IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WOODBRIDGE GROUP OF COMPANIES LLC, *et al.*,[1] Debtors.	:	Chapter 11 Case No. 17- 12560 (BLS) (Jointly Administered) **Related Docket Nos. 3561, 3562, 3564, 3565**

OBJECTION OF WOODBRIDGE LIQUIDATION TRUST TO APPLICATIONS OF DRINKER BIDDLE & REATH LLP, COUNSEL TO AD HOC NOTEHOLDER GROUP, FOR (1) FINAL ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES; AND (2) ALLOWANCE OF ADMINISTRATIVE EXPENSES INCURRED IN MAKING A SUBSTANTIAL CONTRIBUTION IN THESE CASES

The Woodbridge Liquidation Trust (the "Trust") hereby objects to: (1) the *Final Application of Drinker Biddle & Reath LLP, Counsel for the Ad Hoc Noteholder Group for Allowance of Compensation for Services Rendered and for Reimbursement of Expenses, for the Period From February 1, 2018 Through February 15, 2019* [D.I. 3564] (the "Final Drinker Application"); and (2) the *Application of Drinker Biddle & Reath LLP as Counsel and on Behalf of the Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates Pursuant to 11 U.S.C. § 503(b)(3)(D) and (b)(4) for Allowance of Administrative Expenses Incurred in Making a Substantial Contribution in These Cases* [D.I. 3565] (the "Drinker Substantial Contribution Motion" and, together with the Final Drinker Application, the "Drinker Applications").

The Trust has reached agreements with Conway MacKenzie, Inc. ("Conway") and

[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.

Dundon Advisors, LLC ("Dundon") concerning: (1) the *Final Application of Conway MacKenzie, Inc., Financial Advisor to the Ad Hoc Noteholder Group for Allowance of Compensation for Services Rendered and for Reimbursement of Expenses, for the Period From February 5, 2018 Through February 15, 2019* [D.I. 3564] (the "Conway Application"); and (2) the *Final Application of Dundon Advisors, LLC, Financial Advisor to the Ad Hoc Noteholder Group for Allowance of Compensation for Services Rendered and for Reimbursement of Expenses, for the Period From February 5, 2018 Through February 15, 2019* [Docket No. 3561] (the "Dundon Application" and, together with the Drinker Applications and Conway Application, the "Ad Hoc Noteholder Group Applications"), pursuant to which the Trust will not object to amounts already paid to Conway and Dundon, and Conway and Dundon will not seek payment of any additional amounts.

Drinker Biddle & Reath LLP ("Drinker") has agreed that, in the event that the aggregate of allowed fees and expenses requested in the Ad Hoc Noteholder Group Applications is fixed at the capped amount of $2.25 million (pursuant to the Settlement Order described herein), Drinker will accept the $1,516,720 balance that remains after deducting amounts already paid to Conway and Dundon, without prejudice to the Trust's arguments that the Drinker Applications should be allowed in a far lesser amount, or Drinker's arguments that they should be allowed in a higher amount.

In support of its objection to the Drinker Applications, the Trust respectfully represents as follows:

Preliminary Statement

1. The Ad Hoc Group of Noteholders (the "Ad Hoc Noteholder Group") was formed, its tasks prescribed, and its professional compensation strictly limited by the Court's Settlement Order of January 23, 2018 (attached hereto as **Exhibit 1**). Its purpose was limited to representing Noteholders with respect to the common issue of whether their claims were secured, and, if so, whether they would benefit from substantive consolidation: the Court expressed a hope that appointing a single representative of Noteholders for this purpose would preempt the filing of a bevy of lawsuits by individual Noteholders. If Noteholder claims were unsecured, the Court acknowledged, the Official Committee of Unsecured Creditors (the "Official Committee") was the appropriate representative of Noteholders, who comprised a majority of the Committee and who were by far the largest unsecured creditor constituency. Accordingly, the Ad Hoc Noteholder Group was specifically directed not to duplicate the services being performed by the Official Committee's professionals, was permitted to utilize the Official Committee's financial advisors in order to avoid duplication, and was given a strict, "all-in professional budget of $2.25 million through January 1, 2019." In fact, if the Ad Hoc Noteholder Group was to request any expansion of its role or its budget, it was required "***to establish [the] appropriateness of the request by clear and convincing evidence.***"

2. By March 22, 2018, the Ad Hoc Noteholder Group had formally conceded that the Noteholders did ***not*** have perfected liens, agreeing to a Plan Term Sheet that treated Noteholder claims as unsecured. At that time, the Ad Hoc Noteholder Group's mandate ceased, but its professionals did not. Drinker, in particular, continued to bill intensively for services that

were inherently duplicative of those being performed by the Official Committee. As such, they were unauthorized, unreasonable and non-compensable.

3. Further, even if their fees were compensable, Drinker and the other professionals disregarded the $2.25 million "all-in" limit on compensation. No request was made to increase the budget, much less one based on clear and convincing evidence. In fact, the limit is not even referenced in any of the Ad Hoc Noteholder Group Applications, which requested ***over $3 million*** in aggregate compensation and expenses. Nearly all the monthly and interim applications that would have reflected how much was being billed after the Plan Term Sheet was finalized, in March 2018, were not filed until after the Plan was confirmed on October 26, 2018, many months after the services were performed:

- Drinker requests $2,183,093 in compensation and $34,519 in expenses for the period during which it was employed.
- Drinker requests an additional $199,069 in compensation and $2,348 in expenses for the period preceding its employment on a "substantial contribution" basis.
- Conway requests $613,174 in compensation and $2,916 in expenses.
- Dundon requests $271,890 in compensation and $8,316.69 in expenses.

As noted, Conway and Dundon have agreed not to seek amounts beyond those already received.[2] As Drinker has acknowledged, those amounts count against the "all-in" limit on professional compensation, and Drinker has agreed that if aggregate fees are allowed in the amount of the $2.25 million cap, it will accept the remaining balance of $1,516,720.11.

[2] Conway has received $488,455.20 in fees and expenses, leaving unpaid fees of $127,634.70. Dundon has received $244,824.69 in fees and expenses, leaving unpaid fees of $35,382. The total of payments to Conway and Dundon is $733,279.89.

4. In contrast, the Ad Hoc Group of Unitholders[3] (the "Ad Hoc Unitholder Group") stayed within its $2.1 million budget (which had been increased from $1.5 million by agreement of all the major constituents). While it is legally irrelevant *why* the Ad Hoc Noteholder Group exceeded the limit and the Ad Hoc Unitholder Group did not, the explanation is straight-forward: the Ad Hoc Noteholder Group ignored the Settlement Order's scope and budget restrictions, while the Ad Hoc Unitholder Group did not. After the Plan Term Sheet was entered into on March 22, 2018, there was no further need for the Ad Hoc Noteholder Group, since Noteholders' interests as unsecured creditors were represented by the Official Committee. In contrast, there was a continuing role for the Ad Hoc Unitholder Group, since the Plan Term Sheet did not provide for Unitholders to be treated in the same manner as general unsecured creditors and, as such, their interests were not represented by the Official Committee.[4] Nonetheless, the Ad Hoc Unitholder Group complied with the letter and spirit of the Settlement Agreement, utilized the Official Committee's financial advisors, FTI Consulting, Inc. ("FTI"), rather than hiring its own, and requested and complied with an increased budget that was agreed to by all of the major constituents in the cases. In contrast, Drinker barged ahead in a self-appointed role as general bankruptcy counsel to a quasi-official, full-fledged shadow committee, hiring not just one but two financial advisors, manufacturing work by insinuating itself into issues and processes that were squarely within the Official Committee's purview, holding bi-

[3] *See Motion of the Ad Hoc Committee of Unitholders of Woodbridge Mortgage Investment Fund Entities Pursuant to 11 U.S.C. § 1102(a)(2) Directing Appointment of an Official Committee of Unitholders* [Docket No. 250].
[4] Unitholders were to receive a fraction of the Class Liquidation Trust Interests that were to be distributed to general unsecured creditors, and general unsecured creditors were to receive none of the Class B Liquidation Trust Interests to be distributed to Unitholders.

monthly meetings for so long as it could bill for them, and racking up over ***$750,000*** in fees on administrative tasks and meetings alone.

