

APPENDIX A

SUMMARY (Paragraphs 1-4 of Complaint)

Paragraph 1 **Allegation:** Schindler “created and managed two fraudulent oil-and-gas offerings” and James “co-created the second Rockwell Energy fund and co-managed it for a period of several months.”

Conclusory allegation of a fraudulent fund.

Paragraph 2 **Allegation a:** “Shindler and James made material misrepresentations and omitted material facts concerning the profitability of the funds, the nature and extent of the investments that the funds had made or intended to make, and the use of investor proceeds.”

Conclusory allegation of misrepresentations.

Allegation b: “In reality, the first fund owned no oil-and-gas properties when it began accepting investors, and the second fund has never acquired any producing oil-and-gas properties.”

Allegation of fraud fails by reference to entire complaint and PPMs.

See Fund 1 PPM at page 1: “The General Partner, Rockwell Energy of Texas, LLC, currently owns producing and non producing properties in Texas & Oklahoma.”

See Fund 1 PPM at page 25: “**MANAGEMENT - THE GENERAL PARTNER** Management of the Limited Partnership will be conducted by the General Partner, Rockwell Energy of Texas, LLC.

Ronald J. Abercrombie”

Compare: Complaint at paragraph 23:

“In fact, those interests were not owned by Fund I; rather, they were owned by a former business partner of Shindler,” *i.e.*, R. J. Abercrombie

As shown by these passages and by the SEC’s admission that R.J. Abercrombie [who was a part owner of the General Partner] owned the properties, this allegation fails by reference only to the Complaint and the PPM, which has been made part of the Complaint by the SEC’s frequent but selective quotations from it.

Paragraph 3

Allegation a: “The oil-and-gas properties that the funds have invested in never generated sufficient production revenue to cover distribution payments to investors at the 1.5% monthly rate, yet Shindler made the monthly income distributions at the targeted rate for a number of months.”

Pleads fraud by hindsight.

Additionally, the fact that the funds did not perform as hoped cannot constitute fraud. In fact, the Both PPMs warned potential limited partners that the price of gas could fluctuate and materially impact the ability of the Partnerships to pay the targeted returns.

See first page of marketing materials accompanying and made part of the Fund 1 PPM: *“Assumptions based on a minimum price of \$60.00 barrel of oil and \$6.00 mcf of natural gas”* **and third page of marketing materials accompanying and made part of the Fund 2 PPM:** *“This includes forward looking statements. * * * . . . these statements involve risks and uncertainties that may cause actual future activities and results to be materially different from those suggested or described herein.”*

See also Fund 1 PPM at page 18: “POSSIBLE CHANGES IN THE MARKET PRICE OF OIL & GAS - Prevailing prices for oil and gas in the world markets have seen significant variations in recent years. No predictions can be made with reasonable certainty as to what future changes, either upward or downward, may occur in prevailing prices for oil and gas in the United States. *Projections are currently based on a natural gas price of \$6.00 per thousand cubic feet*, while barrel of oil prices are calculated at \$60.00.” (Emphasis added.); **and at page 19: “Volatile Oil and Gas Prices Can Materially Affect The Limited Partnership** The Limited Partnership's future financial condition and results of operations will depend upon the prices received for the Limited Partnership's oil and natural gas production and the costs of acquiring, finding, developing and producing reserves. Prices for oil and natural gas are subject to fluctuations in response to relatively minor changes in supply, market uncertainty and a variety of additional factors that are beyond the control of the General Partner or the Limited Partnership.

See also Fund 2 PPM at pages 12-13: “SPECIFIC RISKS OF THIS PROGRAM Risk of Investments: The Partnership invests in exploration and developmental drilling projects and production properties developed and operated by unrelated third parties. These investments are inherently speculative. Accordingly, an investment

in the Partnership involves a greater degree of risk than an investment in a fund or partnership which includes a broader range of investments. Moreover, events may occur which affect oil and gas commodity prices more dramatically than the prices or values of other investments.” “{Fluctuations [in gas prices] could result in the Partnership earning less revenue, **resulting in lower or no distributions to the Partners.** (Emphasis added.)

Allegation b. “To do so, he relied in part on “investment” income other than production revenue, including payments from sham transactions designed specifically to artificially create the promised returns.”

Conclusory allegation of “sham” transactions.

