sullivan") shall, within five (5) calendar days of receiving any authorization form(s), sign any and all such authorization form(s) that are deemed reasonable or necessary, in the Conservator's sole discretion, to authorize the Conservator to obtain, at the Partnerships' expense, any and all copies of bank statements, cancelled checks, and other financial information of or related to the Partnerships (and their affiliates and insiders including,



but not limited to, Michael D. Sullivan & Associates, Inc., Solutions in Tax, Inc., a/k/a Sullivan & Powell) from BB&T Bank, Republic Bank, Bank of America and other banking institutions with which such entities ever had or have a relationship with (the "Financial Companies"), directly and immediately from the Financial Companies.

3. Sullivan shall, within five (5) calendar days of receiving authorization form(s), sign any and all such authorization form(s) that are deemed reasonable or necessary, in the Conservator's sole discretion, to authorize the Conservator to obtain, at the Partnerships' expense, any and all copies of all insurance policies or insurance related documents of or related to the Partnerships (and their affiliates and insiders including, but not limited to, Michael D. Sullivan & Associates, Inc., Solutions in Tax, Inc., a/k/a Sullivan & Powell) from Cypress Insurance Agency America and any other insurance related entities with which such entities ever had or have a relationship with (the "Insurance Companies"), directly and immediately from the Insurance Companies.

4. If Sullivan fails to comply with this Order, he ~~shall~~ may be held in contempt.

5. This Court retains jurisdiction to enforce this Order.

6. This Court reserves jurisdiction to enter an award of reasonable fees and costs in favor of the Conservator in connection with the preparation and filing of this Renewed Motion; such award to be considered contemporaneously with that certain related April 24, 2013 *Supplement to Motion for Contempt.*

Done and ordered in Chambers this _____, 2013.

JEFFREY E. STREITFELD

AUG 19 2013

A TRUE COPY

HONORABLE JEFFREY E. STREITFELD
Circuit Court Judge

Copies furnished to:
Thomas M. Messana, Esq. who is directed to serve same upon all interested parties.

IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 12-028324 (07)
COMPLEX LITIGATION UNIT

P & S ASSOCIATES, GENERAL PARTNERSHIP and S & P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.

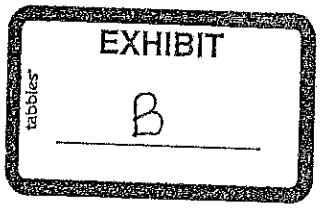
_____/

NOTICE OF DEADLINE TO RESPOND (IN SUPPORT OR OPPOSITION) TO THIS MOTION

This Court's *Second Order Resetting Deadlines and Case Management Conference* provides that interested parties shall have until **June 30, 2013** to file any responses and/or objections to this Motion. It is anticipated that the Court will rule on how the funds the Conservator is holding should be distributed. Failure to respond and/or object may result in a waiver of certain rights.

CONSERVATOR'S MOTION FOR SUMMARY JUDGMENT TO: (i) APPROVE DETERMINATION OF CLAIMS, (ii) APPROVE PLAN OF DISTRIBUTION, AND (iii) ESTABLISH OBJECTION PROCEDURE

Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P) (together, the "Partnerships"), by and through undersigned counsel, pursuant to the Conservator Order (as defined below) hereby files the Conservator's Motion for Summary Judgment to: (i) Approve Determination Claims; (ii) Approve Plan of Distribution, and (iii) Establish Objection Procedure (the "Distribution Motion"), and in support thereof states as follows:



I. BRIEF STATEMENT OF UNDISPUTED FACTS

The Partnerships were each victims in what has become known as the largest fraud in human history, the Bernard L. Madoff Investment Securities LLC ("BLMIS") ponzi scheme (the "Ponzi Scheme"). Most of the Partnerships' many general partners (the "Partners") were, in turn, victims of the Ponzi Scheme.

However, as some Partners received cash distributions and others rolled their paper "profits" back into their investment, the Partners have not borne the Partnerships' losses equally.

Some of the Partners lost their entire investments; others received millions of dollars more than their investments. For this reason and others, the Partners may have different views on how to distribute the Partnerships' remaining assets.[1]

In July of 2012, the Partnerships commenced the instant interpleader action principally seeking judicial oversight and direction as to the appropriate method of distributing the Partnerships' remaining assets (the "Interpleader Action").

In August of 2012, certain Partners filed a lawsuit against the Partnerships' Managing General Partner, Michael Sullivan.[2] This lawsuit alleges, among other things, that Mr. Sullivan diverted millions of Partnership dollars to himself and other insiders.

In the Conservator Suit, the plaintiffs requested, *inter alia*, the appointment of a neutral professional to take over the Partnerships, to pursue the Partnerships' best interests, and to report to this Court and the Partners.

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[1] Likewise, the Partners may have different views on whether Partners are entitled to keep distributions received in excess of their investments.

[2] *Matthew Carone, et. al. v. Michael D. Sullivan*, Case No. 12-24051 (07) (the "Conservator Suit").

On January 17, 2013, this Court granted the plaintiffs' request and appointed Philip Von Kahle as Conservator of the Partnerships by entering the *Order Appointing Conservator* (the "Conservator Order"). The Conservator Order provides, among other things, that the Conservator's duties include:

> Winding down of the affairs of the Partnerships and distribution of assets of the Partnerships, **including following up on the Interpleader Action filed with the Court in determining how the partnership funds are to be distributed, making all necessary and appropriate applications to the Court in order to effect such wind-down and distributions.**

Conservator Order at 5.(a) (emphasis added).

On May 6, 2013, this Court entered its *Second Order Resetting Deadlines and Case Management Conference* in the Interpleader Action (the "Management Order"). The Management Order requires the Conservator to submit his recommendations with respect to distribution by May 31, 2013. The Management Order allows interested parties to file responses (in support or objection) to the Distribution Report through and until June 30, 2013.

The purpose of this Distribution Motion is to explain the Trustee's proposed method of distribution and the basis for the same, and to describe the objection procedure for parties-in-interest to respond to the proposed distribution plan. To that end, this Distribution Motion: (i) provides the relevant background and the Partnerships' relationship to the Madoff Ponzi; (ii) identifies the Partnership Property; (iii) explains the method of determining whether a Partner is eligible to receive a distribution; (iv) describes distribution methods available to the Conservator; (v) explains why the particular distribution method was selected by the Conservator; and (vi) proposes an equitable and efficient objection procedure.

II. RELEVANT BACKGROUND

Partnerships Invest in the BLMIS Ponzi Scheme

The Partnerships were formed pursuant to written partnership agreements dated December 11, 1992. In 1994 the partnership agreements were amended (the "Partnerships Agreements).[3] The Partnerships' stated purpose was to invest in securities. In practice, the Partnerships invested exclusively in BLMIS.

In late 2008 it was discovered that BLMIS was a ponzi scheme orchestrated by, among others, Bernard Madoff. Thereafter, a liquidation proceeding was commenced in the Southern District of New York to liquidate BLMIS pursuant to the Securities Investment Act ("SIPA") (the "BLMIS Liquidation").

Conservator is Appointed Over the Partnerships

On August 24, 2012, certain of the partners of the Partnerships instituted the Conservator Suit. The Conservator Suit sought, among other things, to enjoin the Managing General Partner of the Partnerships, Michael D. Sullivan ("Sullivan"), from exercising control over the Partnerships, their books and records, and their assets. The plaintiff's in the Conservator Suit also sought the appointment of a receiver over the Partnerships.

As previously discussed, this Court appointed the Conservator over the Partnerships in the Conservator Suit. As part of his duties, this Court tasked the Conservator with advancing the Interpleader Action and with making recommendations with regard to the method of distribution of assets to Partners.

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[3] Copies of the Restated Partnership Agreement of S&P ("S&P Partnership Agreement") and Restated Partnership Agreement of P&S ("P&S Partnership Agreement", collectively the "Partnerships Agreements") were attached as exhibits to the Amended Complaint in this Interpleader Action.

Consistent with the Conservator Order, this Distribution Motion advances the objective of distributing Partnership Property in a structured and judicious manner.

III. Partnership Property

The principal sources of Partnerships' Property are: (i) the claims asserted by the Partnerships in the BLMIS Liquidation; (ii) funds the Partnerships held in certain bank accounts prior to the discovery of the Ponzi Scheme; and (iii) claims and causes of action the Partnerships have against certain individuals, professionals, and entities.[4]

With respect to the Partnership claims in the BLMIS Liquidation, the Partnerships filed separate claims for the losses they incurred.

S&P filed a claim in the amount of $44,768,253.86 (the "S&P Claim") and P&S filed a claim in the amount of $18,180,533.93 (the "P&S Claim") (together, the "Partnerships' Initial Claims"). Upon information and belief, the figures used in compiling the Partnerships' Initial Claims were based on the (now admittedly false) account statements reflecting both the cash investments and "paper profits".

Initially, the Madoff Trustee denied the Partnerships' Initial Claims outright. In fact, the Madoff Trustee asserted claims against the Partnerships to avoid certain transfers and to recover monies from the Partnerships (the "Partnerships Transfer Suits").

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[4] At present, the Partnerships have filed two lawsuits seeking recovery for the Partnerships. The first is against certain insiders and affiliates of insiders of the Partnerships. The second is against certain Partners who received greater distributions from the Partnerships than the contributions they made to the Partnerships (Net Winners).

Ultimately, the Madoff Trustee entered into settlement agreements with each of the Partnerships which resolved, among other things, the Partnerships' Initial Claims and the Partnerships Transfer Suits (the "Settlement Agreements").[5]

Pursuant to the Settlement Agreements, the Madoff Trustee agreed to allow the Partnerships' Initial Claims in amounts which reflected an analysis of the Partners' net investment (total contributions less total distributions) in BLMIS. Upon information and belief, the Madoff Trustee based his analysis on all of the books and records available to him.

The S&P Claim was allowed in the gross amount of $10,131,036.00. The P&S Claim was allowed in the gross amount of $2,406,624.65 (together, the "Partnerships' Allowed Claims").

