EATON VANCE CORP
Form 8-K
November 12, 2008

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 11, 2008

EATON VANCE CORP.

(Exact name of registrant as specified in its charter)

Maryland	-	1-8100	-	04-2718215
(State or other jurisdiction of incorporation)		(Commission File Number)		(IRS Employer Identification No.)

255 State Street, Boston, Massachusetts	02109
(Address of principal executive offices)	(Zip Code)

Registrant s telephone number, including area code(617) 482-8260

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INFORMATION INCLUDED IN THE REPORT

Item 1.01. Entry into a Material Definitive Agreement

Registrant has entered into a definitive agreement to acquire 100% of the equity of M.D. Sass Tax Advantaged Bond Strategies, L.L.C. as described in Registrant s news release dated November 10, 2008, a copy of which is filed herewith as Exhibit 99.1 and incorporated herein by reference and the Purchase Agreement, a copy of which is filed herewith as Exhibit 10.1 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

Financial Statements of M.D. Sass Tax Advantaged Bond Strategies, L.L.C. are not required to be included herein pursuant to Section 3.05(b)(2)(i) of Regulation S-X.

The following exhibits are filed as part of this report:

*10.1	Purchase Agreement, dated as of November 10, 2008, by and among M.D. Sass Tax Advantaged Bond Strategies, L.L.C., a Delaware limited liability company, M.D. Sass Investors Services, Inc., a Delaware corporation, 1185 Advisors, L.L.C., a Delaware limited liability company, James H. Evans, and Eaton Vance Management, a Massachusetts business trust and wholly owned subsidiary of the Registrant.
99.1	Copy of registrant's news release dated November 10, 2008.

* Certain exhibits and schedules to this Exhibit were omitted in accordance with Item 601(b)(2) of Regulation S-K. A copy of any omitted exhibit or schedule will be furnished to the Commission upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

EATON VANCE CORP.

(Registrant)

Date: November 11, 2008

/s/ Robert J. Whelan

Robert J. Whelan, Chief Financial Officer

EXHIBIT INDEX

Each exhibit is listed in this index according to the number assigned to it in the exhibit table set forth in Item 601 of Regulation S-K. The following exhibit is filed as part of this report:

Exhibit No.	Description
10.1	Copy of Purchase Agreement, dated as of November 10, 2008, by and among M.D. Sass Tax Advantaged Bond Strategies, L.L.C., a Delaware limited liability company, M.D. Sass Investors Services, Inc., a Delaware corporation, 1185 Advisors, L.L.C., a Delaware limited liability company, James H. Evans, and Eaton Vance Management, a Massachusetts business trust and wholly owned subsidiary of the Registrant.
99.1	Copy of registrant s news release dated November 10, 2008.

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Exhibit 10.1

EXECUTION VERSION

PURCHASE AGREEMENT

by and among

M.D. SASS TAX ADVANTAGED BOND STRATEGIES, L.L.C.

M.D. SASS INVESTORS SERVICES, INC.

1185 ADVISORS, L.L.C.

JAMES H. EVANS

and

EATON VANCE MANAGEMENT

Dated as of November 10, 2008

PI-2074303 v15

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PURCHASE AGREEMENT

This PURCHASE AGREEMENT, dated as of November 10, 2008 (this Agreement), is made by and among M.D. Sass Tax Advantaged Bond Strategies, L.L.C., a Delaware limited liability company (the Company), M.D. Sass Investors Services, Inc., a Delaware corporation (MDSIS), 1185 Advisors, L.L.C., a Delaware limited liability company (1185 Advisors and together with MDSIS, Sellers), James H. Evans (Evans), and Eaton Vance Management a Massachusetts business trust (Buyer). Certain terms used in this Agreement are defined in Section 10.

RECITALS

Sellers own, beneficially and of record, all of the issued and outstanding Interests, including all Class A Interests and all Class B Interests (as such terms are defined in the Company Operating Agreement), of the Company (collectively, the Interests). The Interests constitute all of the issued and outstanding limited liability company interests (as defined in the DLLCA) of the Company. Evans owns, directly or indirectly, the majority of the issued and outstanding membership interests of 1185 Advisors.

Sellers wish to sell to Buyer, and Buyer wishes to purchase from Sellers, the Interests on the terms and conditions and for the consideration provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties made herein and of the mutual benefits to be derived herefrom, the parties hereto agree as follows:

Section 1. Closing; Payments, Holdback and Adjustments.

1.1 Closing and Initial Payment.

The closing of the sale and purchase of the Interests and of the other transactions contemplated by this Agreement (the Closing) shall take place at the offices of Eaton Vance Corp., at 10:00 a.m. on the third Business Day following the satisfaction (or written waiver) of the conditions precedent set forth in Section 7 of this Agreement, or at such other place, date and time as the parties hereto may agree in writing (the Closing Date). At the Closing, the following shall occur:

(a) MDSIS shall deliver to Buyer all of the Class A Interests, and 1185 Advisors shall deliver to Buyer all of the Class B Interests, together representing 100% of the Interests in the Company. All Interests shall be delivered to Buyer free and clear of any Liens.

(b) Buyer shall pay an aggregate amount in cash equal to thirty million dollars ($30,000,000) (the Initial Payment) to Sellers for the Interests, subject to the Holdback as provided in Section 1.4 and the Client Consent Adjustment as provided in

Section 1.5. The Initial Payment, as adjusted, shall be delivered to Sellers by Buyer by wire transfer of immediately available funds to the accounts designated in writing by the Sellers Representative, such account details to be delivered to Buyer at least two Business Days prior to the Closing Date. The Initial Payment, as adjusted, shall be paid to Sellers as follows: 75% of the Initial Payment to MDSIS and 25% of the Initial Payment to 1185 Advisors.

1.2 Deferred Payments to Sellers.

(a) Amount. In addition to the Initial Payment, Sellers shall be entitled to receive four deferred purchase price payments for the Interests, to be calculated as of December 31 of each of the calendar years 2009, 2010, 2011 and 2012 (individually, a Deferred Payment , and collectively, the Deferred Payments). Each Deferred Payment shall be in an aggregate amount equal to (i) the sum of (A) 6.0 multiplied by the Annual Fund Revenues for the Applicable Year and (B) 4.25 multiplied by the Annual Other Product Revenues for the Applicable Year, multiplied by (ii) 0.10 (the Deferred Payment Amount). Each Deferred Payment Amount shall be paid to Sellers as follows: 75% of the Deferred Payment Amount to MDSIS and 25% of the Deferred Payment Amount to 1185 Advisors.

