

**Objection Deadline:** September 19, 2017, 4:00 p.m.

**Hearing Date:** October 4, 2017, 9:30 a.m.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,  
Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 3283-LTS  
(Jointly Administered)

**JOINT MOTION BY THE AD HOC GROUP OF GENERAL OBLIGATION  
BONDHOLDERS, ASSURED GUARANTY CORP. ASSURED GUARANTY  
MUNICIPAL CORP., AND THE MUTUAL FUND GROUP  
FOR ORDER AUTHORIZING RULE 2004 EXAMINATION**

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<sup>1</sup> The Debtors in these Title III cases (collectively, the “Title III Cases”), along with each Debtor’s respective Title III Case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686). (Title III Case numbers are listed as bankruptcy case numbers due to software limitations).

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Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), made applicable to these Title III Cases by section 310 of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”),<sup>1</sup> the Ad Hoc Group of General Obligation Bondholders (the “GO Group”),<sup>2</sup> Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (“Assured”) and the Mutual Fund Group, (collectively with the GO Group, and Assured, “Movants”) submit this motion (the “Motion”) for entry of an order (1) compelling the Commonwealth and the Federal Oversight and Management Board for Puerto Rico (the “Oversight Board” or the “Board” and, with the Commonwealth, “Respondents”), to produce documents responsive to the requests listed in **Schedule A**; (2) compelling the depositions of the individual members of the Oversight Board; (3) compelling the Commonwealth and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) to designate for deposition a witness or witnesses knowledgeable about the topics in **Schedule A**; and (4) authorizing Movants to serve subpoenas on third parties with knowledge of the topics in **Schedule A** without seeking further leave of the Court.

## INTRODUCTION

How much can the Commonwealth really pay? Its Title III case turns on that question. The case’s goal is a plan of adjustment, which must, among other things, be “fair and equitable” (to be confirmed over the objection of a class of creditors) and “in the best interests of creditors” (in all cases). Whether a plan of adjustment meets those criteria depends, in turn, on whether it does all that is reasonably possible to maximize creditor recoveries. And that is a

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<sup>1</sup> PROMESA has been codified at 48 U.S.C. §§ 2101-2241.

<sup>2</sup> Members of the GO Group file this Motion exclusively on their own behalves and do not assume any fiduciary or other duties to any other creditor or person.

quintessentially *factual* question that turns on the data, financial models, and other analytical materials underlying the Commonwealth's plan of adjustment.

The Bankruptcy Rules provide just the tool to develop the necessary facts. Rule 2004 allows the Court to order a sweeping examination of “the liabilities and financial condition of the debtor.” Fed. R. Bankr. P. 2004(b). That is what this Motion seeks. Specifically, this Motion seeks an examination of documents and key witnesses concerning the projections in the Fiscal Plan (defined below), which will no doubt form the basis of any plan of adjustment, and the Commonwealth's fiscal health in general.

The Oversight Board and the Commonwealth have steadfastly refused to provide these facts voluntarily to Movants or to most other creditors. Movants also understand that National Public Finance Corporation (“National”), which also owns or insures billions of dollars of debt issued by the Commonwealth or its instrumentalities, will be filing a motion pursuant to Rule 2004 because it too has been denied basic facts regarding the Commonwealth's financial situation and the Fiscal Plan. In the Board's view as expressed repeatedly to all creditors, to this Court, and most recently to Movants during a conference held in advance of our filing this Motion, the determination to certify the Fiscal Plan is insulated by PROMESA not only from our “second-guessing,” but even from this Court's scrutiny. That facile response misses the point: Movants' purpose in seeking this discovery is to be able to assess whether any proposed plan of adjustment—which must be consistent with the Fiscal Plan—is *confirmable*. And the confirmability of a plan of adjustment is assuredly open to the Court's scrutiny.<sup>3</sup>

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<sup>3</sup> In light of the Board's categorical position that discovery under Rule 2004(b) is unavailable *as a matter of law*, its objection during the August 24, 2017 meet-and-confer call that Movants should have held off on filing this Motion until Movants afforded the Board an opportunity to review the specific discovery requests, is just an effort at still further delay. The Board was explicit during that conference that it has no obligation (and no intent) to provide discovery of materials that relate to the Fiscal Plan because (among other reasons) (1) per PROMESA, the assumptions underlying the Fiscal Plan are none of our business, and (2) no plan of confirmation has yet been proposed, so any discovery relevant to whether a plan would be confirmable is premature.

Movants and National have coordinated the filing of their motions and are willing to coordinate their further discovery efforts in order to minimize burden on the Commonwealth and the Oversight Board. But the evidence sought by this Motion and the motion that will be filed by National is critical to these Title III Cases. No less important, it is critical to any settlement—without it, no creditor can satisfy itself that a proposed settlement is fair. The Court therefore should grant the Motion.

### **JURISDICTION AND VENUE**

This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1331 and PROMESA § 306(a). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and PROMESA § 307(a).

### **BACKGROUND**

*The Fiscal Plan.* PROMESA provides that the Commonwealth will be subject to a fiscal plan. The fiscal plan is developed by the Commonwealth (by default) and, if it satisfies certain requirements, certified by the Oversight Board. PROMESA §§ 201(b), (c).

Much hinges on the fiscal plan and associated projections regarding how actions taken pursuant to the fiscal plan will impact the Commonwealth for decades to come. Once the Board has approved and certified a fiscal plan, the Commonwealth's budgets must comply with it. *Id.* § 202. Additionally, in the Commonwealth's Title III case, any plan of adjustment may be confirmed only if it is "consistent with the applicable Fiscal Plan." *Id.* § 314(b)(7). But consistency with the fiscal plan alone does not suffice. The plan of adjustment, which will govern how much creditors receive for 20, 30, or even 40 years after the fiscal plan ceases to be in effect, must also be "fair and equitable" and "in the best interests of creditors" and satisfy several other requirements not relevant to the instant motion. *See id.* §§ 314(b)(1), (6).



In March 2017, the Board certified a fiscal plan for the Commonwealth (as amended, the “Fiscal Plan”). While the Board’s advisors have, at times, relied upon longer-term projections, the Fiscal Plan covers fiscal years 2017 through 2026 and contains financial projections and other data for that period. On its face, the Fiscal Plan requires financial creditors collectively to accept a haircut of nearly 80%.

*Movants’ efforts to seek discovery out of court.* Movants long have tried to work with the Oversight Board and the Commonwealth to understand the Commonwealth’s finances. These efforts date to at least fall 2015, when the previous administration proposed an opaque (and now obsolete) “Fiscal and Economic Growth Plan.” By May 2017, the Board and the Commonwealth had given Movants access to a “data room” containing some fifty documents. Many of these documents either were hard-coded spreadsheets, which did not include working financial models, or lacked necessary backup files.

The latest chapter in Movants’ consensual-discovery efforts began after the Board, in May, filed a Title III petition for the Commonwealth. On June 2, Assured and the GO Group sent the Board and the Commonwealth a letter explaining that the existing “data room” did not enable Movants to understand the Fiscal Plan and the haircut it purported to impose. Ex. A (6/2 Letter).<sup>4</sup> Accordingly, the letter requested 56 specific categories of documents concerning the data underlying the Fiscal Plan, the Commonwealth’s revenue and expense projections, and other issues. *Id.* at 3-9.

*The Board and the Commonwealth’s refusal.* The Board and the Commonwealth largely refused Movants’ requests. On June 13, they responded to Movants’ June 2 letter by referring to the existing data room and to publicly available data. Ex. B (6/13 Letter). They also agreed to

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<sup>4</sup> Unless otherwise specified, exhibits are attached to the Declaration of Lanora C. Pettit filed herewith.

add some new documents to the data room. For the most part, though, Respondents claimed that PROMESA precludes the GO Group and Assured from access to the information they sought:

AAFAF and the [Board] . . . will not provide proprietary models created by outside consultants, nor provide information obviously sought for *no purpose other than litigating the propriety of the [Board's] certification* of the Fiscal Plan. Any factual inquiries made into “determinations” by the [Board] are statutorily mandated to be within in its “*sole discretion*” pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is *not reviewable by any court pursuant to PROMESA [§ 106(e)]*.

*E.g., id.* at 5 (emphases added).

Two days later and after receiving a response to the GO Group,<sup>5</sup> the Oversight Board reiterated its arguments in a status report to this Court. ECF No. 350.<sup>6</sup> Citing section 106(e) of PROMESA, the Board asserted that its “certifications are not . . . subject to being second-guessed by the Court.” *Id.* ¶ 26; *see also id.* ¶ 25 n.11 (citing PROMESA § 201(c)(3)). Finally, the Board claimed that “extensive” financial information was available publicly and in the data room. *Id.* ¶¶ 12, 15.

Since May 3, the Board and the Commonwealth have added only 34 additional documents to the data room, fifteen of which are publicly available articles from academic journals. Since June, no additional information has been added to the data room.

*The Adversary Proceedings.* On May 11, 2017, Assured and National Public Finance Guarantee Corporation (“National”) filed an adversary proceeding challenging, among other things, the unlawful diversion of collateral pursuant to Act 24-2017 and the violations of constitutional rights under the Fiscal Plan and Act 24-2017. *See Assured Guaranty Corp. v.*

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<sup>5</sup> The GO Group immediately sent a letter explaining why that these objections from the Oversight Board and AAFAF were without merit. Ex. C. The GO Group also raised concerns that the Oversight Board and AAFAF were inappropriately claiming deliberative process and executive privileges over vast swaths of factual information, *id.* at 2, and that they were refusing to produce “proprietary” models from third party consultants without any legal basis whatsoever, *ibid.*

<sup>6</sup> Unless otherwise specified, ECF references in this Motion are taken from the docket of *In re Commonwealth of Puerto Rico*, No. 17 BK 3283-LTS.