As of the date of this Distribution Motion, the Conservator has received approximately $4,519,086.93[6] on account of the S&P Allowed Claim (including $175,000.00 as part of the SIPC claim). The Conservator has received approximately $921,183.72[7] on account of the P&S Allowed Claim. Prior to the appointment of the Conservator certain of these funds were held by the law firm Becker & Poliakoff LLP.

Additionally, the Conservator is in possession of certain funds that were held in BB&T bank accounts of the Partnerships. For S&P, such funds were in the amount of

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[5] Copies of the Settlement Agreements were attached as Exhibit "C" to the Second Amended Complaint in the Interpleader Action.

[6] First Interim Distribution of $466,230.28 plus Second Interim Distribution of $3,399,570.44 plus Third Interim Distribution of $478,286.21 plus $175,000.00.

[7] Comprised of funds from the Second Interim Distribution of $807,566.97 plus Third Interim Distribution of $113,616.75.

$20,602.37. For P&S, such funds were in the amount of $610,750.87 plus $50,606.21 for a total recovery of $661,357.08.

Finally, the Partnerships assert claims or may assert claims against, among others, certain individuals who were insiders or related to insiders of the Partnerships, certain Partners who received greater distributions than they were entitled, and others.

The relevant information is summarized as follows:

	S&P Partnership	P&S Partnership
Partnerships' Initial Claims	$44,768,253.86	$18,180,533.93
Partnerships' Allowed Claims	$10,131,036.00	$2,406,624.65
Total Received on Account of Partnerships' Allowed Claims	$4,344,086.93	$921,183.72
SIPC Claim	$175,000.00	N/A
Monies Received From BB&T	$20,602.37	$661,357.08
Claims and Causes of Action held by the Partnerships	Value To Be Determined	Value to Be Determined
Interest on Funds	$4,235.00	$1,658.20

The Partnership Property may increase in the event the Madoff Trustee authorizes additional distributions on account of the Partnerships' Allowed Claims. While it is as yet uncertain, it is reasonably anticipated that the Partnerships will receive future additional distributions from the Madoff Trustee on account of their Allowed Claims. As such, the Conservator recommends consistent application of the distribution method recommended herein to all further and future distributions.

With respect to the Partnerships' claims and causes of action, the Partnerships commenced certain lawsuits which, if successful, may provide substantial additional recoveries for the Partnerships. The lawsuits are styled: *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Janet A. Hooker Charitable Trust, et. al.*, Case No. 12-034121 (07) (the "Net Winner Lawsuit") and *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Michael D. Sullivan, et. al.*, Case No. 12-034123 (07) (the "Insider Lawsuit") (together, the "Lawsuits"). The Lawsuits are currently pending in the Complex Litigation Division in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

At this time, the funds available for the initial interim distribution, net of holdbacks for administrative costs and other claims, for S&P Partners is approximately $3,900,000.00.

At this time, the funds available for the initial interim distribution, net of holdbacks for administrative costs and other claims, for P&S Partners is approximately $1,000,000.00.

The Conservator's proposed interim distribution is of approximate 69.57% of all funds for P&S and 87.85% for S&P. In the BLMIS Liquidation, the Madoff Trustee has distributed only 53% percent of monies available for distribution and has reserved the remaining funds.[8]

Notwithstanding the standard set by the Madoff Trustee, the Conservator believes that the interim distribution percentages recommended here are appropriate and provide the Partnerships sufficient reserves to fund the costs associated with the administration of the Conservatorship including reserves for contingencies.

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[8] http://www.madofftrustee.com/recoveries-25.html

IV. PARTNER CLAIMS ANALYSIS/CAPITAL ACCOUNT

A. Overview of the Conservator's Claims Analysis

Shortly after his appointment, the Conservator received certain documents, including the available Partnerships' accounting records from GlassRatner.[9] The Conservator and his professional staff at Michael Moecker and Associates, Inc. have reviewed and analyzed the Partners' interests in the Partnerships and their relative rights in the current assets of the Partnerships' Property.

To accurately determine each individual Partner's capital account, the Conservator and his team was required to recreate each account based on the total cash contributions made by the Partner and total cash distributions received by the Partner from the beginning of the Partnerships. Moreover, as the original Partnership records reflected hundreds and hundreds of transactions accounting for reductions of each Partner's capital account for fees and other costs, adjustments were required to determine each Partner's true 'net' position.

Additionally, during his investigation the Conservator discovered, among other things, (i) that certain Partners received impermissible commissions or referral fees from the Partnerships;[10] and (ii) that certain Partners' accounts were moved from the Partnerships to other entities without permission.

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[9] Substantially all of the documents received from GlassRatner were in hardcopy form. The Conservator undertook significant efforts to input the relevant information into electronically analyzable format.

[10] The Conservator's analysis and recommendations contemplate withholding distributions from Partners who received commissions and referral fees until a resolution of the Partnerships claims against such Partners is reached.

In connection with such discoveries, the Conservator has issued several requests for additional information from the Partnerships' principals and related entities.

In connection with such requests, the Conservator filed, among other things, motions for contempt against Michael Sullivan and Steve Jacob for failing to comply with the Conservator's demands and Court Orders.

To date, Mr. Jacob has failed and refused to turnover all of the requested materials and has objected to the Conservator's requests for information. Mr. Jacob has also opposed substantially every effort of the Conservator, including by purporting to be Managing General Partner of S&P and sending a 'Call to Action' letter with misleading information to the Partners. Mr. Jacob's actions have had a detrimental effect upon the administration of the Conservatorship and have led to increased costs and expenses for the Partnerships.

Upon information and belief, after entry of Stipulated Protective Order, Mr. Sullivan has made a good faith effort to respond to the Conservator's requests. However, it is unknown whether additional relevant information has been withheld from the Conservator. The Conservator is still in the process of reviewing the tremendous amount of information only recently turned over.[11]

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[11] The Conservator has also discovered that principals of the Partnerships were associated with and paid commissions and/or referral fees to Frank Avellino and Michael Bienes ("A&B"), defendants in the Insider Lawsuit. In 1992, A&B were investigated by the SEC. "According to the SEC complaint, Avellino & Bienes had apparently been feeding funds to Madoff for years, possibly as long as thirty years, back to 1962. By the late 1980's, A&B actually had its own feeder funds, at least two smaller firms, funneling funds into it ... The SEC's primary issue with A&B was the lack of proper securities registration per the 1933 Securities Act ... The firm was shut down in 1993, an $875,000 fine was paid, and A&B and the other two feeder funs were required to return the funds to investors." Peter Sander, Madoff – Corruption, Deceit, and the Making of the World's Most Notorious Ponzi Scheme 93 (The Lyons Press 2009). The Conservator has discovered evidence that A&B were business associates with principals of the Partnerships and that certain investors in A&B's 'shut down' Madoff feeder fund were transferred to the Partnerships.

Attached hereto and incorporated by reference herein as Exhibit "A" (P&S) and Exhibit "B" (S&P) are spreadsheets reflecting the results of the Conservator's analysis (the "Spreadsheets").

Based on the review of the available documents, the Conservator has determined that the Partners generally fall within one of two classes:

1. The first class of Partners is comprised of Partners who contributed more cash to the Partnerships than they received distributions from the Partnerships. On a 'net' basis, these Partners – Net Losers – lost at least some investment dollars that originated outside of the Ponzi Scheme ("Net Loss").

2. The second class of Partners is comprised of Partners who received more distributions from the Partnerships than they made contributions to the Partnerships. On a 'net' basis, these Partners – Net Winners – received 100% of their investment dollars plus at least some amount of money ('fictitious profits') which originated from the Ponzi Scheme ("Net Winnings").

As discussed above, within each class, documents discovered by the Conservator reflect that certain Partners received impermissible commissions and/or referral fees. The Conservator recommends withholding distributions from such Partners until all such issues are fully resolved.

To protect the identities of all of the Partners, the Spreadsheets identify Partners by Investor Account Number.[12]

Each of the Spreadsheets contain: 1) the Partners' Investor Account Number; 2) the amount of Net Loss or Net Winnings; 3) a proposed interim distribution amount; and 4) remarks or footnotes with specific information for certain Partners. Please note, in certain circumstances accounts held by the same investor were combined (consolidated) to reach a total 'net' figure for the particular Partner.[13] For example, if John Doe is a Partner with two accounts: Account #1 which is a Net Winner of $10,000; and Account #2 which is a Net Loser of $15,000, Account #1 and Account #2 were consolidated resulting in John Doe being treated as a Net Loser in the consolidated amount of $5,000.[14]

As is more fully discussed below, the Conservator recommends that the Net Losers be entitled to a claim in the amount of their Net Loss (an "Allowed Claim").

As recommended, each Net Loser shall have a claim against the particular Partnership in which they were a Partner. For clarity, S&P Net Losers will have an

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[12] If you are a Partner and you do not know your Investor Account Number, please contact the attorneys for the Conservator at the undersigned law firm by calling 954-712-7400. Please have available information to help confirm your identity.

[13] Corporate formalities have been respected such that accounts were not consolidated where an individual Partner is also the owner of an entity Partner. For Example, John Doe is a Partner with Account #1. John Doe is also the owner of Company ABC. Company ABC is a Partner with Account #2. Account #1 and Account #2 were not consolidated.

[14] The right of setoff (also called "offset") allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding "the absurdity of making A pay B when B owes A." *Studley* v. *Boylston Nat. Bank*, 229 U. S. 523, 528 (1913); *see also Wiand v. Meeker*, 8:10-CV-166-T-EAK, 2013 WL 298335 at *4 (M.D. Fla. Jan. 25, 2013) (noting that set-off is appropriate in certain instances where investors have multiple accounts).

Allowed Claim equal to their Net Loss against S&P. Likewise, P&S Net Losers will have an Allowed Claim equal to their Net Loss against P&S.

The Conservator proposes to distribute Partnership Property on a *pro rata* basis, to the Net Losers based on their Allowed Claims.

Until the Net Losers are made whole, the Conservator objects to all claims of Net Winners. Furthermore, pursuant to the Net Winner Lawsuit, the Partnerships have asserted claims to recover the Net Winnings paid to the Net Winners.

B. The Partners' Allowed Claims

P&S Net Losers

Based on the Conservator's analysis, there are forty-seven (47) P&S Net Losers. The Conservator recommends allowing the P&S Net Loser's Allowed Claims against P&S in the total amount of approximately $9,742,612.61. *See* Exhibit "A".

