

NO. 68478-7

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

QUELLOS GROUP, LLC,

Appellant/Cross-Respondent,

v.

FEDERAL INSURANCE COMPANY and INDIAN HARBOR
INSURANCE COMPANY,

Respondents/Cross-Appellants,

On Appeal from the King County Superior Court
Case No. 10-2-41637-4 SEA
Hon. Dean S. Lum, Judge Presiding

**BRIEF OF RESPONDENT/CROSS-APPELLANT FEDERAL
INSURANCE COMPANY**

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I. INTRODUCTION

In the mid-1990s, Quellos Group LLC (“Quellos”), a then-small Seattle-based investment firm, became involved in the execution of tax shelters designed by major accounting firms for their high net worth clients. In 1999, Quellos decided to design its own proprietary tax shelter product, which became known as POINT. Jeffrey Greenstein, one of Quellos’s founders and its CEO, and Charles Wilk, a tax lawyer who became a principal at Quellos, among others at Quellos, were intimately involved in POINT’s creation, promotion, and implementation. In September 2010, Greenstein and Wilk both pled guilty to a conspiracy to defraud the IRS out of \$240 million in taxes dating back to POINT’s inception. This appeal presents the question whether those criminal admissions and the insureds’ contemporaneous, pre-inception knowledge of the facts that gave rise to claims against Quellos by clients and governmental authorities bar Quellos’s attempt to recover amounts expended to defend and resolve those claims from its insurers.

The trial court correctly entered judgment for the insurers on the ground that the primary policy had not been exhausted under the excess policies’ plain language. The trial court also correctly concluded that four separate exclusions contained in the insurance contract at issue clearly applied to the POINT-related claims. However, the court erred in not

according to the policy provisions their full preclusive effect to negate coverage for all of the sums sought by Quellos. Contrary to well-settled Washington law governing the application of similar insurance contract provisions, the trial court failed to apply broadly policy exclusions barring coverage for all claims “arising out of” or “arising from” the criminal conduct or pre-inception knowledge of “any Insured” or “any” of Quellos’s “partners, directors, officers, [or] employees.” The trial court ruled that a non-imputation clause in the policy potentially preserved coverage for “innocent” insureds even though the non-imputation clause by its plain terms does not apply to two of the four exclusions and the amounts specifically identified by Quellos as incurred on behalf of such individuals total less than Quellos’s \$2.5 million self-insured retention.

Accordingly, Federal Insurance Company (“Federal”) joins with Indian Harbor Insurance Company (“Indian Harbor,” and with Federal collectively, the “Insurers”) in urging affirmance of the judgment in their favor on the basis of Quellos’s failure to exhaust the underlying insurance.¹ In addition, as demonstrated below, POINT’s fraudulent

¹ Pursuant to RAP 10.1(g), Federal adopts by reference in its entirety the brief of Respondent/Cross-Appellee Indian Harbor Insurance Company, which addresses the exhaustion-related issues raised by Quellos’s appeal.

nature and the obvious potential for claims growing out of the fraud independently mandate judgment in the Insurers' favor.

II. ASSIGNMENTS OF ERROR

- (1) While acknowledging that an insurance policy exclusion broadly barring coverage for “any claim arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act by any Insured, or any knowing or willful violation of any statute by any Insured” clearly applied to Quellos’s claims for coverage in light of the admitted conspiracy to defraud the IRS through a fraudulent tax shelter by its former CEO and principal, the trial court erred in ruling that factual issues regarding the amount of loss incurred on behalf of other, un-indicted Quellos officers or employees (as opposed to Quellos entities) precluded enforcement of the exclusion with respect to all sums sought by Quellos. RP 96:4-97:12.²
- (2) While acknowledging that an exclusion rendering the Insurers’ policies inapplicable “to any actual or alleged Wrongful Act committed with knowledge that it was a Wrongful Act” clearly

² The transcript of proceedings before the trial court is included as Exhibit A in the Appendix to Quellos’s Brief. The relevant insurance policies are also appended as exhibits to Quellos’s Brief.

excluded costs incurred in connection with claims resulting from the knowing design and implementation of a fraudulent tax shelter, the trial court erred in ruling that unspecified issues of material fact precluded entry of summary judgment in the Insurers' favor notwithstanding that the specific amounts Quellos incurred on behalf of officers and employees not criminally charged total less than the \$2.5 million retention applicable under the primary policy. RP 97:13-24.

- (3) While acknowledging that a self-executing exclusion contained in Quellos's application for insurance incorporated into the policy barring coverage for "any claim arising from" "any fact or circumstance which might give rise to a claim" known to "any insured" as of September 2000 applied to the POINT claims, the trial court erred in not enforcing that exclusion to preclude coverage for all POINT-related claims in their entirety where Quellos's CEO and tax-planning principal admitted their knowledge in 1999 of POINT's intrinsically fraudulent nature and expressly contemplated the risk of claims resulting from IRS disallowance of claimed tax benefits in the spring of 2000. RP 97:25-98:3.

- (4) Notwithstanding the admissions by Quellos’s CEO and tax-planning principal and established Washington law imputing the wrongful conduct of “any Insured” to all insureds in the absence of contrary policy provisions, the trial court erred in failing to apply an exclusion barring coverage for “any actual or alleged Wrongful Act occurring prior to” a specified “Continuity Date” “[i]f on or before such Continuity Date any Insured knew of such Wrongful Act or could have reasonably foreseen that such Wrongful Act could lead to a claim” and not ruling that the exclusion precluded coverage for all POINT claims. RP 97:25-98:3

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- (1) Whether insurance policy exclusions applicable to all claims “arising out of” certain proscribed conduct or “arising from” an insured’s pre-policy inception knowledge bar coverage for all claims growing out of such conduct or knowledge regardless of the legal theories upon which such claims might be asserted?
(Assignments of Error 1 and 3)
- (2) Whether, in the absence of an applicable severability or non-imputation clause in the insurance contract, exclusions triggered by the wrongful conduct or knowledge of “any” insured preclude

coverage for all insureds under the policy? (Assignments of Error 3 and 4)

- (3) Whether an insurance contract provision expressly precluding the imputation of one *individual* insured's wrongful act to another *individual* insured precludes the imputation of an individual insured's wrongful act to insured *Quellos entities* in light of settled Washington law applying exclusions triggered by the conduct or knowledge of "any" insured? (Assignments of Error 1 and 2)

IV. STATEMENT OF THE CASE

A. THE INSURANCE CONTRACTS

Federal issued Excess Policy No. 7023-2408 to *Quellos Group, LLC* for the Policy Period from September 21, 2004 to September 21, 2005 (the "Federal Policy"). *See* CP 97, Items 1 & 5. Subject to all of its terms, limitations, and conditions, the Federal Policy affords \$10 million in coverage in excess of a \$10 million primary Investment Management Insurance Policy issued by American International Specialty Lines Insurance Company ("AISLIC") to *Quellos* for the same period (the "Primary Policy") and a retention of \$2.5 million per Wrongful Act or related Wrongful Acts. CP 47, Items 1-4. Under the Federal Policy, "[c]overage . . . shall attach only after the insurers of the Underlying Insurance shall have paid in legal currency the full amount of the

Underlying Limit for such Policy Period” and “shall then apply in conformance with the terms and conditions of the Primary Policy as amended by any more restrictive terms and conditions of any other policy designated in Item 4(B) of the Declarations, except as otherwise provided” by the Federal Policy. CP 99, Section 1. Accordingly, upon exhaustion of the Primary Policy’s limit of liability by actual payment by AISLIC, the Federal Policy “follows form” to the Primary Policy.

Subject to its terms and conditions, the Primary Policy provides coverage to Quellos and other specified Insureds, including Quellos’s past, present or future officers, directors, and employees, for damages resulting from claims first made against them during the Policy Period for Wrongful Acts in rendering, *inter alia*, services as an investment adviser and other defined professional services, including amounts that Quellos is permitted or required to pay as indemnification to individual Insureds. CP 50-51, Section 1.I. (Insuring Agreements); CP 53, Section 2.(e) (defining “Insured”); and CP 94 (Extended Professional Services Endorsement). “Wrongful Acts” consist of “any breach of duty, neglect, error, misstatement, misleading statement, omission or other act wrongfully done or attempted by the Insured.” CP 53, Section 2.(i).

AISLIC has no duty to defend; rather, the Primary Policy provides for the advancement of Defense Costs, which are defined in relevant part

as “reasonable and necessary fees, costs and expenses . . . incurred by the [Insurer] or by the Insured with the written consent of the [Insurer], and resulting solely from the investigation, adjustment, defense and appeal of any claim against the Insured.” CP 51-52, Section 1.II; CP 52, Section 2.(a). Defense Costs are subject to and part of the limit of liability. CP 57, Section 5.

Coverage is subject to four pertinent exclusions. *First*, the Primary Policy “does not apply . . . to any claim arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act by any Insured, or any knowing or willful violation of any statute by any Insured.” CP 69, ¶ 1 (the “Fraud Exclusion”). *Second*, the “policy does not apply . . . to any actual or alleged Wrongful Act committed with knowledge that it was a Wrongful Act.” CP 54, Section 4.I.3 (the “Knowing Wrongful Act Exclusion”). *Third*, the “policy does not apply . . . to any actual or alleged Wrongful Act occurring prior to the Continuity Date specified in Item 6 of the Declarations, if on or before such Continuity Date any Insured knew of such Wrongful Act or could have reasonably foreseen that such Wrongful Act could lead to a claim.” CP 54-55, Section 4.II.4 (the “Continuity Date Exclusion”). The Continuity Date specified in the Declarations is September 20, 2000, (CP

47, Item 6), although by endorsement the Continuity Date applicable to Quellos Group, LLC is August 25, 2000. CP 78.

Fourth, the Primary Policy provides that the application submitted to AISLIC “form[s] a part hereof.” CP 50. The Investment Management Insurance Renewal Application submitted by Quellos attached to the 2004-2005 Primary Policy in turn specifies that “this Renewal Application is a supplement to the Application(s) which are part of the expiring policy, and that those Application(s) together with this Renewal Application constitute the complete Application that shall be the basis of the contract and shall form part of the Policy should a Policy be issued” and that “it will be attached to and become part of the policy.” CP 1133 (Ex. E).³ The Investment Management Insurance Application executed by Quellos’s General Counsel and dated September 30, 2000 submitted in connection with the “expiring policy” issued by AISLIC for the 2000-2004 Policy Period contains the following question and exclusion:

VI. THE FOLLOWING APPLIES TO
ALL INSURING CLAUSES AND
MUST BE COMPLETED.

Does the applicant or any of its partners,
directors, officers, employees or trustees
have any knowledge of any fact or

³ “Ex. __” refers to the exhibits contained in the Appendix to this Brief.

circumstance which might give rise to a claim under the proposed policy?

Yes No

It is agreed that if such knowledge exists any claim arising from such fact or circumstances will not be covered by the policy.

CP 1122 (Ex. E) (the “Prior Knowledge Exclusion”). Quellos answered “No.” *Id.*

The Primary Policy also contains the following non-imputation clause applicable to the Fraud Exclusion and Knowing Wrongful Act Exclusion—but not the Prior Knowledge or Continuity Date Exclusions:

NOTE: The Wrongful Act of any partner, officer, director, trustee, managing member or employee who is an Insured under this policy shall not be imputed to any other partner, officer, director, trustee, managing member or employee who is an Insured under this policy for the purpose of exclusions I.1) through 5).

CP 91 (“NOTE” following Section 4.I.).

B. QUELLOS DESIGNS, PROMOTES, AND IMPLEMENTS THE POINT TAX SHELTER.

“Design of the POINT transaction occurred during the summer of 1999,” and “[i]n 2000 and 2001,” Quellos entities “assisted five clients in performing a total of six POINT transactions, with the first of such transactions occurring on April 28, 2000.” CP 1178, ¶ 3 (Ex. F); CP 1179,

¶ 6 (Ex. F); CP 835, ¶ 13 (Ex. B); CP 857-58, ¶ 65.r (Ex. B). As described by Quellos, “[t]he POINT transaction was designed to allow clients to defer tax liabilities by offsetting their capital gains with losses that could be realized from a portfolio of assets that had declined in value, while providing an opportunity for profit if those assets appreciated.” CP 1179, ¶ 5 (Ex. F). Quellos’s then-CEO, Jeffrey Greenstein, and Charles Wilk, a principal with tax expertise, conceived and designed POINT. CP 946 (Ex. C); CP 958 (Ex. D).

As described in the indictment charging a conspiracy to defraud the IRS to which Greenstein and Wilk ultimately pled guilty as charged, POINT began when “an ‘offshore investment fund’ purportedly purchased shares of stock in well known, publicly-traded technology companies” and “contributed portions of its portfolio of stock” to various offshore partnership entities referred to as “Special Purpose Vehicles” or “SPVs.” CP 836, ¶ 15.a (Ex. B). The offshore investment fund “then purportedly caused each SPV to issue ‘Covered Warrants’ against the respective basket of stocks.” CP 836, ¶ 15.b (Ex. B). The warrants permitted “an outside investor to purchase the Warrant for a premium in return for the right in five years to purchase the stocks in the SPV at a set price.” CP 836-37, ¶ 15.b (Ex. B). Following issuance of the warrants, Quellos’s client, a U.S. taxpayer, acquired the offshore fund’s interest in the SPV,

and in doing so effectively also acquired the unrealized, built-in capital losses generated by the declining value of the technology stocks purportedly held by the SPV. CP 837, ¶ 15.c. (Ex. B)

The SPV then served as a kind of “mixing bowl” to which the taxpayer contributed his assets with built-in, unrealized capital gains that were offset by the built-in losses of the tech stocks. CP 837, ¶ 15.d (Ex. B). Within a matter of months, the client would sell all of the combined partnership assets and cancel the warrant “under terms that ultimately resulted in no economic impact on the partnership or the client.” CP 837, ¶ 15.e. (Ex. B). As the net effect, “the client was able to draw out of the partnership, tax free, the proceeds up to the client’s basis in the partnership, or continue to maintain the proceeds within the partnership tax free, and invest it further.” CP 837, ¶ 15.f (Ex. B).

The challenge in creating POINT was identifying assets with unrealized losses that could be transferred to the “mixing bowl” to permit Quellos’s clients to offset their gains. After failing to identify actual assets that could be used for this purpose, Quellos’s CEO created a *hypothetical* paper portfolio of technology company stocks that eventually grew to over \$9 billion with roughly \$1.3 billion in unrealized capital losses. CP 675; CP 687-88; CP 946 (Ex. C); CP 958 (Ex. D). Between December 1999 and June 2000, this “synthetic” portfolio was the subject

of an exchange of a series of contracts between two Isle of Man shell corporations, Barnville and Jackstones. CP 744-46. Through these transactions, Jackstones purported to “sell” stock it did not own to Barnville, and Barnville would “loan” the stock back to Jackstones in exchange for “cash collateral” that Barnville did not actually have or pay. CP 744. Quellos worked with representatives of an entity called European American Investment Group (“Euram”) in London, who were charged with identifying the Isle of Man companies and papering the Jackstones-Barnville transactions. CP 946 (Ex. C); CP 958 (Ex. D). As admitted by Greenstein and Wilk, “[i]n truth, there was no actual stock; no purchase and sale of actual stock, no payment for actual stock, and no basis in stock.” CP 946 (Ex. C), CP 958 (Ex. D).

Quellos described POINT not only to prospective clients, but also to law firms who were then asked to opine as to the tax consequences of the transactions. As to both, Quellos failed to disclose the “synthetic” nature of the Barnville portfolio of stock that formed the foundation for the strategy, and in some cases affirmatively represented that the stock was being acquired from European investors with Euram’s assistance. CP 947 (Ex. C); CP 959 (Ex. D); CP 743-44.

While in the midst of developing POINT in late 1999 through mid-2000, Greenstein, Wilk, and the bankers at Euram specifically discussed

the risk of claims resulting from a lack of transparency with respect to the true nature of the loss assets. In a February 7, 2000 teleconference, Greenstein, Wilk, and Euram's John Staddon and Chris Donegan (who secretly recorded the call), discussed the fact that the lawyer at Cravath, Swaine & Moore authoring the initial legal opinions on POINT "would not sign off on this if you told him what was going on," leading Donegan to admonish Wilk that "whoever it is that's talking to the client just needs to make sure that that risk is boxed," "[o]therwise, the guy is going to get audited and lose . . . and come back and try to sue our asses." CP 607-08. Wilk responded, "you're right." CP 608; *see also generally* CP 585-613.

As the planning continued, though, Euram again sought assurances that Quellos was accurately disclosing the phantom nature of the Barnville portfolio, voicing concern in an April 4, 2000 e-mail to Wilk about the "commercial risk that both you and I know only too well . . . that the client turns around under a certain scenario and claims to have been misled as to the nature of the share trading between the two [Isle of Man] companies." CP 815; *see also* CP 818 (April 28, 2000 e-mail from Staddon seeking "confirmation from [Greenstein and Wilk] that [client] and/or his advisers is aware of the book entry features of the structure"). Prior to executing the first POINT, a Quellos in-house tax professional joked in an e-mail

exchange with Wilk that “I just hope [the client] doesn’t get cold feet or have the IRS select his return for audit!” CP 830.

C. THE POINT CLAIMS

The risks envisioned by POINT’s creators ultimately materialized. “The IRS subsequently denied the tax benefits generated by each of the POINT transactions,” CP 1108, ¶ 13 (Ex. E), and in 2005 and 2006 two different Quellos clients who used the POINT strategy advised Quellos that they were considering legal action “against Quellos.” CP 1109, ¶¶ 19-20 (Ex. E); *see also* CP 1279-81 (Ex. A). Quellos settled both claims prior to litigation. CP 1110, ¶ 22 (Ex. E); CP 1280-81 (Ex. A) (the “Client Claims”).

POINT also attracted scrutiny from government authorities. The IRS sought documents from Quellos beginning in February 2005, and the U.S. Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs subpoenaed Quellos in September 2005 in connection with an investigation of the use of offshore entities in the creation of tax shelters. CP 1281-82 (Ex. A); CP 382, ¶ 53. The California Franchise Tax Board (“CFTB”) determined in May 2008 that Quellos had promoted a fraudulent tax shelter in connection with the POINT transaction for client Haim Saban and imposed a penalty on Quellos. CP 1283 (Ex. A); *see also* CP 923-40.

The U.S. Attorney's Office for the Western District of Washington also launched a criminal probe, resulting in the issuance of grand jury subpoenas to Quellos in 2007 and 2008 "for documents and information related to the POINT transaction." CP 1282 (Ex. A); *see also* CP 1109, ¶ 16 (Ex. E). The grand jury subsequently indicted Greenstein and Wilk in July 2009 and presented an eighteen-count second superseding indictment on December 30, 2009. *See* CP 831-73 (Ex. B) (The Client Claims, IRS information request, Senate investigation, CFTB audit and penalty, and U.S. Attorney's Office investigation and prosecution are referred to herein collectively as the "POINT Claims.") The government charged Greenstein and Wilk with conspiracy to defraud the IRS, tax evasion, counseling false tax returns, wire fraud, and conspiracy to launder monetary instruments.

On September 10, 2010, both Greenstein and Wilk entered into materially similar plea agreements and pled guilty to Count 1 (conspiracy to defraud the United States in violation of 18 U.S.C. § 371) and Count 13 (aiding and assisting the filing of a false tax return in connection with the Saban POINT in violation of 26 U.S.C. § 7206(2)). CP 941-52 (Ex. C); CP 953-64 (Ex. D); CP 965-66 (Greenstein Acceptance of Plea); CP 967-68 (Wilk Acceptance of Plea); CP 969-75 (Greenstein Judgment); CP 96-82 (Wilk Judgment). Quellos spent more than \$24 million in connection

with the federal criminal investigation, although it has identified less than \$1.3 million specifically incurred on behalf of employees other than Greenstein and Wilk. CP 1282 (Ex. A).

As part of their plea agreements, both Greenstein and Wilk adopted identical statements of facts “in their entirety.” CP 1000. The statements included the following admissions:

- “Beginning in 1999 and continuing through 2005,” Greenstein and Wilk, among others, “conspired and agreed to defraud the Internal Revenue Service by designing, promoting, and implementing a fraudulent tax shelter, which they referred to by the acronym, POINT, and by directly and indirectly deceiving and lying to the IRS during examinations of returns that taxpayers filed in reliance upon POINT.” CP 946 (Ex. C); CP 958 (Ex. D).
- Greenstein and Wilk worked with Euram “to create fictitious losses through the purported purchase and sale of ‘synthetic’ stock with paper value exceeding \$9.6 Billion between two Special Purpose Vehicles (SPV’s), Isle of Man businesses, Jackstones, Ltd., and Barnville, Ltd[.], which had no assets. In truth there was no actual stock; no purchase and sale of actual stock; no payment for actual stock, and no basis in stock. These fictitious losses were used in POINT to offset approximately equal dollar amounts of

real capital gains, thereby deferring substantial capital gains taxes.”

CP 946-47 (Ex. C); CP 958 (Ex. D).

- Defendants “provided and caused to be provided to these willing taxpayers, information and documentation for POINT that they knew were false. They also provided these taxpayers with legal opinions, based upon the same false information and documentation, that attested to the probable legitimacy of POINT. Defendants knew these opinions relied on false information and documentation.” CP 947 (Ex. C); CP 959 (Ex. D).
- “When these returns came under audit, the defendants gave the taxpayers and their advisors the same false information and documentation and the defendants knew that the taxpayers and their advisors would use the false information and documentation in responding to the IRS.” CP 947 (Ex. C); CP 959 (Ex. D).
- In connection with the Saban POINT, the partnership entity filed a false return for tax year 2001 claiming \$614 million in capital losses. Greenstein and Wilk “knowingly and willfully caused to be provided the false loss figure thus aiding and assisting in the filing of the materially false return.” CP 947 (Ex. C); CP 959 (Ex. D).

Quellos acknowledges that the two previously settled “individual investor claims [*i.e.*, the Client Claims] arose out of the same factual circumstances

and POINT transactions that later served, in part, as the basis for the criminal indictments and ultimate guilty pleas of Messrs. Greenstein and Wilk.” CP 1109, ¶ 21 (Ex. E).

Greenstein and Wilk were each sentenced to 50 months’ incarceration. CP 971; CP 978. Each is currently serving his sentence at a facility outside of Washington. CP 1243-49.

D. THE INSTANT LITIGATION AND PROCEEDINGS BELOW.

Quellos commenced this action on December 1, 2010, asserting claims for breach of contract and declaratory relief regarding the availability of coverage under its 2004-2005 insurance program for the POINT Claims, as well as coverage for claims arising from other tax shelters under other policy periods. Under the First Amended Complaint, the claims directed to Federal and Indian Harbor solely concern the POINT strategy. Quellos’ fifth cause of action seeks coverage for defense costs incurred by Quellos to defend itself and its directors and officers for the POINT Claims, and its sixth cause of action seeks coverage for “other covered losses” incurred in connection with the POINT Claims. CP 388-89, ¶¶ 89-94. All told, the amounts for defense expenses and settlements for which Quellos seeks coverage exceed \$62.5 million. CP 1280-84 (Ex. A).

Prior to bringing this action, AISLIC had paid Quellos less than half of the \$10 million limit under the Primary Policy. CP 1285. After filing suit, Quellos entered into a settlement with AISLIC under which Quellos released AISLIC with respect to its claims for coverage under the Primary Policy for the POINT Claims without payment by AISLIC of any additional amounts in connection with the POINT Claims. CP 22-37.

Quellos and the excess carriers cross-moved for summary judgment with respect to whether coverage under the Federal and Indian Harbor excess policies attached in light of AISLIC's failure to pay its full limit of liability. Following oral argument, by order dated February 10, 2012, the trial court granted the Insurers' motion, denied Quellos's motion, and dismissed Quellos's claims against Federal and Indian Harbor with prejudice. CP 1293, 1353-55.

In addition to the motion regarding exhaustion, Federal, joined by Indian Harbor, also moved for summary judgment on the ground that Greenstein's and Wilk's criminal guilty pleas and other admissions, as well as their pre-policy inception knowledge of the admitted conspiracy to defraud, triggered application of several policy exclusions barring coverage for all of the POINT Claims. Following oral argument, the trial court overruled objections by Quellos to the admissibility of several of the

exhibits submitted by Federal in support of its motion, and found that Greenstein's and Wilk's guilty pleas "are clearly admissible." RP 95:22.

The trial court concluded that it would "enter[] a partial summary judgment order establishing the viability and the applicability of the [F]raud [E]xclusion insofar as it clearly relates to certain costs incurred by those individuals who were actually indicted." RP 96:19-23. However, the court determined that "there is a potential conflict . . . between the severability clause and the arising out of language" contained in the Fraud Exclusion, citing the potential for "claims against other nonindicted [insureds], which arguably arise out of a fraud, but perhaps not, which may more sound in negligence and maybe not." RP 96:5-14. As such, in the trial court's view, "there is a genuine issue of material fact as to what exactly arising out of means, and so therefore I will grant in part and deny in part summary judgment on the part of the [F]raud [E]xclusion." RP 97:3-6. However, the court specifically rejected Quellos's contention that the Fraud Exclusion barred coverage only for defense expenses incurred after Greenstein's and Wilk's guilty pleas, explaining that "if they were excluded by the fraud, then they were excluded all the way back." RP 98:3-10.

Similarly, the trial court decided that the Knowing Wrongful Act Exclusion "is clearly viable" and "clearly excludes certain costs that were

incurred by plaintiff” but found “a genuine issue of material fact as to which costs are covered, which costs are not.” RP 97:15-19. The trial court further granted only partial summary judgment on the basis of the Continuity Date Exclusion and the Prior Knowledge Exclusion “for similar reasons.” RP 98:1-3.

The trial court accordingly entered an order granting Federal and Indian Harbor partial summary judgment on the basis of the policy exclusions *nunc pro tunc* to February 10, 2012. The trial court entered final judgment in favor of the insurers February 13, 2012 pursuant to CR 54(b). Quellos timely appealed the judgment and orders regarding the exhaustion issue, and the Insurers timely sought cross-review of the trial court’s order regarding the application of the policy exclusions.

V. SUMMARY OF ARGUMENT

In September 2010, a federal criminal investigation resulted in the entry of guilty pleas by both Quellos’s former CEO, Jeff Greenstein, and another Quellos principal, Charles Wilk, to a conspiracy to defraud the IRS out of \$240 million in taxes dating back to POINT’s inception in 1999. The detailed admissions that accompanied those guilty pleas and the entirely foreseeable—indeed, foreseen—consequences of engineering a fraudulent tax shelter built upon a “synthetic” portfolio of stock and selling the tax avoidance strategy to clients without full disclosure of such

fact plainly implicate a number of exclusions barring insurance coverage for criminal conduct and knowledge of conduct that could give rise to claims. The trial court had little trouble concluding that each of the exclusions relied upon by the Insurers applied to Quellos's efforts to recoup losses resulting from its calculated foray into the tax shelter business.

However, the trial court erred in failing to accord the exclusions the full preclusive effect dictated by their plain language. The trial court concluded that genuine issues of material fact precluded summary judgment in the Insurers' favor because it could not determine which amounts for which Quellos seeks coverage are subject to the exclusions and which are not. The trial court's analysis, however, did not pinpoint any such issues. To the contrary, the substance of the POINT Claims, the illegal conduct that led to them, and the basis for the sums incurred by Quellos as a result are not seriously in dispute. The trial court therefore should have granted the Insurers full summary judgment based on the unambiguous terms of the Primary Policy to which they follow form.

First, the policy does not apply "to any claim arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act by any Insured, or any knowing or willful violation of any statute by any Insured." Greenstein's and Wilk's guilty pleas by

themselves establish that POINT’s genesis and execution and all of the claims flowing from its implementation arise from “criminal” and “deliberate fraudulent” acts, as well as both “knowing” and “willful violation[s] of any statute.” Citing a perceived “conflict” between the broad “arising out of” language used in the exclusion on the one hand, and a limited non-imputation clause excepting certain individuals from the exclusion’s reach on the other, the trial court decided it could not determine the extent to which the Fraud Exclusion applied. That “conflict” is illusory, though, as the non-imputation clause does not apply to the sums incurred by Greenstein, Wilk, or the Quellos entities—which far and away comprise the vast majority of the sums at issue.

Second, the policy does not apply to the POINT Claims because they arise from misconduct that the Insureds knew was wrongful when they did it and the Insureds should have foreseen—and actually did foresee—prior to the policy period the potential for claims resulting from such misconduct. Again, the trial court determined that these provisions excluded coverage for some, but not all, of Quellos’s POINT-related losses. And again, it did not identify what factual issues compelled that result. Quellos, through Greenstein and Wilk, knew that the lack of disclosures to its clients and their outside counsel, the synthetic nature of the loss assets, and POINT’s lack of real economic substance were

wrongful and might lead to claims—precisely the claims at issue. Nor did the trial court address how the non-imputation clause could conflict with the broad “arising from” and “any” insured language employed in the Prior Knowledge Exclusion since the non-imputation clause does not apply to that exclusion or the Continuity Date Exclusion. Accordingly, even assuming that Quellos can overcome the exhaustion issue—which it cannot—the uncontroverted criminal conduct of Jeff Greenstein and Charles Wilk arising out of the tax scheme at issue in the POINT Claims triggers four separate exclusions that bar coverage for Quellos’s claim.

VI. ARGUMENT

This Court “review[s] a summary judgment order de novo, performing the same inquiry as does the trial court.” *Sauter v. Houston Cas. Co.*, 276 P.3d 358, 361 (Wash. Ct. App. 2012) (citations omitted). “Similarly, the interpretation of an insurance contract is a question of law reviewed de novo.” *Id.*

A. UNDER WASHINGTON LAW, THE PLAIN LANGUAGE OF THE POLICIES MUST BE ENFORCED AS WRITTEN.

“The criteria for interpreting insurance contracts in Washington are well settled. We construe insurance policies as contracts.” *Quadrant Corp. v. American States Ins. Co.*, 154 Wn. 2d 165, 171 (2005). “Interpretation of insurance policies is a question of law, in which the policy is construed as a whole and each clause is given force and effect.”

Overton v. Consolidated Ins. Co., 145 Wn. 2d 417, 424 (2002).

“Language in an insurance contract is to be given its ordinary meaning, and courts should read the policy as the average person purchasing insurance would.” *Campbell v. Ticor Title Ins. Co.*, 166 Wn. 2d 466, 472 (2009). “In doing so, we do not engage in a strained or forced construction that would lead to absurd results.” *Christal v. Farmers Ins. Co.*, 133 Wn. App. 186, 191 (2006) (internal quotation marks and citation omitted). “Most importantly, if the policy language is clear and unambiguous, we must enforce it as written; we may not modify it or create ambiguity where none exists.” *Quadrant*, 154 Wn. 2d at 171. “[W]hile exclusions should be strictly construed against the drafter, a strict application should not trump the plain, clear language of an exclusion such that a strained or forced construction results.” *Id.* at 172.

B. THE GUILTY PLEAS ENTERED BY QUELLOS’S CEO AND PRINCIPAL CLEARLY ESTABLISH THAT THE POINT CLAIMS ARISE FROM CRIMINAL AND FRAUDULENT ACTS BARRED FROM COVERAGE.

The Fraud Exclusion contained in the Primary Policy bars coverage for “any claim arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act by any Insured, or any knowing or willful violation of any statute by any Insured.” CP 69, ¶ 1. The admissions contained in Greenstein’s and

Wilk's guilty pleas, by themselves, clearly establish that Greenstein, Wilk, and Quellos committed criminal and deliberately fraudulent acts in designing, promoting, and implementing POINT. As such, the Federal Policy does not apply to the POINT Claims.

1. The Trial Court Correctly Held that the Guilty Pleas Triggered Application of the Fraud Exclusion.

Beyond a doubt, the criminal pleas demonstrate that Greenstein and Wilk "in fact" committed fraudulent and criminal acts. As used in the Fraud Exclusion, "in fact" "refers to 'something which is put forward as 'objectively real' or which can be 'objectively verified.'"" *Virginia Mason Med. Ctr. v. Executive Risk Indem. Inc.*, No. C07-0636, 2007 WL 3473683, at *5 (W.D. Wash. Nov. 14, 2007) (quoting *PMI Mortg. Ins. Co. v. American Int'l Specialty Lines Ins. Co.*, No. C02-1774, 2006 WL 825266, at *5 (N.D. Cal. Mar. 29, 2006)). Such objective verification can take the form of a final adjudication in the relevant underlying proceeding, an admission by the insured, or a finding by the court in a separate action based on evidence of the insureds' conduct. *Id.* Of course, where, as here, insureds have been convicted of criminal offenses, such conviction "constitutes far more than some pertinent factual finding of fraudulent conduct and fully supports the conclusion that" the Fraud Exclusion applies. *Farkas v. National Union Fire Ins. Co.*, No. 11cv529, 2011 WL

2838167, at *2 (E.D. Va. July 14, 2011) (holding that similarly-worded fraud exclusion barred coverage for criminal proceedings where “jury’s guilty verdict clearly triggered” the exclusion).

In construing a similar exclusion, the Court of Appeals affirmed the entry of summary judgment in favor of an insurer for the insured law firm’s liability for losses resulting from an employee’s embezzlement scheme. *Stouffer & Knight v. Continental Cas. Co.*, 96 Wn. App. 741, 745 (1999) (applying exclusion for “any claim arising out of . . . any dishonest, fraudulent, criminal or malicious act or omission by you or any of your partners, officers, stockholders or employees”). In *Stouffer & Knight*, the Court concluded that “[n]o ambiguity exists in Knight’s CNA insurance contract because the language on its face is *not* fairly susceptible to two different but reasonable interpretations[.]” *Id.* at 749-50 (internal quotation marks and citation omitted). The Court held that regardless whether the attorney’s negligent supervision contributed to the losses, they unquestionably arose directly out of the employee’s dishonest acts of embezzlement and therefore fell within the scope of the exclusion. *Id.* at 750-51.

The uncontroverted facts require the same result here. The offenses to which Greenstein and Wilk pled guilty relate entirely to their conception and implementation of POINT. Greenstein and Wilk each pled

guilty to a conspiracy to defraud the IRS beginning in 1999. As set forth in their plea agreements, the conspiracy offense consists of (1) “the existence of an agreement by two or more persons to defraud” the IRS; (2) each one’s “knowing and voluntary participation in the conspiracy”; and (3) “an overt act in furtherance of the conspiracy.” CP 943 (Ex. C); CP 955 (Ex. D); *see also* 18 U.S.C. § 371. Second, Greenstein and Wilk each pled guilty to the offense of aiding and assisting the filing of a false tax return, which requires (1) that “the defendant aided or assisted in, procured, counseled, or advised the preparation or presentation of” a partnership income tax return; (2) “the document was false as to a material matter”; and (3) “the act of the defendant was willful.” CP 943 (Ex. C); CP 955 (Ex. D); *see also* 26 U.S.C. § 7206(2).

The elements of these offenses admitted by Quellos’s CEO and tax strategy principal clearly satisfy each of the Fraud Exclusion’s requirements of a “criminal” act, “deliberate fraudulent act,” or “any knowing or willful violation of any statute by any Insured.” CP 69, ¶ 1. The statement of facts each adopted by Greenstein and Wilk as part of their plea agreements underscores the deliberately fraudulent nature of their misconduct that infected all of the POINT transactions. Each admits that they “conspired and agreed to *defraud* the Internal Revenue Service by designing, promoting, and implementing a *fraudulent* tax shelter . . .

and by directly and indirectly *deceiving and lying to the IRS* during examinations of returns that taxpayers filed in reliance upon POINT.” CP 946 (Ex. C) (emphasis added); *see also* CP 958 (Ex. D). They each admit to “creat[ing] fictitious losses” and that the Barnville-Jackstones trades involved “no actual stock; no purchase and sale of actual stock; no payment for actual stock, and no basis in stock.” *Id.* And they provided documents to their clients describing POINT “that they knew were false,” as well as legal opinions regarding POINT’s legitimacy that they “knew . . . relied on false information and documentation.” CP 946-47 (Ex. C); CP 958-59 (Ex. D). The record could not be clearer. As such, the trial court correctly held that the Fraud Exclusion applies to the POINT Claims.

2. The Trial Court Erred in Failing to Apply the Fraud Exclusion to the Full Extent of its Unambiguous Breadth as Mandated by Washington Law.

However, the trial court erred in limiting application of the Fraud Exclusion to “certain costs incurred by those individuals who were actually indicted.” RP 96:22-23. To the contrary, the Fraud Exclusion bars coverage not only for the criminal investigation and prosecution, but all of the POINT Claims. The Fraud Exclusion provides that the Primary Policy does not apply “to any claim arising out of, based upon or attributable to” the fraudulent conduct. CP 69, ¶ 1. As used in insurance policy exclusions, “[t]he phrase ‘arising out of’ is unambiguous and has a

broader meaning than ‘caused by’ or ‘resulted from.’ It ordinarily means ‘originating from,’ ‘having its origin in,’ ‘growing out of,’ or ‘flowing from.’” *Munn v. Mutual of Enumclaw Ins. Co.*, 73 Wn. App. 321, 325 (1994).⁴

All of the claims at issue grow directly out of the admittedly fraudulent conception and implementation of POINT. The Client Claims sought to recover amounts allegedly incurred as a result of the IRS’s disallowance of capital losses claimed by virtue of POINT. Quellos explicitly concedes that the two Client Claims “arose out of the same factual circumstances and POINT transactions that later served, in part, as the basis for the criminal indictments and ultimate guilty pleas of Messrs. Greenstein and Wilk.” CP 1109-10, ¶ 21 (Ex. E). The governmental investigations directly concern POINT’s creation and promotion. CP

⁴ See also *Stouffer & Knight*, 96 Wn. App. 741, 750 n.11 (1999) (applying dishonesty exclusion in lawyer’s professional liability policy broadly to preclude coverage for amounts expended by attorney to satisfy embezzlement losses despite his contention that his liability was predicated on alleged negligent supervision rather than any alleged dishonest acts on his part); *City of Everett v. American Empire Surplus Lines Ins. Co.*, 64 Wn. App. 83, 88-89 (1991) (affirming summary judgment for insurer and holding that exclusion contained in municipal errors and omissions policy broadly applied to preclude coverage for city’s alleged negligent supervision and rejecting application of an efficient proximate cause standard); *Mutual of Enumclaw Ins. Co. v. St. Paul Fire & Marine Ins. Co.*, No. C05-0312, 2006 WL 16634, at *4 (W.D. Wash. Jan. 4, 2006) (observing that “ample Washington case law interpreting arising-out-of clauses” have “found the ph[r]ase to be unambiguous, and have interpreted such clauses as calling for a more liberal causation standard than demanded by language such as ‘caused by’ or ‘resulted from’”).

1279-84 (Ex. A). Given Greenstein's and Wilk's admissions that POINT was built upon a phony stock portfolio, that such fact was not fully explained to their clients, and that they misled their clients, counsel, and the IRS when questioned during the audit process, all of the POINT Claims clearly have their origins in, grow out of, and flow from precisely the same fraudulent conduct and statutory violations underlying the government's criminal case.

Moreover, the Fraud Exclusion expressly provides that the Primary Policy does not respond to "any claim" arising from the proscribed conduct "by any Insured." Under Washington law, policy exclusions applicable to the acts of "any Insured" bar coverage for all insureds when any insured's proscribed conduct gives rise to the claim. "Here, the exclusion is not restricted to intentional acts of the particular insured sought to be held liable, but broadly excludes coverage for all intentionally caused injury or damage by *an* insured, which includes anyone insured under the policy." *Farmers Ins. Co. v. Hembree*, 54 Wn. App. 195, 200 (1989).⁵ The Insureds under the Primary Policy include Quellos as the

⁵ Both before and after *Hembree*, the Washington state and federal courts have consistently adhered to this principle, repeatedly affirming the applicability of exclusions triggered by misconduct of "an insured" or "any insured" to even asserted "innocent" insureds, notwithstanding "separability" clauses requiring the policy to be treated as separate insurance contracts for each insured. See *Leanderson v. Farmers Ins. Co.*, 111 Wn. App. 230, 237 (2002) ("[T]he Leandersons' policy uses the term 'an insured' rather than 'the insured.' Therefore, the exclusion is not restricted to Crystal's acts, but broadly

Named Insured and the other Quellos entities involved in the implementation of POINT. CP 53, Section 2.(e); CP 78. As such, the Fraud Exclusion broadly precludes coverage for all POINT Claims because (1) they are premised on criminal and fraudulent *conduct* regardless of the legal *theory* under which they are asserted; and (2) except as the Primary Policy might otherwise provide, Greenstein's and Wilk's admitted illegal conduct is imputed as a matter of law to all insureds under the policy.

