

No.

In the Supreme Court of the United States

MARC S. KIRSCHNER,

Petitioner,

v.

DENNIS J. FITZSIMONS, 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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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 19-3049-cv; 19-449-cv
(D.C. Nos. 11md2296 (DLC); 12cv2652 (DLC)) (S.D.N.Y.)

IN RE: TRIBUNE COMPANY FRAUDULENT CONVEYANCE
LITIGATION

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE FOR THE
TRIBUNE LITIGATION TRUST,

Plaintiff–Appellant,

v.

LARGE SHAREHOLDERS, FINANCIAL ADVISORS,
FINANCIAL INSTITUTION HOLDERS, FINANCIAL
INSTITUTION CONDUITS, PENSION FUNDS, INDIVIDUAL
BENEFICIAL OWNERS, MUTUAL FUNDS,

Defendants–Appellees.

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE FOR THE
TRIBUNE LITIGATION TRUST,

Plaintiff–Appellant,

v.

CITIGROUP GLOBAL MARKETS INC., MERRILL LYNCH,
PIERCE, FENNER & SMITH INCORPORATED,

Defendants–Appellees.

Argued: Aug. 24, 2020

Decided: Aug. 20, 2021

Before: RAGGI and CHIN, *Circuit Judges*.*

Appeals from a judgment and orders of the United States District Court for the Southern District of New York (Sullivan and Cote, *JJ.*) dismissing claims arising out of the leveraged buyout of the Tribune Company in 2007 and its bankruptcy filing in 2008. The bankruptcy litigation trustee contends on appeal that the district court erred in dismissing his claims against the Tribune Company's shareholders and financial advisors for fraudulent transfer, breach of fiduciary duty, and related causes of action. The bankruptcy litigation trustee also contends that the district court erred in denying leave to amend his complaint.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

LAWRENCE S. ROBBINS (Roy T. Englert, Jr., *on the brief*), Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, Washington, DC; Robert J. Lack, Jeffrey R. Wang, Friedman Kaplan Seiler & Adelman LLP, New York, New York; David M. Zensky, Akin Gump Strauss Hauer & Feld LLP, New York, New York, *for Plaintiff-Appellant*.

* Our late colleague Judge Ralph K. Winter was originally assigned to this panel. The two remaining members of the panel, who are in agreement, have decided this case in accordance with Second Circuit Internal Operating Procedure E(b). *See* 28 U.S.C. § 46(d); *United States v. Desimone*, 140 F.3d 457, 458–59 (2d Cir. 1998).

DOUGLAS HALLWARD-DRIEMEIR, (Jonathan Ference-Burke *on the brief*), Ropes & Gray LLP, Washington, DC; Andrew Devore, Joshua Sturm, Ropes & Gray LLP, Boston, MA; Philip D. Anker, Alan E. Schoenfeld, Ryan Chabot, Wilmer Cutler Pickering Hale & Dorr LLP, New York, New York; Joel W. Millar, Wilmer Cutler Pickering Hale & Dorr LLP, Washington, DC; Matthew L. Fornshell, Ice Miller LLP, Columbus, Ohio; Andrew J. Entwistle, Entwistle & Cappucci LLP, New York, New York; Mark A. Neubauer, Carlton Fields, LLP, Los Angeles, California; P. Sabin Willett, Michael C. D'Agostino, Morgan, Lewis & Bockius LLP, Boston, Massachusetts; Michael S. Doluisio, Dechert LLP, Philadelphia, Pennsylvania, *for Defendants-Appellees Pension Funds, Financial Institution Holders, Individual Beneficial Owners, Mutual Funds, Certain Large Shareholders, and Financial Institution Conduits.*

ERIN E. MURPHY, Kirkland & Ellis LLP, Washington, DC; Gabor Balassa, Brian Borchard, Kirkland & Ellis LLP, Chicago, Illinois; Oscar Garza, Douglas G. Levin, Gibson, Dunn & Crutcher LLP, Irvine, California; Matthew D. McGill, Gibson, Dunn & Crutcher LLP, Washington, D.C., *for Defendants-Appellees Large Shareholders.*

KANNON K. SHANMUGAM (Masha G. Hansford, Joel S. Johnson, *on the brief*), Paul, Weiss, Rifkind, Wharton & Garrison LLP, Washington, D.C.; Andrew G. Gordon, Kira A. Davis, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York; Daniel L. Cantor, Daniel S. Shamah, O'Melveny & Myers LLP, New York, New York, *for Defendants-Appellees Citigroup Global Markets, Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc.*

JONATHAN D. POLKES (Gregory Silbert, Stacy Nettleton, *on the brief*), Weil, Gotshal & Manges LLP, New York, New York; George E. Mastoris, Winston & Strawn LLP, New York, New York, *for Defendants-Appellees Financial Advisors.*

CHIN, *Circuit Judge*:

In 2007, the Tribune Company (“Tribune”), then-publicly traded, executed a leveraged buyout (the “LBO”) to go private. Less than a year later, Tribune filed for Chapter 11 bankruptcy. Plaintiff-appellant Marc Kirschner, the bankruptcy litigation trustee (the “Trustee”), brought fraudulent conveyance and other claims on behalf of creditors against shareholders who sold their stock in the LBO and against the financial advisors that helped Tribune navigate and complete the LBO. In several orders and decisions, the district court dismissed the Trustee’s claims for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

For the reasons set forth below, we **AFFIRM in part, VACATE in part**, and **REMAND** for further proceedings.

BACKGROUND

I. The Facts

The facts alleged in the operative complaints are assumed to be true for purposes of this appeal.¹

Prior to its bankruptcy in 2008, Tribune was a media company that owned numerous radio and television stations and major national newspapers, including *The Chicago Tribune*, *The Los Angeles Times*, and *The Baltimore Sun*. In 2005, the newspaper publishing industry faced severe decline and, by 2006, Tribune, which derived approximately 75% of its total revenues from such publishing, started faltering financially. In September 2006, Tribune's board of directors (the "Board") created a special committee (the "Special Committee") to consider ways to return value to Tribune's shareholders. The Special Committee was comprised of all seven of the Board's independent directors (the "Independent Directors").

A. Tribune Retains Advisors

Before the formation of the Special Committee, the Board hired two financial advisors, defendant-appellee Merrill Lynch, Pierce, Fenner, and Smith, Inc. ("Merrill Lynch") on October 17, 2005 and

¹ In Appeal No. 19-3049, the operative complaint is the Fifth Amended Complaint in No. 12-CV-2652, referred to by the district court as the *FitzSimons* action. In Appeal No. 19-449, the operative complaint is the First Amended Complaint in No. 12-CV-6055, referred to by the district court as the *Citigroup* action.

defendant-appellee Citigroup Global Markets, Inc. (“Citigroup”) on October 26, 2005, to conduct a strategic review and to recommend possible responses to the ongoing changes in the media industry. Both Merrill Lynch and Citigroup signed engagement letters, which promised each a “Success Fee” of \$12.5 million if a “Strategic Transaction” was completed. The engagement letters also allowed each firm to play a role in helping to finance any such “Strategic Transaction,” despite the potential conflict of interest inherent in the firms’ distinct roles in any such deal. The engagement letters further specified that neither Merrill Lynch nor Citigroup was a fiduciary.

On October 17, 2006, the Special Committee hired Morgan Stanley & Co. LLC f/k/a Morgan Stanley & Co. Inc. (“Morgan Stanley”) to serve as its independent financial advisor. Morgan Stanley’s engagement letter specified that the firm owed no fiduciary duty to Tribune.

B. Proposed LBO

In early 2007, Sam Zell, an investor, proposed to take Tribune private. At this time, defendants-appellees Chandler Trust No. 1, Chandler Trust No. 2, and certain Chandler sub-trusts (collectively, the “Chandler Trusts”) held approximately 20% of Tribune’s publicly-held shares. The Robert R. McCormick Foundation and the Cantigny Foundation (collectively, the “Foundations”) held another 13% of shares. The Special Committee sought the views of the Chandler Trusts and the Foundations (together, the “Large Shareholders”) on Zell’s proposal. Concerned that Tribune’s stock price would fall before they could sell their shares, the Large Shareholders indicated that they would only vote for a two-step

LBO that allowed them to cash out during the first step. In response, Zell suggested a two-step LBO, in which, at Step One, Tribune would borrow money to buy back roughly half of its shares and, at Step Two, Tribune would borrow more money to purchase all remaining shares. Tribune would then merge with a specially created shell corporation. The new entity would become an S Corporation, resulting in nearly \$1 billion in anticipated tax savings. In considering whether to approve the LBO, the Board consulted Citigroup and Merrill Lynch.

To secure financing for the LBO, Tribune needed an opinion stating that it would be solvent after each step of the proposed LBO. On February 13, 2007, the Board hired Duff & Phelps to provide such a solvency opinion. Toward that end, Tribune gave Duff & Phelps financial projections predicting that Tribune would fare better in the second half of 2007 as compared to the same period from the year prior (the “February Projections”). These figures were created by Tribune’s management team, which, according to the Trustee, had a conflict of interest because its members stood to cash out Tribune shares worth \$36 million and reap other gains if an LBO were executed.

After conducting its analysis, Duff & Phelps concluded it could not provide a solvency opinion without considering the \$1 billion in tax savings that Tribune expected at Step Two. Duff & Phelps, however, also determined that considering such tax savings in a solvency opinion was not appropriate. Accordingly, on April 1, 2007, Duff & Phelps instead provided a “viability opinion,” which concluded that the fair market value of Tribune’s assets would exceed its liabilities after the close of the LBO.

The same day, Morgan Stanley and Merrill Lynch issued fairness opinions that the price to be paid for Tribune's stock was fair. These opinions were filed with the SEC as proxy statements. Also, on April 1, 2007, the Special Committee unanimously voted to recommend the two-step LBO, which the Board ultimately approved.

C. Implementation of LBO

Still in need of a solvency opinion to secure financing for the approved LBO, Tribune approached Houlihan Lokey, which declined, on March 29, 2007, to bid for the engagement. On April 11, 2007, Tribune retained Valuation Research Company ("VRC") to provide two solvency opinions, one for Step One and one for Step Two. To secure the engagement, VRC, "a virtually unknown firm," agreed to use a non-standard approach in formulating its solvency opinions. 3049 Appellant's Br. at 12–13.² VRC charged Tribune \$1.5 million -- VRC's highest fee ever for such an engagement -- to issue the solvency opinions.

On May 24, 2007, VRC issued an opinion that Tribune would be solvent after completing Step One. According to the Trustee, however, after VRC issued this solvency opinion, Tribune's management team realized that the February Projections, upon which VRC's opinion was based, were no longer an accurate forecast of Tribune's 2007 second half performance. No one alerted VRC that Tribune was unlikely to meet the February Projections. Indeed, the Trustee alleges that Citigroup and Merrill Lynch reviewed VRC's

² References to "3049 Appellant's Br." and "449 Appellant's Br." refer to the Trustee's briefs in Appeal Nos. 19-3049 and 19-449, respectively.

solvency analysis but “failed to fulfill their responsibilities as ‘gatekeepers’ retained to objectively analyze the LBO.” 449 Appellant’s Br. at 8.

Despite the issue with VRC’s solvency opinion, Tribune delivered it to the financing banks on June 4, 2007. That same day, Step One closed. Tribune borrowed \$7 billion to pay off its existing bank debt and to complete a tender offer, buying back just over half of its publicly held shares. The Large Shareholders sold all their shares, and the members of the Board appointed by those shareholders resigned. After Step One, Tribune issued a proxy statement, which explained that while the LBO was in the company’s best interest, it was risky and might not create the anticipated value.

In October 2007, management again updated its financial projections (the “October Projections”) in preparation for Step Two. The October Projections still forecasted that Tribune’s performance would improve, but not as quickly as the February Projections had predicted.

Even with the October Projections, VRC was reluctant to author a second solvency opinion because it did not appear that Tribune would be able to repay its debts without refinancing its existing debts. Tribune management represented to VRC that Morgan Stanley -- the Special Committee’s financial advisor -- believed that Tribune would be able to refinance its debts, even though Morgan Stanley had not drawn that conclusion. On December 18, 2007, VRC issued a solvency opinion stating that Tribune would be solvent after Step Two.

The Board's retained financial advisors did not agree with VRC's second solvency opinion. In fact, analyses from Citigroup and Merrill Lynch showed that, at the close of Step Two, Tribune would be insolvent by more than \$1.4 billion and \$1.5 billion respectively, but neither advisor tried to stop the transaction. On December 20, 2007, Step Two closed, and Tribune borrowed an additional \$3.7 billion, which it used to buy back its remaining publicly held shares.

After the close of Step Two, Tribune had roughly \$13 billion in debt. Tribune's directors and officers received approximately \$107 million from selling their stock and from bonuses. Citigroup and Merrill Lynch were each paid their \$12.5 million success fee because they helped effectuate a "Strategic Transaction." A group of pension funds (the "Pension Funds"), who are defendants-appellees in this case, also received cash proceeds in connection with the LBO.

II. Procedural History

On December 8, 2008 -- less than one year after Step Two closed -- Tribune filed for Chapter 11 bankruptcy in Delaware. Claims were eventually filed in the Delaware Bankruptcy Court on behalf of creditors, including for fraudulent conveyance. Tribune emerged from bankruptcy in 2012; pursuant to Tribune's plan of reorganization, the claims were transferred to the Tribune Litigation Trust, and the Trustee was appointed to pursue the claims on behalf of Tribune's creditors.

In the meantime, some seventy-four federal and state lawsuits asserting fraudulent conveyance and related claims were filed around the country by

Tribune’s creditors. Eventually, the Judicial Panel on Multidistrict Litigation transferred the bankruptcy claims as well as the federal and state actions to the Southern District of New York, where they were consolidated on the basis that the claims all arose out of the LBO and Tribune’s 2008 Chapter 11 bankruptcy filing. *See In re: Tribune Co. Fraudulent Conv. Litig.*, 831 F. Supp. 2d 1371, 1372 (J.P.M.L. 2011).

On September 23, 2013, the district court (Sullivan, *J.*) dismissed several state law constructive fraudulent conveyance claims that were brought against Tribune. The parties appealed, and on March 29, 2016, this Court affirmed the district court’s dismissal of the state law fraudulent conveyance claims. *See In re Tribune Co. Fraudulent Conv. Litig.*, 818 F.3d 98, 105 (2d Cir. 2016) (“*Tribune I*”). After further proceedings in this Court and the Supreme Court, we issued an amended opinion on December 19, 2019, affirming the district court’s dismissal of the state law constructive fraudulent conveyance claims on the basis that these claims were preempted by section 546(e) of the Bankruptcy Code, which provides that a trustee may not avoid a transfer made by or to a “financial institution” in connection with “a securities contract.” *In re Tribune Co. Fraudulent Conv. Litig.*, 946 F.3d 66, 78, 96 (2d Cir. 2019) (“*Tribune II*”).³

³ On July 22, 2016, this Court denied rehearing *en banc*, and our mandate issued on August 1, 2016. On September 9, 2016, the Trustee petitioned for certiorari to the Supreme Court. In April 2018, the Supreme Court advised the parties that their petition for certiorari as to *Tribune I* would be deferred to allow this Court to consider whether to recall the mandate in light of the Supreme

In the meantime, the district court proceeded to consider defendants' motions to dismiss the remaining claims. On January 6, 2017, the district court (Sullivan, *J.*) dismissed the Trustee's intentional fraudulent conveyance claims with prejudice because it found that the complaint failed to allege that Tribune had the actual intent to defraud its creditors when it bought back shares from shareholders at both steps of the LBO. In particular, the district court concluded that the intent of the Tribune officers who created the February and October Projections could not be attributed to the Special Committee, which approved the LBO. The district court also declined to grant the Trustee leave to amend its complaint in the *FitzSimons* action, "without prejudice to renewal in the event of an intervening change in the law." 3049 S. App'x at 28.

On November 30, 2018, the district court (Sullivan, *J.*) dismissed the Trustee's state law claims for breach of fiduciary duty asserted in the *FitzSimons* Complaint and certain "tag-along" actions. In particular, the district court declined to collapse the two-step LBO into a unitary transaction, thereby concluding that (1) Tribune was solvent at Step One, and (2) the Large Shareholders were not liable at Step Two because they had relinquished their board seats and Tribune stock by that point.

Court's decision in *Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 138 S. Ct. 883, 892 (2018), which held, *inter alia*, that Section 546(e) does not protect transfers in which financial institutions served as mere conduits. See *Deutsche Bank Tr. Co. Americas v. Robert R. McCormick Found.*, 138 S. Ct. 1162, 1163 (2018) (statement of Justices Kennedy and Thomas). As a result, this Court recalled its mandate and eventually issued *Tribune II*.

On December 1, 2018, the case was reassigned to Judge Cote. On January 23, 2019, the district court (Cote, *J.*) granted Citigroup and Merrill Lynch's motions to dismiss certain claims in the *FitzSimons* and *Citigroup* actions. As relevant here, the district court dismissed the aiding-and-abetting and professional malpractice claims under the *in pari delicto* doctrine and it dismissed the fraudulent conveyance claims on the ground that the advisory fees received did not constitute actual or constructive fraudulent conveyances. On April 23, 2019, the district court denied the Trustee's request to amend his complaint in the *FitzSimons* action, denying leave to file what would have been a Sixth Amended Complaint.

These appeals followed.

DISCUSSION

Three categories of claims are at issue: (1) intentional fraudulent conveyance claims against the shareholders based on the buy-back of their shares; (2) breach of fiduciary duty and aiding and abetting breach of fiduciary claims against the allegedly controlling shareholders; and (3) aiding and abetting breach of fiduciary duty, professional malpractice, intentional fraudulent conveyance, and constructive fraudulent conveyance claims against Citigroup, Merrill Lynch, Morgan Stanley, and VRC (collectively, the "Financial Advisors"). We discuss these claims in turn, as well as the district court's denial of leave to amend.

We review *de novo* a district court's grant of a motion to dismiss under Rule 12(b)(6) for failure to state a claim, "accepting the complaint's factual

allegations as true and drawing all reasonable inferences in the plaintiff's favor." *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 750 F.3d 227, 232 (2d Cir. 2014) (internal quotation marks omitted). "We review the district court's denial of leave to amend for abuse of discretion." *Broidy Cap. Mgmt. LLC v. Benomar*, 944 F.3d 436, 447 (2d Cir. 2019) (internal quotation marks omitted). If, however, "the denial was based on futility, . . . we review that legal conclusion *de novo*." *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173, 188 (2d Cir. 2014).

I. *Intentional Fraudulent Conveyance Claims*

We first consider whether the district court erred in dismissing the Trustee's intentional fraudulent transfer claims against the shareholders based on the buy-back of their shares.

A. *Applicable Law*

The Bankruptcy Code allows a bankruptcy trustee to recover fraudulent transfers where a transfer has been made with "actual intent to hinder, delay, or defraud" creditors. 11 U.S.C. § 548(a)(1)(A). An intentional fraudulent conveyance claim must be pled with specificity, as required by Fed. R. Civ. P. 9(b). *See In re Sharp Int'l Corp.*, 403 F.3d 43, 56 (2d Cir. 2005). The alleged fraud must relate to the specific payment or transfer the plaintiff is seeking to avoid, rather than to the overall course of business. *See id.* (differentiating between alleged fraud in obtaining funding from noteholders and subsequent payment of some proceeds to defendant). And by "actual intent," the statute contemplates intent "existing in fact or reality" and not merely the imputed intent that would suffice for a constructive

fraudulent conveyance claim. *Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020) (holding, in context of ERISA, that “actual” means “existing in fact or reality,” more than “potential, possible, virtual, conceivable, theoretical, hypothetical, or nominal”) (citations and internal quotation marks omitted); *compare* 11 U.S.C. § 548(a)(1)(A) (intentional fraudulent conveyance) *with id.* § 548(a)(1)(B) (constructive fraudulent conveyance); *see also United States v. Finkelstein*, 229 F.3d 90, 95 (2d Cir. 2000) (“[T]he should-have-known alternative connotes a concept more akin to negligence than to knowledge.”).

Because of the difficulties in proving intent to defraud, a pleader may rely on “badges of fraud,” *i.e.*, circumstances so commonly associated with fraudulent transfers that their presence gives rise to an inference of intent. *In re Kaiser*, 722 F.2d 1574, 1582 (2d Cir. 1983). Courts have inferred intent to defraud from the “concealment of facts and false pretenses by the transferor,” “reservation by [the transferor] of rights in the transferred property,” the transferor’s “absconding with or secreting the proceeds of the transfer immediately after their receipt,” “the existence of an unconscionable discrepancy between the value of property transferred and the consideration received therefor,” the oppressed debtor’s creation “of a closely-held corporation to receive the transfer of his property,” as well as the oppressed debtor’s transfer of property while insolvent. *Id.* (citation omitted); *see also Sharp*, 403 F.3d at 56.

A corporation can only act through its directors and officers, and we look to state law to determine who has the authority to act on behalf of a corporation (and

therefore whose actions to review to see whether there was fraudulent intent or badges of fraud). *See Burks v. Lasker*, 441 U.S. 471, 478 (1979) (“[T]he first place one must look to determine the powers of corporate directors is in the relevant State’s corporation law.”). Under Delaware law -- Tribune’s state of incorporation -- only the board of directors (or a committee to which the board has delegated its authority) has the power to approve an extraordinary transaction such as a merger or consolidation. *See* Del. Gen. Corp. Law §§ 141(a), (c), 160(a), 251(b). Here, the Board delegated its authority to approve a merger and redemption of Tribune’s stock to the Special Committee, and thus the Trustee was required to plead allegations that gave rise to a strong inference that the Special Committee had the “actual intent to hinder, delay, or defraud” Tribune’s creditors, as required by 11 U.S.C. § 548(a)(1)(A).

The Trustee does not argue that the members of the Special Committee had “actual intent” to harm Tribune’s creditors but instead contends that Tribune’s senior management had the necessary fraudulent intent, and that this intent must be imputed to the Special Committee. The issue of whether a company’s officers’ intent to defraud creditors can be imputed to an independent special committee for purposes of a fraudulent conveyance claim under the Bankruptcy Code is a question of first impression in this Circuit. The First Circuit has addressed the issue and applied a “control” test -- a court “may impute any fraudulent intent of [an actor] to the transferor . . . [if the actor] was in a position to control the disposition of [the transferor’s] property.” *In re Roco Corp.*, 701 F.2d 978, 984 (1st Cir. 1983). The district court here applied the control test, holding

that “this test appropriately accounts for the distinct roles played by directors and officers under corporate law, while also factoring in the power certain officers and other actors may exercise over the corporation’s decision to consummate a transaction.” 3049 S. App’x at 9.

The Trustee argues that the district court erred in applying the control test, and that the correct standard is either a scope-of-employment agency standard or a “proximate cause” standard. We are not persuaded. In the circumstances here, we affirm the district court’s use of a “control” test for imputation. We agree that for an intentional fraudulent transfer claim, which requires “actual intent,” a company’s intent may be established only through the “actual intent” of the individuals “in a position to control the disposition of [the transferor’s] property.” *Roco*, 701 F.2d at 984; *see also In re Lehman Bros. Holdings, Inc.*, 541 B.R. 551, 576 (S.D.N.Y. 2015) (“[T]he Court’s analysis regarding imputation must turn on *actual control* of [the debtor].”).⁴

B. Application

The Trustee makes two arguments in support of his intentional fraudulent transfer claims. First, he argues that Tribune’s senior management possessed actual intent to defraud, and that intent should be imputed to the Special Committee. Second, even

⁴ In arguing for a lesser imputation standard, the Trustee relies heavily on *Staub v. Proctor Hospital*, 562 U.S. 411 (2011). That case, however, applied a “motivating factor” standard under the Uniformed Services Employment and Reemployment Rights Act, *id.* at 417–18, and we are not persuaded that it carries much weight in a case requiring “actual intent” under the Bankruptcy Code.

assuming the imputation argument fails, the Trustee maintains that Independent Directors on the Special Committee had the required intent as demonstrated by “badges of fraud.”

1. *Imputation of Intent*

We conclude that the Trustee failed to plausibly allege that the intent of Tribune’s senior management should be imputed to the Special Committee because the Trustee failed to allege that Tribune’s senior management controlled the transfer of the property in question.

As discussed above, the Board created an independent Special Committee to evaluate the LBO. The Special Committee, in turn, hired Morgan Stanley to serve as its independent financial advisor. As the district court observed, the Trustee failed to allege that senior management inappropriately pressured the Independent Directors -- who included former senior officers of major corporations -- to approve the transactions or that senior management dominated the Special Committee.

The Trustee failed to allege any financial or personal ties between senior management and the Independent Directors that could have affected the impartiality of the Special Committee. And to the extent that the officers misled the Special Committee by presenting it with the February Projections and a flawed viability and solvency opinions, Morgan Stanley and the Special Committee itself checked these figures. Therefore, to impute the officers’ intent onto the Special Committee, which was working independently with an outside financial advisor and independently reviewed opinions provided by Duff &

Phelps and VRC, would stretch the “actual intent” requirement as set forth in § 548(a)(1)(A) to include the merely possible or conceivable or hypothetical as opposed to existing in fact and reality.

2. *The Badges of Fraud*

On appeal, the Trustee contends that five of the traditional “badges of fraud” weigh in favor of finding actual intent -- (1) lack of consideration for the shareholder transfers; (2) Tribune’s financial condition; (3) the relationship among the parties; (4) the “pattern of transactions”; and (5) the “general chronology” of the events. 3049 Appellant’s Br. at 37–38. While some of these factors arguably weigh in favor of the Trustee, in the end we conclude that the district court correctly held that the Trustee failed to plead “badges of fraud” sufficient to raise a strong inference of actual fraudulent intent on the part of the Special Committee. *See Kaiser*, 722 F.2d at 1582–83.

The Trustee’s assertion that Independent Directors stood to earn \$6 million for selling their shares if they approved the LBO is insufficient to satisfy the stringent pleading standard of Rule 9(b). First, it would be unreasonable to assume actual fraudulent intent whenever the members of a board of directors (or a committee created by that board) stood to profit from a transaction they recommended or approved. *See, e.g., Kalnit v. Eichler*, 264 F.3d 131, 139 (2d Cir. 2001) (“Motives that are generally possessed by most corporate directors and officers do not suffice [to demonstrate fraud]. . . . Insufficient motives, we have held, can include (1) the desire for the corporation to appear profitable and (2) the desire to keep stock prices high to increase officer compensation.”). Second, the Independent Directors

owned only a small fraction (0.08%) of Tribune's shares, and the Independent Directors' shares were sold at a price only slightly above the price at which Tribune stock had been trading. These assertions, even assuming they are true, do not give rise to a strong inference of actual fraudulent intent.

The Trustee's arguments that the Independent Directors "knew that Tribune was falling far short of projections and thus was unlikely to generate enough cash to service its debt" and the risky nature of the proposed LBO were indications of fraud are also unpersuasive. 3049 Appellant's Br. at 38. Even assuming the Independent Directors were wrong in believing that Tribune's financial condition would improve, their approval of a risky transaction when Tribune and other newspaper companies were struggling would arguably support a negligence or constructive fraud claim but not, in the circumstances here, an intentional fraudulent transfer claim. *See, e.g., In re Lehman Bros. Holdings, Inc.*, 541 B.R. at 577 ("Indeed, there is nothing unlawful about a company transacting business during unusually difficult financial times in an attempt to prevent its own collapse. To find otherwise would place in question any contract executed during a financial downturn and invite upheaval in the financial markets."). Moreover, Tribune's contemporaneous public filings warned that its projections could fall short, and the Independent Directors had an obligation to try to achieve the highest price for Tribune's shareholders. *See, e.g., Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986) (directors have duty to obtain highest price for shareholders).

Again, the Trustee was required to plausibly allege *actual* fraudulent intent on the part of the members of the Special Committee. We agree with the district court that the Trustee failed to do so.

II. *State Law Fiduciary Duty Claims*

We next consider the Trustee's claims that the Large Shareholders breached their fiduciary duties under Delaware law by pushing for the LBO based on projections they knew to be false and by causing Tribune to incur debt they knew would leave the company insolvent. The Trustee also alleges that through this conduct the Large Shareholders aided and abetted senior management's own breach of fiduciary duty and were unjustly enriched. The Trustee argues that Steps One and Two of the LBO should be collapsed so that the LBO is viewed as a single unitary transaction. The Trustee contends that, if the LBO is so viewed and Tribune's Step Two obligations taken into account at the start, Tribune was insolvent as of April 1, 2007, the day that Tribune's Board originally voted to approve the LBO. The Trustee alleges that the Large Shareholders were controlling shareholders with attendant fiduciary duties before Step One and that these fiduciary duties were breached by advocating for and executing the LBO.

The district court dismissed Trustee's claims, holding that Steps One and Two could not be collapsed into a unitary transaction and that Tribune's purported insolvency had to be analyzed separately at each of the LBO's two steps. The district court concluded that the Trustee's allegations failed at Step One because he could not plausibly allege that Tribune was insolvent at that point. While the district

court concluded that the Trustee had adequately pleaded Tribune's insolvency at Step Two, it held that the fiduciary duty claims nevertheless failed because, after Step One, the Large Shareholders no longer owned any Tribune stock and their appointed directors had resigned from the Board.

The principal issue with respect to these claims is thus whether the Trustee's pleadings support collapsing Step One and Step Two into one event.

A. Applicable Law

Under Delaware law, a shareholder owes the company a fiduciary duty "only if it owns a majority interest in or exercises control over the business affairs of the corporation." *Ivanhoe Partners v. Newmont Mining Corp.*, 535 A.2d 1334, 1344 (Del. 1987). If such a fiduciary duty exists, a shareholder breaches that duty if, for its own benefit, it approves a transaction that renders the corporation insolvent. See, e.g., *In re Tropicana Entm't, LLC*, 520 B.R. 455, 471 (Bankr. D. Del. 2014) (holding that creditor must allege either that corporation was or became insolvent as result of fiduciary's misconduct to bring suit for breach of fiduciary duty); see also *Crawford v. Franklin Credit Mgmt. Corp.*, 758 F.3d 473, 482 (2d Cir. 2014) (noting this Court may "affirm the judgment on any basis that is supported by the record").⁵

⁵ We assume, without deciding, that the Large Shareholders had a fiduciary duty to Tribune. We note, however, that together the Chandler Trusts and the Foundations owned only 33% of Tribune's publicly held shares. See *Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1114 (Del. 1994) ("[A] shareholder who owns less than 50% of a corporation's outstanding stocks does not, without more, become a controlling shareholder of that

To determine whether the two steps should be viewed as a single transaction, the district court applied the *Sabine* factors, which consider (i) “[w]hether all of the parties involved had knowledge of the multiple transactions”; (ii) “[w]hether each transaction would have occurred on its own”; and (iii) “[w]hether each transaction was dependent or conditioned on other transactions.” *In re Sabine Oil & Gas Corp.*, 547 B.R. 503, 541 (Bankr. S.D.N.Y.), *aff’d*, 562 B.R. 211 (S.D.N.Y. 2016).

In performing this analysis, Delaware courts have sometimes applied a “step-transaction doctrine,” under which collapse is warranted if a party can satisfy any one of three tests: (1) the “end result test,” which authorizes collapse “if it appears that a series of separate transactions were prearranged parts of what was a single transaction, cast from the outset to achieve the ultimate result”; (2) the “interdependence test,” which authorizes collapse if “the steps are so interdependent that the legal relations created by one transaction would have been fruitless without a completion of the series”; and (3) the “binding-commitment test,” which allows collapse “only if, at the time the first step is entered into, there was a binding commitment to undertake the later steps.” *Bank of N.Y. Mellon Tr. Co. v. Liberty Media Corp.*, 29 A.3d 225, 240 (Del. 2011) (internal quotation marks omitted).

Delaware courts have also noted that, regardless of the test to be applied, the substance of the

corporation, with a concomitant fiduciary status.”) (quoting *Citron v. Fairchild Camera & Instrument Corp.*, 569 A.2d 53, 70 (Del. 1989)).

transaction is what matters, not the form. *See Gatz v. Ponsoldt*, 925 A.2d 1265, 1280 (Del. 2007). Further, they have noted that “courts have found that a set of transactions may be viewed as one integrated transaction if the transactions reasonably collapse into a single integrated plan and either defraud creditors or leave the debtor with less than equivalent value post-exchange.” *In re Hechinger Inv. Co. of Del.*, 274 B.R. 71, 91 (D. Del. 2002) (internal quotation marks omitted). In *Hechinger*, the court denied a motion to dismiss and noted that it was “reluctant to conclude that because the defendants structured the set of transactions in a certain manner, they [were] immune from a claim of breach of fiduciary duty, especially where the [complaint] allege[d] that the harms it complain[ed] of were foreseeable results of the acts of the defendants.” *Id.*

B. Application

1. Was the LBO a Unitary Transaction?

Although we must accept as true all plausible allegations set forth in the complaint, we need not accept “threadbare recitals of a cause of action’s elements” that are “supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). Here, the Trustee failed to sufficiently allege that the two steps should be collapsed into one.

First, it is undisputed that there were several obstacles that Tribune needed to clear after Step One and before completing Step Two. At Step One, Tribune borrowed approximately \$7 billion and executed a tender offer, by which the company repurchased half of Tribune’s outstanding common stock and refinanced its existing debt. Even if Step Two were never consummated, Step One would have amounted

to a standalone recapitalization plan -- similar to transactions Tribune had engaged in prior to the LBO.⁶

Additionally, the “knowledge and intent of the parties” weigh heavily against the Trustee’s collapse argument as neither Tribune nor the Large Shareholders knew for certain whether both steps would be completed. Step Two required shareholder approval, which was not received until months after Step One closed, and the Trustee does not allege that the Large Shareholders had anything to do with the “pie-in-the-sky” February Projections. 3049 J. App’x at 146–47. Similarly, Tribune never knew that Step Two was a foregone conclusion, as its merger would need government approval.