*Commonwealth of Puerto Rico*, Adv. Proc. No. 17-00125-LTS. As of the date hereof, no discovery has been taken in this adversary proceeding.

On June 3, 2017, Assured, National and Financial Guaranty Insurance Company (“FGIC”) commenced adversary proceedings challenging the diversion of (i) proceeds of certain excise taxes that are collateral for revenue bonds issued by certain public agencies and (ii) toll revenues, each of which qualify as “special revenues” under section 902(2) of the Bankruptcy Code. *See Assured Guaranty Corp. v. Commonwealth of Puerto Rico*, Adv. Proc. No. 17-00155-LTS, 17-00156-LTS (the “Assured HTA Adversary”). Pursuant to the Court’s Order entered on July 7, 2017 in the Assured HTA Adversary (ECF No. 31), discovery taken in *Peaje Investments LLC v. Puerto Rico Highways and Transportation Authority*, Adv. Proc. No. 17-151-LTS, Nos. 17-151-LTS (the “Peaje HTA Adversary”) in connection with a motion for preliminary injunction was made available to Assured, National and FGIC. Other than reproduction of the discovery from the Peaje HTA Adversary, as of the date hereof, no other discovery has been taken in the Assured HTA Adversary.

On June 27, 2017, the GO Group filed an adversary proceeding challenging the diversion of two specific streams of revenue: (1) proceeds of certain taxes and fees that, although conditionally earmarked for payment of certain obligations of Commonwealth instrumentalities (*e.g.*, the Puerto Rico Highways and Transportation Authority), are required by Puerto Rico law to be “clawed back” for the sole purpose of paying debt guaranteed under the Puerto Rico Constitution (“Constitutional Debt”) when other available resources are insufficient to do so; and (2) certain proceeds of property taxes that Puerto Rico statutory law requires be levied and collected for the benefit of Constitutional Debtholders. *See generally ACP Master, Ltd. v. Commonwealth*, Adv. Proc. No. 17-189-LTS. No discovery has taken place in that proceeding;

indeed, defendants have taken the position that discovery should generally be stayed pending its motion to dismiss. Even basic and easily accessible materials, such as the native spreadsheet used by Dr. Andrew Wolfe to analyze the Fiscal Plan, have been withheld from any creditors—some of whom are owed hundreds of millions, if not billions, of dollars—who do not have direct access to discovery materials produced in the Peaje HTA Adversary Proceeding.

*The Fiscal Plan's inaccuracies.* Even without access to the underlying data and analytical models, we are able to show fundamental weaknesses and errors in the current Fiscal Plan (and, hence, any future projections derived from figures contained in it or any plan of adjustment based upon it). Those flaws exceed the scope of this Motion, but one recent revelation illustrates the problem. The Fiscal Plan projected that the Commonwealth would reach June 30, 2017 (the end of the fiscal year) with \$291 million in cash. ECF No. 1, Ex. A, at 31. By early August, however, the Commonwealth's Governor announced that, as of June 30, the Commonwealth actually had \$1.8 billion in its main operating account. Associated Press, *Puerto Rico Gov Vows To Fight Possible Furloughs Amid Crisis*, Caribbean Business, Aug. 3, 2017, available at <http://caribbeanbusiness.com/puerto-rico-gov-vows-to-fight-possible-furloughs-amid-crisis/> (last accessed Aug. 23, 2017). In other words, according to the Commonwealth, the Fiscal Plan underestimated the Commonwealth's financial position by **\$1.5 billion**. See, e.g., Ex. D (Tr. 8/4 FOMB Meeting) at 85:15-21 ("The numbers speak for themselves, from the \$230 liquidity projection. For June 2017 the number was surpassed by almost \$1.6 billion and the sources of those funds have been shown to the Board."). This is particularly striking because Fiscal Year 2017 formed the baseline for the entire Fiscal Plan and presumably for financial projections extending as many as 50 years in the future. *Id.* at 85:4-6

(“To be clear, we beat the expectations once already and I commit that we will beat those expectations again.”).

Faced with this discrepancy, even the Board had to confess error. The day after the revelation, its Executive Director observed that “the significant variance . . . highlights the need for more to be done to ensure transparency, timeliness and accuracy.” Ex. D at 72:6-8. The Board agreed; it approved a resolution calling for its Executive Director, Natalie Jaresko, to propose reforms to provide additional transparency into the Commonwealth’s financial controls, including potentially the “appointment of a Central Commonwealth Treasury Manager.” Ex. E (FOMB Resolution #4 (Aug. 4, 2017)). Despite talk of transparency, however, the Board since has disclosed no additional information.

*This Motion.* By this Motion, Movants seek an examination, pursuant to Bankruptcy Rule 2004, of categories of documents and testimony relating to the support for the numerous projections in the Fiscal Plan, bases for the Board’s and the Commonwealth’s numerous claims that the Commonwealth lacks funds to pay financial creditors, and documents provided to the Commonwealth’s and the Oversight Board’s financial advisors and other professionals. It also seeks permission to request information on similar topics from the Commonwealth’s financial advisors and other professionals without further leave from the Court.

### **LEGAL STANDARD**

Rule 2004 is a unique tool in bankruptcy that provides the Court with discretion to allow a “broad and unfettered” look into a debtor’s financial affairs. *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002); *see also In re Youk-See*, 450 B.R. 312, 319-20 (Bankr. D. Mass. 2011). The examination “may relate only to the acts, conduct, or property or to the liabilities and

financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b).

## **ARGUMENT**

### **I. Movants Are Entitled To Information Regarding The Commonwealth's Fiscal Health And Its Fiscal Plan**

The Court should authorize Movants' examination because the evidence they seek—data about and analyses underlying the Commonwealth's financial condition—is exactly the kind of evidence that Rule 2004 is designed to elicit. Contrary to the Board's arguments, PROMESA does not change that. And other factors that a Court may consider in ruling on a Rule 2004 motion, such as hardship, likewise favor Movants.

A. Examinations under Rule 2004 may be conducted by any party in interest, not merely the trustee. *See In re Summit Corp.*, 891 F.2d 1, 5 (1st Cir. 1989) ("Courts have generally construed the term 'party in interest' as used in 11 U.S.C. § 1109(b) liberally."). Congress deliberately chose to allow Rule 2004 examinations in Title III. PROMESA § 310 (incorporating the Bankruptcy Rules). Accordingly, Movants, who collectively own or insure more than \$15.6 billion of debt issued by Puerto Rico or its instrumentalities, are entitled to pursue Rule 2004 discovery.

B. Movants' proposed examination falls within the heartland of Rule 2004—the "financial condition of the debtor." Fed. R. Bankr. P. 2004(b); *see also In re Hughes*, 281 B.R. 224, 226 (Bankr. S.D.N.Y. 2002) ("Rule 2004 of the Federal Rules of Bankruptcy Procedure provides courts with the authority to order examinations with respect to the financial matters of debtors.") (quoting Fed. R. Bankr. P. 2004). It concerns the Commonwealth's revenues, expenses, growth, and budgetary plans. The Commonwealth and the Board insist that the Commonwealth's condition is so desperate that creditors must accept a haircut of

unprecedented proportions. Movants and others believe that the evidence does not support that assertion. The question of who is right is intensely factual. Discovery of those facts—that is, “assist[ing] a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, [and] examining transactions”—is the very “purpose of a Rule 2004 examination.” *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004); *see also In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991) (“The purpose of a Rule 2004 examination is ‘to show the condition of the estate and to enable the Court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditor may be preserved.’”) (quoting *Cameron v. United States*, 231 U.S. 710, 717 (1914)).

Indeed, it is only a matter of time before the Commonwealth’s financial condition is before the Court. Any plan of adjustment must, to be confirmed, be “consistent with the applicable Fiscal Plan.” PROMESA § 314(b)(7). Hence, the Commonwealth’s Fiscal Plan—a key subject of Movants’ proposed examination—is necessarily the blueprint for the Commonwealth’s plan of adjustment. If any party contests the plan of adjustment, it will, of necessity, build its argument (and the Board its defense) on the evidence sought here. Consequently, “the relevance of and necessity of the information sought by examination” is substantial. *See In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 712 (Bankr. S.D.N.Y. 1991).

Take just two examples. Request No. 10 in Schedule A seeks a fully functional version of the macroeconomic growth model used to calculate the forward-looking projections contained in the Fiscal Plan, which the Commonwealth used to calculate both projected revenues and expenses over the 10-year period covered by the Fiscal Plan (and beyond). Request No. 17 seeks information regarding a “Bridge” analysis that was created by Ernst & Young and used by the

Oversight Board to estimate expenses for Fiscal Year 2017 after the Oversight Board concluded that the budget for Fiscal Year 2017 was not an accurate baseline from which to calculate likely expense growth. These two pieces of information are crucial to any genuine understanding of the Fiscal Plan, and thus to creditors' ability to address the assertion by the Board's own expert that cutting any additional government expenditure would lead to an economic death spiral. *See, e.g., Peaje Investments LLC v. Puerto Rico Highways & Transportation Authority*, No. 17-152, ECF No. 216 (8/8 Tr.) at 153 (Testimony of A. Wolfe). The motion also seeks testimony to explain (among other things) inconsistencies in the written record between publicly available information, requirements imposed by the Oversight Board, and positions publicly announced by the Governor and his administration.

