

No.

IN THE
Supreme Court of the United States

DEUTSCHE BANK TRUST COMPANY AMERICAS, ET AL.,

Petitioners,

v.

ROBERT R. MCCORMICK FOUNDATION, ET AL.,

Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit**

PETITION APPENDIX

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July 6, 2020

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APPENDIX A

13-3992-cv(L)

In re: Tribune Company Fraudulent Conveyance
Litigation

In the United States Court of Appeals For the
Second Circuit

August Term, 2014

Nos. 13-3992-cv; 13-3875-cv; 13-4178-cv; 13-4196-cv

**IN RE: TRIBUNE COMPANY FRAUDULENT
CONVEYANCE LITIGATION**

NOTE HOLDERS, Deutsche Bank Trust Company
Americas, Law Debenture Trust Company of New
York, Wilmington Trust Company, INDIVIDUAL
RETIREEES, William A. Niese, on behalf of a putative
class of Tribune Company retirees,

Plaintiffs-Appellants-Cross-Appellees.

MARK S. KIRSCHNER, as Litigation Trustee for the
Tribune Litigation Trust,

Plaintiff.

TENDERING PHONES HOLDERS, Citadel Equity
Fund Ltd., Camden Asset Management LLP and
certain of their affiliates,

Plaintiffs-Intervenors,

v.

LARGE PRIVATE BENEFICIAL OWNERS, FINANCIAL INSTITUTION HOLDERS, FINANCIAL INSTITUTION CONDUITS, Merrill Lynch, Pierce, Fenner & Smith, Inc., on behalf of a putative class of former Tribune Company shareholders, PENSION FUNDS, including public, private, and Taft Hartley Funds, INDIVIDUAL BENEFICIAL OWNERS, Mario J. Gabelli, on behalf of a putative class of former Tribune Company shareholders, MUTUAL FUNDS, AT-LARGE, ESTATE OF KAREN BABCOCK, PHILLIP S. BABCOCK, DOUGLAS BABCOCK, DEFENDANTS LISTED ON EXHIBIT B,

Defendants-Appellees-Cross-Appellants,

CURRENT AND FORMER DIRECTORS AND OFFICERS, Betsy D. Holden, Christopher Reyes, Dudley S. Taft, Enrique Hernandez, Jr., Miles D. White, Robert S. Morrison, William A. Osborn, Harry Amsden, Stephen D. Carver, Dennis J. FitzSimons, Robert Gremillion, Donald C. Grenesko, David Dean Hiller, Timothy J. Landon, Thomas D. Leach, Luis E. Le, Mark Hianik, Irving Quimby, Crane Kenney, Chandler Bigelow, Daniel Kazan, Timothy Knight, Thomas Finke, SAM ZELL AND AFFILIATED ENTITIES, EGI-TRB, LLC, Equity Group Investments, LLC, Sam Investment Trust, Samuel Zell, Tower CH, LLC, Tower DC, LLC, Tower DL, LLC, Tower EH, LLC, Tower Gr, LARGE

SHAREHOLDERS, Chandler Trusts and their representatives, FINANCIAL ADVISORS, Valuation Research Corporation, Duff & Phelps, LLC, Morgan Stanley & Co. Inc. and Morgan Stanley Capital Services, Inc., GreatBanc Trust Company, Citigroup Global Markets, Inc., CA PUBLIC EMPLOYEE RETIREMENT SYSTEM, CALPERS, UNIVERSITY OF CA REGENTS, T. ROWE PRICE ASSOCIATES, INC., MORGAN KEEGAN & COMPANY, INC., NTCA, DIOCESE OF TRENTON-PENSION FUND, FIRST ENERGY SERVICE COMPANY, MARYLAND STATE RETIREMENT AND PENSION SYSTEM, T BANK LCV QP, T BANK-LCV-PT, JAPAN POST INSURANCE, CO., LTD., SERVANTS OF RELIEF FOR INCURABLE CANCER (AKA DOMINICAN SISTERS OF HAWTHORNE), NEW LIFE INTERNATIONAL, NEW LIFE INTERNATIONAL TRUST, SALVATION ARMY, SOUTHERN TERRITORIAL HEADQUARTERS, CITY OF PHILADELPHIA EMPLOYEES, OHIO CARPENTERS' MIDCAP (AKA OHIO CARPENTERS' PENSION FUND), TILDEN H. EDWARDS, JR., MALLOY AND EVANS, INC., BEDFORD OAK PARTNERS, LP, DUFF AND PHELPS LLC, DURHAM J. MONSMA, CERTAIN TAG-ALONG DEFENDANTS, MICHAEL S. MEADOWS, WIRTZ CORPORATION,

Defendants.

Appeal from the United States District Court
for the Southern District of New York

4a

No. 1:11-md-02296

ARGUED: NOVEMBER 5, 2014

DECIDED: MARCH 29, 2016

AMENDED: DECEMBER 19, 2019

Before: WINTER, DRONEY, Circuit Judges, and
HELLERSTEIN, District Judge.*

Appeal from a dismissal by the United States District Court for the Southern District of New York (Richard J. Sullivan, Judge), of state law, constructive fraudulent conveyance claims brought by creditors' representatives against the Chapter 11 debtor's former shareholders, who were cashed out in an LBO. The district court held that plaintiffs lacked statutory standing under the Bankruptcy Code. We hold that appellants have statutory standing but affirm on the ground that appellants' claims are preempted by Section 546(e) of that Code.

* Judge Alvin K. Hellerstein, of the Southern District of New York, sitting by designation.

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WINTER and DRONEY, Circuit Judges:

Representatives of certain unsecured creditors of
the Chapter 11 debtor Tribune Company appeal from
Judge Sullivan's grant of a motion to dismiss their
state law, constructive fraudulent conveyance claims
brought against Tribune's former shareholders.

Appellants seek to recover an amount sufficient to satisfy Tribune's debts to them by avoiding (recovering) payments by Tribune to shareholders that purchased all of its stock. The payments occurred in a transaction commonly called a leveraged buyout ("LBO"),¹ soon after which Tribune went into Chapter 11 bankruptcy. Appellants appeal the district court's dismissal for lack of statutory standing, and appellees cross-appeal from the district court's rejection of their argument that appellants' claims are preempted.²

We address two issues: (i) whether appellants are barred by the Bankruptcy Code's automatic stay provision from bringing state law, constructive fraudulent conveyance claims while avoidance proceedings against the same transfers brought by a party exercising the powers of a bankruptcy trustee on an intentional fraud theory are ongoing; and (ii) if not, whether the creditors' state law, constructive fraudulent conveyance claims are preempted by Bankruptcy Code Section 546(e).

On issue (i), we hold that appellants are not barred by the Code's automatic stay because they

¹ In a typical LBO, a target company is acquired with a significant portion of the purchase price being paid through a loan secured by the target company's assets.

² Because the issue has no effect on our disposition of this matter, we do not pause to consider whether a cross-appeal was necessary for appellees to raise the preemption issues in this court, but, for convenience purposes, we sometimes refer to those issues by the term crossappeal.

have been freed from its restrictions by orders of the bankruptcy court and by the debtors' confirmed reorganization plan. On issue (ii), the subject of appellees' cross-appeal, we hold that appellants' claims are preempted by Section 546(e). That Section shields certain transactions from a bankruptcy trustee's avoidance powers, including, inter alia, transfers by or to a financial institution in connection with a securities contract, except through an intentional fraudulent conveyance claim.³

We therefore affirm.

BACKGROUND

a) The LBO

Tribune Media Company (formerly known as "Tribune Company") is a multimedia corporation that, in 2007, faced deteriorating financial prospects. Appellee Samuel Zell, a billionaire investor, proposed to acquire Tribune through an LBO. In consummating the LBO, Tribune borrowed over \$11 billion secured by its assets. The \$11 billion plus, combined with Zell's \$315 million equity contribution, was used to refinance some of Tribune's pre-existing bank debt and to cash out Tribune's

³ As discussed *infra*, after we previously issued an opinion in this appeal, In re Tribune Co. Fraudulent Conveyance Litig. ("Tribune I"), 818 F.3d 98 (2d Cir. 2016), the Supreme Court clarified the test for determining whether a transaction falls within Section 546(e), *see Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 138 S. Ct. 883 (2018), causing us to recall the mandate and issue this amended opinion.

shareholders for over \$8 billion at a premium price -- above its trading range -- per share.

It is undisputed that Tribune transferred the over \$8 billion to a “securities clearing agency” or other “financial institution,” as those terms are used in Section 546(e), acting as intermediaries in the LBO transaction.⁴ Those intermediaries in turn paid the funds to the shareholders in exchange for their shares that were then returned to Tribune. Appellants seek to satisfy Tribune’s debts to them by avoiding Tribune’s payments to the shareholders. Appellants do not seek money from the intermediaries. See Note 15, infra.

b) Bankruptcy Proceedings

On December 8, 2008, with debt and contingent liabilities exceeding its assets by more than \$3 billion, Tribune and nearly all of its subsidiaries filed for bankruptcy under Chapter 11 in the District of Delaware. A trustee was not appointed, and Tribune and its affiliates continued to operate the businesses as debtors in possession. See 11 U.S.C. § 1107(a) (“Subject to any limitations on a trustee . . . a debtor in possession shall have all the rights . . . , and powers, and shall perform all the functions and duties . . . of a trustee . . .”). In discussing the powers of a bankruptcy trustee that can be exercised by a trustee or parties designated by a bankruptcy

⁴ Appellees contend that, with respect to the LBO transaction, Tribune also qualified as a “financial institution,” but appellants disagree. We describe the facts relevant to that dispute infra.

court, we shall refer to the trustee or such parties as the “trustee et al.”

The bankruptcy court appointed an Official Committee of Unsecured Creditors (the “Committee”) to represent the interests of unsecured creditors. In November 2010, alleging that the LBO-related payments constituted intentional fraudulent conveyances, the Committee commenced an action under Code Section 548(a)(1)(A) against the cashed out Tribune shareholders, various officers, directors, financial advisors, Zell, and others alleged to have benefitted from the LBO. An intentional fraudulent conveyance is defined as one in which there was “actual intent to hinder, delay, or defraud” a creditor. 11 U.S.C. § 548(a)(1)(A).

In June 2011, two subsets of unsecured creditors filed state law, constructive fraudulent conveyance claims in various federal and state courts. The plaintiffs, the appellants before us, were: (i) the Retiree Appellants, former Tribune employees who hold claims for unpaid retirement benefits and (ii) the Noteholder Appellants, the successor indenture trustees for Tribune’s pre-LBO senior notes and subordinated debentures. A constructive fraudulent conveyance is, generally speaking, a transfer for less than reasonably equivalent value made when the debtor was insolvent or was rendered so by the transfer. See *Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199, 208-09 (2d Cir. 2014).

Before bringing these actions, appellants moved the bankruptcy court for an order stating that: (i) after the expiration of the two-year statute of limitations period during which the Committee was

authorized to bring avoidance actions under 11 U.S.C. § 546(a), eligible creditors had regained the right to prosecute their creditor state law claims; and (ii) the automatic stay imposed by Code Section 362(a) was lifted solely to permit the immediate filing of their complaint. In support of that motion, the Committee argued that, under Section 546(a), the “state law constructive fraudulent conveyance transfer claims ha[d] reverted to individual creditors” and that the “creditors should consider taking appropriate actions to preserve those claims.” Statement of the Official Committee of Unsecured Creditors in Supp. of Mot. at 3, *In re Tribune Co.*, No 08-13141 (KJC) (Bankr. D. Del. Mar. 17, 2011).

In April 2011, the bankruptcy court lifted the Code’s automatic stay with regard to appellants’ actions. The court reasoned that because the Committee had elected not to bring the constructive fraudulent conveyance actions within the two-year limitations period following the bankruptcy petition imposed by Section 544, fully discussed *infra*, the unsecured creditors “regained the right, if any, to prosecute [such claims].” J. App’x at 373. Therefore, the court lifted the Section 362(a) automatic stay “to permit the filing of any complaint by or on behalf of creditors on account of such Creditor [state law fraudulent conveyance] Claims.” *Id.* The court clarified, however, that it was not resolving the issues of whether the individual creditors had statutory standing to bring such claims or whether such claims were preempted by Section 546(e).

On March 15, 2012, the bankruptcy court set an expiration date of June 1, 2012 for the remaining

limited stay on the state law, fraudulent conveyance claims. In July 2012, the bankruptcy court ordered confirmation of the proposed Tribune reorganization plan. The plan terminated the Committee and transferred responsibility for prosecuting the intentional fraudulent conveyance action to an entity called the Litigation Trust. The confirmed plan also provided that the Retiree and Noteholder Appellants could pursue “any and all LBO-Related Causes of Action arising under state fraudulent conveyance law,” except for the federal intentional fraudulent conveyance and other LBO-related claims pursued by the Litigation Trust. J. App’x at 643. Under the plan, the Retiree and Noteholder Appellants recovered approximately 33 cents on each dollar of debt. The plan was scheduled to take effect on December 31, 2012, the date on which Tribune emerged from bankruptcy.

c) District Court Proceedings

Appellants’ various state law, fraudulent conveyance complaints alleged that the LBO payments, made through financial intermediaries as noted above, were for more than the reasonable value of the shares and made when Tribune was in distressed financial condition. Therefore, the complaints concluded, the payments were avoidable by creditors under the laws of various states. These actions were later consolidated with the Litigation Trust’s ongoing federal intentional fraud claims in a multi-district litigation proceeding that was transferred to the Southern District of New York. In re: Tribune Co. Fraudulent Conveyance Litig., 831 F. Supp. 2d 1371 (J.P.M.L. 2011).

After consolidation, the Tribune shareholders moved to dismiss appellants' claims. The district court granted the motion on the ground that the Bankruptcy Code's automatic stay provision deprived appellants of statutory standing to pursue their claims so long as the Litigation Trustee was pursuing the avoidance of the same transfers, albeit under a different legal theory. *In re Tribune Co. Fraudulent Conveyance Litig.*, 499 B.R. 310, 325 (S.D.N.Y. 2013). The court held that the bankruptcy court had only "conditionally lifted the stay." *Id.* at 314.

The district court rejected appellees' preemption argument based on Section 546(e). That Section bars a trustee *et al.* from exercising its avoidance powers under Section 544 to avoid certain transactions including, *inter alia*, transfers "by or to . . . a financial institution . . . in connection with a securities contract," except through an intentional fraudulent conveyance claim. 11 U.S.C. § 546(e). The district court held that Section 546(e) did not bar appellants' actions because: (i) Section 546(e)'s prohibition on avoiding the designated transfers applied only to a bankruptcy trustee *et al.*, *id.* at 315-16; and (ii) Congress had declined to extend Section 546(e) to state law, fraudulent conveyance claims brought by creditors, *id.* at 318.

d) Appellate Proceedings

Appellants appealed the dismissal for lack of statutory standing, and appellees cross-appealed the rejection of their argument that appellants' claims are preempted. In a prior opinion, *In re Tribune Co.*

Fraudulent Conveyance Litig. (“Tribune I”), 818 F.3d 98 (2d Cir. 2016), we affirmed the dismissal of appellants’ claims on the ground that Section 546(e) preempts “fraudulent conveyance actions brought by creditors whose claims are [] subject to Section 546(e).” Id. at 118, 123-24. At the time, it was the law in this Circuit, under In re Quebecor World (USA) Inc. (“Quebecor”), 719 F.3d 94, 100 (2d Cir. 2013), that the payments at issue fell within Section 546(e) because entities covered by Section 546(e) had served as intermediaries. See Tribune I, 818 F.3d at 120 (“Section 546(e)’s language clearly covers payments, such as those at issue here, by commercial firms to financial intermediaries to purchase shares from the firm’s shareholders.”).

Appellants petitioned for rehearing en banc, which was denied, and we issued the mandate. Appellants then petitioned for certiorari, presenting the following question, among others: “Whether the Second Circuit correctly held . . . that a fraudulent transfer is exempt . . . under 11 U.S.C. § 546(e) when a financial institution acts as a mere conduit for fraudulently transferred property.” Petition for a Writ of Certiorari, Deutsche Bank Trust Co. Ams. v. Robert R. McCormick Found., No. 16-317 (U.S. Sept. 9, 2016), 2016 WL 4761722, at *1.

While that petition was pending, the Supreme Court in Merit Mgmt. Grp., LP v. FTI Consulting, Inc., 138 S. Ct. 883 (2018), rejected Quebecor’s interpretation of Section 546(e)’s scope, holding that Section 546(e) does “not protect transfers in which financial institutions served as mere conduits.” Merit Mgmt., 138 at 892. The question presented in Merit

Mgmt. was whether, “in the context of a transfer that was executed via one or more transactions,” such as a transfer from Party A to Party D that included Parties B and C as intermediaries, the relevant transfer for purposes of Section 546(e) is the overarching transfer from Party A to Party D or “any component part[] of the overarching transfer,” such as the transfer from Party B to Party C. Id. at 888. The Court concluded, based on the “plain meaning” of Section 546(e), that the relevant transfer is the overarching transfer, and therefore abrogated the relevant portion of Quebecor. Id. at 888, 897; see also id. at 892 n.6 (identifying Quebecor as one of the decisions in conflict with its holding).

Soon thereafter, Justices Kennedy and Thomas issued a statement suggesting that this Court might wish to recall its mandate or provide other relief in light of Merit Mgmt. See Statement of Justice Kennedy and Justice Thomas Respecting the Petition for Certiorari, Deutsche Bank Trust Co. Ams., No. 16-317 (Apr. 3, 2018), 2018 WL 1600841. Appellants subsequently filed a motion to recall the mandate, and we recalled the mandate in anticipation of further panel review.

We have since agreed on changes to our prior opinion, which are reflected in this amended opinion. Upon the filing of this amended opinion, the original opinion is vacated. See, e.g., Brown v. City of Oneonta, New York, 221 F.3d 329, 336 (2d Cir. 2000), amending and superseding 195 F.3d 111 (2d Cir. 1999).

DISCUSSION

We review de novo the district court's grant of appellees' motion to dismiss. See *Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144, 151 (2d Cir. 2013). The relevant facts being undisputed for purposes of this proceeding, only issues of law are before us.⁵

a) Statutory Standing to Bring the Claims

We first address the district court's dismissal of appellants' claims on the ground that they lacked standing to bring them because of Section 362(a)(1).⁶

⁵ Appellants argue that one of the issues we address *infra* -- whether Tribune's payments to shareholders remain subject to Section 546(e) following Merit Mgmt. -- requires resolving two factual disputes "never before tested in this case," thus precluding a determination as a matter of law and necessitating a remand to the district court. Appellants' Reply in Support of Motion to Recall the Mandate at 9-11. Neither of the disputes identified by appellants is factual in nature, however. Appellants first contend that certain documents cited by appellees do not suffice to establish that Computershare Trust Company, N.A. was Tribune's "agent" in connection with the LBO payments. But that argument does not present a factual dispute about the content or accuracy of those documents; instead, it only challenges the legal significance of the documents, raising a pure question of law. Second, appellants argue that a contract to redeem shares is not a "securities contract" within the meaning of 11 U.S.C. § 101(22)(A). But that argument, too, is plainly legal. Thus, there are no factual disputes precluding our consideration of whether Tribune's payments to shareholders remain subject to Section 546(e) following Merit Mgmt., and a remand is unnecessary.

⁶ The term "standing" has been used to describe issues arising in bankruptcy proceedings when individual creditors sue to

In re Tribune, 499 B.R. at 325. When a bankruptcy action is filed, any “action or proceeding against the debtor” is automatically stayed by Section 362(a). The purpose of the stay is “to protect creditors as well as the debtor,” Ostano Commerzanstalt v. Telewide Sys., Inc., 790 F.2d 206, 207 (2d Cir. 1986) (per curiam), by avoiding wasteful, duplicative, individual actions by creditors seeking individual recoveries from the debtor’s estate, and by ensuring an equitable distribution of the debtor’s estate. See In re McMullen, 386 F.3d 320, 324 (1st Cir. 2004) (noting that Section 362(a)(1), among other things, “safeguard[s] the debtor estate from piecemeal dissipation . . . ensur[ing] that the assets remain within the exclusive jurisdiction of the bankruptcy court pending their orderly and equitable distribution among the creditors”). Although fraudulent conveyance actions are against third parties rather than a debtor, there is caselaw, discussed *infra*, stating that the automatic stay

recover funds from third parties to satisfy amounts owed to them by the debtor, and that action is defended on the ground that the recovery seeks funds that are recoverable under the Code only by a representative of all creditors. St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc., 884 F.2d 688, 696-97 (2d Cir. 1989), disapproved of on other grounds by In re Miller, 197 B.R. 810 (W.D.N.C. 1996). The use of the term “standing” is based on the suing creditors’ need to demonstrate an injury other than one redressable under the Code only by the trustee et al. Id. at 704.

applies to such actions.⁷ See *In re Colonial Realty Co.*, 980 F.2d 125, 131 (2d Cir. 1992).

The district court ruled that Section 362's automatic stay provision deprived appellants of statutory standing to bring their claims because the Litigation Trustee was still pursuing an intentional fraudulent conveyance action challenging the same transfers under Section 548(a)(1)(A). *In re Tribune*, 499 B.R. at 322-23. We disagree. The Bankruptcy Code empowers a bankruptcy court to release parties from the automatic stay "for cause" shown. *In re Bogdanovich*, 292 F.3d 104, 110 (2d Cir. 2002) (quoting 11 U.S.C. § 362(d)(1)). Once a creditor obtains "a grant of relief from the automatic stay" under Section 362(d), it may "press its claims outside of the bankruptcy proceeding." *St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 702 (2d Cir. 1989), disapproved of on other grounds by *In re Miller*, 197 B.R. 810 (W.D.N.C. 1996).

In the present matter, the bankruptcy court granted appellants relief from the automatic stay on three occasions. On April 25, 2011, the bankruptcy court granted appellants relief "to permit the filing of any complaint by or on behalf of creditors on account of such Creditor [state law fraudulent conveyance] Claims." J. App'x at 373. A second order, entered on June 28, 2011, clarified that "neither the automatic stay of [Section 362] nor the provisions of the [original lift-stay order]" barred the parties in the

⁷ The implications of applying the automatic stay to fraudulent conveyance actions are discussed infra.

state law actions from consolidating and coordinating these actions. J. App'x at 376. And the bankruptcy court's third order, entered on March 15, 2012, set an expiration date of June 1, 2012, for the "stay imposed on the state law constructive fraudulent conveyance actions." J. App'x at 521. None of the Tribune shareholders filed objections to these orders.

Finally, the reorganization plan, confirmed by the bankruptcy court and in all pertinent respects an order of that court, expressly allowed appellants to pursue "any and all LBO-Related Causes of Action arising under state fraudulent conveyance law." J. App'x at 643. Section 5.8.2 of the plan provided that "nothing in this Plan shall or is intended to impair" the rights of creditors to attempt to pursue disclaimed state law avoidance claims. J. App'x at 695.

Thus, under both the bankruptcy court's orders and the confirmed reorganization plan, if appellants had actionable state law, constructive fraudulent conveyance claims, assertion of those claims was no longer subject to Section 362's automatic stay. See, e.g., In re Heating Oil Partners, LP, 422 F. App'x 15, 18 (2d Cir. 2011) (holding that the automatic stay terminates at discharge); United States v. White, 466 F.3d 1241, 1244 (11th Cir. 2006) (similarly recognizing that the automatic stay terminates when "a discharge is granted").

For the foregoing reasons, we hold that appellants' claims are not barred by Section 362.

b) Section 546(e) and Preemption

We turn now to the issue raised by the cross-appeal: whether appellants' claims are preempted because they conflict with Code Section 546(e).

1. The Scope of Section 546(e)

The threshold question in our preemption inquiry is whether, in the aftermath of Merit Mgmt., 138 S. Ct. 883, Tribune's payments to the shareholders remain subject to Section 546(e). As discussed above, it was previously the law in this Circuit that the payments were subject to Section 546(e) because entities covered by Section 546(e) had served as intermediaries. See Tribune I, 818 F.3d at 120; Quebecor, 719 F.3d at 100. Now, however, the parties agree that Merit Mgmt. "forecloses" that basis for finding the payments covered by Section 546(e). Appellees' Opposition to Appellants' Motion to Recall the Mandate at 16; see also Merit Mgmt., 138 S. Ct. at 892 (holding that Section 546(e) does "not protect transfers in which financial institutions served as mere conduits"). Accordingly, we must determine whether there is an alternative basis for finding that the payments are covered. For the reasons that follow, we find that such a basis exists.

(i) Tribune is a Covered Entity

Under Merit Mgmt., the payments at issue can be subject to Section 546(e) only if (1) Tribune, which made the payments, was a covered entity; or (2) the shareholders, who ultimately received the payments, were covered entities. See Merit Mgmt., 138 S. Ct. at 893 ("[T]he relevant transfer for purposes of the

§ 546(e) safe-harbor inquiry is the overarching transfer[.]”). According to appellees, that requirement is satisfied because appellants’ complaints, transaction documents that are integral to those complaints, and materials subject to judicial notice establish that Tribune was a “financial institution” for the purposes of Section 546(e).⁸ See Appellees’ Opposition to Appellants’ Motion to Recall the Mandate at 16-20. Tribune was a “financial institution,” appellees maintain, because it was a “customer” of Computershare Trust Company, N.A. (“Computershare”), and Computershare was its agent in the LBO transaction. *Id.* at 17-18. We agree with appellees that Tribune was a “financial institution” and therefore a covered entity.

Section 546(e) provides in relevant part that “the trustee may not avoid . . . a transfer made by or to (or for the benefit of) a . . . financial institution, . . . in connection with a securities contract, as defined in section 741(7),” except through an intentional fraudulent conveyance claim. 11 U.S.C. § 546(e). Section 101(22) of the Code defines “financial institution,” to include, *inter alia*, “an entity that is a commercial or savings bank, . . . trust company, . . . and, when any such . . . entity is acting as agent or custodian for a customer (whether or not a ‘customer’, as defined in section 741) in connection

⁸ Appellees also argue that Tribune was a covered entity because it was a “financial participant,” and that the shareholders were likewise covered entities. Having agreed with appellees that Tribune was a “financial institution,” we do not reach either of appellees’ alternative arguments.

with a securities contract (as defined in section 741) such customer.”⁹ 11 U.S.C. § 101(22)(A) (emphasis added).

Here, Tribune retained Computershare to act as “Depository” in connection with the LBO tender offer. See Tribune Offer to Purchase at 13, 113, In re Tribune Co., No. 08-13141 (KJC) (Bankr. D. Del. Aug. 20, 2010), ECF Nos. 5437-5, 5437-6. Computershare is a “financial institution” for the purposes of Section 546(e) because it is a trust company and a bank. See Office of the Comptroller of the Currency, Trust Banks Active as of November 30, 2019, at <https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/trust-by-name.pdf>; Office of the Comptroller of the Currency, National Banks Active as of November 30, 2019, at <https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/national-by-name.pdf>. Therefore, Tribune was likewise a “financial institution” with respect to the LBO payments if it was Computershare’s “customer,” and Computershare was acting as its agent. See 11 U.S.C. § 101(22)(A).

⁹ As the Court noted in Merit Mgmt., “[t]he parties [t]here d[id] not contend that either the debtor or petitioner in th[at] case qualified as a ‘financial institution’ by virtue of its status as a ‘customer’ under § 101(22)(A). Petitioner Merit Management Group, LP, discussed th[at] definition only in footnotes and did not argue that it somehow dictate[d] the outcome in th[e] case.” Merit Mgmt., 138 S. Ct. at 890 n.2. The Court “therefore d[id] not address what impact, if any, § 101(22)(A) would have in the application of the § 546(e) safe harbor.” Id.

In its role as Depositary, Computershare performed multiple services for Tribune. First, Computershare received and held Tribune's deposit of the aggregate purchase price for the shares. See Examiner's Report, Vol. 1, at 206, In re Tribune Co., No. 08-13141 (KJC) (Bankr. D. Del. Aug. 3, 2010), ECF No. 5247. Then, Computershare received tendered shares, retained them on Tribune's behalf, and paid the tendering shareholders. Id.; see also Tribune Offer to Purchase at 81, In re Tribune Co., No. 08-13141 (KJC) (Bankr. D. Del. Aug. 20, 2010), ECF Nos. 5437-5, 5437-6.

Given these facts, we conclude that Tribune was Computershare's "customer" with respect to the LBO payments. Although Section 741 of the Code provides a specialized definition of "customer" for certain purposes, see 11 U.S.C. § 741(2), the relevant section for these purposes, Section 101(22), plainly states that its definition of "customer" is not limited by Section 741's definition, see 11 U.S.C. § 101(22)(A) (defining "financial institution" to include certain entities when such entities are "acting as agent . . . for a customer (whether or not a 'customer,' as defined in section 741)"). Moreover, Section 101(22) does not provide any alternative specialized definition. Thus, we must give the term its "ordinary meaning."¹⁰ Ransom v. FIA Card Servs., N.A., 562

¹⁰ Appellants suggest that we should apply the specialized definition of "customer" given in Section 761(9), see Appellants' Reply in Support of Motion to Recall the Mandate at 10-11, which appears in a subchapter dealing with commodity broker liquidations. See 11 U.S.C. § 761(9). Section 761(9)'s definition, unlike the definition of "customer" from Section 741(2), is not

U.S. 61, 69 (2011). We have previously recognized that the “core” ordinary definition of “customer” is “someone who buys goods or services.” UBS Fin. Servs., Inc. v. W. Virginia Univ. Hosps., Inc., 660 F.3d 643, 650 (2d Cir. 2011) (citing multiple dictionary definitions). Black’s Law Dictionary, which provides more granular definitions, defines “customer” to include “a person . . . for whom a bank has agreed to collect items.” Black’s Law Dictionary (10th ed. 2014). Regardless of which definition we apply, Tribune would qualify as Computershare’s customer. Computershare agreed to collect items for Tribune by receiving the tendered shares and retaining them, and Tribune bought Computershare’s services by retaining Computershare to act as Depositary.

explicitly disclaimed in Section 101(22). Nonetheless, we believe it is clear that the definitions from Section 761(9) and Section 101(22) are not intended to be coextensive. First, there is no indication in Section 101(22)’s text that Section 761(9)’s limited definition of “customer” should apply. Moreover, Section 101(22)’s explicit disclaimer of Section 741(2)’s definition suggests that “customer” should be given a broad meaning, so it would be odd to hold – without any textual indication – that the definition in Section 761(9) circumscribes Section 101(22). In addition, other subsections of Section 101 explicitly incorporate definitions from Section 761, including its definition of “customer” specifically. See, e.g., 11 U.S.C. § 101(6) (“The term ‘commodity broker’ means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title.”). Thus, if Congress had intended to import Section 761(9)’s definition into Section 101(22), it clearly knew how (yet declined) to do so.

It is likewise plain that Computershare was Tribune’s agent. “[S]tatutes employing common-law terms,” such as agent, “are presumed . . . ‘to incorporate the established meaning of th[o]se terms,’” absent a contrary indication. U.S. ex rel. O’Donnell v. Countrywide Home Loans, Inc., 822 F.3d 650, 657 (2d Cir. 2016) (quoting Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 322 (1992)). Here, the parties have not identified any reason why the term “agent,” for the purposes of Section 101(22), should be given anything other than its common-law meaning, and we have identified none. Thus, we will apply its common-law meaning.

At common law, “[a]gency is the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.” Restatement (Third) of Agency § 1.01 (2006); see also Commercial Union Ins. Co. v. Alitalia Airlines, S.p.A., 347 F.3d 448, 462 (2d Cir. 2003) (“Establishment of [an agency] relationship requires facts sufficient to show (1) the principal’s manifestation of intent to grant authority to the agent, and (2) agreement by the agent. In addition, the principal must maintain control over key aspects of the undertaking.”) (internal citations omitted). Generally, “[w]hether an agency relationship exists is a mixed question of law and fact.” Commercial Union Ins., 347 F.3d at 462. However, the existence of an agency relationship can be resolved “as a matter of law” if: “(1) the facts are undisputed; or (2)

there is but one way for a reasonable jury to interpret them.” Garanti Finansal Kiralama A.S. v. Aqua Marine & Trading Inc., 697 F.3d 59, 71 (2d Cir. 2012).

Here, Tribune manifested its intent to grant authority to Computershare by depositing the aggregate purchase price for the shares with Computershare and entrusting Computershare to pay the tendering shareholders. Computershare, in turn, manifested its assent by accepting the funds and effectuating the transaction. Then, as the transaction proceeded, Tribune maintained control over key aspects of the undertaking. See Tribune Offer to Purchase at 81, In re Tribune Co., No. 08-13141 (KJC) (Bankr. D. Del. Aug. 20, 2010), ECF Nos. 5437-5, 5437-6 (“For purposes of the Tender Offer, [Tribune] will be deemed to have accepted payment . . . shares that are properly tendered and not properly withdrawn only when, as and if we give oral or written notice to [Computershare] of our acceptance of the shares for payment pursuant to the Tender Offer . . .”). Accordingly, the undisputed facts establish that Computershare was Tribune’s agent,¹¹ and we conclude that Tribune was a “financial institution” with respect to the LBO payments.

¹¹ The decision cited by appellants, Manufacturers Hanover Tr. Co. v. Yanakas, 7 F.3d 310 (2d Cir. 1993), see Appellants’ Reply in Support of Motion to Recall the Mandate at 10, is inapposite. That decision involved the application of the rule that, under normal circumstances, a creditor-debtor relationship does not amount to a fiduciary relationship. Manufacturers Hanover Tr., 7 F.3d at 319. Tribune and Computershare were not in a creditor-debtor relationship.

That conclusion does not end our assessment of whether the payments are subject to Section 546(e), however, because we must also determine whether all of the payments were made “in connection with a securities contract.” See Appellees’ Opposition to Appellants’ Motion to Recall the Mandate at 20; Appellants’ Reply in Support of Motion to Recall the Mandate at 10.

(ii) The Payments were Made in Connection with a “Securities Contract”

As stated above, Section 546(e) covers transfers “made by or to (or for the benefit of) a . . . financial institution, . . . in connection with a securities contract, as defined in section 741(7)[.]”¹² 11 U.S.C. § 546(e). Appellants do not dispute that “approximately half” of the payments were made in connection with a securities contract because they involved the purchase of shares. See Appellants’ Reply in Support of Motion to Recall the Mandate at 10 (acknowledging that the term “securities contract,” for these purposes, “encompasses contracts ‘to purchase shares’”) (emphasis removed). However, they contend that the remaining payments were not made in connection with a securities contract

¹² Section 546(e) also covers certain “settlement payments,” which need not be “in connection with a securities contract,” see 11 U.S.C. § 546(e), but appellees’ theory is that the payments are covered because they were transfers made in connection with a securities contract. See Appellees’ Opposition to Appellants’ Motion to Recall the Mandate at 20. Thus, we are not deciding whether the payments at issue qualify as “settlement payments” under Section 546(e).

because they involved the redemption, rather than the purchase, of shares. See id.

We disagree with appellants. The term “redemption,” in the securities context, means “repurchase.” See Quebecor, 719 F.3d at 99 (“Generally, ‘to redeem is defined as to purchase back; to regain possession by payment of a stipulated price; to repurchase; to regain, as mortgage property, by paying what is due; to receive back by paying the obligation.’”) (quoting In re United Educ. Co., 153 F. 169, 171 (2d Cir. 1907)); Merriam-Webster’s Collegiate Dictionary 1042 (11th ed. 2003) (defining “redeem” as “to buy back” or “repurchase”). Section 741(7) defines “securities contract” capaciously to include, inter alia, a “contract for the purchase [or] sale . . . of a security, . . . including any repurchase . . . transaction on any such security,” 11 U.S.C. § 741(7)(A)(i) (emphasis added), as well as “any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph.” 11 U.S.C. § 741(7)(A)(vii); see also In re Bernard L. Madoff Inv. Sec. LLC, 773 F.3d 411, 417 (2d Cir. 2014) (observing that Section 741(7) “defines ‘securities contract’ with extraordinary breadth”). Thus, we have no trouble concluding, based on Section 741(7)’s plain language, that all of the payments at issue, including those connected to the redemption of shares, were “in connection with a securities contract.”

(iii) Conclusion

For the foregoing reasons, we agree with appellees that the payments at issue remain subject to Section 546(e) following Merit Mgmt.

2. Conflict-Preemption Law

Under the Supremacy Clause, Article VI, Clause 2 of the Constitution, federal law prevails when it conflicts with state law. Arizona v. United States, 132 S. Ct. 2492, 2500 (2012).

As discussed throughout this opinion, Section 546(e)'s reference to limiting avoidance by a trustee provides appellants with a plain language argument that only a trustee et al., and not creditors acting on their own behalf, are barred from bringing state law, constructive fraudulent avoidance claims. However, as discussed infra, we believe that the language of Section 546(e) does not necessarily have the meaning appellants ascribe to it. Even if that meaning is one of multiple reasonable constructions of the statutory scheme, it would not necessarily preclude preemption because a preemptive effect may be inferred where it is not expressly provided.

Under the implied preemption doctrine,¹³ state laws are “pre-empted to the extent of any conflict

¹³ We see no need for a full discussion of various modes of analysis used to determine federal preemption, i.e., “express” preemption, Chamber of Commerce v. Whiting, 131 S. Ct. 1968, 1977 (2011), “field” preemption, Arizona v. United States, 132 S. Ct. 2492, 2502 (2012), or even that branch of “implied” preemption that requires a showing of “impossibility” of complying with both state and federal law, id. at 2501. The only

with a federal statute. Such a conflict occurs . . . when [] state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hillman v. Maretta*, 133 S. Ct. 1943, 1949-50 (2013) (citations and internal quotation marks omitted); accord *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 725 F.3d 65, 97 (2d Cir. 2013) cert. denied sub nom. *Exxon Mobil Corp. v. City of New York*, 134 S. Ct. 1877 (2014) (courts will find implied preemption when “state law directly conflicts with the structure and purpose of a federal statute”) (citation and internal quotation marks omitted). Appellants argue that a recognized presumption against preemption limits the implied preemption doctrine. They argue that Section 546(e) preempts creditors’ state law, fraudulent conveyance claims only if the claims would do “‘major damage’ to ‘clear and substantial’ federal interests.” Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 45 (quoting *Hillman*, 133 S. Ct. 1943, 1950 (2013) (citation omitted)). The presumption against inferring preemption is premised on federalism grounds and, therefore, weighs most heavily where the particular regulatory area is “traditionally the domain of state law.” *Hillman*, 133 S. Ct. at 1950; see also *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 241 (2d Cir. 2006) (“The mere fact of ‘tension’ between federal and state law is generally not enough to

relevant analysis in the present matter is preemption inferred from a conflict between state law and the purposes of federal law, as discussed in the text.

establish an obstacle supporting preemption, particularly when the state law involves the exercise of traditional police power.”). According to appellants, the presumption against preemption fully applies in the present context because fraudulent conveyance claims are “among ‘the oldest [purposes] within the ambit of the police power.’” Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 36 (quoting California v. Zook, 336 U.S. 725, 734 (1949)).

Preemption is always a matter of congressional intent, even where that intent must be inferred. See Cipollone v. Liggett Grp., Inc., 505 U.S. 504, 516 (1992) (congressional intent is the “ultimate touchstone of pre-emption analysis”) (quoting Malone v. White Motor Corp., 435 U.S. 497, 504 (1978)) (internal quotation marks omitted); N.Y. SMSA Ltd. P’ship v. Town of Clarkstown, 612 F.3d 97, 104 (2d Cir. 2010) (“The key to the preemption inquiry is the intent of Congress.”). As in the present matter, the presumption against preemption usually goes to the weight to be given to the lack of an express statement overriding state law.

The presumption is strongest when Congress is legislating in an area recognized as traditionally one of state law alone. See Hillman, 133 S. Ct. at 1950 (stating that because “[t]he regulation of domestic relations is traditionally the domain of state law . . . [t]here is [] a presumption against pre-emption”) (internal quotation marks and citation omitted). However, the present context is not such an area. To understate the proposition, the regulation of creditors’ rights has “a history of significant federal

presence.” United States v. Locke, 529 U.S. 89, 90 (2000).

Congress’s power to enact bankruptcy laws was made explicit in the Constitution as originally enacted, Art. 1, § 8, cl. 4, and detailed, preemptive federal regulation of creditors’ rights has, therefore, existed for over two centuries. Charles Jordan Tabb, The History of the Bankruptcy Laws in the United States, 3 Am. Bankr. Inst. L. Rev. 5, 7 (1995). Once a party enters bankruptcy, the Bankruptcy Code constitutes a wholesale preemption of state laws regarding creditors’ rights. See Eastern Equip. and Servs. Corp. v. Factory Point Nat. Bank, Bennington, 236 F.3d 117, 120 (2d Cir. 2001) (“The United States Bankruptcy Code provides a comprehensive federal system of penalties and protections to govern the orderly conduct of debtors’ affairs and creditors’ rights.”); In re Miles, 430 F.3d 1083, 1091 (9th Cir. 2005) (“Congress intended the Bankruptcy Code to create a whole scheme under federal control that would adjust all of the rights and duties of creditors and debtors alike . . .”).

Consider, for example, the present proceeding. While the issue before us is often described as whether Section 546(e) preempts state fraudulent conveyance laws, Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 33, that is a mischaracterization. Appellants’ state law claims were preempted when the Chapter 11 proceedings commenced and were not dismissed. Appellants’ own arguments posit that those claims were, at the very least, stayed by Code Section 362. Whether, as appellants argue, they were restored in full after two

years, see 11 U.S.C. § 546(a)(1)(A), or by order of the bankruptcy court, see 11 U.S.C. § 349(b)(3), is hotly disputed. But if they were restored, it was by force of federal law.

Once Tribune entered bankruptcy, the creditors' avoidance claims were vested in the federally appointed trustee et al. 11 U.S.C. § 544(b)(1). A constructive fraudulent conveyance action brought by a trustee et al. under Section 544 is a claim arising under federal law. See In re Intelligent Direct Mktg., 518 B.R. 579, 587 (E.D. Cal. 2014); In re Trinsum Grp., Inc., 460 B.R. 379, 387-88 (S.D.N.Y. 2011); In re Sunbridge Capital, Inc., 454 B.R. 166, 169 n.16 (Bankr. D. Kan. 2011); In re Charys Holding Co., Inc., 443 B.R. 628, 635-36 (Bankr. D. Del. 2010). Although such a claim borrows applicable state law standards regarding avoiding the transfer in question, see Universal Church v. Geltzer, 463 F.3d 218, 222 n.1 (2d Cir. 2006), the claim has its own statute of limitations, 11 U.S.C. § 546(a)(1)(A), measure of damages, see 11 U.S.C. § 550, and standards for distribution, 11 U.S.C. § 726. A disposition of this federal law claim extinguishes the right of creditors to bring state law, fraudulent conveyance claims. See St. Paul Fire, 884 F.2d at 701 disapproved of on other grounds by In re Miller, 197 B.R. 810 (W.D.N.C. 1996) (noting that "creditors are bound by the outcome of the trustee's action"); see also In re PWS Holding Corp., 303 F.3d 308, 314-15 (3d Cir. 2002) (barring creditor's state law, fraudulent transfer claims after trustee released § 544 claims). And, if creditors are allowed by a bankruptcy court, trustee, or, as appellants argue, by

the Bankruptcy Code, to bring state law actions in their own name, that permission is a matter of grace granted under federal authority. The standards for granting that permission, moreover, have everything to do with the Bankruptcy Code's balancing of debtors' and creditors' rights, In re Coltex Loop Cent. Three Partners, L.P., 138 F.3d 39, 44 (2d Cir. 1998), or rights among creditors, United States v. Ron Pair Enters, Inc., 489 U.S. 235, 248 (1989), and nothing to do with the vindication of state police powers.

We also note here, and discuss further infra, that the policies reflected in Section 546(e) relate to securities markets, which are subject to extensive federal regulation. The regulation of these markets has existed and grown for over eighty years and reflects very important federal concerns.

In the present matter, therefore, there is no measurable concern about federal intrusion into traditional state domains. Our bottom line is that the issue before us is one of inferring congressional intent from the Code, without significant countervailing pressures of state law concerns.

3. The Language of Section 546(e)

Section 544(b) empowers a trustee et al. to avoid a "transfer . . . [by] the debtor . . . voidable under applicable law by a[n] [unsecured] creditor." Section 548(a) also provides the trustee et al. with independent federal intentional, 11 U.S.C. § 548(a)(1)(A), and constructive fraudulent conveyance claims, 11 U.S.C. § 548(a)(1)(B).

Section 546(e) provides in pertinent part:

Notwithstanding sections 544, . . . 548(a)(1)(B) . . . of this title, the trustee may not avoid a transfer that is a . . . settlement payment . . . made by or to (or for the benefit of) a . . . stockbroker, financial institution, financial participant, or securities clearing agency, or that is a transfer made by or to (or for the benefit of) a . . . stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract . . . except under section 548(a)(1)(A). . . .

Id. § 546(e). Section 546(e) thus expressly prohibits trustees et al. from using their Section 544(b) avoidance powers and (generally) Section 548 against the transfers specified in Section 546(e). However, Section 546(e) creates an exception to that prohibition for claims brought by trustee et al. under Section 548(a)(1)(A) that, as noted, establishes a federal avoidance claim to be brought by a trustee et al. based on an intentional fraud theory. As discussed supra, the Litigation Trust brought a Section 548(a)(1)(A) claim against the same transfers challenged by appellants' actions before us on this appeal, which was still pending when appellants' claims were dismissed.

The language of Section 546(e) covers all transfers by or to covered entities that are "settlement payment[s]" or "in connection with a securities contract." Transfers in which either the transferor or transferee is not a covered entity are clearly included in the language, so long as one of the two is a covered entity. The Section does not distinguish between kinds of transfers, e.g.,

settlements of ordinary day-to-day trading, LBOs, or mergers in which shareholders of one company are involuntarily cashed out. So long as the transfer sought to be avoided is within the language quoted above, the Section includes avoidance proceedings in which the covered entity would escape a damages judgment. But see *In re Lyondell Chem. Co.*, 503 B.R. 348, 372-73 (Bankr. S.D.N.Y. 2014), as corrected (Jan. 16, 2014) (holding that Section 546(e) does not include “LBO payments to stockholders at the very end of the asset transfer chain, where the stockholders are the ultimate beneficiaries of the constructively fraudulent transfers, and can give the money back to injured creditors with no damage to anyone but themselves”).

4. Appellants’ Legal Theory

Appellants’ state law, constructive fraudulent conveyance claims purport to be brought under mainstream bankruptcy procedures directly mandated by the Code. However, an examination of the Code as a whole, in contrast with an isolated focus on the word “trustee” in Section 546(e), reveals that appellants’ theory relies upon adhering to statutory language only when opportune and resolving various ambiguities in a way convenient to that theory. Even then, their legal theory results in anomalies and inconsistencies with parts of the Code. The consequence of those ambiguities, anomalies, and conflicts is that a reader of Section 546(e), at the time of enactment, would not have necessarily concluded that the reference only to a trustee et al. meant that creditors may at some point bring state law claims seeking the very relief barred

to the trustee et al. by Section 546(e). Its meaning, therefore, is not plain.

(i) Appellants' Theory of Fraudulent Conveyance Avoidance Proceedings

Appellants' theory goes as follows. When a debtor enters bankruptcy, all "legal or equitable interests of the debtor in property," 11 U.S.C. § 541(a)(1), vest in the debtor's bankruptcy estate. This property includes legal claims that could have been brought by the debtor. See U.S. ex rel. Spicer v. Westbrook, 751 F.3d 354, 361-62 (5th Cir. 2014) ("The phrase 'all legal or equitable interests' includes legal claims—whether based on state or federal law."). Therefore, "the Trustee is conferred with the authority to represent all creditors and the Debtor's estate and with the sole responsibility of bringing actions on behalf of the Debtor's estate to marshal assets for the estate's creditors." In re Stein, 314 B.R. 306, 311 (D.N.J. 2004). However, fraudulent conveyance claims proceed on a theory that an insolvent debtor may not make what are essentially gifts that deprive creditors of assets available to pay debts. See Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 322 (1999). Therefore, before a bankruptcy takes place, fraudulent conveyance claims belong to creditors rather than to the debtor. As a consequence, Section 544(b)(1) provides that a bankruptcy trustee may avoid "any transfer of an interest of the debtor . . . that is voidable under applicable law by a creditor holding an unsecured claim." 11 U.S.C. § 544(b)(1). The responsibility of the trustee et al. is to "step into the shoes of a creditor under state law and avoid any transfers

such a creditor could have avoided.” Univ. Church v. Geltzer, 463 F.3d 218, 222 n.1 (2d Cir. 2006).

The trustee et al., however, is subject to a statute of limitations that requires such claims to be brought within two years of the commencement of the bankruptcy proceeding. See 11 U.S.C. § 546(a)(1)(A). Appellants infer from this statute of limitations that if the trustee et al. fails to act to enforce such claims during that two-year period, the claims revert to creditors who may then pursue their own state law, fraudulent conveyance actions. Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 1. This position assumes that, although the power to bring such actions is clearly vested in the trustee et al. when the bankruptcy proceeding begins, if the power is not exercised, it returns in full flower to the creditors after the bankruptcy ends or after two years.

