EXHIBIT A

SECURITIES & EXCHANGE COMMISSION V. JOHN V. BIVONA, ET AL.

United States District Court, Northern District of California Case No.: 3:16-cv-01386-EMC

Tax Structure Comments by Scott C. Burack, JD, CPA, CFP

September 19, 2019

Introduction and Retention Matters

I have been asked by The Investor Group, LLC ("The Investor Group") to respond to the motion by Receiver Kathy Bazoian Phelps (Docket #516), comment on the two proposed principal approaches to handling tax issues presented by the receiver, and where applicable, offer alternative approaches in an effort to identify opportunities for The Investor Group to maximize their after-tax recovery and achieve the original investment objectives of the investors.

My firm's policy is to invoice clients for efforts on their behalf based on hours worked applied against our applicable hourly rates. My hourly rate is $495. Other professionals employed by Squar Milner have hourly rates ranging from $50 to $675; those professionals who have performed services in connection with this matter have hourly rates ranging from $145 to $495. Our compensation in this matter is not dependent on my opinions, observations or calculations.

Qualifications and Experience

I am a certified public accountant, attorney and a certified financial planner and a Principal of the accounting firm of Squar Milner, which provides financial, tax, accounting and business consulting services to a wide variety of commercial and industrial clients including small to medium-sized public companies.

I have been employed as an accountant and consultant since 1989 and have provided accounting and/or related financial analysis and consulting services to many parties in cases throughout southern California, including trustees, debtors and creditors.

Attached at **Exhibit A** is a copy of my curriculum vitae, which summarizes my professional and educational background.

My opinions are generally based on my training, education and judgment, and in particular, my review of the information provided to Squar Milner to date in the course of this engagement.

I understand that I may receive additional relevant information. Therefore, Squar Milner's analyses and my opinions are subject to refinement and revision based on the availability, production and review of such additional relevant information.

The views expressed in this report are those of the author and should not be construed as representing the positions of other professionals at Squar Milner. I have personal knowledge of the matters stated in this report and could competently testify to them if called upon to do so.

Case Background

Here is my understanding of the background of this case:

On March 23, 2016, the Securities & Exchange Commission filed a complaint and requested Temporary Restraining Orders, Asset Freezes, Appointment of a Monitor and Other Relief against John V. Bivona, Saddle River Advisors, LLC ("Saddle River"), SRA Management Associates, LLC; Frank Gregory Mazzola (collectively, "Defendants") in the United States District Court, Northern District of California ("Court"). Additional relief defendants include SRA I, LLC; SRA II, LLC; SRA III, LLC; Felix Investments, LLC; Michele K. Mazzola; Anne Bivona; Clear Sailing Group IV, LLC; and Clear Sailing Group V, LLC (collectively, "Relief Defendants"). The Court granted the temporary restraining order on March 25, 2016 and appointed Michael A. Maidy as an Independent Monitor.

On October 11, 2016, the Court approved a stipulation to appoint a temporary receiver to marshal and preserve all assets of the Receivership Defendants and certain other affiliated entities ("Order of Appointment"). Sherwood Partners was appointed (original) receiver over the assets of SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group IV, LLC. Clear Sailing Group V, LLC, Felix Multi-opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and NYPA Management Associates, LLC (collectively, "Receivership Entities").

The following was set forth in this Order for Appointment, among other items:

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

2. The Receiver shall assume and control the operation of the Receivership Entities and shall pursue and preserve all of their claims.

3. The Receiver shall have the power and duty to manage, control, operate and maintain the Receivership Estates and hold in her possession, custody and control all Receivership Property, pending further Order of this Court.

4. In the "Managing Assets" Section of the Order of Appointment, the below was included:

a. For each of the Receivership Estates, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the "Receivership Funds").

b. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of Saddle River Management LLC" together with the name of the action.

c. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and of the regulations, when applicable whether proposed, temporary or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. §1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2, including but not limited to (a) obtaining a taxpayer identification number, (b) timely filing applicable federal, state and local tax returns and paying taxes reported thereon, and (c) satisfying any information, reporting or withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a "Qualified Settlement Fund." The Receivership Defendants shall cooperate with the Receiver in fulfilling the Settlement Funds' obligation under Treas. Reg. §1.468B-2.