Notwithstanding the well-recognized breadth of the Fraud Exclusion, the trial court declined to enter summary judgment in favor of the Insurers because of a perceived "potential conflict . . . between the

excludes coverage for all injury or damage caused by an insured under the policy."); *Mutual of Enumclaw Ins. Co. v. Cross*, 103 Wn. App. 52, 61-62 (2000) (same and rejecting application of severability clause); *Caroff v. Farmers Ins. Co.*, 155 Wn. App. 724, 730 (1999) ("The average insurance purchaser would know from the explicit language of the child molestation exclusions that, despite the severability clauses, Farmers will not cover any suits or claims arising out of child molestation by any insured."); *Allstate Ins. Co. v. Raynor*, 93 Wn. App. 484, 498 (1999) ("Washington courts have interpreted an exclusionary clause based upon the acts of 'an insured' as precluding coverage for an innocent insured where coverage for the acts of another culpable insured is excluded under the policy."); *Farmers Ins. Co. v. Edie*, 52 Wn. App. 411, 412 (1988) (holding that intentional acts exclusion applicable to acts of "an insured" barred coverage for both culpable husband and non-culpable wife); *U.S.F. & G. Ins. Co. v. Brannan*, 22 Wn. App. 341, 348 (1979) ("The policy provides no coverage if the business pursuits of Any [sic] of the separate insureds gave rise to the damage."); *Allstate Indem. Co. v. Eisenhut*, No. C09-0835, 2010 WL 1330003, at *3 n.5 (W.D. Wash. Mar. 30, 2010) ("Under Washington law, exclusion clauses apply to all insureds even when only one insured acts."); *Allstate Ins. Co. v. Goldman*, No. C07-0478, 2007 WL 2900398, at *2 (W.D. Wash. Oct. 3, 2007) ("[U]nder the language of the policy, the intentional acts of 'any insured' preclude coverage for all insureds for claims arising from those intentional acts.").

severability clause and the arising out of language here.” RP 96:6-8. No such conflict—potential or actual—exists. The “severability clause” or non-imputation clause to which the trial court referred provides that “[t]he Wrongful Act of any partner, officer, director, trustee, managing member or employee who is an Insured under this policy shall not be imputed to any other partner, officer, director, trustee, managing member or employee who is an Insured under this policy for the purpose of” certain exclusions, including the Fraud Exclusion. CP 91 (“NOTE” following Section 4.I.). By its express terms, the non-imputation clause renders the Fraud Exclusion severable only as to *Individual Insureds*. The clause does not preclude imputation of Greenstein’s and Wilk’s admitted misconduct to *Quellos entities*. This limitation on the non-imputation clause is dispositive because of the well-settled default rule under Washington law that the excluded conduct of one Insured precludes coverage for all Insureds where the relevant exclusion is triggered by the conduct of “any Insured.”

Against this backdrop of established Washington law, the broad scope of the Fraud Exclusion dictated by its “arising out of” language is easily harmonized with the limited exception to the general rule of imputation of the conduct by “any Insured” reflected in the Primary Policy’s non-imputation clause. Whether asserted under theories or

negligence or intentional conduct, the “arising out of” language brings within the Fraud Exclusion’s sweep all claims growing out of and flowing from the admittedly criminal acts of POINT’s design and implementation. Because the exclusion applies to all Insureds based on the conduct of “any Insured,” the exclusion bars all coverage for the POINT Claims except to the extent they were asserted against and resulted in sums that *Individual Insureds* other than Greenstein and Wilk were legally obligated to pay. The non-imputation clause does not affect coverage for amounts incurred by or on behalf of Greenstein, Wilk, or the Quellos entities themselves—which clearly lie within the Fraud Exclusion’s reach.

3. The Undisputed Record Evidence Establishes that, at Best, the Amounts Potentially Not Subject to the Fraud Exclusion are Less than the Primary Policy’s Retention.

Here, the record demonstrates that the only amounts claimed by Quellos to have been incurred by or on behalf of assertedly non-culpable individuals do not even exceed the Primary Policy’s \$2.5 million retention, let alone the retention and AISLIC’s \$10 million limit of liability. In response to interrogatories concerning the specifics of the various POINT Claims, with the exception of the federal criminal investigation, Quellos identified itself or one of its subsidiaries—not any Individual Insured—as the party against whom the claim was asserted. CP 1280-84. With respect to the U.S. Attorney’s Office investigation that

culminated in Greenstein's and Wilk's guilty pleas, Quellos has identified approximately \$1.27 million in defense expenses incurred on behalf of nine individuals other than Greenstein and Wilk. CP 1282 (Ex. A). Thus, according to Quellos's own statement of its damages, the sums it has incurred on behalf of Individual Insureds versus those incurred on behalf of itself, Greenstein, or Wilk do not even penetrate the Primary Policy.

Quellos also argued below that the two settlements it entered into to resolve the Client Claims "released all claims that could have been asserted against any Quellos entity or person representing Quellos, including all of its directors, officers, employees, and insurers." CP 1110, ¶ 24 (Ex. E). Quellos suggested, and the trial court appears to have accepted, that because some Individual Insureds received the benefit of the releases given to resolve the Client Claims, some amount of the settlement consideration should be allocated as damages incurred by Quellos on behalf of individuals for claims for negligence and breach of fiduciary duty beyond the scope of the Fraud Exclusion. But regardless of who might have enjoyed the benefit of the releases—which includes Quellos employees who had no involvement whatsoever with POINT as well as Quellos's insurers—Quellos has not identified any Individual Insured against whom a claim has been asserted. Indeed, Quellos has not suggested that any individuals were even parties to these settlements.

Rather, Quellos quite clearly states that the Client Claims were asserted “against Quellos”—not any individuals—and Quellos does not identify any specific individual accused of misconduct in connection with those claims. CP 1109, ¶ 19 (Ex. E) (declaration of Quellos’s former General Counsel stating that “two POINT clients asserted claims . . . against Quellos”); CP 1280-81 (Ex. A) (responding to interrogatory requesting identification, with respect to each POINT Claim, of “[t]he entity, individual and/or other person to whom the matter was asserted” by stating that both Saban and Schein investor claims involved potential “legal action against Quellos” without referencing any individuals). The record before the trial court thus established that with the exception of less than \$1.3 million in criminal investigatory defense expenses, Quellos has not incurred any amounts on behalf of “innocent” insureds against whom claims were made. Accordingly, the Insurers are entitled to summary judgment on the basis of the Fraud Exclusion.

C. **QUELLOS’S PRIOR KNOWLEDGE OF ITS WRONGFUL CONDUCT IN DEVELOPING POINT AND MANIFEST POTENTIAL FOR RESULTING CLAIMS INDEPENDENTLY PRECLUDES COVERAGE.**

The admitted criminal conspiracy concerning the development and implementation of POINT rises well above the level necessary to implicate the Fraud Exclusion. However, even if that were not the case,

the Primary Policy bars coverage for the POINT Claims based upon Quellos's knowledge of its wrongful acts and clear potential for claims based on those wrongful acts. By its express terms, the Primary Policy does not apply where any Insured knows that he or it committed Wrongful Acts or where any Insured has knowledge of facts or circumstances that might give rise to a claim under the Policy. As such, the Prior Knowledge Exclusion, Continuity Date Exclusion, and Knowing Wrongful Act Exclusion each render the Primary Policy inapplicable to the POINT Claims.

1. Greenstein's and Wilk's Knowledge of Their Misconduct Completely Bars Coverage under the Prior Knowledge Exclusion.

First, the application submitted by Quellos in connection with the 2000-2004 Policy Period, which the 2004-2005 Primary Policy incorporates by reference, provides that if Quellos or "any of its partners, directors, officers, employees or trustees ha[s] any knowledge of any fact or circumstance which might give rise to a claim," then coverage is excluded for "any claim arising from such fact or circumstances." CP 1122, Section VI (Ex. E). "This type of exclusionary language is known as a prior knowledge limitation, and similar prior knowledge limitations have been construed by Washington courts to require the insured to disclose any acts or omissions that the insured could have reasonably

foreseen might be a basis for a claim against him or her.” *Carolina Cas. Ins. Co. v. Ott*, No. C09-5540, 2010 WL 1849230, at *10 (W.D. Wash. May 7, 2010) (granting summary judgment to insurer under similar prior knowledge limitation contained in lawyers professional liability insurance policy).

In applying such clauses, the Washington Supreme Court has mandated the use of an objective standard, “looking at the facts from a neutral, ‘reasonable’ perspective.” *Allstate Ins. Co. v. Peasley*, 131 Wn. 2d 420, 430 (1997) (affirming summary judgment for insurer on basis of exclusion for injuries “which may reasonably be expected to result from the intentional or criminal acts of an insured person”). Such prior knowledge limitations “do[] not require the prediction of claims with absolute certainty or exactitude. Rather, the focus of the clause is on the underlying ‘acts and omissions’ that are the subject of a dispute which might give rise to a claim. The insurer is inquiring about any such acts or omissions in order to allow it to realistically assess its risk and establish an appropriate premium for coverage.” *Tewell, Thorpe & Findlay, Inc., P.S. v. Continental Cas. Co.*, 64 Wn. App. 571, 576-77 (1992) (affirming entry of summary judgment for insurer under lawyers professional liability policy based on exclusion barring coverage “if any insured on the effective date knew or could have reasonably foreseen that such acts or

omissions might be the basis for a claim”); *see also Westport Ins. Corp. v. Markham Grp. Inc. PS*, 403 F. App’x 264, 265 (9th Cir. 2010) (applying Washington law) (same). Indeed, such contract language “also does not imply that the potential claims of which the insurance company must be informed necessarily have merit.” *Tewell*, 64 Wn. App. at 577.

Here, Greenstein and Wilk—and by extension Quellos—clearly had knowledge of facts or circumstances that “might give rise to a claim” as of the September 2000 date applicable to the Prior Knowledge Exclusion. The record leaves no room for doubt:

- “Beginning in 1999,” Greenstein and Wilk “conspired and agreed to defraud” the IRS “by designing, promoting, and implementing a fraudulent tax shelter” based upon the generation of “fictitious losses” through the Barnville-Jackstones paper portfolio—a portfolio that had been fully created by mid-2000. CP 946 (Ex. C); CP 958 (Ex. D); CP 744-46; CP 842, ¶ 30 (Ex. B).
- By mid-2000, Quellos had completed half of the six POINT transactions it implemented, with three of the six legal opinions for such transactions issued as well. CP 857-58, ¶¶ 65.r.-s. (Ex. B). Greenstein and Wilk have admitted that in connection with all of the POINT transactions, the documentation provided to the

taxpayers and legal counsel was false. CP 947 (Ex. C); CP 959 (Ex. D).

- In February 2000, Greenstein and Wilk acknowledged in a conference call with Euram that legal counsel had not been apprised of the synthetic nature of the critical stock portfolio. CP 895 (“All [counsel] said is don’t synthetically create the basis. [Laughter] That was six months ago and all we’re doing here is we’re synthetically creating a long position.”); CP 895-96 (Wilk acknowledging that “[counsel] would not sign off on this if you told him what was going on”). On that call, the participants explicitly foresaw the potential for claims following an IRS audit by clients claiming that they had not been adequately informed, CP 896, and the Euram representatives raised this possibility again in April 2000, seeking assurances that such disclosures had been made. CP 815; CP 822.

The Individual Insureds subjectively knew that the POINT tax shelter had been built upon an artificial stock portfolio manufactured by Quellos and that such critical fact not only had not been disclosed to the Quellos clients and legal counsel, but that counsel would not have opined favorably as to POINT’s legality had the true facts been revealed to them. Moreover, Quellos and Euram principals had explicitly discussed the risk

of claims based on the lack of disclosure. Even in the absence of such explicit discussions, the potential for claims arising from the disallowance of claimed tax benefits was manifest. An objective observer armed with the same knowledge should have foreseen the potential for such claims, and the Insureds here actually did foresee such claims. *See Carolina Cas.*, 2010 WL 1849230, at *11 (holding coverage excluded because “[a] reasonable attorney with [insured]’s knowledge of these facts would have understood that a claim might arise” where client’s lawsuit had been dismissed for lack of prosecution, client had filed bar grievance, and insured fabricated letters attached as exhibits to response to bar investigator).⁶ As the Prior Knowledge Exclusion applies to “any claim” arising from such facts and circumstances and applies if Quellos or “any

⁶ Other recent cases from outside Washington have similarly resulted in summary judgments for insurers under substantially similar prior knowledge clauses and analogous factual circumstances. *See Schwartz Manes Ruby & Slovin, L.P.A. v. Monitor Liab. Managers., LLC*, No. 09cv790, 2011 WL 3627287, at *5 (S.D. Ohio Aug. 17, 2011) (holding that insured law firm “either knew or could have reasonably foreseen that [its] handling of the Kissel matter might be the basis of a malpractice claim” where firm failed to appear for trial, judgment was entered against client, and new counsel advised that insured was responsible); *Capitol Specialty Ins. Corp. v. Sanford Wittels & Heisler, LLP*, 793 F. Supp. 2d 399, 411 (D.D.C. 2011) (applying objective standard and holding that insured law firm had a basis to believe that an act or omission might reasonably be expected to be the basis of a claim where dismissal of clients’ lawsuit “would clearly put a lawyer on notice of the possibility of a malpractice claim”); *Cuthill & Eddy, LLC v. Continental Cas. Co.*, 784 F. Supp. 2d 1331, 1341-42 (M.D. Fla. 2011) (granting summary judgment to insurer where insured accounting firm had reason to believe that client would file claim arising from tax preparation work where counsel for clients suggested that accounting firm had committed professional malpractice and firm internally discussed potential settlement before suit was brought).

of its . . . officers [or] employees” have such knowledge, the Prior Knowledge Exclusion therefore bars coverage for all of the POINT Claims. *See supra* at 30-33.

The trial court did not specifically address the Prior Knowledge Exclusion other than to find summary judgment unavailable for “similar reasons” it discussed in connection with the Fraud Exclusion and Knowing Wrongful Act Exclusion. Again, as to those contract provisions, the trial court merely pointed to “a potential conflict . . . between the severability clause and the arising out of language.” RP 96:6-8. But the Prior Knowledge Exclusion is not subject to any severability or non-imputation clause. The non-imputation clause contained in the Primary Policy by its terms applies solely to specifically enumerated exclusions—“exclusions I.1) through 5).” CP 91. The Prior Knowledge Exclusion does not appear among exclusions I.1) through 5); it appears instead in the 2000-2004 Application. Thus, as officers and/or employees of Quellos, Greenstein’s and Wilk’s knowledge “of any fact or circumstances which might give rise to a claim” bars coverage to all Insureds with respect to “any claim arising from such fact or circumstances.” CP 1122, Section VI (Ex. E). The trial court did not offer any rationale as to why all of the POINT Claims do not grow out of the pre-inception knowledge of Greenstein and Wilk of POINT’s fraudulent underpinnings, and indeed, there is none.

Accordingly, the Insurers are entitled to summary judgment on the basis of the Prior Knowledge Exclusion.

2. The Knowing Wrongful Act Exclusion Similarly Erects a Complete Bar to Coverage for the POINT Claims.

The Knowing Wrongful Act Exclusion likewise sweeps all of the POINT Claims into its ambit. That provision bars coverage for “any actual or alleged Wrongful Act committed with knowledge that it was a Wrongful Act.” CP 54, Section 4.I.3. The exclusion’s broad scope extends beyond the Prior Knowledge Exclusion, encompassing knowingly committed Wrongful Acts whenever they occur. The Wrongful Acts committed by the Insureds with knowledge of their wrongfulness here include all of those pre-dating the 2000-2004 policy plus Greenstein’s and Wilk’s continuation of their admitted conspiracy to defraud the IRS up through 2005. Following completion of all of the POINT transactions in 2001 and filing of the relevant tax returns by 2002, “[w]hen these returns came under audit, the defendants gave the taxpayers and their advisors the same false information and documentation and the defendants *knew* that the taxpayers and their advisors would use the false information and documentation in responding to the IRS.” CP 947 (Ex. C) (emphasis added); CP 959 (Ex. D).

As the POINT matters all involve the same Wrongful Acts constituting the conspiracy to defraud, the Knowing Wrongful Act Exclusion precludes coverage under the Federal Policy. Although the Primary Policy's non-imputation clause applies to the Knowing Wrongful Act Exclusion, that clause does not materially affect the availability of coverage for the same reasons it does not do so with respect to the Fraud Exclusion: at best, it preserves coverage only for non-culpable Individual Insureds, and the sums incurred by such individuals do not even remotely approach the Federal Policy's attachment point. *See supra* at 34-37.

3. Quellos Also Cannot Evade the Preclusive Effect of the Continuity Date Exclusion.

Finally, the Continuity Date Exclusion applies on a similar basis as both the Prior Knowledge and Knowing Wrongful Act Exclusions. The Continuity Date Exclusion provides that the Primary Policy "does not apply . . . to any actual or alleged Wrongful Act occurring prior to the Continuity Date specified in Item 6 of the Declarations, if on or before such Continuity Date, any Insured [1] knew of such Wrongful Act or [2] could have reasonably foreseen that such Wrongful Act could lead to a claim." CP 54-55, Section 4.II.4. Although Quellos argued below that the Continuity Dates for some of the Quellos entities responsible for POINT pre-date POINT's development and implementation, *see* CP 78, Quellos

seeks sums incurred on behalf of “Quellos Group LLC,” which is the only plaintiff in this litigation. The August 25, 2000 Continuity Date applicable to Quellos Group, LLC post-dates POINT’s creation and the implementation of half of the relevant transactions. CP 78.

Moreover, the non-imputation clause does not apply to the Continuity Date Exclusion. To the extent that the Continuity Date Exclusion requires knowledge of Wrongful Acts committed prior to August 25, 2000, the same factual predicate applicable to the Prior Knowledge Exclusion applies. *See supra* at 40-42. To the extent that the Continuity Date Exclusion bars coverage based on an objective evaluation of the potential for claims based on the facts known to any Insured, the same analysis as that applicable to the Prior Knowledge Exclusion and the same factual predicate for the Knowing Wrongful Act Exclusion applies. *See supra* at 44-45.

In any event, whichever variation on the “prior knowledge” theme one chooses, the conclusion remains the same: Quellos’s CEO and principal knew before the first POINT transaction had been completed that the strategy rested on a “synthetic” foundation that could not bear its weight, that the economic substance justifying the strategy was illusory, and that the clients to whom Quellos marketed the strategy could not have appreciated those facts because they were not disclosed to them. In such

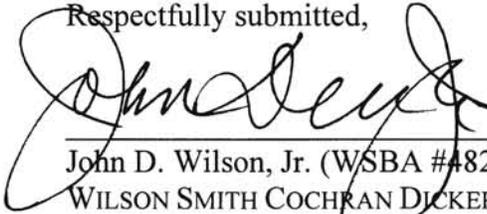
circumstances, IRS scrutiny and corresponding claims were a virtual certainty. Accordingly, the Federal Policy affords no coverage for them.

VII. CONCLUSION

For the foregoing reasons, Federal respectfully requests, to the extent that the Court concludes that the limits of the AISLIC primary policy have been fully exhausted and the Federal Policy potentially applies to the POINT Claims, that the Court reverse the trial court's order granting partial summary judgment in favor of the Insurers and instead enter judgment in favor of the Insurers dismissing all of Quellos's claims.

Dated: August 3, 2012

Respectfully submitted,



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Gary P. Seligman (*pro hac vice*)
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
Telephone: (202) 719-7000
Facsimile: (202) 719-7049

*Attorneys for Respondent/Cross-
Appellant Federal Insurance
Company*

CERTIFICATE OF SERVICE

The undersigned certifies that on this 3rd day of August,

2012, I caused the foregoing to be served on:

Paul E. Fogarty
Mary Przekop
Dearmin Fogarty PLLC
600 Stewart Street, Ste. 1200
Seattle, WA 98101-1246

Via Messenger

Barry J. Fleishman
Helen K. Michael
Eric M. Gold
Kilpatrick Townsend, et al.
607 14th St., NW, Suite 900
Washington DC 20005

Via U.S. Mail

Matthew J. Sekits
Janis C. Puracal
Jerret E. Sale
Bullivant Houser Bailey PC
1700 Seventh Ave., Suite 1810
Seattle, WA 98101

Via Messenger

Leslie S. Ahari
Troutman Sanders LLP
16600 International Drive
Suite 600
McLean, VA 22102

Via U.S. Mail

SIGNED this 3rd day of August, 2012.



Connie Enns Jory

RECEIVED
COURT OF APPEALS
DIVISION ONE
AUG 03 2012

NO. 68478-7

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

QUELLOS GROUP, LLC,

Appellant/Cross-Respondent,

v.

FEDERAL INSURANCE COMPANY and INDIAN HARBOR
INSURANCE COMPANY,

Respondents/Cross-Appellants,

On Appeal from the King County Superior Court
Case No. 10-2-41637-4 SEA
Hon. Dean S. Lum, Judge Presiding

**APPENDIX TO BRIEF OF RESPONDENT/CROSS-APPELLANT
FEDERAL INSURANCE COMPANY**

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Attorneys for Respondent/Cross-Appellant Federal Insurance Company

2012 AUG -3 PM 1:44
COURT OF APPEALS
STATE OF WASHINGTON

APPENDIX A

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY RELATED TO:

REDACTED

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THE HONORABLE DEAN S. LUM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

QUELLOS GROUP LLC,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY;
INDIAN HARBOR INSURANCE
COMPANY; STEADFAST INSURANCE
COMPANY; AND NUTMEG INSURANCE
COMPANY,

Defendants.

No.: 10-2-41637-4 SEA

PLAINTIFF QUELLOS GROUP
LLC'S RESPONSES AND
OBJECTIONS TO DEFENDANT
INDIAN HARBOR INSURANCE
COMPANY'S FIRST SET OF
INTERROGATORIES TO
PLAINTIFF

Pursuant to Washington Superior Court Civil Rules ("Washington Civil Rules") 26 and 33, Plaintiff Quellos Group LLC ("Quellos" or "Plaintiff"), by and through their undersigned counsel, Kilpatrick Townsend & Stockton LLP, hereby respond and object to Defendant Indian Harbor Insurance Company's ("Indian Harbor") First Set of Interrogatories to Plaintiff, dated August 31, 2011, as follows:

GENERAL OBJECTIONS AND LIMITATIONS

1. Quellos objects to Indian Harbor's Interrogatories to the extent they seek to impose obligations upon Plaintiffs beyond those required by the Washington Civil Rules, the

PLAINTIFF'S RESPONSE TO FIRST SET OF
INTERROGATORIES — 1

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1420 FIFTH AVENUE, SUITE 4400
SEATTLE, WA 98101-2325
(206) 467-9600

US20042918579.1



ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY RELATED TO

REDACTED

1 Local Rules, or any other Order of this Court. Plaintiffs will interpret each definition, and
2 interpret and respond to each Interrogatory, in a manner consistent with its obligations under
3 the Washington Civil Rules or any applicable Order of this Court.

4 2. Quellos objects to Indian Harbor's Interrogatories to the extent they seek
5 information or documents protected by a confidentiality agreement, the attorney-client
6 privilege, the work-product doctrine, the joint-defense privilege, or any other applicable
7 privilege or immunity from discovery. None of Quellos' responses is intended, or should be
8 construed, as a waiver or relinquishment of any part of the protection afforded by a
9 confidentiality agreement, the attorney-client privilege, the work-product doctrine, the joint
10 defense privilege, or any other applicable privilege or immunity from discovery.

11 3. Quellos objects to Indian Harbor's Interrogatories to the extent they seek
12 information or materials already in Indian Harbor's possession, custody or control, or that are
13 publicly available to Indian Harbor.

14 4. Quellos objects to Indian Harbor's Interrogatories to the extent they require
15 Quellos to formulate legal conclusions or conclusions of fact in order to determine what
16 information or documents are sought.

17 5. No agreement by Quellos to provide information or documents in response to
18 an Interrogatory if it exists shall in any way be construed as an admission that in fact any
19 responsive information or documents exists. By responding to an Interrogatory, Quellos does
20 not accept, admit, or concede any assertions, characterizations, or implications contained
21 therein. A response to an Interrogatory is only a representation that non-privileged and
22 otherwise unprotected information will be made available, subject to objections, if it exists.

23 6. No agreement by Quellos to provide information or documents in response to
24 an Interrogatory shall be construed as a waiver of Quellos' right to object to the use of those
25 information or documents in trial or any other proceeding in this or any other action.

26



PLAINTIFF'S RESPONSE TO FIRST SET OF INTERROGATORIES — 2

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US2006 2934539.1

**ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
RELATED TO**

1 7. Quellos objects to Indian Harbor's Interrogatories to the extent that they are
2 premature. Plaintiffs reserve the right to amend or supplement its Responses and Objections,

3 8. Quellos objects to Indian Harbor's Interrogatories to the extent that they are
4 vague and ambiguous and do not describe with reasonable specificity the information
5 requested.

6 9. Quellos objects to Indian Harbor's Interrogatories to the extent they seek
7 confidential or proprietary business information.

8 10. Quellos objects to Indian Harbor's Interrogatories to the extent they are
9 overbroad, unduly burdensome, duplicative, or redundant.

10 11. Quellos objects to Indian Harbor's Interrogatories to the extent they seek
11 information that is irrelevant to the subject matter of the lawsuit and/or is not reasonably
12 calculated to lead to discovery of relevant evidence.

13 12. These General Objections and Limitations apply to each Interrogatory as
14 though restated in full in the specific responses that follow. The failure to mention any of the
15 foregoing General Objections and Limitations in the specific responses set forth below shall
16 not be deemed a waiver of such objections or limitations.

17 **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

18 13. Quellos objects to Indian Harbor's Instructions, including but not limited to,
19 Instruction No. 6, to the extent they seek information or materials already in Indian Harbor's
20 possession, custody or control, or that are publicly available to Indian Harbor.

22 14. Quellos objects to Instruction No. 7 to the extent it purports to require Quellos
23 to seek any documents or information not within Quellos' possession, custody, or control.

24 15. Quellos objects to the definition of "you" or "your" or "Quellos" on the
25 grounds that it is overbroad, unduly burdensome, and purports to require Plaintiffs to produce
26

PLAINTIFF'S RESPONSE TO FIRST SET OF
INTERROGATORIES — 3

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(206) 467-9600

US2008 2938539.1

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
 RELATED TO REDACTED

1 documents protected by the attorney-client privilege, attorney work-product doctrine and any
 2 other applicable privileges, protections and immunities from discovery, or to produce
 3 documents not within its possession, custody or control.

4
 5 16. Quellos objects to the definition of "all" to the extent it purports to require the
 6 production of cumulative or duplicative information or otherwise imposes a burden on
 7 Plaintiffs that outweighs the benefit of the documents sought.

8 17. Quellos objects to the definition of "documents" on the grounds that it is
 9 overbroad and unduly burdensome.

10 18. Quellos objects to the definition of "identify," "identity" or "identification" on
 11 the grounds that it is overbroad and unduly burdensome, and to the extent that it purports to
 12 require Quellos to seek any documents or information not within its possession, custody, or
 13 control, or to the extent that it seeks information or documents that may be derived or
 14 ascertained from some other source that is more convenient, less burdensome, or less
 15 expensive than the imposition of this definition on Quellos.
 16

17 19. Quellos objects to the definition of "describe" on the grounds that it is
 18 overbroad and unduly burdensome, and to the extent that it purports to require Quellos to seek
 19 any documents or information not within its possession, custody, or control, or to the extent
 20 that it seeks information that may be derived or ascertained from some other source that is
 21 more convenient, less burdensome, or less expensive than the imposition of this definition on
 22 Quellos.
 23

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 26
 PLAINTIFF'S RESPONSE TO FIRST SET OF
 INTERROGATORIES — 4

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 1420 FIFTH AVENUE, SUITE 4400
 SEATTLE, WA 98101-2325
 (206) 467-9600

US2208 2938539.1

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
RELATED TO: REDACTED

Name	Street Address	City	State	Postal Code
RICHARD E. HALPERIN	25 STRATFORD ROAD	HARRISON	NY	10528
ANDREW J. ROBBINS	9 WOODBURY FARMS DRIVE	WOODBURY	NY	11797
CYNTHIA G. BEERBOWER	825 EIGHTH AVENUE, SUITE 4050	NEW YORK	NY	98105
BRUCE M. DRESNER	10 PHEASANT RIDGE ROAD	NEWTOWN	CT	98115
MIHIR BHATTACHARYA	22 CHURCH LANE SOUTH	SCARSDALE	NY	98118
DAVID MULLANE	9 FIELDSTONE ROAD	RYE	NY	90274
MICHAEL J. LINN	900 PARK AVENUE, 3A	NEW YORK	NY	98027
RICHARD SACHS	88 CENTRAL PARK WEST, APARTMENT 4S	NEW YORK	NY	98102
GARY A. BUDLOW	37 FOREST DRIVE	SHORT HILLS	NJ	10583
STEVE M. BERGIDA	10 RAYMOND LANE	BELLE MEAD	NJ	98077
JOHN T. RYAN	4 BRIDLE PATH	LAWRENCEVILLE	NJ	98040
PETER J. KRZYSZEK	2419 ORCHARD CREST	MANASQUAN	NJ	98074
NICHOLAS SIDERATOS	208 ALDERSHOT LANE	MANHASSET	NY	10028
MARK SCHWARTZ	453 HARRIS ROAD	BEDFORD HILLS	NY	08648

Interrogatory No. 2:

Identify and describe each of the POINT Claims referenced in your Complaint. In responding to this interrogatory, please identify for each such claim:

- (i) The claimant, agency and/or other person initiating the claim.
- (ii) The entity, individual and/or other person to whom the matter was asserted.
- (iii) The date and manner by which Quellos learned of the claim.
- (iv) The date and manner by which Quellos contends it notified Indian Harbor of the claim (e.g., identify the pertinent communication to Indian Harbor).
- (v) How much Quellos expended indemnifying itself or indemnifying its officers and directors for their defense costs incurred in connection with the claim as alleged in the Complaint ¶ 77.
- (vi) How much in "other covered losses" Quellos incurred in connection with the claim as alleged in the Complaint ¶ 80, and describe the nature of such losses.
- (vii) All facts supporting your contention that the claim is covered by the Policies.

Response:

Quellos hereby incorporates each of the foregoing General Objections and Objections to Instructions and Definitions, including but not limited to, Objection Nos. 15 and 16. In addition, Quellos objects to Interrogatory No. 2 on the grounds that it, and the definitions of

PLAINTIFF'S RESPONSE TO FIRST SET OF
INTERROGATORIES — 6

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(206) 467-9600

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
 RELATED TO, REDACTED

1 "identify" and "describe," are overbroad and unduly burdensome and seeks information or
 2 documents that may be within Indian Harbor's custody or control, or derived or ascertained
 3 from some other source that is more convenient or less burdensome than the imposition of this
 4 Interrogatory on Quellos. Quellos further objects to this Interrogatory to the extent it requests
 5 information that is irrelevant to the subject matter of the lawsuit and/or is not reasonably
 6 calculated to lead to the discovery of admissible evidence. Quellos also objects to this
 7 Interrogatory as premature because discovery has just commenced and is ongoing. Quellos
 8 further objects to this Interrogatory to the extent it seeks information or documents protected
 9 by the attorney-client privilege, the work-product doctrine, the joint-defense privilege, or any
 10 other applicable privilege or immunity from discovery.
 11

12 Subject to and without waiving the foregoing objections, Quellos responds as
 13 follows: Quellos provides responses below identifying certain information requested in
 14 Interrogatory No. 2 for each of the POINT Claims referenced in Quellos' Complaint. The
 15 costs listed in response to part (v) are the total defense costs incurred and submitted to
 16 Indian Harbor as of today's date and Quellos reserves its right to supplement the response
 17 below. The matter names provided below correspond to the descriptions provided in POINT
 18 invoices previously submitted to Indian Harbor.
 19

20
 21 Saban Claim

- 22 (i) Haim Saban, Cheryl Saban, and related trusts and entities ("Saban Parties").
 23 (ii) Quellos Financial Advisors, LLC and Quellos Custom Strategies, LLC.
 24 (iii) In June 2005, the Saban Parties advised Quellos that they would consider
 25 legal action against Quellos.
 26 (iv) Quellos has given Indian Harbor notice of this claim and will produce
 documents from which responsive information may be obtained.

PLAINTIFF'S RESPONSE TO FIRST SET OF
 INTERROGATORIES — 7

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US2008 293853.1

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
 RELATED TO REDACTED

- 1 (v) Defense costs: \$238,311.86. REDACTED
 2 (vi) Other covered losses: REDACTED

3 Schein Claim

- 4
 5 (i) Marvin Schein, Platinum Trading Parties, LLC, Cobalt Trading Partners
 LLC, and Lawrence Gaslow, *et al.* ("Schein Parties").
 6 (ii) Quellos Custom Strategies, LLC, and Quellos Group LLC.
 7 (iii) In March 2006, the Schein Parties advised Quellos that they would consider
 8 legal action against Quellos.
 9 (iv) Quellos has given Indian Harbor notice of this claim and will produce
 documents from which responsive information may be obtained.
 10 (v) Defense Costs: \$19,450.58.
 11 (vi) Other covered losses: REDACTED

12 IRS Investigation

- 13
 14 (i) Internal Revenue Service ("IRS").
 15 (ii) Quellos Custom Strategies, LLC.
 16 (iii) On February 8, 2005, Quellos Group LLC received a summons from the
 IRS seeking documents related to the POINT transaction.
 17 (iv) Quellos has given Indian Harbor notice of this claim and will produce
 documents from which responsive information may be obtained.
 18 (v) IRS/POINT defense costs: \$536,861.12.
 19 (vi) Other covered losses: \$0.

20
 21 United States Senate Investigation

- 22 (i) United States Senate Permanent Subcommittee on Investigations.
 23 (ii) Quellos Group, LLC.
 24 (iii) On September 21, 2005, Quellos received a subpoena from the
 25 United States Senate Permanent Subcommittee on Investigations, seeking
 information related to the POINT transaction strategy and interviews with
 26 certain Quellos employees.

PLAINTIFF'S RESPONSE TO FIRST SET OF
 INTERROGATORIES — 8

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US2008 2938539.1

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY RELATED TO [REDACTED]

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- (iv) Quellos has given Indian Harbor notice of this claim and will produce documents from which responsive information may be obtained.
- (v) U.S. Senate Investigation defense costs: \$1,072,519.46.
- (vi) Other covered losses: \$0.

United States Attorney's Office

- (i) United States Attorney's office for the Western District of Washington.
- (ii) Quellos Holdings, Inc. and Quellos Group, LLC.
- (iii) In late January, 2007, Quellos was contacted by the United States Attorney's office for the Western District of Washington concerning the POINT transaction. On July 3, 2007 and June 19, 2008, Quellos received a grand jury subpoena for documents and information related to the POINT transaction.
- (iv) Quellos has given Indian Harbor notice of this claim and will produce documents from which responsive information may be obtained.
- (v) Defense costs:

Matter Description	Defense Cost Total
Greenstein/Wilk (on behalf of Greenstein/Wilk)(pre-guilty plea)	\$17,443,623.57
Hirata	\$220,137.62
Hanson	\$84,836.07
Robbins	\$279,583.71
Feinglass	\$77,473.47
Dennis	\$525.00
Bontje	\$324,870.83
Scheinfeld	\$197,328.90
McNamara	\$5,137.50
White	\$79,760.33
POINT Investigation	\$5,286,481.31
POINT Greenstein/Wilk (on behalf of Quellos)	\$50,227.21
USAG Seattle	\$52,596.05



PLAINTIFF'S RESPONSE TO FIRST SET OF INTERROGATORIES — 9

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(206) 467-9600

US2006 2938539.1

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
 RELATED TO: REDACTED

USAO Investigation	\$29,175.40
TOTAL:	\$24,131,756.97

(vi) Other Covered Losses: \$0.

California Franchise Tax Board Matters

- (i) California Franchise Tax Board ("CFTB").
- (ii) Quellos Financial Advisors, LLC.
- (iii) On May 15, 2008, Quellos received a letter from the CFTB indicating the board's intention to take action against Quellos with regard to the POINT transaction. The CFTB also sent notices related to CFTB matters on July 17, 2008, September 2, 2008, and October 21, 2009.
- (iv) Quellos has given Indian Harbor notice of this claim and will produce documents from which responsive information may be obtained.
- (v) Defense costs:

Matter Description	Defense Cost Total
California Franchise Tax Board	\$44,543.00
Promoter Audit	\$362,579.35
California State Promoter Penalty	\$952,155.17
TOTAL:	\$1,359,277.52

(vi) Other Covered Losses: \$0.

Additional POINT Related Defense Costs

Quellos has incurred additional costs for legal work that benefited the defense of its officers and directors or Quellos in multiple noticed matters listed above, including but not limited to, the Saban and Schein matters. These additional costs are as follows:

Matter Description	Defense Cost Total
POINT Civil Litigation	\$259,192.59

PLAINTIFF'S RESPONSE TO FIRST SET OF
 INTERROGATORIES — 10

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 (206) 467-9600

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY RELATED TO, REDACTED

POINT General	\$223,049.81
TOTAL:	\$482,242.40

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In response to part (vii) of Interrogatory No. 2, Quellos responds that the Indian Harbor 2004-2005 Excess Policy sold to Quellos provides coverage for the investigations and lawsuits threatened or commenced against Quellos and certain of its current or former directors and officers (the "POINT Claims"). The POINT Claims involve losses incurred by Quellos in connection with lawsuits and other claims, including criminal and regulatory investigations, alleging wrongful acts committed by Quellos while performing professional services related to the POINT transaction. The POINT Claims required Quellos and/or its directors and officers to incur costs defending and settling these claims. Quellos reserves its right to amend or supplement its response to Interrogatory No. 2.

Interrogatory No. 3:

Identify all payments made by any insurers to you or on your behalf in connection with the POINT Claims, including but not limited to the insurer making each payment, the recipient of each payment, the amount of each payment, the date of each payment, and the specific action or matter to which each payment pertains.

Response:

Quellos hereby incorporates each of the foregoing General Objections and Objections to Instructions and Definitions, including but not limited to, Objection Nos. 14 and 15. Quellos further objects to Interrogatory No. 3 on the grounds that the definition of "identify" is overbroad and unduly burdensome, and to the extent this Interrogatory purports to require Quellos to seek information that may be derived or ascertained from some other source that is more convenient, less burdensome, or less expensive than that requested by this Interrogatory.

Subject to and without waiving the foregoing objections, Quellos responds as



ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY RELATED TO:

REDACTED

1 follows: American International Specialty Lines Insurance Company ("AISLIC") is the
 2 only insurer to pay Quellos in connection with the POINT claims and did so under its 2004-
 3 2005 primary policy, Policy No. 885-37-42 ("AISLIC Primary Policy"). By letter dated
 4 July 13, 2009, AISLIC informed Quellos that it was recognizing \$6,357,973.58 of submitted
 5 defense costs and REDACTED After deducting the AISLIC Primary
 6 Policy's \$2,500,000 retention, AISLIC paid to Quellos \$4,982,973.58 (the "AISLIC
 7 Payment"). Quellos received the AISLIC Payment on August 28, 2009. The following is a
 8 more detailed breakout of the AISLIC Payment:
 9

Matter Description	Defense Cost Total
REDACTED	REDACTED
Greenstein/Wilk Defense Costs	\$2,476,632.15
Other Director and Officer Defense Costs	\$566,232.81
Additional Matters Listed in Response to Interrogatory No. 2	\$3,315,108.62
Retention	(\$2,500,000)
TOTAL:	\$4,982,973.58

17 Interrogatory No. 4:

18 Itemize and describe all damages that you are claiming against Indian Harbor in connection
 19 with the Fifth Cause of Action in your Complaint.

20 Response:

21 Quellos hereby incorporates each of the foregoing General Objections and Objections
 22 to Instructions and Definitions, including but not limited to, Objection Nos. 14 and 15.

23 Quellos further objects to Interrogatory No. 4 to the extent it is duplicative of Interrogatory
 24 No. 2. In addition, Quellos objects to Interrogatory No. 4 on the grounds that the definition of
 25 "describe" is overbroad and unduly burdensome, and to the extent this Interrogatory purports
 26 to require Quellos to seek information that may be derived or ascertained from some other

PLAINTIFF'S RESPONSE TO FIRST SET OF INTERROGATORIES — 12

KILPATRICK TOWNSEND AND STOCKTON LLP
 1420 FIFTH AVENUE, SUITE 4400
 SEATTLE, WA 98101-2325
 (206) 467-9600

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
 RELATED TO: REDACTED

1 source that is more convenient, less burdensome, or less expensive than that requested by this
 2 Interrogatory.