Appellants’ theory also is that their fraudulent conveyance claims were only stayed under Section 362(a), rather than extinguished when assumed by the trustee on behalf of the bankrupt estate by the trustee et al. under Section 544, and could be asserted by them as creditors when the Section 362(a) stay was lifted. Accordingly, appellants argue, when the Committee did not bring constructive fraudulent conveyance actions against the LBO transfers by December 8, 2010, appellants regained the right to bring their own state law actions. See Resp. & Reply Br. of Pls.-Appellants-Cross Appellees 6. Moreover, they correctly note that Section 362’s automatic stay was, as discussed supra, lifted. In either case -- automatically after two years or by the bankruptcy court’s lifting of the

stay -- appellants assert that the right to bring state law actions has reverted to them.

(ii) Ambiguities, Anomalies, and Conflicts

When appellants' arguments and their relation to the Code are viewed, as we must view them, in their entirety, *In re Boodrow*, 126 F.3d 43, 49 (2d Cir. 1997) ("The Supreme Court has thus explained . . . 'we must not be guided by a single sentence or [part] of a sentence [of the Code], but look to the provisions of the whole law, and to its object and policy.'") (quoting *Kelly v. Robinson*, 479 U.S. 36, 43 (1986)), they reveal material ambiguities, anomalies, and outright conflicts with the purposes of Code Sections 544, 362, and 548, not to mention the outright conflict with Section 546(e) discussed *infra*.

A critical step in the logic of appellants' theory finds no support in the language of the Code. In particular, the inference that fraudulent conveyance actions revert to creditors if either the two-year statute of limitations passes without an exercise of the trustees' et al. powers under Section 544 or the Section 362(a) stay is lifted by the bankruptcy court has no basis in the Code's language. To begin, the language of the automatic stay provision applies only to actions against "the debtor." 11 U.S.C. § 362. To be sure, there are cases barring fraudulent conveyance actions brought by creditors before the passing of the limitations period or lifting of the stay. See, e.g., *In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1101 (2d Cir. 1990). The rationales of these cases vary. Some rely on Section 362(a) on the theory that the fraudulent conveyance claims are the

property of the debtors' estate. See *In re MortgageAmerica Corp.*, 714 F.2d 1266, 1275-76 (5th Cir. 1983); *Matter of Fletcher*, 176 B.R. 445, 452 (Bankr. W.D. Mich. 1995), rev'd and remanded on other grounds sub nom. *In re Van Orden*, No. 1:95-CV-79, 1995 WL 17903731 (W.D. Mich. Sept. 5, 1995). Some do not mention Section 362(a) and rely on the need to protect trustees' et al. powers to bring Section 544 avoidance actions. See *In re Van Diepen, P.A.*, 236 F.App'x. 498, 502-03 (11th Cir. 2007); *In re Clark*, 374 B.R. 874, 876 (Bankr. M.D. Ala. 2007); *In re Tessmer*, 329 B.R. 776, 780 (Bankr. M.D. Ga. 2005). All the caselaw agrees that the trustee et al.'s powers under Section 544 are exclusive, at least until the stay is lifted or the two-year period expires.

Equally important is the fact that the inference of a reversion of fraudulent conveyance claims to creditors drawn from Section 544's statute of limitations is not based on the language of the Code, which says nothing about the reversion of claims vested in the trustee et al. by Section 544. Statutes of limitation usually are intended to limit the assertion of stale claims and to provide peace to possible defendants, *Converse v. Gen. Motors Corp.*, 893 F.2d 513, 516 (2d Cir. 1990), and not to change the identity of the authorized plaintiffs without some express language to that effect. A decisive part of appellants' legal theory thus has no support in the language of the Code.

Even if this gap is assumed not to exist, or can be otherwise traversed, appellants' theory encounters other serious problems. Section 544, vesting

avoidance powers in the trustee et al., is intended to simplify proceedings, reduce the costs of marshalling the debtor's assets, and assure an equitable distribution among the creditors. See *In re MortgageAmerica Corp.*, 714 F.2d 1266, 1275-76 (5th Cir. 1983) (noting that "[t]he 'strong arm' provision of the [Bankruptcy] Code, 11 U.S.C. § 544, allows the bankruptcy trustee to step into the shoes of a creditor for the purpose of asserting causes of action under state fraudulent conveyance acts for the benefit of all creditors, not just those who win a race to judgment" and Section 362 helps prevent "[a]ctions for the recovery of the debtor's property by individual creditors under state fraudulent conveyance laws [that] would interfere with [the bankruptcy] estate and with the equitable distribution scheme dependent upon it"). However, these purposes are hardly consistent with the process hypothesized by appellants.

Accepting for purposes of argument appellants' view of the applicable process, Section 362, at the very least, prevented appellants (for a time) from bringing their state law, fraudulent conveyance claims, while Section 546(e) barred the Committee from seeking to enforce or, necessarily, to settle them. Appellants' argument thus seems to posit that their claims are on hold until the trustees et al. decide whether to bring an action they are powerless to bring or to pass on to creditors a power they do not have. In short, it assumes that, when creditors' avoidance claims are lodged in the trustee et al. and are diminished in that hand by the Code, they reemerge in undiminished form in the hands of

creditors after the statute of limitations governing actions by the trustee et al. has run or the bankruptcy court lifts the automatic stay.

In the context of the Code, however, any such process is a glaring anomaly. Section 548(a)(1)(A) vests trustees with a federal claim to avoid the very transfers attacked by appellants' state law claims -- but only on an intentional fraud theory. There is little apparent reason to limit trustees et al. to intentional fraud claims while not extinguishing constructive fraud claims but rather leaving them to be brought later by individual creditors. In particular, enforcement of the intentional fraud claim is undermined if creditors can later bring state law, constructive fraudulent conveyance claims involving the same transfers. Any trustee would have grave difficulty negotiating more than a nominal settlement in the federal action if it cannot preclude state claims attacking the same transfers but not requiring a showing of actual fraudulent intent. Unable to settle, a trustee et al. will be reluctant to expend the estate's resources on vigorously pursuing the federal claim while awaiting the stayed state claims to revert and to be litigated by creditors. As happened in the present matter, the result is that the trustee et al.'s action awaits the pursuit of piecemeal actions by creditors. This is precisely opposite of the intent of the Code's procedures. While a bankruptcy court can reduce the delay by an early lifting of the automatic stay with regard to constructive fraudulent conveyance actions, that action would underline the anomaly of

applying the stay to the bringing of claims that are barred to trustees et al.

Staying ordinary state law, constructive fraudulent conveyance claims by individual creditors while the trustee deliberates is a rational method of avoiding piecemeal litigation and ensuring an equitable distribution of assets among creditors. See *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006) (“The objectives of the Bankruptcy Code . . . include . . . ‘the need to protect creditors and reorganiz[e] debtors from piecemeal litigation’”) (quoting *Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp.*, 118 F.3d 1056, 1069 (5th Cir. 1997)). However, the scheme described by appellants does not resemble this method either in simplicity or in the equitable treatment of creditors.

To rationalize these anomalies, appellants speculate as to -- more accurately, imagine -- a deliberate balancing of interests by Congress. They argue that Congress wanted to balance the need for certainty and finality in securities markets, recognized in Section 546(e), against the need to maximize creditors’ recoveries, recognized in various other provisions. Congress did so, they argue, by limiting only the avoidance powers of trustees et al., not those of individual creditors (save for the stay), in Section 546(e) because actions by trustees et al. are a greater threat to securities markets than are actions by individual creditors. Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 71. That greater threat results from the fact that a trustee’s power of avoidance is funded by the debtor’s estate, see 11 U.S.C. §§ 327, 330, supported by national long-arm

jurisdiction, see Fed. R. Bankr. P. 7004(d),(f), and can be used to avoid the entirety of a transfer, *Tronox Inc. v. Anadarko Petroleum Corp.* (In re *Tronox Inc.*), 464 B.R. 606, 615-17 (Bankr. S.D.N.Y. 2012) (citing *Moore v. Bay*, 284 U.S. 4 (1931)). Creditors, in turn, have no such funding, are limited by state jurisdictional rules, and can sue only for their individual losses. See *In re Integrated Agri, Inc.*, 313 B.R. 419, 428 (Bankr. C.D. Ill. 2004). Therefore, appellants argue that a deliberate “balance” was struck by protecting securities markets from trustees’ et al. actions while subjecting them to the lesser disruption individual creditors’ actions might cause after a two-year stay. Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 83-85. For a court to upset this delicate balance would constitute judicial intrusion on policy decisions rightfully left to the Congress.

However, the balance described above is an ex post explanation of a legal scheme that appellants must first construct, and then justify as rational, because it is essential to their claims. Although they argue that the scheme was deliberately constructed by Congress, that argument lacks any support whatsoever in the legislative deliberations that led to Section 546(e)’s enactment.

Moreover, appellants’ arguments understate the number of creditors who would sue, if allowed, and the corresponding extent of the danger to securities markets. Creditors may assign their claims and various methods of aggregation can lead to billions of dollars of claims, as here.

(iii) No Plain Meaning

These issues reflect ambiguities as to exactly what is transferred to trustees et al. by Section 544(b)(1). It is clear that trustees et al. own the debtors' estates, which include the debtors' property and legal claims. See 11 U.S.C. § 541(a)(1) (Among other things, the "estate is comprised of . . . all legal or equitable interests of the debtor in property as of the commencement of the case"); U.S. ex rel. Spicer v. Westbrook, 751 F.3d 354, 361-62 (5th Cir. 2014) ("The phrase 'all legal or equitable interests' includes legal claims -- whether based on state or federal law."). Avoidance claims belong to creditors, however, and whether they become the property of the debtors' estates is a debated, and somewhat metaphysical, issue. The issue does have a limited practical bearing on the present matter, however. If the claims asserted by appellants became the property of the debtor's estate upon Tribune's bankruptcy and were thereby limited in the hands of the Committee, their reversion in an unaltered form, whether occurring automatically or by act of the Committee or bankruptcy court, might seem counterintuitive.

Appellants' reliance on the applicability of the automatic stay to their claims would arguably support the "property" view. The stay is intended in part to protect the property rights of the trustee et al. in the debtor's estate. Subjecting avoidance actions by creditors to the stay has been supported by various courts on the ground that such claims are either the property of the debtor's estate or have an equivalent legal status. See In re MortgageAmerica

Corp., 714 F.2d 1266, 1275-76 (5th Cir. 1983); In re Swallen's, Inc., 205 B.R. 879, 882 (Bankr. S.D. Ohio 1997); Matter of Fletcher, 176 B.R. 445, 452 (Bankr. W.D. Mich. 1995).

Whether, and to what degree, fraudulent conveyance claims become the property of a bankrupt estate was, at the time of Section 546(e)'s enactment, and now, anything but clear. The principal Supreme Court precedent held that such claims are the property of the debtor's estate. Trimble v. Woodhead, 102 U.S. 647, 649 (1880). It is a very old decision but has not been expressly overruled. Subsequent court of appeals decisions are bountiful in contradictory statements regarding the property issue. Compare In re Cybergenics Corp., 226 F.3d 237, 241, 246 (3d Cir. 2000) (stating that "fraudulent transfer claims have long belonged to a transferor's creditors, whose efforts to collect their debts have essentially been thwarted as a consequence of the transferor's actions" but also noting that the debtor's "'assets' and 'property of the estate' have different meanings, evidenced in part by the numerous provisions in the Bankruptcy Code that distinguish between property of the estate and property of the debtor, or refer to one but not the other"), and Picard v. Fairfield Greenwich Ltd., 762 F.3d 199, 212 (2d Cir. 2014) ("Our case law is clear that assets targeted by a fraudulent conveyance action do not become property of the debtor's estate under the Bankruptcy Code until the Trustee obtains a favorable judgment."), with Cumberland Oil Corp. v. Thropp, 791 F.2d 1037, 1042 (2d Cir. 1986) (noting that causes of action alleging violation of fraudulent

conveyance laws would be property of the estate), and Nat'l Tax Credit Partners v. Havlik, 20 F.3d 705, 708-09 (7th Cir. 1994) (“[T]he right to recoup a fraudulent conveyance, which outside of bankruptcy may be invoked by a creditor, is property of the estate that only a trustee or debtor in possession may pursue once a bankruptcy is underway.”).

Use of the term “property” as a short-hand way of suggesting exclusivity has merit, Henry E. Smith, Property and Property Rules, 79 N.Y.U. L. Rev. 1719, 1770-74 (2004), but Section 544(b)(1) does not expressly state whether the bundle of rights transferred can revert. However, we need not resolve either the “property” or the reversion issues. Whether the statutory language has a plain meaning turns on whether a consensus would have existed among reasonable, contemporaneous readers as to meaning of that language in the particular statutory context. See Pettus v. Morgenthau, 554 F.3d 293, 297 (2d Cir. 2009) (“[W]e attempt to ascertain how a reasonable reader would understand the statutory text, considered as a whole.”); Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 252-53 (2004) (noting that “[s]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose”) (quoting Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc., 469 U.S. 189, 194 (1985)). If differing views as to meaning were reasonable at the time of Section 546(e)’s enactment, its meaning is less than plain. See, e.g., Rodriguez v. Cuomo, 953 F.2d 33, 39-40 (2d Cir. 1992).

Appellants' arguments on meaning rely not only on the reference to a trustee's et al. powers but equally, or more so, on a claim of settled law at the time of Section 546(e)'s enactment that creditors' avoidance rights not only revert to creditors but also revert in their original breadth. However, whether fraudulent conveyance claims revert as a matter of law upon a trustee's failure to act was, both at the time Section 546(e) was passed as well as now, unclear, as discussed supra. A contemporaneous reader would not, therefore, necessarily have believed it plain that Section 546(e)'s reference only to a trustee's et al. avoidance claim meant that creditors could bring their own claims.¹⁴

A contemporaneous reader would also notice that the language of the automatic stay provision does not literally apply to appellants' actions and that no provision for the reversion of claims vested in the trustee et al. by Section 544 exists. As explained supra, having to draw an inference of reversion of rights from that provision's statute of limitations might well have appeared as a leap several bridges too far to such a reader. Indeed, the vesting of avoidance claims in the trustee et al., the lack of applicable language in the automatic stay provision, and the lack of a statutory basis for reversion might well have suggested to such a reader that Section 544's vesting of avoidance proceedings in the trustee

¹⁴ Our task of determining how a contemporaneous reader would have read Section 546(e) does not depend on the caselaw of one particular circuit.

et al. cut off creditors from any avoidance rights other than a share of the proceeds in bankruptcy.

Even passing these obstacles, the structure of the Code and the relationship of its pertinent sections might have suggested to a contemporaneous reader that altered rights do not revert to creditors unaltered, or to put it another way, a trustee et al. cannot pass on, or “allow” to revert through passivity, a right the trustee et al. does not have. To be sure, contemporaneous readers might have taken other views, including those of appellants, but that is the very definition of ambiguity.

(iv) Conclusion

We need not resolve these issues or even hold that the lack of statutory support, ambiguities, anomalies, or conflicts with purposes of the Code are sufficient to support a preemption holding. They are sufficient, however, to dispel the suggestions found in some discussions of these issues of a clear textual basis for appellants’ theory in the Code and an overall consistency with congressional purpose. See In re Lyondell Chem. Co., 503 B.R. 348, 358-59 (Bankr. S.D.N.Y. 2014) as corrected (Jan. 16, 2014); In re: Tribune Co. Fraudulent Conveyance Litig., 499 B.R. at 315. We also need not issue a decision that affects fraudulent conveyance actions brought by creditors whose claims are not subject to Section 546(e). Our ensuing discussion concludes that the purposes and history of that Section necessarily reflect an intent to preempt the claims before us. We turn now to the conflict between those claims and Section 546(e).

5. Conflict with Section 546(e)

As discussed supra, the meaning of Section 546(e) with regard to appellants' rights to bring the actions before us is ambiguous. We must, therefore, look to its language, legislative history, and purposes to determine its effect. Marvel Characters, Inc. v. Simon, 310 F.3d 280, 290 (2d Cir. 2002). Every congressional purpose reflected in Section 546(e), however narrow or broad, is in conflict with appellants' legal theory. Their claims are, therefore, preempted.

Section 546(e) was intended to protect from avoidance proceedings payments by and to commodities and securities firms in the settlement of securities transactions or the execution of securities contracts. The method of settlement through such entities is essential to securities markets. Payments by and to such entities provide certainty as to each transaction's consummation, speed to allow parties to adjust the transaction to market conditions, finality with regard to investors' stakes in firms, and thus stability to financial markets. See H.R. Rep. No. 97-420 (1982); H.R. Rep. No. 95-595 (1977). Unwinding settled securities transactions by claims such as appellants' would seriously undermine -- a substantial understatement -- markets in which certainty, speed, finality, and stability are necessary to attract capital. To allow appellants' claims to proceed, we would have to construe Section 546(e) as achieving the opposite of what it was intended to achieve.

Allowing creditors to bring claims barred by Section 546(e) to the trustee et al. only after the

trustee et al. fails to exercise powers it does not have would increase the disruptive effect of an unwinding by lengthening the period of uncertainty for covered entities and investors. Indeed, the idea of preventing a trustee from unwinding specified transactions while allowing creditors to do so, but only later, is a policy in a fruitless search of a logical rationale.

The narrowest purpose of Section 546(e) was to protect other commodities and securities firms from avoidance claims seeking to unwind a bankrupt commodities or securities firm's transactions that consummated transfers between customers. See H.R. Rep. No. 97-420, at 1 (1982) ("The commodities and securities markets operate through a complex system of accounts and guarantees. Because of the structure of the clearing systems in these industries and the sometimes volatile nature [of] the markets, certain protections are necessary to prevent the insolvency of one commodity or security firm from spreading to other firms and possibl[y] threatening the collapse of the affected market."). It must be emphasized that appellants' legal theory would clearly allow such claims to be brought (later) by creditors of the bankrupt firm. Even the narrowest purpose of Section 546(e) is thus at risk.

Some judicial and other discussions of these issues avoid addressing the full effects of adopting appellants' arguments. See In re Lyondell Chem. Co., 503 B.R. 348, 359-78 (Bankr. S.D.N.Y. 2014) as corrected (Jan. 16, 2014). Such analysis always begins by reliance on the "trustee" language, id. at 358, but then narrows the scope of the transfers covered by Section 546(e)'s language. For example,

appellants argue that the concerns of the amicus curiae Securities and Exchange Commission regarding the effect of the district court's decision on the securities markets are misplaced, because appellants are not seeking money from the intermediaries.¹⁵ Resp. & Reply Br. of Pls.-Appellants Cross-Appellees 78-82. In doing so, they rely upon the Lyondell opinion, which, after relying on the “trustee” language, held that Section 546(e) is not preemptive of state law, fraudulent conveyance actions involving LBOs because such actions do not implicate the purposes of Section 546(e). 503 B.R. at 372-73.

There is no little irony in putting lynchpin reliance on the word “trustee” while ignoring the language that follows. In any event, for the reasons stated above, Section 546(e)'s language is broad enough under certain circumstances to cover a bankrupt firm's LBO payments even where, as here, that firm's business was primarily commercial in nature. 11 U.S.C. § 546(e) (limitations on avoidance of transfers made by a “customer” of a financial institution “in connection with a securities contract”). A search for legislative purpose is heavily informed by language, and analyzing all the language of a

¹⁵ Under the “Collapsing Doctrine,” “[c]ourts analyzing the effect of LBOs have routinely analyzed them by reference to their economic substance, ‘collapsing’ them, in many cases, to consider the overall effect of multi-step transactions.” In re Lyondell Chem. Co., 503 B.R. 348, 354, 379 (Bankr. S.D.N.Y. 2014) as corrected (Jan. 16, 2014). Monies passed through intermediaries are deemed to be the property only of the ultimate recipients, here the cashed out shareholders.

provision and its relationship to the Code as a whole is preferable to using literalness here and perceived legislative purpose (without regard to language) where as needed to reach particular results. See King v. Burwell, 135 S. Ct. 2480, 2489 (2015) (“[O]ftentimes the meaning -- or ambiguity -- of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme. Our duty, after all, is to construe statutes, not isolated provisions.”) (internal quotation marks and citations omitted).

We do not dwell on this because we perceive no conflict between Section 546(e)’s language and its purpose. Section 546(e) is simply a case of Congress perceiving a need to address a particular problem within an important process or market and using statutory language broader than necessary to resolve the immediate problem. Such broad language is intended to protect the process or market from the entire genre of harms of which the particular problem was only one symptom. The legislative history of Section 546(e) clearly reveals such a purpose. That history (confirmed by the broad language adopted) reflects a concern over the use of avoidance powers not only after the bankruptcy of a commodities or securities firm, but also after a “customer” or “other participant” in the securities markets enters bankruptcy. See H.R. Rep. No. 97-420 (1982). To be sure, the examples used by the Section’s proponents focused on the immediate concern of creditors of bankrupt brokers seeking to

unwind payments by the bankrupt firm to other brokers. Id. Such actions were perceived as creating a danger of “a ripple effect,” id., a chain of bankruptcies among brokers disrupting the securities market generally. From these examples, appellants, and others, have argued that when monetary damages are sought only from shareholders, or an LBO is involved, the purposes of Section 546(e) are not implicated. See Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 79; In re Lyondell, 503 B.R. at 358-59. Even apart from using the oil and water mixture of applying a narrow literalness to the word “trustee” and disregarding the rest of the Section’s language, we disagree.

As courts have recognized, Congress’s intent to “minimiz[e] the displacement caused in the commodities and securities markets in the event of a major bankruptcy affecting those industries,” Quebecor, 719 F.3d at 100 (quoting Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V., 651 F.3d 329, 333 (2d Cir. 2011)), reflected a larger purpose memorialized in the legislative history’s mention of bankrupt “customers” or “other participant[s]” and in the broad statutory language defining the transactions covered. That larger purpose was to “promot[e] finality . . . and certainty” for investors, by limiting the circumstances, e.g., to cases of intentional fraud, under which securities transactions could be unwound. In re Kaiser Steel Corp., 952 F.2d 1230, 1240 n.10 (10th Cir. 1991) (quoting H. Rep. No. 484, 101st Cong. 2d Sess. 2 (1990), reprinted in 1990 U.S.C.C.A.N. 223, 224).

The broad language used in Section 546(e) protects transactions rather than firms, reflecting a purpose of enhancing the efficiency of securities markets in order to reduce the cost of capital to the American economy. See Bankruptcy of Commodity and Securities Brokers: Hearings Before the Subcomm. on Monopolies and Commercial Law of the Comm. on the Judiciary, 47th Cong. 239 (1981) (statement of Bevis Longstreth, Commissioner, SEC) (explaining that, without 546(e), the Bankruptcy Code's "preference, fraudulent transfer and stay provisions can be interpreted to apply in harmful and costly ways to customary methods of operation essential to the securities industry"). As noted, central to a highly efficient securities market are methods of trading securities through commodities and securities firms. Section 546(e)'s protection of the transactions consummated through these entities was not intended as protection of politically favored special interests. Rather, it was sought by the SEC - and corresponding provisions by the CFTC, see Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary, 94th Cong., Supp. App. Pt. 4, 2406 (1976) - in order to protect investors from the disruptive effect of after-the-fact unwinding of securities transactions.

A lack of protection against the unwinding of securities transactions would create substantial deterrents, limited only by the copious imaginations of able lawyers, to investing in the securities market. The effect of appellants' legal theory would be akin to

the effect of eliminating the limited liability of investors for the debts of a corporation: a reduction of capital available to American securities markets.

For example, all investors in public companies would face new and substantial risks, if appellants' theory is adopted. At the very least, each would have to confront a higher degree of uncertainty even as to the consummation of securities transfers. The risks are not confined to the consummation of securities transactions. Pension plans, mutual funds, and similar institutional investors would find securities markets far more risky if exposed to substantial liabilities derived from investments in securities sold long ago. If appellants were to prevail, a pension plan whose position in a firm was cashed out in a merger might have to set aside reserves in case the surviving firm went bankrupt and triggered avoidance actions based on a claim that the cash out price exceeded the value of the shares. Every economic downturn could expose such institutional investors not only to a decline in the value of their current portfolios but also to claims for substantial monies received from mergers during good times.

Given the occasional volatility of economic events, any transaction buying out shareholders would risk being attacked as a fraudulent conveyance avoidable by creditors if the firm faltered. Appellants' legal theory could even reach investors who, after voting against a merger approved by other shareholders, were involuntarily cashed out. Tender offers, which almost always involve a premium above trading price, Lynn A. Stout, Are Takeover Premiums Really Premiums? Market Price, Fair Value, and Corporate

Law, 99 Yale L.J. 1235, 1235 (1990), would imperil cashed out shareholders if the surviving entity encountered financial difficulties.

If appellants' theory was adopted, individual investors following a conservative buy-and-hold strategy with a diversified portfolio designed to reduce risk might well decide that such a strategy would actually increase the risk of crushing liabilities. Such a strategy is adopted because it involves low costs of monitoring the prospects of individual companies and emphasizes the offsetting of unsystematic risks by investing in multiple firms. See Leigh v. Engle, 858 F.2d 361, 368 (7th Cir. 1988). Appellants' legal theory might well require costly and constant monitoring by investors to rid their portfolios of investments in firms that might, under then-current circumstances, be subject to mergers, stock buy-backs, or tender offers (and would otherwise be good investments). Investing in multiple companies, the essence of diversification, would increase the danger of avoidance liability.

The threat to investors is not simply losing a lawsuit. Given the costliness of defending such legal actions and the long delay in learning their outcome, exposing investors to even very weak lawsuits involving millions of dollars would be a substantial deterrent to investing in securities. The need to set aside reserves to meet the costs of litigation -- not to mention costs of losing -- would suck money from capital markets.

As noted, concern has been expressed that LBOs are different from other transactions in ways pertinent to the Bankruptcy Code. In re Lyondell

Chem. Co., 503 B.R. 348, 354, 358-59 (Bankr. S.D.N.Y. 2014), as corrected (Jan. 16, 2014). However, the language of Section 546(e) clearly covers the LBO payments at issue here for the reasons stated above.

Moreover, securities markets are heavily regulated by state and federal governments. The statutory supplements used in law school securities regulation courses are thick enough to rival Kevlar in stopping bullets. Mergers and tender offers are among the most regulated transactions. See, e.g., Williams Act, 15 U.S.C.A. §§ 78m(d)-(e), 78n(d). Much of the content of state and federal regulation is designed to protect investors in such transactions. Much of that content is also designed to maximize the payout to shareholders cashed out in a merger, see, e.g., Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986); Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 955-56 (Del. 1985), or accepting a tender offer, see Williams Act, 15 U.S.C.A. §§ 78m(d)-(e), 78n(d). Appellants' legal theory would allow creditors to seek to portray that maximization as evidence supporting a crushing liability. A legal rule substantially undermining those goals of state and federal regulation -- again, one akin to eliminating limited liability -- is a systemic risk.

It is also argued that the Bankruptcy Code has many different purposes and that Section 546(e) does not clearly "trump[] all [the] other[s]." In re Tribune Co. Fraudulent Conveyance Litig., 499 B.R. 310, 317 (S.D.N.Y. 2013). The pertinent -- and "trumping" -- "other" purpose of the Code is said to be the

maximization of assets available to creditors. Id. Courts customarily accommodate statutory provisions in tension with one another where the principal purpose of each is attainable by limiting each in achieving secondary goals. See, e.g., In re Colonial Realty Co., 980 F.2d 125, 132 (2d Cir. 1992). However, Section 546(e) is in full conflict with the goal of maximizing the assets available to creditors. Its purpose is to protect a national, heavily regulated market by limiting creditors' rights. Conflicting goals are not accommodated by giving value with the right hand and taking it away with the left. Section 546(e) cannot be trumped by the Code's goal of maximizing the return to creditors without thwarting the Section's purposes.

6. Additional Considerations Regarding Congressional Intent

We therefore conclude that Congress intended to protect from constructive fraudulent conveyance avoidance proceedings transfers by a debtor in bankruptcy that fall within Section 546(e)'s terms. As discussed *supra*, appellants' theory hangs on the ambiguous use of the word "trustee," has no basis in the language of the Code, leads to substantial anomalies, ambiguities and conflicts with the Code's procedures, and, most importantly, is in irreconcilable conflict with the purposes of Section 546(e). In this regard, we do not ignore Section 544(b)(2), which prohibits avoidance of a transfer to a charitable contribution by a trustee but also expressly preempts state law claims by creditors. It states: "Any claim by any person to recover a transferred contribution described in the preceding

sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.” 11 U.S.C. § 544(b)(2). Appellants rely heavily upon this provision to argue that, while Congress knew how to explicitly preempt state law in the Bankruptcy Code, it chose not to do so in the context of Section 546(e).

Appellants’ argument suffers from a fatal flaw, however. In Arizona v. United States, the Supreme Court made clear that “the existence of an express pre-emption provisio[n] does not bar the ordinary working of conflict preemption principles or impose a special burden that would make it more difficult to establish the preemption of laws falling outside the clause.” 132 S. Ct. 2492, 2504-05 (2012) (quotation marks and citations omitted); see also Hillman, 133 S. Ct. at 1954 (“[W]e have made clear that the existence of a separate pre-emption provision does not bar the ordinary working of conflict pre-emption principles.”) (internal quotation marks and citations omitted). Section 544(b)(2) does not, therefore, undermine our conclusion as to Congress’s intent.

Next, appellants argue that Congress’s failure to amend Section 546(e) over the years that it has existed in pertinent form reflects a congressional intent to allow their actions to proceed. In support, they point only to requests for an amendment by the Chair of the CFTC and by Comex, see Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary, 94th Cong., Supp. App. Pt. 4, 2406 (1976); Bankruptcy Reform Act: Hearings on S. 2266 and H.R. 8000 Before the

Subcomm. on Improvements in Judicial Machinery of the S. Comm. on the Judiciary, 95th Cong. 1297 (1978), the enactment of Section 544(b)(2) with an express preemption provision, and a decision in the District of Delaware, PHP Liquidating, LLC v. Robbins, 291 B.R. 603, 607 (D. Del. 2003), aff'd sub nom. In re PHP Healthcare Corp., 128 F. App'x 839 (3d Cir. 2005).

To be sure, a history of relevant practice may support an inference of congressional acquiescence. See, e.g., Fiero v. Fin. Indus. Regulatory Auth., 660 F.3d 569, 577 (2d Cir. 2011) (noting that FINRA's "longstanding reliance" on enforcement mechanisms other than fines -- and Congress's failure to alter FINRA's enforcement powers -- "indicates that FINRA is not authorized to enforce the collection of its fines through the courts"); Am. Tel. & Tel. Co. v. M/V Cape Fear, 967 F.2d 864, 872 (3d Cir. 1992) ("The Supreme Court in the past has implied private causes of action where Congress, after a 'consensus of opinion concerning the existence of a private cause of action' had developed in the federal courts, has amended a statute without mentioning a private remedy.") (quoting Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353, 380 (1982)). However, the effect or meaning of legislation is not to be gleaned from isolated requests for more protective, but possibly redundant, legislation. The impact of Section 544(b)(2) is discussed immediately above and need not be repeated here.

Finally, the failure of Congress to respond to court decisions is of interpretive significance only when the decisions are large in number and

universally, or almost so, followed. See Merrill Lynch, 456 U.S. at 379 (holding that congressional amendment of the Commodity Exchange Act that was silent on the subject of private judicial remedies did not overturn federal court decisions routinely and consistently [] recogniz[ing] an implied private cause of action”) (emphasis added); see also Touche Ross & Co. v. Redington, 442 U.S. 560, 577 n.19 (1979) (holding that the Supreme Court’s implication of a private right of action under § 10(b) of the Securities and Exchange Act of 1934 was simply acquiescence in “the 25-year-old acceptance by the lower federal courts of an implied action”). The present decision is far from a departure from a generally accepted understanding. The district court decision in this very case and the bankruptcy court decision in Lyondell are in fact the sole extensive judicial discussions of the issue. Indeed, our present decision does not even constitute a split among the circuits. As or more telling with regard to the existence of a general understanding or a need for action, we find no history of the use of state law, constructive fraudulent conveyance actions to unwind settled securities transactions, either after a bankruptcy or in its absence.

The Constitution’s establishment of two legislative branches that must act jointly and with the executive’s approval was designed to render hasty action possible only in circumstances of widely perceived need. Congress’s failure to act must be viewed in that context, and reliance upon an inference of satisfaction with the status quo must at least be based on evidence of a long-standing and

recognized status quo. In the present matter, we cannot draw the suggested inference on the basis of the skimpy evidence submitted while the inference of a preemptive intent is easily drawn.

7. The Relevance of Merit Mgmt. to this
Preemption Holding

Appellants finally contend that this preemption holding “cannot be reconciled” with the Supreme Court’s decision in Merit Mgmt. Appellants’ Motion to Recall the Mandate at 10. Again, we disagree. As an initial matter, the Merit Mgmt. Court was not tasked with assessing Section 546(e)’s preemptive force, and it did not address preemption. Instead, the sole issue in Merit Mgmt. was whether, “in the context of a transfer that was executed via one or more transactions,” the relevant transfer for the purposes of Section 546(e) was the overarching transfer or any of its component transfers. Merit Mgmt., 138 S. Ct. at 888. Accordingly, Merit Mgmt. does not control our disposition of the preemption issue.

Nor have we located anything in Merit Mgmt.’s reasoning that contradicts our assessment of Congress’s preemptive intent. Appellants suggest that the Supreme Court rejected a primary premise upon which we have relied here: that Section 546(e) was intended to promote “‘finality’ in the securities markets.” Appellants’ Motion to Recall the Mandate at 10-11. The Court did no such thing, however. Instead, it merely concluded that, to the extent the policies animating Section 546(e) were relevant for determining the safe harbor’s scope, those policies

did not supply a basis for “deviat[ing] from the plain meaning of the language used in § 546(e).” Merit Mgmt., 138 S. Ct. at 897; see also id. at 888 (“The Court concludes that the plain meaning of § 546(e) dictates that the only relevant transfer for purposes of the safe harbor is the [overarching] transfer that the trustee seeks to avoid.”).

Also, the failures of the “purposivist arguments” in Merit Mgmt., id. at 897, are not particularly instructive here due to the distinctions between the inquiries here and there. The Supreme Court has repeatedly held that where, as in Merit Mgmt., courts are interpreting the meaning of a statutory provision, they should not allow extrinsic evidence of Congressional purpose to alter the plain meaning of the statute. See, e.g., Henson v. Santander Consumer USA Inc., 137 S. Ct. 1718, 1725 (2017) (“[I]t is quite mistaken to assume . . . that whatever might appear to further the statute’s primary objective must be the law.”) (internal quotation marks and alterations omitted); Dodd v. United States, 545 U.S. 353, 357 (2005) (“We must presume that the legislature says in a statute what it means and means in a statute what it says there.”) (internal quotation marks and alterations omitted). But where, as here, we are assessing whether a statute preempts certain claims, we have been directed to consult evidence of Congressional purpose to ascertain whether the statute has a preemptive effect beyond that provided by its plain terms. See, e.g., Altria Grp., Inc. v. Good, 555 U.S. 70, 76 (2008) (“Congress may indicate pre-emptive intent through a statute’s express language or through its structure

and purpose. [Even where] a federal law contains an express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains.") (internal citations omitted) (emphasis added). Thus, in light of these different directives, it is clear that a "purposivist" argument should carry far more weight in this case than in Merit Mgmt.

Finally, it bears emphasizing that the other reasons underpinning our preemption holding are not implicated by Merit Mgmt. in any way. Specifically, Merit Mgmt. does not contradict our findings that appellants' legal theory has no support in the language of the Code; leads to substantial anomalies and conflicts with the Code's procedures; and requires reading Section 546(e)'s reference to a trustee et al. avoidance claim to mean that creditors could bring their own claims -- a reading that is less than plain.

For these reasons, we find that our preemption holding is consistent with Merit Mgmt.

CONCLUSION

For the reasons stated, we affirm the dismissal of appellants' claims, on preemption rather than standing grounds. We resolve no issues regarding the rights of creditors to bring state law, fraudulent conveyance claims not limited in the hands of a trustee et al. by Code Section 546(e) or by similar provisions such as Section 546(g), which was at issue in an appeal heard in tandem with the present

matter, see Whyte v. Barclays Bank PLC, 644 F. App'x 60, 60 (2d Cir. 2016) (affirming the district court's dismissal of state law, fraudulent conveyance claims limited by Section 546(g) "for substantially the reasons stated in [Tribune I]"), cert. denied, 137 S. Ct. 2114 (2017).

APPENDIX B

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of May, two thousand and eighteen.

Before: Ralph K. Winter,
 Christopher F. Droney,
 Circuit Judges,
 Alvin K. Hellerstein,
 *District Judge.**

IN RE: TRIBUNE COMPANY
FRAUDULENT CONVEYANCE
LITIGATION

ORDER

NOTE HOLDERS, Deutsche Bank Docket No.
Trust Company Americas, Law 13-3992(L)
Debenture Trust Company of New
York, Wilmington Trust Company,

* The Honorable Alvin K. Hellerstein, of the United States District Court for the Southern District of New York, sitting by designation.

INDIVIDUAL RETIREES, William	13-3875(XAP)
A. Niese, on behalf of a putative	13-4178(XAP)
class of Tribune Company retirees,	13-4196(XAP)

Plaintiff-Appellant-Cross-
Appellees,

Mark S. Kirschner, as Litigation
Trustee for the Tribune Litigation
Trust,

Plaintiff,

Tendering Phones Holders, Citadel
Equity Fund Ltd., Camden Asset
Management LLP and certain of
their affiliates,

Plaintiff-Intervenors,

v.

Large Private Beneficial Owners,
Financial Institution Holders,

Financial Institution Conduits,
Merrill Lynch, Pierce, Fenner &
Smith, Inc., on behalf of a putative
class of former Tribune Company
shareholders, Pension Funds,
including public, private, and Taft
Hartlet Funds, Individual Beneficial
Owners, Mario J. Gabelli, on behalf
of a putative class of former Tribune
Company shareholders, Mutual
Funds, At-Large, Estate of Karen

Babcock, Phillip S. Babcock, Phillip
S. Babcock, Douglas Babcock,
Defendants listed on Exhibit B,

Defendants-Appellee-Cross-
Appellants,

Current and Former Directors and
Officers, Betsy D. Holden,
Christopher Reyes, Dudley S. Taft,
Enrique Hernandez, Jr., Miles D.
White, Robert S. Morrison, William
A. Osborn, Harry Amsden, Stephen
D. Carver, Dennis J. FitzSimons,
Robert Gremillion, Donald C.
Grenesko, David Dean Hiller,
Timothy J. Landon, Thomas D.
Leach, Luis E. Le, Mark Hianik,
Irving Quimby, Crane Kenney,
Chandler Bigelow, Daniel Kazan,
Timothy Knight, Thomas Finke,
SAM ZELL AND AFFILIATED
ENTITIES, EGI-TRB, LLC, Equity
Group Investments, LLC, SAM
Investment Trust, Samuel Zell,
Tower CH, LLC, Tower DC, LLC,
Tower DL, LLC, Tower EH, LLC,
Tower Gr, Large Shareholders,
Chandler Trust and their
representatives, FINANCIAL
ADVISORS, Valuation Research
Corporation, Duff & Phelps, LLC,
Morgan Stanley & Co. Inc. and
Morgan Stanley Capital Services,

Inc., GreatBanc Trust Company,
Citigroup Global Markets, Inc., CA
PUBLIC EMPLOYEE
RETIREMENT SYSTEM,
CALPERS, UNIVERSITY OF CA
REGENTS, T. ROWE PRICE
ASSOCIATES, INC., MORGAN
KEEGAN & COMPANY, INC.,
NTCA, DIOCESE OF TRENTON-
PENSION FUND, FIRST ENERGY
SERVICE COMPANY, MARYLAND
STATE RETIREMENT AND
PENSION SYSTEM, T BANK LCV
QP, T BANK-LCV-PT, JAPAN POST
INSURANCE, CO., LTD.,
SERVANTS OF RELIEF FOR
INCURABLE CANCER (AKA
DOMINICAN SISTERS OF
HAWTHORNE), NEW LIFE
INTERNATIONAL, NEW LIFE
INTERNATIONAL TRUST,
SALVATION ARMY, SOUTHERN
TERRITORIAL HEADQUARTERS,
CITY OF PHILADELPHIA
EMPLOYEES, OHIO
CARPENTERS' MIDCAP (AKA
OHIO CARPENTARS' PENSION
FUND), TILDEN H. EDWARDS,
JR., MALLOY AND EVANS, INC.,
BEDFORD OAK PARTNERS, LP,
DUFF AND PHELPS LLC,
DURHAM J. MONSMA, CERTAIN
TAG-ALONG DEFENDANTS,
MICHAEL S. MEADOWS, WIRTZ

73a

CORPORATION,

Defendants.

IT IS HEREBY ORDERED that the mandate in this case is recalled in anticipation of further panel review.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

The image shows a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal. The seal has a red outer ring with the words "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. Inside the ring, the words "SECOND CIRCUIT" are written in blue. The signature is written in a cursive style, with the "O" in "O'Hagan" being particularly large and looping.

APPENDIX C

Cite as: 584 U. S. ____ (2018)

Statement of KENNEDY, J. and THOMAS, J.

SUPREME COURT OF THE UNITED STATES

DEUTSCHE BANK TRUST COMPANY
AMERICAS, ET AL. *v.* ROBERT R. MCCORMICK
FOUNDATION, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

No. 16–317. Decided April 3, 2018

Statement of JUSTICE KENNEDY and JUSTICE
THOMAS respecting the petition for certiorari.

The parties are advised that consideration of the petition for certiorari will be deferred for an additional period of time. This will allow the Court of Appeals or the District Court to consider whether to recall the mandate, entertain a Federal Rule of Civil Procedure 60(b) motion to vacate the earlier judgment, or provide any other available relief in light of this Court’s decision in *Merit Management Group, LP v. FTI Consulting, Inc.*, 583 U. S. ____ (2018). The petition for certiorari in this case was pending when the Court decided *Merit Management*. The Court of Appeals or the District Court could decide whether relief from judgment is appropriate given the possibility that there might not be a quorum in this Court. See 28 U. S. C. §2109.

APPENDIX D

13-3992-cv (L)

**In re: Tribune Company Fraudulent
Conveyance Litigation**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2014

(Argued: November 5, 2014 Decided: March 29, 2016)

Docket Nos. 13-3992-cv; 13-3875-cv; 13-4178-cv; 13-
4196-cv

IN RE: TRIBUNE COMPANY FRAUDULENT
CONVEYANCE LITIGATION

NOTE HOLDERS, Deutsche Bank Trust Company
Americas, Law Debenture Trust Company of New
York, Wilmington Trust Company, INDIVIDUAL
RETIREEES, William A. Niese, on behalf of a putative
class of Tribune Company retirees,

Plaintiffs-Appellants-Cross-Appellees.

MARK S. KIRSCHNER, as Litigation Trustee for the
Tribune Litigation Trust,

Plaintiff.

TENDERING PHONES HOLDERS, Citadel Equity Fund Ltd., Camden Asset Management LLP and certain of their affiliates,

Plaintiffs-Intervenors.

v.

LARGE PRIVATE BENEFICIAL OWNERS, FINANCIAL INSTITUTION HOLDERS, FINANCIAL INSTITUTION CONDUITS, Merrill Lynch, Pierce, Fenner & Smith, Inc., on behalf of a putative class of former Tribune Company shareholders, PENSION FUNDS, including public, private, and Taft Hartley Funds, INDIVIDUAL BENEFICIAL OWNERS, Mario J. Gabelli, on behalf of a putative class of former Tribune Company shareholders, MUTUAL FUNDS, AT-LARGE, ESTATE OF KAREN BABCOCK, PHILLIP S. BABCOCK, DOUGLAS BABCOCK, DEFENDANTS LISTED ON EXHIBIT B,

Defendants-Appellees-Cross-Appellants.

CURRENT AND FORMER DIRECTORS AND OFFICERS, Betsy D. Holden, Christopher Reyes, Dudley S. Taft, Enrique Hernandez, Jr., Miles D. White, Robert S. Morrison, William A. Osborn, Harry Amsden, Stephen D. Carver, Dennis J. FitzSimons, Robert Gremillion, Donald C. Grenesko, David Dean Hiller, Timothy J. Landon, Thomas D. Leach, Luis E. Le, Mark Hianik, Irving Quimby, Crane Kenney, Chandler Bigelow, Daniel Kazan, Timothy Knight, Thomas Finke, SAM ZELL AND AFFILIATED ENTITIES, EGI-TRB, LLC, Equity Group

Investments, LLC, Sam Investment Trust, Samuel Zell, Tower CH, LLC, Tower DC, LLC, Tower DL, LLC, Tower EH, LLC, Tower Gr, LARGE SHAREHOLDERS, Chandler Trusts and their representatives, FINANCIAL ADVISORS, Valuation Research Corporation, Duff & Phelps, LLC, Morgan Stanley & Co. Inc. and Morgan Stanley Capital Services, Inc., GreatBanc Trust Company, Citigroup Global Markets, Inc., CA PUBLIC EMPLOYEE RETIREMENT SYSTEM, CALPERS, UNIVERSITY OF CA REGENTS, T. ROWE PRICE ASSOCIATES, INC., MORGAN KEEGAN & COMPANY, INC., NTCA, DIOCESE OF TRENTON-PENSION FUND, FIRST ENERGY SERVICE COMPANY, MARYLAND STATE RETIREMENT AND PENSION SYSTEM, T BANK LCV QP, T BANK-LCV-PT, JAPAN POST INSURANCE, CO., LTD., SERVANTS OF RELIEF FOR INCURABLE CANCER (AKA DOMINICAN SISTERS OF HAWTHORNE), NEW LIFE INTERNATIONAL, NEW LIFE INTERNATIONAL TRUST, SALVATION ARMY, SOUTHERN TERRITORIAL HEADQUARTERS, CITY OF PHILADELPHIA EMPLOYEES, OHIO CARPENTERS' MIDCAP (AKA OHIO CARPENTERS' PENSION FUND), TILDEN H. EDWARDS, JR., MALLOY AND EVANS, INC., BEDFORD OAK PARTNERS, LP, DUFF AND PHELPS LLC, DURHAM J. MONSMA, CERTAIN TAG-ALONG DEFENDANTS, MICHAEL S. MEADOWS, WIRTZ CORPORATION,

Defendants.*

Before: WINTER, DRONEY, Circuit Judges, and
HELLERSTEIN, District Judge.**

Appeal from a dismissal by the United States District Court for the Southern District of New York (Richard J. Sullivan, Judge), of state law, constructive fraudulent conveyance claims brought by creditors' representatives against the Chapter 11 debtor's former shareholders, who were cashed out in an LBO. The district court held that plaintiffs lacked statutory standing under the Bankruptcy Code. We hold that appellants have statutory standing but affirm on the ground that appellants' claims are preempted by Section 546(e) of that Code.

ROY T. ENGLERT, JR.
(Lawrence S. Robbins, Ariel N.
Lavinbuk, Daniel N. Lerman,
Shai D. Bronshtein, Robbins,
Russell, Englert, Orseck,
Untereiner & Sauber LLP,
Washington, DC, Pratik A. Shah,
James E. Tysse, Z.W. Julius
Chen, Akin Gump Strauss Hauer
& Feld LLP, Washington, DC,
David M. Zensky, Mitchell
Hurley, Deborah J. Newman,

* The Clerk of the Court is instructed to conform the caption in accordance with this opinion.

** The Honorable Alvin K. Hellerstein, of the Southern District of New York, sitting by designation.

Akin Gump Strauss Hauer & Feld LLP, New York, NY, Robert J. Lack & Hal Neier, Friedman Kaplan Seiler & Adelman LLP, New York, NY, Daniel M. Scott & Kevin M. Magnuson, Kelley, Wolter & Scott, P.A., Minneapolis, MN, David S. Rosner & Sheron Korpus, Kasowitz Benson Torres & Friedman LLP, New York, NY, Joseph Aronauer, Aronauer Re & Yudell, LLP, New York, NY, on the brief), Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, Washington, DC, for Plaintiffs-Appellants-Cross-Appellees Note Holders.

Jay Teitelbaum, Teitelbaum & Baskin LLP, White Plains, NY, for Plaintiffs-Appellants-Cross-Appellees Individual Retirees.

Joel A. Feuer & Oscar Garza, Gibson, Dunn & Crutcher LLP, Los Angeles, CA, David C. Bohan & John P. Sieger, Katten Muchin Rosenman LLP, Chicago, IL, for Defendants-Appellees-Cross-Appellants Large Private Beneficial Owners.