The Conservator respectfully requests that this Court permit distributions to the P&S Net Losers on a pro-rata basis, i.e., the P&S Net Losers will share in the distribution based on their relative net losses.

S&P Net Losers

Based on the Conservator's analysis, there are approximately fifty-seven (57) S&P Net Losers. The Conservator recommends allowing the S&P Net Loser's Allowed Claims against S&P in the total amount of approximately $20,791,854.30. *See* Exhibit "B".

The Conservator respectfully requests that this Court permit distributions to the S&P Net Losers on a pro-rata basis, i.e., the S&P Net Losers will share in the distribution based on their relative Net Losses.

Net Winners

At this stage, and absent distributions that would make the Net Losers whole, the Conservator respectfully recommends that this Court disallow all claims of Net Winners. Based upon the review of the Partnerships books and records, the Conservator has identified approximately ninety-seven (97) S&P Net Winners and thirty-one (31) P&S Net Winners that are not entitled to a distributive share of the Partnerships' Property. *See* Exhibits "A" and "B".

C. Partners Requiring Additional Disclosure

Guardian Angel Trust, LLC.

Guardian Angel appears on the books and records of S&P as a Partner.

Based upon, among other things, the Conservator's review of the available books and records of the Partnerships, it appears that certain Partners were unknowingly transferred from being partners in one of the Partnerships to being partners of Guardian Angel Trust, LLC ("Guardian Angel"). Guardian Angel appears to be an entity formed by the insiders of the Partnerships and still appears to be controlled by insiders of the Partnerships.

In fact, certain partners of Guardian Angel have contacted the Conservator in writing and have requested that he oversee the distribution to the partners of Guardian Angel.

Upon information and belief, certain individuals hold accounts in both the S&P or P&S and Guardian Angel. Consistent with the Conservator's methodology of consolidating accounts held by the same individual, the Conservator has requested that

Steve Jacob ("Jacob"), the purported managing member of Guardian Angel, identify the partners of Guardian Angel and their relative interest in Guardian Angel.

To date, Jacob has failed and refused to turn over information relative to Guardian Angel. According to Jacob's May 10, 2013, *Objection Response to Notice of Intent to Issuance of Subpoena Upon Guardian Angel Trust and Incorporated Memorandum of Law and Intent to File for Protective Order*, Guardian Angel ceased operations on December 11, 2008.

Jacob is also a defendant in the Insider Lawsuit which alleges, among other things, that certain insiders of the Partnerships diverted millions of dollars of Partnership funds to themselves and others.

The Conservator recommends that the distribution methodology applied to the Partners of the Partnerships also be applied to the partners of Guardian Angel.

However, absent complete and full disclosure, the Conservator cannot determine the particular partners of Guardian Angel's respective Allowed Claims. Therefore, at this juncture, the Conservator respectfully recommends reserving but withholding all proposed distributions to Guardian Angel.

SPJ Limited Investments, Ltd.

SPJ Limited Investments, Ltd. ("SPJ") appears on the books and records of S&P as a Partner. It appears that SPJ was formed by insiders of the Partnerships to create a conduit for self-directed IRA monies ("IRA Investors") to be invested in the Partnerships.

Like Guardian Angel, SPJ still appears to be controlled by insiders of the Partnerships and Jacob purports to be one of its managing general partners.

Like Guardian Angel, certain partners of SPJ have contacted the Conservator in writing and have requested that he oversee the distribution to the partners of SPJ.

According to Jacob, such IRA Investors were required to go through a qualified custodian to invest in SPJ (a "Custodian"). Notwithstanding the diligent search of the Conservator and requests of Jacob to provide relevant information, the IRA Investors' Custodian(s) have not been identified. To date, Jacob has failed and refused to cooperate with the Conservator. In fact, on May 10, 2013, Jacob filed his *Objection to [the Conservator's] Notice of Intent to Issuance of Subpoena upon SPJ Limited Investments and Incorporated Memorandum of Law* (the "Objection"). Notwithstanding that certain of the investors of SPJ appear to be Net Losers and may be entitled to a distribution, according to Jacob "SPJ ceased operations on December 11, 2008, and is winding down is operations." Objection at 1.

Absent identification of the appropriate Custodian and confirmation that a distribution to such custodian comports with all applicable law, the Conservator recommends reserving but withholding all proposed distributions to SPJ.

V. THE CONSERVATOR'S PROPOSED PLAN OF DISTRIBUTION

A. Distribution Methods Available to the Conservator

The Conservator, with the aid of counsel, has become knowledgeable of the relevant statutory and case law regarding the various methodologies applied in distributing assets to good faith investors in connection with fraudulent schemes such as the Ponzi Scheme. Certain of the methods rely on principles of equity and fairness; while other methods apply concepts of partnership law. Based upon the Conservator's review he has identified the following methods as possible distribution methodologies:

Equitable Methodologies:

1. Net Investment or Cash-In-Cash-Out-Method
2. Rising Tide Method

Partnership Law Methodologies:

1. Partnership Agreement Method
2. Statutory General Partnership Law Method

Based on his analysis of these distribution methodologies, consistent with the methodology employed by the Madoff Trustee, the Conservator respectfully recommends application of the Net Investment Method in this case. Other methodologies are described herein in order to more fully advise the Court and all the Partners of the issues the Conservator considered in reaching his recommendation.

B. Equitable Methods

In any analysis of a partners' interests in a partnership whose only source of profits was from a known ponzi-scheme, it must be admitted that the statement balances are inaccurate and any reference to 'profit' or 'interest' in such statements are falsehoods. *See Focht v. Athens (In re Old Naples Sec., Inc.)*, 311 B.R. 607, 616-617 (M.D. Fla. 2002).

Based on a review of all available records of the Partnerships, the only source of the Partnerships' purported profits was derived from the Ponzi Scheme. Thus, any statement reflecting 'profits' or 'interest' is false.

Any equitable method of distribution therefore must accept the premise that no profits or interest was ever earned by the Partnerships, or their respective Partners.

As such, equitable methods of distribution reject account balances based on statements which include false profits.

Equitable methods seek to allow a professional fiduciary to "unwind, rather than legitimize" a ponzi scheme. *In re Pearlman*, 484 B.R. 241, 243 (Bankr. M.D. Fla. 2012). Additionally, "recognizing returns from an illegal financial scheme is contrary to public policy inasmuch as it legitimizes the proscribed investment scheme." *In re Pearlman*, 484 B.R. 241, 244 (Bankr. M.D. Fla. 2012); *SEC v. Credit Bancroft, Ltd.*, No. 99 Civ. 11395, 2000 WL 1752979, at *40 (S.D. N.Y. Nov. 29, 2000), aff'd 290 F.3d 80 (2d Cir. 2002) ("Since all the funds were obtained by fraud, to allow some investor to stand behind the fiction that [the] the Ponzi scheme had legitimately withdrawn money to pay them 'would be carrying the fiction to a fantastic conclusion."); *Focht v. Athens (In re Old Naples Sec., Inc.)*, 311 B.R. 607, 616-617 (M.D. Fla. 2002) ("permitting claimants to recover not only their initial capital investment but also the phony 'interest' payments they received and rolled in another transaction is illogical. No one disputes that the interest payments were not in fact interest at all, but were merely portions of other victims' capital investments").

Accordingly, the equitable methods do not credit a partner's account for the fictitious profits or interests associated with it. This approach furthers the goal of restoring a defrauded investor's principal before others receive profits and interest. *In re Pearlman*, 484 B.R. 241, 244 (Bankr. M.D. Fla. 2012) ("Where individuals have been similarly defrauded, all should recover their principal before any one of them recovers profits or interest.")

Under the equitable methods approach partners are only credited for dollars actually invested and any withdrawals are treated as a return of capital which reduces the partner's interest for purposes of determining distribution. When determining a

distribution method equity and fairness are the overarching goals and "it is important to remember that each investor's recovery comes at the expense of the others." *S.E.C. v. Byers*, 637 F. Supp. 2d 16, 176 (S.D.N.Y. 2009). Ultimately, even when seeking to provide the fairest result certain partners will be disappointed and the Conservator recognizes that "when funds are limited, hard choices must be made." *Official Comm. of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 84 (2d Cir. 2006).

1. Net Investment Method

Because such statements reflect false profits and interest, certain courts have rejected methodologies based on account statements in ponzi schemes. Instead, they have applied the Net Investment Method. Under the Net Investment Method investor's, "net equity" is calculated by subtracting the amount of cash withdrawn from the amount of cash invested. Once the "net equity" is established for each particular Partner, the Conservator will determine the "total net equity".

Distributions will be based on the proportion of each Partner's "net equity" to the "total net equity", their "loss percentage". The Conservator will then apply each Partner's "loss percentage" to the total distribution to determine each individual Partners distribution.

This method has been applied with Court approval by the Madoff Trustee. *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229, 238 (2d Cir. 2011) ("Here, the profits recorded over time on the customer statements were after-the-fact constructs that were based on stock movements that had already taken place, were rigged to reflect a steady and upward trajectory in good times and bad, and were arbitrarily and unequally distributed among customers. These facts provide powerful reasons for the Trustee's rejection of the Last Statement Method for calculating 'net equity'").

The BLMIS court found that the Net Investment Method (or sometimes referred to as the cash-in-cash-out method) raises the "greatest number of investors closest to their positions prior to Madoff's scheme in an effort to make them whole." *In re Bernard L. Madoff Inv. Sec. LLC*, 424 B.R. 122, 142 (Bankr. S.D.N.Y.2010).

The 7th Circuit provides a helpful example of the Net Investment Method:

> Imagine that three investors lose money in a Ponzi scheme. *A* invested $150,000 and withdrew $60,000 before the scheme collapsed, so his net loss was $90,000. *B* invested $150,000 but withdrew only $30,000; his net loss was $120,000. *C* invested $150,000 and withdrew nothing, so lost $150,000. Suppose the receiver gets hold of $60,000 in assets of the Ponzi scheme--one-sixth of the total loss of $360,000 incurred by the three investors ($90,000 + $120,000 + $150,000). We'll call these recovered assets "receivership assets." Under the net loss method each investor would receive a sixth of his loss, so *A* would receive $15,000, *B* $20,000, and *C* $25,000 . . .

