

UNITED STATES DISTRICT
COURT SOUTHERN
DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

VEROS PARTNERS, INC,
MATTHEW D. HAAB,
JEFFERY B. RISINGER,
VEROS FARM LOAN HOLDING LLC,
TOBIN J. SENEFELD,
FARMGROWCAP LLC,
PINCAP LLC, and

Defendants,

PIN FINANCIAL LLC,

Relief Defendant.

Case No. 1:15-cv-659-JMS-MJD

RECEIVER’S MOTION TO AMEND AGREED ORDER APPOINTING RECEIVER

William E. Wending, Jr., the Receiver herein, by counsel, respectfully requests the Court to amend the Agreed Order Appointing Receiver. In support of this motion, the Receiver states as follows:

1. On May 1, 2015, the Agreed Order Appointing Receiver (“Agreed Order”) was entered appointing William E. Wendling, Jr., to serve without bond as the Receiver over Veros Farm Loan Holdings LLC (“VFLH”), FarmGrowCap LLC (“FarmGrowCap”), PinCap LLC (“PinCap”), and all private offerings in which Defendant Veros Partners controls investors funds (“Private Offerings”) [[Filing No. 34](#)].

2. Paragraph 42 of the Agreed Order requires the Receiver to establish a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code for the collection and distribution of assets for the benefit of the investors [[Filing No. 34 at 16](#)].

3. The Receiver requested authority to hire Blue & Co., LLC to assist with, among other things, the administration, analysis and ongoing monthly accounting and bookkeeping of the businesses of the Receivership Defendants; to prepare monthly reports to the investors/lenders; to assist with the review and analysis of the Receivership Defendants internal accounting records for accuracy and completeness and of the internal investor/lender records; to prepare reports and conclude on findings regarding the Receivership Estates; and to perform other ongoing business services required to maintain and operate the Receivership Estates during the pendency of this matter [[Filing No. 74](#)]. Said request was approved by the Court on June 30, 2015 [[Filing No. 76](#)].

4. Blue & Co. LLC, during the course of performing its obligation of assisting the Receiver, reviewed the Agreed Order. The accounting firm noted Paragraph 42, which states:

The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and of the regulations, when applicable, whether proposed, temporary or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. §1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2, including but not limited to (a) obtaining a taxpayer identification number, (b) timely

filing applicable federal, state, and local tax returns and paying taxes reported thereon, and (c) satisfying any information, reporting or withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a Qualified Settlement Fund.” The Receivership Defendants shall cooperate with the Receiver in fulfilling the Settlement Funds’ obligations under Treas. Reg. §1.468B-2.

[\[Filing No. 34 at 16\]](#)

5. Blue and Co., LLC has informed the Receiver that the funds controlled by the Receiver do not, in fact, meet the strict definition of Qualified Settlement Funds. Such funds are established to resolve claims, receive funds from the defendant, who is then discharged from liability, and have an element of discretion in the payout.

6. The funds managed or controlled by the Receiver throughout this cause have been distinctly different. On one hand, the private placement, each a separate entity, have had operating accounts in which funds from mortgages, land sales, collections or other sources of the ongoing business entity have been collected. FarmGrowCap, likewise, is a separate business entity and not a claim fund. The income generated in the funds have been reported on entity tax returns as required. none have involved a new fund to resolve a disputed claim from the Defendants.

7. Blue & Co., LLC believes the provisions of the order and strict compliance with the Internal Revenue Code and related regulations would have required the Receivership to set up separate Qualified Settlement Funds, obtain twenty-five (25) new EIN numbers and bank accounts, and file corresponding individual tax returns for each of the twenty-five (25) Private Offerings for

which the Receiver has or had control. These requirements present an unnecessary burden and expense when no funds have been received requiring such an additional reporting burden.

8. In addition, Blue & Co., LLC has specifically counseled the Receiver that the accounts do not or would not meet all the necessary requirements of the regulations. This is more specifically explained in the attached [Exhibit A](#) in which Blue & Co., LLC contends that the operation of the Receiver (as it relates to these entities) should not require the Receivership to adhere to these requirements of the Agreed Order.

9. Accordingly, the Receiver requests the Agreed Order be amended such that this requirement should not apply to any Veros Private Placements.

10. Counsel for Plaintiff has been made aware of the filing of this Motion. However they are not yet prepared to take a position on the same and request the Court allow thirty (30) days here from for Plaintiff to file any responsive pleadings as it may ultimately deem appropriate.

WHEREFORE, the Receiver, by counsel, respectfully requests the Court to amend the Agreed Order Appointing Receiver granting him relief from Paragraph 42 such that he is not required to establish separate Qualified Settlement Funds for each of the twenty-five (25) Veros Private Offerings nor any other Receivership funds or accounts controlled by the Receiver, and for all other proper relief.

Respectfully submitted,

By /s/ Anne Hensley Poindexter
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Counsel for the Receiver

Certificate of Service

I hereby certify that on December 21, 2017, a copy of the foregoing ***Motion to Amend Agreed Order Appointing Receiver*** was filed electronically. Notice of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Anne Hensley Poindexter
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