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

CASE NO. 12-034123 (07)

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

Plaintiffs,

vs.

STEVEN JACOB, et al.

Defendants.
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PLAINTIFFS' RESPONSE TO DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' AMENDED MOTION FOR SUMMARY JUDGMENT

Defendant Frank Avellino ("Avellino") and Defendant Michael Bienes ("Bienes") (Avellino and Bienes are collectively the "Defendants") filed an Amended Motion for Summary Judgment (the "MSJ"). The MSJ is essentially another Motion to Dismiss, which attempts to avoid a trial on the merits by selectively excluding genuine issues of material fact. Defendants argue that because the Fifth Amended Complaint ("5AC") provides that the last transfer at issue was received, by one of them, in October 2008, and the Partnership Agreements — which were attached to the Fifth Amended Complaint — permit a partner of the Partnerships to inspect the books and records of the Partnerships, Defendants are entitled to summary judgment.

Defendants incorrectly assert that "Plaintiffs previously unsuccessfully raised in their response to Defendants Motion to Dismiss the Fourth Amended Complaint arguments that delayed discovery, continuing tort theory and equitable estoppel applied to extend the applicable statute of limitations." See MSJ at 6-8. To the contrary, Plaintiff's Fourth Amended Complaint asserted claims for Breach of Fiduciary Duty (Count V), Unjust Enrichment (Count IX),

Avoidance of Fraudulent Transfers (Count VII), Money Had And Received (Count X) and the Civil Conspiracy (Count XI). All of these claims survived Defendants' Motion to Dismiss the Fourth Amended Complaint premised upon Plaintiffs' arguments that delayed discovery, continuing tort theory and equitable estoppel extended the applicable statute of limitations. These claims have all been part of the case since the First Amended Complaint. Judge Streitfield's dismissal of some claims was based on issues relating to a statute of repose and relation back doctrines which are inapplicable to the instant case.[1] Defendants primarily rely upon an out of context excerpt from Plaintiffs' responses to interrogatories, to support the relief they are now seeking.[2] Evidence obtained in this matter raises numerous disputed factual issues which require a trial, and therefore the MSJ must be denied.[3]

Among others, record evidence in this case shows that the transfers at issue were hidden and secreted in the books and records of Michael D. Sullivan and Associates ("MDS"), **not the Partnerships' records**.[4] The record evidence, also demonstrates that the bad acts at issue in this

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[1] Defendants include a footnote that the Court (Judge Streitfeld) dismissed Plaintiffs' fraud claims because of the expiration of the statute of repose in an attempt to bolster their position. However, those claims were based on different facts than those in the pending Complaint. Specifically the fraud counts were dismissed solely because the Court found that claims that Avellino and Bienes knew that BLMIS was a Ponzi scheme as far back as 1992 were barred by the statute of repose and did not relate back to the filing of the original complaint in this matter. That issue has no relationship to the Court's resolution of the currently pending MSJ.

[2]Defendants' MSJ strategically omits genuine issues of material fact. For instance, Defendants point to a **portion** of Plaintiffs' responses to Interrogatories 9, 11, and 13 as proof that the kickbacks were revealed in the partnerships books and records. Defendants omit the salient portion of those interrogatories, that Sullivan did not allow the Partners access to documents relating to the commissions and concealed the transfers at issue. Therefore, Defendants reliance on out-of-context portions of interrogatory responses does not support granting the MSJ.

[3] Simultaneous with the filing of the Instant Motion, Plaintiffs have filed a State of Material Facts in Support of their Motion for Summary Judgment.

[4] The MDS records were not available to the partners of the Partnerships until after the Conservator was appointed and Sullivan faced contempt of Court for refusing to turnover

case occurred within the applicable statute of limitations, and that Defendants also misled the Partnerships in an effort to prevent the filing of a lawsuit. Notwithstanding the foregoing efforts to prevent the commencement of litigation, the Partnerships were incapable of prosecuting the instant claims until after Sullivan was removed as the managing general partner.

I. LEGAL ARGUMENT

Pursuant to Florida Rule of Civil Procedure 1.510, Summary Judgment may only be granted if the moving party can "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 burden is initially on the movant. 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." *Craven v. TRG-Boynton Beach, Ltd.*, 925 So. 2d 476, 480 (Fla. 4th DCA 2006). "Moreover, the movant's proof of the nonexistence of a genuine issue of fact must be conclusive, such that all reasonable inferences which may be drawn in favor of the opposing party are overcome." *Lenhal Realty, Inc. v. Transamerica Com. Fin. Corp.*, 615 So. 2d 207, 208 (Fla. 4th DCA 1993).[5]

Defendants have failed to present evidence which conclusively establishes that Plaintiffs' claims are time barred. Notably, Defendants fail to demonstrate that the transfers they received could have been discovered within one year of the filing of the instant claims against them, or that no bad acts occurred during the applicable look back period. Therefore, the MSJ cannot be granted.

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documents to the Conservator. Affidavit of Philip Von Kahle ("Von Kahle Aff.") ¶ 5. A true and correct copy of the Affidavit of Philip Von Kahle is attached hereto as **Exhibit "1".**

[5] Plaintiffs are also filing Plaintiffs' Statement of Material Facts in Opposition to Defendants' Amended Motion for Summary Judgment, simultaneously with the instant Motion.

Even if Defendants could meet their initial burden, the MSJ must be denied because of the following disputed issues of material fact including, among other issues:

1) Any right to access the books and records of the Partnerships would not have revealed the fraudulent transfers to Defendants.

2) Plaintiffs timely commenced this action within four years of the last unlawful act made in furtherance of the conspiracy at issue.

3) Plaintiffs were unable to commence this lawsuit prior to August 2012.

4) The statute of limitations cannot bar Plaintiffs' claims because Defendants and Sullivan misled the Partnerships and prevented them from filing suit against Defendants.