Multiple distribution plans were presented to the Court along with revisions and supporting documents and the Court made its determination as to the distribution of the receivership assets in an order dated December 20, 2018. In addition, the order called for a new receiver and on February 28, 2019, a Revised Order Appointing Receiver was entered appointing Kathy Bazoian Phelps ("Receiver") as the successor receiver over the Receivership Entities. On June 27, 2019, an additional entity, Solis Associated Fund, was consolidated into the Receivership Estate by order of the Court.

I have been presented with many documents and have had a short time to review. For my analysis, I have mainly considered the following:

- Plaintiff Securities & Exchange Commission's Stipulated Order for Appointment of Receiver (Docket #142)
- Motion by Receiver Kathy Bazoian Phelps To: (1) Employ Miller Kaplan as Tax Advisor (2) Employ Schinner & Shain, LLP as Securities Counsel; and (3) For Instructions (Docket #516)
- Declaration of Receiver Kathy Bazoian Phelps in Support of Motion (Docket #516-2)
- Treasury Regulations, Internal Revenue Code, and other case law

Summary of Receiver's position

As pointed out in Docket #433 – Order Re Proposed Distribution Plans under II Discussion A., page 7 specifies, ***"After all, 'the ultimate goal of a receivership is to maximize the recovery of the investor class.'"*** *Wealth Mgmt.*, 628 F.3d at 336; *see Janvey v. Romero,* No. 3:11-CV-0297-N, 2015 WL 11017950, at *3 (N.D. Tex. Sept. 22, 2015) ("The goal of the receivership is to maximize the Receivership Estate's assets so that defrauded investors . . . can be made whole to the greatest extent possible.")

As set forth in Document 516, Motion by Receiver Kathy Bazoian Phelps to (1) Employ Miller Kaplan as Tax Advisor; (2) Employ Schinner & Shain LLP as Securities Counsel; and (3) For Instructions, contrary to the above, the Receiver is proposing tax treatment for the Receivership that, in fact, may result in less after-tax recovery to the investors than may otherwise be required. The Receiver seems to have limited her choices to two Scenarios in moving forward. Scenario 1 is deemed by her the most conservative approach and most likely will lead to the largest tax obligation owed by the Receivership. Scenario 2 is an approach that should lead to a better tax result for the Investor Group, however, the Receiver seemingly will not move forward on this without much cost and time-delay being incurred in the administration.

Scenario 1 is described as follows:

1. Treat both the IPO Shares and the Pre-IPO Shares as part of the Qualified Settlement Fund ("QSF");
2. Treat all assets of the receivership as part of the QSF;
3. Treat the QSF effective as of the date of commencement of the Receivership Estate, October 11, 2016 and all assets of the Receivership Entities transferred to the QSF as of October 11, 2016;
4. Tax the assets of the QSF on the difference between the value as of the commencement of the receivership and the date of sale or distribution as ordinary income, which is estimated to be 40% of the gain.
5. Offset against income/gain any deductions that may be available.
6. Pay the tax liability with cash generated through the sale of securities.
7. Hold distributions to creditors and investors until such time as the Receiver determines that sufficient funds are available to pay all taxes in full.

Scenario 2 is described as follows:

1. Obtain an IRS ruling that the Pre-IPO Shares are not part of the QSF;

2. Assert that the Pre-IPO shares are excluded from the QSF and treat the shares as distributed directly from the transferor to the investors (or distributed through a trust that the Receiver could set up).
3. Not subject the Pre-IPO shares to tax on the gain in appreciation from the date of commencement to the date of distribution by excluding these shares from being part of the QSF.

Receiver is seeking instructions from the Court as to whether to pursue Scenario 1 or 2 and for authority to employ Miller Kaplan to provide tax advice, opinions and services for whichever approach the Court deems appropriate.

Receiver acknowledges that there is a potential tax benefit to choosing Scenario 2 but also acknowledges such benefit is and will remain unknown due to the uncertain value of the Shares when they are ultimately sold.

