UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CIVIL ACTION NO. 8:20-cv-325-T-35AEP

SECURITIES AND EXCHANGE COMMISSION,	)
	)
Plaintiff,	)
	)
v.	)
	)
BRIAN DAVISON, *et al.*,	)
	)
Defendants and Relief Defendants.	)
	)

BARRY M. RYBICKI'S MOTION TO DISMISS

Defendant Barry Rybicki moves this Court to dismiss the Complaint for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Rules").

I. INTRODUCTION

The SEC's Complaint is based on internally inconsistent allegations that distort and conflate the roles and conduct of the Defendants. The result is a "group pleading" that does not comport with Rule 9(b) and is insufficient as a matter of law. In the same Complaint, the SEC alleges that co-defendant Brian Davison was the founder, CEO and Owner of EquiAlt, the Corporate Defendant that exercised day-to-day control over the affairs of the Funds, and then attributes to Rybicki conduct and knowledge that the allegations fail to plead with the heightened level of particularity required by the Rules. On occasion, the allegations even acknowledge that Rybicki did not have the requisite knowledge attributed to co-defendant Rybicki. In the end, the Complaint, is nothing more than a formulaic statement of conclusory facts that improperly and

unfairly create a "suspicion of a legally cognizable right of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

As if this were not enough, the SEC's Complaint selectively references portions of documents gathered in its investigation and omits material facts that render its allegations misleading and its Complaint fatally deficient. Consequently, the Complaint fails to adequately allege facts supporting multiple required elements for a securities fraud claim as follows:

1. The scheme allegations do not properly allege scienter as to Barry Rybicki;
2. The SEC fails to allege the scheme allegations with the required heightened particularity;
3. The Complaint falls well short of the heightened specificity requirements of Rule 9(b) with respect to the misrepresentations alleged in the Complaint as to Rybicki;
4. The alleged misrepresentations are not materially misleading;
5. Barry Rybicki did not have the requisite scienter to make the material misstatements or omissions alleged in the Complaint.
6. The SEC has failed to establish that Barry Rybicki violated the Exchange Act as a "control person" of EquiAlt; and
7. A majority of the SEC's claims are time barred.

Accordingly, the Complaint should be dismissed.

II. STANDARD FOR MOTION TO DISMISS

This Court may dismiss the SEC's claims against Rybicki under Rule 12(b)(6) if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint fails to state a claim if it does not articulate "a plausible entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007); *N.J. Carpenters Pension & Annuity Funds v. Biogen IDEC Inc.*, 537 F.3d 35, 44 (1st Cir. 2008) (affirming dismissal of securities claims). A pleading must "contain

something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action." *Twombly*, 550 U.S. at 555 (quoting 5 Wright & Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)). While all allegations must be accepted as true and construed in the light most favorable to the plaintiff, this does not include "facts" that are "conclusively contradicted by plaintiffs' concessions or otherwise." *Chongris v. Bd. of Appeals of the Town of Andover*, 811 F.2d 36, 37 (1st Cir. 1987) (affirming dismissal); *see also U.S. ex rel. Carroll v. JFK Med. Ctr.*, 2002 WL 31941007, at *2 (S.D. Fla. Nov. 15, 2002) ("Court need not accept facts that are internally inconsistent, facts that run counter to facts which the Court may take judicial notice of, conclusory allegations, unwarranted deductions or mere legal conclusions"). Mere "labels and conclusions" or a "formulaic recitation of the elements of a cause of action" are likewise insufficient. *Twombly*, 550 U.S. at 555. Further, when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court.'" *Id*. at 558.

Further, in a complaint alleging fraud or mistake, such as the SEC's here, "the circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). A pleading that includes allegations of fraud or mistake under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act") must adhere to the heightened pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 9(b). The particularity requirements of Rule 9(b) apply equally to actions initiated by the SEC. *See, e.g.*, *S.E.C. v. BankAtlantic Bancorp, Inc.*, 12-60082-CIV, 2012 WL 1936112, at *7-10 (S.D. Fla. May 29, 2012); *S.E.C v. Ginsburg*, 99-8694C-IV, 2000 WL 1299020, at *2 (S.D. Fla. Jan. 10, 2000) ("[a]llegations of security fraud under § 10(b) and Rule 10b–5 are subject to the

heightened pleading standards of Federal Rule of Civil Procedure Rule 9(b)."); *S.E.C. v. Tambone*, 417 F. Supp. 2d 127, 130-31 (D. Mass. 2006).

In fraud actions, Rule 9(b) serves the important purpose of "alerting defendants to the 'precise misconduct with which they are charged' and protecting defendants 'against spurious charges of immoral and fraudulent behavior.'" *Durham v. Bus. Mgmt. Ass'n.*, 847 F.2d 1505, 1511 (11th Cir. 1988) (quoting *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 742 F.2d 786, 791 (3d Cir. 1984)). As such, a complaint in a securities action that fails to connect the factual allegations to the substantive elements of each alleged count fails to meet the heightened pleading requirement of Rule 9(b). Further, "[e]ven securities claims without a fraud element must be pled with particularity pursuant to Rule 9(b) when that nonfraud securities claim is alleged to be part of a defendant's fraudulent conduct." *SEC v. Solow*, No. 06–81041, 2007 WL 917269, at *4 (S.D.Fla. Mar. 23, 2007) (quoting *Wagner v. First Horizon Pharmaceutical Corp.*, 464 F.3d 1273, 1279 (11th Cir.2006) and finding that since the "aiding and abetting counts are alleged to be part of [the] fraudulent conduct, [] they must be plead with particularity as well").

While the heightened pleading requirement of Rule 9(b) does not abrogate the notice pleading requirement of Rule 8, Fed. R. Civ. P., it does require that a complaint include:

(1) precisely what statements or omissions were made in which documents or oral representations;

(2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) them;

(3) the content of such statements and the manner in which they misled the plaintiff; and

(4) what the defendant obtained as a consequence of the fraud.

Bankatlantic Bancorp, Inc., 2012 WL 1936112, at *8 (quoting *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1261 (11th Cir.2006)). In other words, Rule 9(b) is satisfied if the complaint

sufficiently pleads the "who, what, when, where, and how of the allegedly false statements" and then generally alleges the requisite intent. *S.E.C. v. Betta*, 09-80803-CIV-MARRA, 2010 WL 963212, at *4 (S.D.Fla. Mar.10, 2010) (quoting *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1237 (11th Cir. 2008). As set forth below, the fraud allegations in the Complaint fails to state claims for which relief may be granted and, accordingly, Counts II-VIII should be dismissed. Counts I and IX, which allege nonfraud violations of Section 5 of the Securities Act and Aiding and Abetting Violations of Section 15(a) of the Exchange Act, respectively, are alleged as part of Rybicki's fraudulent conduct, and likewise fail to meet Rule 9(b)'s requirements. Consequently, the Complaint, as to Barry Rybicki, must be dismissed.

III. ARGUMENT

1. The SEC Has Failed to Establish That Barry Rybicki Violated the Antifraud Provisions of the Federal Securities Laws.

The SEC alleges in Counts II-VII that Barry Rybicki violated Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and SEC Rule 10b-5(a), (b), and (c) thereunder—known as the Anti-Fraud Provisions. To show a violation under Section 17(a)(1), "the SEC must prove (1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with scienter." *S.E.C. v. Merchant Capital, LLC*, 483 F.3d 747, 766 (11th Cir.2007) (citing *Aaron v. S.E.C.*, 446 U.S. 680, 695 (1980)). Similarly, in order to prove a violation under Section 17(a)(2) and (3), "the SEC need only show (1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with negligence." *Id*. (citing *Aaron*, 446 U.S. at 702).

To satisfy the scienter element for Section 17(a)(1) claims, the SEC must show "either an 'intent to deceive, manipulate or defraud,' or 'severe recklessness.'" *Mizzaro,* 544 F.3d at 1238 (quoting *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1284 (11th Cir.1999)). In *Aaron v. SEC*,

446 U.S. 680, 701 (1980), the United States Supreme Court held that scienter is a necessary element of a civil enforcement action under section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder, as well as a civil enforcement action under section 17(a)(1) of the 1933 Act. Although the Supreme Court has not yet decided whether recklessness satisfies the scienter requirement under those provisions, *see id.* at 686 n.5, the Eleventh Circuit has held that "severe recklessness" can satisfy that requirement. *SEC v. Monterosso*, 756 F.3d 1326, 1335 (11th Cir.2014) (alterations omitted) (quoting *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th Cir.1982). The Eleventh Circuit, however, limits severe recklessness as follows:

> Scienter may be established by a showing of knowing misconduct or severe recklessness. . . .Proof of recklessness [] require[s] a showing that the defendant's conduct was an *extreme departure* of the standards of ordinary care, which presents a danger of misleading buyers or sellers that *is either known to the defendant or is so obvious that the actor must have been aware of it*.

Id. (emphasis added)*; see also Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1264 (11th Cir. 2006) ("severe recklessness can be established through deliberate avoidance of 'red flags.'")

To establish a violation of Section 10(b) and Rule 10b-5, the SEC must prove by a preponderance of the evidence that Defendants made "(1) material misrepresentations or materially misleading omissions, (2) in connection with the purchase or sale of securities," and that they "(3) made [them] with scienter." *Merch. Capital*, 483 F.3d at 766 & n. 17 (citing *Aaron* 446 U.S. at 695); *SEC v. Zandford*, 535 U.S. 813, 816 n.1 (2002). A complaint alleging claims under Section 10(b) and Rule 10b-5 must satisfy the heightened pleading requirements established under Rule 9(b) of the Federal Rules of Civil Procedure. *SEC v. Strebinger*, 114 F.Supp.3d 1321, 1329 (N.D.Ga.2015) (citing *Kammona v. Onteco Corp*., 587 Fed.Appx. 575, 581 (11th Cir.2014)). To do so, a plaintiff "must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b).

a. **Barry Rybicki Did Not Have the Requisite Scienter to Commit the Schemes to Defraud Alleged in the Complaint.**

The very first scheme to defraud alleged by the SEC is a Ponzi scheme. Compl., ¶2. Despite its dramatic placement at the top of the Complaint, the SEC allots all of two sentences to its description. The SEC alleges that the "[w]ithout sufficient revenues to pay the money owed to investors, the Defendants resorted to fraud, using new investor money to pay the returns promised to existing investors." (Id.) The Ponzi scheme, according to the SEC, operated by "paying investors their monthly interest payments for the debentures by raising new investor funds to pay old investors." Id., ¶ 42. The allegations as to Rybicki are woefully insufficient, for several reasons.

First, the SEC cites no specific allegation that supports the conclusion that Rybicki knew or was severely reckless in not knowing that EquiAlt was a Ponzi scheme. To survive a motion to dismiss, the SEC must plead specific facts with particularity giving rise to a "strong inference" of scienter. *Nathenson v. Zonagen Inc.*, 267 F.3d 400, 407 (5th Cir.2001). "A pleading of scienter may not rest on the inference that defendants must have been aware of the misstatement based on their positions within the company." *Abrams v. Baker Hughes, Inc.,* 292 F.3d 424 (5th Cir.2002).

Here, the SEC alleges no facts suggesting Rybicki had any knowledge of, much less involvement in, the alleged Ponzi scheme. They do not allege that he had access to the accounts from which the Ponzi payments were made (he did not), and do not allege that he knowledge of the Ponzi payments (same). Moreover, the SEC does not allege that Rybicki was even *aware* of the shortfall they suggest necessitated the Ponzi payments. They allege nothing to suggest that Rybicki reviewed, or even had access to, records that would have made him aware of EquiAlt's finances or whether EquiAlt had sufficient revenues to pay investors back. They allege nothing to suggest that Rybicki had knowledge of, or access to, the amount of assets EquiAlt purchased with

investor money, the amount of revenue these assets generated, or the value of those assets over time. They even fail to allege the existence of "red flags" which arguably could have put him on notice of any of the information listed above. In short, they allege nothing to support their baseless claim that he had the requisite scienter to have "conducted a Ponzi scheme."

In fact, the SEC's allegations suggest just the opposite: that Rybicki had no involvement in the scheme and no access or opportunity to carry it out:

- EquiAlt manages the Funds. It is based in Tampa, Florida. Complaint ¶12
- Davison was EquiAlt's CEO and Owner. He resided in Tampa, Florida. Id., ¶10.
- Through his ownership of EquiAlt, Davison owns Fund 1, Fund 2, Fund 3, and the EA SIP Fund.
- Davison controlled the accounting and finances for the Funds and their bank accounts. Id., ¶ 4.
- Davison "was responsible for making Ponzi payments to investors." Id., ¶4
- Rybicki communicated with investors, executed debentures and subscription agreements with investors. Id., ¶4.
- He was EquiAlt's "President of Arizona Operations" and resided in Phoenix, Arizona. Id., ¶11.

The second scheme alleged in the Complaint is that Davison and Rybicki "misappropriate[ed] investor money" by "paying themselves millions from the Funds…" Id., ¶ 2,3. Not unlike its deficient allegations regarding the existence of a purported Ponzi scheme, the SEC misappropriation scheme amounts to nothing more than a conclusory, two-sentence allegation that Davison and Rybicki received "improper" cash distributions. Id., ¶ 45.

This conclusory allegation fails to pass muster under Rule 9 for several reasons. First, as asserted earlier, the SEC has not posited a single allegation that plausibly supports the conclusion that Rybicki directed, caused, or authorized these distributions to be made with knowledge that they were improper, much less with an "intent to deceive, manipulate, or defraud." *See Aaron*, 446 U.S. at 685-686. Nothing in the SEC's Complaint explains why these distributions were "improper," or who authorized them. The lack of specific pleading on this point is even more

problematic where, as SEC alleges, it was Davison—not Rybicki— who maintained control over the accounts from which these allegedly improper cash distributions were made. Id. ¶ 4. Much like the SEC's improper effort to bootstrap its "Ponzi scheme" allegations of Davison against Rybicki, the SEC's allegations of Rybicki's knowing involvement in this alleged scheme are not only implausible, but inconceivable. *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009) (To survive motion to dismiss, allegations must push claim "across the line from conceivable to plausible.")

The third scheme referenced in the Complaint alleges that the Defendants "misused millions of dollars;" in other words, that they allegedly used investor money in a manner "inconsistent with the private placement memoranda ["PPMs"] provided to investors." ¶ 48. The SEC provides slightly more detail regarding this alleged scheme, outlining five ways in which the Defendants allegedly carried it out:

> (a) money from one Fund being used to purchase real estate for another Fund or for third party entities owned by Davison;
> (b) money from one Fund being used to pay investors in another Fund;
> (c) substantial undisclosed commissions paid to unregistered sales agents;
> (d) substantial undisclosed fees such as due diligence fees, management fees, success fees, auction fees, underwriting fees, purchase discount fees, and bonuses paid to EquiAlt and Davison; and
> (e) substantial improper cash distributions to Davison and Rybicki.

