Michael Luskin
Lucia T. Chapman
Stephan E. Hornung
LUSKIN, STERN & EISLER LLP
Eleven Times Square
New York, New York 10036
Telephone: (212) 597-8200
Facsimile: (212) 974-3205

*Attorneys for the Chapter 11 Trustee*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| In re: | : | Chapter 11 |
| | : | |
| FLETCHER INTERNATIONAL, LTD., | : | Case No. 12-12796 (REG) |
| | : | |
| Debtor. | : | |
| | : | |

**SUPPLEMENT TO THE TRUSTEE'S REPORT AND DISCLOSURE STATEMENT**

Richard J. Davis
Chapter 11 Trustee
415 Madison Avenue, 11th Floor
New York, New York 10017
Telephone: (646) 553-1365

**This is not a solicitation of acceptance or rejection of the Plan. Acceptances or rejections may not be solicited until a disclosure statement has been approved by the Bankruptcy Court. This Supplement to the Disclosure Statement is being submitted for approval but has not been approved by the Court.**

# TABLE OF CONTENTS

**SUPPLEMENT TO THE TRUSTEE'S REPORT AND DISCLOSURE STATEMENT**

Richard J. Davis, the Chapter 11 Trustee of the Debtor, Fletcher International, Limited, respectfully submits this Supplement to his Report and Disclosure Statement (the "**Supplement**"), filed November 25, 2013 [Docket No 327].[1]

## I.
## INTRODUCTION

The Trustee filed his Report and Disclosure Statement on November 25, 2013. On December 4, 2013, the Trustee filed an *ex parte* application requesting entry of an order fixing the deadline to file objections to the Trustee's Report and Disclosure Statement and the Trustee's Motion to Approve the Disclosure Statement (the "**Motion to Approve**"), (ii) fixing the deadline for the Trustee to file responses to any objections, and (iii) shortening the notice period for the Objection Deadline and the hearing to consider approval of the Disclosure Statement [Docket No 339]. On December 6, 2013, the Court entered an order granting the Trustee's application [Docket No. 341], and, on the same day, the Trustee filed his Motion for Entry of an Order Approving the Disclosure Statement, Fixing Certain Deadlines, and Granting Related Relief [Docket No. 344].

Since the Trustee filed his Report and Disclosure Statement and filed his Motion to Approve, there have been several important developments in this case. The Trustee has received informal comments from parties-in-interest and written objections from two insiders whose conduct is criticized in the Report and who take issue with portions of the Report. Additionally, based on extensive discussions with the Arbitrage, Leveraged and Alpha JOLs, the

[1] All capitalized terms not otherwise defined in this Supplement are defined in the Trustee's Report and Disclosure Statement and its accompanying Glossary.

MBTA, and the Louisiana Pensions Funds, the Trustee believes it is appropriate to clarify or modify certain aspects of the Plan. These are all described in this Supplement.

## II.
## DEVELOPMENTS SINCE THE TRUSTEE'S REPORT AND DISCLOSURE STATEMENT WAS FILED

### A. THE ION LITIGATION (REPORT SECTION VI.H, PP. 133–35)

On October 31, 2013, the Chancery Court heard post-trial argument, and on December 4, 2013, issued a written opinion awarding the Debtor $300,000 in damages. An order and final judgment (the "**Judgment**") was entered on December 12, 2013, directing that the Debtor was entitled to $300,000 in damages, plus pre-judgment interest compounded annually. The Court directed that if the Judgment was paid by January 11, 2014, the amount of the payment would be $351,782.86. The Trustee, having concluded that an appeal was unlikely to be successful, has reached an agreement with ION pursuant to which ION will pay $500,000 and the Trustee will not appeal the Court's decision.

### B. THE KASOWITZ LITIGATION (REPORT SECTION VI.G.15, P. 133)

On November 21, 2013, the Court held a pre-trial conference. The Trustee and Kasowitz have exchanged document requests, and their objections and responses are due by January 24, 2014. On November 22, 2013, Kasowitz served third-party defendants, AF and FAM. A pre-trial conference has been scheduled for January 16, 2014 at 9:45 a.m. at which time AF and FAM have been directed to appear.

