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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  
 LLC; FRANK GREGORY MAZZOLA,

17 Defendants, and

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

21 Relief Defendants.  
 22  
 23

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

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

Date: N.A.  
 Time: N.A.  
 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 Distribution Plan, the Court hereby adopts this Revised Order Appointing Receiver to carry out implementation of the Distribution Plan in an effective and cost efficient manner as follows:

The Court hereby appoints Kathy Bazoian Phelps, Esq., 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 Distribution Plan**

The Receiver in consultation with the SEC Staff shall implement the 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 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 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:

- (i) Equity Acquisition Corp. (EAC) for turnover of and allocation of shares held by EAC for the Receivership.

- 1 (ii) Loan agreement, forward contracts, or other similar agreements between SRA  
 2 and Clear Sailings and certain individuals or entities where these agreements  
 3 were secured/supported by securities that are to be turned over to the  
 4 Receivership.

5 The former receiver and the SEC Staff have determined which Unsecured Claims<sup>1</sup> and  
 6 Unsecured Creditor Claims are Valid Claims based upon the Corporate Defendants' and Relief  
 7 Defendants existing records, submissions of Claims by investors and creditors, and other sources of  
 8 information reasonably available to the Receiver or the SEC Staff. Within 90 days of approval of the  
 9 Distribution Plan, the Receiver in consultation with the SEC shall file objections to claims. If the  
 10 SEC and or the Receiver are not able to settle or resolve the objections to claim, the SEC and or the  
 11 Receiver will schedule a hearing at which point the Claim Objection(s) shall be heard by the Court.  
 12 If there is a settlement of the objection to claim the SEC and or the Receiver will file a motion to  
 13 have the settlement approved by the court. As of the Record Date, the Distribution Agent will send  
 14 all Valid Claimants their claim amount, and the amount of the distribution they are to receive.

15 **Limitations on Fees and Expenses**

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

24 JND Corporate Restructuring or such other professional as may be approved by the  
 25 Court to serve as the Claims Agent;

26 Alan Kadish and Archer & Greiner to serve as local bankruptcy counsel for the  
 27

28 <sup>1</sup> Capitalized terms herein are defined in the Distribution Plan.

1 Receiver in the Chapter 7 proceeding of John Vincent Bivona, case no. 16-12961-SCC, in the United  
2 States Bankruptcy Court for the Southern District of New York;

3 A court-approved firm to serve as the tax accounting firm for the Distribution Plan  
4 with respect to federal and state tax returns.

5 A court-approved law firm to serve as counsel for the Receiver.

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

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

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

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

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

1 Each Quarterly Fee Application shall:

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

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

11 **Adjustments and Amendments**

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

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

19 **I. Marshalling of Receivership Assets**

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

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

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

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

14  
 15 A. To manage, control, operate and maintain the Receivership Estates and hold in her  
 16 possession, custody and control all Receivership Property, pending further Order of this  
 Court;

17 B. To use Receivership Property for the benefit of the Receivership Estates, making  
 18 payments and disbursements and incurring expenses as may be necessary or advisable in the  
 ordinary course of business in discharging her duties as Receiver;

19 C. To take such action as necessary and appropriate for the preservation of Receivership  
 20 Property or to prevent the dissipation or concealment of Receivership Property;

21 D. To take such other action as may be approved by this Court.

## 22 **III. Access to Books, Records and Accounts**

23 The former receiver will promptly transfer to the Receiver all assets, bank accounts or other  
 24 financial accounts, books and records and all other documents or instruments relating to the  
 25 Receivership Entities and/or Recoverable Assets. All persons and entities having control, custody or  
 26 possession of any Receivership Property and/or Recoverable Property are hereby directed to turn  
 27 such property over to the Receiver.  
 28

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

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

- 10
- 11 A. Not liquidate, transfer, sell, convey or otherwise transfer Recoverable Assets or any  
 12 assets, securities, funds, or accounts in the name of or for the benefit of the  
 Receivership Entities except upon instructions from the Receiver;
- 13 B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help  
 14 whatsoever, or refuse to transfer any funds or assets to the Receiver's control without  
 the permission of this Court;

15 Within five (5) business days of receipt of that notice, file with the Court and serve on the  
 16 Receiver and counsel for the Commission a certified statement setting forth, with respect to  
 17 each such account or other asset, the balance in the account or description of the assets as of  
 the close of business on the date of receipt of the notice; and,

- 18
- 19 D. Cooperate expeditiously in providing information and transferring funds, assets  
 20 and accounts to the Receiver or at the direction of the Receiver.

21 **IV. Injunction Against Interference with Receiver**

22 The Receivership Entities and all persons receiving notice of this Order by personal service,  
 23 facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any  
 24 action or causing any action to be taken, without the express written agreement of the Receiver,  
 25 which would:

- 26 A. Interfere with the Receiver's efforts to take control, possession, or management of any  
 27 Receivership Property; such prohibited actions include but are not limited to, using  
 28 self-help or executing or issuing or causing the execution or issuance of any court  
 attachment, subpoena, replevin, execution, or other process for the purpose of

1 impounding or taking possession of or interfering with or creating or enforcing a lien  
upon any Receivership Property;

2 B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of her  
3 duties; such prohibited actions include but are not limited to, concealing, destroying or  
altering records or information;

4 C. Dissipate or otherwise diminish the value of any Receivership Property; such  
5 prohibited actions include but are not limited to, releasing claims or disposing,  
6 transferring, exchanging, assigning or in any way conveying any Receivership  
7 Property, enforcing judgments, assessments or claims against any Receivership  
8 Property or any Receivership Defendant or any FMOF Entity or NYPA Entity,  
attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due  
date), of any lease, loan, mortgage, indebtedness, security agreement or other  
agreement executed by any Receivership Defendant or which otherwise affects any  
Receivership Property; or,

9 D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive  
10 jurisdiction of this Court over the Receivership Estates.

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

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

15 **V. Stay of Litigation**

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

19  
20 All civil legal proceedings of any nature, including, but not limited to, bankruptcy  
21 proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions  
22 of any nature involving: (a) the Receiver, in her capacity as Receiver; (b) any Receivership  
23 Property, wherever located; (c) any of the Receivership Entities including subsidiaries and  
24 affiliates; or, (d) any of the Receivership Entities' past or present officers, directors,  
managers, agents, or members sued for, or in connection with, any action taken by them while  
acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff,  
third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary  
Proceedings").

25 The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing  
26 any such legal proceeding, or from taking any action, in connection with any such proceeding,  
27 including, but not limited to, the issuance or employment of process.  
28

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

6 **VI. Liability of Receiver**

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

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

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

19 In the event the Receiver decides to resign, the Receiver shall first give written notice to the  
20 Commission’s counsel of record and the Court of her intention, and the resignation shall not be  
21 effective until the Court appoints a successor. The Receiver shall then follow such instructions as the  
22 Court may provide.

23 SO ORDERED.

24 DATED: February 28, 2019

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26 

27 Judge Edward M. Chen  
28 UNITED STATES DISTRICT COURT