

SEC Presentation #3

(1/9/07)

Barry Goldsmith
Anthony Mahajan
Jim Walden

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Airplane Purchase

Barry Goldsmith

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Genesis of issue

- **Company discovered in May 2006**
- **Hired SRZ to perform review**
- **Based on that review, repaid funds with interest**
- **Hired us to conduct an independent investigation**
 - **Company was fully cooperative**

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I. Executive summary

- **Date: Summer and Fall 2005**
- **Summary: \$3.77 Million from LP and HCM/Z temporarily used to fund purchase**
- **Purpose: Pay certain acquisition costs and down payment for letter of credit**
- **Confirmed: SRZ conclusions**
 - Gruss knew about and approved use of LP and HCM/Z money
 - Mixed evidence on Kahn's knowledge

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II. Detailed chronology

A. Pre-closing events

- **Spring 2005:** Dan Zwirn's travel became increasingly frequent and global
 - Zwirn began considering purchase of private plane. *See* Tab 1-2

- **8/5/05 – 9/14/05:** O'Hara paid pre-closing costs from management company account, subject to reimbursement by Dan Zwirn. *See* Tab 3-8

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Pre-closing events

Payments from Management Company

Date	Transfer Source	Transferee	Amount
8/5/05	D.B. Zwirn & Co.	Jackson, Wade & Blanck, LLC	\$10,000
8/12/05	D.B. Zwirn & Co.	Jackson, Wade & Blanck, LLC	\$315
8/22/05	D.B. Zwirn & Co.	PrivatAir, Inc.	\$25,000
9/1/05	D.B. Zwirn & Co.	Insured Aircraft Title Service, Inc.	\$250,000
9/14/05	D.B. Zwirn & Co.	MLBFS Equipment Finance	\$35,000

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B. Financing

- Airplane Cost – \$17.95 million
- Kahn/Gruss discussed possible need for revolver in the management company for regular expenses and airplane. *See* Tab 9
- Merrill Lynch financed 90% of transaction but required \$1.9mm letter of credit
 - Citibank agreed to provide it as part of management company revolver
 - Later decoupled from Citi revolver
- Closing targeted no later than 9/30 for tax reasons

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C. Closing

- **9/26/05:** Kahn advised Zwirn - *"LC in place . . . now just waiting for the Merrill docs which we should get tonight."* Tab 10
- Gruss and Kahn expected the Citi revolver, including letter of credit for plane, to be in place by Friday, 9/30/05. *See Tabs 11-13*

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Closing (cont.)

- Up until this point, all payments advanced by the management company
 - However, on September 27, 2005, Kahn emailed Li Anne Law:
 - *"LL -- can you pls arrange to have the \$1.9MM wired to Citi asap for the issuance of the LC. This will only be a short-term deposit in that once the Citi revolver is in place (should be w/in a week) we will credit the amount against the line."*
- Tab 14-15

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Closing (cont.)

- **9/27/05:** Kahn emailed Law to wire an \$80,250 facility fee to Merrill. *See Tab 16*
- **9/28/05:** Both payments made from HCM/Z. *See Tab 30*

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Closing (cont.)

- **9/29/05:** Kahn emailed Law to wire \$1,681,350 for plane expenses:
 - *"we are trying to do the close late-morning/mid-day."* Tab 17
 - Kahn stated that this was *"full remaining payment by Z1 Holdings, LLC relating to the purchase."* Tab 18
- **9/30/05:** Kahn emailed Law and O'Hara to wire \$112,575 in broker fees to Privatair. *See* Tab 19

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Closing (cont.)

- **Both payments made from LP account.
*See Tab 20-21***
- **All payments from LP or HCM/Z
approved by Gruss. *See Tabs 20-21 & 30***

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Transfers Using Fund/Managed Account Money

9/28/05	HCM/Z Special Opportunity LLC (Acct # 102-27052-USD-2)	MLBFS Equipment Finance	\$80,250
9/28/05	HCM/Z Special Opportunity LLC (Acct # 102-27052-USD-2)	Citibank, N.A.	\$1,900,000
9/29/05	Highbridge Zwirn LP (Acct # 721599)	Insured Aircraft Title Service, Inc.	\$1,681,350
9/30/05	Highbridge Zwirn LP (Acct # 721599)	PrivatAir, Inc.	\$112,575

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Closing (cont.)