5. Especially galling is Drinker's request that the estates be taxed for $200,000 of its pre-employment services as constituting a "substantial contribution" under section 503(b)(3) or (4) of the Bankruptcy Code. It moved for recognition as an official committee of an informal group of creditors that it already represented and that was acting in its own self-interest, whose interests as unsecured creditors were already represented by the existing Official Committee, by asserting that Noteholders had distinct lien rights that were *adverse* to the estates and made them something other than general unsecured creditors. It gained leverage to negotiate a *limited* appointment by supporting the Debtors' efforts to retain its corrupt then-management, only to completely abandon its spurious lien theory within two months. Thereafter, it treated the limited-scope appointment as a $2 million sinecure, billing for services that were wholly duplicative and unnecessary. Its services in finagling a sinecure that wasted the estates' resources do not remotely satisfy the strict requirements for establishing a substantial contribution.

Relevant Facts

6. On December 4, 2017, 279 of the Debtors commenced voluntary chapter 11 cases in the United States Bankruptcy Court for the District of Delaware. Subsequently, a total of 27 additional Debtors filed voluntary chapter 11 petitions.

7. The cases arose from a massive, multi-year fraudulent scheme perpetrated by Robert Shapiro between (at least) 2012 and 2017. As part of this fraud, Robert Shapiro,

through the Woodbridge entities, raised over one billion dollars from approximately 10,000 investors—as either Noteholders or Unitholders—and used approximately $368 million of new investor funds to pay existing investors—a typical characteristic of Ponzi schemes.

8. The Noteholders comprised nearly all of the Debtors' unsecured creditors. As of the Petition Date, the Debtors were collectively indebted to (i) approximately 9,331 Noteholders, holding notes with a cumulative total face amount of approximately $750 million and (ii) approximately 1,583 Unitholders, holding units with a cumulative face amount of $226 million. Other general unsecured claims against the Debtors were estimated at between approximately $5-30 million.[5]

9. On December 14, 2017, the United States Trustee appointed the Official Committee to represent the interests of all unsecured creditors in these cases pursuant to section 1102 of the Bankruptcy Code. Two of the three members of the Official Committee were Noteholders. The Official Committee retained Pachulski Stang Ziehl & Jones LLP ("PSZJ") as its bankruptcy counsel and FTI Consulting, Inc. ("FTI") as its Financial Advisor.

10. On December 28, 2017, the Official Committee filed an *Emergency Motion of Official Committee of Unsecured Creditors for Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104* [Docket No. 150] seeking the appointment of a chapter 11 trustee based on, among other things, management's demonstrated lack of independence from Shapiro. On January 2, 2018, the Securities Exchange

[5] *Disclosure Statement for the First Amended Joint Chapter 11 Plan of Liquidation of Woodbridge Group of Companies, LLC and its Affiliated Debtors* [Docket No. 2398] at 32.

Commission (the "SEC") filed a trustee motion (together with the Official Committee's motion, the "Trustee Motions"), on similar grounds.[6]

11. The "Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates," represented by Drinker, filed a motion on December 18, 2017 seeking appointment of an official committee of Noteholders pursuant to Bankruptcy Code § 1102(a)(2) [Docket No. 85]. It asserted that the interests of Noteholders were distinct from those of unsecured creditors and so were not represented by the Official Committee because the Noteholders had valid perfected liens or were purchasers for value in the underlying mortgage notes, and that substantive consolidation could hurt such Noteholders because they had relied on entity separateness. An Ad Hoc Committee of Unitholders also sought appointment of an official committee of Unitholders [Docket No. 250].

12. The Ad Hoc Noteholder Group proceeded to join forces with the Debtors in *opposing* the Trustee Motions [Docket Nos. 240 & 245], arguing that appointing a trustee without official, separate, representation for Noteholders could harm Noteholders' interests.

13. The Official Committee opposed the appointment of additional official committees, in part on the basis that the Noteholders were unsecured creditors who already comprised a majority of the Official Committee and did not require separate representation. The Official Committee expressed particular concern about the administrative burden: "Even if the Court were inclined to appoint a large and unwieldy group of Noteholders to a committee,

[6] *See Motion by the U.S. Securities and Exchange Commission for Order Directing the Appointment of a Chapter 11 Trustee* [Docket No. 157].

adding such a committee to these chapter 11 cases would only succeed in adding an additional layer of complexity and cost and create an undue burden on the estates and unsecured creditors."[7]

14. On or about January 23, 2018, after extensive negotiations, the Debtors, the Official Committee, the SEC, the Ad Hoc Noteholder Group, and the Ad Hoc Unitholder Group entered into the Settlement Agreement [Docket No. 357-1] that resolved, among other things, the Trustee Motions and the committee appointment motions. On January 23, 2018, the Court entered the Settlement Order [Docket No. 357]. The Settlement Agreement has very specific terms and limitations on the scope of work and budget of the Ad Hoc Noteholder Group (as well as the Ad Hoc Unitholder Group).

15. Sections C.12 through 17 of the Settlement Agreement provide:

> 12. In settlement of the motion to form an official Noteholder committee, the Noteholder movants (who claim they are secured) will be permitted to form a single 6 – 9 member Ad Hoc Noteholder Group … with an all-in professional budget of $2.25 million through January 1, 2019. ***Not to duplicate the Committee's or proposed Ad Hoc Unitholder Group's responsibilities***, the Ad Hoc Noteholder Group will be tasked with litigating and negotiating any aspects of Noteholder treatment in the cases, ***focused primarily on whether Noteholders are secured***, whether if secured the Noteholders are better off with substantive consolidation of the estates or not, and traditional secured creditor protections such as adequate protections for the Noteholders and upon sales of properties the use of the sale proceeds;
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> * * *

[7] *See* the Official Committee's *Objection to the Motion of the Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates Pursuant to Section 1102(a)(2) of the Bankruptcy Code Directing the Appointment of an Official Committee of Noteholders,* at 9.

> 15. The Ad Hoc Groups shall be granted regular access to the Debtors' advisors in a manner consistent with that typically granted to official statutory committees;
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> 16. ***In an effort to avoid duplication by financial advisors to the various groups, FTI will provide information to the Ad Hoc Groups***….
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> 17. ***In the event that an Ad Hoc Group seeks to augment their budget or scope as set forth in paragraphs 11 and 12 above, such requests shall require the moving party to establish appropriateness of the request by clear and convincing evidence***.[8]

16. Section C.11 of the Settlement Agreement places similar restrictions on the formation of the Ad Hoc Unitholder Group, which had an all-in professional budget of $1.5 million (later increased to $2.1 million by agreement of all the major constituents). The Ad Hoc Unitholder Group was charged with issues relating to whether unitholders should be treated as equity holders or creditors and whether substantive consolidation is in the best interests of the Unitholders. Unlike the Ad Hoc Noteholder Group, however, the Ad Hoc Unitholder Group (a) utilized FTI rather than hiring its own financial advisors, and (b) stayed within the ultimate $2.1 million budget for its professionals.

