

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Inmate Calling Solutions, LLC dba ICSolutions (U6813C) and TKC Holdings, Inc. For Approval of an Indirect Transfer of Control of Inmate Calling Solutions, LLC dba ICSolutions to TKC Holdings, Inc., Pursuant to California Public Utility Code Section 854.

Application 16-06-015
(Filed June 29, 2016)

DECISION APPROVING TRANSFER OF INDIRECT CONTROL, INCLUDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, OF INMATE CALLING SOLUTIONS, LLC, DBA ICSOLUTIONS TO TKC HOLDINGS, INC.

Summary

This decision authorizes TKC Holdings, Inc., a Delaware corporation (Buyer), to acquire indirect control of Inmate Calling Solutions, LLC, a California limited liability company, dba ICSolutions (ICS), pursuant to the Member Interest Purchase Agreement (Agreement) included with the application.

This proceeding is closed.

1. Factual Background

On June 29, 2016, TKC Holdings, Inc., a Delaware corporation (Buyer), and Inmate Calling Solutions, LLC, a California limited liability company, dba ICSolutions (ICS) filed this application (Joint Application) for authority to transfer indirect control of ICS to Buyer. The Agreement, dated May 6, 2016¹, is

¹ See Exhibit F to the Joint Application.

entered into among Centric Group, LLC, a Delaware limited liability company (Centric), Keefe Group, LLC, a Missouri limited liability company (Keefe), Courtesy Group, LLC, a Missouri limited liability company, and Buyer. Centric owns (i) all of the issued and outstanding membership interests in Keefe, which owns all of the issued and outstanding membership interests in ICS, and (ii) Courtesy Group (collectively, the Membership Interests). Upon consummation of the transactions contemplated by the Agreement, Buyer will purchase the Membership Interests, which will result in an acquisition by the Buyer of indirect control of ICS. ICS will become an indirect wholly-owned subsidiary of Buyer, which in turn will ultimately be controlled by affiliates of HIG Capital, LLC, (HIG Capital). *See Attachment 1 to this decision.*

ICS and the Buyer submit that the approval requested by their Joint Application will serve the public interest by providing additional capital to ICS, which in turn will enhance its ability to maintain and improve its network and services, and allow ICS to better compete in the telecommunications marketplace. The transaction will have no adverse impact on ICS's customers and will be virtually transparent to customers in terms of the service they currently receive. ICS will continue to provide services at the same rates and on the same terms and conditions as are currently in effect. ICS holds only a de minimis share of each of the domestic and international markets. Thus, this transaction poses no risk of competitive harm to the domestic or international telecommunications markets. The joint applicants are targeting the closing of this transaction for October 2016.

ICS provides institutional calling services to inmates of confinement institutions throughout California and in 37 other states. ICS received a Certificate of Public Convenience and Necessity (CPCN) to Operate as a

Switchless Reseller of inter-Local Access and Transport Area (LATA) and intra-LATA telecommunications services within California (U-6813-C) on September 4, 2003. ICS received a CPCN to operate as a provider of resold interexchange service within California on September 8, 2011. It is indirectly 100 percent-owned and controlled by Centric.²

Buyer is incorporated under the laws of Delaware, with its principal business office at 1459 Brickell Avenue, 31st Floor, Miami, FL 33131. Buyer is controlled by an affiliate of HIG Capital, a private equity investment firm headquartered in Miami, Florida. The HIG family of funds includes private equity, growth equity, real estate, debt/credit, lending and life sciences.

The Commission has received no protests to the Joint Application.

2. Discussion

The primary standard by which the Commission reviews whether a transaction should be approved under Section 854(a), is whether the transaction will be “adverse to the public interest.”³

In addition, the Commission has established that:

Where a company that does not possess a [CPCN] desires to acquire control of a company or companies that do possess a CPCN, the Commission will apply the same requirements to

² Certain pre-closing restructuring transactions were recently completed by Centric to facilitate this transaction. Prior to the restructuring, Keefe and ICS were both wholly-owned direct subsidiaries of Centric, *i.e.*, Keefe was a sister affiliate of ICS. As part of the restructuring, the equity interests of ICS were contributed by Centric to Keefe. Keefe remains a direct wholly-owned subsidiary of Centric, and ICS has become a direct wholly-owned subsidiary of Keefe and an indirect wholly-owned subsidiary of Centric. Ultimate parent control of ICS resided and continues to reside with Centric before and after the restructuring.

