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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
NAUTILUS HOLDINGS LIMITED, et al.,	:	Case No. 14-22885 (RDD)
Debtors.[1]	:	(Jointly Administered)

DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO DEBTORS' MOTION FOR AN ORDER APPROVING (I) THE DISCLOSURE STATEMENT; (II) THE FORM AND MANNER OF THE DISCLOSURE STATEMENT HEARING NOTICE; (III) CERTAIN KEY DATES RELATING TO CONFIRMATION OF THE PLAN; (IV) PROCEDURES FOR SOLICITATION; (V) FORMS OF BALLOTS AND NOTICES; (VI) PROCEDURES FOR TABULATION OF VOTES; AND (VII) PROCEDURES FOR NOTICE OF THE CONFIRMATION HEARING AND OBJECTIONS TO CONFIRMATION OF THE PLAN

[1] The Debtors and, where applicable, the last four digits of their Hong Kong taxpayer identification codes are as follows: Nautilus Holdings Limited, Nautilus Holdings No. 2 Limited, Nautilus Shipholdings No. 1 Limited, Nautilus Shipholdings No. 2 Limited, Nautilus Shipholdings No. 3 Limited, Able Challenger Limited (8877), Charming Energetic Limited (0936), Dynamic Continental Limited (0928), Earlstown Limited (1898), Findhorn Osprey Limited (8075), Floral Peninsula Limited (4549), Golden Knighthead Limited (6376), Magic Peninsula Limited (0950), Metropolitan Harbour Limited (7969), Metropolitan Vitality Limited (9019), Miltons Way Limited (6180), Perpetual Joy Limited (0897), Regal Stone Limited (3636), Resplendent Spirit Limited (8114), Superior Integrity Limited (0934), and Vivid Mind Limited (7935). The Debtors maintain offices at 445 Hamilton Avenue, 11th Floor, White Plains, New York, 10601; 35th FL, Citicorp Centre, 18 Whitfield Road, North Point, Hong Kong; 23rd FL, 248 Queen's Road East, Wanchai, Hong Kong; and Canon's Court, 22 Victoria Street, Hamilton HM12, Bermuda.

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Nautilus Holdings Limited and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), hereby submit this omnibus reply (the "Reply") to the objections (the "Objections")[2] to the Debtors' motion (the "Motion") for entry of an order approving the *Disclosure Statement for the Joint Plan of Reorganization of Nautilus Holdings Limited and Certain of its Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, dated October 15, 2014 [Docket No. 189] (the "Initial Disclosure Statement"), filed concurrently with the Debtors' *Joint Plan of Reorganization of Nautilus Holdings Limited and Certain of its Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, dated October 15, 2014 [Docket No. 190] (the "Initial Plan").[3] The Debtors have revised their Disclosure Statement and Plan (i) to reflect their agreement with HSH Nordbank AG with respect to the Flowers and Columbia Facility Claims, and (ii) to accommodate certain other issues raised in the Objections. Accordingly, the Debtors' *Amended Disclosure Statement for the Joint Plan of Reorganization of Nautilus Holdings Limited and Certain of its Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Amended Disclosure Statement" or the "Disclosure Statement") and *Amended Joint Plan of Reorganization of Nautilus Holdings Limited and Certain of its Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Amended Plan" or

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[2] The Objections were filed by Citibank International Limited ("Citi") and HSH Nordbank AG in its capacity of Syndicate Agent (the "Syndicate"). See (i) Objection to Debtors Motion for an Order Approving (I) the Disclosure Statement; (II) the Form and Manner of the Disclosure Statement Hearing Notice; (III) Certain Key Dates Relating to Confirmation of the Plan; (IV) Procedures for Solicitation; (V) Forms of Ballots and Notices; (VI) Procedures for Tabulation of Votes; and (VII) Procedures for Notice of the Confirmation Hearing and Objections to Confirmation of the Plan [Docket No. 212] and Objection of HSH Nordbank, AG, as Syndicate Agent, to Debtors Motion for an Order Approving (I) The Disclosure Statement; (II) The Form and Manner of the Disclosure Statement Hearing Notice; (III) Certain Key Dates Related to Confirmation of the Plan; (IV) Procedures for Tabulation of Votes; and (V) Procedures for Notice of the Confirmation Hearing and Objections to the Confirmation of the Plan [Docket No. 213]

[3] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion and/or the Plan.

the "Plan") are being filed concurrently herewith. In support of the Reply, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. As the Debtors previously have advised this Court, their international shipping enterprise is managed as a unitary enterprise by one management company and is comprised of two holding companies, three intermediate holding companies and 16 entities which hold vessels that collectively serve as collateral for six different lending facilities to four different groups or "silos" of lenders. This Court previously approved a restructuring support agreement entered into by the Debtors and one of those lenders, DVB Bank SE ("DVB"), in connection with the consensual terms of a restructuring regarding two of those six facilities.

2. The Debtors are pleased to advise the Court that the Debtors have since reached agreement with an additional lender with respect to two more facilities – HSH Nordbank AG ("HSH") with respect to the so-called "HSH bilateral facilities." Additionally, the Debtors are close to reaching an agreement on economic terms with Citibank International Limited ("Citibank"or "Citi"), as agent with respect to the "Citi facility," and expect to document same upon agreement. Accordingly, the Debtors believe there will be only one holdout lender under one facility that does not consent to payment of its claim in full under the Plan: the so-called HSH syndicate facility (the "Syndicate").

3. Under the terms of the agreement relating to each of the HSH bilateral facilities, and an expected agreement with Citibank regarding the Citi facilities, the Debtors have agreed to transition control of the relevant vessel collateral in an orderly fashion, while obtaining financial concessions from HSH that will enable the Debtors to make payment on account of their general unsecured claims, the unpaid balance of the debtor-in-possession lending facility provided by an

affiliate of the Debtors, and costs of administration, while also providing for continued management of certain of the vessels by the Debtors' existing manager. The agreement with HSH is incorporated into the Amended Plan, which already reflects the agreement with DVB. The Debtors therefore continue to anticipate moving towards a confirmation hearing and effective date by January 2015, consistent with their term sheet with DVB and agreement with all of the lenders under the cash collateral order.

4. The Plan otherwise proposes to pay claims held by the hold-out lenders in the Syndicate **in full** in accordance with the terms of a restructured lending facility that includes a proposed interest rate consistent with this Court's recent ruling in the In re MPM Silicones LLC chapter 11 case. While distressed liquidation values of the vessels securing this facility are less than the face amount of the Syndicate claims, each of the five vessels in this silo has the benefit of a long-term, above-market charter that will allow the reorganized Debtors to amortize the **full amount** of the restructured Syndicate facility over time, including via proceeds from the refinancing or ultimate disposition of the vessels at the maturity of the facility, which is consistent with lending practices in the maritime industry. The Debtors, with the assistance of their financial and legal advisors, will be prepared to show at confirmation that the proposed treatment is both feasible and fair and equitable to holders of the Syndicate facility claims.