### C. FLETCHER INTERNATIONAL PARTNERS, LTD. (REPORT SECTION IV.F., PP. 76–79)

Stewart Turner, acting as sole director of FIP, and without notice to any of the shareholders, executed an employment contract, dated July 1, 2013, on behalf of both FIP and himself, pursuant to which he agreed to serve as president of FIP (a position that had not

previously existed), effective July 1, 2013, through March 31, 2014, subject to renewal at the discretion of the board of directors. The employment agreement was purportedly approved at a board meeting that took place on the morning of July 1, 2013, and was attended only by Turner, who acted as Secretary and Chairperson of the meeting. Pursuant to the employment agreement, Mr. Turner agreed to pay himself:

- A signing bonus of $25,000;
- A salary of $16,000 per month (equal to $192,000 per year);
- A 5% commission in the event FIP's only asset (FFC shares) was sold for more than it had been valued in April 2013 (approximately $4 million).
- A $50,000 bonus in the event that more than 90% of the outstanding FIP shares were repurchased or paid out during his tenure as president or within three months after his term as president ended; and
- Severance of four months' salary ($72,000) if the shareholders removed him from office or if he resigned from office.

In April 2013, FIP received approximately $150,000 on account of certain shares of FFC being redeemed. According to Turner, all that remains is approximately $3,800 in cash. Turner caused the other approximately $145,000 to be spent as follows:

- $30,000 was paid to Turner for director's fees for all of 2012 and the first two quarters of 2013;
- $25,000 was paid to Turner as a signing bonus for becoming president of FIP;
- Approximately $80,000 ($16,000 per month, less certain unidentified fees) was paid to Turner in salary as president for the months of July through November 13, 2013;
- $5,000 for reimbursement of what the Trustee believes to be Turner's legal fees; and

- $6,000 in fees to Intertrust, FIP's corporate administrator.

The Trustee believes that other than the payment to Intertrust, all of these payments were wrongfully made and are subject to challenge.[2] The Trustee has informed Turner of this and that he considers the contract to be of no force and effect, and has demanded that Turner return the salary and signing bonus and refrain from further dissipating FIP's assets. To date Turner has refused, claiming that he was justified in paying himself these amounts. Given Turner's intransigence, litigation is virtually certain. FIP's other main shareholders (which together own approximately 90% of FIP's common stock) have also instructed Turner to take no action.

**D. BUDGET TRAVEL BANKRUPTCY (SECTION VI.G.12, P. 131)**

On December 9, 2013, the Trustee filed proofs of claim on behalf of BRG and FDIF to preserve their rights with respect to approximately $3.6 million in loans that were made to Budget Travel. An auction to sell Budget Travel's assets has been scheduled for February 7, 2014.

**E. FII AVOIDANCE ACTION (NEW)**

The Trustee has determined that since at least as early as January 1, 2009, through the Petition Date, AF and FAM essentially used FII and FILB as a piggy bank, facilitating, among other things, the payment of inflated management, incentive, and administrative fees to FAM and others, payment of redemptions to Fletcher-related entities, and the payment of legal fees for representation of Fletcher in connection with personal litigation against the board of directors of the Dakota. Fletcher did so through the use of redemptions between FII and FILB

[2] It appears that Turner hired and agreed to pay himself these amounts several months after the Trustee discontinued Turner's consulting services.

that siphoned off funds for debts that FII claimed it was owed by FILB, but for which FILB received no identifiable value.

FAM's methods for diverting funds for its ultimate use varied, but much of the scheme involved transfers from FILB to FII, purportedly to satisfy redemptions by FII. The Trustee believes that all transfers were made at AF or FAM's direction. FILB received inadequate value in exchange for payment of the redemptions to FII, largely because the redemptions were based on highly inflated valuations.

