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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2024-001558

CarMax Auto Superstores, Inc., ... Appellant,

v.

South Carolina Department of Revenue, ... Respondent.

RECORD ON APPEAL
VOLUME VIII of IX

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TABLE OF CONTENTS

VOLUME I

ORDERS

Order on Joint Motion to Take Expert Depositions Beyond Discovery Deadline (March 1, 2023)	1
Remand Order (Original Final Order) (July 12, 2024)	3
Order Rescinding Remand Order (July 29, 2024)	73
Order Granting Motion for Reconsideration (August 15, 2024)	74
Amended Final Order (August 15, 2024)	84
Order Denying Motion for Reconsideration (September 20, 2024)	153
Order Granting Consent Motion to Recognize Inapplicability of Automatic Stay to ALC's Second Reconsideration Order (October 21, 2024)	155

PLEADINGS

CarMax Auto Superstores Inc. ("CarMax East") Request for Contested Case Hearing (June 8, 2021)	156
CarMax East's Pre-Hearing Statement (August 2, 2021)	168
South Carolina Department of Revenue's ("Department") Pre-Hearing Statement (July 29, 2021)	176

PRE-TRIAL MOTIONS AND SUBMISSIONS

Department's Expert Disclosure (April 25, 2022)	182
CarMax East's Motion in Limine to Exclude Expert Testimony Challenging the 2004 Valuation Study and for Expedited Hearing on Same (April 21, 2023)	206
CarMax East's Motion to Exclude Expert Witness (May 5, 2023)	339
Department's Response to CarMax East's Motion in Limine to Exclude Expert Testimony Challenging the 2004 Valuation Study and for Expedited Hearing on Same (May 8, 2023)	361
CarMax East's Deposition Designations (May 23, 2023)	363

Respondent’s Counter Designations and Objections to Petitioner’s Deposition Designations (May 26, 2023).....	378

Joint Exhibit List (May 26, 2023).....	381

POST-TRIAL MOTIONS AND SUBMISSIONS

Letter to ALC re: 30(b)(6) Deposition of the Department (w/o enclosed transcript ¹) (January 30, 2024)	386

CarMax East’s Proposed Final Order (January 31, 2024)	392

Department’s Proposed Final Order (January 31, 2024)	473

VOLUME II

Department’s Proposed Final Order (January 31, 2024) cont.	501

CarMax East’s Motion to Reconsider Remand Order (July 22, 2024).....	518

Department’s Response to CarMax East’s Motion to Reconsider Remand Order (August 2, 2024)	552

CarMax East’s Motion to Reconsider Amended Final Order and Reconsideration Order (August 26, 2024)	566

Department’s Response to CarMax East’s Second Motion to Reconsider (September 10, 2024)	591

Consent Motion to Recognize Inapplicability of Automatic Stay to ALC’s Second Reconsideration Order (October 2, 2024).....	600

TRANSCRIPTS

Hearing Transcript (May 22-26, 2023).....	606

Opening Statement of the Department by Mr. Antley	621

Opening Statement of CarMax East by Mr. von Lehe.....	629

Testimony of Orville Sharpe	
Direct Examination by Mr. Antley, Counsel for Department.....	644
Cross Examination by Mr. Streisel, Counsel for CarMax East	692

¹ This transcript is separately included in the Record on Appeal (“ROA” or “R.”) at R. 1917.

Re-Direct Examination by Mr. Antley, Counsel for Department.....	763
Testimony of David W. DeRamus, PhD	
Direct Examination by Mr. Antley, Counsel for Department.....	768
Voir Dire by Ms. Geer, Counsel for CarMax East	802
Direct Examination Continued by Mr. Antley, Counsel for Department	819

VOLUME III

Direct Examination by Mr. Antley, Counsel for Department cont.	1001
Cross Examination by Ms. Geer, Counsel for CarMax East	1162
Testimony of Eileen Yost	
Direct Examination by Ms. Geer, Counsel for CarMax East	1340
Cross Examination by Mr. Antley, Counsel for Department.....	1429
Testimony of Prof. Richard D. Pomp	
Direct Examination by Mr. von Lehe, Counsel for CarMax East	1441
Voir Dire by Mr. Antley, Counsel for Department.....	1454
Direct Examination Continued by Mr. von Lehe, Counsel for CarMax East.....	1471

VOLUME IV

Testimony of Prof. Richard D. Pomp cont.	
Direct Examination by Mr. von Lehe, Counsel for CarMax East cont.....	1501
Cross Examination by Mr. Antley, Counsel for Department.....	1555
Testimony of Brian Cody, PhD	
Direct Examination by Ms. Geer, Counsel for CarMax East	1558
Cross Examination by Mr. Antley, Counsel for Department.....	1722
Re-Direct Examination by Ms. Geer, Counsel for CarMax East.....	1730
Testimony of David W. DeRamus, PhD	
Rebuttal by Mr. Antley, Counsel for Department.....	1741
Cross Rebuttal by Ms. Geer, Counsel for CarMax East	1855
Further Rebuttal by Mr. Antley, Counsel for Department.....	1899
Transcript of Designated Portions of 30(b)(6) Deposition of Department (March 17, 2023)....	1917
Testimony of Orville Sharpe	
Direct Examination by Mr. Streisel, Counsel for CarMax East	1921

VOLUME V

Testimony of Orville Sharpe cont.	
Direct Examination by Mr. Streisel, Counsel for CarMax East cont.....	2001
Cross Examination by Mr. Antley, Counsel for Department.....	2112
Billing records of Dr. DeRamus provided in lieu of deposition testimony	2154

JOINT TRIAL EXHIBITS

Joint Exhibit 1: 2003 CarMax East Annual Report and 10-K	2165
Joint Exhibit 2: 2004 CarMax East Annual Report and 10-K	2192
Joint Exhibit 3: 2005 CarMax East Annual Report and 10-K	2211
Joint Exhibit 4: 2016 CarMax East Annual Report and 10-K	2231
Joint Exhibit 5: 2017 CarMax East Annual Report and 10-K	2353

VOLUME VI²

Joint Exhibit 6: 2018 CarMax East Annual Report and 10-K	2485
Joint Exhibit 7: E&Y Transfer Pricing Report FYE February 29, 2012	2613
Joint Exhibit 8: E&Y Transfer Pricing Report FYE February 28, 2015	2614

VOLUME VII³

Joint Exhibit 8: E&Y Transfer Pricing Report FYE February 28, 2015 cont.....	2985
Joint Exhibit 9: Form 1120 (amended) FY 2016 – Consolidated Federal Return	3089
Joint Exhibit 10: Form 1120 FY 2017 – Consolidated Federal Return	3220
Joint Exhibit 11: Form 1120 FY 2018 – Consolidated Federal Return	3351
Joint Exhibit 12: Form 1065 (amended) FY 2016 – CBS Federal Return.....	3530
Joint Exhibit 13: Form 1065 FY 2017 – CBS Federal Return.....	3565
Joint Exhibit 14: Form 1065 FY 2018 – CBS Federal Return.....	3595

² The last page for both Joint Exhibit 7 and 8 was filed under seal.

³ Joint Exhibits 9-21, 24-25, 38, 50, and portions of 26 and 30-31 were filed under seal.

Joint Exhibit 15: Form SC 1120 FY 2016 – CarMax East	3627
Joint Exhibit 16: Form SC 1120 (amended) FY 2016 – CarMax East	3637
Joint Exhibit 17: Form SC 1120 FY 2017 – CarMax East	3649
Joint Exhibit 18: Form SC 1120 FY 2018 – CarMax East	3659
Joint Exhibit 19: Form SC 1120 (amended) FY 2016 – CarMax West.....	3672
Joint Exhibit 20: Form SC 1120 FY 2017 – CarMax West.....	3684
Joint Exhibit 21: Form SC 1120 FY 2018 – CarMax West.....	3697
Joint Exhibit 22: Explanation of Audit Assessments and Adjustments.....	3709
Joint Exhibit 23: Proposed Assessment (September 4, 2019)	3710
Joint Exhibit 24: Corporate Working Papers of the Department.....	3713
Joint Exhibit 25: Apportionment Schedules	3735
Joint Exhibit 26: Report of Field Audit (September 4, 2019).....	3745
Joint Exhibit 27: Department Determination (May 14, 2021).....	3762
Joint Exhibit 28: SC Revenue Ruling 15-5.....	3775
Joint Exhibit 29: Audit Appointment Letter	3788
Joint Exhibit 30: IDR #1 Responses	3790
Joint Exhibit 31: IDR #2 Responses.....	3791
Joint Exhibit 32: CarMax East Protest (November 14, 2019)	3794
Joint Exhibit 33: CarMax Organizational Chart	3805
Joint Exhibit 34: Master Management Services Agreement.....	3806
Joint Exhibit 35: Amendments to Master Management Services Agreement	3833
Joint Exhibit 36: License Agreement.....	3846
Joint Exhibit 37: Management Fee Breakout FY 2016-18	3857

Joint Exhibit 38: 2016 Sample SC Invoices, Wire Requests, and Monthly Reconciliations	3860
Joint Exhibit 39: Legal Entity Org Chart with Associate Counts	3909
Joint Exhibit 40: CarMax East and West Initial Contributions to CBS (December 1, 2004)	3910
Joint Exhibit 41: E&Y Memo to CarMax re: Certain Federal and State Income Tax Consequences of Proposed Restructure	3914
Joint Exhibit 42: E&Y Draft Board of Directors Corporate Reorganization Presentation (April 6, 2004)	3957
Joint Exhibit 43: CarMax Memo re: Purposes of Restructuring (November 1, 2004)	3973
Joint Exhibit 44: CarMax BOD Meeting Minutes (April 6, 2004)	3977
Joint Exhibit 45: Business Purpose Notes	4021
Joint Exhibit 46: E&Y Memo to Corporate Restructuring File (February 13, 2004)	4022
Joint Exhibit 47: Audit Committee Notes and Board of Directors Corporate Reorganization Presentation (April 6, 2004)	4029
Joint Exhibit 48: Memo to E&Y File re: Restructuring (September 6, 2004)	4046
Joint Exhibit 49: List of Officers and Directors for CarMax, Inc. and various subsidiaries	4047
Joint Exhibit 50: CarMax East SC Sales by Stores	4075
Joint Exhibit 51: IRS Overpayment Letter to CarMax	4076
Joint Exhibit 52: E&Y Memo to CarMax re: Treatment of Advance Payments following Restructuring (May 31, 2005)	4078
Joint Exhibit 53: E&Y Memo to CarMax re: State Tax Challenges (November 17, 2004)	4100

VOLUME VIII⁴

Joint Exhibit 53: E&Y Memo to CarMax re: State Tax Challenges (November 17, 2004) cont.	4163
Joint Exhibit 54: E&Y Memo to CarMax re: Potential Restructuring (November 12, 2004)	4184
Joint Exhibit 55: E&Y Valuation of IP (“2004 Valuation Study”)	4227
Joint Exhibit 56: 2010 TRAC Commission Report	4273
Joint Exhibit 57: CV of Professor Richard Pomp	4322
Joint Exhibit 58: CV of Dr. Brian Cody	4357
Joint Exhibit 61: CV of Dr. David DeRamus	4363
Joint Exhibit 62: Memo (Car dealer set)	4373
Joint Exhibit 63: Memo (Back office set)	4382
Joint Exhibit 64: Memo (Real estate services set)	4488
Joint Exhibit 65: Memo (Retailer set)	4501
Joint Exhibit 66: FY16 –18 Legal P&L	4549
Joint Exhibit 67: CASS Associates	4549
Joint Exhibit 68: E&Y Supporting Documentation	4549
Joint Exhibit 69: FY16 –18 Legal Balance Sheets Summaries	4549
Joint Exhibit 70: Spreadsheet from Brian Cody's file	4549
Joint Exhibit 71: DeRamus Spreadsheet 1	4549
Joint Exhibit 72: DeRamus Spreadsheet 2	4549
Joint Exhibit 73: DeRamus Spreadsheet 3	4549
Joint Exhibit 74: DeRamus Spreadsheet 4	4549

⁴ Joint Exhibits 66, 68-71, 77, and 81-84 were filed under seal. In addition, Joint Exhibits 66-83 are electronic documents that have been provided to the Court via a thumb drive.

Joint Exhibit 75: DeRamus Spreadsheet 5	4549
Joint Exhibit 76: DeRamus Spreadsheet 6	4549
Joint Exhibit 77: DeRamus Spreadsheet 7	4549
Joint Exhibit 78: DeRamus Spreadsheet 8	4549
Joint Exhibit 79: DeRamus Spreadsheet 9	4549
Joint Exhibit 80: DeRamus Spreadsheet 10.....	4549
Joint Exhibit 81: FY 16 CAF v. Non-CAF Legal P&L	4549
Joint Exhibit 82: FY 17 CAF v. Non-CAF Legal P&L	4549
Joint Exhibit 83: FY 18 CAF v. Non-CAF Legal P&L	4549
Joint Exhibit 84: Form SC 1120 FY2016 – CarMax Auto Superstores West Coast, Inc.	4550

VOLUME IX⁵

Joint Exhibit 85: 30(b)(6) Deposition of CarMax Auto Superstores, Inc. (with exhibits) (September 22, 2022).....	4560
Testimony of Eileen Yost as 30(b)(6) Witness	
Direct Examination by Mr. Antley, Counsel for Department	4563
Cross Examination by Ms. Geer, Counsel for CarMax East	4741
Exhibit 1: Notice of 30(b)(6) Deposition ⁶	4743
Exhibit 2: Proposed Assessment (September 4, 2019)	4746
Exhibit 3: CarMax Protest	4747
Exhibit 4: CarMax Organizational Chart.....	4748
Exhibit 5: CarMax Form 10-K FY ending February 28, 2018	4749
Exhibit 6: Master Management Services Agreement	4750
Exhibit 7: License Agreement	4751
Exhibit 8: Employment Services Agreement CBS - CASS.....	4752
Exhibit 9: E&Y Transfer Pricing Analysis FY ending February 28, 2015.....	4761

⁵ Respondent’s Demonstrative Exhibits 1, 2, and 3 were filed under seal. Additionally, Respondent’s Demonstrative Exhibit 1 is an electronic document submitted to the Court via a thumb drive.

⁶ The bulk of the remaining exhibits in this deposition are duplicates of items already included in the Record on Appeal, so the placeholder for each will refer to the page where each exhibit was previously included.

Exhibit 10: E&Y memo to CarMax re: Treatment of Advance payments following restructuring (May 31, 2005)	4762
Exhibit 11: CarMax East’s Pre-Hearing Statement	4763
Exhibit 15: Department Determination.....	4764
Exhibit 16: CarMax BOD meeting minutes (April 6, 2004)	4765
Exhibit 17: Memo to Corporate Restructuring File (February 13, 2004)	4766
Exhibit 18: Business Purpose Notes	4767
Exhibit 19: Audit Committee Notes and Board of Directors Corporate Reorganization Presentation (April 6, 2004)	4768
Exhibit 20: CarMax memo re: purposes of restructuring (November 1, 2004).....	4769
Exhibit 21: FY 2017 Officers and Directors as of October 1, 2016	4770

OTHER MATERIALS OR DOCUMENTS

Letter from Court of Appeals Consolidating two Notices of Appeal (October 23, 2024).....	4771

DEMONSTRATIVE EXHIBITS

Respondent’s Demonstrative Exhibit 1	4773
Respondent’s Demonstrative Exhibit 2	4774
Respondent’s Demonstrative Exhibit 3	4871

Tennessee and the presence of JCPNB's credit cards in Tennessee. However, the Tennessee Court of Appeals rejected the concept of nexus based on "economic presence" and held that the physical presence requirement that was reaffirmed by the U.S. Supreme Court in *Quill v. North Dakota*.³³

The Tennessee Court of Appeals limited the issue to whether the taxes imposed by Tennessee violated the Commerce Clause. As a preliminary matter, the court noted that JCPNB had purposely availed itself of the substantial privilege of doing business in the state. Accordingly, assertion of nexus by the Commissioner was proper under a Due Process argument. However, the court continued that an analysis of nexus must also include consideration of limits imposed by the Commerce Clause. Here, the Appeals Court looked to the first prong of the four part test as provided in *Complete Auto Transit v. Brady*, 430 U.S. 274, which provides for imposition of tax only if the tax is applied to an activity having substantial nexus with the taxing state.

In applying this test, the commissioner argued that the physical presence was not required, but only a substantial nexus. The Tennessee Court of Appeals noted however that the physical presence requirement in *Quill* and *National Bellas Hess* do not depart from the decision in *Complete Auto Transit* and were thus applicable. The court noted that the only consideration was whether the circumstances of JCPNB could be distinguished from these decisions. The Commissioner argued that the state's excise tax should be treated differently from these cases because these decisions focused on use tax, however, the Tennessee Court of appeals however rejected this argument. Accordingly, the Court of appeals maintained that physical presence was the standard necessary to satisfy the interstate Commerce argument within the state and thus subject the taxpayer to tax.

Having established the proper law to be applied, the Appeals Court next turned to each of the Commissioner's factual arguments. The Commissioner first argued that the presence of credit cards within the state constituted ownership of tangible personal property within the state by JCPNB. Thus, under the Commissioner's line of reasoning, substantial nexus was established by the physical presence of the JCPNB credit cards within the state. The court disagreed, noting that the cards themselves are worthless; the real value rested in the customer's accounts, which were present in Delaware, not Tennessee.

The Commissioner next argued that JCPNB was physically present by virtue of the fact that JC Penney, the parent company, operated retail stores in the state. Again the court disagreed, noting that the retail stores conducted no activities that assisted JCPNB in maintaining its credit card business in Tennessee.

Finally, the Commissioner argued that substantial nexus existed based on the activities of affiliates and third parties working on behalf of JCPNB. Both the commissioner and the Chancery court relied on the cases of *Tyler Pipe Indus. v. Washington State Dep't of Revenue*, 483 U.S. 232, and *Scripto v. Carson*, 362 U.S. 207, which held that the

³³ 504 U.S. 298 (1992).

activities of affiliates and third parties working on behalf of an organization can be used to impute nexus to the organization. The Appeals Court disagreed, noting that while *Tyler* and *Scripto* involved agents and affiliates present in the taxing state, JCPNB had no such affiliate activities occurring within the state of Tennessee.

In conclusion The Court held that JCPNB's credit card business activities in Tennessee were not sufficient to establish nexus for purposes of the state's franchise and excise tax on corporate net income. In making their decision, the Tennessee Court of Appeals Stated "the commissioner has pointed to no case in which the Supreme Court of the United States has upheld a state tax where the out-of-state taxpayer had absolutely no physical presence in the State. The Commerce Clause requires a greater relationship than does the Due Process Clause". On October 10th, 2000, the US Supreme Court denied certiorari in the JC Penney Case. Therefore, the prior decision of the Tennessee Court of Appeals stands.

In *America Online Inc. v. Johnson*, No. 97-3786-III (Tenn. Chancery Ct., Mar. 13, 2001), the Chancery Court upheld the physical presence standard only to be overturned by the Court of Appeals in *America Online Inc. v. Johnson*, 2002 Tenn. App. LEXIS 555 (July 30, 2002). America Online was based in Virginia where all business was conducted. Because its Internet servers are located in Virginia, it did not bill customers at their home addresses. Furthermore, the company had no employees, offices or property in Tennessee. America online did however work with a substantial number of third party network service providers within Tennessee including one of its own subsidiaries. These companies operated to connect customers, by means of their equipment and data networks within Tennessee, to America Online's servers in Virginia. Additionally, AOL had non-employee, unpaid, remote staff in the state that moderated AOL content.

The Chancery Court held that, based on the decision in *J.C. Penney National Bank v. Johnson*, America Online Inc. was not subject to sales and use, franchise and excise, and business taxes because the company, which provides Internet services to customers in Tennessee, did not have a physical presence in the state. The court of appeals however backed off the *J. C. Penney National Bank* decision, distancing itself from the bright line physical presence conclusion reached in this case. The court clarified its decision stating "What we actually said in J.C. Penney was, 'It is not our purpose to decide whether 'physical presence' is required under the Commerce Clause. However the commissioner has pointed to no case in which the Supreme Court of the United States has upheld a state tax where the out-of-state taxpayer had absolutely no physical presence in the State. Perhaps it would have been more accurate to say that the Supreme Court had rejected state taxes on interstate commerce where no activities had been carried on in the taxing state on the taxpayer's behalf"

The Tennessee court of appeals concluded that although it was inconclusive that America Online itself had a physical presence within the state, the company had a substantial number of businesses assisting in the provision of their services. The Court cited *Tyler Pipe Indus. v. Washington State Dep't of Revenue*, in stating a substantial nexus exists where activities "being conducted in the taxing state that substantially contribute to the

taxpayer's ability to maintain operations in the taxing state." In *JC Penney*, the Court ruled that these activities of the company's affiliates did not assist in maintaining their business in Tennessee. In contrast The Tennessee Court of Appeals ruled in *America Online* that the activities conducted on AOL's behalf were not insignificant. Additionally, America Online's connection to the state exceeded the Internet, as well as the mail and common carrier activities addressed in *Quill*. As a result, the Court of Appeals determined that the activities conducted on the company's behalf were sufficient to create nexus within the state.

Drawing a contrast between these two cases, it appears that the distinction that the state has made is whether the out of state company assists in maintaining the company's marketplace in Tennessee. As CBS will provide services to CASI, but will not assist in the company's solicitation and customer service, the state will, more likely than not, consider the companies' activities to be separate and distinct. Accordingly, the state, more likely than not, will not be successful in an attempt to assert nexus on the out of state partnership.

Sham Transaction

Tennessee has enacted statutory provisions, effective for tax years ending on or after June 30, 1999, allowing the Commissioner to disregard any entity created or transaction having no business purpose or entered into for the purpose of evading tax. Tenn. Code Ann. § 67-4-2014(c)(4) states,

The Commissioner may disregard any entity created or transaction made which has no business purpose or is created or made with the primary purpose of evading either the federal income tax or the excise tax.

As this legislation has been recently enacted, no cases or rulings have been observed where the state has asserted this authority. Tennessee courts have, however, addressed the application of the sham transaction doctrine prior to the enactment of this legislation.

The Tennessee Supreme Court analyzed the issue of sham transaction in the context of the sales and use tax in *Standard Advertising Agency, Inc. v. Jackson*³⁴. Standard Advertising was formed as a wholly owned subsidiary of Service Merchandise Company, Inc. in order to serve as an advertising agency. Standard Advertising had no employees; however, it maintained its own bank account and was a validly formed corporation. Standard Advertising met the criteria to be considered an advertising agency; however, the company's primary source of revenue was from its transactions with Service Merchandise.

The state assessed sales tax upon Standard Advertising based upon the fact that the company created video tapes and other recordings to be used by Service Merchandise. As a result, intercompany charges were considered to be for the sale of tangible personal

³⁴ *Standard Advertising Agency, Inc. v. Jackson*, 735 S.W.2d 441

property and were thus subject to Tennessee sales tax. Standard Advertising argued that the company was only acting as an agent and transactions were effectively sales from the vendors directly to Service Merchandise. The Court noted, however, that Standard Advertising was a legitimate and profitable business and that its transactions took the form of the sale of tangible personal property. In making its decision, the Tennessee Supreme Court quoted the U.S. Supreme Court's decision in *Schenley Distillers Corp. v. United States* stating,

We think that the following statement by the United States Supreme Court is appropriate: 'While corporate entities may be disregarded where they are made the implement for avoiding a clear legislative purpose, they will not be disregarded where those in control have deliberately adopted the corporate form in order to secure its advantages and where no violence to the legislative purpose is done by treating the corporate entity as a separate legal person.'³⁵

As a result, the Court held that as the corporation had a valid business purpose and economic substance, the existence of the corporation could not be disregarded. As a consequence of this corporate existence, the company was subject to the Tennessee sales and use tax.

Similarly, in *Cook Export Corp. v. King*³⁶, The Tennessee Supreme Court held that a DISC was an entity that maintained economic substance within Tennessee and was thus subject to the Tennessee excise tax. The court noted that the DISC executed contracts, observed corporate formalities such as directors meetings and the declaration of dividends, kept books and records, and held bank accounts within the state. In making this decision the Tennessee Supreme Court stated,

All corporations are legal fictions, and all are created for business purposes of one type or another. Most subsidiaries are controlled, in large degree, by their parents and are created for business purposes, frequently including tax considerations, of the parent.

As a result, the court held that the DISC was an entity of economic substance and should be subjected to the Tennessee excise tax. The court quoted the same authority as noted above from *Schenley Distillers Corp. v. United States* concluding that an entity may not be disregarded unless created for the purpose of avoiding a clear legislative purpose.

As a result, notwithstanding the recent legislation, Tennessee has adopted a strict construction of the corporate form. These decisions indicate that the state should only be successful in disregarding the corporate form when the company's sole purpose is the avoidance of tax. As CBS was not been formed solely for tax avoidance purposes, the company should not be considered to lack economic substance or business purpose.

³⁵ *Schenley Distillers Corp. v. United States*, 326 U.S., 432, 437, 66 S.Ct. 247, 249, 90 L.Ed. 181, 184 (1946), 221 Tenn. at 607-608, 429 S.W.2d at 817-818.

³⁶ *Cook Export Corp. v. King*, 652 S.W.2d 896

Additionally, as it will have substantial business purpose as well as intercompany transactions, the state should not be successful in asserting a challenge under the sham transaction doctrine.

Texas

482 Type Powers

There are no specific statutory provisions that authorize the Comptroller of Public Accounts (“Comptroller”) to reallocate income, deductions or expenses between or among related taxpayers. However, Texas Tax Code §111.002 gives the Comptroller broad authority to make and enforce rules to administer and enforce the Texas Tax Code.

Pursuant to his power under §111.002, the Comptroller has adopted Rules 3.555(e) and 3.557(d)(9). 34 Tex. Admin. Code §§3.555(e) and 3.557(d)(9). These Rules essentially adopt IRC §482 as the standard for reallocation powers in Texas. Consequently, the standard in Texas is arm’s length pricing. Rule 3.555(e) states:

If the comptroller determines that transactions between members of a controlled group of corporations are not entered into on an arm’s length basis, the comptroller may distribute or allocate income deductions as necessary to prevent franchise tax avoidance provided such adjustments are authorized by applying the principles of IRC 482 and regulations thereunder.

Based upon this authority, the Comptroller may attempt to challenge CarMax’s structure based upon the 482-type powers to redistribute income among controlled corporations. The comptroller’s powers however are limited, both by state regulations and federal regulations interpreting this authority, to circumstances the where transactions are not at arms length. As CarMax has conducted a detailed transfer pricing study to determine appropriate arms length pricing for intercompany transactions, and will be conducting these transactions at arm’s length, the state should not be successful in such an attempt.

UDITPA § 18 Authority

Texas has not adopted UDITPA and does not have any provisions similar to UDITPA § 18 allowing the comptroller to adjust apportionment to fairly reflect income. Although the state is not empowered with the authority to adjust apportionment, the power to adjust income between entities is reiterated in 34 TAC § 3.557, the regulation discussing apportionment. Although the state does not have the authority to adjust apportionment, the state has identified an exhaustive list of receipts and provides for the sourcing of these receipts. Among the transactions for which CBS will be charging, the state has identified the proper sourcing for sales of services as well as charges for intangibles. Receipts from the sale of services are apportioned to the location where the services are performed. If the services are performed both within and without the state, then receipts are Texas receipts based upon the fair value of services performed in Texas. Effective for tax years

beginning on or after January 1, 1998, receipts from the use of Intangibles are included as Texas receipts to the extent the intangibles are used in Texas.

As Texas does not have the UDITPA § 18-type authority, the state should not be successful in an attempt to adjust apportionment of CASI to fairly reflect income.

Addback Legislation

Texas recently proposed draft legislation to require the addback of interest and intangibles expenses and management fees that do not meet certain safe harbor provisions. The state legislature however did not pass the legislation prior to the end of the 2004 session.³⁷ As a result, the state does not have the authority to require the addback of expenses except under its 482-type powers. As a result, the state should not be successful in a requiring addback of arms length expenses for intangibles or service fees.

Economic Nexus Theory

Texas Tax code §171.001 imposes the franchise tax upon each corporation or LLC that does business in the state or that is chartered in the state. Texas regulations provide for an extensive listing of activities considered to be doing business in Texas for franchise tax purposes. Texas regulation 34 TAC 3.546, addressing nexus for the capital stock portion of the franchise tax, does not enumerate the licensing of intangibles as an activity that establishes nexus. The regulation does however provide that entering into a contract, as a franchisor with a business located in Texas is an activity that creates nexus. A franchise agreement will create nexus in circumstances where the franchisee, “ (A) is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor; and (B) the operation of a franchisee's business pursuant to such plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate”. Additionally, Texas regulation 34 TAC 3.554, addressing nexus for the earned surplus portion of the franchise tax, indicates that the licensing of intangibles is an activity that exceeds the protection of P.L. 86-272. Furthermore this regulation states, “A corporation is doing business in this state, for the earned surplus component of the franchise tax, when it has sufficient contact with this state to be taxed without violating the United States Constitution.” As a result it appears to be policy of the Comptroller's office to assert nexus upon companies to the fullest extent allowed under the Constitution.

The Texas Court of Appeals however maintained the physical presence standard of nexus in *Rylander v. Bandag Licensing Corporation*, No. 03-99-00427-CV (May 11, 2000). Bandag Licensing Corporation (BLC) owned three patents that it licensed to its parent, Bandag, Inc. within Texas. BLC did not have any physical presence within Texas and its

³⁷ 2004 STT 153-2

contacts with the state were limited to a certificate of authority to conduct business in the state and royalty payments for intangible property paid by Bandag to BLC in Iowa. The Comptroller argued that the company's possession of a certificate of authority to conduct business in Texas alone was sufficient to impose tax upon BLC and did not make the case based upon whether the company's intangibles had acquired situs with the state.

In analyzing whether BLC had a nexus with the state, the Court of appeals looked to the four-pronged test under *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). Specifically, the court addressed whether the tax imposed on BLC was "applied to an activity with a substantial nexus." The court bifurcated this issue and separately addressed whether BLC was carrying on "an activity" and whether the company had a "substantial nexus" with the state. The Court of Appeals determined that the passive nature of holding the certificate of authority did not constitute an activity. In determining whether a substantial nexus exists, the court looked to the *Quill* physical presence standard to determine whether the company had a substantial nexus. The Comptroller argued that the physical presence standard outlined in *Quill* should be limited to the sales and use taxes, and the economic benefits of the privilege to do business in the state satisfied the requirement of substantial nexus. The court however disagreed arguing that, under the commerce clause, no economic consequence occurred simply from the privilege of doing business. In making their decision, The Court of Appeals stated,

"While the decisions in Quill Corp. and Bellas Hess involved sales and use taxes, we see no principled distinction when the basic issue remains whether the state can tax the corporation at all under the Commerce Clause. As construed in Quill Corp. and Bellas Hess, when the corporation conducts its activity solely through interstate commerce and lacks any physical presence in the state, no sufficient nexus exists to permit the state to assess tax."

As a result, the Court of appeals determined that a certificate of authority was not sufficient to create a substantial nexus and upheld physical presence as the standard necessary to satisfy the commerce clause nexus requirements. The court however did not address whether the receipts from intangible property created nexus. The comptroller made the argument that the possession of the certificate of authority alone was sufficient to establish nexus and did not raise the issue of whether the royalty payments were sufficient to create nexus until the case had reached the Court of Appeals. The court ruled that because the Comptroller failed to present this argument at the trial court level, the Comptroller had waived its right to address the topic on appeal.

As the issue was not addressed as to whether the royalty payments satisfy the substantial nexus requirement, the issue is still open for challenge by the comptroller. The Court of Appeals decision to uphold the physical presence standard begs the question of whether the use of intangible property in the state will acquire a situs in the state similar to the decision in *Geoffrey*. At the present time however, the *Bandag* case is controlling and the physical presence remains the nexus standard for the state of Texas. As a result, it is more likely than not that the charges for intangibles in the CBS service fee will not create

nexus with the state of Texas.

Forced Combination

Tex. Tax Code §§ 171.109(a) & 171.110(h) each state, “a corporation shall report its surplus based solely on its own financial condition. Consolidated reporting of surplus is prohibited.” Further, 34 TAC § 3.555(e) specifically rejects the notion of consolidated tax filings and requires computation of income on an entity by entity basis. The state of Texas has stressed the prohibition on combined and consolidated filing both in statute and in regulation. Additionally, no cases or rulings were found where the state has required a combined report. Consequently, the state should not be successful in an attempt to require a combined or consolidated report.

Sham Transaction

No circumstances in the context of Texas Franchise tax have been found where Texas has asserted a challenge based on the sham transaction doctrine. The state has however addressed the issue in a Comptroller decision.³⁸ In this decision, a parent company attempted to disregard the existence of its subsidiary under the premise that the company was no more than a division. The comptroller disagreed and determined that the subsidiary should be subjected to tax. In making this decision the Comptroller stated,

The parent corporation and its wholly owned subsidiary must be treated as separate persons unless there be some public policy reason to ignore their separateness. Arguments have previously been made, by others, particularly in tax cases, that one or more corporations were shams and should therefore be ignored. Such arguments are generally met with the observation that the corporations chose to operate as separate legal entities and that they consequently must accept any tax disadvantages of doing so; corporations, like other persons must accept the bitter with the sweet. Additionally, it should be said that the State 'may not be required to acquiesce in [the election to do business as a corporation,] and where the corporate form is a sham the Government 'may sustain or disregard the effect of the fiction as best serves the purposes of the tax statute.' Higgins v. Smith, 307 U.S. 473, 477 ... (1940).' Delta Pipe Fabricators, Inc. v. Bullock, 638 S.W.2d 652, 653 (Tex. App.-CITY C 1982, writ ref'd n.r.e.). That has not been done in this case; the Comptroller has not as yet attempted to sustain or disregard the fiction as best serves the state's tax purposes.

Although Texas has not actively applied the sham transaction doctrine, this ruling appears to indicate that the power is available, albeit on a limited basis. The ruling however indicates that the state will not disregard an entity unless the entity is a fiction intended to avoid tax.

³⁸ Decision of the Comptroller of Public Accounts, Hearing No. 18,514

Based upon the state's history of not asserting challenges based on the sham transaction doctrine, the state should not challenge CarMax's structure on this basis. Additionally, as CBS will have substantial economic substance in its operations, and will not be considered merely a fiction, the state should not be successful in asserting a challenge based upon the sham transaction doctrine.

Virginia

482 Type Powers

Virginia Code §58.1-446 grants the department of Taxation powers similar to those provided under IRC § 482. The commissioner is granted the authority to challenge related party transactions, by to through the redetermination or reallocation of income between related corporations. The Commissioner's power in this statute is limited by the doctrine of fair profits/fair value. Virginia Code §58.1-446 states:

When any corporation liable to taxation under this chapter by agreement or otherwise conducts the business of such corporation in such manner as either directly or indirectly to benefit the members or stockholders of the corporation, or any of them, or any person or persons directly or indirectly interested in such business, by either buying or selling its products or the goods or commodities in which it deals at more or less than a fair price which might be obtained therefore, or when such a corporation sells its products, goods or commodities to another corporation or acquires and disposes of the products, goods or commodities of another corporation in such manner as to create a loss or improper taxable income, and such other corporation by stock ownership, agreement or otherwise controls or is controlled by the corporation liable to taxation under this chapter, the Department may require such facts as it deems necessary for the proper computation provided by this chapter and may for the purpose determine the amount which shall be deemed to be the Virginia taxable income of the business of such corporation for the taxable year. In determining such income, the Department shall have regard to the fair profits which, but for any agreement, arrangement or understanding, might be, or could have been, obtained from dealing in such products, goods or commodities.

The Virginia Administrative Code ("VAC") provides additional guidance on "intragroup" transactions. 23 VAC 10-120-360 defines "arm's-length," "group," and "intragroup transaction." 23 VAC 10-120-361 provides that a group's Virginia taxable income is distorted if all of the following elements exist:

1. There is an arrangement:

2. Between one or more members of a group subject to Virginia income tax, engaging in one or more intragroup transactions;
3. Where the consideration for an intragroup transaction does not accurately reflect the income from business done in Virginia of the participating group members; and
4. The intragroup transaction has the purpose or effect of distorting income from business done in Virginia.

The regulation also provides extensive guidance on items that constitute safe harbor provisions as well as items that will cause a reputable presumption that income is distorted. For instance the state has explained that where intragroup services are rendered without adequate consideration, the transactions create a rebuttable presumption that income is distorted. Similarly the state explains, “If a patent or similar asset is transferred between group members, with the transferor's compensation being future royalty payments, those payments must be at an arm's length price.”

As a result, the state must challenge the income of the entities on the basis that transactions are not conducted at arms length. As CarMax has conducted a transfer pricing study to determine the appropriate fees to be charged and to comply with IRC § 482, the state should not be successful in an attempt to challenge the validity of the intercompany fees.

UDITPA § 18 Authority

Additionally, Virginia possesses the UDITPA §18-type powers, which states the use of the three-factor apportionment formula is mandatory unless, in the discretion of the Commissioner, the formula produces an unconstitutional result, is inequitable, or results in double taxation. 23 VAC §10-120-280; *Department of Taxation v. Lucky Stores*, 225 S.E.2d 870 (Va. 1976). The policy of the Department is that the statutory method is the most equitable method of determining the portion of a multistate corporation's income that is attributable to business activity in Virginia and that permission to use alternative apportionment will only be granted in extraordinary circumstances.

As it is the policy of the department of taxation to use formulary apportionment to its fullest extent, the state should not propose a challenge under this authority.

Addback Legislation

Virginia recently passed legislation requiring the addback of intercompany interest and intangibles expenses by related parties. The provisions of the legislation allow that the companies need not add back these expenses in the event that: (1) the corresponding Income from the transaction is subject to another state's income tax or a tax based on capital, (2) the related party derives at least one third of its revenues from the licensing of intangibles to third parties and the rates at which intangible property is licensed to related

parties are comparable to those of third parties, or (3) that the taxpayer can establish to the tax commissioner both that the related member conducted a substantially the same transaction with someone who is not a related party and that the principal purpose of the transaction was not the avoidance of tax.

If the corporation does not meet any of these exceptions and is required to add back expenses under this section, the taxpayer may petition the commissioner to consider additional evidence, however, only after a return is filed and all tax is paid. If the taxpayer can demonstrate to the tax commissioner by clear and convincing evidence that the transaction has a valid business purpose, the commissioner shall permit the company to file an amended return and to receive a refund for the additional tax due to the addback requirement.

Additionally the legislation provides an item that precludes courts within the commonwealth from hearing any cases contesting the action of the tax commissioner under this addback legislation. Presumably, if an appeal is denied by the commissioner, the taxpayer has no recourse under the statute except to appeal at the federal level.

As CBS will have a physical presence within the state of Virginia and Georgia, the partnership's distributive share of partnership income and apportionment from these states will flow through to CASI and West. As this income will be taxable by Virginia, the state should not require CASI and West to add back deductions for intangibles expense.

Economic Nexus Theory

The Virginia Department of Taxation personnel are not currently following the *Geoffrey* decision. The Virginia statute however indicates that in cases where transactions between related parties distort tax the Virginia tax liability, out of state parties to the transactions may be deemed to be doing business in the state through agency. Code of Virginia §58.1-446 states:

“In case it appears to the Department that any arrangements exist in such a manner as improperly to reflect the business done or the Virginia taxable income earned from business done in this Commonwealth, the Department may, in such manner as it may determine, equitably adjust the tax. In all cases mentioned in this paragraph, such other corporations not otherwise liable to taxation under this chapter shall, for the purposes of this chapter, be deemed to be doing business in Virginia through the agency of the corporation liable to taxation under this chapter.”

Recently, Virginia has been attacking *Geoffrey*-type structures that lack substantial economic substance and where intercompany charges were not made at arm's length. In such situations, Virginia is requiring that the *Geoffrey*-type company be consolidated with the operating company for Virginia income tax purposes. In CarMax's

circumstance, CBS will have physical presence in the state of Virginia under *Quill*; the issue of economic nexus is moot.

Forced Combination

Virginia Code §58.1-446 grants the Commissioner limited authority to require a determination of income attributable to Virginia based on the combined income of the related group. Based upon the numerous decisions noted below, the combination of income between related taxpayers appears to be the department's preferred method of challenging contested structures and transactions. The combined income of the related group is determined on a consolidated basis, where all intercorporate transactions are eliminated. The Commissioner's power to force consolidation is limited to cases where Virginia taxable income is improperly reflected.

Virginia Code §58.1-446 provides that:

Any corporation liable to taxation under this chapter and either owned or controlled by or owning or controlling, either directly or indirectly, another corporation may be required by the Department to make a report consolidated with such other corporation showing the combined gross and net income and such other information as the Department may require, but excluding intercorporate stockholdings and the intercorporate accounts. In case it appears to the Department that any arrangements exist in such a manner as improperly to reflect the business done or the Virginia taxable income earned from business done in this Commonwealth, the Department may, in such manner as it may determine, equitably adjust the tax.

There have been several judicial and administrative interpretations of the Commissioner's authority to force consolidations under Virginia Code §58.1-446. In the leading case, *Commonwealth v. General Electric Company*, 372 S.E.2d 599 (Va. 1988), the Virginia Supreme Court upheld Commissioner's ability to force consolidation of parent and subsidiary corporations. In this ruling, the courts generally rejected the unitary business principle as it is at odds with state statutes, however noted that the statute allowing combination was an exception and was nevertheless appropriate. The taxpayer also argued that the statute's provision allowing the department to adjust income whenever transactions resulted in "improper" taxable income was unconstitutionally vague. The taxpayer argued that the commissioner was enabled to consolidate income "whenever doing so produces the desirable and equitable ends of greater tax revenues." The supreme court of Virginia ruled that the statute indicated definite standards and thus rejected the notion that the statute was unconstitutionally vague. The court thus upheld the statutory authority enabling the Commissioner to require a consolidation of income.

In one of the more recent rulings on this topic, the state upheld, In Ruling of Commissioner, P.D. 03-56, August 8, 2003, the combination of a parent and two wholly owned subsidiaries for the interest charges between these parent company and the wholly

owned factoring companies. Intercompany charges for the factoring arrangements were paid for through the cancellation of intercompany debt. The commissioner noted that this arrangement constituted bookkeeping entries and there was no evidence that payments for these transactions ever occurred. Additionally, the commissioner noted that many of the functions performed with regard to the factored accounts were performed by the parent prior to the transfer to the accounts. Although the parent company charged an administrative fee for these services, these charges were not sufficient to cover these administrative costs. As a result, the commissioner upheld the department's decision to consolidate the accounts since the department was unable to establish a true arms length nature of these transactions.

In Ruling of Commissioner, P.D. 94-179, June 8, 1994, the Department of Taxation's adjustments to transactions between a parent corporation and its wholly owned subsidiary were upheld. During 1989, the parent corporation transferred its trademark, trade name, and patent rights to its subsidiary and contracted to pay a royalty for the use of the intangibles. The royalty payments were deducted by the parent for Virginia tax purposes. The Department of Taxation asserted that the arrangement lacked substantial economic substance and consolidated both corporations' income for Virginia tax purposes under Va. Code Ann. §58.1-446.

The Commissioner sustained the adjustments under §58.1-446 because the operations of the subsidiary lacked economic substance. First, the subsidiary had seven part-time employees and an annual payroll of approximately \$148. In addition, the subsidiary had few assets, earned revenues only through intercompany transactions, and immediately returned royalty income to affiliated corporations as intercompany loans. Further, the ruling stated that it would be difficult for the parent corporation to structure an arm's-length sale of the intangibles to a third party because the trademarks and trade names were so closely related to the parent's goodwill or going concern value. The Commissioner noted that the case at issue was substantially similar to *Commonwealth v. General Electric Co.*, 236 Va. 54 (1986).

In Commissioner Ruling P.D. 95-229, the Commissioner ruled that the required consolidation by the Department of Taxes ("Department") was proper because the Department may equitably adjust a corporation's tax where an arrangement between commonly owned companies operates in a manner to improperly, inaccurately or incorrectly reflect the business done or the Virginia taxable income earned from business done in Virginia. The Commissioner added that the royalty and interest payments resulted in the transfer of income from the parent to its two subsidiaries which otherwise would have been included in the parent's taxable income apportioned and taxed in Virginia. Additionally, the parent corporation did not provide clear evidence that the creation and transfer of assets to its subsidiaries served any significant purpose other than tax planning. Comm. Rul. P.D. 95-229.

In Commissioner Ruling P.D. 96-366, the consolidation of wholly owned subsidiaries with their parent corporation, an out-of-state manufacturer, was disallowed because the subsidiaries had substantial economic substance, Licensing Agreements were at arms

length and the taxpayer's relationships with its subsidiaries did not result in a distortion of its Virginia taxable income. In Commissioner Ruling P.D. 96-322, royalty paid by a taxpayer to its wholly owned subsidiary were improperly disallowed where the subsidiary had sufficient business activities, including maintenance of bank accounts, negotiation of licensing agreements in its own name with unrelated third parties and registration of its trademarks in foreign countries, all of which were directly related to the achievement of the subsidiary's stated business purpose, to manage and enhance the value of its trademarks.

As the shared service fee charged by CBS will be in the normal course of business, the fee should not be of a nature as to "improperly reflect" income with respect to the state. Consequently, the state should not be successful in an attempt to force combination of the entities.

Sham Transaction

As noted above, the department in several circumstances has required combined reporting under circumstances where transactions between related parties were deemed not to have economic substance. In Ruling of Commissioner, P.D. 94-179, June 8, 1994, the Department of Taxation's adjustments to transactions between a parent corporation and its wholly owned subsidiary were upheld. During 1989, the parent corporation transferred its trademark, trade name, and patent rights to its subsidiary and contracted to pay a royalty for the use of the intangibles. The royalty payments were deducted by the parent for Virginia tax purposes. The Department of Taxation asserted that the arrangement lacked substantial economic substance and consolidated both corporations' income for Virginia tax purposes under Va. Code Ann. §58.1-446.

The Commissioner sustained the adjustments under §58.1-446 because the operations of the subsidiary lacked economic substance. First, the subsidiary had seven part-time employees and an annual payroll of approximately \$148. In addition, the subsidiary had few assets, earned revenues only through intercompany transactions, and immediately returned royalty income to affiliated corporations as intercompany loans. Further, the ruling stated that it would be difficult for the parent corporation to structure an arm's-length sale of the intangibles to a third party because the trademarks and trade names were so closely related to the parent's goodwill or going concern value. The Commissioner noted that the case at issue was substantially similar to *Commonwealth v. General Electric Co.*, 236 Va. 54 (1986).

Additionally in P.D. 94-179 the commissioner contrasted the activities of this taxpayer to another taxpayer licensing intangibles in the context of research and development. In Ruling of Commissioner, P.D. 94-66, March 16, 1994, the commissioner analyzes a taxpayer that paid royalties to an out of state subsidiary engaged in the acquisition and licensing of new technology. The subsidiary licensed this technology to various unrelated parties and maintained several employees and offices outside of the state. The subsidiary additionally was able to establish that the charges for royalties were at arms

length. As a result, the commissioner was unable to conclude that these intercompany transactions were conducted to improperly reflect business done in Virginia.

As noted above In Ruling of Commissioner, P.D. 03-56, August 8, 2003, the department upheld the combination of a parent and two wholly owned subsidiaries because these transaction lacked economic substance. In asserting the sham transaction doctrine in this case, the commissioner noted the former Virginia regulation 630-3-446 in determining under what circumstances the department may require combined returns. The regulation stated:

The conduct or manner in which business is conducted reached by this section is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction or to the case of a device designed to reduce or avoid tax by shifting or distorting income, deductions, credits or allowances. The conduct may be legal or even encouraged by the laws of other jurisdictions, including laws of the United States. The determining factor is whether the conduct of taxpayer's affairs, by inadvertence or design, causes the income from Virginia sources to be inaccurately stated.

As a result, the states' power to force combination will consider the economic substance of the entity, however is not limited by the concept.

As CBS will have substantial economic substance in its operations, as evidenced by employees performing bona fide business operations, the state should not be successful in asserting this type of challenge.

Wisconsin

482 Type Powers

In Wis. Stat. §71.30(2), Wisconsin's income tax statutes provide that:

ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE BUSINESSES. In any case of 2 or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the secretary or his or her delegate may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if he or she determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses.

In *Presto Products, Inc. v. Wisconsin Department of Revenue* (Wis. Tax App. Comm'n 1990), the Department was held to have improperly disallowed the deduction of interest paid by the taxpayer to its parent on money borrowed at commercially reasonable rates during the same year in which it also paid dividends to its parent. The Tax Appeals Commission relied on U.S. Treasury regulations concerning the purpose of I.R.C. §482 in concluding that the examination under the state statute is one based on arm's length transactions. The court ruled that the department did not have authority to adjust the rate unless there was evidence that the taxpayer calculated the interest at rates other than arms length.

As CarMax has conducted a detailed transfer pricing study to determine appropriate arms length pricing, and CBS will be basing their fee upon these arm's length rates, the state should not be successful in an attempt to challenge these transactions under their 482-type authority.

UDITPA § 18 Authority

Wisconsin has adopted language similar to that of UDITPA §18, wherein the Department is granted authority to make adjustments through alternative apportionment methods. Wis. Stat. § 71.25(11) states:

Where, in the case of any corporation engaged in business in and outside of this state and required to apportion its income as provided in sub. (6), it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided in sub. (6) gives an unreasonable or inequitable final average ratio because of the fact that such corporation does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income. This subsection does not apply to taxable years beginning after December 31, 2007.

Wis. Stat. §71.25(12) further provides

If the income of any such corporation properly assignable to the state of Wisconsin cannot be ascertained with reasonable certainty by the methods under this section, then the same shall be apportioned and allocated under such rules as the department of revenue may prescribe.

As the CBS fee will be within the normal course of business and at arms length prices, the activities should not be of an extraordinary nature as to produce an 'unreasonable or inequitable final average ratio' with respect to the state. Accordingly, the state should not be successful in an attempt to adjust apportionment under this authority.

Addback Legislation

Wisconsin does not have any legislative provisions requiring the addback of intercompany intangibles or interest expense. The state has been considering legislative action to require the addback of these types of expenses for some time, however to date no legislation in this regard has been introduced. As a result, CBS should not be required to add back intangibles or interest expenses, unless legislation is enacted.

Economic Nexus Theory

Wisconsin Regulation Rule Sec. Tax 2.82(4)(a)(9) states that the “leasing of tangible property and licensing of intangible rights for use in Wisconsin” is sufficient to establish nexus.

The Wisconsin Department of Revenue, has elaborated on the specific types of activities that will create income tax nexus in Tax Bulletin No. 94 published October 1995. This bulletin identifies lists of intangibles that will create nexus and also provides some examples of the transactions that will cause nexus. Tax Bulletin No. 94 states indicates that the presence of intangibles within the state alone is not necessarily sufficient to create nexus however delineates the conditions under which nexus will be created. The bulletin states:

*However, the presence of intangibles in Wisconsin may create nexus for Wisconsin income or franchise tax purposes if **all three** of the following conditions are met:*

- 1. The property or service (source of income) to which the intangible pertains must be present in Wisconsin. For example, in **Geoffrey**, Toys R Us stores were present in South Carolina.*
- 2. The taxpayer must be involved in the licensing of the intangible in Wisconsin in the course of an income producing business activity. According to **Geoffrey**, it was determined that, "By licensing intangibles which could be used in South Carolina and receiving income in exchange for their use, the taxpayer had the minimum connection with the state necessary for the imposition of income tax."*
- 3. The licensing of the intangible must be substantial, as required by the U.S. Commerce Clause, rather than de minimus.*

The following example is detailed in the release as creating nexus: “TM Inc., an Arizona corporation, owns the trademark to a line of paper products. TM Inc. licenses the use of the trademark to the Wisconsin manufacturer of the paper goods. The Wisconsin manufacturer pays a 1% license fee to TM Inc. on all TM Inc. products sold. TM Inc. has Wisconsin franchise or income tax nexus.”

Based on the analysis of the Wisconsin regulation noted above, as well as the criteria set out in the Tax Bulletin No 94, it appears that the intent of the state of Wisconsin is to

follow the *Geoffrey* decision. As a result, the service fee charged by CarMax should create nexus with the state by virtue of the intangibles included in the fee.

Forced Combination

Wisconsin law does not permit either consolidated or combined returns, nor does it provide authority for the state to adjust items of income and expense among related entities. Wis. Stats. Ann. §71.26(3)(x). The Secretary may however require whatever consolidated statements are necessary to determine the taxable income received by any one of the affiliated or related corporations. Wis. Stats. Ann. §71.30(8)(b).

Accordingly, the combined or consolidated filing is not an option available to the state. The state may however require consolidated statements in an attempt to use its 482-type powers or UDITPA § 18 Powers to allocate income between members or adjust apportionment. As transactions between CBS, CASI and West should be at arm's length and should not distort income, the state should be unsuccessful in this type of challenge.

Sham transaction

In *Kimberly-Clark Corporation as Successor to Kimtech Ltd. v. Wisconsin Department of Revenue* (Wis. Tax App. Commn., No. 92-I-306 (April 12, 1994)), the Department's denial of a tax deduction for sales commission expenses paid to a subsidiary foreign sales corporation (FSC) was held to be improper. The court ruled that the formation of the FSC was not a mere paper corporation. Rather, the separate corporation was formed for substantial business reasons which carried on substantial business activities (i.e. centralization of export operations, increasing foreign sales, increasing profitability of exports and obtaining the benefits accorded under I.R.C. §§926-927 in order to be more competitive with foreign sellers in compliance with the General Agreement on Tariffs and Trade).

Based on this case, the standard appears to be that the company must have economic substance and must be formed for substantial business reasons. As CBS will have employees and actually conduct services, apart from its parents, the state should not be successful in challenging the validity of this company under this doctrine.

V. STATE CONCLUSIONS

Our conclusions with respect to the matters addressed in this memo are detailed below. Our opinion with respect to each State is expressed in terms of a level of assurance. Levels of assurance are "terms of art," frequently quantified as percentages in an attempt to predict the ultimate holding of a state's highest court which has full knowledge of all the facts and reaches a decision on the merits. In reaching our opinion regarding the appropriate level of assurance in each of the states we have considered and weighed those factors which would be relevant to each jurisdiction's highest court.

In the context of a professional opinion, a “more likely than not opinion” indicates our professional assessment that there is greater than 50 percent likelihood that the tax treatment of the item will prevail on the merits if challenged, whereas a “should opinion” indicates a stronger support for the sought-after tax treatment than a “more-likely than not” position, but indicates that there is still some uncertainty concerning the taxpayer's likelihood of prevailing on the merits.

At times, the body of this memo may use the terms “will”, “would”, or “should”. These terms are used for the limited purpose of ease of reading and should not be interpreted to convey a level of assurance beyond that specifically stated below.

Alabama

The structure and transactions discussed above should withstand challenge in Alabama. However, royalty payments should be subject to add-back under Alabama statute.

California

CASI, West and CBS should be considered members of a unitary group. Consequently, the income and apportionment factors of CBS should be included in the California combined report and intercompany transactions between the partnership and other members of the unitary group should be eliminated. Accordingly, the companies should not realize any benefit from the CBS partnership in California.

Florida

It is more likely than not that the structure and the transactions will withstand challenge in Florida. However, West, more likely than not, will be required to file an annual return with a zero sales factor based on the State's cost of performance sales sourcing methodology.

Georgia

The structure and the transactions should withstand challenge in Georgia.

Illinois

CASI, West and CBS should be considered members of a unitary group. Consequently, the income and apportionment factors of CBS should be included in the Illinois combined report and intercompany transactions between the partnership and other members of the unitary group should be eliminated. Accordingly, the companies should not realize any benefit from the CBS partnership in Illinois.

Indiana

It is more likely than not that the structure and the transactions will withstand challenge

in Indiana.

Kansas

CASI, West and CBS should be considered members of a unitary group. Consequently, the income and apportionment factors of CBS should be included in the Kansas combined report and intercompany transactions between the partnership and other members of the unitary group should be eliminated. Accordingly, the companies should not realize any benefit from the CBS partnership in Kansas.

Kentucky

The structure and the transactions should withstand challenge in Kentucky.

Maryland

The structure and the transactions should withstand challenge in Maryland. However, royalty payments made to CBS should be subject to add-back under Maryland statute.

North Carolina

Based upon the applicable state authority, it is more likely than not that North Carolina would be successful in asserting that CBS has nexus with the State.

South Carolina

Based on prevailing case law, South Carolina should be successful in asserting that CBS has nexus with the State.

Tennessee

It is more likely than not that the structure and the transactions will withstand challenge in Tennessee.

Texas

It is more likely than not that the structure and the transactions will withstand challenge in Texas.

Virginia

The structure and the transactions should withstand challenge in Virginia.

Wisconsin

Wisconsin regulations and administrative guidance indicate that the licensing of

intangibles in the state creates nexus. While the matter is not free from doubt, in order to prevail in Wisconsin it would be necessary to successfully challenge the Wisconsin Department of Revenue's position on constitutional grounds. In the circumstances, while there may be a reasonable basis for a filing position, we believe that it is more likely than not that Wisconsin would be successful in challenging the structure.

VI. POTENTIAL STATE PENALTIES

In the event that a state taxing authority reached a conclusion contrary to the opinions expressed in this memo, the taxing authority could impose various penalties. While the penalty provisions vary from state-to-state, penalties that are typically imposed by the various states include failure to file penalties, and failure to pay penalties. Some states may also impose accuracy related penalties; return preparer penalties; and other miscellaneous penalties.

Most states have provisions that allow for penalties to be abated if the taxpayer shows that there was reasonable cause and that the taxpayer acted in good faith. There is little guidance to indicate what constitutes reasonable cause for purposes of penalty abatement.

E&Y and CarMax have agreed that detailed analysis of state penalty provisions is beyond the scope of this memo.



**Tax Advisor/Client Communication
Privileged and Confidential**

November 12, 2004

To: CarMax, Inc.

From: Scott Vaughn, E&Y McLean, VA
Steve Bell, E&Y McLean, VA
Deane Eastwood, E&Y Baltimore, MD
Grace Keegan, E&Y McLean, VA
Jennifer Nolan, E&Y McLean, VA
Matt Libeg, E&Y McLean, VA

**CarMax, Inc.
Certain Federal and State Income Tax Consequences of the
Proposed Restructuring**

This memorandum addresses certain federal income tax, state income and franchise tax, sales and use tax and realty transfer tax consequences of a series of transactions described in Section IV below (the “Proposed Restructuring”) involving CarMax, Inc. (“CarMax”) and its affiliates (collectively the “CarMax Group”). In particular, we were directed by the CarMax Group to focus on the discrete issues described in this memorandum.

The purpose of this memorandum is to describe the basis upon which the CarMax Group may take certain positions in filing U.S. federal income tax returns and specific state income and franchise tax returns, and to provide guidance as to certain sales and use tax and realty transfer tax matters. It is not a comprehensive analysis of all U.S. federal income tax, state income and franchise tax, and other tax issues potentially raised by the Proposed Restructuring. The memorandum is subject to the limitations on scope and other matters set forth in Section VIII.

I. FACTS

Historical Legal Entity Structure and General Business Description

CarMax was formed in 1993 and is the nation’s largest specialty retailer of used cars and light trucks. Operationally, CarMax purchases, reconditions and sells used vehicles. In addition, CarMax sells new vehicles under franchise agreements with DaimlerChrysler, Nissan, Toyota, and General Motors. CarMax provides its customers the opportunity to shop for vehicles the same way they shop for items at other “big-box” retailers by

offering a broad selection of quality vehicles at low, no-haggle prices in a customer-friendly atmosphere. CarMax has separated the practice of trading in a used vehicle in conjunction with the purchase of another vehicle into two distinct and independent transactions. CarMax provides an appraisal that allows current vehicle owners to sell their cars to CarMax regardless of their intent to purchase a vehicle from the company. CarMax also provides its customers with a full range of related services, including the financing of vehicle purchases, the sale of extended warranties and vehicle repair service.

CarMax was formerly a wholly owned subsidiary of Circuit City Stores, Inc. ("Circuit City"). On September 10, 2002, Circuit City shareholders approved the separation of the CarMax business from Circuit City, and the Circuit City board of directors authorized the distribution of CarMax, Inc. common stock to effect the separation. The separation was effective October 1, 2002. As a result of the separation, all of the businesses, assets and liabilities of the CarMax Group are now held in subsidiaries of CarMax, Inc., an independent, separately traded public company.

Because the spin-off transaction was treated as a tax-free reorganization under section 355, the legacy CarMax legal structure under Circuit City carried over to the new stand-alone CarMax Group. While this structure may have provided certain benefits within the Circuit City group, the management of CarMax has been identifying a structure that is better aligned with the CarMax business as a stand-alone company.

II. CURRENT COMPANY STRUCTURE

CarMax is a holding company for the operating entities and is publicly traded on the New York Stock Exchange. CarMax has three operating subsidiaries, CarMax Auto Superstores, Inc. ("CASI"), CarMax Auto Superstores West Coast, Inc. ("West") and Glen Allen Insurance, Ltd. ("GAIL"). CASI contains the majority of the company's retail operations, back office support functions and the finance function.¹ West contains the California and Nevada retail operations and owns the CarMax trademarks and trade names. GAIL is a Bermuda captive insurance company that currently houses the workman's compensation and garage liability insurance plans.

Aside from its operating assets, West holds an approximately \$162 million note receivable due from CASI ("CASI Note Receivable"). It was represented to us that the CASI Note Receivable constitutes valid indebtedness for both federal and state income tax purposes, and that the value of the CASI Note Receivable is equal to West's tax basis in such note. It is beyond the scope of this memorandum to determine whether or not the

¹ CASI has a few special purpose single-member limited liability companies related to its new car retail operations (Kenosha Automotive, LLC, CarMax Automall, LLC and CarMax of Laurel, LLC), real estate relocation function (CarMax Properties, LLC) and financing function (CarMax Auto Funding, LLC). CASI also has a wholly owned subsidiary for purposes of its financing function (CFC II, Inc.). A final entity related to the finance function, CarMax Funding, LLC, is owned 99.9% by CASI and .1% by CFC II, Inc.

CASI Note Receivable is in fact a bona fide debt for both federal and state income tax purposes.

Currently, CarMax, CASI, West, and GAIL file a federal consolidated corporate income tax return with CarMax as the common parent corporation.

III. BUSINESS PURPOSE

As noted above, the current CarMax legal structure is a carry-over from the structure in place when CarMax was owned by Circuit City. Management has determined that there are various business reasons for changing the existing structure as detailed below.

CarMax has two distinct businesses, vehicle retail operations (auto superstores) and finance operations (CAF). Generally, in the auto sale and finance industry, the finance and dealership operations are in separate entities (and usually not under common ownership). Generally, the dealership operations sell vehicles, most of which are on credit pursuant to a retail installment contract ("RIC") while the finance operations buy and service installment RICs purchased from dealerships. Most dealership operations do not hold and service the RICs they originate. Dealers generally sell RICs to one or more finance companies engaged in the business of buying and servicing the RICs.²

Since its inception, CarMax has operated both its auto superstores and CAF operations under the same legal entity, CASI. This structure has created certain legal and operational issues, including those described below.

- CarMax RICs have an assignment section where the name of the finance company to which CarMax is assigning the RIC must be inserted upon assignment. Under CarMax's current structure, the RICs originated by auto superstores owned by West, clearly need to be assigned to CASI (d/b/a CAF). However, this requirement is unclear for RICs originated by auto superstores owned by CASI. In those states that license CAF as a finance company, auditors often want to see that the RIC has been assigned to CAF, though CAF is a d/b/a for CASI. Further, CarMax has had issues with Texas regulators wherein the regulators requested a formal letter explaining CarMax's structure, and that CAF is a part of CASI. The current structure is confusing to CarMax's stores and its regulators. Separating the lines of business into different entities will help clarify the assignment process and other documentation reviewed by regulators and other governmental agencies with which CAF and the auto superstores interact.
- For securitization purposes, the separation of CAF from the retail operations would clarify the type of RICs in the pool of RICs securitized. Currently, some RICs are originated in the entity seeking to be securitized (CASI) and other RICs

² Notwithstanding the foregoing, some "buy here, pay here" dealerships sell vehicles pursuant to RICs and also service the RICs. These dealerships are usually used vehicle dealerships with below prime customers (i.e. non-prime and sub-prime customers). The consumers being financed usually have a very difficult time obtaining financing, and pay very high rates of financing to these "buy here, pay here" dealers.

are assigned to this entity by another entity (West; CarMax Auto Mall LLC, CarMax of Laurel LLC and/or Kenosha Automotive LLC). Again, this structure can be confusing to the parties involved in the securitization process, and creates different legal obligations for the differently originated RICs (CASI originated vs. West, etc. originated).

Separating CarMax's finance and dealership lines of businesses into two distinct entities will also clarify each line of business' compliance requirements and duties to consumers. The federal government and state governments regulate each line of business differently. Although many of the same laws and implementing regulations govern both the dealership and finance operations, each may have separate and/or different compliance requirements. Further, in many instances, each line of business has different regulators. For example, in all states DMV-type agencies regulate the dealership operations. Not all states regulate finance operations, but those that do have a Department of Financial Institutions - type agency that regulates finance operations. What follows are some examples of acts and implementing regulations that govern both the finance and dealership operations, the acts and regulations' different requirements, and/or the confusion that can occur in interpreting each line of business' compliance obligations.

- Equal Credit Opportunity Act (ECOA) - both the dealership operations and CAF operations are subject to ECOA. CarMax auto superstores do not evaluate consumers for credit. CarMax auto superstores forward credit applications containing consumers' information to finance companies, including CAF, for credit evaluation. The finance companies and CAF evaluate each consumer's credit and determine whether they wish to purchase the relevant contract. The ECOA prohibits a creditor from discriminating against a consumer based on certain criteria (e.g. race, religion, nationality, etc). It is advantageous to the finance companies and CAF to be separate (preferably in a different entity) from the dealership that has face to face contact with the consumer, because the finance company (CAF) will not know the consumer's race, religion, nationality, etc., and therefore cannot consider such factor in its credit decision.
- Fair Credit Reporting Act (FCRA) - both the dealership operations and CAF operations are subject to FCRA. The CarMax auto superstores are dealer users of credit reports, and CAF is a finance company user. Though, FCRA does not distinguish between types of users, it does regulate the different uses of credit reports. Each line of business uses the credit report differently, creating different compliance requirements. For instance, if an entity uses a consumer's credit report in evaluating the consumer for credit, and the consumer is not approved for financing, the consumer is entitled to an adverse action notice. The question then arises as to which entity must give the consumer the adverse action notice--the dealership entity or the finance company? The Federal Trade Commission has stated in an opinion letter, that so long as one of the two entities provides an adverse action notice, the FCRA adverse action notice requirement is satisfied. Though it seems clear that only one entity must provide one adverse action notice, it becomes less clear when the facts are modified. If the store plays too great a

role in evaluating the consumer for credit, the store may have an obligation to send a notice. Thus, in those instances where the CarMax auto superstores are part of CASI (of which CAF is a part), do two adverse action notices need to be sent, or will the notice sent by CAF be sufficient? Is one notice necessary for CAF, and a separate notice for the store, though both operations are part of CASI? If the lines of business were separate, the responsibilities and compliance requirements for each line of business would be clearer.

- Licensing - both the dealership operations and CAF operations are subject to state licensing requirements. All states require CarMax dealership operations to be licensed as motor vehicle dealers. Certain states require CAF to be licensed as a finance company. When the dealership and finance operations are combined into one entity, the applicability of finance company licensing requirements becomes unclear. For example, in some states, an exemption from finance company licensing exists for retailers that hold and service their own RICs. It would seem clear from the statute that CASI would not need to be licensed because CAF is part of CASI (the retailer). However, when regulators discover that the finance company operations are performed under a d/b/a (CAF), the regulators generally require CAF to be licensed. This situation has arisen in Illinois. Separating the finance company operations from the dealership operations helps identify when finance company licensing is necessary for CAF.
- USA Patriot Act - CAF operations are subject to the Patriot Act, but currently the dealership operations are not (however, FinCen is currently evaluating whether to promulgate regulations applicable to motor vehicle dealers). Separating the finance company operations into a distinct legal entity will ensure that the dealership operations are not subject to the Patriot Act in its current form.
- GLB, FACTA, FCRA, privacy, security and data protection statutes and regulations - CAF and the dealership operations are many times subject to the same privacy, security and data protection acts and implementing regulations. Other times they are subject to different acts and implementing regulations. By way of example, in California, CAF is subject to SB 1 (California Financial Code Section 4050 et. seq.), however the dealership operations are not. Instead, the dealership operations are subject to SB 27 (California Civil Code 1798.83) and CAF is not. Though in California, the dealership operations are separate from the finance company, if similar laws are enacted in other states where the dealership operations and finance company operations are in the same entity, it will be unclear what compliance obligations the entity will have. Although both lines of business are generally subject to the same privacy, security and data protection acts and implementing regulations, each line of business will be restricted in its use and disclosure of such information. Separating the entities would make clearer what responsibilities (use and disclosure) each line of business has regarding the information. For example, because some of CarMax's auto superstores are in the same entity as CAF (CASI), their information is considered CAF's. However, for the CarMax auto superstores not part of CASI (those owned

by West), their information is not deemed to be CAF's information. When there is a restriction on the use of information, CarMax faces the peculiar situation of having to parcel out some of the CarMax auto superstores information, but not all. Separating the lines of business into distinct entities will clarify the types of information that may properly be disclosed and/or used.

Further, because CarMax operates and manages each line of business as a distinct operation, there are internal rules that apply to the interactions and relationship between the two. Each line of business has its own perspective, priority and agenda, at times resulting in conflicts. It would be helpful operationally to have a written agreement between the two lines of business which outlines the rules upon which they interact. Further, some state and federal laws (e.g. GLB) require that there be agreements between separate legal entities. Because not all CarMax dealership operations are in an entity separate from CAF, confusion arises with respect to knowing when an agreement exists, and when it does not. Some of the CarMax auto superstores have an agreement defining terms and conditions with CAF, while other CarMax auto superstores do not. Therefore, separating CAF operations and dealership operations into distinct entities and ensuring a written agreement exists between the entities will be beneficial operationally.

Additionally, each line of business has its own vulnerability to liability and litigation. Though, sometimes consumer lawsuits or claims are made against both the dealership and the finance company, this is not always the case. Separating the lines of businesses would protect each line of business' assets from liability claims against the other.

California is one of, if not the most, highly regulated states in which CarMax and its affiliates do business. Laws and regulations related to motor vehicle sales, motor vehicle financing, advertising and employment/human resources present unique compliance challenges for CarMax in California. California laws and regulations in these areas are vastly different from laws in other states and in certain cases, require the Company to modify its business model in order to be in compliance. For example, the Company has had to adopt a modified commission pay structure for its sales associates in order to comply with California wage laws.

Further, the legislative environment in California in recent years has resulted in an increase in regulations on businesses as well as an increase in penalties for non-compliance, even if such non-compliance is minor and/or unintentional. Most notably, the enactment of Section 17200 *et seq* of the California Business and Professional Code, the so-called "Shakedown Lawsuit" provision causes great concern. This provision creates an opportunity for consumers and plaintiff attorneys to bring lawsuits seeking substantial damages for minor violations where the consumers have not been harmed.

Therefore, in addition to allowing for greater ease in regulatory compliance, the formation of the California LLC to own CarMax's California stores may provide greater protection of CarMax's assets from lawsuits under Section 17200 *et seq* and otherwise.

A number of alternative structures were considered all of which involved the segregation of the auto dealer and finance functions in order to achieve the business objectives discussed above.

Items to be housed in Shared Services Entity

After reviewing the key function areas of the organization, management decided that certain business functions, including employees associated with those functions, and intangible assets would be transferred into the new shared services entity. The business functions and related employees to be transferred to the shared services entity include: (i) general management functions which include human resources, management information systems, finance and accounting, treasury and legal services and (ii) retail functions which include CAF (financing), real estate support services, analytical and business development services, and advertising and marketing (the general management functions and retail functions including employees associated with each function are collectively referred to as "Business Functions"). The intangibles to be transferred include the registered intellectual property, namely trademarks and trade names and the business process intangibles which include internally developed software tools, marketing development and activity, customer data and analysis and trade secrets (the business process intangibles collectively referred to as "Business Process Intangibles"). CarMax regards the algorithms it has developed to identify optimal car inventories as a highly valuable trade secret. A particular group within CarMax develops and interprets CarMax's buying models and provides the retail locations with extremely detailed data regarding the appropriate inventory mix, specific to each individual location.

IV. PROPOSED RESTRUCTURING

To achieve the business objectives discussed above, the following steps have been undertaken or are proposed ("Proposed Restructuring"):

- 1) On May 3, 2004, West formed CarMax Auto Superstores California, LLC ("California LLC"), a single-member limited liability company, and on December 1, 2004, contributes California stores and related assets and liabilities to California LLC. It is management's intention not to file Form 8832 to elect to be treated as an association taxable as a corporation, and consequently it is management's intention that California LLC be treated as a disregarded entity for Federal income tax purposes.
- 2) On December 1, 2004, CarMax contributes 100 percent of its West stock to CASI. CASI will not issue additional shares to CarMax.
- 3) On December 1, 2004, CASI contributes its Business Process Intangibles and West Creek land to West.

- 4) On April 23, 2004, West forms CarMax Business Services, LLC ("CBS"), a single-member Delaware limited liability company. On December 1, 2004, CBS receives the following contributions:
 - a. West contributes the Business Process Intangibles and the West Creek land received in Step 3, the CarMax trademarks and tradenames to CBS in exchange for a membership interest in CBS. Collectively, referred to as the "West Contribution" and the "West Assets." CarMax anticipates that immediately after the transfer, West will have a 95 percent membership interest in CBS.
 - b. CASI contributes the Business Functions, certain contractual obligations, and some cash in exchange for a membership interest in CBS. Collectively referred to as the "CASI Contribution" and the "CASI Assets." CarMax anticipates that immediately after the transfer, CASI will have a 5 percent membership interest in CBS.
- 5) On April 28, 2004, CBS forms CarMax Auto Superstores Services, Inc. ("CASS"), a Virginia corporation and a wholly owned subsidiary of CBS. On December 1, 2004, CBS contributes the employees and certain assets received in Step 4.b to CASS.
- 6) On December 1, 2004, CBS enters into management service agreements with CASI, West, and California LLC.
- 7) On December 1, 2004, CBS enters into employee servicing agreement with CASS.
- 8) In addition to the steps outlined above, the management of CarMax Group represents the following:

Contribution of 100% of West stock to CASI by CarMax

- 1) Immediately after the contribution of West, CarMax will own 100 percent of CASI's issued and outstanding stock. CarMax has no plan or intention to sell, exchange, or otherwise dispose of any CASI shares. At the time of the transaction, CASI will not have any warrants, options, convertible securities or any other type of right that would allow a person to acquire shares of CASI.
- 2) CarMax will not receive any consideration in exchange for the contribution. The West stock contributed to CASI will not be subject to any liabilities and CASI will not assume any CarMax liabilities.
- 3) CarMax has no plan or intention to liquidate West or CASI or to merge West or CASI into another corporation.
- 4) CarMax, CASI and West will pay their respective expenses, if any, incurred in connection with the transaction.

- 5) At the time of the contribution, CASI and CarMax will not qualify as “investment companies” within the meaning of section 351(e). For this purpose investment company means (i) a regulated investment company, (ii) a real estate investment trust, or (iii) a corporation more than 80 percent of the value of whose assets are “investment assets” as defined in section 351(e). “Investment assets” include (a) money, (b) stock or other equity interests in a corporation, evidence of indebtedness, options, forward or future contracts, notional principal contracts and derivatives, (c) foreign currency, (d) any interest in a traded partnership, and (e) an interest in a precious metal that is not used in a trade or business.
- 6) Treasury Regulation §1.351-1(c)(1)(ii) provides a look-through rule in making the determination required under section 351(e).³ Stocks and securities in subsidiary corporations shall be disregarded and the parent corporation shall be deemed to own its ratable share of its subsidiary's assets. The corporation shall be considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.
- 7) CarMax and CASI are solvent entities (the fair market value of each entity's assets exceeds its liabilities, including intercompany obligations). Neither CarMax nor any of its affiliated entities, are under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A) of the Code.
- 8) The fair market value of West stock exceeds CarMax's tax basis in the stock of West.

Contribution of Business Process Intangibles and West Creek Land by CASI to West

- 1) Immediately after the contribution, CASI will own 100% of all West issued and outstanding stock. CarMax has no plan or intention to sell, exchange, or otherwise dispose of any West shares. At the time of the transaction, West will not have any warrants, options, convertible securities or any other type of right that would allow a person to acquire shares of West.
- 2) CASI will not receive any consideration in exchange for the contribution. The assets contributed to West will not be subject to any liabilities and West will not assume any liabilities of CASI.
- 3) West is not an investment company within the meaning of section 351(e). See representation 5 above for the contribution of West stock to CASI.
- 4) CASI and West will pay their respective expenses, if any, incurred in connection with the transaction.

³ Unless otherwise noted, “Section” references are to the Internal Revenue Code of 1986, as amended (the “Code”), or to the Treasury regulations (“Treas. Reg.”) promulgated thereunder.

- 5) West is solvent (the fair market value of its assets exceed its liabilities, including intercompany obligations).
- 6) Except for the \$162 million note payable by West to CASI, there was no other written indebtedness existing between CASI and West.
- 7) CASI will transfer substantially all of the rights as defined by Revenue Ruling 69-156, in the Business Process Intangibles contributed to West.
- 8) The fair market value of the Business Process Intangibles and the West Creek land exceeds CASI's tax basis in these assets.

Formation of and Transfers to CBS by West and CASI

- 1) For the CASI Contribution, the fair market value of the CASI Assets transferred to CBS will equal or exceed the sum of the liabilities assumed by CBS plus the amount of liabilities, if any, to which the assets are subject.
- 2) For the West Contribution, the fair market value of the West Assets transferred to CBS will equal or exceed the sum of the liabilities assumed by CBS plus the amount of liabilities, if any, to which the assets are subject.
- 3) The fair market value of the CBS interests received by CASI is approximately equal to the fair market value of the assets CASI transferred to CBS.
- 4) The fair market value of the CBS interests received by West is approximately equal to the fair market value of the assets West transferred to CBS.
- 5) In connection with the CASI and West Contributions, any liabilities assumed by CBS will be qualified liabilities as defined in Treas. Reg. section 1.707-5(a)(5) and CBS will not assume any non-qualified liabilities.
- 6) In connection with the CASI and West Contributions, CBS has no present plan or intention to transfer money or other property to CASI or West within two years of the contributions other than the partners' shares of operating income. The only exception would be routine cash transfers made in connection with the CarMax Group's cash management program. All such transfers will be recorded as intercompany receivables and payables.
- 7) CBS, CASI and West will pay their respective expenses, if any, incurred in connection with the transactions.
- 8) CBS is not an investment company as defined under section 721(b). For this purpose, a partnership will be treated as an investment company if the partnership would be treated as an investment company within the meaning of section 351(e) if the

partnership were incorporated. See representation 5 above for the contribution of West stock to CASI.

- 9) There are no deferred intercompany gains or loss associated with the assets and liabilities to be transferred to CBS by CASI and West.
- 10) West will transfer substantially all of the rights as defined by Revenue Ruling 69-156, in the trademarks and trade names and Business Process Intangibles contributed to CBS.
- 11) It is management's intention not to file Form 8832 to elect to be treated as a corporation, and consequently it is management's intention that for Federal income tax purposes, CBS be treated as a partnership under Subchapter K of the Code.

Formation of and Transfer of Business Functions to CASS by CBS

- 1) Immediately after the contribution, CBS will own 100% of all CASS issued and outstanding stock. CarMax and CBS have no plan or intention to sell, exchange, or otherwise dispose of any CASS shares. At the time of the transaction, CASS will not have any warrants, options, convertible securities or any other type of right that would allow a person to acquire shares of CASS.
- 2) The fair market value of the assets transferred to CASS will equal or exceed the sum of the liabilities assumed by CASS plus the amount of liabilities, if any, to which the assets are subject.
- 3) The tax basis of assets transferred to CASS will equal or exceed the sum of any liabilities transferred to CASS.
- 4) The fair market value of assets transferred to CASS will exceed the tax basis of the assets transferred to CASS (i.e. there is no built in loss associated with the assets contributed).
- 5) CarMax has no plan or intention to liquidate CASS or to merge CASS into another corporation.
- 6) CBS and CASS will pay their respective expenses, if any, incurred in connection with the transaction.
- 7) The fair market value of the CASS shares received by CBS pursuant to the transfer was approximately equal to the fair market value of the assets transferred to CASS.
- 8) CASS is solvent (the fair market value of its assets exceed its liabilities, including intercompany obligations).

V. STATES WHERE THE VARIOUS CARMAX GROUP ENTITIES HAVE A TAXABLE PRESENCE

For income and franchise tax purposes, nexus describes the degree of business activity that must be present before a taxing jurisdiction has the right to impose a tax on a company's income. The amount of activity or connection that is necessary to create nexus is generally defined by state statute, and therefore tends to vary from state to state. Nexus may be defined differently depending on the type of tax. In all cases however, the Due Process and Commerce Clauses of the U.S. Constitution establish minimum threshold standards that must be met in order for any state or locality to assert its jurisdiction to impose a tax. Although both the Due Process and Commerce Clauses establish the parameters for determining if an out-of-state business has "nexus", their standards differ. For purposes of the Due Process Clause, "minimal" nexus satisfies the nexus requirements; however, "substantial" nexus is required under the restrictions imposed by the Commerce Clause.

The Due Process Clause requires some minimal link between the business and the taxing state. Generally, the minimal connection standard is met if the business "purposefully directs" its activities to a jurisdiction. For financial institutions, in certain states nexus may also be established if the institution makes either personal or commercial loans to residents of the state. Determination of whether an entity qualifies as a financial institution is a state-by-state determination, and that analysis for CarMax entities is beyond the scope of this memorandum.

Generally speaking, any one of the following factors may establish income tax nexus in a jurisdiction:

- Regular and systematic sales solicitation,
- Owning or leasing property in the state,
- Having capital or property employed in the state,
- Employing personnel in the state,
- Making loans to individuals secured by real property in the state, or
- Deriving income from activities or other sources in the state.

Based on our understanding of locations of the various CarMax facilities (including auto superstores and office locations) various CarMax entities have a taxable presence in Alabama, California, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Texas, Virginia, and Wisconsin. We have been directed by the CarMax Group to limit our analysis to these states.

VI. ISSUES AND CONCLUSIONS

Step One: West forms California LLC, and contributes California stores and related assets and liabilities to California LLC.

Q1. Will the formation of California LLC and the contribution of assets and liabilities qualify for nonrecognition treatment for federal income tax purposes?

A1. California LLC is a single-member LLC and is treated as a disregarded entity and a division of West. As such, the formation and contribution of assets and liabilities to California LLC should not constitute a taxable event for federal income tax purposes.

Q2. Will the formation of California LLC and the contribution of assets and liabilities qualify for nonrecognition treatment for California income tax purposes?

A2. Refer to California Limited Liability Company memorandum.

Step Two: CarMax contributes 100 percent of its West stock to CASI

Q3. What are the federal income tax consequences to CarMax as a result of the contribution of 100 percent of the West stock to CASI?

A3. CarMax's contribution of the West stock to CASI should qualify as a tax-free transfer under section 351. Accordingly, CarMax should not recognize gain or loss on the transfer of West. CASI should not recognize gain or loss on the receipt of West under section 1032.

Under section 362(a), CASI should have tax basis in the West stock equal to CarMax's basis in the West stock immediately before the transfer. Under section 358(a)(1), CarMax's basis in the CASI shares currently held should be increased by its tax basis in the West stock.

Q4. What are the state income tax consequences to CarMax as a result of the contribution of 100 percent of the West stock to CASI?

A4. CarMax's contribution of the West stock to CASI should qualify as a tax-free transfer under section 351 for Alabama, California, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia and Wisconsin income tax purposes. Accordingly, CarMax should not recognize gain or loss on the transfer of West in these states.

Step Three: CASI contributes Business Process Intangibles and West Creek land to West.

Q5. What are the federal income tax consequences to CASI as a result of the contribution of the Business Process Intangibles and West Creek land to West?

A5. CASI's contribution of the West Creek site to West should qualify as a tax-free transfer under section 351. In addition, so long as CASI transfers all substantial rights associated with the Business Process Intangibles, CASI should not recognize gain or loss upon the contribution of the Business Process Intangibles, and West should not recognize gain or loss on the receipt of the assets under section 1032.

Under section 362(a), West should receive tax basis in the Business Process Intangibles and West Creek assets equal to CASI's basis in those assets immediately before the transfer. Under section 358(a)(1), CASI tax basis in its West shares currently held should be increased by its tax basis in the contributed assets.

Q6. What are the state income tax consequences to CASI as a result of the contribution of the Business Process Intangibles and West Creek site to West?

A6. CASI's contribution of the West Creek site to West should qualify as a tax-free transfer under section 351 for Alabama, California, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia and Wisconsin income tax purposes. In addition, so long as CASI transfers all substantial rights associated with the Business Process Intangibles, CASI should not recognize gain or loss upon the contribution of the Business Process Intangibles in these states.

Step Four: West forms CBS. Subsequently West contributes Business Process Intangibles and the West Creek land received in Step Three and the CarMax trademark and tradenames in exchange for a membership interest in CBS. CASI contributes the Business Functions, certain contractual obligations and cash to CBS in exchange for a membership interest. Immediately after the transfers, it is anticipated that West will have a 95 percent membership interest, and CASI will have a 5 percent membership interest in CBS.

Q7. Will the formation of CBS by West and the subsequent contribution of property by West and CASI in exchange for membership interests qualify for non-recognition treatment for federal income tax purposes?

A7. At the formation date, CBS is a single-member LLC and is treated as a disregarded entity and a division of West. As such, the formation of CBS should not constitute a taxable event for federal income tax purposes. The subsequent contribution of property by West and CASI to CBS in exchange for membership interests in CBS should be treated as a contribution to a partnership under section 721. Generally under section 721

and subject to the representations discussed above, no gain or loss should be recognized to West and CASI upon the contribution of property to CBS.

Under section 722, CASI's and West's basis in their respective membership interests in CBS should equal the basis of the property contributed to CBS. Under section 723, CBS should take a carryover basis in the property contributed by CASI and West.

If CBS assumes non-qualified liabilities from CASI or West, the excess of the liabilities over West's or CASI's post-contribution share of the liabilities could be subject to the disguised sale treatment under section 707 and could give rise to the recognition of income.

Q8. Will the formation of CBS qualify for non-recognition treatment for state income tax purposes?

A8. Alabama, California, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia and Wisconsin either adopts or incorporates by reference IRC section 721. Further, under section 721 and subject to the representations discussed above, no gain or loss should be recognized to West and CASI upon the contribution of property to CBS in the aforementioned states for income tax purposes since none would be recognized for federal tax purposes.

Q9. Will section 704(c) apply to the contribution by CASI and West to CBS and if so, what are the federal income tax implications?

A9. Section 704(c) could apply to the contributions by CASI and West to CBS. To the extent that the fair market value of the contributed property differs from the tax basis in such property at the time of the contribution, income, gain, loss and deductions with respect to the contributed property must be allocated among the partners accordingly in order to account for such variation. The state income tax consequences of the application of the section 704(c) rules is also beyond the scope of this memorandum.

Step Five: CBS forms CASS and contributes the Business Functions received in Step Four to CASS.

Q10. Will the formation of CASS and the contribution of the Business Functions to CASS qualify for nonrecognition treatment for federal income tax purposes?

A10. CASS is a wholly owned subsidiary of CBS. As such, the formation of CASS and CBS' contribution of the Business Functions to CASS should qualify for tax-free treatment under section 351. Under section 1032, CASS should not recognize gain or loss on the receipt of the assets. Furthermore, under section 362(a), CASS should receive tax basis in the assets equal to CBS's tax basis in those assets immediately before the transfer.

Q11. Will the formation of CASS and the contribution of property to CASS qualify for non-recognition treatment for state income tax purposes?

A11. CASS is a wholly owned corporation of CBS. As such, the formation of CASS and CBS' contribution of the Business Functions to CASS should qualify for tax-free treatment under section 351 for Virginia and Georgia income tax purposes. We have been directed by Carmax to restrict this analysis to the states of Georgia and Virginia, where CBS and CASS have offices and employees.

Steps Six and Seven: CBS enters into management service agreements with CASI, West and California LLC; and CBS enters into an employee services agreement with CASS.

Q12. What are the federal income tax consequences of CBS entering into the management services agreements with CASI, West and California LLC and entering into an employee services agreement with CASS?

A12. The agreements should be at arm's length to be respected as such for federal income tax purposes. Otherwise, there could be potential deemed dividends, partnership distributions, etc.

Q13. What are the state income tax consequences of CBS entering into the management services agreements with CASI, West and California LLC and entering into an employee leasing agreement with CASS?

A13. Refer to Potential State Tax Challenges memorandum.

VII. ANALYSIS

Step One: West forms California LLC, and contributes California stores and related assets and liabilities to California LLC.

Q1. Will the formation of California LLC and the contribution of assets and liabilities qualify for nonrecognition treatment for federal income tax purposes?

A1. California LLC is a single-member LLC and is treated as a disregarded entity and a division of West. As such, the formation and contribution of assets and liabilities to California LLC should not constitute a taxable event for federal income tax purposes.

The formation and contribution of assets and liabilities to a single-member LLC should not constitute a taxable event for federal income tax purposes. In the absence of an election to be classified as an association, a single-member LLC is treated as disregarded as an entity separate from its owner.⁴ As such, the assets and liabilities of a single-member LLC are treated as owned by its owner for federal income tax purposes.

⁴ Treas. Reg. § 301.7701-3.

Accordingly, the formation of a disregarded entity and the transfer of assets and liabilities to such entity do not constitute a taxable event for federal income tax purposes. On a going-forward basis, transactions between a single-member LLC and its owner should generally be ignored for income tax purposes.

In the instant case, California LLC is a single-member LLC of West. As such, the formation of California LLC and West's contribution of property to California LLC should not constitute taxable events for income tax purposes.

Q2. Will the formation of California LLC and the contribution of assets and liabilities qualify for nonrecognition treatment for state income tax purposes?

A2. Refer to California Limited Liability Company memorandum.

Step Two: CarMax contributes 100 percent of its West stock to CASI

Q3. What are the federal income tax consequences to CarMax as a result of the contribution of 100 percent of the West stock to CASI?

A3. CarMax's contribution of the West stock to CASI should qualify as a tax-free transfer under section 351.⁵ In addition, under section 1032, CASI should not recognize gain or loss on the receipt of the West stock.

Section 351 Generally

Transfers to corporations are governed by section 351. Generally, no gain or loss is recognized if one or more persons transfer property to a corporation solely in exchange for stock in such corporation and immediately after the exchange such transferors are in control of the corporation.⁶ The term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.⁷

For Federal income tax purposes, when a sole shareholder contributes property to a corporation and the corporation does not issue additional shares to the shareholder, the Internal Revenue Service treats the transaction as if the corporation issued additional shares to the shareholder with a fair market value equal to the property received by the corporation.⁸

⁵ Although the transaction is analyzed in this memorandum as a section 351 transfer, the transaction might also qualify as a tax-free reorganization under section 368(a)(1)(B). A discussion of the requirements under Section 368(a)(1)(B) is beyond the scope of this memorandum.

⁶ IRC § 351(a).

⁷ IRC § 368(c).

⁸ Rev. Rul. 64-155, 1964-1 C.B. 138.

If the transferor in a section 351 transfer receives boot (i.e., money or property other than stock of the transferee corporation) in addition to stock of the transferee corporation, the transferor must recognize any gain realized on the exchange to the extent of the value of the boot received.⁹ Section 357(a) provides that the assumption of a liability by a transferee corporation in a section 351 transfer is not treated as the receipt by transferor of money or other property.¹⁰ Accordingly a section 351 transfer involving the assumption of liabilities by the transferee corporation qualifies under as a tax-free transfer under section 351 and the transferor is not required to recognize gain or loss by reason of the assumption of liabilities by the transferee corporation.¹¹

Because CarMax will be in control of CASI immediately after the transfer of the West stock to CASI, and CarMax will not receive boot in the exchange, no gain or loss should be recognized by CarMax on the transfer.

Transferee and Transferor Basis

The transferee corporation's basis in the assets received equals the basis in the hands of the transferor immediately before the transfer, increased by any gain recognized to the transferor.¹² Because CarMax should not recognize any gain on the transfer, CASI should have a basis in the West stock equal to CarMax's basis in the West stock immediately before the transfer.

The transferor's basis in the transferee corporation stock received in the exchange is generally the same as that of the property transferred, decreased by the fair market value of other property received and increased by the amount of gain recognized.¹³ Subject to exceptions, under section 358(d)(1), if a transferee corporation assumes a liability of a transferor or receives a property subject to a liability, the amount of such liability is treated as boot received by the transferor for purposes of section 358 whether or not the assumption of such liability resulted in the recognition of gain or loss to the transferor. Accordingly, an assumption of liabilities by the transferor corporation would be treated as boot for section 358 purposes and therefore reduce the transferee's basis in the stock received.

The American Jobs Creation Act of 2004¹⁴ ("AJCA") added a new provision, section 362(e)(2), to the Code which affects the basis of the assets transferred to the controlled corporation or the transferor's basis in the stock where assets with a built-in loss are

⁹ IRC § 351(b).

¹⁰ Treas. Reg. § 1.357-1(a). Note that under section 357(d) the assumption of liabilities can be treated as boot if the liability assumption does not have a bona fide business purpose or the principal purpose for the assumption was to avoid Federal income tax on the exchange.

¹¹ But see section 357(c). Under section 357(c), if the sum of the liabilities assumed exceeds the total of the adjusted basis of the property transferred to a corporation in a section 351 transfer, the excess shall be treated as a gain from the sale or exchange of a asset.

¹² IRC § 362(a).

¹³ IRC § 358(a).

¹⁴ P.L. 108-357.

transferred to the corporation. This provision applies to section 351 transfers that occur after October 22, 2004.

CarMax did not receive actual additional shares in CASI on the transfer of the West stock; however, a transfer of additional shares is imputed when a shareholder holds 100 percent of the outstanding stock of a corporation. Because there was no other property received by CarMax in the transfer and no gain was recognized, CarMax's basis in the CASI shares currently held should be increased by the tax basis of the West stock, the property transferred to CASI.¹⁵

Transferee Holding Period

In measuring its holding period for assets received in a section 351 exchange, the transferee corporation is allowed by section 1223(2) to include the period they were held by the transferor, and can evidently do so even if they were not capital assets when so held.¹⁶ Accordingly, CASI, in determining its holding period for the West stock, can include the period of time the stock was held by CarMax.

Q4. What are the state income tax consequences to CarMax as a result of the contribution of 100 percent of the West stock to CASI?

A4. CarMax's contribution of the West stock to CASI should qualify as a tax-free transfer under section 351 in the applicable states.

Alabama

¹⁵ Since the fair market value of the contributed property exceeded the tax basis of such property, section 362(e)(2) should not apply to this transaction. Basically, section 362(e)(2) functions to limit the transfer of built-in losses in section 351 transactions. If the aggregate adjusted basis of property contributed by a transferor exceeds the aggregate fair market value of the property transferred, then the transferee's aggregate basis in the property received is generally reduced to the aggregate fair market value of such property.¹⁵ Any required basis reduction is allocated among the transferred properties proportionately, according to their built-in loss immediately before the transaction. However, the parties may elect to reduce the basis in the stock received by the transferor to the aggregate fair market value of the transferred property, instead of reducing the basis in the transferred assets. This irrevocable election must be included with the tax returns of the parties for the tax year in which the transaction occurs. In this step CarMax contributes 100 percent of its West stock to CASI in a section 351 transaction. If CarMax's tax basis in the West stock exceeds its fair market value at the time of the contribution, then the carryover basis regime would not apply. Consequently, CASI would be required to reduce its tax basis in the West stock to the fair market value. Alternatively, CarMax and CASI may elect to reduce CarMax's tax basis in the CASI stock received to the fair market value. It is important that CarMax maintains proper documentation supporting the basis and the fair market value of the West stock at the time of the contribution to properly determine whether section 362(e)(2) will apply.