Further, the complaint acknowledges that there were several additional hurdles Tribune had to clear to effectuate Step Two, including receiving a solvency opinion, and that the Large Shareholders were concerned that the deal would not actually close. Indeed, Tribune’s July 13, 2007 proxy statement warned that there was a “risk that the conditions to the [Step Two] Merger will not be met, including the conditions requiring receipt of FCC approval, the receipt of financing and receipt of a solvency opinion.” 3049 J. App’x at 1740. Finally, as the Large Shareholders point out, the two-step transaction was designed to guard against the possibility that the second step might not close if conditions precedent

⁶ In May 2006, Tribune engaged in a leveraged recapitalization by which it purchased 55 million shares of outstanding stock for \$1.8 billion in May 2006. In March 2007, Tribune again considered a “more modest recapitalization plan.” 3049 J. App’x at 198.

were not satisfied. The Trustee even acknowledges that the LBO was structured in two steps *because* the Board “express[ed] concerns regarding the delays and completion risk associated with Zell’s [initial single-step] proposal.” 3049 J. App’x at 191. Therefore, the Board decided instead on the two-step LBO to “provide an upfront distribution to Tribune’s stockholders,” even if Step Two were never consummated. *Id.*

The parties do not dispute that *Sabine* applies federally, though ultimately we conclude that, regardless of whether *Sabine* or Delaware’s “step-transaction doctrine” applies, the two steps of this LBO should not be collapsed. As the facts alleged in the complaint make clear, the third *Sabine* factor weighs against collapse. Further, collapse is inappropriate under all three of the step-transaction tests, because the parties intended to structure the two steps as independent transactions, Step One was able to stand alone, and there was no binding commitment to undertake Step Two. Accordingly, we affirm the district court’s conclusion that the two steps must be considered independently.

2. Was Tribune Insolvent at Step One?

The Trustee argues that even if the two steps are not treated as a unitary transaction, he sufficiently alleged Tribune’s insolvency at Step One, to support a claim that the Large Shareholders breached their fiduciary duties when approving of a transaction that resulted in insolvency. The district court held that the Trustee failed to sufficiently allege that Tribune was insolvent at Step One of the LBO under either the “balance sheet” or the “inability to pay debt when due” tests. We agree.

In Delaware, “[u]nder the balance sheet test, an entity is insolvent if it has liabilities in excess of a reasonable market value of assets held.” *Quadrant Structured Prods. Co. v. Vertin*, 102 A.3d 155, 176 (Del. Ch. 2014) (internal quotation marks omitted). We are not persuaded by the Trustee’s argument that the district court erred in failing to take into account “the commitments Tribune had *already* made -- notably to borrow an additional \$3.7 billion of debt and to make an additional \$4 billion distribution to its shareholders -- for which performance was due at Step Two.” 3049 Appellant’s Br. at 65. This argument rests on the same logic undergirding the Trustee’s argument in favor of collapsing the two steps, which we have rejected for the reasons outlined above. Moreover, the Trustee himself admits that he “did not allege that the \$8 billion borrowed at Step One, standing alone, rendered Tribune insolvent.” *Id.* at 62.

As to the “inability to pay debts when due” test, the Trustee’s argument again hinges upon his assertion that the district court should have considered whether Tribune was able to pay upcoming debts or raise additional capital in the future -- *i.e.*, by taking “Step Two into account, along with Tribune’s ability to access additional funds.” *Id.* at 70. In other words, the Trustee argues that courts should not limit their consideration to past debt payments and instead also consider whether companies will be able to pay upcoming debts or raise additional capital in the future.

There appears to be no consensus in Delaware courts, however, as to whether this test is forward-looking. *See, e.g.*, Robert J. Stearn, Jr. & Cory D. Kandestin, *Delaware’s Solvency Test: What Is It and*

Does It Make Sense? A Comparison of Solvency Tests Under the Bankruptcy Code and Delaware Law, 36 Del. J. Corp. L. 165, 182 (2011) (“The [inability to pay debts when due] test is not entirely clear: the unanswered question is whether the test is present or forward-looking. . . . The case law does not answer this question definitively.”). The Trustee cites several Delaware cases, *see* 3049 Appellant’s Br. at 69, but they are inapposite as none definitively establishes that courts *must* consider future debts to be incurred as part of its insolvency analysis. Moreover, as the district court observed, this Court offered a definitive answer in *Pereira v. Farace*, 413 F.3d 330 (2d Cir. 2005). There, we rejected a forward-looking approach, noting that such a test would “project[] into the future to determine whether capital will remain adequate over time while the Delaware [inability to pay debts when due] test looks solely at whether the corporation has been paying bills on a timely basis.” *Id.* at 343. We see no reason to overturn that holding here.

Accordingly, we conclude that the district court did not err in dismissing the Trustee’s state law claims against the Large Shareholders. We additionally conclude that the district court did not abuse its discretion in dismissing these claims with prejudice, as the Trustee has not explained what specific facts he would plead to salvage these claims.

III. Claims Against Financial Advisors

We next consider whether the district court erred in dismissing the following claims against the Financial Advisors: (1) aiding and abetting breaches

of fiduciary duty and professional malpractice⁷; (2) intentional fraudulent conveyance; and (3) constructive fraudulent conveyance. For the reasons set forth below, we affirm the district court’s dismissal of the aiding and abetting and professional malpractice claims as to all Financial Advisors; we affirm the district court’s dismissal of the intentional fraudulent conveyance claims as to Morgan Stanley, Citigroup, and Merrill Lynch, and vacate the dismissal of these claims as to VRC; and we affirm the dismissal of the constructive fraudulent conveyance claims as to Morgan Stanley and VRC and vacate the dismissal of these claims as to Citigroup and Merrill Lynch.

A. *Aiding and Abetting Breach of Fiduciary Duty and Professional Malpractice Claims*

1. *Applicable Law*

Under Delaware law,⁸ a third party may be liable for aiding and abetting a breach of fiduciary duty if there is “(i) the existence of a fiduciary relationship, (ii) a breach of the fiduciary’s duty, (iii) knowing participation in that breach by the defendants, and (iv) damages proximately caused by the breach.” *RBC*

⁷ Additionally, the Trustee asserted a breach of fiduciary claim, but against only Morgan Stanley. The district court did not explicitly address this claim in its January 23, 2019 opinion. In a February 13, 2019 order, however, the district court stated that this claim was “barred for the same reasons discussed in the January 23 Opinion with respect to the other common law claims asserted against Morgan Stanley . . . namely, the doctrine of *in pari delicto*.” 3049 S. App’x at 180.

⁸ The parties agree that Delaware law governs the Trustee’s aiding and abetting claim.

Cap. Mkts., LLC v. Jervis, 129 A.3d 816, 861 (Del. 2015).

The *in pari delicto* doctrine acts as an affirmative defense to an aiding and abetting claim by barring a plaintiff “from recovering damages if his losses are substantially caused by activities the law forbade him to engage in.” *Stewart v. Wilmington Tr. SP Servs., Inc.*, 112 A.3d 271, 301–02 (Del. Ch.), *aff’d*, 126 A.3d 1115 (Del. 2015) (internal quotation marks omitted). In other words, a plaintiff can generally only sue for aiding and abetting a breach of fiduciary duty if the plaintiff’s hands are clean. As applied to corporations, the illegal actions of a corporation’s officers and directors are imputed to the corporation itself. *Id.* at 303. There are, however, exceptions that render the *in pari delicto* doctrine inapplicable and therefore permit a plaintiff to sue, even if its hands are not clean.

First, under the adverse interest exception, a corporation is permitted to sue those alleged to have aided an agent’s wrongdoing when “the corporate agent responsible for the wrongdoing was acting *solely* to advance his own personal financial interest, rather than that of the corporation itself.” *In re Am. Int’l Grp., Inc., Consol. Derivative Litig.*, 976 A.2d 872, 891 (Del. Ch. 2009) (“*AIG II*”), *aff’d sub nom. Teachers’ Ret. Sys. of La. v. Gen. Re Corp.*, 11 A.3d 228 (Del. 2010) (emphasis added). The adverse interest exception, however, does not enable a plaintiff to recover if the wrongdoing benefits the corporation. *Stewart*, 112 A.3d at 309.

Further, the exception does “not apply even when the ‘benefit’ enjoyed by the corporation is ultimately outweighed by the long-term damage that is done when the agent’s mischief comes to light”; instead, it

only covers the “unusual” case where allegations support a reasonable inference of “total abandonment of the corporation’s interests.” *Id.* at 303, 309 (describing “siphoning corporate funds or other outright theft” as such “unusual” cases); *see also In re Am. Int’l Grp., Inc.*, 965 A.2d 763, 827 (Del. Ch. 2009) (“*AIG I*”) (holding that the adverse interest test is directed at insiders who are “essentially stealing from the corporation as opposed to engaging in improper acts that, even if also self-interested, have the effect of benefiting the corporation financially”), *aff’d sub nom. Teachers’ Ret. Sys. of La. v. PricewaterhouseCoopers LLP*, 11 A.3d 228 (Del. 2011).

Second, the fiduciary/insider exception to the *in pari delicto* doctrine allows a suit to be brought against corporate fiduciaries who “knowingly caused the corporation to commit illegal acts and, as a result, caused the corporation to suffer harm.” *AIG II*, 976 A.2d at 889. The *AIG II* court appeared, on public policy grounds, to limit the application of the fiduciary exception to “gatekeepers,” third parties employed by a corporation to help ensure the lawful operation of the corporation. *Id.* at 890 n.49, 892–93; *see also RBC Cap. Mkts.*, 129 A.3d at 865 n.191 (rejecting the proposition that financial advisors are inherently “gatekeepers,” explaining that “the role of a financial advisor is primarily contractual in nature” and defined by its engagement letter). Similarly, the fiduciary exception precludes application of the *in pari delicto* doctrine to aiding and abetting claims against “non-fiduciaries . . . who occupy a position of trust and materially participate in the traditional insiders’ discharge of their fiduciary duties.” *Stewart*, 112 A.3d at 320 (holding that the auditor defendants played a “gatekeeper” role).

The *in pari delicto* doctrine also applies to the Trustee’s professional malpractice claims. Under both New York law and Illinois law,⁹ professional malpractice claims are viewed as a species of negligence. See *Hydro Invs., Inc. v. Trafalgar Power Inc.*, 227 F.3d 8, 15 (2d Cir. 2000); *Hassebrock v. Bernhoft*, 815 F.3d 334, 341 (7th Cir. 2016).

It is settled in both New York and Illinois that the *in pari delicto* doctrine bars claims against co-conspirators for negligence. See, e.g., *Kirschner v. KPMG LLP*, 15 N.Y.3d 446, 464 (2010) (“The justice of the *in pari delicto* rule is most obvious where a willful wrongdoer is suing someone who is alleged to be merely negligent.”); *Peterson v. McGladrey & Pullen, LLP*, No. 10 C 274, 2010 WL 4435543, at *4 (N.D. Ill. Nov. 3, 2010) (“[T]he *in pari delicto* principles that preclude plaintiff from seeking redress for [the trustee’s] alleged negligence . . . apply equally to plaintiff’s claims against [the defendant auditor.]”), *vacated on other grounds*, 676 F.3d 594 (7th Cir. 2012). Thus, the *in pari delicto* doctrine precludes a corporation engaged in wrongdoing from suing its co-conspirators on the grounds of negligence.

2. Application

As an initial matter, accepting the Trustee’s factual assertions to be true, he plausibly alleges that the Financial Advisors aided and abetted Tribune’s directors and officers in breaching their fiduciary

⁹ In the district court, the parties disputed whether New York (where Citigroup and Merrill Lynch are headquartered) or Illinois (where Tribune was headquartered) law governed the Trustee’s professional malpractice claim. This argument has been largely abandoned, likely because, as the district court explained, the states’ laws are nearly the same.

duties when they hid Tribune's true financial state to complete the LBO. In particular, the Trustee's complaint alleges that Citigroup and Merrill Lynch reviewed VRC's solvency analysis and failed to alert anyone that the February Projections, which formed the bedrock of VRC's first solvency opinion, were no longer accurate. Instead, they allowed VRC's analysis to be delivered to the financing banks at Step One of the LBO. Likewise, the Trustee contends that Citigroup's analysis showed that Tribune was insolvent by more than \$1.4 billion before the close of Step Two, and Merrill Lynch's analysis showed that Tribune was insolvent by more than \$1.5 billion. Still, neither tried to stop the LBO.

Indeed, for purposes of these appeals, Citigroup and Merrill Lynch do not challenge the allegations of wrongdoing or negligence. Instead, they contend that any aiding and abetting breach of fiduciary duty and malpractice claims must be dismissed based on the *in pari delicto* doctrine. And for his part, the Trustee does not argue on appeal that the *in pari delicto* doctrine is inapplicable; instead, he argues that two exceptions to that doctrine should apply to allow the claims to go forward -- the adverse interest exception, which it argued below to the district court, and the fiduciary/insider exception, which it argues for the first time on appeal. This Court has discretion to consider arguments waived below where necessary to avoid a manifest injustice. *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008). In circumstances where those arguments were available to the party below and no reason is proffered for their failure to raise them, such an exercise of discretion is not favored. *Id.*

a. *Adverse Interest Exception*

Here, the adverse interest exception does not apply because the LBO conferred at least some “benefit” on Tribune. *AIG II*, 976 A.2d at 891. Tribune received over \$300 million in additional capital from Zell’s investment, and there was also the potential for \$1 billion in tax savings. Even putting aside the tax savings -- which Moody’s called a “key assumption” for the LBO, 449 J. App’x at 112, but which were ultimately never realized -- the transaction still infused hundreds of millions of dollars of capital into the business at a time when Tribune was struggling, provided value to many shareholders by helping cash them out, and gave Tribune a chance to continue as a going concern by allowing it to pay off at least some existing debt. Indeed, Tribune itself explained in a proxy statement that the LBO was in its best interest.

The Trustee also makes no specific allegations that support an inference that Tribune received *no* benefit from the LBO; instead, it contends that the net effect of the LBO was negative. But the net effect is not relevant when considering whether the adverse interest exception will apply. *Stewart*, 112 A.3d at 303. Therefore, despite any “long-term damage,” *id.*, the adverse interest exception to the *in pari doctrine* does not apply in this case.¹⁰

¹⁰ Notwithstanding the Trustee’s argument to the contrary, the district court did not resolve any issues of fact by holding that the adverse interest exception did not apply here. Instead, it simply observed that the infusion of \$300 million in capital stated in the Complaint conferred some benefit on Tribune, and therefore, the defendants had not acted “*solely* to advance [their] own personal financial interest.” *AIG*, 976 A.2d at 891 (emphasis added).

b. *Fiduciary/Insider Exception*

The Delaware Chancery Court has explained that for the fiduciary/insider exception to apply, the party must “occupy a position of trust and materially participate in the traditional insiders’ discharge of their fiduciary duties,” thereby playing a “‘gatekeeper’ role vis-à-vis the [corporation].” *Stewart*, 112 A.3d at 319. Here, the Trustee has failed to sufficiently allege that any of the Financial Advisors played such a role.

While a corporation’s auditors “assume[] a public responsibility transcending any employment relationship,” *United States v. Arthur Young & Co.*, 465 U.S. 805, 817–18 (1984) (emphasis omitted), and act as the gatekeepers of standards designed to avoid damage to corporations, the Delaware Supreme Court has emphasized that “the role of a financial advisor is primarily contractual in nature” and that a financial advisor’s “engagement letter typically defines the parameters of the financial advisor’s relationship and responsibilities with its client,” *RBC Cap. Mkts.*, 129 A.3d at 865 n.191. Here, the engagement letters between Tribune and Citigroup and between Tribune and Merrill Lynch expressly provide that they did not create fiduciary relationships and that Citigroup and Merrill Lynch were not acting as Tribune’s agents. The letters instead made clear that Tribune would “make an independent analysis and decision regarding any Transaction based on [their] advice.” 449 J. App’x at 366. Citigroup and Merrill Lynch were financial advisors, not “gatekeepers,” *AIG II*, 976 A.2d at 890 n.49, and, further, neither Citigroup nor Merrill Lynch “materially participate[d]” in the

discharge of fiduciary duties, *Stewart*, 112 A.3d at 320.

Moreover, the Delaware Supreme Court has cautioned against “inappropriately . . . suggest[ing] that any failure by a financial advisor to prevent directors from breaching their duty of care gives rise to an aiding and abetting claim against the advisor.” *RBC Cap. Mkts.*, 129 A.3d at 865 n.191. Instead, such a claim may arise where “the [financial advisor] knows that the board is breaching its duty of care and participates in the breach by misleading the board or creating [an] informational vacuum.” *Id.* at 862.

Here, although the Trustee lodges numerous allegations of misconduct on the Financial Advisors’ part, there is little to suggest that their conduct created an “‘informational gap[]’ . . . l[eading] to the Board’s breaches of fiduciary duties,” as occurred in *Stewart*, 112 A.3d at 322, much less the “fraud on the Board” and “intentional[] dup[ing]” of directors that warranted liability of the financial advisor in *RBC Cap. Mkts.*, 129 A.3d at 865. Rather, the Trustee alleges that Tribune’s officers and advisors conspired with their financial advisors (among others) to carry out the LBO.

Accordingly, the district court did not err in dismissing the Trustee’s aiding and abetting breach of fiduciary duty and professional malpractice claims against the Financial Advisors.

B. Intentional Fraudulent Conveyance Claims

As discussed above, the Bankruptcy Code allows a bankruptcy trustee to recover transfers made with “actual intent to hinder, delay, or defraud” creditors.

11 U.S.C. § 548(a)(1)(A). The complaint does not sufficiently allege that the transfers to Citigroup, Merrill Lynch, and Morgan Stanley as financial advisors were made with an “actual intent to hinder, delay, or defraud” creditors. *Id.* It does, however, sufficiently plead such an actual intent as to VRC.

As to Morgan Stanley, the complaint alleges that Tribune paid the firm \$10 million for a fairness opinion, but the complaint then barely mentions the fairness opinion again, much less suggest that payment for the opinion was motivated by fraudulent intent. Without additional allegations, the Trustee cannot satisfy Rule 9(b)’s heightened pleading standard as to Morgan Stanley.

As to Citigroup and Merrill Lynch, the Trustee’s allegations -- that these firms “were incentivized to promote the LBO over other proposals being considered by [Tribune],” 3049 J. App’x at 59, and that they “purported to rely on the unrealistic February 2007 Projections even as each month’s below-projection performance showed conclusively that they could not be achieved,” 3049 J. App’x at 118 -- are insufficient to support an inference of intent to defraud as to the payment of their financial advisory fees. *Kaiser*, 722 F.2d at 1582.

Specifically, the Trustee maintains that “multiple badges of fraud” support the requisite strong inference of fraudulent intent against Citigroup and Merrill Lynch, including that (1) the advisory fees were paid to these firms in December 2007, following the close of Step Two when Tribune was insolvent; (2) Tribune received less than reasonably equivalent value for the fees paid; (3) the fees were not paid in the ordinary course of Tribune’s

business; and (4) Tribune's management engaged in deceptive conduct by concealing the February and October Projections from certain others in management, and induced Citigroup and Merrill Lynch to use those projections to bring the LBO to a close. 449 Appellant's Br. at 53.

Regarding this first alleged badge of fraud, payments to Citigroup and Merrill Lynch when Tribune was insolvent weigh in favor of finding actual fraudulent intent. As to the second badge of fraud, whether Tribune received reasonably equivalent value for these payments is a disputed factual question, which also weighs in the Trustee's favor at this stage.

As to third badge of fraud, nothing in the pleadings supports the notion that fees paid to Citigroup and Merrill Lynch pursuant to their respective engagement letters were outside the ordinary course of Tribune's business. Rather, the pleadings on these payments relate to the tortious performance of financial advisory services and the alleged fraudulent nature of the LBO transaction as a whole. They do not admit an inference of fraudulent intent as to Tribune's specific payment of the advisory fees, *see Sharp*, 403 F.3d at 56, which occurred pursuant to engagement letters entered into with Citigroup and Merrill Lynch in October 2005, long before the LBO was proposed.

As to the fourth badge of fraud, the Trustee's allegations of deceptive conduct by Tribune's management are too attenuated from the advisory fee payments to Citigroup or Merrill Lynch to indicate Tribune's intent as to those payments. At most, the Trustee's allegations indicate that Citigroup and

Merrill Lynch did not report Tribune's management's concealment of facts. But other checks on such behavior existed as Morgan Stanley and the Special Committee independently reviewed the relevant figures.

In sum, the Trustee's highlighted badges of fraud fail to raise a strong inference of fraudulent intent. In the absence of other common badges of fraud -- reserving rights in the property, hiding funds, and paying an unconscionable price, *Kaiser*, 722 F.2d at 1582 -- the Trustee has not satisfied the heightened pleading standard for demonstrating an actual fraudulent conveyance as to Citigroup and Merrill Lynch.

The Trustee contends that these same "multiple badges of fraud" also support the requisite strong inference of fraudulent intent as to VRC. The first alleged badge of fraud weighs against finding actual fraudulent intent because VRC received the majority of its payment before Step Two closed and, therefore, prior to Tribune's insolvency.

As to the second alleged badge of fraud, whether Tribune received reasonably equivalent value for these payments is again a disputed factual question, weighing in the Trustee's favor at this stage.

The third alleged badge of fraud favors a finding of actual fraudulent intent for the payments made to VRC. Specifically, the Trustee alleges that: Tribune hastily hired VRC after Duff & Phelps, the company initially hired to perform a solvency analysis, informed Tribune that it could not provide a favorable solvency opinion, and after another "prominent" valuation firm rebuffed Tribune, 3049 J. App'x at 211;

VRC charged Tribune the highest fee it had ever charged for a solvency opinion; and VRC agreed, among other things, to define “fair value,” *id.* at 212, inconsistently with the industry standard upon which VRC had relied for its previous solvency opinions. These allegations are sufficient to admit an inference that the VRC payments were outside the ordinary course of Tribune’s business. *See In re Lehman Bros. Holdings Inc.*, 469 B.R. 415, 447–49 (Bankr. S.D.N.Y. 2012) (concluding that actual intent was sufficiently pled where allegations included, *inter alia*, that “each transaction . . . was unprecedented in the prior course of business between the parties, and the industry generally”).

As to the fourth badge of fraud, the Trustee persuasively argues that Tribune’s management’s manipulation of the definition of “fair value” in its engagement letter with VRC was deceptive conduct that was (1) necessary for the LBO to proceed and (2) directly tied to Tribune’s payments to VRC, in that VRC was retained precisely because it was willing to employ such a definition in formulating a solvency opinion. Further, the questionable nature of the “fair value” definition is highlighted by VRC’s charge of an unprecedented fee to take the assignment.

In sum, as to Morgan Stanley, Citigroup, and Merrill Lynch, we agree with the district court that the pleaded badges of fraud are insufficient to create a strong inference of actual fraudulent intent. As to VRC, however, we conclude that the Trustee has sufficiently pleaded actual fraudulent intent.

C. *Constructive Fraudulent Conveyance Claims*

A trustee may recover “constructive” fraudulent transfers where “the debtor . . . received less than a reasonably equivalent value in exchange for such transfer or obligation” and: (1) “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”; (2) “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”; (3) “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 (4) “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.” See 11 U.S.C. § 548(a)(1)(B).

The Bankruptcy Code does not define “reasonably equivalent value,” only defining “value” as the “satisfaction . . . of a present or antecedent debt of the debtor.” *Id.* § 548(d)(2)(A). This court, however, has stated that “reasonably equivalent value is determined by the value of the consideration exchanged between the parties *at the time of the conveyance or incurrence of debt* which is challenged.” *In re NextWave Pers. Commc’ns, Inc.*, 200 F.3d 43, 56 (2d Cir. 1999) (internal quotation marks omitted). Hence, in determining whether the debtor received “reasonably equivalent value,” the court “need not strive for mathematical precision” but “must keep the equitable purposes of the statute firmly in mind,

recognizing that any significant disparity between the value received and the obligation assumed . . . will have significantly harmed the innocent creditors.” *Rubin v. Mfrs. Hanover Tr. Co.*, 661 F.2d 979, 994 (2d Cir. 1981) (discussing § 67(d) of the Bankruptcy Act of 1898, predecessor to § 548 of the Bankruptcy Code); *see also United States v. McCombs*, 30 F.3d. 310, 326 (2d Cir. 1994) (“[T]he concept [of fair consideration] can be an elusive one that defies any one precise formula.” (discussing N.Y. Debt. & Cred. Law § 272)).

To determine whether reasonably equivalent value was provided, “the Court must ultimately examine the totality of the circumstances, including the arms-length nature of the transaction; and . . . the good faith of the transferee.” *In re Bernard L. Madoff Inv. Sec. LLC*, 454 B.R. 317, 334 (Bankr. S.D.N.Y. 2011) (internal quotation marks omitted).

Where the reasonably equivalent value analysis requires “more than a simple math calculation,” such a computation usually should not be made at the motion to dismiss stage. *Id.*; *see also In re Agape World, Inc.*, 467 B.R. 556, 571 (Bankr. E.D.N.Y. 2012). Still, while the determination of whether reasonably equivalent value was exchanged is “largely a question of fact,” *Am. Tissue Inc. v. Donaldson, Lufkin & Jenrette Secs. Corp.*, 351 F. Supp. 2d 79, 105 (S.D.N.Y. 2004) (internal quotation marks omitted); *accord In re Jesup & Lamont, Inc.*, 507 B.R. 452, 470 (Bankr. S.D.N.Y. 2014), courts have dismissed constructive fraudulent transfer claims where the complaint does not plausibly allege that the debtor received less than reasonably equivalent value, *see, e.g., In re Trinsum Grp., Inc.*, 460 B.R. 379, 388–89 (Bankr. S.D.N.Y. 2011) (dismissing constructive fraudulent transfer

claims due to the trustee's failure to sufficiently plead the less than reasonably equivalent value requirement); *In re Bernard L. Madoff Inv. Sec. LLC*, 458 B.R. 87, 113–15 (Bankr. S.D.N.Y. 2011) (dismissing certain of Trustee's claims that failed to meet the particularity requirement and relied on transfers outside the applicable time period).

Here, the various Financial Advisors are differently situated. Upon *de novo* review, we conclude that the constructive fraudulent conveyance claims against Citigroup and Merrill Lynch cannot be dismissed on the pleadings, but those against Morgan Stanley and VRC were properly dismissed.

As to Citigroup and Merrill Lynch, the Trustee alleges that the \$12.5 million success fee paid to each firm upon consummation of the LBO was a constructive fraudulent conveyance. We first consider "the time of the conveyance or incurrence of debt" to determine whether there was reasonably equivalent value. *NextWave*, 200 F.3d at 56 (emphasis and citation omitted). The district court found that the debt was incurred when Citigroup's and Merrill Lynch's engagement letters were signed, years before the LBO's completion, thus rendering the success fees that the Trustee seeks to claw back unavoidable antecedent debt. We conclude otherwise.

The pleadings record indicates that Citigroup's and Merrill Lynch's success fees were not debts incurred or owed until December 2007 when the LBO closed at Step Two, at which point a triggering "Strategic Transaction" took place. Indeed, under their engagement letters, Citigroup and Merrill Lynch were entitled to payment of their success fees only "upon consummation of a Transaction involving"

Tribune. 449 J. App'x at 368. Accordingly, the financial firms were only paid their success fees after the completion of Step Two and the closure of the LBO. Further, the engagement letters required Tribune to reimburse Citigroup and Merrill Lynch for all reasonable expenses incurred in providing financial advisory services prior to the consummation of the LBO, “[r]egardless of whether any [t]ransaction [was] proposed or consummated.” 449 J. App'x at 368; *see also id.* at 376. This suggests that Tribune’s obligations to pay the two \$12.5 million success fees were separate, additional debts that were only payable in the event of a successful transaction. Accordingly, because the success fees were only incurred upon consummation of the LBO, they were not antecedent debt constituting categorically reasonably equivalent value.

Because the Trustee has adequately pleaded Tribune’s insolvency upon the completion of Step Two, it is plausible that Tribune: (1) was “insolvent on the date” that the success fees were paid; (2) was engaged in the transaction of paying the success fees while it retained “unreasonably small capital”; and/or (3) “incurred” the success fees, which may have been “beyond [its] ability to pay.” Therefore, the issue of whether Citigroup’s and Merrill Lynch’s success fees constitute a constructive fraudulent transfer hinges on whether the services that Tribune received in exchange were of “reasonably equivalent value.” 11 U.S.C. § 548(a)(1)(B).

Turning then to the question of “reasonably equivalent value,” we note that according to Citigroup and Merrill Lynch’s engagement letters, Tribune owed success fees only if the advisors performed

satisfactorily. Specifically, Citigroup's engagement letter states that it will "perform such financial advisory and investment banking services for [Tribune] in connection with the proposed Transaction as are customary and appropriate in transactions of this type." Merrill Lynch's engagement similarly states that it "will perform such financial advisory and investment banking services for [Tribune] as are customary and appropriate in transactions of this type." The Trustee alleges that Citigroup and Merrill Lynch fell short of "customary and appropriate" industry standards, were grossly negligent in carrying out their responsibilities, and rendered their services in bad faith. Thus, according to the Trustee, because these firms provided "no value" to Tribune, consummation of the LBO would not trigger the contractual obligation to pay fees and the success fees should be clawed back.

On a motion to dismiss, we must accept factual allegations as true as long as they are not "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Nielsen v. Rabin*, 746 F.3d 58, 62 (2d Cir. 2014) (alteration and internal quotation marks omitted).

The complaint alleges plausible facts that Citigroup and Merrill Lynch knew or should have known the February Projections would not be met and that each firm thought Tribune was insolvent by over \$1 billion, and that they yet failed to act.

To determine whether the Financial Advisors' guidance met the standard of reasonably equivalent value, courts evaluate the totality of the circumstances, considering, *inter alia*, the number of hours worked, industry standards, fees paid compared

to the overall size of the transaction, when the engagement letters were signed, and opportunity costs. Here, the determination of whether the Citigroup and Merrill Lynch provided reasonably equivalent value likely requires more than “a simple math calculation.” *Madoff*, 454 B.R. at 334. Unlike in *In re Old Carco LLC*, where the trustee’s allegations simply “appl[ied] implausible values” or “omit[ted] other key assets,” 509 F. App’x 77, 79 (2d Cir. 2013) (summary order), the Trustee in this case alleges, amongst other failings, that Citigroup and Merrill Lynch failed to advise Tribune about the flaws in VRC’s Step One solvency analysis, which stemmed from the February Projections that the firms knew would not be met. The Trustees also alleges that both Citigroup’s and Merrill Lynch’s analyses showed Tribune was insolvent by more than \$1 billion before the close of Step Two. How much, if at all, this ought to detract from the fees they were paid should not have been decided on a motion to dismiss. *See In re Actrade Fin. Techs. Ltd.*, 337 B.R. 791, 804 (Bankr. S.D.N.Y. 2005) (“[T]he question of ‘reasonably equivalent value’ and ‘fair equivalent’ is fact intensive, and usually cannot be determined on the pleadings.”); *see also In re Andrew Velez Const., Inc.*, 373 B.R. 262, 271 (Bankr. S.D.N.Y. 2007) (declining to dismiss constructive fraudulent transfer claim given the complexities of the factual background giving rise to the issue of “reasonably equivalent value”).

While it is a close call, because we are required to accept the allegations in the Trustee’s complaint as true, we conclude the factual question of whether Citigroup and Merrill Lynch provided reasonably equivalent value for their success fees cannot be decided without first assessing whether the banks

satisfactorily performed their duties. Thus, dismissal of the constructive fraudulent conveyance claims against these parties was premature.

In contrast, we find no error in the dismissal of these claims against Morgan Stanley and VRC. While these firms adopt the arguments set forth by Citigroup and Merrill Lynch, their actions differ in several important respects. First, Morgan Stanley was hired as advisor for and was responsive to a different part of Tribune -- the Special Committee. Second, Morgan Stanley and VRC did not have the same incentives as Citigroup and Merrill Lynch. Because both Morgan Stanley and VRC earned their respective fees upon delivery of their contracted-for opinions, they had no financial stake in the LBO's consummation. Finally, and most important, the Morgan Stanley and VRC payments were in large part due *before* Step One closed. Because there is hardly an allegation that Tribune was insolvent before the first step, the constructive fraudulent transfer claims against Morgan Stanley and VRC must fail.

VI. *Leave to Amend*

The Trustee sought leave to amend his complaint as to the shareholders in two respects: first, to provide additional allegations in support of his intentional fraudulent conveyance claims and, second, to add a constructive fraudulent conveyance claim. The district court denied both requests.

“[L]eave [to amend] shall be freely given when justice so requires.” *Ronzani v. Sanofi S.A.*, 899 F.2d 195, 198 (2d Cir. 1990) (citing Fed. R. Civ. P. 15(a)(2)). A court may deny leave to amend, however, for a “valid ground,” *id.*, such as futility or undue prejudice,

see *Foman v. Davis*, 371 U.S. 178, 182 (1962). “Futility is a determination, as a matter of law, that proposed amendments would fail to cure prior deficiencies or to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.” *Empire Merchs., LLC v. Reliable Churchill LLLP*, 902 F.3d 132, 139 (2d Cir. 2018). To determine whether granting leave to amend would be futile, we consider the proposed amendments and the original complaint. See *Pyskaty v. Wide World of Cars, LLC*, 856 F.3d 216, 225–26 (2d Cir. 2017).

A. Intentional Fraudulent Conveyance Claims

In denying the Trustee leave to amend his intentional fraudulent conveyance claims, the district court noted that the Trustee gave “no clue as to how the complaint’s defects would be cured.” 3049 S. App’x at 26 (alteration omitted). On appeal, the Trustee argues that if given the opportunity to amend, he would have been able to satisfy the imputation standard applied by the district court.

We are not persuaded. The Trustee had ample opportunity to plead a viable claim in the district court -- indeed, the operative pleading was the *Fifth* Amended Complaint -- but he failed to propose any amendments that would cure the pleading defects. Nor has he identified on appeal any additional factual allegations that would give rise to a strong inference of fraudulent intent on the part of the Special Committee. Accordingly, we find no abuse of discretion in the district court’s denial of leave to amend the Trustee’s intentional fraudulent transfer claims.

B. Constructive Fraudulent Conveyance Claims

The Trustee did not initially assert a constructive fraudulent transfer claim against the shareholders but sought leave to file a Sixth Amended Complaint to add such a claim. On April 23, 2019, the district court (Cote, *J.*) denied the request, on two independent grounds: (1) the shareholders would suffer substantial prejudice; and (2) the proposed amendments to the constructive fraudulent transfer claim would be futile.

