IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*,[1]	Case No. 17-12560 (KJC)
	(Jointly Administered)
Debtors.	**Ref. Docket No. 2958**

DEBTORS' OPPOSITION TO MOTION FOR STAY
PENDING APPEAL OF THE CONFIRMATION ORDER

Woodbridge Group of Companies, LLC ("WGC") and its affiliated debtors and debtors in possession (collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases") hereby oppose the *Motion of Lise La Rochelle and Other Noteholders for a Stay Pending Appeal of the Order Confirming Debtors' First Amended Joint Chapter 11 Plan of Liquidation* [Docket No. 2958] (the "Stay Motion"). In support of this opposition, the Debtors rely on the accompanying Declaration of Bradley D. Sharp ("Sharp Decl."), which may be supplemented by Mr. Sharp's testimony at the hearing, and the Court's *Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Liquidation of Woodbridge Group of Companies, LLC and Its Affiliated Debtors* [Docket No. 2903] (the "Confirmation Order").[2] The Debtors further respectfully represent as follows:

[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. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of this information may be obtained on the website of the Debtors' noticing and claims agent at www.gardencitygroup.com/cases/WGC, or by contacting the undersigned counsel for the Debtors.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to those terms by the Confirmation Order or by the chapter 11 plan attached thereto as Exhibit A (the "Plan").

PRELIMINARY STATEMENT

1. The Stay Motion is simply the latest example of an ever-expanding series of efforts by Lise La Rochelle and other clients of the Sarachek Law Firm (collectively, the "Sarachek Parties") to extort additional consideration for themselves at the expense of innocent victims of Robert Shapiro's Ponzi scheme. The Sarachek Parties are not entitled to additional consideration, and the Debtors, as fiduciaries, will do everything in their power to prevent the further victimization of investors by the Sarachek Parties.

2. The Sarachek Parties' efforts have already consumed substantial resources of the Debtors' estates (which otherwise would enhance recoveries for the defrauded investors) and of this Court, including in the form of multiple adversary proceedings, baseless objections to plan confirmation and to numerous motions, and other litigation. These efforts have been correctly rejected on the merits in every instance, including by dismissal of an adversary proceeding and overruling of confirmation objections for the reasons detailed in written opinions. *See In re Woodbridge Grp. of Cos., LLC*, --- B.R. ---, 2018 Bankr. LEXIS 3315 (Bankr. D. Del. Oct. 26, 2018) (the "Confirmation Opinion"); *La Rochelle v. Woodbridge Grp. of Cos., LLC (In re Woodbridge Grp. of Cos., LLC)*, --- B.R. ---, 2018 Bankr. LEXIS 3107 (Bankr. D. Del. Oct. 5, 2018) (the "Owlwood Adversary Opinion").

3. The Stay Motion is more of the same from the Sarachek Parties – it seeks confusing and ill-articulated relief, is supported by only the thinnest attempted justifications, and largely just ignores what has already occurred in the Chapter 11 Cases. In particular, the Stay Motion makes no real effort to grapple with the analysis of the Confirmation Opinion and the Owlwood Adversary Opinion, simply glosses over the significant harm that the Sarachek Parties' proposal will impose on defrauded investors, and ignores public interest considerations entirely.

4. In reality, the Sarachek Parties cannot satisfy ***any***, let alone all four, of the standards for obtaining a stay pending appeal under Bankruptcy Rule 8005. As such, the Stay Motion should be summarily denied. Nevertheless, as discussed below and as detailed in the Sharp Declaration, to the extent the Court is inclined to enter any stay, the Court should require that the Sarachek Parties post an appropriate bond of $74 million to protect against the substantial harm that will result from a stay including, without limitation, continued accrual of fees owed to the office of the United States Trustee for the District of Delaware (the "U.S. Trustee") in cases that cannot be closed, continued state tax and related fees for Debtors that cannot be dissolved, continued U.S. Trustee reporting costs, additional professional fees that would not be necessary if the Plan were fully consummated, and the depressive effect of bankruptcy on property values during a potentially lengthier liquidation process.

ARGUMENT

5. "A stay is an intrusion into the ordinary processes of administration and judicial review." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal quotation marks and citation omitted). Hence, the "party seeking a stay pending appeal carries a heavy burden." *In re Adelphia Commc'ns Corp.*, 333 B.R. 649, 659 (S.D.N.Y. 2005); *see also, e.g., United States v. Cianfrani*, 573 F.2d 835, 846 (3d Cir. 1978) (noting how a stay pending appeal is an "extraordinary" remedy). The Sarachek Parties must demonstrate that four factors all tilt in their favor: (1) a strong showing that they are likely to succeed on the merits; (2) that they will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *accord In re Tribune Co.*, 477 B.R. 465, 474 (Bankr. D. Del. 2012) (reciting similar criteria applicable to request for stay under Bankruptcy Rule 8005).

6. The Sarachek Parties have the burden of proof regarding each of these four factors. *See, e.g., In re W.R. Grace & Co.*, 475 B.R. 34, 205-06 (D. Del. 2012). "If a party fails to establish one of the four prongs, a court may deny the requested stay." *Morgan v. Polaroid Corp. (In re Polaroid Corp.)*, No. 02-1353, 2004 U.S. Dist. LEXIS 1917, at *3 (D. Del. Feb. 9, 2004) (citation omitted); *see also, e.g., In re Deep*, 288 B.R. 27, 30 (N.D.N.Y. 2003) (noting that "failure to satisfy one prong of the standard for granting a stay pending appeal dooms the motion"). Moreover, the Sarachek Parties must prove each of the four factors with "clear and satisfactory" evidence. *See, e.g., In re Charles & Lillian Brown's Hotel, Inc.*, 93 B.R. 49, 54 (Bankr. S.D.N.Y. 1988) (denying stay motion because movant's "affidavit lacks the clear and satisfactory evidence that is required under FRBP 8005").

7. Here, as more fully detailed below, the Sarachek Parties offer no evidence and have not otherwise established (and barely try to establish) ***any*** of the four factors. Separate and apart from the factors, however, the requested stay is illogical. In the unlikely event the Court is inclined to issue any stay, however, a substantial bond must be required.

I. The Stay Suggested by the Stay Motion Is Illogical and Unsupported

8. As a threshold matter, the stay suggested by the Sarachek Parties is illogical and not supported by any precedent in which any court has granted a similar stay.

9. The specific relief requested is "a stay pending appeal of the Confirmation Order to the extent it allows for Substantive Consolidation of the Debtors' companies and the extinguishing of inter-company liens." Stay Motion ¶ 6. The Sarachek Parties blithely assert that the Debtors could somehow "enact all other parts of the plan whether or not the liens are extinguished, including beginning to distribute assets from the liquidating trust" and also "apply for the right to make an interim distribution to all creditors." *Id.* ¶ 13.

10. This proposal makes no sense. Substantive consolidation and the extinguishment of Intercompany Claims and Intercompany Liens under the Plan are two elements of a far broader "comprehensive compromise and settlement negotiated by the Debtors the Committees" to be effectuated as a package under the Plan. *See* Plan § 3.11.2;[3] Sharp. Decl. ¶ 8. It is entirely sensible why the Plan would be structured in this fashion – until threshold questions about the nature and extent of putative intercompany claims and liens are resolved, the relative rights of all creditors cannot be determined and the additional settlement elements cannot be negotiated or effectuated. The Sarachek Parties have no explanation of what "interim distribution" could be calculated or distributed (or what the legal basis for such a distribution would be). The reason there is no explanation offered is that the practical reality is that holding resolution of the intercompany issues in abeyance would similarly freeze any distribution from being made to creditors until those predicate issues have been addressed. Sharp Decl. ¶¶ 13-14 (discussing general delay and also noting that registration of Litigation Trust Interests, an additional important element to put funds into the hands of necessitous creditors, cannot occur until Plan effectiveness).