C. Against this backdrop, the Board's refusal to provide the discovery Movants seek could be justified only if the Board were correct that the Fiscal Plan's analysis and assumptions, as incorporated in the budget and ultimately in a plan of adjustment, are immune from judicial review. If that were true, one might conclude that discovery would be pointless because creditors would be stuck with the Board's analysis and projections—no matter how erroneous they are shown to be through discovery. But the Board's position is fundamentally wrong. The evidence Movants seek—including information about the Commonwealth's financial condition, the Board's projections for future revenues and expenses, and the proposed measures embodied in the Fiscal Plan—pertains to multiple requirements for confirmation of a plan of adjustment. Those requirements may (indeed, must) be considered by the Court. Contrary to the Board's contention, PROMESA does not work a dramatic—and entirely unprecedented—exception to the basic premise in bankruptcy that creditors are entitled to full transparency into the debtor's financial condition and operations.



For example, the information sought is relevant to the requirement that, to be confirmed (over an impaired class's objection), a plan of adjustment must be "fair and equitable." 11 U.S.C. § 1129(b)(1); *see* PROMESA §§ 301(a), 314(b)(1) (incorporating this requirement). This fair-and-equitable requirement has especially "important content" in municipal bankruptcy cases. 6 Collier on Bankruptcy 943.03[1][f][i][A] (16th ed.) ("*Collier*"). In particular, a municipal debtor's plan of adjustment may be approved only upon a factual finding that the recovery proposed for creditors is "the maximum that the [debtor] could reasonably pay." *Lorber v. Vista Irrigation Dist.*, 127 F.2d 628, 639 (9th Cir. 1942); *see also* 6 Collier 943.03[1][f][i] ("A plan under chapter 9 is fair and equitable if the amount to be received by the bondholders is all that they can reasonably expect in the circumstances." (quotation marks omitted)); H.R. Rep. No. 94-686, 94th Cong., 1st Sess. 33 (1977) (noting that the debtor "must exercise its taxing power to the fullest extent possible for the benefit of its creditors").<sup>7</sup> This inquiry necessarily considers both the revenue and expense sides of the Commonwealth's budget, which in turn depend on the assumptions and projections in the Fiscal Plan.

Nothing in PROMESA overrides the requirement that the Commonwealth do all that is reasonably possible to maximize creditor recoveries if any proposed plan of adjustment is to be confirmed. To the contrary, this requirement is expressly incorporated. Nor does PROMESA commit that determination to the Oversight Board. Rather, "[t]he court shall confirm the plan

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<sup>7</sup> *See also* *Kelley v. Everglades Drainage Dist.*, 319 U.S. 415, 419-420 (1943) (per curiam) ("In order that a court may determine the fairness of the total amount of cash or securities offered to creditors by the plan, the court must have before it data which will permit a reasonable, and hence an informed, estimate of the probable future revenues available for the satisfaction of creditors."); *Fano v. Newport Heights Irrigation Dist.*, 114 F. 2d 563, 565-566 (9th Cir. 1940); *cf.* *W. Coast Life Ins. Co. v. Merced Irrigation. Dist.*, 114 F.2d 654, 679 (9th Cir. 1940) (upholding finding "that 51.501 cents on the dollar is fair and equitable and all that could reasonably be expected in all the existing circumstances"); *In re Corcoran Hosp. Dist.*, 233 B.R. 449, 461 (Bankr. E.D. Cal. 1999) (upholding plan only because debtor could not "raise taxes sufficient to pay more to" the rejecting class); *In re Hardeman Cty. Hosp. Dist.*, 540 B.R. 229, 239 (Bankr. N.D. Tex. 2015) (same); *In re Barnwell Cty. Hosp.*, 471 B.R. 849, 869 (Bankr. D.S.C. 2012) (requiring that "the Plan afford[] all creditors the potential for the greatest economic return from Debtor's assets").

if,” based on the evidence before it, the confirmation requirements are satisfied. PROMESA § 314(b) (emphasis added).

Thus, in any contested confirmation proceeding, the Board will have to demonstrate to the Court’s satisfaction that the proposed plan of adjustment does all that is reasonably possible to maximize creditor recoveries. If (and when) the Board proposes a plan of adjustment premised on the current Fiscal Plan, then creditors will be entitled to challenge the assumptions, projections, and analyses that underlie the Fiscal Plan’s proposed debt-service figures.

The evidence Movants seek also bears heavily on the requirement that any plan of adjustment be “in the best interests of creditors.” PROMESA § 314(b)(6). That rule “require[s] the court to consider whether available remedies under the non-bankruptcy laws and constitution of the [Commonwealth] would result in a greater recovery for the creditors than is provided by such plan.” *Ibid.* The Board claims that allowing creditors to pursue non-bankruptcy remedies would “yield[] little for anyone because the Commonwealth cannot survive for long under that scenario.”<sup>8</sup> Thus, the Board maintains, a plan of adjustment consistent with the current Fiscal Plan would satisfy the best-interests requirement. Movants, by contrast, believe the opposite: that the Commonwealth will not recover from its current economic downturn unless it *jettisons* the current Fiscal Plan and provides appreciably more funds for debt service. But wherever the truth lies, it cannot be uncovered without a close evaluation of the pertinent financial premises of the Fiscal Plan and any related assumptions about growth over the next 30-40 years (the period over which many of Puerto Rico’s bonds will mature). In short, this fundamental disagreement

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<sup>8</sup> Assured HTA Adversary, ECF No. 46 (Defendants Motion to Dismiss) at 10.

about the Commonwealth's financial condition cannot be resolved without complete transparency, and robust discovery.<sup>9</sup>

These confirmation standards affect not only litigation but also settlement. Without complete transparency, creditors cannot be assured that the recovery proposed under any consensual plan of adjustment in fact represents a fair resolution of their claims. Accordingly, settlement will be impossible. Indeed, some of the most critical materials sought here have already been provided to *a subset of* creditors but not others. For example, numerous creditors have requested the native spreadsheet used by Dr. Wolfe to evaluate the Fiscal Plan on behalf of the Board. Respondents have refused to produce it on the grounds that the Fiscal Plan is not subject to challenge. Ex. B at 5 (6/13 Letter). By contrast, Respondents *have* provided that model to certain litigants in a proceeding before the Court, including Assured but *not* the GO Group. *Peaje Investments LLC v. Puerto Rico Highways & Transportation Authority*, No. 17-152, ECF No. 216 (8/8 Tr.) at 140 (discussing results from model apparently calculated by *Peaje* plaintiffs' counsel). Settlement is unimaginable unless all parties have equal access to complete information.

Finally, even were the Board's argument valid, it would not shield it and the Commonwealth from all the discovery Movants seek. Many of Movants' requests do not in any way implicate the Fiscal Plan. *E.g.*, Schedule A at Request No. 23 (requesting documents regarding actuarial assessments of and proposed reforms to the Commonwealth's public pension system).

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<sup>9</sup> Movants seek discovery regarding not only the Commonwealth's Fiscal Plan but also the Commonwealth's budget for fiscal year 2018. Such discovery likewise is relevant to the standards for confirmation of a plan of adjustment. Movants do not seek to question whether the budget complies with the Fiscal Plan, a determination the Board makes in its "sole discretion." PROMESA § 202(c)(1). Any arguments concerning whether the budget for fiscal year 2018 complies with other applicable law, however, are expressly reserved.

D. Movants' proposed discovery is also supported by other factors courts consider in determining whether to authorize an examination under Rule 2004.

For instance, Movants have sought the information through other, less intrusive means. *Cf. In re Chateaugay Corp.*, 120 B.R. 707, 709-10 (S.D.N.Y. 1990). They have sent letters, attended meetings, and served informal document requests. Moreover, Movants will suffer "undue hardship [and] injustice" if they are not provided the information they seek. *See Drexel Burnham Lambert*, 123 B.R. at 712. Without that information, Movants may be constrained to accept the Commonwealth's financial projections at face value. But, as explained above, even on their face, those projections are wildly askew. The Commonwealth, even after paying over \$1 billion in accounts payable, surpassed the Fiscal Plan's 2017 end-of-year cash estimate by \$1.5 billion. *Supra* at 7. Such outperformance is particularly significant given that fiscal year 2017 formed the baseline for every projection the Fiscal Plan uses all the way through 2026.

E. Moreover, Movants are entitled to seek Rule 2004 discovery from parties other than the Debtor. "Any third party who has a relationship with a debtor may be made subject to a Rule 2004 investigation." *Recoton*, 307 B.R. at 755 (citing *Air Line Pilots Ass'n., Int'l v. Am. Nat'l Bank & Trust Co. of Chi. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 432 (S.D.N.Y. 1993), *aff'd sub nom. Sobchack v. Am. Nat'l Bank & Trust Co. of Chi.*, 17 F.3d 600 (2d Cir. 1994)); *see also ePlus, Inc. v. Katz (In re Metiom, Inc.)*, 318 B.R. 263, 268 (S.D.N.Y. 2004) (holding that Rule 2004 may be employed to compel discovery of information maintained by creditors or third parties where such information relates to the effective reorganization and administration of the estate). In this instance, the Commonwealth and Oversight Board have themselves conceded that fundamental analyses incorporated into the Fiscal Plan were conducted

by third parties.<sup>10</sup> For example, Ernst & Young conducted an analysis that led to the creation of a \$600 million “Reconciliation Adjustment” that is layered onto projected expenses each year, and which serves to wipe out the effect of the Commonwealth’s proposed financial reform measures. ECF No. 1, Ex. A at 15. The basis and outcome of such an analysis is rightly the subject of a Rule 2004 examination. *See Hughes*, 281 B.R. at 226 (allowing examination of Deloitte).

