

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION, :	:
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Plaintiff, :	:
	:
-v- :	No. 1:22-cv-03897-LAK
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STRAIGHTPATH VENTURE PARTNERS LLC, :	:
STRAIGHTPATH MANAGEMENT LLC, :	:
BRIAN K. MARTINSEN, :	:
MICHAEL A. CASTILLERO, :	:
FRANCINE A. LANAIA, and :	:
ERIC D. LACHOW, :	:
	:
Defendants. :	:
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THE RECEIVER’S SECOND QUARTERLY STATUS REPORT TO THE COURT

Melanie L. Cyganowski, the receiver (the “*Receiver*”) for StraightPath Venture Partners LLC (the “*SP Fund Manager*”), StraightPath Management LLC (the “*SP Advisor*”), SP Ventures Fund LLC, SP Ventures Fund 2 LLC, SP Ventures Fund 3 LLC, SP Ventures Fund 4 LLC, SP Ventures Fund 5 LLC, SP Ventures Fund 6 LLC, SP Ventures Fund 7 LLC, SP Ventures Fund 8 LLC, SP Ventures Fund 9 LLC (collectively, the “*SP Funds*” and together with the SP Fund Manager and the SP Advisor, the “*Receivership Entities*” or “*StraightPath*”), by her undersigned counsel, hereby submits this Second Quarterly Status Report, covering the period from July 1, 2022, through and including September 30, 2022 (the “*Reporting Period*”), as required by the Consent Order Appointing Receiver [Dkt. No. 56] (the “*Receivership Order*”), entered on June 14, 2022, which appointed the Receiver for the estate of the Receivership Entities (the “*Receivership Estate*” or “*Receivership*”).¹

¹ The Receiver already reported on a portion of her activities during the Reporting Period in her Initial Status Report to the Court [Dkt. No. 70] (the “*Initial Report*”), dated July 14, 2022 and her First Quarterly Report to the Court [Dkt. No. 85] (the “*First Quarterly Report*”), dated August 29, 2022. Given that this report is being filed after the conclusion

I. PRELIMINARY STATEMENT

During the Reporting Period, the Receiver has focused on determining the extent, if any of a share shortfall (the “**Shortfall**”), as well as the magnitude, if any of any commingling of the Receivership Entities’ assets (“**Commingling**”), so that she may promptly propose a plan of distribution (a “**Plan**”) and take appropriate action as may be required in the event that any of the companies in which StraightPath invested “goes public”. To that end, during and following the Reporting Period, the Receiver, with the assistance of her advisors (collectively, the “**Receivership Team**”)² has taken the following steps, among other things:

- (i) continued to take inventory of the Pre-IPO assets (the “**Pre-IPO Assets**”) held by StraightPath, directly or through intermediaries;
- (ii) continued to review the Receivership Entities’ books and records, which has resulted in identification of several accounts that held substantial assets but had not been disclosed by Brian K. Martinsen, Michael A. Castillero, Francine A. Lanaia, and Eric D. Lachow³ (collectively, the “**Individual Defendants**”), notwithstanding the provisions of the Receivership Order;
- (iii) continued to review the Receivership Entities’ “Welcome Letters” and other documents regarding investors’ equity interests and compared them against bank and financial transactions in an effort to piece together information about each investor’s holdings;

of the Reporting Period, this report will include descriptions by the Receiver of activities that occurred both during and after the Reporting Period.

² The Receivership Team includes Otterbourg P.C. (“**Otterbourg**”) as the Receiver’s legal counsel, Stout Risius Ross, LLC (“**Stout**”) as the Receiver’s financial advisor, Stretto, Inc. (“**Stretto**”) as her claims and noticing agent, and Berkeley Research Group, LLC (“**BRG**”) as her tax advisor.

³ On October 18, 2022, Nelson Mullins Riley & Scarborough LLP, counsel for the Individual Defendants filed a letter with the Court stating that although the law firm currently represents Mr. Lachow, he is in the process of looking for separate counsel [Dkt. No. 103].

- (iv) continued to review bank and financial transactions regarding the Receivership Entities' financial affairs, including the use of funds to purchase Pre-IPO Assets;
- (v) timely filed the Receivership Entities' 2021 partnership tax returns and issued Schedule K-1s to investors;
- (vi) communicated with counsel for the Individual Defendants regarding various matters related to, among others, the turnover of books and records to the Receiver, the filing of the 2021 taxes, and the Individual Defendants' proposal to use certain Receivership Assets (as defined in the Receivership Order) to purchase additional Pre-IPO Assets;
- (vii) continued to take steps towards implementation of a claims process;
- (viii) analyzed issues regarding a Plan;
- (ix) participated in certain litigation matters in the above-captioned action, including the Application to Stay [Dkt. No. 101] (the "*Stay Application*") made by the U.S. Attorney's Office for the Southern District of New York (the "*USA*") in respect of its investigation of pre-Receivership matters; and
- (x) reviewed and prepared for the production of documents in response to a Grand Jury Subpoena served by the USA in connection with its investigation.

All of the foregoing tasks are necessary for the Receiver to complete her primary objective – implementation of a Plan to distribute value to investors and creditors – and she is moving as efficiently as possible to complete these tasks.

A. Responses to Common Questions Posed to the Receiver

Before detailing the specific work by the Receiver, the following are some of the more common questions the Receiver has recently received, along with responses thereto:

1. ***Will the Stay Application impede completion of the Receivership?*** The Stay Application should not stay or otherwise impede the Receiver's administration of the Receivership Estate. By its terms, the Stay Application does not seek such relief and on October 25, 2022, the Court entered an order regarding a briefing schedule on the Stay Application, providing, among other things, that "[n]othing herein shall be construed to limit or otherwise modify the Receiver's powers, duties, and responsibilities as set forth in the Receivership Order and any other Orders of this Court." [Dkt. No. 108].

2. ***Will the Receiver sell Pre-IPO Assets before the respective Pre-IPO companies go public?*** The Receiver is in the process of formulating a Plan that maximizes value for investors and creditors, as well as minimizing cost and risk. The Receiver understands that different investors may have different opinions on what approach she should take with respect to the disposition and/or distribution of assets, and for this reason and others as required by the Receivership Order, she will present her Plan to the Court for approval before implementing it, so that all parties-in-interest will have an adequate opportunity to have their opinions heard by the Court and by the Receiver.