Under the Bankruptcy Code, certain transactions fall within a safe harbor and the payments that are part of those transactions cannot be clawed back via a federal constructive fraudulent transfer claim. *See* 11 U.S.C. §§ 544, 546(e). These include a payment made “in connection with a securities contract” if that payment was made by “a financial institution.” *Id.* at § 546(e). As we held in *Tribune II*, however, Tribune’s payments to its shareholders fell within this safe harbor. *See* 946 F.3d at 77–81, 90–97 (holding that Tribune was a “financial institution” within meaning of safe harbor provision and that payments to shareholders were payments “in connection with a securities contract”). On appeal, the Trustee argues that the district court and the *Tribune II* panel improperly concluded that Tribune was a financial institution, first by incorrectly taking judicial notice of certain documents and second by misinterpreting those documents. We are not persuaded.

As an initial matter, we are bound by the *Tribune II* panel’s decision that Computershare Trust Company (“CTC”), a financial institution for purposes of § 546(e), was Tribune’s agent when it served as a depository to help effectuate the LBO, which was a

securities contract. *Tribune II*, 946 F.3d at 78-81; see also *4 Pillar Dynasty LLC v. New York & Co., Inc.*, 933 F.3d 202, 211 n.8 (2d Cir. 2019) (“We are bound by the decision of prior panels until such time as they are overruled either by an en banc panel of our Court or by the Supreme Court.” (internal quotation marks omitted)).

The Trustee takes issue with how the district court took judicial notice of certain documents to conclude that CTC was Tribune’s agent. That argument is without merit, as “[w]e have recognized . . . that in some cases, a document not expressly incorporated by reference in the complaint is nevertheless ‘integral’ to the complaint and, accordingly, a fair object of consideration on a motion to dismiss.” *Goel v. Bunge, Ltd.*, 820 F.3d 554, 559 (2d Cir. 2016). “A document is integral to the complaint where the complaint relies heavily upon its terms and effect.” *Id.* (internal quotation marks omitted). Here, the documents the district court relied on were the contracts that set forth the relationship between Tribune and CTC, and they were therefore integral to the complaint.

Similarly, the Trustee’s argument that CTC was not Tribune’s agent because it was given no discretion and was not a fiduciary lacks merit. Here, Tribune entered into an agreement with CTC whereby CTC was hired to be a steward of Tribune’s money and its shareholders’ stock. It was clearly acting on behalf of Tribune, which is enough to satisfy § 546(e). Accordingly, even on *de novo* review, the district court did not err when it denied the Trustee leave to amend its complaint as futile.

Separately, the district court did not abuse its discretion when it alternatively refused to grant leave to amend because doing so would be unduly prejudicial. There are thousands of shareholders who have been impacted by this ongoing litigation, all of whom relinquished control of their stock more than twelve years ago. As both this Court and the district court pointed out, allowing another amended complaint would prevent “certainty, speed, finality, and stability” in the market. 3049 S. App’x at 27 (citing *Tribune II*); see also *Trs. of Upstate N.Y. Eng’rs Pension Fund v. Ivy Asset Mgmt.*, 843 F.3d 561, 568 (2d Cir. 2016) (discussing the importance of finality).

Accordingly, we conclude that the district court did not abuse its discretion in denying the Trustee leave to amend his complaint to add a constructive fraudulent claim under federal law.

CONCLUSION

For the foregoing reasons, the judgment and orders of the district court are **AFFIRMED in part** and **VACATED in part** as follows:

1. the district court’s dismissal of the intentional fraudulent conveyance claims against the shareholders based on the buy-back of their shares is **AFFIRMED**;

2. the district court’s dismissal of the breach of fiduciary duty and aiding and abetting breach of fiduciary claims against the allegedly controlling shareholders is **AFFIRMED**;

3. (a) the district court’s dismissal of the aiding and abetting breach of fiduciary duty and professional malpractice claims against the Financial Advisors is **AFFIRMED**;

(b) the district court's dismissal of the actual fraudulent conveyance claims is **AFFIRMED** as to Morgan Stanley, Citigroup, and Merrill Lynch and **VACATED** as to VRC; and

(c) the district court's dismissal of the constructive fraudulent conveyance claims is **AFFIRMED** as to Morgan Stanley and VRC and **VACATED** as to Citigroup and Merrill Lynch; and

4. the district court's denial of the Trustee's motion for leave to amend to amplify his intentional fraudulent conveyance claim against the shareholders and to add a constructive fraudulent conveyance claim against the shareholders is **AFFIRMED**.

The case is hereby **REMANDED** for further proceedings in accordance with the above.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case Nos. 11md2296 (DLC), 12cv2652 (DLC)

IN RE: TRIBUNE COMPANY FRAUDULENT
CONVEYANCE LITIGATION

Filed: April 23, 2019

OPINION AND ORDER

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DENISE COTE, District Judge:

The Litigation Trustee for the Tribune Litigation Trust (the “Trustee”) has moved for leave to file a Sixth Amended Complaint (“6AC”) in Marc S. Kirschner, as Litigation Trustee for the Tribune Litigation Trust v. Dennis FitzSimons, et al., 12cv2652 (the “FitzSimons Action”) to add claims for constructive fraudulent transfer under 11 U.S.C. § 548(a)(1)(B) (“Federal CFT Claims”) against former shareholders of the Tribune Company (the “Shareholders” and “Tribune”). That motion is denied.

Background

This lawsuit arises out of the 2007 leveraged buyout (“LBO”) of Tribune and its subsequent bankruptcy in 2008. That transaction and subsequent events are described in greater detail in an Opinion of January 23, 2019. In re Tribune Co. Fraudulent Conveyance Litig., 11md2296 (DLC), 2019 WL 294807 (S.D.N.Y. Jan. 23, 2019). The following facts and procedural history are of particular relevance to the Trustee’s motion to amend.

In the two-step LBO, Tribune purchased all of its outstanding stock from the Shareholders for about \$ 8 billion. In order to carry out Step One of that transaction, Tribune transmitted the cash required to repurchase its shares in connection with a tender offer to Computershare Trust Company, N.A. (“CTC”) pursuant to CTC’s agreement to act as “Depositary.” CTC then accepted and held tendered shares on Tribune’s behalf and paid out \$ 34 per share to the tendering Shareholders. The Step One tender offer

was oversubscribed, and the remaining outstanding shares were repurchased in Step Two at the same price. In Step Two, CTC was engaged as an “Exchange Agent” to perform essentially the same function.

Soon after the LBO was completed, Tribune experienced serious financial difficulties. As a result of this financial distress, Tribune and many of its subsidiaries filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on December 8, 2008. On October 27, 2010, the Bankruptcy Court granted standing to the Official Committee of Unsecured Creditors of Tribune (the “Committee” or “UCC”) to assert claims on behalf of Tribune’s bankruptcy estate. The UCC initiated the FitzSimons Action in the Bankruptcy Court on November 1, 2010 against Tribune’s directors, officers, Shareholders, and financial advisors to claw back funds transferred during the LBO. Of particular relevance to the current motion, Count One in the FitzSimons Action was a claim against the Shareholders for intentional fraudulent transfer pursuant to 5 U.S.C. § 548(a)(1)(A) (the “Federal IFT Claim”).

On June 25, 2011, the Bankruptcy Court granted Tribune’s creditors (“Creditors”) relief from the automatic stay to allow them to pursue state law constructive fraudulent conveyance claims. That order stated that “[b]ecause no state law constructive fraudulent conveyance claims against [the Shareholders] were commenced by or on behalf of the Debtors’ estates before the expiration of the applicable statute of limitations under 11 U.S.C. § 546(a), the Debtors’ creditors have regained the right, if any, to prosecute their respective state law constructive

fraudulent conveyance claims against [the Shareholders].” The Creditors then filed numerous state law actions against the Shareholders in venues across the country (the “Creditor Actions”). On December 19, 2011, pursuant to 28 U.S.C. § 1407, the Judicial Panel on Multidistrict Litigation (the “MDL Panel”) consolidated approximately forty federal and state cases involving more than 5,000 defendants in the Southern District of New York before the Honorable Richard Holwell. See In re Tribune Co. Fraudulent Conveyance Litig., 831 F. Supp. 2d 1371 (J.P.M.L. 2011).

On March 20, 2012, the MDL Panel transferred the FitzSimons Action to the Southern District of New York to proceed as part of the MDL. On July 23, 2012, the Bankruptcy Court confirmed a plan for Tribune’s reorganization (the “Plan”) which transferred the UCC’s claims to a Litigation Trust (the “Trust”). The Plan defined the assets of the Litigation Trust to include

(a) any and all LBO-related Causes of Action that the Tribune Entities or the Debtors’ Estates may have or are entitled to assert on behalf of their respective Estates (whether or not asserted) against the Non-Settling Defendants under any provision of the Bankruptcy Code or any applicable nonbankruptcy law including, without limitation, any and all claims under chapter 5 of the Bankruptcy Code

The preserved causes of action specifically excluded “the Disclaimed State Law Avoidance Claims,” which in turn are defined as:

any and all LBO-related Causes of Action arising under state fraudulent conveyance law that existed in favor of any Holder of a Claim that arose prior to the Petition Date against Selling Stockholders . . . [except] (i) any claims for intentional fraudulent conveyance [and] (ii) any and all LBO related causes of action [asserted in the FitzSimons action].

On June 4, 2013, the Trustee moved as the “successor plaintiff” to the UCC in the FitzSimons Action to amend the operative complaint, a motion which was granted on July 22, 2013. On August 2, 2013, the Trustee filed the fifth amended complaint in the FitzSimons Action (“FAC”).¹

On September 23, 2013, the Honorable Richard Sullivan, to whom this litigation had been reassigned, granted the defendants’ motion to dismiss the Creditors’ state-law fraudulent conveyance claims brought in the Creditor Actions, finding that Section 362(a)(1) of the Bankruptcy Code deprives individual creditors of standing to challenge the same transactions that the UCC was simultaneously seeking to avoid. In re Tribune Co. Fraudulent Conveyance Litig., 499 B.R. 310 (S.D.N.Y. 2013). On September 30, 2013, the parties in those actions filed a joint notice of appeal, and on March 29, 2016, the Court of Appeals for the Second Circuit affirmed Judge Sullivan’s decision on different grounds, holding that Section 362(a)(1) did not deprive the

¹ Although this was the fifth amendment of the FitzSimons complaint, only the FAC made substantive changes to the complaint. The prior amendments made non-substantive changes such as adding or dropping defendants, correcting the caption, or fixing typographical errors.

Creditors of standing, but that their state law fraudulent conveyance claims were preempted by the Section 546(e) safe harbor provision of the Bankruptcy Code. In re Tribune Co. Fraudulent Conveyance Litig., 818 F.3d 98 (2d Cir. 2016). On July 22, 2016, the Second Circuit denied rehearing en banc, and the Second Circuit's mandate issued on August 1, 2016. On September 9, 2016, the plaintiffs in the Creditor Actions filed a petition for a writ of certiorari with the United States Supreme Court. See Deutsche Bank Tr. Co. Ams., et al. v. Robert R. McCormick Found., et al., No. 16-317.

On May 1, 2017, the Supreme Court granted certiorari in Merit Management Group, LP v. FTI Consulting, Inc., 137 S. Ct. 2092 (2017) (granting petition for a writ of certiorari). In Merit Management, the Seventh Circuit held that “the section 546(e) safe harbor [does not] protect[] transfers that are simply conducted through financial institutions (or the other entities named in section 546(e)), where the entity is neither the debtor nor the transferee but only the conduit.” 830 F.3d 690, 691 (7th Cir. 2016) (emphasis in original). The law in the Second Circuit at that time was that Section 546(e) applied to any transaction involving one of the financial entities listed in that section, “even as a conduit.” In re Quebecor World (USA) Inc., 719 F.3d 94, 100 (2d Cir. 2013). The law in the Third Circuit, where the FitzSimons Action originated, was the same. See In re Plassein Int'l Corp., 590 F.3d 252, 256-57 (3d Cir. 2009); In re Resorts Int'l, Inc., 181 F.3d 505, 516 (3d Cir. 1999).

On January 6, 2017, Judge Sullivan granted the Shareholders' motion to dismiss Count One of the

FAC in the FitzSimons Action, which sought to avoid billions of dollars paid to Tribune's Shareholders during the LBO as actual fraudulent conveyances under the Bankruptcy Code. In re Tribune Fraudulent Conveyance Litig., 11md2296 (RJS), 2017 WL 82391 (S.D.N.Y. Jan. 6, 2017). The January 2017 Opinion declined to impute the intent of Tribune's officers to Tribune for purposes of the Trustee's actual fraudulent conveyance claim, and determined that, although the Independent Directors' intent could be imputed to the Company, the Trustee had not sufficiently alleged that the Independent Directors acted with fraudulent intent. Id. at *11, *15. Following the January 2017 Opinion, Judge Sullivan partially lifted the discovery stay to allow document discovery to proceed.

On July 18, 2017, less than three months after the Supreme Court had granted certiorari in Merit Management, the Trustee sought permission to file a motion to amend the FAC to add the Federal CFT Claims, anticipating that the Supreme Court would reverse the Second and Third Circuit's interpretation of Section 546(e). On August 24, 2017, Judge Sullivan rejected that request as premature because the claim was "presently barred by governing circuit precedent," and "the mere prospect of change in law is not a sufficient grounds for permitting the filing of an otherwise admittedly futile amended complaint." Judge Sullivan's order also noted, however, that "[i]f, and when, the Supreme Court affirms the Seventh Circuit in [Merit Management], the Trustee would have a strong argument in support of amending his complaint to include the constructive fraudulent conveyance claim."

On February 27, 2018, the Supreme Court unanimously affirmed the Seventh Circuit’s decision in Merit Management. See Merit Mgmt. Grp., LP v. FTI Consulting, Inc., 138 S. Ct. 883 (2018), holding that “the relevant transfer for purposes of § 546(e) safe-harbor inquiry is the overarching transfer” Id. at 893. Shortly thereafter, on March 8, 2018, the Trustee renewed his request to file a motion to amend the FAC to add Federal CFT Claims to Count One against the Shareholder defendants. On April 3, 2018, Justice Kennedy and Justice Thomas issued a statement concerning the petition for certiorari in the Creditor Actions, advising the parties that

consideration of the petition for certiorari [would] be deferred for an additional period of time . . . [to] 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 [the Supreme Court’s] decision in Merit Management . . . given the possibility that there might not be a quorum in the [Supreme] Court.

Deutsche Bank Tr. Co. Americas v. Robert R. McCormick Found., 138 S. Ct. 1162, 1162–63 (2018). On May 15, 2018, the Second Circuit recalled the mandate in the Creditor Actions “in anticipation of further panel review.” On June 18, 2018, Judge Sullivan stayed the Trustee’s request to amend pending further action by the Second Circuit in the Creditor Actions, noting that the Second Circuit is likely to rule on the applicability of Section 546(e) to the LBO in the related Creditor Actions.

The MDL was reassigned to this Court on December 1, 2018. An Opinion and Order of January 23, 2019 resolved the outstanding motions in this case and dismissed several claims asserted against various remaining defendants. In re Tribune Co. Fraudulent Conveyance Litig., 11md2296 (DLC), 2019 WL 284807 (S.D.N.Y. Jan. 23, 2019). The parties were provided with a window of two months to settle all surviving claims, with depositions to begin on March 25, 2019 and fact discovery to conclude on December 13.

On March 26, 2019, the Trustee and the remaining defendants filed a joint letter alerting the Court that a settlement in principle had been reached with respect to virtually all remaining claims,² leaving only the Trustee's request to amend to be addressed. A telephone conference was held on March 27. At that conference, the Court proposed a schedule for briefing the Trustee's motion to amend and the parties were directed to meet and confer regarding that schedule. The parties adopted the Court's proposal and the Trustee filed his motion on April 4. That motion became fully submitted on April 12.³

² The sole exception was Count Twenty-Three of the FAC. Count Twenty-Three seeks recovery of a reimbursement paid to Morgan Stanley, pursuant to Section 547(b) and 550(a) of the Bankruptcy Code. On March 29, counsel for the Trustee filed a letter with the Court indicating that the parties had reached a settlement in principle with respect to that claim as well.

³ Subsets of Shareholders opposed the motion on grounds that are particular to them. Because this motion is resolved on global grounds, those arguments are not addressed in this Opinion.

Discussion

I. Judicial Estoppel

As a threshold matter, the Shareholders argue that the Trustee is barred from seeking amendment by the doctrine of judicial estoppel. That argument is unpersuasive.

The doctrine of judicial estoppel prevents a party from asserting a factual position in one legal proceeding that is contrary to a position that is successfully advanced in another proceeding. Judicial estoppel will prevent a party who failed to disclose a claim in bankruptcy proceedings from asserting that claim after emerging from bankruptcy.

BPP Illinois, LLC v. Royal Bank of Scotland Grp. PLC, 859 F.3d 188, 192 (2d Cir. 2017) (citation omitted). “Generally, judicial estoppel will apply if: [A] a party’s later position is clearly inconsistent with its earlier position; [B] the party’s former position has been adopted in some way by the court in the earlier proceeding; and [C] the party asserting the two positions would derive an unfair advantage against the party seeing estoppel.” Id. (citation omitted).

“[T]he exact criteria for invoking judicial estoppel will vary based on specific factual contexts.” Adelphia Recovery Trust v. Goldman, Sachs & Co., 748 F.3d 110, 116 (2d Cir. 2014) (citation omitted). The purpose of the doctrine “is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment.” Id. (citation omitted). “Because the rule is intended to prevent improper use of judicial machinery, judicial estoppel is an equitable

doctrine invoked by a court at its discretion.” New Hampshire v. Maine, 532 U.S. 742, 750 (2001) (citation omitted).

Judicial estoppel is not appropriate here. The Trustee’s motion to amend is occasioned by an intervening change in governing law. Judicial estoppel is generally applied to inconsistent factual positions. BPP Illinois, 859 F.3d at 192. Courts regularly allow plaintiffs to amend their pleadings when there has been an intervening change in governing law during the pendency of the litigation. See, e.g., Elsevier Inc. v. Grossman, 12cv5121 (KPF), 2017 WL 1843298, at *9 (S.D.N.Y. May 8, 2017) (collecting cases).

The Shareholders argue that the Trustee’s predecessor, the UCC, took an “inconsistent position” in the Bankruptcy Court, where it supported the lifting of the automatic stay to allow the Creditors to pursue state law CFT claims. Judicial estoppel requires “a true inconsistency between the statements in the two proceedings. If the statements can be reconciled there is no occasion to apply an estoppel.” Wight v. BankAmerica Corp., 219 F.3d 79, 90 (2d Cir. 2000) (citation omitted). The UCC went to great lengths in the Bankruptcy Court to distinguish the claims it intended to pursue in the FitzSimons Action from the CFT claims the Creditors sought to pursue. These statements are easily reconcilable with the position the Trustee now asserts. At no point did the Trustee or his predecessor disclaim the Federal CFT Claims. Rather, the Trustee disclaimed only state law CFT claims, which were then asserted by the Creditors. It is true that the Trustee and its predecessor were not always precise about

distinguishing between state and federal CFT claims when arguing before the Bankruptcy Court. Read in context, however, these statements indicate that the Trustee and his predecessor disclaimed only state law CFT claims, while retaining any claims under federal law, including under Chapter 5 of the Bankruptcy Code. The Bankruptcy Court's order lifting the automatic stay confirms this, as does the Plan.

The Shareholders further argue that the Bankruptcy Court "undoubtedly would have approached the proceedings differently" but for the UCC's and the Trustee's statements. This contention is largely speculative, especially considering that both the lift stay order and the Plan clearly preserved the Federal CFT Claims for the Trustee.

II. Leave to Amend

Under Rule 15(a)(2), Fed. R. Civ. P., a party may amend its pleading only with the opposing party's written consent or the court's leave. "The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Nevertheless, it remains "within the sound discretion of the district court to grant or deny leave to amend." Kim v. Kimm, 884 F.3d 98, 105 (2d Cir. 2018) (citation omitted). Leave to amend may be denied "for good reason, including futility, bad faith, undue delay, or undue prejudice to the opposing party." Id. (citation omitted).

Prejudice to the opposing party may occur if the new claim would: "(i) require the opponent to expend significant additional resources to conduct discovery and prepare for trial; (ii) significantly delay the resolution of the dispute; or (iii) prevent the plaintiff from bringing a timely action in another jurisdiction."

Pasternack v. Shrader, 863 F.3d 162, 174 (2d Cir. 2017) (citation omitted). Mere delay absent a showing of bad faith or undue prejudice is insufficient to deny the right to amend. Id. Nor can complaints of “the time, effort and money expended in litigating the matter,” without more, constitute prejudice sufficient to warrant denial of leave to amend. Id. (citation omitted).

A proposed amendment is “futile when it could not withstand a motion to dismiss.” F5 Capital v. Pappas, 856 F.3d 61, 89 (2d Cir. 2017) (citation omitted). “Thus, the standard for denying leave to amend based on futility is the same as the standard for granting a motion to dismiss.” IBEW Local Union No. 58 Pension Trust Fund and Annuity Fund v. Royal Bank of Scotland Grp., PLC, 783 F.3d 383, 389 (2d Cir. 2015). On a motion to amend, like a motion to dismiss, all factual allegations in the complaint are accepted as true and all reasonable inferences are drawn in favor of the plaintiff. See Krys v. Pigott, 749 F.3d 117, 128, 134 (2d Cir. 2014).

“A complaint is deemed to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference.” Nicosia v. Amazon.com, Inc., 834 F.3d 220, 230 (2d Cir. 2016) (citation omitted). A court may also consider documents that are “integral to the complaint.” Goel v. Bunge, Ltd., 820 F.3d 554, 559 (2d Cir. 2016). “A document is integral to the complaint where the complaint relies heavily upon its terms and effect.” Id. A court may consider “documents that the plaintiffs either possessed or knew about and upon which they relied in bringing the suit” Rothman v. Gregor, 220 F.3d 81, 88 (2d Cir. 2000). A court may

also take judicial notice of “relevant matters of public record.” Giraldo v. Kessler, 694 F.3d 161, 164 (2d Cir. 2012).

a. Bad Faith

The Shareholders contend that the Trustee’s motion to amend is brought in bad faith, because his predecessor made a tactical decision to disavow the Federal CFT Claims in order to allow the Creditors to pursue CFT claims under state law. This argument is unpersuasive. The Trustee correctly notes that, both at the time the FitzSimons Action was commenced, and at the time the FAC was filed, it was settled law in both the Second Circuit and the Third Circuit (where the action was initially commenced) that Section 546(e) barred a bankruptcy trustee from pursuing a Federal CFT Claim where the challenged transaction went through a financial institution acting as an intermediary or conduit. Merit Management reversed that holding and, in the Trustee’s view, opened the door for his Federal CFT Claims. This intervening change in law gave the Trustee a good faith basis to pursue amendment of the FAC.

The Shareholders argue that the Trustee and his predecessor could have pursued his Federal CFT Claims earlier, notwithstanding controlling precedent in the Second and Third Circuits, by seeking en banc review or Supreme Court review of those precedents, and that he and his predecessor made a strategic decision not to do so. It is unsurprising that the Trustee chose not to expend the resources of the Trust by pursuing a claim that was barred by governing law. This does not support an inference that the Trustee’s current motion to amend is brought in bad faith.

b. Undue Delay

Nor did the Trustee unduly delay seeking leave to amend. While Merit Management was pending, the Trustee diligently sought leave to amend in response to an anticipated change in governing law. Judge Sullivan denied that request as premature because Merit Management had not yet been decided. After Merit Management was decided, the Trustee promptly renewed his request for leave to amend.

c. Undue Prejudice

It is true, however, that the Shareholders will suffer substantial prejudice if the Trustee's proposed amendment is allowed. It is of particular significance that, at this stage in the litigation, the only claim against the Shareholders asserted in the FitzSimons Action has been dismissed for over two years, subject to appeal. Because of the sheer size of this litigation, the number of defendants, and the number of claims asserted, the dismissal of the Federal IFT Claim against the Shareholders has not yet been reduced to judgment. The Trustee should not be permitted take advantage of this fortuity to justify further delay, despite his diligence in promptly seeking to amend his complaint in response to a change in law. Allowing the Trustee to add Federal CFT Claims against the Shareholders at this late hour would cause the Shareholders to "expend significant additional resources to conduct discovery and prepare for trial" and would "significantly delay the resolution of the dispute." Pasternack, 863 F.3d at 174 (citation omitted).

As Judge Sullivan noted in his January 2017 decision, any further amendment

would result in substantial prejudice to the Shareholder Defendants. Given the strong presumption that stock transactions are final, the resulting prejudice is especially acute here. More than 5,000 Shareholder Defendants -- alleged to have done nothing more than receive payment for their shares in an LBO -- have been in limbo for almost a decade. Any additional delay comes at a significant cost to the certainty, speed, finality, and stability of financial markets, a concern that animated Congress's drafting of the Bankruptcy Code and the Second Circuit's Opinion in [the Creditor Actions].

In re Tribune Fraudulent Conveyance Litig., 2017 WL 82391, at *21.⁴ Those concerns have only become more acute in the intervening twenty-eight months, and provide “good reason” for denial of this motion. See Kim, 884 F.3d at 105. Although the Trustee has a stronger basis for amending his complaint than he did in January 2017 because of an intervening change in governing law, that has little bearing on the prejudice that will be suffered by the Shareholders if this litigation were to continue on. Standing alone, undue prejudice to the Shareholders provides a sufficient basis upon which to deny the Trustee's motion.

⁴ The Trustee wrongly suggests that the Supreme Court rejected the argument that Section 546(e) was motivated by concerns about finality of transactions and stability of financial markets. In fact, the Court rejected the contention that Section 546(e) was meant to protect “component parts” of transactions, rather than transactions by certain types of covered entities. See Merit Management, 138 S. Ct. at 895. That has no bearing on the overall policy of the statute or whether Tribune is such a covered entity.

D. Futility

i. Relation Back

The statute of limitations for the Federal CFT Claims is two years. 11 U.S.C. § 546(a). The statute of limitations on the Trustee's Federal CFT Claims therefore expired in December 2010. Accordingly, the Federal CFT Claims are barred by the statute of limitations unless those claims relate back to the filing of the initial FitzSimons complaint in November 2010.

An amendment to a pleading relates back to the date of the original pleading when “the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out -- or attempted to be set out -- in the original pleading” Fed. R. Civ. P. 15(c)(1)(B). The Shareholders do not dispute that this standard is met here -- the Federal CFT Claims arise out of the same transaction that has been the subject of this litigation for nearly a decade.

The Shareholders argue, however, that the Federal CFT Claims cannot relate back because the only claim against the Shareholders -- the Federal IFT Claim in Count One -- has been dismissed. This argument is unavailing. Although the sole claim against the Shareholders has been dismissed, this action remains pending and the Federal CFT Claims relate back to the timely-filed IFT Claim.

ii. Section 546(e)

As an initial argument, the Trustee contends that the Shareholders' Section 546(e) defense cannot be adjudicated on this motion to amend because further factual development is necessary. That argument is unavailing. The application of Section 546(e) presents

a straightforward question of statutory interpretation of the type that is appropriately resolved on the pleadings.⁵

The Shareholders principally argue that the Trustee's proposed amendment would be futile because his Federal CFT Claims are barred by Section 546(e) notwithstanding the Supreme Court's holding in Merit Management.

Section 546(e) provides:

Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is 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, made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, or that is a transfer made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7), commodity contract, as defined in section 761(4), or forward contract, that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

⁵ The Trustee also notes that the application of Section 546(e) to the LBO is currently sub judice before the Second Circuit in the related Creditor Actions. It is unduly prejudicial to all parties to further delay adjudication of this sole remaining question in the FitzSimons Action and entry of judgment.

11 U.S.C. § 546(e). Of relevance to the analysis that follows, Section 546(e) bars a Trustee from asserting a claim for constructive fraudulent conveyance with respect to a “settlement payment . . . made by . . . [a] financial institution [or] financial participant,” or “a transfer made by . . . [a] financial institution [or] financial participant . . . in connection with a securities contract” 11 U.S.C. § 546(e).

There is no dispute that the transfers at issue here are both “settlement payments” and “in connection with a securities contract.” It is further undisputed that the transfers were made “by” Tribune. The parties disagree, however, whether Tribune was an entity covered by Section 546(e), that is, either a financial institution or a financial participant.⁶ The Shareholders contend that Tribune itself is both a financial institution and a financial participant, and that Section 546(e) therefore bars the Trustee’s Federal CFT Claims.

“Section 546(e) is a very broadly-worded safe-harbor provision that was enacted to minimize the displacement caused in the commodities and securities markets in the event of a major bankruptcy affecting those industries.” In re Bernard L. Madoff Inv. Sec. LLC, 773 F.3d 411, 416 (2d Cir. 2014) (citation omitted). “The safe harbor limits this risk by prohibiting the avoidance of ‘settlement payments’ made by, to, or on behalf of a number of participants

⁶ Several Shareholders have separately opposed this motion to amend on the ground that they are also financial institutions or financial participants, and thereby protected by Section 546(e). Given the finding that Tribune is a financial institution, it is unnecessary to address these contentions by certain Shareholders.

in the financial markets.” Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V., 651 F.3d 329, 334 (2d Cir. 2011). “Congress enacted § 546(e) to ensure that honest investors will not be liable if it turns out that a leveraged buyout (LBO) or other standard business transaction technically rendered a firm insolvent.” Peterson v. Somers Dublin Ltd., 729 F.3d 741, 748 (7th Cir. 2013) (Easterbrook, J.); see also, Grede v. FCStone, LLC, 746 F.3d 244, 252 (7th Cir. 2014) (“[T]he § 546(e) safe harbor protects the market from systemic risk and allows parties in the securities industry to enter into transactions with greater confidence.”); Samuel P. Rothschild, Bad Guys in Bankruptcy: Excluding Ponzi Schemes From the Stockbroker Safe Harbor, 112 Colum. L. Rev. 1376, 1380-81 (2012) (exploring the legislative history of Section 546(e) in the context of stockbrokers).

Statutory interpretation “begins . . . with the text of the statute.” Nat. Res. Def. Council, Inc. v. U.S. Food and Drug Admin., 760 F.3d 151, 172 (2d Cir. 2014). “Where the statutory language provides a clear answer, our analysis ends there.” Tanvir v. Tanzin, 894 F.3d 449, 459 (2d Cir. 2018) (citation omitted). “If the statute is ambiguous, then we may resort to canons of statutory interpretation to resolve the ambiguity.” Khalid v. Sessions, 904 F.3d 129, 132 (2d Cir. 2018) (citation omitted). Whether or not a statute is ambiguous is determined “by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” Id. (citation omitted).

1) Financial Participant

The Bankruptcy Code defines a “financial participant” as

An entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than \$ 1,000,000,000 in notional or actual principal amount outstanding (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has gross mark-to-market positions of not less than \$100,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition

11 U.S.C. § 101(22A)(A) (emphasis supplied). In order to be considered a financial participant, an “entity” must have entered into a covered transaction with “the debtor or any other entity (other than an affiliate).” The issue of statutory interpretation is whether the debtor -- here, Tribune -- may be the “entity” described at the beginning of this section. The better reading of the statute is that it cannot.

The Shareholders contend that this definition covers any “entity” -- including the debtor -- who enters into a covered transaction with “any other entity.” If the “entity” described in the first part of the definition could include the “debtor,” the inclusion of the term “debtor” in the second part would be

puzzling. It would be unusual if not impossible for the debtor to enter into the covered transactions with itself, and the Shareholders have not identified an example of a covered transaction in which that may occur. Further, if the term “entity” is meant to include the debtor, then it would be redundant to refer to “the debtor”, distinguishing it from “any other entity” in the second part of the definition. “It is one of the most basic interpretive canons that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” Hedges v. Obama, 724 F.3d 170, 189 (2d Cir. 2013). The clear text of the statute thus forecloses the Shareholders’ argument that Tribune is a “financial participant” as defined in 11 U.S.C. § 101(22A). Section 546(e) therefore cannot be applied to bar the Trustee’s Federal CFT Claims on this basis.

2) Financial Institution

The Bankruptcy Code defines a “financial institution” to include not only traditional financial institutions, but also, in defined circumstances, the customers of traditional financial institutions. The definition includes:

a Federal reserve bank, or an entity that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer (whether or not a ‘customer’, as defined in section 741) in connection with a securities

contract (as defined in section 741) such customer

. . . .

11 U.S.C. § 101(22)(A).

It is undisputed that CTC is both a “bank” and a “trust company.” The issues of statutory construction that are presented are thus: (1) was Tribune a “customer” of CTC? (2) was CTC acting as Tribune’s “agent or custodian”? and (3) was CTC acting “in connection with a securities contract”? Because all three of these questions are answered in the affirmative, not only CTC but also Tribune qualifies as a “financial institution,” as that term is defined in the Bankruptcy Code. The Trustee’s Federal CFT Claims are therefore barred by Section 546(e).

The allegations in the 6AC (and documents which may be relied on in resolving this motion) establish that Tribune was a “customer” of CTC. Section 101, which contains the definition of financial institution, does not define “customer.” In the absence of a statutory definition, “we give the term its ordinary meaning, starting our inquiry with contemporaneous dictionaries.” Munoz-Gonzalez v. D.L.C. Limousine Serv., Inc., 904 F.3d 208, 213 (2018); cf. UBS Fin. Servs., Inc. v. West Virginia Univ. Hosps., Inc., 660 F.3d 643, 650 (2d Cir. 2011) (applying the dictionary definition of the term “customer” where that term was not defined in the FINRA Code). The term “financial institution” was first added to Section 546(e) by the Bankruptcy Amendments Act of 1984, Pub. L. 98-353 (Jul. 10, 1984). Webster’s New Twentieth Century Dictionary, published in 1983, defines “customer” as “a person who buys, especially one who buys regularly.” Webster’s New Twentieth Century Dictionary (2d ed. 1983). The current version of the

Merriam-Webster dictionary defines a “customer” as “one that purchases a commodity or service.” Merriam-Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/customer>. The Fifth Edition of Black’s Law Dictionary, published in 1979, defines “customer” in as “A buyer, purchaser, consumer, or patron,” and “[i]n banking, any person having an account with a bank or for whom a bank has agreed to collect items.” Black’s Law Dictionary (5th ed. 1979). The current version similarly defines “customer” as “a buyer or purchaser of goods or services” and “a person having an account with a bank or for whom a bank has agreed to collect items.” Black’s Law Dictionary (10th ed. 2014).

