

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TRIAD GUARANTY INC.¹

Debtor.

Chapter 11

Case No. 13-11452 (MFW)

Objections Due: August 28, 2017 at 4:00 p.m. (ET)
Hearing Date: September 8, 2017 at 1:30 p.m. (ET)

**MOTION FOR ORDER (A) APPROVING DISCLOSURE STATEMENT;
(B) FIXING VOTING RECORD DATE; (C) APPROVING SOLICITATION
AND VOTING PROCEDURES WITH RESPECT TO
PLAN OF REORGANIZATION; (D) APPROVING FORM OF
SOLICITATION PACKAGE AND NOTICES; AND (E) SCHEDULING
CERTAIN DATES IN CONNECTION THEREWITH**

Triad Guaranty Inc. (the “Debtor”), by this motion (the “Motion”), seeks the entry of an order in substantially the form of Exhibit A hereto (the “Disclosure Statement Order”) (a) approving the proposed Disclosure Statement for the Joint Plan of Reorganization of Triad Guaranty Inc. and Wolfgang Holdings LLC Pursuant to Chapter 11 of the Bankruptcy Code (as may be amended or supplemented from time to time and including all exhibits and supplements thereto, the “Disclosure Statement”) in connection with the Joint Plan of Reorganization of Triad Guaranty Inc. and Wolfgang Holdings LLC (together, the “Plan Proponents”) Pursuant to Chapter 11 of the Bankruptcy Code (as may be amended or supplemented from time to time and including all exhibits and supplements thereto, the “Plan”);² (b) fixing a voting record date pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for

¹ The last four digits of the Debtor’s federal taxpayer identification number are 8519. The location of the Debtor’s headquarters and the Debtor’s service address is 1900 Crestwood Blvd., Birmingham, AL 35210.

² Terms not defined herein shall have the meanings ascribed to them in the Plan.

determining, among other things, those interest holders entitled to receive ballots and materials necessary for voting on the Plan, as specified in Bankruptcy Rule 3017(d); (c) approving solicitation and voting procedures with respect to the Plan; (d) approving the form of the solicitation package and the notices to be distributed with respect thereto; and (e) approving certain deadlines in connection with the hearing on the adequacy of the Disclosure Statement (the “Disclosure Statement Hearing”) scheduled for September 8, 2017 at 1:00 p.m. (ET), and the hearing on confirmation of the Plan (the “Confirmation Hearing”) scheduled for October 25, 2017 at 10:30 a.m. (ET). In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. The predicates for the relief requested herein are sections 105(a), 1125, 1126 and 1128 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) and Bankruptcy Rules 2002, 3003, 3017, 3018 and 3020.

BACKGROUND

4. On June 3, 2013 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its property as debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.
5. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed in this case.

RELIEF REQUESTED

6. By this Motion, the Debtor requests, among other things, that the Court enter the Disclosure Statement Order, substantially in the form attached as Exhibit A hereto, (a) approving the Disclosure Statement, (b) fixing a voting record date (the “Voting Record Date”) pursuant to Bankruptcy Rule 3018(a) for determining, among other things, those equity security holders entitled to receive ballots and materials necessary for voting on the Plan, as specified in Bankruptcy Rule 3017(d), (c) approving solicitation and voting procedures with respect to the Plan, (d) approving the form of the Solicitation Package (as defined herein) and the notices to be distributed with respect thereto, and (e) establishing the following deadlines related to confirmation of the Plan:

Disclosure Statement Objection Deadline	August 28, 2017
Disclosure Statement Hearing	September 8, 2017 at 1:30 p.m. (ET)
Voting Record Date	September 8, 2017
Confirmation Hearing Notice Mailing Deadline	September 15, 2017
Voting Objection Deadline	September 15, 2017
Solicitation Mailing Deadline	September 15, 2017
Plan Supplement Filing Deadline	October 6, 2017
Voting Deadline	October 16, 2017 at 4:00 p.m. (ET)
Plan Objection Deadline	October 16, 2017 at 4:00 p.m. (ET)
Plan Proponents’ Reply in Support of Confirmation Deadline	October 23, 2017
Confirmation Hearing	October 25, 2017 at 10:30 a.m. (ET)

BASIS FOR RELIEF

A. Approval of the Form and Manner of Notice of the Disclosure Statement Hearing and Deadline for Filing Objections Thereto

7. Bankruptcy Rule 3017(a) provides, in relevant part:

[A]fter a disclosure statement is filed in accordance with [Bankruptcy] Rule 3016(b), the court shall hold a hearing on at least 28 days' notice to the debtor, creditors, equity security holders and other parties-in-interest as provided in [Bankruptcy] Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any party-in-interest who requests in writing a copy of the statement or plan.