S.E.C. v. Huber, 702 F.3d 903, 904 (7th Cir. 2012)

It appears that the Net Investment Method has become the preferred method for distribution of Ponzi assets. It has been applied by several United States Circuit Courts as well as Florida Federal Courts. *See, e.g., CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115-16 (9th Cir. 2000) (upholding net investment method); *Official Cattle Contract Holders Comm. v. Commons (In re Tedlock Cattle Co.)*, 552 F.2d 1351 (9th Cir. 1977) (per curium) (investors in Ponzi scheme treated *pro rata* on "cash-in-cash-out" basis, following *Abrams v. Eby (In re Young)*, 294 F. 1 (4th Cir. 1923) (claimant who received back amount of his initial investment could not share in remaining funds until he had accounted for false profits, which had been paid at expense of other equally innocent investors)); *Focht v. Athens (In re Old Naples Sec., Inc.)*, 311 B.R. 607, 616-17 (M.D. Fla. 2002) (*citing SIPC v. C.J. Wright & Co. (In re C.J. Wright & Co.)*, 162 B.R. 597,

609-10 (Bankr. M.D. Fla. 1993)) (Ponzi scheme participants in SIPA case are entitled to receive amount invested less any payments received, not fictitious profits); *Anderson v. Stephens*, 875 F.2d 76 (4th Cir. 1989) (pro rata distribution based on initial investment); *In re Pearlman*, 484 B.R. 241, 245 (Bankr. M.D. Fla. 2012) (Granting the Trustee's Motion Establishing the Net Investment Method).

Further, the Net Investment Method which does not provide recovery to Net Winners is consistent with the principal that transfers in excess of the actual investment in the ponzi scheme are recoverable. *In re Dreier LLP*, 452 B.R. 391, 440 n. 44 (Bankr. S.D.N.Y. 2011) ("[V]irtually every court to address the question has held unflinchingly that to the extent that investors have received payments in excess of the amounts they have invested, those payments are voidable as fraudulent transfers.") (citation omitted).

For the same "powerful reasons" as applied in the BLMIS case, the Conservator recommends that this Court approve the Net Investment Method for distributions to Partners.

2. Rising Tide Method

Certain courts have adopted an equitable method know as the Rising Tide Method. *S.E.C. v. Huber*, 702 F.3d 903, 904 (7th Cir. 2012). These courts describe the Rising Tide Method as follows:

> [D]istributions under the Rising Tide Method are "calculated according to the following formula: (actual dollars invested x pro rata multiplier) - withdrawals previously received = distribution amount." *Commodities Futures Trading Comm'n v. Equity Fin. Grp., LLC*, No. Civ.04-1512 RBK AMD, 2005 WL 2143975, at *24 (D.N.J. Sept. 2, 2005).

Like the Net Investment Method, the Rising Tide Method disregards the fictitious profits inherent in ponzi schemes, only recognizes the actual capital contributions, and

treats all withdrawals as return of capital. Under both equitable methods, Net Winners do not receive any distributions until all other investors have recouped their principal. *S.E.C. v. Parish*, 2:07-CV-00919-DCN, 2010 WL 5394736 at *3 (Dist. S.C. Feb. 10, 2010) ("Moreover, investors who previously received payments exceeding their pro rata amount of the total distribution will receive no distribution from the receivership estate").

A key distinction in the Rising Tide Method is that not all Net Losers receive a distribution. In fact, Net Losers only receive a distribution to the extent required to make all of the Net Loser's loss percentage the same. This is because the interim distributions the partners received are treated differently.

Unlike the Net Investment Method, prior distributions from the ponzi scheme are viewed the same as distributions planned to be made after discovery of the ponzi scheme. *Parish*, 2010 WL 5394736 at*3. ("Payments received by the investor prior to the scheme's collapse are treated as "distributions" on par with the distributions to be made by the Receiver, so that prior amounts paid by Parish are credited against (i.e., subtracted from) the amount that would otherwise be paid from the receivership estate.")

Accordingly, the Rising Tide Method attempts to equalize the losses for each investor such that their percentage of the losses is the same. The *Parish* Court provided an example which highlights the differences between the Net Investment Method and the

Rising Tide Method:

> The court essentially considered two investors who both invested $100,000 in a case in which the interim distribution would be approximately 30%. One of the investors received payments during the scheme of $50,000, or 50% of his investment, while the other received no payments during the scheme. If Net [Investment] were applied in such a situation, the investor who had already received 50% of his investment would nevertheless receive an additional $15,000 in a distribution from the estate ($50,000 x .30), for total returns of 65% of his investment. The investor who had not received any payments during the course of the scheme, however, would receive a distribution from the estate of $30,000, thereby only recouping 30% of his investment after the estate had been distributed.

Parish, 2010 WL 5394736 at *6. (D.S.C. Feb. 10, 2010).

Ultimately, the Conservator's analysis favors the Net Investment Method over the Rising Tide Method because the greater weight of authority opposes penalizing good faith investors who did not know of the fraudulent scheme for taking interim distributions. *Compare* cases cited infra at p. 19-20 (Net Investment Method, with cases cited infra at p. 21 (Rising Tide Method).

C. Partnership Law Methods

1. The Partnership Agreement Method

Florida has adopted the Revised Uniform Partnership Act in chapter 620 of the Florida statutes ("Florida RUPA"). Florida RUPA applies retroactively to general partnership formed before its adoption. *Horizon/CMS Healthcare Corp. v. S. Oaks Health Care, Inc.*, 732 So. 2d 1156, 1159 n.4 (Fla. 5th Dist. Ct. App. 1999) ("In 1995, Florida enacted the Revised Uniform Partnership Act (RUPA), effective January 1, 1996 for general partnerships formed on or after that date. However, RUPA applies retroactively to all general partnerships, whenever they were initially formed, beginning January 1, 1998. Fla. Stat. § 620.90 (1997)").

Under Florida RUPA, partners are able to create a partnership agreement to govern the partnership rather than following the statutes. Fla. Stat. § 620.8103. However, Florida RUPA provides that certain statutory provisions may not be altered in the partnership agreements. Fla. Stat. §620.8103(1) ("Except as otherwise provided in subsection (2), relations among partners and between partners and a partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this act governs relations among partners and between partners and a partnership.") Settlement of accounts is an area in which the partners may alter the Florida RUPA provisions.

As discussed above, P&S and S&P adopted the Partnerships Agreements. The provisions of the Partnerships Agreements are identical in all material respects. The relevant sections, for the purposes of the distribution analysis, are Article Four ("Capital Contributions"), Article Eleven ("Valuation of Partnership Interests"), Article Five ("Allocations and Distributions"), and Article Twelve ("Termination of The Partnership" and "Distribution of Assets").

Distribution according to the Partnerships Agreements would flow as follows. First, the Partnerships' liabilities must be paid first. (S&P Partnership Agreement Article 12.02); (P&S Partnership Agreement Article 12.02) ("On termination, the Partnership' business shall be wound up as timely as in [sic] practical under the circumstances; the Partnerships assets shall be applied as follows: (i) first to payment of the outstanding Partnership liabilities...").

Second, after payment of the Partnerships' liabilities then Partner's capital shall be returned in accordance with their partnership interests. (S&P Partnership Agreement

Article 12.02 (ii)); (P&S Partnership Agreement Article 12.02 (ii)) ("a return of the Partner's capital in accordance with the Partnership interest").

Accordingly, based on the Partnerships Agreements the Partners would recover a *pro-rata* share in relation to their partnership interest, when funds are inadequate to provide 100% return of capital, because none of the Partners are entitled to priority. (S&P Partnership Agreement Article 4.04); (P&S Partnership Agreement Article 4.04) ("No partner shall have any priority over any other Partner as to allocations of profits, losses, dividends, distributions or returns of capital contributions").

Third, a Partner's partnership interest must be determined so they may receive their *pro rata* share. Valuation of a Partners' partnership interest is addressed in the Partnerships Agreements as:

> The full purchase price of the Partnership interest of a deceased, incompetent, withdrawn or terminated Partner shall be an amount equal to the Partner's capital and income accounts as the [sic] appear on the Partnership books on the date of death, incompetence, withdrawal or termination and adjusted to include the Partner's distribute share of any partnership net profits or losses not previously credited to or charged against the income and capital accounts.

(S&P Partnership Agreement Article 11.01); (P&S Partnership Agreement Article 11.01).

The determination of a Partner's partnership interest requires calculation of a partner's capital account. A capital account is described in the Partnerships Agreements as follows:

> An individual capital account shall be maintained for each Partner. The capital account shall consist of that Partner's initial capital contribution:
>
> a. increased by his or her additional contributions to capital and by his or her share of Partnership profits transferred to capital; and
> b. decreased by his or her share of partnership losses and by distributions to him or her in reduction of his or her capital.

(S&P Partnership Agreement Article 4.05); (P&S Partnership Agreement Article 4.05).

The Partnerships Agreement reference to the amount of the Partner's capital and income accounts as it "appear[s] on the Partnership books" suggests that the last statement received by the partners from the Partnership reflects a partner's partnership interest (the "Last Statement"). Using the last statement from a ponzi entity as the basis for determining a partner's *pro rata* share of a distribution is know as the Last Statement Method. Proponents of the Last Statement Method argue that the use of this method protects the ponzi investor's reasonable reliance on the statements produced by the company (however fraudulent) and accounts for the time value of money lost as a result of the investment. However, as discussed below in the "Equitable Methods" section, the Conservator finds the Last Statement Method inappropriate here because it would essentially treat the ponzi schemes fictitious profits as legitimate and allow certain Partners to recover "paper profit" before other Partners recover their principal contributions. Such a result is contrary to public policy and the Conservator's equitable position and the Partnerships' Agreements themselves.

The Partnerships' Agreements provide that the partnership interest should be "adjusted" to include "net profits or losses not previously credited or charged against the income or capital accounts." (S&P Partnership Agreement Article 11.01); (P&S Partnership Agreement Article 11.01). However, here, the Last Statement provided to the Partners is silent about net losses not previously charged against the income or capital accounts.