(b) Payment. Buyer shall prepare and deliver to Sellers of a certificate (the Deferred Payment Certificate) setting forth the Annual Fund Revenues and Annual Other Product Revenues for the calendar years ending December 31 of each of 2009, 2010, 2011 and 2012 (each such calendar year, an Applicable Year), and setting forth the calculation of the applicable Deferred Payment Amount due to Sellers under this Agreement, together with a written statement from Buyer s Chief Financial Officer that the Deferred Payment Certificate is complete and accurate and that Buyer has complied with the terms of this Agreement. Buyer shall deliver each such Deferred Payment Certificate to Sellers as promptly as practicable after December 31 of the Applicable Year to which it applies, but in any event by March 15 of the following year. The Sellers Representative shall be provided, at Sellers expense, with reasonable access to the supporting materials related to the preparation of the Deferred Payment Certificate for the purpose of reviewing the Deferred Payment Certificate; such information shall be provided to Sellers electronically and shall not require inspection by Sellers of the physical books and records of Buyer unless, and only to the extent, reasonably requested by Sellers. Payment of each Deferred Payment to Sellers shall be made by Buyer by wire transfer of immediately available funds to the accounts designated in writing by the Sellers Representative within three Business Days of delivery of the respective Deferred Payment Certificate.

(c) Disputes. Unless Sellers Representative delivers to Buyer, within 35 days of the delivery of such Deferred Payment Certificate, written notice of Sellers disagreement with such Deferred Payment Certificate and the calculations therein, such Deferred Payment Certificate and calculations shall be conclusive and binding on the parties for purposes of calculating the applicable Deferred Payment. Any notice delivered by Sellers Representative pursuant to the preceding sentence shall state with reasonable specificity the reasons for Sellers disagreement and identify the items and

amounts in dispute. Any disputes as to the Deferred Payment Certificate or any Deferred Payment shall be resolved, and the amount of the Deferred Payment finally determined, in accordance with Section 1.10. If, as a result of the resolution of any such dispute, a payment needs to be made by any party, such payment shall be made within three (3) Business Days of final resolution of such dispute.

(d) Certain Understandings.

(i) Sellers acknowledge that there can be no assurances that any Deferred Payment or Second Deferred Payment, or any specific amount thereof, will be earned under Section 1.2 or Section 1.3, and that, except as set forth herein, neither Buyer nor any Affiliate of Buyer (including the Company) shall have any obligation, whether express or implied, to take any action(s), or omit to take any action(s), in order to cause any Deferred Payment or Second Deferred Payment to be earned, or any specific amount thereof to be earned. The amount of any Deferred Payment or Second Deferred Payment may be offset by Buyer against any amount payable to the Buyer Indemnitees under Section 9.1 of this Agreement.

(ii) During the period in which Deferred Payments and/or Second Deferred Payments are required to be made pursuant to this Agreement, (a) Buyer and its Affiliates shall maintain its books and records in such a manner as to separately identify those assets under the management of the TABS Team and permit the proper determination of the Annual Fund Revenues and Annual Other Product Revenues arising in connection therewith, and (b) the TABS Team and the Company s track record, business models and investment processes shall be used by Buyer and its Affiliates only in connection with the Business.

(iii) During the period following Closing through December 31, 2016, Buyer shall not, without the prior written consent of Sellers Representative (or, after December 31, 2013, 1185 Advisors), sell or dispose of all or substantially all of the Business to an independent, unaffiliated third party.

(iv) If Buyer or any of its Affiliates intends to have a client of a business of Buyer or its Affiliates (other than the Business) serviced by the Business, then Buyer and the Seller Representative (or, after December 31, 2012, 1185 Investors) shall negotiate in good faith to reach an agreement on the appropriate fee revenues to be allocated to the Business from such client for the purposes of the Deferred Payments under the terms of this Agreement. If the parties are not able to agree, then (a) Buyer or such Affiliate shall be under no obligation to cause or encourage such client of such other business to become a client of the Business, and (b) if such client becomes a client of the Business, then the fees of such client arising out of the Business shall be allocated as Annual Fund Revenues or Annual Other Product Revenues like any other Client of the Business in accordance with the terms of this Agreement.

1.3 Second Deferred Payments to 1185 Advisors.

(a) Amount. In addition to the Initial Payment and the Deferred Payments, 1185 Advisors shall be entitled to receive three deferred purchase price payments, calculated as of December 31 of each of the calendar years 2014, 2015 and 2016 (individually, a Second Deferred Payment , and collectively, the Second Deferred Payments). Each Second Deferred Payment shall be in an aggregate amount equal to (i) the sum of (A) 6.0 multiplied by the Annual Fund Revenues for the Second Deferred Payment Applicable Year and (B) 4.25 multiplied by the Annual Other Product Revenues for the Second Deferred Payment Applicable Year, multiplied by (ii) 0.0667.

(b) Payment. Buyer shall prepare and deliver to 1185 Advisors of a certificate (the Second Deferred Payment Certificate) setting forth the Annual Fund Revenues and Annual Other Product Revenues for the calendar years ending December 31 of each of 2014, 2015 and 2016 (each such calendar year, a Second Deferred Payment Applicable Year), and setting forth the calculation of the applicable Second Deferred Payment amount due to 1185 Advisors under this Agreement. Buyer shall deliver each such Second Deferred Payment Certificate to 1185 Advisors as promptly as practicable after December 31 of the Second Deferred Payment Applicable Year to which it applies, but in any event by March 15 of the following year. 1185 Advisors shall be provided, at 1185 Advisors expense, with reasonable access to the supporting materials related to the preparation of the Second Deferred Payment Certificate for the purpose of reviewing the Second Deferred Payment Certificate. Payment of each Second Deferred Payment to 1185 Advisors shall be made by Buyer by wire transfer of immediately available funds to an account designated in writing by 1185 Advisors within three Business Days of delivery of the respective Second Deferred Payment Certificate.

(c) Disputes. Unless 1185 Advisors delivers to Buyer, within 35 days of the delivery of such Second Deferred Payment Certificate, written notice of 1185 Advisors disagreement with such Second Deferred Payment Certificate and the calculations therein, such Second Deferred Payment Certificate and calculations shall be conclusive and binding on the parties for purposes of calculating the applicable Second Deferred Payment. Any notice delivered by 1185 Advisors pursuant to the preceding sentence shall state with reasonable specificity the reasons for 1185 Advisors disagreement and identify the items and amounts in dispute. Any disputes as to the Second Deferred Payment Certificate or any Second Deferred Payment shall be resolved, and the amount of the Second Deferred Payment finally determined, in accordance with Section 1.10. If, as a result of the resolution of any such dispute, a payment needs to be made by any party, such payment shall be made within three (3) Business Days of final resolution of such dispute.

1.4 Holdback.

(a) Holdback Amount. Subject to Sections 1.4(b) and (c) below, the aggregate amount of the Initial Payment which shall be retained by Buyer and not paid over to Sellers at Closing (such aggregate amount, the Holdback) shall be equal to the sum of the following:

(i) the Client Consents Holdback, if any, as specified in Section 1.5(a); and

(ii) solely in the event that the Natixis Agreements are not terminated at or prior to Closing with no cost or liability to Buyer or the Company (other than any such liability to the extent the dollar amount thereof has been fully reflected as either a reduction in cash or a current liability in the Closing Date Working Capital), an amount equal to $1,400,000 (the Natixis Holdback Amount), which shall be used to pay any and all obligations owed by the Company to Natixis in connection with the termination of the Natixis Agreements.

