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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE RIVER ADVISORS, LLC; SRA MANAGEMENT ASSOCIATES, LLC; FRANK GREGORY MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III LLC; FELIX INVESTMENTS, LLC; MICHELE J. MAZZOLA; ANNE BIVONA; CLEAR SAILING GROUP IV LLC; CLEAR SAILING GROUP V LLC,

Relief Defendants.

Case No. 3:16-cv-01386-EMC

REPLY DECLARATION OF MARC D. KATZ IN SUPPORT OF PLAINTIFF'S JOINT MOTION WITH THE RECEIVER FOR APPROVAL OF THE PROPOSED JOINT DISTRIBUTION PLAN

Date: September 28, 2017
Time: 1:30 p.m.
Courtroom: 5
Judge: Edward M. Chen

DECLARATION OF MARC D. KATZ

I, Marc D. Katz, declare:

1. I am one of the trial counsel representing the United States Securities and Exchange Commission (the "Commission") in this action.

2. According to the Stipulated Order signed by the Court on July 25, 2017, part of the reason for the extended briefing schedule and second hearing on the proposed Joint Distribution Plan was to permit the SRA Funds Investor Group "to confer with the Commission and the Receiver about its alternative plan in advance of it being filed with the Court." (Dkt 208 at 3:17-19.)

3. But the Investor Group did not confer with the Commission before filing its alternative with the Court. The Commission first saw the proposed alternative plan when it received the papers via the Court's ECF filing system.

4. After receiving the proposed alternative plan, our office obtained the documents referenced below related to Joshua Cilano, proposed advisory committee member Peter Healy, Capital Truth Holdings, and Capital Truth Advisors.

5. The SRA Investor Group proposes an advisory committee "to monitor and oversee" the proposed new manager. The Investor Group states: "All of the members of the advisory committee are independent from Investors Rights." (Opp. 20:2-4.) The first person listed for the proposed advisory committee is Peter Healy, a senior partner at O'Melveny & Myers, LLP.

6. The corporate documents that I reviewed and reference below, however, indicate that Peter Healy is a business partner of Joshua Cilano.

7. According to a notarized Amended and Restated Statement of Authorized Person for Capital Truth Holdings, LLC, on June 3, 2015, Joshua Cilano became the sole Authorized Person and Managing Member of Capital Truth Holdings. This June 2015 document is notarized by defendant John Bivona. A copy of this June 3, 2015 document is attached hereto as **Exhibit 1** (Katz Reply Decl**.** p. 5).

8. According to a document entitled "Action by Written Consent of the Sole Member of PSI, LLC," dated July 1, 2016, Peter T. Healy is the sole managing member of a Delaware limited liability company called PSI, LLC. The document purportedly bears the signature of Peter T. Healy.

9. Attached hereto as **Exhibit 2** (at Katz Reply Decl. pp. 7-54) is a copy of a Limited Liability Company Agreement of Capital Truth Holdings LLC (the "Capital Truth LLC Agreement"). The "Initial Members" of Capital Truth Holdings are Joshua Cilano and PSI, LLC (paras 1.19 and 1.20, at Katz Reply Decl. p. 16). Cilano has an 80% interest in Capital Truth Holdings and PSI has 20% (Schedule B, at Katz Reply Decl. p. 54). Capital Truth Holdings owns all rights, title, and interest of any affiliates, including Capital Truth Advisors, and including related management fees and carried interest payments (Schedule A, at Katz Reply Decl. p. 53). The Capital Truth LLC Agreement specifies that any Member is authorized to vote, represent, and exercise on behalf of Capital Truth Holdings "all rights incident to any and all shares … of any other company … standing in the name of the Company" (para 17.4, at Katz Reply Decl. p. 50).

10. According to an August 1, 2016 Limited Liability Company Resolution for Capital Truth Holdings, as "Managing Member of Late Stage Investment," the partners named in the document were granted a wide range of rights, including being "fully authorized and empowered to open a brokerage account, transfer, endorse, sell, assign, set over and deliver any and all securities … [and] execute and deliver . . . any and all written instruments necessary or proper to effectuate the authority herby confirmed." Peter T. Healy of Hillsborough, California is listed as one of the two partners, and the document is purportedly signed by Peter T. Healy. The "Managing Member" of Capital Truth Holdings, of Hackensack, NJ is the other listed partner and signatory. A copy of this Limited Liability Company Resolution is attached as **Exhibit 3** (at Katz Reply Decl. p. 56).

11. Attached as **Exhibit 4** (at Katz Reply Decl. pp. 58-67) are printouts of pages of a prior version of a website for Capital Truth Advisors. This prior website version includes a page describing an "Outside Advisory Board" (Exhibit 4, at Katz Reply Decl. p 64). The next page, with the heading "Advisory Board Members," includes a photograph and full-page biography of Peter Healy, who is identified as "Chairman" (Exhibit 4, at Katz Reply Decl. p. 65). The Capital Truth Advisors Advisory Board Members also purportedly include Robert Brunner (Exhibit 4, at Katz Reply Decl. p. 66). Mr. Brunner is also listed in as proposed advisory committee member to oversee the receivership entities. (Opp. at 20:15-19.)

12. On September 11, 2017, I conducted an internet search for "Capital Truth Advisors LLC," and located the website for "capitaltruthadvisors.com." Although some of the content on the current version of the website was similar to Exhibit 4, the current website does not contain any reference to Messrs. Healy or Brunner as described in the paragraph above.

13. Prior to our filing the Joint Distribution Plan, I and my colleague John Yun met with Peter Healy and attorneys for the Pritzker Levine law firm. Neither during that meeting, nor since that meeting, did Mr. Healy or the Pritzker Levine attorneys reference that Mr. Healy had a business relationship with Joshua Cilano. Nor did they discuss Mr. Cilano's relationships with John Bivona, Frank Mazzola or the receivership entities.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed in San Francisco, California on September 13, 2017.

Marc D. Katz

Exhibit 1

to

Reply Declaration of

Marc Katz

AMENDED AND RESTATED STATEMENT OF AUTHORIZED PERSON

STATEMENT OF ORGANIZATION OF THE AUTHORIZED PERSON OF CAPITAL TRUTH HOLDINGS LLC

The undersigned, the sole Authorized Person of Capital Truth Holdings LLC, a Delaware limited liability company (the "Company"), hereby certifies pursuant to Section 18-201 of the Delaware Limited Liability Company Act, as follows:

1. that the Certificate of Formation of Capital Truth Holdings LLC was filed with the Secretary of State of Delaware on February 4, 2015;

2. that on February 4, 2015, the following persons were named as the Managing Members of the Company until their successors are elected and qualify: Joshua J. Cilano; and Stephen Soler;

3. that on June 3, 2015, Stephen Soler resigned as a Managing Member of the Company; and

4. that from and after June 3, 2015, the sole Authorized Person and Managing Member of the Company is and shall be Joshua J. Cilano.

IN WITNESS WHEREOF, the undersigned have executed this Statement Of Authorized Person as of June 3, 2015.

Joshua J. Cilano
Sole Authorized Person and Sole Managing Member of the Company

RESIGNATION CONFIRMED
BY STEPHEN SOLER

Stephen Soler

JOHN V. BIVONA
Notary Public, State of New York
No. 31-4870258
Qualified in New York County
Commission Expires August 6, 20

OMM_US:73968236.1

Exhibit 2

to

Reply Declaration of

Marc Katz

LIMITED LIABILITY COMPANY AGREEMENT

of

CAPITAL TRUTH HOLDINGS LLC

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LIMITED LIABILITY COMPANY AGREEMENT

of

CAPITAL TRUTH HOLDINGS LLC

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THE INTERESTS REPRESENTED HEREBY (THE "INTERESTS") HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER THE SECURITIES ACT OR AN OPINION OF LEGAL COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED. THE INTERESTS ARE BEING OFFERED AND SOLD UNDER AN EXEMPTION PROVIDED BY THE SECURITIES ACT AND THE RULES THEREUNDER. THERE IS NO OBLIGATION ON THE ISSUER TO REGISTER THE INTERESTS UNDER THE SECURITIES ACT. A PURCHASER OF ANY INTEREST MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

THE INTERESTS REPRESENTED HEREBY HAVE NOT BEEN REVIEWED OR APPROVED BY THE SECURITIES ADMINISTRATORS OF CERTAIN STATES OR OTHER JURISDICTIONS NOR HAVE THEY BEEN QUALIFIED OR REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OF CERTAIN STATES OR OTHER JURISDICTIONS AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE QUALIFICATION OR REGISTRATION REQUIREMENTS OF SUCH LAWS. THEREFORE, A PURCHASER OF ANY INTEREST WILL NOT BE ABLE TO RESELL IT UNLESS THE INTEREST IS QUALIFIED OR REGISTERED UNDER THE APPLICABLE STATE SECURITIES LAWS OR LAWS OF OTHER JURISDICTIONS OR UNLESS AN EXEMPTION FROM SUCH QUALIFICATION OR REGISTRATION IS AVAILABLE.

LIMITED LIABILITY COMPANY AGREEMENT

of

CAPITAL TRUTH HOLDINGS LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT is made and entered into as of the date set forth below by and among Capital Truth Holdings LLC, a Delaware limited liability company, and the several persons whose names and addresses are set forth on Schedule A attached hereto and whose signatures appear on the counterpart signature pages attached hereto.

THE PARTIES HERETO ENTER THIS AGREEMENT ON THE BASIS OF THE FOLLOWING FACTS, UNDERSTANDINGS AND INTENTIONS:

A. The parties hereto, wishing to form and become members of a limited liability company named Capital Truth Holdings LLC (the "Company") under and pursuant to Title 6, Chapter 18 of the Delaware Code (the Delaware Limited Liability Company Act), have caused a certificate of formation to be executed and filed with the Delaware Secretary of State pursuant to Section 18-201 of the Delaware Limited Liability Company Act.

B. The parties hereto agree that their respective rights, powers, duties and obligations as Members of the Company, and the management, operations and activities of the Company, shall be governed by this Agreement.

C. The objective of the Members in forming the Company is, subject to the limitations herein to create a holding company to hold interests in all of the companies (including, without limitation, corporations, partnerships, limited liability companies, trusts, and otherwise) as set forth more particularly on Schedule A attached hereto.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby agree as follows:

ARTICLE I.
DEFINITIONS

Capitalized terms used in this Agreement without other definition shall, unless expressly stated otherwise, have the meanings specified in this Article I:

1.1 "Act" means Title 6, Chapter 18 of the Delaware Code (the Delaware Limited Liability Company Act), as from time to time in effect in the State of Delaware, or any corresponding provision or provisions of any succeeding or successor law of such State; provided, however, that in the event that any amendment to the Act, or any succeeding or successor law, is applicable to the Company only if the Company has elected to be governed by the Act as so amended or by such succeeding or successor law, as the case may be, the term "Act" shall refer to the Act as so amended or to such succeeding or successor law only after the appropriate election by the Company, if made, has become effective.

1.2 "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) increased by any amounts that such Member is obligated to restore to the Company (pursuant to this Agreement or otherwise) or is deemed to be obligated to restore pursuant to (i) the penultimate sentence of Treasury Regulations § 1.704-2(g)(1) and (ii) Treasury Regulations § 1.704-2(i)(5); and

(b) decreased by the items described in Treasury Regulations §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6).

1.3 "Affiliate" means any corporation, limited liability company, partnership, joint venture, trust or other entity, regardless of how organized or identified which is directly or indirectly owned, managed or controlled by the Founding Member. The term "control" herein means when used with respect to any person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have correlative meanings.

1.4 "Agreement" means this Limited Liability Company Agreement, as originally executed and as amended, modified or supplemented from time to time. Words such as "herein," "hereinafter," "hereof," "hereto," "hereby" and "hereunder," when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

1.5 "Assignee" means any transferee of a Member's Interest who has not been admitted as a Member of the Company in accordance with Section 11.2.

1.6 "Book Value" means, with respect to any asset, the asset's adjusted Tax basis for U.S. Federal income Tax purposes, except as follows:

(a) the initial Book Value of any asset contributed by a Member to the Company shall be equal to the gross Fair Market Value of such asset as of the date of contribution;

(b) the Book Value of all Company assets shall be adjusted to equal their respective Fair Market Values as of the following times:

(i) the acquisition of an additional Percentage Interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;

(ii) the distribution by the Company to a Member of more than a de minimis amount of cash or Company property (other than cash) as consideration for a Percentage Interest in the Company; and

(iii) the liquidation of the Company within the meaning of Treasury Regulations § 1.704-1(b)(2)(ii)(g);

provided, however, that any adjustments pursuant to clauses (i) and (ii) shall be made only if the Members reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) the Book Value of any item of Company assets distributed to any Member shall be adjusted to equal the Fair Market Value of such asset on the date of distribution;

(d) the Book Values of all Company assets shall be adjusted to reflect any adjustments to the adjusted basis of such assets pursuant to Sections 734(b) or 743(b) of the Code, but only to the extent that such adjustments are required to be taken into account in determining Capital Accounts pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m); provided, however, that Book Values shall not be adjusted pursuant to this Section 1.6(d) to the extent that the Members determine that an adjustment pursuant to Section 1.6(b) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 1.6(d); and

(e) if the Book Value of an asset has been determined or adjusted pursuant to Sections 1.6(a), (b) or (d) above, such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profit and Net Loss and specific items, if any, of income, gain or loss allocated to the Members pursuant to this Agreement.

The foregoing definition of Book Value is intended to comply with the provisions of Treasury Regulations § 1.704-1(b)(2)(iv) and shall be interpreted and applied consistently therewith.

1.7 "Buy/Sell Decision" means any decision which requires the affirmative vote of the Initial Members pursuant to Section 4.5(b).

1.8 "Capital Account" means an account established and maintained (in accordance with, and intended to comply with, Treasury Regulations Section 1.704-1(b)) for each Member pursuant to Article VII hereof.

1.9 "Capital Contributions" means the contributions made by the Members to the Company pursuant to Sections 6.1, 6.2 and 6.3 hereof and, in the case of all the Members, the aggregate of all such Capital Contributions.

1.10 "Capital Truth Advisors" means Capital Truth Advisors LLC, an entity formed for the purpose of rendering advisory services to Late Stage I and Late Stage II.