3 Subject to and without waiving the foregoing objections, Quellos responds as
 4 follows: The damages claimed against Indian Harbor in connection with the Fifth Cause of
 5 Action in Quellos' Complaint are those exceeding the limits of the underlying 2004-2005
 6 policies, which are listed in response to part (v) of Interrogatory No. 2, as well as defense
 7 costs and other covered losses that it may incur in the future in connection with the matters
 8 listed in response to Interrogatory No. 2. In addition, Quellos is seeking interest at the
 9 legally prescribed rate, and attorneys' fees and other expenses incurred in bringing this
 10 action to obtain the benefits of the 2004-2005 Indian Harbor Excess Policy.
 11
 12

13 **Interrogatory No. 5:**

14 Itemize and describe all damages that you are claiming against Indian Harbor in connection
 15 with the Sixth Cause of Action in your Complaint.

16 **Response:**

17 Quellos hereby incorporates each of the foregoing General Objections and Objections
 18 to Instructions and Definitions, including but not limited to, Objection Nos. 14 and 15.
 19 Quellos further objects to Interrogatory No. 5 to the extent it is duplicative of Interrogatory
 20 No. 2. In addition, Quellos further objects to Interrogatory No. 4 on the grounds that the
 21 definition of "describe" is overbroad and unduly burdensome, and to the extent this
 22 Interrogatory purports to require Quellos to seek information that may be derived or
 23 ascertained from some other source that is more convenient, less burdensome, or less
 24 expensive than that requested by this Interrogatory.

25 Subject to and without waiving the foregoing objections, Quellos responds as
 26

PLAINTIFF'S RESPONSE TO FIRST SET OF
 INTERROGATORIES — 13

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 SEATTLE, WA 98101-2325
 (206) 467-9600

US2004 2918539.1

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
 RELATED TO

REDACTED

1 follows: The damages claimed against Indian Harbor in connection with the Sixth Cause of
 2 Action in Quellos' Complaint are those exceeding the limits of the underlying 2004-2005
 3 policies, which are listed in response to part (vi) of Interrogatory No. 2, as well as and other
 4 covered losses that it may incur in the future in connection with the matters listed in
 5 response to Interrogatory No. 2. In addition, Quellos is seeking, interest at the legally
 6 prescribed rate, and attorneys' fees and other expenses incurred in bringing this action to
 7 obtain the benefits of 2004-2005 Indian Harbor Excess Policy.
 8

9 Interrogatory No. 6

10 If you contend that any provision of the Primary Policy is ambiguous, please identify each
 11 such provision and describe in detail the basis for your contention, including but not limited to
 12 references to all relevant documents and communications, persons with knowledge relating to
 13 your contention, expert opinion(s), and any other materials or facts you believe support this
 14 contention.

14 Response:

15 Quellos hereby incorporates each of the foregoing General Objections and Objections
 16 to Instructions and Definitions, including but not limited to, Objection Nos. 14, 15, 16, 17,
 17 and 18. In addition, Quellos objects to Interrogatory No. 6 on the grounds that it is premature
 18 because Indian Harbor has yet to take a definitive coverage position. Quellos further objects
 19 to this Interrogatory to the extent it seeks information or documents protected by the attorney-
 20 client privilege, the work-product doctrine, the joint-defense privilege, or any other applicable
 21 privilege or immunity from discovery. Quellos also objects to this Interrogatory to the extent
 22 it requires Quellos to formulate a legal conclusion.
 23

24 Subject to and without waiving the foregoing objections, Quellos responds as follows:
 25 Indian Harbor has yet to definitively state its basis for denying coverage for each of the
 26 POINT Claims identified in response to Interrogatory No. 2, including its position regarding

PLAINTIFF'S RESPONSE TO FIRST SET OF
 INTERROGATORIES — 14

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 SEATTLE, WA 98101-2325
 (206) 467-9600

US2008 2918539.1

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY RELATED TO:

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1 the terms and conditions of the AISLIC Primary Policy to which the Indian Harbor Policy
2 follows form. Until such time as Indian Harbor definitively takes a position on key policy
3 terms, Quellos is not able to assess whether it has specific disagreements with Indian Harbor's
4 interpretations of the AISLIC Primary Policy and, based on such stated coverage position,
5 whether Quellos believes that any specific provision of the policy is ambiguous.
6

7 Interrogatory No. 7:

8 If you contend that any provision of the Indian Harbor Policy is ambiguous, please identify
9 each such provision and describe in detail the basis for your contention, including but not
10 limited to references to all relevant documents and communications, persons with knowledge
11 relating to your contention, expert opinion(s), and any other materials or facts you believe
12 support this contention.

11 Response:

12 Quellos hereby incorporates each of the foregoing General Objections and Objections
13 to Instructions and Definitions, including but not limited to, Objection Nos. 14, 15, 16, 17,
14 and 18. Quellos further objects to Interrogatory No. 7 on the grounds that it is premature
15 because Indian Harbor has yet to take a definitive coverage position in this action. Quellos
16 further objects to this Interrogatory to the extent it seeks information or documents protected
17 by the attorney-client privilege, the work-product doctrine, the joint-defense privilege, or any
18 other applicable privilege or immunity from discovery. Quellos also objects to this
19 Interrogatory to the extent it requires Quellos to formulate a legal conclusion.
20

21 Subject to and without waiving the foregoing objections, Quellos responds as follows:
22 Indian Harbor has yet to definitively state its basis for denying coverage for each of the
23 POINT Claims identified in response to Interrogatory No. 2, including its coverage position
24 regarding the terms and conditions of the 2004-2005 Indian Harbor Excess Policy. Until such
25 time as Indian Harbor definitively takes a position on key policy terms, Quellos is not able to
26



PLAINTIFF'S RESPONSE TO FIRST SET OF INTERROGATORIES — 15

KILPATRICK TOWNSEND AND STOCKTON LLP
1420 FIFTH AVENUE, SUITE 4400
SEATTLE, WA 98101-2325
(206) 467-9600

US2008 2938539.1

ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
 RELATED TO REDACTED

1 assess whether it has specific disagreements with Indian Harbor's interpretations of the 2004-
 2 2005 Indian Harbor Excess Policy and, based on such stated coverage position, whether
 3 Quellos believes that any specific provision of the policy is ambiguous.
 4

5 **Interrogatory No. 8:**

6 If you contend that any conduct to which Jeffrey Greenstein pled guilty on September 9,
 7 2010, was not within the scope of his duties on behalf of Quellos, identify the specific act(s)
 8 and describe the factual basis for your contention that such act(s) were not within the scope of
 9 his employment, including but not limited to references to all relevant documents and
 10 communications, persons with knowledge relating to your contention, expert opinion(s), and
 11 any other materials or facts you believe support this contention.

12 **Response:**

13 Quellos hereby incorporates each of the foregoing General Objections and
 14 Objections to Instructions and Definitions, including but not limited to, Objection Nos. 14,
 15 15, 16, 17, and 18. Quellos further objects to Interrogatory No. 8 on the grounds that it is
 16 vague, ambiguous and unintelligible as phrased.

17 **Interrogatory No. 9:**

18 If you contend that any conduct to which Charles Wilk pled guilty on September 9, 2010, was
 19 not within the scope of his duties on behalf of Quellos, identify the specific act(s) and
 20 describe the factual basis for your contention that such act(s) were not within the scope of his
 21 employment, including but not limited to references to all relevant documents and
 22 communications, persons with knowledge relating to your contention, expert opinion(s), and
 23 any other materials or facts you believe support this contention.

24 **Response:**

25 Quellos hereby incorporates each of the foregoing General Objections and
 26 Objections to Instructions and Definitions, including but not limited to, Objection Nos. 14,
 15, 16, 17, and 18. Quellos further objects to Interrogatory No. 9 on the grounds that it is
 vague, ambiguous and unintelligible as phrased.

PLAINTIFF'S RESPONSE TO FIRST SET OF
 INTERROGATORIES — 16

KILPATRICK TOWNSEND AND STOCKTON LLP
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 SEATTLE, WA 98101-2325
 (206) 467-9600

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ALL RESPONSES SUBJECT TO CONFIDENTIALITY AGREEMENT AS THEY
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DATED: October 18, 2011

KILPATRICK, TOWNSEND &
STOCKTON, LLP

By Helen K. Michael (PAC)
Barry J. Fleishman (Pro Hac Vice)
Helen K. Michael (Pro Hac Vice)
Eric M. Gold (Pro Hac Vice)
607 14th Street, NW Suite 900
Washington, DC 20005
Telephone: (202) 508-5800
Facsimile: (202) 508-5858

Attorneys for Plaintiff Quellos Group LLC



PLAINTIFF'S RESPONSE TO FIRST SET OF
INTERROGATORIES — 17

KILPATRICK TOWNSEND AND STOCKTON LLP
1420 FIFTH AVENUE, SUITE 4400
SEATTLE, WA 98101-2325
(206) 467-9600

US2008 2038539.1

VERIFICATION

My name is Norm Bontje. I am the Chief Financial Officer at Quellos Group LLC and I have the authority to verify these discovery responses. I declare under the penalty of perjury under the laws of the State of Washington that the above answers to Defendant Indian Harbor Insurance Company's First Set of Interrogatories to Plaintiff are true and correct based on my understanding and belief.

DATED this 18th day of October, 2011.



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Proof of Service

The undersigned hereby certifies and declares under penalty of perjury that on this 18th day of October, 2011, I caused to be served Plaintiff Quellos Group LLC's Responses and Objections to Defendant Indian Harbor Insurance Company's First Set of Interrogatories to Plaintiff, via electronic mail and first class mail, to the following:

John D. Wilson, Jr. Wilson Smith Cochran Dickerson 1215 Fourth Avenue, Suite 1700 Seattle, WA 98161	Matthew J. Sekits Janis C. Puracal Bullivant Houser Bailey PC 1601 Fifth Avenue Suite 2300 Seattle, WA 98101
Daniel J. Standish Gary P. Seligman Wiley Rein LLP 1776 K Street, NW Washington, DC 20006	Gabriela Richeimer Leslie S. Ahari Stephanie T. Schmelz Kelly B. Thoerig Troutman Sanders LLP 401 9th Street, N. W. Suite 1000 Washington, D.C. 20004
<i>Counsel for Federal Insurance Company</i>	<i>Counsel for Indian Harbor Insurance Company</i>

EXECUTED this 18th day of October, 2011, at Washington, District of Columbia.



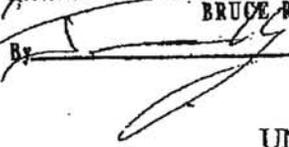
Jeffrey Hoffman



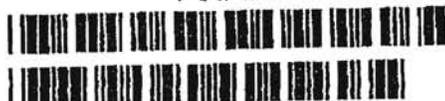
APPENDIX B

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Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.

DECEMBER 30 20 07
BRUCE RIFKIN, Clerk
By  Deputy

Hon. Ricardo S. Martinez



08-CR-00296-INDI

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY I. GREENSTEIN and
CHARLES H. WILK,

Defendants.

NO. CR08-0296RSM

SECOND SUPERSEDING
INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT 1
(Conspiracy to Defraud IRS)

1. Beginning at a time unknown, but no later than in or about June 1999, and continuing until in or about August 2006, at Seattle, Washington, within the Western District of Washington and elsewhere, JEFFREY I. GREENSTEIN and CHARLES H. WILK, and others known and unknown, did knowingly conspire, combine, confederate and agree to defraud the United States and an agency thereof, to wit, the Internal Revenue Service (hereinafter, "IRS") of the United States Department of Treasury, for the purpose of impeding, impairing, defeating and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of incomes taxes, interest, and penalties.

I. INTRODUCTION

A. Defendants and Other Relevant Parties.

At all times relevant to this Second Superseding Indictment:

2. Quellos Group, L.L.C. (hereinafter "Quellos"), formerly known as Quadra Capital Management, L.P., was an investment management services firm founded in or about 1994 and headquartered in Seattle, Washington.

3. Defendant JEFFREY I. GREENSTEIN was a founder and Chief Executive Officer of Quellos. JEFFREY I. GREENSTEIN has a bachelors degree in finance and extensive experience dealing in complex securities and derivative markets. Prior to founding Quellos, JEFFREY I. GREENSTEIN was a General Partner of another registered investment advisory firm that provided alternative investment strategies through the use of derivatives and hedging transactions. Previous to that, JEFFREY I. GREENSTEIN had been affiliated with a national investment advisory firm, marketing derivative securities to institutional clients.

4. Beginning in or about 1996, JEFFREY I. GREENSTEIN gained knowledge and experience in tax shelters through work with certain national accounting firms on tax shelter strategies to include, among others, FLIP (Foreign Leveraged Investment Program), OPIS (Offshore Portfolio Investment Strategy), and CDS (Contingent Deferred Swaps). JEFFREY I. GREENSTEIN, with others at Quellos, assisted national accounting firms by designing aspects of FLIP and OPIS, and provided execution services in connection with approximately 150 individual FLIP and OPIS transactions. JEFFREY I. GREENSTEIN, with others at Quellos, also promoted and provided execution services for a number of CDS transactions. Through JEFFREY I. GREENSTEIN's work on the various tax shelters, Quellos earned tens of millions of dollars in fees. Through JEFFREY I. GREENSTEIN's involvement in FLIP and OPIS alone, Quellos earned between \$25 million and \$50 million in fees. In addition, JEFFREY I. GREENSTEIN gained further knowledge about tax shelters by personally participating in a FLIP shelter for himself.

1 5. Quellos Customs Strategies, LLC (hereinafter "QCS"), was formed in or
2 about March 1999 as a wholly owned subsidiary of Quellos. QCS was formed with the
3 goal of providing customized services to high net-worth individuals and families,
4 including designing and implementing customized tax shelter strategies to minimize or
5 defer payment of taxes. Through QCS, JEFFREY I. GREENSTEIN sought to capture a
6 part of the lucrative tax shelter market from the national accounting firms for themselves.
7 JEFFREY I. GREENSTEIN also sought to use these tax shelter strategies as a means to
8 attract wealthy clients to the firm who could then be persuaded to invest their assets with
9 Quellos, thereby expanding Quellos's investment business. One such tax shelter strategy
10 developed and implemented by QCS was a strategy that came to be known as "POINT"
11 (Portfolio Optimized Investment Transaction).

12 6. Defendant CHARLES H. WILK, a lawyer with a Masters Degree in tax
13 law, joined Quellos in or about June 1999 as a principal. As part of his duties,
14 CHARLES H. WILK directed QCS's tax shelter business. Prior to joining Quellos,
15 CHARLES H. WILK was a senior manager with a national accounting firm, whose duties
16 included providing tax shelter strategies for the accounting firm's wealthy clients.
17 Previous to his position at the accounting firm, CHARLES H. WILK was an associate in
18 the tax department of a national law firm.

19 7. European American Investment Holdings NV was incorporated in or about
20 June 1999 in the Netherlands Antilles. European American Investment Holdings NV was
21 a holding company under which a group of companies known as European American
22 Investment Group (hereinafter "Euram") was organized. Euram was formed by American
23 and European investors, in part, to acquire an Austrian bank, which came to be known as
24 European American Investment Bank AG.

25 8. In or about 1999, principals from Quellos, including JEFFREY I.
26 GREENSTEIN, became shareholders in Euram and stood to profit from Euram's
27 business.

28 9. Of the other Euram companies, two United Kingdom-based subsidiaries,

1 European American Corporate Services Limited and European American Advisors
 2 Limited, focused on advising and providing structured financial products for high net
 3 worth individuals. The key members of the management of Euram included:

- 4 a. C.D., Euram's Chief Executive Officer;
- 5 b. J.S., Euram's Head of Tax and Structured Products; and
- 6 c. R.P., Euram's Head of Risk Management and Alternative

7 Investments.

8 10. Beginning in or about late 1999 and continuing through in or about 2002,
 9 C.D., J.S., and R.P. of Euram assisted Quellos by providing execution services, such as
 10 drafting transactional documents and finding and appropriating offshore shell companies,
 11 in furtherance of tax shelter strategies developed by QCS. Euram earned large fees for its
 12 participation in the tax shelter transactions developed and marketed by QCS, generally
 13 1% of the tax loss desired by the taxpayer client.

14 11. Beginning in or about 1999 and continuing through in or about 2000,
 15 Partner L.S. of Law Firm C.S. & M. LLP provided legal advice to JEFFREY I.
 16 GREENSTEIN and CHARLES H. WILK with respect to the development and
 17 implementation of POINT, and issued legal opinion letters to at least four clients who
 18 entered into POINT tax shelter transactions.

19 12. In 2001 and 2002, Law Firm B.C. LLP provided legal opinion letters to at
 20 least two clients who entered into POINT tax shelter transactions.

21 **B. The POINT Tax Shelter.**

22 13. Beginning in or about 1999 and continuing through in or about 2001,
 23 JEFFREY I. GREENSTEIN and CHARLES H. WILK designed, marketed and
 24 implemented the tax shelter strategy known as POINT. In or about 2000 and 2001, six
 25 POINT tax shelters were executed on behalf of five wealthy individuals:

- 26 a. In 2000, Client M.Z. executed a POINT tax shelter transaction with
- 27 Quellos. Client M.Z.'s POINT tax shelter transaction was known as "Torens."
- 28 b. In 2000, Client R.J. executed a POINT tax shelter transaction with

1 Quellos. Client R.J.'s POINT tax shelter transaction was known as "Reka."

2 c. In 2000, Client B.J. executed a POINT tax shelter transaction with
3 Quellos. Client B.J.'s POINT tax shelter transaction was known as "Burgundy."

4 d. In 2000 and then in 2001, Client M.S. executed two POINT tax
5 shelter transactions with Quellos. Client M.S.'s POINT tax shelter transactions were
6 known respectively as "Platinum" and "Cobalt."

7 e. In 2001, Client H.S. executed a POINT tax shelter transaction with
8 Quellos. Client H.S.'s POINT tax shelter transaction was known as "Titanium."

9 14. The total amount of fees paid by the clients to participate in POINT was
10 approximately \$86 million. The clients who participated in the POINT tax shelter
11 collectively sought to shelter approximately \$2 billion in capital gains and avoid payment
12 of more than \$400 million in federal taxes.

13 15. The objective of POINT was to offset capital gains and defer and reduce
14 taxes on those gains. In furtherance of this tax saving objective, JEFFREY I.
15 GREENSTEIN and CHARLES H. WILK, with the assistance of C.D., J.S., and R.P. of
16 Euram, designed a series of transactions and executed those transactions on behalf of
17 their clients in order to obtain the desired tax benefits. While each of the six POINT
18 transactions varied somewhat in actual implementation, they typically included the
19 following steps:

20 a. During late 1999 and continuing through 2000, an "offshore
21 investment fund" purportedly purchased shares of stock in well known, publicly-traded
22 technology companies. The fund then formed a number of offshore partnership entities
23 and contributed portions of its portfolio of stock to such partnerships. These partnership
24 entities were known generically as "Special Purpose Vehicles" or "SPVs."

25 b. The fund then purportedly caused each SPV to issue "Covered
26 Warrants" against their respective baskets of stocks. The Covered Warrants operated like
27 a long-dated call, meaning that an outside investor could purchase the Warrant for a
28 premium in return for the right in five years to purchase the stocks in the SPV at a set

1 price. In this case, each Covered Warrant was purportedly placed with a "bank" or some
2 other financial institution that purportedly paid millions in premiums to the SPVs for the
3 Warrants. The institution then was purportedly responsible for further marketing the
4 Warrant to others.

5 c. Once the Warrants were issued, a U.S. taxpayer acquired from the
6 offshore fund the partnership interests in an SPV. At the time the client acquired his or
7 her partnership, the technology stocks that the fund had purportedly contributed to the
8 partnership had fallen in value and, therefore, the partnership had built-in, unrealized
9 losses.

10 d. After the client acquired the partnership, he or she contributed to the
11 partnership his or her own assets. These assets, typically other stock that the client
12 desired to sell, had unrealized gains.

13 e. Shortly after the client contributed his or her own assets, within a
14 matter of two or three months, all or most of the assets within the partnership were sold,
15 including the purported shares of technology stock with the built-in loss. The sale of the
16 pre-existing portfolio also purportedly triggered a cancellation of the "Covered Warrant"
17 under terms that ultimately resulted in no economic impact on the partnership or the client
18 who acquired the partnership. The client then offset the gains from his or her contributed
19 assets with the alleged losses stemming from the pre-existing portfolio.

20 f. Subsequently, the client was able to draw out of the partnership, tax
21 free, the proceeds up to the client's basis in the partnership, or continue to maintain the
22 proceeds within the partnership tax free, and invest it further.

23 **C. IRS Treatment of Tax Shelters.**

24 16. During all times relevant to this Second Superseding Indictment, JEFFREY
25 I. GREENSTEIN and CHARLES H. WILK knew and understood that tax shelters that
26 the IRS concluded were designed, marketed and implemented solely for the purpose of
27 providing clients with a way to defer or reduce tax, would be challenged by the IRS. In
28 that event, the IRS would seek to collect the unpaid taxes plus interest, and might also

1 seek to impose substantial penalties upon the clients.

2 17. During all times relevant to this Second Superseding Indictment, JEFFREY
3 I. GREENSTEIN and CHARLES H. WILK knew and understood that in order for a tax
4 shelter strategy to survive challenge by the IRS, taxpayers were generally required to
5 demonstrate the following:

6 a. First, the individual transactions that comprised the shelter possessed
7 real economic substance and were not sham transactions;

8 b. Second, the transactions that comprised the shelter were not pre-
9 arranged and orchestrated solely for the purpose of obtaining a tax benefit; and

10 c. Third, the various parties involved in the transactions had a bona fide
11 business purpose for engaging in the transactions, i.e., that the client and others had a
12 reasonable profit motive to take part in the transaction other than for tax savings.

13 18. During all times relevant to this Second Superseding Indictment, JEFFREY
14 I. GREENSTEIN and CHARLES H. WILK also knew and understood in the event that
15 the IRS disallowed a benefit obtained as a result of a tax shelter, the IRS could impose
16 substantial penalties ranging from 20% to 40% of the underpayment attributable to the
17 shelter, unless the claimed tax benefit was supported by an independent legal opinion,
18 reasonably relied upon by the taxpayer in good faith. Therefore, JEFFREY I.
19 GREENSTEIN and CHARLES H. WILK knew and understood that in order to induce
20 clients to participate in a shelter, and to shield the clients from possible penalties, they had
21 to obtain legal opinion letters from reputable law firms concluding that a shelter will at
22 least "more likely than not" survive IRS challenge.

23 **II. OBJECT OF THE CONSPIRACY**

24 19. It was a part of and an object of the conspiracy that JEFFREY I.
25 GREENSTEIN and CHARLES H. WILK, together with others known and unknown, to
26 unlawfully and knowingly defraud and attempt to defraud the IRS by impeding,
27 impairing, defeating and obstructing the lawful governmental functions of the IRS in the
28 ascertainment, evaluation, assessment, and collection of income taxes, interest, and

1 penalties by designing, marketing, implementing, and defending and aiding in the defense
2 before the IRS of a fraudulent tax shelter known as POINT.

3 **III. MANNER AND MEANS OF THE CONSPIRACY**

4 20. It was a part of the conspiracy that JEFFREY I. GREENSTEIN and
5 CHARLES H. WILK designed and developed the POINT tax shelter to consist of a pre-
6 ordained series of sham transactions, executed in precise steps in accordance with the
7 directions of JEFFREY I. GREENSTEIN and CHARLES H. WILK, for the sole purpose
8 of providing a means for wealthy individuals to reduce and/or defer the payment of taxes
9 on capital gains income.

10 21. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
11 CHARLES H. WILK implemented the POINT tax shelter in a manner that minimized
12 costs to Quellos and maximized their profits. Specifically, JEFFREY I. GREENSTEIN
13 and CHARLES H. WILK knew and understood that the procurement of sufficient
14 amounts of actual stocks to generate the losses for the POINT clients would cost more
15 than they or others involved in the implementation of the shelter were able or willing to
16 pay. Furthermore, JEFFREY I. GREENSTEIN and CHARLES H. WILK were
17 unsuccessful in locating any bona fide, independent third-party who had real assets with
18 sufficient built-in losses willing to participate in the POINT transaction. Therefore,
19 JEFFREY I. GREENSTEIN and CHARLES H. WILK caused the creation of a fictional
20 "offshore investment fund" with a fictional portfolio of stocks that had been obtained
21 through a series of sham paper transactions in which no stocks and no money ever
22 exchanged hands.

23 22. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
24 CHARLES H. WILK knew at the time they designed, marketed and implemented the
25 POINT tax shelters that the various clients who participated in the shelter would likely be
26 audited by the IRS. Therefore, JEFFREY I. GREENSTEIN and CHARLES H. WILK
27 drafted and disseminated, and caused to be drafted and disseminated, marketing material,
28 transactional documents, and legal opinions designed to conceal from the IRS the facts

1 that first, each aspect of the POINT tax shelter, including the actions of the "offshore
2 investment fund" was wholly conceived, orchestrated, and directed by JEFFREY I.
3 GREENSTEIN and CHARLES H. WILK for the purpose of implementing a tax shelter,
4 and second, that the purported stocks that generated the off-setting losses for POINT
5 clients were, in truth and fact, non-existent.

6 **A. Fraudulent POINT Marketing Materials.**

7 23. It was further a part of the conspiracy that in order to conceal and attempt to
8 conceal from the IRS the true nature of the POINT tax shelter, JEFFREY I.
9 GREENSTEIN and CHARLES H. WILK drafted and disseminated and caused to be
10 drafted and disseminated to POINT clients and their advisors, false, fraudulent and
11 misleading descriptions of the POINT transaction in a marketing document entitled
12 "POINT Strategy," knowing and expecting that such clients and their advisors would rely
13 upon the document to claim false and fraudulent tax benefits as well as in defense of any
14 audit before the IRS. The POINT Strategy document purportedly set forth the genesis
15 and business rationale for the POINT transaction. According to the document, the
16 POINT Strategy was an investment opportunity independently fashioned by offshore
17 parties to replicate a popular European investment vehicle, and only fortuitously
18 discovered by Quellos. The document described this supposed investment opportunity as
19 follows:

20 a. A certain unnamed "offshore investment fund" desired to profit from
21 replicating a European financial product sold by large European financial institutions
22 known as "Covered Warrants," "BLOCS," or "HYPOS."

23 b. In order to replicate this product, the fund formed a partnership
24 entity known generically as an SPV ("Special Purpose Vehicle"). Once the SPV was
25 formed, the fund contributed certain publicly traded "stocks" it purportedly owned to the
26 SPV. The fund then caused the SPV to issue a "Covered Warrant" on the stocks in the
27 SPV. The terms of the Covered Warrant gave the acquirer of the Warrant the right to
28 purchase the SPV's stocks in five years at a set price in return for a large premium.

1 According to the POINT Strategy document, a "bank" agreed to subscribe to the Covered
2 Warrant and paid millions in premiums to the SPV with the intention of marketing the
3 Warrant to other investors:

4 c. Once the SPV was formed, funded and the Covered Warrant placed
5 with the bank, the fund, with the assistance of the bank, sought to sell the entirety of the
6 SPV interests to potential investors with the goal of profiting from the sale. According to
7 the POINT Strategy document, Quellos only became involved in marketing this
8 opportunity because the bank, which had a pre-existing relationship with Quellos,
9 approached Quellos to assist them in marketing the SPV units to U.S. investors.

10 24. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
11 CHARLES H. WILK knew, in truth and fact, that contrary to what was stated in the
12 POINT Strategy document, the "offshore investment fund" was not an independent
13 investment fund who formed and marketed the SPV interests with the desire to replicate a
14 popular European investment vehicle, but rather, a shell corporation whose actions were
15 wholly controlled by JEFFREY I. GREENSTEIN, CHARLES H. WILK and their Euram
16 associates for the sole purpose of implementing a tax shelter.

17 25. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
18 CHARLES H. WILK knew, in truth and fact, that contrary to what was stated in the
19 POINT Strategy document, the "offshore investment fund" owned no stocks to contribute
20 to the SPVs.

21 26. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
22 CHARLES H. WILK knew, in truth and fact, that contrary to what was stated in the
23 POINT Strategy document, the "Covered Warrant" was a sham paper transaction, that no
24 "bank" subscribed to any Warrant, that no premiums were ever paid for the Warrant by
25 any such bank, and that there was never any intent by any bank to market the Warrant.

26 27. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
27 CHARLES H. WILK knew, in truth and fact, that contrary to what was stated in the
28 POINT Strategy document, Quellos was not fortuitously introduced by the bank to the

1 POINT Strategy and asked to assist in marketing the product to U.S. investors but, rather,
2 JEFFREY I. GREENSTEIN and CHARLES H. WILK conceived, designed and
3 orchestrated the entire POINT strategy, including the actions of the purported "offshore
4 investment fund," and intended from the beginning to market the strategy to U.S.
5 taxpayers as a tax shelter.

6 **B. Fraudulent POINT Transaction Documents.**

7 28. It was further a part of the conspiracy that in order to conceal and attempt to
8 conceal the true nature of the POINT tax shelter from the IRS, JEFFREY I.
9 GREENSTEIN and CHARLES H. WILK drafted and executed and caused to be drafted
10 and executed false, fraudulent and misleading contracts and agreements to document the
11 various steps in the POINT transaction, knowing and expecting that clients who
12 participated in POINT would rely upon such documents to claim a false and fraudulent
13 tax benefit as well as in defense of any audit by the IRS.

14 29. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
15 CHARLES H. WILK represented and caused to be represented to clients and others that
16 an Isle of Man entity known as Barnville Ltd. (hereinafter "Barnville") was the "offshore
17 investment fund" that created the SPVs and contributed the loss generating stocks.

18 30. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
19 CHARLES H. WILK caused to be drafted and executed a series of false, fraudulent, and
20 misleading "Purchase Agreements" dated December 28, 1999, January 3, 2000, January
21 10, 2000, February 28, 2000, and June 6, 2000, through which Barnville purportedly
22 purchased more than \$9 billion worth of stocks in a number of publicly traded technology
23 companies from another Isle of Man entity known as Jackstones Ltd. (hereinafter
24 "Jackstones").

25 31. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
26 CHARLES H. WILK knew, in truth and fact, that the Purchase Agreements were false,
27 fraudulent and misleading in that Jackstones possessed no stocks to sell and Barnville had
28 no means to pay for any such stocks.

1 32. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
2 CHARLES H. WILK, in order to conceal the fact that Barnville never acquired any
3 stocks from Jackstones on the dates subscribed to in the various Purchase Agreements,
4 and that the purchases were a sham, caused to be drafted and executed a "Securities
5 Lending Agreement" between Barnville and Jackstones. According to the terms of the
6 Securities Lending Agreement, Barnville, on each day it purchased stocks from
7 Jackstones, immediately loaned the same stocks back to Jackstones in return for "cash"
8 collateral purportedly equal to the purchase price. JEFFREY I. GREENSTEIN and
9 CHARLES H. WILK knew and understood that this lending arrangement would be used
10 to provide an explanation to the clients and their advisors, who, in turn, would provide the
11 explanation to the IRS, as to the reason for the apparent lack of delivery or transfer of any
12 stocks and cash between brokerage accounts of Barnville and Jackstones at the time of
13 the purported purchase and, therefore, conceal the fact that Barnville never owned any
14 stocks in the first place.

15 33. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
16 CHARLES H. WILK, in 2000 and 2001, drafted and executed and caused to be drafted
17 and executed false, fraudulent and misleading "Subscription Agreements" to the Global
18 Call Warrants that were purportedly issued by each of the SPVs associated with the
19 POINT clients. According to the "Subscription Agreement," a company known as EA
20 Investment Services Limited subscribed to the Global Call Warrants and in return paid a
21 "Subscription Price" to the SPVs. The purported Subscription Price, in each instance,
22 amounted to millions of U.S. dollars, and, according to the Subscription Agreement, the
23 payments were credited to an account at EA Investment Services Limited for the benefit
24 of each SPV. JEFFREY I. GREENSTEIN and CHARLES H. WILK knew, in truth and
25 fact, that no subscription payments were ever made or going to be made, that EA
26 Investments Limited had neither the intention nor the ability to make any such payments,
27 and that the "Subscription Agreements" were shams, implemented solely to provide a
28 fraudulent business purpose for the transaction.

1 **C. False, Fraudulent and Misleading Information Given to Legal Opinion**
2 **Writers.**

3 34. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
4 CHARLES H. WILK knew and understood that in order to induce clients to participate in
5 POINT, they would need to provide an opinion from respected law firms concluding that
6 the shelter would at least "more likely than not" survive a challenge from the IRS.

7 35. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
8 CHARLES H. WILK knew and understood that in the event of an audit, these legal
9 opinions would likely be produced to the IRS in defense of the audit and to avoid possible
10 penalties.

11 36. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
12 CHARLES H. WILK secured the participation of Law Firm C.S. & M. LLP and Law
13 Firm B.C. LLP to opine on the various POINT transactions implemented by the five
14 clients. Law Firm C.S. & M. LLP opined on the first four POINT transactions executed
15 by Quellos in 2000; specifically, Law Firm C.S. & M. LLP opined on the POINT
16 transactions known as Torens, Reka, Burgundy, and Platinum. Law Firm B.C. LLP
17 opined on the last two POINT transactions executed by Quellos in 2001; specifically,
18 Law Firm B.C. LLP opined on POINT transactions known as Titanium and Cobalt. Each
19 opinion concluded that the POINT transaction would "more likely than not" survive a
20 challenge from the IRS.

21 37. It was further a part of the conspiracy that in order to conceal and attempt to
22 conceal the true nature of the tax shelter from the opinion writers and, ultimately, the IRS,
23 JEFFREY I. GREENSTEIN and CHARLES H. WILK knowingly and willfully made and
24 caused to be made false, fraudulent and misleading representations to Law Firm C.S. &
25 M. LLP and Law Firm B.C. LLP about the POINT transaction, knowing that Law Firm
26 C.S. & M. LLP and Law Firm B.C. LLP would rely upon their representations in order to
27 understand the POINT transactions and to render their "more likely than not" opinions.
28 These false, fraudulent and misleading representations included the following:

a. JEFFREY I. GREENSTEIN and CHARLES H. WILK falsely,

1 fraudulently and misleadingly represented and caused to be represented that the source of
2 the losses utilized by the clients in the POINT transactions was derived from "stocks" in
3 well-known publicly traded companies that had been purchased by a "non-U.S.
4 investment fund" or "foreign investment fund," and contributed to the various SPVs.

5 b. JEFFREY I. GREENSTEIN and CHARLES H. WILK falsely,
6 fraudulently and misleadingly represented and caused to be represented that Barnville was
7 the independent "non-U.S. investment fund" or "foreign investment fund" that formed the
8 SPVs, and that Barnville formed the SPVs independent of any pre-conceived plan to
9 utilize the SPVs for a tax shelter; specifically, that Barnville formed the SPVs in order to
10 profit from the issuance and sale of the "Covered Warrants."

11 38. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
12 CHARLES H. WILK provided and caused to be provided to Law Firm C.S. & M. LLP
13 and Law Firm B. C. LLP the same false, fraudulent, and misleading POINT Strategy
14 document that they had provided to their clients, knowing that the document was false,
15 fraudulent and misleading and knowing and expecting that the firms would rely upon the
16 document to understand the POINT transaction and to render their opinions.

17 39. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
18 CHARLES H. WILK provided and caused to be provided to Law Firm C.S. & M. LLP
19 and Law Firm B.C. LLP the same false, fraudulent, and misleading transactional
20 documents, including the Purchase Agreements and the Securities Lending Agreement
21 between Barnville and Jackstones, and the Subscription Agreements for the Covered
22 Warrants that they had provided to their clients, knowing that the transactional documents
23 were false, fraudulent and misleading, and knowing and expecting that the firms would
24 rely upon such documents to understand the POINT transaction and to render their
25 opinions.

26 40. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
27 CHARLES H. WILK provided and caused to be provided to Law Firms C.S. & M. LLP
28 and B.C. LLP, false, fraudulent and misleading documents regarding the fees paid by the

1 Clients to implement the POINT tax shelter strategy, in order to hide the actual amount of
2 fees they paid and, thereby, make it falsely appear that the Clients had a reasonable
3 potential of earning a profit from the POINT tax shelter strategy aside from the tax
4 benefits.

5 41. It was further a part of the conspiracy that Law Firm C.S. & M. LLP and
6 Law Firm B.C. LLP provided JEFFREY I. GREENSTEIN and CHARLES H. WILK with
7 drafts of their opinion letters, and relied upon JEFFREY I. GREENSTEIN and
8 CHARLES H. WILK to provide corrections and edits to the factual descriptions of the
9 POINT transactions in the opinion letters.

10 42. It was further a part of the conspiracy that as a result of their reliance upon
11 JEFFREY I. GREENSTEIN's and CHARLES H. WILK's representations regarding the
12 POINT transactions, Law Firm C.S. & M. LLP and Law Firm B.C. LLP issued opinion
13 letters that included false, fraudulent, and misleading descriptions of the POINT
14 transactions.

15 43. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
16 CHARLES H. WILK provided the false, fraudulent, and misleading opinion letters issued
17 by Law Firm C.S. & M. LLP to clients and prospective clients in order to induce them to
18 participate in the transaction, knowing that the opinion letters were false, fraudulent, and
19 misleading.

20 **D. Kickbacks Paid to Matthew G. Krane, the Personal Attorney of Client H.S.**

21 44. It was further a part of the conspiracy that in 2001, CHARLES H. WILK
22 met Matthew G. Krane, a tax attorney and advisor to Client H.S. CHARLES H. WILK
23 learned from Matthew G. Krane that Client H.S. anticipated having more than \$1 billion
24 in capital gains in 2001.

25 45. It was further a part of the conspiracy that in 2001, JEFFREY I.
26 GREENSTEIN, CHARLES H. WILK and Matthew G. Krane agreed to kickback to
27 Matthew G. Krane a portion of the fees Quellos obtained from Client H.S.

28 46. It was further a part of the conspiracy that in 2001, JEFFREY I.

1 GREENSTEIN, CHARLES H. WILK and Matthew G. Krane did not disclose to Client
2 H.S. the kickback arrangement. Instead, beginning in or about March 2001 and
3 continuing through in or about October 2001, JEFFREY I. GREENSTEIN, CHARLES H.
4 WILK and Matthew G. Krane drafted and executed and caused to be drafted and executed
5 a series of false, fraudulent, and misleading fee agreements between Client H.S. and
6 Quellos, wherein Client H.S. was led to believe that he would pay a specific Quellos
7 entity identified in the agreements as "Quellos Financial Advisors LLC" or "QFA,"
8 approximately \$46 million for work in connection with the POINT transaction, whereas,
9 in truth and fact, JEFFREY I. GREENSTEIN and CHARLES H. WILK, knew that they
10 would divert a majority of those fees to Matthew G. Krane, Client H.S.'s own attorney.

11 47. It was further a part of the conspiracy that in or about October 2001,
12 CHARLES H. WILK introduced Matthew G. Krane to J.S. and R.P of Euram, and
13 requested that J.S. and R.P. assist Matthew G. Krane in setting up an offshore entity and
14 an offshore account for Matthew G. Krane.

15 48. It was further a part of the conspiracy that in or about October 2001,
16 Matthew G. Krane, with the assistance of a Swiss associate, B.H., appropriated an
17 existing offshore shell entity and changed its name to "QFS Consulting Ltd."

18 49. It was further a part of the conspiracy that in or about October 2001;
19 Matthew G. Krane, with the assistance of a Swiss associate, B.H., opened a bank account
20 at European American Investment Bank A.G. in Vienna, Austria in the name of QFS
21 Consulting Ltd.

22 50. It was further a part of the conspiracy that in or about October 2001,
23 JEFFREY I. GREENSTEIN and CHARLES H. WILK agreed that the kickback payments
24 for Matthew G. Krane would be paid not to Matthew G. Krane directly, but to QFS
25 Consulting Ltd.

26 51. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN,
27 CHARLES H. WILK, and Matthew G. Krane knew and intended that the name of the
28 foreign entity and foreign account controlled by Matthew G. Krane, "QFS Consulting

1 Ltd.”, appeared very similar to a number of Quellos entities that were commonly known
2 by acronyms starting with the letter “Q,” including but not limited to “QFA” (Quellos
3 Financial Advisors, LLC), “QCS,” (Quellos Customs Strategies, LLC), “QBS,” (Quellos
4 Brokerage Services, LLC), “QCM,” (Quellos Capital Management, LP), “QFV,” (Quellos
5 Financial Ventures, LP), and “QCI” (Quellos Capital International). JEFFREY I.
6 GREENSTEIN, CHARLES H. WILK, and Matthew G. Krane knew and intended that by
7 using the name “QFS,” parties who were unaware of the kickback arrangement, including
8 bank representatives overseeing the flow of funds, other advisors of Client H.S., and
9 Client H.S. himself, would be misled into believing that fees that were in truth diverted
10 to Matthew G. Krane was paid to a Quellos entity consistent with the fee agreements
11 signed by Client H.S.