5) The well-established Doctrines of Equitable Estoppel, and Continuing Tort apply to preclude Summary Judgment

Based on the foregoing, the MSJ should be denied.

A. THE DELAYED DISCOVERY DOCTRINE PRECLUDES ENTRY OF SUMMARY JUDGMENT ON PLAINTIFFS' FRAUDULENT TRANSFER CLAIMS

A fraudulent transfer claim (Count IV) under Fla. Stat. § 726.105(a)(1) is timely if the claim is brought 4 years after the transfer was made, "or, **if later**, within 1 year after the transfer or obligation was or ***could reasonably have been*** discovered by the claimant." *See* Fla. Stat. § 726.110(1) (emphasis added). Defendants argue that Plaintiffs' fraudulent transfer claims are untimely because partners of the Partnerships (who are not the Plaintiffs in this action) had a right to access the Partnerships' books and records and could have discovered the kickbacks at an earlier date. MSJ at 5.

Specifically, Defendants assert that the delayed discovery doctrine is inapplicable because, "[a]ll of the books and records of P&S and S&P (the "Partnerships") were at all times

available for inspection and review by the general partners of the Partnerships." Defendants' Statement of Material Facts ¶ 8. This fact alone — even if true — does not permit entry of summary judgment,[6] because even if partners inspected the books and records of the Partnerships, those records would not have revealed there transfers. Affidavit of Barry Mukamal ("Mukamal Aff.") ¶ 6.[7] ("A review of the books and records of the Partnerships did not reveal that Avellino and Bienes received any distributions, commissions or payments from the Partnerships."). The documents which disclose the transfers Avellino and Bienes received were not partnership records, but were actually records from MDS. Statement of Material Facts ¶ 13. Those documents were not disclosed to partners of the Partnerships until May, 2012, and additional documents at issue were not disclosed until a year after that. Declaration of Margaret Smith ("Smith Decl.") ¶ 3.[8]

The testimony of Sullivan also confirms that — contrary to Defendants' argument — accessing the Partnerships' books and records would not have disclosed those kickbacks. *See* Statement of Material Facts ¶ 13. Sullivan testified that the kickbacks would have "been made out of [Sullivan's entities], not in the S&P and P&S records." Transcript of the Deposition of Michael D. Sullivan ("Sullivan Tr.") at 193:8-194:6.[9] The Partnerships' books and records would have only reflected a transfer to Sullivan's company MDS, as a Managing General Partner, – concealing the unlawful kickbacks from those inspecting the Partnerships records. *Id.* In direct

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[6] Defendants do not identify a single partner who inspected the books and records of the partnerships prior to 2008. *See* Transcript of the March 2, 2016 Deposition of Brett Stacey Stepelton, as Corporate Representative of Festus & Helen Stacey Foundation, Inc. ("Festus Tr.") at 40; 74:16-26; 75:1-2; 76:11-15. A true and correct copy of the Festus Tr. is attached hereto as **Exhibit "2".**

[7] A true and correct copy of the Mukamal Aff. is attached hereto as **Exhibit "3"**

[8] A true and correct copy of the Smith Decl. is attached hereto as **Exhibit "4".**

[9] A true and correct copy of excerpts of the Sullivan Tr. is attached hereto as **Exhibit "5".**

conflict with Defendants' statement of facts, Sullivan's testimony demonstrates that it was not until the Conservator or Margaret Smith (Smith was elected to replace Sullivan as the Managing General Partner in August 2012) obtained copies of hard drives and e-mails, at the earliest, in May 2012, or January 2013, that records revealing the transfers to Defendants were made available for outside inspection. Sullivan Tr. at 10-17; Transcript of March 8, 2016 Deposition of Michael D. Sullivan ("Sullivan Tr. (3-8-2016)") at 43:7-18[10]; Von Kahle Aff. ¶¶ 2-7 ("the documents which revealed the transfers to Avellino and Bienes were not accessible to the partners of the Partnerships. Instead they were concealed within the records of Michael D. Sullivan and Associates"); Smith Decl. ¶ 3; Mukamal Aff. ¶ 6.

Sullivan's testimony is consistent with the testimony of other partners who, despite requests for information from Sullivan, as the managing general partner, were unable to obtain information disclosing the kickbacks. Statement of Material Facts ¶ 14. Sullivan also wrote a letter to all partners of the Partnerships stating that Avellino and Bienes never received any money from the Partnerships. Sullivan Tr. (3-8-2016) Exh. 23, 118:24-25, 120:6-7. Thus, any partners' right to inspect the Partnerships' books and records would not have revealed the fraudulent transfers to Defendants. Mukamal Aff ¶ 6; Smith Decl. ¶ 3. Accordingly, Plaintiffs timely brought their fraudulent transfer claims in December 2012 – less than one year from August 2012, the earliest time when the transfers could have been discovered. *See* Fla. Stat. § 726.110(1).

Further, Plaintiffs' fraudulent transfer claim is premised on the fact that the kickbacks Defendants received improperly came from the capital contributions of other partners. Smith's

[10] A true and correct copy of excerpts from the Sullivan Tr. (3-8-2016) is attached hereto as **Exhibit "6".**

declaration establishes that **only after** documents were received from Sullivan after in approximately May 2012, was Smith able to be determine that portions of Sullivan's management fees were paid to Avellino and others (and not from partnership profits, as required by the Partnership Agreements). *See* Mukamal Aff. ¶ 5. Sullivan was the keeper of those documents and segregated them from the Partnerships records.

Notwithstanding the foregoing, this issue was previously determined in *P&S Associates v. Janet A. Hooker Charitable Trust*, Case No. 12-034121(07) (the "Net Winner Action"). In that case, the Conservator sought to recover money which was improperly transferred to partners of the Partnerships from the capital contributions of other partners. Like Defendants, those partners argued that the Conservator's claims were barred by the applicable statute of limitations, and filed motions for summary judgment to that effect. This Court denied their motions, because:

> It is alleged that Michael Sullivan, as managing partner, participated in the fraud and actively concealed evidence of the fraud. The time to bring this cause of action is extended to one year after the partnerships, as creditors/victims of the fraud, had the ability to determine the facts and bring the instant claims. Fla Stat. Sec. 726.110. **Sullivan's involvement and concealment remain disputed, as does the date of discovery**.

