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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 SECURITIES AND EXCHANGE COMMISSION,

13 Plaintiff,

14 v.

15 JOHN V. BIVONA; SADDLE RIVER  
16 ADVISORS, LLC; SRA MANAGEMENT  
ASSOCIATES, LLC; FRANK GREGORY  
17 MAZZOLA,

18 Defendants, and

19 SRA I LLC; SRA II LLC; SRA III LLC;  
20 FELIX INVESTMENTS, LLC; MICHELE J.  
MAZZOLA; ANNE BIVONA; CLEAR  
21 SAILING GROUP IV LLC; CLEAR  
SAILING GROUP V LLC,

22 Relief Defendants.  
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Case No. 3:16-cv-01386-EMC

**PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S NOTICE OF  
FILING OF AMENDED PROPOSED JOINT  
DISTRIBUTION PLAN AND AMENDED  
ORDER APPOINTING RECEIVER**

Date: December 13, 2018  
Time: 1:30 p.m.  
Courtroom: 5  
Judge: Edward M. Chen

1           **NOTICE OF FILING OF AMENDED PROPOSED JOINT DISTRIBUTION PLAN AND**  
2                                   **PROPOSED REVISED ORDER APPOINTING RECEIVER**

3           In accordance with the Court's Minute Order of October 23, 2018 (ECF 413), plaintiff  
4 Securities and Exchange Commission ("the SEC" or "the Commission") hereby notifies the Court  
5 that it is filing as Exhibit 1 the Commission's and Receiver's Proposed Amendment to the Joint  
6 Distribution Plan ("Amended Joint Plan"). This Amended Joint Plan incorporates changes that  
7 respond to the Court's request for language that provides a structure for investor input. This  
8 Amended Joint Plan also includes language providing that the Early Payment Option will be  
9 implemented only if approved by the Court and feasible. Although these changes in the Amended  
10 Joint Plan are not extensive, the Commission is filing as Exhibit 2 a blacklined version comparing  
11 this current version of the Amended Joint Plan with the version that was filed with the Court on  
12 September 28, 2018 (ECF 404-1).

13           Also in accordance with the October 23, 2018 Minute Order, the Commission is filing as  
14 Exhibit 3 the Commission's Proposed Revised Order Appointing Receiver. This Revised Order is  
15 designed to establish the more limited and cost efficient future scope of the receivership.

16 Dated: November 21, 2018

Respectfully submitted,

17  
18                                   /s/ John S. Yun

John S. Yun

Marc Katz

Jessica W. Chan

Attorneys for the Plaintiff Securities and Exchange  
Commission

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# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,  
  
Plaintiff,  
  
v.  
  
JOHN V. BIVONA; SADDLE RIVER  
ADVISORS, LLC; SRA MANAGEMENT  
ASSOCIATES, LLC; FRANK GREGORY  
MAZZOLA,  
  
Defendants, and  
  
SRA I LLC; SRA II LLC; SRA III LLC;  
FELIX INVESTMENTS, LLC; MICHELE  
J. MAZZOLA; ANNE BIVONA; CLEAR  
SAILING GROUP IV LLC; CLEAR  
SAILING GROUP V LLC,  
  
Relief Defendants.

Case No. 3:16-cv-01386-EMC

**Proposed Joint Plan of Distribution**

1       **A. Summary of Distribution Plan**

2       The Securities and Exchange Commission (“Commission” or “SEC”) and Sherwood Partners,  
 3 Inc., the court-appointed receiver or a court-approved successor (“Receiver”), respectfully submit this  
 4 proposed Joint Plan of Distribution (the “Plan” or “Distribution Plan”) to distribute funds to investors  
 5 and creditors harmed as a result of the violations alleged in the Commission’s complaint (DE 1).  
 6 Pursuant to the October 11, 2016 Order (DE 142, Stipulated Order Appointing Receiver), the Court  
 7 appointed the Receiver to take possession and control of the assets of certain Defendants<sup>1</sup> and Relief  
 8 Defendants<sup>2</sup> and third party affiliated entities<sup>3</sup> (the “Receivership Estate”) and to develop a plan for  
 9 the administration of the Receivership Estate.

10       This Plan provides for the determination of investor and creditor claims to assets in the  
 11 Receivership Estate (including assets that may be collected hereafter) and for the *pro rata* distribution  
 12 of assets as set forth herein. This Plan also provides for the orderly sale of the shares and financial  
 13 interests held by the entities in the Receivership Estate and the pro rata distribution of the proceeds to  
 14 investors based upon their net out-of-pocket investments and to creditors based on the debt owed. If  
 15 there are sufficient proceeds, investors will receive interest on the principal amount of their  
 16 investments to compensate investors for the time value of their money and creditors will receive  
 17 either the contractual rate of interest or the treasury rate for unpaid federal funds or such other  
 18 appropriate rate as determined by the Receiver and the Court. Investors who purchased securities  
 19 that are determined to have no value, either before or after the appointment of the Receiver on  
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21       <sup>1</sup> Saddle River Advisors LLC (“Saddle River”) and SRA Management, LLC (“SRA Management”),  
 22 Saddle River and SRA Management (collectively, the “Corporate Defendants”).

23       <sup>2</sup> SRA I LLC (“SRA I”), SRA II LLC (“SRA II”), SRA III LLC (“SRA III”) (together, “SRA Funds”) and Clear Sailing Group IV LLC and Clear Sailing Group V LLC (together, “Clear Sailing”) (collectively the “Relief Defendant Entities”).

24       <sup>3</sup> By stipulation, Sherwood Partners also became the Receiver for third-party affiliated entities NYPA Fund I LLC (“NYPA I”), NYPA II Fund LLC (“NYPA II”) (together, “NYPA Funds”) and NYPA Management Associates LLC (collectively, “NYPA Entities”) and Felix Multi-Opportunity Funds I and II, LLC (“FMOF I and II”) (together, “FMOF Funds”) and FMOF Management Associates, LLC (collectively, “FMOF Entities”).

1 October 11, 2016, may share in the proceeds of other assets, but at a discount. These investors will  
2 receive their pro rata distribution which will be limited to 25 to 30 percent of the principal amount of  
3 their claim. In the event that the sale of shares or economic interests in a particular company,  
4 generates an excess recovery and the other investors have received the principal amount of their  
5 investments plus interest, then the Receiver will be authorized to propose a supplemental distribution  
6 to those investors who subscribed and/or invested in the shares of the particular company or contracts  
7 for shares of the particular company generating the excess recovery.

8 In addition, if the Court determines that the shares and financial interests held by the entities in  
9 the Receivership Estate are to be held for a period of time which could exceed 2 years, the Court will  
10 determine if it is feasible, upon appropriate application, to include a mechanism for investor and  
11 creditor claimants to elect an early payment of 25-30% on valid claims. Such election would be by a  
12 date certain to be set by the Court.

13 The Plan will also provide for the retention by the Receivership, pursuant to Court order, of an  
14 Investment Banker to liquidate certain securities held by the Receivership to allow for an early  
15 payment, if elected and if feasible, and to monitor the securities held by the Receivership, file  
16 quarterly periodic reports regarding those securities, file recommendations for process and timing of  
17 sales and management of the securities.

#### 18 **B. Background**

19 The Commission filed its complaint against John V. Bivona (“Bivona”), Frank Mazzola, the  
20 Corporate Defendants, and Relief Defendants in this action on March 22, 2016. It brought this action  
21 in order to stop Bivona, Frank Mazzola and the companies they currently control or previously  
22 controlled from continuing to defraud investors, from which Bivona, Frank Mazzola and their  
23 companies raised over \$53 million in the SRA Funds. Bivona, Frank Mazzola, Saddle River  
24 Advisors (“Saddle River”) and SRA Management Associates, LLC (“SRA Management”), marketed  
25 investments in early-to-late stage, pre-IPO technology companies, however Bivona, Saddle River and  
26 SRA Management lied to investors and used their money to purchase shares promised to earlier  
27 investors in other unrelated funds. Bivona, Saddle River and SRA Management also used the SRA  
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1 Funds' bank accounts to pay for personal expenses for John Bivona and his family. (DE 1, Complaint  
2 at ¶¶ 2, 3)

3 Among other things, the Commission alleged that Bivona, Saddle River and SRA Management  
4 disguised their misconduct by continually transferring money in and out of multiple bank accounts  
5 associated with more than a dozen different funds and entities. Millions of dollars have been  
6 funneled to pay for the expenses of earlier funds that Bivona and Saddle River also manage, while at  
7 least \$5.7 million has been diverted to family members to pay, among other things, credit card bills,  
8 income taxes, a car loan, unrelated defense attorney fees, and the mortgage on a Jersey Shore  
9 vacation home. Bivona, Saddle River and SRA Management failed to provide investors with the  
10 promised financial statements that should have revealed their fraud. Bivona steered the lion's share  
11 of the misappropriated money to benefit Bivona's nephew, Frank Mazzola, who faced SEC fraud  
12 charges for an earlier investment scheme, which resulted in the March 2014 entry of permanent  
13 injunctions by this Court and the institution of an administrative SEC order barring Mazzola from the  
14 securities industry for at least three years. (DE 1, Complaint at ¶¶ 4, 5)

15 On March 25, 2016, on the basis of the allegations in the Complaint, the SEC's Motion for a  
16 Temporary Restraining Order (DE 4) and the documentation filed by the SEC in support of the SEC's  
17 Motion (DE 5-20), the Court entered an Order Granting Temporary Restraining Order, Appointment  
18 of Independent Monitor, and other Preliminary Relief (DE 36). On October 11, 2016, on consent,  
19 Judge Chen appointed the Independent Monitor, Sherwood Partners, Inc., as the Receiver for  
20 defendant SRA Management and relief defendants SRA Funds and Clear Sailing. By stipulation,  
21 Sherwood Partners, Inc. also became the Receiver for third-party affiliated entities NYPA Fund I  
22 LLC ("NYPA I"), NYPA II Fund LLC ("NYPA II") and NYPA Management Associates LLC  
23 (collectively, "NYPA Entities") and Felix Multi-Opportunity Funds I and II, LLC ("FMOF I and II")  
24 and FMOF Management Associates, LLC (collectively, "FMOF Entities"). Like the SRA Funds,  
25 those third-party affiliates held their pre-IPO shares and interests through Clear Sailing. (DE 142)

1 The Receivership Defendants<sup>4</sup> do not currently have any permanent employees, and have ceased  
2 operations. The shares of private companies beneficially owned by the SRA Funds and other  
3 investment funds, such as the NYPA Funds and Felix Multi-Opportunity Funds, are held centrally at  
4 Clear Sailing, through ownership interests in the Clear Sailing entities. Because these private  
5 company shares are not held within the SRA Funds, or other investment funds, claiming an  
6 ownership interest over the shares, it is appropriate to have these entities in the Receivership Estate to  
7 be administered pursuant to this Distribution Plan. (DE 142)

8 On December 22, 2017, the Court entered Final Judgments on consent against defendants John  
9 Bivona and Frank Mazzola and relief defendants Anne Bivona and Michele Mazzola.