PHILIP D. ANKER (Alan E. Schoenfeld, Adriel I. Cepeda Derieux, Pablo G. Kapusta, Wilmer Cutler Pickering Hale and Dorr LLP, New York, NY, Sabin Willett & Michael C. D'Agnostino, Bingham McCutchen LLP, Boston, MA, Joel W. Millar, Washington, DC, on the brief), Wilmer Cutler Pickering Hale and Dorr LLP, New York, NY, for Defendants-Appellees-Cross-Appellants Financial Institution Holders.

Elliot Moskowitz, Davis Polk & Wardwell LLP, New York, NY, Daniel L. Cantor, O'Melveny & Myers LLP, New York, NY, Gregg M. Mashberg & Stephen L. Ratner, Proskauer Rose LLP, New York, NY, for Defendants-Appellees-Cross-Appellants Financial Institution Conduits.

DOUGLAS HALLWARD-DRIEMEIER, Ropes & Gray LLP, Washington, DC, D. Ross Martin, Ropes & Gray LLP, New York, NY, Matthew L. Fornshell, Ice Miller LLP, Columbus, OH, for Defendants-Appellees-Cross-Appellants Pension Funds.

Andrew J. Entwistle, Entwistle & Cappucci, LLP, New York, NY, David N. Dunn, Potter Stewart, Jr. Law Offices, Brattleboro, VT, Mark A. Neubauer, Steptoe & Johnson LLP, Los Angeles, CA, for Defendants-Appellees-Cross-Appellants Individual Beneficial Owners.

Michael S. Doluisio & Alexander Bilus, Dechert LLP, Philadelphia PA, Steven R. Schoenfeld, Robinson & Cole LLP, New York, NY, for Defendants-Appellees-Cross-Appellants Mutual Funds.

Alan J. Stone & Andrew M. LeBlanc, Milbank, Tweed, Hadley & McCloy LLP, New York, NY, for Defendant-Appellee-Cross-Appellant At-Large.

Gary Stein, David K. Momborquette, William H. Gussman, Jr., Schulte Roth & Zabel LLP, New York, NY, for Defendants-Appellees-Cross-Appellants Defendants Listed on Exhibit B.

Kevin Carroll, Securities Industry and Financial Markets Association, Washington, DC,

Holly K. Kulka, NYSE Euronext, New York, NY, Marshall H. Fishman, Timothy P. Harkness, David Y. Livshiz, Freshfields Bruckhaus Deringer US LLP, New York, NY, for Amici Curiae Securities Industry and Financial Markets Association, International Swaps and Derivatives Association, Inc., and the NYSE Euronext.

Michael A. Conley, John W. Avery, Tracey A. Hardin, Benjamin M. Vetter, Securities and Exchange Commission, Washington, DC, for Amicus Curiae Securities and Exchange Commission.

WINTER, Circuit Judge:

Representatives of certain unsecured creditors of the Chapter 11 debtor Tribune Company appeal from Judge Sullivan's grant of a motion to dismiss their state law, constructive fraudulent conveyance claims brought against Tribune's former shareholders. Appellants seek to recover an amount sufficient to satisfy Tribune's debts to them by avoiding (recovering) payments by Tribune to shareholders that purchased all of its stock. The payments occurred in a transaction commonly called a

leveraged buyout (“LBO”),¹ soon after which Tribune went into Chapter 11 bankruptcy. Appellants appeal the district court’s dismissal for lack of statutory standing, and appellees cross-appeal from the district court’s rejection of their argument that appellants’ claims are preempted.²

We address two issues: (i) whether appellants are barred by the Bankruptcy Code’s automatic stay provision from bringing state law, constructive fraudulent conveyance claims while avoidance proceedings against the same transfers brought by a party exercising the powers of a bankruptcy trustee on an intentional fraud theory are ongoing; and (ii) if not, whether the creditors’ state law, constructive fraudulent conveyance claims are preempted by Bankruptcy Code Section 546(e).

On issue (i), we hold that appellants are not barred by the Code’s automatic stay because they have been freed from its restrictions by orders of the bankruptcy court and by the debtors’ confirmed reorganization plan. On issue (ii), the subject of appellees’ cross-appeal, we hold that appellants’ claims are preempted by Section 546(e). That

¹ In a typical LBO, a target company is acquired with a significant portion of the purchase price being paid through a loan secured by the target company’s assets.

² Because the issue has no effect on our disposition of this matter, we do not pause to consider whether a cross-appeal was necessary for appellees to raise the preemption issues in this court, but, for convenience purposes, we sometimes refer to those issues by the term cross-appeal.

Section shields from avoidance proceedings brought by a bankruptcy trustee transfers by or to financial intermediaries effectuating settlement payments in securities transactions or made in connection with a securities contract, except through an intentional fraudulent conveyance claim.

We therefore affirm.

BACKGROUND

a) The LBO

Tribune Media Company (formerly known as “Tribune Company”) is a multimedia corporation that, in 2007, faced deteriorating financial prospects. Appellee Samuel Zell, a billionaire investor, proposed to acquire Tribune through an LBO. In consummating the LBO, Tribune borrowed over \$11 billion secured by its assets. The \$11 billion plus, combined with Zell’s \$315 million equity contribution, was used to refinance some of Tribune’s pre-existing bank debt and to cash out Tribune’s shareholders for over \$8 billion at a premium price -- above its trading range -- per share. It is undisputed that Tribune transferred the over \$8 billion to a “securities clearing agency” or other “financial institution,” as those terms are used in Section 546(e), acting as intermediaries in the LBO transaction. Those intermediaries in turn paid the funds to the shareholders in exchange for their shares that were then returned to Tribune. Appellants seek to satisfy Tribune’s debts to them by avoiding Tribune’s payments to the shareholders.

Appellants do not seek money from the intermediaries. See Note 8, infra.

b) Bankruptcy Proceedings

On December 8, 2008, with debt and contingent liabilities exceeding its assets by more than \$3 billion, Tribune and nearly all of its subsidiaries filed for bankruptcy under Chapter 11 in the District of Delaware. A trustee was not appointed, and Tribune and its affiliates continued to operate the businesses as debtors in possession. See 11 U.S.C. § 1107(a) (“Subject to any limitations on a trustee . . . a debtor in possession shall have all the rights . . . , and powers, and shall perform all the functions and duties . . . of a trustee”). In discussing the powers of a bankruptcy trustee that can be exercised by a trustee or parties designated by a bankruptcy court, we shall refer to the trustee or such parties as the “trustee et al.”

The bankruptcy court appointed an Official Committee of Unsecured Creditors (the “Committee”) to represent the interests of unsecured creditors. In November 2010, alleging that the LBO-related payments constituted intentional fraudulent conveyances, the Committee commenced an action under Code Section 548(a)(1)(A) against the cashed out Tribune shareholders, various officers, directors, financial advisors, Zell, and others alleged to have benefitted from the LBO. An intentional fraudulent conveyance is defined as one in which there was “actual intent to hinder, delay, or defraud” a creditor. 11 U.S.C. § 548(a)(1)(A).

In June 2011, two subsets of unsecured creditors filed state law, constructive fraudulent conveyance claims in various federal and state courts. The plaintiffs, the appellants before us, were: (i) the Retiree Appellants, former Tribune employees who hold claims for unpaid retirement benefits and (ii) the Noteholder Appellants, the successor indenture trustees for Tribune's pre-LBO senior notes and subordinated debentures. A constructive fraudulent conveyance is, generally speaking, a transfer for less than reasonably equivalent value made when the debtor was insolvent or was rendered so by the transfer. See Picard v. Fairfield Greenwich Ltd., 762 F.3d 199, 208-09 (2d Cir.15 2014).

Before bringing these actions, appellants moved the bankruptcy court for an order stating that: (i) after the expiration of the two-year statute of limitations period during which the Committee was authorized to bring avoidance actions under 11 U.S.C. § 546(a), eligible creditors had regained the right to prosecute their creditor state law claims; and (ii) the automatic stay imposed by Code Section 362(a) was lifted solely to permit the immediate filing of their complaint. In support of that motion, the Committee argued that, under Section 546(a), the "state law constructive fraudulent conveyance transfer claims ha[d] reverted to individual creditors" and that the "creditors should consider taking appropriate actions to preserve those claims." Statement of the Official Committee of Unsecured Creditors in Supp. of Mot. 3, In re Tribune Co., No 08-13141 (KJC) (Bankr. D. Del. Mar. 17, 2011).

In April 2011, the bankruptcy court lifted the Code's automatic stay with regard to appellants' actions. The court reasoned that because the Committee had elected not to bring the constructive fraudulent conveyance actions within the two-year limitations period following the bankruptcy petition imposed by Section 544, fully discussed infra, the unsecured creditors "regained the right, if any, to prosecute [such claims]." J. App'x at 373. Therefore, the court lifted the Section 362(a) automatic stay "to permit the filing of any complaint by or on behalf of creditors on account of such Creditor [state law fraudulent conveyance] Claims." Id. The court clarified, however, that it was not resolving the issues of whether the individual creditors had statutory standing to bring such claims or whether such claims were preempted by Section 546(e).

On March 15, 2012, the bankruptcy court set an expiration date of June 1, 2012 for the remaining limited stay on the state law, fraudulent conveyance claims. In July 2012, the bankruptcy court ordered confirmation of the proposed Tribune reorganization plan. The plan terminated the Committee and transferred responsibility for prosecuting the intentional fraudulent conveyance action to an entity called the Litigation Trust. The confirmed plan also provided that the Retiree and Noteholder Appellants could pursue "any and all LBO-Related Causes of Action arising under state fraudulent conveyance law," except for the federal intentional fraudulent conveyance and other LBO-related claims pursued by the Litigation Trust. J. App'x at 643. Under the plan, the Retiree and Noteholder Appellants

recovered approximately 33 cents on each dollar of debt. The plan was scheduled to take effect on December 31, 2012, the date on which Tribune emerged from bankruptcy.

c) District Court Proceedings

Appellants' various state law, fraudulent conveyance complaints alleged that the LBO payments, made through financial intermediaries as noted above, were for more than the reasonable value of the shares and made when Tribune was in distressed financial condition. Therefore, the complaints concluded, the payments were avoidable by creditors under the laws of various states. These actions were later consolidated with the Litigation Trust's ongoing federal intentional fraud claims in a multi-district litigation proceeding that was transferred to the Southern District of New York. In re: Tribune Co. Fraudulent Conveyance Litig., 831 F. Supp. 2d 1371 (J.P.M.L. 2011).

After consolidation, the Tribune shareholders moved to dismiss appellants' claims. The district court granted the motion on the ground that the Bankruptcy Code's automatic stay provision deprived appellants of statutory standing to pursue their claims so long as the Litigation Trustee was pursuing the avoidance of the same transfers, albeit under a different legal theory. In re Tribune Co. Fraudulent Conveyance Litig., 499 B.R. 310, 325 (S.D.N.Y. 2013). The court held that the bankruptcy court had only "conditionally lifted the stay." Id. at 314.

The district court rejected appellees' preemption argument based on Section 546(e). That Section bars a trustee et al. from exercising its avoidance powers under Section 544 to avoid transfers by the debtor to specified financial intermediaries, e.g. a "securities clearing agency" or "financial institution," that is a "settlement payment" in a securities transaction or is a transfer "in connection with a securities contract." The district court held that Section 546(e) did not bar appellants' actions because: (i) Section 546(e)'s prohibition on avoiding the designated transfers applied only to a bankruptcy trustee et al., id. at 315-16; and (ii) Congress had declined to extend Section 546(e) to state law, fraudulent conveyance claims brought by creditors, id. at 318.

DISCUSSION

We review de novo the district court's grant of appellees' motion to dismiss. See Mary Jo C. v. N.Y. State & Local Ret. Sys., 707 F.3d 144, 151 (2d Cir. 2013). The relevant facts being undisputed for purposes of this proceeding, only issues of law are before us.

a) Statutory Standing to Bring the Claims

We first address the district court's dismissal of appellants' claims on the ground that they lacked standing to bring them because of Section 362(a)(1).³

³ The term "standing" has been used to describe issues arising in bankruptcy proceedings when individual creditors sue to recover funds from third parties to satisfy amounts owed to them by the debtor, and that action is defended on the ground

In re Tribune, 499 B.R. at 325. When a bankruptcy action is filed, any “action or proceeding against the debtor” is automatically stayed by Section 362(a). The purpose of the stay is “to protect creditors as well as the debtor,” Ostano Commerzanstalt v. Telewide Sys., Inc., 790 F.2d 206, 207 (2d Cir. 1986) (per curiam), by avoiding wasteful, duplicative, individual actions by creditors seeking individual recoveries from the debtor’s estate, and by ensuring an equitable distribution of the debtor’s estate. See In re McMullen, 386 F.3d 320, 324 (1st Cir. 2004) (noting that Section 362(a)(1), among other things, “safeguard[s] the debtor estate from piecemeal dissipation . . . ensur[ing] that the assets remain within the exclusive jurisdiction of the bankruptcy court pending their orderly and equitable distribution among the creditors”). Although fraudulent conveyance actions are against third parties rather than a debtor, there is caselaw, discussed infra, stating that the automatic stay applies to such actions.⁴ See In re Colonial Realty Co., 980 F.2d 125, 131 (2d Cir. 1992).

that the recovery seeks funds that are recoverable under the Code only by a representative of all creditors. St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc., 884 F.2d 688, 696-97 (2d Cir. 1989), disapproved of on other grounds by In re Miller, 197 B.R. 810 (W.D.N.C. 1996). The use of the term “standing” is based on the suing creditors’ need to demonstrate an injury other than one redressable under the Code only by the trustee et al. Id. at 704.

⁴ The implications of applying the automatic stay to fraudulent conveyance actions are discussed infra.

The district court ruled that Section 362's automatic stay provision deprived appellants of statutory standing to bring their claims because the Litigation Trustee was still pursuing an intentional fraudulent conveyance action challenging the same transfers under Section 548(a)(1)(A). In re Tribune, 499 B.R. at 322-23. We disagree. The Bankruptcy Code empowers a bankruptcy court to release parties from the automatic stay "for cause" shown. In re Bogdanovich, 292 F.3d 104, 110 (2d Cir. 2002) (quoting 11 U.S.C. § 362(d)(1)). Once a creditor obtains "a grant of relief from the automatic stay" under Section 362(d), it may "press its claims outside of the bankruptcy proceeding." St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc., 884 F.2d 688, 702 (2d Cir. 1989), disapproved of on other grounds by In re Miller, 197 B.R. 810 (W.D.N.C. 1996).

In the present matter, the bankruptcy court granted appellants relief from the automatic stay on three occasions. On April 25, 2011, the bankruptcy court granted appellants relief "to permit the filing of any complaint by or on behalf of creditors on account of such Creditor [state law fraudulent conveyance] Claims." J. App'x at 373. A second order, entered on June 28, 2011, clarified that "neither the automatic stay of [Section 362] nor the provisions of the [original lift-stay order]" barred the parties in the state law actions from consolidating and coordinating these actions. J. App'x at 376. And the bankruptcy court's third order, entered on March 15, 2012, set an expiration date of June 1, 2012, for the "stay imposed on the state law constructive fraudulent conveyance actions." J. App'x at 521.

None of the Tribune shareholders filed objections to these orders.

Finally, the reorganization plan, confirmed by the bankruptcy court and in all pertinent respects an order of that court, expressly allowed appellants to pursue “any and all LBO-Related Causes of Action arising under state fraudulent conveyance law.” J. App’x at 643. Section 5.8.2 of the plan provided that “nothing in this Plan shall or is intended to impair” the rights of creditors to attempt to pursue disclaimed state law avoidance claims. J. App’x at 695.

Thus, under both the bankruptcy court’s orders and the confirmed reorganization plan, if appellants had actionable state law, constructive fraudulent conveyance claims, assertion of those claims was no longer subject to Section 362’s automatic stay. See, e.g., In re Heating Oil Partners, LP, 422 F. App’x 15, 18 (2d Cir. 2011) (holding that the automatic stay terminates at discharge); United States v. White, 466 F.3d 1241, 1244 (11th Cir. 2006) (similarly recognizing that the automatic stay terminates when “a discharge is granted”).

For the foregoing reasons, we hold that appellants’ claims are not barred by Section 362.

b) Section 546(e) and Preemption

We turn now to the issue raised by the cross-appeal: whether appellants’ claims are preempted because they conflict with Code Section 546(e).

1. Conflict-Preemption Law

Under the Supremacy Clause, Article VI, Clause 2 of the Constitution, federal law prevails when it conflicts with state law. Arizona v. United States, 132 S. Ct. 2492, 2500 (2012).

As discussed throughout this opinion, Section 546(e)'s reference to limiting avoidance by a trustee provides appellants with a plain language argument that only a trustee et al., and not creditors acting on their own behalf, are barred from bringing state law, constructive fraudulent avoidance claims. However, as discussed infra, we believe that the language of Section 546(e) does not necessarily have the meaning appellants ascribe to it. Even if that meaning is one of multiple reasonable constructions of the statutory scheme, it would not necessarily preclude preemption because a preemptive effect may be inferred where it is not expressly provided.

Under the implied preemption doctrine,⁵ state laws are “pre-empted to the extent of any conflict

⁵ We see no need for a full discussion of various modes of analysis used to determine federal preemption, i.e., “express” preemption, Chamber of Commerce v. Whiting, 131 S. Ct. 1968, 1977 (2011), “field” preemption, Arizona v. United States, 132 S. Ct. 2492, 2502 (2012), or even that branch of “implied” preemption that requires a showing of “impossibility” of complying with both state and federal law, id. at 2501. The only relevant analysis in the present matter is preemption inferred from a conflict between state law and the purposes of federal law, as discussed in the text.

with a federal statute. Such a conflict occurs . . . when [] state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” Hillman v. Maretta, 133 S. Ct. 1943, 1949-50 (2013) (citations and internal quotation marks omitted); accord In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig., 725 F.3d 65, 97 (2d Cir. 2013) cert. denied sub nom. Exxon Mobil Corp. v. City of New York, 134 S. Ct. 1877 (2014) (courts will find implied preemption when “state law directly conflicts with the structure and purpose of a federal statute”) (citation and internal quotation marks omitted).

Appellants argue that a recognized presumption against preemption limits the implied preemption doctrine. They argue that Section 546(e) preempts creditors’ state law, fraudulent conveyance claims only if the claims would do “‘major damage’ to ‘clear and substantial’ federal interests.” Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 45 (quoting Hillman, 133 S. Ct. 1943, 1950 (2013) (citation omitted)). The presumption against inferring preemption is premised on federalism grounds and, therefore, weighs most heavily where the particular regulatory area is “traditionally the domain of state law.” Hillman, 133 S. Ct. at 1950; see also Madeira v. Affordable Hous. Found., Inc., 469 F.3d 219, 241 (2d Cir. 2006) (“The mere fact of ‘tension’ between federal and state law is generally not enough to establish an obstacle supporting preemption, particularly when the state law involves the exercise of traditional police power.”). According to appellants, the presumption against preemption

fully applies in the present context because fraudulent conveyance claims are “among ‘the oldest [purposes] within the ambit of the police power.’” Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 36 (quoting California v. Zook, 336 U.S. 725, 734 (1949)).

Preemption is always a matter of congressional intent, even where that intent must be inferred. See Cipollone v. Liggett Grp., Inc., 505 U.S. 504, 516 (1992) (congressional intent is the “ultimate touchstone of pre-emption analysis”) (quoting Malone v. White Motor Corp., 435 U.S. 497, 504 (1978)) (internal quotation marks omitted); N.Y. SMSA Ltd. P’ship v. Town of Clarkstown, 612 F.3d 97, 104 (2d Cir. 2010) (“The key to the preemption inquiry is the intent of Congress.”). As in the present matter, the presumption against preemption usually goes to the weight to be given to the lack of an express statement overriding state law.

The presumption is strongest when Congress is legislating in an area recognized as traditionally one of state law alone. See Hillman, 133 S. Ct. at 1950 (stating that because “[t]he regulation of domestic relations is traditionally the domain of state law . . . [t]here is [] a presumption against pre-emption”) (internal quotation marks and citation omitted). However, the present context is not such an area. To understate the proposition, the regulation of creditors’ rights has “a history of significant federal presence.” United States v. Locke, 529 U.S. 89, 90 (2000).

Congress's power to enact bankruptcy laws was made explicit in the Constitution as originally enacted, Art. 1, § 8, cl. 4, and detailed, preemptive federal regulation of creditors' rights has, therefore, existed for over two centuries. Charles Jordan Tabb, The History of the Bankruptcy Laws in the United States, 3 Am. Bankr. Inst. L. Rev. 5, 7 (1995). Once a party enters bankruptcy, the Bankruptcy Code constitutes a wholesale preemption of state laws regarding creditors' rights. See Eastern Equip. and Servs. Corp. v. Factory Point Nat. Bank, Bennington, 236 F.3d 117, 120 (2d Cir. 2001) ("The United States Bankruptcy Code provides a comprehensive federal system of penalties and protections to govern the orderly conduct of debtors' affairs and creditors' rights."); In re Miles, 430 F.3d 1083, 1091 (9th Cir. 2005) ("Congress intended the Bankruptcy Code to create a whole scheme under federal control that would adjust all of the rights and duties of creditors and debtors alike . . .").

Consider, for example, the present proceeding. While the issue before us is often described as whether Section 546(e) preempts state fraudulent conveyance laws, Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 33, that is a mischaracterization. Appellants' state law claims were preempted when the Chapter 11 proceedings commenced and were not dismissed. Appellants' own arguments posit that those claims were, at the very least, stayed by Code Section 362. Whether, as appellants argue, they were restored in full after two years, see 11 U.S.C. § 546(a)(1)(A), or by order of the bankruptcy court, see 11 U.S.C. § 349(b)(3), is hotly

disputed. But if they were restored, it was by force of federal law.

Once Tribune entered bankruptcy, the creditors' avoidance claims were vested in the federally appointed trustee et al. 11 U.S.C. § 544(b)(1). A constructive fraudulent conveyance action brought by a trustee et al. under Section 544 is a claim arising under federal law. See In re Intelligent Direct Mktg., 518 B.R. 579, 587 (E.D. Cal. 2014); In re Trinsum Grp., Inc., 460 B.R. 379, 387-88 (S.D.N.Y. 2011); In re Sunbridge Capital, Inc., 454 B.R. 166, 169 n.16 (Bankr. D. Kan. 2011); In re Charys Holding Co., Inc., 443 B.R. 628, 635-36 (Bankr. D. Del. 2010). Although such a claim borrows applicable state law standards regarding avoiding the transfer in question, see Universal Church v. Geltzer, 463 F.3d 218, 222 n.1 (2d Cir. 2006), the claim has its own statute of limitations, 11 U.S.C. § 546(a)(1)(A), measure of damages, see 11 U.S.C. § 550, and standards for distribution, 11 U.S.C. § 726. A disposition of this federal law claim extinguishes the right of creditors to bring state law, fraudulent conveyance claims. See St. Paul Fire, 884 F.2d at 701 disapproved of on other grounds by In re Miller, 197 B.R. 810 (W.D.N.C. 1996) (noting that "creditors are bound by the outcome of the trustee's action"); see also In re PWS Holding Corp., 303 F.3d 308, 314-15 (3d Cir. 2002) (barring creditor's state law, fraudulent transfer claims after trustee released § 544 claims). And, if creditors are allowed by a bankruptcy court, trustee, or, as appellants argue, by the Bankruptcy Code, to bring state law actions in their own name, that permission is a matter of grace

granted under federal authority. The standards for granting that permission, moreover, have everything to do with the Bankruptcy Code's balancing of debtors' and creditors' rights, In re Coltex Loop Cent. Three Partners, L.P., 138 F.3d 39, 44 (2d Cir. 1998), or rights among creditors, United States v. Ron Pair Enters, Inc., 489 U.S. 235, 248 (1989), and nothing to do with the vindication of state police powers.

We also note here, and discuss further *infra*, that the policies reflected in Section 546(e) relate to securities markets, which are subject to extensive federal regulation. The regulation of these markets has existed and grown for over eighty years and reflects very important federal concerns.

In the present matter, therefore, there is no measurable concern about federal intrusion into traditional state domains. Our bottom line is that the issue before us is one of inferring congressional intent from the Code, without significant countervailing pressures of state law concerns.

2. The Language of Section 546(e)

Section 544(b) empowers a trustee *et al.* to avoid a “transfer . . . [by] the debtor . . . voidable under applicable law by a[n] [unsecured] creditor.” Section 548(a) also provides the trustee *et al.* with independent federal intentional, 11 U.S.C. § 548(a)(1)(A), and constructive fraudulent conveyance claims, 11 U.S.C. § 548(a)(1)(B).

Section 546(e) provides in pertinent part:

Notwithstanding sections 544, . . . 548(a)(1)(B) . . . of this title, the trustee may not avoid a transfer that is a . . . settlement payment . . . made by or to (or for the benefit of) a . . . stockbroker, financial institution, financial participant, or securities clearing agency, or that is a transfer made by or to (or for the benefit of) a . . . stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract . . . except under section 548(a)(1)(A). . . .

Id. § 546(e). Section 546(e) thus expressly prohibits trustees et al. from using their Section 544(b) avoidance powers and (generally) Section 548 against the transfers specified in Section 546(e). However, Section 546(e) creates an exception to that prohibition for claims brought by trustee et al. under Section 548(a)(1)(A) that, as noted, establishes a federal avoidance claim to be brought by a trustee et al. based on an intentional fraud theory. As discussed supra, the Litigation Trust has brought a Section 548(a)(1)(A) claim against the same transfers challenged by appellants' actions before us on this appeal. That claim is still pending.

The language of Section 546(e) covers all transfers by or to financial intermediaries that are "settlement payment[s]" or "in connection with a securities contract." Transfers in which either the transferor or transferee is not such an intermediary are clearly included in the language. The Section does not distinguish between kinds of transfers, e.g., settlements of ordinary day-to-day trading, LBOs, or

mergers in which shareholders of one company are involuntarily cashed out. So long as the transfer sought to be avoided is within the language quoted above, the Section includes avoidance proceedings in which the intermediary would escape a damages judgment. But see In re Lyondell Chem. Co., 503 B.R. 348, 372-73 (Bankr. S.D.N.Y. 2014), as corrected (Jan. 16, 2014), that Section 546(e) does not include “LBO payments to stockholders at the very end of the asset transfer chain, where the stockholders are the ultimate beneficiaries of the constructively fraudulent transfers, and can give the money back to injured creditors with no damage to anyone but themselves.”

3. Appellants’ Legal Theory

Appellants’ state law, constructive fraudulent conveyance claims purport to be brought under mainstream bankruptcy procedures directly mandated by the Code. However, an examination of the Code as a whole, in contrast with an isolated focus on the word “trustee” in Section 546(e), reveals that appellants’ theory relies upon adhering to statutory language only when opportune and resolving various ambiguities in a way convenient to that theory. Even then, their legal theory results in anomalies and inconsistencies with parts of the Code. The consequence of those ambiguities, anomalies, and conflicts is that a reader of Section 546(e), at the time of enactment, would not have necessarily concluded that the reference only to a trustee et al. meant that creditors may at some point bring state law claims seeking the very relief barred

to the trustee et al. by Section 546(e). Its meaning, therefore, is not plain.

(i) Appellants' Theory of Fraudulent
Conveyance Avoidance Proceedings

Appellants' theory goes as follows. When a debtor enters bankruptcy, all "legal or equitable interests of the debtor in property," 11 U.S.C. § 541(a)(1), vest in the debtor's bankruptcy estate. This property includes legal claims that could have been brought by the debtor. See U.S. ex rel. Spicer v. Westbrook, 751 F.3d 354, 361-62 (5th Cir. 2014) ("The phrase 'all legal or equitable interests' includes legal claims - whether based on state or federal law."). Therefore, "the Trustee is conferred with the authority to represent all creditors and the Debtor's estate and with the sole responsibility of bringing actions on behalf of the Debtor's estate to marshal assets for the estate's creditors." In re Stein, 314 B.R. 306, 311 (D.N.J. 2004). However, fraudulent conveyance claims proceed on a theory that an insolvent debtor may not make what are essentially gifts that deprive creditors of assets available to pay debts. See Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 322 (1999). Therefore, before a bankruptcy takes place, fraudulent conveyance claims belong to creditors rather than to the debtor. As a consequence, Section 544(b)(1) provides that a bankruptcy trustee may avoid "any transfer of an interest of the debtor . . . that is voidable under applicable law by a creditor holding an unsecured claim." 11 U.S.C. § 544(b)(1). The responsibility of the trustee et al. is to "step into the shoes of a creditor under state law and avoid any transfers

such a creditor could have avoided.” Univ. Church v. Geltzer, 463 F.3d 218, 222 n.1 (2d Cir. 2006).

The trustee et al., however, is subject to a statute of limitations that requires such claims to be brought within two years of the commencement of the bankruptcy proceeding. See 11 U.S.C. § 546(a)(1)(A). Appellants infer from this statute of limitations that if the trustee et al. fails to act to enforce such claims during that two-year period, the claims revert to creditors who may then pursue their own state law, fraudulent conveyance actions. Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 1. This position assumes that, although the power to bring such actions is clearly vested in the trustee et al. when the bankruptcy proceeding begins, if the power is not exercised, it returns in full flower to the creditors after the bankruptcy ends or after two years.

Appellants’ theory also is that their fraudulent conveyance claims were only stayed under Section 362(a), rather than extinguished when assumed by the trustee on behalf of the bankrupt estate by the trustee et al. under Section 544, and could be asserted by them as creditors when the Section 362(a) stay was lifted. Accordingly, appellants argue, when the Committee did not bring constructive fraudulent conveyance actions against the LBO transfers by December 8, 2010, appellants regained the right to bring their own state law actions. See Resp. & Reply Br. of Pls.-Appellants-Cross Appellees 6. Moreover, they correctly note that Section 362’s automatic stay was, as discussed supra, lifted. In either case -- automatically after

two years or by the bankruptcy court's lifting of the stay -- appellants assert that the right to bring state law actions has reverted to them.

(ii) Ambiguities, Anomalies, and Conflicts

When appellants' arguments and their relation to the Code are viewed, as we must view them, in their entirety, In re Boodrow, 126 F.3d 43, 49 (2d Cir. 1997) ("The Supreme Court has thus explained . . . 'we must not be guided by a single sentence or [part] of a sentence [of the Code], but look to the provisions of the whole law, and to its object and policy.'") (quoting Kelly v. Robinson, 479 U.S. 36, 43 (1986)), they reveal material ambiguities, anomalies, and outright conflicts with the purposes of Code Sections 544, 362, and 548, not to mention the outright conflict with Section 546(e) discussed infra.

A critical step in the logic of appellants' theory finds no support in the language of the Code. In particular, the inference that fraudulent conveyance actions revert to creditors if either the two-year statute of limitations passes without an exercise of the trustees' et al. powers under Section 544 or the Section 362(a) stay is lifted by the bankruptcy court has no basis in the Code's language. To begin, the language of the automatic stay provision applies only to actions against "the debtor." 11 U.S.C. § 362. To be sure, there are cases barring fraudulent conveyance actions brought by creditors before the passing of the limitations period or lifting of the stay. See, e.g., In re Crysen/Montenay Energy Co., 902 F.2d 1098, 1101 (2d Cir. 1990). The rationales of these cases vary. Some rely on Section 362(a) on the

theory that the fraudulent conveyance claims are the property of the debtors' estate. See In re MortgageAmerica Corp., 714 F.2d 1266, 1275-76 (5th Cir. 1983); Matter of Fletcher, 176 B.R. 445, 452 (Bankr. W.D. Mich. 1995), rev'd and remanded on other grounds sub nom. In re Van Orden, No. 1:95-CV-79, 1995 WL 17903731 (W.D. Mich. Sept. 5, 1995). Some do not mention Section 362(a) and rely on the need to protect trustees' et al. powers to bring Section 544 avoidance actions. See In re Van Diepen, P.A., 236 F. App'x. 498, 502-03 (11th Cir. 2007); In re Clark, 374 B.R. 874, 876 (Bankr. M.D. Ala. 2007); In re Tessmer, 329 B.R. 776, 780 (Bankr. M.D. Ga. 2005). All the caselaw agrees that the trustee et al.'s powers under Section 544 are exclusive, at least until the stay is lifted or the two-year period expires.

Equally important is the fact that the inference of a reversion of fraudulent conveyance claims to creditors drawn from Section 544's statute of limitations is not based on the language of the Code, which says nothing about the reversion of claims vested in the trustee et al. by Section 544. Statutes of limitation usually are intended to limit the assertion of stale claims and to provide peace to possible defendants, Converse v. Gen. Motors Corp., 893 F.2d 513, 516 (2d Cir. 1990), and not to change the identity of the authorized plaintiffs without some express language to that effect. A decisive part of appellants' legal theory thus has no support in the language of the Code.

Even if this gap is assumed not to exist, or can be otherwise traversed, appellants' theory encounters other serious problems. Section 544, vesting avoidance powers in the trustee et al., is intended to simplify proceedings, reduce the costs of marshalling the debtor's assets, and assure an equitable distribution among the creditors. See In re MortgageAmerica Corp., 714 F.2d 1266, 1275-76 (5th Cir. 1983) (noting that "[t]he 'strong arm' provision of the [Bankruptcy] Code, 11 U.S.C. § 544, allows the bankruptcy trustee to step into the shoes of a creditor for the purpose of asserting causes of action under state fraudulent conveyance acts for the benefit of all creditors, not just those who win a race to judgment" and Section 362 helps prevent "[a]ctions for the recovery of the debtor's property by individual creditors under state fraudulent conveyance laws [that] would interfere with [the bankruptcy] estate and with the equitable distribution scheme dependent upon it"). However, these purposes are hardly consistent with the process hypothesized by appellants.

Accepting for purposes of argument appellants' view of the applicable process, Section 362, at the very least, prevented appellants (for a time) from bringing their state law, fraudulent conveyance claims, while Section 546(e) barred the Committee from seeking to enforce or, necessarily, to settle them. Appellants' argument thus seems to posit that their claims are on hold until the trustees et al. decide whether to bring an action they are powerless to bring or to pass on to creditors a power they do not have. In short, it assumes that, when creditors'

avoidance claims are lodged in the trustee et al. and are diminished in that hand by the Code, they reemerge in undiminished form in the hands of creditors after the statute of limitations governing actions by the trustee et al. has run or the bankruptcy court lifts the automatic stay.

In the context of the Code, however, any such process is a glaring anomaly. Section 548(a)(1)(A) vests trustees with a federal claim to avoid the very transfers attacked by appellants' state law claims -- but only on an intentional fraud theory. There is little apparent reason to limit trustees et al. to intentional fraud claims while not extinguishing constructive fraud claims but rather leaving them to be brought later by individual creditors. In particular, enforcement of the intentional fraud claim is undermined if creditors can later bring state law, constructive fraudulent conveyance claims involving the same transfers. Any trustee would have grave difficulty negotiating more than a nominal settlement in the federal action if it cannot preclude state claims attacking the same transfers but not requiring a showing of actual fraudulent intent. Unable to settle, a trustee et al. will be reluctant to expend the estate's resources on vigorously pursuing the federal claim while awaiting the stayed state claims to revert and to be litigated by creditors. As happened in the present matter, the result is that the trustee et al.'s action awaits the pursuit of piecemeal actions by creditors. This is precisely opposite of the intent of the Code's procedures. While a bankruptcy court can reduce the delay by an early lifting of the automatic stay

with regard to constructive fraudulent conveyance actions, that action would underline the anomaly of applying the stay to the bringing of claims that are barred to trustees et al.

Staying ordinary state law, constructive fraudulent conveyance claims by individual creditors while the trustee deliberates is a rational method of avoiding piecemeal litigation and ensuring an equitable distribution of assets among creditors. See MBNA Am. Bank, N.A. v. Hill, 436 F.3d 104, 108 (2d Cir. 2006) (“The objectives of the Bankruptcy Code . . . include . . . ‘the need to protect creditors and reorganiz[e] debtors from piecemeal litigation’”) (quoting Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp., 118 F.3d 1056, 1069 (5th Cir. 1997)). However, the scheme described by appellants does not resemble this method either in simplicity or in the equitable treatment of creditors.

To rationalize these anomalies, appellants speculate as to -- more accurately, imagine -- a deliberate balancing of interests by Congress. They argue that Congress wanted to balance the need for certainty and finality in securities markets, recognized in Section 546(e), against the need to maximize creditors’ recoveries, recognized in various other provisions. Congress did so, they argue, by limiting only the avoidance powers of trustees et al., not those of individual creditors (save for the stay), in Section 546(e) because actions by trustees et al. are a greater threat to securities markets than are actions by individual creditors. Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 71. That greater

threat results from the fact that a trustee's power of avoidance is funded by the debtor's estate, see 11 U.S.C. §§ 327, 330, supported by national long-arm jurisdiction, see Fed. R. Bankr. P. 7004(d),(f), and can be used to avoid the entirety of a transfer, Tronox Inc. v. Anadarko Petroleum Corp. (In re Tronox Inc.), 464 B.R. 606, 615-17 (Bankr. S.D.N.Y. 2012) (citing Moore v. Bay, 284 U.S. 4 (1931)). Creditors, in turn, have no such funding, are limited by state jurisdictional rules, and can sue only for their individual losses. See In re Integrated Agri. Inc., 313 B.R. 419, 428 (Bankr. C.D. Ill. 2004). Therefore, appellants argue that a deliberate "balance" was struck by protecting securities markets from trustees' et al. actions while subjecting them to the lesser disruption individual creditors' actions might cause after a two-year stay. Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 83-85. For a court to upset this delicate balance would constitute judicial intrusion on policy decisions rightfully left to the Congress.

However, the balance described above is an ex post explanation of a legal scheme that appellants must first construct, and then justify as rational, because it is essential to their claims. Although they argue that the scheme was deliberately constructed by Congress, that argument lacks any support whatsoever in the legislative deliberations that led to Section 546(e)'s enactment.

Moreover, appellants' arguments understate the number of creditors who would sue, if allowed, and the corresponding extent of the danger to securities

markets. Creditors may assign their claims and various methods of aggregation can lead to billions of dollars of claims, as here.

(iii) No Plain Meaning

These issues reflect ambiguities as to exactly what is transferred to trustees et al. by Section 544(b)(1). It is clear that trustees et al. own the debtors' estates, which include the debtors' property and legal claims. See 11 U.S.C. § 541(a)(1) (Among other things, the "estate is comprised of . . . all legal or equitable interests of the debtor in property as of the commencement of the case"); U.S. ex rel. Spicer v. Westbrook, 751 F.3d 354, 361-62 (5th Cir. 2014) ("The phrase 'all legal or equitable interests' includes legal claims -- whether based on state or federal law."). Avoidance claims belong to creditors, however, and whether they become the property of the debtors' estates is a debated, and somewhat metaphysical, issue. See Note 7, infra. The issue does have a limited practical bearing on the present matter, however. If the claims asserted by appellants became the property of the debtor's estate upon Tribune's bankruptcy and were thereby limited in the hands of the Committee, their reversion in an unaltered form, whether occurring automatically or by act of the Committee or bankruptcy court, might seem counterintuitive.

Appellants' reliance on the applicability of the automatic stay to their claims would arguably support the "property" view. The stay is intended in part to protect the property rights of the trustee et al. in the debtor's estate. Subjecting avoidance

actions by creditors to the stay has been supported by various courts on the ground that such claims are either the property of the debtor's estate or have an equivalent legal status. See In re MortgageAmerica Corp., 714 F.2d 1266, 1275-76 (5th Cir. 1983); In re Swallen's, Inc., 205 B.R. 879, 882 (Bankr. S.D. Ohio 1997); Matter of Fletcher, 176 B.R. 445, 452 (Bankr. W.D. Mich. 1995).

Whether, and to what degree, fraudulent conveyance claims become the property of a bankrupt estate was, at the time of Section 546(e)'s enactment, and now, anything but clear. The principal Supreme Court precedent held that such claims are the property of the debtor's estate. Trimble v. Woodhead, 102 U.S. 647, 649 (1880). It is a very old decision but has not been expressly overruled. Subsequent court of appeals decisions are bountiful in contradictory statements regarding the property issue. Compare In re Cybergenics Corp., 226 F.3d 237, 241, 246 (3d Cir. 2000) (stating that "fraudulent transfer claims have long belonged to a transferor's creditors, whose efforts to collect their debts have essentially been thwarted as a consequence of the transferor's actions" but also noting that the debtor's "'assets' and 'property of the estate' have different meanings, evidenced in part by the numerous provisions in the Bankruptcy Code that distinguish between property of the estate and property of the debtor, or refer to one but not the other"), and Picard v. Fairfield Greenwich Ltd., 762 F.3d 199, 212 (2d Cir. 2014) ("Our case law is clear that assets targeted by a fraudulent conveyance action do not become property of the debtor's estate

under the Bankruptcy Code until the Trustee obtains a favorable judgment.”), with Cumberland Oil Corp. v. Thropp, 791 F.2d 1037, 1042 (2d Cir. 1986) (noting that causes of action alleging violation of fraudulent conveyance laws would be property of the estate), and Nat’l Tax Credit Partners v. Havlik, 20 F.3d 705, 708-09 (7th Cir. 1994) (“[T]he right to recoup a fraudulent conveyance, which outside of bankruptcy may be invoked by a creditor, is property of the estate that only a trustee or debtor in possession may pursue once a bankruptcy is underway.”).

Use of the term “property” as a short-hand way of suggesting exclusivity has merit, Henry E. Smith, Property and Property Rules, 79 N.Y.U. L. Rev. 1719, 1770-74 (2004), but Section 544(b)(1) does not expressly state whether the bundle of rights transferred can revert. However, we need not resolve either the “property” or the reversion issues. Whether the statutory language has a plain meaning turns on whether a consensus would have existed among reasonable, contemporaneous readers as to meaning of that language in the particular statutory context. See Pettus v. Morgenthau, 554 F.3d 293, 297 (2d Cir. 2009) (“[W]e attempt to ascertain how a reasonable reader would understand the statutory text, considered as a whole.”); Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 252-53 (2004) (noting that “[s]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose”) (quoting Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc., 469 U.S. 189, 194 (1985)). If differing views

as to meaning were reasonable at the time of Section 546(e)'s enactment, its meaning is less than plain. See, e.g., Rodriguez v. Cuomo, 953 F.2d 33, 39-40 (2d Cir. 1992).

Appellants' arguments on meaning rely not only on the reference to a trustee's et al. powers but equally, or more so, on a claim of settled law at the time of Section 546(e)'s enactment that creditors' avoidance rights not only revert to creditors but also revert in their original breadth. However, whether fraudulent conveyance claims revert as a matter of law upon a trustee's failure to act was, both at the time Section 546(e) was passed as well as now, unclear, as discussed supra. A contemporaneous reader would not, therefore, necessarily have believed it plain that Section 546(e)'s reference only to a trustee's et al. avoidance claim meant that creditors could bring their own claims.⁶

A contemporaneous reader would also notice that the language of the automatic stay provision does not literally apply to appellants' actions and that no provision for the reversion of claims vested in the trustee et al. by Section 544 exists. As explained supra, having to draw an inference of reversion of rights from that provision's statute of limitations might well have appeared as a leap several bridges too far to such a reader. Indeed, the vesting of avoidance claims in the trustee et al., the lack of

⁶ Our task of determining how a contemporaneous reader would have read Section 546(e) does not depend on the caselaw of one particular circuit.

applicable language in the automatic stay provision, and the lack of a statutory basis for reversion might well have suggested to such a reader that Section 544's vesting of avoidance proceedings in the trustee et al. cut off creditors from any avoidance rights other than a share of the proceeds in bankruptcy.

Even passing these obstacles, the structure of the Code and the relationship of its pertinent sections might have suggested to a contemporaneous reader that altered rights do not revert to creditors unaltered, or to put it another way, a trustee et al. cannot pass on, or “allow” to revert through passivity, a right the trustee et al. does not have. To be sure, contemporaneous readers might have taken other views, including those of appellants, but that is the very definition of ambiguity.

(iv) Conclusion

We need not resolve these issues or even hold that the lack of statutory support, ambiguities, anomalies, or conflicts with purposes of the Code are sufficient to support a preemption holding. They are sufficient, however, to dispel the suggestions found in some discussions of these issues of a clear textual basis for appellants' theory in the Code and an overall consistency with congressional purpose. See In re Lyondell Chem. Co., 503 B.R. 348, 358-59 (Bankr. S.D.N.Y. 2014) as corrected (Jan. 16, 2014); In re: Tribune Co. Fraudulent Conveyance Litig., 499 B.R. at 315. We also need not issue a decision that affects fraudulent conveyance actions brought by creditors whose claims are not subject to Section 546(e). Our ensuing discussion concludes that the

purposes and history of that Section necessarily reflect an intent to preempt the claims before us. We turn now to the conflict between those claims and Section 546(e).

4. Conflict with Section 546(e)

As discussed supra, the meaning of Section 546(e) with regard to appellants' rights to bring the actions before us is ambiguous. We must, therefore, look to its language, legislative history, and purposes to determine its effect. Marvel Characters, Inc. v. Simon, 310 F.3d 280, 290 (2d Cir. 2002). Every congressional purpose reflected in Section 546(e), however narrow or broad, is in conflict with appellants' legal theory. Their claims are, therefore, preempted.

Section 546(e) was intended to protect from avoidance proceedings payments by and to financial intermediaries in the settlement of securities transactions or the execution of securities contracts. The method of settlement through intermediaries is essential to securities markets. Payments by and to such intermediaries provide certainty as to each transaction's consummation, speed to allow parties to adjust the transaction to market conditions, finality with regard to investors' stakes in firms, and thus stability to financial markets. See H.R. Rep. No. 97-420 (1982); H.R. Rep. No. 95-595 (1977). Unwinding settled securities transactions by claims such as appellants' would seriously undermine -- a substantial understatement -- markets in which certainty, speed, finality, and stability are necessary to attract capital. To allow appellants' claims to

proceed, we would have to construe Section 546(e) as achieving the opposite of what it was intended to achieve.

Allowing creditors to bring claims barred by Section 546(e) to the trustee et al. only after the trustee et al. fails to exercise powers it does not have would increase the disruptive effect of an unwinding by lengthening the period of uncertainty for intermediaries and investors. Indeed, the idea of preventing a trustee from unwinding specified transactions while allowing creditors to do so, but only later, is a policy in a fruitless search of a logical rationale.

The narrowest purpose of Section 546(e) was to protect other intermediaries from avoidance claims seeking to unwind a bankrupt intermediary's transactions that consummated transfers between customers. See H.R. Rep. No. 97-420 (1982). It must be emphasized that appellants' legal theory would clearly allow such claims to be brought (later) by creditors of the bankrupt intermediary. Even the narrowest purpose of Section 546(e) is thus at risk.

Some judicial and other discussions of these issues avoid addressing the full effects of adopting appellants' arguments. See In re Lyondell Chem. Co., 503 B.R. 348, 359-78 (Bankr. S.D.N.Y. 2014) as corrected (Jan. 16, 2014). Such analysis always begins by reliance on the "trustee" language, id. at 358, but then narrows the scope of the transfers covered by Section 546(e)'s language. For example, appellants argue that the concerns of the amicus

curiae Securities and Exchange Commission regarding the effect of the district court's decision on the securities markets are misplaced, because appellants are not seeking money from the intermediaries.⁷ Resp. & Reply Br. of Pls.-Appellants Cross-Appellees 78-82. In doing so, they rely upon the Lyondell opinion, which, after relying on the “trustee” language, held that Section 546(e) is not preemptive of state law, fraudulent conveyance actions involving LBOs because such actions do not implicate the purposes of Section 546(e). 503 B.R. at 372-73.

There is no little irony in putting lynchpin reliance on the word “trustee” while ignoring the language that follows. In any event, Section 546(e)'s language clearly covers payments, such as those at issue here, by commercial firms to financial intermediaries to purchase shares from the firm's shareholders. 11 U.S.C. § 546(e) (limitations on avoidance of transfers made to a financial intermediary “in connection with a securities contract”). A search for legislative purpose is heavily informed by language, and analyzing all the language of a provision and its relationship to the

⁷ Under the “Collapsing Doctrine,” “[c]ourts analyzing the effect of LBOs have routinely analyzed them by reference to their economic substance, ‘collapsing’ them, in many cases, to consider the overall effect of multi-step transactions.” In re Lyondell Chem. Co., 503 B.R. 348, 354, 379 (Bankr. S.D.N.Y. 2014) as corrected (Jan. 16, 2014). Monies passed through intermediaries are deemed to be the property only of the ultimate recipients, here the cashed out shareholders.

Code as a whole is preferable to using literalness here and perceived legislative purpose (without regard to language) there as needed to reach particular results. See King v. Burwell, 135 S. Ct. 2480, 2489 (2015) (“[O]ftentimes the meaning -- or ambiguity -- of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme. Our duty, after all, is to construe statutes, not isolated provisions.”) (internal quotation marks and citations omitted).

