FTC anticipates the Fund also will point to revisions made to the Confidential Offering Memorandum in May 2005. As noted above, the Fund announced that a three-year lock-up would apply to all investments made after January 1, 2005. In connection with this change, the Fund issued a new Offering Memorandum, albeit five months later. The new Offering Memorandum describes the applicable lock-up using the following language:

> A Limited Partner may, upon at least 120 days' prior written notice to the General Partner, withdraw part or all of its Capital Account as of the last business day of the calendar quarter ending at least three years after the date on which the Interest was purchased and as of each third anniversary of that date thereafter . . . For purposes of determining the withdrawal date (the "Withdrawal Date") with respect to Interests, a separate Capital Account will be established for each Interest purchased (i.e., each capital contribution made).

May 2005 Offering Memorandum.

This evidence is inadmissible. To begin with, the document was created in May 2005 five months after the 2005 Letter Agreement was entered into in January 2005. This is classic extrinsic evidence that should be excluded. As the Delaware Supreme Court has stated, "backward-looking evidence gathered after the time of contracting is not usually helpful" because admitting such evidence would "threaten[] to transgress one of the primary tenets of the parol evidence rule: relevant extrinsic evidence is that which reveals the parties' intent at the time they entered into the contract." *Eagle Indus.*, 702 A.2d at 1233 n.11*; See, e.g., Agranoff v. Miller*, No. Civ. A 16795, 1999 WL 219650, *17 (Del. Ch. Apr. 12, 1999) (applying the *Eagle Industries* bar on "backward-looking evidence" to exclude evidence of certain shareholders' actions after contract was executed because "none of these dealings bear on what the parties to the [contract] intended at the time they executed it"). Second, this language is not probative of the intended meaning of the 2005 Letter Agreement because it applies to investments subject to the three-year lock-up—*i.e.*, not FTC's investment. Worse, the Fund's use of this language five months after the 2005 Letter Agreement illustrates painfully that the Fund knew how to invoke a

"Tranche-by-Tranche" method of calculating lock-ups; yet, it failed to use such language when crafting the 2005 Letter Agreement.