SULLIVAN & CROMWELL LLP

July 12, 2017

Via E-mail

MEMORANDUM TO: Ada Clapp
Barry J. Cohen
Bradley J. Wechsler
(Elysium Management LLC)

FROM: Charles T. Dowling
Elizabeth A. Kubanik

RE: Leon Black Estate Planning

This memorandum summarizes our high-level thoughts on Leon Black's estate planning based upon the information and documents that have been provided to us and our discussions with you. As a general matter, we have been very impressed by Leon's planning to date, which we found to be creative, sophisticated and thorough.

I. CLAT Planning

a. *Overview*

We believe the proposed CLAT planning would be a very effective means to minimize estate tax on Leon's estate and preserve assets for Leon's descendants. We see no reason not to implement this planning now as flexibility can be maintained to take into account potential tax changes by providing that the CLATs will be funded only in the event there is an estate tax upon Leon's death. Funding the CLATs with interests in Black Family Partners, L.P. ("BFP") has the potential to make the CLATs very successful in building value for the remainder beneficiaries as such interests are highly

appreciable and eligible for a valuation discount upon creation of the CLATs. As described more fully below, we considered the "self-dealing" and "excess business holdings" rules which, although complicated, do not present an impediment to funding the CLATs with BFP interests or artwork that cannot be managed. In addition, the use of CLATs in Leon's estate planning should not have any impact on benefits available under the Tax Receivable Agreement ("TRA").

b. *Self-Dealing Rules*

We considered application of the self-dealing rules to an exchange of Apollo Operating Group ("AOG") units for Apollo Class A stock after Leon's death when BFP is controlled by the CLATs, and whether an exchange between BFP and APO Corp. would be an act of indirect self-dealing between a "controlled organization" and a "disqualified person." BFP would be a controlled organization because, as the owners of the general partner of BFP, the Trustees of the CLATs could require BFP to enter into an exchange. On the other side of the transaction, APO Corp. would not be a disqualified person.

Disqualified persons with respect to the CLATs include, among others, Leon, certain of Leon's family members, the Trustees of the CLATs and corporations, partnerships, trusts and estates in which such persons own more than 35% of the combined voting power, profits interests or beneficial interests, respectively. Leon currently owns 33.3% of the voting control of APO Corp. through his interest in BRH Holdings GP, Ltd. ("BRH GP").[1] Upon Leon's death, his successor will be appointed to

[1] Leon and the other principals, through BRH GP, together own the only outstanding Class B share which represents 57.94% of the total voting power based on Apollo's 2016 10-K. In reality, the principals have 100% voting control

the Executive Committee of BRH GP and automatically will succeed to Leon's interest in BRH GP pursuant to the Agreement Among Principals. Therefore, the CLATs will not have any voting control over APO Corp. Even if a disqualified person is designated as Leon's successor on the Executive Committee, that individual would succeed to Leon's 33.3% voting control and would not meet the 35% threshold in order to make APO Corp. a disqualified person with respect to the CLATs. Therefore, exchanges should not be considered indirect self-dealing transactions.

Self-dealing issues could arise if the loans that Leon has received from family trusts are repaid in kind with BFP interests or artwork after the death of the survivor of Leon and Debra. However, the "estate administration" exception generally can be utilized to exempt such transactions from the self-dealing rules if such repayments are made prior to funding the CLATs and certain other requirements set forth in the Treasury Regulations are satisfied, including Surrogate's Court approval of the proposed repayments.[2] Alternatively, reliance on the estate administration exception would not be

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because AGM Management, LLC, which is owned and controlled by the principals through BRH GP, will manage all of Apollo's operations and activities and have discretion over significant corporate actions as long as the "control condition" is satisfied (i.e., the principals, their affiliates, and certain other insiders continue to own at least 10% of the aggregate number of votes). The Agreement Among Principals specifically contemplates a three-person Executive Committee of BRH GP and accordingly Leon's voting interest would remain at 33.3% as long as the control condition is satisfied.