On December 31, 2013, the Trustee commenced an action against FII seeking to avoid and recover more than $143 million that AF and FAM caused FILB to pay to FII in preferences and fraudulent conveyances.[3] FII was served with a copy of the Summons and Complaint on January 6, 2014, through its registered agent in Delaware. Its answer is due by February 3, 2014, and a pre-trial conference has been scheduled for February 13, 2014.

### F. THE SOUNDVIEW BANKRUPTCY (NEW)

In August 2013, winding up petitions were filed against Soundview Elite, Ltd., Soundview Premium, Ltd., Soundview Star, Ltd., Elite Designated, Premium Designated, Star Designated, and New Wave Fund SPC in the Cayman Islands. On September 24, 2013, the Grand Court of the Cayman Islands entered an order winding up Soundview Elite, Ltd, Soundview Premium Ltd, and Soundview Star Ltd. and appointing Peter Anderson and Matthew Wright as joint Official Liquidators (the "**Soundview JOLs**"). On the same day, AF caused Soundview Elite, Ltd., Soundview Premium, Ltd., Soundview Star, Ltd., Elite Designated, Premium Designated, and Star Designated (the "**Soundview Debtors**")[4] to file petitions for relief

[3] Richard J. Davis v. Fletcher International, Inc., Adv. Proc. No. 13-01814 (REG) (Bankr. S.D.N.Y.).

[4] Each of the Soundview Funds mentioned in this section is also a "Richcourt Fund."

under Chapter 11 of the Bankruptcy Code in the Southern District of New York (the "**Soundview Bankruptcy**").[5] The Soundview Bankruptcy has also been assigned to Judge Gerber.

There is a dispute between AF, who purports to control the Soundview Debtors-in-possession, and the Soundview JOLs with respect to who controls certain of the Soundview Debtors, and the parties-in-interest in the Soundview Bankruptcy are currently litigating, among other things, the propriety of filing the Soundview Petitions, who has control over the Soundview Debtors, whether a Chapter 11 trustee should be appointed, or whether the cases should be dismissed in favor of the pending Cayman Islands proceedings. The Court heard closing arguments on January 7, 2014, and the Trustee expects that the Court will issue a decision shortly.

### G. APPROVAL BY THE CAYMAN ISLANDS COURT (NEW)

At a hearing on January 9, 2014, the Cayman Islands Court authorized the Arbitrage and Leveraged JOLs' entry into the Investor Settlement and support of the Plan. No written order as yet been issued.

## III.
## OBJECTIONS TO THE DISCLOSURE STATEMENT

The Trustee has received two formal written objections to the Disclosure Statement from the Soundview Debtors [Docket No. 370] and Turner [Docket No. 371.][6] The Soundview Objection consists of nine pages of "legal argument" and 12 pages cut and pasted from AF's direct testimony from the Soundview Bankruptcy. Given that the Objection was

[5] In re Soundview Elite, Ltd. et al., Case No. 13-13098 (REG) (Jointly Administered).

[6] Parties in interest may download the objections in full from the Court's website.

obviously filed to advance AF's and FAM's interests (and not Soundview's), the Trustee is treating it as if it was filed by AF personally.[7]

Both objections – which are filed by insiders against whom the Trustee believes the Debtor and the other Pooling Parties have substantial claims – overlap each other, and both take issue with selected portions of the Trustee's Report and Disclosure Statement. However, neither objection seriously disputes:

- FAM took enormous initial markups on many of FILB's investments. (See Report Sections IV.G, IV.I, IVJ, IV.L, VIII.E.2, VIII.E.3.c, VIII.E.3.h, VIII.E.3.k.) Ten new PIPEs and warrants investments initiated by FILB between 2007 and the petition date had a combined highest mark of $454 million, but FILB realized only $60 million on those investments, a mere 13% of the highest mark.
- The non-standard warrant formula was so highly unusual as to cause at least one issuer to insist on an amendment incorporating the standard formula and undermines the purely theoretical valuation of those warrants because of very real market concerns. (See Report Sections VIII.E.2, VIII.E.3.d.)
- FAM did not use its own sales of the investments in Helix and ION in valuing those positions, relying instead on purely theoretical model-based valuations which provided dramatically greater values on FILB's books (and thereby boosted AUM and fees). None of those transactions resulted