Exhibit 7 at 3 (emphasis added).[11]

While short of *res judicata,* the Court's denial of summary judgment in the Net Winner Action demonstrates why the MSJ should be denied. Unlike in this case, the transfers at issue in the Net Winner action were made directly from the Partnerships themselves and could have been discovered through a review of the Partnerships' books and records. However, the Court determined that the date of discovery of the fraudulent nature of the transactions at issue was and still is disputed, and denied summary judgment. Just as issues of fact remained as it relates to

[11] A true and correct copy of this Court's Order in the Net Winner Action is attached hereto as **Exhibit "7".**

the transfers in the Net Winner action, so too do issues of fact remain as it relates to the transfers at issue in this matter.

Moreover, whether partners of the Partnerships could have discovered the transfers by accessing the Partnerships' books and records is irrelevant because partners of the Partnerships are not the Plaintiffs in this action. The determining fact for purposes of the statute of limitations on a fraudulent transfer claim is whether the transfers at issue could have been discovered by "the claimant" – and in this case the claimant is the Conservator. *See In re Burton Wiand Receivership Cases Pending in the Tampa Div. of Middle Dist. of Fla.*, 8:05-CV-1856T27MSS, 2008 WL 818509, at *14 (M.D. Fla. 2008) ("the Undersigned finds that as pled the second amended complaint is not subject to dismissal on a motion to dismiss as the Receiver may be able to prove that the one year statute of limitations period began to run on the date *the Receiver,* not the Receivership Entities, discovered or could have discovered the transfers"). In any case, Defendants failed to submit any evidence to conclusively demonstrate that *the claimant* — the Conservator — could have reasonably discovered their fraudulent transfer claims at a date earlier than August 2012. It is therefore improper to grant summary judgment. *Id.*; *see also 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).

B. PLAINTIFFS' CIVIL CONSPIRACY, BREACH OF FIDUCIARY DUTY, UNJUST ENRICHMENT, AND MONEY HAD AND RECEIVED CLAIMS ARE TIMELY BECAUSE PLAINTIFFS WERE PREVENTED FROM FILING SUIT EARLIER.

"[A] limitations period ordinarily does not begin to run until the plaintiff has a complete and present cause of action, and a cause of action does not become complete and present until the plaintiff can file suit and obtain relief." *Park v. City of W. Melbourne*, 999 So. 2d 673, 677 (Fla. 5th DCA 2008); *accord Anthony v. Perez-Abreu & Martin-Lavielle, P.A.*, 51 So. 3d 525, 527

(Fla. 3d DCA 2010) (tolling statute of limitations against defendants for civil conspiracy "because [the plaintiff's] cause of action was not complete **until he could legally file suit and obtain relief.**) (emphasis added).[12]

The MSJ ignores that Plaintiffs timely commenced this action in December 2012, because they were legally unable to commence this action until August 2012, at the earliest. Sullivan, as the Managing General Partner of the Partnerships, was the only person who could engage attorneys and institute an action on the Partnerships behalf. *See* Partnership Agreements 8.02(a), (d). However, Sullivan prevented the Partnerships from filing suit against Defendants. *See also* Sullivan Tr. (3-8-2016) at 149:21-25; 150-1-5. After Sullivan feigned cooperation, but stonewalled the partners of the Partnerships, and refused to disclose information to them, the partners voted to remove Sullivan as Managing General Partner on August 17, 2012. Smith Decl. ¶ 2. Sullivan ignored the fact that he was removed and refused to step down as Managing General Partner until August 29, 2012, when Sullivan resigned as Managing General Partner, and finally permitted Smith to act as Managing General Partner pursuant to an Agreed Order Resolving Plaintiffs' Emergency Motion for Temporary Injunction. Smith Decl. ¶ 4; Agreed Order Resolving Plaintiffs' Emergency Motion for Temporary Injunction.[13] Notwithstanding Smith's appointment as Managing General Partner, Sullivan continued to work to prevent Smith from prosecuting any claims against Defendants. In fact, the Partnerships' prior counsel, previously retained by Sullivan, withheld partnership money from Smith. *Id.* That money would have been used to fund the litigation against him. Sullivan's efforts to obstruct the

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[12] *See also Stenger v. World Harvest Church, Inc.*, CIV.A.1:04CV00151-RW, 2006 WL 870310, at *9 (N.D. Ga. Mar. 31, 2006) (applying Georgia law).

[13] A true and correct copy of the Agreed Order Resolving Plaintiffs' Emergency Motion for Temporary Injunction is attached hereto as **Exhibit "8".**

commencement of litigation ended in January 2013, when the Conservator was appointed. However, Sullivan refused to turn over the full records of the Partnerships and MDS to the Conservator until August 19, 2013. Von Kahle Aff ¶ 5.

Because the foregoing facts demonstrate that the Partnerships were unable to file this action prior to August 2012, their causes of action were not complete. Therefore, this action was timely filed on December 10, 2012 – less than four years from when Plaintiffs' unjust enrichment, money had and received, breach of fiduciary duty, and civil conspiracy claims accrued. *See Park v. City of W. Melbourne*, 999 So. 2d 673, 677 (Fla. 5th DCA 2008).