10 On February 12, 2018, the Court entered a Final Judgment on consent against Saddle River  
11 Advisors LLC.

12 On March 22, 2018, the Court entered a Final Judgment on consent against defendants SRA  
13 Management Associates LLC and Relief Defendants SRA I, LLC, SRA II, LLC, Clear Sailing Group  
14 IV, LLC and Clear Sailing Group V, LLC.

15 **1. Current Financial Status of Receivership Estate**

16 The Receiver has taken steps necessary to preserve the status quo as to the Corporate Defendants  
17 and Relief Defendant Entities and to allow the investigation of the nature, location and rightful  
18 allocation of their assets. To date, the Receiver, on behalf of the Corporate Defendants and Relief  
19 Defendant Entities, and related entities in the Receivership Estate has marshalled the following assets  
20 (the "Current Assets") in the Receivership Estate:

- 21 a. \$1,665,219.77 in proceeds from the sale of shares of Square, Inc. after the start of the  
22 receivership (some of which has been used to pay Court approved fees and expenses).  
23 b. \$500,000 payment from Anne Bivona pursuant to Final Judgment.<sup>5</sup>

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<sup>4</sup> SRA Management, SRA Funds and Clear Sailing.

27 <sup>5</sup> The current amount held in the Receivership Estate is \$1,100,597. Total funds disbursed to date is  
28 \$1,199,861.



1 c. securities (or forward contracts on securities) including, but not limited to, Addepar, Airbnb,  
2 Badgeville, Bloom Energy, Candi Controls, Cloudera, Dropbox, Evernote, Glam, Jawbone, Lookout,  
3 Lyft, Mongo DB, Palantir, Pinterest, Practice Fusion, Snapchat, Uber, Twitter, Box, oDesk, Check,  
4 Flurry, and Virtual Instruments. The Receiver will provide a report to the Court with the number of  
5 shares held by the Receivership Estate.

6 d. any and all intangibles, including but not limited to, funds received or reasonably expected to  
7 be received from potential claims from Avoidance Actions and other Causes of Action in favor of  
8 the Receivership Estate.

9 **2. Substantive Consolidation due to Commingling**

10 Based on the Commission's accounting investigation and the Receiver's investigation into the  
11 shortfall of the investments, and its' marshalling of assets of the Corporate Defendants and Relief  
12 Defendant Entities, it has been determined that:

- 13 a. Bivona and the Corporate Defendants commingled and transferred funds among the Relief  
14 Defendant Entities and Receivership Entities;
- 15 b. Bivona and the Corporate Defendants expended amounts in excess of the management fees  
16 permitted under the management agreements;

17 The Receiver is terminating all management agreements with SRA Management, NYPA  
18 Management and FMOF Management and the advisory agreements with defendant Saddle River so  
19 that no further management or advisory fees will be paid or owed to SRA Management, NYPA  
20 Management, FMOF Management and/or Saddle River.

21 The Receiver consented to a Final Judgment for full injunctive relief, and disgorgement sought by  
22 the Commission in its Complaint. The Final Judgment provided that the monetary judgment against  
23 SRA Management and the Relief Defendant entities will be deemed satisfied by the payments  
24 contemplated to investors and creditors under this Distribution Plan.

25 Due to the extensive commingling of funds among the Corporate Defendants and Relief  
26 Defendant Entities and misappropriation of investor money by Bivona and the Corporate Defendants,  
27 the Commission and the Receiver propose to consolidate the assets and liabilities of the Corporate  
28 Defendants, Relief Defendants Entities and affiliated third party entities, including the dissolution of

1 all of the Corporate Defendant, Relief Defendant Entities and affiliated third party entities, and to  
2 distribute the assets pursuant to the following plan of distribution to investors and creditors on a pro  
3 rata basis. In addition, to unwind the transactions supporting the Unsecured Claims and Unsecured  
4 Creditor Claims would be unduly burdensome, prohibitively expensive and administratively  
5 unfeasible.

### 6 **C. Definitions**

7 “Administrative Claims” means accrued and unpaid Receiver’s fees and expenses and those of  
8 Receiver’s counsel, accountants and other professionals’ fees and expenses, through distribution.  
9 Employee salaries for those retained by the Receiver, and Trust Fund Taxes incurred during  
10 receivership, i.e. payroll taxes and income taxes for the period covered by the Receivership.

11 “Administrative Reserve” means the amount of funds, the Receiver upon consultation with the  
12 SEC Staff shall calculate an administrative reserve sufficient to complete distributions and wind  
13 down the Receivership Estate.

14 “Avoidance Action” means any cause of action, or defense against an action, to avoid or recover  
15 a transfer of property of the Receivership Estate or interest of the Receivership Entities in property,  
16 including actions, or defenses arising under applicable federal, state or common law.

17 “Bivona Bankruptcy Case” the Chapter 7 Bankruptcy Proceeding of John Vincent Bivona, Case  
18 No. 16-12961-SCC, in the United States Bankruptcy Court for the Southern District of New York.

19 “Cause of Action” means a claim, right, action, chose in action, suit, cause of action, judgment,  
20 belonging to the Receivership Estate and any and all liabilities, obligations, and debts owing to the  
21 Receivership Estate, whether arising prior to or after October 11, 2016.

22 “Claims Agent” means JND Corporate Restructuring (“JND”) of Denver Colorado.

23 “Claim Objection” means an objection served by the SEC and or the Receiver prior to a claim  
24 objection cutoff date on any person or entity for which the SEC and or the Receiver disputes the  
25 claim filed. The SEC and or the Receiver will then schedule a hearing for the Claim Objection to be  
26 heard by the Court. These claims, include, but are not limited to, claims filed for confessions of  
27 judgment against Receivership Entities; and any claims listed on Exhibit A. Exhibit A may be  
28 supplemented and amended.

1 “Corporate Defendants” means Saddle River and SRA Management.

2 “Disallowed Claims” include claims belonging to or asserted by or on behalf of (i) John V.  
3 Bivona; (ii) Frank Mazzola; (iii) Anne Bivona; (iv) Michele Mazzola; (v) David Jurist; (vi) Alice  
4 Jurist; (vii) former agents or employees of Saddle River Advisors, Felix Investments, FMOF  
5 Management, NYPA Management, SRA Management, Clear Sailing IV and Clear Sailing V and the  
6 Fortuna Fund Management; (viii) other insiders (including Emilio DiSanluciano); (ix) Management  
7 fees; (x) Inter-company claims; and (xi) and any claim for the guarantee of a debt or financial  
8 obligation for the benefit of insiders, including but not limited to John V. Bivona, Frank Mazzola,  
9 Anne Bivona, Michele Mazzola, David Jurist, and Alice Jurist, by FMOF Management, or NYPA  
10 Management or any other of the Receivership Entities.

11 “Disgorgement Funds” or “Fair Fund” means monies collected by the Commission that are  
12 ordered paid to the Commission or the Receivership pursuant to a Final Judgement entered in this  
13 case.

14 “Distributable Funds” means assets determined by the Receiver, as approved by the Court,  
15 available for distribution in accordance with the Plan. This includes the proceeds of any sales of  
16 securities after the date of the appointment of the Receiver, on October 11, 2016, including the  
17 proceeds from the sale of securities of Square, Inc.

18 “Distribution” means the disbursement of money from the Distribution Account or a Corporate  
19 Defendant account to Eligible Claimants pursuant to the Plan.

20 “Distribution Account” means a checking account or accounts established by the Receiver to  
21 receive the monies from the Corporate Defendants, Relief Defendant Entities and affiliated third  
22 party entities that are scheduled to be disbursed in accordance with the Plan. “Distribution Account”  
23 shall also mean a checking account established by the Receiver to accept disgorgement or Fair Fund  
24 monies from the Commission, subject to any limitations on disbursement required by the  
25 Commission. Multiple such accounts may be necessary to ensure that the entire amount deposited is  
26 insured by the Federal Deposit Insurance Corporation.

27 “Distribution Agent” means JND Corporate Restructuring (“JND”) of Denver Colorado, or such  
28 other professional hired by the Receiver pursuant to Court order.

1 “Distribution Plan” or “Plan” means this proposed joint plan of distribution for the resolution and  
2 distribution of funds on claims to investors and creditors harmed as a result of the violations alleged  
3 in the Commission’s complaint.

4 "Distribution Plan Notice" means the notice to investors and creditors that the Plan is approved  
5 and they are eligible for a distribution pursuant to this Distribution Plan, unless they receive a Claim  
6 Objection. The Distribution Plan Notice will include an Early Election Claim form. The Distribution  
7 Plan Notice will be subject to Court approval.

8 “Eligible Claimant” means any investor or creditor with Valid Claims.

9 “Early Election Claim” means the claim of a creditor or investor that seeks an early percent  
10 distribution of 25 - 30 % on their Valid Claim by submitting an Early Election Claim form by a date  
11 to be set by the Court. (These creditors and investors shall be referred to as “Early Election  
12 Claimants”).

13 “Investment Banker” means such investment banker hired by the Receiver pursuant to Court  
14 order.

15 “Other Recoveries” means any investor or creditor recovery for capital, profit, claims or damages,  
16 other than through the Plan, including but not limited to any funds received or reasonably expected to  
17 be received in the Bivona Bankruptcy Case, other litigation or from third party sources, included but  
18 not limited to payment on personal guarantees.

19 “Receivership Claims” means any legal claims the Corporate Defendants or Relief Defendant  
20 Entities or affiliated third party entities have against third parties.

21 “Receivership Defendants” means SRA Management, SRA Funds and Clear Sailing.

22 “Receivership Entities” means SRA Management, SRA Funds, Clear Sailing, the NYPA Entities,  
23 and FMOF Entities.

24 “Receivership Estate” means the assets and property, in whatever form, of the Receivership  
25 Entities.

26 “Record Date” means the date set by the Distribution Agent in consultation with the Receiver and  
27 the SEC Staff, prior to any distributions of funds under the Plan.

1 “Rescission Claim” means an Unsecured Claim that is based on an investment in securities that  
2 have been determined to have no value by the Record Date. The Rescission Claim will be 25 - 30%  
3 of the principal amount of the Unsecured Claim.

4 “Rescission Claimant” means an investor with only Rescission Claims as of the Record Date. A  
5 Rescission Claimant may include as part of his or her claim, those investments that had no value  
6 before the receivership began on October 11, 2016.

7 “Relief Defendant Entities” means SRA Funds and Clear Sailing.

8 “Subordinated Claim” means a claim for guarantees, broker fees, management fees, advisory  
9 fees, or for transactions that lacked adequate consideration or value, or in the case of claims by  
10 money judgment creditors, including, but not limited to, claims by Global Generation and Progresso  
11 Ventures, that include a portion of the money judgment that is for interest (other than the treasury rate  
12 for unpaid federal funds or such amount approved by the Court), attorney’s fees, and costs, which  
13 shall include arbitration costs, and any claim listed on Exhibit B. Exhibit B may be supplemented  
14 and amended.