¶ 50. In all but one—the payment of "substantial undisclosed commissions to unregistered sales agents[1]—the SEC once again fails to allege sufficient facts to support a plausible conclusion that Rybicki had knowledge that EquiAlt used investor money as the SEC suggests. According to the SEC's own allegations, Davison managed the day-to-day affairs of EquiAlt in Florida, had control of its accounting and finances, and purportedly made Ponzi payments to investors based on what the SEC describes as a shortfall in EquiAlt's assets and revenues. Meanwhile, according to the

[1] The allegation that Rybicki made a knowing misrepresentation to investors regarding the payment of commissions is addressed in Section 1.d.ii, *infra*.

SEC, Rybicki resided and worked across the country in Arizona and was responsible for communicating with investors. According to the SEC's own allegations, Rybicki had no authorization to move investor funds out of the Funds for any purpose, and no knowledge of EquiAlt's finances. And, as before, SEC does not allege red flags that would have put him on notice of EquiAlt's affairs such that he could have been aware that any distributions he received were, as the SEC suggests, improper, *much less* made with the intent to deceive investors. Instead, the Complaint lumps Rybicki in with EquiAlt and Davison and seeks to impute to Rybicki the alleged knowledge and conduct of others. To survive a motion to dismiss, the SEC must plead specific facts with particularity giving rise to a "strong inference" of scienter. *Nathenson*, 267 F.3d at 407. Because the SEC's allegations do not establish that Rybicki's conduct constituted "an extreme departure" from the ordinary care standard, or that he acted with any fraudulent intent whatsoever, the SEC's complaint falls well short of this important standard.

b. **The Complaint Fails to Allege the Schemes to Defraud with Sufficient Particularity.**

In addition to its failure to properly allege scienter as to Rybicki for the fraudulent schemes they allege as to all Defendants, the SEC also fails to allege the schemes with the heightened particularity required by Rule 9(b). In particular, the SEC fails to provide to properly set forth the "who, what, when, where, and how" of these alleged schemes to defraud. *Betta*, 2010 WL 963212, at *4. For example, while the SEC alleges that the Funds have been operated as a Ponzi scheme "almost since their inception," Compl., ¶42, it fails to allege a single detail about a single transfer. The details in this case matter, for several reasons.

First, the SEC's allegations contradict its contention that the Defendants were engaged in a "classic Ponzi-scheme." Compl., ¶ 42. The Eleventh Circuit has described a Ponzi scheme as a "*phony* investment plan in which monies paid by later investors are used to pay artificially high

returns to the initial investors, with the goal of attracting more investors. *United States v. Silvestri*, 409 F.3d 1311, 1317 n. 6 (11th Cir.2005) (emphasis added). Black's Law Dictionary defines a Ponzi scheme as:

> A fraudulent investment scheme in which money contributed by later investors generates artificially high dividends for the original investors, whose example attracts even larger investments. Money from the new investors is used directly to repay or pay interest to old investors, usually *without any operation or revenue-producing activity* other than the continual raising of new funds. This scheme takes its name from Charles Ponzi, who in the later 1920s was convicted for fraudulent schemes he conducted in Boston.

Black's Law Dictionary (7th ed.1999) at 1180 (emphasis added).

The SEC's allegations belie this description. Instead of a "phony investment plan" "without any operation or revenue producing activity," the SEC's own version of the events makes clear that EquiAlt and Davison's use of investor proceeds generated real estate and cash holdings totaling at least $145 million. Compl., ¶6. Moreover, the SEC's $145 million estimate of EquiAlt's real estate and cash holdings does not include those of Fund III, id., which stopped raising investor proceeds in December 2015 and is now closed. Id., ¶ 15. Thus, when the SEC's complaint alleges that Funds I, II, III, and EA SIP raised $170 million but "only" have real estate and cash holdings totaling $145 million, they are including the money raised by Fund III, but omitting the real estate and cash holdings Fund III generated before it closed.

This omission matters, particularly in a case where the SEC, in dramatic fashion, opens its Complaint alleging that the Defendants engaged in a classic Ponzi scheme because they purportedly lacked the revenues to pay investors. Even excluding the assets of Fund III, the SEC's Complaint establishes that, at the time of its filing, EquiAlt held cash and real estate valued at more than 85% percent of the total deposited by investors ($145/$170 million). Even based on the SEC's incomplete telling of the story, this was anything but the "phony investment plan" contemplated

by the Eleventh Circuit in *Silvestri,* or the investment "without any operation or revenue producing activity" described by Black's Law Dictionary. If the theory underlying the SEC's Ponzi-scheme claim is that EquiAlt lacked sufficient revenues to pay investors, Rule 9(b) demands more than this incomplete picture.

The SEC's skewed presentation does not, however, end there. The SEC alleges that, by December 2020, investors in Funds I, II, and EA SIP "will be owed approximately $167 million in revenue." Compl., ¶40. But the SEC's description of the debentures sold to investors in those Funds—which define what investors are owed and when—is inconsistent with its allegation. The SEC alleges that Defendants sold investors "3-year or 4-year debentures providing fixed annual returns of 8-10%." Id. This means that the principal amount invested is owed to each investor three or four years from the date they invest. For the SEC's allegation to have any merit, all of these debentures signed at different times and having different terms would have to mature, at once, in December 2020. Even viewing the allegations in the light most favorable to the SEC, this is internally inconsistent.

Moreover, the SEC alleged that "Fund 1, Fund 2, and the EA SIP Fund have collectively been raising from investors $2-3 million per month since January 2018." Id., ¶ 42. This accounts for somewhere between $48 million and $72 million dollars of the total allegedly raised by the Defendants in 2018 and 2019. Accepting these allegations as true, EquiAlt will owe principal amounts invested to January 2018 investors only when the debentures mature three or four years after the date of investment (January 2021 or 2022), while February 2018 investors will be owed their principal in either February 2021 or February 2022, and so on. In other words, according to the SEC's allegations, *none* of the principal raised in 2018 and 2019—which accounts for somewhere between 28% and 42% of the total amount EquiAlt raised, will even mature by the

December 2020 date alleged in the Complaint. Thus, the Commission's allegations about what is owed to investors by December 2020 is either unclear or inaccurate, and improperly indicates that EquiAlt cannot meet its obligations to investors. Without a clear demonstration that EquiAlt cannot meet its obligation to investors, the SEC's Ponzi-scheme theory crumbles.

For these reasons, the SEC's paltry allegations regarding the who, what, when and how of the alleged Ponzi scheme payments weighs more heavily in this case. Because the SEC's allegations make clear that EquiAlt did, in fact, operate Funds which acquired, held, and managed actual, substantial real estate and cash holdings, and because the SEC's allegations regarding a shortfall in December 2020 appears inconsistent with the debentures EquiAlt sold, it is vitally important that the allegations identify the amount and timing of the alleged Ponzi payments so that Defendants (and the Court) can assess whether a shortfall even existed at the time they were allegedly made. If no such shortfall existed, then the SEC will have failed to properly allege that the alleged Ponzi payments were made with the intent to manipulate, deceive, or defraud investors.[2] If no amounts are alleged, Defendants cannot assess the materiality of the alleged transfers and the allegations cannot satisfy Rule 9(b)'s heightened particularity requirements. *SEC v. Escala Group, Inc.*, 2009 WL 2365548, at *9 (S.D.N.Y. July 31, 2009) (discussing a "five percent threshold" for whether a matter is material.)

Given these deficiencies, the SEC's Ponzi-scheme theory is seriously flawed as applied to Davison. The SEC's theory is even more flawed as applied to Rybicki. As explained above, the alleged scheme is devoid of any facts suggesting, much less creating, a "strong inference of scienter" on his part. But the SEC's penchant for alleging "guilt by association" is clearer still when one considers the SEC's wholly unsubstantiated allegation that Rybicki—with no access to

[2] The SEC's failure to allege the when the alleged transfers were made also conceals from Defendants' and the Court's view whether any such transfers were made outside of the SEC's 5-year statute of limitations.

or control over EquiAlt's finances—knew or was so severely reckless that he must have known that EquiAlt, with its substantial real estate and cash holdings, was being operated as a "classic Ponzi scheme." The SEC's allegations that Rybicki had the requisite scienter to misappropriate investor funds also are wholly substantiated. The SEC alleges that the PPMs and Operating Agreement disclosed to investors that EquiAlt would receive management fees. Compl., ¶ 56. Given the substantial real estate and cash holdings amassed by the Funds over the years, it is inconceivable that Rybicki—with no access to or control over EquiAlt's finances—could have even known that a distribution – which, based on the SEC's own pleadings, could only have been authorized by Davison – would have been improper. Once again, the SEC's allegations of Rybicki's knowing involvement in this alleged scheme are not only implausible, but inconceivable. *See Iqbal*, 556 U.S. at 680.

The SEC's Complaint, which unfairly and improperly conflates the conduct of the Defendants, is itself a "classic" example of conclusory group pleading and must be dismissed. *See Mizzaro*, 544 F.3d at 1238 ("Moreover, the complaint must allege facts supporting a strong inference of scienter '*for each defendant* with respect to each violation.'") (emphasis added); *SEC v. Roanoke Tech. Corp.*, No. 6:05-cv-1880-Orl-31KRS, 2006 WL 3813755, at *5 (M.D. Fla. Dec. 26, 2006) (dismissing complaint under Rule 9(b) because it "lumps everything together" and thus "fails to specify the particulars of the actual scheme, such as whom [defendant] intended to defraud and which of his alleged misrepresentations were directed to that end.")

c. **The Complaint Fails the Heightened Specificity Requirements of Ruler 9(b) With Respect to the Misrepresentations Alleged in the Complaint as to Rybicki.**

The Complaint alleges that each Defendant made identical serial misrepresentations but provides none of the necessary detail required by Rule 9(b). Despite the various roles attributed to each Defendant and the various Funds about which these alleged statements were made, the

Complaint makes no distinction between speakers, content, time, date, or manner of the alleged misstatements. The lack of specificity regarding who is alleged to have made each purported misstatement is particularly fatal to the SEC's 10(b) claims. Under *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135, 142-43 (2011), no defendant can be liable for any alleged misstatements that are not attributable to him, or over which he has no ultimate authority.

As previously stated, SEC alleges in the Complaint that Davison owned and maintained control over EquiAlt and the Funds. Compl., ¶ 10. While the SEC alleges that Rybicki also maintained control over EquiAlt and the Funds, id., it differentiates his role from Davison's by describing him as the Managing Director and President of EquiAlt's Arizona Operations. Id., ¶ 11. In this role, the SEC alleges that Rybicki communicated with investors and executed debenture and subscription agreements. Id. It also states, in conclusory fashion, that he "reviewed and approved marketing materials." Id. The SEC's factual basis for this conclusion, however, is unclear. The SEC does not allege what marketing materials he reviewed, or what he did to approve them. Even in the light most favorable to the SEC, a reasonable inference can be drawn from the Complaint that *Rybicki did not prepare, draft, or edit any of the marketing materials*, as this conduct is not alleged in the Complaint. *See Metropolitan Transportation Authority Defined Benefit Pension Plan Master Trust v. Welbilt, Inc.*, Case No. 8:18-cv-3007-T-30AEP, 2020 WL 905591, *4 (M.D. Fla. February 6, 2020) (In deciding a motion to dismiss, court may consider other inferences that may be drawn from the allegations). Moreover, based upon the allegation that Davison—not Rybicki—formed EquiAlt (Compl., ¶ 37), another reasonable inference that should be drawn is that Rybicki was not involved in preparing, drafting, editing, or reviewing materials for EquiAlt's first Fund, Fund 1. In order for Rybicki to defend himself against the very serious allegations made in the Complaint, the SEC has a duty under Rule 9(b) to differentiate his conduct

from that of others and to indicate whether his conduct applies to all of the Funds or some of the Funds. *See Durham v. Bus. Mgmt. Ass'n*, 847 F.2d at 1511 (In fraud actions, Rule 9(b) serves the important purpose of "alerting defendants to the 'precise misconduct with which they are charged'" and protecting defendants "against spurious charges of immoral and fraudulent behavior."), quoting *Seville Indus.*, 742 F.2d at 791.

The SEC's lack of clarity on this point is particularly important, because, once again, it improperly attributes all of the alleged misrepresentations to Rybicki, even though elsewhere it makes allegations undermining its own theory of the case. For example, the SEC alleges that another individual—unnamed in the Complaint and identified only as EquiAlt's "President of Business Development and Marketing"—made misrepresentations to Fund 2 investors. Id., ¶ 55. That individual is Andre Sears. Exhibit A, Fund 2 PPM.[3] Sears' role as President of Business Development and Marketing is obviously significant, and his alleged involvement in making misrepresentations to Fund 2 investors while in that role raises an question that the SEC must, in good faith, clarify for the Court, and that is whether Rybicki had *anything* to do with the offering materials and representations made to Fund 2 investors.

d. **The Alleged Misrepresentations Are Not Materially Misleading.**

In the context of claims brought under Section 17(a) and 10(b), materiality is "defined as information that is substantially likely to be important to a reasonable investor in deciding whether to purchase, sell, or hold securities." *SEC v. Kirkland*, 521 F.Supp.2d 1281, 1303 (M.D.Fla. 2007). "Materiality is proved by showing a 'substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix'

[3] The court may considers matters that are outside a pleading on a motion to dismiss for failure to state a claim without converting the motion into one for summary judgment if the document is: (1) central to the plaintiff's claim; and (2) undisputed. *Slakman v. Admin. Comm. of Delta Air Lines, Inc.*, No. 16–10572, 2016 WL 4978353, at *1 (11th Cir. Sept. 19, 2016).

of information made available.'" *SEC v. Ginsburg*, 362 F.3d 1292, 1302 (11th Cir.2004) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). The standard depends on the actions of a hypothetical "reasonable investor" and thus does not require an inquiry into whether the investors in this case actually considered the statements about EquiAlt's to be material. *See TSC Indus.*, 426 U.S. at 449.

i. Use of Funds

The SEC alleges that the PPMs for "Fund l, Fund 2, and the EA SIP Fund" were materially misleading because they indicate that "approximately 90% of investor funds would be used to "invest in property." Compl., ¶51. The allegation is derived from a chart in a section of the PPMs entitled "Uses of Funds, which identifies uses of investor funds, which include, but are not limited to, accounting and legal fees and other administrative costs which amount to roughly 10% of investor deposits." Id., ¶ 49; Exhibit B, Fund 1 PPM , pp. 8-9. However, as the SEC acknowledges elsewhere in the Complaint, the same PPMs informed investors that management fees would be charged (Compl., ¶56), and that "commissions or fees" might be charged if EquiAlt used registered brokers or other financial intermediaries to offer the securities. Id., ¶ 41.