1.11 "Cause" shall mean with respect to a Member: (a) a breach by such Member of a material law or regulation or a material rule of any securities exchange or the Securities and Exchange Commission; (b) a breach by such Member of a material regulation or rule of the Financial Industry Regulatory Authority; (c) the conviction of such Member of a felony or the entering by such Member of a plea of nolo contendere to a felony; (d) intentional malfeasance, misconduct or fraud; or (e) a material breach by such Member of this Agreement.

1.12 "Certificate of Formation" means the certificate of formation of this Company filed with the Delaware Secretary of State on February 4, 2015.

1.13 "Company Minimum Gain" has the meaning set forth in Treasury Regulations §§ 1.704-2(b)(2) and 1.704-2(d).

1.14 "Competing Business" means any entity which engages in a business (a) similar to one in which the Company or any of its Subsidiaries or any of its Affiliates or the Founding Member's Affiliates are engaged, or (b) similar to any business that competes with the portfolio investments of the Company or any of its Subsidiaries or any of its Affiliates or the Founding Member's Affiliates. Competing Businesses shall include, without limitation: (i) the formation, ownership, operation and management of investment funds; (ii) the conduct of any investment advisory business in connection with any investment funds; (iii) the conduct of any investment banking business, including, without limitation, (A) any private placement business, (B) any mergers and acquisitions advisory business, (C) any capital raising business for third parties, (D) any buying and selling of businesses or shares therein as an agent; (iv) the conduct of any brokerage or broker-dealer business; (v) the conduct of any business wherein the Founding Member (or the Founding Member's Affiliates) act as a principal in any transaction; and (vi) any business that competes with Capital Truth Advisors, Late Stage Asset Management, Late Stage I and Late Stage II.

1.15 "Depreciation" means, for any Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for U.S. Federal income Tax purposes with respect to property for such Fiscal Year, except that:

(a) with respect to any property the Book Value of which differs from its adjusted Tax basis for U.S. Federal income Tax purposes and which difference is being eliminated by use of the "remedial allocation method", Depreciation for such Fiscal Year shall mean the amount of book basis recovered for such Fiscal Year under the rules prescribed by Treasury Regulations § 1.704-3(d)(2); and

(b) with respect to any other property the Book Value of which differs from its adjusted Tax basis at the beginning of such Fiscal Year, Depreciation shall mean an amount which bears the same ratio to such beginning Book Value as the U.S. Federal income Tax depreciation, amortization or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted Tax basis;

provided, however, that if the adjusted Tax basis of any property at the beginning of such Fiscal Year is zero, Depreciation with respect to such property shall be determined with reference to such beginning Book Value using any reasonable method selected by the Members.

1.16 "Dissolution Event" means, with respect to any Person, one or more of the following: the death, insanity, withdrawal, resignation, retirement, expulsion, bankruptcy or dissolution of such Person.

1.17 "Economic Risk of Loss" shall have the meaning given in Treasury Regulations § 1.752-2(a).

1.18 "Fiscal Year" means the calendar year, except for such shorter Tax period in the year of Company's inception and termination or as otherwise required by the Code.

1.19 "Founding Member" means Joshua L. Cilano.

1.20 "Initial Members" means the Founding Member and PSI, LLC, in each case, so long as the Percentage Interest of such Member exceeds 10%.

1.21 "Interest" means the entire ownership interest of a Member in the Company at any particular time, including, without limitation, the right of such Member to share in the Company's Net Income or Net Loss, receive distributions of Net Cash Flow and any and all rights and benefits to which a Member may be entitled pursuant to this Agreement and under the Act, together with the obligations of such Member to comply with all the provisions of this Agreement and the Act.

1.22 "IRS" means the U.S. Internal Revenue Service.

1.23 "Late Stage Asset Management" means Late Stage Asset Management, LLC, an entity formed to render management Services to Late Stage I and Late Stage II.

1.24 "Late Stage I" means Late Stage Investment Fund I, LLC, an entity formed for the purpose of acquiring, holding and managing venture capital and growth equity investments in early-stage development-stage and later-stage private companies engaged in social media, digital media and other technology businesses.

1.25 "Late Stage II" means Late Stage Investment Fund II, LLC, an entity formed for the purpose of acquiring, holding and managing venture capital and growth equity investments in early-stage development-stage and later-stage private companies engaged in social media, digital media and other technology businesses.

1.26 "Member" means any Person who (a) (i) is an Initial Member of the Company (including, without limitation, the Founding Member), and listed as such on Schedule A attached hereto, or (ii) has been admitted to the Company as a Member in accordance with the Act and this Agreement, and (b) has not ceased to be a Member for any reason.

1.27 "Member Nonrecourse Debt" has the same meaning as "partner nonrecourse debt" as set forth in Treasury Regulations § 1.704-2(b)(4).

1.28 "Member Nonrecourse Deductions" means any and all items of loss, deduction or expenditure (described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulations §§ 1.704-2(i)(2) and 1.704-2(k), are attributable to Member Nonrecourse Debt; *provided*, that for purposes of determining Member Nonrecourse Deductions, all increases and decreases, if any, of Member Nonrecourse Debt Minimum Gain allocated to the Company with respect to its interests in lower-tier partnerships in accordance with Treasury Regulations § 1.704-2(k) shall be aggregated and netted with all such increases and decreases at the Company level.

1.29 "Member Nonrecourse Debt Minimum Gain" has the meaning given to the term "partner nonrecourse debt minimum gain" as set forth in Treasury Regulations § 1.704-2(i)(2).

1.30 "Net Cash Flow" means, with respect to any Fiscal Year, the excess of operating revenues, investment income and gains, income from affiliates, and other receipts over operating expenses, losses and other expenditures for such Fiscal Year, other than any Net Cash Flow From a Non-Proportionate Investment.

1.31 "Net Cash Flow From a Non-Proportionate Investment" means, with respect to a Non-Proportionate Investment for any Fiscal Year, the excess of operating revenues, investment income and gains, income from affiliates, and other receipts over operating expenses, losses and other expenditures for such Fiscal Year, as determined for such Non-Proportionate Investments.

1.32 "Net Profit" and "Net Loss" means, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code will be included in taxable income or loss), with the following adjustments:

(a) any income of the Company that is exempt from U.S. Federal income Tax and not otherwise taken into account in computing Net Profit and Net Loss will be added to such taxable income or loss;

(b) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profit or Net Loss will be subtracted from such taxable income or loss;

(c) in the event the Book Value of any Company asset is adjusted, the amount of such adjustment will be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profit or Net Loss;

(d) gain or loss resulting from any disposition of assets with respect to which gain or loss is recognized for U.S. Federal income Tax purposes will be computed by reference to the Book Value of the assets disposed of, notwithstanding that the adjusted Tax basis of such asset differs from its Book Value;

(e) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there will be taken into account Depreciation for such Fiscal Year or other period; and

(f) to the extent that an adjustment to the adjusted Tax basis of any Company property pursuant to Sections 734(b) or 743(b) of the Code is required pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m) to be taken into account in determining Capital Accounts, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the adjusted tax basis of the property) or loss (if the adjustment decreases the adjusted Tax basis of the property) from the disposition of the property and shall be taken into account for purposes of computing Net Profit or Net Loss.

Notwithstanding any other provision of this definition, any items that are specially allocated pursuant to Sections 8.2, 8.3 or 14.5 shall not be taken into account in computing Net Profit or Net Loss. The amount of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 8.2, 8.3 or 14.5 shall be determined by applying rules analogous to those set forth in Sections 1.32(a) through (f) above.

1.33 "Nonrecourse Deductions" has the meaning set forth in Treasury Regulations § 1.704-2(b)(1).

1.34 "Nonrecourse Liability" has the meaning set forth in Treasury Regulations § 1.704-2(b)(3).

1.35 "Non-Voting Interest" means an interest in the Company that shall have no right to vote or otherwise participate in the business and affairs of the Company; provided, however, that the holder of a Non-Voting Interest shall have the right to vote in the same manner as any Member on any matter specifically affecting the economic rights of such holder with respect to the Non-Voting Interest (other than matters which do not disproportionately affect the Non-Voting Interests).

1.36 "Percentage Interest" means the allocable interest of each Member in the income, gain, loss, deduction or credit of the Company, as set forth on Schedule B attached hereto, as amended from time to time.

1.37 "Person" means a natural person or any partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, limited life company, limited duration company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity or any other entity.

1.38 "Pro Rata" means, with respect to a Member that has a Purchase Right, Right of First Opportunity or Right of First Refusal, the proportion that such Member's Percentage Interest bears to the aggregate Percentage Interests of all Members having such rights; provided, that, if some but not all Members having such right do not elect to exercise such rights, Pro Rata shall mean the proportion that such Member's Percentage Interest bears to the aggregate Percentage Interests of all Members exercising such rights.

1.39 "Regulatory Allocations" means the allocations described in Section 8.2 and 8.4.

1.40 "Restricted Period" means with respect to a former Member (and/or any Affiliate thereof) of the Company, the period beginning on the date such former Member ceased to be a Member of the Company and ending twelve (12) months after such date.

1.41 "Secretary of State" means the Secretary of State of the State of Delaware.

1.42 "Subsidiaries" means, with respect to the Company, any corporation, limited liability company, partnership, association or other business entity of which the Company owns a majority of the total shares (whether by vote or value) or interests, as applicable.

1.43 "Tax" or "Taxes" means any U.S. Federal, state or local income tax, ad valorem tax, excise tax, sales tax, use tax, franchise tax, real or personal property tax, transfer tax, gross receipts tax or other tax assessment, fee, levy or other governmental charge, together with and including any and all interest, fines, penalties, assessments and additions to the Tax resulting from, relating to, or incurred in connection with any of the foregoing or any contest or dispute thereof.

1.44 "Tax Return" means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including any information return, claim for refund, amended return or declaration of estimated Tax.

1.45 "Treasury Regulations" means, unless the context clearly indicates otherwise, the regulations in force as final or temporary that have been issued by the U.S. Department of the Treasury pursuant to its authority under the Code, and any successor regulations.

1.46 Other Definitions. All other terms are defined in the sections listed in the table below.

Definition	Section Reference
Breaching Member	Section 11.4(d)
Buy/Sell Notice	Section 11.3(a)
Company	Recitals
Company Item	Section 9.3
Deadlock	Section 11.3(a)
Deadlock Resolution Period	Section 11.3(a)
Deceased Member	Section 11.4(b)
Designated Allocation Method	Section 8.6
Distribution Date	Section 14.3
Divorcing Member	Section 11.4(a)
Divorcing Spouse	Section 11.4(a)
Drag-Along Member	Section 11.3(c)
Drag-Along Sale	Section 11.3(c)
Drag-Along Sale Date	Section 11.3(c)
Drag-Along Sale Notice	Section 11.3(c)
Exercise Period	Section 11.3(a)
Fair Market Value	Section 11.4(a)
Initiating Party	Section 11.3(a)
Non-Breaching Member	Section 11.4(d)
Non-Divorcing Members	Section 11.4(a)
Non-Retiring Member	Section 11.4(c)
Non-Transferable Period	Section 11.4(b)
Non-Transferring Members	Section 11.3(b)
Non-Venturing Member	Section 4.12(a)
Note	Section 11.4(c)
Notice	Section 11.3(a)
Other Party	Section 11.3(a)

Purchase Offer	Section 11.3(c)
Purchase Price	Section 11.3(a)
Purchase Right	Section 11.4(a)
Retiring Member	Section 11.4(c)
Retirement Notice	Section 11.4(c)
Reply Notice	Section 11.3(a)
Right of First Opportunity	Section 11.3(b)
Rules	Section 17.9
Securities Act	Title Page
Selling Party	Section 11.3(a)
Subject Interest	Section 11.3(b)
Tag-Along Members	Section 11.3(d)
Tag-Along Right	Section 11.3(d)
Tag-Along Sale	Section 11.3(d)
Tax Matters Member	Section 9.2
transfer	Section 11.1
Transfer Incident to Death	Section 11.4(b)
Transfer Incident to Divorce	Section 11.4(a)
Transferring Member	Section 11.3(b)
Value	Section 11.3(a)
Venturing Member	Section 4.12(a)

ARTICLE II.
THE COMPANY

2.1 Name. The name of the Company shall be Capital Truth Holdings LLC.

2.2 Purpose of the Company. The Company is organized for the following objects and purposes, subject to the limitations herein:

(a) to create a holding company to hold interests in all of the companies (including, without limitation, corporations, partnerships, limited liability companies, trusts, and otherwise) formed, owned, operated or managed by the Founding Member (or the Founding Member's Affiliates) (present and future);

(b) to govern the overall business relationship between the Initial Members (and their respective Affiliates) and any and all other Members of the Company;

(c) to cause the Founding Member (and the Founding Member's Affiliates) to conduct business operations through entities owned by the Members;

(d) to eliminate any risk that the Founding Member (or the Founding Member's Affiliates) could individually take advantage of any business opportunity except through the Company (or the Company's Affiliates);

(e) to engage in any lawful activity for which a limited liability company may be formed under the Act; and

(f) such other activities directly related to and in furtherance of the foregoing business as may be necessary, advisable, or appropriate, in the reasonable opinion of the Initial Members.

2.3 Term. This Company shall continue in existence in perpetuity from the date of filing of its Certificate of Formation with the Secretary of State, unless earlier dissolved pursuant to the Act or Section 14.1 of this Agreement.

ARTICLE III.
OFFICES

3.1 Registered Office. The registered office of the Company in Delaware required by the Act shall be as set forth in the Company's Certificate of Formation until such time as the registered office is changed in accordance with the Act.

3.2 Principal Executive Office. The principal executive office for the transaction of the business of the Company shall be fixed by the Founding Member from time to time upon prompt written notice to the Members.

3.3 Other Offices. The Founding Member may at any time establish other business offices other than as set forth in Section 3.2 upon prompt prior written notice to the Members.

ARTICLE IV.
MEMBERS RIGHTS

4.1 Members. Each of the parties to this Agreement, and each Person admitted as a Member of the Company pursuant to the Act and Section 11.2 of this Agreement, shall be Members of the Company until they cease to be Members in accordance with the provisions of the Act, the Certificate of Formation, or this Agreement. Upon the admission of any new Member, Schedules A and B attached hereto shall be amended accordingly.