15 “Unsecured Claims” means investor claims. Investor claims are the principal amount invested  
16 in or through Clear Sailing or related entities in securities for which there has been no distribution  
17 including: (i) Clear Sailing holdings began in mid-2011, (ii) investor claims in Fortuna Fund LLC I  
18 and Fortuna Fund LLC II (collectively, the “Fortuna Fund”) to the extent the Fortuna Fund invested  
19 in Clear Sailing, as identified by the SEC Staff, Receiver or Distribution Agent, if any, (iii) all  
20 investor claims for principal are calculated by reducing claims by any redemptions paid excluding  
21 redemptions or distributions on account of the purchase of any pre-IPO shares; (iv) All investor  
22 claims for principal are calculated by offsetting/reducing claims by amounts received or reasonably  
23 expected to be received in the Bivona Bankruptcy Case, other litigation or from third party sources,  
24 including but not limited to payment on personal guarantees.

25 “Unsecured Creditor Claims” means principal amount owed on loans, business debt, money  
26 judgments, if any including: (i) vendors; (ii) Progresso Ventures, (iii) Benchmark Capital, (iv) Global  
27 Generation; (v) business debts; (v) Other claims of taxing authorities, such as non-trust fund taxes,  
28 state income taxes, franchise type taxes. All creditor claims for principal amounts are calculated by

1 reducing claims by amounts received or reasonably expected to be received in the Bivona Bankruptcy  
2 Case or other litigation or from third party sources, including but not limited to payment on personal  
3 guarantees. Contractual rate of interest will be used for trade and financial institutional lenders,  
4 default rate of interest will be excluded. Otherwise, the treasury rate for unpaid federal funds or such  
5 other appropriate rate as determined by the Receiver and the Court will be used.

6 “Valid Claim” means an investor or creditor claim that the Receiver and the SEC Staff have  
7 determined is represented by a valid invoice, receivable, or debt against the Corporate Defendants,  
8 Relief Defendant Entities and/or Receivership Entities supported by the submissions of the investor  
9 or creditor claimant, the books and records of the Corporate Defendants and Relief Defendant  
10 Entities, or other sources of information reasonably available to the Receiver. Investor or creditor  
11 claimant submissions will include a sworn declaration, affidavit or attestation, and all claims will be  
12 subject to the jurisdiction of the District Court for the Northern District of California.

13 **D. Proposed Plan Notice**

14 Upon entry of an appropriate scheduling order to approve the Plan,

- 15 a. The Receiver and/or SEC Staff will file by ECF and serve pursuant to ECF those parties  
16 that have an account on the District Court’s website and mail to known Unsecured Claims  
17 and Unsecured Creditor Claimants that do not have an account on the District Court’s  
18 website a copy of the Plan, together with the information the Receiver will have  
19 determined is necessary to inform the Unsecured Claims and Unsecured Creditor  
20 Claimants of their potential right to receive funds from the Distributable Funds pursuant to  
21 the approved Plan.
- 22 b. The Receiver shall post a Proposed Plan Notice on the Receiver’s website at:  
23 <http://www.shrwood.com/saddleriver> to alert Unsecured Claims and Unsecured Creditor  
24 Claimants of their potential rights to receive funds from the Distributable Funds and to file  
25 an Objection to the Plan. The Receiver’s website shall include a link to a copy of the  
26 Distribution Plan.
- 27 c. The SEC Staff will also post a link to the Distribution Plan on [www.sec.gov](http://www.sec.gov)  
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- 1           d. The Receiver and the SEC Staff working with the Distribution Agent will serve a notice of  
2           hearing to approve the Distribution Plan. An objection date will be set in the Proposed  
3           Plan Notice, the Notice will be approved by the Court.
- 4           e. Upon approval of the Plan, The Receiver and/or SEC Staff working with the Distribution  
5           Agent will serve a notice of possible distribution.
- 6           f. Upon approval of the Plan and if authorized by the Court, the Receiver and/or SEC Staff  
7           will serve a notice of optional request for an Early Election Claim on Valid Claim holders.  
8           The Early Election Claim form will be due by a date to be set by the Court.
- 9           g. Within 10 business days of approval of the Plan, an investor group that demonstrates that  
10          they represent a majority of investors that have filed claims in this case shall submit the  
11          resume of a proposed investor representative to SEC Staff for its consent. The investor  
12          representative proposed (i) must own a substantial position in the securities that are the  
13          subject of this enforcement case, and (ii) cannot have been an employee, affiliate or sales  
14          person of John Bivona, the SRA Funds or any of the affiliated entities, and/or (iii) the  
15          subject of an SEC enforcement action. The SEC Staff will not unreasonably withhold its  
16          consent to such person's participation as a representative for investors to give input on  
17          matters with respect to the Plan administration. In the event of a dispute over such person,  
18          the SEC Staff shall file with the Court an objection to the applicant's designation of such  
19          person as the investor representative and the Court will schedule a hearing to determine  
20          whether such person or any other person proposed by the investor group shall be  
21          designated as the investor representative. The investor representative will be authorized to  
22          meet and confer with the Receiver and the SEC Staff and to provide input with respect to  
23          matters involving Plan administration. Nothing herein prevents any investor or party in  
24          interest from filing objections on their own behalf with the Court on matters relating to the  
25          Plan.
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1 **E. Marshalling and Liquidation of the Assets and Liabilities of the Corporate and Relief**  
2 **Defendants**

3 In anticipation of implementing the Distribution Plan upon approval of the Court, the Receiver in  
4 consultation with SEC Staff shall:

- 5 a. Determine the amounts of any Valid Claims, as set forth below;
- 6 b. Consolidate the existing Corporate and Relief Defendant accounts into the Distribution  
7 Account;
- 8 c. In accordance with a proposed further Order of the Court, liquidate or manage the non-  
9 cash assets in the Receivership Estate and upon liquidation deposit cash receipts for the  
10 non-cash assets in the Distribution Account;
- 11 d. Hire an Investment Banker pursuant to Court order to assist with the liquidation and  
12 management of non-cash assets; to monitor securities held by the Receivership, file  
13 periodic reports regarding those securities, file recommendations for process and timing  
14 of sales and management of the securities; and to determine if partial portfolio sales are  
15 feasible;
- 16 e. To the extent the non-cash assets in the Receivership Estate are securities, the Receiver  
17 shall liquidate or resell the securities in a manner consistent with state and federal  
18 corporate and securities laws. The Receiver anticipates that such resale shall be done in  
19 accordance with Section 5 of the Securities Act of 1933 ("Securities Act") or in  
20 accordance with exemptions from registration provided in the Rules promulgated by the  
21 Commission pursuant to the Securities Act; and is authorized to seek the retention of  
22 such professionals necessary to assist the Receiver with such transactions;
- 23 f. In accordance with its authority and powers under Section X of the October 11, 2016  
24 Order Appointing Receiver, the Receiver may pursue Receivership Claims in  
25 consultation with the SEC Staff and as authorized by the Court.
- 26 g. To the extent that any purported outstanding agreements have not already been  
27 cancelled, such agreements will be reviewed by the Receiver for possible termination,  
28 cancellation or amendment.



1       **F. Determination of Eligible Claims**

2       The Receiver and the SEC Staff will determine which Unsecured Claims and Unsecured Creditor  
3 Claims are Valid Claims based upon the Corporate Defendants' and Relief Defendants existing  
4 records, submissions of the Claimants to the Receiver, and other sources of information reasonably  
5 available to the Receiver or the SEC Staff.

6       Within 90 days of approval of the Plan, the SEC or the Receiver shall file any objections to  
7 claims.<sup>6</sup> If the SEC and or the Receiver are not able to settle or resolve the objection to claim, the  
8 SEC and or the Receiver will schedule a hearing at which point the Claim Objection shall be heard by  
9 the Court. If there is a settlement of the objection to claim the SEC and or the Receiver will file a  
10 motion to have the settlement approved by the court. As of the Record Date, the Distribution Agent  
11 will send all Valid Claimants their claim amount, and the amount of the distribution they are to  
12 receive.

13       **G. Tax Claims**

14       During the second quarter of 2018, the Receiver engaged an accounting firm to prepare tax  
15 returns for the entities in the receivership for the tax years of 2015 and 2016. Based on the returns  
16 filed to date for certain receivership entities, the IRS and NYS have assessed penalties against the  
17 receivership estate. The SEC and the Receiver are reviewing the amounts owed and the basis for the  
18 liability. A plan supplement to be filed at a later date will provide for the treatment of the IRS and  
19 NYS claims and/or a method to resolve any disputes.

20       **H. Distributions**

21       The distribution methodology in this Plan seeks to achieve the prompt, fair, and efficient  
22 distribution of the Distributable Funds to those victims who suffered a loss as a result of the  
23 violations alleged in the Complaint, as well as the creditors of the Corporate Defendants, Relief  
24 Defendants and affiliated third party entities. The amount of the Distributable Funds is unknown and  
25 may be less than the total Valid Claims.

26  
27 \_\_\_\_\_  
28 <sup>6</sup> The SEC or the Receiver can request an extension of the 90 day time period.

1           **1. First Distribution**

2           If the Court determines, upon appropriate application, that it is feasible to allow a distribution to  
3 Early Election Claims, then upon the liquidation of assets by the Investment Banker or otherwise, the  
4 first distribution will be to make the pro rata distribution to the Early Election Claimants, these  
5 investors and creditors will be paid a pro rata 25-30% of their Valid Claims. There will be sufficient  
6 funds heldback in order to pay necessary administrative expenses related to the sale of any assets and  
7 distribution of funds in this first distribution. If claimants receive a distribution pursuant to their  
8 Early Election Claim, they are not eligible for the Second Distribution described below.

9           **2. Second Distribution**

10          Upon the sale of the remaining assets, including securities and financial interests held by the  
11 entities in the Receivership Estate, payments will be made as follows: First, pay accrued  
12 Administrative Claims in full and satisfy or partially satisfy Administrative Reserve; Second, pay pro  
13 rata all Unsecured Claims for principal amount outstanding, Rescission Claimants, all Unsecured  
14 Creditor Claims for loans or business debt up to principal amount owed plus contractual rate of  
15 interest for business debt or loans accrued as of October 11, 2016 (For purposes of distributions on  
16 Unsecured Creditor Claims and Unsecured Claims, these claims shall be paid on a par or pari passu);  
17 Third, pay pro rata interest at the treasury rate of unpaid federal funds or such other appropriate rate  
18 as determined by the Receiver and the Court, accrued as of October 11, 2016, to investors that  
19 purported to purchase securities or a series of securities from the FMOF Funds, NYPA Funds, SRA  
20 Funds and/or Clear Sailing, and those securities have been sold by the Receiver or have been  
21 determined to be of limited value by the retained financial professionals. These are investors who are  
22 not eligible for the Third Distribution described below and their claims are deemed satisfied to the  
23 extent they are paid in full on their principal and interest claim in this distribution. Upon motion by  
24 the SEC and approval by the Court, the Disgorgement Funds obtained by the SEC from relief  
25 defendant Anne Bivona may be used in the First Distribution and/or Second Distribution to help pay  
26 the claims of the Early Election Claimants and Rescission Claimants.