[2] The relevant requirements of the "estate administration" exception include: (i) the executor of the estate or trustee of the revocable trust possesses the power of sale with respect to the property or has the power to reallocate the property to another beneficiary; (ii) such transaction is approved by the probate court having jurisdiction over the estate or trust; (iii) such transaction occurs before all remaining interests of the estate or trust are charitable; (iv) the estate or trust receives at least fair market value consideration; and (v) such transaction results

necessary if the estate raises sufficient liquidity through the sale of artwork and exchanges of AOG units to satisfy the loans in cash.

Payment of CLAT annuity payments to the Leon Black Family Foundation (the "Foundation") in kind with BFP interests or artwork also raises self-dealing issues. The transfer of BFP interests or artwork to the Foundation would be treated as a deemed sale between the Foundation and the CLAT, a disqualified person with respect to the Foundation as a substantial contributor to the Foundation. Therefore, exchanges of AOG units or sales of artwork would be necessary to the extent there is not sufficient liquidity in the CLAT to satisfy an annuity payment with cash. Alternatively, artwork could be paid in kind to public charities based on a fair market value appraisal.

c. *Excess Business Holding Rules*

We considered whether the CLATs' holdings in BFP would constitute excess business holdings that must be disposed of within five years of receipt. A CLAT has excess business holdings to the extent that it, together with all disqualified persons, owns in the aggregate more than 20% of the profits interest of an unincorporated business enterprise, such as a partnership. The foregoing limitation is increased to 35% if the business enterprise is effectively controlled by one or more non-disqualified persons. The term "business enterprise" does not include a trade or business which derives at least 95% of its gross income from passive sources. If a CLAT owns an interest in a business enterprise through an intermediate holding company, the CLAT is treated as owning its proportionate share of the interests in the business enterprise.

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in the foundation receiving an interest or expectancy at least as liquid as the one given up.

The CLATs' interests in BFP should not qualify as an interest in a business enterprise because BFP has more than 95% passive income. AOG units owned through BFP would be considered interests in a business enterprise that would be attributed to the CLATs in proportion to their interests in BFP. After Leon's death, assuming a non-disqualified person is designated as Leon's successor on the Executive Committee of BRH GP, non-disqualified persons would effectively control AOG. (Even if a disqualified person is designated as Leon's successor, however, AOG should still be under the effective control of non-disqualified persons because the other two principals (or their successors) would have control.) Accordingly, the threshold for excess business holdings in AOG units should be 35%. Under the current ownership structure, BFP owns 21% of the profits interests in AOG, 33.9% of the profits interests in Fund IV and 26.2% of the profits interests in Fund V.[3] Accordingly, BFP's profits interests in AOG, including the two Heritage Funds, should not exceed the 35% threshold for excess business holdings.

d. *Tax Receivable Agreement*

The use of CLATs in Leon's estate planning should not have any impact on benefits available under the TRA. The CLATs would be entitled to the same TRA payments upon making exchanges of AOG units for Apollo Class A stock that Leon

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[3] These percentages were arrived at by applying Leon's Sharing Percentage (44%) and Heritage Points Percentages (71% for Fund IV and 55% for Fund V) under the Agreement Among Principals to the 47.79% of AOG units owned by Leon and the other two principals as of February 8, 2017 based on Apollo's 2016 10-K. Leon's profits interests in AOG units, Fund IV and Fund V likely differ somewhat from the percentages provided herein as we understand the other principals have made exchanges since entering into the Agreement Among Principals which would have resulted in an adjustment of the Sharing Percentages and Heritage Points Percentages.

would be entitled to during his lifetime. Under the Exchange Agreement, there are two types of exchanges – "A Exchanges" for gratuitous transfers of Apollo stock to charity, which are nontaxable exchanges that do not give rise to TRA payments, and "B Exchanges" for sales of Apollo Class A stock in the market, which are taxable exchanges that trigger TRA payments. The transfer of BFP interests from Leon's estate to the CLATs would not be considered a nontaxable A Exchange because the CLATs themselves are not charities and no AOG units would be exchanged for public stock as part of the transfer. As exchanges are made by the CLATs in order to raise liquidity, the CLATs would opt to make taxable B Exchanges and receive the corresponding TRA payments.

e. *CLAT Calculations*

If Leon determines to proceed with CLAT planning, we would recommend rerunning the CLAT calculations at that time in order to fine tune the terms of the CLATs before they are finalized.