4.2 Limited Liability. Except as expressly set forth in this Agreement or required by law, no Member shall be personally liable for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member of the Company.

4.3 Nature of Membership Interest; Agreement Is Binding Upon Successors. The interests of Members in the Company constitute their personal estate. No Member has any interest in any specific asset or property of the Company. In the event of the death or legal disability of any Member, the executor, trustee, administrator, guardian, conservator or other legal representative of such Member shall be bound by the provisions of this Agreement. If a Member which is not a natural person is dissolved or terminated, the successor of such Member shall be bound by the provisions of this Agreement

4.4 Classes of Members. The Company shall have a single class of Members which shall have exclusive management, control and voting power with respect to the Company and its affairs except as expressly provided in this Agreement or required by the Act.

4.5 Voting Rights.

(a) The unanimous affirmative vote of the Initial Members shall be required to:

(i) amend the Certificate of Formation;

(ii) amend this Agreement;

(iii) authorize the filing of Internal Revenue Service Form 8832, *Entity Classification Election*, electing to have the Company classified for U.S. Federal income Tax purposes as an association taxable as a corporation;

(iv) approve a transfer of a Member's interest in accordance with Section 11.1;

(v) approve the admission of a Member in accordance with Section 11.2;

(vi) agree to continue the business of the Company after a Dissolution Event specified in Section 14.1;

(vii) approve a merger, consolidation or other reorganization of this Company;

(viii) approve indemnification of any Member or officer of the Company as authorized by Article XV of this Agreement;

(ix) authorize or approve a fundamental change in the business of the Company, including dissolution, liquidation or a sale of all or substantially all of its assets;

(x) determine that the Company commence any business, subject to the provisions of Section 4.12;

(xi) determine that the Company cease or exit an existing business; and

(xii) take any action on behalf of the Company in respect of the Company's interest in any other Person as provided in Section 17.4.

(b) All other votes shall require the majority vote of the Members in accordance with their Percentage Interests.

(c) The Initial Members may, pursuant to a joint unanimous resolution of the Initial Members, determine to manage any business of the Company in a manner other than as provided in this Agreement.

(d) Only Persons whose names are listed as Members on the records of the Company at the close of business on the business day immediately preceding the day on which notice of the meeting is given or, if such notice is waived, at the close of business on the business

day immediately preceding the day on which the meeting of Members is held (except that the record date for Members entitled to give consent to action without a meeting shall be determined in accordance with Section 4.10) shall be entitled to receive notice of and to vote at such meeting, and such day shall be the record date for such meeting. Any Member entitled to vote on any matter may cast part of the votes in favor of the proposal and refrain from exercising the remaining votes or vote against the proposal, but if the Member fails to specify the Interests such Member is voting affirmatively, it will be conclusively presumed that the Member's approving vote is with respect to all votes such Member is entitled to cast. Such vote may be viva voce or by ballot.

(c) Without limiting the preceding provisions of this Section 4.5, no Person shall be entitled to exercise any voting rights as a Member until such Person (i) shall have been admitted as a Member pursuant to Section 11.2, and (ii) shall have paid the Capital Contribution of such Person in accordance with Section 6.1.

4.6 Place of Meetings. All meetings of the Members shall be held at any place which may be designated by the Founding Member.

4.7 Meetings of Members. Meetings of the Members for the purpose of taking any action permitted to be taken by the Members may be called by Members entitled to cast not less than twenty percent (20%) of the votes at the meeting. Upon a request in writing that a meeting of Members be called for any proper purpose, the secretary forthwith shall cause notice to be given to the Members entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, not less than ten (10) days nor more than thirty (30) days after receipt of the request. Except in special cases where other express provision is made by statute, written notice of such meetings shall be given to each Member entitled to vote not less than ten (10) days nor more than thirty (30) days before the meeting. Such notices shall state:

(a) the place, date and hour of the meeting; and

(b) those matters which the Members, at the time of the mailing of the notice, intend to present for action by the Members.

4.8 Quorum. The presence at any meeting in person or by proxy of Members holding not less than a majority of the Percentage Interests entitled to vote at such meeting shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the votes required to constitute a quorum.

4.9 Waiver of Notice. The actions of any meeting of Members, however called and noticed, and wherever held, shall be as valid as if taken at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting, or an approval of the minutes thereof. The waiver of notice, consent or approval need not specify either the business to be transacted or the

purpose of any regular or special meeting of Members, except that if action is taken or proposed to be taken for approval of any of those matters specified in Section 4.6(b), (c) or (d) of this Agreement, the waiver of notice, consent or approval shall state the general nature of such proposal. All such waivers, consents or approvals shall be filed with the Company's records and made a part of the minutes of the meeting. Attendance of a Member at a meeting shall also constitute a waiver of notice of and presence at such meeting, except when the Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice but not so included, if such objection is expressly made at the meeting.

4.10 Action by Member Without a Meeting. Any action which, under any provision of the Act or the Certificate of Formation or this Agreement, may be taken at a meeting of the Members, may be taken without a meeting, and without notice except as hereinafter set forth, if a consent in writing, setting forth the action so taken, is signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. All such consents shall be filed with the secretary of the Company and shall be maintained in the Company's records. Unless the consents of all Members entitled to vote have been solicited in writing:

(a) notice of any proposed Member approval of any of the matters without a meeting by less than unanimous written consent shall be given to those Members entitled to vote who have not consented in writing at least ten (10) days before the consummation of the action authorized by such approval; and

(b) prompt notice shall be given of the taking of any other action approved by Members without a meeting by less than unanimous written consent to those Members entitled to vote who have not consented in writing.

Any Member giving a written consent, or the Member's proxyholders, or a personal representative of the Member or their respective proxyholders, may revoke the consent by a writing anytime thereafter.

4.11 Management of the Business. The businesses that:

(a) have been contributed to the Company pursuant to Article VI; or

(b) are undertaken directly by the Company or any of its Subsidiaries after the date of this Agreement;

shall, in each case, be managed and operated by the Founding Member as the sole officer of the Company, subject to the provisions of this Agreement.

4.12 Outside Business Ventures.

(a) Each Member of the Company, either individually or with others, shall have the right to participate in other business ventures of any kind whatsoever that is a Competing Business; provided, however, as a condition thereof, in the case of the Founding

Member (the "Venturing Member"), the Founding Member shall be obligated to offer to the other Initial Member (the "Non-Venturing Member") the right to require that the Company (or an Affiliate thereof) participate in such business venture that is a Competing Business on the same terms and conditions provided to the Venturing Member (the "Terms Proposed") in place of any individual participation by the Venturing Member (directly or indirectly) in such business venture that is a Competing Business. In furtherance thereof, a Venturing Member shall notify the Non-Venturing Member in writing of such Venturing Member's intention to participate (directly or indirectly) in such business venture that is a Competing Business pursuant to the previous sentence and the Non-Venturing Member shall have thirty (30) days to make an election in writing to require that the Company (or an Affiliate thereof) participate in such business venture that is a Competing Business in place of any individual participation therein by the Venturing Member (directly or indirectly). If the Non-Venturing Member does not elect to require that the Company (or an Affiliate thereof) participate in the applicable business venture that is a Competing Business on the Terms Proposed, then and only then shall such business venture that is a Competing Business be allowed by the Venturing Member on the Terms Proposed. The Venturing Member shall be obligated to promptly disclose in writing to the Company and the Non-Venturing Member whether the Venturing Member participated in the applicable business venture that is a Competing Business on the Terms Proposed. In the event that the Company (or any Affiliate thereof) declines to participate in the applicable business venture that is a Competing Business on the Terms Proposed, the Venturing Member shall be prohibited from participating (directly or indirectly) in the applicable business venture that is a Competing Business except on the Terms Proposed.

(b) The Founding Member shall have the right to participate in business ventures or make investments of any kind whatsoever to the extent that such venture is not a Competing Business. No other Member shall have any restrictions with respect to their rights to participate in business ventures or in making investments.

(c) Any Member shall be entitled to make investments solely for such Member's benefit and not to be jointly made or owned by any other Member to the extent such investments are:

(i) investments of up to 5% of any class of stock, securities or other interest in any company, fund or other Person, provided such class is listed on a national or recognized international exchange;

(ii) debt securities of (A) any Company, fund, or other Person, any class of whose stock is listed on a national or recognized international exchange, or (B) any governmental entity;

(iii) business ventures or investments consistent with Section 4.12(b).

4.13 Loans by Members to the Company. No Member shall be obligated to lend money to the Company. No Member may lend money to the Company without the prior approval of the Members. Any loan by a Member to the Company with the required approval of the Members shall be separately entered on the books of the Company as a loan to the Company and not as a Capital Contribution, shall bear interest at such rate as may be agreed upon by the

lending Member and the other Members, and shall be evidenced by a promissory note duly executed on behalf of the Company (provided that such note must be executed by at least one Member other than the lending Member) and delivered to the lending Member.

ARTICLE V.
MANAGEMENT OF THE COMPANY BY THE MEMBERS

5.1 Management by Members. Subject to the provisions of the Act and any limitations in the Certificate of Formation and this Agreement, the business and affairs of the Company shall be managed and all its powers shall be exercised by or under the direction of its Members. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Members shall have the following powers:

(a) to conduct, manage and control the business and affairs of the Company and to make such rules and regulations therefor not inconsistent with law or with the Certificate of Formation or with this Agreement, as shall be deemed to be in the best interests of the Company;

(b) to appoint and remove the officers, agents and employees of the Company, and prescribe their duties and fix their compensation (as of the date hereof, the Founding Member is the sole officer of the Company);

(c) to borrow money and incur indebtedness for the purposes of the Company and to cause to be executed and delivered therefor, in the Company's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor;

(d) to designate an executive and/or other committees to serve at the pleasure of the Members, and to prescribe the manner in which proceedings of such committees shall be conducted;

(e) to acquire real and personal property, arrange financing and enter into contracts;

(f) to make all other arrangements and do all things which are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the Company; and

(g) to determine the businesses and investments of the Company and the management and operation thereof.

ARTICLE VI.
CAPITAL CONTRIBUTIONS

6.1 Initial Capital Contributions.

(a) Each Member has made an initial Capital Contribution to the Company as set forth in Schedule A attached hereto.

(b) Upon the date of admission of a new Member in accordance with Section 11.2, or on such later date as the Members from time to time shall unanimously agree in writing, each new Member shall make a Capital Contribution to the Company in such amount and in such form as all the Members shall agree.

6.2 Additional Capital Contributions. No Member shall be obligated to contribute additional capital to the Company.

6.3 Withdrawal or Reduction of Capital Contributions.

(a) Except as expressly provided in this Agreement, no Member shall have the right to withdraw from the Company all or any part of such Member's Capital Contribution prior to the dissolution and winding up of the Company.

(b) Without limiting the generality of Section 6.3(a), no Member shall receive any part of such Member's Capital Contribution until:

(i) all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay such liabilities;

(ii) the consent of all Members is obtained, unless the return of the Capital Contribution may be rightfully demanded under the Act or other applicable law; or

(iii) the Certificate of Formation or this Agreement is canceled or so amended as to permit the withdrawal or reduction of Capital Contributions by Members.

(c) A Member, irrespective of the nature of such Member's Capital Contribution, shall only have the right to demand and receive cash in return for his or its Capital Contribution, with the consent of all Members.

6.4 No Interest Payable on Capital Contributions. No interest shall be payable on or with respect to the Capital Contributions or Capital Accounts of Members.

ARTICLE VII.
CAPITAL ACCOUNTS

7.1 Capital Accounts. A separate Capital Account shall be established and maintained for each Member in accordance with Treasury Regulations §1.704-1(b)(2)(iv)

Consistent therewith, the Capital Account of each Member shall initially be zero and shall be adjusted as follows:

(a) Each Member's Capital Account shall be increased by:

(i) any cash contributed by such Member to the Company;

(ii) the Book Value of any property contributed by such Member to the Company (net of liabilities secured by such contributed property as calculated pursuant to Section 7.2 below); and

(iii) the Member's distributive share of Net Profit and any other items of income or gain specially allocated to such Member pursuant to Section 8.1.

(b) Each Member's Capital Account shall be decreased by:

(i) any cash distributed by the Company to such Member;

(ii) the Book Value of property distributed by the Company to such Member (net of liabilities secured by such distributed property as calculated pursuant to Section 7.2 below); and

(iii) the Member's distributive share of Net Loss and any other items of loss or deduction allocated to such Member pursuant to Article VIII.

Upon the disposition of any Interest or portion thereof, the portion of the Capital Account of the disposing Member that is attributable to such Interest or portion thereof shall carry over to the assignee in accordance with the provisions of Treasury Regulation § 1.704-1(b)(2)(iv)(l).

7.2 Calculation of Liabilities. The existence or amount of any liability secured by property contributed to or distributed by the Company for purposes of Section 7.1 above, shall be calculated pursuant to Section 752 of the Code and any other applicable provisions of the Code or Treasury Regulations.

7.3 Adjustments by the Members.

(a) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations § 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Treasury Regulations (including all amendments thereto).

(b) In order to ensure compliance with applicable Treasury Regulations as provided in clause (a), the Members may:

(i) modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Treasury Regulations (including all amendments thereto and the terms of any proposed or temporary Treasury Regulations issued under Section 704(b) of the Code);

(ii) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(q); and

(iii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

ARTICLE VIII.
ALLOCATION OF PROFITS AND LOSSES; TAX AND ACCOUNTING MATTERS

8.1 Allocations of Net Profit and Net Loss.

(a) For each Fiscal Year of the Company, after adjusting each Member's Capital Account for all Capital Contributions and distributions during such Fiscal Year and all special allocations pursuant to Sections 8.2, 8.3, 8.4 and 8.5 hereof, with respect to such Fiscal Year, Net Profit and Net Loss (other than items specially allocated pursuant to Sections 8.2, 8.3, 8.4 and 8.5) shall be allocated to the Members' Capital Accounts in a manner such that, as of the end of such Fiscal Year, the Capital Account of each Member (which may be either a positive or negative balance) shall be equal to (a) the amount which would be distributed to such Member, determined as if the Company were to sell all of its assets for the Book Value thereof and distribute the proceeds thereof pursuant to Section 10.1 and Section 14.4, as applicable, minus (b) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain.

