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June 7, 2023

By ECF

The Honorable Vera M. Scanlon  
Chief United State District Judge  
United States District Court for the Eastern District of New York  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: SEC v. GPB Capital Holdings, LLC, et al., 21-cv-00583-MKB-VMS**

Dear Judge Scanlon:

We represent Western International Securities, Inc., FSC Securities Corp., Triad Advisors, LLC, Royal Alliance Associates, Inc., Sagepoint Financial, Inc., and Woodbury Financial Services, Inc., who are defendants in *Kinnie Ma Individual Retirement Account, et al., individually and on behalf of all others similarly situated, v. Ascendant Capital, LLC, et al.* (W.D. Texas, Case No. 19-cv-01050) (“*Kinnie Ma*”). We write, not only on behalf of our own clients, but also on behalf of twenty-six other broker-dealers and investment adviser firms who have been named as defendants in the *Kinnie Ma* putative class action (collectively, the “Broker-Dealer Defendants”<sup>1</sup>). We write regarding your April 28, 2023 order regarding the Securities and Exchange Commission's ("SEC") pending order to show cause (Dkt. 88) seeking the appointment of a Receiver over the Company and a litigation injunction (the "Receivership Motion"). We move the court to accept the two amicus curiae letter-briefs attached hereto as Exhibit 1 and Exhibit 2, on behalf of various broker-dealers who sold interests in GPB Capital Holdings, LLC's ("GPB") limited partnerships who wish to offer some additional perspective on the pending Receivership Motion.

I have consulted the Local Court Rules of the United States District Courts for the Southern and Eastern Districts of New York and find no procedure for filing of amicus briefs.

<sup>1</sup> Aegis Capital Corp., Aeon Capital, Inc., American Capital Partners, LLC, Arete Wealth Management, LLC, Arkadios Capital, Ausdal Financial Partners, Inc., Center Street Securities, Inc., Crown Capital Securities, LP, DFIG Investments, Inc., DH Hill Securities, LLP, Dinosaur Financial Group, LLC, Geneos Wealth Management, Inc., HighTower Advisors, LLC, HighTower Securities, LLC, IBN Financial Services, Inc., Innovation Partners, LLC, Kingsbury Capital, Inc., Landolt Securities, Inc., Money Concepts Capital Corp., Orchard Securities, LLC, Sanctuary Wealth Group LLC (formerly known as David A. Noyes & Co.), SCF Securities, Inc., Sentinus Securities LLC n/k/a Sentinus-Halo Securities, LLC, Uhlmann Price Securities, LLC, Vestech Securities, Inc. and Whitehall-Parker Securities, Inc.

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Similarly, the Court's Individual Practice Rules do not provide any guidance regarding submission of amicus briefs. However, "[a] district court has broad discretion to grant or deny an appearance as amicus curiae in a given case." *Citizens Against Casino Gambling in Erie County v. Kempthorne*, 471 F.Supp.2d 295, 311 (W.D.N.Y. 2007) (citing *United States v. Ahmed*, 788 F.Supp. 196, 198 n. 1 (S.D.N.Y.1992), aff'd, 980 F.2d 161 (2d Cir.1992); *United States v. Microsoft Corp.*, 2002 WL 319366 at \*2 (D.D.C. 2002), "[a]n amicus curiae...does not represent the parties but participates only for the benefit of the Court. Accordingly, it is solely within the discretion of the Court to determine the fact, extent, and manner of participation by the amicus." (citing *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir.1997); *Ryan*, 125 F.3d at 1063 ("[a]n amicus brief should normally be allowed when ...the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide."))

These amicus letter-briefs will add valuable perspective for the Court regarding extensive litigation that is related to and affected by this proceeding, and specifically by the pending Receivership Motion, but in which GPB is not a named party.

Thank you very much for your attention to this request.

Very truly yours,

MARKUN ZUSMAN & COMPTON LLP



Rick Smith

# Exhibit 1



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The Broker-Dealer Defendants are being sued for in excess of \$1 billion in damages resulting from having sold any interests in GPB-sponsored limited partnerships. The gravamen of the *Kinnie Ma* Complaint against the Broker-Dealer Defendants is that GPB Capital Holdings, LLC (“GPB”) was a Ponzi scheme and that if a broker-dealer sold one unit in GPB-sponsored limited partnerships, or one thousand units in GPB-sponsored limited partnerships, they are each

<sup>1</sup> Aegis Capital Corp., Aeon Capital, Inc., American Capital Partners, LLC, Arete Wealth Management, LLC, Arkadios Capital, Ausdal Financial Partners, Inc., Center Street Securities, Inc., Crown Capital Securities, LP, DFIG Investments, Inc., DH Hill Securities, LLP, Dinosaur Financial Group, LLC, Geneos Wealth Management, Inc., HighTower Advisors, LLC, HighTower Securities, LLC, IBN Financial Services, Inc., Innovation Partners, LLC, Kingsbury Capital, Inc., Landolt Securities, Inc., Money Concepts Capital Corp., Orchard Securities, LLC, Sanctuary Wealth Group LLC (formerly known as David A. Noyes & Co.), SCF Securities, Inc., Sentinus Securities LLC n/k/a Sentinus-Halo Securities, LLC, Uhlmann Price Securities, LLC, Vestech Securities, Inc. and Whitehall-Parker Securities, Inc.

equally liable for the entire \$1 billion because every sale propped up the alleged Ponzi scheme. A substantial part of the impetus behind the *Kinnie Ma* case is that investors have not been paid any funds out of the amounts generated by GPB's sale of assets, and either believe, or are being led to believe that the investment was a Ponzi scheme, a total loss and that they will never be paid anything.

