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April 25, 2011

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.W.
Washington, D.C. 20549

Re: BF Enterprises, Inc. Application under Section 12(h) of the Exchange Act

Ladies and Gentlemen:

On behalf of our client, BF Enterprises, Inc. (the "Company"), we are submitting this request to the Staff of the Securities and Exchange Commission (the "Commission") for an exemption of the Company from the provisions of Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act"). We respectfully submit that, based on the Company's unique facts and circumstances further described below, exemptive action under Section 12(h) of the Exchange Act is consistent with the public interest or the protection of investors because (i) as of December 31, 2010, the Company has total assets of approximately $13.3 million and stockholders' equity of approximately $11.8 million; (ii) the Company has fewer than 85 total beneficial owners of its common stock, one of which has expressly stated under oath that its shares are held indirectly through 500 trust entities formed solely for the purpose of attempting to cause the Company to register under Section 12(g) of the Exchange Act; and (iii) there is no trading activity in, and an absence of any regular market for, the Company's securities.

Executive Summary

The Company is a real estate developer whose primary business comprises two properties: a real estate development in suburban Tampa, Florida, and an office building in Tempe, Arizona. As of December 31, 2010, the Company had total assets of $13.3 million, consisting primarily of real estate, mortgage loans receivable and cash and cash equivalents. The Company was a reporting company under the Exchange Act until 2005 and terminated its Exchange Act registration pursuant to a Form 15 filed with the Commission on August 30, 2005 in connection with a reverse/forward stock split transaction (the "Transaction").

The Company's stockholders approved the Transaction on July 21, 2005 based upon a Schedule 13E-3 filed with the Commission on March 31, 2005 and as subsequently amended by the Company. Pursuant to the Transaction, as approved by the stockholders, the Company implemented a 1-for-3,000 reverse stock split, followed immediately by a 3,000-for-1 forward stock split. Those stockholders who owned fewer than 3,000 shares of the Company's common

stock before the reverse split received cash payments for their shares equal to $8.95 per share. The Company's records indicate that, during the course of the Transaction, one of its stockholders, Leeward Capital, L.P. (the "Hedge Fund"), actually increased its existing share ownership by more than 43%, from 100,000 shares to over 143,000 shares. Other than the Hedge Fund, the Company has fewer than 25 record holders of all of its shares of common stock and fewer than 85 total beneficial owners of the Company's common stock.

In July 2010, the Hedge Fund approached the Company and demanded that the Company repurchase the Hedge Fund's shares of the Company's common stock for $1.4 million ($9.85 per share). In the same conversation and in subsequent correspondence, the Hedge Fund warned the Company that, if the Company did not accept the Hedge Fund's offer, the Hedge Fund would attempt to take unilateral steps to require the Company to become an Exchange Act registrant. The Company responded that it was unable to entertain the Hedge Fund's proposed repurchase price but indicated that the Company would consider a repurchase at approximately $6.00 per share, which was at the high end of the range of share purchases that the Company had recently completed at the time. Immediately after the Company's response, the Hedge Fund withdrew its offer of $9.85 per share and did not communicate further with the Company until November 2010, when the Hedge Fund initiated a process to implement a transfer (the "Transfer") of its shares to 500 identical trusts.

The Company informed the Hedge Fund that the Company would need additional information from the Hedge Fund to determine whether the proposed Transfer could proceed in accordance with the federal securities laws. Rather than providing this information to the Company, the Hedge Fund commenced litigation in Delaware Chancery Court, seeking an expedited court order giving effect to the Transfer as of November 2010 and awarding attorneys fees and costs to the Hedge Fund. During the course of the litigation, the Hedge Fund filed an affidavit that contained the information that the Company had previously requested from the Hedge Fund regarding the 500 transferee trusts and the Hedge Fund itself. As a result of the information finally provided to the Company in that affidavit, the Company concluded that the transaction was exempt from registration under the Securities Act of 1933, as amended (the "Securities Act") and that the proposed Transfer would entail no change in beneficial ownership of the Company's shares. The Company therefore instructed its transfer agent, Registrar and Transfer Company (the "Transfer Agent"), to proceed with the Transfer, which occurred before December 31, 2010, the last day of the Company's fiscal year.

In determining the number of its holders of record as of the last day of its most recently completed fiscal year for purposes of Section 12(g) of the Exchange Act, the Company believes that Rule 12g5-1(a)(3) under the Exchange Act provides that the shares held by the 500 trusts are deemed to be held of record by one person because the Company's records of security holders identify those shares as held of record by one or more custodians or in other fiduciary capacities (i.e., through the 500 trusts) with respect to a single account (i.e., the Hedge Fund). The Company acknowledges that the Staff is not in a position to concur with that view of Rule 12g5-1(a)(3). However, on the basis of the facts and reasons set forth herein, the Company respectfully submits this request pursuant to Section 12(h) of the Exchange Act to exempt the Company from the provisions of Section 12(g) of the Exchange Act.

Facts

On July 1, 2010, a representative of the Hedge Fund met with the Company and demanded that the Company purchase the Hedge Fund's shares of the Company's common stock. The Hedge Fund simultaneously indicated that, if the Company did not agree to repurchase the Hedge Fund's shares, the Hedge Fund would take unilateral action to force the Company, a privately held corporation, to become a reporting company under the Exchange Act.

The Company responded to the Hedge Fund's demand on July 16, 2010. In its response, the Company invited the Hedge Fund to provide the Hedge Fund's asking price for its shares. The Company also informed the Hedge Fund that a unilateral attempt to force the Company to become an Exchange Act registrant would present multiple issues and would be unlikely to result in a market for the Company's securities that provided any actual liquidity for the Hedge Fund or any other stockholder.

On July 19, 2010, the Hedge Fund responded to the Company by denying that it had made a "demand or threat" and by simultaneously reiterating the selfsame demand and accompanying threat that the Hedge Fund had previously made. Specifically, the Hedge Fund asserted that there are "two options" for "finding a path to liquidity" and that, if the Company did not agree to the Hedge Fund's asking price for the shares, the Hedge Fund would attempt to force the Company to become an Exchange Act registrant:

> "One option would be to find a mutually acceptable price at which to sell the [Hedge Fund] shares back to the Company. The other would be to create a public market for the Company's common stock through the Company's resumption of the Company's public reporting obligations as an SEC registrant. My hope would be to achieve the first option. My alternative, if the first option fails, is to pursue the second."[1]

After this statement, the Hedge Fund demanded that the Company repurchase the Hedge Fund's shares for $1.4 million, or $9.85 per share, which the Hedge Fund characterized as a "fair price" that the Company should "seriously consider" so that "we can resolve this matter quickly and amicably."

The Company responded on July 27, 2010, explaining that it had recently conducted limited repurchases in amounts that did not exceed $6.00 per share (involving purchase prices of approximately $5.90 and $5.00 per share) and that, if the Hedge Fund were "interested in a sales price consistent with our recent purchases, please let us know and we will see what we can do." On July 29, 2010, the Hedge Fund rejected the Company's proposal and formally withdrew the Hedge Fund's offer, made ten days prior, to sell the Hedge Fund's shares for $9.85 per share.

[1] Letter from Leeward Investments, LLC as General Partner of Leeward Capital, LP to BF Enterprises, Inc. (July 19, 2010), attached as Exhibit A hereto.

The Hedge Fund did not communicate further with the Company until November 21, 2010, when the Company received a copy of the Hedge Fund's correspondence sent on November 15, 2010 to the Transfer Agent, in which the Hedge Fund demanded that the Transfer Agent implement the Transfer of the Hedge Fund's shares to an additional 499 separate accounts. The accounts were not specified to the Company until November 29, 2010, when the Company received a list indicating that the accounts were each sequentially numbered trust entities with the same trustee. In light of the multiple issues under the federal securities laws associated with the proposed Transfer, the Company notified its Transfer Agent to await further instructions pending review and analysis by the Company's legal counsel.

On December 6, 2010, the Hedge Fund sent a demand letter to the Transfer Agent insisting that the Transfer be completed as of November 24, 2010 and threatening to "institute litigation" to "compel the registration of the Transfer" as of that date if the Transfer was not completed within the following two days. The Hedge Fund made a similar demand to the Company.

The Company reviewed the Hedge Fund's demand with due regard for the Company's legal obligations relating to the proposed Transfer. Delaware law requires an issuer to register upon request the transfer of a certificated security if "the transfer is in fact rightful."[2] However, the Delaware Chancery Court has observed that a "transfer is not 'rightful' if it would violate" the Securities Act.[3] The Company notified the Transfer Agent that in light of the existence of "reasonable grounds" to "believe that a proposed transfer might be a 'wrongful' transfer under the Securities Act, a transfer agent is justified in refusing to make the requested transfer and requesting further information to show that the transfer can be made in accordance with federal law."[4]

In light of the Securities Act issues raised, the Company took steps to obtain additional information as necessary to provide reasonable assurance that the proposed Transfer was consistent with the requirements of the federal securities laws. On December 9, 2010, the Company directed the Transfer Agent to refrain from completing the Transfer pending the resolution of multiple issues that the proposed Transfer presented under the federal securities laws:

1. The proposed Transfer identified 499 transferee entities to which the Hedge Fund sought to transfer shares of the Company. Although each of these entities appeared to have an identical trustee and business address, the Company was at that time unable to determine whether the beneficiary of the

[2] Delaware Uniform Commercial Code § 8-401(a)(7) (6 Del. Code) ("If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if . . . the transfer is in fact rightful.").

[3] Bender v. Memory Metals, Inc., 514 A.2d 1109, 1116 (Del. Ch. 1986) (citing Charter Oak Bank & Trust Co. v. Registrar & Transfer Co., 358 A.2d 505, 509 (N.J. Super. 1976)).

