COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108

IN THE MATTER OF:

GPB CAPITAL HOLDINGS, LLC,

RESPONDENT.

Docket No. E-2018-0100

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the "Enforcement Section" and the "Division," respectively) files this Administrative Complaint (the "Complaint") to commence an adjudicatory proceeding against GPB Capital Holdings, LLC ("Respondent") for violations of Mass. GEN. LAwS ch. 1 l0A, the Massachusetts Uniform Securities Act (the "Act"), and the regulations promulgated thereunder at 950 Msss. CODE Regs. 10.00 - 14.413 (the "Regulations"). The Enforcement Section alleges that Respondent engaged in acts and practices in violation of Section 101 of the Act and Regulations.

The enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondent to permanently cease and desist from further conduct in violation of the Act and Regulations; 4) censuring Respondent; 5) requiring Respondent to provide a verified accounting for those losses attributable to the alleged wrongdoing; 6) requiring Respondent to make offers of rescission to all residents of the Commonwealth who purchased securities sold in violation of the Act; 7) requiring Respondent to disgorge all profits, direct or indirect compensation, and remuneration received in connection with the alleged wrongdoing; 8) permanently barring Respondent from registering as, or associating with, an investment adviser, investment adviser representative, broker-dealer, broker-dealer agent, Securities and Exchange Commission registered investment adviser, investment adviser excluded from the definition of investment adviser, issuer, issuer agent, or a partner, officer, director, or control person of any of the above; 9) imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 10) taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

II. SUMMARY

David Gentile created GPB Capital Holdings, LLC ("GPB Capital") in 2013 as an offshoot of his father's New York accounting firm, Gentile Pismeny & Brengel, LLP, also known as GP&B.[1] Gentile spawned the idea in conjunction with Jeffry Schneider, and old accounting client turned business partner. GPB Capital initially operated as the general partner of its first fund, GPB Holdings, LP ("GPB Holdings"). Since inception, David Gentile has been the managing member of GPB Capital, and maintains full control over the company.

Prior to forming GPB Capital, David Gentile spent 25 years at his father's accounting firm, GP&B where he was a partner and built and maintained relationships with a number of the firm's high net worth and institutional clients. Gentile has maintained his Certified Public Accountant license in New York and is a member of the

[1] GP&B has since rebranded, and is currently known as Gentile Brengal & Lin, LLP.

American Institute of Certified Public Accountants. Based on his experience in the private and public markets, Gentile decided that he had the necessary expertise to start managing private equity on a large scale.

GPB Capital's general strategy is to acquire middle market, income-producing companies, regardless of a specific fund's strategy. According to its website, GPB Capital utilizes "four main criteria as the cornerstone of our acquisition thesis, regardless of which focus industry they are applied: current and sustainable yield, recession resiliency, high barriers to entry, and experienced operating partners/management teams." These four criteria are reiterated in nearly every piece of GPB Capital literature regarding its funds.

As part of its strategy to attract investors all across the United States, Gentile offered high sales commissions to financial professionals to sell his funds, and utilized managing broker-dealers to help draft and develop key documents and marketing materials, such as fund private placement memoranda and marketing presentations. To facilitate the marketing and sale of its funds, GPB Capital utilized the broker-dealer branch office Ascendant Capital, LLC ("Ascendant Capital").

Ascendant Capital is wholly-owned by Gentile's business partner Jeffry Schneider. Ascendant Capital began as a branch office of a New York-based broker-dealer but in 2017 became a branch office of the Gentile-owned broker-dealer Ascendant Alternative Strategies, LLC ("Ascendant Alternative Strategies"). Not only did Gentile engage Schneider in drafting key documents and attending internal GPB executive meetings, but GPB Capital functionally gave Schneider the exclusive right to sell GPB Capital funds.

Eventually, Gentile sought to fully integrate and take control of Ascendant Capital's broker-dealer activity, and registered his own broker-dealer. In March 2017, Ascendant Alternative Strategies registered as a broker-dealer with the Securities & Exchange Commission and FINRA. On October 10, 2017, Ascendant Alternative Strategies registered as a broker-dealer in Massachusetts. The firm's main owners and control persons include Gentile and Schneider. Ascendant Capital then became a registered branch office of Gentile and Schneider's new broker-dealer.

GPB Capital paid Ascendant Alternative Strategies and Ascendant Capital millions of dollars in connection with marketing GPB Capital funds and in connection with acquisitions made by GPB Capital. Publicly, GPB Capital and Ascendant Capital sought to appear as two distinct companies, but in reality, they were one-and-the-same. Schneider was intimately involved in GPB Capital's strategy and direction, and served as Gentile's top confidant. The line between Gentile, Schneider, GPB Capital, and Ascendant Alterative Strategies and Ascendant Capital is blurred beyond recognition. The firms even share office space in Austin, Texas. The only difference between GPB Capital and the Ascendant entities is the e-mail addresses used. Gentile profited directly whenever GPB Capital paid Ascendant Alternative Strategies selling commissions.

Gentile launched its first fund, GPB Holdings, in 2013 shortly after GPB Capital's founding. Gentile and his team marketed this fund as unique among other private equity opportunities, and consistently highlighted the fund's income-producing aspect and monthly 8% distribution. GPB Holdings is a diversified fund, with holdings in debt strategies, information technology, healthcare, and automotive retail. GPB Holdings saw early success in capital raising, and raised almost $4,000,000 in its first 7 months of existence. However, GPB Holdings took a big step in 2014, raising over $70,000,000 from investors across the United States. GPB Holdings' primary focus became automotive retail, as the automotive portion of the fund typically represented a strong plurality or majority of the fund's assets. This was in part achieved by GPB Capital purchasing dealerships from Car Executive 1, an old associate of Gentile's, with the understanding that Car Executive 1 would join GPB in a senior management role. By year end 2016, 48.5% of GPB Holdings' strategy was wrapped up in automotive retail.

In May 2013 and shortly after the launch of its "diversified" fund, GPB Capital launched GPB Automotive Portfolio, LP ("GPB Automotive"). Unlike GPB Holdings, GPB Automotive's strategy was to invest strictly in automotive dealerships and automotive retail. GPB Automotive was formed with the initial directive to acquire dealerships owned by Jeff Lash, with the intent that Lash join GPB Capital to manage its automotive strategy. GPB Automotive was a big success from a capital raising perspective. From inception through August 31, 2014, the fund raised almost $6,000,000. However, GPB Automotive soon became significantly bigger. In 2015 alone, the fund raised over $120,000,000 from investors. Emboldened by its success and the persistence of its marketing team, GPB Capital launched a number of other funds, some diversified, like GPB Holdings II, LP ("GPB Holdings II"), and others more specialized, such as GPB Waste Management, LP ("GPB Waste Management") and GPB NYC Development, LP ("GPB NYC Development").

Part of GPB Capital's success in fundraising came from its aggressive marketing strategies. As stated above, GPB Capital repeatedly hammered investors with two key selling points – a yearly 8% distribution paid monthly, and distributions that were paid from operating profits. GPB Capital and Schneider carefully constructed the narrative that unlike a traditional risky private placement, where an investor places chips on a roulette table hoping for a positive outcome, investing in a GPB Capital fund would provide a continuous stream of income in addition to a big payday upon exit. GPB Capital's approach worked, and to date the firm has raised over $1.5 billion. GPB Capital initially stayed true to its word regarding investor distributions. Its funds generated sufficient net income from operations to pay investors their 8% distributions.

As time went on and GPB Capital raised more money, it was unable to deploy its capital efficiently. Instead of limiting contributions until capital was deployed, GPB Capital continued to take on new investors, especially for GPB Automotive and GPB Holdings II. As investor contributions increased, so did the capital required to continue to pay investor distributions. While GPB Capital maintained authority to suspend distributions whenever it wished, the firm continued to make its monthly distributions in order to maintain appearances and stay attractive to investors. In order to keep up with distributions, GPB Capital began dipping into other sources of income, contrary to statements made in its private placement memoranda and marketing materials. GPB Holdings, GPB Holdings II, GPB Automotive, and GPB Waste Management eventually turned to investor contributions to meet the demands of the 8% monthly distributions, and the fund financials tell as much. The funds' financials show that distributions were issued that exceeded the funds' net incomes, yet GPB Capital never updated any of its disclosure or marketing materials to reflect this.

