

**From: Atlas Financial Holdings, Inc.**

**To: The Scheme Creditors**

6 January 2022

Dear Sirs,

## **PRACTICE STATEMENT LETTER**

### **PROPOSED SCHEME OF ARRANGEMENT IN RESPECT OF ATLAS FINANCIAL HOLDINGS, INC. (the "Company")**

This letter (the "**Practice Statement Letter**") concerns matters which may affect your legal rights and entitlements and you may therefore wish to take appropriate legal advice on its contents.

#### **Purpose of this Practice Statement Letter**

The Company is proposing to implement a scheme of arrangement under Cayman Islands law (the "**Scheme**") between it and its existing noteholders (the "**Scheme Creditors**") pursuant to section 86 of The Companies Act (As Revised) (the "**Act**"). There will be a hearing on **25 January 2022 at 10 a.m. EST** (the "**Convening Hearing**") at which the Grand Court of the Cayman Islands (the "**Court**") will be asked to give certain directions in connection with the Scheme.

The principal purpose of this Practice Statement Letter is to give notice to Scheme Creditors that the Company intends to apply to the Court at the Convening Hearing for an order granting directions in relation to the Scheme, including permission to convene a meeting of Scheme Creditors for the purpose of considering and, if thought fit, approving, the Scheme (the "**Scheme Meeting**").

#### **The Scheme and Relevant Background**

In the context of a creditor restructuring, a scheme of arrangement is a formal procedure under section 86 of the Act which enables a company to agree to a compromise or arrangement with its creditors, or any class of its creditors, in respect of its debts or obligations owed to those creditors.

Under Cayman Islands law, a scheme of arrangement requires the following to occur in order to become legally binding:

- (a) a convening hearing at which the Court will give directions for the convening of meeting(s) of the creditors or classes of creditors to consider and, if thought fit, approve the scheme of arrangement;
- (b) the approval of a majority in number representing at least 75% in value of the relevant creditors or classes of creditors present in person or by proxy and voting at the meeting(s) convened to approve the scheme of arrangement;

- (c) the approval of the Court by making an order sanctioning the scheme of arrangement (the **"Sanction Order"**) at a hearing convened for that purpose (the **"Sanction Hearing"**); and
- (d) the filing of the Sanction Order with the Cayman Islands Registrar of Companies.

The Company is a Cayman Islands incorporated and registered entity. The Company is a holding company in the commercial automobile insurance sector in the United States, with a historical niche market orientation and focus on insurance for the "light" commercial automobile sector including taxi cabs, non-emergency paratransit, limousine, livery, full-time transportation network, and business auto. In addition to recapturing business in these traditional target markets, the Company is also pursuing further expansion in the specialty commercial auto sector. The Company's business is carried on through a number of subsidiaries based on decades of experience with a commitment to being an industry leader in these particularly specialized areas of insurance. As previously announced, in 2019, the Company implemented a strategic re-positioning following challenges related to its regulated insurance company subsidiaries as described more fully in the Company's public financial results and the Explanatory Statement related to this Scheme of Arrangement. The current focus of our business is operating as a technology- and analytics-driven managing general agency.

The Company is the issuer of US\$25,000,000 in aggregate nominal principal amount of senior unsecured notes with a coupon of 6.625% with a stated maturity date of 26 April 2022 (the **"Notes"**) issued pursuant to the terms of an indenture dated April 26, 2017 (as amended or supplemented from time to time) (the **"Indenture"**), between the Company and Wilmington Trust, as indenture trustee (the **"Indenture Trustee"**). As of the date of this Practice Statement Letter, US\$25,000,000 plus accrued but unpaid interest is currently outstanding under the terms of the Indenture.

The proceeds received from the issuance of the Notes (together with cash already held by the Company's group) was used to repay US\$19.4 million in outstanding indebtedness under its secured credit facility (which was subsequently terminated), make repurchases of common stock, support organic growth, and to make potential acquisitions, as well as for general corporate purposes.

The lasting impact of COVID-19 on the Company's target market was significant. Of the Company's customer segments, non-emergency paratransit was least impacted given the volume of essential rides these operators provide but was still down approximately 30%. Taxi and livery were down 90% or more for much of the pandemic in virtually all major areas of the United States.