Fed. R. Bankr. P. 3017(a). Bankruptcy Rules 2002(b) and (d) require notice to all creditors, indenture trustees, and equity security holders of the time set for filing objections to, and the hearing to consider the approval of, a disclosure statement.

8. The Debtor requests that the Court establish **August 28, 2017** as the deadline to object to the Disclosure Statement. In accordance with Bankruptcy Rules 2002(b) and (d) and 3017(a), the Debtor will have served at least 28 days in advance of the deadline to object to the Disclosure Statement:

a. A copy of the notice of the Disclosure Statement Hearing in the form attached to the proposed Disclosure Statement Order as Exhibit 1 (the "Disclosure Statement Notice") and a copy of the Disclosure Statement (including the Plan attached as Exhibit A thereto) by first-class mail upon (i) the United States Trustee for this District (the "US Trustee"), (ii) the Securities and Exchange Commission (the "SEC"), and (iii) any party-in-interest who specifically requests the Disclosure Statement in the manner specified in the Disclosure Statement Notice and/or Bankruptcy Rule 3017(a); and

b. A copy of the Disclosure Statement Notice by first class mail to the Debtor's creditor matrix, including: (i) the Office of the United States Attorney for the District of Delaware, (ii) the Internal Revenue Service, (iii) all known holders of claims against and equity interests in the Debtor, and (iv) all parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy Rule 2002 (the "2002 List").

The Debtor submits that the objection deadline, hearing date and service of the Disclosure Statement Notice with respect to the Disclosure Statement comply with the notice requirements of the Bankruptcy Rules and the Bankruptcy Code.

B. Approval of Disclosure Statement

9. Section 1125(b) of the Bankruptcy Code prohibits the postpetition solicitation of a chapter 11 plan unless the plan (or summary thereof) and a written disclosure statement—approved by the bankruptcy court as containing adequate information—are transmitted to those persons whose votes are being solicited. The Debtor requests that the Court approve the Disclosure Statement as providing “adequate information” within the meaning of section 1125(a)(1) of the Bankruptcy Code:

“[A]dequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

10. The primary purpose of a disclosure statement is to provide information that is “reasonably practicable” to permit an “informed judgment” by those entitled to vote on the plan. See Century Glove, Inc. v. First Am. Bank of New York, 860 F.2d 94, 100 (3d Cir. 1988) (“ . . . § 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); see also In re Phoenix Petroleum, Co., 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001).

11. The Court has broad discretion to determine whether the information contained in a disclosure statement is “adequate.” See Kirk v. Texaco, Inc., 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more clear in granting

broad discretion to bankruptcy judges under § 1125(a) . . .”); see also Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 417 (3d Cir. 1988); Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.), 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.”).

12. The Court’s determination should take account of the expertise and resources, including outside advisors and relevant information already possessed or publicly available, of the hypothetical investor of each class of claims or interests in a debtor’s chapter 11 case from which classes the post-petition acceptance or rejection of the plan is solicited. See In re Zenith Elecs. Corp., 241 B.R. 92, 99-100 (Bankr. D. Del. 1999).

13. The Disclosure Statement contains the pertinent information necessary for those equity security holders entitled to vote to make an informed decision whether to accept or reject the Plan. The Debtor respectfully submits that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code and should be approved.

C. Fixing A Voting Record Date

14. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a Chapter 11 plan, “creditors and equity security holders shall include holders of stocks, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P.

3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes.

15. The Debtor requests that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) to establish **September 8, 2017** as the record date (the “Voting Record Date”) for determining: (a) those equity holders entitled to receive the Solicitation Package (as defined below) pursuant to the Solicitation Procedures (as defined below); (b) those equity holders entitled to vote to accept or reject the Plan; and (c) whether equity interests have been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the assigned claim.

