

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 59508 / March 4, 2009

Omnibus Order Directing the Appointment of Tax Administrator in
Administrative Proceedings that Establish Distribution Funds

The Commission's orders in administrative proceedings may lead to the payment of disgorgement and/or penalties for distribution. Such distribution funds may create qualified settlement funds ("QSFs") under Treasury Regulation Section 1.468B-1(c) and have a variety of tax-related obligations. The Division of Enforcement ("Division") has evaluated the proposals received from potential tax administrators for the QSFs and, of those proposals, has determined that Damasco & Associates LLP ("Damasco"), a certified public accounting firm located in Half Moon Bay, California, is best suited to act as tax administrator for the QSFs for calendar years 2009 and 2010 in such administrative proceedings.

Accordingly,

IT IS ORDERED that:

- A. Pursuant to the Commission's Rules on Fair Fund and Disgorgement Plans (17 CFR §§ 201.1101, *et seq.*), Damasco is appointed as the tax administrator (the "Tax Administrator") when requested by staff in calendar years 2009 and 2010 in those administrative proceedings where distribution funds have been established. Damasco will have the limited authority and power to: (1) act as the administrator for tax purposes for each QSF; (2) prepare, sign, and file the necessary tax returns and tax-related documents for the QSFs; (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 QSFs; (5) perform other tax-related and reporting duties on behalf of the QSFs as required by Department of the Treasury regulations relating to QSF administrators; and (6) communicate on behalf of the QSFs on matters set forth in this paragraph.

- B. The Tax Administrator will, from time to time, have custody or control of monies transferred to the Tax Administrator to make tax payments. Therefore, the Tax Administrator, before taking possession of those monies, will obtain through insurance and through a bond, pursuant to the 2009-2010 Letter Agreement executed between the Commission and the Tax Administrator, coverage against misappropriation (including, but not limited to, negligence) of monies by the Tax Administrator.
- C. The Tax Administrator shall submit, at least 30 days prior to any date on which a tax payment is required on behalf of any QSF or as soon as is practicable, documentation showing the amount necessary to satisfy the tax liability of each 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 Tax Administrator shall submit the documentation to the Respondent, with a copy to: the Commission staff member assigned to the proceeding and to the Assistant Director of the Division's Financial Management Unit.

The Respondent shall pay the amount of the documented taxes to the Tax Administrator by check or wire transfer. The Tax Administrator, in turn, shall be responsible for paying the taxes to the Internal Revenue Service ("IRS") and the relevant state taxing authority, if any, on behalf of the QSF. The Tax Administrator shall provide written confirmation of the payment of the taxes to the Commission staff member assigned to the proceeding and to the Assistant Director of the Division's Financial Management Unit.

2. Where the money in the QSF is held by an escrow agent, the Tax Administrator shall submit the documentation to the escrow agent, with a copy to: the Commission staff member assigned to the proceeding and to the Assistant Director of the Division's Financial Management Unit.

Upon approval to disburse by the staff to whom authority is delegated by paragraph F., below, the escrow agent shall 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 shall 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, shall be responsible for paying the taxes to the IRS and the relevant state taxing authority, if any, on behalf of the QSF. The Tax Administrator shall provide written confirmation of the payment of the taxes to the Commission staff member

assigned to the proceeding and to the Assistant Director of the Division's Financial Management Unit.

3. In all other proceedings, the Tax Administrator shall submit the documentation to the Commission staff member assigned to the proceeding and to the Assistant Director of the Division's Financial Management Unit.

Upon approval to disburse by staff to whom authority is delegated by paragraph F., below, the Commission staff shall 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 shall 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, shall be responsible for paying the taxes to the IRS and the relevant state taxing authority, if any, on behalf of the QSF. The Tax Administrator shall provide written confirmation of the payment of the taxes to the Commission staff member assigned to the proceeding and to the Assistant Director of the Division's Financial Management Unit.

- D. The Tax Administrator shall comply with all reporting requirements applicable to a QSF as defined in Treasury Regulations Section 1.468B1(a), as amended, and shall file on a timely basis all required federal, state, and local tax returns, and shall contemporaneously provide copies of such filings to the assigned Commission staff member and to the Assistant Director of the Division's Financial Management Unit.
- E. The Tax Administrator shall keep records and bill each QSF for the services provided to it, pursuant to the 2009-2010 Letter Agreement executed between the Commission and the Tax Administrator.

1. In the proceedings in which the Respondent has agreed to pay for the expenses of the QSF, the 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 Tax Administrator will submit the bill to the assigned Commission staff member for approval. Where services have been billed according to the terms of the Tax Administrator's 2009-2010 Letter Agreement with the Commission, and are for an amount less than or equal to \$10,000 per case per tax filing per quarter, payment may be approved by staff to whom authority is delegated by

paragraph F., below. For bills totaling an amount greater than \$10,000 per case per tax filing per quarter, the Commission staff assigned to the proceeding must seek Commission approval for payment. After payment of the Tax Administrator's bill has been approved, the escrow agent is authorized to pay the bill of the Tax Administrator by check or wire transfer from the QSF. Payment shall 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 Tax Administrator will submit the bill to the assigned Commission staff member and to staff to whom authority is delegated by paragraph F., below. After payment of the Tax Administrator's bill has been approved (which approval shall be as described in paragraph E.2., above), the Commission staff shall pay the bill of the Tax Administrator by check or wire transfer from the QSF. Payment shall 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 shall be as agreed upon in the Tax Administrator's 2009-2010 Letter Agreement with the Commission, as executed by the Secretary of the Commission on behalf of the Commission.

- F. 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 Tax Administrator's fees and expenses and to approve the disbursement of QSF tax payments based on the calculations of the Tax Administrator is delegated to the following Division of Enforcement staff: the Division Director, the Deputy Director of the Office of Collections and Distributions, and the Assistant Directors in the Collections and Distributions Unit and the Financial Management Unit; and to the following Office of the Executive Director staff: the Executive Director and the Director of the Office of Collections and Distributions.
- G. The Secretary of the Commission shall, upon request by the Division staff during calendar years 2009 and 2010, issue orders that appoint Damasco as the Tax Administrator in administrative proceedings.

By the Commission.

Elizabeth M. Murphy
Secretary