11. The Sarachek Parties' proposal has other knock-on consequences throughout the Plan. For example, the Plan provides for the dissolution of 304 of the Debtors and the closing of their cases. *See* Plan §§ 5.2.3 & 11.22. If the Court is staying the Plan "to the extent it allows for Substantive Consolidation of the Debtors' companies," however, then presumably those entities cannot be dissolved and their cases cannot be closed, which will create significant resulting administrative costs. Sharp Decl. ¶ 19 (in excess of "$54 million over the 18 months that an appeal would [likely] be pending"). Likewise, if the Court is staying the extinguishing of

[3] Excerpts including the cited portions of the Plan are attached hereto as a consolidated **Exhibit 1** for ease of reference.

Intercompany Liens under the Plan, then it is also effectively staying the parts of the Plan that would vest the Wind-Down Assets in the Wind-Down Entity on a free and clear basis and provide the Wind-Down CEO with authority to administer those assets on such a basis. *See, e.g.*, Plan §§ 5.3.3 & 5.3.4. *Id.* ¶¶ 18 (discussing impact on sales of real estate) & 21 (discussing negative impact on realization from real estate sales of $20-30 million).

12. At day's end, if the Court were to grant the stay requested by the Sarachek Parties, the result would be that the Debtors cannot proceed to consummate the Plan. Although (probably deliberately) not styled as such, the end effect would be the same as a categorical stay of the entire Confirmation Order, because the elements the Sarachek Parties attack are linchpin aspects that form the foundation on which the rest of the Plan was built. As such, the Court should approach the Stay Motion as if it requested the categorical stay that it would create. The Court should also be mindful of the ***extraordinary*** creditor support for the Plan, which was accepted by 5,715 Noteholders in Class 3 (94.82% in amount and 95.12% in number), 974 Unitholders in Class 5 (96.77% in amount and 97.01% in number), and 38 General Unsecured Creditors (99.84% in amount and 97.44% in number). *See* Docket Nos. 2836 & 2855.

II. None of the Four Required Factors Is Satisfied Here

13. The Sarachek Parties make a perfunctory effort to satisfy the required four factors, offering little in the way of analysis or case citation and no evidence whatsoever. Indeed, the Sarachek Parties' effort is so perfunctory that some elements, such as where the public interest lies, are not discussed ***at all***.

14. Such a cursory attempt cannot satisfy the heavy burden the Sarachek Parties bear to affirmatively establish all of the necessary elements. Therefore, the Court could conclude that the Sarachek Parties have failed to make even a *prima facie* case for a stay pending appeal and

deny the Stay Motion out of hand. To the extent the Court is inclined to go further, however, it is clear that ***none*** of the four factors weigh in favor of the Sarachek Parties.

A. The Sarachek Parties Have Not Shown They Will Succeed on the Merits

15. A strong showing that the Sarachek Parties are likely to succeed on the merits requires more than simply arguing or rearguing legal or factual issues. Rather, "[l]ikelihood of success on the merits means that a movant has a 'substantial case,' or a strong case on appeal." *Coast Cities Truck Sales, Inc. v. Navistar Int'l Transp. Co. (In re Coast Cities Truck Sales, Inc.)*, 147 B.R. 674, 676 (D.N.J. 1992) (citing *In re The Columbia Gas Sys., Inc.*, No. 92-127, 1992 U.S. Dist. LEXIS 3253, at *4 (D. Del. Mar. 10, 1992)); *see also, e.g.*, *In re Pub. Serv. Co.*, 116 B.R. 347, 349 (Bankr. D.N.H. 1990) (requiring a "substantial case" or "strong case on appeal").

16. Here, the Sarachek Parties appear to want to pursue two contentions on appeal (i) the Court erroneously approved substantive consolidation of certain Debtors under or in connection with the Plan and (ii) the Court erroneously approved a settlement that, among many other things, resolved issues regarding the validity of certain intercompany claims and liens. Because the challenges are to fact-driven issues that implicate the Court's findings of fact, the review on appeal will be for clear error and the Court's exercise of discretion or abuse thereof. *See, e.g.*, *In re Cont'l Airlines*, 203 F.3d 203, 208 (3d Cir. 2000).[4] As discussed in turn below, there was no error and both rulings are amply supported by the record.

[4] Notably, when the Court asked counsel for the Sarachek Parties if he wished to present any evidence of his own at the Confirmation Hearing, counsel declined to do so. *See* Oct. 24, 2018 Hr'g Tr. at 56:18-20. The chances of convincing any appellate court that the Court made clear error in its findings "must be deemed slim" when an appellant failed to present any evidence. *E.g.*, *In re Red Mountain Mach. Co.*, 451 B.R. 897, 905-06 (Bankr. D. Ariz. 2011) (noting that the "likelihood of [appellant] convincing an appellate court that [the bankruptcy court] made clear error" in its factual findings "is certainly not great" and further noting that the chances of success on appeal "must be deemed slim" where the appellant failed to present any evidence); *see also, e.g.*, *In re Motor Coach Indus. Int'l, Inc.*, No. 08-12136 (BLS), 2009 U.S. Dist. LEXIS 10024, at *10 (D. Del. Feb. 10, 2009) (holding that due to the creditors' committee's failure to present evidence in support any of its factual arguments on the record, it failed to carry its burden to prove that a stay pending appeal was justified).

(a) Substantive Consolidation

17. The Court concluded "that substantive consolidation in the Plan is appropriate under the principals and holding of *Owens Corning*," 419 F.3d 195 (3d Cir. 2005). Confirmation Opinion, 2018 Bankr. LEXIS 3315, at *35. More specifically, the Court concluded that the record included "ample evidence that the Debtors' assets were hopelessly commingled, and their business affairs were entangled," which satisfies the second rationale for substantive consolidation that is articulated in *Owens Corning*. *See id.* at *30-31; *see also, e.g.*, Docket No. 2829 ¶¶ 11-19 (Sharp confirmation declaration providing detailed record in support of the proposed substantive consolidation); Oct. 24, 2018 Hr'g Tr. at 45:16 – 46:18 & 51:9 – 52:8 (live testimony from Mr. Sharp further amplifying about this issue). The Court further explained how the Ponzi scheme run by Shapiro in this case creates unique "facts and circumstances" that additionally "comport with the principles discussed in *Owens Corning*" for four separate reasons. *See* Confirmation Opinion, 2018 Bankr. LEXIS 3315, at *34-35. The Court finally noted that "[a] substantial majority of the creditors constituencies voted in favor of the Plan, which includes substantive consolidation," thereby situating the case within the creditor consent rationale for substantive consolidation under *Owens Corning* and distinguishing other cases in which the affected classes of creditors voted to reject a plan. *See id.* at *35.