³ See Decision (D.) 03-12-033 at 6; D.01-06-007 at 15.

the acquiring company as would be applied to an initial applicant seeking a CPCN.⁴

The Commission has two major criteria for determining whether a CPCN should be granted, or transferred. An applicant who desires to operate as a switchless reseller of local exchange and interexchange services must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Buyer has provided an audited balance sheet as of December 31, 2015, an unaudited balance sheet as of June 30, 2016, and a bank statement for the period of May 1, 2016 through May 31, 2016, of its affiliated guarantor, HIG Middle Market LBO Fund II, L.P., a limited partnership, (Parent) as evidence that \$100,000 would be available to Buyer for one year following certification. Buyer has submitted evidence of a guaranty of its Parent in the amount of \$100,000 for purposes of satisfying the financial documentation requirements of D.95-12-056.⁵ Parent has certified and guaranteed that it will make available to Buyer the sum of \$100,000 plus any amounts required to cover deposits imposed by other telecommunications carriers for the purpose of satisfying the Commission's financial qualification standards for competitive local exchange carriers (CLECs).

The record shows that buyer is technically and managerially qualified to acquire and operate ICS's existing telecommunications operations in California.⁶

⁴ See D.15-07-015 at 4.

⁵ As recently clarified by D.14-11-004. See page 6.

⁶ See Response to ALJ Ruling, including Exhibit G, dated August 23, 2016.

The management teams of Buyer and ICS will remain largely unchanged as a result of the pending transaction. Except for adding ICS's Chief Executive Officer as an officer of Buyer, the current officers and directors of Buyer will not change as a result of the contemplated closing. Ultimate ownership of Buyer will be widely disbursed among various passive investors through their investment in several investment holding companies and investment funds.

These investment holding companies and funds are ultimately managed and controlled by HIG - GPII, Inc. (Manager). The Manager is equally owned and controlled by Sami Mnaymneh and Anthony Tamer, who are also the founders and co-CEOs of HIG Capital.

In addition to the submitted biographies of Msrs. Mnaymneh and Tamer, Applicants have submitted biographies of other key managerial personnel, including Jeff Zanarini, President and Director; Chris Paldino, Vice-President and Secretary and Director; Christopher Alberta, Chief Integration Officer and Director; James Theiss, Chief Executive Officer; James Patrick Morris, Chief Administrative Officer; Alexander Lee, Vice President, General Counsel and Corporate Secretary, Centric; Nathan Schulte, President, Keefe; and Timothy P. McAteer, President and General Manager, ICS.

Also, applicants for CPCN authority must disclose any regulatory fines, penalties, or sanctions they have received and any past bankruptcies. Here, Buyer and ICS have verified under penalty of perjury that, to the best of their knowledge, neither Applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10 percent of Applicant, or anyone acting in a management capacity for Applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable,

for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

Buyer and ICS have verified under penalty of perjury that, to the best of Applicant's knowledge, neither Applicant, any affiliate, officer, director, partner, nor owner of more than 10 percent of Applicant, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by the FCC or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

There is nothing in the record which contradicts these assertions. Therefore, we find that the Buyer has demonstrated sufficient financial strength, and managerial and technical expertise to satisfy Commission requirements for transfer of a CPCN.

We find that the Buyer's acquisition of indirect control of ICS, including the CPCN held by ICS, will serve the public interest. Following the Agreement,

ICS will continue to provide services at the same rates and on the same terms and conditions as are currently in effect. Buyer is overseen by a management team with substantial experience and expertise in the telecommunications field, and the transaction has been structured to assure an orderly transition.

