

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94845 / May 4, 2022

Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-By-Case Basis in Administrative Proceedings that Establish Distribution Funds

The Commission's orders in administrative proceedings may lead to the payment of disgorgement and/or penalties creating distribution funds. Such distribution funds may create qualified settlement funds ("QSFs") under Treasury Regulation 1.468B-1(c), 26 CFR § 1.468B-1(c), and have a variety of tax-related obligations. The Division of Enforcement ("Division") has evaluated proposals received from potential tax administrators for the QSFs and, of those proposals, has determined that the two applicants best suited to act as tax administrators for the QSFs for calendar years 2022 through 2024 in administrative proceedings are: Heffler, Radetich & Saitta, LLP ("HRS"), a CPA firm located in Philadelphia, PA and Miller Kaplan Arase LLP ("MKA"), an accounting firm located in San Francisco, California, and five other U.S. locations.

Accordingly, IT IS ORDERED that:

- A. Pursuant to the Commission's Rules on Fair Fund and Disgorgement Plans (17 CFR §§ 201.1101, *et seq.*), MKA and HRS are engaged to be separately appointed to serve as a Commission tax administrator ("Tax Administrator"), pursuant to their respective letter agreements ("Letter Agreements") provided to the Commission, for selection on an individual case basis for calendar years 2022 through 2024 inclusive for those administrative proceedings where QSFs have been established. For the life of each QSF, the appointed Tax Administrator will have the limited authority and power to: (1) act as the administrator for tax purposes for the QSF; (2) prepare, sign, and file the necessary tax returns and tax-related documents for the QSF; (3) make the tax payments on behalf of the QSFs; (4) obtain the necessary tax-related documents and identifiers, such as an employer identification number, on behalf of the QSF; (5) perform other tax-related and reporting duties on behalf of the QSF as required by Department of the Treasury regulations relating to QSF administrators; (6) prepare a final accounting when a QSF distribution has been completed, on a form provided by the SEC; (7) prepare distribution checks and mail to injured investors for small QSFs (approximately 50 injured investors), when requested to do so by a fund administrator pursuant to a Commission approved distribution plan; and (8) communicate on behalf of the QSF on matters set forth in this paragraph.

B. Each appointed Tax Administrator will, from time to time, have custody or control of monies transferred quarterly to the Tax Administrator to make tax payments. Therefore, each Tax Administrator, before taking possession of those monies, will obtain a bond, pursuant to their respective Letter Agreement. The bond will be in the annual amount of \$2 million for MKA and \$500,000 for HRS for each of the calendar years 2022 through 2024.¹ If it is determined this amount is not sufficient, pursuant to Section 4A of the Securities Exchange Act of 1934 (15 U.S.C. § 78d-1), the Chief of the Bankruptcy, Collections, Distributions and Receiverships (“Chief-BCDR”) or the Assistant Director-Business of the Office of Distributions or the Equivalent (“AD-Business or Equivalent”) is delegated authority to raise the applicable bond amount up to \$4 million.

C. Each Tax Administrator will submit, at least 30 days prior to any date on which a tax payment is required on behalf of any QSF to which it is appointed or as soon as is practicable, documentation showing the amount necessary to satisfy the tax liability of the QSF as well as all other documents supporting such amount, to the following:

1. Where the Respondent has agreed to pay the taxes of the QSF, the appointed Tax Administrator will submit the documentation to the Respondent, with a copy to the Commission staff member assigned to the proceeding and to the Distributions Program Analysis mailbox.

The Respondent will pay the amount of the documented taxes to the Tax Administrator by check or wire transfer. The Tax Administrator, in turn, will be responsible for paying the taxes to the Internal Revenue Service (“IRS”) and the relevant state and local taxing authority, if any, on behalf of the QSF. The Tax Administrator will provide written confirmation of the payment of the taxes to the Commission staff member assigned to the proceeding and to the Distributions Program Analysis mailbox.

2. Where the money in the QSF is held by an escrow agent, the appointed Tax Administrator will submit the documentation to the escrow agent, with a copy to the Commission staff member assigned to the proceeding and to the Distributions Program Analysis mailbox.

