

**US TAX COURT
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**US TAX COURT
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GWA, LLC, GEORGE A. WEISS, TAX MATTERS
PARTNER,

Petitioners,

ELECTRONICALLY FILED

v.

Docket No. 6981-19

COMMISSIONER OF INTERNAL REVENUE,
Respondent

RESPONDENT'S ANSWER

SERVED Jul 01 2019

UNITED STATES TAX COURT

GWA, LLC, George A. Weiss,)	
Tax Matter Partner)	
)	
Petitioner,)	Docket No. 6981-19
)	
v.)	
)	
COMMISSIONER OF INTERNAL)	Filed Electronically
REVENUE,)	
)	
Respondent.)	

ANSWER

RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1. The first sentence is a subheading and is not an allegation that needs to be admitted or denied. Second sentence. Denies that GWA, LLC, is the petitioner. Admits that GWA, LLC, is a Connecticut limited liability company. Admits that George A. Weiss is GWA, LLC's Tax Matters Partner for its tax years ending December 31, 2009, and December 31, 2010. Alleges that George A. Weiss, Tax Matters Partner, is the petitioner. Third sentence. Admits that GWA, LLC (the "Partnership"), was a partnership for U.S. federal income tax purposes for its tax year ending December 31, 1998, and tax years ending December 31, 2003, through December 31, 2010. Admits that GWA, LLC, was a TEFRA partnership for U.S.

federal income tax purposes and subject to I.R.C. §§ 6221-6234¹ for its tax years ending December 31, 2009, and December 31, 2010. Denies for lack of sufficient information as to all other periods. Fourth sentence. Denies for lack of sufficient information. Alleges that the Notices of Final Partnership Administrative Adjustment for the Partnership's tax years ending December 31, 2009 ("2009 FPAA"), and December 31, 2010 ("2010 FPAA") (together "FPAA's"), were mailed to George A. Weiss, Tax Matters Partner of GWA, LLC, at One State Street, 20th Floor, Hartford, CT, 06103-3100. Fifth sentence. Admits.

2. The first sentence is a subheading and is not an allegation that needs to be admitted or denied. Second sentence. Admits. Third sentence. Denies for lack of sufficient information. Alleges that the FPAA's were mailed to George A. Weiss, Tax Matters Partner of GWA, LLC, at One State Street, 20th Floor, Hartford, CT, 06103-3100.

2.a. First sentence. Admits that for the Partnership's tax years ending December 31, 2009, and December 31, 2010, George A. Weiss was a notice partner within the meaning of I.R.C. § 6231(a)(8). Denies for lack of sufficient information whether George A. Weiss was a notice partner in all other years.

¹ All section references are to the Internal Revenue Code, as amended and in effect for the years in issue.

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Denies that I.R.C. § 6231(b)(8) exists. Second sentence. Denies for lack of sufficient information.

2.b. Admits that the Partnership's Forms 1065, U.S. Return of Partnership Income, for its tax years ending December 31, 2009, and December 31, 2010, reflect that George A. Weiss had an ownership interest in the Partnership. Admits that with respect to this case, George A. Weiss has an interest in the outcome and is a party under I.R.C. §§ 6226(c) and 6226(d). Denies the remainder for lack of sufficient information.

2.c. Admits.

3. The first sentence is a subheading and is not an allegation that needs to be admitted or denied. Second sentence. Admits. Alleges that the FPAAs were issued on December 3, 2018. Third sentence. Denies that the FPAAs proposed adjustments to partnership items, but admits that the FPAAs determined adjustments to partnership items of the Partnership for 2009 and 2010. Fourth sentence. Admits. Fifth sentence. The fifth sentence is not an allegation that needs to be admitted or denied. To the extent a response is required, admits.

4. The first sentence is a subheading and is not an allegation that needs to be admitted or denied. Second sentence. Admits, except denies that in the 2009 FPAA respondent adjusted the Partnership's portfolio income in the amount of \$8,838,781. Alleges that in the 2009 FPAA respondent adjusted the Partnership's

“portfolio income ordinary dividends” in the amount of \$8,838,781. Third sentence. Admits, except denies that in the 2010 FPAA respondent adjusted the Partnership’s portfolio income in the amount of \$3,327,781. Alleges that in the 2010 FPAA respondent adjusted the Partnership’s “portfolio income ordinary dividends” in the amount of \$3,327,781. Fourth sentence. Admits. Fifth sentence. Admits that in the FPAAs, respondent determined that accuracy-related penalties under I.R.C. § 6662 apply, which are in dispute. Sixth sentence. Admits, except denies that the alternative adjustments are overlapping.