(b) Distributions of Client Consents Holdback. The Client Consents Holdback, if any, remaining after giving effect to the Client Consents Adjustment, as finally determined pursuant to Section 1.5, shall be delivered to Sellers, in an amount based on their respective Sellers Percentages, by wire transfer of immediately available funds to the accounts designated in writing by the Sellers Representative within three Business Days of such final determination.

(c) Distributions of Natixis Holdback Amount. If the Natixis Agreements are not terminated at or prior to Closing, the Buyer shall, not later than five days following the termination of the Natixis Agreements, deliver to Sellers a certificate (the Natixis Certificate) setting forth a list of all payments made by the Company after the Closing Date in connection with the termination of the Natixis Agreements (the Natixis Termination Amounts), together with any supporting documentation as Sellers may reasonably request, which documentation shall be provided to Sellers electronically. If Sellers disagree with the Natixis Termination Amounts, Sellers shall provide Buyer with written notice of such disagreement (the Natixis Dispute Notice), setting forth Sellers determination as to the proper amount of such amounts and the Sellers and Buyer shall in good faith attempt to resolve any such dispute. If the Sellers and Buyer cannot agree upon the Natixis Termination Amounts within five days after delivery of the Natixis Dispute Notice, then a nationally recognized firm of independent accountants shall be engaged, in the manner set forth in Section 1.10, to resolve their dispute. The engagement agreement with the independent accountants shall require the independent accountants to resolve the dispute within ten Business Days of the engagement. Absent fraud or manifest error, the independent accountants decision shall be final, binding and conclusive upon the parties hereto. The fees and expenses of the independent accountants shall be determined as set forth in Section 1.10. Not later than three days following the final determination of the Natixis Termination Amounts, any portion of the Natixis Holdback Amount remaining after payment by Buyer of the Natixis Termination Amounts shall be delivered to Sellers, based on their respective Sellers Percentages, by wire transfer of immediately available funds to the accounts designated in writing by the Sellers Representative.

1.5 Client Consents Adjustment.

(a) Client Consents Holdback. Schedule 1.5(a) sets forth a complete and accurate list of its Signing Date Clients, together with the Signing Date Fee Revenues

attributable to each. The Aggregate Signing Date Fee Revenues reflected on Schedule 1.5(a) are $17,218,544. If, at Closing, the Company shall have received Client Consents from Signing Date Clients and New Clients representing Aggregate Closing Date Fee Revenues that are less than $15,200,000, then at Closing an amount (the Client Consents Holdback) shall be retained by Buyer, and not then paid over to Sellers, equal to the excess of (i) $30,000,000 over (ii) the product of (x) $30,000,000 times (y) a fraction, the numerator of which is the Aggregate Closing Date Fee Revenues represented by Signing Date Clients and New Clients from whom Client Consents have then been received, and the denominator of which is $16,000,000.

(b) Notice. Sellers shall, not later than 5:00 p.m. Eastern Time on the third Business Day preceding the scheduled Closing Date (the Cut-Off Date), deliver to Buyer a certificate (the Closing Client Consents Certificate) setting forth a list of all Signing Date Clients and New Clients from whom Client Consents have been received and the amount of the Client Consents Holdback, if any, associated therewith, together with supporting calculations and such additional supporting documentation as Buyer may request. If Sellers obtain any Client Consents between the Cut-off Date and the Closing Date, Sellers shall promptly provide Buyer with a list of such consents and a revised Clients Consents Holdback amount, which amount shall be reflected in calculating the amount of the Client Consents Holdback. If Buyer disagrees with Sellers proposed amount for the Client Consents Holdback, Buyer shall provide Sellers with written notice of such disagreement (the Client Consents Holdback Notice), setting forth Buyer s determination as to the proper amount of the Client Consents Holdback and the Sellers and Buyer shall in good faith attempt to resolve any such dispute. If the Sellers and Buyer cannot agree upon the amount of the Client Consents Holdback within five days after delivery of the Client Consents Holdback Notice, then a nationally recognized firm of independent accountants shall be engaged, in the manner set forth in Section 1.10, to resolve their dispute. Absent fraud or manifest error, the independent accountants decision shall be final, binding and conclusive upon the parties hereto. The fees and expenses of the independent accountants shall be determined as set forth in Section 1.10.

(c) Client Consents Adjustment. Following Closing, Sellers shall have until the later of February 15, 2009 and the 45th day after Closing (the Client Consent Adjustment Date) to use all reasonable efforts to obtain, and Buyer shall use all reasonable efforts to cooperate with Sellers in soliciting, Client Consents from all remaining Signing Date Clients and New Clients. If the Company receives Client Consents from Signing Date Clients and New Clients during the period between the Closing Date and the Client Consent Adjustment Date, then Buyer shall pay to Sellers out of the Client Consents Holdback an amount equal to the product of (x) $30,000,000 times (y) a fraction, the numerator of which is only that portion of the Aggregate Closing Date Fee Revenues represented by Signing Date Clients and New Clients from whom Client Consents were received during the period between the Closing Date and the Client Consent Adjustment Date and the denominator of which is $16,000,000 (such amount, the Client Consents Adjustment). Any amount of the Client Consent Holdback that is not required to be paid to Sellers as a Client Consents Adjustment pursuant this Section 1.5(c) shall be retained by Buyer and shall reduce the Purchase Price. Buyer shall provide Sellers with notice of the amount of the Client Consents Adjustment Amount as

promptly as is practicable after the Client Consent Adjustment Date, but in any event within 15 days following the Client Consent Adjustment Date, together with a written statement from Buyer s Chief Financial Officer that the notice of Client Consents Amount is complete and accurate and such supporting calculations as are reasonably necessary to confirm the amount thereof (the Client Consents Adjustment Notice). Contemporaneously with the delivery of the Client Consents Adjustment Notice, Buyer shall deliver to Sellers, based on their respective Sellers Percentages, the amount of the Client Consents Adjustment by wire transfer of immediately available funds to the accounts designated in writing by the Sellers Representative.

(d) Disputes. Any disputes as to the Client Consents Adjustment shall be resolved, and the amount of the Client Consents Adjustment finally determined, in accordance with Section 1.10.

1.6 Post-Closing Adjustment.

(a) Closing Date Balance Sheet. Buyer shall deliver to Sellers, within 60 days after the Closing Date, a balance sheet of the Company as of the close of business on the day prior to the Closing Date (including the accounts receivable schedule described below and attached thereto, the Closing Date Balance Sheet), together with supporting calculations and such additional supporting documentation as Sellers may reasonably request; such information shall be provided to Sellers electronically and shall not require inspection by Sellers of the physical books and records of Buyer unless, and only to the extent, reasonably requested by Sellers. The Closing Date Balance Sheet shall be prepared in accordance with United States generally accepted accounting principles (GAAP) and, to the extent compatible with GAAP, in a manner consistent with the Balance Sheet; provided, that (i) all current liabilities of the Company shall be fully reflected on an accrual basis on the Closing Date Balance Sheet (including, without limitation, (x) accrual of all employee bonuses, deferred compensation or other obligations, (y) accrual of a current liability in an amount corresponding to pre-paid services and (z) accrual of all appropriate reserves), (ii) the Closing Date Balance Sheet shall not give effect to any write-up or write-down of the value of intangible assets or other balance sheet items that may be required or permitted under GAAP in connection with the consummation of the transactions contemplated by this Agreement, and (iii) the accounts receivable schedule included in the Closing Date Balance Sheet shall separately identify the amount of each account receivable and the portions thereof that are in respect of services billed in advance and services billed in arrears. Sellers shall use commercially reasonable efforts to cooperate with Buyer and the Company in the preparation of the Closing Date Balance Sheet.

