

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
WOODBRIIDGE GROUP OF COMPANIES LLC, <i>et al.</i> , ¹	:	Case No. 17-12560 (KJC)
	:	
	:	(Jointly Administered)
	:	
Debtors.	:	Ref Docket Nos. 1563 & 1826
	:	

**STATEMENT OF THE AD HOC NOTEHOLDER GROUP
REGARDING (I) DEBTORS’ OBJECTION TO PROOF OF CLAIM 1216
AND (II) CONTRARIAN FUNDS LLC’S RESPONSE THERETO**

The Ad Hoc Group of Noteholders Formed Pursuant to January 23, 2018, Order [D.I. 357] (the “Noteholder Group”), by and through its undersigned counsel, respectfully states as follows with respect to (i) *Debtors’ Objection to Proof of Claim 1216* [D.I. 1563] (the “Claim Objection”) and (ii) the response of Contrarian Funds, LLC (“Contrarian”) [D.I. 1826] (the “Contrarian Response”):

PRELIMINARY STATEMENT

1. The Noteholder Group conditionally supports the Claim Objection, given its continued and substantial concerns about the risks to all Noteholders of unfettered, non-traceable trading. The Noteholder Group files this statement primarily (i) to explain the Noteholder Group’s concerns regarding claims trading, which were noted, but given short shrift, in the Contrarian Response, and (ii) to request that the Court take these concerns into account in its ruling if it decides not to sustain the Claim Objection. In addition, the Noteholder Group

¹ The last four digits of Woodbridge Group of Companies, LLC’s federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Boulevard #302, Sherman Oaks, California 91423. A complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses may be obtained on the website of the Debtors’ noticing and claims agent at www.gardencitygroup.com/cases/WGC.

believes it is appropriate to apprise the Court and other parties in interest of the status of the various liquidity alternatives the Noteholder Group has been pursuing for the benefit of Noteholders, given the suggestion in the Contrarian Response that claim trading is the only viable path to liquidity for Noteholders.

2. The Noteholder Group was at the early forefront of exploring ways for all Noteholder victims to have a fair opportunity to monetize their claims when needed, in particular for those most hard-hit by the massive Woodbridge fraud. Trading of claims on a fair, controlled, non-recourse basis was the initial focus of the Noteholder Group at the very outset of its formation. However, despite the concerted efforts and careful analysis outlined below, the Noteholder Group concluded that the risks to Noteholder victims of trading outweighed the possible benefits. In particular, the Noteholder Group believes it is unacceptable to allow Noteholder victims to be exposed to possible recourse and securities law exposure in connection with trading. As a result of these serious obstacles to a safe trading environment, the Noteholder Group promptly focused its efforts on an alternative liquidity source for Noteholders, in the form of a borrowing facility for Noteholders. The Noteholder Group, in collaboration with the Official Committee of Unsecured Creditors, is working on a potential liquidity facility with the goal of meeting the needs Noteholders may have for funds on an immediate basis, without the perils of trading as implicated by the Claim Objection.

BACKGROUND ON THE NOTEHOLDER GROUP

3. On December 18, 2017, the Ad Hoc Committee of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates (the “Movant Ad Hoc Committee”) filed a motion [D.I. 85] (the “Committee Appointment Motion”) pursuant to section 1102(a)(2) of the Bankruptcy Code for entry of an order directing appointment of an

official committee of Woodbridge noteholders (the “Noteholders”). The motion was opposed by the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) [D.I. 288]. On January 23, 2018, the Court entered an order approving a global resolution of several pending contested matters, including the Committee Appointment Motion [D.I. 357] (the “Settlement Order”).

4. On February 1, 2018, in accordance with the Settlement Order, the Movant Ad Hoc Committee formed the Noteholder Group [D.I. 470].

5. Under the Settlement Order, the Noteholder Group is “tasked with litigating and/or negotiating any aspects of Noteholder treatment in the cases,” including “traditional secured creditor protections such as adequate protections for the Noteholders and upon sales of properties the use of the sales proceeds.” (Sett. Ord. Ex. 1 ¶ 12.) In furtherance of these responsibilities, the Noteholder Group was invested with party-in-interest status under section 1109 of the Bankruptcy Code, as well as the right to perform such services as are in the interests of Noteholders. (*Id.* ¶ 13.)

LIQUIDITY UPDATE

6. The Noteholder Group supports the view that an efficient claims-trading market is important to creditors in bankruptcy. The Noteholder Group recognizes that Contrarian and its affiliates and/or predecessors have participated in the claims trading market for many years with integrity and, indeed, commends its stated desire to be part of providing liquidity for victims of the Woodbridge frauds.

7. As the Noteholder Group has learned from numerous inbound calls, many of the retail Noteholders were counting on the interest payments from their investments to fund their living expenses. Other Noteholders have expressed concern about possible adverse tax

consequences arising from the necessity to account for “required minimum distributions” from their retirement accounts if they continue to hold their Notes. Thus, some Noteholders have a critical need to receive cash sooner than the conduct of these cases will provide by distributions in cash or property readily convertible to cash.

8. The Noteholder Group’s professionals, at the direction of the Noteholder Group, engaged in an extensive effort to develop a satisfactory framework for trading of Notes and/or related bankruptcy claims, including dialog with other stakeholders and regulators. This framework contemplated extensive protections for Noteholder victims, exemptions or immunities from prospective securities law concerns for victims (discussed further below), and a useful measure of price and other transactional transparency that would encourage competition among buyers, thus establishing a fairer, more efficient market for claims. However, these efforts had not yielded a successful result by the time the Debtors chose to impose a moratorium on providing consent to the trading of Notes and Units on March 21, 2018 (the “Moratorium”). Given the obstacles encountered and the Debtors’ Moratorium, the Noteholder Group suspended its efforts with respect to a trading framework.

