

## Memorandum

To: Probity Investments  
CC: Alan Palmiter  
From: James S. Austin  
Date: 11/25/98

Re: Virtual Corporate Counsel: Charter Equipment Lease 1998-1 LLC

### Introduction

In the introduction to [A Plain English Handbook: How to create clear SEC disclosure documents](#) (Handbook) Arthur Levitt, chairman of the SEC, states that, "investors need to read and understand disclosure documents to benefit fully from the protections offered by our federal securities laws." The Plain English Handbook provides proven tips from individuals who are currently writing plain English disclosure documents. The S-1 Registration Statement (prospectus) submitted by Charter Equipment Lease 1998-1 LLC (Charter) does not follow virtually any of the suggestions in the Handbook. In this memorandum I will: (1) illustrate how various parts of Charter's prospectus could be written in accord with the Handbook's guidelines, (2) outline information not found in the prospectus that would be useful to investors, and (3) find other non-prospectus sources for this information.

### Plain English Handbook's Guidelines

The Handbook gives recommendations in three broad areas: (1) Organization, (2) Writing in Plain English, and (3) Document Design. Under these three areas the Handbook offers more detailed suggestions. It is clear that the author of Charter's prospectus did not follow the Handbook because the prospectus disregards the suggestions of all three areas. Had the writer gone back and edited his document, keeping the principles from the handbook in mind, the examples that I am presenting would have been easily corrected.

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### Organization

**Chapter 5 of the Plain English Handbook indicates a few principles of good organization that should be present in a disclosure document. Three of the five are worthy of discussing on relation to Charter's prospectus.**

#### Present the big picture before the details

Charter's prospectus starts off with a detailed description of the Lease-Backed Notes being issued. As the Plain English Handbook notes, "it is hard to absorb the details if you don't know why they are being given to you." The reader is not told what the money will be used for until page 22 or what Charter's line of business is until page 29. If the reader were told at the beginning of the prospectus that Charter is a specialty capital equipment financing and leasing company the reader could better understand the nature of the asset-backed notes being described.

Use descriptive headers and subheaders to break up your document into manageable sections

Using descriptive headers and subheaders is done so the reader can better digest the information. Charter's prospectus effectively uses headers but not subheaders. The paragraphs under the headings are long and subheaders would make it easier to find information.

The reader would benefit by a better-organized table of contents in the front of the prospectus. The section headings are listed, but there are not page numbers present. There is a better table of contents at the end of the document, but you do not know it until you have read to the end.

Always group related information together

Grouping related information together helps you identify and eliminate repetitious information. Charter's prospectus repeats information on multiple occasions. A Summary of Terms is located on pages 5 to 16. All of this information is repeated in separate sections later in the prospectus. The Summary of Terms is organized in basically the same order as the individual section beginning on page 17. If a table of contents were provided for the section beginning on page 17 they would serve the same purposes and eliminate 12 pages.

The paragraph indicating that a rating is not a recommendation to purchase is one that is present in the prospectus in several locations. In fact, this paragraph is on both pages 19 and 20.

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### **Writing in Plain English**

**After the organizational issues the Plain English Handbook lists common problems found in disclosure documents. Charter's prospectus suffers from almost all of the common problems.**

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### **Long Sentences**

Long sentences confuse and bore the reader. One need not go beyond the first sentence of the description of the notes to find a sentence that could cure insomnia. This example shows how much easier the sentence is to understand when it is broken into multiple sentences.

#### Before

The Lease-Backed Notes (the "Notes") issued by the Charter Equipment Lease 1998-1 LLC, a limited liability company organized under the laws of the state of Delaware (the "LLC" or the "Issuer"), consist of seven classes, the Class A-1 Notes, the Class A-2 Notes, the Class A-3 Notes, the Class A-4 Notes (the foregoing the "Class A Notes") the Class B Notes, the Class C Notes and the Class D Notes, (each a "Class") of nonrecourse debt obligations of the Issuer, which respectively represent the right to receive repayment of the initial outstanding principal amount of such Class of the Notes as set forth in the table below (the

"Initial Outstanding Principal Amount") and monthly interest at a rate per annum for such Class of Notes as set forth in the table below (the "Note Interest Rate") on the unpaid portion of such Outstanding Principal Amount.