[4] Charter Oak, 358 A.2d. at 509 (emphasizing that a "transfer agent cannot be required by state law to transfer stock in violation of the Securities Act").

various trusts was a single account or whether the trusts were for the benefit of the same beneficiaries and, if so, the number of accounts underlying the trusts. The Company required this information because, if the trusts were in fact separate persons holding for the benefit of multiple accounts, it was unclear to the Company how the Hedge Fund intended to complete the proposed Transfer in compliance with Section 5 of the Securities Act, given that the Securities Act requires every offer or sale of securities to be either registered or made pursuant to an available exemption from registration.

2. The Company sought clarification regarding what exemption from registration under the Securities Act the Hedge Fund was claiming in connection with the proposed Transfer, particularly because Securities Act exemptions "are construed strictly."[5] The Company sought to understand how the proposed Transfer, if truly made to nearly 500 separate investors, was not a "public offering" requiring registration under the Securities Act. Similarly, the Company sought clarification of whether the Hedge Fund was an "underwriter" within the meaning of Section 2(a)(11) of the Securities Act, which broadly defines that term to include "any person who has purchased from an issuer with a view to . . . distribution of any security" (for which purpose a "distribution" is a public offering of securities).[6] In that case, the Section 4(1) exemption, which excludes transactions by an underwriter, also would not apply.

3. The Company advised the Transfer Agent that the Commission has repeatedly brought enforcement actions for failure to comply with the registration provisions of the Securities Act, including in the case of purportedly private placements made to a large number of people.[7]

4. The Company advised that, if the Hedge Fund believed that an exemption from registration was available under the Securities Act, the Company would require the Hedge Fund to provide an opinion of counsel from a reputable law firm with appropriate expertise in the federal securities laws stating that the proposed Transfer was exempt from registration under the Securities Act and setting forth the facts that provide the basis for that opinion.

5. The Company also requested clarification regarding the Company's concerns with respect to the Hedge Fund's compliance with the Investment Company Act of 1940 (the "Company Act"). In particular, the Hedge Fund's list of 499 transferee entities identified a single individual as the sole trustee for trusts numbered sequentially from 2 to 500 with an identical trustee

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[5] SEC v. Cavanagh, 445 F.3d 105, 115 (2d Cir. 2006).

[6] Gilligan, Will & Co. v. SEC, 267 F.2d 461 (2d Cir. 1959).

[7] Cf. SEC v. CMKM Diamonds, Inc., Case No. 2:08-CV-00437 (Compl.) (Apr. 7, 2008) (involving a Commission enforcement action against a transfer agent for illegally aiding and abetting an unregistered offering of securities in violation of Sections 5(a) and 5(c) of the Securities Act).

> and business address. Upon the Transfer, all but one of these entities would hold the exact same number (287) of shares of the Company's common stock. As a result, the Company expressed a concern that, although listed as separate trusts, the trusts in economic reality should be integrated as a single issuer having, among other things, the same investment objective, portfolio holdings and investment adviser. If the separate trusts were deemed to be a single issuer for that purpose, the Company was concerned that the issuer would constitute an investment company under Section 3(a)(1)(C) of the Company Act because it would be engaged in the business of investing, reinvesting, owning, holding, or trading in securities and would own or propose to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets. Based on the fact that the Hedge Fund had not registered as an investment company with the Commission under the Company Act, if the Hedge Fund were deemed to be an unregistered investment company, the Hedge Fund issuer would be unable under Section 7(a)(4) of the Company Act to engage in interstate commerce, and any transfer in accordance with the proposed Transfer would risk being voidable under Section 47(b) of the Company Act. As a result, the Company requested (i) evidence of registration of the Hedge Fund issuer as an investment company under the Company Act or (ii) an opinion of counsel from a reputable law firm with appropriate expertise in the federal securities laws stating that the issuer is exempt from registration under the Company Act and setting forth the facts on which that opinion is based.

The Hedge Fund did not provide the Company with any of the requested information. Rather, on December 9, 2010, the Hedge Fund filed a lawsuit against the Company in Delaware Chancery Court. In the Hedge Fund's complaint filed in Chancery Court, the Hedge Fund admitted that it had deliberately (i) attempted to cause the Company to become an Exchange Act registrant "so that a broader public market would develop for the Company's common stock"; (ii) created the transferee trusts solely for that purpose; and (iii) transferred a portion of the Hedge Fund's shares to each of the newly created trusts.[8] The Hedge Fund further complained that the Company's requests for more information regarding the proposed Transfer were made "to prevent the existence of more than 500 record stockholders of the Company on or before December 31, 2010" and that if the transfers were not deemed effective on or before that date, "the Company will be able to continue 'dark' for another year."[9] The Hedge Fund asked the Chancery Court to (i) declare that the Transfer to all of the trusts was "valid and effective as of November 24, 2010"; (ii) declare that each of the 500 trusts "is a record holder of the Company's common stock" as of that date; (iii) declare that each of the trusts "must be listed as a record holder of shares on the Company's stocklist [sic]"; (iv) award fees, expenses and costs to the

[8] Leeward Capital, LP v. BF Enterprises, Inc., Verified Complaint (Del. Ch. Case No. 6059-VCP), ¶¶ 14-16, 20-21, attached as Exhibit B hereto [hereinafter "Compl."].

[9] Compl. ¶ 32.

Hedge Fund and its counsel; and (v) grant such other relief as the Chancery Court deemed appropriate.[10]

After filing the lawsuit, the Hedge Fund wrote to the Transfer Agent on December 14, 2010, purporting to provide additional information about the trusts in response to the Company's request for information from the Hedge Fund that the Company viewed as necessary to resolve the federal securities law issues that the proposed Transfer presented. However, after reviewing this additional correspondence from the Hedge Fund, the Company continued to believe that the Hedge Fund still had not specifically addressed the fundamental aspects of the Company's previously identified questions.

As a result, the Company wrote to the Transfer Agent on December 17, 2010 reiterating its objections and providing, at the Transfer Agent's request, a detailed statement of the issues that remained outstanding with respect to the proposed Transfer. The Company's letter to the Transfer Agent enumerated these and other questions that the Hedge Fund had refused to answer:

1. Is the beneficiary of the various trusts a single account?

2. Are the trusts for the benefit of the same beneficiaries?

3. How many unique accounts underlie the trusts?

4. How did the Hedge Fund propose to complete the proposed Transfer, which purports to transfer Company shares to approximately 500 putatively different persons, in compliance with Section 5 of the Securities Act? In particular, what exemption from registration under the Securities Act did the Hedge Fund believe is available with respect to the Transfer? In this regard, the Company noted that (a) the Hedge Fund's claim that its shares are freely transferrable said nothing about the particular manner in which the Transfer was to be conducted and whether the Securities Act would require registration of that particular transaction and (b) an unregistered distribution of securities would be no less problematic under Section 5 of the Securities Act simply because the shares illegally offered and sold would be freely transferrable if sold properly.

5. What was the basis for the Hedge Fund's conclusion that the Transfer is not a "distribution" of securities within the meaning of Section 2(a)(11) of the Securities Act?

6. What was the basis for the Hedge Fund's conclusion that the trusts, each of which would hold securities of the Company, do not in the aggregate

[10] Compl. at 9.

represent a single issuer that is an investment company under Section 3(a)(1)(C) of the Investment Company Act of 1940 (the "Company Act")?[11]

7. In claiming that the Company has not identified "any security issued or proposed to be issued" by the trusts, what was the basis for Leeward's conclusion that the interests in each of the trusts are not securities?[12]

8. The Company also requested that the Hedge Fund provide an opinion of counsel from a reputable law firm with appropriate expertise in the federal securities laws stating that (i) the transactions contemplated by the proposed Transfer are exempt from registration under the Securities Act and that (ii) the Hedge Fund issuer is exempt from registration under the Company Act.

On December 22, 2010, the Hedge Fund filed with the Chancery Court a motion for an expedited ruling on the proposed Transfer. In support of that motion, the Hedge Fund included an affidavit of its principal, Kent Rowett, the manager of the Hedge Fund's sole general partner and a lawyer by training. In that affidavit, the Hedge Fund for the first time provided certain portions of the information that the Company had repeatedly sought. For example, in that affidavit the Hedge Fund admitted that it had only "27 limited partners, six of which are spouses holding their partnership interests jointly," that each of the trusts was identical, that all of the trusts had exactly the same settlor and beneficiary — the Hedge Fund — and that each of the trusts will automatically expire in September 2012, at which time all of the trusts' property reverts to the Hedge Fund.[13]

This information, obtained only when the Hedge Fund filed an affidavit in its lawsuit (despite the Company's repeated previous efforts to obtain the information), was crucial for the Company's determination whether the Transfer was lawful under the federal securities laws. The Company for first time knew that the trusts were all absolutely identical and not 499 unique persons. Rather, the sole settlor and sole beneficiary of each trust was the Hedge Fund, an entity which itself had only 27 limited partners, six of which were spouses holding their partnership interests in the Hedge Fund jointly.

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[11] Cf. Release No. IC-20260 (July 27, 1995) (explaining that an "investment advisory program could be considered to be an issuer because the client accounts in the program, taken together, could be considered to be an organized group of persons," that investors in the program "could be viewed as purchasing securities in the form of investment contracts" and, as such, that the program "would be deemed to be an investment company because it is engaged in the business of investing, reinvesting, or trading in securities"); see also Banque Indosuez Luxembourg (avail. Dec. 10, 1996) (same).

[12] See SEC v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946) (holding that a security exists where "a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party"); cf. Hazen, The Law of Securities Regulation § 1.6 at 141 (6th ed. 2009) (noting that "beneficial interests in a business trust satisfy the Howey test for classifying an investment contract as a security") (citing SEC v. Banner Fund Int'l, 211 F.3d 602, 614-15 (D.C. Cir. 2002)).

[13] Affidavit of Kent Rowett (Del. Ch. Case No. 6059-VCP) (Dec. 22, 2010), ¶¶ 1, 7-8, 10 & Trust Agreement (attached to Affidavit) at Article II.B., attached as Exhibit C hereto.

