

## ATTACHMENT B

### PETITION FOR DECLARATORY RULING

#### Introduction and Summary

This petition for declaratory ruling (“PDR”) accompanies applications seeking the Commission’s consent to transfer control of Mobile Satellite Ventures Subsidiary LLC (“MSV Sub”) from SkyTerra Communications, Inc. (“SkyTerra”) to Harbinger Capital Partners Master Fund I, Ltd. (“Master Fund”) and Harbinger Capital Partners Special Situations Fund, L.P. (“Special Situations Fund”) (collectively referred to as “Harbinger” or the “Harbinger Funds”).<sup>1</sup> The parties to the applications respectfully request a declaratory ruling from the Commission, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, that it is consistent with the public interest for Harbinger and any commonly-controlled funds<sup>2</sup> to own, directly or indirectly, up to 100% of the issued and outstanding stock of SkyTerra, which has a controlling interest in MSV Sub.<sup>3</sup>

In addition, in order to account for the possibility that Harbinger and commonly-controlled funds will hold less than 100% of the issued and outstanding stock of SkyTerra following consummation of the proposed transfer of control,<sup>4</sup> the parties request a declaratory

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<sup>1</sup> The applications also seek the Commission’s consent to transfer control of Inmarsat Hawaii Inc. and Inmarsat, Inc.

<sup>2</sup> As stated in the transfer of control applications, it is possible that Harbinger Capital Partners Fund I, L.P. and Harbinger Co-Investment Fund, L.P., which are under the same control as the Master Fund and the Special Situations Fund, will have an ownership interest in SkyTerra.

<sup>3</sup> SkyTerra has an equity interest of 99.29% and a voting interest of 100% in MSV Sub, which holds various common carrier licenses as well as authorizations to provide common carrier services pursuant to Section 214 of the Communications Act. The parties are not requesting a declaratory ruling in connection with the transfer of control of Inmarsat Hawaii Inc. and Inmarsat, Inc. because neither of those companies holds a common carrier authorization that is subject to the foreign ownership limits of Section 310(b).

<sup>4</sup> It is likely that Harbinger’s interest in SkyTerra will be below 100% and that some or all of the current non-Harbinger shareholders of SkyTerra will continue to have an interest in the company. The precise level of Harbinger’s post-closing interest, however, will depend on market conditions and other factors at closing and therefore cannot be determined at this time. For similar reasons, it is unknown at present what the relative levels of ownership will be as between the Master Fund and the Special Situations Fund. Out of an abundance of caution, the

ruling permitting ownership, subject to the qualification in the sentence that follows, of up to 25% of SkyTerra's equity and voting stock by foreign investors that are not identified in this PDR. The parties are not, however, seeking authority that would permit any foreign investor that is not identified in this PDR to acquire control of SkyTerra, or to acquire an equity and/or voting interest in SkyTerra that exceeds 25%, without obtaining additional approval from the Commission.

The Commission already has made a preliminary determination that it is consistent with the public interest for Harbinger to have a substantial interest in SkyTerra. Earlier this year, the Commission released an Order and Declaratory Ruling granting Harbinger interim authority pursuant to Section 310(b) to have an up to 49.99% equity interest and an up to 49.99% voting interest in SkyTerra.<sup>5</sup> Harbinger has a pending request for the same relief on a permanent basis.<sup>6</sup>

The parties demonstrate below that their proposal for Harbinger to increase its interest in SkyTerra to up to 100% is supported by good cause. In particular, they show that the requested declaratory ruling is warranted under the Commission's policies because: (1) U.S. citizens control the Master Fund and the Special Situations Fund; (2) the principal place of business of the Special Situations Fund is the United States and the principal place of business of the Special Situations Fund is the Cayman Islands, which is a WTO member country; and (3) all but a *de minimis* portion of the investments in the Harbinger Funds are made by investors from the United States and other WTO Member countries.

In support of this PDR, the parties are attaching the following:

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parties are seeking authority herein for the range of possible foreign ownership levels associated with Harbinger's ownership of up to 100 percent of SkyTerra.

<sup>5</sup> *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc.*, Order and Declaratory Ruling, FCC 08-77 (March 7, 2008).

<sup>6</sup> See ISP-PDR-20080129-00002.