18. The Sarachek Parties apparently intend to challenge the Court's decision to approve substantive consolidation consistent with *Owens Corning* on appeal.[5] Yet the Stay

[5] Courts are not in agreement about the standard of review applicable to an appeal from an order approving substantive consolidation. Some courts use an "abuse of discretion" standard. *See, e.g.*, *Reider v. FDIC (In re Reider)*, 31 F.3d 1102, 1104-05 (11th Cir. 1994); *Boellner v. Dowden*, No. 4:14CV00056, 2014 U.S. Dist. LEXIS 188432, at *1-2 (E.D. Ark. June 6, 2014). Other courts use a standard under which the "Bankruptcy Court's findings of fact are reviewed for clear error" while "[q]uestions of law and mixed questions of law and fact are generally subject to de novo review." *See, e.g., In re Republic Airways Holdings Inc*., 582 B.R. 278, 281 (S.D.N.Y. 2018). Under either standard, however, the Court's factual findings about aspects of the record that support substantive consolidation would be entitled to significant deference.

Motion never mentions *Owens Corning* or any of its rationales. Instead, the Sarachek Parties apparently intend to argue that substantive consolidation here somehow violates the principles expressed in the (non-binding, unlike *Owens Corning*) decision in *In re Gulfco Inv. Corp.*, 593 F.2d 921 (10th Cir. 1979), regarding how substantive consolidation cannot "defeat the security of secured creditors." *See* Stay Motion ¶ 8.

19. As an initial matter, this argument is misplaced. The substantive consolidation proposed under the Plan does not "defeat" any secured claim. To the contrary, the Plan is express that substantive consolidation is done "subject to the rights of Allowed Other Secured Claims." *See* Plan § 3.11.2(c); *see also, e.g.*, Docket No. 2829 ¶ 19 ("It is also my understanding that the Plan makes clear that the proposed substantive consolidation into WGC will not affect the rights of the few creditors that may have valid, perfected security interests in specific real property owned by the Other Debtors as a result of directed interactions involving only such specific property, including, for example, mechanics' lien holders, and tax lien holders."). To the extent the suspect and challenged Intercompany Liens are "defeated" by the Plan, it is pursuant to an element of the global settlement that is separate and distinct from substantive consolidation, and involves not lien invalidation per se but lien collapse as the result of the underlying claims being invalid. *Compare* Plan § 3.11.2(c), *with id.* § 3.11.2(g). As such, any argument based on the *Gulfco* case is wildly inapposite to what the Plan actually does.

20. Because they fail to discuss the appropriate legal standards under *Owens Corning* or the actual ruling by the Court applying those standards to the unique facts that have been proven here, the Sarachek Parties have not established a "substantial" or "strong" (or really any) position on an appeal challenging this Court's approval of substantive consolidation.

(b) Elimination of Heavily Contested Intercompany Claims and Liens

21. The Court concluded that the various elements of the Plan's settlements, including the elimination of Intercompany Claims and Intercompany Liens, were reasonable and satisfied the standards for approval of settlements, which are the same under Bankruptcy Rule 9019 or as part of a Plan. *See* Confirmation Opinion, 2018 Bankr. LEXIS 3315, at *18-27. The Court specifically concluded that "[t]here are complex multi-layered issues involving the intercompany liens that the parties have carefully and vigorously negotiated," that a "comprehensive settlement of the issues, including the elimination of the intercompany liens, clearly falls within a range of reasonableness," and that the settlement advanced the paramount interest of creditors in light of the overwhelming votes in favor of the Plan. *See id.* at *23-27.

22. It has long been the law that a bankruptcy plan may settle disputed intercompany claims on terms that are fair and equitable, including in particular claims that are asserted by one debtor's estate against another debtor's estate. *See, e.g.*, *In re Midland United Co*., 58 F. Supp. 667, 670-85 (D. Del. 1944) (endorsing findings of the Securities and Exchange Commission that bankruptcy plan, which resolved substantial pending intercompany litigations, was fair and equitable). Indeed, settlements of this sort are a common aspect of modern bankruptcy practice in multi-debtor cases. *See, e.g.*, *Adelphia Recovery Trust v. Bank of Am., N.A.*, 390 B.R. 80, 87-88 (S.D.N.Y. 2008); *In re Pac. Energy Res. Ltd*., No. 09-10785 (KJC), 2010 Bankr. LEXIS 5300, at *24-25 (Bankr. D. Del. Dec. 15, 2010).

23. The Sarachek Parties apparently want to challenge on appeal the settlement of hotly-disputed Intercompany Claims and Intercompany Liens under the Plan.[6] Yet the Sarachek

[6] "[T]he standard of review for a compromise entered under Bankruptcy Rule 9019 is an abuse of discretion standard." *In re Summit Metals, Inc*., 477 F. App'x 18, 21 (3d Cir. 2012) (citing *Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006)).

Parties offer no discussion of the standards for approval of a settlement under *Myers v. Martin (In re Martin)*, 91 F.3d 389 (3d Cir. 1996). Nor is there any discussion of material in the record casting significant doubt on the validity of the Intercompany Liens and Intercompany Claims, such as the allegations in the complaint filed by the Unsecured Creditors' Committee or live testimony at the Confirmation Hearing that the putative intercompany transactions were ones where "there is not any semblance to reality" because "the note between the property-owning debtor and the fund [debtor had] no consideration as exchanged for that note. ***It's a fictitious piece of paper***." Oct. 24, 2018 Hr'g Tr. at 52:22 – 53:8 (emphasis added).

24. Instead, the Sarachek Parties simply recite the Tenth Circuit's holding in *Gulfco* regarding the effects of substantive consolidation on valid, uncontested liens held by non-debtors. The Court already considered this exact argument, however, and correctly articulated multiple reasons why *Gulfco* is inapplicable and inapposite, including because (i) *Gulfco* did not involve "the elimination of the debtor entities' intercompany liens through a global settlement in a plan," but instead involved unavoidable external liens securing valid claims held by non-debtors and (ii) *Gulfco* did not involve "fraud in the form of a massive Ponzi scheme" that made the applicable liens ones that were "disputed." *See* Confirmation Opinion, 2018 Bankr. LEXIS 3315, at *22-25.

25. The Sarachek Parties cite no case law suggesting *Gulfco* is applicable in this context, let alone that similar principles are compelled under any Third Circuit authority. Rather, they simply state that "the principal [sic] of *Gulfco* still is precedent" and thus "to allow liens to be extinguished without an adversary proceeding violates the Bankruptcy Code." Stay Motion ¶ 10. This just misses fundamental points, however – there are no legitimate third-party liens that are destroyed by the Plan. Rather, there are hotly disputed ***intercompany claims*** – and their

correlative liens – that are resolved as one part of a comprehensive settlement, as bankruptcy plans have properly done for decades. This is the critical distinction already articulated by the Court, and it is insufficient for the Sarachek Parties simply to rehash arguments that were previously considered and rejected. *See In re W.R. Grace*, 475 B.R. at 206 (denying stay pending appeal when appellant "once again rehashes the allegations it previously argued at length"); *In re Trans World Airlines, Inc.*, No. 01-0056, 2001 Bankr. LEXIS 722, at *8-10 (Bankr. D. Del. Mar. 16, 2001) (denying stay pending appeal when movants presented the same arguments previously addressed by extensive testimony and oral argument); *In re Olick*, No. 96-784, 1996 U.S. Dist. LEXIS 7391, at *4 (E.D. Pa. May 29, 1996) (denying stay when movant "has not presented any arguments or authority not considered previously by this court").