In other words, to bolster its allegation that investors were misled about fees and costs, the SEC selectively referenced the 10% accounting and legal fees and other administrative costs in the chart as if the other disclosures about management fees and commissions simply did not exist. While the allegations must be construed in the light most favorable to the plaintiff, this material misrepresentation allegation is not supported by "facts" that are "conclusively contradicted by plaintiffs' concessions or otherwise." *Chongris*, 811 F.2d at 37 (1st Cir. 1987) (affirming dismissal). Because the administrative costs alone constituted 10% of investor deposits, investors were on notice that their deposits would be invested net of administrative costs, plus managements

fees and, if they purchased their securities from a sales agent or "financial intermediary," commissions. Consequently, the SEC's allegation that the chart in the PPM is misleading only survives scrutiny if one ignores the other disclosures in the very same PPM. The SEC's presentation thus does not survive scrutiny under Rules 9(b) and 12(b)(6).

ii. Payment of Commissions

The SEC alleges that Defendants failed to adequately disclose to investors that their funds would be used to pay commissions. Compl., ¶ 54. To be clear, the SEC is not alleging that the PPMs advised investors that commissions would not be paid, or that Defendants even had a duty to disclose the payment of commissions. Rather, the SEC is taking the unusual and factually unsupported position that the PPMs' disclosure to investors that commissions may be paid was "inadequate." Id. This is an important signal that the SEC's allegation fails to state a claim under Rule 12(b)(6) with respect to this alleged misstatement: the SEC falls short of even alleging that the statement is materially misleading, but instead alleges it is inadequate.

The relevant PPM provision states: "Securities are being offered directly through the Company [EquiAlt]. The Company may utilize the services of one or more registered broker/dealers or other financial intermediaries. In such cases, the Company may pay commissions or fees of up to 12% to such persons." Exhibit B, Fund 1 PPM, p. 3. Here, the SEC alleges that the disclosure is inadequate because a reasonable investor might not understand that the money they invest will always be made net of a commission. However, the "total mix of information" available to the investor includes the manner in which he or she arrives at the investment decision. Even in the light most favorable to the SEC, a reasonable inference can be drawn that an investor who purchases EquiAlt securities after interacting with a "broker or financial intermediary" would expect, based on the disclosure, that a commission would be paid. If anything, the inclusion of

this statement in the PPMs served to put prospective investors on notice that there was a possibility that brokers were being compensated for the sale of EquiAlt securities, such that investors could pursue that line of inquiry if they were concerned.

Several courts have examined similar disclosures and have agreed that they fail to meet the materiality requirements of Section 17(a) and 10b. In *Benzon v. Morgan Stanley Distributors, Inc.*, 420 F.3d 598 (6th Cir. 2005), a prospectus disclosed that individual financial investment advisers "*may* receive different [i.e., additional] compensation" for selling certain funds. In fact, there was an actual agreement to pay extra for trading in certain funds. The court called the plaintiff's distinction between "may receive" and "will receive" a "semantic quibble," and held that the difference was not material. In *Press v. Quick & Reilly, Inc.*, 218 F.3d 121 (2d Cir. 2000), brokers received compensation for moving uninvested money from clients' accounts into money-market funds which earned interest. Investors were told the brokers received payments for "distribution assistance," but were not told that certain money-market fund companies compensated the brokers to move unallocated client money into those funds. The court held that the brokers had not breached their disclosure duties based on an SEC *amicus brief* that interpreted its rules and concluded that the defendants' failure to disclose was not material because it would not provide much more information than what already had been given. *Id.* at 123-24, 130-32. In *Castillo v. Dean Witter Discover & Co.*, No. 97 Civ. 1272(RPP), 1998 WL 342050 (S.D.N.Y. June 25, 1998), the court held that a broker had no duty to disclose that individual selling agents received higher commissions on selling propriety products than they received for selling non-propriety products. The court based this finding on the fact that plaintiffs could cite no caselaw on their side and on the rationale that "[p]laintiffs should have been aware that sale of a Dean Witter fund, as opposed to an outside fund, would mean greater compensation for the Dean Witter companies."

The court also said that recognizing a duty to disclose such differential compensation "would engender an almost impossible problem of defining the limits of such a duty." *Id.* at *9.

Because the Complaint fails to adequately plead that the disclosure the SEC calls "inadequate" was actually materially misleading, it fails to state a claim under Section 17(a) of the Securities Act and Section 10b of the Exchange Act, and must be dismissed. Moreover, because the Complaint is internally inconsistent regarding whether Rybicki was the "maker" of the statements concerning Fund 2 investors or instead made the statements in connection with the purchase or sale of Fund 2 securities, it fails to state a claim under Rule 12(b)(6).[4]

iii. Risk

The SEC also alleges that investors were materially misled about the safety and risk of their investments. Compl., ¶ 57. It bases this on a conclusory allegation that Defendants, "while pitching investment in the Funds," represented that they were "low risk, safe, and conservative," and claims that this representation was false because the Funds suffered losses. What the SEC fails to mention, however, is that the significant risk factors associated with investment in EquiAlt were disclosed in the PPMs provides to investors no fewer than *three* times.

The very first page of the Fund 1 PPM disclosed to investors that "INVESTMENT IN THE SECURITIES INVOLVES A HIGH DEGREE OF RISK," and further discloses that "INVESTORS WILL BE REQUIRED TO REPRESENT THAT THEY ARE FAMILIAR WITH

[4] This reasoning applies with equal force to Counts I and IX. The SEC has failed to allege facts with sufficient particularity under Rule 9(b) to create a reasonable inference that: (1) Rybicki directly or indirectly sold or offered to sell unregistered securities interests in Fund 2; or (2) knowingly or recklessly substantially assisted violations of Section 15(a) of the Exchange Act with respect to the sale of investments in Fund 2. Because the Complaint alleges the unregistered sales of securities and the sale of those securities by unregistered sales agents as part of the fraud scheme, *see* Compl., ¶¶ 1,3,5,37, & 50, and realleged every paragraph of the Complaint into Counts 1 and IX, Rule 9(b)'s heightened particularity requirements apply. *Wagner v. First Horizon Pharmaceutical Corp.*, 464 F.3d 1273 (11th Cir.2006) (Rule 9(b) applies to nonfraud claims when the misrepresentation justifying relief on such claims under the Securities Act is also alleged to support a claim for fraud); *Solow*, 2007 WL 917269, at *3-4 (applying *Wagner* to aiding and abetting securities violations).

AND UNDERSTAND THE TERMS OF THE OFFERING (SEE "RISK FACTORS)." Exhibit B. These risk factors are referenced again, at page 3, where the PPM discloses to investors that "[t]he purchase of Securities involves a *high degree of risk* to the Investor including certain risks relating to regulatory, operating, tax and investment matters. (See "RISK FACTORS."). Id. at 3 (emphasis added). The PPM itemizes and details the risks on page 5 of the PPM under the heading "RISK AND OTHER IMPORTANT FACTORS." Id. In that section, the PPMs discloses to investors that investment in EquiAlt "involves substantial risks," including, but not limited to "Operating Risks." The PPM then describes the legal risks associated with real estate acquisitions, the unpredictability of "carrying costs," "rising operating costs," "losses due to structural deficiencies," and other unforeseeable risks. Given the "total mix of information made available to investors" *Ginsburg*, 362 F.3d at 1302, in this case, and given the fact that over one thousand investors decided to invest in EquiAlt after having received these disclosures in the PPMs, it would be unreasonable to conclude that the alleged "pitch" statements made to investors altered their investment decision.

iv. Registration with the Commission

The SEC's complaint is replete with allegations of misstatements that are contradicted by the PPMs they reference therein. Once again, the SEC bases an allegation on a statement made to investors despite the existence of a clear disclosure in the PPM.

In paragraph 58 of the Complaint, the SEC alleges that EquiAlt falsely told investors in Fund 2 that the fund was registered with the Commission. However, this allegation is directly contradicted by the PPM for Fund 2. On the very first page of this PPM, potential investors are advised, in no uncertain terms, that "THE SECURITIES HAVE NOT BEEN REGISTERED WITH NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION ("COMMISSION") NOR HAS THE COMMISSION PASSED

UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. Exhibit A, Fund 2 PPM. This disclosure is repeated on page 4, where the PPM states, "While this Offering is made to various parties, it is not a registered offering under Federal securities laws," and then, for good measure, on page 14, where it states, "The Securities have not been registered under the Act." Id.

As the only allegation regarding this alleged misstatement is tied to the sale of Fund 2 investments, the SEC must state, with sufficient particularity, whether this statement is even attributable to Rybicki. SEC's attribution of this statement to EquiAlt, and not directly to Rybicki serves as yet another tacit acknowledgement by the SEC that Andre Sears, not Rybicki, was involved in the sale of Fund 2 investments for EquiAlt. Consequently, absent clarification by the SEC, no alleged misstatements made or schemes conducted in connection with the offer, purchase, or sale of Fund 2 investments in EquiAlt can be attributed to Rybicki, as any such allegation would fail to satisfy the "in connection with" requirements of Sections 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act. *Roanoke Tech. Corp*., 2006 WL 3813755, at *2 (Section 10(b) and Section 17(a) have essentially similar requirements that the deceptive conduct occur in connection with the "purchase or sale" or "offer or sale.")

e. **Barry Rybicki Did Not have the Requisite Scienter to Make the Material Misstatements Alleged in the Complaint.**

The SEC alleges the following misrepresentations made by the Defendants in the complaint:

- *use of funds, Compl.,* ¶ 51-52**;**
- *the transfer of funds from one Fund to another*, Id., ¶ 53;
- *use of investor funds to pay commissions*, Id., ¶ 54;
- *payment of management fees to EquiAlt made to Fund 2 investors*, Id., ¶ 55;
- *risk*, Id., ¶ 57;

- *registration with the Commission made to Fund 2 investors*, Id., ¶ 58-59; and
- *Fund management*, Id., ¶ 60.

As explained in Section 1.a., *supra*, the SEC's allegations make clear that Rybicki did not have access to or control over EquiAlt's bank accounts or finances and did not manage its day to day operations in Tampa, Florida. Instead, the SEC alleges that Rybicki managed interactions with customers investing in and sales agents marketing investments in Fund 1, Fund 3, and EA SIP. In light of Rybicki's limited role, and in light of the reasonable inference from the Complaint that EquiAlt actually used investor deposits to amass substantial real estate and cash holdings of at least $145 million, there is an insufficient basis for the SEC's allegations that Rybicki had knowledge of or was severely reckless in not knowing about EquiAlt's use of funds, transfers of money between Funds, the payment of management Fees, or the level of involvement of Diane Dutton in the management of Fund I (italicized above). Consequently, those allegations as to Rybicki must be dismissed for failure to state a claim under Rule 12(b)(6). *U.S. ex rel. Carroll v. JFK Med. Ctr.*, No. 01–8158–CIV, 2002 WL 31941007, at *2 (S.D. Fla. Nov. 15, 2002) ("Court need not accept facts that are internally inconsistent, facts that run counter to facts which the Court may take judicial notice of, conclusory allegations, unwarranted deductions, or mere legal conclusions"). While the Complaint alleges sufficient facts to create an inference—taken in the light most favorable to the SEC—that Rybicki knew or was reckless in not knowing about the use of investor funds to pay commissions and statements to investors about risk, the Complaint fails to properly allege that any such statements were materially misleading and, consequently, should nevertheless be dismissed for failure to state a claim pursuant to Rule 12(b)(6).

2. **The SEC Has Failed to Establish That Barry Rybicki Violated the Exchange Act as a "Control Person" of EquiAlt.**

In order to establish derivative liability under § 20(a) of the Exchange Act, a plaintiff must allege that: (1) the controlled person committed a primary violation of the Exchange Act; (2) the defendant had the power to control the general affairs of the primary violator; and (3) the defendant "had the requisite power to directly or indirectly control or influence the specific corporate policy which resulted in primary liability." *Mizzaro*, 544 F.3d at 1237 (quoting *Theoharous v. Fong*, 256 F.3d 1219,1227 (11th Cir.2001). "The legislative purpose in enacting a control person liability provision was to prevent people and entities from using straw parties, subsidiaries, or other agents acting on their behalf to accomplish ends that would be forbidden directly by the securities laws." *Dusek v. JPMorgan Chase & Co.*, 132 F.Supp.3d 1330, 1351-52 (M.D.Fla.2015) (quoting *Laperriere v. Vesta Ins. Grp., Inc.*, 526 F.3d 715, 721 (11th Cir.2008).

The Complaint in this case is devoid of any facts to support a reasonable inference that Rybicki had the power to control the general affairs of EquiAlt. In fact, the SEC alleges just the opposite, namely, that Davison not only owned the Funds, but also owned, formed, and served as CEO of EquiAlt in Tampa, Florida, which managed the day-to-day affairs of the Funds. Compl. ¶¶ 10, 12, 14. Rybicki, on the other hand, resided across the country in Phoenix, Arizona, and "communicated with investors and executed debentures and subscription agreements with investors." Id., ¶¶ 4, 11. While Rybicki held the title of Managing Director and President of Arizona Operations, "title alone does not suffice to create control person liability" under Section 20(a) of the Exchange Act. *Wafra Leasing Crop., 1999-A-1 v. Prime Capital Corp.*, No. 01 C 4314, 2004 WL 1977572, at *8 (N.D.Ill. August 31, 2004). Consequently, Count VII should be dismissed under Rule 12(b)(6) for failure to state a claim.

3. **A Majority of the SEC's Claims are Time Barred.**

A majority of the SEC's claims are time barred because they are based on conduct that occurred as long as nine years ago, which is outside the five-year statute of limitations period set forth in 28 U.S.C. § 2462. For SEC enforcement actions that seek civil penalties, this "five-year clock begins to tick [ ] when a defendant's allegedly fraudulent conduct occurs." *Gabelli v. SEC*, 568 U.S. 442, 448 (2013). And, because "[d]isgorgement in the securities-enforcement context is a 'penalty' within the meaning of § 2462, and so disgorgement actions must be commenced within five years of the date the claim accrues." *Kokesh v. SEC*, __ U.S. __, 137 S. Ct. 1635, 1639 (2017). Consequently, any non-equitable remedies, including penalties and disgorgement, requested by the SEC for conduct arising prior to February 14, 2016 must be dismissed.

IV. CONCLUSION

For the foregoing reasons, the Court should grant Barry Rybicki's Motion to Dismiss the Complaint.

Respectfully submitted,

/s/ Adam S. Fels
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afels@ffslawfirm.com

Attorney for Defendant Barry Rybicki

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed via the Court's CM/ECF system, which will send an electronic copy of the foregoing and a notice of filing same to all counsel of record, on this 18th day of June, 2020.

s/Adam S. Fels

PRIVATE PLACEMENT MEMORANDUM

EQUIALT FUND II, LLC

PRIVATE PLACEMENT MEMORANDUM

EQUIALT FUND II, LLC

$20,000,000

9% DEBENTURES

MINIMUM PURCHASE: $100,000

EQUIALT FUND II, LLC, a Nevada limited liability company (the "Company"), organized under the Nevada Limited Liability Company Act, hereby offers (the "Offering"), by and through its Manager, up to Twenty Million Dollars ($20,000,000) in 9% Debentures (the "Securities") of the Company. EQUIALT, LLC, a Nevada limited liability company, is the Manager (the "Manager") of the Company. The securities referred to herein are being offered on a best efforts basis to residents of Arizona, California, Florida and Nevada, and may be offered in other states.

ORIGINAL OFFER DATE OF THIS PRIVATE PLACEMENT MEMORANDUM: May 10, 2013, AS REVISED OCTOBER 3, 2017

INVESTMENT IN THE SECURITIES INVOLVES A HIGH DEGREE OF RISK. INVESTORS WILL BE REQUIRED TO REPRESENT THAT THEY ARE FAMILIAR WITH AND UNDERSTAND THE TERMS OF THE OFFERING (SEE "RISK FACTORS," "CONFLICTS OF INTEREST" AND "COMPENSATION AND FEES TO THE MANAGER AND AFFILIATES.").