We do not dwell on this because we perceive no conflict between Section 546(e)’s language and its purpose. Section 546(e) is simply a case of Congress perceiving a need to address a particular problem within an important process or market and using statutory language broader than necessary to resolve the immediate problem. Such broad language is intended to protect the process or market from the entire genre of harms of which the particular problem was only one symptom. The legislative history of Section 546(e) clearly reveals such a purpose. That history (confirmed by the broad language adopted) reflects a concern over the use of avoidance powers not only after the bankruptcy of an intermediary, but also after a “customer” or “other participant” in the securities markets enters bankruptcy. See H.R. Rep. No. 97-420 (1982). To be sure, the examples used by the Section’s proponents focused on the immediate concern of creditors of bankrupt brokers seeking to unwind payments by

the bankrupt firm to other intermediaries. Id. Such actions were perceived as creating a danger of “a ripple effect,” id., a chain of bankruptcies among intermediaries disrupting the securities market generally. From these examples, appellants, and others, have argued that when monetary damages are sought only from shareholders, or an LBO is involved, the purposes of Section 546(e) are not implicated. See Resp. & Reply Br. of Pls.-Appellants-Cross-Appellees 79; In re Lyondell, 503 B.R. at 358-59. Even apart from using the oil and water mixture of applying a narrow literalness to the word “trustee” and disregarding the rest of the Section’s language, we disagree.

As courts have recognized, Congress’s intent to “minimiz[e] the displacement caused in the commodities and securities markets in the event of a major bankruptcy affecting those industries,” In re Quebecor World (USA) Inc., 719 F.3d 94, 100 (2d Cir. 2013) (quoting Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V., 651 F.3d 329, 333 (2d Cir. 2011)), reflected a larger purpose memorialized in the legislative history’s mention of bankrupt “customers” or “other participant[s]” and in the broad statutory language defining the transactions covered. That larger purpose was to “promot[e] finality . . . and certainty” for investors, by limiting the circumstances, e.g., to cases of intentional fraud, under which securities transactions could be unwound. In re Kaiser Steel Corp., 952 F.2d 1230, 1240 n.10 (10th Cir. 1991) (quoting H. Rep. No. 484, 101st Cong. 2d Sess. 2 (1990), reprinted in 1990 U.S.C.C.A.N. 223, 224).

The broad language used in Section 546(e) protects transactions rather than firms, reflecting a purpose of enhancing the efficiency of securities markets in order to reduce the cost of capital to the American economy. See Bankruptcy of Commodity and Securities Brokers: Hearings Before the Subcomm. on Monopolies and Commercial Law of the Comm. on the Judiciary, 47th Cong. 239 (1981) (statement of Bevis Longstreth, Commissioner, SEC) (explaining that, without 546(e), the Bankruptcy Code's "preference, fraudulent transfer and stay provisions can be interpreted to apply in harmful and costly ways to customary methods of operation essential to the securities industry"). As noted, central to a highly efficient securities market are methods of trading securities through intermediaries. Section 546(e)'s protection of the transactions consummated through these intermediaries was not intended as protection of politically favored special interests. Rather, it was sought by the SEC -- and corresponding provisions by the CFTC, see Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary, 94th Cong., Supp. App. Pt., 2406 (1976) -- in order to protect investors from the disruptive effect of after-the-fact unwinding of securities transactions.

A lack of protection against the unwinding of securities transactions would create substantial deterrents, limited only by the copious imaginations of able lawyers, to investing in the securities market. The effect of appellants' legal theory would be akin to

the effect of eliminating the limited liability of investors for the debts of a corporation: a reduction of capital available to American securities markets.

For example, all investors in public companies would face new and substantial risks, if appellants' theory is adopted. At the very least, each would have to confront a higher degree of uncertainty even as to the consummation of securities transfers. The risks are not confined to the consummation of securities transactions. Pension plans, mutual funds, and similar institutional investors would find securities markets far more risky if exposed to substantial liabilities derived from investments in securities sold long ago. If appellants were to prevail, a pension plan whose position in a firm was cashed out in a merger would have to set aside reserves in case the surviving firm went bankrupt and triggered avoidance actions based on a claim that the cash out price exceeded the value of the shares. Every economic downturn would expose such institutional investors not only to a decline in the value of their current portfolios but also to claims for substantial monies received from mergers during good times.

Given the occasional volatility of economic events, any transaction buying out shareholders would risk being attacked as a fraudulent conveyance avoidable by creditors if the firm faltered. Appellants' legal theory would even reach investors who, after voting against a merger approved by other shareholders, were involuntarily cashed out. Tender offers, which almost always involve a premium above trading price, Lynn A. Stout, Are Takeover Premiums Really

Premiums? Market Price, Fair Value, and Corporate Law, 99 Yale L.J. 1235, 1235 (1990), would imperil cashed out shareholders if the surviving entity encountered financial difficulties.

If appellants' theory was adopted, individual investors following a conservative buy-and-hold strategy with a diversified portfolio designed to reduce risk might well decide that such a strategy would actually increase the risk of crushing liabilities. Such a strategy is adopted because it involves low costs of monitoring the prospects of individual companies and emphasizes the offsetting of unsystematic risks by investing in multiple firms. See Leigh v. Engle, 858 F.2d 361, 368 (7th Cir. 1988). Appellants' legal theory might well require costly and constant monitoring by investors to rid their portfolios of investments in firms that might, under then-current circumstances, be subject to mergers, stock buy-backs, or tender offers (and would otherwise be good investments). Investing in multiple companies, the essence of diversification, would increase the danger of avoidance liability.

The threat to investors is not simply losing a lawsuit. Given the costliness of defending such legal actions and the long delay in learning their outcome, exposing investors to even very weak lawsuits involving millions of dollars would be a substantial deterrent to investing in securities. The need to set aside reserves to meet the costs of litigation -- not to mention costs of losing -- would suck money from capital markets.

As noted, concern has been expressed that LBOs are different from other transactions in ways pertinent to the Bankruptcy Code. In re Lyondell Chem. Co., 503 B.R. 348, 354, 358-59 (Bankr. S.D.N.Y. 2014), as corrected (Jan. 16, 2014). However, the language of Section 546(e) does not exempt from its protection payments by firms to intermediaries to fund ensuing payments to shareholders for stock.

Moreover, securities markets are heavily regulated by state and federal governments. The statutory supplements used in law school securities regulation courses are thick enough to rival Kevlar in stopping bullets. Mergers and tender offers are among the most regulated transactions. See, e.g., Williams Act, 15 U.S.C.A. §§ 78m(d)-(e), 78n(d). Much of the content of state and federal regulation is designed to protect investors in such transactions. Much of that content is also designed to maximize the payout to shareholders cashed out in a merger, see, e.g., Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986); Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 955-56 (Del. 1985), or accepting a tender offer, see Williams Act, 15 U.S.C.A. §§ 78m(d)-(e), 78n(d). Appellants' legal theory would allow creditors to seek to portray that maximization as evidence supporting a crushing liability. A legal rule substantially undermining those goals of state and federal regulation -- again, one akin to eliminating limited liability -- is a systemic risk.

It is also argued that the Bankruptcy Code has many different purposes and that Section 546(e) does not clearly “trump [] all [the] other[s].” In re Tribune Co. Fraudulent Conveyance Litig., 499 B.R. 310, 317 (S.D.N.Y. 2013). The pertinent -- and “trumping” -- “other” purpose of the Code is said to be the maximization of assets available to creditors. Id. Courts customarily accommodate statutory provisions in tension with one another where the principal purpose of each is attainable by limiting each in achieving secondary goals. See, e.g., In re Colonial Realty Co., 980 F.2d 125, 132 (2d Cir. 1992). However, Section 546(e) is in full conflict with the goal of maximizing the assets available to creditors. Its purpose is to protect a national, heavily regulated market by limiting creditors’ rights. Conflicting goals are not accommodated by giving value with the right hand and taking it away with the left. Section 546(e) cannot be trumped by the Code’s goal of maximizing the return to creditors without thwarting the Section’s purposes.

5. Additional Considerations Regarding Congressional Intent

We therefore conclude that Congress intended to protect from constructive fraudulent conveyance avoidance proceedings transfers by a debtor in bankruptcy that fall within Section 546(e)’s terms. As discussed supra, appellants’ theory hangs on the ambiguous use of the word “trustee,” has no basis in the language of the Code, leads to substantial anomalies, ambiguities and conflicts with the Code’s procedures, and, most importantly, is in irreconcilable conflict with the purposes of Section

546(e). In this regard, we do not ignore Section 544(b)(2), which prohibits avoidance of a transfer to a charitable contribution by a trustee but also expressly preempts state law claims by creditors. It states: “Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State March 14, 2016 court shall be preempted by the commencement of the case.” 11 U.S.C. § 544(b)(2). Appellants rely heavily upon this provision to argue that, while Congress knew how to explicitly preempt state law in the Bankruptcy Code, it chose not to do so in the context of Section 546(e).

Appellants’ argument suffers from a fatal flaw, however. In Arizona v. United States, the Supreme Court made clear that “the existence of an express pre-emption provisio[n] does not bar the ordinary working of conflict pre-emption principles or impose a special burden that would make it more difficult to establish the preemption of laws falling outside the clause.” 132 S. Ct. 2492, 2504-05 (2012) (quotation marks and citations omitted); see also Hillman, 133 S. Ct. at 1954 (“[W]e have made clear that the existence of a separate pre-emption provision does not bar the ordinary working of conflict pre-emption principles.”) (internal quotation marks and citations omitted). Section 544(b)(2) does not, therefore, undermine our conclusion as to Congress’s intent.

Next, appellants argue that Congress’s failure to amend Section 546(e) over the years that it has existed in pertinent form reflects a congressional intent to allow their actions to proceed. In support,

they point only to requests for an amendment by the Chair of the CFTC and by Comex, see Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary, 94th Cong., Supp. App. Pt. 4, 2406 (1976); Bankruptcy Reform Act: Hearings on S. 2266 and H.R. 8000 Before the Subcomm. on Improvements in Judicial Machinery of the S. Comm. on the Judiciary, 95th Cong. 1297 (1978), the enactment of Section 544(b)(2) with an express preemption provision, and a decision in the District of Delaware, PHP Liquidating, LLC v. Robbins, 291 B.R. 603, 607 (D. Del. 2003), aff'd sub nom. In re PHP Healthcare Corp., 128 F. App'x 839 (3d Cir. 2005).

To be sure, a history of relevant practice may support an inference of congressional acquiescence. See, e.g., Fiero v. Fin. Indus. Regulatory Auth., 660 F.3d 569, 577 (2d Cir. 2011) (noting that FINRA's "longstanding reliance" on enforcement mechanisms other than fines -- and Congress's failure to alter FINRA's enforcement powers -- "indicates that FINRA is not authorized to enforce the collection of its fines through the courts"); Am. Tel. & Tel. Co. v. M/V Cape Fear, 967 F.2d 864, 872 (3d Cir. 1992) ("The Supreme Court in the past has implied private causes of action where Congress, after a 'consensus of opinion concerning the existence of a private cause of action' had developed in the federal courts, has amended a statute without mentioning a private remedy.") (quoting Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353, 380 (1982)). However, the effect or meaning of legislation is not to

be gleaned from isolated requests for more protective, but possibly redundant, legislation. The impact of Section 544(b)(2) is discussed immediately above and need not be repeated here.

Finally, the failure of Congress to respond to court decisions is of interpretive significance only when the decisions are large in number and universally, or almost so, followed. See Merrill Lynch, 456 U.S. at 379 (holding that congressional amendment of the Commodity Exchange Act that was silent on the subject of private judicial remedies did not overturn federal court decisions routinely and consistently [] recogniz[ing] an implied private cause of action”) (emphasis added); see also Touche Ross & Co. v. Redington, 442 U.S. 560, 577 n.19 (1979) (holding that the Supreme Court’s implication of a private right of action under § 10(b) of the Securities and Exchange Act of 1934 was simply acquiescence in “the 25-year-old acceptance by the lower federal courts of an implied action”). The present decision is far from a departure from a generally accepted understanding. The district court decision in this very case and the bankruptcy court decision in Lyondell are in fact the sole extensive judicial discussions of the issue. Indeed, our present decision does not even constitute a split among the circuits. As or more telling with regard to the existence of a general understanding or a need for action, we find no history of the use of state law, constructive fraudulent conveyance actions to unwind settled securities transactions, either after a bankruptcy or in its absence.

The Constitution's establishment of two legislative branches that must act jointly and with the executive's approval was designed to render hasty action possible only in circumstances of widely perceived need. Congress's failure to act must be viewed in that context, and reliance upon an inference of satisfaction with the status quo must at least be based on evidence of a long standing and recognized status quo. In the present matter, we cannot draw the suggested inference on the basis of the skimpy evidence submitted while the inference of a preemptive intent is easily drawn.

CONCLUSION

For the reasons stated, we affirm the dismissal of the complaint, on preemption rather than standing grounds. We resolve no issues regarding the rights of creditors to bring state law, fraudulent conveyance claims not limited in the hands of a trustee et al. by Code Section 546(e) or by similar provisions such as Section 546(g) which is at issue in an appeal heard in tandem with the present matter, see Whyte v. Barclays Bank.

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Multidistrict Litigation No. 11 MD 2296 (RJS)
Master Case File No. 12 MC 2296 (RJS)

IN RE TRIBUNE COMPANY
FRAUDULENT CONVEYANCE LITIGATION

MEMORANDUM AND ORDER
September 23, 2013

RICHARD J. SULLIVAN, District Judge:

This multidistrict litigation (“MDL”), which consolidates state and federal cases from across the country, arises out of the leveraged buyout (“LBO”) of the Tribune Company (“Tribune”) in 2007 and its subsequent bankruptcy in 2008. Plaintiffs in these cases – the Official Committee of Unsecured Creditors (the “Committee”), which represents Tribune’s bankruptcy estate, and hundreds of

individual creditors of Tribune (the “Individual Creditors” or “Creditors”¹) – seek to claw back funds that were distributed to individuals and entities bought out in the course of the LBO (“Defendants”). The Creditors’ suits (the “Individual Creditor Actions”) target transactions that the Committee’s suits (the “Committee Actions”) are already seeking to unwind; however, the Creditors and the Committee assert different claims in pursuit of their shared end.

Now before the Court is Defendants’ consolidated motion to dismiss the Individual Creditor Actions pursuant to Federal Rule of Civil Procedure 12(b)(6). The narrow questions raised by the motion are whether Section 546(e) of the Bankruptcy Code prohibits the Creditors’ state law constructive fraudulent conveyance claims now that Tribune has filed for bankruptcy, and, if not, whether the Creditors are deprived of standing to proceed with their constructive fraudulent conveyance claims outside of bankruptcy while the Committee simultaneously asserts different fraudulent conveyance claims to unwind the same transactions². For the reasons set forth below, the Court concludes

¹ The Individual Creditors are comprised of both the “Note Holders” and the “Retirees” as defined in Master Case Order No. 3. (11 MD 2296, Doc. No. 1395.)

² At the outset, to avoid confusion, the Court notes that “standing” here denotes a creditor’s power to bring suit in light of the stay on creditor litigation while a bankruptcy trustee litigates estate claims. *See, e.g., St. Paul Fire and Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 700–01 (2d Cir. 1989).

that Section 546(e) does not prohibit the Individual Creditors' fraudulent conveyance claims, but that Section 362(a)(1) nonetheless deprives the Individual Creditors of standing to avoid the same transactions that the Committee is simultaneously suing to avoid.

I. BACKGROUND³

Tribune is a 166-year-old media corporation that publishes the *Chicago Tribune* and the *Los Angeles Times* and also operates business units in radio, television, and the Internet. In the mid-2000s, this storied company's financial condition was deteriorating, so on April 1, 2007, Tribune's board of directors approved a buyout plan proposed by private equity investor Sam Zell ("Zell"). (NH Compl. ¶¶ 2–3; *see* Retiree Compl. ¶ 34.) The LBO paid out more than \$8.2 billion to thousands of public shareholders

³ The following facts are drawn from the Third Amended Complaint in *Deutsche Bank Trust Co. Ams. v. Adaly Opportunity Fund TD Sec., Inc.*, No. 11 Civ. 4784 (RJS) (S.D.N.Y. Oct. 9, 2012), Doc. No. 704 ("NH Compl.") and the Second Amended Complaint in *Niese v. Alliance Bernstein L.P.*, No. 11 Civ. 4538 (S.D.N.Y. Dec. 20, 2011), Doc. No. 203 ("Retiree Compl.") – which, for the purposes of factual allegations, are substantively identical to the complaints filed, respectively, in the other Note Holder and Retiree Actions. (Def.'s Mem. of Law ("Mem.") at 3 n.3.) In deciding the motion, the Court also considered Defendants' memorandum of law in support of their motion, the Individual Creditors' brief in opposition ("Opp."), Defendants' reply ("Reply"), and the transcript of the May 23, 2013 oral argument on the motion ("Arg. Tr."). After the motion was fully briefed, the parties also submitted several letters with supplemental authority, which the Court also considered. (*See* Doc. Nos. 2358, 2393, 2420, 2476, 2490, 2498, 2499, 2515, 2523, 2526, 2576, 2580.)

in exchange for their Tribune shares. (NH Compl. ¶¶ 62, 66; Retiree Compl. ¶¶ 37, 40.) Although the company operated for a year after it was taken private, when the economy and the publishing industry entered a steep decline in 2008, Tribune commenced bankruptcy proceedings pursuant to Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101, *et seq.* (NH Compl. ¶ 112; Retiree Compl. ¶ 13.)

After Tribune filed for bankruptcy, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) created the Committee to stand in the shoes of the bankruptcy trustee and to file adversary proceedings for the benefit of Tribune’s creditors. (*In re Tribune Co.*, 08-13141 (Bankr. D. Del.), Docket (“Bankr. Doc.”) Nos. 5668 and 6150.)⁴ In this capacity, the Committee filed suit against cashed-out Tribune shareholders, Tribune’s officers and directors, financial advisors, Zell, and others who benefited from the buyout. (*Official Comm. of Unsecured Creditors of Tribune Co. v. Fitzsimons*, No. 10-ap-54010 (KJC) (Bankr. D. Del.), Doc. (“Committee SH Action Doc.”) No. 1; *Official Comm. of Unsecured Creditors of Tribune Co. v. Citigroup Global Mkts., Inc.*, No. 12-ap-50446 (KJC) (Bankr. D. Del.), Doc. No. 1.) Among other claims, the Committee sought to unwind the LBO by asserting that the shareholder buyouts constituted intentional

⁴ The Bankruptcy Court confirmed a plan for Tribune’s reorganization (the “Plan”) on July 23, 2012. (Bankr. Doc. No. 12074.) The Plan transferred the Committee Actions to a litigation trust administered by trustee Marc Kirschner (the “Litigation Trustee”). (*Id.*)

fraudulent conveyances. (Committee SH Action Doc. No. 1 ¶¶ 317-320.)

However, for reasons that will be made apparent below, the Committee did not assert a claim for *constructive* fraudulent conveyance. Consequently, on March 1, 2011, the Individual Creditors moved the Bankruptcy Court to permit them to file state-law constructive fraudulent conveyance (“SLCFC”) claims outside of bankruptcy.⁵ (Bankr. Doc. No. 8201.) The Bankruptcy Court conditionally lifted the stay because it found that, although the estate had filed intentional fraudulent conveyance claims, it had not asserted SLCFC claims within the applicable time period under 11 U.S.C. § 546(a) for trustee-filed fraudulent conveyance actions. (Bankr. Doc. No. 8740 (“Bankr. Decision”) ¶ 2.) The Bankruptcy Court expressly limited its decision, however, stating that it “made no finding and issue[d] no ruling determining the standing of [creditors] to assert SLCFC Claims or whether such claims are preempted or otherwise impacted by 11 U.S.C. § 546(e),” thus leaving those determinations for this Court. (Bankr. Decision ¶ 8 n.2.)

Based on the Bankruptcy Court’s decision to conditionally lift the stay on the SLCFC claims, starting on June 2, 2011, Individual Creditors across the country initiated SLCFC actions in more than

⁵ Intentional fraudulent conveyance claims require a showing of actual fraud by the transferor, whereas constructive claims impute fraudulent intent to transfers that, among other things, render the transferor insolvent.

twenty state and federal courts to unwind the buyouts of Tribune shareholders. (*See e.g.*, NH Compl. ¶¶ 115–160; Retiree Compl. ¶¶ 314–329; *see also* Mem. at 7.) By December 19, 2011, the filings related to the LBO had become sufficiently voluminous that the Judicial Panel on Multidistrict Litigation consolidated the Individual Creditor Actions and the Committee Actions here in the Southern District of New York. *In re Tribune Co. Fraudulent Conveyance Litig.*, 831 F. Supp. 2d 1371, 1371 (J.P.M.L. 2011).

Defendants filed their motion to dismiss and memorandum of law on November 6, 2012 (Doc. Nos. 1670, 1671⁶), and the Individual Creditors responded on December 21, 2012 (Doc. No. 2086). The motion was fully briefed as of February 4, 2013. (Doc. No. 2293.) On March 27, 2013, this MDL was transferred to my docket (Doc. No. 2419), and on May 23, the Court heard oral argument on the motion (Doc. No. 2560).

I. DISCUSSION

In order to survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must “provide the grounds upon which his claim rests.” *ATSI Commc’ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007). He must also allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

⁶ Unless otherwise noted, docket citations refer to the consolidated MDL docket sheet, 11 MD 2296.

Defendants assert two reasons why the Individual Creditor Actions are barred as a matter of law. First, Defendants argue that creditors' claims under state law are prohibited by 11 U.S.C. § 546(e), which bars a bankruptcy trustee from asserting constructive fraudulent conveyance claims to unwind "settlement payments" such as shareholder buyouts in an LBO. (Mem. at 9–21.) Second, Defendants argue that, because of Tribune's ongoing bankruptcy and the Committee's pursuit of intentional fraudulent conveyance claims, the Individual Creditors lack standing to assert constructive fraudulent conveyance claims that duplicate the Committee's claims. (*Id.* at 22–35.) The Court will address each argument in turn.

A. The Effect of Section 546(e) on
State-Law Claims

Defendants contend that 11 U.S.C. § 546(e) bars not only the Committee from asserting constructive fraudulent conveyance claims, but the Individual Creditors as well. (Mem. at 9–21.) Before turning to that provision, a brief overview of trustee avoidance powers may be helpful.

A bankruptcy trustee is empowered to assert various fraudulent conveyance claims under the Bankruptcy Code. Section 544(b)(1) gives a trustee power to "avoid any transfer of an interest of the debtor in property . . . that is voidable under applicable law by a creditor." This provision empowers the trustee to utilize, on behalf of the estate, any legal theory of recovery that a creditor could assert under state law. Section 548(a)(1) also

permits a trustee to avoid fraudulent transfers by the debtor, but this Section creates a federal cause of action in the trustee's own name. Under Section 548(a)(1), there are two different avenues by which a trustee may avoid a transaction. Subsection (A) permits a trustee to:

avoid any transfer . . . of an interest of the [bankrupt] debtor in property . . . that was made . . . on or within 2 years before the date of the filing of the [bankruptcy], if the debtor voluntarily or involuntarily made such transfer . . . with *actual intent* to hinder, delay, or defraud any entity . . .

11 U.S.C. § 548(a)(1)(A) (emphasis added). In contrast to Subsection (A)'s avoidance power for intentional fraudulent transfers, Subsection (B) permits a trustee to avoid transactions that were constructively fraudulent due to the debtor's insolvency and the adequacy of the consideration the debtor received in exchange for the transfer. 11 U.S.C. § 548(a)(1)(B).

In this way, the Bankruptcy Code girds a trustee with broad avoidance powers; however, it also strips away those powers in certain circumstances. In particular, Section 546(e) dictates that "[t]he trustee [in bankruptcy] may not avoid a transfer that is a . . . settlement payment." 11 U.S.C. § 546(e). The term "settlement payment" refers to any kind of payment that "complete[s] a transaction in securities," *Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.* 651 F.3d 329, 336 (2d Cir. 2011), including a "payment

for shares during an LBO,” *In re Resorts Int’l*, 181 F.3d 505, 515-16 (3d Cir. 1999); see *Enron Creditors*, 651 F.3d at 336. Section 546(e) makes one exception, however: a trustee may utilize Section 548(a)(1)(A) to avoid actually fraudulent transfers. Therefore, in conjunction, Sections 546(e) and 548(a)(1)(A) prohibit a bankruptcy trustee from asserting a constructive fraudulent conveyance claim to unwind LBO payouts. Defendants argue that the Individual Creditors’ claims are similarly barred.

1. Construing Section 546(e)

To determine whether Section 546(e) also applies to the Individual Creditors, the Court “must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” *United States v. Kozeny*, 541 F.3d 166, 171 (2d Cir. 2008) (quoting *United States v. Albertini*, 472 U.S. 675, 680 (1985)). As discussed above, Section 546(e) addresses its prohibition on avoiding settlement payments only to the bankruptcy trustee, and the Court works from the premise “that Congress says in a statute what it means and means in a statute what it says there.” *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (quoting *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992)). “[H]ad Congress intended [Section 546(e)] to be broadly [applicable], it could simply have said so, as it did in describing the parties who [may] act under other sections of the Code.” See *Hartford Underwriters*, 530 U.S. at 7 (analyzing whether Section 506(c) of the Bankruptcy Code applies only to the bankruptcy trustee or also

to an administrative claimant). And where, as here, “a statute [prohibits] specific action and designates a particular party [as barred from] tak[ing] it[, that] is surely among the least appropriate [moments] in which to presume nonexclusivity.” *Id.* at 6. Moreover, “the fact that the sole party named – the trustee – has a unique role in bankruptcy proceedings makes it entirely plausible that Congress would [apply a limitation] to him and not to others.” *Id.* at 7. Because Congress has spoken so clearly with respect to the object of the limitation in Section 546(e), the Court discerns no basis in the text for barring SLCFC claims brought by Individual Creditors who have no relation to the bankruptcy trustee. *See PHP Liquidating, LLC v. Robbins*, 291 B.R. 603, 607 (Bankr. D. Del. 2003) (concluding that Section 546(e), by its own terms, does not apply to unsecured creditors seeking to unwind a fraudulent conveyance); *see also Burlington N. R.R. Co. v. Okla. Tax Comm’n*, 481 U.S. 454, 461 (1987) (“Unless exceptional circumstances dictate otherwise, when we find the terms of a statute unambiguous, judicial inquiry is complete.” (quotation marks, punctuation, and citations omitted)).

2. Implied Preemption

Notwithstanding the straightforward language of the statute, Defendants urge the Court to find that Congress impliedly preempted constructive fraudulent conveyance claims brought by state-law creditors when it enacted Section 546(e). (Mem. at 14-21.) Although “[i]mplied preemption analysis does not justify ‘a freewheeling judicial inquiry . . . ,’” *Chamber of Commerce of U.S. v. Whiting*, 131 S. Ct.

1968, 1985 (2011) (quoting *Gade v. Nat’l Solid Wastes Mgmt. Assn.*, 505 U.S. 88, 111 (1992)), there are circumstances in which a court may infer that Congress clearly intended to preempt state law, even without expressly saying so, *see Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000); *Pac. Capital Bank, N.A. v. Connecticut*, 542 F.3d 341, 351 (2d Cir. 2008). These include situations (1) “where Congress has legislated so comprehensively that federal law occupies an entire field of regulation and leaves no room for state law,” *N.Y. SMSA Ltd. P’ship v. Town of Clarkstown*, 612 F.3d 97, 104 (2d Cir. 2010); (2) “where local law conflicts with federal law such that it is impossible for a party to comply with both . . . ,” *id.*; and (3) where “state law . . . stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *see also In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, Nos. 10-4135-cv (L), 10-4329-cv (XAP), 2013 WL 3863890, at *23 (2d Cir. July 26, 2013) (distinguishing “conflict preemption” from “obstacle preemption” but conceding that the latter may be “only an intermediate step down the road to impossibility preemption”).

Here, Defendants focus on the third type of implied preemption – obstacle preemption – arguing that the Individual Creditors’ claims “would assuredly frustrate the purposes of the federal statute and stand as an obstacle to its accomplishment.” (Mem. at 13 (internal citations

and quotation marks omitted).) “The burden of establishing obstacle preemption . . . is heavy Indeed, federal law does not preempt state law under obstacle preemption analysis unless ‘the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or consistently stand together.’” *MTBE Prods. Liab.*, 2013 WL 3863890, at *23 (quoting *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 241 (2d Cir. 2006)).

In every pre-emption case, “the purpose of Congress is the ultimate touchstone . . . ,” *Wyeth v. Levine*, 555 U.S. 555, 565 (2009), and the first place to look for Congress’s purpose is in the language it used, see *O&G Indus., Inc. v. Nat’l R.R. Passenger Corp.*, 537 F.3d 153, 161 (2d Cir. 2008) (declining to infer preemption by “supply[ing] that which [was] omitted by the legislature” when a federal statute “contain[ed] no limitation on its face” and utilized “unambiguous” language (quoting *Spielman v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 332 F.3d 116, 127 (2d Cir. 2003))). As already discussed, it is not evident from the language of Section 546(e) that Congress intended to block creditors from filing SLCFC claims. Moreover, Congress has repeatedly issued reports discussing Section 546(e), and these reports refer only to the provision’s effect on the trustee.⁷ Therefore, Congress’s language counsels against Defendants’ argument.

⁷ See H.R. Rep. No. 95-595, at 391 (1977) (referring only to the trustee in the context of § 546(e)); S. Rep. No. 95-989, at 8, 106 (1978) (same); H.R. Rep. No. 96-1195, at 6, 17 (1980) (same);

Nevertheless, Defendants urge the Court to consider the policy goals that spurred congressional action. (Mem. at 14–16.) By its own accounts, Congress enacted Section 546(e) in order to provide certainty to securities transactions and, in so doing, to enhance the stability of the nation’s financial markets. *See, e.g.*, H.R. Rep. No. 95-595, at 391 (1977); *Kaiser Steel Corp. v. Charles Schwab & Co.*, 913 F.2d 846, 848 (10th Cir. 1990) (finding that Congress enacted Section 546(e) to “protect the nation’s financial markets from the instability caused by the reversal of settled securities transactions” (citing S. Rep. No. 989, 95th Cong., 2d Sess. 8 (1978))). However, Congress pursues a host of other aims through the Bankruptcy Code, not least making whole the creditors of a bankruptcy estate. *See, e.g.*, Elizabeth Warren, *The New Property*, 92 Mich. L. Rev. 336, 344–61 (1993). It is not at all clear that Section 546(e)’s purpose with respect to securities transactions trumps all of bankruptcy’s other purposes. *See Freeman v. Quicken Loans, Inc.*, 132 S. Ct. 2034, 2044 (2012) (acknowledging that “no legislation pursues its purposes at all costs, and every statute purposes, not only to achieve certain ends, but also to achieve them by particular means”); *cf. Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982) (determining that, although the purpose of federal antitrust law is to prohibit anticompetitive conduct, a “state statute is not preempted . . . simply

H.R. Rep. No. 97- 420, at 1–2 (1982) (same); H.R. Rep. No. 109-648, at 6 (2006) (same).

because [it] might have an anticompetitive effect” (citations omitted)).

To the contrary, Congress has repeatedly indicated that it did not enact Section 546(e) to protect market stability to the exclusion of all other policies. For example, the Commodities Futures Trading Commission and Commodity Exchange, Inc. petitioned Congress to amend Section 546(e) to expressly preempt SLCFC claims. *See Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil & Constitutional Rights of the Comm. on the Judiciary*, 94th Cong., at 2406 (1976); *Bankruptcy Reform Act: Hearings Before the Subcomm. on Improvements in Judicial Machinery of the Comm. on the Judiciary*, 95th Cong., at 1296–97 (1977). Nevertheless, Congress declined to do so when it enacted Section 546(e) in 1977.⁸ Moreover, on each of the eight occasions when it has amended Section 546(e),⁹ Congress has never added an express

⁸ The Supreme Court has used Congress’s decision not to explicitly implement the recommendations of interest groups as evidence that Congress rejected those proposals. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1201 (2013) (citing a hearing witness’s support for a bill eliminating the fraud-on-the-market theory from private securities litigation as evidence that Congress was aware of that option and chose not to pursue it); *see also Capitol Records, LLC, v. ReDIGI Inc.*, No. 12 Civ. 95 (RJS), 2013 WL 1286134, at *15 (S.D.N.Y. Mar. 30, 2013) (“[T]he Court cannot of its own accord condone wholesale [statutory revision], particularly when Congress itself has declined to take that step.”).

⁹ *See* Pub. L. No. 109-390, § 5(b)(1) (2006); Pub. L. No. 109-8, § 907(o)(3) (2005); Pub. L. No. 105-183, § 3(c)(1) (1998); Pub. L. No. 103-394, § 501(b)(4)(A) (1994); Pub. L. No. 101-311, § 203

preemption provision, even after the Bankruptcy Court for the District of Delaware held that Section 546(e) *permits* creditors to assert SLCFC claims under the right circumstances. *See PHP*, 291 B.R. at 607. And tellingly, Congress chose not to extend Section 546(e) to SLCFC claims filed *before* bankruptcy or to intentional fraudulent conveyance claims brought *after* a bankruptcy filing, even though these types of claims pose the very same threat to the stability of securities markets. Obviously, Congress has struck some balance between various policy priorities, which means that it has determined that fraudulent conveyance actions are not necessarily and in all cases “repugnant” to the interest of market stability. *See MTBE Prods. Liab.*, 2013 WL 3863890, at *23. The Court is not authorized to upend Congress’s balance between the operation of state and federal law, even if doing so would clearly benefit investors and markets. *See O&G Indus.*, 537 F.3d at 161.

Furthermore, Congress has demonstrated elsewhere in the Bankruptcy Code that it knows how to – and is willing to – preempt an individual creditor’s state law claims. *See* 11 U.S.C. § 544(b)(2). This is powerful evidence that Congress did not intend for Section 546(e) to preempt state law. *See MTBE Prods. Liab.*, 2013 WL 3863890, at *23 (citing *Wyeth v. Levine*, 555 U.S. 555 (2009)); *see also Wyeth*, 555 U.S. at 575 (“The case for federal pre-emption is

(1990); Pub. L. No. 99-554, § 283(l) (1986); Pub. L. No. 98-353, § 351(3) (1984); Pub. L. No. 97-222, § 4 (1982).

particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts”). Specifically, in Section 544(b)(1), Congress empowered the trustee to avoid any fraudulent conveyances that a creditor could avoid under state law. Then in Section 544(b)(2), Congress withdrew this power in the case of certain charitable contributions, much in the way that Congress limited a trustee’s power to avoid certain “settlement payments” under Section 546(e). However, Section 544(b)(2) goes further: it states that “any claim *by any person* to recover a transferred contribution . . . under Federal or State law in a Federal or State court shall be preempted by the commencement of the [bankruptcy] case.” 11 U.S.C. § 544(b)(2) (emphasis added). Section 546(e), as we have seen, names only the trustee. Congress’s explicit preemption of all creditors’ state-law claims in one section of the Code undermines the suggestion that Congress intended to *implicitly* preempt state-law claims only two sections later. *See MTBE Prods. Liab.*, 2013 WL 3863890, at *23; *Integrated Solutions, Inc. v. Svc. Support Specialties, Inc.*, 124 F.3d 487, 493 (3d Cir. 1997) (“The clear lack of Congressional intent to preempt state law . . . is even more telling given the explicit language the Congress uses when it intends to displace state nonbankruptcy law in other provisions of the Code.” (citing 11 U.S.C. §§ 541(c)(1), 1123(a))).

Defendants also make much out of a recent decision in which Judge Rakoff held that a Bankruptcy Code provision very similar to Section

546(e) prohibits an avoidance action by creditors, not just the bankruptcy trustee. (See Doc. No. 2293 at 5 (citing *Whyte v. Barclays Bank PLC*, 494 B.R. 196 (S.D.N.Y. 2013)).) However, that case is readily distinguishable. In *Whyte*, a bankruptcy plan under Chapter 11 designated one entity, the SemGroup Litigation Trust (“SemGroup”), to serve in the capacity of both the bankruptcy trustee and the representative of outside creditors. SemGroup sued to avoid several “swap transactions,” and the parties disputed the application of 11 U.S.C. § 546(g) to SemGroup’s claim. Section 546(g) prohibits a bankruptcy trustee from avoiding certain “swap transactions” in much the same way that Section 546(e) bars a trustee from avoiding settlement payments. Therefore, in its role as bankruptcy trustee, SemGroup was clearly prohibited from avoiding swap transactions. In light of that prohibition and because 11 U.S.C. § 546(a)(1)(A) gives a bankruptcy trustee only two years after the initiation of bankruptcy proceedings to file an avoidance claim, SemGroup waited for two years and then sought to avoid several swap transactions in its role as the representative of outside creditors. Judge Rakoff concluded that this was impermissible. He reasoned that, because Section 546(g) barred SemGroup-as-trustee from avoiding these transactions, to allow SemGroup-as-creditor – itself a “creature of a Chapter 11 plan” – to avoid the transaction “by way of a state fraudulent conveyance action would stand as a major obstacle to the purpose and objectives of” the prohibition in Section 546(g). *Whyte*, 494 B.R. at 200. In essence, SemGroup could not simply take off its trustee hat,

put on its creditor hat, and file an avoidance claim that Section 546(g) prohibited the trustee from filing. By contrast, the Individual Creditors here, unlike SemGroup, are not creatures of a Chapter 11 plan, and they are in no way identical with the bankruptcy trustee; as a result, there is no reason why Section 546(e) should apply to them in the same way that Section 546(g) applied to SemGroup.¹⁰

Finally, Defendants contend that, if the Court does not find that Section 546(e) preempts *all* SLCFC claims, then bankruptcy trustees will simply assign these claims to creditors any time Section 546(e) bars the trustee from acting. (Mem. at 21; Arg. Tr. 13:23–14:4.) These concerns are overstated. For the reasons discussed below in Section II.B.3, the Court concludes that a trustee may not relinquish constructive fraudulent conveyance claims while

¹⁰ Defendants cite three other cases in which federal courts blocked state causes of action because of Section 546(e). However, each of the cases likewise involved a successor to the bankruptcy trustee – which is explicitly bound by Section 546(e) – so none of them addresses whether Section 546(e) should apply to individuals or entities other than the trustee. See *Contemporary Indus. Corp. v. Frost*, 564 F.3d 981, 988 (8th Cir. 2009) (blocking state law claims by the committee-successor to the trustee for unjust enrichment and impermissible shareholder distributions because they were effectively restyled constructive fraudulent conveyance claims); *U.S. Bank N.A. v. Verizon Commc'ns Inc.*, 892 F. Supp. 2d 805, 812, 815 (N.D. Tex. 2012) (barring similar claims by the litigation trust that was the assignee of the bankruptcy trustee's claims); *Hechinger Inv. Co. v. Fleet Retail Fin. Grp.*, 274 B.R. 71, 74, 95–96 (D. Del. 2002) (prohibiting similar claims by the committee-successor to the bankruptcy trustee).

retaining intentional claims, so there is some limit to the collusion between trustee and creditors that Defendants fear. In any event, as discussed above, Congress is not ignorant of the implications of its phrasing in Section 546(e), and despite multiple opportunities and invitations to amend the provision, Congress has left it untouched. Defendants do not explain why the Court should act where Congress has repeatedly declined to do so. *See Wyeth*, 555 U.S. at 574 (“If Congress thought state law suits posed an obstacle to its objectives, it surely would have enacted an express pre-emption provision at some point.”).

Accordingly, the Court concludes that Congress said what it meant and meant what it said, *see Underwriters Ins. Co.*, 530 U.S. at 6; as such, Section 546(e) applies only to the trustee and does not preempt the Individual Creditors’ SLCFC claims.

B. Standing

Defendants alternatively move to dismiss the Individual Creditor Actions based on three different standing arguments. First, they argue that “[b]ankruptcy . . . eliminates the individual creditor rights in favor of collective bankruptcy-estate rights,” so the Individual Creditors were permanently divested of the right to sue on their own behalf when Tribune commenced bankruptcy proceedings. (Mem. at 1, 22–24.) Defendants next argue that, even if the SLCFC claims could revert to the Individual Creditors, the claims would need to be formally disclaimed by the trustee first, which Defendants contend did not happen here. (*Id.* 29–

32.) Finally, Defendants argue that, even if the SLCFC claims could automatically revert to the Individual Creditors, the Creditors nevertheless lack standing because the Committee is suing to avoid the *same* transactions under an intentional fraudulent conveyance theory.¹¹ (*Id.* at 24–29.) The Court addresses each of these arguments in turn.

1. SLCFC Claims Are Not Permanently Stayed by Bankruptcy

Defendants argue that, when Tribune filed for bankruptcy, the “trustee (or creditors’ committee) acquire[d] complete dominion and control over any creditor’s state law claims,” meaning that the Individual Creditors were permanently divested of their fraudulent conveyance claims. (Mem. at 22.) The Court disagrees. Filing for bankruptcy is powerful magic, but the mere filing does not operate as a permanent stay against the Individual Creditors’ SLCFC Claims.

Section 362(a) of the Bankruptcy Code provides that the filing of a bankruptcy petition operates as a stay of, among other things, “the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor . . . or to recover a claim against the debtor that arose

¹¹ Defendants raise a fourth related argument – that even if Plaintiffs have standing they are subject to the same limitations that Section 546(e) imposes on a trustee. (Mem. at 32–35.) This argument simply rehashes their primary argument with regard to Section 546(e), and that argument fails for the reasons discussed in Section II.A.

before the commencement of the case.” 11 U.S.C. § 362(a)(1). This stay applies to fraudulent conveyance claims, even though fraudulent conveyance claims are asserted against the debtor’s transferee rather than against the debtor. *In re Colonial Realty Co.*, 980 F.2d 125, 131-32 (2d Cir. 1992) (“[T]hird-party action[s] to recover fraudulently transferred property [are] properly regarded as undertaken to recover a claim against the debtor and [are] subject to the automatic stay pursuant to § 362(a)(1).” (citation and internal quotations omitted)). Significantly, however, the stay does not last forever; it remains only until the bankruptcy proceedings are closed, dismissed, or discharged. 11 U.S.C. § 362(c)(2).

For some claims, the stay may lift even earlier. For example, under Section 546(a)(1)(A), the trustee has only two years to commence avoidance actions after a debtor files for bankruptcy, *see* 11 U.S.C. §§ 301(b), 546(a)(1)(A), and if that prerogative expires, a “creditor regains standing to pursue a state law fraudulent conveyance action, in its own name and for its own benefit,” *In re Integrated Agri, Inc.*, 313 B.R. 419, 427–28 (Bankr. N.D. Ill. 2004); *see Klingman v. Levinson*, 158 B.R. 109, 113 (N.D. Ill. 1993) (“[T]he trustee does not retain this exclusive right in perpetuity. The trustee’s exclusive right to maintain a fraudulent conveyance action expires and creditors may step in (or resume actions) when the trustee no longer has a viable cause of action.” (citing *Kathy B. Enterprises, Inc. v. United States*, 779 F.2d 1413, 1415 (9th Cir. 1986); *Federal Deposit Ins. Corp. v. Davis*, 733 F.2d 1083, 1085 (4th Cir. 1984))). Therefore, the automatic stay on the

Individual Creditors' SLCFC claims expired in 2010 unless the Committee exercised its own avoidance powers. The stay does not, of its own operation, continue to bar the Creditors' claims.

2. SLCFC Claims Revert to Creditors Automatically

Defendants next argue that, even if the Individual Creditors' claims are no longer inexorably barred by the stay, the claims do not revert to the Individual Creditors automatically. Instead, Defendants assert, the bankruptcy court must take some affirmative action before SLCFC claims may revert to the Individual Creditors. (Mem. at 30.)

Defendants' argument is premised on the language of 11 U.S.C. § 349(b)(3), which states that, "[u]nless the court, for cause, orders otherwise, a dismissal of a case . . . reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case" Because Tribune's bankruptcy has not been dismissed, Defendants contend that the SLCFC claims could not have reverted. However, Defendants clearly misconstrue the bankruptcy estate's relationship with fraudulent conveyance claims. A fraudulent conveyance claim is not treated as property of the bankruptcy estate because the debtor has no personal recourse against the transferee in a fraudulent conveyance. *See Colonial Realty*, 980 F.2d at 131 ("In accordance with 11 U.S.C. § 541(a)(1) (1988), the property of a bankruptcy estate includes . . . 'all legal or equitable interests of the debtor in property as of the

commencement of the case. . . . [T]he inclusion of property recovered by the trustee pursuant to his avoidance powers in a separate definitional subparagraph clearly reflects the congressional intent that such property is not to be considered property of the estate until it is recovered.” (internal quotation marks omitted)). Because creditors’ avoidance claims are not property of the estate, the trustee has a limited time in which to bring them, and the bankruptcy court need not discharge the debtor from bankruptcy in order for the avoidance claims to revert. Instead, when the two-year limitation on trustee avoidance claims expires, the claims automatically revert. See 11 U.S.C. § 546(a)(1)(A); *Integrated Agri*, 313 B.R. at 427-28 (“A creditor regains standing to pursue a state law fraudulent conveyance action, in its own name and for its own benefit, once the statute of limitations expires on the bankruptcy trustee’s right to bring the claim.”); *Klingman*, 158 B.R. at 113 (“The trustee’s exclusive right to maintain a fraudulent conveyance action expires and creditors may step in (or resume actions) when the trustee no longer has a viable cause of action.”); see also *In re Tessmer*, 329 B.R. 776, 779 (Bankr. M.D. Ga. 2005) (“[C]reditors do not regain the right to sue unless the trustee abandons the claim or he no longer has a viable cause of action because, for example, the statute of limitations has run.” (internal quotation marks omitted)).¹²

¹² In support of their contention that fraudulent conveyance claims did not revert to the Individual Creditors, Defendants cite the Bankruptcy Act of 1867 and the Supreme Court’s

3. The Committee's Intentional Fraudulent Conveyance Action Deprives the Individual Creditors of Standing to Pursue SLCFC Claims

Finally, Defendants argue that, because the Committee is still pursuing its own avoidance action against the LBO beneficiaries, the Individual Creditors' co-extensive claims are held in abeyance by the automatic stay in Section 362 of the Code. (Mem. at 24–29.) In essence, Defendants claim that the Committee's effort to avoid the LBO payouts on a theory of intentional fraudulent conveyance deprives the Individual Creditors of standing to avoid the same payouts under a constructive theory. Therefore, the question is whether the Individual Creditors may attempt to unwind the shareholder payouts even though the Committee is simultaneously targeting the same shareholder payouts by different means. This is ultimately a question of statutory interpretation, which of course turns on the language of the Bankruptcy Code.

interpretation of that statute in *Trimble v. Woodhead*, 102 U.S. 647, 649 (1880). Although the Court in *Trimble* barred a creditor from pursuing a state-law avoidance claim after the trustee had failed to act, that holding does not apply to this case. Critically, unlike the modern Code, the Bankruptcy Act of 1867 explicitly treated fraudulent conveyance claims as property of the trustee once bankruptcy proceedings commenced. See Act of March 2, 1867, ch. 176, 14 Stat. 517, 523 (repealed 1878) (vesting “all the property conveyed by the [debtor] in fraud of his creditors . . . at once . . . in such [trustee]” as is appointed). Therefore, the Supreme Court's jurisprudence interpreting the 1867 law is inapposite here.

The Court sees nothing in the language of the Bankruptcy Code to suggest that Congress intended for Section 362(a)(1)'s automatic stay to apply differently based on the theory under which a trustee brings a fraudulent conveyance claim or the particular Code provision on which the trustee relies. Section 362(a)(1) does not differentiate between constructive and intentional fraudulent conveyance actions: it stays *any* action "to recover a claim against the debtor" from a third party. 11 U.S.C. § 362(a)(1); see *In re Colonial Realty Co.*, 980 F.2d at 132. Other sections reinforce that Congress did not conceive of the trustee's avoidance power as a severable commodity that could be sliced up by theory and distributed between the trustee and creditors. Section 546(a), which creates the time limitation on a bankruptcy trustee's avoidance power, recognizes no distinction between trustee avoidance actions brought under Section 544(b)(1) and those brought under Section 548(a)(1), nor does it distinguish between avoidance actions based on theories of actual fraud versus those based on constructive fraud. 11 U.S.C. § 546(a). Similarly, Section 544(b)(1) states that "the trustee may avoid any transfer of an interest in property . . . that is voidable under applicable [state] law by a creditor." 11 U.S.C. § 544(b)(1). It refers only to the trustee's power to avoid a transfer and makes no reference to the particular theory that the trustee employs. Ultimately, it is irrelevant whether the Committee styles its claim as intentional or constructive or as one under Section 548(a)(1)(A) or Section 544(b)(1).¹³

¹³ In its original Complaint, the Committee brought its

Section 362(a)(1) stays fraudulent conveyance claims by creditors for as long as the trustee is exercising its avoidance powers, so the stay deprives the Individual Creditors' of standing to bring SLCFC claims against the same transactions that the Committee is currently targeting.