Receiver and her tax advisor declare that they have explored possible alternatives in an effort to mitigate tax liability but believe that only a formal ruling form the taxing agencies would allow the Receiver to consider any other tax treatment other than that set forth in Scenario 1.

Applicable Tax Law

The tax law to which I believe the Receiver is relying upon is as follows:

Treas. Reg §1.468B-1. Qualified Settlement Funds

(a) In general. A qualified settlement fund is a fund, account, or trust that satisfies the requirements of paragraph (c) of this section.

(c) Requirements. A fund, account or trust satisfies the requirements of this paragraph (c) if

(1) It is established pursuant to an order of, or is approved by, the United States . . . or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority;

(2) It is established to resolve or satisfy one or more contested or uncontested claims that have resulting or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability –

(ii) Arising out of a tort, breach of contract, or violation of law

(3) The fund, account, or trust is a trust under applicable state law, or its assets are otherwise segregated from other assets of the transferor (and related parties).

(h) Segregation requirement.

(1) In general. If it is not a trust under applicable state law, a fund, account, or trust satisfies the requirements of paragraph (c)(3) of this section if its assets are physically segregated from other assets of the transferor (and related persons).

(j) Classification of fund prior to satisfaction of requirements in paragraph (c) of this section.

(1) In general. If a fund, account, or trust is established to resolve or satisfy claims described in paragraph (c)(2) of this section, the assets of the fund, account, or trust are treated as owned by the transferor of those assets until the fund, account, or trust also meets the requirements of paragraphs (c)(1) and (3) of this section. On the date the fund, account, or trust satisfies all the requirements of paragraph (c) of this section, the transferor is treated as transferring the assets to a qualified settlement fund.

Treas Reg §1.468B-2. Taxation of qualified settlement funds and related administrative requirements.

(a) In general. A qualified settlement fund is a United States person and is subject to tax on its modified gross income for any taxable year at a rate equal to the maximum rate in effect for that taxable year under section 1(e).

NOTE: Internal Revenue Code section 1(e) is the estates and trusts income tax rate tables, with a maximum rate of 37% for 2019. Note also, the income would seemingly also be subject to California income tax.

(b) Modified gross income. The "modified gross income" of a qualified settlement fund is its gross income, as defined in section 61, computed with the following modifications –

(1) In general, amounts transferred to the qualified settlement fund by, or on behalf of, a transferor to resolve or satisfy a liability for which the fund is established are excluded from gross income.

(e) Basis of property transferred to a qualified settlement fund. A qualified settlement fund's initial basis in property it receives from a transferor (or from an insurer or other person on behalf of a transferor) is the fair market value of that property on the date of transfer to the fund.

(f) Distribution of property. A qualified settlement fund must treat a distribution of property as a sale or exchange of that property for purposes of section 1001(a). In

computing gain or loss, the amount realized by the qualified settlement fund is the fair market value of the property on the date of distribution.

(g) Other taxes. The tax imposed under paragraph (a) of this section is in lieu of any other taxation of the income of a qualified settlement fund under subtitle A of the Internal Revenue Code. Thus, a qualified settlement fund is not subject to . . . the maximum capital gains rate of section 1(h). . .

(j) Taxable year and accounting method. The taxable year of a qualified settlement fund is the calendar year. A qualified settlement fund must use an accrual method of accounting within the meaning of section 446(c).

(k) Treatment as a corporation for purposes of subtitle F. Except as otherwise provided in 1.468B-5(b), for purposes of subtitle F of the Internal Revenue Code, a qualified settlement fund is treated as a corporation and any tax imposed under paragraph (a) of this section is treated as a tax imposed by section 11. Subtitle F rules that apply to qualified settlement funds include, but are not limited to –

(2) A qualified settlement fund is in existence for the period that –

(i) Begins on the first date on which the fund is treated as a qualified settlement fund under section 1.468B-1; and

(ii) Ends on the earlier of the date the fund –

(A) No longer satisfies the requirements of Section 1.468B-1; or

(B) No longer has any assets and will not receive any more transfers.