26. At bottom, the Sarachek Parties appear highly confused about what the Plan actually does.[7] They fail to appreciate the reasoning contained in the Confirmation Opinion, and they certainly provide no substantive argument or evidence to suggest they will convince an appellate court that this Court abused its discretion by approving a comprehensive settlement under the Plan that included as one element a resolution of substantial pending disputes regarding the propriety of the Intercompany Claims and Intercompany Liens. This is not a "strong" case for success on appeal, but rather is no case at all.

27. In sum, the Sarachek Parties have not made a "strong" showing that they are likely to succeed in any appellate challenge to the Confirmation Opinion. To the contrary, given

[7] This is not the only instance of deep confusion on the Sarachek Parties' part. For example, they attempt to utilize the decision in *Neilson v. Chang (In re First T.D. & Inv. Inc.)*, 253 F.3d 520 (9th Cir. 2001), to support the conclusion that "security interests could be perfected" in a Ponzi scheme scenario. *See* Stay Motion ¶ 9. *First T.D.* is a chapter 7 case that has nothing to do with confirmation of a plan or approval of a settlement of disputed intercompany claims under a plan, but instead addresses the scope of the "strong arm" powers under Bankruptcy Code section 544(a). *First T.D.* does bear on certain of the theories that the Sarachek Parties asserted in the Owlwood adversary proceeding, which the Court correctly rejected, but it has no relevance whatsoever to whether the settlement proposed under the Plan satisfies the *Martin* factors. The Sarachek Parties are conflating apples and bicycle tires.

the high standards of review, substantial supporting record, and controlling authority grounding the Court's decision, the Sarachek Parties have no realistic chance of success on any appeal, let alone a "strong" or "substantial" case. Their failure to satisfy this first factor is itself sufficient reason to deny the Stay Motion.

B. The Sarachek Parties Will Not Be Irreparably Injured Absent a Stay

28. The Sarachek Parties devote a single paragraph to attempting to show why they "will be irreparably injured without a stay." Stay Motion ¶ 12. The putative injury is that their appeal of the Owlwood Adversary Opinion is still pending and "[s]hould the Court allow the substantive consolidation of portions of the Confirmation Order to remain in full effect and the liens to be extinguished, the Appeal may be rendered moot." *Id.*

29. The Debtors agree that consummation of the Plan could indeed moot some or all of the issued raised in the pending appeal from the Owlwood Adversary Opinion. Nevertheless, legions of decisions make clear that "the risk that an appeal may become moot does not by itself constitute irreparable injury." *Acton v. Fullmer (In re Fullmer)*, 323 B.R. 287, 304 (Bankr. D. Nev. 2005) (citing ten cases). The law in this Circuit is in full accord. *See, e.g.*, *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 658 (3d Cir. 1991) ("Certainly the fact that the decision on the stay may be dispositive of the appeal in some cases is a factor that an appellate court must consider, but that alone does not justify pretermitting an examination of the nature of the irreparable injury alleged and the particular harm that will befall the appellant should the stay not be granted."); *Winters Nursery LLC v. Color Spot Holdings, Inc. (In re Color Spot Holdings, Inc.)*, No. 18-1246, 2018 U.S. Dist. LEXIS 141221, at *11 (D. Del. Aug. 21, 2018) ("[T]he possibility that an appeal may become moot does not alone constitute irreparable harm for purposes of obtaining a stay."); *In re W.R. Grace*, 475 B.R. at 207 n.3 ("Here, by contrast, [the movant] points to equitable mootness as the sole basis of its alleged irreparable

injury. Reliance on this factor alone, however, is insufficient to establish irreparable injury for purposes of a stay."). After all, were this not the rule, the requirement that the appellant demonstrate that it will be irreparably injured absent a stay pending appeal would be automatically subverted because ***every*** appeal of a confirmation order would mandate that there be a stay. *See, e.g., In re Baldwin United Corp.*, 45 B.R. 385, 386 (Bankr. S.D. Ohio 1984).

30. Moreover, the Sarachek Parties cannot establish irreparable harm since their alleged harm is purely economic. *See In re Tribune Co.*, 477 B.R. at 477 ("Irreparable harm is an injury that cannot be redressed by a legal or equitable remedy following a trial." (citing *In re L.A. Dodgers LLC*, 465 B.R. 18, 34 (D. Del. 2011))). In the exceedingly unlikely event that the Sarachek Parties prevail on their appeal, there may be a remedy to redress any economic injury, but even if there is not, the risk of non-payment on account of purely economic harm does not constitute irreparable injury. *See, e.g., In re Sabine Oil & Gas Corp.*, 551 B.R. 132, 145 (Bankr. S.D.N.Y. 2016) (rejecting movant's assertion that it will be irreparably harmed due to the debtor's potential inability to pay damages and holding that "the [inability to pay] of a debtor counterparty standing alone does not support a claim of irreparable injury sufficient to satisfy the standard for a stay pending appeal").

31. Because the only asserted injury that may befall the Sarachek Parties is not irreparable injury as a matter of law, the Sarachek Parties have failed to satisfy this factor.

C. Issuance of a Stay Will Substantially Injure Other Parties

32. If the Plan is not consummated, numerous victims of Shapiro's Ponzi scheme who voted overwhelmingly to accept the Plan will see their distributions delayed while the Sarachek Parties' meritless appeals wind their way through the appellate process. Sharp Decl. ¶¶ 12-14. Such a delay in distribution to legitimate creditors constitutes "substantial harm to other parties." *In re F.G. Metals, Inc.*, 390 B.R. 467, 478 (Bankr. M.D. Fla. 2008); *see also, e.g., In re Pub.*

Serv. Co., 116 B.R. at 350 ("[T]he delay caused to creditors receiving their payments is also a significant harm warranting denial of a stay."); *In re Charter Co*., 72 B.R. 70, 72 (Bankr. M.D. Fla. 1987) (claimants will "suffer substantial harm as a result of a stay because of the resulting delay in their receipt of settlement funds"). In addition to delaying distributions, there will likely be a diminution in sale proceeds, thus depressing distributions. Sharp Decl. ¶¶ 15-18 & 21 ($20-30 million impact on sale proceeds).

33. As discussed in Section I above, the practical effect of the Stay Motion will be to bar consummation of the entire Plan despite the Sarachek Parties' unsupported contention that some unspecified "interim distributions" might be made. This delays payments to victims of Shapiro's Ponzi scheme (including ***Mr. Sarachek's own clients***), many of whom are retired, elderly, or otherwise in need of timely liquidity sources. Sharp Decl. ¶¶ 10 & 23. The need to make distributions to the victims of Shapiro's Ponzi scheme as quickly as possible has been a significant motivating factor for the Debtors and all three Committees and it was a critical consideration as the Plan was formulated and prosecuted. *See* Oct. 24, 2018 Hr'g Tr. at 18:20 – 20:18, 87:7 – 88:12, 90:5-13, 91:13-25 & 97:18-22; Sharp Decl. ¶ 11. These timing considerations were likely a material driver for many of the thousands of investors who voted overwhelmingly to support the Plan. *Id.* The Sarachek Parties' proposal would thwart the reasonable expectations of these thousands of creditors and, indeed, effectively victimize them yet again. The Sarachek Parties will have no countervailing injury.