- Annex 1 provides information concerning the citizenship of investors in the Harbinger Funds.
- Annex 2 provides principal place of business showings.
- Annex 3 consists of diagrams depicting the ownership of the Harbinger Funds.
- Annex 4 describes the control that Harbinger's management has over sales of interests in the Master Fund and the Special Fund so that management can monitor and enforce continuing compliance with Section 310(b).
- Annex 5 depicts the ownership structure of MSV Sub that is proposed in the transfer of control applications.

#### **Legal Standard**

Section 310(b)(4) limits the ownership interests that foreign investors may have in any corporation that controls the licensee of a common carrier radio station. Under Section 310(b)(4), no more than 25% of the capital stock of the corporation controlling the licensee may be owned or voted by foreign citizens and their representatives, foreign governments and their representatives, and corporations organized under the laws of a foreign country. However, Section 310(b) authorizes the Commission to permit foreign investment in excess of this 25% limit if the Commission determines that the foreign investment is not inconsistent with the public interest.

The Commission has adopted a presumption that foreign investment by individuals or entities from WTO Member countries should be permitted without limit under Section

310(b)(4).<sup>7</sup> It uses a “principal place of business” test to determine whether the nationality or “home market” of a foreign investor is a WTO Member.<sup>8</sup>

### **Ownership of Harbinger Funds**

The diagrams in Annex 3 depict the ownership of the Master Fund and the Special Situations Fund. This ownership is summarized below.

**Master Fund.** The Master Fund is a Cayman Islands Exempted Company. Because the Cayman Islands are a British protectorate, they are deemed to be a WTO signatory. Harbinger Capital Partners Offshore Fund I, Ltd. (“Offshore Feeder”), a Cayman Islands entity, owns 84.05% of the voting shares of Master Fund. The remaining 16.10% of the voting shares of Master Fund are owned by Harbinger Capital Partners Fund I, L.P., a Delaware limited partnership.

Annex 1 provides information concerning the citizenship of investors in the Master Fund. All of the direct and indirect holders of the Master Fund are either U.S. citizens or citizens of WTO signatories, except for five investors from the Bahamas holding in the aggregate limited partnership interests amounting to 0.33% in the Offshore Feeder.

**Special Situations Fund.** The Special Situations Fund is a Delaware limited partnership. The general partner of the Special Situations Fund is Harbinger Capital Partners Special Situations GP, LLC, a Delaware limited liability company, which has management control over the Special Situations Fund. All of the limited partners are U.S. citizens, except for: (1) Harbinger Capital Partners Special Situations Offshore Fund, L.P. (“Special Offshore Fund”),

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<sup>7</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23896 ¶ 9, 23913 ¶ 50, and 23940 ¶¶ 111-112 (1997) (“*Foreign Participation Order*”), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

<sup>8</sup> *Foreign Participation Order*, 12 FCC Rcd at 23941 ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, FCC 95-475, 11 FCC Rcd 3873, 3951 ¶ 207 (1995)).

which is a Cayman Islands limited partnership holding a 62.80% equity interest in the Special Situations Fund; and (2) Harbinger Capital Partners SSF CFF, Ltd., which is a Cayman Islands Exempted Company holding a 1.54% equity interest in the Special Situations Fund. The general partner of Special Offshore Fund is a Delaware limited liability company, which, in turn, is controlled by a corporation organized under the laws of the United States. The limited partners of the Special Offshore Fund are widely dispersed and all have a less than 10% interest in the Special Situations Fund.

Annex 1 provides information concerning the citizenship of investors in the Special Situations Fund. All of the ownership interests are held by U.S. citizens or citizens of WTO signatories.

#### **Control of Harbinger Funds**

Two U.S. citizens, Philip A. Falcone and Raymond J. Harbert, have ultimate control of the Harbinger Funds. As described in detail below, Mr. Falcone exercises his control as an individual and Mr. Harbert exercises his control through his ownership of over 50% of the voting interests of Harbert Management Corporation and HMC Investors LLC.

**Master Fund.** Over 80% of the Master Fund's shares, all of which are voting shares, are held by Harbinger Capital Partners Offshore Fund I, Ltd. (the "Offshore Feeder"). No investor owns more than 50% of the Offshore Feeder's voting securities.