Here, Tribune engaged the CTC’s services as depository in exchange for a fee. SEC filings indicate that CTC was retained by Tribune to “act as Depositary in connection with the Tender Offer” at Step One. It was a “purchaser” of CTC’s “services.” Tribune was CTC’s customer in connection with the LBO transactions at issue here.

The Trustee attempts to limit the definition of “customer” by reference to statutory definitions in Sections 741 and 761 of the Bankruptcy Code, but that effort is contrary to the clear terms of the statute. The definition of “financial institution” quoted above specifies that, in order to qualify as a “customer,” a covered entity need not be a “customer” as defined in Section 741. 11 U.S.C. § 101(22)(A). Section 741(2) defines “customer” for the purposes of the bankruptcy subchapter that deals with stockbroker liquidation.⁷

⁷ Specifically, this Section defines “customer” to include “(A) [an] entity with whom a person deals as principal or agent and that has a claim against such person on account of a security received,

Section 761(9) defines “customer” for the purpose of the subchapter that deals with commodity broker liquidation.⁸ Each of these sections is directed to a narrow issue; the transactions addressed in Section 546(e) are not so limited and the express disclaimer of a limited definition is both appropriate and understandable.

Second, CTC was acting as Tribune’s “agent.”⁹ “[I]t is a settled principle of interpretation that,

acquired, or held by such person in the ordinary course of such person’s business as a stock broker, from or for the securities account or accounts of such entity-- (i) for safekeeping; (ii) with a view to sale; (iii) to cover a consummated sale; (iv) pursuant to a purchase; (v) as collateral under a security agreement; or (vi) for the purpose of effecting registration of transfer,” as well as “(B) [an] entity that has a claim against a person arising out of-- (i) a sale or conversion of a security received, acquired, or held as specified in subparagraph (A) . . . ; or (ii) a deposit of cash, a security, or other property with such person for the purpose of purchasing or selling a security” 11 U.S.C. § 741(2).

⁸ Specifically, this Section defines the term “customer” “(A) with respect to a futures commission merchant,” “(B) with respect to a foreign futures commission merchant,” “(C) with respect to a leverage transaction merchant” “(D) with respect to a clearing organization,” and “(E) with respect to a commodity options dealer.” 11 U.S.C. § 761(9).

⁹ The definition of financial institution in Section 101(22) requires that CTC acted as Tribune’s agent or custodian. The term “custodian” is defined by 11 U.S.C. § 101(11) as “(A) a receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title; (B) assignee under a general assignment for the benefit of the debtor’s creditors; or (C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor’s creditors.” The

absent other indication, Congress intends to incorporate the well-settled meaning of the common-law terms it uses.” DeKalb Cty. Pension Fund v. Transocean Ltd., 817 F.3d 393, 405 (2d Cir. 2016) (citation omitted).¹⁰ 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 to so act.” Restatement (Third) of Agency § 1.01 (2006). Generally, the existence of a principal-agent relationship is a mixed question of law and fact. See Commercial Union Ins. Co. v. Alitalia Airlines, S.p.A., 347 F.3d 448, 462 (2d Cir. 2003). “While the existence of an agency relationship often turns on questions of fact, the issue is properly resolved as a matter of law where, as here, the relevant facts are uncontroverted.”

Shareholders do not contend that CTC was acting as Tribune’s custodian.

¹⁰ The Trustee suggests, in a footnote, that the term “agent” should not be construed more broadly than the term “custodian” because of the interpretive canon *noscitur a sociis* -- that a word in a statute “is known by the company it keeps.” See, e.g., Yates v. United States, 135 S. Ct. 1074, 1085 (2015). The Trustee is mistaken. *Noscitur a sociis* has limited application where, as here, there are just two words in a statutory phrase connected by a disjunctive “or.” That canon is more appropriately applied to “a string of statutory terms” or “items in a list.” Graham Cty. Soil and Water Conservation Dist. v. United States ex rel. Wilson, 559 U.S. 280, 288-289 (2010) (citation omitted). A court must construe the terms “agent” and “custodian” to give each of them meaning, or else run afoul of the equally important maxim that “statutes should be read to avoid superfluity.” Marx v. Gen. Revenue Corp., 568 U.S. 371, 392 (2013).

Johnson v. Priceline.com, Inc., 711 F.3d 271, 275 (2d Cir. 2013).

The facts asserted in the 6AC, when read in combination with documents that are either judicially noticeable or are integral to the complaint, establish that CTC was acting as Tribune’s agent. CTC was entrusted with billions of dollars of Tribune cash and was tasked with making payments on Tribune’s behalf to Shareholders upon the tender of their stock certificates to CTC. This is a paradigmatic principal-agent relationship.¹¹

Finally, CTC acted “in connection with a securities contract.” Section 741 defines the term “securities contract” broadly. As relevant here, that definition includes “a contract for the purchase, sale, or loan of a security . . . including any repurchase . . . transaction on any such security.” 11 U.S.C. § 741(7)(A)(i) (emphasis supplied). It also includes “any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph,” and “any security agreement or arrangement or other credit enhancement related to

¹¹ The Trustee also argues, in a footnote, that a customer qualifies as a financial institution only when the bank “is acting as an agent or custodian” at the time the avoidance claim is asserted. This argument is without merit. Both the definition of “financial institution” and Section 546(e) itself are couched in the present tense. Incorporating the definition of “financial institution,” Section 546(e) provides that the Trustee may not avoid, as constructively fraudulent, a transfer that “is a settlement payment” to a bank or trust company that “is acting as agent” for its customer, in connection with a securities contract. The better reading of the statute is that the bank or trust company must be acting as agent at the time the transfer is made.

any agreement or transaction referred to in this subparagraph.” Id. at 741(7)(A)(vii), (xi) (emphasis supplied). “Thus, the term ‘securities contract’ expansively includes contracts for the purchase or sale of securities, as well as any agreements that are similar or related to contracts for the purchase or sale of securities.” In re Madoff, 773 F.3d at 418. The Second Circuit has described 11 U.S.C. § 741(7)(A)(vii) as a “catch-all” provision, noting that “[f]ew words in the English language are as expansive as ‘any’ and ‘similar.’” Id. at 419, 421.

There can be no question that Tribune’s use of CTC to repurchase Tribune stock from Shareholders at both steps of the LBO involved the purchase of securities. This is sufficient to establish that CTC’s involvement in these LBO transactions was “in connection with a securities contract.”

The Trustee argues that such a holding is in conflict with the January 2019 decision regarding the Trustee’s claims against the Independent Directors for violation of Delaware corporate law. See In re Tribune, 2019 WL 294807, at *18-19. That decision applied the independent legal significance doctrine from Delaware law and held that since Step Two of the LBO was a “merger” under Section 251 of the Delaware General Corporation Law (“DGCL”), the Trustee could not pursue a claim against the Independent Directors for the “purchase or redemption of stock” under DGCL Section 160. Id. at *18. That application of the doctrine of independent legal significance has no bearing on the statutory question presented here. The Trustee has defined the transfer it seeks to avoid as Tribune’s payment of cash to its Shareholders. See, Merit Management, 138 S.

Ct. at 894. That transaction is a securities transaction and the Trustee “is not free to define the transfer it seeks to avoid in any way it chooses.” Id.

The Trustee next suggests that reading the definition of “financial institution” to cover an entity like Tribune would run counter to the spirit of the Supreme Court’s decision in Merit Management, which rejected the idea that a bank or trust company acting as a “mere conduit” can be sufficient ground to invoke the safe harbor provision. The tension suggested by the Trustee between the Shareholders’ successful invocation of Section 546(e)’s safe harbor and Merit Management does not exist. Among other things, in Merit Management the Supreme Court specifically declined to address the scope of the definition of “financial institution”: “The parties here do not contend that either the debtor or petitioner in this case qualified as a ‘financial institution’ by virtue of its status as a ‘customer’ under § 101(22)(A) We therefore do not address what impact, if any, § 101(22)(A) would have in the application of the § 546(e) safe harbor.” Merit Management, 138 S. Ct. at 890 n.2.

The text of Section 101(22)(A) compels the conclusion that Tribune itself was a “financial institution.” The Trustee’s Federal CFT claims are therefore barred by the safe harbor provided in Section 546(e). This result is consistent with Section 546(e)’s goal of promoting stability and finality in securities markets and protecting investors from claims precisely like these. The Trustee argues that Tribune was not a “systemically important” institution. But at the time of the LBO, Tribune was a publicly traded, Fortune 500 company. The Trustee

sued over 5,000 Shareholders of Tribune -- whose only involvement in this transaction was receiving payment for their shares -- to unwind securities transactions. This is precisely the sort of risk that Section 546(e) was intended to minimize.

Conclusion

Because the Trustee's Federal CFT Claims are barred by Section 546(e), his proposed amendment would be futile. Further, allowing the Trustee to amend his complaint at this stage of the litigation would result in undue prejudice to the Shareholders. The Trustee's April 4 motion to amend is denied.

Dated: New York, New York
April 23, 2019

/s/ Denise Cote
DENISE COTE
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 19-3049-cv
(D.C. No. 11md2296 (DLC)) (S.D.N.Y.)

IN RE: TRIBUNE COMPANY FRAUDULENT
CONVEYANCE LITIGATION

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE FOR THE
TRIBUNE LITIGATION TRUST,

Plaintiff–Appellant,

v.

LARGE SHAREHOLDERS, FINANCIAL ADVISORS,
FINANCIAL INSTITUTION HOLDERS, FINANCIAL
INSTITUTION CONDUITS, PENSION FUNDS, INDIVIDUAL
BENEFICIAL OWNERS, MUTUAL FUNDS,

Defendants–Appellees.

Filed: Oct. 7, 2021

ORDER

Appellant, Marc S. Kirschner, 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

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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:

Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe

APPENDIX D

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 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 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 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. 78l and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).

APPENDIX E**LIST OF RESPONDENTS**

1173132 Ontario Inc	A.G. Edwards & Sons, LLC
1199SEIU Greater NY Pension Fund LCV	A.G. Edwards Trust Company, FSB
1199SEIU Health Care Employees Pension Fund	Abbey Equity Fund ICVC Sub, The
1199SEIU Healthcare Employees Pension Fund MCV	Royal Bank of Scotland PLC, as Holder of Accounts
1199SEIU Home Care Employees Pension Fund	Abbey National Securities, Inc.
1993 GF Partnership #4 G-Bar	ABC Arbitrage SA
1998 Clarke Family Trust UA Dtd 2/12/98, Randall W Clarke, Tina Lin Clarke, Trustees	Abdul W Moten and Michelle L Moten Abigail Wallach
1st Source Bank	ABN AMRO Asia Financial Services, Ltd.
3GT Investment Partnership	ABN AMRO Equities (UK), Ltd.
3M Employees Welfare Benefits Association Trust I, Current Trustee	ABN AMRO Multi- Manager Funds
A & P Associates SB Advisor	Absolute Value Fund LP
A Erickson Shuster and Virginia G Shuster	Abu Dhabi Investment Authority
	ACM Group Trust- S&P 500, Current Trustee
	ACT, Inc. Large-Cap Value Fund

Adage Capital Partners LP	Alan R Rhen IRA R/O U/A Dtd 8/13/98, FCC, Custodian
Adam W. Potter, USAA Federal Savings Bank C/F	ALAP UK WP Norwich Union Investment Trust, Current Trustee
Adia Investment Series	Alaska Large-Cap Trust
Advanced Series Trust - AST QMA US Equity Alpha Portfolio f/k/a AST AllianceBernstein Managed Index 500 Portfolio	Alaska Permanent Fund Corporation
Advanced Series Trust - AST T. Rowe Price Asset Allocation Portfolio	Alberta Finance Alberta W. Chandler Marital Trust No. 2, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees
Advisors Inner Circle Fund - LSV Value Equity Fund	Alecta Pensionsforsakring Omsesidigt
Aetna Life Insurance Company	Alexander D Solon and Paula Solon
Affiliated Private Investors U.S. Core Value Fund, L.L.C.	Alexander Solon IRRA, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Custodian
AHL Pegasus Ltd.	Alexandra Global Master Fund Ltd
AIG U.S. Large Cap Fund - Offshore Class U	
Alan Devaney and Jill Devaney	
Alan Gerry	
Alan L Garner BGC Insurance Trust Plg	

<p>Alfa-Tech, LLC</p> <p>Alfred V Tjarks, Alfred V Tjarks Retirement Plan Dtd 02/18/85, Alfred V Tjarks Jr, Trustee</p> <p>Alfred W. Merkel, Marlowe G. Merkel Trust UA 11 Sep 85, Marlowe G. Merkel, Trustee</p> <p>Alfred Weinstein</p> <p>Alice C. Garner</p> <p>Alice Garner Money PPP</p> <p>Alison Ford Duncan, Acting Trustee and Beneficiary of the Alfred C. Glassell Jr. Children's Trust for Alison Ford Duncan</p> <p>Aliza Leah Rozman Trust, U/A Dtd 10/08/82, Marjorie Rozman, Nanette Rosenberg, Trustees</p> <p>Allan H Willard Trust U/A Dtd 9/7/93, Current Trustee</p> <p>Allegro Associates</p> <p>Allen C. Tanner Jr.</p>	<p>Allen Putterman MD SC Money Purchase Pension Plan</p> <p>Alliance Capital Group Trust, Tim McCarthy, Trustee</p> <p>Alliance Capital Management LLC</p> <p>AllianceBernstein L.P. f/k/a Alliance Capital Management Co f/k/a Alliance Capital Management LP</p> <p>AllianceBernstein Trust, AllianceBernstein Value Fund, Current Trustee</p> <p>Aloysius J & Eugene F Franz Foundation for the Congregation of the Mission</p> <p>Alphadyne International Master Fund Ltd</p> <p>Alpheus L. Ellis 1993 Grandchildren's Trust FBO Lynn Ann Sharp, The Northern Trust Company and Carol</p>
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E. Martin, Co-Trustees	Cooperman, Trustees
Alpine Associates II, L.P.	AM International
Alpine Associates	EMAC 63 Ltd/Vol Arb
Offshore Fund II Ltd.	AM Master Fund III, LP
Alpine Associates Offshore Fund Ltd.	Amelia Rose Howells
Alpine Associates, a Limited Partnership	Amelita Neiburger
Alpine Institutional LP	Amelita Neiburger Trust 5c-183, Amelita M Neiburger, Trustee
Alpine Partners, L.P.	American Enterprise Investment Services Inc
Alternative Fd LLC (Catalyst)	Ameriprise Trust Co.
Altma Fund Sicav PLC in Respect of the Amiens Sub-Fund	Ametek Inc Employees Master Retirement Trust, Current Trustee
Alvin A Vinegar Trust Sv-15, Alvin Vinegar, Trustee	Amida Partners Master Fund Ltd
Alvin Baum Jr 1966 Trust, Alvin H Baum, Trustee	Amy W Fong Living Trust U/A Dtd 06/14/1988, Arnold D Fong and Amy W Fong, Trustees
Alyce Tuttle Fuller Trust U/A Dtd 10/03/2003, Alyce Tuttle Fuller, Trustee	Anadarko Petroleum Corporation Master Trust, Apc
Alyn L Cooperman Revocable Trust Dated 8/25/1994, A Maitland & M	Administrative and Investment Committee, Trustee

<p>Andersen Defined Benefit, US Bank N.A., Trustee Andra-AP-Fonden (AP2) Andrea Reimann- Ciardelli Trust U/A Dtd 04/28/2006, Current Trustee Andrew Absler and Lauren F Absler Andrew Allen Charitable Foundation Sel Adv, Northern Trust, Trustee Andrew Boehm and Rita A Boehm Andrew J Ian Gary Wendy J Macken Family Trust UA 3/16/1999, Andrew J Ian Gary Wendy J Macken, Trustees Andrew J. McKenna Trust, Current Trustee Angelo D. Giancarlo Ann F. Parks Trust, William M. Parks, Trustee Annabelle M Frederickson #XXXXXXX0010, Mellon, Custodian</p>	<p>Anne Elizabeth McKenny 2007, Anne E McKenny, Trustee Anne McKenny Trust, Clara Whitney, Trustee Anne Rr Husk & Ef Porter III S Howells Trust 12/30/85, Martha S Molloy, J Cs Mullen, Trustees Anne S Howells Char Trust Dtd Dec 18 1989, Jane C. Mullen, Richard R. Husk, Trustees Anne S Scheiermann Anne W. Charpie Trust, Annie W. Charpie, Trustee Anne-Marie S Greenberg Annette O Glover Harold R Glover Trust UA 02/08/99, Annette O. Glover, Harold R. Glover, Trustees Anthony Tabasco III Anthony Y. Lin Anthony Yukseen Yau Antoinette B Brumbaugh Trust, Antoinette B</p>
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Brumbaugh, Trustee	Armstrong World Industries, Inc.
Aon Corporation	Retirement Master Trust, Current
APG a/k/a All Pensions Group Structured Research a/k/a APG Asset Management Us, Inc. f/k/a ABP Investments Us, Inc.	Trustee Arnold R Weber & Edna F Weber Arnold R Weber and Edna F Weber Arthur E Goldberg Arthur E Lee and Nancy L Lee Arthur Hoyer Rollover IRA, Scottrade Inc, Custodian
Aqua America-Gabelli Asset Management	Arthur R. Hoyer and Thelma L. Lemts Arthur Shawn Casey
Arc Revocable Trust, Robert Snyder, Trustee	Artis Aggressive Growth Master Fund LP
Archdiocesan Pension Plan of the Archdiocese of New York	Artis Aggressive Growth, L.P.
Archdiocese of Cincinnati	Artis Partners (Institutional), L.P.
Archdiocese of New York Master Trust, Current Trustee	Artis Partners 2x (Institutional), L.P.
Argyll Research LLC	Artis Partners 2x Ltd Artis Partners 2x, L.P.
Arie & Ida Crown Memorial	Artis Partners Ltd Artis Partners, L.P.
Arizona State Retirement System	Arturo Quinones Asbestos Workers Local 32 Pension Fund
Armen J Adajian Trust U/A 9/15/80, Armen J Adajian, Trustee	
Armenian Gen. Benevolent Union	

<p>Asbestos Workers Philadelphia Pension LCV Ascension Health Astrid K Birke Revocable Trust Dated 04/28/98, Astrid K Birke, Trustee AT&T Inc. Austin Trust Company Australian Company Number 003 113 960 Ltd Automobile Club of Southern California Automotive Machinists Pension Trust Fund Autry Community Property Trust, U/A Dtd 03/15/1985, Jacqueline E Autry, Trustee Avalon Trust Company Avery Dennison Corporation Master Retirement Trust a/k/a Avery Dennison Master Retirement Trust, Current Trustee Aviv Nevo AXA Equitable Life Insurance Company AXA Insurance</p>	<p>AXA Pacific Insurance Company AXA Premier VIP Trust AXA Premier VIP Trust - Multimanager Large Cap Core Equity Portfolio, Current Trustee AXA Premier VIP Trust - Multimanager Large Cap Value Portfolio Axelson Fam. Limited Partnership, Stephen Axelson and Linda Axelson B H Gerald Rogers Md Ltd Employee Pension Trust U/A 07/01/84, B H Gerald Rogers, Trustee Babson Bacap Equity Fund Xx1 Bank of America BAE Systems Land & Armaments Inc. f/k/a United Defense LP Bakery, Confectionery, Tobacco Workers &</p>
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Grain Millers International Pension Fund Baldwin Enterprises, Inc Balentine US Mid Cap Equity Fund Select Bank Julius Baer & Co. AG Bank of America Pension-T. Rowe Price, Bank of America, N.A. as Directed Trustee Bank of Montreal Holding, Inc. as Successor to BMO Nesbitt Burns Trading Corp. S.A. Bank of New York Mellon Corp Ret Plans Master Trust, Current Trustee Baptist Foundation of Texas Barbara Alter Barbara Anne Ward Living Trust U/A Dtd 11/20/2007, Barbara Anne Ward, Trustee Barbara Clements Heller Revocable Trust Dtd 3/22/01, Current Trustee	Barbara H Alter 2002 Declaration of Trust Dtd 12/12/2002, Barbara H Alter, Trustee Barbara J. Kneeland Barbara M Osborne Interim Tst Dtd 2/7/02, Jonathan Osborne & Elizabeth O Siegel, Trustees Barbara M Osborne Trust U/I/T Dtd 2/7/05, Jonathan Osborne, Elizabeth Siegel, Trustees Barbara M. J. Wood Living Trust U/A/D 9/17/81, The Northern Trust Company, Trustee Barbara M. Osborne Trust U/I/T Dtd 2/7/05, Jonathan Osborne, Acting Trustee Barbara Martell Barbara Atsaves Pabst IRA Rollover Fidelity Management Trust Co Cust
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Barclays Bank PLC - Barclays Capital Group	Battelle Memorial Institute Pn - Nasa Technical Reports Server
Barclays Capital Inc. Barclays Capital Securities Limited	Baxter International Inc.
Barclays Capital Securities Limited as Successor to BZW Securities Limited	BCBSM Foundation Blue Cross Blue Shield of Michigan (Bernstein Value)
Barclays Global Investors	Bear Stearns Asset Management, Inc.
Barrett C McGregor	Bear Stearns Equity Strategies Rt LLC
Barry David Kupferberg & Lori Banner Kupferberg	Bechtel Corporation Trust and Thrift Plan
Barry Shein Revocable Trust, Barry S Shein, Trustee	Bedford Oak Partners LP
Barry T Werblow and Bari Werblow	Bell Atlantic Master Trust, Current Trustee
BASF Corporation Pension Master Trust	Bellin Hospital Pension Trust, U.S. Bank N.A., Trustee
BASF Pensionkasse Wag	BellSouth Corp. Non- Representable Health Care Trust, Current Trustee
Bashar A Mubashir Bashar A Mubashir IRA Rollover Fidelity Management Trust Co Cust	BellSouth Corporation BellSouth Group Life Trust S&P, Current Trustee
Battelle Memorial Institute	BellSouth Healthcare S&P 500

<p>BellSouth/Alliance Benjamin J. Verdusco Trust, U/A Dtd 12/13/1989, Catherine A Verdusco, Trustee Benjamin Joseph Daly Gift Trust, Audrey Young, Trustee Bernadette Fingleton Bernard and Barbro Osher 2006 Charitable Remainder Unitrust #2, Bernard Osher and Barbro Osher, Trustees Bernard E Waterman and Edith B Waterman Bernard Osher 2006 Charitable Remainder Untrust #2, Bernard Osher, Trustee Bernard Osher Trust, Bernard Osher, Trustee Bernard Rabinowitz Trust U/A/D 09-11- 2006, Bernard Rabinowitz, Trustee Bernard W. Lincicome</p>	<p>Bernard Weinger GST Trust, Laurence S. Spector, Trustee Bernice K Wattman Trust, U/A Dtd 11/01/2002, Current Trustee Bethesda Master Trust, Current Trustee Bette Wendt Jore Bettie Sue Flynn Betty Beaird Living Trust U/A Dtd 4/10/87, Betty Beaird, Trustee Betty H. Roeland Marital Trust, The Roeland Family Trust UA 8/19/86, Betty H Roeland, Trustee Betty K. Zlatchin IRA, Delaware Charter Guarantee & Trust, Custodian Beturn BGI Cdn US Equity Index - Non Tax Fund BGICL Nonpension US Eq Big Sky, LLC Bill C. Ogle and Janie L. Ogle</p>
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Billie J Bouzek Trust U/A 1/28/00, Frank J Bouzek, Trustee	Blue Chip Fund, a Series of First Investors Life Series Funds
Binhua Mao Roth IRA, Etrade, Custodian	Blue Cross & Blue Shield of Kansas
Black Box Corporation	Blue Cross Blue Shield of Michigan Bcbsm Foundation
Black Diamond Arbitrage Offshore Ltd. Carlson Capital L.P.	Bernstein Value
Black Diamond Offshore Ltd. Carlson Capital L.P.	Blue Hills Bank f/k/a Hyde Park Savings Bank
Black River Global Equity Fund Ltd. f/k/a Black River Global Equity Arbitrage Fund Ltd.	Blythe T Belenky BMO Nesbitt Burns Inc./CDS
Blackburn Trust, Marsha Blackburn, Trustee	BMR 2 LLC
Blackport Capital Fund Ltd	BNA Employees Retirement Trust, Current Trustee
Blandina Rojek	BNP Paribas Arbitrage, SNCR
Blandina Rojek Char Ld. Trust, Friedman & Huey Associates, Trustee	BNP Paribas Private Bank, SA Hong Kong Branch (Pool 3 30% Withhold Dividend)
BLK Global Equity I	BNP Paribas Securities Corp.
Blue Chip Fund, a Series of First Investors Equity Funds	BNP Paribas Securities Corp. (Equity Derivatives SEFUSD)

BNP Paribas Securities Corp. (Paris Trading)	Bodmas Capital Partners LP
BNP Paribas Securities Services	BOKF, National Association f/k/a Bank of Oklahoma NA
BNY Mellon, National Association as Successor-In-Trust to Mellon Trust of New England, N.A.	Bonnie Gonzalez, as Beneficiary of the Estate of Alfred C. Glassell Jr.
BNYTD Equator Inv Fd ICVC NAmerica Large Mid Cap Eqty-Fd-T Rowe Price	Borrowed-NY, Stock BP Pension Services, Ltd
BOA Pension-Bacap Largecap Index, Bank of America, Trustee	Bradley A Long Traditional Ira
BOA Pension-CMG Largecap Index	Brandes Investment Funds PLC Brandes US Equities Fund
Board of Administration of the Water and Power Employees' Retirement Plan a/k/a Water and Power Employees' Ret Disab & Death Benefit Ins Plan, T. Rowe Price Associates, Inc., Custodian	Brandes Investment Partners, L.P. Brandes U.S. Equity Fund
Bob Fushimi and Clovie L. Fushimi	Brent Eastburg Hy/Sct Brent V Woods IRA Rollover, Charles Schwab & Co Inc, Custodian
	Bresler Family Investors LLC
	Brian Gormley
	Brian McGovern
	Brian Sheridan Hall

Bricklayers & Trowel Trades Intl Pension Fund MCV	Brumbaugh A B Irrv Trust, Pierce Atwood, Trustee
Bristol County Retirement System LCV	Building Trades United Pension Trust Fund, Current Trustee
Bristol-Myers Squibb Company Master Retirement Trust, Bob Ramnarine, Trustee	Burroughs Wellcome Fund
Broadridge Business Process Outsourcing, LLC f/k/a Ridge Clearing & Outsourcing Solutions	Burt Jm Test, Current Trustee
Brookline Avenue Partners, LP	Byrd Trading LLC
Brophy Properties Inc	C Hugh Stephens Trust U/A Dtd 11/08/2002, C Hugh Stephens, Trustee
Brown & James Pc Pft Shr Plan Dtd 91/03	C M Lloyd Mar GST Tax Exempt Trust U/D, Current Trustee
Bruce G Murphy and Lou Ann Murphy Jt WROS	Caceis Bank Caceis Bank Luxembourg (Client Account)
Bruce Kirkpatrick	Caisse De Depot Et Placement Du Quebec
Bruce Strohm Rev Trust U/A 05/12/93 FBO Bruce Strohm, Bruce Carlton Strohm, Trustee	Caldwell Foundation California Ironworkers Field Pension Trust, Board of Trustees
Brumback Family LLC Charles T. Brumback	California Master Trust, Current Trustee

California Public Employees' Retirement System	(Pooled S+P 500 Index Fund)
California Public Employees' Retirement System (California Public Employees' Fund)	California State Teachers' Retirement System
California Public Employees' Retirement System (Deferred Compensation Fund/Trust)	Calvert Variable Products, Inc. f/k/a Summit Mutual Funds, Inc.
California Public Employees' Retirement System (Dynamic Completion Fund)	Camden Asset Management LP and Barnet Partners Ltd
California Public Employees' Retirement System (Judges' Retirement System II Trust, California Employees' Retiree Benefit Trust, Legislators Retirement System Trust, Long-Term Care Fund Trust)	Camilla Chandler Family Foundation
California Public Employees' Retirement System	Canada Pension Plan Investment Board
	Canadian Imperial Holdings Inc.
	Cantor Fitzgerald & Co.
	Canyon Balanced Master Fund, Ltd. f/k/a Canyon Balanced Equity Master Fund, Ltd.
	Canyon Value Realization Fund, L.P.
	Canyon Value Realization Mac 18 Ltd Fortis Prime Fund Sol.
	Capitalia Azionario Usa Pv, Credit

Agricole, SA (Amundi Group f/k/a Systea Capital Management) Cara Leigh Gillespie- Wilson Carl F. Thorne and Rosella M. Thorne Carl H Spahr Carl V Clark IRA Fidelity Management Trust Co Cust Carl Weiner Testamentary Trust U/A/D 3/7/86, Helen Berman, Frances Goldstein, Trustees Carl Zlatchin Profit Sharing Plan, Delaware Charter Guarantee & Trust, Custodian Carlos Madrigal Jr and Elsa Madrigal Carmine Macchiaroli Living Trust U/A 07/01/88, Marie Macchiaroli, Carmine Macchiaroli, Trustees Carol E Jansson Trust U/A Dtd	06/17/1998, Carol E Jansson, Trustee Carol E Newman Revocable Trust UA 02-10-2006, Carol E. Newman, Trustee Carol Forace Carol S Rowe Rollover Account, Vanguard Fiduciary Trust Co, Custodian Caroline D Bradley Trust Dated 11/30/51 FBO Sarah Doll Barder, The Northern Trust Company, Trustee Carpenters Annuity Trust Fund for Northern California, Current Trustee Carpenters Pension Trust for Northern California, Board of Trustees Carr Total Return Fund Limited Partnership, Alpha Windward LLC Carrington M. Lloyd, Jr. Pld Carroll Pittman, Lou E Pittman Trust UA
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04/30/02 Pittman Trust, Current Trustee	Catholic United Investment Trust, Current Trustee
Caryl Pucci Rettaliata Designated Bene Plan	Caxton International Limited Caxton Associates, LP f/k/a
Casey and Associates, LLP	Caxton Associates, LLC
Cassandra Trading Group LLC	CBS Master Trust, Current Trustee
Caterpillar Inc. Group Insurance Plan	CD Investment Partners Ltd
Master Trust, Loci Colaw, Trustee	CDC Financial Products Inc.
Caterpillar Inc. Master Retirement Trust, Current Trustee	Cecil C. Smith IRA, Ptc, Custodian
Caterpillar Inc. VEBA LCV	Cedar Grove Cemetery Association
Caterpillar Investment Trust a/k/a	Perpetual Care Reserve Fund
Caterpillar, Inc. 401(K) Plan	Central Pension Fund
Caterpillar Portable Alpha	Central States Southeast and Southwest Areas Pension Fund
Catherine A. Campbell Trust Uad	Centurion Long-Term Strategies
9/21/1995, Robert D. Campbell, Trustee	Overseas, Ltd.
Catherine Verdusco & Francesca J	Cervurite
Verdusco Trust UA	Cervurite Family LLC
12/13/89, Catherine J Verdusco, Trustee	Cey Living Trust 5/14/87, Ronald C Cey & Frances L Cey Trustees

Chandler Family Trust C Dated April 15, 2012, Anne- Charlotte Chandler, Kristina Chandler Laviolette, Trustees	Guarantee & Trust Co., Trustee Charles R . Baugh, Jr. and Barbara Baugh Charles R Baugh Charles Rothers Trust UA 5/11/89, Janice E Rothers, Barbara A Rader, Charles T Rothers, Trustees Charles Stottlemeyer Trust UA Dtd 04/15/82, Charles E. Stottlemeyer, Trustee Charles T Brumback Jr and Kimberly C Brumback Charles T Martin Charles T. and Mary Howe Brumback Descendants Trust, The Northern Trust Company, Trustee Charles W Hammond Trust, James P Hammond, Trustee Charles Weinberg Charley Chunyu Lu & Biyang Zhang Charlotte Broder Revocable Living Trust, Current Trustee Charter Partners LP
Chandler Trust No. 1, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees	
Chandler Trust No. 2 and Chandler Sub- Trusts, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees	
Charlene Frost Trust, Gertrude K Chisholm, Trustee	
Charles Friedman	
Charles L. Edwards IRA R/O,	

Charter Trust Company	Chris Lindblad, Trustee
Cheetah + Co (T. Rowe Price Associates Inc.)	Chris P Stepuszek
Chemtura Corporation	Christian School Pension and Trust Fund Christian Schools International
Master Retirement Trust, Ann Budzynski, Trustee	Christiana L O'Connor
Cheryl Ann Goke Trust UA 12-16-1996, Cheryl Ann Goke, Trustee	Trust, Bank of America, N.A., Trustee
Chester S Cain IRA, Ameriprise Trust Company f/k/a H&R Block Financial Advisors, Custodian	Christopher J Appleby Trust U/A Dtd 12/13/1989, Jeffrey J Appleby, Trustee
Cheuk W Yung	Christopher K Carpenter
Chicago Community Foundation The Cellmer/Neal Family Foundation	Christopher Reilly
Chicago Mercantile Exchange	Christus Health Christus Health Cash Balance Plan - Christus Health Operating Fund LCV
Chicago Tribune Foundation	Chrysler Group LLC f/k/a Daimlerchrysler Corporation
Chinese National Council for Social Security Fund	CIBC Trust Corporation
Chris Carpenter	Imperial U.S. Equity Pool
Chris Lindblad Revocable Trust U/A/D 04-20-2000,	CIBC U.S. Broad Market Index Fund

CIBC World Markets Corp.	City of Los Angeles Employees' Retirement System
CIBC World Markets, Inc./CDS	City of Philadelphia Public Em
CIC	City of Stamford Classified Emp. Ret. Fund
Ciconia Co LLC, a Partnership	Civilian Employees' Retirement System of the Police Department of Kansas City, Missouri
Cigna Corporation	Clara Busch Orthwein Irrevocable Trust, Bank of America, N.A., Trustee
CIM XVI LLC	Clare Attwell Glassell, Individually and as the Beneficiary of the Clare Attwell Glassell Continuing Marital Trust, Alfred C. Glassell III, Acting Trustee
Cindy L Schreuder IRA Rollover, Charles Schwab & Co Inc, Custodian	Clarence G Petersen
Ciri Gillespie	Claresa F. M. Armstrong
Citadel Derivatives Group LLC	Claudia Brown
Citadel Equity Fund Ltd	Clear Cove Capital LP
Citadel Limited Partnership	Clearwater Investment Trust (Clearwater Growth Fund), Current Trustee
City National Bank	
City of Cincinnati	
City of Daytona Beach Police and Fire Pension	
City of Gainesville Police Officers' and Firefighters Retirement Plan	
City of Jacksonville Police & Fire Pension Board of Trustees Trust	