Based on the terms of the proposed transaction, we find that approving this transaction is in the public interest. Since the transaction is in the public interest, it is also not adverse to the public interest. Thus, the proposed transaction fulfills the requirements of § 854, and it is reasonable for the Commission to approve the transaction.

3. California Environmental Quality Act Compliance

The Joint Application proposes no new construction; and, thus, there is no possibility that the transaction will have a significant adverse impact on the environment. The transaction does not constitute a “project” under the California Environmental Quality Act, California Public Resources Code, Section 21000, *et seq.*⁷

4. Motion for Confidentiality

With their Joint Application, the Applicants filed a Motion for Leave to file the following materials under seal pursuant to Pub. Util. Code § 583, Rule 42 of the Commission’s Rules of Practice and Procedure (Rules) and General Order (GO) 66-C: Exhibits C and D (Financial Statements), Exhibit F (Membership Interest Purchase Agreement), and Exhibit I (Audited Balance Sheet as of December 31, 2015, an Unaudited Balance Sheet as of June 30, 2016, and a Bank

⁷ ICS will continue to provide services strictly via resale of the services of underlying carriers. The proposed transaction is not a request to construct or transfer any physical facilities, but rather involves only an indirect change of control of ICS through the transfer of equity interests.

Statement for the period of May 1, 2016 through May 31, 2016, of its affiliated guarantor, HIG Middle Market LBO Fund II, L.P., a limited partnership, (Parent). Applicants assert that the information contained in Exhibits C D, F and I is confidential and has not been made available to the public. Joint Applicants assert that public disclosure of this information would materially damage the competitive and financial position of Buyer and Parent, whom is a private, closely-held investment fund whose financial information is maintained as highly confidential and proprietary.

The public interest would be impaired by public disclosure of the information contained in these Exhibits, in that any compromise of the competitive or financial position of Parent, vis-a-vis its competitors, would ultimately work to the detriment of the consuming public. We have granted similar requests in the past and we agree that details of Exhibits C, D, F, and I, if disclosed, could place applicants at an unfair competitive disadvantage. Therefore, the motion is granted for a period of three years from the effective date of this decision. During that period the information must not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

If Applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion must be filed no later than 30 days before the expiration date.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3381 dated July 14, 2016, the Commission preliminarily categorized this application as rate setting, and preliminarily determined that no hearings were necessary. As the Commission has received no protests to this application, a public hearing is not necessary.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Michael Picker is the assigned Commissioner and John A. Mikita is the assigned ALJ and Presiding Officer in this proceeding.

Findings of Fact

1. Buyer is a Delaware Corporation.
2. ICS is a California Limited Liability Company.
3. Buyer is a holding company with no operations.
4. ICS is authorized in California to provide the switchless resale of local exchange and interexchange telecommunications services.
5. Where a company that does not possess a California CPCN desires to acquire control of a company or companies that do possess a California CPCN, the Commission will apply the same requirements, to the acquiring company, as would be applied to an initial applicant seeking a CPCN.
6. ICS is managed by the experienced management team of HIIG Capital. Upon closing, this management team will continue to manage the operations of ICS supplemented with the additional management resources of Buyer.

7. Buyer has submitted evidence of a guaranty by its Parent in the amount of \$100,000 for purposes of satisfying the financial documentation requirements, which is reasonably liquid and available and which is sufficient to cover operating expenses and any deposits third-party carriers may require.

8. Buyer has also submitted an attestation under penalty of perjury signed by both its Chief Executive Officer and President that the guarantee is irrevocable for a period of one year following the grant by the Commission of the requested CLEC authority to Buyer.

9. Applicants represent that no other persons associated with or employed by Applicants as an affiliate, officer, director, partner, agent or owner of more than 10 percent of Applicant was previously associated with any company that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

10. Upon closing, ICS's current customers will continue to receive service under the same rates, terms and conditions that currently apply.

11. No new construction is proposed in the application.

12. The transaction will serve the public interest by providing additional capital to ICS, which, in turn, will enhance its ability to maintain and improve its network and services and better compete in the telecommunications marketplace.