3. ***Is the Receiver making distributions to investors?*** No, at this time the Receiver is not making any distributions to investors and no assets will be distributed to investors without prior Court order following an opportunity for parties-in-interest to be heard on the Receiver's Plan.

4. ***Is an entity named "Legend" one of the Receivership Entities?*** No. Certain investors have informed the Receiver that individuals have been contacting them regarding an entity known as Legend Venture Partners ("***Legend***") stating that Legend is a continuation of StraightPath and requesting the investors to invest money in Legend. Legend is not part of the

Receivership and the Receiver has no control over Legend. The Receiver's review of the Receivership Entities' bank records shows that before the start of the Receivership, the Receivership Entities transferred over \$30 million to entities that are associated with individuals who are also associated with Legend. Additionally, the Receivership Entities' records show that StraightPath emailed StraightPath investor information to an email address associated with Legend as late as March, 2022.

5. ***When will the Receiver hold another Town Hall?*** The Receiver will hold another public Town Hall on November 14, 2022 at 12:00 noon Eastern Standard Time. Registration information is as follows: https://otterbourg.zoom.us/webinar/register/WN_MyiaxGDDQ0iXx0hu2dqeOQ. Registration information may also be found on the Receivership Website at: <https://www.straightpathreceivership.com/>. For those who cannot attend the Town Hall, a recording of the Town Hall and a transcript will be posted to the Receivership Website, following the Town Hall.

II. **SUMMARY OF OPERATIONS OF THE RECEIVERSHIP**

A. **Forensic Analysis**

During the Reporting Period, the Receiver dedicated resources to the analysis of the pre-Receivership financial affairs necessary to maximize value for investors. In order to propose a Plan, the Receiver must first (i) determine whether there exists a Shortfall in the shares of Pre-IPO companies held by StraightPath, and if so, in what amount, and (ii) determine if there was Commingling by and among the Receivership Entities, and in what amounts, to make certain that all investors are treated fairly. In its Complaint commencing the above-captioned action (the "***SEC Action***"), the Securities and Exchange Commission (the "***Commission***") alleges that the Shortfall

is “*at least*” \$14 million across seven Pre-IPO companies. Additionally, the Commission alleges that StraightPath’s assets were commingled by transfers of assets between and among the Receivership Entities to purchase Pre-IPO Assets and make payments back to investors.

The Receiver has devoted significant time and effort into determining the amount of any Shortfall and Commingling. The analysis of the Shortfall and Commingling requires the review of vast amounts of data and documents related to investors’ equity interests in StraightPath, the Pre-IPO Assets held by the Receivership Entities, and other financial transactions of the Receivership Entities. In many cases, the documents reflecting this information were maintained in a haphazard fashion, requiring the Receiver to undertake an extensive analysis, including examining records of the Receivership Entities’ bank transactions and documents (e.g., Welcome Letters) that demonstrate investors’ contributions to the Receivership Entities as compared against the assets held by the Receivership Entities.

1. The Shortfall Analysis

The Shortfall analysis is complicated because the bank records do not contain complete details to identify the Pre-IPO companies to which the investors’ contributions related. Further, the bank records do not capture numerous investments that were made through non-cash transactions, which were referred to as “flips” by StraightPath representatives. Flips describe instances when investors would use some or all of redemptions from one investment with StraightPath to reinvest with StraightPath in other Pre-IPO Assets. To understand these transactions, the Receiver must locate documents reflecting investors’ interests, including “Welcome Letters” and documentation regarding reinvestments and distributions. The Receivership Entities’ records are comprised of hundreds of thousands of documents, which in many instances are disorganized and incomplete with respect to this information.

Another part of the Shortfall analysis is creating an inventory of the assets in which StraightPath invested. As explained in the First Quarterly Status Report, StraightPath purchased Pre-IPO Assets using various methods, including through entities that acquired interests on behalf of StraightPath, as well as purchasing assets in StraightPath's name. These interests were varied, including but not limited to: (i) interests in special purpose vehicles ("*SPVs*"), which are non-StraightPath entities controlled by third-parties that invested in financial instruments to purchase Pre-IPO Assets; (ii) forward contracts; and (iii) direct shares.

The Receiver is taking all steps to identify and quantify these financial arrangements. However, this process is time-consuming because the books and records turned over to the Receiver with respect to the Pre-IPO Assets were in a state of disarray and incomplete. Among other things, StraightPath's records do not contain a centralized ledger that ties together investors' equity interests to the Receivership Entities' assets, and the Receiver is effectively required to create one from various sources of information relating to each investor and the Pre-IPO Assets. Notwithstanding these time-consuming and challenging tasks, the Receiver's goal is to publish her preliminary Shortfall analysis in November, 2022.

2. Commingling Analysis

Contemporaneously with conducting the Shortfall analysis, the Receiver is reviewing the extent of Commingling of the Receivership Entities' assets. The analysis involves reviewing records reflecting the Receivership Entities' historical financial transactions to determine if any of the SP Funds' assets were commingled with the assets of other SP Funds or the SP Manager. The Receiver intends to provide a preliminary report on the extent of Commingling at the same time that she reports on the Shortfall.

3. **Communications with the Individual Defendants Regarding the Receiver's Forensic Analysis and Use of Receivership Assets to Purchase Additional Pre-IPO Assets**

The Receiver has been in discussions with counsel for the Individual Defendants regarding the above-referenced topics, but such communications have not provided the Receiver with clarity with respect to the Shortfall or Commingling.

As previously reported, upon the Receiver's appointment, the Receiver issued an initial written request for information to the Individual Defendants' counsel on June 21, 2022 (the "**Initial Request**"), to help the Receiver understand the operations of the Receivership Entities and the Receivership Property, including information with respect to the investors in the SP Funds and the Pre-IPO Assets by fund. Written responses to the Initial Request were provided on July 7, 2022 (the "**July 7 Memorandum**"), in which counsel for the Individual Defendants noted that such information is recorded in the Receivership Entities' books and records.