Other courts have reached the same conclusion. In a leading example, the Fourth Circuit confronted a situation in which a trustee and a creditor both sought to unwind the same transactions using different theories of recovery. *Nat'l Am. Ins. Co. v. Ruppert Landscaping Co. Inc.*, 187 F.3d 439, 441 (4th Cir. 1999). The court held that the creditors "lack[ed] standing to pursue these claims in district court. Until the trustee . . . abandoned his potential fraudulent conveyance action, the [creditors could] not proceed with their claims in district court." *Id.*¹⁴

fraudulent conveyance claim pursuant to both Section 544(b)(1) and Section 548(a)(1)(A). (See Committee SH Action Doc. No. 1 ¶¶ 317–320.) In the Fifth Amended Complaint, the Committee relies exclusively on Section 548(a)(1)(A) as the statutory basis for its claim. (See Doc. No. 2565, Ex. 1 ¶¶ 376–381.) This amendment, which caused no substantive change whatsoever to the nature of the Committee's claim, illustrates the irrelevance of the distinction the Committee seeks to draw between Section 544(b)(1) and Section 548(a)(1)(A), and it does not alter the Court's analysis.

¹⁴ Defendants assert that *Ruppert* is not applicable because it arose during the two-year period within which only the trustee may bring fraudulent conveyance claims. (Opp. at 34–35; Arg. Tr. at 40:8–41:2, 48:20–49:6.) While the Court appreciates this distinction, the thrust of *Ruppert* – that a creditor is stayed from asserting a claim to unwind the same transaction that a

Other courts within and outside the Fourth Circuit have echoed this rule, and the Individual Creditors fail to identify any authority that holds otherwise. *See, e.g., Poth v. Russey*, 99 F. App'x 446, 457 (4th Cir. 2004) (“When a creditor brings a state-law challenge to a transaction that a bankruptcy trustee could avoid as a fraudulent conveyance, the . . . creditor lacks standing to assert it.”); *N. Trust Bank, FSB v. Wells Fargo Bank, N.A.*, 464 B.R. 269, 269 (E.D. Va. 2012) (holding that where both the trustee and a creditor challenge the same transfer, the trustee’s “ongoing prosecution of its fraudulent conveyance action ‘on behalf of all creditors’ deprive[d the creditor] of standing to pursue its individual claims”); *In re Teleservices Group, Inc.*, 463 B.R. 28, 36 (Bankr. W.D. Mich. 2012) (determining that, where the trustee and a creditor choose different remedies to “rectify . . . the same injustice,” the “automatic stay prohibits” the creditor from prosecuting its claim); *In re Bridge Info. Sys., Inc.*, 325 B.R. 825, 836 (Bankr. M.D. Mo. 2005) (recognizing that only the trustee’s successor “has the statutory right to assert” fraudulent conveyance claims, to the exclusion of state law claimants seeking to recover for the same transactions); *In re Tessmer*, 329 B.R. 776, 780 (Bankr. M.D. Ga. 2005) (“Once the Trustee acts under § 544(b), the rights of all other parties to bring a suit based on the same transaction are fully and permanently cut off unless the Trustee later abandons the claim.”); *Integrated*

bankruptcy trustee is already suing to unwind – is equally applicable in this context.

Agri, 313 B.R. at 427 (“A creditor who had the right to bring, outside of bankruptcy, a UFTA claim to recover prepetition transfers fraudulently made by the debtor, has no standing to commence or continue the suit during the bankruptcy case, until and unless the trustee relinquishes the Section 544(b) claim or the trustee no longer has a viable cause of action.”); *cf. In re MortgageAmerica Corp.*, 714 F.2d 1266, 1275–76 (5th Cir. 1983) (concluding that actions “by individual creditors under state fraudulent conveyance laws would interfere with [the] estate and with the equitable distribution scheme dependent on it, and are therefore appropriately stayed Any other result would produce near anarchy . . .”).¹⁵

The Individual Creditors seek refuge in the fact that the Committee supports their effort to bring

¹⁵ The cases that the Individual Creditors cite as counterexamples are distinguishable. (Opp. at 36-37; Arg. Tr. at 49:7-18.) In *Lumbard v. Maglia*, the bankruptcy trustee for an individual creditor and the bankruptcy trustee for that creditor’s debtor stipulated that they would “jointly prosecute,” under the same complaint, a fraudulent conveyance by the debtor, “dividing the eventual proceeds.” 621 F. Supp. 1529, 1532-33 (S.D.N.Y. 1985). Here, of course, only one of the parties is a bankruptcy trustee, and the parties are proceeding separately. In *Baron Fin. Corp. v. Natanzon*, the court determined that a creditor could bring suit for *different* misconduct than that which the bankruptcy trustee was litigating. 509 F. Supp. 2d 501, 520-21, 521 n.34 (D. Md. 2007). In *Integrated Agri*, the trustee’s time to bring a fraudulent conveyance action had expired, and it had filed no fraudulent conveyance claims, so the court permitted creditor fraudulent conveyance claims. 313 B.R. at 428-29.

SLCFC claims and that the Bankruptcy Court released the Individual Creditors to pursue those claims. (Opp. at 35–36.) Whether the Committee supports the Individual Creditors’ SLCFC claims is of no moment. The Individual Creditors cite no authority for the proposition that a bankruptcy trustee’s druthers may trump Section 362(a)(1), nor is the Court aware of any authority to that effect. With respect to the Bankruptcy Court, its decision is wholly inapposite to the question of standing, since the Bankruptcy Court expressly declined to decide that issue, leaving it to this Court.¹⁶

Bankruptcy is intended to consolidate multiple, potentially wasteful claims in one entity – the trustee. *See Ruppert*, 187 F.3d at 441–42; *St. Paul Fire*, 884 F.2d at 701. While the trustee acts, it cuts off the claims of creditors in order to seek a fair, orderly, and comprehensive resolution of the debtor’s financial affairs so that, as much as it is possible, creditors are made whole. *See St. Paul Fire*, 884 F.2d at 701 (“If a claim is a general one, with no particularized injury arising from it, and if that claim could be brought by any creditor of the debtor,

¹⁶ The Bankruptcy Court took great pains to emphasize that it made “no finding and issue[d] no ruling determining the standing of the [Individual Creditors] to assert the Creditor SLCFC Claims . . .” (Bankr. Decision ¶ 8 n.2.) Its decision to conditionally lift the stay against the Individual Creditors did not determine whether they “regained the right . . . to prosecute their respective [SLCFC] claims” simply because the two-year window on trustee fraudulent conveyance claims closed without the Committee filing a constructive fraud claim on behalf of the estate. (Bankr. Decision ¶ 2.)

the trustee is the proper person to assert the claim, and the creditors are bound by the outcome of the trustee's action."). Here, the Committee has not completely abandoned its avoidance powers and is actively seeking to reverse the payouts made to the LBO beneficiaries. (See Committee SH Action Doc. No. 1 ¶¶ 317–320; Doc. No. 2565, Ex. 1 ¶¶ 376–381.) Unless and until the Committee actually and completely abandons those claims, the Individual Creditors lack standing to bring their own fraudulent conveyance claims targeting the very same transactions.

IV. CONCLUSION

Accordingly, for the reasons set forth above, the Court concludes that Section 546(e) does not preempt the Individual Creditors' SLCFC claims, but that Section 362(a)(1) nonetheless deprives the Individual Creditors of standing to avoid the same transactions that the Committee is simultaneously suing to avoid. Defendants' motion to dismiss is therefore GRANTED. The Clerk of the Court is respectfully directed to terminate the motions pending at Doc. No. 1670 of 11 MD 2296 and Doc. No. 61 of 12 MC 2296 and to close the cases listed in Exhibit A of this Memorandum and Order.

IT IS FURTHER ORDERED THAT Liaison Counsel in the Committee Actions shall confer with the parties remaining in this MDL and shall submit a joint letter to the Court no later than October 8, 2013, regarding the next steps in this litigation. In particular, the letter shall address whether the Litigation Trustee intends to proceed with its

fraudulent conveyance claims or amend its Fifth Amended Complaint in order to abandon those claims. If the Litigation Trustee intends to seek leave to amend, the letter shall also set forth the parties' views as to the permissibility of such an amendment in light of, among other things, the Litigation Trustee's duties to Tribune's creditors. *See In re Lehal Realty Assocs.*, 101 F.3d 272,276 (2d Cir. 1996).

SO ORDERED.

RICHARD J. SULLIVAN
United States District Judge

Dated: September 23, 2013
New York, New York

APPENDIX F

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of February, two thousand twenty.

IN RE: TRIBUNE COMPANY FRAUDULENT CONVEYANCE LITIGATION	ORDER Docket Nos: 13-3992 (L) 13-3875 (XAP) 13-4178 (XAP) 13-4196 (XAP)
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Appellants, Note Holders, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

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Catherine O'Hagan Wolfe, Clerk

 Catherine O'Hagan Wolfe

APPENDIX G

11 U.S.C. § 544

§ 544. Trustee as lien creditor and as successor to
certain creditors and purchasers

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the

time of the commencement of the case, whether or not such a purchaser exists.

(b)(1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.

APPENDIX H

11 U.S.C. § 548

§ 548. Fraudulent transfers and obligations

(a)(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily--

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

(c) Except to the extent that a transfer or obligation

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voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

(d)(1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

(2) In this section--

(A) “value” means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor;

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;

(C) a repo participant or financial participant that

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receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment;

(D) a swap participant or financial participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer; and

(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.

(3) In this section, the term “charitable contribution” means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution--

(A) is made by a natural person; and

(B) consists of--

(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

(ii) cash.

(4) In this section, the term “qualified religious or

charitable entity or organization” means--

(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.

(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if--

(A) such transfer was made to a self-settled trust or similar device;

(B) such transfer was by the debtor;

(C) the debtor is a beneficiary of such trust or similar device; and

(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by--

(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

(B) fraud, deceit, or manipulation in a fiduciary

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capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l* and 78*o*(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).

APPENDIX I

LIST OF PETITIONERS**Noteholder Petitioners**

Deutsche Bank Trust Company Americas
Delaware Trust Company
Wilmington Trust Company

Retiree Petitioners

Abatemarco, Fred A.	Carpenter, Dian S.
Alcantar, Gerald J.	(widow of Dow C.
Alfano, Richard S.	Carpenter)
Armstrong, C. Michael	Carroll, John S., estate
Arnold, Gary M.	of c/o Lee Carroll,
Arthur, John M.	executor
Barlow, William H.	Casey, Kathleen M.
Barrett, David S.	Chandhok, Rajender K.
Barwick, Bruce E.	Charles, Randolph R.
Becker, Todd A.	Clayton, Janet T.
Bell, George	Clifford, Patrick A.
Bell, Susan P.	Clurman, Andrew W.
Bergmann, Horst A.	Coffey, C. Shelby, III
Blood, Edward L.	Coppens, Stuart K.
Brandt, Robert F.	Cotliar, George J.
Brauer, Alan L.	Crawford, William D.
Brennan, Leo	DeYoung, Barbara R.
Brief, Kenneth H.	Dill, John F.
Brisco, Robert N.	Dilworth, Ann E.
Campbell, Patricia G.	Downing, Kathryn M.
	Dreher, Beverly A.

<p>Drewry, Elizabeth V. Dubester, Michael S. Dyer, John M. Erburu, Robert F., estate of c/o Lois Erburu Esgro, David A. Falk, Joanne K. (survivor of Eugene Falk) Fitzgerald, James E. Forgione, Michael J. Forst, Donald H., estate of Fox, Douglas B. Furukawa, Vance I. Goldstein, Gary P. Gottzman, Edward J., beneficiary of estate of Edward Gottzman Graham, Edward Kenneth, estate of Graham, Kenneth, estate of c/o Marian Lewis, executor & trustee Grant, Robert T. Guerrero, Richard Guittar, Lee J. Guthrie, James F. Guttry, Delynn T. (widow of Harvey V. Guttry) Halajian, Kenneth L. Hall, Charlotte H. Halle, Jean</p>	<p>Haugh, Michael J. Heaphy Durham, Janis Helin, James D. Hessler, Curtis A. Higby, James H. Higby, Lawrence M. Holton, Raymond Horn, Karen Laukka Howard, Leslie M. Howe, Mark E. Hughes, Joseph M. Ibarguen, Alberto Imbriaco, James Isenberg, Steven L. Isinger, William R. Jansen, Raymond A., Jr. Johnson, Edward E. Johnson, Robert M. Johnson, W. Thomas, Jr. Junck, Mary E. Kabak, Scott W. Kallet, Judith S. Keller, William F. Kellermann, Donald S., estate of c/o Joan B. Kellermann, Executor & Trustee King, Victoria Klein, Jason E. Klein, Jeffrey S. Klutnick, Susan K. Kopper, James L.</p>
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<p>Kuekes, Sally, estate of c/o Kurt Kuekes, Executor Kurtich, Mark H. LaFrance, Kimberly McCleary Lankey, Jeffrey W. Laventhol, David A., estate of Lee Schneider, R. Marilyn Levin, Martin P. Levine, Jesse E. Magnuson, Robert G. Maxwell, Donald S, estate of c/o Brad Maxwell McGuinness, Kathleen G. McKeon, John C. Meadows, Jack E. Meier, Stephen C. Molvar, Janie (alternate payee of Roger Molvar) Molvar, Roger H. Nash, John T. Niese, William A. Niles, Nicholas H. Norris, James H. Nuckols, James H. O'Neill, Nancy W. O'Sullivan, Robert T. Pandolfi, Francis P. Parks, Michael C.</p>	<p>Paro, Jeffrey N. Payne, Janette O. Perruso, Carol Perry, Victor A. Peterson, Maureen G. (widow of Larry W. Peterson) Petty, Martha A. Plank, Jack L. Redmond, Elizabeth F, estate of Rhoads, S. Keating Riley, Michael R., estate of c/o Sue Riley Rose, Michael G. Rowe, William J. Rubin, Jerome S., estate of c/o David Kahn Sann, Alexander Sally, Geraldine Schlosberg, Richard T., III Schnall, Herbert K. Schneider, Charles I., estate of Schneider, Hilary A. Schneider, Howard S. Sellstrom, Brian J. Shaw, James D. Shirley, Dennis A. Shorts, Gary K. Simpson, James R. Sito, Louis Stanton, Richard W.</p>
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Sweeney, Judith L.
 Sweeney, Stender E.
 Toedtman, James S.
 Tunstall, Sharon S.
 Udovic, Michael S.
 Valenti, Michael J.
 Wada, Karen J.
 Wade, Claudia A.
 Wallace, James W.
 Waller, Michael E.
 Wangberg, Larry W.
 Weinstein, Howard
 Wiegand, William D.
 Wild, Mary A.
 Willes, Mark H.
 Williams, Phillip L.,
 estate of c/o Diane
 Williams, Executor
 Wilson, Hazel E.
 Wilson, Julia C.
 Woldt, Harold F., Jr
 Wolinsky, Leo
 Wright, Donald F.
 Young, John W., estate
 of c/o Kathleen Young
 Zakarian, John J., estate
 of c/o Paul Zakarian
 Zapanta, Norene
 (trustee for Dr. Edward
 Zapanta Trust)
 Zimbalist, Efrem, III

APPENDIX J

LIST OF RESPONDENTS**Noteholder Respondents**

#502 U/W/O Minnette R. Eckhouse Trust	Abbey National Securities, Inc.
1199SEIU Greater New York Pension Fund, by and through its Board of Trustees	Abigail Wallach ABP
1199SEIU Health Care Employees Pension Fund, by and through its Board of Trustees	Absolute Value Fund LP
1199SEIU Home Care Employees Pension Fund, by and through its Board of Trustees	Abu Dhabi Investment Authority
1IA SPX1	Account BOS05-0702, John Doe, as Owner of
1st Source Bank	Account PNC 4455065
1st Source Bank, as an entity and as Trustee of the Robert Dishon Family Trust	P&PNPF LSV, John Doe, as Owner of [Plumbers & Pipefitters National Pension Fund]
3M Employees Welfare Benefits Association Trust I	Adage Capital Advisors Long
A & P Associates	Adage Capital Partners LP
A. Erickson Shuster	Adaly Investment Management Co.
A. Hoyer	Administrator of Ohio Bureau of Workers' Compensation

Administrator of Ohio Carpenters' Pension Fund	Alberta W. Chandler Marital Trust No. 2
Administrator of Ohio Public Employees Retirement System	Alberta W. Chandler Marital Trust UAD 06/26/35
Advanced Series Trust	Alcatel-Lucent USA Inc., as Trustee of Lucent Technologies, Inc.
Advantus Capital Management, Inc.	Master Pension Trust
Advantus Series Fund, Inc.	Alexander D. and Paula Solon JTWROS
Advantus Series Fund, Inc. Index 500 Portfolio	Alexander D. Solon
Advantus Series Fund, Inc., as Owner of	Alexander Solon
Advantus Series Fund, Inc. Index 500 Portfolio	Alexander Solon IRRA FBO Alexander Solon c/o MLPF&S Cust FPO
Advisory Research, Inc.	Alexandra Global Master Fund Ltd.
Advisory Research, Inc. S&P 500 Index Equal Weight	Alfred C. Glassell III, acting Trustee and Beneficiary of the
Aetna Inc.	Alfred C. Glassell Jr. Children's Trust for
Affiliated Private Investors U.S. Core Value Fund LLC	Alfred C. Glassell, III
AG Edwards & Sons, Inc.	Alfred C. Glassell III, acting Trustee of the
Agoralogos LLC	Clare Attwell Glassell Continuing Marital Trust
Alan Devaney	Alfred C. Glassell Jr.
Alan Devaney and Jill Devaney	Alfred V. Tjarks Jr., as Trustee of the Alfred V. Tjarks Retirement Plan DTD 02/18/85
Alaska Large-Cap Trust	
Alberta Finance	

Alfred W. Merkel, as Trustee of the Alfred W. Merkel Marlowe G. Merkel Trust UA 11 Sep 85 Alicia Patterson Guggenheim Trust Alison Ford Duncan, acting Trustee and Beneficiary of the Alfred C. Glassell Jr. Children's Trust for Alison Ford Duncan Alison S. Andrews, as Trustee of the Hannah Smith Trust Allan H. Willard, as Trustee of the Allan H Willard Trust U/A DTD 9/7/93 Allegro Associates Allen C. Tanner, Jr. Allen C. Tanner, Jr., CGM IRA Custodian Allen Putterman MD SC Money Purchase Pension Plan Alliance Capital Group Trust Alliance Capital Management LLC AllianceBernstein LP	AllianceBernstein LP, in its individual and custodial Capacities Alliancebernstein Trust (AllianceBernstein Value Fund) Aloysius J. Franz Alphadyne Asset Management LLC Alphadyne International Master Fund Ltd. Alpheus L. Ellis 1993 Grandchildren's Trust FBO Lynn Ann Sharpe Alpine Associates II, LP Alpine Associates Offshore Fund II Ltd. Alpine Associates Offshore Fund Ltd. Alpine Associates, a Limited Partnership Alpine Institutional LP Alpine Partners LP Alvin Baum Jr. 1966 Trust Alyce Tuttle Fuller, as a Trustee of the Trust by Alyce Tuttle Fuller U/A DTD 10/03/2003 AM International E Mac 63 Limited AM Master Fund III, LP Amalgamated Bank Amelita M. Neiburger
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American Electric Power	Amida Capital
American Electric Power	Management LLC
Defined Benefit	Amida Partners Master
American Enterprise	Fund Ltd.
Investment Services	Amida Partners Master
Inc.	Fund Ltd. / Non-Flip
Ameriprise Advisor	Account c/o Amida
Services, Inc. (f/k/a	Capital Management
H&R Block Financial	LLC
Advisors, Inc.)	Amundi Investments
Ameriprise Advisor	Advisors USA, Inc.
Services, Inc. (f/k/a	Amy W. Fong, as
H&R Block Financial	Trustee of the Amy W.
Advisors, Inc.), as	Fong Living Trust
Custodian for Edwin R	Anadarko Petroleum
Labuz	Corporation Master
Ameriprise Enterprise	Trust
Investment Services	Andrew Absler
Inc.	Andrew Absler and
Ameriprise Trust Co.	Lauren F. Absler
Ameriprise Trust	Andrew Boehm
Company	Andrew Boehm and Rita
Ameriprise Trust	A. Boehm
Company, as	Andrew J. McKenna
Custodian of Jerry	Trust
Lower IRA R/O	Andrew Letts
Ametek, Inc. Employees	Aneice R. Lassiter
Master Retirement	Angelo D. Giancarlo
Trust	Anna B. Schroer, acting
Ametek, Inc., as	Trustee of the
Administrator of the	Raymond & Anna
Ametek, Inc.	Schroer Trust U/A
Employees Master	DTD 09/28/2006
Retirement Trust	Anna Livingstone

Anne G. Taylor	AQR Global Stock
Anne G. Taylor, as	Selection HV Master
Trustee of the Trust by	Account Ltd.
Walter E. Graham U/A	AQR Global Stock
DTD 10-16-2000	Selection Master
Anne S. Scheiermann	Account, LP
Reilly	Aqua America, Inc.
Anne Scheiermann, as	Archdiocesan Pension
Trustee of the	Plan of the Archdiocese
Scheiermann Living	of New York
Trust U/A DTD	Archdiocese of
08/28/1997	Cincinnati
Anne-Marie S.	Archdiocese of New York
Greenberg	Master Trust
Annika De Goldmith, as	Argyll Research LLC
Trustee of the Marital	Arlene L. Posner
Trust of the De	Arline Doblin, as
Goldsmith Family	Trustee of the Nathan
Trust	H. Perlman Trust B
Anthony Y. Lin	DTD 12/17/68
Antoinette B.	Armen J Adajian Trust
Brumbaugh,	U/A 9/15/80
individually and as a	Armen J Adajian, as a
Trustee of the Trust by	Trustee of the Armen J
Antoinette B.	Adajian Trust U/A
Brumbaugh U/A Dated	9/15/80
10/05/94	Armstrong World
Aon Corporation	Industries, Inc.
APG Asset Management	Armstrong World
US, Inc. (f/k/a ABP	Industries, Inc.
Investments US, Inc.)	Retirement Master
AQR Absolute Return	Trust
Master Account, LP	

Arnold D. Fong, as Trustee of the Amy W. Fong Living Trust	AST QMA U.S. Equity Alpha Portfolio
Arnold R. Weber	Audrey Moran, as Trustee of the Jessie Ball Dupont Fund
Arrow Distressed Securities Fund	Austin Trust Company
Arthur Blauzda	Automobile Club of Southern California
Arthur E. Goldberg	Automotive Machinists Pension Trust Fund
Arthur P. Heinz, as Trustee of the Nancy B. Heinz Family Trust	Avery Dennison Corporation Master Retirement Trust
Arthur S. Casey SB Advisor	Aviv Nevo
Arthur Shawn Casey	AXA Equitable Funds Management Group, LLC
Artis Aggressive Growth LP	AXA Equitable Life Insurance Co.
Artis Aggressive Growth Master Fund LP	AXA Premier VIP Trust, Multimanager Large Cap Core Equity Portfolio
Artis Capital Management LP	AXA Premier VIP Trust, Multimanager Large Cap Value Portfolio
Artis Partners (Institutional) LP	Axelson Family Lmt'd Partnership
Artis Partners 2x (Institutional) LP	BACAP Equity Fund XXI
Artis Partners 2x LP	BAE Systems Land & Armaments, Inc. f/k/a United Defense LP
Artis Partners 2x Ltd.	
Artis Partners LP	
Artis Partners Ltd.	
Arturo Quinones	
ASB Advisors LLC	
Asbestos Workers Local No. 32 Pension Trust Fund	

Bakery Conf Tob Wrks Local 102	Bank of America as Trustee UA Earl W.
Bakery, Confectionery, Tobacco Workers & Grain Millers International Pension Fund	Huntley FBO Melinda Bank of America as Trustee UA Earl W. Huntley FBO Pamela
Bakery, Confectionery, Tobacco Workers & Grain Millers Union Local 102	Bank of America as Trustee UA George W. Thoms Trust B
Baldwin Enterprises, Inc.	Bank of America as Trustee UA Joseph L. Molder
Banc of America Securities LLC	Bank of America
Bank of America	Structured Research
Bank of America and Adolphus Busch Orthwein, Trustees, Clara Busch Orthwein IR Trust	Bank of America, N.A. (Equity Index Trust)
Bank of America and Pierce Atwood, Trustees, Brumbaugh A B IRRY Trust	Bank of America, N.A. (Large Cap Value Index Trust of QA Collective Trust Series)
Bank of America and Pierce Atwood, Trustees, Polly H. Werthman IRRA Trust UA	Bank of America, N.A., as Trustee of its Sponsored and Administered Collective Investment Funds
Bank of America as Trustee UA E L Sanford FAM FBO ADA	Bank of America, National Association
	Bank of America, National Association as Trustee
	Bank of America, National Association

as Trustee of Lucy A. O'Connor Trust	Sanford FAM FBO William
Bank of America, National Association as Trustee of Stephen L. O'Connor Trust	Bank of America, National Association as Trustee of Trust under Agreement FBO Craig P Emmons
Bank of America, National Association as Trustee of Trust under Agreement Carrington M. Lloyd, Jr. PLD	Bank of America, National Association as Trustee of Trust under Agreement J Sanford Children/ADA
Bank of America, National Association as Trustee of Trust under Agreement E L Sanford by Children/Mason	Bank of America, National Association as Trustee of Trust under Agreement J Sanford Children/Mason
Bank of America, National Association as Trustee of Trust under Agreement E L Sanford Children/William	Bank of America, National Association as Trustee of Trust under Agreement J Sanford Children/William
Bank of America, National Association as Trustee of Trust under Agreement E L Sanford FAM FBO Mason	Bank of America, Trustee, and Judith E. Neisser, Beneficiary, Judith E Neisser IRA
Bank of America, National Association as Trustee of Trust under Agreement E L	Bank of America, Trustee, BOA Pension- Bacap Largecap Index
	Bank of America, Trustee, BOA Pension- Cmg Largecap Index

Bank of America, Trustee, Lee U. Gillespie Revocable Trust	Barbara H. Alter 2002 Declaration of Trust Dated 12/12/2002
Bank of America, Trustee, Marian C. Falk for Alexandra	Barbara H. Alter, as Trustee of the Barbara H. Alter 2002 Declaration of Trust Dated 12/12/2002
Bank of America, Trustee, Mini TR U/A Edward H. Lindsay	Barbara J. Kneeland Barbara M. J. Wood Living Trust UA Dated 9/17/81
Bank of America, Trustee, UW EW Maske for Ruth M. Bennett	Barbara Martell Barbara Murphy Barbro Osher, as Trustee of Bernard and Barbro Osher 2006 Charitable Remainder Unitrust #2
Bank of New York Mellon as Custodian for Barclays Capital Securities Limited	Barclays Bank PLC Barclays Capital Securities Limited
Bank of New York Mellon as Custodian for Coutts US Equity Index Programme	Barclays Capital Securities Limited as Successor to BZW Securities Limited
Bank of New York Mellon as Custodian for Oddo & Cie (as Successor to Banque d'Orsay)	Barclays Capital, Inc. Barnet Partners Ltd.
Bank of New York Mellon Corporation Retirement Plans Master Trust	Barrie A. Kass Barry David Kupferberg Barry David Kupferberg & Lori Banner Kupferberg JT Ten
Baptist Foundation of Texas	
Barbara Baugh	

Barry T. Werblow and Bari Werblow, husband and wife	Bernard Osher 2006 Charitable Remainder Unitrust #2
BASF Corp Pension Master Trust	Bernard Osher Trust Dated 03/08/88
BATL PN-NTRS S&P	Discretionary Account
Battelle Memorial Institute	Bernard Osher, as Trustee of Bernard and
Baxter International, Inc.	Barbro Osher 2006 Charitable Remainder Unitrust #2
Bear Stearns Asset Management, Inc.	Bernard Osher, as Trustee of Bernard
Bear Stearns Equity Strategies RT LLC	Osher 2006 Charitable Remainder Unitrust #2
Bechtel Corp.	Bernard Osher, as Trustee of Bernard
Bell Atlantic Master Trust	Osher Trust Dated 03/08/88 Discretionary Account
Bellsouth Corp. Non- Representable Health Care Trust	Bernard Rabinowitz, as Trustee of the Trust
Bellsouth Healthcare S&P 500	FBO Bernard Rabinowitz, U/A/D 09- 11-2006
Bellsouth/Alliance	Bernard Rabinowitz, as Trustee of the Trust
Bernadette Cooley	for the Benefit of Bernard Rabinowitz U/A/D 09-11-2006
Bernadette Fingleton	Bernard W. Lincicome
Bernard and Barbro Osher 2006 Charitable Remainder Unitrust #2	Bernice K. Wattman as a Trustee of the Bernice K. Wattman
Bernard E. Waterman	
Bernard E. Waterman and Edith B. Waterman	

Trust U/A DTD 11/01/2002	Family Trust UA 8/19/86
Bernice K. Wattman Trust U/A DTD 11/01/2002	Beverly Mackintosh, as Trustee of the Trust U/A DTD 8/22/1989 by Mary Coniglio
Beth Leslie Ertel Bethesda Hospital Master Trust	Beverly Mackintosh, as Trustee of the Trust U/A DTD 8/22/1989 by Mary Coniglio GSTT TE Trust
Bethesda Non- Retirement Assets Master Trust	Beverly Perry
Bethesda, Inc.	BGC Insurance Trust
Bette Wendt Jore	PLG
Betty Ann Altman, as Trustee FBO the John & Betty Altman Family Trust UAD 05/16/86	Binhua Mao
Betty Beaird, as Trustee of Betty Beaird Living Trust U/A DTD 4/10/87	Binhua Mao Roth IRA
Betty Beaird, as Trustee of the Betty Beaird Living Trust UA 10- Apr-87	Binhua Mao, Beneficiary
Betty H. Roeland, as Trustee of the Survivors' Trust	Biying Zhang
Betty K. Zlatchin	Black Box Corporation (Penson Financial Services Bbox)
Betty Roeland, as Trustee of the Betty H. Roeland Marital Trust	Black Diamond Arbitrage Offshore Ltd. f/k/a Black Diamond Arbitrage Offshore LDC
Betty Roeland, as Trustee of the Roeland	Black Diamond Offshore Ltd.
	Blackport Capital Fund Ltd.
	Blandina Rojek
	Blandina Rojek Charitable Lead Trust

Blue Chip Fund, a Series of First Investors Equity Funds	BMO Harris Bank, N.A., as Trustee of the Stanley G. Harris Trust UAD 6/10/46
Blue Chip Fund, a Series of First Investors Life Series Funds	BMO Harris Bank, N.A., as Trustee of the T. Stanton Armour Trust dated 2/10/66
Blue Hills Bank (f/k/a Hyde Park Savings Bank)	BMO Nesbitt Burns Trading Corp., S.A.
Bmo Harris Bank N.A., as Trustee of the Scripps Family Revocable Trust	BMO Nesbitt Burns, Inc. BMO Nesbitt Burns, Inc./CDS
BMO Harris Bank, N.A., as Trustee of the Henry G. Barkhausen Trust UAD 12/14/36	BMR 2 LLC
BMO Harris Bank, N.A., as Trustee of the Janet U. Embury Chln TR Grace FD	BNA Employees' Retirement Plan
BMO Harris Bank, N.A., as Trustee of the Janet U. Embury, Chln TR J Ley FD	BNP Paribas Prime Brokerage, Inc.
BMO Harris Bank, N.A., as Trustee of the S. G. Harris Charity Trust UAD 6/13/45	BNP Paribas Securities Corp.
BMO Harris Bank, N.A., as Trustee of the S. G. Harris Mar TR 6/17/65	BNY Mellon Trust of Delaware
	BNY Mellon, in its custodial capacity
	BNY Mellon, N.A., as Successor-In-Interest to Mellon Trust of New England, National Association
	Board of Administration of the Los Angeles City Employees' Retirement System, as Administrator of the

Los Angeles City Employees' Retirement System	and Officers' Annuity and Benefit Fund of Cook County
Board of Administration of the Water and Power Employees' Retirement Plan	Board of Trustees of the United Food and Commercial Workers Unions and Employers Midwest Pension Fund, as
Board of Education Retirement System of the City of New York	Administrator of the United Food and Commercial Workers Unions and Employers Midwest Pension Fund
Board of Trustees of Leland Stanford Junior University	Bob Fushimi
Board of Trustees of the Carpenters Pension Trust Fund for Northern California, as	Bodmas Capital Partners LP
Administrator of the Carpenters Pension Trust Fund for Northern California	Bonnie Gonzalez
Board of Trustees of the Colleges of Applied Arts and Technology Pension Plan, as	Borden, Dillard R. Jr. and Salvatore J. Chilia, Trustees, National Electrical Benefit Fund
Administrator of Colleges of Applied Arts and Technology Pension Plan	BP America
Board of Trustees of the Cook County Pension Fund, as	BP Pension Services Limited
Administrator of the County Employees'	Bracebridge Capital LLC
	Bradley A. Long
	Brandes Investment Partners L.P.
	Brent V. Woods

Brent Woods, as Trustee of the Woods/Mitchell Family Trust	California Public Employees Retirement System (CalPERS)
Bresler Family Investors LLC	California Public Employees Retirement System (CalPERS) DC
Brian McGovern	California Public Employees Retirement System (CalPERS)
Bricklayers & Trowel Trades Intl Pension Fund	California Public Employees Retirement System (CalPERS)
Bristol-Myers Squibb Company Master Retirement Trust	Dynamic Completion Fund
Broadridge Business Process Outsourcing, LLC f/k/a Ridge Clearing & Outsourcing Solutions f/k/a Penson Financial Services, Inc./Ridge	California Public Employees Retirement System (CalPERS) Judges Retirement System II Trust CERBT Fund Trust Legislators Retirement System Trust Long TE
Brookline Avenue Partners LP	California Public Employees Retirement System (CalPERS)
Brophy Properties Inc.	Perf
Bruce G. Murphy	California Public Employees Retirement System (CalPERS)
Bruce Kirkpatrick	California Public Employees Retirement System (CalPERS)
Brumback Family LLC	Pooled S+P 500 Index Fund ACCT SK80
Building Trades United Pension Trust Fund	California Public Employees Retirement System (CalPERS)
Byrd Trading LLC	SW5J A/C Domestic Enhanced Index ST
C. Boynton Index 500 Portfolio	
C. Phelps	
California Ironworkers Field Pension Trust	

California State Teachers Retirement System	Cara Leigh Gillespie-Wilson
Camilla Chandler Family Foundation	Carl Zlatchin
Camilla Frost Chandler, as Trustee of Chandler Trust No. 1	Carl Zlatchin Profit Sharing Plan
Camilla Frost Chandler, as Trustee of Chandler Trust No. 2	Carlson Capital L.P.
Canadian Imperial Holdings Inc	Carlyle Hedrick
Cantigny Foundation	Carlyle Multi-Strategy Master Fund Ltd.
Cantor Fitzgerald & Co.	Carlyle Paff Hedrick Tic
Canyon Asset Management	Carmine Macchiaroli, as Trustee of the Carmine Macchiaroli Living Trust U/A 07/01/88
Canyon Balanced Equity Master Fund Ltd.	Carol Askin, as Trustee of the Askin Family Trust U/A DTD 09/27/1990
Canyon Balanced Master Fund Ltd. (f/k/a Canyon Balanced Equity Master Fund Ltd.)	Carol E. Jansson, as Trustee of the Trust by Carol E. Jansson U/A DTD 06/17/1998
Canyon Capital Advisors LLC	Carol E. Martin, as Trustee of the Alpheus L. Ellis 1993 Grandchildren's Trust FBO Lynn Ann Sharpe
Canyon Value Realization Fund LP	Carol E. Newman
Canyon Value Realization Mac 18 Ltd.	Revocable Trust UA 02-10-2006
Capital One Bank (USA), National Association	Carol E. Newman, as Trustee of the Carol E. Newman Revocable Trust UA 02-10-2006

Carol Forace	Catherine A. Verdusco,
Carol S. Rowe	as Trustee of the
Caroline D. Bradley	Francesca J. Verdusco
Trust dated 11/30/51	Trust
FBO Sarah Doll	Catherine A. Verdusco,
Barder	as Trustee of the
Carpenters Pension	Francesca J. Verdusco
Trust Fund for	Trust U/A DTD
Northern California	12/13/1989
Carr Total Return Fund	Catholic Health West
Carr Total Return Fund	CHW
Limited Partnership	Catholic Healthcare
Carret Asset	West
Management	Catholic United
Caryl Pucci Rettaliata	Investment Trust
Caryl W. Basoco	Caxton Associates LP
Casey and Associates,	Caxton International
LLP	Limited
Cassandra Trading	CBS Master Trust
Group LLC	CD Investment Partners
Caterpillar Investment	Ltd.
Trust	Cecil C. Smith
Caterpillar, Inc. Group	Cedar Grove Cemetery
Insurance Master	Association
Trust	Cedar Grove Cemetery
Caterpillar, Inc.	Association Perpetual
Retirement Master	Care Reserve Fund
Trust	Central Pension Fund
Catherine A. Verdusco,	Central States
as Trustee of the	Teamsters
Benjamin J. Verdusco	Central States,
Trust U/A DTD	Southeast and
12/13/1989	Southwest Areas
	Pension Fund

Centurylink, Inc.	Brent V. Woods IRA Rollover
Chandis Securities Company	Charles Schwab & Co., Inc., as Custodian of the Cindy L. Schreuder IRA Rollover
Chandler Trust No. 1	Charles Schwab & Co., Inc., as Custodian of the George William Buck Sep-IRA Dtd 04/08/93
Chandler Trust No. 2	Charles Schwab & Co., Inc., as Custodian of the Lawrence F. Klima IRA Rollover
Charles Bresler	Charles Schwab & Co., Inc., as Custodian of the Linnet F. Myers IRA Rollover
Charles Friedman	Charles Schwab & Co., Inc., as Custodian of the Peter R. Marino IRA Rollover
Charles Jasa, as Personal Representative of the Estate of Robert D. Nelson	Charles Schwab & Co., Inc., as Custodian of the Robert D. Bosau IRA
Charles Joseph De Sieyes, as Trustee of the Trust under an Agreement dated December 13, 1976 Between Virginia S. Risley, as Settlor, and William H. Risley, Charles Joseph De Sieyes and United States Trust Company of New York, as Trustees	Charles Schwab & Co., Inc., as Custodian of the Rose T Bosau IRA
Charles Keates	Charles Schwab & Co., Inc., as Custodian of the William Effron Katzin IRA Rollover
Charles L. Edwards	
Charles R. Baugh	
Charles R. Baugh Jr and Barbara Baugh Jtwros	
Charles R. Baugh, Jr.	
Charles Schwab & Co., Inc., as Custodian for	

Charles Schwab & Co., Inc., as Trustee of the Francis Nessinger IRA UTA DTD 10/14/86	Lindblad U/A/D 04-20- 2000
Charles T. and Mary Howe Brumback Descendants Trust	Christopher Reilly Christus Health Christus Health Cash Balance Plan
Charles T. Brumback, Jr.	CIBC World Markets Corp.
Charles T. Martin	CIBC World Markets, Inc./CDS
Charles Thurman	Cigna Corporation
Charley Chunyu Lu	CIM XVI LLC
Charley Chunyu Lu & Biying Zhang	Cindy L. Schreuder
Commercial Property	Ciri Gillespie
Charlotte O'Brien	Citadel Derivatives Group LLC
Charter Partners LP	Citadel Equity Fund Ltd.
Chase L. Leavitt, as Trustee of the Philip B. Chase Revocable Trust dated 07/28/94	Citadel Limited Partnership
Chemtura Corporation Master Retirement Trust	Citadel LLC (f/k/a Citadel Investment Group LLC)
Cheuk W. Yung	Citibank, N.A. as Custodian for Prism
Chevy Chase Trust Company	Partners Offshore
Chicago Tribune Foundation	Citibank, National Association, in its Individual and Custodial Capacities
Christopher Lindblad, as a Trustee of the Revocable Trust for the Benefit of Christopher	Citigroup Global Markets, Inc. Citigroup Pension Plan Trust, and its Trustee,

the Bank of New York Mellon, in its Capacity as Trustee thereof	Clovio L. Fushimi
Citigroup Securities Services, Inc.	CMCJL LLC
City Employees' Retirement System of the City of Los Angeles	CNH Master Account, LP
City National Bank	CNH Partners, LLC
City of Daytona Police and Fire Pension	Coastview Equity Partners LP
City of Gainesville Police Officers' and Firefighters' Retirement Plan	Cobalt Trading LLC
City of Los Angeles Fire and Police Pension Plan	Cogent Investment Strategies LLC
Clare Attwell Glassell, Individually and as the Beneficiary of the Clare Attwell Glassell Continuing Marital Trust	Cogent Investment Strategies Master Fund, SPC - Class D
Claude Rosenberg, as Trustee of the Rosenberg Revocable Trust	Cogent Management, Inc.
Clear Cove Capital LP	Colleges of Applied Arts and Technology Pension Plan
Clearwater Growth Fund	Colorado Public Employees' Retirement Association
Clearwater Investment Clearwater Investment Trust	Columbia Management Group [n/k/a Bofa Global Capital Management Group, LLC]
	Comerica Bank & Trust, N.A., in its Corporate Capacity and as Sponsor of its Collective Investment Funds
	Commercial Banking Client Rang

Commerzbank AG	Credit Agricole
Commonwealth of	Securities (USA), Inc.
Pennsylvania Tuition	Credit Suisse Securities
Account Program Fund	(Europe) Limited
Conair Corporation	Credit Suisse Securities
Connecticut General	(USA) LLC F/K/A
Life Insurance	Credit Suisse First
Company	Boston LLC
Connecticut Health	Creighton, Neal and
Foundation	Joan H. Creighton Jt
Conservative Balanced	TEN
Portfolio a Series of	CSS LLC
Prudential Series Fnd	CTC Fund Management
Inc	LLC
Consolidated Edison of	Custodial Trust Co.
NY K801	Cutler Group LP
Constance Tolbert Yeso	D. E. Shaw Valence
Cooper Neff Advisors,	Portfolio LLC
Inc.	D. O'Donnell, as Trustee
CooperNeff Alternative	of the Dorothy P.
Managements	O'Donnell Revocable
Cougar Trading LLC	Trust U/A DTD
County Employees' and	04/25/1983
Officers' Annuity and	D.E. Shaw & Co. LP
Benefit Fund of Cook	D.E. Shaw & Company
County	LLC
Coutts Us Equity Index	D.E. Shaw Oculus
Programme	Portfolios LLC
Cox Family Educational	D.E. Shaw Valence
Trust Dated	Portfolios LLC
08/02/2004	D.E. Shaw Valence
Craig W. Dougherty	Portfolios LLC - Broad
Crane Co. Master Trust	Core

D.E. Shaw Valence Portfolios LLC - Long	Davenport, William L, Trustee, William M
Dain Rauscher	Davenport Trust
Dain Rauscher, as a Custodian of the Patrick J. McGlinn Individual Retirement Account RBC	Under Will of Thomas Carrter Lupton
Daiwa Securities Trust Co.	David A. Dichek
Dan Eric Miller, as Trustee of the Miller Family Trust	David A. Dichek and Jane Doe Dichek, a Washington Marital Community
Danica F. Hughes	David C. De Sieyes
Daniel and Tracy Opat, as Individuals and as Trustees of a Certain Trust Document dated August 31, 2006	David C. De Sieyes, as Trustee of the Trust under an Agreement dated December 13, 1976 between Virginia S. Risley, as Settlor, and William H. Risley, David C. De Sieyes, and United States Trust Company of New York, as Trustees
Daniel Braidwood	David D. Grumhaus
Daniel Cohen	1990 Trust
Daniel Cohen and Barrie A. Kass	David D. Grumhaus, as a Trustee of the David D. Grumhaus 1990 Trust
Daniel D. Pecaro, as Trustee of the Pecaro Family Trust DTD 4/12/02	David E. Neisser Irrevocable Trust Dated 8-14-83
Daniel R. Zuckerman	David Ertel
Daniel S. Gregory	David Greenspahn
Daniel S. Jursa	David Hochberg
Darrell F. Kuenzel	
Darrick O. Ross	
Daryl V. Dichek	
Davenport & Co. LLC	

David L. Riley	Delaware Charter
David P. Slesur	Guarantee & Trust, as
David T.K. Lu	Custodian of Carl
DBSO Securities Ltd.	Zlatchin Profit Sharing
Deann K. Riley	Plan
Declaration of Bell	Delaware Charter
Family Trust	Guarantee & Trust, as
Meadowbrook Equity	Custodian of the Betty
Fund UA 12/1/86	Zlatchin IRA
Declaration of Bell	Delaware Charter
Family Trust UA	Guarantee & Trust, as
12/1/86	Custodian of the Kevin
Deepak Agarwal	Stone IRA R/O
Deere & Company	Delaware Charter
Welfare Benefit Trust	Guarantee & Trust, as
#1	Custodian of the
Deere & Company, as	Sherry P. Broder IRA
Administrator of the	Delaware Charter
John Deere Pension	Guarantee & Trust, as
Trust	Trustee of the Herbert
Del Mar Master Fund,	G. Lau Profit Sharing
Ltd.	QRP Participation
Delaware Charter G&T	Deld Family Foundation
TTEE	Trust UAD 9/30/02
Delaware Charter	Denise A. Meck
Guarantee & Trust	Denise E. Palmer, as
Delaware Charter	Trustee of the Denise
Guarantee & Trust Co.	Palmer Revocable
Delaware Charter	Trust U/A/D 10-28-
Guarantee & Trust	1991
Co., as Custodian of	Dennis Eugene De Haas
the Lisa M. Featherer	Dennis J. Layne
IRA R/O	Dennis S. Bunder
	DEPFA Bank, PLC

DEPFA Bank, PLC (Hypo Real Estate Bank Int'l)	Diamond, Marilyn R., as Trustee, Marilyn R. Diamond Trust dated 11-11-88
Derek M. Dalton, as Trustee of the 10/03/2007 Dalton Trust	Diamond, Terry and Muriel Diamond as Trustees U/W of Sol Diamond dated 12/4/72
Despina Haigler, as Trustee of the Richard Haigler & Despina Haigler Living Trust U/A 11/04/91	Diamond, Terry, Trustee, Terry D. Diamond Trust DTD 5/7/86
Deutsche Bank AG, Filiale Amsterdam	Diamondback Cap Mgt/ Diamondback Master Fund Ltd Century Yard
Deutsche Bank AG, Frankfurt	Diamondback MA FD LTED QAES/TMS/ITS SETT A/C
Deutsche Bank AG, in its custodial capacity	Diamondback Master Fund/TMS/ITS SETT A/C for Queensgate House
Deutsche Bank Securities Inc. – DB AG Equity Swaps Offshore Consolidated Account I	Diamondback Master Fund Ltd Century Yard
Deutsche Lufthansa AG DIA Mid Cap Value Portfolio	Diamondback Master Fund Ltd.
Diamond Consolidated L.P.	Diane A. Kucera, Individually and as Trustee of the Trust by Richard A. Kucera & Diane A. Kucera U/A/D
Diamond, John B., as Trustee of the John B. Diamond Declaration of Trust dated April 15, 2010	

03-23-07 FBO Richard & Diane Kucera	01/18/88 of the Schuler Trust
Diane Buchanan Wilsey	Donna C. Lies
Dictaphone Corporation	Doris Duke Charitable Foundation
Direxion Funds	Doris Keats Frank
Direxion Insurance Trust	Doris Keats Frank, as Trustee of the Doris Keats Frank Revocable Trust UA 03/07/00
District 1199J New Jersey Health Care Employers Pension Plan a/k/a District 1199J New Jersey Health Care Employers Pension Fund	Dorothy A. Levenson
Doheny Eye Institute	Dorothy B. Chandler Marital Trust No. 2 UAD 06/26/35
Dolores C. Mierkiewicz	Dorothy B. Chandler Residuary Trust
Dolores Locascio	Dorothy B. Chandler Residuary Trust No. 2
Dominion Resources, Inc.	Dorothy C. Patterson Irrevocable Trust #2 Dated 12-21-93
Dominion Resources, Inc. Defined Benefit Master Trust	Dorothy D. Park
Donald Baron	Dorothy E. Hinze
Donald Baron, as a Trustee of the Don & Irene Baron Family Trust 7B-251	Dorothy Flibbert, as a Trustee of the 12/09/90 Tommie L. Cordero Trust
Donald F. Ray	Dorothy L. Drummey, as Trustee of the Deld Family Foundation Trust UAD 9/30/02
Donald H. Rumsfeld	Dorothy P. O'Donnell Revocable Trust U/A DTD 04/25/1983
Donald M. Hinman Jr.	
Donald Rooney	
Donavon Virgil Schuler, as Trustee UTD	