The Conservator's appointment should also preclude entry of summary judgment. Although Florida law does not yet recognize the doctrine of equitable tolling for all claims (*HCA Health Services of Florida v. Hillman*, 906 So. 2d 1094 (Fla. 2d DCA 2004)), federal courts widely find that the appointment of a receiver allows the application of equitable tolling to suspend the statute of limitations in circumstances where the receiver is appointed as a result of the fraudulent conduct of the directors of a corporation. *FDIC v. Jackson,* 133 F.3d 694, 698 (9th Cir.1998); *FDIC v. Dawson,* 4 F.3d 1303 (5th Cir.1993); *Farmers & Merchants Nat'l Bank v. Bryan,* 902 F.2d 1520 (10th Cir.1990); *Shapo v. O'Shaugnessy*, 246 F.Supp.2d 935, 953 (N.D. Ill. 2002) (citing *Resolution Trust Corp. v. Gallagher,* 800 F.Supp. 595, 600 (N.D.Ill.1992), *aff'd,* 10 F.3d 416 (7th Cir.1993)); *Janvey v. Democratic Senatorial Campaign*, 793 F.Supp.2d 825, 835 (N.D. Tex. 2011); *Klein v. Abdulbaki*, 2:11-CV-00953, 2012 WL 2317357 (D. Utah 2012).

The basis for such holdings is that where, as here, an entity is being used for the purpose of defrauding its investors, the entity is unlikely to bring suit against itself.[14] "Under those

[14] That concept has been recognized by at least one Florida court, which held that a receiver only becomes a claimant once appointed, and therefore applied the discovery rule in the context of a

circumstances, the entity is paralyzed to defend itself against the wrongdoers and the doctrine [of equitable tolling] ensures that the statute of limitations begins to run only once the wrongdoing directors lose control of the entity." *Warfield v. Carnie*, 2007 WL 1112591, at *14 (N.D. Tex. April 13, 2007); *Quilling v. Cristell,* 2006 WL 316981 *6 (W.D.N.C.2006) ("Equitable tolling principles recognize that so long as a corporation remains under the control of wrongdoers, it cannot be expected to take action to vindicate the harms and injustices perpetrated by the wrongdoers."); *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").

Here, once a receiver – or in this case, the Conservator – was appointed over the Partnerships, he and the Partnerships should be able to assert claims against wrongdoers and those who were unjustly enriched. Indeed, such a result is especially justified in this case given that it appears Defendant concedes that they should return the amounts owed to the Partnerships absent the statute of limitations defense – which was made possible only because of years of concealed mismanagement by the now forcibly removed former Managing General Partner, and prior to the appointment of the Conservator. That fact further justifies denial of the MSJ.

C. THE DOCTRINE OF EQUITABLE ESTOPPEL PRESERVES PLAINTIFFS' CLAIMS.

Defendants are barred from raising the defense of statute of limitations under the doctrine of equitable estoppel. "Equitable estoppel can be raised to bar a defendant from unfairly claiming the benefit of the statute of limitations where a plaintiff can show that the defendant willfully induced the plaintiff to forego suit until after the limitations period has ended." *Fox v.*

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fraudulent transfer from the date the receiver was appointed. *Burton Wiand Receivership Cases Pending in the Tampa Div. of Middle Dist. of Fla.*, 8:05-CV-1856T27MSS, 2008 WL 818509, at *14 (M.D. Fla. 2008).

City of Pompano Beach, 984 So. 2d 664, 667 (Fla. 4th DCA 2008). "The case law makes clear that an equitable estoppel claim raised in response to a statute of limitations defense must allege that the defendant acted with an intent to mislead or deceive the plaintiff into filing late, and that the plaintiff's failure to timely file is directly attributable to the defendant's misconduct." *Id.*

Summary judgment is improper and equitable estoppel applies in this case because the evidence shows that Avellino and Bienes were aware of the facts underlying Plaintiffs' claims and misled the partners and the Partnerships regarding their knowledge, involvement, and losses related to the Madoff Ponzi scheme to prevent the Partnerships from filing suit against them. *Acoustic Innovations, Inc. v. Schafer*, 976 So. 2d 1139, 1144 (Fla. 4th DCA 2008).

The level of control that Avellino and Bienes exercised over Sullivan was extraordinary, thereby ensuring that Sullivan would never file suit against them. Statement of Material Facts ¶¶ 6, 7, 8, 9, 10, 11. Despite the fact that Sullivan had no investment experience and was not qualified, to run the Partnerships, Avellino gave Sullivan the "gift" of being the managing general partner of the Partnerships, and could take back the gift at any time. *Id.* ¶ 10. Sullivan was able to run the Partnerships because Avellino and Bienes provided him with substantial assistance, and oversaw his efforts by tracking the returns of certain investors. *Id.* ¶¶ 8, 9, 11. Avellino and Bienes even communicated with partners in the Partnership about Partnership affairs. *Id.*¶ 17. More importantly, Avellino and Bienes gave Sullivan advice as to how to structure the Partnerships, avoid regulatory scrutiny, and ensure a continuing relationship with Madoff. *Id.* ¶¶ 8, 9, 11. Because of this relationship, Avellino and Bienes ensured that Sullivan would never file suit against them. As a result, Sullivan actively sought to prevent the Partnerships from filing suit against Avellino and Bienes. *Id.* ¶¶ 18-22; 25. Certainly, the effect of Sullivan's relationship with Avellino and Bienes creates disputes as to material facts which

warrant denial of summary judgment and trial on all of Plaintiffs' claims.