[7] The Soundview Debtors' claims, to the extent they have any, would be against the Feeder Funds, not FILB. In any event, it is unclear how attacking the Report and Disclosure Statement is in the interests of the Soundview Debtors since, to the extent they have claims, they would benefit from the successful prosecution of the Pooled Claims.

in significant value in excess of conversion or redemption value. (See Report Sections II.E.6, VIII.E.3.a.)

- The valuations of Richcourt were inaccurate and misleading and relied on incorrect data in order to disguise Richcourt's decline and the fact that, by September 2010, Richcourt's AUM not subject to pending redemptions had dropped to zero or close to zero. (See Report Sections IV.E, VIII.H.)
- AF bought Richcourt for himself using the money from the Louisiana Pension Funds, through the non-market IAP/EIC Note. They also did not dispute that the IAP/EIC Note was worth substantially less than its face amount. (See Report Sections IV.E, VIII.C.1.)
- The Corsair Redemption breached the 20% cushion required for the Leveraged Series N shareholders and should have triggered a redemption of Series N, an event that would have collapsed the entire structure. (See Report Sections III.B.3, VIII.D.4.)
- FAM round-tripped client funds through Vanquish and Aesop to invest in Leveraged and maintain the appearance of compliance with the 20% cushion. (See Report Sections IV.O, VIII.C.6, VIII.D.3.)
- FILB, at FAM's and AF's direction, put almost $8 million of investor funds in AF's brother's movie without disclosing the payment and without any prior notice as required by the MBTA Side Letter. (See Report Section VIII.C.3.)
- AF and FAM caused FILB to invest a net of $4.1 million in FIP as a means of providing $6.5 million in cash to a senior Citco executive,

Ermanno Unternaehrer, without any meaningful disclosure and without any prior notice. (See Report Sections IV.F, VIII.A, VIII.C.2, VIII.I, VIII.J.)

- The Fletcher System (Arbitrage, Alpha, Leveraged, Arbitrage LP, FILB and FII) was insolvent as of the Measurement Dates (December 31, 2008, the end of the year in which the Louisiana Pension Funds invested, and March 31, 2010, the date of the Corsair Redemption). (See Report Section VIII.F.)

AF's and Turner's principal objections, which the Trustee disputes, are:

- That the Report and Disclosure Statement is inappropriately combined in a single document because it fails to make clear what is "fact" and what is "opinion;"
- That the Trustee and his advisors do not understand valuations or how hedges work and are not qualified to render opinions on valuations;
- That the JOLs settled the FILBCI Litigation for too little value;
- That the Trustee provides misleading information in describing the profitability of FILB; and
- That the investments made by FILB were consistent with the governing offering materials.

Most of these objections are refuted by the Report and Disclosure Statement itself, and no further space need be taken in these papers with respect to them. The Trustee is, however, filing a separate brief responding to some of AF's and Turner's most outlandish objections. The Trustee submits that his Disclosure Statement, as supplemented, together with

AF's and Turner's objections – which are available to interested parties – provide more than enough information for the small number of creditors – all of them highly sophisticated – entitled to vote on the Plan. In the event the issues raised by the objections need to be resolved on the merits before the Plan can be approved, they will be resolved at the confirmation hearing.

## IV.
## PLAN REVISIONS AND CLARIFICATIONS AND OTHER DISCLOSURE STATEMENT SUPPLEMENTS AND AMENDMENTS

Since filing his Report and Disclosure Statement, the Trustee has received comments from several parties-in-interest and has continued extensive discussions with the estate's major constituents – the JOLs for Arbitrage, Leveraged, and Alpha, the MBTA, and the Louisiana Pension Funds. As a result, changes have been made. Redlined and a clean versions of the revised plan are attached to this Supplement as Exhibits 1 and 2, respectively.