Accordingly, the Partner's partnership interests must be reduced to reflect the losses suffered by the Partnerships as a result of their investments in the Ponzi Scheme.

The Internal Revenue Service ("IRS") has indicated that partners of a general partnership that directly invested in a ponzi scheme, such as the Partnerships, should treat these losses as "theft losses". Revenue Ruling 2009-9. The Partnerships' Agreement approach to losses is consistent with the IRS position that theft losses should be passed through to the partners and reflected on the partner's individual returns. IRS PLR 2009-0154 ("Partnerships (or entities that may elect to be taxed as partnerships, such as limited liability companies) that qualify as direct investors may use the safe harbor treatment and pass the loss through to the indirect investor (partner)").

Additionally, the partners' capital accounts should be adjusted to reflect prior distributions as returns of capital. *Perkins v. Haines*, 661 F.3d 623, 627 (11th Cir. 2011) (in ponzi schemes, the general rule is that defrauded investors may receive returns of their principle investment as being for 'value'). To the extent a partner received more in distributions than actual contributions of capital, i.e. Net Winners, these partners will have negative capital accounts. Partners with negative capital accounts are not entitled to any distribution under the Partnerships Agreements until all other partners have received 100% of their capital contributions.

As a final concern with the Partnership Agreement Method here, the Partnerships' Agreements do not explicitly contemplate the present situation, i.e., negative capital accounts at the time of liquidation. Instead, one must look to the Florida RUPA default rules. Fla. Stat. §620.8103(1).

When a partner has a negative capital account at the time for liquidation, FL RUPA provides that, "**a partner shall contribute to the partnership an amount equal**

to any excess of the charges over the credits in the partner's account." Fla. Stat. § 620.8807(2).

Accordingly, a partner with a negative capital account, a Net Winner, owes a debt to the respective partnership and is required to return their capital account to zero upon liquidation by contributing the Partnerships. This result is reflected in Uniform Comment 3 of RUPA § 807 which provides:

> Any partner with a negative account balance must contribute to the partnership an amount equal to the excess of charges over the credits in the account provided the excess relates to an obligation for which the partner is personally liable under Section 306. The partners may, however, agree that a negative account does not reflect a debt to the partnership and need not be repaid in settling the partners' accounts.

RUPA § 807 Cmt. 3.

Other jurisdictions applying RUPA have reached the same conclusion. *Farnsworth v. Deaver*, 147 S.W.3d 662, 664-65 (Tex. App. 2004)(affirming trial court order which entered a judgment against partner with "a negative balance" based on the debt owed to the partnership "to satisfy that negative balance.")[15]

In this case, because certain of the Partners (the Net Winners), received more from the Partnerships than they contributed, they have negative capital accounts.[16]

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[15] By applying Florida RUPA and interpreting the Partnerships' Agreements, the Partnership Agreement Method may result in substantially similar results as the Net Investment Method. However, while application of the Net Investment method is an entirely objective process, application of Florida RUPA and interpretation of the Partnerships' Agreements requires legal application of contractual terms and may be subject to dispute. Moreover, under the Partnership Agreement Method, each Partner's capital account must be brought into equilibrium prior to making any distribution, i.e., Net Winners would have to give back their Net Winnings. To best serve the Partners and effectuate a timely distribution of the Partnerships Property, the Conservator recommends application of the Net Investment Method.

[16] Recovery of transfers to the Net Winners is the subject of a related case styled: *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Janet A. Hooker Charitable Trust, et. al.*, Case No. 12-034121 (21) (the "Net Winners Suit")

Accordingly, the Net Winners are not entitled to distributions of Partnership Property and are required to contribute the amount necessary to bring their capital accounts to zero.

2. General Partnership Law under Florida RUPA

Application of Florida RUPA provides for a similar outcome as the Partnerships Agreement Method.

First, like the Partnerships' Agreements, Florida RUPA requires that the Partnerships' liabilities be paid before distributing to the partners. Fla. Stat. § 620.8807 ("In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge the partnership's obligations to creditors").

Second, like the Partnerships' Agreements, after creditors are paid the remainder of the partnership property is liquidated and partners receive cash payments. Fla. Stat. § 620.8807(1) ("Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2)").

Florida RUPA provides, "in settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under s. 620.8306." Fla. Stat. §620.8807(2).

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presently pending in the Complex Litigation Division in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

Accordingly, where there are insufficient funds partners to return 100% of a partner's capital, partners are entitled to a *pro rata* share of the distribution based upon their capital accounts. Further, as addressed by the IRS, the fictitious profits should be excluded from the capital account total and prior distributions should be treated as returns of capital which reduce the balance. These losses should be passed through to the individual partners.

As addressed above, because certain of the Partners (the Net Winners), received more from the Partnerships than they contributed, they have negative capital accounts. Accordingly, the Net Winners are not entitled to distributions of Partnerships Property until all other parties have received 100% of their actual contribution. Further, pursuant to Florida RUPA Net Winners are required to contribute the amount necessary to bring their capital accounts to zero. Fla. Stat. §620.8807(2) ("A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account.")

After review of the Partnership Agreements, Florida RUPA, and the Equitable Distribution Methodologies, the Conservator has determined that the Net Investment Method most completely accounts for the losses suffered by the Partners, its application is objective in nature and is not influenced by subjective considerations, and it can be applied quickly and efficiently. For these reasons and others, the Net Investment Method ought to be applied in this matter.

VI. OBJECTION PROCEDURE

To fairly and efficiently administer the Partnership Property, this Court established a procedure for Partners to respond to the recommendations contained herein.

The Management Order provides any interested party must file a response and/or objection to this Distribution Motion no later than June 30, 2013.

To provide interested parties with notice, within three (3) business days of the date of this Distribution Motion, the Conservator will post this Distribution Motion on his website, www.FloridaConservator.com (the "Conservator Website").[17]

Failure to properly and timely serve a response and/or objection to this Motion should be deemed acceptance of the Conservator's recommendations and determination of any particular Partner's Allowed Claim.

Further, by filing and serving an objection, any objecting partner shall be deemed to have submitted to the jurisdiction of this Court irrespective of whether such Partner was served with a copy of the Summons or Complaint in the Interpleader Action. A person filing and serving an objection to the Conservator's Claim Determination or plan of distribution, shall be entitled to notice, but only as it relates to adjudication of the particular objection and the claim to which the objection is directed.

The Conservator may attempt to settle and compromise any claim or objection subject to the Court's final approval.

WHEREFORE, the Conservator respectfully requests that this Court enter an Order: (i) Approving the Conservator's determination of Allowed Claims as set forth in herein and in attached **Exhibits "A" and "B"**; (ii) Approving the Net Investment Method as set forth herein and in the attached **Exhibits "A" and "B"** as the proper method for determining the Partners'

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[17] Previously, this Court authorized the Conservator to provide partners with notice by posting on the Conservator Website in the Conservator Case. Specifically, the Conservator Order provided that "any posting on the website will be deemed adequate notice to all Partners unless a Partner specifically request information to be mailed to him/her." Conservator Order at ¶13.

Allowed Claims; (iii) Approving the amount of initial distributions to Net Losers as proposed herein and pursuant to **Exhibits "A" and "B"**; (iv) Approving withholding distributions to certain Partners as proposed herein and identified on **Exhibits "A" and "B"**; (v) Authorizing the Conservator to make the interim distributions to the Partners as proposed herein pursuant to **Exhibits "A" and "B"** within a reasonable time of the entry of an Final Non-Appealable Order granting this Distribution Motion; (vi) Approving the Objection Procedure proposed herein; and (vii) for any further relief that this Court deems necessary and appropriate.

Dated: May 31, 2013

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Exhibit "A"

P&S Spreadsheet

P&S Investors with Account Number - Net Winners and Net Losers

Investor Account Number	Net Winner	Net Loser
PS A071-AB		$ 100,000.00
PS A071		$ 100,000.00
PS B21-1	$ 53,423.39	
PS B21-2	$ (68,000.00)	
PS B021-3	$ 1,133.51	
combined total for PS B21-1, PS B21-2, & PS B021-3	$ (13,443.10)	
PS B01		
PS C058-AB		$ 245,000.00
PS C28-AB		$ 294,986.00
PS C054-AB		$ 388,000.00
PS C055-AB		$ 440,000.00
PS C41-AB		$ 75,486.00
PS C30	$ 1,629.23	
PS H63	$ (3,467.98)	
combined total for PS C30 & PS H63	$ (1,838.75)	
PS C002-1	$ (130,085.95)	
PS C28-2	$ 176,463.64	
combined total for PS C002-1 & PS C28-2	$ 46,377.69	$ 46,377.69
PS C29		
PS C033		
PS C03		
PS D-064		
PS D040		$ 4,827.36
PS D067		$ 200,000.00
PS F062		$ 216,000.00
PS F04		$ 78,785.70
PS F031		$ 500,000.00
PS G039		$ 285,018.00
PS G073		$ 200,000.00
PS H05		
PS H030		$ -
PS H030		
PS H036		
PS-060		$ 325,000.00
PS-H070		$ 50,000.00
PS H06		$ 115,510.17
PS H07		
PS H08		
PS H29		
PS H25		$ 106,000.00
PS H062		$ 105,167.12
PS J0707		$ 50,000.00
PS J042		$ 400,000.00
PS K26		
PS K10		$ 10,079.45
PS K11		$ 30,236.75
PS k029-K-1		$ -

PS K034-K-2		
PS K035	$	270,000.00
PS K09		
PS L24		
PS L037	$	41,127.45
PS L-49-R	$	574,697.83
PS W059		
PS M12		
PS M13		
PS M14		
PS M16		
PS M15	$	125,435.78
PS M67	$	483,101.28
PS M52	$	1,183,000.00
PS N30	$	76,224.09
PS N17-N		
PS O18		
PS K033		
PS P038	$	459,517.09
PS 053	$	132,000.00
PS 066	$	446,000.00
PS P27	$	210,000.00
PS P26		
PS R19-R	$	182,078.57
PS S028	$	65,993.00
PS S27	$	31,560.97
PS 068	$	30,000.00
PS S22		
PS U50		
PS W032-B	$	397,151.00
PS W43		
PS W060	$	32,500.00
PS W44	$	5,000.00
PS W45	$	21,000.00
PS W48	$	3,951.31
PS W23		
PS W056	$	5,000.00
PS S065	$	22,800.00
PS W067		
PS Z058-AB	$	578,000.00
Total	$	9,742,612.61