5. The Syndicate nonetheless asserts that the Disclosure Statement should not be approved because, in its view, the Plan is patently unconfirmable.[4] In doing so, it raises two primary objections. First, it asserts that the Plan violates the absolute priority rule by allowing

[4] The Citi Silo lenders filed an objection to the Disclosure Statement while the parties continue to finalize their deal terms and incorporate such terms into the Amended Plan. While the Debtors believe they are close to reaching agreement on economic terms with Citi, in an abundance of caution, the Debtors are responding in full to the Citi objection, the legal points of which overlap with that of the Syndicate's lenders' objection. References in this Reply to the Syndicate's objections therefore should be read to include Citi's as well.

existing equity holders to retain 100% of the interests in the Syndicate silo without requiring existing equity to contribute new value. But as noted, the Plan is not a new value plan – it provides for payment in full of the Syndicate facility. Accordingly, there is no violation of the absolute priority rule here.

6. Second, the Syndicate asserts that the accepting votes of lenders outside its collateral silo or general unsecured creditors cannot be used as an acceptance of the Plan for purposes of cramming down the Syndicate in the event it rejects its proposed treatment. However, that is not the law in this District, nor is it consistent with the facts of this case or the policies underlying the Bankruptcy Code. To the contrary, courts in this District are consistent in their view that a plan, whether or not it contemplates substantive consolidation, can be confirmed so long as one impaired class accepts; there need not be an accepting class at each entity.

7. And to focus, as the Syndicate does, on its own collateral silo, would afford every secured lender in every case a veto right over a debtor's plan solely if it votes to reject. But the Bankruptcy Code does not allow a single secured lender to destroy a debtor's reorganization prospects solely because that lender has its own, discrete set of collateral. It is especially inappropriate where, as here, the evidence will show that the Debtors have always acted as an integrated enterprise through a single management company. The Syndicate certainly cannot credibly suggest a lack of good faith given the Debtors' ability to obtain agreement with everyone else in the case.

8. In short, the Syndicate fails to establish that the Plan is unconfirmable on its face. The Syndicate may disagree with the Plan's classification scheme and the Debtors' projections and hence, the Plan's feasibility, but these are factual matters reserved exclusively for confirmation, not for consideration at a hearing on approval of a disclosure statement. In fact, the

real agenda here is being driven by a newcomer to the Syndicate, York Capital Management, a hedge fund who bought into the debt deep into the parties' plan negotiations. York doesn't want to see the debt paid in full, because if that happens, then existing equity is legally entitled to keep the vessels and any possible equity upside. York therefore wants to write-down the debt today so it can convert its holdings to equity and take ownership of the vessels alongside existing containerships that it owns and/or manages.

9. The Debtors respectfully disagree that this approach is appropriate or warranted, legally or factually. To repeat, the Debtors believe that they are fully capable of paying off the Syndicate debt in cash, **in full** on the terms set forth in the Plan. Consistent with the duties of the Debtors' directors to maximize value for **all** stakeholders, and consistent with the requirements of the fair and equitable standard and absolute priority rule, existing equity therefore is entitled to retain ownership. In fact, it would be inappropriate on these facts to knuckle-under to the demands of another hedge fund pursuing a loan-to-own strategy in furtherance of an effort to enhance its own portfolio of containerships.

10. Finally, most of the Syndicate's disclosure-related objections are completely devoid of merit. As an initial matter, this Court previously admonished the parties not to waste time on disclosure objections and to focus instead on constructive plan-related discussions. See 10/17/14 Hr'g Tr. at 13 ("THE COURT: . . . I would urge all the parties to focus less on objecting to the disclosure statement than to focus on concluding negotiations."). Second, the Syndicate is very sophisticated and very informed about the facts here, especially in light of the virtually constant flow of information that has been provided to it during this case and its long-standing lending relationship with the Debtors. None of the additional information it seeks is

going to further inform its vote. **Indeed, it has already made clear that it has already decided to vote against the Plan**.

11. Rather, the level of minutiae reflected in the disclosure demands of the Syndicate evidence an effort to get discovery from the Debtors to be used in a confirmation battle. This transparent attempt to use the Disclosure Statement process as a fishing expedition contravenes the letter and the spirit of the Code and should not be condoned. Put simply, a disclosure statement is not a discovery document, nor is it a brief in support of confirmation. Nonetheless, as indicated in Exhibit A attached hereto, the Debtors, in an effort to avoid wasteful sideshows on ancillary issues, have made a number of changes to their Disclosure Statement and Solicitation Procedures to accommodate certain of the Syndicate's disclosure-related demands. But much of what the Syndicate demands is simply not necessary for sophisticated debt holders such as those that hold the Syndicate debt to determine whether to accept the Plan, and is instead more appropriately dealt with in discovery and at confirmation if the parties cannot reach an agreement.

12. For these and the other reasons outlined in greater detail below, the Syndicate's objection should be overruled.

REPLY

A. The Objections to Plan Confirmation Are Premature and Without Merit

13. A disclosure statement hearing is not the proper forum to address objections to confirmation of a plan. Doing so subverts section 1125 and the orderly process for confirmation of a plan set forth in the Bankruptcy Code – a process that contemplates disclosure first, solicitation and voting second, and only then, confirmation. For these reasons, it is well-settled that objections to confirmation, in general, are properly considered only at confirmation. See, e.g., In re Scioto Valley Mortg. Co., 88 B.R. 168, 172 (Bankr. S.D. Ohio 1988) ("If the creditors

oppose their treatment in the plan, but the Disclosure Statement contains adequate information, issues respecting the plan's confirmability will await the hearing on confirmation."); In re Dakota Rail, Inc., 104 B.R. 138, 144 (Bankr. D. Minn. 1989) (concluding that the determination of absolute priority rule issues at the disclosure statement hearing would be premature because "[i]t is an issue to be addressed at confirmation"); In re Copy Crafters Quickprint, Inc., 92 B.R. 973, 980 (Bankr. N.D.N.Y. 1988) ("[C]are must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing, due process considerations are protected and objections are restricted to those defects that could not be cured by voting and where the pertinent material facts are either not at issue or have been fully developed at the disclosure statement hearing.").

14. Courts have entertained confirmability objections at the disclosure statement stage only in rare circumstances, where **facial** deficiencies render a plan patently unconfirmable on grounds that do not depend on the development of a factual record and that cannot be cured by voting. See, e.g., In re Scioto Valley Mortg., 88 B.R. at 172; In re Dakota Rail, 104 B.R. at 144; In re Copy Crafters Quickprint, 92 B.R. at 980. As discussed below, there are no facial plan deficiencies here. Indeed, the cases cited by the Objectors to support their view that the Disclosure Statement cannot be approved on the basis that the Plan is unconfirmable are readily distinguishable. For example, in the Quigley bankruptcy case, Judge Bernstein actually approved the disclosure statement in the face of plan-related objections at the disclosure statement stage. According to the Quigley court, confirmation issues, such as classification (which has been raised by the HSH syndicate lenders here) do not render a plan facially defective, and are better deferred to an evidentiary confirmation hearing. In re Quigley Co., 377 B.R. 110, 119 (Bankr. S.D.N.Y. 2007).