17. The Settlement Agreement also provided for the appointment of a new and independent Board for the Debtors. Several meetings during the week of March 19, 2018 involving the Official Committee, the Debtors, the Ad Hoc Noteholder Group, the Ad Hoc Unitholder Group and the SEC culminated with the signing of a *Summary Plan Term Sheet*, dated as of March 22, 2018 [Docket No. 828] (the "Plan Term Sheet").

[8] *See* Settlement Agreement, § C.12, 14, 15, 16, 17 (emphasis added).

18. The Plan Term Sheet included a negotiated treatment of Noteholder and Unitholder claims. Relevant here, no Noteholder lien rights were recognized. Noteholder claims were treated as unsecured and all issues concerning substantive consolidation were resolved. Accordingly, as of March 22, 2018, the primary task for which the Noteholder Group was formed – the exploration of asserted Noteholder lien rights that might differentiate the interests of Noteholders from those of the unsecured creditors represented by the Official Committee – became moot. A Plan incorporating this treatment was filed on July 9, 2018.[9]

19. The Official Committee was not oblivious to the possibility that the Ad Hoc Noteholder Group might seek to use its foothold in the cases to expand the scope of its role, and create unnecessary administrative expenses. That is why such strict limitations were written into the Settlement Agreement. The Ad Hoc Noteholder Group was explicitly warned in correspondence dated February 22, 2018 (attached as **Exhibit 2**) that its attempt to intercede in a sale process and demand the retention of a broker preferred by Conway was "an unacceptable attempt to aggrandize the limited role of the Ad Hoc Noteholder Group (the "Group") and impermissibly supplant the broad duties of the Official Committee…." Mr. Stang elaborated:

> The Bankruptcy Court approved the creation of your Group for the limited purpose of representing the noteholders in their claim alleging a perfected security interest in certain properties of the Debtors' estates and in relation to the possibility of substantive consolidation of the estates. The Official Committee … will not tolerate your Group's efforts to appear in these cases on other issues affecting the estates, *i.e.*, the not so subtle threat that your Group will litigate over the sale of properties if, among other things, your anointed broker is not employed by the Debtors.

[9] *Joint Chapter 11 Plan of Liquidation of Woodbridge Group of Companies, LLC and Its Affiliated Debtors*, dated as of July 9, 2018 [Docket No. 2138].

* * *

> While the Official Committee agreed to your Group's professional fee budget of $2.25 million, even though it clearly exceeded any reasonably anticipated amounts of fees and costs, it was not a license for your Group to go outside its lane. I further understand that during your negotiations with Richard Pachulski that you made it very clear to him that the Group was not sure that it would even retain a financial advisor and, if the Group did, the financial advisor would have an extremely limited role in light of FTI's extensive involvement in the Debtors' cases.

20. The Official Committee also warned that the Ad Hoc Noteholder Group was duplicating its services by employing not just one but two financial advisors, Conway and Dundon (unlike the Ad Hoc Unitholder Group, which obtained information from FTI as contemplated under the Settlement Agreement). The Official Committee expressly reserved its right to challenge such fees as duplicative and outside the scope of the Ad Hoc Noteholder Group's appointment. The April 4, 2018, *Order Authorizing the Employment and Retention of Conway MacKenzie, Inc. as Financial Advisor for the Ad Hoc Noteholder Group* [Docket No. 914] provided at ¶ 6:

> For the avoidance of debt, entry of this Order is without prejudice to the rights of the Creditors' Committee and the Debtors to contend that work done by Conway MacKenzie (including, but not limited to) work listed in the [Conway Mackenzie] Application was done in contravention of the Settlement Order, as beyond the scope listed in the Settlement Order.

21. When the Ad Hoc Noteholder Group moved to retain Dundon, the Official Committee reiterated that position:

> The Official Committee firmly believes that all noteholders are unsecured as any purported security interest held by a noteholder is

> unperfected and void or voidable and the Official Committee is charged with advancing the interests of unsecured creditors. The Settlement Agreement limits the scope of services of the Ad Hoc Secured Noteholders to evaluate and pursue the interests of noteholders in their capacity as secured creditors and not to duplicate the efforts of the Official Committee, which represents all noteholders in their capacity as unsecured creditors.
>
> Having already engaged Conway MacKenzie to serve as financial advisors, the Ad Hoc Noteholder Group has filed the Application to retain Dundon Advisers, LLC ("Dundon") as a second financial advisor. However, notwithstanding the limited purpose for which the Ad Hoc Noteholder Group was appointed, the literal scope of services described in the Application as well as in the application to retain Conway MacKenzie approved under the Conway Retention Order (the "Conway Application") exceeds the mandate of the Ad Hoc Noteholder Group under the Settlement Agreement and overlaps and duplicates the functions being carried out by the Official Committee as the representative of the noteholders in their capacity as unsecured creditors.

22. While the Official Committee was of course aware that the Ad Hoc Noteholder Group's professionals were continuing to perform services after March 22, 2018, it was ***not*** aware of the extent of those services, because the Ad Hoc Noteholder Group professionals did not file most of their fee applications until as much as six months later, after Plan confirmation. Drinker's *First Monthly Fee Application*, for its services performed in February 2018, was not filed until ***August 23, 2018*** [Docket No. 2408]. More to the point, the extent of the services that Drinker continued to perform ***after March 22, 2018***, when it agreed to treat Noteholder claims as unsecured, was not revealed until ***after the Plan was confirmed on October 26, 2018***. Drinker applied for its April fees on October 29, 2018, in its *Third Monthly Fee Application* [Docket No. 2862], and then began to catch up by filing monthly fee applications on November 5, 9, 15 and 16, 2018 for its May through September fees [Docket Nos. 2907, 2931, 2954, 3003, 3027 and 3029].

23. For its part, Conway filed its *First Monthly Application* for its February 2018 fees on June 18, 2018 [Docket No. 1991], and then on July 24, 2018 filed monthly applications for March through May fees and a *First Interim Application* [Docket Nos. 2237, 2238, 2239 and 2240]. No more monthly applications were filed until November 9, 2018, for June and July, and on February 23, 2019 for August [Docket Nos. 2952, 2953 and 3401]. Its *Final Application* was filed on April 1, 2019 [Docket No. 3562].

24. As discussed *infra*, the Ad Hoc Noteholder Group Applications reflect that the Official Committee's warnings were disregarded, and that Drinker, in particular, undertook to set up shop and perform the same services that it would perform if the Ad Hoc Noteholder Group was an official creditors' committee with an unlimited portfolio (when in fact it had little substantive responsibilities and made correspondingly little substantive contributions).[10]

The Drinker Application Seeks Compensation for Services That Were Duplicative and Unauthorized and are Noncompensable Under Section 330

25. These were large and extraordinarily complex cases. The estates' professionals were keenly aware that a commensurately large amount of professional fees would necessarily be incurred, and that it was critical to resolve the cases expeditiously and efficiently in order to keep such expenses in check and preserve value for creditors. Nearly all of those creditors held unsecured claims and their interests were represented by the Official Committee. The Official Committee believes those objectives were met: a plan was confirmed in less than a

[10] The Dundon Application was less objectionable, not just because it billed far less than the others, but because it had particular expertise that the Official Committee was able to utilize with respect to liquidity facilities and the public trading of interests in liquidation trusts.

year and a significant return is projected. As expected, a large amount of fees was necessarily and reasonably incurred: PSZJ's Final Application [Docket No. 3557] seeks approval of $4,798,031.53 in fees for its services as Official Committee counsel from December 14, 2017 through February 15, 2019. By agreement with the SEC, those fees were discounted by 5%. FTI's Final Application [Docket No. 3653] seeks approval of $2,863,855.99 in fees for services performed as financial advisors to the Official Committee.