In light of the lasting impact of the COVID-19 pandemic that substantially exacerbated the Company's liquidity constraints (which were already being challenged) prior to COVID-19, the directors of the Company have determined that the Company will not be able to repay principal amounts due under the Notes in April 2022 at their stated maturity. After carefully considering various alternatives, the directors, upon consultations with the Company's professionals, ultimately determined that the transaction contemplated in this Practice Statement Letter is the only feasible alternative that would be value accretive to the holders of Notes (**"Noteholders"**). Therefore, the main purpose of the Scheme is to defer the obligation of the Company to repay the amounts due on the Notes upon their stated maturity and to provide the Company with the additional financial flexibility by enabling it to "PIK" the quarterly interest payments accrued during any interest period ending on or prior to April 27, 2024, which the Company believes will enable it to bridge to a normalized, post-COVID-19 business environment. In the event that

the Scheme is not implemented, the Company will, in all likelihood, enter a liquidation process, which would be value-destructive for all stakeholders. The directors of the Company consider that the Scheme Creditors would likely receive no return on account of their respective Notes should the Company be forced to commence a liquidation process in the absence of the approval of the Scheme.

Under the terms of the Scheme, the Indenture will be amended and supplemented by a second supplemental Indenture to allow:

- (a) the Company to cancel the Notes and, in exchange for the Notes, to issue new unsecured notes on the terms set forth in the Second Supplemental Indenture (the “**New Notes**”);
- (b) the coupon rate for the New Notes will be kept at 6.625% per annum if paid in cash but will be increased to 7.25% if paid in kind (at the Company’s option, which option the Company shall have for any interest payments due for the period up to two years after the date of issuance of the New Notes);
- (c) the accrued but unpaid interest on the Notes as at the date the New Notes are issued will be added onto the principal of the New Notes;
- (d) the maturity date of the New Notes to be extended to 27 April 2027; and
- (e) the New Notes are to be redeemable at the Company’s election after three (3) years at par value plus accrued but unpaid interest without penalty.

If (i) the Scheme is approved by the requisite majorities at the Scheme Meeting; (ii) the Scheme is sanctioned by the Court at the Sanction Hearing; (iii) the Sanction Order is delivered to the Cayman Islands Registrar of Companies; and (iv) all conditions precedent to the Scheme’s effectiveness are satisfied or waived, including, among other things, the entry of an order by the U.S. Bankruptcy Court (the “**Bankruptcy Court**”) of an order pursuant to Chapter 15 of the U.S. Bankruptcy Code (the “**Recognition Order**”) that recognises and enforces the Scheme, the Scheme will become effective in accordance with its terms and bind all Scheme Creditors, including those Scheme Creditors who voted in favour of it and those Scheme Creditors who voted against it or did not vote at all, in each case together with their successors and assigns.

The Scheme cannot be sanctioned by the Court unless the Court is satisfied, among other things, that the relevant provisions of section 86 of the Act have been complied with and fulfilled.

For the purposes of establishing support for the Scheme the Company entered into a restructuring support agreement on August 31, 2021 (the “**Restructuring Support Agreement**”) which memorializes the agreed-upon terms for the financial restructuring and places certain positive obligations on the parties to the agreement with respect to the Scheme. As at the date of this Practice Statement Letter, the number of Scheme Creditors who have become a party to the Restructuring Support Agreement (the “**Consenting Noteholders**”) represent, in aggregate, the majority of the outstanding Notes (being approximately 55.2% of the face value of the outstanding Notes).

For the purposes of financing the restructuring, on September 1, 2021 the Company and certain of its subsidiaries (as borrowers) entered into a Convertible Senior Secured Delayed-Draw Credit Agreement

(the “**Credit Agreement**”) with certain entities associated with a Consenting Noteholder (as lenders). The Credit Agreement made available a term loan facility in the aggregate principal amount of US\$3,000,000 of which US\$500,000 has been advanced to the Company by the lenders as at the date of this Practice Statement Letter.

## **Purpose of the Scheme**

The purpose of the Scheme is to effect a compromise and arrangement, pursuant to section 86 of the Act, between the Company and the Scheme Creditors<sup>1</sup> that will apply to all claims of a Scheme Creditor against the Company arising directly or indirectly out of, in relation to and/or in connection with the Notes and the Indenture (including, without limitation, each of the transactions contemplated by the Scheme) (the “**Scheme Claims**”) (excluding, however, (i) claims under or in connection with the New Notes; (ii) claims in respect of rights created under the Scheme and/or which arise as a failure by the Company or any party to the Scheme to comply with any terms of the Scheme from and after the date on which the Scheme becomes effective in accordance with its terms; and (iii) claims arising from or relating to fraud or dishonesty.