Movants therefore request the Court’s approval of authority to issue subpoenas to third parties that may have information regarding the Fiscal Plan, subject to reasonable procedures approved by the Court. Specifically, the Proposed Order includes the following procedures in connection with the issuance of subpoenas to third parties in connection with the investigation: (A) except as otherwise agreed by Movants, within fourteen (14) days of service of Movants’ subpoena, witnesses shall be directed to produce, on a rolling basis all non-privileged documents responsive to Movants’ subpoena, or within fourteen (14) days of service of Movants’ subpoena, to file all objections and/or responses to Movants’ subpoena with the Court, with a hearing promptly scheduled; (B) the witness is directed to submit to oral examination upon reasonable notice and, absent other agreement with Movants, in no event more than fourteen (14) days from the service of a deposition subpoena upon a witness; and (C) in accordance with Bankruptcy Rule 2004, the Clerk of the Court shall issue subpoenas, signed but otherwise blank as requested by Movants.

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<sup>10</sup> Indeed, the Oversight Board has few employees and has not opted to use the services of individuals employed by the governments of either Puerto Rico or the United States. As a result, almost the entirety of the Board’s work is accomplished through use of such “third parties.” That policy choice should not effectively place otherwise discoverable information beyond the scope of investigation, let alone judicial scrutiny.

This procedure, which has been accepted by courts in other complex bankruptcies,<sup>11</sup> may allow both Movants and third parties to avoid any unnecessary duplication or expense should Rule 2004 discovery from the Commonwealth and Oversight Board prove sufficient.

## **II. The Board And The Commonwealth Cannot Shield The Commonwealth's Financial Condition From Scrutiny By Invoking The "Pending Proceeding" Doctrine**

In previous correspondence, the Board and Commonwealth have taken the position that discovery under Rule 2004 is unavailable here because "Rule 2004 discovery is not allowed once adversary proceedings are filed." Ex. B (6/13 Letter) at 2. That is wrong. While it is true that the Puerto Rico Local Bankruptcy Rules direct that Rule 2004 is "inapplicable *to pending adversary proceedings and contested matters*" (P.R. LBR 2004-1, emphasis added), Movants are not seeking Rule 2004 discovery as part of any adversary proceeding. To date, Movants have not served discovery in the adversary proceedings. In any event, the fact that Movants filed adversary proceedings and have or will seek discovery in such proceedings does not foreclose on their rights to pursue discovery in the Title III Cases under Rule 2004.

Nor does the closely related "pending proceeding" doctrine, which has been adopted by some courts but not others, compel a different result. Consistent with the Local Rule cited above, the doctrine holds that a plaintiff in an adversary proceeding *may* be disallowed from invoking Rule 2004 to seek discovery from any opposing party *in that adversary proceeding*. See, e.g., *In re 2435 Plainfield Ave., Inc.*, 223 B.R. 440, 455-56 (Bankr. D.N.J. 1998) (collecting cases). The doctrine derives from the sensible view that, because the Bankruptcy Rules expressly hold that discovery in adversary proceedings is governed by the Federal Rules of Civil Procedure, it would not make sense to allow a party to evade the limits imposed by those rules

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<sup>11</sup> See, e.g., Order Granting Authority to Issue Subpoenas for the Production of Documents and the Examination of the Debtors' Current and Former Officers, Directors and Employees, and Other Persons, *In re Lehman Brothers Inc.*, No. 08-1420 (Bankr. S.D.N.Y. Jan. 15, 2009), ECF No. 561.

by invoking Rule 2004. *Ibid.* Again, however, the doctrine has no application here, where the Movants are seeking Rule 2004 discovery in the main Title III case, not in an adversary proceeding.

In any event, even the courts that have adopted the pending proceeding doctrine recognize that it “paints with a broad brush,” *In re Bennett Funding Grp.*, 203 B.R. 24, 28-29 (S.D.N.Y. 1996), and thus courts retain considerable discretion to determine that a Rule 2004 examination is appropriate under the particular circumstances of the case, even in the context of an adversary proceeding. *E.g.*, *In re Wash. Mut. Inc.*, 408 B.R. 45, 51 (D. Del. 2009); *In re Matter of Sun Medical Mgmt., Inc.*, 104 B.R. 522, 524-525 (Bankr. M.D. Ga. 1989); *In re M4 Enters., Inc.*, 190 B.R. 471, 476 (Bankr. N.D. Ga. 1995); *see also* 9 *Collier* ¶ 2004.01 (citing *In re Int’l Fibercom, Inc.*, 283 B.R. 290, 292 (Bankr. D. Ariz. 2002) (bankruptcy court has ultimate discretion under the prior proceeding doctrine whether to permit the use of Rule 2004)). This view is supported by the plain language of Rule 2004, which does *not* prohibit the use of Rule 2004 when an adversary proceeding is pending. And it has been endorsed by courts in this Circuit, including in one instance where the court entered summary judgment against the debtor in an adversary proceeding because “they had two months to conduct discovery by way of Rule 2004 examinations” but failed to do so. *Noone v. St. Cyr (In re Noone)*, 188 B.R. 710, 713 (Bankr. D. Mass. 1995).

Even if this Court were to conclude (contrary to this authority) that the pending proceeding doctrine *may* be applied to prohibit a Rule 2004 examination because of the pendency of a separate adversary proceeding, it should not apply that rule here. This is not a case in which Movants are “seeking to avoid the procedural safeguards of Bankruptcy Rules 7026-7037.” *Plainfield*, 223 B.R. at 456 (quotation marks omitted). Instead, each of the

requests seeks materials and information plainly discoverable under the Federal Rules. Moreover, as the Governor has recognized, “the Fiscal Plan [i]s the foundation of the Government’s finances” as well as the Budget. Ex. F at 3. As explained above, the assumptions and projections in the Fiscal Plan are absolutely central to the issues that must be adjudicated if a plan of adjustment is to be confirmed, and thus are discoverable notwithstanding the pendency of any adversary proceeding.

### **RELIEF REQUESTED**

By this Motion, Movants request entry of an order, pursuant to Bankruptcy Rule 2004:

- a) Directing the Oversight Board, AAFAF, and the Debtors to produce responsive, non-privileged documents requested on the attached **Schedule A** hereto for examination by Movants;
- b) Directing the Commonwealth, and AAFAF to each designate an individual or individuals with knowledge of the matters described in **Schedule A** hereto (the “**Designated Individual(s)**”), and directing each member of the Oversight Board and each of the Designated Individual(s) to be examined by Movants under oath on such date and time and at such location in Puerto Rico as may be designated in writing by Movants on not less than 14 days’ notice; and
- c) Authorizing Movants to issue subpoenas directing the production of documents and the examination of other witnesses who may have knowledge of the matters described in **Schedule A** hereto without separate application to this Court for each subpoena or witness, and in accordance with the procedures set forth herein and in the Proposed Order.



If the Court concludes that a Rule 2004 examination is inappropriate in light of Movants' pending adversary proceedings, Movants request that the Court schedule a joint status conference at the Court's earliest convenience so that a scheduling order may be entered providing for completion of discovery in those adversary proceedings in an orderly but expeditious manner.

**CERTIFICATION OF COMPLIANCE WITH LOCAL BANKRUPTCY RULE 2004-1**

Undersigned counsel hereby certifies that, prior to filing this motion, they requested a conference with counsel for the Oversight Board and AAFAF, on August 21, 2017, to "arrange a mutually agreeable date, place, and time for the examination." Rule 2004-1(b) of the Puerto Rico Local Bankruptcy Rules. A conference was held on August 24. Counsel for Respondents maintained that Movants had not complied with their obligation under that Rule because Movants did not provide a copy of **Schedule A** in advance of the call. However, counsel also repeated its long-held position that Rule 2004 discovery is categorically prohibited for a number of reasons. In light of Respondents' refusal to consider Rule 2004 disclosure, Movants certify that further meet and confer would not be fruitful.

**NOTICE**

Under the Second Amended Case Management Procedures, the deadline to file an objection to this Motion is September 19, 2017. Movants therefore provide the following notice pursuant to Rule 2004-1(d) of the Puerto Rico Local Bankruptcy Rules, modified accordingly with respect to the objection deadline:

Any party who objects to the examination shall serve and file an objection or motion for protective order with the United States Bankruptcy Court for the District of Puerto Rico by

September 19, 2017. If no objection or motion for protective order is timely filed, the court may grant the motion for examination without further notice or a hearing.

Dated: August 25, 2017  
San Juan, Puerto Rico

Respectfully submitted.