GPB Capital's use of investor funds to pay distributions to GPB Holdings, GPB Holdings II, GPB Automotive, and GPB Waste Management investors not only lowered the funds' available operating capital, but also created a host of accounting problems. In mid-2018, GPB Capital suspended contributions and redemptions for GPB Automotive and GPB Holdings II due to GPB Capital's inability to file required audited financials with the Securities & Exchange Commission. Almost two years later, GPB Capital has failed to make the required filings, and has gone through a number of auditors in an effort to complete this task. Throughout this time, GPB Capital has continually told investors the audits will be completed, but has failed to meet every self-imposed deadline.

Unfortunately, GPB Capital's disclosure issues were not just related to investor distributions. By its nature, GPB Capital is structurally complex. Its funds have a number of sub-funds, and those sub-funds have various ownership interests in portfolio companies. Some of GPB Capital's funds jointly own portfolio companies, like the Prime Automotive Group. Moreover, the property on which many dealerships sit is owned by separate companies under the GPB Capital umbrella. GPB Capital has many hundreds of bank accounts under its purview. GPB Capital-related individuals like Gentile, Lash, Car Executive 1, and Schneider all have various ownership interests related to GPB Capital. Unbeknownst to investors, companies in which individuals like Gentile had ownership stakes engaged in transactions with GPB Capital-related entities. Only some of these relationships were disclosed, and typically after the fact. For example, while GPB Capital disclosed that Gentile is related to an entity called GPB Lender, LLC (which, despite carrying the "GPB" name, is not affiliated with GPB Capital), GPB Capital did not disclose that Gentile's company would be making loans and collecting interest from GPB Capital funds. Other entities, like LSG Auto (owned partially by Gentile and Lash), received payments from GPB Capital-owned dealerships, without ever disclosing this fact to investors. GPB Capital even paid Gentile's wife for "consulting" work, and sought to reclassify those payments as payroll to obfuscate where investor money actually went.

Over 180 Massachusetts investors contributed more than $14,000,000 to GPB Capital funds under false and misleading pretenses, in reliance on GPB Capital private placement memoranda and marketing materials, and without knowing that GPB Capital continually engaged in self-dealing from inception.

In connection with offerings made to Massachusetts investors, GPB Capital made false and misleading statements and omitted material facts in connection with the offer and sale of GPB Holdings, GPB Automotive, GPB Holdings II, GPB Waste Management, and GPB NYC Development. With this action, the Enforcement Section of the Division seeks to prevent further financial harm and provide relief to Massachusetts residents who were defrauded by GPB Capital.

III. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.

2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations. This proceeding is brought in accordance with Sections 101 and 407A of the Act.

3. The Enforcement Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the time period of January 1, 2013, to the present date (the "Relevant Time Period").

V. RESPONDENT

5. GPB Capital Holdings, LLC ("GPB Capital") is a Delaware limited liability company with a principal place of business located at 535 West 24th Street, Floor 4, New York, NY 10011. GPB Capital registered as an investment adviser with the Securities & Exchange Commission on April 4, 2014, and has a Financial Industry Regulatory Authority ("FINRA") a Central Registration Depository ("CRD") number of 169825. GPB Capital serves as the general partner of GPB Holdings, LP, GPB Holdings II, LP, GPB Automotive, LP, GPB NYC Development, LP and GPB Waste Management, LP. David Gentile serves as the sole managing member of GPB Capital.

VI. RELATED PERSONS[2]

6. GPB Holdings, LP ("GPB Holdings") is a Delaware limited partnership with a principal place of business located at 159 Northern Boulevard, Great Neck, New York 11021. GPB Capital serves as the general partner of GPB Holding. GPB Holdings includes GPB Holdings Qualified, LP.

7. GPB Holdings II, LP ("GPB Holdings II") is a Delaware limited partnership with a principal place of business located at 535 West 24th Street, New York, New York 10011. GPB Capital serves as the general partner of GPB Holding II.

[2] Under Section 401(h) of the Act, "person" "means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a limited liability company, a limited liability partnership, a government, or a political subdivision of a government."

8. GPB Automotive, LP ("GPB Automotive") is a Delaware limited partnership with a principal place of business located at 159 Northern Boulevard, Great Neck, New York 11021. GPB Capital serves as the general partner of GPB Automotive.

9. GPB NYC Development, LP ("GPB NYC Development") is a Delaware limited partnership with a principal place of business located at 535 West 24th Street, New York, New York 10011. GPB Capital serves as the general partner of GPB Waste Management.

10. Armada Waste Management, LP (f/k/a GPB Waste Management, LP) ("GPB Waste Management") is a Delaware limited partnership with a principal place of business located at 535 West 24th Street, New York, New York 10011. GPB Capital serves as the general partner of GPB Waste Management.

11. David Gentile ("Gentile") is the sole managing member of GPB Capital.

12. Ascendant Alternative Strategies, LLC ("AAS") is a limited liability company with a principal place of business located at 405 Lexington Avenue, New York, New York 10174, and a FINRA CRD number of 283881. AAS registered as a broker-dealer in Massachusetts on October 20, 2017. AAS is indirectly owned by Mark Martino,[3] Schneider, and Gentile. Martino, Schneider and Gentile are the firm's control persons. Since inception, AAS has served as GPB Capital's managing broker-dealer.

13. Ascendant Capital, LLC ("Ascendant Capital") is a limited liability company and branch office of AAS with a location at 3811 Bee Cave Road, Suite 210, Austin, Texas 78746. Prior to becoming a registered branch office of AAS, Ascendant Capital was a registered branch office of a New York-based broker-dealer. Ascendant Capital is solely

[3] Martino is the chief executive officer and registered agent of AAS. Martino has a FINRA CRD number of 1010228.

owned by Schneider.

14. New York Broker-Dealer ("New York Broker-Dealer") is a corporation organized under the laws of Delaware and a broker-dealer with a principal place of business located in New York, New York. New York Broker-Dealer served as GBP Capital's managing broker-dealer until 2017.

15. Jeffry Schneider ("Schneider") is the CEO of Ascendant Capital. Schneider is currently a broker-dealer agent of Ascendant Alternative Strategies, and was previously a broker-dealer agent of New York Broker-Dealer. Schneider has a FINRA CRD number of 283881. Schneider also serves as a "Strategic Advisor" to GPB Capital.

16. Former GPB CFO is GPB Capital's former Chief Financial Officer, who resigned in 2016.

17. GPB Employee 1 is a current GPB Capital executive. Prior to joining GPB Capital, GPB Employee 1 was an employee of Ascendant Capital.

18. GPB Employee 2 is a current GPB Capital executive. GPB Employee 2 reports to GPB Employee 1.

19. LSG Auto Wholesale, LLC ("LSG Auto") is a Delaware limited liability company owned partially by Gentile and Lash.

20. GPB Lender, LLC ("GPB Lender") is a Delaware limited liability company formed on March 31, 2013. GPB Lender's sole managing member is GPB Lender Holdings.

21. GPB Lender Holdings, LLC ("GPB Lender Holdings") is a Delaware limited liability company with a principal place of business located at 159 Northern Boulevard, Great Neck, New York 11021. GPB Lender Holdings is the managing member of GPB

Lender.

VII. STATEMENT OF FACTS

A. Overview

22. GPB Capital is an alternative asset management firm that specializes in purchasing established income-producing companies.

23. On April 2, 2014, the Securities and Exchange Commission (the "SEC") allowed GPB Capital's registration as an investment adviser.

24. Since its inception, David Gentile has served as the sole control person of GPB Capital.

25. GPB Capital is the general partner of GPB Holdings, LP, GPB Holdings II, LP, GPB Automotive Portfolio, LP, GPB NYC Development, LP, and GPB Waste Management, LP (collectively the "GPB Funds").

