

Fortress VRF I LLC and Fortress Value Recovery Fund I LLC, vs.
Jeepers, Inc.

Expert Report

Daniel Strachman

June 14, 2011

RESPONDENT FINANCIAL TRUST COMPANY & JEEPERS' EXPERT REPORT

DANIEL STRACHMAN

Fortress VRF I LLC and Fortress Value Recovery Fund I LLC v. Jeepers, Inc.

June 22, 2011

1. My name is Daniel Strachman. I am currently Managing Director of The Answers and Company Group. I have been asked by Susman Godfrey LLP counsel for Jeepers Inc. to opine on how the hedge fund industry tracks lock-ups and processes withdrawal requests.
2. The Answers & Company Group is a strategic consulting and educational firm that I founded in 2001 which focuses on providing services to the investment management industry. I have been working in the investment management industry since 1995. I began my career in the investment management industry at Cantor Fitzgerald and Co., where I was a Vice President of the Institutional Property Group. In this position, I was responsible for buying and selling large loan portfolios that were thereafter "securitized," i.e. pooled to combine the collateral for mortgage backed and asset backed securities. I left Cantor Fitzgerald and Co. in 1998 to become Senior Vice President of Sales for Winstar Government Securities, an odd-lot Government bond dealer. In this position, I was responsible for developing, marketing and maintaining trading relationships with institutions around the country. In late 1999, Winstar Government Securities was sold to Fahnestock and Company Inc. Upon completion of my contract, I joined Orbitex Financial Services Group, Inc. as Director of Product Development and Marketing. In this

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position, I was responsible for product development and marketing of the firm's investment management products, including oversight of the creation and distribution of all marketing material for the firm's investment products. These investment products include mutual funds, separate accounts, sub-advised mutual funds and hedge funds. I left Orbitex Financial Services Group, Inc. in 2001.

3. In September of 2001, I launched The Answers and Company Group to provide strategic consulting and educational services to the investment management industry. In that position, I work with clients to create, develop and market new investment products both in the United States and abroad. These products include both fixed income and equity hedge funds. The firm's clients include both large and small investment management firms as well as financial services companies seeking help with new product development, marketing, distribution and expansion of market share. As part of these services, I provide advice and guidance on the creation and distribution of material for particular investment products including both fixed income and equity funds. My experience includes working not only with investment managers but also with investors about their expectations and understanding of various types of funds and both initial and on-going manager and strategy due diligence.
4. While maintaining my responsibilities at The Answers and Company Group, from December 2007 to April 2009, I worked for Morgan Stanley & Co., Inc. in business development for its Morristown, NJ office.

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5. Prior to working in the investment management industry, I was a reporter at the American Banker newspaper, writing about banking systems and technology.

6. I am the author of eight books on investment strategy, including:
 - Fund of Funds Investing: A Roadmap to Portfolio Diversification (Wiley 2009) with Richard Bookbinder

 - The Long and Short of Hedge Funds (Wiley 2008)

 - The Fundamentals of Hedge Fund Management (Wiley 2007)

 - Julian Robertson: A Tiger the land of Bulls and Bears (Wiley 2004)

 - Essential Stock Picking Strategies (Wiley 2002)

 - Getting Started In Hedge Funds -First Edition (Wiley 2000) – Second Edition (Wiley 2005)
– Third Edition (Wiley 2010)

7. I graduated from Clark University with a Bachelor of Arts in 1993.

8. I received remuneration in the amount of \$625.00 per hour for my services. Payment for my services was not contingent on my opinions.

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9. I have arrived to my opinions based on material provided to me by Susman Godfrey L.L.P. counsel for Jeepers Inc. and upon my personal knowledge, experience, and research into this matter.
10. I have reviewed the documents listed on Exhibits A and B to my declaration. From my work in the industry, I am also familiar with the circumstances surrounding the closure and liquidations of the investment funds operated by D. B. Zwirn & Co. ("Zwirn").
11. Throughout my engagement in this matter I have reviewed documents and investment memoranda for a number of funds, including but not limited to the documents listed in Exhibit A. It is clear from reviewing this material as well as my experience in the hedge fund industry, that provisions for lock-ups and procedures for withdrawals on initial and subsequent investments are governed by the language of the fund's governing documents.
12. When reviewing fund documents it is common to find very clear language that provides for policies and procedures regarding the manner in which the fund manager allows for withdrawals based on the fund's lock-up provision. The two most common methods for calculating an investor's lock-up are the tranche-by-tranche method and the single capital account method. Using either method, the contract language governs the procedures surrounding withdrawal requests.