**JIMÉNEZ, GRAFFAM & LAUSELL**

By: /s/ Andrés F. Picó Ramírez

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**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO  
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,  
*et al.*

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**[PROPOSED] ORDER GRANTING JOINT MOTION  
BY THE AD HOC GROUP OF GENERAL OBLIGATION BONDHOLDERS,  
ASSURED GUARANTY CORP., ASSURED GUARANTY MUNICIPAL CORP. AND THE  
MUTUAL FUND GROUP FOR ORDER AUTHORIZING RULE 2004 EXAMINATION**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Ad Hoc Group of General Obligation Bondholders, Assured Guaranty Corp., Assured Guaranty Municipal Corp. and the Mutual Fund Group (“**Movants**”), pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing Movants to take Rule 2004 discovery of (i) the Financial Oversight and Management Board for Puerto Rico (the “**Oversight Board**”), as representative of

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

the Commonwealth of Puerto Rico (the “**Commonwealth**”) pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“**PROMESA**”); (ii) the Commonwealth; and (iii) the Puerto Rico Fiscal Agency and Financial Advisory Authority (“**AAFAF**”) (collectively the “**Debtors**”), as well as the examination of and production of documents from entities determined by Movants to have information in connection with Movants’ investigation, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 48 U.S.C. § 2166; and venue being proper before this Court pursuant to 48 U.S.C. § 2167; and notice of the Motion having been given as provided in the Motion, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice of the Motion need be provided; and the Court having held a hearing to consider the relief requested in the Motion; and the Court having found and determined that the relief sought in the Motion and granted herein is in the best interests of the Debtors, their respective creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein.
2. The Oversight Board, AAFAF, and the Commonwealth shall comply with the document requests attached hereto as **Schedule A** by no later than ten (10) days after entry of this Order.
3. The Commonwealth and AAFAF shall each designate an individual or individuals with knowledge of the matters described in **Schedule A** hereto (the “**Designated Individual(s)**”). Each member of the Oversight Board and each of the Designated Individual(s)



shall produce themselves for examination by counsel to Movants under oath and in accordance with Bankruptcy Rule 2004 on such date and time and at such location as may be designated in writing by counsel to Movants.

4. Movants are authorized, pursuant to Bankruptcy Rule 2004, to issue such subpoenas as may be necessary to compel the production of documents and/or testimony of a third party witness to accomplish the discovery authorized by this Order.

5. Third party witnesses shall have fourteen (14) days from the service of a subpoena to either (1) produce to Movants all responsive non-privileged documents requested in Movants' subpoena, or (2) file with the Court an objection or response to the subpoena with a hearing promptly scheduled.

6. Third party witnesses are directed to either (1) submit to oral examination upon reasonable notice and, absent other agreement with Movants, in no event more than fourteen (14) days from the date of the service of a deposition subpoena upon such witness, or (2) file with the Court an objection or response to the subpoena with a hearing promptly scheduled.

7. Movants shall serve each subpoena and a copy of this Order on the target of the subpoena.

8. Movants' rights are reserved to request additional discovery, including any additional documents or depositions, under Bankruptcy Rule 2004 and applicable law, based on any information that may be revealed as a result of the information provided pursuant to this Order or otherwise.

9. This Court shall retain jurisdiction to resolve any dispute arising or related to this Order and to interpret, implement and enforce the provisions of this Order.

10. This Order is without prejudice to Movants' rights to file further motions seeking additional documents pursuant to Bankruptcy Rule 2004(a) or any other applicable law.

Dated: \_\_\_\_\_, 2017  
San Juan, Puerto Rico

\_\_\_\_\_  
HONORABLE LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT COURT JUDGE

## **SCHEDULE A**

### **DEFINITIONS**

“AAFAF” means the Puerto Rico Fiscal Agency and Financial Advisory Authority, including its officers, directors, employees, partners, subsidiaries, and affiliates, as applicable.

“All,” “any,” “each,” and “every” shall be construed as inclusive or exclusive, and shall be construed as both “each” and “every” to bring within the scope of the Request all responses that might otherwise be construed to be outside its scope.

“April 28 Proposal” means the term sheet for a plan of adjustment proposed by AAFAF on April 28, 2017.

“*Assured Motion*” means the Motion to Dismiss Plaintiffs’ Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6), which was filed on July 10, 2017, by the Financial Oversight and Management Board (“FOMB”) in *Assured Guaranty Corp. v. Commonwealth of Puerto Rico*, Adv. Proc. No. 17-00125-LTS (Dkt. 27).

“Bridge” means the Fiscal Plan Comparison to Historical Results, prepared by the Territorial Government at the Request of the FOMB.

“Bridge Analysis” means the review of the Bridge conducted by Ernst & Young and presented to the FOMB on March 7, 2017.

“Budget” means the budget(s) adopted for Fiscal Year 2018 for the Territorial Government, including the budget Commonwealth and any agency or instrumentality thereof, as well as the FOMB.

“COFINA” mean the Puerto Rico Sales Tax Financing Corporation.

“Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and, with respect to oral Communications, includes any document

evidencing the Date, participants, subject matter, and content of any such oral communication, including, but not limited to, transcripts, minutes, notes, audio, video, electronic recordings, telephone records and calendar entries.

“Comprehensive Investigation” means the FOMB’s investigation of Puerto Rico’s debt and its relationship to the fiscal crisis, as announced via the FOMB’s August 2, 2017 press release.

“CRIM” means Centro de Recaudaciones de Ingresos Municipales.

“CU Rollup” means the Component Unit Roll-Up, which is the Microsoft Excel file provided by the Commonwealth that provides certain back-up information regarding the Component Units included in the Fiscal Plan.

“Dedicated Sales Tax” means the portion of the Sales and Use Tax that, pursuant to 13 L.P.R.A. § 12, is transferred to COFINA.

“Diligence Responses” means AAFAF’s response, which was dated April 11, 2017, to a preliminary diligence list sent by PJT Partners, financial advisors to National Public Finance Guarantee Corporation.

“Document” means any and all writings and recorded materials, of any kind, that are or have been in Your possession, custody or control, whether originals or copies. Such writings include, but are not limited to, Communications, electronically stored information in any medium, such as emails, text messages, and instant messages; contracts; notes; drafts; interoffice memoranda; memoranda for files; letters; research materials; correspondence; logs; diaries; forms; bank statements; tax returns; card files; books of accounts; journals; ledgers; invoices; drawings; computer files; records; data; print-outs or tapes; reports; statistical components; studies; graphs; charts; minutes; manuals; pamphlets; or books of all nature and kind whether

handwritten, typed, printed, mimeographed, photocopied or otherwise reproduced; all tape recordings (whether for computer, audio or visual display) or other tangible things on which words, phrases, symbols or information are stored.

“Fiscal Plan” shall mean the Fiscal Plan certified by the FOMB on March 13, 2017. To the extent there is a difference between the Fiscal Plan that the FOMB filed as an exhibit to the Title III petition, and the Fiscal Plan that the Governor of Puerto Rico asserts is the “foundation of the Government’s finances” and “work[s] hand-in-hand with the Budget” for Fiscal Year 2018, Letter from Governor Ricardo Rosselló Nevares to President Donald J. Trump et al. (August 4, 2017) (“August 4 Letter”), these Requests should be interpreted to include both such plans.

“FOMB” means the Financial Oversight and Management Board for Puerto Rico.

“GDB” means the Government Development Bank of Puerto Rico.

“GDB RSA” means the Restructuring Support Agreement announced by the Commonwealth on May 15, 2017, as amended.

“General Fund” means both the Commonwealth’s primary operating fund, and all other entities, components, or units that must be consolidated with the General Fund under U.S. Generally Accepted Accounting Principles for purposes of preparing the Commonwealth’s basic financial statements. *See* Commonwealth of Puerto Rico, *Financial Information And Operating Data Report* 148-152 (Dec. 18, 2016) (describing Territorial Government’s historic financial reporting practices).

“GO Group” means, individually and collectively, the members of the “Ad Hoc Group of General Obligation Bondholders.”

“March 9 Letter” means the letter sent from Jose B. Carrion, III, Chairman of the FOMB to the Honorable Ricardo A. Roselló Nevares on March 9, 2017.

“March 13 Resolution” means the FOMB Resolution Adopted on March 13, 2017 (Fiscal Plan Certification).

“MBA” means the Metropolitan Bus Authority.

“MCO” means Managed Care Organization.

“Party” or “Parties” means, as applicable, each or every plaintiff and defendant in this Action (including, without limitation, any party that seeks to intervene).

“*Peaje* Opposition” means Defendants’ Opposition To Plaintiff’s Motion For A Preliminary Injunction, filed on July 14, 2017, in *Peaje Investments, LLC v. Puerto Rico Highway and Transportation Authority*, Adv. Proc. No. 17-00151-LTS (Dkt. 96).

“Person” means any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

“*PREPA* Opposition” means means the Opposition of the Financial Oversight And Management Board For Puerto Rico To Motion Of Ad Hoc Group Of *PREPA* Bondholders, National Public Finance Guaranty Municipal Corp., Assured Guaranty Corp., Assured Guaranty Municipal Corp., And Syncora Guarantee Inc. For Relief From Automatic Stay, filed on July 31, in *In re Puerto Rico Electric Power Authority*, No. 17 BK 04780-LTS (Dkt. 149).

“*PREPA* RSA” means the Restructuring Support Agreement between the Puerto Rico Electric Power Authority and its creditors, which the FOMB declined to certify on June 27, 2017.

“PRCCDA” means Puerto Rico Convention Center District Authority.

“PRHTA” or “HTA” means the Puerto Rico Highways and Transportation Authority.

