



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD OF 2023 (IKJ)

IN THE MATTER OF THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) CAYMAN ISLANDS ORDER 1978

**AND IN THE MATTER OF ORDER 70 OF THE GRAND COURT RULES, 2023 CONSOLIDATION
AND IN THE MATTER OF A CIVIL MATTER NO PROCEEDING IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK ENTITLED:**

CASE NO. 1:21-CV-11059 (GHW)

BETWEEN:

**(1) U.S. BANK, NATIONAL ASSOCIATION, IN ITS CAPACITY AS TRUSTEE, (2) JOSHUA N. TERRY, AND (3) ACIS CAPITAL MANAGEMENT, L.P., AS PLAINTIFFS
AND COUNTER-DEFENDANTS**

AND

(1) THE CHARITABLE DONOR ADVISED FUND, L.P., (2) CLO HOLDCO LTD., AND (3) NEXPOINT DIVERSIFIED REAL ESTATE TRUST, AS DEFENDANTS AND COUNTER-PLAINTIFFS

ORIGINATING SUMMONS

LET ALL PARTIES CONCERNED attend before a Judge of the Grand Court sitting in Chambers on the 11th day of ^{October} 2023 at 10:00 ~~am~~ ^{pm} for a hearing of an application by NexPoint Diversified Real Estate Trust of 300 Crescent Ct, Ste 700 Dallas, Texas 75201, for the following Orders:

1. That the Clerk of this Honourable Court or such other qualified person as may be appropriate be appointed as examiner herein (the “**Examiner**”) to receive the documents referred to in paragraph 2 hereto, and before whom the deposition referred to in paragraph 3 below shall occur.

This **SUMMONS** was filed by Travers Thorp Alberga, Attorneys-at-Law for the Applicant, NexPoint Diversified Real Estate Trust , whose address for service is 2nd Floor, Harbour Place, P.O. Box 472, Grand Cayman KY1-1106, Cayman Islands. [N0347-001]

- 2. A duly authorised officer of ACIS CLO 2015-6 Ltd (“ACIS 6”) (the “Examinee”) do produce the documents listed in Schedule 1 hereto within fourteen (14) days of the date of service upon the Examinee of an Order made pursuant to this Summons, or such other date and time as the Court may see fit or the Examiner may appoint.

- 3. The Examinee do attend before the Examiner at the offices of Travers Thorp Alberga, 2nd Floor, Harbour Place, 103 South Church St, George Town, Grand Cayman within twenty-eight (28) days of the date of service upon the Examinee of an Order made pursuant to this Summons, or such other date and time as the Court may think fit or the Examiner may appoint, and do there submit to be examined upon oath or affirmation upon the subjects listed in Schedule 2 hereto.

- 4. All further orders and directions as may be necessary regarding the conduct of the examination of the Examinee.

- 5. Such further or other orders as the Court thinks fit.

DATED this 13th day of September 2023

FILED this day of September 2023

Travers Thorp Alberga

TRAVERS THORP ALBERGA
Attorneys-at-Law for NexPoint Diversified Real Estate Trust

TIME ESTIMATE: The estimated length of the hearing of this Summons is 1 hour

TO: The Registrar of the Financial Services Division

SCHEDULE 1**INSTRUCTIONS AND DEFINITIONS**

1. Please produce all documents as they are kept in the usual course usual course of business. Please label each document by means of a Bates Number and identify the Request(s) to which the document is responsive.
2. If there are no documents responsive to a particular Request, please state "No responsive document is being produced" in writing, rather than leaving that request unanswered.
3. If you withhold from production any document requested herein on the grounds of attorney-client privilege, work-product immunity, or otherwise, please describe with specificity a full identification of the withheld document, and the specific privilege, protection, or immunity asserted for the document. Please ensure that the manner in which such documents are described will enable others to assess any claims of protection or privilege as to those documents without revealing information that is itself protected or privileged.
4. Any purportedly privileged document containing non-privileged matter must be produced, with the purportedly privileged portion redacted or removed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.
5. If, for reasons other than privilege, you refuse to produce documents or withhold documents sought in any Request, state the grounds upon which the refusal is based with sufficient specificity to permit a determination of the propriety of such refusal.
6. If you object to a Request, the grounds for each objection must be stated with specificity. Any objection must also state whether any responsive materials are being withheld on the basis of that objection.
7. If, in responding to a Request, you encounter any ambiguities when construing a phrase or definition, the response shall set forth the matter deemed ambiguous and the construction used in responding to that Request.
8. If any Request, or a portion thereof, is duplicative of a previous Request to which documents have already been produced, you need not reproduce such documents but you are requested to notify Plaintiff that such documents are among those already produced, and identify the responsive documents by Bates Number.
9. If a requested document is maintained in a file, the file folder is included in the Request for production of the document.
10. It is intended that these Requests will not solicit any material protected either by the attorney/client privilege or by the work product doctrine. If any Request is susceptible of a construction which calls for the production of such material, that material should be produced with the purportedly privileged portion redacted or removed. When such a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person

performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.

11. These Requests shall be deemed continuing. If, after responding to any Request, you obtain or become aware of any further documents or things responsive to these Requests, you are required to supplement your responses and to provide Plaintiff with such additional documents or things without hesitation or delay.
12. In response to these Requests, You should produce all documents from February 15, 2018, to August 1, 2023, unless otherwise instructed.