12 52. It was further a part of the conspiracy that on or about October 24, 2001,
13 CHARLES H. WILK instructed a bank to wire approximately \$28 million into the “QFS”
14 account in Vienna, Austria, knowing that the money was derived from fees Client H.S.
15 believed he was paying Quellos.

16 53. It was further a part of the conspiracy that on or about October 25, 2001,
17 CHARLES H. WILK instructed R.P. to wire approximately \$8 million into the “QFS”
18 account in Vienna, Austria, knowing that the money was derived from fees Client H.S.
19 believed he was paying Euram.

20 54. It was further a part of the conspiracy that in or about November 2001, after
21 the funds had already been transferred, JEFFREY I. GREENSTEIN, CHARLES H.
22 WILK, and Matthew G. Krane executed and caused to be executed a false, fraudulent,
23 and misleading fee sharing agreement between Quellos and “QFS Consulting Ltd.” The
24 agreement specified that Quellos would pay approximately \$28 million to QFS
25 Consulting for “certain advisory and consulting services,” which “did not constitute the
26 provision of legal advice.”

27 55. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN,
28 CHARLES H. WILK, and Matthew G. Krane did not execute any written agreements to

1 document or otherwise account for the additional \$8 million that was wired to QFS on or
2 about October 25, 2001.

3 56. It was further a part of the conspiracy that in 2001 and 2002, CHARLES H.
4 WILK knowingly and willfully provided and caused to be provided false, fraudulent and
5 misleading information to Law Firm B.C. LLP about the fees paid by Client H.S. in
6 connection with the Titanium transaction, including providing false, fraudulent and
7 misleading fee calculation documents that excluded large portions of fees paid to Quellos
8 as well as the amounts paid to Matthew G. Krane.

9 **E. False and Fraudulent Tax Returns.**

10 57. It was further a part of the conspiracy that JEFFREY I. GREENSTEIN and
11 CHARLES H. WILK caused Clients M.Z., R.J., B.J., M.S, and H.S. to file false and
12 fraudulent income tax returns, specifically Form 1040s, claiming capital losses from the
13 sale of the stocks within their respective SPVs which, in truth and fact, JEFFREY I.
14 GREENSTEIN and CHARLES H. WILK knew did not exist.

15 58. It was further a part of the conspiracy that the following Quellos clients
16 claimed the following false and fraudulent capital losses on their Form 1040s as a result
17 of their participation in the POINT transactions:

Taxpayer	Tax Year	Approx. Date of Filing	Approx. amount of Fraudulent Capital Loss
Client M.Z.	2000	1/12/02	\$122 million
Client R.J.	2000	12/27/01	\$133 million
Client B.J.	2000	12/26/01	\$178 million
Client M.S.	2000	4/15/01	\$159 million
Client H.S.	2001	10/15/02	\$730 million
Client M.S.	2001	10/16/02	\$59 million

25
26 **F. False, Fraudulent, and Misleading Representations in Anticipation of and
During POINT Clients' IRS Audits.**

27 59. It was further a part of the conspiracy that sometime between 2003 and
28 2006, CHARLES H. WILK and JEFFREY I. GREENSTEIN knew that Clients M.Z.,

1 R.J., B.J., M.S., and H.S. were under or anticipated to be under IRS audit as a result of
2 their participation in the POINT tax shelter strategy.

3 60. It was further a part of the conspiracy that CHARLES H. WILK, beginning
4 in 2003 and continuing through 2005, when asked by the clients and clients'
5 representatives for assistance responding to IRS inquiries or anticipated IRS inquiries
6 about the POINT transaction, provided and caused to be provided to such clients the same
7 false, fraudulent, and misleading documents that purportedly described and documented
8 the POINT transaction, including the "POINT Strategy" document and underlying
9 transactional documents, such as the stock Purchase Agreements between Barnville and
10 Jackstones, the Securities Lending Agreement between Barnville and Jackstones, and the
11 Warrant Subscription Agreements purportedly executed by the SPVs.

12 61. It was a further part of the conspiracy that CHARLES H. WILK, beginning
13 in 2003 and continuing through 2005, when asked by clients and clients' representatives
14 for assistance in responding to the IRS inquiries or anticipated IRS inquiries about the
15 POINT transaction, knowingly and willfully made and caused to be made false,
16 fraudulent, and misleading statements to clients' representatives, including the following:

17 a. In or about March 2003, CHARLES H. WILK falsely, fraudulently
18 and misleadingly represented and caused to be represented to attorneys for Clients R.J.
19 and B.J. that the source of the capital losses derived through the POINT transactions were
20 shares of stock in a number of publicly traded companies that Barnville had contributed to
21 the SPVs.

22 b. In or about March 2003, CHARLES H. WILK falsely, fraudulently
23 and misleadingly represented and caused to be represented to attorneys for Clients R.J.
24 and B.J. that Barnville formed the SPVs and contributed the securities to those SPVs for
25 an independent business purpose, i.e. to issue "Covered Warrants" for which the SPVs
26 received tens of millions of dollars in premiums.

27 c. In or about June 2004, CHARLES H. WILK falsely, fraudulently,
28 and misleadingly represented and caused to be represented to the attorneys for Clients

1 R.J. and B.J. that the only reason Quellos was unable to provide independent
2 documentary evidence of the existence of stocks that were purportedly purchased by
3 Barnville from Jackstones, such as brokerage statements or confirmations, was because
4 Quellos did not have access to the internal records of Barnville and Jackstones, whereas,
5 CHARLES H. WILK knew, in truth and fact, that the real reason Quellos could not
6 provide such records was that no such stocks ever existed.

7 d. In or about October 2004, in response to demands by attorneys for
8 Clients R.J. and B.J. that Quellos provide a written explanation of the transaction between
9 Barnville and Jackstones to provide to the IRS, CHARLES H. WILK provided a false,
10 fraudulent, and misleading written document in which he stated that Euram introduced
11 Quellos to Barnville who happened to be holding a "stock portfolio", and that Barnville
12 contributed the "Stock" to the SPVs.

13 e. On or about November 15, 2004, in response to demands by Clients
14 R.J. and B.J. to JEFFREY I. GREENSTEIN for a detailed step-by-step explanation of the
15 transaction between Barnville and Jackstones, CHARLES H. WILK provided the clients
16 with a false, fraudulent, and misleading letter in which he stated, among other things, that
17 "...[Quellos was] not party to the original transactions (Purchase Agreements and
18 Securities Lending Agreements) between Barnville and Jackstones, and therefore, this
19 part of our step-by-step explanation is based on documentation we have reviewed",
20 whereas, CHARLES H. WILK knew, in truth and fact, that he and JEFFREY I.
21 GREENSTEIN were involved in the original transactions between Barnville and
22 Jackstones. CHARLES H. WILK knew that he and JEFFREY I. GREENSTEIN devised
23 the sham sale and loan-back arrangement between Barnville and Jackstones, that
24 JEFFREY I. GREENSTEIN, himself selected the very stocks that were to be used for the
25 sham transactions, and CHARLES H. WILK and JEFFREY I. GREENSTEIN directed
26 C.D., J.S. and R.P. to appropriate the companies and execute the transactions.

27 f. On November 15, 2004, CHARLES H. WILK further wrote in the
28 letter to Clients R.J. and B.J. that "[t]he Purchase Agreements between Jackstones (as

1 seller) and Barnville (as purchaser) reflect that Jackstones sold to Barnville the right to
2 beneficial ownership of shares” whereas CHARLES H. WILK knew, in truth and
3 fact, that the Purchase Agreements falsely stated that actual shares were purchased, and
4 that Barnville engaged in neither a transaction for the “right to beneficial ownership of
5 shares” nor an actual stock purchase since the entire transaction with Jackstones was a
6 sham.

7 g. In or about January 2005, CHARLES H. WILK, falsely,
8 fraudulently, and misleadingly represented to attorneys for Client H.S. that Barnville was
9 a “fund” that held a stock portfolio and that this fund was “discovered” by Euram, giving
10 the false, fraudulent and misleading impression that Barnville held actual stock and that
11 its stock portfolio pre-existed Quellos’s involvement with the company, whereas
12 CHARLES H. WILK knew, in truth and fact, that Barnville held no stock, and that
13 JEFFREY I. GREENSTEIN and CHARLES H. WILK, together with Euram,
14 appropriated Barnville and directed it to enter into sham stock purchase agreements for
15 the sole purpose of utilizing it in the POINT tax shelter strategy.

16 62. It was a further part of the conspiracy that beginning in or about April 2003
17 and continuing in or about October 2005, representatives of Clients M.Z., R.I., B.J., M.S.,
18 and H.S. responded to various IRS Information Document Requests (also known as
19 “IDRs”) which sought explanations and documents relating to their respective POINT
20 transactions by forwarding to the IRS the same false, fraudulent and misleading
21 documents that had earlier been provided or caused to be provided by CHARLES H.
22 WILK to such clients, including the “POINT Strategy” document and/or underlying
23 transactional documents, such as the stock Purchase Agreements between Barnville and
24 Jackstones, the Securities Lending Agreement between Barnville and Jackstones, and the
25 Warrant Subscription Agreements purportedly entered into by the various SPVs.

26 G. False, Fraudulent and Misleading Testimony During Senate Investigation

27 63. It was further a part of the conspiracy that by 2006, the IRS had expanded a
28 “promoter” examination of Quellos to include Quellos’ role in the POINT transactions.

1 64. It was further a part of the conspiracy that in or about August 2006,
2 JEFFREY I. GREENSTEIN, in an effort to continue to hide and conceal the true nature
3 of the POINT tax shelter transactions from the IRS and others, knowingly and willfully
4 gave the following false, fraudulent, and misleading testimony before the United States
5 Senate Permanent Subcommittee on Investigations (hereinafter "PSI") that was
6 conducting an investigation into, among other things, the POINT transactions:

7 a. JEFFREY I. GREENSTEIN testified that the circular stock purchase
8 and lending agreement entered into between Barnville and Jackstones through which the
9 portfolio of loss stocks were generated was "not dissimilar to swaps or contract for
10 differences or single stock futures," in an effort to mislead the PSI and others into
11 believing that Barnville and Jackstones engaged in legitimate derivative trades, whereas
12 JEFFREY I. GREENSTEIN knew, in truth and fact, that the Barnville/Jackstones
13 purchase and loan-back arrangement was a sham, paper transaction.

14 b. JEFFREY I. GREENSTEIN testified that the purported derivative
15 nature of these transactions between Barnville and Jackstones was, to his understanding,
16 disclosed in detail to clients and the clients' advisors, whereas JEFFREY I.
17 GREENSTEIN knew, in truth and fact, that the clients and the clients advisors were never
18 so informed, that none of the descriptions of the POINT transactions provided to the
19 clients and clients advisors described the POINT transaction as such, that none of the
20 transactional documents provided to the clients and the clients' advisors described the
21 transactions between Barnville and Jackstones as such, that none of the opinion letters
22 issued by Law Firm C.S. & M. LLP and Law Firm B.C. LLP described the Barnville and
23 Jackstones transaction as such, and, to the contrary, all representations and materials
24 provided to the clients and client representatives were designed and contrived to mislead
25 them into believing that what Barnville purchased and contributed to the SPVs were
26 actual stock.

27 c. JEFFREY I. GREENSTEIN testified that the Covered Warrants
28 issued through each of the SPVs provided a potential for profit for the clients who

1 participated in POINT, whereas JEFFREY I. GREENSTEIN knew, in truth and fact; that
2 the Covered Warrants were sham transactions, and that no real premiums were paid or
3 were ever going to be paid, and that the Covered Warrants never provided any profit
4 potential to the clients who participated in POINT because each transaction was designed
5 to be unwound and completed before the Clients could ever profit from such Covered
6 Warrants.

7 IV. OVERT ACTS

8 65. In furtherance of the conspiracy and to effect the illegal objects thereof,
9 JEFFREY I. GREENSTEIN and CHARLES H. WILK, and their co-conspirators, known
10 and unknown, committed or caused to be committed the following overt acts, among
11 others, in the Western District of Washington and elsewhere:

12 a. Beginning in or about August 4, 1999, and continuing through on or
13 about August 11, 1999, JEFFREY I. GREENSTEIN and CHARLES H. WILK together
14 drafted and edited the "POINT Strategy" document.

15 b. On or about August 30, 1999, CHARLES H. WILK sent an email to
16 Partner L.S. at Law Firm C.S. & M. LLP, attaching the "POINT Strategy" document,
17 which, according to CHARLES H. WILK, described the POINT transaction in its "most
18 basic facts."

19 c. On or about January 7, 2000, CHARLES H. WILK, with the
20 knowledge and consent of JEFFREY I. GREENSTEIN, forwarded to Partner L.S. at Law
21 Firm C.S. & M. LLP a document that purportedly described how the offshore fund
22 originally obtained its stocks.

23 d. On or about January 14, 2000, JEFFREY I. GREENSTEIN sent an
24 email to C.D., attaching a list of stocks that JEFFREY I. GREENSTEIN selected to
25 generate the fake capital losses for the POINT transactions.

26 e. On or about January 19, 2000, JEFFREY I. GREENSTEIN sent an
27 email to Partner L.S. of Law Firm C.S. & M. LLP, forwarding a schematic that
28 purportedly explained the POINT transaction in diagram form. The schematic described

1 the transaction as involving the transfer of "stock" from one entity to another entity.

2 f. On or about January 20, 2000, JEFFREY I. GREENSTEIN sent an
3 email to an associate at Law Firm C.S. & M. LLP, who was assisting Partner L.S.,
4 attaching calculations purportedly demonstrating the potential profits and losses that
5 could be incurred by a POINT investor from the Covered Warrants.

6 g. On or about January 24, 2000, JEFFREY I. GREENSTEIN and
7 CHARLES H. WILK received by facsimile from Partner L.S. of Law Firm C.S. & M.
8 LLP, a draft of Law Firm C.S. & M. LLP 's opinion letter regarding the POINT
9 transaction.

10 h. On or about February 2, 2000, JEFFREY I. GREENSTEIN,
11 CHARLES H. WILK, C.D., and J.S. of Euram conducted a telephone conference call to
12 discuss the POINT transaction, including, among other things, how Euram had "set up"
13 the companies to be used to generate the sham portfolio; how the parties could increase
14 the size of the sham portfolio to accommodate additional tax shelter clients; how Partner
15 L.S. had not been fully informed as to the manner in which the sham portfolio was
16 created; and the fact that the legal opinion issued by Partner L.S. regarding POINT could
17 be viewed by the IRS as having been "predicated on a fact that [was] not true,"
18 specifically, regarding whether the SPVs owned any shares in stock.

19 i. On or about February 16, 2000, M.P., an individual in Britain, at the
20 direction of C.D. and J.S., who were, in turn, following the instructions of JEFFREY I.
21 GREENSTEIN and CHARLES H. WILK, met with the Isle of Man corporate
22 administrators of Barnville and Jackstones. During the meeting, M.P. explained the
23 following, which he learned from J.S. and C.D.:

24 1. Barnville and Jackstones were both beneficially owned by one
25 individual, L.B., and that individuals at Quellos and Euram, with the permission of L.B.,
26 sought to appropriate Barnville and Jackstones for the purpose of executing a tax shelter
27 strategy;

28 2. Barnville and Jackstones were being asked, in furtherance of

1 | this tax shelter strategy, to enter into a "virtual share transaction" in which Barnville buys
2 | a portfolio of non-existent stocks from Jackstones and Jackstones borrows those same
3 | shares from Barnville, resulting in no actual exchange of shares or exchange of money;

4 | 3. M.P. acknowledged to the administrators of Barnville and
5 | Jackstones that over time, as a result of this transaction, one party would have a large debt
6 | owed to the other on the books, but that in the end, because the two entities were
7 | beneficially owned by the same person, the companies could eventually be merged and
8 | any debts eliminated from the books;

9 | 4. M.P. stated that L.B. would benefit from allowing the entities
10 | to be utilized in this manner through the large fees that Euram was expecting to earn as a
11 | result of assisting in executing this transaction because L.B. was a shareholder in Euram;
12 | and

13 | 5. M.P. agreed that for assisting in the POINT strategy, the
14 | corporate administrators for each of the companies would receive a flat fee of £5000 in
15 | addition to normal costs and disbursements.

16 | j. On or about February 29, 2000, JEFFREY I. GREENSTEIN emailed
17 | J.S. and C.D. another selection of stocks to be added to the sham portfolio being created
18 | between the two offshore companies for use in the POINT transactions.

19 | k. On or about March 13, 2000, C.D. emailed JEFFREY I.
20 | GREENSTEIN that he was greatly disturbed by a meeting he had with an advisor for
21 | Client R.J. during which it was made clear to C.D. that this advisor had no idea how the
22 | loss stocks were generated, and C.D. demanded a formal letter from Quellos assuring
23 | Euram that they had fully informed POINT clients and their advisors of the manner in
24 | which the loss stocks were "created."

25 | l. On or about March 13, 2000, JEFFREY I. GREENSTEIN responded
26 | to C.D. in an email stating that the advisor C.D. had met with had no involvement in
27 | advising Client R.J. in the POINT transaction, and that he was confident that Partner L.S.
28 | had fully advised the Client.

1 m. On or about March 29, 2000, CHARLES H. WILK and JEFFREY I.
2 GREENSTEIN received from J.S. proposed transactional documents for the POINT
3 transaction, including the sham stock Purchase Agreements and the Securities Lending
4 Agreement to be executed between Barnville and Jackstones.

5 o. On or about April 4, 2000, J.S. emailed CHARLES H. WILK and
6 asked whether the tax shelter clients and their advisors had been fully informed as to the
7 true nature of the sham stock portfolio between Barnville and Jackstones as promised.
8 CHARLES H. WILK responded that per the advice of Partner L.S., the clients should not
9 be informed about the nature of how the shares were created and how they were
10 contributed into the SPVs.

11 p. On or about April 5, 2000, J.S., in response to requests by the
12 corporate administrator for Jackstones for written assurances from Quellos confirming
13 that the POINT clients and their advisors were fully informed of the nature of the share
14 trading transaction between the two offshore companies, stated that they were not able to
15 provide any such written assurances. J.S. further explained that no such written
16 assurances could be provided because Quellos was sensitive about "having anything in
17 writing which suggests that the investment strategy contemplated for the client is
18 completely pre-ordained and exists only for the possibility of achieving a U.S. tax
19 advantage."

20 q. In or about April 2000, CHARLES H. WILK edited and caused to be
21 edited transactional documents for the POINT transaction, including the stock Purchase
22 Agreement and the Securities Lending Agreement between Barnville and Jackstones.

23 r. On or about the following dates, JEFFREY I. GREENSTEIN and
24 CHARLES H. WILK initiated and then unwound the following POINT transactions in
25 order to generate the fake losses for the POINT clients:

Approx. Date Initiated	Approx. Date Unwound	Client	Name of Transaction
April 28, 2000	May 19, 2000	M.Z.	Torens

Approx. Date Initiated	Approx. Date Unwound	Client	Name of Transaction
May 5, 2000	June 5, 2000	R.J.	Reka
May 10, 2000	June 5, 2000	B.J.	Burgundy
Nov. 29, 2000	Dec. 18, 2000	M.S.	Platinum
Sept. 24, 2001	Nov. 18, 2001	H.S.	Titanium
Nov 7, 2001	Dec. 10, 2001	M.S.	Cobalt

s. On or about the following dates, JEFFREY I. GREENSTEIN and CHARLES H. WILK caused Law Firm C.S. & M. LLP and Law Firm B.C. LLP to issue false, fraudulent and misleading opinion letters to each of the POINT Clients as follows:

Approx. Date	Law Firm	Transaction
Aug. 29, 2000	Law Firm C. S.& M LLP	Reka
Sept. 6, 2000	Law Firm C. S.& M LLP	Burgundy
Sept. 6, 2000	Law Firm C. S.& M LLP	Torens
Dec. 22, 2000	Law Firm C. S.& M LLP	Platinum
Dec. 14, 2001	Law Firm B.C. LLP	Cobalt
Oct. 14, 2002	Law Firm B.C. LLP	Titanium

t. Beginning on or about September 9, 2001, and continuing through September 20, 2001, CHARLES H. WILK informed J.S. through a series of emails and telephone conversations that in order for Euram to be paid for work on Client H.S.'s POINT transaction, they must enter into an advisory services agreement with Client H.S. despite the fact that Euram provided no advisory services to Client H.S.

u. On or about September 20, 2001, Matthew G. Krane and CHARLES H. WILK drafted an advisory agreement between Euram and Client H.S., backdated to appear to have been effectuated on May 1, 2001, wherein Client H.S. purportedly agreed to pay Euram fees for advising Client H.S. on European aspects of Client H.S.'s business holdings and forwarded the agreement to J.S. for signature.

v. In or about October 2001, CHARLES H. WILK and Matthew G. Krane telephoned J.S. seeking assistance in setting up a non-U.S. corporation and bank

1 account for Matthew G. Krane.

2 w. On or about October 24, 2001, CHARLES H. WILK and Matthew
3 G. Krane caused to be drafted and signed a final fee agreement between Quellos and
4 Client H.S. in which Client H.S. agreed to pay a specific Quellos entity more than \$46
5 million in fees for their work on Client H.S.'s transaction.

6 x. On or about October 24, 2001, CHARLES H. WILK by email
7 directed a bank representative to divert approximately \$28 million of Client H.S.'s \$46
8 million in fees that had previously been instructed to go to Quellos to, instead, be
9 deposited into an account in the name of "QFS".

10 y. On or about October 24, 2001 and October 26, 2001, CHARLES H.
11 WILK, with the knowledge of JEFFREY I. GREENSTEIN, directed J.S. and R.P. in
12 emails to wire transfer approximately \$8 million in additional fees collected from Client
13 H.S. to an account in the name of "QFS".

14 z. On or about November 5, 2001, JEFFREY I. GREENSTEIN signed
15 on behalf of Quellos a fee splitting agreement, back-dated to October 25, 2001, in which
16 Quellos agreed to pay "QFS Consultants Ltd." approximately \$28 million for services it
17 rendered as an "independent advisor" in connection with Client H.S.'s transaction.

18 aa. On or about October 26, 2004, CHARLES H. WILK, in response to
19 requests from the audit attorneys for Clients R.J. and B.J. for a written explanation of the
20 POINT transaction, emailed a document in which CHARLES H. WILK explained that
21 Euram introduced Quellos to Barnville, and that Barnville had in its possession a portfolio
22 of stock that was ultimately contributed to the SPVs for use by the clients.

23 bb. On or about November 15, 2004, CHARLES H. WILK, in response
24 to further requests by Clients R.J. and B.J. to JEFFREY I. GREENSTEIN for a written
25 description and explanation of the POINT transaction, sent by facsimile a letter stating
26 that Quellos was not a party to the original transaction between Barnville and Jackstones,
27 but from an examination of the documents it appeared that Barnville obtained "rights to
28 an underlying portfolio of stock."

1 cc. On or about June 7, 2004, during a meeting with representatives of
2 Client H.S. who were handling an audit of Client H.S., CHARLES H. WILK represented
3 and caused to be represented that he had discovered Barnville during a trip to London and
4 was told that it held losses in stocks that it could not use.

5 dd. On or about October 21, 2004, CHARLES H. WILK caused to be
6 sent by email the "POINT Strategy" document purporting to describe the POINT
7 transaction to the representatives of Client H.S. who were responding to an audit of the
8 POINT transaction by state taxing authorities and who were also anticipating an audit by
9 the IRS.

10 ee. On or about January 24 and 25, 2005, CHARLES H. WILK met with
11 representatives of Client H.S. and represented that Euram found Barnville and Jackstones;
12 that CHARLES H. WILK gave instructions to Euram to find loss stocks and did not think
13 it would be so easy to find the loss stocks. CHARLES H. WILK further stated that while
14 he had no additional information regarding the existence of the stocks, perhaps Client
15 H.S.'s representatives could write a letter to Barnville and Jackstones asking for
16 documentation. CHARLES H. WILK additionally stated that he did not know what
17 advice Euram gave to Client H.S. to earn its fees and that he had simply referred Matthew
18 G. Krane to Euram and they entered into a separate engagement. CHARLES H. WILK
19 also represented that Euram got two fees.

20 ff. On or about August 1, 2006, JEFFREY I. GREENSTEIN testified
21 under oath before the Permanent Subcommittee on Investigations of the Committee on
22 Governmental Affairs United States Senate regarding POINT. JEFFREY I.
23 GREENSTEIN testified that it appeared to him that Jackstones and Barnville engaged in
24 a transaction "not dissimilar to swaps or contract for differences or single stock futures",
25 that the Covered Warrants provided clients with a potential for profit, and that it was his
26 understanding that the clients and their advisors were made fully aware of the nature of
27 the POINT transaction.

28 66. In furtherance of the conspiracy, and to accomplish one or more of its

1 objects, one or more of the conspirators committed or caused to be committed the overt
2 acts described in Counts 2-14 of this Second Superseding Indictment.

3 All in violation of Title 18, United States Code, Section 371.

4 **COUNTS 2-9**
5 **(Tax Evasion)**

6 67. The allegations set forth in paragraphs 1-65 of this Second Superseding
7 Indictment are incorporated and re-alleged as if fully set forth herein.

8 68. From in or about June 1999 through at least about October 2005, in the
9 Western District of Washington and elsewhere, JEFFREY I. GREENSTEIN and
10 CHARLES H. WILK, unlawfully, willfully and knowingly did attempt to evade and
11 defeat and aid and abet in the attempt to evade and defeat a substantial part of the income
12 tax due and owing by the POINT tax shelter clients set forth below to the United States of
13 America for the calendar years set forth below, by committing and causing to be
14 committed the following affirmative acts, among others:

15 a. preparing and executing and causing to be prepared and executed
16 false and fraudulent documents to deceive the IRS, including promotional documents
17 purporting to describe the POINT transaction, transactional documents, and opinion
18 letters;

19 b. creating and causing to be created entities to be used in executing the
20 POINT tax shelter transaction;

21 c. preparing and filing, and causing to be prepared and filed, false and
22 fraudulent tax returns; and

23 d. taking various steps to attempt to defeat the audit of the POINT tax
24 shelter clients by causing clients' representatives to provide false, fraudulent and
25 misleading information and documents to the IRS, purporting to describe and document
26 their respective POINT transactions, including, but not limited to, the "POINT Strategy"
27 document and/or underlying transactional documents, such as the stock Purchase
28 Agreements between Barnville and Jackstones, Securities Lending Agreements between
Barnville and Jackstones, and the Warrant Subscription Agreements purportedly entered

1 into by the various SPVs.

Count	Client	Tax Returns	Approx. Amount of Fraudulent Tax Savings	Approx. Date of Filing
2	Client M.Z.	2000 Form 1040	\$24 million	1/12/02
3	Client R.J.	2000 Form 1040	\$18 million	12/27/01
4	Client R.J.	2003 Form 1040	\$3 million	10/18/04
5	Client R.J.	2004 Form 1040	\$2 million	10/18/05
6	Client B.J.	2000 Form 1040	\$36 million	12/26/01
7	Client M.S.	2000 Form 1040	\$32 million	4/15/01
8	Client H.S.	2001 Form 1040	\$276 million	10/15/02
9	Client M.S.	2001 Form 1040	\$11 million	10/16/02

12 All in violation of Title 26, United States Code, Section 7201 and Title 18, United
13 States Code, Section 2.

14 **COUNTS 10-14**
15 **(Counseling False Tax Filings)**

16 69. The allegations set forth in paragraphs 1-65 of this Second Superseding
17 Indictment are incorporated and re-alleged as if fully set forth herein.

18 70. On or about the dates hereinafter set forth, in the Western District of
19 Washington, and elsewhere, JEFFREY I. GREENSTEIN and CHARLES H. WILK, did
20 willfully aid and assist in, and procure, counsel, and advise the preparation and
21 presentation to the Internal Revenue Service, of U.S. Returns of Partnership Income,
22 Forms 1065, for the partnership entities and calendar years hereinafter specified. The
23 returns were false and fraudulent as to material matters, in that they represented and
24 caused to be represented that the partnership entities were entitled under the provisions of
25 the Internal Revenue laws to report the following capital losses in amounts hereinafter
26 specified, whereas, as JEFFREY I. GREENSTEIN and CHARLES H. WILK then and
27 there knew, the partnership entities were not entitled to report the capital losses in such
28 amounts.

Count	Partnership	Tax Year	Approx. Date of Filing	Approx. amount of Fraudulent Capital Loss
10	Torens Limited	2000	10/24/01	\$137 million
11	Reka Limited	2000	10/15/01	\$137 million
12	Burgundy Limited	2000	10/15/01	\$158 million
13	Titanium Trading Partners LLP	2001	10/15/02	\$614 million
14	Cobalt Trading Partners LLP	2001	6/17/02	\$54 million

All in violation of Title 26, United States Code, Section 7206(2).

**COUNTS 15-17
(Wire Fraud)**

71. Beginning at a time unknown, but no later than in or about June 1999 and continuing until in or about January 2005, in Seattle, Washington, within the Western District of Washington, and elsewhere, JEFFREY I. GREENSTEIN and CHARLES H. WILK, together with others known and unknown, did knowingly devise and intended to devise, and aided and abetted in devising, a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and concealment of material facts, knowing that they were false and fraudulent when made, and transmitting and causing to be transmitted certain wire communications in interstate commerce for the purpose of executing the scheme.

I. INTRODUCTION.

72. The allegations set forth in paragraphs 2-18 of this Second Superseding Indictment are incorporated and re-alleged as if fully set forth herein.

**II. ESSENCE OF THE
SCHEME AND ARTIFICE TO DEFRAUD.**

73. The essence of the scheme and artifice to defraud was for JEFFREY I. GREENSTEIN and CHARLES H. WILK to design, market and execute a fraudulent tax

1 shelter known as POINT on behalf of wealthy individuals through which they could and
2 did earn millions of dollars in fees, as well as retain the wealthy clients as investors in
3 Quellos' various investment funds through which the company earned additional revenue.
4 The scheme and artifice to defraud proceeded in two phases:

5 a. First, in order to induce clients to participate in the fraudulent tax
6 shelter, JEFFERY I. GREENSTEIN and CHARLES H. WILK provided and caused to be
7 provided false, fraudulent and misleading marketing documents, transactional documents,
8 and false, fraudulent and misleading legal opinion letters from national law firms all of
9 which described the transaction as involving the purchase of partnerships that owned low
10 value/high basis "stocks," whereas, JEFFREY I. GREENSTEIN and CHARLES H.
11 WILK knew, in truth and fact, that the transactions did not involve any such stocks.

12 b. Second, JEFFREY I. GREENSTEIN and CHARLES H. WILK were
13 aware that clients who executed the POINT tax shelter strategy would likely be subject to
14 IRS audit. As such, JEFFREY I. GREENSTEIN and CHARLES H. WILK, in
15 furtherance of the continuing scheme and artifice to defraud, provided and caused to be
16 provided false, fraudulent and misleading representations and explanations about the
17 POINT transactions to the clients in response to their requests for assistance with audits
18 and anticipated audits in order to prevent detection of the scheme and artifice, and to
19 prevent the loss of such clients as investors.

20 74. As a result of their scheme and artifice to defraud, a total of five individuals
21 – Clients M.Z., R.J., B.J., M.S., and H.S. – paid approximately \$86 million in fees to
22 participate in POINT. Moreover, these clients also collectively invested tens of millions
23 of dollars in various Quellos investment vehicles, earning Quellos substantial sums in
24 additional fees.

25
26 **III. MANNER AND MEANS OF THE
SCHEME AND ARTIFICE TO DEFRAUD.**

27 75. The manner and means of the scheme and artifice to defraud are set forth in
28 paragraphs 20-65 of this Second Superseding Indictment, which are incorporated and re-

1 alleged as if fully set forth herein.

2 **IV. EXECUTION OF THE**
 3 **SCHEME AND ARTIFICE TO DEFRAUD.**

4 76. On or about the dates set forth below, at Seattle, Washington, within the
 5 Western District of Washington, and elsewhere, having devised the above-described
 6 scheme and artifice to defraud, JEFFREY I. GREENSTEIN and CHARLES H. WILK,
 7 for the purpose of executing this scheme and artifice to defraud, did knowingly cause to
 8 be transmitted by wire communication in interstate or foreign commerce writings, signals,
 9 picture, and sounds, each transmission of which constitutes a separate count of this
 10 Second Superseding Indictment.

Count	Date	Sender	Recipient	Wire Transmission
15	10/21/04	Employee of Quellos	Attorney for Client H.S.	Email sent from Seattle, Washington to Los Angeles, California attaching the "POINT Strategy" document, which falsely, fraudulently and misleadingly described the POINT transaction as involving the acquisition by the taxpayer of high/basis low value "stock" that had been contributed to a partnership by an "offshore investment fund."
16	10/26/04	CHARLES H. WILK	Attorney for Clients R.J. and B.J.	Email sent from Seattle, Washington to New York, New York attaching a document entitled "Barnville," which falsely stated that Barnville contributed "stock" to the SPV acquired by the clients.
17	11/15/04	CHARLES H. WILK	Clients R.J. and B.J.	Faxed letter sent from Washington D.C. to New York, New York in which CHARLES H. WILK falsely suggests that Quellos was not involved in the original transaction between Barnville and Jackstones; that the documents appear to indicate that Jackstones sold to Barnville "the right to beneficial ownership of shares"

28 All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT 18
(Conspiracy to Launder Monetary Instruments)

1
2
3 77. Beginning at a time unknown, but no later than in or about March 2001, and
4 continuing through in or about January 2008, at Seattle, Washington, within the Western
5 District of Washington, and elsewhere, Matthew G. Krane, JEFFREY I. GREENSTEIN,
6 and CHARLES H. WILK, together with others known and unknown to the Grand Jury,
7 did knowingly combine, conspire, and agree with each other to commit offenses against
8 the United States in violation of Title 18, United States Code, Section 1956, to wit, to
9 knowingly conduct and attempt to conduct a financial transaction affecting interstate and
10 foreign commerce, which involved the proceeds of a specified unlawful activity, that is
11 Deprivation of Honest Services, in violation of Title 18, United States Code, Sections
12 1343 and 1346, and Wire Fraud, in violation of Title 18, United States Code, Section
13 1343, knowing that the transactions were designed in whole or in part to conceal and
14 disguise the nature, location, source, ownership, and control of the proceeds of specified
15 unlawful activity, and that while conducting and attempting to conduct such financial
16 transactions, knew that the property involved in the financial transactions represented the
17 proceeds of some form of unlawful activity, in violation of Title 18, United States Code,
18 Section 1956(a)(1)(B)(i).

I. INTRODUCTION.

19 At various times relevant to this Second Superseding Indictment:

20 78. The allegations set forth in paragraphs 2-18 of this Second Superseding
21 Indictment are incorporated and re-alleged as if fully set forth herein.

22 79. Defendant Matthew G. Krane was an attorney, licensed in the State of
23 California. Matthew G. Krane was a sole practitioner who specialized in the area of tax.

24 80. Client H.S. was a Los Angeles based business man. Beginning
25 approximately in 1990 or 1991, Matthew G. Krane was engaged by Client H.S. to provide
26 tax advice and tax planning services to Client H.S. and Client H.S.'s business.

27 81. B.H. is a resident of Switzerland and a business associate of Matthew G.
28 Krane.

1 **II. THE ESSENCE OF THE SPECIFIED UNLAWFUL ACTIVITIES:**
2 **DEPRIVATION OF HONEST SERVICES AND WIRE FRAUD.**

3 82. Attorneys practicing law in California owe both a fiduciary duty to their
4 clients and a duty of loyalty to act in their clients' best interests, both financially and
5 otherwise, and to comply with the California Rules of Professional Conduct.

6 83. Rule 3-310 of the California Rules of Professional Conduct requires that
7 members of the California Bar "shall not accept or continue representation of a client
8 without providing written disclosure to the client where...the member has or had a legal,
9 business, financial, or professional interest in the subject matter of the representation."

10 84. The essence of the Specified Unlawful Activities is that beginning in or
11 about January 2001 and continuing through in or about December 2002, Matthew G.
12 Krane, knowingly and willfully devised and intended to devise a scheme and artifice to
13 defraud and deprive Client H.S. of his intangible right to honest services as his attorney,
14 and used or caused the use of the wires in furtherance of the scheme; and that Matthew G.
15 Krane knowingly and willfully devised and intended to devise a scheme and artifice to
16 obtain money and property of Client H.S. by means of materially false and fraudulent
17 pretenses, representations, promises, and omissions, and used or caused the use of the
18 wires in furtherance of the scheme.

19 85. It was part of both schemes and artifices to defraud that in late 2000, Client
20 H.S. engaged Matthew G. Krane to find a means to minimize anticipated capital gains
21 taxes stemming from a sale of certain of Client H.S.'s assets.

22 86. It was a further part of both schemes and artifices to defraud that sometime
23 in early 2001, Matthew G. Krane introduced Client H.S. to Quellos and CHARLES H.
24 WILK who, according to Matthew G. Krane, had devised a financial transaction through
25 which Client H.S. could shelter his capital gains.

26 87. It was a further part of both schemes and artifices to defraud that Matthew
27 G. Krane represented to Client H.S. that he would need to pay approximately \$46 million
28 in fees to Quellos for their work in implementing the transaction. Matthew G. Krane
represented that the fees were reasonable because the transaction would save Client H.S.

1 substantially more in taxes than it cost.

2 88. It was a further part of both schemes and artifices to defraud that Client
3 H.S., relying upon the advice and representations of Matthew G. Krane that the
4 transaction was legitimate and that the fees and costs were reasonable, agreed to enter
5 into the tax shelter transaction with Quellos.

6 89. It was a further part of both schemes and artifices to defraud that, contrary
7 to what Matthew G. Krane represented to Client H.S. about the fee arrangements,
8 Matthew G. Krane, JEFFREY I. GREENSTEIN, and CHARLES H. WILK had entered
9 into a separate agreement whereby JEFFREY I. GREENSTEIN and CHARLES H. WILK
10 promised to kickback to Matthew G. Krane more than half of the fees that Client H.S.
11 agreed to pay Quellos.

12 90. It was a further part of both schemes and artifices to defraud that Matthew
13 G. Krane, contrary to his duties as Client H.S.'s attorney, never disclosed to Client H.S.
14 the kickback arrangement he had entered into with JEFFREY I. GREENSTEIN and
15 CHARLES H. WILK.

16 91. It was a further part of both schemes and artifices to defraud that Matthew
17 G. Krane knew about and participated with CHARLES H. WILK and others in creating
18 false and misleading documents to hide from the Internal Revenue Service and others the
19 true amount of fees and costs paid by Client H.S. to take part in the tax shelter
20 transaction.

21 92. It was a further part of both schemes and artifices to defraud that in or about
22 October and November 2001, when Client H.S.'s tax shelter transaction was completed,
23 CHARLES H. WILK, in Seattle, Washington, in fulfillment of the kickback arrangement
24 with Matthew G. Krane, caused, by means of international wire transfers, the following
25 payments totaling approximately \$36 million:

26 a. On or about October 31, 2001, the transfer of approximately \$28
27 million from HSBC Bank in New York, New York, to European
28 American Investment Bank AG in Vienna, Austria, for the benefit of

1 an account in the name of QFS Consultants, Ltd;

- 2 b. On or about October 25, 2001, the transfer of approximately \$7.5
3 million from HSBC Bank in New York, New York, to European
4 American Investment Bank AG in Vienna, Austria, which amount
5 was further transferred on or about November 1, 2001, to another
6 account in European American Investment Bank AG in Vienna,
7 Austria for the benefit of an account in the name of QFS
8 Consultants, Ltd.
- 9 c. On or about November 7, 2001, the transfer of approximately
10 \$600,000 from HSBC Bank in New York, New York, to European
11 American Investment Bank AG in Vienna, Austria, for the benefit of
12 an account in the name of QFS Consultants, Ltd.

13 **C. Manner and Means of the Conspiracy to Launder Monetary Instruments.**

14 93. The manner and means by which Matthew G. Krane, JEFFREY I.
15 GREENSTEIN, CHARLES H. WILK, and their coconspirators sought to accomplish the
16 object of the conspiracy included, among other things, the following:

17 94. In or about October 2001, CHARLES H. WILK, who was working in
18 Seattle, Washington, introduced Matthew G. Krane to J.S. and R.P. in London, England,
19 and requested that J.S. and R.P. assist Matthew G. Krane in establishing an offshore
20 company and an offshore bank account to hold Matthew G. Krane's share of fees
21 generated from Client H.S.'s tax shelter transaction.

22 95. In or about October 2001, Matthew G. Krane and B.H. agreed that in return
23 for a payment of \$1 million, B.H. would act on behalf of Matthew G. Krane as the sole
24 beneficial owner of the offshore company to be set up through the assistance of J.S. and
25 R.P. B.H. further agreed with Matthew G. Krane that he would manage an offshore
26 account in the name of this offshore company on Matthew G. Krane's behalf.