Double Black Diamond Offshore Ltd. f/k/a Double Black Diamond/Offshore LDC	Dundee Leeds Management Services (Cayman) Ltd. Dynamic Domestic Fund LP
Douglas B. Stewart	E*Trade Capital Markets LLC
Douglas E. Knee and Barbara J. Kneeland Joint Tenants with Rights of Survivorship	E*Trade Securities LLC E*Trade Securities LLC, as Custodian of Joe Youssry Kelada SEP IRA
Douglas E. Kneeland	E*Trade Securities LLC, as Custodian of the Enzo S. Ricciardelli SEP IRA
Douglas H. Dittrick	E*Trade Securities LLC, as Custodian of the Karl Putnam IRA
Dr. Charles J. De Sieyes	E. Donald Heymann, as Trustee of the E. Donald Heymann Trust
Dr. David L. Hoexter	E. Gallagher EAC Management LP EAC Partners Master Fund Ltd.
Dr. Peter Fairweather	Eagle New Media Investments LLC
Draper and Kramer Inc. (a/k/a DK/Equity LLC)	Earl E. Crowe Trust No. 2 UAD 06/26/35
Drawbridge Global Macro Master Fund Ltd.	Echotrade LLC
Dresdner Bank, AG	
DT Broad Market Stock Index Fund	
Duane Shelton Tydings, as Trustee of the Grace Trust	
Duke Energy Corporation	
Duke Power Company Non-Qualified Equity Nuclear Decommissioning Trust	

Eddie Jones Jr., as Trustee of the Jessie Ball Dupont Fund	Elaine T. Bovaird, as Trustee of the Trust by Elaine T. Bovaird U/A DTD 2/18/1993
Edgar D. Gifford, as Trustee of the Edgar D Gifford Trust UA 7/15/98	Elaine W. Getz, as Trustee of the Elaine W. Getz Trust UA 2/5/86
Edith A. Ehrlich	Elaine W. Pettijohn, as Trustee of the Elaine W. Pettijohn Trust U/A 12/20/89
Edith B. Waterman	Eleanor A. Kenyon
Edmund D. Haigler Jr.	Eleanor Jackson Stern Trust Dated 01/06/1971
Edna F. Weber	Electrolux Home Products, Inc. Master Trust
Edward A. Cox, Jr. Revocable Trust DTD 5/21/2004	Eliza Haskins
Edward A. Cox, Jr., as Trustee of the Edward A. Cox, Jr. Revocable Trust DTD 5/21/2004	Elizabeth Dahan
Edward E. Neisser Marital Trust	Elizabeth De Cuevas
Edward T. McGowan	Elizabeth H. Vanmerkensteijn
Edwards, W L Jack, Trustee	Elizabeth L. Levin, as Trustee of the Elizabeth L. Levin 2006 Sz-2 Year Grantor Retained Annuity Trust under Agreement dated 07/31/06
Edwin J. Hayes Jr.	Elizabeth Siegel, Acting Trustee of the Barbara
Edwin J. Hayes, as Trustee of the Trust by Edwin J. Hayes Jr. U/A DTD 5/26/2006	
Edwin R. Labuz EFH Retirement Plan Master Trust	
Eileen C. Norris	
Eileen Marie Wirth	
Eitner, Paul G	

M. Osborne Trust U/I/T DTD 2/7/05	EQ Advisors Trust - EQ/Equity 500 Index Portfolio
Elkhorn LLC	EQ Advisors Trust - EQ/Gamco Mergers and Acquisitions Portfolio
Ellen Johnson Twaddell	EQ Advisors Trust - EQ/Mid Cap Value Plus Portfolio
Ellen P. Caputo	EQ Advisors Trust (EQAT Equity 500 Index)
Ellen Warren	Equitec Specialists LLC
Elmer H. Wavering Family Trust dated 06/24/1977 as Amended	Equity Investment Fund Pooled Trust
Emanuel E. Geduld 2005 Family Trust	Eric D. Werthman
Embarq Corporation	Eric I. Chang
Emily Evans Embrey, Beneficiary of the Alfred C. Glassell Jr. Children's Trust for Emily Evans Embrey	Eric Morris
Emily G. Plumb Charitable Trust dated 1/8/80 as Amended	Estate of Barbara Hammond
Employee Retirement Income Plan Trust of Minnesota Mining & Manufacturing Co.	Estate of Charles Pratt Twichell UW HT Clement for SP BC QTIP Trust
Employees Retirement System of Texas	Estate of Karen Babcock
Employers' Fire Insurance Company	Estate of Robert C. Gilkison
Enhanced Rafi U.S. Large LP	Esther G. Fox
Enzo S. Ricciardelli	Eugene Taylor
	Eugene Taylor and Rose Marie Taylor JT Ten
	Eugene Tillman, as Trustee of the Tillman

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Family Trust U/A 07/29/1980	Fairweather Limited Partnership
Eureka Options LLC	Fairweather Ltd Ptrshp
Evangelical Lutheran Church in America	R1F3154C, Custodian
Board of Pensions	Farmers Group, Inc.
Everest Re Group Ltd.	Fasken Ltd.
Everest Reinsurance (Bermuda) Ltd.	Federal Reserve System Employee Retirement Fund
Evergreen Asset Management c/o Prentice-Hall Corporation System, Inc.	Felix Wen Guang Tong
Evergreen Asset Management Corp.	Ferris Trading Fund LLC
Everything Medical, Inc.	Ferris, Baker Watts, Inc.
Evol Capital Management, LLC	Fidelity Management Trust Co. as Trustee for Verizon Master Savings Trust
Evolution All-Cap Equity Fund	Fidelity Management Trust Company, Custodian, and Michael Muskal, Beneficiary, Michael Muskal IRA Rollover
Excel Realty Fund LP	Fidelity Management Trust Company, Custodian, and Timothy L. O'Rourke, Beneficiary, Timothy L. O'Rourke IRA
ExxonMobil Investment Fund	Fidelity Management Trust Company, Custodian, Bashar A. Mubashir IRA Rollover
ExxonMobil Investment Management Inc.	
F. Audrye Woller	
F. Tong	
Fair Oaks LLC, as Trustee of the John N. Robson Trust B dated 9/11/1970	
Fairweather Family LP	

Fideuram Bank Luxembourg S.A.	1976 between Virginia S. Risley, as settlor, and William H. Risley,
Fideuram Bank Luxembourg S.A. c/o Intesa Sanpaolo	David C. De Sieyes, and United States
Fiduciary Company Incorporated	Trust Company of New York, as Trustees
Fiduciary Mgt. Assoc. LLC 401k FBO Robert Wesley Thornburgh	Fiduciary Trust Company
Fiduciary Trust Co.	International, as
Fiduciary Trust Company	Trustee of a Trust
Fiduciary Trust International	under an agreement dated December 19,
Fiduciary Trust Company	1977 between Virginia
Fiduciary Trust International, as	S. Risley, as settlor, and William H. Risley
Trustee of a Trust	and United States
under an Agreement	Trust Company of New
dated December 13,	York, as Trustees
1976 between Virginia	Fifth Third Bank
S. Risley, as settlor,	Financial Management
and William H. Risley,	Concepts Corporation
Charles Joseph De	First American Equity
Sieyes and United	Index Fund
States Trust Company	First American
of New York, as	Investment Funds, Inc.
Trustees	– Equity Index Fund
Fiduciary Trust	First Capital Alliance
Company	LP
International, as	First Data Incentive
Trustee of a Trust	Savings Plan FBO
under an Agreement	John G. Kologi
dated December 13,	

First Investors Life Series Fund Blue Chip Series	Fontaine Trust under Will of Thomas Carrter Lupton
First Investors Life Series Fund Utilities Series	Fordham University Foundation for Anesthesia Education & Research
First Investors Utilities Income	Frances L. Cey, individually and as a Trustee of the Cey Living Trust 5/14/87
First Midwest Bancorp	Francis G. Duggan
First New York Securities LLC	Francis L. Coolidge
First Republic Bank	Francis Nessinger
Firststar Equity Index Fund	Frank Callea
First-Citizens Bank & Trust Company	Frank J. Bouzek, as Trustee of the Billie J. Bouzek Trust U/A 1/28/00
Fit Collective Investment Plan	Frank Maloney
Flexible US Equity Managers	Frank Maloney and Kathleen Maloney
Flexible US Equity Managers Portfolio 1 LLC	Frank Russell Investments
Florida Power Corp Non- Qual	Frank Russell Trust Company
Floyd C. Sanger Jr., as Trustee of the Floyd C. Sanger Jr. Trust U/A 3/11/86	Frank W. Considine
FM Global	Frank W. Denius
Folksamerica	Fred J. Eychaner
Reinsurance Company	Fred Martell
Fontaine, John T., Trustee, John T.	Frederick Goldstein
	Fredericka Paff
	Fredric Levenson

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Fredric Levenson and Dorothy A. Levenson	Gabelli Funds, Inc. (the Gabelli Equity Inc FD)
Frost National Bank	Bruce M. Alpert
Full Value Partners LP	Gabelli Funds, Inc. (the Gabelli Global
Gabelli & Company, Inc.	Multimed TR) Bruce
Gabelli 787 Fund Inc. - Gabelli Enterprise	M. Alpert
Mergers and Acquisitions Fund f/k/a	Gabelli Investor Funds, Inc.
the 787 Fund Inc - AXA Enterprise	Gabelli Multimedia Partners, L.P.
Mergers and Acquisitions FundMC	Gabelli Performance Partnership, L.P.
Gabelli ABC Fund	Gabelli Securities, Inc.
Gabelli Asset Management Company	Gabelli Value Fund, Inc.
Gabelli Associates Fund	Gail C. Schlang
Gabelli Average Price 2	Gail D. Scripps, as Trustee of the Barry H.
Gabelli Equity Trust, Inc.	Scripps Trust
Gabelli Foundation, Inc.	Gail Samos Johnson
Gabelli Funds LLC	GAMCO Asset Management, Inc.
Gabelli Funds, Inc. (Gabelli ABCFund)	GAMCO Investors, Inc.
Gabelli Funds, Inc. (Gabelli Funds, Inc.)	Garland Foundation Trust No. 2
Bruce M. Alpert	Gary E. Pekala
Gabelli Funds, Inc. (Gabelli) Bruce M. Alpert	Gaspare Locascio Gaspare Locascio and Dolores Locascio
Gabelli Funds, Inc. (the Gabelli Asset Fund)	G-Bar Limited Partnership
Bruce M. Alpert	GCW Capital LLC GDK, Inc.

GDK, Inc. c/o Caxton Associates LP	Glassell Family Foundation, Inc.
Gene C. McCaffery	Glaxosmithkline LLC
General Board of the Global Ministries of the United Methodist Church's Collins Pension Plan	Glen W. Bell Jr., as Trustee of Declaration of Bell Family Trust UA 12/1/86
General Motors Hourly-Rate Employee Pension Trust (GMHREP Trust)	Glen W. Bell, as Trustee of Declaration of Bell Family Trust Meadowbrook Equity Fund UA 12/1/86
General Motors Investment Management Corp.	Glenmede Trust Co.
Genworth Financial Wealth Management	Glenview State Bank
George E. Keeler	GMIMCo TRUST (General Motors Investment Management Corp.)
George J. Peckham, as Trustee of U/A/D 07-14-2000 FBO the 2000 Peckham Family Trust	GMIMCo Trust (General Motors) Bruce Marquand
George M. Moss	Goldentree Asset Management LP
George William Buck	Goldentree Master Fund II Ltd.
Georgette Pettijohn	Goldentree Master Fund Ltd.
Geraldo Rivera	Goldentree Multistrategy Ltd.
Gertrude K. Chisholm, as Trustee of the Trust U/W Charlene Frost	Goldentree Multistrategy Offshore Fund
GGCP, Inc. (f/k/a Gabelli Funds, Inc.)	
Gidwitz Art Ventures	
GJD Partners L.P.	

Goldman Sachs 1997 Exchange Place Fund, L.P.	Graham Event Driven Ltd.
Goldman Sachs 1999 Exchange Place Fund, L.P.	Great-West Life Assurance Co.
Goldman Sachs 2005 Exchange Place Fund, L.P.	Greenock Multi-Strategy Master Fund Ltd.
Goldman Sachs Execution & Clearing, L.P., in its individual and custodial capacities	Greenwich Capital d/b/a RBS Greenwich Capital
Goldman Sachs Investment Strategies, LLC, in its custodial and investment managerial capacities	Greg Guma, as Trustee of the Jesse Lloyd Guma Irrevocable Trust U/A DTD 7-5-96
Goldman, Sachs & Co., in its individual and custodial capacities	Gregory J. Caputo
Goldsher Investment Co., Inc.	Gregory J. Caputo and Ellen P. Caputo
Governing Council of the University of Toronto	Gregory Reyftmann
Government of Singapore Investment Corporation PTE Ltd.	Griffith E. Madigan, as custodian of Griffith Patrick Madigan Utma Wi
GPS Funds I	Gryphon Hidden Values VIII L.P.
Graham Capital Management, Limited Partnership	Gryphon Hidden Values VIII Ltd.
	Guarantee & Trust Co.
	Guarantee & Trust Co., as Custodian of the Charles L. Edwards IRA Rollover Account
	Guardian
	Guardian Investors Services LLC [RS S&P 500 Index VIP Series]

Guardian VC 500 Index Fund, John Doe as Owner of	Hannah Smith Trust
Guggenheim Advisors LLC	Harbor Capital Advisors, Inc.
Guggenheim Portfolio LIX, LLC	Harbor Capital Group Trust
Guidemark Large Cap Value Fund (f/k/a Assetmark Large Cap Value Fund)	Harbor Mid Cap Value Fund
Guidestone Equity Index Fund	Harold R. Lifvendahl Trust dated 9/7/1988
Guidestone Funds	Harold R. Lifvendahl, as Trustee of the Harold R. Lifvendahl Trust Dated 9/7/1988
Gulco Corp.	Harriet H. Glasspiegel, as Trustee of the Harriet H. Glasspiegel DI Trust U/A 6/21/89
Gwedolyn Garland Babcock	Harrington Bischof, as Trustee of the Harrington Bischof Trust UAD 9/15/97
Gwendolyn G. Babcock Hach Scientific Foundation	Harris Corp. Retirement Trust
Halcyon Asset Management LLC f/k/a Halcyon Management Co. LLC	Harry F. Byrd, Jr.
Halcyon Diversified Fund L.P.	Harry F. Byrd, Jr., as Trustee of the Harry F. Byrd Jr Revocable Trust
Halcyon Fund LP	Harry F. Byrd, Jr., as Trustee of the Thomas T. Byrd Trust UA 01/25/82
Halcyon Offshore Enhanced Master Fund LP	Harry F. Byrd, Jr., as Trustee of Thomas T
Halcyon Special Situations, L.P.	
Halliburton Co.	
Hanna Jonas Miller	

Byrd TR UA 01/25/82	Helen Brown
Harry F. Byrd Jr	Helen Brown, Jean
Revocable Trust	Samos and Gail Samos
Harry Glasspiegel, as	Helen Bittenwieser
Trustee of the Harriet	Trust 7/28/38
H. Glasspiegel DI	Helen Garland Trust No.
Trust U/A 6/21/89	2 FBO Gwedolyn
Hartford Investment	Garland Babcock UAD
Management Company	06/26/35
Hartford Life Insurance	Helen Garland Trust No.
Company	2 FBO Hillary Duque
Harvard Management	Garland
Co.	Helen Garland Trust No.
Harvard University	2 FBO William M.
Harvest AA Capital LP	Garland III UAD
Harvest Capital LP	06/26/35
Harvey B. Plotnick, as	Helen Grossman, as
Trustee of the Harvey	Trustee of the Helen
B. Plotnick Declaration	Grossman Trust Dated
of Trust u/a/d March	09/08/99
16, 1988	Helen K. Dohm
Harvey Bookman	Helena Pai
Harvey Mudd College	Henry G. Barkhausen
Harvey R. Heller	Trust UAD 12/14/36
Havens Advisors LLC	Henry P. Albrecht, as
Havens Partners	Trustee of the Henry
Enhanced Fund LP	P. Albrecht Revocable
Havens Partners LP	Trust U/A 1/21/74
Headwaters Holdings	Herbert Anthony Clark
LLC	Jr.
Hearst Equity	Herbert G. Lau Profit
Appreciation Plan	Sharing QRP
Hedgehog Capital LLC	Participation
Hedonic Capital LLC	HFF I LLC

HFR Asset Mgmt LLC	Hon. Harry F. Byrd
HFR RVA Whitebox	Revocable Trust U/A
Master Trust (f/k/a	DTD 1/25/82
HFR RVA Combined	Honeywell International
Master Trust)	Inc. Master Retirement
HHS Partnership	Trust
Highmark, Inc.	Horizon Golden Partners
Hilda Flynn	LP
Hillary Duque Garland	Horwitz, Donald
Himan Brown Revocable	Horwitz, Lola L
Trust	Howard Berkowitz
Himan Brown, TR UA	Howard E. Mazur
11/20/02 Himan Brown	Howard F. Ahmanson
Revocable Trust	Jr. Revocable Trust
HOC GST Exempt Trust	Howard F. Ahmanson
No. 2 FBO John	Jr., as Trustee of the
Haskins	Howard F. Ahmanson
HOC GST Exempt Trust	Jr. Revocable Trust
No. 2 FBO Scott	Howard J. Trienens, as
Haskins	Trustee of the Paula
HOC GST Exempt Trust	Miller Trienens Trust
No. 2. FBO Eliza	Dated 9-18-91
Haskins UAD 06/26/35	Howard J. Trienens, as
HOC Trust No. 2 FBO	Trustee under Self-
Eliza Haskins UAD	Declaration of Trust
06/26/35	dated 9-18-91
HOC Trust No. 2 FBO	Howard Resnick
John Haskins UAD	Howard Wong
06/26/35	Hoyer/Lemts
HOC Trust No. 2 FBO	Hudson Bay Fund LP
Scott Haskins UAD	Hudson Bay Master
06/26/35	Fund Ltd.
Homeland Insurance	Hugh F. Fagan
Company of New York	Huntington

Huntington National Bank	Illinois Municipal Retirement Fund
Hussman Econometrics Advisors, Inc.	Illinois State Board of Investment
Hussman Investment Trust	Illinois Student Assistance Commission
Hussman Strategic Growth Fund	IM Margaret K Crane Trust
Hypo Real Estate Bank Int'l	Imogene S. Peckham, as Trustee of U/A/D 07-14-2000 FBO the 2000 Peckham Family Trust
I.B.E.W. 103	Imperium Insurance Company (f/k/a Delos Insurance Company)
IBEW Local 103 Trust Fund	Ina Tillman, as Trustee of the Tillman Family Trust U/A 07/29/1980
IBEW Local 25 Mastertrust Plans	ING Investment Trust Co.
IBEW Local 25 Retirement Funds Master Trust	Intech Investment Management LLC
IBEW Local 98 Pension Plan Mv	Intel Corporation
IBEW-NECA Equity Index Fund	Interactive Brokers Group
IBM Netherlands Msci Us [Stichting Pensioenfonds IBM Nederland]	International Brotherhood of Electrical Workers Pension Benefit Fund
IBM Personal Pension Plan Trust	International Brotherhood of Painters and Allied
ICAP Corporates LLC	
Ice Bear Incorporated, an Alaska Corporation	
Iglesia Metodista Del Peru	

Trades Union & Industry Pension Fund	Iris B. Mahoney, as a Trustee of the Iris B. Mahoney Revocable Trust U/A/D 04/10/98
International Business Machines Corporation	Iris Elston, as Trustee of the Iris Elston Trust UAD 5/30/95
International Monetary Fund Staff Retirement Plan	Ironworker Employees' Benefit Corporation, as Administrator of the California Ironworkers Field Pension Trust
International Union of Operating Engineers	Irving & Varda Rabin 1992 Revocable Trust
International Union of Operating Engineers Local 14-14B Pension Fund, by and through its Board of Trustees	Irving Rabin, as Trustee of the Irving & Varda Rabin 1992 Revocable Trust
Intersil Equity Income Fund	J. McWethy and Jane Doe McWethy, husband and wife
Intersil Equity, Inc. Fund	J. Oldendorf, as Trustee of the Dorothy P O'Donnell Revocable Trust U/A DTD 04/25/1983
Intl. Union Painters & Allied Trades Industry Pension Fund	J.M. Smucker Company
Invenio Partners LP	J.P. Morgan Whitefriars Inc.
Investors Bank & Trust	J.P. Morgan Whitefriars, Inc.
Invoc [Investment Operating Company LLC]	Jack D. McManus
Ipac Asset Management	Jack D. McManus and John R. McManus
Ira Willis Baker Jr.	
Irene Baron, as a Trustee of the Don & Irene Baron Family Trust 7b-251	
Irene M. McNulty	

Jack R. McDonald	James B. Kerr, III, as
Jack R. McDonald, as a	Trustee of James B.
Custodian of the CGM	Kerr III Trust U/W
IRA	Agnes R Kerr DTD
Jackson Capital Ptrs, LP	7/2/1977
Main LP	James C. Warren
Jackson Capital Ptrs,	James Dietz
LP-Main-Pl	James E. Pearson
Jacksonville Police &	James F. Hoge Jr.
Fire Pension Board of	James F. Kerr Jr.
Trustees Trust	James F. Kerr Jr. and
Jacqueline E. Autry, as	Nancy E. Kerr
Trustee of the Autry	James H. Eckhouse, as
Community Property	Trustee of #502 U/W/O
Trust dated 03/15/1985	Minnette R. Eckhouse
Jacuzzi Brands, Inc.	Trust
Jacuzzi Brands, Inc.	James King
Defined Benefit (a/k/a	James King and Judie
Jacuzzi Brands, Inc.	King
Master Pension Plan,	James L. Lockwood, Jr.
Jacuzzi Brands, Inc.	James M. Lachey
Master Trust, and/or	James Mateja
Jacuzzi Brands, Inc.	James Rothermel
Retirement Savings &	James Rothermel and
Investment Plan)	Mary Rothermel
James A. Crumley	James T. Smith, as a
James A. Friedberg, as	Trustee of the Trust by
Trustee of the Herman	James T. Smith U/A
R. Friedberg Revocable	DTD 10/09/1995
Trust	James Thomas Wirth
James B. Kerr III Trust	James Thomas Wirth
U/W Agnes R Kerr	and Eileen Marie
DTD 7/2/1977	Wirth
	James Zerwekh

Jamie A. Simins	Jean Shaulis Black, as
Jane B. White Trust UA	Trustee of the Jean S.
10/17/02	Black Trust
Jane B. White, as	Jeanette M. Duggan
Trustee of the Jane B.	Jeanne Caplice, as a
White Trust UA	Trustee of the William
10/17/02	Caplice Revocable
Janet U. Embury Chln	Trust
Tr Grace FD	Jefferies & Company,
Janet U. Embury, Chln	Inc.
Tr J Ley FD	Jefferson R. Solender
Janice Williams	Jeffrey C. Neal
Barnard, as Trustee of	Jeffrey Chandler, as
the Trust for the	Trustee of Chandler
Benefit of John F.	Trust No. 1
Barnard UAD 4/4/03	Jeffrey Chandler, as
Janna L. Gadden	Trustee of Chandler
Janney Montgomery	Trust No. 2
Scott LLC	Jeffrey J. Appleby, as
Janus Capital Group	Trustee of the
Jason P. Smith	Christopher J. Appleby
Javad Rassouli	Trust U/A DTD
Jay Goldman & Co., LP	12/13/89
Jay Goldman Master LP	Jeffrey J. Appleby, as
Jean Cheloni	Trustee of the Felicity
Jean Curry Glassell,	J. Appleby Trust U/A
Acting Trustee and	DTD 12/13/89
Beneficiary of the	Jeffrey J. Appleby, as
Alfred C. Glassell Jr.	Trustee of the James
Children's Trust for	F. Polk Trust U/A DTD
Jean Curry Glassell	12/13/89
Jean F. Bell	Jeffrey Risley
Jean Samos	Jeffrey Schatz
	Jenifer B. McIntosh

Jennifer G. Hines	JHT 500 Index Trust,
Jennifer Gross, as	John Doe as Owner of
Trustee of the Martha	JHT Equity Income
Gross Living Trust	Trust, John Doe, as
U/A/D 04/14/1996	Owner of
Jerome & Maria	JHT Mid Value Trust,
Markowitz JTWROS	John Doe, as Owner of
Jerome Blank, as	JHT New Income Trust
Trustee of the Jerome	JHT Total Stock Market
Blank Declaration of	Index Trust, John Doe,
Trust	as Owner of
Jerome Kahn, as	Jianshi Mao
Trustee of the Jerome	Jill Devaney
Kahn Jr. Revocable	Jill E. Berube, as
Trust DTD 10/16/87	Trustee of #502 U/W/O
Jerome M. Wells	Minnette R. Eckhouse
Jerome Markowitz	Trust
Jerome P. and Melanie	Jill E. Eckhouse, as
M. Martin	Trustee of #502 U/W/O
Jerome P. Martin	Minnette R. Eckhouse
Jerry J. Wolfe	Trust
Jerry Lower	Jim Hicks & Co.
Jesse Lloyd Guma	Employee Profit-
Irrevocable Trust U/A	Sharing Plan
DTD 7-5-96	Jim Hicks, as Trustee of
Jesse Werthman	the Jim Hicks & Co.
Jessie Ball Dupont Fund	Employee Profit-
Jessnick Partners LP	Sharing Plan
JHF II Equity-Income	Jim Roche
Fund	Joan E. Clark
JHF II Spectrum Income	Joan Ellis Van Loan
Fund	Joan H. Creighton
JHT 500 Index Trust B,	Joan L. Gilkison,
John Doe, as Owner of	Administrator CTA

Estate of Robert C. Gilkison	John Deere Pension Trust
Joan S. Freehling, as Trustee of the Ruth Stein Discretionary Trust for Joan UAD 1/2/80	John Doe, as Administrator of Bakery, Confectionery, Tobacco Workers & Grain Millers International Pension Fund
Joanna Sturm	John Doe, as Administrator of Central Pension Fund
Joanne Desherow Sanger, as Trustee of the U/A DTA 03/29/04	John Doe, as Administrator of Evangelical Lutheran Church in America Board of Pensions
Joanne Desherow Sanger Living Trust	John Doe, as Administrator of Hearst Equity Appreciation Plan
Joe Frank	John Doe, as Administrator of IBEW Local 25 Retirement Funds Master Trust
Joe Youssry Kelada	John Doe, as Administrator of Laborers District Council & Contractors Pension FD of Ohio
John B. Diamond Declaration of Trust dated April 15, 2010	John Doe, as Administrator of Mid-Atlantic Regional
John B. Lloyd Jr., as Trustee of the John B. Lloyd Jr. Revocable Trust	
John Bird Lloyd Jr., as Trustee of the Madge A.L. Macneil 1988 Family Trust	
John Cheloni	
John Cheloni and Jean Cheloni	
John D. & Catherine T. Macarthur Foundation	
John D. Lane Revocable Trust U/A DTD 9/19/96	

Council of Carpenters Pension Plan	John Doe, as Administrator of the City of Daytona Police and Fire Pension
John Doe, as Administrator of New York City District Council of Carpenters Pension Fund	John Doe, as Administrator of the IBEW Local 98 Pension Plan Mv
John Doe, as Administrator of New York City District Council of Carpenters Welfare Fund	John Doe, as Administrator of the International Brotherhood of Electrical Workers Pension Benefit Fund
John Doe, as Administrator of OneBeacon Insurance Savings Plan	John Doe, as Administrator of the Teamsters Joint Council No. 83 of Virginia Pension Fund
John Doe, as Administrator of OneBeacon Insurance Savings Plan – Equity 401k	John Doe, as Administrator of the Virginia College Savings Plan
John Doe, as Administrator of OneBeacon Insurance Savings Plan – Fully Managed	John Doe, as Administrator of the Virginia Retirement System
John Doe, as Administrator of Ontario Pension Board	John Doe, as Administrator of the Waterman Broadcasting Corp Employee Profit Sharing Plan U/A 01/01/1974
John Doe, as Administrator of the Building Trades United Pension Trust Fund	

John Doe, as Administrator of Tre Pension EFT Account Pension Payment System	John Doe, as custodian of the John R. Loftus IRA
John Doe, as Administrator of Waterman Broadcasting Corp. Employee Profit Sharing Plan U/A 01/01/1974	John Doe, as owner of C. Boynton Index 500 Portfolio
John Doe, as Beneficiary and/or Distributee of Kurt Adler Estate	John Doe, as owner of Dennis Eugene De Haas Tod
John Doe, as custodian of the Bradley A. Long Traditional IRA	John Doe, as owner of Imperial U.S. Equity Pool
John Doe, as custodian of the Darrell F. Kuenzel IRA	John Doe, as owner of Margaret T.M. Jones Cp & Co. AC
John Doe, as custodian of the Dennis J. Layne Rollover IRA	John Doe, as Owner of Ohio National Strategic Value Portfolio
John Doe, as custodian of the Helen K. Dohm IRA	John Doe, as Owner of Ohio Natl Fund, Inc. Strategic Value Portfolio
John Doe, as custodian of the Howard Resnick IRA	John Doe, as Owner of SSBT Omnibus Account
John Doe, as custodian of the Jerome M. Wells IRA	John Doe, as Owner of SSGA Russell 1000 Value SL Fund
	John Doe, as Owner of SSGA S&P 500 Flagship Fund
	John Doe, as Owner of State Street Bank &

Trust Co./IBT–Account # 2	John Doe, as Owner of TMS/ITS Settlement
John Doe, as Owner of State Street Bank & Trust Company - S&P 500 Tobacco Free Index CTF	Account for Agoralogos John Doe, as Owner of TMS/ITS Settlement Account for HFF I LLC
John Doe, as Owner of State Street Global Advisors, Inc. Confidential Client Account	John Doe, as Successor Trustee of Himan Brown Revocable Trust
John Doe, as Owner of State Street Global Advisors, Inc. S&P 500 Index CTF	John Doe, as Trustee for R.E. Ginna Nuclear Power Plant LLC Master Decommissioning Trust
John Doe, as Owner of the Northwestern Mutual Series Fund Inc. Equity Income Portfolio	John Doe, as Trustee for R.E. Ginna Qualified Decommissioning Trust
John Doe, as Owner of the Northwestern Mutual Series Fund Inc. Index 500 Portfolio	John Doe, as Trustee of 3M Employees Welfare Benefits Association Trust I
John Doe, as Owner of the Northwestern Mutual Series Fund Inc. Small Cap Value Portfolio	John Doe, as Trustee of Archdiocese of New York Master Trust
John Doe, as Owner of TMS/ITS SETT A/C for 05602646	John Doe, as Trustee of Armstrong World Industries, Inc. Retirement Master Trust
	John Doe, as Trustee of Avery Dennison

Corporation Master Retirement Trust	John Doe, as Trustee of JHT New Income Trust
John Doe, as Trustee of Bethesda Nonretirement Assets Master Trust	John Doe, as Trustee of Kaman Corp. Mas Trust-LSV
John Doe, as Trustee of BNY Mellon Trust of Delaware	John Doe, as Trustee of L3 Communications Corporation Master Trust
John Doe, as Trustee of CBS Master Trust	John Doe, as Trustee of Marshfield Clinic Master Trust
John Doe, as Trustee of EFH Retirement Plan Master Trust	John Doe, as Trustee of National Railroad Investment Trust
John Doe, as Trustee of Emanuel E. Geduld 2005 Family Trust	John Doe, as Trustee of National Railroad Retirement Investment Trust
John Doe, as Trustee of Employee Retirement Income Plan Trust of Minnesota Mining & Manufacturing Co	John Doe, as Trustee of NSP-Monticello Minnesota Retail Qualified Trust
John Doe, as Trustee of General Motors Hourly-Rate Employee Pension Trust (Gmhrep Trust)	John Doe, as Trustee of SEI Institutional Investments Trust
John Doe, as Trustee of IBEW Local 103 Trust Fund	John Doe, as Trustee of SEI Institutional Managed Trust
John Doe, as Trustee of IM Margaret K. Crane Trust	John Doe, as Trustee of TD Emerald Hedged U.S. Equity Pooled Fund Trust

John Doe, as Trustee of the Alaska Large-Cap Trust	John Doe, as Trustee of the Caterpillar Investment Trust
John Doe, as Trustee of the Alberta W. Chandler Marital Trust No. 2	John Doe, as Trustee of the Caterpillar, Inc. Group Insurance Master Trust
John Doe, as Trustee of the Alberta W. Chandler Marital Trust UAD 06/26/35	John Doe, as Trustee of the Caterpillar, Inc. Retirement Master Trust
John Doe, as Trustee of the Alvin Baum Jr. 1966 Trust	John Doe, as Trustee of the Catholic United Investment Trust
John Doe, as Trustee of the Andrew J. McKenna Trust	John Doe, as Trustee of the Chemtura Corporation Master Retirement Trust
John Doe, as Trustee of the Barbara Clements Heller Revocable Trust DTD 3/22/01	John Doe, as Trustee of the Deere & Company Welfare Benefit Trust #1
John Doe, as Trustee of the Barbara M. Osborne Interim Trust DTD 2/7/02	John Doe, as Trustee of the Dominion Resources, Inc. Defined Benefit Master Trust
John Doe, as Trustee of the Bethesda Hospital Master Trust	John Doe, as Trustee of the Dorothy B. Chandler Marital Trust No. 2 UAD 06/26/35
John Doe, as Trustee of the Blackburn Trust	
John Doe, as Trustee of the Blandina Rojek Charitable Lead Trust	John Doe, as Trustee of the Dorothy B.

Chandler Residuary Trust	John Doe, as Trustee of the Helen Garland Trust No. 2 FBO Gwedolyn Garland Babcock UAD 06/26/35
John Doe, as Trustee of the Dorothy B. Chandler Residuary Trust No. 2	John Doe, as Trustee of the Helen Garland Trust No. 2 FBO Hillary Duque Garland
John Doe, as Trustee of the Duke Energy Corporation Master Decommissioning Trust	John Doe, as Trustee of the Helen Garland Trust No. 2 FBO William M. Garland III UAD 06/26/35
John Doe, as Trustee of the Duke Power Company Non-Qualified Equity Nuclear Decommissioning Trust	John Doe, as Trustee of the HFR RVA Whitebox Master Trust (f/k/a HFR RVA Combined Master Trust)
John Doe, as Trustee of the Earl E. Crowe Trust No. 2 UAD 06/26/35	John Doe, as Trustee of the HOC GST Exempt Trust No. 2 FBO Eliza Haskins UAD 06/26/35
John Doe, as Trustee of the Electrolux Home Products, Inc. Master Trust	John Doe, as Trustee of the HOC GST Exempt Trust No. 2 FBO John Haskins
John Doe, as Trustee of the Equity Investment Fund Pooled Trust	John Doe, as Trustee of the HOC GST Exempt Trust No. 2 FBO Scott Haskins
John Doe, as Trustee of the Garland Foundation Trust No. 2	John Doe, as Trustee of the HOC Trust No. 2

FBO Eliza Haskins UAD 06/26/35 John Doe, as Trustee of the HOC Trust No. 2 FBO John Haskins UAD 06/26/35 John Doe, as Trustee of the HOC Trust No. 2 FBO Scott Haskins UAD 06/26/35 John Doe, as Trustee of the Hon. Harry F. Byrd Revocable Trust U/A DTD 1/25/82 John Doe, as Trustee of the J. McWethy Trust John Doe, as Trustee of the Jacksonville Police & Fire Pension Board of Trustees Trust John Doe, as Trustee of the John D. Lane Revocable Trust U/A DTD 9/19/96 John Doe, as Trustee of the John W. Stewart 1966 Trust FBO C. Phelps John Doe, as Trustee of the Kaiser Permanente Rabbi Trust John Doe, as Trustee of the Lee U. Gillespie Revocable Trust	John Doe, as Trustee of the Lsv Enhanced Index Core Equity Trust John Doe, as Trustee of the Marian Otis Chandler Trust No. 2 John Doe, as Trustee of the Mary Sue Gatzert Trust dated 9-29-95 John Doe, as Trustee of the May C. Goodan Trust No. 2 John Doe, as Trustee of the MOC Chandler Trust No. 1 John Doe, as Trustee of the Nancy R. Spiegel Rev Trust UAD 10/14/89 John Doe, as Trustee of the NSP-Minnesota Prairie I Retail Qualified Trust John Doe, as Trustee of the NSP-Minnesota Prairie II Retail Qualified Trust John Doe, as Trustee of the Otto J. Koch Trust U/A DTD Nov 18, 1992 John Doe, as Trustee of the Patricia Crowe Warren Residuary
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Trust No. 2 UAD 06/26/35	Employee Retirement Trust
John Doe, as Trustee of the Philip Chandler Residuary Trust No. 2 UAD 06/26/35	John Doe, as Trustee of the State Farm Variable Product Trust (Large Cap Equity Index Fund)
John Doe, as Trustee of the Pleasant T. Rowland Revocable Trust	John Doe, as Trustee of the Terrill F. Cox & Lorraine M. Cox Trust U/A DTD 3/31/98
John Doe, as Trustee of the Qualified CPUC Decom Master Trust	John Doe, as Trustee of the Trust by Walter K. Graham for the Benefit of Anne G. Taylor U/A DTD 10/16/2000
John Doe, as Trustee of the Robert & Mildred Harris Trust	John Doe, as Trustee of the Victor Grossi Trust UA DTD 05/08/98 FBO Victor Grossi
John Doe, as Trustee of the Ruth C. Von Platen Trust No. 2	John Doe, as Trustee of the Wellspan Health Master Trust
John Doe, as Trustee of the Scripps Family Revocable Trust	John Doe, as Trustee of the Ziegler Family Trust A
John Doe, as Trustee of the SDG&E Qualified Nuclear Decommissioning Trust	John Doe, as Trustee of Umwa 1974 Pension Trust
John Doe, as Trustee of the Stanton R. Cook Charitable Remainder Trust	John Does 1-10, as Trustees of National Automatic Sprinkler Industry Pension Fund
John Doe, as Trustee of the State Farm Insurance Companies	

John E. Mayasich, as Trustee of John E Mayasich Trust U/A DTD 04/23/2007 John F. Barnard, individually and as Trustee of the Trust for the benefit of John F. Barnard UAD 4/4/03 John F. Llewellyn Living Trust John F. Llewellyn, as Trustee of the John F. Llewellyn Living Trust John F. Mangan, Jr. John F. Splain, as Trustee of the Hussman Investment Trust John G. Kologi John Hancock Financial Services, Inc. John Hancock Funds II John Hancock Funds II (Equity-Income Fund) John Hancock Funds II (Spectrum Income Fund) John Hancock Variable Insurance Trust John Hancock Variable Insurance Trust (f/k/a John Hancock Trust (New Income Trust))	John Haskins John Healey, as Trustee of the Grace Trust John J. and Rosemary Wagner JTWROS John J. McDermott John M. Altman, as Trustee FBO the John & Betty Altman Family Trust UAD 05/16/86 John Mason Sanford John Mullooly John Nesbit Rees and Sarah Henne Rees Charitable Foundation John Pritzker John R. Black John R. Flanagan John R. Flanagan, as an individual and as a CGM IRA custodian John R. Loftus John R. McManus John R. Staib John Spears John T. O'Loughlin John T. Risley John T. Risley, as Trustee of the Trust Under an Agreement Dated December 19, 1977 Between Virginia S. Risley, as Settlor,
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and William H. Risley and United States Trust Company of New York, as Trustees	Joseph B. Mohn, as Trustee of the J&M Trust UA dated 07/23/1992
John W. Madigan, as a Trustee of the John W. Madigan Trust U/A DTD 05/15/1998	Joseph C. Linnen Joseph M. Fee, as Trustee of the Joseph M. Fee & Elizabeth Fee Revocable Living Trust
John W. Stewart 1966 Trust FBO C. Phelps	Joshua Tree Capital Management LP
John W. Stewart II, as Trustee of the John Stewart Property Trust	Joy Leichenger, as Trustee of the Joy Leichenger Trust
Joint Board of Trustees of the Southwest Carpenters Pension Trust, as Administrator of the Southwest Carpenters Pension Trust	JP Morgan Chase Bank, N.A., Trustee, the Boeing Company Employee Retirement Plan
Jon R. Lind	JPMorgan Chase Bank, National Association as Trustee of the
Jonathan A. Knee	Jpmorgan Chase
Jonathan Gary Keith	401(k) Savings Plan
Jonathan Kovler	JPMorgan Chase
Jonathan Osborne, Acting Trustee of the Barbara M. Osborne Trust U/I/T DTD 2/7/05	Funding Inc. f/k/a J. P. Morgan Ventures Corp.
Jonathan Tillman, as Trustee of the Tillman Family Trust U/A 07/29/1980	Judd S Alexander Foundation Inc.
Joseph A. Young	Judie King Judith Blazer, as Trustee of the Judith

E. Blazer Living Trust U/A/D 10/21/96	JYG Limited Partnership #2 G-Bar
Judith E. Blazer Living Trust U/A/D 10/21/96	Kaiser Foundation Health Plan, Inc.
Judith E. Neisser, as Trustee of the David E. Neisser Irrevocable Trust dated 8-14-83	Kaiser Foundation Health Plans and Hospital
Judy C. Webb, as Trustee of Chandler Trust No. 1	Kaiser Permanente Rabbi Trust
Judy C. Webb, as Trustee of Chandler Trust No. 2	Kaman Corporation Kaman Corporation Mas Trust-LSV
Julia K. Rosenwald Julia Neitzert Trust	Karen Babcock and Phillip S. Babcock
Julia Neitzert, as Trustee of the Julia Neitzert Trust	Karen E. Dalton, as Trustee of the 10/03/2007 Dalton Trust
Julio Arriaga	Karen Hammond, as Trustee of the
Jung E. Lee	Hammond Family
Jupiter Capital Partners LLC	Trust U/A/D 02/11/88
Jupiter Medical Center Foundation Permanent Endowment General Fund	Karl Putnam
Jupiter Medical Center Foundation, as Administrator of the Jupiter Medical Center Foundation Permanent Endowment General Fund	Katherine T. Goldberg Kathleen B. Flynn, as Trustee of Declaration of Bell Family Trust Meadowbrook Equity Fund UA 12/1/86
	Kathleen B. Flynn, as Trustee of Declaration of Bell Family Trust UA 12/1/86
	Kathleen M. Ringel

Kathleen Maloney	Kenneth R. Posner and
Kathryn Vorisek, as a	Arlene L. Posner
Trustee of Fiduciary	Kenneth Weiss
Mgt. Assoc. LLC 401k	Kevin D O'Brien Trust
FBO Robert Wesley	DTD 8-18-03
Thornburgh	Kevin D. O'Brien, as
Kathy Kuzmich	Trustee of the Kevin D
Kathy Rex Hundley	O'Brien Trust DTD 8-
Kathy Rex Hundley and	18-03
Thomas W. Hundley	Kevin D. O'Brien, as
Kathy Spinato	Trustee of the Sarah A.
Kay Walsh, as Trustee	O'Brien Trust DTD 8-
of #502 U/W/O	18-03
Minnette R. Eckhouse	Kevin L. Ringel
Trust	Kevin L. Ringel and
KBR Employee Benefit	Kathleen M. Ringel
Master Trust	Kevin Stone
Keith Matthews	Kiener LP
Kellogg Brown & Root,	Kimberly Brumback
Inc.	Kimberly Rizzo
Kellogg Capital Markets	Kimberly Schatz
LLC	Kirsten Konrad
Kenneth Cahn	Krystyna Jurzykowski
Kenneth Cahn, as	Kurt Adler Estate
Trustee of the Dorothy	L. Dean Davenport
Cahn Trust UA	L. Michael Schmitt
07/03/1981	L.D.C.C.
Kenneth E. Nichols	L3 Communications
Kenneth J. Vydra, as a	Corporation Master
Trustee of the Kenneth	Trust
J. Vydra Trust No. 101	Laborers District
U/A/D 03-10-2006	Council & Contractors
Kenneth Puglisi	Pension FD of Ohio
Kenneth R. Posner	

Laborers National Pension Fund	Lee U. Gillespie Revocable Trust
Labranche & Co. LLC	Legacy Trust Company, N.A., Acting Trustee of the Alfred C. Glassell Jr. Children's Trust for Emily Evans Embrey
Labranche Structured Products LLC	Legg Mason Batterymarch Financial Management S&P 500 Index Fund, a Series of the Legg Mason Partners Equity Trust
Lacera	Legg Mason Partners
Lakonishok Corp	Lenox Hill Hospital
Langdon Street Capital, L.P.	Leonard F. Hill, as Trustee of the Hill Revocable Living Trust DTD 12/24/91
Large Cap Equity Index Fund	Leroy Davis, as Trustee of the Jessie Ball Dupont Fund
Larry L. Bloom, as a Trustee of the Larry L. Bloom Trust 11-21-95	LFT Partnership
Lasers	Liberty Financial Services, Inc.
Latigo Master Fund Ltd.	Liberty Harbor Master Fund I, LP
Latigo Partners LP	Liberty Mutual Life Insurance Company
Lauren F. Absler	Lidia Horvath
Laurie H. Weaver, as Trustee of the Helen Grossman Trust dated 09/08/99	Lightning Trading LLC
Laurie Mitchell, as Trustee of the Woods/Mitchell Family Trust	Linda Axelson
Lawrence B. Bittenwieser, Esq., as Trustee of the Helen Bittenwieser Trust 7/28/38	Linda Eigner
Lawrence F. Klima	
Lawrence M. Pucci	
Lawrence Smith	

Linda Molenda	Locals 612 of the
Linnet F. Myers	International Union of
Lisa A. Schuster, as	Operating Engineers
Executor of the	Construction Industry
Beverly A. Perry	Retirement Fund
Estate	Lockheed Martin
Lisa M. Featherer	Corporation
Lisa M. Featherer Trust	Lockwood Brothers, Inc.
U/A/D June 12, 1992	Loeb Arbitrage B Fund
Lisa M. Featherer, as	LP
Trustee of the Lisa M.	Loeb Arbitrage Fund
Featherer Trust U/A/D	Loeb Arbitrage
June 12, 1992	Management LP
Lisa Pritzker	Loeb Offshore B Fund,
Lloyd Wendt	Ltd.
Local 102 Pension/No	Loeb Offshore Fund,
TR Val Im	Ltd.
Local 134 Pension Plan	Loeb Partners
No. 5 S&P 500 Fund	Corporation
Local 134 S&P 500	Lois D. Kaliebe, as a
Index Fund	Trustee of the Trust by
Locals 302 and 612 of	Mrs. Lois D. Kaliebe
the International	U/A DTD 03/05/1993
Union of Operating	Loisanne R. Flaherty, as
Engineers—Employers	Trustee of the
Construction Industry	Loisanne R. Flaherty
and Michael Parmalee	Trust U/A DTD
Welfare and Pension	09/23/2004
Administration	Lola Lloyd Horwitz, as
Locals 302 of the	Trustee of the Marni
International Union of	Horwitz Trust Dated
Operating Engineers	January 22, 1998
Construction Industry	Lombardi & Co., Inc.
Retirement Fund	

Loomis Sayles Credit Alpha Fund	Lutheran Brotherhood
Loretta C. Finlay, as a Trustee of the Loretta C. Finlay Trust	Lynda M. Freedman
Lori Ann Talarico	Lynn Ann Sharpe, individually and as Trustee of the Alpheus L. Ellis 1993
Lori Banner Kupferberg	Grandchildren's Trust
Los Angeles City Employees' Retirement System	FBO Lynn Ann Sharpe
Lou Ann Murphy	Lynn R. Wolfson Trust
Louis G. Gilbert	Lynn R. Wolfson, as Trustee of the Lynn R. Wolfson Trust
Louise Rosenberg, as Trustee of the Rosenberg Revocable Trust	Lynne Shotwell, as Trustee of the Elmer H. Wavering Family Trust dated 06/24/1977 as Amended
LP MA1 Ltd.	Lyondell Petrochemical Corporation Defined Benefit
LPL Financial LLC	Lyra Capital LLC
LSV Enhanced Index Core Equity Trust	Lyxor Alphadyne, SPC (f/k/a Lyxor Starway, SPC f/k/a Sgam AI Starway, SPC)
LSV US Large Cap Long/Short Fund LP	Lyxor/Black Diamond Arbitrage Fund Limited
LSV Value Equity Fund	Lyxor/Canyon Value Realization Fund Limited
Luanne G. Joys, as Trustee of the Sargeant & Luann Joys Living Trust	M&J Investment Group L.P.
Lucent Technologies, Inc. Master Pension Trust	
Lucile M. Dunn, as Trustee of the Lucile McVey Dunn Trust U/A DTD 12/19/91	