### A. DISTRIBUTION TO THE MBTA AND THE LOUISIANA PENSION FUNDS

Article VI of the Plan has been amended to remove any reference to credits against the "waterfall" for recoveries received by the MBTA or the Louisiana Pension Funds because it was not clear how this would be done. The JOLs, the MBTA, and the Louisiana Pension Funds have instead agreed that the ratio of total recoveries by the MBTA and the Louisiana Pension Funds from the FILB, Arbitrage, Leveraged and Alpha insolvency proceedings, Pooled Claims, and individual (unpooled) claims will be 80% for the Louisiana Pension Funds and 20% for MBTA/Alpha. These parties' allowed claims and pooled percentages under the Plan remain unchanged. This means that the Plan Administrator will make distributions as provided under the Plan. The JOLs will make distributions in the Cayman Islands as required by Cayman law.

### B. PRE AND POST-CONFIRMATION AMENDMENTS TO THE PLAN

#### 1. Additional Parties to the Investor Settlement

A new Section 14.1(c) has been added to clarify that the Louisiana Pension Funds may not be added as parties to the Investor Settlement post-confirmation without the unanimous consent of the Advisory Board, or an order of the Court, after notice and a hearing, or both, if necessary.

Old Section 14.1(c) has been renamed 14.1(d).

#### 2. Distribution of the Pooled Claim Recoveries

A new Section 8.1(c) has been added to clarify that the percentages set forth in 8.1(b) may be amended at any time. If the change is made prior to the Effective Date, any such change requires the consent of any adversely affected party (i.e., any party whose percentage is reduced), or an order of the Court, after notice and a hearing, or both if necessary. If the change is made after the Effective Date, any change requires the unanimous consent of the Advisory Board, or an order of the Court, after notice and a hearing, or both, if necessary.

Old Section 8.1(c) has been renamed 8.1(d).

### C. PLAN ADMINISTRATOR COMPENSATION

Section 7.3(a)(iii) of the Plan has been amended to specify that the Plan Administrator will be compensated as follows:

- The Plan Administrator will charge will the same discounted hourly rate charged by the Trustee during the Bankruptcy.
- The Plan Administrator will cap his fees at $30,000 a month, subject to the provision set forth below.

- If total Liquidation and Pooled Claim Recoveries exceed $50 million, the Plan Administrator will be entitled to receive payment for all hours for which he was not compensated due to the cap.
- If total Liquidation and Pooled Claim Recoveries exceed $125 million in the aggregate, the Plan Administrator will be entitled receive an additional payment equal to 25 % of the total amount of billed time based upon the Trustee's ordinary hourly rate.
- The Plan Administrator will be reimbursed for all out-of-pocket expenses.

**D. PLAN ADVISORY BOARD**

Section 7.3(b) of the Plan has been amended to specify that the following parties will be members of the Advisory Board:

- The Trustee, as Plan Administrator, and on behalf of the Debtor;
- Rob McMahon, of Ernst & Young, on behalf of the Arbitrage and Leveraged JOLs; and
- Tammy Fu, of Zolfo Cooper, on behalf of the MBTA and the Alpha JOLs.

**E. INVESTOR SETTLEMENT**

The Investor Settlement (see Article VIII of the Plan; Report Section X.A.2) includes settlement of the following claims or potential claims between and among the Trustee, the Debtor, Arbitrage, the Arbitrage JOLs, Leveraged, the Leveraged JOLs, Alpha, the Alpha JOLs, and the MBTA:

- Litigation commenced by the Arbitrage and Leveraged JOLs against FILB over the so called Euro Note (See Report Section V. E.);

- The winding up petition filed against FILB in Bermuda (See Report Section V.F.);
- All proofs of claim filed by the Parties to the Investor Settlement against the Debtor, including, Claim No. 12 (Alpha); Claim No. 30 (Arbitrage); Claim Nos. 35, 37 (Leveraged); and
- Clawback claims by FILB against the Parties to the Investor Settlement for redemptions made to redeeming investors during the statutory look-back period, including, without limitation any claims that FILB may have against Arbitrage or Leveraged for the UCBI assets that were transferred in February 2012. (See Report Section V.B).

