

August 15, 2023

VIA E-MAIL: eoclass@irs.gov

IRS EO Classification
1100 Commerce Street
MC 4910 DAL
Dallas, TX 75242-1198

Re: Complaint Against Several Tax-Exempt Organizations Paying Excessive Compensation, Directly or Indirectly, to Eric Kessler

Dear Sir or Madam:

Americans for Public Trust (“**APT**”)¹ respectfully submits this Tax-Exempt Organization Complaint to the Internal Revenue Service (“**IRS**”) regarding the following tax-exempt organizations:

1. New Venture Fund (EIN: 20-5806345), a District of Columbia nonprofit corporation and Section 501(c)(3) tax-exempt entity (“**NVF**”);
2. Sixteen Thirty Fund (EIN: 26-4486735), a District of Columbia nonprofit corporation and Section 501(c)(4) social welfare organization (“**Sixteen Thirty**”);
3. Windward Fund (EIN: 47-3522162), a District of Columbia nonprofit corporation and Section 501(c)(3) tax-exempt entity (“**Windward**”); and
4. Hopewell Fund (EIN: 47-3681860), a District of Columbia nonprofit corporation and Section 501(c)(3) tax-exempt entity (“**Hopewell**”).

This complaint will refer to these four tax-exempt entities as the “**Kessler-Affiliated Nonprofits.**” Each of the Kessler-Affiliated Nonprofits were founded and controlled by Eric Kessler (“**Mr. Kessler**”), and he served not only as the President, but as the Chairman of each entity’s Board of Directors as well.

There are serious questions as to whether the Kessler-Affiliated Nonprofits have directly diverted substantial portions of their income and assets for the personal benefit of Mr. Kessler. Each of these entities has made substantial independent contractor payments to a for-profit, limited liability company founded and controlled by Mr. Kessler. These payments were generally recorded as being made in exchange for

¹ *APT is a Code Section 501(c)(3) tax-exempt organization (EIN: 84-4413894) that serves as a nonpartisan ethics watchdog.*

administrative support services; however, there is reason to believe that the payments made far exceeded the fair market value of the services rendered.

The details of these concerning commercial transactions are not readily discernible, as the underlying contracts are not publicly available. Therefore, only the IRS, using its summons, investigatory, and related enforcement powers, can compel the production of information necessary to determine whether private inurement, private benefit, and/or excess benefit have resulted from the hundreds of millions of dollars that have been transferred as independent contractor payments.

Form 13909 is enclosed with this letter.

FACTUAL BACKGROUND

Eric Kessler

Mr. Kessler has worked in the nonprofit sector for decades, and in June 2005, founded the for-profit Arabella Advisors, LLC (“**Arabella**”) as a Virginia limited liability company.² Mr. Kessler was listed as the company’s sole member.³

New Venture Fund

In October 2006, Mr. Kessler founded and incorporated NVF as a 501(c)(3) nonprofit organization in the District of Columbia, and served as Chairman of the Board of Directors and President.⁴ NVF applied for charitable tax-exempt status by filing Form 1023 on November 3, 2006—a period during which Eric Kessler was identified as the sole member of Arabella.⁵ On that application for tax-exempt status, in response to a question about contracts with organizations that were also controlled by NVF officers or directors, NVF claimed that it would need to pay Arabella to administer payroll and benefits for NVF employees “[u]ntil such time as [NVF] has sufficient financial resources to make the operation of its own back office cost-efficient.”⁶

² The LLC was originally founded as Arabella Philanthropic Investment Advisors, LLC and changed its name to Arabella Advisors, LLC on Feb. 2, 2011.

³ Arabella Legacy Fund, [Form 1023](#), 15 (Filed Nov. 3, 2006).

⁴ *Id.* (New Venture Fund was originally Arabella Legacy Fund but changed its name in 2009).