27 96. In or about October 2001, B.H., through the assistance of R.P. and others,
28 utilized a corporate administrator based in Gibraltar to obtain the use of a shell company

1 known as Eldred Ltd., incorporated in the British Virgin Islands.

2 97. On or about October 24, 2001, at the behest of Matthew G. Krane, B.H.
3 instructed the corporate administrator of Eldred Ltd. to change the name of the company
4 to QFS Consultants Ltd. QFS was similar to acronyms used by various subsidiaries of
5 Quellos. Matthew G. Krane chose the name QFS so that documents regarding fees that
6 were, in truth, being paid to Matthew G. Krane in fulfillment of the kickback arrangement
7 with JEFFREY I. GREENSTEIN and CHARLES H. WILK, would fraudulently appear to
8 others as if they were being paid to Quellos.

9 98. On or about October 24, 2001, at the behest of Matthew G. Krane, B.H.
10 opened a bank account in Vienna, Austria, at European American Investment Bank AG in
11 the name of QFS.

12 99. On or about October 31, 2001, at the behest of Matthew G. Krane,
13 CHARLES H. WILK, from Seattle, Washington, emailed instructions to HSBC, a bank in
14 New York, to transfer approximately \$28 million from the fees generated from Client
15 H.S.'s tax shelter transaction to the QFS account at European American Investment Bank
16 AG in Vienna, Austria.

17 100. On or about October 25, 2001, approximately \$28 million in proceeds from
18 the above described scheme and artifice to defraud as set forth in paragraphs 82 through
19 92, was transferred via wire from an HSBC account in New York, New York, to an
20 account in the name of QFS at European American Investment Bank AG in Vienna,
21 Austria.

22 101. On or about October 25, 2001, at the behest of Matthew G. Krane and
23 consistent with the undisclosed fee sharing agreement as described in above paragraphs
24 82 through 92, CHARLES H. WILK, with the knowledge and consent of JEFFREY I.
25 GREENSTEIN, emailed from Seattle, Washington, instructions to Euram, to transfer
26 approximately \$8 million in additional fees generated from Client H.S.'s tax shelter
27 transaction that had been held in the name of Euram to the QFS account at European
28 American Investment Bank AG in Vienna, Austria.

1 102. On or about November 1, 2001, in accordance with the instructions from
2 CHARLES H. WILK, Euram caused approximately \$7.5 million in proceeds from the
3 above described scheme and artifice to defraud as set forth in paragraphs 82 through 92,
4 to be transferred from an account in the name of Euram at European American
5 Investment Bank AG in Vienna, Austria, to the account in the name of QFS at European
6 American Bank AG in Vienna, Austria.

7 103. On or about November 7, 2001, in accordance with the instructions from
8 CHARLES H. WILK, Euram caused approximately \$600,000 in proceeds from the above
9 described scheme and artifice to defraud as set forth in paragraphs 82 through 92, to be
10 transferred from an account at HSBC in New York, New York, to the account in the name
11 of QFS at European American Investment Bank AG in Vienna, Austria.

12 104. In or about October 2001, in response to due diligence demands by the QFS
13 corporate administrators for explanations as to the source of the \$36 million in funds held
14 by QFS, Matthew G. Krane, CHARLES H. WILK and JEFFREY I. GREENSTEIN
15 agreed to execute a written agreement wherein it was made to falsely appear that QFS,
16 and not Matthew G. Krane, obtained the money as a result of a fee-sharing agreement
17 with Quellos for "non-legal" advisory services that QFS provided in connection with
18 Client H.S.'s tax shelter transaction.

19 105. In or about October 2001, Matthew G. Krane instructed B.H. to find
20 someone wholly unrelated to Client H.S. and MATTHEW KRANE to sign the written
21 fee-sharing agreement on behalf of QFS. B.H. agreed to do so, and caused an
22 acquaintance in London, with no connections to Client H.S., MATTHEW KRANE, or
23 QFS, to sign the agreement on behalf of QFS.

24 106. On or about November 5, 2001, B.H. faxed from Switzerland the written
25 fee-sharing agreement between QFS and Quellos to Seattle, Washington, for execution of
26 the agreement by Quellos.

27 107. On or about November 5, 2001, JEFFREY I. GREENSTEIN, in Seattle,
28 Washington, executed the fee sharing agreement on behalf of Quellos, and CHARLES H.

1 WILK caused the agreement to be faxed back to B.H. in Switzerland. B.H. then
2 submitted the executed agreement to the QFS corporate administrators in fulfillment of
3 their due diligence request.

4 108. By January 2002, the QFS corporate administrators continued to be
5 dissatisfied with the explanation for the source of the \$36 million held by QFS. In or
6 about January 2002, in response to the corporate administrator's continued due diligence
7 requests, Matthew G. Krane and B.H. submitted and caused to be submitted a false
8 document that falsely explained that the source of the QFS funds were fees from complex
9 work done by B.H. in connection with the sale of Client H.S.'s assets. In truth, B.H. had
10 done no work in connection with the sale of Client H.S.'s assets.

11 109. In or about January 2002, Matthew G. Krane caused to be incorporated in
12 the State of Delaware a new corporation known as Goldfluegel Partnerschaft, LLC
13 (hereinafter "Goldfluegel").

14 110. In or about July 2002, Matthew G. Krane caused to be opened a new bank
15 account at European American Investment Bank AG in Vienna, Austria in the name of
16 Goldfluegel.

17 111. On or about July 31, 2002, Matthew G. Krane and B.H. instructed European
18 American Investment Bank AG to transfer approximately \$35 million in proceeds from
19 the above described scheme and artifice to defraud held in the European American
20 Investment Bank AG's QFS account to the new account in the name of Goldfluegel.
21 Matthew G. Krane and B.H. agreed that the remaining approximately \$1 million in
22 proceeds in the QFS account was for B.H.'s use in fulfillment of Matthew G. Krane's
23 agreement to pay B.H. for his involvement with QFS.

24 112. On or about the dates listed below, MATTHEW KRANE caused the
25 following wire transfers from the European American Investment Bank AG's account in
26 Vienna, Austria, in the name of Goldfluegel, to an account in the name of Matthew G.
27 Krane at Charles Schwab & Company, Inc. in San Francisco, California. These monetary
28 transactions involved proceeds from the above described scheme and artifice. In an effort

1 to disguise the purpose, source, and nature of these monetary transactions, Matthew G.
 2 Krane caused each of the wired funds to be accompanied with a false notation that these
 3 amounts were being paid to Matthew G. Krane for "legal fees."

Date of Wire Transfer	Amount of Wire Transfer
November 18, 2004	\$ 86,259.77
February 23, 2005	\$76,277.23
December 30, 2005	\$124,939.52
April 12, 2006	\$137,288.68
September 5, 2006	\$198,814.07
February 8, 2007	\$164,426.22
June 11, 2007	\$192,049.93
September 21, 2007	\$65,587.06

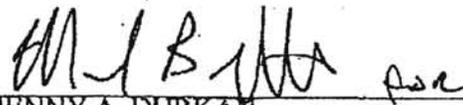
All in violation of Title 18, United States Code, Section 1956(h).

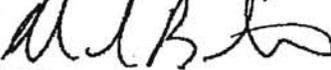
A TRUE BILL:

DATED: 12/30/2009

Signature of Foreperson redacted pursuant to the policy of the Judicial Conference of the United States.

FOREPERSON

18 
 19
 20 JENNY A. DURKAN
 United States Attorney

21 
 22 MARK BARTLETT
 23 First Assistant United States Attorney

24 
 25 KATHERYN KIM FRIERON
 Assistant United States Attorney

APPENDIX C

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08-CR-00296-JSR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY I GREENSTEIN,

Defendant.

No. CR08-0296RSM

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Robert Westinghouse, Katheryn Kim Frierson, Michael Dion, and Jerrod Patterson, Assistant United States Attorneys for said District, Defendant, Jeffrey Greenstein, and his attorneys, Jeffery Robinson, Andrew Levander, and Benjamin Rosenberg enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters his pleas of guilty to the following charges contained in the Second Superseding Indictment (hereinafter, the "Indictment").

a. Conspiracy to Defraud the United States, as charged in Count 1, in violation of Title 18, United States Code, Section 371; and

1 b. Aiding and Assisting the Filing of a False Return, as charged in Count 13,
2 in violation of Title 26, United States Code, Section 7206(2).

3 By entering pleas of guilty, Defendant hereby waives all objections to the form of the charging
4 document. Defendant further understands that before entering his pleas of guilty, he will be
5 placed under oath. Any statement given by Defendant under oath may be used by the United
6 States in a prosecution for perjury or false statement.

7 2. **Elements of the Offense.** The elements of the offense of Conspiracy to Defraud
8 the United States, as charged in Count 1, in violation of Title 18, United States Code, Section
9 371, are as follows:

10 First, the existence of an agreement by two or more persons to defraud an agency
11 of the United States, specifically, the Internal Revenue Service of the United States Department
12 of Treasury for the purpose of impeding, impairing, defeating and obstructing the lawful
13 governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection
14 of income taxes;

15 Second, the defendant's knowing and voluntary participation in the conspiracy;
16 and

17 Third, the commission of an overt act in furtherance of the conspiracy.

18 The elements of the offense of Aiding and Assisting the Filing of a False Return,
19 in violation of Title 26, United States Code, Section 7206(2), are as follows:

20 First, the defendant aided or assisted in, procured, counseled, or advised the
21 preparation or presentation of a document, specifically, Form 1065, U.S. Returns of Partnership
22 Income, in connection with a matter arising under the internal revenue laws;

23 Second, the document was false as to a material matter; and

24 Third, the act of the defendant was willful.

25 3. **The Penalties.** Defendant understands that the statutory penalties for the offenses
26 of Conspiracy to Defraud the United States, as charged in Count1, and Aiding and Assisting in
27 the Filing of False Returns, as charged in Count 13, are as follows:
28

1 a. Count 1 (Conspiracy to Defraud the United States): Imprisonment for up to
2 five (5) years, a fine of up to two hundred and fifty thousand dollars (\$250,000.00) or, in cases
3 involving pecuniary gain as a result of the offense, of an amount no greater than twice the gross
4 gain pursuant to Title 18, United States Code, Section 3571(d), a period of supervision following
5 release from prison of at least two (2) years but not more than three (3) years, and a special
6 assessment of one hundred dollars (\$100.00).

7 b. Count 13 (Aiding and Assisting in the Filing of False Returns):
8 Imprisonment for up to three (3) years, a fine of up to two hundred fifty thousand dollars
9 (\$250,000.00) or, in cases involving pecuniary gain as a result of the offense, of an amount no
10 greater than twice the gross gain pursuant to Title 18, United States Code, Sections 3571(d) and
11 (e), together with the costs of prosecution, a period of supervision following release from prison
12 of up to one (1) year, and a special assessment of one hundred dollars (\$100.00).

13 If Defendant receives a sentence of probation, the probationary period could be up
14 to five (5) years. Defendant agrees that the special assessment shall be paid at or before the time
15 of sentencing.

16 Defendant understands that supervised release is a period of time following
17 imprisonment during which he will be subject to certain restrictions and requirements.
18 Defendant further understands that if supervised release is imposed and he violates one or more
19 of its conditions, Defendant could be returned to prison for all or part of the term of supervised
20 release that was originally imposed. This could result in Defendant's serving a total term of
21 imprisonment greater than the statutory maximum stated above.

22 Defendant agrees that any monetary penalty the Court imposes, including the
23 special assessment, fine, or costs, is due and payable at the time of sentencing or before. If
24 payment is not made by the time of or at sentencing, Defendant agrees to submit a completed
25 Financial Statement of Debtor form as requested by the United States Attorney's Office.

26 4. **Rights Waived by Pleading Guilty.** Defendant understands that by pleading
27 guilty, he knowingly and voluntarily waives the following rights:

28 a. The right to plead not guilty and to persist in a plea of not guilty;

- 1 b. The right to a speedy and public trial before a jury of his peers;
- 2 c. The right to the effective assistance of counsel at trial, including, if
- 3 Defendant could not afford an attorney, the right to have the Court appoint one for him;
- 4 d. The right to be presumed innocent until guilt has been established beyond a
- 5 reasonable doubt at trial;
- 6 e. The right to confront and cross-examine witnesses against Defendant at
- 7 trial;
- 8 f. The right to compel or subpoena witnesses to appear on his behalf at trial;
- 9 g. The right to testify or to remain silent at trial, at which trial such silence
- 10 could not be used against Defendant; and
- 11 h. The right to appeal a finding of guilt or any pretrial rulings.

12 5. **United States Sentencing Guidelines.** Defendant understands and acknowledges

13 that, at sentencing, the Court must consider the sentencing range calculated under the

14 United States Sentencing Guidelines, together with the other factors set forth in Title 18,

15 United States Code, Section 3553(a), including: (1) the nature and circumstances of the

16 offenses; (2) the history and characteristics of the defendant; (3) the need for the sentence to

17 reflect the seriousness of the offenses, to promote respect for the law, and to provide just

18 punishment for the offenses; (4) the need for the sentence to afford adequate deterrence to

19 criminal conduct; (5) the need for the sentence to protect the public from further crimes of the

20 defendant; (6) the need to provide the defendant with educational and vocational training,

21 medical care, or other correctional treatment in the most effective manner; (7) the kinds of

22 sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid

23 unwarranted sentence disparity among defendants involved in similar conduct who have similar

24 records. Accordingly, Defendant understands and acknowledges that:

- 25 a. The Court will determine his applicable Sentencing Guidelines range at the
- 26 time of sentencing;
- 27 b. After consideration of the Sentencing Guidelines and the factors in
- 28

1 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum
2 term authorized by law;

3 c. The Court is not bound by any recommendation regarding the sentence to
4 be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by
5 the parties or the United States Probation Department, or by any stipulations or agreements
6 between the parties in this Plea Agreement; and

7 d. Defendant may not withdraw a guilty plea solely because of the sentence
8 imposed by the Court.

9 6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
10 guaranteed what sentence the Court will impose.

11 7. **Statement of Facts.** The parties agree on the following facts. Defendant admits
12 he is guilty of the charged offenses.

13 Quellos Group, LLC (hereinafter "Quellos"), formerly known as Quadra Capital
14 Management, LP, was an investment management services firm founded in 1994 and
15 headquartered in Seattle, Washington. Defendant Jeffrey Greenstein was a founder and Chief
16 Executive Officer of Quellos. Defendant Charles Wilk was hired by Quellos in May of 1999
17 and became a principal in May of 2000.

18 Beginning in 1999 and continuing through 2005, Jeffrey Greenstein, together with
19 Charles Wilk, and others conspired and agreed to defraud the Internal Revenue Service by
20 designing, promoting, and implementing a fraudulent tax shelter, which they referred to by the
21 acronym, POINT, and by directly and indirectly deceiving and lying to the IRS during
22 examinations of returns that taxpayers filed in reliance upon POINT. To accomplish the
23 objective of this conspiracy, Jeffrey Greenstein and Charles Wilk worked with individuals at
24 European American Investment Group (EURAM) to create fictitious losses through the
25 purported purchase and sale of "synthetic" stock with a paper value exceeding \$9.6 Billion
26 between two Special Purpose Vehicles (SPV's), Isle of Man businesses, Jackstones, Ltd., and
27 Barnville, Ltd, which had no assets. In truth there was no actual stock; no purchase and sale of
28 actual stock; no payment for actual stock, and no basis in stock. These fictitious losses were

1 used in POINT to offset approximately equal dollar amounts of real capital gains, thereby
2 deferring substantial capital gains taxes.

3 As part of the conspiracy and in furtherance of it, Jeffrey Greenstein and Charles
4 Wilk told wealthy individuals and their advisors with substantial capital gains that they could
5 defer taxes on such capital gains by participating in POINT. The defendants then provided and
6 caused to be provided to these willing taxpayers, information and documentation for POINT that
7 they knew were false. They also provided these taxpayers with legal opinions, based upon the
8 same false information and documentation, that attested to the probable legitimacy of POINT.
9 Defendants knew these opinions relied on false information and documentation.

10 The taxpayers, in reliance upon the losses generated by POINT, filed individual
11 and partnership returns in which they claimed huge losses as a means of offsetting real capital
12 gains, thereby deferring taxes of approximately \$240 Million. When these returns came under
13 audit, the defendants gave the taxpayers and their advisors the same false information and
14 documentation and the defendants knew that the taxpayers and their advisors would use the false
15 information and documentation in responding to the IRS. The false information and
16 documentation purportedly explained the genesis and business purpose of the POINT strategy.

17 Taxpayer H.S., was one of the taxpayers that participated in POINT. The
18 partnership entity that H.S. purchased in order to obtain the purported built in loss to offset his
19 capital gain was known as Titanium. For the tax year 2001, Taxpayer caused to be filed a U.S.
20 Partnership Income Return, Form 1065, for Titanium in which he claimed approximately \$614
21 million in capital loss as a result of the sale of the purported technology stocks that were
22 contributed by Barnville. The loss, however, did not exist. Jeffrey Greenstein and Charles Wilk,
23 knowingly and willfully caused to be provided the false loss figure thus aiding and assisting in
24 the filing of the materially false return.

25 8. **Tax Offenses.** The United States and Defendant stipulate and agree that two
26 hundred and forty million dollars (\$240,000,000.00) is the correct amount of tax loss for
27 purposes of sentencing. The United States and the Defendant agree that this tax loss figure
28 specifically excludes losses from the "Silverlight" transaction which comprised approximately

1 half of the tax loss claimed by taxpayer H.S. The United States understands that the Internal
2 Revenue Service does not intend to assess any additional civil tax, penalties, and/or interest that
3 may be owed by Defendant as a result of his conduct in designing, promoting, and implementing
4 POINT. However, the United States acknowledges that there is a current examination of
5 Quellos and Quadra regarding the promotion of various tax shelters, including POINT, and
6 nothing in this agreement limits the authority of the IRS to complete those examinations and
7 assess and collect whatever civil taxes, penalties, and interest it deems appropriate therein. The
8 United States agrees that any assessment and collection of civil taxes, penalties, and interest will
9 be enforced first against Quellos and Quadra.

10 **9. Monetary Penalties** Defendant understands that he is required to pay the costs of
11 prosecution, the amount of which will not exceed \$400,000.00, and which will be determined
12 prior to the time of payment. Jeffrey Greenstein and Charles Wilk will each pay half of the
13 assessed cost of prosecution. The payment for the cost of prosecution is to be made on or before
14 September 30, 2010.

15 In addition, the Defendant agrees to pay the Internal Revenue Service at the time
16 of sentencing, as disgorgement of the total amount of gain that has been realized by Jeffrey
17 Greenstein from the design, promotion, and implementation of POINT, the sum of \$6.4 Million.
18 The payment will be made pursuant to a closing agreement that will be provided to the
19 Defendant and signed by the Defendant prior to sentencing and which will provide the necessary
20 documentation for acceptance of this payment by the Internal Revenue Service. If, for any
21 reason this payment cannot be accepted by the Department of Treasury, a like amount will be
22 imposed as a fine by the Court at sentencing.

23 **10. Sentencing Recommendation.** As part of this plea agreement,

24 a. The United States agrees to recommend a sentence no greater than 72
25 months and the Defendant agrees to recommend a sentence of no less than 24 months.
26 Defendant understands, however, that at the time of sentencing, the Court is free to reject these
27 recommendations and sentence up to the maximum permitted by law;
28

1 b. The United States and the Defendant agree to recommend that the United
2 States Sentencing Commission Guidelines Manual effective November 1, 2000 will apply; and,

3 c. The United States also agrees to join the Defendant in recommending the
4 designation of Sheridan Prison Camp as his place of incarceration and in requesting that
5 sentencing occur on January 28, 2011.

6 **11. Additional Obligations of Defendant.** As part of this plea agreement, the
7 Defendant agrees to the following:

8 a. The Defendant will arrange for and speak publicly, at a time agreeable to
9 the institution but prior to sentencing, at the University of Washington School of Business
10 regarding his offense and focusing on the topic of business ethics. The Defendant will provide
11 prior notice to the United States Attorneys Office of the time and place of the speaking
12 engagement; and

13 b. The Defendant will work with the United States to gain an expedited
14 designation to report to the Bureau of Prisons and to self report as soon as designated, with the
15 goal of having the Defendant report promptly after sentencing.

16 **12. Interdependence of Plea Agreements.** The parties agree that this Plea
17 Agreement shall be conditioned upon the Court's acceptance of the Plea Agreement(s) in the
18 matter of *United States v. Charles Wilk*, CR08-296RSM. Defendant understands, therefore, that
19 this Agreement is part of a package plea agreement with the United States, to wit: if either
20 Defendant or Charles Wilk does not enter into, and plead guilty pursuant to the respective Plea
21 Agreement, or if either Defendant or Charles Wilk subsequently seeks to withdraw from the
22 guilty plea, then the United States will withdraw from both Plea Agreements and will seek an
23 indictment against both parties for all crimes for which the United States has sufficient evidence.

24 **13. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement, the
25 United States Attorney's Office for the Western District of Washington agrees to move to
26 dismiss the remaining counts in the Indictment at the time of sentencing and not to prosecute
27 Defendant for any additional offenses known to it as of the time of this Agreement that are based
28 upon evidence in its possession at this time, and that arise out of the conduct giving rise to this

1 investigation. In this regard, Defendant recognizes the United States has agreed not to prosecute
 2 all of the criminal charges set forth in the indictment solely because of the promises made by
 3 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing the
 4 Presentence Report, the United States Attorney's Office will provide the United States Probation
 5 Office with evidence of all conduct committed by Defendant.

6 Defendant agrees that any charges to be dismissed before or at the time of
 7 sentencing were substantially justified in light of the evidence available to the United States,
 8 were not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for
 9 any future claims under the "Hyde Amendment," Pub.L. No. 105-119(1997).

10 **14. Acceptance of Responsibility.** The United States acknowledges that if Defendant
 11 qualifies for an acceptance of responsibility adjustment pursuant to USSG § 3B1.1(a),
 12 and if the offense level is sixteen (16) or greater, his total offense level should be decreased by
 13 ~~three (3)~~ ^{three (3)} levels pursuant to USSG §§ 3B1.1(a) and (b), because he has assisted the United States
 14 by timely notifying the authorities of Defendant's intention to plead guilty, thereby permitting
 15 the United States to avoid preparing for trial and permitting the Court to allocate its resources
 16 efficiently.

17 **15. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if Defendant
 18 breaches this Plea Agreement, the United States may withdraw from this Plea Agreement and
 19 Defendant may be prosecuted for all offenses for which the United States has evidence. In such
 20 event, Defendant agrees not to oppose any steps taken by the United States to nullify this Plea
 21 Agreement, including the filing of a motion to withdraw from the Plea Agreement. Defendant
 22 also agrees that if Defendant is in breach of this Plea Agreement, Defendant has waived any
 23 objection to the re-institution of any charges in the Indictment that were previously dismissed or
 24 any additional charges that had not been prosecuted.

25 Defendant further understands that if, after the date of this Agreement, Defendant
 26 should engage in illegal conduct, or conduct that is in violation of his conditions of release
 27 (examples of which include, but are not limited to: obstruction of justice, failure to appear for a
 28 court proceeding, criminal conduct while pending sentencing, and false statements to law

1 enforcement agents, the Pretrial Services Officer, Probation Officer, or Court), the United States
 2 is free under this Agreement to file additional charges against Defendant or to seek a sentence
 3 that takes such conduct into consideration by requesting the Court to apply additional
 4 adjustments or enhancements in its Sentencing Guidelines calculations in order to increase the
 5 applicable advisory Guidelines range, and/or by seeking an upward departure or variance from
 6 the calculated advisory Guidelines range. Under these circumstances, the United States is free to
 7 seek such adjustments, enhancements, departures, and/or variances even if otherwise precluded
 8 by the terms of the plea agreement.

9 **16. Waiver of Appeal.** As part of this Plea Agreement and on the condition that the
 10 Court imposes a custodial sentence that is within or below the Sentencing Guidelines range (or
 11 the statutory mandatory minimum, if greater than the Guidelines range) that is determined by the
 12 Court at the time of sentencing, Defendant waives to the full extent of the law:

- 13 a. any right conferred by Title 18, United States Code, Section 3742 to appeal the
 14 sentence, including any restitution order imposed; and
 15 b. any right to bring a collateral attack against the conviction and sentence, including
 16 any restitution order imposed, except as it may relate to the effectiveness of legal
 17 representation.

18 Furthermore, this waiver does not preclude Defendant from bringing an appropriate motion
 19 pursuant to 28 U.S.C. 2241, to address the conditions of his confinement or the decisions of the
 20 Bureau of Prisons regarding the execution of his sentence.

21 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
 22 attacking (except as to effectiveness of legal representation) the conviction or sentence in any
 23 way, the United States may prosecute Defendant for any counts, including those with mandatory
 24 minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

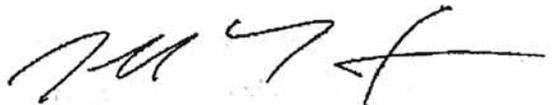
25 **17. Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea
 26 Agreement freely and voluntarily and that no threats or promises, other than the promises
 27 contained in this Plea Agreement, were made to induce Defendant to enter these pleas of guilty.

28 **18. Statute of Limitations.** In the event this Agreement is not accepted by the Court

1 for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of
 2 limitations shall be deemed to have been tolled from the date of the Plea Agreement to:
 3 (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or
 4 (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is
 5 discovered by the United States Attorney's Office.

6 19. **Completeness of Agreement.** The United States and Defendant acknowledge that
 7 these terms constitute the entire Plea Agreement between the parties. This Agreement binds
 8 only the United States Attorney's Office for the Western District of Washington. It does not
 9 bind any other United States Attorney's Office or any other office or agency of the
 10 United States, except as provided in Paragraph 8 above, or any state or local prosecutor.

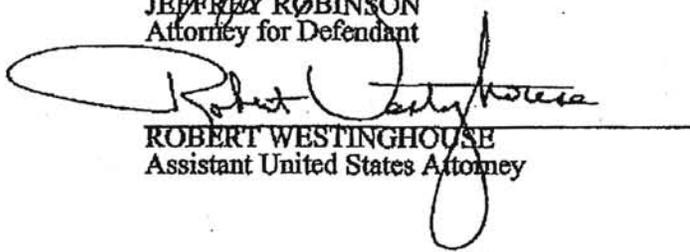
11 Dated this 10th day of September, 2010.



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14 JEFFREY I. GREENSTEIN
Defendant



15
16 JEFFREY ROBINSON
Attorney for Defendant



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18 ROBERT WESTINGHOUSE
Assistant United States Attorney
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APPENDIX D

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08-CR-00296-DOCTRM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES H. WILK,

Defendant.

No. CR08-0296RSM

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Robert Westinghouse, Katheryn Kim Frierson, Michael Dion, and Jerrod Patterson, Assistant United States Attorneys for said District, Defendant, Charles Wilk, and his attorneys, John Kecker, Jan Little, and Paula Blizzard enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters his pleas of guilty to the following charges contained in the Second Superseding Indictment (hereinafter, the "Indictment").

a. Conspiracy to Defraud the United States, as charged in Count 1, in violation of Title 18, United States Code, Section 371; and

b. Aiding and Assisting the Filing of a False Return, as charged in Count 13, in violation of Title 26, United States Code, Section 7206(2).

1 By entering pleas of guilty, Defendant hereby waives all objections to the form of the charging
2 document. Defendant further understands that before entering his pleas of guilty, he will be
3 placed under oath. Any statement given by Defendant under oath may be used by the United
4 States in a prosecution for perjury or false statement.

5 **2. Elements of the Offense.** The elements of the offense of Conspiracy to Defraud
6 the United States, as charged in Count 1, in violation of Title 18, United States Code, Section
7 371, are as follows:

8 First, the existence of an agreement by two or more persons to defraud an agency
9 of the United States, specifically, the Internal Revenue Service of the United States Department
10 of Treasury for the purpose of impeding, impairing, defeating and obstructing the lawful
11 governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection
12 of income taxes;

13 Second, the defendant's knowing and voluntary participation in the conspiracy;
14 and

15 Third, the commission of an overt act in furtherance of the conspiracy.

16 The elements of the offense of Aiding and Assisting the Filing of a False Return,
17 in violation of Title 26, United States Code, Section 7206(2), are as follows:

18 First, the defendant aided or assisted in, procured, counseled, or advised the
19 preparation or presentation of a document, specifically, Form 1065, U.S. Returns of Partnership
20 Income, in connection with a matter arising under the internal revenue laws;

21 Second, the document was false as to a material matter; and

22 Third, the act of the defendant was willful.

23 **3. The Penalties.** Defendant understands that the statutory penalties for the offenses
24 of Conspiracy to Defraud the United States, as charged in Count 1, and Aiding and Assisting in
25 the Filing of False Returns, as charged in Count 13, are as follows:

26 a. Count 1 (Conspiracy to Defraud the United States): Imprisonment for up to
27 five (5) years, a fine of up to two hundred and fifty thousand dollars (\$250,000.00) or, in cases
28 involving pecuniary gain as a result of the offense, of an amount no greater than twice the gross

1 gain pursuant to Title 18, United States Code, Section 3571(d), a period of supervision following
2 release from prison of at least two (2) years but not more than three (3) years, and a special
3 assessment of one hundred dollars (\$100.00).

4 b. Count 13 (Aiding and Assisting in the Filing of False Returns):

5 Imprisonment for up to three (3) years, a fine of up to two hundred fifty thousand dollars
6 (\$250,000.00) or, in cases involving pecuniary gain as a result of the offense, of an amount no
7 greater than twice the gross gain pursuant to Title 18, United States Code, Sections 3571(d) and
8 (e), together with the costs of prosecution, a period of supervision following release from prison
9 of up to one (1) year, and a special assessment of one hundred dollars (\$100.00).

10 If Defendant receives a sentence of probation, the probationary period could be up
11 to five (5) years. Defendant agrees that the special assessment shall be paid at or before the time
12 of sentencing.

13 Defendant understands that supervised release is a period of time following
14 imprisonment during which he will be subject to certain restrictions and requirements.
15 Defendant further understands that if supervised release is imposed and he violates one or more
16 of its conditions, Defendant could be returned to prison for all or part of the term of supervised
17 release that was originally imposed. This could result in Defendant's serving a total term of
18 imprisonment greater than the statutory maximum stated above.

19 Defendant agrees that any monetary penalty the Court imposes, including the
20 special assessment, fine, or costs, is due and payable at the time of sentencing or before. If
21 payment is not made by the time of or at sentencing, Defendant agrees to submit a completed
22 Financial Statement of Debtor form as requested by the United States Attorney's Office.

23 4. **Rights Waived by Pleading Guilty.** Defendant understands that by pleading
24 guilty, he knowingly and voluntarily waives the following rights:

- 25 a. The right to plead not guilty and to persist in a plea of not guilty;
26 b. The right to a speedy and public trial before a jury of his peers;
27 c. The right to the effective assistance of counsel at trial, including, if
28 Defendant could not afford an attorney, the right to have the Court appoint one for him;

1 d. The right to be presumed innocent until guilt has been established beyond a
2 reasonable doubt at trial;

3 e. The right to confront and cross-examine witnesses against Defendant at
4 trial;

5 f. The right to compel or subpoena witnesses to appear on his behalf at trial;

6 g. The right to testify or to remain silent at trial, at which trial such silence
7 could not be used against Defendant; and

8 h. The right to appeal a finding of guilt or any pretrial rulings.

9 5. **United States Sentencing Guidelines.** Defendant understands and acknowledges
10 that, at sentencing, the Court must consider the sentencing range calculated under the
11 United States Sentencing Guidelines, together with the other factors set forth in Title 18,
12 United States Code, Section 3553(a), including: (1) the nature and circumstances of the
13 offenses; (2) the history and characteristics of the defendant; (3) the need for the sentence to
14 reflect the seriousness of the offenses, to promote respect for the law, and to provide just
15 punishment for the offenses; (4) the need for the sentence to afford adequate deterrence to
16 criminal conduct; (5) the need for the sentence to protect the public from further crimes of the
17 defendant; (6) the need to provide the defendant with educational and vocational training,
18 medical care, or other correctional treatment in the most effective manner; (7) the kinds of
19 sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid
20 unwarranted sentence disparity among defendants involved in similar conduct who have similar
21 records. Accordingly, Defendant understands and acknowledges that:

22 a. The Court will determine his applicable Sentencing Guidelines range at the
23 time of sentencing;

24 b. After consideration of the Sentencing Guidelines and the factors in
25 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum
26 term authorized by law;

27 c. The Court is not bound by any recommendation regarding the sentence to
28 be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by

1 the parties or the United States Probation Department, or by any stipulations or agreements
2 between the parties in this Plea Agreement; and

3 d. Defendant may not withdraw a guilty plea solely because of the sentence
4 imposed by the Court.

5 6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
6 guaranteed what sentence the Court will impose.

7 7. **Statement of Facts.** The parties agree on the following facts. Defendant admits
8 he is guilty of the charged offenses.

9 Quellos Group, LLC (hereinafter "Quellos"), formerly known as Quadra Capital
10 Management, LP, was an investment management services firm founded in 1994 and
11 headquartered in Seattle, Washington. Defendant Jeffrey Greenstein was a founder and Chief
12 Executive Officer of Quellos. Defendant Charles Wilk was hired by Quellos in May of 1999
13 and became a principal in May of 2000.

14 Beginning in 1999 and continuing through 2005, Charles Wilk, together with
15 Jeffrey Greenstein, and others conspired and agreed to defraud the Internal Revenue Service by
16 designing, promoting, and implementing a fraudulent tax shelter, which they referred to by the
17 acronym, POINT, and by directly and indirectly deceiving and lying to the IRS during
18 examinations of returns that taxpayers filed in reliance upon POINT. To accomplish the
19 objective of this conspiracy, Jeffrey Greenstein and Charles Wilk worked with individuals at
20 European American Investment Group (EURAM) to create fictitious losses through the
21 purported purchase and sale of "synthetic" stock with a paper value exceeding \$9.6 Billion
22 between two Special Purpose Vehicles (SPV's), Isle of Man businesses, Jackstones, Ltd., and
23 Barnville, Ltd, which had no assets. In truth there was no actual stock; no purchase and sale of
24 actual stock; no payment for actual stock, and no basis in stock. These fictitious losses were
25 used in POINT to offset approximately equal dollar amounts of real capital gains, thereby
26 deferring substantial capital gains taxes.

27 As part of the conspiracy and in furtherance of it, Jeffrey Greenstein and Charles
28 Wilk told wealthy individuals and their advisors with substantial capital gains that they could

1 defer taxes on such capital gains by participating in POINT. The defendants then provided and
2 caused to be provided to these willing taxpayers, information and documentation for POINT that
3 they knew were false. They also provided these taxpayers with legal opinions, based upon the
4 same false information and documentation, that attested to the probable legitimacy of POINT.
5 Defendants knew these opinions relied on false information and documentation.

6 The taxpayers, in reliance upon the losses generated by POINT, filed individual
7 and partnership returns in which they claimed huge losses as a means of offsetting real capital
8 gains, thereby deferring taxes of approximately \$240 Million. When these returns came under
9 audit, the defendants gave the taxpayers and their advisors the same false information and
10 documentation and the defendants knew that the taxpayers and their advisors would use the false
11 information and documentation in responding to the IRS. The false information and
12 documentation purportedly explained the genesis and business purpose of the POINT strategy.

13 Taxpayer H.S., was one of the taxpayers that participated in POINT. The
14 partnership entity that H.S. purchased in order to obtain the purported built in loss to offset his
15 capital gain was known as Titanium. For the tax year 2001, Taxpayer caused to be filed a U.S.
16 Partnership Income Return, Form 1065, for Titanium in which he claimed approximately \$614
17 million in capital loss as a result of the sale of the purported technology stocks that were
18 contributed by Barnville. The loss, however, did not exist. Jeffrey Greenstein and Charles Wilk,
19 knowingly and willfully caused to be provided the false loss figure thus aiding and assisting in
20 the filing of the materially false return.

21 8. **Tax Offenses.** The United States and Defendant stipulate and agree that two
22 hundred and forty million dollars (\$240,000,000.00) is the correct amount of tax loss for
23 purposes of sentencing. The United States and the Defendant agree that this tax loss figure
24 specifically excludes losses from the "Silverlight" transaction which comprised approximately
25 half of the tax loss claimed by taxpayer H.S. The United States understands that the Internal
26 Revenue Service does not intend to assess any additional civil tax, penalties, and/or interest that
27 may be owed by Defendant as a result of his conduct in designing, promoting, and implementing
28 POINT. However, the United States acknowledges that there is a current examination of

1 | Quellos and Quadra regarding the promotion of various tax shelters, including POINT, and
2 | nothing in this agreement limits the authority of the IRS to complete those examinations and
3 | assess and collect whatever civil taxes, penalties, and interest it deems appropriate therein. The
4 | United States agrees that any assessment and collection of civil taxes, penalties, and interest will
5 | be enforced first against Quellos and Quadra.

6 | **9. Monetary Penalties** Defendant understands that he is required to pay the costs of
7 | prosecution, the amount of which will not exceed \$400,000.00, and which will be determined
8 | prior to the time of payment. Jeffrey Greenstein and Charles Wilk will each pay half of the
9 | assessed cost of prosecution. The payment for the cost of prosecution is to be made on or before
10 | September 30, 2010.

11 | In addition, the Defendant agrees to pay the Internal Revenue Service at the time
12 | of sentencing, as disgorgement of the total amount of gain that has been realized by Charles
13 | Wilk from the design, promotion, and implementation of POINT, the sum of \$600,000. The
14 | payment will be made pursuant to a closing agreement that will be provided to the Defendant
15 | and signed by the Defendant prior to sentencing and which will provide the necessary
16 | documentation for acceptance of this payment by the Internal Revenue Service. If, for any
17 | reason this payment cannot be accepted by the Department of Treasury, a like amount will be
18 | imposed as a fine by the Court at sentencing .

19 | **10. Sentencing Recommendation.** As part of this plea agreement,

20 | a. The United States agrees to recommend a sentence no greater than 72
21 | months and the Defendant agrees to recommend a sentence of no less than 24 months.
22 | Defendant understands, however, that at the time of sentencing, the Court is free to reject these
23 | recommendations and sentence up to the maximum permitted by law;

24 | b. The United States and the Defendant agree to recommend that the United
25 | States Sentencing Commission Guidelines Manual effective November 1, 2000 will apply; and,

26 | c. The United States also agrees to join the Defendant in recommending the
27 | designation of Sheridan Prison Camp as his place of incarceration and in requesting that
28 | sentencing occur on January 28, 2011.

1 **11. Additional Obligations of Defendant.** As part of this plea agreement, the
2 Defendant agrees to the following:

3 a. The Defendant will arrange for and speak publicly, at a time agreeable to
4 the institution but prior to sentencing, at the University of New York Law School regarding his
5 offense and focusing on the topic of legal ethics. The Defendant will provide prior notice to the
6 United States Attorneys Office of the time and place of the speaking engagement; and

7 b. The Defendant will work with the United States to gain an expedited
8 designation to report to the Bureau of Prisons and to self report as soon as designated, with the
9 goal of having the Defendant report promptly after sentencing.

10 **12. Interdependence of Plea Agreements.** The parties agree that this Plea
11 Agreement shall be conditioned upon the Court's acceptance of the Plea Agreement(s) in the
12 matter of *United States v. Jeffrey Greenstein*, CR08-296RSM. Defendant understands, therefore,
13 that this Agreement is part of a package plea agreement with the United States, to wit: if either
14 Defendant or Jeffrey Greenstein does not enter into, and plead guilty pursuant to the respective
15 Plea Agreement, or if either Defendant or Jeffrey Greenstein subsequently seeks to withdraw
16 from the guilty plea, then the United States will withdraw from both Plea Agreements and will
17 seek an indictment against both parties for all crimes for which the United States has sufficient
18 evidence.

19 **13. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement, the
20 United States Attorney's Office for the Western District of Washington agrees to move to
21 dismiss the remaining counts in the Indictment at the time of sentencing and not to prosecute
22 Defendant for any additional offenses known to it as of the time of this Agreement that are based
23 upon evidence in its possession at this time, and that arise out of the conduct giving rise to this
24 investigation. In this regard, Defendant recognizes the United States has agreed not to prosecute
25 all of the criminal charges set forth in the indictment solely because of the promises made by
26 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing the
27 Presentence Report, the United States Attorney's Office will provide the United States Probation
28 Office with evidence of all conduct committed by Defendant.

1 Defendant agrees that any charges to be dismissed before or at the time of
 2 sentencing were substantially justified in light of the evidence available to the United States,
 3 were not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for
 4 any future claims under the "Hyde Amendment," Pub.L. No. 105-119(1997).