26. GPB Funds are structured as limited partnerships which act as holding companies for the underlying companies. As general partner, GPB Capital is responsible for determining fund acquisitions.

27. Investors purchase shares of the GPB Funds directly, and do not own shares of any of the underlying companies. Investors are passive limited partners and do not take part in the management or operation of the GPB Funds. As the general partner, GPB Capital maintains complete control of the operation and management of the GPB Funds.

B. GPB Capital Selling Arrangements

28. The vast majority of investors purchased shares of GPB Funds through independent broker-dealers or investment advisers. Investors who purchased shares wired money through Phoenix American Financial Services ("Phoenix American"), which is

the transfer agent for all the GPB Funds.

29. Phoenix American then transmits investment monies to the respective fund, less commissions associated with the investment. Commissions are typically 7%.

30. Other selling fees typically included a 1% due diligence fee, a 1.75% placement fee, and a 1.25% wholesaling fee. Organizational expenses could add an additional 1.25% fee.

31. The vast majority of shares sold for the GPB Funds are Class A shares. Selling fees for Class A shares are greater than those associated with Class B shares.

32. The GPB Funds receive 87.5% to 89% of each dollar invested.

a. Overview of Ascendant Capital, the Primary Broker-Dealer

33. Per GPB Capital's own statement, the branch office Ascendant Capital, dating back to its time as a branch office of New York Broker-Dealer, has been the exclusive managing entity for GPB Fund offerings.

34. Schneider has always been the sole owner of Ascendant Capital. Schneider personally funds Ascendant Capital, and maintains full control of the business. Since 2017, Ascendant Capital has conducted all its broker-dealer activities through AAS.

35. AAS registered as a broker-dealer in Massachusetts on October 20, 2017.

36. AAS is partially owned by Gentile through an entity known as DJ Partners, LLC. Schneider is also a partial owner of AAS through DJ Partners, LLC.

37. Ascendant Capital is a registered branch office of AAS and does not conduct any business other than selling securities on behalf of an issuer.

38. AAS broker-dealer agents earned commissions when a retail customer/client invested in a GPB Fund.

39. In addition, GPB Capital pays Schneider and Ascendant Capital, through AAS, a

fee for consulting on GPB Capital acquisitions.

40. Since the formation of GPB Capital, Schneider has been intimately involved with the growth and strategy of GPB. In a June 19, 2017 e-mail, Gentile formalized the longstanding relationship with Schneider by approving for him the title of "Strategic Advisor."

41. Among other things, Schneider provided advice on acquisitions, personnel decision, marketing material, and general strategy to GPB Capital and Gentile. He often attended Acquisition Committee and Investment Committee meetings.

42. Schneider received substantial compensation for his involvement with GPB Fund acquisitions. The compensation was paid to Schneider from by GPB Capital through Ascendant Capital. For instance:

- On September 8, 2017, GPB Capital paid Ascendant Capital and Schneider $451,814.06 in connection with GPB Waste Management's acquisition of Capitol Waste, Iron City Express & Buckeye Water.

- On May 17, 2017, GPB Capital paid Ascendant Capital and Schneider $168,000 in connection with GPB Holdings II's acquisition of Icagen via its subsidiary GPB Debt Holdings II.

- On October 4, 2017, GPB Capital paid $8,538,302.30 to Ascendant Capital and Schneider in connection with GPB Capital's acquisition of the Prime Motor Group.

43. Schneider continued to attend Investment or Acquisition Committee meetings throughout 2017 and 2018. GPB Capital has paid $16,304,798.64 in acquisition fees since May 2017 to AAS.

44. The GPB Fund's private placement memoranda ("PPMs") discloses that GPB Capital may pay an acquisition fee of 1.75%; however, it is not disclosed that this fee goes to Schneider.

45. In addition, the GPB Fund PPMs do not disclose that Gentile owns an interest in AAS jointly with Schneider through DJ Partners.

46. GPB Capital also does not disclose that Gentile's entity, DJ Partners, receives funds indirectly from the GPB Funds through AAS.

b. Primary Broker-Dealer Relationship

47. In its early days, GPB Capital utilized New York Broker-Dealer as its managing broker-dealer. Specifically, GPB Capital utilized a New York Broker-Dealer branch office located in Texas called Ascendant Capital.

48. The branch office, which is separately registered as an LLC, is wholly-owned by Schneider. Functionally, the branch office Ascendant Capital was responsible for seeking out agents of broker-dealer firms and representatives of investment adviser firms who were willing to sell GPB Funds to their customers and clients as well as marketing, promoting, and managing the GPB Fund offerings.

49. Ascendant Capital's responsibilities included drafting investor updates and determining what information would be included in fund prospectuses and limited partnership agreements ("LPAs").

50. In 2017, the branch office Ascendant Capital registered as an independent broker-dealer under the name of Ascendant Alternative Strategies. Ascendant Capital then became registered as a branch office of Ascendant Alternative Strategies.

51. GPB Capital continues to maintain its relationship with the Ascendant Capital branch office.

c. Secondary Broker-Dealer and Investment Adviser Relationships

52. Ascendant Capital's responsibilities included contacting agents of broker-dealer

firms and representatives of investment adviser firms to sell GPB Funds to retail investors.

53. After Ascendant Capital creates the relationship with the broker-dealer firm, GPB Capital would communicates directly with the firm's due diligence personnel and provide informational materials regarding the GPB Funds.

54. As part of this process, GPB Capital often hosts slideshow presentations and due diligence meetings so that firm personnel have the opportunity to meet with GPB Capital employees and ask questions. GPB Capital and Ascendant Capital typically reimbursed firm personnel for attending due diligence events.

55. During these presentations and meetings, additional marketing materials are provided to attendees. The marketing materials provided information about GPB Capital's offerings, executive team, expenses, fund strategy, and fees.

56. In addition, GPB often provides third party due diligence reports, paid for by GPB Capital, to broker-dealer and investment adviser firms.

57. Once a firm's due diligence committee approves a GPB Fund for sale on its platform, Ascendant Capital representatives would then reach out to individual agents or representatives at the firm and pitch them GPB Funds to sell to their retail clients.

58. Ascendant Capital's sales force is split into two groups: internal sales representatives who are responsible for reaching out to financial professionals and setting up meetings, and external sales representatives who are responsible for actually meeting with financial professionals.

59. External sales representatives are registered agents of AAS, and earn commissions from the sale of GPB Funds.

60. Ascendant Capital internal sales representatives cold-called the majority of agents and representatives. Ascendant Capital tracks the number of calls made.

61. Internal sales representatives would then attempt to schedule meetings between the agent or representative and an Ascendant Capital external sales representative. If an internal sales representative is successful in scheduling a meeting, an external sales representative would then contacts the agent or representative to persuade them to invest his or her customers in GPB Funds.

62. Ascendant Capital's internal sales representatives made over 21,000 calls from December 2018 to January 2020 to agents and representatives regarding the GPB Funds.

63. Ascendant Capital's external sales representatives made over 6,500 calls from January 2019 to January 2020 to agents or representatives regarding the GPB Funds.

64. Both internal and external sales representatives earned commissions in connection with sales resulting from meeting with agents and representatives.

65. In May 2017 alone, Ascendant Capital external sales representatives earned $809,396.34 in net commissions in connection with the sales of GPB Funds.

C. GPB Capital Funds

66. In connection with soliciting financial professionals and potential investors, GPB Capital and Ascendant Capital utilized a number of marketing materials, including slideshows and presentations, in addition to traditional offering documents such as Private Placement Memoranda ("PPMs").

67. The marketing materials, as well as the various PPMs issued for GPB Funds, frequently highlighted the 8% distribution the GPB Funds would pay.

a. GPB Holdings LP

68. GPB Holdings filed Form D with the SEC on June 6, 2013 indicating that it would be utilizing the Regulation D Rule 506 exemption. GPB Holdings made a notice filing with the Commonwealth of Massachusetts on January 6, 2015.[4]

69. The offering amount was initially $150,000,000.00 with a minimum investment amount of $50,000.00. The June 6, 2013 filing also identified that no shares had yet been sold, but that GPB Holdings was estimating sales commissions and finder's fees to be $16,500,000.00.