Additionally, the Receivership Order and the Stipulation and Consent Order Imposing Preliminary Injunction and Other Relief [Dkt. No. 55] (the "**PI Order**") require Mr. Martinsen, Mr. Castellero, and Ms. Lanaia (the "**Escrow Defendants**")⁴ to provide sworn statements (the "**Sworn Statements**") with respect to, among other things, all Receivership Assets, all liabilities of the Receivership Entities, and the books and records of the Receivership Entities. The Sworn Statements were provided to the Receiver on July 8, 2022, which provide that information regarding investors' interests in StraightPath and StraightPath's Pre-IPO Assets are recorded in company records including Welcome Letters, QuickBooks, internal tracking records, contracts, and bank records.

⁴ The Escrow Defendants include all of the Individual Defendants, except for Mr. Lachow. (Receivership Order, 3).

It was not until August 8, 2022, that the Receiver obtained access to the Receivership Entities' data from certain email systems and computer systems, comprising a vast majority of the documents turned over to the Receiver to date. As explained above, these documents were in a state of disarray. Moreover, the information provided by the Individual Defendants in the July 7 Memorandum and the Sworn Statements do not identify any specific documents containing the information necessary to identify all investors' interests and the Receivership Entities' Pre-IPO Assets, but rather refer to the documents generally.

Less than a month after receiving access to the books and records, counsel for the Individual Defendants submitted to the Receiver a "Plan Regarding Shortfalls in Pre-IPO Shares," which provides a proposal to the Receiver to use certain Receivership Assets to purchase Pre-IPO Assets "to cover any potential shortfall that may be identified by the Receiver." (the "**Defendants' Proposal**"). Pursuant to the PI Order, the Escrow Defendants were required to pay \$15,000,000, plus certain unused retainer funds of \$188,182.45, for a total of \$15,188,182.45 (collectively the "**Escrow Funds**") into a segregated account established and under the control of the Receiver. The Receivership Order provides in the event the Receiver determines that there is cause to believe that any of the Receivership Entities does not have enough Pre-IPO Assets to cover all outstanding investments, the Escrow Defendants may make a proposal to the Receiver, with notice to the Commission, to use the Escrow Funds to purchase enough Pre-IPO shares to cover any such shortfall(s).

The Defendants' Proposal noted that the then current prices of certain Pre-IPO Assets were lower than in 2020 and 2021 when other such shares were acquired by the Receivership Entities, and the Individual Defendants therefore suggested that the Receiver use the Escrow Funds to

purchase Pre-IPO shares in the market so as to take advantage of these lower prices and acquire shares that will cure any potential shortfall.

The Receiver promptly scheduled a time with counsel for the Individual Defendants to discuss the Defendants' Proposal and, in advance of that discussion, sent the Individual Defendants' counsel specific written questions regarding the Defendants' Proposal on September 7, 2022, which included specific questions related to the Receiver's Shortfall and Commingling analysis.

On September 13, 2022, about a week after the Receiver sent her questions to the Individual Defendants' counsel, members of the Receivership Team, counsel for the Individual Defendants, and counsel for the Commission attended a Zoom meeting to discuss the Defendants' Proposal. Following the discussion, the Receiver sent another letter, dated September 15, 2022 (the "***Sept. 15 Letter***") containing follow-up questions to the Individual Defendants regarding the Defendants' Proposal, including additional specific questions regarding the Shortfall and Commingling analysis. On September 23, 2022, the Individual Defendants sent a letter in response to the Sept. 15 Letter (the "***Sept. 23 Letter***"). On October 4, 2022, the Receiver sent a letter in response to the Sept. 23 Letter, which outlined the steps the Receiver is required to undertake to make a determination regarding the Defendants' Proposal.

On October 14, 2022, the Receiver requested one or more of the Individual Defendants to meet with members of the Receivership Team to answer certain questions regarding the Receivership Entities' financial affairs. On October 24, 2022, counsel for the Individual Defendants informed the Receiver that given the USA's criminal investigation, the Individual Defendants will not be meeting with members of the Receivership Team.

The Receiver's forensic analysis, as outlined above, is necessary to the Receiver's determinations regarding any plans to use Receivership Assets to purchase additional Pre-IPO Assets. In addition to concluding the Shortfall and Commingling analyses on a preliminary basis, to determine whether the Individual Defendants' proposal has merit, the Receiver must consider other issues. For example, upon acquisition, the Receivership Entities will bear the risk that (i) companies in which StraightPath owns Pre-IPO Assets will not "go public" or have another type of liquidity event, or will fail; and (ii) that the counterparties to StraightPath's share purchase agreements will perform all of their obligations under the agreements and deliver shares to the Receiver following a liquidity event. Accordingly, even if the Receiver used Receivership Assets to purchase shares to eliminate the Shortfall (assuming that sufficient assets exist), the Receivership Entities will continue to bear the risk that the Pre-IPO Assets might be insufficient to satisfy all investors' outstanding equity interests in StraightPath.

B. Receivership Assets

The Receiver continues to take inventory and control of the Receivership Assets, including brokerage accounts and Pre-IPO Assets, while preparing for public offerings of certain Pre-IPO companies.

1. Undisclosed Financial Accounts

After receiving access to the Receivership Entities' books and records, the Receiver became aware of financial accounts that the Individual Defendants did not previously disclose to the Receiver. These accounts include an online brokerage account that holds securities of a publicly traded company and electronic accounts that contain vital documentation regarding Pre-IPO Assets. The Individual Defendants were required to identify these accounts in the exhibits to the Receivership Order or in the Sworn Statements that the Individual Defendants were required

to submit to the Receiver and the Commission. The Individual Defendants' failure to disclose these accounts has materially impacted the Receiver's administration of the Receivership Estate, including the Receiver's marshalling of Receivership Assets, her analysis of the share Shortfall, and the ultimate distribution of assets to investors. Specifically, the Receivership Team recently uncovered:

- i. An account at E*Trade, holding over \$270,000 in publicly traded securities as of October 21, 2022. This account was not identified as required even though the password for this account was changed by one or more of the Individual Defendants in January, 2022.
- ii. Accounts at Carta, which hold 22 unsigned share certificates for 6 different Pre-IPO companies, reflecting the purchases of Pre-IPO Assets in the total amount of \$22.7 million, many of which had been issued to StraightPath over a year ago but were never signed. Because these share certificates were never signed by StraightPath, the Receiver may need to take additional steps to take control of the shares, including signing the certificates on behalf of StraightPath. The Carta accounts were not identified as required even though the password for one of the accounts was changed by one or more of the Individual Defendants in May 2022, shortly before the Commission commenced the SEC Action.
- iii. Accounts at HelloSign holding 8 share purchase agreements reflecting Pre-IPO Asset purchases by StraightPath in the total amount of \$4.8 million, several of which are missing from the books and records turned over by the Individual Defendants.