34. In addition, the Plan provides for the issuance of Liquidation Trust Interests that will be registered under the Exchange Act in order to make them tradeable. *See* Plan § 5.4.12. This aspect of the Plan is another key feature of the settlement among the Debtors and the three Committees and was designed to permit defrauded investors to cash out early at reasonable,

market-generated non-distressed prices. Sharp Decl. ¶ 13. If the Plan cannot be consummated, this liquidity opportunity will not be available to Noteholders or Unitholders, which yet again imposes an injury on many of those investors as a result of the proposed stay. *Id.* ¶ 14.

35. Finally, the issuance of a stay pending appeal is particularly inappropriate when, as here, substantial prejudice would result by staying plan consummation for an appeal that is unlikely to succeed on the merits. *See In re First Magnus Fin. Corp.*, No. 07-01578, 2008 Bankr. LEXIS 888, at *3 (Bankr. D. Ariz. Mar. 18, 2008) ("Both creditors and the Debtor need to maintain the positive momentum of this case, and continue the liquidation and litigation progress which was set in motion before and since confirmation. This effort to maximize monetary recoveries must not be stalled by an appeal which, in the court's view, has little merit and, based on the evidence (or lack thereof), offers only a pale alternative to the well-conceived plan approved by the court. Delay harms everyone. Delay which sidetracks progress serves no one. Paralysis of progress invites financial disaster to the creditor body.").

D. The Public Interest Is Advanced by Consummation of the Plan

36. The Sarachek Parties ***ignore*** the fourth factor, offering no discussion whatsoever of the public interest, let alone a convincing case for why the public interest supports their proposal. The explanation for this oversight is obvious – the Sarachek Parties fail to discuss public interest considerations because those considerations support consummating the Plan.

37. As the Supreme Court recently emphasized, "expedition is always an important consideration in bankruptcy." *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, 1694 (2015). It was certainly an important factor in the complex settlement negotiations that produced the Plan. Sharp Decl. ¶¶ 9-11. Favoring prompt bankruptcy resolution is not a new rule; it has been a

bedrock principle of bankruptcy law for centuries.[8] And, based on this principle, there is a "great public policy in ensuring that this bankruptcy case continue to an orderly, efficient resolution to maximize and preserve the estate's assets." *In re Bankr. Appeal of Allegheny Health, Educ. & Research Found.*, 252 B.R. 309, 331 (W.D. Pa. 1999); *see also, e.g.*, *Century Glove, Inc. v. First Am. Bank*, 860 F.2d 94, 98 (3d Cir. 1988) (highlighting how "issues central to the progress of the bankruptcy petition, those likely to affect the distribution of the debtor's assets, or the relationship among the creditors, should be resolved quickly" (citation and quotation marks omitted)). This "great public policy" will be undermined if the Confirmation Order is stayed and the streamlining of the Debtors' estates is delayed.

38. To the extent that there is any public interest in favor of the Sarachek Parties, that interest is easily outweighed by the interests of other creditors. In the context of a stay pending appeal of a confirmation order, "the public interest requires bankruptcy courts to consider the good of the case as a whole, and not individual creditors' investment concerns." *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 284 (Bankr. S.D.N.Y. 2007) (holding that "the public interest . . . strongly dictate[s] against any further extension of the stay" because "[i]t would be grossly unconscionable . . . to thwart the will of such an overwhelming majority [of voting creditors] to accommodate the desires of such a small minority, who are simply dissatisfied with the Settlement under the Plan").

[8] *See, e.g.*, *Katchen v. Landy*, 382 U.S. 323, 328-29 (1966) (describing longstanding recognition "that a chief purpose of the bankruptcy laws is 'to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period'" (quoting *Ex parte Christy*, 44 U.S. (3 How.) 292, 312 (1845))); *Wiswall v. Campbell*, 93 U.S. (3 Otto) 347, 350-51 (1876) (emphasizing how "[p]rompt action is everywhere required by law," and that this principle requires quick resolutions of claims against a bankruptcy estate, as "[w]ithout it there can be no dividend"); *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 346-47 (1875) (discussing how "[i]t is obviously one of the purposes of the Bankrupt law, that there should be a speedy disposition of the bankrupt's assets," which is a goal "only second in importance to securing equality of distribution").

39. Issuance of a stay is particularly outside the public interest when, as here, there are profound doubts as to the merits of an appeal. *See, e.g.*, *ePlus, Inc. v. Katz (In re Metiom, Inc.)*, 318 B.R. 263, 272 (S.D.N.Y. 2004) ("[T]he public interest in the expeditious administration of bankruptcy cases as well as in the preservation of the bankrupt's assets for purposes of paying creditors, rather than litigation of claims lacking a substantial possibility of success, outweighs the public interest in resolving the issues presented here on appeal."); *In re Baker*, No. 05-3487, 2005 U.S. Dist. LEXIS 36969, at *31-32 (E.D.N.Y. Aug. 31, 2005) ("Having determined that the Debtor is unlikely to succeed on appeal, I find that the public interest is better served by allowing distributions under the Plan to proceed in an expeditious manner.").

40. In sum, the Sarachek Parties did not even try to show, and thus have necessarily failed to show, that the issuance of a stay pending appeal will serve, rather than disserve, the public interest. Indeed, as detailed above, the Sarachek Parties have failed to satisfy ***even one*** of the four factors necessary for a stay. As such, the Stay Motion should be denied in its entirety.

III. In the Alternative, If the Court Determines that a Stay Pending Appeal Should Be Issued, the Sarachek Parties Should Be Required to First Post a Significant Bond

41. Even were this Court to find that the Sarachek Parties have met the heavy burden necessary for the issuance of a stay pending appeal (which they plainly have not), it is imperative that the Court condition any stay on the posting of a supersedeas bond in an amount sufficient to protect the Debtors, their creditors, and other stakeholders against the potential harm they may suffer as a result of or during the stay.

42. "Bankruptcy Rule 8005 allows the Court, in its discretion, to condition a stay pending appeal on the filing of a bond. The purpose of Rule 8005 is to protect the adverse party from potential losses resulting from the stay." *In re United Merchants & Mfrs., Inc.*, 138 B.R.

426, 430 (D. Del. 1992) (citations omitted). The amount of the bond not only protects parties in interest from potential loss as a result of an ineffectual appeal, but also limits those parties' ability to recover for damages incurred as a result of the pendency of the appeal. *See Edlin v. M/V Truthseeker*, 69 F.3d 392, 394 (9th Cir. 1995) ("[R]ecovery for damages incurred during the pendency of an appeal is limited to the amount of the supersedeas bond."). Fairness to all parties in interest who may be harmed as a result of the stay pending appeal requires that the amount of any supersedeas bond be set at a level that will be sufficient to cover all potential harms. *E.g.*, *ACC Bondholder Grp. v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.)*, 361 B.R. 337, 351 (S.D.N.Y. 2007) ("If a stay pending appeal is likely to cause harm by diminishing the value of an estate or 'endanger [the non-moving parties'] interest in the ultimate recovery,' and there is no good reason not to require the posting of a bond, then the court should set a bond at or near the full amount of the potential harm to the non-moving parties." (citation omitted)).

