UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:13-CR-41 (JCH)
	:	
v.	:	
	:	
DAVID BRYSON,	:	April 27, 2015
BART GUTEKUNST, and	:	
RICHARD PEREIRA,	:	

GOVERNMENT'S OMNIBUS OPPOSITION TO THE DEFENDANTS' MEMORANDA IN AID OF SENTENCING

The United States of America, by and through its attorney, the United States Attorney for the District of Connecticut, hereby submits the following Opposition to the Defendants' Memoranda in Aid of Sentencing. In each of their separate memoranda, the Defendants made similar arguments about the law and the facts of this case that are unsupported by the Court's findings and inconsistent with the law of this Circuit. The government respectfully opposes the defendants' requested sentences.

DISCUSSION

The Defendants seek leniency from the Court in their respective sentencing memoranda. They provide the Court with numerous letters of support, attesting to the Defendants' rectitude and good nature. The government does not dispute the sincere sentiments expressed by the Defendants' loved ones and acquaintances, particularly declarations made by individuals outside of the Defendants' immediate families, but who know the Defendants on an intimate level – such as Mr. Pereira's father-in-law or Mr. Gutekunst's sister-in-law. These statements provide the Court with a unique insight into the Defendants' behavior outside of New Stream and should be

weighed accordingly. The Government does take serious issue, discussed *infra*, with the statements of support provided by attorneys from Reed Smith LLP ("Reed Smith") and with the more outlandish statements included in Defendant Bryson's submission and incorporated into his sentencing memo, epitomized by declarations like "[David Bryson] is simply not capable of knowingly engaging in criminal acts." Dkt. No. 373-2 at 16 and Dkt. No. 373 at 26.

The Defendants' pleas for leniency, however, follow a familiar pattern in arguing for mercy on the basis of their past good deeds. As one Court in this Circuit observed:

> [The defendant's] presentation, though stressing points that argue for uniqueness, distinction and individual consideration, in fact is not uncommon. The Court has heard much of the argument in echoes from similar pleas for mercy frequently urged in this courthouse, indeed in courtrooms across the country. In particular, [the defendant's] argument falls into a pattern advanced by a subset of the white collar criminal. This category encompasses a select class: distinguished, reputable, highly esteemed model citizens. . . . The list of their achievements and virtues is long and impressive.

United States v. Fishman, 631 F. Supp. 2d 399, 400 (S.D.N.Y. 2009). The Court in *Fishman* carefully considered the "social and economic advantages" that could tip the scales of justice in favor of wealthy, accomplished defendants, giving them an over-appearance of virtue that "could enable them to gain a substantial edge over blue collar offenders who cannot make claim to comparable means and opportunities with which to mitigate the full impact of a heavy sentence." *Id.* at 403. The Defendants' memoranda fall within this category.

Each defendant urges the Court to impose a sentence of probation in his case.[1] The imposition of such a sentence in a $46 million corporate fraud case is exactly the type of scenario Congress tried to avoid with the development of the fraud standards in the Sentencing Guidelines. It undermines respect for the law, drawing dangerous class distinctions into the

[1] Defendant Bryson, in the alternative, "requests that the Court consider a brief sentence of incarceration followed by a period of supervised release with a similar community-service component." Dkt. No. 373 at 40.

criminal law that should be outside the Court's consideration in fashioning a proper sentence. In making their case, the Defendants make flawed arguments about the role that loss and other guideline factors should play in the Court's consideration of the present offense. The Defendants downplay the egregiousness of their conduct and each Defendant minimizes his role in the conspiracy.

I. The Requested Sentences Undermine Respect for the Law

In 2013, the average sentence for a case sentenced under § 2B1.1 was 24 months.[2] The median loss was $105,599.[3] Fraud cases specifically had an average loss amount of $5,293,655 and a median loss amount of $195,649.[4] However, the Defendants in this instance, after having defrauded investors of over $46 million, argue that they deserve probationary sentences. In doing so, the Defendants contend that the loss figure found by the Court significantly overwhelms the guidelines such that the Guidelines merit little consideration. The effect of this position is to substantially minimize the type of sentence a Court would ever fashion for a white collar defendant. The Defendants contend that white collar defendants should be accorded special treatment by the Court – a lighter hand in sentencing and a consideration of their learned professions. They are incorrect. To give credence to the Defendants' arguments would seriously impair the public's respect for the law and create two-tiered system that undermines the very idea of equal justice before the law.

[2] http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Theft_Property_Destruction_Fraud_FY13.pdf
[3] *Id.*
[4] http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2014/FY13_Overview_Federal_Criminal_Cases.pdf

a. Courts Should Seek to Minimize Discrepancies Between White-Collar Offenses and Blue-Collar Offenses

The fundamental goal of the American judicial system should be to treat every individual fairly, justly and equally when compared to his or her neighbor. The Defendants want the Court to believe that white collar defendants should be treated differently – that, unlike other defendants, they do not need to be incarcerated when they steal over $46 million. Their claims are emblematic of the arrogance with which they approached their crime and the subsequent investigation into their fraud; commonly blaming the investors for "not asking the right questions." Their arguments should be rejected. White collar defendants should receive no special treatment at the bar.

"Sentences for white-collar criminals should have the following effects: 'deterrence of white-collar crime . . ., the minimization of discrepancies between white- and blue-collar offenses, and limits on the ability of those with money or earning potential to buy their way out of jail." *United States v. Tom*, 504 F.3d 89, 97 (1st Cir. 2007) *cert. granted, judgment vacated,* 552 U.S. 1163, 128 S. Ct. 1132, 169 L. Ed. 2d 945 (2008), quoting *United States v. Mueffelman*, 470 F.3d 33, 40 (1st Cir. 2006). "One of the central reasons for creating the sentencing guidelines was to ensure stiffer penalties for white-collar crimes and to eliminate disparities between white-collar sentences and sentences for other crimes." *United States v. Davis*, 537 F.3d 611, 617 (6th Cir. 2008). "[T]he sentencing guidelines sought to address the inequities of prior sentencing practices that tended to punish white collar economic crimes less severely than other comparable blue collar offenses." *Fishman*, 631 F. Supp. 2d at 403. Yet the Defendants'

memoranda in this case are replete with calls for the Court to show leniency because of their status as white collar criminals.

Defendant Bryson, in his sentencing memorandum, makes lengthy arguments about what sort of sentences are effective in the cases of white collar criminals. However, he never explains how an impartial court of law could still hope to garner the respect of the public while providing lenient sentences to white collar defendants but doling out stiffer sentences to other defendants. Instead, Mr. Bryson boldly states that "potential white-collar offenders are much more likely to be deterred by informal sanctions, such as shame and loss of employment prospects, and financial penalties, both from civil suits and lost earnings." Dkt. No. 373 at 39. To support his claim, he cites two footnotes in a law review article written by an associate attorney at Skadden, Arps, Slate, Meagher & Flom LLP. The footnotes' sourcing is itself problematic, but more troubling is the fact that the article does not claim that "white collar defendants are much more likely to be deterred by informal sanctions" as Bryson contends.[5] Rather, the article simply find no *decisive* evidence that steeper sentences deter and, indeed, the second cited footnote from the article actually contends that criminal sanctions *do* have a deterrent effect, but that informal penalties were also important. Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White-Collar Crime*, 8 Cardozo J. Conflict Resol. 421, 448-49 (2007). Mr. Bryson then cites *United States v. Adelson*, 441 F. Supp. 2d 506, 510 (S.D.N.Y. 2006), for the proposition that Courts have "recognized that substantial prison sentences do not

[5] The first footnote cites to another article which itself rests on three subsidiary sources. It is particularly ironic that Mr. Bryson, who has argued through his sentencing memorandum, that the increased sentencing guidelines penalties – *which were mandated by the United States Congress* – were irrelevant because they weren't based on the Sentencing Commission's own empirical study, would cite a law review article which is based not on its own empirical study nor on the empirical study of the article referenced in the first footnote. The second footnote, while not based on studies of actual occurrences, actually contends that criminal sanctions do have some deterrent effect.

promote deterrence among white-collar offenders." Dkt. No. 373 at 39. However, as discussed *infra*, *Adelson* says no such thing.

Defendant Pereira makes similarly flawed arguments, contending that courts "have recognized, in white collar cases, the publicity and stigma associated with conviction serves to deter similar crimes, even where a non-custodial sentence is imposed" and citing *United States v. Robinson*, 13-436 JLL, 2014 WL 1400197 (D.N.J. Apr. 9, 2014), in support of his contention. However, *Robinson* in no way stands for the distinction that white collar crimes, as opposed to other crimes, can be deterred by publicity, stigma, and non-custodial sentences. In fact, *Robinson* says nothing about publicity or stigma; the *Robinson* Court simply held that, in the particular $1.5 million tax fraud before it, probation could address the Court's deterrence concerns. Mr. Pereira also rests his argument on a Stanford Law Review Artcile by University of Minnesota law professor, Richard Frase. Mr. Pereira's truncated quote makes it appear as if Frase argues that the collateral consequences of a conviction, rather than incarceration, deter white-collar criminals. In fact, Frase actually contends that criminal prosecution is more likely to deter white collar criminals than drug offenders.[6] However, the collateral consequences for a blue collar defendant are often far greater than those for a white collar defendant.[7] Even if this weren't the case, such considerations would be irrelevant. "It is impermissible for a court to impose a lighter sentence on white-collar defendants than on blue-collar defendants because it

[6] The full quote states, "drug crimes are very hard to deter, since they are often motivated by addiction, high profits (maintained by supply-side enforcement), and/or lack of attractive lawful activities. White-collar and regulatory offenders are more likely to be deterred, even by selective enforcement and modest penalties; such offenders have many lawful alternatives and much to lose from being convicted, regardless of the penalty." Richard S. Frase, *Punishment Purposes*, 58 Stan. L. Rev. 67, 80 (2005). Holding that *even* modest penalties deter, the quote implies that stiffer penalties deter white collar defendants to a greater degree.

