

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
INVESTOR PROTECTION BUREAU

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In the Matter of

Assurance No. 16-132

**Investigation by ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New York, of**

Gondor Partners, LP;  
Gondor Partners, Ltd.;  
Gondor Capital Management, LLC;  
Gondor Advisors, LLC; and  
Vincent Au,

Respondents.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation pursuant to Article 23-A, Section 352 *et seq.* of the General Business Law of New York (the "Martin Act") and Section 63(12) of the Executive Law of New York, concerning private investment funds Gondor Partners, LP and Gondor Partners, Ltd. (the "Funds"); Gondor Partners, LP's general partner, Gondor Capital Management, LLC; and the Funds' investment manager, Gondor Advisors, LLC (collectively, "Gondor"), all of which are controlled and/or operated by Vincent Au ("Au") (the "Investigation").

This Assurance of Discontinuance ("Assurance") contains the findings of the Investigation and the relief agreed to by OAG and Au (collectively "the parties").

## **OAG'S FINDINGS**

1. Vincent Au is an individual who resides in New York County in the State of New York.

2. From approximately May 2013 through the present, Au has operated Gondor Partners, LP and Gondor Partners, Ltd., both of which are private investment funds (the "Funds"). Gondor Capital Management, LLC, which is Gondor Partners, LP's general partner, and Gondor Advisors, LLC, which is the Funds' investment manager, are both controlled by Au.

3. Gondor Partners, LP is a Delaware limited partnership, and Gondor Partners, Ltd. is a Cayman Islands exempted company. Both Funds are operated from the State of New York.

4. The Funds represent that, as of December 22, 2016, Gondor Partners, LP had 47 limited partners and approximately \$7.7 million in assets, and Gondor Partners, Ltd. had 119 shareholders (together with Gondor Partners, LP's limited partners, "investors") and approximately \$4.29 million in assets.

### **I. Gondor's Marketing Pitchbook**

5. Gondor's investment strategy on behalf of the Funds consists in significant part of selling equity options. In exchange for selling such options, the Funds receive a premium. If the stock price moves against the Funds, the Funds risk losses when the option is exercised by the counterparty.

6. For example, the Funds engage in an options strategy known generally as "writing puts." In this strategy, the Funds agree to buy a certain number of shares from a counterparty at a particular price that is the same or lower than the current stock price, in exchange for a premium that the Funds receive. This strategy may (a) result in a profit equal to the option premium if the

stock price rises or remains the same, as the option will remain out-of-the-money and the counterparty will not sell at the price agreed to in the option contract; (b) break even if the stock price declines slightly, by an amount equal to the option premium that the Fund received; or (c) result in a loss if the stock price declines by an amount greater than the option premium. These results can be affected by the hedging strategies described below.

7. The Funds also engage in an options strategy known generally as selling “covered calls.” In this strategy, the Funds (a) purchase stock, and (b) sell call options on the same stock, such that the Funds agree to sell a certain number of shares to a counterparty at an agreed-upon price, in exchange for a premium payment to the Fund. This strategy may result in a profit if the stock price rises or remains the same, may break even if the stock price falls by an amount equal to the option premium received, and may result in a loss if the stock price falls to a level that is not offset by the option premium. These results can be affected by the hedging strategies described below.

8. Gondor’s options strategies are coupled with strategies designed to mitigate, or hedge against, the potential for losses, but such hedging strategies are not always possible to enter into, may limit profits, and may not prevent losses.

9. When marketing the Funds to potential investors in or around 2013, Au showed certain potential investors a marketing pitchbook (the “Pitchbook”). The slides in the Pitchbook describing the “writing puts” and “covered calls” strategies contained scenarios showing how the Funds could profit or break even from such transactions. The Pitchbook also contained disclaimers referring the potential investors to offering memoranda that included notifications about risks associated with investing in the Funds. The Pitchbook did not include scenarios

showing how the Funds could lose money as a result of the “writing puts” and “covered calls” strategies. OAG finds that the Pitchbook slides should have included scenarios in which these options transactions result in losses. Relevant excerpts of the Pitchbook are attached hereto as Exhibit A.

## **II. Statements Concerning Prior Administrative Action**

10. On or around April 30, 2013, Au was officially advised that the Financial Industry Regulatory Authority (“FINRA”) had filed a complaint alleging (1) that Au, as anti-money laundering compliance officer at Avalon Partners, failed to respond to red flags of suspicious activity involving low priced stocks, but instead advocated to a clearing firm that the customer’s trades be accepted, and (2) that Au sold 50 million shares of unregistered subpenny stock. Au was made aware of FINRA’s investigation prior to April 30, 2013.

11. The Funds’ May 2013 offering memoranda state: “There have been no administrative, civil or criminal actions within the past ten (10) years preceding this Memorandum against the Fund, the Investment Manager or Mr. Vincent Au.” This statement is false in light of the FINRA action described above.

12. FINRA’s complaint against Au was resolved on July 18, 2013, with a 30 day suspension from any trading activity, an additional five month suspension from trading in any principal capacity, and a \$20,000 fine.