15. In the two other cases relied upon by the Syndicate, denial of approval of the disclosure statement was warranted because it was evident that no steps could be taken to cure the patently defective plans at issue. For example, in In re Weiss-Wolf, the court denied approval of the disclosure statement, although not because, as the Syndicate suggests, a party voiced its determination to cast a blocking vote against the plan. Rather, Judge Beatty found the plan to be facially infirm because it proposed different payment amounts on account of allowed and disputed unsecured claims and reflected that, due to the debtor's limited assets, insufficient funds would be available to pay disputed claims, such that the bank's disputed unsecured claim had dim prospects for any recovery. See In re Weiss-Wolf, Inc., 59 B.R. 653, 655 (Bankr. S.D.N.Y. 1986). The Plan here has no such terms.

16. Finally, the circumstances in the third case cited by the Syndicate, In re American Capital Equipment, are not even remotely applicable here. American Capital was an asbestos-driven chapter 11 case where, in the debtor's fifth iteration of a plan, it attempted to implement a speculative litigation process pursuant to which the sole source of funding arose from a surcharge based on successful, albeit speculative, asbestos litigation brought against the debtor. Based on the record below, the Third Circuit found the plan to be "highly **speculative**, to say the least, not only because it is contingent on potential litigation winnings, but also because most of the claims have been administratively dismissed and have 'thus far been . . . overwhelmingly unsuccessful.'" In re Am. Capital Equip., LLC, 688 F.3d 145, 156 (3d Cir. 2012) (emphasis added) (citation omitted). Importantly, key to the Third Circuit's decision that the plan was not feasible and therefore was facially unconfirmable was that "the feasibility issue cannot be cured, and no dispute of material fact remains, because Appellants admit that no plan will work without a Surcharge." Id.

17. Based on the foregoing authorities that warn against premature confirmation issues raised at the disclosure hearing phase of a case, and as further discussed below, none of the Syndicate objections should be addressed now. Each is of the sort properly (and typically) deferred until confirmation. However, even if the Court were nevertheless to address the merits of these objections, none of them render the Plan unconfirmable.

(i) Section 1129(a)(10) is a "Per Plan," Not a "Per Debtor," Requirement

18. The Objectors assert that the Plan runs afoul of section 1129(a)(10) of the Bankruptcy Code. In particular, the Syndicate contends that it would be a violation if the Debtors seek to use the vote of any class outside of the Syndicate silo to cram down the Syndicate claims in Class 8. A subset of the Syndicate's objection argument focuses on the classification scheme and the separate classification of the Syndicate's deficiency claim from general unsecured claims, which, as discussed below, the Debtors have now provisionally classified in subclasses, on a per Debtor basis, in Class 9.

19. Courts in this District and elsewhere share the view that classification and cram-down issues are more properly addressed at confirmation. See, e.g., In re WorldCom, Inc., No. M-47, 2003 WL 21498904, *9 (S.D.N.Y. June 30, 2003) ("Whether the proposed classification is improper is a matter to be decided at the confirmation hearing . . . ."); In re Ellipso, Inc., No. 09-00148, 2012 WL 368281, at *2 (Bankr. D.D.C. Feb. 3, 2012) (deferring classification objection to confirmation); In re Sunshine Precious Metals, Inc., 142 B.R. 918, 920 (Bankr. D. Idaho 1992) (deferring classification objection to confirmation).

20. However, even if the Court were to entertain these objections now, they would be found to be baseless and certainly do not render the Plan "patently unconfirmable." With respect to section 1129(a)(10), the Objectors focus much of their energy on their view that this is a "per

debtor", and not a "per plan", requirement. To begin with, the statutory language speaks in terms of one singular plan in requiring that only one class "impaired under the plan has accepted the plan." 11 U.S.C. § 1129(a)(10) (emphasis added).

21. Accordingly, courts in this District and elsewhere have consistently ruled that section 1129(a)(10) is a per plan and not a per debtor requirement. See JPMorgan Chase Bank, N.A. v. Charter Commc'ns Operating, LLC (In re Charter Commc'ns), 419 B.R. 221, 266 (Bankr. S.D.N.Y. 2009) ("[I]t is appropriate to test compliance with section 1129(a)(10) on a per-plan basis . . . not . . . on a per-debtor basis."); In re Enron Corp., No. 01-16034 (AJG), 2004 Bankr. LEXIS 2549, at *235 (Bankr. S.D.N.Y. July 15, 2004) (finding that the plain meaning of section 1129(a)(10) requires at least one impaired class under a joint plan of reorganization); see also In re SGPA, Inc., No. 01-02609 (RJW), 2001 Bankr. LEXIS 2291, at *21 (Bankr. M.D. Pa. Sept. 28, 2001) ("[I]t is not necessary to have an impaired class of creditors of each Debtor vote to accept [a plan].").

22. While the legislative intent of this provision is unclear, see W. Real Estate Equities, L.L.C. v. Vill. at Camp Bowie I, L.P. (In re Vill. at Camp Bowie I, L.P.), 710 F.3d 239, 246 (5th Cir. 2013) ("[T]he scant legislative history on § 1129(a)(10) provides virtually no insight as to the provision's intended role."), a leading treatise notes that the intent of the impaired accepting class requirement aimed to "reverse pre-Code Chapter XII cases, which permitted the use of the cramdown powers without the consent of **any** class of creditors." See 7 Collier On Bankruptcy ¶ 1123.01[7] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010) (emphasis added).

23. The Plan here enjoys the support of most of the Debtors' major stakeholders – likely three of four lender groups relating to five of six lending silos. It therefore is a far cry from

the type of nonconsensual, fully contested plan that section 1129(a)(10) was intended to prevent. "An overly broad reading of that section — arguably barred and certainly not supported by its plain language — would inappropriately complicate multi-debtor cases by exalting form over substance and would, in some cases, potentially make a negotiated plan unworkable." In re SGPA, 2001 Bankr. LEXIS 2291, at *21.

24. Accordingly, section 1129(a)(10) creates a per-plan requirement solely to establish some base level of an impaired creditor's consent to the reorganization terms. Consequently, a recalcitrant creditor such as the Syndicate, who is receiving payment **in full** on account of its claim and is already protected by the substantive cram down requirements of section 1129(b), should not be permitted to use section 1129(a)(10) as a sword to challenge its treatment. See In re Rhead, 179 B.R. 169, 177 (Bankr. D. Ariz. 1995) ("Section 1129(a)(10) is a technical requirement for confirmation. It is an obligation for the proponent to fulfill; it is not a substantive right of objecting creditors." (emphasis added)).