- O'Hara prepared expense spreadsheet for Kahn, which he reviewed.
 - Spreadsheet
- In response to the spreadsheet, Kahn wrote,
 - *“But you didn't format for letter printing... :). Very good...”* Tab 22

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Remaining Payments

- **10/25/05: O'Hara emailed Gruss**
 - *“Please approve - \$163,267.50 for DZ airplane expense. Fyi, I am now out completely of cash. ... I have about 2MM of invoices holding on my desk waiting to be paid.”* Tab 23
- **Gruss reply:**
 - *“ok pag. Pls move \$ from Ltd.”* Id.
- **However, no subsequent transfer from LTD to management company; management company money used instead**

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IV. Reimbursement for Closing Costs

- **11/1/05:** Month after close, revolver still not in place
 - Gruss email to Citigroup:
 - *“What's the status? This is beyond ridiculous.”* Tab 24

- **11/4/05:** \$8.1 million of Citibank revolver credited to Management Company account. *See* Tab 25

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Reimbursement for Closing Costs (cont.)

11/9/05: Law email to Gruss

- *“Repay LP fund for airplane wires (3.8).”* Tab 26
- Law was not being precise – money actually owed to LP and Highbridge
- **Law intended to repay the money borrowed despite the fact that she felt *“our cash needs thru dec are look pretty tight.”* Id.**

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Reimbursement for Closing Costs (cont.)

- 11/10/05: Law email to Gruss
 - *“we need to send \$3.77mm from the new account where we recvd the 8.1mm loan back to the LP fund for reimbursement of the airplane wires.”* Tab 27

- 11/10/05: LP was reimbursed. *See* Tab 28

- 11/23/05: HCM/Z reimbursed. *See* Tab 29

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Reimbursement for Closing Costs (cont.)

- **5/06: Issue uncovered by new controller**
 - Company engaged SRZ to conduct investigation
 - Based on SRZ review, company compensated
- **6/12/06: DBZ paid compensation for lost interest**
 - \$29,624.07 to LP. *See* Tab 30
 - \$97,395.32 to HCM/Z. *See id.*
 - HCM/Z paid through year end despite repayment in November

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III. Witness Perspectives

■ Law:

- Because she primarily dealt with transfers from funds and HCM/Z, she believed Kahn was directly asking for payment from those sources
- No recollection of any discussions about the transfers from LP or HCM/Z for plane-related expenses
- But any transfer of fund and managed account money required Gruss' approval, which she received

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Witness Perspectives (cont.)

■ O'Hara:

- Kahn directed all transfers for plane-related expenses
- Tasked with keeping track of plane-related expenses for later reimbursement by Dan Zwirn
- Does not recall discussing with Kahn, Gruss or Law the use of fund money for plane expense payments prior to the transfers
- Generally responsible for accounts payable for management company; Law responsible for fund side
- After transactions, knew fund money used for payments

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Witness Perspectives (cont.)

■ Gruss:

- Was against plane purchase because of liquidity problems
- Shared his concerns with Kahn and others, but not Zwirn
- Kahn was largely responsible for the transactions
- Intense pressure to close because of tax reasons
- Gruss said he “likely” knew plane expenses were paid with fund money
- Believes, but does not know as a fact, that Kahn knew
- Did not discuss source of payments with Zwirn

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Witness Perspectives (cont.)

■ Zwirn:

- Did not know fund/managed account was used for plane expenses
- Was never informed of any actual details of transaction, other than high-level updates on progress and generally how transaction was to be financed
- Knew about Citibank revolver but did not know of management company liquidity problems

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Witness Perspectives (cont.)

■ Kahn:

- Said he did not know plane expenses were paid with fund money
- Did not discuss source of four managed account/fund payments with Gruss, Law, O'Hara, or Zwirn
- Discussed management company liquidity problems and need for revolver with Zwirn

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Postscript on Kahn

■ That He Knew

- Knew management company liquidity was low and borrowing maybe required to complete purchase
- First documented contact with Law was just prior to closing when \$\$ wired from HCM/Z and LP -- all other dealings with O'Hara
- On 10/25/05, he reviewed O'Hara's spreadsheet, including references to "FUND" as a source for payments

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Postscript on Kahn

■ That He Did Not Know

- Maintains he did not know LP & HCM/Z \$ used
- Unlike Gruss, no emails showing he was specifically advised of source
- Email to Law (9/30/05): *“When DZ receives his next quarterly fee income distribution, he will repay through Z1 Holdings, LLC to the mgmt co. the full amount of the advances made to date...”* Tab 19 (emphasis supplied)

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V. Conclusions

- LP and HCM/Z used to fund portion of plane transaction
- Gruss knew of and approved use of money from those sources
- Mixed evidence on Kahn
- Law effectuated transfers based on emails from Kahn
- O'Hara knew after-the-fact
- No evidence Zwirn knew that LP or HCM/Z were sources for payments
- LP and HCM/Z repaid with interest

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