Net Winner	Proposed Interim Distribution (10.264%)
	$ 10,264.00
	$ 10,264.00
	$ -
	$ -
	$ -
$ (13,443.10)	$ -
$ (10,414.31)	$ -
	$ 25,146.80
	$ 30,277.36
	$ 39,824.32
	$ 45,161.60
	$ 7,747.88
	$ -
	$ -
$ (1,838.75)	$ -
	$ -
	$ -
	$ 4,760.21
$ (182,532.35)	$ -
$ (33,490.39)	$ -
$ (61,065.80)	$ -
$ (10,320.00)	$ -
	$ 495.48
	$ 20,528.00
	$ 22,170.24
	$ 8,086.56
	$ 51,320.00
	$ 29,254.25
	$ 20,528.00
$ (262,843.58)	$ -
$ -	$ -
$ (127,286.32)	$ -
$ (472,624.27)	$ -
	$ 33,358.00
	$ 5,132.00
	$ 11,855.96
$ (157,550.48)	$ -
$ (116,455.13)	$ -
$ (28,045.98)	$ -
	$ 10,879.84
	$ 10,794.35
	$ 5,132.00
	$ 41,056.00
$ (742.32)	$ -
	see footnote 1.
	see footnote 1.
$ -	$ -

$ (40,463.20)	$ -
	$ 27,712.80
$ (6,130.19)	$ -
$ (6,681.64)	$ -
	$ 4,221.32
	$ 58,986.99
$ (2,058.41)	$ -
$ (5,948.83)	$ -
$ (51,828.46)	$ -
$ (116,343.91)	$ -
$ (68,077.39)	$ -
	$ 12,874.73
	see footnote 2.
	see footnote 2.
	$ 7,823.64
$ (79,647.61)	$ -
$ (15,858.42)	$ -
$ (1,948,756.02)	$ -
	$ 47,164.83
	$ 13,548.48
	$ 45,777.44
	$ 21,554.40
$ (20,629.68)	$ -
	see footnote 3.
	$ 6,773.52
	$ 3,239.42
	$ 3,079.20
$ (2,600.18)	$ -
$ (92,946.21)	$ -
	$ 40,763.58
$ (4,000.00)	$ -
	$ 3,335.80
	$ 513.20
	$ 2,155.44
	$ 405.56
$ (12,736.39)	$ -
	$ 513.20
	see footnote 4.
$ (13,700.00)	$ -
	$ 59,325.92

$ (3,967,059.32)

P & S FOOTNOTES
Proposed Interim Distribution

1. The Partnerships have asserted or may assert claims against the holder(S) of account number PS K10 and PS K11 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account PS K10 and PS K11 until all claims are resolved or until further order of the Court.
2. The Partnerships have asserted or may assert claims against the holder(s) of account number PS M67 and PS M52 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account PS M67 and PS M52 for until all claims are resolved or until further order of the Court.
3. The Partnerships have asserted or may assert claims against the holder of account number PS R19-R for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account PS R19-R until all claims are resolved or until further order of the Court.
4. The Partnerships have asserted or may assert claims against the holder of account number PS S065 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account PS S065 until all claims are resolved or until further order of the Court.

Exhibit "B"

S&P Spreadsheet

S&P Investors with Account Number - Net Winners and Net Losers

Investor Account Number		Net Loser	Net Winner
SP A143			$ (1,838.93)
SP A01-AB			$ (15,000.00)
SP A124			$ (9,000.00)
SP A41		$ 78,466.12	
SP B139		$ 10,000.00	
SP B137		$ 1,696,000.00	
SP B143			$ (86,195.71)
SP B67-B			$ (25,499.61)
SP B53-N		$ 3,567.49	
SP B142	$ (38,407.94)		
SP B155	$ 49,249.13		
combined accounts SP B142 & SP B155	$ 10,841.19	$ 10,841.19	
SP B113-IRA			$ (23,593.47)
SP B119-J		$ -	$ -
SP B37-H			$ (58,612.99)
SP B74			$ (40,458.71)
SP B98		$ -	$ -
SP-B131-H			$ (15,720.18)
SP B38-H			$ (27,269.78)
SP B125-J		$ -	$ -
SP C31			$ (26,870.16)
SP C115-C	$ (18,131.23)		
SP C15 (IRA) -C	$ 1,915.00		
combined accounts SP C115-C & SP C15(IRA)-C	$ (16,216.23)		$ (16,216.23)
SP C29N			$ (25,977.53)
SP C02			$ (2,715.97)
SP C132			$ (382.99)
SP C25			$ (12,323.78)
SP C105			$ (5,257.47)
SP C103-IRA		$ -	$ -
SP W82-W		$ 15,100.00	
SP C03			$ (176,761.03)
SP C136			$ (1,705.08)
SP C-69-B		$ 10,000.00	
SP C146			$ (29,761.70)
SP D70-N			$ (44,375.61)
SP D145-1	$ (14,736.38)		
SP D145-2	$ (279,121.29)		
combined accounts SP D145-1 & SP D145-2	$ (293,857.67)		$ (293,857.67)
SP D68-B			$ (4,210.00)
SP D04			$ (18,119.29)
SP D71-DRG			$ (31,322.30)
SP E155	$ (31,228.24)		
SP E154	$ 593,368.00		
combined accounts SP E155 & SP E154	$ 562,139.76	$ 562,139.76	
SP E111-H			$ (287,454.40)
SP F140		$ 22,742.30	

SP F57		$ -	$ -
SP F58			$ (48,786.66)
SP F147		$ 5,343,298.44	
SP F60-F		$ -	$ -
SP F61-F		$ -	$ -
SP F65-F		$ -	$ -
SP 130-F		$ 47,053.57	
SP F146-F		$ 160,522.43	
SP F05		$ 58,127.47	
SP G91-H		$ 129,137.86	
SP G06			$ (159,349.71)
SP G45			$ (768.48)
SP G44			$ (768.48)
SP G86-H-IRA		$ -	$ -
SP G85-H-IRA		$ -	$ -
SP G81-B			$ (71,294.81)
SP G133N			$ (62,180.21)
SP G145-J		$ 3,897,207.97	
SP G148		$ 33,352.30	
SP H50			$ (15,569.04)
SP H126		$ 25,000.00	
SP H144		$ 6,000.00	
SP H08	$ (2,447.89)		
SP H09	$ 11,834.82		
combined accounts SP H08 & SP H09	$ 9,386.93	$ 9,386.93	
SP H108		$ 9,600.00	
SP H52			$ (29,345.16)
SP H101-H		$ 148,418.06	
SP H117-H		$ 10,128.07	
SP H97-H			$ (17,736.95)
SP H34H			$ (45,405.47)
SP H153		$ 90,000.00	
SP H66-WH		$ 45,100.00	
SP H110-IRA		$ -	$ -
SP H109-IRA		$ -	$ -
SP H144-AB			$ (859,880.41)
SP H127(IRA)B		$ -	$ -
SP H129(IRA)		$ -	$ -
SP H07H		$ -	$ -
SP H35H		$ -	$ -
SP H36H		$ -	$ -
SP I43			$ (132,428.58)
SP I42-1		$ -	$ -
SP I42-2		$ -	$ -
AP I118			$ (12,864.83)
SP 131		$ 100,000.00	
SP I148		$ 95,000.00	
SP J30N			$ (18,115.47)
SP J142-N		$ 6,774.95	
SP J147-A&B			$ (80,000.00)
SP J129-J			$ (26,508.25)
SP J86-H			$ (20,569.28)

SP J75-1			
SP J90-2			$ (5,215.08)
SP K89			$ (7,644.13)
SP K107-IRA			$ (5,959.17)
SP L141-B		$ -	$ -
SP L104			$ (26,152.98)
SP L150			$ (7,240.80)
SP L18			$ (87,788.57)
SP L10			$ (13,500.00)
SP L11			$ (45,213.83)
SP W39		$ 12,070.73	
SP L151		$ 1,237.79	
SP M134		$ 102,250.00	
SP M123	$ (16,223.36)		
combined accounts SP M134 & SP M123	$ 50,000.00		
SP O128-B	$ 33,776.64	$ 33,776.64	
SP M12		$ 125,000.00	
SP M138			$ (72,144.10)
SP M73			$ (9,545.90)
SP M78-F			$ (487.18)
SP M87-F			$ (2,673.99)
SP M83-M			$ (16,362.72)
SP M130-J			$ (6,188.33)
SP Mc093-F		$ -	$ -
SP Mc123-F		$ 4,968.35	
SP Mc092-F			$ (13,137.87)
SP Mc013-1			$ (7,991.44)
SP M64-2			$ (55,193.70)
SP M96-M		$ -	$ -
SP M22		$ 25,000.00	
SP N99-N		$ 155,687.63	
SP O88		$ 10,000.00	
SP O90			$ (14,659.63)
SP P129-B		$ 45,000.00	
SP P88		$ 50,000.00	
SP P131A			$ (5,500.00)
SP P131		$ 114,000.00	
SP P14		$ 78,807.98	
SP P16			$ (17,094.66)
SP P133		$ 70,221.61	
SP P77		$ 10,000.00	
SP P94(IRA)			$ (36,292.40)
SP P76		$ -	$ -
SP P15			$ (7,151.94)
SP P116-J			$ (9,944.84)
SP P112-J			$ (112,538.76)
SP R141		$ -	$ -
SP R23R			$ (9,015.93)
SP R128R			$ (114,956.18)
SP R27N			$ (51,142.13)
SP R48H			$ (12,418.09)
SP R40			$ (5,628.73)
		$ 47,946.36	