(b) Working Capital Adjustment. The Purchase Price shall be subject to upward or downward adjustment in accordance with this Section 1.6 if the excess of the aggregate cash, Cash Equivalents, pre-paid expenses and accounts receivable of the Company shown on the Closing Date Balance Sheet over the total liabilities of the Company shown on the Closing Date Balance Sheet (such excess, if any, the Closing Date Working Capital) is greater or less than $500,000 (the Target Working Capital); provided, however, that any liabilities related to the termination of the Natixis

Agreements shall be included in Closing Date Working Capital only in an amount in excess of the Natixis Holback Amount. Any adjustment of the Purchase Price pursuant to this Section 1.6 is referred to in this Agreement as a Working Capital Adjustment , and together with the Client Consents Adjustment, the Initial Payment Adjustments . If the Closing Date Working Capital is less than the Target Working Capital, then the Purchase Price shall be reduced dollar-for-dollar by the amount of such shortfall and Sellers shall promptly, but not later than five Business Days after final determination of the Working Capital Adjustment, pay to Buyer the amount of such difference by wire transfer of immediately available funds to an account designated in writing by the Buyer. If the Closing Date Working Capital is greater than the Target Working Capital, then Buyer shall promptly, but not later than five Business Days after final determination of the Working Capital Adjustment, pay to Sellers the amount of such difference (in accordance with their Sellers Percentage), by wire transfer of immediately available funds to the accounts designated in writing by the Sellers Representative, if and only to the extent that the Company actually collects amounts in respect of accounts receivable, and actually pays amounts in respect of current liabilities, shown on the Closing Date Balance Sheet ; provided that, if the Company collects any additional amounts in respect of accounts receivable shown on the Closing Date Balance Sheet after the date on which such payment is made by Buyer, then Buyer shall pay such amount to Sellers not later than five Business Days following receipt of such amount; provided, further, that in no event shall Buyer be obligated to pay pursuant to this Section 1.6(b) any amounts related to services rendered after the Closing Date. Buyer shall cause the Company (or if the Company is dissolved, its successor) to use commercially reasonable efforts to collect and pay such amounts in a manner consistent with past practice.

(c) Disputes. Unless Sellers deliver to Buyer, within 30 days of the delivery of the Closing Date Balance Sheet, written notice of Sellers disagreement with such Closing Date Balance Sheet, such Closing Date Balance Sheet shall be conclusive and binding on the parties for purposes of calculating the applicable Working Capital Adjustment. Any notice delivered by Sellers pursuant to the preceding sentence shall state with reasonable specificity the reasons for Sellers disagreement and, to the extent practicable, identify the items and amounts in dispute. Any disputes as to the Working Capital Adjustment shall be resolved, and the amount of the Working Capital Adjustment finally determined, in accordance with Section 1.10.

1.7 Allocation of Payments. Pursuant to Revenue Ruling 99-6, 1999-1 C.B. 432, the parties acknowledge that the sale and purchase of Interests from each Seller, pursuant to this Agreement is, and agree to treat, for tax purposes, such sale and purchase of the Interests as, a sale by each Seller of its respective partnership interest in the Company and a purchase by the Buyer of the assets of the Company. The Buyer and the Sellers agree that the Initial Payment, Deferred Payments, Second Deferred Payments and all adjustment thereto to be paid by Buyer for the Interests (the Purchase Price) shall be allocated among the Assets of the Company in accordance with Schedule 1.7, which may only be amended following a written consent of the parties, which consent shall not be unreasonably conditioned or withheld. Each of the parties agrees to report the sale and purchase of the Interests for all tax purposes and to file all federal, state, local and other Tax Returns required to be filed in accordance with Schedule 1.7,

including the filing of IRS Form 8594, or a successor thereof (and any amendment thereto), as set forth in Section 1060(d) and (b) of the Code to the extent such provisions are applicable and, if required, IRS Form 8308, which Form 8308, if required, shall be prepared and filed by the Sellers Representative on behalf o the Company. Neither party shall take or shall permit any of its respective Affiliates to take an inconsistent position with Schedule 1.7 on any Tax Return or any form related to Taxes. Each party shall act in accordance with Schedule 1.7 in the course of any Tax audit, Tax review and any other proceeding or controversy concerning such party and relating to the allocations made pursuant to this Section 1.7 ; provided, however, that if the Buyer uses commercially reasonable efforts to defend the Purchase Price allocation pursuant to Schedule 1.7 in any such proceeding, and despite such efforts the relevant tax authority does not accept such allocation, the Buyer shall not be required to appeal to or litigate in any court any such decision of the tax authority. In addition, the Buyer shall be entitled to settle any dispute regarding the allocations contemplated herein with the prior written consent of the Sellers Representative, which consent shall not be unreasonably withheld or delayed; the Sellers and the Buyer agree to consult, and to cause their respective Affiliates to consult, with one another with respect to any Tax audit, Tax review, Tax litigation and any other proceeding or controversy relating to the allocations made pursuant to this Section 1.7, by the IRS or another tax authority. Notwithstanding anything herein to the contrary, but without modification of the express terms of the foregoing covenants, no party to this Agreement is making, nor shall be deemed to have made, any representation or warranty to any other party as to the treatment of the transactions contemplated hereby under any Tax law.

1.8 Dissolution of the Company. Sellers and Evans acknowledge that Buyer may, in its sole discretion, dissolve, merge or take any other action with respect to the Company or the Interests at any time after Closing, provided that it is otherwise in compliance with its obligations under this Agreement, including Section 1.2(d) . Sellers and Evans agree that they will, at Buyer s sole expense, use commercially reasonable efforts to provide all such cooperation and assistance in connection with such post-Closing dissolution or merger or other action with respect to the Company as may be reasonably requested by Buyer, including, without limitation, assistance in acquiring any necessary consents and in determining the Persons to whom notice of dissolution may be required.

1.9 Short-Term Closing Date Account Revenue.

(a) At Closing, Sellers shall deliver to Buyer a Schedule (the Short-Term Closing Date Account Revenue Schedule) setting forth a list of all accounts representing Short-Term Closing Date Account Revenue as of the Closing Date.

(b) Following Closing, Buyer shall pay to Sellers, based on their respective Sellers Percentages, all fees on such Short-Term Closing Date Account Revenue accounts received by the Company or Buyer or any of their respective Affiliates, not later than the last day of each month that any such fees are received, by wire transfer of immediately available funds to the accounts designated in writing by the Sellers Representative, and, simultaneously with each such payment to Sellers, Buyer

shall deliver to Sellers a written statement from Buyer s Chief Financial Officer that the amount of such fees on such Short-Term Closing Date Account Revenue accounts is true and accurate. The obligation to remit fees received on such accounts shall terminate upon the expiration of the stated term of the respective Advisory Agreement. If such Advisory Agreement is amended, extended or replaced with a new Advisory Agreement, then the fees in respect thereof shall, beginning on the effective date of such new, amended, extended or replaced Advisory Agreement, be treated as Annual Other Product Revenues.