II. Generation-Skipping Transfer Tax Planning

While Leon's estate planning has been very successful in moving substantial assets out of his taxable estate, under current law significant generation-skipping transfer ("GST") taxes will be owed on the death of Leon's children without further planning. Accordingly, we recommend that consideration be given now to planning to address the GST tax. For example, Leon could set up a "mirror" Heritage Trust that is exempt from GST tax.[4] Such trust would be funded with Leon's remaining

[4] In order to preserve GST-exempt assets for future generations of Leon's descendants, the GST-Exempt Heritage Trust should not include any provision for

exemption amount (and Debra's remaining exemption amount, if desired) and the assets currently held in the Black Family 1997 GST Exempt Trust.[5] The GST-exempt Heritage Trust could then purchase interests in BFP, or other assets with appreciation potential, from one or more of the non-exempt trusts in exchange for a promissory note bearing interest at the applicable federal rate ("AFR"). The GST-exempt trust's purchase money financing would be supported by the initial equity seed capital received by the GST-exempt trust as well as by further credit support in the form of guaranties from one or more of the non-exempt trusts (other than the selling trusts). For example, the GST-exempt Heritage Trust could purchase a 19.72 % limited partnership interest in BFP worth approximately $470 million[6] from the APO-01 Declaration and the Black 2011 Family Trusts in exchange for a Note that would be guaranteed by the APO1 Agreement and APO2 Declaration.[7] All returns and appreciation in value on the purchased assets in excess of the AFR would be captured by the GST-exempt trust. Value accumulating in the GST-exempt trust could be used to make additional purchases from the non-exempt

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payment of assets to Legacy Trusts for the children. Instead, the Legacy Trusts should be funded with non-exempt assets.

5 We understand that the Black Family 1997 GST Exempt Trust holds GST tax-exempt assets. Because that trust does not include the more tailored governance provisions of the Heritage Trust, it may be desirable to consolidate the GST exempt assets in a single trust.

6 As of December 31, 2016.

7 In Part III.a. below, we recommend pouring the assets of certain family trusts that Leon has created into the Heritage Trust or into one or more other trusts incorporating the governance provisions of the Heritage Trust. If the GST planning described above is implemented, a trust that is an obligee under the Note from the GST-exempt Heritage Trust would not be consolidated into a trust that is a guarantor of such Note.

trusts for AFR notes. Over time, such planning has the potential to shift substantial value from the non-exempt trusts to the GST-exempt trust.

III. Governance Considerations

a. *Conforming Governance Provisions Across Trusts*

The Heritage Trust contains well thought-out, detailed governance provisions which provide the children with the opportunity to participate in trust governance by recommending that the trust invest in business "Ventures" with which they are involved, and by serving as Trustees after Leon's death. In order to achieve Leon's goals uniformly with respect to all of the trust assets, the governance provisions of the other family trusts that Leon has created should be conformed to the Heritage Trust. Specifically, the assets of the APO-01 Declaration, Publishing Trust, APO1 Agreement and APO2 Declaration could be poured into the Heritage Trust now, or into one or more other trusts incorporating the governance provisions of the Heritage Trust.[8]

Funding the Heritage Trust now would provide an opportunity for the Trustees to engage with the beneficiaries and educate them regarding trust matters during Leon's lifetime. We would encourage the Trustees to consider having regular meetings with the beneficiaries which will help to prepare them for the greater governance role they will take on after Leon's death. In addition, if the Heritage Trust is funded now (i.e., with assets from the existing trusts), the Legacy Trusts for the children could be funded

