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8 Counsel to Receiver Sherwood
9 Partners, Inc.

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 JOHN V. BIVONA; SADDLE RIVER
17 ADVISERS, LLC; SRA
18 MANAGEMENT ASSOCIATES, LLC;
19 FRANK GREGORY MAZZOLA

20 Defendants, and

21 SRA I LLC; SRA II LLC; SRA III
22 LLC; FELIX INVESTMENTS,
23 LLC; MICHELE J. MAZZOLA;
24 ANNE BIVONA; CLEAR
25 SAILING GROUP IV LLC;
26 CLEAR SAILING GROUP V LLC,

27 Relief Defendants.

Case No. 3:16-cv-1386

**RECEIVER’S UNOPPOSED
APPLICATION PURSUANT
TO LOCAL RULE 7-11 FOR
THE RETENTION OF AN
INDEPENDENT
INVESTMENT BANKER**

Date: No Date
Time: No Time
Judge: Edward M. Chen

28 **I. Background**

On October 11, 2016, this Court issued an Order of Appointment of Receiver (“the Order”) and thereby appointed Sherwood Partners Inc. (“Sherwood”) as Receiver in this matter. The U.S. Securities & Exchange Commission (“SEC”), counsel for the SRA Investors Group (“SRA IG”),

1 counsel for interested investor Global Generation Group LLC and counsel for
2 Sherwood Partners, Inc. (“ the Receiver”) (together “the Parties”) were all in
3 attendance at two hearings before the Court held on September 28 and
4 November 16, 2017, regarding numerous matters. As to one such matter, the
5 Court entertained discussion from the Parties, both in camera and in public,
6 regarding the Receiver’s recommendation to retain an independent investment
7 banking firm (“IB” firm) as part of it’s and the SEC’s proposed Joint
8 Distribution Plan and the concerns expressed by some of the Parties regarding
9 the most appropriate IB firm to be retained.

10 At the conclusion of the November 16 hearing, the Court issued a minute
11 order (Docket No. 275) in which it ordered the Parties to meet and confer to
12 select, and then negotiate appropriate terms regarding a mutually acceptable IB
13 firm, and to report back to the Court by December 1, 2017, on their progress.
14 Since November 16, the Parties have conducted numerous telephonic meetings
15 concerning the retention of the most appropriate and least costly IB firm. Those
16 meetings have resulted in the selection of an IB firm, and its requested
17 retention terms that are acceptable to all Parties.¹The selected firm is Oxis
18 Capital (“Oxis”) based in New York.

19 The Parties have all reviewed this application and do not oppose the
20 Receiver’s recommendation to the Court that Oxis be retained, and the terms
21 which Oxis requested for such retention be approved, including both the fees
22 and certain protections to be afforded Oxis in connection with the scope of its
23 work.

24 **II. OXIS CAPITAL’S REQUESTED ENGAGEMENT TERMS**

25
26
27 ¹ Counsel for defendants John Bivona, Saddle River Advisers LLC and SRA Management
28 Associates LLC has not been a party to the discussions regarding the selection of an IB firm;
however he has indicated to the Receiver’s counsel that he has no objection to the
administrative approval regarding approval of Oxis to act as an IB firm requested herein.

1 Oxis has agreed to evaluate potential recoveries in the liquidation of
2 certain assets (the “Receivership Assets”) and to advise the Court and the
3 Parties of its recommendations. Its main mandate will be to advise on the most
4 beneficial timing of any proposed liquidation of the Receivership Assets; that
5 is, whether some or all of the Receivership Assets can or should be liquidated
6 in the near term in the secondary market for pre-IPO securities, or whether
7 such liquidation should be deferred until the underlying securities become
8 subject to a liquidity, or similar event in the future. As set forth in its proposed
9 engagement letter, Oxis will undertake to evaluate the probability of such an
10 event occurring, the probable time line to such an event, the discount of the
11 future value of such an event when compared to a near term sale; and the costs
12 associated with the two scenarios to be considered. A copy of the proposed
13 engagement letter is attached hereto as Exhibit A.