(c) Any disputes as to the Short-Term Closing Date Account Revenue shall be resolved, and the amount of the Short-Term Closing Date Account Revenue finally determined, in accordance with Section 1.10.

1.10 Disputes. If Buyer and Sellers Representative (or, in the case of the Second Deferred Payment, 1185 Advisors) cannot agree upon the Initial Payment Adjustments, a Deferred Payment, a Second Deferred Payment, or the Short-Term Closing Date Account Revenue within 30 days after delivery of such notice of disagreement, a nationally recognized firm of independent accountants mutually acceptable to Buyer and Sellers Representative (or, in the case of the Second Deferred Payment, 1185 Advisors) shall be engaged to resolve their dispute. The engagement agreement with the independent accountants shall require the independent accountants to resolve the dispute within 90 days of the engagement. Absent fraud or manifest error, the independent accountants decision shall be final, binding and conclusive upon the parties hereto. Buyer, on the one hand, and Sellers, on the other hand, shall share equally the fees and expenses of the independent accountants.

Section 2. Representations and Warranties of Sellers and the Company. Sellers, the Company and Evans represent and warrant to Buyer as follows, as of the date of this Agreement and as of the Closing Date:

2.1 Power and Authority.

(a) Sellers. Sellers have full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which they are designated parties, to perform their obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which Sellers are designated parties, the performance of Sellers obligations hereunder and thereunder, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all requisite actions of Sellers. Sellers have duly executed and delivered this Agreement and on the Closing Date will have duly executed and delivered the Ancillary Agreements to which they are designated parties. This Agreement constitutes, and each such Ancillary Agreement when so executed and delivered will constitute, the legal, valid and binding obligation of Sellers enforceable against Sellers in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors rights and remedies generally, and subject, as to enforceability,

to general principles of equity. Evans has the requisite capacity to execute and deliver this Agreement and the Ancillary Agreements to which he is designated a party, to perform his obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Evans has duly executed and delivered this Agreement and on the Closing Date will have duly executed and delivered the Ancillary Agreements to which he is designated a party. This Agreement constitutes, and each such Ancillary Agreement when so executed and delivered will constitute, the legal, valid and binding obligation of Evans enforceable against him in accordance with its respective terms.

(b) The Company. The Company has full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is designated a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which the Company is designated a party, the performance of the Company s obligations hereunder and thereunder, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all requisite actions of the Company. The Company has duly executed and delivered this Agreement and on the Closing Date will have duly executed and delivered the Ancillary Agreements to which it is designated a party. This Agreement constitutes, and each such Ancillary Agreement when so executed and delivered will constitute, the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors rights and remedies generally, and subject, as to enforceability, to general principles of equity.

2.2 Title, Capitalization, etc.

(a) Title. Sellers own, beneficially and of record, all of the Interests, free and clear of any Liens. Upon the delivery of the Interests at the Closing as provided for in this Agreement, Buyer will acquire good and valid title to all of the Interests, free and clear of any Liens other than any Lien created by Buyer.

(b) Company Interests. The sole membership interests of the Company issued, authorized or outstanding are the Interests, consisting of the Class A Interests and the Class B Interests. The Interests have been duly issued in accordance with the Company Operating Agreement, a true and complete copy of which is attached as Schedule 2.2(b)(i). No Interest is evidenced by a certificate. Each Seller is the sole legal and beneficial owner of the Interests set forth on Schedule 2.2(b)(ii) and has sole and exclusive right to exercise all privileges associated with such Interests.

(c) No Equity Rights. There are no preemptive or similar rights on the part of any holders of any class of Interests or other equity interests of the Company. Except for this Agreement, no subscriptions, options, warrants, conversion or other rights, agreements, commitments, arrangements or understandings of any kind obligating Sellers, the Company or any other Person, contingently or otherwise, to issue or sell, or cause to be issued or sold, any Interests or any other equity interests of the Company, or

any securities or other equity interests convertible into or exchangeable for any such Interests or other equity interests in the Company are outstanding, and no authorization therefor has been given. There are no outstanding contractual or other rights or obligations to or of Sellers, the Company or any other Person to repurchase, redeem or otherwise acquire any outstanding Interests or other equity interests of the Company.

2.3 No Conflicts, etc.

(a) The execution, delivery and performance of this Agreement and the Ancillary Agreements by Sellers and the consummation of the transactions contemplated hereby and thereby, do not and will not conflict with, contravene, result in a violation or breach of or default under (with or without the giving of notice or the lapse of time or both), create in any other Person a right or claim of termination or amendment, or require modification, acceleration or cancellation of, or result in the creation of any Lien (or any obligation to create any Lien), on any of the properties or assets of Sellers, under, (a) any Law applicable to Sellers or any of their respective properties or assets, (b) any provision of any of the Organizational Documents of Sellers or (c) except as set forth on Schedule 2.3(a), any material Contract, or any other agreement or instrument to which Sellers are a party or by which any of their respective properties or assets may be bound, other than, in the case of clause (c), as would not be reasonably expected to adversely affect Sellers ability to perform under this Agreement.

(b) The execution, delivery and performance of this Agreement and the Ancillary Agreements by the Company, and the consummation of the transactions contemplated hereby and thereby, do not and will not conflict with, contravene, result in a violation or breach of or default under (with or without the giving of notice or the lapse of time or both), create in any other Person a right or claim of termination or amendment, or require modification, acceleration or cancellation of, or result in the creation of any Lien (or any obligation to create any Lien), on any of the properties or assets of the Company, under, (a) any Law applicable to the Company or any of its respective properties or assets, (b) any provision of any of the Organizational Documents of the Company or (c) except as set forth on Schedule 2.3(b), any material Contract, or any other agreement or instrument to which the Company is a party or by which any of their respective properties or assets may be bound.

2.4 Status.

(a) Organization. MDSIS is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has full corporate power and authority to conduct its business and to own or lease and to operate its properties as and in the places where such business is conducted and such properties are owned, leased or operated. 1185 Advisors is a limited liability company, duly organized, validly existing and in good standing under the Laws of Delaware, and has full limited liability company power and authority to conduct its business and to own or lease and to operate its properties as and in the places where such business is conducted and such properties are owned, leased or operated.

(b) Organization. The Company is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has full limited liability company power and authority to conduct its business and to own or lease and to operate its properties as and in the places where such business is conducted and such properties are owned, leased or operated.

(c) Qualification. The Company is duly qualified or licensed to do business as a foreign entity and in good standing in each of the jurisdictions specified in Schedule 2.4, which includes each jurisdiction in which the nature of its business or the properties owned or leased by it makes such qualification or licensing necessary except where the failure to be so qualified, licensed or in good standing would not have a Material Adverse Effect.