While the collection of the agreements and other documents underlying the Pre-IPO Assets is mostly complete, the Receiver is continuing to identify missing agreements and collect and review documents relevant to the Pre-IPO Assets, and will provide a full report on the Pre-IPO Assets in the near future. The time spent collecting documents would have been unnecessary if the Receiver were provided with complete and accurate information. Accordingly, the Receiver may locate additional assets or accounts that were undisclosed to the Receiver and will report on such assets or accounts as appropriate.

2. Preparing for Initial Public Offering of Triller

The Receiver is continuing to monitor the market for Pre-IPO Assets. Specifically, the Receiver is preparing for the possible initial public offering of a company commonly referred to as Triller, or Triller Hold Co LLC, which *The Los Angeles Times* reported intends to go public this year.⁵ The Receiver has identified the agreements governing the Receivership Entities' holdings with respect to Triller. The Receivership Entities do not hold direct shares of Triller. Instead certain of the Receivership Entities invested in Triller through various complex transactions. This complicated investment structure, involving multiple parties, holding different types of interests, poses risks to the Receiver's ultimate receipt of the Triller shares.

For example, certain of the Receivership Entities' interests in Triller are held through two layers of ownership interests. The first layer is governed by agreements which provide that a foreign entity is the registered owner of certain shares of Triller and holds the shares for the benefit of certain Receivership Entities. The foreign entity has informed the Receiver that even it does not hold direct shares of Triller, but instead holds shares in an SPV, managed by third parties,

⁵ *Triller battles gauntlet of lawsuits as it prepares IPO*, Brian Contreras and Wendy Lee, *The Los Angeles Times* (available at <https://www.latimes.com/entertainment-arts/business/story/2022-10-04/lat-et-ct-triller-lawsuit-ipo-ryan-kavanaugh>).

which in turn holds interests in Triller. The Receiver is reviewing the applicable agreements with respect to the Triller Pre-IPO Assets.

There is no guarantee that Triller will be going public this year. Additionally, the distribution of shares to the Receiver may be subject to a “lock-up” period, which is a period of time after a company goes public, during which company insiders are prevented from selling their shares. The Receiver expects that the lock-up period with respect to Triller will be disclosed in its registration documents at or around the time it announces its public offering. The lock-up period may prevent the Receiver from receiving or distributing shares for several months following an initial public offering. Additionally, the Receivership Entities bear the risk as to whether the counterparties to the agreements will perform all of their obligations under the agreements and deliver Triller shares to the Receiver following a liquidity event

C. Tax Returns and Issuance of Schedule K-1s

During the Reporting Period, the Receiver filed the 2021 tax returns for the SP Funds and issued Schedule K-1s to investors in those entities. The Receivership Team analyzed historical tax records of the Receivership Entities and reviewed the Receivership Entities’ reconciliation processes that were used to prepare prior tax returns. The Receivership Team made efforts to reconcile the Receivership Entities’ accounts and general ledger in connection with preparing 2021 tax returns. Additionally, the Receivership Team addressed issues regarding the Receivership Entities’ incomplete and inaccurate records, including locating and compiling investor information that was missing from, or incorrectly recorded in, the Receivership Entities’ QuickBooks accounts (i.e., the general ledger) and prior years’ tax Schedule K-1s.

The Receiver encountered several issues in preparing the 2021 tax returns, including the lack of information showing the link between the information in StraightPath’s QuickBooks

account and the information reflected in the 2020 Schedule K-1s for the investors. For example, (i) there were numerous instances of inconsistent and incorrect spelling of investors' names in the Schedule K-1s and QuickBooks; (ii) QuickBooks often included two names for one account (i.e. John and Sue Doe), with no detail as to the dollar allocation for each person named, or there were other inconsistencies in the names of the investors; (iii) the ending balances were not reconciled between the 2020 Schedule K-1s and QuickBooks; (iv) the 2020 Schedule K-1s reported activity that was not reported in a particular investor's QuickBooks capital account; (v) in some instances the balance sheets in the 2020 tax returns did not balance and did not tie to the balance sheets in QuickBooks; (vi) the 2020 tax returns did not appear to use a consistent approach when reporting investors' capital percentages on the Schedule K-1s of the various SP Funds; (vii) many 2020 Schedule K-1s were issued without proper addresses and/or Taxpayer Identification Numbers; (viii) many of the details regarding individual stock sales did not identify whether the sale was a Short Term or a Long Term sale; and (ix) there were instances where the 2020 returns that were provided had inconsistencies, for example one return stated that there were 200 Schedule K-1s attached but in actuality there were over 460 Schedule K-1s attached.

The Receivership Team was required to expend a substantial amount of time in addressing these issues. For example, approximately 1,252 investors' contact or other relevant information was not captured in the Receivership Entities' QuickBooks accounts and other corporate records. Certain of this information was missing in prior years' Schedule K-1s that were previously issued to investors prior to the Receiver's appointment. Locating the investors' information was challenging because the information was not historically saved in a centralized location. The Receiver communicated with Counsel for the Individual Defendants regarding locating the information, and they confirmed that the process required undertaking a multi-step search through

hundreds of thousands of documents that were originally stored in various locations, including email systems and cloud computing system.

Because the 2021 tax returns were based on incomplete, missing, or incorrect information, the Receiver could not verify the accuracy and completeness of all of the information. Accordingly, the Receiver included a footnote in all of the Schedule K-1s, which provided that the Receiver will file amended Schedule K-1s if and when the Receiver determines an amended Schedule K-1 is required.