With the new information made available to the Company for the first time on December 22, 2010 in the Hedge Fund's affidavit, the Company concluded that the Delaware Chancery Court would likely determine that the Hedge Fund had provided sufficient information to establish that the proposed Transfer was not "wrongful" under the Securities Act and would therefore likely conclude that the proposed Transfer was "rightful" under the Delaware Uniform Commercial Code.

As a result, the Company informed the Hedge Fund on December 28, 2010 that the Company would instruct the Transfer Agent to allow the proposed Transfer based on the Company's understanding of the information provided in the affidavit filed in Chancery Court on the Hedge Fund's behalf: (i) each of the 499 trusts is identical and based upon the trust document set forth in the attachment to the affidavit; (ii) each of the 499 trusts has the Hedge Fund as the sole settlor and sole beneficiary and provides that the shares will automatically return to the Hedge Fund at the end of 2012; (iii) the Hedge Fund has only 27 individual limited partners, of which six are spouses of other limited partners; and (iv) the Transfer would result in no change in beneficial ownership of any shares of the Company. The Company specifically asked the Hedge Fund and its counsel to contact the Company's counsel if any of these four statements was not correct and that, if the Company did not hear further, it would instruct the Transfer Agent to proceed with the Transfer based on the foregoing understanding of the information provided in the Hedge Fund's affidavit. Neither the Hedge Fund nor its counsel responded to further correspondence or telephone calls. As a result, on the basis of the information provided by the Hedge Fund, the Company authorized its Transfer Agent to complete the Transfer prior to December 31, 2010.

Analysis

In connection with the Transfer, the Company expressly identified the Hedge Fund as the owner of securities pursuant to Rule 12g5-1 under the Exchange Act with respect to the record ownership as of December 31, 2010 of the shares evidenced by certificates issued to the trusts pursuant to the Hedge Fund's demand. The Company determined that the Transfer was rightful for Delaware law purposes solely on the basis of information provided by the Hedge Fund in its sworn affidavit dated December 21, 2010.

Based on the Hedge Fund's sworn affidavit, the Company confirmed that the Hedge Fund is the sole settler and the sole beneficiary of each of the 500 trusts and that each of those trusts holds its shares of the Company's common stock in a custodial or fiduciary capacity with respect to the Hedge Fund, which is automatically entitled to receive all of the trusts' property upon the trusts' expiration in September 2012, at which time the trusts each expire by their terms. The Company expressly memorialized in its corporate records, within the meaning of Section 3(a)(37) of the Exchange Act, the information regarding the trusts' custodial relationship on behalf of the Hedge Fund. Accordingly, from and as of the effective date of the Transfer, the Company and its Transfer Agent have reflected in the records of security holders maintained by the Company or on its behalf that, as of or prior to December 31, 2010, all such shares are identified as held of record by each of the 500 trusts as custodians and/or in a fiduciary capacity with respect to a single account, namely the Hedge Fund.

As a result, in determining the number of its holders of record as of the last day of its most recently completed fiscal year for purposes of Section 12(g) of the Exchange Act, the Company is of the view that Rule 12g5-1(a)(3) under the Exchange Act provides that the shares held by the 500 trusts are deemed to be held of record by one person because those shares are identified as held of record by one or more custodians or in other fiduciary capacities with respect to a single account.

Registration Requirements

Section 12(g) and Rule 12g-1 of the Exchange Act generally require every issuer that meets the Exchange Act's jurisdictional requirements and that has total assets of more than $10 million and a class of equity security held of record by 500 or more persons to register that class of equity security under the Exchange Act.

As Chairman Schapiro emphasized three weeks ago, in her letter to Chairman Issa of the House Committee on Oversight and Government Reform, the Commission permits a company to determine its holders of record by reference to the stockholder records that a company or its transfer agent maintains:

> "The definition of 'held of record' counts as holders of record only persons identified as owners on records of security holders maintained by the company in accordance with accepted practice. The Commission used this definition to simplify the process of determining the applicability of Section 12(g) by allowing a company to look to the holders of its securities as shown on records maintained by it or on its behalf, such as records maintained by the company's transfer agent."[14]

The Company has indicated in its records that each of the Hedge Fund's 500 trusts holds the shares as a custodian and/or in a fiduciary capacity with respect to a single account, namely the Hedge Fund. Based on that manner in which the Hedge Fund's ownership is indicated in the Company's records, the Company believes that, under Rule 12g5-1(a)(3), the trusts are properly viewed as fiduciary custodians who hold on behalf of a single account, the Hedge Fund, and that the Hedge Fund accordingly should be counted as a single holder of record for purposes of Section 12(g).[15] The Company respectfully submits that this represents a modest and reasonable

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[14] Letter from Chairman Schapiro to Hon. Darrell E. Issa, Chairman, Committee on Oversight and Government Reform (Apr. 6, 2011), at 17 (citing Release No. 34-7492 (Jan. 5, 1965)) [hereinafter "Schapiro Letter"].

[15] See Release No. 34-7492 (Jan. 5, 1965) (explaining that "securities held by one or more fiduciaries for a single . . . account shall be counted as a single record holder"). Whereas Rule 12g5-1(a)(2) generally provides that securities identified as held of record by an organization are counted as being held by one person rather than by each of the organization's underlying constituents ("securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person"), Rule 12g5-1(a)(3), in contrast, addresses the obverse scenario, providing that securities identified as held of record by multiple custodians who hold for a single account are counted as being held by one person rather than by each of the multiple fiduciaries ("securities identified as held of record by one or more persons as trustees, executors, guardians, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be

application of Rule 12g5-1, particularly in light of the fact that (i) many large and substantial enterprises, some of which are well known, are currently able to remain private based on a straightforward application of Rule 12g5-1; and (ii) an issuer should be able to take steps "to assure that it does not cross the 500 holder threshold and trigger registration and reporting."[16]

However, the Company does understand that the Staff is not prepared to concur with the Company's view of how Rule 12g5-1(a)(3) applies to the Company's specific circumstances.

Against this background, absent the relief requested herein, the Company would become subject to the registration and reporting requirements of the Exchange Act if the Company's shares ultimately were deemed to be "held of record" by each of the 500 identical trusts that the Hedge Fund has established — each with the Hedge Fund as both settler and beneficiary — for the sole purpose of seeking to require the Company to register under the Exchange Act.

The Company respectfully submits that Section 12(g) was clearly not intended to apply to the scenario that the Hedge Fund has unilaterally imposed on the Company. Congress added Section 12(g) to the Exchange Act for the express purpose of ensuring adequate disclosure relating to securities that are actively traded in the over-the-counter market. The legislation introducing Section 12(g) states, in its preamble, that its purpose is "to extend disclosure requirements to the issuers of additional publicly traded securities."[17]

The legislative history of Section 12(g) further indicates that the provision was intended to "provide for registration of securities traded in the over-the-counter market and for disclosure by issuers thereof comparable to the registration and disclosures required in connection with

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included as held of record by one person"). The Company is aware of In the Matter of Bacardi Corporation, File No. 3-7019 (Feb. 15, 1990), and the administrative law judge's opinion in that matter with respect to Rule 12g5-1(a)(2). However, the Company respectfully submits that Bacardi is inapposite to the Company's circumstances. The administrative law judge's opinion in Bacardi did not address Rule 12g5-1(a)(3) in any way, and the opinion makes no mention of any evidence, or even any assertion, that one or more of the trusts in that case were holding shares in a custodial capacity for the benefit of one single account. Moreover, the facts in the Bacardi matter could hardly be less similar to the Company's situation. The Bacardi matter involved a major corporation, with a nationally recognized name and an active trading market, seeking to terminate its Exchange Act registration over the objection of some of its stockholders. In contrast, the Company's situation involves a single stockholder attempting unilaterally to force a very small, private corporation, with no active trading market at all, to become an Exchange Act registrant.

[16] See id. at 20 n.74. Although the Staff has noted the "relatively recent trend" of using special purpose vehicles "to allow investors to have access to investments in companies that have not yet completed initial public offerings" and "has been exploring a variety of issues raised by it," id. at 20, the Company respectfully submits that the Staff also should consider the possibility for manipulative or abusive practices involving structures using trusts or other special purpose vehicles created for the purpose of unilaterally forcing private companies to go public. Chairman Schapiro noted that the Staff "does not advise or influence any company about whether it should proceed with, or indicate the appropriate timing for when a company should commence, the initial public offering process." Id. at 21. Similarly, the Company respectfully submits that no single stockholder should be able to act unilaterally to cause a company to commence a similar process through Exchange Act registration.

[17] Securities Acts Amendments of 1964, Pub. L. 88-467; 78 Stat. 565 (referencing Section 3(c), which added Exchange Act Section 12(g)).

listed securities."[18] The intended purpose was to "improve investor protection by extending to the larger companies in the over-the-counter market the registration, reporting, proxy solicitation, and insider trading requirements" that, before 1964, were "applicable to companies listed on an exchange."[19] Congress intended Section 12(g) to apply those requirements to the over-the-counter market so that "investor confidence in the over-the-counter market should be increased and the ability of companies to raise necessary capital should be enhanced."[20]

Congress set the Section 12(g) threshold at 500 shareholders to capture only "substantial enterprises" and to avoid an unwarranted burden on smaller companies. The Senate Report explained that "by any standard the companies with between 500 and 1,000 shareholders represent substantial enterprises" and "the primary test in selecting coverage standards . . . should be the public interest as measured by the number of shareholders."[21] The Report also explained that, if Section 12(g) were applied to companies with as few as 100 stockholders, the result would "create a burden on issuers and the Commission unwarranted by the number of investors protected, the size of companies affected, and other factors bearing on the public interest."[22]

Consistent with congressional intent, the Commission has similarly described the Exchange Act's intended registration and reporting provisions as extending to "all issuers presumed to be the subject of active investor interest in the over-the-counter market"[23] and that the numerical thresholds of Section 12(g) were designed to address issuers that have "active trading markets and public interest" of a level sufficient to require "mandatory disclosure to ensure the protection of investors."[24] Furthermore, the Commission "has long recognized that the cost of compliance with Exchange Act reporting requirements is relatively greater for smaller companies than for larger ones."[25]

The Company respectfully submits that Congress never intended to require Exchange Act registration under the Company's circumstances. The Company has fewer than 85 beneficial owners of its common stock, well below the 100-shareholder threshold rejected by Congress in 1964 expressly to avoid creating "a burden on issuers and the Commission unwarranted by the number of investors protected, the size of companies affected, and other factors bearing on the

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[18] H.R. 6793, U.S. Code Cong. and Admin. News, 88th Cong. 2d Sess., at 3027-28 (Report of the House Committee on Interstate and Foreign Commerce).