(d) Organizational Documents. The Company has made available to Buyer complete and correct copies of the Organizational Documents of the Company, as amended, modified or waived through and in effect on the date hereof. Each of the Organizational Documents is in full force and effect. The Company is not in violation of any of the provisions of its Organizational Documents.

2.5 Investments and Subsidiaries; Transfer of Assets.

(a) The Company does not own, and since inception has not owned, directly or indirectly, any shares of capital stock or other securities of, or interest in, any other Person, except (i) in investment advisory accounts managed by the Company for third persons and (ii) as set forth on Schedule 2.5.

(b) No dissenter s or other comparable rights are exercisable by any Person in respect of the transactions contemplated by this Agreement.

2.6 Financial Statements.

(a) The Company has delivered to Buyer complete and correct copies of the Financial Statements.

(b) The Financial Statements are complete and correct in all material respects, have been derived from the accounting books and records of the Company, and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods presented in the Financial Statements except as may be indicated in the notes thereto and subject, in the case of interim unaudited Financial Statements, only to normal recurring year-end adjustments, and the absence of footnotes.

(c) The balance sheets included in the Financial Statements present fairly in all material respects the financial position of the Company as at the respective dates thereof, and the statements of income, statements of members equity and statements of cash flows included in such Financial Statements present fairly in all material respects the results of operations and cash flows of the Company for the respective periods indicated.

2.7 Regulatory Documents.

(a) The Company and each Fund have in all material respects timely filed all forms, reports, notices, registration statements and supplements thereto, advertising or marketing materials and all other documents, together with any amendments required to be made with respect thereto, that were requested or required to be filed with any Governmental Authority, including the SEC, or any Self Regulatory Organization (collectively, the Regulatory Documents), and have timely paid all fees and assessments due and payable in connection therewith.

(b) The Company, if so required, and each of its officers and employees which is or who are required to be registered, if so required by the nature of their work for the Company, are duly registered as applicable (i) as an investment adviser under the Advisers Act and under applicable state statutes, (ii) as an investment adviser representative (as defined in the Advisers Act) under applicable state statutes, and (iii) with all other applicable Governmental Authorities (including Self Regulatory Organizations), where any such registration is necessary in order for the Company to conduct its business in accordance with applicable Law. Schedule 2.7 lists the Governmental Authorities (including Self Regulatory Organizations) with which the Company is so registered and the capacity in which it is registered. Each such registration is in full force and effect and has been in full force and effect during the time periods which such registration was required. The Company has made available to Buyer a true, complete and correct copy of all registration forms filed by the Company or to be filed by the Company to accomplish the registrations listed on Schedule 2.7.

(c) The Regulatory Documents comply and have complied in all material respects with the requirements of all applicable Laws (including the Exchange Act, the Securities Act, the 1940 Act and the Advisers Act and all rules and regulations thereunder, including the rules and regulations of all Self Regulatory Organizations) applicable to such Regulatory Documents.

2.8 Ineligible Persons. None of the Company, Sellers or any associated person (as defined in the Advisers Act) thereof, is ineligible pursuant to Section 203 of the Advisers Act to serve as an investment adviser or as an associated person to a registered investment adviser.

2.9 Investment Contracts and Clients.

(a) Schedule 2.9(a) sets forth a true, complete and correct list that identifies each investment advisory Signing Date Client of the Company, and shows for each Client and as of the date hereof, the fee arrangements, investment style and net Assets under Management. For each Client listed on Schedule 2.9(a) that is a Fund, also listed is the (i) exception relied on, if any, from registration as an investment company under the 1940 Act and the (ii) exemption relied on from registration with the CFTC, or if no such exemption is listed, such Fund is not obligated to make a filing with the CFTC. To the Knowledge of the Company, each Client listed on Schedule 2.9(a) is being served by the Company in all material respects in accordance with the terms of the Advisory

Agreement with respect to such Client. The Company has administered all accounts for which it acts as an investment adviser or in a similar capacity, in all material respects in accordance with the terms of the Contracts relating thereto, the Advisers Act and all applicable Laws. Each Advisory Agreement set forth on Schedule 2.9 under which MDSIS was designated an investment advisor was validly and enforceably assigned to the Company in connection with its formation in 2006.

(b) To the Knowledge of the Company, no material dispute exists between the Company and any Client of the Company or of the Business.

(c) The Company has adopted a formal code of ethics and a written policy regarding insider trading and front running, true, complete and correct copies of which have been made available to Buyer. Such code of ethics and policy regarding insider trading and front running comply in all material respects with Section 204A of the Advisers Act, respectively. The policies of the Company with respect to avoiding conflicts of interest are as set forth in the Form ADV of the Company. As of the date of this Agreement, there are no material violations of, or, to the Knowledge of the Company, allegations that any violations have occurred or been made with respect to, such code of ethics, policy regarding insider trading and front running or the conflict of interest policies.

(d) Neither the Company nor, to the Knowledge of the Company, any other Person associated (as defined under the Advisers Act) with it, has for a period not less than five years prior to the date hereof been convicted of any crime or is or has been subject to any disqualification that would be a basis for denial, suspension or revocation of registration of an investment adviser under Section 203(e) of the Advisers Act and, to the Knowledge of the Company, there is no reasonable basis for, or proceeding or investigation, whether formal or informal, or whether preliminary or otherwise, that would reasonably be expected to become the basis for, any such disqualification, denial, suspension or revocation.

(e) Except as set forth on Schedule 2.9(e), the Company has not paid a cash fee, directly or indirectly, to any Person who, directly or indirectly, solicits any Client or prospective Client for, or refers any Client or prospective Client to, the Company other than in compliance with Rule 206(4)-3 of the Advisers Act.

(f) Except as set forth on Schedule 2.9(f), there are no obligations or requirements to refund or return any amounts or funds paid, payable or to be paid under any Advisory Agreement.

(g) The Company has not incurred any Loss as a result of any failure or alleged failure to be compliant with the CFA Institute s Global Investment Performance Standards.

2.10 Wrap-Fee Programs. All wrap-fee programs of the Company are and have been conducted in compliance in all material respects with Rule 3a-4 under the 1940 Act and all other applicable Law and Contracts, including all disclosure and delivery

requirements applicable to such programs. All disclosure documents and Advisory Agreements relating to the wrap-fee programs for which the Company serves as an adviser, sponsor or portfolio manager are set forth in Schedule 2.10, which identifies the program sponsors in respect of each wrap-fee program sponsored by a third-party.

2.11 Fund-Related Issues.

(a) The Affiliates of the Company that may be involved in the sale of Fund interests are currently registered, or are not otherwise required to be registered, as a broker/dealer under the Exchange Act, or under any state Law in connection with offerings of securities;

(b) Each of the Funds has complied with all requirements of the private placement exemption in Section 4(2) of the Securities Act (Private Placement Exemption) and offering of interests in Funds has complied in all material respects with the requirements of the Exchange Act and the Securities Act, as applicable;

(c) Each of the Funds qualifies, and has qualified since inception, under an exception from the definition of investment company under the 1940 Act, and the Company does not sponsor or act as adviser to any funds registered under the 1940 Act;

(d) None of the assets of the Funds are treated as plan assets under ERISA;

(e) Intentionally omitted.