D. Approval of Solicitation Procedures and Forms of Solicitation Documents and Notices

16. To conduct an effective solicitation of acceptances or rejections of the Plan, consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and due process, the Debtor requests that the Court approve the below-described solicitation, transmittal, balloting, tabulation and related activities to be undertaken by it and the Debtor’s proposed solicitation agent, Donlin Recano & Company (“DRC”), in connection with this case (collectively, the “Solicitation Procedures”). The Debtor believes that the Solicitation Procedures are well-designed and specifically tailored to solicit acceptances or rejections of the Plan effectively.

17. In addition, the Debtor shall mail, or cause to be mailed, the Solicitation Package to all holders of Interests in the Class 3 on or before September 15, 2017, as further described below. The amount of Interests in Class 3 Equity Interests for voting purposes only will be established based on the amount of the applicable positions held by

such Class 3 Interest holders as of the Voting Record Date, as evidenced by the Debtor's books and records.

18. To the extent that circumstances require a further modification or amendment of the Solicitation Procedures, the Debtor hereby reserves the right to supplement or amend the Solicitation Procedures as appropriate to better facilitate the solicitation process.

Special Solicitation Procedures for Soliciting Votes from Beneficial Holders of Equity Interests

19. The Debtor believes that Beneficial Holders³ of Equity Interests in Class 3 may hold such interests either in their own name (a "Record Holder") or through a broker, dealer, commercial bank, trust company or other agent nominee (a "Nominee"). Rule 3017(e) of the Federal Rules of Bankruptcy Procedure states that the Court "shall consider the procedures for transmitting the documents and information required by subdivision (d) to beneficial holders of stock . . . and other securities, determine the adequacy of the procedures, and enter an orders the court deems appropriate." Fed. R. Bankr. P. 3017(e). The Debtor requests that the Court approve the following procedures for soliciting votes from Beneficial Holders.

- a) The Voting Agent shall distribute or cause to be distributed the appropriate number of copies of Ballots to Nominees identified by the Voting Agent as Entities through which Beneficial Holders hold Class 3 Equity Interests as of the Voting Record Date;
- b) Any Nominee that is a holder of record with respect to Class 3 Equity Interests shall solicit votes from Beneficial Holders of such interests by:
 - (i) immediately distributing the Solicitation Package, including Ballots, it

³ The term "Beneficial Holder" refers to a beneficial owner of interests in the Debtor whose interests have not been satisfied prior to the Voting Record Date pursuant to Bankruptcy Court order or otherwise, as reflected in the records maintained as of the Voting Record Date

receives from the Voting Agent to all such Beneficial Holders;
(ii) providing such Beneficial Holders with a return address and envelope to send Ballots; (iii) promptly collecting Ballots from such Beneficial Holders that cast votes on the Plan; (iv) compiling and validating the votes and other relevant information of all such Beneficial Holders on the Master Ballot; and (v) transmitting the Master Ballot to the Voting Agent by the Voting Deadline.

- c) Any Beneficial Holder holding the Class 3 Equity Interests as a Record Holder in its own name shall vote on the Plan by completing and signing a Ballot and returning it directly to the Voting Agent on or before the Voting Deadline;
- d) Any Beneficial Holder holding Class 3 Equity Interests in “street name” through a Nominee must vote on the Plan through such Nominee by completing and signing the Beneficial Ballot and returning such Beneficial Ballot to the appropriate Nominee as promptly as possible and in sufficient time to allow such Nominee to process the Beneficial Ballot and return the Master Ballot to the Notice and Claims Agent prior to the Voting Deadline. Any Beneficial Holder holding Equity Interests in “street name” that submits a Beneficial Ballot to the Debtor, the Debtor’s agents, or the Debtor’s legal advisors will not have such Beneficial Ballot counted for purposes of accepting or rejecting the Plan;
- e) Any Ballot returned to a Nominee by a Beneficial Holder shall not be counted for purposes of accepting or rejecting the Plan until such Nominee properly completes and delivers to the Voting Agent a Master Ballot that reflects the vote of such Beneficial Holders by the Voting Deadline or otherwise validates the Ballot in a manner acceptable to the Voting Agent. Nominees shall retain all Ballots returned by Beneficial Holders for a period of one (1) year after the Effective Date of the Plan;
- f) If a Beneficial Holder holds Interests through more than one Nominee or through multiple accounts, such Beneficial Holder may receive more than one Ballot and each such Beneficial Holder should execute a separate Ballot for each block of Interests that it holds through any Nominee and must return each such Ballot to the appropriate Nominee;
- g) If a Beneficial Holder holds a portion of an Equity Interest through a Nominee or Nominees and another portion in its own name as the record holder, such Beneficial Holder should follow the procedures described herein to vote the portion held in its own name and the procedures described in the rest of this section to vote the portion held by the Nominee(s); and