Three persons – a US citizen, a UK citizen, and a citizen of Ireland - serve as the directors of both the Master Fund and the Offshore Feeder. Any director can be removed and replaced by majority vote of either the shareholders or the directors.

The Master Fund's Board of Directors has delegated broad investment management authority under an Investment Management Agreement to Harbinger Capital Partners Offshore

Manager, LLC, a Delaware LLC (the “Offshore Manager”). Two members have voting control of the Offshore Manager: (1) HMC Investors, LLC (“HMC Investors”), a Delaware LLC, is the Managing Member and has a 50% voting interest comprised of a 0.50% voting interest in its own right and a 49.5% voting interest based on irrevocable proxies that other members of the Offshore Manager have granted to HMC Investors; and (2) Philip A. Falcone is the Senior Managing Director and has a 50% voting interest. HMC Investors is controlled by Raymond J. Harbert, who has a voting interest in the company in excess of 50%.

***Special Situations Fund.*** The Special Fund is a Delaware limited partnership whose General Partner is Harbinger Capital Partners Special Situations GP, LLC (“SSGP”), a Delaware LLC. Two members have voting control of SSGP: (1) HMC-New York, Inc. (“HMC-NY”), a New York corporation, is the Managing Member and has a 50% voting interest; and (2) Philip A. Falcone is the Senior Managing Director and also has a 50% voting interest. HMC-NY is a wholly-owned subsidiary of Harbert Management Corporation, an Alabama corporation. Harbert Management Corporation is controlled by Raymond J. Harbert, a U.S. citizen, who has a voting interest in the company in excess of 50%. The limited partners of the Special Situations Fund have no ability to control or be involved in the day-to-day business operations, activities or decisions of Special Situations Fund.

#### **Principal Places of Business**

Annex 2 consists of principal place of business showings for the Master Fund, the Special Situations Fund, Harbinger Capital Partners Offshore Fund I, Ltd., and Harbinger Capital Partners Special Situations Offshore Fund, L.P. In every case, the principal place of business is either the United States or a country that is a WTO signatory.

## **Conclusion**

Under the Commission's policies and precedents implementing Section 310(b)(4) of the Communications Act, up to 100% ownership of SkyTerra by Harbinger would be consistent with the public interest because: (1) U.S. citizens control the Master Fund and the Special Situations Fund; (2) each of the Harbinger Funds has its principal place of business in the United States or a WTO member country; and (3) all but a *de minimis* portion of the investments in the Harbinger Funds are made by investors from the United States and other WTO Member countries.

**Annex 1 to Petition for Declaratory Ruling:  
Investor Interests in the Harbinger Funds**

<b><i>Harbinger Capital Partners Offshore Fund I, Ltd.</i></b>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	0.05%	United States
Individuals that are citizens of foreign countries	0.37%	Canada, , China, South Africa, United Kingdom, Switzerland
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	4.20%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	19.46%	Australia, Bermuda, Cayman Islands, Channel Islands, China, Finland, Hong Kong, Ireland, Isle of Man, Luxembourg, Norway, Sweden, Switzerland, , France, The Netherlands, United Kingdom
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.66%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	75.26%	Arab Emirates, Australia, Bermuda, Brazil, British Virgin Islands, Canada, Cayman Islands, Channel Islands, Chile, China, France, Hong Kong, Italy, Isle of Man, Ireland, Japan, Luxembourg, Norway, Panama, Portugal, Singapore, Spain, Sweden, Switzerland, Netherlands Antilles, The Bahamas, The Netherlands, United Kingdom



**Annex 1 to Petition for Declaratory Ruling:  
Investor Interests in the Harbinger Funds**

<i>Harbinger Capital Partners Fund I, L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	6.74%	United States
Individuals that are citizens of foreign countries	0.0%	
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	13.01%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	0.0%	
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	80.25%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	

**Annex 1 to Petition for Declaratory Ruling:  
Investor Interests in the Harbinger Funds**

<i>Harbinger Capital Partners Special Situations Fund, L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	5.90%	United States
Individuals that are citizens of foreign countries	0.0%	
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	3.98%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	0.0%	
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	25.77%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	64.35%	Cayman Islands <sup>1</sup>

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<sup>1</sup> Information regarding the investors in this fund is set forth on p. 4 of this Annex 1.