5. The first sentence is a subheading and is not an allegation that needs to be admitted or denied. Second sentence. Denies.

5.a. and 5.b. Denies generally that respondent erred. Denies for lack of sufficient information because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

5.c. Denies generally that respondent erred. Denies for lack of sufficient information because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

5.d. Denies.

5.e. Denies generally that respondent erred. Denies for lack of sufficient information because petitioner does not define “Contract” or identify a specific contract.

5.f. Denies generally that respondent erred. Denies for lack of sufficient information because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

5.g. through 5.i. Denies.

5.j. Denies generally that respondent was arbitrary, capricious, and unreasonable, and denies generally that respondent erred. Denies for lack of sufficient information because petitioner does not define “Contract” or identify a specific contract.

5.k. Denies.

5.l. Denies generally that respondent was arbitrary, capricious, and unreasonable, and denies generally that respondent erred. Denies for lack of sufficient information because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

5.m. through 5.o. Denies.

5.p. Denies for the same reasons explained in response to paragraphs 5.a. through 5.o., inclusive.

6. The first sentence is a subheading and is not an allegation that needs to be admitted or denied. The second sentence is not an allegation that needs to be admitted or denied. To the extent a response is required, denies for lack of sufficient information.

6.a. First sentence. Denies for lack of sufficient information. Alleges that the Partnership, on its Forms 1065, U.S. Return of Partnership Income for its tax years ending December 31, 2009, and December 31, 2010, reported that its business started on July 15, 1996. Second sentence. Admits that GWA, LLC, was a partnership for U.S. federal income tax purposes for its tax year ending December 31, 1998, and tax years ending December 31, 2003, through December 31, 2010. Denies the remainder for lack of sufficient information.

6.b. First sentence. Denies generally that the Partnership's activities were so limited. Admits that during its tax years ending December 31, 2009, and December 31, 2010, the Partnership held interests in other entities including disregarded entities and a partnership for U.S. federal income tax purposes. Denies the remainder for lack of sufficient information generally and because petitioner's definition of "Contracts" in paragraph 5.a. does not identify specific contracts. Alleges that, in form, the Partnership entered into ten letter agreements each called a "Confirmation" with Deutsche Bank between 2003 through 2006 (together "Confirmations"). Further alleges that the Partnership, on a statement attached to

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its Form 1065, U.S. Partnership Return of Income, for its tax year ending December 31, 1998, reported that it “engages in a trader activity operated through a wholly-owned limited liability company.” Second sentence. Denies. Alleges that, during 2003 through 2010, in substance, the Partnership bought and sold securities for its own account. Further alleges that the Partnership, on a statement attached to its Form 1065, U.S. Partnership Return of Income, for its tax year ending December 31, 1998, reported that it “engages in a trader activity operated through a wholly-owned limited liability company.”

6.c. Admits that during the years at issue, Mr. Weiss was a partner of the Partnership and indirectly held an interest in the Partnership through Weiss Family Interests, LLC. Further admits that during the years at issue, the Partnership issued Schedules K-1 to various individual partners and to Weiss Family Interests, LLC. Denies the remainder for lack of sufficient information.

6.d. Denies for lack of sufficient information. Alleges that for its tax years ending December 31, 2009, and December 31, 2010, Weiss Multi-Strategy Advisers, LLC, filed Forms 1065, U.S. Return of Partnership Income. Further alleges that during the years at issue, the Partnership held a 99.9% partnership interest in Weiss Multi-Strategy Advisers, LLC.

6.e. First sentence. Admits that in the First Amended and Restated Operating Agreement of Weiss Multi-Strategy Advisers, LLC, the stated purpose

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of the company is to engage in the business of an investment advisor. Denies the remainder for lack of sufficient information. Second sentence. Admits that in the First Amended and Restated Operating Agreement of Weiss Multi-Strategy Advisers, LLC, the stated purpose of the company is to engage in the business of an investment advisor. Denies the remainder for lack of sufficient information.