(m) Request for prompt assessment. A qualified settlement fund is eligible to request the prompt assessment of tax under section 6501(d). For purposes of section 6501(d), a qualified settlement fund is treated as dissolving on the date the fund no longer has any assets (other than a reasonable reserve for potential tax liabilities and related professional fees) and will not receive any more transfers.

NOTE: Under 6501(d), if a request is made, tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request thereof (filed after the return is made . . . .).

Reg §1.468B-3. Rules applicable to the transferor.

(a) Transfer of property.

(1) In general. A transferor must treat a transfer of property to a qualified settlement fund as a sale or exchange of that property for purposes of section 1001(a). In computing the gain or loss, the amount realized by the transferor is the fair market value of the property on the date the transfer is made to the qualified settlement fund.

Observations and Analysis

Based on the law, and the analysis to follow, I believe asking the Court for direction on whether to pursue either of just the two scenarios as laid out is premature.

I'm not clear on what work was done by the Receivers' tax advisor in ruling out other potential scenarios and/or tax positions prior to narrowing down the choices to Scenario 1 or Scenario 2 but I think the following may be tax issues that could be flushed out further that could result in a more favorable tax result to the Investor Group.

The Investor Group invested funds into securities with the expectation that, if a positive return would be realized, the investors gain would be treated as long-term capital gain at the time the investors decided to sell their shares and cash out of their position. The proposed QSF treatment and positions set forth by the Receiver have a much different result.

I. Potential Harm to Investor Group if moving forward with Scenario 1

1. *Tax Treatment in the QSF*

    a. Acceleration of Gain and Tax Liability. As set forth in Scenario 1, rather than eventually being able to receive back shares in a nontaxable transaction that would allow the Investor Group to hold and eventually sell the shares on their own time frame, the distribution of shares to the Investor Group would be treated as a taxable event, with gain recognized inside of the QSF subject to tax, regardless of the shares not yet being cashed in. Also, apparently the pre-IPO shares in Scenario 1 would not be distributed until there is a liquidity event and all lock up periods are expired which would seem to be at a time when the largest tax gain would result in the QSF (as opposed to distributing out the shares pre-IPO to a pass-through entity now when the shares value may arguably be much less, if not equal to the value of the shares when transferred into the QSF, thus resulting in little to no gain when distributed).

b. Taxation of gain at ordinary rates. The gain inside of a QSF would be subject to a current federal tax rate of 37% (as opposed to a current maximum 20% long-term capital gains rate). In addition, California taxes would apply.

2. Tax Treatment outside of the QSF

What is lacking in the Receiver's summary of tax matters is the tax consequences to the Investor Group, rather than just the QSF, as a result of the Scenario's proposed as well as how the entities in the Receivership will be handled for income tax purposes.

As all of the assets of the Receivership are under the Receiver's control, tax filing obligations also come under the Receiver's responsibilities (see Holywell Corp. v. Smith, 92-1 USTC ¶50,110; also, see Judicial Code Section 960, 28 U.S.C. §960 which provides that a federal court-appointed receiver is required, in the same manner as anyone conducting a business under the jurisdiction or authority of any United States court, to file all tax returns and pay all taxes as they become due under applicable tax law).

If the Scenario's are to be followed, and assets are deemed transferred into the QSF on October 11, 2016, then what is the tax treatment to the persons/entities transferring assets into the QSF?

a. Possible acceleration of gain/phantom income consequences to the Investor Group. The investors could be required to recognize gain (or loss) in 2016 on the transfer of the securities into the QSF under Treas. Reg. §1.468B-3(a)(1). The gain or loss would be the difference between the fair market value of the securities at the time of transfer as compared to their adjusted tax basis in the investment. If gain, this would result in phantom income to the investor, potentially causing the investor to have a tax liability in 2016 without any cash from the investment to pay the tax. In addition, given that the tax event would occur in 2016, investors most likely would be required to amend their individual income tax returns and be subject to late penalties and interest. If instead, the investors have a loss on the transfer and the loss occurs in 2016, would the investor be prohibited from taking a deduction on that loss due to the expiration of the statute of limitations? That may be a possibility.

b. Possible loss consequences to the Investor Group with such loss deductions being prohibited by expiration of the statute of limitations? If the Investor Group is deemed to transfer assets into the QSF at fair market value in a taxable event and that Investor Group does not receive any consideration for those assets, does the Investor Group recognize a loss at that time, in 2016? Is the Investor Group now prohibited by the applicable tax statute of limitations from taking such loss?