Additionally, the entirety of the offering materials, which this Court may consider on a motion to dismiss, demonstrates that claims of securities fraud fail. The PPMs and Partnership Agreements specifically provide the General Partner with broad discretion in the management of the Funds, and the literature accompanying the offering materials for both Funds specifically states that the respective Fund’s goals are to provide “monthly cash flow” and “pass thru [sic] tax benefits.” Additionally, both PPMs specifically authorize the General Partner to make loans with partnership assets: *See* Fund 1 PPM at page 15: “LOANS AND BORROWING On behalf of the Limited Partnership, and without a vote of the Limited Partners, **the General Partner will have the authority to loan Limited Partnership funds.** The General Partner will have the authority to pledge Limited Partnership properties and assets to secure borrowings. While borrowings are intended to increase the quality of the Limited Partnership's assets, the use of borrowings creates the risk that assets may be foreclosed upon if borrowings cannot be repaid. The use of borrowings also will delay or reduce distributions to the Limited Partners from assets subject to borrowings.” (Emphasis added.) ***See also* Fund 2 PPM at page 10** [identical language].

Allegation c: “Shindler also converted some investor funds to personal and other improper uses, and some of the ‘returns’ he paid investors were made from the principal payments of other investors (*i.e.*, Ponzi payments).”

Conclusory allegations, which do not allege fraud in connection with the purchase or sale of a security.

Paragraph 4

No allegations of securities fraud.

JURISDICTION AND VENUE (Paragraphs 5-9 of the Complaint)

No allegations of securities fraud.

DEFENDANTS (Paragraphs 10-16 of the Complaint)

No allegations of securities fraud.

FACTS (Paragraphs 17-53 of the Complaint)

Paragraph 17 **No allegations of securities fraud.**

Paragraph 18 **No allegations of securities fraud.**

Paragraph 19 **Allegation:** “According to offering materials, PDS technology ‘results in an immediate increase in production of 40%,’ and the ‘production and revenue increase . . . mitigat[es] risk completely.’ The statement that the device ‘mitigates’ risk ‘completely’ is either misleading or patently false.”

Allegedly misleading statement taken out of context:

It comes from the third page of the marketing material from Croft incorporated into the offering materials for Fund 1 and the fourth page of the marketing material from Croft incorporated into the offering materials for Fund 2, and explains the operation of the Croft PDS units. The entire discussions on those pages are based upon a hypothetical “well with a net current production of 100,000 cubic feet.” The discussion of this exemplar, hypothetical well contains several explanatory statements, including:

- That recovery of gas by PDS units on most such wells is increased by “approximately 40% . . .”
- That a TEG unit “wastes up to 40% of the natural gas being produced . . .”
- That “a typical well moving 100,000 cubic feet of gas per day would use approximately 40,000 cubic feet of that production just to operate.

Allegedly misleading statement must be read in the context of the risk being discussed—that of interfering with the gas reservoir. Indeed, the quoted statement obviously refers to the risk of “touching” (or interfering with/modifying in some way) the subject oil or gas reservoir and/or the risk of having to undertake expensive work-over procedures, as discussed on the same page.

The PPMs contain substantial warnings of the highly speculative nature of the partnership units and the high degree of risk associated with holding a partnership interest:

THIS INVESTMENT IS SUITABLE ONLY FOR PERSONS WHO HAVE SUBSTANTIAL FINANCIAL RESOURCES AND MEET CERTAIN SUITABILITY REQUIREMENTS, WHO DO NOT ANTICIPATE THAT THEY WILL BE REQUIRED TO LIQUIDATE ANY INVESTMENT ACQUIRED HEREUNDER IN THE FORESEEABLE FUTURE, AND WHO UNDERSTAND OR HAVE BEEN ADVISED REGARDING ANY RISK FACTORS ASSOCIATED WITH THIS OFFERING. THIS INVESTMENT IS HIGHLY SPECULATIVE AND SUBJECT TO SUBSTANTIAL RISKS. IT SHOULD BE CONSIDERED BY, AND IS SUITABLE ONLY FOR THOSE PERSONS WHO CAN AFFORD TO ASSUME A HIGH DEGREE OF RISK AND WHO CAN AFFORD TO SUSTAIN A TOTAL LOSS OF THEIR INVESTMENT, AS WELL AS A TOTAL LOSS OF ANY ANTICIPATED TAX BENEFITS. SALES WILL BE MADE ONLY TO PERSONS MEETING CERTAIN STANDARDS OF INCOME AND NET WORTH. SEE "TERMS OF THE OFFERING."