6.f. First sentence. Denies for lack of sufficient information, but admits that OGI Associates, LLC (“OGI”), was registered as a domestic limited liability company with the State of Connecticut on December 30, 1994. Second sentence. Admits. Third sentence. Admits that the Partnership has owned all of OGI’s membership interests since 1998, but denies for lack of sufficient information whether the Partnership owned all of OGI’s membership interests since June 1, 1998. Fourth sentence. Admits that OGI has been a disregarded entity for U.S. federal income tax purposes since 1998, but denies for lack of sufficient information whether OGI has been a disregarded entity since June 1, 1998.

6.g. First sentence. Admits that OGI has been a disregarded entity for U.S. federal income tax purposes since 1998. Denies that a response is required to the legal conclusion that OGI is a “regarded entity for legal and commercial purposes.” T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information. Denies the remainder for lack of sufficient information. Second sentence. Denies for lack of sufficient information. Third sentence.

Admits that during the years in issue, OGI held accounts in which securities were traded. Denies the remainder for lack of sufficient information. Alleges that the Partnership, on a statement attached to its Form 1065, U.S. Partnership Return of Income for its tax year ending December 31, 1998, reported that the Partnership “engages in a trader activity operated through a wholly-owned limited liability company.”

6.h. First sentence. Denies for lack of sufficient information. Second sentence. Admits that, during the years in issue, OGI held accounts in which securities were traded. Denies that OGI’s activities were separate from the Partnership’s for U.S. federal income tax purposes. Denies the remainder for lack of sufficient information.

6.i. First sentence. Denies for lack of sufficient information because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, in form, the Partnership entered into Confirmations with Deutsche Bank between 2003 through 2006. Second sentence. Denies for lack of sufficient information because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, in form, the Confirmations were between the Partnership and Deutsche Bank. Third sentence. Denies for lack of sufficient information because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, in form, the

Confirmations refer to the Partnership's payment of a "Premium." Fourth sentence. Denies for lack of sufficient information because petitioner does not define "Contract" or identify a specific contract. Alleges that, in form, the Confirmations refer to an "Expiration Date" and provide that after expiration, Deutsche Bank must pay the Partnership a "Cash Settlement Amount" which equals the greater of zero and an amount calculated with reference to the "NAV Index Level."

6.j. First sentence. Denies for lack of sufficient information because petitioner does not define "Contract" or identify a specific contract. Alleges that, in form, the Partnership and Deutsche Bank entered into a Confirmation that was dated April 15, 2003 ("Confirmation One"). Alleges that, in form, Confirmation One had a stated "Expiration Date." Further alleges that the Partnership reported long-term capital gain from Confirmation One on its 2009 Form 1065, U.S. Return of Partnership Income. Second sentence. Denies for lack of sufficient information because petitioner's definition of "Contracts" in paragraph 5.a. does not identify specific contracts. Alleges that, in form, the Partnership and Deutsche Bank signed four Confirmations on December 12, 2006 ("Confirmation Seven," "Confirmation Eight," "Confirmation Nine," and "Confirmation Ten," respectively, and together, "Confirmations Seven through Ten"). Alleges that, in form, Confirmations Seven through Ten each had a stated "Expiration Date." Further alleges that the

Partnership reported long-term capital gain from Confirmations Seven through Ten on its 2010 Form 1065, U.S. Return of Partnership Income.

6.k. First sentence. Denies that a response is required to the allegation that “various margin limitations imposed by regulations governing extensions of credit by financial institutions did not apply” because it states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies the entire first sentence for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Second sentence. Denies that a response is required to the extent the sentence implies a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, during 2003 through 2010, in substance, the Partnership owned the securities that, in form, are referred to as the “Basket” in the Confirmations.

6.l. First sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information. Second sentence. Denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.m. First sentence. Denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract and does not define “Reference Portfolio” or identify a specific portfolio. Alleges that, in form, each Confirmation set forth a dollar amount designated as a “Premium” that was approximately ten percent of the stated “Notional Amount,” but the dollar amount could be greater than ten percent in the event an “Additional Premium Amount” was paid. Second sentence. Denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.n. First sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract. Second sentence. Denies for lack of sufficient information. Alleges that the Confirmations reference an “Additional Premium Amount” that may be paid by the Partnership.

6.o. First sentence. Denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific

contracts. Second sentence. Denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract.