The Receiver encourages any investors to contact the Receiver at StraightpathReceiver@Otterbourg.com if they did not receive a Schedule K-1 or believe there are discrepancies between their records and the Schedule K-1 they received. If it is deemed that an amended return or Schedule K-1 is required, the Receiver will do so. That process may take some time, and once complete, if appropriate, investors will receive an amended Schedule K-1.

Below are common questions the Receiver has recently received regarding the Schedule K-1s, along with responses thereto:

- 1. Why does the Schedule K-1 state that the investor invested in an SP Fund and not a Pre-IPO company?*** Investors in StraightPath do not own shares of Pre-IPO companies. They own interests in one or more SP Funds, which are limited liability companies. Investors' Schedule K-1s do not identify the Pre-IPO companies in which StraightPath invested because investors only own interests in one or more SP Funds, and not the Pre-IPO companies themselves.
- 2. Why were the K-1s filed if the Receiver's forensic analysis is not complete and the Receiver was aware there might be issues in the Schedule K-1s?*** The Receivership

Entities were required to file their partnership tax returns and issue Schedule K-1s on or before September 15, 2022, or possibly face penalties.

3. ***When will the Receiver file amended K-1s?*** In an effort to administer the Receivership Estate consistently and efficiently, the Receiver will not be issuing amended K-1s in a piecemeal fashion. The Receiver will file amended K-1s if and when the Receiver determines an amended K-1 is necessary and required.

D. Claims Process

The Receiver continues to take steps towards implementing a claims process. Because the Receivership Entities' books and records were turned over to the Receiver in a state of disarray, the Receiver originally planned to require each investor to submit a claims form to the Receiver with supporting documentation. However, because the Receiver has gathered information about investors through her review of documents in the Receivership Entities' records, preparing Schedule K-1s, and through communications with investors, she believes she has gathered sufficient information to be able to identify most of the investors' equity interests in the Receivership Entities. Accordingly, the Receiver believes that at this time it would be more efficient to issue statements to each investor, reflecting the amounts invested in one or more SP Funds and the amounts previously received as distributions on account of the investor's equity interest. The Receiver believes that this process will be more efficient than requiring each investor to submit a claims form with supporting documentation because it will simplify the claims process for investors and avoid duplication of work.

Investors will have an opportunity to review the information provided and to refute the information if they disagree with it. If an investor disputes the claim information, the Receiver will work with the investor to reconcile any discrepancies, while allowing for a dispute process,

including mediation and summary proceedings before the Court. Once an investor's claim information is agreed upon or is determined through Court proceedings, the information will form the basis of distributions pursuant to a Plan. Additionally, the claims process will also provide for procedures for creditors to submit claims to the Receiver.

The Receiver plans to file a motion to approve the claims process in the near future, and will thereafter issue statements to investors. In the meantime, investors may provide the Receiver with information regarding their investments by emailing the Receiver at StraightpathReceiver@Otterbourg.com. If an investor has not previously received any contact from the Receiver or a Schedule K-1, they are encouraged to contact the Receiver regarding their investments.

E. Plan of Distribution

During the Reporting Period, the Receiver worked on analyzing issues related to a Plan. Prior to proposing a Plan, the Receiver must complete her forensic analysis, further understand the assets that are available for distribution, and process claims of investors and creditors. Further, in proposing a Plan, the Receiver will apply the governing law regarding distribution plans in receivership cases.

Investors and creditors will have the opportunity to object to the Plan proposed by the Receiver, including the distribution methodology and treatment of claims and equity interests. The Receiver cannot at this time state what type or amount of distributions will ultimately be issued to creditors and investors. Following approval of a Plan, the timing of distributions might also be impacted by, among other things, the claims that are asserted against the Receivership Entities, including, but not limited to, the substantial indemnification claims the Individual Defendants have asserted in correspondence with the Receiver.

F. The Receivership Entities' Books and Records

During the Reporting Period, the Receiver continued to take control of the Receivership Entities' books and records. As reported in the First Quarterly Status Report, the Receivership Order restricts the Receiver's access to documents and information unilaterally deemed by the Individual Defendants to be "Pre-Appointment Privileged Materials" or "Personal Privileged Materials" (the "***Privilege Provision***"). On July 12, 2022, counsel for the Receiver and counsel for the Individual Defendants entered into a letter agreement (the "***Privilege Protocol Agreement***") to establish a protocol by which the Receivership Entities' electronic books and records would be turned over to the Receiver, with the exception of materials that the Individual Defendants assert are subject to the Privilege Provision, while reserving the parties' rights to challenge, or defend, such designations.

Pursuant to the Privilege Protocol Agreement, a third-party service provider, ETRM/L2 ("***L2***") took custody of the Receivership Entities' computers and of certain of the Receivership Entities' other data systems, including StraightPath's email domain and cloud system. L2 downloaded the data from these systems and screened the data systems for Pre-Appointment Privileged Materials or Personal Privileged Materials based on the filters created by the Individual Defendants as to which the Receiver reserved all rights.

Over 500,000 documents were screened for Pre-Appointment Privileged Materials or Personal Privileged Materials. Of the documents that were screened, over 9,000 documents were identified as potentially Pre-Appointment Privileged Materials or Personal Privileged Materials. Of these documents, counsel for the Individual Defendants identified approximately over 1,000 documents that were initially deemed privileged but which the Individual Defendants, upon review, concluded are not in fact privileged. With respect to the documents that continue to remain

withheld from the Receiver, on September 30, 2022, counsel for the Individual Defendants emailed a spreadsheet to the Receiver, which the Receiver understands to be a form of privilege log, which the Receiver reserves all rights to object to, including that it fails to provide all required information in accordance with the Local Civil Rules.

Additional sources of data have been identified, including email accounts used by the Individual Defendants with respect to StraightPath's business operations that were not previously identified or turned over to the Receiver. The Receiver is working with the Individual Defendants to gain access to these accounts.

G. The Receiver's Involvement in the Civil Litigation of the SEC Action

Two of the Receivership Entities are named defendants in the SEC Action: (i) the SP Fund Manager; and (ii) the SP Advisor (collectively the "*Corporate Defendants*"). During the Reporting Period, in an effort to minimize the Receiver's time and expenses litigating on behalf of the Corporate Defendants, the Receiver negotiated and entered into a proposed civil case management plan scheduling order (the "*Scheduling Order*") with the Commission and the Individual Defendants, which was filed on September 8, 2022. [Dkt. No. 97]. The Scheduling Order expressly recognizes that the Receiver, on behalf of the Corporate Defendants, shall not be subject to the terms of the Scheduling Order, except with respect to certain discovery in the SEC Action.