[19] Report of the Committee on Banking and Currency to Accompany S. 1642, S. Rep. No. 88-379, at 1 (1963).

[20] Id. at 9, 11.

[21] Id. at 21.

[22] Id. at 19.

[23] Release No. 34-18189 (Oct. 20, 1981) (citing Report of the Special Study of Securities Markets of the Commission, House Committee on Interstate and Foreign Commerce, H.R. Doc. No. 95, pt. 3, 88th Cong. 1st Sess. (1963) at 60-62).

[24] Release No. 34-23407 (July 8, 1986).

[25] Release No. 34-37157 (May 1, 1996) (citing Release No. 33-6605 (Sept. 30, 1985)).

public interest." Moreover, the Company's common stock is neither a security that is "traded in the over-the-counter market" nor subject to any active public investor interest.

Authority to Grant Relief

Section 12(h) provides "broad authority to exempt issuers from the registration requirements of Section 12(g)."[26] In particular, Section 12(h) of the Exchange Act allows the Staff to exempt an issuer from the registration requirements of Section 12(g) if the Staff finds that exemptive relief "is not inconsistent with the public interest or the protection of investors" based upon "the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer or otherwise."

Appropriateness of Exemption

We believe that it would be appropriate for the Staff to grant the Company an exemption from the registration requirements of Section 12(g) because such exemptive relief would be consistent with the standards articulated in Section 12(h). We respectfully submit that requiring the Company to register under the Exchange Act would serve neither the public interest nor the protection of investors.

Number of Public Investors

The first factor specified in Section 12(h) is the number of public investors in the issuer. Other than the Hedge Fund, the Company has fewer than 25 record holders of all of its shares of common stock, and the Company's common stock is owned by fewer than 85 total beneficial owners within the meaning of Rule 13d-3.

Trading Interest

The second factor specified in Section 12(h) is the level of trading interest in a company's equity securities. There is no trading interest in the Company's common stock, and the Company believes that no such interest is likely to develop in the future, even if the Company were to register its common stock under Section 12(g). There are limited opportunities for any trading to occur in the Company's common stock as a result of the Company's limited number of stockholders.

Nature of Issuer

The third factor specified in Section 12(h) is the nature and extent of the issuer's activities, income or assets. The Company has a total of seven employees and owns two parcels of real estate. The Company's total assets are approximately $13.3 million as of December 31, 2010, with 2010 annual net income of approximately $103,000. The nature and extent of the Company's activities, income and assets strongly indicate that exemptive relief under Section 12(h) would be consistent with the public interest and the protection of investors.

[26] Schapiro Letter at 18.

Finally, while not specifically articulated in Section 12(h), the Company respectfully submits that it would be contrary to the public interest and inconsistent with investor protection if any private company with more than $10 million in total assets — even a company with only two stockholders — could be forced to register under the Exchange Act as a result of one stockholder, for whatever personal purpose, having formed 499 identical trusts with the same settlor and beneficiary. In this case, the purpose was clear: simply to extract the Company's agreement to repurchase the Hedge Fund's shares at an inflated price.

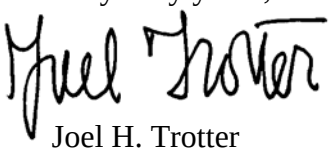
Conclusion

We respectfully request that the Staff issue an exemptive order pursuant to Section 12(h) of the Exchange Act relieving the Company from any obligation that it may otherwise have to register its common stock under Section 12(g) of the Exchange Act as a result of the shares held by the trusts that the Hedge Fund established. The relief requested is limited to ownership of the shares held by the 500 trusts that the Hedge Fund established and does not include the Company generally or any other shares of the Company's equity securities, including equity securities awarded under any Company compensation plans.

* * *

If for any reason you are unable to grant the Company's request, we would very much appreciate the opportunity to confer with members of the Staff prior to any written response to this letter. Please contact the undersigned at (202) 637-2165 with any questions regarding this matter.

Very truly yours,



Joel H. Trotter
of LATHAM & WATKINS LLP

Attachments

cc: Brian P. Burns, Chairman, BF Enterprises, Inc.
Brian P. Burns, Jr., President, BF Enterprises, Inc.
Christopher L. Kaufman, Latham & Watkins LLP
Alexander F. Cohen, Latham & Watkins LLP

Exhibit A

LEEWARD INVESTMENTS, LLC

July 19, 2010

Mr. Brian P. Burns, Jr.
President
BF Enterprises, Inc.
100 Bush Street, Suite 1730
San Francisco, CA 94104

Re: Expression of Interest to Purchase 143,440 Shares of Common Stock ("Leeward Shares") in BF Enterprises, Inc. (the "Company" or "BFE")

Dear Brian:

Thank you for the time you took to meet with me to discuss Leeward Capital's investment in BFE as well as your follow-up letter of July 16, 2010 inviting me to submit Leeward's asking price for the Leeward Shares.

I came away from our discussion believing we'd had a constructive dialogue so I was disappointed to read that you felt I had made a demand or a threat. I was not seeking to be contentious but, rather, to make clear our situation. What I had tried to convey, and hoped I had, was that, as Leeward Investments' manager since Eric Von der Porten's death, I have the responsibility for finding a path to liquidity for the Leeward Shares in the interests of Leeward Capital's investors as part of the process of winding up Leeward's activities. Since there is no current efficient market for the shares of BFE's common stock, I see two options for fulfilling that responsibility. One option would be to find a mutually acceptable price at which to sell the Leeward Shares back to the Company. The other would be to create a public market for the Company's common stock through the resumption of the Company's public reporting obligations as an SEC registrant. My hope would be to achieve the first option. My alternative, if the first option fails, is to pursue the second.

We apparently have different views as to the feasibility of the second option and its efficacy in creating a liquid market. However, rather than focusing on those issues and precipitating a debate between us and our respective counsel that is hopefully avoidable, I would like to focus on the first option right now. Based on what I know about BFE from Leeward's long-time investment in BFE and the information the Company has been providing to its stockholders since it de-registered, I believe a price of $9.85 per share is a fair price and I hope you will seriously consider it.

I look forward to your response and hope that we can resolve this matter quickly and amicably. Meanwhile, please give my best wishes to your father and Mr. Kaufman.

Sincerely,

Kent Rowett
Manager, Leeward Investments, LLC,
General Partner of Leeward Capital, LP

Exhibit B

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LEEWARD CAPITAL, LP	)	
	)	
Plaintiff,	)	
	)	
v.	)	C. A. No. _____
	)	
BF ENTERPRISES, INC.,	)	
	)	
Defendant.	)	

VERIFIED COMPLAINT

Introduction

1. This action seeks a declaratory judgment that Leeward Capital, LP ("Leeward Capital" or "Plaintiff") validly transferred 143,153 shares of common stock of BF Enterprises, Inc. ("BF Enterprises" or the "Company") into the record ownership of certain trusts and that each of the transferees is a record holder of common stock of the Company and must be so reflected on the Company's stocklist.

Parties

2. Leeward Capital is a California limited partnership. Leeward Capital's sole general partner is Leeward Investments, LLC, a California limited liability company ("Leeward Investments"). The manager of Leeward Investments is Kent M. Rowett. Until the stock transfers described in paragraph 20 herein, Leeward Capital was the record holder of 143,153 shares of common stock of the Company.

3. BF Enterprises is a Delaware corporation that primarily owns and/or develops residential and commercial real estate. BF Enterprises is headquartered in San Francisco, California. Its registered agent for service of process is The Prentice Hall Corporation System, Inc., located at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

Background

4. On August 30, 2005, the Company filed with the Securities and Exchange Commission ("SEC") a Form 15 suspending its obligation to file reports with the SEC and on the same date it applied to NASDAQ to have its stock delisted the following day.

5. The basis of its SEC filing and delisting was that the Company had reduced its number of stockholders to below 300. The reduction in the number of the Company's stockholders was achieved through a reverse/forward stock split which cashed-out stockholders owning less than 3,000 shares of the Company's common stock immediately prior to the split for $8.95 per share. The stated purpose of the stock split, as set forth in the Company's Definitive Information Statement on Schedule 14C filed with the SEC on July 26. 2005 (the "Information Statement"), was to terminate the registration of the Company's common stock and the Company's obligation to file information with the SEC.

6. According to the Information Statement, the split was approved by the written consent of directors and executive officers owning or controlling 54% of the outstanding common stock. No proxies were solicited from any other stockholders and no meeting of stockholders was held to vote on the split.

7. Since August 30, 2005, the Company has been "dark." The Company has made no information public and has provided little information to its stockholders. The only information the Company has furnished its stockholders is an annual report. As a result of the dearth of publicly-available Company information, the market for the Company's common stock has been illiquid for the past five-plus years, with only episodic reported over-the counter (or so-called "pink sheet") trading of relatively small numbers of shares.

8. On July 1, 2010, Mr. Rowett discussed Leeward Capital's investment in the Company with Brian P. Burns, Jr., the Company's President. Mr. Rowett explained to Mr. Burns that, since the death of Leeward Investments' founding Manager, Mr. Eric Von der Porten, in December 2008 and Mr. Rowett's assumption of the position of Manager, Mr. Rowett has had the responsibility of finding a path to liquidity for Leeward Capital's shares in the interests of Leeward Capital's investors as part of the process of winding up Leeward Capital's activities.