- h) Beneficial Holders holding Equity Interests through a Nominee must return their paper Beneficial Ballot to their Nominee, unless, at the option of the Nominee, the Nominee instructs their Beneficial Holders that they may relay votes or voting instructions electronically to the Nominee or the entity preparing the Master Ballot on such Nominee's behalf, and Nominees may use their customary procedures for obtaining such votes electronically.

Duties of Voting Agent

20. DRC shall act as voting agent (the "Voting Agent") for the Debtor. In such capacity, DRC will assist the Debtor in (i) distributing the Solicitation Packages, (ii) receiving, tabulating and reporting on Ballots (defined below) cast for or against the Plan by holders of Equity Interests in the Debtor, (iii) responding to inquiries from creditors, equity holders, and other parties-in-interest relating to the Plan, the Disclosure Statement, the Ballots, the Solicitation Procedures, and all other Solicitation Package (defined and described below) materials and matters related thereto, including, without limitation, the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (iv) soliciting votes on the Plan, and (v) if necessary, contacting creditors and equity holders regarding the Plan.

Determination of Treatment of Certain Claims and Equity Interests for Notice and Voting Purposes

21. As set forth in the Disclosure Statement and Plan, the Plan Proponents have filed a Plan for the resolution of the outstanding creditor claims against, and equity interests in the Debtor through distribution under the Plan.

22. Pursuant to the Plan, the Debtor shall satisfy in full all Allowed Administrative Claims, Priority Claims, and General Unsecured Claims and such claims shall not be classified and the holders of such claims are not entitled to vote on the Plan.

The following summary chart sets forth the rights of each class of claims and equity interests to vote, or not vote, on the Plan:

Summary of Status and Voting Rights			
Class	Designation	Impairment	Entitled to Vote
1	Priority Claims	Unimpaired	Deemed to Have Accepted the Plan and Not Entitled to Vote
2	General Unsecured Claims	Unimpaired	Deemed to Have Accepted the Plan and Not Entitled to Vote
3	Equity Interests	Impaired	Entitled to Vote

Approval of Form of Non-Voting Status Notice

23. Consistent with section 1126 of the Bankruptcy Code and Bankruptcy Rule 3017(d), and in an effort to conserve the resources of the Debtor's estate, unless specifically requested, the Debtor proposes that it not be required to send Solicitation Packages to those creditors who are not entitled to vote on the Plan. A copy of the Plan and Disclosure Statement will be available by request to DRC.

24. As reflected above and in the Plan, Class 1 holders of Priority Claims and Class 2 holders of General Unsecured Claims are not entitled to vote to accept or reject the Plan because such classes are unimpaired under the Plan and therefore conclusively are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. In accordance with section 1123(a)(1) of the Bankruptcy Code, and in lieu of Solicitation Packages, the Debtor will send Class 1 and 2 members both a Confirmation Hearing Notice (defined below) and a Notice of Non-Voting Status with Respect to Unimpaired Class Deemed to Accept the Plan and Unclassified Classes, substantially in the form attached to the proposed Disclosure Statement Order as Exhibit 3 (the "Non-Voting Status Notice"). Additionally, in lieu of Solicitation Packages, the Debtor will

send the Confirmation Hearing Notice (as defined herein) to those parties on the creditor matrix not referenced in this paragraph and not receiving the Solicitation Package.