5 **14. Acceptance of Responsibility.** The United States acknowledges that if Defendant
 6 qualifies for an acceptance of responsibility adjustment pursuant to USSG § 3B1.1(a),
 7 and if the offense level is sixteen (16) or greater, his total offense level should be decreased by
 8 ~~three (3)~~ ^{two (2)} levels pursuant to USSG §§ 3B1.1(a) and (b), because he has assisted the United States
 9 ~~three (3)~~ ^{two (2)} by timely notifying the authorities of Defendant's intention to plead guilty, thereby permitting
 10 the United States to avoid preparing for trial and permitting the Court to allocate its resources
 11 efficiently.

12 **15. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if Defendant
 13 breaches this Plea Agreement, the United States may withdraw from this Plea Agreement and
 14 Defendant may be prosecuted for all offenses for which the United States has evidence. In such
 15 event, Defendant agrees not to oppose any steps taken by the United States to nullify this Plea
 16 Agreement, including the filing of a motion to withdraw from the Plea Agreement. Defendant
 17 also agrees that if Defendant is in breach of this Plea Agreement, Defendant has waived any
 18 objection to the re-institution of any charges in the Indictment that were previously dismissed or
 19 any additional charges that had not been prosecuted.

20 Defendant further understands that if, after the date of this Agreement, Defendant
 21 should engage in illegal conduct, or conduct that is in violation of his conditions of release
 22 (examples of which include, but are not limited to: obstruction of justice, failure to appear for a
 23 court proceeding, criminal conduct while pending sentencing, and false statements to law
 24 enforcement agents, the Pretrial Services Officer, Probation Officer, or Court), the United States
 25 is free under this Agreement to file additional charges against Defendant or to seek a sentence
 26 that takes such conduct into consideration by requesting the Court to apply additional
 27 adjustments or enhancements in its Sentencing Guidelines calculations in order to increase the
 28 applicable advisory Guidelines range, and/or by seeking an upward departure or variance from

1 the calculated advisory Guidelines range. Under these circumstances, the United States is free to
2 seek such adjustments, enhancements, departures, and/or variances even if otherwise precluded
3 by the terms of the plea agreement.

4 **16. Waiver of Appeal.** As part of this Plea Agreement and on the condition that the
5 Court imposes a custodial sentence that is within or below the Sentencing Guidelines range (or
6 the statutory mandatory minimum, if greater than the Guidelines range) that is determined by the
7 Court at the time of sentencing, Defendant waives to the full extent of the law:

- 8 a. any right conferred by Title 18, United States Code, Section 3742 to appeal the
9 sentence, including any restitution order imposed; and
10 b. any right to bring a collateral attack against the conviction and sentence, including
11 any restitution order imposed, except as it may relate to the effectiveness of legal
12 representation.

13 Furthermore, this waiver does not preclude Defendant from bringing an appropriate motion
14 pursuant to 28 U.S.C. 2241, to address the conditions of his confinement or the decisions of the
15 Bureau of Prisons regarding the execution of his sentence.

16 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
17 attacking (except as to effectiveness of legal representation) the conviction or sentence in any
18 way, the United States may prosecute Defendant for any counts, including those with mandatory
19 minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

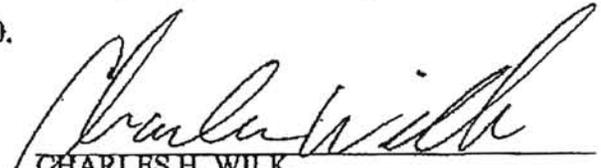
20 **17. Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea
21 Agreement freely and voluntarily and that no threats or promises, other than the promises
22 contained in this Plea Agreement, were made to induce Defendant to enter these pleas of guilty.

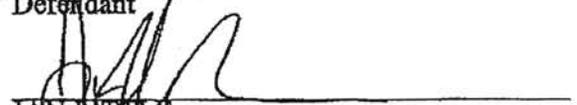
23 **18. Statute of Limitations.** In the event this Agreement is not accepted by the Court
24 for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of
25 limitations shall be deemed to have been tolled from the date of the Plea Agreement to:

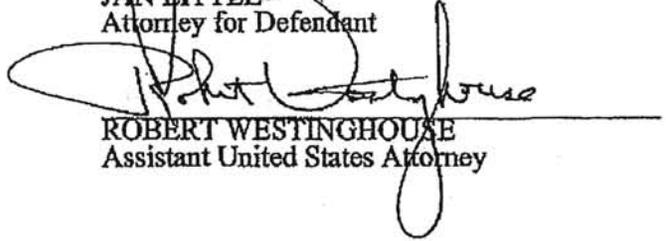
- 26 (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or
27 (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is
28 discovered by the United States Attorney's Office.

1 19. **Completeness of Agreement.** The United States and Defendant acknowledge that
 2 these terms constitute the entire Plea Agreement between the parties. This Agreement binds
 3 only the United States Attorney's Office for the Western District of Washington. It does not
 4 bind any other United States Attorney's Office or any other office or agency of the
 5 United States, except as provided in Paragraph 8 above, or any state or local prosecutor.

6 Dated this 10th day of September, 2010.

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 8 
 9 CHARLES H. WILK
 Defendant

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 11 
 12 JAN LITTLE
 Attorney for Defendant

13 
 14 ROBERT WESTINGHOUSE
 Assistant United States Attorney

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APPENDIX E

FILED

11 NOV 22 PM 3:44

THE HONORABLE JUDGE JOHN STYLUM
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 10-2-41637-4 SEA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

QUELLOS GROUP LLC,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY;
INDIAN HARBOR INSURANCE
COMPANY; AND NUTMEG INSURANCE
COMPANY

Defendants.

No.: 10-2-41637-4 SEA

**DECLARATION OF MARIE M.
BENDER IN SUPPORT OF
QUELLOS GROUP LLC'S
OPPOSITION TO FEDERAL'S
MOTION FOR SUMMARY
JUDGMENT**

I, Marie M. Bender, declare:

1. The information contained herein is based upon my personal knowledge or a reasonable inquiry gained from my review of relevant documents and information. If called as a witness, I could and would competently testify thereto.

2. I was the General Counsel for Quellos Group LLC ("Quellos") and its predecessors (collectively "Quellos") during the relevant period.

3. Between 2000 and 2001, Quellos Custom Strategies, LLC f/k/a Quadra Custom Strategies, LLC ("Quellos Custom"), Quadra Financial Group, L.P., and Quellos

Bender Declaration in Support of Quellos'
Opposition to Federal's Motion for Summary
Judgment

1 Financial Advisors, LLC contracted with clients to provide tax advantaged investment
2 strategies in connection with portfolio optimized investment transactions ("POINT"), and
3 performed work necessary to execute the POINT transactions.

4
5 4. In my capacity as General Counsel, I completed and signed the September 30,
6 2000 Investment Management Insurance Application ("Application"), a true and correct copy
7 of the Application, without supporting documentation, is attached hereto as Exhibit 1.

8 5. I answered "No" to the following question in § VI of the Application: "Does
9 the applicant or any of its partners, directors, officers, employees or trustees have any
10 knowledge of any fact or circumstance which might give rise to a claim under the
11 proposed policy?" I answered this question honestly, with no intent to deceive and only after
12 making a reasonable, good faith inquiry within Quellos and concluding that no fact or
13 circumstance was then known that reasonably might give rise to a claim covered by the
14 proposed policy.

15
16 6. In connection with various POINT transactions, a tax attorney issued opinion
17 letters approving the POINT transaction.

18 7. As of September 30, 2000, Quellos Custom had completed POINT transactions
19 for three clients, and, to my knowledge, none of those clients had expressed any
20 dissatisfaction with the services rendered or expressed any intent to pursue any type of claim
21 against Quellos.

22
23 8. As of September 30, 2000, the IRS had not yet taken any action to question the
24 validity of any POINT transaction or deny the tax benefits generated by any of the POINT
25 transactions.

1 9. Quellos described to AISLIC its tax strategy services in connection with its
2 original 2000 Investment Management Insurance Application, and again for the 2004
3 Renewal Application for primary coverage.

4 10. A true and correct copy of the 2004 Renewal Application and pertinent
5 portions of the supporting documentation, including a service brochure and Part II of Quellos
6 Custom's Form ADV, are attached hereto as Exhibit 2.

7 11. Among the documents Quellos provided to AISLIC as part of the 2004
8 Renewal Application was a brochure describing the services provided by Quellos affiliates for
9 maximizing after-tax returns for its clients through legal structures and complex investment
10 strategies. In addition, as part of the 2004 Renewal Application Quellos provided AISLIC
11 with Quellos Custom's "Form ADV," which discussed the inherent risk that the IRS could
12 challenge an investment strategy, such as the POINT strategy, could deny the claimed tax
13 benefits, and potentially subject a client to the payment of back taxes, interest charges, and
14 penalties.
15

16 12. On February 8, 2005, the IRS sent a summons to Quellos for documents
17 related to POINT.
18

19 13. The IRS subsequently denied the tax benefits generated by each of the POINT
20 transactions.
21

22 14. In 2005, the Senate Permanent Subcommittee on Investigations ("Senate
23 Subcommittee") initiated an investigation regarding various tax shelter strategies, including
24 POINT.
25

26 15. In August 2006, Jeff Greenstein, the former CEO of Quellos, gave testimony

1 before the Senate Subcommittee about the POINT transaction.

2 16. In July 2007 and June 2008, Quellos received grand jury subpoenas seeking
3 documents and other information relating to the POINT transaction in connection with an
4 investigation initiated by the United States Attorney's office for the Western District of
5 Washington.
6

7 17. Quellos incurred costs in responding to this formal investigation on behalf of
8 the company and eleven directors, officers and employees, including Mr. Greenstein and
9 Charles Wilk, a former director of at least one Quellos subsidiary, including Quellos Custom.

10 18. On June 4, 2009, after having advised Quellos seven months prior that the
11 company would not be charged with any wrongdoing because the activities under
12 investigation were confined to a discrete and minor area of Quellos' overall business, the U.S.
13 Attorney's office announced the indictments of Messrs. Greenstein and Wilk for alleged
14 wrongdoing in connection with the POINT transactions.
15

16 19. Long before the criminal indictments of Messrs. Greenstein and Wilk, two
17 POINT clients asserted claims of negligence, negligent misrepresentation, breach of fiduciary
18 duty, and intentional misrepresentation against Quellos arising out of the POINT transactions
19 (collectively, the "individual investor claims").
20

21 20. The first of the individual investor claims was made in June 2005, four years
22 before the indictments, and the second of these claims was made in March 2006, over three
23 years before the indictments.

24 21. It is my understanding that these individual investor claims arose out of the
25 same factual circumstances and POINT transactions that later served, in part, as the basis for
26

1 the criminal indictments and ultimate guilty pleas of Messrs. Greenstein and Wilk.

2 22. Quellos settled with one individual investor in March 2006, approximately
3 three years before the indictments, and with the other individual investor in November 2007,
4 approximately two years before the indictments.
5

6 23. Quellos negotiated and executed the settlements based upon the individual
7 investors' allegations of negligence, negligent misrepresentation, breach of fiduciary duty,
8 and intentional misrepresentation.

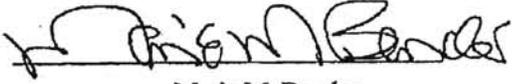
9 24. The settlements released all claims that could have been asserted against any
10 Quellos entity or person representing Quellos, including all of its directors, officers,
11 employees, and insurers.
12

13 25. The settlements and related costs of representation exceeded the limits of the
14 Investment Management Insurance Policy sold to Quellos by American International
15 Specialty Lines Insurance Company, Policy No. 885-37-42, and the Excess Policy sold to
16 Quellos by Federal Insurance Company, Policy No. 7023-2408, for the policy period
17 September 21, 2004 to September 21, 2005.
18

19 26. Quellos gave timely notice of various claims related to the POINT transaction,
20 including the individual investor claims, beginning in the 2004-2005 policy period. Quellos
21 apprised its insurers of the settlement discussions regarding the individual investor claims.
22 For the larger of these claims, the insurers declined to participate in the discussions and
23 denied coverage.
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To the best of my knowledge and belief, I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on this 22nd day of November, 2011, in Seattle, Washington.



Marie M. Bender

Bender Declaration in Support of Quellos' Opposition to Federal's Motion for Summary Judgment

Exhibit 1



American International Companies

Name of Insurance Company
To which Application is Made: Quadra Financial Group, L.P.
(herein called the Company)

The following are the available coverages under this policy form:

PLEASE ALWAYS COMPLETE SECTION I

- 1) Coverage A. Investment Adviser Professional Liability and Corporate Reimbursement, please complete Section II.
- 2) Coverage B. Mutual Fund Professional Liability and Directors and Officers Liability and Corporate Reimbursement, please complete Section III.
- 3) Coverage C. Directors and Officers Liability and Corporate Reimbursement, please complete Section IV.
- 4) Coverage D. Distributor Professional Liability and Corporate Reimbursement, please complete Section V.

INVESTMENT MANAGEMENT INSURANCE APPLICATION

IF A POLICY IS ISSUED, IT WILL BE ON A CLAIMS-MADE BASIS

NOTICE: THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. AMOUNTS INCURRED FOR DEFENSE COSTS SHALL BE APPLIED AGAINST THE RETENTION AMOUNT. ALSO NOTE THAT THE COMPANY HAS THE RIGHT, BUT NOT THE DUTY TO DEFEND THE INSURED, BUT WILL PAY DEFENSE COSTS AS THEY ARE INCURRED.

IF A POLICY IS ISSUED THE APPLICATION IS ATTACHED TO AND MADE A PART OF THE POLICY SO ITS IS NECESSARY THAT ALL QUESTIONS BE ANSWERED IN DETAIL.

I. GENERAL INFORMATION (MUST BE COMPLETED):

1. (a) Name of applicant: Quadra Financial Group, L.P.
- (b) Mailing Address: 601 Union Street, 56th Floor, Seattle, WA 98101
- (c) State of incorporation (if applicable): Delaware
- (d) If other than a corporation, state form of organization and identify applicable law controlling said form of organization. State what public authority any documents relating to formation of such organization (e.g., limited partnership certificate of record) are filed with.
Limited Partnership - Delaware
2. (a) Limit of liability requested: \$ _____ aggregate
- (b) Retentions requested: \$ _____
3. Is applicant registered with the SEC as an Investment Adviser? Yes No

- 4. (a) Has the applicant been involved in any mergers, acquisitions and/or consolidations during the past three years? Yes No
- (b) Are any plans for merger, acquisition or consolidation being considered? Yes No
- (c) If so, have they been approved by the board of directors? Yes No
- (d) If so, have they been submitted to the shareholders for approval? Yes No

II. COVERAGE A: INVESTMENT ADVISER PROFESSIONAL LIABILITY INCLUDING COMPANY REIMBURSEMENT (COMPLETE ONLY IF COVERAGE IS DESIRED):

1. Attach copies of following:

- (a) Applicant's latest audited annual report;
- (b) Applicant's latest 10-K report filed with the SEC (if the Applicant is publicly traded);
- (c) Copy of brochure and sample contract offered to clients;
- (d) Information indicating overall portfolio performance for past five years and include comparative results to Standard and Poors, Salomon Brothers Bond Index or similar indices;
- (e) Latest prospectus and audited annual report for each mutual fund for which the applicant acts as Investment Adviser;
- (f) Complete ADV report parts I and II (as filed with the SEC);
- (g) List of applicant's affiliates and subsidiaries. See Exhibit 1

2. Year investment advisory operations commenced: _____

3. (a) Does the applicant have a parent (ownership of more than 50% of applicant)? Yes No

(b) If "Yes", please supply full details and attach parent's latest audited annual report. _____

(c) Is coverage desired for any entity affiliated with applicant? Yes No

(d) If "Yes", state entity and describe its function and relationship. _____

4. (a) Total asset value of all accounts managed:

Current Year (9/30/00)	Previous Year (12/31/99)
\$ <u>2,592,600,000</u>	\$ <u>1,186,600,000</u>

(b) Asset value of largest account: \$ 395,532,000 (9/30/00)

(c) Number of accounts lost during last 12 months and corresponding total asset value: 2 (\$86,000,000)

(d) Reasons for loss of accounts: (1) Client reallocation of assets; (2) was a sub-advised account - business terms disagreement with manager.

- (e) Percentage of accounts for which the applicant acts as custodian: _____
- (f) Percentage of accounts for which the applicant acts as financial planner or consultant: _____
- (g) Minimum size of accounts currently accepted as new accounts: \$ _____

5. Complete for all those accounts for which the applicant acts as Investment Adviser:

	MARKET ASSET VALUE	NUMBER OF ACCOUNTS
	(9/30/00)	(9/30/00)
(a) Discretionary Accounts:		
ERISA pension & employee benefit plans	\$ _____	_____
Non-ERISA pension & employee benefit plans	\$ _____	_____
Mutual Funds	\$ _____	_____
REITS	\$ _____	_____
All other accounts	\$ _____	_____
Total book value of all accounts	\$ <u>1,963,800,000</u>	<u>46</u>

(b) Non-Discretionary Accounts:		
ERISA pension & employee benefit plans	\$ _____	_____
Non-ERISA pension & employee benefit plans	\$ _____	_____
All other accounts	\$ _____	_____
Total book value of all accounts	\$ <u>628,800,000</u>	<u>10</u>

- (c) Does the Applicant Investment Adviser(s) manage private account assets of related and/or affiliated companies?
 Yes No If yes, state amount of total managed assets: _____
 Are these assets included in Question 4.(a)? Yes No

6. Does the applicant act as Investment Adviser for any multi-employer (Taft-Hartley), union or governmental employee benefit plans?
 Yes No (If "Yes" attach list of clients and dollar amounts of assets managed.)

- 7. (a) May clients select their own brokers for executions? Yes No
 No clients presently select their own broker.
- (b) Are some client transactions executed by "in-house" broker-dealer? Yes No
 Transactions may in the future be executed by Quadra Capital Markets, LLC.
- (c) Name of "in-house" broker-dealer: _____

8. State the percentage of investments in the following specialty areas.

commodity futures _____ %	real estate _____ %	unregistered securities _____ %
private placements _____ %	options _____ %	direct placements _____ %
junk bonds _____ %	annuities _____ %	oil and gas joint ventures _____ %
GICs/GACs _____ %	foreign securities _____ %	limited partnerships _____ %

9. (a) Does the applicant have measures instituted to assure that clients' plans are in compliance with ERISA?
 Yes No

(b) State frequency and nature of auditing services. _____

(c) Do the clients of the applicant transfer all fiduciary liability to the applicant? Yes No

If yes, please explain _____

10. Does the applicant have procedures for decisions and executions when a portfolio manager is not available?
 Yes No

11. (a) Annual fees for investment advisory services: \$ _____

Other income (annual) \$ _____

(b) Explain sources of other income: _____

12. Please explain how the applicant insures that the clients investment management contracts are adhered to? Also the internal compliance procedures for client accounts.

13. Describe how the applicant protects itself from the liabilities of a previous investment adviser which it succeeds? (Hold harmless, etc.)

14. Does the applicant guarantee in any way to its clients a predetermined return on investments?

Yes No If yes, please explain _____

15. Previous Investment Adviser Professional Liability Insurance:

(a) Insurer _____ Limits of Liability \$ _____

Policy Term _____ Premium \$ _____

Loss Experience _____

(b) Has any insurer refused, cancelled or non-renewed coverage? Yes No

(c) If "Yes", state name of insurer, reason and date of refusal, cancellation or non-renewal:

16. Insurer Limit Term

Current Directors and Officers Insurance Policy _____

Current Fidelity Bond _____

Other similar insurance (describe) _____

17. Name and address of law firm acting as counsel: _____

18. Does the applicant have separate ERISA counsel? Yes No

If yes, which firm is utilized? _____

19. Please attach information on the training of all new professional employees:

20. Has any claim been brought against the applicant or any of its partners, directors, officers, trustees or employees in their capacities as Investment Advisers? Yes No

If "Yes", attach full details. It is agreed that such prior or existing claim(s) will not be covered by the policy.

III. COVERAGE B: MUTUAL FUND PROFESSIONAL LIABILITY AND DIRECTORS AND OFFICERS LIABILITY AND COMPANY REIMBURSEMENT (COMPLETE ONLY IF COVERAGE IS DESIRED):

1. Attach copies of the following:

- (a) Each Fund's latest prospectus;
- (b) Latest annual and quarterly report for each Fund;
- (c) Statement of additional information for each Fund.

2. (a)

NAME OF EACH FUND	TOTAL ASSETS	
	CURRENT YEAR	PREVIOUS YEAR
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Current Assets of all funds _____

(b) Name of Advisers: _____

(c) Name of sub-advisers (if any): _____

(d) Number of offices of the Funds and the location of each: _____

(e) Name and address of the bank or firm performing shareholder accounting services: _____

3. (a) Have there been any changes or modifications in the investment restrictions or limitations of any Fund during the past two (2) years? Yes No

If "Yes", please give full details: _____

(b) Have there been any material changes in the administrative operations or investment policies of any Fund during the past two (2) years? Yes No

If "Yes", please give full details: _____

4. Does any Fund utilize 12b-1 distribution plans? Yes No

If "Yes", please state name of Fund and fee percentage: _____

5. State criteria used in selecting institutions approved for repurchase agreements, reverse repurchase agreements and lending of securities wherein these investments comprise more than 25% of any one Fund's assets. (Please attach list of institutions).

- 6. Do the directors, officers, partners and trustees (as a group) of the Funds or their Investment Advisers own more than 5% of the outstanding shares of any of the Funds? Yes No

If "Yes" give full details: _____

- 7. (a) Name and address of the law firm acting as counsel: _____

- (b) Does the firm supply a written opinion as to the legality of any change in investment and management policy? Yes No

- 8. Previous Mutual Fund Professional Liability Insurance:

- (a) Insurer: _____
 Policy Term: _____
 Loss Experience: _____
 Limit of Liability: _____
 Premium: _____

- (b) Has any Insurer refused, cancelled or non-renewed coverage? Yes No

If "Yes", attach full details: _____

- 9. Current Fidelity Bond in force:

- Insurer: _____
 Limit: _____
 Term: _____

- 10. Has any claim been brought against the applicant or any of its trustees, partners, officers, directors or employees? Yes No

If "Yes", attach full details. It is agreed that such prior or existing claim(s) will not be covered by the policy.

IV. COVERAGE C: DIRECTORS AND OFFICERS LIABILITY AND COMPANY REIMBURSEMENT (NOT APPLICABLE TO FUNDS) (COMPLETE ONLY IF COVERAGE IS DESIRED):

1. Attach copies of the following:

- (a) Latest annual report
- (b) Latest 10K report filed with SEC (if the Company is publicly traded)
- (c) Latest interim financial statement available
- (e) Latest copy of the notice of annual meeting of shareholders
- (f) Latest proxy statement
- (g) Certified copy of the indemnification provisions of the charter and the by-laws or partnership agreement. Also attach a copy of any standard indemnification agreement.

2. List of entities for which coverage is desired:

<u>NAME</u>	<u>BUSINESS OR TYPE OF OPERATION</u>	<u>OWNED BY</u>	<u>PERCENTAGE OF OWNERSHIP</u>	<u>DATE ACQUIRED</u>	<u>DOMESTIC OR FOREIGN</u>

- 3. (a) Annual Sales _____
- (b) Net Worth _____
- (c) Total Assets _____

4. Organization has continually been operating since _____

5. Stock ownership

- (a) Total number of common shares outstanding _____
- (b) Total number of common stock shareholders _____
- (c) Total number of common shares owned by its Directors (direct and beneficial) _____
- (d) Total number of common shares owned by its Officers (direct and beneficial) who are not Directors _____
- (e) In the event any shareholder owns 5 percent or more of the common shares directly or beneficially, designate name and percentage of holdings.

(f) Please designate if there are any other securities convertible to common stock. If so, describe fully.

6. Complete list of all directors of parent company by name and affiliations with other corporations.

7. Complete list of all officers of parent company by name and affiliations with other corporations.

8. Does the organization anticipate any new public offering of securities or any registration of securities under the Securities Act of 1933 or qualification of securities under Regulation A within the next year? (if "Yes", give details and submit prospectus). Yes No

9. There has not been nor is there now pending any claim(s) against any person proposed for insurance in their capacity as director, officer, partner or trustee of the organization named in 2. above, except as follows:

(attach complete details). (if no such claims, check here: None)

It is agreed that such prior or existing claims will not be covered by the policy.

10. Has the Organization or any of its directors, officers, partners or trustees been involved in or have any knowledge of any fact or circumstances involving the following which may give rise to a claim under the proposed policy? All in connection with the business of applicant and its affiliates.

(a) Antitrust, copyright or patent litigation? Yes No

(b) Been charged in any civil or criminal action or administrative proceeding with a violation of any federal or state securities law or regulation? Yes No

(c) Been charged in any civil or criminal action or administrative proceeding with a violation of any federal or state antitrust or fair trade law? Yes No

(d) Been involved in any representative actions, class actions or derivative suits? Yes No

(if any of the above are answered "Yes", attach full details.)

It is agreed that if such knowledge, information or involvement exists, any claim or action arising therefrom is excluded from this proposed coverage.

11. It is agreed that the Organization will file with the Company, as soon as they become available, a copy of each registration statement and annual or interim report which the Organization may from time to time file with the Securities and Exchange Commission.

12. Previous Directors and Officers Insurance (answer each item):

- (a) Name of insurance company _____
- (b) Limit _____ Self-Insured Retention _____
- (c) Policy Expiration Date _____
- (d) Premium _____ (indicate one year or other)
- (e) Loss Experience (attach full details) (if no Losses, check here: None)

13. Has any insurance carrier refused, cancelled or nonrenewed coverage? Yes No
 (If "Yes", state when) _____

V. COVERAGE D: DISTRIBUTOR PROFESSIONAL LIABILITY AND CORPORATE REIMBURSEMENT (COMPLETE ONLY IF COVERAGE IS DESIRED):

- 1. Name and address of general distributor: _____

- 2. Please provide average number of transactions on a daily basis _____
- 3. Please provide average dollar value of transactions _____
- 4. (a) Give number of notices, letters, and complaints received in the past three years by the Applicant: _____
 (b) How many were unsettled after 60 days? _____
 (c) Attach full details regarding any cases in the last five years involving monetary settlement in excess of \$5,000.
- 5. Describe measures the Distributor has instituted for verifying customers orders and determining that confirmations are accurate and received on time:

VI. THE FOLLOWING APPLIES TO ALL INSURING CLAUSES AND MUST BE COMPLETED.

Does the applicant or any of its partners, directors, officers, employees or trustees have any knowledge of any fact or circumstance which might give rise to a claim under the proposed policy?

Yes No

It is agreed that if such knowledge exists any claim arising from such fact or circumstances will not be covered by the policy.

THE APPLICANT DECLARES THAT THE STATEMENTS SET FORTH HEREIN ARE TRUE. THE APPLICANT AGREES THAT IF THE INFORMATION SUPPLIED ON THIS APPLICATION CHANGES BETWEEN THE DATE OF THIS APPLICATION AND THE EFFECTIVE DATE OF INSURANCE, APPLICANT WILL IMMEDIATELY NOTIFY THE COMPANY OF SUCH CHANGES, AND THE COMPANY MAY WITHDRAW OR MODIFY ANY OUTSTANDING QUOTATIONS AND/OR AUTHORIZATION OR AGREEMENT TO BIND THE INSURANCE.

SIGNING OF THIS APPLICATION DOES NOT BIND THE APPLICANT NOR THE COMPANY TO COMPLETE THE INSURANCE, BUT IT IS AGREED THAT THIS FORM SHALL BE THE BASIS OF THE CONTRACT SHOULD A POLICY BE ISSUED, AND IT WILL BE ATTACHED TO AND BECOME PART OF THE POLICY.

ALL WRITTEN STATEMENTS AND MATERIALS FURNISHED TO THE COMPANY IN CONJUNCTION WITH THIS APPLICATION ARE HEREBY INCORPORATED BY REFERENCE INTO THIS APPLICATION AND MADE A PART HEREOF.

NOTICE: IN NEW YORK AND OHIO, ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.

Signed: *William R. Rindel*
Date: 9/30/2000

Title: General Counsel
(Must be signed by the chairman of the board or the president if a corporation, general partner if a partnership).

Broker: _____

Address: _____

PLEASE CONTINUE TO NEXT PAGE

PLEASE READ THE FOLLOWING STATEMENT CAREFULLY AND SIGN BELOW WHERE INDICATED. IF A POLICY IS ISSUED, THIS SIGNED STATEMENT WILL BE ATTACHED TO THE POLICY.

The Insured hereby acknowledges that he/she/it is aware that the limit of liability contained in this policy shall be reduced, and may be completely exhausted, by the costs of legal defense and, in such event, the Company shall not be liable for the costs of legal defense or for the amount of any judgment or settlement to the extent that such exceeds the limit of liability of this policy.

The Insured hereby further acknowledges that he/she/it is aware that legal defense costs that are incurred shall be applied against the deductible amount.

Signed:  _____

Date: 9/30/2000

Title: General Counsel

(Must be signed by the chairman of the board or the president if a corporation, general partner if a partnership).

EXHIBIT 1

Quellos Group, LLCOperating Entities Information

Operating Entity	Formation Date	Termination Date	Formerly Known As (f/k/a)	Date Name Changed
Quellos Group, LLC	25-Aug-00		Quadra Financial Group, LLC	27-Sep-00
Quadra Financial Group, L.P. (*Merged into Quadra Financial Group, LLC on 8/31/00)	7-Nov-94	31-Aug-00	Quadra Group, L.P. Quadra Capital Management, L.P.	10-Sep-99 29-Dec-97
Quellos Holdings, LLC	25-Aug-00		Quadra Financial Holdings, LLC	27-Sep-00
Quellos Holdings, Inc.	7-Nov-94		Quadra Holdings, Inc.	27-Sep-00
Quellos Capital International, LLC	9-Oct-98		Quadra Capital International, LLC	27-Sep-00
Quellos Custom Strategies, LLC	24-Mar-99		Quadra Custom Strategies, LLC	27-Sep-00
Quellos Financial Advisors, LLC	1-Jul-97		Quadra Associates, LLC	27-Sep-00
Quellos Fixed Income Advisors, LLC	5-Nov-99		Quadra Fixed Income Advisors, LLC	27-Sep-00
Quellos Brokerage Services, LLC	29-Jul-98		Quadra Capital Markets, LLC	
Quellos Capital Management, L.P.	3-Dec-97		Quadra Capital Management, L.P. Quadra Group, L.P.	27-Sep-00 29-Dec-97
Quadra Corporate Advisors, LLC	1997			
Quadra Advisors, LLC	18-Feb-97			
QA Investments, LLC	1-Jul-97			
Union Personal Guaranty, LLC	31-Aug-00			

Exhibit 2



American International Companies ®

Name of Insurance Company
To which Application is Made:

_____ (herein called the Company)

INVESTMENT MANAGEMENT INSURANCE RENEWAL APPLICATION

IF A POLICY IS ISSUED, IT WILL BE ON A CLAIMS-MADE BASIS

NOTICE: THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGEMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. AMOUNTS INCURRED FOR DEFENSE COSTS SHALL BE APPLIED AGAINST THE RETENTION AMOUNT. ALSO NOTE THAT THE COMPANY HAS THE RIGHT, BUT NOT THE DUTY TO DEFEND THE INSURED, BUT WILL PAY DEFENSE COSTS AS THEY ARE INCURRED.

IF A POLICY IS ISSUED THE APPLICATION IS ATTACHED TO AND MADE A PART OF THE POLICY SO IT IS NECESSARY THAT ALL QUESTIONS BE ANSWERED IN DETAIL.

I. GENERAL INFORMATION (MUST BE COMPLETED):

1. (a) Name of applicant: QUELLOS GROUP, LLC
- (b) Mailing address: 601 UNION STREET, 56TH FLOOR, SEATTLE, WA 98101
- (c) State of incorporation (if applicable): N/A
- (d) If other than a corporation, state form of organization and identify applicable law controlling said form of organization. State what public authority any documents relating to formation of such organization (e.g., limited partnership certificate of record) are filed with.
Limited Liability Company formed in Delaware
2. (a) Limit of liability requested: \$ 100,000,000 aggregate
- (b) Retentions requested: \$ 500,000
3. Is applicant registered with the SEC as an Investment Adviser? Yes _____ No X (two affiliates of Applicant are registered)
4. (a) Has the applicant been involved in any mergers, acquisitions and/or consolidations during the past three years? Yes _____ No X
- (b) Are any plans for merger, acquisition or consolidation being considered?
Yes _____ No X
- (c) If so, have they been approved by the board of directors? Yes _____ No _____ : N/A
- (d) If so, have they been submitted to the shareholders for approval? Yes _____ No _____ N/A
- If (a) or (b) is answered "Yes", attach full details.

II. COVERAGE A: INVESTMENT ADVISER PROFESSIONAL LIABILITY INCLUDING COMPANY REIMBURSEMENT (COMPLETE ONLY IF COVERAGE IS DESIRED):

1. Attach copies of the following:

- (a) Applicant's latest audited annual report; Attached
- (b) Applicant's latest 10-K report filed with the SEC (if the Applicant is publicly traded); N/A
- (c) Copy of brochure and sample contract offered to clients; Attached
- (d) Information indicating overall portfolio performance for past five years and include comparative results to Standard and Poors, Salomon Brothers Bond Index or similar indices; Attached is the Composite Performance for the ARS funds; Private capital funds are too new and therefore have no performance
- (e) Latest prospectus and audited annual report for each mutual fund for which the applicant acts as Investment Adviser; Offering memoranda on file for each named insured; audited financial statements or balance sheet and income statement attached for all funds
- (f) Complete ADV report parts I and II (as filed with the SEC); Attached
- (g) List of applicant's affiliates and subsidiaries. Attached

2. (a) Does the applicant have a parent (ownership of more than 50% of applicant)?
Yes No

(b) If "Yes", please supply full details and attach parent's latest audited annual report. Quellos Holdings, LLC is a holding company of Applicant. See Part II. 1(a) for consolidated annual report.

(c) Is coverage desired for any entity affiliated with applicant? Yes No

(d) If "yes", state entity and describe its function and relationship. See Part II. 1(g) for list and detail.

3. (a) Total asset value of all accounts managed:

Current Year (5/1/04)	Previous Year (12/31/03)
-----------------------	--------------------------

\$ 14,213,171,857	\$ 11,760,641,890
-------------------	-------------------

(b) Asset value of largest account: \$ Largest Managed Account \$553,121,520 as of 5/1/04
~~Largest Commingled Fund Account \$2,230,555,003 as of 5/1/04~~

(c) Number of accounts lost during last 12 months and corresponding total asset value:
Four accounts were lost for a total asset value of \$1,301,588,930

(d) Reasons for loss of accounts:
One account was a term note that expired; Other accounts were due to changes in commercial strategy.

(e) Percentage of accounts for which the applicant acts as custodian: None, other than as general partner or managing member.

(f) Minimum size of accounts currently accepted as new accounts: \$ stated minimum for investors in the funds is \$2,000,000 to \$5,000,000; Stated minimum for a separately managed account is \$50,000,000.

4. Complete for all those accounts for which the applicant acts as Investment Adviser:

	MARKET ASSET VALUE as of 5/1/04	NUMBER OF ACCOUNTS as of 5/1/04
(a) Discretionary Accounts:		
ERISA pension & employee benefit plans	\$ <u>1,277,994,271</u>	<u>3</u>
Non-ERISA pension & employee benefit plans	\$ <u>450,929,886</u>	<u>2</u>
Mutual Funds	\$ <u>N/A</u>	<u>N/A</u>
REITS	\$ <u>N/A</u>	<u>N/A</u>
All other accounts	\$ <u>11,684,096,391</u>	<u>82</u>
Total book ^{market} value of all accounts	\$ <u>13,413,020,548</u>	<u>87</u>
(b) Non-Discretionary Accounts:		
ERISA pension & employee benefit plans	\$ <u>0</u>	<u>0</u>
Non-ERISA pension and employee benefit plans	\$ <u>0</u>	<u>0</u>
All other accounts	\$ <u>800,151,309</u>	<u>11</u>
Total book ^{market} value of all accounts	\$ <u>800,151,309</u>	<u>11</u>

5. Does the applicant act as Investment Adviser for any multi-employer (Taft-Hartley), union or governmental employee benefit plans? Yes No (If "Yes" attach list of clients and dollar amounts of assets managed.) Investors in QIP, Ltd include Taft-Hartley and other governmental plans. See attachment.
6. (a) May clients select their own brokers for executions? Yes No
 (b) Are some client transactions executed by "in-house" broker-dealer? Yes No
 (c) Name of "in-house" broker-dealer: Quellos Brokerage Services, LLC
7. (a) Does the applicant recommend investments in specialty areas other than commonly traded securities? Yes No (Specialty areas include commodity futures, real estate, options, private placements, unregistered securities, direct placements, oil and gas joint ventures, foreign securities, limited partnerships of any types.)
 (b) If "Yes", describe specialty area and state its percentage of (i) total asset value and (ii) each type of account as specified in 4 (a) and 4 (b), (i.e., mutual funds, etc.)
See Capabilities Brochure under tab Part II 1(c) and Part II 1(g) for description of functions.
8. Does the applicant have measures instituted to assure that clients' plans are in compliance with ERISA?
 Yes No
9. Does the applicant have procedures for decisions and executions when a portfolio manager is not available?
 Yes No

* to the extent distributions from underlying funds are received as distributions in-kind, the sale of such securities may be executed through Quello's Brokerage Services.

10. (a) Annual fees for investment advisory services: \$ Management-\$53,635,197; Performance=\$80,381,692
 *for Quellos Capital Management, L.P. and Quellos Custom Strategies, LLC
 Other Income (annual): \$ 4,404,232
- (b) Explain sources of other income: Investment Income earned on general partner/
 managing member investments and interest on cash and money balances.

11.	Insurer	Limit	Term
Current Directors and Officers Insurance Policy	_____		
Current Fidelity Bond	_____		
Other similar insurance (describe)	_____		

12. Name and address of law firm acting as counsel: Various law firms are employed depending on the matter.

III. COVERAGE B; MUTUAL FUND PROFESSIONAL LIABILITY AND DIRECTORS AND OFFICERS LIABILITY AND COMPANY REIMBURSEMENT (COMPLETE ONLY IF COVERAGE IS DESIRED):

1. Attach copies of the following:
- (a) Each Fund's latest prospectus; ~~Offering Memoranda for Named Insureds on file.~~
 - (b) Latest annual and quarterly report for each Fund; See attachment for Part II. 1(e).
 - (c) Statement of additional information for each Fund. N/A

TOTAL ASSETS

2. (a)	NAME OF EACH FUND	CURRENT YEAR	PREVIOUS YEAR
	<u>See attached chart</u>		

(b1) Name and address of advisers: See attached chart above in 2(a). The address of the advisers is 601 Union Street, 56th Floor, Seattle, WA 98101

(b2) Name and address of sub-advisers (if any): None

(c) Name and address of general distributor: There is no general distributor, however various funds or Quellos' Capital Management, L.P. may have distribution arrangements with distribution agents.

(d) Name and address of the bank or firm performing shareholder accounting services: See attached chart in Part III. 2(a)

3. Number of offices of the Funds and the location of each: Quellos' Capital Management, L.P. maintains offices in Seattle, New York, San Francisco, Menlo Park, Los Angeles and North Carolina (pending); Quellos Custom Strategies, LLC maintains offices in Seattle and New York.

4. (a) Have there been any changes or modifications in the investment restrictions or limitations of any Fund during the past two (2) years? Yes _____ No X. If "Yes", please give full details: _____
No material changes

(b) Have there been any material changes in the administrative operations or investment policies of any fund during the past two (2) years? Yes _____ No X. If "Yes", please give full details: _____
Other than to meet regulatory requirements

5. Does any Fund utilize 12b-1 distribution plans? Yes _____ No X. If "Yes", please state name of Fund and fee percentage: _____
N/A

6. State criteria used in selecting institutions approved for repurchase agreements, reverse repurchase agreements and lending of securities wherein these investments comprise more than 25% of any one Fund's assets. (Please attach list of institutions.) _____
N/A

7. Do the directors, officers, partners and trustees (as a group) of the Funds or their Investment Advisers own more than 5% of the outstanding shares of any of the Funds? Yes X No _____. If "Yes" give full details. _____
See attached chart for detail

8. Are any portfolio transactions executed by an "in-house" broker? Yes _____ No X. If "Yes", give name of in-house broker. _____

9. If coverage is desired for any entity affiliated with the Applicant, please state the entity and describe its function and relationship: _____
See response to Part II. 1(g)

10. (a) Name and address of the law firm acting as counsel: _____
Various law firms are employed depending on the matter.