¹⁶ Section 1223(2) differs from section 1223(1), allowing the transferor to treat the holding period for the stock received as including the period during which it held the property transferred only if the latter was a capital or section 1231 asset in its own hands. If a corporation acquires undivided interests with different holding periods in one property, they apply on a pro rata basis to a sale of all the property. See [Rev. Rul. 67-309, 1967-2 CB 263](#).

Property transferred to a corporation in a transaction which satisfies the requirements of IRC §351 will be recognized in accordance with IRC §351.¹⁷ The gain or loss recognized on a reorganization for Alabama income tax purposes will be the same as the gain or loss recognized for federal tax purposes. Consequently, there should be no gain or loss for Alabama income tax purposes.

California

California adopts all of Subchapter C of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to corporate distributions and adjustments, unless otherwise provided.¹⁸ Therefore, California follows the IRC §351 definition and treatment of transfers of property to controlled corporations and no gain or loss will be recognized.

Florida

Property transferred to a corporation in a transaction which satisfies the requirements of IRC §351 will be recognized in accordance with IRC §351.¹⁹ Unless specifically defined in the state code or forms or regulations, each taxpayer making a Florida state return shall take into account the “items of income, deduction, and exclusion on such return in the same manner and amounts as reflected in such taxpayer’s federal income tax return for the same taxable year.”²⁰ Any term in the Florida Tax Code has the same meaning as when used in a similar context in the Internal Revenue Code and other United States federal income tax statutes, as effective January 1, 1993.²¹ Although Florida has not specifically adopted IRC §351, the result to the parties to the exchange should be the same for Florida state tax purposes as if Florida had specifically adopted the section.²² Consequently, there should be no gain or loss for Florida income tax purposes.

Georgia

Georgia defines taxable income as the “corporation’s taxable income as defined in the Internal Revenue Code of 1986,” with adjustments provided within the Georgia code.²³ The state taxable income definition includes the federal treatment of IRC §351 transactions. Consequently there will be no gain or loss.

Illinois

Illinois begins with the federal taxable income definition and modifies it by adding certain items to the base taxable income amount. Illinois follows IRC §351, however, an adjustment may be required in two unique factual circumstances. If a gain is recognized by a noncorporate taxpayer on the transfer of appreciated property, the gain shall be added back into the taxpayer’s taxable income.²⁴ In addition, the filing method (combined v. separate) may affect the gain recognized and basis in assets transferred because Illinois requires a

¹⁷ AL Code §40-18-8(e) (2004).

¹⁸ Rev. & Tax. Code §17321 (2004).

¹⁹ *Technical Assistance Advisement, No. 94(C)1-006*, Florida Department of Revenue, October 4, 1994.

²⁰ Fla. Stat. §220.43(1).

²¹ Fla. Stat. §220.03(2)(c).

²² *Technical Assistance Advisement, No. 94(C)1-006*, Florida Department of Revenue, October 4, 1994.

²³ O.C.G.A. §48-7-21 (2004).

²⁴ 35 ILCS 5/203 (2004).

member of an Illinois unitary business group not electing to file a combined Illinois return to follow different filing instructions.²⁵ There should be no gain or loss for Illinois income tax purposes since it is our understanding that the transaction would not be affected by either of the above exceptions.

Indiana

Indiana's treatment of C corporations is the same as the federal tax treatment because the starting point for determining Indiana's adjusted gross income tax is federal taxable income before the net operating loss deduction or special federal deductions²⁶ and because the state conforms to the Internal Revenue Code as of January 1, 2002.²⁷ Therefore, Indiana has adopted the federal definition and treatment of IRC §351 transactions and there will be no gain or loss on the transaction.

Kansas

Kansas follows the federal definition of taxable income and therefore follows the definition and treatment of §351 transactions.²⁸ The federal definition was explicitly adopted, and thereby incorporates §351 of the Internal Revenue Code. Consequently there is no gain or loss on the transaction.

Kentucky

Kentucky adopts the federal taxable income definition, thereby incorporating IRC §351.²⁹ Kentucky explicitly follows the federal definitions, applications and interpretations applicable to such sections for use in calculating Kentucky taxable income.³⁰ Consequently, there will be no gain or loss on the transaction.

Maryland

Maryland's tax treatment of C corporations is the same as the federal government's treatment because the starting point for Maryland taxable income is federal taxable income after the net operating loss and special deductions.³¹ By adopting that definition, Maryland adopts all of the applicable Internal Revenue Code sections related to creating the federal taxable income, including IRC §351 and so there is no gain or loss on the transaction.

North Carolina

North Carolina's treatment of C corporations is generally the same as federal because North Carolina generally incorporates the Internal Revenue Code as enacted on May 1, 2004,

²⁵ IL PLR IT 90-0017.

²⁶ IC §6-3-1-3.5 (2004).

²⁷ IC §6-3-1-11 (2004).

²⁸ K.S.A. §79-32, 110(c) (2004).

²⁹ KRS 141.010 & 141.050(1) (2004).

³⁰ KRS 141.050(1) (2004).

³¹ Instructions, 2003 Form 500, Corporation Income Tax Return.

including any provisions that become effective before or after that date,³² however North Carolina does not conform to certain specific provisions of the Code. North Carolina does follow the federal treatment of IRC §351 contributions, and so there will be no gain or loss on the transaction.

Ohio

Ohio generally follows the Internal Revenue Code, adopting the 1986 version of the code.³³ There are differences in calculating taxable income within Ohio, but these additions and subtractions do not impact any IRC §351 transaction circumstances. Therefore, the state follows the federal treatment of §351 transfers and there will be no gain or loss.

South Carolina

South Carolina adopts the Internal Revenue Code, as amended through December 31, 2003, with specific exclusions.³⁴ IRC §351 is not listed as a section that South Carolina specifically excludes from its state tax code.³⁵ Therefore, South Carolina follows the federal treatment of §351 transactions and there will be no gain or loss.

Tennessee

Federal taxable income is taken as the starting point in determining Tennessee taxable income, thereby adopting IRC §§301-385 for corporate distributions and adjustments.³⁶ Tennessee follows the federal definition and treatment of IRC §351 transactions³⁷ and so there is no gain or loss.

Texas

Texas adopts the Internal Revenue Code in effect for federal tax years beginning in 1996, with specific exclusions.³⁸ Texas net taxable earned surplus is based on federal taxable income before the net operating loss deduction but after various special deductions, which are the state's exclusions from the IRC.³⁹ As a result, Texas has generally adopted IRC §§301-385, but the state has opted to specifically not incorporate certain federal laws into Texas law. IRC §351 is not specifically excluded, though, and is thereby incorporated into Texas law and so there will be no gain or loss.

Virginia

Virginia taxable income is based on federal taxable income after the net operating loss and special deductions. Virginia generally adopts the provisions of the Internal Revenue Code,

³² NCGS §105-228.90 (2004).

³³ ORC Ann. 5733.04 (2004).

³⁴ SC Code §12-6-40(A) (2004).

³⁵ SC Code §12-6-50 (2004).

³⁶ TCA §67-4-2006 (2004).

³⁷ *Id.*

³⁸ Tex. Tax Code §171.001(b) (2004).

³⁹ *Id.*

with specific exclusions for certain industries.⁴⁰ Specifically, IRC §§301-385 are adopted for corporate distributions and adjustments because of the starting point for Virginia taxable income. Therefore, IRC §351 is incorporated into the taxable income and Virginia thereby follows the federal treatment of such transactions for calculating a corporation's taxable income.

Wisconsin

Wisconsin net income is based on federal taxable income before the net operating loss and special deductions.⁴¹ Wisconsin explicitly adopts the Internal Revenue Code as amended to December 31, 2002, excluding and as indirectly affect by certain federal acts and provisions.⁴² As a result of the IRC adoption and federal taxable income starting point for Wisconsin net income, Wisconsin adopts IRC §351 and so there will be no gain or loss.

Step Three: CASI contributes Business Process Intangibles and West Creek land to West.

Q5. What are the federal income tax consequences to CASI as a result of the contribution of the Business Process Intangibles and West Creek land to West?

A5. CASI's contribution of the West Creek site to West should qualify as a tax-free transfer under section 351. In addition, as long as CASI transfers all substantial rights associated with the Business Process Intangibles CASI should not recognize gain or loss. West should not recognize gain or loss on the receipt of the assets.⁴³ Under section 362(a), West should receive tax basis in the Business Process Intangibles and West Creek land equal to CASI's basis in those assets immediately before the transfer. Under section 358(a)(1), CASI tax basis in its West shares currently held should be increased by its tax basis in the contributed assets.

Section 351 Generally

As discussed previously, transfers to corporations are governed by section 351, and no gain or loss is recognized if one or more persons transfer property to a corporation solely in exchange for stock in such corporation and immediately after the exchange such transferors are in control of the corporation. Because CASI will be in control of West immediately after the transfer of the Business Process Intangibles and West Creek assets to West, and CASI will not receive boot in the exchange, no gain or loss should be recognized by CASI on the transfer.

Section 351 Transfers of Intangible Property

⁴⁰ 23 VAC 10-120-100 (2004).

⁴¹ WI Stats. §71.26(3) (2004).

⁴² WI Stats. §71.22(4)(p) (2004).

⁴³ IRC § 1032.

Section 351 requires that property be “transferred” to a controlled corporation. For a transfer to occur typically a deed or other assignment document is executed and delivered or a physical item of property is transferred to the possession of the transferee corporation. If the transferor retains ownership of the property and merely grants the transferor a right to use the property, the issuance of stock by the transferee could be recast as the payment of rent or a royalty, taxable as ordinary income, rather than as part of a tax-free exchange under section 351.

Differing views have been adopted by the Service and the Courts regarding the extent to which rights associated with intangible property must be transferred to qualify as a transfer of property. The Service has adopted the view that an exclusive unqualified right to use the property in perpetuity must be granted to the transferee. The Courts, on the other hand, have required only that valuable property be transferred and has not required that all rights to use the property in perpetuity be transferred.

In Revenue Ruling 69-156, the Service stated that the grant of patent rights to a corporation in an exchange otherwise qualifying under section 351 was a transfer only if all substantial rights in the patent are granted.⁴⁴ In the ruling, the transferor granted the transferee the exclusive right to employ the patent in the country in which it was organized and in which it operated; but the transferee agreed not to assert its right against the transferor or other related corporations. The Service ruled that this transfer did not qualify as a transfer under section 351 and stated that the grant of patent rights to a corporation in a section 351 transfer qualifies only if “the grant of these rights in a transaction which would ordinarily be taxable, would constitute a sale or exchange of property rather than a license for purposes of determining gain or loss.”⁴⁵ Accordingly, to qualify for sale or exchange treatment, the grant must consist of all substantial rights to the patent.

The Courts have adopted the view that the transfer of the property does not have to encompass all the rights in the property; however, the transfer does have to be perpetual, irrevocable and substantial in value. In *E.I. DuPont de Nemours & Co. v. U.S.*⁴⁶ the transferor transferred a royalty-free, nonexclusive license to its subsidiary in exchange for all of the subsidiary’s stock. The court reasoned that the sale or exchange requirement was not embodied in section 351 transfers, and because the rights transferred were perpetual, irrevocable and quite substantial in value, the property was transferred even though not all of the substantial rights of the transferor had been released.⁴⁷

Because CASI proposes to transfer all of its rights to the Business Process Intangibles to West, the transfer should qualify as a transfer of property under both the Service and the Court’s interpretations of transfers in section 351 transactions. Accordingly, CASI’s contribution of the Business Process Intangibles to West should qualify as a tax-free transfer under section 351.

⁴⁴ 1964-1 C.B. 133.

⁴⁵ Id.

⁴⁶ 471 F.2d 1211 (Ct. Cl. 1973).

⁴⁷ Id. at 1219.

Transferee and Transferor Basis

As discussed previously, the transferee corporation's basis in the assets received equals the basis in the hands of the transferor immediately before the transfer, increased by any gain recognized to the transferor.⁴⁸ Because CASI should not recognize any gain on the transfer, West should have a basis in the Business Process Intangibles and West Creek land equal to CASI's basis in those assets immediately before the transfer.⁴⁹

As also discussed previously, the transferor's basis in the transferee corporation stock received in the exchange is generally the same as that of the property transferred, decreased by the fair market value of other property received and increased by the amount of gain recognized.⁵⁰ CASI did not receive actual additional shares in West on the transfer of the Business Process Intangibles and West Creek land, however, a transfer of additional shares is imputed when a shareholder holds 100 percent of the outstanding stock of a corporation. Because there was no other property received by CASI in the transfer and no gain was recognized, CASI's basis in the West shares currently held should be increased by the basis of the Business Process Intangibles and the West Creek land, the property transferred to West.⁵¹

⁴⁸ IRC § 362(a).

⁴⁹ If CASI's aggregate tax basis in the Business Process Intangibles and West Creek land exceeds the aggregate fair market value of such property at the time of the contribution, then the carryover basis regime would not apply. Consequently, West would be required to reduce its tax basis in the Business Process Intangibles and/or West Creek land to their fair market value. Alternatively, CASI and West may elect to reduce CASI's tax basis in the West stock received to the fair market value. It is important that CASI maintains proper documentation supporting the basis and the fair market value of the Business Process Intangibles and West Creek land at the time of the contribution in order to properly determine whether section 362(e)(2) will apply.

⁵⁰ IRC § 358(a).

⁵¹ Since the fair market value of the contributed property exceeded the tax basis of such property, section 362(e)(2) should not apply to this transaction. Basically, section 362(e)(2) functions to limit the transfer of built-in losses in section 351 transactions. If the aggregate adjusted basis of property contributed by a transferor exceeds the aggregate fair market value of the property transferred, then the transferee's aggregate basis in the property received is generally reduced to the aggregate fair market value of such property.⁵¹ Any required basis reduction is allocated among the transferred properties proportionately, according to their built-in loss immediately before the transaction. However, the parties may elect to reduce the basis in the stock received by the transferor to the aggregate fair market value of the transferred property, instead of reducing the basis in the transferred assets. This irrevocable election must be included with the tax returns of the parties for the tax year in which the transaction occurs. In this step CarMax contributes 100 percent of its West stock to CASI in a section 351 transaction. If CarMax's tax basis in the West stock exceeds its fair market value at the time of the contribution, then the carryover basis regime would not apply. Consequently, CASI would be required to reduce its tax basis in the West stock to the fair market value. Alternatively, CarMax and CASI may elect to reduce CarMax's tax basis in the CASI stock received to the fair market value. It is important that CarMax maintains proper documentation supporting the basis and the fair market value of the West stock at the time of the contribution to properly determine whether section 362(e)(2) will apply.

Transferee Holding Period

In measuring its holding period for assets received in a section 351 exchange, the transferee corporation is allowed by section 1223(2) to include the period they were held by the transferor, and can evidently do so even if they were not capital assets when so held.⁵² Accordingly, West, in determining its holding period for the Business Process Intangibles and West Creek land can include the period of time the property was held by CASI.

Q6. What are the state income tax consequences to CASI as a result of the contribution of the Business Process Intangibles and West Creek land to West?

A6. CASI's contribution of the West Creek site to West should qualify as a tax-free transfer under section 351 for the applicable states. In addition, as long as CASI transfers all substantial rights associated with the Business Process Intangibles CASI should not recognize gain or loss.

Alabama

Property transferred to a corporation in a transaction which satisfies the requirements of IRC §351 will be recognized in accordance with IRC §351.⁵³ The gain or loss recognized on a reorganization for Alabama income tax purposes will be the same as the gain or loss recognized for federal tax purposes. Consequently, there should be no gain or loss for Alabama income tax purposes.

California

California adopts all of Subchapter C of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to corporate distributions and adjustments, unless otherwise provided.⁵⁴ Therefore, California follows the IRC §351 definition and treatment of transfers of property to controlled corporations and no gain or loss will be recognized.

Florida

Property transferred to a corporation in a transaction which satisfies the requirements of IRC §351 will be recognized in accordance with IRC §351.⁵⁵ Unless specifically defined in the state code or forms or regulations, each taxpayer making a Florida state return shall take into account the "items of income, deduction, and exclusion on such return in the same manner and amounts as reflected in such taxpayer's federal income tax return for the same taxable year."⁵⁶ Any term in

⁵² Section 1223(2) differs from section 1223(1), allowing the transferor to treat the holding period for the stock received as including the period during which it held the property transferred only if the latter was a capital or section 1231 asset in its own hands. If a corporation acquires undivided interests with different holding periods in one property, they apply on a pro rata basis to a sale of all the property. See [Rev. Rul. 67-309, 1967-2 CB 263](#).

⁵³ AL Code §40-18-8(e) (2004).

⁵⁴ Rev. & Tax. Code §17321 (2004).

⁵⁵ *Technical Assistance Advisement, No. 94(C)1-006*, Florida Department of Revenue, October 4, 1994.

⁵⁶ Fla. Stat. §220.43(1).

the Florida Tax Code has the same meaning as when used in a similar context in the Internal Revenue Code and other United States federal income tax statutes, as effective January 1, 1993.⁵⁷ Although Florida has not specifically adopted IRC §351, the result to the parties to the exchange should be the same for Florida state tax purposes as if Florida had specifically adopted the section.⁵⁸ Consequently, there should be no gain or loss for Florida income tax purposes.

Georgia

Georgia defines taxable income as the “corporation’s taxable income as defined in the Internal Revenue Code of 1986,” with adjustments provided within the Georgia code.⁵⁹ The state taxable income definition includes the federal treatment of IRC §351 transactions. Consequently there will be no gain or loss.

Illinois

Illinois begins with the federal taxable income definition and modifies it by adding certain items to the base taxable income amount. Illinois follows IRC §351, however, an adjustment may be required in two unique factual circumstances. If a gain is recognized by a noncorporate taxpayer on the transfer of appreciated property, the gain shall be added back into the taxpayer’s taxable income.⁶⁰ In addition, the filing method (combined v. separate) may affect the gain recognized and basis in assets transferred because Illinois requires a member of an Illinois unitary business group not electing to file a combined Illinois return to follow different filing instructions.⁶¹ There should be no gain or loss for Illinois income tax purposes since it is our understanding that the transaction would not be affected by either of the above exceptions.

Indiana

Indiana’s treatment of C corporations is the same as the federal tax treatment because the starting point for determining Indiana’s adjusted gross income tax is federal taxable income before the net operating loss deduction or special federal deductions⁶² and because the state conforms to the Internal Revenue Code as of January 1, 2002.⁶³ Therefore, Indiana has adopted the federal definition and treatment of IRC §351 transactions and there will be no gain or loss on the transaction.

Kansas

Kansas follows the federal definition of taxable income and therefore follows the definition and treatment of §351 transactions.⁶⁴ The federal definition was explicitly adopted, and thereby incorporates §351 of the Internal Revenue Code. Consequently there is no gain or loss on the transaction.

⁵⁷ Fla. Stat. §220.03(2)(c).

⁵⁸ *Technical Assistance Advisement, No. 94(C)1-006*, Florida Department of Revenue, October 4, 1994.

⁵⁹ O.C.G.A. §48-7-21 (2004).

⁶⁰ 35 ILCS 5/203 (2004).

⁶¹ IL PLR IT 90-0017.

⁶² IC §6-3-1-3.5 (2004).

⁶³ IC §6-3-1-11 (2004).

⁶⁴ K.S.A. §79-32, 110(c) (2004).

Kentucky

Kentucky adopts the federal taxable income definition, thereby incorporating IRC §351.⁶⁵ Kentucky explicitly follows the federal definitions, applications and interpretations applicable to such sections for use in calculating Kentucky taxable income.⁶⁶ Consequently, there will be no gain or loss on the transaction.

Maryland

Maryland's tax treatment of C corporations is the same as the federal government's treatment because the starting point for Maryland taxable income is federal taxable income after the net operating loss and special deductions.⁶⁷ By adopting that definition, Maryland adopts all of the applicable Internal Revenue Code sections related to creating the federal taxable income, including IRC §351 and so there is no gain or loss on the transaction.

North Carolina

North Carolina's treatment of C corporations is generally the same as federal because North Carolina generally incorporates the Internal Revenue Code as enacted on May 1, 2004, including any provisions that become effective before or after that date,⁶⁸ however North Carolina does not conform to certain specific provisions of the Code. North Carolina does follow the federal treatment of IRC §351 contributions, and so there will be no gain or loss on the transaction.

Ohio

Ohio generally follows the Internal Revenue Code, adopting the 1986 version of the code.⁶⁹ There are differences in calculating taxable income within Ohio, but these additions and subtractions do not impact any IRC §351 transaction circumstances. Therefore, the state follows the federal treatment of §351 transfers and there will be no gain or loss.

South Carolina

South Carolina adopts the Internal Revenue Code, as amended through December 31, 2003, with specific exclusions.⁷⁰ IRC §351 is not listed as a section that South Carolina specifically excludes from its state tax code.⁷¹ Therefore, South Carolina follows the federal treatment of §351 transactions and there will be no gain or loss.

⁶⁵ KRS 141.010 & 141.050(1) (2004).

⁶⁶ KRS 141.050(1) (2004).

⁶⁷ Instructions, 2003 Form 500, Corporation Income Tax Return.

⁶⁸ NCGS §105-228.90 (2004).

⁶⁹ ORC Ann. 5733.04 (2004).

⁷⁰ SC Code §12-6-40(A) (2004).

⁷¹ SC Code §12-6-50 (2004).

Tennessee

Federal taxable income is taken as the starting point in determining Tennessee taxable income, thereby adopting IRC §§301-385 for corporate distributions and adjustments.⁷² Tennessee follows the federal definition and treatment of IRC §351 transactions⁷³ and so there is no gain or loss.

Texas

Texas adopts the Internal Revenue Code in effect for federal tax years beginning in 1996, with specific exclusions.⁷⁴ Texas net taxable earned surplus is based on federal taxable income before the net operating loss deduction but after various special deductions, which are the state's exclusions from the IRC.⁷⁵ As a result, Texas has generally adopted IRC §§301-385, but the state has opted to specifically not incorporate certain federal laws into Texas law. IRC §351 is not specifically excluded, though, and is thereby incorporated into Texas law and so there will be no gain or loss.

Virginia

Virginia taxable income is based on federal taxable income after the net operating loss and special deductions. Virginia generally adopts the provisions of the Internal Revenue Code, with specific exclusions for certain industries.⁷⁶ Specifically, IRC §§301-385 are adopted for corporate distributions and adjustments because of the starting point for Virginia taxable income. Therefore, IRC §351 is incorporated into the taxable income and Virginia thereby follows the federal treatment of such transactions for calculating a corporation's taxable income.

Wisconsin

Wisconsin net income is based on federal taxable income before the net operating loss and special deductions.⁷⁷ Wisconsin explicitly adopts the Internal Revenue Code as amended to December 31, 2002, excluding and as indirectly affect by certain federal acts and provisions.⁷⁸ As a result of the IRC adoption and federal taxable income starting point for Wisconsin net income, Wisconsin adopts IRC §351 and so there will be no gain or loss.

Step Four: West forms CBS. Subsequently West contributes Business Process Intangibles, West Creek land, and the CarMax trademarks and tradenames in exchange for a membership interest in CBS. CASI contributes the Business

⁷² TCA §67-4-2006 (2004).

⁷³ *Id.*

⁷⁴ Tex. Tax Code §171.001(b) (2004).

⁷⁵ *Id.*

⁷⁶ 23 VAC 10-120-100 (2004).

⁷⁷ WI Stats. §71.26(3) (2004).

⁷⁸ WI Stats. §71.22(4)(p) (2004).

Functions, certain contractual obligations and cash to CBS in exchange for a membership interest in CBS. Immediately after the transfers, it is anticipated that West will have a 95 percent membership interest, and CASI will have a 5 percent membership interest in CBS.

Q7. Will the formation of CBS and the subsequent contribution of property by West and CASI qualify for nonrecognition treatment for federal income tax purposes?

A7. At the formation date, CBS is a single-member LLC and is treated as a disregarded entity and a division of West. As discussed previously, the formation of a single-member LLC does not constitute a taxable event for federal income tax purposes. The subsequent contribution of property by West and CASI to CBS in exchange for membership interests in CBS should be treated as a contribution to a partnership under section 721. Generally under section 721 and subject to the representations discussed previously, no gain or loss would be recognized to West and CASI upon the contribution of property to CBS in exchange for an interest in CBS.

Transfers to a Partnership

General Rule -- Section 721(a).

Section 721(a) provides that no gain or loss is recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in such partnership. The partner's basis in the partnership interest equals the basis of the property contributed, and the partnership takes a carryover basis in the contributed property.⁷⁹ Consequently, absent other considerations, no gain or loss should be recognized to West and CASI upon the contribution of property to CBS in exchange for interests in CBS.⁸⁰

Exception to the General Rule -- Section 721(b).

An exception to the nonrecognition rule under section 721(a) is contained in section 721(b), which provides that the general nonrecognition rule of section 721(a) will not apply to gain realized "on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated."⁸¹ Although section 351 itself does not define the term "investment company," Treas. Reg. section 1.351-1(c) provides that a transfer of property will be considered a transfer to an investment company if (i) the transfer results, directly or indirectly, in *diversification* of the transferors' interests, *and* (ii) the transferee is (a) a regulated investment company, (b) a real estate investment trust, or (c) a corporation

⁷⁹ IRC §§ 722 and 723.

⁸⁰ It is assumed that West will transfer substantially all of the rights associated with the CarMax trademarks, trade names, and Business Process Intangibles to CBS. See previous discussion regarding transfers of intangible property.

⁸¹ Section 351(e)(1) provides that the general nonrecognition rule of section 351(a) will not apply to a transfer of property to an "investment company."

more than 80% of the value of whose assets (excluding cash and nonconvertible debt obligations from consideration) are held for investment and are readily marketable stocks or securities, or interests in regulated investment companies or real estate investment trusts. The Taxpayer Relief Act of 1997 amended section 351(e) to provide, among other things, that (i) the determination of whether a company is an investment company shall be made by taking into account all stock and securities held by the company, and (ii) for this purpose, money and evidences of indebtedness shall be treated as stock and securities. The legislative history of section 721(b) confirms that the foregoing definition should apply for determining whether a partnership constitutes an investment company.⁸²

It is understood that the assets transferred to CBS by CASI and West will consist primarily of assets used in the active trade or business of the CarMax Group. Very little, if any, of the transferred assets will consist of stocks and securities held for investment. CarMax has represented that CBS should not qualify as an investment company immediately after the transactions. Therefore, section 721(b) should not apply and the nonrecognition rule under section 721(a) should still apply to the transfer.

Disguised Sales of Property to Partnerships - Section 707(a)(2)(B)

General Rule

Section 721(a) provides that a partner shall not recognize gain or loss upon the contribution of property to a partnership solely in exchange for an interest therein. If, however, there is a related direct or indirect transfer of money or other property by the partnership to the partner and these transfers, when viewed together, are properly characterized as a sale or exchange of property, the transfers will be treated as a sale and not as a contribution of property under section 721(a) (a “disguised sale”).⁸³

Additionally, if CBS takes property subject to a liability or assumes liabilities, the disguised sale rules under section 707(a)(2) could apply. Under the disguised sale rules, contributions could be recharacterized, in whole or in part, as a sale of such property if all or part of the assumed liabilities are non-qualified liabilities. Accordingly, it is important to determine whether or not such liabilities are qualified liabilities within the meaning of Treas. Reg. section 1.707-5(a)(5).

A liability is qualified only if it meets two requirements. First, it must fall into one of the following four categories:

- 1) Any liability incurred more than two years prior to the earlier of the date the property is transferred to the partnership or the date the partner enters into a

⁸²See S. Rep. No. 938, 94th Cong., 2nd Sess., pt. 2, at 43 (1976) (confirming that the definition of investment company in Treasury Regulation Section 1.351-1(c)(1) also defines a “partnership investment company”); H.R. Rep. No. 1515, 94th Cong., 2nd Sess. 527, 528 (1976) (same).

⁸³ Importantly, these rules operate regardless of the order of the transfers. In addition, the disguised sale rules can also recast transfers as a disguised sale of property by a partnership to a partner or as a disguised sale of a partnership interest (although these regulations are currently reserved).

written agreement to make the transfer, provided the liability has encumbered the property throughout the two-year period;

- 2) Any liability incurred within the two-year period that is not incurred in anticipation of the transfer to the partnership, provided the liability encumbers the property throughout the period. A liability incurred within the two-year period is presumed to be incurred in anticipation of the transfer unless the liability is described in category 3 or category 4 below or the facts and circumstances clearly establish that the liability was not incurred in anticipation of the transfer;⁸⁴
- 3) Any liability that is allocable to capital expenditures with respect to the contributed property pursuant to the allocation rules in Temporary Regulations section 1.163-8T;⁸⁵ or
- 4) Any liability incurred in the ordinary course of the trade or business in which the contributed property is used or held, but only if all of the assets material to a continuation of the trade or business are transferred to the partnership.⁸⁶

Second, if the liability is a recourse liability, it cannot exceed the fair market value of the transferred property (net of any senior liens that either encumber the property or are described in category 3 or 4) at the time of the transfer.⁸⁷ Liabilities not meeting these two requirements are considered as non-qualified liabilities.

If a partnership assumes or takes property subject to liabilities that are not qualified, the excess of the liabilities over the contributor's post-contribution share of the liabilities is treated as sale consideration.⁸⁸

CarMax has represented that CBS will not assume or take assets subject to any liabilities that are not qualified liabilities under Treas. Reg. section 1.707-5(a)(5). Additionally, CarMax has represented that CBS has no plan or intention to transfer money or other property to CASI or West within two years of the contributions other than the partners' shares of operating income. Therefore, the disguised sale rules under section 707(a)(2) should not apply. However, if CBS assumes non-qualified liabilities or if CBS distributes cash or other property to CASI or West in exchange for the CASI or West contributions, the disguised sale rules could require the recognition of gain for federal income tax purposes.

Deferred Intercompany Gain or Loss

⁸⁴ Treas. Reg. §§ 1.707-5(a)(6)(i)(B) and 1.707-5(a)(7). A partner who takes the position a liability incurred within the two-year period is not incurred in anticipation of the transfer to the partnership must disclose such position to the Service. Treas. Reg. § 1.707-5(a)(ii).

⁸⁵ See generally Priv. Ltr. Rul. 9444004 (Nov. 9, 1993); Priv. Ltr. Rul. 9340036 (July 7, 1993). FSA 200011025 (Dec. 16, 1999) (intercompany loans not "automatically" qualified under Reg. § 1.163-8T(j)(1)(iii)).

⁸⁶ Treas. Reg. § 1.707-5(a)(6)(i).

⁸⁷ Treas. Reg. § 1.707-5(a)(6)(ii).

⁸⁸ Treas. Reg. § 1.707-5(a)(1).

Any deferred intercompany gain or loss associated with the property contributed to CBS would be triggered immediately before the contribution to CBS. Such gain or loss would be recognized by the CarMax consolidated group and reported on their income tax return for the year in which the transfer takes place.⁸⁹

Generally, deferred intercompany gains or losses consist of sales or exchanges of property, the performance of services where the expense thereof must be capitalized, and any other capitalized expenditures between members of a consolidated group. Basically, the regulations treat the members of a consolidated group as divisions of a single corporation for purposes of reporting their respective income tax consequences from the transaction including determining the timing of the intercompany items. In general, the effects of intercompany transactions are matched, and sales and other basis-affecting transactions are handled on a deferred-reporting basis with timing keyed to the acquiring member's recovery of basis in the acquired property by depreciation or resale.

In the event and to the extent the matching treatment can no longer be effectuated with respect to intercompany items because the associated property has been transferred outside the consolidated group, deferred treatment will end under the acceleration rule. The gain or loss associated with the intercompany item is accelerated and recognized on the day before an accelerating event. One accelerating event occurs when the property's basis becomes "reflected" in the hands of a nonmember by way of a carryover basis transaction (e.g., by a contribution to a partnership under section 721 or to a corporation nonmember under section 351).⁹⁰

Because CASI and West are treated as transferring property to a partnership under section 721 which is a nonmember of the CarMax consolidated group, an acceleration event occurs with respect to the transferred property. Accordingly, any deferred intercompany gain or loss associated with the transferred property is recognized on the day before the transfer to the CarMax consolidated group.

Q8. Will the formation of CBS qualify for non-recognition treatment for state income tax purposes?

A8. Since the formation of CBS qualifies for non-recognition treatment for federal tax purposes under IRC section 721 and the states below either adopt or incorporate IRC section 721, the transaction should qualify for non-recognition treatment for state income tax purposes.

Alabama

The Alabama code explicitly adopts Internal Revenue Code §721.⁹¹ It states that the "amount of gain or loss recognized on the contribution of property to a subchapter K entity in exchange for an interest in the subchapter K entity shall be determined in

⁸⁹ See Treas. Regs. §§ 1.1502-13(d)(1)(i)(B), 1.1502-13(c)(7)(ii), Ex. (1)(j).

⁹⁰ Id.

⁹¹ Code of Ala. §40-18-8.

accordance with 26 U.S.C. §721.”⁹² The transfer of property to the partnership will have the same recognition in Alabama as it will federally.

California

California generally incorporates by reference IRC §701-761, the federal income tax provisions concerning partners and their partnerships, subject to certain modifications.⁹³ There is no modification to IRC §721; therefore, no gain or loss will be recognized upon the contribution of property to the partnership in exchange for a partnership interest, except for any gain realized on a transfer of property to a partnership that would be treated as an investment company if it were incorporated.

Florida

The Florida legislature has provided for the annual adoption dates for the Internal Revenue Code.⁹⁴ Concepts developed in connection with federal income tax laws will apply to the Florida income tax laws to the greatest extent possible, being taken into account in the computation of net income subject to tax when expressly authorized by law.⁹⁵ The annual update provides full “piggybacking” of the initial Florida tax on the base determined under the current federal code. Florida does not expressly add §721 gains or loss into the federal taxable income based used in Florida for income tax purposes. Since Florida adopts IRC §721, there will be no gain or loss recognized in Florida for the transaction.

Georgia

Georgia taxable net income is computed by using the taxpayer’s federal adjusted gross income as a starting point.⁹⁶ Georgia adopts the Internal Revenue Code provisions, enacted on or before January 1, 2004, except IRC §168(k), 1400L, and 179(b).⁹⁷ Therefore, IRC §721 is incorporated and no gain or loss will be recognized for the exchange with the partnership.

Illinois

The computation of Illinois taxable income requires that certain items be added as a modification to the federal taxable income. Illinois incorporates by reference the Internal Revenue Code of 1954, or any successor law or laws relating to federal income taxes in effect for the taxable year.⁹⁸ Certain gains and losses are required to be adjusted into the Illinois base income, but IRC §721 transactions are not included in these additions or

⁹² *Id.*

⁹³ Cal. Rev. & Tax Code §17851.

⁹⁴ Fla. Stat. §220.02(3).

⁹⁵ *Id.*

⁹⁶ O.C.G.A. §48-7-27(a).

⁹⁷ O.C.G.A. §48-1-2(14).

⁹⁸ ILCS §5/1501(11).

subtractions.⁹⁹ Therefore, no gain or loss for an IRC §721 transaction should be recognized for Illinois income tax purposes.

Indiana

The Internal Revenue Code provisions in effect on January 1, 2003, are regarded as incorporated in the adjusted gross income tax law by reference and have the same force and effect as though they were fully set forth in the law.¹⁰⁰ Indiana adjusted gross income is based on federal taxable income, subject to certain adjustments.¹⁰¹ There are no provisions for the addition or subtraction of gains or losses such as those discussed in an IRC §721 transaction.¹⁰² Therefore, there will be no gain or loss recognition for exchange of property for the partnership interest.

Kansas

The starting point for computing Kansas corporate income tax is federal taxable income.¹⁰³ Kansas has adopted the Internal Revenue Code of 1986, and amendments thereto.¹⁰⁴ Therefore, IRC §721 is incorporated in Kansas corporate income tax law, and there is no gain or loss recognized on the transaction.

Kentucky

Kentucky adopts the Internal Revenue Code in effect on December 31, 2001, except where modifications are necessitated.¹⁰⁵ In many respects, the provisions of the Kentucky income tax law conform to federal tax provisions. By statute, the starting point for calculating a corporate entity's Kentucky corporation income tax is the entity's federal gross income.¹⁰⁶ There are no modifications to IRC §721. There will be no gain or loss recognized in Kentucky.

Maryland

Maryland modified income of a corporation is its federal taxable income as determined under the Internal Revenue Code, adjusted by statutory modifications.¹⁰⁷ The current IRC is adopted, amendments after December 31, 2001, taking effect the year following their enactment.¹⁰⁸ The statutory modifications do not effect IRC §721 transactions. Maryland corporate income tax will not recognize a gain or loss on the transfer of property for a partnership interest.

⁹⁹ 35 ILCS 5/203.

¹⁰⁰ Ind. Code §6-3-1-11(b).

¹⁰¹ Ind. Code §6-3-1-3.5.

¹⁰² *Id.*

¹⁰³ Kan. Stat. Ann. §79-32,138(a).

¹⁰⁴ Kan. Stat. Ann. §79-32,109(a).

¹⁰⁵ Ky. Rev. Stat. Ann. §141.010(3).

¹⁰⁶ Ky. Rev. Stat. Ann. §141.010(12).

¹⁰⁷ Md. Code Ann. Tax-Gen. §10-304(1).

¹⁰⁸ Md. Code Ann. Tax-Gen. §10-108.

North Carolina

North Carolina follows the Internal Revenue Code, as effective May 1, 2004.¹⁰⁹ Any amendments to the IRC enacted after June 1, 2003, that increase North Carolina taxable income for the 2003 tax year become effective for tax years beginning on or after January 1, 2004.¹¹⁰ As a result, IRC §721 is adopted by North Carolina, and there will be no gain or loss recognized for the transaction.

Ohio

The franchise tax statutes of Ohio adopt the Internal Revenue Code of 1986, as amended, and other federal income tax and related laws.¹¹¹ The amendments to the Code may not be effective, based on the Ohio Supreme Court case *State v. Gill*, 63 Ohio St. 3d 53 (1992), until the revised code has been amended in some manner.¹¹² The entire IRC is incorporated, thereby including IRC §721. There will be no gain or loss recognized in Ohio for income tax purposes.

South Carolina

South Carolina conforms to the federal Internal Revenue Code of 1986 as amended through December 31, 2003.¹¹³ The state specifically does not adopt certain provisions of the Code, but this explicit list does not include IRC §721.¹¹⁴ Therefore, there will be no gain or loss recognized for the transfer of property for a partnership interest.

Tennessee

The starting point for determining the amount of Tennessee excise tax is the business entity's federal taxable income as defined in the Internal Revenue Code, effective during the year in which net earnings are determined.¹¹⁵ Note, unlike states that set a fixed date of their conformity to the Internal Revenue Code, Tennessee adopts a continuous update, under which the IRC becomes effective immediately for state purposes. IRC §721 is adopted by Tennessee, so no gain or loss will be recognized for the transaction.

Texas

Effective January 1, 1996, when the Texas franchise tax law refers to the Internal Revenue Code, it means the federal Internal Revenue Code of 1986 that is in effect for the federal tax year beginning on or after January 1, 1994, and before January 1, 1995.¹¹⁶

¹⁰⁹ N.C. Gen. Stat. §105-228.90(b).

¹¹⁰ N.C. L. 2004 Chapter 110 §1.2.

¹¹¹ Ohio Rev. Code Ann. §5733.04(G).

¹¹² Ohio Tax Information Release No. CFT 2002-01, 10/27/2003.

¹¹³ S.C. Code Ann. §12-6-40(A)(1).

¹¹⁴ S.C. Code Ann. §12-6-50.

¹¹⁵ Tenn. Code Ann. §67-4-2006.

¹¹⁶ Tex. Tax Code Ann. §171.001(b)(5).

IRC §721 is incorporated upon the adoption of the entire Internal Revenue Code. Therefore, no gain or loss will be recognized on the transfer of property for a partnership interest.

Virginia

Virginia taxable income is based on federal taxable income after the net operating loss and special deductions.¹¹⁷ Virginia generally adopts the provisions of the Internal Revenue Code, with specific exclusions for certain industries. Specifically, IRC §721 is adopted because of the starting point for Virginia taxable income. Therefore, IRC §721 is incorporated into the taxable income and Virginia would not recognize a gain or loss for the transaction.¹¹⁸

Wisconsin

The basis of the Wisconsin franchise tax and income tax is in effect federal taxable income as effective December 31, 2002, including all items of federal income entering into federal gross income and reflects a deduction for all federal items of deduction.¹¹⁹ Amendments after December 31, 2002, do not apply for Wisconsin purposes.¹²⁰ As a result, there will be no gain or loss recognized in the transfer of property for the partnership interest.

Q9. Will section 704(c) apply to the contributions by CASI and West to CBS and if so, what are the federal income tax implications?

A9. Section 704(c) would apply to the contributions by CASI and West to CBS to the extent that the fair market value of the contributed property differs from the tax basis in such property at the time of the contribution. Accordingly, potential issues with respect to the allocation of income, gain, loss and deductions associated with the property under section 704(c) should be considered.

As discussed previously, a partnership's basis for property contributed by a partner is generally equal to its basis in the hands of the contributing partner.¹²¹ If the basis of contributed property differs from its fair market value, then income, gain, loss, and deduction with respect to the contributed property is required to be allocated among the partners "so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution."¹²² The regulations provide that a partnership must account for this variation by "using a reasonable method

¹¹⁷ VA Code §§58.1-605 & 58.1-606 (2004).

¹¹⁸ VA Code §§58.1-602 & 58.1-609.10(2) (2004).

¹¹⁹ Wis. Stat. §71.22(4)(p).

¹²⁰ *Id.*

¹²¹ See IRC § 723.

¹²² IRC § 704(c)(1)(A).

that is consistent with the purpose of section 704(c)."¹²³ The regulations sanction three methods: a) the traditional method, b) the traditional method with curative allocations, and c) the remedial allocation method; and provide that other methods may also be acceptable.¹²⁴

Furthermore, if section 704(c) property is distributed to partners other than the contributing partner within seven years of its contribution, the contributing partner is required to recognize gain or loss in an amount (and character) equal to the gain or loss that would have been allocated to the contributing partner under section 704(c)(1)(B) if the property had been sold to the distributees at its fair market value at the time of distribution.¹²⁵ Property contributed to a partnership is "section 704(c) property" if, at the time of its contribution, its "book value," determined in accordance with Treas. Reg. section 1.704-1(b), differs from the contributing partner's adjusted tax basis.¹²⁶ If gain or loss is recognized, the basis of the contributing partner's partnership interest and the basis of the distributed property are adjusted to reflect the recognized gain or loss. The basis adjustment to the distributed property is made prior to the distribution, after which the usual distribution rules are applied to the distributee.¹²⁷

The AJCA added a new provision to section 704(c) which disallows the transfer of partnership losses. Under new section 704(c)(1)(C), a built-in loss may be taken into account only by the contributing partner and not by the other partners. In determining the amount of items allocated to partners other than the contributing partner, the basis of the contributed property is treated as the fair market value at the time of contribution. Additionally, if the contributing partner's partnership interest is transferred or liquidated, the partnership's adjusted basis in the property is based on its fair market value at the time of contribution, and the built-in loss is eliminated. Because property will be transferred to a partnership subject to this new provision, it will be important to obtain information regarding the adjusted basis and fair market value of such property. If property being contributed has a built-in loss, this loss may only be taken into account by the contributing partner.

The section 704(c) rules are quite complex. Specific application of these rules to the contribution of assets by CASI and West to CBS would require, in addition to other partnership allocation information, information regarding the basis and fair market values of the assets transferred and a preference regarding the method of allocation. Accordingly, application of the section 704(c) rules is beyond the scope of this memorandum; however, it is an important consideration for this Proposed

¹²³ Treas. Reg. § 1.704-3(a)(1). These rules are effective for property contributed to a partnership, and to capital accounts restatements ("book-ups") pursuant to regulations § 1.704-1(b)(2)(iv)(f), on or after December 21, 1993. Prior to this date, use of the traditional method was mandatory.

¹²⁴ See Treas. Reg. § 1.704-3(b).

¹²⁵ IRC §§ 704(c)(1)(B)(i) and 704(c)(1)(B)(ii). The partners must also maintain capital accounts in accordance with section 704(b) and reflect the gain accordingly.

¹²⁶ See Treas. Reg. § 1.704-3(a)(3)(i).

¹²⁷ Treas. Reg. § 1.704-4(e)(2); S. Rep. No. 101, 101st Cong., 1st Sess. 197 (1989).

Restructuring.¹²⁸ Similarly, the state income tax consequences of the application of the section 704(c) rules is also beyond the scope of this memorandum.

Step Five: CBS forms CASS and contributes the Business Functions received in Step Four to CASS.

Q10. Will the formation of CASS and the contribution of Business Function employees to CASS qualify for non-recognition treatment for federal income tax purposes?

A10. The formation of CASS and CBS' contribution of business function employees to CASS should qualify for non-recognition treatment under section 351 for federal income tax purposes.

As discussed above, transfers to corporations are governed by section 351. Under section 351, no gain or loss is recognized if one or more persons transfer property to a corporation solely in exchange for stock in such corporation and immediately after the exchange such transferors are in control of the corporation.¹²⁹ The basis of the assets and liabilities transferred to the corporation carryover from the transferor.¹³⁰ The basis of the stock received in the exchange is the same as the property transferred.¹³¹

The transferee corporation is permitted to assume the liabilities transferred to the corporation under section 351 without recognizing gain. If the liabilities assumed exceed the total adjusted basis of the assets transferred, however, the excess is considered as a gain from the sale or exchange of the assets transferred.¹³²

CBS proposes to transfer the Business Functions to CASS in exchange for 100 percent of the outstanding stock and CarMax represented that any liability assumed will not exceed the tax basis in the property transferred. Therefore, because property is exchanged solely for stock and CBS is in control of CASS immediately after the exchange, this transfer should qualify for nonrecognition treatment under section 351.

Because CBS should not recognize any gain on the transfer, CASS should have a basis in the Business Functions equal to CBS' basis in those assets immediately before the transfer. Furthermore, because CBS did not receive any other property in the transfer and no gain was recognized, CBS's basis in the CASS shares should equal the basis in the Business Functions, the property transferred to CASS. Finally, CASS, in determining its holding period for the Business Functions can include the period of time the property was held by CBS (which includes the time the property was held by CASI).

¹²⁸ For a more in-depth discussion of section 704(c), see William S. McKee, William F. Nelson, and Robert L. Whitmire, *Federal Taxation Of Partnerships & Partners*, Chapter 10, (2004).

¹²⁹ IRC § 351(a).

¹³⁰ IRC § 362(a).

¹³¹ IRC § 358(a).

¹³² IRC § 357(c).

Q11. Will the formation of CASS and the contribution of property to CASS qualify for non-recognition treatment for state income tax purposes?

A11. The formation of CASS and CBS' contribution of business function employees to CASS should qualify for non-recognition treatment under section 351 for Virginia and Georgia income tax purposes. We have been directed by Carmax to restrict this analysis to the states of Georgia and Virginia, where CBS and CASS have offices and employees.

Georgia

Georgia defines taxable income as the "corporation's taxable income as defined in the Internal Revenue Code of 1986," with adjustments provided within the Georgia code.¹³³ The state taxable income definition includes the federal treatment of IRC §351 transactions. Consequently there will be no gain or loss.

Virginia

Virginia taxable income is based on federal taxable income after the net operating loss and special deductions. Virginia generally adopts the provisions of the Internal Revenue Code, with specific exclusions for certain industries.¹³⁴ Specifically, IRC §§301-385 are adopted for corporate distributions and adjustments because of the starting point for Virginia taxable income. Therefore, IRC §351 is incorporated into the taxable income and Virginia thereby follows the federal treatment of such transactions for calculating a corporation's taxable income.

Steps Six and Seven: CBS enters into management service agreements with CASI, West and California LLC; and CBS enters into an employee services agreement with CASS.

Q12. What are the federal income tax consequences of CBS entering into the management services agreements with CASI, West and California LLC and entering into an employee servicing agreement with CASS?

A12. The agreements should be at arm's length in order to be respected as such for federal income tax purposes. In the absence of an arm's length agreement, the Service could challenge to reallocate the gross income, deductions, credits and other allowances of CBS, CASI, West, California LLC and CASS, in the event of an IRS audit.

Section 482 provides that gross income, deductions, credits, and other allowances of related taxpayers may be reallocated by the Service to prevent the evasion of taxes or to clearly reflect the income of the related entities. The principal function of section 482 is to prevent the distortion of the true taxable incomes of commonly controlled enterprises

¹³³ O.C.G.A. §48-7-21 (2004).

¹³⁴ 23 VAC 10-120-100 (2004).

and the objective "is to place a controlled taxpayer on a tax parity with an uncontrolled taxpayer."¹³⁵

Section 482 applies to practically any type of taxable entity or enterprise having independent significance for tax purposes, including corporations, associations, partnerships, proprietorships, trusts, and estates, regardless of whether they are domestic or foreign, taxable or tax-exempt, or parties to a consolidated return.¹³⁶ The trades or businesses must be "owned or controlled directly or indirectly by the same interests."¹³⁷ The term "controlled" is defined broadly as "any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised," and "it is the reality of the control which is decisive, not its form or the mode of its exercise."¹³⁸

Section 482 should apply to the management service and employee leasing agreements entered into by CBS and CASI, West, California LLC and CASS because the entities are owned or controlled, directly or indirectly by the same common interests, CarMax. As such, the agreements must reflect economic substance.

In general, taxpayers must structure related party transactions based upon an arms-length standard. Various pricing methodologies are included in the regulations; however, the emphasis is on an arms-length standard based on comparable transactions. Accordingly, the analysis is essentially fact-driven. In the absence of an arms-length agreement, the Service can reallocate the gross income, deductions, credits, and other allowances among the related taxpayers to more clearly reflect income.

In summary, to prevent a reallocation by the Service in the event of a tax audit, CBS should perform an analysis of the management services to be provided to CASI, West and California LLC and determine the arms-length price to be charged for these services. The same should be done for the employee leasing agreement with CASS.

Q13. What are the state income tax consequences of CBS entering into the management services agreements with CASI, West and California LLC and entering into an employee leasing agreement with CASS?

A13. Refer to Potential State Tax Challenges memorandum.

¹³⁵ Treas. Regs. § 1.482-1(a)(1) (1994) reiterated from the earlier 1968 regulations that the purpose of § 482 "is to place a controlled taxpayer on a tax parity with an uncontrolled taxpayer"; quoted with approval by the Supreme Court in *First Sec. Bank of Utah*, 405 US 394, 400 (1972).

¹³⁶ See Treas. Regs. §§ 1.482-1A(a)(1) and 1.482-1A(b)(2) (1968), and 1.482-1T(g)(1)-1.482-1T(g)(3) (1993); the comparable final regulations are Treas. Regs. §§ 1.482-1(i)(1) and 1.482-1(i)(2) (1994).

¹³⁷ IRC § 482.

¹³⁸ Treas. Regs. §§ 1.482-1A(a)(3) (1968), 1.482-1T(g)(4) (1993) (same); final Treas. Regs. § 1.482-1(i)(4) (1994) (same).

IX. LIMITATIONS ON SCOPE AND USE OF MEMORANDUM

Ernst & Young LLP ("E&Y") has relied upon the accuracy and completeness of the facts, assumptions, and representations (without regard to any limitation based on knowledge or belief, or similar limitation) set forth in this memorandum.

CarMax and each member of the CarMax Group have represented to us that such facts, assumptions, and representations are true, correct, and complete. However, we have not independently audited or otherwise verified any of these facts, assumptions, or representations. A misstatement or omission of any fact or a change or amendment in any of the facts, assumptions, or representations we have relied upon may require a modification of all or a part of E&Y's analysis. In addition, our analysis is based on such facts, assumptions, and representations as represented to us as of the date of this letter. Any changes in the facts, assumptions, or representations upon which we have relied may require a modification of all or part of this memorandum. We have no responsibility to update our analysis for events, mergers, circumstances or changes in any of the facts, assumptions, or representations occurring after this date.

Our analysis is based upon our interpretation of the Code, U.S. Treasury regulations promulgated thereunder, relevant State statutes and regulations promulgated thereunder, court decisions, published guidance issued by the Internal Revenue Service (the "Service"), and relevant state taxing authorities and such other authorities as we deemed relevant, in each case as of the date hereof. U.S. federal income tax laws and regulations, state tax laws and regulations, and the interpretations thereof, are subject to change, which could adversely affect the conclusion stated herein. Should there be any change, including any change having retroactive effect, in the Code, the regulations thereunder, state tax laws and the regulations thereunder, and the administrative guidance issued thereunder, or in the prevailing judicial interpretation of the foregoing, the conclusion expressed herein would necessarily have to be reevaluated in light of such change. The conclusion is as of the date of this memorandum, and we have no responsibility to update our analysis for changes in applicable law or authorities occurring after the date hereof.

The conclusion expressed herein is made only with respect to the specified U.S. federal and state tax consequences of the issues described herein to CarMax and the CarMax Group. You have not requested us to consider, nor have we considered, any other U.S. federal or state tax consequences; any non-income tax consequences beyond those specifically addressed herein; or any local or foreign income tax consequences in this memorandum. Furthermore, we express no views on non-tax issues such as corporate law or securities law matters.

This memorandum should not be taken as an assurance of the ultimate tax treatment. Neither taxing authorities nor the courts are bound by any of the conclusions expressed herein, and there can be no assurance that taxing authorities will not take positions contrary to our conclusions and will not be successful in sustaining such contrary positions.

E&Y expressly authorizes CarMax and the CarMax Group to (and each employee, representative, or other agent of CarMax and the CarMax Group may) disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including tax analyses) that are provided to CarMax and the CarMax Group relating to such tax treatment and tax structure. This memorandum, however, is solely for the benefit of CarMax and the CarMax Group and certain of its affiliates and is not to be relied upon by anyone else without the written consent of E&Y. We assume no responsibility for tax consequences, or any other consequences, to any other parties to the Proposed Transactions or to other persons. Instead, any other such parties or persons should consult and rely upon the advice of their own counsel, accountant, tax advisor or other advisors.

CarMax, Inc.

Valuation of Car-Related Intellectual Property

March 15, 2005

 **ERNST & YOUNG**

Quality In Everything We Do

CarMax, Inc.

VALUATION OF CAR-RELATED INTELLECTUAL PROPERTY

March 15, 2005

 **ERNST & YOUNG LLP**

Table of Contents

I. INTRODUCTION.....	3
A. SCOPE AND USE.....	3
B. RESULTS	3
II. COMPANY INFORMATION.....	4
III. REGULATORY FRAMEWORK.....	5
A. INTRODUCTION.....	5
B. COMPARABLE UNCONTROLLED TRANSACTION METHOD.....	6
C. COMPARABLE PROFITS METHOD.....	6
D. PROFIT SPLIT METHOD	7
E. UNSPECIFIED METHODS.....	7
I. MARKET CAPITALIZATION METHOD.....	8
II. ACQUISITION PRICE METHOD.....	8
III. CAPITALIZED EXPENDITURES METHOD	9
IV. DISCOUNTED RESIDUAL FREE CASH FLOW METHOD	9
IV. ECONOMIC ANALYSIS.....	10
A. INTRODUCTION.....	10
B. VALUATION OF THE ENTIRE COMPANY.....	10
C. CAF FREE CASH FLOW CALCULATION.....	11
D. PERPETUITY VALUE OF THE CAR BUSINESS	12
E. VALUATION OF THE CAR BUSINESS' INTELLECTUAL PROPERTY.....	13
F. CORROBORATION USING MARKET CAPITALIZATION.....	14
V. CONCLUSIONS	15
VI. APPENDICES.....	16

I. Introduction

A. Scope and Use

CarMax, Inc. ("CarMax") has engaged Ernst & Young LLP ("E&Y") to conduct an analysis to estimate the arm's length price of its Car business-related intellectual property, for purposes of an intercompany transfer of these assets.

This report is solely for the use of CarMax with respect to the valuation of the intellectual property in question. No other uses of this report are permitted, and no-one other than CarMax may rely upon it.

This report is based on the specific facts and circumstances of CarMax's business and relevant financial data. Any views expressed in this report are based upon information furnished to us by others, including CarMax management. We believe that all of the information used in this report is reliable, but we have not verified it in all cases. No warranty is given as to the accuracy of that information.

The work performed by E&Y for this study does not constitute an attest engagement in accordance with generally accepted accounting principles. Any other tax matters, including other corporate income tax aspects, as well as accounting and legal matters, that may or may not relate to the transactions under review, are outside the scope of this report. Finally, other transactions between or among CarMax entities that may or may not relate to the transactions under review are outside the scope of this report.

B. Results

In this analysis, E&Y determines an arm's length value for the Car business-related intellectual property owned by CarMax as of December 1, 2004 (i.e., unrelated to its financing operations and retail store leases). Applying the discounted residual free cash flow method, E&Y's analysis determines that this value is approximately \$1,996 million.

II. Company Information

CarMax began operations in 1993 under the ownership of Circuit City Stores, Inc. ("Circuit City"), with its first location in Richmond, Virginia. During the fiscal year ending ("FYE") 1997, Circuit City created two common stock series, Circuit City Stores, Inc.-Circuit City Group common stock and Circuit City Stores, Inc.-CarMax Group ("CarMax Group") common stock. On February 7, 1997, Circuit City completed an initial public offering of CarMax Group common stock, which was intended to track separately the performance of the CarMax operations. On September 10, 2002, Circuit City shareholders approved the separation of the CarMax business from Circuit City, and on October 1, 2002, the CarMax business was separated from Circuit City through a tax-free transaction in which each share of CarMax Group common stock was exchanged for one share of CarMax, Inc. common stock.

CarMax is the nation's largest specialty retailer of used cars and light trucks. CarMax (also referred to as "the company" hereafter) purchases, reconditions, and sells used vehicles. The company has separated the practice of trading-in a used vehicle in conjunction with the purchase of another vehicle into two distinct and independent transactions. Thus CarMax provides an appraisal that allows current vehicle owners to sell their cars to CarMax irrespective of their intention to purchase a vehicle from the company. CarMax also provides its customers with a full range of related services, including the financing of vehicle purchases through CarMax Auto Finance ("CAF") and third-party lenders, the sale of extended warranties, accessories, and vehicle repair service. CAF is the company's own operation that offers financing to prime-rated customers.

Due to the nature of the separation transaction, the legacy CarMax legal structure under Circuit City carried over to the new stand-alone CarMax, Inc. group. While this structure may have provided certain benefits within the Circuit City group, the management of CarMax has identified a structure that is better aligned with the CarMax business as a stand-alone company and has aligned the new structure with the operations of the business. As a part of this restructuring, the Company has decided for various reasons to pursue a "shared services" concept to supplement the store operations and risk management operations. This type of structure also allows for significant flexibility in the future as it affords a methodology regarding the manner in which both new store locations and new business segments can be added to the legal structure. This new structure was implemented on December 1, 2004.

This new structure involves the creation of a partnership that will own the company's intellectual property and will charge an arm's length royalty for the use of that intellectual property. Such intellectual property includes CarMax's intellectual property related to CAF, and the remaining intellectual property unrelated to the real estate leases and CAF (and, therefore, primarily related to the "Car" business). The purpose of this analysis is to provide a valuation of the latter, the Car business-related intellectual property.

III. Regulatory Framework

A. Introduction

The applicable taxation regulatory framework for this analysis is guided largely by §482 of the Internal Revenue Code (“IRC §482”) and the final §1.482 Treasury Regulations (published on July 8, 1994). IRC §482 authorizes the Commissioner of the Internal Revenue Service (“IRS”) to allocate items of income, deductions, credits or allowances between commonly controlled entities in order to prevent the evasion of taxes or to clearly reflect income. The objective of a §482 audit is to determine whether charges for transfers of goods, services or intangibles between related entities reflect an “*arm’s length price*” (i.e., the price that would have been charged if the entities were unrelated) and, if not, what the *arm’s length* price should be. This is commonly referred to as “intercompany transfer pricing.”

Particular to this study, most states have enacted a statutory provision similar to IRC §482 authorizing the state tax administrator to make intercompany adjustments if necessary to clearly reflect the income attributable to the taxing state. *See, e.g.*, Arizona Rev. Stat. Ann. §43-941; Oregon Rev. Stat. §314.295; or Wisconsin Stat. §71.10(1), 71.30(2) and 71.80(1)(b). In many instances, the state’s statute has been adopted substantially verbatim from the federal statute. States that have adopted IRC §482-type authority also have adopted the guidelines established by Treas. Reg. §1.482 in determining *arm’s length* pricing for intercompany transactions.

This section summarizes the regulatory framework set forth in Treas. Reg. §1.482 and reviews the pricing methods prescribed for evaluating the *arm’s length* nature of related party services and intangible property transactions.

The intercompany transaction analyzed in this study is the transfer of certain intangibles, among which are processes, know-how, trademarks, brand names, and other similar items; accordingly, the relevant specific regulations are those relating to the transfer of intangible property, §1.482-4. These regulations require that the *arm’s length* consideration for the transfer of an intangible must be commensurate with the income attributable to that intangible and that this consideration must be determined under one of the four methods listed in §1.482-4(a), *viz.*:

- i. The Comparable Uncontrolled Transaction method;
- ii. The Comparable Profits method;
- iii. The Profit Split method; or
- iv. Unspecified methods.

Furthermore, Treas. Reg. §1.482-1(c) require that the *arm’s length* result of a controlled transaction be determined under the method that, given the facts and circumstances, provides the most reliable measure of an *arm’s length* result (the best method rule). In determining the best method, the IRS regulations¹ specify that the two primary factors to consider are:

¹ Treas. Reg. §1.482-1(c)(2).

- the degree of comparability between the controlled transaction and any uncontrolled comparables; and
- the quality of the data and assumptions used in the analysis.

In the following sections, we examine each of the methods specified in the regulations and establish that the discounted residual cash flow method, an unspecified method, is the best method for this particular analysis for CarMax.

B. Comparable Uncontrolled Transaction Method

The Comparable Uncontrolled Transaction ("CUT") method evaluates whether or not the amount charged for a controlled transfer of intangible property is at arm's length by reference to the amount charged in a comparable uncontrolled transaction.

Application of the CUT method requires that the controlled and uncontrolled transactions involve either the same or comparable intangible property. In particular, in considering comparability,² the intangibles must be used in connection with similar products or processes within the same general industry or market and have similar profit potential. In addition, the transaction must take place under comparable circumstances: the terms of the transfer, the stage of the intangible's development, the uniqueness of the property, the extent of any collateral transactions, and, *inter alia*, the functions to be performed by the transferor and recipient must either be comparable or be different in such a way that suitable adjustments can be made to neutralize those differences.

CarMax has not licensed similar intangibles to third-parties, nor has it licensed similar intangibles from third-parties, thus internal comparables are not available. Given the highly specific, if not unique, character of CarMax's relevant intangibles, it is difficult if not impossible to identify external comparables which could serve as the basis for this analysis. Although there are external examples of some portion of the intangibles being licensed, such as the trademark, E&Y was unable to identify any publicly available external agreements/transactions that involved the sale or license of intangibles similar to all of the intangibles being transferred as part of this transaction.

C. Comparable Profits Method

The Comparable Profits Method ("CPM") evaluates whether or not the amount charged in a controlled transaction is arm's length based on objective measures of profitability, known as profit level indicators, derived from uncontrolled taxpayers that engage in similar business activities under similar circumstances. The tested party's reported operating profit is compared to the comparable operating profits derived from the profit level indicators of uncontrolled comparable companies to determine if the reported operating profit represents an arm's length result.

² Treas. Reg. §1.482-4(c)(2)(iii)(B).

Although the CPM can be applied to test the arm's length character of a royalty paid in exchange for the on-going transfer of intangible property, as in Example 4 of Treas. Reg. §1.482-5(e), it provides at best indirect guidance in determining the arm's length lump sum payment for CarMax's transferred intangibles. Specifically, if there were an uncontrolled transaction in which one party licensed comparable intellectual property to another in return for a stream of royalties, the present discounted value of that stream of royalties could be calculated and used as a benchmark for the intercompany valuation. In practice, the required degree of comparability of the intellectual property and in the transaction terms renders the method impractical in this instance because of the absence of suitable comparables. Hence the CPM cannot be regarded as the best method.

D. Profit Split Method

The profit split method evaluates whether or not the allocation of the combined operating profit or loss attributable to one or more controlled transactions is arm's length by reference to the relative value of each controlled taxpayer's contribution to that combined operating profit or loss. This relative value must be determined in a manner that reflects the functions performed, risks assumed, and resources employed by each participant in the relevant business activity, consistent with the comparability provisions of Treas. Reg. §1.482-1(d)(3).

There are two forms of profit split: the comparable profit split and the residual profit split. In the comparable profit split, the arm's length split is derived from the combined operating profit of uncontrolled taxpayers whose transactions and activities are similar to those of the controlled taxpayers. In the residual profit split, the "routine" contributions to combined operating profit of the controlled taxpayers would be benchmarked by reference to independent third party comparables, and the remaining operating profit would be shared according to the relative value of each taxpayer's contribution of intangible property to the business activity that was not accounted for as a routine function.

In practice, the required degree of comparability of the intellectual property and in the transaction terms renders the method impractical in this instance because of the absence of suitable comparables, and hence the profit split method cannot be regarded as the best method.

E. Unspecified Methods

As with any other method, the transfer pricing regulations require that an unspecified method be applied only if it provides the most reliable measure of an arm's length result under the principles of the best method rule. There are several methods that are commonly applied in valuation analyses and which are discussed in the following sections. Among these unspecified methods and all the specified methods, it is established in this section that the discounted residual cash flow method is the best method for determining the arm's length price for the intercompany transfer of the intangible property.

i. Market Capitalization Method

The market capitalization method determines a value for the intangibles in question by beginning with the total value of a company's assets, computed as the value of its equity, plus the value of its net debt (and any preferred stock and minority interests), from which are subtracted the value of its tangible assets and the value of any intangibles that are not being transferred. This is considered by the IRS³ to be a version, albeit inexact, of the CUT method because the share price, used to compare the company's equity, could be viewed as a measure of how much uncontrolled parties would be willing to pay for the intangibles being transferred (as well as for the rest of the company).

There are numerous objections to this approach, primarily focused on the market equity calculation. Although stock prices can proxy future cash flows, they tend to be much more volatile than should be the case if all they reflected were future cash flows. For example, in the case of CarMax, the stock price has varied between \$18.45 and \$35.39 over the course of the twelve months prior to December 1, 2004. Stock prices, for example, may be distorted by speculative "bubbles" or other market imperfections. Furthermore, although stock prices are an independent guide to a company's value, the very independence of those involved in determining prices can vitiate the reliability of the valuation estimates because outsiders tend not to be as well informed about the company's operations and prospects as would be company management.

ii. Acquisition Price Method

Sometimes considered a variation on the market capitalization method, the acquisition price method would measure the intangibles based either on the purchase price paid by CarMax to acquire them from a third party or on the purchase price paid in a comparable uncontrolled transaction for comparable intangibles. Again, this is sometimes seen as a version of the CUT method because it bases the valuation on a comparable transaction between unrelated parties.

In this case, CarMax did not acquire the relevant intellectual property from a third party (or sell comparable intangibles to a third party) and so application of the method would require identification of comparable transactions between third parties. As discussed in the above section on the CUT method, suitable transactions are unlikely to exist because the degree of comparability required is high and therefore this method is unlikely to be the best method. (Even if a comparable transaction could be identified, the acquisition price would have to be adjusted for a "control premium" and for potential synergies that might not be present in the CarMax transaction.)

³ IRS Field Service Advice memorandum 200023014, dated February 29, 2000.

iii. Capitalized Expenditures Method

This method, suggested by the IRS regulations on the residual profit split method,⁴ would value intangibles according to the capitalized cost of developing the intangibles and all related improvements and updates, less an appropriate amount of amortization based on the useful life of each intangible.

However, as the regulations point out,⁵ the reliability of this method is reduced relative to other methods that do not employ such cost capitalization to measure value because firstly the costs of developing an intangible may not be related to its market value, secondly the calculation of these costs may require an allocation of indirect costs between the relevant business activity and the controlled taxpayer's other activities, and thirdly the calculation depends upon the assumption made regarding the intangible's useful life.

In the case of CarMax, all three disadvantages are present, particularly because the intangibles being transferred are diverse and the expenditures associated with their development are not easily identifiable or quantifiable.

iv. Discounted Residual Free Cash Flow Method

The discounted residual free cash flow method calculates projections for the business' free cash flows, discounts these projections, and then subtracts from the sum of these discounted projections the value of the parts of the business not being transferred. Although not one of the specified methods under the IRS regulations, Treas. Reg. §1.482-4(d), including the accompanying example, envisions the use of this approach in valuing intangibles. Moreover, this method is routinely used by valuation practitioners and academics.

The drawback of this method is that it requires reliable data and assumptions to forecast free cash flows accurately. In this instance, this drawback was mitigated, to a considerable degree, by the fact that the company's own internal projections, which were developed for management's planning purposes, were used, and many other data and assumptions used in the analysis were validated by company personnel after discussions with E&Y. This approach, in itself, offers an advantage over the market capitalization method because whereas valuation in that method relies on the estimates of outsiders to the company (i.e., reflected in the share price), the discounted cash flow method relies on the information and data of company insiders who generally are better informed about the company's value drivers, synergies, specific expansion plans, margin improvements, risks, and growth prospects. Therefore, the discounted free cash flow method is judged the best method to determine the arm's length price for the intercompany transfer of CarMax's Car-related intellectual property.

⁴ Treas. Reg. §1.482-6(c)(3)(i)(B).

⁵ Treas. Reg. §1.482-6(c)(3)(ii)(C)(3).

IV. Economic Analysis

A. Introduction

Using the discounted free cash flow method, the valuation of CarMax's Car-related intellectual property proceeds sequentially, calculated as a residual after the value of the other components of the CarMax "portfolio" have been identified, estimated, and eliminated from the estimated value of the company as a whole. Specifically, these other components are the CAF business, Car net working capital, Car plant, property, and equipment ("PPE"), and the leases of the retail stores. The method is applied to three distinct time periods:

- Fiscal years ending ("FYE") 2006 through 2008, when CarMax internal financial projections are used where possible;⁶
- FYE 2009 through 2020, when certain assumptions about growth rates and other financial data were made by E&Y and validated by CarMax management; and
- Years subsequent to FYE 2020, when the company is assumed to be in "steady state" with constant growth.

B. Valuation of the Entire Company

The first step is to value the entire company using the discounted free cash flow method. Income statement data for the three fiscal years ending in February 2006 through February 2008 are assembled from company-supplied projections for CarMax, Inc. Free cash flow is calculated as operating cash flow, less the increase in net working capital, less the increase in capital expenditure net of proceeds from sales of PPE.

For the subsequent period of twelve fiscal years from March 2008 to February 2020, projected growth rates, validated by CarMax management, are applied to the (forecast) income statement for FYE 2008. Operating cash flow is projected to grow at 17 percent in FYE 2009 (the same rate as in the preceding fiscal year), 15 percent in each of the following five years, and at a annual growth rate that declines in straight-line manner over the following six fiscal years to the projected long-term growth rate of 4 percent per annum⁷ in FYE 2020. These growth rates from FYE 2009 are presented in Appendix 1. The effective corporate income tax rate is expected to be 38.0 percent during this period.

⁶ CarMax's fiscal year ends on or about February 28 or 29. For purposes of this analysis reference to FYE 2006 (the period from March 1, 2005 to February 28, 2006) includes the period December 1, 2004 to February 28, 2005.

⁷ This estimate of the long-term growth rate was based upon an analysis of historic macroeconomic data by E&Y.

The components of net working capital are projected to grow at the same rates, except inventory. Again, CarMax management validated the inventory turnover assumptions. Inventory is expected to turnover so that days inventory⁸ will be 35 days over the six-year period FYE 2009 through 2014, and 34 days in the following six fiscal years to FYE 2020.

Capital expenditure is projected by the company to grow from its (forecast) level in FYE 2008 at 10 percent per annum over the six fiscal years ending 2014 and then to grow at an annual rate that declines in straight-line manner over the following six years to the projected long-term annual growth rate of 4 percent in FYE 2020. Based on company management guidance, proceeds from the sale of PPE are assumed to be 80 percent of the level of capital expenditure in the prior period for FYE 2009 through 2020.

C. CAF Free Cash Flow Calculation

Having established an estimate of the value of CarMax's stream of free cash flow, the next step is to distinguish between free cash flow attributable to the Car business and that attributable to the financing business, CAF.

CarMax offers financing to customers through CAF and third-party finance companies. Financing for prime-rated customers is provided through its own finance operation, CAF and through unrelated financial institutions such as Bank of America. In some cases where the used vehicle is a certified used vehicle, the manufacturer may also provide prime-rated customers with an offer of financing. In addition, Chrysler Financial, Ford Motor Credit, General Motors Acceptance, Mitsubishi Motors Credit, Nissan Motors Acceptance, and Toyota Financial Services offer prime financing to customers purchasing new vehicles at applicable CarMax locations. Financing for non-prime rated customers is offered by TransSouth Financial, Wells Fargo Financial Acceptance, and AmeriCredit Financial Services, with no financial recourse to CarMax. Sales consultants use CarMax's proprietary information system to electronically submit financing applications and receive responses, often from multiple lenders, generally in less than five minutes from prime lenders. Financings are installment sale contracts secured by the vehicles financed.

Revenue for CAF arises from three sources: gains on sales of loans, servicing fee income, and interest income.⁹ CAF free cash flow projection are based on forecasted CAF segmented data that are contained in the overall CarMax projections (also see Sections A and B above) for the 2006-2008 periods, and on the Car business growth rates for the period FYE 2009 to 2020. Therefore, CAF's revenue and direct expenses are assumed to grow at the same rate as CarMax's net sales over the period FYE 2006 through 2008. Over the period FYE 2009 through 2020, the growth rates are assumed to be the same as for the business overall, on the grounds that financing operations are likely to track closely the Car business' performance, ultimately reaching the same long-term growth rate of 4 percent per annum in FYE 2020.

⁸ Days inventory is calculated as $360 \times \text{mid-year average inventory} / \text{cost of goods sold}$.

⁹ For the purposes of this analysis, no allocation is made of CarMax, Inc. non-operating income to CAF.

Selling, general, and administrative expenses ("SG&A") for the CAF business comprise two elements: firstly, an allocation of the consolidated company's total SG&A, set (based on management guidance) at one half percent of CAF's total revenue over the period FYE 2006 through 2020; and secondly, a payment to the Car business in recompense for generating loans serviced by CAF. According to the company, the cost to acquire a loan is either \$250 for ValuMax cars or \$325 for new and used units at CarMax.¹⁰ Weighting these costs by the historical unit sales, the weighted average cost to acquire a loan is \$314. Multiplying this figure by the unit projections for the CAF business over the period FYE 2006 through 2008 provides an estimate of this component of CAF's SG&A, which is then projected for the subsequent period through FYE 2020 using the same growth rate as for net sales.

CAF is assumed to have no net capital expenditure and its net working capital is assumed to grow at the same rate as that for net sales. Thus, the free cash flow for the period FYE 2006 through 2020 can be estimated. This is then subtracted from the free cash flow projections for the business as a whole to leave the free cash flow attributable to the Car business. These (undiscounted) projections, as well as those for the entire company and for CAF on a stand-alone basis, are presented in Appendix 2.

D. Perpetuity Value of the Car Business

Having estimated free cash flow for the period FYE 2006 to 2020, the next step is to value all subsequent free cash flows to perpetuity (that is, as if the business would continue indefinitely). Although it may not be the case that the business will last indefinitely, this is a common and convenient assumption to get around the problem of the impractical nature of an extended forecast period. This value is known as the perpetuity (or terminal) value of the business. It is calculated by taking the free cash flow estimate for FYE 2020, adjusted for the difference in growth rates of net capital expenditure and depreciation/amortization, and using the Gordon Growth Formula¹¹ to determine the value of this cash flow generated indefinitely (i.e., to an infinite horizon). This cash flow is assumed to grow at the long-term growth rate of 4 percent per annum (indefinitely) and is discounted at an annual rate of 10 percent, a figure provided by CarMax for the Car business.¹²

¹⁰ For the more cost conscious consumer, CarMax offers used cars, branded "ValuMax," that are more than six years old or have 60,000 miles or more and that generally range in price from \$6,500 to \$19,000.

¹¹ The Gordon Growth Formula is: adjusted free cash flow multiplied by $(1 + \text{long-term growth rate})$ divided by the difference between the discount rate and this long-term growth rate. The Gordon Growth Formula, also known as the Constant Growth Formula, assumes that a company grows at a constant rate forever.

¹² The discount rate of 10% is based on a 14% cost of equity, a 6.5% cost of debt, debt to value ratio of 45% and a tax rate of 38%. The CAF discount rate is slightly higher than the Car business because company management considers the Car business to have a lower cost of capital than the CAF business.

The adjustment for the difference in growth rates of net capital expenditure and depreciation/amortization arises because it is assumed that such differences cannot persist indefinitely. Accordingly, the adjustment eliminates the difference in one step (in this case, in FYE 2020) so that subsequently net capital expenditure and depreciation would move in lockstep. Based on their projected values in FYE 2020, the ratio of capital expenditure to net sales will be 0.42 percent. The ratio of depreciation to net sales in the same year, while not explicitly projected, is estimated to be 0.39 percent based on the average ratio prevailing over the period FYE 2002 to 2004. Multiplying the difference in ratios (i.e., 0.03 percent) by the projection for net sales in FYE 2020 (i.e., \$31,468 million) yields the value of the adjustment to free cash flow in that year (i.e., \$8.3 million). The (undiscounted) adjusted free cash flow in FYE 2020 is then \$467 million, which yields an undiscounted perpetuity value of \$8,101 million.

E. Valuation of the Car Business' Intellectual Property

With the calculation of the perpetuity value of the non-CAF business and the stream of non-CAF free cash flows over the period FYE 2006 through 2020, it is then possible to arrive at an estimate of the present value of the entire non-CAF business. Each of the annual free cash flow estimates from FYE 2006 to 2020 is multiplied by a present value factor, which takes into account not only the annual discount rate of 10 percent for the Car business but also the number of months from the valuation date of December 1, 2004 to the midpoint of each fiscal year. Accordingly, a lower present value factor is applied to the free cash flow estimate for FYE 2018 (i.e., 0.304), for example, than that for, say, FYE 2009 (i.e., 0.716) because the later fiscal year is further from the valuation date and is therefore discounted more heavily. The present value factor applied to the perpetuity value is assumed, for simplicity's sake, to be the same as that for FYE 2020. Summation of the present values produces an estimate of the present value of the non-CAF business using this discounted cash flow method, namely, \$2,744 million.

This valuation, however, captures several elements besides the intellectual property of the Car business. These elements (namely, operating assets consisting of net working capital and PPE, and retail store leases) need to be estimated and then subtracted to yield the valuation of Car business-related intellectual property.

Net working capital for the non-CAF business is estimated simply by taking its net book value at the end of November 30, 2004, taking out of the calculation those parts of working capital related to the CAF business, that is, automobile loan receivables held for sale and retained interests in securitized receivables. The net book value of Car-related net working capital, then, is \$374 million. Strictly speaking, the appropriate measure is fair market value rather than book value but company management advised E&Y that the two values would be similar. Similarly, PPE is estimated using its net book value at the end of November 30, 2004. The resulting estimate is \$367 million.

The final calculation is of the present value of retail store leases. Based on discussions with the company, E&Y assumed that, on average, leases could be renewed at a replacement cost of \$155,000 and that these replacement costs could be employed to estimate the value of each

lease.¹³ The perpetuity value of leases expiring after FYE 2020 is based on the average annual lease cost over the period FYE 2016 through 2020, a long-term annual growth rate of 4 percent, and an annual discount rate of 10 percent. The combined present value of the perpetuity value and the annual lease costs in the preceding period from FYE 2006 to 2020 is \$7 million.

Once these three values are subtracted from the present value of the Car business, the remaining value, attributable to the intellectual property of the Car business, is \$1,996 million. This calculation is presented in Appendix 3.

F. Corroboration using Market Capitalization

Although considered by E&Y to be the best method, any valuation established using the discounted cash flow method is liable to the method's well-known shortcomings. Most important of these is the sensitivity of the resulting valuation to assumptions about cash flow growth rates, the terminal value, and the discount rate. That said, all of these assumptions have been explicitly stated and validated by CarMax management. For this reason, the estimate obtained by E&Y can be considered reliable.

However, the valuation estimate obtained by E&Y can be corroborated to some degree using an alternative calculation. Specifically, while not judged to be the best method, the market capitalization of CarMax, Inc. can be regarded as secondary (and objective) support for the aggregate of the various valuation estimates obtained in the course of applying the discounted residual free cash flow approach.

Market capitalization is calculated as the product of number of common shares outstanding and the stock price, plus net debt. As noted earlier, the stock price can vary considerably over time, and therefore market value also is quite volatile. However, as of November 30, 2004, the sum of market capitalization, and short and long term debt was approximately \$3,017 million, which compares favorably with the sum of the valuation estimates derived using the discounted cash flow method, namely, \$2,932 million.¹⁴ The similarity of the two values lends additional credence to the estimated value of the Car business' intellectual property determined by E&Y.

¹³ The one exception to this assumption is a 47 square foot lot in Virginia, the incremental lease replacement cost of which was assumed to be \$50,000.

¹⁴ The calculation to estimate these data is presented in Exhibit 6.

V. Conclusions

CarMax has engaged E&Y to conduct an analysis to estimate the arm's length price of its Car business-related intellectual property, for purposes of an intercompany transfer of those rights. Specifically, this analysis looked at the value of the intangibles related to the Car business, separate and distinct from the values of the CAF business, the Car business' operating assets, and the retail store leases.

E&Y determined an arm's length value for the intercompany transfer of this intellectual property as of December 1, 2004 using the discounted residual free cash flow method. First, the stream of free cash flows from FYE 2006 through 2020 for the entire company was estimated, and from this was subtracted the stream of free cash flows relating to the auto financing business, CAF. The remaining free cash flow, relating to the non-CAF business, was discounted to its present value and a perpetuity value was computed for years subsequent to FYE 2020. Summing the present values of the perpetuity value and the stream of non-CAF free cash flows relating to FYE 2006 through 2020 yielded an estimate of the present value of the Car business, \$2,744 million. From this present value were deducted the present value of net tangible assets and the present value of retail store leases, leaving an estimate of the Car business' intellectual property. This resulted in an arm's length price for the Car business-related intellectual property of approximately \$1,996 million. This estimate is implicitly corroborated by the market capitalization method, which produces an estimated value for the whole company markedly similar to the sum of the valuation estimates derived using the discounted cash flow method.

The conclusions in this report are based upon both primary and secondary research. In particular, the facts pertaining to the relevant transactions are based upon substantial input and information provided by CarMax management.

VI. Appendices

Appendix 1: Annual growth rates of sales and capital expenditure

FYE	Non-CAF Sales	CAF Sales	Capital expenditure
2009	17.0%	17.0%	10.0%
2010	15.0%	15.0%	10.0%
2011	15.0%	15.0%	10.0%
2012	15.0%	15.0%	10.0%
2013	15.0%	15.0%	10.0%
2014	15.0%	15.0%	10.0%
2015	13.2%	13.2%	9.0%
2016	11.3%	11.3%	8.0%
2017	9.5%	9.5%	7.0%
2018	7.7%	7.7%	6.0%
2019	5.8%	5.8%	5.0%
2020	4.0%	4.0%	4.0%
Long term	4.0%	4.0%	4.0%

Appendix 2: Projections of Free Cash Flow, \$ million (undiscounted)

FYE	Entire company	CAF	Residual Car
Dec. 1, 2004-Feb. 28, 2005	1.1	6.2	-5.1
2006	10.6	6.7	3.9
2007	- 28.7	-1.5	-27.2
2008	- 51.7	7.2	-58.9
2009	10.3	8.5	1.8
2010	79.1	9.7	69.4
2011	48.2	11.2	37
2012	63.9	12.9	51
2013	70.4	14.8	55.6
2014	90.9	17	73.9
2015	170.6	19.3	151.3
2016	241.3	21.5	219.8
2017	263.1	23.5	239.6
2018	338.0	25.3	312.7
2019	408.9	26.8	382.1
2020	486.9	27.9	459

March 15, 2005

**Appendix 3: Valuation of Car-related intellectual property (\$ million, at
December 1, 2004)**

Present Value of non-CAF Cash Flows	\$ 2,744
Less Net Book Value Net Working Capital (Nov. 30. 2004), Car business	\$ 374
Less Net Book Value PPE (Nov. 30. 2004), Car business	\$ 367
Less PV of retail store leases	\$ 7
Estimated value of non-CAF intangibles	\$ 1,996

EXHIBITS

Exhibit: Inputs

CarMax IP Valuation**Residual Earnings Analysis - CarMax**
Inputs for valuation analysis

2009-20 effective tax rate 38.0% (1)

Discount rates

Non-CAF 10.00% (2)

CAF 11.00% (3)

Valuation date December 1, 2004 (4)

Growth rates: sales & revenue, capital expenditure and Days Inventory

	Non-CAF	CAF	Capex	Days Inventory
FYE				
2005		10.1%		39.9
2006		19.1%		37.9
2007		16.0%		38.4
2008		17.0%		38.1
2009	17.0%	17.0%	10.0% (5)	35.00 (9)
2010	15.0%	15.0%	10.0% (6)	35.00 (10)
2011	15.0%	15.0%	10.0%	35.00
2012	15.0%	15.0%	10.0%	35.00
2013	15.0%	15.0%	10.0%	35.00
2014	15.0%	15.0%	10.0%	35.00
2015	13.2%	13.2%	9.0% (7)	34.00 (11)
2016	11.3%	11.3%	8.0%	34.00
2017	9.5%	9.5%	7.0%	34.00
2018	7.7%	7.7%	6.0%	34.00
2019	5.8%	5.8%	5.0%	34.00
2020	4.0%	4.0%	4.0%	34.00
Long term	4.0%	4.0%	4.0% (8)	
Ratio of depreciation to net sales		0.39% (12)		
New/used car loan charge		325 (13)		
ValuMax car loan charge		250 (14)		
CAF SG&A as a percent of CAF Revenues		0.5% (15)		
Sale Lease-back factor		80% (16)		
Incremental lease replacement cost		\$155,000 (17)		
Adjustment factor to forecast FY2005 for Q42004		22% (18)		

Sources:

(1)	CarMax tax department	(10)	Discussion with CarMax
(2)	Discussion with CarMax (see (4) below)	(11)	Discussion with CarMax
(3)	Discussion with CarMax and Ibboston Cost of Capital 2004 Yearbook, SIC 6141, p. 6-12.	(12)	Discussion with CarMax
(4)	CarMax tax department	(13)	Discussion with CarMax
(5)	Discussion with CarMax	(14)	Discussion with CarMax
(6)	E&Y estimate	(14)	Discussion with CarMax
(7)	E&Y estimate	(15)	Discussion with CarMax
(8)	E&Y estimate	(16)	Discussion with CarMax
(9)	Discussion with CarMax	(17)	Discussion with CarMax
		(18)	Discussion with CarMax; based on historical estimates

CarMax IP Valuation

Residual Earnings Analysis - CarMax
Present Value Calculations

(USD 000,000s)

	Q4-2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Perpetuity	Total
Car Free Cash Flow Projections	(\$5.1)	\$4	(\$27)	(\$59)	\$2	\$69	\$37	\$51	\$56	\$74	\$151	\$220	\$240	\$313	\$382	\$459	\$8,451	\$10,417
Discount Factor	0.9889	0.9535	0.8668	0.7880	0.7164	0.6512	0.5920	0.5382	0.4893	0.4448	0.4044	0.3676	0.3342	0.3038	0.2762	0.2511	0.2511	
Present Value of Car Cash Flows	(\$5.1)	\$4	(\$24)	(\$46)	\$1	\$45	\$22	\$27	\$27	\$33	\$61	\$81	\$80	\$95	\$106	\$115	\$2,122	\$2,744

Present Value of Car Cash Flows	\$ 2,744.4
Net Book Value Net Working Capital (end Nov. 30, 2004), Car	\$ 374.1
Net Book Value PPE (end Nov. 30, 2004), Car	\$ 368.8
PV of retail store leases	\$ 7.1
Estimated value of Car-related Intangibles	\$ 1,996

Note:

For discount factors, see Exhibit 7

For PV of Retail Store leases, see Exhibit 5

Tangible Asset data from CarMax 10-Q for period ended Nov. 30, 2004

CAF PPE is \$1.417912

Exhibit 1.1

CarMax IP Valuation**CarMax - Car
Perpetuity Value**

(USD 000,000s)

2020 Free Cash Flow	\$459
Long-Term Capital Expenditure and Depreciation Adjustment	29
2020 Adjusted Free Cash Flow	<u>\$488</u>
Long-Term Growth Rate	4.00%
Discount Rate	<u>10.00%</u>
Perpetuity Value	<u>\$8,451</u>

Inputs

Non-CAF Long-Term Growth Rate	4.00%
Non-CAF Discount Rate	10.00%

Exhibit 1.2

ROA_004252

CarMax_001625

CarMax IP Valuation**CarMax - Car****Long-Term Capital Expenditure and Depreciation Adjustment**

(USD 000,000s)

2020 Capital Expenditures/Net Sales (projected)	0.48%
2020 Depreciation/Net Sales (1)	0.39%
Difference	0.09%
2020 Projected Net Sales, non-CAF	\$31,468
Long-Term Capital Expenditure and Depreciation Adjustment	\$28.6

Note:

(1) Ratio of depreciation to net sales, 2002-2004

Exhibit 2

CarMax IP Valuation

Residual Earnings Analysis - CarMax
CarMax FCF

	Source: Carmax Inc. 10-K Annual Reports				Company projections																
	2/28/2001	2/28/2002	2/28/2003	2/28/2004	Forecast 2/28/2005	Forecast Q4-2005	2/28/2006	2/28/2007	2/28/2008	2/28/2009	2/28/2010	2/28/2011	2/28/2012	2/28/2013	2/28/2014	2/28/2015	2/29/2016	2/28/2017	2/28/2018	2/28/2019	2/29/2020
INCOME STATEMENT (USD 000,000s)																					
Net Sales	2,758,512	3,533,759	3,969,944	4,597,691	5,064	1,114	6,030	6,992	8,179	9,569	11,005	12,655	14,554	16,737	19,248	21,782	24,250	26,554	28,590	30,258	31,468
Cost of sales	2,417,291	3,114,369	3,501,705	4,026,803	4,434	975	5,259	6,124	7,179	8,399	9,659	11,108	12,774	14,691	16,894	19,119	21,285	23,308	25,094	26,558	27,621
Gross Profit	341,221	419,393	468,239	570,888	630	139	761	868	1,000	1,170	1,346	1,547	1,779	2,046	2,353	2,663	2,965	3,247	3,496	3,699	3,847
SG&A expenses	298,782	334,484	392,417	468,374	542	119	854	744	845	889	1,137	1,307	1,504	1,729	1,989	2,250	2,505	2,743	2,954	3,128	3,251
OAF net income	42,700	66,500	82,400	85,000	77	17	89	106	127	149	171	197	226	260	299	338	377	412	444	470	489
Operating Profit	85,139	151,429	158,222	187,514	165	36	196	230	282	330	379	436	502	577	664	751	836	916	986	1,043	1,085
Earnings before interest and taxes (EBIT)	85,139	151,429	158,222	187,514	165		196	230	282	330	379	436	502	577	664	751	836	916	986	1,043	1,085
Effective income tax rate	38.0%	38.0%	39.5%	38.5%	39.0%		38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%
Operating Profit after tax	52,766	93,866	95,724	115,321	101	22	122	143	175	205	235	271	311	358	411	466	518	568	611	647	673
Add Depreciation, depletion and amortization	18,116	16,340	14,873	16,181	18,021		18,635	23,574	26,012	37	43	50	57	66	75	85	95	104	112	119	123
Operating Cash Flow	70,902	110,226	110,597	131,502	118,631	26,099	140,155	166,174	200,852	242	278	320	368	423	487	551	613	672	723	765	796
Provision for deferred income taxes			8,880	(1,299)	0		0	0	0												
(Increase) in accounts receivable net			(8,006)	(15,909)	(2,732)		(13,279)	(13,206)	(17,547)												
(Increase) in auto accounts receivable held for sale			(1,435)	(15,202)	3,761		(2,677)	(3,970)	(4,139)												
(Increase) in retained interests in securitized recv.			(14,333)	(10,972)	(0,445)		(19,602)	(33,483)	(33,400)												
Decrease in inventory			(67,366)	0,369	(51,055)		(88,587)	(95,492)	(117,869)	(139)	(97)	(158)	(178)	(213)	(241)	(213)	(194)	(221)	(190)	(155)	(105)
Decrease in prepaid assets			(10,671)	3,986	0,658		(0,879)	(0,979)	(1,091)												
Decrease in other assets			(0,845)	4,647	1,065		(0,240)	(0,278)	(0,317)												
Increase in AP, accr exp, other curr liab, accr inc tax			51,375	48,670	6,212		29,228	30,217	36,941												
Increase in deferred revenues			2,488	2,962	5,196		5,439	5,585	5,901												
Effect of change in NWC on cash flow			(37,915)	17,173	(37,321)		(90,597)	(111,694)	(131,521)	(155)	(115)	(179)	(203)	(241)	(273)	(250)	(234)	(265)	(237)	(206)	(157)
Purchases of PPE			122,032	181,338	228,387		176,369	175,161	254,673	280	308	339	373	410	451	492	531	568	602	633	658
Proceeds from sale of PPE			(41,621)	(107,493)	(149,949)		(137,442)	(92,041)	(133,677)	(204)	(224)	(247)	(271)	(298)	(328)	(361)	(393)	(425)	(455)	(482)	(506)
Net Capital Expenditure			80,411	73,845	78,438		38,927	83,120	120,996	76	84	92	102	112	123	131	138	143	148	151	152
Free Cash Flow			(7,629)	74,630	4,872	1,072	10,631	(28,840)	(61,665)	10	79	48	64	70	91	171	241	283	338	406	487
OAF FCF			28,392	19,646	28,250	6,215	6,684	(1,481)	7,239	6	10	11	13	15	17	19	21	24	25	27	28
Car FCF			(36,020)	55,164	(23,378)	(6,143)	3,947	(27,159)	(58,904)	2	69	37	51	56	74	151	220	240	313	382	459
Non-Inventory NWC effect					13,734	3,021	(2,010)	(18,202)	(13,652)	(18)	(18)	(21)	(24)	(28)	(32)	(36)	(40)	(44)	(48)	(51)	(53)

Exhibit 3

CarMax IP Valuation

Residual Earnings Analysis - CarMax
CarMax Balance Sheet

(USD 000,000s)

BALANCE STATEMENT

Source: Carmax Inc. 10-K Annual Reports

2/28/2001 2/28/2002 2/28/2003 2/29/2004

Company projections

2/28/2005 Actual 11/30/04 2/28/2006 2/28/2007 2/29/2008

ASSETS

Current Assets

Cash and cash equivalents	3.286	34.615	61.643	76.690	25.762	98.263	80.470	39.404
Accounts receivable, net	50.441	56.449	72.358	75.090	63.694	88.369	101.665	119.212
Automobile loan receivables held for sale	2.144	3.579	18.781	15.000	3.540	17.677	21.647	25.785
Retained interests in securitized receivables	120.683	135.016	145.988	146.433	131.621	166.035	199.518	232.917
Inventory	347.137	399.084	466.450	517.116	503.682	605.703	701.195	819.064
Prepaid expenses and other current assets	2.065	12.636	8.650	7.992	9.248	8.871	9.850	10.941

Total Current Assets

Property and equipment, net	577.703	708.745	773.481	838.321	737.547	984.918	1,114.345	1,247.323
Other assets	120.976	187.158	244.064	302.481	368.203	322.772	382.318	477.302
Deferred income taxes	21.543	21.714	19.287	18.222	0.667	18.462	18.738	19.055
	0.000	0.000	0.185		18.642			

Total Assets

	720.222	917.617	1,037.017	1,159.024	1,125.059	1,326.152	1,515.401	1,743.680

LIABILITIES AND STOCKHOLDERS' EQUITY

Current Liabilities

Accounts payable	87.160	117.587	145.517	139.985	133.015	158.899	177.656	200.845
Accrued expenses and other current liabilities	25.775	44.682	59.724	71.468	53.388	81.782	93.242	106.994
Deferred income taxes	22.009	29.783	32.711	33.064	31.030	35.544	38.210	41.075
Short-term debt	9.840	56.051	4.446	4.500	6.331	4.500	4.500	4.500
Current installments of long-term debt	78.608	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Accrued income taxes	0.000	0.000	0.000	0.000	4.481	0.000	0.000	0.000

Total Current Liabilities

Long-term debt, excluding current installments	223.392	248.103	242.398	249.017	228.245	280.725	313.608	353.414
Deferred revenue and other liabilities		100.000	100.000	100.000	111.940	100.000	100.000	100.000
Deferred income taxes	8.416	10.904	13.866	16.888	15.638	19.724	22.511	25.405
	2.935	4.041	0.000	1.635	0.000	1.758	1.889	2.031

Total Liabilities

	234.743	363.048	356.264	367.540	355.823	402.207	438.008	480.850

Stockholders' Equity

Common Stock		51.542	51.889	52.227	52.065	52.566	52.908	53.252
Capital in excess of par value		472.745	482.132	491.533	487.205	501.118	510.890	520.852
Retained earnings		30.282	146.732	247.724	229.966	370.261	513.595	688.727
Parent's equity	485.479							

Total Stockholders' Equity

	485.479	554.569	680.753	791.484	769.236	923.945	1,077.393	1,262.831

Total Liabilities and Stockholders' Equity

	720.222	917.617	1,037.017	1,159.024	1,125.059	1,326.152	1,515.401	1,743.681

Days inventory (2)

	44.5	41.7	39.9	41.4	37.9	38.4	38.1

Note

- (1) Nov. 30, 2004 Actual from SEC Form 10-Q for KMX
 (2) Calculated as 360 Days * Average Inv./Cost of goods

Exhibit 4

CarMax IP Valuation

Residual Earnings Analysis - CarMax
CAF FCF

INCOME STATEMENT	Source: Carmax Inc. 10-K Annual Reports				Company projections																
	2001	2002	2003	2004	Forecast 2/28/2005	Forecast Q42005	2/28/2006	2/28/2007	2/29/2008	2/28/2009	2/28/2010	2/28/2011	2/29/2012	2/28/2013	2/28/2014	2/28/2015	2/29/2016	2/28/2017	2/28/2018	2/28/2019	2/29/2020
(USD 000,000s)																					
NET REVENUE																					
Gains on Sales of Loans	35,400	56,400	68,200	65,100																	
Servicing Fee Income	10,800	14,000	17,300	21,800																	
Interest Income	5,200	7,700	11,500	16,000																	
Total Revenue	51,400	78,100	97,000	102,900																	
DIRECT EXPENSES (Cost of Sales)																					
CAF Payroll and fringe benefit expense	4,200	5,700	7,000	8,200																	
Other direct CAF expenses	4,500	5,900	7,800	9,700																	
Total Direct Expenses	8,700	11,600	14,800	17,900																	
Gross Profit	42,700	66,500	82,400	85,000	77	17	89	106	127	149	171	197	226	260	299	338	377	412	444	470	489
Consolidated SG&A as percentage of sales	10.8%	9.5%	9.7%	10.2%	0.5%		0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
Allocated SG&A	5,551	7,420	9,409	10,496	0.4		0.4	0.5	0.6	0.7	0.9	1.0	1.1	1.3	1.5	1.7	1.9	2.1	2.2	2.3	2.4
Payment to Car business for loan business					36		42	47	54	63	73	84	96	111	127	144	161	176	189	200	208
SG&A for CAF business	6	7	9	10	36	8	42	48	55	64	74	85	97	112	129	146	162	178	191	203	211
Earnings before interest and taxes (EBIT)	37,149	59,081	72,991	74,504	41		47	58	72	85	97	112	129	148	170	192	214	234	252	267	278
Effective tax rate	38.0%	38.0%	38.5%	38.5%	39.0%		38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%	38.0%
Less income taxes	14,117	22,451	28,831	28,884	16		18	22	27	32	37	42	49	56	65	73	81	89	96	102	108
Add Depreciation, depletion and amortization																					
CAF Operating Cash Flow	23,032	36,630	44,160	45,620	25	5	29	36	45	52	60	69	80	92	105	119	133	145	157	168	172
Capital Expenditures																					
CAF share of capital expenditure	0.0%	0.0%	0.0%	0.0%	0.0%		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total capital expenditure		0,000	80,411	73,845	76		39	83	121	76	84	92	102	112	123	131	138	143	148	151	152
CAF Capital Expenditure	0,000	0,000	0,000	0,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Change in Net Working Capital																					
Change in Loan Receivables		0,704	(1,435)	(15,202)	3,781		(2,677)	(3,970)	(4,139)												
Change in Retained Interests		(48,542)	(14,333)	(10,972)	(0,445)		(19,602)	(33,483)	(33,400)												
Change in NWC	0,000	45,838	15,768	26,174	(3,336)	(0,734)	22	37	38	44	51	58	67	77	88	100	111	122	131	139	144
Free Cash Flow																					
Operating Cash Flow			44,160	45,620	25		29	36	45	52	60	69	80	92	105	119	133	145	157	168	172
Less Capital Expenditures		0,000	0,000	0,000	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less Change in NWC			15,768	26,174	(3)		22	37	38	44	51	58	67	77	88	100	111	122	131	139	144
CAF Free Cash Flow			28,392	19,646	28	6	7	(1)	7	8	10	11	13	15	17	19	21	24	25	27	28

Exhibit 4.1

CarMax IP Valuation

Payment to Car business for loan business - cost/car
Total Unit Sales - Carmax

Total	Actual FY03	Actual FY04	Projection			
			FY05	FY06	FY07	FY08
Carmax	160	191	202	245	279	320
ValuMax	30	33	41	43	49	56
Total Used	190	224	243	288	328	377
New	22	22	21	21	23	24
Total units (000s)	212	246	265	310	351	401

CAF Share	Actual FY03	Actual FY04	Projection			
			FY05	FY06	FY07	FY08
Carmax (1)	69	82	87	105	120	138
ValuMax (1)	13	14	18	19	21	24
Total Used	82	96	105	124	141	162
New (1)	9	9	9	9	10	10
Total units CAF (000s)	91	106	114	133	151	172
Payment to non-CAF for loan business (000s) (2)	<u>\$ 28,660</u>	<u>\$ 33,256</u>	<u>\$ 35,757</u>	<u>\$ 41,840</u>	<u>\$ 47,450</u>	<u>\$ 54,142</u>

Assumptions

(1) CAF as a % of Total units (historical average/forecast)

43%

(2) Loan Acquisition Costs

	Share	Cost	Weight
ValuMax/Total units	14%	\$ 250	\$ 35
Carmax/Total units	75%	325	245
New/Total units	10%	325	34
Weighted average cost to acquire loans			<u>\$ 314</u>

Exhibit 5

CarMax IP Valuation

Retail Store Lease Value

US Dollars

	FYE	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Total lease value	\$155,000	\$155,000	\$670,000	\$155,000										\$155,000	\$1,550,000	\$930,000	\$775,000	\$1,395,000	\$5,630,000
Discount Factor			0.953	0.867	0.788	0.716	0.651	0.592	0.538	0.489	0.445	0.404	0.368	0.334	0.304	0.276	0.251		
PV lease value			\$638,820	\$134,352	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$56,978	\$517,983	\$282,536	\$214,043	\$350,252	\$2,194,964
Terminal value		\$4,928,880																	
Total PV lease value			<u>\$7,123,844</u>																

CarMax IP Valuation

Retail Store Lease Replacement Cost

US Dollars

Loc. #	State	Sq Footage	Lease Type	Lease Expires	FYE Expiration	Incremental lease replacement cost (1)
7810	CA	18,778	Lease	12/31/2003	2004	\$ 155,000
7150A	TN	76,338	Lease	11/30/2004	2005	\$ 155,000
07062A	VA	5,979	Lease	6/30/2005	2006	\$ 155,000
7028	VA	70,423	Lease	9/30/2005	2006	\$ 155,000
07028A	VA	47	Lease	9/30/2005	2006	\$ 50,000
7062	VA	24,000	Lease	9/30/2005	2006	\$ 155,000
7076	VA	31,678	Lease	9/30/2005	2006	\$ 155,000
07102A	NC	1,350	Lease	9/30/2006	2007	\$ 155,000
7101	VA	32,871	SaleLSBK	2/29/2016	2016	\$ 155,000
7121	MD	51,310	SaleLSBK	8/9/2016	2017	\$ 155,000
7132	VA	70,020	SaleLSBK	8/9/2016	2017	\$ 155,000
7136	CA	74,000	SaleLSBK	8/9/2016	2017	\$ 155,000
7150	TN	55,585	SaleLSBK	8/9/2016	2017	\$ 155,000
7172	FL	47,785	SaleLSBK	8/9/2016	2017	\$ 155,000
7177	SC	47,700	SaleLSBK	8/9/2016	2017	\$ 155,000
7203	TX	11,154	SaleLSBK	8/9/2016	2017	\$ 155,000
7207	TX	11,898	SaleLSBK	8/9/2016	2017	\$ 155,000
7806	MD	42,055	SaleLSBK	8/9/2016	2017	\$ 155,000
7103	GA	35,000	SaleLSBK	2/28/2017	2017	\$ 155,000
7104	GA	67,430	SaleLSBK	6/30/2017	2018	\$ 155,000
7147	CA	46,659	SaleLSBK	9/26/2017	2018	\$ 155,000
7180	IN	15,080	SaleLSBK	9/26/2017	2018	\$ 155,000
7185	NC	48,225	SaleLSBK	9/26/2017	2018	\$ 155,000
7102	NC	31,475	SaleLSBK	11/30/2017	2018	\$ 155,000
7106	NC	50,220	SaleLSBK	1/13/2018	2018	\$ 155,000
7197	NC	16,297	SaleLSBK	7/31/2018	2019	\$ 155,000
7241	TN	35,300	SaleLSBK	7/31/2018	2019	\$ 155,000
7243	GA	16,440	SaleLSBK	7/31/2018	2019	\$ 155,000
7218	TN	50,922	SaleLSBK	12/21/2018	2019	\$ 155,000
7807	WI	126,674	Lease	12/31/2018	2019	\$ 155,000
7107	FL	48,400	SaleLSBK	3/31/2019	2020	\$ 155,000
7114	TX	41,862	SaleLSBK	7/31/2019	2020	\$ 155,000
7116	TX	47,265	SaleLSBK	7/31/2019	2020	\$ 155,000
7117	GA	53,046	SaleLSBK	7/31/2019	2020	\$ 155,000
7105	FL	55,000	SaleLSBK	9/13/2019	2020	\$ 155,000
7108	FL	75,964	SaleLSBK	2/29/2020	2020	\$ 155,000
7111	TX	79,990	SaleLSBK	2/29/2020	2020	\$ 155,000
7113	FL	53,072	SaleLSBK	2/29/2020	2020	\$ 155,000
7118	MD	83,832	SaleLSBK	2/29/2020	2020	\$ 155,000
7115	TX	132,080	SaleLSBK	3/31/2020	2021	\$ 155,000
7110	FL	75,171	SaleLSBK	5/31/2020	2021	\$ 155,000
7112	TX	80,000	SaleLSBK	5/31/2020	2021	\$ 155,000
7122	IL	51,897	SaleLSBK	5/31/2020	2021	\$ 155,000
7152	TX	57,112	SaleLSBK	10/31/2020	2021	\$ 155,000
7123	IL	92,166	SaleLSBK	1/31/2021	2021	\$ 155,000
7128	IL	92,847	SaleLSBK	1/31/2021	2021	\$ 155,000
7146	IL	92,164	SaleLSBK	4/30/2021	2022	\$ 155,000
7109	TX	71,532	SaleLSBK	12/31/2021	2022	\$ 155,000
7157	NV	59,712	SaleLSBK	11/30/2023	2024	\$ 155,000
7173	KS	55,466	SaleLSBK	11/30/2023	2024	\$ 155,000
7224	AL	50,656	SaleLSBK	11/30/2023	2024	\$ 155,000
7199	IL	13,376	SaleLSBK	12/21/2023	2024	\$ 155,000
7208	IL	19,043	SaleLSBK	6/29/2024	2025	\$ 155,000
7241R	TN	39,479	SaleLSBK	10/11/2029	2030	\$ 155,000

Note:

(1) EY assumption about incremental zoning and relocation costs at lease renewal/expiration. Costs of \$110,000-200,000 if renewed.