THE SECURITIES HAVE NOT BEEN REGISTERED WITH NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION ("COMMISSION") NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THIS OFFERING HAS NOT BEEN APPROVED OR DISAPPROVED UNDER APPLICABLE STATE SECURITIES LAWS, BY THE SECURITIES DIVISION OF CORPORATIONS, SECURITIES REGULATION DIVISION ("DIVISION"), NOR HAS THE DIVISION REVIEWED OR PASSED UPON THE ACCURACY OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

DURING THE COURSE OF THE OFFERING AND PRIOR TO SALE, EACH OFFEREE OF THE SECURITIES AND HIS ADVISOR(S) ARE INVITED TO ASK QUESTIONS OF AND OBTAIN ADDITIONAL INFORMATION FROM THE MANAGER CONCERNING THE TERMS AND CONDITIONS OF THE OFFERING, THE COMPANY, THE DEBT TO BE OWED BY THE COMPANY AND ANY OTHER RELEVANT MATTERS (INCLUDING, BUT NOT LIMITED TO, ADDITIONAL INFORMATION TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH HEREIN), TO THE EXTENT THE MANAGER POSSESSES SUCH INFORMATION OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE.

OFFEREES OR ADVISORS HAVING QUESTIONS OR DESIRING ADDITIONAL INFORMATION SHOULD CONTACT THE MANAGER.

THIS MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. IT CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS OF DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN. THIS MEMORANDUM CONTAINS SUMMARIES OF CERTAIN DOCUMENTS, THAT ARE BELIEVED TO BE ACCURATE, BUT REFERENCE IS HEREBY MADE TO THE ACTUAL DOCUMENTS, COPIES OF WHICH ARE ATTACHED HERETO OR ARE AVAILABLE AT THE OFFICE OF THE MANAGER, FOR COMPLETE INFORMATION CONCERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO. ALL SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THIS REFERENCE, AND NOTHING IN THIS MEMORANDUM SHALL EXTEND THE LIABILITY UNDER ANY SUCH DOCUMENTS OF ANY OF THE PARTIES HERETO. ALL DOCUMENTS RELATING TO THE OFFERING WILL BE MADE AVAILABLE TO THE OFFEREE NAMED BELOW AND/OR HIS ADVISOR(S) UPON REQUEST.

THE OFFERING CAN BE WITHDRAWN AT ANY TIME BEFORE CONSUMMATION AND IS SPECIFICALLY MADE SUBJECT TO THE CONDITIONS DESCRIBED IN THIS MEMORANDUM. IN CONNECTION WITH THE OFFERING AND SALE OF THE SECURITIES, THE MANAGER RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO REJECT ANY SUBSCRIPTION IN WHOLE OR IN PART OR TO ALLOT TO ANY PROSPECTIVE INVESTOR LESS THAN THE SECURITIES SUBSCRIBED FOR BY SUCH PROSPECTIVE INVESTOR.

SINCE THERE ARE SUBSTANTIAL RESTRICTIONS ON THE TRANSFERABILITY OF THE SECURITIES, EACH OFFEREE MUST ASSUME THAT HE WILL BEAR THE ECONOMIC RISK OF HIS INVESTMENT FOR AN INDEFINITE PERIOD. THE SECURITIES MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE REMAINING MEMBERS. IN ADDITION, SECURITIES ARE NOT REGISTERED FOR SALE TO THE PUBLIC UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE AND THE SECURITIES MAY BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF BY AN INVESTOR ONLY IF, AMONG OTHER THINGS, THE SECURITIES ARE REGISTERED OR, IN THE OPINION OF COUNSEL TO THE COMPANY, REGISTRATION IS NOT REQUIRED UNDER SUCH LAWS.

THIS MEMORANDUM HAS BEEN PREPARED SOLELY FOR THE USE OF PERSONS WHO MAY WANT TO PURCHASE SECURITIES AND DELIVERY THEREOF CONSTITUTES AN OFFER ONLY IF THE NAME OF AN OFFEREE APPEARS IN THE APPROPRIATE SPACE PROVIDED BELOW AND IF THE PERSON SO NAMED MEETS THE SUITABILITY STANDARDS SET FORTH UNDER "QUALIFICATION OF INVESTORS." ANY DISTRIBUTION OF THIS MEMORANDUM TO ANY PERSON OTHER THAN THE OFFEREE NAMED BELOW (OR TO THOSE INDIVIDUALS WHOM HE RETAINS TO ADVISE HIM WITH RESPECT THERETO) IS UNAUTHORIZED AND ANY REPRODUCTION OF THIS

MEMORANDUM IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE MANAGER, IS PROHIBITED.

NO REPRESENTATIONS OR WARRANTIES OF ANY KIND ARE INTENDED TO BE MADE IN THIS MEMORANDUM OR SHOULD BE INFERRED THEREFROM WITH RESPECT TO THE ECONOMIC RETURN OR THE TAX TREATMENT WHICH MAY ACCRUE TO THE INVESTOR. NO ASSURANCE CAN BE GIVEN THAT EXISTING TAX LAWS WILL NOT BE CHANGED OR INTERPRETED ADVERSELY, EITHER OF WHICH MAY DENY THE INVESTORS ALL OR A PORTION OF THE TAX TREATMENT CONSIDERED HEREIN. PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THE CONTENTS OF THIS MEMORANDUM AS LEGAL, TAX OR INVESTMENT ADVICE. EACH INVESTOR SHOULD CONSULT HIS OWN ATTORNEY, ACCOUNTANT AND OTHER ADVISORS AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING A PURCHASE BY HIM OF A DEBENTURE.

NO OFFERING LITERATURE OR ADVERTISING IN WHATEVER FORM WILL OR MAY BE EMPLOYED IN THE OFFERING EXCEPT FOR THIS MEMORANDUM AND STATEMENTS CONTAINED OR DOCUMENTS SUMMARIZED HEREIN. NO PERSON HAS BEEN AUTHORIZED TO MAKE ANY REPRESENTATIONS, OR GIVE ANY INFORMATION, WITH RESPECT TO THE SECURITIES, EXCEPT FOR INFORMATION CONTAINED OR REFERRED TO HEREIN.

Name of Offeree:		Memorandum Number:	

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These securities are offered subject to (a) prior sale, (b) approval of counsel, (c) the right to terminate the offer without prior notice or to reject any subscription, and (d) certain other conditions.

QUALIFICATION OF INVESTORS

Each Debenture requires a minimum investment of $100,000, provided, however, the Company reserves the right to accept subscriptions for a lesser amount. Additional investment may be made in increments of $5,000.

Investment in the Securities offered hereby involves risk and is suitable only for persons of financial means who have provided for liquidity in their other investments. No Securities will be sold to Investors who will not warrant and represent to the Company and the Manager (and unless the Manager shall have reasonable grounds to believe) that such offeree has such knowledge and expertise in financial and business matters, is capable of evaluating the merits and risks of the prospective investment and is able to bear the economic risks of the investment, or alternatively, that such Investor's legal or financial representative has such knowledge and expertise about financial and business matters and is capable of evaluating the merits and risks of the investment together with the Investor having the ability to bear the economic risks of the investment. In either case, the Investor must also warrant and represent to the Company and the Manager that he is acquiring the Securities for his own account.

Each Investor must satisfy the Manager that the Investor can bear a total loss of his investment. Each Investor will be required to represent that he is acquiring the Securities being purchased by him for investment and for his own account, and not with a view to resale or distribution. Resale of the Securities is subject to extensive restrictions (see "SUMMARY OF THE OFFERING"). It is not expected that any public market for the resale of the Securities will develop.

GLOSSARY OF TERMS

"Act" - the Securities Act of 1933, as amended.

"Affiliate" - (i) any person directly or indirectly controlling, controlled by or under common control with another person, (ii) a person owning or controlling 10% or more of the outstanding voting securities of such other person, (iii) any officer, director, partner or employee of such person and (iv) if such other person is an officer, director, partner or employee, any company for which such person acts in any such capacity.

"Agreement" - the Operating Agreement of the Company, as such may be amended from time to time.

"Debenture" - the 9% Debentures maturing in 36 months offered to Investors herein.

"Manager" - this Company's Manager: EQUIALT, LLC or its successor(s) as determined by the Agreement.

"Memorandum" - this Private Placement Memorandum.

"Company" - this limited liability company: EQUIALT FUND II, LLC, a Nevada limited liability company.

"Investor(s)" – prospective purchasers of Debentures in the Company.

"Project" - the proposed business of the Company (i.e., acquiring, improving and/or selling distressed real property).

"Reserves" - all reserves established by the Manager in its sole discretion for the Company's purposes, including, but not limited to, operating expenses and other working capital needs, liabilities, and taxes.

SUMMARY OF THE OFFERING

This summary of certain provisions of the Memorandum is intended only for a quick reference and is not intended to be complete. This Memorandum describes in detail numerous aspects of the transaction which are material to Investors, including those summarized below, and this Memorandum and the accompanying Exhibits must be read in their entirety by reference to the full text of this Memorandum and the underlying documents.

The Offering.

The Memorandum describes an offering (the "Offering") to prospective Investors of 9% Debentures issued by EQUIALT FUND II, LLC, a limited liability company formed under the laws of the State of Nevada.

The Company.

EQUIALT FUND II, LLC (the "Company"), a Nevada limited liability company, was formed as of April 24, 2013, when its Articles of Organization were filed with the Nevada Secretary of State's Office pursuant to the Nevada Limited Liability Company Act as adopted by the State of Nevada. The office of the Company is located at 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145.

The Manager.

The Manager of the Company is EQUIALT, LLC, a Nevada limited liability company (See "THE MANAGERS").

Purpose of the Offering.

The purpose of this Offering is to secure capital in order to enable the Company to purchase, improve, lease and/or dispose of distressed real property, enter into opportunistic loan transactions and/or engage in other ventures. (See "MANAGEMENT OF THE COMPANY" and "INVESTMENT OBJECTIVES".)

Investment Objectives.

The primary investment objective of the Company shall be to purchase and sell single family properties in certain distressed real estate markets in the U.S. and participate in opportunistic lending in the U.S.

Securities Being Offered.

An aggregate of up to $20 million in 9% Debentures of the Company are being offered. The Securities shall be offered on a best efforts basis. The minimum subscription accepted by the Company will be for $100,000, and additional investment may be made in increments of $5,000. (See "Allocation of Benefits" below.) Under no circumstances will the Company admit more than thirty-five (35) non-accredited Investors as computed under Rule 501 of Regulation D promulgated under the Act. The Offering will terminate on a date to be determined by the Manager.

Selling Agent.

Securities are being offered directly through the Company. The Company may utilize the services of one or more registered broker/dealers or other financial intermediaries. In such cases, the Company may pay commissions or fees of up to 12% to such persons.

The purchase price is payable by Investors in full by cash.

Risk Factors.

The purchase of Securities involves a high degree of risk to the Investor including certain risks relating to regulatory, operating, tax and investment matters. (See “RISK FACTORS.”)

Allocation of Benefits.

a) Profits, Losses and Net Cash Flow.

The Company does not anticipate substantial profits, losses or Net Cash Flow until assets are sold.

b) Net Proceeds from Refinancing, Sale or upon Termination of the Company.

In the event that the Company disposes of substantially all of its assets, the Company shall be obligated to satisfy all of its debts, including without limitation the Debentures, prior to any distribution of cash to its members.

Management of the Project.

The Project will be managed by the Company through EQUIALT, LLC, the Company's Manager.

Compensation and Fees to Manager.

The Manager will receive Management Fees as set forth in the Operating Agreement and described more fully below. (See "COMPENSATION AND FEES TO MANAGER AND AFFILIATES.")

No Tax Ruling.

The Company will not seek a ruling from the Internal Revenue Service (the "IRS") as to any aspects of the Offering and will rely on the opinion of the Manager and its legal counsel with respect to its classification as a limited liability company for Federal income tax purposes. (See "RISK FACTORS - TAX RISKS.")

Management and Control of the Company.

The Manager will be responsible for the management and control of the Company. EQUIALT, LLC will serve as the initial Manager.

Distributions to Investors.

The Manager does not anticipate cash distributions from operations of the Company. (See "SOURCES AND USES OF FUNDS.") Each Investor will receive payments pursuant to the terms of the Debentures.

Status of Investor.

Each Investor will be a creditor of the Company pursuant to the terms of the Debenture (See "EXHIBIT A.")

Further Investigation.

Statements contained in this Summary or elsewhere in the Private Placement Memorandum as to the contents of the other offering documents are not necessarily complete and each such statement is deemed to be qualified and amplified in all respects by the provisions of such agreements and documents, copies of which are either attached hereto or are available upon reasonable notice for examination by offerees, or their duly authorized representatives, at the office of the Manager, located at 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145. Each offeree and his business and/or tax advisors are urged to examine all agreements and documents.

THE OFFERING

While this Offering is made to various parties, it is not a registered offering under Federal securities laws. This Offering is being made pursuant to the private offering exemption of Section 4(2) of the Act and/or Regulation D promulgated under the Act. This Offering is also being made in strict compliance with the applicable state securities laws. Each Investor must represent that he is acquiring his Debenture ("Securities") for investment purposes only and not with a view to resale or distribution. All Securities are offered subject to prior sale, when, as and if issued, and subject to the right of the

Manager to reject any subscription in whole or in part. The Company will only sell Securities to persons meeting its suitability standards, which the Company's Manager may determine in its sole and absolute discretion.

METHOD OF DISTRIBUTION

This Private Placement Memorandum summarizes a proposed transaction in which Investors will be entitled to hold a Debenture issued by EQUIALT FUND II, LLC, a Nevada limited liability company.

The purpose of this Offering is to raise monies to enable the Company to purchase distressed real property and either derive rental income therefrom or dispose of the property for a profit.

Distribution of Securities.

These securities are being offered through the Company. There is no firm commitment for the purchase of any Securities. Sales of the Securities may be made to residents of Arizona, California, Florida and Nevada, and possibly in other jurisdictions, all in compliance with the laws of each jurisdiction.

RISK AND OTHER IMPORTANT FACTORS

Investment herein involves substantial risks. Investors should consider the risks mentioned elsewhere in this Private Placement Memorandum as well as the following matters:

Tax Risks.

A summary of Federal income tax provisions is included in this Memorandum. No representation or warranty of any kind is made by the Manager, the Company, counsel to the Manager or the Company with respect to any tax consequences relating to the Company, or the allocation of taxable income or loss set forth in this Memorandum and each Investor should seek his own tax advice concerning the purchase of a Debenture.

1. Suitability of the Investment to the Investor. It is expected that the Debenture will yield taxable income to its Investors.