In exchange for their Notes, Scheme Creditors will receive the New Notes, with the New Notes being issued on a one-for-one basis for the Notes held as at the record date stipulated in the Scheme (the “**Scheme Consideration**”).

## **Identity and Proposed Class of Scheme Creditors**

A summary of: (i) the identities of the Scheme Creditors; and (ii) the process for voting at the Scheme Meeting, is set out below.

### **Identity of Scheme Creditors**

The Scheme is being proposed by the Company in respect of the Scheme Claims of the Scheme Creditors. The Scheme Creditors’ Scheme Claims consist of claims arising directly or indirectly out of, in relation to and/or in connection with the Notes and the Indenture.

As the Notes are securities that are held in global form, the creditors under the Notes comprise persons with a beneficial interest in the principal of the Notes as reflected on the records of clearing systems as at the voting record date, being 4 p.m. on 14 January 2022 (EST).

The Company will be seeking a direction from the Court at the Convening Hearing that only the holders of the Notes shall be treated as Scheme Creditors for voting purposes on the Scheme. References below to Scheme Creditors should therefore also be construed as references to Noteholders.

---

<sup>1</sup> Which for these purposes only includes those with economic interests in the Notes.

## Scheme Meeting: Class for Voting Purposes

### One Class of Scheme Creditors

As noted above, under the provisions of section 86 of the Act, in order for the Scheme to become legally binding on the Company and the Scheme Creditors, the Scheme must be approved by a majority in number, representing at least 75% in value, of the Scheme Creditors present and voting either in person or by proxy at the Scheme Meeting. The Scheme must then be sanctioned by the Court at a subsequent Sanction Hearing, a copy of the Sanction Order filed with the Cayman Islands Registrar of Companies and all conditions precedent to the Scheme's effectiveness being satisfied or waived, including, among other things, the entry of the Recognition Order by the Bankruptcy Court, before it can become effective.

If the rights of the Scheme Creditors affected by the Scheme are so different or would be affected so differently by the Scheme as to make it impossible for them to consult together with a view to their common interest, they must be divided into separate classes for purposes of voting on the Scheme and a separate scheme meeting must be held for each class of Scheme Creditors.

It is the responsibility of the Company to formulate the class or classes of creditors for the purpose of convening a meeting to consider and, if thought fit, approve the Scheme. The final decision as to class composition will be a matter for the Court after taking into account any objections from Scheme Creditors (to the extent any objections are made).

The Company has considered the existing and prospective rights of the Scheme Creditors against the Company in the absence of the Scheme (i.e., in a winding up of the Company) and the rights of the Scheme Creditors under the proposed Scheme. Having considered these rights, the Company has concluded that it is appropriate that all Scheme Creditors vote as one class in a single meeting.

As all Noteholders hold economic and beneficial interests in the one single series of debt securities issued by the Company, all Noteholders rights against the Company are identical, and each Noteholder has a claim against the Company in the principal amount of Notes held by that Noteholder which ranks *pari passu* with any claim by any other Noteholder.

In order to determine the difference that the proposed Scheme would make to the rights of Scheme Creditors, it is necessary to determine the correct comparator. On 26 August 2021, an Event of Default (as defined in the Indenture) occurred under the terms of the Notes. The Company did not pay the quarterly interest in the aggregate amount of US\$414,062.50 that was due and payable on 26 July 2021 (the "**July Interest Payment**"), and the 30-day grace period provided for such payment under the Indenture expired when the overdue amount was not paid on or before 25 August 2021. As a consequence of the outstanding July Interest Payment, the Company's board of directors (the "**Board**") does not believe the Company's existing obligations and liquidity permit enough time to formulate a consensual restructuring solution substantially different from the restructuring envisaged by the Scheme. In the absence of the Scheme, assuming the Company is not able to obtain sufficient support from Noteholders for an alternative transaction within the necessary timeframe, the Company would be unable to satisfy its obligations under the Indenture and the Board would, in the proper discharge of its fiduciary duties, be required to take steps to commence insolvency proceedings, which would most likely involve the appointment of a permanent liquidator.

Accordingly, the relevant comparator to the Scheme is a winding up of the Company. It is anticipated that the Company would be wound up in accordance with the laws of the Cayman Islands because the Company is incorporated in the Cayman Islands and, as such, the Court has jurisdiction to conduct winding-up proceedings in respect of the Company, should the relevant circumstances arise.