14 Oxis has fixed its fee structure to a set amount of \$50,000, half of which
15 to be paid upon the approval of the Court to its proposal; the other half of
16 which is to be paid upon delivery of its written report to the Receiver. Oxis is
17 prepared and staffed to undertake the assignment immediately. It has agreed,
18 among other things, to have the engagement governed by the laws of
19 California, and to submit to the jurisdiction of this Court in any dispute arising
20 out of its retention.

21 As it requires in all of its engagements, and in keeping with IB industry
22 standards, Oxis has requested limited indemnity by the Receiver from
23 negligence claims against it for its work, including the reasonable cost of any
24 attorney needed to defend it from such claims. After negotiation, the Parties
25 and Oxis have agreed that it should be granted the same protections while
26 working as a retained IB firm as the Court has extended to “Retained
27 Personnel” in Section XII of its Order of October 11, 2016 (Docket No.142).
28 The Parties have also agreed that if Oxis is in need of legal defense in any

1 action brought by any party against it for the scope of its work in this matter,
2 that such may be provided by the Receiver’s retention of independent legal
3 counsel, subject to the approval of this Court. In order to accommodate this
4 term of Oxis’ retention, the Parties have crafted and agreed upon a paragraph in
5 the accompanying proposed order of retention that will read as follows:

6 “Oxis Capital shall be provided the same limitation on liability that the
7 Court has provided for in Section XII of its Order of October 11, 2016
8 (Docket No. 142) for all Retained Personnel. Further, in the event any
9 litigation is commenced against Oxis Capital relating to the performance
10 of any of its work set forth in, or implied from its engagement letter, the
11 Receiver may (with the Court’s prior approval) retain legal counsel for
12 the purpose of defending Oxis.”

13 Oxis has also requested that in order for it to more expeditiously perform
14 its tasks within a short period of time, that the Court as part of its approval of
15 Oxis’ retention, include the following language to encourage cooperation in
16 gathering information from third parties employed by the pre-IPO companies
17 in the Receivership Estate:

18 “ Oxis is hereby authorized to make inquiries on the Receiver’s behalf of
19 any pre-IPO company issuer of securities which are part of the
20 Receivership Estate, on any matter relevant to the performance of its
21 scope of work.”

22
23 **III. CONCLUSION**

24 The Receiver respectfully makes this unopposed request that the Court
25 approve the retention of Oxis Capital on the terms set forth in its
26 accompanying engagement letter, extend to Oxis the limited liability granted to
27 all the Receiver’s Retained Personnel and protection from the cost of defense,
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1 and to grant it authority to make information inquiries on behalf of the
2 Receiver, all as set forth above.

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Dated: November 28, 2017

GARTENBERG GELFAND HAYTON
LLP

By: /s/ John W. Cotton
JOHN W. COTTON
Counsel to the Receiver

Exhibit A



November 29, 2017

Peter Hartheimer
Sherwood Partners
555 Fifth Ave., 14th Floor
New York, NY 10017

Dear Peter,

In connection with the Oxis Capital's proposal to evaluate potential recoveries in the liquidation of certain assets (the "Receivership Assets") in the case: SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. JOHN V. BIVONA, et al., I am herewith providing a letter outlining the terms of the engagement to perform the evaluation (the "Agreement").

The following sets forth the understanding and agreement between Oxis Capital, Inc. ("Advisor") and the Court appointed receiver, Sherwood Partners Incorporated in connection with the case entitled Securities and Exchange Commission v. John V. Bivona et al, Case No. 3:16-cv-1386 (together with all affiliates, if any, the "Receiver").

1. Engagement

Pursuant to an order of the Court, the Receiver hereby retains the Advisor to provide research and analysis of selected securities in the Receivership Assets and to present the results of such analysis in a report to the Court (the "Report"). The report shall:

1. Compare the potential value of the Receivership Assets if (A) liquidated now in the secondary market vs (B) holding the Receivership Assets until each of the underlying securities undergoes a liquidity or similar event.
 - i. Look at the probability of such an event occurring*
 - ii. Look at the probable time line to such an event and discount the future values accordingly when comparing to a near term sale in the secondary market.*
 - iii. Evaluate the costs associated with the above 2 scenarios (legal, monitoring, etc.).*
2. Present potential recoveries (valuation) for investors in (A) and (B).
3. Evaluate and if appropriate make a recommendation as to whether or not it would benefit investors to sell certain securities immediately in the secondary market or if there are securities that should be held until a future liquidity or similar event occurs.