2. Federal Income Tax Risks.

a. Necessity of Obtaining Professional Advice. THERE IS NO GENERAL EXPLANATION OF THE FEDERAL INCOME TAX ASPECTS OF INVESTMENT IN THE COMPANY CONTAINED IN THIS MEMORANDUM, AND ACCORDINGLY, EACH INVESTOR IS URGED TO CONSULT SUCH INVESTOR'S OWN TAX INVESTMENT AND LEGAL ADVISORS WITH RESPECT TO SUCH MATTERS AND WITH RESPECT TO THE ADVISABILITY OF INVESTING IN THE COMPANY. The income tax consequences of an investment in the Company are complex, subject to varying interpretations, and may vary significantly between Investors depending upon such personal factors such as sources of income, investment

portfolios and other tax considerations. A Prospective Investor should consider with his professional advisors the tax effects of his becoming a Debenture holder. Each Investor should, at his own expense, retain, consult with and rely on his own advisors with respect to the tax effects of his investment in the Company. In addition to considering the federal income tax consequences, each Investor should also consider with his own advisors the state and local tax consequences of an investment in the Company.

No representations are made as to any federal, state or local tax consequences resulting from an investment in the Company, and no assurances are given that any deduction or other federal income tax benefits will be available to Members in the Company in the current or future years.

b. Company Tax Status. Although the Manager believes that the Company will be treated as a partnership for federal income tax purposes, such treatment cannot be assured. The Manager reserves the right to convert the Company to a corporation if it is in the best interests of the Company to do so.

c. Tax Law Changes. The existence and amount of particular credits and deductions, if any, claimed by the Company may depend upon various determinations and allocations, characterizations of payments, and other matters which are subject to potential controversy on factual as well as legal grounds. Changes in the Code and official interpretations thereof after the date of this Memorandum may eliminate or reduce any perceived tax benefits from an investment in the Securities. There can be no assurance that regulations having an adverse effect on the creditors will not be issued in the future and enforced by the courts. Any modification or change in the Code or the regulations promulgated thereunder, or any judicial decision, could be applied retroactively to any investment in the Company. In view of this uncertainty, Investors are urged to consider ongoing developments in this area and consult their advisors concerning the effects of such developments on an investment in the Company in light of their own personal tax situations.

d. Absence of Ruling or Opinion. The Company will not seek a ruling from the IRS or an opinion of counsel with respect to any tax matters described in this Memorandum.

Operating Risks.

1. Risk of Interpretation of Real Estate Documents and Agreements. There are certain risks in connection with any real estate acquisition resulting from the drafting and subsequent interpretation of mortgages, deeds, leases, purchase agreements, management contracts, et cetera. Any documents describing the Property or the legal relations thereto could be subject to various interpretations and potential disputes. While legal counsel may review certain legal documents, it is impossible to prevent and be secured against such various differing interpretations.

2. Risks of Real Estate Ownership. Real estate is not readily marketable. It is fixed in location and is subject to adverse social and economic changes and uses. Carrying costs may increase beyond the levels sustainable.

3. Results of Operations - Possible Operating Deficits. This Memorandum and the attached Financial Projections are based upon projected results which may be greater than results obtained from actual operations. Actual results may differ adversely for a number of reasons; including, but not

limited to, the possibility of increases in entitlement costs, losses due to structural-related deficiencies and real estate taxes, which cannot be fully recovered through increased property values and other revenues, softness in the demand for land due to changing socio-economic conditions in the area in which the Property is located and competition among other real estate development projects in the area.

Following the Offering, the Company may be subject to rising operating costs, although the Company does not anticipate significant operating costs. (See "FINANCIAL PROJECTIONS - SOURCES AND USES OF CASH".) However, there is no assurance that these funds will be adequate. Additional capital may be raised by the Company.

4.Risk of Financing and Potential Foreclosure on Mortgage Loan. A mortgage loan may be secured by the Property. The risk of foreclosure can arise from, among other things, the failure by the Company to meet any of the other various conditions existing in the mortgage loan documents.

Payment of principal and interest on the mortgage loan will be due on a monthly basis. It is anticipated that these payments will be met by the Company from its initial capital and revenue sources. No assurance can be given that the funds generated by the initial capital or revenue will be sufficient to meet the monthly payments.

5.Risk of Failure to Obtain Loan. Although the Company does not intend to secure a loan to purchase the Property, such a loan could be secured by the Property. In the event of a default on the loan, the lender could foreclose upon the Property.

6.Dependence Upon Issuer. The Manager has full discretion in the management of the Project and in the management and control of the affairs of the Company, including the authority to sell less than all or substantially all of the Company's assets for whatever consideration it deems appropriate. Except upon the sale of all or substantially all of the Company's assets, the sale of such assets will not result in the dissolution of the Company. The sale of all or substantially all of the Company's interests in the Property will result in the dissolution of the Company.

The success of the operations of the Company will be dependent in large measure on the judgment and ability of the Manager.

7.Dependability of Assumptions. The description of the contemplated results of the operations of the Company described in this Memorandum are based on various assumptions concerning many facts over which the Company has no control, including, without limitation:

(a) The continuing advantages of certain provisions of the Federal Income Tax laws and of certain local tax laws; and

(b) The management capabilities of the Manager.

8.Conflicts of Interest. The Manager and its affiliates are not required to devote themselves exclusively to the affairs of the Company. Further, the Manager and its affiliates may own real estate in the same market as the Property. The Manager and its affiliates may have a conflict of interest in the ownership of these other properties and in allocating management, services and functions between this Company and their other present and future interests. The Manager and its affiliates believe that they

have sufficient time and staff to be fully capable of discharging their responsibilities to the Company and to any other present or future activities.

9. Limited Transferability. The Securities have not been registered under the Act, or under the securities laws of any state, but are being offered and sold in reliance upon exemptions from registration thereunder, including the exemptions from federal registration contained in Section 4(2) of the Act and/or Regulation D, Rule 506 promulgated thereunder. As a consequence of the restrictions on subsequent transfer imposed by these exemptions, the Securities may not be subsequently sold, assigned, conveyed, pledged, hypothecated or otherwise transferred by the holder thereof, whether or not for consideration, except in compliance with the Act and applicable state securities laws. There will be no public market for the Securities following termination of this Offering and it is not expected that a public market for the Securities will ever develop.

10. Company's Redemption Option. The Company has the legal right, but not the obligation, to repurchase the Debentures prior to their maturity date.

11. Management Decisions. The Manager is vested with the exclusive authority as to the management and conduct of the business and affairs of the Company. The success of the Company depends, to a large extent, upon the management decisions made by the Manager.

12. Best Efforts Offering. The Company will utilize proceeds of the Offering as and when received. No escrow account has been established for this Offering.

CONSULT YOUR OWN ATTORNEY, ACCOUNTANT AND/OR FINANCIAL CONSULTANT FOR AN EVALUATION OF THE MERIT OF AND THE RISKS INHERENT IN THIS INVESTMENT. EACH PROSPECTIVE INVESTOR IS RESPONSIBLE FOR ANY FEES OR CHARGES INCURRED IN CONNECTION WITH SUCH AN EVALUATION.

SOURCES AND USES OF FUNDS

The Company is offering up to Twenty Million Dollars in Debentures.

The funds received will be used to purchase, own, improve and/or sell real property.

PROJECTED SOURCES AND USES OF CASH

The Company's sources and uses of capital are set forth below:

SOURCES:		
	Debentures:	**$20,000,000**
USES:		
	Working Capital (i.e., investments in real property)	19,500,000
	Accounting and Tax Preparation	50,000
	Legal	50,000
	Investor Relations and Communications Expenses	200,000
	Marketing and Sponsorships	100,000
	Miscellaneous Expenses and Reserves	100,000
		$20,000,000

Pursuant to this Offering, the Company is raising debt financing of up to $20,000,000. It is not anticipated that the Company will require additional capital beyond that mentioned above. However, if additional capital is needed, the Manager may seek additional capital through means determined by it.

Because any projection of the future is subject to uncertainties, actual results could vary significantly from those estimated. All uses of proceeds are estimated and subject to change.

COMPENSATION AND FEES TO THE MANAGER

The Manager shall be exclusively responsible for the management and control of the operations of the Company. The Manager shall be reimbursed for any direct funds or expenses advanced by it prior to or after formation of the Company to the extent that such expenses are incurred or paid directly on behalf of the Company. The Manager shall be entitled to a management fees as set forth in the governing documents of the Company.

THE PROJECT

The Company plans to purchase distressed real property in opportunistic markets, such as Tampa, Florida. The Company may "flip" these properties or hold them for investment, in the Manager's sole and absolute discretion. The Company may use some of its capital to engage in lending activities when risk management and income analysis deem appropriate. We anticipate that the principal amount of real estate loans generally will be in the range of approximately $25,000 to $1 million. Our loans may be secured by a deed of trust, mortgage, or other form of security. Generally, any such loan transaction will have a term of two months to two years, and may be extended at the manager's discretion. We anticipate that substantially all of the loans to be invested in or purchased will require the borrower to make a balloon payment on the principal amount upon maturity of the loan either by sale of the property/project and/or its units, by refinance, or other means which we will attempt to establish before funding. From time to time, opportunities may arise in which the Company may be able to participate in opportunistic real estate related activity with other entities or individuals. These opportunities will be evaluated in a like manner by the Manager

MANAGEMENT OF THE PROJECT

The Manager is EQUIALT, LLC. The Manager shall manage the Company. As such, the Manager has the power and authority, on the Company's behalf and in its name, to manage, administer, and operate the Company's day-to-day business affairs, and to do or cause to be done on behalf of the Company anything necessary or appropriate for the same, including but not limited to the powers and authority set forth in the Agreement. The Manager's power and authority is subject to the limitations set forth in the Agreement. The Manager shall serve as Manager until its successor is appointed by the Company's members as provided in the Agreement. The Manager may delegate its duties to others.

COMPANY INVESTMENT OBJECTIVES AND POLICIES

The primary investment objective of the Company is to purchase distressed real property in the U.S. and derive economic benefit through a resale or lease.

COMPETITION

There is significant competition in the distressed real property markets referenced herein, and other competitors may enter the field.

MANAGER

EQUIALT, LLC, a Nevada limited liability company organized in 2011, serves as the Manager.

The principals involved in the project are as follows:

Brian Davison – Chief Executive Officer

Brian Davison's real estate career began in 1994, in North County San Diego. He has the hands-on experience in a variety of functions in the real estate and mortgage industries: encompassing management loan renegotiation and customer retention at a publicly traded REIT, regional Vice President of a private residential mortgage company, the broker-owner of a multi-state branch correspondent residential loan origination company with in-house underwriting and outbound marketing support system, and Vice President of a private lending company. Brian has held real estate and/or mortgage broker licenses in California, Nevada, and Florida, with additional work in the Arizona and Colorado markets. Brian has facilitated over $1.5 billion in mortgage and real estate transactions, is an active investor in a variety of markets and is host of an investor radio show "The Cash Flow Show" and author of investor risk management book "The Top 10 Pitfalls of Trust Deed Investing". In early 2009, he founded and sold Invest REO LLC dba The Cash Flow Store, an opportunistic distressed real estate investment company. He currently holds a State of Nevada Real Estate License.

Barry M. Rybicki — President - Arizona Operations

Barry has over 14 years of experience in real estate lending. He has lived in Phoenix, Arizona, for the past 21 years, originally coming to Arizona from Nebraska to attend Arizona State University where he majored in Accounting and minored in Marketing. He served as President to a bank in Arizona, and managed a $10,000,000 line of credit. This capacity required; real estate evaluation, risk management, customer service, underwriting, appraisal review. He has handled over $540,000,000.00 in residential deeds of trust in the Phoenix market and continues to have an overall understanding of the residential sectors inside of Maricopa County. Barry also served as Vice President for Cole Management LLC, where he gained significant experience in originating, structuring and negotiating deals, developing and implementing business strategies, assessing market and competitive issues, and raising capital from debt and equity providers. He remains actively involved in the community donating his time to Coach youth sports and is currently the Treasurer of Pinnacle High Schools' Boys Soccer Team.

Andre Sears – President, Business Development and Marketing

Andre is a native of Las Vegas and has spent most of his professional career in the financial/investment field. Andre brings more than ten years of financial expertise to EquiAlt. Prior to joining the team of professionals at CFS, he served as Vice President of Business Development for a local bank and as Private Client Manager for a private real estate investment company. Andre performed his undergraduate studies at Boise State University and is a graduate of the Investment Banking Institute of California. Sears has gained financial experience in business planning and development, commercial real estate evaluation, customer service, sales, and marketing as well as financial goal implementation. Andre's career success can be directly attributed to his ability to educate his clients, help them clarify and prioritize their financial goals, implement a plan of action and then follow up with timely and effective ongoing client service. Mr. Sears is often a guest speaker for association and community groups on various financial topics.

Andre's strong commitment to give back to his community is demonstrated through his volunteer activities. Mr. Sears currently serves on the Board of Trustees for the Southern Nevada Leukemia and Lymphoma Society (LLS) where he is "Relentless in finding a cure…". In 2008, Mr. Sears served as Corporate Walk Chairman for the Southern Nevada Light the Night Walk for the LLS and has accepted the invitation to do so again in 2009. Andre also volunteers his time with the YMCA and Boys and Girls Clubs.

Zolt Szorenyi – Business Development, Market Analysis

President of Developers Marketing Solutions and a licensed real estate agent in Las Vegas since 1997, Zolt has been actively involved in selling residential and commercial real estate. His experience is ranging in Resale and New Construction Single Family and Attached products, Representing and Negotiating for Buyers and Sellers on private and corporate levels, Industrial and Multi Family Commercial products. From April of 2004 to August of 2006 he was the Chief Operating Officer of one of the largest Real Estate Marketing and Sales Firms in Las Vegas. During that time, Zolt was personally involved with the marketing and sales of over 20 developments in the Las Vegas area which totaled over 7,000 homes. Zolt founded Developers Marketing Solutions in 2006. He has

put together a team of experienced professionals that includes specialists in market research and reporting, business development, marketing plans and budgeting, sales training and management, escrow management, project management and sales strategies through networks throughout the US. Since April of 2008, Zolt has launched the Trustee Sale and Foreclosure acquisition department. Annually, Developers Marketing Solutions finds and purchases 300-400 homes for individual investor's purchases.

Jim McMillan, MBA – Business Development, Investment Research

Vice President of Developers Marketing Solutions and a graduate from the University of Nevada Las Vegas with a Masters Degree in Business and a Bachelors Degree from Brigham Young University and as a licensed real estate agent in Las Vegas since 2004, Jim has analyzed and researched multiple properties for real estate business development. He has worked on dozens of communities over the years that go under his microscopic process which includes product analysis; project development and analysis; market trends, research and reporting; database creation and implementation. Currently with the Trustee Sales, Jim is instrumental in analyzing and researching each property as well as title research in finding the best investment opportunities for our investors.