9. Mr. Rowett advised Mr. Burns that since there was no market for the Company's common stock, Mr. Rowett saw two options for fulfilling that responsibility. One option would be to find a mutually acceptable price at which to sell the shares back to the Company. The other option would be to create a broader public market for the Company's common stock through the resumption of the Company's public reporting obligations as an SEC registrant.

10. In a letter dated July 16, 2010, Mr. Burns characterized what Mr. Rowett had stated during their July 1, 2010 conversation as a demand and threat that either the Company purchase Leeward Capital's shares or Mr. Rowett would take action to force the Company to become a reporting company under the Securities Exchange Act.

11. In a letter dated July 19, 2010, Mr. Rowett replied to Mr. Burns. In his letter, Mr. Rowett expressed his disappointment that what he had discussed with Mr. Burns on July 1, 2010 in what he had thought was a constructive dialogue had been characterized as a demand and threat rather than a frank discussion of Leeward Capital's situation. Mr. Rowett reiterated the options that he saw in order to achieve liquidity for Leeward Capital, with his preference being a repurchase by the Company of Leeward Capital's shares. He also indicated that, based on what he knew about the Company from Leeward Capital's long-time investment and the information the Company had been providing to its stockholders since it de-registered and delisted, Mr.

Rowett believed a price of $9.85 per share was a fair price that he hoped the Company would consider.

12. In a letter dated July 27, 2010, Mr. Burns replied to Mr. Rowett's letter, advising Mr. Rowett that the Company was declining to repurchase Leeward Capital's shares at the price proposed by Mr. Rowett. Mr. Burns stated that while the Company would be willing to consider the purchase of a large number of shares represented by Mr. Rowett's proposal, the Company would not be in a position to purchase any shares at that time at the price Mr. Rowett proposed. Instead, Mr. Burns indicated the Company may be willing to purchase Leeward Capital's shares at a price range of less than $6.00 per share.

13. In a letter dated July 29, 2010, Mr. Rowett advised Mr. Burns that Leeward Capital had to decline sell its shares at $6.00 per share and its earlier offer was withdrawn.

Transfer of Stock to the Trusts

14. Discouraged with its discussions with the Company, Leeward Capital instead sought to cause the Company to resume SEC reporting so that a broader public market would develop for the Company's common stock.

15. Specifically, Leeward Capital decided to transfer all of its 143,440 shares of the Company’s common stock from "street name" ownership into record ownership and then create five hundred trusts, irrevocably transfer to each of them, in approximately equal amounts, all its shares and instruct the Company's transfer agent to register those transfers in the respective names of each of the trusts.

16. Accordingly, BFE Trust 1 was created September 28, 2010 and Leeward Capital, as Settlor, irrevocably transferred to the Trustees of the Trust its interest in 287 shares of the Company's common stock.

17. On October 8, 2010, Mr. Rowett directed the Company's transfer agent, Registrar & Transfer Company ("R&T"), to record the transfer, and to issue a new stock certificate to BFE Trust 1 and to list BFE Trust 1 as a record holder of 287 shares of the Company's common stock on the Company's stocklist. Enclosed in Mr. Rowett's October 8, 2010 correspondence to R&T were the organizational documents and resolutions of Leeward Capital authorizing the general partner to act on its behalf, which had been requested by R&T. The transfer of these shares into the record ownership of BFE Trust 1 was effected by R&T on or about October 14, 2010. Following the transfer, Leeward Capital still held 143,153 shares of the Company's common stock.

18. BFE Trust 1 received its stock certificate in connection with the transfer, however, Leeward Capital did not receive a new stock certificate evidencing the balance of the shares it did not transfer. When Mr. Rowett asked R&T about the certificate, Linda Prieto at Investor Relations told him that the Lost Certificate Department, after doing some research, had determined that the certificate had been sent to Leeward Capital's old address and would probably be returned to R&T. Ms. Prieto advised Mr. Rowett to wait for R&T to receive the certificate back before making further transfer requests.

19. When the certificate did not arrive within 10 days, Ms. Prieto discussed the situation with the Lost Certificate Department and advised Mr. Rowett that additional transfer requests could be made if he filed an Affidavit of Certificate Not Received. R&T faxed Mr. Rowett the form, and Mr. Rowett completed and returned the affidavit per R&T's request.

The Company Fails to Process Further Transfer Requests

20. Meanwhile, BFE Trust 2 through BFE Trust 500 (referred herein individually as a "Trust" and collectively as the "Trusts") were created. As with BFE Trust 1, Leeward Capital, as

Settlor, irrevocably transferred to the Trustees of each Trust 287 of its shares of the Company's common stock (except that 227 shares were transferred to BFE Trust 500).

21. On November 15, 2010, Leeward Capital submitted to R&T instructions to record each of the transfers and to issue a new stock certificate to each of the respective Trusts, and to list each of the Trusts as a record holder of shares of the Company's common stock on the Company's stocklist. As with Leeward Capital's previous request, all documentation required to support its instruction to R&T were enclosed in Leeward Capital's request, including signed copies of the Affidavit of Certificate Not Received.

22. On November 17th, Ms. Prieto advised Mr. Rowett that R&T had received the missing certificate. Ms. Prieto directed Mr. Rowett to send R&T a letter to "remove the stop" that had been placed on the certificate. As directed by Ms. Prieto, Mr. Rowett delivered the letter via email that day to Pat Mecca, Head of both the Stock Transfer and Lost Certificates Departments. R&T made no further mention of the certificate.

23. On November 18th, R&T confirmed the receipt and sufficiency of Leeward Capital's transfer request (including receipt of a check requested by R&T for $4,990; $10 for each transfer) and indicated that it would begin processing Leeward Capital's request.

24. On November 24, 2010, R&T advised Mr. Rowett that it could not effect the registration of the transfers immediately because it only had approximately 450 share certificates on hand, and processing the transfer requests required 499 share certificates.

25. On November 29, 2010, Mr. Rowett again inquired with R&T on the status of the processing of Leeward Capital's transfer requests. Pat Mecca of R&T responded that same day stating, "I'm still waiting to hear from the company."

26. R&T has not responded to subsequent inquiries on the status of the processing of Leeward Capital's transfer requests.

27. In a letter dated December 6, 2010, Mr. Rowett advised R&T that Leeward Capital did not agree that the lack of stock certificates is a sufficient basis for failing to register the transfers. Mr. Rowett advised R&T that it is Leeward Capital's position that the absence of a supply of stock certificates does not preclude R&T from registering the transfers and confirming to Leeward Capital the Trusts are the stockholders of record of the number of shares transferred to each of them by Leeward Capital and that the Trusts are listed on the Company's stocklist. Accordingly, Leeward Capital formally demanded that by the close of business on Wednesday, December 8, 2010, R&T confirm to it and the Trusts in writing that the transfers had been registered on the Company's records effective of November 24, 2010 (three business days after R&T acknowledged the receipt and sufficiency of the original request; the "Transfer Date") and that stock certificates evidencing the Transfers, each dated the Transfer Date, be issued and delivered to each of the Trusts by no later than December 13, 2010.

28. R&T has not responded to Mr. Rowett's December 6, 2010 letter.

29. Instead, on December 7, 2010, Mr. Rowett received a letter from Mr. Burns which for the first time stated that the Leeward Capital original stock certificate that was inadvertently mailed to an old address and returned to R&T was needed to process the transfer requests.

30. On December 8, 2010, Mr. Rowett responded to Mr. Burns that Leeward Capital's original stock certificate was in the Company's possession through its agent, R&T, and again demanded that the transfers be recorded and reflected on the Company's stocklist list as of November 24, 2010.

31. To date, the Company has failed to confirm to Leeward Capital or the Trusts that the stock transfers have been recorded and reflected on the Company's stocklist.

32. The Company's delay in processing the transfer requests is a transparent attempt to prevent the existence of more than 500 record stockholders of the Company on or before December 31, 2010. Under Section 12(g)(1)(B) of the Exchange Act, if the transfers to the Trusts are not registered by R&T, or declared to have become effective, on or before December 31, 2010, then the Company will be able to continue "dark" for another year.

33. Accordingly, time is of the essence.

COUNT I

DECLARATION OF RECORD HOLDERS ON STOCKLIST

34. The prior paragraphs are repeated and realleged as if set forth fully herein.

35. Leeward Capital has transferred 143,153 shares of the Company's common stock to the Trusts.

36. Leeward Capital has directed the Company and its agent, R&T, to record the transfers and reflect the transfers on the Company's stocklist.

37. The Company, through its agent, R&T, has stated that the transfer requests were received and are sufficient, yet the Company has unnecessarily delayed and refused to effect the transfer requests in accordance with Leeward Capital's instruction.

38. Accordingly, Leeward Capital requests a declaration that the transfer requests are valid and effective as of November 24, 2010 and that each of the Trusts are record holders of shares of the Company's common stock and must be reflected as such on the Company's stocklist as of that same date.

WHEREFORE, Leeward Capital respectfully requests that the Court:

(a) Declare that each of the transfer requests is valid and effective as of November 24, 2010;

(b) Declare that each of the Trusts is a record holder of shares of the Company's common stock as of November 24, 2010;

(c) Declare that each of the Trusts must be listed as a record holder of shares of the Company's common stock as of November 24, 2010 on the Company's stocklist;

(d) Award fees, expenses and costs to Leeward Capital and its counsel; and

(e) Grant such other and further relief as the Court deems just and proper.

PRICKETT, JONES & ELLIOTT, P.A.