Sullivan's repetition of deceitful statements from Defendants professing that they were victims of the Ponzi scheme to protect them from is seen in his own e-mails. When discussing Defendants' role in the Madoff Ponzi scheme in an email on December 18, 2008, Sullivan stated to a partner that "I do not believe they had anything to do with what happened. I would not believe it unless they told me. They are good people and [I] love them both very much." Affidavit of Matthew Carone ("Carone Aff.") Exh. O, P.[15] In response to which the partner stated – "I feel the same way — unless I learn that they haven't lost everything as Frank has told me —." *Id.* Bienes similarly professed that he was a victim of the Ponzi scheme. Carone Aff., Exh. E. Sullivan went on to recall a meeting with partners and stated "At that meeting it was suggested to us the possibility of a suit against Frank Avellino and you would hope we would join you if necessary. I was shocked. Other than stories that ran in the newspaper the thought of a law suit against another Christian and one who belonged to the same church was stunning to me." *Id.*

Similarly, Bienes professed that people who said they were guided to Sullivan by Avellino and Bienes are lying and that he lost all his money through Madoff. Bienes Depo. Exh. 37 at AVE02951RTP, AVE02959RTP.[16] After the discovery of the Madoff Ponzi scheme, Bienes also stated, on national television, that he had no involvement with the Partnerships. Bienes Depo. Exh. 37 at AVE02951RTP-02959RTP. Despite these representations, Defendants continued to be involved with the management the Partnerships, after the disclosure of the

[15] A true and correct copy of the Carone Aff. is attached hereto as **Exhibit "9".**

[16] A true and correct copy of the referenced portions of Exhibit 27 to the Deposition of Michael Bienes is attached to Plaintiffs' Statement of Material Facts, which was filed simultaneously with the instant Response.

Madoff Ponzi scheme, as evidenced by e-mails from Sullivan to Defendants in 2011 and 2012. *See* Sullivan Tr. (3-8-2016) at 155-159 (discussing e-mail correspondence between Sullivan and Avellino between 2009 and 2012.); Sullivan Tr. (3-8-2016) 9:19 – 10:1, 10:16-25, 13:1-4; (Exhibit 39).

Avellino and Bienes statements to Sullivan were false and misleading as reflected in the testimony of Frank DiPascali in a criminal trial against 5 Madoff associates.[17] DiPascali served as Madoff's "right-hand" for several decades and was aware of the Madoff Ponzi scheme. DiPascali's testimony, among other evidence, resulted in 5 Madoff associates being sentenced to prison. DiPascali's testimony reflects that Avellino and Madoff had a meeting during which it was decided that certain individuals, such as Avellino, would receive commissions for bringing investors to Madoff. Transcript of Testimony of Frank DiPascali ("DiPascali Tr.") [ECF 858 at p. 33-34]. DiPascali's testimony continues and provides that Avellino and Madoff were working together to bring former investors in A&B to Madoff directly by providing extra money to certain people's individual accounts. DiPascali Tr. [ECF 858 at p. 34-35]. Defendants exploited their position of trust and concealed their special treatment and involvement with Madoff from Sullivan and the Partnerships to prevent the filing of a lawsuit against them.

As a result of Avellino's and Bienes' misleading statements regarding their financial catastrophe and being victims of Madoff's Ponzi scheme, Sullivan reposed trust and confidence in them and abstained from filing a lawsuit against them. Contrary to Defendants' argument in their MSJ, the Complaint alleges that Avellino was active in the management of the Partnerships through 2012, that Defendants recognized that Plaintiffs had a basis for suit against them, and prevented Sullivan and the Partnerships from pursuing any claims against them. Complaint ¶¶

[17] A true and correct copy of excerpts of the DiPascali Tr. is attached as **Exhibit "10"**.

50-51. The evidence shows that Avellino and Bienes intended to and did mislead the partners and the Partnerships to prevent them from filing suit against them, therefore summary judgment is improper.

D. THE CONTINUING TORT DOCTRINE PRESERVES PLAINTIFFS' CLAIMS.

Under the continuing tort doctrine, "the limitations period runs from the date the tortious conduct ceases." *Halkey-Roberts Corp. v. Mackal*, 641 So. 2d 445, 447 (Fla. 2d DCA 1994). The continuing tort doctrine permits parties to assert claims in connection with conduct that has occurred outside of the statute of limitations period, so long as the last act in furtherance of tortious conduct occurred within that period. *City of Quincy v. Womack*, 60 So. 3d 1076, 1078 (Fla. 1st DCA 2011); *accord Winn-Dixie Stores v. Dolgencorp, LLC*, 746 F. 3d 1008 (11th Cir. 2014). "A continuing tort is 'established by continual tortious *acts,* not by continual harmful effects from an original, completed act.'" *Black Diamond Properties, Inc. v. Haines*, 69 So. 3d 1090, 1094 (Fla. 5th DCA 2011).[18] "Whether the continuing torts doctrine applies to the facts of [this] case is for the trier of fact to decide." *Pearson v. Ford Motor Co.*, 694 So. 2d 61, 68-69 (Fla. 1st DCA 1997); *Rosario v. Procacci Commercial Realty, Inc.*, 717 So. 2d 148 (Fla. 2d DCA 1998).

In *Goodwin v. Sphatt*, 114 So. 3d 1092, 1094 (Fla. 2d DCA 2013), for example, the

[18] Defendants rely three cases which allegedly support the proposition that the statute of limitations for a breach of fiduciary duty claim commences when the injury first occurs. First, they cite to *Phillips v. Amoco Oil, Co.,* 799 F.2d 1464, 1468-69 (11th Cir. 1986), an Alabama case which analyzes the accrual of a fraud cause of action under Alabama law. Then they cite to *Kelley v. School Board,* 435 So.2d 804 (Fla. 1983), a case relating to construction defects where a single bad act occurred before the filing of the complaint. Finally, Defendants cite to *PricewaterhouseCoopers LLP v. Cedar Res., Inc.*, 761 So.2d 1131, 1134 (Fla. 2d DCA 1999), a fraud case involving venue, where the injury continued to persist after a single bad act, to claim that Plaintiffs' claims are time barred. However none of these cases relate to breaches of fiduciary duty, and are therefore inapplicable to the instant matter as the statute of limitations applicable to such claims can be extended by the continuing tort doctrine.