70. In connection with this private offering, GPB Holdings released various PPMs. The first was released in March 2013 and the last was released in December 2016.

71. The June 6, 2013 Form D is the only SEC filing for the GPB private placement offering. As stated above, the filing identified the total offering amount as $150,000,000.00. However, the May 13, 2014 PPM identified the offering amount as $200,000,000.00. No amendments to the GPB Holdings Form D increasing the offering amount are on file with the SEC.

i. Misstatements and Omissions in Connection with the GPB Holdings Offering

72. In addition to the PPMs, GPB Capital utilized various marketing materials in connection with the GPB Holdings offering.

73. GPB Holdings issued statements as early as 2014 stating that it pays distributions from operating profits.

74. For example, in a question and answer style document that broke down some key aspects of the GPB Holdings offering, one question asks whether distributions are fully

[4] GPB Holdings Qualified, LP made a notice filing with the Commonwealth of Massachusetts on January 6, 2020.

covered by operations. GPB stated in response "[t]he distribution of an 8% per annum and all special distributions are fully covered with funds from operations."

75. In another document promoting the GPB Automotive fund, GPB Capital provided a brief update on GPB Holdings for 2013 and 2014, and stated "[c]urrent distributions 8% per annum sources only from funds from operations."

76. The PPMs also disclosed that the targeted distribution rates for investors would be 8%. Although the PPMs did not disclose the source of funds that would be used to pay investor distributions, the May 13, 2014, PPM states, "[a]t the core of the GPB strategy is the goal to **pay distributions from Portfolio Company operations**." (emphasis added).

77. In the 2016 year-end financial statements, GPB Holdings reported total distributions to limited partners of $15,845,000. The financial statements further state:

> Cash Distributions have been, and may in the future continue to be, paid out of available working capital, including, but not limited to, investor contributions, Current Cash Distributions have, and may in the future, exceed operating income, if any, generated by the Partnership.

ii. Massachusetts Investors

78. Fifty seven Massachusetts residents made 43 separate investments ın GPB Holdings.

79. Massachusetts investors relied on PPMs and marketing materials issued by GPB Capital for GPB Holdings in connection with their investments.

80. Massachusetts residents invested $3,892,816.29 in GPB Holdings and paid $222.368.74 in commissions.

b. GPB Holdings II, LP

81. GPB Holdings II filed a Form D with the SEC on April 28, 2015. It subsequently filed amendments to its Form D on May 19, 2016, May 18, 2017 and May 16, 2018. The

most recent Form D filing indicates that the total amount of the offering is indefinite, the total amount sold was $645,813,889.00 and that there were estimated sales commissions of $47,914,143.00. GPB Holdings II made a notice filing with the Commonwealth of Massachusetts on December 12, 2015. There have been no amendments to the Form D since May 16, 2018.

82. In connection with this offering, GPB Holdings II released various PPMs. The first was released in April 2015 and the last was released in July 2018.

83. All GPB Holdings II PPMs discuss distributions to investors. For example, an April 13, 2015, PPM states that distributions will "substantially depend on our operation of our Portfolio Companies" and "that GPB Holdings II will "reserve the right to return Capital Contributions to LPs as part of our distributions, though we do not presently have plans to do so." The PPM then specifically states that investor funds are not used to pay distributions, but that "while we have no present plans to do so, we could include LPs' invested capital in amounts we distribute to LPs, which would reduce an LPs rate of return."

84. These statements also appear in GPB Holdings II's March 7, 2016, April 25, 2016, and December 2016 PPMs.

85. In contrast to all of the previous PPMs, the final GPB Holdings II PPM released in July 2018 makes significantly different disclosures. The July 2018 PPM states:

> Amounts that we distribute to LPs have been and may in the future include LPs' invested capital, and have been and may in the future not be entirely comprised of income generated by the Portfolio Companies.

86. This statement contradicts GPB Holdings II's prior PPMs which stated that the fund was not utilizing investor funds to pay investor distributions.

i. Misstatements and Omissions in Connection with the Offer, Purchase, and Sale of GPB Holdings II

87. In addition to the PPMs, GPB Capital utilized various marketing materials in connection with the GPB Holdings II offering.

88. Ascendant Capital assisted in creating marketing materials, and typically transmitted materials to broker-dealer agents and investment adviser representatives. For example, one e-mail states:

> Do you have a few minutes for us to discuss with you what is now available to you through [Broker-Dealer] in the form of an income producing opportunity?
>
> GPB Capital's investment strategy is to invest in Income-Producing, Middle Market Companies. GPB has 20+ years of Private Equity experience and was spun out of a 40 year old Corporate Advisory & Accounting Firm.
>
> GPB Holdings II Investment highlights:
>
> • Targeted 8% annualized yield, paid monthly, and 100% covered from operations
> • GPB Capitals goal is to invest in mature stage, double-digit yielding companies
> • 15%+ Targeted IRR
> • Passive Income Generator
> • Currently NO leverage
> • 3-5 year timeframe

89. Among other things, the e-mail highlights with its first bullet point that the 8% distributions are covered 100% from portfolio company operations.

90. Ascendant Capital sent this form e-mail to a significant number of agents and representatives. In addition, the e-mail contained two attachments: a two-page GPB Holdings II investment summary, and a 54-page slide deck titled *GPB Holdings II, LP Income-Producing Private Equity Class A*.

91. The summary and slide deck provide an overview of GPB Capital and GPB

Holdings II, including the fund's structure and strategies, and states that GPB Holdings II distributions, targeted at 8.0%, are derived "100% funds from operations" and are "[b]ased off cash flow from portfolio companies[.]"

92. In the first quarter of 2016, GPB Capital used a 22 page presentation titled "GPB Holdings II, LP 1Q 2016 Update" which provided, among other things, information on all the "special" distributions passed out to investors, including 1.5% special distribution and a "second special distribution of at least 1%" for investors who contributed to the fund by August 31, 2016.

93. As part of the 'offering highlights' page of the presentation GPB Capital advertises the monthly 8.0% distribution, right above the 2016 "Distribution Yield" which is purportedly 10.5%.

94. The presentation also discusses how it will acquire income-producing companies, and how an investment in GPB Holdings II is potentially safer than a traditional investment.

95. In contrast to previous presentations, in May of 2018, GPB Capital released an updated 43 page slide-deck, titled *GPB Holdings II, LP – Class A* which contained several disclosures that fundamentally differed from prior slide decks and presentations.

96. In the "Annual Distribution" section, GPB Capital discloses that invested capital may be used to pay investor distributions, "which may negatively impact the value of the portfolio's investments." However, the presentation still states that funds are "immediately committed", and that distributions are "primarily based off cash flow from portfolio companies[.]"

97. The May 2018 slide-deck also makes 'corrections' related to GPB Holdings II's

prior financial statements, specifically those from inception until year-end 2016.

98. GPB Capital writes on page 37 of the presentation that GPB Holdings II has used net investment income and return of capital to pay investor distributions, stating: "[s]ince inception through **December 31, 2016** distributions have been paid from Net Investment Income and Return of Capital 94.48% and 5.52%, respectively." (emphasis added).

99. Prior to this, GPB Capital repeatedly stated that distributions to GPB Holdings II investors would be paid from profits from portfolio companies and that capital contributions would NOT be used in connection with investor distributions.

100. Regardless, GPB Capital has used investor funds to pay distributions, contrary to the disclosures in most of GPB Holdings II PPMs and marketing materials.

101. The GPB Holdings II financials provide additional insight into its distribution practices. The GPB Holdings II consolidated financial statements from inception (April 13, 2015) to December 31, 2015, report a net income of $645,632, and total distributions of $197,056.

102. The GPB Holdings II consolidated financial statements for year ended December 31, 2016 report a net loss of $6,607,000, but total distributions of $8,089,000.

103. Taking the two financial statements together, from inception to year end 2016, GPB Holdings II had a net loss of $5,961,368, yet still paid out $8,286,056 in distributions to limited partners.