Upon approval to disburse by the Commission staff to whom authority is delegated by paragraph F below, the escrow agent will disburse to the Tax Administrator, by check or wire transfer from the QSF, the amount of taxes as calculated by the Tax Administrator. Such tax payments will come first from any earnings or interest in the QSF, and second, if necessary, from the principal of the QSF. The Tax Administrator, in turn, will be responsible for paying the taxes to the IRS and the relevant state

¹ The difference in bond amounts is attributed to the number of MKA’s current cases (approximately 300 QSFs) plus additional cases/QSFs assigned in 2022-2024 compared to HRS’s cases/QSFs assigned for 2022-2024 only.

and local taxing authority, if any, on behalf of the QSF. The Tax Administrator will provide written confirmation of the payment of the taxes to the Commission staff member assigned to the proceeding and to the Distributions Program Analysis mailbox.

3. In all other proceedings, the appointed Tax Administrator will submit documentation to the Commission staff member assigned to the proceeding and to the Distributions Program Analysis mailbox.

Upon approval to disburse by staff to whom authority is delegated by paragraph F below, the Commission staff will disburse to the Tax Administrator, by check or wire transfer from the QSF, the amount of the taxes as calculated and documented by the Tax Administrator. Such tax payments will come first from any earnings or interest in the QSF and second, if necessary, from the principal of the QSF. The Tax Administrator, in turn, will be responsible for paying the taxes to the IRS and the relevant state and local taxing authority, if any, on behalf of the QSF. The Tax Administrator will provide written confirmation of the payment of the taxes to the Commission staff member assigned to the proceeding and to the Distributions Program Analysis mailbox.

- D. The appointed Tax Administrator will comply with all reporting requirements applicable to a QSF as defined in Treasury Regulation 1.468B-1(a), as amended, and will file on a timely basis all required federal, state, and local tax returns and will contemporaneously provide copies of such filings to the assigned Commission staff member and to the Distributions Program Analysis mailbox.
- E. The appointed Tax Administrator will keep records and bill each QSF for the services provided to it pursuant to their respective Letter Agreement.
 1. In the proceedings in which the Respondent has agreed to pay for the expenses of the QSF, the appointed Tax Administrator will submit the bill to the Respondent for payment by check or wire transfer.
 2. Where the money in the QSF is held by an escrow agent, the appointed Tax Administrator will submit the bill to the assigned Commission staff member and to the Distributions Program Analysis mailbox for review and approval. Where services have been billed according to the terms of the Tax Administrator's Letter Agreement, and where all bills submitted for work performed on behalf of a QSF in a given calendar quarter total an amount less than or equal to \$20,000, payment of bills submitted for the QSF in that quarter maybe approved by the Commission staff to whom authority is delegated by paragraph F below. Where all bills submitted for work performed on behalf of a QSF in a given calendar quarter total an amount greater than \$20,000, the Commission staff assigned to the proceeding must seek Commission approval for payment of the bills

submitted for that quarter. After payment of the Tax Administrator's bills for the quarter have been approved by staff or the Commission, as applicable, the escrow agent is authorized to pay the bill of the Tax Administrator by check or wire transfer from the QSF. Payment will come first from any earnings or interest in the QSF and second, if necessary, from the principal of the QSF.

3. In all other proceedings, the appointed Tax Administrator will submit the bill to the assigned Commission staff member and to the Distributions Program Analysis mailbox for approval. After payment of the Tax Administrator's bill has been approved, which approval will be as described in paragraph E.2. above, the Commission staff will make arrangements to pay the bill of the Tax Administrator by check or wire transfer from the QSF. Payment will come first from any earnings or interest in the QSF and second, if necessary, from the principal of the QSF.

In all proceedings, the fees billed will be in accordance with the appointed Tax Administrator's Letter Agreement, as executed by the Secretary of the Commission on behalf of the Commission.

- F. For calendar years 2022-2024, pursuant to Section 4A of the Securities Exchange Act of 1934 (15 U.S.C. § 78d-1), the authority as set forth in paragraphs C.2., C.3., E.2., and E.3. above, to approve the payment of the appointed Tax Administrator's fees and expenses and approve the disbursement of QSF tax payments based on the calculations of the appointed Tax Administrator is delegated to the Chief-BCDR or the AD-Business or Equivalent.

By the Commission.

Vanessa A. Countryman
Secretary