Source:

CarMax Real Estate 10/18/2004

Exhibit 6

CarMax IP Valuation

Residual Earnings Analysis - CarMax
Implied Enterprise Value and Corroboration

(USD 000,000s)

FYE	Q4-2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Perpetuity	Total
Non-CAP																		
Non-CAP Free Cash Flow	\$ (5.1)	\$ 3.9	\$ (27.2)	\$ (58.9)	\$ 1.8	\$ 69.4	\$ 37.0	\$ 51.0	\$ 55.6	\$ 73.9	\$ 151.3	\$ 219.8	\$ 239.6	\$ 312.7	\$ 382.1	\$ 459.0	\$ 8,451.3	\$ 10,417.2
Discount Factor	0.989	0.953	0.867	0.788	0.716	0.651	0.592	0.538	0.489	0.445	0.404	0.368	0.334	0.304	0.276	0.251	0.251	
PV of Non-CAP FCF	\$ (5.1)	\$ 3.8	\$ (23.5)	\$ (46.4)	\$ 1.3	\$ 45.2	\$ 21.9	\$ 27.5	\$ 27.2	\$ 32.9	\$ 61.2	\$ 80.8	\$ 80.1	\$ 95.0	\$ 105.5	\$ 115.2	\$ 2,121.9	\$ 2,744.4
CAF																		
CAF FCF	\$ 6.2	\$ 6.7	\$ (1.5)	\$ 7.2	\$ 8.5	\$ 9.7	\$ 11.2	\$ 12.9	\$ 14.8	\$ 17.0	\$ 19.3	\$ 21.5	\$ 23.5	\$ 25.3	\$ 26.8	\$ 27.9	\$ 413.8	\$ 650.8
Discount Factor	0.988	0.949	0.855	0.770	0.694	0.625	0.563	0.507	0.457	0.412	0.371	0.334	0.301	0.271	0.244	0.220	0.220	
PV of CAF FCF	\$ 6.1	\$ 6.3	\$ (1.3)	\$ 5.6	\$ 5.9	\$ 6.1	\$ 6.3	\$ 6.5	\$ 6.8	\$ 7.0	\$ 7.2	\$ 7.2	\$ 7.1	\$ 6.9	\$ 6.5	\$ 6.1	\$ 91.0	\$ 187.4
Total PV of CarMax FCF	\$ 1.1	\$ 10.1	\$ (24.8)	\$ (40.8)	\$ 7.1	\$ 51.3	\$ 28.2	\$ 34.0	\$ 34.0	\$ 39.9	\$ 68.3	\$ 88.0	\$ 87.2	\$ 101.9	\$ 112.1	\$ 121.4	\$ 2,213.0	\$ 2,931.8

USD (000s)	Implied TEV
E&Y DCF calculation	\$ 2,931,770
Stock price 52 week high	\$ 35.39 \$ 3,801,308
Stock price 52 week low	\$ 18.45 \$ 2,038,363
Stock price 11/15/04	\$ 27.27 \$ 2,956,260
Stock price 11/30/04	\$ 27.85 \$ 3,016,621
Weighted Avg. Comm. Shares outstanding (11/30/04)	104,070
LT+ST Debt outstanding (11/30/04)	\$ 118,271

Exhibit 7

ROA_004268

CarMax_001641

CarMax IP Valuation**Residual Earnings Analysis - CarMax
Present Value Factors Table - Non-CAF**

Year (FYE)	Date	Ending Date	Mid-Point	Months from Valuation Date	PV Factor
2005	December 1, 2004	February 28, 2005	January 13, 2005	1.4	0.9889
2006	March 1, 2005	February 28, 2006	August 29, 2005	6.0	0.9535
2007	March 1, 2006	February 28, 2007	August 29, 2006	18.0	0.8668
2008	March 1, 2007	February 29, 2008	August 30, 2007	30.0	0.7880
2009	March 1, 2008	February 28, 2009	August 29, 2008	42.0	0.7164
2010	March 1, 2009	February 28, 2010	August 29, 2009	54.0	0.6512
2011	March 1, 2010	February 28, 2011	August 29, 2010	66.0	0.5920
2012	March 1, 2011	February 29, 2012	August 29, 2011	78.0	0.5382
2013	March 1, 2012	February 28, 2013	August 29, 2012	90.0	0.4893
2014	March 1, 2013	February 28, 2014	August 29, 2013	102.0	0.4448
2015	March 1, 2014	February 28, 2015	August 29, 2014	114.0	0.4044
2016	March 1, 2015	February 29, 2016	August 29, 2015	126.0	0.3676
2017	March 1, 2016	February 28, 2017	August 29, 2016	138.0	0.3342
2018	March 1, 2017	February 28, 2018	August 29, 2017	150.0	0.3038
2019	March 1, 2018	February 28, 2019	August 29, 2018	162.0	0.2762
2020	March 1, 2019	February 28, 2020	August 29, 2019	174.0	0.2511

Inputs

Valuation Date	December 1, 2004
Discount Rate	10.00%

Exhibit 8

CarMax IP Valuation**Residual Earnings Analysis - CarMax
Present Value Factors Table - CAF**

Year (FYE)	Date	Ending Date	Mid-Point	Months from Valuation Date	PV Factor
2005	December 1, 2004	February 28, 2005	January 13, 2005	1.4	0.9879
2006	March 1, 2005	February 28, 2006	August 29, 2005	6.0	0.9492
2007	March 1, 2006	February 28, 2007	August 29, 2006	18.0	0.8551
2008	March 1, 2007	February 29, 2008	August 30, 2007	30.0	0.7704
2009	March 1, 2008	February 28, 2009	August 29, 2008	42.0	0.6940
2010	March 1, 2009	February 28, 2010	August 29, 2009	54.0	0.6252
2011	March 1, 2010	February 28, 2011	August 29, 2010	66.0	0.5633
2012	March 1, 2011	February 29, 2012	August 29, 2011	78.0	0.5075
2013	March 1, 2012	February 28, 2013	August 29, 2012	90.0	0.4572
2014	March 1, 2013	February 28, 2014	August 29, 2013	102.0	0.4119
2015	March 1, 2014	February 28, 2015	August 29, 2014	114.0	0.3710
2016	March 1, 2015	February 29, 2016	August 29, 2015	126.0	0.3343
2017	March 1, 2016	February 28, 2017	August 29, 2016	138.0	0.3012
2018	March 1, 2017	February 28, 2018	August 29, 2017	150.0	0.2713
2019	March 1, 2018	February 28, 2019	August 29, 2018	162.0	0.2444
2020	March 1, 2019	February 29, 2020	August 29, 2019	174.1	0.2200

Inputs

Valuation Date	December 1, 2004
Discount Rate	11.00%

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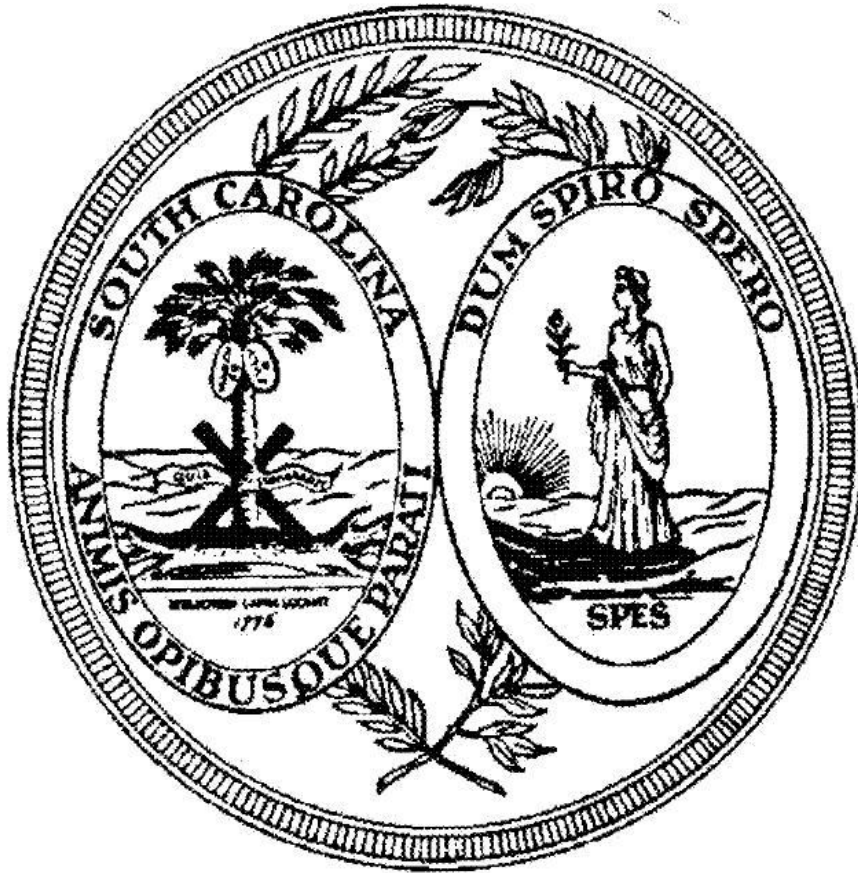
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0603-0726882ev

Corporate Income Tax



South Carolina Taxation Realignment Commission

Corporate Income Taxes, Generally

South Carolina imposes one of the lowest corporate income tax rates (and tax burdens) and has one of the most “business and tax friendly” climates of any state in the nation.

First introduced in 1927, and today levied at a rate of 5 percent (the corporate tax was reduced from 6 percent to 5 percent in 1989), South Carolina’s corporate tax rate ranks tenth best nationally (overall) and is tied with Utah for the third lowest corporate tax rate among the 32 states imposing a flat tax, only slightly trailing Colorado (4.63 percent) and Michigan (4.95 percent) for the top spot.¹⁴⁷ However, it is important to note that while Michigan’s corporate tax rate “appears” to be lower than ours, hidden just beneath the surface are additional business tax burdens which act to increase that state’s effective corporate tax rate. Specifically, Michigan imposes a 21.99 percent “surtax” on a corporation’s tax liability (capped at \$6 Million per year) as well as a modified version of a “gross receipts tax” at a rate of 0.8 percent.¹⁴⁸

South Carolina’s low corporate tax rate and tax burden leads the way (e.g. are low) closer to home as well. Of the seven Southeastern states that impose flat taxes, South Carolina imposes the lowest corporate tax rate.¹⁴⁹

South Carolina’s corporate tax rate is 20 percent lower than Georgia’s (6 percent) and 38 percent lower than North Carolina’s (6.9 percent - and that calculation is before factoring North Carolina’s recent tax increase (via a “surtax”) on corporate income over a certain threshold)).¹⁵⁰ Mississippi’s tax rate is slightly lower because it does not impose its 5 percent top marginal tax

¹⁴⁷ “Corporate Income Tax: Statewide Economic Growth and Taxation Issues in South Carolina” prepared by Dr. Rebecca Gunnlaugsson, Ph.D., Director, Research Division, SC Department of Commerce, October 28, 2010.

¹⁴⁸ “Corporate Income Tax: Statewide Economic Growth and Taxation Issues in South Carolina” prepared by Dr. Rebecca Gunnlaugsson, Ph.D., Director, Research Division, SC Department of Commerce, October 28, 2010.

¹⁴⁹ The Tax Foundation http://www.taxfoundation.org/files/state_corp_income_rates-20100325.pdf.

¹⁵⁰ See www.scstatehouse.gov/citizensinterestpage/TRAC/021910Meeting/TRACquestionsbearesponse.pdf for a complete description of the North Carolina surtax referenced in this report. Specifically, from NC DOR’s website regarding the Corporate Surtax: “Corporations subject to corporate income tax must pay an income tax surcharge of 3 percent on its North Carolina income tax due before deducting any tax credits or payments. S corporations filing composite income tax returns on behalf of shareholders who live outside North Carolina must calculate the amount of North Carolina income tax due separately for each nonresident shareholder. That calculation must include the amount of individual income surtax based on the Surtax Percentage Table for individuals with a filing status of single. Note: there is no penalty (interest) for underpayment of estimated tax if the underpayment is because of the surtax.”

rate until corporate income reaches \$10,000.¹⁵¹ Likewise, Louisiana taxes income less than \$200,000 at 4 percent compared to South Carolina's 5 percent, but at income of \$201,000 and above, Louisiana's tax rate jumps all the way to 8 percent, giving South Carolina the clear advantage at corporate incomes above that level.¹⁵²

As important as a state's corporate tax rate, is its "tax burden" (as sometimes measured on a "per capita" basis). Here too, South Carolina performs well, and actually improves its national standing, ranking sixth best nationally (at \$72 per capita).¹⁵³ Georgia ranks ninth (\$98 per capita), imposing a tax burden 36 percent higher than South Carolina's.¹⁵⁴ At \$132 per capita, North Carolina ranks 24th, imposing an average tax burden that is more than 80 percent higher than South Carolina's.¹⁵⁵ Note: TRAC did not recommend an adjustment to the State's current corporate income tax rate.

South Carolina's low corporate tax rate, coupled with its expansive list of corporate tax "credits" (South Carolina had over 20 types of credits against corporate income tax in FY 2007-2008, a fact which is discussed in greater detail below) helps to explain the State's competitive tax advantage both regionally and nationally as well.

Not only does South Carolina rank well when comparing baseline tax statistics between states as outlined above, but it also annually ranks as one of the nation's most "business friendly" states among a host of prominent annual "business climate" reports each year. Consider only a sampling of the State's most recent achievements in this category: 1) South Carolina ranked 1st for the nation's lowest business costs according to "Area Development" magazine's annual report "Top 10 States for Business"; 2) 1st for "economic growth potential" by "Business

¹⁵¹ The Tax Foundation http://www.taxfoundation.org/files/state_corp_income_rates-20100325.pdf.

¹⁵² The Tax Foundation http://www.taxfoundation.org/files/state_corp_income_rates-20100325.pdf. Note: SC is tied with Mississippi for the lowest top rate of 5%. However, Mississippi (and several other states) has a marginal rate structure with lower rates. SE states/rates are as follows: SC=Flat 5%, FL=Flat 5.5%, WV=Flat 8.5%, NC=Flat 6.9% (does not factor increase due to temporary "surtax"), KY=Marginal Rates of 4%, 5% and 6%, with top rate kicking in at \$50K+, AR=Marginal Rates from 1% to 6.5% with top rate kicking in at \$100K+, TN=Flat 6.5%, AL=Flat 6.5%, GA=Flat 6%, LA=Marginal Rates from 4% to 8% with top rate kicking in at \$200K+, VA=Flat 6%, MS=Marginal Rates from 3% to 5%, with top rate kicking in at \$10K+.

¹⁵³ The Tax Foundation "The Facts on South Carolina's Tax Climate" <http://www.taxfoundation.org/research/topic/57.html>.

¹⁵⁴ <http://www.taxfoundation.org/research/topic/22.html>

¹⁵⁵ <http://www.taxfoundation.org/research/topic/47.html>.

Facilities Magazine”, and 3) in the common category of “best business climate”, South Carolina ranked fourth, sixth and sixth by “Business Facilities Magazine”, “Site Selection Magazine” and “Development Counselors International” respectively.¹⁵⁶

And while South Carolina’s corporate tax rate is low (and therefore very competitive) nationally, and its per capita tax burden modest, the revenue it generates is not insignificant. Averaging approximately \$200 Million per year over the last ten years, corporate income tax revenue is the third largest source of “General Fund” revenue for the State of South Carolina.¹⁵⁷

Historically, corporate tax revenue fluctuates from year to year, particularly relative to the business cycle. Following the 2001 recession, corporate tax collections fell three consecutive years, bottoming out at approximately \$108 Million in 2003. Similar to other revenue sources during the same period, corporate tax collections rebounded sharply along with the economy after 2003, averaging almost \$250 Million per year between the last two recessions (2001 and 2008). Not surprisingly, the “Great Recession” led to a familiar pattern, one seen earlier in the decade, with corporate tax revenue now back to its 2003 level (\$110 Million in FY2009-10).¹⁵⁸

It is also of interest (and importance) to examine who “actually pays” (e.g. “who owes”) corporate income taxes in South Carolina. Specifically, of the approximately 98,000 “corporate filers”, only 11 percent (roughly 11,000) actually end up owing South Carolina corporate income tax each year.¹⁵⁹ That means that almost 90 percent (87,000) of corporate filers owe “zero tax” to South Carolina.

¹⁵⁶ “South Carolina’s Corporate and Business Tax Climate Rates and Rankings”, a presentation to the South Carolina Taxation Realignment Commission, by Craig H. Parks, MPA, Sr. Research Analyst, Senate Finance Committee, October, 22, 2010.

¹⁵⁷ SC’s Corporate Tax Collections: FY10 from Comptroller General’s Year End report for FY10, dated August 20, 2010. Other Years indicated taken from the SC Budget and Control Board’s “Historical Analysis” report dated October 31, 2009.

¹⁵⁸ SC’s Corporate Tax Collections: FY10 from Comptroller General’s Year End report for FY10, dated August 20, 2010. Other Years indicated taken from the SC Budget and Control Board’s “Historical Analysis” report dated October 31, 2009.

¹⁵⁹ Information regarding corporate tax liability in SC from data provided by the SC Department of Revenue for Tax Year 2008.

Dissecting further, of the 11,000 corporate filers that actually owe tax, more than 40 percent are actually not South Carolina based corporations at all, but are instead what are known as “foreign” corporations, which means that the corporations are chartered (incorporated) outside of South Carolina. Furthermore, the average tax liability of foreign corporations owing tax to South Carolina is actually three times higher than South Carolina based corporations owing tax (\$32,000 for foreign corporations vs. \$10,000 for South Carolina based corporations).¹⁶⁰

Generally speaking, corporate filers comprise a wide array of industries, representing 96 different industrial sectors in 2008. But while corporate filers represent the a large variety of industry, their geographic diversity across the State is not as diverse, with more than half of all corporate filers concentrated in one of just seven counties. Those counties are (in order of magnitude greatest to least): Greenville, Charleston, Horry, Richland, Beaufort, Lexington and Spartanburg.¹⁶¹

Federal Tax Conformity and Taxable Income

As noted above, South Carolina corporate income tax is imposed upon the South Carolina taxable income of domestic and foreign corporations. Once a business has determined its South Carolina taxable income, it must apply the South Carolina corporate income tax rate (5 percent) to determine the amount of South Carolina corporate income tax due.

South Carolina corporate (and individual) income tax laws conform substantially to the federal income tax laws. Each year, South Carolina’s income tax laws have been amended to conform to the Internal Revenue Code of 1986 as amended through the immediately preceding December 31st, with the exception of Internal Revenue Code Section provisions listed in South Carolina Code §12-6-50 that are specifically not adopted by South Carolina.

¹⁶⁰ Information regarding corporate tax liability in SC from data provided by the SC Department of Revenue for Tax Year 2008. Domestic corporation, per DOR is a corporation that is chartered/incorporated in SC. Foreign corporation, per DOR is a corporation that is chartered/incorporated outside of SC.

¹⁶¹ “Corporate Income Tax: Statewide Economic Growth and Taxation Issues in South Carolina” prepared by Dr. Rebecca Gunnlaugsson, Ph.D., Director, Research Division, SC Department of Commerce, October 28, 2010.

This conformity simplifies the filing of returns by adopting federal taxable income as a starting point for South Carolina income tax purposes. With some exceptions, South Carolina income tax liability is determined in accordance with the same set of statutes and rules used in determining federal income tax liability. Subject to certain modifications, the South Carolina gross income and taxable income of a business is the business's gross income and taxable income as determined under the Internal Revenue Code.

Note: Refer to TRAC's "Individual Income Tax" component of this report for a more detailed analysis of TRAC's "findings and recommendations" regarding conformity.

Corporate License Fees, Generally

South Carolina, like a number of other states, imposes a corporate license fee. South Carolina Code §12-20-50 imposes this annual license fee on the capital and paid-in surplus of a corporation. The license fee is \$15 plus \$1 for each \$1,000, or fraction, of capital stock and paid-in or capital surplus shown on the corporate records on the first day of the tax year. The minimum license fee is \$25. The license fee is computed in advance of the taxpayer's income tax year.

If a "consolidated" return is filed, then the license fee is measured by the capital stock and paid-in or capital surplus of each corporation considered separately without offset for investment of one corporation in the capital or surplus of another corporation in the consolidated group. The minimum license fee applies to each corporation in the consolidated group.

South Carolina Code §12-20-60 provides that the license fee imposed by South Carolina Code §12-20-50 must be apportioned in accordance with the ratio prescribed for income tax purposes. However, a taxpayer using the reduction percentage allowed during the phase in of the single sales factor apportionment method in Code §12-6-2250(B) for income tax purposes, may use either the "phased in" factor for license fee purposes or the original four factor apportionment factor, whichever results in the lower license fee. The \$25 minimum license fee,

however, may not be apportioned. A business using an alternative method to apportion income must also use that alternative method to compute the South Carolina corporate license fee.

License fee revenue has historically been more stable compared to corporate income tax collections, having ranged between approximately \$65 Million and \$75 Million annually between 2001 and 2010.¹⁶²

Note: Even when factoring (“adding in”) South Carolina’s per capita corporate license fee burden (approximately \$16 per capita in 2008) into its per capita corporate tax burden (\$72 per capita), South Carolina’s total average per capita corporate tax and license fee burden combined is still lower than both Georgia’s (\$98) and North Carolina’s (\$132) corporate tax burden (per capita) alone.

Taxation of Other Corporate and/or Business Entities

South Carolina Code §12-6-550 exempts a number of corporations from South Carolina income tax. Exempt corporations include insurance companies, certain nonprofit corporations organized for the purpose of providing water supply and/or sewer disposal, banks, building and loan associations, and certain electric cooperatives. Some of these entities may be subject to other types of South Carolina tax. Also, South Carolina does not generally tax the income of a tax-exempt organization qualifying under Internal Revenue Code §§501 through 528, although the unrelated business income of such an entity is taxed. The taxation of pass through entities and limited liability companies generally conforms to the federal income tax laws. The South Carolina taxation of pass-through entities and withholding requirements are discussed below, as is the tax treatment of various financial institutions.

Pass Through Entities

S Corporations*

¹⁶² “Corporate Income Tax: Statewide Economic Growth and Taxation Issues in South Carolina” prepared by Dr. Rebecca Gunnlaugsson, Ph.D., Director, Research Division, SC Department of Commerce, October 28, 2010.

South Carolina recognizes a valid federal Subchapter S election. South Carolina Code §12-6-590 provides that a corporation having a valid election under Subchapter S of the Internal Revenue Code is not subject to South Carolina income tax to the extent it is exempt from federal corporate income tax. Further, a termination or revocation of an “S” election for federal purposes automatically terminates or revokes the election for South Carolina income tax purposes.

Partnerships*

Partnerships are not subject to South Carolina income tax under South Carolina Code §12-6-600. The gross income, adjusted gross income, and taxable income of a partnership and its partners are determined in accordance with applicable provisions of the Internal Revenue Code. Partners include in their South Carolina taxable incomes their proportionate share of the partnership’s South Carolina taxable income. See South Carolina Revenue Ruling #97-7 for information on a resident partner reporting personal service income received from South Carolina and one or more states.

Limited Liability Companies*

South Carolina follows the federal tax treatment of limited liability companies. If a limited liability company is treated as a corporation for federal income tax purposes it is treated as a corporation for South Carolina income tax purposes and is subject to a corporate license fee. South Carolina Code §12-2-25 provides that a partnership includes a limited liability company taxed for all South Carolina income tax purposes as a partnership. Accordingly, a limited liability company that is treated as a partnership for federal income tax purposes is not subject to South Carolina income tax or the corporate license fee.

*Note: As “pass through entities”, S Corporations, Partnerships and Limited Liability Companies are taxed, not at the entity level, but at the individual level through the individual income tax structure. In 2006, the General Assembly, in an effort to “level the playing field between “C-corps” (typically considered to be larger businesses that pay the “corporate tax” described above) and smaller businesses who traditionally are more likely to be S Corporations,

Partnerships, or Limited Liability Companies, reduced the top marginal rate from 7 percent to a flat 5 percent for income passed through from these businesses. Furthermore, as some businesses would owe less under the former marginal rate structure, the General Assembly went the extra “business friendly” step by allowing these firms to choose each year which tax structure would provide them the lowest tax burden.

As an aside, it is important to note, that similar to our State’s positive rankings regarding “business friendliness” for larger corporations, South Carolina also ranks well as a place for small businesses too, having ranked seventh best “small business climate” in the US according to the “2009 Small Business Survival Index” published by Small Business and Entrepreneurial Council.¹⁶³

Financial Institutions

Banks

Banks are defined as any person “engaged in a banking business, whether incorporated under the laws of this State, any other state or the United States or whether unincorporated, except cash depositories.”¹⁶⁴ This definition is generally viewed as being limited to persons who are regulated by federal or state banking regulators.

Banks are exempt from South Carolina income taxes,¹⁶⁵ however, SC Code Title 12, Chapter 11, imposes a franchise tax based upon the “entire net income” of banks. The tax rate is 4.5 percent of the “entire net income” of the bank doing business in South Carolina or from the sales or rentals of property within South Carolina.¹⁶⁶ Although the chapter is entitled “Income Tax on Banks” and several of its sections refer to it as an income tax,¹⁶⁷ this tax has always been

¹⁶³ The Small Business and Entrepreneurial Council’s “Small Business Survival Index 2009” - <http://www.sbecouncil.org/uploads/SBSI2009.pdf>.

¹⁶⁴ SC Code §12-11-10.

¹⁶⁵ SC Code §12-6-550(1).

¹⁶⁶ SC Code §12-11-20.

¹⁶⁷ SC Code §§12-11-30, 12-11-50, and 12-11-60.

considered a franchise tax based upon net book income.¹⁶⁸ Banks are not subject to any taxes in South Carolina except this tax, use taxes, deed recording fees, and property taxes on real property.¹⁶⁹

For purposes of administration, allocation and apportionment, enforcement, collection, liens, penalties, and other similar provisions, all provisions of the South Carolina's income tax¹⁷⁰ that may be appropriate or applicable are adopted and made a part of the bank franchise tax for the purposes of enforcement and administration, including the requirement to make declarations of estimated tax and make estimated tax payments.¹⁷¹

Savings and Loan Associations

A savings and loan association includes any mutual or stock-chartered corporation insured by the Federal Savings and Loan Insurance Corporation or any corporation subject to regulatory supervision by the Federal Home Loan Bank, or the Savings and Loan Division of the South Carolina Board of Financial Institutions, other than banks taxed under Chapter 11 of Title 12 of the SC Code, or employees' credit unions.¹⁷²

Associations are exempt from South Carolina's corporate income tax,¹⁷³ however, SC Code Chapter 13 of Title 12 imposes an income tax (not a franchise tax) on associations. The tax rate is 6 percent of the net income from all sources, except for income from municipal, state, or federal bonds or securities exempted by law from the tax, including interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successors, for those savings and loan associations which meet the qualified thrift lender test set forth in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73), as amended.¹⁷⁴

¹⁶⁸ See South Carolina Attorney General's Opinion dated March 12, 1948, Commission Decision I-D-189 (1975), and SC Form 1101B and instructions.

¹⁶⁹ SC Code §12-11-30.

¹⁷⁰ Chapter 6 of Title 12 of the SC Code.

¹⁷¹ SC Code §12-11-40 and Commission Decision I-D-189 (1975).

¹⁷² SC Code §§12-13-10 and 12-13-40.

¹⁷³ SC Code §12-6-550(2).

¹⁷⁴ SC Code §12-13-30.

Associations are exempt from this tax for the first three years of their operation.¹⁷⁵ This savings and loan income tax is imposed in lieu of all other taxes on associations, except use taxes, deed recording fees, and property taxes on real property.

Other Financial Institutions

Other financially related corporations like finance companies, credit card companies, securities brokers and dealers, are taxed under the corporate income tax provisions in SC Code Chapter 6 of Title 12.

Recommendations Regarding Financial Institutions

1. Conform the Bank Corporate Income Tax Rate to Those Paid by Other Businesses

As a result of legislation passed in the 1940s, banks, savings and loans and certain credit unions pay an income tax in lieu of all other taxes except deed recording fees, real property and use taxes. As such, these institutions pay no sales taxes, personal property taxes or local business license taxes. One would surmise that such financial institutions would therefore pay an income tax at a higher rate than other businesses. In fact, the converse is true; the income tax rate for banks is lower than virtually every other business enterprise tax rate (4.5 percent versus 5 percent for C Corporations and 7 or 5 percent for individuals, LLCs, S Corporations and the like.) In addition, federally chartered credit unions pay no income taxes.

Banks paid \$15,672,134 and savings and loans \$3,421,963 in taxes in FY 2009 – 2010 – (By contrast, insurers paid \$158 million, along with numerous other state and local taxes.)

As such, the General Assembly should consider raising the income tax rates on banks, savings and loans and credit unions to a level commiserate with their other tax savings.

2. Conform the Tax Treatment of Credit Unions and Savings and Loans to Banks

¹⁷⁵ SC Code §12-13-40.

There is little economic difference today between a credit union, savings & loan and a bank, and yet federally chartered credit unions pay no income taxes. Therefore, the General Assembly should conform the tax treatment of credit unions and savings and loans to other financial institutions.

3. Allocation and Apportionment of Income of Multi-State Banks

There is little guidance for the allocation and apportionment of income for multi-state banks. The General Assembly should enact legislation to provide clarity in this area. (The MTC has a model Banking Regulation for apportioning income for multi-state banks.)

A Note about Nexus and Public Law 86-272

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution, 15 U.S.C. §381 (Public Law 86-272), and other federal statutes provide limitations on states' powers to tax out-of-state corporations.

Public Law 86-272 prohibits a state from taxing the income of a taxpayer if the taxpayer's only business activities within the state consist of the solicitation of orders for sales of tangible personal property that are sent outside the state for approval and are filled and shipped from outside the state.

Allocation and Apportionment of Income, Generally

South Carolina Code §12-6-2210 provides for the determination of taxable income of a business. A taxpayer whose entire business is transacted or conducted in South Carolina is subject to income tax based on the entire taxable income of the business for the taxable year. A taxpayer that transacts or conducts its business partly within and partly outside of South Carolina

is subject to income tax based on the portion of its business carried on in South Carolina. This portion is determined through allocation and apportionment of income. The sum of these amounts is South Carolina taxable income.

South Carolina Code §§12-6-2220 and 12-6-2230 provide that certain classes of income, less related expenses, are allocated. Items directly allocated include non-business interest, non-business dividends, non-business rents and royalties from the lease or rental of real estate or tangible personal property, gains and losses from the sale of real property, and non-business gains and losses from sales of intangible property.

The income remaining after allocation is apportioned in accordance with South Carolina Code §12-6-2240. South Carolina generally requires the use of one of the following apportionment methods:

- 2) A “four factor” apportionment method (based on property, payroll, and double-weighted sales) or a “phased in” single factor apportionment method (based on sales) for taxpayers whose principal business in South Carolina is dealing in tangible personal property. This method is typically used by businesses that manufacture, sell, or rent tangible personal property.

NOTE: The “single sales factor” apportionment method is being phased in for tax years beginning in 2007 – 2010. The “single sales factor” apportionment method will replace the “four factor” apportionment method for tax years beginning in 2011 for businesses dealing in tangible personal property. See South Carolina Code §§12-6-2250, 12-6-2252, and 12-6-2295.

- 3) A “gross receipts” apportionment method for taxpayers not dealing in tangible personal property. This method is typically used by financial businesses and service businesses, including businesses that install or repair tangible personal property, and contractors. See South Carolina Code §§12-6-2290 and 12-6-2295.
- 4) A “special” apportionment method provided in South Carolina Code §12-6-2310 for certain companies, such as railroad companies, telephone companies, pipeline companies, airline companies, and shipping lines.
- 5) An individualized apportionment method tailored to a particular taxpayer (a) because the standard method for that taxpayer does not fairly represent the extent of the taxpayer’s business in South Carolina, or (b) as an economic incentive allowed the taxpayer. See subsections (b) and (c) below for more information on alternative apportionment provisions.

Four Factor Apportionment Method/ New Single Sales Factor Apportionment Method

Phase-In Rules for Tax Year Beginning 2007-2010

- a. Original Four Factor Apportionment Method. South Carolina Code §12-6-2250 contains the “four factor” formula and provides:

A taxpayer whose principal business in this State is (a) manufacturing or any form of collecting, buying, assembling, or processing goods and materials within this State, or (b) selling, distributing, or dealing in tangible personal property within this State, shall make returns and pay annually an income tax which includes its income apportioned to this State. Its income apportioned to this State is determined by multiplying the net income remaining after allocation under South Carolina Code §§12-6- 2220 and 12-6-2230 by a fraction, the numerator of which is the property ratio, plus the payroll ratio, plus twice the sales ratio, and the denominator of which is four. However, where the sales ratio does not exist [*i.e.*, there is zero sales everywhere], the denominator of the fraction is the number of existing ratios, and where the sales ratio exists but the payroll ratio or the property ratio does not exist, the denominator of the fraction is the number of existing ratios plus one. The property, payroll, and sales ratios must be determined in accordance with South Carolina Code §§12-6-2260, 12-6- 2270, and 12-6-2280, respectively.

b. New Single Sales Factor Apportionment Method.

For tax years beginning after 2010, South Carolina Code §12-6-2252 (*i.e.*, the new single sales factor apportionment method) provides that the above taxpayer's income is apportioned to South Carolina by multiplying the net income remaining after allocation under South Carolina Code §§12-6-2220 and 12-6-2230 by the sales factor defined in South Carolina Code §12-6-2280. However, if a sales factor does not exist, the remaining net income is apportioned to the business's principal place of business.

c. Phase In of Single Sales Factor Apportionment Method, As Applicable, for Tax Years Beginning 2007 - 2010.

For taxable years beginning in 2007 through 2010 only, South Carolina Code §12-6-2250(B) provides that a taxpayer apportioning income pursuant to South Carolina Code §12-6-2250(A) (*e.g.*, one whose principal business in South Carolina is dealing in tangible personal property) shall apportion income by using the method provided in South Carolina Code §12-6-2250 (*i.e.*, original four factor apportionment method) and, if applicable, the method provided in South Carolina Code §12-6-2252 (*i.e.*, new single sales factor apportionment method). If the calculation under South Carolina Code §12-6-2252 (single sales factor apportionment method) results in a reduction in income apportioned to South Carolina, the reduction is allowed as follows:

Taxable Year Beginning in	Percentage of Reduction
2007	20 percent
2008	40 percent
2009	60 percent
2010	80 percent

Gross Receipts Apportionment Method

South Carolina Code §12-6-2290 provides for the “gross receipts” formula and states: “If the principal profits or income of a taxpayer are derived from sources other than those described in South Carolina Code §12-6-2250 or §12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in South Carolina Code §12-6-2295.” The “gross receipts” ratio is most commonly used by service businesses. The proper sourcing of gross receipts was reviewed in *Lockwood Greene Engineers v. South Carolina Tax Commission*, 361 S.E.2d 346 (1987). The court held that in sourcing income of a multistate engineering firm, “gross receipts from within this State” were to be determined according to where the services were performed rather than according to where the customers were located.

Fairness Based Alternative Apportionment Provisions

South Carolina Code §12-6-2320 provides for alternative methods to fairly apportion income for companies who do business in more than one state. Any taxpayer who believes that the statutory apportionment formula does not represent the extent of the taxpayer's business within this State may apply to the Department for approval of an alternative method.

Under South Carolina Code §12-6-2320(A), a taxpayer may petition for, or the Department may require, with respect to all or any part of the taxpayer's business activity, one of the following alternatives for reporting:

- a. Separate Accounting;
- b. The exclusion of one or more factors;
- c. The inclusion of one or more factors; or
- d. The use of another allocation and apportionment method.

Unitary Business Doctrine, Generally

Apportionment is tied to the unitary business concept. Before an apportionment formula can be applied by a state to ascertain the taxable income of a multistate corporation, or an affiliated group of corporations, a determination must be made that the divisions of the corporation, or the members of the controlled corporate group, constitute one unitary business. "The linchpin of apportionability in the field of state income taxation is the unitary business principle."¹⁷⁶

A state cannot tax value earned outside of the state,¹⁷⁷ but a state may look beyond its borders to get the true value of taxed property or privileges within its borders, when in-state activities are an integral part of an organic interstate system that gives an enhanced value to the property or privileges which are taxed.

¹⁷⁶ Exxon Corp v. Dept of Revenue, 447 U.S. 207, 223 (1980).

¹⁷⁷ Conn. General Life Ins. Co. v. Johnson, 303 U.S. 77 (1938).

“In a unitary enterprise, property outside the state, when correlated in use with property within the state, necessarily affects the worth of the privilege within the state.”¹⁷⁸ Thus, the privilege of doing business within a state may be made more valuable owing to its being an integral part of a multistate operation.

Therefore, to determine the amount a state can tax, first the unitary business is determined. A corporation can have income which is not connected with a trade or business, and a corporation can conduct more than one unitary business. The income and apportionment must be computed separately for each unitary business. On the other hand, one unitary business can encompass a group of related corporations¹⁷⁹ and the income from the unitary business, which is not otherwise allocated, is apportioned between the taxing state and everywhere else.

There is no objective and easy definition of unitary business. Rick Pomp and Oliver Oldman explain:¹⁸⁰

The unitary business concept is not, so to speak, unitary: there are variations on the theme, and any number of them are logically consistent with the underlying principles motivating the approach.¹⁸¹ Instead it [US Supreme Court] has identified some of the indicia of a unitary business: unity of use and management;¹⁸² a concrete relationship between the out-of-state and the in-state activities;¹⁸³ functional integration, centralization of management, economies of scale;¹⁸⁴ substantial mutual interdependence;¹⁸⁵ and some sharing or exchange of value not capable of precise identification of measurement — beyond the mere flow of funds arising out of a passive investment or a distinct business

¹⁷⁸ Ford Motor Co. v. Beauchamp, 308 U.S. 331 at 336 (1939) (franchise tax case).

¹⁷⁹ See Mobil Oil v. Vermont, 445 U.S. 425 (1980).

¹⁸⁰ State & Local Taxation, Richard D. Pomp and Oliver Oldman (3d ed. 2000) at 10-20 to 10-21. See also the draft of the Public Participation Working Group - Uniformity Committee Liaison Group on Definitions of Unitary Businesses on the Multistate Tax Commission website; www.mtc.gov.

¹⁸¹ Container Corp. v. Franchise Tax Bd., 463 U.S. 159 (1983).

¹⁸² Butler Bros. v. McCollan, 315 U.S. 501 (1942).

¹⁸³ Container Corp. v. Franchise Tax Bd., 463 U.S. 159 (1983).

¹⁸⁴ Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980).

¹⁸⁵ F.W. Woolworth Co. v. New Mexico, 458 U.S. 354 (1982).

operation.¹⁸⁶ The Court has recognized that in a unitary business, it is exceedingly difficult to determine the profits earned by the processes conducted within a state's borders.¹⁸⁷

In a unitary multistate business, no method of assigning net income can precisely determine the exact amount of income attributable to any geographic area or to any given part of a series of multistate business operations. States have devised statutory apportionment formulas for multistate income designed to arrive at a portion of income reasonably attributable to the state. The formula method provides a rough approximation of a company's income that is reasonably related to the activities conducted within the taxing state; it does not identify the precise geographical source of a company's income.

Unitary Business Doctrine, Issues

There are really two separate unitary business issues:

Are two (or more) entities or segments unitary so that their apportionment factors and incomes should be combined and used in determining income subject to income tax in a state? A segment for this purpose is a subdivision of an entity consisting of any grouping of business activities, functions, or transactions.

If the answer to the first issue is no, then is the income in question part of apportionable income? A yes answer to the second issue means that the income is apportionable, but that the apportionment factors of the payer are not included in the apportionment formula.

The first issue is the traditional unitary business issue for corporate income tax. Are the entities or segments not separate businesses, but an integral part of a multi-state unitary operation, such that the income from the operations within each state cannot accurately be

¹⁸⁶ Container Corp. v. Franchise Tax Bd., 463 U.S. 159 (1983).

¹⁸⁷ Underwood Typewriter Co. v. Chamberlain, 254 U.S. 113 (1920).

attributed to a given state by the separate accounting method?¹⁸⁸ The underlying rationale is that there is but one business and the apportionment factors and income are really the apportionment factors and income of one business which should be allocated and apportioned together.¹⁸⁹

The second issue is a determination of whether income is apportionable. In South Carolina that is the same as determining whether it is business income or non-business income,¹⁹⁰ and in some cases where a corporation is carrying on more than one unitary business, determining to which unitary business the income relates.¹⁹¹

South Carolina Overview, a Separate Entity State

South Carolina is a separate entity state, and generally treats related corporations as if they were unrelated. South Carolina does not normally apportion the income of related corporations together, even when they are part of one unitary business.¹⁹² Single member limited liability companies and QSubs that are disregarded for all South Carolina tax purposes are exceptions to this rule. Another possible exception is provided by SC Code §12-6-2320(A) which provides that if South Carolina's statutory allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business activity in South Carolina, the taxpayer may petition for, or the Department may require, in respect to all or any part of the taxpayer's business activity a

¹⁸⁸ The Supreme Court has declared the "principal virtue of the unitary business principle of taxation is that it does a better job of accounting for 'the many subtle and largely unquantifiable transfers of value that take place among the components of a single enterprise' than, for example, geographical or transactional accounting." *Allied Signal, Inc. v. New Jersey*, 504 U.S. 768, 783 (1992) quoting from *Container Corp. v. Franchise Tax Bd.*, 463 U.S. 159, 164-165 (1983).

¹⁸⁹ See e.g., *Exxon Corp. v. Wisconsin*, 447 U.S. 207 (1980); *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980); *F.W. Woolworth, Co. v. New Mexico*, 458 U.S. 354 (1962); *ASSARCO, Inc. v. Idaho State Tax Comm.*, 458 U.S. 307 (1982); *Container Corp. v. Franchise Tax Bd.*, 463 U.S. 159 (1983); and see BNA Multistate Tax Portfolio #1110, *Income Taxes: Definition of a Unitary Business*.

¹⁹⁰ In South Carolina, all apportionable income is business income.

¹⁹¹ The payee and the payor need not be engaged in the same unitary business as a prerequisite to apportionment. What is required instead is that the transaction serve an operational rather than an investment function. For example, interest earned on short-term deposits in a bank located in another state where that income forms part of the working capital of the corporation's unitary business, is part of that corporation's apportionable income, notwithstanding the absence of a unitary relationship (issue 1) between the corporation and the bank.

In order to exclude certain income from the apportionment formula, the company must prove that the income was earned in the course of activities unrelated to those carried out in the taxing state. See *Allied Signal, Inc. v. New Jersey*, 504 U.S. 768 (1992); and *Eastman Kodak Company v. SC Tax Comm.*, 418 S.E.2d 542 (SC 1992); and see BNA Multistate Tax Portfolio #1110, *Income Taxes: Definition of a Unitary Business*.

¹⁹² The South Carolina Supreme Court held in *Emerson Elec. Co. v. Wasson*, 287 S.C. 394, 339 S.E.2d 118 (1986), that parent and subsidiary corporations are not to be considered a single entity for apportionment purposes.

different method. It is possible that in certain circumstances the taxpayer may request, or the Department may require, combined reporting; *i.e.*, the apportionment of multiple related corporations together. Although this type of alternative combined apportionment has been discussed, the Department has, to date, never attempted to impose it over a taxpayer's objection.

South Carolina does allow what it refers to as consolidated returns.¹⁹³ They are nothing like what federal tax practitioners consider consolidated returns.

South Carolina recognizes that it is possible that one corporation can carry on two or more separate unitary businesses. When that is the case, each unitary business is apportioned separately.¹⁹⁴

Separate Reporting System for Corporate Income Tax, Generally

South Carolina currently operates under a separate reporting system for corporate income tax. This means that the state generally “treats related corporations as if they were unrelated.” The following example offers some insight for how the separate entity reporting works on an individual basis.

Corporation A operates within South Carolina, and because of these in-state activities, A has nexus with the state. A is therefore liable to pay corporate income tax. Corporation B is a trademark holding firm in another state, and a subsidiary of A. B owns and holds A's trademark,

¹⁹³ SC Code §12-6-5020 and *Emerson Elec. Co. v. Wasson*, 287 S.C. 394, 339 S.E.2d 118 (1986).

¹⁹⁴ *Exxon Corporation v. South Carolina Tax Commission*, 273 S.C. 594, 258 S.E.2d 93 (1979). See also SC Reg. §117-710.1 Proper Allocation and Apportionment of Income:

The phrase “transacting or conducting his business partly within and partly without this State” ... is applicable to a single business operation, which is unitary or homogenous and is carried on both within and without the State. A taxpayer operating two or more unrelated businesses, each of which is entirely within and without the State, is not subject to the provisions of this section, but each business determines its South Carolina net income separately. A taxpayer operating a unitary or homogenous business within and without the State and an unrelated business either entirely within or without is subject to the [apportionment] formulas with respect to the unitary or homogenous business but not with respect to the unrelated business. The income from the unrelated business is allocated and apportioned separately as appropriate to the State where such business is conducted.

A review of South Carolina cases below will attest, this possibility is not a common occurrence in South Carolina.

and, as part of A's business within South Carolina, licenses the use of this trademark to A in exchange for a royalty fee.¹⁹⁵ Corporation B has no officers within South Carolina, nor does it do any business within the state beyond this licensing agreement with Corporation A.¹⁹⁶

Under the separate entity system, Corporation B is an unrelated operation to Corporation A in South Carolina. A and B are separate companies entirely for the purpose of assessing tax liability. Even if the state were to utilize the unitary business principle and define A's operation so broadly as to include its transactions with B, and even though B is a subsidiary A, a corporation liable to pay corporate income tax, the state would still not be able to reach B and its activities with A to tax the income it receives from A's operations in South Carolina. With separate entity reporting, the two companies would be distant from each other, and since B has no nexus with the state, it would avoid liability.

Similarly, since the state treats A and B as strangers, A's operations would have no impact in B's tax liability, since there would be no liability to begin with. More striking however, B's income from its operations with A would not be held against A when apportioning A's income for tax liability.¹⁹⁷ The money Corporation A pays to its subsidiary, Corporation B, would only serve to negate A's liability since it would only be calculated as an expense against A's income for its in-state activities.¹⁹⁸

Separate entity reporting creates a potentially massive tax loophole for corporations capable of taking advantage. While the system is very attractive to those companies, it creates a number of problems for the state, as well as for those corporations incapable of seizing its benefits.

Separate Reporting, Issues and Concerns

¹⁹⁵ Under this hypothetical, Corporation B could be referred to as a "Passive Investment Company" or "Delaware holding companies." See Sheldon H. Laskin, *Only a Name? Trademark Royalties, Nexus, and Taxing That Which Enriches*, 22 AKRON TAX J. 1, 4 (2007).

¹⁹⁶ See, e.g., *Geoffrey, Inc. v. South Carolina Tax Com'n*, 437 S.E.2d 13 (S.C. 1993).

¹⁹⁷ See RICHARD POMP, *STATE & LOCAL TAXATION* 10-30 (4th ed. 2001); see also HELLERSTEIN & HELLERSTEIN, *STATE TAXATION* §9.15 (3rd ed. 2010).

¹⁹⁸ See PENNSYLVANIA BUDGET AND POLICY CENTER, *ENSURING ALL CORPORATIONS PAY THEIR FARE SHARE* (2010).

There are numerous potential issues associated with separate reporting for both the state and the private sector. What follows is a point-by-point breakdown of these problems.

1. Separate Entity Reporting Creates a Tax Loophole for Corporations to Avoid Tax Liability.

The most obvious concern with separate entity reporting is the potential tax loophole the system leaves open for certain businesses to utilize. Using the example from above, consider a scenario in which Corporation A creates Corporation B as its subsidiary, and that Corporation B files its articles of incorporation in a state that has no corporate income tax.¹⁹⁹ Corporation B would then have no tax liability in South Carolina or in the state in which it is incorporated. A can then pay B extremely high rates and fees for the use of its trademark, thereby reducing its taxable income to a point where its liability within South Carolina would be either minimal or none at all.²⁰⁰ Tax expert Richard Pomp refers to this form of income maneuvering as the “Delaware loophole” given the high number of corporations who establish subsidiaries in the tax-free state of Delaware and thereby avoid tax liability in separate entity states where they have sufficient nexus.²⁰¹

The implications for South Carolina include significant losses in tax revenue. Pomp recently estimated that Pennsylvania’s separate entity system has so far cost that state \$615 million.²⁰²

2. Separate Entity Reporting is Discriminatory Against Smaller Businesses.

A second issue with separate entity reporting is that the system provides an unfair competitive advantage for typically large multi-state corporations. The holding company tax loophole, as exemplified in the A and B example, offers a potentially beneficial option for

¹⁹⁹ See Delaware or Wyoming as examples.

²⁰⁰ PENNSYLVANIA BUDGET AND POLICY CENTER, ENSURING ALL CORPORATIONS PAY THEIR FARE SHARE (2010).

²⁰¹ *Id.*

²⁰² *Id.*

certain businesses capable of setting up subsidiaries in tax-free states. This benefit, however, is felt by only certain corporations, while many others, including small businesses, are left out.

Multi-state corporations operating within South Carolina benefit from state and locally-funded public services. They benefit, like all businesses, from doing business within the state. The difference, however, for these multi-state corporations is that while they accept and use these benefits, they are able to avoid paying their fair share of taxes, which are then used to fund these services. The income they collect can be sent, under the current law, to their holding subsidiary in Delaware.

Other, usually smaller, businesses are not so fortunate. Corporations that do all of their business within South Carolina, for example, are liable to pay their 5 percent income tax.²⁰³ Since they are not capable or sophisticated enough to establish holding companies as tax haven subsidiaries, they operate within their own state at a competitive disadvantage with these multi-state corporations.²⁰⁴

3. Separate Entity Reporting Leads to Year-by-Year Inconsistencies in State Tax Revenue.

The tax loopholes created by South Carolina's separate reporting structure also lead to inconsistencies with the state's tax revenues. Looking at South Carolina's year-by-year tax revenues from fiscal year 2000-01 to the present shows that over the past nine years, ending in fiscal year 2008-09, revenues have jumped as high as 47 percent in fiscal year 2003-04, but have likewise dropped in 2001-02 at -38 percent and -23 percent in 2008-09.²⁰⁵

There are numerous explanations for these inconsistencies, including changes in the economic climate and other areas of legislation, but the ability of corporations to manipulate

²⁰³ S.C. CODE ANN. § 12-6-530 (2010).

²⁰⁴ See Andrew Haile, *A Time For Action: Reforming the North Carolina Tax Code*, 2010 N.C. L. REV. ADDENDUM 1 (2010).

²⁰⁵ See *supra* chart on pp. 4.

their multi-state tax liabilities through holding company loopholes only exacerbates the state's problem in enforcing a consistent, dependable tax structure.²⁰⁶

Overcoming Separate Reporting – Geoffrey

The Case

*Geoffrey, Inc. v. South Carolina Tax Commission*²⁰⁷ involved a corporate structure identical to the A and B hypothetical discussed above. Geoffrey, Inc. was a subsidiary of Toys R Us, incorporated in Delaware, and held various Toys R Us trademarks. Geoffrey then issued licensing agreements with Toys R Us so that Toys R Us could then use these marks in various states across the United States, including South Carolina, where they sold their products. Toys R Us used the licensed marks on their buildings and on the tags of their products within South Carolina. Much like Corporation B in the hypothetical, Geoffrey had no officers within South Carolina, nor anything else, such as tangible property, that would have created a sufficient nexus with the state to generate tax liability.²⁰⁸

As expected, Toys R Us used the expense associated with its licensing agreements with Geoffrey to limit their in-state tax liability by taking a deduction on their income. Under South Carolina's separate entity structure, the income derived from Toys R Us' activities within the state, as well as Geoffrey's income from its licensing agreements arising from Toys R Us' activities within the state, could not be reached by the South Carolina Department of Revenue. Toys R Us' income had been diminished by their deductions paid to Geoffrey, and Geoffrey's income suffered no liability since the subsidiary had no nexus with the state.

Despite these facts, the Department of Revenue still forced Geoffrey to pay income tax under the concept that it was doing business in South Carolina through its licensing agreements, which was sufficient activity to trigger nexus with the state.

²⁰⁶ See Andrew Haile, *A Time For Action: Reforming the North Carolina Tax Code*, 2010 N.C. L. REV. ADDENDUM 1 (2010).

²⁰⁷ *Geoffrey, Inc. v. South Carolina Tax Com'n*, 437 S.E.2d 13 (S.C. 1993).

²⁰⁸ *Id.*

Supreme Court's Ruling

Geoffrey challenged the tax on Due Process and Commerce Clause grounds, but to no avail. The South Carolina Supreme Court upheld the tax and held that Geoffrey had nexus with the state for two reasons.²⁰⁹ First, Geoffrey had intangible property in the state through an account receivable set up by Toys R Us through which Toys R Us paid Geoffrey for the use of the trademarks.²¹⁰ The Court ignored a long-held assumption that physical, tangible, presence within the state was necessary for nexus.²¹¹

Second, the Court held that Geoffrey willingly sought to do business within South Carolina through its agreements with Toys R Us.²¹² These agreements read that the trademarks were licensed for Toys R Us' use in all states *except for Massachusetts, Pennsylvania, New Jersey, Texas, and New York*.²¹³ The Court reasoned that Geoffrey set up the agreements with sufficient specificity such that Geoffrey was on notice of the use of the marks in South Carolina, one of the states unlisted in the exception, and could have prevented Toys R Us from doing so.²¹⁴

Once the Court determined that Geoffrey had nexus with South Carolina, the tax survived both the Due Process and Commerce Clause challenges.²¹⁵

Problems with *Geoffrey*

Despite the Court's success in overcoming the parent-subsidary structure²¹⁶ for taxing within a separate entity jurisdiction, relying on the *Geoffrey* ruling to deal with the numerous problems posed by separate reporting only leads to more issues for the state.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ See *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992).

²¹² *Geoffrey*, 437 S.E.2d 13 (S.C. 1993).

²¹³ Emphasis added.

²¹⁴ *Geoffrey*, 437 S.E.2d 13 (S.C. 1993). The Court further held that the tax imposed was rationally related to the benefits Geoffrey received from the state for Due Process purposes. The benefit received were Toys R Us' customers, through whom Geoffrey received its income. Geoffrey also received protection, benefits, and opportunities in accordance with doing business in the state, from which it also derived its income.

²¹⁵ For further discussion of the Due Process and Commerce Clause holdings by the Court, see *supra* pp. 16-18.

Listed are a few of the difficulties in using *Geoffrey* as the de facto law for overriding multi-state tax structures taking advantage of separate entity loopholes.

Litigation is Not the Best Answer

From a practical perspective, using *Geoffrey* as the method of overcoming loophole structures means that the only way for the state to gain access to some of the lost revenue is through more litigation. This is an expensive way of dealing with the separate entity problem. Other states, including North Carolina, have already recognized that the use of litigation in dealing with the shortcomings and inefficiencies of separate reporting is not the ideal answer.²¹⁷

Geoffrey is Not Entirely Definitive for All Holding Company Loophole Structures

The *Geoffrey* ruling offers a mechanism for dealing with loophole structures that is very fact specific. In a separate entity jurisdiction, a multi-state corporation could still conceivably take advantage of the loophole without facing a successful *Geoffrey* challenge.

For example, a parent and subsidiary could execute less specific licensing agreements than those between Geoffrey and Toys R Us. Those agreements listed specific states as being exempted locations for the use of the trademarks, and this degree of specificity was a crucial factor in the Court's determination that Geoffrey willfully did business within South Carolina. All a post-Geoffrey multi-state corporation has to do is be less specific with their agreements.

A second crucial factor in *Geoffrey* for finding nexus within the state was the presence of an account receivable within South Carolina that Toys R Us used to pay Geoffrey. A post-Geoffrey corporation could simply avoid this type of intangible presence within the state and the parent could simply pay the subsidiary directly to its Delaware (or out of state) address.

²¹⁶ Also referred to as piercing the corporate veil.

²¹⁷ See Andrew Haile, *A Time For Action: Reforming the North Carolina Tax Code*, 2010 N.C. L. REV. ADDENDUM 1 (2010)..

The case is helpful, then, in only specific circumstances that are easily overcome. Relying on the courts to use the ruling as a way to overcome every loophole structure is a gamble that need not be taken.

Legislation is the Better Way

The most definitive way for dealing with separate entity reporting is through new legislation that will change South Carolina's tax structure to a combined reporting system. Legislation would be definitive and not subject to corporations altering their corporate structure to constantly fit within the shifting or narrowing allowable loophole as determined by cases like *Geoffrey*. Other states have also recognized the need to enact legislation to move from a separate entity system to combined reporting when the alternative would be relying strictly on case law.²¹⁸

Combined Reporting for Corporate Income Tax, Generally

Combined reporting represents another mechanism for taxing corporate income in South Carolina. Under a combined reporting system, a parent company and all of its subsidiaries file as a single unified or *combined* company, eliminating shifting mechanisms where profits and costs can be funneled disproportionately based on where each was incurred.

In a separate entity reporting structure, the relationship between a parent and subsidiary is ignored, even when both operate within the same unitary business. In a combined reporting structure, on the other hand, the state treats a subsidiary as if it is a division of the parent corporation, operating within the same unitary business. The income of the subsidiary and the parent would be calculated together, with all allocable income removed, and the remaining, taxable income would be determined by the state's apportionment formula from this overall number. Returning to the Corporation A/ Corporation B scenario offers some insight into how combined reporting works.

²¹⁸ See Andrew Haile, *A Time For Action: Reforming the North Carolina Tax Code*, 2010 N.C. L. REV. ADDENDUM 1 (2010).

Corporation A sells its products in South Carolina, where it has nexus with the state. Corporation B, a subsidiary of A, is incorporated in Delaware, where it leases the use of A's trademark to A in South Carolina. Normally, as established above, B would not have nexus with South Carolina, and thus could not be taxed in a separate entity structure. In combined reporting, however, A and B would both be taxed as one entity. Since A has nexus with South Carolina, and part of A's business in the state included the use of the trademarks it leased from B, both would be included in the same unitary business. For tax purposes, both A and B's income would be combined, and then the state would determine the taxable portion of that income to them by their apportionment formula.²¹⁹

Combined reporting states impose numerous conditions on when multi-state corporations qualify for combined reporting. First, the parent and subsidiaries must be part of the same unitary business.²²⁰ Second, states normally require that a common corporation own the subsidiaries and parent, measured by a minimum ownership of stock.²²¹ This minimum ownership requirement usually entails that one corporation own more than 50 percent of common stock²²² in the parent and subsidiaries involved in the unitary business.²²³

In 2008, 21 states applied combined reporting methods to corporate income tax. Combined reporting requires that companies combine profits from all related subsidiaries, including captive real-estate investment trusts (REITs) and passive investment companies (PICs), before determining what portion of their profits are taxable in that state.²²⁴

For the four states that did not levy corporate income tax in 2008, this issue was irrelevant. (Texas has since instituted a 0 percent corporate tax rate.)

²¹⁹ For a discussion of South Carolina's apportionment formula, *see supra* pp. 7-15.

²²⁰ *See supra* pp. 22-25.

²²¹ *See* RICHARD POMP, *STATE & LOCAL TAXATION* 10-31 (4th ed. 2001).

²²² Some states require 80 percent share of common stock over the corporations. *See* HELLERSTEIN & HELLERSTEIN, *STATE TAXATION* §8.11 (3rd ed. 2010).

²²³ *See* RICHARD POMP, *STATE & LOCAL TAXATION* 10-31 (4th ed. 2001).

²²⁴ These states are: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Kansas, Maine, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New York, North Dakota, Oregon, Texas, Utah, Vermont, and West Virginia.

Besides D.C., South Carolina is one of the remaining 25 states that still uses a separate reporting method. Separate reporting methods can facilitate a company's ability to shelter corporate income from taxes, typically through PICs and REITs.

No other southeastern states apply combined reporting mechanisms, however. Commissions in Kentucky, Pennsylvania, and North Carolina have also recommended the adoption of combined reporting.

Forms of Combined Reporting

Combined reporting serves numerous purposes for the state, and most important of which, it prevents the use of holding companies and subsidiaries in tax-free states that can be used as tax havens. Despite the general usefulness of combined reporting in bolstering the state's corporate income tax revenue, there are various forms of combined reporting that need to be explored.

1. "Pure" Combined Reporting²²⁵

The most basic method used by combined reporting states entails requiring all corporations to file combined returns. This "pure" combined reporting involves, first, that a subsidiary or parent company have nexus with the state. Second, the state must determine the unitary business of the corporation. Then, this unitary business must satisfy the more than 50 percent common ownership requirement. Once all of this satisfied, then the parent and subsidiaries file a combined report that includes all of their income, whether some of these subsidiaries have nexus with the state or not. The state then uses its apportionment formula to calculate the tax liability of this unitary business operation.

2. Forced Combined Reporting

²²⁵ See RICHARD POMP, STATE & LOCAL TAXATION 10-31 (4th ed. 2001).

A second method in which a state enforces combined reporting is by authorizing the Department of Revenue to compel a corporation to file a combined return. This would entail the South Carolina DOR determining that a unitary business includes subsidiaries that do not have nexus with the state, and then forcing the corporate entity that does have nexus with the state to file a report that includes the income of its parent and subsidiaries, whether they have nexus with the state or not, so long as they are considered part of the unitary business. A very recent South Carolina Supreme Court decision, *Media General v. SCDOR*, arguably authorizes forced combined returns.

Kansas, North Carolina, and Tennessee utilize a forced combined reporting mechanism. In Kansas, Kan. Stat. Ann. § 79-32.141 empowers the department of revenue director to require a unitary business to file a combined report even though corporations are not otherwise required to do so under state law.²²⁶ Once the director decides that a corporation must file a combined report in a given year, that business must continue to do so for as long as combined reporting is allowed in the state.²²⁷

In North Carolina, the tax administrator may require a unitary business to file a combined return if a separate entity report does not effectively determine the taxable income for the state.²²⁸ Similarly, in Tennessee, the state tax commissioner can compel “two or more entities owned or controlled” by the same person or corporation to file a combined report when filing separate reports would fail to properly reflect taxable income.²²⁹

3. “Water’s Edge” Combined Reporting

²²⁶ See *State by State Analysis of Income Taxes: Consolidated Returns and Combined Reporting*, BNA Tax Management Portfolios (2010).

²²⁷ See *State by State Analysis of Income Taxes: Consolidated Returns and Combined Reporting*, BNA Tax Management Portfolios (2010).

²²⁸ See *State by State Analysis of Income Taxes: Consolidated Returns and Combined Reporting*, BNA Tax Management Portfolios (2010).

²²⁹ See *State by State Analysis of Income Taxes: Consolidated Returns and Combined Reporting*, BNA Tax Management Portfolios (2010).

One of the most controversial issues affecting combined schemes is what states should do with unitary business operations that include foreign corporations or subsidiaries. While some states, most notably California, initially included these foreign entities in a combined report, concerns over foreign affairs eventually led most states with worldwide reporting to adopt “water’s edge” combined reporting. Water’s edge reporting adheres to the policy that combined reporting should only concern united corporations or corporate entities within the United States.

Benefits of Combined Reporting

Combined reporting prevents the use of tax loopholes linked to corporate structure. In a separate entity tax system, multi-state corporations are able to control their tax liability through their own structures. Using out of state subsidiaries, for example, provides a tax haven from which the state cannot reach because the subsidiary does not have nexus. Under a pure combined reporting scheme, corporations within a unitary business are required to file a combined report, thus eliminating the usefulness of holding companies and other subsidiaries. In a forced combined reporting scheme, corporations are similarly forced to file as a unitary business when the department of revenue determines doing so better reflects their taxable corporate income.

Additional advantages to combined reporting are:

- Combined reporting discourages corporations from creating out of state subsidiaries.
- In combined reporting, corporations are no longer incentivized to establish out of state subsidiaries. If these subsidiaries, typically holding companies, are deemed to be part of the same unitary business as the parent company, which has nexus with the state, then any income that is shifted to them will be taxed. Subsidiaries whose sole purpose is to take advantage of the loopholes created by separate entity reporting will cease to serve that purpose, and corporations will no longer feel the need to shift income out of the state.
- Combined reporting leads to increased tax revenue for South Carolina. Since companies can no longer shield themselves from liability through the restructuring

loopholes created by separate entity reporting, the state will be much more successful at capturing taxable income in a combined system.

- Combined reporting is a more equitable tax system for all taxpaying businesses. In a separate entity system, intrastate companies are at a disadvantage since they cannot take advantage of holding company loopholes like multi-state corporations. Combined reporting prevents those loopholes, meaning that all taxpaying companies within South Carolina are on equal footing.
- Combined reporting better reflects the economic realities of present day corporations. Companies operating in multiple states are often part of a group of companies controlled by a parent. Merging these related companies for tax purposes better represents their true economic activity as decisions are made by the parent company.

More specifically, combined reporting better captures the true income of a multi-state corporation. In a separate entity system, the state is limited in determining and taxing corporate income for business activities that take place within its jurisdiction. The only corporate entities with tax liability in a separate system are those with nexus within the state. This eliminates transfers of income, “flows of value,” “sharing of knowledge,” and experience that contribute to the earnings and income of multi-state corporations. In a separate system, these and other intangible elements of a business operation are eliminated from consideration and all that remains to be allocated and apportioned is the sales income of the one or two corporate entities within the state. The reality, however, is that what a corporation earns from its activities in South Carolina reach beyond just what can be seen or experienced within the state’s borders. Combined reporting states recognize the complexity of the current corporate culture, and in certain cases, even in South Carolina, corporations themselves have recognized the need for combined reporting as a way to properly determine tax liability.

Case Note – *Media General Communications v. South Carolina Department of Revenue*.

In *Media General Communications v. South Carolina Department of Revenue*, the taxpaying corporation challenged the Department of Revenue’s use of the separate entity accounting procedures authorized by the state on the grounds that it did not correctly reflect the

unitary business's corporate income.²³⁰ The parent corporation, Media General, Inc., was domiciled in Virginia and owned Media General Communications, incorporated in Delaware. Media General Communications in turn owned Media General Options, who then owned a subsidiary named Media General Broadcasting of South Carolina Holdings, Inc. This corporate structure, indicative of the complexities of the current corporate climate, comprised a unitary business of shared ownership and management.

The Department of Revenue performed an audit of Media General, Media General Communication, and Media General Broadcasting and issued tax assessments on each of them individually for income earned through licensing intangible assets within South Carolina. Media General challenged these individual assessments performed under the separate entity accounting formula on the grounds that they resulted in a distortion of the income and business activities of the unitary business within the state. Media General instead argued that a combined accounting better represented their taxable income.

The administrative court sided with Media General, holding that S.C.C. § 12-6-2320 (A)(4) allows for combined reporting. That specific code section reads:

If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.²³¹

The South Carolina Supreme Court upheld the administrative court's ruling. The Court held that the code section authorizing the use of "any other method to effectuate an

²³⁰ Media General Communications, Inc. v. South Carolina Department of Revenue, 2010 WL 2347037 (S.C. June 14, 2010).

²³¹ S.C. CODE ANN. § 12-6-2320 (A)(4) (2010).

equitable allocation and apportionment of the taxpayer's income" included the use of combined reporting as a possible mechanism in South Carolina.

The Court's ruling in *Media General* recognized that combined reporting is preferential to separate entity reporting in certain circumstances. What is also of note is the fact that while separate entity reporting has been the common method in South Carolina, there is case law recognition within the state that combined reporting is better equipped to handle the complexities of multi-state corporate structures, particularly when such structures impact the ability of the state to properly tax corporate income.

Additional advantages to combined reporting are (continued):

- Combined reporting does not necessarily mean increased tax liability for corporations. Tax expert Richard Pomp argues that while some businesses may fear that combined reporting increases the tax liability for multi-state corporations, this is not always or necessarily the case.²³² *Media General* offers a clear example of when multiple parts of a unitary business have nexus with the state, and each are taxed separately, shifting to a combined reporting system may actually lessen the tax liability while also giving corporations a much easier and cost-effective way of filing income tax.
- Combined reporting does not inhibit economic growth. Economist Robert Lynch found that combined reporting has not interfered with the economic progress of states that employ it.²³³
- Combined reporting is now the corporate income tax system followed by 23 of 45 states. One of the most pressing concerns for shifting from a separate entity reporting structure to a combined system is that it would encourage multi-state corporations to leave South Carolina for more tax-friendly states. The reality, however, is that 23 of the 45 states that impose corporate income tax now use combined reporting as their tax structure. In many of the 22 states without pure

²³² See RICHARD POMP, STATE & LOCAL TAXATION 10-31 (4th ed. 2001).

²³³ PENNSYLVANIA BUDGET AND POLICY CENTER, ENSURING ALL CORPORATIONS PAY THEIR FARE SHARE (2010).

or forced combined reporting, legislation allows for the elective use of combined reporting by either administrative agencies or taxpayers.

In short, keeping with the current separate entity reporting system places South Carolina at a disadvantage with these other states and prevents the state from joining a movement by most jurisdictions to utilizing combined reporting, particularly when complex corporate structures require the use of a more comprehensive tax system to better reflect income tax liability.

Criticisms of Combined Reporting²³⁴

Mandatory unitary combined reporting (MUCR)—is touted by proponents as a “loophole closer” and as a way to stop “income shifting” to low tax jurisdictions. In actuality, however, mandatory unitary combined reporting carries severe economic consequences: 1) it arbitrarily assigns income to a state, 2) negatively impacts the real economy, and 3) imposes significant administrative burdens on both the taxpayer and state.²³⁵

1. Arbitrarily Assigns Income – Although proponents of MUCR argue that it helps to overcome distortions in the reporting of income among related companies in separate filing systems, the mechanics used under MUCR create new distortions in assigning income to different states. The MUCR assumption that all corporations in an affiliated unitary group have the same level of profitability is not consistent with either economic theory or business experience. Consequently, MUCR may reduce the link between income tax liabilities and where income is actually earned. Many corporate taxpayers may conclude that there is a significant risk that MUCR will arbitrarily attribute more income to a state than is justified by the level of a corporation’s real economic activity in the state.

²³⁴ Testimony of Committee on State Taxation (COST) before TRAC.

²³⁵ A thorough discussion of the problems associated with MUCR can be found in the study prepared for COST by Ernst & Young LLP, “*Understanding the Revenue and Competitive Effects of Mandatory Unitary Combined Reporting*” (<http://www.cost.org/WorkArea/DownloadAsset.aspx?id=70000>).

2. Negatively Impacts the Real Economy – Proponents of MUCR have focused on the benefits in terms of reducing tax planning opportunities, but they fail to acknowledge that MUCR may result in higher effective corporate income tax rates. Economic theory suggests that these higher effective tax rates will ultimately be borne by labor in the state through fewer jobs (or lower wages over time) or by in-state consumers through higher prices for goods and services.

3. Significant Administrative Burden - Determining the Unitary Group: The concept of a “unitary business” is uniquely factual and universally poorly-defined. It is a constitutional (Due Process) concept that looks at the business as a whole rather than individual separate entities or separate geographic locations. In order to evaluate the taxpayer’s determination of a unitary relationship, state auditors must look beyond accounting and tax return information. Auditors must annually determine how a taxpayer and its affiliates operate at a fairly detailed level to determine which affiliates are unitary. Auditors must interact with a corporation’s operational and tax staff to gather this operational information. In practice, however, auditors routinely refuse to make a determination regarding a unitary relationship on operational information and instead wait to determine unitary relationships until after they have performed tax computations. In other words, the tax result of the finding that a unitary relationship exists (or does not exist) often significantly influences, or in fact controls the auditor’s finding. Determining the scope of the unitary group is a complicated, subjective, and costly process that is not required in separate filing states and often results in expensive, time-consuming litigation.

Calculating Combined Income – Calculating combined income is considerably more complicated than simply basing the calculations on consolidated federal taxable income. In most MUCR states, the group of corporations included in a federal consolidated return differs from the members of the unitary group. In addition to variations in apportionment formulas among the states that apply to all

corporate taxpayers, further compliance costs related to MUCR result from variations across states in the methods used to calculate the apportionment factors.

Mandating unitary combined reporting exacerbates the problems with the corporate income tax. In light of the underlying conceptual flaws in the state corporate income tax, the TRAC should support either elimination of the corporate income tax or adoption of a New Mexico-style election that allows corporations to choose to file on a separate, combined or consolidated basis.

Combined Reporting, Recommendations

For the reasons articulated above, the General Assembly should examine requiring the use of combined reporting for corporate income tax. Ideally, such legislation would recognize the benefits of the combined system over the current separate entity reporting structure. Combined reporting is a way to avoid discrimination against certain businesses, to tax income that would otherwise be shifted out of state, and to deal with the growing complexities of the current corporate climate.

The two best methods for enforcing combined reporting include pure combined reporting, which means an across the board requirement that all corporations and unitary businesses with nexus with the state file a combined report, and forced combined reporting, which authorizes the Department of Revenue to compel corporations to file combined reports should it be determined that doing so better reflects the income of a corporation.

Separate Reporting, Recommendations

In the event the General Assembly retains South Carolina as a separate reporting state (see prior discussion) the General Assembly should consider adopting the following reforms.

Adopt State Law Counterpart to IRC §482

Regardless of whether their statutes or case law authorize combined reporting for affiliated corporate entities, many states have adopted provisions identical or analogous to Section 481 of the Internal Revenue Code, which authorizes the Secretary of the Treasury to “distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among” commonly controlled entities “in order to prevent evasion of taxes or clearly to reflect income.” For example Alaska, California, and Hawaii have expressly incorporated Section 482 into their own tax codes. Other state legislatures have adopted their own statutes based on Section 482, and still other states provide their respective taxing authorities with broad power to prevent distortions of net income and evasion of taxes.

Adopt Economic Substance Doctrine

The General Assembly should consider adopting the federal income tax requirement for economic substance. This would allow the SCDOR to better challenge unlawful tax shelters.

Disallow Deduction for Related Party REITs

REITs are a creature of federal tax law. Deductions for payments to related party REITs should be disallowed.

Require Forced Combinations

The DOR has the authority to require forced combinations under the recent *Media General* ruling. The DOR should issue regulations providing the ground rules for forced combinations.

Apply the Throwback Rule

The “throwback rule” is used to rectify the loss of corporate income tax revenue caused by the conflict between state apportionment formulas and Public Law 86-272. When a corporation produces and/or sells goods in more than one state, each state requires the business

to pay tax on just a portion of its nationwide profit. That taxable share is calculated by an apportionment formula in each state's corporate income tax law. The most commonly used formula assigns some of the profit to the state(s) in which the corporation produces goods, some to state(s) in which employees are based, and some to the state(s) in which the corporation makes sales.

However, Public Law 86-272, establishes a threshold level of presence or "nexus" a corporation must have in a state before it can be subjected to a corporate income tax on profit earned in that state. Public Law 86-272 frequently blocks states in which a corporation merely makes sales from imposing an income tax on the states' respective shares of the corporation's profit (as calculated by the formula).

The throwback rule effectively allows a state in which a corporation produces goods or services to tax the profit on any sales made by the corporation into states in which the corporation has insufficient presence to be subjected to a tax on its profit from those sales. Including D.C., 31 states in the nation issue the "throwback rule" to avoid such loss of corporate income tax. Alabama and Mississippi are the only two southeastern states that apply the "throwback rule".²³⁶

Corporate Tax Recommendations Relative to Ethical Issues

Most illegal tax shelters historically have resulted from contingency fee tax planning wherein the tax professional charges for a portion of the tax savings. (Such changes are sometimes contingency fees and other times are large flat fees with no relationship to the amount of professional time spent on the matter.) Contingency fees are barred by IRS Circular 230, which only applies to original filed returns. Circular 230 does not apply to amended returns. The General Assembly should consider the following reforms:

Adopt all of Circular 230

²³⁶ The Department of Commerce, A Report to the SC Taxation Realignment Commission.

South Carolina has adopted most, but not all of IRS Circular 230. The General Assembly should consider adopting Circular 230 in its entirety.

Amended Returns

As stated above, Circular 230 does not prohibit contingency fees on amended returns. South Carolina should consider: (1) going beyond Circular 230 and barring contingency fees on amended returns; or (2) requiring a statement on any return prepared on the basis of contingency fees.

Corporate Income Tax Credits, Generally

South Carolina had over 20 different types of credits against corporate income tax in FY 2007-2008. During that year, \$708.9 million in credits were claimed by only 454 filers. South Carolina allows credits to be carried forward up to 15 years. As noted below, in 2008, \$645.7 million in credits were carried forward by 279 filers.²³⁷

Corporate Tax Credit Carry-forwards (2001-2009)*

2001	\$84 Million
2002	\$99 Million
2003	\$87 Million
2004	\$191 Million
2005	\$261 Million
2006	\$274 Million
2007	\$627 Million
2008	\$646 Million
2009	\$708 Million

*Source: South Carolina Department of Revenue Annual Reports 2001-2009

²³⁷ “Corporate Income Tax: Statewide Economic Growth and Taxation Issues in South Carolina” prepared by Dr. Rebecca Gunnlaugsson, Ph.D., Director, Research Division, SC Department of Commerce, October 28, 2010.

Apart from carry-forwards from previous years, the New Jobs tax credit and the Economic Impact Zone (EIZ) credit are the largest credits. In 2008, credits carried over from previous years accounted for 89 percent of total credits, New Jobs credits account for 5 percent, and EIZ credits accounted for 3 percent.²³⁸

Year-by-Year Comparison of Corporate Income Tax Credits

Credit Claimed	FY 06-07 No. of Returns	FY 06-07 Amount	FY 07-08 No. of Returns	FY 07-08 Amount	FY 08-09 No. of Returns ²³⁹	FY 08-09 Amount ²⁴⁰
TC Column A Carry Over from Previous Year	161	\$574,948,328	175	\$631,714,509	248	\$664,735,750
TC 1 Drip/ Trickle Irrigation Systems	-	-	3	\$1,295,285	1	\$97,500
TC 2 Socio/ Econ Disadvantage Small Business	5	\$100,068	3	\$56,742	-	-
TC 3 Water Resources	1	\$2,500	1	\$82,500	3	\$1,042,344
TC 4 New Jobs Credit	93	\$72,059,902	102	\$36,581,029	124	\$41,479,523
TC 5 Scenic River	-	-	-	-	-	-
TC 6 Infrastructure	5	\$673,570	8	\$1,519,781	9	\$3,043,408
TC 7 Palmetto Seed Capital	-	-	-	-	-	-
TC 8 Corporate	2	\$434,737	1	\$434,736	5	\$9,287,269

²³⁸ “Corporate Income Tax: Statewide Economic Growth and Taxation Issues in South Carolina” prepared by Dr. Rebecca Gunnlaugsson, Ph.D., Director, Research Division, SC Department of Commerce, October 28, 2010.

²³⁹ These numbers are preliminary and not yet finalized.

²⁴⁰ These numbers are preliminary and not yet finalized.

Headquarters						
TC 9 Employer Child Care	-	-	-	-	-	-
TC 10 Base Closure	1	\$4,186	1	\$482	-	-
TC 11 Economic Impact Zone	62	\$9,070,623	84	\$20,772,039	69	\$23,190,705
TC 12 Family Independenc e Payments	16	\$381,202	12	\$71,739	17	\$136,697
TC 12A Add. AFDC	6	\$35,987	6	\$17,262	6	\$25,561
TC 17 Recycling Property Tax	1	\$12,187,836	1	\$7,026,056	3	\$7,877,996
TC 18 Research Expenses	33	\$4,142,805	47	\$7,425,132	88	\$15,753,004
TC 19 Qualified Conservation Contribution	1	\$2,557	1	\$469	2	\$24,499
TC 21 Certified Historic Structure	2	\$242,876	1	\$77,477	1	\$235,155
TC 28 SC Quality Forum	-	-	3	\$1,158,981	-	-
TC 30 Increased Port Cargo	-	-	2	\$53,144	6	\$1,702,268
TC 34 Corporate Tax Moratorium	2	\$922,428	-	-	-	-
TC 36 Industry Partnership Fund	1	\$5,300	1	\$500,000	-	-
TC 37 Toxicity Testing	-	-	2	\$142,200	-	-

Credit						
Health Insurance Pool Credit ²⁴¹	-	-	-	-	1	\$795,484
Unidentified Taken ²⁴²	1	\$2,500	-	-	14	\$926,833
Total	393	\$675,217,405	454	\$708,929,563	597	\$770,353,996
Expired Credits	4	\$742,572	5	\$589,273	5	\$2,740,273
Total Carry forwards	154	\$626,509,297	279	\$645,733,375	253	\$708,376,217

The “Jobs Tax Credit”, Issues and Concerns

South Carolina has a host of tax credits. Most have relatively little revenue impact. The one tax credit with a major revenue impact is the Job Tax Credit. This revenue impact is a function of several factors. First, the credit is relatively rich, ranging from \$1,500 to \$8,000 per job depending upon the wage scale and the county in which the job is located. Second, the carry forward for the credit is 15 years. Third, new jobs – even retail and service (mostly in poorer counties) now qualify for the credit. Lastly, the General Assembly has steadily increased the types of jobs which qualify even in richer counties. When originally enacted, the minimum number of jobs which had to be created was ten, and only manufacturers, warehouse and distribution qualified. Currently, only 2 new jobs need to be created and such entities as banks and general contractors qualify.

The “Jobs Tax Credit”, Recommendations

1. The General Assembly should consider reducing the maximum credit amount from \$8,000 to \$6,000.
2. The Carry forward should be reduced

²⁴¹ There is no form for this credit.

²⁴² Previously these were not broken out.

Corporate income tax credits carried forward to the future have been increasing since 2003. The amount of carryover credits from previous years increased dramatically in 2007, rising \$353 million or 129 percent over 2006. The level remained high in 2008. This increasing use of tax credits and carry-forwards over time not only reduces state corporate revenues, but also increases year-over-year variability. South Carolina has a staggering \$650 million plus in tax credit carry forwards, many of which relate to the Job Tax Credit. The carry forward on new hires should be reduced from 15 to 5 or 3 years. Three years is the typical carry forward period for most state and federal tax credits. South Carolina's fifteen year carry forward is likely the longest in the country. The General Assembly should, however, reduce the carry forward prospectively (i.e. only on jobs created after the effective date of the Act.)

3. Tax credits for retail and service jobs should be eliminated

When the economy improves, the General Assembly should consider eliminating the creation of retail and service jobs from the Job Tax Credit.

R&D Credit, Issues, Concerns and Recommendation

Amend the South Carolina research credit to make it more in line with the federal research credit. Both the South Carolina federal research credits are for research and development costs in the experimental or laboratory sense, including costs incident to the development or improvement of a product. The federal research credit, Section 41 of the Internal Revenue Code, is 20 percent of the increase in qualified research expenses incurred by the company for the tax year over a base year amount calculated pursuant to the statute. South Carolina's research credit (SC Code Section 12-6-3415) is equal to 5 percent of the taxpayer's total qualified research expenses. To claim the South Carolina research credit, a taxpayer must claim the federal increased research expenditures credit, so the taxpayer must claim the federal increased research expenditures credit, so the taxpayer must have some increase in eligible research expenses to claim the South Carolina research credit, but because South Carolina's credit research expenses to claim the South Carolina research credit, but because South Carolina's credit is not limited to increases in research costs, the South Carolina credit may be

much larger than the credit allowed under federal law, which is an unusual, and probably unintended, outcome.