Clerical Medical Investment Group Limited	York Mellon, Trustee
Clinton Chan, Gabelli Asset Management Co.	College of the Ozarks Colleges of Applied Arts and Technology Pension Plan
CMA Capital Partners Fund GU IG Markets, CMA Capital Partners Ltd.	Colorado Public Employees' Retirement Association
CMCJL LLC	Columbia Large Core Quantitative Fund f/k/a Columbia Lc Indx
CNH Master Account L.P. CNH Partners, LLC	Columbia Large Core Quantitative Fund f/k/a Rvs VP Large Cap Equity Fund – Main
Coastview Equity Partners LP	Columbia University
Cobalt Trading LLC	Comerica 500 Index Fund - EB
Cogent Investment Strategies Master Fund, Spc-Class D	Comerica 500 Largecap Index - 584 (184)
Cohen Fam Rev Liv Trust, Milton L Cohen, Trustee	Comerica Bank & Trust, N.A.
Colin T Kerr Trust U/A Dtd 09/02/1977, Julie M. Kerr, Trustee	Comerica Bank & Trust, N.A., as Sponsor of Its Collective Investment Funds
Collective Investment Trust for Employee Benefit Plans, Current Trustee	Comerica Largecap Value Index - Eb
Collective Trust of the Bank of New York, The Bank of New	

Comerica Total US Equity Index Fd. 584	Conway 1992 Trust U/A Dated 01/16/1992, Christopher J. Conway, Ann W. Conway, Trustees
Commerzbank AG f/k/a Dresdner Bank Ag Commonwealth of Pa Treasury Department Funds Commonwealth of Pennsylvania Public School Employees' Retirement System Commonwealth of Pennsylvania Tuition Account Program Fund Community of Christ Church LCV Conair Corporation Connecticut General Life Insurance Company Connecticut Health Foundation, Inc. Cons Disc Select Sector Spdr Conseiller Managed Fund Ltd. Consolidated Edison Company of New York Constance Tolbert Yeso	Coppola Family Trust U/A Dtd 11/27/2001, Louis Coppola, Betty Coppola, Trustees Corinne Chandler Werdel Tst No. 1 GST Non-Exempt Qua, Tom Werdel, Trustee Corporation Service Company Corrie Norris White Cortese/Mogavero Joint Venture Cougar Trading LLC County Employees' and Officers' Annuity and Benefit Fund of Cook County Coutts US Equity Index Programme Cowen Capital LLC f/k/a Labranche Structured Products LLC Cox Family Educational Trust

U/A Dtd 08/02/2004, Rosemary T Cox, Trustee	CSX Corporation Master Trust Pension, Rick Patsy, Trustee
Craig P. Emmons Trust U/A FBO Craig P Emmons, Bank of America, N.A., Trustee	CTC Fund Management, L.L.C.
Craig W Dougherty Crane Co Master Trust, Current Trustee	CTC Master Fund Ltd CTS Corporation Master Retirement Trust, Donna Belusar, Trustee
Crawford Company LLC	Customer Friendly Creations
Credit Agricole Corp. & Investment Bank - Credit Agricole Securities (Usa) Inc.	Cutler Group, LP D & J Tenenbaum Revocable Trust U/A 8/14/06, David M Tenenbaum, Jann G Tenenbaum, Trustees
Credit Suisse (Luxembourg) Sa	D.E. Shaw & Co. LP
Credit Suisse First Boston Europe Ltd	D.E. Shaw Oculus Portfolios LLC
Credit Suisse International (Dealer)	D.E. Shaw Valence Portfolios LLC
Credit Suisse Securities (Europe) Ltd	D.E. Shaw Valence Portfolios LLC - Broad Core
Crow Realty Investors, LP	Daimlerchrysler Corp.
CS Zurich	Daimlerchrysler Corp. Veba LCV
CSS, LLC	

Dallas Police and Fire Pension System, Current Trustees	Daryl V Dichek
Dalton Trust	Davenport & Co. LLC
Agreement, U/A	David A Dichek
Dtd 10/03/2007,	David A. Noyes & Company
Derek M. Dalton,	David C De Sieyes
Karen E. Dalton,	David C. Twichell
Trustees	David D Grumhaus
Dana Corporation	1990 Trust U/A Dtd
Pension Plans	03/26/1990, David
Trust, Corey Lucas,	D Grumhaus,
Trustee	Trustee
Daniel A McCaughna	David E Neisser
IRA, FCC,	Irrevocable Trust
Custodian	Dated 8-14-83,
Daniel B. Oldham	Judith E Neisser,
Daniel Cohen and	Trustee
Barrie Cohen f/k/a	David Ertel and Beth
Barrie A. Kass	Ertel
Daniel J Hillary	David Greenspahn Tod
Daniel Opat Trust U/A	Herbert
Dtd 08/31/2006,	Greenspahn
Daniel Opat, Tracy	David Hochberg
Opat, Trustees	David Leighton Taylor
Daniel R Zuckerman	Rev Trust U/A/D
Daniel S Jursa IRA	09-09-2004, David
Rollover, Pershing	L. Taylor, Trustee
LLC, Custodian	David Mazzullo
Daniel S. Gregory	David N Kornfeld Psrp
Danske Bank	Ps, Fidelity
Darell F. Kuenzler	Management Trust
IRA, Edward D.	Co, Trustee
Jones & Co.,	David T.K. Lu
Custodian	DBI Fonds HPT USV
	DBSO Securities Ltd.

DBX Risk Arbitrage 7 Fund	U/A/D 10-28-1991, Denise E Palmer, Trustee
De Werd Trust U/A Dtd 05/04/1998, J De Werd, M De Werd, Trustees	Dennis Eugene De Haas
Dean L. Davenport	Dennis J Britt Rollover IRA, Scottrade Inc, Custodian
Deann K Riley and David L Riley Jt Ten	Dennis J. Layne Rollover IRA, Robert W Baird & Co Inc, Custodian
Deborah L Brice	Dennis S. Bunder
Debra A. Marthey	Depfa Bank PLC, Hypo Real Estate Bank International
Declaration of Bell Family Trust, Glen W. Bell Jr., Martha A Bell and Kathleen B Flynn, Trustees	Deseret Trust Co. Desjardins American Equity Value
Deepak Agarwal	Detroit Medical Center Consolidated Pension Plan and Master Retirement Trust, Current Trustee
Deere & Company Welfare Benefit Trust #1, Current Trustee	Detroit Policeman and Fireman Retirement System
Dekalb County	Deutsche Bank AG Amsterdam
Del Mar Master Fund, Ltd.	Deutsche Bank AG London
Deld Family Foundation Trust Uad 9/30/02, Dorothy L. Drummey, Paul Bourdeau, Trustees	Deutsche Bank AG London DB Alternative Trading
Denise Meck	
Denise Palmer Revocable Trust	

Inc. A/C US	Treuhand E.V.
Options	(DSPT)
Deutsche Bank AG	Devin J Murphy
London Ripley	Devin J Murphy IRA
Index	Fidelity
Deutsche Bank AG	Management Trust
London Ripley SPX	Co Cust
Lng-Auto	DF Media
Deutsche Bank AG	DGAM Heritage
London Ripley SPX	Absolute Return
Sht-Auto	Master Fund
Deutsche Bank AG	Diamond Consolidated
London SEF Swap	L.P.
Hedge Account	Diana L. Bonvegna
Deutsche Bank AG	CGM IRA, State
Map Trading	Street Bank and
Account	Trust Company,
Deutsche Bank AG	Custodian
Maps Provident	Diane Buchanan
Advisors LLC	Wilsey
Deutsche Bank AG	Dichek Family Trust
Westchester	U/A 12/11/74,
Capital	Shirley Dichek,
Management Inc.	Trustee
Deutsche Bank AG,	Dignity Health f/k/a
Filiale Amsterdam	Catholic Healthcare
Deutsche Bank AG,	West Funded
London, GED	Depreciation
Deutsche Bank USA	Dignity Health f/k/a
(Deutsche Bank	Catholic Healthcare
AG, Frankfurt)	West Retirement
Deutsche Lufthansa	Trust, Current
AG	Trustee
Deutsche Shell	
Pensionen	

<p>Dina Albright Tr- Times Mirror, Troy Gass, Trustee Direct Edge ECN A-F Direct Edge ECN LLC Direxion Funds Trust (Evolution All Cap Equity Fund) Direxion Insurance Trust, Current Trustee District 1199J New Jersey Health Care Employers Pension Plan a/k/a District 1199J New Jersey Health Care Employers Pension Fund Diversified Inv Adv E- Hzn DK Equity, LLC Doheny Eye Institute Dolores C. Mierkiewicz Dolores H. Russ Trust, Dolores H. Russ, Trustee Dominion Resources, Inc. Defined Benefit Master Trust, Current Trustee Don & Irene Baron Family Trust 7b- 251, Irene Baron, Trustee</p>	<p>Don Widrig Trust, Michael Richard Widrig, Gregory D Widrig, Trustees, Fidelity Management Trust Co Custodian - Roth Bda Trustee Donald A Agrella and Eleanor T Agrella Trust U/A/D 10-15- 88, Donald A Agrella, Eleanor T Agrella, Trustees Donald Carl and Sharron Louise Cramer Donald H Niederer Donald H Rumsfeld Donald Horwitz Donald M Hinman Jr Donald R Harris Living Trust UA Dtd 8/25/2000, Donald R Harris, Trustee Donald Rooney and Sara Rooney Donald Salmanson Trust, Current Trustee Donna Barrows Doreen M Klime Revocable Living Trust U/A Dtd</p>
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6/13/2006, L Klima, D Klima, Trustees Doris Duke Charitable Foundation Doris Keats Frank Revocable Trust UA 03/07/00, Doris Keats Frank, Trustee Dorothy B Chandler Marital Trust No. 2, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees Dorothy B Chandler Residuary Trust No. 2, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees Dorothy C. Patterson Irrevocable Trust #2 U/A/D 12-21-93,	The Northern Trust Company, as Successor Trustee Dorothy Cahn Trust UAD 07/03/1981, Kenneth Cahn, Trustee Dorothy D. Park Dorothy E. Hinze Dorothy L. Drummey 2005 Grantor Retained Annuity Trust U/A Dtd 12/09/2005, Dorothy L. Drummey, Trustee Dorothy P O'Donnell Revocable Trust U/A Dtd 04/25/1983, J Oldendorf, Trustee Dorothy Patterson Guardianship, The Northern Trust Company, Trustee Dorothy R Moog Family Trust, US Bank, Trustee Double Black Diamond Offshore Ltd. f/k/a Double Black Diamond Offshore Ldc, Carlson Capital L.P. Douglas A. Ward
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Douglas B Stewart	Duke Power Company
Douglas H	Non-Qualified
McCorkindale	Equity Nuclear
Douglas M. & Judith	Decommissioning
A. Light Rev. Trust,	Trust, Duke Energy
D. Light & J. Light,	Corporation,
Trustees	Trustee
Douglas Page IRA	Duncan T Weaver Jr
Dow Jones Lg/Midcap	and Karen M
SL Series Common	Sorrell
Trust Fund, State	DWP Bank
Street Bank and	Dye Children
Trust Company,	Partnership Special
Trustee	TV JWD
Dr. Claresa F	Management
Armstrong Trust	Dynamic Domestic
U/A Dtd 4/21/1983,	Fund LP
Claresa F.	E Donald Heymann
Armstrong, Trustee	E L Sanford Trust
Dr. David L. Hoexter	Children/Ada, Bank
IRA R/O, Delaware	of America, N.A.,
Charter Guarantee	Trustee
& Trust Company,	E L Sanford Trust
Trustee	Children/Mason,
Drawbridge Global	Bank of America,
Macro Master Fund	N.A., Trustee
Ltd - K	E L Sanford Trust
Dreman Contrarian	Children/William,
Value Trust Series	Bank of America,
3, Current Trustee	N.A., Trustee
Dreyfus Index Funds,	E L Sanford Trust Fam
Inc. (Dreyfus S&P	FBO Ada, Bank of
500 Index Fund)	America, N.A.,
Dreyfus Stock Index	Trustee
Fund, Inc.	

E L Sanford Trust Fam	Roger Goodan,
FBO Mason, Bank	William Stinehart,
of America, N.A.,	Jr., Judy C. Webb,
Trustee	Warren B.
E L Sanford Trust Fam	Williamson,
FBO William, Bank	Trustees
of America, N.A.,	Earl W Huntley FBO
Trustee	Melinda, Bank of
E L Wiegand	America, N.A.,
Foundation	Trustee
E W Maske Trust U/W	Earl W Huntley FBO
for Ruth M	Pamela, Bank of
Bennett, Current	America, N.A.,
Trustee	Trustee
E. Dominick and A.	Echotrade LLC
Andrews, Jr. Trust	Ed Buchsbaum
Agreement Dated	Edgar D Gifford Trust,
10/02/90 F/B/O	Edgar D Gifford,
Elizabeth M.	Trustee
Dominick, E.	Edgar O. Jannotta
Dominick, A.	Edgar O. Jannotta Jr.
Andrews, Jr.,	Revocable Trust
Trustees	Dated 07/8/1993,
E. Gallagher	Edgar O. Jannotta
E.on Energie US Value	Jr., Trustee
(EBWfond)	Edith A. Ehrlich
EAC Partners Master	Edmund D. Haigler, Jr
Fund Ltd.	Edmund F Murphy Jr
Eagle Trading	Rev Trust U/A
Company	6/21/99, Edmund F
Earl E Crowe Trust	Murphy Jr, Mary P
No. 2, Susan	Murphy, Trustees
Babcock, Jeffrey	Edson W. Murray
Chandler, Camilla	Edward A. Cox, Jr.
Chandler Frost,	Revocable Trust

<p>Dtd 5/21/2004, Edward A. Cox, Jr., Trustee Edward E Neisser Marital Trust, Sherwin A Zuckerman, Trustee Edward Howells Edward T McGowan Edwin J Hayes Jr Edwin J Hayes Jr Trust, U/A Dtd 05/26/2006, Edwin J Hayes, Trustee Edwin R Labuz IRA, Ameriprise Trust Company f/k/a H&R Block Financial Advisors, Custodian EFG Bank European Finl Group EFH Retirement Plan Master Trust, Current Trustee Elaine T Bovaird Trust U/A Dtd 02/18/1993, Eliane T Bovaird, Trustee Elaine W Getz Trust UA Feb 5 1986, Elaine W Getz, Trustee Eleanor A. Kenyon</p>	<p>Eleanor Jackson Stern Trust Dated 01/06/1971, The Northern Trust Company, Russell T. Stern Jr., Patricia Stern Ross, Trustees Eleanor T Agrella Trust, Donald A Agrella, Trustee Electrolux Home Products, Inc. Master Trust, Current Trustee Elinor P. Baker TOW FBO Charities, The Bank of New York, Trustee Elizabeth De Cuevas Elizabeth H Vanmerkensteijn Elizabeth H. Wolff Elizabeth L. Levin 2006 Sz-2 Year Grantor Retained Annuity Trust Uad 07/31/06, Elizabeth L. Levin, Trustee Elkhorn LLC Ella L. Morris Trust, 1st Source Bank, as Trustee Ellen Johnson Twaddell</p>
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Ellen Warren	Amended, Northern
Ellis Henican	Trust Company,
Elmer H. Wavering	Trustee
Family Trust Dated	Emmas LP, a
06/24/1977 as	Partnership
Amended, The	Employee Retirement
Northern Trust	Income Plan Trust
Company and	of Minnesota
Lynne Shotwell, as	Mining &
Co-Trustees	Manufacturing Co.,
Emanuel E. Geduld	Current Trustee
2005 Family Trust,	Employee Retirement
Current Trustee	System of Georgia
Embarq Corporation	Employees' Retirement
Master Retirement	Fund of the City of
Trust, Adam	Dallas
Hanks, Trustee	Employees Retirement
Emil D Kratochvil	System of Texas
Emily A Jefferson	Employers' Fire
Tr/Stock Account	Insurance Company
U/A 6/1/84, Emily A	Energizer Holdings
Jefferson, Trustee	Inc. Retirement
Emily E Orthwein	Plan Trust, John
Irrev Trust Dtd	Drabik, Trustee
8/19/91, Ellen W	Energy Industries
Orthwein, Trustee	Superannuation
Emily Evans Embrey,	Scheme
Beneficiary of the	Enhanced RAFI US
Alfred C. Glassell	Large, L.P. a/k/a
Jr. Children's Trust	Research Affiliates
for Emily Evans	Fundamental Index
Embrey	LP
Emily G. Plumb	Ensign Peak Advisors
Charitable Trust	Inc
Dtd 1/8/80 as	Enzo S Ricciardelli

Epsilon Distressed Strategies Master Fund, LP	Equity Index Fund
EQ Advisors Trust (EQ/Equity 500 Index Portfolio)	Equity Index Fund B
EQ Advisors Trust (EQ/Gamco Mergers and Acquisitions Portfolio)	Equity Index Fund, a Series of American Century Capital Portfolios, Inc.
EQ Advisors Trust (EQ/Mid Cap Value Plus Portfolio)	Equity Index Plus Fund A
Equal Weight S&P 500 MH Tr, State Street Bank and Trust Company, Trustee	Equity Value Fund
Equifax Inc Master Trust, Current Trustee	Eric D. Werthman
Equifax US Retirement Plan	Eric I Chang
Equitable Separate Account #20	Eric Morris and Shannon Morris
Equitec Specialists LLC	Erik Lebsack
Equitech/DBAG Ldn/DB Glb Mstrs	Erik White Maske
Equitrust Series Fund, Inc.	Trust U/D 2/20/67, Debra Maske, Current Trustee
Equitrust Variable Insurance Series Fund	Ernest K. Koehler Ira
Equity Index A	Erwin Shakin Delta Trust U/A 10/5/00, Stanley Weiss, Trustee
	Estate of Alfred C. Glassell Jr., Alfred C. Glassell, III, Independent Executor
	Estate of Barbara Hammond
	Estate of Beverly A. Perry, Lisa A. Schuster, Executor
	Estate of Charles Pratt Twichel UW HT

Clement for SP BC QTIP Trust, Chase Twichel, as Representative	Taman McGrath, Co-Executors
Estate of Donald Baron, Irene Baron, Executrix	Estate of Lorraine L. Ward, Douglas A. Ward, Personal Representative
Estate of Franklin W. Denius, Frank Wofford Denius, Charmaine Denius McGill, Co- Executors	Estate of Patricia I. Walsh, Mark J. Walsh, Executor
Estate of Gene C McCaffery	Estate of Robert C Gilkison, Joan L Gilkison, Administrator Cta
Estate of Jane D. Meadows, Jack E. Meadows, Sr., Executor	Estate of Robert D. Nelson, Charles Jasa, Personal Representative
Estate of John Mason Sanford, Betty Alene Sanford, Executrix	Estate of Sally B. O'Keefe, Julie A. Triona, Executor
Estate of Karen Babcock, Philip S. Babcock, Executor	Estate of Seth A Thayer, Frances M Thayer, Personal Representative
Estate of Kurt Adler, Clifford Adler, Howard Adler, Executors	Estate of Thomas P. O'Keefe, Julie A. Triona, Personal Representative
Estate of Lewis Taman, Cecelia Taman, Robert Taman, Bonnie	Estate of Warren B. Williamson and Williamson Living Trust, Elizabeth A. Bawden, Trustee Estate of Wayne F. McNulty, Mary

Kathleen McNulty, Executrix	Everest Re Group Ltd.
Estate of William F Warchol	Evergreen Asset Management Corp.
Estates of Wayne F. McNulty and Irene M. McNulty, Mary Kathleen McNulty, Executrix	Evergreen Investment Services Fund Administration, Evergreen Asset Management Corp.
Esther Wong IRA Rollover Fidelity Management Trust Co Cust	Evergreen Investment, Evergreen Asset Management Corp.
ETF SPY Eq Finance Prod Ctrl	Everything Medical, Inc. a/k/a Everything Medical Services, Inc.
Eugene E Dechter Jied Trust UA 12/02/92, Bradley Dechter, Trustee	Evol Capital Management LLC Portfolio Margin Account
Eugene Taylor and Rose Marie Taylor	Evolution All-Cap Equity Fund - Direxion Funds
Eureka Options LLC	Evolution VP All-Cap Equity Fund, a Series of Direxion Insurance Trust
Euroclear Bank SA/NV	Excel Realty Fund, LP
Evangelical Board of Pensions	Exelon Corporation Nuclear Decommission Trust - Tax Qualified, Cindy Catlin, Trustee
Evangelical Lutheran Church in America Board of Pensions	
Evelyn Cooper	
Aurandt Trust U/A 10-12-71, Current Trustee	
Everest Reinsurance (Bermuda) Ltd.	

Exxonmobil	12/13/1989, Jeffrey
Investment	J Appleby, Trustee
Management, Inc.	Felix Sheu
(Exxonmobil	Felix Wen Guang Tong
Investment Fund)	Tod
F Audrye Woller	Ferris Trading Fund
F Harlan Batrus	LLC
Fairweather Family	Fideuram Bank
L.P. a/k/a	Luxembourg S.A.
Fairweather Ltd	Fiduciary Small and
Ptrshp	Mid-Cap Stock
Farmers Group, Inc.	Fund LLC
a/k/a Farmers	Fiduciary Trust
Insurance Group	Company
Fasken Ltd (Channing	International
I)	Fiducie Desjardins Inc.
Fasken, Ltd. B a/k/a	Fifth Third Bank
Fasken (Channing	Fifth Third Funds
II)	Financial Management
Faulkner Family Trust	Concepts
UA Dtd 8/29/1989,	First American
Marilyn M	Investment Funds,
Matheson, Trustee	Inc. - Equity Index
FBF Pension-CMG	Fund
S&P 500 Index,	First Capital Alliance
Bank of America	LP
Federal Reserve	First Clearing, LLC
Employee Benefits	First Midwest Bancorp
System	First New York
Federal Reserve	Securities, LLC
System Employee	First Republic Bank
Retirement Fund	First-Citizens Bank &
Felicity E Appleby	Trust Company
Trust U/A Dtd	Firstenergy Corp Non-
	Qualifying Nuclear

Decommissioning Trusts, Current Trustee	Ford Motor Company of Canada, Limited Master Trust Fund, Ford Motor Company Pension Asset Management, Trustee
FIS Operations	Fordham University
Fleet Maritime Inc.	Foster G Hembry Jr
Flexible (US Equity) Managers: Portfolio 1 LLC	Foundation for Anesthesia Education and Research
Florida Power Corp Non-Qual Progress Energy Service Co	Francesa J. Verduco Trust U/A Dtd 12/13/1989, Catherine A Verduco, Trustee
Floyd C Sanger Jr Trust U/A 3/11/86, Floyd C Sanger Jr, Trustee	Francis G Duggan and Jeanette M Duggan
FM Global	Francis L. Coolidge
FM Global Pension	Francis Nessinger and Jean K Nessinger
FMC Corp Defined Benefit Retirement Trust, Current Trustee	Francis Nessinger IRA Contributory Trust Dtd 10/14/86, Charles Schwab & Co Inc, Trustee
FNY Managed Accounts LLP, a Wholly Owned Subsidiary of FNY First New York Securities, LLC	Francisco Perdomo and Caroline Oliveira
Ford Motor Company Defined Benefit Master Trust, Mark Kopp, Trustee	Francisco Perdomo- Ferrer Ret Pl, Francisco J Perdomo-Ferrer, Trustee
Ford Motor Company of Canada - WAM Domestic	

Francoise Isabelle Michel Trust U/A Dtd 10/26/1994, John M Stickney, Trustee	Fredericka Paff & Carlyle Paff Hedrick
Frank A Jones Trust U/A Dtd 05/05/1995 FBO M Jones, Frank A Jones, Trustee	Fredric Levenson and Dorothy A Levenson
Frank Callea	Frick C FBO F D Frick I I-Trust No 3
Frank J Mangano GST Non-Tax Exempt Trust U/A 6/22/94, Margaret Mangano, Mike Hoover, Trustees	Friedman Living Trust U/A 08/04/99, Robert D Friedman, Trustee
Frank Maloney and Kathleen Maloney	Froedtert & Community Health, Inc. Long Term Master Trust, Current Trustee
Frank N Magid and Marilyn A Magid Jt Ten	Frost Bank
Frank Russell Investment Management	Full Value Partners LP
Frank Russell Trust Company	Fund American Reinsurance Company, Ltd.
Frank S Ladner Rev Trust U/A Dtd 03/03/1993, Frank S Ladner, Trustee	Future Fund Board of Guardians
Frank W Considine	Gabelli & Company Inc. (Gabelli Avg Price 2)
Fred J Eychaner	Gabelli 787 Fund Inc. - Gabelli Enterprise Mergers and Acquisitions Fund
Frederick Goldstein	f/k/a The 787 Fund Inc - AXA Enterprise Mergers

and Acquisitions Fund	Chandler Frost,
Gabelli Asset Management Co.	Roger Goodan,
Gabelli Asset Management Co.	William Stinehart,
(A/C x0560)	Jr., Judy C. Webb,
Gabelli Associates	Warren B.
Gabelli Associates Fund	Williamson,
Gabelli Associates Limited	Trustees
Gabelli Company	Gary E. Pekala
Gabelli Dividend & Income Trust, Current Trustee	Gary R. Norton
Gabelli Foundation Inc	Gaspare Locascio and Dolores Locascio,
Gabelli Funds, LLC	Jtwros
Gabelli Multimedia Partners, L.P.	Gayle G McLean Rev Living Trust U/A 3/1/94, Gayle G McLean, Trustee
Gabelli Performance Partnership	G-Bar Limited Partnership
Gabelli Securities, Inc., Gamco Investors, Inc.	GCW Capital LLC
Gabelli Value Fund, Inc.	GDK Inc
Gail C Schlang	General Board of the Global Ministries of the United Methodist Church's Collins Pension Plan
Gamco Asset Management Inc.	General Building Laborers' Local 66 LCV
Gamco Investors Inc	General Dynamics Corporation VEBA Trust, The
Garland Foundation Trust No. 2, Susan Babcock, Jeffrey Chandler, Camilla	Northern Trust Company, Trustee

General Electric Pension Trust, Current Trustee	Gerald J McCarthy IRA Rollover, Charles Schwab & Co Inc, Custodian
General Motors Hourly-Rate Employee Pension Trust (GMHREP Trust), State Street Bank and Trust Company, Trustee	Geraldo Rivera Geraldo Rivera R/O IRA, Sterne Agee & Leach Inc, Custodian
Geoffrey Dawson	Ggcp, Inc. f/k/a Gabelli Funds, Inc. (Gabelli ABC Fund)
George B. Kaiser	Ggcp, Inc. f/k/a Gabelli Funds, Inc. (Gabelli Funds Inc)
George Buckman Trust U/A/D 08/26/88, George Buckman, Trustee	Ggcp, Inc. f/k/a Gabelli Funds, Inc. (Gabelli)
George E. Keeler	Ggcp, Inc. f/k/a Gabelli Funds, Inc. (The Gabelli Asset Fund)
George Johnson	Ggcp, Inc. f/k/a Gabelli Funds, Inc. (The Gabelli Equity Inc Fd)
George M. Moss	Ggcp, Inc. f/k/a Gabelli Funds, Inc. a/k/a Gabelli Global Multimedia Trust Inc.
George W Thoms Trust B, Bank of America, N.A., Trustee	Gibson Family Trust, Franklin L Gibson & Karen C Gibson, Trustees
George William Buck SEP-IRA Dtd 4/8/93, Charles Schwab & Co Inc, Custodian	Gidwitz Art Ventures
Georgette Pettijohn	
Georgia Municipal Employee Benefit System Pension Plan Georgia Municipal Association	
Gerald E. Grieve	

Gjd Partners L.P.	Goldentree
Gladys G. Cofrin	Multistrategy
Trust, US Bank,	Offshore Fund
Trustee	Goldman Sachs 1997
Gladys Smith Hayes	Exchange Place
Testamentary Trust	Fund, L.P.
12/3/1987, W L Jack	Goldman Sachs 1999
Edwards, Trustee	Exchange Place
Glassell, Alfred C. III,	Fund, L.P.
Individually and as	Goldman Sachs 2005
Acting Trustee and	Exchange Place
Beneficiary of	Fund, L.P.
Alfred C. Glassell,	Goldman Sachs
Jr. Children's Trust	Execution &
for Alfred C.	Clearing, L.P.
Glassell, III	Goldman Sachs
Glen W Bell, Martha	International
Bell, Bell Family	Goldman, Sachs & Co.,
Trust, Glen W Bell,	in Its Individual
Kathleen Bell,	and Custodial
Martha Bell,	Capacities
Trustees	Goldsher Investment
Glenview State Bank	Co Inc
GM Promark Large	Good Steward Trading
Cap Blend Fund	Company SPC
GMP (Brobbz) Re	Goodrich Corp, as Plan
Greenwich Cap	Administrator for
Goldentree Master	the Goodrich
Fund II, Ltd.	Corporation Master
Goldentree Master	Trust for Qualified
Fund Ltd.	Employee Benefit
Goldentree	Plans, Current
Multistrategy Ltd	Trustee

Goodrich Corporation	Limited
Employees' Savings	Partnership
Plan	Graham Family
Gordon T Ford Trust	Growth Partnership
U/A/D 04/24/72,	LCV
Robert L Heritier,	Great-West S&P 500
Richard R	Index Fund f/k/a
Mullaney,	Maxim S&P 500®
Randolph C	Index Portfolio
Paschke, Trustees	Green Century USA
Governing Council of	Green Century
the University of	Capital
Toronto	Management
Government of	Green Forest
Singapore	Investments
Investment	Limited
Corporation Pte,	Green Forest Trust,
Ltd.	HSBC Guyerzeller
Government Pension	Trust Company AG,
Investment Fund,	Trustee
Japan	Gregory J Caputo and
GPC LIX LLC	Ellen P Caputo
Graff Valve & Fittings	Gregory Reyftmann
Co. Employees	Gregory S Simko
Profit Sharing Plan	Gregory S Simko IRA
2 Uad 6/30/85,	Rollover Fidelity
Philip Graff,	Management Trust
Michael Graff,	Co Cust
Trustees	Griffith Patrick
Graham Capital	Madigan Utma Wi,
Partnership I, LP	Griffith E.
Graham Event Driven	Madigan,
Ltd. a/k/a Graham	Custodian
Capital	Gryphon Hidden
Management,	Values VIII L.P.