See Fund 1 PPM at page and 2 PPM at page i.

See also Fund 1 PPM at pages 4-7 and, especially at page 14, on which appears: "All contemplated activities of the Limited Partnership are the highest risk and, as such, investors could lose all their money." (Emphasis added.)

See also Fund 2 PPM at pages i-x and 12-22, especially at page 12, on which appears: "An investment in the Partnership involves a high degree of financial risk, and accordingly a prospective investor should consider all the risk factors described below. This offering is intended only for persons/institutions who can afford to lose all, or substantially all, of their investment." (Emphasis added.)

Paragraph 20

No allegations of securities fraud.

Paragraph 21

Allegation: "The PPM falsely states that RET owned working interests in two producing gas wells, and that Fund I intended to purchase those interests and outfit the wells with PDS technology. In reality, in June 2008, at the time these representations were made to investors, RET did not own any interests in either well, and only one of the two was producing. Fund I never acquired any interest in the non-producing well because, according to Shindler, it turned out to be a dry hole."

As shown by the passages discussed above regarding Paragraph 2, Allegation b, this allegation fails by reference only to the Complaint and the PPM, which has been made part of the Complaint by the SEC's frequent but selective quotations from it.

Additionally, an allegation of failing to follow through on a future intent does not state a cause of action for securities fraud.

Paragraph 22

Allegation: “In addition, the offering materials include a ‘case study’ that describes the purported benefit of PDS technology based on anticipated production figures for another well, and claims that the well is ‘company owned.’ In reality, neither RET nor Fund I owned the well.

Reference to the entirety of offering materials shows that the statement does not constitute securities fraud: While the Maco Stewart #1 Well was used as a “case study” in the materials explaining the Croft PDS units, there is no mention of that well in the PPM for Fund 1; additionally, it provides that the General Partner reserves the right to substitute other oil and gas prospects “if the General Partner believes in [its] sole discretion that such substituted prospects are in the best interest of the Limited Partnership.” *See Fund 1 PPM at page 5.*

Paragraph 23

Allegation: “The offering materials also falsely claim that Fund I ‘currently owns’ an ‘inventory of 20 wells,’ with which the fund ‘will be able to increase its monthly distributions’ as it adds new wells from its inventory to the program. In fact, those interests were not owned by Fund I; rather, they were owned by a former business partner of Shindler. Fund I never acquired any interests in those wells.”

As shown by the passages discussed above regarding Paragraph 2, Allegation b, this allegation fails by reference only to the Complaint and the PPM, which has been made part of the Complaint by the SEC's frequent but selective quotations from it.

Additionally, the failure to acquire interests in particular wells cannot constitute securities fraud in light of the statement that the General Partner reserves the right to substitute other oil and gas prospects “if the General Partner believes in [its] sole discretion

that such substituted prospects are in the best interest of the Limited Partnership.” *See Fund 1 PPM at page 5.*

Paragraph 24

Allegation: “Fund I instead acquired well interests from others with whom Shindler had had prior business dealings, including James. By August 2008, Fund I had acquired working interests at four different gas well sites. Between the four well sites, Fund I owns fractional interests in 14 different gas wells. RET has deployed only one PDS unit, which services four wells, all at the same site.”

None of these statements constitutes a sufficient allegation of securities fraud. *See Fund 1 PPM at page 5*, in which the General Partner reserves the right to substitute other oil and gas prospects “if the General Partner believes in [its] sole discretion that such substituted prospects are in the best interest of the Limited Partnership.”

Paragraph 25

Allegation: “In the Fund I offering materials, Shindler told investors that the fund ‘will payout 18% annually which is paid out 1.5% monthly, from the date of investment,’ and that returns would climb as high as 30% ‘as additional production is brought online.’ Shindler never disclosed to investors that there existed no reasonable basis on which he could project such returns.”

Insufficient allegation of securities fraud, especially light of substantial disclosures that the Fund’s ability to pay 18% depended upon a wide variety of factors and risks. *See discussion above at Paragraph 19.*

Paragraph 26

Allegation: “As promised, Shindler started paying investors 1.5% monthly returns soon after they invested in Fund I. The gas well interests that Fund I owned, however, never generated sufficient production revenue to support such high returns.”

No allegations of securities fraud. Again, an alleged failure of a partnership to generate the targeted returns does not constitute a material misrepresentation.