8.2 Regulatory Allocations.

(a) Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement and subject to the exceptions set forth in Treasury Regulations § 1.704-2(f), if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member will be specially allocated items of Company income and gain for such year (and, if necessary, for subsequent Fiscal Years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations § 1.704-2(g). Allocations pursuant to the previous sentence will be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated will be determined in accordance with Treasury Regulations §§ 1.704-2(f) and 1.704-2(j)(2). This Section 8.2(a) is intended to comply with the minimum gain chargeback requirement of the applicable Treasury Regulations and shall be interpreted and applied consistently therewith.

(b) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement other than Section 8.2(a), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Fiscal Year, then, except as provided in Treasury Regulations § 1.704-2(i)(4), each Member shall be allocated items of income and gain for such Fiscal Year (and, if necessary, for subsequent Fiscal Years) in an amount equal to the portion of such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain during

such Fiscal Year. Allocations pursuant to the previous sentence will be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated will be determined in accordance with Treasury Regulations §§ 1.704-2(i)(4) and 1.704-2(j)(2). This Section 8.2(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations § 1.704-2(i)(4) and shall be interpreted and applied consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6), items of income and gain will be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the applicable Treasury Regulations, the deficit balance in such Member's Adjusted Capital Account Deficit as quickly as possible, provided that an allocation pursuant to this Section 8.2(c) will be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 4.02 have been tentatively made as if this Section 8.2(c) were not in this Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit balance in its Adjusted Capital Account at the end of any Fiscal Year, each such Member will be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 8.2(d) will be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 8.2 have been made as if Section 8.2(c) and Section 8.2(d) were not in this Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year or other period will be specially allocated among the Members in the same proportion that the Members share Net Profit or Net Loss, as the case may be, for such Fiscal Year.

(f) Member Nonrecourse Deductions. Member Nonrecourse Deductions attributable to Member Nonrecourse Debt shall be allocated to the Members bearing the Economic Risk of Loss for such Member Nonrecourse Debt as determined under Treasury Regulations §§ 1.704-2(b)(4) and 1.752-2. If more than one Member bears the Economic Risk of Loss for such Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable to such Member Nonrecourse Debt shall be allocated among the Members according to the ratio in which they bear the Economic Risk of Loss. This Section 8.2(f) is intended to comply with the provisions of Treasury Regulations § 1.704-2(i) and shall be interpreted and applied consistently therewith.

(g) Adjustments. The Members shall have the discretion to adopt such conventions or allocations as they deem appropriate in determining the amount of depreciation, amortization and cost recovery deductions; provided, that such allocations are consistent with the principles of Section 704 of the Code and further, to amend or deviate from the terms of this Agreement to the extent necessary to comply with any change in applicable law (including any interpretations thereof or the issuance of any relevant proposed or temporary Treasury Regulations).

8.3 Curative Allocations. The Regulatory Allocations are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 8.3. Therefore, notwithstanding any other provision of this Article VIII (other than the Regulatory Allocations), the Members shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine to be appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the greatest extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to the general allocation provisions under Section 8.1. In exercising their discretion under this Section 8.3, the Members shall take into account future Regulatory Allocations under Section 8.2(a) and Section 8.2(b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 8.2(e) and Section 8.2(f).

8.4 Loss Limitation. Net Loss allocated pursuant to Section 8.1 hereof shall not exceed the maximum amount of such Net Loss that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Net Loss pursuant to clause Section 8.1, the limitation set forth in this Section 8.4 shall be applied on a Member by Member basis and any Net Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Net Losses to each Member under Treasury Regulations § 1.704-1(b)(2)(ii)(d).

8.5 Other Allocation Rules.

(a) For purposes of determining Net Profit, Net Loss or any other items allocable to each Member in any Fiscal Year in which the Percentage Interests of the Members vary, Net Profit, Net Loss and such other items will be determined on a daily, monthly, or other basis, using any permissible method under Section 706 of the Code and the Treasury Regulations thereunder as agreed by the Members, except that Depreciation shall be deemed to accrue ratably on a daily basis over the entire Fiscal Year during which the corresponding asset is owned by the Company if such asset is placed in service prior to or during the Fiscal Year.

(b) Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction and any other allocations (including allocations of credits) not otherwise provided for will be divided among the Members in the same proportions as they share Net Profit or Net Loss, as the case may be, for the Fiscal Year.

8.6 Tax Allocations. For Tax purposes only:

(a) Except as otherwise provided in this Section 8.6, all allocations of Tax items with respect to Net Profit and Net Loss for each Fiscal Year shall be allocated in the same

proportions as the relevant allocations of book items for such Fiscal Year pursuant to Sections 8.1, 8.2, 8.3, 8.4 and 8.5 hereof.

(b) Notwithstanding Section 8.6(a) if, as a result of a contribution of property by a Member to the Company or an adjustment to the Book Value of Company assets pursuant to this Agreement, there exists a variation between the adjusted basis of an item of Company property for U.S. Federal income Tax purposes and the Book Value of such property, allocations of Net Profit and Net Loss shall be allocated among the Members so as to take into account any variation between the adjusted basis of such property and its Book Value (computed in accordance with the definition of Book Value) using any permissible method under the Treasury Regulations (the "Designated Allocation Methods"). In the event the Book Value of any Company asset is adjusted, subsequent allocations of income, gain, loss, and deduction with respect to such asset will take into account any variation between the adjusted basis of such asset for U.S. Federal income Tax purposes and its Book Value using any permissible method under the Treasury Regulations as agreed by the Members.

(c) Any elections or other decisions relating to Capital Accounts and Tax allocations shall be made by the Tax Matters Member in any manner that reasonably reflects the purpose and intent of this Agreement and as the Members so agree.

(d) All Tax credits shall be allocated among the Members in accordance with applicable law, including, with respect to any Tax credits relating to foreign Taxes paid by the Company, the provisions of Treasury Regulations § 1.704-1T and any successor version thereof. Any (i) recapture of depreciation deductions shall be allocated, in accordance with Treasury Regulations § 1.1245-1(e), to the Members who received the benefit of such deductions (taking into account the effect of the Designated Allocation Method), if any, used with respect to asset to which such depreciation deduction relates and (ii) recapture of credits shall be allocated to the Members in accordance with Treasury Regulations § 1.704-1(b)(4)(ii) unless otherwise provided by an applicable provision of the Code.

(e) To the extent necessary to determine a Member's share of "excess nonrecourse debt", within the meaning of Treasury Regulations § 1.752-3(a)(3), the Company's debt shall be allocated in a manner that is consistent with Treasury Regulations § 1.752-3(a)(3) and as the Members so agree.

(f) All items of income, gain, loss, deduction or credit recognized by the Company for U.S. Federal income Tax purposes and allocated to the Members in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the Code, which may be made by the Company; provided, however, that such allocations, once made, shall be adjusted as necessary or appropriate to take into account those adjustments permitted or required by Sections 734 and 743 of the Code; provided, further, that to the extent such an adjustment is made with respect to the purchase of an Interest in the Company, any adjustment to the depreciation, amortization, gain or loss resulting from such adjustment shall affect the transferee only and shall not affect the Capital Account of the transferor or transferee and in such case, the transferee agrees to provide to the Company (i) the allocation of any step-up or step-down in basis to the Company's assets and (ii) the depreciation or amortization method for any step-up in basis to the Company's assets.

ARTICLE IX.
TAX AND ACCOUNTING MATTERS

9.1 Accounting Matters. The Members shall cause to be maintained complete books and records accurately reflecting the accounts, business and transactions of the Company on a calendar year basis and using such cash, accrual, or hybrid method of accounting as in the judgment of the Members, as the case may be, is most appropriate; provided, however, that books and records with respect to the Company's Capital Accounts and allocations of income, gain, loss, deduction or credit (or item thereof) shall be kept under U.S. Federal income Tax accounting principles as applied to partnerships.

9.2 Tax Status and Returns.

(a) The Company shall prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of the Company with any taxing authority, and shall make timely filing thereof. Within ninety (90) days after the end of each calendar year, the Company shall prepare or cause to be prepared and delivered to each Member a report setting forth in reasonable detail the information with respect to the Company during such calendar year reasonably required to enable each Member to prepare his or its federal, state and local income tax returns in accordance with applicable law then prevailing.

(b) Unless otherwise provided by the Code or the Treasury Regulations thereunder, the Member holding the largest Percentage Interest, or if the Percentage Interests be equal, the Founding Member shall be deemed to be the "Tax Matters Member." The Tax Matters Member shall be the "Tax Matters Partner" for U.S. Federal income Tax purposes.

9.3 Partnership Items. No Member may file (i) a request under Section 6227 of the Code for an administrative adjustment of any "partnership item" (as defined in Section 6231(a)(3) of the Code) of the Company (a "Company Item") or (ii) a petition to the IRS (including under Sections 6226 and 6228 of the Code) with respect to any Company Item, without first obtaining the written consent of the Members (such consent not to be unreasonably withheld).

9.4 Tax Audits. The Tax Matters Member shall direct the defense of any claims made by the IRS to the extent that such claims relate to the adjustment of Company items at the Company level and, in connection therewith, shall cause the Company to retain and to pay the fees and expenses of counsel and other advisors chosen by the Tax Matters Member in consultation with the other Members. The Tax Matters Member shall promptly deliver to each other Member a copy of all notices, communications, reports and writings received from the IRS relating to or potentially resulting in an adjustment of Company Items, shall promptly advise each of the other Members of the substance of any conversations with the IRS in connection therewith and shall keep the other Members advised of all developments with respect to any proposed adjustments which come to its attention. In addition, the Tax Matters Member shall (a) provide the other Members with a draft copy of any correspondence or filing to be submitted by the Company in connection with any administrative or judicial proceedings relating to the determination of Company items at the Company level reasonably in advance of such submission, (b) allow such other Members to make comments or request changes to such

correspondence or filing which the Tax Matters Member shall take into account in good faith and (c) provide the other Members with a final copy of correspondence or filing.

9.5 Tax Notice. Each Member shall give prompt notice to each other Member of any and all notices it receives from the IRS concerning the Company, including any notice of audit, any notice of action with respect to a revenue agent's report, any notice of a 30-day appeal letter and any notice of a deficiency in tax concerning the Company's U.S. Federal income Tax return.

ARTICLE X.
DISTRIBUTIONS

10.1 Distributions.

(a) Subject to the reasonably anticipated business needs and opportunities of the Company, taking into account all debts, liabilities and obligations of the Company then due, working capital and other amounts which the Members deem necessary for the Company's business or to place into reserves for customary and usual claims with respect to such business, and subject also to any restrictions under applicable law (including, without limitation, any obligation to withhold and remit any amounts to any governmental authority), the Members may resolve to distribute:

(i) Net Cash Flow of the Company to the Members, at such intervals as the Members shall determine from time to time, in proportion to their Percentage Interests as set forth in Schedule B attached hereto;

(ii) the net proceeds from any disposition of any other asset of the Company (excluding any items of Net Cash Flow of the Company, such as investment gain), at such intervals as the Members shall determine from time to time, in proportion to their Percentage Interests as set forth on Schedule B attached hereto.

(b) Without limiting the generality of Section 10.1(a), if and to the extent that the Company is earning income which will result in the Members being subject to income tax on their distributive share of the Company's income, minimum distributions shall be made to the Members in such amounts and at such times (but in no event later than March 31 each year) as shall be sufficient to enable the Members to meet United States income tax liability arising or incurred as a result of their participation in the Company. For the purposes of such distributions, it shall be assumed that the Members are taxable at the then highest applicable U.S. individual rate, federal, state and local, in New York, New York. Any such distribution shall be made to all Members pro rata in accordance with their respective Percentage Interests. It is specifically recognized that in making an assumption as to tax liabilities of a Member, some Members may receive a distribution which is in excess of their actual tax liabilities, and some Members may receive a distribution which is less. Any such minimum distributions to a Member shall be an advance against any future distributions (including pursuant to Section 14.4) to which such Member shall be entitled, other than other distributions pursuant to this Section 10.1(b).

10.2 Restriction on Distributions.

(a) No distribution shall be made if, after giving effect to the distribution:

(i) the Company would not be able to pay its debts as they become due in the usual course of business; or

(ii) the Company's total assets would be less than the sum of its total liabilities.

(b) The Members may base a determination that a distribution is not prohibited on any of the following:

(i) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;

(ii) a fair valuation; or

(iii) any other method that is reasonable in the circumstances.

The effect of a distribution is to be measured as of the date the distribution is authorized if the payment is to occur within one hundred twenty (120) days after the date of authorization, or the date payment is made if it is to occur more than one hundred twenty (120) days after the date of authorization.

10.3 Return of Distribution. Members and Assignees who receive distributions made in violation of the Act or this Agreement shall return such distributions to the Company. Except for those distributions made in violation of the Act or this Agreement, no Member or Assignee shall be obligated to return any distribution to the Company or pay the amount of any distribution for the account of the Company or to any creditor of the Company. The amount of any distribution returned to the Company by a Member or Assignee or paid by a Member or Assignee for the account of the Company or to a creditor of the Company shall be added to the account or accounts from which it was subtracted when it was distributed to the Member or Assignee.

10.4 Withholding from Distributions. To the extent that the Company is required by law to withhold or to make tax or other payments on behalf of or with respect to any Member, the Company may withhold such amounts from any distribution and make such payments as so required. For purposes of this Agreement, any such payments or withholdings shall be treated as a distribution to the Members on behalf of whom the withholding or payment was made.

ARTICLE XI.
TRANSFER OF INTERESTS; ADMISSION OF MEMBERS; BUY/SELL

11.1 Transfer of Interests.

(a) No Member may sell, exchange, transfer, assign, make a gift of, pledge, encumber, hypothecate or alienate (or contract to do so) all or any part of (each a "transfer") such Member's Interest in the Company to any Person, including, without limitation, another Member, and no transferee of a Member's Interest may be admitted as a Member, other than as provided in this Article XI; provided, however, (i) upon prior written notice to the Founding Member, PSI, LLC shall have the right to hold all or a part of PSI, LLC's Member's Interest in

the Company in one or more special purpose entities, all of which shall be identified on Schedule 11.1(a)-1 attached hereto; and (ii) the Founding Member shall have the right to hold all or a part of the Founding Member's Member's Interest in the Company in one or more special purpose entities, all of which shall be identified on Schedule 11.1(a)-2 attached hereto.