[7] Defendants who are convicted of felonies often lose the ability to live in public housing and to receive public assistance. They are often barred from a host of jobs, like operating a taxi or working in a hospital. The vast reach of these collateral consequences falls more heavily of blue collar defendants.

reasons that white-collar offenders suffer greater reputational harm or have more to lose by conviction." *United States v. Prosperi*, 686 F.3d 32, 47 (1st Cir. 2012).

Defendant Pereira's memorandum argues that background and status of the defendants should be given special weight in determining their sentence, citing Judge Friendly in saying, "While every criminal conviction is important to the defendant, there is a special poignancy and a corresponding responsibility on reviewing judges when, as here, the defendants have been men of blameless lives and respected members of a learned profession." Dkt. No. 372 at 1 quoting *United States v. Simon*, 425 F.2d 796, 798-99 (2d Cir. 1969). However, with regard to a defendant's hitherto blameless life, a defendant's "criminal history category of I already takes into account his lack of a criminal record." *United States v. Martin*, 455 F.3d 1227, 1239-40 (11th Cir. 2006). On the issue of a defendant's "learned professions," Judge Friendly is simply wrong. No court should extend special treatment to a defendant because of his or her "learned" profession. Indeed, the sentencing guidelines clearly prohibit such considerations, saying, "Education and vocational skills are not ordinarily relevant in determining whether a departure is warranted, but the extent to which a defendant may have misused special training or education to facilitate criminal activity is an express guideline factor." U.S.S.G. § 5H1.2.

The possibility that a court would take into consideration a defendant's "learned" background has been of utmost concern to the law over the last quarter century. In 1980, Yale Law School researcher, Kenneth Mann, and his colleagues conducted "lengthy interviews with fifty-one federal district judges in seven federal districts, including those with the heaviest 'white-collar crime' caseloads." Kenneth Mann, Stanton Wheeler & Austin Sarat, *Sentencing*

the White Collar Offender, 17 AM. CRIM. L. REV. 479, 481 (1980).[8] They wrote, "What is clear is that factors intimately related to the defendant's social status do receive weight in the judges' thinking." *Id.* at 479. "These matters raise questions of fundamental fairness in the sentencing process" that "would appear to be of paramount concern to those who would fashion a just as well as an efficient sentencing policy." *Id.* "Because of the nature of their crimes, white-collar offenders are uniquely positioned to elicit empathy from a sentencing court." *United States v. Edwards*, 622 F.3d 1215 (9th Cir. 2010) (Gould, J., dissenting) citing Mann, et al., *supra*. Indeed, the Sentencing Reform Act of 1984 – and the subsequent work by the Sentencing Commission – was explicitly concerned with these questions of fairness. Daniel Richman, *Federal White Collar Sentencing in the United States: A Work in Progress*, Law & Contemp. Probs., 2013, at 53, 55. Sentences of incarceration for white-collar crime hinge on the need to create and maintain a fair judicial system because "probationary sentences for white-collar crime raise concerns of sentencing disparities according to socio-economic class." *United States v. Levinson*, 543 F.3d 190, 201 (3d Cir. 2008).

In short, the Court should reject the Defendants' arguments for probationary sentences, which employ the same tactics that years of legal developments have sought to combat. The defendants were engaged in a $46 million fraud and should be held accountable for that offense. The sentence imposed should reflect the seriousness of their actions.

b. The Need For Restitution Should Not Be Used to Limit the Defendants' Sentences.

Messrs. Bryson and Gutekunst, each of whom previously participated in a plan to blame the victims for their own losses, now claim that the need to provide restitution "counsels against

[8] Available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5129&context=fss_papers.

any sentence of imprisonment." Dkt. No. 373 at 44. *See also* Dkt. No. 375 at 32. However, "[a]llowing sentencing courts to depart downward based on a defendant's ability to make restitution would thwart the intent of the guidelines to punish financial crimes through terms of imprisonment by allowing those who could pay to escape prison. It would also create an unconstitutional system where the rich could in effect buy their way out of prison sentences." *United States v. Seacott*, 15 F.3d 1380, 1389 (7th Cir. 1994). *Cf. Mueffelman*, 470 F.3d at 40; *Tom*, 504 F.3d at 95-97. To give the Defendants a lighter sentence of incarceration because they had caused greater economic harm would, in essence, favor more serious offenders over less culpable ones and should be rejected by the Court.

c. The New Stream Fraud was Precisely the Type of Corporate Conduct That Congress Sought to Proscribe With Increased Penalties

Each Defendant makes some variation of the argument that "this is not the typical fraud case." Dkt. No. 372 at 2. *See also* Dkt. No. 373 at 23; Dkt. No. 375 at 26 ("Mr. Gutekunst had no designs on absconding with investors' money, nor was he running a Ponzi scheme."). However, it is precisely the type of conduct at issue in this case – corporate frauds employed by executives using their corporate entities to cause vast losses – that Congress sought to address in increasing the Sentencing Guidelines after Enron and other corporate scandals. Corporate frauds are particularly difficult to detect and prove, as opposed to run-of-the-mill Ponzi schemes, and can cause disproportionately vast economic harm, all of which is evidenced by this case. Rather than granting any sort of leniency for the nature and circumstances of such a corporate fraud, any sentencing court that wanted to promote respect for the law would treat such frauds as especially serious.

In some respects, this case combines some of the worst elements of both corporate frauds and Ponzi schemes. Much of the harm that Ponzi schemes cause – personal losses and violations of trust that occur from very direct, personal interaction with the perpetrators of the fraud – are present here. Although the vast personal destitution that results from many Ponzi schemes is not the primary element of this case, many of the victims lost their own personal or family funds in the Defendants' fraudulent conduct at New Stream. Many of the victims met with the Defendants personally, over the course of a number of years, and developed something of a relationship of trust with the Defendants. Yet, whereas Ponzi schemes can often be uncovered with a subpoena to a bank or a brokerage firm, the Defendants here were able to cloak their fraud in series of dense amendments to New Stream's underlying documentation and shield discovery of their crime through the strategic utilization of the attorney-client privilege.

The Defendants argue that, amidst their deceit, they hoped to turn a profit for their clients. In other words, the Defendants contend that they really believed they could deliver profitable returns. However, it was not the Defendants' right to make this choice for their victims under false pretenses. The perpetrators of corporate fraud often believe that they can turn profits for their victims. They are often wrong and when the effects of their mistakes come to light, they leave disastrous results.

II. The Case Law Cited By the Defendants Support Sentences of 42 Months or More

In their sentencing memoranda, the Defendants repeatedly pull *dicta* from three cases – *U.S. v. Litvak*, no 3:13-cr-19 (JCH), *U.S. v. Adelson*, 441 F. Supp. 2d 506, 513 (S.D.N.Y. 2006), and *U.S. v. Corsey*, 723 F.3d 366, 380, (2nd Cir. 2013), to argue in favor of their requested

probationary sentences. However, the specifics of each of those cases are all distinguishable from the case at hand and actually favor sentences of 42 months or more of incarceration.[9]

a. The Facts in *Litvak* Are Distinguishable From the Facts in This Case

Any discussion of this Court's imposition of sentence on Jesse Litvak must begin by acknowledging one simple fact – this Court sentenced Litvak, not to probation, but to two years in prison. Litvak sold bonds to customers, lying to them about the price at which he could buy the bonds from third parties or whether he had to buy the bonds at all. By employing these tactics, Litvak acquired over $6 million in stolen funds from the victims for his employer's benefit. His victims, by and large, were pleased with the bonds they received; they were unhappy about having been deceived into being overcharged for the bonds. Litvak did not create or sell his bonds by using misleading marketing materials. He did not falsify or change any of the underlying records of his company. And, although testimony at trial indicated that Litvak's coworkers may have been involved in the same conduct, Litvak was not the leader of a large conspiracy.

In the present case, the majority of the victims would not have agreed to invest in a subordinate position beneath the Bermuda Fund; some others would have adjusted their investments and negotiated the terms according to the subordinate position. The Defendants altered the records of New Stream to appease Gottex, legally subordinating the interest of the US and Cayman Funds to the Bermuda Fund, and altered the 2007 year-end financial statements "to

[9] Defendant Pereira also cites at length the sentences imposed in *U.S. v. Testo, et al*, 14-cr-48 (RNC), Dkt. No. 9 (March 12, 2014). Mr. Pereira's assertion that "the conduct in the *Testo* case was far more egregious than the conduct in this case," Dkt. No. 372 at 39, is unserious and warrants scant mention. The defendants in *Testo* managed properties for a property owning company. They lied to the property owning company about the number of tenants and the amount of rents. The tax loss in *Testo* was $71,795.00 and the wire fraud loss was only $275,000.00. The conduct here is much more serious. The loss found by the Court is over 167 times the loss found in the *Testo* case. As such, the case is not comparable and, to the extent it offers any comparison, favors the Government's suggested period of incarceration.

placate Gottex on the one hand, while on the other hand keeping U.S./Cayman investors and potential investors in the dark." Ruling Re: Findings of Fact ("April 1st Ruling"), Dkt. No. 353 at 13. They marketed New Stream through the use of false marketing materials. When investors objected to the existence of the Bermuda Fund and its senior status, the Defendants never informed the investors about the legal subordination that occurred in March 2008.

