

Exhibit 38

From: Derek S. Daley
Sent: Wednesday, June 18, 2003 7:27:41 PM
To: Peter Stamos
Subject: FW: Levered fund

Peter:

I asked Ashok about the process of resolving the rather heated discussion today (to which the personal fued/stalemate between you and Noreen admitted no compromise) about whether and the extent to which the levered fund should swap into Ezra's Ascot fund. He received the attached message from you at the same time.

I'm confused. How do decisions get made concerning the portfolio? Although circumstances were ripe for compromise on this and the issue of the equity managers, neither you nor Noreen would budge, despite the impassioned and entirely sober pleas of Saul and Ellen to compromise. And then, with issues still apparently open, you confirm a \$1.5 to \$3 million investment in Ascot! Admittedly I stepped out to attend to other urgent business but I think I caught the gist of the conversation about Ezra. [Incidentally, as an entirely unschooled observer, the combination of lack of transparency, history of betrayal to you and Noreen and assessment that market conditions no longer validate Ezra's approach to options leaves me seriously unimpressed with Ezra's track record and historical performance]. But I'm willing to defer to your better judgment.

Where I cannot defer, however, is as to process, which is seriously broken. Saul expressed the substance, the characteristics of the fund (e.g., conservative, no pejoratively described "high octane" players, etc.), very well. Unfortunately, I make investment decisions on the basis of substance and process. When people I love and respect sit down and have intelligent, thoughtful discussions and on that basis reach a consensus that the participants embrace as perhaps less than the ideal fund but nevertheless a skillfully crafted, well-balanced fund, I invest. I did not witness that today.

This afternoon's conversation, Marketing 1A -- in which the company sits with customers to design a product that meets their needs -- was long overdue. It should have taken place with Saul three months ago. Nevertheless, what I found fascinating was that no one disagreed with Saul's objective. The argument was over how we get there and it's unfair to paint one side as having as its objective "home runs" or a search for "high octane" players.

People can disagree on the appropriate balance of the factors you outlined at the start of the meeting. They can even disagree about the assessment of a certain managers qualitative and/or statistical merit (e.g., whether Ezra is or is likely to be transparent, whether the historical data is meaningful as applied to certain managers). Disagreements are healthy. They promote thoughtful reconsideration, especially among people as gifted as you, Noreen, Ashok and Ellen. But these disagreements were something else -- uncompromising, unyielding and expressed in very personal terms (e.g., Noreen drawing clear battle lines between us (the portfolio group) and you). It was unproductive and, when focused on inconsequential amounts \$250,000 to \$1 million in a \$50 to \$60 million fund, laughably absurd.

I sat there in complete horror. Watching a group of exceptionally skilled and gifted people about whom I care unable to harness their collective wisdom. If I were Saul, I would withhold my investment until consensus could be built and you and Noreen arrive at some happy middle ground in terms of process for the portfolio and co-existence as partners. As to my own investment, I remain confused and reluctant.

Derek

-----Original Message-----

From: Ashok Chachra
Sent: Wednesday, June 18, 2003 6:44 PM
To: Derek S. Daley
Subject: FW: Levered fund



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-----Original Message-----

From: J. Ezra Merkin [mailto:JEMerkin@gabrielcapital.com]
Sent: Wednesday, June 18, 2003 6:22 PM
To: Peter Stamos
Cc: Ashok Chachra
Subject: RE: Levered fund

I am sure it is fine.

I have been sitting here for the entire afternoon, and am sorry I missed your call. You can call again if that reassures you; if not, assume it is fine, and put it on the list for next week.

> -----

> From: Peter Stamos[SMTP:peter.stamos@spcapitalgroup.com]
> Sent: Wednesday, June 18, 2003 6:08 PM
> To: JEMerkin@gabrielcapital.com
> Cc: ashok.chacrha@spcapm.com
> Subject: Levered fund

>

> Ezra

>

> Sorry that I missed you. I've asked Ashok to call to confirm an additional
> investment in Ascot. 1.5 plus. Perhaps as much as 3 million

>

> OK?

>

> Looking forward to seeing you on Monday

>

> Soonmee and I both send our love from Napa. Though my vacations are
> beginning to sound a lot like yours

>

> Peter

>