Gryphon Hidden Values VIII Ltd	Haidee W Flinders
GS Financial Markets	Halcyon Diversified Fund L.P. f/k/a/
GS Investment Strategies LLC (Liberty Harbor Master Fund I, LP)	Halcyon Special Situations, L.P. Halcyon Diversified Fund LP
Guardian	Halcyon Fund LP
Guardian VC 500 Index Fund	Halcyon Master Fund LP f/k/a Halcyon
Guggenheim Portfolio LIX, LLC	Offshore Enhanced Master Fund LP
Guidemark Large Cap Value Fund f/k/a Assetmark Large Cap Value Fund	Halcyon Offshore Fund Ltd.
Guidestone Funds (Equity Index Fund)	Halifax International Investment North American Fund, The Royal Bank of Scotland as Depository
Gulco Corporation	Halliburton Co.
Gus G Hartoonian IRA, A G Edwards & Sons C/F	Hammond Family Trust U/A/D 02-11- 1988, Paul Theodore
Guy W Russell and Aija A Russell	Hammond, Karen Hammond, Trustees
Gwendolyn G. Babcock	Hanna Jonas Miller
H June Widrig IRA Rollover Fidelity Management Trust Co Cust	Hannah Smith Trust, Alison S Andrews, Trustee
H. Robert Holmes IRA, FCC, Custodian	Harbor Capital Advisors LCV
H.M. Payson & Co.	
Hach Scientific Foundation	

Harbor Capital Group Trust	Hartford Index HLS Fund
Harbor Mid Cap Value Fund	Hartford Life Insurance Company (Separate Account B)
Harmony Investment Management LLC	Harvard Management Co.
Harold R. Lifvendahl Trust U/A/D 9/7/1988, The Northern Trust Company and Harold R Lifvendahl, as Co-Trustees	Harvest Aa Capital LP
Harriet H Glasspiegel DL Trust U/A Dtd 6/21/89, Harry H Glasspiegel, Trustee	Harvest Capital LP
Harrington Bischof Trust Dtd 9/15/97, Harrington Bischof, Trustee	Harvey B. Plotnick Declaration of Trust 6321 UA Mar 16 88, Harvey B. Plotnick, Trustee
Harris Corporation Master Trust a/k/a Harris Corp. Retirement Trust, Current Trustee	Harvey Bookman
Harsco Pension & Profit Sharing Fund LCV	Harvey Mudd College
Hart Family Trust Dtd 04/23/92, William Hart, Erica Hart, Trustees	Harvey R. Heller
	Hatabah Ltd.
	Havens Partners Enhanced Fund, L.P.
	Havens Partners, L.P.
	Haywood Securities, Inc.
	HCA, Inc. Master Retirement Trust, Current Trustee
	Headwaters Holdings LLC
	Hearst Equity Appreciation Plan
	Hedgehog Capital LLC
	Hedonic Capital LLC

<p>Helen Brown, Jean Samos & Gail Samos Johnson Helen Bittenwieser Trust 7/28/38, Lawrence B. Bittenwieser, Trustee Helen Garland Trust No. 2 (for Gwendolyn Garland Babcock), Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees Helen Garland Trust No. 2 (for Hillary Duque Garland), Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees Helen Garland Trust No. 2 (for William</p>	<p>M. Garland III), Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees Helen Grossman Trust U/A/D 09/08/99, Laurie H. Weaver, Trustee Helen K Dohm IRA, FCC, Custodian Henry Francis Dupont Winterthur Museum, Inc. Henry G Barkhausen Trust 12/14/36, BMO Harris Bank, N.A., Trustee Henry L Adamic Jr Henry P Albrecht Revocable Trust U/A 1/21/74, Current Trustee Herbert Anthony Clark, Jr Herbert G. Lau Profit Sharing QRP Participation, Delaware Charter</p>
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Guarantee & Trust, Trustee	C. Webb, Warren B. Williamson, Trustees
Herman R Friedberg Revocable Trust, James A. Friedberg, Thomas F. Friedberg, Trustees	HOC GST Exempt Trust No. 2. FBO John Haskins, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees
HFF I LLC	HOC GST Exempt Trust No. 2. FBO Scott Haskins, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees
HFR Ed Select Performance Master Trust Enhanced	HOC Trust No. 2 FBO Eliza Haskins, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy
HFR RVA Whitebox Master Trust f/k/a HVR RVA Combined Master Trust, Current Trustee	
HHS Partnership	
Highmark Inc	
Hilda Flynn	
Himan Brown Trust UA 11/20/02 Himan Brown Revocable Trust, Current Trustee	
HOC GST Exempt Trust No. 2. FBO Eliza Haskins, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy	

C. Webb, Warren B. Williamson, Trustees	Byrd Jr, Thomas T Byrd, Trustees
HOC Trust No. 2 FBO John Haskins, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees	Honeywell - Income and Appreciation Holdings Honeywell International Inc. Master Retirement Trust, Current Trustee
HOC Trust No. 2 FBO Scott Haskins, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees	Hong Kong Monetary Authority Hong Kong Special Administrative Region Government - Exchange Fund
Holmes Family Trust UA Dtd 04/24/87, Robert Holmes, Trustee	Horace W. Howells Horizon Golden Partners L P Horizon Partners Howard Berkowitz Howard F. Ahmanson Jr. Revocable Trust, Howard F. Ahmanson, Jr., The Northern Trust Company, Trustees
Homeland Insurance Company of New York	Howard J. Trienens, Howard J. Trienens Trust Dated 9-18- 91, Howard J. Trienens, Trustee
Hon Harry F Byrd Rev Trust U/A Dtd 01/25/82, Harry F	Howard Resnick IRA, Fidelity

Management Trust Co, Custodian Howard Shulkes Residuary Credit Trust U/A Dtd 09/20/1991, Myra Shulkes, Trustee Howells Family GST, Gurdon H. Metz, Trustee Howells Family GST, William Dean Howells, Trustee HSBC Bank PLC HSBC Global Asset Management f/k/a HSBC Bank PLC Global Investor Services Hudson Bay Fund LP Hudson Bay Master Fund Ltd Hugh F Fagan Huntington Huntington National Bank Hussman Strategic Growth Fund a/k/a The Hussman Investment Trust, John P. Hussman, Trustee Hyde Park Savings Bank/H.P. Security Corp.	IBEW Local 103 Trust Fund a/k/a International Brotherhood of Electrical Workers Local 103 Pension Fund LCV IBEW Local 57 IBEW/NECA Local 124 Pension - Alliance - IBEW Local Union 124 Pension Trust, Current Trustee IBEW-NECA Equity Index Fund IBM Canada Limited IBM Personal Pension Plan Trust, Current Trustee ICAP Corporates LLC Iccrea Banca Spa - Europe (RB9999) Ice Bear Incorporated Iglesia Metodista Del Peru - General Board of Global Ministries, Umc Illinois Municipal Retirement Fund Illinois State Board of Investment Illinois Student Assistance Commission
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Imperium Insurance Company f/k/a Delos Insurance Company	ING U.S. Stock Index Portfolio f/k/a ING Stock Index Portfolio (ING Investors Trust)
Indian Point Qualified NDT Investment Pool C-O Mellon GSS	ING Value Choice Fund f/k/a ING Largecap Value Fund (ING Investors Trust)
Indiana Teachers' Retirement Fund a/k/a Indiana State Teachers' Retirement Fund	Inja Lew CGM IRA, State Street Bank and Trust Company, Custodian
ING Belgium, SA	Institutional Managed US Equity
ING Corporate Leaders 100 Fund f/k/a Indexplus Large Cap Fund f/k/a ING Index Plus Largecap Equity	Insurance Trust U/A 4/25/67 FBO Sheldon Cooper, Sheldon Cooper, Trustee
ING Investment Trust Co. Enhanced Core Equity Common Trust Fund	Intel Corporation Interactive Brokers Group
ING Investment Trust Company	International Brotherhood of Electrical Workers Local 25 Master Trust Plans
ING Investors Trust (ING US Stock Index Portfolio)	International Brotherhood of Electrical Workers Local 357 Pension Trust Fund, Zenith
ING T. Rowe Price Equity Income Portfolio, a Series of ING Investors Trust	

Administrators, Inc, Trustee	Engineers Local 825 Pension Fund
International Brotherhood of Electrical Workers Local 98 Pension Plan Mv	Intersil Equity Inc Fund, T. Rowe Price Trust Co, Trustee
International Brotherhood of Electrical Workers Pension Benefit Fund	Intl Program Trades Programs Average Price #1
International Business Machines Corporation	Invenio Partners LP INVOC, Wilmington Trust Company, Custodian
International Monetary Fund Staff Retirement Plan	IPAC Asset Management Ira Willis Baker, Jr
International Painters and Allied Trades Industry Pension Fund a/k/a	Iris B. Mahoney Rev Trust U/A/D 04/10/98, Paul M. Mahoney, Trustee
International Brotherhood of Painters and Allied Trades Union & Industry Pension Fund a/k/a	Iris Elston 5/30/95 Trust, Current Trustee
International Union Painters & Allied Trades Industry Pension Fund	Iron Workers Local 16 Pen Fd LSV
International Union of Operating	Ironworkers-Laborers Pension Plan of Cumberland Md UAD 8/1/1965, Current Trustee
	Irving & Varda Rabin 1992 Revocable Trust, Irving Rabin, Varda Rabin, Trustees

Irving S. Gilmore	J.P. Morgan
Foundation LCV	Whitefriars Inc.
Isabel B. Young	(A/C Margin)
Balanced Advisory	J.P. Morgan
Iuoe Local 138 LCV	Whitefriars Inc.
Iuoe Local 14-14B	(Whfr-Mgn Pt)
Pension Fund	Jack D. McManus and
J Bourne Tr-IMA,	John R. McManus
Current Trustee	Jack M Rosenberg, A G
J Sanford Trust	Edwards & Sons
Children/Ada, Bank	C/F SEP-IRA
of America, N.A.,	Jack R. McDonald
Trustee	CGM IRA, State
J Sanford Trust	Street Bank and
Children/Mason,	Trust Company,
Bank of America,	Custodian
N.A., Trustee	Jackson Capital, L.P.
J Sanford Trust	a/k/a Jackson
Children/William,	Capital Ptrs, LP-
Bank of America,	Main-Pl
N.A., Trustee	Jacksonville Plumbers
J&M Trust UA Dated	and Pipefitters
07/23/1992, Robert	Pension Fund
N. Mohr, Successor	Jacqueline Adler
Trustee	Walker
J.J.B. Hilliard, W.L.	Jacqueline S Phelan
Lyons LLC	Trust U/A Dtd
J.M. Smucker	12/12/83 FBO J
Company LCV	Phelan, Teryl
J.P. Morgan Securities	Phelan, Trustee
LLC	Jacques Hochglaube
J.P. Morgan Securities	MD PC Employee
Ltd.	Profit Sharing Plan
J.P. Morgan	U/A Dtd 8/15/75,
Whitefriars Inc.	Jacques

Hochglaube, Trustee	James M Kevra IRA
James A Crumley	Rollover Fidelity
James B Kerr III and	Management Trust
Julie M Kerr Jt Ten	Co Cust
James B Kerr III Trust	James M. Lachey
U/W Agnes R Kerr	James Marshall Burt,
Dtd 7/2/1977,	Burt JM Test,
James B Kerr III,	Current Trustee
Trustee	James Mateja
James C Warren	James P Hoge
James Chan	Revocable Trust
James Dietz	U/A Dtd
James E Pearson	12/19/1984, James
James F Kerr Jr. and	Patrick Hoge,
Nancy E Kerr Jt	Trustee
WROS	James P. Moskun
James F Polk Trust	Revocable Trust
U/A Dtd	(Mosktr) James P.
12/13/1989, Jeffrey	Moskun, Trustee
J. Appleby, Trustee	James Rothermel and
James F. Hoge Jr.	Mary Rothermel
James Franklin	James S. McDonnell
Holderman	Charitable Trust A
James Glynn IRA	James S. McDonnell
Rollover Fidelity	Charitable Trust B
Management Trust	James T Smith Trust
Co Cust	U/A Dtd
James H. Kimberly	10/09/1995, Current
and Elizabeth O.	Trustee
Kimberly	James Thomas Wirth
James King and Judie	and Eileen Marie
King	Wirth Jt Ten
James L. Lockwood	James W Kirk Trust,
	Bank of America,
	N.A., Trustee

James W. Duford	Javad Rassouli
Revocable Trust	Jay Goldman Master
U/A Dtd 03/01/94,	LP
James W. Duford,	Jean Curry Glassell,
Trustee	Acting Trustee and
James Zerwekh	Beneficiary of the
Jane B White Trust	Alfred C. Glassell
UA Oct 17 02, Jane	Jr. Children's Trust
B White, Trustee	for Jean Curry
Jane Street Capital,	Glassell
LLC	Jean Shaulis Black,
Janet U Embury Chln	Jean S. Black
Trust Grace Fd,	Trust, Jean Shaulis
BMO Harris Bank,	Black, Trustee
N.A., Trustee	Jeanne Napolitano
Janet U Embury Chln	Trust, Current
Trust J Ley Fd,	Trustee
BMO Harris Bank,	Jefferies LLC f/k/a
N.A., Trustee	Jefferies &
Janice Davis Jobson	Company, Inc.
Janice F. Winburn	Jefferson R Solender
Janice R. Grubman	Jeffrey C Neal
IRA Rollover,	Jeffrey Risley
Vanguard Fiduciary	Jeffrey Schatz and
Trust Co,	Kimberly Schatz
Custodian	Jenifer B. Booth f/k/a
Janna L Gadden	Jenifer B. McIntosh
Janus Capital Group	Jennifer G Hines
Janus Capital	Jennison Mid-Cap IRA
Management	Rollover Fidelity
Jason A. Janik	Management Trust
Jason Bernzweig and	Co Cust
Marylyn Bernzweig	Jerome & Maria
Jason H Camassar and	Markowitz
Carolyn I Camassar	

Jerome and Ilene Cole Foundation SC-287	Phillips, Co- Trustees
Jerome Blank, Jerome Blank Declaration of Trust U/A Dtd 9/19/96, Jerome Blank, Trustee	Jessnick Partners, L.P.
Jerome Kahn Jr Revocable Trust Dtd 10-16-87, Jerome Kahn, Trustee	JG Global Growth Fund Ltd
Jerome M Wells IRA, FCC, Custodian	JHT 500 Index Trust
Jerome P. Martin and Melanie M. Martin	JHT 500 Index Trust B
Jerry J. Wolfe and Tiffany Wolfe Tankersley	JHT Equity Income Trust
Jerry Lower IRA R/O, Ameriprise Trust Co, Custodian	JHT Mid Value Trust
Jesse Lloyd Guma Irrev Trust U/A Dtd 7-5-96, Greg Guma, Trustee	JHT Spectrum Income Trust
Jesse Werthman	JHT Total Stock Market Index Trust
Jessie Ball Dupont Fund, The Northern Trust Company, Mary Huntley, Eddie Jones Jr., Leroy Davis, Thomas Jeavons, Mary	Jianshi Mao
	Jim Hicks & Co. Employee Profit- Sharing Plan, Jim Hicks, Trustee
	Jing Ye and Hong Lu
	Jnl/Mellon Capital Management S&P 500 Index Fund
	Joan E Clark
	Joan Ellis Van Loan
	Joanna Sturm
	Joanne Desherow Sanger Liv Trust U/A Dtd 03/29/2004, Joanne Desherow Sanger, Trustee
	Joanne Schiller IRA, FCC, Plan Custodian

Jody E Gunter IRA Rollover Fidelity Management Trust Co Cust	15,2010, John B. Diamond, Trustee
Joe Frank	John B. Lloyd, Jr.
Joe Youssry Kelada Sep IRA, E*Trade Securities LLC, Custodian	John Bird Lloyd '68 Irrevocable Trust, Current Trustee
John & Betty Altman Family Trust Uad 05/16/86, John M Altman, Betty Ann Altman, Trustees	John Cheloni and Jean Cheloni Jt Ten
John A Canning Jr Rev Trust U/A 3/15/94, John A Canning Jr, Trustee	John D. & Catherine T. Macarthur Foundation
John A Maher IRA Rollover Account, Vanguard Fiduciary Trust Co, Custodian	John D. Lane Revocable Trust, Current Trustee
John A. McWethy Irrevocable Trust U/A/D May 10, 1978, Greenleaf Trust, Trustee	John Deere Pension Trust, Current Trustee
John B Lloyd Jr Rev Tr, John B Lloyd Jr, Trustee	John E Mayasich Trust U/A Dtd 04/23/2007, John E. Mayasich, Trustee
John B. Diamond Declaration of Trust Dated April	John E McGowan
	John F. Barnard Trust U/A/D 04/04/03, Janice Anderson, John F. Barnard, Trustees
	John F. Llewellyn Living Trust, John F. Llewellyn, Trustee
	John F. Mangan, Jr.
	John G Kologi
	John G. Kologi First Data Incentive Svgs

Plan, State Street Bank & Trust Company, Trustee	Fair Oaks LLC, Trustees
John Hancock Financial (Manulife Financial)	John Nesbit Rees and Sarah Henne Rees Charitable Foundation U/W, Richard W Roeder & Barbara L Smith, Trustees
John Hancock Funds II Equity-Income Fund	John P Fendley Trust U/A Dtd 11/27/1995, Patricia J Fendley, Trustee
John Hancock Funds II Spectrum Income Fund	John Pritzker and Lisa Pritzker
John Hancock Variable Insurance Trust f/k/a John Hancock Trust (New Income Trust)	John R Black
John Howells	John R Flanagan CGM IRA, State Street Bank and Trust Company, Custodian
John J McDermott	John R Staib
John J McDermott and Mary R McDermott	John R. Loftus IRA, Stifel Nicolaus, Custodian
John J Wagner and Rosemary Wagner Jt WROS	John Spears
John M Schloerb Trust Dtd Jul 26 00, John M. Schloerb, Trustee	John Stewart Property Trust U/A Dtd 12/06/2000, John W Stewart II, Trustee
John Mullooly	John T O'Loughlin
John N. Robson Trust B Dated 9/11/1970, Tom Falcey, The Northern Trust Company, and/or	John V Farwell IV Dec of Tr, Amend & Restatement U/A

1/15/98, John V Farwell IV, Trustee John W. Madigan Trust, John W. Madigan, Trustee John W. Stewart John W. Stewart 1966 Trust FBO Cynthia L. Phelps, James C. Waldo, Trustee Jon R. Lind IRA Rollover, Northern Trust Company, Custodian Jonathan A. Knee Jonathan Kovler Jonathan R. Evans IRA, Jonathan R. Evans or JPMCC Cust Joseph A. Young and Sandra L. Young Joseph F Kun and Karen L Kun Joseph G Traynor and Elaine S Traynor Jt WROS Joseph Kollin & Bella Kollin Joseph L Molder Trust, Bank of America, N.A., Trustee Joseph M Fee and Elizabeth Fee Revocable Living	Trust, Joseph M Fee, Trustee Joseph R Medley IRA, Mesirow Financial, Inc, Custodian Joshua Tree Capital Management LP Joy Leichenger Trust U/A Dtd 08/02/1978, Current Trustee JPMorgan 401(k) Savings Plan JPMorgan Chase & Co. Inc. JPMorgan Chase Bank, N.A JPMorgan Chase Bank, N.A. f/k/a Custodial Trust Co. JPMorgan Chase Funding Inc. f/k/a JP Morgan Ventures Corp Qrdt JPMorgan Services, Inc. Judd S Alexander Foundation Inc Judith E Neisser Ira Judith E. Blazer Living Trust U/A/D 10/21/96, Judith E. Blazer, Trustee Judith Sarnat Trust SS-512, Custodian,
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Judith Sarnat, Trustee	Employees' Pension Plan
Julia K. Rosenwald	Kansas City Police
Julia Neitzert Trust, The Northern Trust Company, Trustee	Employees' Retirement Systems
Julia P Walski	Kansas Public
Julie A. Triona Trust U/A Dtd	Employees Retirement System
04/17/1998, Julie A. Triona, Trustee	Karen L Lockwood Rev Trust U/A/D
Julio Arriaga	07/30/1998, Karen L Lockwood, Trustee
Jupiter Capital Partners LLC	Karl Putnam
Jupiter Medical Center Foundation	Kas Bank, NV
Permanent Endowment General Fund	Kaszton Family Trust UAD 10/23/1997, William & Patricia Kaszton, Trustees
Justin Long	Katharine N Lloyd
Jyg Limited Partnership #2 G- Bar	Testamentary Trust, Current Trustee
K P Twichell Trust U/D, D C Twichell, Trustee	Katherine Pratt Twichell Trust U/I Dated July 27, 1964 for the Issue of Harmony T. Clement, United States Trust Company of New York, Trustee
Kaiser Foundation Health Plan	
Kaiser Foundation Hospitals	
Kaiser Permanente Rabbi Trust, Current Trustee	
Kaman Corp. Master Trust a/k/a Kaman	

<p>Katherine T Goldberg and Steven Y Goldberg Kathryn M Barger Rev. Trust Dtd 8- 18-99, Kathryn M Barger, Donald W Murray, Trustees Kathy Rex and Thomas W Hundley KBC Securities KBS Partnership Kellogg Brown & Root LLC as Successor to the Rights and Interests of Kellogg Brown & Root, Inc. Kellogg Capital Markets, LLC Kenneth Cahn Kenneth E Lacy and Patricia H Lacy Jt WROS Kenneth E Page 2001 Trust UA Dtd 11/20/01, Kenneth E. Page, Trustee Kenneth E. Nichols Kenneth F Puglisi Kenneth J. Vydra Trust No. 101 U/A/D 03-10-2006, Kenneth J. Vydra, Trustee Kenneth Mitchell</p>	<p>Kenneth Puglisi Kenneth R Loiselle Trust U/A Dtd 10/30/2001, Kenneth Robert Loiselle, Trustee Kenneth R. Posner and Arlene L. Posner Kenneth Weiss Kentucky Retirement Systems Kevin E Dombkowski Alcatel-Lucent Savings Plan FBO, Fidelity Management Trust Co, Trustee Kevin L Ringel and Kathleen M Ringel Jt Ten Kevin M. Moore and Kimberly A. Moore Jt WROS Kevin Stone IRA R/O, Delaware Charter Guarantee & Trust, Custodian Kiener LP KPC US Equity LLC Kraft Group Krystyna Jurzykowski Kuang C Yeh IRA Rollover Fidelity Management Trust Co Cust</p>
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L-3 Communications Corporation Master Trust	Collective Trust Series
Laborers' District Council & Contractors' Pension Fund of Ohio	Large Cap Value Subtrust of the DFA Group Trust, Dimensional Fund Advisors, Trustee
Laborers National Pension Fund	Larry L Bloom and Mary J Bloom Trust(S) 11-21-95,
Lakonishok Corp	Larry L Bloom and Mary J Bloom, Trustees
Lamotta Family Trust U/A/D 01/01/93, Matthew Maryles, Trustee	Latigo Master Fund Ltd
Lancashire Insurance Company, Ltd	Lauralyn D. Matos
Langdon Street Capital LP - March Partners LLC	Lavergne Marcucci Trust U/A Dtd May 28 1988, Dennis R. Marcucci & Nicolas G. Marcucci, Trustees
Lansforsakringar	Law Companies Group, Inc. Pens
Large Cap Fund, a Series of SEI Institutional Investments Trust	Lawrence Barner and Joan Barner Jt WROS
Large Cap Index Fund, a Series of SEI Institutional Investments Trust	Lawrence F Klima IRA Rollover, Charles Schwab & Co Inc, Custodian
Large Cap Value Fund, a Series of SEI Institutional Managed Trust	Lawrence J Blum Trust U/A 1/30/06,
Large Cap Value Index Trust of QA	Lawrence J Blum, Trustee

Lawrence M Cohen	Legal & General US
Trust Lawrence M	Index Trust, The
Cohen Trading	Royal Bank of
Acct, Current	Scotland, Trustee
Trustee	Legent Clearing LLC
Lawrence M Pucci	Legg Mason
Designated Bene	Batterymarch
Plan	Financial
Lawrence S. Smith	Management S&P
Lay Employees of the	500 Index Fund, a
Archdiocese of	Series of the Legg
Cincinnati Defined	Mason Partners
Benefit Plan, US	Equity Trust, a
Bank, Trustee	Maryland Statutory
Leandro P Rizzuto	Trust a/k/a Legg
Lee Ann Varasconi	Mason Partners
Living Trust U/A	Legg Mason Partners
Dtd 02/09/2004, Lee	LMP Var Equity
Ann Varasoni,	Index Portfolio
Trustee	Lei Jin
Lee U Gillespie Rev	Lenox Hill Hospital
Trust U/A - Dec'd	Leonard Hill, Hill
05/20/10, Bank of	Revocable Living
America, N.A.,	Trust Dtd 12/24/91,
Trustee	Leonard Hill,
Legacy Fund	Trustee
Legacy Trust	Leonard R Soglio
Company, N.A.,	Designated Bene
Acting Trustee of	Plan
the Alfred C.	Leonard Sarnat Trust
Glassell Jr.	#71825 Ss-253,
Children's Trust for	Custodian, Leonard
Emily Evans	A. Sarnat, Trustee
Embrey	LFT Partnership

Liberty Financial Services Co	Management Trust Co Cust
Liberty Harbor Master Fund I, LP	Lloyd Tribune Nominee Trust, Current Trustee
Liberty Mutual Insurance Co.	Lloyd Wendt
Liechtensteinische Landesbank AG	Local 134 S&P 500 Index Fund
Lighthouse Financial Group LLC	Local Government Super Annuation Scheme
Lightning Trading LLC	Locals 302 & 612 of the International Union of Operating Engineers- Employers Construction Industry Retirement Trust, Current Trustee
Linda B Keller	Lockheed Martin Corp.
Linnet F Myers IRA Rollover, Charles Schwab & Co Inc, Custodian	Lockwood Brothers Inc.
Lisa M Featherer IRA R/O, Delaware Charter Guarantee & Trust Company, Custodian	Loeb Arbitrage B Fund LP
Lisa M. Featherer Trust U/A/D June 12, 1992, Lisa M. Featherer, Trustee	Loeb Arbitrage Fund Investment A/C Under Sec 1236 & 475 of I R C
Lisl Gershon	Loeb Arbitrage Management LP
Living Trust of Laurel L Schnitzer, Laurel L Schnitzer, Trustee	Loeb Offshore B Fund Ltd
LJR Limited Partnership	Loeb Partners (Loeb Offshore Fund Ltd)
Lloyd A Conners IRA Rollover Fidelity	

Loeb Partners Corporation	02/04/1994, Loretta C. Finlay, Trustee
Lois D Kaliebe Trust U/A Dtd	Lori Ann Talarico
03/05/1993, Lois D Kaliebe, Trustee	Lorraine Aydinian
Lois Moss Barnwell	Los Angeles Fire and Police Pension Plan
Loisanne R Flaherty Trust U/A Dtd	Louis G Gilbert and Renee Gilbert
09/23/2004, Loisanne R. Flaherty, Trustee	Louisiana School Employees' Retirement System
Lola Lloyd Horwitz	Louisiana State Employees' Retirement System
Lombard Odier Darier Hentsch & Cie	Lowe Interests, L.P.
Lombardi & Co., Inc.	LP MA1 Ltd - Latigo Partners, L.P.
London Equity Financing Operations	LPL Financial LLC
Lone Tree Partners, LLC	LSV Enhanced Index Core Equity Trust, Current Trustee
Longview Largecap 500 Index Fund and Longview Largecap 500 Index VEBA Fund, Amalgamated Bank, as Trustee	LSV U.S. Large Cap Long/Short Fund L.P.
Loomis Sayles Credit Alpha Master Fund	Lucent Technologies Inc. Master Pension Trust, Alcatel-Lucent USA Inc., Trustee
Loomis Sayles Multi Strategy Master Alpha Ltd	Lucile McVey Dunn Trust U/A Dtd
Loretta C. Finlay Trust U/A Dtd	12/19/1991, Lucile M Dunn, Trustee
	Lucy A O'Connor Trust, Bank of

America, N.A., Trustee	Lyxor/Canyon Value Realization Fund Limited
Lumina Foundation for Education Inc.	M & J Investment Group L.P.
LVIP SSGA S&P 500 Index Fund	M Christine
Lynn R. Wolfson Trust, The Northern Trust Company, Lynn R. Wolfson and/or Mark Scott, Trustees	Jurzykowski Rev Trust FBO M Christine Jurzykowski, Milena Christine Jurzykowski, Claude D Pepin, Mark Finser, Trustees
Lynne W Shotwell Trust U/A Dated 5/16/84, Lynne W Shotwell, Trustee	M K Paschall Trust- IMA, Daniel Bull, Trustee
Lyondell Petrochemical Corporation Defined Benefit a/k/a Lyondell Chemical Co. Defined Benefit Plan LCV	M&T Bank f/k/a Manufacturers & Traders Trust Co.
Lyra Institutional Bakram	M. Christine Jurzykowski 2005 Revocable Trust, Current Trustee
Lyxor Alphadyne SPC f/k/a Lyxor Starway SPC f/k/a SGAM AI Starway SPC	Madge A L MacNeil Madge A L MacNeil 1988 Family Trust, John Bird Lloyd Jr, Trustee
Lyxor/Black Diamond Arbitrage Fund Limited	Madge A L MacNeil Trust, Madge A L MacNeil, Trustee

Madison Proprietary Trading Group, LLC	Mainstay Funds Trust, as Issuer of a Series Known as Mainstay
Madison Square Investors Large- Cap Enhanced Index Fund LP f/k/a NYLIM-QS Large Cap Enhanced Fund LP	U.S. Equity Opportunities Fund f/k/a Mainstay 130/30 Core Fund
Madison Square Investors U.S. Large-Cap Core 130/30 Collective Fund f/k/a NYLIM US Large-Cap Core 130/30 Collective Fund	Mainstay VP Funds Trust, as Issuer of a Series Known as VP Common Stock Portfolio a/k/a Mainstay VP Common Stock Fund
Madison Street Fund QP Fund LP	Mainstay VP Funds Trust, as Issuer of a Series Known as VP Mid Cap Core Portfolio a/k/a Mainstay VP Midcap Core
Madison Street Fund, L.P.	Mainstay VP Funds Trust, as Issuer of a Series Known as VP S&P 500 Index Portfolio a/k/a Mainstay VP S&P 500 Index Fund
Mahmoud Sebghati IRA, Stifel Nicolaus, Custodian	Major League Baseball Players Benefit Plan
Main Street America Assurance Co.	Mallet Global Enhanced Ltd.
Main Street Small Cap Portfolio	
Mainstay Funds Trust, as Issuer of a Series Known as Mainstay S&P 500 Index Fund	

Managed Pension Funds Limited (MFS Funds (UK))	Marcella A Deluca IRA c/o RBC Capital Markets Corp Cust
Managed Portfolio of the Equitrust Variable Insurance Series Fund	Margaret Durkin and Jim Roche
Mandarin Inc	Margaret G Arnone
Manufacturers & Traders Trust 14 0272881, Current Trustee	Margaret K. Crane Trust, Margaret K. Crane, Trustee
Manulife (International) Limited (Bermuda)	Margaret L Sindelar
Manulife Asset Management Limited f/k/a Elliott & Page Limited	Margaret P Gundlach Rev Trust Dtd 3/27/1996, Margaret P Gundlach, Trustee
Manulife Financial Corp (ML Invst Ex Fds Corp.-Mix US Large Cap Value Class)	Margaret R Coniglio Trust U/A Dtd 08/22/1989, Beverly Mackintosh, Trustee
Manulife Reinsurance (Bermuda) Limited	Margeret T. M. Jones, Charles Pratt & Company LLC, Custodian
Manulife U.S. Equity (Alliance Bernstein US Equity)	Marguerite Payne Trust U/A/D 6/7/61 FBO Virginia K. Townley, The Northern Trust Company, Trustee
Manulife U.S. Value Equity Fund	Marian C Falk for Alexandra, Bank of America, N.A., Trustee
Maple Partners America Inc	

Marian Otis Chandler Trust No. 2, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees	Trust Company, Custodian Marjorie Rozman Trust Uad 8/7/85 FBO Avi J Rozman, Nanette Rosenberg, Marjorie Rozman, Trustees
Marian Wetterling Marilyn R Miller IRA National Financial Services LLC/Fidelity Management Trust Co, Custodian	Mark A Baun Jr Irr Trust U/A Dtd 2/28/2005, Caprice Ww Baun, Consuelo W Pierrep, Charles L Wilson III, Trustees
Marilyn R. Diamond Trust Dated 11-11- 88, Marilyn R. Diamond, Terry Diamond, Trustees	Mark A Hughes and Danica F Hughes Mark A. Jones and Diane D. Jones
Marilyn Rapkin Marino Family Trust U/A Dtd 09/21/1997, P Marino & G Marino, Trustees	Mark Allen Itkin Trust 3/16/2001, Mark A. Itkin, Trustee Mark C Boe Trust U/A Dtd 07/20/2000, Mark C Boe, Trustee
Mario J. Gabelli Marissa Rudman Marjorie B David CGM IRA Rollover, State Street Bank and	Mark C Landry Mark Domas Mark I. Seiden Mark Metzner Mark R. Pattis Revocable Trust UAD 07/30/04, Mark R. Pattis, Trustee

Mark S. & Donna C. Lies	04/14/1996, Jennifer Gross & Bernard Schinder, Trustees
Mark Stranahan	Martin Company- Proxy Dept A/C
Mark W. Madigan and Stephanie A. Madigan	Scott M Niswonger #2
Market Street Securities	Marvin C Schneider Trust Dtd 6-5-97, Marvin C. Schneider, Trustee
Marla Krause IRA, Nm Wealth Management Co., Custodian	Mary A Ryan
Marlene F Slade Rollover IRA, National Financial Services LLC/Fidelity Management Trust Co, Custodian	Mary Ann Lane Mary Coniglio Trust U/A Dtd 08/22/89, Beverly Mackintosh, Trustee
Marlis J Dawson IRA, FCC, Custodian	Mary Coniglio Trust U/A Dtd 8/22/1989 GSTT TE Trust, Beverly Mackintosh, Trustee
Marni Horwitz Trust Dated January 22, 1998, Lola Lloyd Horwitz, The Northern Trust Company, Trustees	Mary E Day Mary F Brown Mary Green Mary H Cooper Mary Jo Osterman Trust U/A/D 04/04/91, Mary Jo Osterman, Trustee
Marsco Investment Corp.	Mary K Lawler Trust U/A Dtd
Marshfield Clinic Master Trust, Current Trustee	
Martha Gross Living Trust FBO Martha Gross U/A/D	

06/18/1996, Mary K Lawler, Trustee	Bank and Trust Company, Trustee
Mary L. Tunney Junior Trust, Current Trustee	Masonic Education & Charity Trust, Current Trustee
Mary Lee Yuen Trust U/A Dtd	Mass Mutual- Separates
05/09/2000, Mary Lee Yuen, Dennis Joe Yuen, Trustee	Massachusetts Mutual MassMutual Premier Balanced Fund
Mary Lou Ricotta	MassMutual Premier Disciplined Value Fund f/k/a
Mary Maverick Lloyd Trust U/A 5/23/89 FBO Mary Maverick Lloyd, Mary Lloyd, W B Lloyd III, Trustees	MassMutual Premier Enhanced Index Value Fund MassMutual Premier Main Street Small Cap Fund
Mary McCune Edwards Charitable Lead Annuity Trust, Joanne Welsh, Trustee Advisor	MassMutual Premier Small/Mid Cap Opportunities Fund f/k/a MassMutual Premier Small Company Opportunities Fund
Mary Neville Hankey	MassMutual Select Diversified Value Fund
Mary Sue Gatzert Trust Dated 9-29- 95, Current Trustee	MassMutual Select Indexed Equity Fund
Maryland State Retirement and Pension System	Master Equities I Ltd (Gap) TMS/ITS Sett A/C for Hite
Maryland Voted Russell 3000 Common Trust Fund, State Street	

<p>Cragmuir Chambers Master Trust Between Pfizer Inc. and The Northern Trust Company (As Successor to Wyeth Master Trust), The Northern Trust Company, Trustee Matthew Bender IV Matthew Gerard Hartmann and Lisa Marie Hartmann JTWROS Matthew Halbower Maureen S. Woodall, as Successor to Donald W. Woodall IRA R/O Max L. Gardner IRA, TD Ameritrade Clearing, Custodian Max S Bell and Jean F Bell Maxim T. Rowe Price Equity/Income Portfolio May C. Goodan Trust No. 2, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart,</p>	<p>Jr., Judy C. Webb, Warren B. Williamson, Trustees Mazur, Howard E MB Financial Bank, Inc. MC Investment Partners LLC McAfee & Taft Profit- Sharing Plan, Current Trustee McMorgan Balanced Equity Mainstay Funds Meadowbrook Equity Fund UA Dec 01 86 Declaration of Bell Family Tr, Glen W Bell, Martha Bell, Kathleen B Flynn, Trustees Mea-Messa-Mea Financial Services Meghan M Flannery Mel L Shultz & Beth Jane Shultz Trust Dtd 9/5/79, Mel L Shultz & Beth J Shultz, Trustees Mel L Shultz and Beth Jane Shultz Melissa Monson Mellon Bank Securities Lending</p>
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Mellon Capital Management	Michael C. Labonia and Debra D. Labonia
Melvin Goodman	Michael E. Bee Trust
Mercer Funds f/k/a MGI Funds (MGI US Small/Mid Cap Value Equity Fund)	Uad 10/20/2003, Michael E. Bee, Trustee
Metcalf X Limited	Michael Eigner and Linda Eigner
Methodist Health Systems	Michael G. Murphy and Mary Therese Murphy
Methodist Healthcare (Channing Capital Management)	Michael Glazer and Lauren Glazer
Methodist Healthcare (LSV Asset Management)	Michael J Krause IRA, Ameriprise Trust Company, Custodian
Metropolitan Life Insurance Co	Michael J Palumbo Revocable LI Trust U/A Dtd 11/29/1999, Current Trustee
Metropolitan Transit Authority	Michael K Reilly Trust U/A Dtd 09/25/1995, Michael K. Reilly, Trustee
Metzner Family Foundation	Michael Keiser (Special Account)
Miami Oil Producers Inc	Michael Loeb
Michael & Rosalind Keiser Charitable Trust U/A Dtd 12/30/90, Michael & Rosalind Keiser, Trustees	Michael Muskal IRA Rollover, Fidelity Management Trust Co Cust
Michael A Silver	
Michael C Donahue and Martha D Donahue	