Second District Court of Appeal found that allegations that a manager of a corporation made and concealed improper distributions were sufficient to establish a continuing tort. *See also*, *Halkey-Roberts Corp. v. Mackal*, 641 So. 2d 445, 447 (Fla. 2d DCA 1994) ("The question of whether Mackal's actions constituted continuing torts precludes the granting of summary judgment.") In *Carlton v. Germany Hammock Groves*, 803 So. 2d 852 (Fla. 4th DCA 2002) (denying summary judgment because of the continuing tort doctrine.). Here, as in the foregoing cases, the continuing tort doctrine preserves Plaintiffs' civil conspiracy and breach of fiduciary duty claims.

1. The Continuing Tort Doctrine Preserves Plaintiffs' Conspiracy Claims

A civil conspiracy "cause of action does not accrue and become actionable until the final element is satisfied which, in this case, is damages." *Anthony v. Perez-Abreu & Martin-Lavielle, P.A.*, 51 So. 3d 525, 526 (Fla. 3d DCA 2010). "A conspiracy cause of action accrues when the plaintiff suffers damages as a result of the acts performed pursuant to the conspiracy." *Olson v. Johnson*, 961 So. 2d 356, 360 (Fla. 2d DCA 2007). "The last of [the] elements [of conspiracy] will necessarily be the injury to the plaintiff." *Id.* The statute of limitations for a civil conspiracy claim is 4 years. Fla. Stat. § 95.11(3).

In this case, Plaintiffs timely filed this action within four years of the last action that injured Plaintiffs. Plaintiffs' civil conspiracy claim does not arise solely out of the kickbacks that Avellino and Bienes received; it also arises from the improper management fees paid to Sullivan, his affiliates and the other co-conspirators. Complaint ¶ 46. While the last management fee at issue was paid to MDS on December 15, 2008, less than 4 years before the original Complaint was filed, there were several other subsequent bad acts in furtherance of the conspiracy which

occurred during that period.[19] *See* Mukamal Aff. ¶ 7. Among other conduct, was Sullivan's concealment of his receipt of improper management fees. In fact, in January 2009, Sullivan adjusted the Partnerships' books and records to conceal his improper siphoning of money. Specifically, Sullivan reduced the balance of his personal capital account, by approximately $300,000 to conceal that funds in excess of the alleged Management fees were paid to him. Sullivan took such action when the Partnerships did not have the $300,000 allegedly withdrawn by Sullivan. Such conduct was intended to create the appearance of compliance with the Partnership Agreements. Statement of Material Facts ¶ 16. Sullivan Tr. (3-8-2016) 28:1-6, 61:10-18, 114:16-25. Additionally, Sullivan falsely professed to partners of the Partnerships that "Michael and Frank had no connection with S&P or P&S[,]" in July 2009. See Carone Aff., Exh. Q. He continued to maintain that position through August 2012, when Sullivan wrote a letter to all partners of the Partnerships stating that Avellino and Bienes never received any money from the Partnerships. Sullivan Tr. (3-8-2016) Exh. 23, 118:24-25, 120:6-7.

Accordingly, under the continuing tort doctrine, Plaintiffs' civil conspiracy claims are timely because this action was commenced on December 10, 2012, less than four years from the act which last caused injury to Plaintiffs.

[19] Defendants argue that the last kickback "could only have been paid prior to December 11, 2008, as that is the date Madoff's Ponzi scheme was made public." MSJ at 6 fn. 4. However, Defendants offer no evidence in support of this argument. While Defendants' involvement in Madoff's Ponzi scheme contributed to the rise of the conspiracy to receive kickbacks, the timing of the kickback payments was not dependent on it. Even after the Ponzi scheme was revealed, Sullivan and Defendants attempted to conceal their receipt of the kickbacks.

2. The Continuing Tort Doctrine Preserves Plaintiffs' Breach of Fiduciary Duty Claims

Unlike a civil conspiracy claim, the statute of limitations for a breach of fiduciary duty begins to run from the date of the applicable breach. *Halkey-Roberts Corp. v. Mackal*, 641 So. 2d 445, 447 (Fla. 2d DCA 1994). Regardless of the jurisprudential differences between the application of the statute of limitations for civil conspiracy and breach of fiduciary duty claims, the continuing tort doctrine applies to both.

In *Kravitz v. Levy*, 973 So.2d 1274, 1275-76 (Fla. 4th DCA 2008), for example, the Fourth District Court of Appeal found that the continuing tort doctrine precluded entry of summary judgment on statute of limitations grounds. In determining that the defendant could be held liable for breaches of fiduciary duty in connection with the misappropriation of assets 20 years before the lawsuit at issue was filed, the Fourth District Court of Appeal noted that so long as the defendant was a personal representative, and thus had a fiduciary duties, whether he continued to breach his fiduciary duties, despite the expiration of the statute of limitations, was a question which must be submitted to the jury. *Id.*; *see also Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1042 (11th Cir. 2014) ("The continuing tort doctrine, or the continuing violation principle, distinguishes between a single act that causes multiple, cascading harms, and recurrent, repetitive acts excepted from the running of the statute of limitations…").

As in *Kravitz*, Defendants continued to breach their fiduciary duties to the Partnerships through 2012. After BLMIS was revealed as a fraud, Defendants continued to be involved in the management and organization of the Partnerships. In fact, on December 12, 2008, Frank Avellino e-mailed a partner of the Partnerships to inform that partner of the fact that the Partnerships had obtained counsel, and told that partner to wait for information instead of investigating the financial condition of the Partnerships. Sullivan Tr. (3-8-2016) at Exh. 29.

Avellino, Bienes' long-time partner, continued to exercise control over the Partnerships to conceal his receipt of kickbacks by discouraging partners of the Partnerships from taking any action in connection with an investigation of BLMIS and thus the Partnerships. Sullivan Tr. (3-8-2016) at Exh. 30. Avellino and Bienes continued to be involved in Partnership affairs until at least 2011, which is demonstrated by the fact that Avellino and Bienes received confidential settlement communications concerning the Partnerships. Sullivan Tr. (3-8-2016) at Exh. 39. These communications, which are a portion of what could be obtained due to Defendants' deletion of documents, are sufficient to create issues of fact, as Sullivan was unable to provide any reasonable explanation for Avellino and Bienes' involvement in the Partnerships and subsequent breaches of fiduciary duty through 2012 when Sullivan was removed as managing general partner. Therefore, the continuing tort doctrine preserves Plaintiffs' breach of fiduciary duty claims.