25. Moreover, the evidence at confirmation will show that the Debtors are a unified enterprise. They have common shareholders, a common manager, and share two common technical managers. Their officers and directors are common, and their obligations on many of their agreements are joint and several. There are significant efficiencies to the Debtors' unified operations that benefit all stakeholders. The fact that the Debtors, like all shipping companies, financed their vessels in different groups does not mean that each group or silo is a separate business or that each such group or silo can only be restructured separately and that section 1129(a)(10) legally applies to only each such group or silo. Indeed, due to unique elements of maritime law, the Debtors' corporate structure is, like that of many shipping companies, divided into separate silos of assets and vessel ownership to minimize the impact of potential maritime

liens that may be asserted; i.e., to prevent vessel arrest predicated upon "sister ship" or "associated ship" theories. In other words, this one, maritime-driven aspect of the Debtors' corporate separateness actually acts as a benefit to the Syndicate by protecting its vessels from seizure on account of maritime claims against other vessels in the Debtors' enterprise.

26. Paying heed to the Objectors' assertions with respect to the application of section 1129(a)(10) would not only unfairly prejudice every corporate entity that maintained some degree of separateness for a legitimate business reason that benefited all stakeholders, or that financed different pools of assets with different lenders, but it also would unfairly elevate the judicially-recognized technical requirements of section 1129(a)(10), place "form over substance," and jeopardize a "fair and equitable plan." See In re SGPA, 2001 Bankr. LEXIS 2291, at *21-22. This interpretation is directly contrary to the Code's underlying "fresh start" policy and should not be entertained from a dissident lender group whose claims are being satisfied in full.

27. With no case law in this District to support their premature objection, the Objectors rely heavily on case law from outside this District, including In re Tribune Co., a case decided at the confirmation stage under different fact patterns than the ones here by the United States Bankruptcy Court for the District of Delaware. 464 B.R. 126 (Bankr. D. Del. 2011). However, this Court should follow the interpretation of section 1129(a)(10) set forth above, which is consistent with other decisions within this District. See In re Adelphia Commc'ns Corp., 359 B.R. 65, 72 n.13 (Bankr. S.D.N.Y. 2007) ("This Court has been on record for many years as having held that the interests of predictability in this District are of great importance, and that where there is no controlling Second Circuit authority, it follows the decisions of other bankruptcy judges in this District in the absence of clear error.").

(ii) Objections to the Plan's Classification Scheme and Impairment Provisions Are Premature

28. It is well settled that classification and voting issues such as those raised by the Syndicate are properly addressed at confirmation. See, e.g., In re Ellipso, 2012 WL 368281 at *2 (deferring classification objection to confirmation); In re Sunshine Precious Metals, 142 B.R. at 920 (deferring classification objection to confirmation). The Syndicate's statement that it intends to reject the Plan does not alter the analysis. See In re Dune Deck Owners Corp., 175 B.R. 839, 847 (Bankr. S.D.N.Y. 1995) (approving disclosure statement and determining the secured lender's anticipated rejecting vote neither granted it veto power nor rendered plan facially unconfirmable and deferring issue as to whether such lender's vote should be designated to the confirmation hearing). Indeed, it is hard to conceive of an issue more appropriately deferred to confirmation than cram-down, since the results of further negotiations, voting tabulations, and potential vote designation may obviate the need to even address these issues.[5]

29. In any event, beside the expected accepting vote from DVB, the Debtors anticipate that they will have an impaired accepting class with the affirmative vote of general unsecured claims, including at the Syndicate silo. The Objectors' protestation to the separate classification of such claims falls short. It is altogether appropriate for the Debtors to separately classify their general unsecured trade debt where, as here, there is a legitimate business reason for doing so. See Bos. Post Rd. Ltd. P'Ship v. Fed. Deposit Ins. Corp. (In re Bos. Post Rd. Ltd.

[5] In an analogous context, other courts have held that challenges to speculative voting outcomes should not be determined prematurely, particularly when they are based on a set of facts that do not yet exist and may not ever exist. Thus, in U.S. Surgical Corp. v. Circon Corp., No. 15223, 1997 Del. Ch. LEXIS 161 (Del. Ch. Sept. 18, 1997), the Delaware Chancery Court declined to issue a preliminary injunction that would prevent a company from reinstating its incumbent board member in the event that he was not re-elected. The court found that the plaintiffs' claims of a futile shareholder vote were based only on an assumed set of facts and speculation that "does not yet exist and which might never exist." Id. at *5. Similarly, in the case of Northrop Grumman Corp. v. TRW, Inc., No. 1:02CV400, 2002 U.S. Dist. LEXIS 12905 (N.D. Ohio Apr. 15, 2002), the court declined to issue a preliminary injunction excluding the tally of certain votes when the ultimate outcome of the vote was purely speculative and may not ever have occurred.

P'Ship), 21 F.3d 477, 483 (2d Cir. 1994) (holding similar claims can be classified separately if the "debtor . . . adduce[s] credible proof of a legitimate reason" for the separate classification); In re Chateaugay Corp., 89 F.3d 942, 949 (2d Cir. 1996) (same); In re LightSquared Inc., 513 B.R. 56, 82 (Bankr. S.D.N.Y. 2014) (same).

30. Here, there are several reasons for the separate classification and treatment of any Syndicate deficiency claims from trade creditor claims. In this case, cash payment of trade claims is critical to the Debtors' ability to continue to operate. The reasons for this are several. First, the Debtors' unsecured creditors consist largely of maritime-related trade creditors for whom nonpayment of their claims could result in seizure of the Debtors' vessels under maritime law. Second, payment of certain claims, such as classification society fees and other fees and costs may be a requirement under the Debtors' charter agreements. Finally, payment of the trade claims on the terms set forth in the Plan will allow the Debtors to re-establish and/or maintain good will with those trade creditors who supply the Debtors with the services that are central to the Debtors' operations, and who may otherwise stop engaging in business with the Debtors.

31. Separate classification is justifiable where, as is the case here, the creditors for which different treatment has been provided are "integral" to the Debtor's reorganization. See WHBA Real Estate Ltd. P'ship v. Lafayette Hotel P'ship (In re Lafayette Hotel P'ship), 198 F.3d 234 (2d Cir. 1999); see also Order Confirming Debtors' Chapter 11 Plan, In re Excel Maritime Carriers Ltd., Case No. 13-23060 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2014), ECF No. 562 ("the separate classification of general unsecured claims is necessary for the Debtors' continued economic viability post-emergence."). Indeed, courts have held that a debtor may provide for separate treatment for trade creditors where more favorable treatment for trade creditors will allow the debtor to maintain a good relationship with its trade creditors. See, e.g., In re Richard

Buick, Inc., 126 B.R. 840 (Bankr. E.D. Pa. 1991) (finding sufficient justification to segregate dealer claims and offer them better treatment where full payment of dealer-trade claims was needed to re-establish a good relationship with other dealers whose trades would supply a large percentage of the vehicles sold); In re Graphic Commc'ns, Inc., 200 B.R. 143, 147 (Bankr. E.D. Mich. 1996) (holding that a rational business reason for the separate classification of claims exists where it was necessary to maintain good standing with trade creditors but not with competitor-creditor); In re Snyders Drug Stores, Inc., 307 B.R. 889, 894 (Bankr. N.D. Ohio 2004) ("The need to maintain good will for future operations can be [a legitimate business] reason"); In re Coram Healthcare, Corp., 315 B.R. 321, 349 (Bankr. D. Del. 2004) ("[S]eparate classification and treatment of trade claims is acceptable if the separate classification is justified because they are essential to a reorganized debtor's ongoing business"); see also Lumber Exch. Bldg. Ltd. P'Ship v. Mut. Life Ins. Co. of N.Y. (In re Lumber Exch. Bldg. Ltd. P'ship), 968 F.2d 647, 649 (8th Cir. 1992) ("a plan may classify trade creditors separately from, and treat them more generously than, other creditors if doing so is necessary to a debtor's ongoing business.").