Paragraph 27

Allegation: “At full subscription, the fund needed \$52,500 in monthly production revenue to meet its distribution commitments. Fund I was fully subscribed by October 2008, but was earning, on average, only about \$20,000 in monthly production revenue. Fund I never earned more than \$42,675 in production revenue in a single month, and, since September 2008, has not earned more than \$18,000 in a single month.”

No allegations of securities fraud. Again, an alleged failure of a partnership to generate the targeted returns does not constitute a material misrepresentation.

Paragraph 28

Allegation: “Nevertheless, Shindler sent investors monthly distribution payments at the promised rate of return up until December 2008, at which time he cut the payments to roughly 1% monthly. Shindler told investors at the time that the drop was due to price declines in the market for natural gas. In reality, Fund I’s assets never performed well enough to support 1% monthly returns, let alone the 1.5% returns originally promised.”

Does not plead material misrepresentation in connection with purchase or sale of security. See discussion in reference to Paragraph 3.

Paragraph 29

Allegation: “In an apparent effort to bolster the fund’s returns, Shindler caused Fund I to make two ‘investments’ that were unrelated to interests in oil-and-gas properties, and which were not disclosed to investors as part of the fund’s investment strategy.”

Allegation fails with reference to the entirety of the offering materials. See Fund 1 PPM at page 5: “The Limited Partnership may do each and everything necessary and suitable for the accomplishment of the primary purpose *or any other purpose which a Limited Partnership may accomplish* which shall, at any time, appear conducive to, or expedient for, the protection or benefit of this Limited Partnership. Specifically, the PPM authorizes the General Partner to make loans with partnership assets.”

Paragraph 30

Allegation: “Shindler used investor funds to make a loan of \$130,000 to an entity co-owned by James’ brother. The entity agreed to pay RET a monthly interest payment of \$3,800, which amounts to an annual interest rate of 35%.”

No allegation of securities fraud.

Additionally, the PPM discloses that loans were contemplated: See Fund 1 PPM at page 15: “LOANS AND BORROWING On behalf of the Limited Partnership, and without a vote of the Limited Partners, *the General Partner will have the authority to loan Limited Partnership funds.* The General Partner will have the authority to pledge Limited Partnership properties and assets to secure borrowings. While borrowings are intended to increase the

quality of the Limited Partnership's assets, the use of borrowings creates the risk that assets may be foreclosed upon if borrowings cannot be repaid. The use of borrowings also will delay or reduce distributions to the Limited Partners from assets subject to borrowings.” (Emphasis added.)

Paragraph 31

Allegation: “Shindler designed the transaction to generate sham revenue with which to service the monthly income payments Fund I promised its investors. In documents Shindler prepared for and provided to the Commission, he falsely categorized the interest payments from the loan as production revenue.”

Conclusory allegation of “sham” revenue.

Additionally, as discussed in reference to Paragraph 30, the PPM discloses that loans were contemplated.

Paragraph 32

Allegation: “Shindler also put \$100,000 of investor money in a commodities hedge fund that, from September 2008 to January 2009, purported to generate monthly returns to Fund I ranging from 4.5% to 15%. Shindler never disclosed to investors, through the PPM or otherwise, that returns on their investments would be generated through loans to third parties, or that Fund I would invest in anything other than oil-and-gas properties.”

Insufficient allegation of securities fraud, especially considered in context of offering materials, which this Court may consider with the motion to dismiss. See discussion of paragraphs 30 and 31.

Paragraph 33

Allegation: “Shindler converted investor proceeds to improper personal uses as well. Under the PPM for Fund I, the general partner is entitled to management fees equal to 10% of the gross monthly revenue generated by the fund. As of January 2009, Fund I had received roughly \$128,000 in production revenue, of which Shindler would be entitled to \$12,800 in management fees. Shindler, however, paid himself more than \$25,000, and spent another \$15,000 on travel, meals, and entertainment.”

No allegation of material misrepresentations in connection with purchase or sale of securities.

Moreover, again, the offering materials demonstrate that such expenditures were allowed: See Fund 1 PPM at page 26: REIMBURSEMENT TO THE GENERAL PARTNER - The Limited Partnership will reimburse the General Partner for any and

all costs and expenses incurred by it on behalf of the Limited Partnership. * * * **AFFILIATE COMPENSATION** - The General Partner may be affiliated with companies that may provide services to the Limited Partnership. If services are provided by such affiliates, such as transportation, lending of funds or any other related services, such affiliate(s) shall be paid as if such service were rendered by any unrelated third party by supplying invoices in amounts determined at the discretion of the affiliate.