II. CONCLUSION

All in all, it is worth emphasizing that Plaintiffs are seeking to recover money from Defendants for the benefit of hundreds of partners of the Partnerships, whose money was improperly diverted to Avellino and Bienes through Sullivan. Sullivan, as a conspirator, did everything in his power to prevent Plaintiffs from pursuing the instant claims against himself, and his co-conspirators, Avellino and Bienes. Accordingly, and because (i) the transactions at issue in this Complaint could not have been discovered until August 2012; (ii) the continuing tort

doctrine and equity preserve Plaintiffs' claims; and (iii) Plaintiffs initiated the instant lawsuit at the earliest possible time, Defendants' MSJ must be denied.

Dated: August 1, 2016

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 1, 2016, a copy of the foregoing was filed with the Clerk of the Court via the E-filing Portal, and served via Electronic Mail by the E-filing Portal upon:

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By: *s/Leonard K. Samuels*
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7277945-2

EXHIBIT 1
AFFIDAVIT OF PHILIP VON KAHLE

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. 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, in 2013 to determine the exact amount that was paid to Avellino and Bienes.

7. Moreover, the documents which revealed the transfers to Avellino and Bienes were not accessible to the partners of the Partnerships. Instead they were concealed within the records of Michael D. Sullivan and Associates.

8. 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 25th day of July, 2016 by Philip Von Kahle who is personally known to me or has produced as identification _____ and did/did not take an oath.

Name: Nadira Joseph
(Notary Public)
(Affix Seal Below)

NADIRA JOSEPH
Notary Public - State of Florida
My Comm. Expires Dec 11, 2017
Commission # FF 075791
Bonded Through National Notary Assn.

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.*

JEFFREY E. STREITFELD

Done and ordered in Chambers this _____, 2013.

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.

EXHIBIT 2
BRETT STACY STEPELTON
DEPOSITION EXCERPTS

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

CASE NO. 12-034123(07)

P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
Partnership, et al,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.
_____/

DEPOSITION OF BRETT STACY STEPELTON
CORPORATE REPRESENTATIVE OF
FESTUS & HELEN STACY FOUNDATION, INC.

TAKEN ON BEHALF OF THE DEFENDANT AVELLINO

DATE TAKEN: Wednesday, March 2, 2016

TIME: 9:32 a.m. - 11:14 a.m.

PLACE: Genovese, Joblove & Battista
200 E Broward Boulevard
Suite 1110
Fort Lauderdale, Florida 33301

Reported by:
April Goldberg, FPR
Notary Public, State of Florida

investors in S&P made -- requested to review the books and records of the Foundation prior to December 2008?

A. Excuse me?

Q. Okay. Any other -- okay, the Foundation, we've discussed the Foundation --

A. Yeah.

Q. -- didn't request to look at the books and records. What about your knowledge of whether or not any other investors in S&P, Scott Holloway, for example, you mentioned him, are you aware of whether or not any other investors requested to look at the books and records?

A. No.

Q. You're not aware?

A. No.

Q. Prior to December of 2008?

A. Correct.

Q. Do you know who Father Kelly is?

A. Yes.

Q. And who is he?

A. Catholic priest.

Q. And do you know him personally or --

A. No.

Q. You just know of him?

A. Of him, yeah.

records of Michael D. Sullivan & Associates?

A. Didn't even know about it.

Q. Do you know who Michael D. Sullivan & Associates is?

A. I do now.

Q. Is that based on your knowledge of the litigation?

A. Litigation.

Q. Did you ever request access to Michael D. Sullivan & Associates?

A. No.

Q. Did you ever request that Sullivan disclose information about the management fees he had received and what he did with that money?

A. Say that again?

Q. Did you request information from Sullivan about what he did with management fees?

A. Eventually.

Q. What did he tell you?

A. No management -- it's not a partnership issue, no management fees were ever taken out of the partnerships.

Q. Did you try to get any additional information about those management fees?

A. Yes.

Q. Did you receive any?
A. No.
Q. Earlier you testified that Mr. Holloway discussed investment in the partnerships with you --
A. Right.
Q. -- do you recall that?
Would the fact that he received a -- or he received fees in connection with people he referred to the partnerships have changed your view of his advice?
MR. WOODFIELD: Object to the form of the question.
THE WITNESS: Yeah.
BY MR. HYMAN:
Q. How so?
A. Conflicted at that point.
Q. Why would you say he was conflicted?
A. Just not objective information.
Q. So would the disclosure of the referral fee have changed anything?
A. It could have.
Q. Were you familiar with an entity referred to as A&B prior to 2009?
A. No.
Q. Have you become familiar with an entity known as A&B since, at any point in time?

A. I heard that Avellino and Bienes were involved with Madoff.

Q. But just the term A&B, have you heard that term before?

A. Yeah.

Q. When?

A. Litigants all -- litigation, and...

Q. I'm going to go through a list of names and just ask if you knew them and a follow-up question from there.

Ralph Fox, did you know him?

A. Not personally.

Q. Did you know if he was receiving management and/or referral fees from the partnerships?

A. No.

MR. WOODFIELD: Objection to the form of the question. Go ahead.

MR. HYMAN: Or let me rephrase it, then.

BY MR. HYMAN:

Q. Do you know if he was receiving money from the partnerships?

MR. WOODFIELD: Object to the form of the question.

MR. HYMAN: You can answer.

THE WITNESS: I didn't know he was a partner.

EXHIBIT 3

AFFIDAVIT OF BARRY MUKAMAL

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

CASE NO. 12-034123 (07)

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

Plaintiffs,

vs.

STEVEN JACOB, et al.