And the Defendants in this case caused over $46 million of losses. A loss of that magnitude is so large, it almost loses all meaning for ordinary individuals. The seriousness of this conduct must be reflected in the sentence that the Court imposes and it must be a sentence that is substantially more than the one that Jesse Litvak received.

b. The Facts in *Adelson* and *Corsey* Are Distinguishable From the Facts in This Case

The defendants argue that the Sentencing Guidelines and the loss table are completely without value in the present case, using language drawn from *Adelson* and the concurrence in *Corsey*. In examining the two cases, it is unsurprising that Judge Underhill's concurrence in *Corsey* drew on Judge Rakoff's language in *Adelson*. Each of those cases involved extreme sentencing guidelines for defendants who personally had no participation in causing any actual loss. Both cases must be understood in that context.

Adelson was a participant in a conspiracy to inflate the stock price of his company, Impath. "Adelson was not the originator of the fraud, and, as the jury found in effect, Adelson did not participate in the fraudulent conspiracy until its final months. During the time of his participation, the price of Impath's stock was not further inflated." *Adelson* at 513. "Put another way, the evidence showed that Adelson was sucked into the fraud not because he sought to

inflate the company's earnings, but because, as President of the company, he feared the effects of exposing what he had belatedly learned was the substantial fraud perpetrated by others . . . Adelson was closer (though not identical) to an accessory after the fact, a position that has historically been viewed as deserving lesser punishment than that accorded the instigators of the wrongdoing." *Id*. Adelson did not actually participate in any of the activity that caused the loss. And yet, the guidelines recommended that Adelson serve 85 years in prison. Judge Rakoff rightly recognized that in the *Adelson* case, the numeric guide provided by the guidelines could not account for the nuanced way in which the defendant participated in the scheme and resulted in a patently unjust sentence.

Corsey presented a similarly abnormal situation warranting a departure. In *Corsey*, the defendants were prosecuted for trying to carry out an outlandish scheme against, what turned out to be, an FBI informant. "This was a clumsy, almost comical, conspiracy to defraud a non-existent investor of three billion dollars. That scheme never came close to fruition." *Corsey* at 378. "This scheme amounted to a series of absurd lies piled on top of even more absurd lies." *Id*. at 379. However, the defendants in *Corsey* immediately faced a guidelines calculation that was above the statutory maximum of 20 years and close to life in prison. It is in this context that Judge Underhill found the guidelines to be of "low marginal value" for the case at hand. However, he did not say the guidelines were always of such little import. In fact, Underhill quoted *Adelson* in holding that in other instances, the guidelines are "of considerable help to any judge in fashioning a sentence that is fair, just, and reasonable." *Id*. at 380.

The dicta from these two unusual cases should not be applied to the case against the Defendants. Defendants Bryson, Gutekunst and Pereira were involved in the fraud at New

Stream from the outset. Their actions directly affected the losses suffered by the victims. They should be held accountable for that.

c. Adelson Received a Sentence of 42 Months for a Substantially Similar Offense, But For a Comparatively Minor Role

In the present case, the Defendants were all participants in originating the fraud and all were involved in it for a number of years. All three Defendants were intimately involved in causing the loss. The loss was real and it was massive.

In the case of *Adelson*, despite his late entry into the conspiracy and his lack of participation in the actual inflation of the stock price, Judge Rakoff held that the "offense here was egregious: an accounting fraud extending over several years that had an intended loss of more than $50 million." *Adelson* at 513. Rakoff imposed a 42 month sentence on Adelson for his accessory-like participation in a fraud involving over $50 million.

Defendants Bryson, Gutekunst and Pereira were actively involved in causing over $46 million in losses – not as accessories, but as principals who engaged in their criminal conduct for a number of years. They deserve a sentence that is, in the very least, equivalent to what Adelson received.

III. The Loss Was Foreseeable and Was Directly Causes by the Fraud

The Defendants want the Court to believe that "New Stream's bankruptcy was simply not something that anyone foresaw and was not related to the offense." Dkt. No. 373 at 26. *See also* Dkt. No. 375 at 29 ("Mr. Gutekunst had always viewed the off-shore funds as merely tax structures and saw no appreciable risk of liquidation. But suddenly, the seniority of the Bermuda Fund came to the fore. The fund had to liquidate and seniority mattered."); Dkt. No. 372 at 12

("The defendants did not intend for New Stream Capital to collapse and be forced into a liquidation. Fraud is not what caused New Stream Capital to fail and ultimately declare bankruptcy."). However, this is not true. The Defendants foresaw the liquidation scenario because their victims forced them to contemplate it.

Gottex ordered a redemption of its full investment after Bart Gutekunst's March 17, 2008 conversation with Amy Lai and Richard Leibovich and his March 18th conversation with J.P. Bailey, in which he told them that the debt held by the Bermuda Fund was *pari passu* to the debt held by the new US and Cayman Funds. Gottex found the threat of a liquidation scenario so important, that they ordered the redemption of their whole investment. This order, in and of itself, threatened New Stream's solvency. It was at the root of the execution of the new notes, note purchase agreements, and new collateral agency agreement, all of which legally subordinated the debt of the newer feeder funds to the Bermuda Fund. It is what caused New Stream to get resolutions from the Cayman directors agreeing to subordinate their investments to the Bermuda Fund investment, in exchange for a higher interest rate. It was at the root of David Frank's question in GX 79 which Bryson and Gutekunst avoided answering. And it was at the heart of Tricia Ward's conversations with Bryson in October 2008 in which he blatantly deceived her about the Bermuda Fund's existence. New Stream's victims contemplated liquidation and forced the Defendants to contemplate it, too. "[T]his loss was foreseeable to defendants." April 1st Ruling at 14.

The Defendants further argue that they never intended the victims to lose any money. In other words, the Defendants contend that they fully expected that New Stream would continue to grow and that the new investors, including the $40 million obtained fraudulently after March

2008, would never lose any money. According to the Defendants' view of the world, they would be able to find over $300 million in new investments to replace the Gottex investment. *See* Dkt. No. 373 at 24-25 and Dkt. No. 375 at 7. This was obviously an unrealistic and truly fantastic assumption, strikingly similar to an argument rejected some time ago by the Chief Judge Posner of the Seventh Circuit in the case of *United States v. Lauer*:

> He [Lauer] says he didn't intend the loss of the entire $19.9 million, and there is a sense in which this is true. But it is the same sense in which the author of a Ponzi scheme might not intend that any of his investors lose anything—might intend that the scheme continue until the end of the world, in which event there would be no losers. Likewise an embezzler might not intend to impose a loss on his employer, might instead intend to use the money to gamble and win and thus be able to replace every penny he had taken. . . . We may put it this way: the amount of the intended loss, for purposes of sentencing, is the amount that the defendant placed at risk by misappropriating money or other property. That amount measures the gravity of his crime; that he may have hoped or even expected a miracle that would deliver his intended victim from harm is both impossible to verify and peripheral to the danger that the crime poses to the community.

United States v. Lauer, 148 F.3d 766, 767-68 (7th Cir. 1998) (Posner, J.). Had the Defendants not deceived their investors into making investments after the onset of the conspiracy, the Defendants would have had less money to tie up in the assets that needed to be liquidated at bankruptcy. The bankruptcy would have been smaller and significantly less destructive.

At the time of the Gottex meeting, the Feeder Funds were legally equal in priority to the Bermuda Fund. The Defendants re-executed the Notes, Note Purchase Agreements, the Collateral Agency Agreement and obtained resolutions effectuating these documents from the Cayman directors in secret in order to appease Gottex. *See* GX 39, 44,46, 47, 52, 59, 60. The Court calculated the loss to the pre-March investors to be $5,644,800 – "the 'change in value' from a *pari passu* investment to a junior investment." April 1st Ruling at 18. That is, the loss to

the pre-March investors is directly tied to the actions the Defendants took to subordinate their interests to the interests of the Bermuda Fund. It may be true that the market influenced New Stream's bankruptcy, but the Defendants made their victims' losses $5 million worse by perpetrating a fraud on them. They made those losses $40 million bigger by obtaining new investments that otherwise would never have been made with New Stream. They are responsible for those actions.

IV. Specific Deterrence

Each Defendant argues that the Court has no reason to be concerned with specific deterrence in this case, employing some version of the argument that "he will not be returning to work in the securities industry. As such, there is no chance that he will ever commit an offense such as this in the future." Dkt. No. 373 at 39. *See also*, Dkt. No. 375 at 31 ("Moreover, he will never again work in the financial-services industry."); Dkt. No. 372 at 37 ("In addition and as noted above, Mr. Pereira has already suffered significant consequences as a result of his conviction. There is simply nothing about the offense or Mr. Pereira's background which indicates that he poses any risk of recidivism."). However, the record on this issue is far from clear.

The Defendants all pleaded guilty by claiming that their conspiracy was barely three weeks long and that it was a result of errors made by the head of New Stream's marketing department, Tara Bryson. In addition, they argued strenuously throughout the *Fatico* hearing process that their admitted fraud involved no loss. Indeed, during the course of the *Fatico* hearing, counsel for Defendant Pereira told the Court that he "embrace[d]" the 2007 Financial Statements for their clarity. Hearing Tr. 1298. Defendant Bryson now describes the fraud as simply a "failure to prominently point out certain downsides to an investment in New Stream's feeder funds." Dkt. No.