Brief Summary of Corporate Income Tax Credits

DRIP/TRICKLE IRRIGATION SYSTEMS CREDIT: For purchasing and installing conservation tillage equipment, drip/trickle irrigation system or dual purpose combination truck and crane equipment. (TC-1)

CREDIT FOR STATE CONTRACTORS SUBCONTRACTING WITH SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESSES: For state contractors that subcontract with socially and economically disadvantaged small businesses. (TC-2)

WATER RESOURCES CREDIT: For investing in the construction of water storage and control structures for soil and water conservation, wildlife management, agriculture and aquaculture purpose.

NEW JOBS CREDIT: For qualifying employers that create ten or more jobs. (TC-4)

SMALL BUSINESS ALTERNATIVE JOB CREDIT: For qualifying small businesses that create 2 or more full-time jobs. (TC-4SA)

SMALL BUSINESS JOB CREDIT: For qualifying small businesses that create and maintain 2 or more full-time jobs. (TC-4SB)

SCENIC RIVER CREDIT: For donating certain lands adjacent to designated rivers or sections of a river. (TC-5)

INFRASTRUCTURE CREDIT: For construction or improvements of water lines, sewer lines and road projects eventually dedicated to public use or qualifying private entity. (TC-6)

CORPORATE HEADQUARTERS CREDIT: For qualifying costs related to establishing a corporate headquarters in South Carolina or expanding or adding to an existing headquarters. (TC-8)

EMPLOYER CHILD CARE CREDIT: For employers that establish child care programs to benefit employees or donate to a non-profit corporation providing child care. (TC-9)

BASE CLOSURE CREDIT: For hiring employees who lost their jobs because of federal military installation closure or Realignment. (TC-10)

ECONOMIC IMPACT ZONE CREDIT: For placing qualifying property in service in an economic impact zone. (TC-11)

FAMILY INDEPENDENCE PAYMENTS CREDIT: For employers hiring qualifying recipients of Family Independence Payments. (TC-12)

ADDITIONAL FAMILY INDEPENDENCE PAYMENTS CREDIT: For employers hiring qualified Family Independence Payment recipients in a least developed county. (TC-12A)

COMMUNITY DEVELOPMENT CREDIT: For investing amounts not claimed as charitable deductions in qualifying development corporations or financial institutions. (TC-14)

RECYCLING PROPERTY CREDIT: For taxpayers constructing or operating a qualified recycling facility when investing in recycling property. (TC-17)

RESEARCH EXPENSES CREDIT: For taxpayers claiming a federal research expenses credit. (TC-18)

QUALIFIED CONSERVATION CONTRIBUTION CREDIT: For donating a qualifying gift of land for conservation or a qualified conservation contribution of a real property interest. (TC-19)

BROWNFIELD VOLUNTARY CLEANUP PROGRAM CREDIT: For costs of voluntary cleanup activity by a non-responsible party. (TC-20)

CERTIFIED HISTORIC STRUCTURE CREDIT: For rehabilitation projects that qualify for the federal credit. (TC-21)

TEXTILES REHABILITATION CREDIT: For rehabilitating an abandoned textile manufacturing facility. (TC-23)

COMMERCIALS CREDIT: For production companies producing commercials in South Carolina. (TC-24)

MOTION PICTURES CREDITS: For investing in motion picture projects or motion picture production or post-production facilities in South Carolina after June 30, 2004. (TC-25)

VENTURE CAPITAL INVESTMENT CREDIT: For lending money to the SC Venture Capital Authority (TC-26)

SC QUALITY FORUM CREDIT: For participating in quality programs of the SC Quality Forum. (TC-28)

PORT CARGO CREDIT: For increasing usage by volume at state ports. (TC-30)

RETAIL FACILITIES REHABILITATION CREDIT: For revitalizing abandoned retail facilities. (TC-31)

MERCURY SWITCH DISPOSAL CREDIT: For vehicle recycler or scrap recycling facility participating in End-of-Life Vehicle Solution (ELVS) Program for each mercury switch collected and admitted for disposal. (TC-33)

CORPORATE TAX MORATORIUM: For qualifying taxpayers that make a substantial investment and creates at least 100 new, full-time jobs, a 10 year, or in some cases, a 15 year moratorium on corporate income taxes. (TC-34)

ALTERNATIVE MOTOR VEHICLE CREDIT: Taxpayers with federal credit allowed under Internal Revenue Code 30B, will receive SC Credit. (TC-35)

INDUSTRY PARTNERSHIP FUND CREDIT: For contributing to the SC Research Authority's Industry Partnership Fund. (TC-36)

WHOLE EFFLUENT TOXICITY TESTING CREDIT: For a manufacturing facility incurring costs in complying with whole effluent toxicity testing. (TC-37)

SOLAR ENERGY OR SMALL HYDROPOWER SYSTEM CREDIT: For installing a solar energy system or small hydropower system in a South Carolina facility. (TC-38)

ETHANOL OR BIODIESEL PRODUCTION CREDIT: For producers of corn-based or non-corn-based ethanol or soy-based or non-soy-based biodiesel. (TC-40)

RENEWABLE FUEL FACILITY CREDIT: For constructing a renewable fuel production or distribution facility in South Carolina. (TC-41)

APPRENTICESHIP CREDIT: For employing an apprentice. (TC-45)

HYDROGEN INFRASTRUCTURE DEVELOPMENT FUND CREDIT: For contributions to the South Carolina Hydrogen Infrastructure Development Fund. (TC-47)

PLUG-IN HYBRID VEHICLE CREDIT: For in-State purchase or lease of a plug-in hybrid vehicle. (TC-48)

CELLULOSIC ETHANOL OR ALGAE-DERIVED BIODIESEL RESEARCH AND DEVELOPMENT CREDIT: For qualified expenditures for research into and development of feedstock's and processes for cellulosic ethanol and for algae-derived biodiesel. (TC-49)

BIOMASS RESOURCE CREDIT: For costs incurred by corporation for purchases and installation of equipment used to create power, etc. for commercial use. (TC-50)

VENISON FOR CHARITY CREDIT: For processing deer meat for charity. (TC-51)

SPRINKLER SYSTEM CREDIT: For installing a fire sprinkler system. (TC-52)

ENERGY EFFICIENT MANUFACTURED HOME CREDIT: \$750 credit for new purchase of an Energy Star manufactured home. (TC-53)

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ACADEMIC APPOINTMENTS

Alva P. Loisel Professor of Law, University of Connecticut, School of Law, 1992-present; Professor of Law, 1979-present; Associate Professor of Law, 1976-1979.

Adjunct Professor, NYU Law School, 2021-2022.

Visiting Professor, Harvard Law School, 1999-2000.

Visiting Professor, NYU Law School, Fall 1988.

Distinguished Professor in Residence, Chulalongkorn Law School, Bangkok, January 1988.

Visiting Scholar, University of Tokyo Law School, December 1987.

Visiting Professor, Boston College, Fall 1987.

Visiting Scholar, Harvard Law School, 1984-1985.

Visiting Professor, University of Texas, Spring 1981.

Instructor of Law, Boston College Law School, 1975-1976.

Director, International Tax Program, Harvard Law School, 1973-1976.

Courses Taught

Federal Income Taxation, Corporate Income Taxation, International Taxation, Tax Policy, State and Local Taxation, American Indian Taxation.

EDUCATION

Harvard Law School, Cambridge, Massachusetts
J.D. 1972 *magna cum laude*

University of Michigan, Ann Arbor, Michigan
B.S. 1967 *summa cum laude*

PRIZES AND AWARDS

Perry Zirkel '76 Distinguished Teaching Award, 2017.

Recipient of a Fulbright Award, 2015.

Connecticut Law Tribune, 2015 Professional Excellence Award.

2014 Council on State Taxation (COST), Excellence in State Taxation Award.

2013 State Tax Person of the Year, Tax Analysts.

2012 University of Connecticut's Faculty Excellence in Teaching---Graduate Level.

Bureau of National Affairs (BNA), Distinguished Service in State and Local Tax Law (2011).

All Decade State Tax Team, State Tax Notes, 2010.

NYU Institute on State and Local Taxation, Outstanding Achievement in State and Local Taxation (2008).

PROFESSIONAL ACTIVITIES

Consultant, North Carolina Chamber Legal Institute, 2021.

Consultant, Stand for Children, 2020-2021.

Consultant, Alaska Legislature, 2020-2021.

Consultant, Connecticut Office of Policy and Management, 2019-2020.

Consultant, Washington Commissioner of Insurance, 2019-2020.

Consultant, Washington Attorney General, 2016-2018.

Consultant, City of Kansas City, Missouri, 2015-2016.

Hearing Officer, Multistate Tax Commission, 2013.

BNA Tax Advisory Board, 2011-present.

Member, California Commission on the 21st Century Economy, 2009-2010.

Co-Reporter for the Revision of the Uniform Division of Income for Tax Purposes Act (UDITPA), 2008-2009.

Advisory Board, State Sales Tax Alert, 2008-2010.

Member, Connecticut Streamlined Sales Tax Commission, 2007-2008.

Advisory Board, Pew Charitable Foundation Tax Project, 2007-2008.

General Editor, Lexis Connecticut Practice Insights, 2006-2009.

Member, Connecticut Business Tax Credit and Tax Policy Review Committee, 2005.

Consultant, State of Delaware, 2002.

Consultant, South Carolina Department of Revenue, 2002-2003, 2005-2006.

Consultant, Treasurer, State of New Jersey, 2002-2003.

Consultant, City of San Francisco, 2001-2003.

CCH, State Tax Advisory Board, 2000-2011.

Advisory Board, Interstate Tax Report, 2000-2010.

BNA Tax Management State Tax Advisory Board, 2000-present.

Consultant, California Legislature, 2000.

Consultant, State of West Virginia, 2000.

Consultant, California Franchise Tax Board, 2000.

Consultant, Alaska Department of Revenue, 1999-2010.

Consultant, New York Department of Taxation and Finance, 1998-1999.

Consultant, Pew Charitable Foundation, 1998-2000.

Consultant, U.S. Department of the Treasury, 1997-2000.

Consultant, Tennessee Attorney General, 1998-1999, 2001-2003.

Consultant, Montana Department of Revenue, 1998-1999, 2004-2008, 2016.

Consultant, U.S. Department of Justice, 1997, 2001.

Advisory Board, Deloitte & Touche Center for Multistate Taxation at University of Wisconsin, 1997-2014.

Consultant, Louisiana Department of Revenue, 1995-2000.

Consultant, Utah Attorney General, 1994-1995.

Property Revaluation Task Force, Connecticut Institute of Municipal Studies, 1993.

Consultant, IMF, 1993, 1999.

Consultant, Multistate Tax Commission, 1993, 1996-2004, 2009-2010, 2014, 2016.

Consultant, Illinois Department of Revenue, 1993.

Consultant, North Dakota Department of Revenue, 1992-1993, 1999-2005.

Consultant, IRS, 1992-94.

Editorial Advisory Board, State Income Tax Alert, 1992-1999.

Columnist, Natural Resources Tax Review, 1992-1993.

Member, Blue Ribbon Committee on Municipal Overburden for the City of Hartford, 1991.

Advisory Board, State Tax Notes, 1991-present.

Consultant, Texas Comptroller of Public Accounts, 1991, 2002-2004.

Advisory Board, Center for State and Local Taxation, 1990-present.

Short Review Editor, Tax Notes International, 1989-1994.

Member, Connecticut Task Force to Study and Evaluate State Tax Revenue and the Current Tax Base, 1989-1991.

Special Counsel, Connecticut Senate Majority Leader, 1989, 1991.

Consultant, Ministries of Justice and Finance, The Gambia, 1989 (HIID).

Member, Consulting Group on Tax Policy and its Impact on Land Use, Lincoln Institute of Land Policy, 1988-present.

Consultant, Ministry of Finance, Republic of Indonesia, 1988-1989 (HIID).

Instructor, NYU-IRS Continuing Legal Education Program, 1988, 1989, 1991.

Educational Leader, Soviet-American Legal Tour, 1987.

Consultant, Connecticut Conference of Municipalities, 1987, 1989, 1991.

Consultant, Connecticut Attorney General, 1986, 2002-2004.

Director, New York State Tax Study Commission, 1982-1987.

Consultant, Citizens for Tax Justice, 1981.

Consultant, Appalachian Research and Defense Fund, 1981.

Referee, National Tax Journal, 1980-2005.

Consultant, World Bank, 1980.

Chairman of the Board, Institute on Taxation and Economic Policy, 1979-2016.

Consultant, People's Republic of China, 1979-1982, 1987.

Advisory Committee, Assessment and Valuation Legal Reporter, 1979-1993.

Consultant, City of Hartford, 1978-1980.

Consultant, Connecticut Department of Education, 1978-1979.

Consultant, Hartford Chamber of Commerce, 1978-1979.

Consultant, United Nations Conference on Trade and Development, 1977-1978.

Consultant, Navajo Nation, 1977-82.

Consultant, U.S. Office of Technology Assessment, 1977.

Consultant, Ministry of Finance, Mexico, 1977.

Consultant, Commissioner of Taxation, Republic of Zambia, 1976-1978.

Consultant, United Nations Development Program, 1975.

Editor, *European Taxation*, and Research Associate, International Bureau of Fiscal Documentation, the Netherlands, 1972-1973.

Commissioned Officer, U.S. Public Health Service, 1968-1970.

PUBLICATIONS

BOOKS, REPORTS, AND MONOGRAPHS

RESISTING THE SIREN SONG OF GROSS RECEIPTS TAXES:
FROM THE MIDDLE AGES TO MARYLAND’S TAX ON
DIGITAL ADVERTISING (2022)

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PROVIDERS (MOTION PICTURES ASSOCIATION OF
AMERICA (2015)).

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COMPACT ARTICLE IV [UDITPA] PROPOSED
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State Corporate Income Taxes: The Illogical Deduction for Income Taxes Paid to Other States, 42 *Tax L. Rev.*

419 (1987); reprinted in Multistate Tax Commission Review (September 1987).

The Use and Misuse of Interstate Tax Comparisons, 5 J. State Tax'n 97 (1986); reprinted in 33 Tax Notes 87 (1986).

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Tax Aspects of Doing Business with the People's Republic of China, 22 Colum. J. Transnat'l L. 421 (1984) (with T. Gelatt); reprinted in CHINA'S LEGAL DEVELOPMENT (J. Oldham ed. 1986); a substantial revision of *China's Tax System: An Overview and Transactional Analysis* in FOREIGN TRADE, INVESTMENT AND THE LAW IN THE PEOPLE'S REPUBLIC OF CHINA 36 (M. Moser ed. 1st edition 1984), revised and reprinted in 2d ed. 1987 at 42; revised and reprinted in 3rd ed.

State Tax Reform for the Eighties, 16 Conn. L. Rev. 925 (1984) (festschrift issue); reprinted in Multistate Tax Commission Review (Oct. 1984); a revision of *Improving a State's Tax System and its Administration Through a Major Tax Study*, Revenue Administration-1983, p. 56 (1983).

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The Evolving Tax System of the People's Republic of China, 16 Tex. Int'l L.J. 11 (1981) (with S. Surrey and T. Gelatt); excerpted in LAW IN THE PEOPLE'S REPUBLIC OF CHINA 495 (R. Folsom and J. Minan eds. 1986).

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Function and specialization

Dr. Cody has worked in the field of applied economics for over three decades, consulting on finance, tax, and other related subject areas.

Professional Positions

- BJC Consulting, LLC – Principal, October 2020 – present
- KPMG LLP – Principal, September 2006 – September 2020 (retired)
- CRA International, Inc. – Vice President, 2002 – September 2006
- Arthur Andersen, LLP – Partner, Central Region Intercompany Pricing Services Group, 1993 – 2002
- Coopers & Lybrand, LLP – Transfer Pricing Manager, 1991 – 1993
- The Federal Reserve Bank of Philadelphia – Senior Economist, Research Department, 1987 – 1991
- The Wharton School, University of Pennsylvania – Instructor in Finance/International Finance, 1988 – 1990

Educational Background

- Ph.D., Economics - The University of North Carolina at Chapel Hill, 1987
- B.A. with honors, summa cum laude, Economics - The University of Missouri, Columbia 1983
- B.A. with honors, summa cum laude, French - The University of Missouri, Columbia 1983

Professional and industry experience

Brian has worked in the field of applied economics since 1987, consulting finance, tax, and other related subject areas. He has been admitted as an expert economic witness and provided hearing and deposition testimony on intercompany pricing, income allocation, characterization of financial transactions, and other matters in Federal District Court, Federal Bankruptcy Court, numerous state tax and district courts, and the Superior Court of Justice (Ontario, Canada).

Brian served previously as a Principal and leader of the Washington National Tax Economic and Valuation Services group of KPMG in the US. In this role, Brian provided national support to KPMG's transfer pricing practice, as well as served as a senior technical advisor with respect to transfer pricing issues for KPMG's Global Transfer Pricing Services group.

Brian has been repeatedly nominated as an Expert Transfer Pricing Adviser in the Guide to the World's Leading Transfer Pricing Advisers published by Euromoney Legal Media Group. He is a frequent speaker at business and professional conferences and has published articles on the economics of intercompany pricing in the Journal of International Taxation, Journal of Corporate Taxation, BNA Transfer Pricing Report, and Tax Planning International Review. Brian has also served as Senior Economist, Research Department of the Federal Reserve Bank of Philadelphia, preparing and presenting pre-Federal Open Market Committee (FOMC) policy briefings and conducting research on international economics and foreign exchange risk. During this same period, he also taught International Finance at the Wharton School of the University of Pennsylvania.

Expert Reports and Testimony

- South Carolina Department of Revenue, "Concerning Identification and Location of Income Producing Activities," Expert report, Deposition Testimony (March 2022), and Testimony at Hearing (anticipated 2022). Issue: Identification and location of income producing activities.
- New York State Division of Tax Appeals, "Allocation of Customer Receipts", Testimony at Hearing (January 2022). Issue: Economic analysis of customer identity and location for purposes of apportioning business receipts to the state.
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- on economic characterization of income subject to tax and character of income.
- North Carolina Department of Revenue, “Determination of Arm’s-length Distribution of Income – Domestic Intercompany Retail Structure,” Expert report (settled 2020 prior to Hearing). Issue: Analyze the compensation paid for the operation of retail stores and the intercompany provision of various management and administrative services.
 - Indiana Department of State Revenue, “Arm’s-length Compensation for High-Value Services,” Deposition testimony (September 2016) and expert report. Issue: Analyze the intercompany provision of high-value services and determine whether compensation paid was reasonable under the arm’s-length standard.
 - Utah State Tax Commission, “Valuation and Arm’s-length Royalty Rate for Retail Tradename Intangibles,” Testimony at Tax Commission Hearing (May 2014) and Utah District Court (July 2016). Issue: Analyze whether the valuation of retail tradename intangibles and subsequent licensing royalty rate were reasonable under the arm’s-length standard.
 - State of Wisconsin, Circuit Court, Washburn County, Expert Report, Deposition Testimony (February 2015) and Testimony at Hearing (March 2015). Issues: Impact of intercompany transactions on indebtedness between and among related parties and pricing of certain bulk and packaged goods between related parties.
 - South Carolina Department of Revenue, “Economic Determination of the Location of Income Generating Activities,” Expert Report, Deposition Testimony (December 2014), and Testimony at Hearing (January 2015). Issue: Economic determination of the location of income producing activities for the purpose of sourcing gross receipts within and without the State.
 - North Carolina Department of Revenue Administrative Tax Hearing, “Economic Analysis of Borrowed Capital,” Expert Report (Spring, 2012). Issue: Analyze whether certain liabilities were properly characterized from an economic perspective as borrowed capital for North Carolina franchise tax purposes.
 - State of Maryland, Tax Appeals Commission, “Economic Analysis of Value-Added Services, Licensing of Intellectual Property, and Cash Management Services,” Expert Reports and Testimony in Maryland Tax Court (August 23-25, 2011). Issue: Analyze economic substance of the intercompany provision of value-added and cash management services, and the licensing of intellectual property and determine whether the intercompany transactions were reasonable under the arm’s-length standard.
 - Commonwealth of Massachusetts, Department of Revenue, “Economic Analysis of Intercompany Cash Management System”, Expert Report and Testimony at Appellate Tax Board Hearing (February 22 – 24, 2010). Issue: Analyze intercompany cash management system to determine whether the intercompany

- advances and deposits were properly characterized as debt or equity-related transactions.
- State of Wisconsin, Department of Revenue, “Economic Substance and Arm’s-Length Royalty Rates”, Expert Report and Testimony at Hearing (March 17 – 19, 2009). Issue: Analyze intercompany licensing arrangement to determine whether the entities involved had appropriate economic substance and whether the intercompany royalty rates were reasonable under the arm’s-length standard.
 - State of New York, “Intercompany Transactions and 482 Analysis.” Presentation to New York Department of Taxation and Finance Conciliation Conference (May 20, 2008). Issue: Determination as to whether the pricing of various intercompany transactions was conducted at arm’s-length prices.
 - State of Utah, “Economic Characterization of Business and Non-business Income.” Expert Report (May 31, 2006). Issue: Determination whether income generated by various transactions is properly characterized from an economic perspective as business or non-business income.
 - Commonwealth of Massachusetts, “Characterization of Intercompany Service Transactions.” Deposition Testimony (February 9, 2006). Issue: Examination whether various activities performed by company personnel constitute stewardship/shareholder or directly beneficial services.
 - State of Minnesota, Tax Court, Regular Division, “Concerning Apportionment and the Nexus Standard for State Corporate Income Taxation.” Expert Reports and Deposition Testimony (January 10, 2006). Issue: Analyze the structure and conduct of company operations and determine the location of the activities creating economic value.
 - United States District Court, District of Massachusetts, American Twine Limited Partnership v. Gregory F. Whitten, Ruth Whitten and DKSW, LLC. Civil Action No. 02-10590-NMG, September 20, 2005. Expert Rebuttal Report and Testimony at Trial (August 16, 2005). Issue: Analyze economic nature of funds advanced from minority shareholder to determine whether such advances are properly characterized as debt or equity.
 - State of New York Division of Tax Appeals, Hallmark Marketing Corporation for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Year 1999, Determination DTA No. 819956, January 26, 2006. Expert Report, Rebuttal Report, and Testimony at Hearings (February and April, 2005). Issue: Analyze intercompany pricing of tangible products and ancillary transactions and determine whether the prices were consistent with the arm’s-length standard.
 - Ontario, Canada, Superior Court of Justice, Commercial List, “Intercompany Pricing – Minority Shareholder Issues”. Cross examination and submission of affidavits (February and March 2005). Issue: Analyze intercompany pricing of tangible products and

ancillary transactions and determine whether the prices were consistent with the arm's-length standard.

- Harrison J. Golding Chapter 11 Trustee to PSINet Consulting Solutions Holdings, Inc. et al. v. PSINet, Inc. et al. and PSINet Liquidating L.L.C., Chapter 11 Case No. 01-14916 (REG), Adversary Proceeding No. 02/8077. Deposition Testimony (November 25, 2003) and Testimony at Trial, Federal Bankruptcy Court, Southern District of New York (March 10-11, 2004). Issue: Analyze economic nature of funds advanced intercompany to determine whether such advances are properly characterized as debt or equity.
- State of New York Department of Taxation and Finance Administrative Tax Hearing, "Economic Analysis of Investment Tax Credit Program and Recapture Provisions." Expert Report and Testimony at Hearing (October 1, 2003). Issue: Examine sale of group companies to determine whether the terms of the disposition satisfied from an economic perspective the recapture provisions of the State's investment tax credit program.
- North Carolina Department of Revenue Administrative Tax Hearing, "Economic Analysis of Intercompany Franchise Arrangements." Expert Report and Testimony at Hearing (July 10, 2003). Issue: Analyze intercompany licensing / franchise arrangements to determine whether the pricing embodied in those arrangements satisfied the arm's-length standard and to determine the location of the activities generating the inherent value of the subject intangible property.

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- "Getting to know the Value Chain Analysis," (joint with Sean Foley, Paul Glunt, and Jerry Thompson) KPMG (Summer 2020).
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- "Alternative Methods for Determining Arm's Length Intercompany Prices," (joint with Frans W. Blok, Christopher D. Rolfe, and Deloris R. Wright) *International Bureau of Fiscal Documentation* (1992).
- "The Role of Commodity Prices in Formulating Monetary Policy," (joint with Leonard O. Mills) *The Review of Economics and Statistics* 73, No. 2 (May 1991): 358-365.
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- "International Policy Coordination: Building A Sound Foundation," *Federal Reserve Bank of Philadelphia Business Review* (March/April 1989). Reprinted as "Building a Foundation for Policy Coordination," in *Economic Impact 1989/3*, U.S. Information Agency. Also to be reprinted in *The International Finance Reader*, Robert W. Kolb (ed.), Kolb Publishing Company, Inc., Miami, 1991.

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AREAS OF EXPERTISE

- Transfer pricing analysis
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SUMMARY OF EXPERIENCE

David W. DeRamus is a founding member of Bates White Economic Consulting and is active in several of the firm's practices, including Transfer Pricing and Tax, Antitrust and Competition, Commercial Litigation, International Arbitration, and Energy. He specializes in economic and financial analysis, quantitative modeling, transfer pricing analysis, antitrust analysis, damages analysis, and valuation. Dr. DeRamus has an extensive background in industrial organization, international economics, antitrust economics, microeconomics, finance, financial modeling, and statistical analysis.

EDUCATION

- PhD, Economics, University of Massachusetts at Amherst
- MA, Economics, University of Massachusetts at Amherst
- BA, Political Science (*magna cum laude*), Duke University

SELECTED TRANSFER PRICING AND TAX EXPERIENCE

- On behalf of the US Internal Revenue Service, served as economic expert in *Western Digital Corporation and Subsidiaries v. Commissioner of Internal Revenue*, U.S. Tax Court (Docket Nos. 18984-18, 4818-19). Testified on transfer pricing issues related to the hard-disk drive (HDD) business; analyzed the development and value of HDD technology; and determined arm's-length pricing for various intercompany transactions.
- On behalf of the US Department of Justice, served as economic expert in *Perrigo Company and Subsidiaries v. United States of America*. U.S. District Court, Western District of Michigan (No. 1:17-cv-00737). Testified on transfer pricing issues, the structuring of certain related party transactions, and the economic effects of those transactions. Analyzed economic issues related to the development of over-the-counter omeprazole, the value of that business, and the determination of arm's-length prices for related-party transactions associated with that business.
- Served as economic expert on transfer pricing issues in the Purdue Pharma Chapter 11 proceedings (*In re Purdue Pharma L.P.*, U.S. Bankruptcy Court, Southern District of New York, Case No. 19-23649). On behalf

of the Debtors, analyzed the value of intercompany transfers between Purdue Pharma and the Independent Associated Companies (“IACs”) and other Sackler-owned entities. Analyzed intellectual property licenses, intellectual property rights transfers, manufacturing services, finished goods transfers, active pharmaceutical ingredients (“API”) transfers, R&D services, administrative services, real estate transactions, and transfers of equity interests in third parties and other related party companies.

- On behalf of the South Carolina Department of Revenue, testified on transfer pricing issues in *Tractor Supply Company v. South Carolina Department of Revenue* (State of South Carolina Administrative Law Court, Docket No. 20-ALJ-17-0416-CC). Analyzed related-party transactions involving tangible goods, headquarters services, and trademarks.
- On behalf of the South Carolina Department of Revenue, testified on transfer pricing issues in *AutoZone Investment Corporation v. South Carolina Department of Revenue* (State of South Carolina Administrative Law Court, Docket No. 20-ALJ-17-0068-CC). Analyzed related-party transactions involving tangible goods, headquarters services, financing, and trademarks.
- Analyzed transfer pricing issues and prepared transfer pricing documentation for a large multinational pharmaceutical company.
- Conducted numerous transfer pricing studies for tax planning, documentation, audits, Advance Pricing Agreements (“APAs”), and litigation. Clients include large multinational companies involved in automotive manufacturing, medical products, computer software/hardware, industrial equipment, retail clothing, food products, tobacco, alcoholic and non-alcoholic beverages, oil drilling services, package delivery services, shipping, machinery, pharmaceuticals, and industrial products.
- Prepared transfer pricing documentation, planning, and APA studies for a multinational company undergoing a major restructuring.
- Prepared numerous transfer pricing analyses on behalf of several international automotive manufacturers, used for documentation, planning, and audit on a global basis. Evaluated policies and pricing for related-party transactions with respect to the arm’s-length standard under US, Mexico, and OECD guidelines. Analyzed transfer pricing issues related to finished vehicles, engines, transmissions, other components, royalties, and services. Developed cost-sharing arrangements; addressed issues related to APAs and Competent Authority proceedings; and assisted with audit and controversy proceedings.
- Submitted various expert reports in transfer pricing disputes before the Mexican tax authority (Servicio de Administración Tributaria) related to transfer pricing. These reports evaluated whether certain related-party transactions were consistent with the arm’s length standard under OECD and Mexican transfer pricing guidelines.
- Submitted expert report in a transfer pricing dispute before the tax authority of Ecuador (Servicio de Rentas Internas). Report evaluated whether certain related-party transactions were consistent with the arm’s length standard and the OECD guidelines.
- Designed, managed, and implemented intellectual property-related planning initiatives for large multinational clients in manufacturing, computer, telecommunications, and consumer product industries. Designed R&D cost sharing arrangements and prepared transfer pricing documentation for tax compliance.
- Analyzed the impact of a private-label credit card on a large retailer’s sales and profits in a major tax dispute. Developed a robust statistical model using the company’s point-of-sale data, credit card data, and customer demographic information. Tax dispute resolved in favor of the client based on this analysis.

- Estimated value of automotive engine technology for large international automotive manufacturer. Study prepared for tax and financial reporting purposes.
- Analyzed impact of proposed tax policies on international trade flows, prices, and certain industries.
- Conducted extensive empirical research on the impact of R&D and advertising on profitability; analyzed the impact of foreign exchange rate fluctuations on US prices.
- Analyzed tax policies directed at the US ethanol industry, quantifying the impact of the expiration of the Voluntary Ethanol Excise Tax Credit (VEETC) and a tariff on US ethanol imports.

SELECTED LITIGATION EXPERIENCE

- On behalf of Plaintiffs, served as economic expert in *Liu Chin Mei, Tong-Schung Tai and Robert Shi, as Executors of the Will of Yueh-Lan Wang v. New Mighty U.S. Trust, New Mighty Foundation, and Clearbridge LLC*, U.S. District Court for the District of Columbia (Civil Action No. 1:10-cv-01743 (JEB)). Testified on valuation issues related to a petrochemical business.
- Submitted expert report in proceedings before the American Arbitration Association in a contract dispute related to a retail business and the sale of property to the U.S. government. Analyzed the impact of certain contractual provisions in a partnership agreement on the appropriate distribution of proceeds from the sale of property; and assessed the value of different components of related retail businesses.
- Serving as a consulting expert in several ongoing matters related to cryptocurrencies, cryptocommodities, and other digital assets, including allegations of market manipulation and other causes of action.
- Submitted expert testimony on antitrust issues and damages in *Rockwell Automation v. Radwell International*, U.S. District Court, District of New Jersey (15-cv-05246 (RBK) (JS)), a case involving Lanham Act trademark infringement claims and antitrust counterclaims. Analyzed issues of monopoly power, anticompetitive conduct, trademark infringement, and damages.
- Submitted expert testimony in *In the Matter Of Certain Programmable Logic Controllers (PLCs), Components Thereof, And Products Containing Same*, United States International Trade Commission Investigation No. 337-TA-1105. Analyzed market definition, monopoly power, monopolization, and other antitrust claims. Also analyzed alleged trademark infringement.
- Submitted testimony in *The State of Mississippi, ex. Rel. Jim Hood, Attorney General for the State of Mississippi v. Entergy Mississippi, Inc. et al.*, U.S. District Court for the Southern District of Mississippi (Civil Action No. 3:08cv780-CWR-LRA). Analyzed Defendants' alleged failure to purchase adequate amounts of lower-cost electric power from third parties; estimated damages to Plaintiff resulting from the alleged conduct.
- Submitted a declaration on behalf of plaintiffs in *Electric Power Supply Association et al. v. Anthony M. Starr et al.* in U.S. District Court for the Northern District of Illinois Eastern Division (Case No. 17-cv-01164). Analyzed the impact of the Illinois Zero Emissions Credit on wholesale electricity markets.
- Served as a Technical Expert in a contract dispute between two petrochemical companies in administered expert proceedings before the International Chamber of Commerce (ICC)/International Centre for ADR. The scope of the assignment was to determine an appropriate reference price to be used by the Parties for the remaining period of a long-term supply contract.
- Served as testifying expert in *XY, LLC v. Trans Ova Genetics LLC*, a patent infringement and antitrust dispute in the livestock reproductive services industry. Testified on behalf of Counterclaim Plaintiff Trans Ova

Genetics on issues related to relevant market definition, monopoly power, anticompetitive conduct, antitrust damages, and patent infringement damages.

- Served as testifying expert before the International Center for Settlement of Investment Disputes in a royalty dispute involving a major natural gas extraction and LNG project in Latin America. The LNG produced from the project was exported to customers in Mexico, the U.S., and other global natural gas markets. Testified on behalf of a consortium of producers on issues related to the economics of the contract, industry practices, the impact on the parties of recent developments in global natural gas markets, the commercial causes and consequences of “re-exports” from certain global LNG terminals, the appropriate calculation of royalties, and damages.
- Served as testifying expert in *Allure Energy, Inc. v. Nest Labs, Inc.* on behalf of defendant Nest Labs. Performed economic analysis of the four *eBay* factors to assess whether a preliminary injunction against Nest Labs should be granted for alleged patent infringement. Plaintiff’s request for a preliminary injunction was denied.
- Submitted expert testimony on behalf of Arkema in a contract dispute in the chemical industry. Testified in proceedings before the American Arbitration Association on the economics of the contract, the value to the parties of the contract, the impact of foreign exchange rate changes on the value of the contract, the competitive alternatives available to the parties, and damages.
- Testified in proceedings before the American Arbitration Association in a contract dispute between defense contractors. Testified on issues related to the materiality of the failure to disclose a government investigation, the economic analysis of a subcontract and alleged joint venture agreement, and damages.
- Served as testifying expert in international arbitration proceedings (International Chamber of Commerce) related to a contract for the construction of an airport. Estimated damages associated with the alleged breach of contract.
- Served as consulting expert in international arbitration proceedings (International Chamber of Commerce) related to a dispute in the pharmaceutical industry. Estimated damages associated with the alleged breach of contract.
- Submitted expert testimony in *T.E. Security Consultants v. DynCorp Int’l*, a contract dispute between defense contractors. Testified on issues of the financial ability of one of the parties to perform on a contract, a party’s ability to obtain financing, the economic analysis of an alleged subcontract, the value of alleged trade secrets, and damages.
- Testified at trial in *ZF Meritor LLC v. Eaton Corp.*, a monopolization case involving certain heavy-duty truck components. On behalf of plaintiffs, submitted testimony defining the relevant antitrust market, assessing whether a market participant had monopoly power, and evaluating the harm to competition from certain contracts and the performance of those contracts; also submitted testimony estimating damages. Jury verdict on liability in favor of client, upheld on appeal (*ZF Meritor v. Eaton Corp.*, 696 F.3d 254 (3d Cir. 2012), cert denied, 133 S.Ct. 2025 (2013)). Prior to the damages phase of trial, the parties agreed to a \$500 million settlement.
- Submitted testimony and testified at hearing in *Jenkins v. Entergy Corp.* estimating damages to plaintiffs resulting from an alleged improper energy purchasing scheme; submitted testimony in class certification proceeding.
- Served as consulting expert services to the US Department of Justice in a major government contract dispute. Assessed the economics of a development contract with defense aerospace companies. Analyzed the

contractors' financial performance and viability, bankruptcy risks, potential financing sources, project cash-flows, and the impact of contract termination.

- Submitted expert testimony in government procurement litigation matter involving office productivity software. Analyzed financial costs and benefits of software standardization initiative, reviewed product comparisons, analyzed data on software installation and use, evaluated claims regarding alleged product integration and standardization advantages, and analyzed market consequences of government procurement decisions.
- Served as consulting expert on behalf of multiple defendants in several large cases related to the natural gas industry on class certification and damages issues. Alleged conduct involved misreporting of prices to publishers of natural gas price indices.
- Submitted expert testimony in *In re Methionine Antitrust Litigation*, a major price-fixing case involving feed additives on behalf of direct action opt-out plaintiffs. Issues included establishment of liability, estimation of damages, analysis of industry structure, analysis of financial performance, and other pricing-related issues.
- Submitted expert testimony on behalf of indirect purchaser plaintiffs in class certification proceedings in *J&R Ventures, Inc. v. Rhone-Poulenc SA*, a price-fixing case involving feed additives.
- Testified in Delaware Chancery Court in *Frontier Oil Corp. v. Holly Corp.*, a merger-related dispute in the energy industry. Testimony involved the valuation of a potential environmental liability/toxic tort arising from oil and gas operations, including an assessment of the materiality of the liability to the proposed merger.
- Served as consulting expert on behalf of plaintiffs for monopolization cases involving the computer software industry. Assisted with the development of overall case strategy and preparation of economic analysis used in legal filings, analyzed pricing issues, investigated and reviewed allegations of anticompetitive behavior, prepared damage estimates, submitted damage reports to clients, and assisted with settlement negotiations.
- Served as consulting expert on antitrust, pricing, and exclusionary conduct issues related to biotechnology and agricultural products. Analyzed potential anticompetitive harm resulting from a proposed acquisition.
- Developed a state-of-the-art microsimulation model for estimating the future liability of former asbestos manufacturers from personal injury lawsuits. Developed several financial cash-flow models to determine long-term viability of product liability settlement trusts.
- Conducted several valuation studies related to potential future product liability and potential future litigation recoveries. Valuation reports prepared and submitted as part of the acquisition process for due diligence and tax reporting purposes.
- Assessed reliability of statistical study related to pricing accuracy for a large retailer. Analyzed issues related to overall study methodology, sampling bias, and quantification of harm to consumers.
- Submitted expert testimony assessing the damages resulting from defamation in the travel retail industry.
- Conducted an antidumping study to estimate exposure to tariffs in the petrochemical industry.
- Conducted market and industry analyses for various due diligence, breach of contract, bankruptcy, and product liability engagements in the areas of insurance, general aviation, commercial property, electronic funds transfer, restaurant franchising, and construction.

SELECTED ENERGY REGULATORY EXPERIENCE

- Submitted an affidavit on behalf of the Electric Power Supply Association in *PJM Interconnection, L.L.C.* (FERC Docket No. RM18-1314-000). Evaluated PJM's proposed modifications to its auction market rules to address market distortions caused by the participation of subsidized resources in PJM's capacity market.
- Submitted affidavit in FERC Proceeding related to Grid Reliability and Resilience Pricing (Docket No. RM18-1-000). Responded to DOE's proposal to subsidize uneconomic coal and nuclear units.
- Submitted testimony on behalf of Vote Solar in proceedings before the Public Service Commission of Utah regarding the costs and benefits of distributed solar generation. Responded to Rocky Mountain Power's proposed changes to the Utah residential Net Energy Metering (NEM) program.
- Submitted testimony on behalf of the Energy Freedom Coalition of America in proceedings before the Arizona Corporation Commission regarding a proposal by Tucson Electric Power Company for a residential solar power program. Addressed issues regarding the potential anticompetitive consequences of TEP's proposal.
- Testified on behalf of Florida Power & Light Company in proceedings before the Florida Public Service Commission regarding the potential impact on residential and commercial customers of a proposed base rate increase.
- Testified on behalf of the Maryland Public Service Commission Staff to assess potential market power issues associated with the proposed merger of Exelon Corporation and Constellation Energy Group, Inc. Analyzed changes in market concentration, the definition of relevant geographic markets, and Applicants' proposed mitigation plan. Assessed the economic viability of the facilities selected for divestiture by the Applicants. Provided testimony on the Applicants' proposal to build additional generation as a means of addressing market power concerns raised by the proposed merger.
- Submitted testimony on behalf of Occidental Chemical Company in FERC proceedings (Docket No. ER10-396-000) related to the application by Tres Amigas for authorization to sell transmission services at negotiated rates. Analyzed potential market power issues raised by the application.
- Submitted testimony on behalf of the NRG Companies in FERC proceedings (Docket No. ER08-1209-____) related to the proposal by ISO New England Inc. and the New England Power Pool Participants Committee to compensate rejected Dynamic and Static De-List Bids in the ISO-NE Forward Capacity Auction.
- Testified on behalf of the New York Power Authority in FERC proceedings (Docket No. ER06-456-000, et al.) related to the proposal by PJM Interconnection to allocate cost responsibility for certain transmission network upgrades included in the baseline PJM Regional Transmission Expansion Plan to merchant transmission projects that interconnect with the PJM transmission network.
- Submitted testimony on behalf of Milford Power Company, LLC, in FERC proceedings (Docket No. ER99-4102-____) related to the Commission's generation market power screens as applicable to Milford's market-based rate authority.
- Submitted testimony on behalf of Southaven Power and Kelson Energy III in FERC proceedings (Docket No. EC08-____-000) related to potential market power issues arising from Kelson's proposed acquisition of the Southaven generation facility. Submitted testimony on behalf of Kelson Energy III in FERC Docket No. ER08-____-000 related to the Commission's generation market power screens as applicable to Kelson's application for market-based rate authority.

- Submitted comments in proceedings before FERC (Docket Nos. RM07-19-000 and AD07-7-000) related to “Wholesale Competition in Regions with Organized Electric Markets.” Analyzed economic issues related to FERC’s demand response proposals.
- Testified on behalf of Tenaska and Coral Power in proceedings before the Public Utility Commission of Texas (PUC Docket No. 33687) related to the application by Entergy Gulf States, Inc., of its “Transition to Competition Plan.” Analyzed issues related to Entergy’s business strategy, cost-benefit analysis, cost allocation, cross-subsidization, and potential harm to competition.
- Testified on behalf of Shell Trading Gas and Power Company and Calpine Corp. in proceedings before FERC (Docket Nos. ER97-4166-015, EL04-124-000, et al.) related to the application by the Southern Companies for market based rate authority. Analyzed issues related to the appropriate implementation of the Commission’s Delivered Price Test, generation market power, Southern Companies’ transmission network, barriers to entry, and affiliate preferences.
- Submitted testimony on behalf of Constellation Energy Commodities Group, Inc., in a complaint proceeding before FERC (Docket No. EL07-47-000) brought by the Illinois Attorney General against various participants in the Illinois Auction for electric power supplies held in September 2006. Analyzed issues related to the competitiveness of the auction structure, market concentration, the ability of the participants to exercise market power, and allegations of collusion.
- Submitted testimony on behalf of Occidental Chemical Company in FERC proceedings (Docket No. EC07-70-000) evaluating the proposed acquisition of jurisdictional assets of Calcasieu Power, LLC, by Entergy Gulf States, Inc. Analyzed issues related to the impact of the acquisition on market concentration and the ability of the applicant to exercise market power.
- Testified on behalf of BP Canada Energy Marketing Corp. and IGI Resources, Corp., in FERC proceedings (Docket No. RP06-407) related to the application by Gas Transmission Northwest Corporation for market-based rate authority and flexible services rates for certain transportation services provided by the GTN natural gas pipeline.
- Testified on behalf of Occidental Permian Ltd. and Occidental Power Marketing, L.P., in FERC proceedings (Docket No. EL05-19-002 and ER05-168-001) related to the wholesale electric power rates charged by Southwestern Public Service Company. Analyzed issues associated with the appropriate allocation of average system fuel costs and cross-subsidization.
- Submitted testimony on behalf of Occidental Permian Ltd. and Occidental Power Marketing, L.P., in FERC proceedings (Docket No. ER01-205-009, et al.) related to the application by Southwestern Public Service Company for market-based rate authority. Analyzed issues related to generation market power and affiliate abuse.
- Submitted testimony on behalf of Calpine Corp. in FERC proceedings (Docket No. ER05-1065-000) and Louisiana Public Service Commission proceedings (Docket No. U-28155) related to the application by Entergy Services, Entergy Louisiana, and Entergy Gulf States, to establish an Independent Coordinator of Transmission. Analyzed the functions to be performed by the ICT, Entergy’s transmission pricing proposal, and its Weekly Procurement Process proposal.
- Submitted testimony on behalf of Calpine Corp. in proceedings before the Louisiana Public Service Commission (Docket No. U-27836) related to the application by Entergy Louisiana, Inc., and Entergy Gulf States, Inc., for approval of the purchase of the Perryville, La., electric generating facility. Analyzed issues of market power and calculated the extent to which the proposed transaction increased market concentration.

- Submitted testimony on behalf of Calpine Corp. and Occidental Chemical Corp. in FERC proceedings (Docket No. ER91-569-023) related to the application by Entergy Services for market based rate authority. Analyzed issues of generation market power, transmission market power, barriers to entry, and affiliate abuse in the Entergy control area. Implemented a model of the Entergy control area transmission constraints in performing the generation market power analysis.
- Submitted testimony on behalf of Calpine Corp. in FERC proceedings (Docket No. ER96-2495-018, et al.) related to the application by AEP Power Marketing, Inc., et al., for market based rate authority. Analyzed issues of generation market power, transmission market power, barriers to entry, and affiliate abuse in the AEP-SPP control area.
- Testified on behalf of the Texas Industrial Energy Consumers in proceedings before the Public Utility Commission of Texas (SOAH Docket No. 473-06-2536 and PUC Docket No. 32766) related to the retail electric power rates charged by Southwestern Public Service Company. Analyzed issues associated with the allocation of average system fuel costs and cross-subsidization.
- Submitted expert testimony on behalf of InterGen in FERC proceedings (Docket No. EC03-131-000) related to Oklahoma Gas & Electric's proposed acquisition of NRG McClain. Analyzed issues of horizontal and vertical market power for a hearing to identify appropriate mitigation measures.
- Submitted expert testimony on behalf of the Independent Energy Producers Association on vertical market power in FERC proceedings (Docket No. ER04-316-000) related to Southern California Edison's proposed acquisition of a Mountainview, California, electricity generating facility and a subsequent interaffiliate Power Purchase Agreement.
- Submitted expert testimony on behalf of Duke Energy in FERC proceedings (Docket Nos. EL00-95-075 and EL00-98-063) related to the California power markets during 2000–2001 and allegations of improper bidding behavior. Analyzed detailed data on individual bids and plant-level generation, performed statistical analysis of “physical” and “economic” capacity withholding, analyzed financial market data, examined alleged evidence of manipulative trading strategies, and assessed evidence of coordinated behavior.
- Submitted expert testimony on behalf of Duke Energy in response to a FERC Show Cause Order (Docket No. EL03-152-000) relating to alleged “gaming” behavior in the California power markets.
- Submitted report for the Independent Energy Producers Association regarding the market price referent methodology for use in California Renewables Portfolio Standards power solicitations in proceedings before the California Public Utilities Commission (Docket No. OIR 01-10-024).

SELECTED BUSINESS CONSULTING EXPERIENCE

- Assisted pharmaceutical company in assessing intellectual property-related issues as part of an acquisition, and in assessing royalties for certain intellectual property in potential licensing transactions.
- Managed the development of advanced data analytic software based on artificial neural networks for financial services client. Responsible for identifying new product opportunities for client, evaluating feasibility of applications, performing cost-benefit analysis for new product investment, designing implementation plan, and managing the overall software development process.
- Estimated the future asbestos liability of several companies (public and private) for investment research firms and potential acquirers as due diligence. Analyzed the litigation risks faced by the companies, insurance

coverage issues, potential consequences of other developments in the asbestos litigation environment, and financial reporting issues.

- Estimated the value of liabilities for a remainder trust established for a former manufacturer of food products. Potential liabilities were related to environmental remediation costs associated with a “Superfund” site containing hazardous waste.
- Developed a financial simulation model for a major transportation consortium in contract negotiations with the US Department of Defense to determine the appropriate compensation for risk in a long-term supply contract.
- Managed business consulting projects requiring statistical analysis to guide pricing and marketing decisions.
- Provided strategy consulting to seed-stage start-up companies, including development of business strategy, competitive analysis, intellectual property assessment, development of revenue and cost projections, and formulation of business and financing plan.

PUBLICATIONS

- Axelrod, Howard, David DeRamus, and Collin Cain. “The Fallacy of High Prices.” *Public Utilities Fortnightly* 144 (2006): 55–60.

INDUSTRY PRESENTATIONS

- Renewable Fuels Association, Conference, National Ethanol Conference, February 21, 2011: “Future of Biofuels Tax Policy Panel Discussion.”
- COMPETE and the Electric Power Supply Association, Conference, Empowering Customers Through Competitive Markets, November 5, 2007: “Ensuring Consistent Environmental and Competition Policies in Electricity Markets.”
- Federal Trade Commission, Conference, Energy Markets in the 21st Century: Competition Policy in Perspective, April 10, 2007: “Empirical Analyses of Wholesale Electric Competition and Industry Restructuring.”
- Federal Energy Regulatory Commission, Technical Conference, Generation Market Power and Affiliate Abuse, January 28, 2005: “Comments by David W. DeRamus, PhD.”
- Federal Energy Regulatory Commission, Technical Conference, Acquisition and Disposition of Merchant Generation Assets by Public Utilities, Docket No. PL04-9-000, June 10, 2004: “Comments by David W. DeRamus, PhD.”
- Federal Energy Regulatory Commission Technical Conference, Market-Based Rates for Public Utilities, Docket No. RM04-7-000, June 9, 2004: “Comments by David W. DeRamus, PhD.”
- Electric Power Supply Association, Spring Membership Meeting, April 2004: “Utility Power Supply: Costs and Risks of Vertical Reintegration.”
- American Antitrust Institute, Fourth Annual Energy Roundtable Workshop, January 2004: “Electric Utility Reintegration: Vertical Market Power and Potential Market Foreclosure.”
- Institute of Public Utilities, Annual Conference, December 2003: “Distinguishing Between Market, Regulatory, and Business Failures.”

PROFESSIONAL EXPERIENCE

Dr. DeRamus was previously a Manager with A.T. Kearney and a Senior Manager with KPMG. In both positions, he had broad client responsibility including the management of complex litigation, transfer pricing, and business consulting engagements.

PROFESSIONAL ASSOCIATIONS

- American Bar Association
- American Economic Association
- Energy Bar Association

RELATED ACTIVITIES AND HONORS

- German Academic Exchange Service Grant (awarded)
- Council for European Studies Pre-Dissertation Fellowship (Columbia University)
- Dean's University Fellowship (University of Massachusetts)
- Herbert Lehman Fellowship (New York State)

LANGUAGES

- French (fluent)
- German (fluent)
- Spanish (intermediate)

Memorandum

To CarMax File
From
Date February 23, 2023
Re Development of Car Dealer Set
cc

I. Selection of Companies

I.A. Search Criteria

1	Industry Classifications: Motor Vehicle Retail OR Motor Vehicle Dealers (New) OR Motor Vehicle Dealers (Used) OR Motorcycle Dealers OR Recreational Vehicle Dealers	63447
2	Geographic Locations: United States and Canada (Primary)	23999
3	Company Type: Private Company With Public Debt OR Public Company	64
4	Key Developments by Type: NOT (Auditor Going Concern Doubts [4/1/2013-3/31/2017])	60

Data were collected from S&P's CapitalIQ on February 20, 2023.¹ The search resulted in 71 companies for review. All companies are matched to CarMax's FY2016 to FY2018, the period under audit.

I.B. Quantitative Review of the Identified Companies

Companies are rejected if:

- Financial data are unavailable for at least two years between FY2016 and FY2018;
- The company's R&D-to-sales ratio is higher than 3% for the three-year period between FY2016 and FY2018;

¹ Unless otherwise noted, all financial data and business descriptions are taken from CapitalIQ® 2023 S&P Global Market Intelligence (and its affiliates, as applicable) (individually and collectively, "S&P"). Reproduction of any information, data, or material, including ratings ("Content") in any form, is prohibited except with the prior written permission of S&P. S&P does not guarantee the accuracy, adequacy, completeness, timeliness, or availability of any Content and is not responsible for any errors or omissions (negligent or otherwise), regardless of the cause, or for the results obtained from the use of such Content. In no event shall S&P be liable for any damages, costs, expenses, legal fees, or losses (including lost income or lost profit and opportunity costs) in connection with any use of the Content.

- The company's advertising-to-sales ratio is higher than 3% for the three-year period between FY2016 and FY2018;
- The company's PP&E-to-sales ratio is higher than 100% for the three-year period between FY2016 and FY2018.

I.C. Qualitative Review of the Identified Companies

We next review the business descriptions and regulatory filings (e.g., 10-K filings) for the remaining companies to further narrow the list. The search results in 10 companies being selected as potentially comparable. Table 1 summarizes the rejection reasons for the 61 companies rejected and Section III lists the rejection reason (if any) for each of the companies considered.

Table 1: Summary of Rejection Reasons

Rejection Reason	Total
Diversified company	1
Duplicate	1
Excessive R&D	3
Insufficient sales	50
Other business	1
Other markets	1
Rentals	2
Tested party	2

I.D. Results

Section II presents the business descriptions for the 10 accepted companies. The companies' financials were matched to CarMax's fiscal years for the period under audit.

I.D.1. Operating Margin

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$mm)
America's Car-Mart, Inc.	3.9%	6.4%	7.0%	5.8%	588.7
Asbury Automotive Group, Inc.	4.6%	4.5%	4.6%	4.6%	6,524.2
AutoCanada Inc.	3.2%	3.0%	3.0%	3.1%	2,965.6
AutoNation, Inc.	4.2%	3.8%	3.5%	3.8%	21,335.2
Camping World Holdings, Inc.	7.3%	7.9%	8.3%	7.9%	3,691.7
Lithia Motors, Inc.	4.3%	4.1%	4.1%	4.2%	8,876.3
MarineMax, Inc.	3.2%	4.3%	4.6%	4.1%	915.2
Penske Automotive Group, Inc.	2.9%	2.9%	2.9%	2.9%	20,263.4
Rush Enterprises, Inc.	2.4%	2.1%	3.2%	2.6%	4,636.1
Sonic Automotive, Inc.	2.5%	2.4%	2.2%	2.4%	9,741.1
25th percentile	2.9%	2.9%	3.0%	2.9%	
Median	3.6%	3.9%	3.8%	4.0%	
75th percentile	4.3%	4.5%	4.6%	4.6%	

I.D.2. Markup on Total Costs

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$mm)
America's Car-Mart, Inc.	4.1%	6.8%	7.5%	6.2%	588.7
Asbury Automotive Group, Inc.	4.8%	4.7%	4.8%	4.8%	6524.2
AutoCanada Inc.	3.3%	3.1%	3.1%	3.1%	2965.6
AutoNation, Inc.	4.4%	3.9%	3.7%	4.0%	21335.2
Camping World Holdings, Inc.	7.9%	8.6%	9.1%	8.6%	3691.7
Lithia Motors, Inc.	4.5%	4.2%	4.3%	4.3%	8876.3
MarineMax, Inc.	3.3%	4.5%	4.8%	4.3%	915.2
Penske Automotive Group, Inc.	3.0%	2.9%	2.9%	3.0%	20263.4
Rush Enterprises, Inc.	2.5%	2.1%	3.3%	2.6%	4636.1
Sonic Automotive, Inc.	2.5%	2.4%	2.3%	2.4%	9741.1
25th percentile	3.0%	2.9%	3.1%	3.0%	
Median	3.7%	4.1%	4.0%	4.1%	
75th percentile	4.5%	4.7%	4.8%	4.8%	

I.D.3. Return on Assets

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$mm)
America's Car-Mart, Inc.	5.5%	9.0%	9.7%	8.2%	588.7
Asbury Automotive Group, Inc.	13.8%	13.0%	12.8%	13.2%	6524.2
AutoCanada Inc.	6.8%	5.9%	6.1%	6.2%	2965.6
AutoNation, Inc.	10.2%	8.8%	7.9%	8.9%	21335.2
Camping World Holdings, Inc.	21.3%	22.0%	20.5%	21.2%	3691.7
Lithia Motors, Inc.	11.8%	10.5%	10.4%	10.8%	8876.3
MarineMax, Inc.	6.4%	9.1%	9.0%	8.3%	915.2
Penske Automotive Group, Inc.	7.9%	7.4%	7.1%	7.5%	20263.4
Rush Enterprises, Inc.	4.8%	3.4%	5.7%	4.6%	4636.1
Sonic Automotive, Inc.	7.4%	6.5%	6.0%	6.6%	9741.1
25th percentile	6.4%	6.5%	6.1%	6.6%	
Median	7.6%	8.9%	8.4%	8.2%	
75th percentile	11.8%	10.5%	10.4%	10.8%	

Operating assets are calculated as: Total Assets – Cash & Short-term investments – Long Term Investments – Construction in Progress – Other Assets² – Current Deferred Tax Assets + LIFO Reserve.³

II. Business descriptions for the Accepted companiesAmerica's Car-Mart, Inc.

America's Car-Mart, Inc., through its subsidiaries, operates as an automotive retailer in the United States. It primarily sells older model used vehicles and provides financing for its customers. The company was founded in 1981 and is based in Rogers, Arkansas.

Asbury Automotive Group, Inc.

Asbury Automotive Group, Inc., together with its subsidiaries, operates as an automotive retailer in the United States. It offers a range of automotive products and services, including new and used vehicles; and vehicle repair and maintenance services, replacement parts, and collision repair services. The company also provides finance and insurance products, including arranging vehicle financing through third parties; and aftermarket products, such as extended service contracts, guaranteed asset protection debt cancellation, prepaid maintenance, and credit life and disability insurance. As of December 31, 2021, the company owned and operated 205 new vehicle franchises representing 31 brands of automobiles at 155

² This is a defined variable in CapitalIQ for assets that are not part of a standard classification.

³ This adjusts all operating asset calculations to be on a FIFO basis.

dealership locations; and 35 collision centers in the United States. Asbury Automotive Group, Inc. was founded in 1996 and is headquartered in Duluth, Georgia.

AutoCanada Inc.

AutoCanada Inc., through its subsidiaries, operates franchised automobile dealerships. The company offers a range of automotive products and services, including new and used vehicles, vehicle leasing, vehicle parts, vehicle maintenance and collision repair services, extended service contracts, and vehicle protection and other after-market products. It also arranges financing and insurance for vehicle purchases by its customers through third-party finance and insurance sources. The company sells its vehicles under the Chrysler, Dodge, Jeep, Ram, FIAT, Alfa Romeo, Chevrolet, GMC, Buick, Cadillac, Ford, Infiniti, Nissan, Hyundai, Subaru, Audi, Volkswagen, Kia, Mazda, Mercedes-Benz, BMW, MINI, Volvo, Toyota, Lincoln, Acura, Honda, and Porsche brands. As of November 7, 2022, it operated 81 franchised dealerships in eight provinces in Canada, as well as in Illinois, the United States. The company also offers used vehicles online. AutoCanada Inc. was incorporated in 2009 and is headquartered in Edmonton, Canada.

AutoNation, Inc.

AutoNation, Inc., through its subsidiaries, operates as an automotive retailer in the United States. The company operates through three segments: Domestic, Import, and Premium Luxury. It offers a range of automotive products and services, including new and used vehicles; and parts and services, such as automotive repair and maintenance, and wholesale parts and collision services. The company also provides automotive finance and insurance products comprising vehicle services and other protection products, as well as arranges finance for vehicle purchases through third-party finance sources. As of December 31, 2021, it owned and operated 339 new vehicle franchises from 247 stores located primarily in metropolitan markets in the Sunbelt region. The company also owned and operated 57 AutoNation-branded collision centers, 9 AutoNation USA used vehicle stores, 4 AutoNation-branded automotive auction operations, and 3 parts distribution centers. AutoNation, Inc. was founded in 1991 and is headquartered in Fort Lauderdale, Florida.

Camping World Holdings, Inc.

Camping World Holdings, Inc., through its subsidiaries, retails recreational vehicles (RVs), and related products and services. It operates in two segments, Good Sam Services and Plans; and RV and Outdoor Retail. The company provides a portfolio of services, protection plans, products, and resources in the RV industry. It also offers extended vehicle service contracts;

roadside assistance plans; property and casualty insurance programs; travel assist travel protection plans; and RV and outdoor related consumer shows, as well as produces various monthly and annual RV focused consumer magazines; and operates the Coast to Coast Club. In addition, the company provides new and used RVs; vehicle financing; RV repair and maintenance services; various RV parts, equipment, supplies, and accessories, which include towing and hitching products, satellite and GPS systems, electrical and lighting products, appliances and furniture, and other products; and collision repair services comprising fiberglass front and rear cap replacement, windshield replacement, interior remodel solutions, and paint and body work. Further, it offers equipment, gears, and supplies for camping, hunting, fishing, skiing, snowboarding, bicycling, skateboarding, and marine and watersports equipment and supplies, as well as operates Good Sam Club, a membership organization that offers savings on a range of products and services and provides co-branded credit cards. It serves customers through dealerships, and online and e-commerce platforms. The company was founded in 1966 and is headquartered in Lincolnshire, Illinois.

Lithia Motors, Inc.

Lithia Motors, Inc. operates as an automotive retailer in the United States. The company operates through three segments: Domestic, Import, and Luxury. It offers new and used vehicles; vehicle financing services; warranties, insurance contracts, and vehicle and theft protection services; and automotive repair and maintenance services, as well as sells vehicle body and parts under the Driveway and GreenCars brand names. It also offers its products online through 300 websites. Lithia Motors, Inc. was founded in 1946 and is headquartered in Medford, Oregon.

MarineMax, Inc.

MarineMax, Inc. operates as a recreational boat and yacht retailer and superyacht services company in the United States. It operates in two segments, Retail Operations and Product Manufacturing. The company sells new and used recreational boats, including pleasure and fishing boats, mega-yachts, yachts, sport cruisers, motor yachts, e-power yachts, pontoon boats, ski boats, jet boats, and other recreational boats. It also offers marine parts and accessories comprising marine electronics; dock and anchoring products that include boat fenders, lines, and anchors; boat covers; trailer parts; water sport accessories, which comprise tubes, lines, wakeboards, and skis; engine parts; oils; lubricants; steering and control systems; corrosion control products and service products; high-performance accessories, including propellers and instruments; and a line of boating accessories, such as life jackets, inflatables, and water sports equipment. In addition, the company provides novelty items, such as shirts, caps, and license plates; marine engines and equipment; maintenance, repair,

and slip and storage accommodation services; and boat or yacht brokerage services, as well as charters yachts and power catamarans. Further, it offers new or used boat finance services; arranges insurance coverage, including boat property, disability, undercoating, gel sealant, fabric protection, and casualty insurance coverage; and manufactures and sells sport yachts and yachts. Additionally, the company operates vacations in Tortola and British Virgin Islands. It also markets and sells its products through offsite locations and print catalog. MarineMax, Inc. was incorporated in 1998 and is based in Clearwater, Florida.

Penske Automotive Group, Inc.

Penske Automotive Group, Inc., a diversified transportation services company, operates automotive and commercial truck dealerships. The company operates through four segments: Retail Automotive, Retail Commercial Truck, Other, and Non-Automotive Investments. It operates dealerships under franchise agreements with various automotive manufacturers and distributors. The company engages in the sale of new and used motor vehicles, and related products and services comprise vehicle and collision repair services, as well as placement of finance and lease contracts, third-party insurance products, and other aftermarket products; and wholesale of parts. It also operates a heavy and medium duty truck dealership, which offers Freightliner and Western Star branded trucks, as well as a range of used trucks, and maintenance and repair services. In addition, it imports and distributes Western Star heavy-duty trucks, MAN heavy and medium duty trucks, buses, and Dennis Eagle refuse collection vehicles with associated parts in Australia, New Zealand, and portions of the Pacific. Further, the company distributes diesel and gas engines, and power systems. Penske Automotive Group, Inc. was incorporated in 1990 and is headquartered in Bloomfield Hills, Michigan.

Rush Enterprises, Inc.

Rush Enterprises, Inc., through its subsidiaries, operates as an integrated retailer of commercial vehicles and related services in the United States. The company operates a network of commercial vehicle dealerships under the Rush Truck Centers name. Its Rush Truck Centers primarily sell commercial vehicles manufactured by Peterbilt, International, Hino, Ford, Isuzu, IC Bus, or Blue Bird. The company also provides new and used commercial vehicles, and aftermarket parts, as well as service and repair, financing, and leasing and rental services; and offers property and casualty insurance, including collision and liability insurance on commercial vehicles, cargo insurance, and credit life insurance to its commercial vehicle customers. In addition, it provides equipment installation and repair, parts installation, and paint and body repair services; new vehicle pre-delivery inspection, truck modification, and natural gas fuel system installation services; body, chassis upfitting, and component installation services, as well as sells tires for use on commercial vehicles,

new and used trailers, and vehicle telematics products; and manufactures compressed natural gas fuel systems and related component parts for commercial vehicles. The company serves regional and national fleets, corporations, local and state governments, and owner operators. It operates a network of centers located in the states of Alabama, Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Missouri, Nevada, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, and Virginia. Rush Enterprises, Inc. was incorporated in 1965 and is headquartered in New Braunfels, Texas.

Sonic Automotive, Inc.

Sonic Automotive, Inc. operates as an automotive retailer in the United States. It operates in two segments, Franchised Dealerships and EchoPark. The Franchised Dealerships segment is involved in the sale of new and used cars and light trucks, and replacement parts; provision of vehicle maintenance, manufacturer warranty repair, and paint and collision repair services; and arrangement of extended warranties, service contracts, financing, insurance, and other aftermarket products for its guests. The EchoPark segment sells used cars and light trucks; and arranges finance and insurance product sales for its guests in pre-owned vehicle specialty retail locations. Sonic Automotive, Inc. was incorporated in 1997 and is based in Charlotte, North Carolina.

III. Reason for Rejection for each company rejected

Company	Reason
Alpha Motorsport Inc.	Insufficient sales
America's Car-Mart, Inc.	Accept
Asbury Automotive Group, Inc.	Accept
AutoCanada Inc.	Accept
Autoline Group, Inc.	Insufficient sales
AutoNation, Inc.	Accept
Autostrada Motors Inc.	Insufficient sales
BMW Canada Inc.	Insufficient sales
Budget Group Inc.	Insufficient sales
Can/Am Autosales, Inc.	Insufficient sales
CarMax, Inc.	Tested party
Consumer Automotive Finance, Inc.	Insufficient sales
Cross-Continent Auto	Insufficient sales
Driven Brands Holdings Inc.	Insufficient sales
Ford Motor Company	Excessive R&D
Abby, Inc.	Insufficient sales
Alpha Motorsport Inc.	Insufficient sales
Autoline Group, Inc.	Insufficient sales
Automax Group Inc.	Insufficient sales
Autostrada Motors Inc.	Insufficient sales

Berkshire Hathaway Inc.	Diversified company
Bird Global, Inc.	Insufficient sales
BMW Canada Inc.	Insufficient sales
Budget Group Inc.	Insufficient sales
Camping World Holdings, Inc.	Accept
Can/Am Autosales, Inc.	Insufficient sales
CarMax, Inc.	Tested party
Consumer Automotive Finance, Inc.	Insufficient sales
Cross-Continent Auto	Insufficient sales
Driven Brands Holdings Inc.	Insufficient sales
E & B Marine Inc.	Insufficient sales
Energy 1 Corp.	Insufficient sales
ePunk, Inc.	Insufficient sales
Extreme Innovations, Inc.	Insufficient sales
Folkup Development Inc.	Insufficient sales
Ford Motor Company	Excessive R&D
Graham Holdings Company	Other business
Group 1 Automotive, Inc.	Other markets
Hertz Global Holdings, Inc.	Rentals
Intelligent Motor Cars Group, Inc.,	Insufficient sales
Jim White Company, Inc.	Insufficient sales
Ken Garff Automotive, LLC	Insufficient sales
Lazydays Holdings, Inc.	Insufficient sales
LFG International Inc.	Insufficient sales
Lithia Motors, Inc.	Accept
LMP Automotive Holdings, Inc.	Insufficient sales
Lucid Group, Inc.	Insufficient sales
Major Creations, Inc	Insufficient sales
MarineMax, Inc.	Accept
Newriders, Inc.	Insufficient sales
OneWater Marine Inc.	Insufficient sales
Penske Automotive Group, Inc.	Accept
Prestige Cars International, Inc.	Insufficient sales
Pure Transit Technologies, Inc.	Insufficient sales
Rent-A-Wreck Capital Inc.	Insufficient sales
Republic Automotive Parts, Inc.	Insufficient sales
Rush Enterprises, Inc.	Accept
Ryder System, Inc.	Rentals
Ryder Truck Rental Canada Ltd.	Insufficient sales
Shift Technologies, Inc.	Insufficient sales
SIMCO America Inc.	Insufficient sales
Smart Choice Automotive Group, Inc.	Insufficient sales
Sonic Automotive, Inc.	Accept
Spitzer Management, Inc.	Insufficient sales
Team Rahal of Pittsburgh, Inc.	Insufficient sales
Tesla, Inc.	Excessive R&D
The Hertz Corporation	Duplicate
The Limestone Boat Company Limited	Insufficient sales
Trimax Corporation	Insufficient sales
Vector Holdings Corporation	Insufficient sales
Victory Marine Holdings Corp.	Insufficient sales

Memorandum

To CarMax File
From
Date March 1, 2023
Re Development of Back Office Set
cc

I. Selection of Companies

I.A. Search Criteria

Company Type: Public Company OR Private Company With Public Debt	97867
Geographic Locations: United States and Canada (Primary)	33283
Company Status: NOT (Reorganizing OR Out of Business OR No Longer Investing OR Liquidating)	30877
SIC Codes: 8721 Accounting, Auditing, and Bookkeeping Services OR 8741 Management Services OR 8742 Management Consulting Services OR 8743 Public Relations Services OR 8744 Facilities Support Management Services OR 8748 Business Consulting Services, Not Elsewhere Classified OR 8999 Services, not elsewhere classified OR 7300 Business Services OR 7310 Advertising OR 7320 Consumer Credit Reporting Agencies, Mercantile OR 7330 Mailing, Reproduction, Commercial Art And Photography, and Stenographic Services OR 7340 Services To Dwellings And Other Buildings OR 7350 Miscellaneous Equipment Rental And Leasing OR 7360 Personnel Supply Services OR 7370 Computer Programming, Data Processing, And Other Computer Related Services OR 7380 Miscellaneous Business Services OR 7390 Miscellaneous business services OR 8100 Legal Services OR 8110 Legal Services OR 8720 Accounting, Auditing, And Bookkeeping Services OR 8740 Management And Public Relations Services OR 8930 Accounting, auditing, and bookkeeping services OR 8931 Accounting, auditing, and bookkeeping services OR 8990 Miscellaneous Services	3612

Data were collected from S&P's CapitalIQ on February 28, 2023.¹ The search resulted in 3,612 companies for review. All companies are matched to CarMax's FY2016 to FY2018, the period under audit.

I.B. Quantitative Review of the Identified Companies

Companies are rejected if:

- Financial data are unavailable for at least two years between FY2016 and FY2018;
- The company's R&D-to-sales ratio is higher than 3% for the three-year period between FY2016 and FY2018;

¹ Unless otherwise noted, all financial data and business descriptions are taken from CapitalIQ® 2021 S&P Global Market Intelligence (and its affiliates, as applicable) (individually and collectively, "S&P"). Reproduction of any information, data, or material, including ratings ("Content") in any form, is prohibited except with the prior written permission of S&P. S&P does not guarantee the accuracy, adequacy, completeness, timeliness, or availability of any Content and is not responsible for any errors or omissions (negligent or otherwise), regardless of the cause, or for the results obtained from the use of such Content. In no event shall S&P be liable for any damages, costs, expenses, legal fees, or losses (including lost income or lost profit and opportunity costs) in connection with any use of the Content.

- The company's advertising-to-sales ratio is higher than 3% for the three-year period between FY2016 and FY2018;
- The company's PP&E-to-sales ratio is higher than 10% for the three-year period between FY2016 and FY2018.

I.C. Qualitative Review of the Identified Companies

We next review the business descriptions and regulatory filings (e.g., 10-K filings) for the remaining companies to further narrow the list. The search results in 64 companies being selected as potentially comparable. These 64 companies are segmented into three distinct transactions identified in the E&Y planning study—routine back office services, advertising and marketing services, and strategic management.² Table 1 summarizes the rejection reasons for the 3,548 companies rejected and Section 0 lists the rejection reason for each of the companies considered.

Table 1: Summary of Rejection Reasons

Rejection Reason	Total
Accept	64
Cannabis	4
Development stage	1
Distribution	12
Duplicate	3
Excessive advertising	88
Excessive PP&E	26
Excessive R&D	248
Financial services	64
Franchisor	1
Going concern	471
Government	38
Healthcare services	16
Insufficient sales	2467
Investment management	1
Leasing	13
Licensing	1
Manufacturing	8
Medical services	1
Minimal operations	1
Other business	33
Other markets	10
Other services	29
Potential financial misconduct	1
Real estate services	2
Regulated industry	1
Related-party transactions	2

² CarMax_000013 is an undated planning study authored by E&Y for CarMax' fiscal year ended February 28, 2015.

Rejection Reason	Total
Residential services	1
Retail	4
Retail services	1
Software	1

I.D. Results

Section II presents the business descriptions for the 64 accepted companies. The companies' financials were matched to CarMax's fiscal years for the period under audit.

I.D.1. Operating Margin

I.D.1.a. Advertising Services

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$MM)
Alliance Creative Group, Inc.	-2.3%	-1.6%	1.6%	-0.4%	13.7
Harte Hanks, Inc.	3.1%	-3.8%	-1.7%	-0.6%	410.8
Insignia Systems, Inc.	10.0%	-8.0%	-3.4%	-0.1%	26.5
Inuvo, Inc.	3.0%	-1.2%	-4.9%	-1.2%	73.8
Mastermind, Inc.		4.2%	23.8%	15.3%	2.5
MDC Partners Inc.	7.9%	7.0%	9.0%	8.0%	1,408.6
National CineMedia, Inc.	41.0%	39.5%	36.7%	39.1%	440.1
Omnicom Group Inc.	12.7%	13.0%	13.3%	13.0%	15,275.0
SPAR Group, Inc.	2.7%	1.6%	2.3%	2.2%	145.0
The Interpublic Group of Companies, Inc.	11.5%	12.5%	12.4%	12.1%	7,513.2
TTEC Holdings, Inc.	7.8%	7.0%	8.2%	7.7%	1,346.5
25th percentile	3.0%	-1.6%	-1.7%	-0.4%	
Median	7.85%	4.2%	8.2%	7.7%	
75th percentile	11.5%	12.5%	13.3%	13.0%	

I.D.1.b. Back Office Services

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$MM)
ABM Industries Incorporated	1.9%	2.2%	2.4%	2.1%	5,165.4
Ameri Holdings, Inc.	4.3%	-10.5%	-23.6%	-13.7%	35.0
ARC Document Solutions, Inc.	8.2%	6.9%	4.5%	6.6%	409.9
Automatic Data Processing, Inc.	19.2%	20.2%	19.8%	19.7%	12,438.0
Barrett Business Services, Inc.	4.9%	3.4%	3.3%	3.8%	834.0
BGSF, Inc.	6.0%	6.1%	6.4%	6.2%	248.0
Cass Information Systems, Inc.	34.1%	35.3%	35.4%	35.0%	128.5
Command Center, Inc.	3.2%	1.2%	3.8%	2.7%	93.3
Computer Task Group, Incorporated	3.2%	1.6%	1.6%	2.2%	331.9
CorVel Corporation	9.1%	9.2%	8.6%	9.0%	526.9
CreditRiskMonitor.com, Inc.	7.3%	1.4%	-2.1%	2.1%	12.9
Cross Country Healthcare, Inc.	3.5%	3.9%	3.4%	3.6%	822.0
Donnelley Financial Solutions, Inc.	16.9%	11.7%	12.2%	13.7%	1,012.6
DXC Technology Company	2.7%	2.0%	10.3%	7.1%	12,148.7
GDI Integrated Facility Services Inc.	2.3%	2.1%	2.6%	2.4%	852.6
GEE Group Inc.	-2.9%	2.3%	1.1%	0.8%	87.1
Healthcare Services Group, Inc.	6.2%	7.5%	6.7%	6.8%	1,620.2
IBEX Limited	28.5%	25.7%	11.9%	21.9%	333.1
Insperty, Inc.	2.9%	3.6%	4.0%	3.6%	2,948.4
InsPro Technologies Corporation	-30.1%	-12.4%	10.3%	-10.6%	21.7
Kelly Services, Inc.	1.3%	1.3%	1.5%	1.4%	5,309.3
Kforce Inc.	5.6%	4.9%	4.7%	5.1%	1,297.5
KLDiscovery Inc.		4.0%	-7.7%	-4.5%	128.7
ManpowerGroup Inc.	3.7%	3.8%	3.9%	3.8%	20,006.1
Mastech Digital, Inc.	4.5%	4.0%	4.1%	4.2%	134.5
nDivision Inc.		-3.8%	-32.7%	-15.4%	4.3
Park City Group, Inc.	4.9%	20.6%	16.0%	14.7%	18.3
Paychex, Inc.	38.8%	39.8%	38.2%	38.9%	3,160.9
Robert Half International Inc.	11.4%	10.5%	9.8%	10.6%	5,204.0
SilverSun Technologies, Inc.	1.3%	3.7%	2.7%	2.7%	32.2
Staffing 360 Solutions, Inc.	-4.6%	-0.8%	0.4%	-1.3%	169.7
TriNet Group, Inc.	2.9%	4.1%	6.6%	4.7%	2,998.0
TrueBlue, Inc.	3.6%	3.6%	3.1%	3.4%	2,670.0
TSR, Inc.	1.4%	0.9%	1.4%	1.2%	62.9
Unisys Corporation	2.1%	4.6%	5.1%	3.9%	2,859.2
Virtusa Corporation	7.5%	2.1%	4.5%	4.4%	826.6
25th percentile	2.3%	1.8%	2.0%	2.1%	
Median	4.0%	3.75%	4.05%	3.8%	
75th percentile	7.5%	7.2%	9.2%	6.95%	

I.D.1.c. Strategic Management Services

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$MM)
Altus Group Limited	5.0%	8.1%	7.9%	7.1%	445.3
Booz Allen Hamilton Holding Corporation	8.2%	8.6%	8.3%	8.4%	5,794.3
Cognizant Technology Solutions Corporation	17.3%	17.0%	17.2%	17.2%	13,571.0
CRA International, Inc.	5.6%	5.8%	4.5%	5.3%	332.8
Edgewater Technology, Inc.	3.2%	3.7%		3.4%	76.5
ExlService Holdings, Inc.	10.7%	9.4%	9.5%	9.8%	692.3
FTI Consulting, Inc.	9.2%	8.5%	8.4%	8.7%	1,799.1
Gartner, Inc.	14.5%	14.2%	4.6%	10.3%	2,639.7
Heidrick & Struggles International, Inc.	6.7%	6.2%	6.6%	6.5%	578.3
Huron Consulting Group Inc.	14.1%	11.3%	7.5%	10.9%	719.3
Information Services Group, Inc.	4.6%	1.7%	3.9%	3.4%	231.8
Korn Ferry	6.7%	9.5%	11.5%	9.5%	1,541.6
National Research Corporation	25.8%	28.5%	29.1%	27.9%	109.8
Perficient, Inc.	8.1%	6.5%	6.9%	7.2%	476.8
Resources Connection, Inc.	9.0%	5.9%	4.7%	6.5%	612.0
The Caldwell Partners International Inc.	4.0%	0.8%	5.2%	3.3%	56.7
The Hackett Group, Inc.	9.7%	13.8%	13.5%	12.4%	247.3
25th percentile	5.6%	5.9%	4.95%	6.5%	
Median	8.2%	8.5%	7.7%	8.4%	
75th percentile	10.7%	11.3%	10.5%	10.3%	

I.D.2. Markup on Total Costs**I.D.2.a. Advertising Services**

Primary Industry	Company	FY2016	FY2017	FY2018	Period
Alliance Creative Group, Inc.	-2.2%	-1.5%	1.6%	-0.4%	13.7
Harte Hanks, Inc.	3.2%	-3.6%	-1.6%	-0.6%	410.8
Insignia Systems, Inc.	11.1%	-7.4%	-3.3%	-0.1%	26.5
Inuvo, Inc.	3.1%	-1.2%	-4.7%	-1.2%	73.8
Mastermind, Inc.		4.4%	31.3%	18.1%	2.5
MDC Partners Inc.	8.6%	7.6%	9.9%	8.7%	1,408.6
National CineMedia, Inc.	69.4%	65.3%	58.0%	64.2%	440.1
Omnicom Group Inc.	14.5%	15.0%	15.4%	15.0%	15,275.0
SPAR Group, Inc.	2.8%	1.7%	2.3%	2.2%	145.0
The Interpublic Group of Companies, Inc.	13.0%	14.3%	14.1%	13.8%	7,513.2
TTEC Holdings, Inc.	8.4%	7.5%	8.9%	8.3%	1,346.5
25th percentile	3.1%	-1.5%	-1.6%	-0.4%	
Median	8.5%	4.4%	8.9%	8.3%	
75th percentile	13.0%	14.3%	15.4%	15.0%	

I.D.2.b. Back Office Services

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$MM)
ABM Industries Incorporated	1.9%	2.2%	2.4%	2.2%	5,165.4
Ameri Holdings, Inc.	4.4%	-9.5%	-19.1%	-12.1%	35.0
ARC Document Solutions, Inc.	8.9%	7.5%	4.7%	7.1%	409.9
Automatic Data Processing, Inc.	23.7%	25.3%	24.6%	24.6%	12,438.0
Barrett Business Services, Inc.	5.2%	3.6%	3.4%	4.4%	834.0
BGSF, Inc.	6.3%	6.4%	6.9%	6.6%	248.0
Cass Information Systems, Inc.	51.8%	54.6%	54.7%	53.7%	128.5
Command Center, Inc.	3.3%	1.2%	3.9%	2.8%	93.3
Computer Task Group, Incorporated	3.3%	1.6%	1.7%	2.2%	331.9
CorVel Corporation	10.1%	10.1%	9.4%	9.8%	526.9
CreditRiskMonitor.com, Inc.	7.9%	1.4%	-2.1%	2.1%	12.9
Cross Country Healthcare, Inc.	3.7%	4.4%	3.5%	3.7%	822.0
Donnelley Financial Solutions, Inc.	20.3%	13.3%	13.9%	15.8%	1,012.6
DXC Technology Company	2.8%	2.1%	11.5%	7.6%	12,148.7
GDI Integrated Facility Services Inc.	2.4%	2.2%	2.7%	2.4%	852.6
GEE Group Inc.	-2.8%	2.3%	1.1%	0.8%	87.1
Healthcare Services Group, Inc.	6.6%	8.1%	7.1%	7.3%	1,620.2
IBEX Limited	39.9%	34.5%	13.5%	28.1%	333.1
Insperty, Inc.	3.1%	3.7%	4.2%	3.7%	2,948.4
InsPro Technologies Corporation	-23.1%	-11.1%	11.5%	-9.6%	21.7
Kelly Services, Inc.	1.3%	1.3%	1.6%	1.4%	5,309.3
Kforce Inc.	6.1%	5.1%	5.1%	5.4%	1,297.5
KLDiscovery Inc.		4.2%	-7.1%	-4.3%	128.7
ManpowerGroup Inc.	3.8%	4.1%	4.1%	4.1%	20,006.1
Mastech Digital, Inc.	4.8%	4.2%	4.3%	4.4%	134.5
nDivision Inc.		-3.7%	-24.7%	-13.4%	4.3
Park City Group, Inc.	5.2%	25.9%	19.1%	17.3%	18.3
Paychex, Inc.	63.5%	66.1%	61.9%	63.8%	3,160.9
Robert Half International Inc.	12.9%	11.8%	10.9%	11.8%	5,204.0
SilverSun Technologies, Inc.	1.3%	3.9%	2.8%	2.7%	32.2
Staffing 360 Solutions, Inc.	-4.4%	-0.8%	0.4%	-1.3%	169.7
TriNet Group, Inc.	3.1%	4.2%	7.1%	4.9%	2,998.0
TrueBlue, Inc.	3.7%	3.7%	3.2%	3.6%	2,670.0
TSR, Inc.	1.4%	0.9%	1.4%	1.2%	62.9
Unisys Corporation	2.1%	4.8%	5.4%	4.1%	2,859.2
Virtusa Corporation	8.2%	2.2%	4.7%	4.6%	826.6
25th percentile	2.4%	1.85%	2.05%	2.15%	
Median	4.1%	3.95%	4.25%	4.0%	
75th percentile	8.2%	7.8%	10.15%	7.45%	

I.D.2.c. Strategic Management Services

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$MM)
Altus Group Limited	5.3%	8.9%	8.6%	7.6%	445.3
Booz Allen Hamilton Holding Corporation	9.1%	9.5%	9.1%	9.2%	5,794.3
Cognizant Technology Solutions Corporation	20.8%	20.4%	20.8%	20.7%	13,571.0
CRA International, Inc.	5.9%	6.2%	4.7%	5.6%	332.8
Edgewater Technology, Inc.	3.3%	3.8%		3.6%	76.5
ExlService Holdings, Inc.	12.1%	10.3%	10.5%	10.9%	692.3
FTI Consulting, Inc.	10.1%	9.3%	9.2%	9.5%	1,799.1
Gartner, Inc.	17.1%	16.6%	4.8%	11.4%	2,639.7
Heidrick & Struggles International, Inc.	7.1%	6.6%	7.1%	6.9%	578.3
Huron Consulting Group Inc.	16.4%	12.7%	8.1%	12.2%	719.3
Information Services Group, Inc.	4.8%	1.7%	4.1%	3.5%	231.8

Korn Ferry	7.2%	10.5%	13.0%	10.5%	1,541.6
National Research Corporation	34.8%	39.9%	41.1%	38.7%	109.8
Perficient, Inc.	8.8%	7.0%	7.4%	7.7%	476.8
Resources Connection, Inc.	9.9%	6.3%	4.9%	6.9%	612.0
The Caldwell Partners International Inc.	4.2%	0.8%	5.5%	3.4%	56.7
The Hackett Group, Inc.	10.8%	16.0%	15.6%	14.2%	247.3
25th percentile	5.9%	6.3%	5.2%	6.9%	
Median	9.0%	9.3%	8.35%	9.2%	
75th percentile	12.0%	12.7%	11.75%	11.4%	

I.D.3. Return on Assets³

Operating assets are calculated as: Total Assets – Cash & Short-term investments – Long Term Investments – Construction in Progress – Finance Division Assets – Other Assets⁴ – Current Deferred Tax Assets + LIFO Reserve.⁵

I.D.3.a. Advertising Services

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$MM)
Alliance Creative Group, Inc.	-4.8%	-3.5%	5.7%	-1.0%	13.7
Harte Hanks, Inc.	2.8%	-5.5%	-4.5%	-0.9%	410.8
Insignia Systems, Inc.	22.2%	-14.4%	-5.7%	-0.2%	26.5
Inuvo, Inc.	9.3%	-3.6%	-13.5%	-3.4%	73.8
Mastermind, Inc.					2.5
MDC Partners Inc.	7.3%	6.7%	9.2%	7.7%	1,408.6
National CineMedia, Inc.	26.5%	23.6%	18.7%	22.7%	440.1
Omnicom Group Inc.	10.2%	10.3%	10.0%	10.2%	15,275.0
SPAR Group, Inc.	10.1%	6.1%	9.5%	8.6%	145.0
The Interpublic Group of Companies, Inc.	8.3%	8.7%	8.4%	8.5%	7,513.2
TTEC Holdings, Inc.	14.6%	12.9%	14.8%	14.2%	1,346.5
25th percentile	7.3%	-3.6%	-4.5%	-0.9%	
Median	9.7%	6.4%	8.8%	8.1%	
75th percentile	14.6%	10.3%	10.0%	10.2%	

³ Certain comparables, such as Mastermind, only have one year of average operating assets during the audit period. These companies are excluded from the ROA analysis.

⁴ This is a defined variable in CapitalIQ for assets that are not part of a standard classification.

⁵ This adjusts all operating asset calculations to be on a FIFO basis.

I.D.3.b. Back Office Services

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$MM)
ABM Industries Incorporated	4.8%	5.7%	4.5%	4.9%	5,165.4
Ameri Holdings, Inc.	11.5%	-16.3%	-30.3%	-21.1%	35.0
ARC Document Solutions, Inc.	9.3%	8.4%	6.2%	8.1%	409.9
Automatic Data Processing, Inc.	6.5%	6.9%	7.9%	7.1%	12,438.0
Barrett Business Services, Inc.	16.4%	11.5%	10.4%	12.5%	834.0
BGSF, Inc.	22.1%	21.5%	21.3%	21.6%	248.0
Cass Information Systems, Inc.	5.2%	5.6%	5.9%	5.6%	128.5
Command Center, Inc.	20.7%	7.4%	23.5%	17.2%	93.3
Computer Task Group, Incorporated	10.2%	5.3%	6.3%	7.5%	331.9
CorVel Corporation	25.1%	24.5%	22.8%	24.1%	526.9
CreditRiskMonitor.com, Inc.	18.9%	3.6%	-5.5%	5.5%	12.9
Cross Country Healthcare, Inc.	8.4%	9.3%	7.7%	8.4%	822.0
Donnelley Financial Solutions, Inc.	22.8%	14.1%	14.8%	17.1%	1,012.6
DXC Technology Company	3.5%	2.6%	14.7%	9.7%	12,148.7
GDI Integrated Facility Services Inc.	4.1%	4.1%	5.2%	4.5%	852.6
GEE Group Inc.	-8.2%	5.9%	1.7%	1.6%	87.1
Healthcare Services Group, Inc.	27.1%	32.1%	26.5%	28.4%	1,620.2
IBEX Limited		77.7%	38.8%	101.6%	333.1
Insperty, Inc.	21.9%	27.1%	27.1%	25.6%	2,948.4
InsPro Technologies Corporation	-149.4%	-67.7%	84.8%	-63.1%	21.7
Kelly Services, Inc.	4.9%	4.9%	5.7%	5.2%	5,309.3
Kforce Inc.	24.6%	21.3%	18.5%	21.4%	1,297.5
KLDiscovery Inc.					128.7
ManpowerGroup Inc.	11.9%	12.2%	12.2%	12.1%	20,006.1
Mastech Digital, Inc.	20.8%	14.1%	9.1%	12.9%	134.5
nDivision Inc.					4.3
Park City Group, Inc.	2.7%	14.2%	11.4%	9.7%	18.3
Paychex, Inc.	20.8%	21.7%	20.3%	20.9%	3,160.9
Robert Half International Inc.	45.5%	40.6%	35.6%	40.3%	5,204.0
SilverSun Technologies, Inc.	6.7%	18.6%	14.1%	13.6%	32.2
Staffing 360 Solutions, Inc.	-15.1%	-3.4%	1.3%	-4.4%	169.7
TriNet Group, Inc.	4.1%	7.1%	11.6%	7.6%	2,998.0
TrueBlue, Inc.	12.3%	12.5%	9.8%	11.5%	2,670.0
TSR, Inc.	10.1%	7.3%	12.1%	9.8%	62.9
Unisys Corporation	5.1%	11.1%	12.5%	9.4%	2,859.2
Virtusa Corporation	9.7%	2.7%	6.3%	5.8%	826.6
25th percentile	4.9%	5.3%	6.2%	5.6%	
Median	10.0%	8.85%	11.5%	9.7%	
75th percentile	20.8%	18.6%	20.3%	17.2%	

I.D.3.c. Strategic Management Services

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$MM)
Altus Group Limited	4.%	6.9%	7.1%	6.%	445.3
Booz Allen Hamilton Holding Corporation	16.8%	17.4%	16.3%	16.8%	5,794.3
Cognizant Technology Solutions Corporation	29.9%	29.6%	30.%	29.8%	13,571.0
CRA International, Inc.	7.9%	8.5%	6.6%	7.6%	332.8
Edgewater Technology, Inc.	6.3%	6.5%		6.4%	76.5
ExlService Holdings, Inc.	18.5%	15.5%	15.4%	16.4%	692.3
FTI Consulting, Inc.	8.4%	8.1%	8.%	8.2%	1,799.1
Gartner, Inc.	20.2%	19.9%	3.6%	10.9%	2,639.7
Heidrick & Struggles International, Inc.	12.1%	11.1%	12.8%	12.%	578.3
Huron Consulting Group Inc.	10.8%	7.7%	5.4%	7.9%	719.3
Information Services Group, Inc.	9.3%	2.5%	5.4%	5.3%	231.8
Korn Ferry	9.%	11.3%	14.9%	12.%	1,541.6
National Research Corporation	30.3%	36.2%	38.6%	35.%	109.8
Perficient, Inc.	8.5%	7.%	7.2%	7.6%	476.8
Resources Connection, Inc.	18.3%	11.6%	9.1%	12.8%	612.0
The Caldwell Partners International Inc.	15.6%	2.7%	18.%	11.9%	56.7
The Hackett Group, Inc.	16.7%	25.2%	22.5%	21.5%	247.3
25th percentile	8.5%	7.0%	6.85%	7.6%	
Median	12.1%	11.1%	10.95%	11.9%	
75th percentile	18.3%	17.4%	17.15%	16.4%	

II. Business descriptions for the accepted companies**ABM Industries Incorporated**

ABM Industries Incorporated, through its subsidiaries, engages in the provision of integrated facility, infrastructure, and mobility solutions in the United States and internationally. The company operates through Business & Industry, Manufacturing & Distribution, Education, Aviation, and Technical Solutions segments. The company offers janitorial, facilities engineering, and parking services for commercial real estate properties, including corporate offices for high tech clients, sports and entertainment venues, and traditional hospitals and non-acute healthcare facilities; provides vehicle maintenance and other services to rental car providers. It also offers integrated facility services, engineering, and other specialized services in different types of manufacturing, distribution, and data center facilities. In addition, the company delivers custodial and landscaping and grounds for public school districts, private schools, colleges, and universities. Further, it supports airlines and airports with services comprising passenger assistance, catering logistics, air cabin maintenance, and transportation services. Additionally, the company provides electric vehicle power design, installation, and maintenance, as well as microgrid systems installations. ABM Industries Incorporated was founded in 1909 and is based in New York, New York.

Alliance Creative Group, Inc.

Alliance Creative Group, Inc. operates as a creative packaging and digital engagement company in the United States. The company provides creative and design services, including advertising campaigns, art direction, brand identity, graphic design, strategy and planning, logo design, Website design, collateral design, video production, conversion copywriting, blog and keyword planning, package design, and photography; and club packs, corrugate, flexible, folding carton, pallet display, pre-print, custom, stock, and thermo-forming packaging services. It also offers supply chain management services, such as third-party logistics, trucking and distribution, vendor managed inventory, and warehousing; commercial, digital, direct mail, grand format, large format, offset, catalog, design support, outdoor signage, and Web printing services; and brand audit and research, brand strategy, communication planning, content planning, event planning, event advisory, and PR advisory services. In addition, the company provides content creation, online marketing, customer engagement, business consulting and strategic marketing, software development, digital engagement, and logistics/VMI services. It offers its services under the St. Louis Packaging, STL Graphics, Snap Graphics, Print4aCause, CoporateGifts4aCause, and PeopleVine brand names to automotive, beauty and wellness, confectionery, food and beverage, gaming and electronics, home enhancement, music and entertainment, pet care, restaurant, sports, technology, and wine and spirits industries. The company was formerly known as Invicta Group, Inc. and changed its name to Alliance Creative Group, Inc. in November 2010. Alliance Creative Group, Inc. was founded in 2000 and is headquartered in East Dundee, Illinois.

Altus Group Limited

Altus Group Limited provides asset and funds intelligence solutions for commercial real estate (CRE). It operates through Analytics, Property Tax, and Appraisals and Development Advisory segments. The Analytics segment portfolio includes software, data analytics, and advisory solutions primarily for CRE asset valuations for the purpose of performance, development, and investment management; ARGUS-branded, finance active-branded debt management, and valuation management solutions; technology consulting services, such as strategic advisory for front-to-back-office strategies, processes, and technology; and software services related to education, training, and implementation. The Property Tax segment includes expert services and technology for property tax management, which include conducting property tax assessment reviews for commercial properties. The Appraisals and Development Advisory segments include services in the field of commercial property valuation appraisals, such as valuation appraisals of properties for transactional purposes, due diligence and litigation support, and economic consulting; and commercial development advisory services in the areas of construction feasibility studies, budgeting, cost and loan monitoring, and project management. It operates in Canada, the United

States, the United Kingdom, France, Australia, Europe, the Middle East, Africa, and Asia Pacific. Altus Group Limited was founded in 2005 and is headquartered in Toronto, Canada.