Defendants.
_____/

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 investments 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 Exhibit A, cash deficiencies in the Partnerships due to the improper payment of partnership distributions and management fees were funded by certain capital contributions received by the Partnerships. I did not see any Partnership records which indicate, or would have notified partners in the Partnerships, that their distributions were funded by capital contributions of other partners.

4. My engagement with Phillip J. Von Kahle was expanded in 2014 to include an analysis as to whether Sullivan received management fees in compliance with the Partnership Agreements of the Partnerships. A copy of the expert report I drafted is attached hereto as **Exhibit B.**

5. As set forth in Exhibit B, the Partnerships improperly transferred money invested by Partners as capital contributions to Sullivan/Powell as management fees.

6. A review of the books and records of the Partnerships did not reveal that Avellino and Bienes received any distributions, commissions or payments from the Partnerships. I am informed that Sullivan thereafter improperly transferred funds he received from the Partnerships to Avellino and Bienes from Michael D. Sullivan & Associates own accounts.

7. Moreover, a review of the records of the Partnerships also reveals that an improper transfer of Partnership funds occurred on December 15, 2008. That transfer consisted of a $20,000 payment from P&S to Michael D. Sullivan and Associates, Inc., and was improper because, among other reasons, Madoff was arrested on December 11, 2008 and the Partnerships did not have any capital as a result of the discovery of the BLMIS fraud.

FURTHER AFFIANT SAYETH NAUGHT.

BARRY MUKAMAL

STATE OF FLORIDA)
.SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 29th day of July, 2016 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)

NOTARY PUBLIC STATE OF FLORIDA
JULIET ZAMORA
MY COMMISSION # FF244165
EXPIRES: June 24, 2019

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

TABLE OF CONTENTS

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.

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[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)

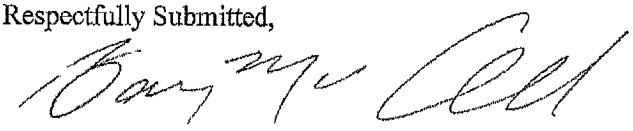
We employed the following methodology to confirm the amounts of new investment and distributions as reported on the S&P Spreadsheet:

- 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 acccrued	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						

S&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 accrued	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 & T 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	Tax Fees Due to yrds.
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
	511,620	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
Accrued Expenses

2005

	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

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

Gross Fees paid YTD	433,726.29
less comm. paid YTD & accrued TOTAL	-125,825.01
Net fees paid YTD	307,901.28
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	GJ	1/1/01	Sullivan & Powell	25,000.00		
	3847	GJ	1/10/01	Sullivan & Powell	5,000.00		
	3851	GJ	1/19/01	Sullivan & Powell	24,018.29		
	3852	GJ	1/19/01	Sullivan & Powell	15,000.00		
	3864	GJ	2/23/01	Sullivan & Powell	15,000.00		
	3924	GJ	4/1/01	Sullivan & Powell	20,000.00		
	3938	GJ	4/13/01	Sullivan & Powell	40,000.00		
	3945	GJ	4/19/01	Sullivan & Powell	5,000.00		
	3947	GJ	4/20/01	Sullivan & Powell	10,000.00		
	3956	GJ	5/10/01	Sullivan & Powell	10,000.00		
	3965	GJ	5/17/01	Sullivan & Powell	8,000.00		
	3974	GJ	5/30/01	Sullivan & Powell	10,000.00		
	3976	GJ	6/5/01	Sullivan & Powell	10,000.00		
	4033	GJ	6/21/01	Sullivan & Powell	7,000.00		
	4039	GJ	6/28/01	Sullivan & Powell	6,500.00		
	4043	GJ	7/13/01	Sullivan & Powell	30,000.00		
	4048	GJ	7/23/01	Sullivan & Powell	10,000.00		
	4053	GJ	8/6/01	Sullivan & Powell	10,000.00		
	4056	GJ	8/20/01	Sullivan & Powell	15,000.00		
	4064	GJ	8/27/01	Sullivan & Powell	5,000.00		
	4072	GJ	9/10/01	Sullivan & Powell	10,000.00		
	4122	GJ	9/26/01	Sullivan & Powell	15,000.00		
	4125	GJ	10/1/01	Sullivan & Powell	5,000.00		
	4130	GJ	10/10/01	Sullivan & Powell	10,000.00		
	4132	GJ	10/14/01	Sullivan & Powell	25,000.00		
	4134	GJ	10/22/01	Sullivan & Powell	6,000.00		
	4138	GJ	10/30/01	Sullivan & Powell	6,000.00		
	4139	GJ	11/5/01	Sullivan & Powell	6,000.00		
	4146	GJ	11/9/01	Sullivan & Powell	5,000.00		
	4150	GJ	11/16/01	Sullivan & Powell	6,000.00		
	4157	GJ	11/27/01	Sullivan & Powell	8,000.00		
	4161	GJ	12/4/01	Sullivan & Powell	5,000.00		
					387,518.29	0.00	

(24,018.29) ← year 2000

363,500.00

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, then 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.
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 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. P & S ASSOCIATES, GENERAL PARTNERSHIP
NAME

225 N. FEDERAL HWY., SUITE 600
STREET

POMPANO BEACH, FL 33062
CITY STATE ZIP

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

REG. REP Michael Sullivan & Greg 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) Amy Dreyfuss, Managing Atty

"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.

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 E 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			161,347.0
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		22,379.0
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, Gary Pucill, 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

4370

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 Partners.

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 communications 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 Partner's 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 HE 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 that 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, then 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 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.

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, telecopied, telexed or sent by United States mail and shall be deemed to 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 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 "P&S Associates, GP" to:

P & S ASSOCIATES, General Partnership
c/o SULLIVAN & POWELL
4555 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 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 #.

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.

*Licensed by the State of Florida

- "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*

*Licensed by the State of Florida

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 Caloulations	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.

[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.