6.p. First sentence. Denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, in form, the Confirmations refer to a “Cash Settlement Amount.” Second sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract. Third sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract.

6.q. First sentence. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, in form, the Confirmations refer to a “Cash Settlement Amount” that was calculated, in part, with reference to the “NAV Index Level.” Second sentence. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s

definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

Alleges that, in form, the Confirmations refer to a “Cash Settlement Amount” that was calculated, in part, with reference to the “NAV Index Level.”

6.r. First sentence. Denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract.

Alleges that, in form, the Confirmations provide that on expiration, Deutsche Bank must pay the Partnership a “Cash Settlement Amount” which equals the greater of zero and an amount calculated, in part, with reference to the “NAV Index Level.”

Second sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information.

6.s. Denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract. Alleges that, in form, the Confirmations provide that on expiration, Deutsche Bank must pay the Partnership a “Cash Settlement Amount” which equals the greater of zero and an amount calculated, in part, with reference to the “NAV Index Level.”

6.t. Denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.u. Denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract and does not define “Reference Portfolio” or identify a specific portfolio. Alleges that, in form, the Confirmations refer to an “Expiration Price,” which was 94 but could be subject to adjustment, and an “Expiration Price Notice Level,” which was 97. Further alleges that the Confirmations provide that an “Early Expiration Event” occurs if, among other things, the “Barrier NAV Index Level” has reached the “Expiration Price Notice Level” and the “Expiration Price.”

6.v. First sentence. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, in form, the Confirmations provide that “the composition of the Basket and the Basket Base Performance shall be under the sole discretionary trading authority” of an investment advisor. Second sentence. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Third sentence. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.w. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.x. First sentence. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, in form, Deutsche Bank and Quaker Partners, LLC, entered into three Investment Advisory Agreements: the first on April 15, 2003, the second on December 21, 2005, and the third on December 12, 2006 (“Investment Advisory Agreements”), and the Investment Advisory Agreements reference a “Restricted List.” Second sentence. Denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Third sentence. Denies for lack of sufficient information generally and because “Restricted List” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Fourth sentence. Denies that the Partnership did not, in substance, buy and sell securities for its own account. Denies the remainder for lack of sufficient information generally and because “Restricted List” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.y. First sentence. Denies for lack of sufficient information generally and because petitioner does not define “Reference Portfolio” or identify a specific portfolio. Alleges that, in form, Deutsche Bank and Quaker Partners, LLC, entered into the Investment Advisory Agreements. Further alleges that the Investment Advisory Agreements refer to “Investment Guidelines and Restrictions” which address, among other things, the value and diversity of the investments. Second sentence. Denies for lack of sufficient information generally and because “Investment Guidelines” and “Reference Portfolios” are defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that the Investment Advisory Agreements refer to “Investment Guidelines and Restrictions” which address, among other things, the value and diversity of the investments.

6.z. Denies for lack of sufficient information generally and because “Investment Guidelines” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contacts.

6.aa. Denies for lack of sufficient information generally and because “Restricted List” and “Investment Guidelines” are defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.bb. First sentence. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, during 2003 through 2010, in substance, the Partnership owned the securities that, in form, are referred to as the “Basket” in the Confirmations. Second sentence. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.cc. First sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, during 2003 through 2010, in substance, the Partnership owned the securities that, in form, are referred to as the “Basket” in the Confirmations. Second sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a.

does not identify specific contracts. Alleges that, during 2003 through 2010, in substance, the Partnership owned the securities that, in form, are referred to as the “Basket” in the Confirmations.

6.dd. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, in form, paragraph 12 in each Confirmation, titled “Assignment and Pledging,” provides that neither party could transfer, pledge, or hypothecate the Confirmations without the prior written consent of the other party, with certain exceptions including where either party transferred substantially all of its assets to, or was amalgamated with, consolidated with, or merged with or into, another entity.