13. The Funds’ revised September 2013 offering memoranda notified potential investors of the FINRA action, but separately included the above false statement.

## **III. Conclusion**

14. OAG finds that the foregoing conduct by Gondor and Au violated provisions of



the Martin Act, Article 23-A of the General Business Law, and violated provisions of § 63(12) of the Executive Law.

### **RELIEF**

WHEREAS, Au and Gondor neither admit nor deny the OAG's Findings above;

WHEREAS, OAG is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

#### **Remedial Measures**

15. Au shall cause the administrator of each Fund to send a copy of a letter in the form attached hereto as Exhibit B (the "Letter") to each and every investor in the Funds, by the same means that the administrator sends monthly statements to those investors, by January 5, 2017. Insofar as the Funds' administrator sends monthly statements to the Funds' investors by mail, the administrator shall send copies of the Letter to those investors by certified mail. Au shall certify to OAG in writing that he has completed the above, and that the Letter has been sent to each and every investor in the Funds, by January 6, 2017. This certification shall also state the address and/or electronic mail address to which the Letter was sent to each investor in the Funds.

16. Notwithstanding the provisions of any written or oral agreement, the Funds' investors shall be permitted to redeem all or part of their investments in their Fund accounts, at each such investor's option, until and including February 6, 2017. Each such redemption shall be payable two weeks after such redemption request is received by Au, the Funds' administrator, or

another representative of the Funds.

17. Au agrees not to use any marketing documents for purposes of describing any investment or fund which include the "Investment Strategy – Covered Calls" or "Investment Strategy – Writing Puts" pages of the Pitchbook appended hereto as Exhibit A.

18. Au shall promptly distribute audited financial statements for 2014 and 2015 to all investors in the Funds.

19. For purposes of the relief agreed to in this Assurance, the term "Funds" shall mean either or both of Gondor Partners, LP and Gondor Partners, Ltd. as necessary to make the relief most inclusive.

20. Paragraphs 15 through 19 above shall also apply to all investors in the Funds whose accounts have been moved in whole or part from the Funds to any other investment fund that Au operates in whole or in part (including but not limited to Rivendell Partners, LP, and Rivendell Partners, Ltd.).

#### **Penalty**

21. In consideration of the making and execution of this Assurance, Au agrees that he will pay by wire transfer, certified check, or bank check payable to the State of New York \$20,000.00 in penalties, fees, and costs, no later than January 15, 2017.

22. All payments and correspondence related to this Assurance must reference Assurance No. 16-132.

23. Au agrees that neither he nor Gondor will claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax, directly or indirectly, for any portion of the payment that he shall make pursuant to this Assurance.

24. Au agrees that no portion of the payment that is required by this Assurance shall be paid by the Funds or any of their investors (other than himself), or by any investment fund operated in whole or in part by Au on behalf of clients (including but not limited to Rivendell Partners, LP, and Rivendell Partners, Ltd.), or by any investor in such fund (other than himself). Au further agrees not to seek indemnification or reimbursement from the Funds or any of their investors, or from any investment fund operated in whole or in part by Au on behalf of clients (including but not limited to Rivendell Partners, LP, and Rivendell Partners, Ltd.), or from any investor in such fund, for any payment required by this Assurance.

#### **Additional Provisions**

25. Au shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this Paragraph affects Au's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party.

26. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by Au and OAG's own factual investigation as set forth above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

27. If the Assurance is voided or breached, Au agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, Au expressly agrees and acknowledges that this Assurance

shall in no way bar or otherwise preclude OAG from commencing, conducting or prosecuting any investigation, action, or proceeding, however denominated, related to the Assurance, against Au, or from using in any way any statements, documents, or other materials produced or provided by Au prior to or after the date of this Assurance.

28. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Au in agreeing to this Assurance.

29. Au represents and warrants, through his signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

30. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

31. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

32. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

33. To the extent not already provided under this Assurance, Au shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance



with this Assurance.

34. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the Respondents, to:

Jason Masimore  
Kobre & Kim LLP  
Tower 42  
25 Old Broad Street  
London, EC2N 1HQ

If to the OAG, to:

Jonathan Zweig  
Assistant Attorney General  
Investor Protection Bureau  
120 Broadway, 23rd Floor  
New York, New York 10271

35. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and Au shall make no representation to the contrary.

36. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by OAG.

37. If a court of competent jurisdiction determines that Au or Gondor has breached this Assurance, Au shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

38. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to Executive

Law § 63(15), in lieu of commencing a statutory proceeding.

39. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

40. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

[Remainder of page intentionally left blank.]

41. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Dated: Jan. 3, 2016<sup>7</sup>

ERIC T. SCHNEIDERMAN

Attorney General of the State of New York  
120 Broadway  
New York, New York 10271

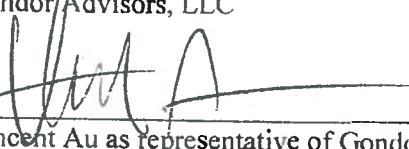
By:

  
Katherine C. Milgram  
Chief of the Investor Protection Bureau

Dated: 12/31, 2016

Gondor Partners, LP,  
Gondor Partners, Ltd.,  
Gondor Capital Management, LLC, and  
Gondor Advisors, LLC

By:

  
Vincent Au as representative of Gondor Partners,  
LP, Gondor Partners, Ltd., Gondor Capital  
Management, LLC, and Gondor Advisors, LLC

Dated: 12/31, 2016

Vincent Au

By:

  
Vincent Au

This Assurance has been reviewed by counsel, who certifies that the signature of Vincent Au above is true and authentic.