13. The language in the January 11, 2005 letter from Daniel Zwirn to Jeffrey Epstein states:

In accordance with section 9.1 of the Amended and Restated Limited Partnership Agreement, dated as of May 1, 2003 (as amended to the date hereof, the "Agreement") of the Fund, the General Partner hereby agrees that Financial Trust Company, Inc. (the "Company") shall be permitted to withdraw its Capital Account as of the last Business Day of the calendar quarter ending at least two years after the Company initially purchased this Interest and as of the second anniversary of that date thereafter upon not less than 120 days' prior written Notice to the General Partner.

14. The letter makes no reference to the tranche-by-tranche method of calculating lock-ups nor does it reference the creation of additional Capital Accounts to track lock-ups.

15. Furthermore, at the end the letter it states:

"Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Agreement."

16. "Capital Account" as defined by the Second Amended and Restated Agreement of Limited Partnership in Article 6.1 does not refer to additional investments being credited to a separate capital account. The document is silent as to additional capital accounts being used to track lock-ups and as such, it is my opinion that the fund was not employing a Tranche-by-Tranche method

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of calculating lock-ups but rather was utilizing a single capital account to track an investor's lock-up period. This language clearly means that the Fund will utilize a Single Capital Account approach to calculating lock-up periods.

17. In my experience, there is no set standard for how funds calculate lock-up periods for subsequent investments made by the same investor.
18. For instance, I have reviewed Financial Trust Company's ("FTC") other hedge fund investments held for the period 1999 to the present to see how these funds tracked lock-ups.¹ Some of his investments use a Single Capital Account method while some of his investments use a Tranche-by-Tranche method.

19. In Exhibit A, I have attempted to summarize the relevant language addressing how subsequent investments were handled. Noticeably, funds employing a tranche-by-tranche method employ specific language informing investors of this treatment. This sort of language is conspicuously absent from the January 11, 2005 Letter Agreement between Zwirn and FTC. For example, the Prentice Capital Limited Partnership Agreement expressly states that each investment is put in

¹ I requested that FTC gather the offering documents (both the offering memorandum or prospectus as well as any limited partnership agreement) for FTC's hedge fund and private equity investments for the 10-years preceding this dispute. Given the time frame of this request, I understand that FTC was not able to locate the material for every one of these investments. However, I am informed that FTC provided me with copies of every offering memorandum or prospectus and limited partnership agreement that it had in its possession for the hedge fund and private equity investments that FTC made during this period.

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its own "Capital Account": "A capital account (the 'Capital Account') shall be established on the books of the Partnership for each Capital Contribution made by each Partner." As a result, the Offering Memorandum explains: "Each capital contribution of a Limited Partner will be credited to a separate capital account (each, as 'Capital Account'). Each capital contribution by a Limited Partner (and any appreciation or depreciation thereof) will be subject to a new Lock-Up Period (as defined below) and to the application of other provisions relating to withdrawals." Similarly, the Bear Stearns Asset Backed Fund's Limited Partnership Agreement states: "For purposes of this Sec. 4.02, each additional contribution by a Limited Partner made pursuant to Sec. 3.02(b) shall be placed in a separate Capital Account for purposes of determining the applicable Lock-up Period." Schulte Roth and Zabel, the same firm that drafted the Zwirn documents, drafted both sets of these documents.

20. I have been informed that the Zwirn Fund has suggested that every hedge fund must track each investment separately in order to calculate, for example, the high-water mark. This is simply not true. For example, FTC itself invested in hedge funds where the governing documents adopt a tranche-by-tranche approach for redemptions but expressly say that investments will not be segregated for purposes of calculating the high-water mark.

21. In sum, I am aware of no industry custom or practice that adopts only a Tranche-By-Tranche approach to calculating lock-up periods. Instead, funds adopt many different approaches,

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including the Single Capital Account method. The language of the governing documents dictates which approach has been adopted.

