



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

MAR 21 2013

Mr. John L. Roe
Ms. Hilary G. Escajeda
Commodity Customer Coalition
125 South Wacker Drive
Suite 300
Chicago, IL 60606

Dear Mr. Roe and Ms. Escajeda:

Thank you for your letter of February 20, 2013, to Acting Commissioner Steven Miller. You wrote about the federal tax treatment of losses sustained by victims of the investment fraud that Russell R. Wasendorf perpetrated as CEO of the Peregrine Financial Group, Inc., also known as PFG Best.

You asked whether taxpayers affected by the PFG Best scheme are eligible to use the optional safe harbor method provided by Revenue Procedure 2009-20 to deduct losses. You indicate that some victims have received conflicting information from tax advisors and others on the application of this revenue procedure.

As we discussed during our telephone conversation on February 26, whether a given investor meets all the qualifications to use the safe harbor in Revenue Procedure 2009-20, and, if so, the amount the investor may deduct, depends on the facts and circumstances of that particular investor's situation. Unfortunately, in this letter we cannot make that determination for any particular taxpayer who invested in the PFG Best scheme. However, based on the information you provided and our understanding of the situation as described below, we believe the PFG Best scheme qualifies as a "specified fraudulent arrangement" within the meaning of Revenue Procedure 2009-20.

Our understanding is that in September 2012, Mr. Wasendorf entered into an agreement with the U.S. Department of Justice under which he pled guilty to multiple counts for defrauding customers and embezzling customer account funds over a 20-year period. The assets Mr. Wasendorf embezzled were collateral required by regulation to be deposited and maintained in customer accounts in order to margin, guarantee, and secure their futures and commodities trades.

You state that, unlike the lead figures in some fraudulent schemes, Mr. Wasendorf did not generally direct or advise investors as to their futures and options transactions, or misrepresent the trading transactions they executed or the profits they made on those

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trades. Instead, his customers generally executed self-directed futures and options transactions. Mr. Wasendorf, for the most part, facilitated these transactions, reported the transactions accurately, and accomplished the fraud by misrepresenting the amount of customer funds he was purportedly holding in a segregated, interest-bearing bank account, as required to margin, guarantee, or secure the investors' trading activity.

You state that Mr. Wasendorf received cash or property from investors; purported to act on their behalf in facilitating the investment activity and holding the margin funds; perpetuated the scheme through misrepresentations and by making payments that were, in whole or in part, from other investors' funds; and appropriated the investors' cash or property, an act for which he was criminally charged in 2012. The scheme involved some misreporting of income amounts to investors, although that may not have been primarily how he accomplished the fraud.

Taking into account these factors, as well as the other information you provided, the PFG Best scheme qualifies as a "specified fraudulent arrangement" within the meaning of Revenue Procedure 2009-20. Thus, investors who otherwise meet the requirements of Revenue Procedure 2009-20 may use the safe harbor, following the procedures as set forth in that revenue procedure.

I hope this information is helpful. If you have any questions, please call me or Elizabeth R. Binder, Office of Chief Counsel, Income Tax and Accounting Division, at (202) 622-5020.

Sincerely,



Andrew M. Irving
Senior Counsel, Branch 1
Office of Chief Counsel
(Income Tax & Accounting)