On September 23, 2022, the Individual Defendants issued their (1) first set of requests for the production of documents directed to the Receiver; and (2) their third set of requests for the production of documents directed to the Commission. On September 23, 2022, the Commission issued its (1) third requests for production of documents directed to the Individual Defendants; and (2) third requests for production of documents directed to the Corporate Defendants. On

September 30, 2022, the Commission issued its first set of interrogatories to the Individual Defendants. The Receiver has reviewed these requests and began preparing responses; however, on October 18, 2022, the USA filed the Stay Application. The Receiver reviewed the Stay Application and appeared at a Court conference regarding the Stay Application that was held on October 18, 2022. During the Court conference, the Court stayed the above-captioned action, except with respect to the Receiver's obligations and duties under the Receivership Order. The Receiver consented to the relief sought in the Stay Application. On October 25, 2022, the Court entered an order regarding a briefing schedule on the Stay Application, providing, among other things, that "[n]othing herein shall be construed to limit or otherwise modify the Receiver's powers, duties, and responsibilities as set forth in the Receivership Order and any other Orders of this Court." [Dkt. No. 108]. The Individual Defendants have stated that they oppose the Stay Application. The time for any parties to submit opposition to the Stay Application is November 8, 2022.

H. Receivership Website, Receivership Email, and Communications

During the Reporting Period, the Receiver communicated with investors and other parties-in-interest regarding the Receivership.

To facilitate communications with parties-in-interest, the Receivership Team updated the dedicated website for this Receivership (<https://www.straightpathreceivership.com>). This website provides investors and other interested parties with, among other things, periodic updates, access to court documents including status reports, recordings of Town Halls, and answers to frequently asked questions.

During the Reporting Period, the Receiver also monitored the dedicated email address for inquiries (StraightpathReceiver@Otterbourg.com).

The Receiver received phone calls and correspondence from investors and creditors and communicated with those parties. Since the Receiver's appointment, the Receivership Team has received or made over 1,138 individual communications by phone and email with parties-in-interest, including receiving inquiries from over 640 investors and other parties-in-interest, to date.

During the Reporting Period, the Receiver held a "Town Hall" forum on August 1, 2022 via a Zoom Webinar that was open to the public during which she introduced herself, made clear that she and the Receivership Team were available to discuss the Receivership process and provided an update and answered questions with respect to the Receivership.

The Receiver has scheduled the next virtual Town Hall for November 14, 2022 at noon Eastern Standard Time. This informational event is for all investors and parties-in-interest to learn more about the status of these proceedings. All parties that wish to attend the virtual Town Hall, either by computer or phone, must register in advance at the following link: https://otterbourg.zoom.us/webinar/register/WN_MyiaxGDDQ0iXx0hu2dqeOQ.

III. CASH, EXPENSES, AND UNENCUMBERED ASSETS

A schedule summarizing cash receipts and disbursements, as well as cash on hand for the Reporting Period, is set forth in the Standardized Fund Accounting Report ("**SFAR**") prepared and filed in the receivership case, as of September 30, 2022, and is attached hereto as **Exhibit A**.

As of September 30, 2022, the Receivership Entities had approximately \$20,873,954.30 in cash and securities, of which \$15,166,727.97 of cash was held in the account for the Escrow Funds, \$1,831,454.83 of cash was held in the Receivership Entities' accounts that are bank accounts for which the Receiver maintains control, and \$3,875,771.50 worth of securities and cash⁶ were held

⁶ The total of \$3,875,771.50 consists of \$3,874,954.18 in securities and \$817.32 in cash. The amounts of cash and securities do not include the securities in the E*Trade account, which was discovered after the Reporting Period (See Section II.B.1.i). The Receiver will include the value of the securities in the E*Trade account in the SFAR in her next status report.

in accounts that are brokerage accounts, for which the Receiver maintains control. It is estimated that, as of September 30, 2022, accrued and unpaid administrative expenses amount to approximately \$1,987,420.74. This amount includes the fees and expenses that have been incurred by the Receiver, Otterbourg, Stout, Stretto, and BRG during this Reporting Period. While the Court approved the first interim applications for the Receiver, Otterbourg, and Stout [Dkt. Nos. 88, 89], they agreed to defer seeking payment of the allowed fees and expenses applied for until after they have filed, and the Court has reviewed, their applications for compensation for the third quarter of 2022. Accordingly, although the Receiver, Otterbourg, and Stout's first interim applications have been approved, they have not yet received payment. In addition to these unpaid administrative expenses, the Receivership Estate incurred and paid other operating expenses during the Reporting Period as described below.

Cash disbursements during the Reporting Period totaled \$26,216.31. This amount consisted of (i) \$225.00 in tax filing fees; (ii) \$2,577.46 in business expenses (primarily including bank and technology fees and lease expenses (net of the security deposit refund)); (iii) \$13,498.60 in professional fees and expenses paid to Stretto as approved by order of the Court [Dkt. No. 90]; and (iv) \$9,915.25 in hosting fees and document processing for electronic data collected by the Receiver.

Cash receipts during the Reporting Period totaled \$7,909,524.25, consisting of the receipt of the remaining Escrow Funds of \$7,900,000 and interest income of \$9,524.25 from the Escrow Funds money market account.

IV. RECEIVERSHIP PROPERTY, PRE-IPO ASSETS, AND INTERESTS SOLD TO INVESTORS

A. Receivership Property

As of September 30, 2022, the Receivership Property consisted of the following:

- (a) Cash, cash equivalents, and securities of approximately \$20,873,954.30;
- (b) Pre-IPO Assets, including holdings in SPVs, forward contracts, and direct shares, held either directly or indirectly, as well as other securities;

At the time of this Status Report, the Receiver continues to collect and review financial information with respect to StraightPath, including the ownership of Pre-IPO Assets. Moreover, the value of the Receivership Entities' investment portfolio has not yet been independently verified by the Receiver. The Receiver hopes to gain a better understanding of the value of these investments over time and will disclose it at the appropriate time.