(b) Subject to the restrictions set forth in this Section 11.1, certificates evidencing interests in the Company may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee, but in the absence of such written instrument of transfer the Members or officers may accept such evidence of a transfer of a Member's Interest as they consider appropriate.

11.2 Admission of New Members.

(a) No Person shall be admitted as a Member of the Company unless the Initial Members unanimously agree to approve the admission of such Person as a new Member.

(b) Upon the admission of a new Member in accordance with the Act and this Agreement, there shall be a special closing of the books solely for the purpose of determining the value of the Company's investments on such date by whatever method the Initial Members, in their sole and absolute discretion, consider reasonable, and the Capital Accounts of the existing Members shall be adjusted accordingly. After such adjustment, the new Member shall pay in his or its Capital Contribution in accordance with Section 6.1(b), the Members shall establish a Capital Account which shall be credited with the Capital Contribution of the new Member, and Schedules A and B attached hereto shall be adjusted accordingly.

11.3 Procedure for Transferring Interests.

(a) Buy/Sell Procedure.

(i) In the event that the Initial Members cannot reach agreement with respect to a Buy/Sell Decision (a "Deadlock"), then the Initial Members shall initiate a settlement process and make a good faith effort to attempt to informally resolve the Deadlock within thirty (30) days ("Deadlock Resolution Period"). If for any reason the Deadlock is not resolved within such Deadlock Resolution Period, then upon expiration thereof and continuing until thirty (30) days thereafter, either Initial Member (the "Initiating Party") may deliver a written proposal (the "Buy/Sell Notice") to the other (the "Other Party"). The Initiating Party shall be determined in the following manner: (i) if each of the Initial Members timely deliver to the other a Buy/Sell Notice, then the Member that delivered such Buy/Sell Notice on the earlier day shall be considered the Initiating Party, and (ii) if the Initial Members each timely deliver to the other a Buy/Sell Notice on the same day, then the Member who delivers a Buy/Sell Notice which specifies the highest Value (as defined below) shall be considered the Initiating Party.

(ii) The Buy/Sell Notice shall set forth an aggregate value, without reduction for liabilities, for the Company and its subsidiaries (the "Value"), such value and such allocation to be determined in the sole discretion of the Initiating Party. The Other Party shall have a period of thirty (30) days after its receipt of the Buy/Sell Notice (the "Exercise Period") within which to notify the Initiating Party in writing (the "Reply Notice") whether the Other Party shall (x) sell to the Initiating Party all of its Percentage Interests in the Company at a price

computed in the manner set forth in Section 11.3(a)(iii) (the "Purchase Price"), or (y) buy all of the Percentage Interests in the Company of the Initiating Party in exchange for the Purchase Price.

(iii) The Purchase Price for the purchase of the Percentage Interests in the Company of whichever of the Initiating Party and the Other Party is the seller (the "Selling Party") shall be the amount that would be distributed to the Selling Party with respect to such Percentage Interests under Section 14.4 upon liquidation of the Company if all assets were to be sold for the Value, and adjusted in accordance with Section 11.5(e).

(iv) During the Exercise Period, the Other Party may consult with the accountants then employed by the Company to obtain estimates of the Purchase Price and regarding any other matters the Other Party considers relevant. If the Other Party timely gives the Reply Notice electing to sell to the Initiating Party all of its Percentage Interests in the Company pursuant to Section 11.3(a)(ii)(x) above, the Initiating Party shall be conclusively deemed to have agreed to purchase, and the Other Party shall be conclusively deemed to have agreed to sell, all of the Percentage Interests in the Company of the Other Party at the Purchase Price. If the Other Party timely gives the Reply Notice electing to buy all of the Percentage Interests in the Company of the Initiating Party pursuant to Section 11.3(a)(ii)(y) above, the Initiating Party shall be conclusively deemed to have agreed to sell, and the Other Party shall be conclusively deemed to have agreed to purchase, all of the Percentage Interests in the Company of the Initiating Party at the Purchase Price. If the Other Party fails to give a Reply Notice prior to the expiration of the Exercise Period, the Other Party shall be conclusively deemed to have properly elected to sell to the Initiating Party all of its Percentage Interests in the Company pursuant to Section 11.3(a)(ii)(x) above.

(b) Right of First Opportunity.

(i) If any Member (the "Transferring Member") desires to transfer its Interest, in whole or in part (the "Subject Interest"), it shall notify the Company in writing and in advance of such desire and first negotiate exclusively and in good faith with the Initial Members (the "Non-Transferring Members") for a period of thirty (30) days to sell/purchase the Subject Interest (a "Right of First Opportunity"). If, after such 30-day period, the Transferring Member and any of the Non-Transferring Members agree upon the sale and purchase of the Subject Interest (if more than one Non-Transferring Member desires to purchase the Subject Interest, each such Non-Transferring Member shall be entitled to purchase its Pro Rata share of such Subject Interest), the Transferring Member shall transfer the Subject Interest to the Non-Transferring Member or Members in accordance with the terms agreed upon by such Members and Section 11.5.

(ii) If, after such 30-day period, the Transferring Member and the Non-Transferring Members do not agree upon the sale and purchase of the Subject Interest, the Transferring Member shall, in its sole discretion, either continue to hold all of the Subject Interest or transfer the Subject Interest to a third-party transferee, subject to the terms provided in Section 11.3(c).

(c) Right of First Refusal.

(i) In the event that the Non-Transferring Members do not exercise their Right of First Opportunity, then should any Transferring Member propose to accept one or more bona fide offers (collectively, a "Purchase Offer") from any person to purchase any of its Interest, in whole or in part, such Transferring Member shall promptly deliver a written notice (the "Notice") to the Company stating the terms and conditions of such Purchase Offer, including, without limitation, the proportion of such Member's Percentage Interests to be sold or transferred, the nature of such sale or transfer, the consideration to be paid, and the name and address of each prospective purchaser or transferee.

(ii) The Non-Transferring Members shall have an option for a period of sixty (60) days following the receipt of the Notice to elect to purchase the Subject Interest described at the same price and subject to the same material terms and conditions as described in the Notice (the "Right of First Refusal"). The Non-Transferring Members may exercise such purchase option and purchase all or any portion of the Subject Interest by notifying such Transferring Member in writing before expiration of such sixty (60) day period that it wishes to purchase the Subject Interest; provided, that, if more than one Non-Transferring Member desires to purchase the Subject Interest, each such Non-Transferring Member shall be entitled to purchase its Pro Rata share of such Subject Interest). Upon such notice provided by the Non-Transferring Members wishing to purchase the Subject Interest, the Transferring Member shall transfer the Subject Interest in accordance with the terms agreed upon by such Members and Section 11.5.

(iii) Termination. If a Transferring Member has not come to an agreement for a transfer to any non-Member pursuant to the terms of this Section 11.3(c) within the ninety (90) day period beginning with the day on which the Non-Transferring Members were first notified of their Right of First Opportunity with respect to the Subject Interest, any subsequent transfer shall once again be subject to the Non-Transferring Members' Right of First Opportunity and Right of First Refusal as set forth in Section 11.3(b) and Section 11.3(c), respectively.

(d) Tag-Along Rights. Prior to any proposed transfer by the Transferring Member of all or any portion of its Interest to any third party (a "Tag-Along Sale"), the Non-Transferring Members may elect to participate in the proposed transfer on the same terms and conditions of the proposed transfer on a Pro Rata basis (a "Tag-Along Right") by delivering to the Transferring Member a written notice of such election within the thirty (30)-day period following delivery of the Notice (such Non-Transferring Members, the "Tag-Along Members"). Any such sale by any Tag-Along Member shall be on the same terms and subject to the same conditions in the Tag-Along Sale as proposed by the Transferring Member, provided that no Tag-Along Member shall be required to enter into non-competition or similar agreements. Each selling Tag-Along Member shall be solely responsible for any representations as to such selling Tag-Along Member's unencumbered ownership of, and ability to transfer, the Interest being sold by it in the Tag-Along Sale.

(e) Drag-Along Rights.

(i) In the event the Non-Transferring Members do not exercise their rights to acquire the Transferring Member's Interest or participate in a Tag-Along Sale pursuant

to this Section 11.3, and the Transferring Member determines to accept an offer from one or more third parties, who are neither Members nor their respective Affiliates, to purchase, directly or indirectly, one hundred percent (100%) of the total outstanding Interests of the Company, each Member (a "Drag-Along Member") shall at the direction of the Transferring Member sell all of its respective Interests pursuant to such offer of purchase (a "Drag-Along Sale") for the same price and on substantially the same terms and conditions as are applicable to the Initiating Party; provided, however, that in no case shall any Initial Member that has a Percentage Interest of at least twenty percent (20%) be required to be a Drag-Along Member. All Drag-Along Members in such Drag-Along Sale shall execute such documents and take such actions as may be reasonably required to effect the sale of the Interests provided that no Drag-Along Member will be required to enter into non-competition or similar agreements. Each Member agrees to cooperate fully (including by waiving any appraisal rights to which such Member may be entitled under applicable Law and each Member does hereby waive all such appraisal rights) with the purchaser in any Drag-Along Sale and, to execute and deliver all documents (including purchase agreements) and instruments as is reasonably required to effect such Drag-Along Sale including, without limitation, making all representations, warranties and covenants agreed to by the Initiating Party. The consideration payable to each Drag-Along Member in a Drag-Along Sale shall be reduced by a pro rata share of the transaction expenses associated with such Drag-Along Sale.

(ii) The Transferring Member shall promptly provide each Non-Transferring Member with written notice (the "Drag-Along Sale Notice") not more than sixty (60) but no less than thirty (30) days prior to the date of the Drag-Along Sale (the "Drag-Along Sale Date"). Each Drag-Along Sale Notice shall set forth: (i) the name and address of each proposed direct or indirect purchaser of the Interests in the Drag-Along Sale; (ii) the proposed amount and form of consideration to be paid for such Interests (directly or indirectly) and the terms and conditions of payment offered by each proposed purchaser; and (iii) the Drag-Along Sale Date.

11.4 Transfers Incident to Divorce, Death, Retirement or Cause.

(a) Transfers Incident to Divorce.

(i) Upon a transfer incident to the dissolution of a marriage or legal separation of all or any part of the Interest of any Member (collectively, "Transfer Incident to Divorce"):

(A) the transferring Member (the "Divorcing Member") shall give written notice to the Company of the identity, address, and telephone number of the Divorcing Member's recipient spouse (the "Divorcing Spouse"), the transfer date, and a description of the Interest being transferred; and

(B) the Interest of the Divorcing Spouse shall become a Non-Voting Interest immediately upon such Transfer Incident to Divorce and the Divorcing Spouse shall not become a Member.

(ii) Upon a Transfer Incident to Divorce, the Members other than the Divorcing Member (the "Non-Divorcing Members") shall have the opportunity (a "Purchase Right") to acquire their Pro Rata portion of the Interest of the Divorcing Spouse a Pro Rata portion of the amount that would be distributed to the Divorcing Spouse under Section 14.4 upon liquidation of the Company if all assets were to be sold for fair market value, as determined by an independent appraiser acceptable to all parties to the transfer ("Fair Market Value") in respect of such Interest or portion thereof.

(iii) Section 11.4(a)(i) and (ii) shall have no application if the entire Interest of the Member is awarded in a judicial proceeding to the Divorcing Member and not to the Divorcing Spouse.

(b) Transfers Incident to Death.

(i) Upon the transfer of all or any part of the Interest of a Member as a result of the death of such Member, whether by bequest, devise, or intestate succession ("Transfer Incident to Death"):

(A) the trustee, executor, or other personal representative of the deceased Member (the "Deceased Member") shall promptly provide written notice to the Company of the identity, address, and telephone number of the recipient of such Interest, the transfer date, and a description of the Interest being transferred; and

(B) such Interest shall be a Non-Voting Interest immediately upon such Transfer Incident to Death and no transferee shall become a Member.

(ii) Upon a Transfer Incident to Death:

(A) for one (1) year following such Transfer Incident to Death, no other Member may initiate any procedure provided under this Section 11.4 that would require the transfer of the Deceased Member's Interest (the "Non-Transferable Period"); and

(B) after the expiration of the Non-Transferable Period, the Members other than the Deceased Member shall have a Purchase Right to acquire their Pro Rata portion of the Interest of the Deceased Member for the Pro Rata amount that would be distributed to the Deceased Member under Section 14.4 upon liquidation of the Company if all assets were to be sold at Fair Market Value in respect of such Interest or portion thereof.

It is the intention of the parties that this provisions of this Section 11.4(b)(ii) financially provide for the surviving spouse and family of the Deceased Member for one (1) year following the death of the Deceased Member.

(c) Retirement of a Member.

(i) Upon the voluntary retirement of any Member (the "Retiring Member") the Retiring Member shall give written notice to the Company of such Retiring

Member's intention to retire (the "Retirement Notice"). The Initial Members, other than the Retiring Member (the "Non-Retiring Members"), shall have a Purchase Right with respect to their Pro Rata portion of all, but not less than all, of the Interest owned by the Retiring Member. The Non-Retiring Members may exercise such Purchase Right by delivering notice of exercise to the Retiring Member at any time within ninety (90) days after the delivery of the Retirement Notice to the Company. If the Non-Retiring Members do not exercise such Purchase Right with respect to such Interest or any portion thereof, the Retiring Member shall cease to be a Member, and the Interest held by the Retiring Member shall become a Non-Voting Interest.

(ii) The amount at which the Non-Retiring Members shall be entitled to acquire the Interest of the Retiring Member shall be such Non-Retiring Members' Pro Rata portion of the amount that would be distributed to the Retiring Member under Section 14.4 upon liquidation of the Company if all assets were to be sold at Fair Market Value.