⁵ *Id.*

⁶ *Id.*

As such, NVF stated its intention to pay Arabella for administrative services on a “cost-plus” basis, which were described as reimbursement for the cost of actual services plus a 5% surcharge.⁷

The IRS questioned who would oversee the payments to Arabella, given the fact that Mr. Kessler was a founding director and officer of NVF. NVF responded that the agreement required the approval of two disinterested members of its Board of Directors, and further claimed that the agreement was “anticipated to be temporary and, indeed, only has a one-year term.”⁸ The organization further assured the IRS that “as soon after this period as [NVF] has adequate funding, it will no longer require the services of [Arabella].”⁹

Apparently, NVF never achieved an “adequate” level of funding, as it continued paying Arabella “cost-plus” for administrative services for 15 years, drastically longer than the one-year term it initially indicated. Despite originally anticipating on Form 1023 that it would pay Arabella only **\$11,250** in 2006, **\$75,000** in 2007, and **\$100,000** in 2008,¹⁰ NVF had already paid Arabella *over five times* that amount by 2008, all without apparently making any effort to stand up its own back office as it had once promised. From 2006 through 2021, NVF paid Arabella a total of **\$166,543,054**.¹¹ NVF continued with this payment arrangement even though NVF reported annual revenue of **\$460,798,902** in 2019, **\$975,483,022** in 2020, and **\$963,814,870** in 2021.¹² That these substantial revenue sums reported by NVF in recent years are somehow inadequate to finance the group’s in-house administrative support services is both laughable and disingenuous.

Sixteen Thirty Fund

This aforementioned financial pattern was later repeated by other Kessler-Affiliated Nonprofits. In February 2009, Sixteen Thirty, a 501(c)(4) social welfare organization, was founded and incorporated in Washington, D.C. by Mr. Kessler. Like NVF, Mr. Kessler was appointed as Sixteen Thirty President and Chairman of the Board of Directors.¹³ In Sixteen Thirty’s Form 1024 application for tax-exempt status, it made an identical claim to the one NVF had made only a few years earlier: that Sixteen Thirty would “enter into an

⁷ *Id.*

⁸ *Id.* Form 1023 Supplemental Questions & Answers, 7.

⁹ *Id.*

¹⁰ Arabella Legacy Fund, [Form 1023](#), 19 (Filed Nov. 3, 2006).

¹¹ *For computational methodology, see* New Venture Fund, Form 990 (2006-2021).

¹² New Venture Fund, [Form 990](#), 1 (2019), New Venture Fund, [Form 990](#), 1 (2020), and New Venture Fund, [Form 990](#), 1 (2021).

¹³ Sixteen Thirty Fund, [Form 1024](#), 7 (Filed Apr. 4, 2009).

administrative support agreement with Arabella” allowing Arabella to handle Sixteen Thirty’s administrative support services “[u]ntil such time as [Sixteen Thirty] has sufficient financial resources to make the operation of its own back office cost-efficient.”¹⁴ Again, just as with NVF, Sixteen Thirty stated that it expected its administrative support arrangement with Arabella to be of limited duration. It is more than suspect that by the time Sixteen Thirty entered into and detailed this temporary arrangement with Arabella, NVF’s virtually identical arrangement with Arabella produced payments to the firm over *five times* the agreement’s initial estimates.

Sixteen Thirty’s arrangement with Arabella proved just as lasting and lucrative for the business as NVF’s. From 2009 through 2021, Sixteen Thirty paid Arabella a total of **\$24,988,766** for administrative support services.¹⁵ For comparison, Sixteen Thirty reported revenues of **\$138,371,684** in 2019, **\$389,684,866** in 2020, and **\$190,651,953** in 2021.¹⁶ While perhaps not as large as the annual revenue totals reported by NVF, listed annual revenues in the hundreds of millions should be more than enough to fund in-house administrative services, and ultimately end a “temporary” arrangement that Sixteen Thirty originally assured the IRS was dependent solely on their acquisition of “sufficient financial resources.”¹⁷