In the event of the insolvent liquidation of the Company, pursuant to Cayman Islands insolvency law, all Scheme Creditors will rank *pari passu* and will have the same rights to have their claims adjudicated through a proof of debt process (including the right to appeal the court-appointed liquidator's decision on a proof of debt). The rights of the Scheme Creditors in the event of the Company's liquidation are therefore substantively the same and, in any event, are not so dissimilar as to make it impossible for them to consult together with a view to a common interest. There are also no other creditors of the Company that are subject to the compromises contained in the Scheme.

In addition, each Noteholder will be treated identically under the Scheme and shall be entitled to their allocation of the Scheme Consideration.

The Company also considered whether its entry into the Restructuring Support Agreement with certain constituted a separate class of scheme creditor for voting purposes. The Company has concluded it does not on the basis the Restructuring Support Agreement, in simple terms, memorializes the agreed-upon terms for a financial restructuring by amending the terms of the Notes and it is appropriate for the Company to garner the support from a majority of the Noteholders to the transactions contemplated by the Scheme.

For the reasons set out above, the Company considers that the rights of the Noteholders under the Scheme are not so dissimilar as to make it impossible for them to consult together with a view to a common interest and has determined that they can be considered as a class and can vote as one class.

### **The Convening Hearing**

As noted above, the Convening Hearing is listed to be heard by the Court on **25 January 2022 at 10 a.m. (EST)**.

At that Convening Hearing, the Company will draw any issue raised by Scheme Creditors who do not appear at the Convening Hearing to the Court's attention. Scheme Creditors have the right to be heard in person or through counsel and make representations at the Convening Hearing.

Scheme Creditors who wish to attend the Convening Hearing (in person or through counsel) are requested to notify Conyers Dill & Pearman LLP, the Company's Cayman Islands attorneys, by way of email at [atlas@conyers.com](mailto:atlas@conyers.com) no later than **12 p.m. on 20 January 2022 (EST)** providing their contact information. Scheme Creditors are also welcome to send written submissions to the same email address, which will be placed before the Court in advance of the Convening Hearing.

This Practice Statement Letter is intended to provide Scheme Creditors with sufficient information regarding the Scheme and the transactions contemplated by the Scheme such that, should they wish to raise issues related to the constitution of the class of creditors voting at the Scheme Meeting or issues which might otherwise affect the conduct of such Scheme Meeting ("**Scheme Issues**"), they may attend and be represented before the Court at the Convening Hearing.

If no email communications are received by 12 p.m. on 20 January 2022 (EST), the Court may be invited to dispense with the oral hearing and give directions “on the papers” on or around 25 January 2022.

Noteholders should be aware that Scheme Issues should be raised at the Convening Hearing. If they do not raise such Scheme Issues, while Scheme Creditors will still be entitled to appear and raise objections at the subsequent Sanction Hearing, the Court would expect those Scheme Creditors to show good reason why they did not previously raise any Scheme Issues in respect of the proposals for convening the Scheme Meeting. Scheme Creditors should therefore raise any Scheme Issues at the Convening Hearing.

If the Court orders the Scheme Meeting to be convened at the Convening Hearing, then the Scheme Creditors will have the opportunity to raise objections at the Sanction Hearing. At the Sanction Hearing the Court will consider any additional jurisdictional issues and decide whether to exercise its discretion to sanction the Scheme. A notice confirming the precise date of the Sanction Hearing, once known, will be distributed, made available and announced to Noteholders.

Yours sincerely,

The Board of Directors

Atlas Financial Holdings, Inc.

---

### **No Offer or Solicitation**

Nothing in the Practice Statement Letter constitutes an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote of approval, nor shall it constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale is unlawful. Securities may not be offered or sold in the United States absent registration or an exemption from registration. The Notes which are the subject of the Scheme, or the securities to be issued in the context of the Scheme have not been and will not be registered under the U.S. Securities Act of 1933, as amended, or the securities laws of the United States or any state thereof or the applicable laws of any other jurisdiction.

The Practice Statement Letter does not constitute an invitation to participate in the Scheme in or from any jurisdiction in or from which, or to or from any person to or from whom, it is unlawful to make such invitation under applicable securities laws. The distribution of the Practice Statement Letter in certain jurisdictions may be restricted by law. Persons into whose possession the Practice Statement Letter comes are required by the Company to inform themselves about, and to observe, such restrictions.