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	A	B	C
1	Exhibit A: Strachman Report		
2			
3			
4	FTC		<u>Comments</u>
5			
6	AP SHL		Not relevant (LLC without withdrawal rights)
7	AP Technology		Not relevant (LLC without withdrawal rights)
8	Bear Stearns ABS	Jan 2001 LPA; July 2005 OM; June 2006 OM	Tranche-by-tranche: LPA Sec. 4.02: "For purposes of this Sec. 4.02, each additional contribution by a Limited Partner made pursuant to Sec. 3.02(b) shall be placed in a separate Capital Account for purposes of determining the applicable Lock-up Period." Schulte Roth document. The OM at 6 further explains, "Such separate capital accounts will only be maintained for purposes of applying the separate Lock-Up and for purposes of calculating the Management Fee, as described below; it will be disregarded for purposes of calculating such Limited Partner's Incentive Allocation and Loss Recovery Account (as defined below)."
9	Bear Stearns Emerging Macro	Feb 2005 LPA	Single Capital Account: Monthly liquidity. Single Capital Account & Tranche-by-tranche: OM at 6: "A Limited Partner may generally, upon not less than 40 days' prior written notice to the General Partner, withdraw all or any portion of the positive balance in its Capital Account as of the last Business Day of any calendar month (each such date a 'Monthly Withdrawal Date'), subject to a withdrawal fee of 4% of any amount withdrawn In addition, following the first-year anniversary of any capital contribution by a Limited Partner, such Limited Partner may generally, upon not less than 60 days' prior written notice to the General Partner, withdraw all or any portion of the positive balance in its Capital Account as of the last Business Day of each successive anniversary of the Limited Partner's capital contribution. . . ."
10	Bear Stearns High Grade		

	A	B	C
11	Bear Stearns High Grade Enhanced Levergae	June 2006 OM & LPA	Single Capital Account & Tranche-by-tranche: LPA Sec. 6.1: (1) withdrawal "all or any portion of its Capital Account" at anytime with a 2% "withdrawal fee"; or (2) without a fee, "following the first year anniversary of a Capital Contribution by a Limited Partner, such Limited Partner may generally upon not less than 60 days' prior written notice to the General Partner, withdraw all or any portion of such Limited Partner's Capital Account attributable to such Capital Contribution as of the last Business Day of every subsequent third month-end following such first year anniversary of such Capital Contribution."
12	Caliber One LP		Cannot locate
13	Citigroup 3x Leveraged Basket		Cannot locate.
14	Citigroup Renaissance		Cannot locate
15	Colden Capital Partners	March 2000 LPA	Single Capital Account: Sec. 8.02 of the LPA says, "A Limited Partner may, upon at least 60 days' prior written notice, withdraw all or any part of its capital account as of the June 30 or December 31 occurring on or after the first anniversary of its initial investment in the Partnership and on each June 30 or December 31 thereafter."
16	DCM Partners	Sept 1999 OM & LPA; Feb 2006 OM & LPA	Single Capital Account: Sec. 3.02(a) of LPA says "A Limited Partner (a 'Withdrawing Partner') shall be entitled to withdrawal all or part of such Limited Partner's Capital Account as of the first calendar month-end falling on or after the six-month anniversary of such Limited Partner's initial Capital Contribution, and as of each December 31st thereafter." The OM at 8 explains how this works in practice, "For example, an investor whose initial Capital Contribution is made as of January 31, 2006 could first withdraw capital as of July 31, 2006 and as of each December 31 thereafter, and the Capital Account balance allocated to any additional Capital Contribution by such investor could be withdrawn as of the December 31 immediately following the date of such Capital Contribution."

	A	B	C
17	Highbridge Capital Corporation		Share redemptions quarterly based on 45-days notice.
18	Highbridge Capital LLP	Dec 2008 OM & LPA	Tranche-by-tranche: Formed in 2008 to hold Highbridge funds that were in run-off. OM at 19: "A Limited Partner may, as of the first calendar quarter-end following the six-month anniversary of the establishment of a Capital Account, and then on every calendar quarter-end thereafter" withdraw up to 75% of the account. "For the avoidance of doubt, a Capital Account is established for each subscription and, accordingly, each subscription will be treated separately for the purpose of calculating the amount permitted to be withdrawn on any Withdrawal Date." OM at 9, "A new Capital Account will also be established for each investment made by a Limited Partner."
19	HB Multi- Strategy Holdings	Dec 2008 OM & LPA	Not relevant. No withdrawal rights.
20	Highbridge Long Short	March 2005 OM	Single Capital Account: Withdrawals permitted quarterly based on 45-days notice.
21	Highbridge Statistically Enhanced		Monthly withdraws of Capital Account. "A new Capital Account will also be established for each additional investment made by a Limited Partner." OM, at 5.
22	Highview Global Macro	Dec 2004 OM	Single Capital Account: Withdrawals permitted quarterly based on 45-days notice.
23	JCK Partners	Feb 2005 LPA & OM	Zwirn/HCM related fund. No rolling lock-up feature. Section 8.02 of LPA: "A Limited Partner may, upon at least 120 days' prior written notice, withdraw all or any portion of its Capital account as of the last day of each calendar quarter occurring on or after the second anniversary of such capital's investment in the Partnership. Withdrawals of capital will occur on a 'first in-first out' basis from the time such capital was first contributed."