Windward Fund

In February 2015, Mr. Kessler founded a third nonprofit, a 501(c)(3) organization incorporated in Washington, D.C., the Windward Fund. Once again, Mr. Kessler served as both President and Chairman of the Board of Directors.¹⁸ And, just like Mr. Kessler’s previous nonprofits, Windward claimed on its Form 1023 application that it would enter into an administrative support arrangement with Arabella. While this arrangement was identical to those involving NVF and Sixteen Thirty – and Mr. Kessler was at this time still reported as Arabella’s sole member – Windward’s arrangement with Arabella was not classed as temporary. Instead, Windward claimed that the disinterested members of its Board of Directors had determined that

¹⁴ *Id.* at 8.

¹⁵ For *computational methodology*, see Sixteen Thirty Fund, Form 990 (2009-2021).

¹⁶ Sixteen Thirty Fund, [Form 990](#), 1 (2019), Sixteen Thirty Fund, [Form 990](#), 1 (2020), and Sixteen Thirty Fund, [Form 990](#), 1 (2021).

¹⁷ Sixteen Thirty Fund, [Form 1024](#), 8 (Filed Apr. 4, 2009).

¹⁸ Windward Fund, [Form 1023](#), 15 (Filed May 6, 2015).

“Arabella’s services and fees are best-in-class, competitive and no more than market value,” and, that as such, they were therefore worthy of a long-term relationship.¹⁹

Windward also assured the IRS that the agreement with Arabella was not exclusive and that Windward retained the right to retain other service providers, but stated that it “expects that Arabella will be a significant service provider for [Windward]” in perpetuity.²⁰ In exchange for administrative support services provided by Arabella, Windward intended to pay “reasonable compensation...established on a project by project basis...” that would include both reimbursement for out-of-pocket expenses, as well as “an administrative overhead rate” that would range from 2% to 15% depending on “the size, scope, and complexity of the project.”²¹

In the Form 1023 Windward submitted in 2015, it anticipated that it would pay Arabella approximately **\$75,000** in 2016 and **\$100,000** in 2017 for administrative support services.²² In reality, just like the Kessler-Affiliated Nonprofits that preceded it, Windward paid Arabella far more: **\$740,180** in 2016 and **\$980,466** in 2017.²³ Between 2015 and 2021, Windward ultimately transferred a total of **\$11,989,885** to Arabella.²⁴

Hopewell Fund

The youngest Kessler-Affiliated Nonprofit – the Hopewell Fund – is a 501(c)(3) nonprofit entity incorporated in Washington, D.C. in April 2015. Mr. Kessler again served as President and Chairman of the Board of Directors of Hopewell.²⁵ On its Form 1023 application for tax-exempt status, Hopewell stated that it would enter into the now-familiar administrative support agreement with Arabella utilized by the other Kessler-Affiliated Nonprofits. Hopewell assured the IRS that it retained “absolute discretion” to retain other service providers, but acknowledged that it “expects that Arabella will be a significant service provider for [Hopewell].”²⁶

¹⁹ *Id.* at 15-16.

²⁰ *Id.*

²¹ *Id.* at 17.

²² *Id.* at 25.

²³ Windward Fund, [Form 990](#), 8 (2016) and Windward Fund, [Form 990](#), 8 (2017).

²⁴ For *computational methodology*, see Windward Fund, Form 990 (2015-2021).

²⁵ Hopewell Fund, [Form 1023](#), 18 (Filed Apr. 9, 2015).