By: /s/ Ronald A. Brown, Jr
Ronald A. Brown, Jr. (DE Bar No. 2849)
Marcus E. Montejo (DE Bar No. 4890)
1310 King Street
Wilmington, Delaware 19801
(302) 888-6500
Attorneys for Plaintiff

Dated: December 9, 2010

Exhibit C

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LEEWARD CAPITAL, LP	)	
	)	
Plaintiff,	)	
	)	
v.	)	C. A. No. 6059-VCP
	)	
BF ENTERPRISES, INC.,	)	
	)	
Defendant.	)	

AFFIDAVIT OF KENT ROWETT

STATE OF CALIFORNIA)
:
COUNTY OF)

I, Kent Rowett, do hereby swear and affirm on this 21st day of December, 2010 as follows:

1. I am the Manager of Leeward Investments, LLC, a California limited liability company ("Leeward Investments") that is the sole general partner of Leeward Capital, LP, a California limited partnership ("Leeward Capital" and, together with Leeward Investments, the "Leeward Entities"). Leeward Capital was formed in or about January 1997 for the primary purpose of investing in securities. It has 27 limited partners, six of which are spouses holding their partnership interests jointly. None of the limited partners of Leeward Capital (except for one individual retirement account owned by an individual) owns 10% or more of Leeward Capital's outstanding limited partnership interests. Leeward Investments was formed at approximately the same time as Leeward Capital and has two members, myself and another individual.

2. I assumed the position of Manager of Leeward Investments upon the death of the founding Manager, Eric Von der Porten in December 2008. Except as otherwise indicated herein, I make this Affidavit based on my personal knowledge of the facts set forth in this

Affidavit, my familiarity with the books and records of the Leeward Entities and my discussions with Mr. Von der Porten regarding Leeward Capital's investment in BF Enterprises, Inc., a Delaware corporation (the "Company"), prior to his death.

3. I submit this Affidavit in support of Leeward Capital's Motion for an Expedited Ruling on the Transfer of Shares in the action it filed in this Court on December 9, 2010 against the Company under the caption Leeward Capital, LP v. BF Enterprises, Inc., C. A. No. 6059-VCP (the "Action"). Capitalized terms used but not defined in this Affidavit have the respective meanings given to them in the Complaint.

4. In the Action, Leeward Capital seeks a declaration that the share transfer requests (the "Transfer Requests") identified in its verified complaint dated December 9, 2010 (the "Complaint") are valid and effective as of November 24, 2010 and that each of the Trusts is a record holder of shares of the Company's common stock and must be reflected as such on the Company's stock list as of such date.

5. The 143,153 shares of the Company's common stock that are the subject of the Transfer Requests (the "Subject Shares") were acquired by Leeward Capital through open market purchases made either: (i) on the Nasdaq National Market System ("Nasdaq") at a time when the Company's common stock was listed on Nasdaq; or (ii) in the over-the-counter market following the Company's delisting from Nasdaq (which I understand, from the Company's filings with the Securities and Exchange Commission in connection with the suspension of its obligation to file reports under the Securities Exchange Act of 1934, became effective on August 30, 2005). Leeward Capital's last purchases of any Subject Shares occurred in September 2006. None of the Subject Shares was acquired directly from the Company or in any other privately negotiated transaction.

6. Leeward Capital is the record holder of the Subject Shares, as evidenced by stock certificate number 5534.

7. On September 28, 2010 Leeward Capital, created BFE Trust 1 ("Trust 1 and, collectively with the Trusts, the "BFE Trusts") and transferred to Trust 1 all of its interest in 287 shares of the Company's common stock (the "Trust 1 Shares" and, together with the Subject Shares, the "Trust Shares"), purchased by Leeward Capital in the open market in or before September 2006. Trust 1 is the record holder of the Trust 1 Shares, as evidenced by stock certificate number 5542. Neither of the stock certificates referred to herein bears any restrictive legend.

8. Subsequent to the events described in the two prior paragraphs, Leeward Capital, as settlor, in October 2010 created all of the Trusts and transferred to each of them the number of Subject Shares specified in the Transfer Requests.

9. Neither of the Leeward Entities nor any of the BFE Trusts nor I individually has any relationship with the Company – whether through membership or representation on its Board of Directors, appointment as an officer, any contractual or commercial relationship or otherwise – other than that of a minority stockholder through the ownership of the Trust Shares first by Leeward Capital and now by the BFE Trusts. Based on the balance sheet contained in the most recent annual report provided by the Company to its stockholders for the year ended December 31, 2009 (which is the most recent financial information about the Company that is available to me), the Trust Shares represent approximately 5.7% of the outstanding voting securities of the Company.

10. Attached to this Affidavit as Exhibit A is a true and correct copy of BFE Trust 1 Agreement, pursuant to which Leeward Capital created Trust 1. The agreements creating the

Trusts are identical to Exhibit A except for (a) the name of the Trust, (b) the date of the applicable agreement (which for some Trusts was October 14, 2010 and for the other Trusts was October 26, 2010), and (c) the number of Subject Shares transferred to BFE Trust 500 (227 rather than 287).

By: _____
Kent Rowett

STATE OF CALIFORNIA)
)
COUNTY OF MARIN)

SUBSCRIBED AND SWORN TO (or affirmed) before me on this 21st day of December, 2010, by Kent Rowett, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____

SHIRLEY D. ROSS
Commission # 1832755
Notary Public - California
Marin County
My Comm. Expires Feb 7, 2013

EXHIBIT A

BFE TRUST 1 AGREEMENT

THIS BFE TRUST 1 AGREEMENT is made this 28th day of September, 2010 by LEEWARD CAPITAL, L.P., a California limited partnership ("Settlor"), and KENT ROWETT and any additional and successor Trustees ("Trustees"). In consideration of the acceptance by the Trustees of the Trust hereby created, the Settlor has transferred to the Trustees all of the Settlor's interest in the assets listed on Schedule A attached hereto and made a part hereof. All assets transferred to the Trustees shall be held as BFE Trust 1 pursuant to the following terms:

ARTICLE I

IRREVOCABLE NATURE OF TRUST

This Trust shall be irrevocable. No person transferring any property to the Trust created hereunder shall have any right to alter, amend, revoke, or modify the Trust, nor shall any such person retain any interest, vested or contingent, in the Trust.

ARTICLE II

DISPOSITIVE PROVISIONS

A. During the continuance of the Trust, the Trustee may pay to the Settlor such amounts of the net income and/or the principal of the Trust as the Trustees, in their sole and absolute discretion may deem necessary, desirable or advisable for any reason.

B. Upon the earlier to occur of two (2) years following the creation of this Trust or such time as the Trust no longer holds any shares of stock in BF Enterprises, Inc., a Delaware corporation, this Trust shall terminate, and the Trustees shall transfer any property constituting this Trust (including any accrued or accumulated and undistributed income) to the Settlor, outright and free of Trust.

ARTICLE III

APPOINTMENT OF TRUSTEES

A. The Trustee or Trustees of any trust hereunder may from time to time appoint one or more individuals and/or, if no corporate Trustee is serving, an individual, a bank or trust company as Co-Trustee or Co-Trustees of such trust.

B. Any individual Trustee of any trust hereunder for whom no successor has been designated or is qualified to serve may, while serving in that capacity, appoint an individual, or if

such individual Trustee is then serving as sole Trustee, an individual, a bank or trust company, to succeed to his office as Trustee of such trust upon his death, resignation or incapacity.

C. Notwithstanding any provision herein to the contrary, the individual Trustee or Trustees of any trust hereunder shall have the right at any time to remove any corporate Trustee of such trust; and if at any time there shall be no individual Trustee then serving, the Settlor shall have the right at any time to remove any corporate Trustee of such trust.

D. Any Trustee of any trust hereunder may at any time resign such office by giving written notice of such resignation to all Co-Trustees of such trust and, if such Trustee shall then be serving as the sole Trustee, to the Settlor.

E. If at any time, with respect to any trust created hereunder, there should be no individual serving as Trustee, the Settlor shall have the right to appoint such an individual to serve as a Trustee of such trust. If the office of individual Trustee of any trust hereunder ever becomes vacant and a corporate Trustee is then serving, the corporate Trustee shall thereafter serve as sole Trustee of such trust unless and until a successor individual Trustee shall be appointed.

F. The removal or appointment of any Trustee of any trust established hereunder shall be effected by written instrument, signed by the person or persons exercising the right of removal or appointment, and delivered to the Trustee to be removed or appointed and to any other Trustee of such trust; provided, however, that in the event of the death of an individual Trustee while serving in such capacity, his appointment of a successor Trustee may also be effected by his Last Will and Testament. Any appointment by an individual Trustee of a successor Trustee may be withdrawn or amended at any time, while such individual is still serving as Trustee of such trust, by written instrument signed by such individual and delivered to the designated successor Trustee whose appointment is to be withdrawn or amended and to any other Trustee of such trust.

G. No court proceeding shall be necessary for the removal, resignation or appointment of any Trustee hereunder. Any Trustee who accepts appointment as a Co-Trustee or as a substitute or successor Trustee of any trust hereunder is authorized to accept, without audit, the books and records of any such trust and shall be free of all liability with respect to the prior administration of trust or trusts created hereunder.

H. A Trustee by instrument in writing may delegate to a Co-Trustee for a specified period of time any of such Trustee's powers and authorities. Upon termination of any such delegation, the delegating Trustee may accept, without audit, the books and records of the Co-Trustee to whom such powers and authorities have been delegated and shall be free from liability for any and all acts or omissions of such Co-Trustee during the period of such delegation.

I. For the purposes of construing this Trust Agreement, a person shall be deemed not to be able and willing, or unable or unwilling, as the case may be, to act upon such person's death, written resignation or renunciation of any power conferred herein, or upon (i) a court order

holding such person to be legally incapacitated to act on his behalf or appointing a Guardian to act for such person; (ii) duly executed, witnessed and acknowledged written certificates of incapacity of at least two licensed physicians, one of whom shall be such person's then attending physician and each of whom represents that he is certified by a recognized medical board, has examined such person and has concluded that, by reason of accident, physical or mental illness, progressive or intermittent physical or mental deterioration, or other similar cause, such person had, at the date thereof, become incapacitated to act rationally and prudently in his own financial best interests; or (iii) other evidence that a Trustee of such trust deems to be credible and still currently applicable that such person has disappeared, is unaccountably absent, or is being detained under duress where such person is unable effectively and prudently to look after his own financial best interests.