25. The Non-Voting Status Notice provides: (i) notice of the approval of the Disclosure Statement, (ii) notice of the filing of the Plan and (iii) directions for obtaining copies of the Plan and Disclosure Statement. The Debtor submits that such notice satisfies the requirements of the Bankruptcy Code and the Bankruptcy Rules.

Establishing the Voting Deadline

26. Pursuant to Bankruptcy Rule 3017(c), at the time of the approval of the Disclosure Statement, or earlier, “the court shall fix a time within which the holders of claims and interests may accept or reject the Plan.” Fed. R. Bankr. P. 3017(c). The Debtor requests that the Court establish October 16, 2017 at 4:00 pm (prevailing Eastern time), a date that is nine days before the proposed Confirmation Hearing, as the voting deadline (“Voting Deadline”).⁴ The proposed Voting Deadline is thirty-one days after the date that Solicitation Packages are expected to be distributed. The Debtor proposes that the Plan Objection Deadline (as defined below) be set for the same date.

Approval of the Form of Ballots

27. Bankruptcy Rule 3018(c) provides, in relevant part, as follows:

An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form.

⁴ The Debtor is reserving the right to amend from time to time the Plan (subject to compliance with the requirements of section 1127 of the Bankruptcy Code and the terms of the Plan regarding modifications). The Bankruptcy Code requires the Debtor to disseminate additional solicitation materials if the Debtor makes material changes to the Plan or if the Debtor waives a material condition to Plan confirmation. In that event, the Voting Deadline will be extended or re-opened to the extent directed by the Court.

Fed. R. Bankr. P. 3018(c). All votes must be cast by using the appropriate ballot (singularly, the “Ballot”, collectively, the “Ballots”).⁵ The Debtor, in accordance with Bankruptcy Rule 3018(c), will prepare the Ballots for Class 3, which is the only class entitled to vote to accept or reject the Plan.

28. By this Motion, the Debtor seeks approval of, and authority to use, the Ballot, in substantially the form attached as Exhibit 4 to the Disclosure Statement Order. The form of Ballot complies with Bankruptcy Rule 3018(c) and is based on Official Form No. 14, as modified to address the particular needs of the Debtor’s chapter 11 case.

29. The Ballot may not be used for any purpose other than to vote to accept or reject the Plan. The Ballot does not constitute, and shall not be deemed to be, a proof of Claim or Equity Interest or an assertion or admission of a Claim or Equity Interest. At the time that the Ballots are transmitted, and equity interest holders should not surrender certificates, instruments, or other documents representing or evidencing their Equity Interests.

Approval of Solicitation Packages and Procedures for Distribution Thereof

30. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests for purposes of soliciting their votes and providing adequate notice of a plan confirmation hearing. Upon approval of the Disclosure Statement, and no later than September 15, 2017, the Debtor proposes that it, or the Voting Agent, will serve the holders of Class 3 Equity Interests (as of the Voting Record Date) the following:

⁵ The defined term “Ballot” shall include all ancillary and related information and any amendments or supplements thereto necessary for completing the Ballot.

- the Confirmation Hearing Notice;
- a Ballot, together with voting instructions;
- the Disclosure Statement and the Plan; and
- the Disclosure Statement Order (without Exhibits).

(collectively, the “Solicitation Package”).

31. The Debtor also intends to serve all of the documents in the Solicitation Package (except for the Ballot), on (i) the US Trustee, (ii) the SEC and (iii) any party-in-interest who specifically requests the Disclosure Statement in the manner specified in the Disclosure Statement Notice and/or Bankruptcy Rule 3017(a).

32. The Debtor submits that the Solicitation Procedures satisfy the requirements of the Bankruptcy Code and the Bankruptcy Rules and should be approved.