²⁶ *Id.*

As on the Windward Form 1023, Hopewell claimed that its disinterested board members had “determined that Arabella’s services and fees are best-in-class, competitive and no more than market value.”²⁷ In language virtually identical to that featured in the Windward arrangement, Hopewell stated that it would pay “reasonable compensation” to Arabella that consisted of both reimbursement for out-of-pocket expenses and “an administrative overhead rate” that it expected would range from 2% to 15% depending on “the size, scope, and complexity of the project.”²⁸ Hopewell anticipated that these payments would amount to **\$11,250** in 2015, **\$75,000** in 2016, and **\$100,000** in 2017.²⁹ Instead, the actual payments Hopewell made to Arabella amounted to **\$170,953** in 2015, **\$807,425** in 2016, and **\$1,507,771** in 2017.³⁰ In total, Hopewell paid Arabella **\$24,862,777** between 2015 and 2021.³¹

VIOLATIONS

I. Private Inurement, Private Benefit, and Excess Benefit Transactions

A. The Law.

Nonprofit entities organized under Sections 501(c)(3) and 501(c)(4) are subject to limitations on how they direct their resources. They must be “both organized and operated exclusively for” the promotion of their exempt purpose.³² When a nonprofit organization operates for a private benefit by distributing its earnings “in whole or in part to the benefit of private . . . individuals,” it does not operate exclusively for lawfully exempt purposes, and is therefore subject to revocation of its tax-exempt status.³³ A private benefit is any non-incident benefit given to a disinterested person that serves private interests.³⁴ Accordingly, if a nonprofit organization uses its resources to aid private individuals for private interests, it confers an impermissible private benefit upon such individuals, unless such aid is merely “incidental.”

In evaluating whether a benefit is incidental, the IRS considers whether the benefit is a necessary consequence of the organization’s exempt activities, and if any public benefit would result which is greater than

²⁷ *Id.*

²⁸ *Id.* at 19.

²⁹ *Id.* at 28.

³⁰ Hopewell Fund, [Form 990](#), 8 (2015), Hopewell Fund, [Form 990](#), 8 (2016), and Hopewell Fund, [Form 990](#), 8 (2017).

³¹ For computational methodology, see Hopewell Fund, Form 990 (2015-2021).

³² 26 C.F.R. §§ 1.501(c)(3)-1(a)(1); 1.501(c)(4)-1(a)(1)(ii) (*Exempt organizations must be “operated exclusively for the promotion of social welfare”*).

³³ *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1064-65 (1989).

³⁴ *Id.* at 1069.

the private benefit.³⁵ The IRS and the judicial system have consistently found that if a nonprofit organization dedicates its resources to the benefit of private individuals, rather than the community as a whole, it is not being operated exclusively for exempt purposes, and its tax-exempt status should be revoked.³⁶

Section 501(c)(3) and 501(c)(4) nonprofit organizations are also prohibited from providing private inurement to any person with a personal and private interest in the activities of the organization.³⁷ Violating this absolute prohibition can cause a nonprofit to lose its tax-exempt status. Examples of private inurement include instances where a nonprofit uses its funds to pay the personal expenses of its founder and CEO, as well as those in which a nonprofit purchases services from members of its governing board for more than their fair market value.³⁸

Additionally, Section 501(c)(3) and 501(c)(4) organizations can face excise taxes for engaging in excess benefit transactions with a disqualified person.³⁹ A disqualified person is: (1) anyone who, during the five year period preceding the date of the transaction, was in a position to exercise substantial influence over the affairs of the organization (*e.g.*, an officer or director); (2) the spouse, ancestor, child (including adopted), grandchild, great-grandchild, sibling (whole or half), or spouse of the child, grandchild, great-grandchildren, or sibling of any person described in subsection (1); or (3) a corporation, partnership, or trust in which a person described in (1) or (2) owns more than 35% of the total combined voting power, profit interest, or beneficial interest.⁴⁰ An excess benefit transaction occurs when a nonprofit organization provides an economic benefit, directly or indirectly, to or for the use of a disqualified person and the value of the benefit exceeds the value of consideration received for the benefit (including the performance of services).⁴¹

Finally, because Section 501(c)(3) and 501(c)(4) organizations are operated for charitable or social welfare purposes, they are subject to limits on engaging in commercial activity that is not related to their exempt

³⁵ IRS G.C.M. 39598 (Dec. 8, 1986).