SP R149-R	$ 54,000.00		
SP R59-W		$	(2,000.00)
SP R72-B		$	(37,678.82)
SP R100-R		$	(48,500.00)
SP S46		$	(13,054.14)
SP S56		$	(3,500.00)
SP S47	$ 553.66		
SP S122		$	(3,916.69)
SP S85	$ 130,000.00		
SP S139	$ 5,397,729.32		
SP S033	$ 33,729.66		
SP S20	$ 76,874.24		
SP S26-1	$ -	$	-
SP S26-2		$	(47,373.20)
SP S140		$	(705.18)
SP S28N		$	(37,670.45)
SP S55-N		$	(3,205.43)
SP 017		$	(1,757.24)
SP S130		$	(5,803.89)
SP S63-F		$	(155,572.02)
SP S138		$	(853.09)
SP T21		$	(8,382.49)
SP T108	$ -	$	-
SP T147-F	$ 59,943.84		
SP W120	$ 54,706.00		
SP W62	$ 1,039,500.00		
SP W95		$	(84,974.47)
SP W152		$	(20,558.62)
SP W150	$ 171,071.16		
SP W149	$ 82,814.42		
SP W49-W	$ -	$	-
SP W80-W		$	(16,398.28)
SP W149	$ 45,000.00		
SP W79	$ 37,000.00		
SP W51		$	(85,032.70)
SP W106-IRA		$	(17,105.35)
SP W151		$	(20,732.67)
SP W32		$	(12,772.76)
SP W19	$ -	$	-
SP W102-H	$ -	$	-
SP W114-J		$	(47,061.40)
SP W89-F		$	(30,917.88)
SP W120(IRA)	$ -	$	-
SP Y135-Y	$ 100,000.00		
SP Z87		$	(6,851.64)
Total	$ 20,791,854.30	$	(4,373,233.87)

Proposed Interim Distribution (18.757%)
$ -
$ -
$ -
$ 14,717.89
$ 1,875.70
$ 318,118.72
$ -
$ -
$ 669.15
$ -
$ -
$ 2,033.48
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ 2,832.31
$ -
$ -
$ 1,875.70
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ -
$ 105,440.55
$ -
$ 4,265.77

$	-
$	-
$	1,002,242.49
$	-
$	-
$	-
	see footnote 1.
$	30,109.19
	see footnote 1.
$	24,222.39
$	-
$	-
$	-
$	-
$	-
$	-
$	-
	see footnote 2.
$	6,255.89
$	-
$	4,689.25
$	1,125.42
$	-
$	-
$	1,760.71
$	1,800.67
$	-
$	27,838.78
$	1,899.72
$	-
$	-
$	16,881.30
$	8,459.41
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	18,757.00
$	17,819.15
$	-
$	1,270.78
$	-
$	-
$	-

$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	2,264.11
$	232.17
$	19,179.03
$	-
$	-
$	6,335.48
$	23,446.25
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	931.91
$	-
$	-
$	-
$	-
$	4,689.25
$	29,202.33
$	1,875.70
$	-
$	8,440.65
$	9,378.50
$	-
$	21,382.98
$	14,782.01
$	-
$	13,171.47
$	1,875.70
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	8,993.30

$	10,128.78
$	-
$	-
$	-
$	-
$	-
$	103.85
$	-
$	24,384.10
	see footnote 3.
	see footnote 4.
	see footnote 5.
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	11,243.67
$	10,261.20
$	194,979.02
$	-
$	-
$	32,087.82
$	15,533.50
$	-
$	-
$	8,440.65
$	6,940.09
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
$	-
	see footnote 6.
$	-

S & P FOOTNOTES
Proposed Interim Distribution

1. The Partnerships have asserted or may assert claims against the holder(S) of account number SP 130-F and SP F05 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP 130-F and SP F05 until all claims are resolved or until further order of the Court.
2. The Partnerships have asserted or may assert claims against the holder(S) of account number SP G145-J for, among other things, receiving commissions and/or referral fees from the Partnerships. The Conservator has also been unable to identify the members of SP G145-J for purposes of determining appropriate distributions. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP G145-J until all claims are resolved or until further order of the Court.
3. The Conservator has been unable to identify an appropriate Custodian for purposes of distribution, until the Conservator can identify an appropriate Custodian, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP S139.
4. The Partnerships have asserted or may assert claims against the holder(S) of account number SP S033 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP S033 until all claims are resolved or until further order of the Court.
5. The Partnerships have asserted or may assert claims against the holder(S) of account number SP S20 for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP S20 until all claims are resolved or until further order of the Court.
6. The Partnerships have asserted or may assert claims against the holder(S) of account number SP Y135-Y for, among other things, receiving commissions and/or referral fees from the Partnerships. Therefore, the Conservator recommends reserving and withholding all interim distributions to the holder(s) of account SP Y135-Y until all claims are resolved or until further order of the Court.

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 12-034121 (04)

P &S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership; and S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership, and PHILIP VON KAHLE as Conservator on behalf of P&S ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership, and S&P ASSOCIATES, GENERAL PARTNERSHIP

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE TRUST, a charitable trust, *et al.*,

Defendants.
_____/

AFFIDAVIT OF MARGARET J. SMITH

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared Margaret J. Smith, who deposes and states:

1. I, Margaret J. Smith, am above the legal age of majority and otherwise competent to make this affidavit. I make this affidavit of my own personal knowledge, except where otherwise indicated, in support of Plaintiffs' Response to Defendant Holy Ghost — Western Providence's Motion for Summary Judgment.

5247675-4

EXHIBIT
tabbies
5

2. I am a Certified Public Accountant employed with the advisory firm of GlassRatner Advisory and Capital Group, LLC ("GlassRatner"). Non-managing partners of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P," collectively the "Partnerships") retained GlassRatner to investigate certain matters concerning the operation and management of the Partnerships. On August 17, 2012, the partners of S&P and P&S held a meeting at which the Partnerships' former Managing General Partner, Michael D. Sullivan ("Sullivan"), was replaced, and I was elected Managing General Partner in his stead.

3. Only after reviewing and analyzing books and records that were received from Sullivan after August 2012, in conjunction with documents received in approximately May 2012, was it established that certain partners received distributions from the capital contributions of other partners and that certain partners received money in excess of their contributions to the Partnerships.

4. Once the identities of those partners was discovered, on November 13, 2012, as Managing General Partner of the Partnerships, I sent out demand letters to partners who received distributions in excess of their contributions. A copy of one such a demand letter is attached hereto as Exhibit A.

5. To date, and to the best of my knowledge, no partner who received a demand letter has returned any of the distributions that they received in excess of their contributions.

FURTHER AFFIANT SAYETH NAUGHT.

MARGARET J. SMITH

STATE OF FLORIDA)
.SS

COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 16 day of October, 2013 by Margaret J. Smith who is personally known to me or has produced as identification _____ and did/did not take an oath.

Name: Ashley E. Peal
(Notary Public)
(Affix Seal Below)

ASHLEY E. PEAL
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE211737
Expires 6/27/2016

GLASSRATNER

November 13, 2012

Congregation of the Holy Ghost - Western Providence
1700 West Alabama Street
Houston , TX 77087

Re: **P&S Associates, General Partnership**
Case No.: 12-24051

Dear Sir or Madam:

Please be advised that on August 29, 2012, Michael D. Sullivan resigned and Margaret J. Smith was appointed as Managing General Partner of P&S Associates, General Partnership ("P&S" or the "Partnership"). Pursuant to ¶8.02 of the Amended and Restated Partnership Agreement dated December 1994, "the Managing General Partner [is] authorized and empowered to carry out and implement any and all purposes of the Partnership" including but not limited to (d) "to take any actions and to incur any expense on behalf of the Partnership that may be necessary or advisable in connection with the conduct of the Partnership's affairs".

Review of the Partnership books and records as of December 31, 2008 indicates you received funds in excess of contributions totaling **$182,532.35**. Enclosed for your reference as **Exhibit A** is the detail of the funds contributed and funds disbursed from your capital account from December 1992 through December 2008. The immediate return of funds totaling $182,532.35 to P&S is hereby requested.

To encourage a speedy and effective resolution of this matter prior to the commencement of litigation against you, we will accept **$164,279.12** in full satisfaction of the amount claimed, if paid within 10 calendar days of the date of this letter. This represents a 10% discount of the amount which the Partnership may sue you for if this matter is not resolved as set forth above.

Accordingly, we demand payment of **$164,279.12** in immediately available U.S. funds within 10 calendar days of the date of this letter, payable to:

Berger Singerman, LLP Trust Account
Attn: Etan Mark, Esq.
1450 Brickell Avenue
Suite 1900
Miami, FL 33131

In the absence of a timely, conforming payment, Berger Singerman, on behalf of P&S, will take appropriate action, including the filing of a Complaint seeking recovery of all sums due, plus interest and costs of collection.

Exhibit "A"

Be assured that we want to treat everyone fairly and to minimize the cost of responding to this demand letter for return of funds. Should you wish to do so, we are willing to schedule a call or meeting with you to discuss this matter. However, because time is of the essence, and to avoid litigation, we must receive either payment, a request for a timely call or meeting or an explanation (Including copies of all cancelled checks, wire transfer advices and relevant agreements) of why you do not owe the sum demanded within 10 calendar days of this letter. If we elect to forbear from the commencement of litigation, entry into an acceptable tolling agreement may be required. To discuss this matter further, you may contact me via email at msmith@glassratner.com or by phone at 305-358-6092.