M&T Bank (f/k/a Manufacturers & Traders Trust Co.)	NYLIM–QS Large Cap Enhanced Fund LP)
M&T Bank Vision Mid Cap Stock Fund	Madison Street Fund LP
M&T Bank, as Trustee of the W. Milton Jr. Trust under Will for the Benefit of Anna Livingstone	Magnetar Capital LLC
M. Joyce as Trustee of the Sara Joyce Trust U/A DTD 12/7/2005	Magnetar Financial LLC
M. Safra & Co., Inc.	Malcolm McConnell
Madge A. L. Macneil Trust	Managed Pension Funds Limited (MFS Funds (UK))
Madge A. L. Macneil, as Trustee of the Madge A. L. Macneil Trust	Manulife Asset Management (US) LLC
Madge A.L. Macneil	Manulife Invst Ex Fds Corp.–Mix
Madison Proprietary Trading Group LLC	Manulife Mutual Funds
Madison Square Investors US Large- Cap Core 130/30 Collective Fund f/k/a NYLIM US Large-Cap Core 130/30 Collective Fund	Manulife U.S. Equity Fund
Madison Square Large- Cap Enhanced Index Fund LP (f/k/a NYLIM Large-Cap Enhanced Index Fund LP a/k/a	Margaret Durkin
	Margaret K. Crane
	Margaret L. Sindelar
	Margaret Mangano, as Trustee of the Frank J. Mangano GST Non- Tax Exempt Trust U/A Dated 6/22/94
	Margaret Meister
	Margaret Meister and John Doe Meister, a Washington Marital Community
	Margaret R. Coniglio, as Trustee of the Trust by Margaret R. Coniglio U/A DTD 08/22/1989
	Margaret T.M. Jones

Margaret T.M. Jones CP & Co. AC	Marjorie Rozman, as Trustee of the
Margaret U. Miller, as Trustee of the Miller Family Trust	Rappaport Family Trust U/A DTD 06/04/1992
Marguerite Payne Trust Dated 6/7/61 FBO Virginia K. Townley	Marjorie Rozman, as Trustee of the Trust U/A DTD 02/23/1981 by Michael Rosenberg
Maria Markowitz	Marjorie Rozman, as Trustee of the Trust U/A DTD 11/02/1977 by Robert Rosenberg
Marian Otis Chandler Trust No. 2	Mark A. Hughes
Marie Macchiaroli, as Trustee of the Carmine Macchiaroli Living Trust U/A 07/01/88	Mark Allen Itkin, as Trustee of the Mark A. Itkin Trust
Marilyn M. Matheson, as Trustee of the Faulkner Family Trust UA DTD 8/29/1989	Mark C. Landry
Marilyn R. Diamond Trust dated 11-11-88	Mark Domas
Marilyn Rapkin	Mark I. Seiden
Mario J. Gabelli	Mark J. Metzner
Marissa Rudman	Mark J. Metzner, as a custodian of the Metzner Family Foundation 1M-579
Marjorie B. David	Mark R. Pattis, as Trustee of the Mark R. Pattis Revocable Trust
Marjorie B. David, as an individual and as a CGM IRA Rollover Custodian	Mark R. Pattis, as Trustee of the Next Chapter Holdings
Marjorie Rozman and Nanette Rosenberg, Trustees U/A Dated 10/08/82 by Aliza Leah Rozman	Mark R. Pattis Revocable Trust UAD 07/30/04

Mark S. Lies	Martha Gross, as
Mark Stranahan	Trustee of the Martha
Mark W. Madigan	Gross Living Trust
Mark W. Madigan and	U/A/D 04/14/1996
Stephanie Madigan	Mary Anne Vydra, as a
Market Street Securities	Trustee of the Trust
Marlowe G. Merkel, as	for the Benefit of Mary
Trustee of the Alfred	Anne Vydra U/A/D 03-
W. Merkel Marlowe G.	10-2006
Merkel Trust UA 11	Mary B. Schwab, as
Sep 85	Trustee of the Schwab
Marni Horwitz Trust	Trust A Charitable
Dated January 22,	U/A DTD 05/23/1995
1998	Mary E. Day
Marni Norris Lloyd	Mary F. Brown
Horwitz, as Trustee of	Mary H. Cooper
the Marni Horwitz	Mary Huntley, as
Trust Dated January	Trustee of the Jessie
22, 1998	Ball Dupont Fund
Marshall & Ilsley Trust	Mary J. Bloom, as a
Co.	Trustee of the Mary J
Marshfield Clinic	Bloom Trust 11-21-95
Master Trust	Mary Jo Osterman,
Martha A. Bell, as	individually and as
Trustee of Declaration	Trustee of the Trust by
of Bell Family Trust	Mary Jo Osterman
UA 12/1/86	U/A/D 04/04/91 FBO
Martha Bell, as Trustee	Mary Jo Osterman
of Declaration of Bell	Mary K. Lawler, as a
Family Trust	Trustee of the Trust by
Meadowbrook Equity	Mary K. Lawler U/A
Fund UA 12/1/86	DTD 06/18/1996
Martha D. Donahue	Mary K. Monopoli

Mary Kathleen McNulty, individually and as personal representative of the Estate of Wayne F. McNulty	Master Fund, SPC – Madison Street Master Investment Portfolio (S&P 500 Stock Master Portfolio)
Mary Lou Ricotta	Mathodam Ranjit
Mary Neville Hankey	Matthew Bender IV
Mary Phillips, as Trustee of the Jessie Ball Dupont Fund	Matthew Halbower Matthews, Rondra and Keith Matthews JTWROS
Mary R. McDermott	Max S. Bell
Mary Rothermel	Max S. Bell and Jean F. Bell
Mary Sue Gatzert Trust dated 9-29-95	Maxim Foreign Equity Portfolio
Mary Therese Murphy	Maxim Series Fund Inc.
MassMutual Premier Enhanced Index Value Fund	May C. Goodan Trust No. 2
MassMutual Premier Funds	MB Financial Bank, National Association
MassMutual Premier Main Street Small/Mid Cap Fund	M-B Paul Harvey Aurandt Trust UA 11/13/90
MassMutual Premier Small Company Opportunities Fund	MC Investment Partners LLC
MassMutual Select Diversified Value Fund	McConnell Foundation Medisend International
MassMutual Select Funds	Mel L. Shultz and Beth Jane Shultz, husband and wife
MassMutual Select Indexed Equity Fund	Melissa Monson Mellon Bank N.A. Employee Benefit Plan

Mellon Bank N.A. Employees Benefit Collective Investment Plan	Merrill Lynch, Pierce, Fenner & Smith Inc., as custodian of the Charles R. Baugh IRA
Mercer Funds f/k/a MGI Funds (MGI Us Small/Mid Cap Value Equity Fund)	Merrill Lynch, Pierce, Fenner & Smith Incorporated
Merrill Lynch Financial Markets, Inc.	Merrill Lynch, Pierce, Fenner & Smith Incorporated as Successor to Banc of America Securities LLC
Merrill Lynch Pierce Fenner & Smith	
Merrill Lynch Pierce Fenner & Smith, as Custodian of the James Mateja IRA	Merrill Lynch, Pierce, Fenner & Smith Incorporated, as Custodian of the Alexander Solon IRRA FBO Alexander Solon
Merrill Lynch Trust Company, a Division of Bank of America, N.A.	
Merrill Lynch Trust Company, Trustee of Mine Scribante Crut Sanibel Captiva	Merrill Lynch, Pierce, Fenner & Smith Incorporated, Custodian, and Milan E. Chilla, Beneficiary, Milan E. Chilla IRA
Merrill Lynch, in its individual and custodial capacities	Merrill Lynch, Pierce, Fenner & Smith Incorporated, Custodian, and Richard Moy, Beneficiary, Richard Moy IRA
Merrill Lynch, Pierce, Fenner & Smith Inc.	Merrill Lynch, Pierce, Fenner & Smith
Merrill Lynch, Pierce, Fenner & Smith Inc., as custodian of the Anne S. Scheiermann IRA	

Incorporated, Custodian, and Robert D. Sparr, Beneficiary, Robert D. Sparr IRRA	Michael D. Schwaiger, as Custodian of the Batl Pn-Ntrs S&P
Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its Individual and Custodial Capacities	Michael E. Bee, as Trustee of the Michael E. Bee Trust UAD 10/20/2003
Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its Individual and Custodial Capacities [Incl. Merrill Lynch Professional Clearing Corp.]	Michael Eigner Michael G. Murphy Michael G. Murphy and Mary Therese Murphy
Merrill Lynch, Pierce, Fenner & Smith Incorporated, Trustee, and Stephen E Quast, Beneficiary, Stephen E Quast IRA 12/31/1995	Michael Graff, as Trustee of the Graff Value & Fittings Company Employees Profit Sharing Plan & Trust 2 UAD 6/30/85
Metropolitan Life Insurance Co. Metzner Family Foundation 1M-579	Michael Hendrickson as Administrator of the Automotive Machinists Pension Trust Fund
Michael A. Silver Michael Argirion, as Trustee of the Michael Argirion Revocable Trust U/A DTD 11/13/96	Michael J. Palumbo, as Trustee of the Michael J. Palumbo Revocable Li Trust U/A DTD 11/29/1999
Michael C. Donahue	Michael K. Reilly, as Trustee of the Michael K. Reilly Trust U/A DTD 09/25/1995
	Michael Keiser Michael Keiser, as Trustee of the Michael & Rosalind Keiser

Charitable Trust U/A DTD 12/30/90	Mitchell Wolfson, Sr. Foundation
Michael Loeb	ML Equity Index Trust
Michael Plonski	ML Index 500 V.I. Fund
Michael R. Quinlan, as a Trustee of the Trust by Michael R. Quinlan U/A DTD 09/04/1979	ML Large Capitalization IN
Michael W. Dunaway, as a Trustee of the FBO Dunaway Family Trust U/A/D 07-05-1991	MML Blend Fund
Mid Atlantic Capital Corp.	MML Series Investment Fund
Mid-Atlantic Regional Council of Carpenters Pension Plan	MML Series Investment Fund II
Mike Eugene Abernethy	MOC Chandler Trust No. 1
Miliken Stock Fund (7R)	Monica K. Hinman
Mill Shares Holdings (Bermuda) Ltd.	Monserrate Ramirez
Millenco LLC	Montpelier Reinsurance Ltd
Milton Partners LLC	Monumental Life Insurance Company
Minnesota Life Insurance Company	Monumental Life Insurance Company f/k/a Peoples Benefit Life Insurance Company
Minnesota State Board of Investment	Monumental Life Insurance Company, as Owner of Teamsters Separate Account
Miriam A. Pawel	Morgan Stanley & Co. International Plc f/k/a
Miriam Novick, as Trustee of the Nathan H. Perlman Trust B DTD 12/17/68	Morgan Stanley & Co. International Limited
Miriam Susan Zach	Morgan Stanley & Co. LLC f/k/a Morgan

Stanley & Co. Inc., in its individual and custodial capacities	Mubashir, Bashar A, Individually and as
Morgan Stanley & Co., Inc. [LLC] as custodian	Beneficiary, Bashar A Mubashir IRA Rollover
for Caxton Associates LLC [n/k/a Caxton Associates, LP]	Multi-Strategy Greenock Master Fund Ltd.
Morgan Stanley & Co., Inc. [LLC] as custodian	Museum of Fine Arts
for Tribeca	Mutual of America
Investments LLC	Investment Corp.
Morgan Stanley d/b/a	Myra Shulkes, as
Morgan Stanley Prime	Trustee of the Howard
Brokerage, in Its	Shulkes Residuary
custodial capacity	Credit Trust U/A DTD
Morgan Stanley	09/20/1991
Equally-Weighted S&P	Myrna Ramirez
500 Fund f/k/a Morgan	Myrna Ramirez and
Stanley Value Added	Monserate Ramirez
Market Series	Jtwros
Morgan Stanley S&P	Myron L. Hendrix
500 Index Fund	Nancy Crossman
Morgan Stanley Smith	Nancy E. Kerr
Barney LLC	Nancy Fay Johnson
Morgan, Keegan &	Nancy Kallenberger
Company, Inc.	Nancy L. Mac Donald, as
Mount Ararat Cemetery, Inc.	Trustee of the William
Mr Violet and Mrs Leslie	D. Mac Donald &
Payne JTWROS	Nancy L. Mac Donald
MTB Mid Cap Stock	Trust UA 7 21
Fund	Nancy R. Spiegel Rev
	Trust UAD 10/14/89
	Nancy Trohan Dollar
	Nanette Rosenberg, as
	Trustee of the
	Rappaport Family

Trust U/A DTD 06/04/1992	Natixis Financial Products Inc.
Nanette Rosenberg, as Trustee of the Trust U/A DTD 02/23/1981 by Michael Rosenberg	Natixis Funds Trust Ii Natixis Securities Americas LLC (Successor-In-Interest to Natixis Bleichroeder LLC)
Nanette Rosenberg, as Trustee of the Trust U/A DTD 11/02/1977 by Robert Rosenberg	Neal Creighton NECA-IBEW Pension Trust Fund
National Asbestos Workers Pension Fund	Neckar Holdings LLC
National Automatic Sprinkler Industry Pension Fund	Nedra Plonski Neil J. Rowe Neil J. Rowe and Carol S. Rowe
National Financial Services LLC/Fidelity Management Trust Company, Custodian, and Marlene F Slade, Beneficiary, Marlene F Slade Rollover IRA	Neisser Investment LP Neuberger Berman, Inc. New Americans LLC New England Health Care Employees Pension Fund
National Railroad Investment Trust	New Jersey Health Foundation
National Railroad Retirement Investment Trust	New York City Deferred Compensation Plan New York City District Council of Carpenters Pension Fund
National Roofing Industry Pension Fund	New York City District Council of Carpenters Welfare Fund
Nationwide Funds	
Nationwide S&P 500 Index Fund	
Natixis Financial Products LLC f/k/a	

New York City Employees Retirement System	Nomura Securities International, Inc.
New York City Fire Pension Fund	Nondima Chicago Comm Foundation - FitzSimons
New York City Firefighters' Variable Supplements Fund	Norma B. Webb Normandy Hill Master Fund LP
New York City Police Officers' Variable Supplements Fund	Northern Assurance Co. of America
New York City Police Pension Fund	Northern Funds Northern Funds – Enhanced Large Cap Fund
New York Life Insurance Co.	Northern Funds – Large Cap Value Fund
New York State Insurance Fund	Northern Illinois Benefit Funds
New York State Teachers' Retirement System	Northern Institutional Fund Equity Index Portfolio
Newedge USA LLC	Northern Institutional Funds
Newedge USA LLC Equity Clearing Division	Northern Multi- Manager Mid Cap Fund
Next Chapter Holdings LP	Northern States Power Company–Minnesota
Nicholas G. Chantiles	Northern Stock Index Fund
Nicholas H. Werthman	Northern Trust CC AFGT
Nicholas Hallack	Northern Trust CC EBT
Ninth Street Partners Ltd.	
Nomura International Trust Co.	

Northern Trust Company	Northshore University Health System, as
Northern Trust Company, as	Owner of the
Custodian of Jon R. Lind IRA Rollover	Northshore University Healthsystem Second Century Fund
Northern Trust Enhanced Large Cap Fund	Northshore University Healthsystem Second Century Fund
Northern Trust Global Investment	Northwestern Mutual Life Insurance Company
Northern Trust Investments, Inc. (f/k/a Northern Trust Investments, N.A.)	Northwestern Mutual Series Fund Inc. Equity Income Portfolio
Northern Trust Investments, Inc. f/k/a Northern Trust Investments, N.A.	Northwestern Mutual Series Fund Inc. Index 500 Portfolio
Northern Trust Large Cap Value Fund	Northwestern Mutual Series Fund Inc. Small Cap Value Portfolio
Northern Trust Value Investors, a Division of Northern Trust Investments, Inc. (f/k/a Northern Trust Investments, N.A.)	Northwestern Mutual Series Fund, Inc. NSP-Minnesota Prairie I Retail Qualified Trust
Northern Trust Value Investors, a Division of Northern Trust Investments, Inc. f/k/a Northern Trust Investments, N.A.	NSP-Minnesota Prairie II Retail Qualified Trust NSP-Monticello Minnesota Retail Qualified Trust

NT Collective Russell 1000 Value Index Fund – Lending	NTGI-QM Collective Daily Us Marketcap Equity Special Purpose Index Fund – Lending
NT Collective S&P 500 Index Fund Lending	NTGI-QM Common Daily Labor Select
NT Collective S&P 500 Index Fund Non Lending	Russell 3000 Equity Index Fund – Lending
NT Collective US Marketcap Equity Index Fund – Lending	NTGI-QM Common Daily Russell 1000 Value Equity Index Fund – Lending
NTCC Advisors Funds for Employee Benefit Trust	NTGI-QM Common Daily S&P 500 Equity Index Fund – Lending
NTCC Channing Mid Cap Value Afebt	NTGI-QM Common Daily S&P500 Equity Index Fund – Non Lending
NTCC Channing Mid Cap Value Sudan Free Fund Afebt	NTGI-QM Common Daily Us Marketcap Equity Index Fund – Lending
NTCC Lsv Mid Cap Value Fund Afgt	NTGI-QM Labor Select Collective Daily Russell 3000 Equity Index Fund – Lending
NTGI-QM Collective Daily Quant Index Plus S&P500 Equity Fund – Lending	Nuclear Electric Insurance Limited
NTGI-QM Collective Daily S&P500 Citigroup/Value Equity Index, Fund – Lending	Nuveen Equity Index Fund
NTGI-QM Collective Daily S&P500 Special Purpose Equity Index Fund – Lending	Nuveen Equity Index Fund (f/k/a First

American Equity Index Fund)	Ohio Natl Fund, Inc.
Nuveen Equity Index Fund, Inc.	Strategic Value Portfolio
Nuveen Investment Funds, Inc.	Ohio Public Employees Retirement System
Nuveen Investments LLC	Ohlson Enterprises
NVIT S&P 500 Index Fund	Olifant Fund Ltd.
NYC District Council Carpenters Pension	Olivia Jean Williams, Individually and as Beneficiary of Olivia Jean Williams IRA Rollover and Olivia Jean Williams IRA Rollover DTD 12/19/97
NYC District Council Carpenters Welfare	
Oakmont Management	Oma & Opa LLC
Oddo & Cie as Successor to Banque d'Orsay	Omar F. Johnson Jr.
Ofelia R Pecaro, as Trustee of the Pecaro Family Trust DTD 4/12/02	Omers Pension Fund
OFI Private Investments, Inc.	Omers/AACP Investors II, L.P.
OFIPI Main Street Select Strategy	Omimex Investments LLC
Ohio Carpenters' Pension Fund	OneBeacon America Insurance Co.
Ohio National Financial Services	OneBeacon Insurance Co.
Ohio National Fund, Inc.	OneBeacon Insurance Company, as Administrator of OneBeacon Insurance Pension Plan
Ohio National Strategic Value Portfolio	OneBeacon Insurance Pension Plan
	OneBeacon Insurance Savings Plan

OneBeacon Insurance Savings Plan – Equity 401k	Otto J. Koch Trust U/A DTD Nov 18, 1992
OneBeacon Insurance Savings Plan – Fully Managed	Palisades Partners LP Pam Lindberg
Ontario Pension Board	Pandora Select Partners LP
Oppenheimer & Co., Inc.	Paris Trading
Oppenheimer Main Street Select Fund (f/k/a Oppenheimer Main Street Opportunity Fund)	Patience Humphrey Patricia Crowe Warren Residuary Trust No. 2 UAD 06/26/35
Oppenheimer Main Street Small- & Mid- Cap Fund (f/k/a Oppenheimer Main Street Small Cap Fund)	Patricia Goldenberg Patricia H. Yeomans, as Trustee of the Yeomans Family Trust U/A 2/22/92
Oppenheimer Variable Account Funds (d/b/a Oppenheimer Main Street Small- & Mid- Cap Fund/Va, f/k/a Oppenheimer Main Street Small Cap Fund/Va)	Patricia I. Walsh Patricia J. Fendley, as a Trustee of the John P. Fendley Trust U/A DTD 11/27/1995
OppenheimerFunds, Inc.	Patricia J. Shand
Opportunity Partners LP	Patricia Kaszton, as Trustee of the Kaszton Family Trust UAD 10/23/97
Option Opportunities Company	Patricia L. Pierce
OptionsXpress, Inc.	Patricia L. Pierce, as Trustee of the O.C. Smith & P.L. Pierce Joint Revocable Living Trust DTD 7/18/2005
	Patricia Stern Ross, as Trustee of the Eleanor

Jackson Stern Trust	Paul W. Dillon
Dated 01/06/1971	Grandchildren's Trust
Patricia Stern Ross, as	Dated 12/6/41 FBO
Trustee of the Russell	Paul D. Goddard
T. Stern Trust B	Paula Miller Trienens
Patrick J. McGlinn	Trust Dated 9-18-91
Paul C. Konrad	Paula Solon
Paul C. Konrad and	Pavers and Road
Kirsten Konrad	Builders District
Paul D. Goddard	Council Pension Fund,
Paul Harvey Aurandt, as	by and Through Its
Trustee of the M-B	Board of Trustees
Paul Harvey Aurandt	PCRG Fund I LLC
Trust UA 11/13/90	PCRG Fund II LLC
Paul M. Mahoney, as a	PCRG Fund III LLC
Trustee of the Iris B.	PCRG, Inc.
Mahoney Revocable	Pecaro, Timothy S. and
Trust U/A/D 04/10/98	Susan S. Pecaro Jtwros
Paul M. Mahoney, as	Pennsylvania General
Trustee of the Trust	Insurance Co.
for the Benefit of Paul	Pennsylvania Municipal
P. Mahoney DTD	Retirement System
12/28/1978	Pension Benefit
Paul P. Mahoney	Guaranty Corporation,
Paul Pai	as Trustee of the
Paul Pai & Helena Pai	Hartmarx Retirement
Joint Tenant	Income Plan
Paul R. Gerken	Pension Commingle
Paul Theodore	Fund
Hammond, as Trustee	Pension Fund
of the Hammond	Association for Local
Family Trust U/A/D	Government officials
02/11/88	Pension Fund of the
	Christian Church

(Disciples of Christ), Inc.	Penson Financial Services, Inc.
Pension Reserves Investment Management Board	Pentwater Credit Partners Fund Ltd.
Pension Reserves Investment Management Board, as Trustee of Pension Reserves Investment Trust Fund	Pepperdine University Pequot Capital Management, Inc. [Pequot Diversified Master Fund, Ltd.]
Pension Reserves Investment Trust Fund	Pequot Credit Opportunities Fund, L.P.
Pension Trust Fund Local Union #27	Perceval Investment Partners-P LP
Penson Financial Services Centurion 115179192	Perry Corp. Perry Partners L.P.
Penson Financial Services Centurion 115180082	Pershing LLC Pershing LLC, as custodian of the Cecil C. Smith IRA
Penson Financial Services Crawford	Pershing LLC, as custodian of the Daniel S Jursa IRA Rollover
Penson Financial Services Mushin Tra	Pershing LLC, as custodian of the Robert Farrington IRA Rollover
Penson Financial Services Opus Bbx	Pershing LLC, as custodian of the Sherwin A. Zuckerman IRA
Penson Financial Services Spectrum T	Peter A. Nielsen
Penson Financial Services Track Data	Peter A. Young Peter G. Lagen

Peter Perugini	Philip S. Babcock and
Peter R. Marino	Jane Doe Babcock, a
Peter Rizzo	Washington Marital
Peter Rizzo and	Community
Kimberly Rizzo	Phonovisual Products
Peter W. King	Inc.
Peter W. King and Jane	Pipefitters Local 274
Doe King, Husband	Pension
and Wife	Pleasant T. Rowland
PFPC, Inc.	Revocable Trust
PG&E Postretirement	Pleiades Investment
Medical Plan Trust	Partners G LP
PG&E Qual CPUC NDT	Plumbers & Pipefitters
Partnership	National Pension Fund
Philip B Doherty, as a	Plumbers and
Trustee of the Trust by	Pipefitters Local 501
Philip B. Doherty U/A	(f/k/a Plumbers and
DTD 04/28/2000	Pipefitters Local 507)
Philip B. Chase	Plumbers Local Union
Revocable Trust dated	No 519 Pension Fund
07/28/94	PNC Bank, National
Philip Chandler	Association, as
Residuary Trust No. 2	Successor to
UAD 06/26/35	Mercantile Safe
Philip Graff, as Trustee	Deposit & Trust Co.
of the Graff Valve &	Policemen's Annuity and
Fittings Company	Benefit Fund of
Employees Profit	Chicago
Sharing Plan & Trust	Polly H. Howells
2 UAD 6/30/85	Portfolio 1 Offshore
Philip H. Slesur	Master LP Lsv
Philip H. Slesur and	Posen Family Limited
David P. Slesur	Partnership
	Potter, Adam F. [W.]

PowerShares Buyback Achievers Portfolio	Prudential Bache Securities, LLC]
PowerShares Exchange-Traded Fund Trust	Prudential Insurance Co. of America (PDI)
PowerShares FTSE RAFI US 1000 Portfolio	Prudential Insurance Co. of America (PMFIM) [PICA -
Priac Funds	Prudential Insurance Company Separate Account]
Princeton Theological Seminary	Prudential Insurance Company of America
Prism Partners I [L.P.]	Prudential Investment Management Inc.
Prism Partners II Offshore Fund	Prudential Investment Portfolio 3 - Prudential Strategic Value Fund
Prism Partners III Leveraged LP	Prudential Investment Portfolios 8 -
Prism Partners IV Leveraged Offshore Fund	Prudential Stock Index Fund
Private Bank and Trust Company	Prudential Investments, Inc.
Pro Shares Ultra S&P 500	Prudential Non-Qualified Benefits Funding (TOLI)
Progress Energy Service Co.	Prudential Retirement Insurance and Annuity Co
Progressive Casualty Insurance Company	Prudential Retirement SA LV5
Prospector Partners LLC	Public School Teachers' Pension and Retirement Fund of
Prospector Summit Fund LP	
Prudential Bache Securities, LLC	
[Jefferies Bache Securities, LLC f/k/a	

Chicago a/k/a Chicago Teachers' Pension Fund	R.E. Ginna Qualified Decommissioning Trust
Putnam Fiduciary Trust Company, as Trustee of the Local 134 Pension Plan No. 5 S&P 500 Fund	R.F. Foundation
Putnam Lovell NBF Securities, Inc.	Rabin Worldwide, Inc.
Q4 Partners LP	Rae F Patterson Self Trust
QC & CO.	Rae F. Patterson
QCM Absolute Return Fund	Rae F. Patterson, as Trustee of the Rae F. Patterson Self Trust
Qualified Cpuc Decom Master Trust	Ramius Securities LLC
Quantitative Master Series LLC f/k/a Quantitative Master Series Trust (Master S&P 500 Index Series)	Raymond John Frank, as a Trustee of the Raymond John Frank Revocable Trust UA 03/07/00
Quixote Capital Management	Raytheon Master Pension Trust Large Cap/Long/Short
Quixote Partners LLC	RB&W/GAMCO
QVT Fund LP	RBC Capital Markets, LLC d/b/a Rbc Wealth Management F/K/A Ferris Baker Watts, Inc.
R. J. Brookes	RBC Capital Markets, LLC f/k/a RBC Capital Markets Corporation
R.E. Ginna Nuclear Power Plant LLC	RBC Global Asset Management Inc.
R.E. Ginna Nuclear Power Plant LLC Master Decommissioning Trust	RBC O'Shaughnessy Canadian Equity Fund

RBC O'Shaughnessy U.S. Value Fund	Research Affiliates Fundamental Index LP
RBS Holdings, N.V. formerly Known as ABN AMRO Holding N.V. (ABN AMRO Equities)	Retirement Board of the San Francisco Employees' Retirement System, as Administrator of the San Francisco Employees' Retirement System
RBS Securities, Inc.	Rex L. Sturm
RE Ginna Qualified Decommissioning Trust	Rex L. Sturm Trust
Reckford, Samuel P	Rex L. Sturm, as Trustee of the Rex L. Sturm Trust
Redbourn Partners Ltd.	Rex Logan Sturm, Jr
Redwood Master Fund Ltd	Rhen, Alan R., Individually and as Beneficiary of Alan R. Rhen IRA R/O U/A DTD 8/13/98
Reed Elsevier Inc.	Rhumblin Advisers
Reed Elsevier Inc., as Administrator of Reed Elsevier US Retirement Plan	Rhumblin S.A. Free S&P Index
Reed Elsevier US Retirement Plan	Richard A. Kucera, Individually and as Trustee of the Trust by Richard A. Kucera & Diane A. Kucera U/A/D 03-23-07 FBO Richard & Diane Kucera
Reinhold Weege, as Trustee of the Weege Family Trust U/A 6/21/89	Richard Askin, as Trustee of the Askin
Rempel Brothers	
Renaissance Technologies LLC	
Renee Gilbert	
Renee H. Miller, as Trustee of the Renee H. Miller Living Trust	

Family Trust U/A DTD 09/27/1990	Richard Paniagua
Richard C. Freedman	Richard Rott
Richard C. Freedman	Richard W. McIntosh
and Lynda M.	Richard W. McIntosh
Freedman Jtwros	and Jenifer B.
Richard Cooley	McIntosh
Richard Cooley and	Richmond Capital
Bernadette Cooley	Master Fund Ltd
Richard D. Dudley	Richmond Enhanced
Richard Engberg and	Capital LP
Dorothy Engberg,	RIEF RMP LLC
husband and wife	RIEF RMP LLC c/o
Richard Haigler, as	Renaissance
Trustee of the Richard	Technologies LLC
Haigler & Despina	RIEF Trading LLC
Haigler Living Trust	RIEF Trading LLC c/o
U/A 11/04/91	Renaissance
Richard Kallenberger	Technologies LLC
Richard Kallenberger	Risk Facil 99: Close/Risk
and Nancy	Rita A. Boehm
Kallenberger, a	Riversource Absolute
Washington Marital	Return Fund LLC
Community	Robbins & Associates
Richard M. Ader	Robeco Institutional
Richard M. Basoco	Asset Management Bv
Richard M. Vander Meer	Robeco Investment
Richard Morabito	Management, Inc.
Richard O. Kearns	Robert & Mildred Harris
Revocable Trust	Trust
Richard O. Kearns, as	Robert A. and Jamie A.
Trustee of the Richard	Simins JTWROS
O. Kearns Revocable	Robert A. Fox
Trust	Robert A. Habermann,
	as Trustee of the

Robert A. Habermann Revocable Trust U/A DTD 4/20/99	Robert J. Brookes, as Trustee of the 3/10/87 Trust for the Benefit of R. J. Brookes & V. M. Brookes
Robert A. Simins	Robert J. Kuhn
Robert B. Dold	Declaration of Trust Dated 4-6-92
Robert B. Dold and Eileen C. Norris	Robert J. White, as Trustee of the Trust FBO Robert Joseph White U/A/D 06/16/99
Robert D. Bosau	Robert Joseph White
Robert D. Campbell, as Trustee of the Catherine A. Campbell Trust, dated 9/21/1995	Robert L. Oakum
Robert D. Nelson	Robert L. Oakum and Susann Oakum
Robert Dishon Family Trust, and 1st Source Bank as Trustee	Robert M Steiner
Robert E. LaBlanc	Robert M. Treboux
Robert F. Farrington, as Trustee of the Robert H. Farrington Marital Trust UAD 09/05/05	Robert Mosberg
Robert Farrington	Robert Parrillo, as a Trustee of the Trust by Robert Parrillo U/A DTD 12/27/1990
Robert Friedman, as Trustee of the Friedman Living Trust U/A 08/04/99	Robert Passaneau
Robert H. Farrington, as Trustee of the Robert H. Farrington Marital Trust UAD 09/05/05	Robert R. Cull, as Trustee of the Robert R. Cull Trust U/A 1/14/98
Robert J Brooks, as Trustee of the R. J. Brooks Community Property Trust	Robert R. McCormick Foundation
	Robert Ramsey
	Robert S. Splithoff, as a Trustee of the Robert

S. Splithoff Trust	Rose T. Bosau
U/A/D 05-27-1992	Rosemary T. Cox
Robert W. Young	Revocable Trust DTD
Robert Wesley	5/21/2004
Thornburgh	Rosemary T. Cox, as
Robertson Five, Inc.	Trustee of the Cox
Robin Lloyd	Family Educational
Robyn L. Motley	Trust dated 08/02/2004
Rocca Limited Liability	Rosemary T. Cox, as
Co.	Trustee of the
Rodolfo V. Gil	Rosemary T. Cox
Roger Goodan, as	Revocable Trust DTD
Trustee of Chandler	5/21/2004
Trust No. 1	Rosemary Wagner
Roger Goodan, as	Rothschild Investment
Trustee of Chandler	Corporation Employee
Trust No. 2	Profit Sharing Plan
Romano Brothers & Co.	Designated Investment
Ronald C. Cey,	Account FBO Robert M
individually and as a	Steiner
Trustee of the Cey	Royal Bank of Canada
Living Trust 5/14/87	Royal Trust Corporation
Ronald E. Cann, as	of Canada
Trustee of the Ronald	Royal Trust Corporation
Cann Trust UAD 11-	of Canada c.o Royal
22-04	Bank of Canada
Rondra Matthews	Ruanwil LLC
Ronin Capital LLC	Russell Equity I Fund
Rosalind Keiser, as	Russell F. Stephens Jr.,
Trustee of the Michael	as Trustee of the
& Rosalind Keiser	Russell F. Stephens Jr.
Charitable Trust U/A	Trust U/A DTD
DTD 12/30/90	02/10/1992
Rose Marie Taylor	

Russell Investment Company	Rydex ETF Trust (Rydex S&P Equal Weight Consumer Discretionary ETF)
Russell Investment Company Diversified Equity Fund	Rydex ETF Trust (Rydex S&P Equal Weight ETF)
Russell Investment Group	Rydex Investments
Russell Investments	Rydex Series Funds
Russell T. Stern Jr., as Trustee of the Eleanor Jackson Stern Trust Dated 01/06/1971	Rydex Series Funds Multi-Hedge Strategies Fund
Russell T. Stern Jr., as Trustee of the Russell T. Stern Trust B	Rydex Series Funds S&P 500 Pure Value Fund
Russell T. Stern Trust B	Rydex Variable S&P 500 Pure Value Fund
Russell US Core – Equity Fund	Rydex Variable Trust
Ruth C. Von Platen Trust No. 2	Rydex Variable Trust Multi-Hedge Strategies Fund
Ruth McCormick Tankersley, as Trustee of the 10/06/92 Ruth McCormick Tankersley Revocable Trust	S&P 500 Equity Index Weighted Fund LP
Ruth Wottge	S. G. Harris Charity Trust UAD 6/13/45
RWB	S. G. Harris Mar TR 6/17/65
Ryan Enterprises Group LLC	S. Joyce as Trustee of the Sara Joyce Trust U/A DTD 12/7/2005
Ryan, Patrick G	SA Funds - Investment Trust
Rydex ETF Trust (Rydex S&P 500 Pure Value ETF)	SA U.S. Core Market Fund
	SA U.S. Value Fund

Sacramento County Employees Retirement System	Sandra L. Young
Safeco Life Insurance Co.	Sanford C. Bernstein & Co., Inc., in its Individual and Custodial Capacities
Safeco Life Insurance— Master Tr Pl	Sanford C. Bernstein Fund, Inc.
Salisbury Bank & Trust Co.	Sanibel Captiva Trust Co.
Sally H. Contant, as Trustee of the Sally H. Contant Trust U/A DTD 10/13/1983	Sara A. Young Lightbourn
Salvation Army – Southern Territory	Sara Rooney
Salvation Army Central Territorial	Sarah A O'Brien Trust DTD 8-18-03
Samuel H. Frankel, as a Trustee of the Trust for the Benefit of Samuel H Frankel U/A/D 01/28/80	Sarah A. O'Brien, as Trustee of the Kevin D O'Brien Trust DTD 8- 18-03
Samuel Moore, as Trustee of the Samuel S. Moore Trust U/A DTD 10/11/1988	Sarah A. O'Brien, as Trustee of the Sarah A O'Brien Trust DTD 8- 18-03
San Francisco Employees' Retirement System	Sarah Doll Barder
Sandelman Partners Multi-Strategy Master Fund Ltd.	Sargeant E. Joys and Luanne G. Joys, as Trustees of the Sargeant & Luann Joys Living Trust
Sander Morris Harris, Inc.	Sargeant E. Joys, as Trustee of the Sargeant & Luann Joys Living Trust
	SBC Master Pension Trust

SBL Fund	Scottrade, Inc.,
SBL Fund Series H	Custodian for Mak/Tu
SBL Fund Series O	SDG&E Qualified
SC Edison Nuclear	Nuclear
Facilities	Decommissioning
Schaefer–Nevada Inc.	Trust
School Employees	Security Global
Retirement System of	Investors–Rydex/Sgi
Ohio	SEI Institutional
Schultze Asset	Investment Trust –
Management LLC	Large Cap Fund
Schwab Trust A	SEI Institutional
Charitable U/A DTD	Investment Trust –
05/23/1995	Large Cap Index Fund
Scotia Capital Inc.	SEI Institutional
Scott Haskins	Investments Trust
Scott R. Cook	SEI Institutional
Scott R. Klarquist	Managed Trust
Scottrade, Inc., as	SEI Institutional
Custodian for Dennis	Managed Trust – S&P
J. Britt Rollover IRA	500 Index Fund
Scottrade, Inc., as	SEI Institutional
Custodian of A. Hoyer	Managed Trust Large
R/O	Cap Value Fund
Scottrade, Inc., as	SEI Institutional
Custodian of E.	Managed Trust Tax-
Gallagher	Managed Large Cap
Scottrade, Inc., as	Fund
Custodian of F. Tong	SEI Investment
Tod	Management
Scottrade, Inc.,	SEI Investments
Custodian for	Company
Hoyer/Lemts	SEI Investments
	Distribution Co., as

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Administrator of the Lsv Value Equity Fund	Family Trust U/A 6/21/89
SEI Investments, as Administrator of the SGIF Large Cap Value Fund (R1v Enhanced)	Sherrie M. Argirion, as Trustee of the Sherrie M. Argirion Revocable Trust U/A DTD 11/13/96
SEI SIIT	
SEI SIMT	Sherry Broder,
SEIU Local 36 BOLR Pension Fund	individually and as Trustee of the Trust for the Benefit of Sherry P. Broder U/A DTD 1/1/94
Sempra Energy Pension Mstr Trust	Sherry P. Broder
Seth A. Thayer	Sherwin A. Zuckerman
SG Americas Securities LLC	Sherwin A. Zuckerman, as Trustee of the Edward E. Neisser Marital Trust
SGIF Large Cap Value Fund (R1V Enhanced)	Sherwin Zuckerman
Shannon Morris	Shirley C. Beal
Sharon B. Christhlf	Gegenheimer
Sharon H. Boultinghouse, as Trustee of the Sharon L. Boultinghouse Trust	Shirley Dichek, as Trustee of the Dichek Family Trust Dated 12/11/74
Sharon L. Boultinghouse Trust	
Sharon Rosenhause	Shirley H. Dean, as Trustee of the Paul H. Dean Marital Trust A
Sharron R. Beard	Shirley J Sperling and Susan J Martin Jt Ten
Sheldon Cooper, as Trustee of the Ins. Trust U/A 4/25/67	Shirley J. Sperling
Sheldon Gray	SI Trust Servicing
Shelley Weege, as Trustee of the Weege	

SICAV State Street Banq, Paris	SSGA S&P 500 Index Fund Ctf
SIG-SS CBOE Joint Account	SSGA S&P 500 Tobacco Free Index Ctf
Siragusa Enterprises LP	St. Francis Friends of the Poor, Inc.
SMH Capital, Inc.	St. Gregory College Preparatory School
Smoke Rise Foundation, Inc.	Stacie Elizabeth ford, Acting Trustee and Beneficiary of the Alfred C. Glassell Jr. Children's Trust for Stacie Elizabeth ford
Sophie McConnell	Stacy Dean Yochum, as Trustee of the Paul H. Dean Marital Trust A
Sophie McConnell and Malcolm McConnell	Stanford Management Company
South Shore Hospital Corporation	Stanley G. Harris Trust UAD 6/10/46
Southwest Carpenters Pension Trust	Stanley Weiss, as Trustee of the Erwin Shakin Delta Trust U/A 10/5/00
Southwest Securities, Inc.	Stanton R. Cook Charitable Remainder Trust
Spencer W. Beard	Starbuck, Tisdale & Associates
Sprint Corporation	Stark Global Opportunities Master Fund Ltd
SPX Principal Strategy U.S. Shares Programs	Stark Investments
SS&C Technologies Holdings, Inc.	
SS&C Technologies, Inc.	
SSB Exchange Fund	
SSBT Omnibus Account	
SSB—Trust Custody	
SSGA Funds	
SSGA Russell 1000 Value SI Fund	
SSGA S&P 500 Equal Weight CTF	
SSGA S&P 500 Flagship Fund	

Stark Master Fund Ltd	State Street Bank &
State Farm Fire &	Trust Co., as Owner of
Casualty Insurance	IBT–Account # 2
Company	State Street Bank &
State Farm Insurance	Trust Co., as Successor
Companies Employee	to Investors Bank
Retirement Trust	Trust Company
State Farm Life	State Street Bank &
Insurance Company	Trust Co., as Successor
State Farm Mutual	to Investors Bank
Automobile Insurance	Trust Company /
Company	Institutional Custody
State Farm Variable	State Street Bank &
Product Trust (Large	Trust Company
Cap Equity Index	State Street Bank &
Fund)	Trust Company, as
State of California – Mid	Custodian of Thomas
Cap Value	J. Majorana CGM IRA
State of California,	State Street Bank &
Department of	Trust Company, as
Personnel	Trustee for First Data
Administration,	Incentive Savings Plan
Savings Plus Plan	FBO John G. Kologi
State Retirement &	State Street Bank and
Pension System of	Trust Company
Maryland–Srs	State Street Bank and
State St. Bank & Trust	Trust Company, as
Co.	Custodian of the Allen
State Street Amr	C.Tanner Jr., CGM
State Street Bank &	IRA
Trust	State Street Bank and
State Street Bank &	Trust Company, as
Trust Co. / Ibt–Account	Custodian of the Jack
# 2	R. McDonald CGM IRA

State Street Bank and Trust Company, as Custodian of the John R. Flanagan CGM IRA	Stephanie B. Flynn, as Trustee of the Stephanie B Flynn Trust U/A DTD 11/14/62
State Street Bank and Trust Company, as Custodian of the Larry Townsend CGM IRA Rollover	Stephanie B. Flynn, as Trustee of the William J. Byrnes Trust U/A DTD 11/14/62
State Street Bank and Trust Company, as Custodian of the Majorie B. David CGM IRA Rollover	Stephanie Madigan Stephanie Murray, as Trustee of the Stephanie Murray Living Trust
State Street Bank and Trust Company, as Custodian of the Richard Morabito CGM IRA Rollover	Stephen Axelson Sterne Agee & Leach, Inc., as Custodian of Geraldo Rivera R/O IRA
State Street Bank and Trust Company, as Custodian, of the Lloyd Ferguson CGM IRA Rollover	Steven U. Lee Steven Y. Goldberg Stevens Capital Management LP
State Street Bank Luxembourg, S.A.	Stichting Pensioenfonds Abp
State Street Equity 500 Index Portfolio	Stichting Pensioenfonds Campina
State Street Trust and Banking Co. Ltd.	Stichting Pensioenfonds Hoogovens
State Universities Retirement System	Stichting Pensioenfonds Medische Specialisten
Steamfitters Local 420	Stichting Pensioenfonds Oce

Stichting Pensioenfond Van De Abn Amro N.V.	Sunamerica Asset Mgmt Corp. (Variable Ann
Stichting Pensioenfond Zorg En Welzijn	Life Ins Co)
Stichting Shell Pensioenfond	[Sunamerica Series, Inc. - Sunamerica
Stifel, Nicolaus & Company, Incorporated	Strategic Value Portfolio F/K/A
Stock Index Portfolio, a Series of the Prudential Series Fund, Inc.	Focused Value Portfolio]
Strategic Funds, Inc.	Susan Babcock, as
Strategic Opportunities Fund Ltd.	Trustee of Chandler Trust No. 1
Strategic Opportunity	Susan Babcock, as
Strategic Opportunity Bmo Nesbitt Burns C/O Adaly Investment Management Co.	Trustee of Chandler Trust No. 2
Strategy Master Fund (Tradeworx)	Susan F. Frederick, Acting Trustee of the
Strongbow Fund Ltd.	Raymond & Anna Schroer Trust U/A
Sumitomo Mitsui Trust Bank, Limited (F/K/A Sumitomo Trust & Banking Co. Ltd.), as Trustee of Pension Commingle Fund	DTD 09/28/2006
Summit Mutual Funds	Susan H. Shane, Individually and as
Sun Creative Investments LP	Trustee U/A DTD 08/09/1991 of the Trust for the Benefit of Susan H. Shane
	Susan J. Cellmer
	Susan J. Martin
	Susan K. Cunningham
	Susan M. Kennedy
	Susan S. Pecaro
	Susann Oakum
	Susquehanna Capital Group

Susquehanna Investment Group	T. Rowe Price Trust Co, TRPTC TTEE Intersil Equity Inc Fund
Susquehanna Investment Group, as Custodian of the Sig-Ss Cboe Joint Account	T. Rowe Price Associates, Inc., as Custodian of State of California – Mid Cap Value
Swaps, Sbi	T. Rowe Price
Swiss American Securities, Inc.	Associates, Inc., as Custodian of the Los Angeles Department of Water and Power Employees Retirement Plan LCV
Swiss Re Financial Products Corp.	T. Rowe Price Associates, Inc., as Custodian of the Southern California UFCWU & FE Joint Pension Trust Fund
Sybil Jinx Robinson, as Trustee U/A DTD 07/03/07 of the Sybil Jinx Robinson Separate Property Trust	T. Rowe Price Associates, Inc., as Custodian of the State of California, Department of Personnel Administration, Savings Plus Plan
Sylvia Gates Schuler, as Trustee Utd 01/18/88 of the Schuler Trust	T. Rowe Price Associates, Inc., as Custodian of the Water and Power Employees’ Retirement Plan
Symetra Financial Corporation	
Symetra Life Insurance Co. (f/k/a Safeco Life Insurance Company)	
Synergy Capital Management LLC	
Systeia Capital Management	
Systeia Capital Management C/O Amundi Investments Advisors USA, Inc.	