373 at 26. This sort of rhetoric indicates that the Defendants continue to believe that they can minimize their conduct and, to some extent, get away with it. The Defendants' utter lack of contrition raises serious questions as to whether they understand the import of their actions and whether or not they will avoid such actions in the future.[10]

V. The Court Should Not Credit the Letters from New Stream's Counsel, Reed Smith

Amidst the Defendants' letters of support were two letters of support from New Stream's former Reed Smith counsel – one from Wendy Schwartz, a former partner at Reed Smith, and another from Scott Easterbrook, a current partner, writing to the Court on Reed Smith letterhead. These statements should not be credited.

As the Court knows, Reed Smith worked on the transaction side of New Stream's restructuring. It drafted the notes, note purchase agreements and November collateral agency agreement. All testimony at the *Fatico* hearing clearly stated that, as a legal matter, the Feeder Funds and the Bermuda Fund were made *pari passu* by the original restructuring documents.[11] Reed Smith also filed the UCC-1 with the state of Delaware that incorporated the terms of the November Collateral Agency Agreement. GX 9A. Once investors began learning that the Bermuda Fund had not closed and was senior, New Stream also involved Reed Smith in crafting its responses to investors.

[10] In his sentencing brief, Defendant Gutekunst struck a note of contrition at various points. This new, if overdue, tone is welcome and not lost on the Government as discussed, *infra.*

[11] Three witnesses – Keith Harper, Joe Tremblay, and Amada Logue also testified that this was the intent of New Stream's management, as voiced in the meetings leading up to the restructuring. No witness testified to the contrary. The Government also argued that the draft financial statements indicated that the three funds had been accounted for as being *pari passu* up to the March 17th meeting with Gottex. The defense presented documents which, it argued, evidenced that the internal accounting records treated the Bermuda Fund as senior between November 2007 and March 2008.

Attorney Schwartz writes to the Court saying that, with her former partner, Amy Greer, she "conducted an internal investigation, the results of which were provided to the Government." Unfortunately, the "internal investigation" report that Reed Smith provided to the Government significantly mischaracterized the events at New Stream around the Gottex meeting and sought to exculpate the Defendants, rather than provide an independent analysis. For example, in their report to the Government, Reed Smith informed the Government that the Bermuda Fund had been and had always been senior to the U.S. and Cayman Funds. While they indicated that there was some "confusion" among certain employees about this fact, when the SEC asked Reed Smith to identify who exactly, was "confused," Ms. Schwartz pointedly refused to divulge that information to the Government.

Between 2011 and May 2014, the Government engaged in a prolonged litigation with New Stream over documents that were allegedly subject to the attorney-client privilege. Each time a Court reviewed Reed Smith's classification of documents, it determined that there were documents that were not subject to the attorney-client privilege. Indeed, Reed Smith classified as privileged numerous (highly inculpatory) documents in which it is plainly evidence that no legal advice was being sought or provided. *See e.g.* GX 63 and 64.

December 2013, New Stream produced numerous previously withheld documents. Amongst them was a litigation narrative written for Reed Smith by Amanda Logue. It stated that, in November 2007 the Collateral Agency Agreement "was revised to include the Cayman and US Feeders as lenders and the liquidation proceeds section was modified to pay out all proceeds (after payment of Senior Bank Lines) to the Bermuda Loans, the US Feeder Loans and the Cayman Feeder Loans on a pari passu basis." Ms. Logue continued to explain the meeting

with Gottex in March 2008, described the redemption that Gottex placed and to explain that "each of the Cayman and US Feeder Notes was amended to subordinate the debt to the Bermuda Fund demand notes." Attachment A. This critical information, which formed the basis of the Government's case, was never disclosed to the government by Reed Smith.

Although Reed Smith argued to the Government that the Bermuda Fund had always been senior, internally Reed Smith acknowledged that the Bermuda Fund had been *pari passu* with the new feeder funds. On March 11, 2009, Reed Smith attorney, Marilyn Moberg recommended that New Stream respond to the complaints of one Cayman investor by telling them that, as of November 15, 2007, "there was no Bermuda senior subordinated debt . . . in our capital structure." Attachment B. A few days later, Attorney Moberg forwarded the December notes for the feeder funds to Attorney Greer, saying, "Here are the December notes. These were tied into the 11/07 CAA agreement I talked to you about. Will send that one too. That agreement has all notes being rerated pro rata. Compare to the later CAA which puts Bermuda first in the waterfall." Ms. Greer responded "We're on the same page." Attachment C.

In addition, as the Court is aware from GX 87, Constatine Karides advised New Stream *not* to tell investors that the Bermuda Fund was always senior. And yet, that is exactly what Reed Smith told the Government throughout the course of the Government's investigation. The discrepancy between what Reed Smith said internally and what it said externally to the Government is significant. Reed Smith knew about the Gottex meeting, it knew about the subordination of the US and Cayman Funds, it knew that the Defendants were hiding Gottex's redemption from other investors and it knew about the addition of $8 million of BCV money to the Bermuda Fund in the summer of 2008 and it reported none of this to the government during

its purported cooperation. To write a letter to the Court that says that Reed Smith "conducted an internal investigation, the results of which were provided to the Government" is simply misleading to the Court.

Against this backdrop, the reference letters from Reed Smith attorneys should carry little, if any, weight in this proceeding.

VI. The Defendants' Family Responsibilities Should Not Bear on the Court's Sentence

Defendants Bryson and Pereira suggest that their family ties and responsibilities merit a probationary sentence. *See, e.g.*, Dkt. No. 372 at 21 ("In light of Mr. Pereira's extraordinary family circumstances and the significant impact that a period of incarceration would have on the family, both emotionally and financially, a sentence of probation is sufficient but not greater than necessary in this case."). *See also* Dkt. No. 373 at 15 ("David's friends and family worry that David's absence during a period of incarceration will negatively affect [his children], depriving them of a crucial role model and supporter."). Not only is their request not supported by applicable case law, the family ties and responsibilities are hardly "extraordinary." In short, these Defendants are not entitled to any departure on this basis.

As this Circuit and numerous other courts have recognized, all custodial terms of imprisonment impose a hardship on important family responsibilities. *See United States v. Sprei*, 145 F.3d 528, 534 (2d Cir. 1998) (vacating departure where religious father's incarceration would impact children's marriage prospects); *United States v. Headley*, 923 F.2d 1079, 1083 (3d Cir. 1991); *United States v. Cacho*, 951 F.2d 308, 311 (11th Cir. 1992); *United States v. Daly*,

883 F.2d 313, 319 (4th Cir. 1989); *United States v. Brewer*, 899 F.2d 503, 508 (6th Cir. 1990).

As explained by the Circuit in *Sprei*:

> Family ties and responsibilities are a discouraged basis for departure. *See* U.S. Sentencing Guidelines Manual ‘ 5H1.6 policy statement. This is because "many defendants shoulder responsibilities to their families. . . . Disruption of the defendant's life, and the concomitant difficulties for those who depend on the defendant, are inherent in the punishment of incarceration." *United States v. Johnson*, 964 F.2d 124, 128 (2d Cir. 1992). The presence of a hardship resulting from imprisonment is therefore ordinarily not enough to warrant a departure. It is only "[e]xtraordinary circumstances ... not capable of adequate consideration . . . [that] may constitute proper grounds for departure." *Id*. In other words, only if a district court finds the hardship to be exceptional may it downwardly depart on that basis. *See United States v. Galante*, 111 F.3d 1029, 1034 (2d Cir. 1997).

Sprei, 145 F.3d at 534. Thus, a departure based on family circumstances is disfavored and "must be reserved for situations that are truly extraordinary." *United States v. Walker*, 191 F.3d 326, 338 (2d Cir. 1999).

The Second Circuit case law underscores that a departure for family circumstances is rarely applied and only where the defendant has a unique and irreplaceably vital role in the caretaking of minor or disabled family members. *See United States v. Johnson*, 964 F.2d 124, 128-30 (2d Cir. 1992) (no abuse of discretion to depart where defendant was "solely responsible for the upbringing of her three young children, including an infant, and of the young child of her institutionalized daughter"); *United States v. Alba*, 933 F.2d 1117, 1122 (2d Cir. 1991) (no abuse of discretion to depart where defendant was solely financially responsible for wife, two children, ages 4 and 11, and for disabled, dependent father and grandmother, all of whom lived in the same house); *United States v. Mateo-Ruiz*, 112 Fed. Appx. 790, 792 (2d Cir. 2004); *United States v. Smith*, 331 F.3d 292 (2d Cir. 2003); *United States v. Madrigal*, 331 F.3d 258, 260 (2d Cir. 2003); *United States v. Carrasco*, 313 F.3d 750, 756-57 (2d Cir. 2002). Indeed, the Second

Circuit has found that the "absence or presence of adults who can step in during the defendant's incarceration to assist with caring and providing for the defendant's dependents . . . is a central part of the extraordinary family circumstances inquiry." *United States v. Huerta*, 371 F.3d 88, 95 (2d Cir. 2004); *see also United States v. Selioutsky*, 409 F.3d 114, 119 (2d Cir. 2005) (departure not available "where other relatives could meet the family's needs . . . or the defendant's absence did not cause a 'particularly severe hardship'"); *United States v. Davis*, 2006 WL 2165717 at *2 (D. Conn. 2006) (3:06cr111(JCH)) (denying family circumstances departure from a range of 15-21 months where, husband was unemployed and defendant was the primary source of financial support for her family, because husband was able to care for daughter and able to work).