26. Displacing the Debtors' corrupt management was a crucial first step in this success. The Ad Hoc Noteholder Group opposed that relief, unless it was given a paid position in the cases, which it justified by positing that Noteholders had lien rights. The Official Committee was confident that this position lacked merit, but, in order to obtain that relief and move the cases forward as quickly as possible, consented to an appointment with strict limitations on its scope and budget. It made FTI available to the Ad Hoc Noteholder Group and Ad Hoc Unitholder Group, in an effort to avoid duplication by financial advisors. It required that any expansion in scope or budget be requested and supported by clear and convincing evidence. The Court approved the compromise, expressing the view that the Official Committee was the appropriate representative of Noteholders unless they had lien rights, and the hope that appointing the Ad Hoc Noteholder Group to investigate that issue would avoid a bevy of lawsuits by individual Noteholders.

27. As expected, the Ad Hoc Noteholder Group soon conceded that Noteholders do not have secured claims, agreeing on March 22, 2018 to the Plan Term Sheet that provided for the treatment of such claims as unsecured and which resolved substantive

consolidation issues.[11] But instead of winding down to reflect that it had accomplished the tasks for which it was appointed, or at least scaling back substantially to a monitoring capacity, the Drinker Applications reflect that it continued to act as if it represented an official creditors' committee, performing services in relation to issues and tasks that were squarely within the purview of the Official Committee, for which the Official Committee's professionals were responsible and which they were performing assiduously. Remarkably, for instance, Drinker managed to incur expenses subsequent to January 23, 2018, the date of the Settlement Agreement, that were ***nearly 70% as much as the amounts expended during the same time period by counsel for the Official Committee, who were working full bore as the primary creditors' counsel on all substantive issues in the cases***.

28. The Final Drinker Application evinces this rampant duplication and lack of billing restraint. Drinker expended $319,585 in February and $298,983 in March 2018 – fees to which the Trust does not object even though a very substantial portion is administrative and another material portion is for services plainly outside its mandate, such as those to which Mr. Stang took exception.[12] After entering into the Plan Term Sheet at the end of those two busy months, at a time when the Ad Hoc Noteholder Group had performed the tasks assigned to it, Drinker proceeded at a monthly burn rate of ***$200,000*** for several months, dipping briefly to $150,000 for two months before jumping back to $200,000 in October 2018, when the Plan was

[11] Dissatisfied with that conclusion, an individual Noteholder, Joe Sarachek, took up the mantle, litigated the issue of Noteholder lien rights with the Debtors and the Official Committee, and lost.

[12] In February 2018, Drinker expended $30,849 on asset analysis, and states: "The firm's services in this category also included analysis and advocacy on behalf of the Ad Hoc Noteholder Group in seeking to have the Debtors' properties subjected to a formal brokered sale process to maximize value for noteholders." Drinker App. at 8. But that is precisely the role of the Official Committee. Noteholders had zero *unique* interests in maximizing value.

confirmed. Even after confirmation, it managed to burn approximately $100,000 monthly until February 2019. On what activities? ***Fully $427,900 was spent on what it categorized as "Creditor Information Sharing,"*** *i.e.*, communicating with constituents of the Official Committee, and that amount does not even include ***another $219,461 spent on "Meetings of and Communications With Creditors,"*** part of which is presumably more such communications and part of which was meetings that continued to be held at least bi-monthly, even after entry into the Plan Term Sheet, even after Plan confirmation and even after the Effective Date in November 2018, and on into 2019. To that sum of $647,361 should be added another ***$115,629 for "Case Administration***," bringing the running total of just these three categories to ***$762,990***, representing 35% of the $2.18 million in fees for which Drinker seeks approval.[13]

29. Drinker's billing in virtually every other area of activity was also duplicative and unreasonable. One of the two largest categories was the Plan and Disclosure Statement, on which Drinker expended ***$533,145*** despite having no drafting role or any material role in negotiations after its entry into the Plan Term Sheet. The other had to do with obtaining a liquidity facility, a topic that Drinker appears to have billed in at least two categories (Claim Administration and Financing/Cash Collateral) that aggregate ***$282,711***. Aside from the fact that this was outside the scope of the Ad Hoc Noteholder Group's appointment, the amount requested by Drinker on this subject alone exceeds the entirety of the fees requested by Dundon, the professionals that were actually attempting to procure the liquidity facility. Because Dundon has

[13] Drinker states in its application for October 2018: "For the noteholder victim constituency of the Noteholder Group, Drinker Biddle continued its role during the Application Period as the primary nondebtor source of direct phone and email communications responding to noteholder inquiries." The Official Committee was unaware that Drinker had appointed itself to that position or that it was spending half a million dollars or more on it.

particular expertise on liquidity facilities and on the public trading of interests in liquidation trusts, the Official Committee requested that it work on these issues, and thus the Dundon Application was far less objectionable to the Trust.

30. The Trust respectfully submits that, generously, a reasonable fee award may be measured by: (a) the full amount of fees and expenses requested by Drinker for the months of February and March 2018 when it was negotiating the Plan Term Sheet, totaling $618,568 (notwithstanding the Trust's objections to a material portion of that amount), and (b) an additional $100,000 in total for monitoring the cases thereafter, for a total of $718,568.

The Ad Hoc Noteholder Group Applications Exceed the Amount Permitted Under the Settlement Order

31. There is little to be said on this issue. The Settlement Agreement set an "all-in" limit of $2.25 million on the Ad Hoc Noteholder Group's professional fees. The requested fees exceed $3 million, yet the Ad Hoc Noteholder Group Applications do not even reference this limitation. Any request to increase its scope or budget had to be supported by *clear and convincing evidence*. No such request was timely made or supported.

32. Drinker may not request that this Court approve, *post facto*, an increase in the scope of its role in these cases and an increase in the all-in $2.25 million budget for Ad Hoc Noteholder Group professional fees. The Settlement Agreement clearly contemplated that any such request would be made contemporaneous with the need for such additional services, as the Ad Hoc Unitholder Group did when it requested an increase from $1.5 million to $2.1 million (which was agreed to by the major constituents). Any right to make such a request has been

waived. Furthermore, given that this Court did not preside over these cases, such a request would place this Court in the extraordinarily difficult position of attempting to reconstruct the complex and unfamiliar circumstances of these cases in order to ascertain whether there was clear and convincing evidence to support such a request.

The Drinker Substantial Contribution Motion is Meritless

33. In its Substantial Contribution Motion, Drinker submits that it should be paid $199,069 for services and $2,348.29 in expenses incurred before the Ad Hoc Noteholder Group was appointed, from December 15, 2017 through January 31, 2018, for making a "substantial contribution" in the cases within the meaning of section 503(b) of the Bankruptcy Code. It seeks to be paid for applying for the appointment of an official noteholder committee, for opposing the Trustee Motions and for participating in negotiating the Settlement Agreement that provided in part for the appointment of the Ad Hoc Noteholder Group, with its limited mandate and budget. Drinker articulates its purported substantial contribution as follows: "But for the Applicant's concerted efforts to obtain formation of the Noteholder Group, an essential representative role would have been absent for the majority of the victims of the Woodbridge fraud, as it was abundantly clear that no other existing official body was structurally capable of pursuing the unique position noteholders held in these cases. A substantial contribution claim is well-warranted under the circumstances presented here." Drinker Mot. at 2.