ARTICLE IV

ADMINISTRATIVE PROVISIONS AND TRUSTEE'S POWERS

A. **DEFINITIONS**. The terms listed below shall be defined in the Trust Agreement as follows:

1. Code. The Internal Revenue Code of 1986 as amended and in effect from time to time.

2. Trustee. Any Trustee who may be serving at any time. Where powers and/or discretions are conferred upon the Trustees, such powers or discretions shall be exercised by the Trustees.

3. Include, Including. Include or including, as the case may be, by way of illustration and not by way of limitation.

4. Persons. Individuals, general or limited partnerships, limited liability companies, joint ventures or stock companies, unincorporated and incorporated associations, corporations, companies, trusts, estates and any other entity recognized by law.

5. Trust Agreement. The trust instrument reflected by this Trust Agreement.

B. **POWERS OF TRUSTEES**

1. Investments generally. The Trustees may buy, hold, encumber (including by margin loan), pledge, sell, transfer or exercise options and conversion rights regarding any and all stocks, bonds, debentures, stock rights, warrants, options, mutual funds, investment company or investment trust interests, partnership interests (both general and limited), limited liability company interests, joint venture interests and any other securities or types of investment property of every kind and nature; may execute stock powers; may vote and otherwise act with

respect to any and all stocks and other securities or investments (whether or not closely held and including stock or other securities of a corporation created by the Trustees or common trust funds or any other kind of property, domestic or foreign, wasting or non-wasting, productive or non-productive, regardless of the fact that any or all of the investments made or retained are of a character or size that would not be permissible under any statute or rule of court or otherwise deemed advisable for investments by Trustees.

2. Retention of assets. The Trustees may retain, for any period, without liability for loss, all assets initially received by the Trustees as a part of a trust, regardless of whether an asset constitutes a large part or all of any trust or is not of the character, size, or income yield permissible or otherwise deemed advisable for investments by Trustees.

3. Registration of assets. The Trustees may register any stock, fund, or other asset of any trust or trusts created hereunder on the direct registration system, in bearer form or in the name of any broker/dealer, recognized depository, or nominee whom the Trustees may select, without liability for any loss.

4. Business interests. The Trustees may carry on, engage in, incorporate, reorganize, and in every other way participate fully in any partnership, corporation and/or other business entity (including a limited liability company or a limited liability limited partnership) in which any trust or trusts created hereunder has an interest, and/or may merge, consolidate or dissolve such interest; may cause or join with others in causing any business entity to be converted into any other business entity; may continue as or become a partner, stockholder or member of any partnership, corporation or other business entity; may modify any partnership or other business entity agreement; may terminate any partnership or other business entity; may elect, employ and compensate, as directors, officers, managers, employees, counsel, or agents, any person, including any one or more of the individual Trustees, any agent of a Trustee, or the members of any partnership, corporation or other business entity with which any Trustee may be affiliated.

5. Borrowing and Lending. The Trustees may lend or borrow money; create mortgages or deeds of trust; and make pledge, guaranty, or collateral debt agreements to a lender as security for obligations of a borrower; if the Trustees deem such action to be necessary, desirable or advisable.

6. Dealings with related fiduciary estate and beneficiaries. The Trustees may make secured or unsecured loans to and/or sell or purchase any asset (for fair and adequate consideration) from the Settlor.

7. Employment of agents. The Trustees may employ such agents, including advisors, brokers, banks, custodians, investment counsel, accountants, appraisers, attorneys, and other assistants, and subsidiaries thereof, as the Trustees may determine, and may delegate to them, or to any one or more of the Trustees hereunder, such of the duties, rights, and powers of the Trustees, and for such periods, as the Trustees may determine, including the right to vote shares of stock belonging to any trust or trusts created hereunder, the right of access to safe

deposit boxes and the right to withdraw funds. The Trustees are authorized to charge the expense of employing such agents to the income or principal of such trust as the Trustees shall deem appropriate.

8. Indemnification agreements. The Trustees may enter into and execute any and all guaranty and indemnification agreements or other agreements with any persons, including underwriters, investment bankers, or the Securities and Exchange Commission or other governmental agencies, necessary, desirable or advisable in order to accomplish any purpose of the trust, including facilitating or consummating any sale of stock or other securities or any other property. The Trustees shall have the power to purchase insurance contracts or bonds in connection with the execution and delivery of guaranty and indemnification agreements.

9. Additional powers. In addition to the powers enumerated herein, the Trustees shall have all powers conferred on Trustees by common law, statute, or rule of court. The Trustees may exercise all powers without the need to apply for or obtain any order, ratification or approval of any court.

C. GENERAL ADMINISTRATIVE PROVISIONS

1. Bond. No Trustee shall be required to give surety or bond.

2. Accumulation of income. With respect to the administration of any trust hereunder, if any income of such trust has not been distributed prior to the expiration of sixty-five (65) days following the end of the taxable year of such trust, it shall be added to the principal of such trust.

3. Separate shares.

a. The Trustees may divide, distribute, or partition any trust or trusts created hereunder into two or more separate shares, in cash, in kind, or partly in cash and partly in kind, or in undivided shares in property different in kind from any other share.

b. With respect to divisions, the Trustees may hold the assets comprising such shares as (i) a common fund in which the separate shares have undivided interests, making the necessary accounting adjustments to reflect the division or (ii) separate trusts, governed by the law of any one or more jurisdictions in the world, for the benefit of any one or more of the Settlor.

c. When a trust is divided into separate trusts under this provision, each trust shall have the same provisions as the original trust from which it is established, and references in the Trust Agreement to the original trust shall collectively refer to the separate trusts derived from it.

4. Combination of trusts.

a. The Trustees may deliver all of the assets of any trust created under the Trust Agreement to the trustees of any other trust created under the Trust Agreement, including a trust created by any one or more of such Trustees, or under any other will or trust instrument so as to consolidate the trusts if, in the discretion of the Trustees, the terms and provisions of the two trusts are the same or substantially similar,. In the event of such a consolidation, and for the sole purpose of preserving the rights of any persons who might be adversely affected by the consolidation, the trustees of the consolidated trust may adopt such records, methods of valuation and other procedures as will permit a fair and equitable division of the consolidated trust in the event a division ever becomes necessary. Such trusts shall be combined by written agreement that shall include the terms of the applicable Trust Agreement that shall be considered the operative Agreement for such combined Trusts.

b. The Trustees may combine the assets of any trust created under the Trust Agreement with those of any other trust if the Trustees determine such action to be economical and otherwise advisable, and may hold, manage, invest and account for the consolidated assets as a single fund, making appropriate entries in the books of account to reflect each trust's fractional share of its proportionate part of all of such fund's receipts and expenses.

5. Additions to trusts. The Trustees may receive additions to the trust and/or any trusts created under the Trust Agreement from any person by gift or will or from any other source.

6. Claims. The Trustees may pay, demand, sue for, collect, foreclose upon, compromise, adjust, abandon, submit to arbitration, renew, settle, defend, sell, release and otherwise deal with any claims or demands of the trust and/or any trust created under the Trust Agreement against others, or of others against the trust, in such manner as the Trustees may determine.

7. Trustees' accounts. The provisions of the Trust Law of the California Probate Code concerning accountings shall not apply to this trust. The trustee may render an accounting from time to time regarding the transactions of a trust created under this instrument by delivering a written accounting to the Settlor. The Trustee may, in the Trustee's discretion, provide in the Trustee's account a written notice in compliance with California Probate Code Section 16461(c)(3) (or its successor) informing the Settlor of its right to object to the account within one hundred eighty (180) days of receipt of the account. Unless the Settlor shall deliver a written objection to the Trustee within one hundred eighty (180) days of receipt of the Trustee's account, the account shall be deemed settled, and shall be final and conclusive in respect to transactions disclosed in the account. After settlement of the account by reason of the expiration of the one hundred eighty (180) day period referred to above, by agreement of the parties, by order of a court of competent jurisdiction, or pursuant to the provisions of California Probate Code Section 16460 (or its successor), the trustee shall no longer be liable to the Settlor with respect to transactions disclosed in the account, to the extent allowable under California Trust Law.

8. Personal liability. No Trustee shall be personally liable for the action or lack of action of any other Trustee or of any agent appointed by the Trustees. No Trustee shall be liable for failure to contest the accounts or prior acts of any other Trustee or otherwise to compel any other Trustee to redress a breach of a trust, unless the Settlor (i) requests the Trustee in writing so to contest or compel redress, and (ii) advances funds for costs, expenses and fees (including attorneys' fees) reasonably anticipated to be incurred in such matter.

9. Liability for safekeeping of assets. The Trustee shall be responsible for custody of all tangible assets of any trust created under the Trust Agreement, and the Individual Trustees shall be excused from any liability on account thereof.

10. Relief from duty of inquiry. No purchaser or mortgagee from, or other person dealing with, the Trustees shall be responsible for the application of any purchase money, loan, or other thing of value paid or delivered to the Trustees. The receipt of the Trustees shall be a full discharge, and no purchaser from or other person dealing with the Trustees, and no issuer, registrar, or transfer agent or other agent of any issuer of any securities shall be under any obligation to ascertain or inquire into the power of the Trustees. No party to or having any dealings with any instrument in writing signed by the Trustees shall be obligated to inquire into its validity or to ascertain or inquire into the power of the Trustees.

11. Change of situs of trust. The Trustees may move the situs of the trust and/or any trust created under the Trust Agreement for administrative, tax, and/or construction purposes to such jurisdiction (whether within or outside the United States) as the Trustee shall then deem reasonable and appropriate, and may keep the trust there for so long as the Trustees may determine.

D. THE OFFICE OF TRUSTEE

1. Powers appurtenant to office.

a. All powers given to the Trustees shall be construed to be appurtenant to the fiduciary office and shall pass to and be exercisable by the Trustees acting at any time.

b. The Trustees' powers and duties shall continue until all of the assets of the trust have been distributed.