T. Stanton Armour Trust Dated 2/10/66	TD U.S. Index Fund c/o TD Asset Management USA Inc.
Taliesin Capital Partners LP	TD U.S. Large Cap Value Fund
Talon Opportunity Partners	TD U.S. Large Cap Value Fund c/o TD Asset Management USA Inc.
Talon Opportunity Partners LP	TE Cadel Portfolio, Ltd
Tamar Securities Inc	Teachers Retirement System of the State of Illinois
Tax Managed Opportunity Fund LLC	Teamsters Joint Council No. 83 of Virginia Pension Fund
TD Emerald Hedged U.S. Equity	Teamsters Separate Account
TD Emerald Hedged U.S. Equity c/o TD Asset Management USA, Inc.	Telluride Asset Management LLC, as Owner of the Telluride Capital Master Fund
TD Emerald Hedged U.S. Equity Pooled Fund Trust	Telluride Capital Master Fund
TD Emerald Pooled U.S. Fund	Tensor Opportunity Limited
TD Emerald Pooled U.S. Fund c/o TD Asset Management USA, Inc.	Terence Rhoden
TD Emerald U.S. Market Index Fund	Terra Nova Financial
TD Emerald U.S. Market Index Fund c/o TD Asset Management USA, Inc.	Terrence R. McGovern and Barbara T. McGovern JtTen
TD U.S. Index Fund	Terry D. Diamond Trust Dated 5/7/86

Tewksbury Investment Fund Ltd.	The Alfred W. Merkel Marlowe G. Merkel Trust
Texas Education Agency	The Allan H. Willard Trust U/A DTD 9/7/93
Texas Permanent School Fund	The Alliancebernstein Portfolios (Alliancebernstein Tax-Managed Funds)
Texas Presbyterian Foundation	The Alternative Fund
Texas Scottish Rite Hospital Endowment	The Amy W. Fong Living Trust
Texas Scottish Rite Hospital Retirement	The Askin Family Trust U/A DTD 09/27/1990
The 10/03/2007 Dalton Trust	The Autry Community Property Trust Dated 03/15/1985
The 10/06/92 Ruth McCormick Tankersley Revocable Trust	The Bank of New York Mellon as Trustee of the Bank of New York Mellon Employee Benefit Collective Investment Fund Plan
The 12/09/90 Tommie L. Cordero Trust	The Bank of New York Mellon as Trustee of the Collective Trust of the Bank of New York
The 3/10/87 Trust for the Benefit of R. J. Brookes & V. M. Brookes	The Bank of New York Mellon, as Trustee of PG&E Postretirement Medical Plan Trust
The Advisors Inner Circle Fund	The Bank of New York Mellon, as Trustee of the Bank of New York
The Advisors' Inner Circle Fund	
The Advisors Inner Circle Fund – Value Equity Fund	
The Alfred V. Tjarks Retirement Plan DTD 02/18/85	

Mellon Decommissioning Collective Trust Investment Plan – DT Broad Market Stock Index Fund	The Caldwell Foundation The Canyon Value Realization Fund (Cayman) Ltd. The Canyon Value Realization Master Fund, L.P. (as assignee of the Canyon Value Realization Fund (Cayman) Ltd.)
The Bank of New York Mellon, in Its Individual and Custodial Capacities	The Carmine Macchiaroli Living Trust U/A 07/01/88
The Barbara Clements Heller Revocable Trust DTD 3/22/01	The Catherine A. Campbell Trust, dated 9/21/1995
The Barbara M. Osborne Interim Trust DTD 2/7/02	The Cey Living Trust 5/14/87
The Barbara M. Osborne Trust U/I/T DTD 2/7/05	The Christopher J. Appleby Trust U/A DTD 12/13/89
The Barry H. Scripps Trust	The Church Pension Fund, in Its Individual and Trustee Capacities
The Benjamin J. Verduco Trust U/A DTD 12/13/1989	The Clare Attwell Glassell Continuing Marital Trust
The Betty Beaird Living Trust U/A DTD 4/10/87	The Consolidated Edison Retirement Plan, and Its Trustee, State Street Bank and Trust Company, in its
The Betty Beaird Living Trust UA 10-Apr-87	
The Betty H. Roeland Marital Trust	
The Billie J. Bouzek Trust U/A 1/28/00	
The Blackburn Trust	
The Burroughs Wellcome Fund	

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Capacity as Trustee Thereof	The Faulkner Family Trust UA DTD
The Denise Palmer Revocable Trust U/A/D 10-28-1991	8/29/1989 The FBO Dunaway Family Trust U/A/D 07-05-1991
The Diamond Family Foundation	The Felicity J. Appleby Trust U/A DTD 12/13/89
The Dichek Family Trust dated 12/11/74	The Floyd C. Sanger Jr. Trust U/A 3/11/86
The Don & Irene Baron Family Trust 7b-251	The Francesca J. Verduco Trust
The Doris Keats Frank Revocable Trust UA 03/07/00	The Francesca J. Verduco Trust U/A DTD 12/13/1989
The Dorothy Cahn Trust UA 07/03/1981	The Frank J. Mangano GST Non-Tax Exempt Trust U/A dated 6/22/94
The E. Donald Heymann Trust	The Friedman Living Trust U/A 08/04/99
The Edgar D. Gifford Trust UA 7/15/98	The Gabelli Asset Fund
The Elaine W. Getz Trust UA 2/5/86	The Gabelli Equity, Inc. Fund
The Elaine W. Pettijohn Trust U/A 12/20/89	The Gabelli Global Multimedia Trust, Inc.
The Elizabeth L. Levin 2006 Sz-2 Year Grantor Retained Annuity Trust under Agreement dated 07/31/06	The GDL Fund (f/k/a Gabelli Global Deal Fund)
The Erwin Shakin Delta Trust U/A 10/5/00	The Glenmede Trust Company, National Association
The Estate of Dorothy Patterson	The Grace Trust

The Graff Valve & Fittings Company Employees Profit Sharing Plan & Trust 2 UAD 6/30/85	The Hill Revocable Living Trust DTD 12/24/91
The Hammond Family Trust U/A/D 02/11/88	The Howard Shulkes Residuary Credit Trust U/A DTD 09/20/1991
The Harriet H. Glasspiegel DI Trust U/A 6/21/89	The Ins. Trust U/A 4/25/67
The Harrington Bischof Trust UAD 9/15/97	The Iris B. Mahoney Revocable Trust U/A/D 04/10/98
The Harry F. Byrd Jr Revocable Trust	The Iris Elston Trust UAD 5/30/95
The Hartford Financial Services Group, Inc. d/b/a the Hartford	The J&M Trust UA Dated 07/23/1992
The Hartmarx Retirement Income Plan	The J. McWethy Trust
The Harvey B. Plotnick Declaration of Trust U/A/D March 16, 1988	The James F. Polk Trust U/A DTD 12/13/89
The Helen Grossman Trust dated 09/08/99	The Jean S. Black Trust
The Henry Francis Dupont Winterthur Museum, Inc.	The Jerome Blank Declaration of Trust
The Henry P. Albrecht Revocable Trust U/A 1/21/74	The Jerome Kahn Jr. Revocable Trust DTD 10/16/87
The Herman R. Friedberg Revocable Trust	The John & Betty Altman Family Trust UAD 05/16/86
	The John B. Lloyd Jr. Revocable Trust
	The John E Mayasich Trust U/A DTD 04/23/2007

The John N. Robson Trust B dated 9/11/1970	The Lucile McVey Dunn Trust U/A DTD 12/19/91
The John P. Fendley Trust U/A DTD 11/27/1995	The Madge A.L. Macneil 1988 Family Trust
The John Stewart Property Trust	The Marital Trust of the De Goldsmith Family Trust
The John W. Madigan Trust U/A DTD 05/15/1998	The Mark A. Itkin Trust
The Joseph M. Fee & Elizabeth Fee Revocable Living Trust	The Mark R. Pattis Revocable Trust
The Joy Leichenger Trust	The Martha Gross Living Trust U/A/D 04/14/1996
The Kaszton Family Trust UAD 10/23/97	The Mary J. Bloom Trust 11-21-95
The Kenneth J. Vydra Trust No. 101 U/A/D 03-10-2006	The Maryland State Retirement and Pension System
The Kraft Group	The Merger Fund
The Larry L. Bloom Trust 11-21-95	The Michael & Rosalind Keiser Charitable Trust U/A DTD 12/30/90
The Loisanne R. Flaherty Trust U/A DTD 09/23/2004	The Michael Argirion Revocable Trust U/A DTD 11/13/96
The Loretta C. Finlay Trust	The Michael E. Bee Trust UAD 10/20/2003
The Los Angeles Department of Water and Power Employees Retirement Plan Lcv	The Michael J. Palumbo Revocable Li Trust U/A DTD 11/29/1999

The Michael K. Reilly Trust U/A DTD 09/25/1995	The Northern Trust Company (as Successor by Merger to Northern Trust, NA), as
The Miller Family Trust	Guardian of the Estate of Dorothy Patterson
The Nancy B. Heinz Family Trust	The Northern Trust
The Nathan H. Perlman Trust B DTD 12/17/68	Company (as Successor by Merger to Northern Trust, NA), as Trustee
The New Church Investment Fund	of the Alpheus L. Ellis 1993 Grandchildren's Trust FBO Lynn Ann Sharpe
The New York Province of the Society of Jesus	The Northern Trust
The Next Chapter Holdings Mark R. Pattis Revocable Trust UAD 07/30/04	Company (as Successor by Merger to Northern Trust, NA), as Trustee of the Dorothy C. Patterson Irrevocable Trust #2 dated 12-21- 93
The Northern Trust Company	The Northern Trust
The Northern Trust Company (as Successor by Merger to Northern Trust Bank, FSB), as Trustee of the Marguerite Payne Trust Dated 6/7/61 FBO Virginia K. Townley	Company (as Successor by Merger to Northern Trust, NA), as Trustee of the R. J. Brooks Community Property Trust
The Northern Trust Company (as Successor by Merger to Northern Trust, NA) as Trustee of the John N. Robson Trust B Dated 9/11/1970	The Northern Trust Company (as Successor by Merger to Northern Trust, NA), as Trustee of the Richard O.

Kearns Revocable Trust	The Northern Trust Company, as Trustee of the Eleanor Jackson Stern Trust dated 01/06/1971
The Northern Trust Company of Connecticut, as Trustee of the Ntcc Advisors Funds for Employee Benefit Trust	The Northern Trust Company, as Trustee of the Elmer H. Wavering Family Trust dated 06/24/1977 as Amended
The Northern Trust Company Pension Trust	The Northern Trust Company, as Trustee of the Emily G. Plumb Charitable Trust dated 1/8/80 as Amended
The Northern Trust Company, as Custodian of the Theodore D Novak IRA Rollover	The Northern Trust Company, as Trustee of the Harold R. Lifvendahl Trust dated 9/7/1988
The Northern Trust Company, as Trustee of the Barbara M. J. Wood Living Trust UA Dated 9/17/81	The Northern Trust Company, as Trustee of the Howard F. Ahmanson Jr. Revocable Trust
The Northern Trust Company, as Trustee of the Caroline D Bradley Trust dated 11/30/51 FBO Sarah Doll Barder	The Northern Trust Company, as Trustee of the Jessie Ball Dupont Fund
The Northern Trust Company, as Trustee of the Charles T. and Mary Howe Brumback Descendants Trust	The Northern Trust Company, as Trustee of the Julia Neitzert Trust

The Northern Trust Company, as Trustee of the Lynn R. Wolfson Trust	The Northern Trust Company, as Trustee of the Russell T. Stern Trust B
The Northern Trust Company, as Trustee of the Marni Horwitz Trust dated January 22, 1998	The Northern Trust Company, as Trustee of the Tribune Company Master Retirement Savings Trust
The Northern Trust Company, as Trustee of the Master Trust Between Pfizer Inc. and the Northern Trust Company (as Successor to Wyeth Master Trust)	The Northern Trust Company, as Trustee of the Virginia Kearns Revocable Trust
The Northern Trust Company, as Trustee of the Northern Trust Company Pension Trust	The Northern Trust Company, as Trustee of the Vivian B. Larsson Trust
The Northern Trust Company, as Trustee of the Paul W. Dillon Grandchildren's Trust dated 12/6/41 FBO Paul D. Goddard	The Northern Trust Company, as Trustee of the William Bross Lloyd Jr. New York Trust dated July 18, 1968
The Northern Trust Company, as Trustee of the Paula Miller Trienens Trust dated 9-18-91	The Northern Trust Company, as Trustee of the William Bross Lloyd Jr. Vermont Trust dated July 18, 1968
	The Northern Trust Company, Trustee, and Terry Diamond,

Beneficiary, Terry Diamond IRA	Capacity as Trustee Thereof
The O.C. Smith & P.L. Pierce Joint Revocable Living Trust DTD 7/18/2005	The Renee H. Miller Living Trust The Revocable Trust for the Benefit of Christopher Lindblad U/A/D 04-20-2000
The Paul H. Dean Marital Trust A	The Richard Haigler & Despina Haigler Living Trust U/A 11/04/91
The Pecaro Family Trust DTD 4/12/02	The Robert A. Habermann Revocable Trust U/A DTD 4/20/99
The Pension Boards – United Church of Christ, Inc.	The Robert H. Farrington Marital Trust UAD 09/05/05
The President and Fellows of Harvard College	The Robert R. Cull Trust U/A 1/14/98
The R. J. Brooks Community Property Trust	The Robert S. Splithoff Trust U/A/D 05-27- 1992
The Rappaport Family Trust U/A DTD 06/04/1992	The Roeland Family Trust UA 8/19/86
The Raymond & Anna Schroer Trust U/A DTD 09/28/2006	The Ronald Cann Trust UAD 11-22-04
The Raymond John Frank Revocable Trust UA 03/07/00	The Rosenberg Revocable Trust
The Reader's Digest Association, Inc. Retirement Plan, and Its Trustee, the Northern Trust Company, in Its	The Royal Bank of Scotland N.V. f/k/a ABN AMRO Bank N.V. The Royal Bank of Scotland Plc

The Royal Bank of Scotland Plc (Royal Bank of Scotland Financial Markets)	The Scripps Family Revocable Trust
The Royal Bank of Scotland PLC, as Holder of the Accounts of Abbey Equity Fund Icvc Sub	The Sherrie M. Argirion Revocable Trust U/A DTD 11/13/96
The Royal Bank of Scotland Plc, as Holder of the Accounts of US Equity Fund	The Siragusa Foundation
The Russell F. Stephens Jr. Trust U/A DTD 02/10/1992	The Stephanie B Flynn Trust U/A DTD 11/14/62
The Ruth Stein Discretionary Trust for Joan UAD 1/2/80	The Stephanie Murray Living Trust
The Sally H. Contant Trust U/A DTD 10/13/1983	The Strategic Opportunities Master Fund LP
The Samuel S. Moore Trust U/A DTD 10/11/1988	The Survivors' Trust
The Sara Joyce Trust U/A DTD 12/7/2005	The Sybil Jinx Robinson Separate Property Trust
The Sargeant & Luann Joys Living Trust	The Teachers' Retirement System of the City of New York, by and Through the Teachers' Retirement Board
The Scheiermann Living Trust U/A DTD 08/28/1997	The Terrill F. Cox & Lorraine M. Cox Trust U/A DTD 3/31/98
The Schuler Trust	The Thomas T. Byrd Trust UA 01/25/82
	The Tillman Family Trust U/A 07/29/1980

<p>The Trust by Antoinette B. Brumbaugh U/A Dated 10/05/94</p> <p>The Trust by Carol E. Jansson U/A DTD 06/17/1998</p> <p>The Trust by Edwin J. Hayes Jr. U/A DTD 5/26/2006</p> <p>The Trust by Elaine T. Bovaird U/A DTD 02/18/1993</p> <p>The Trust by James T Smith U/A DTD 10/09/1995</p> <p>The Trust by Margaret R. Coniglio U/A DTD 08/22/1989</p> <p>The Trust by Mary Jo Osterman U/A/D 04/04/91 FBO Mary Jo Osterman</p> <p>The Trust by Mary K. Lawler U/A DTD 06/18/1996</p> <p>The Trust by Michael R. Quinlan U/A DTD 09/04/1979</p> <p>The Trust by Mrs. Lois D. Kaliebe U/A DTD 03/05/1993</p> <p>The Trust by Philip B. Doherty U/A DTD 04/28/2000</p>	<p>The Trust by Richard A. Kucera & Diane A. Kucera U/A/D 03-23-07 FBO Richard & Diane Kucera</p> <p>The Trust by Robert Parrillo U/A DTD 12/27/1990</p> <p>The Trust by Thomas J. Osterman U/A/D 04/04/91 FBO Thomas J. Osterman</p> <p>The Trust by Walter E. Graham U/A DTD 10- 16-2000</p> <p>The Trust by Walter K. Graham for the Benefit of Anne G. Taylor U/A DTD 10/16/2000</p> <p>The Trust FBO Robert Joseph White U/A/D 06/16/99</p> <p>The Trust for the Benefit of Bernard Rabinowitz U/A/D 09- 11-2006</p> <p>The Trust for the Benefit of John F. Barnard U/A/D 4/4/03</p> <p>The Trust for the Benefit of Paul P. Mahoney DTD 12/28/1978</p>
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The Trust for the Benefit of Samuel H Frankel U/A/D 01/28/80	Risley, as Settlor, and William H. Risley, Charles Joseph De Sieyes and United States Trust Company of New York, as Trustees
The Trust for the Benefit of Sherry P. Broder U/A DTD 1/1/94	The Trust under an Agreement dated December 13, 1976 between Virginia S. Risley, as Settlor, and William H. Risley, David C. De Sieyes, and United States Trust Company of New York, as Trustees
The Trust for the Benefit of Susan H. Shane	The Trust under an Agreement dated December 19, 1977 between Virginia S. Risley, as Settlor, and William H. Risley and United States Trust Company of New York, as Trustees
The Trust U/A DTD 02/23/1981 by Michael Rosenberg	The U/A Dtd 03/29/04 Joanne Desherow Sanger Living Trust
The Trust U/A DTD 11/02/1977 by Robert Rosenberg	The Verna R. Harrah Trust Special Account DTD 9/5/86
The Trust U/A DTD 8/22/1989 by Mary Coniglio	
The Trust U/A DTD 8/22/1989 by Mary Coniglio GSTT TE Trust	
The Trust U/I Katherine Pratt Twichell Dated July 27, 1964 for the Issue of Harmony T. Clement	
The Trust U/W Charlene Frost	
The Trust under an Agreement dated December 13, 1976 between Virginia S.	

The Victoria Badali Dec of Living Family Trust U/A/D 12/9/98	R. Friedberg Revocable Trust
The Weege Family Trust U/A 6/21/89	Thomas G. Hubert
The Whittier Trust Company	Thomas J. Kuhn, as a Trustee of the Robert J. Kuhn Declaration of Trust dated 4-6-92
The Will K. Weinstein Revocable Trust U/A DTD 2-27-90	Thomas J. Majorana
The William D. Mac Donald & Nancy L. Mac Donald Trust U/A 7 21	Thomas J. Majorana, CGM IRA Custodian
The William J. Byrnes Trust U/A DTD 11/14/62	Thomas J. Osterman, Individually and as Trustee of the Trust by Thomas J. Osterman U/A/D 04/04/91 FBO Thomas J. Osterman
The William James Bell 1993 Trust U/A 8/23/93 (Cash & Holding Account)	Thomas Jeavons, as Trustee of the Jessie Ball Dupont Fund
The Woods/Mitchell Family Trust	Thomas M. Owens
The Workers Compensation Board - Alberta	Thomas P. O'Keefe
The Yeomans Family Trust U/A 2/22/92	Thomas W. Hundley
Theodore D. Novak	Thomasyne C. Hubert
Third Millennium Trading LLC	Thorne, Carl F and Rosella M Thorne
Thomas B. O'Keefe	Thrift Plan for the Employees of the Federal Reserve System
Thomas F. Friedberg, as Trustee of the Herman	Thrivent Financial for Lutherans f/k/a Lutheran Brotherhood Thrivent Series Fund, Inc.

Thrivent Series Fund, Inc., as Owner of the Thrivent Series Fund Balanced Portfolio	Transamerica Asset Management, as Owner of the Dia Mid Cap Value Portfolio
Thrivent Series Fund, Inc., as Owner of the Thrivent Series Fund Large Cap Index Portfolio	Transamerica Partners Mid Value Portfolio (f/k/a Transamerica Partners Mid-Cap Value Portfolio F/K/A Diversified Investors Mid-Cap Value Portfolio)
Tiffany Wolfe	Transamerica Partners Portfolios (f/k/a Diversified Investors Portfolios)
Timber Hill LLC	TRE Pension EFT Account Pension Payment System
Time Warner Inc. Master Pension Trust	Treasurer of the State of North Carolina
Times Mirror Savings Plus Plan	Treasurer of the State of North Carolina Index
Timothy R. Kennedy	Tribune Co Com Stk Tender Exp, Tensor Opportunity Limited c/o M. Safra & Co., Inc.
Timothy S. Pecaro	Tribune Company 401(K) Savings Plan
TLCD List LP	Tribune Company Master Retirement Savings Trust
TMI	Tribune Employee Stock Ownership Plan
TMS/ITS Settlement Account for HFF I LLC	
Tocqueville Asset Management LP	
Tommie L. Cordero, as a Trustee of the 12/09/90 Tommie L. Cordero Trust	
Tompkins Financial Corporation F/K/A Tompkins Trustco, Inc.	
Toro Trading LLC	
Towerview LLC	
Tradelink LLC	
Traits Omni	

Trinity Derivatives Group LLC	U.S. Bank National Association as Trustee
Trudy V. Dunaway, as a Trustee of the FBO	of the US Bancorp Pension Plan
Dunaway Family Trust U/A/D 07-05-1991	U.S. Large Company Equity Fund
Trust by Alyce Tuttle Fuller U/A DTD 10/03/2003	U.S. Shares Programs U/A/D 07-14-2000 FBO the 2000 Peckham Family Trust
Trust D for a Portion of the Assets of the Kodak Retirement Income Fund Plan	UA Local Union office & Employees [United Ass'n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry]
Trust for the Benefit of Mary Anne Vydra U/A/D 03-10-2006	UBS AG
Trust U/W of Sol Diamond Dated 12/4/72	UBS Financial Services Inc.
Trust U/A E. L. Sanford Children FBO Ada	UBS FTC S&P 500 Index Portfolio, John Doe, as Owner of, Wilmington Trust Fiduciary Services Company
Trustees of Boston College	UBS Securities LLC
Trustees of the Central States, Southeast and Southwest Areas Pension Fund, as Administrator of the Central States, Southeast and Southwest Areas Pension Fund	UBS Securities LLC as Successor to UBS Securities Inc.
Twin Securities, Inc.	UD Virginia S. Risley Jt Risley
	UD VS Risley CJ De Sieyes et al

UD VS Risley DC De Sieyes et al	S. Risley, as Settlor, and William H. Risley,
UFCW International Union-Industry Pension Fund	David C. De Sieyes, and United States Trust Company of New York, as Trustees
UFCW Midwest Pension Fund	United Teamsters Pension Fund "A," by and Through Its Board of Trustees
UMC Benefit Board, Inc.	
UMWA 1974 Pension Trust	United Technologies Corp. Master Retirement Trust, John Doe, Trustee for
United Church of Christ, Defined Contribution	University of California Board of Regents
United Food & Commercial Workers International Union- Industry Pen Fd	University of Toronto Master Trust
United Food and Commercial Workers Unions and Employers Midwest Pension Fund	US Bank N.A. as Trustee of Andersen Defined Benefit
United States Trust Company of New York, as Trustee of the Trust	US Bank N.A. as Trustee of Bellin Hospital
U/I Katherine Pratt Twichell Dated July 27, 1964 for the Issue of Harmony T. Clement	US Bank N.A. as Trustee of Dorothy R Moog Family Trust
United States Trust Company of New York, as Trustee of the Trust under an Agreement dated December 13, 1976 Between Virginia	US Bank N.A. as Trustee of Lay Employees of the Archdiocese of Cincinnati Defined Benefit Plan

US Bank N.A. as Trustee of Thelma Orshek Testamentary Trust	Vanguard Fiduciary Trust Company, Custodian, William O. Howe IRA
US Bank N.A. as Trustee of William B. Denhart Nonqualifying Trust under Will of William B. Denhart	Vantagepoint Funds Varda Rabin, as Trustee of the Irving & Varda Rabin 1992 Revocable Trust
US Bank N.A. as Trustee of Wm & Jane Hays Charitable Remainder Unitrust	Variable Insurance Products Fund II [VIP Index 500 Fund, a Series of Variable Insurance Products Fund II]
US Trust Co., N.A.	
V Trader Pro LLC	
V. M. Brookes	Veba Partnership N L.P.
Valic Company I [Stock Index Fund, a Series of Valic Company I f/k/a Aig Retirement Company I]	Veba Partnership X L.P.
Value Fund, a Series of First Investors Equity Funds	Veritable Partnership Holding, Inc.
Value Fund, a Series of First Investors Life Series Funds	Verizon Investment Management Corporation
Vanguard Fiduciary Trust Company, Custodian, and John Maher, Beneficiary, John Maher IRA Rollover Account	Vermont State Employees Retirement System
	Vern M. Strickler
	Verna R. Harrah, as Trustee of the Verna R. Harrah Trust Special Account DTD 9/5/86
	Vicesel Group Inc.
	Victor Grossi

Victor Grossi Trust UA DTD 05/08/98 FBO Victor Grossi	Vyvian Heath W. Milton Jr. Trust under Will for the Benefit of Anna Livingstone
Vikram Parvataneni	W. Rockwell Wirtz
Vilma L Chantiles Jt Ten	W. Wrigley Jr. Christmas Trust
Vilma L. Chantiles	W.G. Lassiter Jr. Wabash/Harvest Partners LP (f/k/a Wabash Harvest Partners LP)
Vincent A. Badali, as a Trustee of the Victoria Badali Dec of Living Family Trust UAD 12/9/98	Wachovia Bank f/k/a Wachovia Bank, N.A. Walker House Spv Ltd. Walter E. Graham
Vincent A. G. Badali, as a Trustee of the Victoria Badali Dec of Living Family Trust UAD 12/9/98	Walter E. Graham, as Trustee of the Trust by Walter K. Graham for the Benefit of Anne G. Taylor U/A DTD 10/16/2000
Virginia A. Kearns, as Trustee of the Virginia Kearns Revocable Trust	Walter K. Graham Walter K. Taylor
Virginia G. Shuster	Walters Art Gallery, Inc., d/b/a the Walters Art Museum
Virginia K. Townley	Walters Trustees Consolidated Fund– Fixed Income
Virginia Kearns Revocable Trust	Warren B. Williamson
Virginia Sonnenschein Trust	
Virginia Sonnenschein, as Trustee of the Virginia Sonnenschein Trust	
Vivian B. Larsson Trust	
Vogel Consulting Group, S.C.	

Warren B. Williamson, as Trustee of the Chandler Trust No. 1	Wedbush Morgan Securities, Inc.
Warren B. Williamson, as Trustee of the Chandler Trust No. 2	Wedbush Securities, Inc.
Warren J. Eide	Weintraub Capital Management
Washington Area Carpenters Pension Fund	Weiss Multi-Strategy Partners LLC
Water and Power Employees' Retirement, Disability, and Death Benefit Insurance Plan	Welch and Forbes LLC
Waterman Broadcasting Corp Employee Profit Sharing Plan U/A 01/01/1974	Welfare & Pension Administration Services Inc., as Administrator of the Automotive Machinists Pension Trust Fund
Waterman Broadcasting Corp. Employee Profit Sharing Plan U/A 01/01/1974	Welfare and Pension Admin. Service, Inc., as Administrator of the International Union of Operating Engineers Construction Industry Retirement Fund for Locals 302 and 612
Waterman Broadcasting Inc.	Wellspan Health Master Trust
Wayne F. McNulty	Wellspan Health System
Wayne F. McNulty and Irene M. McNulty, a Washington Marital Community	Westchester Capital Management LLC
Wayne Hummer Trust Co NA	WG Trading Company LP
Wealth Management Services	Whi Growth Fund
	White Mountains Re Bermuda Ltd.

White Mountains Reinsurance Company of America	S. Risley, as Settlor, and William H. Risley, Charles Joseph De Sieyes and United States Trust Company of New York, as Trustees
Whitebox Diversified Convertible Arbitrage Fund LP	William H. Risley, as Trustee of the Trust under an Agreement dated December 13, 1976 Between Virginia S. Risley, as settlor, and William H. Risley, David C. De Sieyes, and United States Trust Company of New York, as Trustees
Whitebox Hedged High Yield Fund, L.P.	William H. Risley, as Trustee of the Trust under an Agreement dated December 19, 1977 Between Virginia S. Risley, as Settlor, and William H. Risley and United States Trust Company of New York, as Trustees
Will K. Weinstein, as Trustee of the Will K. Weinstein Revocable Trust U/A DTD 2-27- 90	William J. Bell, as Trustee of the William James Bell 1993 Trust U/A 8/23/93 (Cash & Holding Account)
William Apfelbaum William Blair & Co.	William J. Brown
William Bross Lloyd Jr. New York Trust Dated July 18, 1968	
William Bross Lloyd Jr. Vermont Trust Dated July 18, 1968	
William Caplice Revocable Trust	
William D. Mac Donald, as Trustee of the William D. Mac Donald & Nancy L. Mac Donald Trust U/A 7 21	
William F. Warchol	
William H. Risley, as Trustee of the Trust Under an Agreement Dated December 13, 1976 Between Virginia	

William J. Byrnes, as Trustee of the Stephanie B Flynn Trust U/A DTD 11/14/62	William Stinehart Jr., as Trustee of Chandler Trust No. 2
William J. Byrnes, as Trustee of the William J. Byrnes Trust U/A DTD 11/14/62	William V. Monopoli
William K. McGee Jr.	William V. Monopoli and Mary K. Monopoli
William Kaszton, as Trustee of the Kaszton Family Trust U/A/D 10/23/97	William W. Howells
William M. Garland Iii	Willow Creek Capital Partners
William Murphy	Willow Creek Offshore Fund
William O. Howe	Wilmington Fiduciary Trust Services Co. (f/k/a UBS Fiduciary Trust Co.) Collective Investment Trust for Employee Benefit Plans
William Osborn, as Trustee of the Herman R. Friedberg Revocable Trust	Wilshire 5000 Index Fund
William P. Hammond Trust	Wilshire Mutual Funds, Inc., as Owner of the Wilshire 5000 Index Fund
William P. Hammond, Trustee	Wilshire Variable Insurance Trust
William P. Mumma and Kathleen A. Mumma	Wilshire Variable Insurance Trust
William Sanderson Twaddell	Equity Fund
William Stinehart Jr., as Trustee of Chandler Trust No. 1	Wilshire Variable Insurance Trust Socially Responsible Fund

Winchester Evening
Star, Inc.
Wirtz Corporation
Wisconsin Reinsurance
Corp
Wolverine Convertible
Arbitrage Fund LLC
Wolverine Trading LLC
Woodmont Investments
Ltd.
Worldwide Transactions
Limited
Wpg Ericott Merger
Arbitrage Overseas LP
WPML Limited
Partnership
Wrigley, William Jr.,
Trustee, W. Wrigley Jr.
Christmas Trust
Xcel Energy Inc.
Yield Strategies Fund I
LP
Ziegelman Partners LP
Ziegler Family Trust A
Zoltan Horvath
Zoltan Horvath and
Lidia Horvath
Zoological Society of San
Diego

Retiree Respondents

1IA SPX1	DTD 10/05/94 by
A. G. Edwards & Sons, LLC	Antoinette B
A. G. Edwards Private Equity Partners III, L.P.	Brumbaugh Pledged to ML Lender
A. G. Edwards, Inc.	Ariel Capital Management
A/C CSFB Prop Trading US	Ariel/Aprf/Ariel Appreciation Fund
Abbey National Securities Inc	Ariel/Maxmid/Maxim Midcap Portfolio
Aerial Investments, LLC	Arthur L. Holden
Alberta - WCB	Assent LLC
Alberta W. Chandler Marital Trust No. 2	Attn Intl Program Trades
Alexandra Global Master Fund Ltd	Aviv Nevo
Alliancebernstein L.P.	B Trade Services LLC
Alpine Associated LLC	B Woods & L Mitchell TTEE - Woods/Mitchell
Alpine Associates Access LLC (A/K/A Alpine Associates LLC)	Family Trust U/A DTD 01/25/1999
Alyce Tuttle Fuller Ttee	Banc of America Securities LLC
AM Master Fund III, LP	Bank of America Corporation
Amalgamated Bank	Bank of America, N.A.
American Enterprise Investment Services Inc.	Bank West Trust I Bank West Trust II
Amida Partners Master Fund Ltd	Barclays Capital, Inc.
Antoinette B	Barclays GBL Investors NA
Brumbaugh TTEE U/A	Baxter Bechtel

BellSouth Corp. Non-Representable Health Care Trust	BMO Nesbitt Burns Employee Co-Investment Intermediate (U.S.), L.P.
Bernard and Barbro Osher 2006 Charitable Rem Unitrust #2	BMO Nesbitt Burns Trading Corp. S.A.
Bernard Osher 2006 Charitable	BMO Nesbitt Burns U.S. Blocker Inc.
Bernard Osher Trust U/A DTD 3/8/88	BMR 2 LLC
Beverly Perry	BNP Paribas Prime Brokerage, Inc.
Blackport Capital Fund Ltd	BNP Paribas Securities Corp.
Blue Chip Fund, a Series of First Investors Life Series Funds	Bruce Kirkpatrick
BMO Nesbitt Burns Corp.	BZW Securities, Inc.
BMO Nesbitt Burns Employee Co-Investment Fund I (U.S.) L.P.	CA Public Ee Retrmnt Sys
BMO Nesbitt Burns Employee Co-Investment Fund I Management (U.S.) Inc.	California Ironworkers Field
BMO Nesbitt Burns Employee Co-Investment Intermediate (U.S.) Gp, L.P.	Calpers (California Pub. Emp. Retire. Sys.)
	Calpers (Dynamic Completion Fund)
	Camilla Chandler Family Foundation
	Canadian Imperial \$55arb
	Cantigny Foundation
	Cantor Fitzgerald & Co.
	Carl Zlatchin Profit
	Carlyle Multi-Strategy Master

Catherine A Verduco as Trustee U/A DTD 12/13/1989 Francesca J. Verduco Trust	Citigroup Global Markets, Inc.
Catherine A Verduco Ttee U/A DTD 12/13/1989 Benjamin J. Verduco Trust	City National Bank of New Jersey Capital Trust I
Catholic Health West CHW	CMA Omnibus
CBS Master Trust	Cnty Empl Annty & Ben
Cecil Smith	End Cook Cnty
Cedar Grove Cem Assn Perp Care	Collective Trust of the Bank of New York
Central States SE & SW Areas	Comerica Bank
Chandler Trust No. 1	Confidential Stock
Chandler Trust No. 2	Transferees
Cheyne Capital Management, Inc.	Consolidated Edison of NY K801
Cheyne Capital Management, LLC	Credit Agricole Securities (USA) Inc.
Chicago Tribune Foundation	Credit Suisse (USA), Inc.
CIBC World Markets Corp.	Credit Suisse First Boston
CIBC World Markets, Inc.	Credit Suisse Securities (USA) LLC
CIM XVI LLC	Credit Suisse-
Citadel LLC (F/K/A Citadel Investment Group, LLC)	Investment Banking and Security
Citibank, N.A.	Investment Division
	Cutler Group LP
	D E Shaw Valence Portfolio LLC
	D.E. Shaw Investment Management, L.L.C.
	Daryl V Dichek

Davenport & Company LLC	EWT, LLC
David D. Grumhaus 1990 Trust	FAO Deephaven FAO Havens Advisors LLC
DB AG Equity Swaps Offshore - Consolidated Account I	Fifth Third Bank First Bank & Trust First Clearing LLC
DBSO Securities Ltd.	First Option Consulting, Inc.
DE Shaw Oculus Port LLC - Us A	First Option Debt Solutions Ltd.
Delos Insurance Company	First Option Funding Corp.
Deutsche Bank - Private Banking and Investment Banking Investments Division	First Republic Bank Firststar Trust Company Flexible US Equity Managers
Donald M. Hinman Jr.	Forestal Funding Master Trust
Dorothy B. Chandler Marital Trust No. 2	Gabelli Asset Management Company
Dorothy B. Chandler Residuary Trust No. 2	Gabelli Avg Price 2 Gabelli Equity Trust Inc
Dr. David L. Hoexter Ira R/O	Gabelli Funds, Inc.
Drawbridge Global Macro	Gabelli Funds, Inc. - Gabelli ABC Fund
Earl E. Crowe Trust No. 2	Gabelli Funds, Inc. - Gabelli Funds Inc.
Echotrade LLC	Gabelli Funds, Inc. - The Gabelli Asset Fund
E-Connectivity Avg Px	Gabelli Funds, Inc. - The Gabelli Equity Inc. FD
Edward D. Jones & Co., L.P.	
Eric D. Werthman	
Erturk Ozbek Ttee	
Eureka Options LLC	

Gabelli Funds, Inc. - The	Gryphon Hidden Value
Gabelli Global	VIII LP
Multimed TR	Gryphon Hidden Values
Gabelli Global Deal	Viii Ltd
Fund	Gulco Corp
Gabelli Value Fund, Inc.	Halcyon Diversified
Gamco Investors, Inc.	Fund LP
Garland Foundation	Harbor Capital Group
Trust No. 2	Trust
Gaspare Locascio &	Havens Partners
Dolores Locascio Jt	Enhanced Fund, L.P.
WROS	Havens Partners, L.P.
Gene C Mccaffery	HBK Investments L.P.
Glass Lewis & Co.	Helen Garland Trust No.
Glenmede Trust	2 (for Gwendolyn
Company, N.A.	Garland Babcock)
GMIMCO Trust	Helen Garland Trust No.
Goldentree Master Fund	2 (for Hillary Duque
II, Ltd.	Garland)
Goldentree Master Fund	Helen Garland Trust No.
Ltd.	2 (for William M.
Goldentree	Garland Iii)
Multistrategy Offshore	Herbert G. Lau Profit
Fund	Sharing QRP
Goldman Sachs	Participation
Execution & Clearing,	HFR Asset Mgmt. LLC
L.P.	Himan Brown
Goldman Sachs	HOC GST Exempt Trust
International Holdings	No. 2. FBO Eliza
LLC	Haskins
Goldman, Sachs & Co.	HOC GST Exempt Trust
Greenock Mult-Strategy	No. 2. FBO John
Greywolf Capital	Haskins
Management L.P.	

HOC GST Exempt Trust No. 2. FBO Scott Haskins	John W. Madigan TTEE Joy Leichenger Ttee - Joy Leichenger Trust - U/A DTD 08/02/1978
HOC Trust No. 2 FBO Eliza Haskins	Kaiser Fdn Hlth Plans+Hospital
HOC Trust No. 2 FBO John Haskins	Kenneth Cahn
HOC Trust No. 2 FBO Scott Haskins	Key Bank, N.A.
Hudson Bay Fund LP	Labranche Structured Products LLC
Hudson Bay Master Fund Ltd	Legent Clearing LLC
IBM Personal Pension Plan Trust	Leonard F. Hill, Ttee Hill Revocable Living Trust DTD 12/24/91
Illinois State Board of Invest	LFT Partnership
Instinet Corp NY	Loeb Arbitrage Management LP
Interactive Brokers Inc.	LPI Financial Corporation
Iolaire Investors LLP	Lucile M Dunn Ttee U/A DTD 12/19/1991 Lucile Mcvey Dunn Trust
Iris B. Mahoney & Paul M. Mahoney Ttees for Iris B. Mahoney Revocable Trust U/A/D 04/10/98	M.L. Stern & Co., LLC Manufacturers and Traders Trust Company
Irving & Varda Rabin 1992 Revocable Trust	Marian Otis Chandler Trust No. 2
J.J.B. Hilliard, W.L. Lyons, LLC	Mary F Brown
James Rothermel	Mary Rothermel
James Thomas Wirth	Matthew Halbower
Janna L Gadden	Max S Bell and Jean F Bell
Jefferies & Company, Inc.	
Jianshi Mao	

May C. Goodan Trust No. 2	Natixis Securities North America Inc.
Mellon Trust of New England, National Association	Neuberger Berman Inc.
Mergers Invtmt Trd	Neuberger Berman LLC
Merrill Lynch & Co., Inc.	New York City Deferred Compensation
Merrill Lynch Capital Corporation	New York State Teachers Retire
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Newedge USA, LLC
Met Life	Nicholas H. Werthman
Metropolitan Life Insurance Company	Nomura Securities International, Inc.
Michael J. Liccar & Co.	Northern Trust Global Advisors, Inc.
Millenco LLP	NYC District Council Carpenters
Monica K. Hinman	NYC Employees Retirement System
Monumental Life Insurance Co	Oppenheimer & Co. Inc.
Morgan Stanley & Co. LLC (f/k/a Morgan Stanley & Co. Incorporated)	Optionsxpress, Inc.
Morgan Stanley Smith Barney LLC	O'Shaughnessy
Morgan, Keegan & Company, Inc.	Paris Trading
Mrs Lois D Kaliebe Ttee	Patricia Crowe Warren Residuary Trust No. 2
MS Select-Value Added Market	Patricia H Yeomans TTEE - the Yeomans Family Trust U/A 2/22/92
Nancy Fay Johnson	Paul M Mahoney Ttee U/W/O Paul P Mahoney DTD 12/28/1978
Natixis Bleichroeder Inc.	PCRG (Fund I, LLC) PCRG (Fund II, LLC)

PCRG (Fund III, LLC)	Putnam Lovell NBF
Penson Financial	Securities Inc
Futures, Inc.	Quintessence Fund L.P.
Penson Financial	QVT Fund LP
Services, Inc.	Raymond James
Perry Capital L.L.C.	Financial Services, Inc.
Pershing LLC	Raymond James Ltd.
PG&E Qual CPUC NDT	(USA), Inc.
Partnership	Raymond James Trust
Philip B Doherty Ttee	N.A.
Philip Chandler	RBC Capital Markets
Residuary Trust No. 2	Arbitrage, LLC
Phoenixx Inc	RBC Capital Markets
PNC Bank, Delaware	Corporation
Polly H. Howells	RBC Capital Markets
PowerShares FTSE	Holdings (USA) Inc.
RAFI US 1000	RBC Capital Markets,
Prime Broker Cssi Stock	LLC
Split	RBS Securities Inc.
Prism Partners I	Re Camden Asset Mgmt
Prism Partners II	LP
Offshore Fund	Regions Bank
Prism Partners II, L.P.	Regions Financial
Prism Partners III	Corporation
Leverage LP	Reinhold & Shelley
Prism Partners IV	Weege TTEE - Weege
Leveraged Offshore	Family Trust - U/A
Fund	6/21/89
Prism Partners Offshore	Relative Value FD LP
Prism Partners Offshore	(a/k/a Highbridge
Fund	Event Drvien
PS Buyback Achievers	Opportunities Fund,
Port	L.P.)
	Reliance Trust Company

Richard & Carol Askin TTEE U/A DTD 09/27/1990 by Askin Family Trust	San Pasqual Fiduciary Trust Co.
Rief RMP LLC	Sandelman Partners
Rief Trading LLC	Sanford C. Bernstein & Co., LLC
Robert D Bosau	SBI Swaps
Robert D Friedman TTEE - Friedman Living Trust -U/A 08/04/99	SC Edison Nuclear Facilities
Robert R. McCormick Foundation	Schultze Asset Management, LLC
Romano Brothers Investors, LLC	Scotia Capital (USA) Inc.
Rose T Bosau	Sempra Energy Pension Mstr Trst
Rosenberg Revocable Trust - Claude and Louise Rosenberg Trustees	SG Americas Securities, LLC
Ruth C. Von Platen Trust No. 2	Shirley Dichek Ttee - Dichek Family Trust - U/A 12/11/74 FBO Shirley Dichek
Ruth McCormick Tankersley	Southwest Securities, Inc.
Ruth McCormick Tankersley Trust dated 12/3/1990	Spear Leeds and Kellogg Stanford University LCV
RWB	State Street Bank & Trust Company
Sacramento Cnty Emp Ret System	State Street Luxembourg, S.A.
Samuel Moore Ttee - Samuel S. Moore Trust - U/A DTD 10/11/1988	Stephanie B Flynn & William J. Byrnes Ttees
	Stephens, Inc. (a.k.a. Stephens Inc.)

Stifel, Nicolaus & Company Incorporated	The Spurgeon Family Limited
Stock Borrowed-NY Strategic Funds, Inc.	The Sumitomo Trust & Banking Co., Ltd., as Trustee for Pension
STRS	Comminge Fund
SunTrust Bank	The Whittier Trust Company
SuttonBrook Capital Portfolio LP	Time Warner Inc Master Pension
Swiss American Advisors, LLC	TMS/ITS Sett A/C for HFF I LLC
Swiss American Corporation	Traits Omni
Synergy Capital Management LLC	Transit Employees Retirement
T. Rowe Price Group, Inc.	TRE Pension EFT ACCT PPS
Talon Opportunity Partners LP	U.S. Trust Company of Delaware
Terra Nova Financial, LLC	UBS Financial Services, Inc.
The Bank of New York Mellon Employee Benefit Collective Investment Fund Plan (f/k/a the Mellon Bank, N.A. Employee Benefit Collective Investment Fund Plan)	UBS Global Asset Management (Americas) Inc.
The Bank of Nova Scotia	UBS Global Asset Management (US) Inc.
The Dorothy Cahn Trust UAD 07/03/1981	UBS Securities LLC
The Northern Trust Company	Ultra Select LP
	UMB Bank, N.A.
	UMC Benefit Board, Inc
	University of CA Regents
	V Trader Pro LLC

Value Fund, a Series of	White Mountains
First Investors Life	Reinsurance Company
Series Funds	Will K. Weinstein
Value Line, Inc	Revocable Trust U/A
Vanderbilt Partners,	DTD 2-27-90
LLC	William Blair &
Verna R. Harrah Trust	Company, L.L.C.
Special Account DTD	William F. Warchol
9/5/86	William J Bell TTEE
Wachovia Bank, N.A.	William - James Bell
Water and Power	1993 TR U/A 8/23/93
Employees' Ret	(Cash & Holding
Wedbush Securities, Inc.	Account)
Weintraub Capital	William J Brown
Management	Wilmington Trust
WG Trading Co LP	Company
	Wirtz Corporation

APPENDIX K

RELATED CASES**United States Court of Appeals for the
Second Circuit**

Case name	Case Number	Date of entry of judgment	Docket Number
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In re Tribune Company Fraudulent Conveyance Litigation	13-3875	Dec. 19, 2019	311
In re Tribune Company Fraudulent Conveyance Litigation	13-4178	Dec. 19, 2019	295
In re Tribune Company Fraudulent Conveyance Litigation	13-4196	Dec. 19, 2019	296

**United States District Court for the
Southern District of New York**

Noteholder Actions:

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Deutsche Bank Trust Co. Americas v. Adaly Opportunity Fund TD Securities Inc. C/O Adaly Investment Management Co.	1:11-cv-04784	Sept. 27, 2013	828
Deutsche Bank Trust Co. Americas v. Cantor Fitzgerald & Co.	1:11-cv-04900	Sept. 27, 2013	153
Deutsche Bank Trust Co. Americas v. CIBC World Markets Corp.	1:11-cv-05136	Sept. 27, 2013	90
Deutsche Bank Trust Co. Americas v.	1:11-cv-09319	Sept. 27, 2013	242

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Deutsche Bank Trust Co. Americas v. Sumitomo Trust & Banking Co. (U.S.A.)	1:11-cv-09406	Sept. 27, 2013	196
Deutsche Bank Trust Co. Americas v. Merrill Lynch Trust Co.	1:11-cv-09407	Sept. 27, 2013	178
Deutsche Bank Trust Co. Americas v. Eaton Vance Multi Cap Growth Portfolio	1:11-cv-09408	Sept. 27, 2013	111
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Deutsche Bank Trust Co. Americas v. King	1:11-cv-09410	Sept. 27, 2013	161
Deutsche Bank Trust Co. Americas v. Anderson	1:11-cv-09510	Sept. 27, 2013	180

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Deutsche Bank Trust Co. Americas v. Aqua America-Gabelli Asset Mgt	1:11-cv-09512	Sept. 27, 2013	149
Deutsche Bank Trust Co. Americas v. Associated Bank Green Bay, NA	1:11-cv-09514	Sept. 27, 2013	185
Deutsche Bank Trust Co. Americas v. Mazur, Howard	1:11-cv-09515	Sept. 27, 2013	97
Deutsche Bank Trust Co. Americas v. Employees Retirement Fund of the City of Dallas	1:11-cv-09568	Sept. 27, 2013	263
Deutsche Bank Trust Co. Americas v. Bank of America	1:11-cv-09569	Sept. 27, 2013	156

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Deutsche Bank Trust Co. Americas v. Long	1:11-cv-09570	Sept. 27, 2013	227
Deutsche Bank Trust Co. Americas v. Ader	1:11-cv-09571	Sept. 27, 2013	261
Deutsche Bank Trust Co. Americas v. First Republic Bank	1:11-cv-09572	Sept. 27, 2013	620
Deutsche Bank Trust Co. Americas v. Robert Dishon Family Trust	1:11-cv-09581	Sept. 27, 2013	129
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Deutsche Bank Trust Co. Americas v. Sirius International Insurance Corporation	1:11-cv-09583	Sept. 27, 2013	286
Deutsche Bank Trust Co. Americas v.	1:11-cv-09584	Sept. 27, 2013	149

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Deutsche Bank Trust Co. Americas v. Wells Fargo Bank, N.A.	1:11-cv-09585	Sept. 27, 2013	109
Deutsche Bank Trust Co. Americas v. Sowood Alpha Fund LP	1:11-cv-09586	Sept. 27, 2013	296
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Deutsche Bank Trust Co. Americas v. Huntington National Bank	1:11-cv-09589	Sept. 27, 2013	153
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Co.			
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Deutsche Bank Trust Co. Americas v. AG Edwards & Sons	1:11-cv-09593	Sept. 27, 2013	176
Deutsche Bank Trust Co. Americas v. Verizon Investment Management Corporation	1:11-cv-09594	Sept. 27, 2013	104
Deutsche Bank Trust Co. Americas v. Alliance Capital Management LLC	1:11-cv-09595	Sept. 27, 2013	219
Deutsche Bank Trust Co.	1:11-cv-09596	Sept. 27, 2013	89

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Deutsche Bank Trust Co. Americas v. ING Trust Equity Inc. Port	1:11-cv-09597	Sept. 27, 2013	132
Deutsche Bank Trust Co. Americas v. Ametek Inc Employees Master Retirement Trust	1:11-cv-09598	Sept. 27, 2013	252
Deutsche Bank Trust Co. Americas v. Pandora Select Partners LP	1:11-cv-09599	Sept. 27, 2013	97
Deutsche Bank Trust Co. Americas v. U.S. Bank, N.A.	1:11-cv-09600	Sept. 27, 2013	116
Deutsche Bank Trust Co. Americas v. Waterman Broadcasting Corporation	1:12-cv-00061	Sept. 27, 2013	359

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Deutsche Bank Trust Co. Americas v. Fushimi	1:12-cv-00549	Sept. 27, 2013	130
Deutsche Bank Trust Co. Americas v. Oppenheimer Main Street Select Fund	1:12-cv-00550	Sept. 27, 2013	124

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Case name	Case Number	Date of entry of judgment	Docket Number
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Niese v. A.G. Edwards, Inc.	12-cv-00551	Sept. 27, 2013	194
Niese v. Chandler Trust No. 1	12-cv-00554	Sept. 27, 2013	139
Niese v. ABN AMRO Clearing Chicago LLC	12-cv-00555	Sept. 27, 2013	212