



**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD 380 OF 2023 (IKJ)**

**IN THE MATTER OF SECTION 11 OF THE EXEMPTED LIMITED  
PARTNERSHIP ACT (2021 REVISION)**

**AND IN THE MATTER OF ROTHENBERG VENTURES 2016 FUND-A, L.P.**

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**PETITION**

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**TO THE GRAND COURT OF THE CAYMAN ISLANDS**

The humble petition of SMBC Trust Bank Ltd whose registered office is at 3-2, Marunouchi 1-chome, Chiyoda-ku, Tokyo, Japan, as the limited partner of Rothenberg Ventures 2016 Fund-A, L.P (the "**Petitioner**" or the "**Limited Partner**") shows that:-

**Introduction**

1. Rothenberg Ventures 2016 Fund-A, L.P. ("**Fund-A LP**" or the "**Partnership**") was registered in the Cayman Islands on 12 April 2016 as an exempted limited partnership with registration number 85545. The former registered office of Fund-A LP was Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. Fund-A LP was struck from the Cayman Register of Exempted Limited Partnerships (the "**Register**") on 31 October 2022.
2. Rothenberg Ventures 2016 Feeder Fund, L.P. ("**Feeder Fund LP**") was registered in the Cayman Islands on 13 October 2015 as an exempted limited partnership with registration number 83549. The former registered office of Feeder Fund LP was Maples Corporate Services Limited, PO Box 309, Ugland House, Grand

Cayman, KY1-1104, Cayman Islands. Feeder Fund LP was also struck from the Register on 31 October 2022.

3. Rothenberg Ventures 2016 Feeder Fund GP, Ltd (the “**General Partner**” or “**GP Ltd**”) is currently the general partner of the both Feeder Fund LP and Fund-A LP (the “**ELPs**”). GP Ltd is a Cayman Islands exempted company registered on 13 October 2015 with registration number 304766, whose former registered office was Maples Corporate Services Limited PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.
4. GP Ltd is controlled by Mr Michael Rothenberg who is believed to be the company’s sole director and shareholder (“**Mr Rothenberg**”).
5. Following the resignation of the registered office of the ELPs and GP Ltd in or around January 2021, the General Partner itself was struck from the Cayman Islands Register of Companies (the “**Companies Register**”) on or around 30 April 2021. The ELPs were then struck from the Register on 31 October 2022.
6. The striking off and dissolution of the General Partner and the ELPs is believed to be as a consequence of the resignation of the former registered office of the entities, Maples Corporate Services Limited whose registered address is at Boundary Hall, Cricket Square, PO Box 1093, Grand Cayman KY1-1102, Cayman Islands.
7. The Limited Partner was not informed by the General Partner of its dissolution or of the status of Fund-A LP. The General Partner has not properly communicated with the Limited Partner for over 2 years and has otherwise not been fulfilling its duties as general partner.
8. In the circumstances, the Limited Partner has elected a new general partner in accordance with the terms of the relevant limited partnership agreement but has not been able to obtain the cooperation, and/ or voluntary withdrawal of the

General Partner. In particular, the General Partner has failed to sign and file the statement required under section 10 of the Exempted Limited Partnership Act (the “ELP Act”) regarding the appointment of the new general partner (the “**Section 10 Statement**”). The Limited Partner therefore seeks the Court’s assistance for an order directing that another person sign and file the Section 10 Statement so as to give effect to the appointment of the newly elected general partner so that Fund-A LP can resume proper functioning.

#### **The relevant terms of the LPA**

9. As far as the Petitioner is aware, the relationship between the Petitioner and the General Partner is governed by the terms of Fund-A LP’s Amended and Restated Exempted Limited Partnership Agreement dated 18 April 2016 (the “**Fund-A LPA**”).
10. The following provisions of the Fund-A LPA are relevant to the Petition:
  - 10.1. Article 2.1 *Term*.

*The term of the Partnership commenced upon the date of the filing of the statement by the General Partner pursuant to Section 9(1) of the Law with respect to the Partnership (the “Section 9(1) Statement”), which filing was submitted together with such registration fee as required by the Law, with and to the Registrar of Exempted Limited Partnerships in the Cayman Islands. The term of the Partnership shall continue until the eighth anniversary of the Partnership’s Final Closing Date (such eighth anniversary being referred to as the “Termination Date”), unless extended pursuant to paragraph 10.1 or sooner dissolved as provided in paragraph 10.2.*

- 10.2. Article 2.4: *Events Affecting the General Partner*.