Here, Defendants Bryson and Pereira have provided the Court with nothing exceptional or extraordinary to separate them from other white collar defendants facing incarceration who provide support to family members. Both Mr. Bryson and Mr. Pereira have their wives, in-laws, and other friends and family members that are able to take care of their children. In addition, both Defendants have had more than sufficient time since their May 2014 change of plea hearings to make suitable arrangements for other family members and friends to care for their dependents. The fact is that Defendants Bryson and Pereira engaged in their criminal conduct with utter disregard for the future of their dependents. Thus, they should not be heard to complain now that her incarceration will impact their well-being. As Judge Haight observed in *United States v. Shoher*, 1984 U.S. Dist. LEXIS 2432 at *3 (S.D.N.Y. 1984), "[e]very individual who deliberately [commits] criminal acts for personal gain must be taken to understand that, by so acting, he places his family's future happiness at risk; and if he is caught, their future will be

forfeit." Given the presence of other family members, and all of the friends and relatives who are supporting Defendant Bryson and Pereira by writing letters to the Court, there are many other persons who are available to help their wives and other family members. For these reasons, the Court should deny Defendant Bryson and Pereira's request for a downward departure on the basis of their family ties and responsibilities.

VII. Specifics On the Defendants

a. David Bryson

Defendant Bryson organized a scheme through which he had his partner, Bart Gutekunst, and his employees Richard Pereira, Perry Gillies, Tara Bryson, Keith Harper, Chris Floetter, Joe Tremblay, and others deceive investors out of over $46 million. In light of these facts, it is odd that the Defendant, who has pleaded guilty, paraphrases Timothy Feldausen in saying that "David always behaved ethically and fairly" at New Stream. Dkt. No. 373 at 8. However, Mr. Bryson's sentencing memorandum is replete with attempts to persuade the Court that it should ignore his years-long effort to deceive investors about the Bermuda Fund and the subordination and convince the Court he always acted appropriately.

Even though the Court heard Amanda Logue's contemporaneous voicemail discussing "David going crazy about Gottex is gonna see the collateral sharing agreement but not the note agreements," GX 45, Mr. Bryson wants the Court to believe that he instituted an "open door policy" with investors. He quotes Roger Eustance as saying that he "was very honest about what the problems were" with investors. Dkt. No. 373 at 8. Bryson also quotes John Catizon as saying "Employees never saw David do anything that was not transparent or appropriate," even though the Court sat through days of testimony in which employees discussed how Defendant Bryson

had ordered them not to discuss the Bermuda Fund with investors. Rather than acknowledging that Mr. Bryson and his team marketed New Stream with materials that clearly made it appear that there was no Bermuda Fund in New Stream's structure, Defendant Bryson instead argues that, "David and New Stream's partners built New Stream on its commitment to transparency to investors," *Id*. at 11, and that "from the first to the last, New Stream was an entirely legitimate enterprise." *Id*. at23.

This language strikes a problematic cord, indicating that Defendant Bryson either fails to comprehend the import of his actions or believes that he can sell the Court on a story that is not true. For example, Mr. Bryson writes, "The government has never argued – and could not possibly argue . . . that New Stream's management took fees that weren't based on actual assets under management and work performed." *Id*. at 23. Bryson conveniently ignores that $40,980,000 of those assets were obtained through fraudulent means. Moreover, Bryson claims that "when investors asked about the status of the Bermuda Fund, they were given correct information." *Id*. at 25. In doing so, he conveniently ignores Tricia Ward's testimony about her conversation with Bryson where she tried in vain to learn whether there were any senior investors in the capital stack, Tr. at Tr. 1044:4-7 (Ward); David Frank's email asking if there were any senior investors, GX 79; or the e-mail in which Joe Tremblay told a Bermuda Fund investor that New Stream was attempting to move all investors over to the Cayman Fund, even while they were allowing Gottex to stay, offering Cannonball and Eden Rock the opportunity to stay in the Bermuda Fund and allowing BCV to add $8 million to the Bermuda Fund, GX 73. In perhaps the strangest twist, Bryson writes that "[p]rior to the financial crisis of 2008 the seniority of New Stream's different funds was largely seen as irrelevant." Dkt. No. 373 at 25. This is not

what David Frank or Michael Beattie testified. Indeed, it is difficult to understand how Bryson even argues that the seniority was irrelevant when it was the issue at the very heart of Gottex's redemption.

Bryson also presents the Court with a number of letters attesting to his good character. These should be weighed appropriately against the Court's other evidence of his character. The Court heard from Chris Floetter and Amanda Logue that David Bryson could be very volatile, explosive and intimidating. Floetter once wrote to another colleague discussing his fear that Mr. Bryson "may fire me for sport and his own amusement. That would be sad." Attachment D. The Court has heard and read how Mr. Bryson came up with the story to tell Gottex. *See* GX 34. And the Court saw Mr. Bryson stand before it, plead guilty, and blame his sister for the entire fraud. This information, too, is evidence of Mr. Bryson's character – evidence that is on full display in his sentencing memorandum, as he attempts to minimize his criminal conduct.

b. Bart Gutekunst

In his sentencing memo, Defendant Gutekunst writes:

> In the spring and summer of 2008, New Stream was faced with a difficult choice. One option was to tell Feeder Fund investors about the continued existence and seniority of the Bermuda Fund, which would have likely triggered a run on the fund resulting in massive investor losses. . . . While the proper course would have been full disclosure, Mr. Gutekunst chose to withhold information in order to secure and retain investments in New Stream.

Dkt. No. 375 at 2. With that admission, Mr. Gutekunst began a welcome, if small, shift from his previous position. No longer was Tara Bryson the root of the fraud. Rather, Mr. Gutekunst now claims that he participated in the fraud because of the "force of [David] Bryson's personality," *Id*. at 6, a statement the Government believes to be substantially closer to the truth. However,

the extent to which this changes the Court's assessment of Mr. Gutekunst must be tempered by the fact that Mr. Gutekunst's admission is too little, too late.

On the eve of trial, Gutekunst pleaded guilty by, essentially, blaming Tara Bryson for the fraud at New Stream. The Government was then forced to present multiple witnesses over the course of five days of *Fatico* hearing testimony, flying them in from various parts of the world, to the present the scope of the Defendants' conduct to the Court.

Even now, Mr. Gutekunst obscures the more unsavory aspects of his conduct. The crime, in this instance, was simply not withholding from the Feeder Fund investors the truth about the Bermuda Fund. It was the fact that Defendant Gutekunst and others continued to raise almost $41 million in new investments through fraudulent means. As the Court found, "members of New Stream's marketing team testified that the chart omitting the Bermuda Fund was the only chart that had been approved for use by the partners, including Bryson and Gutekunst, and that the marketing team understood they were not supposed to mention the Bermuda Fund to new investors." January 12, 2015 Ruling at 6-7. For example, "Finles representatives met with Gutekunst and Tremblay in June 2008. During the meeting, in which they discussed Finles making a potential new investment, neither Gutekunst nor Tremblay disclosed the continued existence or seniority of the Bermuda Fund[.]" *Id*. at 8. "In an August 2008 phone call, Matthew Thorley of ZAM asked Gutekunst to confirm whether all investors were treated *pari passu*, which Gutekunst confirmed." *Id*. at 15. As the Court noted, Mr. Gutekunst made this statement at the same time that "Bryson and Gutekunst were expressly stating to Gottex that they were senior to investments like ZAM's." *Id*. In addition, when directly asked by David Frank in

2008 if there were any investors senior to the US Feeder Fund, Mr. Gutekunst could have provided a simple answer as a response. He did not. *See* GX 79.

Furthermore, Mr. Gutekunst denies his leadership role in the conspiracy. Mr. Gutekunst, instead, argues that Defendant Bryson was the organizer of the conspiracy. While it may be true that Mr. Bryson had a superior role within the conspiracy, Defendant Gutekunst played a key organizational role in carrying out the fraud. As the Court noted, "internal emails strategizing about Gottex between Bryson, Gutekunst, and New Stream President Perry Gillies" circulated at New Stream. *Id*. at 6. *See also* GX 56 and 61. Those strategies were then put into place through the other New Stream employees. It was Defendants Bryson *and* Gutekunst who together drafted the initial story to tell Gottex. *See* GX 34, 35, 36, and 37. It was then up to employees like Tara Bryson, Keith Harper and Amanda Logue to make that story appear true by amending the fund documents. Defendant Gutekunst then signed those fund documents. GX 44, 59 and 60. Mr. Gutekunst played a key leadership role in carrying out this fraud – a role not matched by any of the other participants, save Defendant Bryson. The Guidelines should appropriately reflect that. Equally importantly, Mr. Gutekunst should honestly account for that leadership role.

In short, the shift in tone found in Defendant Gutekunst's sentencing memo presents the Court with a positive, but incomplete, reconciliation with the true facts of the case. The Government recognizes that Mr. Gutekunst now says that "[a]t the *Fatico* hearing, he heard first-hand how the answers given in response to investors' questions misled those investors. He heard loudly and clearly that his conduct harmed investors." *Id*. at 8. This acknowledgement evidences an important shift in Mr. Gutekunst's previous position and stands in stark contrast to the attitude evidenced by his codefendant, Mr. Bryson. However, the extent to which this affects

his sentences if at all, must be judged in the context of his continued failure to truly admit what he has done and all that has come before. His belated admissions and tempered contrition are only partial in their scope and should be treated accordingly.

c. Richard Pereira

i. Defendant Pereira Should Receive an Enhancement for Abuse of Position of Trust

In the alternative Defendant Pereira should receive an enhancement for an abuse of a position of trust. The Court has already found that at least one investor, Walter Schwab, dealt primarily with Defendant Pereira and invested based on misrepresentations made by Pereira. April 1st Ruling at 7-8 ("[T]he court finds that Schwab invested on the basis of misrepresentations made to him by Pereira."). Defendant Pereira ignores this finding and claims that there is "no evidence" that Mr. Pereira "ever made any affirmative misrepresentations to Mr. Schwab." Dkt. No. 372 at 26 (conceding only that he did "interact" with Schwab). The Court's finding on this point is clear and supported by the record. The evidence provided by Mr. Schwab to the agents indicated that he felt Mr. Pereira had "misled" him and told him a "pack of lies." Dkt. No. 356 Ex. 3, at 1. In addition, Special Agent Allen's report noted that Mr. Schwab did not recall being told that some funds were subordinate to other funds. *Id*. at 2. In short, Defendant Pereira misrepresented the facts to this investor and, as such, proceeded to abuse the trust that Mr. Schwab gave to him in investing with New Stream.