104. GPB Holdings II has failed to issue SEC-required audited financial statements past 2016.

105. For 2017, GPB Capital reported that GPB Holdings II had a net income of $44,585,000 and a net loss of cash used in operating activities of $208,392,000.

Additionally, GPB Holdings II paid $26,440,000 in distributions to limited partners.[5]

106. Despite reporting an alleged net income of $44,585,000, in a March 26, 2018 e-mail to an investment adviser, GPB Capital through Ascendant Capital reported GPB Holdings II's 2017 adjusted net income as only $22,143,000.

107. The "adjusted" figured released by GPB Capital put GPB Holdings II's net income from inception to year end 2017 as $645,632, $(5,961,368), and $22,143,000, totaling $16,827,264. GPB Holdings II paid $34,726,056 in distributions for the same period.

108. Taking the adjusted net income for 2017, GPB Holdings II issued $17,898,792 worth of distributions in excess of the fund's net income.

109. Per GPB Capital's own definition, this means that since inception to year end 2017, GPB Holdings II had a coverage ratio of 48.46%, meaning 51.54% of distributions were paid using investor contributions.

110. Even according to information communicated to financial professionals, GPB Holdings II did not always maintain a coverage ratio of 100%. According to Ascendant Capital, GPB Holdings II's coverage ratio from inception to September 30, 2017 was less than 100%, and was "approximately 81.3%."

111. In another 2018 e-mail, Ascendant Capital reported that GPB Holdings II's coverage ratio for 2017 was also below 100%, at 84%.

112. During the time that GPB Holdings II reported coverage ratios of below 100%, the fund specifically disclosed in communications, offering materials, and advertising materials that investor funds would not be used to pay GPB Holdings II distributions.

[5] GPB Capital provides two figures in the update for distributions: $26,440,000 and $26,441,000. There is no explanation for the discrepancy.

ii. Massachusetts Investors

113. Eighty Massachusetts residents made 68 separate investments in GPB Holdings II.

114. Massachusetts investors relied on PPMs and marketing materials issued by GPB Capital for GPB Holdings II in connection with their investments.

115. Massachusetts residents contributed $5,012,555.72 to GPB Holdings II, and paid their financial professionals $360,597.44 in commissions.

c. GPB Automotive Portfolio, LP

116. GPB Automotive filed a Form D with the SEC on June 10, 2013. It subsequently filed amendments to its Form D on March 27, 2015, May 19, 2016, May 18, 2017, and May 14, 2018. The most recent Form D filing indicates that the total amount of the offering is indefinite, the total amount sold was $622,143,273.00 and that there were estimated sales commissions of $52,204,671.00. GPB Automotive made notice filing with the Commonwealth of Massachusetts on June 30, 2016. There have been no amendments to the Form D since May 14, 2018.

117. In connection with this private offering, GPB Automotive released various PPMs. The first was released in May 2013 and the last was released in April 2018.

118. The first GPB Automotive PPM, dated May 27, 2013, states that the fund will pay investor distribution using profits earned from automotive dealerships.

119. The May 27, 2013, PPM first discusses investor distributions on page eight of the PPM, stating:

> [W]e will make distributions based on cash flow we have received from Dealerships. GPB expects the Company to make distributions of cash, if any, to the LPs beginning three months after their subscriptions at annual return rates targeted to be at least 8%[.]

120. The PPM further states on page 22:

> To the extent that Dealerships are not generating sufficient revenue to pay the fees, we may have to pay these fees out of other available cash, thus further reducing the amount of cash available for distribution to the LPs or to pay other Company expenses.

121. The May 27, 2013 PPM does not state that the fund will pay investor distributions from any source of funds other than profits from automotive dealerships.

122. The February 20, 2014, December 31, 2014, and March 6, 2015, PPMs mirror the language of the May PPM and state that distributions will be made based on cash flow GPB Automotive has received from its automotive dealerships.

123. The June 6, 2016, PPM states:

> We can provide no assurances that we will be able to continue to generate operating cash flow sufficient to make distributions to LPs. Thus, there is no guarantee that we will pay any particular amount of distributions, if at all.
>
> Furthermore, while we **have no present plans to do so**, we could include LPs' invested capital in amounts we distribute to LPs, which may reduce the amount of capital available to acquire and operate Dealerships and make other permitted acquisitions, as well as, negatively impact the value of the LP's investments, especially if a substantial portion of our distributions are paid from our LPs' investment capital. (emphasis added).

124. GPB Automotive released its Third Amended and Restated PPM in December 2016, which used language identical to the June 6, 2016, PPM, stating that GPB Automotive had no plans to use investor contributions to pay distributions.

125. GPB Automotive's final PPM, dated April 2018, also stated that the fund had no present plans to include investor contributions to pay distributions.

126. No GPB Automotive PPM ever disclosed that investor funds would be used to pay any portion of distributions.

127. However, at least for GPB Automotive's third quarter of 2017 54.5% of the distributions were comprised of investor funds.

128. In an e-mail sent to an investment adviser on March 26, 2018, GPB Automotive stated that it had a net investment income plus realized gain of $3,337,539, and total distributions of $7,332,248, resulting in a coverage ratio of 45.5% in the third quarter of 2017.

129. GPB Employee 2 indicated that when a fund's coverage ratio was below 100%, it would mean that investor funds would be used to pay distributions in order to compensate for lack of funds from operations.

130. This means that in the third quarter of 2017, GPB Automotive paid out more in distributions than it earned. In order to compensate for paying out more in distributions than earnings, GPB Capital utilized investor funds. For the calendar year of 2017, GPB Automotive's coverage ratio was 60%, meaning that 40% of distributions were paid using investor funds, directly contrary to all of the GPB Automotive PPMs and GPB Automotive marketing materials.

131. GPB Automotive's coverage ratio was frequently below 100%.

132. From 2013 to 2016, GPB Automotive's coverage ratio fell below 100% for at least five quarters. For example:

- From launch until year end 2016, GPB Automotive's total net income was $12,076,979.; however, total distributions to limited partners was $19,901,719, resulting in a coverage ratio of only 60.68%, meaning that 39.32% of distributions were paid using investor funds, directly contrary to all of the GPB Automotive PPMs and GPB Automotive marketing materials.

- GPB Automotive's 2017 Annual Report of the Partnership provides financial information for 2017. In this presentation, GPB Capital reports that GPB Automotive had a net income of $3,897,000, and a net loss of cash used in operating activities of $144,156,000. Additionally, GPB Capital reports $27,441,000 worth of distributions to limited partners.

- According to information provided to investors, GPB Automotive's distributions made to limited partners in 2017 exceed the fund's net income by $23,544,000.

133. On August 17, 2018, GPB Automotive gave notice to broker-dealers, investment advisers and investors that GPB Automotive would no longer be accepting new investments, and would be suspending redemptions until the fund produced its required annual audited financial statements.

134. To date, GPB Automotive has not produced the required annual audited financial statements.

135. On November 22, 2019, GPB Automotive issued a written update to investors regarding GPB Automotive.

136. The letter states that the net capital contribution to the fund is $606,348,358, and distributions have totaled $94,136,104.

137. Furthermore, the letter states that relative to the total distributions paid, "[d]istributions have been paid out of Company working capital and available assets, including, but not limited to, limited partner Net Capital Contributions (as defined in the LPA)."

138. Former GPB CFO reported that at GPB Capital's statement in GPB Automotive's December 2016 PPM's that "while we have no present plans to do so, we could include LPs' invested capital in amounts we distribute to LPs" was inaccurate, as investor capital had been used to pay investor distributions.

i. Misstatements and Omissions in Connection With the Offer, Purchase, and Sale of GPB Automotive Offering

139. In addition to the PPMs, GPB Capital utilized various marketing materials in connection with the GPB Automotive offering.

140. Ascendant Capital assisted in creating marketing materials, and typically transmitted materials to broker-dealer agents and investment adviser representatives.

141. For example, Ascendant Capital representatives would e-mail marketing presentations, such as the *GPB Automotive Investment Summary*, which identified the targeted annual distribution as 8%, to agents and representatives.