Michael Plonski and Nedra Plonski	Microsoft Corporation
Michael R Quinlan	Mid-Atlantic Regional
Trust U/A Dtd	Council of
09/04/1979, Michael	Carpenters Pension
R. Quinlan, Trustee	Plan
Michael Richard	Mike & Melissa
Widrig and	Parnell Rev Trust
Jacqueline A	UA Dtd 08/27/90,
Widrig	Mike Parnell,
Michael Rosenberg	Melissa Parnell,
Trust U/A Dtd	Trustees
02/23/1981, Nanette	Mike Eugene
Rosenberg,	Abernethy
Marjorie Rozman,	Milan E Chilla
Trustees	Milan E Chilla
Michael S Rosenblum	Custodian FPO IRA
Michael Sobel Paper	Miliken Stock Fund
Michael Supera	(7R) T Rowe Price
Michael Tarnoff	Trust Co
Michael Tierney and	Mill Shares Holdings
Patricia Tierney	(Bermuda) Ltd.
Michigan Department	Millenco LLC
of Treasury	Millenco LP (Omni
Michigan Education	Stat Arb)
Association	Millennium Funding
Michigan Judges'	Associates LLC
Retirement System	Miller Family Trust
Michigan Public School	UAD 3/24/87,
Employees'	Margaret U Miller,
Retirement System	Trustee
Michigan State Police	Milton Partners LLC
Retirement System	Mine Scribante CRUT-
Micro Trading Capital	Sanibel Capitva
Fund	Mini Trust U/A
	Edward H Lindsay,

Bank of America, N.A., Trustee	Interlands
Ministry of Finance of the Republic of Kazakhstan	SA/SICPA Holdings SA
Minnesota Life Insurance Company - Separate Account A	MML Blend Fund
Minnesota Life Insurance Company - Separate Account L	MML Equity Income Fund
Minnesota State Board of Investment	MML Equity Index Fund
Minnette R. Eckhouse Trust #502 U/W/O Dtd 2/1/74, James H. Eckhouse and Jill E. Berube, Trustees	MML Small Cap Equity Fund
MIP S&P 500 Index	MNS, Ltd.
Miriam A. Pawel	Mogavero/Felty Joint Venture - TMS
Miriam Susan Zach	Monica K. Hinman
Mississippi Public Employees' Retirement System	Monteagle Value Funds
Mitchell Wolfson, Sr Foundation	Montpelier Reinsurance Holdings, Ltd.
Mizuho Trust & Banking Co., Ltd.	Montpelier Reinsurance Ltd - Mintflower Pl
ML Stern & Co. LLC	Monumental Life Insurance Company - Teamsters Separate Account L-23
MM Trust (BVI) f/k/a Morgan & Morgan Trust Co. for	Monumental Life Insurance Company f/k/a Peoples Benefit Life Insurance
	Morgan Keegan & Co.
	Morgan Stanley & Co. International PLC

f/k/a Morgan Stanley & Co. International Limited	Multi-Strategy Fund LP
Morgan Stanley & Co. International PLC	Munder Index 500 Fund
f/k/a Morgan Stanley & Co. International Limited (BNY GCM)	Municipal Employees' Annuity and Benefit Fund of Chicago
Morgan Stanley & Co., LLC f/k/a Morgan Stanley & Co. Incorporated	Muriel S Harris
Morgan Stanley Smith Barney LLC	Museum of Fine Arts, Houston, as Beneficiary of the Estate of Alfred C. Glassell Jr.
Morton Goldfine and Adrienne M. Goldfine	Mushin Trading LLC #2
Mount Ararat Cemetary Inc	Mutual of America Investment Corporation
MPAMG Security Processing Omnibus	Myrna Ramirez and Monserrate Ramirez Jtwros
MPF North America Equity Index Sub Fund	Myron L. Hendrix
MS Select-Value Added Market	Nancy A Cook
MTB Equity Index Fund	Nancy B Heinz Family Trust, Arthur P. Heinz, Trustee
Multi-Strategy, Greenock Master Fund Ltd, Greenock	Nancy B. Heinz
	Nancy Crossman
	Nancy Fay Johnson
	Nancy R Spiegel Rev Trust UAD
	10/14/89, Michael Cottle, Chris Marder, Trustees

Nancy Trohan Dollar	National Railroad
Natalie McCormick	Retirement
Miller Living Trust	Investment Trust,
U/W 12/27/83 FBO	Current Trustee
Natalie McCormick	National Roofing
Miller, Richard	Industry Pension
Duffield, Trustee	Fund
Nathan H. Perlman	Nationwide S&P 500
Trust B Dtd 12-17-	Index Fund, a
68, Miriam Novick,	Series of
Arline Doblin,	Nationwide Mutual
Trustees	Funds
National Asbestos	Natixis Financial
Workers Pension	Products LLC f/k/a
Fund	Natixis Financial
National Automatic	Products Inc
Sprinkler Industry	Natixis Securities
Pension Fund	Americas LLC f/k/a
National Bank of	Natixis
Kazakhstan	Bleichroeder LLC
National Construction	NBCN Inc
Association Pension	NC Department of
Fund	State Treasurer
National Electrical	Neal Creighton and
Benefit Fund Trust,	Joan H Creighton
Dillard R. Borden,	NECA IBEW Pension
Jr. and Salvatore J.	LSV US Eq NECA
Chilia, Trustees	NECA-IBEW Pension
National Grange	Trust Fund,
Mutual	Current Trustee
National Pensions	Neckar Holdings LLC
Reserve Fund	Neil Harkins
Commission	Neil J. Rowe & Carol
National Prearranged	S. Rowe
Services Inc.	Neisser Investment LP

Nevada Public Employees Retirement System	New York City Police Officers' Variable Supplements Fund
New Americans LLC	New York City Police Pension Fund
New England Health Care Employees Pension Fund	New York City Police Superior Officers' Variable Supplements Fund
New Jersey Health Foundation	New York City Teachers Retirement Fund
New Mexico Educational Retirement Board	New York Life Insurance Company
New Mexico State Investment Council	New York Life Investment Management LLC
New York City Deferred Compensation Plan	New York State Common Retirement Fund
New York City District Council of Carpenters Pension Fund	New York State Insurance Fund
New York City District Council of Carpenters Welfare Fund	New York State Teachers Retirement System
New York City Employees Retirement System	Newedge USA, LLC
New York City Fire Pension Fund	NGM Insurance Company
New York City Firefighters' Variable Supplements Fund	Nicholas H. Werthman
	Nicholas Hallack
	Nicholas J Solli
	Nicholas Starr
	Nicholas Van Hoogstraten IRA, Ameriprise Trust

Company f/k/a H&R Block Financial Advisors, Custodian Nielsen Superannuation Pty Ltd Ninth Street Partners Ltd. Nomura International Trust Co. Nomura Rafi International Equity Fund Nomura Securities International, Inc. Nomura Trust and Banking Co Ltd Nondima Chicago Comm Fdn- FitzSimons Norinchukin Bank US Equity Index Fund Norma B. Webb Norma R. Phelps Trust U/A Agency, Norma R. Phelps, Trustee Normandy Hill Master Fund LP North Carolina S&P 500 - North Carolina Department of Treasury North Central States Regional	North Dakota State Investment Board North Dakota State Investment Board Ins. Trust, Current Trustee North Dakota State Investment Board Pension Trust, Current Trustee Northeast Medical Center Inves Northern Assurance Co. of America Northern Funds - Enhanced Large Cap Fund Northern Funds - Large Cap Value Fund a/k/a Northern Large Cap Value Fund Northern Funds - Multi-Manager Mid Cap Fund Northern Funds - Stock Index Fund a/k/a Northern Stock Index Fund Northern Illinois Benefit Funds Northern Institutional Fund Equity Index Portfolio Northern Trust
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Northern Trust Company	(Small Cap Value Portfolio)
Northern Trust Investments N.A. (Large Cap Value)	Northwestern Mutual Series Fund, Inc. (Equity Income Portfolio)
Northern Trust Investments N.A. (Multi Discipline Equity)	NRG South Texas LP Amended and Restated
Northern Trust Quantitative Fund Public Limited Company	Decommissioning Master Trust No. 2 for the South Texas Project, NRG Energy, Current Trustee
Northern Trust Value Investors, a Division of Northern Trust Investments, Inc. f/k/a Northern Trust Investments, N.A.	NSP-Minnesota Prairie I Retail Qualified Trust, Current Trustee
Northshore University Healthsystem Second Century Fund	NSP-Minnesota Retail Prairie II Qualified Trust, Current Trustee
Northwestern Mutual Series Fund Inc.	NSP-Monticello Minnesota Retail Qualified Trust, Current Trustee
Northwestern Mutual Series Fund Inc. (Index 500 Portfolio)	NT Collective Russell 1000 Value Index Fund - Lending
Northwestern Mutual Series Fund Inc.	NT Collective S&P 500 Index Fund Lending

NT Collective S&P 500 Index Fund Non Lending	NTGI-QM Collective Daily US Market Cap Equity Special Purpose Index Fund - Lending
NT Collective US Marketcap Equity Index Fund - Lending	NTGI-QM Common Daily Labor Select Russell 3000 Equity Index Fund - Lending
NTCC Advisors Funds for Employee Benefit Trust, The Northern Trust Company of Connecticut, Trustee	NTGI-QM Common Daily Russell 1000 Value Equity Index Fund - Lending
NTCC Channing Mid Cap Value AFEBT	NTGI-QM Common Daily S&P 500 Equity Index Fund - Lending
NTCC Channing Mid Cap Value Sudan Free Fund AFEBT	NTGI-QM Common Daily S&P 500 Equity Index Fund - Non Lending
NTGI-QM Collective Daily Quant Index Pan S&P 500 Equity Fund - Lending	NTGI-QM Common Daily US Marketcap Equity Index Fund - Lending
NTGI-QM Collective Daily S&P 500 Citigroup/Value Equity Index Fund - Lending	NTGI-QM Labor Select Collective Daily Russell 3000 Equity Index Fund - Lending
NTGI-QM Collective Daily S&P 500 Special Purpose Equity Index Fund - Lending	Nuance Communications, Inc. f/k/a

Dictaphone Corporation	Ohio Public Employees Retirement System
Nuclear Electric Insurance Limited	Ohlson Enterprises
NVIT S&P 500 Index Fund	Olifant Fund Ltd.
NW Indiana Carpenters Pension Fund LCV	Olin Corporation Pension Plans
O.C. Smith & P.L. Pierce Joint Rev Living Trust Dtd 7/18/2005, Patricia L. Pierce, Trustee	Master Retirement Trust, Current Trustee
Oakbrook (Glass Lewis Co)	Olivia Jean Williams, Individually and as Beneficiary of Olivia Jean Williams IRA
Oddo & Cie as Successor to Banque D'Orsay	Rollover and Olivia Jean Williams IRA
OFIPI Main Street Select Strategy	Rollover Dtd 12/19/97
Ogle B & J Tnts-Com Value-Cust	Oma Opa LLC
Ohio Bureau of Workers' Compensation	Omar F. Johnson, Jr.
Ohio Carpenters Index	Omers Administration Corp
Ohio Carpenters' Pension Plan a/k/a Ohio Carpenters' Pension Fund	Omimex Investments, LLC
Ohio National Fund, Inc. Blue Chip Fund (Strategic Value Portfolio)	OneBeacon America Insurance Co.
	OneBeacon Insurance
	OneBeacon Insurance Company
	OneBeacon Insurance Pension Plan a/k/a
	OneBeacon Pension Plan
	OneBeacon Insurance Savings Plan

OneBeacon Insurance Savings Plan - Equity 401k	Estate of Alfred C. Glassell Jr.
OneBeacon Insurance Savings Plan - Fully Managed	Pandora Select Partners, LP
Ontario Pension Board	Park National Corporation
Opal Investment Limited	Parochial Employees Retirement System Louisiana
Opportunity Partners LP	Partners Group Alternative Strategies PCC Ltd
Option Opportunities Company	Partners Group Alternative Strategies PCC Ltd – Black Vega Cell
OptionsXpress, Inc.	Partners Group Alternative Strategies PCC Ltd – Grey Delta Cell
Opus Trading Fund LLC	Partners Group Alternative Strategies PCC Ltd – Yellow Vega Cell
Opus Trading Fund LLC - BBX	Patience Humphrey
Osborne Interim Trust Dtd 2/7/02, Current Trustee	Patricia Crowe Warren Residuary Trust No. 2, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B.
Otto J Koch Trust U/A Dtd Nov 18 1992, Otto J Koch, Trustee	
Pacific Select Fund - Equity Index Portfolio	
Pacificorp (Other Trusts), Frank Burkhartsmeier, Trustee	
Palisades Partners LP	
Pamela S. Lindberg, as Beneficiary of the	

<p>Williamson, Trustees Patricia Fulton Eek Rev Trust U/A Dtd 09/25/1987, Nathaniel Sisson Eek, Trustee Patricia J Shand Patricia L. Stewart f/k/a Patricia Stewart Hayes Patricia S. Phelps 1935 Trust FBO Cynthia L. Phelps, James C. Waldo, Trustee Patricia W Bernhardt Patrick G Ryan Patrick J Sloyan IRA Rollover Fidelity Management Trust Co Cust Patrick J. McGlinn IRA, Patrick J. McGlinn, RBC Dain Rauscher, Custodians Patrick Mooney Trad IRA, WFBNA, Custodian Patton Albertson Paul C. Konrad and Kirsten Konrad Paul D Borman Paul G Eitner</p>	<p>Paul H Dean Marital Trust A, Shirley H Dean & Stacy Dean Yochum, Trustees Paul H Dean Residuary Trust B U/A Dtd 12/07/89, Shirley H Dean and Stacy Dean Yochum, Trustees Paul Harvey Aurandt Trust UA 11/13/90 M-B, Current Trustee Paul I Cohen Paul J. Kenkel Paul M Meister 2005 Revocable Trust U/A 10/20/05, Paul M Meister, Trustee Paul M. Mahoney, Paul P. Mahoney Trust Dtd 12/28/1978, Paul M. Mahoney, Trustee Paul Pai and Helena Pai Jt Ten Paul R Gerken Paul W. Dillon Grandchildren's Trust Dated 12/6/41 FBO Paul D. Goddard, The Northern Trust Company, Trustee</p>
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Paula Miller Trienens Trust Dated 9-18- 91, Howard J. Trienens and The Northern Trust Company, Trustees Pavers & Road Builders Pension Fund PCRG A/C for xxxx2645 PCRG Fund I, LLC Peak6 Investments A/C 8pk Peak6 Advisors Pecaro Family Trust Dtd 04-12-02, Daniel D Pecaro and Ofelia R Pecaro, Trustees Pennsylvania General Insurance Co. Pennsylvania Municipal Retirement System Pennsylvania Public School Employees Retirement System Pensioenfonds Horeca & Catering Pension Commingle Fund, Sumitomo Mitsui Trust Bank, Limited, Trustee	Pension Fund Association for Local Government Officials Pension Fund of the Christian Church (Disciples of Christ) Pension Reserves Investment Trust Fund, Pension Reserves Investment Management Board, Trustee Pension Trust Fund Local Union #27, Current Trustee Pentwater Credit Partners Fund Ltd Pentwater Growth Fund Ltd Pepperdine University Pequot Credit Opportunities Fund LP Pequot Diversified Master Fund, Ltd. Perceval Investment Partners P, L.P. Permal TB Value Ltd. Perry Partners L.P. Pershing LLC Peter A Nielsen Peter A Young Peter G. Lagen
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Peter R Marino IRA	Warren B.
Rollover, Charles	Williamson,
Schwab & Co Inc,	Trustees
Custodian	Philip H Slesur and
Peter Rizzo and	David P Slesur Jt
Kimberly Rizzo	Ten
Peter W. King	Philip V Mann
PG&E Postretirement	Philips Electronics
Medical Plan Trust,	N.A. Corp Master
The Bank of New	Retirement Trust,
York Mellon,	Current Trustee
Trustee	Phillip W Greer IRA,
PG&E Qual CPUC	Fidelity
NDT Partnership	Management Trust
Philip B Chase	Co Cust
Revocable Trust,	Physical, Index Arb
U/A/D 07/28/94,	Exch for Ida Kieran
Chase L Leavitt,	Kilkenny Bryan
Trustee	Cross
Philip B Doherty Trust	Pictet & Cie
U/A Dtd	Pictet & Cie (Europe)
04/28/2000, Philip	S.A. Luxembourg
B. Doherty, Trustee	PIM Equity Average
Philip B Lloyd	Price Acct
Cambridge Savings	Pipefitters Local 274
Bank	Pension Fund
Philip Chandler	Pitney Bowes, Inc.
Residuary Trust	Pittman Trust, Ridge
No. 2, Susan	Pittman, Trustee
Babcock, Jeffrey	Plan B Trustees
Chandler, Camilla	Limited
Chandler Frost,	Platinum Grove
Roger Goodan,	Contingent Capital
William Stinehart,	Master Fund Ltd.
Jr., Judy C. Webb,	

Pleasant T. Rowland Revocable Trust, Rhona Vogel, Trustee	PowerShares Exchange Traded Fund Trust
Pleiades Investment Partners - G, L.P.	PowerShares FTSE RAFI US 1000 Portfolio, a Series of
Plumbers & Pipefitters National Pension Fund	PowerShares Exchange Traded Fund Trust
Plumbers and Pipefitters Local 501 f/k/a Plumbers and Pipefitters Local 507	Pressman's Publishers Pension Fund
Plumbers Local Union No. 519 Pension Fund	PRIAC Funds
Pme Global Value	Princeton Theological Seminary
Policemen's Annuity and Benefit Fund of Chicago	Priscilla G Powell Lvg Trust U/A Dtd 4/25/97, Priscilla G Powell, Trustee
Polly H. Howells	Prism Partners I, L.P.
Polly H. Werthman Irrevocable Trust UA, Bank of America, N.A. and Pierce Atwood LLP, Trustees	Prism Partners II Offshore Fund
Portfolio Strategies Incorporated	Prism Partners III Leveraged LP
Posen Family Limited Partnership	Prism Partners IV Leveraged Offshore Fund
PowerShares Buyback Achievers Portfolio, a Series of	Prism Partners Offshore Fund
	Pro Shares Ultra S&P 500
	Progressive Casualty Insurance - Progressive- Halcyon Ins Co

Prospector Partners LLC	Quantitative Master Series LLC f/k/a
Prospector Summit Fund, L.P.	Quantitative Master Series Trust
Proxy Governance, Inc. - JMR&MCG/DE8	(Master S&P 500 Index Series),
Prudential Pensions Limited	Current Trustee
Prudential Retirement Insurance and	Quixote Capital Management LLC
Annuity Company	Quixote Capital Partners LP
Prudential Retirement SA Lv5 LCV	QVT Fund LP
Public Employee Retirement System	QVT Fund LP and
of Idaho	Quintessence Fund L.P.
Public Employees Retirement	R Charles Rashid II
Association of New Mexico	R F Foundation
Public Employees Retirement System	R. J. Brooks
of Nevada	Community Property Trust, The
Public School Teachers' Pension and	Northern Trust Company, Trustee
Retirement Fund of Chicago	Radharani Gupta
Putnam Lovell NBF Securities Inc	Rae F Patterson Self Trust, Rae F
PVA-3233/Rhumblin Advisors	Patterson, Trustee
Q4 Partners LP	Rafi Global Equity Fund
QCM Absolute Return Fund	Ralph Goetting Jr
	Ralph W Goetting Jr
	2000 Trust, Ralph W Goetting Jr,
	Trustee
	Ralph W Goetting Jr
	Rollover IRA, TD

<p>Ameritrade Inc, Custodian Ramachandra N Kurup IRA Rollover, Fidelity Management Trust Co Cust Ramiro Barrera III Ramius Securities, LLC Ramona R Diaz and Bonita Diaz Ranjit Mathoda Rappaport Family Trust U/A Dtd 06/04/1992, Nanette Rosenberg, Marjorie Rozman, Trustees Raymond & Anna Schroer Trust U/A Dtd 09/28/2006, Anna B Schroer, Susan F Frederick, Trustees Raymond A Eckhart and Margaret E Eckhart Jt Ten Raymond A. Uzanis CGM Roth Conversion IRA, State Street Bank and Trust Company, Custodian</p>	<p>Raymond E Janczak IRA National Financial Services LLC/Fidelity Management Trust Co, Custodian Raymond F Falk Raymond Gene Novelty Raymond John Frank Revocable Trust UA 03/07/00, Raymond John Frank, Trustee Raymond R Coffey Trad IRA JPMorgan Chase Bank Cust Raytheon Master Pension Trust (Large Cap/Long/Short/Market Neutral), Current Trustee RB&W/Gamco RBC Capital Markets, LLC f/k/a Ferris Baker Watts, Inc. RBC Capital Markets, LLC f/k/a RBC Capital Markets Corporation RBC Disb/Migros Ast Us. RBC Dominion Securities, Inc.</p>
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RBC O'Shaughnessy Canadian Equity Fund	Renaissance Fund Advisors
RBC O'Shaughnessy U.S. Value Fund	Renee H Miller Living Trust U/A Dtd 12/13/97, Renee H Miller, Trustee
RBS Citizens N.A.	Retirement Program Plan for Employees of Certain
RBS Dep Skandia SF US Eq Fd QMA	Employers at the U.S. Department of Energy Facilities at Oak Ridge, Tenn.
RBS Securities Inc.	Retirement System of Alabama
Re Ginna Nuclear Power Plant LLC Master Decommissioning Trust, Constellation Energy Nuclear Group, Current Trustee	Rev Sheldon Cooper Ins Trust U/A 4/25/67, Sheldon Cooper, Mary H. Cooper, Trustees
Redacted at Request of Office of Texas Attorney General	Rex L Sturm IRA, RBC Capital Markets, Custodian
Redbourn Partners Ltd	Rex L Sturm Trust Dtd 7/15/99, Rex L Sturm, Trustee
Redwood Master Fund Ltd	Rex Logan Sturm, Jr
Reed Elsevier US Retirement Plan	Rex R Mull and Nancy B Mull
Regents of the University of Michigan	Rexnord-Zurn Holdings Inc. Master Trust
Regents of University of California	Rheta R. Smith
Regions Bank	RHS Family Partnership Ltd
Reichhold, Inc. (Reichhold Chemicals Inc.)	
Rempel Brothers	

<p>Rhumblin S.A. Free S&P Index RIC Diversified Equity Richard & Despina Haigler Living Trust UA 11/04/91, Richard Haigler and Despina Haigler, Trustees Richard & Diane Kucera Trust U/A/D 03-23-2007, Richard A. Kucera, Diane A Kucera, Trustees Richard A Pitino Richard Askin and Carol Askin, Askin Family Trust U/A Dtd 09/27/1990, Richard Askin, Carol Askin, Trustees Richard B. Cohen Revocable Trust, Richard B. Cohen, Trustee Richard C. Freedman and Lynda M. Freedman Richard Cooley and Bernadette Cooley Richard D Dudley Richard Engberg and Dorothy Engberg</p>	<p>Richard J Orthwein Rev Trust Dtd 3/13/01, C/O Richard J Orthwein Or Current Trustee Richard J Wostick Richard Kallenberger and Nancy Kallenberger Jt WROS Richard M Ader Richard M. Basoco and Caryl W. Basoco Jt WROS Richard Morabito CGM IRA Rollover, State Street Bank and Trust Company, Custodian Richard Moy IRA, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Custodian Richard O Kearns Revocable Trust, Richard O. Kearns and The Northern Trust Company, Trustees Richard Paniagua Richard Rott Richard Triest Lvg Trust U/A Dtd 2-29-</p>
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96, Richard R Triest, Trustee Richard W. McIntosh and Jenifer B. Booth f/k/a Jenifer B. McIntosh Richmond Capital Master Fd Ltd Richmond Enhanced Capital LP Rick L Colyer Rief RMP LLC Rief Trading LLC Risk Facil 99: Close/Risk - U.S. Shares Programs RiverSource Absolute Return Fund LLC RiverSource Equity Index Base Fund RiverSource Large Cap Series, Inc. (Columbia Large Cap Index Fund a/k/a RiverSource Disciplined Equity Fund) RiverSource Large Cap Series, Inc. (Columbia Large Core Quantitative Fund f/k/a RiverSource Large Cap Equity Fund)	RiverSource Strategic Allocation Series, Inc. (Columbia Strategic Allocation Fund f/k/a RiverSource Strategic Income Allocation Fund) RiverSource VP – Dynamic Equity Fund Robeco Institutional Asset Management Bv Robert & Mildred Harris Trust 7H- 249, Claudia Harris Brown, Trustee Robert A Habermann Revocable Trust U/A Dtd 4/20/99, Robert A Habermann, Trustee Robert A Lange Robert A Strutzel Declr Trust U/A 9/28/04, Robert A Strutzel, Trustee Robert A Strutzel IRA Rollover, Fidelity Management Trust Co Cust Robert A. Fox & Esther G. Fox
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Robert A. Simins and Jamie A. Simins	Robert J Brookes and Valentine M
Robert B Dold and Eileen C Norris	Brookes, Robert J
Robert D Sparr	Brookes, Trustee
Robert D. Bosau	Robert J Gunterberg
Designated Bene	Robert J. Kuhn Decl of
Plan/Tod	Trust Dtd 4-6-92,
Robert Dishon Family	Thomas J. Kuhn,
Trust, 1st Source	Trustee
Bank, Trustee	Robert J. Passaneau
Robert E. La Blanc	Robert Joseph White
Robert Farrington	Trust U/A/D
Rollover Account,	06/16/99, Robert J
Pershing LLC,	White, Trustee
Custodian	Robert K Kraft
Robert G Witt IRA	Robert L. Oakum and
Fidelity	Susann Oakum
Management Trust	Robert M. Steiner,
Co Cust	Rothschild
Robert G. Speck	Investment Corp.
Robert H Farrington	Employee Profit Sh
Marital Trust Uad	Plan Designated
09/05/05, Robert H	Inv Acct FBO
Farrington and	Robert M. Treboux
Robert F	Robert Mosberg
Farrington,	Robert O'Brien,
Trustees	Executor U/W
Robert H Huffman III	Charlotte O'Brien
Rev Trust U/A	Robert Parrillo Trust,
3/12/90, Robert H	U/A Dtd
Huffman III,	12/27/1990, Robert
Trustee	Parrillo, Trustee
Robert J Brookes Trust	Robert R Cull Trust
U/A 3/10/87 FBO	U/A 1/14/98, Robert
	R Cull, Trustee

Robert R. McCormick Foundation	Rocca Limited Liability Co
Robert Ramsey	Rodman W. Moorhead,
Robert Rosenberg	III
Trust U/A Dtd	Rodolfo V Gil
11/02/1977, Nanette	Roger Bare
Rosenberg,	Roger Williams Univ
Marjorie Rozman,	Ed Growth Eq
Trustees	Romano Brothers &
Robert S Evans	Co.
Robert S Splithoff	Ronald Cann Trust
Trust U/A/D 05-27-	UAD 11-22-04,
1992, Robert S.	Ronald E. Cann,
Splithoff, Trustee	Trustee
Robert V Fattibene	Ronald L Bornhuetter
and Mildred W	Rondra Matthews and
Fattibene	Keith Matthews
Robert W Baird Co.	Ronin Capital LLC
Inc.	Rose M Howells
Robert W Young	Rose Marie Boyd
Robert Wesley	Rose T. Bosau
Thornburgh	Designated Bene
Fiduciary Mgt.	Plan/Tod
Assoc. LLC 401k,	Rosemary T. Cox
Kathryn Vorisek,	Revocable Trust
Trustee	Dtd 5/21/2004,
Robertson Five, Inc.	Rosemary T. Cox,
Robin Lloyd	Trustee
Robin Wood	Rosenberg Revocable
Orthopedic	Trust, Louise
Specialists Benefit	Rosenberg, Trustee
Trust, Current	Roslyn Furth Trust
Trustee	U/A Dtd
Robyn L. Motley	11/16/2004, Nancy

Yacyshyn Succ, Trustee	Fund, State Street Bank and Trust
Ross David Cahn	Company, Trustee
Roy J. Carver	Russell 2500 Index Fund
Charitable Trust, Current Trustee	Russell 3000 Index Fund
Royal Trust	Russell 3000 Index Fund Common
Corporation of Canada	Trust Fund, State Street Bank and
Royce W Nation and Nell Nation	Trust Company, Trustee
RS S&P 500 Index VIP Series	Russell 3000 Index Non-Lending
Ruanwil LLC	Common Trust
Russell 1000 Alpha Tilts B -- RLBcore	Fund, State Street Bank and Trust
Russell 1000 Alpha Tilts Fund BL	Company, Trustee
Russell 1000 Index Fund	Russell 3000 Screened Index Non-Lending
Russell 1000 Value Common Trust	Common Trust
Fund	Fund, State Street Bank and Trust
Russell 1000 Value Fund	Company, Trustee
Russell 1000 Value Fund B	Russell Equity I Fund
Russell 1000 Value Index NL QP	Russell F Stephens Jr Trust U/A Dtd
Common Trust	02/10/1992, Russell F Stephens Jr,
Fund, State Street Bank and Trust	Trustee
Company, Trustee	Russell Investment Company
Russell 1000 Value SL Common Trust	Diversified Equity Fund

Russell Investment Company PLC	Ruth Steif Support Trust for William
Russell Investment Group	U/A Dtd 01/02/1980, William
Russell T. Stern Trust B, The Northern Trust Company, Russell T. Stern Jr., Patricia Stern Ross, Trustees	Steif, Trustee
Russell US Core Equity Fund	Ruth Stein Discretionary Trust for Joan S Freehling Uad 1/2/80, Current Trustee
Ruth C. Von Platen Trust No. 2, Susan Babcock, Jeffrey Chandler, Camilla Chandler Frost, Roger Goodan, William Stinehart, Jr., Judy C. Webb, Warren B. Williamson, Trustees	Ruth Wottge RWB Funds - Investment Trust
Ruth M Tankersly Rev Trust Amd 6/16/2000 U/A 10/6/92, Ruth M Tankersley, Trustee	Rydex ETF Trust, Rydex S&P 500 Pure Value ETF
Ruth McCormick Tankersley Revocable Trust Dated October 6, 1992, Ruth McCormick Tankersley, Trustee	Rydex ETF Trust, Rydex S&P Equal Weight Consumer Discretionary ETF Rydex ETF Trust, Rydex S&P Equal Weight ETF Rydex Series Funds, Absolute Returns Strategies Fund Rydex Series Funds, Large Cap Value Fund Rydex Series Funds, Multi-Hedge Strategies Fund

Rydex Series Funds, S&P 500 Pure Value Fund	Fund, State Street Bank and Trust Company, Trustee
Rydex Variable Trust, Absolute Strategies Return Fund	S&P 500 Index Fund - UBS Global Asset Management (Americas) Inc.
Rydex Variable Trust, Large Cap Value Fund	S&P 500 Index Fund, a Series of SEI
Rydex Variable Trust, Multi-Hedge Strategies Fund	Institutional Managed Trust
Rydex Variable Trust, S&P 500 Pure Value Fund	S&P 500 Screened SL Common Trust
S & P 500 Equity Index Weighted Fund LP a/k/a S & P 500 Index Equal Weight - Advisory Research Inc	Fund, State Street Bank and Trust Company, Trustee
S&P 500 Equal Weight Common Trust	S&P 500 Stock Master Portfolio
Fund, State Street Bank and Trust Company, Trustee	S&P 500 Tobacco Free Common Trust
S&P 500 Equity Index Weighted Fund LP	Fund, State Street Bank and Trust Company, Trustee
S&P 500 Flagship Common Trust	S&P Conservative Index Common Trust Fund, State Street Bank and Trust Company, Trustee
Fund, State Street Bank and Trust Company, Trustee	SA Funds-Investment Trust (S.A. U.S. Market Fund)
S&P 500 Index Common Trust	SA Funds-Investment Trust (S.A. U.S. Value Fund)

Sacramento County Employees Retirement System	Employees' Retirement System
Sacred Heart University	San Francisco Ladies' Protection and Relief Society d/b/a The Heritage
Saint Louis University	Sandelman Partners Multi-Strategy Master Fund
Salisbury Bank & Trust Co.	Sanders Morris Harris, Inc. a/k/a SMH Capital Inc
Sally B O'Keefe 1999 Restated Trust U/A/D 5/12/1999, Sally B O'Keefe, Trustee	Sanford Bernstein Company, Inc.
Sally H Contant Trust U/A Dtd 10/13/1983, Sally H Contant, Trustee	Sanford C Bernstein Fund Inc - Alliance Bernstein Investor Services
Sally S Shelden Trust U/A 12/21/99, Sally S Shelden, Trustee	Sanford C Bernstein Fund Inc - Alliance Bernstein LP
Sampension Invest	Sanford C. Bernstein & Co., LLC
Samuel H Frankel Trust U/A/D 01/28/80, Samuel H Frankel, Trustee	Sanford C. Bernstein Fund, Inc.
Samuel P Reckford	Sanibel Captiva Trust Co.
Samuel S Moore Trust U/A Dtd 10/11/1988, Samuel Moore, Trustee	Sano Investments LLC
San Francisco Employees' Retirement System a/k/a San Francisco City & County	Santa Fe Art Foundation Sara A Lightbourn Sara Joyce Trust U/A Dtd 1/7/2005, M. Joyce & S. Joyce Trustees