See also Limited Partnership Agreement (included in the PPM) for Fund 1 at page 9: “The General Partner shall be entitled to charge the Limited Partnership, and to be reimbursed by it for any and all reasonable costs actually paid or incurred by the General Partner in connection with the Limited Partnership's activities, operation, and business affairs, *including travel*, insurance, etc.” (Emphasis added.)

Paragraph 34

Allegation: “In addition, Shindler made some questionable and possibly improper payments from investor funds on deposit with Fund I. He caused Fund I to pay: 1) \$60,000 to his mother, his wife, and his father for alleged ‘administrative’ services; 2) \$100,000 to a company Shindler owns for which Fund I received no known benefit; and 3) over \$45,000 to defendant James for alleged ‘consulting’ services.”

No allegation of material misrepresentations in connection with purchase or sale of securities.

Moreover, again, the offering materials demonstrate that such expenditures were allowed: *See* discussion above in reference to Paragraph 33; *see also* Limited Partnership Agreement at page 8, which gives the General Partner the power “[t]o employ such employees, consultants, accountants, General Partners, agents appraisers, attorneys and other persons in the operation, conduct, administration and supervision of the business of the Limited Partnership.”

Paragraph 35

Allegation: “In addition, Shindler used \$20,000 of investor proceeds from RET’s deposit account to fund distribution payments to investors. In so doing, he paid investors ‘returns’ using their own money instead of production revenue – *i.e.*, Ponzi payments.”

Apart from the fact that this allegation is simply false (a point Rockwell acknowledged is not before this Court on a motion to

dismiss), it fails to allege a material misrepresentation in connection with the purchase or sale of securities.

Paragraph 36 No allegation of securities fraud.

Paragraph 37 No allegation of securities fraud.

Paragraph 38 **Allegation:** “Describing the fund’s ‘investment objective,’ the PPM for Fund II falsely [sic] states that it ‘will open with two wells in the inventory of target acquisitions’ and that ‘this will ensure the Fund is profitable and has a positive cash flow from inception.’ The PPM for Fund II also identifies, as a separate investment purpose, purchasing oil-and-gas leases, either to drill wells for the fund or to resell to other oil companies.”

No allegation of securities fraud, as “target acquisitions” are simply that. And as additionally disclosed in the PPM, “[t]he General Partner may commence operations at any time that the General Partner believes, at the General Partner’s sole discretion, that the Limited Partnership has received sufficient capital to commence this or any other oil projects. In the event that the capitalization obtained proves insufficient to proceed with the initial investment objectives, the General Partner may substitute other oil projects.” Fund 2 PPM at page 21.

Paragraph 39 **Allegation:** “Both Shindler and James reviewed and approved the offering materials that REM prepared for investors in Fund II. Those materials offered investors the same returns Shindler touted to investors in Fund I – 18% annual returns, paid out in increments of 1.5% per month. Shindler and James never disclosed to investors that there existed no reasonable basis on which they could project such returns.”

Insufficient allegation of securities fraud, especially light of substantial disclosures that the Fund’s ability to pay 18% depended upon a wide variety of factors and risks. See discussion above at Paragraph 19.

Paragraph 40 **Allegation:** “In fact, Fund II never invested in any gas wells or sought to benefit from PDS technology. Rather, the only investment it ever made was in a structured transaction that Shindler engineered to generate sham revenue with which to pay Fund II investors.”

Pleads fraud by hindsight. Conclusory allegation of “sham” revenue.

Additionally, the face of the Complaint belies the allegation of no investment in oil and gas properties: *see* Complaint at paragraph 44: “Under the terms of the agreement, however, TOEI was ultimately entitled to recover back from Fund II the full \$147,500 in payments. ***The refund is to come from the proceeds of the sale of the oil-and-gas lease***, and is to be paid to TOEI before any returns are paid to Fund II.” (Emphasis added.)

See also Fund 2 PPM at page 1: The Partnership may also purchase oil and gas leases with potential new reserves found through exploration ***or purchase leases bought speculatively to hold and then resell to other oil companies while retaining an interest***. (Emphasis added, demonstrating that limited partners were advised that Fund 2 might not invest in any gas wells or seek to use PDS technology.)

Paragraph 41

No allegation of securities fraud.