DEFINITIONS

13. The definitions herein may use and incorporate another defined term.
14. "Acis" refers to Acis Capital Management, L.P., and includes its principals, employees, control persons, affiliates, attorneys, accountants, investment banks, repository agents, placement agents or other agents.
15. "ACIS-6 CLO" refers to the arrangement created by the Acis-6 Indenture.
16. "Brigade" refers to Brigade Capital Management, L.P. and includes its principals, employees, control persons, affiliates, attorneys, accountants, investment banks, repository agents, placement agents or other agents.
17. As used herein, "Communication" or "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).
18. "Concerning" means relating to, referring to, describing, evidencing, or constituting.
19. As used herein, "Document" or "Documents" means each and every form of communication and includes, without limitation, all written, printed, typed, recorded, audio/digitally recorded, and voice recorded materials maintained electronically (including, but not limited to, electronic mail, word documents, Portable Document Format (PDF) files, Joint Photographic Experts Group (JPEG) files, Tagged Image File Format (TIF) files, or Graphic Interchange Format (GIF) files) or graphic matter of any kind, type, nature, or description, in whatever form (e.g., final and draft versions) that is or has been in your actual or constructive possession, custody, or control, including, but not limited to, all printed and electronic copies of electronic mail, notes, correspondence, memoranda, tapes, stenographic or handwritten notes, written forms of any kind, charts, blueprints, drawings, sketches, graphs, plans, articles, specifications, diaries, letters, telegrams, photographs, minutes, contracts, agreements, reports, surveys, computer printouts, data compilations of any kind, teletypes, facsimiles, invoices, order forms, checks, drafts, statements, credit memos, reports, summaries, books, ledgers, notebooks, schedule transparencies, recordings, audio/digital records, catalogs, advertisements, promotional materials, films, videotapes, audio tapes, digital/audio records, voicemail recordings, brochures, pamphlets, or any written or recorded materials of any kind, however stored (whether in tangible or electronic form), recorded, produced, or reproduced, including backup tapes. The term "Document" or "Documents" includes not only originals, but also any copies or reproductions of all such written, printed, typed, recorded or graphic matter upon which any notations, comments, or markings of any kind have been made that do not appear on the original documents or that are otherwise not

identical to the original documents. Any document with marks such as initials, comments or notations of any kind not identical to one without such marks is to be produced as a separate document. If the original of a document contains information not reflected on the copy, please produce the original.

20. "Indenture" refers to the indenture governing the ACIS-6 CLO fund in which NexPoint is a 12.5% equity holder.
21. "Notes" shall generally refer to the securities issued in the ACIS-6 CLO.
22. "Parties" refers to Acis, Terry, and/or Brigade.
23. "Portfolio Management Agreement" or "PMA" refers to the contract involving Acis Capital Management L.P. (and any agents or subordinates) or sub-advisory agreement that relates to the services provided by them regarding the ACIS-6 CLO, its assets, its management, or any other facet of the ACIS-6 CLO, and also includes any agreement by which Brigade rendered any services and/or collected any fees with respect to the ACIS-6 CLO.
24. "Terry" refers to Joshua N. Terry and his employees, attorneys, accountants, advisors, agents and any person acting on his behalf.
25. "U.S. Bank" refers to U.S. Bank, N.A. and its principals, employees, control persons, affiliates, attorneys, accountants, investment banks, repository agents, placement agents or other agents.
26. "You" and "Your" refer to the person(s) to whom these Requests are directed, *i.e.*, ACIS CLO 2015-6 Ltd.

DOCUMENT REQUESTS

1. Documents and Communications concerning the drafting and execution of the Indenture establishing the ACIS-6 CLO.
2. Any Communications You had with the Parties and other third parties concerning the allegations against the Parties or U.S. Bank.
3. Documents and Communications concerning Your input or approval of the purchase, sale, or selection of any assets within the ACIS-6 CLO.
4. Documents and Communications concerning Your involvement in the compliance of the ACIS-6 CLO with the Indenture or the PMA and/or the liquidation and winddown of the ACIS-6 CLO.

SCHEDULE 2**DEFINITIONS**

1. The definitions herein may use and incorporate another defined term.
2. “Acis” refers to Acis Capital Management, L.P., and includes its principals, employees, control persons, affiliates, attorneys, accountants, investment banks, repository agents, placement agents or other agents.
3. “ACIS-6 CLO” refers to the arrangement created by the Acis-6 Indenture.
4. “Brigade” refers to Brigade Capital Management, L.P. and includes its principals, employees, control persons, affiliates, attorneys, accountants, investment banks, repository agents, placement agents or other agents.
5. As used herein, “Communication” or “Communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).
6. “Concerning” means relating to, referring to, describing, evidencing, or constituting.
7. “Indenture” refers to the indenture governing the ACIS-6 CLO fund in which NexPoint is a 12.5% equity holder.
8. “Notes” shall generally refer to the securities issued in the ACIS-6 CLO.
9. “Parties” refers to Acis, Terry, and/or Brigade.
10. “Portfolio Management Agreement” or “PMA” refers to the contract involving Acis Capital Management L.P. (and any agents or subordinates) or sub-advisory agreement that relates to the services provided by them regarding the ACIS-6 CLO, its assets, its management, or any other facet of the ACIS-6 CLO, and also includes any agreement by which Brigade rendered any services and/or collected any fees with respect to the ACIS-6 CLO.
11. “Terry” refers to Joshua N. Terry and his employees, attorneys, accountants, advisors, agents and any person acting on his behalf.
12. “You” and “Your” refer to the person(s) to whom these Requests are directed, *i.e.*, ACIS CLO 2015-6 Ltd.

SUBJECTS OF ORAL EXAMINATION

1. The drafting and execution of the Indenture establishing the ACIS-6 CLO.
2. Communications You had with the Parties and other third parties concerning the ACIS-6 CLO.
3. Your input or approval of the purchase, sale, or selection of any assets within the ACIS-6 CLO.

4. Your involvement in the compliance of the ACIS-6 CLO with the Indenture or the PMA and/or the liquidation and winddown of the ACIS-6 CLO.