“PRIFA” means the Puerto Rico Infrastructure Financing Authority.

“PROMESA” means the Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat 549.

“Relate” and “concern” shall be construed to bring within the scope of the Request all information that comprises, references, constitutes, describes, evidences, explicitly or implicitly relates to, was reviewed in conjunction with, or was made as a result of the subject matter of the Request, including without limitation all Documents that reflect, record, memorialize, discuss, evaluate, consider, review or report the subject matter of the Request.

“Request” means a request for the production of Documents contained herein.

“Territorial Government” shall be given the meaning that is ascribed in PROMESA § 5(18), 48 U.S.C. § 2104(18).

“Title III Proceedings” means all litigation relating to any effort to restructure the debt of the Commonwealth or any of its public instrumentalities that is filed pursuant to Title III of PROMESA, including but not limited to *In re FOMB for P.R. as representative of The Commonwealth of Puerto Rico*, No. 17 BK 3283; *In re FOMB as representative of Puerto Rico Sales Tax Financing Corporation (“COFINA”)*, No. 17 BK 3284; *In re FOMB as representative of Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”)*, No. 17 BK 3566; *In re FOMB for P.R. as representative of Puerto Rico Highways and Transportation Authority (“HTA”)*, No. 17 BK 3567; *In re FOMB as representative for Puerto Rico Electric Power Authority (PREPA)*, No. 17 BK 4780.

“TPA” means Third Party Administrator.

“You” or “Your” refers to (1) the FOMB; and (2) the Commonwealth, and their respective divisions, subdivisions, offices, departments, agencies, affiliates, and any current and

former elected officials, officers, trustees, accountants, attorneys, employees, agents, consultants, experts, and independent contractors, assigns, and any Person or entity acting or purporting to act on their behalf.

## **INSTRUCTIONS**

1. You are required to answer these Document Requests drawing upon all materials in Your possession, custody, or control, as well as materials that are not in Your custody but are owned in whole or in part by You and those that You have an understanding, express or implied, that You may use, inspect, examine, or copy. You must provide all information in response to a Document Request which is known to You, Your agents, consultants employees, accountants, attorneys, or experts, or which appears in Your records.

2. The following rules of construction shall apply to these Document Requests.

- a. The terms “all” and “any,” whenever used separately, shall be construed as “any and all” to encompass the greatest amount of responsive material.
- b. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory or Document Request all responses that might otherwise be construed to be outside of its scope.
- c. The term “including” shall always be construed to mean “including, but not limited to,” or “including, without limitation” to encompass more than the specifically identified materials.
- d. The present tense shall also include the past tense and vice versa.
- e. The use of the singular form of any word includes the plural and vice versa.

3. Documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond to the categories in these Interrogatories and Document Requests.



4. You are required to produce all non-identical copies and drafts of each document. The originals of all Documents produced in copy form shall be made available for inspection upon request.

5. Documents attached to each other in their original form should not be separated.

6. If no information or Documents responsive to a numbered paragraph are in Your possession, You are to indicate this in a written response.

7. The fact that a Document has or will be produced by another plaintiff, third party, or other party to these or related proceedings does not relieve You of the obligation to produce Your copy of the same Document.

8. If any Document is withheld in whole or in part under claim of any privilege or work product or other immunity, then consistent with Fed. R. Civ. P. 26(b)(5), as applied to this proceeding by Bankruptcy Rule 7026, and PROMESA § 310, 48 U.S.C. § 2170, You are to provide a list of such Documents identifying each such document for which any such privilege, work product, or other immunity is claimed, together with the following information:

- a. the nature of the claim of privilege or immunity, including the statute, rule, or decision giving rise to the claim of privilege or immunity;
- b. all facts relied upon in support of the claim of privilege or immunity;
- c. all Persons on whose behalf the privilege or immunity is claimed;
- d. the type of Document (*e.g.*, letter, memorandum, note, telegram, e-mail, chart, report, recording, etc.);
- e. the subject matter (without revealing the information as to which privilege is claimed);
- f. its Date, author(s), sender(s), addressee(s), and recipient(s); and
- g. the paragraph(s) of these Interrogatories and Document Requests to which production of the document is responsive.

You are further directed to describe the factual and legal basis for each claim of privilege or immunity in sufficient detail so as to permit the court to adjudicate the validity of the claim of privilege or immunity, and to produce all Documents or portions thereof not subject to Your objection.

9. If any Document requested was, but is no longer, in Your possession, custody, or control, identify the document and state what disposition was made of it and the Date or Dates upon which such disposition was made, and additionally, produce all Documents relating to the disposition of such document.

10. If You object to any Document Request (or portion thereof), state the reason for the objection in detail and respond to that Document Request as narrowed by Your objection.

11. Electronically stored information (“ESI”) as that term is used in Fed. R. Civ. P. 34 should be produced as follows:

- a. TIFFs. Black and white images shall be delivered as single page Group IV TIFF image files. Color images must be produced in .jpeg format. Image file names should not contain spaces or special characters and must have a unique file name, *i.e.*, Beginning Bates Number. Images must be endorsed with sequential Bates numbers in the lower right corner of each image.
- b. Unique IDs. Each image should have a unique file name and should be named with the Bates number assigned to it.
- c. Text Files. Extracted full text in the format of document level txt files shall be provided in a separate folder, one text file per document. Each text file should match the respective TIFF filename (Beginning Bates Number). Text from redacted pages will be produced in OCR format rather than extracted text.
- d. Parent-Child Relationships. Parent-child relationships (the association between an attachment and its parent record) should be preserved.

- e. Database Load Files/Cross-Reference Files. Records should be provided in a format compatible with the following industry standards.
- The image cross-reference file to link the images to the database should be a comma-delimited file with a line in the cross-reference file for every image in the database.
  - The data file (.dat) should contain all the fielded information that will be loaded into the database.
  - The first line of the .dat file must be a header row identifying the field names.
  - The .date file must use the following *Concordance* default delimiters:  
Comma           ¶           ASCII           character           (020)  
Quote   p   ASCII character (254)
  - Date Fields should be provided in the format mm/dd/yyyy.
  - Date and time fields must be two separate fields.
  - If the production includes imaged emails and attachments, the attachment fields must be included to preserve the parent/child relationship between an email and its attachments.
  - An OCRPATH field must be included to provide the file path name of the extracted text file(s).
  - Each text file must be named after the Beginning Bates Number.
  - For production with native files, a NATIVELINK field must be included in the .dat file to provide the file path and name of the native file being produced.
  - Beginning Bates Number and Ending Bates Number should be two separate fields.
  - A complete list of metadata fields is included in paragraph 11(f).
- f. Metadata. For all ESI records, provide all of the following metadata fields: Custodian, Beginning Bates Number, Ending Bates Number, Beginning Attachment Number, Ending Attachment Number, Record Type, Master Date, SentOn Date and Time, Received Date and Time, Create Date and Time, Last Modified Date and Time, Parent Folder,

Author, To, From, CC, BCC, Subject/Title, Original Source, Native Path, File Extension, File Name, File Size, Full Text, and page count.

- g. Spreadsheets. For spreadsheets that were originally created using common, off-the-shelf software (*e.g.*, Microsoft Excel), produce the spreadsheets in native format and, in addition, in TIFF format. Native file Documents must be named per the Beginning Bates Number. The full path of the native file must be provided in the .dat file.

12. Hard copy Documents shall be produced as follows:

- a. TIFFs. Black and white images shall be delivered as single page Group IV TIFF image files. Color images must be produced in .jpeg format. Image file names should not contain spaces or special characters and must have a unique file name, *i.e.*, Beginning Bates Number. Images must be endorsed with sequential Bates numbers in the lower right corner of each image.
- b. Unique IDs. Each image should have a unique file name and should be named with the Bates number assigned to it.
- c. OCR. High-quality document level OCR text files should be provided in a separate folder, one text file per document. Each text file should match the respective TIFF filename (Beginning Bates Number). For redacted Documents, provide the re-OCR'd version.
- d. Database Load Files/Cross-Reference Files. Records should be provided in a format compatible with the following industry standards.
  - The image cross-reference file to link the images to the database should be a comma-delimited file with a line in the cross-reference file for every image in the database.
  - The data file (.dat) should contain all the fielded information that will be loaded into the database.
  - The first line of the .dat file must be a header row identifying the field names.
  - The .date file must use the following *Concordance* default delimiters:

Comma	¶	ASCII	character	(020)
Quote	þ	ASCII	character	(254)
  - Date Fields should be provided in the format mm/dd/yyyy.

- Date and time fields must be two separate fields.
  - If the production includes imaged emails and attachments, the attachment fields must be included to preserve the parent/child relationship between an email and its attachments.
  - An OCRPATH field must be included to provide the file path name of the extracted text file(s).
  - Each text file must be named after the Beginning Bates Number.
  - For production with native files, a NATIVELINK field must be included in the .dat file to provide the file path and name of the native file being produced.
  - Beginning Bates Number and Ending Bates Number should be two separate fields.
- e. Unitizing of Records. In scanning hard copy records, distinct records should not be merged into a single record, and single records, should not be split into multiple records (*i.e.*, hard copy records should be logically unitized).
- f. Parent-Child Relationships. Parent-child relationships (the association between an attachment and its parent record) should be preserved.
- g. Objective Coding Fields. The following objective coding fields should be provided: Beginning Bates Number, Ending Bates Number, Beginning Attachment Number, Ending Attachment Number, Source-Custodian, and page count.