13. Approving the proposed transaction, as described in the Joint Application, is the relief requested by the Joint Applicants and this relief is not opposed by any party in this proceeding.

Conclusions of Law

1. Buyer has the financial resources and the technical capabilities that the issuance of a CPCN would require.
2. The transaction is in the public interest, meets the criteria of Section 854 of the Pub. Util. Code, and should be approved.
3. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.
4. This proceeding is an uncontested matter.
5. The Joint Application should be approved.
6. ICS will continue to be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.
7. Hearings are not necessary in this proceeding.

ORDER

IT IS ORDERED that:

1. Application 16-06-015 is granted. TKC Holdings, Inc., is authorized to acquire control of Inmate Calling Solutions, LLC, dba ICSolutions, in accordance with the Member Interest Purchase Agreement submitted with Application 16-06-015.
2. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Appendices to Decision 06-04-063 and Decision 11-10-039, Inmate Calling Solutions, LLC, a California limited liability company, dba ICSolutions (ICS), continues to be subject to all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

3. The joint motion of TKC Holdings, Inc., and Inmate Calling Solutions, LLC, a California limited liability company, dba ICSolutions (ICS) (jointly, Applicants) to file under seal Exhibits C, D, F and I is granted for a period of three years from the effective date of this decision. During that period, this information shall not be publicly disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If Applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion must be filed no later than 30 days before the expiration date.

4. Application 16-06-015 is closed.

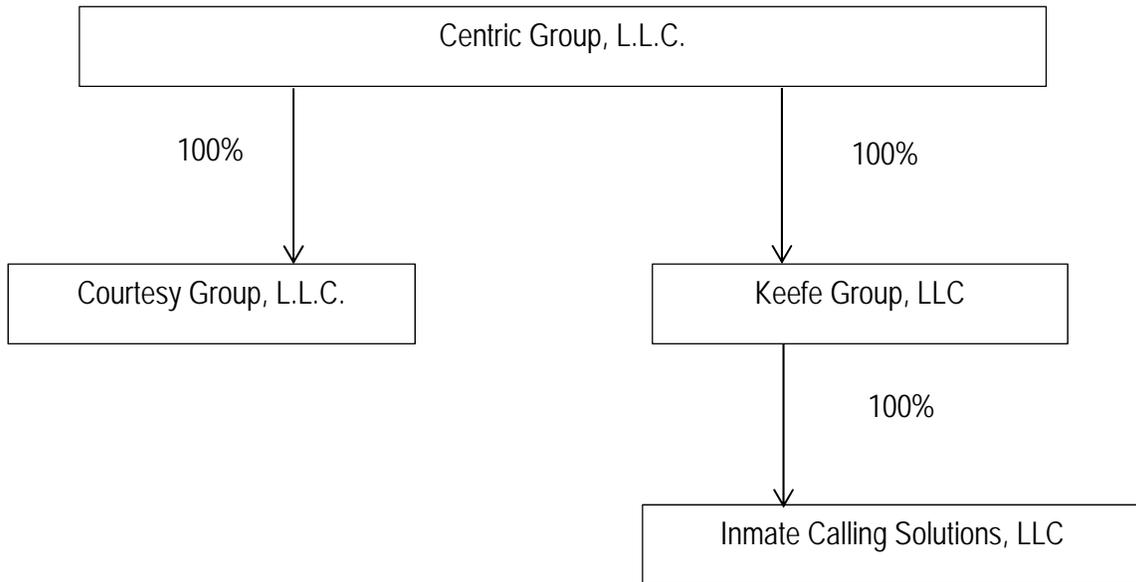
This order is effective today.

Dated _____, at Long Beach, California.