The Investor Settlement will be evaluated under Bankruptcy Rule 9019(a), which allows the Court to approve a compromise or settlement, after notice and a hearing. The Court must determine whether the settlement is reasonable, fair and equitable, and in the best interests of the Debtor's estate. The Court will generally consider (to the extent applicable) such factors as (i) the likelihood of success in the litigation compared to the present and future benefits offered by the settlement; (ii) the prospect of protracted litigation if the settlement is not approved as well as the related expense, inconvenience and delay, including potential difficulty in collecting on the judgment; (iii) the "paramount interests of the creditors" and the degree to which the creditors support the settlement; (iv) the nature and extent of releases to be obtained by officers and directors; and (v) whether the settlement was the result of arm's length bargaining. In assessing whether a compromise should be approved, the Court will generally review the issues to determine whether it falls below the lowest point in the range of reasonableness.

The Trustee believes that the Investor Settlement will be approved by the Court as part of Plan Confirmation. The claims among FILB, Arbitrage, Leveraged, and Alpha being settled are complex and their resolution has been the subject of lengthy negotiations. The Parties to the Investor Settlement have compromised the claims discussed above and made substantial contributions (e.g., each party's pooled claims) in return. The Trustee will make a full presentation on the Investor Settlement at the Confirmation Hearing as may be required, but due to the fact that related litigation is either threatened or is ongoing and the need to keep the Trustee's, the feeder funds', and investors' litigation strategies confidential, only limited disclosure on the details of the Investor Settlement is being made in this Supplement.

### F. WAIVERS, RELEASES AND INDEMNIFICATION

Section 10.6 of the Plan has been amended to clarify that the waivers, releases and injunctions in Article 10 of the Plan do not operate to waive, release or enjoin any claims of the Trustee, the Estate, the parties to the Investor Settlement (current or future), or the Louisiana Pension Funds other than claims against the Debtor.

A new Section 10.7 is being added to the Plan to clarify that the Plan is not intended to affect the rights of any parties to any settlement agreements that the Trustee entered into prior to confirmation of the Plan and that have already been approved by the Court. This makes clear, for example, that the Release and Waiver between the Trustee and UCBI (see Section VI.G.8, pp. 124–26) remains unaffected, and both the Trustee and UCBI retain their respective claims and defenses as specified in the Release and Waiver. Sections 10.1, 10.2, and 10.3 will also be amended to make explicit reference to newly added Section 10.7.

## G. FUNDING OF THE PLAN

A new Section 11.4(b) of the Plan has been added as set forth below:

> In order to fund litigation of the Pooled Claims, the Advisory Board in its discretion may (i) enter into financing agreements with parties and non-parties to the Investor Settlement, on such terms as the Advisory Board approves, including, without limitation, providing premiums to the funding party, granting superpriority status to the funding party, reallocating claims among the Holders of Allowed Class 4 Claims, or providing other consideration, or (ii) hold back a portion of the distributions otherwise due to Holders of Allowed Class 4 Claims; provided, however, that in the event Class 4 Allowed Claims are reallocated, the aggregate amount of Class 4 Allowed Claims cannot be increased above the aggregate amount set forth in Article VI of the Plan.

Old Section 11.4(b) has been renamed 11.4(c).

## H. CLASSIFICATION AND OBJECTIONS TO CERTAIN CLAIMS

Exhibit D to the Disclosure Statement has been amended and replaced in its entirety. Exhibit D now reflects how each claim has been classified for voting purposes. A copy of Revised Exhibit D is attached to this Supplement as Exhibit 4.

