

Black Family Partners

Apollo Management
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Ada Clapp

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To: Barry J. Cohen, Trustee
From: Ada Clapp
Date: November 26, 2013
Re: Restructuring of 2012 Year-End Planning

This memorandum is addressed to you as Trustee of the BEB 2011 Trust, the JMB 2011 Trust, the ASB 2011 Trust and the VRB 2011 Trust (collectively, the “2011 Trusts”).

As you recall, in December 2012, there was concern that the \$5.12 million Federal gift and GST tax exemptions would be drastically reduced as of January 2013. To enable Leon’s children to take advantage of the higher exemption amounts and create trusts for his or her descendants, you and your co-Trustees issued several promissory notes on behalf of the 2011 Trusts.

While these notes were the best means of accomplishing the stated objective in the available time frame, the end result was less favorable from a funding standpoint for some trusts than for others. Specifically, the descendants’ trusts created by Ben and Josh were funded with a note receivable, while the descendants’ trusts created by Alex and Victoria were funded with cash.¹ We propose for your consideration the following two-step plan to put each of the descendants’ trusts on more equal footing:

Step One: The LDB 2011 LLC (the “LLC”) purchases the \$5.12 million notes issued by the 2011 Trusts from the trust that holds such note, as follows:

- From Ben’s descendants’ trust, the note issued by the BEB 2011 Trust;
- From Josh’s descendants’ trust, the note issued by the JMB 2011 Trust;
- From the 2006 Trust, the note issued by the ASB 2011 Trust; and
- From the 2006 Trust, the note issued by the VRB 2011 Trust.

¹ As a reminder, each of Alex and Victoria’s 2011 Trust borrowed \$5.12 million from the Black 2006 Family Trust (the “2006 Trust”) and distributed the cash to Alex and Victoria, each of whom used it to fund a descendants’ trust.

Step Two: The LLC makes a *pro rata* distribution to each of the 2011 Trusts by distributing to each trust its \$5.12 million note that the LLC just purchased (which note is thereupon cancelled), plus any cash needed to make the distributions *pro rata*.

Result: Each of the descendants' trusts holds \$5.12 million in cash to be invested.

You will also recall that promissory notes were issued to Ben (\$3,250,008) and Josh (\$5,897,726) from their 2011 Trusts as payment of a mandatory principal distribution at age 25 and that each transferred his note to a trust for his benefit. Both of Ben and Josh's trusts are grantor trusts for income tax purposes, which means that their income is taxed to Ben and Josh, respectively. As a reminder, the 2011 Trusts are grantor trusts as to Leon.

Accordingly, because the notes issued to Ben and Josh from the 2011 Trusts reflect a loan between different taxpayers, interest income is taxed to Ben and Josh each year and there is no offsetting deduction available to Leon. We believe this tax liability could be eliminated if the loans between trusts were restructured and propose the following:

Step One: The BEB 2011 Trust and the JMB 2011 Trust each borrows funds from the LLC and gives the LLC a promissory note.

Step Two: The BEB 2011 Trust and the JMB 2011 Trust use the borrowed funds to pay off the notes held by Ben's trust and Josh's trust, respectively.

Results: The outstanding notes are between the LLC and the 2011 Trusts. Because each is the same taxpayer as Leon, the loans are not recognized for income tax purposes and no one is taxed on interest income. Ben and Josh's Trust will each hold cash to be invested.

Please let us know if you and your co-Trustees (who will also receive this memorandum) approve of the above proposals and whether you would like for us to arrange for its implementation. Of course, I am happy to answer any questions you may have.