II. Additional/Alternative Tax Positions for Consideration

1. Not all of the Receivership Assets are in the QSF

Receiver's position is that all assets of the Receivership are in the QSF as of the date of appointment, October 11, 2016. This position seems contrary to the Court instructions provided in the Appointment of Receiver Order ("Order of Appointment").

It is clear that the Receiver has power and control over the Receivership Entities and their assets; however, this does not mean that these entities and assets are automatically in the taxable entity of a qualified settlement fund, transferred day one of the creation of the receivership. The "Managing Assets" section of the Order of Appointment seems to make clear a distinction between receivership assets and what is defined as "Receivership Funds." Receivership Funds are defined as "all cash equivalent Receivership Property." The section goes on to provide that the Receivership Funds shall be maintained in a taxable "Settlement Fund," the fund to be treated as a Qualified Settlement Fund for income tax purposes. The Order of Appointment does not suggest all assets of the Receivership are to be maintained in the Settlement Fund –just cash equivalent Receivership Property.

The significance of this is that if the receivership assets are not in the Settlement Fund, they are outside of the Court-required QSF (Treas. Reg. §1.468B-1(c)(3) requires segregation of the assets from the transferor). Perhaps this is the where the Receiver and tax advisor were going with Scenario 2? Seemingly then the non-Settlement Fund assets would continue to remain and be subject to tax in the existing structure in which they were held. A taxable event would arguably then not occur until the assets were converted to cash or a cash equivalent. The Qualified Settlement Fund would receive the cash and only be subject to tax on any appreciation of the cash inside of the QSF.

Question: Does this make sense, for the QSF only to include essentially cash?

In a word, yes. In an effort to understand why QSF tax treatment was recommended and ordered, I went back to the reasoning put forth when the QSF regulations were initially proposed. My understanding is as follows:

The QSF was originally created for mass tort litigation enabling a defendant to settle a claim by depositing money into a central fund that could then settle the claims with each individual plaintiff. The defendant could walk away from the settlement fund after its creation and funding; taking a deduction for the entire settlement amount in the year the assets were transferred to the QSF.

The QSF is often considered quite easy to establish. It serves as a temporary holding vehicle for assets –meant to exist as long as there are allocation discrepancies or unknowns arising between the parties or planning that needs to be done prior to execution of specific disbursements. The QSF may hold benefits for all parties as it relates to taxes, timing of income and distribution planning. QSF claimants/creditors/investors are typically not taxed on funds in the QSF until those funds are distributed.

2. *Distribute Pre-IPO shares prior to Liquidating Event*

Notwithstanding the fact that it appears to the contrary, if we were to assume that all assets were in the QSF as of October 11, 2016, then possible action could be taken now to minimize the tax impact on the pre-IPO shares.

Scenario 1 addresses that the pre-IPO securities would not be transferred until there is a liquidity event and all lock up periods are expired. This would seem to wait until the largest tax liability would be generated inside of the QSF. Perhaps there is a compromise between Scenarios 1 and 2, and the Receiver can consider transferring the pre-IPO shares sooner rather than later, when the value is lower/more speculative (the assets could possibly be transferred to a pass-through entity with provisions of the newly created entity to pay into the QSF any funds that may be required). If so, the potential gain inside the QSF could be lower and the investors would be more in a position of what they expected, with the potential to recognize long-term capital gain treatment upon sale of shares. Note: There may be an issue as to holding period. For long-term capital gain treatment, a capital asset must be held for over one year. The receipt of shares distributed from the QSF may require the restart of a new holding period for the recipient with respect to those shares.

3. *Time Deductions to Offset Gains*

This is probably already in consideration by the Receiver and her tax advisor but I wanted to point out that if the QSF does generate gains/income, planning may be able to be done to accrue deductions to utilize against such income in a given year.