6.ee. First sentence. Denies for lack of sufficient information generally and because petitioner does not define “Contract” or identify a specific contract. Alleges that the Consolidated Financial Statements and Independent Auditors’ Report of Rothstein Kass & Company, P.C. for GWA, LLC and Subsidiaries as of December 31, 2008, reflects the Confirmations as assets included in the “Investments in securities - restricted” account on GWA, LLC and Subsidiaries’ Consolidated Statement of Financial Condition. Further alleges that the Consolidated Financial Statements and Independent Auditors’ Report of Rothstein

Kass & Company, P.C. for GWA, LLC and Subsidiaries as of December 31, 2009, reflects the Confirmations as assets included in the “Investments in securities - restricted” account on GWA, LLC and Subsidiaries’ Consolidated Statement of Financial Condition. Second sentence. Denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that the Partnership’s balance sheet for the period ending December 31, 2009, reflects the Confirmations as a “Current Asset.”

6.ff. First sentence. Denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that the Consolidated Financial Statements and Independent Auditors’ Reports of Rothstein Kass & Company, P.C. for GWA, LLC and Subsidiaries as of December 31, 2008, and December 31, 2009, describe the Confirmations as “[s]ecurities not readily marketable” Second sentence. Denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that the Consolidated Financial Statements and Independent Auditors’ Reports of Rothstein Kass & Company, P.C. for GWA, LLC and Subsidiaries as of December 31, 2008, and December 31, 2009, describe the Confirmations as “[s]ecurities not readily marketable . . . that cannot be offered or sold because of

other arrangements, restrictions or conditions applicable to the instruments, the Company, and or [sic] the counterparty.”

6.gg. Denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.hh. First sentence. Denies for lack of sufficient information generally and because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Alleges that, in form, the Confirmations had a stated “Expiration Date.” Alleges that the Partnership reported long-term capital gain from Confirmation One on its 2009 Form 1065, U.S. Return of Partnership Income. Further alleges that the Partnership reported long-term capital gain from Confirmations Seven through Ten on its 2010 Form 1065, U.S. Return of Partnership Income. Second sentence. Denies for lack of sufficient information because petitioner does not define “Contract” or identify a specific contract. Admits that the Partnership reported \$334,142,118 in long-term capital gain on its Form 1065, U.S. Return of Partnership Income for its tax year ending December 31, 2009, for Confirmation One, based on a reported sales price of \$387,324,387 and a reported cost basis of \$53,182,269. Admits that the Partnership reported \$192,679,910 in long-term capital gain on its Form 1065, U.S. Return of Partnership Income for its tax year ending December 31, 2010, for Confirmations

Seven through Ten, based on a reported sales price of \$286,011,407 and a reported cost basis of \$93,331,497. Denies for lack of sufficient information whether the Partnership reported capital gain under I.R.C. § 1001.

6.ii. First sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, admits that the Partnership was a person for U.S. federal income tax purposes for its tax year ending December 31, 1998, and tax years ending December 31, 2003, through December 31, 2010. Denies the remainder for lack of sufficient information. Second sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies that OGI was a person or taxpayer for purposes of I.R.C. § 475(f).

6.jj. Admits that, during the years in issue, OGI held accounts in which securities were traded. Denies that OGI's activities were separate from the Partnership's for U.S. federal income tax purposes from 1998 through the years in issue. Denies the remainder for lack of sufficient information. Alleges that the Partnership, on a statement attached to its Form 1065, U.S. Partnership Return of Income, for its tax year ending December 31, 1998, reported that "OGI, LLC is engaged in a trade or business as a trader in securities"

6.kk. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information.

6.ll. First sentence. To the extent the allegation implies an interpretation of legislative history, denies that a response is required to such interpretation. T.C. Rule. 34(b)(5). To the extent a response is required: admits that subsection (f) of I.R.C. § 475 was enacted in 1997; admits that I.R.C. § 475(f) generally provides that a person engaged in the business of trading securities may elect to mark to market securities held in connection with such business at the end of each year; and denies that I.R.C. § 475(f) allows a person to mark to market trading gains and losses on securities. Second sentence. Denies that a response is required to the allegation that OGI was a person engaged in a securities trading business in 1998 because it states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information. Alleges that the Partnership, on a statement attached to its Form 1065, U.S. Partnership Return of Income, for its tax year ending December 31, 1998, reported that “OGI, LLC is engaged in a trade or business as a trader in securities” Denies for lack of sufficient information whether in 1998, OGI desired to report its trading gains and losses under the mark-to-market method.

6.mm. Denies for lack of sufficient information. Alleges that section 5.02 of Revenue Procedure 99-17, 1999-1 C.B. 503 provides that a taxpayer may make an election under I.R.C. § 475(f) by attaching an election statement to its timely filed original U.S. federal income tax return for the election year.