³⁶ Rev. Rul. 73-306, 1973-2 C.B. 179 (*A nonprofit organization formed to represent member-tenants of an apartment complex does not qualify for exemption under section 501(c)(4) because the organization is not primarily engaged in activities for the common good and general welfare of the community*) and *Retired Teachers Legal Defense Fund v. Commissioner*, 78 T.C. 280 (1982) (*Organization dedicated to protecting the financial stability of the New York City Teachers' Retirement System was not a charitable organization because it served the private interests of its members rather than the public more broadly*).

³⁷ See 26 U.S.C. §§ 501(c)(3) and (4); 26 C.F.R. § 1.501(a)-1(c) (*Defining private shareholder or individual as any "persons having a personal and private interest in the activities of the organization"*).

³⁸ 26 C.F.R. § 1.501(c)(3)-1(f)(2)(iv), Examples #1 and #3.

³⁹ 26 U.S.C. § 4958.

⁴⁰ 26 U.S.C. § 4958(f)(1).

⁴¹ 26 U.S.C. § 4958(e)(1)(A).

purpose. In order to determine whether commercial activity is substantially related to an organization's exempt purposes, the IRS will evaluate whether it "contribute[s] importantly to the accomplishment of [such] purposes."⁴² The scope of the activity will also be examined to determine if it goes "beyond that reasonably appropriate or necessary" to accomplish the exempt purposes.⁴³ Taxable commercial activity can include exploiting the "good will" or other intangibles of a nonprofit for a commercial endeavor that does not contribute importantly to the accomplishment of an exempt purpose.⁴⁴

B. The Kessler-Affiliated Nonprofits Are Not "Operated Exclusively For" the Promotion of Their Exempt Purposes.

The Kessler-Affiliated Nonprofits have stated a variety of exempt purposes in their organizing documents. NVF claims that it exists primarily to advocate for "the protection and preservation of the environment for the benefit of the public," and to present "research on and public education regarding environmental preservation and protection."⁴⁵ Sixteen Thirty states that it exists to "provid[e] public education on and conduct[] advocacy regarding progressive policies."⁴⁶ Windward lists its purpose as "engaging in activities intended to raise public awareness about environmental conservation and protection domestically and globally,"⁴⁷ whereas Hopewell simply asserts it intends to "promot[e] the public good and achiev[e] lasting improvements to society."⁴⁸ Despite these mission statements, the Kessler-Affiliated Nonprofits have engaged in activities that appear solely intended to benefit private interests, specifically those of Mr. Kessler, who served as both a director and vendor to all four organizations.

1. The Kessler-Affiliated Nonprofits' Transfer of Nonprofit Funds to A For-Profit Business Conferred A Private Benefit on That Organization and Eric Kessler.

Since 2006, the Kessler-Affiliated Nonprofits have directed a total of **\$228,384,481** to Arabella Advisors, LLC, thereby conferring a private benefit on Arabella and upon Mr. Kessler himself.⁴⁹ Such a

⁴² 26 C.F.R. § 1.513-1(d)(2).

⁴³ 26 C.F.R. § 1.513-1(d)(4)(ii).

⁴⁴ 26 C.F.R. § 1.513-1(d)(4)(iv).

⁴⁵ Arabella Legacy Fund, [Form 1023](#), 1 (Filed Nov. 3, 2006).

⁴⁶ Sixteen Thirty Fund, Articles of Incorporation, 1 (Filed Feb. 19, 2009).

⁴⁷ Windward Fund, Articles of Incorporation, 1 (Filed Feb. 25, 2015).

⁴⁸ Hopewell Fund, Articles of Incorporation, 1 (Filed Apr. 9, 2015).

⁴⁹ For *computational methodology*, see New Venture Fund, Form 990 (2006-2021), Sixteen Thirty Fund, Form 990 (2009-2021), Windward Fund, Form 990 (2015-2021), and Hopewell Fund, Form 990 (2015-2021).

substantial diversion of nonprofit resources for the benefit of a single for-profit company and that company's founder cannot be considered "incidental" to the exempt purpose of the nonprofit organizations.