4. *Court Order Clarification and/or Abandonment of Excess Shares*

I was not able to look into this position but, perhaps, if the Court were to order and/or clarify that certain assets were not part of the QSF or thereafter abandoned, then there may be a stronger position that such assets would not be taxable upon distribution since never part of the QSF.

III. Other Concerns

Some of the comments by the Receiver in her motion, Docket #516, may cause some worries for the Investor Group in moving forward.

"Any tax liability of the estate will have to be paid through the sale of securities to generate sufficient cash to pay such tax liability."

- I would think no tax liability would be expected other than when securities are sold or distributed (other than on potential net income from earnings on cash held in the QSF).

"Receiver will be unable to make distributions to creditors or investors until such time as the Receiver determines that sufficient funds are available to pay all taxes in full."

- This is somewhat backwards. The QSF should have little to no tax liability until securities are sold or upon distributions to creditors or investors (again, other than tax on earnings of cash held in the QSF). So the major unknown tax liability expected is not triggered until a distribution is made to creditors or investors. If a sale is made by the QSF, then the gain would not exceed the sales proceeds received and thus the sale of the securities would be sufficient to cover any current income tax liability. As such, the timing of distributions might be controllable with the ability to minimize income tax liability. As previously mentioned above, tax exposure could be limited by distributing assets out of QSF at reduced values. If funds are needed to pay expenses, consideration could be given to a structure outside of the QSF that makes that happen.

"Receiver anticipates engaging a valuation expert to establish the tax basis in shares as of October 11, 2016, which will be one-half of the equation necessary to calculate tax liability. The gain cannot yet be calculated, however, so the Receiver will wait to engage a valuation expert until the Court determines whether the Receiver should proceed under Scenario 1 or 2."

- Based on the above analysis, assuming that all assets of the Receivership are part of the QSF (which is contrary to the Investor Group position), with a tax event affecting entities and investors in 2016, and the importance of establishing tax basis for a tax event on distribution, it seems crucial to get a valuation done now to set the parameters for how assets will be valued and understand the income tax exposure faced. Much of the unknown of the tax treatment to the QSF and the investors is based on the valuation of the assets as of October 11, 2016. If the value of these assets were obtained sooner, rather than later, along with an idea of the current value of the assets, seemingly, the Receiver would have a much better handle on potential tax exposure for the QSF as well as the individual investors and a determination at that point could be made on how to move forward. With an estimate of the amount of potential gain and tax to be paid by the

Receivership and investors, perhaps a better cost/benefit analysis could occur to help determine what the best tax approach may be.

"Because I am subject to personal liability if such a tax opinion is not accepted by the IRS and taxes are not deemed paid in full, I cannot proceed on the basis of a tax opinion along and would need an IRS ruling that Scenario 2 was an appropriate approach before I distributed or sold any of the Shares."

- I am unclear on why only a formal ruling from the taxing agencies would be required to proceed with not treating the pre-IPO shares as part of the QSF. The Receiver is able to adequately disclose her position on tax returns filed and then request a prompt determination of tax liability to accelerate the statute of limitations on her liability. Perhaps further clarification can be provided from the Receiver's tax advisor.

IV. Summary

In sum, the above narrative brings rise to a series of questions that should be addressed prior to making any decision to move forward, especially if only left with the choice of Scenario 1 or 2. Specifically, questions come up as to:

- What are the assets of the QSF – all of the assets in the Receivership or only what is defined as the "Receivership Funds" –all cash equivalent Receivership Property.
- If the assets held in the Receivership go to the QSF, do the Receivership Entities remain in existence or terminate?
- If the assets transfer to the QSF effective October 11, 2016, will this create a taxable event generating a loss at the Receivership Entity level passing through to the individual investors? What is the timing of the transfer to the QSF?
- Has the statute of limitations run on any potential benefit derived from amending the individual investor tax returns for periods passed?
- Will phantom income be generated to the investors during the 2016 through 2018 tax years that will need to be reported via amended tax returns of the investors?
- Will capital gain income pass through to the investors on the front-end when the assets are transferred to the QSF and then generate ordinary income on the back end when distributions occur?

Responses to these questions have a significant impact on which scenario or an alternative or hybrid scenario best serves the interests of all.