**Annex 1 to Petition for Declaratory Ruling:  
Investor Interests in the Harbinger Funds**

<i>Harbinger Capital Partners Special Situations Offshore Fund, L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	0.12%	United States
Individuals that are citizens of foreign countries	0.36%	Channel Islands, Germany, Switzerland
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	14.04%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	17.44%	Cayman Islands, Finland, Luxembourg, Netherland Antilles, Switzerland, The Netherlands,
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	1.97%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	66.07%	British Virgin Islands, Channel Islands, , Canada, Cayman Islands, Finland, Germany, Gibraltar, Guernsey, Ireland, Italy, Liechtenstein, Luxembourg, Norway, Panama, Switzerland, The Netherlands

**Annex 1 to Petition for Declaratory Ruling:  
Investor Interests in the Harbinger Funds**

<i>Harbinger Capital Partners SSF CFF Fund, LTD</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	0.0%	
Individuals that are citizens of foreign countries	0.0%	
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	0.0%	
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	20.41%	Cayman Islands
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	35.45%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	44.14%	Cayman Islands

**Annex 2 to Petition for Declaratory Ruling:  
PRINCIPAL PLACE OF BUSINESS SHOWINGS**

**Harbinger Capital Partners Master Fund I, Ltd.**

- (i) Country of organization:  
CAYMAN ISLANDS
- (ii) Citizenship of investment principals, officers and directors:  
UNITED STATES, IRELAND, UNITED KINGDOM
- (iii) Location of world headquarters:  
IRELAND
- (iv) Location of tangible properties:  
N/A
- (v) Location of greatest sales and/or revenues:  
N/A

**Harbinger Capital Partners Special Situations Fund, L.P.**

- (i) Country of organization:  
UNITED STATES
- (ii) Citizenship of investment principals, officers and directors:  
UNITED STATES
- (iii) Location of world headquarters:  
UNITED STATES
- (iv) Location of tangible properties:  
N/A
- (v) Location of greatest sales and/or revenues:  
N/A

**Harbinger Capital Partners Offshore Fund I, Ltd.**

- (i) Country of organization:  
CAYMAN ISLANDS
- (ii) Citizenship of investment principals, officers and directors:  
UNITED STATES, IRELAND, UNITED KINGDOM
- (iii) Location of world headquarters:  
IRELAND
- (iv) Location of tangible properties:  
N/A
- (v) Location of greatest sales and/or revenues:  
N/A