(iii) With respect to a transfer pursuant to this Section 11.4(c), at each Non-Retiring Member's option, the purchase price shall be payable either (A) in cash or immediately available funds, or (B) by delivery of such Non-Retiring Member's unsecured promissory note in the amount determined pursuant to this Section 11.4(c), which note shall be payable in full on the date that is three (3) years after the retirement of the Retiring Member, plus interest on such amount accruing at an annual rate equal to the short-term applicable federal rate provided by the IRS in effect as of the date the Retiring Event Purchase Option is exercised (such principal and interest to be paid only upon maturity of such note) (a "Note").

(d) Termination for Cause.

(i) If any Member (the "Breaching Member") engages in any action which a court of competent jurisdiction determines to constitute Cause under this Agreement, the Interest held by the Breaching Member shall be a Non-Voting Interest and the Breaching Member shall no longer be a Member; *provided*, that when all potential appeals of such determination have been exhausted or are otherwise no longer available: (x) if the final appeal or judgment affirms the finding of Cause, such Breaching Member shall be considered terminated for Cause or (y) if the final appeal or judgment voids the initial finding of Cause, such Breaching Member's Interest shall no longer be a Non-Voting Interest and the Breaching Member shall be reinstated as a Member.

(ii) Upon a termination for Cause:

(A) the Initial Members, other than the Breaching Member (the "Non-Breaching Members"), shall have a Purchase Right to acquire their Pro Rata portion of the Interest of the Breaching Member for a Pro Rata portion of the lesser of (1) such Breaching Member's aggregate Capital Contributions reduced by any distributions made to such Breaching Member; or (2) to the amount that would be distributed to the Breaching Member under Section 14.4 upon liquidation of the Company if all assets were to be sold at Fair Market Value; and

(B) such Breaching Member's Interest shall become a Non-Voting Interest and the Breaching Member shall cease to be a Member.

(iii) With respect to a transfer pursuant to this Section 11.4(d), at the option of each Non-Breaching Member exercising a Purchase Right, the purchase price shall be payable either (A) in cash or immediately available funds, or (B) by delivery of such Non-Retiring Member's Note in the amount determined pursuant to this Section 11.4(d).

(e) Any Interest that became a Non-Voting Interest pursuant to this Section 11.4, and which Interest was subsequently purchased by any Non-Breaching Member pursuant to a Purchase Right in this Section 11.4, shall no longer be a Non-Voting Interest in the hands of the purchasing Member.

11.5 Procedures for Transfers.

(a) Liabilities; Indemnity. If Interests are purchased by an Initial Member under this Article XI (other than as a result of a Termination for Cause), the purchasing Member shall indemnify, defend and hold the selling person, its directors, officers, shareholders, partners, members, managers, employees and agents, or any of them harmless from any and all claims, demands, actions, losses, liabilities, costs, or expenses (including reasonable attorneys' fees) arising out of or in connection with all obligations or liabilities of the Company, whether or not incurred or accrued while the selling Member was a Member or after the date of consummation of the purchase and sale of the selling Member's Percentage Interests.

(b) Releases. In connection with a purchase by an Initial Member of another Member's Percentage Interests under this Agreement (other than as a result of a Termination for Cause), if the selling Member, any member thereof or any affiliate thereof is a guarantor or an indemnitor of or with respect to any obligations of the Company or any subsidiary for or in connection with borrowed money or is otherwise liable thereon, then at or prior to the closing of such transaction and as a condition precedent to such closing, the purchasing Member shall obtain a release of such guarantee or liability (excluding only any environmental indemnity to any lender to the Company to the extent that such indemnity relates to the period preceding the closing); or if such a release is not obtainable without the payment of any money by any person, with the consent of the selling Member (which may be granted or withheld in its sole discretion), the purchasing Member shall fully indemnify the selling Member, its members and their respective affiliates with respect to any such obligations. Any such indemnity by the purchasing Member shall be secured by its right to all distributions by the Company (both with respect to the purchased Percentage Interests and with respect to all other Percentage Interests of the purchasing Member and its affiliates). If the releases described above are not obtainable without the payment of money by any person and the selling Member does not consent to the indemnification described above, then the Members shall have no further rights or obligations under this Agreement to purchase or sell the applicable Percentage Interests with respect to the particular election giving rise to such rights. Notwithstanding the immediately preceding sentence, the right of an Initial Member to purchase the other Member's Percentage Interests under this Agreement may subsequently arise as a result of another election, subject in each case to this Section 11.3(d).

(c) Form of Payment of Purchase Price. Other than with respect to the Retiring Event Purchase Option as a Termination for Cause, the Purchase Price shall be paid by wire transfer of immediately available funds as directed by the selling Member.

(d) Procedures for Closing.

(i) Location and Time Periods. The closing of any purchase and sale of Percentage Interests under this Section 11.5 shall be held at the principal office of the Company or such other location as the Members may mutually agree upon.

(ii) Closing Documents. Each Member shall deliver such documents and instruments, duly executed, and acknowledged where required, as may be necessary to consummate the purchase and sale of a Member's Percentage Interests under Section 11.3 or 11.4. Without limiting the foregoing, the selling Member shall execute and deliver at the closing an assignment, instrument of conveyance or other instrument appropriate to convey all of the Percentage Interests of the selling Member to the purchasing Member (or to those members of the purchasing Member as the purchasing Member may specify), and shall deliver to the purchasing Member such evidence as the purchasing Member may reasonably request showing that the Percentage Interests being sold are owned or will be owned by the purchasing Member free and clear of any and all claims, liens and encumbrances of any kind or nature. In addition, as a condition precedent to the closing, the parties to the transaction shall obtain the prior written consents of any lenders to the Company or any subsidiary (to the extent such consents are required under the applicable loan documents) to the transactions to be consummated at the closing. The purchasing and selling Members shall each use their reasonable best efforts and cooperate in good faith to obtain such lenders' consents. If any such consent cannot be obtained, then, at the election of the purchasing Member, either: (i) the purchasing Member may, in its sole discretion, waive the requirement of such consents; or (ii) the rights and obligations of the Members to purchase and sell resulting from the applicable election shall terminate and no Member shall have any further right or obligation arising from such election to purchase or sell.

(iii) Payment of Loans. If there are any outstanding loans owed by the Company to the selling Member, any of its members or their respective Affiliates, such loans, including accrued and unpaid interest, shall be purchased without discount by the purchasing Member as a condition precedent to the closing. The purchase price for such loans shall be paid in full at the closing in the same manner as the Purchase Price is paid. At the closing, the selling Member shall deliver to the purchasing Member each note or other instrument evidencing such loans, all documents securing such loans and an assignment or satisfaction, which assignment or satisfaction shall be at the election of the purchasing Member.

(e) Closing Costs and Adjustments. The Purchase Price for the entire Interest of the selling Member shall be (A) increased by the aggregate amount of all Capital Contributions made by the selling Member to the Company between the date on which the Purchase Price is established and the date of closing and (B) reduced by the aggregate amount of all distributions of net cash receipts and capital proceeds received by the selling Member between the date on which the Purchase Price is established and the date of closing. A purchasing Member who purchases a portion of the selling Member's Interests shall have its Purchase Price adjusted as above, but on a Pro Rata basis. All closing costs shall be borne equally by the selling Member and the purchasing Member.

11.6 Compliance with Article XI. Any transfer of any interest in the Company that does not comply with this Article XI shall be null and void and shall not have any effect under

this Agreement to the extent permitted under applicable law. If, under applicable law, a transfer may not be treated in the manner described in the previous sentence, such interest shall be a Non-Voting Interest.

ARTICLE XII.
NON-COMPETITION; NON-SOLICITATION

12.1 Non-Competition. Neither the Founding Member nor any Affiliate thereof shall, directly or indirectly, do any of the following during the Restricted Period, except through the Company or as otherwise permitted under this Agreement:

(a) engage in a Competing Business; or

(b) directly or indirectly be or become an officer, director, stockholder, owner, co-owner, affiliate, partner, promoter, employee, agent, representative, consultant, advisor, manager, licensor, sublicensor, licensee or sublicensee of, for or to, or otherwise be or become associated with or acquire or hold (of record, beneficially or otherwise) any direct or indirect interest (equity or debt) in, any Person that engages directly or indirectly in a Competing Business.

12.2 Non-Solicitation. Neither the Founding Member nor any Affiliate thereof shall, do any of the following during the Restricted Period, except through the Company or as otherwise expressly permitted in this Agreement:

(a) directly or indirectly, personally or through others, encourage, induce, attempt to induce, solicit or attempt to solicit (on the Founding Member's own behalf or on behalf of any other Person) any employee of the Company or any of its Subsidiaries to leave his or her employment therewith;

(b) directly or indirectly, personally or through others: (i) induce or attempt to induce any Person to terminate any of his, her or its relationships with the Company or any of its Subsidiaries; or (ii) otherwise take any action relating to any such Person that would be disadvantageous to the Company or its Subsidiaries; or

(c) directly or indirectly, personally or through others, encourage, induce, attempt to induce, solicit or attempt to solicit (on the Founding Member's own behalf or on behalf of any other Person, including, without limitation, any Affiliate of the Founding Member) (i) any investor in any investment of the Company or any of its Subsidiaries, or any targeted investor known to the Founding Member as such, (ii) any counterparty to any contract with any business of the Company or any of its Subsidiaries, or any targeted counterparty known to the Founding Member as such, or (iii) any investment advisory client, or targeted investment advisory client known to the Founding Member as such.

12.3 Blue Pencil. The parties hereto agree that the restrictions contained in this Article XII are reasonable in scope, duration and otherwise. If any provision contained in this Article XII is nonetheless held by any court or arbitrator of competent jurisdiction to be unenforceable because of the duration of such provision, the geographic area covered thereby or otherwise, the parties hereto agree that the court or arbitrator making such determination shall

have the power to, and is hereby directed by the parties to, reduce the duration or geographic area of such provision or otherwise modify such provision, and, in its reduced or modified form, such provision shall be enforceable.

12.4 Acknowledgement. Each Member acknowledges and agrees that the covenants set forth above in Sections 12.1 through 12.3 applicable to the Founding Member are: (a) reasonable and necessary to protect the Company's goodwill, confidential information, client and vendor relationships, and stable workforce; (b) reasonable in terms of their length of time, geographic scope, and scope of activity restrictions; and (c) intended to qualify as fully enforceable covenants.

ARTICLE XIII.
ACCOUNTING, RECORDS, REPORTING TO AND BY MEMBERS

13.1 Books and Records. The books and records of the Company shall reflect all the Company's transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its principal office all of the following:

(a) a current list of the full name and last known business or residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Accounts and Percentage Interests of each Member or Assignee;

(b) a copy of the Certificate of Formation and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Certificate of Formation or any amendments thereto have been executed;

(c) copies of the Company's U.S. federal, state and local income tax or information returns and reports, if any, and any tax returns or reports filed by or on behalf of the Company in any other jurisdiction, for the six (6) most recent taxable years;

(d) a copy of this Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

(e) copies of the financial statements of the Company, if any, for the six (6) most recent fiscal years; and

(f) the Company's books and records as they relate to the internal affairs of the Company for at least the current and the past four (4) fiscal years.

13.2 Delivery to Members and Inspection.

(a) Each Member has the right, upon reasonable request for purposes reasonably related to the interest of the Person as Member, to inspect and copy the books and records of the Company.

(b) Any inspection or copying by a Member under this Section 13.2 may be made by that Person or that Person's agent or attorney.

13.3 Filings. The Members, at Company expense, shall prepare and timely file or cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to or restatements of, the Certificate of Formation and all reports required to be filed by the Company with those entities under the Act or other then-current applicable laws, rules and regulations. If a Member required by the Act to execute or file any document fails, after demand, to do so within a reasonable period of time or refuses to do so, any other Member may prepare, execute and file that document with the Secretary of State.

13.4 Bank Accounts. The Members shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person.

13.5 Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Founding Members. The Members may rely upon the advice of the Company's accountants as to whether such decisions are in accordance with accounting methods followed for U.S. Federal income Tax purposes or for purposes of any other jurisdiction in which the Company does business or is required to file tax returns or reports under applicable law.

ARTICLE XIV.
DISSOLUTION AND LIQUIDATION

14.1 Dissolution. Subject to the provisions of the Act or the Certificate of Formation, the Company shall be dissolved and its affairs wound up upon the first to occur of the following:

(a) the written consent of all the Members; or

(b) a Dissolution Event occurs with respect to any Member unless the remaining Members vote to continue the business of the Company within ninety (90) days of the occurrence of such Dissolution Event.

14.2 Liquidation and Winding Up.

(a) Upon the occurrence of any of the events of dissolution as set forth in Section 14.1 of this Agreement, the Company shall cease to engage in any further business, except to the extent necessary to perform existing obligations, and shall wind up its affairs and liquidate its assets. The Members shall appoint a liquidating trustee (who may, but need not, be a Member) who shall have sole authority and control over the winding up and liquidation of the Company's business and affairs and shall diligently pursue the winding up and liquidation of the Company in accordance with the Act. As soon as practicable after his or her appointment, the liquidating trustee shall cause to be filed a statement of intent to dissolve as required by Section 18-203 of the Act.

(b) During the course of liquidation, the Members shall continue to share profits and losses as provided in Section 8.1 of this Agreement, but there shall be no cash distributions to the Members until the Distribution Date.

14.3 Liabilities. Liquidation shall continue until the Company's affairs are in such condition that there can be a final accounting, showing that all fixed or liquidated obligations and liabilities of the Company are satisfied or can be adequately provided for under this Agreement. The assumption or guarantee in good faith by one or more financially responsible Persons shall be deemed to be an adequate means of providing for such obligations and liabilities. When the liquidating trustee has determined that there can be a final accounting, the liquidating trustee shall establish a date (not to be later than the end of the taxable year of the liquidation, i.e., the time at which the Company ceases to be a going concern as provided in Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, or, if later, ninety (90) days after the date of such liquidation) for the distribution of the proceeds of liquidation of the Company (the "Distribution Date"). The net proceeds of liquidation of the Company shall be distributed to the Members as provided in Section 14.4 hereof not later than the Distribution Date.

14.4 Distribution of Assets. Upon the winding up of the affairs of the Company pursuant to Section 14.2, the assets of the Company shall be distributed in the following order of priority:

(a) first, to the payment of the expenses of liquidation;

(b) second, to the payment of all debts, liabilities and other obligations of the Company owed to third parties;

(c) third, to Members who are creditors, to the extent permitted by applicable law, in satisfaction of any debts and liabilities; and

(d) fourth, to the Members the balance in accordance with the priorities set forth in Section 10.1(a).

