

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE
COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85174 / February 22, 2019

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 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 the proposals received from potential tax administrators for the QSFs and, of those proposals, has determined that Miller Kaplan Arase LLP ("Miller Kaplan"), an accounting firm located in San Francisco, California, and in five other U.S. locations, is best suited to act as tax administrator for the QSFs for calendar years 2019 through 2021 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.*), Miller Kaplan is appointed as the tax administrator (the "Tax Administrator") when requested by staff in calendar years 2019 through 2021 in those administrative proceedings where distribution funds have been established. For the life of the distribution funds to which Miller Kaplan is appointed in 2019, 2020 and 2021, Miller Kaplan 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; (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 QSFs on matters set forth in this paragraph.

- B. The Tax Administrator will, from time to time, have custody or control of monies transferred quarterly to the Tax Administrator to make tax payments. Therefore, the Tax Administrator, before taking possession of those monies, will obtain a bond, pursuant to the 2019-2021 Letter Agreement executed between the Commission and the Tax Administrator. The bond will be in the annual amount of \$2 million for calendar years 2019, 2020, and 2021. 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 Assistant Director of the Office of Distributions (“OD”) will have authority to raise the bond amount up to \$4 million.
- C. The Tax Administrator will 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 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 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 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 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 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 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 Tax Administrator will keep records and bill each QSF for the services provided to it pursuant to the 2019-2021 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 and to the Distributions Program Analysis mailbox for approval. Where services have been billed according to the terms of the Tax Administrator's 2019-2021 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 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 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 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 as agreed upon in the Tax Administrator's 2019-2021 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 Assistant Director of the OD.
- G. The Secretary of the Commission will, upon request by the Division staff during calendar years 2019, 2020, and 2021, issue orders that appoint Miller Kaplan as the Tax Administrator in administrative proceedings.

By the Commission.

Brent J. Fields
Secretary