34. The Substantial Contribution Motion refers to a supporting Memorandum of Law, but unless its citation to section 503(b) is intended to constitute that memorandum, none appears to have been filed. The Court should not countenance the belated filing of what would

amount to an opening brief in reply to this Objection, particularly on a motion as frivolous as this: there is no law that would sustain a substantial contribution award on these facts.

35. Section 503(b) of the Bankruptcy Code provides in relevant part for the allowance as an administrative expense of reasonable compensation for attorneys for "a creditor … in making a substantial contribution in a case under chapter 9 or 11 of this title." 11 U.S.C. §§ 503(b)(3)(D) and 503(b)(4). In "determining whether there has been a 'substantial contribution' pursuant to section 503(b)(3)(D), the applicable test is whether the efforts of the applicant resulted in an actual and demonstrable benefit to the debtor's estate and the creditors." *Lebron v. Mechem Fin. Inc*., 27 F.3d 937, 944 (3d Cir. 1994). "Inherent in the term 'substantial' is the concept that the benefit received by the estate must be more than an incidental one arising from activities the applicant has pursued in protecting his or her own interests." *Id*.

36. "Creditors are presumed to be acting in their own interests until they satisfy the court that their efforts have transcended self-protection." *Id*. (citation omitted); *In re Dana Corp*., 390 B.R. 100, 108 (Bankr. S.D.N.Y. 2008) ("Creditors face an especially difficult burden in passing the substantial contribution test since they are presumed to act primarily for their own interests."). To overcome this presumption, the movant must offer "something more than self-serving statements regarding its involvement in the case." *In re Worldwide Direct, Inc*., 334 B.R. 112, 123 (Bankr. D. Del. 2005) (internal citation and quotation marks omitted).

37. This Court discussed the law in *In re RS Legacy Corp*., No. 15-10197 (BLS), 2016 Bankr. LEXIS 854 at *11-13 (Bankr. D. Del. Mar. 17, 2016):

> While the phrase "substantial contribution" does not lend itself to a set of exacting criteria, a well-developed body of case law teaches that the sort of contribution that reaches the substantial threshold is exceedingly narrow: extensive and active participation alone does not qualify, *In re Bayou Grp.*, 431 B.R. at 557; services that are duplicative of other estate professionals are insufficient, *In re Worldwide Direct*, 334 B.R. at 134; activities that primarily further the movant's self-interest do not suffice, *Lebron*, 27 F.3d at 944; and expected or routine activities in a chapter 11 case—such as encouraging negotiation among parties, commenting and participating in successful plan negotiations, and reviewing documents—generally do not constitute a substantial contribution, *In re American Plumbing & Mech., Inc.*, 327 B.R. 273, 291 (Bankr. W.D. Tex. 2005); *In re Columbia Gas*, 224 B.R. at 548. A substantial contribution is one that confers a benefit to the entire estate and fosters the reorganization process. *Lebron*, 27 F.3d at 944.

Id. Thus, for instance, *In re Tropicana Entm't LLC*, 498 F. App'x 150 (3d Cir. 2012), affirmed the denial of a substantial contribution motion by an ad hoc noteholder group that sought to be reimbursed its expenses incurred in connection with an emergency motion for appointment of a chapter 11 trustee. *Id*. at 151. The bankruptcy court had found that the "action was taken largely in the self-interest of the movants here and would have been taken whether there would have been estate reimbursement or not." *Id*. at 152.

38. The facts here are much further removed. Drinker did not undertake the legwork in seeking to remove the Debtors' management; it opposed such relief, for the asserted purpose of creating "an essential representative role … for the majority of the victims of the Woodbridge fraud" because the Official Committee was not "structurally capable of pursuing the unique position noteholders held in these cases." But giving a voice to a creditor subgroup is not itself an "actual and demonstrable benefit" to the estate. If, as this Court explained in *RS Legacy Corp.*, "extensive and active participation alone does not qualify," then almost by definition,

actions that, generously construed, helped put a creditor subgroup in a position where it could engage in extensive and active participation would be even more insufficient. Moreover, the very subject and object of the activity is disqualifying: Drinker acted on behalf of what it claimed was a subset of creditors with *distinct interests as secured creditors*, whereas "[a] substantial contribution is one that confers a benefit to the ***entire estate***." *Lebrun*, 27 F.3d at 944 (emphasis added). *A fortiori*, Drinker's advocacy for creditors asserting liens against the estates' assets was done for the benefit of creditors acting in their self-interest, not for the entire estates. Drinker cannot rebut that presumption. On top of all that, Drinker's premise is inaccurate: as it conceded within two months, the Noteholders were ***not*** secured creditors, even though that is the position it took to justify insinuating itself into these cases. Noteholders were unsecured creditors whose interests were already represented by the Official Committee. In sum, there is no basis for taxing creditors for Drinker's wasteful efforts to create an unnecessary quasi-official committee.

Conclusion

39. This objection is not brought lightly. As in many cases involving Ponzi schemes, however, there are many individual victims whose life savings are at stake. The estates' professionals were acutely sensitive to the need for administrative efficiency, and it could not have been clearer that the tasks and budget of the Ad Hoc Noteholder Group were circumscribed, that its mandate was to examine asserted lien rights, and that it was not to duplicate the Official Committee's representation of unsecured creditors, including the Noteholders who formed a majority of the Official Committee. These were particularly inappropriate cases in which to treat these restrictions cavalierly.

40. For the foregoing reasons, the Trust respectfully requests that the Court enter orders: (1) on the Drinker Application, awarding Drinker 100% of its fees and costs incurred between January 23, 2018 and March 22, 2018, and a total of $100,000 for monitoring subsequent to that date, for a total of $718,568 ; (2) denying the Drinker Substantial Contribution Motion in its entirety; (3) at minimum, limiting the aggregate amount of allowed fees and expenses on the Ad Hoc Noteholder Group Applications to $2.25 million; and (4) granting such other and further relief as the Court deems appropriate.

Dated: April 29, 2019
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Colin R. Robinson

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Counsel to the Woodbridge Liquidation Trust

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 17-12560 (KJC) (Jointly Administered) **Ref. Docket Nos. 85, 150, 157, 198, 240, 250**

ORDER, PURSUANT TO SECTIONS 105(a) AND 1102 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, APPROVING THE CONSENSUAL RESOLUTION OF (A) MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF PROMISSORY NOTES OF WOODBRIDGE MORTGAGE INVESTMENT FUND ENTITIES AND AFFILIATES PURSUANT TO SECTION 1102(A)(2) OF THE BANKRUPTCY CODE DIRECTING THE APPOINTMENT OF AN OFFICIAL COMMITTEE OF NOTEHOLDERS, (B) EMERGENCY MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. § 1104, (C) MOTION BY THE U.S. SECURITIES AND EXCHANGE COMMISSION FOR ORDER DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE, (D) JOINDER OF ADDITIONAL NOTEHOLDERS TO MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF PROMISSORY NOTES OF WOODBRIDGE MORTGAGE INVESTMENT FUND ENTITIES AND AFFILIATES PURSUANT TO SECTION 1102(A)(2) OF THE BANKRUPTCY CODE DIRECTING THE APPOINTMENT OF AN OFFICIAL COMMITTEE OF NOTEHOLDERS, AND (E) MOTION OF THE AD HOC COMMITTEE OF UNITHOLDERS OF WOODBRIDGE MORTGAGE INVESTMENT FUND ENTITIES PURSUANT TO 11 U.S.C. § 1102(A)(2) DIRECTING APPOINTMENT OF AN OFFICIAL COMMITTEE OF UNITHOLDERS

Upon the (a) *Motion of the Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates Pursuant to Section 1102(a)(2) of the Bankruptcy Code Directing the Appointment of an Official Committee of Noteholders* [D.I. 85] (the "Noteholder Committee Motion"); (b) *Emergency Motion of Official Committee of*

[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 14225 Ventura Boulevard #100, 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 such information may be obtained on the website of the Debtors' noticing and claims agent at www.gardencitygroup.com/cases/WGC, or by contacting the proposed undersigned counsel for the Debtors.