1 Pay pro rata interest, as defined above, on all other Unsecured Creditor Claims which are not  
2 entitled to a contract rate of interest. (Note that all claims for interest shall be paid on a par or pari  
3 passu)

### 4 **3. Third Distribution**

5 A Third Distribution will only be made if securities remain to be sold or proceeds remain to be  
6 distributed after the Second Distribution. This can occur if an issuer goes public, or either another  
7 liquidity event occurs, or the Receiver and his financial professionals in their business judgment  
8 determine to liquidate the remaining positions. In the event securities are sold and there is enough to  
9 fund a third distribution, claims will be paid as follows: First, pay all accrued but unpaid  
10 Administrative Claims; Second, satisfy unpaid amounts from the Second Distribution; Third, pay  
11 remaining investors as follows:

12 The Receiver will determine who is eligible to participate in the Third Distribution based on the  
13 documentation provided to the Receiver and the Claims Agent. Those eligible will be paid a  
14 distribution pro rata based on the amount of securities they purported to have purchased less the  
15 principal repayment they received in the First or Second Distributions.

16 Prior to making the Third Distribution, the Receiver will file a motion with the Court seeking  
17 approval of the Third Distribution which will include a list of those eligible to receive a distribution  
18 based on the documentation reviewed by the Receiver. These claimants may include those investors  
19 and creditors that received an early payment and have an Early Election Claim deficiency amount.  
20 At this time, the Receiver can consider whether a share distribution is legally and practically feasible.  
21 After consultation with the Receiver's professionals, if a share distribution is legally and practically  
22 feasible, the Receiver will file an appropriate application to the Court. The Receiver or the SEC Staff  
23 will also make a recommendation with respect to payment of some or all of the Subordinated Claims.

### 24 **4. Subsequent Distributions**

25 From time to time, and in the event additional monies are received by the Receivership, the  
26 Receiver shall first pay accrued and unpaid Administrative Claims and taxes if any and then to satisfy  
27 unpaid amounts from previous distributions.  
28

1 **I. Reports to the Court and to Claimants**

2 The Receiver shall file a written report with the Court no less than every 120 days regarding the  
3 status of efforts to implement this Distribution Plan. The Receiver shall post a copy of its written  
4 report, which may be part of the quarterly report, on its website in order to provide notice to  
5 claimants.

6 **J. Adjustments and Amendments**

7 To carry out the purposes of the Distribution Plan, the Receiver may make adjustments to the  
8 Distribution Plan, consistent with the purposes and intent of the Distribution Plan, as may be agreed  
9 upon between the Receiver and the Commission and approved by the Court.

10 The Commission reserves the right to propose amendments to the Distribution Plan at the request  
11 of the Receiver, or on its own initiative. The Court retains jurisdiction over this matter for the  
12 purpose of ruling on any such proposed amendments and for any and all other matters that may arise  
13 under or relate to the Distribution Plan.

14 **K. Possible Avoidance Actions and Retained Claims**

15 All Causes of Action, including possible Avoidance Actions, are to be preserved by and for the  
16 Receivership Estate and the Receiver for the Receivership Estate expressly preserves such Causes of  
17 Action for later adjudication and nothing herein waives the right to bring such Causes of Action  
18 unless the Cause of Action has been settled in this Distribution Plan.

19 **L. Completion of Plan**

20 The Receiver will complete the distributions required by the Plan within five years from date the  
21 Plan is approved by the Court, unless, an application is filed with and approved by the Court to  
22 extend the time to complete the distributions.

23 If the Receiver or the SEC Staff shall determine that the Receiver has concluded his duties and  
24 obligations under the Receivership appointment orders issued by the Court, as may have been  
25 amended, either the Receiver or the SEC Staff may apply to the Court for an Order terminating the  
26 Receivership.

1 Any Order terminating the Receivership shall provide for the Receiver to file a final accounting  
2 providing schedules identifying: (i) all assets, their source and value; and (ii) all liabilities, the nature  
3 and amount of such claims.

4 The Receiver shall preserve all records and documents obtained during the Receivership until a  
5 date that is 1 year following the close of the Receivership.

6 To the extent that it is not expressly superseded by, or clearly contrary to, the provisions of this  
7 distribution plan, the Order Appointing the Receiver dated October 11, 2016 shall remain in full force  
8 and effect, unless superseded by an Amended Order Appointing Receiver.

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# **EXHIBIT 2**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE RIVER  
ADVISORS, LLC; SRA MANAGEMENT  
ASSOCIATES, LLC; FRANK GREGORY  
MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III LLC;  
FELIX INVESTMENTS, LLC; MICHELE  
J. MAZZOLA; ANNE BIVONA; CLEAR  
SAILING GROUP IV LLC; CLEAR  
SAILING GROUP V LLC,

Relief Defendants.

Case No. 3:16-cv-01386-EMC

**Proposed Joint Plan of Distribution**

1 **A. Summary of Distribution Plan**

2 The Securities and Exchange Commission (“Commission” or “SEC”) and Sherwood Partners,  
 3 Inc., the court-appointed receiver or a court-approved successor (“Receiver”), respectfully submit this  
 4 proposed Joint Plan of Distribution (the “Plan” or “Distribution Plan”) to distribute funds to investors  
 5 and creditors harmed as a result of the violations alleged in the Commission’s complaint (DE 1).  
 6 Pursuant to the October 11, 2016 Order (DE 142, Stipulated Order Appointing Receiver), the Court  
 7 appointed the Receiver to take possession and control of the assets of certain Defendants<sup>1</sup> and Relief  
 8 Defendants<sup>2</sup> and third party affiliated entities<sup>3</sup> (the “Receivership Estate”) and to develop a plan for  
 9 the administration of the Receivership Estate.

10 This Plan provides for the determination of investor and creditor claims to assets in the  
 11 Receivership Estate (including assets that may be collected hereafter) and for the *pro rata* distribution  
 12 of assets as set forth herein. This Plan also provides for the orderly sale of the shares and financial  
 13 interests held by the entities in the Receivership Estate and the pro rata distribution of the proceeds to  
 14 investors based upon their net out-of-pocket investments and to creditors based on the debt owed. If  
 15 there are sufficient proceeds, investors will receive interest on the principal amount of their  
 16 investments to compensate investors for the time value of their money and creditors will receive  
 17 either the contractual rate of interest or the treasury rate for unpaid federal funds or such other  
 18 appropriate rate as determined by the Receiver and the Court. Investors who purchased securities  
 19 that are determined to have no value, either before or after the appointment of the Receiver on  
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21 <sup>1</sup> Saddle River Advisors LLC (“Saddle River”) and SRA Management, LLC (“SRA Management”),  
 22 Saddle River and SRA Management (collectively, the “Corporate Defendants”).

23 <sup>2</sup> SRA I LLC (“SRA I”), SRA II LLC (“SRA II”), SRA III LLC (“SRA III”) (together, “SRA Funds”)  
 24 and Clear Sailing Group IV LLC and Clear Sailing Group V LLC (together, “Clear Sailing”)  
 (collectively the “Relief Defendant Entities”).

25 <sup>3</sup> By stipulation, Sherwood Partners also became the Receiver for third-party affiliated entities NYPA  
 26 Fund I LLC (“NYPA I”), NYPA II Fund LLC (“NYPA II”) (together, “NYPA Funds”) and NYPA  
 27 Management Associates LLC (collectively, “NYPA Entities”) and Felix Multi-Opportunity Funds I  
 and II, LLC (“FMOF I and II”) (together, “FMOF Funds”) and FMOF Management Associates, LLC  
 (collectively, “FMOF Entities”).



1 October 11, 2016, may share in the proceeds of other assets, but at a discount. These investors will  
2 receive their pro rata distribution which will be limited to 25 to 30 percent of the principal amount of  
3 their claim. In the event that the sale of shares or economic interests in a particular company,  
4 generates an excess recovery and the other investors have received the principal amount of their  
5 investments plus interest, then the Receiver will be authorized to propose a supplemental distribution  
6 to those investors who subscribed and/or invested in the shares of the particular company or contracts  
7 for shares of the particular company generating the excess recovery.

8 In addition, if the Court determines that the shares and financial interests held by the entities in  
9 the Receivership Estate are to be held for a period of time which could exceed 2 years, ~~there will~~  
10 ~~be the Court will determine if it is feasible, upon appropriate application, to include~~ a mechanism for  
11 investor and creditor claimants to elect an early payment of 25-30% on valid claims, ~~if feasible.~~  
12 Such election ~~will~~would be by a date certain to be set by the Court.

13 The Plan will also provide for the retention by the Receivership, pursuant to Court order, of an  
14 Investment Banker to liquidate certain securities held by the Receivership to allow for an early  
15 payment, if elected and if feasible, and to monitor the securities held by the Receivership, file \_\_\_  
16 quarterly periodic reports regarding those securities, file recommendations for process and timing of  
17 sales and management of the securities. \_\_\_

#### 18 **B. Background**

19 The Commission filed its complaint against John V. Bivona ("Bivona"), Frank Mazzola, the  
20 Corporate Defendants, and Relief Defendants in this action on March 22, 2016. It brought this action  
21 in order to stop Bivona, Frank Mazzola and the companies they currently control or previously  
22 controlled from continuing to defraud investors, from which Bivona, Frank Mazzola and their  
23 companies raised over \$53 million in the SRA Funds. Bivona, Frank Mazzola, Saddle River  
24 Advisors ("Saddle River") and SRA Management Associates, LLC ("SRA Management"), marketed  
25 investments in early-to-late stage, pre-IPO technology companies, however Bivona, Saddle River and  
26 SRA Management lied to investors and used their money to purchase shares promised to earlier  
27 investors in other unrelated funds. Bivona, Saddle River and SRA Management also used the SRA  
28

1 Funds' bank accounts to pay for personal expenses for John Bivona and his family. (DE 1, Complaint  
2 at ¶¶ 2, 3)

3 Among other things, the Commission alleged that Bivona, Saddle River and SRA Management  
4 disguised their misconduct by continually transferring money in and out of multiple bank accounts  
5 associated with more than a dozen different funds and entities. Millions of dollars have been  
6 funneled to pay for the expenses of earlier funds that Bivona and Saddle River also manage, while at  
7 least \$5.7 million has been diverted to family members to pay, among other things, credit card bills,  
8 income taxes, a car loan, unrelated defense attorney fees, and the mortgage on a Jersey Shore  
9 vacation home. Bivona, Saddle River and SRA Management failed to provide investors with the  
10 promised financial statements that should have revealed their fraud. Bivona steered the lion's share  
11 of the misappropriated money to benefit Bivona's nephew, Frank Mazzola, who faced SEC fraud  
12 charges for an earlier investment scheme, which resulted in the March 2014 entry of permanent  
13 injunctions by this Court and the institution of an administrative SEC order barring Mazzola from the  
14 securities industry for at least three years. (DE 1, Complaint at ¶¶ 4, 5)

15 On March 25, 2016, on the basis of the allegations in the Complaint, the SEC's Motion for a  
16 Temporary Restraining Order (DE 4) and the documentation filed by the SEC in support of the SEC's  
17 Motion (DE 5-20), the Court entered an Order Granting Temporary Restraining Order, Appointment  
18 of Independent Monitor, and other Preliminary Relief (DE 36). On October 11, 2016, on consent,  
19 Judge Chen appointed the Independent Monitor, Sherwood Partners, Inc., as the Receiver for  
20 defendant SRA Management and relief defendants SRA Funds and Clear Sailing. By stipulation,  
21 Sherwood Partners, Inc. also became the Receiver for third-party affiliated entities NYPA Fund I  
22 LLC ("NYPA I"), NYPA II Fund LLC ("NYPA II") and NYPA Management Associates LLC  
23 (collectively, "NYPA Entities") and Felix Multi-Opportunity Funds I and II, LLC ("FMOF I and II")  
24 and FMOF Management Associates, LLC (collectively, "FMOF Entities"). Like the SRA Funds,  
25 those third-party affiliates held their pre-IPO shares and interests through Clear Sailing. (DE 142)

1 The Receivership Defendants<sup>4</sup> do not currently have any permanent employees, and have ceased  
2 operations. The shares of private companies beneficially owned by the SRA Funds and other  
3 investment funds, such as the NYPA Funds and Felix Multi-Opportunity Funds, are held centrally at  
4 Clear Sailing, through ownership interests in the Clear Sailing entities. Because these private  
5 company shares are not held within the SRA Funds, or other investment funds, claiming an  
6 ownership interest over the shares, it is appropriate to have these entities in the Receivership Estate to  
7 be administered pursuant to this Distribution Plan. (DE 142)

8 On December 22, 2017, the Court entered Final Judgments on consent against defendants John  
9 Bivona and Frank Mazzola and relief defendants Anne Bivona and Michele Mazzola.