43. As detailed in the Sharp Declaration, and as Mr. Sharp can elaborate in his testimony, in the event that a stay is granted, the Debtors could sustain a significant loss of value. The estimated bond amounts primarily include the following components of harm:

- Reduced sale proceeds from the sale of the Debtors' real properties in the amount of $20 million or more.
- U.S. Trustee fees for 306 Debtors rather than for only two, resulting in additional fees of $1 million per quarter for six quarters, totaling $6 million.
- California state taxes for 306 entities rather than for only two, resulting in additional payments to the California Franchise Tax Board of $243,200 per year ($800 minimum tax per entity, whether or not a taxpayer or pass-through) for two calendar years, 2019 and 2020 totaling $486,400.[9]

[9] These fees are generally payable if an entity is in existence for even a single day during a year. It is uncertain whether the Plan can go effective in 2018, avoiding the payment of 2019 fees. The issuance of a stay would assure that effectiveness in 2018 could not happen.

- Additional costs incurred in preparing monthly operating reports for 306 Debtors rather than for only two in the estimated amount of $5,000 per month as a result, which for 18 months totals $90,000.

- Fees and costs for professionals (lawyers and financial advisors) for the three Committees. These expenses (none of which would otherwise be incurred) will likely run at least $950,000 per month for each month that the Plan does not go effective. For 18 months the total likely harm is $17.1 million.

- Increased fees and costs for Debtors' professionals, which will be substantially higher if the Plan does not go effective. These additional expenses will likely run at least $1.7 million per month. For 18 months the total likely harm is $30.6 million.

See Sharp Decl. ¶¶ 15-22.

44. Therefore, to protect the Debtors, creditors, and other key stakeholders against the harms discussed above, and even assuming that the appeal is resolved through the Court of Appeals level in only 18 months (an optimistic estimate since the actual time could certainly be longer to fully complete the appellate process through a decision by the Third Circuit Court of Appeals), the Debtors submit that the supersedeas bond amount should be at least $74 million, composed of approximately $54 million in increased administrative costs and $20 million in potential erosion of the real property portfolio. *See id.* ¶ 22. Notably this amount does not even take into account the additional harm that could occur if there is a turndown in real estate prices. *Id.* ¶¶ 17-18 & 22. Neither would it compensate the victims of Shapiro's Ponzi scheme for the significant delays that would result from a stay, including the time value of money that they would not receive until a much later day. *See id.* ¶ 23. Given the ages of the victims, this could mean many would never personally receive the distributions. As such, the Court could appropriately determine in its discretion to further increase the amount of the required bond in order to provide a potential source of recovery for victims who could be severely harmed without justification by the Sarachek Parties' continuing and unwarranted behavior regarding these Chapter 11 Cases.

CONCLUSION

For all the foregoing reasons, the Debtors respectfully request that the Stay Motion be denied in its entirety and request such other and further relief as is just and appropriate.

Dated: November 19, 2018
Wilmington, Delaware

/s/ Ian J. Bambrick

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Exhibit 1

[Excerpts from the Plan including cited portions]

distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; *provided, however*, that the Debtors, the Wind-Down Entity, and the Liquidation Trust do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

(d) The Plan shall not expand the scope of, or alter in any other way, the rights and obligations of the Debtors' insurers under their policies, and the Debtors' insurers shall retain any and all defenses to coverage that such insurers may have, including the right to contest or litigate with any Person the existence, primacy, or scope of available coverage under any allegedly applicable policy. The Plan shall not operate as a waiver of any other Claims the Debtors' insurers have asserted or may assert in any proof of claim or of any objections or defenses to any such Claims.

3.11 Comprehensive Settlement of Claims and Controversies.

3.11.1 Generally. Pursuant to Bankruptcy Code sections 1123(a)(5), 1123(b)(3), and 1123(b)(6), as well as Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims and controversies relating to the rights that a Holder of a Claim or an Equity Interest may have against any Debtor with respect to any Claim, Equity Interest, or any Distribution on account thereof, as well as of all potential Intercompany Claims, Intercompany Liens, and Causes of Action against any Debtor, including the Unsecured Creditors' Committee Action. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that all such compromises or settlements are (i) in the best interest of the Debtors, the Estates, and their respective property and stakeholders; and (ii) fair, equitable, and reasonable. This comprehensive compromise and settlement is a critical component of the Plan and is designed to provide a resolution of myriad disputed intercompany and intercreditor Claims, Liens, and Causes of Action that otherwise could take years to resolve, which would delay and undoubtedly reduce the Distributions that ultimately would be available for all Creditors.

3.11.2 Implementing Settlement Elements. Pursuant to the comprehensive compromise and settlement negotiated by the Debtors and the Committees, the Plan effectuates, among other things, the following:

(a) On the Effective Date, unless held by Excluded Parties or Disputing Claimants (in which case such Claims are Disputed Claims), all Class 3 Standard Note Claims and all Class 5 Unit Claims are deemed Allowed under the Plan as set forth in the Schedule of Principal Amounts and Prepetition Distributions;

(b) To the extent, and only to the extent, a Claim is Allowed by subparagraph (a) above, the following Liquidation Trust Actions are waived and released as to the applicable Noteholder or Unitholder (that is not a Disputing Claimant): (i) Liquidation Trust Actions to avoid or recover a Prepetition Distribution with respect to the subject Allowed Claim and (ii) Liquidation Trust Actions to avoid or recover a Debtor's prepetition payment of consideration representing the return or repayment of the principal of any Note or any Unit (which consideration is applied as such prior to determining the

Outstanding Principal Amount for the Notes or Units relevant to the applicable Allowed Claim);

(c) In accordance with Section 5.8 of the Plan, subject to the rights of Allowed Other Secured Claims, the Fund Debtors will be substantively consolidated into Woodbridge Mortgage Investment Fund 1, LLC and the Other Debtors will be substantively consolidated into Woodbridge Group of Companies, LLC;

(d) The Holders of Allowed Claims in Class 3 (Standard Note Claims), Class 4 (General Unsecured Claims), Class 5 (Unit Claims), and Class 6 (Non-Debtor Loan Note Claims) will receive the treatment provided for such Holders under the Plan;

(e) The Liquidation Trust will be created to most effectively and efficiently pursue the Liquidation Trust Actions for the collective benefit of all the Liquidation Trust Beneficiaries (as well as to own the membership interests of the Wind-Down Entity, establish and hold the Distribution Reserves, and receive and distribute to Noteholders, Holders of General Unsecured Claims, and Unitholders holding Liquidation Trust Interests the net proceeds of the liquidation of Wind-Down Assets by the Wind-Down Entity remaining after payment of Wind-Down Expenses, Liquidation Trust Expenses, and certain other Claims, all in accordance with the Plan);

(f) Findings will be sought in the Confirmation Order that (i) beginning no later than July 2012 through December 1, 2017, Robert H. Shapiro used his web of more than 275 limited liability companies, including the Debtors, to conduct a massive Ponzi scheme raising more than $1.22 billion from over 8,400 unsuspecting investors nationwide; (ii) the Ponzi scheme involved the payment of purported returns to existing investors from funds contributed by new investors; and (iii) the Ponzi scheme was discovered in December 2017; and

(g) Any Intercompany Claims that could be asserted by one Debtor against another Debtor will be extinguished immediately before the Effective Date with no separate recovery on account of any such Claims and any Intercompany Liens that could be asserted by one Debtor regarding any Estate Assets owned by another Debtor will be deemed released and discharged on the Effective Date; *provided, however*, that solely with respect to any Secured Claim of a non-debtor as to which the associated Lien would be junior to any Intercompany Lien, the otherwise released Intercompany Claim and associated Intercompany Lien will be preserved for the benefit of, and may be asserted by, the Liquidation Trust as to any Collateral that is Cash and, otherwise, the Wind-Down Entity so as to retain the relative priority and seniority of such Intercompany Claim and associated Intercompany Lien.