14.5 Special Allocation of Profits and Losses upon Liquidation. Notwithstanding any provision to the contrary, prior to the distribution required by Section 14.4(d), the Members may cause to be specially allocated the Net Profit and Net Loss (as well as specific items of gross income, gain or loss) generated at the time of the liquidation in a manner different than what is required by Section 8.1, to the extent such allocations are necessary to have each Member's Capital Accounts reflect the intended economic effects of this Agreement at the time of liquidation.

14.6 Deficit Capital Accounts. No Member shall have any obligation to contribute or advance any funds or other property to the Company by reason of any negative or deficit balance in such Member's Capital Account during or upon completion of winding up or at any other time except to the extent that a deficit balance is directly attributable to a distribution of cash or other property in violation of this Agreement or as required by law.

14.7 Certificate of Cancellation. Upon dissolution and liquidation of the Company, the liquidating trustee shall cause to be executed and filed with the Secretary of State of the State of Delaware, a certificate of cancellation in accordance with Section 18-203 of the Act.

ARTICLE XV.
INDEMNIFICATION AND INSURANCE

15.1 Indemnification; Proceeding Other Than by Company. The Company may indemnify any person (including, without limitation, the Founding Member and the Initial Members and any Affiliates thereof) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the Company, by reason of the fact that such person is or was a Member, officer, employee or agent of the Company, or is or was serving at the request of the Company as a member, shareholder, director, officer, partner, trustee, employee or agent of any other Person, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding if such person acted in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company, and that, with respect to any criminal action or proceeding, such person had reasonable cause to believe that such person's conduct was unlawful.

15.2 Indemnification; Proceeding by Company. The Company may indemnify any person (including, without limitation, the Founding Member and the Initial Members and any Affiliates thereof) who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such person is or was a Member, officer, employee or agent of the Company, or is or was serving at the request of the Company as a member, shareholder, director, officer, partner, trustee, employee or agent of any other Person, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by such person in connection with the defense or settlement of the action or suit if such person acted in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals there from, to be liable to the Company or for amounts paid in settlement to the Company, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

15.3 Authorization of Indemnification. Any indemnification under Sections 15.1 and 15.2, unless ordered by a court or advanced pursuant to Section 15.4, may be made by the Company only as authorized in the specific case upon a determination by the Members that indemnification of the Member, officer, employee or agent is proper in the circumstances.

15.4 Mandatory Advancement of Expenses. The expenses of Members and officers incurred in defending a civil or criminal action, suit or proceeding must be paid by the Company as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the Member or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Company. The provisions of this Section 15.4 do not affect any rights to advancement of expenses to which personnel of the Company other than Members or officers may be entitled under any contract or otherwise.

15.5 Repeal or Modification. Any repeal or modification of this Article XV by the Members of the Company shall not adversely affect any right of a Member, officer, employee or agent of the Company existing hereunder at the time of such repeal or modification.

ARTICLE XVI.
DEFAULTS AND REMEDIES

16.1 Defaults. If a Member materially defaults in the performance of such Member's obligations under this Agreement, and such default is not cured within ten (10) days after written notice of such default is given by the non-defaulting Member to the defaulting Member for a default that can be cured by the payment of money, or within thirty (30) days after written notice of such default is given by the non-defaulting Member to the defaulting Member for any other default, then the non-defaulting Member shall have the rights and remedies described in Section 16.2 hereunder in respect of the default.

16.2 Remedies.

(a) If a Member fails to perform such Member's obligations under this Agreement, the Company and the non-defaulting Member shall have the right, in addition to all other rights and remedies provided herein, on behalf of himself or itself, the Company or any other Member to bring the matter to arbitration pursuant to Section 17.9. The award of the arbitrator in such a proceeding may include an order for specific performance by the defaulting Member of such defaulting Member's obligations under this Agreement, or an award for damages for payment of sums due to the Company or to the non-defaulting Member.

(b) In the event of any claims by one Member against any other Member for any default in the performance of such other Member's obligations under this Agreement as provided under Section 16.1 or any other provision of this Agreement, no amounts paid in respect of such claims, whether to the Member bringing the claim or the Member against whom the claim was brought, shall include attorney's fees unless payment of such attorney's fees is required by a court of competent jurisdiction.

ARTICLE XVII.
MISCELLANEOUS

17.1 Entire Agreement. This Agreement, and the schedules hereto, constitutes the entire agreement among the Members with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No party hereto shall be liable or bound to the other in any manner by any warranties,

representations or covenants with respect to the subject matter hereof except as specifically set forth herein.

17.2 Amendments.

(a) This Agreement may be amended only by the affirmative vote of all the Members. All amendments shall be in writing and duly executed by all of the Members.

(b) The Certificate of Formation may only be amended only by the affirmative vote of all the Members. Any such amendment shall be in writing, and shall be executed and filed in accordance with Section 18-202 of the Act.

17.3 No Waiver. No consent or waiver, express or implied, by the Company or a Member to or of any breach or default by any Member in the performance by such Member of such Member's obligations under this Agreement shall constitute a consent to or waiver of any similar breach or default by that defaulting Member. Failure by the Company or a Member to complain of any act or omission to act by any Member, or to declare such defaulting Member in default, irrespective of how long such failure continues, shall not constitute a waiver by the Company or the non-defaulting Member of such non-defaulting Member's rights under this Agreement.

17.4 Representation of Shares of Companies or Interests in Other Entities. Any Member of this Company is authorized to vote, represent and exercise on behalf of the Company all rights incident to any and all shares, membership interests, or partnership interests of any other company or companies, or any interests in any other Person, standing in the name of the Company. The authority herein granted to the Members to vote or represent on behalf of this Company any and all shares, membership interests, or partnership interests held by the Company in any other company or companies, or any interests in any other Person, may be exercised either by such Members in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officers. Notwithstanding the foregoing, no Member may take any action pursuant to this Section 17.4 without the unanimous agreement or previous written authorization of the Founding Members to take such action.

17.5 No Conflicts. Each Member of the Company has engaged its own legal counsel in connection with this Agreement, and legal counsel to the Company is not legal counsel to any Member of the Company in connection with such Member's review of this Agreement.

17.6 Third Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto, and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

17.7 Severability. If one or more provisions of this Agreement are held by a proper court to be unenforceable under applicable law, portions of such provisions, or such provisions in their entirety, to the extent necessary and permitted by law, shall be severed herefrom, and the balance of this Agreement shall be enforceable in accordance with its terms.

17.8 Governing Law. This Agreement shall be governed by and construed under the substantive laws of the State of Delaware, without regard to Delaware choice of law principles.

17.9 Arbitration. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be settled by arbitration under either (a) the Rules of the American Arbitration Association for Commercial Disputes, or (b) the Rules of JAMS pursuant to its Streamlined Arbitration, Rules and Procedures (the "Rules") (as modified by this Section 17.9). The number of arbitrators shall be one (1) if all parties to the dispute agree on the arbitrator. If there is a disagreement on selection of a sole arbitrator, the number of arbitrators then shall be three (3), with the arbitrators to be appointed in accordance with the Rules from a panel of arbitrators at such location as the Initial Members shall select. The place of arbitration shall be at such location as the Initial Members shall select or such other place as the parties to the dispute shall agree in writing. The arbitration proceedings shall be conducted in the English language, and the arbitral award shall be rendered in writing in the English language and shall state the reasons for the award. Judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, and shall be binding on the parties hereto. The costs of arbitration, including reasonable legal fees and costs, shall be borne by either or both of the parties in whatever proportion as the arbitrator or arbitrators may award.

17.10 Notices. Unless otherwise provided in this Agreement, any notice or other communication herein required or permitted to be given shall be in writing and shall be given by electronic communication, hand delivery, registered or certified mail, with proper postage prepaid, return receipt requested, or courier service regularly providing proof of delivery, addressed to the party hereto.

17.11 Titles and Subtitles. The titles of the sections and paragraphs of this Agreement are for convenience only and are not to be considered in construing this Agreement.

17.12 Currency. Unless otherwise specified, all currency amounts in this Agreement refer to the lawful currency of the United States of America.

17.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective when there exist copies hereof which, when taken together, bear the authorized signatures of each of the parties hereto. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

[*Remainder Of Page Intentionally Blank; Signature Page Follows.*]

IN WITNESS WHEREOF the Capital Truth Holdings LLC and each of the Members hereby execute this Limited Liability Company Agreement as of the ___ day of June 2015.

"Company"

CAPITAL TRUTH HOLDINGS LLC, a Delaware limited liability company

By: _____

Its: _____

"Founding Member"

_____

Joshua J. Cilano

"Initial Members"

_____

Joshua J. Cilano

PSI, LLC,

By: _____

Its: _____

SCHEDULE A

NAMES, ADDRESSES AND CAPITAL CONTRIBUTIONS OF MEMBERS

(Confidential -- Not for Distribution)

Name of Member	Address
Joshua J. Cilano	[redacted]
	Hackensack, NJ 07601
PSI, LLC	

Capital Contributions of the Initial Members:

1. All right, title and interest in Capital Truth Advisors shall be owned by the Company, including, without limitation, any Management Fees paid pursuant to the Late Stage I and Late Stage II documentation.

2. All right, title and interest of Late Stage Asset Management shall be owned by the Company, including, without limitation, any Carried Interest payable pursuant to the Late Stage I and the Late Stage II documents.

3. All right, title and interest of the Company or any Affiliates of the Company, Capital Truth Advisors and Late Stage Asset Management in Late Stage I shall be owned by the Company.

4. All right, title and interest of the Company or any Affiliates of the Company, Capital Truth Advisors and Late Stage Asset Management in Late Stage II shall be owned by the Company.

SCHEDULE B

PERCENTAGE INTERESTS

Name of Member	Percentage Interest
Joshua J. Cilano	80%
PSJ, LLC	20%

Exhibit 3

to

Reply Declaration of

Marc Katz

Account Number 3728-1343

Limited Liability Company Resolution

I, Capital Truth Holding, in my official capacity as Managing Member of Late Stage Investment I, a Limited Liability Company (LLC) duly organized under the laws of the State of Delware, hereby certify that the following is a true copy of a resolution duly and regularly adopted by the officers of said LLC at the meeting held on this 1st day of August, 2016, at which a quorum for the transaction of business was present and acting, and is still in full force and effect, and appears in the minutes of the meeting:

RESOLVED any one of such partners named below, are hereby fully authorized and empowered to open a brokerage account, transfer, endorse, sell, assign, set over and deliver any and all securities (including short sales) now or hereafter standing in the name of or owned by this LLC, to purchase securities (on margin or otherwise), including the purchase and sale of options, and to make, execute, and deliver, under the Resolution of this LLC any and all written instruments necessary or proper to effectuate the authority hereby confirmed.

☐ I am the sole partner

Certifying Partner's Signature	Certifying Partner's Name & Title: Capital Truth Holdings, LLC / Managing Member
Social Security Number: [redacted]	Date of Birth (mm/dd/yyyy): 02/04/2015 - 07/03/1978
Address: [redacted] Hackensack, NJ 07601	Telephone Number: [redacted]
Certifying Partner's Signature: Peter T Healy	Certifying Partner's Name & Title: Peter T Healy
Social Security Number: [redacted]	Date of Birth (mm/dd/yyyy): [redacted]
Address: [redacted], Hillsborough, CA 94010	Telephone Number: [redacted]
Certifying Partner's Signature	Certifying Partner's Name & Title
Social Security Number	Date of Birth (mm/dd/yyyy)
Address	Telephone Number

IN WITNESS WHEREOF, I have hereunto set my hand of said LLC this 1st day of August, 2016.

Certifying Partner's Signature: Peter T. Healy / Peter T. Healy	Certifying Partner's Name

Please Note: COR and/or your broker will verify information provided on this form through a third-party vendor in accordance with the USA Patriot Act.

Exhibit 4

to

Reply Declaration of

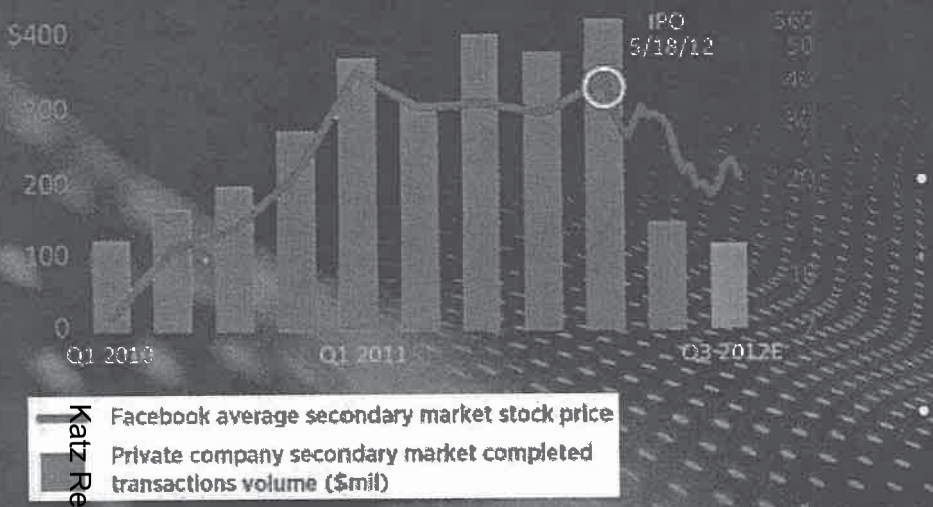
Marc Katz

CTA
CAPITAL TRUTH ADVISORS
Capital Truth Advisors is a premier boutique private equity investment company comprised of a management team offering over 60 years of investment experience combined. Our mission is to provide access to alternative investment strategies for clients seeking to elevate their portfolio through diversification into the secondary market.