### 1. Holders of Class 5 Claims

As set forth in Revised Exhibit D to the Disclosure Statement, all claims filed by AF (Claim No. 48) FAM (Claim No. 31, 67), Turner (Claim No. 68), Floyd Saunders (Claim Nos. 10, 49), Teddy Stewart (Claim No. 50), Kiely (Claim No. 15) and his law firm, The Law Offices of Denis Kiely (Claim No. 14), and back office accounting firm, Duhallow (Claim Nos. 13, 29, 66), have been classified as Class 5 Insider Claims. All insider claims are subordinated under the Plan. To the extent any Holder of a Class 5 Insider Claim seeks to challenge the Trustee's classification of its claim, the Trustee will seek an Order from the Court equitably subordinating its claim to the Class 3 and Class 4 Claims. All Class 5 Insider Claimants will be notified as part of the solicitation process that pursuant to Section 1126(g) of the Bankruptcy

Code, they are deemed to have rejected the Plan and are therefore not entitled to vote on the Plan. Additionally, the Trustee intends to object to each of the Class 5 Claims because, among other reasons, they are inflated, unsupported by proper documentation, duplicative, or otherwise invalid.

**2. Holders of Class 6 Claims**

The Trustee does not believe any Intercompany Claims other than claims held by Classes 4A, 4B, and 4C exist. In the event the Trustee determines that Intercompany Claims do exist, they are subordinated under the Plan. To the extent any Class 6 Claimant challenges the Trustee's classification, the Trustee will seek to have the claim equitably subordinated. To the extent the Trustee determines there are any Holders of Class 6 Intercompany Claims, they will be notified as part of the solicitation process that pursuant to Section 1126(g) of the Bankruptcy Code, they are deemed to have rejected the Plan and are therefore not entitled to vote on the Plan.

**3. Objections to Invalid Claims**

As set forth in Revised Exhibit D to the Disclosure Statement, the Trustee disputes and intends to object to (or already has objected to) 38 claims that otherwise would be classified as Class 3 Unsecured Claims.[8] The Holders of these claims – which the Trustee believes are inflated, invalid, untimely, or otherwise not adequately supported – will be provided ballots; however, to the extent the Trustee objects to these claims before the Voting Deadline, their votes will not be counted.

[8] The Trustee reserves the right to object or not object to these claims as he sees fit in accordance with applicable law.

**4. Equity Interests**

FII owns 100% of the equity in the Debtor. Under the Plan, FII's claims and interest will be subordinated to all claims and will not receive a distribution unless all Allowed Claims are first paid in full. Any recovery by equity is also subject to the Trustee's pending avoidance action against FII. (See Section II.E above.) The Trustee understands that Arbitrage owns 97% of the equity in FII, and, that in the event FII equity receives a distribution, the Arbitrage JOLs will take action to ensure that all proceeds inure to the benefit of FII's legitimate third-party creditors (if any) and to Arbitrage and its legitimate third-party investors (including Leveraged and Alpha, and their respective investors) and not to any entities owned or controlled by AF or FAM.

**5. Objection Bar Date**

The definition of "Objection Bar Date" set forth in Section 2.56 of the Plan has been amended to provide the Trustee until 60 days after the Effective Date to object to any claim. It now provides as follows:

"Objection Bar Date" means the later of: (a) 60 days after the Effective Date; (b) 60 days after the filing of a proof of Claim or Interest, and (c) such other period of limitation for objecting to a Claim or Interest as may be specifically fixed by the Plan, the Confirmation Order, the Bankruptcy Rules, or an order of the Bankruptcy Court."

**I. CONFIRMATION BUDGET**

Attached as Exhibit 3 to this Supplement is the Trustee's budget through February 28, 2014. The budget will be incorporated into the Trustee's Report and Disclosure Statement as Exhibit F. As set forth in the budget, as of December 1, 2013, the estate had $2,040,560 in cash. The Trustee expects that the estate will spend an additional $1.1 million between December 1, 2013 and February 28, 2014 (the approximate expected Effective Date of

the Plan). During that same time period, the Trustee expects that the estate will recover approximately $560,000, leaving a cash balance at the end of February of $1.48 million. The Trustee expects that accrued and unpaid expenses as of February 28, 2014, will total approximately $1.59 million, leaving a deficit of approximately $115,000. The Trustee believes that there are various short-term recoveries available to the estate that will provide additional cash, and as noted below, the Trustee's professionals have agreed to defer payment of any holdbacks until after confirmation.