In addition, if requested and at no additional cost, the Advisor will travel to California and appear at a single hearing of up to four hours. The advisor will provide up to 10 hours of



telephonic meetings if requested by the parties or by the court. Flight expenses associated with the above travel shall be reimbursed at the lower of \$1,500 per round trip flight or actual costs incurred.

2. Term of Engagement

Advisor shall be engaged from the date hereof until this Agreement is terminated in accordance with the terms set forth below. Subject to the provisions of paragraphs 3 through 8, which shall survive any termination of this Agreement and/or the completion of Advisor's engagement hereunder, either party may terminate Advisor's engagement hereunder at any time by giving the other party at least 10 business days prior written notice.

3. Compensation

Advisor shall be paid a flat fee of \$50,000 as follows:

- (a) \$25,000 upon the execution of this Agreement and entry of an order of the court and
- (b) \$25,000 upon delivery by the Advisor of the Report to the Receiver.

Any additional work shall be mutually agreed upon and will be paid at \$600 per hour including travel time over and above the travel described in paragraph 1.

4. Expense Reimbursement

Subject to prior Court review and approval, the Receiver shall reimburse Advisor for Advisor's reasonable out-of-pocket expenses arising out of Advisor's activities under this engagement. Reasonable out-of-pocket expenses shall include, but not be limited to, travel and lodging expenses, outside database charges, outside design charges, courier services and other necessary and reasonable expenses.

5. Independent Contractor

Advisor will act under this Agreement as an independent contractor with duties solely to the Receiver.

6. Advertisements

The Receiver hereby grants to Advisor the right to use its name, logo, and a brief description of its business and this transaction for Advisor's tombstone and other similar advertising. Advisor grants the Receiver the right to use its name, logo, and a brief description of it for the Receiver's website, investor materials and advertising.

7. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of **California**, without regard to conflicts of law principles. The parties hereby irrevocably submit to the jurisdiction of the United States District Court for the Northern District of California presiding over the *Securities and Exchange Commission v. John v. Bivona* litigation



over any dispute or proceeding arising out of this Agreement and agree that all claims in respect of such dispute or proceeding shall be heard and determined in such Court. The parties to this Agreement hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may have to the venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute.

8. Entire Agreement; Amendments

The Receiver agrees that (a) the Receiver will seek an order authorizing this retention and will ask the court for a limitation of liability running in favor of the Advisor with respect to its performance under this Agreement Letter, and (b) The Parties agree that any and all issues, disputes and claims concerning or arising under this Agreement shall be solely brought in the United States District Court for the Northern District of California presiding over the *Securities and Exchange Commission v. John v. Bivona* litigation. This Agreement may be executed via facsimile transmission and may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. This Agreement may not be amended or modified except in writing, except as otherwise provided therein.

Neither MARC WINTHROP NOR OXIS CAPITAL INC have now nor have ever had any connection or contact with John V. Bivona, Frank G. Mazzola, Felix Investments, LLC, Saddle River Advisors, LLC or SRA Management Associates LLC, SRA Funds I, II and III, LLC, FMOF Management Associates, LLC, Felix Multi-Opportunity Funds I and II, LLC, NYPA Management Associates, LLC, NYPA Fund I and II, LLC and Clear Sailing Group IV and V, LLC.

If the foregoing correctly sets forth the understanding and agreement between Advisor and the Receiver, please sign in the space indicated below.

MARC WINTHROP

BY: 
PRESIDENT
OXIS CAPITAL, INC 11/29/17

ACCEPTED AND AGREED TO:

RECEIVER.
Receivership Assets and Exchange Commission v. John V. Bivona, et al., Civil Action No. 3:16-cv-1386 (U.S. District Court for the Northern District of California)

BY: Peter Hartheimer 11/30/17
Peter Hartheimer For the Receiver.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN B. BIVONA; SADDLE RIVER
ADVISERS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
MAZZOLA

Defendants.