After

The Lease-Backed Notes issued by Charter Equipment Lease 1998-1 LLC consist of 7 classes of non-recourse debt obligations. The seven classes are as follow:

Class A-1 Notes

Class A-2 Notes

Class A-3 Notes

Class A-4 Notes

Class B Notes

Class C Notes

Class D Notes

Each class represents the right to receive repayment of the initial outstanding principal amount for the respective class and monthly interest on the unpaid portion of the outstanding principal amount at a rate per annum for the respective class. The initial outstanding principal amounts and per annum interest rates are set forth in the table below.

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Passive Voice

In the passive voice the subject of the sentence is acted upon. In the active voice the subject performs the action. The use of the active voice, as opposed to the passive voice, will shorten sentences and make a document more enjoyable to read. Charter's prospectus form uses the passive voice too often. An example of how a switch to active voice from passive voice can shorten Charter's prospectus is presented below.

Before

The Lease Receivables comprising the Pool of Assets will be serviced by the Servicer pursuant to a servicing agreement (each, a "Servicing Agreement") by and between the Servicer and the Issuer.

After

The Servicer will service the Lease Receivables comprising the Pool of Assets in accord with its servicing agreement (each, a "Servicing Agreement") with the Issuer.

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### Superfluous words

Eliminating superfluous words will shorten a disclosure document. Charter uses superfluous words on numerous occasions. In the following example Charter uses a phrase which is labeled as superfluous in the Handbook.

#### Before

In the event that the party is obligated to perform or satisfy such obligations, the Noteholders may be subject to delays in receiving payments and....

#### After

If the party is obligated to perform or satisfy such obligations, the Noteholders may be subject to delays in receiving payments and....

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### Written in the Negative

"Positive sentences are shorter and easier to understand than their negative counterparts." Charter writes in the negative on many instances where it could shorten the document by writing in the positive. In the following example Charter uses a phrase which is labeled as a negative compound in the Plain English Handbook.

#### Before

The Transferor does not have, nor is it expected in the future to have, any significant assets.

#### After

The Transferor lacks, nor is it expected to obtain, any significant assets.

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### Legal and Financial Jargon/ Abstract Words

Disclosure documents are written for the investor not for the lawyers and accountants. Thus, the disclosure document should not use legal terms when things can be explained more simply; at least not without providing a definition. Similarly, abstract terms should not be used when more concrete examples can be given. Charter's prospectus uses numerous terms that the lay investor would not

know. These terms should be replaced by a description or example that an average investor would understand. A few of the financial and legal terms used and not defined or illustrated by Charter are listed below.

indenture of trust

installment sales contracts

synthetic leases

book-entry registration

stripped notes

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### Numerous Defined Terms

Numerous definitions in a sentence obscure the intended meaning. The example used when discussing long sentences is a prime example of a sentence where the meaning is obscured by definitions. The insertion of ?LLC?, ?Issuer?, ?Class A Notes?, ?Class?, ?The Initial Outstanding Principal Amount?, and ?Note Interest Rate? make the sentence harder to read. Notice how much easier the rewrite of the sentence is when these terms are omitted. Most of these definitions are not that much shorter than what they are replacing and only serve to confuse the reader.

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### Unnecessary Details

As previously mentioned Charter repeated information on numerous occasions, but it did not really provide any unnecessary details. This was a complicated transaction that needed a great deal of discussion on the nature of the underlying lease obligations. If anything more information was needed, as will be discussed later.

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### Document Design

**Chapter 7 of the Plain English Handbook lays out 5 basic design elements and how they contribute to the plain English document:**

**Hierarchy or distinguishing levels or information**

**Typography**

**Layout**

**Graphics**

**Color**

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### Hierarchy

Charter uses section headings but does not use headings within the sections. The text under some heading goes on for several pages. The use of subsection headings would make information easier to locate and focus the reader on the important point of a paragraph.

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### Typography

The main problem with typography in Charter's disclosure document is the way text is emphasized. All capital letters are used to attract the reader's attention to important parts of the text, but it also makes this text more difficult to read. The Handbook recommends that a different size or weight typeface should be used instead.