*Except as specifically provided in paragraph 10.2, the bankruptcy, expulsion, resignation, removal, liquidation, reorganization, merger, sale of all or substantially all the stock or assets of, or other change in the ownership or nature of the General Partner shall not constitute an “event of withdrawal” of the General Partner under the Law, and upon the*

*happening of any such event, the affairs of the Partnership shall be continued without termination by the General Partner or any successor entity thereto.*

10.3. Article 3.1: Name and Address.

*The name and address of the General Partner and each Limited Partner (hereinafter the General Partner and the Limited Partners shall be referred to collectively as the “Partners” and each individually as a “Partner”), the amount of such Partner’s Capital Commitment to the Partnership, and such Partner’s Partnership Percentage are set forth on a separate and confidential EXHIBIT A hereto, which shall be kept on file at the principal office of the Partnership. The General Partner shall cause EXHIBIT A to be amended from time to time to reflect the admission of any new Partner, the withdrawal or substitution of any Partner, the transfer of interests among Partners, receipt by the Partnership of notice of any change of address of a Partner or the change in any Partner’s Capital Commitment or Partnership Percentage, and such amendment shall not require the consent or countersignature of any Limited Partner. An amended EXHIBIT A shall supersede any prior EXHIBIT A and become a part of this Agreement. A copy of the most recent amended EXHIBIT A shall be kept on file at the principal office of the Partnership. EXHIBIT A shall be available for inspection by Limited Partners at the principal office of the Partnership upon request; provided that if requested by a Limited Partner, the General Partner may redact the name and address of such Limited Partner from EXHIBIT A and withhold such information from the other Limited Partners.*

10.4. Article 8.1 Management.

*The General Partner shall have the sole and exclusive right to manage, control, and conduct the affairs of the Partnership and to do any and all acts on behalf of the Partnership, including exercise of rights to elect to adjust the tax basis of Partnership assets and to revoke such elections and to make such other tax elections as the General Partner shall deem appropriate. The General Partner is hereby authorized to enter, by itself or on behalf of the Partnership, into an agreement with an Affiliate of the General Partner for the provision of certain management, administrative, operational and other services with the respect to the Partnership, including recommendations regarding the purchase and sale of investments by the*

*Partnership, on terms to be determined and agreed to by the General Partner (the "Management Company"). Whenever in this Agreement the General Partner is permitted or required to make a decision or determination in its "discretion" (or similarly), the General Partner shall be entitled to consider such interests and factors as it desires, including its own interests. (emphasis added)*

10.5. Article 10.2 *Early Termination of the Partnership.*

*(a) The Partnership shall commence winding up prior to the Termination Date (or such subsequent dates to which the Partnership term has previously been extended pursuant to paragraph 10.1) ninety (90) days after the withdrawal, bankruptcy, or dissolution of the General Partner, unless a Majority in Interest of the Limited Partners elect to continue the Partnership within such ninety (90) day period.*

**Dissolution of the General Partner**

11. Pursuant to section 156 of the Cayman Islands Companies Act, GP Ltd was dissolved upon being struck from the Companies Register on 30 April 2021. The General Partner therefore has not been able to carry out its functions under the Fund-A LPA from 30 April 2021.
12. In the absence of a functional General Partner, the ELPs were struck from the Register on 31 October 2022.
13. The struck off status of Fund-A LP and GP Ltd came to the attention of the Petitioner on or around 5 May 2023 when upon instructing Conyers as its Cayman Islands counsel, Conyers caused an official company search report to be done on Fund-A LP and GP Ltd.
14. Having only learnt of the dissolution of GP Ltd on or around 5 May 2023, in June 2023 the Petitioner promptly elected to continue Fund-A LP pursuant to Article 10.2 of the Fund-A LPA and opted to appoint a new general partner to deal with the affairs of Fund-A LP for that purpose. The Limited Partner's election to continue

the Partnership was made well within 90 days of the Limited Partner obtaining notification of GP Ltd's dissolution.