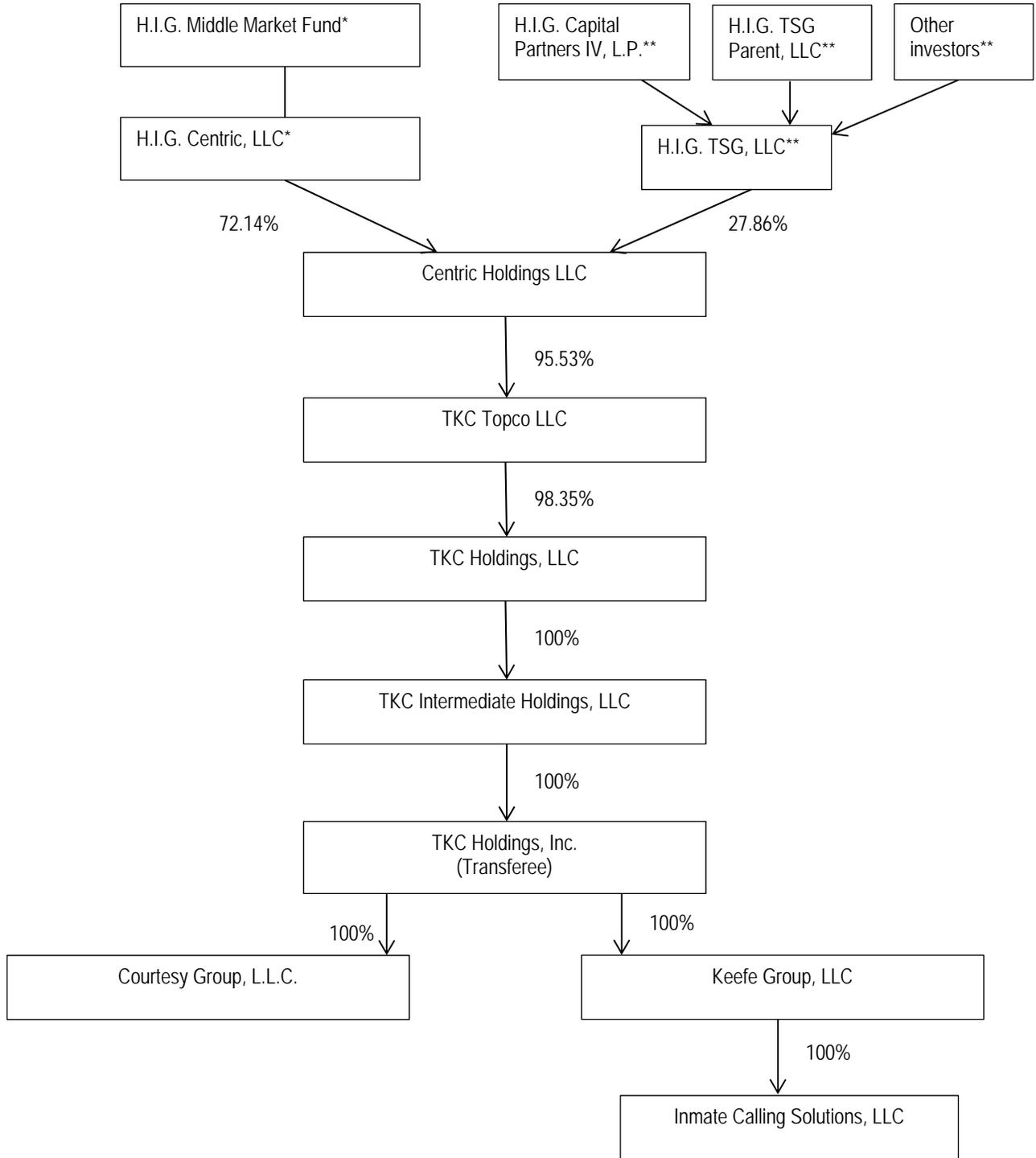
ATTACHMENT 1

Pre- and Post-Transaction Structure of Inmate Calling Solutions, LLC