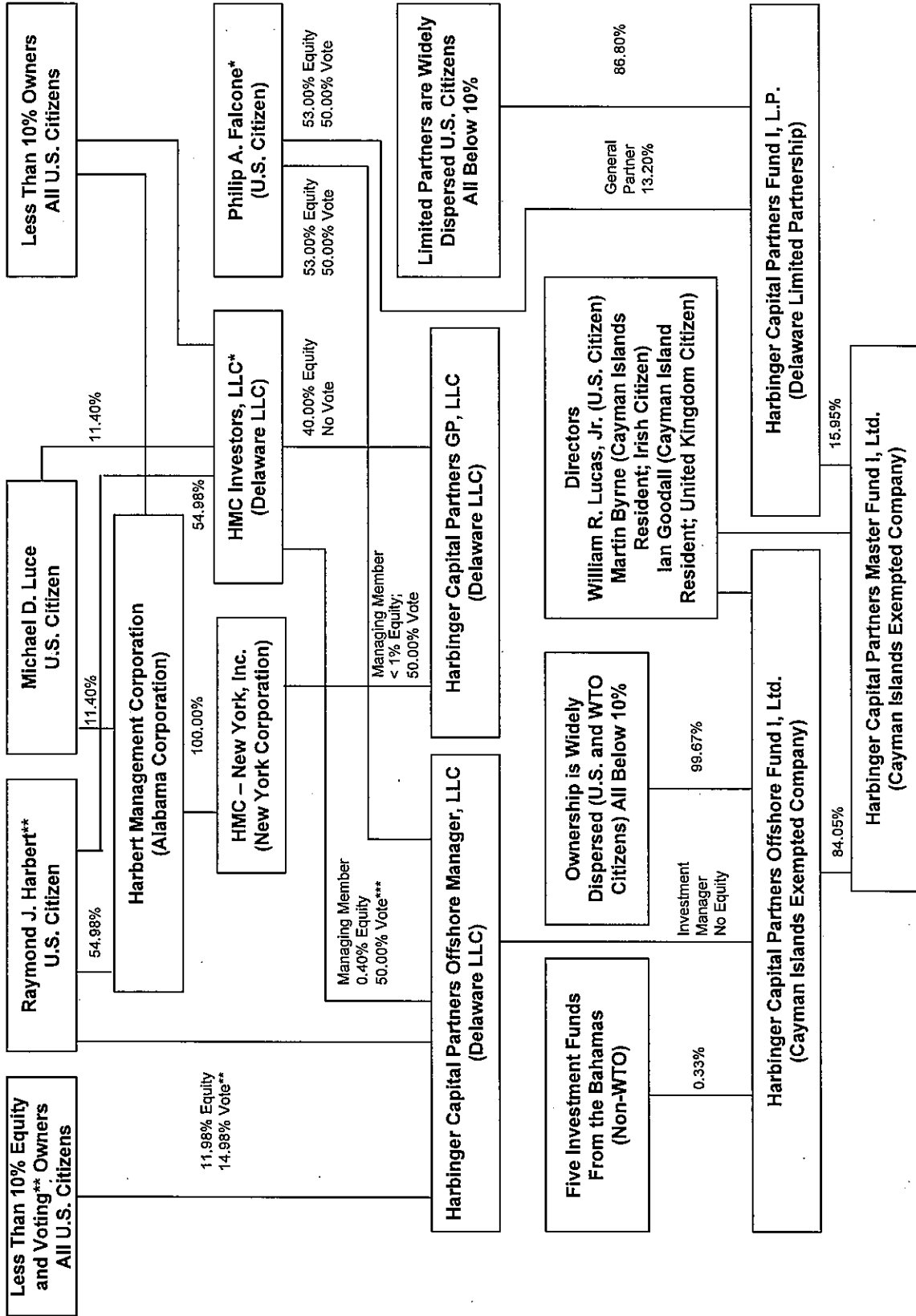
**Harbinger Capital Partners Special Situations Offshore Fund, L.P.**

- (i) Country of organization:  
CAYMAN ISLANDS
- (ii) Citizenship of investment principals, officers and directors:  
UNITED STATES
- (iii) Location of world headquarters:  
IRELAND
- (iv) Location of tangible properties:  
N/A
- (v) Location of greatest sales and/or revenues:  
N/A

**Harbinger Capital Partners SSF CFF, Ltd.**

- (i) Country of organization:  
CAYMAN ISLANDS
- (ii) Citizenship of investment principals, officers and directors:  
UNITED STATES, IRELAND, UNITED KINGDOM
- (iii) Location of world headquarters:  
IRELAND
- (iv) Location of tangible properties:  
N/A
- (v) Location of greatest sales and/or revenues:  
N/A