13. These Documents Requests are continuing in nature. If any information or Document responsive to a Document Request herein is not presently in Your possession, custody, or control but subsequently becomes available, is discovered or is created, or comes into Your possession, custody, or control, You have a continuing obligation pursuant to Fed. R. Civ. P. 26(e), and are hereby requested, to supplement Your responses to these Interrogatories and Document Requests within a reasonable period of time after it comes into Your possession, custody, or control.

### **RELEVANT TIME PERIOD**

Unless otherwise specified, the relevant time period for these requests is January 1, 2014 to the present.

### **DOCUMENT REQUESTS**

#### **REQUEST NO. 1.**

All Documents that You have produced or received in connection with discovery or disclosure in (1) these Title III Proceedings, including any adversary proceedings filed in any of the Title III Proceedings; (2) *Leon v. Rosselló-Nevares*, Civil No. SJ2017cv00107; (3) *Bhatia Gautier v. Rosselló-Nevares*, Civil No. SJ2017cv00271; (4) *Centro de Periodismo Investigativo v. Rosselló-Nevares*, Civil No. SJ2017cv00396; and (5) the Comprehensive Investigation.

#### **REQUEST NO. 2.**

All records of testimony (whether in the form of notes, transcript, or other format) that You have produced or received in connection with discovery or disclosure in (1) these Title III Proceedings, including any adversary proceedings filed in any of the Title III Proceedings, (2) *Leon v. Rosselló-Nevares*, Civil No. SJ2017cv00107; (3) *Bhatia Gautier v. Rosselló-Nevares*, Civil No. SJ2017cv00271; (4) *Centro de Periodismo Investigativo v. Rosselló-Nevares*, Civil No. SJ2017cv00396; and (5) the Comprehensive Investigation.

#### **REQUEST NO. 3.**

All Documents You produced to any federal agency, including but not limited to the United States Securities and Exchange Commission, the Department of the Treasury, or any law enforcement agency, relating to (1) any debt issued by the Territorial Government, (2) the fiscal situation of the Territorial Government, or (3) PROMESA, its development and its implementation. This Request explicitly includes Documents provided by the prior

administration, and it includes documents provided as part of both civil and criminal investigations.

**REQUEST NO. 4.**

All Documents You provided to or Communications You had with any member of the Congress of the United States relating to (1) the fiscal situation of the Territorial Government, (2) any efforts to restructure any debt issued by the Territorial Government, or (3) PROMESA and its implementation. This Request explicitly includes Documents provided or Communications by any Person affiliated with the prior administration.

**REQUEST NO. 5.**

Minutes or notes of any meeting of the FOMB, or any committee subcommittee thereof, whether in public or in executive session, that are not posted on the FOMB's website.

**REQUEST NO. 6.**

A revised version of the Fiscal Plan, which incorporates the Oversight Board's conditions for certification contained in the March 13 Resolution.

**REQUEST NO. 7.**

To the extent that it differs from the Fiscal Plan produced in response to the prior Request, a complete version of any Fiscal Plan (including the CU Rollup) that forms the basis for the *Assured* Motion, the *Peaje* Opposition, the *PREPA* Opposition, or the August 4 Letter. This Request encompasses functional versions (in native format) of any embedded Excel charts and any underlying data.

**REQUEST NO. 8.**

To the extent that the Fiscal Plan produced in response to Request No. 7 does not incorporate or reflect any amendments required by March 13 Resolution, any Documents,

Communications or analysis concerning how incorporating such amendments would impact the assertions made in the *Assured* Motion, the *Peaje* Opposition, or the *PREPA* Opposition.

**REQUEST NO. 9.**

Documents, Communications, or analysis regarding the Budget and any drafts thereof. This Request explicitly includes, but is not limited to, (1) a complete copy of the Budget in native form; (2) any analysis or description of any undefined category of expenses that is not reflected in Puerto Rico's historic financial statements (*e.g.*, “concepto de gasto” and “asignaciones englobadas”), and (3) the intended use of the Dedicated Sales Tax. This Request explicitly includes any breakdown of the “concepto de gasto” or Dedicated Sales Tax used (if any) by agency, department or component unit of the government. This Request also includes a fully functional model (in native format) used to calculate any Budget line item as well as any backup or linked spreadsheets and all data run through that model.

**REQUEST NO. 10.**

A fully functional version of the macroeconomic growth model (in native format) used to calculate each forward-looking projection contained in the Fiscal Plan (as incorporated in the *Assured* Motion, the *Peaje* Opposition, *PREPA* Opposition, or the August 4 Letter), any prior proposed fiscal plan as well as the presentation known as the *Technical Meeting Discussion Materials* (which was presented by the prior administration on November 16, 2017), in the *Revised Baseline Projections* (which was presented by the prior administration on December 20, 2016), and the document provided by the Commonwealth titled “PR\_Macroframework methodology.pdf”. For any expense or revenue line items in the Fiscal Plan that do not grow at the rate of nominal GNP, this request explicitly includes Documents demonstrating or relating to how those growth rates are derived.



**REQUEST NO. 11.**

Any projections, including both underlying data and models (in native format), regarding macroeconomic growth between 2026 and the projected maturity of any proposed restructured obligation. See, e.g., FOMB, *Annual Report: Fiscal Year 2017*, *supra* at 6 (referencing a “50-year long-term projection using the [Fiscal Plan] as a starting point”); March 9, 2017 Letter at 2 (describing February 28, 2017 proposed Fiscal Plan as too optimistic with respect to “a) economic growth rates and the time to return to nominal economic growth; and, b) the failure to reflect near-certain declines in baseline revenues associated with corporate taxes and non-resident withholding taxes”); GO/COFINA Title VI proposal made public by the Commonwealth on April 28, 2017 at 4 (term sheet proposes a 30-year restructured bond subject to “optional amortization...sized based on Fiscal Plan forecast”). This Request explicitly including any backup or linked spreadsheets (in native format) and all data run through any piece of these model(s).

**REQUEST NO. 12.**

Documents, Communications, analyses or models relating to the Fiscal Plan including the assumptions used in formulating the Fiscal Plan (including the CU Rollup) or August 4 Letter, including, but not limited to (1) the fiscal multiplier used to calculate the impact that proposed revenue and expense measures are expected to have on the Puerto Rico economy, (2) inflation assumptions, and (3) estimated population change between FY 2018 and FY 2026, (4) the size and timing of the impact of structural reforms, (5) flat productivity level, (6) flat labor force participation rate, and (7) electricity rate assumptions. This Request explicitly includes a fully functional version of any model (in native format) used to test these assumptions including any backup or linked spreadsheets in live form and all data run through those models.

**REQUEST NO. 13.**

Documents, Communications, analyses or models relating to any proposed revenue and expense measures discussed in the Fiscal Plan (including CU Rollup), the *Assured* Motion, the *Peaje* Opposition, the *PREPA* Opposition, the Budget, or the August 4 Letter. This Request explicitly includes any analyses, projections or models (in native format) concerning the impact of any financial control reforms proposed by the Territorial Government, including the reforms discussed in the Fiscal Plan at 34-38, or referenced in the August 4 Letter.

**REQUEST NO. 14.**

To the extent not produced in response to any prior Request, any sensitivity analyses that measure the impact of growth initiatives, capital expenditures, or proposed Public Private Partnerships including those discussed on page 24 of the Fiscal Plan and recommendations included in Congressional Task Force on Economic Growth in Puerto Rico, Report to the House and Senate (Dec. 20, 2016) and those discussed on *Inventario de Propuestas de Proyectos Prioritarios 2017* (May 11, 2017). This Request explicitly includes a fully functional version of any model (in native format) used to conduct these sensitivity analyses including any backup or linked spreadsheets and all data run through those models.

**REQUEST NO. 15.**

To the extent not provided in response to any prior Request, any analyses, including models (in native format) and data, regarding the creditworthiness of the Territorial Government, including but not limited to any financial modeling, evaluation or analysis of (1) the economic condition, economic activity, and economic performance of the Territorial Government, or (2) how the amounts available for debt service proposed on page 8 of the Fiscal Plan, the *Assured* Motion, the *Peaje* Opposition, the *PREPA* Opposition, the Budget, or the August 4,

Letter, will, if implemented, affect Puerto Rico's future ability to access the capital markets as required by PROMESA § 201(b)(1). To the extent that any model(s) were used to estimate the impact that the proposed haircut reflected in the Fiscal Plan will have on future market access, this Request explicitly includes any backup or linked spreadsheets (in native format) and all data run through any piece of these model(s).

**REQUEST NO. 16.**

To the extent not provided in response to any prior Request, Documents and Communications concerning benchmarking analyses You used to create the Fiscal Plan or assess the reasonableness thereof. This Request explicitly includes, but not limited to, any analyses comparing Puerto Rico's debt situation to that of other economies that were relied upon in determining what would be a sustainable debt load (*cf.* Fiscal Plan at 27-29), including Documents sufficient to identify any comparable economies considered.

**REQUEST NO. 17.**

Documents, Communications, analyses or models relating to the Bridge, including the "five versions of the Bridge submitted in the last four weeks, with adjustments amounting to hundreds of millions of dollars" referenced on page 23 of the Bridge Analysis. This Request explicitly includes a fully functional version of any model (in native format) used in creating the Bridge or Bridge Analysis as well as any backup or linked spreadsheets and all data run through those models.