Pre-Closing Ownership Structure



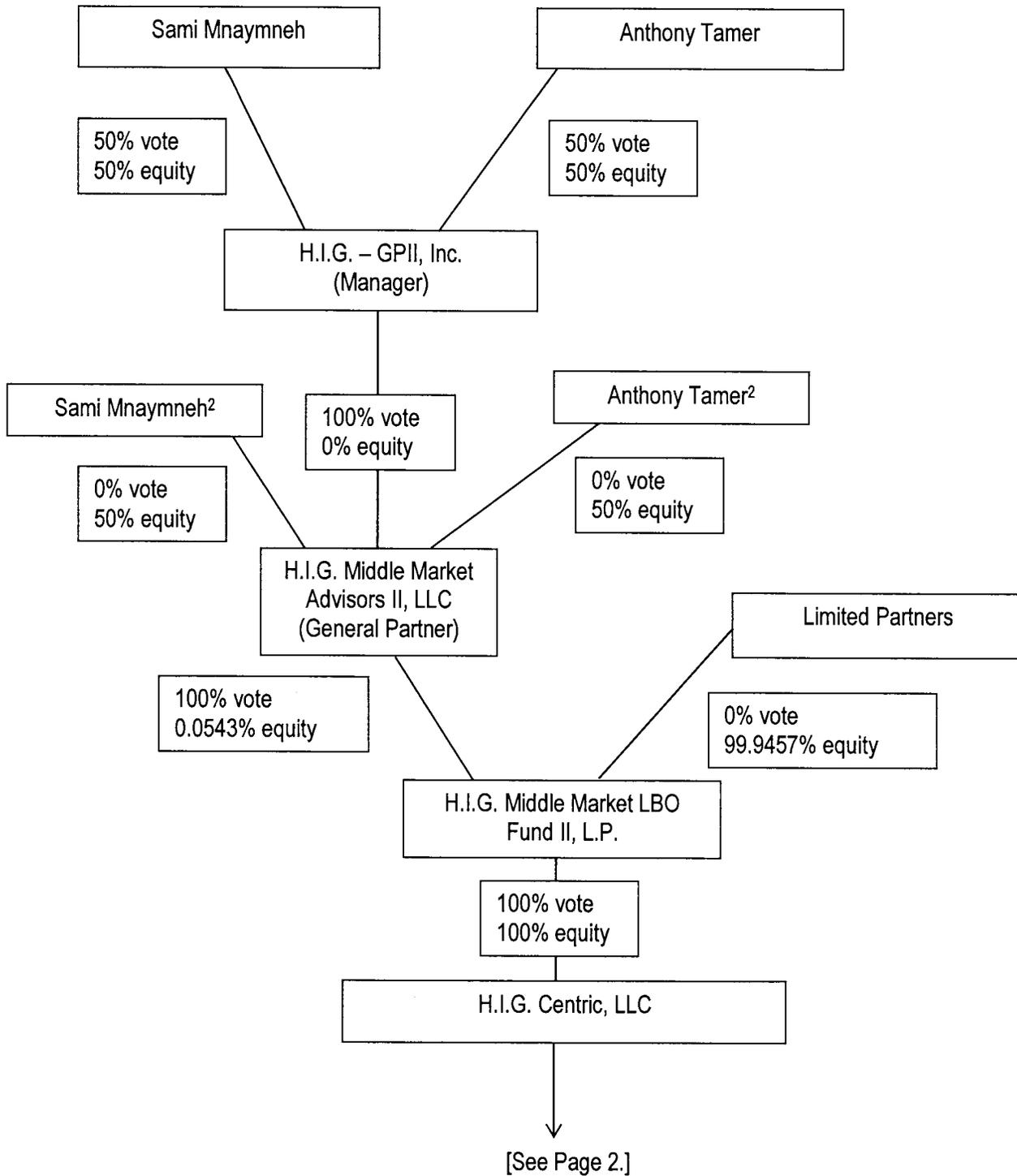
Post-Closing Ownership Structure



* See page 3.

