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The discussion below will briefly discuss the new safe harbor rules for deduction of Theft Losses resulting from certain fraudulent arrangements, pursuant to IRS Revenue Procedure 2009-20 ("Rev. Proc. 2009-20"). The discussion does not outline every element of Rev. Proc. 2009-20, as there are many complicated details, but is an attempt to set forth the main provisions in a manner which is hopefully understandable. EACH PARTY IN INTEREST SHOULD CONSULT HIS/HER PERSONAL TAX ADVISOR REGARDING TAX ISSUES ASSOCIATED WITH ANY INVESTMENTS MADE WITH NAMVAR/NAMCO.

Rev. Proc. 2009-20 provides an optional safe harbor treatment for taxpayers that experience losses in certain investment arrangements discovered to be criminally fraudulent. This revenue procedure provides an optional safe harbor under which qualified investors may treat a loss as a theft loss deduction when certain conditions are met. A theft loss may allow for a more favorable and immediate tax treatment than normal capital losses. This treatment provides qualified investors with a uniform manner for determining their theft losses. In addition, this treatment also avoids potentially difficult problems of proof in determining how much income reported in prior years was fictitious or a return of capital, and alleviates compliance and administrative burdens on both taxpayers and the IRS.

In order for the provisions of Rev. Proc. 2009-20 to be made available to a qualified investor it must first be established that the qualified investor transferred cash or property to a specified fraudulent arrangement. A specified fraudulent arrangement is defined as an arrangement in which a party (the lead figure) receives cash or property from investors; purports to earn income for the investors; reports income amounts to the investors that are partially or wholly fictitious; makes payment, if any, of purported income or principal to some investors from amounts that other investors invested in the fraudulent arrangement; and appropriates some or all of the investors' cash or property.

Once this first hurdle is cleared, additional criteria must be met in order for the provisions of Rev. Proc. 2009-20 to be made available to qualified investors. While it is too early in the administration of this case to make a definitive conclusion, it is possible that ultimately the safe harbor provisions of the revenue procedure may be available to Namvar/Namco investors. Although many of the effects of the financial practices of Namvar/Namco came to light during the months after the filing of petitions in Bankruptcy Court, the required events that would make the provisions of Rev. Proc. 2009-20 available to qualified investors did not occur in either 2008 or 2009, due to the fact that no indictments or criminal complaints were filed against the lead figure(s) in these cases by December 31, 2009. Thus, we believe that the safe harbor provisions of this revenue procedure are not available to Namvar/Namco investors in either 2008 or 2009. This may change in the future should events occur which would allow for the safe harbor provision but unfortunately, those events are beyond the control of the Trustee.

All italicized words are defined terms in the Rev. Proc.

This memorandum is intended to outline the safe harbor provisions for deduction of theft losses resulting from a *Specified Fraudulent Arrangement*, pursuant to Rev. Proc. 2009-20.

In early March, 2009 the IRS issued Rev. Rul. 2009-09, which firmly establishes the general rules for deduction of theft losses. These general rules do not allow for the deduction of any portion of

a theft loss in a tax year for which the taxpayer has a claim for reimbursement with respect to which there is a reasonable prospect of recovery. This has been the procedure under which the IRS has viewed theft losses for a number of years.

However, on March 17, 2009 Rev. Proc. 2009-20 was issued wherein the IRS provided an optional safe harbor treatment for taxpayers that experienced losses in certain investment arrangements discovered to be criminally fraudulent. (A safe harbor is simply that – a harbor under the law wherein a taxpayer can reduce their liability if a party complied with the general provisions of the safe harbor provision and acted in good faith in doing so.) Under these safe harbor provisions a *Qualified Investor* may deduct 95% of its *Qualified Investment* in the *Discovery Year* if he/she does not pursue any *Potential Third-Party Recovery*. A 75% deduction is available if a *Qualified Investor* is pursuing or intends to pursue any *Potential Third-Party Recovery*.

Qualified Investment is defined as:

- (1) The sum of –
 - (a) The total amount of cash, or the basis of property, that the *Qualified Investor* invested in the arrangement in all years; plus
 - (b) The total amount of net income with respect to the *Specified Fraudulent Arrangement* that, consistent with information received from the *Specified Fraudulent Arrangement*, the *Qualified Investor* included in income for federal tax purposes for all taxable years prior to the *Discovery Year*, including taxable years for which a refund is barred by the statute of limitations; over
- (2) The total amount of cash or property that the *Qualified Investor* withdrew in all years from the *Specified Fraudulent Arrangement* (whether designated as income or principal).

It is possible that the Namvar/Namco situation may qualify as a *Specified Fraudulent Arrangement*. If it does, once all the requirements are met, there may be the potential for *Qualified Investors* to take deductions for theft losses. The safe harbor provisions of Rev. Proc. 2009-20 may be applied in the *Discovery Year*. *Discovery year* is defined as the taxable year of the investor in which an indictment, information, or complaint is filed in which-

(1) the lead figure (or one of the lead figures, if more than one) was charged by indictment or information (not withdrawn or dismissed) under state or federal law with the commission of fraud, embezzlement or a similar crime that, if proven, would meet the definition of theft for purposes of Section 165 of the Internal Revenue Code under the law of the jurisdiction in which the theft occurred; or

(2) the lead figure was the subject of a state or federal criminal complaint (not withdrawn or dismissed) alleging the commission of a crime described in (1) above, and either -

(a) The complaint alleged an admission by the lead figure, or the execution of an affidavit by that person admitting the crime; or

(b) A receiver or trustee was appointed with respect to the arrangement or assets of the arrangement were frozen.

AS FAR AS THE TRUSTEE OR HIS PROFESSIONALS ARE AWARE NO INDICTMENT OR CRIMINAL COMPLAINT WAS FILED AGAINST EZRI NAMVAR OR ANY OTHER POTENTIAL LEAD FIGURE AS OF DECEMBER 31, 2009. THEREFORE, 2009 DOES NOT APPEAR TO FALL WITHIN THE DEFINITION OF *DISCOVERY YEAR*. HOWEVER, SHOULD AN INDICTMENT OR CRIMINAL COMPLAINT BE FILED AGAINST NAMVAR (OR A LEAD

FIGURE) IN THE FUTURE, THE YEAR IN WHICH SUCH CHARGES ARE FILED WOULD BECOME THE *DISCOVERY YEAR*, THUS MAKING AVAILABLE THESE SAFE HARBOR PROVISIONS TO THOSE *QUALIFIED INVESTORS* WISHING TO UTILIZE THEM.

By electing to utilize the safe harbor provisions of Rev. Proc. 2009-20 the taxpayer agrees --

(1) Not to deduct in the *Discovery Year* any amount of the theft loss in excess of the 95%/75% rule, less the sum of any *Actual Recovery* and any *Potential Insurance/SIPC Recovery*;

(2) Not to file returns or amended returns to exclude or recharacterize income reported with respect to the investment arrangement in taxable years preceding the discovery year;

(3) Not to apply the alternative computation in IRC Section 1341 with respect to the theft loss deduction allowed by the revenue procedure; and

(4) Not to apply the doctrine of equitable recoupment or the mitigation provisions in IRC Sections 1311-1314 with respect to income from the investment arrangement that was reported in taxable years that are otherwise barred by the period of limitations on filing a claim for refund under IRC Section 6511.

The *Qualified Investor* may have income or an additional deduction in a year subsequent to the *Discovery Year* depending on the actual amount of the loss that is eventually recovered.