A handwritten signature in cursive script, appearing to read "Jason Masimore", is written over a horizontal line.

Jason A. Masimore  
Kobre & Kim (UK) LLP

Dated: January 2, 2017, ~~2016~~

Counsel for Vincent Au



## **Exhibit A**

# Investment Strategy – Covered Calls

**GONDOR**  
CAPITAL MANAGEMENT

## Option Premium Income Generates Alpha:

ABC company selling at \$10  
Sell ABC 11 calls @ \$0.50

### Price Rises:

Price rises above \$11

Sell stock @ \$11

**Profit:**

Difference between purchase and sell price	\$1.00
Option premium	\$0.50
Total profit	\$1.50

### Prices Remains Stagnant:

Price remains at \$10

Hold stock and resell options

**Profit:**

Option premium	\$0.50
Total profit	\$0.50

### Price Falls:

Price falls to \$9.50

Hold stock, break even and resell options

**Profit:**

Option premium	\$0.50
Difference between purchase and current price	(\$0.50)
Total profit	\$0.00



# Investment Strategy – Writing Puts

**GONDOR**  
CAPITAL MANAGEMENT

## Option Premium Income Generates Alpha:

ABC company selling at \$10  
Sell ABC 10 puts @ \$0.50

### Price Rises:

Price rises above \$10

Hold stock and resell options

Profit:	\$0.50
Option premium	\$0.50
Total profit	\$0.50

### Prices Remains Stagnant:

Price remains at \$10

Hold stock and resell options

Profit:	\$0.50
Option premium	\$0.50
Total profit	\$0.50

### Price Falls:

Price falls to \$9.50

Buy stock at \$10 and break even

Profit:	
Option premium	\$0.50
Difference between purchase and market price	(\$0.50)
Total profit	\$0.00



## **Exhibit B**

BY [E-MAIL/CERTIFIED MAIL]  
[INSERT INVESTOR NAME/ADDRESS/E-MAIL ADDRESS]

Dear Investor:

I write to advise you of the below information related to your investment in [Fund Name] (the "Fund"). This letter includes details concerning the different strategies I employ in managing the Fund and how these strategies may result in a profit, may break even, or may result in a loss.

1. The Fund takes long positions in U.S.-listed equities. This means that the Fund purchases certain stocks in anticipation that their prices may increase, resulting in a profit if the Fund sells them for amounts higher than the purchase prices. Conversely, if the prices of those stocks decrease, the Fund may lose money if it sells those stocks for less than the purchase prices.
2. The Fund also takes short positions in U.S.-listed equities. This means that the Fund sells shares of certain stocks that the Fund does not yet own but promises to deliver, in anticipation that their prices may fall. If the prices of those stocks fall, the Fund can make a profit. Conversely if the prices of those stocks rise, the Fund may incur a loss when it has to purchase those stocks for higher prices than it sold those stocks.
3. The Fund also engages in an options strategy known generally as "writing puts." In this strategy, the Fund agrees to buy a certain number of shares from a counterparty at a particular price that is the same or lower than the current stock price, in exchange for a premium that the Fund receives. This strategy may result in a profit if the stock price rises or remains the same, as the option will remain out-of-the-money and the counterparty will not sell at the price agreed to in the option contract. This strategy may break even if the stock price declines slightly, by an amount equal to the option premium that the Fund received. This strategy may result in a loss if the stock price declines by an amount greater than the option premium. These results can be affected by the hedging strategies described below.
4. The Fund also engages in an options investment strategy known generally as selling "covered calls," in which the Fund (i) purchases stock, and (ii) sells call options in which the Fund agrees to sell a certain number of shares of the same stock to a counterparty at an agreed-upon price, in exchange for a premium payment to the Fund. This strategy may result in a profit if the stock price rises or remains the same but may result in a loss if the stock price falls to a level that is not offset by the option premium received. These results can be affected by the hedging strategies described below.



5. The Fund's options strategies are coupled with strategies designed to mitigate, or hedge against, the potential for losses, but such hedging strategies are not always possible to enter into, may limit profits, and may not prevent losses.

By agreement with the Investor Protection Bureau of the Office of the Attorney General of the State of New York, we have provided the information above explaining the Fund's strategies to supplement the material in a marketing pitchbook which was shown to potential investors in 2013. That pitchbook has not been in use by the Fund since 2013.

Notwithstanding the provisions of any written or oral agreement, you may redeem all or part of your investment in the Fund, at your option, until and including February 6, 2017. Any such redemption shall be payable two weeks after such redemption request is received.

If you would like to discuss the above, please feel free to contact me at [Phone].

Sincerely yours,

[SIGNATURE]

Vincent Au