	A	B	C
24	Liquid Funding		Not relevant (LLC without withdrawal rights)
25	ML Hertz Investors		Cannot locate
26	Nestor 2000		Cannot locate
27	Pinehurst	Dec 2001 LPA; & OM; 2004 OM	Single Capital Account: Withdrawals permitted every December 31.
28	Prentice Capital	June 2006 OM; June 2007 LPA	Tranche-by-tranche: OM at 5: "Each capital contribution of a Limited Partner will be credited to a separate capital account (each, as 'Capital Account'). Each capital contribution by a Limited Partner (and any appreciation or depreciation thereof) will be subject to a new Lock-Up Period (as defined below) and to the application of other provisions relating to withdrawals." Section 3.03 of LPA: "A capital account (the 'Capital Account') shall be established on the books of the Partnership for each Capital Contribution made by each Partner." Schulte Roth wrote documents.
29	SAB Capital Partners	Sept 2000 OM; March 2002 OM; March 2002 LPA; July 2002 LPA	Single Capital Account. Post-2002, Changed to Tranche-by-tranche: OM at 14: Limited Partner "may withdraw all or any portion of its capital account . . . only on the second December 31st after the date such Primary Capital Account was established." OM at 15: "Unless otherwise agreed to by the General Partner and a Limited Partner, additional contributions made by a Limited Partner during a Lock-Up Period will be credited to the same Primary Capital Account." See also Sec 4.01(c) of March 2002 LPA, which says the same thing. In August 2002, Fund proposes various changes (effective June 2002). FTC elects to redeem rather than accept the changes. One change includes, "Each additional capital contribution by a Limited Partner will be credited to a separate sub-account within the Limited Partner's capital account (each a 'Sub-Account'). A Limited Partner may withdraw all or any portion of a Sub-Account initially only at expiration of a full calendar year following the establishment of such Sub-Account, and thereafter on each succeeding December 31. . ."

	A	B	C
30	Tudor Futures Fund	OM & LPA: Sept 2000, Jan 2005, Dec 2005, Nov 2006, Jan 2008; March 2009; Dec 2010	Per "Unit." Originally, each "Unit" could be withdrawn monthly. Effective January 1, 2005, changed to two-year lock-up from date of issue of a "Unit" and then monthly thereafter.
31	Viking Global Equities	March 2005 LPA; April 2002 OM; Jan 2006 OM	Tranche-by-tranche: "Additional Capital Contributions by an existing Limited Partner shall be placed in a separate Capital Account with a corresponding new Lock-Up Period (as defined in Sec. 4.02(b)) based on the Class of Interests purchased. Within any single Class of Interests, such separate Capital Account shall only be maintained for purposes of applying the separate Lock-Up Period; it shall be disregarded for purposes of calculating the Incentive Allocation and Loss Recovery Account as set forth in Sec. 3.05."
32	Viking Global Consumer Fund	July 2002 LPA; May 2002 OM	Tranche-by-tranche: "Additional Capital Contributions by an existing Limited Partner shall be placed in a separate Capital Account with a corresponding new Lock-Up Period (as defined in Sec. 4.02(b)) based on the Class of Interests purchased. Within any single Class of Interests, such separate Capital Account shall only be maintained for purposes of applying the separate Lock-Up Period; it shall be disregarded for purposes of calculating the Incentive Allocation and Loss Recovery Account as set forth in Sec. 3.05."
33	Zilkha Capital	Jan 2000 LPA	Not relevant (10-year partnership without withdrawal rights)

Exhibit B
Materials Reviewed by Daniel A. Strachman

DBZ 0009444 – 9525

DBZ 0039687-39690

DBZCO_FTC0001726 – 1755

DBZCO_FTC0004214 - 4221

DBZCO_FTC0015317 – 15324

JE000275 – 309

JE000485 – 493

JE000494 – 495

JE002584 – 2589

JE04152 – 7282

VRP 00000976

Exhibit 1 - DBZCO_FTC0000523, DBZ 0009580 – 9674, DBZ 0003675 – 3712,

DBZCO_FTC0003852 - 3864