10 On February 12, 2018, the Court entered a Final Judgment on consent against Saddle River  
11 Advisors LLC.

12 On March 22, 2018, the Court entered a Final Judgment on consent against defendants SRA  
13 Management Associates LLC and Relief Defendants SRA I, LLC, SRA II, LLC, Clear Sailing Group  
14 IV, LLC and Clear Sailing Group V, LLC.

15 **1. Current Financial Status of Receivership Estate**

16 The Receiver has taken steps necessary to preserve the status quo as to the Corporate Defendants  
17 and Relief Defendant Entities and to allow the investigation of the nature, location and rightful  
18 allocation of their assets. To date, the Receiver, on behalf of the Corporate Defendants and Relief  
19 Defendant Entities, and related entities in the Receivership Estate has marshalled the following assets  
20 (the "Current Assets") in the Receivership Estate:

- 21 a. \$1,665,219.77 in proceeds from the sale of shares of Square, Inc. after the start of the  
22 receivership (some of which has been used to pay Court approved fees and expenses).  
23 b. \$500,000 payment from Anne Bivona pursuant to Final Judgment.<sup>5</sup>  
24  
25

26 <sup>4</sup> SRA Management, SRA Funds and Clear Sailing.

27 <sup>5</sup> The current amount held in the Receivership Estate is \$1,100,597. Total funds disbursed to date is  
28 \$1,199,861.

1 c. securities (or forward contracts on securities) including, but not limited to, Addepar, Airbnb,  
2 Badgeville, Bloom Energy, Candi Controls, Cloudera, Dropbox, Evernote, Glam, Jawbone, Lookout,  
3 Lyft, Mongo DB, Palantir, Pinterest, Practice Fusion, Snapchat, Uber, Twitter, Box, oDesk, Check,  
4 Flurry, and Virtual Instruments. The Receiver will provide a report to the Court with the number of  
5 shares held by the Receivership Estate.

6 d. any and all intangibles, including but not limited to, funds received or reasonably expected to  
7 be received from potential claims from Avoidance Actions and other Causes of Action in favor of  
8 the Receivership Estate.

9 **2. Substantive Consolidation due to Commingling**

10 Based on the Commission's accounting investigation and the Receiver's investigation into the  
11 shortfall of the investments, and its' marshalling of assets of the Corporate Defendants and Relief  
12 Defendant Entities, it has been determined that:

- 13 a. Bivona and the Corporate Defendants commingled and transferred funds among the Relief  
14 Defendant Entities and Receivership Entities;
- 15 b. Bivona and the Corporate Defendants expended amounts in excess of the management fees  
16 permitted under the management agreements;

17 The Receiver is terminating all management agreements with SRA Management, NYPA  
18 Management and FMOF Management and the advisory agreements with defendant Saddle River so  
19 that no further management or advisory fees will be paid or owed to SRA Management, NYPA  
20 Management, FMOF Management and/or Saddle River.

21 The Receiver consented to a Final Judgment for full injunctive relief, and disgorgement sought by  
22 the Commission in its Complaint. The Final Judgment provided that the monetary judgment against  
23 SRA Management and the Relief Defendant entities will be deemed satisfied by the payments  
24 contemplated to investors and creditors under this Distribution Plan.

25 Due to the extensive commingling of funds among the Corporate Defendants and Relief  
26 Defendant Entities and misappropriation of investor money by Bivona and the Corporate Defendants,  
27 the Commission and the Receiver propose to consolidate the assets and liabilities of the Corporate  
28 Defendants, Relief Defendants Entities and affiliated third party entities, including the dissolution of

1 all of the Corporate Defendant, Relief Defendant Entities and affiliated third party entities, and to  
2 distribute the assets pursuant to the following plan of distribution to investors and creditors on a pro  
3 rata basis. In addition, to unwind the transactions supporting the Unsecured Claims and Unsecured  
4 Creditor Claims would be unduly burdensome, prohibitively expensive and administratively  
5 unfeasible.

6 **C. Definitions**

7 “Administrative Claims” means accrued and unpaid Receiver’s fees and expenses and those of  
8 Receiver’s counsel, accountants and other professionals’ fees and expenses, through distribution.  
9 Employee salaries for those retained by the Receiver, and Trust Fund Taxes incurred during  
10 receivership, i.e. payroll taxes and income taxes for the period covered by the Receivership.

11 “Administrative Reserve” means the amount of funds, the Receiver upon consultation with the  
12 SEC Staff shall calculate an administrative reserve sufficient to complete distributions and wind  
13 down the Receivership Estate.

14 “Avoidance Action” means any cause of action, or defense against an action, to avoid or recover  
15 a transfer of property of the Receivership Estate or interest of the Receivership Entities in property,  
16 including actions, or defenses arising under applicable federal, state or common law.

17 “Bivona Bankruptcy Case” the Chapter 7 Bankruptcy Proceeding of John Vincent Bivona, Case  
18 No. 16-12961-SCC, in the United States Bankruptcy Court for the Southern District of New York.

19 “Cause of Action” means a claim, right, action, chose in action, suit, cause of action, judgment,  
20 belonging to the Receivership Estate and any and all liabilities, obligations, and debts owing to the  
21 Receivership Estate, whether arising prior to or after October 11, 2016.

22 “Claims Agent” means JND Corporate Restructuring (“JND”) of Denver Colorado.

23 “Claim Objection” means an objection served by the SEC and or the Receiver prior to a claim  
24 objection cutoff date on any person or entity for which the SEC and or the Receiver disputes the  
25 claim filed. The SEC and or the Receiver will then schedule a hearing for the Claim Objection to be  
26 heard by the Court. These claims, include, but are not limited to, claims filed for confessions of  
27 judgment against Receivership Entities; and any claims listed on Exhibit A. Exhibit A may be  
28 supplemented and amended.

1 “Corporate Defendants” means Saddle River and SRA Management.

2 “Disallowed Claims” include claims belonging to or asserted by or on behalf of (i) John V.  
3 Bivona; (ii) Frank Mazzola; (iii) Anne Bivona; (iv) Michele Mazzola; (v) David Jurist; (vi) Alice  
4 Jurist; (vii) former agents or employees of Saddle River Advisors, Felix Investments, FMOF  
5 Management, NYPA Management, SRA Management, Clear Sailing IV and Clear Sailing V and the  
6 Fortuna Fund Management; (viii) other insiders (including Emilio DiSanluciano); (ix) Management  
7 fees; (x) Inter-company claims; and (xi) and any claim for the guarantee of a debt or financial  
8 obligation for the benefit of insiders, including but not limited to John V. Bivona, Frank Mazzola,  
9 Anne Bivona, Michele Mazzola, David Jurist, and Alice Jurist, by FMOF Management, or NYPA  
10 Management or any other of the Receivership Entities.

11 “Disgorgement Funds” or “Fair Fund” means monies collected by the Commission that are  
12 ordered paid to the Commission or the Receivership pursuant to a Final Judgement entered in this  
13 case.

14 “Distributable Funds” means assets determined by the Receiver, as approved by the Court,  
15 available for distribution in accordance with the Plan. This includes the proceeds of any sales of  
16 securities after the date of the appointment of the Receiver, on October 11, 2016, including the  
17 proceeds from the sale of securities of Square, Inc.

18 “Distribution” means the disbursement of money from the Distribution Account or a Corporate  
19 Defendant account to Eligible Claimants pursuant to the Plan.

20 “Distribution Account” means a checking account or accounts established by the Receiver to  
21 receive the monies from the Corporate Defendants, Relief Defendant Entities and affiliated third  
22 party entities that are scheduled to be disbursed in accordance with the Plan. “Distribution Account”  
23 shall also mean a checking account established by the Receiver to accept disgorgement or Fair Fund  
24 monies from the Commission, subject to any limitations on disbursement required by the  
25 Commission. Multiple such accounts may be necessary to ensure that the entire amount deposited is  
26 insured by the Federal Deposit Insurance Corporation.

27 “Distribution Agent” means JND Corporate Restructuring (“JND”) of Denver Colorado, or such  
28 other professional hired by the Receiver pursuant to Court order.

1 “Distribution Plan” or “Plan” means this proposed joint plan of distribution for the resolution and  
2 distribution of funds on claims to investors and creditors harmed as a result of the violations alleged  
3 in the Commission’s complaint.

4 “Distribution Plan Notice” means the notice to investors and creditors that the Plan is approved  
5 and they are eligible for a distribution pursuant to this Distribution Plan, unless they receive a Claim  
6 Objection. The Distribution Plan Notice will include an Early Election Claim form. The Distribution  
7 Plan Notice will be subject to Court approval.

8 “Eligible Claimant” means any investor or creditor with Valid Claims.

9 “Early Election Claim” means the claim of a creditor or investor that seeks an early percent  
10 distribution of 25 - 30 % on their Valid Claim by submitting an Early Election Claim form by a date  
11 to be set by the Court. (These creditors and investors shall be referred to as “Early Election  
12 Claimants”).

13 “Investment Banker” means such investment banker hired by the Receiver pursuant to Court  
14 order.

15 “Other Recoveries” means any investor or creditor recovery for capital, profit, claims or damages,  
16 other than through the Plan, including but not limited to any funds received or reasonably expected to  
17 be received in the Bivona Bankruptcy Case, other litigation or from third party sources, included but  
18 not limited to payment on personal guarantees.

19 “Receivership Claims” means any legal claims the Corporate Defendants or Relief Defendant  
20 Entities or affiliated third party entities have against third parties.

21 “Receivership Defendants” means SRA Management, SRA Funds and Clear Sailing.