32. Additionally, separate treatment of claims may be justified where such claims represent a distinct legal or voting interest. Indeed, courts in this District and other Districts have upheld the separate classification of unsecured bank note claims from the classification of unsecured trade claims for this very reason. See, e.g., In re Charter Commc'ns, 419 B.R. at 265 (upholding separate classification of noteholders and trade claims); In re Coram Healthcare Corp., 315 B.R. 321, 350-51 (Bankr. D. Del. 2004) (finding noteholders represented "a voting interest that is sufficiently distinct from the trade creditors to merit a separate voice in this reorganization case"); see also, e.g., Order Confirming Plan of Reorganization, In re Calpine, No. 05–60200 (BRL), 2007 WL 4565223 (Bankr. S.D.N.Y. Dec. 19, 2007), ECF No. 7256

(order confirming chapter 11 plan separately classifying convertible unsecured notes claims from general unsecured claims).

33. Finally, the Syndicate's assertion that the class of general unsecured creditors is "artificially impaired" is unavailing. The term "artificial impairment" is a misnomer. The Bankruptcy Code provides a binary standard -- either a claim is impaired or it is not impaired -- period. L & J Anaheim Assocs. v. Kawasaki Leasing Int'l, Inc. (In re L & J Anaheim Assocs.), 995 F.2d 940, 943 (9th Cir. 1993) ("The plain language of section 1124 says that a creditor's claim is 'impaired' unless its rights are left 'unaltered' by the Plan."); see In re Village at Camp Bowie, 710 F.3d at 245 ("we reject the concept of artificial impairment as developed in Windsor").

34. A plan that proposes a delay in payment of these claims, without interest, certainly alters these rights and constitutes impairment. See, e.g., In re Charter Commc'ns, 419 B.R. at 266 (holding that classes were "legitimately impaired because they [were] to be reinstated or paid without post-petition interest"); In re Duval Manor Assocs., 191 B.R. 622, 627 (Bankr. E.D. Pa. 1996) (delayed payment in full of class constitutes impairment). Because the rights of general unsecured creditors are changed by the Plan, the class is impaired, and can satisfy the requirements of section 1129(a)(10).

(iii) Compliance with the Absolute Priority Rule is a Confirmation Issue to be Established through Evidence at Confirmation

35. The Objectors' assertion that the Plan violates the absolute priority rule is belied by the Plan's treatment of their respective claims. As set forth clearly in the Plan, the Syndicate lenders' claims will be paid in full. The Citi Facility Claims will similarly enjoy full payment through a new credit facility and equity in the entities that hold their collateral. Thus, as the Syndicate already acknowledges, "the only way for [Mr.] Papathomas to retain his equity in the

HSH Syndicated Facility silo is for the Syndicate Lenders' . . . claims to be paid in full." Obj. at 49. Evidence at confirmation will show that the vessels securing the relevant facilities will generate income sufficient to allow the full amount of the claims to be paid over time, including from proceeds from the refinancing or disposition of the vessels at the maturity of the facilities. The objectors may disagree with the projections that the Debtors have relied upon, but such disputes are meant for confirmation, and certainly do not render the plan patently unconfirmable at the disclosure statement stage.

(iv) The Objection to the Estate Release is a Confirmation Objection

36. This leaves only the Syndicate's objection to the estate release provided in Article 9.4(a) of the Plan (the "Estate Release"). The Estate Release represents a release of claims, if any, by the Debtors against third parties. Courts in this District (and others) recognize that the propriety of releases is a confirmation issue not appropriate for decision at the disclosure stage. In New York City O.T.B., for example, this Court deferred until confirmation objections to certain third-party release provisions, noting that it did "not have a sufficient factual or legal record to resolve [the] objections at this time." See Order Regarding Motion to Approve Disclosure Statement at 2-3, In re N.Y.C. O.T.B., No. 09-17121 (Bankr. S.D.N.Y. Dec. 1, 2010), ECF No. 234.

37. Other cases have reached a similar conclusion. See, e.g., Hr'g Tr. at 126:14-16, In re Chemtura Corp., Case No. 09-11233 (Bankr. S.D.N.Y. July 22, 2010) (noting that "[t]he propriety of a third-party release . . . is a confirmation issue"); In re Drexel Burnham Lambert Grp., No. 90-B-10421, 1992 WL 62758, at *1 (Bankr. S.D.N.Y. Mar. 5, 1992) (referencing court's earlier ruling at the disclosure statement stage that objections to plan's non-debtor release and injunction provisions were in the nature of objections to confirmation); In re Specialty

Equipment Cos., 3 F.3d 1043, 1045 (7th Cir. 1993) (referencing earlier bankruptcy court ruling that validity of plan releases was confirmation issue not disclosure statement issue).

38. At confirmation, the Debtors will demonstrate that the Estate Release is justified in light of the facts and circumstances of this case. See U.S. Bank National Ass'n v. Wilmington Trust Co., Spansion, Inc. (In re Spansion, Inc.), 426 B.R. 114, 143 (Bankr. D. Del. 2010) ("[A] debtor may release claims in a plan pursuant to Bankruptcy Code § 1123(b)(3)(A), if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."). First and foremost, to the best of the Debtors' knowledge, no viable estate causes of action exist against any of the Released Parties. See id. at 143 n.48 (holding that "it [was] not unreasonable for the Debtors to provide a broad release of its claim in return for creditors' agreement to the Plan" even where "there [was] no evidence of any potential claims"). Significantly, the evidence will show that the pre-filing dividend referenced by the Syndicate in its objection was made by an entity that had **no** third-party creditors and was **not** obligated on the Syndicate debt.[6]

B. **The Disclosure Statement Contains Adequate Information**

39. Adequate information is "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor . . . that would enable a hypothetical 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) (emphasis added). Courts have broad discretion in determining whether a disclosure statement contains adequate information, employing a flexible approach based on the unique facts and circumstances of each case. See

[6] In this regard, the Syndicate lacks standing to raise this as a disclosure objection. See Scioto Valley, 88 B.R. at 170 (a creditor lacks standing to challenge adequacy of disclosure that does not affect its class).

Abel v. Shugrue (In re Ionosphere Clubs, Inc.), 179 B.R. 24, 29 (S.D.N.Y. 1995) (citing In re Texas Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988)). Factors relevant to the adequacy of disclosure include the need to avoid excessive cost and delay. See H.R. Rep. No. 95-595, 1st Sess.at 408-409 (1977) reprinted in 1978 U.S.C.C.A.N. 5963, 6365; Kirk v. Texaco, Inc., 82 B.R. 678, 682 (S.D.N.Y. 1988).

