

AFFIDAVIT OF DANIEL B. ZWIRN

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Daniel B. Zwirn, being duly sworn, deposes and says:

1. I am over twenty-one years of age and am competent to testify to the matters stated herein because I have personal knowledge of the facts and statements in this affidavit. Each of the facts and statements in this affidavit is true and correct.
2. In 2002, I, along with Highbridge Capital Mgmt, started an investment Fund that ultimately became known as the D.B. Zwirn Special Opportunities Fund, L.P. ("Fund"). The Fund was originally organized under the name Highbridge/Zwirn Special Opportunities Fund, L.P., but in 2004 the Certificate of Limited Partnership of the Fund was amended to officially change the Fund's name to D.B. Zwirn Special Opportunities Fund, L.P.
3. The General Partner of the Fund was D.B. Zwirn Partners, LLC ("DBZ Partners"). The Fund's investment manager was D.B. Zwirn & Co., L.P. ("DBZCO"), in which Glenn Dubin had an interest.
4. The managing member of the Fund's general partner, DBZ Partners, was Zwirn Holdings, LLC ("Zwirn Holdings"). The general partner of the Fund's investment manager, DBZCO, was DBZ GP, LLC, of which Zwirn Holdings was also the managing member. I was the managing member of Zwirn Holdings. By virtue of my ownership of the managing membership interest of Zwirn Holdings, I was the controlling principal with management and operational decision-making authority over both the Fund's general partner and its investment manager.
5. The Fund, as well as its general partner and investment manager, was started with the assistance and capital of Highbridge Capital Management, LLC ("HCM"), and, in particular, Glenn Dubin ("Dubin"), who was one of HCM's founding and managing principals.
6. I was an employee of HCM before I left the firm in 2002. I along with HCM's and Dubin's sponsorship and assistance launched the Highbridge/Zwirn hedge fund business, including the Fund. Since the Fund's inception and throughout the relevant time period discussed herein, HCM both owned substantial interests in the Fund's general partner, DBZ Partners, and had a separate managed account, managed by the Fund's investment manager, DBZCO, (and Glenn Dubin), as such, was entitled to receive a percentage of the management fees and incentive fees the Fund paid to its general partner and investment manager. That percentage decreased over time, but ranged from [50%] at the inception of the Fund to 46% in 2004 and 31% in 2006. Through HCM, Dubin was a

principal of the Fund, and actively participated in the marketing, management and operations of the Fund. In fact, the Fund originally operated out of offices located at HCM's headquarters in New York City and used HCM's personnel to provide, among other things, administrative support. (REFERENCE THE SEC DEFICEINCY LETTER ?>)In 2004, the Fund moved its offices and transferred its administrative functions to a separate location in New York City.

7. Among other things, Dubin brought early investors to the Fund. Jeffrey Epstein was one of the Fund's earliest investors. Over the next couple of years, Epstein's wholly-owned corporation, Financial Trust Company, Inc. ("FTC"), became one of the largest retail investors in the Fund. FTC made a series of large capital contributions to the Fund totaling \$80 million between 2002 and 2005. Dubin was Epstein's primary contact at the Fund and because of what I understood to be the long-standing personal and business relationship between Dubin and Epstein, I consulted with Dubin on mostly all matters relating to FTC.
8. In the Fall of 2004, the Fund determined to increase the rolling "lock-up period" for Fund investments from two years to three years. The change was to be effective for investments in the Fund made as of January 1, 2005 and thereafter, while investments made prior to that time were to remain subject to the original rolling two-year lock-up period.
9. In December 2004, FTC was contemplating making an additional capital contribution to the Fund in the amount of \$20 million. This investment would be effective on January 1, 2005. However, FTC desired that a single rolling lock-up period of two-years apply to the total aggregate investment made by FTC from 2002 through 2005, including, but not limited to, this \$20 million capital contribution. FTC demanded that, as a condition to making this additional \$20 million contribution, the general partner and the Fund agree to apply a single rolling two-year lock-up period to all withdrawals of FTC's capital account. This would permit FTC to make a complete withdrawal or partial withdrawals from FTC's capital account with respect to FTC's entire aggregate investment in the Fund each time the rolling two-year lock-up period ended. Given the size of FTC's investment and its early commitment to the Fund, I decided that the Fund should grant this request.
10. On January 11, 2005, I signed a letter agreement that gave FTC the right to make withdrawals of its capital account, upon 120 days prior notice, at the calendar quarter ending after the two-year anniversary of January 1, 2005 (i.e., March 31, 2007) and at the end of each two-year period thereafter (i.e., March 31, 2009, 2011, etc.). As the controlling principal of the general partner for the Fund, I understood that FTC's rights under the January 11, 2005 Letter Agreement allowed FTC to withdraw all or part of its entire capital account in the Fund at the end of these lock-up periods. It was my and the Fund's understanding and intention that the January 11, 2005 Letter Agreement applied to FTC's aggregate investment in the Fund from 2002 through 2005 and not exclusively to FTC's January 1, 2005 investment of \$20 million. It was also my and the Fund's understanding and intention that the January 11, 2005 Letter Agreement allowed any number of "partial" withdrawals, as opposed to only one "complete" withdrawal. The Fund subsequently took contrary positions on the advice of counsel.