Unsecured Creditors for Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104 [Docket No. 150] (the "Committee's Trustee Motion"); (c) *Motion by the U.S. Securities and Exchange Commission for Order Directing the Appointment of a Chapter 11 Trustee* [D.I. 157] (the "SEC Motion"); (d) *Joinder of Additional Noteholders to Motion of the Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates Pursuant to Section 1102(a)(2) of The Bankruptcy Code Directing the Appointment of an Official Committee of Noteholders* [D.I. 198] (the "Noteholder Committee Motion Joinder"); and (e) *Motion of the Ad Hoc Committee of Unitholders of Woodbridge Mortgage Investment Fund Entities Pursuant to 11 U.S.C. § 1102(a)(2) Directing Appointment of an Official Committee of Unitholders* [D.I. 250] (the "Unitholder Committee Motion" and together with the Noteholder Committee Motion, Committee's Trustee Motion, the SEC Motion, and the Noteholder Committee Motion Joinder, the "Motions"); and upon review of the *Debtors' Objection to Motions of (I) Official Committee of Unsecured Creditors and (II) the U.S. Securities and Exchange Commission for Entry of an Order Directing the Appointment of a Chapter 11 Trustee* [D.I. 240] (the "Debtors' Response") as well as all other statements filed with respect to the Motions; and upon further consideration of the term sheet attached hereto as Exhibit 1 for approval (the "Term Sheet").[2]

It is hereby **ORDERED, ADJUDGED, AND DECREED THAT**:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012.

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2 Capitalized terms used herein, but not otherwise defined, have the meanings given to them in the Term Sheet.

2. Venue of these cases and the Motions in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. This Court may enter a final order consistent with Article III of the United States Constitution.

4. Notice of the Motions has been given as set forth in the Motions and such notice is adequate and no other or further notice need be given.

5. The Term Sheet is approved pursuant to sections 105(a) and 1102 of the Bankruptcy Code and Bankruptcy Rule 9019.

6. Upon entry of this order (the "Order"), the Motions shall be deemed to be consensually resolved in accordance with the terms of the Term Sheet, except that resolution of the SEC Motion is subject to approval by the SEC Commission. For avoidance of doubt, entry of this Order shall not constitute this Court's decision on the merits for any of the Motions.

7. Effective upon entry of this Order, David J. (Jan) Baker, Robert E. Gerber and James M. Peck shall be exculpated and released for any and all actions taken or omitted to be taken in connection with and in contemplation of these cases and their service as members of the Debtors' board of managers.

8. Compensation in the amount of $25,000 each for David J. (Jan) Baker, Robert E. Gerber and James M. Peck is hereby approved for their service as board members.

9. The following provisions shall be applicable with respect to the New Board (as such term is defined in the Term Sheet):

a. Unless and until otherwise ordered by the United States Bankruptcy Court for the District of Delaware (the "Court"), WGC Independent Manager LLC ("WGCIM"), under the direction of the New Board, shall have the authority to manage the affairs of the Debtors in their respective chapter 11 cases.

b. The Debtors are authorized to fund the compensation of the members of the New Board and their reasonable expenses, specifically including, without limitation, travel expenses and the fees and expenses of their counsel incurred in connection with (i) the New Board's appointment and (ii) legal advice and services in matters within the New Board's responsibility as to which the Debtors' counsel cannot appropriately act.

c. The members of the New Board shall receive the benefit of Section 17 (Exculpation and Indemnification) of WGCIM's amended and restated operating agreement dated January 16, 2018 (the "Operating Agreement"). In addition to and not in limitation of any rights of indemnification under the Operating Agreement, the Debtors will, to the maximum extent permitted by applicable law, indemnify and hold harmless the members of the New Board from any and all loss, claim, damage or cause of action, including reasonable attorneys' fees related thereto ("Claims") incurred by the New Board members in the performance of their duties and obligations as such; provided that a New Board member shall not be so indemnified for Claims if they arise from such New Board member's bad faith, gross negligence, or willful misconduct. The benefits of this provision shall survive the termination of each New Board member's service as such.

d. Unless otherwise ordered by the Court, Robert Shapiro shall not have any removal rights with respect to New Board members.

10. The resolution set forth in the Term Sheet is in the best interests of the Debtors, their estates, their creditors, the Committee, and all other parties in interest; the legal and factual bases of the Term Sheet establish just cause for the relief granted herein; and the terms set forth in the Term Sheet constitute a fair resolution of the issues raised in the Motions. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the Debtors, the Committee, and all other parties in interest are authorized to take any and all actions necessary and appropriate to consummate the terms of the Term Sheet, including, without limitation, executing and delivering any documents, agreements or instruments and remitting payments, as may be necessary or appropriate to implement the Term Sheet.

11. Neither the terms of the Term Sheet nor entry of this Order shall constitute an admission by any party with respect to any allegations contained in the Motion or any responses or statements filed with respect thereto.

12. This Order and the Term Sheet shall be binding on all the parties in these cases, except that the SEC's obligations under the Term Sheet are subject to approval by the SEC Commission.

13. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motions, the Term Sheet, or the implementation of this Order.

Dated: January 23, 2018
Wilmington, Delaware

KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

TERM SHEET

Settlement Term Sheet[1]

A. Corporate Governance Matters and Selection and Retention of Professionals

1. The New Board. The Debtors' current board of managers will be reconstituted as a 3-person Board (the "New Board"). The members of New Board will be Richard Nevins, Freddie Reiss and Michael Goldberg. If any Board Member steps down from that role, the party that recommended the particular Board Member that resigned shall designate the replacement Board Member which Board Member shall be reasonably acceptable to the remaining Board Members. Each member of the New Board will be compensated at the rate of $25,000 per month payable prospectively, on or before the first day of each month, through the Effective Date of any Plan of Reorganization and will be entitled to reimbursement for reasonable expenses, specifically including, without limitation, travel expenses and the fees and expenses of their counsel incurred in connection with (a) the New Board's appointment and (b) legal advice and services in matters within the New Board's responsibility as to which the Debtors' counsel cannot appropriately act;

2. CEO/CRO. The New Board will select as soon as practicable a CEO or CRO. The New Board's retention of a CEO or CRO is subject to the Committee and the SEC's consent, which consent shall not be unreasonably withheld;