(b) Does the firm supply a written opinion as to the legality of any change in investment and management policy? Yes _____ No X

11. (a) Name and address of the firm employed as accountant: See attached

(b) State frequency and nature of auditing services conducted: Domestic Funds are audited annually based on US GAAP. Offshore Funds are audited annually based on International Auditing Standards

12. Current Fidelity Bond in force:

Insurer: _____

Limit: _____

Term: _____

IV. COVERAGE C; DIRECTORS AND OFFICERS LIABILITY AND COMPANY REIMBURSEMENT (NOT APPLICABLE TO FUNDS) (COMPLETE ONLY IF COVERAGE IS DESIRED):

1. Attach copies of the following:

- (a) Latest annual report; Attached (see response to Part II. 1(a))
- (b) Latest 10K report filed with SEC (if the Company is publicly traded); N/A
- (c) Latest interim financial statement available; Attached
- (d) Latest copy of the notice of annual meeting of shareholders; N/A
- (e) Latest proxy statement; N/A
- (f) Certified copy of the indemnification provisions of the charter and the by-laws or partnership agreement. Also, attach a copy of any standard indemnification agreement. Attached

2. List of entities for which coverage is desired:

NAME	BUSINESS OR TYPE OF OPERATION	OWNED BY	PERCENTAGE OF OWNERSHIP	DATE ACQUIRED	DOMESTIC OR FOREIGN
------	-------------------------------	----------	-------------------------	---------------	---------------------

See response to Part II. 1(g) and Part III. 2(a)

3. (a) Annual Sales _____
 (b) Net Worth _____
 (c) Total Assets _____

} SEE AUDITED FINANCIAL STATEMENTS (provided in Part II. 1(a))

4. Stock ownership (information includes shareholders holding Quellos Group through Quellos Holdings, LLC)

(a) Total number of common shares outstanding 68,064,051

(b) Total number of common stock shareholders 48

*directors and officers hold interests through Quellos Group and Quellos Holdings, LLC their direct and indirect holdings constitute a percentage of QG interests outstanding:
 (c) Total number of common shares owned by its Directors (direct and beneficial) 75.65%

(d) Total number of common shares owned by its Officers (direct and beneficial) who are not Directors 4.79%

(e) In the event any shareholder owns 5 percent or more of the common shares directly or beneficially, designate name and percentage of holdings. See chart in response to Part II. 1(g)

(f) Please designate if there are any other securities convertible to common stock. If so, describe fully.

None

5. Complete list of all directors of parent company by name and affiliations with other corporations.

Attached. The board of directors has Special Advisors for which we also request coverage.

6. Complete list of all officers of parent company by name and affiliations with other corporations.

See above and see attached for affiliations with other entities.

7. It is agreed that the Organization will file with the Company, as soon as they become available, a copy of each registration statement and annual or Interim report which the Organization may from time to time file with the Securities and Exchange Commission.

N/A

THE APPLICANT DECLARES THAT THE STATEMENTS SET FORTH HEREIN ARE TRUE. THE APPLICANT AGREES THAT IF THE INFORMATION SUPPLIED ON THIS APPLICATION CHANGES BETWEEN THE DATE OF THIS APPLICATION AND THE EFFECTIVE DATE OF INSURANCE, APPLICANT WILL IMMEDIATELY NOTIFY THE COMPANY OF SUCH CHANGES, AND THE COMPANY MAY WITHDRAW OR MODIFY ANY OUTSTANDING QUOTATIONS AND/OR AUTHORIZATION OR AGREEMENT TO BIND THE INSURANCE.

IT IS AGREED THAT THIS RENEWAL APPLICATION IS A SUPPLEMENT TO THE APPLICATION(S) WHICH ARE PART OF THE EXPIRING POLICY, AND THAT THOSE APPLICATION(S) TOGETHER WITH THIS RENEWAL APPLICATION CONSTITUTE THE COMPLETE APPLICATION THAT SHALL BE THE BASIS OF THE CONTRACT AND SHALL FORM PART OF THE POLICY SHOULD A POLICY BE ISSUED.

SIGNING OF THIS APPLICATION DOES NOT BIND THE APPLICANT NOR THE COMPANY TO COMPLETE THE INSURANCE, BUT IT IS AGREED THAT THIS FORM SHALL BE THE BASIS OF THE CONTRACT SHOULD A POLICY BE ISSUED, AND IT WILL BE ATTACHED TO AND BECOME PART OF THE POLICY.

ALL WRITTEN STATEMENTS AND MATERIALS FURNISHED TO THE COMPANY IN CONJUNCTION WITH THIS APPLICATION ARE HEREBY INCORPORATED BY REFERENCE INTO THIS APPLICATION AND MADE A PART HEREOF.

IF A POLICY IS ISSUED THE APPLICATION IS ATTACHED TO AND MADE A PART OF THE POLICY SO IT IS NECESSARY THAT ALL QUESTIONS BE ANSWERED IN DETAIL.

NOTICE TO NEW YORK AND OHIO APPLICANTS:

"ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME. IN NEW YORK, A PERSON WHO COMMITS SUCH CRIME SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED \$5,000 AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION."

Quellos Group, LLC

Signed: [Signature]

Date: June 22, 2004

Title: Chairman and President

(must be signed by the Chairman of the Board or the President if a corporation, General Partner if a partnership).

Attest: _____

Broker: _____

Address: _____

PLEASE READ THE FOLLOWING STATEMENT CAREFULLY AND SIGN BELOW WHERE INDICATED. IF A POLICY IS ISSUED, THIS SIGNED STATEMENT WILL BE ATTACHED TO THE POLICY.

The Insured hereby acknowledges that he/she/it is aware that the limit of liability contained in this policy shall be reduced, and may be completely exhausted, by the costs of legal defense and, in such event, the Company shall not be liable for the costs of legal defense or for the amount of any judgement or settlement to the extent that such exceeds the limit of liability of this policy.

The Insured hereby further acknowledges that he/she/it is aware that legal defense costs that are incurred shall be applied against the retention amount.

Quellos Group, LLC

Signed:  _____

Date: June 22, 2004

Title: Chairman and President

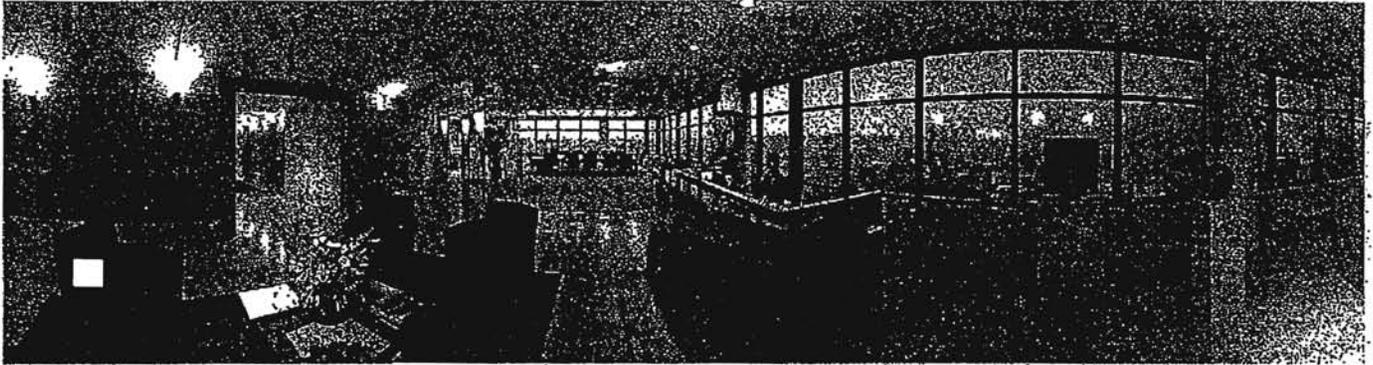
(must be signed by the Chairman of the Board or the President if a corporation, General Partner if a partnership).

comprehensive

Today's financial environment, investment landscape, and the labyrinth of securities and tax regulations are more complex and interrelated than ever before. Capitalizing on opportunities and avoiding costly mistakes requires a dedicated and collaborative team of knowledgeable professionals,

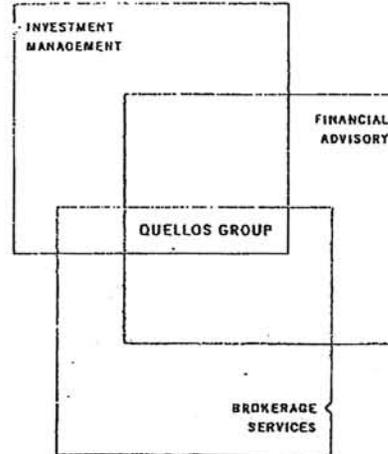
a comprehensive and well-researched strategy, a disciplined management process and a meaningful commitment of resources. For these reasons, many substantial private clients and institutional investors worldwide have turned to Quellos.

Whether it is navigating the maze of potential investment options and evaluating managers, designing and implementing a complex tax-planning strategy, managing the administrative affairs of a family office or executing a sizeable securities transaction, Quellos is distinguished by the resources and expertise it brings in delivering value-added financial solutions for its clients.



leading edge

Since the firm's founding, Quellos has provided leading-edge investment management services as the cornerstone to meeting a client's financial objectives.



QUELLOS GROUP OVERVIEW

Quellos is a financial boutique dedicated to providing integrated financial solutions that address the broader needs and goals of each client. Since the firm's founding in 1994, Quellos has provided leading-edge investment management services as the cornerstone to meeting a client's financial objectives. From this foundation, significant value is added by creating a comprehensive and customized financial solution that carefully analyzes and integrates investment strategies, tax planning, capital market activities and broader financial affairs. Quellos' services span three areas of core competency:

- Investment Management
- Financial Advisory
- Brokerage Services

These core competencies emanate from a corporate culture and a team of professionals that emphasize integration, collaboration and innovation. While services are offered independently, Quellos strongly believes there is tremendous benefit in applying an integrated and holistic approach. For example, while many investors and other financial advisors focus solely on investments without regard to their tax implications, Quellos concentrates on maximizing after-tax returns without compromising investment flexibility.

A comprehensive solution emerges from the breadth of experience and collaboration of Quellos' diverse and formidable team of professionals. A universal passion exists to provide each client with the best solution regardless of its origination. Every employee is aligned and singularly focused on adding value for each client. Quellos' team-oriented culture avoids the encumbrances of bureaucracies and fiefdoms that often plague larger financial-service organizations. This culture is reinforced by a unique compensation model, the lack of geographic boundaries and a flexible management structure.

Through its extensive, collective experience, Quellos recognizes that uncertainty and change are inevitable and a static solution is inferior. Quellos avoids complacency and hubris by relentlessly striving to further develop innovative ways to achieve each client's objectives and enhance results.

Quellos' investment management goal is to create optimal portfolios that target a client's risk and reward objectives in the most tax-efficient manner.



INVESTMENT MANAGEMENT

Quellos' investment management services are based on a core philosophy that global capital markets are characterized by varying levels of market efficiency that directly impact an active manager's potential to add value. In an efficient market, there is a high degree of competition among participants as information is rapidly and widely disseminated. As a result, the overwhelming majority of these managers fail to outperform their benchmark after considering fees and trading costs. In an inefficient market, however, a lesser degree of competition provides greater opportunities for active managers to use specialization and skill to capitalize on these inefficiencies. Furthermore, the higher the degree of inefficiency within a certain market, the wider the dispersion of returns.

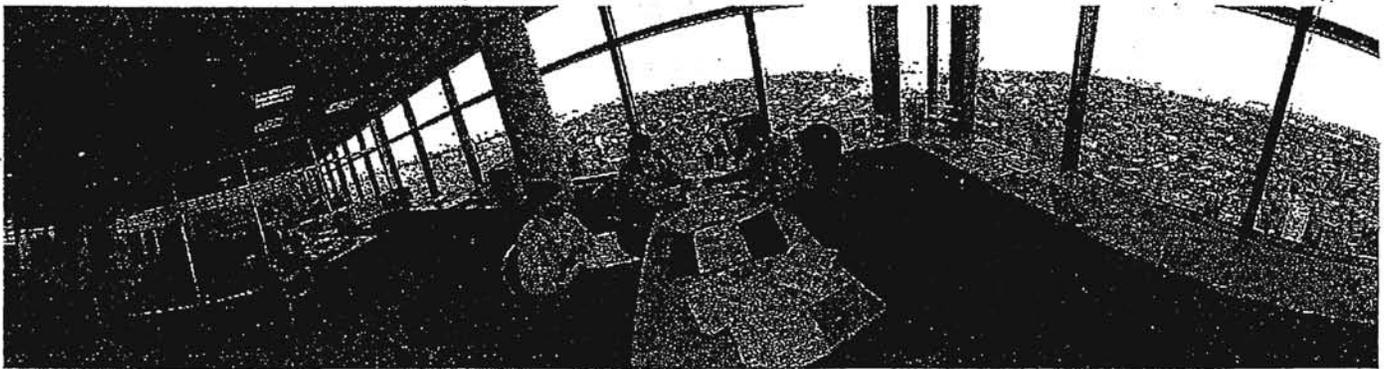
To pursue superior, risk-adjusted returns for its clients and principals, Quellos' investment activities draw on a unique collection of experts with financial backgrounds including:

- Senior investment professionals responsible for managing the assets of multi-billion dollar investment portfolios;

- Portfolio managers, proprietary traders and investment bankers experienced in a wide variety of financial instruments and markets;

- "Big Four" audit experience and investment operations professionals; and

- Risk management professionals experienced in building proprietary tools and evaluating the risks inherent in specific instruments, strategies and markets.



Quellos fundamentally believes that aligning incentives between the investment manager and the investor leads to greater care in the management of funds. For this reason, Quellos has committed personal and corporate funds alongside their investors and, where possible, employs a fee structure primarily based on adding value and reducing the potential to take undue risks with client capital.

Based on its underlying investment philosophy, Quellos' investment management services are designed to:

Actively manage Alternative Investment Strategies allocations involving both Absolute Return Strategies and Private Capital Strategies through a fund of funds approach;

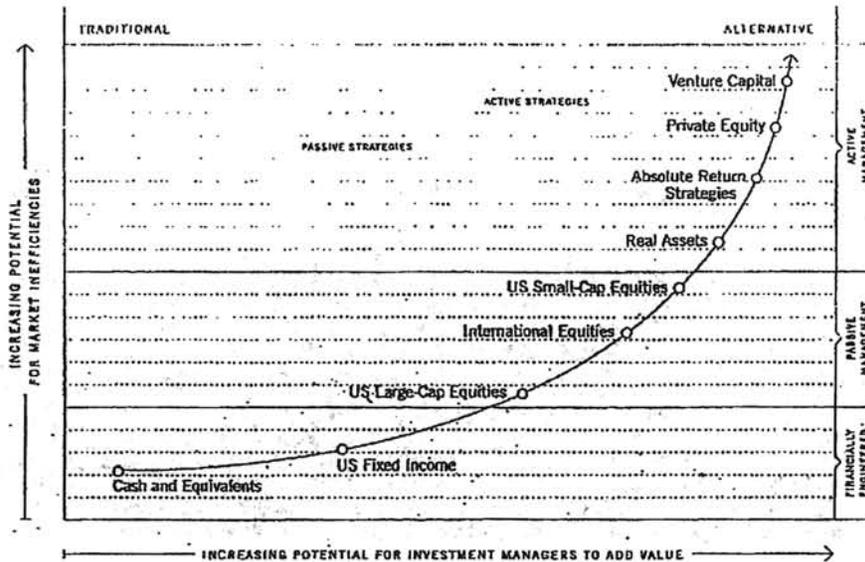
Allocate fixed income and cash allocations to financially engineered portfolios targeting specific client objectives; and

Passively manage (index) or employ Alpha Transport Strategies for traditional equity allocations.

Alternative Investment Strategies

Quellos devotes considerable resources to its investment efforts in Alternative Investment Strategies, which seek to generate superior risk-adjusted returns by exploiting market inefficiencies. These strategies are typically divided based on liquidity to include Absolute Return Strategies, often referred to as hedge funds, and Private Capital Strategies or private equity.

Quellos believes the best approach in these sectors involves assembling a portfolio of independent investment managers instead of relying on one firm. The disparity among top, median and bottom performing alternative investment managers is considerable. Therefore, the challenge of building and managing an optimal portfolio requires a substantial, proactive effort in all aspects of the investment process. To successfully manage billions of dollars for its global clientele, Quellos has assembled a deep and experienced team of investment and operations professionals. Supporting this team is an annual multi-million dollar technology budget earmarked for developing proprietary information management, risk management and client servicing tools.



Absolute Return Strategies (Hedge Funds)

These strategies seek to capitalize on market inefficiencies within a wide range of marketable securities. By isolating these inefficiencies and minimizing uncontrollable macro variables, such as the overall direction of equity markets or interest rates, it is possible to target absolute returns, even in declining markets. Due to the unique and superior risk-adjusted return profiles, Quellos refers to these as "stay rich" investment strategies.

The wide variety, complexity and degree of risk associated with Absolute Return Strategies necessitates the commitment of extensive resources in four critical areas:

Manager identification demands a diligent, proactive effort to overcome the dearth of publicly available manager information. Often, the best investment managers are the most difficult to identify since they are adequately capitalized and focus on performance-related issues rather than marketing.

Manager evaluation focuses on the existence and sustainability of a manager's competitive advantage or edge. Fundamentally assessing this edge provides a more reliable basis for allocating assets than the reliance on historical performance results.

Portfolio construction balances the capabilities and risks of the specific investment managers and strategies. By diversifying across markets and instruments, Quellos targets portfolios less susceptible to adverse conditions in any one sector of the capital markets and eliminates the futile exercise of attempting to correctly time markets.

Risk management seeks early identification of potential problems that may jeopardize the integrity of a manager or strategy. A dedicated team of seasoned professionals use sophisticated, proprietary technology to continuously implement quantitative and qualitative methods in analyzing managers, strategies and underlying positions.

Quellos offers clients several ways to participate in one of the most successful investment programs in this asset class. Clients can invest in a variety of broadly diversified commingled funds targeting pre-defined risk and return objectives or establish a customized fund tailored to meet their individual objectives. Quellos' investment management services are available to US taxable, US tax-exempt and non-US investors.



team approach

A comprehensive solution emerges from the breadth
of experience and collaboration of Quellos' diverse
and formidable team of professionals.

Private Capital Strategies (Private Equity and Venture Capital)

These strategies offer the potential to deliver the highest risk-adjusted returns of any asset class by exploiting the inefficiencies inherent in illiquid private investments, such as venture capital and leveraged buy-outs. The long-term nature of these investments and the wide disparity in manager performance mandates an experienced, well-reasoned and disciplined investment approach.

Managing a fund of funds in this asset class is synergistic and similar in many respects to the approach employed for Absolute Return Strategies. While there is beneficial overlap in sharing resources, there are key distinctions given the attributes of the underlying investments:

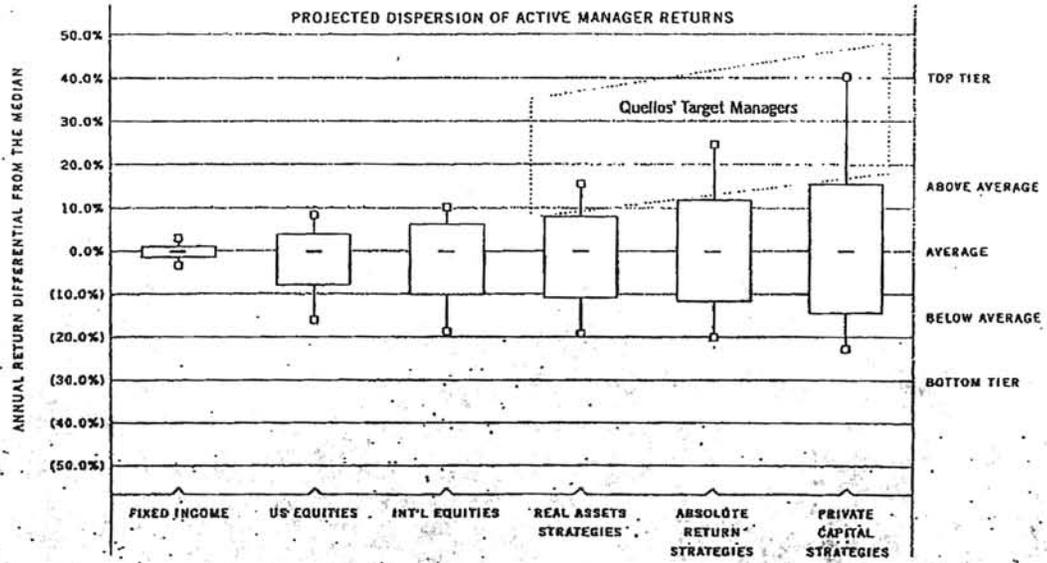
- Manager selection relies not only on identifying and thoroughly evaluating potential candidates, but also negotiating the opportunity to actually invest. Quellos' access to top-tier managers results from its deep and long-standing relationships with the underlying investment professionals.

- Portfolio construction emphasizes the paramount importance of mitigating risk by diversifying across multiple continuums including underlying managers, strategies, time periods, industry sectors and geography.

Portfolio monitoring is critical given the long-term nature of these investment strategies. A regular and proactive dialogue with the investment manager strives for early intervention of troubled investments and the identification of potential new investment opportunities.

Distribution management is required since many managers will often distribute securities in the underlying companies. Quellos will seek to effectively and efficiently liquidate these distributions in a timely manner so that proceeds can be returned to the investor.

Quellos offers commingled investment funds in a broadly diversified portfolio of Private Capital Strategies. Additionally, specialized funds can be dedicated to specific strategies such as early-stage companies, mature-stage companies and real assets. Real Assets Strategies combine inflationary protection, associated with holdings such as real estate, timber and energy, with the opportunity to participate in highly inefficient sectors of the capital markets. Separate account capabilities are available for either broad or specialized portfolios.



opportunistic investing

Quellos believes that market inefficiencies exist and skillful managers capitalize on these inefficiencies.



integrated services

Quellos offers a platform of integrated services specifically designed to address the complex financial and investment needs of a select group of clients.

Traditional Fixed Income and Equity Management**Fixed Income Management**

The global cash and fixed income markets generally represent the largest, most efficient sector of the capital markets. Portfolio allocations to fixed income are often divided among those meeting specific liquidity and income objectives and those addressing longer-term strategic asset allocation objectives. Funds earmarked for liquidity and income objectives should be allocated to portfolios financially engineered and structured to target a client's particular objectives. Whereas, funds earmarked to address long-term strategic asset allocation objectives should be allocated to either an investment manager with the economies of scale and expertise to target a broad-based fixed income index or to Alpha Transport Strategies.

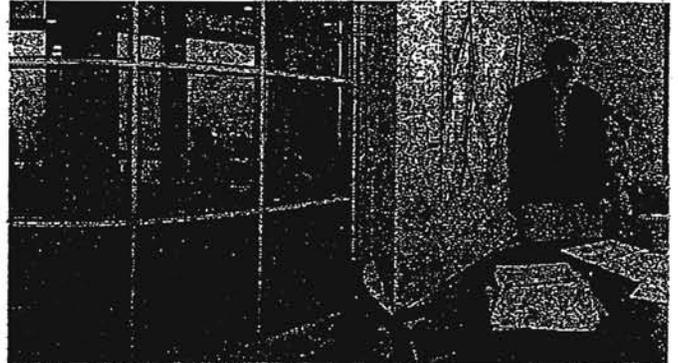
Equity Management

Quellos contends it is highly unlikely that active equity management can reliably outperform a broad-based domestic or international equity index, especially after the consideration of fees and taxes. As a result, Quellos recommends this component of an investor's assets be allocated to a passive index or to Alpha Transport Strategies.

Alpha Transport Strategies

Quellos believes that Alpha Transport Strategies represent the next paradigm for traditional investment management. Alpha is the additional value generated through active management. The fundamental principle behind Alpha Transport Strategies is to expand the sources that generate alpha. Instead of being forced to select only the stocks and bonds contained in the relevant index, alpha can be generated by participating in less efficient sectors of the capital markets. Quellos seeks to significantly increase the likelihood of outperforming traditional equity and fixed income managers by generating alpha through the use of Absolute Return Strategies and transporting the alpha to a traditional benchmark. Quellos offers Alpha Transport Strategies on a broad range of domestic and international equity and fixed income indices for US taxable, US tax-exempt and non-US investors.

Quellos believes providing financial advisory services requires an integrated, strategic process that encompasses issues relating to the management, utilization and distribution of a client's wealth.



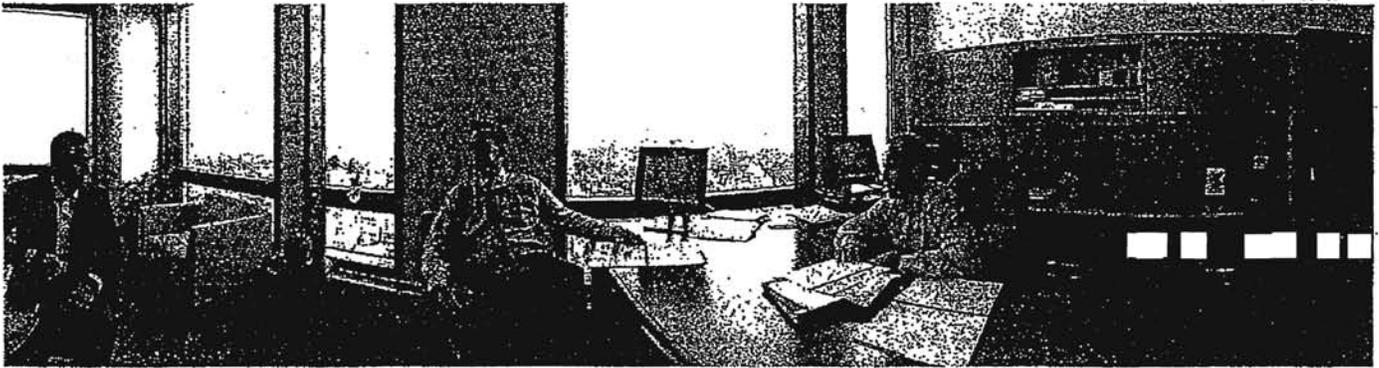
FINANCIAL ADVISORY SERVICES

Optimally addressing a client's financial objectives often requires more than leading-edge investment management. An integrated, strategic approach that encompasses issues relating to managing, utilizing and ultimately distributing a client's wealth must be considered. Issues include: how liquidity is to be generated; how after-tax returns are maximized; how wealth is allocated to support current and future lifestyle goals; how wealth is efficiently transferred to subsequent generations and/or philanthropic concerns; and how wealth is managed based on personal objectives. Though each client's issues are different, there are clear "best practices" and economies of scale that are attributable to Quellos' narrowly defined clientele.

While the scope of appropriate financial advisory services will vary depending on a client's current situation, goals, expectations and desired level of involvement, Quellos draws on its internal team of industry experts to help clients navigate the intricacies and challenges associated with prudently and efficiently managing wealth. To accommodate these various client situations, Quellos has structured financial advisory services into three core areas: Strategic Asset Allocation, Custom Strategies and Family Office Services.

Strategic Asset Allocation

For a select group of clients, Quellos offers strategic assistance in developing, implementing and managing an overall investment policy customized to meet each client's needs and objectives. After a thorough evaluation of a client's current and future financial goals, a tailored



strategic plan is developed that incorporates return objectives, risk tolerance, liquidity needs, tax consequences and other special factors. The key element of this plan is a strategic asset allocation that identifies how each client's assets should be allocated across traditional and alternative investment strategies in a tax-efficient manner. Once implemented, the strategic plan is regularly monitored, rebalanced and modified to correspond with a client's evolving circumstances and the dynamic nature of the capital markets. Asset allocation is the primary driver to meeting a client's overall financial objectives and Quellos believes that meticulous attention and diligence should be spent on this process.

Custom Strategies

Meaningful economic or investment decisions should not be made without first carefully analyzing the overall tax and regulatory implications. Achieving Quellos' objective of maximizing after-tax returns may entail a sophisticated and innovative solution customized to address a client's tax, regulatory and economic situation. These solutions may employ structured financial instruments, resourceful legal structures and complex investment strategies. The effective design, implementation and management of these strategies require the collaboration of a team experienced in tax law, capital market structuring, investment operations, regulatory issues and accounting. Quellos' role will vary depending on the needs of each client; however, considerable time will be spent educating a client as to the risks and rewards of various alternatives and collaborating with a client's tax, accounting and other professional advisors.

Family Office Services

Effective and comprehensive financial advisory services require executing and coordinating a multitude of activities generally performed by a broad range of professionals. Quellos offers a complete range of financial advisory services designed specifically for private clients to simplify, coordinate and enhance the wealth management process. Rarely is a standard pre-packaged solution appropriate or effective. At times, Quellos acts as a client's family office; other times, it serves as a resource for an existing family office and long-standing advisors. After careful assessment of a client's current, intermediate and long-term personal and financial goals, a custom portfolio of services is proposed that may include:

- Strategic asset allocation
- Income and transfer tax-optimization planning
- Consolidated financial and performance reporting
- Tax planning and compliance
- Philanthropic planning
- General business cash flow planning and budgeting
- Family office management
- Special advisory services – non-recurring projects, many of which include asset acquisition and disposition

Acting solely as a client's agent, Quellos Brokerage Services is exclusively focused on executing each request in the most responsive, proficient and cost-efficient manner.

BROKERAGE SERVICES

Successful financial management often requires executing a wide variety of transactions in the global securities markets. These transactions may include diversifying a core equity or option position; hedging complex interest rate or foreign currency exposure; acquiring sizable positions in specific fixed income or equity securities; implementing an asset allocation program; or borrowing against an existing portfolio. To meet these needs, Quellos provides clients with a customer-driven approach to executing securities and derivative transactions throughout the global capital markets. In a manner consistent with its core philosophy regarding market efficiencies, Quellos refrains from recommending specific securities or engaging in market-timing activities. Quellos is exclusively focused on executing each client request in the most responsive, proficient and cost-efficient manner.

In today's market, the difference between a well and a poorly executed transaction can be material. A poorly executed transaction can be disastrous. While advanced technology is valuable, nothing is more critical than relying on experienced and knowledgeable market professionals acting exclusively in a client's best interest. As an independent brokerage

firm, Quellos is unencumbered by serious conflicts or internally imposed restrictions prevalent at many traditional brokerage firms and acts solely as an agent to scour "the Street" and obtain the maximum execution levels. The flexibility to use virtually any trading counterparty affords clients the benefit of multiple firms competing for their order. Acting as an agent, Quellos places a high priority on confidentiality in order to help clients maintain anonymity in the marketplace.

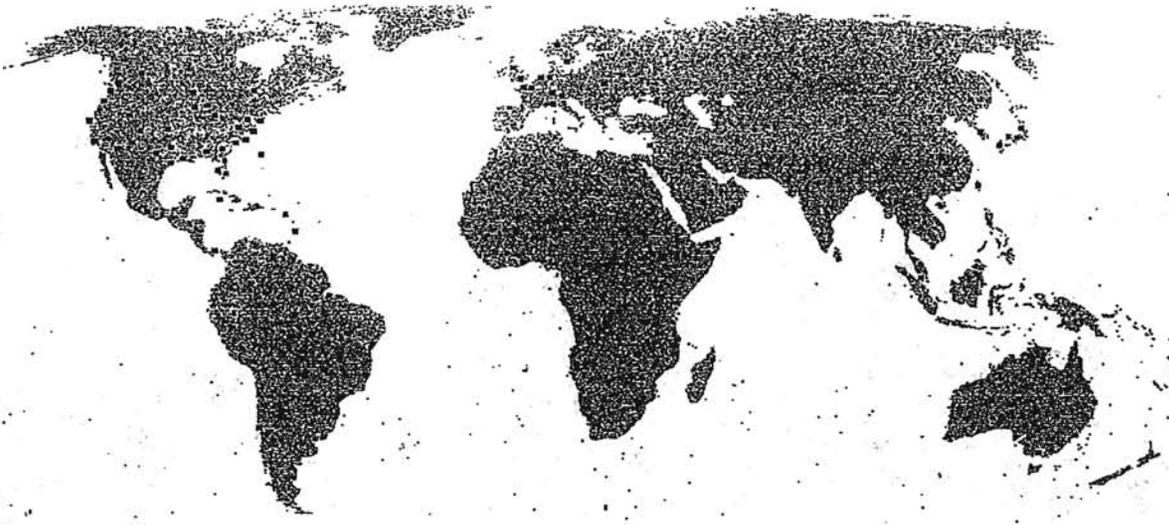
Quellos prides itself in providing clients with services and execution capabilities usually reserved for large, top-tier institutions. This capability promotes greater efficiency as costly and time-consuming steps can be eliminated from the execution process. Quellos offers superior service by eliminating the "middlemen" and providing clients with direct access to senior trading and operations specialists with decades of experience and strategic relationships. Collectively, Quellos' vast experience, advanced technology infrastructure and customer-driven approach enable the thoughtful, efficient and discrete execution of large, and often sensitive, security transactions as part of a comprehensive financial strategy.



innovative solutions

Since uncertainty and change are inevitable, Quellos relentlessly strives to develop innovative solutions to achieve each client's objectives and enhance results.

- QUELLOS OFFICES
- CLIENT RELATIONSHIPS



contact

Contact Quellos via the Internet:

info@quellos.com

quellos.com

Further information on the services provided by Quellos can be obtained by contacting:

SEATTLE

601 Union Street
56th Floor
Seattle, WA 98101
tel 206.613.6700
fax 206.613.6710

LOS ANGELES

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Los Angeles, CA 90024
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fax 310.954.4710

NEW YORK

667 Madison Avenue
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New York, NY 10021
tel 212.609.4100
fax 212.609.4121

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London W1J 5HU
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tel +44 (0)20 7399 1700
fax +44 (0)20 7399 1701

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San Francisco, CA 94111
tel 415.365.5100
fax 415.365.5110

300 Sand Hill Road
Building 2, Suite 165
Menlo Park, CA 94025
tel 650.926.9123
fax 650.926.9150

Quellos Europe, Ltd. is regulated by
the UK Financial Services Authority.

OMB APPROVAL

OMB Number: 3235-0049
 Expires: November 30, 2005
 Estimated average burden
 hours per response.....9.402

FORM ADV
 Part II - Page 1

Uniform Application for Investment Adviser Registration

Name of Investment Adviser: Quellos Custom Strategies, LLC					
Address: (Number and Street)	(City)	(State)	(Zip Code)	Area Code:	Telephone Number:
601 Union Street, 56th Floor	Seattle	WA	98101-	(206)	613-6700

This part of Form ADV gives information about the investment adviser and its business for the use of clients.
 The information has not been approved or verified by any governmental authority.

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	Balance Sheet, if required.....	Schedule G

(Schedules A, B, C, D, and E are included with Part I of this Form, for the use of regulatory bodies, and are not distributed to clients.)

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number

FORM ADV
Part II - Page 2

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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Definitions for Part II

Related person -- Any officer, director or partner of applicant or any person directly or indirectly controlling, controlled by, or under common control with the applicant, including any non-clerical, non-ministerial employee.

Investment Supervisory Services -- Giving continuous investment advice to a client (or making investments for the client) based on the individual needs of the client. Individual needs include, for example, the nature of other client assets and the clients personal and family obligations.

I. A. Advisory Services and Fees. (check the applicable boxes) For each type of service provided, state the approximate % of total advisory billings from that service. Check if Estimate

Applicant:

Service Description	% of Total Advisory Billings	Check if Estimate
<input checked="" type="checkbox"/> (1) Provides investment supervisory services	2%	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/> (2) Manages investment advisory accounts not involving investment supervisory services	100%	<input type="checkbox"/>
<input type="checkbox"/> (3) Furnishes investment advice through consultations not included in either service described above	0%	<input type="checkbox"/>
<input type="checkbox"/> (4) Issues periodicals about securities by subscription	0%	<input type="checkbox"/>
<input type="checkbox"/> (5) Issues special reports about securities not included in any service described above	0%	<input type="checkbox"/>
<input type="checkbox"/> (6) Issues, not as part of any service described above, any charts, graphs, formulas, or other devices which clients may use to evaluate securities	0%	<input type="checkbox"/>
<input checked="" type="checkbox"/> (7) On more than an occasional basis, furnishes advice to clients on matters not involving securities	0%	<input type="checkbox"/>
<input type="checkbox"/> (8) Provides a timing service	0%	<input type="checkbox"/>
<input type="checkbox"/> (9) Furnishes advice about securities in any manner not described above	0%	<input type="checkbox"/>

(Percentages should be based on applicant's last fiscal year. If applicant has not completed its first fiscal year, provide estimates of advisory billings for that year and state that the percentages are estimates.)

B. Does applicant call any of the services it checked above financial planning or some similar term? Yes No

C. Applicant offers investment advisory services for: (check all that apply)

<input checked="" type="checkbox"/> (1) A percentage of assets under management	<input type="checkbox"/> (4) Subscription fees
<input type="checkbox"/> (2) Hourly charges	<input type="checkbox"/> (5) Commissions
<input checked="" type="checkbox"/> (3) Fixed fees (not including subscription fees)	<input checked="" type="checkbox"/> (6) Other

D. For each checked box in A above, describe on Schedule F:

- the services provided, including the name of any publication or report issued by the adviser on a subscription basis or for a fee
- applicant's basic fee schedule, how fees are charged and whether its fees are negotiable
- when compensation is payable, and if compensation is payable before service is provided, how a client may get a refund or may terminate an investment advisory contract before its expiration date

2. Types of Clients - Applicant generally provides investment advice to: (check those that apply)

<input checked="" type="checkbox"/> A. Individuals	<input checked="" type="checkbox"/> E. Trusts, estates, or charitable organizations
<input type="checkbox"/> B. Banks or thrift institutions	<input checked="" type="checkbox"/> F. Corporations or business entities other than those listed above
<input type="checkbox"/> C. Investment companies	<input checked="" type="checkbox"/> G. Other (describe on Schedule F)
<input checked="" type="checkbox"/> D. Pension and profit sharing plans	

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV
Part II - Page 3

 Applicant:
 Quellos Custom Strategies, LLC

 SEC File Number:
 801- 56703

 Date:
 12/11/2003

Types of investments. Applicant offers advice on the following (check those that apply)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>A. Equity Securities</p> <input checked="" type="checkbox"/> (1) exchange-listed securities
<input checked="" type="checkbox"/> (2) securities traded over-the-counter
<input checked="" type="checkbox"/> (3) foreign issuers | <p><input checked="" type="checkbox"/> H. United States government securities</p> <p>I. Options contracts on:</p> <input checked="" type="checkbox"/> (1) securities
<input checked="" type="checkbox"/> (2) commodities |
| <p><input checked="" type="checkbox"/> B. Warrants</p> <p><input checked="" type="checkbox"/> C. Corporate debt securities
(other than commercial paper)</p> <p><input checked="" type="checkbox"/> D. Commercial paper</p> <p><input checked="" type="checkbox"/> E. Certificates of deposit</p> <p><input checked="" type="checkbox"/> F. Municipal securities</p> <p>G. Investment company securities:</p> <input checked="" type="checkbox"/> (1) variable life insurance
<input checked="" type="checkbox"/> (2) variable annuities
<input checked="" type="checkbox"/> (3) mutual fund shares | <p>J. Futures contracts on:</p> <input checked="" type="checkbox"/> (1) tangibles
<input checked="" type="checkbox"/> (2) intangibles <p>K. Interests in partnerships investing in:</p> <input checked="" type="checkbox"/> (1) real estate
<input checked="" type="checkbox"/> (2) oil and gas interests
<input checked="" type="checkbox"/> (3) other (explain on Schedule F) <p><input checked="" type="checkbox"/> L. Other (explain on Schedule F)</p> |

4. Methods of Analysis, Sources of Information, and Investment Strategies.
A. Applicant's security analysis methods include: (check those that apply)

- | | |
|-----------------------------------------------------|------------------------------------------------------------|
| (1) <input type="checkbox"/> Charting | (4) <input checked="" type="checkbox"/> Cyclical |
| (2) <input checked="" type="checkbox"/> Fundamental | (5) <input type="checkbox"/> Other (explain on Schedule F) |
| (3) <input checked="" type="checkbox"/> Technical | |

B. The main sources of information applicant uses include: (check those that apply)

- | | |
|-------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| (1) <input checked="" type="checkbox"/> Financial newspapers and magazines | (5) <input type="checkbox"/> Timing services |
| (2) <input checked="" type="checkbox"/> Inspections of corporate activities | (6) <input checked="" type="checkbox"/> Annual reports, prospectuses, filings with the Securities and Exchange Commission |
| (3) <input checked="" type="checkbox"/> Research materials prepared by others | (7) <input checked="" type="checkbox"/> Company press releases |
| (4) <input checked="" type="checkbox"/> Corporate rating services | (8) <input type="checkbox"/> Other (explain on Schedule F) |

C. The investment strategies used to implement any investment advice given to clients include: (check those that apply)

- | | |
|--------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| (1) <input checked="" type="checkbox"/> Long term purchases
(securities held at least a year) | (5) <input checked="" type="checkbox"/> Margin transactions |
| (2) <input checked="" type="checkbox"/> Short term purchases
(securities sold within a year) | (6) <input checked="" type="checkbox"/> Option writing, including covered options,
uncovered options or spreading strategies |
| (3) <input checked="" type="checkbox"/> Trading (securities sold within 30 days) | (7) <input checked="" type="checkbox"/> Other (explain on Schedule F) |
| (4) <input checked="" type="checkbox"/> Short sales | |

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV
Part II - Page 4

Applicant:
Quellos Custom Strategies, LLC

SEC File Number:
801- 56703

Date:
12/11/2003

5. Education and Business Standards.

Are there any general standards of education or business experience that applicant requires of those involved in determining or giving investment advice to clients?.....