#### **Election of a new GP**

15. On 6 October 2023, the Petitioner executed the following documents pursuant to the Fund-A LPA:
  - i. Written Consent of the Limited Partner (the "**Resolutions**"); and
  - ii. Deed Poll in respect of the admission of RVMC 2016 Cayman GP, LLC ("**RVMC**") as the new General Partner (the "**Deed Poll**"),  
  
(together, the "**New GP Documents**").
  
16. The terms of the New GP Documents were as follows:
  - (a) That GP Ltd was the sole general partner of the Partnership and the consent was from the sole limited partner of the Partnership;
  - (b) That GP Ltd was struck off the Companies Register on 30 April 2021 and as a consequence it was dissolved pursuant to section 156 of the Cayman Islands Companies Act (2023 Revision) and the former registered office resigned;
  - (c) That the Limited Partner wished to continue the Partnership notwithstanding the dissolution of GP Ltd and for that purpose it is proposed that RVMC be admitted to serve as general partner;
  - (d) That the Limited Partner resolved to approve the admission of RVMC as the new general partner of the Partnership in substitution for GP Ltd; and
  - (e) That the Limited Partner entered into the Deed Poll with RVMC to supplement the partnership agreement such that RVMC acceded to all the rights and assumed all the obligations of the Partnership and the limited partnership agreement.

17. The New GP Documents were served on GP Ltd under cover of a letter dated 18 October 2023. In this letter, Conyers (the Cayman Islands attorneys for the Petitioners) requested on behalf of the Petitioner that the General Partner:
  - (a) Immediately take steps to have GP Ltd reinstated to the Companies Register;
  - (b) Thereafter sign and file a statement pursuant to Section 10 of the ELP Act notifying the Registrar of GP Ltd's replacement as general partner of Fund-A LP (the "**Section 10 Statement**") within 15 days of the appointment of RVMC; and
  - (c) File the Certificate of Registration and Certificate of Good Standing in respect of the new General Partner, RVMC pursuant to sections 9(1)(e)(i) and 10(2) of the ELP Act (the "**GP Documents**").
18. As at the date of this Petition, the General Partner has failed to sign and file the Section 10 Statement and the GP Documents.
19. The General Partner has also failed to:
  - (a) file notice of its withdrawal pursuant to Section 36(7) of the ELP Act;
  - (b) file a statement with the Registrar notifying it of GP Ltd's lack of good standing, striking off and dissolution (in violation of section 10 of the ELP Act);
  - (c) keep the Limited Partner informed of the financial condition of the Partnership pursuant to section 22 of the ELP Act; and
  - (d) transmit audited financial statements of the Partnership to the Limited Partner pursuant to Article 11.4 of the Fund-A LPA.
20. The Petitioner does not believe that GP Ltd will co-operate in signing and filing the Section 10 Statement given that:

- (a) GP Ltd continues to be dissolved and (notwithstanding repeated requests) Mr Rothenberg has failed to confirm that he will be taking any steps to reinstate GP Ltd in order to enable it to sign and file the Section 10 Statement; and
- (b) Mr Rothenberg has recently been convicted of 23 counts of fraud and money laundering in the United States District Court of Northern California and is now awaiting sentencing (which is scheduled to take place on 1 March 2024).

### **The Provisions of the ELP Act**

#### Section 10 of the ELP Act

21. Section 10 of the ELP Act states as follows:

*“(1) Without prejudice to subsection (2), if, during the continuance of an exempted limited partnership, any change is made or occurs in any matter specified in paragraphs (a) to (e) of section 9(1), a statement signed, subject to section 11, by a general partner specifying the nature of the change shall, within sixty days of the change, be filed with the [Registrar of Exempted Limited Partnerships (the “Registrar”)].*

*(2) A statement signed in accordance with subsection (1) in respect of any arrangement or transaction consequent upon which any person will be removed, replaced or admitted as a general partner in any exempted limited partnership, shall, within fifteen days of the arrangement or transaction, be filed with the Registrar and, until the statement is so filed, the arrangement or transaction shall, for the purposes of [the ELP Act] and the [LPA], not be effective to remove, replace or admit that person as a general partner of the exempt limited partnership...[emphasis added]”*

22. The exercise by the Petitioner of their right to replace the General Partner pursuant to the terms of the Resolutions and the Deed Poll constitutes an “arrangement” as referred to in Section 10(2) of the ELP Act. The Section 10 Statement is the “statement”, in respect of the “arrangement” consequent upon which the General Partner is replaced, which must be filed with the Registrar pursuant to Section 10(2) of the ELP Act.