3. Debtors' Professionals. Within seven (7) business days from the effective date of this term sheet, the New Board shall notify the SEC of its intent to select new counsel for the Debtors or reconfirm Gibson Dunn and Young Conaway as counsel. The New Board may also elect to retain additional professionals for the Debtors under Section 327 of the Code and provide prior notification to the SEC. Within five (5) business days of receipt of any of the foregoing notifications, the SEC shall notify the New Board whether it consents to the selection or reconfirmation, which consent shall not be unreasonably withheld. If the SEC withholds its consent, the Debtors shall have five (5) business days from the notification of the withholding of consent to file a motion objecting to the SEC's decision. The SEC and New Board may mutually agree to extend any of the deadlines in this paragraph without Court order. Gibson Dunn and Young Conaway shall be employed by Court order from the Petition Date through the date of employment as provided in this paragraph. Notwithstanding such retention order, the SEC reserves all rights to withhold consent of any decision by the New Board to reconfirm either firm as counsel with respect to services to be performed on a prospective basis. The Committee shall retain all of its rights to comment or object to any professional retained by the Debtors other than Gibson Dunn and Young Conaway;

4. SRC Transition. Employees of SRC continue to work on Woodbridge matters and will transition out of that role unless the New Board and the newly appointed CEO/CRO

[1] The terms set forth herein remain subject to (i) documentation acceptable to the Debtors, Committee and SEC necessary to implement this term sheet and (ii) approval by the SEC Commission as described in this term sheet. The parties may make subsequent reasonable modifications to this term sheet upon consent of the parties.

conclude that some or all of the SRC employees and/or contractors should continue working on Woodbridge matters, which should be presented to the Committee and the SEC, with the Committee and SEC having consent rights regarding the continuing role of SRC employees and/or consultants, which consent shall not be unreasonably withheld.

5. Disposition of Trustee Motion. The Committee's Trustee Motion will be dismissed with prejudice; provided however, that nothing herein shall prevent the Committee from filing a motion to appoint a chapter 11 trustee based on newly discovered facts or subsequent events;

6. Contingency. The Parties' rights and obligations under Paragraphs 1 through 5 above are not contingent on the SEC Commissioners' authorization of the dismissal of the SEC's motion for a receiver, as described below.

B. Resolution of Pending Bankruptcy Court and District Court Litigation

7. The SEC staff will recommend that the SEC Commission authorize the staff to dismiss the pending request for a receiver over any entity under the control of the New Board;

8. The SEC will consent to a motion by the entities under the control of the New Board to a sixty (60) day extension from the February 20th response deadline;

9. The Debtors and the SEC, in advance of the January 25, 2018 hearing, will jointly advise the District Court that the SEC is seeking the Commission's approval to dismiss its claim for a receiver, that Debtors and related entities are seeking the unopposed 60-day extension, and that the Debtors and the related entities under their control are not seeking to stay the matter at this time subject to their right to seek such a stay at the conclusion of the 60-day extension or if the SEC staff does not obtain the authority described in paragraph 7;

10. If the SEC staff receives the authorization described in paragraph 7, then

    a. The SEC's Trustee Motion will be dismissed with prejudice; provided however, that nothing herein shall prevent the SEC from filing a motion to appoint a chapter 11 trustee based on newly discovered facts or subsequent events;

    b. All parties will cooperate in having the non-debtor entities, subject to the asset freeze by the District Court, come under the control of the New Board and under the jurisdiction of the Bankruptcy Court administering the Woodbridge chapter 11 cases;

    c. The Debtors will withdraw the Adversary Proceeding and the SEC Injunction Motion without prejudice; and

d. The SEC will withdraw without prejudice its pending request in the District Court for the appointment of a receiver for the Debtors and, upon their entry into bankruptcy, the non-Debtor entities under the control of the New Board.

C. Formation and Appointment of the Additional Statutory Groups (Noteholders and Unitholders) and Retention of Their Respective Professionals

11. In settlement of the motion to form an official Unitholders committee filed on January 8, 2018 (Docket No. 250), the Unitholders will be permitted to form a single 1-2 member Ad Hoc Unitholder Group with an all-in professional budget not to exceed $1.5 million through January 1, 2019. Not to duplicate the Committee's or the proposed Ad Hoc Noteholders (who claim they are secured) responsibilities, the Ad Hoc Unitholder Group will be tasked with litigating and/or negotiating (a) whether Unitholders should be treated as creditors or equity security holders in these chapter 11 cases, including in connection with any plan or asset disposition and (b) whether substantive consolidation is in the best interests of the Unitholders;

12. In settlement of the motion to form an official Noteholder committee, the Noteholder movants (who claim they are secured) will be permitted to form a single 6 - 9 member Ad Hoc Noteholder Group (with the Ad Hoc Unitholder Group, the "Ad Hoc Groups") with an all-in professional budget of $2.25 million through January 1, 2019. Not to duplicate the Committee's or the proposed Ad Hoc Unitholders Group's responsibilities, the Ad Hoc Noteholder Group will be tasked with litigating and/or negotiating any aspects of Noteholder treatment in the cases, focused primarily on whether Noteholders are secured, whether if secured the Noteholders are better off with substantive consolidation of the estates or not, and traditional secured creditor protections such as adequate protections for the Noteholders and upon sales of properties the use of the sales proceeds;

13. The Ad Hoc Groups and their members shall (i) be considered fiduciaries of the Unitholders/Noteholders which such Ad Hoc Group and its members represent, (ii) be deemed parties in interest under Section 1109 of the Bankruptcy Code, (iii) with respect to parties who hold Units or Notes, as the case may be, and who are not members of the representative Ad Hoc Group (a) provide access to information to such parties, (b) solicit and receive comments from such parties and (c) be subject to a court order that compels any additional report or disclosure to be made to such parties, and (iv) have the rights to (a) select and authorize the employment of one or more attorneys, accountants or other agents to represent and/or perform services for such Ad Hoc Group, subject to the all-in budgets described in paragraphs 11 and 12, above, (b) subject to the tasks described in paragraphs 11 and 12 above (I) consult with the Debtors and their advisors or any trustee appointed in these cases concerning administration of the case, (II) investigate the acts, conduct, assets, liabilities and financial condition of the Debtors, the operation of the Debtors' businesses and the desirability of the continuance of such business and any other matter relevant to the case or to the formulation of a plan, (III) participate in the formulation of a plan, advise those represented by such Ad Hoc Group of such Ad Hoc Group's determination as to any plan formulated, (IV) request the appointment of a

trustee or examiner under section 1104 of the Bankruptcy Code and (V) perform such other services as are in the interests of those represented;[2]

14. Professionals for the Ad Hoc Groups shall be retained pursuant to Court order and shall file fee applications each month with the Bankruptcy Court, and shall be subject to approval of fee amounts by the Bankruptcy Court and review of fees in accordance with the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and as otherwise ordered by the Bankruptcy Court, including sections 330 and 331, with parties in interest encouraged to meet and confer on scope and budget issues promptly with respect to such fee applications;

15. The Ad Hoc Groups shall be granted regular access to the Debtors' advisors in a manner consistent with that typically granted to official statutory committees;

16. In an effort to avoid duplication by financial advisors to the various groups, FTI will provide information to the Ad Hoc Groups. FTI will not render any opinions or recommendations to the Ad Hoc Groups, other than as their role as financial advisor to the Committee. In no way will FTI be deemed to represent either or both of the Ad Hoc Groups and in the event of any litigation or other form of dispute resolution FTI will represent the Committee's interests and no other constituency in the case and no conflict claim may be made by any party that FTI cannot represent the Committee in any dispute with any other party. All applicable privileges between the Committee, its other retained professionals (Pachulski Stang Ziehl and Jones LLP) and FTI are preserved and are not waived; and

17. In the event that an Ad Hoc Group seeks to augment their budget or scope as set forth in paragraphs 11 and 12 above, such requests shall require the moving party to establish appropriateness of the request by clear and convincing evidence.