#### Before

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL ?

#### After

**The registration hereby amend this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment with specifically states that this registration statement shall...**

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### Layout

According to the Handbook, research shows that left justified text is easier to read. Charter's prospectus is fully justified. Look at the example under Typography. The drafter did not read this far into the Handbook. The line length and line spacing of Carter's prospectus are reasonable.

Charter's prospectus has some lengthy paragraphs. There are numerous instances where bullet points could have been used to make information easier to read. This is indicated in the example used for Long Sentences. In the rewrite I used bullet points to lay out the different classes of stock, instead of just listing them in a manner that is difficult to read, as the drafter of Charter's prospectus did. On a positive note, Charter's prospectus did use a table to lay out principle and interest rate amounts.

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### Graphics

Graphics would have been useful in Charter's prospectus. The relationships of the various companies as subsidiaries of a parent company and as the issuer, transferor, seller, and servicer are confusing. A diagram of the family relationship between all of the companies would be useful. It is difficult to understand the relationship between Charter Equipment Lease, Charter Funding Corporation, and Charter Financial. A diagram would have easily cleared this up. A diagram of the transactions indicating which companies are the issuer, transferor, setter, and servicer with respect to each document would also be useful.

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### **Information Not Found in Prospectus**

There were several pieces of information which are not in the prospectus that I feel an investor would find useful.

The prospectus talks about how the market value of underlying equipment will effect the amount of money received if there is a default, but the prospectus does not tell the investor what type of equipment may be associated with each class of notes.

The prospectus says that historical levels of delinquencies and losses are no assurance of future levels. But information on historical levels relative to the similar leases from other companies would be useful because it would give the investor a relative perspective on the companies credit policies, that the prospectus attempts to describe in detail.

Why the notes are being shifted to this LLC instead of being dealt with in the parent company?

What type of leases will back each of the seven classes of notes?

Who is the rating agency on the notes going to be? As an investor I would want an established company in the asset backed security area, like Fitch IBCA, to rate them

The prospectus discusses economic factors that will affect possible prepayments. One factor listed is interest rates. But the reader is not told if an increase in interest rates will cause prepayment or a decrease in interest rates will cause prepayments. Causal relationships are not presented for the other variables either.

The only real information given on the companies involved in this transaction are financial for the past year. Since the notes are only backed by the underlying leases a great deal of financial information on the company is not necessary. But as an investor I would like to see more in order to determine if I feet that this is a well run company. I would use this in evaluating the credit policies used.

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### **Non-Prospectus Sources of Information**

## Company Research

First Call Corporation: (<http://www.firstcall.com>) A source of real-time, commingled research, earnings estimates and corporate information.

Zacks Investment Research: (<http://www.zacks.com>) Investment analysts' reports

Bloomberg: (<http://www.bloomberg.com>) Virtually everything available on a company, if you have an account. Analysts reports, historical information, Betas, earnings estimates, real time information and news.

Lexis/Nexis: (<http://www.lexis.com/xchange/>) Historical news on companies.

Hoovers Online: (<http://www.hoovers.com>) Information on 12,000 companies.

## Information on Asset Backed Security Ratings

FitchIBCA: (<http://www.fitchIBCA.com>) The world leader in rating asset backed securities. Will have to pay for reports.

Moody's: (<http://www.moodys.com>) Rates asset backed securities.

Standard and Poors: (<http://www.stockinfo.standardpoor.com>) Rates Asset backed securities.

## Information on Economic Factors

Bloomberg: (<http://www.bloomberg.com>) Has latest economic news

Yardeni's Economics Network: (<http://www.yardeni.com>) Yardeni is Chief Economist of Deutsche Morgan Grenfell.

These sources will provide information on rating asset backed securities and information on the financial performance of the companies I indicated that I would want more information on. Some of these sites will also help predict the economic factors with will effect prepayments. Amazon.com can be used to locate textbooks to help determine the causal relationships between economic factors and prepayments.

Information on what types of leases will be backing each class of notes, what type of equipment is involved, and why this transaction is structured between the companies as it is, and historical levels of delinquencies will have to be provided by the Charter.