11. In the Spring of 2006, reports surfaced internally at the Fund that investor funds had been improperly allocated and that certain management fees had been charged to the Fund (as well as other funds and managed accounts for which DBZ Partners and DBZCO served as the general partner and the investment manager, respectively) before the fees were actually payable. On the advice of the Fund's outside counsel, Schulte, Roth & Zabel, I refrained from revealing the details of these errors, while the Fund's outside counsel investigated the matter further. Finally, at the end of September 2006, I fired the Chief Financial Officer, Mr. Perry Gruss, for these matters, and thereafter, I began to inform investors.
12. After consulting with Dubin, in fact Dubin attended the meeting with counsel, I telephoned Epstein at the end of September/beginning of October 2006 about the CFO's termination. I told Epstein that the CFO had been terminated over an accounting transaction that was "nonmaterial." I specifically advised Epstein that investor money had been mistakenly used from the offshore fund to fund on shore liabilities, but that the money was repaid to investors quickly and that the CFO had approved the transaction without my knowledge or approval. Epstein immediately demanded a complete withdrawal of FTC's entire capital account from the Fund. Epstein was adamant. I was very concerned about Epstein's reaction. FTC was a critical investor in the Fund, and I did not want to lose FTC as an investor or have other investors follow FTC's lead. I told Epstein that there could be a run on the bank. I asked Epstein to refrain from putting that demand in writing and was relieved that immediately after the call, Epstein did not put his verbal demand in writing.
13. Once I fired the CFO, others in the accounting department came forward with additional instances of improper transactions that had taken place. Among those transactions was the numerous instances of money advanced to the Fund from the Fund's offshore sister fund, D.B. Zwirn Special Opportunities Fund, Ltd. (the "Offshore Fund") and other investment funds and managed accounts ("Managed Accounts") for which DBZ Partners and DBZCO served as the general partner and the investment manager, respectively. In response, the Fund decided that it needed to conduct a full independent investigation of what had occurred. I made another round of telephone calls to investors in late October 2006 to advise them of the independent investigation.
14. In light of Epstein's reaction to my initial call, once again I consulted with Dubin about how to address these latest developments with Epstein. Dubin advised me to call Epstein, and on October 30, 2006, I contacted Epstein a second time to advise him of the independent investigation. I again explained to Epstein that I had no prior knowledge of the CFO's accounting irregularities. I also reminded Epstein of the continued positive performance reported by the Fund and assured him of the Fund's solid financial condition. Epstein was very upset and demanded to know why I previously had characterized the issues as "nonmaterial" when now an independent review was required. I explained to Epstein that I had used the "nonmaterial" language on the advice of the Fund's counsel. Epstein demanded that I put him in contact with the Fund's counsel so that Epstein could confirm what I had told him. In response, I held a conference call with Epstein and Harry Davis, a partner with the Fund's outside counsel. After talking to Mr. Davis, Epstein was not satisfied. Epstein again reiterated FTC's demand to withdraw its entire capital

account from the Fund. I again urged Epstein not to put this demand in writing. Epstein told me that he was going to consult with Dubin.