Approval of Voting and Tabulation Procedures

33. Section 1126(d) of the Bankruptcy Code provides:

A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

34. 11 U.S.C. § 1126(d). Further, Bankruptcy Rule 3018(a) provides that “the court after notice and hearing may temporarily allow [an objected to] claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a). So as to avoid uncertainty, to provide guidance to the Debtor and the Voting Agent, and to avoid the potential for inconsistent results, the Debtor respectfully requests that the Court approve the following voting and tabulation

procedures, in accordance with section 1126(d) of the Bankruptcy Code and Bankruptcy Rule 3018(a). The Debtor proposes the following voting procedures:

- a) Voting Class. The Plan contemplates that Class 3 will be entitled to vote on the Plan. The Debtor respectfully requests that the Court order that only those holders of interests in Class 3 be entitled to vote to accept or reject the Plan.
- b) Votes Counted. The Debtor proposes that any Ballot timely received, properly executed, and containing sufficient information to permit the identification of the equity interest holder and the vote cast as either an acceptance or rejection of the Plan be counted as an acceptance or rejection, as the case may be, of the Plan.
- c) Votes Not Counted. The Debtor proposes that the following Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:
 - i. Any Ballot received after the Voting Deadline, even if postmarked prior to the Voting Deadline;
 - ii. Any Ballot that is illegible or contains insufficient information to permit the identification of the equity interest holder;
 - iii. Any Ballot that indicates neither acceptance nor rejection or that indicates both acceptance and rejection of the Plan;
 - iv. Any Ballot cast by a person or entity that does not hold a equity interest in a class that is entitled to vote to accept or reject the Plan;
 - v. Any unsigned Ballot;
 - vi. Any form of Ballot other than the official form sent by the Voting Agent or a copy thereof;
 - vii. Any copy of a Ballot without an original signature; and
 - viii. Any Ballot that is sent by facsimile transmission or via electronic mail.
- d) Changing Votes. Notwithstanding Bankruptcy Rule 3018(a), the Debtor proposes that whenever two or more Ballots are cast voting the same Equity Interest prior to the Voting Deadline, the Ballot dated latest, but received prior to the Voting Deadline, will be deemed to reflect the voter's intent, and, thus, to supersede any prior Ballots, without prejudice to the Debtor's right to object to the validity of the latest Ballot, including under Bankruptcy Rule 3018(a) and, if the objection is sustained, to count the first

Ballot for all purposes. This procedure of counting the last Ballot received is consistent with practice under various state and federal corporate and securities laws. Moreover, it will spare the Court and the Debtor the time and expense associated with responding to motions under Bankruptcy Rule 3018(a) attempting to show cause for changing votes.

e) No Division of Equity Interests or Votes. The Debtor proposes that the Court clarify that creditors may not divide their Equity Interests within a particular class, or the votes associated therewith, and order that interest holders must vote all of their Equity Interests within such class either to accept or reject the Plan. The Debtor further proposes that a Ballot partially accepting and partially rejecting the Plan or otherwise voted inconsistently shall not be counted for any purposes.

f) Voting Report. The Debtor will file with the Court a voting report (the "Voting Report") prior to the commencement of the Confirmation Hearing. The Voting Report shall, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity (each an "Irregular Ballot") including, but not limited to, those Ballots that are late or illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile or electronic mail or damaged. Unless otherwise directed by the Court, delivery of a defective or Irregular Ballot will not be deemed to have been made unless such defect or irregularity has been cured or waived by the Debtor. Any waiver by the Debtor of a defect or irregularity in any Ballot will be detailed in the Voting Report filed with the Court by the Voting Agent. Neither the Debtor nor any other person or entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification. The Voting Report also shall indicate the Debtor's intentions with regard to such Irregular Ballots.

Returned Solicitation Packages or Notices

35. The Debtor seeks the Court's approval for a departure from the Bankruptcy Rules as follows: (a) the Debtor shall be excused from giving notice or providing service of any kind upon any person or entity to whom the Debtor mailed a notice regarding the Disclosure Statement Hearing and received any of such notice returned by the United States Postal Service marked "undeliverable as addressed",

“moved – left no forwarding address”, or “forwarding order expired”, or similar reason, unless the Debtor has been informed in writing or by electronic mail by such person or entity of that person’s or entity’s new address; and (b) the Debtor shall be excused from re-mailing such Solicitation Package, or other notices, as the case may be, to those entities whose addresses differ from the addresses in the claims register or the Debtor’s records as of the Voting Record Date, except to the extent that a Solicitation Package is returned with a forwarding address listed. If a creditor has changed its mailing address after entry of the Disclosure Statement Order, the burden shall be on the creditor or party-in-interest to advise the Voting Agent and the Debtor of the new address.