In assessing the extent of an improper private benefit, the IRS must balance the public benefit that *could* result against any private benefit conferred. Here, no public benefit is apparent, but the private benefit is clear. The transfer of **\$228,384,481** from the Kessler-Affiliated Nonprofits to Arabella in an indisputable private benefit for Arabella and its creator, Mr. Kessler. Because the Kessler-Affiliated Nonprofits directed their nonprofit resources back into Kessler's private business, they are not operating exclusively for exempt purposes and their tax-exempt status should be revoked.

2. The Kessler-Affiliated Nonprofits Provided Private Inurement to Their Common Director Eric Kessler, Who Used the Income and Assets of Each Organization for His Personal Gain.

As tax-exempt organizations, the Kessler-Affiliated Nonprofits are prohibited from providing private inurement to any person with a personal and private interest in the activities of the organizations, *i.e.*, an "insider." As the founder of each of the Kessler-Affiliated Nonprofits, Mr. Kessler is statutorily defined as an "insider" of each organization. IRS regulations are clear: when a nonprofit organization uses its funds to pay excessive personal or private expenses of its founder and CEO, it provides that individual with impermissible private inurement.

Before creating any of the Kessler-Affiliated Nonprofits, Mr. Kessler founded Arabella Advisors, LLC, and for nearly two decades, served as the company's managing director. Because every dollar received by this for-profit company inures to his personal benefit, it is impossible to distinguish between Mr. Kessler's private goals and objectives and those of the for-profit business that he also controls. Thus, the use of hundreds of millions in nonprofit funds to pay Mr. Kessler's private business venture constitutes, on its face, private inurement. Because nonprofit organizations are absolutely prohibited from providing any private inurement, the IRS should revoke the tax-exempt status of the Kessler-Affiliated Nonprofits.

1. The Kessler-Affiliated Nonprofits Are Engaged in a Series of Excess Benefit Transactions with Eric Kessler and/or Arabella Advisors, LLC.

The Kessler-Affiliated Nonprofits, like all 501(c)(3) and 501(c)(4) organizations, face an excise tax for engaging in any excess benefit transactions with disqualified persons. As the founder of each Kessler-Affiliated

Nonprofit, Mr. Kessler satisfies the IRS definition of a “disqualified person.” Since Mr. Kessler held more than a 35% interest in Arabella Advisors, LLC, the company is also classified as a “disqualified person” as well.⁵⁰ The Kessler-Affiliated Nonprofits cannot enter into excess benefit transactions with either Mr. Kessler or Arabella without subjecting those transactions to excise taxes. In order to determine whether the Kessler-Affiliated Nonprofits engaged in excess benefit transactions, the economic benefit conferred by the nonprofits must be measured against the value of any consideration received for the benefit. Again, the economic benefit conferred by the Kessler-Affiliated Nonprofits to Arabella and Mr. Kessler is readily discernible: **\$228,384,481**. Based on publicly available documentation, it is hard to imagine that the services provided by Arabella equate to bills in the hundreds of millions of dollars.

The Kessler-Affiliated Nonprofits have characterized their relationships with Arabella as predicated on a need for administrative support. Initially, the nonprofits informed the IRS that the agreements would be of limited duration until such time as the nonprofits achieved an adequate level of funding. After this funding materialized, and no change in the relationship with Arabella occurred, the nonprofits reported to the IRS that their disinterested directors had evaluated other available service options and determined that the continued use of Arabella was the most cost-efficient choice. The IRS has the necessary investigative authority to determine whether this explanation is supported by facts, and if the IRS discovers that excess benefit transactions have occurred, then it should impose any applicable excise taxes.

2. New Venture Fund and Sixteen Thirty Fund Made Material Misstatements on Their Applications for Recognition of Tax-Exempt Status with the IRS.