Ameri Holdings, Inc.

As of December 30, 2020, Ameri Holdings, Inc. was acquired by Jay Pharma Inc., in a reverse merger transaction. Ameri Holdings, Inc., through its subsidiaries, provides SAP cloud, digital, and enterprise services worldwide. The company offers cloud services, including public, private, and hybrid cloud services, as well as SAP S/4 HANA, SAP SuccessFactors, and SAP Hybris cloud migration; and cloud automation solutions. It also provides digital services, such as Simple Advance Planning and Optimization mobile solution, a mobile application that offers sales professionals with real-time collaboration capabilities and customer data on their mobile devices; SAP IBP mobile app, which enables the real-time management and analysis of sales and operations planning related data from mobile devices; and robotic process automation that leverages the capability of artificially intelligent software agents for business process automation, as well as for reporting and analysis, and deliver insights into business functions by translating large data into structured reports. In addition, the company's digital services comprise automating disparate and redundant data entry tasks by configuring software robots to integrate with existing software systems; and automating standard back office operations. Additionally, it designs, implements, and manages business intelligence and analytics solutions; generates instant financial reports and analytics of customer, product, and cost information; solutions for metadata repository, master data management, and data quality; and other enterprise services, such as consulting services for global and regional SAP implementations, as well as SAP/ information technology (IT) solution advisory and architectural, project management, IT/ enterprise resource planning (ERP) strategy, and vendor selection services. The company also offers data warehousing and other ERP services. Ameri Holdings, Inc. is headquartered in Suwanee, Georgia.

ARC Document Solutions, Inc.

ARC Document Solutions, Inc., a digital printing company, provides digital printing and document-related services in the United States. It provides managed print services, that places, manages, and optimizes print and imaging equipment in customers' offices, job sites, and other facilities; and cloud-based document management software and other digital hosting services. The company also provides professional services and software services to re-produce and distribute large-format and small-format documents, and specialized graphic color printing. In addition, it engages in sale and supply of equipment; and provides ancillary services. The company operates 146 service centers in the United States, Canada, China, United Kingdom, India, United Arab Emirates. It serves local

restaurant owners, construction subcontractors, international retailers, regional energy companies, and largest school districts, as well as retail, technology, energy, education, hospitality, and public utilities. The company was formerly known as American Reprographics Company and changed its name to ARC Document Solutions, Inc. in 2012. ARC Document Solutions, Inc. was founded in 1988 and is headquartered in San Ramon, California.

Automatic Data Processing, Inc.

Automatic Data Processing, Inc. provides cloud-based human capital management solutions worldwide. It operates in two segments, Employer Services and Professional Employer Organization (PEO). The Employer Services segment offers strategic, cloud-based platforms, and human resources (HR) outsourcing solutions. Its offerings include payroll, benefits administration, talent management, HR management, workforce management, insurance, retirement, and compliance services, as well as integrated HCM solutions. The PEO Services segment provides HR outsourcing solutions to small and mid-sized businesses through a co-employment model. This segment offers benefits package, protection and compliance, talent engagement, expertise, comprehensive outsourcing, and recruitment process outsourcing services. The company was founded in 1949 and is headquartered in Roseland, New Jersey.

Barrett Business Services, Inc.

Barrett Business Services, Inc. provides business management solutions for small and mid-sized companies in the United States. The company develops a management platform that integrates a knowledge-based approach from the management consulting industry with tools from the human resource outsourcing industry. It offers professional employer services under which it enters into a client services agreement to establish a co-employment relationship with each client company, assuming responsibility for payroll, payroll taxes, workers' compensation coverage, and other administration functions for the client's existing workforce. The company also provides staffing and recruiting services, such as on-demand or short-term staffing assignment, contract staffing, direct placement, and long-term or indefinite-term on-site management services. It serves electronics manufacturers, light-manufacturing industries, agriculture-based companies, transportation and shipping enterprises, food processors, telecommunications companies, public utilities, general contractors in various construction-related fields, and professional services firms. The company was incorporated in 1965 and is headquartered in Vancouver, Washington.

BGSF, Inc.

BGSF, Inc. provides workforce solutions and placement services in the United States. It operates in two segments, Real Estate and Professional. The Real Estate segment offers office and maintenance

field talent to various apartment communities and commercial buildings. The Professional segment provides skilled IT professionals with expertise in SAP, Workday, Peoplesoft, Hyperion, Oracle, One Stream, cyber, project management, and other IT workforce solutions, as well as finance, accounting, legal, human resource, and related support personnel. Its client partners include Fortune 500 companies, and medium and small companies, as well as consulting companies that engage in systems integration projects. The company was formerly known as BG Staffing, Inc. and changed its name to BGSF, Inc. in February 2021. BGSF, Inc. was incorporated in 2007 and is based in Plano, Texas.

Booz Allen Hamilton Holding Corporation

Booz Allen Hamilton Holding Corporation provides management and technology consulting, analytics, engineering, digital solutions, mission operations, and cyber services to governments, corporations, and not-for-profit organizations in the United States and internationally. The company offers consulting solutions for various domains, business strategies, human capital, and operations. It also provides analytics services, which focuses on delivering transformational solutions in the areas of artificial intelligence, such as machine learning and deep learning; data science, such as data engineering and predictive modeling; automation and decision analytics; and quantum computing. In addition, the company designs, develops, and implements solutions built on contemporary methodologies and modern architectures; delivers engineering services and solutions to define, develop, implement, sustain, and modernize complex physical systems; and provides cyber risk management solutions, such as prevention, detection, and cost effectiveness. Booz Allen Hamilton Holding Corporation was founded in 1914 and is headquartered in McLean, Virginia.

Cass Information Systems, Inc.

Cass Information Systems, Inc. provides payment and information processing services to manufacturing, distribution, and retail enterprises in the United States. The company operates through two segments, Information Services and Banking Services. Its services include freight invoice rating, payment processing, auditing, and the generation of accounting and transportation information. The company also processes and pays facility-related invoices, such as electricity, gas, waste, and telecommunications expenses; and provides telecom expense management solutions. In addition, the company, through its banking subsidiary, Cass Commercial Bank, provides a range of banking products and services, such as demand, savings, time, and money market deposits; commercial, industrial, commercial real estate, and construction and land development loans; and cash management services to privately held businesses, restaurant franchises, and faith-related ministries. Further, it provides B2B payment platform for clients that require an agile fintech partner. It operates through its banking facility near downtown St. Louis, Missouri; operating branch in the Bridgeton, Missouri; and leased facilities in Fenton, Missouri and Colorado Springs, Colorado.

The company was formerly known as Cass Commercial Corporation and changed its name to Cass Information Systems, Inc. in January 2001. Cass Information Systems, Inc. was founded in 1906 and is headquartered in St. Louis, Missouri.

Cognizant Technology Solutions Corporation

Cognizant Technology Solutions Corporation, a professional services company, provides consulting and technology, and outsourcing services in North America, Europe, and internationally. It operates through four segments: Financial Services; Health Sciences; Products and Resources; and Communications, Media and Technology. The company offers customer experience enhancement, robotic process automation, analytics, and AI services in areas, such as digital lending, fraud detection, and next generation payments; the shift towards consumerism, outcome-based contracting, digital health, delivering integrated seamless, omni-channel, and patient-centered experience; and services that drive operational improvements in areas, such as clinical development, pharmacovigilance, and manufacturing, as well as claims processing, enrollment, membership, and billing to healthcare providers and payers, and life sciences companies, including pharmaceutical, biotech, and medical device companies. It also provides solution to manufacturers, automakers, retailers and travel and hospitality companies, as well as companies providing logistics, energy and utility services; and digital content, the creation of personalized user experience, and acceleration of digital engineering services to communications, media and entertainment, education, and information services and technology companies. The company was founded in 1994 and is headquartered in Teaneck, New Jersey.

Command Center, Inc.

As of July 15, 2019, Command Center, Inc. was acquired by Hire Quest, LLC in a reverse merger transaction. Command Center, Inc., a staffing company, operates primarily in the manual on-demand labor segment of the staffing industry. It provides services primarily in the areas of light industrial, hospitality and event services. The company serves small to mid-sized businesses in the industrial/manufacturing/warehousing, construction, hospitality, transportation, and retail industries. As of April 9, 2019, it owned and operated 67 branches in 22 states. The company was formerly known as Command Staffing, LLC and changed its name to Command Center, Inc. in November 2005. Command Center, Inc. was founded in 2002 and is headquartered in Lakewood, Colorado.

Computer Task Group, Incorporated

Computer Task Group, Incorporated, together with its subsidiaries, offers information and technology services in North America, South America, Western Europe, and India. It operates

through three segments: North America IT Solutions and Services, Europe IT Solutions and Services, and Non-Strategic Technology Services. The company offers business process transformation solutions, which include advisory, data strategy, digital workplace, enterprise platforms, information disclosure, and regulatory and compliance services; technology transformation solutions, such as application development, automation, cloud, data management, enterprise platform implementation, and testing services; and operations transformation solutions consisting of application support, IT operations support, cloud, and infrastructure. It also provides staffing services, including managed staffing, staff augmentation, and volume staffing services. The company serves financial services, healthcare, manufacturing, and energy industries, as well as technology service providers. Computer Task Group, Incorporated was incorporated in 1966 and is headquartered in Amherst, New York.

CorVel Corporation

CorVel Corporation provides workers' compensation, auto, liability, and health solutions for employers, third party administrators, insurance companies, and government agencies to assist them in managing the medical costs and monitoring the quality of care associated with healthcare claims. It applies technology, including artificial intelligence, machine learning, and natural language processing to enhance the managing of episodes of care and the related health care costs. The company offers network solutions services, including automated medical fee auditing, preferred provider management and reimbursement services, retrospective utilization review, facility claim review, professional review, pharmacy services, directed care services, Medicare solutions, clearinghouse services, independent medical examinations, and inpatient medical bill review. It also provides a range of patient management services, such as claims management, case management, 24/7 nurse triage, utilization management, vocational rehabilitation, and life care planning, as well as processing of claims for self-insured payors with respect to property and casualty insurance. The company was incorporated in 1987 and is headquartered in Fort Worth, Texas.

CRA International, Inc.

CRA International, Inc., together with its subsidiaries, provides economic, financial, and management consulting services in the United States, the United Kingdom, and internationally. It advises clients on economic and financial matters pertaining to litigation and regulatory proceedings; and guides corporations through business strategy and performance-related issues. The company also offers consulting services, including research and analysis, expert testimony, and support in litigation and regulatory proceedings in the areas of finance, accounting, economics, insurance, and forensic accounting and investigations to corporate clients and attorneys. In addition, it offers management consulting services comprising strategy development, performance improvement, corporate strategy and portfolio analysis, estimation of market demand, new product

pricing strategies, valuation of intellectual property and other assets, assessment of competitors' actions, and analysis of new sources of supply. The company serves various industries, including communications and media; consumer, health, and wellness products; energy; entertainment and leisure; financial services; healthcare; life sciences; manufacturing and industries; natural resources; retail and distribution; technology; and transportation. CRA International, Inc. was incorporated in 1965 and is headquartered in Boston, Massachusetts.

CreditRiskMonitor.com, Inc.

CreditRiskMonitor.com, Inc. provides interactive business-to-business software-as-a-service subscription products for corporate credit and procurement professionals worldwide. It publishes commercial credit reports of public and private companies, which features the analysis of financial statements, including ratio analysis and trend reports, peer analyses, FRISK and PAYCE scores, and Altman Z default scores, as well as issuer ratings of Moody's Investors Service, DBRS, Inc., and Fitch Ratings. The company also provides financial data from the Federal Financial Institutions Examination Council call reports covering banks; and company background information and trade payment reports, as well as public filings, such as suits, liens, judgments, and bankruptcy information on millions of companies in the United States. In addition, it provides alerts on topics, including FRISK score changes, credit limit alerts, financial statement updates, and U.S. Securities and Exchange Commission filings and rating changes, as well as operates as a re-distributor of international credit reports. CreditRiskMonitor.com, Inc. was incorporated in 1977 and is based in Valley Cottage, New York. CreditRiskMonitor.com, Inc. operates as a subsidiary of Flum Partners.

Cross Country Healthcare, Inc.

Cross Country Healthcare, Inc. provides talent management and other consultative services for healthcare clients in the United States. The company operates in two segments, Nurse and Allied Staffing, and Physician Staffing. The Nurse and Allied Staffing segment provides workforce solutions and traditional staffing, recruiting, and value-added total talent solutions, including temporary and permanent placement of travel and local nurse and, allied professionals; temporary placement of healthcare leaders within nursing, allied, physician, and human resources; managed services programs services; education healthcare services; in-home care services; and outsourcing services. It also offers staffing solutions for registered nurses, licensed practical nurses, certified nurse assistants, practitioners, pharmacists, and other allied professionals on per diem and short-term assignments; and clinical and non-clinical professionals on long-term contract assignments, as well as workforce solutions, including MSP, RPO, and consulting services. This segment provides retained search services for healthcare professionals, as well as contingent search and recruitment process outsourcing services. It serves public and private acute care and non-acute care hospitals, government facilities, local and national healthcare plans, managed care providers, public and

charter schools, outpatient clinics, ambulatory care facilities, physician practice groups, and other healthcare providers under the Cross Country brand. The Physician Staffing segment provides physicians in various specialties, certified registered nurse anesthetists, nurse practitioners, and physician assistants under the Cross Country Locums brand on temporary assignments. It serves various healthcare facilities, such as acute and non-acute care facilities, medical group practices, government facilities, and managed care organizations. The company was founded in 1986 and is headquartered in Boca Raton, Florida.

Donnelley Financial Solutions, Inc.

Donnelley Financial Solutions, Inc. operates as a risk and compliance solutions company worldwide. The company operates through four segments: Capital Markets – Software Solutions (CM-SS), Capital Markets – Compliance and Communications Management (CM-CCM), Investment Companies – Software Solutions (IC-SS), and Investment Companies – Compliance and Communications Management (IC-CCM). The CM-SS segment provides Venue, ActiveDisclosure, eBrevia, and other solutions to public and private companies to manage public and private transactional and compliance processes; extract data and analyze contracts; collaborate; and tag, validate, and file SEC documents. The CM-CCM segment offers tech-enabled services and print and distribution solutions to public and private companies for deal solutions and SEC compliance requirements. The IC-SS segment provides clients with the Arc Suite platform that contains a comprehensive suite of cloud-based solutions, including ArcDigital, ArcReporting, ArcPro, and ArcRegulatory, as well as services that enable storage and management of compliance and regulatory information in a self-service and central repository for accessing, assembling, editing, translating, rendering, and submitting documents to regulators and investors. The IC-CCM segment offers its investment companies clients with tech-enabled services to prepare, file, and distribute registration forms, as well as XBRL-formatted filings pursuant to the Investment Act, through the SEC's EDGAR system. This segment also provides print and distribution solutions for its clients to communicate with their investors. Donnelley Financial Solutions, Inc. was founded in 1983 and is headquartered in Chicago, Illinois.

DXC Technology Company

DXC Technology Company, together with its subsidiaries, provides information technology services and solutions primarily in North America, Europe, Asia, and Australia. It operates in two segments, Global Business Services (GBS) and Global Infrastructure Services (GIS). The GBS segment offers a portfolio of analytics services and extensive partner ecosystem that help its customers to gain rapid insights, automate operations, and accelerate their digital transformation journeys; and software engineering, consulting, and data analytics solutions that enable businesses to run and manage their mission-critical functions, transform their operations, and develop new ways of doing business. It also uses various technologies and methods to accelerate the creation, modernization, delivery, and

maintenance of secure applications allowing customers to innovate faster while reducing risk, time to market, and total cost of ownership. In addition, this segment offers business process services, which include integration and optimization of front and back office processes, and agile process automation. The GIS segment adapts legacy apps to cloud, migrate the right workloads, and securely manage their multi-cloud environments; and offers security solutions help predict attacks, proactively respond to threats, and ensure compliance, as well as to protect data, applications, and infrastructure. It also provides IT outsourcing services to help customers securely and cost-effectively run mission-critical systems and IT infrastructure. In addition, this segment offers workplace services to fit its customer's employee, business, and IT needs from intelligent collaboration; and modern device management, digital support services, and mobility services. DXC Technology Company is headquartered in Ashburn, Virginia.

Edgewater Technology, Inc.

Edgewater Technology, Inc. provides business and technology services, and channel-based solutions in the United States, Canada, and internationally. It offers digital transformation; CFO/CIO advisory; business improvement roadmaps; organizational change management; program/project management; business process rejuvenation and integrated social media practices; specialized operational, due diligence, and technology management services to mergers and acquisitions, private equity, and venture capital; and strategic advice, costing, estimates to complete, and failing or failed programs or project initiatives. The company also provides independent package selection and request for information or proposal process design and implementation; domain; technical architecture, roadmaps, and design; strategic technology selections; data analytics and reporting; custom component design and implementation; customer intelligence solutions using Web/mobile analytics; cloud architecture, integration, and phasing solutions; on-going support; and infrastructure optimization and redesign, disaster recovery, and business continuity specialized design and assistance services. In addition, it offers product-based consulting services, such as business transformation through packaged software solutions; enterprise performance management with Oracle budgeting, planning, consolidation, and strategic finance; big data; enterprise resource planning with Microsoft Dynamics AX in process and discrete manufacturing verticals; customer relationship management with Microsoft Dynamics CRM; industry specific platform and solutions; Microsoft CRM/XRM and specialized custom, as well as blended solutions; business intelligence analytics; design, development, and introduction of IP; and support and training services. Further, the company provides enterprise information management and analytics services. Edgewater Technology, Inc. was founded in 1992 and is headquartered in Wakefield, Massachusetts.

ExlService Holdings, Inc.

ExlService Holdings, Inc. operates as a data analytics, and digital operations and solutions company in the United States and internationally. It operates through Insurance, Healthcare, Analytics, and Emerging Business segments. The company provides digital operations and solutions and analytics-driven services, such as claims processing, premium and benefit administration, agency management, account reconciliation, policy research, underwriting support, new business acquisition, policy servicing, premium audit, surveys, billing and collection, commercial and residential survey, and customer service using digital technology, artificial intelligence, machine learning, and advanced automation; digital customer acquisition services using a software-as-a-service delivery model through LifePRO and LISS platforms; subrogation services; and Subsource software platform, an end-to-end subrogation platform. It also offers health care services related to care management, utilization management, disease management, payment integrity, revenue optimization, and customer engagement. The company provides financial planning and analysis, management reporting, forecasting and decision support, data management, regulatory reporting and risk, and compliance services; reservations, customer, and fulfillment services; freight billing, collections, claims management, freight audit, freight scheduling, supply chain management, and revenue assurance services; residential mortgage lending, title verification and validation, retail banking and credit cards, trust verification, commercial banking, and investment management; merchandising, pricing, and demand forecasting; and digital operations and solutions. It offers predictive and prescriptive analytics in the areas of customer acquisition and lifecycle management. The company was founded in 1999 and is headquartered in New York, New York.

FTI Consulting, Inc.

FTI Consulting, Inc. provides business advisory services to manage change, mitigate risk, and resolve disputes worldwide. The company operates through five segments: Corporate Finance & Restructuring, Forensic and Litigation Consulting, Economic Consulting, Technology, and Strategic Communications. The Corporate Finance & Restructuring segment provides business transformation and strategy, transactions, and turnaround and restructuring services. The Forensic and Litigation Consulting segment offers construction and environmental solutions, data and analytics, disputes, health solutions, and risk and investigation services. The Economic Consulting segment provides antitrust and competition economics, financial economics, and international arbitration services. The Technology segment offers corporate legal department consulting; e-discovery and expertise; and information governance, privacy, and security services. The Strategic Communications segment provides corporate reputation, financial communications, and public affairs services. The company serves aerospace and defense, agriculture, airlines and aviation, automotive and industrial, construction, energy, power and products, environmental solutions, financial services, healthcare and life sciences, hospitality, gaming and leisure, insurance, mining, private equity, public sector and

government contracts, real estate, retail and consumer products, telecom, media and technology, and transportation and logistics industries. FTI Consulting, Inc. was incorporated in 1982 and is headquartered in Washington, the District of Columbia.

Gartner, Inc.

Gartner, Inc. operates as a research and advisory company in the United States, Canada, Europe, the Middle East, Africa, and internationally. It operates through three segments: Research, Conferences, and Consulting. The Research segment delivers its research primarily through a subscription service that include on-demand access to published research content, data and benchmarks, and direct access to a network of research experts. The Conferences segment offers business professionals in an organization the opportunity to learn, share, and network. The Consulting segment offers market research, custom analysis, and on-the-ground support services. This segment also offers actionable solutions for IT-related priorities, including IT cost optimization, digital transformation, and IT sourcing optimization. Gartner, Inc. was founded in 1979 and is headquartered in Stamford, Connecticut.

GDI Integrated Facility Services Inc.

GDI Integrated Facility Services Inc. operates in the outsourced facility services industry. The company operates through Janitorial Canada, Janitorial USA, and Technical services segments. It offers janitorial services, such as cleaning floors, dusting desks and tables, vacuuming carpets, sanitizing kitchens and washrooms, watering plants, cleaning exterior and interior parking facilities, and removal of garbage, as well as other services, including stripping and waxing floors, carpet cleaning, heavy dust cleaning, and window cleaning. The company also provides mechanical maintenance and electrical services, such as heating, ventilation, and air conditioning services; refrigeration, mechanical and plumbing; cabling and communications; building automation and control; and security systems. In addition, it engages in janitorial products manufacturing and distribution; and sales and distribution of cleaning and sanitation supplies rental and repairs of cleaning equipment. Further, GDI Integrated Facility Services Inc. operates a network of approximately 700 franchises that provide janitorial services to small and medium-size facilities. The company serves office properties, shopping centers, industrial and institutional buildings, educational facilities, health care centers, airports, hospitals, laboratories, national retail stores, and hotels in Canada and the United States. GDI Integrated Facility Services Inc. is headquartered in LaSalle, Canada.

GEE Group Inc.

GEE Group Inc. provides permanent and temporary professional and industrial staffing and placement services in the United States. The company operates through two segments, Industrial Staffing Services and Professional Staffing Services. It offers placement of information technology, accounting, finance, office, engineering, and medical professionals for direct hire and contract staffing services; and temporary staffing services for light industrial clients. The company also provides electronic medical record services for emergency departments, specialty physician practices, and clinics. It offers professional and commercial staffing services under the names of Access Data Consulting, Agile Resources, Ashley Ellis, GEE Group, Omni One, Paladin Consulting, and Triad; hospital, emergency rooms, and physician practice services under the Scribe Solutions brand; and contract and direct hire professional staffing services under the Accounting Now, Staffing Now, SNI Banking, SNI Certes, SNI Energy, SNI Financial, and SNI Technology brands. The company was formerly known as General Employment Enterprises, Inc. and changed its name to GEE Group Inc. in July 2016. GEE Group Inc. was founded in 1893 and is based in Jacksonville, Florida.

Harte Hanks, Inc.

Harte Hanks, Inc. operates as a customer experience company in the United States and internationally. It operates through three segments: Marketing Services, Customer Care, and Fulfillment & Logistics Services. The company provides strategic guidance to help clients to plan and execute omni-channel marketing programs; audience identification, profiling, segmentation and prioritization, predictive modeling, and data strategy services; data hygiene and cleansing services; print, broadcast, direct mail, website, app, display, social, mobile, search engine marketing, and voice services; Website and app development, e-commerce enablement, database building and management, platform architecture creation, and marketing automation services; and outsourcing marketing operations solutions. It also offers customer experience management services comprising interact and resolve consumer concerns across hardware and software platforms, healthcare benefit plans, and recalls or a myriad of other customer service issues; CRM and digital transformation solutions to create meaningful customer interactions by connecting content between agent or AI-driven interfaces and web-based self-help tools and community forums; and intelligence-based B2B solutions that understand audiences and their behaviors, and then inspire and drive action to deliver results. In addition, the company provides product, print-on-demand, and mail fulfillment solutions, such as printing on demand, managing product recalls, and distributing literature and promotional products; custom solutions to engage audiences, target customers, support conferences, and appreciate employees; and third-party logistics and freight optimization services. It primarily serves B2B, consumer brand, financial services, retail, and healthcare vertical markets. Harte Hanks, Inc. was founded in 1923 and is headquartered in Chelmsford, Massachusetts.

Healthcare Services Group, Inc.

Healthcare Services Group, Inc. provides management, administrative, and operating services to the housekeeping, laundry, linen, facility maintenance, and dietary service departments of nursing homes, retirement complexes, rehabilitation centers, and hospitals in the United States. It operates through two segments, Housekeeping and Dietary. The Housekeeping segment engages in the cleaning, disinfecting, and sanitizing of resident rooms and common areas of the customers' facilities, as well as laundering and processing of the bed linens, uniforms, resident personal clothing, and other assorted linen items utilized at the customers' facilities. The Dietary segment provides food purchasing, meal preparation, and professional dietitian services, which include the development of menus that meet the dietary needs of residents. This segment also offers on-site management and clinical consulting services to facilities. Healthcare Services Group, Inc. was incorporated in 1976 and is based in Bensalem, Pennsylvania.

Heidrick & Struggles International, Inc.

Heidrick & Struggles International, Inc., together with its subsidiaries, provides executive search, consulting, and on-demand talent services to businesses and business leaders worldwide. It enables its clients to build leadership teams by facilitating the recruitment, management, and development of senior executives. The company also offers on-demand services to provide clients with independent talent, including professionals with industry and functional expertise for interim leadership roles and critical project-based initiatives; and consulting services, including leadership assessment and development, team and organization acceleration, digital acceleration and innovation, diversity and inclusion advisory services, and culture shaping services. It provides its services to Fortune 1000 companies; Major U.S. and non-U.S. companies; middle market and emerging growth companies; private equity firms; governmental, higher education, and not-for-profit organizations; and other private and public entities. The company was founded in 1953 and is headquartered in Chicago, Illinois.

Huron Consulting Group Inc.

Huron Consulting Group Inc., a professional services firm, provides consultancy services in the United States and internationally. It operates through three segments: Healthcare, Education, and Commercial. The Healthcare segment provides advisory services in the areas of financial and operational improvement, care transformation, and revenue cycle managed services; organizational transformation; financial advisory; software products; and digital solutions, spanning technology and analytic-related services to national and regional health systems, academic and community health systems, public, children's and critical access hospitals, physician practices and medical groups, payors, and long-term care or post-acute providers. The Education segment provides

research enterprise, and student and alumni lifecycle; digital solutions, spanning technology, and analytic-related services; Huron Research Suite, a software suite designed to facilitate and enhance research administration service delivery and compliance; and organizational transformation services to public and private colleges and universities, research institutes, and other education-related organizations. The Commercial segment delivers digital services and software products, and financial advisory services to financial, energy and utilities, professional and business services, life science, consumer products, and industrials and manufacturing industries, as well as public sector and nonprofit organizations. The company was incorporated in 2002 and is headquartered in Chicago, Illinois.

IBEX Limited

IBEX Limited provides end-to-end technology-enabled customer lifecycle experience solutions in the United States and internationally. The company products and services portfolio includes ibex Connect, that offers customer service, technical support, revenue generation, and other value-added outsourced back-office services through the CX model, which integrates voice, email, chat, SMS, social media, and other communication applications; ibex Digital, a customer acquisition solution that comprises digital marketing, e-commerce technology, and platform solutions; and ibex CX, a customer experience solution, which provides a suite of proprietary software tools to measure, monitor, and manage its clients' customer experience. As of June 30, 2022, the company operated 34 customer engagement and four customer acquisition delivery centers. It serves banking and financial services, delivery and logistics, health tech and wellness, high tech, retail and e-commerce, streaming and entertainment, travel and hospitality, and utility industries. The company was formerly known as IBEX Holdings Limited and changed its name to IBEX Limited in September 2019. The company was incorporated in 2017 and is headquartered in Washington, District of Columbia. IBEX Limited is a subsidiary of The Resource Group International Limited.

Information Services Group, Inc.

Information Services Group, Inc., together with its subsidiaries, operates as a technology research and advisory company in the Americas, Europe, and the Asia Pacific. The company offers digital transformation services, including automation, cloud, and data analytics; sourcing advisory; managed governance and risk; network carrier; technology strategy and operations design; change management; and market intelligence and technology research and analysis services. It supports private and public sector organizations to transform and optimize their operational environments. The company also provides ISG Digital, a client solution platform that helps clients developing technology, transformation, sourcing, and digital solutions; and ISG Enterprise, a client solution platform that helps clients manage change and optimize operations in areas comprising finance, human resource, and Procure2Pay. In addition, it offers ISG GovernX, a software platform, which

provides insights from market and performance data, and automates the management of third-party supplier relationships that comprise contract and project lifecycles, and risk management. The company serves private sector clients operating in the manufacturing, banking and financial services, insurance, health sciences, energy and utilities, and consumer services industries; and public sector clients, including state and local governments, airport and transit authorities, and national and provincial government units. Information Services Group, Inc. was founded in 2006 and is based in Stamford, Connecticut.

Insignia Systems, Inc.

Insignia Systems, Inc. provides in-store advertising solutions to consumer-packaged goods manufacturers, retailers, shopper marketing agencies, and brokerages in the United States. It offers in-store signage solutions, which provides point-of-purchase services; merchandising solutions that include various corrugate displays, side caps, free standing shippers, and customized end-cap solutions; and on-pack solutions, which include BoxTalk, coupons, recipes, and cross-promotions. The company was incorporated in 1990 and is headquartered in Minneapolis, Minnesota.

Insperty, Inc.

Insperty, Inc. engages in the provision of human resources (HR) and business solutions to improve business performance for small and medium-sized businesses. It offers its HR services through its Workforce Optimization and Workforce Synchronization solutions that include a range of human resources functions, such as payroll and employment administration, employee benefits, workers' compensation, government compliance, performance management, and training and development services. The company also provides Insperty Premier, a cloud-based human capital management platform that offers professional employer organization HR outsourcing solutions to its clients; people management services; and employer liability management services, as well as solutions for middle market. In addition, it offers MarketPlace, an e-commerce portal that offers a range of products and services; and Workforce Acceleration, a human capital management and payroll services solution; time and attendance; performance management; recruiting; employment screening; retirement; and insurance services. The company was formerly known as Administaff, Inc. and changed its name to Insperty, Inc. in March 2011. Insperty, Inc. was founded in 1986 and is headquartered in Kingwood, Texas.

InsPro Technologies Corporation

InsPro Technologies Corporation, a technology company, which provides software applications for insurance administrators in the United States. It offers InsPro Enterprise software application, which is a web-based insurance administration software application for insurance carriers and third party

administrators; and processes agent, direct market, worksite, and web site generated businesses. The company provides InsPro Enterprise on a licensed and an application service provider basis. In addition, it offers professional services, such as system implementation, legacy system migration, application management, web development, help desk, and hosting service support services. The company was formerly known as Health Benefits Direct Corporation and changed its name to InsPro Technologies Corporation in November 2010. InsPro Technologies Corporation was incorporated in 2004 and is based in Eddystone, Pennsylvania. InsPro Technologies Corporation is a subsidiary of Majesco.

Inuvo, Inc.

Inuvo, Inc., a technology company, develops and sells information technology solutions in the United States. The company's platforms identify and message online audiences for various products or services across devices, formats, and channels, including video, mobile, connected TV, linear TV, display, social, search, and native. Its platforms optimizes the purchase and placement of advertising in real time. The company's products and services include ValidClick that provides marketing and advertising services, as well as collection of data, analytics, software, and publishing gets used to align merchant advertising messages with anonymous consumers across various websites online; and IntentKey, an artificial intelligence-based consumer intent recognition system designed to reach targeted mobile and desktop in-market audiences. It also operates a collection of websites under the Bonfire Publishing brand, which creates content across a range of topics, including health, finance, travel, careers, auto, education, and lifestyle categories. The company's marketing channels consist of websites, social media, blogs, public relations, trade shows, and conferences. Inuvo, Inc. was incorporated in 1987 and is headquartered in Little Rock, Arkansas.

Kelly Services, Inc.

Kelly Services, Inc., together with its subsidiaries, provides workforce solutions to various industries. The company operates through five segments: Professional & Industrial; Science, Engineering & Technology; Education; Outsourcing & Consulting; and International. The Professional & Industrial segment delivers staffing, outcome-based, and placement services in the areas of office, professional, light industrial, and contact center specialties. The Science, Engineering & Technology segment offers staffing, outcome-based, and placement services in the areas of science and clinical research, engineering, technology, and telecommunications specialties. The Education segment provides staffing, placement, and executive search services to early childhood, and higher education markets. The Outsourcing & Consulting segment offers recruitment process outsourcing (RPO), payroll process outsourcing, and talent advisory services, as well as managed services. The International segment provides staffing, RPO, and placement services in Europe and Mexico. The company serves customers in the United States, Canada, Mexico, Puerto Rico, France, Switzerland,

Portugal, Russia, the United Kingdom, Italy, rest of Europe, and the Asia-Pacific region. Kelly Services, Inc. was founded in 1946 and is headquartered in Troy, Michigan.

Kforce Inc.

Kforce Inc. provides professional staffing services and solutions in the United States. It operates through two segments, Technology, and Finance and Accounting (FA). The Technology segment provides talent solutions to its clients primarily in the areas of information technology, such as systems/applications architecture and development, data management and analytics, business and artificial intelligence, machine learning, project and program management, and network architecture and security. This segment serves clients in various industries comprising financial and business services, communications, insurance, retail, and technology industries. The FA businesses segment offers talent solutions to its clients in areas, including financial planning and analysis, business intelligence analysis, accounting, transactional accounting, business and cost analysis, and taxation and treasury. It also provides consultants in lower skilled areas comprising loan servicing and support, customer and call center support, data entry, and other administrative roles. This segment serves clients in various industries, including financial and business services, healthcare, and manufacturing sectors. The company was founded in 1962 and is headquartered in Tampa, Florida.

KLDiscovery Inc.

KLDiscovery Inc. provides eDiscovery, information governance, and data recovery solutions to corporations, law firms, government agencies, and individual consumers worldwide. The company offers eDiscovery solutions, including Nebula Ecosystem, an information governance and eDiscovery platform, which helps to facilitate the identification, preservation, collection, processing, review, and exchange of electronically stored information (ESI); eDiscovery.com Review, a platform used to search, review and exchange ESI; and Relativity, a document review tool. It also provides KLD Analytics, which offers technology-assisted review tools for predictive coding, workflow, email threading, near-duplicate detection, and language identification; KLD Processing, a processing platform; technology enabled managed review services; digital forensics services; and information archiving services. In addition, the company offers advisory services, such as eDiscovery readiness and response solutions, including eDiscovery expert witness, custodian interviews, preservation and collection strategy, and legal hold solution; information governance solutions comprising Office 365 health check and legal hold process improvement; and data privacy solutions, including privacy compliance assessment and data breach risk mitigation. Further, it provides data recovery services; email recovery services; tape services comprising backup infrastructure migration and consolidation, legacy tape and data remediation, and recovery from physically-damaged and quickly-erased or partially-overwritten tapes; and data destruction services. Additionally, the company provides data

recovery software, such as Ontrack EasyRecovery and Ontrack PowerControls. KLDISCOVERY Inc. was founded in 1985 and is headquartered in McLean, Virginia.

Korn Ferry

Korn Ferry, together with its subsidiaries, provides organizational consulting services worldwide. It operates through four segments: Consulting, Digital, Executive Search, and Recruitment Process Outsourcing (RPO) & Professional Search. The company provides executive search services to recruit board level, chief executive, other senior executive, and general management talent of organizations. It also offers organizational strategy, assessment and succession, leadership and professional development, and total reward services. In addition, the company provides RPO, business project, professional search, and outsource recruiting solutions. Further, the company offers tech-enabled solutions that identify structures, roles, capabilities, and behaviors to drive businesses. It serves public and private companies, and middle market and emerging growth companies, as well as government and non-profit organizations. The company was formerly known as Korn/Ferry International and changed its name to Korn Ferry in January 2019. Korn Ferry was founded in 1969 and is based in Los Angeles, California.

ManpowerGroup Inc.

ManpowerGroup Inc. provides workforce solutions and services in the Americas, Southern Europe, Northern Europe, and the Asia Pacific Middle East region. The company offers recruitment services, including permanent, temporary, and contract recruitment of professionals, as well as administrative and industrial positions under the Manpower and Experis brands. It also offers various assessment services; training and development services; career management; and outsourcing services related to human resources functions primarily in the areas of large-scale recruiting and workforce-intensive initiatives. In addition, the company provides workforce consulting services; contingent staffing and permanent recruitment services; professional resourcing and project-based solutions in information technology, engineering, and finance fields; solutions in the areas of organizational efficiency, individual development, and career mobility; and recruitment process outsourcing, TAPFIN managed, and talent based outsourcing services, as well as Proservia services in the areas of digital services market and IT infrastructure sector. It operates through a network of approximately 2,200 offices in 75 countries and territories. The company was incorporated in 1948 and is headquartered in Milwaukee, Wisconsin.

Mastech Digital, Inc.

Mastech Digital, Inc., together with its subsidiaries, provides digital transformation IT services to large, medium-sized, and small companies in the United States. It operates through two segments,

Data and Analytics Services, and IT Staffing Services. The company offers data management and analytics services, including project-based consulting services in the areas of master data management, enterprise data integration, big data and analytics, and digital transformation by using onsite and offshore resources. It also provides a range of IT staffing services in the areas of data management and analytics, cloud, mobility, social, automation, business intelligence/data warehousing, web services, enterprise resource planning and customer resource management, and e-business solutions. In addition, the company offers digital transformation services, such as digital learning services; and cloud-based enterprise application across sales, marketing, and customer service organizations. It provides its services across various industry verticals, including financial services, government, healthcare, manufacturing, retail, technology, telecommunications, and transportation. The company was formerly known as Mastech Holdings, Inc. and changed its name to Mastech Digital, Inc. in September 2016. Mastech Digital, Inc. was founded in 1986 and is headquartered in Pittsburgh, Pennsylvania.

Mastermind, Inc.

Mastermind, Inc., an involvement marketing service agency, designs, creates, and develops branding and marketing campaigns for corporate clients. Its programs cover various forms, such as creating and managing digital content, designing campaign Websites/landing pages, social media and viral campaigns, mobile marketing initiatives, and brand communications. The company customers include sports and entertainment, oil and gas, automotive, retail, restaurant, B2B, financial services, hotel and hospitality, consumer packaged goods, healthcare and pharmaceuticals, technology, and agricultural chemicals. Mastermind, Inc. was founded in 2012 and is based in Atlanta, Georgia. Mastermind, Inc. is a subsidiary of Mastermind Marketing, Inc.

MDC Partners Inc.

As of August 2, 2021, MDC Partners Inc. was acquired by Stagwell Marketing Group LLC. MDC Partners Inc. provides marketing, advertising, activation, communications, and strategic consulting solutions in the United States, Canada, and internationally. It offers global advertising and marketing, data analytics and insights, mobile and technology experiences, direct marketing, business consulting, database and customer relationship management, sales promotion, corporate communications, market research, social media strategy and communications, product and service innovation, and e-commerce management services; corporate identity, design, and branding services; and media buying, planning, and optimization services. MDC Partners Inc. is headquartered in New York, New York.

National CineMedia, Inc.

National CineMedia, Inc., through its subsidiary, National CineMedia, LLC, operates cinema advertising network in North America. It engages in the sale of advertising to national, regional, and local businesses in Noovie, a cinema advertising and entertainment pre-show seen on movie screens; and sells advertising on its Lobby Entertainment Network, a series of strategically-placed screens located in movie theater lobbies, as well as other forms of advertising and promotions in theatre lobbies. The company is also engaged in the sale of online and mobile advertising through its Noovie Audience Accelerator product, as well as a suite of Noovie digital properties, such as Noovie Shuffle, Noovie Trivia, Name That Movie, and Noovie Arcade to reach entertainment audiences beyond the theater. It offers its services to third-party theater circuits under long-term network affiliate agreements. The company was incorporated in 2006 and is headquartered in Centennial, Colorado.

National Research Corporation

National Research Corporation provides analytics and insights that facilitate measurement and enhancement of the patient and employee experience in the United States and Canada. Its portfolio of subscription-based solutions provides actionable information and analysis to healthcare organizations across a range of mission-critical, constituent-related elements, including patient experience, service recovery, care transitions, health risk assessments, employee engagement, reputation management, and brand loyalty. The company also offers market insights solutions that allow the tracking of awareness, perception, and consistency of healthcare brands; assessment of competitive differentiators; and enhanced segmentation tools to evaluate needs, wants, and behaviors of communities through real-time competitive assessments and enhanced segmentation tools. In addition, it provides experience solutions, such as patient and resident experience, workforce engagement, health risk assessments, transitions, and improvement tools. Further, the company offers health risk assessment solutions that enable clients to segment populations and manage care for those who are most at risk, engage individuals, enhance preventative care, and manage wellness programs; and transitions solutions, which enable organizations to identify and manage high-risk patients to reduce readmissions, enhance patient satisfaction and support safe care transitions. Additionally, it provides transparency solutions that allow healthcare organizations to share picture of their organization and ensure content informs in consumer decision-making; and governance solutions for not-for-profit hospital and health system boards of directors, executives, and physician leadership. The company serves integrated health systems, post-acute providers, and payer organizations. National Research Corporation was founded in 1981 and is headquartered in Lincoln, Nebraska.

nDivision Inc.

nDivision Inc. provides managed information technology (IT) services and project-based professional services in the IT industry. The company offers single pane-of-glass IT operation, integrated configuration management database, automations, smart IT support, autonomic managed services, and end user help desk services to small businesses and enterprises. It provides remote support for customer IT operations in 32 countries and across 6 continents. nDivision Inc. is based in Irving, Texas.

Omnicom Group Inc.

Omnicom Group Inc., together with its subsidiaries, offers advertising, marketing, and corporate communications services. It provides a range of services in the areas of advertising and media, precision marketing, commerce and brand consulting, experiential, execution and support, public relations, and healthcare. The company's services include advertising, branding, content marketing, corporate social responsibility consulting, crisis communications, custom publishing, data analytics, database management, digital/direct marketing, digital transformation, entertainment marketing, experiential marketing, field marketing, financial/corporate business-to-business advertising, graphic arts/digital imaging, healthcare marketing and communications, and in-store design services. Its services also comprise interactive marketing, investor relations, marketing research, media planning and buying, merchandising and point of sale, mobile marketing, multi-cultural marketing, non-profit marketing, organizational communications, package design, product placement, promotional marketing, public affairs, retail marketing, sales support, search engine marketing, shopper marketing, social media marketing, and sports and event marketing services. It operates in the North and Latin America, Europe, the Middle East and Africa (EMEA), and Asia Pacific. The company was incorporated in 1944 and is based in New York, New York.

Park City Group, Inc.

Park City Group, Inc., a software-as-a-service provider, designs, develops, and markets proprietary software products in North America. The company offers ReposiTrak MarketPlace, a supplier discovery and B2B e-commerce solution; ReposiTrak Compliance and Food Safety solutions, which reduces potential regulatory and legal risk from their supply chain partners; and ReposiTrak Supply Chain solutions that enables customers to manage relationships with suppliers. It also provides ScoreTracker, Vendor Managed Inventory, Store Level Ordering and Replenishment, Enterprise Supply Chain Planning, Fresh Market Manager, and ActionManager supply chain solutions to manage inventory, product mix, and labor. In addition, the company offers business-consulting services to suppliers and retailers in the grocery, convenience store, and specialty retail industries,

as well as professional consulting services. It primarily serves multi-store retail chains, wholesalers and distributors, and their suppliers. The company is headquartered in Murray, Utah.

Paychex, Inc.

Paychex, Inc. provides integrated human capital management solutions for human resources (HR), payroll, benefits, and insurance services for small to medium-sized businesses in the United States, Europe, and India. It offers payroll processing services; payroll tax administration services; employee payment services; and regulatory compliance services, such as new-hire reporting and garnishment processing. The company also provides HR solutions, including payroll, employer compliance, HR and employee benefits administration, risk management outsourcing, and the on-site availability of a professionally trained HR representative; and retirement services administration, including plan implementation, ongoing compliance with government regulations, employee and employer reporting, participant and employer online access, electronic funds transfer, and other administrative services. In addition, it offers cloud-based HR administration software products for employee benefits management and administration, time and attendance, digital communication solutions, recruiting, and onboarding solutions; plan administration outsourcing and state unemployment insurance services; various business services to small to medium-sized businesses comprising payroll funding and outsourcing services, which include payroll processing, invoicing, and tax preparation; and payment processing services, financial fitness programs, and a small-business loan resource center. Further, the company provides insurance services for property and casualty coverage, such as workers' compensation, business-owner policies, cyber security protection, and commercial auto, as well as health and benefits coverage, including health, dental, vision, and life. It markets and sells its services primarily through its direct sales force. The company was founded in 1971 and is headquartered in Rochester, New York.

Perficient, Inc.

Perficient, Inc. provides digital consultancy services and solutions in the United States. It offers strategy and transformation solution in digital strategy, technology strategy, business velocity and growth, and organizational change management; and data and intelligence solutions in the areas of analytics, artificial intelligence and machine learning, big data, business intelligence, and custom product portfolio. The company also provides platform and technology solutions across blockchain, cloud, commerce, corporate performance and customer relationship management, content management systems, customer experience platforms, custom application development, DevOps, enterprise resource planning, integration and APIs, intelligent automation, Internet of Things, mobile, portals and collaboration, supply chain, product information management, and order management systems. In addition, it offers customer and digital marketing solutions, which includes analytics, content architecture, conversion rate optimization, creative design, email marketing,

journey sciences, paid media, paid search, marketing automation research, SEO services, and social media; innovation and production development solutions including product development services, and a robust suite of proprietary products; and optimized global delivery solutions. It serves the healthcare, financial services, manufacturing, automotive, consumer, telecommunications, energy and utilities, and life sciences markets. The company was incorporated in 1999 and is headquartered in St. Louis, Missouri.

Resources Connection, Inc.

Resources Connection, Inc. provides consulting services to business customers under the Resources Global Professionals name in North America, Europe, and the Asia Pacific. The company offers services in the areas of transactions, including integration and divestitures, bankruptcy/restructuring, going public readiness and support, financial process optimization, and system implementation; and regulations, such as accounting regulations, internal audit and compliance, data privacy and security, healthcare compliance, and regulatory compliance. It also provides transformations services comprising finance transformation, digital transformation, supply chain management, cloud migration, and data design and analytics. The company has a strategic alliance with Kotter International, Inc. to accelerate joint business development initiatives. The company was formerly known as RC Transaction Corp. and changed its name to Resources Connection, Inc. in August 2000. Resources Connection, Inc. was founded in 1996 and is headquartered in Irvine, California.

Robert Half International Inc.

Robert Half International Inc. provides talent solutions and business consulting service in North America, South America, Europe, Asia, and Australia. The company operates through three segments: Contract Talent Solutions, Permanent Placement Talent Solutions, and Protiviti. The Contract Talent Solutions segment provides contract engagement professionals in the fields of finance and accounting, technology, marketing and creative, legal and administrative, and customer support. This segment markets its services to clients and employment candidates through both national and local advertising activities, including radio, digital advertising, job boards, alliance partners, and events. The Permanent Placement Talent Solutions segment engages in the placement of full-time accounting, finance, and tax and accounting operations personnel. The Protiviti segment offers consulting services in the areas of internal audit, technology consulting, risk and compliance consulting, digital transformation, legal consulting, and business performance improvement. The company offers its services under the Robert Half brand name. Robert Half International Inc. was founded in 1948 and is headquartered in Menlo Park, California.

SilverSun Technologies, Inc.

SilverSun Technologies, Inc. operates as a business application, technology, and consulting company in the United States. The company provides solutions for accounting and business management, financial reporting, managed services, enterprise resource planning, human capital management, warehouse management systems, customer relationship management, and business intelligence. It also offers value-added services that focuses on consulting and professional services, specialized programming, training, and technical support. In addition, the company provides managed, cybersecurity, business continuity, disaster recovery, data back-up, network maintenance and service upgrades, and application hosting services. It serves small and medium-sized businesses primarily in the manufacturing, distribution, and service industries. The company was formerly known as Trey Resources, Inc. and changed its name to SilverSun Technologies, Inc. in June 2011. SilverSun Technologies, Inc. was founded in 1988 and is headquartered in East Hanover, New Jersey.

SPAR Group, Inc.

SPAR Group, Inc., together with its subsidiaries, provides merchandising and brand marketing services worldwide. The company offers syndicated and dedicated merchandising services at the retail store level for retailers, manufacturers, and distributors; and project services, such as new product launches, special seasonal or promotional merchandising, product support, product recalls, and in-store product demonstrations and in-store product sampling, as well as kiosk product replenishment, inventory control, new and existing store resets, re-merchandising, remodels and category implementations, and under annual or stand-alone project contracts or agreements. It also provides retailer specific services consisting of in-store services, including new store openings, new store sets and existing store resets and remodels, and under annual or stand-alone project contracts or agreements. In addition, the company assembles furniture, grills, and other products in stores, homes, and offices; performs ongoing routed coverage at retail locations; and offers in-home and in-office assembly to customers who purchase their product from retailers. Further, it provides staff and distribution center experienced resources to retailers and consumer goods manufacturers; offers retail compliance and price audit services initiated by retailers and manufacturers and focuses on validating store promotions, auditing compliance with branding and signage, verifying product placement and displays, collecting inventory levels, and out-of-stock status; and competitive price intelligence gathering for retailers, as well as ensuring price accuracy and consistency within the retail itself. The company serves grocery and drug, discount, dollar, convenience, cash and carry, home improvement, consumer electronics, automotive, and office supply stores; pharmacies; and mass merchandisers. SPAR Group, Inc. was founded in 1967 and is headquartered in Auburn Hills, Michigan.

Staffing 360 Solutions, Inc.

Staffing 360 Solutions, Inc., a staffing company, engages in the acquisition of staffing companies in the United States and the United Kingdom. It provides temporary contractors; and recruits candidates for permanent placement. The company focuses primarily on the staffing companies supporting accounting and finance, information technology, engineering, administration, and commercial disciplines. The company was formerly known as Golden Fork Corporation and changed its name to Staffing 360 Solutions, Inc. in March 2012. Staffing 360 Solutions, Inc. was incorporated in 2009 and is headquartered in New York, New York.

The Caldwell Partners International Inc.

The Caldwell Partners International Inc. provides candidate research and sourcing services in Canada, the United States, and the United Kingdom. It also offers retained executive search and Caldwell analytics solutions, and on-demand talent acquisition augmentation solutions, as well as professional search services. In addition, the company offers Agile talent solutions. It serves real estate, consumer, commercial banking, academic, non-profit, social enterprise, culture, retail, financial services, industrial, insurance, life science, healthcare, private equity, venture capital, professional services, and technology sectors. The company offers its services under the Caldwell and IQTalent brands. The Caldwell Partners International Inc. was founded in 1970 and is headquartered in Toronto, Canada.

The Hackett Group, Inc.

The Hackett Group, Inc. operates as a strategic advisory and technology consulting firm primarily in North America and internationally. It offers best practice intelligence center, an online searchable repository; best practice accelerators that provide web-based access to best practices, customized software configuration tools, and best practice process flows; advisor inquiry for access to fact-based advice on proven approaches and methods; best practice research that provides insights into the proven approaches; and peer interaction comprising member-led webcasts, annual best practice conferences, annual member forums, membership performance surveys, and client-submitted content, as well as intellectual property as-a-service and Hackett Institute programs. The company's benchmarking services conduct studies for selling, general and administrative, finance, human resources, information technology, procurement, enterprise performance management, and shared services; and business transformation practices to help clients develop coordinated strategy for achieving performance enhancements across the enterprise. It also provides Oracle EEA solutions for core financial close and consolidation, integrated business planning, and reporting/advanced analytics areas. In addition, the company offers SAP solutions, including planning, architecture, and vendor evaluation and selection through implementation, customization, testing, and integration;

post-implementation support, change management, exception management, process transparency, system documentation, and end-user training; off-shore application development, and application maintenance and support services; and OneStream practice that helps clients choose and deploy OneStream XF Platform and Market Place solutions. The company was formerly known as Answerthink, Inc. and changed its name to The Hackett Group, Inc. in 2008. The Hackett Group, Inc. was founded in 1991 and is headquartered in Miami, Florida.

The Interpublic Group of Companies, Inc.

The Interpublic Group of Companies, Inc. provides advertising and marketing services worldwide. It operates in three segments: Media, Data & Engagement Solutions, Integrated Advertising & Creativity Led Solutions, and Specialized Communications & Experiential Solutions. The Media, Data & Engagement Solutions segment provides media and communications services, digital services and products, advertising and marketing technology, e-commerce services, data management and analytics, strategic consulting, and digital brand experience under the IPG Mediabrands, UM, Initiative, Kinesso, Acxiom, Huge, MRM, and R/GA brand names. The Integrated Advertising & Creativity Led Solutions segment offers advertising, corporate, and brand identity services; and strategic consulting. Specialized Communications & Experiential Solutions segment provides public relations and other specialized communications services, events, sports and entertainment marketing, and strategic consulting. The company was formerly known as McCann-Erickson Incorporated and changed its name to The Interpublic Group of Companies, Inc. in January 1961. The Interpublic Group of Companies, Inc. was founded in 1902 and is headquartered in New York, New York.

TriNet Group, Inc.

TriNet Group, Inc. provides human resources (HR) consulting services, employee benefit options, payroll services, and employment risk mitigation services for small and medium size businesses in the United States. The company offers multi-state payroll processing and tax administration; employee benefits programs, including health insurance and retirement plans; workers compensation insurance and claims management; employment and benefits law compliance; and other HR related services. It also provides technology platform, an online and mobile tool that allows users to store, view, and manager HR information and administer various HR transactions, such as payroll processing, tax administration and credits, employee onboarding and termination, employee performance, time and attendance, compensation reporting, expense management, and benefits enrollment and administration, as well as incorporated workforce analytics and allows professional employer organization clients to generate HR data, payroll, compensation, and other custom reports. The company serves clients in various industries, including technology, professional services, financial services, life sciences, and not-for-profit. It sells its solutions through its direct

sales organization. The company was incorporated in 1988 and is headquartered in Dublin, California.

TrueBlue, Inc.

TrueBlue, Inc., together with its subsidiaries, provides specialized workforce solutions in the United States, Canada, the United Kingdom, Australia, and Puerto Rico. It operates through three segments: PeopleReady, PeopleManagement, and PeopleScout. The company's PeopleReady segment provides general, industrial, and skilled trade staffing services for construction, transportation, manufacturing, retail, hospitality, and renewable energy industries. Its PeopleManagement segment offers contingent, on-site industrial staffing, and commercial driver services, which includes on-site management and recruitment for the contingent industrial workforce of manufacturing, warehouse, and distribution facilities; and recruitment and management of contingent and dedicated commercial drivers to the transportation and distribution industries under the Staff Management, SIMOS Insourcing Solutions, and Centerline Drivers brands. The company's PeopleScout segment provides recruitment process outsourcing, talent advisory services, and managed service provider solutions including sourcing, screening, hiring, and onboarding services; operates Affinix, a technology platform which uses artificial intelligence and machine learning for real-time insights; and contingent labor programs including vendor selection, performance management, compliance monitoring, and risk management. TrueBlue, Inc. was formerly known as Labor Ready, Inc. and changed its name to TrueBlue, Inc. in December 2007. The company was incorporated in 1985 and is headquartered in Tacoma, Washington.

TSR, Inc.

TSR, Inc., a staffing company, focuses on recruiting information technology (IT) professionals for short- and long-term assignments, permanent placements, project work, and providing contract computer programming services to its customers in the New York metropolitan area, New England, and the Mid-Atlantic region. The company provides technical computer personnel to supplement the in-house IT capabilities of its customers in the areas of .net and java, mobile applications for Android and IOS platforms, project management, IT security specialists, cloud development and architecture, business analysts, UI design and development, network infrastructure and support, and database development and administration. It primarily serves vendor management companies, as well as customers in the financial services business. TSR, Inc. was incorporated in 1969 and is based in Hauppauge, New York.

TTEC Holdings, Inc.

TTEC Holdings, Inc., a customer experience technology and services company, that designs, builds, orchestrates, and delivers digitally enabled customer experiences designed for various brands. It operates in two segments, TTEC Digital and TTEC Engage. The TTEC Digital segments designs, builds, and operates robust digital experiences for clients and their customers through the contextual integration and orchestration of customer relationship management, data, analytics, customer experience as a service technology, and intelligent automation to ensure customer experience (CX) outcomes. The TTEC Engage segment provides digitally enabled CX managed services; delivers omnichannel customer care, technology support, order fulfillment, customer acquisition, growth, and retention services; and delivers digitally enabled back office and industry specific specialty services, including artificial intelligence (AI) operations, content moderation, and fraud management services. It serves clients in the automotive, communication, financial services, government, healthcare, logistics, media and entertainment, e-tail/retail, technology, transportation, and travel industries with operations in the United States, Australia, Belgium, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Germany, Greece, India, Ireland, Mexico, the Netherlands, New Zealand, the Philippines, Poland, Singapore, South Africa, Thailand, and the United Kingdom. The company was formerly known as TeleTech Holdings, Inc. and changed its name to TTEC Holdings, Inc. in January 2018. TTEC Holdings, Inc. was founded in 1982 and is headquartered in Englewood, Colorado.

Unisys Corporation

Unisys Corporation, together with its subsidiaries, operates as an information technology solutions company in the United States and internationally. It operates in Digital Workplace Solutions (DWS); Cloud, Applications and Infrastructure Solutions (CA&I); and Enterprise Computing Solutions (ECS) segments. The DWS segment provides modern and traditional workplace solutions. The CA&I segment offers solutions for modern applications, data and analytics, cloud management, hybrid infrastructure, and cyber security; design, implementation, monitoring, automation, and management of dedicated on-premises or hosted infrastructure. The ECS segment provides solutions that harness secure, continuous high-intensity computing, and enable digital services through software-defined operating environments. It also offers proprietary platforms, and enterprise software and technology products, including Unisys IntelliServe, PowerSuite, CloudForte, ClearPath Forward, and Unisys Stealth. The company serves customers in the travel and transportation, financial services, energy, and healthcare markets. Unisys Corporation was founded in 1886 and is based in Blue Bell, Pennsylvania.

Virtusa Corporation

Virtusa Corporation provides business consulting and IT outsourcing services to offer digital business assistance. It provides services, such as IT assessment and planning, network architecture and design, and governance-related services, helping users develop distinctive digital consumer experiences, creating operational value using digital labor, developing operational and IT platforms, and rationalizing and modernizing their existing IT applications infrastructure. Virtusa Corporation was formerly known as eRunway, inc. and changed its name to Virtusa Corporation in April 2002. The company was founded in 1996 and is based in Southborough, Massachusetts with additional offices across the globe.

III. Reasons for Rejection for each company

Company	Reason
@Plan.Inc	Insufficient sales
01 Communique Laboratory Inc.	Going concern
110 Media Group Inc.	Insufficient sales
12 ReTech Corporation	Going concern
1985275 Ontario Inc.	Insufficient sales
1mage Software, Inc.	Insufficient sales
23andMe Holding Co.	Insufficient sales
2seventy bio, Inc.	Insufficient sales
2U, Inc.	Excessive R&D
3 Sixty Risk Solutions Ltd.	Cannabis
37Point9	Insufficient sales
3D Systems Corporation	Excessive R&D
3DIcon Corporation	Insufficient sales
3DShopping.com	Insufficient sales
4Front Technologies, Inc.	Insufficient sales
8000 Inc	Insufficient sales
8x8, Inc.	Excessive advertising
A10 Networks, Inc.	Excessive R&D
AAMPRO Group Inc.	Insufficient sales
AAP, Inc.	Insufficient sales
AB International Group Corp.	Going concern
Abaxx Technologies Inc.	Insufficient sales
Abbott Mines Ltd	Insufficient sales
Abby, Inc.	Insufficient sales
ABI Capital Corp.	Insufficient sales
Ableauctions.com Inc.	Insufficient sales
ABM Industries Incorporated	Accept
Absolute Software Corporation	Excessive R&D
Accelera Innovations, Inc	Going concern
Accelerated Building Concepts Corporation	Insufficient sales
Accelerated Technologies Holding Corp.	Insufficient sales
Acceleware Ltd.	Going concern
AccelGraphics, Inc.	Insufficient sales
Access Worldwide Communications, Inc.	Insufficient sales

Company	Reason
Access-Power & Co., Inc.	Insufficient sales
Accessity Corp.	Insufficient sales
Accolade, Inc.	Insufficient sales
Accredited Members Holding Corporation	Insufficient sales
Accredo Health, Incorporated	Insufficient sales
Accruent, LLC	Insufficient sales
Accugraph Corporation	Insufficient sales
Achison Inc.	Minimal operations
ACI Telecentrics Inc.	Insufficient sales
ACI Worldwide, Inc.	Excessive R&D
Ackroo Inc.	Going concern
Aclarion, Inc.	Insufficient sales
Acola Corp.	Insufficient sales
Acoustic Technologies, Inc.	Insufficient sales
ACT Teleconferencing, Inc.	Insufficient sales
Actelis Networks, Inc.	Insufficient sales
Actionview International Inc.	Insufficient sales
Active Decisions, Inc.	Insufficient sales
Active Network, LLC	Insufficient sales
Active Software, Inc.	Insufficient sales
Activision Blizzard, Inc.	Excessive advertising
Activision, Inc.	Insufficient sales
Acuity Imaging, Inc.	Insufficient sales
AcuityAds Holdings Inc.	Going concern
ACV Auctions Inc.	Insufficient sales
Adamant DRI Processing and Minerals Group	Going concern
Adams Outdoor Advertising Limited Partnership	Insufficient sales
Adaptive Ad Systems, Inc.	Insufficient sales
Adeia Inc.	Excessive R&D
AdEx Media, Inc.	Insufficient sales
AdExpress Company	Insufficient sales
Adia Services, Inc.	Insufficient sales
ADM Endeavors, Inc.	Other business
Adobe Inc.	Excessive R&D
Adomni, Inc.	Insufficient sales
Adsouth Partners Inc.	Insufficient sales
ADT Inc.	Excessive advertising
AdTheorent Holding Company, Inc.	Insufficient sales
ADVA International, Inc.	Insufficient sales
Advanced Computer Tech.	Insufficient sales
Advanced Data Exchange, Inc.	Insufficient sales
Advanced Gaming Technology Inc.	Insufficient sales
Advanced Technologies Group, Ltd.	Insufficient sales
Advanced Voice Recognition Systems, Inc.	Going concern
Advant-e Corporation	Insufficient sales
Advantage Planning, Inc.	Insufficient sales
Advantage Solutions Inc.	Related-party transactions
Advantego Corporation	Going concern
Advantex Marketing International Inc.	Going concern
Adventist Health System/West	Medical services
Advisen Ltd.	Insufficient sales
AECOM	Government
Aerius International, Inc.	Insufficient sales

Company	Reason
Affinity Global Inc.	Insufficient sales
Affluence Corporation	Insufficient sales
Agavenny Corporation	Insufficient sales
Agent Information Software, Inc.	Excessive R&D
AgileThought, Inc.	Excessive PP&E
Agiliti, Inc.	Insufficient sales
Agilysys, Inc.	Excessive R&D
Agrify Corporation	Insufficient sales
Ahern Rentals, Inc.	Insufficient sales
AiAdvertising, Inc.	Going concern
Aimia Inc.	Investment management
Aimrite Holdings Corporation	Insufficient sales
Air Lease Corporation	Leasing
Airbnb, Inc.	Insufficient sales
Airborne Security & Protective Services, Inc.	Insufficient sales
Immediate Response Technologies, Inc.	Insufficient sales
Aircastle Limited	Leasing
AirIQ Inc.	Excessive R&D
AirRover Wi-Fi Corp.	Insufficient sales
Ajia Innogroup Holdings, Ltd.	Going concern
Akamai Technologies, Inc.	Excessive R&D
Akerna Corp.	Excessive R&D
Akili, Inc.	Insufficient sales
Alarm.com Holdings, Inc.	Excessive R&D
Alarmguard Holdings, Inc.	Insufficient sales
Albara Corp.	Insufficient sales
Albion Aviation, Inc.	Insufficient sales
Aldus Corp.	Insufficient sales
Alert Centre Inc	Insufficient sales
Alight, Inc.	Insufficient sales
Alithya Group Inc.	Other markets
ALJ Regional Holdings, Inc.	Government
Alkami Technology, Inc.	Insufficient sales
All Things Mobile Analytic Inc.	Insufficient sales
All World Resources Corporation	Insufficient sales
AllDigital Holdings, Inc.	Going concern
Allegiant Professional Business Services, Inc.	Insufficient sales
Alliance Creative Group, Inc.	Accept
Alliance Funding Group, Inc.	Insufficient sales
Alliance Media Holdings Inc.	Manufacturing
Alliance Sports Group, L.P.	Insufficient sales
Alliant Energy Resources, LLC	Insufficient sales
Allied Universal Security Services LLC	Insufficient sales
Allin Corporation	Insufficient sales
Alloy, LLC	Insufficient sales
Allscripts Healthcare Solutions Inc.	Insufficient sales
Almost Country Productions Inc	Insufficient sales
Alouettes 1974 Capital Inc.	Insufficient sales
Alpha Capital Acquisition Company	Insufficient sales
Alpha Metaverse Technologies Inc.	Insufficient sales
Alpha Network Alliance Ventures Inc.	Going concern
Alpha Virtual Inc.	Insufficient sales
Alphabet Inc.	Excessive R&D

Company	Reason
Alphasmart Inc.	Insufficient sales
Alphinat Inc.	Insufficient sales
Alphinat Inc.	Going concern
ALPNET, Inc.	Insufficient sales
Altair Engineering Inc.	Excessive R&D
Altavoz Entertainment, Inc.	Going concern
Alternate Health Corp.	Going concern
Alternative Energy Partners, Inc.	Insufficient sales
Alternative Resources Corp.	Insufficient sales
Alteryx, Inc.	Excessive R&D
Altice USA, Inc.	Other business
Altium Limited	Excessive R&D
Altoona-Blair County Development Corp	Insufficient sales
Altus Group Limited	Accept
Altus Mortgage Corporation	Insufficient sales
Aluf Holdings, Inc.	Insufficient sales
Aly Energy Services, Inc.	Going concern
AMAC Inc.	Insufficient sales
Amacan Resources Corp.	Insufficient sales
Amalgamated Technologies Inc.	Insufficient sales
Amazon.com, Inc.	Excessive R&D
AmberWave, Inc.	Insufficient sales
AMBG Inc.	Insufficient sales
Amdocs Limited	Excessive R&D
AmeriMex International, Inc.	Leasing
Ameri Holdings, Inc.	Accept
America's Suppliers Inc.	Insufficient sales
American Cannabis Company, Inc.	Excessive advertising
American Caresource Holdings, Inc.	Going concern
American Defense Systems, Inc.	Insufficient sales
American Financial Corp.	Insufficient sales
American Geological Enterprises Inc.	Insufficient sales
American Healthcare Management Inc	Insufficient sales
American List Corporation	Insufficient sales
American Medserve Corporation	Insufficient sales
American Shared Hospital Services	Excessive PP&E
American Software, Inc.	Excessive R&D
American Sports Machine	Insufficient sales
American Transportation Holdings, Inc.	Insufficient sales
American Well Corporation	Insufficient sales
Ameriguard Security Services, Inc.	Insufficient sales
AmeriNet Group.com Inc.	Insufficient sales
Ameriprise Financial, Inc.	Financial services
Ameriscribe Corp	Insufficient sales
AmeriStar Network, Inc.	Insufficient sales
AmeriWorks, Inc.	Insufficient sales
Amesite Inc.	Going concern
AMN Healthcare Services, Inc.	Other services
AMN Healthcare, Inc.	Insufficient sales
Amnis Systems Inc.	Insufficient sales
AMPD Ventures Inc.	Insufficient sales
Amplitude, Inc.	Insufficient sales
AmTec, Inc.	Insufficient sales

Company	Reason
AmTrust Financial Services, Inc.	Financial services
Amur Equipment Finance, Inc.	Insufficient sales
Anacomp, Inc.	Insufficient sales
Analogy Inc.	Insufficient sales
AnalytixInsight Inc.	Going concern
Ancestry.com LLC	Insufficient sales
Ancona Mining Corporation	Insufficient sales
Andover.Net, Inc.	Insufficient sales
Andyne Computing Limited	Insufficient sales
Angi Inc.	Excessive R&D
ANSYS, Inc.	Excessive R&D
Antenna Software, Inc.	Insufficient sales
Anything Technologies Media, Inc.	Insufficient sales
API Group Corporation	Insufficient sales
Apogee 21 Holdings, Inc.	Going concern
Apollo Medical Holdings, Inc.	Healthcare services
AppFolio, Inc.	Excessive advertising
Appgate, Inc.	Insufficient sales
Appian Corporation	Excessive R&D
Applewoods Restaurants Inc.	Insufficient sales
Applied Biosystems, Inc.	Insufficient sales
Applied Capital Funding, Inc.	Insufficient sales
Applied Computer Tech.	Insufficient sales
Applied Digital Corporation	Insufficient sales
Applied Global Technologies, LLC	Insufficient sales
Applied Terravision Systems, Inc.	Insufficient sales
Applied Visual Sciences, Inc.	Going concern
Appligate Inc.	Going concern
AppLovin Corporation	Insufficient sales
AppNet, Inc.	Insufficient sales
AppSoft Technologies, Inc.	Going concern
AppTech Payments Corp.	Insufficient sales
Apptio, Inc.	Excessive R&D
APT Systems, Inc.	Going concern
Aqua Capital Corp.	Insufficient sales
Aquarius AI Inc.	Going concern
Aquest Energy Ltd.	Insufficient sales
Aquest Explorations Ltd.	Insufficient sales
Aquilex Holdings LLC	Insufficient sales
Aquilium Software Corporation	Insufficient sales
Arbor Software Corporation	Insufficient sales
Arc Communications Inc.	Insufficient sales
ARC Document Solutions, Inc.	Accept
Archimedes Tech SPAC Partners Co.	Insufficient sales
Architel Systems Corp.	Insufficient sales
Archival CD, Inc.	Insufficient sales
ARCpoint Inc.	Insufficient sales
Arctic Wolf Networks, Inc.	Insufficient sales
ARDENT Software, Inc.	Insufficient sales
Argent Capital Corp.	Insufficient sales
Argus Worldwide Corp.	Insufficient sales
Argyle Security, Inc.	Insufficient sales
ARHT Media Inc.	Going concern

Company	Reason
Arion Group Corp.	Going concern
ARIS Corporation	Insufficient sales
Arma Services, Inc.	Going concern
Armada Data Corporation	Excessive advertising
Armm Inc.	Insufficient sales
Aros Corp.	Insufficient sales
Array Networks, Inc.	Excessive R&D
Arrow Bidco, LLC	Insufficient sales
Arrowhead Gold Corp.	Going concern
Artec Global Media, Inc.	Going concern
Arteris, Inc.	Insufficient sales
ARTISTdirect, Inc.	Insufficient sales
Arway Corporation	Insufficient sales
Arzoon Inc.	Insufficient sales
Asana, Inc.	Insufficient sales
ASAP Expo Inc.	Other business
Ascend Acquisition Corp.	Insufficient sales
Ascend Learning, LLC	Insufficient sales
Ascential Software Corp.	Insufficient sales
ASGN Incorporated	Government
ASI Solutions, Inc.	Insufficient sales
Asia Media Communications Ltd.	Insufficient sales
Aspect Communications Corp.	Insufficient sales
Aspen Technology, Inc.	Insufficient sales
Aspyra Inc.	Insufficient sales
Asset Entities Inc.	Insufficient sales
AssetMark Financial Holdings, Inc.	Insufficient sales
Assisted Care Corp.	Insufficient sales
Associates Corporation of North America, Inc.	Insufficient sales
Astra Veda Corporation	Insufficient sales
Asure Software, Inc.	Excessive R&D
ATC Communications Group	Insufficient sales
ATC Healthcare, Inc.	Insufficient sales
Athena Bitcoin Global	Insufficient sales
ATI Networks, Inc.	Insufficient sales
ATIF Holdings Limited	Other markets
Atlantic Synergy Inc.	Insufficient sales
Atlas Technical Consultants, Inc.	Other services
Atlas Technology Group, Inc.	Insufficient sales
Atria Software, Inc.	Insufficient sales
Atrinsic, Inc.	Insufficient sales
ATW Tech Inc.	Going concern
ATWEC Technologies, Inc.	Insufficient sales
Audatex North America, Inc.	Insufficient sales
Auddia Inc.	Insufficient sales
Audio Communications Network, Inc.	Insufficient sales
AudioEye, Inc.	Going concern
Augmedix, Inc.	Insufficient sales
Aurora Environmental Inc.	Insufficient sales
Aurora Innovation, Inc.	Insufficient sales
Aurtex Inc.	Insufficient sales
Authentidate Holding Corp.	Insufficient sales
authID Inc.	Going concern

Company	Reason
Authoriszor Ltd.	Insufficient sales
Autoco.com, Inc.	Insufficient sales
Autodesk, Inc.	Excessive R&D
Automatic Data Processing, Inc.	Accept
Avalara, Inc.	Excessive advertising
Avalon Works Corp.	Insufficient sales
Avanceon Limited	Other markets
Avantax, Inc.	Excessive advertising
Avante Logixx Inc.	Residential services
Avatech Solutions, Inc.	Insufficient sales
AVE Inc	Insufficient sales
Aveanna Healthcare, LLC	Insufficient sales
Aventail Corporation	Insufficient sales
AvePoint, Inc.	Insufficient sales
Avid Technology, Inc.	Excessive R&D
AvidXchange Holdings, Inc.	Insufficient sales
AVIDYN, Inc.	Insufficient sales
Avistar Communications Corporation	Insufficient sales
AVOLENT, Inc.	Insufficient sales
AVP, Inc.	Insufficient sales
Avricore Health Inc.	Going concern
AVSC Holding Corp.	Insufficient sales
AvTel Communications Inc	Insufficient sales
Award Software Int'l Inc.	Insufficient sales
Aware, Inc.	Excessive R&D
AWR Corporation	Insufficient sales
Axiologix, Inc.	Insufficient sales
Axiom Management, Inc.	Insufficient sales
Axion Ventures Inc.	Going concern
Axios Mobile Assets Corp.	Going concern
AXS-One Inc.	Insufficient sales
Axtion Foods Inc	Insufficient sales
Axway Software SA	Excessive R&D
Aylen Capital Inc.	Licensing
Ayotte Music Inc.	Insufficient sales
Azzurra Holding Corporation	Going concern
B-For-G Capital Inc.	Insufficient sales
B-Scada, Inc.	Insufficient sales
B. Riley Financial, Inc.	Financial services
b2bstores.com Inc.	Insufficient sales
BA Merchant Services, Inc	Insufficient sales
BAB Holdings Inc.	Insufficient sales
Backblaze, Inc.	Insufficient sales
Backstageplay Inc.	Going concern
Bad Toys Inc.	Insufficient sales
Baja Custom Design, Inc.	Insufficient sales
Balance Labs, Inc.	Going concern
Balincan USA, Inc.	Insufficient sales
Balsam Technologies Corp.	Going concern
Bandwidth Inc.	Excessive R&D
BanESCO USA	Insufficient sales
Bang Holdings Corp.	Going concern
Baptist Healthcare System, Inc.	Healthcare services

Company	Reason
Bare Metal Standard, Inc.	Going concern
Bargain Brokers Inc.	Insufficient sales
BarPoint.com Inc.	Insufficient sales
Barrett Business Services, Inc.	Accept
Barrington Laboratories, Inc.	Insufficient sales
Bay Microsystems, Inc.	Insufficient sales
Bayview Corp.	Insufficient sales
BBN Corporation	Insufficient sales
BBTV Holdings Inc.	Insufficient sales
BCII Enterprises Inc.	Going concern
Beacon Enterprise Solutions Group, Inc.	Insufficient sales
Bell Industries, Inc.	Insufficient sales
Bellacasa Productions Inc.	Insufficient sales
Ben Holdings Ltd.	Insufficient sales
Benefitfocus, Inc.	Excessive R&D
Benson Hill, Inc.	Insufficient sales
Bentley Systems, Incorporated	Insufficient sales
BENU, Inc.	Insufficient sales
Berkeley Capital Corp. I	Insufficient sales
Berliner Communications Inc.	Insufficient sales
Betawave Corporation	Insufficient sales
Better Environment Concepts, Inc.	Insufficient sales
Better Plant Sciences Inc.	Going concern
Better Therapeutics, Inc.	Insufficient sales
Beverly and Golden Living Centers	Insufficient sales
BeWhere Holdings Inc.	Going concern
Bexar Ventures Inc.	Going concern
Beyond Commerce, Inc.	Going concern
BGC Partners, Inc.	Financial services
BGI, Inc.	Insufficient sales
BGS Systems, Inc.	Insufficient sales
BGSF, Inc.	Accept
BHPA Inc.	Insufficient sales
BHSH System	Healthcare services
BICO Inc.	Insufficient sales
BICO Inc.	Insufficient sales
Bicoastal Communications, Inc.	Insufficient sales
Big Clix Corp.	Insufficient sales
BigBand Networks, Inc.	Insufficient sales
BigBear.ai Holdings, Inc.	Insufficient sales
BigCommerce Holdings, Inc.	Insufficient sales
BigFix, Inc.	Insufficient sales
BIGG Digital Assets Inc.	Going concern
BigString Corporation	Insufficient sales
BIGtoken, Inc.	Insufficient sales
BILL Holdings, Inc.	Insufficient sales
BindView Development Corp.	Insufficient sales
Binovi Technologies Corp.	Going concern
Bio Angel I Corp.	Insufficient sales
Bio Lab Naturals, Inc.	Insufficient sales
Bio Lab Naturals, Inc.	Insufficient sales
Bio Lab Naturals, Inc.	Insufficient sales
BIO-key International, Inc.	Going concern

Company	Reason
Bio-Matrix Scientific Group, Inc.	Insufficient sales
Biofarm Inc.	Insufficient sales
Bionoid Pharma Inc.	Insufficient sales
BioStem Inc.	Insufficient sales
Bit Digital, Inc.	Insufficient sales
Bit Origin Ltd	Financial services
Bitcoin Generation Inc.	Insufficient sales
Bitcoin Well Inc.	Insufficient sales
Bitfarms Ltd.	Insufficient sales
BitFrontier Capital Holdings, Inc.	Insufficient sales
Bitmine Immersion Technologies, Inc.	Insufficient sales
Black Box Entertainment Ltd.	Insufficient sales
Black Diamond Group Limited	Government
Black Dragon Resource Companies, Inc.	Insufficient sales
Black Knight InfoServ, LLC	Insufficient sales
Black Knight, Inc.	Financial services
Blackbaud, Inc.	Excessive R&D
BlackBerry Limited	Excessive advertising
Blackboard Inc.	Insufficient sales
Blackboxstocks Inc.	Going concern
Blackline Safety Corp.	Excessive R&D
BlackLine, Inc.	Excessive advertising
BlackSky Technology Inc.	Insufficient sales
Blackwell Capital Inc.	Insufficient sales
Blend Labs, Inc.	Insufficient sales
BLGI, Inc.	Going concern
Block Financial LLC	Financial services
Block, Inc.	Excessive advertising
Blockchain Venture Capital Inc.	Insufficient sales
BlockchainK2 Corp.	Going concern
Blockmint Technologies Inc.	Insufficient sales
BlockQuarry Corp.	Going concern
BLOK Technologies Inc.	Going concern
Blox Labs Inc.	Going concern
Blue Diamond Ventures, Inc.	Insufficient sales
Blue Line Protection Group, Inc.	Going concern
Blue Star Opportunities Corp.	Insufficient sales
BlueOne Card, Inc.	Insufficient sales
BluePrint Technologies, Inc.	Insufficient sales
BlueRush Inc.	Excessive advertising
Bluesky Digital Assets Corp.	Going concern
BluMetric Environmental Inc.	Going concern
BM Technologies, Inc.	Insufficient sales
BMW US Capital, LLC	Financial services
Boardwalktech Software Corp.	Going concern
Boatim Inc.	Going concern
BOC Aviation (USA) Corporation	Insufficient sales
Boeing Capital Corporation	Insufficient sales
Boku, Inc.	Excessive R&D
Bolivar Goldfields Ltd.	Insufficient sales
Bonanza Gold Inc.	Insufficient sales
Booking Holdings Inc.	Excessive advertising
Booz Allen Hamilton Holding Corporation	Accept

Company	Reason
Booz Allen Hamilton Inc.	Insufficient sales
Born Inc.	Insufficient sales
Born Inc.	Insufficient sales
BorrowMoney.com, Inc.	Going concern
Boston Omaha Corporation	Excessive PP&E
BOTS, Inc.	Going concern
Bowstreet, Inc.	Insufficient sales
Box, Inc.	Excessive advertising
Boxer Parent Company, Inc.	Insufficient sales
Bragg Gaming Group Inc.	Going concern
BrainyBrawn, Inc.	Insufficient sales
Brand Industrial Services, Inc.	Insufficient sales
Brandon Systems Corp.	Insufficient sales
Bravatek Solutions, Inc.	Going concern
Bravo Multinational Incorporated	Going concern
Braze, Inc.	Insufficient sales
BRCH Corporation	Insufficient sales
Bread Financial Holdings, Inc.	Financial services
Breaking Data Corp.	Going concern
BreedIT Corp.	Insufficient sales
Bridge Communications, Inc.	Insufficient sales
Bridgeline Digital, Inc.	Excessive advertising
Bridger Aerospace Group Holdings, Inc.	Insufficient sales
Bright Mountain Media, Inc.	Going concern
Brightcove Inc.	Excessive R&D
BrightStar Information Technology Group, Inc.	Insufficient sales
Brio Software, Inc.	Insufficient sales
Briotix Inc.	Insufficient sales
Broad Scope Enterprises, Inc.	Insufficient sales
Broadcast Live Digital Corp.	Insufficient sales
Broadridge Content Solutions, Inc.	Insufficient sales
Broadridge Financial Solutions, Inc.	Financial services
BrowseUp, Inc.	Insufficient sales
BSD Software Inc.	Insufficient sales
BSQUARE Corporation	Excessive R&D
BTCS Inc.	Going concern
Bubblr Inc.	Software
Budgethotels Network Inc.	Insufficient sales
Buffalo Capital IV, Ltd.	Insufficient sales
BuildPoint Corporation	Insufficient sales
Bull Run Corp.	Insufficient sales
Bullet Blockchain, Inc.	Insufficient sales
Bullfrog AI Holdings, Inc.	Insufficient sales
Bumble Inc.	Insufficient sales
Bunge Limited Finance Corp.	Insufficient sales
Burns International Services Corp.	Insufficient sales
Business Warrior Corporation	Insufficient sales
Butler National Corporation	Excessive R&D
Buzz Technologies, Inc.	Insufficient sales
BuzzFeed, Inc.	Insufficient sales
BWX Technologies, Inc.	Manufacturing
BYND Cannasoft Enterprises Inc.	Insufficient sales
Byron Preiss Multimedia Company, Inc.	Insufficient sales

Company	Reason
C-ATS Software, Inc.	Insufficient sales
C-Bond Systems, Inc.	Going concern
C-Bridge Internet Solutions, Inc.	Insufficient sales
C.M. Oliver, Inc.	Insufficient sales
C3.ai, Inc.	Insufficient sales
CA, Inc.	Excessive R&D
Cabal Communications Corporation	Insufficient sales
CACI International Inc	Government
Cadence Design Systems, Inc.	Excessive R&D
Caduceus Software Systems Corp.	Insufficient sales
CalAmp Corp.	Excessive R&D
Calian Group Ltd.	Manufacturing
CAM Group, Inc.	Insufficient sales
Cambridge Resources Corp.	Insufficient sales
Caminus Corporation	Insufficient sales
Campbell, Guin, Williams, Guy & Gidiere, LLC	Insufficient sales
Canada West Capital Inc.	Insufficient sales
Cancer Detection Corp.	Insufficient sales
Canna Corporation	Going concern
Cannabiz Mobile, Inc.	Insufficient sales
Cantaloupe, Inc.	Financial services
Capital Growth Systems Inc.	Insufficient sales
Capital Impact Partners	Financial services
Capstone Financial Group, Inc.	Insufficient sales
Caranything.Com, Inc.	Insufficient sales
Carbeeza Inc.	Insufficient sales
CarbonMeta Technologies, Inc.	Going concern
CardioComm Solutions, Inc.	Going concern
Cardlytics, Inc.	Excessive R&D
Cardtronics, Inc.	Insufficient sales
Carebook Technologies Inc.	Insufficient sales
CareCloud, Inc.	Going concern
CareInsite, Inc.	Insufficient sales
Caremerge, Inc.	Insufficient sales
Carepay Inc.	Insufficient sales
CareRx Corporation	Retail services
CareSpan Health, Inc.	Insufficient sales
CareView Communications, Inc.	Going concern
Cargo Aircraft Management, Inc.	Insufficient sales
CarGurus, Inc.	Excessive advertising
Cariocas, Inc.	Insufficient sales
Carmina Technologies, Inc.	Insufficient sales
Carreker Corporation	Insufficient sales
Cars.com Inc.	Excessive advertising
CarsUnlimited.com Inc.	Insufficient sales
Cartera Commerce Inc.	Insufficient sales
Cartier Partners Financial Group Inc	Insufficient sales
Cascade Mountain Mining Co. Inc.	Insufficient sales
Cascadia Blockchain Group Corp.	Going concern
Cashbox Ventures Ltd.	Insufficient sales
Cashman Equipment Company	Insufficient sales
Casino & Credit Services	Insufficient sales
Cass Information Systems, Inc.	Accept

Company	Reason
Castellum, Inc.	Insufficient sales
Castle US Holding Corporation	Insufficient sales
Catalytica Energy Systems Inc.	Insufficient sales
Cathedra Bitcoin Inc.	Insufficient sales
Catholic Health Initiatives	Insufficient sales
Cayenne Software Inc.	Insufficient sales
CBIZ, Inc.	Government
CBRE Services, Inc.	Insufficient sales
CC Neuberger Principal Holdings II	Insufficient sales
CCC Intelligent Solutions Holdings Inc.	Insufficient sales
CCR, Inc.	Insufficient sales
CDG Investments, Inc.	Insufficient sales
CDK Global, Inc.	Excessive R&D
CE Software Holdings, Inc	Insufficient sales
CEA Acquisition Corp.	Insufficient sales
Celebration Cellars Ltd.	Insufficient sales
Celebrity Entertainment Group Inc	Insufficient sales
Celerity Solutions, Inc.	Insufficient sales
CellNet Data Systems Inc.	Insufficient sales
CEN Biotech, Inc.	Going concern
Cendura Corporation	Insufficient sales
Cengent Therapeutics Inc.	Insufficient sales
Centerspan Communications Corp.	Insufficient sales
Centra Software Inc.	Insufficient sales
Century Financial Services Corporation	Insufficient sales
Century Next Financial Corporation	Financial services
CEO America, Inc.	Insufficient sales
Ceon Corporation	Insufficient sales
Cerberus Cyber Sentinel Corporation	Insufficient sales
Cerence Inc.	Insufficient sales
Ceridian HCM Holding Inc.	Excessive R&D
Cerplex Group Inc.	Insufficient sales
Certara, Inc.	Insufficient sales
Certegy Inc.	Insufficient sales
Certified Services Inc.	Insufficient sales
Certive Solutions Inc.	Going concern
CERTPOINT Systems Inc.	Insufficient sales
CF Acquisition Corp. V	Insufficient sales
CF Acquisition Corp. VI	Insufficient sales
CFN Enterprises Inc.	Excessive R&D
CFO Consultants, Inc.	Insufficient sales
CGI Inc.	Government
Champion Gaming Group Inc.	Insufficient sales
Change Healthcare Holdings, LLC	Insufficient sales
Changsheng International Group Limited	Insufficient sales
Chantal Skin Care Corp.	Insufficient sales
Charge Enterprises, Inc.	Insufficient sales
Charmt, Inc.	Going concern
Chegg, Inc.	Excessive R&D
Chelsio Communications, Inc.	Insufficient sales
Cherokee Investments Inc	Insufficient sales
Chesswood Group Limited	Financial services
CHG Healthcare Services, Inc.	Insufficient sales

Company	Reason
Chicago Health System Inc	Insufficient sales
Children's Hospital Of Orange County	Insufficient sales
China Crescent Enterprises, Inc.	Insufficient sales
China Mulans Nano Technology Corp., Ltd.	Insufficient sales
China Score Inc.	Insufficient sales
China Unistone Acquisition Corp.	Insufficient sales
China Yanyuan Yuhui Natl Ed Group Inc.	Insufficient sales
Chiropractic 21 International Inc.	Insufficient sales
CHR Investment Corporation	Insufficient sales
CHUMA HOLDINGS, INC.	Going concern
Churchill Capital Corp III	Insufficient sales
Chutney Technologies, Inc.	Insufficient sales
Ci4net.com, Inc.	Insufficient sales
Cicero Inc.	Going concern
Cimnet Inc.	Insufficient sales
Cincinnati Bell Inc.	Regulated industry
Cinimage Capital Corp.	Insufficient sales
Cintas Corporation	Leasing
Cipher Mining Inc.	Insufficient sales
Cipherloc Corporation	Going concern
Circadence Corporation	Insufficient sales
Circle.com	Insufficient sales
Cistera Networks, Inc.	Insufficient sales
CIT Group Inc.	Excessive PP&E
Citadel EFT, Inc.	Insufficient sales
Citadel Environmental Group Inc	Insufficient sales
CITATION Computer Systems	Insufficient sales
Citibank, N.A.	Insufficient sales
Citizens Bank, National Association	Insufficient sales
Citrix Systems, Inc.	Excessive R&D
CKS Group, Inc.	Insufficient sales
Claremont Technology Group, Inc.	Insufficient sales
Clareos, Inc.	Insufficient sales
Clarity Telecom Networking Inc	Insufficient sales
Clarocity Corporation	Going concern
ClassWorx, Inc.	Insufficient sales
CleanSpark, Inc.	Going concern
CleanTech Acquisition Corp.	Insufficient sales
Clear Channel Outdoor Holdings, Inc.	Other business
Clear Secure, Inc.	Insufficient sales
ClearStory Systems, Inc.	Insufficient sales
Cleartronic, Inc.	Going concern
Clearwater Analytics Holdings, Inc.	Insufficient sales
ClickStream Corporation	Going concern
Clip Money Inc.	Insufficient sales
Clone Algo Technologies Inc.	Insufficient sales
Cloud DX Inc.	Insufficient sales
Cloud Nine Web3 Technologies Inc.	Going concern
Cloudflare, Inc.	Excessive advertising
CloudMD Software & Services Inc.	Going concern
Cloudweb, Inc.	Going concern
CLStv Corp.	Insufficient sales
Clubhouse Media Group, Inc.	Insufficient sales

Company	Reason
CMG Holdings Group, Inc.	Going concern
cMoney, Inc.	Insufficient sales
CNET Media Group	Insufficient sales
Co-Counsel, Inc.	Insufficient sales
CoConnect, Inc.	Going concern
Coda Music Technology, Inc.	Insufficient sales
Coffaro Family Products, Inc.	Insufficient sales
Cogent Communications Group, Inc.	Insufficient sales
Cognizant Technology Solutions Corporation	Accept
Coin Citadel	Insufficient sales
CoinAnalyst Corp.	Insufficient sales
Coinbase Global, Inc.	Insufficient sales
CollabRx, Inc.	Insufficient sales
Collectibles America, Inc.	Insufficient sales
Collectibles Entertainment, Inc.	Insufficient sales
Collexis Holdings Inc.	Insufficient sales
Columbia Bakeries Inc.	Insufficient sales
Com-Guard.com, Inc.	Insufficient sales
Comamtech Inc.	Insufficient sales
Combined Professional Services, Inc.	Insufficient sales
Comdata Holdings Corporation	Insufficient sales
Comepay, Inc.	Insufficient sales
Comerton Corp.	Insufficient sales
ComF5 International, Inc.	Insufficient sales
ComGen Corp.	Insufficient sales
Command Center, Inc.	Accept
Command Systems, Inc.	Insufficient sales
Commercial Labor Management Inc	Insufficient sales
Committed Capital Acquisition Corporation	Insufficient sales
Communications Synergy Technologies, Inc.	Insufficient sales
Communications Systems, Inc.	Excessive R&D
Community Health Comput.	Insufficient sales
Community Health Network Inc.	Insufficient sales
Community Redevelopment Inc.	Insufficient sales
Commvault Systems, Inc.	Excessive R&D
Compass, Inc.	Insufficient sales
Compeer Financial, ACA.	Insufficient sales
CompLink Limited Inc.	Insufficient sales
Comprehensive Healthcare Systems, Inc.	Insufficient sales
CompuMed, Inc.	Insufficient sales
CompuRad, Inc.	Insufficient sales
Computer Language Research, Inc.	Insufficient sales
Computer Modelling Group Ltd.	Excessive R&D
Computer Petroleum Corp	Insufficient sales
Computer Programs and Systems, Inc.	Excessive R&D
Computer Task Group, Incorporated	Accept
Computershare Us	Insufficient sales
Computervision Corp.	Insufficient sales
CompuTrac, Inc.	Insufficient sales
comScore, Inc.	Excessive R&D
COMSovereign Holding Corp.	Insufficient sales
COMTEX News Network, Inc.	Insufficient sales
Comverse Technology Inc.	Insufficient sales

Company	Reason
Concentra Corporation	Insufficient sales
Concentric Network Corporation	Insufficient sales
Concentrix Corporation	Insufficient sales
Concerto Software, Inc.	Insufficient sales
Concorde America, Inc.	Insufficient sales
Conduent Business Services, LLC	Insufficient sales
Conduent Incorporated	Government
Confluent, Inc.	Insufficient sales
Connected Media Technologies Inc.	Insufficient sales
Connected Media Technologies Inc.	Insufficient sales
ConnectInc.com Company	Insufficient sales
Connexus Corporation	Insufficient sales
Connexus Corporation	Going concern
Consensus Cloud Solutions, Inc.	Insufficient sales
Conserve Inc.	Insufficient sales
Consilium, Inc.	Insufficient sales
Consolidated Builders Supply Corporation	Insufficient sales
Consolidated Gold Holdings, Inc	Insufficient sales
Consolidated Pictures Corp.	Insufficient sales
Consolidated Team Resources Corp.	Insufficient sales
Consolidated Technologies Holdings, Inc.	Insufficient sales
Constellation Software Inc.	Excessive R&D
ConsultAmerica Inc.	Insufficient sales
Consumers Financial Corporation	Insufficient sales
Contagious Gaming Inc.	Going concern
Contessa Corporation	Insufficient sales
Control Data System, Inc.	Insufficient sales
Converge Global Inc.	Insufficient sales
Converge Technology Solutions Corp.	Insufficient sales
Converged Access Inc.	Insufficient sales
Convergent Solutions	Insufficient sales
Conversant LLC	Insufficient sales
Coolbrands International Inc.	Insufficient sales
Cooper & Chyan Technology	Insufficient sales
Cooper Holding Corp.	Insufficient sales
Copart, Inc.	Other services
Copperleaf Technologies Inc.	Insufficient sales
CoreCard Corporation	Excessive R&D
CoreCivic, Inc.	Excessive PP&E
CoreLogic, Inc.	Other markets
Corfacts, Inc.	Insufficient sales
Cornerstone OnDemand, Inc.	Excessive R&D
Cornucopia Resources Ltd.	Insufficient sales
Coro Global Inc.	Going concern
Corona Investments Inc.	Insufficient sales
Corporate Development Centers, Inc.	Insufficient sales
Corsair Communications	Insufficient sales
CorVel Corporation	Accept
Cosmos Health Inc.	Going concern
CoStar Group, Inc.	Excessive advertising
Costar Technologies, Inc.	Excessive R&D
Costas, Inc.	Insufficient sales
Coty Inc.	Excessive advertising