22 “Receivership Entities” means SRA Management, SRA Funds, Clear Sailing, the NYPA Entities,  
23 and FMOF Entities.

24 “Receivership Estate” means the assets and property, in whatever form, of the Receivership  
25 Entities.

26 “Record Date” means the date set by the Distribution Agent in consultation with the Receiver and  
27 the SEC Staff, prior to any distributions of funds under the Plan.

28

1 “Rescission Claim” means an Unsecured Claim that is based on an investment in securities that  
2 have been determined to have no value by the Record Date. The Rescission Claim will be 25 - 30%  
3 of the principal amount of the Unsecured Claim.

4 “Rescission Claimant” means an investor with only Rescission Claims as of the Record Date. A  
5 Rescission Claimant may include as part of his or her claim, those investments that had no value  
6 before the receivership began on October 11, 2016.

7 “Relief Defendant Entities” means SRA Funds and Clear Sailing.

8 “Subordinated Claim” means a claim for guarantees, broker fees, management fees, advisory  
9 fees, or for transactions that lacked adequate consideration or value, or in the case of claims by  
10 money judgment creditors, including, but not limited to, claims by Global Generation and Progresso  
11 Ventures, that include a portion of the money judgment that is for interest (other than the treasury rate  
12 for unpaid federal funds or such amount approved by the Court), attorney’s fees, and costs, which  
13 shall include arbitration costs, and any claim listed on Exhibit B. Exhibit B may be supplemented  
14 and amended.

15 “Unsecured Claims” means investor claims. Investor claims are the principal amount invested  
16 in or through Clear Sailing or related entities in securities for which there has been no distribution  
17 including: (i) Clear Sailing holdings began in mid-2011, (ii) investor claims in Fortuna Fund LLC I  
18 and Fortuna Fund LLC II (collectively, the “Fortuna Fund”) to the extent the Fortuna Fund invested  
19 in Clear Sailing, as identified by the SEC Staff, Receiver or Distribution Agent, if any, (iii) all  
20 investor claims for principal are calculated by reducing claims by any redemptions paid excluding  
21 redemptions or distributions on account of the purchase of any pre-IPO shares; (iv) All investor  
22 claims for principal are calculated by offsetting/reducing claims by amounts received or reasonably  
23 expected to be received in the Bivona Bankruptcy Case, other litigation or from third party sources,  
24 including but not limited to payment on personal guarantees.

25 “Unsecured Creditor Claims” means principal amount owed on loans, business debt, money  
26 judgments, if any including: (i) vendors; (ii) Progresso Ventures, (iii) Benchmark Capital, (iv) Global  
27 Generation; (v) business debts; (v) Other claims of taxing authorities, such as non-trust fund taxes,  
28 state income taxes, franchise type taxes. All creditor claims for principal amounts are calculated by



1 reducing claims by amounts received or reasonably expected to be received in the Bivona Bankruptcy  
2 Case or other litigation or from third party sources, including but not limited to payment on personal  
3 guarantees. Contractual rate of interest will be used for trade and financial institutional lenders,  
4 default rate of interest will be excluded. Otherwise, the treasury rate for unpaid federal funds or such  
5 other appropriate rate as determined by the Receiver and the Court will be used.

6 “Valid Claim” means an investor or creditor claim that the Receiver and the SEC Staff have  
7 determined is represented by a valid invoice, receivable, or debt against the Corporate Defendants,  
8 Relief Defendant Entities and/or Receivership Entities supported by the submissions of the investor  
9 or creditor claimant, the books and records of the Corporate Defendants and Relief Defendant  
10 Entities, or other sources of information reasonably available to the Receiver. Investor or creditor  
11 claimant submissions will include a sworn declaration, affidavit or attestation, and all claims will be  
12 subject to the jurisdiction of the District Court for the Northern District of California.

13 **D. Proposed Plan Notice**

14 Upon entry of an appropriate scheduling order to approve the Plan,

- 15 a. The Receiver and/or SEC Staff will file by ECF and serve pursuant to ECF those parties  
16 that have an account on the District Court’s website and mail to known Unsecured Claims  
17 and Unsecured Creditor Claimants that do not have an account on the District Court’s  
18 website a copy of the Plan, together with the information the Receiver will have  
19 determined is necessary to inform the Unsecured Claims and Unsecured Creditor  
20 Claimants of their potential right to receive funds from the Distributable Funds pursuant to  
21 the approved Plan.
- 22 b. The Receiver shall post a Proposed Plan Notice on the Receiver’s website at:  
23 <http://www.shrwood.com/saddleriver> to alert Unsecured Claims and Unsecured Creditor  
24 Claimants of their potential rights to receive funds from the Distributable Funds and to file  
25 an Objection to the Plan. The Receiver’s website shall include a link to a copy of the  
26 Distribution Plan.
- 27 c. The SEC Staff will also post a link to the Distribution Plan on [www.sec.gov](http://www.sec.gov)  
28

1 d. The Receiver and the SEC Staff working with the Distribution Agent will serve a notice of  
 2 hearing to approve the Distribution Plan. An objection date will be set in the Proposed  
 3 Plan Notice, the Notice will be approved by the Court.

4 e. Upon approval of the Plan, The Receiver and/or SEC Staff working with the Distribution  
 5 Agent will serve a notice of possible distribution and

6 f. Upon approval of the Plan and if authorized by the Court, the Receiver and/or SEC Staff  
 7 will serve a notice of optional request for an Early Election Claim on Valid Claim holders.  
 8 The Early Election Claim form will be due by a date to be set in by the scheduling order.  
 9 Court.

10 g. Within 10 business days of approval of the Plan, an investor group that demonstrates that  
 11 they represent a majority of investors that have filed claims in this case shall submit the  
 12 resume of a proposed investor representative to SEC Staff for its consent. The investor  
 13 representative proposed (i) must own a substantial position in the securities that are the  
 14 subject of this enforcement case, and (ii) cannot have been an employee, affiliate or sales  
 15 person of John Bivona, the SRA Funds or any of the affiliated entities, and/or (iii) the  
 16 subject of an SEC enforcement action. The SEC Staff will not unreasonably withhold its  
 17 consent to such person's participation as a representative for investors to give input on  
 18 matters with respect to the Plan administration. In the event of a dispute over such person,  
 19 the SEC Staff shall file with the Court an objection to the applicant's designation of such  
 20 person as the investor representative and the Court will schedule a hearing to determine  
 21 whether such person or any other person proposed by the investor group shall be  
 22 designated as the investor representative. The investor representative will be authorized to  
 23 meet and confer with the Receiver and the SEC Staff and to provide input with respect to  
 24 matters involving Plan administration. Nothing herein prevents any investor or party in  
 25 interest from filing objections on their own behalf with the Court on matters relating to the  
 26 Plan.

27 e:  
 28

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1 **E. Marshalling and Liquidation of the Assets and Liabilities of the Corporate and Relief**

2 **Defendants**

3 In anticipation of implementing the Distribution Plan upon approval of the Court, the Receiver in  
4 consultation with SEC Staff shall:

- 5 a. Determine the amounts of any Valid Claims, as set forth below;
- 6 b. Consolidate the existing Corporate and Relief Defendant accounts into the Distribution  
7 Account;
- 8 c. In accordance with a proposed further Order of the Court, liquidate or manage the non-  
9 cash assets in the Receivership Estate and upon liquidation deposit cash receipts for the  
10 non-cash assets in the Distribution Account;
- 11 d. Hire an Investment Banker pursuant to Court order to assist with the liquidation and  
12 management of non-cash assets; to monitor securities held by the Receivership, file  
13 periodic reports regarding those securities, file recommendations for process and timing  
14 of sales and management of the securities; and to determine if partial portfolio sales are  
15 feasible;
- 16 e. To the extent the non-cash assets in the Receivership Estate are securities, the Receiver  
17 shall liquidate or resell the securities in a manner consistent with state and federal  
18 corporate and securities laws. The Receiver anticipates that such resale shall be done in  
19 accordance with Section 5 of the Securities Act of 1933 ("Securities Act") or in  
20 accordance with exemptions from registration provided in the Rules promulgated by the  
21 Commission pursuant to the Securities Act; and is authorized to seek the retention of  
22 such professionals necessary to assist the Receiver with such transactions;
- 23 f. In accordance with its authority and powers under Section X of the October 11, 2016  
24 Order Appointing Receiver, the Receiver may pursue Receivership Claims in  
25 consultation with the SEC Staff and as authorized by the Court.
- 26 g. To the extent that any purported outstanding agreements have not already been  
27 cancelled, such agreements will be reviewed by the Receiver for possible termination,  
28 cancellation or amendment.

1                   **F. Determination of Eligible Claims**

2           The Receiver and the SEC Staff will determine which Unsecured Claims and Unsecured Creditor  
3 Claims are Valid Claims based upon the Corporate Defendants' and Relief Defendants existing  
4 records, submissions of the Claimants to the Receiver, and other sources of information reasonably  
5 available to the Receiver or the SEC Staff.

6           Within 90 days of approval of the Plan, the SEC or the Receiver shall file any objections to  
7 claims.<sup>6</sup> If the SEC and or the Receiver are not able to settle or resolve the objection to claim, the  
8 SEC and or the Receiver will schedule a hearing at which point the Claim Objection shall be heard by  
9 the Court. If there is a settlement of the objection to claim the SEC and or the Receiver will file a  
10 motion to have the settlement approved by the court. As of the Record Date, the Distribution Agent  
11 will send all Valid Claimants their claim amount, and the amount of the distribution they are to  
12 receive.

13                   **G. Tax Claims**

14           During the second quarter of 2018, the Receiver engaged an accounting firm to prepare tax  
15 returns for the entities in the receivership for the tax years of 2015 and 2016. Based on the returns  
16 filed to date for certain receivership entities, the IRS and NYS have assessed penalties against the  
17 receivership estate. The SEC and the Receiver are reviewing the amounts owed and the basis for the  
18 liability. A plan supplement to be filed at a later date will provide for the treatment of the IRS and  
19 NYS claims and/or a method to resolve any disputes.

20                   **H. Distributions**

21           The distribution methodology in this Plan seeks to achieve the prompt, fair, and efficient  
22 distribution of the Distributable Funds to those victims who suffered a loss as a result of the  
23 violations alleged in the Complaint, as well as the creditors of the Corporate Defendants, Relief  
24 Defendants and affiliated third party entities. The amount of the Distributable Funds is unknown and  
25 may be less than the total Valid Claims.

26                   **1. First Distribution**

27 \_\_\_\_\_  
28 <sup>6</sup> The SEC or the Receiver can request an extension of the 90 day time period.

1 Upon If the Court determines, upon appropriate application, that it is feasible to allow a  
2 distribution to Early Election Claims, then upon the liquidation of assets by the Investment Banker or  
3 otherwise, the first distribution will be to make the pro rata distribution to the Early Election  
4 Claimants, these investors and creditors will be paid a pro rata 25-30% of their Valid Claims, if  
5 feasible. There will be sufficient funds heldback in order to pay necessary administrative expenses  
6 related to the sale of any assets and distribution of funds in this first distribution. If claimants receive  
7 a distribution pursuant to their Early Election Claim, they are not eligible for the Second Distribution  
8 described below.