Marc Cardwell – Business Strategy and Development

While attending the University of Southern California Mr. Cardwell worked full time as an Equities Analyst for investment bank Van Kasper and Company (since acquired by Wells Fargo) and merchant banker W.E. Meyers. Upon completing his B.S. in Finance he went to work for The Dewey Consulting Group where he rose to Vice President and co-managed both The Conti Mortgage Securitization Conduit, as well as the Southern Pacific Funding Securitization Conduit. While there he also specialized in Mergers and Acquisitions of Sub Prime mortgage companies, and completed six deals on behalf of its clients. He then founded American Lending Group which was profitably sold in 2002, but remained as a part-time consultant until 2004. He also has consulted to various public and private mortgage banks, brokerages and hard money lenders in the areas of: risk analysis, secondary marketing, mergers and acquisitions, and converting mortgage brokers into bankers. In particular he consulted exclusively to a public REIT that specialized in hard money lending for a period of two years, where he helped them create new guidelines and refined risk based pricing as well as establishing a new subprime banking division. In addition to his involvement in the mortgage industry he owns a check cashing store, a smog test shop, and has developed residential properties.

CONFLICTS OF INTEREST

The Company is subject to various existing and/or potential conflicts of interest arising out of its relationship with the Manager and/or its affiliates. These conflicts may involve:

(a) Allocation of Manager's Activities. The Manager and/or its affiliates serve and may serve in such capacity in other limited partnerships, limited liability companies, corporations or entities which will compete with the activities of the Company. The Manager and/or its affiliates may have conflicts of interest in allocating management, time, services and functions between other limited partnerships or ventures and this Company as well as any future limited partnerships or limited liability companies. The Manager believes that, together with its affiliates and any employees or agents which

may be retained in the future, it has sufficient staff to be fully capable of discharging its responsibilities to this Company and any other present or future limited partnerships, limited liability companies, corporations or entities. (See "THE MANAGER.")

The Agreement provides that no contract, action or transaction is void or voidable with respect to the Company because it is between or affects the Company and one or more of its Members, managers, or officers or because it is between or affects the Company and any other person in which one or more of its Members, managers or officers are Members, managers, directors, trustees, or officers or have financial or personal interest, or because one or more interested Members, managers or officers participate in or vote at the meeting that authorizes the contracts, action, or transaction, provided certain circumstances apply.

(b) Compensation to Manager. This Offering involves compensation and benefits to the Manager and other affiliates.

The Manager believes that the fees that the Company intends to pay are reasonable, in light of the tasks and risks undertaken, and will result in substantial benefits to the Company, its member(s) and its Debenture holders.

(c) Lack of Independent Counsel. The prospective Investors and the Company have not had separate legal counsel in connection with the formation of the Company, the acquisition of the Property and the offering of the Securities; Investors should seek their own independent counsel.

(d) Liability of Members and Managers. Applicable state law and the Agreement provide that the debts, obligations and liabilities of the Company, however or wherever arisen or derived, shall be solely those of the Company, and no Member of the Company shall be personally liable for the same to third parties solely by reason of his or her status as a Member, and that the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs shall not be grounds for imposing personal liability on Members for liabilities or obligations of the Company.

STANDARD OF CARE; INDEMNIFICATION

1. Standard of Care of Manager. Nevada law provides that a manager of a limited liability company shall perform his duties as a manager in good faith, in a manner he reasonably believes to be in or not opposed to the best interests of the Company, and with the care that an ordinarily prudent person in a similar position would use under similar circumstances. This is in addition to the several duties and obligations of and limitations on the Manager as set forth in the Agreement. To impose liability on a manager, however, it must be shown by clear and convincing evidence that the standard of care was not met by the Manager.

It should be noted that the cost of litigation against the Manager for enforcement of the standard of care may be prohibitively high and that any judgment obtained may not be collectible since the Manager is not bonded and any judgment exceeding its net worth may not be collectible. An investment decision should be based on the judgment of an Investor as to the investment factors described in this

Memorandum rather than reliance upon the value of the right to bring legal actions against or to control the activities of the Manager.

Notwithstanding the standards of care obligations, the Manager has broad discretionary power under the terms of the Operating Agreement and under applicable state law to manage the affairs of the Company with the assistance, if desirable, of consultants or others retained for the account of the Company or the Manager. Generally, actions taken by the Manager are not subject to vote or review by the Members, except to the limited extent provided in the Agreement.

2. Indemnification. The Agreement provides that the Company may, to the fullest extent not prohibited by the Agreement or any provisions of applicable law indemnify the Manager and/or Project Manager against any and all costs and expenses (including amounts paid in settlement, and other disbursements) actually and reasonably incurred by or imposed upon such person in connection with any action, suit, investigation or proceeding (or any claim or other matter therein), whether civil, criminal, administrative or otherwise in nature, including any settlements thereof or any appeal therein, with respect to which the Manager is named or otherwise becomes or is threatened to be made a party by reason of being or at any time having been the Manager of the Company or, at the direction or request of the Company, a manager, director, trustee, officer, employee, or agent of or fiduciary for any other limited liability company, corporation, partnership, trust, venture, or other entity or enterprise.

Because there are provisions in the Agreement for indemnification of the Manager, purchasers of Securities may have a more limited right of action than they would have absent such provision in the Agreement. Insofar as indemnification for liabilities arising out of the Act may not be provided to directors, officers and controlling persons pursuant to the foregoing, or otherwise, the Manager has been advised that in the opinion of the U.S. Securities and Exchange Commission, such indemnification is contrary to public policy and is, therefore, unenforceable.

RESTRICTIONS ON TRANSFER

The Securities have not been registered under the Act. The Securities are being offered and will be sold in the absence of any registration under the Act, by reason of an exemption under Section 4(2) and/or Regulation D promulgated under the Act. The availability of such exemption is dependent, in part, upon the "investment intent" of each Investor and will not be available if any Investor purchases a Debenture with a view toward its distribution. Accordingly, each Investor will be required to acknowledge that his purchase is being made for investment, for his own record and beneficial account, and without any view to the distribution thereof. A Debenture may not be resold by a Member unless and until it is subsequently registered under the Act and applicable state securities laws or unless appropriate exemptions from registration are available.

Investors have not been, and will not be, granted the right to require the registration of the Securities under the Act and applicable state securities laws. Moreover, the Company has no intention to register the Securities under federal securities laws (or to take any action to make exemptions from registration on resale or transfer available to the Investors) and, in view of the nature of the transaction, it is highly unlikely that there will be any such registration (or such action taken) at any time in the future. Accordingly, an Investor must bear the economic risk of an investment in a Debenture for an indefinite period of time.

EXHIBIT A

FORM OF DEBENTURE

EXHIBIT B

OFFEREE SUITABILITY QUESTIONNAIRE

EXHIBIT C

SUBSCRIPTION AGREEMENT

EXHIBIT D

BENEFICIARY DOCUMENT (IF APPLICABLE)

PRIVATE PLACEMENT MEMORANDUM

EQUIALT FUND, LLC

PRIVATE PLACEMENT MEMORANDUM

EQUIALT FUND, LLC

$50,000,000

10% DEBENTURES

MINIMUM PURCHASE: $25,000

EQUIALT FUND, LLC, a Nevada limited liability company (the "Company"), organized under the Nevada Limited Liability Company Act, hereby offers (the "Offering"), by and through its Manager, up to Fifty Million Dollars ($50,000,000) in 10% Debentures (the "Securities") of the Company. EQUIALT, LLC, a Nevada limited liability company, is the Manager (the "Manager") of the Company. The securities referred to herein are being offered on a best efforts basis to residents of Arizona, California, Florida and Nevada, and may be offered in other states.

DATE OF THIS PRIVATE PLACEMENT MEMORANDUM: June 20, 2011

INVESTMENT IN THE SECURITIES INVOLVES A HIGH DEGREE OF RISK. INVESTORS WILL BE REQUIRED TO REPRESENT THAT THEY ARE FAMILIAR WITH AND UNDERSTAND THE TERMS OF THE OFFERING (SEE "RISK FACTORS," "CONFLICTS OF INTEREST" AND "COMPENSATION AND FEES TO THE MANAGER AND AFFILIATES.").

THE SECURITIES HAVE NOT BEEN REGISTERED WITH NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION ("COMMISSION") NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THIS OFFERING HAS NOT BEEN APPROVED OR DISAPPROVED UNDER APPLICABLE STATE SECURITIES LAWS, BY THE SECURITIES DIVISION OF CORPORATIONS, SECURITIES REGULATION DIVISION ("DIVISION"), NOR HAS THE DIVISION REVIEWED OR PASSED UPON THE ACCURACY OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

DURING THE COURSE OF THE OFFERING AND PRIOR TO SALE, EACH OFFEREE OF THE SECURITIES AND HIS ADVISOR(S) ARE INVITED TO ASK QUESTIONS OF AND OBTAIN ADDITIONAL INFORMATION FROM THE MANAGER CONCERNING THE TERMS AND CONDITIONS OF THE OFFERING, THE COMPANY, THE DEBT TO BE OWED BY THE COMPANY AND ANY OTHER RELEVANT MATTERS (INCLUDING, BUT NOT LIMITED TO, ADDITIONAL INFORMATION TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH HEREIN), TO THE EXTENT THE MANAGER POSSESSES SUCH INFORMATION OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE.

OFFEREES OR ADVISORS HAVING QUESTIONS OR DESIRING ADDITIONAL INFORMATION SHOULD CONTACT THE MANAGER.

THIS MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. IT CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS OF DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN. THIS MEMORANDUM CONTAINS SUMMARIES OF CERTAIN DOCUMENTS, THAT ARE BELIEVED TO BE ACCURATE, BUT REFERENCE IS HEREBY MADE TO THE ACTUAL DOCUMENTS, COPIES OF WHICH ARE ATTACHED HERETO OR ARE AVAILABLE AT THE OFFICE OF THE MANAGER, FOR COMPLETE INFORMATION CONCERNING THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO. ALL SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THIS REFERENCE, AND NOTHING IN THIS MEMORANDUM SHALL EXTEND THE LIABILITY UNDER ANY SUCH DOCUMENTS OF ANY OF THE PARTIES HERETO. ALL DOCUMENTS RELATING TO THE OFFERING WILL BE MADE AVAILABLE TO THE OFFEREE NAMED BELOW AND/OR HIS ADVISOR(S) UPON REQUEST.

THE OFFERING CAN BE WITHDRAWN AT ANY TIME BEFORE CONSUMMATION AND IS SPECIFICALLY MADE SUBJECT TO THE CONDITIONS DESCRIBED IN THIS MEMORANDUM. IN CONNECTION WITH THE OFFERING AND SALE OF THE SECURITIES, THE MANAGER RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO REJECT ANY SUBSCRIPTION IN WHOLE OR IN PART OR TO ALLOT TO ANY PROSPECTIVE INVESTOR LESS THAN THE SECURITIES SUBSCRIBED FOR BY SUCH PROSPECTIVE INVESTOR.

SINCE THERE ARE SUBSTANTIAL RESTRICTIONS ON THE TRANSFERABILITY OF THE SECURITIES, EACH OFFEREE MUST ASSUME THAT HE WILL BEAR THE ECONOMIC RISK OF HIS INVESTMENT FOR AN INDEFINITE PERIOD. THE SECURITIES MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE REMAINING MEMBERS. IN ADDITION, SECURITIES ARE NOT REGISTERED FOR SALE TO THE PUBLIC UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE AND THE SECURITIES MAY BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF BY AN INVESTOR ONLY IF, AMONG OTHER THINGS, THE SECURITIES ARE REGISTERED OR, IN THE OPINION OF COUNSEL TO THE COMPANY, REGISTRATION IS NOT REQUIRED UNDER SUCH LAWS.

THIS MEMORANDUM HAS BEEN PREPARED SOLELY FOR THE USE OF PERSONS WHO MAY WANT TO PURCHASE SECURITIES AND DELIVERY THEREOF CONSTITUTES AN OFFER ONLY IF THE NAME OF AN OFFEREE APPEARS IN THE APPROPRIATE SPACE PROVIDED BELOW AND IF THE PERSON SO NAMED MEETS THE SUITABILITY STANDARDS SET FORTH UNDER "QUALIFICATION OF INVESTORS." ANY DISTRIBUTION OF THIS MEMORANDUM TO ANY PERSON OTHER THAN THE OFFEREE NAMED BELOW (OR TO THOSE INDIVIDUALS WHOM HE RETAINS TO ADVISE HIM WITH RESPECT THERETO) IS UNAUTHORIZED AND ANY REPRODUCTION OF THIS

MEMORANDUM IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE MANAGER, IS PROHIBITED.

NO REPRESENTATIONS OR WARRANTIES OF ANY KIND ARE INTENDED TO BE MADE IN THIS MEMORANDUM OR SHOULD BE INFERRED THEREFROM WITH RESPECT TO THE ECONOMIC RETURN OR THE TAX TREATMENT WHICH MAY ACCRUE TO THE INVESTOR. NO ASSURANCE CAN BE GIVEN THAT EXISTING TAX LAWS WILL NOT BE CHANGED OR INTERPRETED ADVERSELY, EITHER OF WHICH MAY DENY THE INVESTORS ALL OR A PORTION OF THE TAX TREATMENT CONSIDERED HEREIN. PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THE CONTENTS OF THIS MEMORANDUM AS LEGAL, TAX OR INVESTMENT ADVICE. EACH INVESTOR SHOULD CONSULT HIS OWN ATTORNEY, ACCOUNTANT AND OTHER ADVISORS AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING A PURCHASE BY HIM OF A DEBENTURE.

NO OFFERING LITERATURE OR ADVERTISING IN WHATEVER FORM WILL OR MAY BE EMPLOYED IN THE OFFERING EXCEPT FOR THIS MEMORANDUM AND STATEMENTS CONTAINED OR DOCUMENTS SUMMARIZED HEREIN. NO PERSON HAS BEEN AUTHORIZED TO MAKE ANY REPRESENTATIONS, OR GIVE ANY INFORMATION, WITH RESPECT TO THE SECURITIES, EXCEPT FOR INFORMATION CONTAINED OR REFERRED TO HEREIN.

Name of Offeree:		Memorandum Number:	

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These securities are offered subject to (a) prior sale, (b) approval of counsel, (c) the right to terminate the offer without prior notice or to reject any subscription, and (d) certain other conditions.

QUALIFICATION OF INVESTORS

Each Debenture requires a minimum investment of $25,000, provided, however, the Company reserves the right to accept subscriptions for a lesser amount. Additional investment may be made in increments of $5,000.

Investment in the Securities offered hereby involves risk and is suitable only for persons of financial means who have provided for liquidity in their other investments. No Securities will be sold to Investors who will not warrant and represent to the Company and the Manager (and unless the Manager shall have reasonable grounds to believe) that such offeree has such knowledge and expertise in financial and business matters, is capable of evaluating the merits and risks of the prospective investment and is able to bear the economic risks of the investment, or alternatively, that such Investor's legal or financial representative has such knowledge and expertise about financial and business matters and is capable of evaluating the merits and risks of the investment together with the Investor having the ability to bear the economic risks of the investment. In either case, the Investor must also warrant and represent to the Company and the Manager that he is acquiring the Securities for his own account.

Each Investor must satisfy the Manager that the Investor can bear a total loss of his investment. Each Investor will be required to represent that he is acquiring the Securities being purchased by him for investment and for his own account, and not with a view to resale or distribution. Resale of the Securities is subject to extensive restrictions (see "SUMMARY OF THE OFFERING"). It is not expected that any public market for the resale of the Securities will develop.