40. The information contained in the Disclosure Statement is more than sufficient to meet the requirements of section 1125 of the Bankruptcy Code. The Disclosure Statement includes a detailed explanation of the treatment of claims and interests under the Plan; a description of the Debtors' businesses and the events leading to the filing of these Chapter 11 Cases; projections regarding the Debtors' future performance where relevant to a party's treatment; a discussion of the risk factors involved in confirmation and consummation of the Plan; and a discussion of the Plan's release and exculpation provisions.

41. Wherever practical and appropriate, the Debtors have accommodated the concerns of the Syndicate and/or Citi and have included additional explanations, clarifications, and disclosures. The additional disclosures added to the Disclosure Statement are set forth in the Objection Summary. The Objection Summary also contains the Debtors' response to each specific disclosure objection. Although the Debtors have sought to avoid sideshows related to disclosure objections by including additional language wherever possible, certain of the disclosure issues raised by the Objectors simply are not material to their decision to vote on the Plan and are not required by any reading of the Code.

42. Indeed, in many instances, the Syndicate's demand for additional disclosure does not evidence any genuine need for additional information, but rather illustrates the Syndicate's intent to harass the Debtors. The Syndicate doesn't need any additional information in deciding

how to vote. It is comprised of some of the largest lenders and hedge fund investors in the shipping industry; has received volumes of information from the Debtors; and has already declared its intent to reject the Plan.

(i) The Financial Information in the Disclosure Statement

43. The Syndicate provides a veritable laundry list of financial information that it contends must be disclosed in order for it to determine whether to vote to accept or reject the Plan. Among the so-called disclosure deficiencies cited by the Syndicate are the financial projections. For example, the Syndicate objects that the projections extend out only four years, as opposed to the eight years demanded by the Syndicate; that the projections do not take a position on the total enterprise value of the Debtors or of the value to be distributed on the Effective Date, and that the projections do not include support for the Debtors' belief that charter rates are expected to rebound from the current market rates.

44. The Syndicate clearly is gearing up for a valuation fight at confirmation. But as the Weiss-Wolf case, relied upon by the Syndicate in its Objection, makes abundantly clear, "[t]he court may approve a disclosure statement without a valuation of the debtor or an appraisal the debtor's assets." In re Weiss-Wolf, Inc., 59 B.R. 653, 654 (Bankr. S.D.N.Y. 1986). Additionally, since the Plan provides for the payment **in full** of the HSH-YM Facility Claims, this valuation information is not even relevant at the disclosure statement stage. Accordingly, this component of the Syndicate's objection should be overruled.

(ii) Information to Support Old Equity's Retention of its Interest

45. The Syndicate demands further disclosure related to the legality of the current equity owners' retention of equity in the holding company debtors, including a discussion of the marketing of any opportunity to contribute new value. To repeat, this is **not** a new value plan. The objecting secured lender – the Syndicate facility – is being paid **in full** by means of the

Amended and Restated HSH-YM Facility. Payment in full of the Syndicate lenders' claims do not implicate the new value exception to the absolute priority rule and thus, this disclosure objection is irrelevant to the Plan and should be overruled.

C. **Responses to Solicitation Procedures Objections**

46. The majority of the Syndicate's objections to the Solicitation Procedures focus on their dissatisfaction with the tabulation of Class 9 claims of general unsecured creditors. According to the Syndicate, the Voting Agent should be mandated to tabulate votes cast on a per-debtor basis. This objection is just another effort to tee up the Syndicate's confirmation objection related to whether section 1129(a)(10) is a per-plan, or a per-debtor, requirement. Although the Debtors believe that the aggregate classification of all general unsecured claims is entirely appropriate, the Debtors have nonetheless included subclasses in Class 9 on a per-Debtor basis in a good faith effort to address the Syndicate's concerns and move forward with the Plan process.

47. The Syndicate's remaining objection to the solicitation procedures – that a "deemed accepting" class that casts no ballot cannot be counted as an impaired accepting class for purposes of section 1129(a)(10) – is premature. It is also incorrect: courts, including those in this District, have indicated that such "deemed accepting" classes can fulfill requirements found throughout the Bankruptcy Code. See, e.g., In re Adelphia Commc'ns Corp., 368 B.R. at 260-261 (holding that "deemed accepting" class satisfied 1129(a)(8)); In re Tribune, 464 B.R. at 183 (holding that "'deemed acceptance' by a non-voting impaired class, in the absence of objection, could constitute the necessary 'consent'" under section 1129(a)(10)); Heins v. Ruti-Sweetwater, Inc. (In re Ruti-Sweetwater, Inc.), 836 F.2d 1263, 1267 (10th Cir. 1988) (holding that "inaction . . . constituted an acceptance of debtors' Plan of Reorganization for purposes of § 1129(b)(1)"). As with its other confirmation objections, HSH can raise such objection based on

the vote tabulation at the appropriate juncture but it is inappropriate and premature to address it at this stage.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order overruling each of the Objections and approving the Amended Disclosure Statement and Solicitation Procedures and granting such other relief as is just and proper.

Dated: New York, New York
November 19, 2014

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EXHIBIT A

Objection Summary

CHART OF OBJECTIONS
NAUTILUS PLAN OF REORGANIZATION AND DISCLOSURE STATEMENT

Capitalized terms used but not defined herein have the meanings assigned to them in the Citibank or HSH Objections, as applicable.

PARAS.	OBJECTION	RESPONSE
Citibank Objection [Docket No. 212]		
The Disclosure Statement Should Not be Approved Because the Plan is Patently Unconfirmable		
¶15-19	• The Plan violates section 1122 of the Bankruptcy Code because it places claims that are not substantially similar in the same class. • The ballots improperly require Classes 3A and 3B to vote on the same ballot.	• This objection is addressed in the Reply. • The Debtors have amended the Solicitation Procedures to permit these Claims to be voted separately.
¶20-33	The Plan violates section 1129(a)(10) of the Bankruptcy Code because it treats the debtors' silos as substantively consolidated for purposes of obtaining the acceptance of an impaired class.	This objection is addressed in the Reply.
¶34-42	The Plan does not satisfy the absolute priority rule because it allocates equity to Insiders without satisfying the new value exception.	This objection is addressed in the Reply.
The Disclosure Statement Does Not Contain Adequate Information		
¶47-49	The Disclosure Statement does not provide adequate disclosure with respect to the treatment of Insiders. • Fails to provide an adequate description of the Insider's "concessions" and details regarding the new management agreements.	As set forth in the Reply, the Debtors have agreed to file the Plan Supplement on or before December 22, 2014. The Debtors have previously provided information regarding the concessions being granted under the Plan in Articles III.F and IV.B, including shortfall guarantees; reductions and relinquishment of certain management fees, and support of the restructuring process. Nonetheless, the Debtors have included additional information in Article IV.B regarding the contributions of the Equity-Related Entities.