9 **2. Second Distribution**

10 Upon the sale of the remaining assets, including securities and financial interests held by the  
11 entities in the Receivership Estate, payments will be made as follows: First, pay accrued  
12 Administrative Claims in full and satisfy or partially satisfy Administrative Reserve; Second, pay pro  
13 rata all Unsecured Claims for principal amount outstanding, Rescission Claimants, all Unsecured  
14 Creditor Claims for loans or business debt up to principal amount owed plus contractual rate of  
15 interest for business debt or loans accrued as of October 11, 2016 (For purposes of distributions on  
16 Unsecured Creditor Claims and Unsecured Claims, these claims shall be paid on a par or pari passu);  
17 Third, pay pro rata interest at the treasury rate of unpaid federal funds or such other appropriate rate  
18 as determined by the Receiver and the Court, accrued as of October 11, 2016, to investors that  
19 purported to purchase securities or a series of securities from the FMOF Funds, NYPA Funds, SRA  
20 Funds and/or Clear Sailing, and those securities have been sold by the Receiver or have been  
21 determined to be of limited value by the retained financial professionals. These are investors who are  
22 not eligible for the Third Distribution described below and their claims are deemed satisfied to the  
23 extent they are paid in full on their principal and interest claim in this distribution. Upon motion by  
24 the SEC and approval by the Court, the Disgorgement Funds obtained by the SEC from relief  
25 defendant Anne Bivona may be used in the First Distribution and/or Second Distribution to help pay  
26 the claims of the Early Election Claimants and Rescission Claimants.

1 Pay pro rata interest, as defined above, on all other Unsecured Creditor Claims which are not  
2 entitled to a contract rate of interest. (Note that all claims for interest shall be paid on a par or pari  
3 passu)

### 4 **3. Third Distribution**

5 A Third Distribution will only be made if securities remain to be sold or proceeds remain to be  
6 distributed after the Second Distribution. This can occur if an issuer goes public, or either another  
7 liquidity event occurs, or the Receiver and his financial professionals in their business judgment  
8 determine to liquidate the remaining positions. In the event securities are sold and there is enough to  
9 fund a third distribution, claims will be paid as follows: First, pay all accrued but unpaid  
10 Administrative Claims; Second, satisfy unpaid amounts from the Second Distribution; Third, pay  
11 remaining investors as follows:

12 The Receiver will determine who is eligible to participate in the Third Distribution based on the  
13 documentation provided to the Receiver and the Claims Agent. Those eligible will be paid a  
14 distribution pro rata based on the amount of securities they purported to have purchased less the  
15 principal repayment they received in the First or Second Distributions.

16 Prior to making the Third Distribution, the Receiver will file a motion with the Court seeking  
17 approval of the Third Distribution which will include a list of those eligible to receive a distribution  
18 based on the documentation reviewed by the Receiver. These claimants may include those investors  
19 and creditors that received an early payment and have an Early Election Claim deficiency amount.  
20 At this time, the Receiver can consider whether a share distribution is legally and practically feasible.  
21 After consultation with the Receiver's professionals, if a share distribution is legally and practically  
22 feasible, the Receiver will file an appropriate application to the Court. The Receiver or the SEC Staff  
23 will also make a recommendation with respect to payment of some or all of the Subordinated Claims.

### 24 **4. Subsequent Distributions**

25 From time to time, and in the event additional monies are received by the Receivership, the  
26 Receiver shall first pay accrued and unpaid Administrative Claims and taxes if any and then to satisfy  
27 unpaid amounts from previous distributions.

### 28 **I. Reports to the Court and to Claimants**

1 The Receiver shall file a written report with the Court no less than every 120 days regarding  
2 the status of efforts to implement this Distribution Plan. The Receiver shall post a copy of its written  
3 report, which may be part of the quarterly report, on its website in order to provide notice to  
4 claimants.

5 **J. Adjustments and Amendments**

6 To carry out the purposes of the Distribution Plan, the Receiver may make adjustments to the  
7 Distribution Plan, consistent with the purposes and intent of the Distribution Plan, as may be agreed  
8 upon between the Receiver and the Commission and approved by the Court.

9 The Commission reserves the right to propose amendments to the Distribution Plan at the request  
10 of the Receiver, or on its own initiative. The Court retains jurisdiction over this matter for the  
11 purpose of ruling on any such proposed amendments and for any and all other matters that may arise  
12 under or relate to the Distribution Plan.

13 **K. Possible Avoidance Actions and Retained Claims**

14 All Causes of Action, including possible Avoidance Actions, are to be preserved by and for the  
15 Receivership Estate and the Receiver for the Receivership Estate expressly preserves such Causes of  
16 Action for later adjudication and nothing herein waives the right to bring such Causes of Action  
17 unless the Cause of Action has been settled in this Distribution Plan.

18 **L. Completion of Plan**

19 The Receiver will complete the distributions required by the Plan within five years from date the  
20 Plan is approved by the Court, unless, an application is filed with and approved by the Court to  
21 extend the time to complete the distributions.

22 If the Receiver or the SEC Staff shall determine that the Receiver has concluded his duties and  
23 obligations under the Receivership appointment orders issued by the Court, as may have been  
24 amended, either the Receiver or the SEC Staff may apply to the Court for an Order terminating the  
25 Receivership.

26 Any Order terminating the Receivership shall provide for the Receiver to file a final accounting  
27 providing schedules identifying: (i) all assets, their source and value; and (ii) all liabilities, the nature  
28 and amount of such claims.

1 The Receiver shall preserve all records and documents obtained during the Receivership until a  
2 date that is 1 year following the close of the Receivership.

3 To the extent that it is not expressly superceded by, or clearly contrary to, the provisions of this  
4 distribution plan, the Order Appointing the Receiver dated October 11, 2016 shall remain in full force  
5 and effect, unless superceded by an Amended Order Appointing Receiver.

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# **EXHIBIT 3**

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8  
 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 SECURITIES AND EXCHANGE COMMISSION,  
 13 Plaintiff,  
 14 v.  
 15 JOHN V. BIVONA; SADDLE RIVER  
 16 ADVISORS LLC; SRA MANAGEMENT  
 LLC; FRANK GREGORY MAZZOLA,  
 17 Defendants, and  
 18 SRA I LLC; SRA II LLC; SRA III LLC;  
 19 FELIX INVESTMENTS, LLC; MICHELE  
 20 J. MAZZOLA; ANNE BIVONA; CLEAR  
 SAILING GROUP IV LLC; CLEAR  
 21 SAILING GROUP V LLC,  
 22 Relief Defendants.

Case No. 3:16-cv-01386-EMC

**PLAINTIFF SECURITIES AND  
 EXCHANGE COMMISSION'S PROPOSED  
 REVISED ORDER APPOINTING  
 RECEIVER**

Date: December 13, 2018  
 Time: 1:30 p.m.  
 Judge: Edward M. Chen  
 Courtroom: 5 (Seventeenth Floor)

**REVISED ORDER APPOINTING RECEIVER**

Based on the record in these proceedings and its decision to adopt the Amended Joint Distribution Plan (“Joint Distribution Plan”) of plaintiff Securities and Exchange Commission (“SEC” or “Commission”) and the current Receiver, Sherwood Partners, Inc., the Court hereby adopts this Revised Order Appointing Receiver to carry out implementation of the Joint Distribution Plan in an effective and cost efficient manner as follows:

The Court hereby appoints \_\_\_\_\_ and her firm, \_\_\_\_\_ as the replacement receiver (hereafter “Receiver”) in this action for the Receivership Defendants, as well as of the stipulating affiliated entities Felix Multi-Opportunity Fund I LLC (“FMOF I”), Felix Multi-Opportunity Fund II LLC (“FMOF II”), FMOF Management Associates LLC (“FMOF Management”) (collectively, “FMOF Entities”), NYPA Fund I LLC (“NYPA I”), NYPA Fund II LLC (“NYPA II”) and NYPA Management Associates LLC (“NYPA Management”) (collectively, “NYPA Entities”) and all of their Receivership Assets” and “Recoverable Assets” as previously defined in the Receivership Order dated October 11, 2016 (Docket No. 142). The Court also deems it appropriate for the Receiver to continue to administer and manage separately the assets of the Solis Associates Fund LLC for the purpose of distributing those assets to the investors of that Fund.

**Implementation of the Joint Distribution Plan**

The Receiver in consultation with the SEC Staff shall implement the Joint Distribution Plan when approved. The Receiver will consult with the SEC Staff and its retained professionals to determine how to proceed in a cost effective manner that is in the best interests of the Receivership estate. As provided in the Joint Distribution Plan, the Receiver, will continue to file periodic written reports (every 120 days) with the Court regarding the status of efforts to implement the Joint Distribution Plan.

**Receivership Actions, Claims and Objections**

The Receiver in consultation with the SEC Staff will work to resolve or if needed litigate the matters listed below and will obtain Court authorization before initiating any litigation or settlement:

- 1 (i) Equity Acquisition Corp. (EAC) for turnover of and allocation of shares held  
2 by EAC for the Receivership.
- 3 (ii) Loan agreement, forward contracts, or other similar agreements between SRA  
4 and Clear Sailings and certain individuals or entities where these agreements  
5 were secured/supported by securities that are to be turned over to the  
6 Receivership.  
7

8 The Receiver and the SEC Staff have determined which Unsecured Claims and Unsecured  
9 Creditor Claims are Valid Claims based upon the Corporate Defendants' and Relief Defendants  
10 existing records, submissions of Claims by investors and creditors, and other sources of information  
11 reasonably available to the Receiver or the SEC Staff. Within 90 days of approval of the Joint  
12 Distribution Plan, the Receiver in consultation with the SEC shall file objections to claims. If the  
13 SEC and or the Receiver are not able to settle or resolve the objection to claim, the SEC and or the  
14 Receiver will schedule a hearing at which point the Claim Objection(s) shall be heard by the Court.  
15 If there is a settlement of the objection to claim the SEC and or the Receiver will file a motion to  
16 have the settlement approved by the court. As of the Record Date, the Distribution Agent will send  
17 all Valid Claimants their claim amount, and the amount of the distribution they are to receive.  
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19  
20 **Limitations on Fees and Expenses**

21 Attached to this Order are the Receiver's hourly fee rates for both administrative and legal  
22 matters. Within 10 business days after the Receiver's appointment, the Receiver will work with the  
23 SEC Staff on a budget for implementing the Joint Plan in a cost effective manner. The budget will  
24 include the following matters, among others: (a) plan notices; (b) retention of professionals; (c)  
25 claims objections; (d) periodic written reports; (e) website maintenance; and (f) any appropriate work  
26 relevant to items (i) and (ii) above. Additionally, absent authorization of the Court, the Receiver is  
27 authorized to retain only the following persons and entities ("Retained Personnel") to assist her in  
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1 carrying out the duties and responsibilities described in this Order and the Joint Distribution Plan:

2 JND Corporate Restructuring to serve as the Distribution Agent for the Joint  
3 Distribution Plan;

4 Marc Winthrop and Oxis Capital to serve as the Investment Banker for the Joint  
5 Distribution Plan;

6 Alan Kadish and Archer & Greiner to serve as local bankruptcy counsel for the  
7 Receiver in the Chapter 7 proceeding of John Vincent Bivona, case no. 16-12961-SCC, in the United  
8 States Bankruptcy Court for the Southern District of New York;

9 \_\_\_\_\_ to serve as the tax accounting firm for the Joint Distribution Plan  
10 with respect to federal and state tax returns.