In addition, Defendant Pereira was a point of contact when individuals in the Marketing Department needed information to fill out investor questionnaires. *See e.g.*, Tr. at 198 (Floeter) ("Yes. That would have been a question that – in terms of the leverage, that would be a Rich

Pereira question."). Mr. Pereira argues in his submission that he "did not direct the members of the marketing department on how to use that information when communicating with investors." Dkt. No. 372 at 25. However, Mr. Pereira was providing information to be used in *investor* questionnaires. As a result, he certainly knew the information he was providing the marketing department was to be given to investors and that the information was misleading. *See* Tr. at 198 (Floeter) (testifying that the answer Pereira provided Floeter for an investor questionnaire was not a complete answer to the investor's question). Finally, as CFO, Defendant Pereira was responsible for the misleading financial statements that were provided to New Stream's investors. It is not accurate to minimize Mr. Pereira's role in communicating with investors, *see* Dkt. No. 372 at 25, when New Stream's financial statements were provided to all of New Stream's investors.

In sum, this is a sufficient basis to warrant an enhancement for abuse of a position of trust for Defendant Pereira for three principal reasons: (1) the Court's findings that an investor made investments in New Stream on the basis of misrepresentations made by Pereira, (2) the testimony at the *Fatico* hearing describing the role Pereira had in providing misleading information to investors through his answers in investor questionnaires, and (3) the role Mr. Pereira played in communicating with investors through New Stream's misleading 2007 financial statements. Mr. Pereira used his position to interact with investors to hide the truth from them about the existence and seniority of the Bermuda Fund. In so doing, his position enabled him "the freedom to commit a difficult-to-detect wrong." *United States v. Laljie*, 184 F.3d 180, 194 (2d Cir.1999). Accordingly, he should receive an enhancement for abuse of a position of trust.

ii. **Defendant Pereira Abused his Special Skill as an Accountant**

The Guidelines' calculation for Defendant Pereira should include the additional two levels pursuant to U.S.S.G. § 3B1.3 for his use of a special skill. *See* PSR at ¶ 251. Defendant Pereira contends that the record does not support the conclusion that he chose the misleading language in New Stream's 2007 financial statements and, accordingly, says that the government has not met its burden of supporting an enhancement for use of a special skill. Dkt. No. 372 at 9-10. Defendant Pereira's argument ignores the fact that the Court has already found that Mr. Pereira directed all of the misleading changes to the financial statements. Jan. 12, 2015 Ruling (Dkt. No. 353) at 12 ("Following the March 2008 Gottex meeting, *Pereira directed* New Stream's independent auditor, J.H. Cohn, to separate out the Bermuda debt as a separate line item from the debt contained in the U.S. and Cayman Funds . . . [and] *Pereira further directed* edits to a footnote (Note 8) related to these line items.") (emphasis added). As the CFO and a CPA, Defendant Pereira directed the changes to the financial statements which were a key part of the Defendants' conspiracy because, as the Court noted, they "allowed the defendants to placate Gottex on the one hand, while on the other hand keeping U.S./Cayman investors and potential investors in the dark." *Id*. at 13. As such, he significantly facilitated the offense using his skill as an accountant and should receive an enhancement under § 3B1.3 for his use of a special skill.

Defendant Pereira contends that Jay Levy, the J.H. Cohn audit partner "did not testify who at New Stream suggested the changes" to the 2007 financial statements. However, contrary to Mr. Pereira's suggestion, Mr. Levy directly indicated that he discussed the changes with Mr. Pereira:

> Q. Who did you speak with at New Stream about [the changes to the 2007 financial statements made following the March 2008 Meeting with Gottex]?
> A. I believe it was *Rich Pereira* and Tim Leonard.

> Q. What did Rich Pereira tell you about those changes?
> A. I don't recall the conversation, you know, six years ago. I don't recall the exact conversation, but we talked about the fact that it should be on two lines and that the one debt is senior subordinated and the other one was subordinated.

Tr. at 968 (Levy) (emphasis added).

Moreover, as the PSR found, Defendant Pereira also used his special skill to conceal the fraud in his dealings with New Stream's auditor, J.H. Cohn. PSR ¶ 251 ("[H]e also facilitated the offense by failing to provide the JHC auditors with all of the necessary documents in support of the 2007 financials, including those relating to the subordination of the debt of the U.S. and Cayman Funds."). This statement is amply supported by the record. *See generally* Tr. at 974-76 (Levy) (noting that Pereira did not provide J.H. Cohn with any documents showing that the U.S. and Cayman Funds had been subordinated to the Bermuda Fund, including the Collateral Agency Agreements or the Cayman Directors' resolution approving the subordination—even though the Management Representation Letter to J.H. Cohn indicated that New Stream had provided these documents).

In sum, Defendant Pereira's specialized skill as a Certified Public Accountant and Chief Financial Officer, "increased his chances of success or concealment" which is sufficient to provide the enhancement under Second Circuit precedent. *United States v. Fritzson*, 979 F.2d 21, 22 (2d Cir. 1992).

iii. Nature and Characteristics of Defendant Pereira

As the Chief Financial Officer, Defendant Pereira was in a unique position to prevent the fraud from occurring. Instead, he joined the conspiracy, facilitated it, and played a key role in lying to the auditors and to investors. In his submission, Defendant Pereira indicates that "he

recognizes the seriousness of his conduct and is deeply remorseful for the harm it has caused." Dkt. No. 372 at 2. However, statements from his sentencing memorandum strongly suggest that Defendant Pereira neither recognizes the seriousness of his conduct or the harm it wrought. Instead, Pereira seeks to minimize his conduct, which reflects a lack of respect for the law and the need for specific deterrence.

First, Defendant Pereira takes no responsibility for the fact that he hid the subordination from New Stream's auditors. To the contrary, Mr. Pereira attempts to minimize his conduct by arguing that "there is no evidence that Mr. Pereira took affirmative steps to hide this information from JH Cohn." Dkt. No. 372 at 28. This statement is simply not accurate. Mr. Levy testified that Defendants Pereira and Gutekunst signed a Management Representation Letter that contained affirmative misrepresentations about documents which were hidden from the auditors regarding the subordination of the U.S. and Cayman Funds. *See generally*, Levy, Nov. 21, 2014 Tr. at 974-76; GX 55. As such, Mr. Pereira took active and affirmative steps to hide the subordination from J.H. Cohn by making misstatements in the Management Representation Letter. Mr. Pereira was not a bystander who always gave J.H. Cohn "access to any documents they requested." Dkt. No. 372 at 28. Rather, he took active and affirmative steps to hide the fraud from New Stream's auditors.[12]

Second, with respect to the misleading financial statements, Defendant Pereira argues that the changes to the financial statements following the March 2008 meeting with Gottex provided investors "with *more* information regarding the existence and seniority of the Bermuda Fund than investors would have had if these revisions had not been made." Dkt. No. 372 at 27

[12] In addition, the Government would respectfully contend that affirmative lies to hedge fund auditors are just as bad as conduct that hides the truth from the auditors by only providing documents explicitly asked for by the auditors and not sharing with the auditors material subsequent events.

(emphasis in original). This argument has already been rejected by the Court. As the Court found, "Note 8 provides no description, by way of name of fund, of which entities hold 'subordinated' or 'senior subordinated' notes which would allow U.S./Cayman investors or potential investors to realize that their debt was subordinated to that of the Bermuda Fund." Jan. 12, 2015 Ruling (Dkt. No. 353) at 12-13. Far from providing *more* information, the 2007 financial statements obscured the classification of debt on the balance sheet and hid from investors the subordination of the U.S. and Cayman Funds that occurred in March 2008.

Lastly, Defendant Pereira argues that he was involved in a "relatively small aspect of the conspiracy." Dkt. No. 372 at 34. Defendant Pereira simply does not understand the severity of his conduct. Directing misleading and false changes to the financial statements is not a "small aspect of the conspiracy." By hiding the subordination from the auditors, Mr. Pereira was able to prevent J.H. Cohn from possibly being able to demand that New Stream include a subsequent event footnote in the 2007 financial statements that reflected the subordination of the U.S. and Cayman Funds. Instead, New Stream was able to use the financial statements to placate Gottex, continue raising money from unknowing new investors, and not alert existing investors to the material subordination of their investment interests.

Nothing said or done in his numerous presentations made to the Court indicates that Mr. Pereira truly recognizes the severity of his actions and the harm he caused in connection with the 2007 financial statements. While Defendant Pereira has provided the Court with numerous letters attesting his good works in the community and his devotion to family, the stark fact remains that the individual that is described in those letters was not the same individual who lied to New Stream's auditors and manipulated the financial statements to hide the truth from New

Stream's investors. Defendant Pereira, by virtue of his position as the CFO, was one of the only individuals in a position to stop the fraud. Instead, he went along with his co-defendants and was complicit in their fraud. No amount of good works can excuse a hedge fund CFO from lying to their auditors and making misrepresentations in the financial statements. Conduct of this ilk is inexcusable from anyone, let alone someone with Mr. Pereira's training. It is all the more unacceptable from a person who purportedly values highly ethical standards and good character.