ARTICLE IV

ACCEPTANCE OR REJECTION OF THE PLAN

4.1 Impaired Class of Claims Entitled to Vote. Only the votes of Holders of Allowed Claims in Class 3, Class 4, Class 5, and Class 6 shall be solicited with respect to the Plan.

5.2.3 Dissolution of the Debtors. On the Effective Date, each of the Debtors other than the Remaining Debtors will be dissolved automatically without the need for any Corporate Action, without the need for any corporate or limited liability company filings, and without the need for any other or further actions to be taken by or on behalf of such dissolving Debtor or any other Person or any payments to be made in connection therewith; *provided, however*, that the Liquidation Trust may in its discretion file any certificates of cancellation as may be appropriate in connection with dissolution of any Debtors other than the Remaining Debtors. On and as of the earlier of the Closing Date and the date on which the Remaining Debtors Manager Files with the Bankruptcy Court a notice of dissolution as to a Remaining Debtor, such Remaining Debtor will be dissolved automatically without the need for any Corporate Action, without the need for any corporate or limited liability company filings, and without the need for any other or further actions to be taken by or on behalf of such dissolving Remaining Debtor or any other Person or any payments to be made in connection therewith; *provided, however*, that the Liquidation Trust may in its discretion file any certificates of cancellation as may be appropriate in connection with dissolution of any Remaining Debtors.

5.2.4 Corporate Documents and Corporate Authority. On the Effective Date, the certificates of incorporation, bylaws, operating agreements, and articles of organization, as applicable, of all the Debtors shall be deemed amended to the extent necessary to carry out the provisions of the Plan. The entry of the Confirmation Order shall constitute authorization for the Debtors, the Wind-Down CEO, the Liquidation Trustee, and the Remaining Debtors Manager, as applicable, to take or cause to be taken all actions (including, if applicable, Corporate Actions) necessary or appropriate to implement all provisions of, and to consummate, the Plan prior to, on, and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act, or action under any applicable law, order, rule, or regulation.

5.3 The Wind-Down Entity.

5.3.1 Appointments.

(a) On and after the Effective Date, the initial Wind-Down CEO shall become and serve as Wind-Down CEO. The compensation terms for the Wind-Down CEO will be set forth in a separate document to be Filed as part of the Plan Supplement.

(b) On and after the Effective Date, the initial Wind-Down Board shall become and serve as Wind-Down Board. The compensation of the non-CEO members of the Wind-Down Board will be $20,000 per month for each calendar month of service during the first year after the Effective Date and $15,000 per month for each calendar month of service commencing after the first anniversary of the Effective Date.

5.3.2 Creation and Governance of the Wind-Down Entity. On the Effective Date, the Wind-Down Entity and the Liquidation Trustee shall execute the Wind-Down Governance Agreement and shall take any other steps necessary to establish the Wind-Down Entity in accordance with the Plan. The Wind-Down Entity shall be governed by the Wind-Down Governance Agreement and administered by the Wind-Down CEO and the Wind-Down Board. The powers, rights, duties, and responsibilities of the Wind-Down CEO and the Wind-Down Board shall be specified in the Wind-Down Governance Agreement. The Wind-Down Entity shall hold, administer, and distribute the Wind-Down Assets in accordance with the provisions of

the Plan and the Wind-Down Governance Agreement. The Wind-Down Entity (a) shall have the Liquidation Trust as its sole member and the Liquidation Trust shall be deemed to be admitted as a member of the Wind-Down Entity on the Effective Date, (b) shall be treated as a disregarded entity for income tax purposes, (c) shall have a purpose consistent with the purpose of the Liquidation Trust as set forth in Section 5.4.4 of the Plan, and (d) shall be subject to the same limitations imposed on the Liquidation Trustee under the terms of this Plan and the Liquidation Trust Agreement.

5.3.3 Vesting of Wind-Down Assets. On the Effective Date, the Wind-Down Entity will be automatically vested with all of the Debtors' and the Estates' respective rights, title, and interest in and to all Wind-Down Assets, including any Debtor's or any Estate's associated rights, including any such rights to exercise and enforce rights and remedies of Holders of Non-Debtor Loan Note Claims regarding any loans or related interests as to which the lender was a Debtor and the underlying borrower actually is or actually was a Person that is not a Debtor as more fully set forth in Section 5.3.4(g) of the Plan. Except as specifically provided in the Plan or the Confirmation Order, the Wind-Down Assets shall automatically vest in the Wind-Down Entity free and clear of all Claims, Liens, or interests, and such vesting shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The Wind-Down Entity shall be the exclusive representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3)(B) regarding all Wind-Down Assets.

5.3.4 Authority. Subject to the supervision of the Wind-Down Board and the provisions of the Wind-Down Governance Agreement, the Wind-Down CEO shall have the authority and right on behalf of each of the Debtors and their respective Estates, without the need for Bankruptcy Court approval (unless otherwise indicated), to carry out and implement all applicable provisions of the Plan for the ultimate benefit of the Liquidation Trust, including to:

(a) retain, compensate, and employ professionals and other Persons to represent the Wind-Down Entity with respect to and in connection with its rights and responsibilities;

(b) establish, maintain, and administer accounts of the Debtors as appropriate;

(c) maintain, develop, improve, administer, operate, conserve, supervise, collect, settle, and protect the Wind-Down Assets (subject to the limitations described herein or in the Wind-Down Governance Agreement);

(d) sell, liquidate, transfer, assign, distribute, abandon, or otherwise dispose of the Wind-Down Assets or any part thereof or any interest therein, including through the formation on or after the Effective Date of any new or additional legal entities to be owned by the Wind-Down Entity to own and hold particular Wind-Down Assets separate and apart from any other Wind-Down Assets, upon such terms as the Wind-Down CEO determines to be necessary, appropriate, or desirable (subject to the limitations described herein or in the Wind-Down Governance Agreement), including the consummation of any sale transaction for any Wind-Down Assets as to which an approval order was entered by the Bankruptcy Court before the Effective Date;

(e) invest Cash of the Debtors and the Estates, including any Cash realized from the liquidation of the Wind-Down Assets, which investments, for the avoidance of doubt, will not be required to comply with Bankruptcy Code section 345(b);

(f) negotiate, incur, and pay the Wind-Down Expenses, including in connection with the resolution and satisfaction of any Wind-Down Claim Expenses;

(g) exercise and enforce all rights and remedies regarding any loans or related interests as to which the lender was a Debtor and the underlying borrower actually is or actually was a Person that is not a Debtor, including any such rights or remedies that any Debtor or any Estate was entitled to exercise or enforce prior to the Effective Date on behalf of a Holder of a Non-Debtor Loan Note Claim, and including rights of collection, foreclosure, and all other rights and remedies arising under any promissory note, mortgage, deed of trust, or other document with such underlying borrower or under applicable law;

(h) comply with the Plan, exercise the Wind-Down CEO's rights, and perform the Wind-Down CEO's obligations; and

(i) exercise such other powers as deemed by the Wind-Down CEO to be necessary and proper to implement the provisions of the Plan.