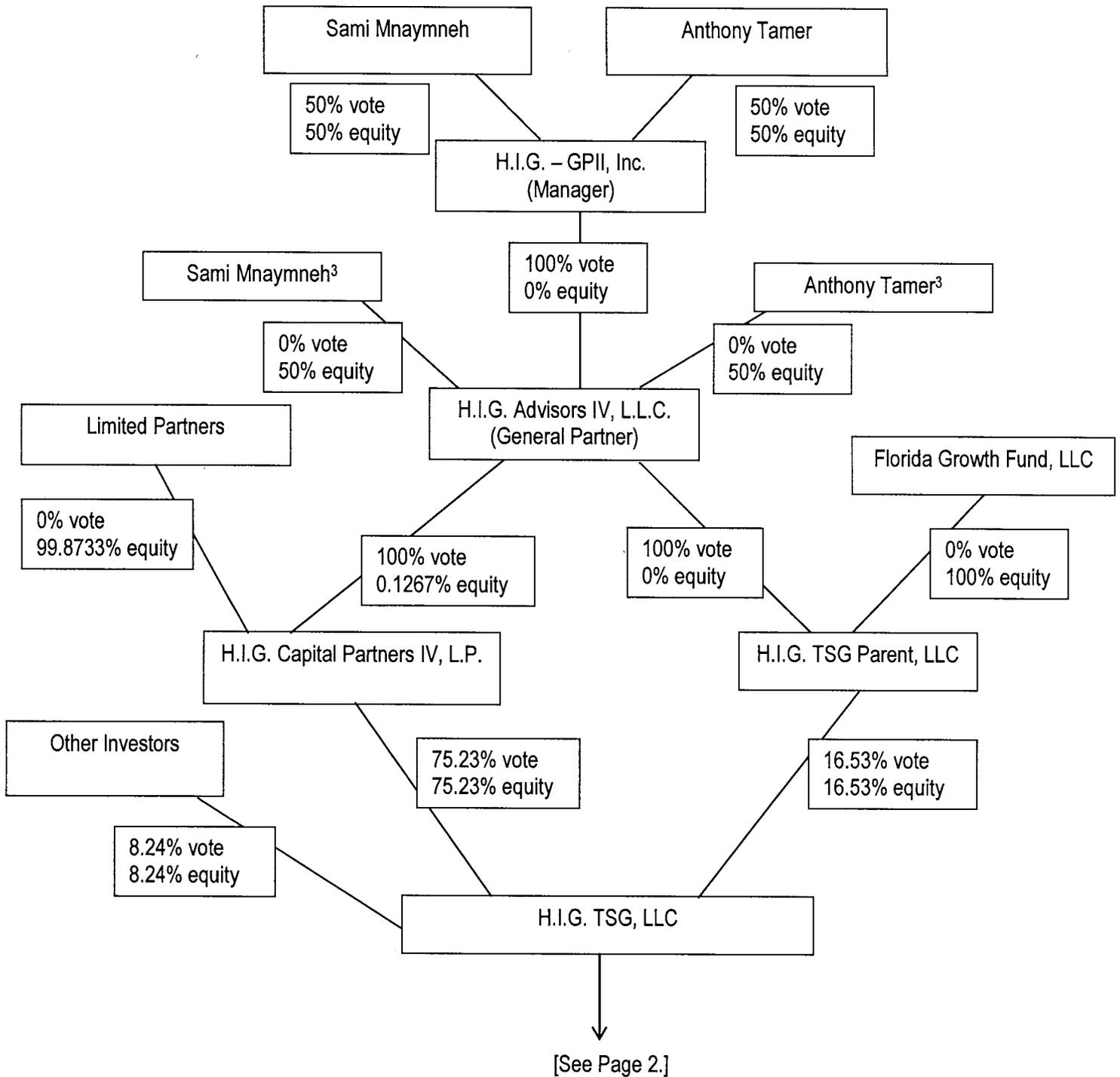
** See page 4.

Post-Closing Ownership Structure (Continued)



² A portion of Mr. Mnaymneh's and Mr. Tamer's ownership interests are held through estate planning vehicles the beneficiaries of which are family members.

Post-Closing Ownership Structure (Continued)



³ A portion of Mr. Mnaymneh's and Mr. Tamer's ownership interests are held through estate planning vehicles the beneficiaries of which are family members.