

- (b) [Meetings were conducted by Dan Zwirn and Vasanth Kesavan, in most cases by telephone.]
- (c) [Some investors made follow-up calls, mostly to Dan Zwirn.]
- (d) The investors were told about all issues.

F. Reasons DBZ initially decided not to disclose the management fee and plane expense issues to investors.

- 1. Disclosure was not initially made to the investors because:
 - (a) Both issues were discovered internally; DBZ's compliance procedures worked.
 - (b) Investors had been made whole.
 - (c) The wrongdoer (Gruss) was removed from the firm.
 - (d) The management fee and plane expense issues (both individually and collectively) were determined to be immaterial from the perspective of the funds and the investors.
 - (i) Materiality was considered from both a legal and an accounting perspective.
 - (ii) Materiality was considered from both a quantitative and qualitative perspective.
 - (iii) From a quantitative perspective, the amounts involved were immaterial.
 - a. For the plane:
 - (1) The payments for the plane (\$3.8 million) represented approximately 27 basis points (\$3.8 million of

expenses out of \$1.4 billion in AUM between the domestic fund (\$900 million) and HCMZ (\$500 million). This was approximately 40 basis points out of the Highbridge managed account (\$2 million out of total assets of \$500 million); and approximately 20 basis points out of LP (\$1.8 million out of total assets of \$900 million).

- (2) The amounts were returned within 45 days.
- (3) The amount of interest necessary for compensation by the management company was very small. For example, the amount necessary to compensate LP was only \$36,000 out of approximately \$900 million (about 1/3 of 1 basis point) in LP assets and the amount necessary to compensate HCMZ was less than \$90,000 out of approximately \$500 million (about 2 basis points).

b. For the management fees paid early:

- (1) The largest management fee taken early was \$10.1 million. It was taken approximately 30 days early from each of the four funds in varying amounts (the largest of which was \$5.2 million from Ltd.). This represents approximately 36 basis

points (of \$2.81 billion of total fund assets under management).

- (2) Most of the amounts are significantly smaller.
 - (3) [The smallest amount taken early was \$82,950. It was taken 35 days early from TE, a fund with assets of approximately \$246 million, representing about 3 basis points.]
 - (4) The amount of interest necessary to compensate the funds was very small. For example, LP was compensated \$189,478.27 in interest on approximately \$900 billion in LP assets, which is 2 basis points.
 - (5) The interest paid to investors to compensate them for the early payment of management fees increased investor capital accounts by 1.5 basis points at the most.
- (iv) From a qualitative perspective, while the misconduct was by a control person, it was not for his personal benefit, and did not affect the portfolio or fund assets, nor did it overstate NAV. No one directed the payments other than Gruss, and he was going to be removed. Zwirn did not know about Gruss's actions. The investors were going to be told that Gruss had left the firm.

G. DBZ has implemented a number of firm-wide changes.

- 1. Substantial personnel improvements.