11 The Receiver shall strive to limit the fees and costs of the Receiver, the Receiver's firm and  
12 the Retained Personnel by avoiding unnecessary duplication of work and by using information  
13 gathered by the SEC's staff.

14 Subject to the schedules of fees, expenses, and budgets submitted to the SEC Staff and the  
15 Court, the Receiver, the Receiver's firm and the Retained Personnel are entitled to reasonable  
16 compensation and expense reimbursement from the Receivership Estates as described in the "Billing  
17 Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange  
18 Commission" (the "Billing Instructions") agreed to by the Receiver. Such compensation shall require  
19 the prior approval of the Court.

20 Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained  
21 Personnel shall apply to the Court for compensation and expense reimbursement from the  
22 Receivership Estates (the "Quarterly Fee Applications"). At least thirty (30) days prior to filing each  
23 Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the Commission a  
24 complete copy of the proposed Application, together with all exhibits and relevant billing information in a  
25 format to be provided by the Commission.

26 All Quarterly Fee Applications will be interim and will be subject to cost benefit and final  
27 reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final  
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1 fee application, describing in detail the costs and benefits associated with all litigation and other  
2 actions pursued by the Receiver during the course of the receivership.

3 Quarterly Fee Applications may be subject to a holdback in the amount of 20%, or such other  
4 appropriate amount, of the amount of fees and expenses for each application filed with the Court.  
5 The total amounts held back during the course of the receivership will be paid out at the discretion of  
6 the Court as part of the final fee application submitted at the close of the receivership.

7 Each Quarterly Fee Application shall:

- 8 A. Comply with the terms of the Billing Instructions agreed to by the Receiver;  
9 and,  
10 B. Contain representations (in addition to the Certification required by the Billing  
11 Instructions) that: (i) the fees and expenses included therein were incurred in  
12 the best interests of the Receivership Estate; and, (ii) with the exception of the  
13 Billing Instructions, the Receiver has not entered into any agreement, written  
14 or oral, express or implied, with any person or entity concerning the amount of  
15 compensation paid or to be paid from the Receivership Estate, or any sharing  
16 thereof.

17 At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to  
18 be provided by the Commission's staff, as well as the Receiver's final application for compensation  
19 and expense reimbursement.

### 20 Adjustments and Amendments

21 To carry out the purposes of this Order and the Joint Distribution Plan, the Receiver may  
22 make adjustments to the Plan, consistent with the purposes and intent of the Joint Distribution Plan,  
23 as may be agreed upon between the Receiver and the SEC and approved by the Court. In addition,  
24 the Receiver or the SEC may seek amendments or adjustment to this Order from the Court upon  
25 notice to the SEC and parties in interest that have requested notice.

26 The Court furthermore deems it appropriate to incorporate herein the following provisions,  
27 originally set forth in whole or in part in the Receivership Order (Docket No. 142):

#### 28 I. Marshalling of Receivership Assets

Pending further Orders, this Court hereby takes exclusive jurisdiction and possession of the

1 assets, of whatever kind and wherever situated, of defendant SRA Management and relief defendants  
2 SRA Funds and Clear Sailing, as well as of the FMOF Entities and NYPA Entities. Accordingly, all  
3 persons and entities with direct or indirect control over any Receivership Assets and/or any  
4 Recoverable Assets, other than the Receiver, are hereby restrained and enjoined from directly or  
5 indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or  
6 otherwise disposing of or withdrawing such assets. This judicial possession and restraint shall  
7 include, but not be limited to, Receivership Assets and/or Recoverable Assets that are on deposit with  
8 financial institutions such as banks, brokerage firms and mutual funds. This judicial possession and  
9 restraint shall also include, but not be limited to, all assets, deposits, interests and holdings that are  
10 directly or indirectly managed by Saddle River through a management company such as SRA  
11 Management, FMOF Management and NYPA Management.

## 12 **II. General Powers and Duties of Receiver**

13 The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by  
14 the officers, directors, managers and members of the entity Receivership Entities under applicable  
15 state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all  
16 powers and authority of a receiver at equity, and all powers conferred upon a receiver by the  
17 provisions of 28 U.S.C. §§ 754, 959 and 1692, and Fed. R. Civ. P. 66.

18 Subject to the specific provisions as otherwise set forth herein, the Receiver shall have the  
19 following general powers and duties:

- 20 A. To manage, control, operate and maintain the Receivership Estates and hold in her  
21 possession, custody and control all Receivership Property, pending further Order of this  
22 Court;
- 23 B. To use Receivership Property for the benefit of the Receivership Estates, making  
24 payments and disbursements and incurring expenses as may be necessary or advisable in the  
25 ordinary course of business in discharging her duties as Receiver;
- 26 C. To take such action as necessary and appropriate for the preservation of Receivership  
27 Property or to prevent the dissipation or concealment of Receivership Property;
- 28 D. To take such other action as may be approved by this Court.

1                   **III. Access to Books, Records and Accounts**

2                   The former receiver will promptly transfer to the Receiver all assets, bank accounts or other  
3 financial accounts, books and records and all other documents or instruments relating to the  
4 Receivership Entities and/or Recoverable Assets. All persons and entities having control, custody or  
5 possession of any Receivership Property and/or Recoverable Property are hereby directed to turn  
6 such property over to the Receiver.

7                   The Receivership Entities as well as their agents, servants, employees, attorneys, any persons  
8 acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by  
9 personal service, facsimile transmission or otherwise, having possession of the property, business,  
10 books, records, accounts or assets of the Receivership Entities and/or Recoverable Assets are hereby  
11 directed to deliver the same to the Receiver, her agents and/or employees.

12                   All banks, brokerage firms, financial institutions, and other persons or entities which have  
13 possession, custody or control of any Recoverable Assets or any assets or funds held by, in the name  
14 of, or for the benefit of, directly or indirectly, of the Receivership Entities that receive actual notice of  
15 this Order by personal service, facsimile transmission or otherwise shall:

- 16
- 17                   A.     Not liquidate, transfer, sell, convey or otherwise transfer Recoverable Assets or any  
18                   assets, securities, funds, or accounts in the name of or for the benefit of the  
19                   Receivership Entities except upon instructions from the Receiver;
  - 20                   B.     Not exercise any form of set-off, alleged set-off, lien, or any form of self-help  
21                   whatsoever, or refuse to transfer any funds or assets to the Receiver's control without  
22                   the permission of this Court;
  - 23                   C.     Within five (5) business days of receipt of that notice, file with the Court and serve on  
24                   the Receiver and counsel for the Commission a certified statement setting forth, with  
25                   respect to each such account or other asset, the balance in the account or description of  
26                   the assets as of the close of business on the date of receipt of the notice; and,

27                   Cooperate expeditiously in providing information and transferring funds, assets and accounts to the  
28                   Receiver or at the direction of the Receiver.

**IV. Injunction Against Interference with Receiver**

                 The Receivership Entities and all persons receiving notice of this Order by personal service,



1 facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any  
2 action or causing any action to be taken, without the express written agreement of the Receiver,  
3 which would:

- 4
- 5 A. Interfere with the Receiver's efforts to take control, possession, or management of any  
6 Receivership Property; such prohibited actions include but are not limited to, using  
7 self-help or executing or issuing or causing the execution or issuance of any court  
8 attachment, subpoena, replevin, execution, or other process for the purpose of  
9 impounding or taking possession of or interfering with or creating or enforcing a lien  
10 upon any Receivership Property;
- 11 B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of her  
12 duties; such prohibited actions include but are not limited to, concealing, destroying or  
13 altering records or information;
- 14 C. Dissipate or otherwise diminish the value of any Receivership Property; such  
15 prohibited actions include but are not limited to, releasing claims or disposing,  
16 transferring, exchanging, assigning or in any way conveying any Receivership  
17 Property, enforcing judgments, assessments or claims against any Receivership  
18 Property or any Receivership Defendant or any FMOF Entity or NYPA Entity,  
19 attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due  
20 date), of any lease, loan, mortgage, indebtedness, security agreement or other  
21 agreement executed by any Receivership Defendant or which otherwise affects any  
22 Receivership Property; or,
- 23 D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive  
24 jurisdiction of this Court over the Receivership Estates.

25 The Receivership Entities shall cooperate with and assist the Receiver in the performance of  
26 her duties.

27 The Receiver shall promptly notify the Court and the Commission's counsel of any failure or  
28 apparent failure of any person or entity to comply in any way with the terms of this Order.

29 **V. Stay of Litigation**

30 As set forth in detail below, the following proceedings, excluding the instant proceeding and  
31 all police or regulatory actions and actions of the Commission related to the above-captioned  
32 enforcement action, are stayed until further Order of this Court:

33 All civil legal proceedings of any nature, including, but not limited to, bankruptcy  
34 proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions

1 of any nature involving: (a) the Receiver, in her capacity as Receiver; (b) any Receivership  
2 Property, wherever located; (c) any of the Receivership Entities including subsidiaries and  
3 affiliates; or, (d) any of the Receivership Entities' past or present officers, directors,  
4 managers, agents, or members sued for, or in connection with, any action taken by them while  
5 acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff,  
6 third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary  
7 Proceedings").

8 The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing  
9 any such legal proceeding, or from taking any action, in connection with any such proceeding,  
10 including, but not limited to, the issuance or employment of process.

11 All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction  
12 thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as  
13 to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a  
14 third person or party, any applicable statute of limitation is tolled during the period in which this  
15 injunction against commencement of legal proceedings is in effect as to that cause of action.

#### 16 **VI. Liability of Receiver**

17 Until further Order of this Court, the Receiver shall not be required to post bond or give an  
18 undertaking of any type in connection with her fiduciary obligations in this matter.

19 The Receiver and her agents, acting within scope of such agency ("Retained Personnel"), are  
20 entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to  
21 anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no  
22 event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance  
23 with their duties and responsibilities as Receiver or Retained Personnel nor shall the Receiver or  
24 Retained Personnel be liable to anyone for any actions taken or omitted by them except upon a  
25 finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross  
26 negligence, or in reckless disregard of their duties.

27 This Court shall retain jurisdiction over any action filed against the Receiver or Retained  
28 Personnel based upon acts or omissions committed in their representative capacities.

In the event the Receiver decides to resign, the Receiver shall first give written notice to the  
Commission's counsel of record and the Court of her intention, and the resignation shall not be

1 effective until the Court appoints a successor. The Receiver shall then follow such instructions as the  
2 Court may provide.

3 SO ORDERED.

4 DATED: December \_\_, 2018

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Judge Edward M. Chen  
UNITED STATES DISTRICT COURT