9. Originally in parallel with the pre-Moratorium efforts regarding trading of Notes, the Noteholder Group has also been working with the Creditors’ Committee and the other constituencies on arranging for a near-term consensual Notes liquidity facility and for long-term liquidity options for Noteholders. The near-term process is significantly advanced with very active interest from potential providers. As currently contemplated, Noteholders would have the option to take what would essentially be an advance on future distributions in the chapter 11 cases on account of their Notes, by means of a non-recourse loan (i.e., repayable solely from the bankruptcy distributions as and when made) at a market rate of interest. It is expected that the

overall cost to any given Noteholder would be meaningfully lower than the cost of selling to a traditional claims buyer, given such buyers' required rate of return on investments and the inherent risks of bankruptcy cases such as these. In the longer term, the chapter 11 plan outlined in the term sheet executed by the Noteholder Group, the Debtors, the Creditors' Committee, and the Ad Hoc Unitholder Group [D.I. 828] would provide for the conversion of Notes into fully-tradeable Class A Liquidation Trust Instruments before to the end of this calendar year.

SECURITIES CONCERNS ABOUT TRADING IN THE NOTES

10. Contrarian makes the statement: "Another case fiduciary has suggested to Contrarian that the Noteholders may be considered 'underwriters' of the Debtors in the sale of the Notes, but this position is frivolous." (Contrarian Response at 15, ¶ 37.) Unfortunately, it does not provide any support for this proposition or analysis of the relevant securities laws.

11. Having delved into this topic, the Noteholder Group is concerned that sales of Notes could introduce risks under the securities laws. Its counsel have shared this thinking with Contrarian so that it could understand the concern and propose a mutually acceptable solution. Unfortunately, the parties have not found a viable path forward on this issue.

12. The U.S. Securities and Exchange Commission ("SEC") has taken the position that the Notes are securities within the meaning of the Securities Act of 1933, as amended (the "Securities Act") and the rules and regulations ("Rules") promulgated thereunder and under the Securities Exchange Act of 1934.

13. Section 5 of the Securities Act prohibits any offer or sale of securities without registration unless an exemption from registration is available. Section 4(a)(1) of the Securities Act exempts from registration transactions by any person *other than* an issuer, underwriter, or

dealer. The Securities Act and the Rules provide for numerous other exemptions as well, but none of them are likely to apply to an offer or sale of the Notes by retail Noteholders.

14. Although it is clear that the Noteholders are not “issuers” or “dealers” with respect to the Notes, the term “underwriter” is broadly defined to include “any person who has purchased from an issuer with a view to . . . the distribution of any security, or participates . . . in any such undertaking” Securities Act §2(a)(11). Although the common conception of an underwriter may be the Wall Street investment bank that arranges a public offering, “individual investors who are not professionals in the securities business also may be ‘underwriters’ if they act as links in a chain of transactions through which securities move from an issuer to the public.” Rule 144, Preliminary Note. As a result, the Noteholder Group does not believe that any Noteholder can offer or sell its Notes to any other person without undertaking at least some risk of being found to have violated Section 5 of the Securities Act.

15. Such legal exposure is not trivial for the retirees and other “Main Street” investors that make up the majority of Noteholders. Section 12(a)(1) of the Securities Act provides that any person who offers or sells a security in violation of Section 5 shall be liable to the purchaser (i.e., Contrarian) for the consideration paid, with interest, less any income received thereon (i.e., “rescission damages”). Thus, without assurance that he or she is not acting as an underwriter, even if a Noteholder can find an opportunity to monetize his or her holdings, he or she could end up in a “no-win” scenario—required to relinquish any potential upside on the sale, but nevertheless stuck with all the potential downside if purchaser suffers “buyer remorse” at any time during the one-year period following a sale.

16. The Ad Hoc Noteholder Group’s professionals, at the time joined by the Creditors’ Committee’s professionals, on several occasions discussed the foregoing concerns

with relevant staff of the SEC. While the SEC staff expressed great sympathy for Noteholder and Unitholder victims, and appreciation for their potential need for near-term liquidity, the SEC staff could not offer any prospect of a No-Action Letter or other interpretative relief to the concerns noted above, and, indeed, took some pains to emphasize a view that the rescission rights of buyers of unregistered securities resold without the benefit of a proper exemption was vested by statute and not waivable, even by a sophisticated commercial entity such as Contrarian.

17. It thus comes as no surprise that Contrarian has nothing to offer on the securities law point other than hyperbole by using such words as “frivolous” and “absurd.” Rather than making such statements to the Court, Contrarian would be better served by using its resources to engage with the SEC to help find a solution that works for everyone. Make no mistake: the Noteholder Group does indeed want to find a path to liquidity for its constituency. That said, it does not wish to see the Noteholders’ troubles compounded by undertaking risk under the securities laws.

CONCLUSION

WHEREFORE, the Noteholder Group respectfully requests (i) that, if the Court is inclined to overrule the Claim Objection, it includes in its order findings that (A) the Berlingers are not “underwriters” for purposes of the Securities Act and Rules, and (B) Contrarian (together with its successors and assigns, if any) is judicially estopped from asserting any rights or remedies against Noteholders under federal or state securities laws; and (ii) that the Court grant such other and further relief as is just and proper.

Dated: June 1, 2018
Wilmington, Delaware

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