142. A 34-page presentation from 2015 titled *GPB Automotive Portfolio, LP Income-Producing Private Equity* states on page six that the targeted annual distribution of 8% is "100% funds from operations."

143. A similar 35-page presentation from 2015 for GPB Automotive titled *Income Producing Private Equity* repeats this claim and states that the "8% [distribution] paid 100% Funds From Operations." The presentation also states that "traditional private equity" never pays distribution, and further states that GPB Automotive's distributions are "[b]ased Off Cash Flow from Portfolio Companies[.]"

144. A 2017 presentation titled *GPB Automotive Portfolio, LP* states that distributions are "based off cash flow from portfolio companies[.]"

145. Agents and representatives utilized such marketing materials in the offer and sale of GPB Funds to retail customers, including Massachusetts investors.

ii. Massachusetts Investors

146. Forty seven Massachusetts residents made 42 separate investments in GPB Automotive.

147. Massachusetts investors relied on PPMs and marketing materials issued by GPB Capital for GPB Automotive in connection with their investments.

148. Massachusetts residents invested $3,149,639.59 in GPB Automotive, and paid $286,348.49 in commissions.

d. GPB NYC Development, LP

149. GPB NYC Development filed a Form D with the SEC on May 12, 2016 and an amended Form D on May 18, 2017. The most recent Form D filing indicates that the total amount of the offering is indefinite, the total amount sold was $41,547,150.00 and that there were estimated sales commissions of $4,881,790.00. GPB NYC Development made notice filings with the Commonwealth of Massachusetts on September 15, 2016 and on January 6, 2020.[6] There have been no amendments to the Form D since May 18, 2017.

150. The purpose of GPB NYC Development was to purchase a parcel of undeveloped land in the Boerum Hill section of Brooklyn, New York, and construct an 86,000 square foot mixed-use 14 story luxury condominium building with 47 residential units. In addition, the property would contain 12,000 square feet of commercial retail space and 14,000 square feet of common area.

151. Unlike GPB Capital's other offerings, GPB NYC Development did not pay monthly or yearly distributions. Rather, GPB NYC Development would pay distributions based on the sale of residential units and commercial space developed on the Boerum Hill property.

152. In connection with this offering, GPB Capital issued two PPMs for GPB NY Development: 1) the Confidential Private Placement Memorandum dated April 7, 2016

[6] GPB NYC Development did not file a Form U-2 until January 6, 2020.

("April 7, 2016 PPM"), and 2) the Amended and Restated Confidential Private Placement Memorandum dated May 3, 2016 ("May 3, 2016 PPM").

153. Ascendant Capital was responsible for marketing the fund to broker-dealer agents and investment adviser representatives and their retail investors.

154. AAS, GPB Capital, and GPB NYC Development entered into a services agreement dated March 28, 2017 (the "Services Agreement:").

155. Section 3.01(a) of the Services Agreement states that GPB Capital will pay an acquisition fee "in an amount set forth in each Company's respective Limited Partnership Agreement and/or private placement memorandum[.]"

156. GBP NYC Development's April 7, 2016 PPM and May 3, 2016 PPM state the following:

> [GPB NYC Development] will pay to GPB, an acquisition fee of 1.875% of the sum of (i) the Purchase Price, and (ii) all costs and expenses related to, among other items related to the Property, the development and commercialization of the Property (collectively, the "Acquisition Fee"). GPB reserves the right to pay and/or assign all or a portion of the Acquisition Fee to qualified third parties, including members of the Selling Group. The Acquisition Fee may be paid in consideration of services provided in the Offering, as well as structuring and providing advice with respect to the Property Acquisition.

157. Additionally, the PPMs state that GPB NYC Development:

> [M]ay also pay Selling Group members and others, to the extent permitted by applicable law, engaged in wholesaling activities a marketing and distribution allowance of up to 1.50% of the gross proceeds received from the Offering[.]

i. Conflicts of Interest

158. GPB Capital did not disclose in the GPB NYC Development PPMs that Schneider is the sole owner of Ascendant Capital.

159. After Ascendant Capital became a branch office of AAS, GPB Capital did not disclose in any GPB NYC Development offering materials that Gentile is a partial owner of AAS.

160. GPB Capital did not disclose in any GPB NYC Development offering materials that Schneider is also a partial owner of AAS with Gentile.

161. Massachusetts residents invested in GPB NYC Development after the formation of AAS.

ii. <u>Massachusetts Investors</u>

162. Seventeen Massachusetts residents made 13 separate investments in GPB NYC Development.

163. Massachusetts investors relied on PPMs and marketing materials issued by GPB Capital for GPB NYC Development in connection with their investments.

164. Massachusetts residents invested $1,204,000.00 in GPB NYC Development and paid $125,645.00 in commissions.

e. GPB Waste Management, LP

165. GPB Waste Management filed a Form D with the SEC on August 30, 2016. It subsequently filed amendments to the Form D on August 30, 2017 and April 25, 2018. The most recent Form D filing indicates that the total amount of the offering is indefinite, the total amount sold was $135,012,605.00 and that there were estimated sales commissions of $10,828,655.00. GPB Waste Management made notice filings with the Commonwealth of Massachusetts on February 1, 2017 and January 6, 2020.[7] There have been no amendments to the Form D after April 25, 2018.

[7] GPB Waste Management did not file a Form U-2 until January 6, 2020.

166. In connection with this private offering, GPB Waste Management released various PPMs. The first was released in May 2013 and the last was released in April 2018.

167. GPB Capital used various slideshows and presentations in connection with mass e-mails to financial professionals in order to market GPB Waste Management.

168. As with other funds, Ascendant Capital assisted in creating marketing materials, and typically transmitted materials to broker-dealer agents and investment adviser representatives.

169. Similar to its other offerings, GPB Capital transmitted slideshows, such as the 2016 copyrighted forty-page presentation titled *GPB Waste Management, LP Income-Producing Private Equity* to provide an overview of the fund and some of its highlights, such as the targeted distribution rate of 8%. Specifically, page nine of the presentation states that distributions are "based off cash flow from portfolio companies targeted at 8.0%[.]"

170. GPB Capital would frequently update and provide newer presentations to promote GPB Waste Management. The marketing materials would often be sent in connection with e-mails to financial professionals.

171. For example, a 2017 e-mail from Ascendant Capital to a broker-dealer agent provided an update on GPB Waste Management's acquisition of Five Star Carting Corporation specifically highlighting the fund's 8% "Projected Annual Distribution."

172. In addition, the Ascendant Capital representative attached two files to the e-mail: a 31-page presentation copyrighted 2017 titled *GPB Waste Management, LP – Class A* and a short two page "offering overview" of GPB Waste Management. These materials

disclose that "[f]unds [are] immediately committed" and that distributions are "[b]ased off cash flow from portfolio companies targeted at 8.0%[.]"

173. Ascendant Capital continued sending blast e-mails to firms to solicit investments in GPB Waste Management. A July 11, 2018 e-mail from Ascendant Capital contained a 27-page presentation for GPB Waste Management which repeated prior presentations stating that distributions are "[b]ased off cash flow from portfolio companies[.]"

i. *Misstatements and Omissions in Connection with the Offer, Purchase, and Sale of GPB Waste Management*

174. In addition to the PPMs, GPB Capital released a combination of audited financials and unaudited financials via Report of the Partnership updates for GPB Waste Management.

175. GPB Capital released its first set of audited financial for GPB Waste Management in 2017, along with a cover letter signed by Gentile.

176. The cover letter states, *inter alia,* that the audited financials are prepared in accordance with United States GAAP, as opposed to Investment Company GAAP. However, the cover letter also states that the quarterly Report of the Partnership financials are prepared in accordance with Investment Company GAAP. The audited financials are for the period of June 17, 2016 (commencement of operations) to December 31, 2016.

177. GPB Capital reported a net loss for the period of $984,880 in its audited financials. Despite the net loss, the audited financials report that the partnership paid $219,170 of distributions to limited partners.

178. On the final page of the audited financials, GPB Capital reports that GPB Waste Management had capital contributions of approximately $21,894,000 and made

distributions of about $519,722 to limited partners.