Company	Reason
Couchbase, Inc.	Insufficient sales
CounterPath Solutions Inc.,	Insufficient sales
Coupa Software Incorporated	Excessive R&D
Coursera, Inc.	Insufficient sales
Covenant Financial Corp.	Insufficient sales
Coveo Solutions Inc.	Insufficient sales
Cox Communications, Inc.	Insufficient sales
CPL Capital, Inc.	Insufficient sales
CRA International, Inc.	Accept
Crane & Co., Inc.	Insufficient sales
Crawford Lake Mining Inc.	Insufficient sales
Creatd, Inc.	Going concern
Creative Learning Corporation	Excessive advertising
Creative Master International, Inc.	Insufficient sales
Creative Realities, Inc.	Going concern
Creative Vistas, Inc.	Insufficient sales
CreditRiskMonitor.com, Inc.	Accept
Creditrust Corporation	Insufficient sales
Creek Road Miners, Inc.	Financial services
Crescent Acquisition Corp.	Insufficient sales
Crexendo, Inc.	Excessive R&D
Critical Power Solutions International, Inc.	Insufficient sales
Cross Check Corp.	Insufficient sales
Cross Country Healthcare, Inc.	Accept
CrowdStrike Holdings, Inc.	Excessive R&D
Crown Cap Ventures Ltd.	Insufficient sales
Crown City Pictures, Inc.	Insufficient sales
Crown Equity Holdings Inc.	Going concern
CRSI Group Inc.	Insufficient sales
Cruisestock Inc	Insufficient sales
Cryptoblox Technologies Inc.	Going concern
CryptoStar Corp.	Financial services
CS Disco, Inc.	Insufficient sales
CSG Systems International, Inc.	Excessive R&D
CSP Inc.	Distribution
CST Entertainment Inc.	Insufficient sales
CTI Group Holdings Inc.	Insufficient sales
CTPartners Executive Search Inc.	Insufficient sales
CTR Investments & Consulting, Inc.	Insufficient sales
Curative Biotechnology, Inc.	Insufficient sales
CuriosityStream Inc.	Insufficient sales
CurrentC Power Corporation	Insufficient sales
Custom Designed Compressor Systems, Inc.	Insufficient sales
Custom Touch Electronics, Inc.	Insufficient sales
Custom Truck One Source, Inc.	Leasing
Cutwater Capital Corp.	Insufficient sales
Cvent Holding Corp.	Insufficient sales
CVF Technologies Corporation	Insufficient sales
Cybeats Technologies Corp.	Insufficient sales
Cyber Apps World Inc.	Going concern
Cyber Group Network Corp.	Insufficient sales
Cyber Informatix, Inc.	Insufficient sales
Cyber Operations, Inc.	Insufficient sales

Company	Reason
Cyberedge Enterprises, Inc.	Insufficient sales
Cyberfort Software, Inc.	Going concern
CyberGold, Inc.	Insufficient sales
CyberGuard Corp.	Insufficient sales
Cyberlog Technologies, Inc.	Going concern
CyberZONE, Inc.	Insufficient sales
CYBRA Corporation	Insufficient sales
CyCare Systems, Inc.	Insufficient sales
Cyclone Holdings, Inc.	Insufficient sales
Cygnus E Transaction Group Inc., Prior to Reverse Merger with Cygnus Entertainment, Inc.	Insufficient sales
Cygnus eTransaction Group, Inc.	Insufficient sales
Cyngn Inc.	Insufficient sales
Cypher Metaverse Inc.	Going concern
CyrusOne LP	Insufficient sales
Cytta Corp.	Insufficient sales
Cyveillance, Inc.	Insufficient sales
Cyxtera Technologies, Inc.	Insufficient sales
D-Wave Quantum Inc.	Insufficient sales
D2L Inc.	Insufficient sales
DA Consulting Group Inc.	Insufficient sales
Daily Journal Corporation	Other business
Dalrada Financial Corporation	Insufficient sales
Data Call Technologies, Inc.	Other services
Data Dimensions, Inc.	Insufficient sales
Data Domain, Inc.	Insufficient sales
Data Growth, Inc.	Insufficient sales
Data Processing Resources Corporation	Insufficient sales
Data Research Associates, Inc.	Insufficient sales
Data Storage Corporation	Government
Data443 Risk Mitigation, Inc.	Going concern
Datable Technology Corporation	Going concern
Datadog, Inc.	Insufficient sales
DataLogic International, Inc.	Insufficient sales
Datalogix International	Insufficient sales
Datametrex AI Limited	Going concern
DataMiners Capital Corp.	Insufficient sales
DATATRAK International, Inc.	Other services
DatChat, Inc.	Going concern
Datec Group Ltd.	Insufficient sales
Dave Inc.	Insufficient sales
Day Tradexchange, Inc.	Insufficient sales
Dazed, Inc.	Insufficient sales
Decentral Life, Inc.	Going concern
Decision Diagnostics Corp.	Healthcare services
DecisionLink Corporation	Insufficient sales
Decisionpoint Systems, Inc.	Going concern
Deep Blue Marine, Inc.	Insufficient sales
Deep Field Technologies, Inc.	Insufficient sales
DeepMarkit Corp.	Going concern
DeepSpatial Inc.	Insufficient sales
Definitive Healthcare Corp.	Insufficient sales
Degama Software Solutions, Inc.	Insufficient sales
Delano Technology Corporation	Insufficient sales

Company	Reason
Delic Holdings Corp.	Insufficient sales
Delivery Now Corp.	Insufficient sales
Delrina Corporation	Insufficient sales
Delwinds Insurance Acquisition Corp.	Insufficient sales
Demand Brands, Inc.	Insufficient sales
Demand Brands, Inc.	Insufficient sales
Democrasoft Holdings, Inc.	Insufficient sales
Dephasium Corp.	Insufficient sales
Destiny Media Technologies Inc.	Excessive R&D
Detwiler Fenton Group, Inc.	Insufficient sales
Developer Ventures Inc.	Insufficient sales
Devolver Digital, Inc.	Insufficient sales
Dewmar International BMC, Inc.	Going concern
Dewmella Inc.	Insufficient sales
Dexterra Group Inc.	Insufficient sales
DGTL Holdings Inc.	Insufficient sales
DHI Group, Inc.	Excessive advertising
Diagnamed Holdings Corp.	Insufficient sales
DIAGNOS Inc.	Going concern
Diamond I, Inc.	Insufficient sales
Dicom Imaging Systems	Insufficient sales
Digatrade Financial Corp.	Going concern
Digerati Technologies, Inc.	Going concern
Digihost Technology Inc.	Insufficient sales
Digimarc Corporation	Excessive R&D
Digital Angel Corporation	Insufficient sales
Digital Brand Media & Marketing Group, Inc.	Going concern
Digital Generation Systems Inc.	Insufficient sales
Digital Media Solutions, Inc.	Insufficient sales
Digital Metcom Inc	Insufficient sales
Digital Processing Systems Inc.	Insufficient sales
Digital River Inc.	Insufficient sales
Digital Turbine, Inc.	Excessive R&D
Digital Utilities Ventures, Inc.	Insufficient sales
DigitalGlobe, Inc.	Insufficient sales
Digitalnet Holdings Inc.	Insufficient sales
DigitalOcean Holdings, Inc.	Insufficient sales
Digitalthink Inc.	Insufficient sales
digitiliti, Inc.	Insufficient sales
Digitran Systems, Inc.	Insufficient sales
Dignity Health	Healthcare services
DiMark, Inc.	Insufficient sales
Dimension Five Technologies Inc.	Going concern
Dimensional Medicine Inc	Insufficient sales
Direct Communication Solutions, Inc.	Insufficient sales
Direct Digital Holdings, Inc.	Insufficient sales
Direct Equity International, Inc.	Insufficient sales
Discovery Acquisitions Inc.	Insufficient sales
Diversified Energy Company PLC	Excessive PP&E
Diversified Strategies, Inc.	Insufficient sales
DLD Group, Inc.	Insufficient sales
DLH Holdings Corp.	Government
DLT Resolution Inc.	Going concern

Company	Reason
DMG Blockchain Solutions Inc.	Insufficient sales
Docebo Inc.	Excessive R&D
Docucon Inc	Insufficient sales
DocuSign, Inc.	Excessive advertising
Dolphin Entertainment, Inc.	Going concern
Dome Corporation	Insufficient sales
Dominix, Inc.	Insufficient sales
Domo, Inc.	Excessive advertising
Donar Enterprises Inc.	Insufficient sales
Donnelley Financial Solutions, Inc.	Accept
Donobi Inc.	Insufficient sales
DoubleVerify Holdings, Inc.	Insufficient sales
Dovarri, Inc.	Insufficient sales
Dow Inc.	Distribution
Doxa Energy Ltd.	Going concern
Doximity, Inc.	Insufficient sales
DPCM Capital, Inc.	Insufficient sales
Dr. Owl Online Inc.	Insufficient sales
Dragoneer Growth Opportunities Corp. II	Insufficient sales
DrazCanna, Inc.	Going concern
Dream Wizards Investments Ltd.	Insufficient sales
Driftwood Ventures Inc.	Insufficient sales
DriveltAway Holdings, Inc.	Insufficient sales
Dropbox, Inc.	Excessive advertising
DropCar, Inc.	Excessive R&D
DSS, Inc.	Other services
DST Systems, Inc.	Financial services
Duck Creek Technologies, Inc.	Insufficient sales
Duff & Phelps Cr. Rating	Insufficient sales
Dufort Capital Inc.	Insufficient sales
Duke University Health System, Inc.	Insufficient sales
Dun & Bradstreet Holdings, Inc.	Other business
Dundee Resort Development LLC	Other business
Duo World, Inc.	Going concern
Duolingo, Inc.	Insufficient sales
Duos Technologies Group, Inc.	Going concern
DXC Technology Company	Accept
DXStorm.com Inc.	Going concern
Dye & Durham Limited	Excessive R&D
DynamicWeb Enterprises	Insufficient sales
Dynasty Gaming Inc.	Insufficient sales
Dynatrace, Inc.	Excessive R&D
Dynetics, Inc.	Insufficient sales
DynTek, Inc.	Government
E Automotive Inc.	Insufficient sales
E-Auto Networks, Inc.	Insufficient sales
E-City Software	Insufficient sales
e-Direct Inc.	Insufficient sales
E-Monee.com, Inc	Insufficient sales
e-Synergies, Inc.	Insufficient sales
E2open Parent Holdings, Inc.	Insufficient sales
Ealixir, Inc.	Insufficient sales
Earth Life Sciences Inc.	Going concern

Company	Reason
EarthLabs Inc.	Going concern
Easel Corporation	Insufficient sales
East Side Games Group Inc.	Insufficient sales
Eastern Air Lines Group, Inc.	Insufficient sales
Eastern Goldfields, Inc.	Insufficient sales
Easy Groups, Ltd.	Insufficient sales
EasyLink Services International Corporation	Insufficient sales
EAV Ventures Corp.	Insufficient sales
eBay Inc.	Excessive advertising
Ebisdot.com Inc.	Insufficient sales
Ebix, Inc.	Excessive R&D
Echopass Corporation	Insufficient sales
Ecogate Inc	Insufficient sales
Ecologic Transportation, Inc.	Insufficient sales
Ecom Products Group Corporation	Insufficient sales
EcoPlus Inc.	Insufficient sales
Ecid, Inc.	Insufficient sales
Eddy Smart Home Solutions Ltd.	Insufficient sales
Edge Total Intelligence Inc.	Insufficient sales
Edgetech Services Inc.	Insufficient sales
Edgewater Technology, Inc.	Accept
Edgio, Inc.	Excessive R&D
EDmin, Inc.	Insufficient sales
Education Networks of America, Inc.	Insufficient sales
EduLink Inc.	Insufficient sales
EFH Group, Inc.	Insufficient sales
eFotoXpress, Inc.	Insufficient sales
eFUEL EFN, CORPORATION	Insufficient sales
eGain Corporation	Excessive R&D
Egenera, Inc.	Insufficient sales
EGF Theramed Health Corp.	Insufficient sales
eGuidedeals.com Inc.	Insufficient sales
EHAVE, Inc.	Going concern
EJF Acquisition Corp.	Insufficient sales
EJH Entertainment, Inc.	Insufficient sales
eLandia International, Inc.	Insufficient sales
ELAST Technologies, Inc.	Insufficient sales
Elastic N.V.	Excessive R&D
Elcom International Inc.	Insufficient sales
ElDorado Financial Group, Inc.	Insufficient sales
ELE Capital Corp.	Insufficient sales
Electrobusiness.com Inc.	Insufficient sales
Electronic Arts Inc.	Excessive advertising
Electronic Global Broadcasting System	Insufficient sales
Electronic Identification Inc.	Insufficient sales
Electronic Processing Inc. Prior to Reverse Merger with EPIQ Systems Inc.	Insufficient sales
Electronic Servitor Publication Network, Inc.	Going concern
Elegant Concrete, Inc.	Insufficient sales
Element Fleet Management Corp.	Excessive PP&E
Elevance Health, Inc.	Healthcare services
Eloquent, Inc.	Insufficient sales
EM Quantum Technologies Inc.	Insufficient sales
Emazing Interactive Inc.	Insufficient sales

Company	Reason
Embark Technology, Inc.	Insufficient sales
eMedia Group Inc.	Insufficient sales
Emerald Holding, Inc.	Other services
Emerald Powerboats Inc.	Insufficient sales
Emergent Capital, Inc.	Financial services
Empatho Holdings Inc.	Insufficient sales
Emperative, Inc.	Insufficient sales
Empire Communications Corp	Insufficient sales
Empirical Inc.	Insufficient sales
Empower Technologies Corp.	Insufficient sales
Emtec Inc.	Insufficient sales
Enable Holdings, Inc.	Insufficient sales
Encompass Compliance Corporation	Insufficient sales
Encore Capital Group, Inc.	Financial services
Encounter Development Technologies Inc.	Insufficient sales
EncounterCare Solutions, Inc.	Insufficient sales
Endo Networks Inc.,	Insufficient sales
Endurance Exploration Group, Inc.	Going concern
Energy Today Inc.	Insufficient sales
Enfusion, Inc.	Insufficient sales
Engage Mobility, Inc.	Going concern
EngageSmart, Inc.	Insufficient sales
Enghouse Systems Limited	Excessive R&D
Engine Gaming and Media, Inc.	Going concern
Engineering Animation, Inc.	Insufficient sales
Enherent Corp.	Insufficient sales
enherent Corp.	Insufficient sales
Enigma-Bulwark, Limited	Going concern
Enterprise Community Loan Fund, Inc.	Insufficient sales
Enterprise Group, Inc.	Excessive PP&E
Enterprise Informatics, Inc.	Insufficient sales
Enterprise Oil Ltd.	Insufficient sales
Enterprise Systems, Inc.	Insufficient sales
Enterra Corp.	Insufficient sales
Entertainment Arts Research Inc.	Insufficient sales
Entertainment Arts Research, Inc.	Insufficient sales
Entertainment Arts, Inc.	Insufficient sales
Entheos Capital Corp.	Going concern
Enthusiast Gaming Holdings Inc.	Insufficient sales
Entigo Corporation	Insufficient sales
EntrePort Corporation	Insufficient sales
eNucleus, Inc.	Insufficient sales
Envestnet, Inc.	Excessive R&D
Enviance, Inc.	Insufficient sales
Enviro Global Corp.	Insufficient sales
Enviro-Serv, Inc.	Insufficient sales
Environmental Credits, Ltd.	Insufficient sales
Environmental Service Professionals, Inc.	Insufficient sales
Envoy Capital Group, Inc.	Insufficient sales
EOS International, Inc.	Insufficient sales
EPAM Systems, Inc.	Other services
Epazz, Inc.	Going concern
EPIC Design Technology, Inc.	Insufficient sales

Company	Reason
Epicor Software Corporation	Insufficient sales
Epicor Software Corporation	Insufficient sales
epipeline, Inc.	Insufficient sales
ePlay Digital Inc.	Going concern
EQ Inc.	Going concern
EQM Technologies & Energy, Inc.	Insufficient sales
Equifax Inc.	Financial services
Equipment Finance Corporation	Insufficient sales
ERAC USA Finance LLC	Insufficient sales
eShare Communications, Inc.	Insufficient sales
Essential Reality Inc.	Insufficient sales
Ether Capital Corporation	Insufficient sales
Etsy, Inc.	Excessive R&D
eUniverse, Inc., Prior to Reverse Merger with Intermix Media Inc.	Insufficient sales
European Wax Center, Inc.	Insufficient sales
Eventbrite, Inc.	Excessive R&D
Everbridge, Inc.	Excessive R&D
EverCommerce Inc.	Insufficient sales
Everdime Technologies, Inc.	Insufficient sales
Everi Holdings Inc.	Other services
Everi Payments Inc.	Insufficient sales
EverQuote, Inc.	Excessive advertising
EVERTEC, Inc.	Other markets
Everything Blockchain, Inc.	Going concern
EVmo, Inc.	Going concern
EVO Payments, Inc.	Other services
Evolent Health, Inc.	Excessive R&D
Evolution Technology Resources Inc.	Insufficient sales
Evolve Bancorp, Inc	Insufficient sales
eWellness Healthcare Corporation	Going concern
Exa Corporation	Excessive R&D
Excel Corporation	Going concern
Excel Publishing Inc.	Insufficient sales
Excelergy Corporation	Insufficient sales
Excite, Inc.	Insufficient sales
EXDS Inc.	Insufficient sales
eXeBlock Technology Corporation	Going concern
Executive Detail Corp.	Insufficient sales
Exela Technologies, Inc.	Financial services
Exelon Corporation	Excessive PP&E
Exigent International, Inc.	Insufficient sales
ExlService Holdings, Inc.	Accept
Exobox Technologies Corp.	Insufficient sales
Exodus Movement, Inc.	Insufficient sales
Expedition Leasing Inc.	Insufficient sales
Expensify, Inc.	Insufficient sales
Exponent, Inc.	Other services
Express Capital Concepts Inc.	Insufficient sales
Expro Group Holdings N.V.	Excessive R&D
Exterran Energy Solutions, L.P.	Insufficient sales
Exthop Technologies Inc	Insufficient sales
Exult Inc.	Insufficient sales
Eyes on the Go, Inc.	Insufficient sales

Company	Reason
EZ Travel, Inc.	Insufficient sales
EZ2 Companies Inc.	Insufficient sales
EZENET Corp.	Insufficient sales
Ezenia!, Inc.	Insufficient sales
F2 Broadcast Network Inc.	Insufficient sales
F5, Inc.	Excessive R&D
FactSet Research Systems Inc.	Excessive R&D
Fair Isaac Corporation	Excessive R&D
FalconStor Software, Inc.	Going concern
Fame Productions, Inc.	Insufficient sales
Famous Fixins Inc.	Insufficient sales
Fandifi Technology Corp.	Going concern
Fansfrenzy Corporation	Insufficient sales
Far Vista Petroleum Corp.	Insufficient sales
Farmers Edge Inc.	Insufficient sales
Farmhouse Inc.	Insufficient sales
Farmhouse, Inc	Insufficient sales
FastChannel Network, Inc.	Insufficient sales
Fastly, Inc.	Insufficient sales
Fasttask Technologies Inc.	Insufficient sales
Favrille, Inc.	Insufficient sales
FCA International Ltd.	Insufficient sales
FDCTech, Inc.	Going concern
Federal Services Acquisition Corp.	Insufficient sales
Fédération des caisses Desjardins du Québec	Financial services
Fernhill Corp.	Insufficient sales
Fertitta Entertainment, LLC	Insufficient sales
FHT, Inc.	Insufficient sales
Fiberlink Communications Corp.	Insufficient sales
Fiberoptic One, Inc.	Insufficient sales
Fidelity National Information Services, Inc.	Financial services
Fieldcrest Corp.	Insufficient sales
Fin Sports U.S.A. Inc.	Insufficient sales
Financial Engines, Inc.	Excessive advertising
Financial Media Group Inc.	Insufficient sales
Finastra USA Corporation	Insufficient sales
Findex.com Inc.	Insufficient sales
Findit, Inc.	Insufficient sales
fine.com International	Insufficient sales
Fintech Select Ltd.	Going concern
Firefox Communications	Insufficient sales
Fireswirl Technologies Inc.	Going concern
First Advantage Bancorp	Financial services
First Advantage Corporation	Insufficient sales
First American Corporation	Insufficient sales
First American Health Concepts Inc.	Insufficient sales
First Carolina Financial Services, Inc.	Insufficient sales
First Data Corporation	Financial services
First Laurel Security Co.	Insufficient sales
First Tower Enterprises Inc.	Insufficient sales
First USA, Inc.	Insufficient sales
FIS Capital Markets US LLC	Insufficient sales
FiscalNote Holdings, Inc.	Insufficient sales

Company	Reason
Fiserv, Inc.	Financial services
Fision Corporation	Going concern
Five9, Inc.	Excessive advertising
FlashNet Communications	Insufficient sales
FlashZero Corp.	Insufficient sales
FLEETCOR Technologies, Inc.	Other markets
Flexential Intermediate Corporation	Insufficient sales
Flexi-Van Leasing, Inc.	Insufficient sales
FlexiInternational Software Inc.	Insufficient sales
FlexShopper, Inc.	Distribution
Flickering Star Financial Inc	Insufficient sales
Flint Corp.	Going concern
floodCX Corp.	Going concern
Fluent, Inc.	Related-party transactions
FLYHT Aerospace Solutions Ltd.	Going concern
Flywire Corporation	Insufficient sales
FNA, LLC	Insufficient sales
FNB Bankshares	Insufficient sales
FNB, Inc.	Insufficient sales
Fobi AI Inc.	Insufficient sales
FogChain Corp.	Insufficient sales
Fomo Worldwide, Inc.	Going concern
FoodLink Online, LLC	Insufficient sales
Forecastagility Corporation	Insufficient sales
Forecross Corp.	Insufficient sales
ForgeHouse, Inc.	Insufficient sales
ForgeRock, Inc.	Insufficient sales
Forian Inc.	Insufficient sales
Forlink Software Corporation, Inc.	Insufficient sales
Formula Telecom Solutions, Inc.	Insufficient sales
Fortinet, Inc.	Excessive R&D
Forwardly Inc.	Insufficient sales
Foundation Properties, Inc.	Excessive PP&E
Founder SPAC	Insufficient sales
Fountain Pharmaceuticals, Inc.	Insufficient sales
Fourth Wave Energy, Inc.	Insufficient sales
Fox River Holdings, Inc.	Insufficient sales
FOXO Technologies Inc.	Insufficient sales
Framework Technologies Corporation	Insufficient sales
Franciscan Missionaries Of Our Lady Health System, Inc.	Insufficient sales
Franklin Covey Co.	Excessive advertising
Franklin Credit Management Corporation	Insufficient sales
FransAction Inc.	Insufficient sales
Free Electron Technology, Inc.	Insufficient sales
FreeMarkets Inc.	Insufficient sales
Freeze Tag, Inc.	Going concern
Frélii, Inc.	Going concern
Fresh Ideas Media, Inc.	Insufficient sales
Freshworks Inc.	Insufficient sales
Friendable, Inc.	Going concern
friendlyway Corporation	Insufficient sales
Front Porch Digital Inc.	Insufficient sales
Frontera Group, Inc.	Going concern

Company	Reason
Frontier Bancshares, Inc.	Insufficient sales
Frontier Communications Parent, Inc.	Excessive PP&E
Frontstep, Inc.	Insufficient sales
FTAI Aviation Ltd.	Excessive PP&E
FTI Consulting, Inc.	Accept
fuboTV Inc.	Going concern
Fuego Enterprises, Inc.	Insufficient sales
Fuego Enterprises, Inc.	Insufficient sales
Fulcrum Technologies, Inc.	Insufficient sales
Full Motion Beverage, Inc.	Insufficient sales
FullCircle Registry, Inc.	Excessive PP&E
Fund Street Technologies LLC	Insufficient sales
Fund.com Inc.	Insufficient sales
FunMobility, Inc.	Insufficient sales
Fusa Capital Corp.	Insufficient sales
Future FinTech Group Inc.	Excessive PP&E
Future Technologies Inc.	Insufficient sales
FutureNet, Inc.	Insufficient sales
FutureWorld Corp.	Going concern
FuzeBox, Inc.	Insufficient sales
GA eXpress, Inc.	Insufficient sales
Gaia, Inc.	Excessive PP&E
GainClients, Inc.	Insufficient sales
Gallagher Security Corp.	Going concern
Galton Biometrics Inc.	Insufficient sales
Galveston Oil & Gas, Inc.	Insufficient sales
Game Technologies, Inc.	Insufficient sales
Gamelancer Media Corp.	Insufficient sales
GameOn Entertainment Technologies Inc.	Insufficient sales
GamePlan, Inc.	Insufficient sales
GAMERICA Holdings and Acquisitions Corp.	Going concern
GamesGamesGames Technology, Inc.	Insufficient sales
Gaming Technologies, Inc.	Insufficient sales
GAN Limited	Excessive R&D
Garda World Security Corporation	Other markets
Garda World Security Corporation	Insufficient sales
Gartner, Inc.	Accept
Gates Industrial Corporation plc	Manufacturing
Gawk Incorporated	Going concern
GBT Technologies Inc.	Going concern
GCI, LLC	Excessive PP&E
GDI Integrated Facility Services Inc.	Accept
GEE Group Inc.	Accept
Geekco Technologies Corporation	Insufficient sales
Gen Digital Inc.	Excessive advertising
GeneDx Holdings Corp.	Insufficient sales
General Finance Corporation	Financial services
Generation Hemp, Inc.	Going concern
Genetic Diagnostics Technologies Corp.	Insufficient sales
Gentech Capital Corp.	Insufficient sales
GEO Corrections Holdings Inc.	Insufficient sales
Geometrix Corporation	Insufficient sales
Geonex Corporation	Insufficient sales

Company	Reason
Geopulse Exploration, Inc.	Insufficient sales
Georgia-Pacific LLC	Insufficient sales
Geospatial Corporation	Going concern
GeoTel Communications	Insufficient sales
Gepco, Ltd.	Insufficient sales
GERs, Inc.	Insufficient sales
GetFugu, Inc.	Insufficient sales
GetSwift Technologies Limited	Excessive advertising
Getty Images Holdings, Inc.	Insufficient sales
GEX Management, Inc.	Going concern
GHST World Inc.	Insufficient sales
Giant Jr Investments Corp.	Insufficient sales
GigCapital, Inc.	Going concern
GigCapital4, Inc.	Insufficient sales
GINSMS Inc.	Going concern
GitLab Inc.	Insufficient sales
GivBux, Inc.	Insufficient sales
Givex Corp.	Insufficient sales
Glance Technologies Inc.	Insufficient sales
Glenbriar Technologies Inc.	Going concern
Global Arena Holding Inc.	Going concern
Global Boulevard International, Inc.	Insufficient sales
Global BPO Services Corp.	Insufficient sales
Global Business Resources Inc	Insufficient sales
Global Business Services Inc.	Insufficient sales
Global Cloud Xchange	Insufficient sales
Global Compliance Applications Corp.	Going concern
Global Defense & National Security Systems, Inc.	Going concern
Global Energy Networks Corp.	Insufficient sales
Global eScience Corp.	Insufficient sales
Global Explorations Inc.	Insufficient sales
Global Financial Group	Insufficient sales
Global Infrastructure Solutions Inc.	Insufficient sales
Global IT Holdings, Inc.	Insufficient sales
Global Links Corp.	Insufficient sales
Global Links Corp.	Insufficient sales
Global Medical Products Holdings, Inc.	Insufficient sales
Global Payments Inc.	Financial services
Global Profit Technologies, Inc.	Insufficient sales
Global Services Partners Acquisition Corp.	Insufficient sales
Global SPAC Partners Co.	Insufficient sales
Globalink, Inc.	Insufficient sales
Globalive Technology Inc.	Insufficient sales
GlobalOptions Group, Inc.	Insufficient sales
Globaltech Holdings, Inc.	Excessive PP&E
Glorious Creation Limited	Going concern
Glowpoint, Inc.	Excessive R&D
Glu Mobile Inc.	Excessive R&D
GMIS Incorporated	Insufficient sales
Go Daddy Operating Company, LLC	Insufficient sales
GoCo-op, Inc.	Insufficient sales
GoDaddy Inc.	Excessive advertising
goeasy Ltd.	Excessive advertising

Company	Reason
GoHealth, Inc.	Insufficient sales
Gold Entertainment Group, Inc.	Going concern
Golden Grail Technology Corp.	Insufficient sales
Golden Matrix Group, Inc.	Going concern
Golden Path Acquisition Corporation	Insufficient sales
Golden River Resources Inc.	Insufficient sales
Golden Star Enterprises Ltd.	Insufficient sales
Goldmoney Inc.	Financial services
Golf Ball World, Inc.	Insufficient sales
GOLO Mobile Inc.	Insufficient sales
GoLogiq, Inc.	Insufficient sales
Good Gamer Entertainment Inc.	Insufficient sales
Good Gaming, Inc.	Going concern
Goodrich Corporation	Insufficient sales
GoodRx Holdings, Inc.	Insufficient sales
GourmetMarket.com	Insufficient sales
GPO Plus, Inc.	Going concern
Grand Prix Sports, Inc.	Insufficient sales
Graph Blockchain Inc.	Insufficient sales
GRD Enterprises Inc.	Insufficient sales
Great American Financial Corporation	Insufficient sales
Great Bear Investments Inc.	Insufficient sales
Green Block Mining Corp.	Insufficient sales
Green Dot Corporation	Financial services
Green Energy Group, Inc.	Insufficient sales
Green EnviroTech Holdings Corp.	Going concern
GreenGro Technologies, Inc.	Insufficient sales
Greenidge Generation Holdings Inc.	Insufficient sales
Greenrise Global Brands Inc.	Cannabis
Greenstone Roberts Advertising Inc.	Insufficient sales
Grid Dynamics Holdings, Inc.	Insufficient sales
Grifco International, Inc.	Insufficient sales
Grindr Inc.	Insufficient sales
Grom Social Enterprises, Inc.	Going concern
Group 1 Software, Inc.	Insufficient sales
Group Maintenance America Corp	Insufficient sales
Groupon, Inc.	Distribution
Grow Capital, Inc.	Insufficient sales
Growth Technologies International, Inc.	Insufficient sales
Growthgen Equity II Inc.	Insufficient sales
Grubhub Holdings Inc.	Insufficient sales
GSDT Fintech Group Inc.	Insufficient sales
GSE Systems, Inc.	Excessive R&D
GTT Communications, Inc.	Other markets
Guard Dog, Inc.	Insufficient sales
Guardian Enterprise Group, Inc.	Insufficient sales
Guardian Technologies International, Inc.	Insufficient sales
GuestLogix Inc.	Insufficient sales
Guidewire Software, Inc.	Excessive R&D
Gulf West Security Network, Inc.	Insufficient sales
Gulfstream Bancshares, Inc.	Insufficient sales
Gulfstream Natural Gas System, L.L.C.	Excessive PP&E
Gushen, Inc.	Insufficient sales

Company	Reason
GZ6G Technologies Corp.	Insufficient sales
H & H Imports Inc.	Insufficient sales
H&E Equipment Services, Inc.	Leasing
H&H Oil Tool Co. Inc	Insufficient sales
H-D International Holdings Group	Insufficient sales
H-Net.net Inc.	Insufficient sales
H-Source Holdings Ltd.	Going concern
Hackerproof Ltd.	Insufficient sales
Hagler Bailly, Inc.	Insufficient sales
HAHT Commerce, Inc.	Insufficient sales
Halitron, Inc.	Insufficient sales
Hall Kinion & Associates Inc.	Insufficient sales
Hampton Consulting Corp.	Insufficient sales
Hank Payments Corp.	Insufficient sales
Hannover House, Inc.	Insufficient sales
Harmat Organization, Inc.	Insufficient sales
Harmony Metals, Inc.	Insufficient sales
Harrier, Inc.	Insufficient sales
Harsco Corporation	Other services
Harte Hanks, Inc.	Accept
Harvard Capital Corp.	Insufficient sales
Harvard Financial Services Corp.	Insufficient sales
HashChain Technology Inc.	Going concern
HashiCorp, Inc.	Insufficient sales
Hayden Hall, Inc.	Insufficient sales
HCL America Inc.	Insufficient sales
HDS International Corp.	Insufficient sales
HeadHunter.NET, Inc.	Insufficient sales
HeadsUp Entertainment International Inc.	Insufficient sales
Health Builders International Inc.	Insufficient sales
Health Catalyst, Inc.	Insufficient sales
Health Logic Interactive Inc.	Going concern
Health Market Science, Inc.	Insufficient sales
Healthaxis Inc.	Insufficient sales
Healthcare Integrated Technologies, Inc.	Going concern
Healthcare Resources Management, Inc.	Insufficient sales
Healthcare Services Group, Inc.	Accept
Healthcare Triangle, Inc.	Insufficient sales
Healthcare.com Corp.	Insufficient sales
Healthdesk Corporation	Insufficient sales
HealthEquity, Inc.	Excessive R&D
HEALTHeUNIVERSE, Inc.	Insufficient sales
HealthLynked Corp.	Going concern
HealthLynked Corp. Prior to Merger with Naples Women's Center LLC	Insufficient sales
Healthscreen Solutions Inc.	Insufficient sales
HealthStream, Inc.	Excessive R&D
Healthtech Solutions Inc.	Insufficient sales
Healthvision, Inc.	Insufficient sales
Heartland Dental, LLC	Insufficient sales
Heartsoft, Inc.	Insufficient sales
Heidrick & Struggles International, Inc.	Accept
Helix Technologies, Inc.	Cannabis
Hello Pal International Inc.	Going concern

Company	Reason
Hemi Energy Group, Inc.	Insufficient sales
Hemp, Inc	Excessive advertising
Her Imports	Going concern
Herc Holdings Inc.	Leasing
Here to Serve Holding Corp.	Insufficient sales
Heritage Global Inc.	Financial services
Heritage Management Inc.	Insufficient sales
Heritage Media Corp.	Insufficient sales
Hero Innovation Group Inc.	Insufficient sales
Hertz Global Holdings, Inc.	Leasing
Hestia Insight Inc.	Insufficient sales
Heuristic Development Group, Inc.	Insufficient sales
High Impact Coaching, LLC	Insufficient sales
High Speed Net Solutions, Inc.	Insufficient sales
Highmark Interactive Inc.	Insufficient sales
HighTower Holding, LLC	Insufficient sales
Hilliard-Lyons, Inc.	Insufficient sales
Himalaya Technologies, Inc.	Insufficient sales
Hire Technologies Inc.	Insufficient sales
HireQuest, Inc.	Franchisor
HireRight Holdings Corporation	Insufficient sales
HIVE Blockchain Technologies Ltd.	Going concern
HiWire, Inc.	Insufficient sales
HNC Software Inc.	Insufficient sales
Hogan Systems, Inc.	Insufficient sales
Holiday Island Holdings, Inc.	Insufficient sales
Holistic Asset Finance Group Co., Ltd.	Insufficient sales
Holmes Protection Group	Insufficient sales
Homassist Corp.	Insufficient sales
Home Capital Group Inc.	Financial services
Home Choice Holdings Inc.	Insufficient sales
Home Trust Company	Insufficient sales
Hookup Communication Corp.	Insufficient sales
HopeLink Corporation	Insufficient sales
hopTo Inc.	Going concern
Houston InterWeb Design, Inc.	Insufficient sales
HP Inc.	Distribution
HP Middleware	Insufficient sales
HPIL Holding	Going concern
HPL Technologies Inc.	Insufficient sales
HPR Inc.	Insufficient sales
HS GovTech Solutions Inc.	Going concern
HSBC Bank Canada	Financial services
HTG Molecular Diagnostics, Inc.	Going concern
Hubb Ventures Inc.	Insufficient sales
Hubei Minkang Pharmaceutical Ltd	Insufficient sales
HubSpot, Inc.	Excessive R&D
Hudson Global, Inc.	Government
Humana Trans Services Holding Corp.	Insufficient sales
HUMBL, Inc.	Insufficient sales
Hunter Technology Corp.	Going concern
Huron Consulting Group Inc.	Accept
Hut 8 Mining Corp.	Insufficient sales

Company	Reason
HUTN, Inc.	Insufficient sales
Huuuge, Inc.	Insufficient sales
Hy-Tech Technology Group, Inc.	Insufficient sales
HYB Holding Corp.	Insufficient sales
Hydrecht Technologies Inc.	Insufficient sales
Hypur Inc.	Insufficient sales
HyreCar Inc.	Going concern
i3 Interactive Inc.	Insufficient sales
i3 Verticals, Inc.	Other markets
i3 Verticals, LLC	Insufficient sales
IAA, Inc.	Other business
IAC Inc.	Excessive R&D
iaNett International Systems Ltd.	Insufficient sales
iAsiaWorks Inc.	Insufficient sales
iBelieve.com	Insufficient sales
IBEX Limited	Accept
IBI Group Inc.	Other markets
iBrands Corp.	Insufficient sales
IBSG International, Inc.	Insufficient sales
iBX Group, Inc.	Insufficient sales
iCAD, Inc.	Excessive advertising
ICESoft Technologies Canada Corp.	Going concern
ICF International, Inc.	Government
iChance International, Inc.	Insufficient sales
Icon CMT Corp.	Insufficient sales
Icon Development Inc	Insufficient sales
Icon Media Holdings, Inc.	Insufficient sales
iConsumer Corp.	Going concern
iCoreConnect Inc.	Going concern
Ideanomics, Inc.	Going concern
Identillect Technologies Corp.	Going concern
Identix Incorporated	Insufficient sales
Ideon Group, Inc.	Insufficient sales
iEntertainment Network, Inc.	Insufficient sales
iExalt, Inc.	Insufficient sales
IFAN Financial, Inc.	Going concern
IFinix Corporation	Insufficient sales
IFS International Holdings, Inc.	Insufficient sales
iFuture.com Inc.	Insufficient sales
iGambit Inc.	Going concern
IGEN Networks Corp.	Going concern
IGN Internet Global Network Inc	Insufficient sales
IIOT-OXYS, Inc.	Going concern
ikeGPS Group Limited	Going concern
IL2M International Corp	Insufficient sales
IL2M International Corp.	Insufficient sales
iLink Telecom	Insufficient sales
Illuminet Holdings, Inc.	Insufficient sales
Image Metrics, Inc.	Insufficient sales
Image Protect, Inc.	Excessive R&D
Image Technology Laboratories, Inc.	Insufficient sales
ImageWare Systems, Inc.	Going concern
ImagicTV Inc.	Insufficient sales

Company	Reason
Imagination TV, Inc.	Insufficient sales
ImagineAR Inc.	Going concern
ImaginOn, Inc.	Insufficient sales
iMall, Inc.	Insufficient sales
IMC2 Corp.	Insufficient sales
iMD Companies, Inc.	Insufficient sales
iMD Companies, Inc.	Insufficient sales
iMemories Inc.	Insufficient sales
iMining Technologies Inc.	Going concern
Immediatek Inc.	Insufficient sales
Immediatek, Inc.	Insufficient sales
Immersion Corporation	Excessive R&D
Immutable Holdings Inc.	Insufficient sales
Impart Media Group, Inc.	Insufficient sales
Imperial Holding Corp.	Insufficient sales
ImproveNet Inc.	Insufficient sales
IMRglobal Corp.	Insufficient sales
IMS Health Holdings, Inc.	Insufficient sales
IMSCO Technologies, Inc.	Insufficient sales
InAlysys, Inc.	Insufficient sales
Incumaker, Inc.	Insufficient sales
IncuNet.com	Insufficient sales
indiePub Entertainment, Inc.	Insufficient sales
Individual, Inc.	Insufficient sales
Industry Source Consulting, Inc.	Insufficient sales
InferX Corporation	Insufficient sales
Infinite Group, Inc.	Going concern
infiniiti ai inc.	Going concern
Infinity Financial Technology Inc.	Insufficient sales
Infinity Stone Ventures Corp.	Insufficient sales
InfoCision Management Corporation	Insufficient sales
InfoMed Holdings, Inc.	Insufficient sales
Infonautics, Inc.	Insufficient sales
InfoNow Corporation	Insufficient sales
Infor, Inc.	Excessive R&D
Informatica Inc.	Insufficient sales
Information Architects Corporation	Insufficient sales
Information Management Associates, Inc.	Insufficient sales
Information Services Group, Inc.	Accept
Informedics, Inc.	Insufficient sales
Inforum Incorporated	Insufficient sales
InfoSearch Media, Inc.	Insufficient sales
Infotec Business Systems Inc.,	Insufficient sales
Infrastructure Developments Corp.	Insufficient sales
Infrax Systems, Inc.	Insufficient sales
InfuSystem Holdings, Inc.	Distribution
InnerSpace Corp.	Insufficient sales
Innodata Inc.	Healthcare services
Innolog Holdings Corporation	Insufficient sales
Innosuisse Corp.	Insufficient sales
Innotech Corporation	Insufficient sales
InnovaQor, Inc.	Insufficient sales
Innovaro, Inc.	Insufficient sales

Company	Reason
Innovation Nation Inc.	Insufficient sales
Innovative Payment Solutions, Inc.	Going concern
Innovative Property Development Corp	Insufficient sales
Innovative Software Technologies, Inc.	Insufficient sales
Innovative Solutions and Support, Inc.	Excessive R&D
Innovative Tech Systems	Insufficient sales
Innovid Corp.	Insufficient sales
Innovotech Inc.	Going concern
Innovotech, Inc.	Insufficient sales
Innovus Corp.	Insufficient sales
InPhyNet Medical Management Inc.	Insufficient sales
Inpixon	Going concern
Inseego Corp.	Excessive R&D
Insight Enterprises, Inc.	Distribution
Insignia Solutions plc	Insufficient sales
Insignia Systems, Inc.	Accept
Insperty, Inc.	Accept
Inspired Entertainment, Inc.	Excessive R&D
InsPro Technologies Corporation	Accept
Instill Corporation	Insufficient sales
Instructure Holdings, Inc.	Excessive advertising
InsuraGuest Technologies Inc.	Insufficient sales
Insurcom Financial Corp.	Insufficient sales
Intalio, Inc.	Insufficient sales
Intapp, Inc.	Insufficient sales
Integral Ad Science Holding Corp.	Insufficient sales
Integrated Alarm Services Group Inc.	Insufficient sales
Integrated Business Systems & Services, Inc.	Insufficient sales
Integrated Services Group Inc	Insufficient sales
Integrated Silicon Systems, Inc.	Insufficient sales
Integrated Systems Consulting Group, Inc.	Insufficient sales
Integrated Technology Group	Insufficient sales
Integrated Ventures, Inc.	Going concern
InteliSys Aviation Systems of America Inc	Insufficient sales
Intellabridge Technology Corp.	Going concern
IntellaKey, Inc.	Insufficient sales
IntelliCentrics Global Holdings Ltd.	Excessive advertising
Intellicheck, Inc.	Excessive R&D
Intellinetics, Inc.	Going concern
IntelliQuest Information Group, Inc.	Insufficient sales
Inter-Act Electronic Marketing, Inc.	Insufficient sales
Interactive Group, Inc.	Insufficient sales
Interactive Marketing Technology, Inc.	Insufficient sales
Interactive Technologies.com, Ltd.	Insufficient sales
InterCare DX, Inc.	Insufficient sales
InterCell International Corp.,	Insufficient sales
InterCloud Systems, Inc.	Going concern
InterDigital, Inc.	Excessive R&D
Interelate	Insufficient sales
Interland, Inc.	Insufficient sales
Interlink Plus, Inc.	Other services
INTERLINQ Software Corp	Insufficient sales
Interlock Services Inc.	Insufficient sales

Company	Reason
Intermap Technologies Corporation	Going concern
InterMetro Communications, Inc.	Insufficient sales
Intermap Holding LLC	Excessive R&D
International Akash Ventures, Inc.	Insufficient sales
International Business Machines Corporation	Excessive R&D
International Card Establishment, Inc.	Insufficient sales
International Consolidated Companies, Inc.	Insufficient sales
International Datashare Corp.	Insufficient sales
International Digital Holding Inc.	Insufficient sales
International Financial Services Corp.	Excessive PP&E
International Group Holdings, Inc.	Insufficient sales
International Integration	Insufficient sales
International Mercantile Corp.	Insufficient sales
International Monetary Systems, Ltd.	Insufficient sales
International Money Express, Inc.	Financial services
International Telecommunication Data Systems, Inc.	Insufficient sales
International Travel CD's, Inc.	Insufficient sales
International Wireless Inc.	Insufficient sales
Internet Infinity, Inc.	Insufficient sales
Internet Song of the Year, Inc.	Insufficient sales
InternetArray, Inc.	Insufficient sales
Interplay Entertainment Corp.	Insufficient sales
Interpool, Inc.	Insufficient sales
Intersolv, Inc.	Insufficient sales
Intertainment Media Inc.	Going concern
InterVU Inc.	Insufficient sales
InTime Systems Internat'l	Insufficient sales
Intouch Insight Ltd.	Excessive R&D
Intrusion Inc.	Excessive R&D
Intuit Inc.	Excessive advertising
Inuvo, Inc.	Accept
Investissement Québec	Financial services
Investview, Inc.	Financial services
Investview, Inc.	Going concern
Invicta Group Inc.	Insufficient sales
Inzap, Inc.	Insufficient sales
ION Geophysical Corporation	Excessive R&D
Iowa Health System, Inc.	Healthcare services
iPayment Inc.	Insufficient sales
IPE Universal Inc.	Insufficient sales
Ipsos Public Affairs, Inc.	Insufficient sales
IQ Biometrix Inc.	Insufficient sales
IQ Software Corporation	Insufficient sales
IQue Intellectual Properties Inc.	Insufficient sales
Iridium Communications Inc.	Excessive R&D
IronNet, Inc.	Insufficient sales
Irvine Pacific Corp.	Insufficient sales
ISA Internationale, Inc.	Insufficient sales
Ise Blu Equity Corp.	Insufficient sales
iSIGN Media Solutions Inc.	Going concern
iSign Solutions Inc.	Going concern
ISOCOR	Insufficient sales
Isonics Corporation	Insufficient sales

Company	Reason
iSpecimen Inc.	Insufficient sales
Issuer Direct Corporation	Excessive R&D
ITEX Corporation	Other services
itLinkz Group, Inc	Insufficient sales
ITT Inc.	Excessive R&D
Iveda Solutions, Inc.	Going concern
Ivoice Inc.	Insufficient sales
Ivmet Inc.	Going concern
iWorld Projects & Systems Inc.	Insufficient sales
IX Capital, Inc.	Insufficient sales
IZEA Worldwide, Inc.	Excessive R&D
IZON Network, Inc.	Going concern
Jack Creek Investment Corp.	Insufficient sales
Jack Henry & Associates, Inc.	Excessive R&D
Jackpot Digital Inc.	Going concern
Jacobs Solutions Inc.	Government
JAG Media Holdings Inc.	Insufficient sales
Jaguar Investments, Inc.	Insufficient sales
James Monroe Capital Corporation	Insufficient sales
Jamf Holding Corp.	Insufficient sales
Jasper Commerce Inc.	Insufficient sales
JavaJuice.net	Insufficient sales
JDA Software Group, Inc.	Insufficient sales
Jeotex Inc.	Going concern
Jetblack Corp.	Insufficient sales
JFrog Ltd.	Insufficient sales
Jia Inc	Insufficient sales
Jin pin Inc.	Insufficient sales
Jinzisheng Holding Group	Going concern
Jitsource Inc.	Insufficient sales
JNS Marketing, Inc.	Insufficient sales
John Bean Technologies Corporation	Manufacturing
John Hancock Life Insurance Company, Inc.	Insufficient sales
Johnson & Johnson	Excessive advertising
JPAL Inc.	Insufficient sales
JumpTV Inc.	Insufficient sales
Jun An Kang Group Inc.	Insufficient sales
Juniper Acquisition Corp.	Insufficient sales
Jupiter Communications, LLC	Insufficient sales
JVWeb, Inc.	Insufficient sales
JZZ Technologies, Inc.	Insufficient sales
JZZ Technologies, Inc.	Insufficient sales
K2 Digital Inc.	Insufficient sales
K45 Capital Corporation	Insufficient sales
Kabira Technologies, Inc.	Insufficient sales
Kading Companies, S.A.	Insufficient sales
Kaleidoscope Venture Capital, Inc.	Insufficient sales
Kallo Inc.	Going concern
Kaltura, Inc.	Insufficient sales
Kange Corp.	Going concern
KAR Auction Services, Inc.	Other services
Kaspien Holdings Inc.	Distribution
Katapult Technology Corp.	Going concern

Company	Reason
Katz Media Corporation	Insufficient sales
KBR, Inc.	Government
Kelly Services, Inc.	Accept
Keltic Inc.	Insufficient sales
Kenilworth Systems Corp.	Insufficient sales
Kennedys Inc.	Insufficient sales
Kennett Trust Bank	Insufficient sales
Kettle River Group Inc.	Insufficient sales
Kforce Inc.	Accept
Khosla Ventures Acquisition Co. II	Insufficient sales
Kidstoysplus.com, Inc.	Insufficient sales
Kinaxis Inc.	Excessive R&D
Kinetic Group Inc.	Going concern
Kinzan, Inc.	Insufficient sales
Kitara Media Corp.	Insufficient sales
Kiwibox.Com, Inc.	Going concern
KlausTech, Inc.	Insufficient sales
KLDiscovery Inc.	Accept
Klever Marketing, Inc.	Going concern
Klimat X Developments Inc.	Going concern
KMA Global Solutions International, Inc.	Insufficient sales
Knight Metals Ltd.	Insufficient sales
Knightscope, Inc.	Insufficient sales
Knol Resources Corp.	Insufficient sales
Koil Energy Solutions, Inc.	Other business
Kona Bay Technologies Inc.	Going concern
Kontrol Technologies Corp.	Going concern
Korn Ferry	Accept
Kovair Software, Inc.	Insufficient sales
Kovo HealthTech Corporation	Insufficient sales
Kratos Defense & Security Solutions, Inc.	Government
Kubient, Inc.	Insufficient sales
Kuboo, Inc.	Insufficient sales
Kuuhubb Inc.	Going concern
KWESST Micro Systems Inc.	Insufficient sales
KwikClick, Inc.	Insufficient sales
KYN Capital Group, Inc.	Insufficient sales
Kyndryl Holdings, Inc.	Insufficient sales
L&F Acquisition Corp.	Insufficient sales
L3Harris Technologies, Inc.	Excessive R&D
Labor Smart, Inc.	Insufficient sales
Labrador Resources Inc.	Going concern
Ladder Capital Finance Holdings LLLP	Insufficient sales
Ladybug Resource Group, Inc.	Insufficient sales
LAI Worldwide, Inc.	Insufficient sales
Laird Group Inc	Insufficient sales
Lamar Media Corp.	Other services
Lance Systems, Inc.	Insufficient sales
Landmark Systems Corp.	Insufficient sales
Laser Recording Systems, Inc.	Insufficient sales
Lasergate Systems, Inc.	Insufficient sales
Latch, Inc.	Insufficient sales
Latinocare Management Corporation, Inc.	Insufficient sales

Company	Reason
Latitude Communications Inc.	Insufficient sales
Lattice Incorporated	Going concern
Lazzara Financial Asset Recovery Inc.	Insufficient sales
LC Luxuries Ltd.	Insufficient sales
LCS Group Inc.	Insufficient sales
LCS Industries, Inc.	Insufficient sales
Leading Brands, Inc.	Insufficient sales
Leaf Mobile Inc.	Insufficient sales
Leafbuyer Technologies, Inc.	Going concern
Leafly Holdings, Inc.	Insufficient sales
Learmonth & Burchett Mgmt	Insufficient sales
Learn2.com, Inc.	Insufficient sales
Lease Corporation of America	Insufficient sales
Leeward Group Holdings Inc.	Insufficient sales
Left Right Marketing Technology Inc.	Insufficient sales
Legacy LifePoint Health, LLC	Healthcare services
Legacy Technology Holdings, Inc.	Insufficient sales
LegalZoom.com, Inc.	Insufficient sales
Legato Systems, Inc.	Insufficient sales
Legend Power Systems Inc.	Excessive R&D
Legends Hospitality Holding Company, LLC	Insufficient sales
Legible Inc.	Insufficient sales
Leidos Holdings, Inc.	Government
Leidos, Inc.	Insufficient sales
Lelantos Holdings Inc.	Insufficient sales
Lemontonic Inc.	Insufficient sales
Leonids Investments Inc.	Insufficient sales
Leonovus Inc.	Going concern
Lessen Inc.	Insufficient sales
Level Brands, Inc.	Excessive advertising
Lexicon United Inc.	Insufficient sales
LFTD Partners Inc.	Going concern
Liberty Alliance, Inc.	Insufficient sales
Liberty Commercial Finance, LLC	Insufficient sales
Liberty Pacific Medical Imaging, LLC	Insufficient sales
Liberty TripAdvisor Holdings, Inc.	Excessive advertising
Life Clips, Inc.	Going concern
Life On Earth, Inc.	Going concern
Life's Time Capsule Services, Inc.	Insufficient sales
Life360, Inc.	Excessive R&D
Lifeminders, Inc.	Insufficient sales
LifeSpeak Inc.	Insufficient sales
Lift & Co. Corp.	Excessive advertising
LiftMetrix, Inc.	Insufficient sales
LIGATT Security International, Inc.	Insufficient sales
Light Media Holdings, Inc.	Insufficient sales
Light Tower Rentals, Inc.	Insufficient sales
Lightbridge Corporation	Going concern
Lightspeed Commerce Inc.	Excessive R&D
Lil Marc, Inc.	Insufficient sales
Limeade, Inc.	Insufficient sales
Limelight Media Group Inc.	Insufficient sales
Limitless X Holdings Inc.	Insufficient sales

Company	Reason
Lincoln Acquisitions Corp.	Insufficient sales
Link Media Publishing Ltd.	Insufficient sales
Linkon Corporation	Insufficient sales
Linmor Inc.	Insufficient sales
Liquid Avatar Technologies Inc.	Insufficient sales
Liquid Media Group Ltd.	Going concern
Liquid Meta Capital Holdings Ltd.	Insufficient sales
Liquidity Services, Inc.	Other services
Liska Biometry Inc.	Insufficient sales
Live Current Media Inc.	Going concern
Live Current Media, Inc.	Insufficient sales
Live Microsystems, Inc.	Insufficient sales
Live Nation Entertainment, Inc.	Other business
Live Ventures Incorporated	Retail
LiveOne, Inc.	Going concern
LivePerson, Inc.	Excessive advertising
LiveRamp Holdings, Inc.	Excessive R&D
LiveTiles Limited	Excessive R&D
LiveToBeHappy, Inc.	Insufficient sales
LiveVox Holdings, Inc.	Insufficient sales
LiveWorld, Inc.	Excessive R&D
Livongo Health, Inc.	Insufficient sales
LM Funding America, Inc.	Financial services
Local Corporation	Going concern
Local Matters Inc.	Insufficient sales
Loch Exploration Inc	Insufficient sales
Logic Works, Inc.	Insufficient sales
LogicMark, Inc.	Going concern
Logiq, Inc.	Excessive R&D
Looking Glass Labs Ltd.	Insufficient sales
LookSmart Group, Inc.	Going concern
LookSmart, Ltd., Prior to spin-off of LookSmart Group	Insufficient sales
Loop Media, Inc.	Insufficient sales
Loud Beverage Group Inc.	Insufficient sales
Louisiana-Pacific Corporation	Manufacturing
Loyalty Ventures Inc.	Insufficient sales
LoyaltyPoint, Inc.	Insufficient sales
LPL Holdings, Inc.	Insufficient sales
LQwD FinTech Corp.	Insufficient sales
Lumension Security, Inc.	Insufficient sales
Luminant Worldwide Corp.	Insufficient sales
Luxfer Holdings PLC	Manufacturing
Luxxfolio Holdings Inc.	Insufficient sales
Lynx Global Digital Finance Corporation	Going concern
Lynx Software Technologies, Inc.	Insufficient sales
LZG International, Inc.	Going concern
M/A/R/C Group	Insufficient sales
M2S, Inc.	Insufficient sales
Mac Filmworks Inc.	Insufficient sales
MacGregor Sports and Fitness, Inc.	Insufficient sales
Mach7 Technologies Limited	Going concern
MacReport.Net, Inc.	Insufficient sales
Madison Systems, Inc.	Insufficient sales

Company	Reason
Magnate Ventures, Inc.	Insufficient sales
Magnet Forensics Inc.	Insufficient sales
Magnite, Inc.	Excessive R&D
Magnolia Solar Corporation	Insufficient sales
Mainspring, Inc.	Insufficient sales
Managed Objects, Inc.	Insufficient sales
Manaris (2010) Corp.	Insufficient sales
Mandalay Media, Inc.	Insufficient sales
Mandiant, Inc.	Excessive R&D
Manhattan Associates, Inc.	Excessive R&D
ManpowerGroup Inc.	Accept
Manu Forti Group Inc.	Insufficient sales
Mapath Capital Corp.	Going concern
MAPICS Inc.	Insufficient sales
MAPLEX Alliance Limited	Insufficient sales
Maptelligent, Inc.	Insufficient sales
Marathon Digital Holdings, Inc.	Going concern
Marathon Group Corp.	Insufficient sales
Marchex, Inc.	Excessive R&D
Marchwell Ventures Ltd.	Going concern
MariaDB plc	Other services
Marijuana Company of America, Inc.	Going concern
Marimba, Inc.	Insufficient sales
Marin Software Incorporated	Excessive R&D
Marine Drive Mobile Corp.	Insufficient sales
Maritrans Inc.	Insufficient sales
Market Star Advisors Inc.	Insufficient sales
MarketWise, Inc.	Insufficient sales
Marqeta, Inc.	Insufficient sales
Martello Technologies Group Inc.	Excessive R&D
MAS Acquisition XIV Corp.	Insufficient sales
Mason Oil Co. Inc.	Insufficient sales
Mason Oil Company Inc.	Insufficient sales
MasTec, Inc.	Other business
Mastech Digital, Inc.	Accept
Masterbeat Corporation	Insufficient sales
Mastercard Incorporated	Excessive advertising
Mastermind, Inc.	Accept
Masterslink Communications, Inc.	Insufficient sales
Match Group Holdings II, LLC	Excessive R&D
Match Group, Inc.	Excessive R&D
Matches, Inc.	Insufficient sales
Matterport, Inc.	Insufficient sales
Max Media Group, Inc.	Insufficient sales
Max Sound Corporation	Going concern
Maximus, Inc.	Government
mBeach Software, Inc.	Insufficient sales
MBSL Group Inc.	Insufficient sales
MC Endeavors, Inc.	Insufficient sales
McAfee Corp.	Insufficient sales
MCAP Acquisition Corporation	Insufficient sales
McGrath RentCorp	Leasing
McKesson Technologies Inc.	Insufficient sales

Company	Reason
mCloud Technologies Corp.	Going concern
MCX Technologies Corporation	Going concern
MDC Partners Inc.	Accept
mdf commerce inc.	Excessive R&D
MDM Group, Inc.	Insufficient sales
Mechanical Dynamics, Inc.	Insufficient sales
Mecklermedia Corporation	Insufficient sales
Med-Emerg International Inc.	Insufficient sales
MedGen, Inc.	Insufficient sales
MEDHOST, Inc.	Insufficient sales
Media & Entertainment.com Inc.	Insufficient sales
Media Central Corporation Inc.	Insufficient sales
Media Sentiment, Inc.	Insufficient sales
Media Way Corp.	Insufficient sales
MediaAlpha, Inc.	Insufficient sales
Mediabin Inc.	Insufficient sales
MediaValet Inc.	Going concern
Medic Computer Systems	Insufficient sales
Medical Cannabis Payment Solutions, Inc.	Insufficient sales
Medical Connections Holdings, Inc.	Insufficient sales
Medical Dynamics, Inc.	Insufficient sales
Medical Management Systems Inc	Insufficient sales
Medical Manager Corp.	Insufficient sales
Medical Marketing Group Inc	Insufficient sales
Medicine Man Technologies, Inc.	Excessive advertising
Mediconsult.com, Inc.	Insufficient sales
MEDIQ Incorporated	Insufficient sales
MediXall Group, Inc.	Going concern
MedLink International, Inc.	Insufficient sales
Medlink Technologies, Inc.	Insufficient sales
Medrium, Inc.	Insufficient sales
Medusa Style Corp.,	Insufficient sales
Mega Matrix Corp.	Other business
MegaChain.com, Ltd.	Insufficient sales
Meganet Corporation	Going concern
Meier Worldwide Intermedia Inc.	Insufficient sales
Meltwater N.V.	Other business
Memex Inc.	Going concern
Mercy Health	Insufficient sales
Mergence Corp.	Insufficient sales
Merida Merger Corp. I	Insufficient sales
Meridian Data, Inc.	Insufficient sales
MeridianLink, Inc.	Insufficient sales
Merrick Bank Corporation	Insufficient sales
Mesa Gold Inc.	Insufficient sales
MessageMedia, Inc.	Insufficient sales
Meta Platforms, Inc.	Excessive R&D
Meta-Software, Inc.	Insufficient sales
Metalo Manufacturing Inc.	Going concern
MetaPower International, Inc.	Insufficient sales
Metatron, Inc.	Insufficient sales
Metaverse Capital Corp.	Going concern
MetaWorks Platforms, Inc.	Going concern

Company	Reason
Metha Energy Solutions, Inc.	Insufficient sales
MetraTech Corp.	Insufficient sales
Metro Inc.	Insufficient sales
Metro Information Services, Inc.	Insufficient sales
Metro One Development, Inc.	Insufficient sales
Metro One Telecommunications, Inc.	Insufficient sales
Mezabay International, Inc.	Insufficient sales
MFC Development Corp.	Insufficient sales
MGT Capital Investments, Inc.	Going concern
Micro Mammoth Solutions Inc	Insufficient sales
Micrografx, Inc.	Insufficient sales
Microlog Corporation	Insufficient sales
Microlytics, Inc.	Insufficient sales
MicroMass Communications, Inc.	Insufficient sales
Micromuse, Inc.	Insufficient sales
Microsoft Corporation	Excessive R&D
MicroStrategy Incorporated	Excessive R&D
Tingo Group, Inc.	Excessive R&D
Mid-Atlantic Military Family Communities, LLC	Insufficient sales
Midcontinent Communications	Insufficient sales
Midmichigan Health	Healthcare services
Midnight Holdings Group, Inc.	Insufficient sales
Mijem Newcomm Tech Inc.	Insufficient sales
Milinx Business Group, Inc.	Insufficient sales
Milk Bottle Cards Inc.	Insufficient sales
MillerKnoll, Inc.	Excessive R&D
MiMedia Holdings Inc.	Insufficient sales
Minaro Corp.	Going concern
Mind Cure Health Inc.	Insufficient sales
MIND Technology, Inc.	Government
MindArrow Systems, Inc.	Insufficient sales
MINDBODY, Inc.	Excessive advertising
Mindpix Corp.	Insufficient sales
Mindset Interactive Corp.	Insufficient sales
MindSpring Enterprises, Inc.	Insufficient sales
Minehub Technologies Inc.	Insufficient sales
Minerva Intelligence Inc.	Insufficient sales
Minnesota American Inc.	Insufficient sales
Minnesota Educational Computing Corporation	Insufficient sales
Mission Ready Solutions Inc.	Going concern
Mitek Systems, Inc.	Excessive R&D
Mitesco, Inc.	Going concern
Mitsubishi HC Capital America, Inc.	Insufficient sales
MiX Telematics Limited	Excessive R&D
MJardin Group, Inc.	Cannabis
MLT International, Inc.	Insufficient sales
MMI-GOC, LLC	Insufficient sales
Mobi724 Global Solutions Inc.	Going concern
Mobile Lads Corp.	Going concern
Mobile Mini, Inc.	Leasing
Mobilized Entertainment, Inc	Insufficient sales
Mobilum Technologies Inc.	Going concern
Mobio Technologies Inc.	Going concern

Company	Reason
Mobiquity Technologies, Inc.	Going concern
Mobivity Holdings Corp.	Excessive R&D
Model N, Inc.	Excessive R&D
Modern Computer Systems, Inc.	Insufficient sales
Modern Technology Corp.	Insufficient sales
Moderngroove Entertainment, Inc.	Insufficient sales
Mohomine, Inc.	Insufficient sales
Mojo Data Solutions, Inc.	Financial services
Momentive Global Inc.	Excessive R&D
Monarch Staffing, Inc.	Insufficient sales
Mondee Holdings, Inc.	Insufficient sales
MoneyLion Inc.	Insufficient sales
MoneyOnMobile, Inc.	Going concern
MongoDB, Inc.	Excessive R&D
Monitronics International, Inc.	Retail
Monroe Staffing Services LLC	Insufficient sales
Monster Arts, Inc.	Going concern
Montague International Holding Ltd.	Insufficient sales
Montrose Environmental Group, Inc.	Insufficient sales
Moody's Corporation	Financial services
Moovly Media Inc.	Going concern
Mopals.com, Inc.	Going concern
Morgan Equities Group Inc.	Insufficient sales
Morgan Stanley Finance LLC	Financial services
Morningstar, Inc.	Financial services
Motivating the Masses, Inc.	Going concern
Motorcycle Centers of America Inc.	Insufficient sales
Motorsport Games Inc.	Insufficient sales
Mount Knowledge Holdings, Inc.	Insufficient sales
Movement Industries Corporation	Insufficient sales
Movius Interactive Corporation	Insufficient sales
mPhase Technologies, Inc.	Going concern
MPS Group Inc.	Insufficient sales
MSCI Inc.	Excessive R&D
MT Ultimate Healthcare Corp.	Insufficient sales
Multi Solutions II, Inc.	Insufficient sales
Multi-Media Tutorial Services, Inc.	Insufficient sales
Multinet International Inc.	Insufficient sales
MultiPlan Corporation	Insufficient sales
Multiplayer Online Dragon, Inc.	Insufficient sales
Murphy Oil USA, Inc.	Insufficient sales
Must Capital Inc.	Going concern
Mustang.com, Inc.	Insufficient sales
Mutual Merchant Services, Inc.	Insufficient sales
MVD Inc.	Insufficient sales
My Screen Mobile, Inc.	Insufficient sales
Mycom Group Inc.,	Insufficient sales
MYCOM Group, Inc.	Insufficient sales
myFreightWorld Technologies, Inc.	Insufficient sales
MyOffiz, Inc.	Insufficient sales
Mystic Entertainment Company	Insufficient sales
N-able, Inc.	Insufficient sales
NameSilo Technologies Corp.	Going concern

Company	Reason
NamSys Inc.	Financial services
Nanomix Corporation	Insufficient sales
NanoTech Entertainment, Inc.	Insufficient sales
NantHealth, Inc.	Excessive R&D
NapaStyle, Inc.	Insufficient sales
Narrowstep Inc.	Insufficient sales
Nasdaq, Inc.	Financial services
Nassau Life Insurance Company	Insufficient sales
National Asset Recovery Corp.	Insufficient sales
National CineMedia, Inc.	Accept
National CineMedia, LLC	Duplicate
National Instruments Corporation	Excessive R&D
National Research Corporation	Accept
National Stock Yards Co.	Insufficient sales
National Storm Management, Inc.	Insufficient sales
Nationwide Credit, Inc.	Insufficient sales
Natixis Financial Products LLC	Insufficient sales
Natural Blue Resources, Inc.	Insufficient sales
Natural Gas Services Group, Inc.	Other business
Natural Way Technologies Inc.	Insufficient sales
Nauticus Robotics, Inc.	Insufficient sales
Nazomi Communications, Inc.	Insufficient sales
nCino, Inc.	Insufficient sales
NCR Corporation	Excessive R&D
nDatalyze Corp.	Insufficient sales
nDivision Inc.	Accept
NeoMedia Technologies, Inc.	Going concern
NEON Communications Group, Inc.	Insufficient sales
Neoview Holdings Inc.	Insufficient sales
Neptune Digital Assets Corp.	Insufficient sales
Nerds on Site Inc.	Going concern
NerdWallet, Inc.	Insufficient sales
Nesco Holdings II, Inc.	Insufficient sales
Ness Technologies Inc.	Insufficient sales
Nestbuilder.com Corp.	Going concern
Net 1 Ueps Technologies Inc.	Insufficient sales
Net Element, Inc.	Going concern
Net Medical Xpress Solutions, Inc.	Going concern
Net Resources Inc.	Insufficient sales
NetCurrents Information Services Inc.	Insufficient sales
NetDriven Solutions Inc.	Insufficient sales
Netezza Corporation	Insufficient sales
Netflix, Inc.	Excessive advertising
Netgenics, Inc.	Insufficient sales
Netgraphe Inc.	Insufficient sales
NetGravity, Inc.	Insufficient sales
netGuru Inc.	Insufficient sales
NetImpact Holdings, Inc.	Insufficient sales
NetLive Communications Inc.	Insufficient sales
NetObjects Inc.	Insufficient sales
NetraMark Holdings Inc.	Insufficient sales
NetScout Systems, Inc.	Excessive R&D
NetSol Technologies, Inc.	Financial services

Company	Reason
NetSpace International Holdings, Inc.	Insufficient sales
NetSpeak Corporation	Insufficient sales
NetTalk.com, Inc.	Going concern
NetWolves Corp.	Insufficient sales
Network Investor Communications, Inc.	Insufficient sales
Network Peripherals Inc.	Insufficient sales
Network Six, Inc.	Insufficient sales
Netzee, Inc.	Insufficient sales
Nevada Stock Exchange, Inc.	Insufficient sales
Never Miss A Call, Inc.	Insufficient sales
New Age Translation Inc.	Insufficient sales
New Directions Manufacturing Inc	Insufficient sales
New Image Industries, Inc.	Insufficient sales
New Infinity Holdings, Ltd.	Insufficient sales
New Media Capital Inc.	Insufficient sales
New Millennium Development Group Inc.	Insufficient sales
New Relic, Inc.	Excessive advertising
New Technology Acquisition Holdings, Inc.	Other business
New Wave Holdings Corp.	Insufficient sales
New World Brands, Inc.	Insufficient sales
New World Publishing Inc.	Insufficient sales
New York Global Innovations, Inc.	Going concern
NewBridge Global Ventures, Inc.	Insufficient sales
Newpoint Financial Corp.	Going concern
Newport International Group Inc.	Insufficient sales
newScale LLC	Insufficient sales
Newtopia Inc.	Insufficient sales
Newtown Lane Marketing, Incorporated	Insufficient sales
Newven Acquisition Corp.	Insufficient sales
NexHorizon Communications, Inc.	Insufficient sales
Nexia Health Technologies Inc.	Going concern
NexPrise, Inc.	Insufficient sales
NEXT-ChemX Corporation	Going concern
Nextdoor Holdings, Inc.	Insufficient sales
NexTech AR Solutions Corp.	Going concern
Nextelgent Holdings, Inc.	Insufficient sales
NextGen Healthcare, Inc.	Excessive R&D
NextMart, Inc.	Insufficient sales
NextNav Inc.	Insufficient sales
NextPlay Technologies, Inc.	Insufficient sales
NextSet Software, Inc.	Insufficient sales
Nextwave Wireless Inc.	Insufficient sales
nFinanSe Inc.	Insufficient sales
NFP Corp.	Insufficient sales
NHMD Holdings, Inc.	Going concern
Nice Systems, Inc.	Insufficient sales
NIKSUN Incorporated	Insufficient sales
Nile Therapeutics, Inc.	Insufficient sales
Nitro Software Limited	Excessive R&D
Noah Bank	Insufficient sales
Noble Iron Inc.	Excessive R&D
Nogin, Inc.	Insufficient sales
Nokia of America Corporation	Insufficient sales

Company	Reason
Nolo, Inc.	Insufficient sales
Nomadix, Inc.	Insufficient sales
Norfin Business Advisors Corp.	Insufficient sales
Norstar Group, Inc.	Insufficient sales
North Mill Equipment Finance, LLC	Insufficient sales
North Peak Resources Ltd.	Going concern
Northern Genesis Acquisition Corp. II	Insufficient sales
Northern Light Group, LLC	Insufficient sales
Northern Uranium Corp.	Going concern
Northport Capital, Inc.	Insufficient sales
Northrop Grumman Space & Mission Systems Corporation	Insufficient sales
Northstar Acquisition Corp.	Insufficient sales
Northwestern Memorial Healthcare Corporation	Insufficient sales
Notify Technology Corporation	Insufficient sales
NOV Inc.	Manufacturing
NovaCare Employee Services, Inc.	Insufficient sales
Novadigm Inc.	Insufficient sales
Novation Companies, Inc.	Healthcare services
Novell, Inc.	Insufficient sales
Novicius Corp.	Going concern
Nowigence, Inc.	Insufficient sales
NowVertical Group Inc.	Insufficient sales
NRP Stone Inc.	Insufficient sales
NS8 Corporation	Insufficient sales
NT Technologies, Inc.	Insufficient sales
NTG Clarity Networks Inc.	Going concern
NTN Buzztime, Inc.	Excessive R&D
Nuance Communications Inc.	Excessive R&D
Nuance Communications, Inc.	Excessive R&D
Nubeva Technologies Ltd.	Going concern
NUGL Inc.	Insufficient sales
NUGL, Inc.	Insufficient sales
Nukkleus Inc.	Going concern
Numerical Technologies, Inc.	Insufficient sales
Nutanix, Inc.	Excessive R&D
Nutech, Inc.	Insufficient sales
Nuvei Corporation	Insufficient sales
Nuvoci Inc.	Insufficient sales
NuWAVE Technologies Inc.	Insufficient sales
NV5 Global, Inc.	Government
NZJ Holdings Inc.	Insufficient sales
Oak Hill Financial Inc.	Insufficient sales
Oasys Mobile, Inc.	Insufficient sales
Oblong, Inc.	Excessive advertising
Obocon, Inc.	Insufficient sales
Oculus VisionTech, Inc.	Going concern
Odyssey Marine Exploration, Inc.	Going concern
OEC Compression Corp.	Insufficient sales
OhioHealth Corporation	Insufficient sales
Okta, Inc.	Excessive advertising
Old Goat Enterprises, Inc.	Insufficient sales
Olo Inc.	Insufficient sales
Olympic Weddings International Inc.	Insufficient sales

Company	Reason
Omega Orthodontics, Inc.	Insufficient sales
Omni USA Inc.	Insufficient sales
Omniceil, Inc.	Excessive R&D
Omnicom Group Inc.	Accept
OmniComm Systems, Inc.	Going concern
OmniNet Media.com Inc.	Insufficient sales
OMNIQ Corp.	Going concern
Omnis Technology Corp.	Insufficient sales
OMS Partners, Inc.	Insufficient sales
ON24, Inc.	Insufficient sales
Ondisplay, Inc.	Insufficient sales
One eCommerce Corporation	Insufficient sales
One Holland Corporation	Insufficient sales
One Step Vending Corp.	Insufficient sales
One Touch Systems, Inc.	Insufficient sales
One World Ventures, Inc.	Insufficient sales
OneDentist Resources, Inc.	Insufficient sales
OneLink Corporation	Insufficient sales
OneMeta AI	Insufficient sales
ONEnergy Inc.	Going concern
OneScreen Inc.	Insufficient sales
OneSoft Solutions Inc.	Other business
OneSpan Inc.	Excessive R&D
Onfolio Holdings, Inc.	Insufficient sales
Ooma, Inc.	Excessive advertising
Open Environment Corp.	Insufficient sales
Open Lending Corporation	Insufficient sales
Open Market, Inc.	Insufficient sales
Open Solutions, LLC	Insufficient sales
Open Text Corporation	Excessive R&D
OPENLANE, Inc.	Insufficient sales
OpenLocker Holdings, Inc.	Insufficient sales
OpenPages, Inc.	Insufficient sales
OpenService, Inc.	Insufficient sales
OpenTable, Inc.	Insufficient sales
Openvision Technologies	Insufficient sales
Opware Inc.	Insufficient sales
Optical Concepts of America Inc.	Insufficient sales
Optika Inc.	Insufficient sales
Optima Medical Innovations Corp.	Going concern
OptiMark Holdings, Inc.	Insufficient sales
OptimizeRx Corporation	Healthcare services
Optimum Interactive USA Ltd.	Insufficient sales
Options Media Group Holdings, Inc.	Insufficient sales
Options Talent Group	Insufficient sales
Optiva Inc.	Excessive R&D
Opus360 Corp.	Insufficient sales
Oracle TimesTen	Insufficient sales
Oracle Corporation	Excessive R&D
Orbis, Inc.	Insufficient sales
Orbit Drop, Inc.	Insufficient sales
Organa Technologies Group, Inc.	Insufficient sales
ORHub, Inc.	Insufficient sales

Company	Reason
Ostrom Climate Solutions Inc.	Going concern
OTG Software, Inc.	Insufficient sales
Outbrain Inc.	Insufficient sales
Outsiders Entertainment, Inc.	Insufficient sales
Ouvo, Inc.	Insufficient sales
Oxford Finance LLC	Insufficient sales
Oxford Investments Holdings Inc.	Going concern
P&L Development, LLC	Insufficient sales
Pacific Ranger Petroleum, Inc.	Insufficient sales
Pacific Software, Inc.	Insufficient sales
Pacific Vegas Global Strategies Inc.	Insufficient sales
Pacira CryoTech, Inc.	Insufficient sales
Packers Holdings, LLC	Insufficient sales
PacketPort.com Inc.	Insufficient sales
PagerDuty, Inc.	Insufficient sales
PAID, Inc.	Insufficient sales
PAID, Inc.	Going concern
Palantir Technologies Inc.	Insufficient sales
Palo Alto Networks, Inc.	Excessive R&D
Paltalk, Inc.	Excessive advertising
Pandora Media, LLC	Excessive advertising
Pangenomic Health Inc.	Insufficient sales
PanGlobal.com Inc.	Insufficient sales
PAO Group, Inc.	Insufficient sales
PaperClip Incorporated	Insufficient sales
PaR Systems, Inc.	Insufficient sales
Paradigm Holdings Inc.	Insufficient sales
Paradise Music & Entertainment, Inc.	Insufficient sales
Parallel Technologies, Inc.	Insufficient sales
ParcelPal Logistics Inc.	Going concern
Pardee Resources Company	Insufficient sales
Park City Group, Inc.	Accept
Parkview Health System, Inc.	Insufficient sales
Parque La Quinta Estates	Insufficient sales
Parsons Corporation	Government
PASSUR Aerospace, Inc.	Excessive R&D
PASW Inc.	Insufficient sales
Patfind Inc.	Insufficient sales
Patient Portal Technologies, Inc.	Insufficient sales
Pay-Fone Systems, Inc.	Insufficient sales
Paya Holdings Inc.	Insufficient sales
Paychex, Inc.	Accept
Paycom Software, Inc.	Excessive R&D
Paycor HCM, Inc.	Insufficient sales
PayCycle, Inc.	Insufficient sales
Paydirt USA, Inc.	Insufficient sales
Payfare Inc.	Financial services
Paylocity Holding Corporation	Excessive R&D
Paymentus Holdings, Inc.	Insufficient sales
Payoneer Global Inc.	Insufficient sales
PayPal Holdings, Inc.	Excessive advertising
PaySign, Inc.	Financial services
Pazoo, Inc.	Going concern

Company	Reason
PBF Holding Company LLC	Other business
PBS Holding, Inc.	Insufficient sales
PC DOCS Group International Inc.	Insufficient sales
pcOrder.com, Inc.	Insufficient sales
PD-LD, Inc.	Insufficient sales
PDA Engineering, Inc.	Insufficient sales
PDC Innovative Industries Inc.	Insufficient sales
PDF Solutions, Inc.	Excessive R&D
Pear Therapeutics, Inc.	Insufficient sales
Pebble Beach Enterprises, Inc.	Insufficient sales
Peeks Social Ltd.	Going concern
Peer to Peer Network	Insufficient sales
Peerless Group, Inc.	Insufficient sales
PeerLogix, Inc.	Going concern
Pegasus Gaming Corp.	Insufficient sales
Pegasystems Inc.	Excessive R&D
Pen Interconnect Inc.	Insufficient sales
Penske Truck Leasing Co., L.P.	Insufficient sales
PeopleConnect, Inc.	Insufficient sales
Perficient, Inc.	Accept
Performant Financial Corporation	Government
Perigee Holdings Inc.	Going concern
Peritus Software Services, Inc.	Insufficient sales
Perk International, Inc.	Insufficient sales
Perk Labs Inc.	Going concern
PERSEUS HOLDING CORPORATION	Insufficient sales
Personas Social Incorporated	Going concern
Perspecta Enterprise Solutions LLC	Insufficient sales
PFSweb, Inc.	Other services
Pharma-Bio Serv, Inc.	Other services
Pharmaceutical Marketing Services Inc. (PMSI)	Insufficient sales
Philux Global Group Inc.	Going concern
Phoenix Apps Inc.	Going concern
PhoneX Holdings, Inc.	Going concern
Phreesia, Inc.	Insufficient sales
Phunware, Inc.	Going concern
Physician Support Systems	Insufficient sales
PI Services, Inc.	Insufficient sales
PIA Merchandising Service	Insufficient sales
Picasso Inc.	Insufficient sales
Pierce International Discovery Inc.	Insufficient sales
Piezo Instruments, Inc.	Insufficient sales
Pine View Technologies, Inc.	Insufficient sales
Pineapple, Inc.	Going concern
Pingify International Inc.	Insufficient sales
Pinkmonkey.com, Inc.	Insufficient sales
Pinterest, Inc.	Insufficient sales
Pivotree Inc.	Insufficient sales
Placer Creek Mining Co.	Insufficient sales
Planet Resources Inc.	Insufficient sales
PlanetCAD Inc.	Insufficient sales
PlanetOut Inc.	Insufficient sales
PlanGraphics Inc.	Insufficient sales

Company	Reason
Plank Ventures Ltd.	Insufficient sales
PlanVista Corporation	Insufficient sales
Playgon Games Inc.	Excessive R&D
Playground Ventures Inc.	Going concern
Playmaker Capital Inc.	Insufficient sales
PLAYSTUDIOS, Inc.	Insufficient sales
Plesk Corp.	Insufficient sales
Pluralsight, Inc.	Excessive advertising
Plurilock Security Inc.	Insufficient sales
Plyzer Technologies Inc.	Going concern
PMT Services, Inc.	Insufficient sales
PocketScript, LLC	Insufficient sales
Pol Invest Holdings Ltd.	Insufficient sales
Polaris Group	Insufficient sales
PolarityTE, Inc.	Going concern
Politics.com, Inc.	Insufficient sales
Pollex, Inc.	Going concern
Ponder Industries, Inc.	Insufficient sales
Ponderosa Lumber, Inc.	Insufficient sales
PopMail.com, Inc.	Insufficient sales
PopReach Corporation	Insufficient sales
PopReach Corporation	Insufficient sales
Porch Group, Inc.	Insufficient sales
Poseidon Capital Corp.	Insufficient sales
Postech Corp	Insufficient sales
Potential Holdings, Inc.	Insufficient sales
Power & Digital Infrastructure Acquisition Corp.	Insufficient sales
PowerCerv Corp.	Insufficient sales
Powerlock International Corp.	Insufficient sales
PowerSchool Holdings, Inc.	Insufficient sales
Powersoft Corporation	Insufficient sales
ppoNEXT, Inc.	Insufficient sales
PRA Group, Inc.	Financial services
Pre-Paid Legal Services, Inc.	Insufficient sales
PreAxia Health Care Payment Systems Inc.	Going concern
Predictiv AI Inc.	Going concern
Preferred Commerce, Inc.	Insufficient sales
Premenos Technology Corp.	Insufficient sales
Premier Diversified Holdings Inc.	Going concern
Premier Document Services Inc.	Insufficient sales
Premier Exhibitions, Inc.	Going concern
Premier Health of America Inc.	Insufficient sales
Premier information Management, Inc.	Insufficient sales
Premier Investment Properties Inc.	Insufficient sales
Premier, Inc.	Healthcare services
Presidio Holdings, Inc.	Insufficient sales
Presto Automation Inc.	Insufficient sales
PRGX Global, Inc.	Financial services
Primal Solutions, Inc.	Insufficient sales
Prime Advantage Corporation	Insufficient sales
Prime Bancorp, Inc.	Insufficient sales
Prime Healthcare Services, Inc.	Insufficient sales
Prime Security Services Borrower, LLC	Insufficient sales

Company	Reason
PrimeCare Systems, Inc.	Insufficient sales
Primus Knowledge Solutions, Inc.	Insufficient sales
Print Data Corp.	Insufficient sales
Printcafe Software, Inc.	Insufficient sales
Priority Technology Holdings, Inc.	Financial services
Prism Software Corporation	Insufficient sales
Prism Solutions, Inc.	Insufficient sales
Prism Technologies Group, Inc.	Going concern
PrismOne Group, Inc.	Insufficient sales
Pro-Active Solutions, Inc.	Insufficient sales
ProBusiness Services, Inc.	Insufficient sales
Procore Technologies, Inc.	Excessive advertising
Prodigy Ventures Inc.	Excessive R&D
Professional Diversity Network, Inc.	Other business
Profit Planners Management, Inc.	Going concern
PROG Holdings, Inc.	Leasing
Progress Software Corporation	Excessive R&D
Promap Corporation	Insufficient sales
Promis Systems Corporation Ltd.	Insufficient sales
Promotions.com, Inc.	Insufficient sales
ProntoForms Corporation	Going concern
Proofpoint, Inc.	Excessive R&D
Propel Media, Inc.	Excessive R&D
Propel Software Corporation	Insufficient sales
Prophecy DeFi Inc.	Insufficient sales
PROS Holdings, Inc.	Excessive R&D
Proscape Technologies, Inc.	Insufficient sales
Prospect Park Capital Corp.	Going concern
ProStar Holdings Inc.	Insufficient sales
Protection One Inc.	Insufficient sales
ProTek Capital, Inc.	Insufficient sales
Protocall Technologies Inc.	Insufficient sales
Protocol Global Solutions, Inc.	Insufficient sales
ProtoSource Corporation	Insufficient sales
Psykey, Inc.	Insufficient sales
PTC Inc.	Excessive R&D
PTS Inc.	Insufficient sales
PTS Inc.	Insufficient sales
Public Company Management Corp.	Insufficient sales
Public Policy Holding Company, Inc.	Insufficient sales
PubMatic, Inc.	Insufficient sales
Puerto Rico Conservation Trust Fund	Insufficient sales
Pulse Evolution Corporation	Going concern
Purch, Inc.	Insufficient sales
Purchase Point Media Corp.	Insufficient sales
Pure Atria Corporation	Insufficient sales
Pure Storage, Inc.	Excessive R&D
Puritan Financial Group, Inc.	Insufficient sales
Q2 Holdings, Inc.	Excessive R&D
Q4 Inc.	Insufficient sales
QC Holdings, Inc.	Financial services
QED Connect, Inc.	Insufficient sales
QIS Ventures, Inc.	Insufficient sales

Company	Reason
Qnective, Inc.	Insufficient sales
Qorus.com, Inc.	Insufficient sales
QRS Corp.	Insufficient sales
QSGI, Inc.	Insufficient sales
Quad Metals Corp.	Insufficient sales
Quality Exchange Inc.	Insufficient sales
Quality Industrial Corp.	Insufficient sales
Quality One Wireless, LLC	Insufficient sales
QualityTech, LP	Insufficient sales
Qualix Group	Insufficient sales
QualTek Services Inc.	Insufficient sales
Qualtrics International Inc.	Excessive R&D
Qualys, Inc.	Excessive R&D
QuantGate Systems Inc.	Insufficient sales
Quantum Computing, Inc.	Going concern
Quantum Metal Exchange Inc.	Insufficient sales
Quantum Technology Corp.	Insufficient sales
Quantum-Si incorporated	Insufficient sales
Quartz Group Inc.	Insufficient sales
Quest Patent Research Corporation	Going concern
QuinStreet, Inc.	Excessive R&D
Qusitive Technology Solutions, Inc.	Insufficient sales
Quorum Information Technologies Inc.	Excessive R&D
QuoteMedia, Inc.	Excessive R&D
Quotient Technology Inc.	Excessive R&D
R1 RCM Inc.	Healthcare services
R2 Technology, Inc.	Insufficient sales
Raadr, Inc.	Going concern
Rackspace Technology Global, Inc.	Excessive R&D
Rackspace Technology, Inc.	Insufficient sales
Radar Resources, Inc.	Insufficient sales
Radial Research Corp.	Going concern
Radial, Inc.	Insufficient sales
Radioio, Inc.	Insufficient sales
Railtown AI Technologies Inc.	Going concern
Rainmaker Systems, Inc.	Insufficient sales
Ram Gold & Exploration, Inc.	Insufficient sales
Ramp Networks, Inc.	Insufficient sales
Rand Worldwide, Inc.	Insufficient sales
Ranger Industries Inc.	Insufficient sales
Rapid7, Inc.	Excessive advertising
Rapt, Inc.	Insufficient sales
Raptor Systems, Inc.	Insufficient sales
Rare Earth Industries Ltd.	Insufficient sales
RareMethod Capital Inc.	Insufficient sales
Rasa Investments Inc.	Insufficient sales
Raycomm Transworld Industries, Inc.	Insufficient sales
RBID.com, Inc.	Insufficient sales
RCB Financial Corporation	Insufficient sales
RCM Interests Inc.	Insufficient sales
RCM Technologies, Inc.	Government
RDA Services, Inc.	Insufficient sales
RDE, Inc.	Insufficient sales

Company	Reason
RDIS Corp.	Insufficient sales
REAC Group, Inc.	Insufficient sales
REAC Group, Inc.	Insufficient sales
Reach Messaging Holdings, Inc.	Insufficient sales
React Gaming Group Inc.	Going concern
Real Matters Inc.	Financial services
Reality Wireless Networks Inc.	Insufficient sales
Realm Production and Entertainment, Inc.	Insufficient sales
RealPage, Inc.	Excessive advertising
Reasoning, LLC	Insufficient sales
Recab International, Inc.	Insufficient sales
Recognition International, Inc.	Insufficient sales
Recruiter.com Group, Inc.	Insufficient sales
Red Brick Systems, Inc.	Insufficient sales
Red Cat Holdings, Inc.	Insufficient sales
Red Lantern Corp.	Insufficient sales
Red Mile Entertainment Inc.	Insufficient sales
Red Violet, Inc.	Excessive R&D
Redify Group, Inc.	Insufficient sales
RediShred Capital Corp.	Excessive R&D
Redwood Broadcasting Inc.	Insufficient sales
Redwood Group International, Inc.	Insufficient sales
Reel Staff, Inc.	Insufficient sales
Regional Management Corp.	Financial services
Rego Payment Architectures, Inc.	Going concern
Reinvent Technology Partners Y	Insufficient sales
Reklaim Ltd.	Insufficient sales
Rekor Systems, Inc.	Government
Reliability Incorporated	Insufficient sales
Reliance LP	Insufficient sales
Reliq Health Technologies Inc.	Going concern
Remark Holdings, Inc.	Excessive R&D
Remitly Global, Inc.	Insufficient sales
Renaissance Solutions Inc	Insufficient sales
Renalytix Plc	Insufficient sales
Renovate Neighborhoods, Inc.	Insufficient sales
RenoWorks Software Inc.	Excessive R&D
Upbound Group, Inc.	Excessive advertising
Repay Holdings Corporation	Financial services
RESAAS Services Inc.	Going concern
Research Solutions, Inc.	Excessive R&D
reslynx, inc	Insufficient sales
Resolve Staffing, Inc.	Insufficient sales
Resources Connection, Inc.	Accept
Results-Based Outsourcing Inc.	Going concern
Reval Holdings, Inc.	Insufficient sales
Reve Technologies, Inc.	Insufficient sales
Reve Technologies, Inc.	Insufficient sales
RevoluGROUP Canada Inc.	Going concern
Revolution Technologies Inc.	Insufficient sales
Revolve Capital Corp.	Insufficient sales
RFID Ltd.	Insufficient sales
RFID Ltd.	Insufficient sales

Company	Reason
RFID Systems Corp	Insufficient sales
Rhino Novi, Inc.	Insufficient sales
Ribbon Communications Inc.	Excessive R&D
Rigetti Computing, Inc.	Insufficient sales
Right On Brands, Inc.	Going concern
Rightscorp, Inc.	Going concern
Rimini Street, Inc.	Other business
Ring Energy, Inc.	Insufficient sales
RingCentral, Inc.	Excessive R&D
Riot Platforms, Inc.	Excessive R&D
Ritchie Bros. Auctioneers Incorporated	Other business
Riverside Entertainment, Inc.	Insufficient sales
RIWI Corp.	Going concern
Road New Media Corporation	Insufficient sales
Robert Half International Inc.	Accept
Roblox Corporation	Insufficient sales
Roboserver Systems Corp.	Insufficient sales
Rock Ridge Resources, Inc.	Insufficient sales
Rocket City Enterprises, Inc.	Insufficient sales
Rocket Software, Inc.	Insufficient sales
RocketFuel Blockchain, Inc.	Insufficient sales
Rockies Financial Corp.	Insufficient sales
Rogue Station Companies, Inc.	Insufficient sales
Rollins, Inc.	Excessive advertising
Rolta Americas LLC	Insufficient sales
Ronald S. Laura Enterprises, Inc.	Insufficient sales
RoomlinX, Inc.	Insufficient sales
root9B Holdings, Inc.	Going concern
Roper Technologies, Inc.	Excessive R&D
Route1 Inc.	Excessive R&D
Royal Wins Corporation	Insufficient sales
RSI Holdings, Inc., Prior to Reverse Merger with Employment Solutions LLC	Insufficient sales
RSI International Systems Inc.	Going concern
RTCORE Inc	Going concern
Rubicon Technologies, Inc.	Insufficient sales
Ruby Creek Resources, Inc.	Insufficient sales
Rumble Inc.	Insufficient sales
RYAH Group, Inc.	Insufficient sales
Ryvyl Inc.	Insufficient sales
S&P Global Inc.	Financial services
SA Recovery Corp.	Insufficient sales
Sabio Holdings Inc.	Insufficient sales
Sabre Corporation	Excessive R&D
Sabre GLBL Inc.	Insufficient sales
Safe Aid Products Inc.	Insufficient sales
Safety-Kleen Corp.	Insufficient sales
SAFLINK Corp	Insufficient sales
Saft America, Inc.	Insufficient sales
SailPoint Technologies Holdings, Inc.	Excessive advertising
Salesforce, Inc.	Excessive advertising
Salon Media Group, Inc.	Going concern
Samoyed Energy Corp	Insufficient sales
Samsara Inc.	Insufficient sales

Company	Reason
SAN Holdings Inc.	Insufficient sales
Sanarco Funds Inc.	Insufficient sales
Sand Hill IT Security Acquisition Corp.	Insufficient sales
Sandston Corporation	Going concern
Sangoma Technologies Corporation	Excessive R&D
Santa Rosa Resources Corp.	Going concern
Santeon Group, Inc.	Insufficient sales
SARS Corporation	Insufficient sales
Satellogic Inc.	Insufficient sales
Satmetrix Systems, Inc.	Insufficient sales
SATO Technologies Corp.	Insufficient sales
Saturn Solutions Inc.	Insufficient sales
Saudi American Holdings Corp.	Insufficient sales
Saztec International Inc.	Insufficient sales
Scene7, Inc.	Insufficient sales
Schismatic Cash Transactions Network.com, Inc.	Insufficient sales
Schlumberger Limited	Excessive R&D
Schrödinger, Inc.	Insufficient sales
Sci Pro Inc.	Insufficient sales
SCI Solutions, Inc.	Insufficient sales
Science Applications International Corporation	Government
Scientific Energy, Inc.	Insufficient sales
Scientific Energy, Inc.	Going concern
Scientific Games International, Inc.	Excessive advertising
Scientific Software-Icmp.	Insufficient sales
SCILEX Pharmaceuticals, Inc.	Going concern
SciPlay Corporation	Insufficient sales
Scope Carbon Corp.	Insufficient sales
Scopus Technology	Insufficient sales
Scottys Original Brew, Inc.	Insufficient sales
Screen Playz.com Inc.	Insufficient sales
Scrip Advantage, Inc.	Insufficient sales
Script Systems, Inc.	Insufficient sales
Scryb Inc.	Going concern
Script, Inc.	Insufficient sales
SCWorx Corp.	Excessive R&D
SE Global Equities Corp.	Insufficient sales
SeaChange International, Inc.	Excessive R&D
Seahawk Capital Corp.	Insufficient sales
SearchGuy.com, Inc.	Insufficient sales
Searchlight Solutions and Services Inc.	Insufficient sales
Seaway Energy Services Inc.	Insufficient sales
Sector Communications Inc.	Insufficient sales
Secure Alliance Holdings Corporation	Insufficient sales
Secure Enterprise Solutions Inc.	Insufficient sales
Secure Sign, Inc.	Insufficient sales
Secured Services, Inc.	Insufficient sales
SecureWorks Corp.	Excessive advertising
Securities Resolution Advisors Inc	Insufficient sales
Security First Corp.	Insufficient sales
Segal Marco Advisors	Insufficient sales
Semrush Holdings, Inc.	Insufficient sales
SensAble Technologies, Inc.	Insufficient sales