B. Information with Respect to Pre-IPO Assets

The Receivership Order requires the Receiver to report on the following items with respect to StraightPath's holding in Pre-IPO Assets:

- Itemization by SP Fund series of the number of Pre-IPO Shares purchased by each SP Fund series.
- Itemization by SP Fund series of the number of investment interests in Pre-IPO Shares sold to investors by each SP Fund series, the SP Fund Manager, or the SP Adviser.
- Inventory of the Pre-IPO Shares held by the Receivership Entities.

As explained above, the Receivership Team is working to take inventory of StraightPath's holdings in Pre-IPO Assets. As further explained above, StraightPath's holdings in Pre-IPO Assets are complex – they are not in a single account or at a single financial institution. Further, the Receiver only recently learned about certain accounts related to the ownership of Pre-IPO Assets that were not previously disclosed to the Receiver. Based on the Receivership Team's preliminary review of StraightPath's financial records, StraightPath remitted funds to over 25 entities, and hundreds of individuals, for the purpose of acquiring Pre-IPO Assets. These entities may be counterparties to contracts with StraightPath, brokers who assisted StraightPath with the purchase of Pre-IPO Assets, or entities holding interests in Pre-IPO Assets for the benefit of StraightPath.

Based on the Receivership Team's preliminary findings, these assets are held through complex financial instruments, including interests in SPVs that purportedly hold interests in Pre-IPO companies. The Receivership Team is working diligently to take inventory of the Pre-IPO Assets and intends to provide a report in subsequent status reports.

Additionally, with respect to the membership interests in the SP Funds that were sold to StraightPath investors, the Receiver is reviewing StraightPath's financial records, StraightPath's pre-Receivership communications with investors, documents provided by investors to the Receivership Team, and StraightPath's books and records, to confirm the investments that were made in the SP Funds. This process will also be supplemented by a claims process motion, which will allow investors to confirm or refute the information gathered by the Receiver regarding investors' equity interests.

V. LIQUIDATED AND UNLIQUIDATED CLAIMS HELD BY THE RECEIVERSHIP ESTATE/INVESTIGATION OF TRANSACTIONS

The Receiver is not currently aware of litigation recoveries to which the Receivership Entities may be entitled. The Receiver may, however, have causes of action against a number of parties and will be considering associated claims. The Receiver at this time cannot state whether any actions will be commenced and, if commenced, the value of any claims and the likelihood of collecting on any judgment that may ultimately be obtained.

VI. CLAIMS ANALYSIS

As noted, the Receiver has been assembling information with respect to investors and intends to file a claims process motion in the near future. The claims process motion will set forth procedures by which the Receiver will issue statements to each investor concerning their equity interests. Investors will have an opportunity to review the information provided and to refute the information provided. If an investor confirms his/her claims information, the information will

form the basis of distributions, if any, pursuant to a plan of distribution. If an investor disputes the claim information, the Receiver will work with the investor to reconcile any discrepancies, while providing for a dispute process, including mediation and summary proceedings before the Court. The claims process will also provide procedures for creditors to submit claims to the Receiver.

VII. RECOMMENDATIONS FOR CONTINUATION OR DISCONTINUATION OF RECEIVERSHIP

The Receiver believes that continuation of the receivership is in the best interests of the creditors and investors of StraightPath. While the Receivership Entities could be administered in a bankruptcy proceeding, the Receiver believes that continuing with the orderly administration of the Receivership Entities in this receivership case provides much greater flexibility to achieve an equitable result for the investors.

This receivership case arose as a result of an alleged fraud with respect to the Individual Defendants' alleged actions in connection with the Receivership Entities. As the United States District Court for the Southern District of New York stated in another action – *SEC v. Byers*, 637 F. Supp. 2d 166 (S.D.N.Y. 2009) – in which the Court considered whether estate administration through an SEC receivership or through a bankruptcy case was preferable, the Court stated that “[u]nder these circumstances, it would be inequitable to force the case into bankruptcy, where the bankruptcy court would have less flexibility in determining the most equitable approach to distribute assets to victims. The overriding goal of these proceedings should be fairness to the defrauded investors, and forcing this case into bankruptcy would, I believe, be inconsistent with that goal.” *Byers*, 637 F. Supp. 2d at 175-76.

The Receiver believes that the reasons set forth in the *Byers* case hold true here. The Receiver also has the ability to propose a plan for distribution of assets that does not adhere to the absolute priority rule, which is required in bankruptcy. Here, the Receiver has not made any

decisions regarding the treatment of creditor and investor claims, but remaining in the receivership offers her flexibility, if appropriate, to prioritize defrauded investors.

VIII. CONCLUSION

The Receiver cannot at this time state when she expects the case to be concluded. The Receiver is making progress in administering the Receivership Estate, including (i) analyzing and understanding the existence and quantum of the Shortfall; (ii) analyzing and understanding the existence and quantum of Commingling; (iii) marshalling and managing the Receivership Entities' assets; (iv) processing claims; and (v) continuing to analyze issues related to a Plan.

Dated: October 31, 2022
New York, New York

OTTERBOURG P.C.

By: /s/ Erik B. Weinick
Erik B. Weinick
230 Park Avenue
New York, NY 10169
(212) 661-9100
Email: eweinick@otterbourg.com
*Counsel for Melanie L. Cyganowski,
as Court-Appointed Receiver*

STANDARDIZED FUND ACCOUNTING REPORT for STRAIGHTPATH RECEIVERSHIP - Cash Basis
 Receivership; Civil Court Docket No. 1.22-cv-03897-LAK
 Reporting Period 07/01/2022 to 09/30/2022