Paragraph 42

Allegation: “Pursuant to the transaction, James entered into an agreement with TOEI 2008-3 LLC (“TOEI”) – an entity controlled by a business associate – under which James agreed to pay TOEI \$500,000 for the purported purpose of acquiring oil-and-gas leases and royalty interests. James simultaneously assigned 75% of his interest in the agreement to Fund II, and reserved to himself the remaining 25%. Fund II made the \$500,000 payment directly to TOEI, with no financial contribution by James. TOEI used \$375,000 of the payment to purchase a 1,500 acre lease. Under the terms of the agreement and assignment, Fund II, TOEI, and James would split the profits from any eventual sale of the lease.”

No allegation of securities fraud.

Implied allegations of affiliate transactions do not state a claim for securities fraud. *See* Fund 2 PPM at page 11: The Partnership may purchase and sell assets to and from entities partially owned or controlled by officers and directors of REM and affiliated entities of REM. The Partnership and these individuals will endeavor to purchase and sell assets at their fair market value.
* * * **AFFILIATE COMPENSATION** The General Partner may be affiliated with companies that may provide services to the Limited Partnership. If services are provided by such affiliates, such as transportation, lending of funds or any other related services, such affiliate(s) shall be paid as if such service were rendered by any unrelated third party by supplying invoices in amounts determined at the discretion of the affiliate.”

Paragraph 43

Allegation: In addition, under the terms of the agreement, TOEI agreed to make an initial payment back to James of \$12,500 followed by 9 monthly payments of \$15,000 each. James assigned these payments to Fund II, and Shindler used them to make distributions to Fund II investors.

No allegation of securities fraud.

Paragraph 44

Allegation: “In communications with investors, Shindler falsely characterized this arrangement as TOEI’s agreement to “pay [Fund II] 18% per year for nine months . . . in consideration for the [\$500,000] investment.” Under the terms of the agreement, however, TOEI was ultimately entitled to recover back from Fund II the full \$147,500 in payments. The refund is to come from the proceeds of the sale of the oil-and-gas lease, and is to be paid to TOEI before any returns are paid to Fund II. The \$147,500 in payments from TOEI to Fund II is, therefore, not a return on investment, but rather a loan transaction.”

No allegation of securities fraud as no allegation of a material misrepresentation made in connection with the purchase or sale of the limited partnership interests.

Implied assertion that a loan constituted fraud on investors fails by reference to the offering materials: *See Fund 2 PPM at page 10: LOANS AND BORROWING* On behalf of the Limited Partnership, and without a vote of the Limited Partners, the *General Partner will have the authority to loan Limited Partnership funds.* The General Partner will have the authority to pledge Limited Partnership properties and assets to secure borrowings. While borrowings are intended to increase the quality of the Limited Partnership's assets, the use of borrowings creates the risk that assets may be foreclosed upon if borrowings cannot be repaid. The use of borrowings also will delay or reduce distributions to the Limited Partners from assets subject to borrowings. (Emphasis added.)

Paragraph 45

Allegation: “The sole purpose of the payments from TOEI was to fund income distributions to investors. With James’ assistance, Shindler structured the transaction specifically to generate payment amounts that met or exceeded 1.5% monthly returns on the amount under investment by Fund II at the time. James terminated the transaction with TOEI after the Commission’s staff questioned Shindler about it.”

No allegation of securities fraud.

Paragraph 46

Allegation a: “In addition to entering into the fraudulent transaction with TOEI, Shindler made some questionable and possibly improper payments from investor funds on deposit with Fund II. For example, Shindler paid almost \$60,000 to a company he owns for which Fund II received no known benefit. Shindler paid more than \$56,000 to his mother for alleged ‘administrative’ services.”

No allegation of material misrepresentation in connection with purchase or sale of limited partnership interests.

Additionally, reference to offering materials demonstrates such payments authorized. See Fund 2 PPM at page 11: AFFILIATE COMPENSATION The General Partner may be affiliated with companies that may provide services to the Limited Partnership. If services are provided by such affiliates, such as transportation, lending of funds or any other related services, such affiliate(s) shall be paid as if such service were rendered by any unrelated third party by supplying invoices in amounts determined at the discretion of the affiliate. * * * **EXPENSES** The day-to-day operating expenses of the Partnership, including rental of office space, salaries for personnel, use of information technologies, and fees for clerical and bookkeeping services will be reimbursed to REM by the Partnership.