2. Appointment of additional or successor Trustees.

a. Any appointment of additional or successor Trustees shall be made (i) by an inter vivos instrument of writing delivered to the remaining Trustees or, if none, to the Settlor of such trust, or (ii) by such Trustee's will.

b. Any instrument by which a Trustee appoints an additional and/or successor Trustee shall be revocable at any time before the additional or successor Trustee takes office (i) by an inter vivos instrument of writing, delivered as provided above, or (ii) by such Trustee's will.

c. If any individual Trustee has executed more than one instrument appointing a successor Trustee or Trustees, then the instrument which shall bear the most recent date and shall be unrevoked shall govern.

3. Resignation of Trustees. Any Trustee may resign at any time from any one or more trusts by giving written notice of such resignation to all remaining and/or successor Trustees of such trust and, if such Trustee shall then be serving as the sole Trustee, to the Settlor. When any resignation becomes effective, the resigning Trustee shall promptly transfer the trust property and records then in his hands to any other Trustee who is then acting, and shall thereafter be discharged from all powers, trusts, duties, or obligations arising under the Trust Agreement.

4. Renunciation as Trustee. Any Trustee may renounce the right to serve as a Trustee under the Trust Agreement prior to having received any assets or having performed any services in a fiduciary capacity.

5. Record of change of Trustee. A copy of any document pertaining to any change of Trustee or the delegation of duties to any Trustee shall be filed among the permanent records of the trust.

6. Separate trusts. The Trustees acting from time to time for the various trusts created under this Trust Agreement shall exercise their powers or discretions as Trustees of each such trust separately and shall not be required to act uniformly for all such trusts.

7. Majority vote. All actions and decisions of the Trustees shall require and become effective upon the vote or written consent of a majority of the Trustees then qualified to act in such matter; provided, however, that, if (a) a Corporate Trustee is then acting and there is only one individual Trustee qualified to act in such matter, and (b) there is a disagreement between the individual Trustee and the Corporate Trustee, the determination of the individual Trustee shall govern and be binding upon the Corporate Trustee. No dissenting or non-assenting Trustee shall be responsible for or incur any liability resulting from any action taken or not taken by the majority or by the individual Trustee, as the case may be. Joint action of the Trustees is not required unless expressly set forth in the Trust Agreement.

E. **SELF-DEALING.** The following acts are specifically authorized and shall not be prohibited as acts of self-dealing or a conflict of interest:

1. Provision of services to the trust or to any trust under the Trust Agreement by any Trustee, directly or through any of the Trustee's partners, direct or indirect subsidiaries, affiliates, employees, agents, officers, and/or directors (collectively, "Affiliated

Entities and Persons"). Without limiting this general authorization, the Trustee is specifically authorized to engage the Trustee and/or Affiliated Entities and Persons (a) to manage or advise on the investments of any trust under the Trust Agreement; (b) to invest in mutual funds or other commingled funds offered or managed by any Affiliated Entities; (c) to act as broker or dealer to execute transactions and to provide other services with respect to trust property, including purchasing, in the Trustee's discretion as Trustee, any securities currently distributed, underwritten, or issued by Affiliated Entities; and/or (d) to provide legal, accounting or other professional services.

2. Payment for reimbursement of expenses incurred by the Trustee from any Affiliated Entities to the Trustee for reasonable administration expenses.

F. **RESOLUTION OF DISPUTES.** The following provisions shall govern the resolution of matters in dispute pertaining to the Trust Agreement and/or any trust thereunder and shall apply to all persons interested in the trust:

1. "Matters in dispute" shall include any issue, question, or dispute involving:

a. The decision of the Trustees to do or to abstain from doing any particular act in their fiduciary capacity,

b. The determination of any question arising in the administration of trust or trusts created hereunder, including questions relating to (i) the construction of the Trust Agreement and other writings, (ii) a change of Trustees, (iii) a change of the situs of a trust and (iv) the determination of fees for a Trustee,

c. The grant to a Trustee of any necessary or desirable powers not otherwise granted in the Trust Agreement or by law, provided that the parties to the dispute determine that such powers are not inconsistent with the purposes of the Trust Agreement, and

d. The amendment, conformation or reformation of the Trust Agreement to comply with the Code in order to achieve qualification for deductions, elections and other tax requirements not inconsistent with the purposes of the Trust Agreement, other than any matter for which a judicial order is required under state or federal law.

2. "Persons interested in the trust" and "interested persons" shall mean (a) the Settlor and (b) all Trustees and co-Trustees of the trust. If an interested person is a disabled person, "interested person" shall include a fiduciary appointed for that person, or, if none, the person who has assumed responsibility for the interested person.

3. Agreement. If there is a matter in dispute as to which all parties reach an agreement, their agreement shall be evidenced by an instrument in writing signed by all the parties. The written agreement shall identify the subject matter of the dispute and the parties to the dispute. The written agreement shall be binding and conclusive on all interested persons.

4. Arbitration of disputes. Except as set forth in Paragraph F.4.e below, if there is a matter in dispute as to which the parties are unable to agree, other than a dispute regarding the validity of the Trust Agreement, the dispute shall be settled by arbitration, administered in the following manner:

a. Any interested person may initiate arbitration by giving written notice to all other interested persons of his intention to arbitrate. Such notice shall explain the nature of the dispute and the remedy sought.

b. The Trustees shall take such steps as are reasonable to obtain the agreement of all parties on the appointment of a single arbitrator. If the parties are unable to agree upon a single arbitrator within thirty (30) days of the notice to arbitrate, each party shall, within thirty (30) days, select a fellow of the American College of Trusts and Estates Counsel ("ACTEC"). If any party fails to appoint an ACTEC fellow within this time, the Trustees shall appoint an attorney who is an ACTEC fellow on behalf of such party. Such ACTEC fellow shall then name as sole arbitrator a mutually acceptable fellow of ACTEC whose primary practice is located in the state where the Trust is being administered. The arbitration shall be held in the state where the Trust is being administered, unless all the parties and the ACTEC fellows selected by the parties agreed otherwise.

c. The arbitrator shall apply the substantive law of the state whose law governs the Trust Agreement. The procedures which govern the arbitration shall be established by agreement of the parties and, in the absence of such agreement, by the arbitrator, who may, but shall not be required to, adopt the procedures of the American Arbitration Association. Arbitration shall be the exclusive remedy for resolving the matters in dispute to which this Paragraph F.4 applies. No interested person shall institute any suit at law or equity regarding the Trust or any trust under the Trust Agreement except to enforce the award of the arbitrator.

d. The decision of the arbitrator shall be final and binding and shall not be appealable to any court. Costs of the arbitration, including fees of the arbitrators and other related expenses, shall be paid from the trust in dispute or assessed against the parties in the manner determined by the arbitrator. A copy of the arbitrator's resolution shall be filed among the permanent records of the Trust.

e. If, within one year from (i) the initial funding of a trust (in the case of the Trustees initially serving) or (ii) acceptance of the trust (in the case of substitute, successor or additional Trustees), one or more Trustees gives notice of intent to be exempt from the provisions hereof to the Settlor, and all co-Trustees, this Paragraph F.4 shall not thereafter apply to disputes regarding an alleged breach of fiduciary duty. For purposes of this Paragraph F.4.e, Paragraph D.7 of this Section shall be inapplicable.

G. RULES OF CONSTRUCTION AND GENERAL APPLICATION

1. Release of powers. The Settlor or Trustee may, at any time, by written instrument, signed and acknowledged by the holder thereof and delivered to the Trustees (or other Trustees), release, in whole or in part, any one or more powers, power to appoint a successor Trustee or any other power given to the Settlor or Trustee by any provision of the Trust Agreement, or of any statute or rule of court. In the event of the release of any power by any Trustee pursuant to this paragraph G.1, the remaining Trustees (including any successor Trustees to the Trustee releasing such power) may thereafter exercise such power, unless they are otherwise prohibited from doing so.

2. Rule against perpetuities. Except as otherwise provided in this Trust Agreement, each trust created hereunder shall terminate no later than twenty-one (21) years following the date of the execution of this Trust Agreement.

3. Descriptive words. The descriptive words in the paragraph headings and section headings of the Trust Agreement shall be given no effect or meaning in construing or interpreting the provisions hereof or of the Trust Agreement, and are inserted solely for convenience.

4. Gender and number. Where appropriate in the Trust Agreement, (a) any gender reference shall include the feminine, masculine and/or neuter, as appropriate, and (b) any reference in or to the singular shall include the plural and vice versa.

5. Court jurisdiction. The Settlor intends that (a) no court shall assume general or continuing jurisdiction over any trust created under the Trust Agreement, and (b) if a proceeding is commenced in any court to resolve any matter concerning any trust or trusts created hereunder, the court shall assume jurisdiction only to resolve such matter, and shall not retain jurisdiction thereafter.

6. Governing law. This Trust Agreement and each trust created hereunder, including any trust created pursuant to the exercise of a power of appointment granted by the terms of the Trust Agreement, shall be construed in accordance with the laws of the State of California.

7. Final determinations. Any decisions made by any Trustee herein shall be final and legally binding on all interested persons.

IN WITNESS WHEREOF, each of the undersigned has hereunto subscribed his name and affixed his seal effective as of the date first above written.

WITNESS:

SETTLOR

LEEWARD CAPITAL, L.P., a California limited partnership

By: LEEWARD INVESTMENTS, LLC, a California limited liability company

By: _____ (SEAL)
KENT ROWETT, Manager

TRUSTEE

_____
KENT ROWETT

BFE TRUST 1 AGREEMENT

made the

28th day of September, 2010

by

LEEWARD CAPITAL, L.P., a California limited partnership, Settlor

and

KENT ROWETT, Trustee

SCHEDULE A

287 Shares of Common Stock of BF Enterprises, Inc.

RECEIPT ACKNOWLEDGED:

_____

KENT ROWETT, Trustee

Date: 10/8/10