Sincerely,

Margaret J. Smith

Margaret J. Smith
msmith@glassratner.com

Exhibit A

P & S Associates, General Partnership
General Partner Statement - Cash Basis

Bank	Account	Transferor/ Transferee	Statement Clearing Date	Check #	General Partner	Funds Received	Funds Disbursed	Net Funds Received (Disbursed)
S.O.A.	3-007887-4		12/23/96		Congregation of the Holy Ghost - Western Providence	$ 200,000.00	$ -	
S.O.A.	3-007887-14		10/2/96		Congregation of the Holy Ghost - Western Providence	100,000.00	-	
S.O.A.	3-007887-3		01/06/97	1418	Congregation of the Holy Ghost - Western Providence	-	5,559.50	
S.O.A.	3-007887-3		04/04/97	1431	Congregation of the Holy Ghost - Western Providence	-	6,250.76	
S.O.A.	3-007887-3		07/03/97	1445	Congregation of the Holy Ghost - Western Providence	-	6,446.46	
S.O.A.	3-007887-17		10/06/97	1463	Congregation of the Holy Ghost - Western Providence	-	6,672.06	
S.O.A.	3-007887-3		01/05/98	1474	Congregation of the Holy Ghost - Western Providence	-	6,697.59	
S.O.A.	3-007887-3		04/08/98	1492	Congregation of the Holy Ghost - Western Providence	-	6,508.72	
S.O.A.	3-007887-3		07/06/98	1504	Congregation of the Holy Ghost - Western Providence	-	6,556.37	
SouthTrust	39-078-673		10/07/98	1606	Congregation of the Holy Ghost - Western Providence	-	6,600.00	
SouthTrust	39-078-673		01/14/99	1617	Congregation of the Holy Ghost - Western Providence	-	6,745.45	
SouthTrust	39-078-673		04/21/99	1630	Congregation of the Holy Ghost - Western Providence	-	6,660.28	
SouthTrust	39-078-673		07/19/99	1646	Congregation of the Holy Ghost - Western Providence	-	6,636.62	
SouthTrust	39-078-673		10/22/99	1664	Congregation of the Holy Ghost - Western Providence	-	7,102.15	
SouthTrust	39-078-673		01/18/00	1679	Congregation of the Holy Ghost - Western Providence	-	7,074.41	
SouthTrust	39-078-673		04/17/00	1692	Congregation of the Holy Ghost - Western Providence	-	6,990.49	
SouthTrust	39-078-673		07/17/00	1710	Congregation of the Holy Ghost - Western Providence	-	7,096.05	
SouthTrust	39-078-673		10/18/00	1727	Congregation of the Holy Ghost - Western Providence	-	7,168.58	
SouthTrust	39-078-673		01/11/01	1740	Congregation of the Holy Ghost - Western Providence	-	7,071.63	
SouthTrust	39-078-673		04/11/01	1758	Congregation of the Holy Ghost - Western Providence	-	6,629.48	
SouthTrust	39-078-673		07/13/01	1778	Congregation of the Holy Ghost - Western Providence	-	6,975.48	
SouthTrust	39-078-673		10/20/01	1794	Congregation of the Holy Ghost - Western Providence	-	7,007.56	
SouthTrust	39-078-673		01/24/02	1813	Congregation of the Holy Ghost - Western Providence	-	6,896.61	
SouthTrust	39-078-673		04/23/02	1836	Congregation of the Holy Ghost - Western Providence	-	6,021.75	
SouthTrust	39-078-673		07/16/02	1864	Congregation of the Holy Ghost - Western Providence	-	6,966.72	
SouthTrust	39-078-673		07/16/02	1868	Congregation of the Holy Ghost - Western Providence	-	217,000.00	
SouthTrust	39-078-673		01/23/03	1898	Congregation of the Holy Ghost - Western Providence	-	9,477.41	
SouthTrust	39-078-673		01/31/03	1913	Congregation of the Holy Ghost - Western Providence	-	616.00	
					Congregation of the Holy Ghost - Western Providence Total	$ 200,000.00	$ 382,632.35	$ (182,632.35)

Berry C. Smith

5 March 2004

S & P Associates, General Partnership
6550 North Federal Highway Ste 210,
Ft. Lauderdale, FL. 33308

Catharine and I wish to withdraw all our funds from the Partnership at your earliest convenience.

We have been completely pleased to have been partners over the past several years and congratulate you for your excellent performance as General Partners.

Thank you, and best wishes for continued success.

Yours Truly,
Berry C. Smith
Catherine B. Smith

EXHIBIT
tabbies
6

S & P ASSOCIATES, GEN. PTRSHP.
PORT ROYALE FINANCIAL CENTER
6550 N. FEDERAL HWY. SUITE 210
FT. LAUDERDALE, FL 33308
PHONE (954) 492-0088 FAX (954) 938-0069

Republic Bank
Florida's community bank
63-886/831

5180

PAY TO THE ORDER OF

Two Thousand Three Hundred Nine and 06/100 Dollars

DATE 1/25/05

AMOUNT $2,309.06

Catharine B. & Berry C. Smith
3563 SE Fairway East
Stuart, FL 34997

2 SIGNATURES REQUIRED OVER $500,000.00

Memo: Distribution Final

Security features. Details on back

REDACTED

EXHIBIT 7

tabbies

PAY TO THE ORDER OF
WACHOVIA BANK, N.A.

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
FIRST CLEARING, LLC

CREDIT THE ACCOUNT OF THE
WITHIN NAMED PAYEE
CHECKS PAYABLE TO
WACHOVIA SEC/FCO

[redacted] GUARANTEED

[redacted]

REDACTED

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NUMBER: 12-028324 (07)
COMPLEX LITIGATION UNIT

P & S ASSOCIATES, GENERAL PARTNERSHIP, and S & P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.
_____/

ANSWER

Catharine Smith ("Defendant" or "Smith"), through undersigned counsel, files this Answer and states as follows:

1. Without knowledge; therefore denied.

2. Without knowledge; therefore denied.

3. Without knowledge; therefore denied.

4. Without knowledge; therefore denied.

5. Without knowledge; therefore denied.

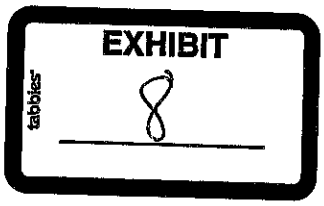
6. Without knowledge; therefore denied.

7. Without knowledge; therefore denied.

8. Without knowledge; therefore denied.

9. Without knowledge; therefore denied.

10. Without knowledge; therefore denied.



11. Without knowledge; therefore denied.

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379. Without knowledge; therefore denied.

380. Without knowledge; therefore denied.

381. Without knowledge; therefore denied.

382. Without knowledge; therefore denied.

COUNT I
DECLARATORY RELIEF

383. Defendant reasserts and realleges its responses to paragraphs 1 through 382 as if fully stated herein.

384. Without knowledge; therefore denied.

385. Without knowledge; therefore denied.

386. Without knowledge; therefore denied.

COUNT II
INTERPLEADER

387. Defendant reasserts and realleges its responses to paragraphs 1 through 386 as if fully stated herein.

388. Without knowledge; therefore denied.

389. Without knowledge; therefore denied.

390. Without knowledge; therefore denied.

391. Without knowledge; therefore denied.

COUNT III
INJUNCTION

392. Defendant reasserts and realleges its responses to paragraphs 1 through 382 as if fully stated herein.

393. Without knowledge; therefore denied.

394. Without knowledge; therefore denied.

395. Without knowledge; therefore denied.

396. Without knowledge; therefore denied.

397. Without knowledge; therefore denied.

398. Without knowledge; therefore denied.

399. Without knowledge; therefore denied.

400. Without knowledge; therefore denied.

401. Without knowledge; therefore denied.

402. Without knowledge; therefore denied.

403. Without knowledge; therefore denied.

404. Without knowledge; therefore denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to Thomas M. Messana (tmessana@messana-lwa.com) Messana, P.A., Post Office Drawer 2485, Ft. Lauderdale, Florida, 33303 this 30 day of September, 2013.

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NUMBER: 12-028324 (07)
COMPLEX LITIGATION UNIT

P & S ASSOCIATES, GENERAL PARTNERSHIP, and S & P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.
_____/

ANSWER TO FOURTH AMENDED COMPLAINT

Catharine Smith ("Defendant" or "Smith"), through undersigned counsel, files this Answer and states as follows:

1. Without knowledge; therefore denied.

2. Without knowledge; therefore denied.

3. Without knowledge; therefore denied.

4. Without knowledge; therefore denied.

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498. Without knowledge; therefore denied.

499. Without knowledge; therefore denied.

500. Without knowledge; therefore denied.

COUNT I
DECLARATORY RELIEF

501. Defendant reasserts and realleges its responses to paragraphs 1 through 500 as if fully stated herein.

502. Without knowledge; therefore denied.

503. Without knowledge; therefore denied.

504. Without knowledge; therefore denied.

COUNT II
INTERPLEADER

505. Defendant reasserts and realleges its responses to paragraphs 1 through 500 as if fully stated herein.

506. Without knowledge; therefore denied.

507. Without knowledge; therefore denied.

508. Without knowledge; therefore denied.

509. Without knowledge; therefore denied.

COUNT III
INJUNCTION

510. Defendant reasserts and realleges its responses to paragraphs 1 through 500 as if fully stated herein.

511. Without knowledge; therefore denied.

512. Without knowledge; therefore denied.

513. Without knowledge; therefore denied.

514. Without knowledge; therefore denied.

515. Without knowledge; therefore denied.

516. Without knowledge; therefore denied.

517. Without knowledge; therefore denied.

518. Without knowledge; therefore denied.

519. Without knowledge; therefore denied.

520. Without knowledge; therefore denied.

521. Without knowledge; therefore denied.

522. Without knowledge; therefore denied.

COUNT IV
INTERPLEADER CONCERNING GUARDIAN ANGEL TRUST, LLC

523. Defendant reasserts and realleges its responses to paragraphs 1 through 500 as if fully stated herein.

524. Without knowledge; therefore denied.

525. Without knowledge; therefore denied.

526. Without knowledge; therefore denied.

527. Without knowledge; therefore denied.

528. Without knowledge; therefore denied.

529. Without knowledge; therefore denied.

530. Without knowledge; therefore denied.

531. Without knowledge; therefore denied.

532. Without knowledge; therefore denied.

COUNT V
INTERPLEADER CONCERNING SPJ INVESTMENTS, LTD

533. Defendant reasserts and realleges its responses to paragraphs 1 through 500 as if fully stated herein

534. Without knowledge; therefore denied.

535. Without knowledge; therefore denied.

536. Without knowledge; therefore denied.

537. Without knowledge; therefore denied.

538. Without knowledge; therefore denied.

539. Without knowledge; therefore denied.

540. Without knowledge; therefore denied.

541. Without knowledge; therefore denied.

542. Without knowledge; therefore denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to Thomas M. Messana (tmessana@messana-lwa.com) Messana, P.A., Post Office Drawer

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McCabe Rabin, P.A.
1601 Forum Place, Suite 505
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Phone: (561) 659-7878
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By: _____
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efrederick@mccaberabin.com; beth@mccaberabin.com