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[8] It would not be appropriate for the assets of the 1992 and 1999 Insurance Trusts or the Black 2011 Family Trusts to be poured into the Heritage Trust as the 1992 and 1999 Insurance Trusts each hold a joint and survivor policy and Debra is not a beneficiary of such trusts, and the Black 2011 Family Trusts already are divided into separate shares for the children. As described in Part II above, we would recommend pouring the assets of the Black Family 1997 Trust into a "mirror" GST-Exempt Heritage Trust.

from the Heritage Trust during Leon's lifetime, upon the children's reaching the specified ages, so that the assets may be available to them during Leon's lifetime, including for the purchase of a principal residence as contemplated by the terms of the trust. Leon could still maintain substantial control over the Heritage Trust if it is funded during his lifetime, including retaining the right to remove and replace the Trustees and to substitute assets of the trust.

b. *Trust Governance*

1. General Considerations

As a general matter, in long-term trust planning there is a tension between vesting ultimate control over a trust in independent Trustees or in family Trustees after the settlor's death. Traditionally in trust planning ultimate control was vested in an independent Trustee, but it has now become much more typical to empower the trust beneficiaries as a check on the Trustee's control. Some of our clients have chosen to give their descendants ultimate control over trusts they have created by granting their adult descendants (acting either unanimously, by majority or by a majority of the family lines) a power to remove and replace the Trustees with independent Trustees (or specified categories of independent Trustees). Other clients have chosen to moderate their descendants' level of control by putting in place a system of "checks and balances" that gives the family as a whole some degree of control over independent Trustees without enabling any particular family members to assume control. For example, the settlor's children, acting unanimously, could be granted the right to remove an independent Trustee and replace him or her with another independent Trustee selected from a group of three potential successor independent Trustees nominated by the outgoing independent

Trustee. Such a structure would preserve a measure of independence of the Trustees and can mitigate against the risk of one or more "insider" beneficiaries dominating the "outsider" beneficiaries by putting in place a hand-picked candidate who potentially may favor their interests over those of the outsider beneficiaries. There are many variations of such systems of "checks and balances."

2. Heritage Trust and Legacy Trust Trustee Provisions

Currently, Richard Ressler[9] and John Hannan are serving as the Trustees of the Heritage Trust and the Legacy Trusts.[10] Upon Leon's death, each of Leon's children is designated as an additional Trustee of the Heritage Trust (with two votes shared among the four of them) and as an additional Trustee of the Legacy Trust for his or her benefit (upon reaching age thirty-five). Either now or in the future one additional Trustee of the Heritage Trust could be appointed by the individual (i.e., non-institutional) Trustees, acting unanimously, as there can be as many as seven Trustees (including Richard, John and the four children). There can be as many as five Trustees of each Legacy Trust, and each of the children has the right to remove and replace the Trustees of the Legacy Trust for his or her benefit with independent Trustees upon reaching age forty. These Trustee provisions are not uniform across the various family trusts. For

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[9] After Leon's death, Richard Ressler's service as a Trustee would attract California income tax based on the proportion of California and non-California resident Trustees. The trusts also would owe New York income tax on all of their income as long as any of the Trustees is a New York resident, the trusts hold New York situs property or have New York source income. It is likely the trusts will have New York source income as long as they hold interests in AOG.

[10] Barry Cohen recently resigned as Trustee without designating a successor. We were provided with Barry's resignations from all of the other trusts of which he was serving as Trustee other than the 1992 Insurance Trust. Barry also is designated as an Executor under Leon's Will, with Debra and Richard, and as Leon's successor Manager of the General Partner of BFP.

example, under the APO-01 Declaration, which we understand holds interests in BFP, John Hannan and Debra will serve as Trustees after Leon's death, and there can be as many as eight Trustees of such trust.