As stated in the letters to the court from GPB, the SEC and the Monitor dated May 8, 2023, approximately \$1 billion dollars is available to be distributed to approximately 17,000 investors. As also referenced in those letters, GPB is involved in numerous litigations in federal and state court.<sup>2</sup> The implication of those two facts taken together is that there are a large number of investors in the GPB limited partnerships that have not received distributions of the funds that GPB is currently holding until the Receivership Motion is decided. And in addition to the *Kinnie Ma* matter, there are numerous other litigation and arbitration matters in which investors are actively pursuing claims and expending resources and causing other individuals and entities to expend resources in an effort to recoup funds they contend were lost as a result of their investments in GPB limited partnerships, largely because GPB has been unable to make distributions. Simply put, the lack of a resolution to the Receivership Motion is injecting massive uncertainty into numerous federal and state cases as well as private arbitrations related to investments in GPB-sponsored limited partnerships affecting thousands of investors and numerous third parties, including every one of the Broker-Dealer Defendants.

Entering the order requested in the Receivership Motion will bring clarity to these matters while also providing the quickest path toward investor distributions. Based on the Monitor's reports and the limited partnerships' SEC filings, it appears that investors will receive substantial sums should the money generated through the asset sales be distributed to investors. That will have a direct and immediate impact on dozens, if not hundreds of matters pending around the country.

Once the distribution process is completed, investors will have a clear idea of what they have received back from their GPB investments. That is a crucial question to resolve in order to facilitate the resolution of claims against not only GPB, but other individuals and entities, including our clients.

Our clients share the SEC's, the Monitor's and GPB's view that under the circumstances of this case, Mr. Gentile's argument that that his or his nominees' involvement in maximizing the returns to investors is necessary should not be given credit. As set forth in the SEC's Receivership Motion and in the Monitor's February 27, 2023 letter to the Court (Dkt.#130), if the Monitor is appointed Receiver, he will within 45 days of his appointment file a proposed plan to distribute the approximately \$1 billion in investor funds back to investors. That is the result that will most benefit investors in the GPB limited partnerships and serve to resolve the many disputes surrounding those investors GPB investments.

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<sup>2</sup> Recent SEC filings by one GPB-sponsored limited partnership lists twenty-one separate federal and state actions where GPB is a defendant.

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Very truly yours,

MARKUN ZUSMAN & COMPTON LLP

A handwritten signature in blue ink, appearing to read "Rick Smith", is positioned below the firm name.

Rick Smith

# Exhibit 2



PARTNER Rick Smith

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Dear Judge Scanlon:

We represent FSC Securities Corporation ("FSC"). We write regarding your April 28, 2023 order regarding the Securities and Exchange Commission's ("SEC") pending application for an order to show cause (Dkt. 88) seeking the appointment of a receiver over the Company and a litigation injunction (the "Receivership Motion"). We write to offer further perspective to the letters submitted by the parties and the Monitor.

The lack of a resolution to the Receivership Motion is preventing and injecting massive uncertainty into numerous federal and state cases as well as private arbitrations related to investments in GPB sponsored limited partnerships affecting countless numbers of investors and third parties. Our client, FSC, has a unique situation, and is suffering injury as a result of the delay in resolving this matter.

FSC came to a resolution of a group of investors' claims regarding the sale of shares in two GPB limited partnerships. The resolution involved the transfer of shares to FSC. However, when the investors and FSC attempted to effectuate the transfer of shares, they were told by GPB that it could not approve the transfer as required by the settlement agreement because of the pendency of the Receivership Motion and Mr. Gentile's actions. This was close to a year ago. In other words, the current procedural posture of this proceeding appears to be restricting the alienability of interests in the GPB limited partnerships while also denying investors distributions of their funds. In the example above, as a result of the inability to effectuate the share transfer, the group of investors initiated a second proceeding in state court (the "lawsuit") attempting to force a resolution of a dispute that had been settled<sup>1</sup>, when the issue could have been resolved

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<sup>1</sup> *Mary Purcell et al. v. FSC Securities Corporation et al.*, Orange County (CA) Superior Court, Case No. 30-2022-0126F810-CU-FR-C1G.

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had there been a ruling on the Receivership Motion. To be clear, the genesis of the lawsuit that our client is subject to in state court in California is a lack of resolution of the Receivership Motion. The execution of the settlement of that lawsuit was frustrated by the continued pendency of the Receivership Motion and a lack of clarity regarding the appointment of a Receiver and the disposition of assets, and who has power to act on GPB's behalf. This is an example of the issues that the current status of the Receivership Motion is causing over and above the issues that status is causing in litigation that GPB is a party to.

FSC shares the SEC's view that under the circumstances of this case, Gentile's argument that that his or his nominees' involvement in maximizing the returns to investors is necessary should not be given credit. As set forth in the SEC's Receivership Motion and in the Monitor's February 27, 2023 letter to the Court (Dkt.#130), if the Monitor is appointed Receiver, he will within 45 days of his appointment file a proposed plan to distribute the approximately \$1 billion in investor funds back to investors. That is the result that will most benefit investors in the GPB funds and serve to resolve the many disputes surrounding those investors' GPB investments, including the unique situation of FSC as described above.

Very truly yours,

MARKUN ZUSMAN & COMPTON LLP



Rick Smith