15. After the call, I talked to Dubin numerous times about what to do about FTC's demand to withdraw FTC's capital account from the Fund. As a principal in the Fund's general partner (DBZ Partners) and its investment manager (DBZCO), Dubin had previously been made aware of the accounting irregularities that had been uncovered and, in fact, was present when the Fund's counsel advised me to refer to them as "nonmaterial" when discussing them with investors.
16. Dubin and I were both concerned that in order to meet FTC's withdrawal demand and pay FTC the substantial value of its capital account, the Fund would have to sell illiquid assets at potentially distressed prices, which would force us to mark down similar investments held by the Offshore Fund and the Managed Accounts. At that time, FTC's capital account was valued at between \$135 million and \$140 million. On the March 31, 2007 effective date of FTC's withdrawal, FTC's capital account was valued at not less than \$140 million.
17. Moreover, at the time that Epstein made FTC's withdrawal demand, DBZCO was in the process of liquidating our largest Managed Account, initially consisting of approximately \$500 million of assets, which DBZCO managed for Dubin's firm, HCM (the "Highbridge Account"). Obviously, any effort to liquidate the Fund's assets to pay FTC would make it harder to liquidate the Highbridge Account and distribute the proceeds to HCM. I do not know if Epstein ever knew about the Highbridge Account being liquidated.
18. Dubin made it clear to me that Epstein was not bluffing or posturing. However, Dubin believed that he could use his long-standing personal and business relationship with Epstein to at least reduce FTC's withdrawal demand.
19. On November 13, 2006, Dubin and I held a telephone conference with Epstein to discuss his demand for FTC's complete withdrawal from the Fund. During the telephone conference, Epstein once again reiterated his demand to withdraw FTC's entire capital account and, in light of the January 11, 2005 Letter Agreement, I did not dispute that he had the right to do so. However, I explained to Epstein that such a withdrawal could cause a "run on the bank". I told him that I feared once word eventually got out that Epstein withdrew FTC's capital account, other investors would follow suit. Dubin also urged Epstein to consider what I was saying and work with me to address this concern. Because I believed, based on my discussions with Dubin, that Epstein could not be talked out of a withdrawal, I asked Epstein, for the time being, to reduce the amount that FTC already demanded to withdraw. I asked him to cut it in half. Both Dubin and I assured Epstein that balance of FTC's capital account was not in any jeopardy and would remain secure.
20. In response, Epstein said that, for now, he would agree to reduce the amount of FTC's withdrawal to \$80 million—the amount of initial capital he invested—if the Fund would agree to honor the request immediately, as opposed to waiting until the March 31, 2007 withdrawal date.

21. I told Epstein in no uncertain terms that the Fund would agree pay the \$80 million withdrawal promptly. I agreed to this on behalf of the Fund in part because it was clear that if I did not agree, Epstein would not go away quietly, and could potentially initiate legal proceedings to compel FTC's withdrawal. At that point in time, with the financial and accounting irregularities at the Fund only beginning to be investigated and come to public light, the last thing the Fund and its management could afford was a public fight with one of our largest investors. In order to prevent this, I determined that it was in the best interest of the Fund and investors to agree to Epstein's request. It was my understanding that I, as the controlling principal of the general partner of the Fund, had the discretion and authority to make this agreement with FTC, and I expected FTC to rely on my authority and my representations.
22. After our call, Epstein reduced the complete withdrawal demand that he previously made on behalf of FTC and sent the Fund FTC's written withdrawal demand for \$80 million. By February 2007, after the Fund refused to honor FTC's \$80 million withdrawal demand with which I had agreed to promptly comply, Epstein sent the Fund FTC's written demand for the complete withdrawal that Epstein had repeatedly demanded in October and November 2006, well before the expiration of the 120-day notice deadline provided for in the January 11, 2005 Letter Agreement.
23. The decision to not honor any of Epstein's withdrawal demands was made by the Fund's lawyers. Because of privilege issues, I cannot explain why events subsequently played out the way that they did.

Daniel B. Zwirn

Sworn to before me this ____ day of _____, 2010.

(Seal) _____
Notary Public in and for
THE STATE OF NEW YORK