As discussed in the Trustee's Fourth Interim Fee Application [Docket No. 342], the Trustee has agreed to increase the amount of his holdback to 50% of all time he has billed or will bill in the future, and has agreed that he will not seek payment of any holdbacks unless the aggregate recoveries for creditors under the Plan or recoveries by the parties through the Pooling Agreement exceed $10 million.

Beginning with its monthly fee statement for the month of November [Docket No. 363], Luskin, Stern & Eisler LLP has agreed to increase its holdback from 20% to 33.33%. The Trustee, Luskin, Stern & Eisler LLP, and Goldin Associates have all agreed that all holdbacks will be paid post-confirmation over time and that the timing of payments will be made at the discretion of the Plan Advisory Board.

**J. SOLICITATION PACKAGE**

The Disclosure Statement has been amended to add an Exhibit G, which includes the following Exhibits:

Exhibit G-1: Notice of Confirmation Hearing

Exhibit G-2: Notice of Non-voting Status to Unimpaired Claims Conclusively Deemed to Have Accepted the Plan.[9]

[9] Exhibit G-2 will be provided to Holders of Class 1 and Class 2 Claims.

Exhibit G-3: Ballot for Holders of Class 3 Claims

Exhibit G-4: Ballot for Holders of Class 4 Claims

Exhibit G-5: Notice of Non-voting Status to Holders of Impaired Claims and Equity Interests Conclusively Deemed to Have Rejected the Plan.[10]

Exhibits G-1 through G-5 are attached to this Supplement as Exhibit 5.

**K. REVISED APPENDIX**

The Exhibit list forth in the Appendix to the Trustee's Report and Disclosure Statement is amended and replaced as follows:

Exhibit A: Plan

Exhibit B: Simplified Fletcher System Organizational Chart

Exhibit C: List of Fletcher-Related Entities

Exhibit D: Classification of Claims

Exhibit E: Richcourt Holding Organizational Chart

Exhibit F: Budget

Exhibit G: Solicitation Documents

[10] Exhibit G-5 will be provided to Holders of Class 5 and Class 6 Claims.

## V.
## CONCLUSION

The Trustee believes that confirmation and implementation of the Plan is in the best interests of all creditors, and urges Holders of impaired Claims in Classes 3 and 4 to vote to accept the Plan and to evidence such acceptance by returning their ballots so that they will be received no later than 5:00 p.m. (Eastern Time) on [●], 2014. [11]

Dated: New York, New York
January 13, 2014

Respectfully submitted,

/s/ Richard J. Davis
Richard J. Davis, Chapter 11 Trustee
for Fletcher International, Ltd.

415 Madison Avenue, 11th Floor
New York, New York 10017

[11] Deadline to be set by the Court at the hearing on the Trustee's motion to approve the Disclosure Statement.

**EXHIBIT 1**

[Redline of Trustee's Plan of Liquidation]

**EXHIBIT 2**

[Trustee's Amended Plan of Liquidation]

**EXHIBIT 3**

[Budget]

**EXHIBIT 4**

[Revised Exhibit D – Classification of Claims]

**EXHIBIT 5**

[Ballots and other Solicitation Documents]

| | |
|---|---|
| Exhibit G-1: | Notice of Confirmation Hearing |
| Exhibit G-2: | Notice of Non-voting Status to Unimpaired Claims Conclusively Deemed to Have Accepted the Plan. |
| Exhibit G-3: | Ballot for Holders of Class 3 Claims |
| Exhibit G-4: | Ballot for Holders of Class 4 Claims |
| Exhibit G-5: | Notice of Non-voting Status to Holders of Impaired Claims and Equity Interests Conclusively Deemed to Have Rejected the Plan. |