Company	Reason
Sensar Corporation	Insufficient sales
Sensitech Inc.	Insufficient sales
SentinelOne, Inc.	Insufficient sales
Sequoia Software Corp.	Insufficient sales
Serebra Learning Corp.	Insufficient sales
ServiceNow, Inc.	Excessive R&D
Servigistics, Inc.	Insufficient sales
Seth Murphy 2022 Multigenerational Trust	Insufficient sales
Seven Arts Entertainment, Inc.	Insufficient sales
Seven Oaks International	Insufficient sales
Sew Cal Logo, Inc.	Insufficient sales
Sezzle Inc.	Insufficient sales
Shanrong Biotechnology Corp.	Insufficient sales
Sharecare, Inc.	Insufficient sales
Sharewell Capital Group, Inc.	Insufficient sales
Sharp Healthcare, Inc.	Insufficient sales
SharpLink Gaming Ltd.	Insufficient sales
Shift4 Payments, Inc.	Insufficient sales
Shift4 Payments, LLC	Insufficient sales
ShiftPixy, Inc.	Going concern
Shopify Inc.	Excessive advertising
ShotSpotter, Inc.	Excessive R&D
Shur de Cor, Inc.	Insufficient sales
Shutterfly, LLC	Excessive advertising
Shutterstock, Inc.	Excessive advertising
Sibannac, Inc.	Insufficient sales
Siboney Corporation	Insufficient sales
SideChannel Inc.	Insufficient sales
Siemens EDA	Excessive R&D
Sienna Senior Living Inc.	Excessive PP&E
Sigma Additive Solutions, Inc.	Excessive R&D
Silicon Acquisition Inc.	Insufficient sales
Silknet Software, Inc.	Insufficient sales
Silvair, Inc.	Excessive R&D
Silver Key Mining Co, Inc.	Insufficient sales
Silver Strike Mining Company, Inc.	Insufficient sales
SilverSun Technologies, Inc.	Insufficient sales
SilverSun Technologies, Inc.	Accept
Simione Central holdings Inc.	Insufficient sales
Simplepons, Inc.	Insufficient sales
Simplex Solutions, Inc.	Insufficient sales
Simtrol, Inc.	Insufficient sales
Simulations Plus, Inc.	Excessive R&D
Simware Inc.	Insufficient sales
Sitesearch Corporation	Insufficient sales
SiteStream Incorporated	Insufficient sales
SITO Mobile, Ltd.	Potential financial misconduct
Skillssoft Corp.	Insufficient sales
Skillz Inc.	Insufficient sales
Skynet Cloud Systems, Inc.	Government
Skylight Health Group Inc.	Going concern
Skyline Entertainment Inc.	Insufficient sales
SkyLynx Communications Inc.	Insufficient sales

Company	Reason
Slack Technologies, LLC	Excessive advertising
Slavia, Corp.	Insufficient sales
Smart Card Marketing Systems Inc.	Going concern
Smart Decision, Inc.	Insufficient sales
Smart Employee Benefits Inc.	Going concern
Smart Frog Holdings, Inc.	Insufficient sales
SmarterKids.com, Inc.	Insufficient sales
SmartForce plc	Insufficient sales
SmartMetric, Inc.	Going concern
SmartRent, Inc.	Insufficient sales
Smartsheet Inc.	Excessive R&D
SMI Products Inc.,	Insufficient sales
SmileDirectClub, Inc.	Insufficient sales
Smith Micro Software, Inc.	Excessive R&D
Snail, Inc.	Insufficient sales
Snap Inc.	Excessive R&D
SNAP Interactive, Inc.	Insufficient sales
SNAP2 Corp.	Insufficient sales
Snipp Interactive Inc.	Going concern
Snowflake Inc.	Insufficient sales
Social Capital Suvretta Holdings Corp. I	Insufficient sales
Social Media Ventures, Inc.	Insufficient sales
SocialPlay USA, Inc.	Going concern
Societe Generale - New York Branch	Insufficient sales
Sodexo, Inc.	Insufficient sales
Softchoice Corporation	Insufficient sales
Softdesk, Inc.	Insufficient sales
SofTech, Inc.	Insufficient sales
SoftLab9 Technologies Inc.	Insufficient sales
SoftQuad Software Ltd.	Insufficient sales
Software Acquisition Group Inc. III	Insufficient sales
Software AG USA, Inc.	Insufficient sales
Software Artistry	Insufficient sales
Software Publishing Corporation	Insufficient sales
Software.com, Inc.	Insufficient sales
Solar Park Initiatives, Inc.	Insufficient sales
Solaris Oilfield Infrastructure, Inc.	Excessive PP&E
SolarWinds Corporation	Excessive advertising
SolarWinds Holdings, Inc.	Insufficient sales
Solera, LLC	Insufficient sales
Sollensys Corp.	Insufficient sales
Soluna Holdings, Inc.	Going concern
Solvbl Solutions Inc.	Insufficient sales
Somerset Trust Holding Company	Financial services
Somerville Capital Inc.	Insufficient sales
Sonasoftware Corporation	Insufficient sales
Sonic Foundry, Inc.	Excessive R&D
Sonicport, Inc.	Insufficient sales
Sooner Holdings Inc.	Insufficient sales
Sotera Health Holdings, LLC	Insufficient sales
Sotheby's	Other business
SoundHound AI, Inc.	Insufficient sales
Source Energy Corp.	Insufficient sales

Company	Reason
Source Services Corp.	Insufficient sales
Southern Cargo Company, Inc.	Insufficient sales
Southern Concepts Restaurant Group, Inc.	Going concern
Southern Products, Inc.	Insufficient sales
Southern Software Group, Inc.	Insufficient sales
SouthPeak Interactive Corporation	Insufficient sales
Spacefy Inc.	Going concern
SPAR Group, Inc.	Accept
Spark Networks, Inc.	Insufficient sales
Sparta Commercial Services, Inc.	Going concern
Sparx Technology Inc.	Insufficient sales
Specialized Services, Inc.	Insufficient sales
Specificity, Inc.	Insufficient sales
Spectral Capital Corporation	Going concern
Spectral MD Holdings, Ltd.	Insufficient sales
Spectrum Group International, Inc.	Insufficient sales
SpectrumDNA, Inc.	Insufficient sales
Speed Commerce, Inc.	Insufficient sales
Spetz Inc.	Going concern
Sphere 3D Corp.	Going concern
Spire Global, Inc.	Insufficient sales
Spitzer Management, Inc.	Insufficient sales
Splitit Payments Ltd	Going concern
Splunk Inc.	Excessive R&D
SponsorsOne Inc.	Going concern
SponsorsOne Brands Inc.	Insufficient sales
Sportech Racing, LLC	Insufficient sales
Sports Concepts, Inc.	Insufficient sales
Sports Technologies Group Inc.	Insufficient sales
Sports-Tech International, Inc.	Insufficient sales
Spotify USA Inc	Insufficient sales
Spotlight Homes, Inc.	Insufficient sales
SpotLite360 IOT Solutions, Inc.	Going concern
Sprenger Health Care Systems	Insufficient sales
SpringBig Holdings, Inc.	Insufficient sales
Springboard Software Inc.	Insufficient sales
Springpoint Senior Living, Inc.	Excessive PP&E
Sprinklr, Inc.	Insufficient sales
Sprout Social, Inc.	Insufficient sales
SPS Commerce, Inc.	Excessive R&D
SPS Transaction Services	Insufficient sales
Spyglass, Inc.	Insufficient sales
SPYR, Inc.	Going concern
SQA, Inc.	Insufficient sales
Squarespace, Inc.	Insufficient sales
SquareTrade, Inc.	Insufficient sales
SRAX, Inc.	Going concern
SRM Networks Inc.	Insufficient sales
SS&C Technologies Holdings, Inc.	Excessive R&D
SS&C Technologies, Inc.	Insufficient sales
SSC Security Services Corp.	Government
St. Joseph, Inc.	Going concern
Staffing 360 Solutions, Inc.	Accept

Company	Reason
Stagwell Inc.	Insufficient sales
Stampede Drilling Inc.	Excessive PP&E
Standard Premium Finance Holdings, Inc.	Insufficient sales
StandardAero Business Aviation Services, LLC	Insufficient sales
Star Data Systems, Inc.	Insufficient sales
Star Peak Energy Transition Corp.	Insufficient sales
Starco Brands, Inc.	Going concern
Starmax Technologies, Inc.	Insufficient sales
Starpress Inc	Insufficient sales
Startech Labs, Inc.	Going concern
StarTek, Inc.	Other services
Startek, Inc.	Duplicate
State Street Corporation	Financial services
Steampunk Wizards, Inc.	Insufficient sales
Steel Connect, Inc.	Other services
Steer Technologies Inc.	Insufficient sales
Stem, Inc.	Insufficient sales
StemGen, Inc.	Going concern
Sterling Check Corp.	Insufficient sales
Sterling Partners, Inc.	Insufficient sales
STG Group, Inc.	Insufficient sales
STI Group, Inc.	Insufficient sales
Stock Market Solutions Inc.	Insufficient sales
Stockscape.com Technologies Inc.	Insufficient sales
Stonepath Group Inc.	Insufficient sales
Storage Engine, Inc.	Insufficient sales
StorageNetworks, Inc.	Insufficient sales
Storigen Systems	Insufficient sales
Strainsforpains, Inc.	Insufficient sales
Stran & Company, Inc.	Insufficient sales
Strategic Environmental & Energy Resources, Inc.	Going concern
Strategic Gaming Investments, Inc.	Insufficient sales
Strategic Global Investments, Inc.	Insufficient sales
Strategic Management & Opportunity Corporation	Insufficient sales
Stream Global Services, Inc.	Insufficient sales
Streamedia Communications, Inc.	Insufficient sales
Streamline Health Solutions, Inc.	Excessive R&D
Stronghold Digital Mining, Inc.	Insufficient sales
Stronghold Industries, Inc.	Insufficient sales
Structural Dynamics Research Corp.	Insufficient sales
STS Evermedia Corporation	Insufficient sales
STWC Holdings, Inc.	Going concern
Styleclick, Inc.	Insufficient sales
Styleclick.com, Inc.	Insufficient sales
Summit Design, Inc.	Insufficient sales
Summit Silver, Inc.	Insufficient sales
Sumo Logic, Inc.	Insufficient sales
Sun & Surf Inc.	Insufficient sales
Suncast Solar Energy, Inc.	Insufficient sales
Suncrest Global Energy Corp.	Insufficient sales
Sundance Strategies, Inc.	Financial services
Sunhawk.com Corporation	Insufficient sales
Sunoco LP	Other business

Company	Reason
Sunport Medical Corp.	Insufficient sales
Super League Gaming, Inc.	Going concern
Super Nova Resources, Inc.	Insufficient sales
SuperBuzz Inc.	Insufficient sales
Superconductor Technologies Inc.	Excessive R&D
SuperPro Vending Group, Inc.	Insufficient sales
Support.com, Inc.	Excessive R&D
SupportSpan Inc.	Insufficient sales
Sure Trace Security Corporation	Insufficient sales
SurePure, Inc.	Insufficient sales
SurfMonkey Inc.	Insufficient sales
Surge Holdings, Inc.	Going concern
Sushee Inc.	Insufficient sales
Swarmio Media Holdings Inc.	Insufficient sales
Switch, Ltd.	Insufficient sales
SWK Holdings Corporation	Financial services
SWWT Inc.	Insufficient sales
SWWT, Inc.	Insufficient sales
Sylogist Ltd.	Excessive R&D
Symbolic Logic, Inc.	Excessive R&D
Synchronoss Technologies, Inc.	Excessive R&D
Syndeo Corporation	Insufficient sales
Synergy 2000 Inc.	Insufficient sales
Synertech Inc.	Insufficient sales
Synopsys, Inc.	Excessive R&D
SynQuest Inc.	Insufficient sales
Synreal Services Corp.	Insufficient sales
Syntrol Corp.	Insufficient sales
Sysorex Global Holding Corp.	Insufficient sales
Sysorex, Inc.	Government
System1, Inc.	Insufficient sales
T Stamp Inc.	Insufficient sales
T-REX Acquisition Corp.	Insufficient sales
T.W. Christian, Inc	Insufficient sales
T/R Systems Inc.	Insufficient sales
Tabatha V Inc.	Insufficient sales
Table Trac, Inc.	Other business
Taboola.com Ltd.	Insufficient sales
Tabula Rasa HealthCare, Inc.	Going concern
Taj Systems, Inc.	Insufficient sales
Take-Two Interactive Software, Inc.	Excessive advertising
TAL International Group, Inc.	Insufficient sales
Talarian Corporation	Insufficient sales
Talus Venture Corp.	Insufficient sales
Tamarack Ventures Inc.	Insufficient sales
Tangram Enterprise Solutions Inc.	Insufficient sales
Tapinator, Inc.	Insufficient sales
Tapinator, Inc.	Excessive R&D
TargetRx, Inc.	Insufficient sales
TaskUs, Inc.	Insufficient sales
Tautachrome, Inc.	Going concern
TD SYNEX Corporation	Distribution
TDT Development, Inc.	Insufficient sales

Company	Reason
Teachers Insurance and Annuity Association of America	Financial services
Team America Corp.	Insufficient sales
Team Health Holdings, Inc.	Insufficient sales
Team, Inc.	Other services
TechForce Corporation	Insufficient sales
Technalysis Corporation	Insufficient sales
Technical Communities Inc.	Insufficient sales
Technology Enterprises, Inc.	Insufficient sales
Technology Group Inc.	Insufficient sales
Technology Growth Partners Corp.	Insufficient sales
Technology Modeling Assoc	Insufficient sales
Technology Solutions Company	Insufficient sales
TechTarget, Inc.	Excessive R&D
Tecsys Inc.	Excessive R&D
Tego Cyber Inc.	Insufficient sales
TekeGldMpire Inc	Insufficient sales
Tekna Holding ASA	Insufficient sales
Telco Cuba, Inc.	Other services
Telcom Direct Inc.	Insufficient sales
Tele Group Corp.	Insufficient sales
Telecom Communications Inc.,	Insufficient sales
Telecom Technologies, Inc.	Insufficient sales
Telecom Wireless Inc., Prior to reverse merger with Phoenix Communications Inc.	Insufficient sales
Telecure Technologies Inc.	Insufficient sales
TeleHealthCare, Inc.	Insufficient sales
Teleplus Consumer Services Inc.	Insufficient sales
Telo Genomics Corp.	Going concern
Teloquent Communications, Inc.	Insufficient sales
Telos Corporation	Government
Telpac Industries, Inc.	Insufficient sales
TELUS International (Cda) Inc.	Insufficient sales
Template Software, Inc.	Insufficient sales
Tempo Acquisition, LLC	Insufficient sales
Tenable Holdings, Inc.	Excessive R&D
Tenet Fintech Group Inc.	Going concern
Tenfold Corporation	Insufficient sales
Teradata Corporation	Excessive R&D
Teranet Holdings Limited Partnership	Insufficient sales
TeraWulf Inc.	Insufficient sales
Terra Energy Resources, Ltd.	Insufficient sales
Terralink Systems, Inc.	Insufficient sales
Tervita Corporation	Other services
Tetra Tech, Inc.	Government
Textmunication Holdings, Inc.	Insufficient sales
TGI Solar Power Group Inc.	Going concern
TGV Software Inc.	Insufficient sales
Thaon Communications, Inc.	Insufficient sales
The ADT Security Corporation	Insufficient sales
The Amacore Group, Inc.	Insufficient sales
The American West.com, Inc	Insufficient sales
The Arena Group Holdings, Inc.	Going concern
The Beachbody Company, Inc.	Insufficient sales
The Brink's Company	Other services

Company	Reason
The Broadlane Group, Inc.	Insufficient sales
The Caldwell Partners International Inc.	Accept
The Castle Group, Inc.	Excessive advertising
The Crypto Company	Going concern
The Depository Trust & Clearing Corporation	Financial services
The Descartes Systems Group Inc.	Excessive R&D
The Dr. Spock Company	Insufficient sales
The Dun & Bradstreet Corporation	Insufficient sales
The GEO Group, Inc.	Government
The Glimpse Group, Inc.	Insufficient sales
The Hackett Group, Inc.	Accept
The Healing Company Inc.	Going concern
The Interpublic Group of Companies, Inc.	Accept
The Kiley Group, Inc.	Insufficient sales
The League Publishing, Inc.	Insufficient sales
The Mint Corporation	Going concern
The Movie Studio, Inc.	Going concern
The Netplex Group, Inc.	Insufficient sales
The NFT Gaming Company, Inc.	Insufficient sales
The OLB Group, Inc.	Going concern
The Parkview Group, Inc.	Insufficient sales
The Pulse Network, Inc.	Going concern
The Quantum Group, Inc.	Insufficient sales
The RealReal, Inc.	Insufficient sales
The Renewable Corporation	Insufficient sales
The Reynolds and Reynolds Company	Insufficient sales
The RMR Group Inc.	Real estate services
The Savings Bank Mutual Life Insurance Company of Massachusetts	Insufficient sales
The Sperry & Hutchinson Company, Inc.	Insufficient sales
The Terminix Company, LLC	Insufficient sales
The Trade Desk, Inc.	Excessive R&D
The Union Corporation	Insufficient sales
The Western Union Company	Financial services
TheDirectory.com, Inc	Going concern
theglobe.com, inc.	Going concern
thePlatform, LLC	Insufficient sales
Theramed Capital Corp.	Insufficient sales
Thimble Point Acquisition Corp.	Insufficient sales
Think Research Corporation	Insufficient sales
Thinkific Labs Inc.	Insufficient sales
ThirdCAI, Inc.	Insufficient sales
Thomson Reuters Corporation	Other business
Thoughtworks Holding, Inc.	Insufficient sales
Thrust Capital Corp.	Insufficient sales
Thryv Holdings, Inc.	Other business
Thumzup Media Corporation	Insufficient sales
Thunder Bridge Acquisition, Ltd.	Insufficient sales
Tianrong Medical Group Inc.	Insufficient sales
TIBCO Software Inc.	Insufficient sales
Tiger Media, Inc.	Insufficient sales
Tiger Reef, Inc.	Going concern
Tiger Team Technologies, Inc.	Insufficient sales
TigrSoft Inc.	Insufficient sales

Company	Reason
Tiidal Gaming Group Corp.	Insufficient sales
Tilion, Inc.	Insufficient sales
TimefireVR Inc.	Excessive R&D
Tingo, Inc.	Insufficient sales
Tintic Standard Gold Mines, Inc.	Insufficient sales
tinyBuild, Inc.	Insufficient sales
TipTapPay Micropayments Ltd	Insufficient sales
Titan Iron Ore Corp.	Insufficient sales
Titanium Intelligence, Inc.	Insufficient sales
TiVo Corporation	Excessive R&D
TLD3 Entertainment Group, Inc.	Insufficient sales
TMM, Inc.	Insufficient sales
Toast, Inc.	Insufficient sales
Toga Limited	Going concern
Token Communities Ltd.	Insufficient sales
Tomahawk Industries Inc.	Insufficient sales
TOMI Environmental Solutions, Inc.	Going concern
Topclick International, Inc.	Insufficient sales
Topicus.com Inc.	Insufficient sales
Tora Technologies Inc.	Insufficient sales
Torino Power Solutions Inc.	Insufficient sales
Total Energy Services Inc.	Excessive PP&E
Total System Services, Inc.	Financial services
Totaligent Inc.	Going concern
Totally Hip Technologies Inc.	Going concern
TotalMed Inc.	Insufficient sales
Toucan Interactive Corp.	Going concern
Touchpoint Group Holdings, Inc.	Going concern
Track Group, Inc.	Excessive R&D
Tracker Ventures Corp.	Going concern
TrackX Holdings Inc.	Going concern
Tradeshaw Marketing Company, Ltd.	Insufficient sales
TradeUP Global Corporation	Insufficient sales
Tradeweb Markets Inc.	Excessive R&D
Transax International Ltd.	Insufficient sales
Transcend Capital Corporation	Insufficient sales
Transform Pack International, Inc.	Insufficient sales
Transition Systems, Inc.	Insufficient sales
TransUnion	Excessive advertising
TransUnion Rental Screening Solutions, Inc.	Insufficient sales
TraqIQ, Inc.	Going concern
Travel Hunt Holdings, Inc.	Insufficient sales
Travelzoo	Excessive advertising
Travlang Inc.	Insufficient sales
Treasure & Shipwreck Recovery, Inc.	Going concern
Treasure Global Inc.	Insufficient sales
Treatment.Com International Inc.	Insufficient sales
Trebia Acquisition Corp.	Insufficient sales
Trellus Health plc	Insufficient sales
Trench Metals Corp.	Going concern
Tribal Rides International Corp.	Going concern
Tribe Property Technologies Inc.	Insufficient sales
Trident Systems International Inc.	Insufficient sales

Company	Reason
Trimax Corp.	Insufficient sales
Trimax Corporation	Insufficient sales
Trimax Corporation	Insufficient sales
TriNet Group, Inc.	Accept
Trinity Health Corporation	Healthcare services
Trinzic Corp.	Insufficient sales
Trioptimum Capital Corp.	Insufficient sales
Tripadvisor, Inc.	Excessive advertising
Tripath Technology Inc.	Insufficient sales
TripSitter Clinic Ltd.	Insufficient sales
Tripwire Interactive LLC	Insufficient sales
Triton Technologies Inc.	Insufficient sales
Troika Media Group, Inc.	Going concern
Troyden Corp.	Insufficient sales
Trucept, Inc.	Insufficient sales
TrueBlue, Inc.	Accept
TrueCar, Inc.	Excessive R&D
Truli Technologies, Inc.	Going concern
Trunity Holdings, Inc.	Insufficient sales
TrustBIX Inc.	Other business
Trustcash Holdings, Inc.	Insufficient sales
Trusted Information Systems Inc.	Insufficient sales
TruTrace Technologies Inc.	Insufficient sales
TRxADE HEALTH, Inc.	Going concern
Tryx Ventures Corp.	Insufficient sales
TSR, Inc.	Accept
TSS, Inc.	Going concern
TTEC Holdings, Inc.	Accept
TTTICKETS Holding Corp.	Insufficient sales
Tuatar Capital Acquisition Corporation	Insufficient sales
Tucows Inc.	Retail
Tugboat International, Inc.	Insufficient sales
Turbine Aviation, Inc.	Insufficient sales
Turnium Technology Group Inc.	Insufficient sales
TurnKey Capital, Inc.	Going concern
TuSimple Holdings Inc.	Insufficient sales
TVC Telecom Incorporated	Insufficient sales
Twilio Inc.	Excessive R&D
Twin Vee Powercats Co.	Insufficient sales
Twitter, Inc.	Excessive advertising
Two Hands Corporation	Going concern
Two Rivers Financial Group, Inc.	Financial services
Tyler Technologies, Inc.	Excessive R&D
U C Inc.	Insufficient sales
U.N. Dollars Corporation	Insufficient sales
U.S. National Telecom, Inc.	Insufficient sales
U.S. Rentals, Inc.	Insufficient sales
UA Multimedia, Inc.	Insufficient sales
UAPC, Inc.	Going concern
Uber Technologies, Inc.	Excessive advertising
Ubiquitech Software Corp.	Insufficient sales
Ubiquiti Inc.	Excessive R&D
Ubrandit.com	Insufficient sales

Company	Reason
Udemy, Inc.	Insufficient sales
Ugomeia Interactive Corp.	Insufficient sales
UiPath Inc.	Insufficient sales
UKT Recycling Technologies, Inc.	Insufficient sales
Ultimate Lifestyle Corp	Insufficient sales
UMF Group Inc.	Insufficient sales
Unibio Inc.	Insufficient sales
Unidoc Health Corp.	Insufficient sales
Unigraphics Solutions, Inc.	Insufficient sales
UniPro Financial Services, Inc.,	Insufficient sales
Unisat Inc	Insufficient sales
Unison Software, Inc.	Insufficient sales
Unisys Corporation	Accept
United American Healthcare Corporation	Insufficient sales
United Communications Partners Inc.	Insufficient sales
United Communities LLC	Insufficient sales
United Rentals (North America), Inc.	Leasing
United Rentals, Inc.	Duplicate
UnitedGlobalCom LLC	Insufficient sales
Unitronix Corporation	Insufficient sales
Unity First Acquisition Corp	Insufficient sales
Unity Software Inc.	Insufficient sales
Universal Compression Holdings, Inc.	Insufficient sales
Universal Power Industry Corporation	Going concern
Universal PropTech Inc.	Going concern
UPAY, Inc.	Going concern
UpHealth, Inc.	Insufficient sales
Upland Software, Inc.	Excessive R&D
Upper Street Marketing Inc.	Insufficient sales
Upper Street Marketing, Inc.	Insufficient sales
UpSNAP Inc.	Insufficient sales
UpSnap, Inc.	Going concern
Upwork Inc.	Excessive advertising
Urbanfund Corp.	Excessive PP&E
Urbanimmersive Inc.	Going concern
URS Corporation	Insufficient sales
UrtheCast Corp.	Going concern
US Biodefense Inc.	Insufficient sales
US Order, Inc.	Insufficient sales
US SerVis, Inc.	Insufficient sales
USA Signal Technology Inc.	Insufficient sales
USCB Financial Holdings, Inc.	Insufficient sales
USDATA Corp.	Insufficient sales
USR Technology, Inc.	Insufficient sales
uWink Inc. Del	Insufficient sales
V Group, Inc.	Insufficient sales
V2X, Inc.	Insufficient sales
Vacasa, Inc.	Insufficient sales
Valiant Eagle Inc.	Insufficient sales
ValiCert, Inc.	Insufficient sales
ValueSetters, Inc.	Excessive PP&E
Vantagemed Corporation	Insufficient sales
Vantive Corporation	Insufficient sales

Company	Reason
Varonis Systems, Inc.	Excessive R&D
Vartech Systems Inc.	Insufficient sales
Vast Exploration Inc.	Insufficient sales
Vaycaychella Inc.	Insufficient sales
Vayusphere, Inc.	Insufficient sales
VCampus Corporation	Insufficient sales
Vectrus, Inc.	Government
Veeva Systems Inc.	Excessive R&D
Vega Promotional Systems, Inc.	Insufficient sales
Vega-Atlantic Corp	Insufficient sales
Velocity Portfolio Group, Inc	Insufficient sales
Velodyne Lidar, Inc.	Insufficient sales
Velos, LLC.	Insufficient sales
Vendio Services, LLC	Insufficient sales
VentureQuest Group Inc.	Insufficient sales
Venturi Partners Inc.	Insufficient sales
Venus Acquisition Corporation	Insufficient sales
Venzee Technologies Inc.	Going concern
Veradigm Inc.	Excessive R&D
Veraz Networks, Inc.	Insufficient sales
Verb Technology Company, Inc.	Going concern
Verecloud, Inc.	Insufficient sales
Veridian Corporation	Insufficient sales
Verify Smart Corp.	Insufficient sales
Verint Systems Inc.	Excessive R&D
VeriSign, Inc.	Excessive R&D
Verisity Ltd.	Insufficient sales
Verisk Analytics, Inc.	Excessive R&D
Veritas US Inc.	Insufficient sales
Veritec, Inc.	Going concern
Veritone, Inc.	Going concern
Verity Inc.	Insufficient sales
Verizon New York Inc.	Insufficient sales
Verra Mobility Corporation	Government
Versatility, Inc.	Insufficient sales
Verscend Holding Corp	Insufficient sales
Verses Technologies Inc.	Insufficient sales
Versus Systems Inc.	Going concern
Vertex, Inc.	Insufficient sales
Vertical Computer Systems Inc.	Insufficient sales
VerticalBuyer, Inc.	Insufficient sales
VerticalScope Holdings Inc.	Insufficient sales
Vessel Management Services, Inc.	Insufficient sales
VetaNova, Inc.	Insufficient sales
VGTel, Inc.	Insufficient sales
Viad Corp	Other business
Vianet Technologies, Inc.	Insufficient sales
Vianet Technology Group Ltd.	Insufficient sales
Viant Corporation	Insufficient sales
Viant Technology Inc.	Insufficient sales
Viasoft, Inc.	Insufficient sales
Viatis Inc.	Excessive R&D
ViaVid Broadcasting, Inc.	Insufficient sales

Company	Reason
Vicinity Corporation	Insufficient sales
Vicon Industries, Inc.	Going concern
Vidable, Inc.	Insufficient sales
Vidaroo Corp	Insufficient sales
Videolocity International, Inc.	Insufficient sales
Vika Corp.	Development stage
Ville d'Otterburn Park	Insufficient sales
Vimeo, Inc.	Insufficient sales
Vinco Ventures, Inc.	Distribution
Vinculum, Inc.	Insufficient sales
VIQ Solutions Inc.	Going concern
Virilitec Industries Inc.	Insufficient sales
VimetX Holding Corp	Excessive R&D
VirTra, Inc.	Excessive advertising
Virtual Ed Link, Inc.	Insufficient sales
Virtual Interactive Technologies Corp.	Going concern
Virtual Interactive Technologies Corp.	Insufficient sales
Virtual Medical International, Inc.	Insufficient sales
Virtual Medical International, Inc.	Insufficient sales
Virtual Silicon Technology, Inc.	Insufficient sales
VirtualSellers.com, Inc.	Insufficient sales
Virtuoso Acquisition Corp.	Insufficient sales
Virtusa Corporation	Accept
Visa Inc.	Financial services
Visigenic Software, Inc.	Insufficient sales
Visio Corporation	Insufficient sales
Visionael Corporation	Insufficient sales
Visionstate Corp.	Insufficient sales
Visionstate Corp.	Going concern
Visium Technologies, Inc.	Going concern
Vista Information Solutions, Inc.	Insufficient sales
Vistas Media Acquisition Company Inc.	Insufficient sales
VistaTech Corp.	Insufficient sales
VisualMED Clinical Solutions Corp.	Insufficient sales
Vita Mobile Systems, Inc.	Insufficient sales
Vitalhub Corp.	Going concern
VitalStream Holdings Inc.	Insufficient sales
Viva Entertainment Group Inc.	Going concern
Vivic Corp.	Going concern
Vivint Smart Home, Inc.	Excessive advertising
VizConnect, Inc.	Going concern
Vizient, Inc.	Insufficient sales
VM Consolidated, Inc.	Insufficient sales
VMware, Inc.	Excessive R&D
VNUE, Inc.	Going concern
Voice Assist, Inc.	Insufficient sales
Voice Assist, Inc.	Insufficient sales
Voice Mobility International, Inc.	Going concern
VoicelQ Inc.	Insufficient sales
VOIS, Inc.	Insufficient sales
Volta Inc.	Insufficient sales
Voltari Corporation	Excessive R&D
Vonage Holdings Corp.	Excessive advertising

Company	Reason
Vortex Brands Co.	Insufficient sales
Vortex Brands Co.	Going concern
VOS International, Inc.	Insufficient sales
VOTI Detection Inc.	Excessive R&D
Voxiva, Inc.	Insufficient sales
Voxtur Analytics Corp.	Excessive R&D
Voyager Aviation Holdings, LLC	Insufficient sales
Voyager Digital (Canada) Ltd.	Going concern
Voyager Learning Company	Insufficient sales
Voyant International Corp.	Insufficient sales
VPC Impact Acquisition Holdings III, Inc.	Insufficient sales
VPN Technologies Inc.	Going concern
Vringo, Inc.	Insufficient sales
Vroom, Inc.	Insufficient sales
VSBLTY Groupe Technologies Corp.	Going concern
VSE Corporation	Government
Vubotics, Inc.	Insufficient sales
Vynleads, Inc.	Going concern
W Technologies, Inc.	Insufficient sales
W Technologies, Inc.	Insufficient sales
Waitr Holdings Inc.	Excessive R&D
Walker & Dunlop, Inc.	Real estate services
Wall Data, Inc.	Insufficient sales
Wall Street Media Co., Inc.	Going concern
Wally World Media, Inc.	Insufficient sales
Walnut Financial Services, Inc.	Insufficient sales
Walsh International Inc.	Insufficient sales
Wang Global, Inc.	Insufficient sales
Warner Music Group Corp.	Other business
Warrior Girl Corp.	Insufficient sales
Wasatch Education Systems	Insufficient sales
Watchout! Inc.	Insufficient sales
Watersave Logic Corp.	Insufficient sales
Wave Sync Corp.	Going concern
WaveDancer, Inc.	Government
Wavefront Technologies	Insufficient sales
Wealthcraft Capital, Inc.	Insufficient sales
Weatherford Enterra, Inc.	Insufficient sales
Weatherford International plc	Distribution
Weave Communications, Inc.	Insufficient sales
Web Global Holdings, Inc.	Insufficient sales
Web Views Corp.	Insufficient sales
Web.com, Inc. (Atlanta, GA)	Insufficient sales
WebAccess International, Inc.	Insufficient sales
WebMD Health Corp.	Insufficient sales
WebMD Health Corp.	Insufficient sales
WebMD Health Services Group, Inc.	Insufficient sales
WebSky, Inc.	Insufficient sales
Websoft, Inc.	Insufficient sales
Webstar Technology Group, Inc.	Going concern
WeCommerce Holdings Ltd.	Insufficient sales
WeddingChannel.com, Inc.	Insufficient sales
Wellfield Technologies Inc.	Insufficient sales

Company	Reason
Wellness Matrix Group, Inc.	Going concern
WellteQ Digital Health Inc.	Going concern
WEQ Holdings Inc.	Other business
Wesco Aircraft Holdings, Inc.	Other services
West Coast Ventures Group Corp.	Insufficient sales
West Virginia United Health System, Inc.	Healthcare services
WestCoast Golf Experiences Inc.	Insufficient sales
Western Data Systems Inc.	Insufficient sales
Western e-com Inc.	Insufficient sales
Western Media Group Corporation	Insufficient sales
Western Technology & Research Inc.	Insufficient sales
Westhill Partners, Inc.	Insufficient sales
Westlin Corporation	Insufficient sales
Westone Ventures Inc.	Insufficient sales
Wewards, Inc.	Going concern
WeWork Inc.	Excessive advertising
WEX Inc.	Government
What a World! Inc.	Insufficient sales
Where Food Comes From, Inc.	Other services
White Cloud Exploration Inc.	Insufficient sales
White Pine Hydro, LLC	Insufficient sales
Whitestone Industries Inc.	Insufficient sales
WidePoint Corporation	Government
Wikifamilies, Inc.	Insufficient sales
WikiSoft Corp.	Insufficient sales
Wild Grizzly Venture Capital Inc.	Insufficient sales
Wilhelmina International, Inc.	Other services
Willis Lease Finance Corporation	Leasing
WillScot Mobile Mini Holdings Corp.	Going concern
Windfall Geotek Inc.	Going concern
Winmark Corporation	Other business
Wipro IT Services LLC	Insufficient sales
Wireless Ronin Technologies Inc.	Insufficient sales
Wisdom Homes of America, Inc.	Insufficient sales
Wishpond Technologies Ltd.	Insufficient sales
WM Technology, Inc.	Insufficient sales
WMD Holdings Group, Inc.	Insufficient sales
Woodland Hatchery, Inc.	Insufficient sales
Workday, Inc.	Excessive R&D
Workiva Inc.	Excessive R&D
World 50, Inc.	Insufficient sales
World Health Alternatives Inc.	Insufficient sales
World Health Energy Holdings, Inc.	Insufficient sales
World Health Energy Holdings, Inc.	Insufficient sales
World Wide Web Inc.	Insufficient sales
WorldAware, Inc.	Insufficient sales
WorldCom Intermedia, Inc.	Insufficient sales
Worlds Inc.	Going concern
Worldwide Computer Services Inc	Insufficient sales
Worldwide Strategies, Inc.	Insufficient sales
Worldwide Wireless Networks, Inc.	Insufficient sales
Worry Free Holdings Company	Insufficient sales
WPF Holdings, Inc.	Insufficient sales

Company	Reason
WSP Global Inc.	Government
WU BA Superior Products Holding Group Inc.	Insufficient sales
WWA Group Inc.	Insufficient sales
X-Factor Communications Holdings, Inc.	Insufficient sales
X-Tech Innovations, Inc.	Insufficient sales
Xalles Holdings Inc.	Going concern
XCana Petroleum Corporation	Insufficient sales
Xcel Brands, Inc.	Distribution
Xcel Management Inc	Insufficient sales
XcelMobility, Inc.	Going concern
Xeno Transplants Corporation	Insufficient sales
Xigem Technologies Corporation	Insufficient sales
Xionics Document Technologies, Inc.	Insufficient sales
XLConnect Solutions, Inc.	Insufficient sales
XOX Corp.	Insufficient sales
Xperi Inc.	Insufficient sales
Xpert Financial, Inc.	Insufficient sales
XR Energy, Inc.	Insufficient sales
XR Immersive Tech Inc.	Insufficient sales
XRApplied Technologies Inc.	Insufficient sales
XRG Inc.	Insufficient sales
XTM Inc.	Other business
XTRA Bitcoin Inc.	Insufficient sales
Xtreme Technologies Inc.	Insufficient sales
XXIS Corp.	Insufficient sales
XXX Acquisition Corp.	Insufficient sales
XY Labs, Inc.	Insufficient sales
Xybion Digital Inc.	Insufficient sales
Yale-New Haven Health Services Corporation	Insufficient sales
YANGAROO Inc.	Going concern
Yappn Corp.	Going concern
YDx Innovation Corp.	Going concern
Yellow Stem Tech Inc.	Insufficient sales
Yelp Inc.	Excessive R&D
Yext, Inc.	Excessive R&D
Yijia Group Corp.	Going concern
Yippy, Inc.	Insufficient sales
York Capital Corp.	Insufficient sales
Yotta Global, Inc.	Going concern
Zaldiva Inc.	Insufficient sales
Zane Interactive Publishing Inc.	Insufficient sales
Zecotek Photonics Inc.	Going concern
Zedcor Inc.	Other business
Zedge, Inc.	Retail
Zegarelli Group International, Inc.	Insufficient sales
Zendesk, Inc.	Excessive advertising
Zenith Technology, Inc.	Insufficient sales
Zenovia Digital Exchange Corporation	Going concern
Zeppelin Energy Inc.	Insufficient sales
Zerify, Inc.	Going concern
Zermatt Capital Inc.	Insufficient sales
ZeroFox Holdings, Inc.	Insufficient sales
Zeta Global Holdings Corp.	Insufficient sales

Company	Reason
ZeU Technologies Inc.	Insufficient sales
Zeus, Inc.	Going concern
ZF Automotive US Inc.	Insufficient sales
Zicix Corporation	Insufficient sales
Ziff Davis, Inc.	Excessive advertising
Ziff-Davis Inc.	Insufficient sales
Zillow Group, Inc.	Excessive advertising
ZIM Corporation	Going concern
Zinio LLC	Insufficient sales
Ziplink, Inc.	Insufficient sales
ZipRecruiter, Inc.	Insufficient sales
Zonetail Inc.	Going concern
Zonzia Media, Inc.	Going concern
Zoom Video Communications, Inc.	Excessive advertising
Zoomd Technologies Ltd.	Insufficient sales
ZoomerMedia Limited	Other business
ZoomInfo Technologies Inc.	Insufficient sales
Zoominfo Technologies LLC	Insufficient sales
ZoomMed Inc.	Insufficient sales
Zoompass Holdings, Inc.	Going concern
Zscaler, Inc.	Excessive R&D
Zuki Inc.	Insufficient sales
Zulu Energy Corp.	Insufficient sales
Zulu-Tek Inc	Insufficient sales
Zunicom, Inc.	Insufficient sales
Zuora, Inc.	Excessive R&D
zvelo, Inc.	Insufficient sales
Zynga Inc.	Excessive advertising

Memorandum

To CarMax File
From
Date February 23, 2023
Re Development of Real Estate Services Set
cc

I. Selection of Companies

I.A. Search Criteria

1	▼	Company Type: Private Company With Public Debt OR Public Company	97886
2	▼	Geographic Locations: United States and Canada (Primary)	33287
3	▼	Company Status: NOT (Reorganizing OR Out of Business OR No Longer Investing OR Liquidating)	30884
4	▼	Key Developments by Type: NOT (Auditor Going Concern Doubts [3/1/2015-2/28/2019])	27434
5	▼	SIC Codes: 6512 Operators of Nonresidential Buildings OR 6513 Operators of Apartment Buildings OR 6514 Operators of Dwellings Other Than Apartment Buildings OR 6515 Operators of Residential Mobile Home Sites OR 6519 Lessors of Real Property, Not Elsewhere Classified OR 6531 Real Estate Agents and Managers OR 6552 Land Subdividers and Developers, Except Cemeteries OR 6500 Real Estate OR 6510 Real Estate Operators (except Developers) And Lessors OR 6530 Real Estate Agents And Managers OR 6532 Real Estate Dealers OR 6550 Land Subdividers And Developers OR 6600 Combinations of real estate, insurance, loans, and law offices	341

Data were collected from S&P's CapitalIQ on February 20, 2023.¹ The search resulted in 341 companies for review. All companies are matched to CarMax's FY2016 to FY2018, the period under audit.

I.B. Quantitative Review of the Identified Companies

Companies are rejected if:

- Financial data are unavailable for at least two years between FY2016 and FY2018;
- The company's R&D-to-sales ratio is higher than 3% for the three-year period between FY2016 and FY2018;

¹ Unless otherwise noted, all financial data and business descriptions are taken from CapitalIQ® 2023S&P Global Market Intelligence (and its affiliates, as applicable) (individually and collectively, "S&P"). Reproduction of any information, data, or material, including ratings ("Content") in any form, is prohibited except with the prior written permission of S&P. S&P does not guarantee the accuracy, adequacy, completeness, timeliness, or availability of any Content and is not responsible for any errors or omissions (negligent or otherwise), regardless of the cause, or for the results obtained from the use of such Content. In no event shall S&P be liable for any damages, costs, expenses, legal fees, or losses (including lost income or lost profit and opportunity costs) in connection with any use of the Content.

- The company's advertising-to-sales ratio is higher than 3% for the three-year period between FY2016 and FY2018;
- The company's PP&E-to-sales ratio is higher than 100% for the three-year period between FY2016 and FY2018.

I.C. Qualitative Review of the Identified Companies

We next review the business descriptions and regulatory filings (e.g., 10-K filings) for the remaining companies to further narrow the list. The search results in 6 companies being selected as potentially comparable. Table 1 summarizes the rejection reasons for the 335 companies rejected and Section III lists the rejection reason (if any) for each of the companies considered.

Table 1: Summary of Rejection Reasons

Rejection Reason	Total
Developer	10
Excessive advertising	6
Excessive PP&E	42
Excessive R&D	5
Financial services	3
Franchiser	2
Government	2
Hotels	1
Insufficient sales	257
Investor	2
Other business	1
Other services	4

Commented [AA1]: We need to list the screen in the list ending I.B.

Commented [MR2R1]: Done. Also updated numbers in table

I.D. Results

Section II presents the business descriptions for the 6 accepted companies. The companies' financials were matched to CarMax's fiscal years for the period under audit.

I.D.1. Operating Margin

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$mm)
Altus Group Limited	5.0%	8.1%	7.9%	7.1%	445.3
CBRE Group, Inc.	7.6%	5.8%	5.8%	6.2%	15,617.9
Colliers International Group Inc.	7.9%	7.9%	7.5%	7.7%	2,018.0
FirstService Corporation	5.7%	6.1%	6.5%	6.2%	1,492.0
Newmark Group, Inc.	-0.9%	11.3%	8.3%	6.6%	1,382.2
The RMR Group Inc.	35.2%	49.0%	45.1%	43.9%	208.5
25th percentile	5.0%	6.1%	6.5%	6.2%	
Median	6.6%	8.0%	7.7%	6.8%	
75th percentile	7.9%	11.3%	8.3%	7.7%	

I.D.2. Markup on Total Costs

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$mm)
Altus Group Limited	5.3%	8.9%	8.6%	7.6%	445.3
CBRE Group, Inc.	8.2%	6.1%	6.2%	6.6%	15,617.9
Colliers International Group Inc.	8.6%	8.6%	8.1%	8.4%	2,018.0
FirstService Corporation	6.0%	6.5%	7.0%	6.6%	1,492.0
Newmark Group, Inc.	-0.9%	12.7%	9.0%	7.1%	1,382.2
The RMR Group Inc.	54.4%	96.1%	82.2%	78.4%	208.5
25th percentile	5.3%	6.5%	7.0%	6.6%	
Median	7.1%	8.7%	8.4%	7.3%	
75th percentile	8.6%	12.7%	9.0%	8.4%	

I.D.3. Return on Assets

Company	FY2016	FY2017	FY2018	Period	Average Sales (\$mm)
Altus Group Limited	4.0%	6.9%	7.1%	6.0%	445.3
CBRE Group, Inc.	10.3%	10.5%	11.2%	10.7%	15,617.9
Colliers International Group Inc.	14.3%	16.6%	16.4%	15.8%	2,018.0
FirstService Corporation	13.8%	14.9%	15.3%	14.7%	1,492.0
Newmark Group, Inc.		8.3%	6.8%	7.3%	1,382.2
The RMR Group Inc.	85.4%	360.9%	280.0%	201.4%	208.5
25th percentile	10.3%	8.3%	7.1%	7.3%	
Median	13.8%	12.7%	13.2%	12.7%	
75th percentile	14.3%	16.6%	16.4%	15.8%	

Operating assets are calculated as: Total Assets – Cash & Short-term investments – Long Term Investments – Construction in Progress – Finance Division Assets – Other Assets² – Current Deferred Tax Assets + LIFO Reserve.³

² This is a defined variable in CapitalIQ for assets that are not part of a standard classification.

³ This adjusts all operating asset calculations to be on a FIFO basis.

II. Business descriptions for the accepted companies

Altus Group Limited

Altus Group Limited provides software, data solutions, and independent advisory services to the commercial real estate industry in Canada, the United States, Europe, and the Asia Pacific. It operates through Altus Analytics and Commercial Real Estate Consulting (CRE Consulting) segments. The Altus Analytics segment offers ARGUS Enterprise, a commercial property valuation and asset management software; ARGUS Taliance, a real estate fund and alternative investment management software; ARGUS EstateMaster, a property development feasibility and management software; and ARGUS Developer, a real estate development pro forma and management software solution; ARGUS Voyanta, a powerful data aggregation, validation, and reporting software solution; ARGUS Acquire, a real estate acquisition deals and pipeline management software; and ARGUS ValueInsight, a commercial real estate valuation software. This segment also offers data subscription products that provide real estate information on the residential, office, industrial, and investment markets; and advisory and managed services. This segment serves equity and debt investors, valuers and appraisers, brokers, developers, banks, and public entities. The CRE Consulting segment offers real estate property tax services, including assessment reviews, management, and appeals, as well as personal property, and state and local tax advisory services; valuation services, such as appraisals of real estate portfolios, valuation of properties, due diligence, litigation, and economic consulting services; and construction feasibility study, budgeting, cost and loan monitoring, and project management services to owner operators, developers, financial institutions, and CRE asset holders and investors. The company was founded in 2005 and is headquartered in Toronto, Canada.

CBRE Group, Inc.

CBRE Group, Inc. operates as a commercial real estate services and investment company worldwide. It operates through three segments: Advisory Services, Global Workplace Solutions, and Real Estate Investments segments. The Advisory Services segment provides strategic advice and execution to owners, investors, and occupiers of real estate in connection with leasing; property sales and mortgage services under the CBRE Capital Markets brand; property and project management services, including construction management, marketing, building engineering, accounting, and financial services for owners of and investors in office, industrial, and retail properties; and valuation services that include market value appraisals, litigation support, discounted cash flow analyses, and feasibility studies, as well as consulting services, such as property condition reports, hotel advisory, and environmental consulting.

The Global Workplace Solutions segment offers facilities management, project management, and transaction management services. The Real Estate Investments segment provides investment management services under the CBRE Investment Management brand to pension funds, insurance companies, sovereign wealth funds, foundations, endowments, and other institutional investors; development services under the Trammell Crow Company brand primarily to users of and investors in commercial real estate; and flexible-space solutions under the CBRE Hana brand. The company was founded in 1906 and is headquartered in Dallas, Texas.

Colliers International Group Inc.

Colliers International Group Inc. provides commercial real estate professional and investment management services to corporate and institutional clients in the Americas, Europe, the Middle East, Africa, and the Asia Pacific. It offers transaction brokerage services, including sales, leasing, and debt finance services, as well as landlord and tenant representation services; capital markets and investment services; and mortgage investment banking services. The company provides outsourcing and advisory services, such as corporate and workplace solutions; occupier; engineering and design, appraisal and valuation, and loan services; workplace strategy; property marketing; and research services. It also offers property management services comprising building operations and maintenance, facilities management, lease administration, property accounting and financial reporting, contract management and, construction management; and project management services, which include bid document review, construction monitoring and delivery management, contract administration and integrated cost control, development management, facility and engineering functionality, milestone and performance monitoring, quality assurance, risk management and strategic project consulting. In addition, the company provides investment management services that consists of asset management and investor advisory services. The company was founded in 1972 and is headquartered in Toronto, Canada.

FirstService Corporation

FirstService Corporation, together with its subsidiaries, provides residential property management and other essential property services to residential and commercial customers in the United States and Canada. The company operates in two segments, FirstService Residential and FirstService Brands. The FirstService Residential segment offers property management services for private residential communities, such as condominiums, co-operatives, homeowner associations, master-planned communities, active adult and lifestyle communities, and various other residential developments. This segment also provides a range

of ancillary services, including on-site staffing for building engineering and maintenance, full-service swimming pool and amenity management, and security and concierge/front desk; and financial services comprising cash management, other banking transaction-related, and specialized property insurance brokerage. In addition, this segment offers energy management solutions and advisory services, and resale processing services. The FirstService Brands segment operates and provides essential property services to residential and commercial customers, through five franchise networks; and company-owned locations, including 20 California Closets, 12 Paul Davis Restoration, and 1 CertaPro Painters locations. It provides residential and commercial restoration, painting, and floor coverings design and installation services; custom-designed and installed closet, and home storage solutions; home inspection services; and fire protection and related services. This segment offers its services primarily under the Paul Davis Restoration, First Onsite Restoration, Century Fire Protection, CertaPro Painters, California Closets, Pillar to Post Home Inspectors, and Floor Coverings International brand names. FirstService Corporation was founded in 1989 and is headquartered in Toronto, Canada.

Newmark Group, Inc.

Newmark Group, Inc. provides commercial real estate services in the United States and internationally. The company's investor/owner services and products include capital markets, such as investment, debt and structured finance, and loan sales; agency leasing, property management, and valuation and advisory; and commercial real estate due diligence consulting and advisory services, as well as government sponsored enterprise lending, loan servicing, mortgage broking, and equity-raising services. Its occupier services and products comprise tenant representation; real estate management technology systems; workplace and occupancy strategy; global corporate consulting; project management; account and transaction management; and lease administration and facilities management services. The company provides its services to commercial real estate tenants, investors, owners, occupiers, and developers, as well as lenders and multi-national corporations. As of December 31, 2021, it operated approximately 160 offices on four continents. The company was formerly known as Newmark Knight Frank and changed its name to Newmark Group, Inc. in October 2017. Newmark Group, Inc. was founded in 1929 and is based in New York, New York.

The RMR Group Inc.

The RMR Group Inc., through its subsidiary, The RMR Group LLC, provides business and property management services in the United States. The company offers management services to its four publicly traded real estate investment trusts and three real estate operating companies. It also provides investment advisory and administrative services. The company

was formerly known as REIT Management & Research Inc. and changed its name to The RMR Group Inc. in September 2015. The RMR Group Inc. was founded in 1986 and is headquartered in Newton, Massachusetts.

III. Reason for Rejection for each company rejected

Company	Reason
1500 Mission Urban Housing LP	Insufficient sales
286 Lenox Partners LLC	Insufficient sales
333 Building Corp.	Insufficient sales
420 Property Management, Inc.	Insufficient sales
A.D. Makepeace Company	Insufficient sales
Acanthus Real Estate Corp.	Insufficient sales
Across America Real Estate Exchange, Inc.	Insufficient sales
Advanced Lighting Solutions, Inc.	Insufficient sales
Advanced Oxygen Technologies, Inc.	Excessive PP&E
AFC Gamma, Inc.	Insufficient sales
Age, Inc.	Insufficient sales
Alfa International Corp.	Insufficient sales
Allegheny & Western Railway Co.	Insufficient sales
Alset Inc.	Insufficient sales
Altrimega Health Corp.	Insufficient sales
Altus Group Limited	Accept
AMEN Properties, Inc.	Insufficient sales
American Funeral Services Corp.	Insufficient sales
American Homes 4 Rent, L.P.	Excessive PP&E
American Racing Capital, Inc.	Insufficient sales
American Realty Investors, Inc.	Excessive PP&E
American Technologies Group, Inc.	Insufficient sales
Ameritrust Corporation	Insufficient sales
AMREP Corporation	Developer
Anywhere Real Estate Group LLC	Insufficient sales
Anywhere Real Estate Inc.	Excessive advertising
ApartmentLove Inc.	Insufficient sales
Apple Green Holding, Inc.	Insufficient sales
Appreciate Holdings, Inc.	Insufficient sales
Armitage Mining Corp	Insufficient sales
Arvada House Preservation Limited Partnership	Insufficient sales
Asia Supernet Corp.	Insufficient sales
B.H.I.T. Inc.	Insufficient sales
Bangla Property Management Inc.	Insufficient sales
Basic Realty Investment Corp.	Insufficient sales
Bayport International Holdings, Inc.	Insufficient sales
BBX Capital, Inc.	Insufficient sales
bclMC Realty Corp.	Insufficient sales
Be At TV, Inc.	Insufficient sales
Beacon Redevelopment Industrial Corporation	Insufficient sales
Beneficial Holdings, Inc.	Insufficient sales
BGI, Inc.	Insufficient sales
Biloxi Marsh Lands Corporation	Excessive PP&E

Company	Reason
BioGeron, Inc.	Insufficient sales
Bishop Capital Corporation	Insufficient sales
Blue Ridge Real Estate Company	Excessive PP&E
Blue Water Ventures International, Inc.	Insufficient sales
Bluesky Systems Holdings, Inc.	Insufficient sales
Bluestem Group Inc.	Excessive advertising
Bresler & Reiner, Inc.	Insufficient sales
BRIDGE Housing Corporation	Insufficient sales
Bridgemark Real Estate Services Inc.	Franchiser
Broad Street Realty, Inc.	Insufficient sales
Brookfield Properties Ltd.	Insufficient sales
Brookfield Residential Properties Inc.	Developer
Buck Hill Falls Company	Insufficient sales
Buckeye Ventures, Inc.	Insufficient sales
BusinessWay International Corp.	Insufficient sales
Cabo Verde Capital Inc.	Insufficient sales
Cal Bay International, Inc.	Insufficient sales
Canal Capital Corporation	Insufficient sales
Cancer Treatment Holdings, Inc.	Insufficient sales
Capital Properties, Inc.	Excessive PP&E
Capterra Financial Group, Inc.	Insufficient sales
Carew Realty, Inc.	Insufficient sales
Carnegie Development, Inc.	Insufficient sales
Carrage House Preservation, L.P.	Insufficient sales
Carrington Holding Company, LLC	Insufficient sales
Cascadia Investments, Inc.	Insufficient sales
CBRE Group, Inc.	Accept
CBRE Services, Inc.	Insufficient sales
CCA Prison Realty Trust	Insufficient sales
CCUR Holdings, Inc.	Insufficient sales
Chief Consolidated Mining Company	Insufficient sales
China Grand Resorts, Inc.	Insufficient sales
China Growth Development, Inc.	Insufficient sales
Church & Crawford, Inc.	Insufficient sales
Circle Entertainment Inc.	Insufficient sales
Citadel Gold Mines Inc.	Insufficient sales
Citation Insurance Group	Insufficient sales
CKX Lands, Inc.	Excessive PP&E
Coho Collective Kitchens Inc.	Insufficient sales
Colliers International Group Inc.	Accept
Comet Industries Ltd.	Excessive PP&E
Commonwealth American Financial Group Inc.	Insufficient sales
Community Redevelopment Inc.	Insufficient sales
Compass, Inc.	Insufficient sales
Comstock Holding Companies, Inc.	Developer
Concordis Group Incorporated	Insufficient sales
Consolidated HCI Holdings Corporation	Excessive PP&E
Copperline Americas Limited	Excessive PP&E
Corix Bioscience, Inc.	Insufficient sales
Correlate Infrastructure Partners Inc.	Insufficient sales
Creative Holdings & Marketing Corp.	Insufficient sales
D.R. Horton, Inc.	Developer
Denmans.com Inc	Insufficient sales

Company	Reason
Diamond Lake Minerals, Inc.	Insufficient sales
Diamond Resorts Corporation	Insufficient sales
Direction Technologies Inc.	Insufficient sales
DLC Holdings Corp.	Insufficient sales
Dobie Center Properties Ltd	Insufficient sales
Doma Holdings Inc.	Insufficient sales
Douglas Elliman Inc.	Insufficient sales
Dunes Hotels and Casinos Inc.	Insufficient sales
e-Net Financial.Com Corp.	Insufficient sales
EACO Corp.	Insufficient sales
Eagle Realty Group LLC	Insufficient sales
East Side Capital Inc.	Insufficient sales
Echelon International Corp.	Insufficient sales
Emergia Inc.	Insufficient sales
Empyrean Holdings Inc.	Insufficient sales
EOP Operating Limited Partnership	Insufficient sales
Exchange Industrial Income Fund	Insufficient sales
eXp World Holdings, Inc.	Other services
Exxe Group Inc.	Insufficient sales
Fairfax Group, The	Insufficient sales
Falcon Crest Energy Inc.	Insufficient sales
Fathom Holdings Inc.	Insufficient sales
FC Global Realty Incorporated	Insufficient sales
First American Clock Co	Insufficient sales
First Hartford Corporation	Excessive PP&E
FirstService Corporation	Accept
Five Point Holdings, LLC	Excessive advertising
Ford Holdings LLC	Insufficient sales
Forestar Group Inc.	Developer
Forge Innovation Development Corp.	Insufficient sales
Fort Hamilton Housing LLC	Insufficient sales
FreewillPC.com Inc.	Insufficient sales
FRP Holdings, Inc.	Excessive PP&E
Fuquan Capital Management, Inc.	Insufficient sales
Galaxy Enterprises Inc.	Insufficient sales
GCI, LLC	Excessive PP&E
GE Capital Franchise Finance Corporation	Insufficient sales
Genesis Land Development Corp.	Developer
GiveMePower Corporation	Insufficient sales
Global Links Corp.	Insufficient sales
Globalnetcare Inc.	Insufficient sales
Golden Cycle Corp.	Insufficient sales
Gordon Corp. (OTCPK:GORL)	Insufficient sales
Grand Court Lifestyles, Inc.	Insufficient sales
Granite REIT Holdings Limited Partnership	Insufficient sales
Green Machine Development Corp.	Insufficient sales
Greenbriar Corp.	Insufficient sales
Greens Worldwide, Inc.	Insufficient sales
Greystar Real Estate Partners, LLC	Insufficient sales
Grubb & Ellis Company	Insufficient sales
Grubb & Ellis Company, Inc.	Insufficient sales
Guilford Capital Corporation	Insufficient sales
Gulf Alternative Energy Corp.	Insufficient sales

Company	Reason
HAL Concepts Ltd.	Insufficient sales
Halmont Properties Corporation	Excessive PP&E
Harbor Custom Development, Inc.	Insufficient sales
Harbor Urban LLC	Insufficient sales
Hawaiian Hospitality Group, Inc.	Insufficient sales
Here to Serve Holding Corp.	Insufficient sales
HG Holdings, Inc.	Insufficient sales
Hilton Grand Vacations Inc.	Developer
Holiday Island Holdings, Inc.	Insufficient sales
Holobeam, Inc.	Insufficient sales
HomeLife Inc.	Insufficient sales
Horizons Holdings International, Corp.	Insufficient sales
Imperial Equities Inc.	Excessive PP&E
Information Services Corporation	Government
Infrastructure Developments Corp.	Insufficient sales
Injectomatic Systems International, Inc.	Insufficient sales
Integrated Enterprises, Inc.	Insufficient sales
Invesque Inc.	Excessive PP&E
Investco Corporation	Insufficient sales
Invitation Homes Operating Partnership LP	Insufficient sales
Ivanhoe Cambridge II Inc.	Insufficient sales
J.W. Mays, Inc.	Excessive PP&E
James Monroe Capital Corporation	Insufficient sales
JDS Investments Ltd.	Insufficient sales
Jones Lang LaSalle Incorporated	Government
Jure Holdings Inc.	Insufficient sales
Kaanapali Land, LLC	Excessive PP&E
Kadestone Capital Corp.	Insufficient sales
Kennedy Wilson, Inc.	Insufficient sales
Kennedy-Wilson Holdings, Inc.	Investor
Killeam Properties, Inc.	Insufficient sales
Kirin International Holding, Inc.	Insufficient sales
Land Resources Corp.	Insufficient sales
Landmark Infrastructure Partners LP	Excessive PP&E
Las Palmas Mobile Estates	Insufficient sales
Latteno Food Corp.	Insufficient sales
Lend Lease Capital, Inc.	Insufficient sales
LGI Homes, Inc.	Developer
Lincoln Heritage Corp.	Insufficient sales
Littlefield Corporation	Insufficient sales
LoopNet, Inc.	Insufficient sales
Lummi Development, Inc.	Insufficient sales
LuxUrban Hotels Inc.	Insufficient sales
Madison Pacific Properties Inc.	Excessive PP&E
Mainstreet Equity Corp.	Insufficient sales
Mainstreet Equity Corp.	Excessive PP&E
Major Group Inc	Insufficient sales
Major Realty Corporation	Insufficient sales
Mar Ventures Inc.	Insufficient sales
Marcus & Millichap, Inc.	Financial services
Marriott Vacations Worldwide Corporation	Developer
Mascot Mines Inc.	Insufficient sales
Mason Harrison Ratliff Enterprises, LLC	Insufficient sales

Company	Reason
Mattamy Group Corporation	Insufficient sales
MAXXAM Inc.	Insufficient sales
MCAP Inc.	Insufficient sales
MDG Real Estate Global Limited	Excessive PP&E
Melcor Developments Ltd.	Excessive PP&E
Merchants' National Properties, Inc.	Insufficient sales
MFC Development Corp.	Insufficient sales
Mills Properties, Inc.	Insufficient sales
Minto Group Inc.	Insufficient sales
MiX Telematics Limited	Excessive R&D
Moneylogix Group, Inc.	Insufficient sales
Mongolia Growth Group Ltd.	Excessive PP&E
Mongolian Explorations Ltd.	Insufficient sales
Morguard Corporation	Excessive PP&E
Mortgage Oil Corp.	Insufficient sales
MRN Limited Partnership	Insufficient sales
Namco Realty Ltd.	Excessive PP&E
Napoli Enterprises Inc.	Insufficient sales
National American University Holdings, Inc.	Excessive advertising
National Bank of Canada	Financial services
National CORE Newhall Avenue Housing MGP, LLC	Insufficient sales
National Realty LP	Insufficient sales
Neighborhood Properties, Inc.	Excessive PP&E
Netgates, Inc.	Insufficient sales
New Concept Energy, Inc.	Excessive PP&E
New England Realty Associates Limited Partnership	Excessive PP&E
New Water Street Corp.	Insufficient sales
New York & Harlem Railroad Co.	Insufficient sales
Newmark Group, Inc.	Accept
NEX2U Inc.	Insufficient sales
North American Resort & Golf, Inc.	Insufficient sales
NTM Properties, Inc.	Insufficient sales
NTS Properties III	Insufficient sales
Oak Ridge Micro-energy Inc.	Insufficient sales
Offerpad Solutions Inc.	Insufficient sales
Omnicell, Inc.	Excessive R&D
Opendoor Technologies Inc.	Insufficient sales
Orpheum Property, Inc.	Insufficient sales
Pacific Oak SOR Holdings, Ltd.	Excessive PP&E
Pan-American Properties Inc.	Insufficient sales
Park Lawn Corporation	Other services
Pinelawn Cemetery	Insufficient sales
PocketSpec Technologies Inc.	Insufficient sales
Portsmouth Square, Inc.	Hotels
Prime City One Capital Corp.	Insufficient sales
Primemd Inc.	Insufficient sales
Promotora Valle Hermoso, Inc.	Insufficient sales
PropTech Investment Corporation II	Insufficient sales
Rafael Holdings, Inc.	Excessive R&D
RE/MAX Holdings, Inc.	Franchiser
Real Matters Inc.	Other services
Realmark Holdings Corp.	Insufficient sales
Red Horse Entertainment Corp.	Insufficient sales

Company	Reason
Redefy Corporation	Insufficient sales
Redfin Corporation	Excessive advertising
Regent Pacific Properties Inc.	Excessive PP&E
REX - Real Estate Exchange, Inc.	Insufficient sales
Rockwood National Corporation	Insufficient sales
Schlegel Villages Inc.	Insufficient sales
Sea Pines Associates, Inc.	Insufficient sales
Seago Group, Inc.	Insufficient sales
Sheltair Aviation Center, LLC	Insufficient sales
ShopCore Properties, L.P.	Insufficient sales
SK Realty Ventures, Inc.	Insufficient sales
Smart Kids, Inc.	Insufficient sales
Société québécoise des infrastructures	Insufficient sales
Solar Integrated Roofing Corporation	Insufficient sales
Sontech Inc	Insufficient sales
Southeast Housing LLC	Insufficient sales
Southmark Corp.	Insufficient sales
Starrex International Ltd.	Financial services
Stemsation International, Inc.	Insufficient sales
StoneMor Inc.	Excessive PP&E
StorageVault Canada Inc.	Excessive PP&E
Stratus Capital Corp.	Insufficient sales
Stratus Properties Inc.	Excessive PP&E
Sunrise Senior Living, LLC	Insufficient sales
Supreme Realty Investments, Inc.	Insufficient sales
Surety Holdings Corp.	Insufficient sales
Target Hospitality Corp.	Insufficient sales
Tarragon Corporation	Insufficient sales
Taylor Morrison Communities, Inc.	Insufficient sales
Teachers Insurance and Annuity Association of America	Investor
Technology General Corporation	Insufficient sales
Tejon Ranch Co.	Excessive PP&E
Temple I Llc	Insufficient sales
Tempus Capital Inc.	Excessive PP&E
Terre aux Boeufs Land Co., Inc.	Insufficient sales
The Barden & Robeson Corporation	Insufficient sales
The Becker Milk Company Limited	Excessive PP&E
The CannaBusiness Group, Inc.	Insufficient sales
The Chestnut Partnership	Insufficient sales
The DeWolfe Companies, Inc.	Insufficient sales
The Howard Hughes Corporation	Excessive PP&E
The Leser Group Ltd.	Excessive PP&E
The Molpus Company	Insufficient sales
The Real Brokerage Inc.	Insufficient sales
The RMR Group Inc.	Accept
The St. Joe Company	Developer
Thermodynetics Inc.	Insufficient sales
Thomas Properties Group Inc.	Insufficient sales
Tiderock Companies, Inc.	Insufficient sales
Tower Health	Insufficient sales
Tower Properties Company	Insufficient sales
Travel + Leisure Co.	Other services
Tremont Mortgage Trust	Insufficient sales

Company	Reason
Tribe Property Technologies Inc.	Insufficient sales
Tuxis Corporation	Insufficient sales
UBuyHoldings, Inc.	Insufficient sales
UC Asset, LP	Insufficient sales
Ultramar Diamond Shamrock Corporation	Insufficient sales
Ulysses Diversified Holdings Corporation	Insufficient sales
United Church Homes, Inc.	Insufficient sales
Urbanfund Corp.	Excessive PP&E
US Financial Inc.	Insufficient sales
Vacation Spa Resorts, Inc.	Insufficient sales
Vault America, Inc.	Insufficient sales
Vector Group Ltd.	Other business
Vert Infrastructure Ltd.	Insufficient sales
Voltari Corporation	Excessive R&D
Wabash Railroad Co.	Insufficient sales
Wall Financial Corporation	Excessive PP&E
Waters Corporation	Excessive R&D
Wellnessamerica Online, Inc.	Insufficient sales
West Edmonton Mall Property Inc.	Insufficient sales
WeWork Inc.	Insufficient sales
Wheeling & Lake Erie Railway Company	Insufficient sales
Williams Scotsman International, Inc.	Insufficient sales
Winchester Holding Group	Insufficient sales
Windrock Land Company	Insufficient sales
Wireless Attachments, Inc.	Insufficient sales
Wisdom Homes of America, Inc.	Insufficient sales
WLB, L.L.C.	Insufficient sales
World Class Holding Company, LLC	Insufficient sales
World Wide Motion Pictures Corp.	Insufficient sales
Xcel Capital Corp.	Insufficient sales
Yorkton Equity Group Inc.	Insufficient sales
Zillow Group, Inc.	Excessive advertising
Zoned Properties, Inc.	Excessive PP&E

Memorandum

To CarMax File
From
Date March 3, 2023
Re Development of Retailer Set
cc

I. Selection of Companies

I.A. Search Criteria

1	▼ SIC Codes: 5200 Building Materials, Hardware, Garden Supply, and Mobile Home Dealers OR 5300 General Merchandise Stores OR 5400 Food Stores OR 5500 Automotive Dealers and Gasoline Service Stations OR 5600 Apparel and Accessory Stores OR 5800 Eating and Drinking Places OR 5900 Miscellaneous Retail	291066
2	▼ Geographic Locations: United States and Canada (Primary)	71882
3	▼ Key Developments by Type: NOT (Auditor Going Concern Doubts [10/1/2014-8/31/2017])	71836
4	▼ Company Type: Private Company With Public Debt OR Companies with Public Financials OR Public Company	1951
5	▼ Company Status: Operating and Operating Subs	1380
6	▼ SIC Codes: NOT (Division H: Finance, Insurance, And Real Estate (Primary))	1349

Data were collected from S&P's CapitalIQ on July 9, 2021.¹ The search resulted in 1,349 companies for review. All companies are matched to Tractor Supply's FY2014 to FY2016, the period under audit.

I.B. Quantitative Review of the Identified Companies

Companies are rejected if:

- Financial data are unavailable for at least two years between FY2014 and FY2016;
- The company's R&D-to-sales ratio is higher than 3% for the three-year period between 2014 and 2016;

¹ Unless otherwise noted, all financial data and business descriptions are taken from CapitalIQ® 2021 S&P Global Market Intelligence (and its affiliates, as applicable) (individually and collectively, "S&P"). Reproduction of any information, data, or material, including ratings ("Content") in any form, is prohibited except with the prior written permission of S&P. S&P does not guarantee the accuracy, adequacy, completeness, timeliness, or availability of any Content and is not responsible for any errors or omissions (negligent or otherwise), regardless of the cause, or for the results obtained from the use of such Content. In no event shall S&P be liable for any damages, costs, expenses, legal fees, or losses (including lost income or lost profit and opportunity costs) in connection with any use of the Content.

- The company's advertising-to-sales ratio is higher than 3% for the three-year period between 2014 and 2016.

I.C. Qualitative Review of the Identified Companies

We next review the business descriptions and regulatory filings (e.g., 10-K filings) for the remaining companies to further narrow the list. The search results in 43 companies being selected as potentially comparable. Table 1 summarizes the qualitative rejection reasons and Section III lists the rejection reasons for each of the companies considered.

Table 1: Summary Qualitative Rejection Reasons

Rejection Reason	Total
Acquisition business	1
Auction business	2
Auto Services	1
Brands	26
Car dealership	6
Catering services	1
Charity	2
Cooperative	1
Development stage company	3
Develops TV shows	1
Education services	1
Energy distribution	1
Entertainment company	1
Excessive advertising	85
Excessive R&D	18
Financial services	4
Financing	1
Food cooperative	1
Food distributor	1
Franchiser	7
Fuel business	9
Gasoline transportation	1
Government agency	1
Grocery stores	16
Health Services	1
Healthcare services	9
Heating oil business	1
Insufficient data	4
Insufficient sales	922
IT solutions	2
Jewelry	1
Jewelry store	1
Leases real estate	1
Licensing	1
Management of water utilities	1
Management solutions	1
Manufacturing	32

Rejection Reason	Total
Marketing Services	1
Medical services	5
Natural gas business	1
No audited data available	1
Non-profit	1
Nutrition solutions	1
Oil and gas business	1
Online business	8
Pawn loans	2
Propane distributor	3
Real estate	1
Related-party transactions	1
Research	1
Restaurants	67
Retails fuel	1
Solar power technology	1
Technical Services to Government	1
Technology	1
Travel center	2
Under liquidation	1
Value added services	34
Vending machines	1
Weight loss program	1
Wholesale	1

I.D. Results

Section II presents the business descriptions for the 47 accepted companies. The companies' financials were matched to Tractor Supply's fiscal years for the period under audit.

I.D.1. Operating Margin

Primary Industry	Company Name	OM FY2016	OM FY2017	OM FY2018	OM Period
Apparel Retail	Bath & Body Works, Inc.	18.0%	16.2%	13.7%	15.9%
	Boot Barn Holdings, Inc.	7.3%	6.2%	6.5%	6.6%
	Burlington Stores, Inc.	5.5%	6.8%	7.8%	6.8%
	Citi Trends, Inc.	3.5%	2.8%	3.1%	3.1%
	Claire's Stores Inc.	9.6%	8.8%	10.8%	9.7%
	Foot Locker, Inc.	12.7%	12.9%	10.1%	11.9%
	Ross Stores, Inc.	13.6%	14.0%	14.5%	14.1%
	The Cato Corporation	9.2%	5.3%	1.7%	5.6%
	The Finish Line, Inc.	5.0%	3.9%	2.5%	3.8%
	The Men's Wearhouse, Inc.	-21.0%	13.1%	11.0%	0.9%
	The TJX Companies, Inc.	12.0%	11.6%	11.1%	11.5%
	Zumiez Inc.	6.2%	5.0%	5.4%	5.5%
Automotive Retail	Advance Auto Parts, Inc.	8.6%	8.7%	6.2%	7.8%
	AutoZone, Inc.	19.4%	19.7%	19.6%	19.6%
	Genuine Parts Company	7.3%	7.1%	6.2%	6.8%
	O'Reilly Automotive, Inc.	19.6%	20.3%	19.5%	19.8%

Primary Industry	Company Name	OM FY2016	OM FY2017	OM FY2018	OM Period
Department Stores	Dillard's, Inc.	6.8%	5.1%	4.2%	5.4%
	Kohl's Corporation	8.1%	7.0%	7.2%	7.4%
	Nordstrom, Inc.	6.8%	5.0%	3.8%	5.2%
Food Retail	Alcanna Inc.	3.6%	3.6%	2.5%	3.3%
	Natural Grocers by Vitamin Cottage, Inc.	4.6%	2.9%	1.8%	3.0%
	Rocky Mountain Liquor Inc.	4.9%	2.2%	1.6%	3.0%
	Weis Markets, Inc.	3.1%	3.2%	2.2%	2.8%
General Merchandise Stores	99 Cents only Stores LLC	-2.5%	-2.5%		-2.5%
	Big Lots, Inc.	4.6%	4.8%	5.7%	5.0%
	Costco Wholesale Corporation	3.1%	3.2%	3.2%	3.2%
	Dollar General Corporation	9.6%	9.5%	8.6%	9.2%
	Dollar Tree, Inc.	8.0%	8.2%	9.0%	8.5%
	Dollarama Inc.	20.7%	21.8%	23.1%	22.0%
	Fred's, Inc.	-1.0%	-3.3%	-2.2%	-2.1%
	PriceSmart, Inc.	5.3%	4.7%	4.6%	4.9%
	Target Corporation	6.9%	7.1%	6.0%	6.7%
	Tuesday Morning Corporation	0.3%	-3.3%	-2.1%	-1.7%
	Walmart Inc.	5.0%	4.7%	4.2%	4.6%
Home Improvement Retail	Lowe's Companies, Inc.	9.4%	9.1%	9.6%	9.3%
	The Home Depot, Inc.	13.3%	13.3%	13.3%	13.3%
Specialty Stores	Barnes & Noble, Inc.	0.7%	1.8%	0.6%	1.0%
	DAVIDsTEA Inc.	8.4%	8.4%	8.4%	8.4%
	Five Below, Inc.	11.2%	11.4%	12.3%	11.7%
	Hibbett, Inc.	11.9%	9.9%	5.9%	9.2%
	Sally Beauty Holdings, Inc.	13.0%	13.0%	13.0%	13.0%
	Staples, Inc.	4.9%	4.9%		4.9%
	Tractor Supply Company	10.4%	10.2%	9.5%	10.0%
	25th Percentile	4.6%	3.9%	3.2%	3.3%
	Median	7.3%	7.0%	6.2%	6.7%
	75th Percentile	11.2%	11.4%	10.8%	10.0%

I.D.2. Markup on Total Costs

Primary Industry	Company Name	NCPM FY2016	NCPM FY2017	NCPM FY2018	NCPM Period
Apparel Retail	Bath & Body Works, Inc.	22.0%	19.3%	15.8%	19.0%
	Boot Barn Holdings, Inc.	7.9%	6.6%	7.0%	7.1%
	Burlington Stores, Inc.	5.9%	7.2%	8.5%	7.3%
	Citi Trends, Inc.	3.7%	2.8%	3.2%	3.2%
	Claire's Stores Inc.	10.6%	9.6%	12.1%	10.8%
	Foot Locker, Inc.	14.6%	14.8%	11.2%	13.5%
	Ross Stores, Inc.	15.7%	16.3%	16.9%	16.4%
	The Cato Corporation	10.1%	5.6%	1.7%	5.9%
	The Finish Line, Inc.	5.3%	4.0%	2.5%	3.9%
	The Men's Wearhouse, Inc.	-17.3%	15.1%	12.4%	0.9%
	The TJX Companies, Inc.	13.6%	13.1%	12.5%	13.0%
Automotive Retail	Zumiez Inc.	6.6%	5.2%	5.7%	5.8%
	Advance Auto Parts, Inc.	9.4%	9.5%	6.6%	8.5%
	AutoZone, Inc.	24.1%	24.5%	24.3%	24.3%
	Genuine Parts Company	7.9%	7.6%	6.6%	7.3%
Department Stores	O'Reilly Automotive, Inc.	24.3%	25.5%	24.2%	24.7%
	Dillard's, Inc.	7.3%	5.4%	4.4%	5.7%

Primary Industry	Company Name	NCPM FY2016	NCPM FY2017	NCPM FY2018	NCPM Period
Food Retail	Kohl's Corporation	8.8%	7.5%	7.7%	8.0%
	Nordstrom, Inc.	7.3%	5.3%	3.9%	5.4%
	Alcanna Inc.	3.8%	3.7%	2.6%	3.4%
	Natural Grocers by Vitamin Cottage, Inc.	4.8%	3.0%	1.9%	3.1%
	Rocky Mountain Liquor Inc.	5.2%	2.3%	1.7%	3.1%
	Weis Markets, Inc.	3.2%	3.3%	2.3%	2.9%
General Merchandise Stores	99 Cents only Stores LLC	-2.4%	-2.5%		-2.4%
	Big Lots, Inc.	4.9%	5.0%	6.0%	5.3%
	Costco Wholesale Corporation	3.2%	3.3%	3.3%	3.3%
	Dollar General Corporation	10.6%	10.5%	9.4%	10.1%
	Dollar Tree, Inc.	8.6%	9.0%	9.9%	9.2%
	Dollarama Inc.	26.1%	27.9%	30.1%	28.1%
	Fred's, Inc.	-1.0%	-3.2%	-2.1%	-2.1%
	PriceSmart, Inc.	5.6%	5.0%	4.8%	5.1%
	Target Corporation	7.4%	7.7%	6.4%	7.2%
	Tuesday Morning Corporation	0.3%	-3.2%	-2.0%	-1.7%
	Walmart Inc.	5.3%	4.9%	4.4%	4.8%
Home Improvement Retail	Lowe's Companies, Inc.	10.3%	10.0%	10.6%	10.3%
	The Home Depot, Inc.	15.3%	15.3%	15.3%	15.3%
Specialty Stores	Barnes & Noble, Inc.	0.7%	1.8%	0.7%	1.0%
	DAVIDsTEA Inc.	9.2%	9.2%	9.2%	9.2%
	Five Below, Inc.	12.6%	12.9%	14.0%	13.3%
	Hibbett, Inc.	13.5%	11.0%	6.2%	10.1%
	Sally Beauty Holdings, Inc.	15.0%	15.0%	15.0%	15.0%
	Staples, Inc.	5.1%	5.2%		5.2%
	Tractor Supply Company	11.7%	11.4%	10.4%	11.1%
	25th Percentile	4.9%	4.0%	3.3%	3.4%
	Median	7.9%	7.5%	6.6%	7.2%
	75th Percentile	12.6%	12.9%	12.1%	11.1%

I.D.3. Return on Assets

Primary Industry	Company Name	ROA FY2016	ROA FY2017	ROA FY2018	ROA Period
Apparel Retail	Bath & Body Works, Inc.	40.3%	35.6%	28.2%	34.5%
	Boot Barn Holdings, Inc.	9.9%	7.3%	7.9%	8.3%
	Burlington Stores, Inc.	11.7%	15.8%	19.5%	15.7%
	Citi Trends, Inc.	13.0%	10.1%	11.6%	11.5%
	Claire's Stores Inc.	6.0%	5.7%	7.6%	6.4%
	Foot Locker, Inc.	44.5%	44.3%	31.1%	39.6%
	Ross Stores, Inc.	43.9%	46.1%	50.6%	47.0%
	The Cato Corporation	29.4%	16.5%	5.0%	17.3%
	The Finish Line, Inc.	14.3%	10.8%	7.5%	10.9%
	The Men's Wearhouse, Inc.		34.5%	35.3%	4.0%
	The TJX Companies, Inc.	44.2%	42.9%	40.7%	42.5%
	Zumiez Inc.	15.6%	12.9%	14.7%	14.4%
Automotive Retail	Advance Auto Parts, Inc.	10.4%	10.2%	7.2%	9.3%
	AutoZone, Inc.	26.0%	25.7%	24.6%	25.4%
	Genuine Parts Company	16.4%	15.2%	10.9%	13.8%
	O'Reilly Automotive, Inc.	24.9%	26.1%	24.4%	25.1%
Department Stores	Dillard's, Inc.	14.0%	10.4%	8.8%	11.1%

Primary Industry	Company Name	ROA FY2016	ROA FY2017	ROA FY2018	ROA Period
Food Retail	Kohl's Corporation	12.5%	11.2%	12.2%	12.0%
	Nordstrom, Inc.	14.7%	12.6%	10.0%	12.5%
	Alcanna Inc.	5.7%	5.4%	4.3%	5.2%
	Natural Grocers by Vitamin Cottage, Inc.	14.5%	8.3%	5.1%	8.8%
	Rocky Mountain Liquor Inc.	11.2%	5.3%	4.6%	7.4%
	Weis Markets, Inc.	8.7%	8.8%	6.2%	7.8%
General Merchandise Stores	99 Cents only Stores LLC	-2.9%	-3.4%		-3.2%
	Big Lots, Inc.	16.9%	17.6%	20.6%	18.4%
	Costco Wholesale Corporation	15.0%	14.6%	14.9%	14.9%
	Dollar General Corporation	18.3%	18.8%	17.3%	18.1%
	Dollar Tree, Inc.	14.4%	11.6%	13.6%	13.0%
	Dollarama Inc.	32.4%	36.5%	41.2%	36.8%
	Fred's, Inc.	-3.2%	-9.9%	-5.3%	-6.1%
	PriceSmart, Inc.	21.6%	18.5%	16.8%	18.8%
	Target Corporation	14.1%	14.4%	12.4%	13.7%
	Tuesday Morning Corporation	0.8%	-9.3%	-5.9%	-5.0%
	Walmart Inc.	13.4%	12.8%	11.7%	12.7%
Home Improvement Retail	Lowe's Companies, Inc.	19.4%	19.5%	20.6%	19.8%
	The Home Depot, Inc.	31.7%	31.7%	31.7%	31.7%
Specialty Stores	Barnes & Noble, Inc.	1.3%	3.5%	1.3%	2.0%
	DAVIDsTEA Inc.	24.7%	24.7%	24.7%	24.7%
	Five Below, Inc.	38.7%	39.5%	45.2%	41.5%
	Hibbett, Inc.	30.6%	24.7%	14.6%	23.2%
	Sally Beauty Holdings, Inc.	26.6%	26.6%	26.6%	26.6%
	Staples, Inc.	11.0%	12.4%		11.7%
	Tractor Supply Company	32.4%	30.0%	26.9%	29.6%
	25th Percentile	11.2%	10.1%	7.6%	8.8%
	Median	14.9%	14.6%	14.6%	13.8%
	75th Percentile	26.6%	26.1%	24.7%	25.1%

Operating assets are calculated as: Total Assets – Cash & Short-term investments – Long Term Investments – Construction in Progress – Finance Division Assets – Other Assets² – Deferred Tax Assets + LIFO Reserve.³

II. Business descriptions for the accepted companies

99 Cents Only Stores LLC

99 Cents Only Stores LLC operates retail stores in the United States. Its stores offer consumable products and other household items, and seasonal items, as well as domestic and imported fresh produce, deli, dairy, and frozen and refrigerated food products. As of January 14, 2019, the company operated 389 stores located in California, Texas, Arizona, and

² This is a defined variable in CapitalIQ for assets that are not part of a standard classification.

³ This adjusts all operating asset calculations to be on a FIFO basis.

Nevada. It also engages in the wholesale of merchandise to retailers, distributors, and exporters. The company was founded in 1965 and is based in City of Commerce, California. 99 Cents Only Stores LLC operates as a subsidiary of Number Holdings, Inc.

Advanced Auto Parts, Inc.

Advance Auto Parts, Inc. provides automotive replacement parts, accessories, batteries, and maintenance items for domestic and imported cars, vans, sport utility vehicles, and light and heavy duty trucks. The company offers battery accessories; belts and hoses; brakes and brake pads; chassis and climate control parts; clutches and drive shafts; engines and engine parts; exhaust systems and parts; hub assemblies; ignition components and wires; radiators and cooling parts; starters and alternators; and steering and alignment parts. It also offers air conditioning chemicals and accessories; air fresheners; antifreeze and washer fluids; electrical wires and fuses; electronics; floor mats, seat covers, and interior accessories; hand and specialty tools; lighting products; performance parts; sealants, adhesives and compounds; tire repair accessories; vent shades, mirrors and exterior accessories; washes, waxes and cleaning supplies; and wiper blades. In addition, the company offers air filters; fuel and oil additives; fuel filters; grease and lubricants; motor oils; oil filters, part cleaners and treatments; and transmission fluids for engine maintenance. Further, it offers battery and wiper installation; engine light scanning and checking; electrical system testing; video clinic; oil and battery recycling; and loaner tool program services. Additionally, the company sells its products through its website. It serves professional installers and do-it-yourself customers. The company operates stores under the Advance Auto Parts, Autopart International, and Carquest brands, as well as branches under the Worldpac name. As of April 23, 2022, it operated 4,687 stores and 311 branches in the United States, Puerto Rico, the U.S. Virgin Islands, and Canada; and served 1,318 independently owned Carquest branded stores in Mexico, Grand Cayman, the Bahamas, Turks and Caicos, and the British Virgin Islands. The company was founded in 1929 and is based in Raleigh, North Carolina.

Alcanna Inc.

Alcanna Inc. engages in the retailing of alcohol in North America. The company retails wines, beers, and spirits; and cannabis products. It operates 176 locations in Alberta and British Columbia; and 53 cannabis retail stores in Alberta, Ontario, and Saskatchewan. The company was formerly known as Liquor Stores N.A. Ltd. and changed its name to Alcanna Inc. in May 2018. Alcanna Inc. was founded in 2004 and is headquartered in Edmonton, Canada. As of March 30, 2022, Alcanna Inc. operates as a subsidiary of Sundial Growers Inc.

AutoZone, Inc.

AutoZone, Inc. retails and distributes automotive replacement parts and accessories. The company offers various products for cars, sport utility vehicles, vans, and light trucks, including new and remanufactured automotive hard parts, maintenance items, accessories, and non-automotive products. Its products include A/C compressors, batteries and accessories, bearings, belts and hoses, calipers, chassis, clutches, CV axles, engines, fuel pumps, fuses, ignition and lighting products, mufflers, radiators, starters and alternators, thermostats, and water pumps, as well as tire repairs. In addition, the company offers maintenance products, such as antifreeze and windshield washer fluids; brake drums, rotors, shoes, and pads; brake and power steering fluids, and oil and fuel additives; oil and transmission fluids; oil, cabin, air, fuel, and transmission filters; oxygen sensors; paints and accessories; refrigerants and accessories; shock absorbers and struts; spark plugs and wires; and windshield wipers. Further, it provides air fresheners, cell phone accessories, drinks and snacks, floor mats and seat covers, interior and exterior accessories, mirrors, performance products, protectants and cleaners, sealants and adhesives, steering wheel covers, stereos and radios, tools, and wash and wax products, as well as towing services. Additionally, the company provides a sales program that offers commercial credit and delivery of parts and other products; sells automotive diagnostic and repair software under the ALLDATA brand through alldata.com and alldatadiy.com; and automotive hard parts, maintenance items, accessories, and non-automotive products through autozone.com. As of November 20, 2021, it operated 6,066 stores in the United States; 666 stores in Mexico; and 53 stores in Brazil. The company was founded in 1979 and is based in Memphis, Tennessee.

Barnes & Noble, Inc.

Barnes & Noble, Inc., a retail bookseller, sells content, digital media, and educational products in the United States. It operates through two segments, B&N Retail and NOOK. The company sells trade books, including hardcover and paperback titles; mass-market paperbacks, such as mystery, romance, science fiction, and other fiction; and children's books, e-books, and other digital content. It also provides NOOK and related accessories, bargain books, textbooks, magazines, gifts, café products and services, educational toys and games, music, and movies. As of June 19, 2019, it operated 627 Barnes & Noble bookstores in 50 states, and a NOOK, a digital bookstore, as well as BN.com and barnesandnoble.com Websites. The company was founded in 1873 and is based in New York, New York. As of August 6, 2019, Barnes & Noble, Inc. was taken private.

Bath & Body Works, Inc.

Bath & Body Works, Inc. operates a specialty retailer of home fragrance, body care, and soaps and sanitizer products. The company sells its products under the Bath & Body Works, White Barn, and other brand names through specialty retail stores and websites located in the United States and Canada, as well as through international stores operated by partners under franchise, license, and wholesale arrangements. As of January 29, 2022, it operated 1,755 company-operated retail stores and 338 international partner-operated stores. The company was formerly known as L Brands, Inc. and changed its name to Bath & Body Works, Inc. in August 2021. Bath & Body Works, Inc. was founded in 1963 and is headquartered in Columbus, Ohio.

Big Lots, Inc.

Big Lots, Inc., through its subsidiaries, operates as a home discount retailer in the United States. The company offers products under various merchandising categories, such as furniture category that includes upholstery, mattresses, case goods, and ready-to-assemble departments; seasonal category, which comprises patio furniture, gazebos, Christmas trim, and other holiday departments; soft home category that consists of fashion and utility bedding, bath, window, decorative textile, home organization, area rugs, home décor, and frames departments; and food category that includes beverage and grocery, candy and snacks, specialty foods, and pet departments. It also provides merchandise under the consumables category, which comprises health, beauty and cosmetics, plastics, paper, and chemical departments; hard home category, including small appliances, tabletops, and food preparation and stationery products; home maintenance and organization products; toys; and accessories category consisting of apparel, electronics, jewelry, apparel, and hosiery departments. As of January 29, 2022, it operated 1,431 stores in 47 states and an e-commerce platform. Big Lots, Inc. was founded in 1967 and is headquartered in Columbus, Ohio.

Boot Barn Holdings, Inc.,

Boot Barn Holdings, Inc., a lifestyle retail chain, operates specialty retail stores in the United States. The company's specialty retail stores offer western and work-related footwear, apparel, and accessories for men, women, and kids. It offers boots, shirts, jackets, hats, belts and belt buckles, handbags, western-style jewelry, rugged footwear, outerwear, overalls, denim, and flame-resistant and high-visibility clothing. The company also provides gifts and home merchandise. As of May 10, 2022, it operated 304 stores in 38 states. The company also sells its products through e-commerce websites, including bootbarn.com; sheplers.com; and countryoutfitter.com. The company was formerly known as WW Top Investment

Corporation and changed its name to Boot Barn Holdings, Inc. in June 2014. Boot Barn Holdings, Inc. was founded in 1978 and is based in Irvine, California.

Burlington Stores, Inc.

Burlington Stores, Inc. operates as a retailer of branded apparel products in the United States. The company provides fashion-focused merchandise, including women's ready-to-wear apparel, menswear, youth apparel, footwear, accessories, toys, gifts, and coats, as well as baby, home, and beauty products. As of January 29, 2022, it operated 837 stores under the Burlington Stores name, 2 stores under the Cohoes Fashions name, and 1 store under the MJM Designer Shoes name in 45 states and Puerto Rico. Burlington Stores, Inc. was founded in 1972 and is headquartered in Burlington, New Jersey.

Citi Trends, Inc.

Citi Trends, Inc. operates as a value retailer of fashion apparel, accessories, and home goods. It offers apparel, such as fashion sportswear and footwear for men and ladies, as well as apparel for kids, including newborns, infants, toddlers, boys, and girls; sleepwear, lingerie, and scrubs for ladies; and kids uniforms and accessories. The company also provides accessories and beauty products that include handbags, luggage, hats, belts, sunglasses, jewelry, and watches, as well as undergarments and outerwear for men and women. In addition, it offers home and lifestyle products comprising home products for the bedroom, bathroom, kitchen, and decorative accessories; and food, tech, team sports, and health products, as well as seasonal items, books, and toys. The company provides its products primarily to African American and Latinx families in the United States. As of January 29, 2022, it operated 609 stores in urban and rural markets in 33 states. The company was formerly known as Allied Fashion, Inc. and changed its name to Citi Trends, Inc. in 2001. Citi Trends, Inc. was founded in 1946 and is headquartered in Savannah, Georgia.

Claire's Stores Inc.

Claire's Stores Inc. operates as a specialty retailer of fashionable jewelry and accessories for young women, teens, tweens, and kids. The company sells jewelry products, including earrings, necklaces, bracelets, body jewelry, and rings, as well as offers ear piercing services. It also sells accessories comprising hair goods; beauty products; room decors; personal, fashion, and seasonal accessories, including phone cases, jewelry holders, stationery, key rings, attitude glasses, headwear, legwear, arm wear, and sunglasses; and handbags and small leather goods. The company operates stores under the Claire's and Icing brands. As of February 3, 2018, it operated 2,330 company-operated Claire's stores in 46 countries in

North America and Europe, excluding 970 concession stores and 698 franchised. The company was founded in 1961 and is headquartered in Pembroke Pines, Florida. Claire's Stores Inc. operates as a subsidiary of Claire's Holdings LLC.