36. The Debtor believes that the requested procedures and other relief requested herein are cost-effective, provide adequate notice and an opportunity to be heard, and are in the best interests of the Debtor’s estate, its creditors, its equity holders and other parties-in-interest. Accordingly, the Debtor submits that it has shown good cause for the relief requested herein.

E. Establishing Notice and Objection Procedures in Respect of Confirmation of the Plan

Confirmation Hearing

37. Bankruptcy Rule 3017(c) provides:

On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

Fed. R. Bankr. Proc. 3017(c). In accordance with Bankruptcy Rule 3017(c), the Court has scheduled the Confirmation Hearing for October 25, 2017, which is approximately forty days after the Solicitation Package is distributed to voting equity interest holders. The date of the Confirmation Hearing may be continued from time to time by the Court

or the Debtor. The proposed timing for the Confirmation Hearing is in compliance with the Bankruptcy Code and the Bankruptcy Rules and will enable the Debtor to pursue confirmation of the Plan in a timely fashion in order to ensure confirmation and consummation of the Plan within the timeframe contemplated by the Debtor.

Approval of Confirmation Hearing Notice

38. The Solicitation Package includes the notice required by Bankruptcy Rules 2002(b) and 2002(d) to all creditors and equity interest holders of the time set for filing objections to confirmation of a chapter 11 plan and the hearing to consider confirmation of such plan (the “Confirmation Hearing Notice”), substantially in the form attached as Exhibit 2 to the proposed Disclosure Statement Order. The Debtor requests approval of the Confirmation Hearing Notice which contains, among other things: (a) the Plan Objection Deadline; (b) the Confirmation Hearing date and time; (c) the Voting Deadline; and (d) the Voting Record Date. The Confirmation Hearing Notice will also instruct creditors and interested parties on how they may obtain copies of the Disclosure Statement, Plan, Disclosure Statement Order, and all other Solicitation Package materials (except Ballots). The Debtor respectfully requests that the Court find that the Confirmation Hearing Notice complies with the requirements of Bankruptcy Rules 2002(b), 2002(c)(3), and 2002(d).

Establishing Procedures for Filing Objections to Confirmation of the Plan

39. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Fed. R. Bankr. P. 3020(b)(1). Unless otherwise ordered by the Court, Bankruptcy Rule 2002(b) requires at least twenty-eight (28) days’ notice by mail to all creditors and equity interest holders of the plan objection deadline.

40. The Confirmation Hearing Notice provides, and the Debtor requests that the Court direct, that objections to confirmation of the Plan must:

- a. be made in writing;
- b. comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware;
- c. state the name and address of the objecting party and the amount and nature of the claim or interest of such party against or in the Debtor, its estate, or its property;
- d. state with particularity the legal and factual bases and nature of any objection to the Plan, including specific reference to the text of the Plan to which the objection is made and, if practicable, proposed modification to the Plan that would resolve such objection; and
- e. be filed, together with proof of service, with the Court and served by personal service, overnight delivery, or first class mail, so that they are RECEIVED by the parties identified in the Confirmation Hearing Notice, no later than 4:00 p.m. (prevailing Eastern Time) on October 16, 2017 (the "Plan Objection Deadline").

41. The proposed timing for filing and service of any objections to confirmation of the Plan will afford the Court, the Debtor, and other parties-in-interest, sufficient time to consider the objections prior to the Confirmation Hearing. The Debtor requests that the Court consider only timely filed and served written objections to confirmation of the Plan, and that objections not timely filed and served in accordance with the above provisions be overruled.

42. The Debtor requests that it be allowed to file its reply to any objections filed by the Plan Objection Deadline by no later than October 23, 2017.

NOTICE AND PRIOR MOTIONS

43. Notice of this Motion has been given to: (i) the US Trustee and (ii) all parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy

Rule 2002. Under the circumstances, the Debtor submits that no other or further notice is required.

WHEREFORE, the Debtor respectfully requests that this Court enter the Disclosure Statement Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and granting such further relief as is just and proper under the circumstances.

Dated: July 31, 2017

**SHAW FISHMAN GLANTZ
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