(f) The securities offerings conducted by the Funds would not be integrated with each other for purposes of establishing the availability of the Private Placement Exemption, and the Funds would not be integrated with each other for purposes of establishing the availability of an exception from registration under the 1940 Act;

(g) Each of the Funds has made all material filings required to be made with each state or other jurisdiction in connection with its offers and sales of securities;

(h) There are no side letters that have been executed in connection with investments in any the Funds;

(i) Each Fund is duly and validly organized, in good standing and validly existing under the Laws of the jurisdiction in which it is organized, with full and adequate power and authority to conduct business as currently conducted and as described in its private placement memorandum (Memorandum). Each Fund is in good standing and duly qualified as a foreign entity in each jurisdiction in which the conduct of its business in connection with the offering of its interests (Offering) renders such qualification necessary except where the failure to be in good standing would not have a

Material Adverse Effect. As used in this Agreement, the term Memorandum shall be deemed to include any amendments or supplements thereto;

(j) The Memorandum for each Fund contains all information required to be given to offerees and purchasers of Fund interests in order to come, in all material respects, within the Private Placement Exemption. Such Memorandum, together with any additional written communication that constitutes an offer to sell or a solicitation of an offer to buy the securities as relied upon by investors for use in connection with any Offering (any such additional written material being herein referred to as Selling Material) has not contained, at any time during an Offering, any untrue statement of a material fact, or has omitted or will omit to state any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were and are made, not misleading;

(k) Neither the Funds nor, to the Sellers Knowledge, any officer, director, employee or Affiliate of the Funds or the Company has taken in conflict with the conditions and requirements of the Private Placement Exemption or applicable Blue Sky or state securities Laws or any action that would make the Private Placement Exemption, or any similar exemption or qualification under such applicable Blue Sky or state securities Law, unavailable with respect to the offering and sale of the Fund interests. All investors in the Funds are accredited investors as such term is defined in the SEC rules and regulations, except as set forth on Schedule 2.11(k);

(l) There is no Litigation pending or, to the Sellers Knowledge, threatened against, or involving any of the Offerings or any of the Funds respective properties or businesses, which might create a Material Adverse Effect.

(m) Neither the Company nor any Affiliates of the Company are in violation of the respective Organizational Documents or any other agreements ancillary to the Organizational Documents of the Funds, and none of the Funds are in default in the performance of any obligation, agreement or condition contained in any agreement of any of the Funds or in any agreement by which any of the Funds are bound, other than as would not be reasonably expected to have a Material Adverse Effect. The execution and delivery of this Agreement, the fulfillment of the terms set forth herein and the consummation of the transactions contemplated herein will not conflict with or constitute a breach of or default under any of the Organizational Documents, or any Law, administrative rule, regulation, order or decree of any court or any governmental body or administrative agency applicable to any of them;

(n) The Company, each Fund and each of their respective employees, is in compliance with all applicable federal, state, local, SRO, or foreign statutes, Laws, ordinances, rules, judgments, orders, and regulations of any Governmental Authority applicable to its business and operations, except for violations that would not result, or reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect. Neither the Company nor any Fund, nor any Person acting on behalf of the Company or any Fund, has, directly or indirectly, on behalf of or with respect to the Company or any Fund: (1) made or received any unreported political contribution; (2)

made or received any payment that was not legal to make or receive; (3) created or used any off-book bank or cash account or slush fund or (4) violated the Foreign Corrupt Practices Act of 1977, as amended. All permits and regulatory licenses required to conduct the Business have been obtained, are in full force and effect, and are being complied with, except where the failure to hold or to be in compliance with such permits would not result, or reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect;

(o) Except as set forth on Schedule 2.11(o), the financial information (including, without limitation, the balance sheets and any accompanying notes and schedules) that has been provided to Buyer concerning each of the Funds presents fairly in all material respects their respective financial positions as of the dates thereof, and through the date of the Closing there has been no Material Adverse Effect in their financial condition since the dates of such information;

(p) Apart from the offering of Fund interests contemplated by each Memorandum, neither the Funds, nor, to the Sellers Knowledge, any officer, director, employee or Affiliate of any of them has, either directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any similar interest in any of the Funds;

(q) Except as set forth in Schedule 2.11(q), there has not been a change in the condition, business or properties of any of the Funds, financial or otherwise, from that on December 31, 2007, and each of their outstanding debt, properties and business substantially conform and shall at the Closing substantially conform to the descriptions thereof contained in their respective Memoranda, in each case other than as would not be reasonably expected to have a Material Adverse Effect; and

(r) The audited balance sheet for each of the Funds and the related audited statements of income, changes in owner s equity and cash flow for the period ending December 31, 2007 that have been provided to the Buyer, comply in all material respects with all accounting requirements applicable to the Funds, have been prepared in accordance with GAAP consistently applied, and fairly present, in all material respects, the financial position of each Fund as of the dates thereof and the results of operations and cash flows for the periods then ending. Such audited financial information has been distributed to investors in their respective Funds within 120 days of such Fund s fiscal year end. There are no liabilities, obligations or contingencies of any Fund (whether absolute or contingent) except liabilities that have been reserved against in the respective balance sheets or that have arisen since the date of such balance sheets in the ordinary course of business or that would not have a Material Adverse Effect.

2.12 Undisclosed Liabilities, etc. The Company has no liabilities or obligations of any nature, whether known, unknown, absolute, accrued, contingent or otherwise and whether due or to become due, except (a) as and to the extent disclosed or reserved against in the Balance Sheet or specifically disclosed in the notes thereto and (b) for liabilities and obligations that (i) were incurred in the ordinary course of business and, if

incurred after the date hereof, are not prohibited by this Agreement and (ii) individually and in the aggregate, would not reasonably be expected to have or result in a Material Adverse Effect. Since the date of the Balance Sheet, there has not occurred or come to exist any Material Adverse Effect.

2.13 Absence of Changes. Since the date of the Balance Sheet, except as specifically permitted after the date hereof pursuant to Section 4.1, the Company has not:

(a) purchased or redeemed, directly or indirectly, any shares of its equity interests;

(b) issued or sold any equity interests, or any securities convertible into or exchangeable for any such interests, or issued, sold, granted or entered into any subscriptions, options, warrants, conversion or other rights, agreements, commitments, arrangements or understandings of any kind, contingently or otherwise, to purchase or otherwise acquire any such shares or interests or any securities convertible into or exchangeable for any such interests;

(c) incurred any indebtedness for borrowed money, issued or sold any debt securities or prepaid any debt (including, without limitation, any borrowings from or prepayments to Sellers) except for borrowings and repayments in the ordinary course of business;

(d) mortgaged, pledged or otherwise subjected to any Lien, any of its real property or other properties or assets, tangible or intangible, except in the ordinary course of business;

(e) forgiven, cancelled, compromised, waived or released any debts, claims or rights, except for debts, claims and rights against Persons (excluding Sellers, the Company and any Affiliate of any of them) that were forgiven, cancelled, compromised, waived or released in the ordinary course of business;