Sargeant & Luann Joys Living Trust U/A Dtd 09/23/2001, Sargeant E Joys & Luann G Joys, Trustees Saudi Arabian Monetary Agency Savannah River Nuclear Solutions LLC Master Trust, Current Trustee SBC Master Pension Trust, Current Trustee SBL Fund Series H SBL Fund, Series O SC Edison Nuclear Facilities Qualified Cpuc Decom Master Trust, Current Trustee SCB Canada Trust Diversified (Sanford C. Bernstein) Schaefer-Nevada Inc Scheer Rowlett & Associates Scheiermann Living Trust, U/A Dtd 08/28/1997, Anne Scheiermann, Trustee	School Employees Retirement System of Ohio - LSV US Lrg School Employees Retirement System of Ohio - SSGA Passive Schuler Trust Utd 01/18/88, Current Trustee Schultze Apex Master Fund Ltd Schultze Asset Management, LLC (A/C Arrow Distressed Fund) Schultze Master Fund Ltd Scotia Capital Inc. Scott Klarquist Scott R Cook Scripps Family Rev. Trust U/A/D 02-16- 2006/Sb, Barry H. and Gail D. Scripps, Trustees Sda Largecap Equity Index Cl A SDG&E Qualified Nuclear Decommissioning Trust Partnership, Sempra Energy, Trustee
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Seasons Series Trust - Focus Value Portfolio	Trust, Sempra Energy, Trustee
Seasons Series Trust - Large Cap Value Portfolio	Sentinel Investment Partners Ltd
Seasons Series Trust - Mid Cap Value Portfolio	Sentry Select Capital Inc.
Securian Funds Trust f/k/a Advantus Series Fund, Inc. (Index 500 Portfolio)	Seslia Securities SG Americas Securities, LLC
Security Benefit Life Insurance Company	SGAM AI Equity Fund - Renaissance Institutional Equity
Security Benefit/Rydex	SGIF Large Cap Value Fund (R1V Enhanced)
SEI Global Master Fund PLC - US Large Companies Fund	Sharon B. Christhlf a/k/a Sharon Anne Bradford
SEI Institutional Managed Trust Tax-Managed Large Cap Fund	Sharon B. Zell, Sharon B. Zell Family Trust #2 Dtd 1/21/94 Restated 5/10/96, Sharon B. Zell, Trustee
SEI Investments Canada Company (U.S. Large Company Equity Fund)	Sharon L. Boultinghouse Trust, Sharon H. Boultinghouse, Trustee
SEIU Local 36 BOLR Pension Fund	Sharon Rosenhause Sheldon Gray
Sempra Energy Pension Master	Shell Contributory Pension Fund ("SCPF")

Sherrie M Argirion Rev Trust U/A Dtd Nov 13, 1996, Sherrie M Argirion, Trustee	Silver Point Capital Offshore Fund, Ltd.
Sherry P. Broder IRA a/k/a Sherry P. Broder Trust U/A Dtd 1/1/94, Sherry Broder, Trustee	Simon Wottge Siragusa Enterprises LP
Sherry P. Broder IRA, Delaware Charter Guarantee & Trust, Custodian	Siragusa Foundation Sirius International Insurance Corporation
Sherwin A. Zuckerman IRA, Pershing LLC, Custodian	Sisters of the Blessed Virgin
Shirley C. Beal Gegenheimer	Sisters Servants of Immaculate Heart of Mary Fund
Shirley J Sperling and Susan J Martin	Six Sis AG
SI Trust Servicing	SJL Moore Ltd
SICAV State Street Banq, Paris	Sjunde Ap-Fonden Premium Savings Fd AP7/Custody Services
Sidney J Silver Wbna Collateral Account	Skandia Investment Management Limited
SIG-SS CBOE Joint Account, Susquehanna Investment Group, Custodian	Skandinaviska Enskilda Banken AB
SIL 1 Ltd	Sloyan Living Trust U/A 03/03/00, Patrick J Sloyan, Phyllis H. Sloyan, Trustees
Silver Point Capital Fund L.P.	Smoke Rise Foundation, Inc.
	Societe Generale Asset Management

Alternative Investments	MCV, Current Trustee
Societe Generale Securities Services	Southwest Carpenters Pension Trust
Society for the Danish Old Peoples Home	Russell 3000 (736), Current Trustee
Sol Diamond Trust	Southwest Securities, Inc.
Dated 12/4/72, Terry and Muriel Diamond, Trustees	Sowood Alpha Fund LP
Sophie & Malcolm McConnell	Sowood Alpha Fund, Ltd.
South Carolina Retirement System	Spectrum Trading LLC - Michael M. Tarpy
South Dakota Retirement System	JBO
South Shore Hospital Corporation	Spectrum Trading LLC - Zachary Showalter
Southern California Edison Company	JBO
Nuclear Facilities	Spencer W Beard and Sharron R Beard
Qualified Cpuc Decommissioning Master Trust	Spinning Wheel LP
Southern Company	Sprint Corporation
System Master Retirement Trust, Current Trustee	Master Trust, Current Trustee
Southern Electrical Retirement Fund	Sr Latigo Master Ma Ltd
Dtd 8/22/1975, Paul Gass & Lanny Smith, Trustees	Citco Fund Svs (Cayman Islands) Ltd
Southwest Carpenters Pension Trust	Sr Loeb Arbitrage Master Ma Ltd
	SS&C Technologies, Inc. f/k/a Cogent Management Inc.
	SSB Exchange Fund - Confidential Client

SSB Exchange Fund (State Street Global Advisors)	Stanley G. Harris Trust 6/10/46, BMO Harris Bank, N.A., Trustee
SSCSIL RIC II US Value - Tacoma (Russell Investments)	Stanley K Friedman Stanton R. Cook - Stanton R. Cook Charitable Remainder Trust, Current Trustee
SSIHM Charitable Trust U/A 6/3/88, S Sattler, Helen E Ingles, Trustee	Stark Global Opportunities Master Fund Ltd
SSM Health Care St. Francis Friends of the Poor, Inc	Stark Master Fund Ltd
St. Gregory College Preparatory School	State Farm Fire & Casualty Insurance Company
St. Joseph Investment Fund LCV	State Farm Insurance Companies Employee Retirement Trust, Current Trustee
Stacie Elizabeth Ford, Acting Trustee and Beneficiary of the Alfred C. Glassell Jr. Children's Trust for Stacie Elizabeth Ford	State Farm Large Cap Indx
Stanley Freehling	State Farm Life Insurance Company
Stanley G. Harris Charity Trust 6/13/45, BMO Harris Bank, N.A., Trustee	State Farm Mutual Automobile Insurance Company
Stanley G. Harris Mar Trust 6/17/65, BMO Harris Bank, N.A., Trustee	State Farm Variable Product Trust (Large Cap Equity Index Fund), Current Trustee State of Alaska SBS

State of Arizona	State Teachers
State of Connecticut	Retirement System
State of Michigan	of Ohio a/k/a Strs
Employees'	Ohio Retirement
Retirement System	Board
State of Wyoming	State Universities
State Street Bank &	Retirement System
Trust Bkr 997	Stationary Engineers
State Street Bank &	Local 39 Pension
Trust Co. as	Trust Fund,
Successor to	Current Trustee
Investors Bank &	Steamfitters Local 420
Trust Company	Stefano Carbonin
State Street Bank &	Stephan P Rothermel
Trust Co., Trustee	Stephanie B Flynn
or Custodian for	Trust U/A Dtd
Closed Funds	11/14/62, Stephanie
State Street Bank &	B. Flynn & William
Trust Co., Trustee	J. Byrnes, Trustees
or Custodian for	Stephanie Murray
Confidential Client	Living Trust,
1	Stephanie Murray,
State Street Bank &	Trustee
Trust Co., Trustee	Stephen E Quast IRA
or Custodian for	12/31/1995,
Confidential Client	Stephen E. Quast,
2	Trustee
State Street Bank	Stephen Herbert
Luxembourg, S.A.	Kaelber IRA
State Street Equity	Rollover Fidelity
500 Index Portfolio	Management Trust
a/k/a State Street	Co Cust
Amr	Stephen L. O'Connor,
State Street	Stephen L.
Management S.A.	O'Connor Trust,

Bank of America, N.A., Trustee	Stichting
Stephens Inc.	Pensioenfond Hoogovens
Sterling Financial Trust Company	Stichting
Steve H. Kagan IRA	Pensioenfond IBM
Rollover Account, Vanguard Fiduciary	Nederland a/k/a
Trust Co, Custodian	IBM Netherlands
Steven A. Ballmer	MSCI US
Steven Ballard	Stichting
Huntley IRA	Pensioenfond Medische
Rollover, Vanguard	Specialisten
Fiduciary Trust Co, Custodian	Stichting
Steven Burger	Pensioenfond Oce
Steven David Levitt and Jeannette	Stichting
Levitt	Pensioenfond Stork
Steven U Lee and Jung	Stichting
E Lee	Pensioenfond Van
Stichting	De ABN AMRO
Bedrijfspensioenfo nds Metalektro	Bank N.V.
Stichting	Stichting
Bedrijfstakpensioen fond	Pensioenfond Voor
Beroepsvervoer US	Huisarten - Doctors
Large Cap Equity	Pension Fund
Stichting	Services
Pensioenfond ABP	Stichting
Stichting	Pensioenfond Zorg
Pensioenfond	En Welzijn
Campina LCV	Stichting Shell
	Pensioenfond
	Stichting Shell
	Pensioenfond LCV
	Stifel Nicolaus & Co. Inc.

Stock Index Fund, a Series of VALIC Company I f/k/a AIG Retirement Company I	Mitsui Trust Bank, Limited, Trustee
Strategic Funds, Inc. - Dreyfus Active Midcap Fund	Sumitomo Mitsui Trust Bank, Limited f/k/a The Sumitomo Trust & Banking Co. Ltd.
Strategic Opportunities Master Fund LP	STB-Pen xxx- xxxxxx-0004-C, Sumitomo Mitsui Trust Bank, Limited, Trustee
Strongbow Fund Ltd	Sumitomo Mitsui Trust Bank, Limited f/k/a The Sumitomo Trust & Banking Co. Ltd.
Suc Co TUA Orthwein Fnd Apprecia	STB-Pub xxx- xxxxxx-0001, Sumitomo Mitsui Trust Bank, Limited, Trustee
Suc TUW Richard Kline FB Barbara Kline, Susan Kinsella, Trustees	Sun Creative Investments LP
Sumitomo Mitsui Trust Bank, Limited f/k/a The Sumitomo Trust & Banking Co. Ltd.	Sun Life of Canada (Oppenheimer Funds Inc.)
STB Pen xxx-xxxxx- 0018-P, Sumitomo Mitsui Trust Bank, Limited, Trustee	SunAmerica Series Trust - Equity Opportunities Portfolio
Sumitomo Mitsui Trust Bank, Limited f/k/a The Sumitomo Trust & Banking Co. Ltd.	SunAmerica Series, Inc. - SunAmerica Strategic Value Portfolio f/k/a
STB Pen xxx-xxxxx- 0059-K, Sumitomo	

Focused Value Portfolio	Suzanne C Hutchins, Trustee
Sungard Brokerage & Securities Services LCC f/k/a Assent LLC	Suzanne Grossinger Gould
Superannuation Funds Management Corporation of South Australia	Swiss American Securities Inc.
Survivor's Trust, Betty H Roeland, Trustee	Swiss National Bank (Banque Nationale Suisse)
Susan B. Heymann	Swiss Re Financial Products Corp.
Susan Cooney Kuhn	Sybil Jinx Robinson
Susan Gail Harwood	Separate Property Trust U/A Dtd
Trust U/A Dtd 8-22- 94, Susan Gail Harwood, Trustee	07/03/07, Sybil Jinx Robinson, Trustee
Susan H Shane Trust U/A Dtd	Symetra Financial Corporation
08/09/1991, Susan H Shane, Trustee	Symetra Life Insurance Co.
Susan J Cellmer	Synergy Capital Management LLC
Susan K Cunningham	T. Stanton Armour Tr.
Susan Lynn Osterman	2/10/66, BMO
Susquehanna Capital Group	Harris Bank, N.A., Trustee
Susquehanna Investment Group	Taliesin Capital Partners LP
Suttonbrook Capital Portfolio LP	Talleyrand Offshore Master Fd Ltd
Suzanne C Hutchins Trust UAD	Talon Opportunity Ptnrs LP
01/16/1974,	Tamar Securities Inc
	Tangle C Lloyd

Tangley Lloyd 1935 Trust No. 1, Tangley Lloyd, Trustee	Teachers' Retirement System of the City of New York
Tao Huang and Xiaomei Huang	Teachers Retirement System of the State of Illinois
Tax Managed Opportunity Fund LLC	Teamsters Joint Council No 83 of Virginia Pension Fund
TD Asset Management Inc (TD Emerald Pooled U.S. Fund)	Telluride Capital Master Fund
TD Asset Management Inc (TD U.S. Index Fund)	Tennessee Consolidated Retirement System
TD Emerald Hedged U.S. Equity Pooled Fund Trust, Current Trustee	Tensor Opportunity Limited
TD Emerald U.S. Market Index Fund	Terence Rhoden
TD U.S. Large Cap Value Fund	Terra Nova Financial, LLC
TD Waterhouse Canada Inc.	Terrence R McGovern and Barbara T McGovern
TE Cael Portfolio, Ltd	Terrence W Reeder IRA Rollover, Fidelity
Teachers' Retirement System of Louisiana	Management Trust Co Cust
Teachers' Retirement System of Louisiana (Intl. Lg. Value)	Terrill F Cox & Lorraine M Cox Trust U/A Dtd 3/31/98, Terrill F Cox, Lorraine M Cox, Trustees
Teachers' Retirement System of Texas	

Terry D. Diamond Trust Dtd 5/7/86, Terry Diamond, Trustee	The American Electric Power Master Retirement Trust
Terry Diamond IRA, The Northern Trust Company, Custodian	The Bank of New York Mellon Corporation
Tewksbury Investment Fund Ltd.	The Bank of New York Mellon Decommissioning Collective Trust
Texas Education Agency	Investment Plan— DT Broad Market Stock Index Fund,
Texas Presbyterian Foundation	The Bank of New York Mellon, Trustee
Texas Scottish Rite Hospital for Crippled Children	The Bank of New York Mellon Employee Benefit Collective Investment Fund Plan, The Bank of New York Mellon, Trustee
Textron Inc Master Trust, Ellen Hayes, Trustee	The Bank of New York Mellon, in Its Individual and Custodial Capacities
The 2000 Peckham Family Trust U/A/D 07-14-2000, George J. Peckham, Imogene S. Peckham, Trustees	The Bank of New York Mellon, in Its Individual and Custodial Capacities
The Alicia P. Guggenheim Trust, Current Trustee	The Bank of Nova Scotia
The AllianceBernstein Portfolios (AllianceBernstein Tax-Managed Funds)	
The Alternative Fund	

The Board of Trustees of the Leland Stanford Junior University	The DFA Investment Trust Company -- U.S. Large Cap Value Series
The Boeing Company Employees Retirement Plans Master Trust, Current Trustee	The Diamond Family Foundation
The Burroughs Wellcome Fund LCV	The Dreyfus/Laurel Funds Inc. (Dreyfus BSC S&P 500 St Indx Fd)
The Canyon Value Realization Master Fund, L.P. (by Conveyance of Participation Interest from the Canyon Value Realization Fund (Cayman) Ltd.)	The Effie and Wofford Cain Foundation
The Church Pension Fund, in Its Individual and Trustee Capacities	The FBO Dunaway Family Trust U/A/D 07-05-1991, Michael W Dunaway, Trudy V Dunaway, Trustees
The DFA Group Trust	The Gabelli Equity Trust Inc
The DFA Investment Trust Company -- Tax-Managed U.S. Equity Series	The GDL Fund f/k/a Gabelli Global Deal Fund
The DFA Investment Trust Company -- Tax-Managed U.S. Marketwide Value Series	The Glassell Family Foundation Inc., as Beneficiary of the Estate of Alfred C. Glassell Jr.
	The Glenmede Trust Company, N.A.
	The Glover Trust Dtd 01-19-90, Carol T Glover, Trustee

The Governor and Company of the Bank of Ireland	The Mainstay Funds, as Issuer of a Series Known as Mainstay Equity Index Fund
The Grace Trust, Duane Shelton Tydings, John Healey, Trustees	The Marital Trust of the De Goldsmith Family Trust, Eric De Goldsmith, Muriel De Goldsmith, Trustees
The Hartford Financial Services Group, Inc. (Coli Pooled S & P 500)	The Maryknoll Sisters of St Dominic Inc- Maryknoll Ny
The Hartmarx Retirement Income Plan/Trust, Pension Benefit Guarantee Corporation, Successor Trustee	The McConnell Foundation
The Helen Hay Whitney Foundation	The Merger Fund (Westchester Capital Management)
The Jacob & Charlotte Lehrman Foundation	The Michael Argirion Revocable Trust Under Agreement Dated Nov 13, 1996, Michael Argirion, Trustee
The Kroger Company Master Retirement Trust, Current Trustee	The Minnesota State Board of Investment
The Lattner Family Foundation	The NBLN Limited Partnership
The Mainstay Funds, as Issuer of a Series Known as Mainstay Common Stock Fund	The New Church Investment Fund

The New York Province of the Society of Jesus	The Prudential Insurance Company of America
The Northern Trust Company of Connecticut AFGT Mid Cap Value Fund	The Reader's Digest Association, Inc. Retirement Plan, The Northern Trust Company, Trustee
The Northern Trust Company of Connecticut EBT MCV	The Rowan Family Trust Survivors Share U/A Dtd 03/23/1993, Marilyn Rowan, Trustee
The Northern Trust Company Pension Trust, Kim Soppi, Trustee	The Royal Bank of Scotland N.V. f/k/a Abn Amro Bank N.V.
The Northwestern Mutual Life Insurance Company	The Royal Bank of Scotland PLC (Royal Bank of Scotland Financial Markets)
The Pension Boards - United Church of Christ, Inc.	The S.O.G. Fund - International
The Peters Corporation	The Salvation Army - Central Territory
The President and Fellows of Harvard College	The Salvation Army - Southern Territory
The Promotion and Mutual Aid Corporation for Private Schools of Japan, Resona Bank, Limited, Trustee	The Schwab Trust a Charitable U/A Dtd 05/23/1995, Mary B Schwab, Trustee
	The Seawater Foundation
	The Seeing Eye, Inc.

The State Board of Administration of Florida, as Investment Fiduciary for: The Florida Retirement Sys. Trust Fund, The Lawton Chiles Endowment Fund, The Florida Education Fund, The Florida State Univ. Research Foundation, and The Div. of Blind Services	The Vantagepoint Funds (Vantagepoint Broad Market Index Fund)
The University of Missouri Retirement, Disability and Dth Benefit Plan, Curators of the University of Missouri, Trustee	The Vantagepoint Funds (Vantagepoint Equity Income Fund)
The Vanguard Group, Inc.	The Vantagepoint Funds (Vantagepoint Goldman)
The Vantagepoint Funds (Vantagepoint 500 Stock Index Fund)	The Vantagepoint Funds (Vantagepoint Mellon Capital Management)
The Vantagepoint Funds (Vantagepoint Asset Allocation Fund)	The Walters Art Gallery, Inc. d/b/a The Walters Art Museum a/k/a Walters Art Gall Ees Con Trp, Current Trustee
	The Workers Compensation Board - Alberta
	Thelma Orshek Testamentary Trust, US Bank N.A., Trustee
	Theodore D Novak IRA Rollover, The

Northern Trust Company, Custodian Third Avenue Special Situations Master Fund LP Third Millennium Trading LLC Thomas B O'Keefe Thomas Cartter Lupton Trust U/W FBO John T. Fontaine & Issue, Brett W Rousch, Trustee Thomas Decedent's Trust U/D/T 6/12/1981, William F. Thomas, Trustee Thomas E Bak IRA R/O, Mesirow Financial, Inc, Custodian Thomas G. Ayers Trust, John S. Ayers and Catherine A. Allen, Trustees Thomas J Pence Thomas J. Majorana CGM IRA, State Street Bank and Trust Company, Custodian	Thomas J. Osterman Trust U/A/D 04/04/91, Thomas J. Osterman, Trustee Thomas M. Owens Thomas Read Thomas T Byrd Trust UA 01/25/82 Harry F Byrd Jr Revocable Trust, Harry F Byrd Jr, Trustee Thomasyne C. Hubert Tod Thomas G. Hubert Thrift Plan for the Employees of the Federal Reserve System Tiden Destiny Master Fund Limited TIF LLC Tillman Family Trust U/A 07/29/1980, Ina Tillman, Jonathan Tillman, Eugene Tillman, Trustees Timber Hill LLC Time Warner Inc. Master Pension Trust, Current Trustee Times Mirror Savings Plus Plan
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Timothy L O'Rourke IRA, Fidelity Management Trust Co Cust	Partners Mid-Cap Value f/k/a Diversified Investors Mid-Cap Value
Timothy R. Kennedy Timothy R. Kennedy and Susan M. Kennedy	Transamerica Series Trust, as Issuer of the Series
Timothy S. Pecaro and Susan S. Pecaro	Transamerica Blackrock Large Cap Value VP f/k/a
TLCD List LP	Aegon/Transameric
TLCD Ltd	a T. Rowe Price
TMI	Equity Income VP
TOA Reinsurance	Traub Trading LLC
Tommie L Cordero Trust UA 12/09/90, Dorothy Flibbert, Trustee	TRE Pension EFT Account Pension Payment System
Tompkins Financial Corporation f/k/a Tompkins Trustco, Inc.	Treasurer of the State of N.C.
Toro Trading LLC	Treasurer of the State of NC Index, First Citizens Bank, Trustee
Toronto Dominion Bank	Tredegar Corporation Master Trust, Current Trustee
Tower North American Equity Fund	Tredje AP-Fonden
Towerview LLC	Trevor Gray and Edna Gray Jtwros
Tradelink Holdings LLC a/k/a Tradelink LLC	Tribune Company 401(k) Savings Plan
Traits Omni	Tribune Company Master Retirement
Transamerica Partners Mid Value Portfolio f/k/a Transamerica	

Savings Trust, Current Trustee Tribune Employee Stock Ownership Plan Trinity Derivatives Group LLC Trinity Health Corporation Troon & Co a Partnership Trowel Trades S&P 500 Index Fund Trust & Custody Services Bank, Ltd. Trust Company of the South - Sanibel Captiva Trust Co. Trust D for a Portion of the Assets of the Kodak Ret Inc Fd Pln, Current Trustee Trust for the Benefit of Mary Anne Vydra U/A/D 03-10-2006, Mary Anne Vydra, Trustee Trust Fund Number 2381011, State Street Trust and Banking Co. Ltd., Trustee Trust U/A Dated 12/13/76, Charles	Joseph De Sieyes, Fiduciary Trust Company International, United States Trust Company of New York, Trustees Trust U/A Dated 12/13/76, David C. De Sieyes, Fiduciary Trust Company International, United States Trust Company of New York, Trustees Trust U/A Dated 12/19/77, John T. Risley, Fiduciary Trust Company International, United States Trust Company of New York, Trustees Trustees of Boston College Twin City Pipe Trades Pension Fund LCV Twin Securities, Inc. U.E. Decom Mo U.S. Equity Market Sudan Free Equity Index Fund U.S. Large Company Portfolio of
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Dimensional Investment Group Inc.	UBS Securities LLC as Successor to UBS Securities Inc
UBS (Luxembourg) S A	UMB Bank, N.A.
UBS AG - UBS (Ch) IF2 Equities USA Passive	UMC Benefit Board, Inc
UBS AG (Swiss Portfolio xxxx4400)	UMWA 1974 Pension Trust, Current
UBS AG (Swiss Portfolio xxxx5700)	Trustee a/k/a UMWA Health and Retirement
UBS AG (Swiss Portfolio xxxx7700)	Union Electrical Industry Master Trust, Tina
UBS AG (Swiss Portfolio xxxx8500)	Thoman, Trustee
UBS AG, Stamford Branch (as Custodian for UBS AG London)	Uniontown Hospital
UBS Bank AG, Jersey Branch	UNITE HERE National Retirement Fund
UBS Bank AG, New York Branch	United Air Lines, Inc. Pilots' Directed Account Plan
UBS Financial Services, Inc.	United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada
UBS Global Asset Management UBS S&P 500 Index Fund	United Brotherhood of Carpenters
UBS Global Equity	United Defense L.P. Master Pension Trust, Current
UBS Life USA Tracker Fund	Trustee
UBS Multi-Manager Large Cap Value	

United Food & Commercial Workers Unions and Employers Midwest Pension Fund	US Equity Fund, The Royal Bank of Scotland PLC, as Holder of Accounts
United States MSC Common Trust Fund, State Street Bank and Trust Company, Trustee	US Equity Market Fund A
United Teamsters Pension Fund "A" LCV	US Equity Market Fund B
United Technologies Corp. Master Retirement Trust, Current Trustee	US Equity Value Pool
University of Miami Growth Pool	Usuf, Florence Hendrick Wray, Edwin Newton Wray, Lois Wray Rowe
University of Toronto Master Trust, Governing Council of University of Toronto, Trustee	Utah Retirement Systems
Univest	V H Energy LLC
US Bancorp Pension Plan, U.S. Bank National Association, Trustee	Value Fund, a Series of First Investors Equity Funds
US Bank - First American Equity Index	Value Fund, a Series of First Investors Life Series Funds
	Value Growth Portfolio of the Equitrust Variable Insurance Series Fund
	Value Line Income & Growth Fund, Inc. f/k/a Value Line Income Fund
	VEBA Partnership N LP
	VEBA Partnership X L.P.

Verizon Investment Management Corp.	Virginia A. Kearns and The Northern Trust Company, Trustees
Verizon Master Savings Trust, Current Trustee	Virginia Sonnenschein Trust, Virginia Sonnenschein, Trustee
Vermont State Employees Retirement System	Vivian B. Larsson Trust, The Northern Trust Company, Trustee
Vern M Strickler	Vivian Pappas IRA Rollover, The Northern Trust Company, Custodian
Verna R. Harrah, Verna R. Harrah Trust Special Account Dtd 9/5/86, Verna Harrah, Trustee	Vtrader Pro, LLC
Vester T Hughes Jr	W. Jerome Frautschi Living Trust, Rhona Vogel, Trustee
Vicis Capital Master Fund	W. Milton Jr. Trust U/W FBO Anna Livingstone, M&T Bank, Trustee
Vikram Parvataneni	W. Wrigley Jr Christmas Trust, William Wrigley, Jr., Trustee
Vilma L Chantiles and Nicholas G Chantiles	W.G. Lassiter, Jr. and Aneice R. Lassiter
Vincent Adone IRA, Vanguard Fiduciary Trust Co, Custodian	W.L. Putnam Prize Fund
Vincent Camuto Gabelli Value	
Vincent T Turitto	
VIP Index 500 Fund, a Series of Variable Insurance Products Fund II	
Virginia Kearns Revocable Trust,	

Wabash/Harvest Partners, L.P. f/k/a Wabash Harvest Partners LP	Morgan Securities, Inc.
Walter Baum	Weed Liv Trust U/A Dtd 08-01-90, Robert N Weed, Marjorie L Weed, Margo Weed, Trustees
Walter E Lang IRA, JPMCC Cust	Weege Family Trust U/A 6/21/89, Reinhold Weege and Shelley Weege, Trustees
Walter K Graham Trust U/A Dtd 10/16/2000, Anne G Taylor, Trustee	Weintraub Capital Management
Walter K Graham Trust U/A Dtd 10/16/2000, Walter E Graham, Trustee	Weiss Multi-Strategy Partners LLC
Wamu Pension Plan Master Trust, Current Trustee	Welch & Forbes LLC
Warren J Eide	Wellmark Health Plan of Iowa, Inc.
Washington Area Carpenters Pension Fund	Wellmark, Inc.
Washington Mutual, Inc. Cash B	Wellspring Health Master Trust, Current Trustee
Waterman Broadcasting Corp Employee Profit Sharing Plan U/A 01/01/1974	Wendi Power and Scott Power
Wayne Hummer Trust Co NA	Wendy Pye Enterprises Ltd
Wealth Management Services	WG Trading Company LP, Robb Evans & Associates LLC, Receiver
Wedbush Securities, Inc. f/k/a Wedbush	Wheels Common Investment Fund

WHI Growth Fund QP LP	Will K. Weinstein, Will K. Weinstein
White Mountains Re Bermuda Ltd	Revocable Trust U/A Dtd 2-27-90,
White Mountains Reinsurance Company of America	Will K. Weinstein, Trustee
White Mountains Reinsurance Company of America f/k/a Folksamerica Reinsurance Company	William & Jane Hays Charitable Remainder Unitrust, US Bank, Trustee
Whitebox Convertible Arbitrage Partners, LP	William A Carey and Janet S Carey Trust U/A 4/16/90, William A Carey, Trustee
Whitebox Credit Arbitrage Partners, L.P.	William A. Jobson III William Apfelbaum
Whitebox Diversified Convertible Arbitrage Fund, LP	William B Denhart Nonqualifying Trust Under Will of William B Denhart, US Bank, Trustee
Whitebox High Yield Fund, LP	William Blair & Co.
Whittier Trust Company	William Bross Lloyd Jr. New York Trust Dated July 18, 1968, The Northern Trust Company, Trustee
Wilfred H Neltner Amended Restated Trust Agreement U/A Dtd 7/9/82, Wilfred Neltner, Trustee	William Bross Lloyd Jr. Vermont Trust Dated July 18, 1968, The Northern

Trust Company, Trustee	8/23/93, William J Bell, Trustee
William C Hatch Trust U/A/D 07/11/96, William C Hatch, Trustee	William K McGee Jr William K. Schaefer William M Davenport Trust Under Will of Thomas Carrter Lupton, Brett W Rousch, Trustee
William Caplice Revocable Trust U/A/D 3/10/1987, Jeanne Caplice, Trustee	William M Vanneman Trust Amended 6/1/2007 U/A 5/6/92, W M Vanneman, W Vanneman Jr, Trustees
William Carter William D Jernigan and Jessie B Jernigan	William M. Brachfeld William O Howe IRA, Vanguard Fiduciary Trust Co, Custodian
William D Mac Donald & Nancy L Mac Donald Trust UA 7 21, Nancy L. Mac Donald, Trustee	William P Mumma and Kathleen A Mumma
William Dean Howells and Christina Howells	William P Weber Trust U/A/D 11-02-2007, William P Weber, Trustee
William E Steiger and Beverly Steiger	William P. Hammond Trust U/A Dtd 08/11/1992, William P. Hammond, Trustee
William J Small William J. Brown William J. Byrnes Trust U/A Dtd 11/14/62, William J. Byrnes, Stephanie B. Flynn, Trustees	William R. Barton William S O'Reilly and Daniel Joseph
William James Bell 1993 Trust U/A	

O'Reilly MD, Trustees William S O'Reilly Trust U/A 6/23/04 FBO William S O'Reilly, William S O'Reilly, Trustee William Sanderson Twaddell William Sanderson Twaddell Irrevocable Present Interest Trust, Dated December 27, 1983 (a/k/a William H. Twaddell Rev Living Trust U/A Dtd 05/10/2004 and William S. Twaddell UTMA DC), William H Twaddell, Trustee William Steif William Steiner Living Trust U/A 8/16/06, William Steiner, Trustee William V Monopoli and Mary K Monopoli Jt WROS William W. Howells Willow Creek Capital Partners Willow Creek Offshore Fund	Wilmington Mid Cap Growth Fund f/k/a MTB Mid Cap Stock Fund f/k/a M&T Bank Vision Mid Cap Stock Fund Wilmington Mid Cap Multi Manager Series Wilmington Trust Co. Wilshire Variable Insurance Trust Equity Fund Wilshire Variable Insurance Trust Socially Responsible Fund Winchester Evening Star Inc. Winton Evolution Portfolio SPC FBO Winton Evolution Segregated Portfolio No 1 Wirtz Corporation Wisconsin Reinsurance Corp Wolverine Arbitrage Fund a/k/a Wolverine Convertible Arbitrage Fund Wolverine Trading LLC
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Woo B Choi Rollover IRA, TD Ameritrade Inc, Custodian	Yeomans Family Trust U/A 2/22/92, Patricia H Yeomans, Trustee
Woodmont Investments Ltd	Yield Strategies Fund I LP
Woods/Mitchell Family Trust U/A Dtd 01/25/1999, Brent Woods and Laurie Mitchell, Trustees	Zebra Multi-Strategy Master Fund Ltd. Ziegelman Partners LP Ziegler Family Trust A, Current Trustee
Woojin Choi Principal Worldwide Transactions Limited	Zoltan Horvath and Lidia Horvath Zoological Society of San Diego
WPG Ericott Merger Arbitrage Overseas LP - Master Feeder	
WPML Limited Partnership	

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

Case name	Case Number	Date of entry of judgment	Docket Number
Kirschner v. Citigroup Global Markets Inc.	19-449	Aug. 20, 2021	119
In re Tribune Company Fraudulent Conveyance Litigation	13-3992	Dec. 19, 2019	432
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**

Case name	Case Number	Date of entry of judgment	Docket Number
Kirschner v. FitzSimons	12-cv- 02652	Oct. 28, 2019	6385
Kirschner v. Citigroup Global Markets Inc.	12-cv- 06055	Dec. 10, 2021	150
Kirschner v. Litman	13-cv- 03736	Oct. 28, 2019	74
Tribune Co. v. Shanahan	13-cv- 03739	Oct. 28, 2019	76
Kirschner v. Berlamino	13-cv- 03741	Oct. 28, 2019	76
Tribune Co. v. Sewell	13-cv- 03737	Oct. 28, 2019	85
Tribune Co. v. Young	13-cv- 03738	July 9, 2019	67
Tribune Co. v. Murphy	13-cv- 03742	Oct. 28, 2019	81
Tribune Co. v. Ehlmann	13-cv- 03743	Oct. 28, 2019	76
Tribune Co. v. Poelking	13-cv- 03744	Oct. 28, 2019	81
Tribune Co. v. Pearson	13-cv- 03745	Oct. 28, 2019	69
Tribune Co. v. Ellis	13-cv- 03746	Oct. 28, 2019	81
Tribune Co. v. Schacher	13-cv- 03747	July 9, 2019	67
Tribune Co. v. Giannini	13-cv- 03748	Oct. 28, 2019	69
Tribune Co. v. Shaw	13-cv- 03749	July 9, 2019	67
Tribune Co. v. Knapp	13-cv- 03750	Oct. 28, 2019	76

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Kirschner v. Hendricks	13-cv- 03751	Oct. 28, 2019	76
Tribune Co. v. Malcolm	13-cv- 03752	July 9, 2019	67
Tribune Co. v. Weitman	13-cv- 03740	Oct. 28, 2019	69