Costco Wholesale Corporation

Costco Wholesale Corporation, together with its subsidiaries, engages in the operation of membership warehouses in the United States, Puerto Rico, Canada, the United Kingdom, Mexico, Japan, Korea, Australia, Spain, France, Iceland, China, and Taiwan. It offers branded and private-label products in a range of merchandise categories. The company offers sundries, dry groceries, candies, coolers, freezers, liquor, and tobacco and deli products; appliances, electronics, health and beauty aids, hardware, garden and patio products, sporting goods, tires, toys and seasonal products, office supplies, automotive care products, postages, tickets, apparel, small appliances, furniture, domestics, housewares, special order kiosks, and jewelry; and meat, produce, service deli, and bakery products. It also operates pharmacies, opticals, food courts, hearing-aid centers, and tire installation centers, as well as 636 gas stations; and offers business delivery, travel, same-day grocery, and various other services online in various countries. As of August 29, 2021, the company operated 815 membership warehouses, including 564 in the United States and Puerto Rico, 105 in Canada, 39 in Mexico, 30 in Japan, 29 in the United Kingdom, 16 in South Korea, 14 in Taiwan, 12 in Australia, 3 in Spain, 1 in Iceland, 1 in France, and 1 in China. It also operates e-commerce websites in the United States, Canada, the United Kingdom, Mexico, South Korea, Taiwan, Japan, and Australia. The company was formerly known as Costco Companies, Inc. and changed its name to Costco Wholesale Corporation in August 1999. Costco Wholesale Corporation was founded in 1976 and is based in Issaquah, Washington.

DAVIDsTEA Inc.

DAVIDsTEA Inc. operates as a specialty tea retailer in Canada and the United States. It offers loose-leaf teas, pre-packaged teas, tea sachets, and tea-related gifts; tea accessories, including tea mugs, travel mugs, teacup sets, teapots, tea makers, kettles, infusers, filters, frothers, tins, and spoons; and food and beverages. As of April 29, 2022, it operated through 18 company-owned stores. The company also provides its products its e-commerce platform, davidstea.com; and distributes products through 3,500 grocery stores and pharmacies. DAVIDsTEA Inc. was incorporated in 2008 and is headquartered in Mount Royal, Canada.

Dillard's, Inc.

Dillard's, Inc. operates retail department stores in the southeastern, southwestern, and midwestern areas of the United States. Its stores offer merchandise, including fashion apparel for women, men, and children; and accessories, cosmetics, home furnishings, and other consumer goods. As of January 29, 2022, the company operated 280 Dillard's stores, including 30 clearance centers, and an Internet store at dillards.com. It also engages in the general contracting construction activities. The company was founded in 1938 and is based in Little Rock, Arkansas.

Dollar General Corporation

Dollar General Corporation, a discount retailer, provides various merchandise products in the southern, southwestern, Midwestern, and eastern United States. It offers consumable products, including paper and cleaning products, such as paper towels, bath tissues, paper dinnerware, trash and storage bags, disinfectants, and laundry products; packaged food comprising cereals, pasta, canned soups, fruits and vegetables, condiments, spices, sugar, and flour; and perishables that include milk, eggs, bread, refrigerated and frozen food, beer, and wine. The company's consumable products also comprise snacks, such as candies, cookies, crackers, salty snacks, and carbonated beverages; health and beauty products, including over-the-counter medicines and personal care products, such as soaps, body washes, shampoos, cosmetics, and dental hygiene and foot care products; pet supplies and pet food; and tobacco products. In addition, it offers seasonal products comprising holiday items, toys, batteries, small electronics, greeting cards, stationery, prepaid phones and accessories, gardening supplies, hardware, and automotive and home office supplies; and home products that include kitchen supplies, cookware, small appliances, light bulbs, storage containers, frames, candles, craft supplies and kitchen, and bed and bath soft goods. Further, the company provides apparel, which comprise casual everyday apparel for infants, toddlers, girls, boys, women, and men, as well as socks, underwear, disposable diapers, shoes, and accessories. As of February 25, 2022, it operated 18,190 stores in 47 states in the United States. The company was formerly known as J.L. Turner & Son, Inc. and changed its name to Dollar General Corporation in 1968. Dollar General Corporation was founded in 1939 and is based in Goodlettsville, Tennessee.

Dollar Tree, Inc.

Dollar Tree, Inc. operates discount variety retail stores. It operates in two segments, Dollar Tree and Family Dollar. The Dollar Tree segment offers merchandise at the fixed price of \$ 1.25. It provides consumable merchandise, including candy and food, and health and

personal care, as well as everyday consumables, such as household paper and chemicals, and frozen and refrigerated food; variety merchandise comprising toys, durable housewares, gifts, stationery, party goods, greeting cards, softlines, arts and crafts supplies, and other items; and seasonal goods that include Christmas, Easter, Halloween, and Valentine's Day merchandise. As of January 29, 2022, this segment operated 8,061 stores under the Dollar Tree and Dollar Tree Canada brands, as well as 15 distribution centers in the United States and 2 distribution centers in Canada. The Family Dollar segment operates general merchandise retail discount stores that offer consumable merchandise, which comprise food and beverages, tobacco, health and personal care, household chemicals, paper products, hardware and automotive supplies, diapers, batteries, and pet food and supplies; and home products, including housewares, home décor, and giftware, as well as domestics, such as comforters, sheets, and towels. It also provides apparel and accessories merchandise comprising clothing, fashion accessories, and shoes; and seasonal and electronics merchandise that include Christmas, Easter, Halloween, and Valentine's Day merchandise, as well as personal electronics, which comprise pre-paid cellular phones and services, stationery and school supplies, and toys. As of January 29, 2022, this segment operated 8,016 stores under the Family Dollar brand; and 11 distribution centers. The company was founded in 1986 and is based in Chesapeake, Virginia.

Dollarama Inc.

Dollarama Inc. operates a chain of dollar stores in Canada. Its stores offer general merchandise, consumables, and seasonal products. The company also sells its products through online store. As of January 30, 2022, it operated 1,421 stores. The company was formerly known as Dollarama Capital Corporation and changed its name to Dollarama Inc. in September 2009. Dollarama Inc. was founded in 1992 and is headquartered in Montreal, Canada.

Five Below, Inc.

Five Below, Inc. operates as a specialty value retailer in the United States. It offers accessories, including socks, sunglasses, jewelry, scarves, gloves, hair accessories, athletic tops and bottoms, and t-shirts, as well as nail polishes, lip glosses, fragrances, and branded cosmetics; and items used to complete and personalize living space, such as glitter lamps, posters, frames, fleece blankets, plush items, pillows, candles, incense, lighting, novelty décor, accent furniture, and related items, as well as provides storage options for the customers room. The company also provides sport balls; team sports merchandise and fitness accessories, such as hand weights, jump ropes, and gym balls; games, including name brand board games, puzzles, collectibles, and toys covering remote control; and pool, beach, and

outdoor toys, as well as games and accessories. In addition, it offers accessories for cell phones, tablets, audio, and computers, such as cases, chargers, headphones, and other items; books, video games, and DVDs; craft activity kits; arts and crafts supplies, such as crayons, markers, and stickers; and trend-right items for school comprising backpacks, fashion notebooks and journals, novelty pens and pencils, locker accessories, and everyday name brand items. Further, the company provides party goods, decorations, gag gifts, and greeting cards, as well as every day and special occasion merchandise products; assortment of classic and novelty candy bars, movie-size box candy, seasonal-related candy, and gum and snack food; chilled drinks through coolers; and seasonally-specific items used to celebrate and decorate for events. It primarily serves tween and teen customers. As of January 29, 2022, the company operated approximately 1,190 stores in 40 states. The company was formerly known as Cheap Holdings, Inc. and changed its name to Five Below, Inc. in August 2002. Five Below, Inc. was incorporated in 2002 and is headquartered in Philadelphia, Pennsylvania.

Foot Locker, Inc.

Foot Locker, Inc., through its subsidiaries, operates as an athletic footwear and apparel retailer. The company engages in the retail of athletic footwear, apparel, accessories, equipment, and team licensed merchandise under the Foot Locker, Lady Foot Locker, Kids Foot Locker, Champs Sports, Eastbay, atmos, WSS, Footaction, and Sidestep brand names. As of January 29, 2022, it operated 2,858 retail stores in 28 countries across the United States, Canada, Europe, Australia, New Zealand, and Asia; and 142 franchised Foot Locker stores located in the Middle East and Asia. The company also offers its products through various e-commerce sites and mobile apps. Foot Locker, Inc. was founded in 1879 and is headquartered in New York, New York.

Fred's, Inc.,

Fred's, Inc., together with its subsidiaries, sells general merchandise through its retail discount stores and full service pharmacies. The company, through its stores, offers health, beauty, and personal care products; household cleaning supplies, disposable diapers, pet foods, and paper products; and various general merchandise, and food and beverage products to low, middle, and fixed income families located in small- to medium-sized towns. It also sells general merchandise to franchised Fred's stores. As of February 2, 2019, the company operated approximately 557 retail stores, including 169 pharmacies and 11 franchised stores located in 15 states primarily in the Southeastern United States. Fred's, Inc. was founded in 1947 and is headquartered in Memphis, Tennessee.

Genuine Parts Company

Genuine Parts Company distributes automotive replacement parts, and industrial parts and materials. It operates through Automotive Parts Group and Industrial Parts Group segments. The company distributes automotive replacement parts for hybrid and electric vehicles, trucks, SUVs, buses, motorcycles, recreational vehicles, farm vehicles, small engines, farm equipment, marine equipment, and heavy duty equipment; and accessory and supply items used by various automotive aftermarket customers, such as repair shops, service stations, fleet operators, automobile and truck dealers, leasing companies, bus and truck lines, mass merchandisers, farms, industrial concerns, and individuals. It also distributes industrial replacement parts and related supplies, such as bearings, mechanical and electrical power transmission products, industrial automation and robotics, hoses, hydraulic and pneumatic components, industrial and safety supplies, and material handling products for original equipment manufacturer, as well as maintenance, repair, and operation customers in equipment and machinery, food and beverage, forest product, primary metal, pulp and paper, mining, automotive, oil and gas, petrochemical, pharmaceutical, power generation, alternative energy, governments, transportation, ports, and other industries. In addition, the company provides various services and repairs comprising gearbox and fluid power and process pump assembly and repair, hydraulic drive shaft repair, electrical panel assembly and repair, hose and gasket manufacture and assembly, and other value-added services. It operates in the United States, Canada, France, the United Kingdom, Ireland, Germany, Poland, the Netherlands, Belgium, Australia, New Zealand, Mexico, Indonesia, and Singapore. The company was incorporated in 1928 and is headquartered in Atlanta, Georgia.

Hibbett, Inc.

Hibbett, Inc. together with its subsidiaries, engages in the retail of athletic-inspired fashion products in small and mid-sized communities in the United States. Its stores offer a range of merchandise, including athletic footwear, athletic and fashion apparel, team sports equipment, and related accessories. As of January 29, 2022, the company operated approximately 1,096 retail stores, which include 900 Hibbett Sports stores, 179 City Gear stores, and 17 Sports Additions athletic shoe stores. It also sells its products through online channels. Hibbett, Inc. was founded in 1945 and is headquartered in Birmingham, Alabama.

Kohl's Corporation

Kohl's Corporation operates as a retail company in the United States. It offers branded apparel, footwear, accessories, beauty, and home products through its stores and website. The company provides its products primarily under the brand names of Apt. 9, Croft & Barrow,

Jumping Beans, SO, and Sonoma Goods for Life, as well as Food Network, LC Lauren Conrad, Nine West, and Simply Vera Vera Wang. As of March 21, 2022, it operated approximately 1,100 Kohl's stores and a website www.Kohls.com. Kohl's Corporation was founded in 1988 and is headquartered in Menomonee Falls, Wisconsin.

Lowe's Companies, Inc.

Lowe's Companies, Inc., together with its subsidiaries, operates as a home improvement retailer in the United States and internationally. The company offers a line of products for construction, maintenance, repair, remodeling, and decorating. It provides home improvement products, such as appliances, seasonal and outdoor living, lawn and garden, lumber, kitchens and bath, tools, paint, millwork, hardware, flooring, rough plumbing, building materials, décor, lighting, and electrical. It also offers installation services through independent contractors in various product categories; extended protection plans; and in-warranty and out-of-warranty repair services. The company sells its national brand-name merchandise and private brand products to homeowners, renters, and professional customers. As of January 28, 2022, it operated 1,971 home improvement and hardware stores. The company also sells its products through websites comprising Lowe.com and Lowe'sforpros.com; and through mobile applications. Lowe's Companies, Inc. was founded in 1921 and is based in Mooresville, North Carolina.

Natural Grocers by Vitamin Cottage, Inc.

Natural Grocers by Vitamin Cottage, Inc., together with its subsidiaries, retails natural and organic groceries, and dietary supplements in the United States. The company's stores offer natural and organic grocery products, such as organic produce; bulk food products; private label products comprising pasta, pasta sauce, ketchup, canned beans and vegetables, frozen vegetables, frozen fruits, frozen meals, frozen pizza, bread, baking mixes, plant based butter, olive and coconut oil, coconut milk, honey, maple syrup, preserves, chocolate, coffee, bacon, beef jerky, canned seafood, popcorn, tortilla chips, taco shells, eggs, cheese, apple sauce, apple cider vinegar, spring water, paper products, cleaning products, and other products; dry, frozen, and canned groceries; meat and seafood products; dairy products, dairy substitutes, and eggs; prepared foods; bread and baked products; beverages; and beer, wine, and hard cider products. Its stores also provide private label dietary supplements; body care products consisting of cosmetics, skin care, hair care, fragrance, and personal care products containing natural and organic ingredients; pet care and food products; books and handouts; and household and general merchandise, including cleaning supplies, paper products, and dish and laundry soaps, as well as other common household products, such as diapers. The company operates its retail stores under the Natural Grocers by Vitamin Cottage trademark.

As of February 1, 2022, it operated 162 stores in 20 states. The company also offers science-based nutrition education programs to help customers make informed health and nutrition choices. Natural Grocers by Vitamin Cottage, Inc. was founded in 1955 and is headquartered in Lakewood, Colorado.

Nordstrom, Inc.

Nordstrom, Inc., a fashion retailer, provides apparels, shoes, beauty, accessories, and home goods for women, men, young adults, and children. It offers a range of brand name and private label merchandise through various channels, such as Nordstrom branded stores and online at Nordstrom.com; TrunkClub.com; Nordstrom.ca; Nordstrom stores; Nordstrom Rack stores; Nordstrom Locals; Nordstromrack.com and HauteLook; clearance stores under the Last Chance name; Trunk Club clubhouses; and Jeffrey boutiques. As of December 31, 2021, the company operated 94 Nordstrom stores and 240 Nordstrom Rack stores in the United States; 2 clearance stores; and 7 Nordstrom Local service hubs, as well as 6 Nordstrom stores and 7 Nordstrom Rack stores in Canada. Nordstrom, Inc. was founded in 1901 and is headquartered in Seattle, Washington.

O'Reilly Automotive, Inc.

O'Reilly Automotive, Inc., together with its subsidiaries, operates as a retailer and supplier of automotive aftermarket parts, tools, supplies, equipment, and accessories in the United States. The company provides new and remanufactured automotive hard parts and maintenance items, such as alternators, batteries, brake system components, belts, chassis parts, driveline parts, engine parts, fuel pumps, hoses, starters, temperature control, water pumps, antifreeze, appearance products, engine additives, filters, fluids, lighting products, and oil and wiper blades; and accessories, including floor mats, seat covers, and truck accessories. Its stores offer auto body paint and related materials, automotive tools, and professional service provider service equipment. The company's stores also provide enhanced services and programs comprising used oil, oil filter, and battery recycling; battery, wiper, and bulb replacement; battery diagnostic testing; electrical and module testing; check engine light code extraction; loaner tool program; drum and rotor resurfacing; custom hydraulic hoses; and professional paint shop mixing and related materials. Its stores offer do-it-yourself and professional service provider customers a selection of products for domestic and imported automobiles, vans, and trucks. As of December 31, 2021, the company owned and operated 5,759 stores in the United States, and 25 stores in Mexico. O'Reilly Automotive, Inc. was founded in 1957 and is headquartered in Springfield, Missouri.

PriceSmart, Inc.

PriceSmart, Inc. owns and operates U.S. style membership shopping warehouse clubs in the United States, Central America, the Caribbean, and Colombia. Its warehouse clubs sell brand name and private label consumer products, essential goods, fresh produce, prepared foods, and fresh-baked goods, as well as provides services, such as optical, tire center, and other ancillary services. The company also operates Click & Go, an e-commerce platform for online ordering, curbside pickup, and delivery services. As of March 29, 2022, it operated 49 warehouse clubs in 12 countries and one U.S. territory. PriceSmart, Inc. was incorporated in 1994 and is headquartered in San Diego, California.

Rocky Mountain Liquor Inc.

Rocky Mountain Liquor Inc., through its subsidiary, Andersons Liquor Inc., owns and operates liquor stores in Alberta, Canada. Its stores sell beer, wine, spirit, and ready to drink liquor products, as well as ancillary items, such as juice, ice, soft drinks, and giftware. As of April 14, 2022, it owned and operated 26 private liquor stores. The company is headquartered in Edmonton, Canada.

Ross Stores, Inc.

Ross Stores, Inc., together with its subsidiaries, operates off-price retail apparel and home fashion stores under the Ross Dress for Less and dd's DISCOUNTS brand names. Its stores primarily offer apparel, accessories, footwear, and home fashions. The company's Ross Dress for Less stores sell its products at department and specialty stores primarily to middle income households; and dd's DISCOUNTS stores sell its products at department and discount stores for households with moderate income. As of July 5, 2022, it operated approximately 1,950 stores under the Ross Dress for Less and dd's DISCOUNTS name in 40 states, the District of Columbia, and Guam. Ross Stores, Inc. was incorporated in 1957 and is headquartered in Dublin, California.

Sally Beauty Holdings, Inc.

Sally Beauty Holdings, Inc. operates as a specialty retailer and distributor of professional beauty supplies. The company operates through two segments, Sally Beauty Supply and Beauty Systems Group. The Sally Beauty Supply segment offers beauty products, including hair color and care products, skin and nail care products, styling tools, and other beauty products for retail customers, salons, and salon professionals. This segment also provides products under third-party brands, such as Wella, Clairol, OPI, Conair, and L'Oreal, as well as exclusive-label brand merchandise. The Beauty Systems Group segment offers

professional beauty products, such as hair color and care products, skin and nail care products, styling tools, and other beauty items directly to salons and salon professionals through its professional-only stores, e-commerce platforms, and sales force, as well as through franchised stores under the Armstrong McCall store name. This segment also sells products under third-party brands, such as Paul Mitchell, Wella, Matrix, Schwarzkopf, Kenra, Goldwell, Joico, and Olaplex. As of September 30, 2021, the company operated 4,777 stores, including 134 franchised units in the United States, Puerto Rico, Canada, Mexico, Chile, Peru, the United Kingdom, Ireland, Belgium, France, the Netherlands, Spain, and Germany. It also distributes its products through full-service/exclusive distributors, open-line distributors, direct sales, and mega-salon stores. Sally Beauty Holdings, Inc. was founded in 1964 and is headquartered in Denton, Texas.

Staples, Inc.

Staples, Inc. retails office products and supplies. The company offers copy paper, ink and toner, furniture, food and breakroom products, cleaning supplies, computers, printers, electronics, health and safety products, and facilities maintenance supplies. Additionally, it provides printing, business, sustainability, office, and furniture solutions. Staples, Inc. was founded in 1986 and is based in Framingham, Massachusetts.

Target Corporation

Target Corporation operates as a general merchandise retailer in the United States. The company offers food assortments, including perishables, dry grocery, dairy, and frozen items; apparel, accessories, home décor products, electronics, toys, seasonal offerings, food, and other merchandise; and beauty and household essentials. It also provides in-store amenities, such as Target Café, Target Optical, Starbucks, and other food service offerings. The company sells its products through its stores; and digital channels, including Target.com. As of March 09, 2022, the company operated approximately 2,000 stores. Target Corporation was incorporated in 1902 and is headquartered in Minneapolis, Minnesota.

The Cato Corporation

The Cato Corporation, together with its subsidiaries, operates as a specialty retailer of fashion apparel and accessories primarily in the southeastern United States. It operates through two segments, Retail and Credit. The company's stores and e-commerce websites offer a range of apparel and accessories, including dressy, career, and casual sportswear; and dresses, coats, shoes, lingerie, costume jewelry, and handbags, as well as men's wear, and lines for kids and infants. It operates its stores and e-commerce websites under the Cato, Cato

Fashions, Cato Plus, It's Fashion, It's Fashion Metro, and Versona names. As of January 29, 2022, the company operated 1,311 stores in 32 states. It also provides credit card services to its customers, as well as layaway plans for customers who agree to make periodic payments. The company was incorporated in 1946 and is headquartered in Charlotte, North Carolina.

The Finish Line, Inc.

The Finish Line, Inc., together with its subsidiaries, operates as a retailer of athletic shoes, apparel, and accessories for men, women, and kids. The company offers athletic shoes, as well as an assortment of apparel and accessories of Nike, Brand Jordan, adidas, Under Armour, Puma, and other brands. It is involved in the in-store and online retail of athletic shoes for Macy's Retail Holdings, Inc.; Macy's Puerto Rico, Inc.; and Macys.com, Inc., as well as online at macys.com. As of May 3, 2018, the company operated 555 Finish Line stores in 44 states in the United States and Puerto Rico. It also operates e-commerce site, finishline.com; and mobile commerce site, m.finishline.com. The Finish Line, Inc. was founded in 1976 and is based in Indianapolis, Indiana. As of June 18, 2018, The Finish Line, Inc. operates as a subsidiary of JD Sports Fashion plc.

The Home Depot, Inc.

The Home Depot, Inc. operates as a home improvement retailer. It operates The Home Depot stores that sell various building materials, home improvement products, lawn and garden products, and décor products, as well as facilities maintenance, repair, and operations products. The company also offers installation services for flooring, cabinets and cabinet makeovers, countertops, furnaces and central air systems, and windows. In addition, it provides tool and equipment rental services. The company primarily serves homeowners; and professional renovators/remodelers, general contractors, maintenance professionals, handymen, property managers, building service contractors, and specialty tradesmen, such as electricians, plumbers, and painters. It also sells its products through websites, including homedepot.com; blinds.com, an online site for custom window coverings; and thecompanystore.com, an online site for textiles and décor products. As of December 31, 2021, the company operated 2,317 stores in the United States. The Home Depot, Inc. was incorporated in 1978 and is based in Atlanta, Georgia.

The Men's Wearhouse, Inc.

The Men's Wearhouse, Inc. retails men's clothing products in the United States and internationally. The company offers suits, dress shirts, blazers, pants, vests, casual shirts, shoes, gift cards, jeans, and outerwear; and accessories, including ties, belts and suspenders,

shoe care products, cologne and grooming products, groomsmen gifts, cufflinks, watches, lapel pins, pocket squares, scarves, hats, gloves, socks, tie bars, underwear, luggage products, bags, and umbrellas. It also engages in the tuxedo rental services. The company sells its products through approximately 700 stores, as well as online. The company was founded in 1973 and is based in Houston, Texas. The Men's Wearhouse, Inc. operates as a subsidiary of Tailored Brands, Inc.

The TJX Companies, Inc.

The TJX Companies, Inc., together with its subsidiaries, operates as an off-price apparel and home fashions retailer. It operates through four segments: Marmaxx, HomeGoods, TJX Canada, and TJX International. The company sells family apparel, including footwear and accessories; home fashions, such as home basics, furniture, rugs, lighting products, giftware, soft home products, decorative accessories, tabletop, and cookware, as well as expanded pet, kids, and gourmet food departments; jewelry and accessories; and other merchandise. As of February 23, 2022, it operated 1,284 T.J. Maxx, 1,148 Marshalls, 850 HomeGoods, 59 Sierra, and 39 Homesense stores, as well as tjmaxx.com, marshalls.com, and sierra.com in the United States; 293 Winners, 147 HomeSense, and 106 Marshalls stores in Canada; 618 T.K. Maxx and 77 Homesense stores, as well as tkmaxx.com in Europe; and 68 T.K. Maxx stores in Australia. The company was incorporated in 1962 and is headquartered in Framingham, Massachusetts.

Tuesday Morning Corporation

Tuesday Morning Corporation operates as an off-price retailer in the United States. The company offers various products, such as upscale home textiles, home furnishings, housewares, gourmet food products, pet supplies, bath and body products, toys, and seasonal décor products. As of September 09, 2021, it operated approximately 489 stores in 40 states. Tuesday Morning Corporation was founded in 1974 and is headquartered in Dallas, Texas.

Walmart Inc.

Walmart Inc. engages in the operation of retail, wholesale, and other units worldwide. The company operates through three segments: Walmart U.S., Walmart International, and Sam's Club. It operates supercenters, supermarkets, hypermarkets, warehouse clubs, cash and carry stores, and discount stores; membership-only warehouse clubs; ecommerce websites, such as walmart.com, walmart.com.mx, walmart.ca, flipkart.com, and samsclub.com; and mobile commerce applications. The company offers grocery and consumables, which includes dairy, meat, bakery, deli, produce, dry, chilled or frozen packaged foods, alcoholic and

nonalcoholic beverages, floral, snack foods, candy, other grocery items, health and beauty aids, paper goods, laundry and home care, baby care, pet supplies, and other consumable items; and health and wellness products covering pharmacy, over-the-counter drugs and other medical products, and optical and hearing services. It also provides gasoline stations and tobacco; home improvement, outdoor living, gardening, furniture, apparel, jewelry, tools and power equipment, housewares, toys, seasonal items, mattresses, and tire and battery centers; and consumer electronics and accessories, software, video games, office supplies, appliances, and third-party gift cards. In addition, the company offers fuel and financial services and related products, including money orders, prepaid cards, money transfers, and check cashing and bill payment, as well as various types of installment lending. It operates approximately 10,500 stores and various e-commerce websites under 46 banners in 24 countries. The company was formerly known as Wal-Mart Stores, Inc. and changed its name to Walmart Inc. in February 2018. The company was founded in 1945 and is based in Bentonville, Arkansas.

Weis Markets, Inc.

Weis Markets, Inc. engages in the retail sale of food through a chain of supermarkets in Pennsylvania and surrounding states. The company's retail food stores sell groceries, dairy products, frozen foods, meats, seafood, fresh produce, floral, pharmacy services, deli products, prepared foods, bakery products, beer and wine, and fuel; and general merchandise items, such as health and beauty care, and household products. It operates stores primarily under the Weis Markets name, as well as Weis, Weis 2 Go, Weis Great Meals Start Here, Weis Gas-n-Go, and Weis Nutri-Facts. As of March 7, 2022, the company owned and operated 197 stores in Pennsylvania, Maryland, Delaware, New Jersey, New York, West Virginia, and Virginia. Weis Markets, Inc. was founded in 1912 and is based in Sunbury, Pennsylvania.

Zumiez Inc.

Zumiez Inc., together with its subsidiaries, operates as a specialty retailer of apparel, footwear, accessories, and hardgoods for young men and women. Its hardgoods include skateboards, snowboards, bindings, components, and other equipment. As of February 26, 2022, the company operated 738 stores, including 602 stores in the United States, 52 stores in Canada, 67 stores in Europe, and 17 stores in Australia under the names of Zumiez, Blue Tomato, and Fast Times. The company also operates zumiez.com, zumiez.ca, blue-tomato.com, and fasttimes.com.au e-commerce websites. Zumiez Inc. was founded in 1978 and is headquartered in Lynnwood, Washington.

III. Reasons for Rejection for each company

Company	Reason
1-800 CONTACTS, INC.	Insufficient sales
1-800-FLOWERS.COM, Inc.	Excessive advertising
1847 Holdings LLC	Value added services
1stdibs.Com, Inc.	Insufficient sales
3530639 Canada Inc.	Insufficient sales
3M Company	Excessive R&D
7-Eleven, Inc.	Insufficient sales
800-JR Cigar, Inc.	Insufficient sales
99 Cents only Stores LLC	Accept
A&W Food Services of Canada Inc.	Restaurants
AB Acquisition LLC	Grocery stores
Abazias Inc.	Insufficient sales
Abercrombie & Fitch Co.	Brands
Abercrombie & Fitch Management Co.	Insufficient sales
Able Energy, Inc.	Insufficient sales
AC Moore Arts & Crafts Inc.	Insufficient sales
Academy Sports and Outdoors, Inc.	Insufficient sales
Academy, Ltd.	Insufficient sales
Access-Power & Co., Inc.	Insufficient sales
Accredo Health, Incorporated	Insufficient sales
Ace Hardware Corporation	Excessive advertising
ACTIS Global Ventures, Inc.	Insufficient sales
ADCO Products, LLC	Insufficient sales
ADM Endeavors, Inc.	Insufficient sales
ADS Tactical, Inc.	Insufficient sales
Advance Auto Parts, Inc.	Accept
Advance Stores Company, Incorporated	Insufficient sales
Advent-AWI Holdings Inc.	Financial services
Adventist Health System/West	Healthcare services
Aegis Brands Inc.	Restaurants
Aero Performance Products, Inc.	Insufficient sales
Aerofoam Metals Inc.	Insufficient sales
Affinia Group Intermediate Holdings Inc.	Manufacturing
Affinity Group Holding, LLC	Insufficient sales
AG Interactive, Inc.	Insufficient sales
Ahold Finance U.S.A., LLC	Insufficient sales
Air Methods Corporation	Medical services
Albertsons Companies, Inc.	Grocery stores
Alcanna Inc.	Accept
Aleafia Health Inc.	Insufficient sales
Alere Health, LLC	Insufficient sales
Alibris, Inc.	Insufficient sales
Alimentation Couche-Tard Inc.	Grocery stores
Allergy Research Group LLC	Insufficient sales
Allion Healthcare, Inc.	Insufficient sales
Aloette Cosmetics, Inc.	Insufficient sales
Aloha Petroleum, Ltd.	Insufficient sales
Alpha Network Alliance Ventures Inc.	Development stage company
Amazon.com, Inc.	Excessive R&D
Ambassador Food Services Corp.	Insufficient sales

Company	Reason
Amergent Hospitality Group, Inc.	Insufficient sales
American Blind and Wallpaper Factory, Inc.	Insufficient sales
American Blue Ribbon Holdings, LLC	Insufficient sales
American Consumers, Inc.	Insufficient sales
American Eagle Outfitters, Inc.	Brands
American Enterprise Development Corporation	Insufficient sales
American Family Cookies, Inc.	Insufficient sales
American Freight Group, Inc.	Insufficient sales
American Green, Inc.	Insufficient sales
American Restaurant Holdings, Inc.	Insufficient sales
American Restaurant Partners, L.P.	Insufficient sales
American Seafoods Group LLC	Insufficient sales
Americas Car Mart Inc	Insufficient sales
America's Car-Mart, Inc.	Financial services
AmeriGas Partners, L.P.	Propane distributor
AmerisourceBergen Drug Corporation	Insufficient sales
AMX, LLC	Insufficient sales
Applebee's International, Inc.	Insufficient sales
Aquestive Therapeutics, Inc.	Insufficient sales
Aramark	Value added services
Aramark Services, Inc.	Insufficient sales
ARC Group Worldwide, Inc.	manufacturing
ARC Group, Inc.	Restaurants
Arden Group, Inc.	Insufficient sales
Arden Holdings Inc.	Insufficient sales
Aritzia Inc.	Brands
Ark Restaurants Corp.	Restaurants
Arkansas National Guard Morale Welfare & Recreational Fund Inc.	Charity
Arko Corp.	Fuel business
Arnold Palmer Golf Management, LLC	Insufficient sales
Art In Motion L.P.	Insufficient sales
Artful Home, LLC	Insufficient sales
As Seen On TV, Inc.	Insufficient sales
Asbury Automotive Group, Inc.	value added services
ASG Consolidated LLC	Insufficient sales
Assured Pharmacy Inc.	Insufficient sales
AT&T Government Solutions, Inc.	Insufficient sales
Atlanta Bread Company International, Inc.	Insufficient sales
Atlantic Richfield Company, Inc.	Insufficient sales
Atomic Burrito Inc.	Insufficient sales
Auction Mills Inc.	Insufficient sales
AuctionCities.com, Inc.	Insufficient sales
Audible, Inc.	Insufficient sales
Auri, Inc.	Insufficient sales
Austins International	Insufficient sales
Auto Parts 4Less Group, Inc.	Insufficient sales
Auto Preservation, Inc.	Insufficient sales
Auto Star, Inc.	Insufficient sales
AutoCanada Inc.	Car dealership
Automotive.com, Inc.	Insufficient sales
AutoNation, Inc.	Car dealership
AutoZone, Inc.	Accept
Avon International Operations, Inc.	Insufficient sales

Company	Reason
Azure Holding Group Corp.	Insufficient sales
BAB, Inc.	Franchiser
Back Yard Burgers, Inc.	Insufficient sales
Bagger Dave's Burger Tavern, Inc.	Excessive advertising
Bare Escentuals, Inc.	Insufficient sales
Baristas Coffee Company, Inc.	Excessive advertising
BARK, Inc.	Insufficient sales
Barnes & Noble Booksellers, Inc.	Insufficient sales
Barnes & Noble College Booksellers, LLC	Insufficient sales
Barnes & Noble Education, Inc.	Value added services
Barnes & Noble, Inc.	Accept
Barnes & Noble.com Professional, Technical and Business Bookstore	Insufficient sales
Barneys New York, Inc.	Insufficient sales
Barney's, Inc.	Insufficient sales
Barrons Enterprises, Inc.	Insufficient sales
Barteca Restaurant Group, LLC	Restaurants
Bath & Body Works, Inc.	Accept
Baylor University	Education services
Bayou City Exploration Inc.	Oil and gas business
Bayport International Holdings, Inc.	Insufficient sales
BBQ Holdings, Inc.	Restaurants
Beacon Home Direct, Inc.	Insufficient sales
Beam Charging LLC	Insufficient sales
BearCom Group, Inc.	Insufficient sales
Beatport, LLC	Insufficient sales
bebe stores, inc.	Excessive advertising
Belk Inc.	Insufficient sales
Bell Rose Capital Inc.	Insufficient sales
BENE IO Inc.	Insufficient sales
Benihana Inc.	Insufficient sales
Benjamin Moore & Co.	Insufficient sales
Bento Inc.	Restaurants
Bergamo Acquisition Corp.	Insufficient sales
Bertucci's Corporation	Insufficient sales
Bertucci's Inc.	Insufficient sales
Betacom Corporation Inc.	Insufficient sales
Bettermoo(d) Food Corporation	Insufficient sales
Beverages & More, Inc.	Insufficient sales
BFW Liquidation, LLC	Insufficient sales
BFX Hospitality Group	Insufficient sales
BIDZ.com, Inc.	Insufficient sales
Big 5 Corp.	Insufficient sales
Big 5 Sporting Goods Corporation	Excessive advertising
Big Lots, Inc.	Accept
Big O Tires, LLC.	Insufficient sales
Biglari Holdings Inc.	Restaurants
Birks Group Inc.	Brands
BJ's Restaurants, Inc.	Restaurants
BJ's Wholesale Club Holdings, Inc.	Insufficient sales
BJ's Wholesale Club Inc.	Insufficient sales
Blackcraft Cult, Inc.	Online business
Blink Technologies, Inc.	Insufficient sales
Blissworld Inc.	Insufficient sales

Company	Reason
Bloomin' Brands, Inc.	Excessive advertising
Blubuzzard, Inc.	Insufficient sales
Blue Apron Holdings, Inc.	Excessive advertising
Blue Nile, Inc.	Jewelry store
Blue Water Global Group, Inc.	Insufficient sales
Bluefly Inc.	Insufficient sales
Bluestem Brands, Inc.	Excessive advertising
Bluestem Group Inc.	brands
BMC East, LLC	Insufficient sales
BMC Stock Holdings, Inc.	Value added services
BMC West Corporation	Insufficient sales
Bob Evans Farms, Inc.	Excessive advertising
Body Central Corp.	Insufficient sales
Bojangles', Inc.	Restaurants
Books-A-Million Inc.	Insufficient data
Boot Barn Holdings, Inc.	Accept
Boston Market Corporation	Insufficient sales
Boston Pizza International Inc.	Restaurants
Boston Restaurant Associates, Inc.	Insufficient sales
Bowlin Travel Centers, Inc.	Travel center
BP Corporation North America Inc.	Insufficient sales
BRAVADA International Ltd	Excessive advertising
Briazz, Inc.	Insufficient sales
Bricktown Brewery Restaurants LLC	Insufficient sales
Brighter Minds Media, Inc.	Insufficient sales
Brinker International, Inc.	Excessive advertising
BSN Sports, LLC	Insufficient sales
BT Brands, Inc.	Insufficient sales
BUCA, Inc.	Insufficient sales
Buffalo Wild Wings, Inc.	Excessive advertising
Buffets Holdings, LLC	Insufficient sales
Build-A-Bear Workshop, Inc.	Excessive advertising
Builders FirstSource, Inc.	Manufacturing
BurgerFi International, Inc.	Insufficient sales
Burlington Coat Factory Investments Holdings, Inc.	Insufficient sales
Burlington Coat Factory Warehouse Corporation	Insufficient sales
Burlington Stores, Inc.	Accept
C. R. Bard, Inc.	Excessive R&D
Cabela's Incorporated	Insufficient sales
Cabtel Corporation	Insufficient sales
Cache, Inc.	Insufficient sales
Cafe Holdings Inc.	restaurants
CafePress Inc.	Excessive advertising
Caleres, Inc.	Excessive advertising
California Beach Restaurants, Inc.	Insufficient sales
California Style Palms, Inc.	Insufficient sales
Calloway's Nursery, Inc.	Insufficient sales
Calvin Klein, Inc.	Insufficient sales
Camping World Holdings, Inc.	Value added services
Canada Payphone Corporation	Insufficient sales
Canadian Tire Corporation, Limited	Value added services
Candy Club Holdings Limited	Excessive advertising
Cannae Holdings, Inc.	restaurants

Company	Reason
CannaGrow Holdings, Inc	Insufficient sales
Capital Markets Technologies, Inc.	Insufficient sales
Capitol Office Solutions, LLC	Insufficient sales
CapSource Financial, Inc.	Insufficient sales
Car.com, Inc.	Insufficient sales
Carbeeza Inc.	Insufficient sales
Cardinal Health 109, Inc.	Insufficient sales
Caremark Rx, L.L.C.	Insufficient sales
CareRx Corporation	Healthcare services
CarGurus, Inc.	Excessive advertising
Caribou Coffee Company, Inc.	Insufficient sales
CarLotz, Inc.	Insufficient sales
Carlson Restaurants Worldwide, Inc.	Insufficient sales
CarMax, Inc.	value added services
Carmichael's Cashway Pharmacy, Inc.	Insufficient sales
Carol Wright Gifts	Insufficient sales
CarParts.com, Inc.	Excessive advertising
Carr Gottstein Foods Co.	Insufficient sales
Carrols Corporation	Insufficient sales
Carrols Restaurant Group, Inc.	Restaurants
Cars.com Inc.	Excessive advertising
Carvana Co.	Excessive advertising
Casey's General Stores, Inc.	Grocery stores
Cashman Equipment Company	Insufficient sales
CattleSale Co.	Insufficient sales
Cavalier Homes, Inc.	Insufficient sales
Cavco Industries, Inc.	Manufacturing
CCS Medical Holdings, Inc.	Insufficient sales
CEC Entertainment, Inc.	Excessive advertising
Cedar Fair, L.P.	Excessive advertising
Cellco Partnership, Inc.	Insufficient sales
Cellular Warehouse, Inc.	Insufficient sales
CEMEX, Inc.	Insufficient sales
Center Cut Hospitality, Inc.	Insufficient sales
Centerplate, Inc.	Insufficient sales
Certified Diabetic Services Inc.	Insufficient sales
Cervus Equipment Corporation	value added services
Champps Entertainment, Inc.	Insufficient sales
Checkers Drive-In Restaurants, Inc.	Insufficient sales
Chefs International Inc.	Restaurants
Cheryl & Co.	Insufficient sales
Chevron Phillips Chemical Company LLC	Manufacturing
Chevron U.S.A. Inc.	Insufficient sales
Chewy, Inc.	Insufficient sales
Chico's FAS, Inc.	Excessive advertising
Chinaberry Inc.	Insufficient sales
Chinos Holdings, Inc.	Insufficient sales
Chinos Intermediate Holdings A, Inc.	Insufficient sales
Chipotle Mexican Grill, Inc.	Restaurants
CHS Inc.	value added services
Chuy's Holdings, Inc.	Restaurants
Cinnabon International, Inc.	Insufficient sales
CITGO Petroleum Corporation	Insufficient sales

Company	Reason
Citi Trends, Inc.	Accept
Citron, Inc.	Insufficient sales
CKE Restaurants Holdings, Inc.	Insufficient sales
Claire's Holdings LLC	Insufficient sales
Claire's Stores Inc.	Accept
Clarus Corporation	Excessive R&D
Clayton Homes, Inc.	Insufficient sales
Clean Energy Fuels Corp.	Natural gas business
Cleaning Ideas Inc	Insufficient sales
Clear Skies Solar Inc.	Insufficient sales
Clickable Enterprises, Inc.	Insufficient sales
CLStv Corp.	Insufficient sales
Clyde Companies, Inc.	Insufficient sales
Coastal Contacts Inc.	Insufficient sales
Cobra Electronics Corporation	Insufficient sales
Coin Citadel	Insufficient sales
Cole Haan, Inc.	Insufficient sales
Cole National Group, Inc.	Insufficient sales
Collectible Concepts Group Inc.	Insufficient sales
Colorado Prime Corporation	Insufficient sales
Commerce Planet, Inc.	Insufficient sales
CompScript, LLC	Insufficient sales
concepts direct, inc.	Insufficient sales
Consolidated Sports Media Group	Insufficient sales
ContextLogic Inc.	Insufficient sales
Continental Building Products, Inc.	Manufacturing
Continental Home Healthcare Ltd.	Insufficient sales
Convey Health Solutions, Inc.	Insufficient sales
Coram LLC	Insufficient sales
Cordia Corporation	Insufficient sales
Core-Mark International, Inc.	Insufficient sales
Cornerstone Brands, Inc.	Insufficient sales
Corporate Express US Finance, Inc.	Insufficient sales
Corporate Express US, Inc.	Insufficient sales
Corporate Restaurant Concepts, Inc.	Insufficient sales
Cortelco Systems Puerto Rico, Inc.	Insufficient sales
Cosi Inc.	Restaurants
Costa Inc.	Insufficient sales
Costco Wholesale Corporation	Accept
Cost-U-Less, Inc.	Insufficient sales
Country Star Restaurants	Insufficient sales
Covetrus, Inc.	value added services
Cox Automotive, Inc.	Insufficient sales
Cracker Barrel Old Country Store, Inc.	Restaurants
Crane & Co., Inc.	Insufficient sales
Cresco Labs Inc.	Insufficient sales
Crestwood Equity Partners LP	Fuel business
Crick Media Group Ltd.	Excessive R&D
Critical Care Systems International, Inc.	Insufficient sales
Critical Care Systems, Inc.	Insufficient sales
Crosstown Traders, Inc.	Insufficient sales
Crown Books Corporation	Insufficient sales
Crumbs Bake Shop, Inc.	Insufficient sales

Company	Reason
Cruzani, Inc.	Insufficient sales
Crystal Rock LLC	Insufficient sales
CSK Auto Corporation	Insufficient sales
CST Brands, Inc.	Value added services
Cucina! Cucina! Italian Cafe, Inc.	Insufficient sales
Cuisine Solutions, Inc.	Insufficient sales
Cumberland Farms, Inc.	Insufficient sales
Current Media Group LLC	Insufficient sales
CVS Health Corporation	Health Services
CWI, Inc.	Insufficient sales
Cyber Apps World Inc.	Insufficient sales
Cyberian Outpost, Inc.	Insufficient sales
Darden Restaurants, Inc.	Restaurants
Dave & Buster's Entertainment, Inc.	restaurants
Dave & Buster's, Inc.	Insufficient sales
David's Bridal, LLC	Insufficient sales
DAVIDsTEA Inc.	Accept
DCH Auto Group, Inc.	Insufficient sales
Dealer Dot Com, Inc.	Insufficient sales
Dealer Tire, LLC	Insufficient sales
Dean & DeLuca, Inc.	Insufficient data
Del Frisco's Restaurant Group, Inc.	Restaurants
Del Taco Income Properties IV	Restaurants
Del Taco Restaurant Properties I	Insufficient sales
Del Taco Restaurants, Inc.	Restaurants
dELiA*s, Inc.	Insufficient sales
Delivery Technology Solutions, Inc.	Insufficient sales
Delota Corp.	Insufficient sales
Denny's Corporation	Restaurants
Denville Scientific Inc.	Insufficient sales
Design Within Reach, Inc.	Insufficient sales
Designer Brands Inc.	Manufacturing
Designer Intimates, Inc.	Insufficient sales
Destination XL Group, Inc.	Excessive advertising
Development Capital Group, Inc.	Insufficient sales
DICK'S Sporting Goods, Inc.	Excessive advertising
Digital Brands Group, Inc.	Excessive advertising
DigitalOptics Corporation	Insufficient sales
Dillard's, Inc.	Accept
Dinewise, Inc.	Insufficient sales
Diplomat Pharmacy, Inc.	value added services
Dixie Lee International Industries, Inc.	Insufficient sales
Do it Best Corp.	Cooperative
Dollar General Corporation	Accept
Dollar Tree, Inc.	Accept
Dollarama Inc.	Accept
Domino's Pizza, Inc.	Restaurants
Door to Door Storage, Inc.	Insufficient sales
DoorDash, Inc.	Insufficient sales
Double Down Holdings Inc.	development stage company
Dougherty's Pharmacy, Inc.	Acquisition business
Dougherty's Pharmacy, Inc.	Insufficient sales
Dover Saddlery, Inc.	Insufficient sales

Company	Reason
Dreams Inc.	Insufficient sales
Dreyer's Grand Ice Cream, Inc.	Insufficient sales
Driven Deliveries, Inc.	Insufficient sales
DriveTime Automotive Group, Inc.	Car dealership
DriveTime Automotive, Inc.	Insufficient sales
DTLR Holding, Inc.	Insufficient sales
Duane Reade Holdings, Inc.	Insufficient sales
Duluth Holdings Inc.	Brands
Dunkin' Brands Group, Inc.	Restaurants
Duty Free Americas, Inc.	Insufficient sales
Dynacraft Golf Products Inc.	Insufficient sales
Dynamic Response Group, Inc.	Insufficient sales
Earful of Books, Inc.	Insufficient sales
Eastbay Inc.	Insufficient sales
Eastern Asteria, Inc.	Insufficient sales
Eateries, Inc.	Insufficient sales
eBay Inc.	Excessive advertising
Eckerd Corporation	Insufficient sales
Edgen Murray Corporation	Insufficient sales
Ehydrogen Solutions, Inc.	Insufficient sales
Einstein Noah Restaurant Group, Inc.	Insufficient sales
El Chico Restaurants CRO, Inc.	Insufficient sales
El Pollo Loco Holdings, Inc.	Excessive advertising
El Pollo Loco, Inc.	Insufficient sales
Electric Car Company, Inc.	Insufficient sales
Electro Optical Systems Corp.	Insufficient sales
Elegant Illusions, Inc.	Insufficient sales
Elmer's Restaurants, Inc.	Insufficient sales
ELXSI Corporation	Insufficient sales
Emerald Dairy, Inc.	Insufficient sales
Emerge Commerce Ltd.	Insufficient sales
Emerging Vision Inc.	Insufficient sales
Empire Company Limited	Real estate
Empire Petroleum Partners, LP	Insufficient sales
Enable Holdings, Inc.	Insufficient sales
ENBC Corporation	Insufficient sales
Engility Holdings, Inc.	Technical Services to Government
Envela Corporation	Jewelry
EnviroChem, Inc.	Insufficient sales
Enzyme Environmental Solutions, Inc.	Insufficient sales
EOS International, Inc.	Insufficient sales
EPL Intermediate, Inc.	Insufficient sales
Equitel Inc.	Insufficient sales
Erickson Oil Products, Inc.	Insufficient sales
Essentia Water, LLC	Insufficient sales
Estee Lauder Inc.	Insufficient sales
Estore Of NY, Inc.	Insufficient sales
ETC Sunoco Holdings LLC	Insufficient sales
Etsy, Inc.	Excessive R&D
Evcarco, Inc.	Insufficient sales
Evernorth Health, Inc.	value added services
EVgo, Inc.	Insufficient sales
Excelligence Learning Corporation	Insufficient sales

Company	Reason
Express Lane, Inc.	Insufficient sales
Express, Inc.	Excessive advertising
Exxon Mobil Corporation	Fuel business
ExxonMobil Oil Corporation	Insufficient sales
EyeCity.com, Inc.	Insufficient sales
EZ Auctions & Shipping Inc.	Insufficient sales
EZCORP, Inc.	Pawn loans
EZFill Holdings Inc.	Insufficient sales
Fairway Group Holdings Corp.	Insufficient sales
Family Memorials Inc.	value added services
Fanatics, Inc.	Insufficient sales
Fashionmall.com, Inc.	Insufficient sales
FAT Brands Inc.	Insufficient sales
FCA US LLC	Insufficient sales
Federated Co-operatives Limited	manufacturing
Ferrellgas Partners Finance Corp.	Insufficient sales
Ferrellgas Partners, L.P.	Propane distributor
Ferrellgas, L.P.	Propane distributor
Fertitta Entertainment, LLC	Insufficient sales
FF Acquisition, L.L.C.	Insufficient sales
FFP Marketing Company, Inc.	Insufficient sales
FGL Sports Ltd.	Insufficient sales
Fidelity Holding Corp.	Insufficient sales
Fiesta Restaurant Group, Inc.	Restaurants
FIIC Holdings, Inc.	Insufficient sales
Finditall, Inc.	Insufficient sales
FirstAmerica Automotive, Inc.	Insufficient sales
FirstCash Holdings, Inc	Pawn loans
Five Below, Inc.	Accept
Flagstone Foods, Inc.	Insufficient sales
Flanigan's Enterprises, Inc.	Restaurants
FLEETCOR Technologies, Inc.	Financial services
FleetPride, Inc.	Insufficient sales
Floor & Decor Holdings, Inc.	Excessive advertising
FNC Realty Corporation	Insufficient sales
FNF Industries, Inc.	Insufficient sales
Fog Cutter Capital Group Inc.	Insufficient sales
Fogo de Chão, Inc.	Restaurants
Food 4 Less Holdings, Inc.	Insufficient sales
Food Lion, Inc.	Insufficient sales
Foodbase Group, Inc.	Insufficient sales
FoodFirst Global Restaurants, Inc.	Restaurants
Foodquest, Inc.	Insufficient sales
Foodvision.com Inc	Insufficient sales
Foot Locker, Inc.	Accept
Ford Motor Company	Excessive R&D
Fortive Corporation	Excessive R&D
Fox and Hound Restaurant Group Inc.	Insufficient sales
Fox Restaurant Concepts, LLC	Insufficient sales
FragranceNet.com, Inc.	Insufficient sales
Franchise Group, Inc.	Excessive advertising
Franciscan Missionaries Of Our Lady Health System, Inc.	Insufficient sales
Fred Meyer, Inc.	Insufficient sales

Company	Reason
Frederick's of Hollywood Group Inc.	Insufficient sales
Fred's, Inc.	Accept
Freedom Golf Corp	Insufficient sales
FreedomRoads RV, Inc.	Insufficient sales
Fresh Direct Holdings, Inc	Insufficient sales
Fresh Enterprises, LLC	Insufficient sales
Freshii Inc.	Restaurants
Freshlocal Solutions Inc.	Insufficient sales
Frisch's Restaurants, Inc.	Restaurants
FTS Group, Inc.	Insufficient sales
FULLBEAUTY Brands, Inc.	Insufficient sales
Furr's Restaurant Group, Inc.	Insufficient sales
Future Carz Inc.	Insufficient sales
G. R. Herberger's Inc.	Insufficient sales
Gallery of History Inc.	Insufficient sales
Galyan's Trading Company, LLC	Insufficient sales
GameStop, Inc.	Insufficient sales
Gear Unlimited	Insufficient sales
Geeknet, Inc.	Insufficient sales
GeneLink, Inc.	Insufficient sales
General Assembly Holdings Limited	Insufficient sales
General Motors Company	Excessive advertising
General Nutrition Centers, Inc.	Insufficient sales
General Store International Corp.	Insufficient sales
Genesco Inc.	Licensing
GenTech Holdings, Inc.	Restaurants
Genuine Parts Company	Accept
George Weston Limited	Value added services
Gepco, Ltd.	Insufficient sales
Gerald Stevens, Inc.	Insufficient sales
Getty Images Holdings, Inc.	Insufficient sales
Giant of Maryland, LLC	Insufficient sales
GiftCertificates.com, Inc.	Insufficient sales
Ginger Beef Corporation	Restaurants
Glacier Water Services, Inc.	Vending machines
Glentel Inc.	Insufficient sales
Global Partners LP	Gasoline transportation
Global Technologies, Ltd.	Insufficient sales
Glow Holdings, Inc.	Insufficient sales
GNC Holdings, Inc.	Manufacturing
GoAntiques Inc.	Insufficient sales
Golden Developing Solutions, Inc.	Insufficient sales
Golden Oil Company	Insufficient data
Goldthorpe Enterprises, Inc.	Insufficient sales
Golf Galaxy, LLC	Insufficient sales
GOLO Mobile Inc.	Insufficient sales
Good Sam Enterprises, LLC	Insufficient sales
Good Times Restaurants Inc.	Restaurants
Goodfood Market Corp.	Grocery stores
Gourmet Provisions International Corporation	Insufficient sales
GoverMedia Plus Canada Corp.	Insufficient sales
GPM Petroleum LP	Leases real estate
Grand Havana Enterprises, Inc.	Insufficient sales

Company	Reason
Great American Cookie Company, Inc.	Insufficient sales
Great American Food Chain, Inc. (The)	Insufficient sales
Green Cures & Botanical Distribution Inc.	Insufficient sales
Green PolkaDot Box Incorporated	Insufficient sales
Green Thumb Industries Inc.	Insufficient sales
Greenlane Holdings, Inc.	Insufficient sales
Greenway Medical Technologies, Inc.	Insufficient sales
Griffith Energy Services, Inc.	Insufficient sales
Grill Concepts Inc.	Insufficient sales
GRILLiT, Inc.	Insufficient sales
Gristedes Foods, Inc.	Insufficient sales
Grocery Outlet Holding Corp.	Insufficient sales
Grossman's Inc.	Insufficient sales
Group 1 Automotive, Inc.	Car dealership
Groupe Bikini Village Inc.	Insufficient sales
Grow Solutions Holdings, Inc.	Value added services
GrowGeneration Corp.	Value added services
GROWMARK, Inc.	Brands
Grubhub Holdings Inc.	Insufficient sales
Grubhub Inc.	Excessive advertising
GSRX Industries Inc.	Insufficient sales
Guozi Zhongyu Capital Holdings Company	Insufficient sales
H3Enterprises, Inc.	Insufficient sales
Hanger, Inc.	value added services
Hannaford Bros. Co., LLC	Insufficient sales
Hanover Direct, Inc.	Insufficient sales
Harco, Inc.	Insufficient sales
Harris Teeter Supermarkets, Inc.	Insufficient sales
Harrison Vickers and Waterman Inc.	Insufficient data
Harry & David Holdings, Inc.	Insufficient sales
Hart Stores Inc.	Insufficient sales
Harvest Health & Recreation Inc.	Insufficient sales
HASCO Medical, Inc.	Insufficient sales
Hat Trick Beverage, Inc.	Insufficient sales
Hat World Corporation	Insufficient sales
HBL LLC	Insufficient sales
HDW Houston	Insufficient sales
HealthCentral.com	Insufficient sales
HealthWarehouse.com, Inc.	Online business
Healthway Shopping Network, Inc.	Development stage company
Healthy Coffee International, Inc.	Insufficient sales
Hear AtLast Holdings, Inc.	Insufficient sales
HeartWare, Inc.	Insufficient sales
Heating Oil Partners Income Fund	Insufficient sales
Heelys, Inc.	Insufficient sales
Helix Hearing, Inc.	Insufficient sales
Hello Direct, Inc.	Insufficient sales
Hempco Food and Fiber Inc.	Manufacturing
Herbalife International, Inc.	Insufficient sales
Herbalife Nutrition Ltd.	Nutrition solutions
Hess Corporation	fuel business
Hibbett, Inc.	Accept
Hims & Hers Health, Inc.	Insufficient sales

Company	Reason
Hiru Corporation	Insufficient sales
HMSHost Corporation	Insufficient sales
Hocks Pharmacy Inc.	Insufficient sales
Home Bistro Inc.	Insufficient sales
Homeland Holding Corp.	Insufficient sales
Hometown Auto Retailers, Inc.	Insufficient sales
Hometown International, Inc.	Restaurants
Hook-SupeRx, L.L.C.	Insufficient sales
Horn & Hardart Baking Co.	Insufficient sales
Host International, Inc.	Insufficient sales
Hot Topic Inc.	Insufficient sales
Houlihan's Restaurants, Inc.	Insufficient sales
House of Fabrics, Inc.	Insufficient sales
HSN, Inc.	Excessive advertising
Hudson Clothing, LLC	Insufficient sales
Hudson's Bay Company	brands
Huffy Corporation	Insufficient sales
Humpty's Restaurants International Inc.	Insufficient sales
Hy & Zel's Inc.	Insufficient sales
IAA, Inc.	Auction business
ICTV Brands Inc.	Excessive advertising
ideeli Inc.	Insufficient sales
iFresh Inc.	Grocery stores
Il Fornaio (America) LLC	Insufficient sales
iMedia Brands, Inc.	Online business
Imusic Worldwide, Ltd.	Insufficient sales
Invescor Restaurants, Inc.	Insufficient sales
InCapta, Inc.	Develops TV shows
Incorporated Productions	Insufficient sales
Independent Propane Company Holdings	Insufficient sales
Indian Hill Holdings Corporation	Insufficient sales
Indiana University Health, Inc.	Insufficient sales
Indigo Books & Music Inc.	Brands
Infusion Brands International, Inc.	Insufficient sales
Ingles Markets, Incorporated	Grocery stores
Inner Spirit Holdings Ltd.	Insufficient sales
InNexus Biotechnology, Inc.	Insufficient sales
Innovative Food Holdings, Inc.	Wholesale
Interfoods of America, Inc.	Insufficient sales
International Building Technologies Group, Inc.	Insufficient sales
International Dairy Queen, Inc.	Insufficient sales
International Fast Food Corp.	Insufficient sales
International Vision Direct Corp.	Insufficient sales
Internet Brands, Inc.	Insufficient sales
Internet Gift Registries, Inc.	Insufficient sales
InternetFitness.com, Inc.	Insufficient sales
Intimate Brands, Inc.	Insufficient sales
iParty Corp.	Insufficient sales
iPower Inc.	Insufficient sales
Iron Age Holdings Corporation	Insufficient sales
IronPlanet, Inc.	Insufficient sales
Islet Holdings, Inc.	Insufficient sales
ITEC Attractions Inc.	Insufficient sales

Company	Reason
J Crew Operating Corp.	Insufficient sales
J. Alexander's Holdings, Inc.	Restaurants
J. J. Newberry Co.	Insufficient sales
J.Crew Group, Inc.	Excessive advertising
J.Jill, Inc.	Excessive advertising
Jack in the Box Inc.	Excessive advertising
Jade Global Holdings, Inc.	Insufficient sales
JAFRA Cosmetics International, Inc.	Insufficient sales
Jamba Juice LLC	Insufficient sales
Jamba, Inc.	Excessive advertising
Jason Incorporated	Insufficient sales
Java Detour, Inc.	Insufficient sales
Jerry's Famous Deli Inc	Insufficient sales
Jim White Company, Inc.	Insufficient sales
JLM Couture, Inc.	Excessive advertising
JOANN Inc.	Insufficient sales
Jo-Ann Stores, LLC	Insufficient sales
Jos. A Bank Clothiers Inc.	Insufficient sales
Jushi Inc	Insufficient sales
Just Kitchen Holdings Corp.	Insufficient sales
K&G Men's Company Inc.	Insufficient sales
KaBloom.com, Ltd.	Insufficient sales
Kahala Brands, Ltd.	Excessive advertising
Kahiki Foods, Inc.	Insufficient sales
Kaival Brands Innovations Group, Inc.	Insufficient sales
Karat Platinum, Inc.	Insufficient sales
Kaspien Holdings Inc.	Technology
Kate Spade & Company	Brands
Keg Restaurants Ltd.	Restaurants
Kelsey's International Inc.	Insufficient sales
Ken Garff Automotive, LLC	Insufficient sales
Kenwin Shops, Inc.	Insufficient sales
Keurig Dr Pepper Inc.	brands
Keurig, Incorporated	Insufficient sales
KeyStar Corp.	Insufficient sales
Keystone Automotive Operations, Inc.	Insufficient sales
Kiara Holdings Corp.	Insufficient sales
Kids Stuff, Inc.	Insufficient sales
Kirkland's, Inc.	Brands
Kisses From Italy Inc.	Insufficient sales
Kits Eyecare Ltd.	Insufficient sales
Kohl's Corporation	Accept
Kona Grill, Inc.	Restaurants
Koo Koo Roo, Inc.	Insufficient sales
Krispy Kreme, Inc.	Franchiser
Krystal Company	Insufficient sales
KT Oil Corp.	Insufficient sales
Kuhlman Company, Inc.	Insufficient sales
Kura Sushi USA, Inc.	Insufficient sales
La Salsa Inc.	Insufficient sales
La Senza Corporation	Insufficient sales
Lacrosse Footwear Inc.	Insufficient sales
Lamar Advertising Southwest, Inc.	Insufficient sales

Company	Reason
Lamonts Apparel Inc.	Insufficient sales
Land O'Lakes, Inc.	Food cooperative
Landry's, Inc.	Insufficient sales
Lands' End, Inc.	brands
Lane Bryant, Inc.	Insufficient sales
Lazydays Holdings, Inc.	Insufficient sales
Leeann Chin, Inc.	Insufficient sales
Legacy Housing Corporation	Manufacturing
Leslie's Poolmart Inc.	Insufficient sales
Leslie's, Inc.	Insufficient sales
Lewan & Associates, Inc.	Insufficient sales
Liberator Medical Holdings, Inc.	Excessive advertising
Liberty Homes, Inc.	Insufficient sales
Liberty Interactive LLC	Insufficient sales
Lifeist Wellness Inc.	Excessive advertising
Light & Wonder, Inc.	Excessive R&D
Lightning eMotors, Inc.	Insufficient sales
Lindley Food Service Company	Insufficient sales
Liquid Nutrition Group Inc.	Insufficient sales
Liquidity Services, Inc.	Online business
Liquor Control Board of Ontario	Insufficient sales
Lithia Motors, Inc.	Car dealership
Little Switzerland, Inc.	Insufficient sales
LKQ Corporation	Manufacturing
LL Flooring Holdings, Inc.	Excessive advertising
Lloyds Shopping Centers	Insufficient sales
LMP Automotive Holdings, Inc.	Insufficient sales
Loblaw Companies Limited	Financial services
Loblaws Inc.	Insufficient sales
Loncor Gold Inc.	Insufficient sales
Longs Drug Stores, L.L.C.	Insufficient sales
LotsOff Corp.	Insufficient sales
Louisiana-Pacific Corporation	Manufacturing
Lowe's Companies, Inc.	Accept
Luby's, Inc.	Restaurants
Lulu Enterprises, Inc.	Insufficient sales
Luxeyard, Inc.	Insufficient sales
Lykes Energy, Inc	Insufficient sales
Macali's Deluxe Super Markets, Inc	Insufficient sales
Macheezmo Mouse Restaurants, Inc.	Insufficient sales
Macy's Retail Holdings, LLC	brands
Macy's, Inc.	Excessive advertising
Mahwah Bergen Retail Group, Inc.	Brands
Maimonides Medical Center Inc.	Non-profit
Main Street Restaurant Group, Inc.	Insufficient sales
Maison Luxe, Inc.	Insufficient sales
Major Automotive Companies Inc.	Insufficient sales
Manchester, Inc.	Insufficient sales
Manhattan Bagel Company	Insufficient sales
ManifestSeven Holdings Corporation	Insufficient sales
Mannatech, Incorporated	Manufacturing
Marble Slab Creamery, Inc.	Insufficient sales
MarineMax, Inc.	Value added services

Company	Reason
Mariner Health Care, Inc.	Insufficient sales
Mark's Work Wearhouse Ltd.	Insufficient sales
Martin's, Inc.	Catering services
Mattel, Inc.	Excessive advertising
Maurices Incorporated	Insufficient sales
Max & Erma's, Inc.	Insufficient sales
MAXX International Inc	Insufficient sales
Maydao Corp	Insufficient sales
Mayor's Jewelers, Inc.	Insufficient sales
McCormick & Schmick's Seafood Restaurants, Inc.	Insufficient sales
McCullough Snappy Service Oil Co., Inc.	Insufficient sales
McDonald's Corporation	Restaurants
McLane Foodservice, Inc.	Insufficient sales
McLaren Health Care Corporation	medical services
MedAvail Holdings, Inc.	Insufficient sales
Medco Health Solutions, Inc.	Healthcare services
MedMen Enterprises Inc.	Insufficient sales
Mednow Inc.	Insufficient sales
MedStar Health, Inc.	medical services
Mega Marts, LLC	Insufficient sales
Mercedes-Benz North America Corporation	Insufficient sales
Mercom, Inc.	Insufficient sales
Meritage Hospitality Group Inc.	Excessive advertising
Meso Numismatics, Inc.	Insufficient sales
Metro Inc.	Manufacturing
Metropark USA, Inc.	Insufficient sales
Mexican Restaurants, Inc.	Insufficient sales
Miami Subs Corporation	Insufficient sales
Michael Anthony Holdings, Inc.	Insufficient sales
Michaels Stores, Inc.	Excessive advertising
Michigan General Corp	Insufficient sales
Mid-Atlantic Convenience Stores, LLC	Insufficient sales
Million Dollar Saloon Inc.	Insufficient sales
Mimbres Valley Farmers Association Inc	Insufficient sales
Mimi's Rock Corp.	Insufficient sales
ML Direct, Inc.	Insufficient sales
Mobile Storage Group, Inc.	Insufficient sales
Mobile/Modular EXPRESS II, LLC	Insufficient sales
MobileIron, Inc.	Excessive R&D
Modern Everyday, Inc.	Insufficient sales
Monoprice, Inc.	Insufficient sales
Monro, Inc.	Auto Services
Montana Mills Bread Co., Inc.	Insufficient sales
Moran Foods, LLC	Grocery stores
Morgan's Foods Inc.	Insufficient sales
Morrison Management Specialists, Inc.	Insufficient sales
Morton's Restaurant Group, Inc.	Insufficient sales
MotherNature.com, Inc.	Insufficient sales
Motor Cars Auto Group, Inc.	Insufficient sales
Mountain Valley Spring Company, LLC	Insufficient sales
Mrs. Fields Famous Brands, LLC	Insufficient sales
Mrs. Fields' Holding Company, Inc.	Insufficient sales
Mrs. Fields' Original Cookies, Inc.	Insufficient sales

Company	Reason
MSTE Holdings, Inc.	Insufficient sales
MTY Food Group Inc.	Restaurants
Murphy USA Inc.	fuel business
Muscle Maker, Inc.	Franchiser
Musician's Friend, Inc.	Insufficient sales
Mutual Propane Ltd.	Insufficient sales
My Healthy Access, Inc.	Insufficient sales
myContactCard, Inc.	Insufficient sales
MYM Nutraceuticals Inc.	Insufficient sales
Nathan's Famous, Inc.	Restaurants
National Convenience Stores Incorporated	Insufficient sales
National Home Centers, Inc.	Insufficient sales
National Law Enforcement Officers Memorial Fund, Inc.	Charity
National Vision Holdings, Inc.	Value added services
Natural Grocers by Vitamin Cottage, Inc.	Accept
Nature's Sunshine Products, Inc.	Manufacturing
NCS HealthCare, LLC	Insufficient sales
Nebraska Book Company, Inc.	Insufficient sales
NeighborCare Pharmacy Services, Inc.	Insufficient sales
Neighbourly Pharmacy Inc.	Insufficient sales
Neiman Marcus Group LTD LLC	brands
Neiman Marcus Group LTD LLC	brands
Nevada Bob's Golf, Inc.	Insufficient sales
New Albertsons L.P.	Insufficient sales
New Asia Inc.	Insufficient sales
New England Home Therapies, Inc.	Insufficient sales
New England Service Company, Inc.	Management of water utilities
New Look Vision Group Inc.	value added services
New Posh LLC	Insufficient sales
Newegg Commerce, Inc.	Insufficient sales
Newlook Industries Corp.	Insufficient sales
Newstrike Brands Ltd.	Insufficient sales
Next Meats Holdings, Inc.	Insufficient sales
Nexus Energy Services, Inc.	Insufficient sales
NGL Energy Partners LP	fuel business
Niman Ranch, Inc.	Insufficient sales
Nine West Group Inc.	Insufficient sales
Noodles & Company	Restaurants
Nordstrom, Inc.	Accept
Nova Cannabis Inc.	Insufficient sales
Nutrisystem, Inc.	Weight loss program
Nutrition Management Services Company	Insufficient sales
Obelysk, Inc.	Insufficient sales
O'Charley's Inc.	Insufficient sales
Odd's-N-End's, Inc.	Insufficient sales
Officeland, Inc.	Insufficient sales
OfficeMax Incorporated	Insufficient sales
Old America Stores, Inc.	Insufficient sales
Old PSG Wind-down Ltd.	Insufficient sales
Ollie's Bargain Outlet Holdings, Inc.	Excessive advertising
OM Foods Ltd.	Insufficient sales
Omega Cabinets, Ltd.	Insufficient sales
Omni Health, Inc.	Insufficient sales

Company	Reason
Omnicare Inc.	Insufficient sales
Omnicom Group Inc.	Marketing Services
One 4 Art Limited	Insufficient sales
OneWater Marine Inc.	Insufficient sales
Online Sheet Music, Inc	Insufficient sales
OptiCare Acquisition Corp.	Insufficient sales
Option Care, Inc.	Insufficient sales
Oragin Foods Inc.	Grocery stores
OraPharma, Inc.	Insufficient sales
Orbit Drop, Inc.	Insufficient sales
O'Reilly Auto Enterprises, LLC	Insufficient sales
O'Reilly Automotive, Inc.	Accept
OrganiGram Holdings Inc.	Brands
OshKosh B'gosh, Inc.	Insufficient sales
OSI Restaurant Partners, LLC	Insufficient sales
OTG EXP, Inc.	Insufficient sales
Overstock.com, Inc.	Excessive advertising
OWL/Neal LP	Insufficient sales
P.F. Chang's China Bistro, Inc.	Insufficient sales
Pacific International Services Corp.	Insufficient sales
Pacific Shore Holdings, Inc.	Insufficient sales
Pacific Sports Exchange Inc.	Insufficient sales
Pacific Sunwear of California, LLC	Brands
Pacific Vector Holdings Inc.	Insufficient sales
Paladin Holdings, Inc.	Insufficient sales
Pancho's Mexican Buffet, Inc.	Insufficient sales
Panera Bread Company	Restaurants
Pantorama Industries Inc.	Insufficient sales
Papa John's International, Inc.	Excessive advertising
Papa Murphy's Holdings, Inc.	Excessive advertising
PARTS iD, Inc.	Insufficient sales
Party City Corporation	Insufficient sales
Party City Holdco Inc.	Manufacturing
Party City Holdings Inc.	Insufficient sales
Pasadena Hospital Association, Ltd.	Healthcare services
Patton Wings, Inc.	Excessive advertising
Payless Inc.	Insufficient sales
Payphone Wind Down Corporation	Insufficient sales
Paystar Corporation	Insufficient sales
PC Connection, Inc.	IT solutions
PCM, Inc.	IT solutions
Peabodys Coffee Inc.	Insufficient sales
PeakBirch Commerce Inc.	Insufficient sales
Peapod, LLC	Insufficient sales
Peloton Interactive, Inc.	Insufficient sales
Pennington Seed, Inc.	Insufficient sales
Penske Automotive Group, Inc.	Car dealership
Pep Boys - Manny, Moe & Jack	Insufficient sales
Perfumania Holdings, Inc.	Excessive advertising
Perkins Family Restaurants, L.P.	Insufficient sales
PesoRama Inc.	Insufficient sales
Pet Quarters, Inc.	Insufficient sales
Pet Retail Brands Ltd.	Insufficient sales

Company	Reason
Pet Valu Holdings Ltd.	Insufficient sales
Petals Decorative Accents, Inc.	Insufficient sales
Petco Animal Supplies, Inc.	Insufficient sales
Petco Health and Wellness Company, Inc.	Insufficient sales
Petco Holdings, Inc.	Insufficient sales
PetMed Express, Inc.	Excessive advertising
Petrie Stores Liquidating Trust	Insufficient sales
Petro Distributing, Inc.	Insufficient sales
Petro Inc.	Insufficient sales
Petro Stopping Centers Holdings, L.P.	Insufficient sales
Petro Stopping Centers, L.P.	Insufficient sales
Petro USA, Inc.	Insufficient sales
Petroleum Heat and Power Inc.	Insufficient sales
Petroleum Marketers, Inc.	Insufficient sales
PetSmart LLC	Insufficient sales
PFSweb Retail Connect, Inc.	Insufficient sales
PGNX Capital Corp.	Insufficient sales
PharmaCann Inc.	Insufficient sales
PharMerica Corporation	Healthcare services
PhoneX Holdings, Inc.	Excessive advertising
Pick-Ups Plus, Inc.	Insufficient sales
Piggly Wiggly Alabama Distributing Company, Inc.	Insufficient sales
Piggly Wiggly Midwest, LLC	Insufficient sales
Pinkmonkey.com, Inc.	Insufficient sales
Piranha, Inc.	Insufficient sales
Pizza Pizza Limited	Restaurants
Pizza Pizza Royalty Corp.	Franchiser
PJ United, Inc.	Insufficient sales
Planet Hollywood International, Inc.	Insufficient sales
PlantX Life Inc.	Insufficient sales
Platcom, Inc.	Insufficient sales
Polished.com Inc.	Insufficient sales
Pollo Operations, Inc.	Insufficient sales
PolyMedica Corporation	Insufficient sales
Poshmark, Inc.	Insufficient sales
Potbelly Corporation	Restaurants
PPC Capital Corp.	Insufficient sales
PPG Industries, Inc.	Excessive R&D
PrairieStone Pharmacy, LLC	Insufficient sales
Prandium, Inc.	Insufficient sales
Precision Industries, Inc.	Insufficient sales
Preferred Restaurant Brands, Inc.	Insufficient sales
Preferred Rx, LLC	Insufficient sales
Premier Brands Group Holdings LLC	Insufficient sales
Premier Development & Investment, Inc.	Insufficient sales
Prestige Cars International, Inc.	Insufficient sales
PriceSmart, Inc.	Accept
PrimEdge, Inc.	Insufficient sales
Prine Systems, Inc.	Insufficient sales
Pro trans Ventures Inc.	Insufficient sales
Promotional Marketing, LLC	Insufficient sales
Propellus Inc.	Solar power technology
Providence St. Joseph Health	Healthcare services

Company	Reason
Provigo Inc.	Insufficient sales
Provo Prepaid (delaware) Corp	Insufficient sales
Publix Super Markets, Inc.	Grocery stores
Pudgie's Chicken, Inc.	Insufficient sales
Purch, Inc.	Insufficient sales
Quality Dining, Inc.	Insufficient sales
Quality Food Centers, Inc.	Insufficient sales
Quotient Technology Inc.	Excessive R&D
Qurate Retail Group, Inc.	Online business
Qurate Retail, Inc.	Online business
QVC, Inc.	Online business
R.G. Barry Corporation	Insufficient sales
Radial, Inc.	Insufficient sales
Rainforest Cafe, Inc.	Restaurants
Rakuten Commerce LLC	Insufficient sales
Ralphs Grocery Company, Inc.	Insufficient sales
Ranbaxy Laboratories, Inc.	Insufficient sales
Randall's Food Markets, Inc.	Insufficient sales
Rankin Automotive Group, Inc.	Insufficient sales
RAP Group, Inc.	Insufficient sales
RARE Hospitality International, Inc.	Insufficient sales
RCI Hospitality Holdings, Inc.	restaurants
RDE, Inc.	Insufficient sales
RDO Equipment Co.	Value added services
Real American Capital Corp.	Insufficient sales
Real Goods Trading Corporation	Insufficient sales
Real Matters Inc.	Management solutions
Recipe Unlimited Corporation	Franchiser
Red Hot Concepts, Inc.	Insufficient sales
Red Robin Gourmet Burgers, Inc.	Restaurants
Redheads Inc DE	Insufficient sales
REEDS Jewelers, Inc.	Insufficient sales
Refac Optical Group	Insufficient sales
Regional Brands Inc.	Insufficient sales
Reitmans (Canada) Limited	Manufacturing
Reliant Holdings, Inc.	Manufacturing
Remark Holdings, Inc.	Excessive R&D
Restaurant Brands International Inc.	Restaurants
Restaurant Brands International Limited Partnership	Restaurants
Revolve Group, Inc.	Insufficient sales
Rexall Sundown, Inc.	Insufficient sales
Reynaldo's Mexican Food Company, LLC	Insufficient sales
Richfood Holdings, Inc.	Insufficient sales
Richtree Inc.	Insufficient sales
Rite Aid Corporation	Value added services
Ritz Interactive, Inc.	Insufficient sales
Riverside Group, Inc.	Insufficient sales
Rockelle Corporation	Insufficient sales
Rocky Mountain Chocolate Factory, Inc.	Manufacturing
Rocky Mountain Equipment Alberta Ltd.	Value added services
Rocky Mountain Liquor Inc.	Accept
Roex Inc.	Insufficient sales
Rolling Pin Kitchen Emporium Inc.	Insufficient sales

Company	Reason
Romacorp, Inc.	Insufficient sales
Rona Inc.	Insufficient sales
Roots Corporation	Insufficient sales
Rosauers Supermarkets, Inc.	Insufficient sales
Ross Stores, Inc.	Accept
Rotech Healthcare Inc.	Insufficient sales
Roundy's, Inc.	Insufficient sales
RTM, LLC	Insufficient sales
Rubio's Restaurants, Inc.	Insufficient sales
Ruby Tuesday, Inc.	Restaurants
Rudy's Restaurant Group	Insufficient sales
rue21, Inc.	Insufficient sales
Rush Enterprises, Inc.	Value added services
Ruth's Hospitality Group, Inc.	Restaurants
Safeway Inc.	Insufficient sales
Saker ShopRites, Inc.	Insufficient sales
Saks Holdings, Inc.	Insufficient sales
Saks Incorporated	Insufficient sales
Sally Beauty Holdings, Inc.	Accept
San Luis Obispo County Farm Supply	No audited data available
Santa Barbara Restaurant Group, Inc.	Insufficient sales
Sarkis Restaurant Group	Insufficient sales
Sbarro LLC	Insufficient sales
SC International Services, Inc.	Insufficient sales
School Specialty, LLC	Brands
Schroeder & Tremayne, Inc.	Insufficient sales
Schuster Enterprises, Inc.	Insufficient sales
Scientific Energy, Inc.	Insufficient sales
SCOA Industries Inc.	Insufficient sales
Seaena, Inc.	Insufficient sales
Sears Canada Inc.	value added services
Sears Hometown and Outlet Stores, Inc.	Excessive advertising
Second Cup Coffee Co	Insufficient sales
Seen On Screen TV, Inc.	Excessive advertising
Sempris, LLC	Insufficient sales
Sequenom Inc.	Excessive R&D
Shake Shack Inc.	Restaurants
Sharing Services Global Corporation	Insufficient sales
Sharp Healthcare, Inc.	medical services
Shell Canada Limited	Insufficient sales
Shell Oil Company	Insufficient sales
Shift Technologies, Inc.	Insufficient sales
Shoe Carnival, Inc.	Excessive advertising
Shoe Pavilion Inc.	Insufficient sales
Shoes.com, Inc.	Insufficient sales
Shoney's North America, LLC	Insufficient sales
Shoppers Drug Mart Corporation	Insufficient sales
Shoppers Food Warehouse Corp.	Insufficient sales
Shopsmith Inc.	Insufficient sales
Sigma Global Corporation	Insufficient sales
Signature Eyewear, Inc.	Insufficient sales
Signature Leisure, Inc.	Insufficient sales
Silver Diner Inc.	Insufficient sales

Company	Reason
Simply Amazing LLC	Insufficient sales
SIR Corp.	Insufficient sales
SIR Royalty Income Fund	Restaurants
Sixx Holdings Inc.	Insufficient sales
Sizzling Platter, LLC	Insufficient sales
SK3 Group, Inc.	Insufficient sales
Sklar Corporation	Insufficient sales
Skolniks, Inc.	Insufficient sales
Skyline Chili, Inc.	Insufficient sales
SkyMall Holdings, LLC	Insufficient sales
Sleep Country Canada Holdings Inc.	Excessive advertising
Smart & Final Inc.	Insufficient sales
Smart & Final Stores, Inc.	Grocery stores
SmartBargains, Inc.	Insufficient sales
Smave Solutions Inc.	Insufficient sales
Smith's Food & Drug Centers, Inc.	Insufficient sales
Smoke Cartel, Inc.	Insufficient sales
Snap-on Incorporated	Manufacturing
Sobeys Inc.	Retails fuel
Sobeys Stores Ltd.	Insufficient sales
Sodexo, Inc.	Insufficient sales
Sonic Automotive, Inc.	Value added services
Sonic Corp.	Excessive advertising
Sonus Corporation	Insufficient sales
Sooner Trailer Manufacturing Co.	Insufficient sales
Sotheby's	auction business
Southeastern Grocers, LLC	Insufficient sales
Southern Concepts Restaurant Group, Inc.	Excessive advertising
Southwest Georgia Oil Company, Inc.	Insufficient sales
Spacefy Inc.	Insufficient sales
Spaghetti Warehouse Restaurants Inc.	Insufficient sales
Specialty Commerce Corp.	Insufficient sales
SpendSmart Networks, Inc.	Excessive advertising
Spiegel, Inc.	Insufficient sales
Spin Master Corp.	Entertainment company
Spintek Gaming Technologies Inc	Insufficient sales
Spitzer Management, Inc.	Insufficient sales
Spok Holdings, Inc.	Excessive R&D
Sport Chalet Inc.	Insufficient sales
Sportscene Group Inc.	Restaurants
Sportsman's Guide, Inc.	Insufficient sales
Sportsman's Warehouse Holdings, Inc.	Brands
Spot Coffee (Canada) Ltd.	Restaurants
Sprouts Farmers Market, Inc.	Grocery stores
SSM Health Care Corporation	medical services
SSP America Gladco, Inc.	Insufficient sales
SSP America, Inc.	Insufficient sales
Staples, Inc.	Accept
Star Buffet, Inc.	Restaurants
Star Group, L.P.	Heating oil business
Star Markets Company, Inc.	Insufficient sales
Starbucks Corporation	Franchiser
Starco Brands, Inc.	Excessive advertising

Company	Reason
Starwood Hotels & Resorts Worldwide, LLC	Excessive advertising
Stater Bros. Holdings Inc.	Insufficient sales
Statesman Resources Ltd.	Insufficient sales
STEN Corporation	Financing
Stewart's Beverages, Inc.	Insufficient sales
Stitch Fix, Inc.	Insufficient sales
Streamline.com, Inc.	Insufficient sales
Styleclick, Inc.	Insufficient sales
Suburban Propane Partners, L.P.	Fuel business
Successories, Inc.	Insufficient sales
Sulja Bros Building Supplies Ltd.	Insufficient sales
Sun & Sun Industries Inc.	Insufficient sales
Sun Tzu Corporation	Insufficient sales
Sunbelt Nursery Group	Insufficient sales
SunLink Health Systems, Inc.	Healthcare services
Sun-Rype Products Ltd.	Insufficient sales
Super Value, Inc.	Insufficient sales
Superior Plus Corp.	Energy distribution
Superior Plus LP	Insufficient sales
SUPERVALU INC.	Brands
Surge Technologies Inc.	Insufficient sales
Susser Holdings Corporation	Insufficient sales
SWH Mimi's Cafe, LLC	Insufficient sales
Synrgy Corp.	Insufficient sales
SynX Pharma Inc.	Insufficient sales
T-3 Energy Services, LLC	Insufficient sales
Taco Cabana, Inc.	Insufficient sales
Tailored Brands, Inc.	Excessive advertising
Tal Consolidated Inc.	Online business
Tallagium Corporation	Insufficient sales
Tam Restaurants Inc.	Insufficient sales
Tandy Leather Company	Insufficient sales
Tandy Leather Factory, Inc.	Excessive advertising
Target Corporation	Accept
Tarkett Inc.	Insufficient sales
Tatyana Designs, Inc.	Insufficient sales
Taxus Pharmaceuticals Holdings, Inc.	Related-party transactions
TBC Corporation, Inc.	Insufficient sales
TC Global, Inc.	Insufficient sales
TCFS Holdings, Inc.	Insufficient sales
Team Rahal of Pittsburgh, Inc.	Insufficient sales
Teavana Holdings, Inc.	Insufficient sales
Techpoint, Inc.	Excessive R&D
Tesla, Inc.	Excessive R&D
Texaco Inc.	Insufficient sales
Texas Roadhouse, Inc.	Restaurants
Thane International, Inc.	Insufficient sales
The Aristotle Corporation	Manufacturing
The Army & Air Force Exchange Service	Government agency
The Bon-Ton Department Stores, Inc.	Insufficient sales
The Bon-Ton Stores, Inc.	Excessive advertising
The Bountiful Company	Excessive advertising
The Buckle, Inc.	Brands

Company	Reason
The Cato Corporation	Accept
The Cheesecake Factory Incorporated	Restaurants
The Children's Place, Inc.	Brands
The Circle K Corporation	Insufficient sales
The Finish Line, Inc.	Accept
The Fresh Market, Inc.	Grocery stores
The Gap, Inc.	Excessive advertising
The Golf Warehouse, Inc.	Insufficient sales
The Goodyear Tire & Rubber Company	Manufacturing
The Habit Restaurants, Inc.	Restaurants
The Home Depot, Inc.	Accept
The J. Jill Group, Inc.	Insufficient sales
The Jean Coutu Group (PJC) Inc.	Franchiser
The Jim Pattison Group, Inc.	Insufficient sales
The Keg Royalties Income Fund	Restaurants
The Kroger Co.	Manufacturing
The Men's Wearhouse, Inc.	Accept
The Michaels Companies, Inc.	Excessive advertising
The Neiman Marcus Group LLC	Insufficient sales
The North West Company Inc.	Value added services
The ODP Corporation	Value added services
The ONE Group Hospitality, Inc.	Excessive advertising
The Pantry, Inc.	Insufficient sales
The RealReal, Inc.	Insufficient sales
The Sherwin-Williams Company	Manufacturing
The Smith & Wollensky Restaurant Group, Inc.	Insufficient sales
The Sperry & Hutchinson Company, Inc.	Insufficient sales
The Sports Authority, Inc.	Insufficient sales
The Strober Organization, Inc.	Insufficient sales
The Talbots Inc.	Insufficient sales
The TJX Companies, Inc.	Accept
The United States Shoe Corporation	Insufficient sales
The Village Green Bookstore, Inc.	Insufficient sales
The Vons Companies, Inc.	Insufficient sales
The Walking Company Holdings, Inc.	Insufficient sales
The Walking Company, Inc.	Insufficient sales
The Wendy's Company	Restaurants
The William Carter Company	Insufficient sales
The World Poker Store, Inc.	Insufficient sales
Therma-Med, Inc.	Insufficient sales
ThredUp Inc.	Insufficient sales
Thrive World Wide, Inc.	Insufficient sales
Tiffany & Co.	Manufacturing
Tile Shop Holdings, Inc.	Manufacturing
Tilly's, Inc.	Excessive advertising
Tilray Brands, Inc.	Research
TILT Holdings Inc.	Insufficient sales
Tim Hortons Inc.	Insufficient sales
Timber Lodge Steakhouse, Inc.	Insufficient sales
Tiny Prints, Inc.	Insufficient sales
Titan Machinery Inc.	Value added services
Titan Propane LLC	Insufficient sales
Titanium Healthcare, Inc.	Insufficient sales

Company	Reason
TKO Holdings Ltd.	Insufficient sales
TLC Health Care Services, L.L.C.	Insufficient sales
Tops Holding II Corporation	Grocery stores
Tops Holding LLC	Insufficient sales
Torrid Holdings Inc.	Insufficient sales
Torrid Inc.	Excessive advertising
Tourico Holidays, Inc.	Insufficient sales
Toys "R" Us, Inc.	Brands
Toys "R" Us - Delaware, Inc.	Excessive advertising
Tractor Supply Company	Taxpayer
Travel Center Partners, Inc.	Insufficient sales
TravelCenters of America Inc.	Travel center
Travis Boats & Motors, Inc.	Insufficient sales
TRIA Beauty, Inc.	Insufficient sales
Triarc Consumer Products Group LLC	Insufficient sales
Truck & Trailer Parts Inc.	Insufficient sales
Truck Hero, Inc.	Insufficient sales
True Product ID, Inc.	Insufficient sales
True Value Company	Manufacturing
Trulieve Cannabis Corp.	Insufficient sales
Tuesday Morning Corporation	Accept
Tumbleweed, Inc.	Insufficient sales
Tumi Holdings, Inc.	Manufacturing
U.S. Biomedical Corp.	Insufficient sales
U.S. Compounding, Inc.	Healthcare services
U.S. Vision, Inc.	Insufficient sales
UDS Group, Inc.	Insufficient sales
UGI International, LLC	Insufficient sales
Ultra Beauty, Inc.	Excessive advertising
Unified Grocers, Inc.	Value added services
Uniprix Inc.	Insufficient sales
United Leisure Corporation	Insufficient sales
United Oil & Gas, Inc.	Insufficient sales
United Online, Inc.	Excessive advertising
United Petroleum Corporation	Insufficient sales
United Refining Company	fuel business
United Retail Group, Inc.	Insufficient sales
United Road Services, Inc.	Insufficient sales
United Time Group LLC	Insufficient sales
Universal International	Insufficient sales
Uno Restaurants LLC	Insufficient sales
Urban Outfitters, Inc.	Excessive advertising
URC, LLC	Insufficient sales
US Foods, Inc.	Food distributor
U-Swirl, Inc.	Insufficient sales
Valcor, Inc.	Insufficient sales
Valero Energy Partners LP	fuel business
Value Financial Services, Inc.	Insufficient sales
Varsity Group, Inc.	Insufficient sales
Vartech Systems Inc.	Insufficient sales
Vaughan Foods Inc.	Insufficient sales
VCA Inc.	Healthcare services
VCG Holding Corp.	Insufficient sales

Company	Reason
Vera Bradley, Inc.	Excessive advertising
Verizon Communications Inc.	Value added services
Verrazano, Inc.	Insufficient sales
Vertility Technology Corporation	Insufficient sales
Vertrue LLC	Insufficient sales
Vibe Records, Inc. Nevada.	Insufficient sales
Victory Marine Holdings Corp.	Insufficient sales
Vicwest Inc	Insufficient sales
Viking Office Products, Inc.	Insufficient sales
Village Super Market, Inc.	Grocery stores
Vinification Ventures Inc.	Insufficient sales
Vintage Wine Estates, Inc.	Insufficient sales
ViSalus, Inc.	Insufficient sales
Visionworks of America, Inc.	Insufficient sales
Vitacost.com, Inc.	Insufficient sales
Vitamin OldCo Corporation	Insufficient sales
Vitamin Shoppe Industries Inc.	Insufficient sales
Vitamin Shoppe, Inc.	Manufacturing
Vitamins.com, Inc.	Insufficient sales
Vroom, Inc.	Insufficient sales
VS Direct, Inc.	Insufficient sales
Waitr Holdings Inc.	Excessive R&D
Walgreen Co.	Insufficient sales
Walgreens Boots Alliance, Inc.	Value added services
Wall Street Deli Inc.	Insufficient sales
Walmart Inc.	Accept
Waterloo Brewing Ltd.	Manufacturing
Watermarc Food Management Corp.	Insufficient sales
Wayfair Inc.	Excessive advertising
Weis Markets, Inc.	Accept
Wendy's International, LLC	Insufficient sales
Wendy's Restaurants, LLC	Insufficient sales
West 49 Inc.	Insufficient sales
West Coast Ventures Group Corp.	Insufficient sales
West Marine, Inc.	Insufficient sales
Western Beef Inc.	Insufficient sales
Western Capital Resources, Inc.	Excessive advertising
Western Sizzlin Corporation	Insufficient sales
Westfair Foods Ltd.	Insufficient sales
Wex Pharmaceuticals Inc.	Insufficient sales
Weyco Group, Inc.	Excessive advertising
Wheel Pros, LLC	Insufficient sales
White House Black Market, Inc.	Insufficient sales
Whitney Automotive Group, Inc.	Insufficient sales
Whole Foods Market, Inc.	Grocery stores
Wild Oats Marketing, LLC	Insufficient sales
Williams-Sonoma, Inc.	Brands
Window Rock Capital Holdings, Inc.	Insufficient sales
Wing Sail Company, Inc.	Insufficient sales
Wingstop Inc.	Restaurants
Winn-Dixie Stores Inc.	Insufficient sales
WiseBuys Stores, Inc.	Insufficient sales
WJ Holdings Liquidating Company	Insufficient sales

Company	Reason
WO Group, Inc.	Insufficient sales
Worldwide Restaurant Concepts, Inc.	Insufficient sales
Xeriant, Inc.	Insufficient sales
Xhibit Corp.	Insufficient sales
Xometry, Inc.	Insufficient sales
XP Innovation, LLC	Insufficient sales
Xperience Restaurant Group	Insufficient sales
Xponential Inc.	Under liquidation
XS Cargo Income Fund	Insufficient sales
Xstelos Holdings, Inc.	Insufficient sales
Xynergy Holdings, Inc.	Insufficient sales
Yale-New Haven Health Services Corporation	Insufficient sales
Yankee Holding Corp.	Insufficient sales
Yaohan International	Insufficient sales
Youngevity International, Inc.	Manufacturing
Yunique, LLC	Insufficient sales
Yum! Brands, Inc.	Excessive advertising
Zale Corporation	Insufficient sales
Zale Delaware, Inc.	Insufficient sales
Zappos.com LLC	Insufficient sales
Zebit, Inc.	Insufficient sales
Zehnder's Of Frankenmuth Inc.	Insufficient sales
Zix Corporation	Excessive advertising
Zoe's Kitchen, Inc.	Restaurants
Zones, LLC	Insufficient sales
Zulily, LLC	Insufficient sales
Zumiez Inc.	Accept

JOINT EXHIBITS 66-83

Files Submitted on Thumb Drive

- 66 - FY 16-18 Legal P&L*
- 67 - CASS Associates
- 68 - E&Y supporting documentation*
- 69 - FY16-18 Legal Balance Sheets Summaries*
- 70 - Spreadsheet from Brian Cody's file*
- 71 - DeRamus Spreadsheet 1*
- 72 - DeRamus Spreadsheet 2
- 73 - DeRamus Spreadsheet 3
- 74 - DeRamus Spreadsheet 4
- 75 - DeRamus Spreadsheet 5
- 76 - DeRamus Spreadsheet 6
- 77 - DeRamus Spreadsheet 7*
- 78 - DeRamus Spreadsheet 8
- 79 - DeRamus Spreadsheet 9
- 80 - DeRamus Spreadsheet 10
- 81 - FY 16 CAF v. Non-CAF Legal P&L*
- 82 - FY 17 CAF v. Non-CAF Legal P&L*
- 83 – FY 18 CAF v. Non-CAF Legal P&L*

*** These files are also confidential and filed under seal.**

**** CONFIDENTIAL INFORMATION FILED UNDER SEAL ****

CarMax Auto Superstores, Inc. v. South Carolina Department of Revenue
Appellate Case No. 2024-001558

Joint Exhibit 84 – Form SC 1120 FY 2016—CarMax Auto Superstores West Coast, Inc.