PARAS.	OBJECTION	RESPONSE
¶50-51	The Disclosure Statement contains other missing, incorrect or inadequate disclosures regarding the below topics.	
	Financial Projections – Failure to include financial projections for Citi silo debtors.	The Debtors will be providing additional information in an exhibit supplement to the Amended Disclosure Statement.
	Citi Facility Swap Claims – Swap claims must be broken out because swap claims are subordinated to payment of Tranche A and Tranche B claims. Debtors must disclose that no distributions will be made to holders of swap claims until holders of Tranche A and Tranche B claims have been paid in full.	The Debtors have included language in the Amended Disclosure Statement to clarify this point.
	Citi Facility Guarantee Claims – Failure to provide explanation of guaranty claims against NS3L.	The Debtors have added language clarifying the treatment of the guaranty claims in the chart in the introduction of the Amended Disclosure Statement and in the Plan.
	Intercompany Interests – Failure to disclose (a) that Insiders' interests are also reinstated under Class 10 (Interests in NHL and NH2L), (b) that Insiders, as ultimate beneficiaries of Class 13 claims, have a right of first refusal to purchase vessels securing the HSH Silos, and (c) that the Insiders are receiving warrants as holders of Class 14 claims.	(a) The Debtors have added language in the chart in the introduction of the Amended Disclosure Statement reflecting this treatment. (b) This point is no longer relevant now that the ROFR has been removed in the Amended Plan. (c) The Debtors have added language in the chart in the introduction of the Amended Disclosure Statement reflecting this treatment.
	"Fair and Equitable" Requirement – Lacks adequate information with respect to the Amended and Restated Citi Facility (e.g., financial covenants, guarantees and security) and the Citi Silo Warrants (e.g., voting, transferability) making it difficult to assess whether proposed treatment of Citi claims is "fair and equitable".	The Debtors believe the Disclosure Statement provides adequate information for Citi to evaluate its treatment. However, as set forth in the Reply, the Debtors have amended the Plan and Disclosure Statement to provide that the Plan Supplement will be filed before the Voting Deadline.
	Feasibility – Failure to explain how the Plan is feasible and does not violate section 1129(a)(11) of the Bankruptcy Code. Failure to disclose expense structure of Citi silo debtors in light of new management agreements and whether post-emergence liquidity will be sufficient.	The Debtors will be providing additional information in an exhibit supplement to the Amended Disclosure Statement.

PARAS.	OBJECTION	RESPONSE
	Releases – Failure to disclose "concessions" the Insiders are providing to justify releases of all claims.	The Debtors have previously provided information regarding the concessions being granted under the Plan in Articles III.F and IV.B, including shortfall guarantees; reductions and relinquishment of certain management fees; and support of the restructuring process. Nonetheless, the Debtors have included additional information in Article IV.B regarding the contributions of the Equity-Related Entities.
	Tax – Failure to describe (i) why the exchange qualifies as a tax-deferred recapitalization and (ii) the tax consequences of owning stock of reorganized NS3L (including whether it will be treated as a passive foreign investment company for U.S. income tax purposes).	The Debtors have added additional information in Section V.F.2 of the Disclosure Statement.
	HSH Syndicate Objection [Docket No. 213]	
The Disclosure Statement May Not be Approved Because the Plan is Patently Unconfirmable		
¶26-33	The Plan violates section 1129(a)(10) of the Bankruptcy Code because there is no impaired accepting class in the HSH silo—acceptance by DVB is inapplicable to the HSH silo.	This objection is addressed in the Reply.
¶34-35	The Plan violates section 1129(a)(10) of the Bankruptcy Code because there is no impaired accepting class in the HSH silo—the class of Other General Unsecured Claims cannot be an impaired accepting class.	This objection is addressed in the Reply.
¶36-37	The Plan violates section 1122 of the Bankruptcy Code because it separately classifies the HSH lenders' deficiency claims from the Other General Unsecured Claims.	This objection is addressed in the Reply.
¶38-39	The class of Other General Unsecured Claims is artificially impaired.	This objection is addressed in the Reply.

PARAS.	OBJECTION	RESPONSE
The Disclosure Statement Does Not Provide Adequate Information		
¶41-44	The Syndicate Lenders' treatment under the Plan is unclear because: • There is no valuation of the Syndicate Lenders' claims. The Disclosure Statement must state that the Syndicate Lenders actually hold deficiency claims and the amount of such claims. • There is insufficient disclosure of the terms of the Amended and Restated HSH-YM Facility. Specifically, details regarding the difference between proposed tranche A and tranche B loans, security, guarantees, and financial covenants must be included. • There is no disclosure of the treatment of the Syndicate Lenders' second-lien claims against the Flowers Facility debtors and their guarantee claims.	The Debtors submit that the Disclosure Statement provides adequate information for the Syndicate to evaluate its treatment. In particular: • The Syndicate's objections are rendered partially moot by the Amended Plan. The lenders in the Syndicate are receiving a single Amended and Restated HSH Facility in exchange for their claim against the Debtors, without separate tranches. The Plan otherwise contemplates payment in full of the entire loan, rendering the Syndicate's objection irrelevant. • The Debtors have agreed to file the Plan Supplement before the Voting Deadline in order to give the lenders in the Syndicate the opportunity to further evaluate their treatment. • The Debtors have added language in the chart in the introduction of the Amended Disclosure Statement and the Plan specifying that the lenders in the Syndicate will receive no distribution on any second-lien or guarantee claims against other Debtors.
¶45	The proposed timing for filing of the Plan is prejudicial—the Court should require the Plan Supplement to be filed by December 1, 2014 to give the Syndicate Lenders time to assess the Plan.	As set forth in the Reply, the Debtors have agreed to file the Plan Supplement on or before December 22, 2014.
¶46-47	The financial information in the Disclosure Statement is inadequate. • The financial projections are deficient because: o they extend only through December 31, 2018 while maturity of the proposed amended facility does not terminate until 2022. o they do not take a position on total enterprise value of the Debtors and the total distributable value on the Effective Date. o they do not provide customary recovery estimates for the	The Debtors submit that the Disclosure Statement provides adequate information for the lenders in the Syndicate to evaluate their treatment. In particular: • The lenders in the Syndicate are sophisticated investors with access to voluminous information from the Debtors; none of the requested information will further inform the lenders in the Syndicate, which have already stated their intent to vote against the Plan.