23. Accordingly, the signed Section 10 Statement should have been filed with the Registrar within 15 days of the making of the Resolutions and, until the Section 10 Statement is filed, the replacement of the General Partner with RVMC is not effective.

Section 11 of the ELP Act

24. Section 11 of the ELP Act provides as follows:

*"If a person required by section...10(2) ...to execute and file a statement or notice fails to do so, any other partner, and any assignee of a partnership interest who is or may be affected by the failure or refusal may petition the court to direct a person the court sees fit to sign the statement and file the same on behalf of the person in default."*

Section 36(7) of the ELP Act

25. Section 36(7) of the ELP Act is as follows:

*"The general partner or its legal representative shall promptly serve notice on all limited partners informing the limited partners of -*

*(a) the death;*

*(b) the commencement of liquidation, bankruptcy or dissolution proceedings; or*

*(c) the withdrawal, removal or making of a winding up or dissolution order,*

*in relation to the sole or last remaining qualifying general partner and in this section each event is referred to an "event of withdrawal". (emphasis added)*

26. Pursuant to the Section 36 of the ELP Act, GP Ltd was therefore obliged to serve a notice either:
- (a) on the Limited Partner upon it being struck from the Companies Register; or
  - (b) alternatively immediately upon being served with the Resolutions to appoint RVMC as the new general partner and Deed Poll on 18 October 2023.

27. 36(9) of the ELP Act which provides:

*“Unless the partnership agreement provides otherwise, if a new qualifying general partner is not elected within ninety days after the service of notice of an event of withdrawal... the exempted limited partnership shall be wound up...”. (emphasis added)*

**Petition for Section 10 Statement to be signed and filed on behalf of the General Partner**

28. GP Ltd has failed to sign, file and/or return the Section 10 Statement within 15 days as required under the ELP Act. The effect of this is that the substitution of GP Ltd with RVMC is presently deemed to be of no effect pursuant to Section 10 (2) of the ELP Act.
29. The Section 10 Statement should have been filed by 23 October 2023, being the first business day after the elapse of the 15 day period after 6 October (the date of the Resolutions).
30. As far as the Petitioner is aware, it is the only limited partner of Fund-A LP and/or affected by the failure and or refusal of GP Ltd to execute and file the Section 10 Statement.
31. Given that GP Ltd continues to be struck from the Companies Register and dissolved, it continues to be in a position where it can neither file the Section 10 Statement nor the GP Documents, by its own doing.
32. In the premises, the Petitioner petitions this Honourable Court to direct a person to sign the Section 10 Statement and file same on behalf of the General Partner.
33. The Petitioner nominates Mr Jefferson Robert Eppler to be directed by this Honourable Court to sign the Section 10 Statement and file the same with the Registrar on behalf of GP Ltd.

34. If the Court does not direct that a person file the Section 10 Statement, Fund-A LP may face winding up pursuant to Section 36(9) of the ELP Act (against the wishes of the Limited to continue the Partnership and to appoint a new general partner) .

**THE PETITIONER THEREFORE HUMBLY PRAYS THAT:-**

1. Mr Jefferson Robert Eppler be directed to sign the Section 10 Statement and file same with the Registrar on behalf of GP Ltd;
2. Such further and/or other relief as this Honourable Court deems appropriate.

**AND** your Petitioners will ever pray etc.

DATED the 13<sup>th</sup> day of December 2023.

*Conyers Dill & Pearman LLP*

**Conyers Dill & Pearman LLP**

**Attorneys-at-law for the Petitioner**

**NOTE:** This Petition is intended to be served on Rothenberg Ventures 2016 Feeder Fund GP, Ltd at its last known registered address: Maples Corporate Services Limited PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands

This **Petition** was issued by Conyers Dill & Pearman LLP, Attorneys-at-Law for and on behalf of the Petitioner herein whose address for service is Second Floor, SIX, Cricket Square, PO Box 2681, George Town, Grand Cayman, KY1-1111

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts,  
George Town,

Grand Cayman, on January 31 2024 at 10:00am.

Any correspondence or communication with the Court relating to the hearing of this  
petition should be addressed to the Registrar of the Financial Services Division of the  
Grand Court at PO Box 495, Grand Cayman KY1-1106, telephone 345 949 4296.