VIII. The Government Has Entered Plea Agreements and Recommended Sentences Fashioned to the Unique Circumstances of Each Defendant

The defendants have gone to great lengths in their various filings to criticize the United States Sentencing Guidelines and claim that the Guidelines in this case yield a "grossly excessive range." *See e.g.*, Dkt. No. 375 at 19. However, it is important for the Court to recognize that in this case the Government is not advocating for sentences within the applicable "Calculated Guidelines range" or at the respective "Adjusted Offense Level" as that term is understood in the Guidelines rubric. The Government is in fact advocating for sentences of approximately one-third of the length of imprisonment as would be recommended by the Calculated Guidelines Range given the defendants' respective Offense levels and criminal histories.

The Government agreed to the disposition in this case that provided a statutory maximum of up to five (5) years imprisonment for each defendant. The arguments now advanced by the defendants as to why the defendants should receive "below Guidelines sentences" are not new to Government counsel and are not being considered for the first time. Many of these very arguments were raised and considered by the Government in making its determination to agree to a plea to Count One of the Indictment.

The Government certainly knew much of the personal history and characteristics of the defendants, their work histories, their lack of prior criminal records, their family circumstance, their prior military service, and much of their community involvement. The Government knew the vastness of the loss and that the calculated Guidelines Range would be well above the five year statutory maximum. The government knew that the defendants would argue that the loss overstates the seriousness of the crime because the defendants placed the money into a real hedge fund, as contrasted with a Ponzi scheme or pyramid scheme. The Government knew that the victim-investors were funds and funds of funds and that some of the money was from pension funds (such as MIO partners) and other was family money (Stone Haven) and personal investment funds (TradeEx). At the time of the plea agreement, Counsel for the Government was well aware that in some instances, Courts in this district have found loss figures so large that the Sentencing Guidelines become unhelpful in determining an appropriate sentence. While Judges can and do differ on this topic, it suffices to say that Government counsel considered this factor in fashioning a plea and advocating for a sentences that are sufficient and not longer than necessary to achieve the goals of sentencing.

The sentences that the Government has advocated for are appropriate, take into consideration the arguments now advanced by counsel and are fashioned to the unique defendants. The defendants have already received the benefit of a five year statutory maximum by virtue of plea agreements which the Government entered into, fully considering the arguments now being advanced. When the Government acts reasonably, fair, and just, the defendants should not then be afforded the additional unjust benefit of further departures.

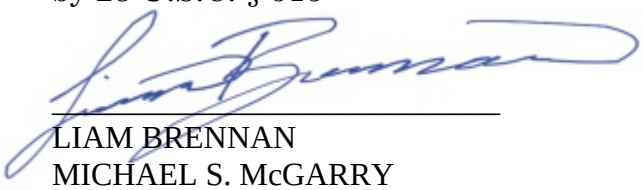
If, based on all the facts, the Court were to determine that a sentence at or above 5 years would be appropriate, then the court should impose the statutory maximum.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court reject the defendants' arguments and impose a sentence of 60 months for Defendants Bryson and Gutekunst and a sentence in the range of 36 to 48 months for Defendant Pereira.

Respectfully submitted,

MICHAEL J. GUSTAFSON
ATTORNEY FOR THE UNITED STATES,
Acting Under Authority Conferred
by 28 U.S.C. § 515



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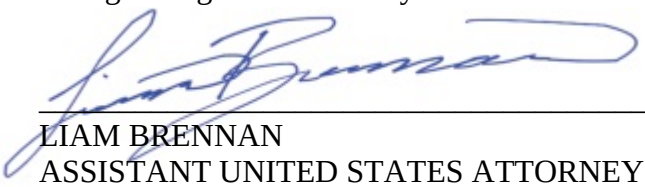
CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.



LIAM BRENNAN
ASSISTANT UNITED STATES ATTORNEY

Attachment A

It should be noted that each investor in the Bermuda Fund was fully aware of the illiquidity of the collateral being offered by NSSC and NSI (as the case may be) as security for the loans that the Bermuda Fund would be making to those entities and those Bermuda investors elected to make their investments in the Bermuda Fund notwithstanding that fact. As such, the prospectus for the Bermuda Fund specifically stated that redemptions would be paid subject to the Manager's (NSC) ability to liquidate the assets of the Fund (which would be the Bermuda Loans).

US Feeder

The Manager of the US Feeder, NSC, invested approximately 20-30% of each investment made into the US Feeder directly into NSSC as equity and the remainder of such investment was loaned to NSSC by the US Feeder (at a fixed rate of interest) through purchase of a demand note ("US Feeder Loans"). Each US Feeder Loan was evidenced by demand note secured by all the assets of NSSC which essentially gave NSSC one year from the date of demand to repay the loan. At the one year point, a default could be declared and standard remedies could be taken by the US Feeder, including foreclosing on the collateral. Any such foreclosure would, as discussed above, be subject to the Collateral Agency Agreement. The Private Placement Memorandum for the US Feeder contained the same general liquidity disclosure as was present in the NSSC Private Placement Memorandum to reiterate the illiquidity of the investment being made in the US Feeder.

Cayman Feeders.

The Investment Manager of each of the Cayman Feeders is New Stream Capital (Cayman), Ltd. which is administered by an independent board of directors domiciled outside of the United States, but the owners of the Investment Manager are the three principals who also own NSC. Each Cayman Feeder was structured to shield the offshore investor from U.S. taxes by taking advantage of various existing tax exemptions, such as the PIE, while still allowing the investor the ability to participate in some of the profitability generated by NSSC. In order to achieve this goal, the Investment Manager of each Cayman Offshore Feeder invested approximately 20-30% of each investment directly into the equity of New Stream Secured Capital, Inc., a Delaware corporation. New Stream Secured Capital, Inc, in turn, invested said amount directly into NSSC as equity. The remainder of such investment was loaned to the NSSC by the respective Cayman Offshore Feeder (at a fixed rate of interest) through the purchase of a demand note (each, a "Cayman Feeder Loan") in form and substance identical to the one used for the US Feeder Loans. As with the US Feeder Loans, any foreclosure remedies available to a Cayman Offshore Feeder under a Cayman Feeder Loan would be subject to the Collateral Agency Agreement. The Private Placement Memoranda for the each of the Cayman Feeders are substantially similar to the US Feeder Private Placement Memorandum and therefore the same redemption and liquidity provisions discussed above for the US Feeder apply to all the Cayman Feeders.

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The Collateral Agency Agreement

On October 5, 2006, NSC negotiated a Collateral Agency Agreement (one for NSSC and one for NSI) with Wilmington Trust Company on behalf of all the lenders to each of such funds at that time.. All the segregated cells of the Bermuda Feeder were signatories to the original Collateral Agency Agreements and each such segregated cells remedies against either NSSC or NSI (as the case may be) with respect to the Bermuda Loans were made subject to the terms of the Collateral Agency Agreement. In order to effect a liquidation of the collateral, each of the lender signatories holding at least 51% of aggregate debt held by all the lender signatories must give written notice to the Collateral Agent. Since the Bermuda Fund segregated cells were the only lenders executing the original Collateral Agency Agreements, upon liquidation, Section 5(n) of the Collateral Sharing Agreement stated that proceeds were to be paid first to Senior Lender bank lines (which are minimal for NSSC and non-existent for NSI), and then to the Bermuda Loans made by each segregated cell on a pari passu basis. When the US and Cayman Feeder Funds were implemented in late 2007, in anticipation of the Bermuda Fund investors transferring to the Cayman Feeders, the Collateral Agency Agreement for NSSC (since neither the Cayman or US Feeders would be lending to NSI), no NSI revision was required) was revised to include the Cayman and US Feeders as lenders and the liquidation proceeds section was modified to pay out all proceeds (after payment of Senior Bank lines) to the Bermuda Loans, the US Feeder Loans and the Cayman Feeder Loans on a pari passu basis. Before this version of the Collateral Agency Agreement could be fully executed by all the lenders, Gottex had made its demand on NSC that the Bermuda Loans be senior to the US and Cayman Feeder Loans (see separate Gottex discussion below) and this version of this first amendment of the Collateral Agency Agreement was never implemented. Instead, a new version of the Collateral Agency Agreement was amended and restated in March of 2008 wherein Section 5(n) was amended such that proceeds (after payment of Senior Bank lines) were to be made to the Bermuda Loans on a pari passu basis first and then to the Cayman and US Feeder Loans. The Collateral Agency Agreement was restated and amended a second time in August 2008 to add another lender category (a Delayed Draw Term Loan) and amend Section 5(n) such that proceeds (after payment of Senior Bank lines) were to be made to the Bermuda Loans on a pari passu basis first and then to the Delayed Draw Term Loan lenders second (this was one party, Northstar Financial Services Ltd., a subsidiary of NSSC) and then to the Cayman and US Feeder Loans. With respect to the Second Amended and Restated Collateral Agency Agreement for NSSC, all the lenders to NSSC (the Bermuda Fund segregated cells, the US Feeder and the Cayman Feeders, plus a the Delayed Draw Tem Loan lender all are signatories.