Allegation b: “In addition, he paid \$14,000 to a plastic surgeon, \$3,500 to a ski resort in Vail, Colorado, \$6,500 to settle a debt owed by Fund I, and \$12,000 for five LCD televisions, and TV and satellite installation.

No allegation of a material misrepresentation in connection with the purchase or sale of limited partnership interests.

Additionally, the Complaint ignores the fact that the offering materials authorize a management fee to REM; there is not allegation that such personal expenditures exceeded the management fee. *See* Fund 2 PPM at page 10: **MANAGEMENT FEES** The General Partner shall receive an amount equal to ten percent (10%) of the gross capital raised [according to the Complaint at paragraph 17, a total of at least \$200,000], of the Limited Partnership as a management fee for conducting the day-to-day business activities of the Limited Partnership

Paragraph 47

No allegation of securities fraud.

Paragraphs 48-53

Relate only to “Rockwell salesmen” and do not contain any allegations of securities fraud by Rockwell Defendants.

FIRST CLAIM VIOLATION OF SECTION 10(b) AND RULE 10b-5 (Paragraphs 54-58 of the Complaint)

Paragraph 54 **No allegation of securities fraud.**

Paragraph 55 **Allegation:** “Defendants RET, REM, Shindler, and James, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.”

This is simply a recitation of the statute without the particularity required in pleading securities fraud. Moreover, because the factual allegations in paragraphs 17-53 do not provide the required particularity or otherwise are insufficient, for the reasons discussed above in connection with each such paragraph. The paragraph also employs prohibited group pleading.

Paragraph 56 **Allegation:** “As a part of and in furtherance of their scheme, defendants RET, REM, Shindler, and James, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in Paragraphs 1 through 53, above.”

This, too, is simply a recitation of the statute without the particularity required in pleading securities fraud. Moreover, because the factual allegations in paragraphs 17-53 do not provide the required particularity or otherwise are insufficient, for the reasons discussed above in connection with each such paragraph. Moreover, there is no identification of the alleged “other correspondence and oral presentations.”

Paragraph 57 **Allegation:** Defendants RET, REM, Shindler, and James made the referenced misrepresentations and omissions knowingly or with severe and reckless disregard of the truth.

Again, a recitation of the statute without particularity required. Also, the allegation employs group pleading.

Paragraph 58 **Allegation:** “For these reasons, defendants RET, REM, Shindler, and James have violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].”

Conclusory statement of violation.

SECOND CLAIM VIOLATIONS OF SECTION 17(A) OF THE SECURITIES ACT (Paragraphs 59-63 of the Complaint)

Paragraph 59 **No allegation of securities fraud.**

Paragraph 60 **Allegation:** “Defendants RET, REM, Shindler, and James, directly or indirectly, singly, in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.”

This is simply a recitation of the statute without the particularity required in pleading securities fraud. Moreover, because the factual allegations in paragraphs 17-53 do not provide the required particularity or otherwise are insufficient, for the reasons discussed above in connection with each such paragraph. The paragraph also employs prohibited group pleading.

Paragraph 61 **Allegation:** “As part of and in furtherance of this scheme, defendants RET, REM, Shindler, and James, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material fact and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those statements and omissions set forth in paragraph 1 through 53 above.”

This, too, is simply a recitation of the statute without the particularity required in pleading securities fraud. Moreover, because the factual allegations in paragraphs 17-53 do not provide the required particularity or otherwise are insufficient, for the reasons discussed above in connection with each such paragraph. Moreover, there is no identification of the alleged “other correspondence and oral presentations.”

Paragraph 62

Allegation: “Defendants RET, REM, Shindler, and James made the referenced misrepresentations and omissions knowingly or with severe and reckless disregard of the truth.”

Again, a recitation of the statute without particularity required. Also, the allegation employs group pleading.

Paragraph 63

Allegation: “For these reasons, defendants RET, REM, Shindler, and James have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].”

Conclusory statement of violation.

THIRD CLAIM VIOLATIONS OF SECTION 5(A) AND 5(C) OF THE SECURITIES ACT (Paragraphs 64-69 of the Complaint)

Paragraphs 64-69 Do not allege securities fraud.

FOURTH CLAIM VIOLATIONS OF SECTION 15(A)(1) OF THE EXCHANGE ACT (Paragraphs 70-74 of the Complaint)

Paragraphs 70-74 Do not allege violations by the Rockwell Defendants.