[2] The appointment of the Ad Hoc Groups shall not in any way limit the Committee's duties and responsibilities under the Bankruptcy Code.

EXHIBIT 2

PACHULSKI STANG ZIEHL & JONES

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February 22, 2018

Via E-mail

Steven K. Kortanek
Drinker Biddle & Reath LLP
222 Delaware Avenue, Suite 1410
Wilmington, DE 19801

Re: Stradella Property – February 21, 2018 Letter

Dear Steve:

Your letter of February 21, 2018 is an unacceptable attempt to aggrandize the limited role of the Ad Hoc Noteholder Group (the "Group") and impermissibly supplant the broad duties of the Official Committee of Unsecured Creditors (the "Official Committee"). It also contains numerous misstatements that border on misrepresentations of discussions between FTI and Conway MacKenzie, although FTI and Richard Pachulski have repeatedly set the record straight on what was actually said in those conversations.

The Bankruptcy Court approved the creation of your Group for the limited purpose of representing the noteholders in their claim alleging a perfected security interest in certain properties of the Debtors' estates and in relation to the possiblity of substantive consolidation of the estates. The Official Committee intends to negotiate and/or litigate with your Group on those carefully circumscribed subjects. However, it will not tolerate your Group's efforts to appear in these cases on other issues affecting the estates, i.e., the not so subtle threat that your Group will litigate over the sale of properties if, among other things, your anointed broker is not employed by the Debtors. In speaking to Richard Pachulski, the principal negotiator over the resolution of the Trustee Motion that your Group opposed, the primary role of your Group was to negotiate the noteholders' security issue and substantive

consolidation; otherwise your Group was going to primarily rely on the efforts of FTI regarding the Debtors' business operations. While we could debate most issues, the Official Committee that represents unsecured creditors has a much stronger interest in increasing the value of the Debtors' estates than noteholders who claim to have perfected security interests.

To be clear, your demands regarding the Stradella property are especially telling as to how widely your Group has overstepped its limited role as not a single noteholder has any assigned interest, perfected or unperfected, in that property. As such, if your Group believes that it has the right to insert itself into the marketing of the Stradella property, then it must believe that there are no limits to its role in the cases notwithstanding the Court's explicit order otherwise. While the Official Committee agreed to your Group's professional fee budget of $2.25 million, even though it clearly exceeded any reasonably anticipated amounts of fees and costs, it was not a license for your Group to go outside its lane. I further understand that during your negotiations with Richard Pachulski that you made it very clear to him that the Group was not sure that it would even retain a financial advisor and, if the Group did, the financial advisor would have an extremely limited role in light of FTI's extensive involvement in the Debtors' cases. In that regard, please advise of the Group's financial arrangement with Conway MacKenzie.

The Official Committee is fulfilling its fiduciary duties to the general unsecured creditors, which includes your Group constituency, as there is no conceivable basis for their assertion of secured claims. The Official Committee's professionals have worked tirelessly to get these cases on the right track and has advised the Official Committee of the myriad issues that must be addressed to confirm a fair and equitable reorganization plan. While the Official Committee intended to share information with your Group relative to its limited role, subject to a common interest agreement, the Committee needs to reconsider that position if MacKenzie is expecting to continue with this self-anointed greater role. Any willingness to share information was intended to conserve estate assets by avoiding the costs of unnecessary work by your firm and Conway MacKenzie. As in the case of your Group's fee budget, it is not a green light for your Group to go beyond its very circumscribed portfolio.

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES

Notwithstanding your misstatements about the Stradella marketing process, the Committee would like to set the record straight:

1. While the Stradella property is not currently on MLS, as Debtors' counsel has advised you it was on the MLS from August 10, 2017 until approximately February 2, 2018. The Bel Air brokerage community is well aware that the property is available, with that being extremely clear as Mr. Rappaport showed it to a client just last month. It has also been shown on Hilton & Hyland's website as a "listed" property since at least November of 2017.

2. We understand that two offers, both just above $40 million, were received and, recognizing that $50 million was meaningfully out of market, the Debtor subsequently reduced the asking price to $45 million in its November, 2017 listing.

3. The property was then listed in the MLS in November, 2017 by Tyrone McKillen of Hilton & Hyland for $45 million. Given the circumstances of the Stradella property, the Debtor encouraged the two brokers who knew the circumstances of the property best (i.e., Rosenfeld and McKillen) to solicit the brokerage community and select developers for offers.

4. To be very clear, as had originally been provided by Richard Pachulski's earlier e-mail, there was never any consensus between FTI and Conway MacKenzie on certain properties, despite your financial advisor's claim to the contrary. FTI was clear that certain properties, such as the Stradella property, warranted unique approaches. Given the relief from stay motion and the expiring permits, FTI's position is and has always been that the Stradella property should be sold as quickly as possible at $40.5 million to a qualified buyer.

5. With respect to marketing and brokerage, your Group continues to conflate two separate issues: the unique circumstances of pursuing a bona-fide offer on 800 Stradella and the process of soliciting listing brokers on the Debtors' portfolio. The Debtors have informed the financial advisors that they intend to solicit brokers' services from the broad, qualified community, taking into account interviews and specific fee proposals. As an aside, we have informed the Debtors that the goal is to obtain the best possible

brokers and while fees are a major issue, the goal is not to obtain the lowest cost provider.

6. The statement that brokerage has been conceded to Rosenfeld is completely fallacious. Again, allowing the two brokers most familiar with the properties (Rosenfeld and McKillen) to submit offers provides valuable market information and does not commit the Debtors to any particular course of action with any offer. If your Group has any specific negative information regarding Rosenfeld or McKillen, with whom the Committee has no relationship whatsoever, please advise as soon as possible. Any offers that are submitted with commission requests to the Debtors can be negotiated and, if prudent, reduced under the circumstances.

7. What is most outrageous is your Group's financial advisor soliciting a brokerage agreement, which is well outside its role and wholly inappropriate. No doubt Mr. Rappaport would say that the Stradella property should be marketed in light of his self-interest in trying to get the brokerage retention. By this letter we are advising the Debtors that any attempt by the Debtors to retain Mr. Rappaport, who is completely self-interested at this point with respect to the Stradella property, would be objected to by the Committee.

8. Additionally, the statement that the terms of the offer are not market are totally baseless. The characterization that Stradella is "raw land and therefore requires no contingency" shows a fundamental lack of understanding of real estate transactions. No one would buy a $40 million graded lot with permits without having adequate time to review soils reports, engineering studies, plans and permits. FTI, who does not make real estate a hobby, but actually a job, firmly believes that 17 days is a reasonable period to complete these important steps and well within market range. While we understand the Debtors are attempting to negotiate a shorter close, in any event FTI firmly believes that the 45 days placed to close is well within a reasonable time frame.

The Official Committee expects the Debtors will respond to your Group's specific demand and any veiled effort to expand its role beyond anything that anyone, including the Court, anticipates. However, the Official Committee cannot silently countenance the misstatements ascribed to FTI. FTI, as reflected above, never told

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Conway MacKenzie that FTI supported the so-called "consensus" with reference to the Stradella property. In fact, the Official Committee supports the private sale of the Stradella property and the terms of the last counteroffer. In light of your Group's misconstruing FTI's statements during financial advisors' consultations and Debtors' counsel's intention to participate in those calls, the Official Committee will participate in those calls as well.

Very truly yours,

James I. Stang

JIS