6.nn. First sentence. Denies that a response is required to the allegation that “[b]ecause OGI was a person entitled to make a mark-to-market election but was not required to file a separate income tax return” because that portion of the sentence states legal conclusions. T.C. Rule 34(b)(5). To the extent a response is required, denies. Further denies that OGI made an election under I.R.C. § 475(f)(1). Denies the remainder for lack of sufficient information. Alleges that the Partnership filed a mark-to-market election under I.R.C. § 475(f) with its Form 1065, U.S. Partnership Return of Income for its tax year ending December 31, 1998. Second sentence. Admits, except denies that OGI made an election under I.R.C. § 475(f)(1) for U.S. federal income tax purposes. Alleges that the Partnership filed a mark-to-market election under I.R.C. § 475(f) with its Form 1065, U.S. Partnership Return of Income for its tax year ending December 31, 1998.

6.oo. Denies. Alleges that the Partnership filed a mark-to-market election under I.R.C. § 475(f) with its Form 1065, U.S. Partnership Return of Income for its tax year ending December 31, 1998. Further alleges that for U.S. federal income

tax purposes during the years in issue, the Partnership owned securities through its disregarded entity OGI and marked to market those securities under I.R.C. § 475(f).

6.pp. First sentence. Denies. Alleges that in a statement attached to its Form 1065, U.S. Partnership Return of Income for its year ending December 31, 1998, the Partnership reported that it “engages in a trader activity operated through a wholly-owned limited liability company.” Second sentence. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies. Alleges that the Partnership filed a mark-to-market election under I.R.C. § 475(f) with its Form 1065, U.S. Partnership Return of Income for its tax year ending December 31, 1998. Third sentence. Denies. Alleges that for U.S. federal income tax purposes during the years in issue, the Partnership owned securities through its disregarded entity OGI and marked to market those securities under I.R.C. § 475(f).

6.qq. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information.

6.rr. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies that respondent’s adjustments change the lifetime income of the Partnership under

Revenue Procedure 2002-18, 2002-1 C.B. 678, and denies the remainder for lack of sufficient information.

6.ss. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies for lack of sufficient information generally and because “Reference Portfolios” is defined with reference to “Contracts” and petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

6.tt. Denies for lack of sufficient information because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies generally that the Partnership’s tax treatment of the partnership items is supported by substantial authority.

6.uu. Denies for lack of sufficient information because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies generally that the Partnership’s tax treatment of the partnership items has a reasonable basis.

6.vv. Denies for lack of sufficient information because petitioner’s definition of “Contracts” in paragraph 5.a. does not identify specific contracts.

Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies generally that the Partnership adequately disclosed the relevant facts affecting the tax treatment of the partnership items on its tax returns.

6.ww. First sentence. Denies for lack sufficient information because petitioner's definition of "Contracts" in paragraph 5.a. does not identify specific contracts. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies that the transactions that relate to the adjustments in the FPAAAs are not tax shelters under I.R.C. § 6662(d)(2)(C)(ii). Second sentence. Denies for lack sufficient information because petitioner's definition of "Contracts" in paragraph 5.a. does not identify specific contracts. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies that the avoidance or evasion of federal income tax was not a significant purpose of the transactions that relate to the adjustments in the FPAAAs.

6.xx. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies.

6.yy. Denies that a response is required because the sentence states a legal conclusion. T.C. Rule 34(b)(5). To the extent a response is required, denies.

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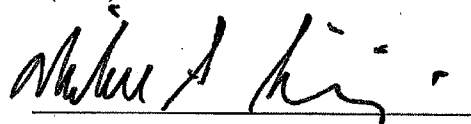
Denies generally each and every allegation of the petition not herein specifically admitted, qualified or denied, including all headings in paragraph 6 of the petition.

WHEREFORE, it is prayed that the relief sought in the petition be denied and that respondent's determinations, as set forth in the Notices of Final Partnership Administrative Adjustment, be in all respects approved.

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Chief Counsel
Internal Revenue Service

Date: July 1, 2019

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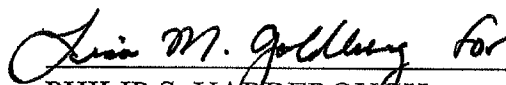
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