GLOSSARY OF TERMS

"Act" - the Securities Act of 1933, as amended.

"Affiliate" - (i) any person directly or indirectly controlling, controlled by or under common control with another person, (ii) a person owning or controlling 10% or more of the outstanding voting securities of such other person, (iii) any officer, director, partner or employee of such person and (iv) if such other person is an officer, director, partner or employee, any company for which such person acts in any such capacity.

"Agreement" - the Operating Agreement of the Company, as such may be amended from time to time.

"Debenture" - the 10% Debentures offered to Investors herein.

"Manager" - this Company's Manager: EQUIALT, LLC or its successor(s) as determined by the Agreement.

"Memorandum" - this Private Placement Memorandum.

"Company" - this limited liability company: EQUIALT FUND, LLC, a Nevada limited liability company.

"Investor(s)" – prospective purchasers of Debentures in the Company.

"Project" - the proposed business of the Company (i.e., acquiring, improving and/or selling distressed real property).

"Reserves" - all reserves established by the Manager in its sole discretion for the Company's purposes, including, but not limited to, operating expenses and other working capital needs, liabilities, and taxes.

SUMMARY OF THE OFFERING

This summary of certain provisions of the Memorandum is intended only for a quick reference and is not intended to be complete. This Memorandum describes in detail numerous aspects of the transaction which are material to Investors, including those summarized below, and this Memorandum and the accompanying Exhibits must be read in their entirety by reference to the full text of this Memorandum and the underlying documents.

The Offering.

The Memorandum describes an offering (the "Offering") to prospective Investors of 10% Debentures issued by EQUIALT FUND, LLC, a limited liability company formed under the laws of the State of Nevada.

The Company.

EQUIALT FUND, LLC (the "Company"), a Nevada limited liability company, was formed as of May 23, 2011, when its Articles of Organization were filed with the Nevada Secretary of State's Office pursuant to the Nevada Limited Liability Company Act as adopted by the State of Nevada. The office of the Company is located at 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145.

The Manager.

The Manager of the Company is EQUIALT, LLC, a Nevada limited liability company (See "THE MANAGERS").

Purpose of the Offering.

The purpose of this Offering is to secure capital in order to enable the Company to purchase, improve, lease and/or dispose of distressed real property, enter into opportunistic loan transactions and/or engage in other ventures. (See "MANAGEMENT OF THE COMPANY" and "INVESTMENT OBJECTIVES".)

Investment Objectives.

The primary investment objective of the Company shall be to purchase and sell single family properties in certain distressed real estate markets in the U.S. and participate in opportunistic lending in the U.S.

Securities Being Offered.

An aggregate of up to $50 million in 10% Debentures of the Company are being offered. The Securities shall be offered on a best efforts basis scheduled to close on or before December 31, 2011. The minimum subscription accepted by the Company will be for $25,000, and additional investment may be made in increments of $5,000. (See "Allocation of Benefits" below.) Under no circumstances will the Company admit more than thirty-five (35) non-accredited Investors as computed under Rule 501 of Regulation D promulgated under the Act. The Offering will terminate on a date to be determined by the Manager on or prior to December 31, 2011, provided the Manager shall have the right to extend the Offering indefinitely.

Selling Agent.

Securities are being offered directly through the Company. The Company may utilize the services of one or more registered broker/dealers or other financial intermediaries. In such cases, the Company may pay commissions or fees of up to 12% to such persons.

The purchase price is payable by Investors in full by cash.

Risk Factors.

The purchase of Securities involves a high degree of risk to the Investor including certain risks relating to regulatory, operating, tax and investment matters. (See “RISK FACTORS.”)

Allocation of Benefits.

a) Profits, Losses and Net Cash Flow.

The Company does not anticipate substantial profits, losses or Net Cash Flow until assets are sold.

b) Net Proceeds from Refinancing, Sale or upon Termination of the Company.

In the event that the Company disposes of substantially all of its assets, the Company shall be obligated to satisfy all of its debts, including without limitation the Debentures, prior to any distribution of cash to its members.

Management of the Project.

The Project will be managed by the Company through EQUIALT, LLC, the Company's Manager.

Compensation and Fees to Manager.

The Manager will receive Management Fees as set forth in the Operating Agreement and described more fully below. (See "COMPENSATION AND FEES TO MANAGER AND AFFILIATES.")

No Tax Ruling.

The Company will not seek a ruling from the Internal Revenue Service (the "IRS") as to any aspects of the Offering and will rely on the opinion of the Manager and its legal counsel with respect to its classification as a limited liability company for Federal income tax purposes. (See "RISK FACTORS - TAX RISKS.")

Management and Control of the Company.

The Manager will be responsible for the management and control of the Company. EQUIALT, LLC will serve as the initial Manager.

Distributions to Investors.

The Manager does not anticipate cash distributions from operations of the Company. (See "SOURCES AND USES OF FUNDS.") Each Investor will receive payments pursuant to the terms of the Debentures.

Status of Investor.

Each Investor will be a creditor of the Company pursuant to the terms of the Debenture (See "EXHIBIT A.")

Further Investigation.

Statements contained in this Summary or elsewhere in the Private Placement Memorandum as to the contents of the other offering documents are not necessarily complete and each such statement is deemed to be qualified and amplified in all respects by the provisions of such agreements and documents, copies of which are either attached hereto or are available upon reasonable notice for examination by offerees, or their duly authorized representatives, at the office of the Manager, located at 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145. Each offeree and his business and/or tax advisors are urged to examine all agreements and documents.

THE OFFERING

While this Offering is made to various parties, it is not a registered offering under Federal securities laws. This Offering is being made pursuant to the private offering exemption of Section 4(2) of the Act and/or Regulation D promulgated under the Act. This Offering is also being made in strict compliance with the applicable state securities laws. Each Investor must represent that he is acquiring his Debenture ("Securities") for investment purposes only and not with a view to resale or distribution. All Securities are offered subject to prior sale, when, as and if issued, and subject to the right of the

Manager to reject any subscription in whole or in part. The Company will only sell Securities to persons meeting its suitability standards, which the Company's Manager may determine in its sole and absolute discretion.

METHOD OF DISTRIBUTION

This Private Placement Memorandum summarizes a proposed transaction in which Investors will be entitled to hold a Debenture issued by EQUIALT FUND, LLC, a Nevada limited liability company.

The purpose of this Offering is to raise monies to enable the Company to purchase distressed real property and either derive rental income therefrom or dispose of the property for a profit.

Distribution of Securities.

These securities are being offered through the Company. There is no firm commitment for the purchase of any Securities. Sales of the Securities may be made to residents of Arizona, California, Florida and Nevada, and possibly in other jurisdictions, all in compliance with the laws of each jurisdiction.

RISK AND OTHER IMPORTANT FACTORS

Investment herein involves substantial risks. Investors should consider the risks mentioned elsewhere in this Private Placement Memorandum as well as the following matters:

Tax Risks.

A summary of Federal income tax provisions is included in this Memorandum. No representation or warranty of any kind is made by the Manager, the Company, counsel to the Manager or the Company with respect to any tax consequences relating to the Company, or the allocation of taxable income or loss set forth in this Memorandum and each Investor should seek his own tax advice concerning the purchase of a Debenture.

1. Suitability of the Investment to the Investor. It is expected that the Debenture will yield taxable income to its Investors.

2. Federal Income Tax Risks.

a. Necessity of Obtaining Professional Advice. THERE IS NO GENERAL EXPLANATION OF THE FEDERAL INCOME TAX ASPECTS OF INVESTMENT IN THE COMPANY CONTAINED IN THIS MEMORANDUM, AND ACCORDINGLY, EACH INVESTOR IS URGED TO CONSULT SUCH INVESTOR'S OWN TAX INVESTMENT AND LEGAL ADVISORS WITH RESPECT TO SUCH MATTERS AND WITH RESPECT TO THE ADVISABILITY OF INVESTING IN THE COMPANY. The income tax consequences of an investment in the Company are complex, subject to varying interpretations, and may vary significantly between Investors depending upon such personal factors such as sources of income, investment

portfolios and other tax considerations. A Prospective Investor should consider with his professional advisors the tax effects of his becoming a Debenture holder. Each Investor should, at his own expense, retain, consult with and rely on his own advisors with respect to the tax effects of his investment in the Company. In addition to considering the federal income tax consequences, each Investor should also consider with his own advisors the state and local tax consequences of an investment in the Company.

No representations are made as to any federal, state or local tax consequences resulting from an investment in the Company, and no assurances are given that any deduction or other federal income tax benefits will be available to Members in the Company in the current or future years.

b. Company Tax Status. Although the Manager believes that the Company will be treated as a partnership for federal income tax purposes, such treatment cannot be assured. The Manager reserves the right to convert the Company to a corporation if it is in the best interests of the Company to do so.

c. Tax Law Changes. The existence and amount of particular credits and deductions, if any, claimed by the Company may depend upon various determinations and allocations, characterizations of payments, and other matters which are subject to potential controversy on factual as well as legal grounds. Changes in the Code and official interpretations thereof after the date of this Memorandum may eliminate or reduce any perceived tax benefits from an investment in the Securities. There can be no assurance that regulations having an adverse effect on the creditors will not be issued in the future and enforced by the courts. Any modification or change in the Code or the regulations promulgated thereunder, or any judicial decision, could be applied retroactively to any investment in the Company. In view of this uncertainty, Investors are urged to consider ongoing developments in this area and consult their advisors concerning the effects of such developments on an investment in the Company in light of their own personal tax situations.

d. Absence of Ruling or Opinion. The Company will not seek a ruling from the IRS or an opinion of counsel with respect to any tax matters described in this Memorandum.

Operating Risks.

1. Risk of Interpretation of Real Estate Documents and Agreements. There are certain risks in connection with any real estate acquisition resulting from the drafting and subsequent interpretation of mortgages, deeds, leases, purchase agreements, management contracts, et cetera. Any documents describing the Property or the legal relations thereto could be subject to various interpretations and potential disputes. While legal counsel will review certain legal documents, it is impossible to prevent and be secured against such various differing interpretations.

2. Risks of Real Estate Ownership. Real estate is not readily marketable. It is fixed in location and is subject to adverse social and economic changes and uses. Carrying costs may increase beyond the levels sustainable.

3. Results of Operations - Possible Operating Deficits. This Memorandum and the attached Financial Projections are based upon projected results which may be greater than results obtained from actual operations. Actual results may differ adversely for a number of reasons; including, but not

limited to, the possibility of increases in entitlement costs, losses due to structural-related deficiencies and real estate taxes, which cannot be fully recovered through increased property values and other revenues, softness in the demand for land due to changing socio-economic conditions in the area in which the Property is located and competition among other real estate development projects in the area.

Following the Offering, the Company may be subject to rising operating costs, although the Company does not anticipate significant operating costs. (See "FINANCIAL PROJECTIONS - SOURCES AND USES OF CASH".) However, there is no assurance that these funds will be adequate. Additional capital may be raised by the Company.

4.Risk of Financing and Potential Foreclosure on Mortgage Loan. A mortgage loan may be secured by the Property. The risk of foreclosure can arise from, among other things, the failure by the Company to meet any of the other various conditions existing in the mortgage loan documents.

Payment of principal and interest on the mortgage loan will be due on a monthly basis. It is anticipated that these payments will be met by the Company from its initial capital and revenue sources. No assurance can be given that the funds generated by the initial capital or revenue will be sufficient to meet the monthly payments.

5.Risk of Failure to Obtain Loan. Although the Company does not intend to secure a loan to purchase the Property, such a loan could be secured by the Property. In the event of a default on the loan, the lender could foreclose upon the Property.

6.Dependence Upon Issuer. The Manager has full discretion in the management of the Project and in the management and control of the affairs of the Company, including the authority to sell less than all or substantially all of the Company's assets for whatever consideration it deems appropriate. Except upon the sale of all or substantially all of the Company's assets, the sale of such assets will not result in the dissolution of the Company. The sale of all or substantially all of the Company's interests in the Property will result in the dissolution of the Company.

The success of the operations of the Company will be dependent in large measure on the judgment and ability of the Manager.

7.Dependability of Assumptions. The description of the contemplated results of the operations of the Company described in this Memorandum are based on various assumptions concerning many facts over which the Company has no control, including, without limitation:

(a) The continuing advantages of certain provisions of the Federal Income Tax laws and of certain local tax laws; and

(b) The management capabilities of the Manager.

8.Conflicts of Interest. The Manager and its affiliates are not required to devote themselves exclusively to the affairs of the Company. Further, the Manager and its affiliates may own real estate in the same market as the Property. The Manager and its affiliates may have a conflict of interest in the ownership of these other properties and in allocating management, services and functions between this Company and their other present and future interests. The Manager and its affiliates believe that they

have sufficient time and staff to be fully capable of discharging their responsibilities to the Company and to any other present or future activities.

9. Limited Transferability. The Securities have not been registered under the Act, or under the securities laws of any state, but are being offered and sold in reliance upon exemptions from registration thereunder, including the exemptions from federal registration contained in Section 4(2) of the Act and/or Regulation D, Rule 506 promulgated thereunder. As a consequence of the restrictions on subsequent transfer imposed by these exemptions, the Securities may not be subsequently sold, assigned, conveyed, pledged, hypothecated or otherwise transferred by the holder thereof, whether or not for consideration, except in compliance with the Act and applicable state securities laws. There will be no public market for the Securities following termination of this Offering and it is not expected that a public market for the Securities will ever develop.

10. Company's Redemption Option. The Company has the legal right, but not the obligation, to repurchase the Debentures prior to their maturity date.

11. Management Decisions. The Manager is vested with the exclusive authority as to the management and conduct of the business and affairs of the Company. The success of the Company depends, to a large extent, upon the management decisions made by the Manager.

12. Best Efforts Offering. The Company will utilize proceeds of the Offering as and when received. No escrow account has been established for this Offering.

CONSULT YOUR OWN ATTORNEY, ACCOUNTANT AND/OR FINANCIAL CONSULTANT FOR AN EVALUATION OF THE MERIT OF AND THE RISKS INHERENT IN THIS INVESTMENT. EACH PROSPECTIVE INVESTOR IS RESPONSIBLE FOR ANY FEES OR CHARGES INCURRED IN CONNECTION WITH SUCH AN EVALUATION.

SOURCES AND USES OF FUNDS

The Company is offering up to Fifty Million Dollars in Debentures.

The funds received will be used to purchase, own, improve and/or sell real property.

PROJECTED SOURCES AND USES OF CASH

The Company's sources and uses of capital are set forth below:

SOURCES:			
	Debentures:		
	TOTAL SOURCES:		**$50,000,000.00**

USES:			
	Investment in Property		$45,000,000.00
	Accounting and Tax Preparation		$550,000.00
	Legal Costs		$250,000.00
	Investor Relations and Communications Expenses		$2,500,000.00
	Marketing and Sponsorship Event Fees		200,000.00
	Miscellaneous Expenses and Reserves		$1,500,000.00
	TOTAL USES:		**$50,000,000.00**

Pursuant to this Offering, the Company is raising debt financing of up to $50,000,000. It is not anticipated that the Company will require additional capital beyond that mentioned above. However, if additional capital is needed, the Manager may seek additional capital through means determined by it.