To the extent necessary to give full effect to its administrative rights and duties under the Plan, the Wind-Down CEO shall be deemed to be vested with all rights, powers, privileges, and authorities of (i) an appropriate corporate or limited liability company officer or manager of each of the Debtors under any applicable nonbankruptcy law and (ii) a "trustee" of each of the Debtors under Bankruptcy Code sections 704 and 1106.

5.3.5 Relationship with the Liquidation Trust.

(a) On the Effective Date, all of the membership interests in the Wind-Down Entity will be issued to the Liquidation Trust. The Liquidation Trust will at all times be the sole and exclusive owner of the Wind-Down Entity, and the Wind-Down Entity will not issue any equity interests to any other Person.

(b) Commencing on the first Business Day that is no longer than thirty (30) calendar days after the quarter-end of the first full calendar quarter following the Effective Date and continuing on the first Business Day that is no longer than thirty (30) calendar days after each calendar quarter-end thereafter, the Wind-Down Entity will remit to the Liquidation Trust as of such quarter-end any Cash in excess of its budgeted reserve for ongoing operations, other anticipated Wind-Down Expenses, and its other Plan obligations (subject to more specific provisions as may be set forth in the Wind-Down Governance Agreement).

(c) The Wind-Down Entity shall advise the Liquidation Trust regarding the status of the affairs of the Wind-Down Entity on at least a monthly basis and shall reasonably make available to the Liquidation Trust such information as is necessary for any reporting by the Liquidation Trust.

(d) The Wind-Down Entity shall advise the Liquidation Trust regarding any material actions by the Wind-Down Board, including the sale of any property prior to entering into a contract of sale or the change in course of the business plan agreed to as part of the Plan. If there is any disagreement between the Wind-Down Entity and the Liquidation Trust as to a material matter, in the first instance the Wind-Down Entity and the Liquidation Trust shall seek to resolve

5.4.12 Registration and Transfer of the Liquidation Trust Interests.

(a) The record holders of the Liquidation Trust Interests shall be recorded and set forth in a registry maintained by, or at the direction of, the Liquidation Trustee expressly for such purpose. Such obligation may be satisfied by the Liquidation Trust's retention of an institutional transfer agent for the maintenance of such registry, and notwithstanding anything to the contrary contained in this paragraph, the Liquidation Trust may, in connection with any Exchange Act Registration with respect to the Class A Liquidation Trust Interests, in its discretion cause the Class A Liquidation Trust Interests to be issued in book entry form.

(b) Upon their issuance as of the Effective Date, and thereafter until the effectiveness of an Exchange Act Registration of the Class A Liquidation Trust Interests, the Class A Liquidation Trust Interests will be subject to restrictions on transfer under the Liquidation Trust Agreement, which restrictions shall prohibit the Class A Liquidation Trust Interests from being certificated or transferable except by operation of law or by will or the laws of descent and distribution, in each case following written notice to the Liquidation Trust. Upon the effectiveness of an Exchange Act Registration of the Class A Liquidation Trust Interests, such transfer restrictions under the Liquidation Trust Agreement shall terminate and the Class A Liquidation Trust Interests may be transferable by the Holders thereof to the extent otherwise permissible under applicable law. The Liquidation Trust shall use its commercially reasonable best efforts to cause an Exchange Act Registration of the Class A Liquidation Trust Interests to become effective, and for the Class A Liquidation Trust Interests to be quoted with an OTC ticker symbol, as soon as reasonably practicable after the Effective Date, but in no event shall the Liquidation Trust file an Exchange Act registration statement any later than may be required under section 12(g) of the Exchange Act or the rules and regulations promulgated thereunder.

(c) Upon their issuance as of the Effective Date, and thereafter until (i) the effectiveness of an Exchange Act Registration of the Class B Liquidation Trust Interests or (ii) the good faith determination by the Liquidation Trustee, in its discretion, that termination of the transfer restrictions under the Liquidation Trust Agreement would not require the Class B Liquidation Trust Interests to be registered under section 12(g) of the Exchange Act, the Class B Liquidation Trust Interests will be subject to restrictions on transfer under the Liquidation Trust Agreement, which restrictions shall prohibit the Class B Liquidation Trust Interests from being certificated or transferable except by operation of law or by will or the laws of descent and distribution, in each case following written notice to the Liquidation Trust. Upon (i) the effectiveness of an Exchange Act Registration of the Class B Liquidation Trust Interests or (ii) the good faith determination by the Liquidation Trustee, in its discretion, that termination of the transfer restrictions under the Liquidation Trust Agreement would not require the Class B Liquidation Trust Interests to be registered under section 12(g) of the Exchange Act, such transfer restrictions under the Liquidation Trust Agreement shall terminate and the Class B Liquidation Trust Interests may be transferable by the Holders thereof to the extent otherwise permissible under applicable law; *provided, however*, that the Liquidation Trust shall not be under any obligation (and does not currently intend) to make any effort to cause the Class B Liquidation Trust Interests to be registered under the Exchange Act or otherwise to facilitate the trading of, or the development of any trading market for, the Class B Liquidation Trust Interests.

5.4.13 Exemption. To the extent the Liquidation Trust Interests are deemed to be "securities," the issuance of such interests under the Plan are exempt, pursuant to Bankruptcy

11.20 Notices. Following the Effective Date, all pleadings and notices Filed in the Chapter 11 Cases shall be served solely on (a) the Liquidation Trust and its counsel, (b) the U.S. Trustee, (c) any Person whose rights are affected by the applicable pleading or notice, and (d) any Person Filing a specific request for notices and papers on and after the Effective Date.

11.21 Final Decree. Upon the Liquidation Trustee's determination that all Claims have been Allowed, disallowed, expunged, or withdrawn and that all Wind-Down Assets and Liquidation Trust Assets have been liquidated, abandoned, or otherwise administered, the Liquidation Trust shall move for the entry of the Final Decree with respect to the Remaining Debtors. On entry of the Final Decree, the Wind-Down CEO, the Wind-Down Board, the Liquidation Trustee, the Liquidation Trust Supervisory Board, the Remaining Debtors Manager, and their respective Related Parties, in each case to the extent not previously discharged by the Bankruptcy Court, shall be deemed discharged and have no further duties or obligations to any Person.

11.22 Closing of Certain Chapter 11 Cases. On the Effective Date, the Chapter 11 Cases for all Debtors other than the Remaining Debtors will be deemed closed and no further fees in respect of such closed cases will thereafter accrue or be payable to any Person. As soon as practicable after the Effective Date, the Liquidation Trust shall submit a separate order to the Bankruptcy Court under certification of counsel closing the Chapter 11 Cases for all Debtors other than the Remaining Debtors. The Liquidation Trust may at any point File a motion to close the Chapter 11 Case for either of the Remaining Debtors.

11.23 Additional Documents. On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Wind-Down Entity, and the Liquidation Trust, as applicable, and all Holders receiving Distributions pursuant to the Plan and all other parties in interest may, from time to time, prepare, execute, and deliver any agreements or documents and take any other acts as may be necessary or advisable to effectuate the provisions and intent of the Plan.

11.24 Conflicts with the Plan. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, any other order entered in the Chapter 11 Cases, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence; *provided, however*, that the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of the Plan, and any of the foregoing documents.

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