When filing their applications for tax-exempt status, both NVF and Sixteen Thirty informed the IRS that their administrative support arrangements with Arabella would be of limited duration. They used identical language on their applications: each nonprofit stated that it would only pay Arabella “[u]ntil such time as [the organization] [had] sufficient financial resources to make the operation of its own back office cost-efficient.”⁵¹ Within only a few years of incorporation, each nonprofit reported such massive revenues that they could easily pay Arabella many more times the company’s initial estimates for annual payments. As the payments to Arabella

⁵⁰ New Venture Fund, [Form 990](#), 189 (2020).

⁵¹ Arabella Legacy Fund, [Form 1023](#), 15 (Filed Nov. 3, 2006) and Sixteen Thirty Fund, [Form 1024](#), 8 (Filed Apr. 21, 2009).

increased by millions of dollars every tax year, neither NVF nor Sixteen Thirty made any move to terminate their relationship with Arabella; such inaction was in direct contradiction to what each had previously told the IRS regarding their plans.

Organizational plans often change in response to new information, but in this case, the IRS's grant of tax-exempt status was directly contingent on the supplemental answers that NVF provided in response to questions about this administrative support arrangement. After receiving NVF's 1023 application, the IRS inquired "[w]ho will oversee the payments to" Arabella, clearly identifying the potential for a conflict of interest.⁵² NVF assuaged any concerns by focusing on the time-limited nature of the arrangement, informing the IRS that "[a]s soon after this period as the Organization has adequate funding, it will no longer require the services of [Arabella]."⁵³ Sixteen Thirty repeated this claim in its own application for tax exemption.⁵⁴ In light of these material misstatements, the IRS should retroactively revoke the tax-exempt status of both NVF and Sixteen Thirty.⁵⁵

CONCLUSION

In summary, Mr. Kessler has directly caused three Section 501(c)(3) and one Section 501(c)(4) organization to pay his business more than **\$228 million** over a nearly twenty-year period. There is evidence that indicates that these fees exceeded the fair market value of the services provided to the Kessler-Affiliated Nonprofits by Arabella Advisors, LLC, the company he also founded. The payments have also vastly exceeded the initial estimates that the Kessler-Affiliated Nonprofits provided to the IRS on their applications for tax exemptions.

As such, APT encourages the IRS to undertake an examination of the Kessler-Affiliated Nonprofits to determine the extent to which they have misused their tax-exempt status. An investigation conducted by the IRS should determine that the Kessler-Affiliated Nonprofits have engaged in egregious and systemic violations of their tax-exempt status, and the IRS should take appropriate regulatory action, including, but not limited to:

⁵² Arabella Legacy Fund, [Form 1023](#), Supplemental Questionnaire, Dated Nov. 30, 2006, 2 (Filed Nov. 3, 2006).

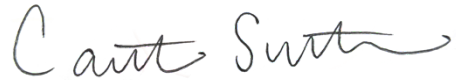
⁵³ *Id.* Form 1023 Supplemental Questions and Answers, 7.

⁵⁴ Sixteen Thirty Fund, [Form 1024](#), 8 (Filed Apr. 21, 2009).

⁵⁵ *Democratic Leadership Council, Inc. v. United States*, 542 F. Supp. 2d 63, 70-71 (D.D.C. 2008); 26 C.F.R. § 601.201(n)(6) (*A determination letter may be retroactively revoked "if the organization omitted or misstated a material fact, [or] operated in a manner materially different from that originally represented"*).

revoking the groups' tax-exempt status, imposing applicable excess benefit transaction excise taxes under Section 4958, imposing any unrelated business income tax, treating each of the organizations in its entirety as a taxable entity, imposing any appropriate penalties and additional taxes, and referring violations to the Department of Justice for possible criminal prosecution.

Sincerely,

A handwritten signature in cursive script that reads "Caitlin Sutherland". The signature is written in black ink and is positioned above the printed name and title.

Caitlin Sutherland
Executive Director