FUND ACCOUNTING (See instructions):			
	Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 07/01/2022):		\$ 12,825,668.91
	<i>Increase in Fund Balance:</i>		
Line 2	Business Income	\$ -	
Line 3	Cash and Securities	164,977.45	
Line 4	Interest/Dividend Income	9,524.25	
Line 5	Business Asset Liquidation	-	
Line 6	Personal Asset Liquidation	-	
Line 7	Third-Party Litigation Income	-	
Line 8	Miscellaneous - Other [1]	7,900,000.00	
	Total Funds Available (Lines 1 - 8):	\$ 8,074,501.70	\$ 20,900,170.61
	<i>Decreases in Fund Balance:</i>		
Line 9	Disbursements to Investors	\$ -	
Line 10	Disbursements for Receivership Operations		
Line 10a	Disbursements to Receiver or Other Professionals	\$ (13,498.60)	
Line 10b	Business Asset Expenses	(11,092.71)	
Line 10c	Personal Asset Expenses	-	
Line 10d	Investment Expenses	-	
Line 10e	Third-Party Litigation Expenses		
	1. Attorney Fees	-	
	2. Litigation Expenses	-	
	Total Third-Party Litigation Expenses	-	
Line 10f	Tax Administrator Fees and Bonds	-	
Line 10g	Federal and State Tax Payments	-	
	Total Disbursements for Receivership Operations	\$ (24,591.31)	
Line 11	Disbursements for Distribution Expenses Paid by the Fund:		
Line 11a	Distribution Plan Development Expenses:		
	1. Fees:		
	Fund Administrator.....	\$ -	
	Independent Distribution Consultant (IDC).....	-	
	Distribution Agent.....	-	
	Consultants.....	-	
	Legal Advisors.....	-	
	Tax Advisors.....	-	
	2. Administrative Expenses	-	
	3. Miscellaneous	-	
	Total Plan Development Expenses	\$ -	
Line 11b	Distribution Plan Implementation Expenses:		
	1. Fees:		
	Fund Administrator.....	\$ -	
	IDC.....	-	
	Distribution Agent.....	-	
	Consultants.....	-	
	Legal Advisors.....	-	
	Tax Advisors.....	-	
	2. Administrative Expenses	-	
	3. Investor Identification:		
	Notice/Publishing Approved Plan.....	-	

STANDARDIZED FUND ACCOUNTING REPORT for STRAIGHTPATH RECEIVERSHIP - Cash Basis
 Receivership; Civil Court Docket No. 1.22-cv-03897-LAK
 Reporting Period 07/01/2022 to 09/30/2022

	Claimant Identification.....	-		
	Claims Processing.....	-		
	Web Site Maintenance/Call Center.....	-		
	4. Fund Administrator Bond	-		
	5. Miscellaneous	-		
	6. Federal Account for Investor Restitution	-		
	7. (FAIR) Reporting Expenses	-		
	<i>Total Plan Implementation Expenses</i>	\$ -		
	Total Disbursement for Distribution Expenses Paid by the Fund		\$ -	\$ -
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees	\$ (1,625.00)		
Line 12b	Federal Tax Payments	-		
	Total Disbursements to Court/Other:		\$ (1,625.00)	
	Total Funds Disbursed (Lines 9 - 11):		\$ (26,216.31)	\$ (26,216.31)
Line 13	Ending Balance (As of 09/30/2022):			\$ 20,873,954.30
Line 14	Ending Balance of Fund - Net Assets:			
Line 14a	Cash & Cash Equivalents	\$ 16,999,000.12		
Line 14b	Investments	3,874,954.18		
Line 14c	Other Assets or Uncleared Funds	-		
	Total Ending Balance of Fund - Net Assets			\$ 20,873,954.30

OTHER SUPPLEMENTAL INFORMATION:

		Detail	Subtotal	Grand Total
	Report of Items NOT To Be Paid by the Fund:			
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	<i>Plan Development Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator.....	\$ -		
	Independent Distribution Consultant (IDC).....	-		
	Distribution Agent.....	-		
	Consultants.....	-		
	Legal Advisors.....	-		
	Tax Advisors.....	-		
	2. Administrative Expenses	-		
	3. Miscellaneous	-		
	<i>Total Plan Development Expenses Not Paid by the Fund</i>		\$ -	
Line 15b	<i>Plan Implementation Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator.....	\$ -		
	IDC.....	-		
	Distribution Agent.....	-		
	Consultants.....	-		
	Legal Advisors.....	-		
	Tax Advisors.....	-		
	2. Administrative Expenses	-		
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....	-		
	Claimant Identification.....	-		
	Claims Processing.....	-		

STANDARDIZED FUND ACCOUNTING REPORT for STRAIGHTPATH RECEIVERSHIP - Cash Basis
 Receivership; Civil Court Docket No. 1.22-cv-03897-LAK
 Reporting Period 07/01/2022 to 09/30/2022

	Web Site Maintenance/Call Center.....	-		
	4. Fund Administrator Bond	-		
	5. Miscellaneous	-		
	6. FAIR Reporting Expenses	-		
	Total Plan Implementation Expenses Not Paid by the Fund		\$ -	
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund	\$ -	\$ -	
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			\$ -
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees	\$ -		
Line 16b	Federal Tax Payments	-		
	Total Disbursements to Court/Other Not Paid by the Fund:		\$ -	\$ -
Line 17	DC & State Tax Payments			
Line 18	No. of Claims:			
	# of Claims Received This Reporting Period.....			0
	# of Claims Received Since Inception of Fund.....			0
Line 19	No. of Claimants/Investors:			
	# of Claimants/Investors Paid This Reporting Period.....			0
	# of Claimants/Investors Paid Since Inception of Fund.....			0

Notes:

- [1] Paragraph VIII of the Preliminary Injunction Order (ECF 55) requires that three of the Individual Defendants, Brian Martinsen, Francine Lanaia and Michael Castillero, collectively pay \$15 million, plus the remainder of retainer funds provided to Nardello & Co., into an account established by the Receiver (the "Escrow Account"). During the Reporting Period, Mr. Castillero deposited \$1,175,000, Ms. Lanaia deposited \$862,500, and Mr. Martinsen deposited \$5,862,500 into the Escrow Account. As of July 8, 2022, the Escrow Account has been fully funded by \$3,275,000 from Mr. Castillero, \$5,862,500 from Ms. Lanaia, and \$5,862,500 from Mr. Martinsen. The remainder of retainer funds of \$188,182.45 from Nardello & Co. were also deposited into the Escrow Account.

Receiver:

By: /s/ Melanie L. Cyganowski
 (signature)

Melanie L. Cyganowski, as Receiver
 (printed name)

Court Appointed Receiver
 (title)

Date: October 31, 2022