179. On June 27, 2018, GPB Capital released audited financials for GPB Waste Management for the year ended December 31, 2017. GPB Capital provided a cover letter with the financials signed by Gentile, in part to discuss the unaudited financials that were also provided.

180. According to the cover letter, the unaudited financials were provided in the form of Modified Investment Company GAAP. The cover letter further states that in this form of GAAP, investment income "also represents cash distributed during the period presented, even if in excess of the subsidiaries' underlying U.S. GAAP net income, provided that cash distributed does not decrease the Partnership's ownership percentage."

181. There are significant inconsistencies between the two sets of financials. For example, the unaudited financials state that net cash used in operating activities totaled $62,862,000, while the audited financials report that net cash used in operating activities totaled only $8,339,000. This represents a $54,523,000 difference between the unaudited and audited financials.

182. According to the 2017 unaudited financials for GPB Waste Management, the fund reported a total investment income of $5,658,000 and total expenses of $3,541,000, and therefore a net investment income of $2,117,000. The fund reported a net income of $4,468,000.

183. The unaudited financials also reported total distributions to limited partners of $4,411,000.

184. Per the audited financials, the fund reported a total net loss of $8,456,000, which includes a net loss to limited partners of $578,000.

185. Despite the reported net loss, the fund paid $4,411,000 in distributions to limited partners.

186. For 2017 GPB Waste Management had a coverage ratio of less than 0%, which meant that all distributions were made using investor contributions.

187. According to GPB Waste Management's audited financials from inception to year end 2017, the fund had a total net loss of $1,562,880, yet paid distributions to limited partners totaling $4,630,170, putting the fund's coverage ratio from inception to year end 2017 well below 0%.

188. Despite the audited financials for 2017 indicating that the fund had a net loss of $8,456,000, in 2018 Ascendant Capital still stated that the fund had a Net Investment Income (Loss) + Realized Gain (loss) of $1,336,701, $785,602, and $1,090,791 for the second, third, and fourth quarters of 2017 respectively, and an adjusted net income for 2017 of $2,478,000 for 2017.

189. Even when utilizing the 2017 adjusted net income of $2,478,000, GPB Capital still paid distributions to GPB Waste Management limited partners well in excess of its net income in 2017.

190. During this time, GPB Waste Management PPMs and marketing materials disclosed that distributions would be paid from portfolio company operations, and no other funds.

191. Despite these representations, GPB Waste Management's audited financials show the fund had net losses for cash flows from operating activities from inception at least until at least the end of 2017, but was still able to make distributions to investors.

ii. Massachusetts Investors

192. Eleven Massachusetts residents made nine separate investments in GPB Waste Management.

193. Massachusetts investors relied on PPMs and marketing materials issued by GPB Capital for GPB NYC Waste Management in connection with their investments.

194. Massachusetts residents invested $756,575 in GPB Waste Management and paid $86,106.06 in commissions.

D. Conflicts of Interest

a. Conflicts of Interest in Connection with Automotive Dealerships

195. LSG Auto is a limited liability company owned by Gentile and Lash. Gentile is the Managing Member of the GPB Capital, the general partner of the GPB Funds including GPB Holdings, GPB Automotive and GPB Holdings II.

196. Dealerships owned by GPB Capital's funds transferred assets to LSG Auto.

i. Car Executive 1 Dealerships

197. One of GPB Capital's auto dealership acquisitions was Nissan Dealership 1. Prior to its acquisition by GPB Capital, Car Executive 1 was the 100% owner.

198. On September 19, 2014, GPB Capital and Car Executive 1 entered into a Convertible Loan Agreement for $14,790,000 relative to Nissan Dealership 1, and an additional dealership, Nissan Dealership 2. This secured a majority ownership in each dealership. The convertible loan allowed GPB Capital to exercise its right to convert at any date.

199. Pursuant to a final master agreement, GPB Capital currently owns 100% of Nissan Dealership 1, in additional to several other dealerships purchased from Car Executive 1.

200. In the same transaction, GPB Capital also purchased Nissan Dealership 2, Nissan Dealership 3, Nissan Dealership 4, Nissan Dealership 5, and Nissan Dealership 6.

201. Prior to entering into the Convertible Loan Agreement, Nissan Dealership 1 began making payments to LSG Auto. For example, Nissan Dealership 1 wired LSG Auto $99,673 on July 9, 2014.

202. On September 3, 2014, Nissan Dealership 1 wired LSG Auto $250,610.88. LSG Auto then wired $105,000 to Lash via a third party on September 30. On January 16, 2015, GPB Capital entered into an agreement with Car Executive 1 to purchase Nissan Dealership 1.

203. GPB Capital did not disclose that payments from Nissan Dealership 1 were directed to a Gentile and Lash-owned entity, LSG Auto.

ii. Buick/GMC Dealership 1

204. In 2013, GPB Capital via GPB Automotive entered into a stock purchase agreement to acquire 50% of Buick/GMC Dealership 1. Concurrent with the stock purchase agreement, GPB Capital and Lash (at the time a GPB executive) acquired the right to make all management decisions for Buick/GMC Dealership 1.

205. GPB Capital and Lash then entered into an additional agreement, where GPB Capital assigned its shares to Lash. GPB Capital and Lash then entered into a convertible loan agreement for $2,000,000. Lash became the 100% owner of Buick/GMC Dealership 1 in September 2013.

206. Eventually, the plan was for Buick/GMC Dealership 1 to convert to a limited liability company, which would result in GPB Capital via GPB Automotive being an 85% owner, and Lash a 15% owner.

207. After execution of the 2013 agreements, Buick/GMC Dealership 1 directed money to LSG Auto.

208. On May 31, 2014, Buick/GMC Dealership 1 wrote a check for $14,451.20 to the order of LSG Auto. The check was deposited on June 4, 2014. The $14,451.20 deposit was the only activity in LSG Auto's Signature Bank account for the period of June 1, 2014, to June 30, 2014.

209. On July 1, 2014, Buick/GMC Dealership 1 issued a check to LSG Auto for $7,100.00. The check was deposited by LSG Auto on July 24, 2014.

210. Buick/GMC Dealership 1 also directed payments to LSG Auto via Vanguard Dealer Services.

211. In 2015, Buick/GMC Dealership 1 directed over $230,000 to LSG Auto in the form of 11 checks.

212. In 2016, Buick/GMC Dealership 1 directed $76,443 to LSG Auto. Buick/GMC Dealership 1 also issued a check on March 8, 2016 to LSG Auto for $20,000.

213. Buick/GMC Dealership 1 directed an additional $3,000 to LSG Auto in 2017.

214. From 2015 to 2017, Buick/GMC Dealership 1 paid LSG Auto at least $331,121.

215. GPB Capital did not disclose to investors that payments from Buick/GMC Dealership 1 went directly to Gentile via LSG Auto.

216. GPB Capital did not disclose payments from its dealership were directed to a related third party entity controlled by Lash and Gentle.

iii. Connecticut Dealership 1

217. LSG Auto owned 51% of the membership interests in Connecticut Dealership 1

218. GPB Automotive acquired Connecticut Dealership 1 on November 1, 2016.

219. Prior to its official acquisition by GPB Capital, Connecticut Dealership 1 entered into a $2,000,000 Promissory Note with GPB Lender dated January 1, 2015.

220. On the same day, Connecticut Dealership 1 entered into an Assignment Agreement with LSG Auto, where LSG Auto assigned its 51% ownership of Connecticut Dealership 1 to Connect Dealership 1 pursuant to a concurrent Redemption Agreement.

221. Connecticut Dealership 1 assumed LSG Auto's obligations to pay back an additional 2014 loan to GPB Lender.

222. Lash executed both the Assignment Agreement and Redemption Agreement on behalf of LSG Auto.

223. Prior to LSG Auto's acquisition, Connecticut Dealership 1 made periodic transfers to LSG Auto accounts.

224. Connecticut Dealership 1 continued to make transfers to LSG Auto up until its acquisition by GPB Capital.

225. GPB Capital did not disclose that Connecticut Dealership 1 made transfers to LSG Auto while it was controlled by GPB Capital.