) Case No. 3:16-cv-1386

) **[PROPOSED] ORDER
GRANTING THE
RECEIVER'S
ADMINISTRATIVE
APPLICATION FOR THE
RETENTION OF AN
INDEPENDENT
INVESTMENT BANKER**

) Date: N/A
) Time: N/A
) Judge: Edward M. Chen

The Receiver in the above matter, Sherwood Partners Inc. ("Sherwood"), requests that this Court approve its Application pursuant to L.R. 7-11 for the retention of the independent investment banking firm of Oxis Capital, on the terms set forth in Exhibit A to the Application.

The Receiver has also requested that this Court approve a limitation on the liability of Oxis Capital similar to that afforded to any Retained Personnel, as defined in this Court's Order of October 11, 2016 (Docket No. 142), and grant it authority to make informational inquiries of the pre-IPO companies in the Receivership Estate on behalf of the Receiver, while conducting its scope of work.

The Receiver represents that the affected parties to this matter have been involved in the selection of Oxis Capital and no affected party opposes its retention, and the request for a limitation on its liability and

1 entitlement to the retention of counsel and payment for legal fees
2 involved in defending itself from any claim of negligence in its work.

3 GOOD CAUSE APPEARING, the Court hereby authorizes the
4 Receiver to retain the firm of Oxis Capital on the terms set forth in
5 Exhibit A to the Application.

6 GOOD CAUSE FURTHER APPEARING, the Court therefore issues
7 the following order:

8 "Oxis Capital shall be provided the same limitation on
9 liability that the Court has provided for Retained Personnel in
10 Section XII of its Order of October 11, 2016 (Docket No. 142) for
11 all Retained Personnel. Further, in the event any litigation is
12 commenced against Oxis Capital relating to the performance of
13 any of its work set forth in, or implied from its engagement letter,
14 the Receiver may (with the Court's prior approval) retain legal
15 counsel for the purpose of defending Oxis. Finally, Oxis is hereby
16 authorized to make inquiries on the Receiver's behalf of any pre-
17 IPO company issuer of securities which are part of the
18 Receivership Estate, on any matter relevant to the performance of
19 its scope of work."

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22 IT IS SO ORDERED.

23 DATED: December __, 2017

24 _____
25 Judge Edward M. Chen
26 United States District Court
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8 Counsel to the Receiver
9 Sherwood Partners Inc.

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

Case No. 3:16-cv-1386

14 Plaintiff,

CERTIFICATE OF SERVICE

15 v.

16 JOHN B. BIVONA; SADDLE RIVER
17 ADVISORS, LLC; SRA
18 MANAGEMENT ASSOCIATES, LLC;
19 FRANK GREGORY MAZZOLA

20 Defendants.

21 SRA I LLC; SRA II LLC, SRA III
22 LLC, FELIX INVESTMENTS, LLC;
23 MICHELE J. MAZZOLA; ANNE
24 BIVONA; CLEAR SAILING GFOUP
25 IV LLC; CLEAR SAILING GROUP V
26 LLC,

27 Relief Defendants.
28

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 15260 Ventura Blvd., Suite 1920, Sherman Oaks, California 91403.

On November 30, 2017 I served the following document(s) described as

- RECEIVER'S UNOPPOSED APPLICATION PURSUANT TO LOCAL RULE 7-11 FOR THE RETENTION OF AN INDEPENDENT INVESTMENT BANKER

- [PROPOSED] ORDER GRANTING THE RECEIVER'S ADMINISTRATIVE APPLICATION FOR THE RETENTION OF AN INDEPENDENT INVESTMENT BANKER

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Frank Gregory Mazzola 27 Dogwood Hill Drive Upper Saddle River, NJ 07458	Michele J. Mazzola 27 Dogwood Hill Drive Upper Saddle River, NJ 07458
Marc David Katz Securities and Exchange Commission 44 Montgomery Street Suite 2800 San Francisco, CA 94104	

(XX) BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (213) 542-2101. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
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(X) FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on November 30, 2017 at Sherman Oaks, California.



Nicole Salazar