May 2009 Restructuring Plan

In late September 2008, the first of a series of fund failures (most notably, an ABL fund run by Tom Petters) had an adverse effect on many of investors in all three New Stream feeder funds. This caused a massive number of redemption requests to be made on all three New Stream feeder fund in the September/October time frame. For the Bermuda Fund, the redemptions approached 100%. For the Cayman and US Feeders, a decision

From: Moberg, Marilyn A. [MMoberg@ReedSmith.com]
Sent: Wednesday, March 11, 2009 2:23 PM
To: Tara Bryson
Cc: Gotthoffer, Lance; Ngo, Thao H.
Subject: ATTORNEY CLIENT PRIVILEGED COMMUNICATION/ATTORNEY WORK PRODUCT PROTECTED COMMUNICATION

Tara, here is a draft of a revised email for Finles. We would like to go over this with you and discuss it before you send it. I am here until 2 pm today CA, so let me know what time works, or if today is bad, tomorrow is fine too. Questions we have and need you to answer are in parens in the text. Once we get this one done, we can address the other outstanding responses you have on your desk!

Dear Robert,

Thank you for your March 6 email.

As you correctly note, the Cayman fund's investments are in notes issued by New Stream Secured Capital, L.P. (NSSC). However, Finles' also has an equity investment in NSSC. So while the Cayman fund necessarily takes a portion of the losses from NSSC, it also enjoys the gains from the equity component of its investment, unlike the Bermuda fund which is entirely the notes. These gains as you are aware have been, until recently, substantial (NEED CONFIRMATION)

Next, let me address your statement that you were not aware that there was a note that was "higher in the capital structure" than Finles' investment in the Cayman fund. By way of background, and as stated in Joe's November 19, 2007 email to you, the Bermuda fund existed at the time Finles invested in the Cayman fund. When the Cayman and US funds were launched, we understood based on the statements of the Bermuda investors at the time, that they intended to transfer to the Cayman fund. We anticipated that these transfers would occur over the course of a few months as Joe indicated in his email. However, as Joe's answer to question 9 indicates, while we planned on "transferring several of our current offshore investors to the new Cayman fund" as I am sure you appreciate, we had no power to force any investor to do so. The Bermuda fund was, however, closed to new investors as of December 1, 2007 (CONFIRM DATE).

The PPM for the Cayman fund was issued on November 15, 2007 (CONFIRM THIS DATE RE FINLES' INVESTMENT AND THEIR PPM, WHAT DATE?) and at the time there was no Bermuda senior subordinated debt (THIS IS THE TERM IN THE AUDIT SO WOULD LIKE TO USE IT HERE IF ACCEPTABLE) in our capital structure (CONFIRM THAT THE NOTES WEREN'T EXECUTED BEFORE DATE OF FINLES' PPM) and therefore this would not have been in the PPM that you received. However, the existence of the Bermuda senior subordinated debt was disclosed in the audited financials of NSSC as of December 31, 2007 which were made available to you (CAN WE CONFIRM THAT FINLES GOT THESE?). I am enclosing another copy of those here for your convenience and direct your attention to pages 3, 4, 6 and 16.

I trust this answers your questions. Let me reiterate that we have and will continue to give Finles full access to our books and records, and audited financials. The availability of the partners and staff for regular update calls/visits etc. has always been a top priority for our firm. So, please don't hesitate to let me know if you need any further information.

Best regards,

Tara

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pdc1

From: Moberg, Marilyn A.
To: Greer, Amy J
Sent: 3/19/2009 6:48:42 PM
Subject: RE: PRIVILEGED

Ok, sorry sent the wrong email, as long as you have December just making sure...

From: Greer, Amy J
Sent: Thursday, March 19, 2009 3:48 PM
To: Moberg, Marilyn A.
Subject: RE: PRIVILEGED

These are not the December notes - these are the April notes. I have both and we're talking about the same thing.
We're on the same page.
a

From: Moberg, Marilyn A.
Sent: Thursday, March 19, 2009 6:47 PM
To: Greer, Amy J
Subject: FW: PRIVILEGED

Here are the December notes. These were tied into the 11/07 CAA agreement I talked to you about. Will send that one too. That agreement has all notes being treated pro rata. Compare to the later CAA which puts Bermuda first in the waterfall.

Does this help?

From: Keith Harper [mailto:KHarper@newstreamcapital.com]
Sent: Thursday, March 12, 2009 6:54 AM
To: Moberg, Marilyn A.
Cc: Tara Bryson
Subject: FW: PRIVILEGED

Hi Marilyn,

Per your request, please see the attached.

Kind regards,

Keith

From: Tara Bryson
Sent: Thursday, March 12, 2009 9:10 AM
To: 'Moberg, Marilyn A.'
Cc: Keith Harper
Subject: RE: PRIVILEGED

Keith please send the current doc (amended and restated as of April)

From: Moberg, Marilyn A. [mailto:MMoberg@ReedSmith.com]
Sent: Wednesday, March 11, 2009 7:49 PM
To: Tara Bryson
Subject: RE: PRIVILEGED

Thanks. These are the first US notes after the fund was launched though correct? Would these also have been the notes that were subject to the 11/16/07 CAA that was not executed?

From: Tara Bryson [mailto:TBryson@newstreamcapital.com]
Sent: Wednesday, March 11, 2009 3:38 PM
To: Keith Harper; Moberg, Marilyn A.
Subject: RE: PRIVILEGED

FYI, this is just the first of a series of notes. Between the U.S. Feeder and Master Fund.

From: Keith Harper
Sent: Wednesday, March 11, 2009 4:53 PM
To: Moberg, Marilyn A.
Cc: Tara Bryson
Subject: FW: PRIVILEGED

Hi Marilyn,

Per your request, please see the attached.

Kind regards,

Keith

Keith Harper
Senior Associate
38 Grove Street, Building C
Ridgefield , CT 06877
Telephone: 203.431.0330 x832
Facsimile: 203.702.5213

From: Moberg, Marilyn A. [mailto:MMoberg@ReedSmith.com]
Sent: Wednesday, March 11, 2009 2:35 PM
To: Tara Bryson
Cc: O'Sullivan, Nicole K.
Subject: FW: PRIVILEGED

Tara, we have one additional request, see below in blue re the US Feeder fund first note which we don't have at all. Thanks!!

From: Moberg, Marilyn A.
Sent: Tuesday, March 10, 2009 4:47 PM
To: 'Tara Bryson'
Subject: PRIVILEGED

Tara, fyi re documents we still need when you get a chance. Also, can I also possibly get any of the written consents by the Managing Member of the LLC to take actions since the funds inception (similar to the Directors' resolutions you sent on the

Cayman fund)? Finally, in one of the emails there is an org chart is referenced that has the Bermuda fund on it, the one I have is the "tax" one and Bermuda isn't on it. Do you have the other one by any chance?

Finally, are you available at about 10 am Ca time tomorrow to talk about the emails? I have gone thru them all and would like to discuss.

M.

We are missing the executed versions of the all of the documents listed below.

Collateral Agency Agreements for the L.P.
1. Collateral Agency Agreement by and among Lenders, New Stream Secured Capital, L.P. and Wilmington Trust Company (as Collateral Agent) [2006]

2. Amended and Restated Collateral Agency Agreement by and among the Lenders, Note Holders, New Stream Secured Capital, L.P., and Wilmington Trust Company (as Collateral Agent) [3/26/2008]

3. Second Amended and Restated Collateral Agency Agreement by and among the Lenders, Note Holders, Subordinated Lenders, New Stream Secured Capital, L.P., and Wilmington Trust Company (as Collateral Agent) [7/2008]

Collateral Agency Agreements for New Stream Insurance
1. Collateral Agency Agreement by and among Lenders, New Stream Insurance, LLC and Wilmington Trust Company (as Collateral Agent) [7/2006]

2. Amended and Restated Collateral Agency Agreement by and among Lenders, New Stream Insurance, LLC and Wilmington Trust Company (as Collateral Agent) [10/5/2006]

US Documents
1. Note Purchase Agreement between New Stream Capital, L.P. and New Stream Secured Capital Fund (US), LLC [2007]
2. Amended and Restated Note Purchase Agreement between New Stream Capital, L.P. and New Stream Secured Capital Fund (US), LLC [3/2008]

3. Amendment No. 1 to the Amended and Restated Note Purchase Agreement between New Stream Capital, L.P. and New Stream Secured Capital Fund (US), LLC [4/1/2008]

4. Executed version of the Limited Liability Company Agreement for New Stream Secured Capital Fund (U.S.), LLC (US Feeder) [10/30/2007]

Northstar Loan
1. Delayed Draw Term Loan Agreement between New Stream Secured Capital, L.P. and Northstar Financial Services, Ltd. [$35,000,000 Delayed Draw Term Loan] [5/27/2008]

* * *

be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or applicable state and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Disclaimer Version RS.US.1.01.03
pdc1

From: Christopher Floeter [imceaex-_o=pcm_ou=first+20administrative+20group_cn=recipients_cn=cfloeter@newstreamcapital.com]
Sent: Thursday, June 05, 2008 5:43 PM
To: Tara Bryson
Subject: RE: Redemption Option Letter changes for Gottex Classes B and I

Attachments: image9e3f63.GIF@76d6a853.84774870

image9e3f63.GIF@
76d6a853.84774...

If I am directly ordered to. Megatron may fire me for sport and his own amusement. That would be sad.

From: Tara Bryson
Sent: Thursday, June 05, 2008 5:41 PM
To: Christopher Floeter
Subject: FW: Redemption Option Letter changes for Gottex Classes B and I

can you get them signed please

From: Christopher Floeter
Sent: Thursday, June 05, 2008 3:02 PM
To: Tara Bryson
Cc: Peggy Brady
Subject: Redemption Option Letter changes for Gottex Classes B and I

[cid:983484121@05062008-2876]Christopher Floeter Senior Associate
38 Grove St, Building C
Ridgefield , CT 06877
Telephone: 203.431.0330 x875
Facsimile: 203.702.5213

<http://www.newstreamcapital.com/>