226. GPB Capital did not disclose that LSG Auto had an ownership interest in Connecticut Dealership 1.

227. GPB Capital did not disclose that Connecticut Dealership 1 assumed LSG Auto's loan obligations.

228. GPB Capital did not disclose that GPB Lender loaned Connecticut Dealership 1

$2,000,000.

iv. LSG Auto Wholesale

229. LSG Auto is jointly owned by three entities: Jachirijo, GPB Lender, and Emdykycol.

230. Jachiriko and Emdykycol each own 33.3333333% of LSG Auto. GPB Lender owns 33.3333334%.

231. Gentile owns LSG Auto through his ownership of Jachirijo. Lash owns LSG Auto through his ownership of Emdykycol.

232. LSG Auto is not identified as a related third-party in any GPB Fund disclosure document, nor is it identified in any GPB Fund marketing materials.

v. GPB Lender

233. In addition to auto dealerships, other entities that received money from GPB entities transferred money to LSG Auto.

234. GPB Lender, which received funds from at least GPB Capital and GPB Automotive, transferred money to LSG Auto.

235. GPB Capital also used LSG Auto bank accounts to pay GPB Capital contractors. Prior to GPB Employee 1's employment with GPB Capital, GPB Employee 1 worked at Ascendant Capital. During this time, GPB Employee 1 did consulting work for GPB Capital.

236. GPB Employee 1 was paid $4,000 a month for his consulting work before he was employed full-time by GPB Capital. He was paid from LSG Auto bank accounts.

237. LSG Auto liquidated its Signature Bank account in December 2016. On information and belief, there has been no further activity in the LSG Auto bank account.

238. Despite having the "GPB" name, GPB Lender is not an entity under the purview of GPB Capital.

239. GPB Lender's general partner is GPB Lender Holdings, whose sole managing member is Gentile.

240. GPB Lender is related to GPB Capital Holdings through Gentile.

241. GPB Capital does identify GPB Lender directly in any of its funds' PPMs. Rather, it identifies GPB Lender as a potential related party in the firm's ADV Part 2B for Gentile.

242. However, GPB Lender is discussed in the audited financials for GPB Capital, GPB Holdings, and GPB Automotive.

243. Typically, GPB Lender would be involved in making loans to a fund, in order for a fund to make an acquisition. For example, according to GPB Holdings audited financials for 2013:

> In connection with the purchase of the dealerships, GPBHA entered into a secured loan payable agreement with GPB Lender LLC ("GPB Lender") [...] The loan is secured by a pledge of the equity in the two dealerships. As of December 31, 2013, the principal balance of the loan was $1,500,000 and the unpaid accrued interest was $15,000.

244. GPB Holdings allegedly repaid the loan in full in 2014.

245. GPB Capital's audited financial statements for the year ended December 31, 2015, also discuss loans from GPB Lender, and state:

> [GPB Capital] has entered into promissory note agreements for amounts due to GPB Lender, LLC to be used for capital improvements. Such amounts due to GPB Lender, LLC bear interest at 6.5% per annum and are due on demand. As of December 31, 2015 $950,000 in principal and $5,146 an accrued interest were due to GPB Lender, LLC.

246. GPB Automotive's audited financials for year-end December 31, 2016, also

identify loans to GPB Lender in connection with the Connecticut Dealership 1 acquisition, stating:

> [GPB Automotive] was assigned a 100% of the interests in a retail used car entity at no cost but with the requirement to make a capital contribution to the entity of $4,439,000 for working capital purposes and to repay a $2,000,000 loan to an affiliate, GPB Lender, LLC.

247. GPB Lender also sent and received funds to LSG Auto.

248. On August 5, 2014, GPB Lender wired LSG Auto $800,000. The corresponding wire report does not provide an explanation for the wire.

249. At the end of August 2014, LSG Auto wired GPB Lender $47,046.58.

250. On October 15, 2014, LSG Auto wired GPB Lender $18,838.36. LSG Auto wired an additional $13,526.94 on October 23, 2014 and $16,666.67 on October 30, 2014.

251. LSG Auto wired a further $100,000 to GPB Lender on January 29, 2015.

252. GPB Capital did not disclose in GPB Holdings or GPB Automotive's PPMs or marketing materials that a Gentile-owned entity would provide interest-bearing loans to the funds.

253. GPB Capital did not disclose that GPB Lender would send and receive money to LSG Auto.

b. Conflicts of Interest with Related-Party Consultants

254. GPB Capital frequently engages law firms to perform work. One firm engaged was a New York law firm affiliated with Gentile's wife ("New York Small Firm"). New York Small Firm's beneficial owners were GPB Capital CFO 2 and Gentile's wife. GPB Capital CFO 2 and Gentile's wife are siblings. Gentile's wife was a partner of the law firm. GPB Capital CFO 2 did not serve as GPB Capital's CFO until after New York Small Firm dissolved.

255. New York Small Firm performed services for GPB Capital and received compensation for such services.

256. GPB Capital paid New York Small Firm a monthly fee of over $12,129 in 2016 and 2017.

257. GPB Capital also paid New York Small Firm through LSG Auto bank accounts. On March 29, 2016, an LSG Auto account wired $12,000 to New York Small Firm.

258. As of March 24, 2017, GPB Capital has paid New York Small Firm at least $145,548 in "consulting" fees. At the time, Gentile's wife was the 100% owner of New York Small Firm.

259. In addition, Gentile's wife was paid $91,291 individually as a "payroll expense."

260. GPB Capital attempted to classify payments to Gentile's wife's law firm as employee compensation.

261. In a May 3, 2017, e-mail to Gentile, a GPB Capital executive wrote "along with classifying guaranteed distributions as compensation you should also classify [New York Small Firm] and Hubbard College as compensation. [Gentile's wife's] services to the company come through payroll as an employee."

262. GPB Capital CFO 2 eventually became GPB Capital's CFO after Former GPB CFO departed.

263. GPB Capital did not disclose that New York Small Firm would perform work for GPB Capital.

264. GPB Capital did not disclose that it paid Gentile's wife "consulting" fees.

E. <u>Investor Impact</u>

265. Overall, more than 180 Massachusetts residents invested over $14,000,000.00 in

the GPB Funds.

VIII. VIOLATIONS OF LAW

Count I – Violations of MASS. GEN. LAWS ch. 110A, § 101(2)

266. Section 101 of the Act provides, in pertinent part:

> It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly
>
> […]
>
> (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading[.]
>
> MASS. GEN. LAWS ch. 110A, § 101(2).

267. The conduct of Respondent, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101(2).

Count II – Violations of MASS. GEN. LAWS ch. 110A, § 101(3)

268. Section 101 of the Act provides, in pertinent part:

> It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly
>
> […]
>
> (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
>
> MASS. GEN. LAWS ch. 110A, § 101(3).

269. The conduct of Respondent, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101(3).

IX. STATUTORY BASIS FOR RELIEF

Section 407A of the Act provides, in pertinent part:

> (a) If the secretary determines, after notice and opportunity for hearing, that any

> person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

X. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such "action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A]."

XI. RELIEF REQUESTED

The Enforcement Section of the Division requests that an order be entered:

A. Finding as fact the allegations set forth in Section VII above;

B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;

C. Requiring Respondent to permanently cease and desist from further conduct in violation of the Act and Regulations;

D. Censuring Respondent;

E. Requiring Respondent to provide a verified accounting for those losses attributable to the alleged wrongdoing;

F. Requiring Respondent to make offers of recession to all residents of the Commonwealth who purchased securities sold in violation of the Act;

G. Requiring Respondent to disgorge all profits, direct or indirect compensation, and remuneration received in connection with the alleged wrongdoing;

H. Permanently barring Respondent from registering in the Commonwealth as, or associating with, an investment adviser, investment adviser representative, broker-dealer, broker-dealer agent, Securities and Exchange Commission registered investment adviser, investment adviser excluded from the definition of investment adviser, issuer, issuer agent, or a partner, officer, director, or control person of any of the above;

I. Imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and

J. Taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION

By and through its attorneys,

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Dated: May 27, 2020