

MEMORANDUM

TO: Board of Managers of ML Manager LLC
FROM: Gregg Hanks
DATE: December 19, 2011
RE: Mortgages Ltd. Theft Losses Under Revenue Procedure 2011-58
(Supplementing Revenue Procedure 2009-20)

IRS CIRCULAR 230 DISCLOSURE: IN ACCORDANCE WITH 31 C.F.R. SECTION 10.35(b)(4), THIS MEMORANDUM HAS NOT BEEN PREPARED, AND MAY NOT BE RELIED UPON BY ANY PERSON, FOR PROTECTION AGAINST ANY FEDERAL TAX PENALTY. WHILE FENNEMORE CRAIG, P.C. HAS CONSENTED TO COPIES OF THIS MEMO BEING GIVEN TO INVESTORS IN MORTGAGES LTD., THE BOARD OF ML MANAGER LLC IS THE CLIENT OF FENNEMORE CRAIG, P.C. NEITHER THE BOARD NOR FENNEMORE CRAIG, P.C., IS ADVISING INVESTORS WITH RESPECT TO THEIR PERSONAL TAX MATTERS. ACCORDINGLY, INVESTORS ARE STRONGLY ENCOURAGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE MATTERS ADDRESSED IN THIS MEMO.

1. Background; Revenue Procedure 2009-20. As you are aware, in early 2009, the IRS issued Revenue Procedure 2009-20, which provided a safe harbor permitting certain taxpayers to claim a specified percentage of their investment in a fraudulent arrangement as a theft loss, if various conditions were satisfied. One of these conditions was that a lead figure in the fraudulent arrangement be indicted or charged under state or federal law with the commission of a crime that would meet the definition of a theft under tax law. To date, no formal indictment or similar criminal charge has been filed with respect to any lead figure in Mortgages, Ltd., possibly due in part to the suicide of Scott Coles. This situation made Revenue Procedure 2009-20 of questionable application with respect to Mortgages Ltd. investors.

2. Revenue Procedure 2011-58; Extension of Revenue Procedure 2009-20 to Additional Situations. The IRS recently issued Revenue Procedure 2011-58, which extends the application of Revenue Procedure 2009-20 to certain situations in which the death of a lead figure has foreclosed the possibility of criminal charges, if a lead figure (or an associated entity involved in a fraudulent arrangement) was the subject of a civil complaint or similar documents filed by a state or federal governmental entity with a court, or in an administrative agency enforcement proceeding, that allege facts that indicate a fraudulent arrangement covered by Revenue Procedure 2009-20 has occurred. Revenue Procedure 2011-58 was issued after PricewaterhouseCoopers ("PWC"), on behalf of ML Manager LLC, and tax advisors of other investor groups requested that the relief in Revenue Procedure 2009-20 be extended to fraudulent arrangements in which a lead figure had committed suicide.

3. Administrative Proceedings Against Mortgages Ltd. and Mortgages Ltd. Securities, LLC. In support of its request that Revenue Procedure 2009-20 be extended to Mortgages Ltd. investors, PWC provided the IRS with copies of the following documents ("Administrative Proceeding Documents") relating to proceedings commenced by the Arizona Department of Financial Institutions and United States Securities and Exchange Commission:

(a) Notice of Filing of Administrative Action by the Arizona Department of Financial Institutions, as filed in the United States Bankruptcy Court on March 2, 2009 (which includes a Notice of Hearing to Revoke the mortgage banker license of Mortgages Ltd.);

(b) A Consent Order of the Arizona Department of Financial Institutions, filed in the office of the Arizona Department of Financial Institutions on July 28, 2009, revoking the mortgage banker license of Mortgages Ltd.;

(c) An undated draft of an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Revoking Broker-Dealer Registration as to Mortgages Ltd. Securities, LLC, which is believed to have been prepared by the Securities and Exchange Commission in August of 2009; and

(d) A final Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings and Revoking Broker-Dealer Registration, dated January 19, 2010, revoking the broker dealer license of Mortgages Ltd. Securities, LLC, an affiliate of Mortgages Ltd. (owned by Scott Coles' family trust) that raised money from investors on behalf of Mortgages Ltd.

It is our understanding that ML Manager LLC has retained PWC to confirm that the Administrative Proceeding Documents meet the requirements of Revenue Procedure 2011-58 and that the IRS intended to extend the application of Revenue Procedure 2009-20 to investors in Mortgages Ltd. Copies of Revenue Procedures 2009-20 and 2011-58, as well as the Administrative Proceeding Documents, are included with this memo, so they can be made available to investors in Mortgages Ltd. and their tax advisors.

4. Qualified Investors for Purposes of Revenue Procedures 2009-20 and 2011-58; Questions Regarding Who Files Amended Returns. Only "qualified investors" can claim theft losses in reliance on Revenue Procedure 2009-20, as modified by Revenue Procedure 2011-58, and the loss must be claimed, if at all, on a tax return or amended tax return filed for the "discovery year" of the loss (which is generally the year in which a lead figure is indicted, or the year in which a civil complaint or other document described in Revenue Procedure 2011-58 was filed by a governmental entity). In order to be a "qualified investor" under the Revenue Procedures, among other matters, a person needs to have transferred cash or property to a fraudulent arrangement, rather than to a fund that invested in a fraudulent arrangement. However, a fund that invests in a fraudulent arrangement may itself be a "qualified investor". In matters pertinent to ML Manager LLC, there are three potential groups that could be "qualified investors":

- The forty-eight Loan LLCs, to which various loans and security instruments issued by Mortgages Ltd. were transferred by a number of Pass-Through Investors and ML Funds.
- The Pass-Through Investors that transferred their interests in loans and security instruments to the Note LLCs.
- The nine ML Funds that also transferred their interests in loans and security instruments to the Note LLCs.

With respect to the foregoing, it is our understanding that ML Manager LLC has retained PWC to (a) advise ML Manager LLC whether the Loan LLC, the Pass-Through Investors that hold interests in the Loan LLCs and/or the ML Funds are "qualified investors" that are eligible to file amended returns under Revenue Procedure 2009-20, as modified by Revenue Procedure 2011-58, and (b) determine the "discovery year" for which theft losses may be claimed under such Revenue Procedures (which is most likely 2009, but could possibly be 2010). Pending a final determination of the correct persons to file amended returns, it is advisable for Pass-Through Investors and investors in the ML Funds to defer filing their own amended returns.

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