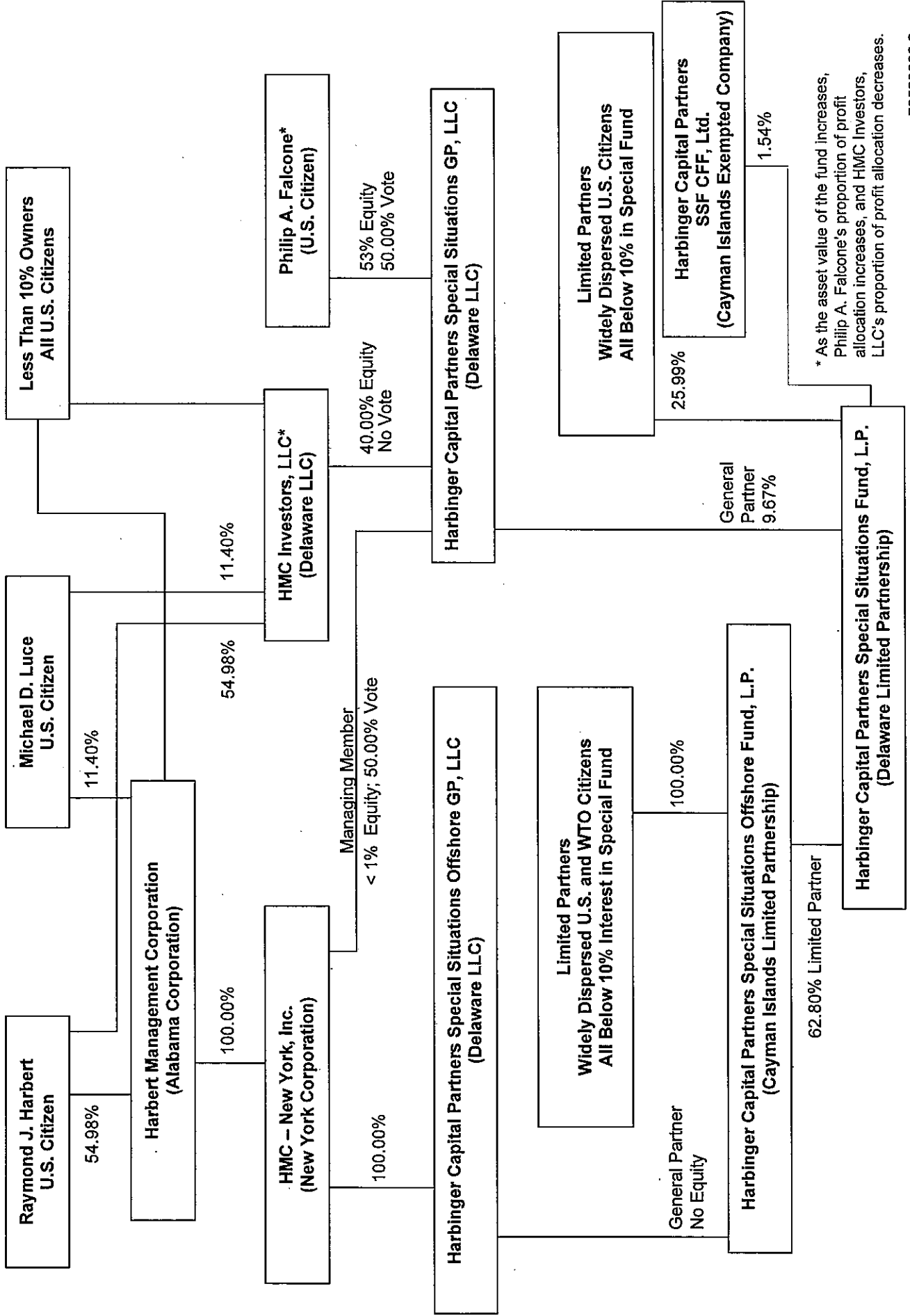
**Annex 3  
MASTER FUND OWNERSHIP DIAGRAM**



\* As the asset value of the fund increases, Philip A. Falcone's proportion of profit allocation increases, and HMC Investors, LLC's proportion of profit allocation decreases.  
 \*\* These members have granted irrevocable proxies to HMC Investors, LLC to vote their respective membership interests, resulting in HMC Investors, LLC having 50.00% of the vote of Harbinger Capital Partners Offshore Manager, LLC.  
 \*\*\* Comprised of a 0.50% voting interest in its own right and a 49.5% voting interest based on irrevocable proxies.



**Annex 3  
SPECIAL SITUATIONS FUND OWNERSHIP DIAGRAM**



**Annex 4 to Petition for Declaratory Ruling:  
SALE RESTRICTIONS**

Harbinger's management has the ability to prevent limited partners from selling their interests in the Master Fund and the Special Fund to third parties if the sales would cause foreign ownership to exceed the levels permitted under Section 310(b) of the Communications Act and declaratory rulings issued thereunder. Sales of limited partnership interests in any of the following companies, and such sales are rare, are subject to approval by Harbinger: Harbinger Capital Partners Fund I, L.P.; Harbinger Capital Partners Special Situations Fund I, L.P.; and Harbinger Capital Partners Special Situations Offshore Fund, L.P. Similarly, sales of shares in Harbinger Capital Partners Offshore Fund I, Ltd. are subject to approval by Harbinger.

**Annex 5 to Petition for Declaratory Ruling:  
PROPOSED CONTROL OF MSV SUB BY THE HARBINGER FUNDS**