Yes No

(If yes, describe these standards on Schedule F.)

6. Education and Business Background.

For:

- each member of the investment committee or group that determines general investment advice to be given to clients, or
- if the applicant has no investment committee or group, each individual who determines general investment advice given to clients (if more than five, respond only for their supervisors)
- each principal executive officer of applicant or each person with similar status or performing similar functions.

On Schedule F, give the:

- name
- year of birth
- formal education after high school
- business background for the preceding five years

7. Other Business Activities. (check those that apply).

- A. Applicant is actively engaged in a business other than giving investment advice.
- B. Applicant sells products or services other than investment advice to clients.
- C. The principle business of applicant or its principal executive officers involves something other than providing investment advice.

(For each checked box describe the other activities, including the time spent on them, on Schedule F.)

8. Other Financial Industry Activities or Affiliations. (check those that apply)

- A. Applicant is registered (or has an application pending) as a securities broker-dealer.
- B. Applicant is registered (or has an application pending) as a futures commission merchant, commodity pool operator or commodity trading adviser.
- C. Applicant has arrangements that are material to its advisory business or its clients with a related person who is a:

<input checked="" type="checkbox"/> (1) broker-dealer	<input type="checkbox"/> (7) accounting firm
<input type="checkbox"/> (2) investment company	<input type="checkbox"/> (8) law firm
<input checked="" type="checkbox"/> (3) other investment adviser	<input type="checkbox"/> (9) insurance company or agency
<input checked="" type="checkbox"/> (4) financial planning firm	<input type="checkbox"/> (10) pension consultant
<input checked="" type="checkbox"/> (5) commodity pool operator, commodity trading adviser or futures commission merchant	<input type="checkbox"/> (11) real estate broker or dealer
<input type="checkbox"/> (6) banking or thrift institution	<input checked="" type="checkbox"/> (12) entity that creates or packages limited partnerships

(For each checked box in C, on Schedule F identify the related person and describe the relationship and the arrangements.)

D. Is applicant or a related person a general partner in any partnership in which clients are solicited to invest?.....

Yes No

(If yes, describe on Schedule F the partnerships and what they invest in.)

Answer all items. Complete amended pages in full; circle amended items and file with execution page (page 1).

FORM ADV
Part II - Page 5

Applicant:
Quellos Custom Strategies, LLC

SEC File Number:
801- 56703

Date:
12/11/2003

Participation or Interest in Client Transactions.

Applicant or a related person: (check those that apply)

- A. As principal, buys securities for itself from or sells securities it owns to any client.
- B. As broker or agent effects securities transactions for compensation for any client.
- C. As broker or agent for any person other than a client effects transactions in which client securities are sold to or bought from a brokerage customer.
- D. Recommends to clients that they buy or sell securities or investment products in which the applicant or a related person has some financial interest.
- E. Buys or sells for itself securities that it also recommends to clients.

(For each box checked, describe on Schedule F when the applicant or a related person engages in these transactions and what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions.)

10. Conditions for Managing Accounts. Does the applicant provide investment supervisory services, manage investment advisory accounts or hold itself out as providing financial planning or some similarly termed services and impose a minimum dollar value of assets or other conditions for starting or maintaining an account? Yes No

(If yes, describe on Schedule F.)

11. Review of Accounts. If applicant provides investment supervisory services, manages investment advisory accounts or holds itself out as providing financial planning or some similarly termed services:

A. Describe below the reviews and reviewers of the accounts. For reviews, include their frequency, different levels, and triggering factors. For reviewers, include the number of reviewers, their titles and functions, instructions they receive from applicant on performing reviews, and number of accounts assigned each.

See Schedule F

B. Describe below the nature and frequency of regular reports to clients on their accounts.

See Schedule F

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV
Part II - Page 6

Applicant:
Quellos Custom Strategies, LLC

SEC File Number:
801- 56703

Date:
12/11/2003

12. Investment or Brokerage Discretion.

A. Does applicant or any related person have authority to determine, without obtaining specific client consent, the:

- | | | |
|----------------------------------------------------------|-----------------------------------------|-----------------------------|
| (1) securities to be bought or sold? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| (2) amount of the securities to be bought or sold? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| (3) broker or dealer to be used? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| (4) commission rates paid? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

B. Does applicant or a related person suggest brokers to clients? Yes No

For each yes answer to A describe on Schedule F any limitations on the authority. For each yes to A(3), A(4) or B, describe on Schedule F the factors considered in selecting brokers and determining the reasonableness of their commissions. If the value of products, research and services given to the applicant or a related person is a factor, describe:

- the products, research and services
- whether clients may pay commissions higher than those obtainable from other brokers in return for those products and services
- whether research is used to service all of applicant's accounts or just those accounts paying for it, and
- any procedures the applicant used during the last fiscal year to direct client transactions to a particular broker in return for products and research services received.

13. Additional Compensation.

Does the applicant or a related person have any arrangements, oral or in writing, where it:

- | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|----------------------------------------|
| A. is paid cash by or receives some economic benefit (including commissions, equipment or non-research services) from a non-client in connection with giving advice to clients? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| B. directly or indirectly compensates any person for client referrals? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

(For each yes, describe the arrangements on Schedule F.)

14. Balance Sheet. Applicant must provide a balance sheet for the most recent fiscal year on Schedule G if applicant:

- has custody of client funds or securities; or
 - requires prepayment of more than \$500 in fees per client and 6 or more months in advance
- Has applicant provided a Schedule G balance sheet? Yes No

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
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Item of Form (identify)	Answer
1.C & D, 2.G	<p>Registrant primarily provides specialized discretionary or advisory services to clients who wish to use combinations of legal structures and derivative securities to achieve pre-defined investment objectives. These objectives could include both hedging and speculative investment strategies. In connection with these investment strategies, Registrant generally will retain a law firm (each a "Tax Professional") to advise Registrant and/or its clients in order to seek to optimize the structure of such investment strategies with regard to the after-tax return to Registrant's clients, and to provide an opinion on the tax treatment of the strategies. Generally, the opinion rendered by the Tax Professional will not be qualified. For example, the opinion may state that federal tax treatment of the investment strategy is complex and therefore all the tax consequences of the transactions cannot be determined with certainty. However, the Tax Professional's opinion will also state to the effect that it is more likely than not that the proposed treatment is correct. Typically the Tax Professional's opinions will state, among other things, that no assurance can be given that there will not be a change in law or that the Internal Revenue Service will not after its present position, either prospectively or retrospectively, or adopt new positions with regard to federal income tax treatment of the investment or otherwise challenge the tax aspects of the investment strategy. To the extent this were to occur, some or all of the tax benefits of the relevant transaction could be disallowed, which could potentially subject a client to the payment of back taxes, an interest charge, or the assessment of other penalties. In addition to the advisory services described above, the Registrant may also, in certain limited circumstances, advise Funds (defined below) that invest in other Funds managed by its affiliate Quellos Capital Management, L.P. and that pursue Quellos ARS (defined below).</p>

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

I. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
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Item of Form (identify)	Answer
1.C & D. 2.C Continued	<p>Registrant's clients primarily include special purpose unregistered investment entities, including limited partnerships, limited liability companies or non-US companies, trusts or other entities ("Funds") for which Registrant acts as general partner, managing member, manager or investment adviser. Registrant charges advisory fees that are based on assets under management, performance of the account or a combination of the two. Performance fees may be calculated on a "interim" basis or as a percentage of profits, share sales. The fee will be charged on the gross assets under management (i.e., excluding amounts borrowed). In certain cases the fee will be charged on net assets under management (i.e., including amounts borrowed). Fee rates calculated on gross assets will generally be lower than fees calculated on net assets due to this leverage effect. Because services for each client of Registrant include some unique aspects, advisory fees are typically negotiated on a case-by-case basis based on factors such as the size of the account, breadth of the assignment, complexity of management and other factors.</p> <p>Registrant's fees may vary among clients that have similar investment objectives and securities holdings. Management fees in excess of 2.0% are generally considered higher than the industry standard. Registrant reserves the right to change its clients' fees in excess of 2.0%; however, it should be noted that other investment advisers may charge lower fees for comparable services. Clients should carefully examine the services offered by Registrant's competitors in relation to the potential fees charged.</p> <p>Investments in Funds are generally offered only to institutional and individual "accredited investors" as defined in Regulation D under the Securities Act of 1933, as amended, and are exempt from registration under the Investment Company Act of 1940, as amended, pursuant to Section 3(c)(1) or 3(c)(7) thereof. Generally, both these Funds and investment funds in which these clients invest are either commodity pools that are exempt (i) from certain reporting, recordkeeping and disclosure requirements pursuant to Rule 4.7 under the Commodity Exchange Act ("CEA"), or (ii) from the registration and related requirements pursuant to Rule 4.13(a)(3) or (4) under the CEA.</p>

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

Full name of applicant exactly as stated in Item IA of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
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Item of Form (identify)	Answer
1.C & D, 2.G Continued	<p>Registrant or clients are able to terminate the advisory relationship pursuant to predefined notice periods stipulated in each advisory contract. Generally the timing of termination relates to the risk/reward objectives inherent in the account's investment objective. Fees may be payable in advance or in arrears. If an advisory contract is terminated prior to its scheduled expiration, the contract will stipulate the basis upon which fees will be rebated or waived.</p> <p>Registrant has policies and procedures related to the voting of proxies on behalf of its clients (the "Policies and Procedures"). The Policies and Procedures apply to those client accounts (i) that contain voting securities, and (ii) for which Registrant has authority or client direction to vote client proxies. Client relationships and transactions in which Registrant is engaged are generally unique, infrequently involve proxy voting, and in such cases, voting decisions are not susceptible to predetermined rules. Accordingly, proxy voting by Registrant will be handled on a case-by-case basis, consistent with the general philosophy set forth below. A summary of these policies and procedures is set forth below, including information on how a client may obtain additional information.</p> <p>When voting proxies for client accounts, Registrant's primary objective is to make voting decisions solely in the best interests of clients for which it manages assets. In fulfilling its obligations to clients, Registrant will act in a manner which is intended to enhance the economic value of the underlying investments held in client accounts. Thus, this process may include a cost-benefit analysis to determine whether the voting of a client's proxy is in the client's best interest. In addition, Registrant will take steps to avoid material conflicts of interests between the interests of Registrant and its affiliates on the one hand and the interests of its clients on the other.</p> <p>Clients of Registrant can obtain a copy of the Policies and Procedures or information on how Registrant voted their proxies by contacting the Managing Director of Investment Operations at (206) 613-6700 or pbonde@quellos.com.</p>

Complete amended pages in full, circle amended items, and file with execution page (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

I. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
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Item of Form (Identify)	Answer
3.K & 3.L	Registrant employs all types of financial instruments and derivative securities in connection with its investment management services. These may include structured products that are one of a kind securities, originated by a third party bank or brokerage firm specifically for Registrant's client. Registrant will also offer advice on interests in commodity pools or other types of US or non-US investment funds.
4.C(7)	Registrant may design products with banks or brokerage firms specifically tailored to meet the client's investment objectives. These products or securities may have many different investment elements embedded in one security or financial instrument. Quellos Brokerage Services, LLC, an affiliate of Registrant may act as Introducing Broker for transactions. Others may involve counterparties with which Registrant or its affiliates may have other business relationships (see item 9 below).
5.	Practical experience and relevant business and educational backgrounds are important and most members of the professional staff hold advanced degrees or equivalent experience; however, Registrant does not believe that any particular qualifications are always indicative of an ability to provide successful advisory services.

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of Form ADV Continuation Sheet for Form ADV Part II	Applicant:	SEC File Number:	Date:
	Quellos Custom Strategies, LLC	801- 56703	12/11/2003

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
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Item of Form (identify)	Answer
6.	<p>The following are members of Registrant's Investment Committees and/or Portfolio Management Committees:</p> <p>Norman D. Bontje 08/00-Present, Director, Principal and Chief Financial Officer, Treasurer and Assistant Secretary, Quellos Group, LLC 05/99-Present, Director, Principal and Chief Financial Officer, Member - Investment Committee and Member - Portfolio Management Committee, Registrant 10/94-Present, Director, Principal and Chief Financial Officer, Quellos Capital Management, L.P. 11/99-Present, Principal and Chief Financial Officer, Quellos Fixed Income Advisors, LLC 01/01-Present, Principal and Chief Financial Officer, Quellos Brokerage Services, LLC BA-Business Administration/Accounting, 1989, University of Washington Date of Birth: 8/28/67</p> <p>Charles L. Claryt 08/00-Present, Director and Principal, Quellos Group, LLC 08/98-Present, Director, Principal and Executive Vice President, Quellos Capital Management, L.P. 05/99-Present, Member - Investment Committee, Registrant 10/98-Present, Director and Principal, Quellos Brokerage Services, LLC 03/85-07/98, Managing Director, Oppenheimer & Co, Inc. BA-Social and Behavioral Sciences, 1978, Johns Hopkins University Date of Birth: 9/4/56</p> <p>Bruce M. Dresner 01/02-Present, Member - Investment Committee, Registrant 10/90-01/02, Vice President for Investments and Chief Investment Officer, Columbia University BA, Economics, 1969, University of Miami; MBA, 1971, Amos Tuck School, Dartmouth College Date of Birth: 1/28/48</p>

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of Form ADV Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
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Item of Form (Identify)	Answer
6. Continued	<p>Jeffrey I. Greenstein 08/00-Present, Chairman of the Board, Chief Executive Officer and President, Quellos Group, LLC 05/99-Present, Chairman of the Board, Chief Executive Officer and Member Investment Committee and Member Portfolio Management Committee, Registrant 07/94-Present, Chairman of the Board and Chief Executive Officer, Quellos Capital Management, L.P. 10/98-Present, Director and Principal, Quellos Brokerage Services, LLC 11/99-Present, Chairman of the Board and Chief Executive Officer, Quellos Fixed Income Advisors, LLC BA Business Administration/Finance, 1984, University of Washington Date of Birth: 5/9/62</p> <p>Eugene J. McDonald 12/01-Present, Member Investment Committee, Registrant 07/01-Present, Principal, Quellos Group, LLC 07/90-09/01, Founding President and Chief Executive Officer, Duke Management Company 07/90-09/01, Executive Vice President and Chief Investment Officer, Duke University 01/98-07/00, Executive Vice Chairman, Central Carolina Bank Financial Corporation Advanced Management Program (AMP '73), 1976, Harvard Graduate School of Business Administration; BS, 1954, University of San Francisco; JD, 1957, University of San Francisco School of Law; LL.M., 1958, Georgetown University Law Center Date of Birth: 7/11/32</p>

Complete amended pages in full, circle amended items and file with execution page (page 1).

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Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
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Item of Form (identify)	Answer
6. Continued	<p>Bryan K. White 08/00-Present, Director, Chief Investment Officer and Principal, Quellos Group, LLC 05/99-Present, Principal and Chairman, Investment Committee, Registrant 06/04-Present, Director, Principal and President, Quellos Capital Management, L.P. 11/99-Present, Director and Principal, Quellos Fixed Income Advisors, LLC BA-Mathematical Economics, 1981, Pomona College; MBA-Finance and Accounting, 1989, University of Chicago Date of Birth: 9/27/62</p> <p>Charles H. Wilk 05/99-Present, Director, Principal, President and Member - Portfolio Management Committee, Registrant 05/98-05/99, Senior Manager, Price Waterhouse Coopers, LLP 05/96-04/98, Tax Associate, Fulbright & Jaworski, LLP BS-Biology, 1979, University of Texas, Austin; JD, 1995, Fordham University School of Law; LL.M-Taxation, 1998, New York University School of Law Date of Birth: 12/04/58</p> <p>In addition to Messrs. Bontje, Clarvit, Dresner, Greenstein, McDonald, White and Wilk, the following are principal executive officers of Registrant:</p> <p>Marie M. Bender 08/00-Present, Principal and General Counsel, Quellos Group, LLC 02/00-Present, Principal and General Counsel, Registrant 02/00-Present, Principal and General Counsel, Quellos Capital Management, L.P. 01/01-Present, Principal, Chief Compliance Officer and General Counsel, Quellos Brokerage Services, LLC 02/00-Present, Principal and General Counsel, Quellos Fixed Income Advisors, LLC 03/90-01/00 -Managing Director and Associate General Counsel, Trust Company of the West and its affiliates. BA-Political Science, 1976, California State University, San Jose; JD, 1979, Georgetown University Law Center Date of Birth: 11/25/54</p>

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
Item of Form (identify)	Answer
6. Continued	<p>Dan A. McNamara 08/00-Present, Principal, Controller and Assistant Treasurer, Quellos Group, LLC 05/99-Present, Principal and Controller, Registrant 01/97-Present, Principal and Controller, Quellos Capital Management, L.P. 11/99-Present, Principal and Controller, Quellos Fixed Income Advisors, LLC 09/92-01/97, Senior Auditor, Deloitte & Touche, LLP BA-Business Administration/Accounting, 1992, University of Washington Date of Birth: 3/4/69</p> <p>Larry B. Scheinfeld 08/00-Present, Director and Principal, Quellos Group, LLC 05/99-Present, Director and Principal, Registrant 07/97-10/01, Director and Principal, Quellos Capital Management, L.P. 07/85-06/97, Tax Partner, KPMG Peat Marwick BS-Accounting, 1976, State University of New York Albany Date of Birth: 5/1/53</p>

Complete amended pages in full, circle amended items and file with execution page. (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
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Item of Form (identify)	Answer
7.B.	<p>Registrant's investment advisory activities may relate to broader estate planning or business objectives of a client. In such cases, Registrant's services may include advice or consulting regarding those broader objectives. However, although Registrant focuses on after-tax investment results, it does not specifically advise on federal, state, or international tax matters and it does not prepare tax returns. Rather, Registrant or the client retains tax professionals (law firms, accounting firms, or otherwise) to determine the proper treatment of the investment results.</p>
8.C (1,3,4,5,12) & 8.D	<p>Registrant is under common control with two other registered investment advisers, <u>Quellos Capital Management, L.P. ("QCM")</u> (SEC File No. 801-49077) and <u>Quellos Fixed Income Advisors, LLC ("QFIA")</u> (SEC File No. 801-57047). QCM's core business is providing discretionary asset management and advisory services to clients, including Funds, that invest through a multi-manager "fund of funds" structure, in private investment vehicles ("<u>hedge funds</u>") managed by external investment advisors ("<u>External Investment Advisors</u>") that invest in <u>Absolute Return Strategies ("Quellos ARS")</u>. In certain circumstances, Registrant may act as manager to Funds that invest substantially all of their assets in Funds that pursue <u>Quellos ARS</u> and that are managed by QCM. QCM, through its subsidiary, <u>Quellos Private Capital Markets, L.P. ("QPCM")</u> also offers (i) a "fund of funds" strategy that focuses on investing in closed-end private investment companies that make venture capital, leveraged buyouts, expansion capital, mezzanine, distressed, and special situation investments, both in the United States and overseas ("<u>Quellos PCS</u>"), and (ii) a "fund of funds" strategy that focuses on investing in closed-end private investment companies that make investments in "real assets," such as the timber, energy and real estate sectors, both in the United States and overseas ("<u>Quellos RA</u>"). QCM is registered with the Commodity Futures Trading Commission as a commodity pool operator (NFA No. 0263480). QFIA provides investment advice, through a non-affiliated sub-adviser, with respect to a broad range of fixed income securities, either as separate accounts or to Funds. QCM, QFIA or Registrant may refer clients to, or solicit clients of, one another as a means of offering the specialized investment management products of each adviser to one another's clients. With respect to any investments in Funds, clients will receive the applicable offering memorandum describing the Fund's investment strategy and terms of the offering.</p>

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
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(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC		IRS Empl. Ident. No.: 91-1976232
Item of Form (identify)	Answer	
8.C (1,3,4,5,12) & 8.D Continued	<p>Registrant is also under common control with Quellos Financial Advisors, LLC ("QFA"). QFA provides high net worth individuals and families with federal and state income tax planning services and family office management. Registrant and QFA may refer clients to each other.</p> <p>Registrant, QFA, QCM and QPCM act as general partner, managing member or investment advisors to Funds in which investors in such Funds or other clients of Registrant, QFA, QCM or QBA may be solicited to invest. In connection with private capital strategies, QPCM GP, LLC and QPCM Real Assets GP, LLC, affiliates of Registrant and QPCM, act as general partner for Funds in the Quellos RCS and Quellos RA, respectively.</p> <p>Registrant is also under common control with Quellos Brokerage Services, LLC, as described below under item 9.B. Quellos Brokerage Services is registered as an introducing broker with the Commodity Futures Trading Commission (NFA No. 0305644).</p>	
9.B, D & 12.B	<p>Registrant or its related parties may recommend to, or purchase or sell on behalf of, clients securities or other investment products, including Funds, in which Registrant or its related parties may have a financial interest as investment manager, general partner or as a co-investor.</p> <p>Registrant may effect purchases and sales between clients or clients of affiliates or advise the counterparty to an over-the-counter derivative contract to which a client of Registrant is a party when Registrant believes such transactions are appropriate based on each party's investment objectives. Related persons of Registrant may have a financial interest in such counterparties.</p>	

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
----------------------------------------------	--------------------------------	---------------------

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
--------------------------------------------------------------------------------------------------------------	-------------------------------------

Item of Form (identify)	Answer
9.B, D & 12.B Continued	<p>Quellos Brokerage Services, LLC ("QBS"), an affiliate of Registrant, is registered as a broker/dealer. QBS is registered with the SEC as a broker-dealer and with the Commodities Futures Trading Commission as an Introducing Broker. Clients of Registrant, Funds in which such clients invest or funds or accounts managed by External Investment Advisors, may execute brokerage, derivative and other transactions through QBS. In connection with such transactions, QBS may receive commissions, mark-ups or other fees with respect to such transactions that will not be shared with the clients of Registrant.</p> <p>Clients of Registrant may also open brokerage accounts with QBS in connection with asset allocation arrangements, for example to diversify a concentrated portfolio of securities, or in the context of an independent relationship with QBS. QBS may also be recommended by Registrant or its affiliates in circumstances where the close working relationship with QBS provides confidentiality, efficiency in execution of a trade or continuity with the client's relationships with Registrant and its affiliates. No "soft dollar" commissions are paid or received in connection with such recommendations.</p> <p>Registrant or its clients may have direct or indirect ownership or other financial interest (a "Financial Interest") in certain of the External Investment Advisors in which other clients of Registrant ("Other Clients") invest. The terms of any Financial Interest may include direct or indirect receipt of a portion of any management or performance-based fees paid by Other Clients to an External Investment Advisor. Registrant or its affiliates will endeavor to negotiate such Financial Interest so as to permit a return to Other Clients of a share of management or performance-based fees paid by Other Clients, but no assurances can be given that it will be able to do so.</p> <p>Investors in Funds managed by Registrant or its affiliates may include Registrant, its affiliates and employees. In addition, Registrant or its affiliates may have and in the future may develop business relationships that are independent of Registrant's services provided to clients. These may include, but are not limited to, lending, depository, brokerage, risk management, investment advisory, security distribution or banking relationships with counterparties to transactions with such clients or other third parties that also provide investment management or other services to clients or Registrant. Also External Investment Advisors in Quellos ARS, Quellos PCS or Quellos RA portfolios, their employees or affiliates may be clients of the Registrant or its affiliates or investors in Funds they manage.</p>

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
----------------------------------------------	--------------------------------	---------------------

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

I. Full name of applicant exactly as stated in Item IA of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
-----------------------------------------------------------------------------------------------------------------	-------------------------------------

Item of Form (Identify)	Answer
10.	Registrant generally will provide separate account management to sophisticated investors who commit substantial sums to their account.
11.A	The review process for accounts will be determined on a case-by-case basis depending on the investment objective of each account and requirements of the client. Generally, activity is reviewed at least quarterly and each account is reviewed with the client either telephonically or in person, no less frequently than annually.
11.B	Advisory accounts will receive detailed financial reports quarterly, unless otherwise requested by the client. The nature and format of the reports will be dependent upon the investment services and/or products utilized by each particular client. Where required, funds or investment entities are audited by an independent public accounting firm on an annual basis.
12.A.(3)-(4)	<p>Several factors are considered in selecting brokers and determining the reasonableness of their commissions. Among them are price/spread, the quality of their execution, and the quality of their research. In selecting a broker to implement a transaction on behalf of a client, Registrant will utilize its judgment in determining the broker must be capable of providing the range and quality of brokerage services given all relevant factors. Generally, brokers or counterparties who can provide the best execution will be favored by Registrant even if a lower transaction price may be available elsewhere. Registrant will not direct client transactions to a particular broker in return for products or services received.</p> <p>Registrant enters into over-the-counter equity swap contracts to implement a variety of its clients investment objectives. Counterparties are selected based on a number of factors, including credit rating, execution prices, and execution capability with respect to complex derivative structures and other criteria relevant to a particular transaction.</p>
13.B	QCM has entered into one referral arrangement relating to a single non-US client.

Complete amended pages in full, circle amended items and file with execution page (page 1).

**Schedule G of
Form ADV
Balance Sheet**

Applicant: Quellos Custom Strategies, LLC	SEC File Number: 801- 56703	Date: 12/11/2003
----------------------------------------------	--------------------------------	---------------------

(Answers in Response to Form ADV Part II Item 14.)

Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: Quellos Custom Strategies, LLC	IRS Empl. Ident. No.: 91-1976232
Instructions	
<p>1. The balance sheet must be:</p> <p>A. Prepared in accordance with generally accepted accounting principles</p> <p>B. Audited by an independent public accountant</p> <p>C. Accompanied by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.</p>	
<p>2. Securities included at cost should show their market or fair value parenthetically.</p>	
<p>3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of Regulation S-X (17 CFR 210.2-01 et seq.).</p>	
<p>4. Sole proprietor investment advisers:</p> <p>A. Must show investment advisory business assets and liabilities separate from other business and personal assets and liabilities</p> <p>B. May aggregate other business and personal assets and liabilities unless there is an asset deficiency in the total financial position.</p>	

Complete amended pages in full, circle amended items and file with execution page (page 1).

QUELLOS CUSTOM STRATEGIES, LLC

**BALANCE SHEET AS OF DECEMBER 31, 2002, AND
INDEPENDENT AUDITORS' REPORT**

Deloitte & Touche LLP

Deloitte & Touche LLP
Suite 4500
700 Fifth Avenue
Seattle, Washington 98104-5044

Tel: (206) 292-1800
Fax: (206) 343-7809
www.us.deloitte.com



INDEPENDENT AUDITORS' REPORT

Board of Directors
Quellos Custom Strategies, LLC
Seattle, Washington

We have audited the accompanying balance sheet of Quellos Custom Strategies, LLC (the Company) as of December 31, 2002. This balance sheet is the responsibility of the Company's management. Our responsibility is to express an opinion on this balance sheet based on our audit.

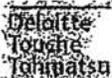
We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the balance sheet is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the balance sheet. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall balance sheet presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, such balance sheet presents fairly, in all material respects, the financial position of the Company as of December 31, 2002, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 4, the financial position of the Company is affected by allocations of expenses and other transactions with Quellos Group, LLC. Accordingly, the financial position is not necessarily the same as that which would have been achieved had the Company operated on an independent basis.

Deloitte & Touche LLP

May 12, 2003



QUELLOS CUSTOM STRATEGIES, LLC

BALANCE SHEET
DECEMBER 31, 2002

<u>ASSETS</u>	
CASH AND CASH EQUIVALENTS	\$ 465,339
SHORT-TERM INVESTMENTS	76,090
INVESTMENTS IN INVESTMENT FUNDS	4,383,591
ACCOUNTS RECEIVABLE	982,489
RECEIVABLES FROM RELATED PARTIES	21,976
OTHER ASSETS	<u>77,126</u>
TOTAL	<u>\$ 6,006,611</u>
<u>LIABILITIES AND MEMBER'S CAPITAL</u>	
<u>LIABILITIES:</u>	
Accounts payable	\$ 4,862
Payable to Parent	34,341
Accrued expenses and other liabilities	<u>578,542</u>
Total liabilities	617,745
MEMBER'S CAPITAL	<u>5,388,866</u>
TOTAL	<u>\$ 6,006,611</u>

See notes to balance sheet.

QUELLOS CUSTOM STRATEGIES, LLC

NOTES TO BALANCE SHEET
DECEMBER 31, 2002

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of business: Quellos Custom Strategies, LLC (the Company) is a limited liability company formed under the Delaware Limited Liability Company Act on March 24, 1999. The Company is a registered investment advisor with the Securities and Exchange Commission and is registered as a commodity pool operator with the Commodity Futures Trading Commission.

The Company provides its clients with specialized investment solutions that emphasize tax-efficient strategies and structures. It also serves as the general partner and/or investment advisor of certain trading partnerships. The Company is a wholly owned subsidiary of Quellos Group, LLC (the Parent).

Cash and cash equivalents: The Company considers all highly liquid investments with an initial maturity of three months or less to be cash equivalents.

Short-term investments: The Company maintains investments in certain private placement vehicles (funds), which are managed by an affiliate. These investments are carried at fair value based upon the funds' net asset values per share and provide at least monthly liquidity.

Accounts receivable: Accounts receivable at December 31, 2002, consists of investment advisory fee amounts due from certain institutions.

Investments in investment funds: The Company accounts for its investments in investment funds, for which it is the general partner, on the equity method (Note 2).

Depreciation: Shared assets and leasehold improvements are carried at the Parent, and depreciation is allocated based on the common paymaster agreement (Note 4). The only fixed assets carried at the Company are specifically identified assets that are not shared. Management, using its best estimates based on reasonable and supportable assumptions and projections, reviews fixed assets for impairment whenever events or changes in circumstances have indicated that the carrying amount of its assets might not be recoverable. Depreciation of equipment and facilities is provided on the straight-line method over five years, the estimated useful lives of the assets.

Revenue recognition: Management fees from the Company's investment management business are calculated and accrued on a quarterly basis, as such fees are earned. Advisory fees, which relate to investment advisor relationships, are recognized over the term of the advisory agreements.

Income taxes: No provision for income taxes has been made since all income or loss is allocated to the Parent in its capacity as sole managing member of the Company for inclusion in its tax returns.

Fair value of financial instruments: The Company's financial instruments consist of cash and cash equivalents, short-term investments, and investments in investment funds, which are carried at fair value.

Use of estimates: The preparation of the balance sheet in conformity with accounting principles generally accepted in the United States of America requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the balance sheet. Actual results could differ from those estimates.

Certain significant risks: The Company's management believes that any of the following could have a material adverse effect on the Company's future financial position: inability to attract significant additional funds to manage, changes in the overall demand for its specialized investment solutions, poor investment performance, or increased competition in management services.

Equity-based compensation: At December 31, 2002, the Company has equity-based employee compensation arrangements, which are described in Note 3. In 2002, the Company adopted the fair value recognition provisions of Statement of Financial Accounting Standards (SFAS) No. 123, *Accounting for Stock-Based Compensation*, under the guidance of SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure—an amendment of FASB Statement No. 123*, for equity-based employee compensation. SFAS No. 123 states that the adoption of the fair value-based method is a change to a preferable method of accounting.

Recently issued accounting pronouncements not yet adopted: In November 2002, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 45 (FIN 45), *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*, which expands on the accounting guidance of SFAS No. 5, SFAS No. 57, and SFAS No. 107 and incorporates, without change, the provisions of FASB Interpretation No. 34, which is being superseded. This interpretation requires a guarantor to recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. In addition, guarantors are required to make significant new disclosures, even if the likelihood of the guarantor making payments under the guarantee is remote. The interpretation's disclosure requirements are effective for the Company as of December 31, 2002. The recognition requirements of FIN 45 are to be applied prospectively to guarantees issued or modified after December 31, 2002. The Company has determined that there are no guarantees that need to be disclosed as of December 31, 2002.

In January 2003, the FASB issued FASB Interpretation No. 46, *Consolidation of Variable Interest Entities*. This interpretation will require a primary beneficiary, defined as an entity that participates in either a majority of the risks or rewards of a variable interest entity (VIE), to consolidate the VIE. The Company has not yet completed its analysis of the impact of the new interpretation on its balance sheet. If the Company is deemed to be a primary beneficiary, the impact to the balance sheet could be material.

NOTE 2: INVESTMENTS IN INVESTMENT FUNDS

The Company is the general partner to various private investment funds. These investments in investment funds are recorded at estimated fair value based on the independently audited net asset values of the investee funds.

NOTE 3: EQUITY INCENTIVE PLANS

The Parent and Quellos Holdings, LLC (Holdings), a majority owner of the Parent, have certain equity compensation arrangements (the Arrangements) to provide additional financial incentives to their employees and employees of their subsidiaries. The Company adopted the recognition provisions of SFAS No. 123 in 2002, in accordance with SFAS No. 148, by applying this accounting method retroactively to all awards granted to employees on or after March 24, 1999 (the date of the formation of the Company) (Note 1).

Applying the provisions of SFAS No. 123 to the Arrangements, the Company records contributed capital from the Parent over the same period that compensation expense is recorded, resulting in no impact to the Company's members' capital at December 31, 2002.

Equity incentive plans: The Parent and Holdings each have adopted an equity incentive plan (the Plans), which provides for the granting of nonqualified options to purchase membership interests. Options granted under the Plans typically vest 25% in the first year and ratably over the following 12 quarters. The exercise prices of the awards are typically at fair value at the date of grant, and the awards are subject to 10-year contractual lives. The value of options granted under the Plans is measured based on their intrinsic value at each reporting date. The effects of changes in the underlying price are recognized as compensation expense over the period until the awards are exercised or forfeited.

Membership option activity under the Plans for employees of the Company is as follows:

	Number of options outstanding	Weighted- average exercise price	Range of exercise prices	Weighted- average remaining contractual life	Number of exercisable option shares	Weighted-average exercise price of exercisable options
Parent						
Outstanding January 1, 2002	43,460	\$ 6.54				
Options granted	91,000	7.91				
Options cash settled	(1,740)	6.54				
Options forfeited	(12,020)	7.22				
Outstanding December 31, 2002	<u>120,700</u>	<u>\$ 7.51</u>	\$6.54 - \$8.68	8.95	12,561	\$ 6.54
Holdings						
Outstanding January 1, 2002	192,500	\$ 4.52				
Options cash settled	(5,625)	4.00				
Options forfeited	(104,375)	4.96				
Outstanding December 31, 2002	<u>82,500</u>	<u>\$ 4.00</u>	\$ 4.00	7.97	74,842	\$ 4.00

Equity Awards: Other equity compensation awards (Equity Awards) were granted in addition to the Plans to senior employees of the Company. During 2002, recipients of Equity Awards became members of the Parent and Holdings. The Equity Awards generally provide for potential future allocations of operating profits and losses of the Parent, which are immediately vested, and potential future allocations of nonoperating gains or losses of the Parent, which are subject to various vesting schedules and requirements.

Membership interest activity related to the Equity Awards for employees of the Company is as follows:

Parent	Number of options outstanding	Weighted-average fair value	Membership interests vested in nonoperating gain (loss) allocation
Outstanding January 1, 2002			
Units granted	<u>260,224</u>	\$ 2.64	
Outstanding December 31, 2002	<u>260,224</u>		
Holdings			
Outstanding January 1, 2002			
Units granted	<u>100,000</u>	\$ 6.02	
Outstanding December 31, 2002	<u>100,000</u>		

At December 31, 2002, a maximum of 40,754,212 membership interests were authorized to be utilized pursuant to the Arrangements. Of this amount, Arrangements governing 38,232,171 membership interests and options on membership interests were granted, and of these, 175,069 have been cash settled, 1,232,997 have been forfeited, and 3,755,038 were available for grant.

NOTE 4: RELATED PARTY TRANSACTIONS

Parent: The Parent participates in the management of the Company's affairs and provides, at allocated cost, administrative support for the Company's operations, including facilities and administrative activities. Accordingly, the expenses allocated to the Company and the resulting financial position of the Company are not necessarily the same as those which would have been achieved if the Company had operated on an independent basis.

The Parent and the Company have an agreement, whereby certain shared expenses are paid by the Parent. The portion attributable to the Company is then allocated for reimbursement to the Parent. At December 31, 2002, the payable to the Parent totalled \$34,341.

Other: As discussed in Note 1, the Company is the general partner in the investment funds in which it invests. At December 31, 2002, management fee receivables from the investment funds totalled \$21,668. Other related party receivables totalled \$308 at December 31, 2002.

APPENDIX F

FILED

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THE HONORABLE JUDITH A. LUM
SUPERIOR COURT CLERK

E-FILED

CASE NUMBER: 10-2-41637-4 SEA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON.
IN AND FOR KING COUNTY

QUELLOS GROUP LLC,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY;
INDIAN HARBOR INSURANCE
COMPANY; AND NUTMEG INSURANCE
COMPANY

Defendants.

No.: 10-2-41637-4 SEA

**DECLARATION OF NORM
BONTJE IN SUPPORT OF
QUELLOS GROUP LLC'S
OPPOSITION TO FEDERAL'S
MOTION FOR SUMMARY
JUDGMENT**

I, Norm Bontje, declare:

1. The information contained herein is based upon my personal knowledge or a reasonable inquiry gained from my review of relevant documents and information. If called as a witness, I could and would competently testify thereto.

2. In 1994, I began my employment at what is now known as Quellos Group LLC ("Quellos"). Since that time, I have served as the Chief Financial Officer ("CFO") for Quellos, including its successor and subsidiary entities.

3. Design of the POINT transaction occurred during the summer of 1999.

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4. Most of the work on the POINT transactions was performed by Quellos Custom Strategies, LLC f/k/a Quadra Custom Strategies ("Quellos Custom"), with additional services provided by Quadra Financial Group, L.P. ("Quadra Financial") and Quellos Financial Advisors, LLC ("Quellos Financial").

5. The POINT transaction was designed to allow clients to defer tax liabilities by offsetting their capital gains with losses that could be realized from a portfolio of assets that had declined in value, while providing an opportunity for profit if those assets appreciated.

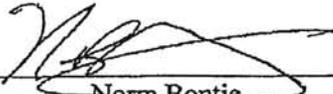
6. In 2000 and 2001, Quellos Custom, Quadra Financial, and Quellos Financial assisted five clients in performing a total of six POINT transactions, with the first of such transactions occurring on April 28, 2000.

7. In October 2007, Charles Wilk's employment at Quellos ended. As of March 26, 2009, Jeff Greenstein had resigned all of his positions at Quellos.

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To the best of my knowledge and belief, I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on this 22nd day of November, 2011, in Seattle, Washington.


Norm Bontje

Bontje Declaration in Support of Quellos' Opposition to
Federal's Motion for Summary Judgment

CERTIFICATE OF SERVICE

The undersigned certifies that on this 3rd day of August,

2012, I caused the foregoing to be served on:

Paul E. Fogarty
Mary Przekop
Dearmin Fogarty PLLC
600 Stewart Street, Ste. 1200
Seattle, WA 98101-1246

Via Messenger

Barry J. Fleishman
Helen K. Michael
Eric M. Gold
Kilpatrick Townsend, et al.
607 14th St., NW, Suite 900
Washington DC 20005

Via U.S. Mail

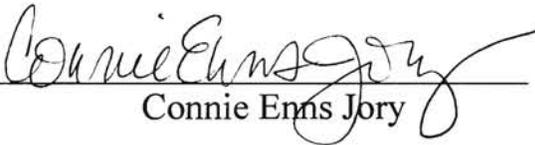
Matthew J. Sekits
Janis C. Puracal
Jerret E. Sale
Bullivant Houser Bailey PC
1700 Seventh Ave., Suite 1810
Seattle, WA 98101

Via Messenger

Leslie S. Ahari
Troutman Sanders LLP
16600 International Drive
Suite 600
McLean, VA 22102

Via U.S. Mail

SIGNED this 3rd day of August, 2012.



Connie Emms Jory