As originally designed, the Heritage Trust structure appears to contemplate that there would be three independent Trustees having a majority vote over matters in which the family trustees can participate. Based on the current designations, however, there will be two independent Trustees and four family Trustees (having two votes in the aggregate) after Leon's death. The independent Trustees of the Heritage Trust have sole authority with respect to discretionary distributions of trust income and principal to and among the beneficiaries (other than for a beneficiary's health, education, maintenance and support), and in determining whether to invest in, or lend funds in support of, entrepreneurial Ventures of the beneficiaries. Other trust investment decisions will be made by the majority vote of all of the Trustees.

3. Other Heritage Trust Governance Provisions

The Heritage Trust includes very detailed guidelines regarding the independent Trustees' determination to make Venture investments and loans in support of the entrepreneurial endeavors of the beneficiaries, including for example a limitation to three Ventures per beneficiary. It may be preferable to set forth such guidelines in a detailed Letter of Wishes from Leon to the independent Trustees or in a resolution of the independent Trustees rather than hardwiring such provisions into the trust so that they may be changed over time as future events unfold.

IV. Loans from Family Trusts

The outstanding amounts of Leon's loans from certain family trusts at the time of his death will be debts of his estate and, as such, will be deductible for estate tax purposes. Given the very substantial size of the loans, it can be expected that the IRS will wish to examine carefully the transactions in which the Notes were issued by Leon. There likely will be a very long timeframe between the issuance of the Promissory Notes and Leon's death, and accordingly it will be important for Leon's Executors to be able to provide contemporaneous evidence that full and adequate consideration was received by Leon in exchange for the Notes in order to substantiate the estate tax deduction.

V. Bank of America Loan

Based on the most recent loan agreement we have reviewed, the Bank of America Loan matures on July 31, 2017. We understand an extension of the term is being negotiated with Bank of America. Tab C of the Estate and Trust Administration presentation dated November 16, 2016 contemplates in the event of Leon's death that the loan will be repaid within eighteen months of Leon's death. To minimize pressure to liquidate artwork immediately after Leon's death, it obviously would be highly desirable to bargain for a reasonable grace period after Leon's death to repay the loan.

VI. Fiduciary Compensation

It appears to us that the fiduciary compensation provisions of Leon's Will and the various trusts may need to be conformed in order to avoid any ambiguity in their application. For example, the Will and Revocable Trust provide for different amounts of compensation which seem to apply to both the Executors and the Trustees of the Revocable Trust during the period of estate administration, and each document appears to

state that it controls. The LB Heritage and Legacy Trust Agreement provides for a third compensation amount for services as Trustee of the Heritage Trust, the Legacy Trust "and of any other trusts created by the Grantor," which would seem to include the Revocable Trust.

VII. Probate Considerations

We recommend consideration be given to retitling substantial assets into the name of the Revocable Trust during Leon's lifetime in order to avoid the need for probate, to provide an uninterrupted succession of control in the event of Leon's death, and to maintain confidentiality with respect to Leon's estate.

VIII. Art Use Agreement

Under the current Art Use Agreement, Debra has been permitted the rent-free use of artwork held under the APO1 Agreement as a beneficiary of such trust. If Debra predeceases Leon, the use of such artwork after Debra's death will need to be addressed. Leon is not a beneficiary under the APO1 Agreement and his use of the artwork without compensation to the trust would result in inclusion of such artwork in his taxable estate. If Leon wishes to continue to enjoy the artwork after Debra's death, he should enter into a lease arrangement with the Trustees under which he pays fair market value rent to the trust. Given the value of the art collection, we would expect the required rental payments would be quite large.

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We would be pleased to discuss any questions or comments you may have on the topics discussed in this memorandum or any other aspect of Leon's estate planning.

C.T.D.
E.A.K.

cc: Leon D. Black

Alan S. Halperin
(Paul, Weiss, Rifkind, Wharton & Garrison LLP)