PARAS.	OBJECTION	RESPONSE
	tranche A and tranche B loans under the proposed amended facility. ○ they provide no projected valuation of the vessels on a charter-free basis, or statement regarding the HSH Debtors' ability to comply with loan-to-value and other covenants to be contained in the proposed amended facility. ○ they rely on historical values for the SG&A line item expense, which is inappropriate because the postpetition Reorganized Debtors will control six vessels, whereas the prepetition Debtors controlled 16 vessels. • The Debtors state that charter rates are expected to rebound but do not include support or projections for such assertion.	• Projections of four years are customary and adequate to evaluate treatment under the Plan. The demand for more is an improper attempt to turn the disclosure statement into a discovery document in advance of confirmation. • The evidence at confirmation will show that cash from operations and proceeds from sale or refinancing of the vessels will pay the restructured facility in full. • The total enterprise value of the debtor is not required, especially given the plan to pay the Syndicate in full, nor is a statement that the Debtors will be able to comply with covenants; the Debtors will prove that the Plan is feasible at confirmation. • The Debtors believe they will be able to comply with loan-to-value covenant to be contained in the proposed amended facility. • The projections filed as part of the Initial Disclosure Statement are based on the new ship holdings structure of the enterprise. • The Debtors have stated that that their projections come from Marsoft, an industry leader. To the extent the Syndicate wishes to challenge those projections, it is premature and should be a confirmation issue.
¶48-49	The Plan does not disclose the legal bases justifying Papathomas' retention of equity in certain of the Debtors, including the extent of new value or why the equity has not been market tested.	As set forth more fully in the Reply, the Debtors are not submitting a new value plan. Classes senior to equity are being paid in full, therefore it is appropriate that equity retain ownership.
¶50	Disclosure regarding the scope of non-Debtor releases is inadequate. • The Disclosure Statement does not make clear what claims against the Equity-Related Entities, if any, may exist. • The Disclosure Statement should include any causes of action that may exist on account of the $1 million dividend made to	• As set forth in more detail in the Reply, to the best of the Debtor's knowledge, no such claims exist. • The dividend was made by an entity, with no third-party creditors and that is not obligated on the Syndicate debt, from residual cash from a capital

PARAS.	OBJECTION	RESPONSE
	Equity-Related Entities six days prepetition.	raise done years ago.
¶51	Other instances of inadequate disclosure: • The Debtors must disclose how they are treating claims under the DIP facility. • The Debtors must explain how they are allocating professional fees among the silos. • The following information/documentation must be provided by December 1, 2014: o the composition of the boards of directors for the Reorganized Debtors. o any amended and restated corporate documents. o the NH2L Management Agreement. o the list of executory contracts or unexpired leases to be rejected by the Plan. • Explanations of the following should be provided: o whether cancellation of Intercompany Claims will adversely affect recoveries available to the Syndicate Lenders from the HSH Debtors. o what services Synergy will provide under the NH2L Management Agreement and how such services justify payments thereunder. o what the 40% of the pooled management fee that will be released pursuant to the DVB RSA to the DVB silo Debtors will be used for and what the Debtors plan to do with the 40% of the pooled management fee in respect of the HSH Debtors. o whether any claims against multiple Debtors will be treated as a separate claim against each of the applicable Debtors, whether claims against particular Debtors are to be satisfied only from assets of the particular Debtor or Debtors against which such claims are made and whether the obligations of any particular Debtor will remain obligations only of such Debtor and that no other Debtor will become liable for the obligations of another	• As set forth in Sections 1.2 and 2.1 of the Plan, amounts advanced under the DIP Financing Orders are Administrative Claims that will be paid in full pursuant to the Plan and agreements with certain lenders. • Article IV.C.1 contains adequate information regarding the payment of Professional Fees. The Syndicate is already aware of the allocation methodology. • As set forth in the Reply, the Debtors have agreed to file the Plan Supplement on or before December 22, 2014. • A list of Intercompany Claims to be canceled pursuant to the Plan will be filed with the Plan Supplement, to be filed on or before December 22, 2014. • In addition to the detail already provided in the Disclosure Statement regarding the Debtors' current management agreements, the Plan Supplement will include the NH2L Management Agreement. • The treatment of the management fee under the DVB RSA is explained in Exhibit D. Under the projections included with the Disclosure Statement, other pooled management fees will remain at the Debtor where such fees were pooled. • As indicated in Article IV.C of the Disclosure Statement, the Debtors are not substantively consolidating their estates. Those liabilities that are joint and several will be treated as such. • As indicated in the Plan, Class 9 is not to be paid postpetition interest. • In addition to the procedures set by the Bankruptcy

PARAS.	OBJECTION	RESPONSE
	under the Plan. ○ whether and on what basis the General Unsecured Claims are entitled to postpetition interest. ○ a further explanation of the process for disputing Disputed Claims and a schedule of claims against the Debtors that are subject to dispute (including the claim of Associated Shipbroking, S.A.M.). ○ a certified statement that Synergy, to the extent the services it provides requires it, is authorized to provide International Safety Management Code certifications, or any other certifications, in respect of the vessels. ○ the location of the post-Effective Date bank accounts from which cash will be distributed, whether the Syndicate Lenders will benefit from an amended and restated account pledge agreement in line with the prepetition account pledge agreement and enjoy a perfected, first-ranking security interest in such accounts. ○ whether there are any potential causes of action against the Debtors that could give rise to any maritime lien or whether there is any other litigation that is known to the Debtors. ○ whether there are any tax consequences to the Debtors resulting from the Plan or, if none, a statement that there is none.	Rules, the Disclosure Statement and Plan contain a lengthy description of the process of resolving disputed claims. For the status of particular claims, creditors may examine the Debtors' schedules and statements. • The objection regarding certifications is addressed in the Reply. • The Debtors intend to continue to manage their business in the way they deem most effective after the Effective Date, including selecting bank accounts. The Debtors' intent, however, is not to change such bank accounts upon the Effective Date. The Plan Supplement will contain information regarding the amended facility and the security interest. • The Debtors have included potential causes of action against them in their filed schedules and statements. The Debtors are not aware of any additional causes of action that would give rise to a maritime lien. • The Debtors reasonably believe there will be no material Hong Kong tax consequences to the transactions contemplated by the Plan.
The Solicitation and Voting Procedures are Improper		
¶53	Holders of General Unsecured Claims in Class 9 under the Plan should receive one ballot for their claims against each of the applicable Debtors, rather than a single ballot for voting a single claim in such class.	This objection is addressed in the Reply.
¶54	Holders of General Unsecured Claims in Class 9 under the Plan should be permitted to split their votes with respect to ballots against separate Debtors.	This objection is addressed in the Reply.

PARAS.	OBJECTION	RESPONSE
¶55	The absence of any ballots cast within an impaired class should not constitute an impaired accepting class for purposes of section 1129(a)(10) under the Bankruptcy Code.	This objection is addressed in the Reply.
¶56	The Voting Agent should be required to provide a tabulation of the votes cast by holders of General Unsecured Claims in Class 9 on a per-Debtor basis.	This objection is addressed in the Reply.
¶57	The Proposed Solicitation Order should provide a reservation of rights for the benefit of the Debtors' prepetition secured lenders providing that permitting balloting of claims in Class 9 to go forward is not an admission by such prepetition secured lenders that claims in Class 9 are impaired and thus entitled to vote.	A reservation of rights is not necessary in the Solicitation Procedures Order. This is a confirmation issue and may be raised in connection with confirmation of the Plan.
¶58	The Proposed Solicitation Order should be amended to reflect that an objection or motion for estimation will not exclude the disputed claim for purposes of plan voting, but rather put such vote in abeyance pending the outcome of such objection or estimation motion.	The Solicitation Procedures have been revised to reflect this comment.