Final Comments

Based on the information noted above, a review of the scenarios presented and in light of the many questions left unanswered, I am of the opinion that the Court, if only left with the choice of selecting Scenario 1 or Scenario 2 for tax treatment at this time, would be premature in its decision. I would think that the Court should consider extending the timeframe with which to render any final decision until such a time as all affected parties can be consulted, options weighed with relevant information and a scenario can be established that better serves the interests of all parties involved.

Before limiting her options to either Scenario 1 or 2, the Investor Group would ask the Receiver and her tax advisor to consider and explore alternative tax treatments to maximize the after-tax returns to the beneficiaries of the Receivership Entities. The Investor Group does not necessarily feel that the Receivership is limited to Scenarios 1 & 2 only and would respectfully request the Receiver and her tax advisor look into additional positions, some of which are provided herein, on how best to treat this Receivership for income tax purposes.

The Investor Group would prefer to be in the same or close to the same tax positon as was originally intended when the investors made their investment. The Investor Group invested funds into securities with the expectation that, if a positive return would be realized, the investors gain would be treated as long-term capital gain at the time the investors decided to sell their shares and cash out of their position (subject to a maximize 20% federal income tax rate). The proposed Qualified Settlement Fund treatment and positions set forth by the Receiver may cause undo harm to the investors as follows:

a. Income/gain acceleration resulting in acceleration of income tax liability.
b. Phantom income recognition resulting in paper tax gain with no cash from the gain to pay the investors tax obligations.
c. Additional tax obligation by losing long-term capital gain treatment on gains (approximately 20% more in income taxes will be paid on a long-term capital gain inside of a QSF versus paying the tax at the individual level).
d. Penalties and interest for potential late payment of taxes.
e. Potential permanent loss of loss deductions due to the expiration of the statute of limitations.

Based on the tax treatment proposed in Scenario 1, The Investor Group could be subject to more onerous tax burdens than is expected or necessary.

In looking at the Appointment of Receiver Order, the pre-IPO shares as well as all other non-cash equivalent receivership property are not considered "Receivership Funds" and, as such, should not be considered as part of the Qualified Settlement Fund tax entity. The Investor Group does not understand why an IRS private letter ruling is required to reach this conclusion.

The Investor Group is in favor of employing a tax advisor and moving forward with tax analysis but does not believe Scenario 1 or 2 are the only options to consider, so additional alternatives and tax positions should be explored. In addition, the Investor Group believes the tax matters related to the Receivership entities need to be addressed.

I understand that documents are available and that the parties may desire further analysis be performed. If I receive or discover additional, relevant information, I may make adjustments to the observations and comments presented in this summary.

If you have any questions or comments, please do not hesitate to contact me.

Respectfully Submitted,

Scott C. Burack, JD, CPA, CFP

Scott C Burack, JD, CPA, CFP

Principal, Tax Services

Area of Focus

Scott Burack is a Principal in the firm's tax department. Areas of concentration include individual, partnership, S corporation, non-profits, estate and trust taxation including bankruptcy and receiverships.

Business Experience

Prior to joining Squar Milner, Scott worked as a Senior Tax Consultant for one of the Big 4 Accounting Firms, performing services for various entities including international corporations and high net worth individuals.

Professional License and Accreditation

- Certified Public Accountant, California (1989)
- Member, California State Bar Association (1992)
- Certified Financial Planner, California (2012)
- Series 7 General Securities Representative
- Series 66 Uniform Combined State Law
- Life-only, Accident and Health Insurance, Variable Contracts Agent, California License #0C67987

Education

- Loyola Law School, Los Angeles, California – Juris Doctor
- University of California at Santa Barbara, Business Economics, Bachelor of Arts (Honors)

Publications and Speaking Engagements

Scott co-authored "Foreclosures, Private Sales and Deeds-in-Lieu in California: Understanding and Planning for the Debtor's Tax Consequences" published in the California Bankruptcy Journal. He is also a contributor to the treatise The Law of Distressed Real Estate, having co-wrote the chapter *"Tax Consequences to Borrowers, Investors, and Lenders."* Scott has been a speaker on various tax matters at educational programs of the Orange County Bar Association and Orange County Bankruptcy Forum.

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