Because any projection of the future is subject to uncertainties, actual results could vary significantly from those estimated. All uses of proceeds are estimated and subject to change.

COMPENSATION AND FEES TO THE MANAGER

The Manager shall be exclusively responsible for the management and control of the operations of the Company. The Manager shall be reimbursed for any direct funds or expenses advanced by it prior to or after formation of the Company to the extent that such expenses are incurred or paid directly on behalf of the Company. The Manager shall be entitled to a management fees as set forth in the governing documents of the Company.

THE PROJECT

The Company plans to purchase distressed real property in opportunistic markets, such as southern Nevada, Arizona and Florida. The Company may "flip" these properties or hold them for investment, in the Manager's sole and absolute discretion. The Company may use some of its capital to engage in lending activities when risk management and income analysis deem appropriate. We anticipate that the principal amount of real estate loans generally will be in the range of approximately $25,000 to $1 million. Our loans may be secured by a deed of trust or other form of security. Generally, any such loan transaction will have a term of two months to two years, and may be extended at the manager's discretion. We anticipate that substantially all of the loans to be invested in or purchased will require the borrower to make a balloon payment on the principal amount upon maturity of the loan either by sale of the property/project and/or its units, by refinance, or other means which we will attempt to establish before funding. From time to time, opportunities may arise in which the Company may be able to participate in opportunistic real estate related activity with other entities or individuals. These opportunities will be evaluated in a like manner by the Manager

MANAGEMENT OF THE PROJECT

The Manager is EQUIALT, LLC. The Manager shall manage the Company. As such, the Manager has the power and authority, on the Company's behalf and in its name, to manage, administer, and operate the Company's day-to-day business affairs, and to do or cause to be done on behalf of the Company anything necessary or appropriate for the same, including but not limited to the powers and authority set forth in the Agreement. The Manager's power and authority is subject to the limitations set forth in the Agreement. The Manager shall serve as Manager until its successor is appointed by the Company's members as provided in the Agreement. The Manager may delegate its duties to others.

COMPANY INVESTMENT OBJECTIVES AND POLICIES

The primary investment objective of the Company is to purchase distressed real property in the U.S. and derive economic benefit through a resale or lease.

COMPETITION

There is significant competition in the distressed real property markets referenced herein, and other competitors may enter the field.

MANAGER

EQUIALT, LLC, a Nevada limited liability company organized in 2011, serves as the Manager.

The principals involved in the project are as follows:

Brian Davison – Chief Executive Officer

Brian Davison's real estate career began in 1994, in North County San Diego. He has the hands-on experience in a variety of functions in the real estate and mortgage industries: encompassing management loan renegotiation and customer retention at a publicly traded REIT, regional Vice President of a private residential mortgage company, the broker-owner of a multi-state branch correspondent residential loan origination company with in-house underwriting and outbound marketing support system, and Vice President of a private lending company. Brian has held real estate and/or mortgage broker licenses in California, Nevada, and Florida, with additional work in the Arizona and Colorado markets. Brian has facilitated over $1.5 billion in mortgage and real estate transactions, is an active investor in a variety of markets and is host of an investor radio show "The Cash Flow Show" and author of investor risk management book "The Top 10 Pitfalls of Trust Deed Investing". In early 2009, he founded and sold Invest REO LLC dba The Cash Flow Store, an opportunistic distressed real estate investment company. He currently holds a State of Nevada Real Estate License.

Diane Dutton, MBA, CPA – Chief Financial Officer

Diane Dutton was born and raised in Brooklyn, New York, and relocated to Southern Nevada in 1980, after working for KPMG Peat Marwick (NYC office). Ms. Dutton holds an MBA and BBA from Pace University, NYC Campus and is a Nevada CPA. Ms Dutton has held positions as Controller, COO and CFO, as well as VP of Profit Planning and Investor Relations during an IPO, responsible for SEC reporting and secondary offering of a subsidiary of Reno-based International Game Technologies. In her various roles, Ms. Dutton has managed the M&A process, debt offerings and divestiture processes for several companies.

From January 2003 to February 2008, Diane was CFO, COO of Prudential Americana Group REALTORS® & Americana Holdings, LLC, Las Vegas, Nevada, which included $100 Million Real Estate, Mortgage & Title Operations oversight. In this capacity, her duties included auditing, financial reporting to PREFSA and SEC Compliance. Diane oversaw a $22.5 Million Senior & Mezzanine level financial offering, which closed October, 2004. Reporting to the Board of Directors, PREFSA and the CEO, she directed the company's tax function and compliance with appropriate local, state and federal jurisdictions.

Ms. Dutton is also the author of *A Woman's Ladder to Success is paved with Broken Glass Ceilings* (published in 2007). Diane is a member of the Executive Board of the NSCPA, and AICPA Ambassador speaking on behalf of the CPA Profession. She is also a member of TMA, CEO-CFO Group, NAFE, NAWBO and Women and Network.

Barry M. Rybicki — President - Arizona Operations

Barry has over 14 years of experience in real estate lending. He has lived in Phoenix, Arizona, for the past 21 years, originally coming to Arizona from Nebraska to attend Arizona State University where he majored in Accounting and minored in Marketing. He served as President to a bank in Arizona, and managed a $10,000,000 line of credit. This capacity required; real estate evaluation, risk management, customer service, underwriting, appraisal review. He has handled over $540,000,000.00 in residential deeds of trust in the Phoenix market and continues to have an overall understanding of the residential sectors inside of Maricopa County. Barry also served as Vice President for Cole Management LLC, where he gained significant experience in originating, structuring and negotiating deals, developing and implementing business strategies, assessing market and competitive issues, and raising capital from debt and equity providers. He remains actively involved in the community donating his time to Coach youth sports and is currently the Treasurer of Pinnacle High Schools' Boys Soccer Team.

Andre Sears – President, Business Development and Marketing

Andre is a native of Las Vegas and has spent most of his professional career in the financial/investment field. Andre brings more than ten years of financial expertise to EquiAlt. Prior to joining the team of professionals at CFS, he served as Vice President of Business Development for a local bank and as Private Client Manager for a private real estate investment company. Andre performed his undergraduate studies at Boise State University and is a graduate of the Investment Banking Institute of California. Sears has gained financial experience in business planning and development, commercial real estate evaluation, customer service, sales, and marketing as well as financial goal implementation. Andre's career success can be directly attributed to his ability to educate

his clients, help them clarify and prioritize their financial goals, implement a plan of action and then follow up with timely and effective ongoing client service. Mr. Sears is often a guest speaker for association and community groups on various financial topics.

Andre's strong commitment to give back to his community is demonstrated through his volunteer activities. Mr. Sears currently serves on the Board of Trustees for the Southern Nevada Leukemia and Lymphoma Society (LLS) where he is "Relentless in finding a cure…". In 2008, Mr. Sears served as Corporate Walk Chairman for the Southern Nevada Light the Night Walk for the LLS and has accepted the invitation to do so again in 2009. Andre also volunteers his time with the YMCA and Boys and Girls Clubs.

Zolt Szorenyi – Business Development, Market Analysis

President of Developers Marketing Solutions and a licensed real estate agent in Las Vegas since 1997, Zolt has been actively involved in selling residential and commercial real estate. His experience is ranging in Resale and New Construction Single Family and Attached products, Representing and Negotiating for Buyers and Sellers on private and corporate levels, Industrial and Multi Family Commercial products. From April of 2004 to August of 2006 he was the Chief Operating Officer of one of the largest Real Estate Marketing and Sales Firms in Las Vegas. During that time, Zolt was personally involved with the marketing and sales of over 20 developments in the Las Vegas area which totaled over 7,000 homes. Zolt founded Developers Marketing Solutions in 2006. He has put together a team of experienced professionals that includes specialists in market research and reporting, business development, marketing plans and budgeting, sales training and management, escrow management, project management and sales strategies through networks throughout the US. Since April of 2008, Zolt has launched the Trustee Sale and Foreclosure acquisition department. Annually, Developers Marketing Solutions finds and purchases 300-400 homes for individual investor's purchases.

Jim McMillan, MBA – Business Development, Investment Research

Vice President of Developers Marketing Solutions and a graduate from the University of Nevada Las Vegas with a Masters Degree in Business and a Bachelors Degree from Brigham Young University and as a licensed real estate agent in Las Vegas since 2004, Jim has analyzed and researched multiple properties for real estate business development. He has worked on dozens of communities over the years that go under his microscopic process which includes product analysis; project development and analysis; market trends, research and reporting; database creation and implementation. Currently with the Trustee Sales, Jim is instrumental in analyzing and researching each property as well as title research in finding the best investment opportunities for our investors.

Marc Cardwell – Business Strategy and Development

While attending the University of Southern California Mr. Cardwell worked full time as an Equities Analyst for investment bank Van Kasper and Company (since acquired by Wells Fargo) and merchant banker W.E. Meyers. Upon completing his B.S. in Finance he went to work for The Dewey Consulting Group where he rose to Vice President and co-managed both The Conti Mortgage Securitization Conduit, as well as the Southern Pacific Funding Securitization Conduit. While there he

also specialized in Mergers and Acquisitions of Sub Prime mortgage companies, and completed six deals on behalf of its clients. He then founded American Lending Group which was profitably sold in 2002, but remained as a part-time consultant until 2004. He also has consulted to various public and private mortgage banks, brokerages and hard money lenders in the areas of: risk analysis, secondary marketing, mergers and acquisitions, and converting mortgage brokers into bankers. In particular he consulted exclusively to a public REIT that specialized in hard money lending for a period of two years, where he helped them create new guidelines and refined risk based pricing as well as establishing a new subprime banking division. In addition to his involvement in the mortgage industry he owns a check cashing store, a smog test shop, and has developed residential properties.

CONFLICTS OF INTEREST

The Company is subject to various existing and/or potential conflicts of interest arising out of its relationship with the Manager and/or its affiliates. These conflicts may involve:

(a) Allocation of Manager's Activities. The Manager and/or its affiliates serve and may serve in such capacity in other limited partnerships, limited liability companies, corporations or entities which will compete with the activities of the Company. The Manager and/or its affiliates may have conflicts of interest in allocating management, time, services and functions between other limited partnerships or ventures and this Company as well as any future limited partnerships or limited liability companies. The Manager believes that, together with its affiliates and any employees or agents which may be retained in the future, it has sufficient staff to be fully capable of discharging its responsibilities to this Company and any other present or future limited partnerships, limited liability companies, corporations or entities. (See "THE MANAGER.")

The Agreement provides that no contract, action or transaction is void or voidable with respect to the Company because it is between or affects the Company and one or more of its Members, managers, or officers or because it is between or affects the Company and any other person in which one or more of its Members, managers or officers are Members, managers, directors, trustees, or officers or have financial or personal interest, or because one or more interested Members, managers or officers participate in or vote at the meeting that authorizes the contracts, action, or transaction, provided certain circumstances apply.

(b) Compensation to Manager and Class B Member. This Offering involves substantial compensation and benefits to the Manager and other affiliates.

The Manager believes that the fees that the Company intends to pay are reasonable, in light of the tasks and risks undertaken, and will result in substantial benefits to the Company, its member(s) and its Debenture holders.

(c) Lack of Independent Counsel. The prospective Investors and the Company have not had separate legal counsel in connection with the formation of the Company, the acquisition of the Property and the offering of the Securities; Investors should seek their own independent counsel.

(d) Liability of Members and Managers. Applicable state law and the Agreement provide that the debts, obligations and liabilities of the Company, however or wherever arisen or derived, shall

be solely those of the Company, and no Member of the Company shall be personally liable for the same to third parties solely by reason of his or her status as a Member, and that the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs shall not be grounds for imposing personal liability on Members for liabilities or obligations of the Company.

STANDARD OF CARE; INDEMNIFICATION

1. Standard of Care of Manager. Nevada law provides that a manager of a limited liability company shall perform his duties as a manager in good faith, in a manner he reasonably believes to be in or not opposed to the best interests of the Company, and with the care that an ordinarily prudent person in a similar position would use under similar circumstances. This is in addition to the several duties and obligations of and limitations on the Manager as set forth in the Agreement. To impose liability on a manager, however, it must be shown by clear and convincing evidence that the standard of care was not met by the Manager.

It should be noted that the cost of litigation against the Manager for enforcement of the standard of care may be prohibitively high and that any judgment obtained may not be collectible since the Manager is not bonded and any judgment exceeding its net worth may not be collectible. An investment decision should be based on the judgment of an Investor as to the investment factors described in this Memorandum rather than reliance upon the value of the right to bring legal actions against or to control the activities of the Manager.

Notwithstanding the standards of care obligations, the Manager has broad discretionary power under the terms of the Operating Agreement and under applicable state law to manage the affairs of the Company with the assistance, if desirable, of consultants or others retained for the account of the Company or the Manager. Generally, actions taken by the Manager are not subject to vote or review by the Members, except to the limited extent provided in the Agreement.

2. Indemnification. The Agreement provides that the Company may, to the fullest extent not prohibited by the Agreement or any provisions of applicable law indemnify the Manager and/or Project Manager against any and all costs and expenses (including amounts paid in settlement, and other disbursements) actually and reasonably incurred by or imposed upon such person in connection with any action, suit, investigation or proceeding (or any claim or other matter therein), whether civil, criminal, administrative or otherwise in nature, including any settlements thereof or any appeal therein, with respect to which the Manager is named or otherwise becomes or is threatened to be made a party by reason of being or at any time having been the Manager of the Company or, at the direction or request of the Company, a manager, director, trustee, officer, employee, or agent of or fiduciary for any other limited liability company, corporation, partnership, trust, venture, or other entity or enterprise.

Because there are provisions in the Agreement for indemnification of the Manager, purchasers of Securities may have a more limited right of action than they would have absent such provision in the Agreement. Insofar as indemnification for liabilities arising out of the Act may not be provided to directors, officers and controlling persons pursuant to the foregoing, or otherwise, the Manager has been advised that in the opinion of the U.S. Securities and Exchange Commission, such indemnification is contrary to public policy and is, therefore, unenforceable.

RESTRICTIONS ON TRANSFER

The Securities have not been registered under the Act. The Securities are being offered and will be sold in the absence of any registration under the Act, by reason of an exemption under Section 4(2) and/or Regulation D promulgated under the Act. The availability of such exemption is dependent, in part, upon the "investment intent" of each Investor and will not be available if any Investor purchases a Debenture with a view toward its distribution. Accordingly, each Investor will be required to acknowledge that his purchase is being made for investment, for his own record and beneficial account, and without any view to the distribution thereof. A Debenture may not be resold by a Member unless and until it is subsequently registered under the Act and applicable state securities laws or unless appropriate exemptions from registration are available.

Investors have not been, and will not be, granted the right to require the registration of the Securities under the Act and applicable state securities laws. Moreover, the Company has no intention to register the Securities under federal securities laws (or to take any action to make exemptions from registration on resale or transfer available to the Investors) and, in view of the nature of the transaction, it is highly unlikely that there will be any such registration (or such action taken) at any time in the future. Accordingly, an Investor must bear the economic risk of an investment in a Debenture for an indefinite period of time.