LEGAL NOTICE

The information provided herein is for informational purposes only, and it should not be relied on for any specific purpose and no representation or warranty is given as regards it accuracy or completeness. This [document] does not constitute an offer to sell or a solicitation of an offer to buy any interests in the Fund or any other securities. Any such offering of the Fund wil be made only in accordance with the terms and conditions set forth in the Fund's Private Placement Memorandum. Prior to investing, investors are strongly urged to review carefuly the Private Placement Memorandum (including the risk factors described therein), the Limited Liablity Agreement and the Subscription Document, to ask such questions of the Manager as they deem appropriate, and to discuss any prospective investment in the Fund with their legal and tax advisers in order to make an independent determination of the suitablity and consequences of an investment. Investment in the Fund is suitable only for Qualified Purchasers as defined under the US. Investment Company Act of 1940. as amended (the «Investment Company Act») for whom an investment in the Fund does not constitute a complete investment program and who fully understand, and are willing to assume, the risks involved in an investment in the Fund. Fund investment, by their nature, involve a substantial degree of risk, including the risk of total loss of an investor's capital. No person has been authorized to give any information or to make any representation, warranty, statement, or assurance not contained in the Private Placement Memorandum and, if given or made, such other information or representation, warranty, statement, or assurance may not be relied upon. The offering of interest in the Fund wil be made in reliance upon an exemption from registration under the United States Securities Act of 1933. as amended. for offers and sales of securities that do not involve a public offering. No public or other market wil develop for the interest, and the interests are not generaly otherwise transferable. The Fund is not registered as an investment company under the Investment Company Act. Prospective investors should inform themselves ans take appropriate advicenat to the applicable legal requirements and any applicable taxation and control regulations in the countries of their citizenship, residence or domicile which might be relevant to the purchase, holding or redemption of interests. The information provided in this overview is not and should not be considered a recommendation to purchase or sell any particular security and contains "forward-looking statements". Forward-looking statements regard past trends or activities and should not be taken as a representation that such trends or activities will continue as they are subject to a number of risks, uncertainties, and assumptions that could cause actual results or events to differ materially from those expressed or implied in the forward-looking statements. Past performance of the Fund or its Manager is not a guide to future performance. Investors should be aware that a total loss of principal may occur. No part of this material may be (i) copied, photocopied or duplicated in any form, by any means, or (ii) redistributed without the Fund's prior written consent.

The Current Climate in the Private Market



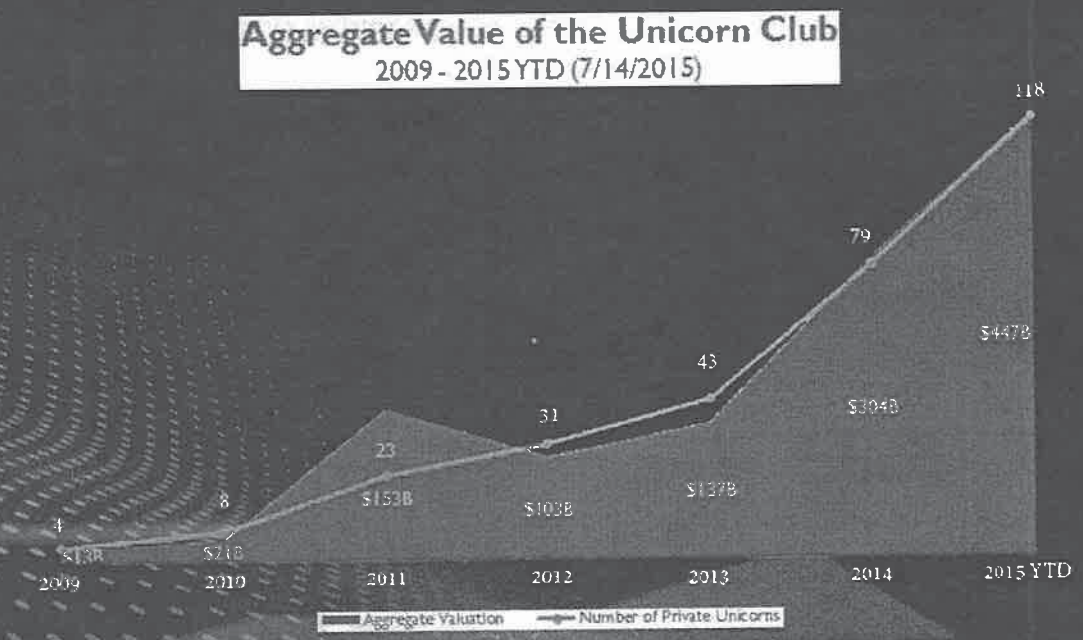
- Tech companies are holding off going public for as long as they can. They are able to raise huge amounts of capital in private rounds, as their valuations and earnings sky-rocket.
- While the delay of an IPO may be necessary for the private company due to market volatility, it is not as beneficial for public investors because by the time they can acquire shares, most of the value has been factored into the market price.
- If you simply compare the pre-IPO valuations of the current crop of Internet companies to earlier tech darlings like Amazon or even Google, it's clear that most of the value is being captured by the private investors, not the public ones.

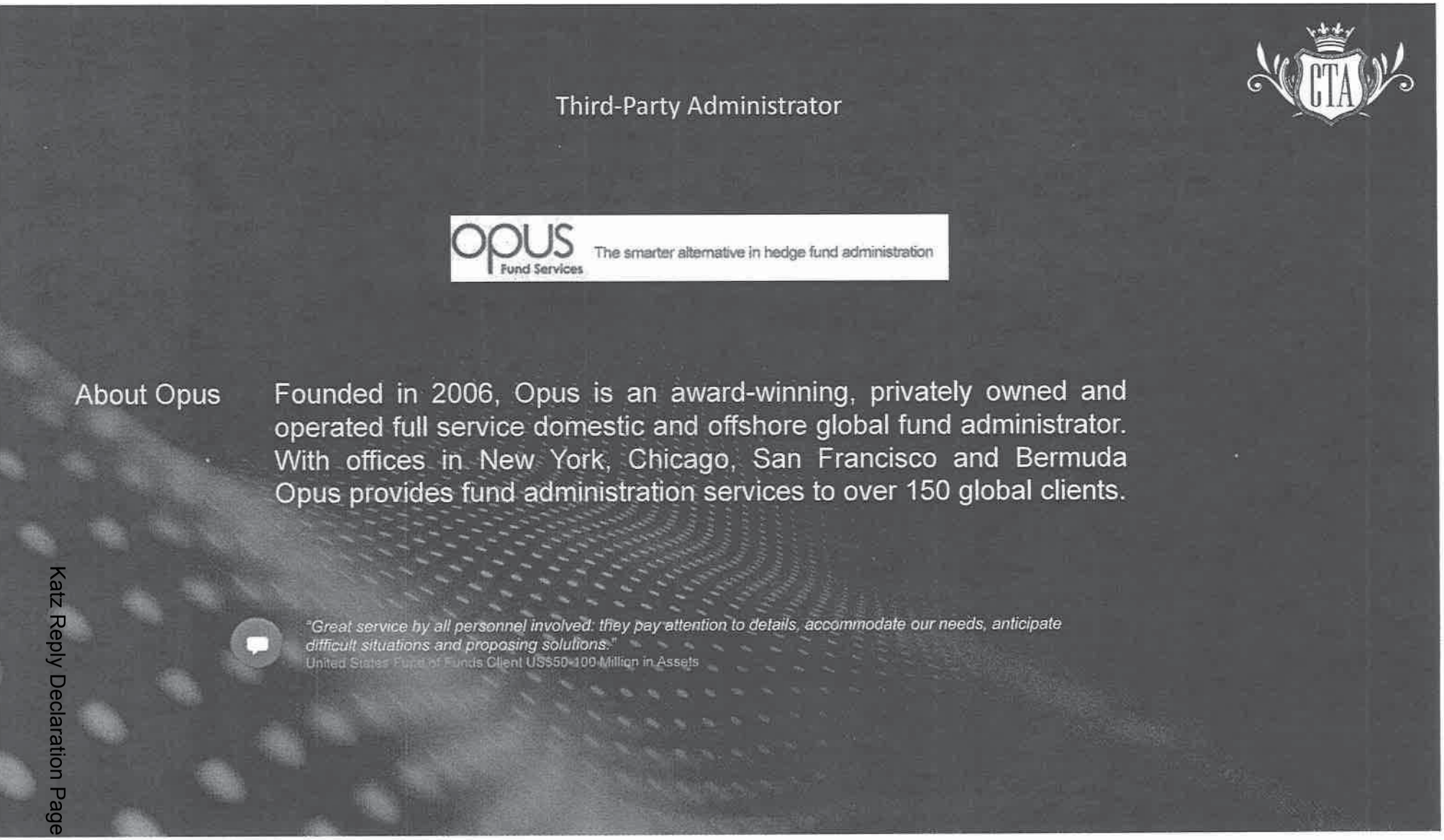
How we seize the opportunity

Capital Truth Advisors through its Late Stage Investment funds has built a special purpose investment vehicle (SPV) to provide accredited and qualified investors access to pre-IPO companies and non-correlated alternative investment products, normally reserved for institutional investors.

Rise of the Decacorn

Unicorn is a term in the U.S. investment and venture capital industry that denotes a start-up company—originally and often software-focused, but now more inclusive of other sectors—whose valuation has exceeded the somewhat arbitrary value of $1 billion. As of August 2015, the list was led by Uber (transportation), Xiaomi (consumer electronics), Airbnb (lodging), Palantir (big data), and Snapchat (social media). A new buzzword, Decacorn, has been reported for those companies over $10 billion, which include all of the foregoing five, as well as s companies such as Dropbox and Pinterest. For instance, as of October 2015, Uber was valued at US$51 billion. As of December 2015 the unicorn market valuation of all companies combined was 527.9 Billion U.S. dollars.




Third-Party Administrator
opus
Fund Services
The smarter alternative in hedge fund administration
About Opus
Founded in 2006, Opus is an award-winning, privately owned and operated full service domestic and offshore global fund administrator. With offices in New York, Chicago, San Francisco and Bermuda Opus provides fund administration services to over 150 global clients.
"Great service by all personnel involved: they pay attention to details, accommodate our needs, anticipate difficult situations and proposing solutions."
United States Fund of Funds Client US$50-100 Million in Assets

Outside Advisory Board

Advisory Boards are established to provide companies with independent information and advice from top experts in their fields. The informal nature of an advisory board gives greater flexibility in structure and management. The Outside Advisory Board does not have authority to vote on corporate matters or bear legal fiduciary responsibilities.

Advisory Board Members

Peter Healy

CHAIRMAN

Peter Healy is a partner in O'Melveny's San Francisco office and a member of the Capital Markets Practice. He has extensive experience representing companies and underwriters in public offerings, private placements, mergers and acquisitions, going-private transactions, public and private debt offerings, and other capital market transactions. Peter also has recent experience in fund formation, private equity and hedge fund activities. He frequently advises boards of directors and independent committees in connection with various capital market and M&A transactions.

Education

University of California Hastings, College of the Law, J.D., 1978

Cornell University, M.B.A., 1975: with distinction

Santa Clara University, B.S., 1973

Admitted
California

Professional Activities

Author/Editor, articles and books for various continuing legal education and industry publications
Speaker, various industry groups, continuing legal education seminars and boards of directors, pertaining to various matters, including capital markets, fund formation, and M&A topics
Vice Chair, ABA Section
Panelist, Practicing Law Institute on *Going Private* Transactions
Awards, *Chambers Global - The World's Leading Lawyers for Business* (2012); *Chambers Global*, Recommended Lawyer for Capital Markets: Debt & Equity (2010-2013); *Legal 500*, Leading Individual in Bank Lending: National and Capital Markets: Equity Offerings (2010); Bank Lending: National; Capital Markets: Debt Offerings; and Capital Markets: Equity Offerings (2011); Capital Markets: Equity Offerings (2012); *Chambers USA*, Leading Lawyer, Nationwide, California, Capital Markets: Debt & Equity (2007, 2010-2015); *PLC Which Lawyer?* USA - National, Capital Markets: Equity (2010, 2011); *International Who's Who of Business Lawyers*, Capital Markets (2009)

Advisory Board Members

Robert Brunner

BOARDMEMBER

Robert L. Brunner is a Senior Managing Director at FTI Consulting and is based in San Francisco. Mr. Brunner leads both the FTI Consulting Residential Mortgage-Backed Securities Litigation practice group and the company's global Financial & Enterprise Data Analytics practice. He is a nationally recognized expert in the areas of collection and analysis of financial, transactional and operational data. Mr. Brunner specializes in complex, data-intensive cases, including class action suits, government/regulatory investigations, financial/accounting investigations, bankruptcies and other cases requiring complex modeling or sharing of information. He has extensive experience in the design, implementation and analysis of complex financial, accounting and operational transaction systems.

Mr. Brunner is an expert in the areas of financial database design and management, complex data modeling, claims management and administration, and electronic discovery. He has testified in the areas of large-scale data analysis, electronic discovery, discovery management, financial fraud, and methodology development. He has served clients in the financial services (banking, credit cards), manufacturing, government, healthcare, and telecommunications industries.

Mr. Brunner's most notable engagements include: assisting several of the largest US banks in defense of their loan origination and securitization practices in defense of MBS related litigation and regulatory inquiries, assisting the US Government in a $160 billion breach of trust class action, assisting a major US retailer in identifying, collecting, and analyzing over 400 million employee-related records for a 4-year period of time for an employment class action, assisting one the country's largest mutual fund complexes in response to SEC allegations of late-trading and market-timing, assisting one of the largest US retailers in identifying and analyzing over 1 billion records of operational data in response to a DOJ investigation of retailer's business practices, developing a data warehouse for one of the largest civil litigations ever filed in California, development of sophisticated financial and data models for a Fortune 100 bank in one of the largest class action suits brought under California's Unfair Competition statute, and design and implementation of a claims processing system for a Fortune 500 company.

Prior to joining FTI Consulting, Mr. Brunner was Partner-in-Charge of the Class Action/Complex Data Services group for KPMG in the US. Before joining KPMG, he was a Partner in Andersen Worldwide, where he led the Strategy, Finance & Economics practice for the Pacific Northwest. He led the development of Andersen's E-Discovery and Legal Information Consulting practice methodologies.

Mr. Brunner has instructed several mathematics and computer science courses for the University of California at both the undergraduate and graduate level. He is a member of the Association for Image and Information Management (AIIM), the American Records Management Association (ARMA) and the American Society for Information Science and Technology (ASIS&T), as well as an active member of The Sedona Conference.

Confidentiality Disclaimer

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