(f) modified any existing Contract or entered into (x) any agreement, commitment or other transaction, other than related agreements entered into in the ordinary course of business and involving an expenditure by the Company of less than $50,000 in each case and $100,000 in the aggregate, or (y) any agreement or commitment that, pursuant to its terms, is not cancelable without penalty on less than 30 days notice;

(g) paid any bonus to any officer, director, employee, sales representative, agent or consultant, or granted to any officer, director, employee, sales representative, agent or consultant any other increase in compensation in any form, except in the ordinary course of business consistent with past practices;

(h) entered into, adopted or amended any employment, consulting, retention, change-in-control, collective bargaining, bonus or other incentive compensation, profit-sharing, health or other welfare, stock option or other equity, pension, retirement, vacation, severance, deferred compensation or other employment, compensation or benefit plan, policy, agreement, trust, fund or arrangement for the

benefit of any officer, director, employee, sales representative, agent, consultant or Affiliate (whether or not legally binding);

(i) had any strike or other employment-related problem;

(j) except as set forth on Schedule 2.13(j), amended any of its Organizational Documents;

(k) changed in any respect its accounting practices, policies or principles;

(l) incurred, assumed, guaranteed or otherwise become directly or indirectly liable with respect to any liability or obligation in excess of $50,000 in each case or $100,000 in the aggregate at any one time outstanding (whether absolute, accrued, contingent or otherwise and whether direct or indirect, or as guarantor or otherwise with respect to any liability or obligation of any other Person);

(m) transferred or granted any rights or licenses under, or entered into any settlement regarding the infringement of, Company Intellectual Property or entered into any licensing or similar agreements or arrangements;

(n) sold any assets with a value in excess of $50,000 in the aggregate; or

(o) taken any action or omitted to take any action that would result in the occurrence of any of the foregoing.

2.14 Tax Matters.

(a) Except as set forth on Schedule 2.14(a), (i) all material Tax Returns of the Company or the Funds, that were required to be filed have been duly and timely filed and when filed all such Tax Returns were correct and complete in all material respects, (ii) all material Taxes of the Company and the Funds (whether or not shown on any Tax Return) that are due and payable prior to or as of the Closing Date by the Company or the Funds have been paid or are reflected in accordance with GAAP as a reserve for Taxes on the most recent Financial Statements, and (iii) neither the Company nor any Fund is currently the beneficiary of any extension of time within which to file any Tax Return. No written claim has been made by a taxing authority of a jurisdiction where the Company or any Fund does not file Tax Returns that the Company or any Fund is or may be subject to taxation in that jurisdiction. There are no Liens for Taxes (other than Taxes not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings and which is set forth on Schedule 2.14(a)(iii)) upon any asset of the Company or any Fund.

(b) Except as set forth on Schedule 2.14(b), there has been no claim or dispute (other than a claim or dispute that has been settled) concerning any liability for Taxes of the Company or any Fund asserted by any taxing authority.

(c) Except as set forth on Schedule 2.14(c), no Tax Returns of the Company or any Fund are currently the subject of audit or examination, nor has the Company or any Fund been notified of any request for an audit or examination, and Sellers have made available to Buyer correct and complete copies of all examination reports, and statements of deficiencies relating to material Taxes that were filed, assessed against or agreed to by the Company or any Fund.

(d) Neither the Company nor any Fund has (i) waived any statute of limitations with respect to Taxes that is still outstanding, (ii) agreed to any extension of the time period for Tax assessment or collection that is still outstanding, or (iii) executed or filed any power of attorney with respect to Taxes, which waiver, agreement or power of attorney is currently in force.

(e) The Company and each Fund have withheld and paid all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, member or other third party.

(f) Except as set forth on Schedule 2.14(f), neither the Company nor any Fund (or any successor thereto or transferee of the assets thereof) will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) closing agreement as described in Code Section 7121 (or any corresponding provision or similar provision of state, local or foreign Tax Law) executed on or prior to the Closing Date; (ii) installment sale or open transaction disposition made prior to Closing; or (iii) prepaid amount received on or prior to the Closing Date.

(g) Except for the covenants as to indemnification set forth in this Agreement or in such agreements or arrangements the principal purpose of which does not relate to Taxes, the Company is not party to or bound by or has any obligation under any Tax allocation, sharing, indemnity or similar agreement or arrangement.

(h) The Company and each Fund have been treated by the Company and Sellers as a partnership for United States federal income tax purposes since its formation. Neither the Company nor any Fund has filed an entity classification election to be treated as an association taxable as a corporation.

2.15 Assets. Except as set forth on Schedule 2.15(a)(i), the Company and each Fund owns, or otherwise has full, exclusive, sufficient and legally enforceable rights to use all of the properties and assets (real, personal or mixed, tangible or intangible), used or held for use in connection with, necessary for the conduct of, or otherwise material to, the Business (the Assets). The Company has good and valid title to, or in the case of leased property has good and valid leasehold interests in, all Assets, including, but not limited to, all such Assets reflected in the Balance Sheet or acquired since the date thereof (except as may be disposed of in the ordinary course of business after the date hereof and not in violation of this Agreement), in each case free and clear of any Lien, except Permitted Liens. The Company has maintained all tangible Assets in good repair, working order and operating condition subject only to ordinary wear and tear, and all

such tangible Assets are fully adequate and suitable for the purposes for which they are presently being used. Sellers have set forth on Schedule 2.15(a)(ii) a list of all material tangible Assets.

2.16 Real Property. The Company does not and has never owned, nor held any other interest in, any real property, including any leasehold interests.

2.17 Contracts.

(a) Disclosure. Schedule 2.17(a) contains a complete and correct list, as of the date hereof, of all Contracts (other than Advisory Agreements included on Schedule 2.9(a)). Sellers have made available to Buyer complete and correct copies of all written Contracts, and accurate descriptions of all material terms of all oral Contracts, set forth or required to be set forth in Schedule 2.17(a).

(b) Enforceability. All Contracts are legal, valid, binding, in full force and effect and enforceable against the Company and, to the Knowledge of the Company, the other parties thereto. The Company has not received any written or, to the Company's Knowledge, oral notice of, and to the Company's Knowledge there does not exist any, material violation, breach or event of default, or event or condition that, after notice or lapse of time or both, would constitute a violation, breach or event of default thereunder. Except as set forth in Schedule 2.17(b), the enforceability of all Contracts will not be affected in any manner by the execution, delivery or performance of this Agreement, and no Contract (other than Advisory Agreements) contains any change in control or other terms or conditions that will become applicable or inapplicable as a result of the consummation of the transactions contemplated by this Agreement.

2.18 Intellectual Property.

(a) Disclosure. Schedule 2.18(a) sets forth a complete and correct list of all Intellectual Property, registered with a Governmental Authority, that is owned by the Company (the Owned Intellectual Property).

(b) Title. Except as set forth in Schedule 2.18(b), all of the Intellectual Property used or held for use in connection with, necessary for the conduct of, and otherwise material to, the Business (the Company Intellectual Property), is owned by the Company. Except as set forth in Schedule 2.18(b), the Company has the exclusive right to use the Owned Intellectual Property in connection with the Business, free