**REQUEST NO. 18.**

Documents, Communications, analyses or models relating to the request to amend the Fiscal Plan in the letter from Gerald J. Portela Franco, Executive Director of AAFAF, to Natalie A. Jaresko, Executive Director of the FOMB, on May 31, 2017.

**REQUEST NO. 19.**

All Documents provided to Ernst & Young in connection with its preparation of the Bridge Analysis.

**REQUEST NO. 20.**

All Documents provided to KPMG in connection with its preparation of the *Commonwealth of Puerto Rico Tax Reform Assessment Project* (2014). For this request, the relevant time period should be construed to mean January 1, 2013 to the date of publication.

**REQUEST NO. 21.**

Documents provided to Anne O. Kruger, Ranjit Teja, Andrew Wolfe, or any individual who participated in the preparation of *Puerto Rico – A Way Forward* (2015), commonly known as the “Krueger Report,” during the Relevant Time Period, regardless of when those Documents were created. The Krueger Report shall refer to the initial report released on June 29, 2015 and the updated report released on July 13, 2015.

**REQUEST NO. 22.**

All Documents provided to Conway MacKenzie during the Relevant Time Period, regardless of when those Documents were created, including but not limited to documents provided in connection with its work to prepare fiscal projections contained in the presentation entitled *Technical Meeting Discussion Materials* (Nov. 16, 2016), and in connection with its recent retention by AAFAF for consulting services related to Office of the Chief Financial Officer.

**REQUEST NO. 23.**

All Documents provided to Pension Trustee Advisors during the Relevant Time Period regardless of when those Documents were created, including but not limited to documents

provided in connection with (1) any actuarial assessment performed on a public pension system maintained by the Territorial Government; (2) any review of the existing public pension system benefits and their sustainability; and (3) related proposed reforms of such pension systems.

**REQUEST NO. 24.**

To the extent that it is not already produced in response to any prior Request, any Documents considered by or any analysis, reports, or recommendations from experts or consultants analyzing the Territorial Government's fiscal situation since January 1, 2014, including but not limited to Tyler Duvall, Andrew Wolfe, Sergio L. Gonzalez, Jonathan I. Arnold, Bradley R. Bobroff, Kevin Lavin, William B. Fornia, Rafael Romeu, and any employee of or contractor with DevTech Systems, Inc.

**REQUEST NO. 25.**

Documents and Communications concerning the assets of the Commonwealth, including Documents and Communications concerning: (1) estimates of the aggregate book and market value of government and public enterprise-owned land and real estate (register of government owned property); (2) break-outs of assumed revenues and/or cash inflows from privatizations and P3s in the Fiscal Plan; and (3) any additional analyses performed on potential privatizations and P3s.

**REQUEST NO. 26.**

For any revenue line item in the Fiscal Plan (as incorporated into the *Peaje* Opposition *PREPA* Opposition or Budget, see August 4 Letter at 3) that does not grow at the rate of GNP (see Fiscal Plan at 10), Documents sufficient to identify how these growth rates are derived, including any supporting indices upon which You or Your agents (including any experts) relied.

**REQUEST NO. 27.**

Documents, Communications or analyses used to reconcile the special revenue funds considered in the Bridge or Bridge Analysis (see for example Bridge Analysis at 11, 18, 28) to special revenue funds discussed in the Fiscal Plan (at 12, 15).

**REQUEST NO. 28.**

Documents, Communications, or analyses relating to the estimated collections and collection rates on all local revenue streams cited in the Fiscal Plan at pages 11 and 19, relied upon in formulating the Budget, and all Documents and Communications concerning: (1) the income tax collection rate; (2) the excise tax collection rate; (3) sales and use tax collection rate; (4) property tax collection rates; (5) other tax collection rates; and ( 6) assumptions and analysis behind Act 154 revenues. This Request explicitly includes a fully functional version of any backup or linked spreadsheets and all data used to create the Budget.

**REQUEST NO. 29.**

To the extent not produced in response to Request No. 28, Documents and Communications concerning the assumed tax collections in the Fiscal Plan, including the McKinsey tax benchmarking analysis referenced in Your Diligence Responses, and all Documents and Communications concerning: (1) the income tax collection rate; (2) the excise tax collection rate; (3) sales and use tax collection rates; (4) property tax collection rates; (5) other tax collection rates; (6) assumptions and analysis behind Act 154 revenues; and (7) any comparisons between assumed or projected revenues and actual revenues (including revenues from tax collections).

**REQUEST NO. 30.**

Documents sufficient to ascertain the status and treatment of any taxes collected on behalf of municipalities by the central government of Puerto Rico, including sales and use taxes and property taxes.

**REQUEST NO. 31.**

Documents or Communications relating to the assertion in the *Assured* Motion (at 3) that the FOMB “constantly strives to find ways to generate more money for . . . creditors.” This Request explicitly includes any Communications, Documents, or analyses regarding potential changes to the tax code in response to Puerto Rico’s current fiscal crisis, including but not limited to Documents relating to reassessing real estate property valuations for the first time since 1958, increasing property tax rates to the levels proposed in the February 29, 2017 version of the Fiscal Plan (at 48), extending Act 154, reassessing any tax incentives or abatements, transitioning the Commonwealth sales and use tax to a broad-based value added tax, or amendments to Law 20/22 incentives passed on July 11, 2017.

**REQUEST NO. 32.**

Documents, Communications, analyses or models (in native format) regarding the Report on Discretionary Tax Abatement Agreements that the Governor was required to submit to the FOMB within six months of the establishment of the FOMB, by PROMESA § 208, 48 U.S.C. § 2148, and which was referenced in FOMB, *Annual Report: Fiscal Year 2017* 6 (July 31, 2017).

**REQUEST NO. 33.**

Documents, Communications, analyses or models (in native format) relating to anticipated revenues relating to health care. This Request explicitly includes any assumptions, models, or data used to project anticipated federal transfers, returns from any Commonwealth-

run medical facility, public corporation or municipal employer or employee contributions, or Commonwealth Fund collections.

**REQUEST NO. 34.**

Documents, Communications or analyses reflecting how the Fiscal Plan and Budget reflect any actual or projected federal transfer allotted to Puerto Rico for use in its Medicaid program, including but not limited to the \$295.9 million allotment passed by Congress on or about May 1, 2017, and any potential allotment proposed by the President in the fiscal year 2018 federal budget.

**REQUEST NO. 35.**

Documents, Communications or analyses regarding historical reimbursements from the Center for Medicare and Medicaid Services.

**REQUEST NO. 36.**

A fully functional version of any model (in native format) used by the Territorial Government or Ernst & Young to “normalize” expenses so that they could be compared across years in the Bridge or Bridge Analysis, which was used to calculate the baseline of expenses in the Fiscal Plan and incorporated into the Budget. *See* August 4 Letter at 3. This Request explicitly includes any backup or linked spreadsheets and all data run through any piece of these model(s).

**REQUEST NO. 37.**

Documents, Communications, analyses or models (in native format) relating to the FOMB’s “recommendation” in the March 9 Letter (at 2) that Fiscal Year 2017 expenses be increased by \$585 million, including the type and amount of “historical expenditures” in Fiscal Year 2014-2016 that Ernst & Young discusses on page 13 of the Bridge Analysis. This Request



explicitly includes any Communications regarding whether that “recommendation” was ever put into effect.

**REQUEST NO. 38.**

A fully functional model or workbook (in native format) showing how the Reconciliation Adjustment discussed on page 15 of the Fiscal Plan was calculated, and any analysis, Documents, or Communications regarding how that Reconciliation Adjustment is reflected in the Budget. To the extent that You maintain that the Reconciliation Adjustment existed, in sum or substance, in earlier budgets or fiscal plans, this Request explicitly includes all Documents, Communications or analyses relating to such Reconciliation Adjustments. This Request also explicitly includes any backup or linked spreadsheets and all data run through any piece of these model(s). To the extent that You maintain that the Reconciliation Adjustment accounts for previous overspending on the part of the Territorial Government, this Request also includes any backup data or analyses of how that money was used.

**REQUEST NO. 39.**

Documents, Communications, analyses or models (in native format) regarding the meaning of the term “essential services” in the Fiscal Plan or the Budget. To the extent that a model or model(s) was used to estimate the cost of “essential services,” this Request explicitly includes any backup or linked spreadsheets and all data run through any piece of these model(s). This Request also includes any Document, Communication, analyses, or assumptions regarding the number of inhabitants who will use or receive such “essential services” during the Fiscal Year 2018 to Fiscal Year 2026 period.

**REQUEST NO. 40.**

Documents, Communications, analyses or models (in native format) that form the basis for Your statement in the *Assured* Motion that the Commonwealth could not provide “necessary services to the people of Puerto Rico . . . while still honoring all its commitments to creditors.” To the extent that a model or model(s) was used to estimate the cost of “essential services,” this Request explicitly includes any backup or linked spreadsheets and all data run through any piece of these model(s).

**REQUEST NO. 41.**

Documents, Communications, analysis or models (in native format) relating to the extent to which individuals who receive transfer payments from the Territorial Government, including but not limited to debt service payments (whether received directly or indirectly), health care benefits and payments from the Territorial Government’s pension programs, are misclassified and/or reside or are employed outside the Commonwealth.

**REQUEST NO. 42.**

Documents, Communications, analyses or models (in native format) relating to the calculation of the “other non-recurring” expenses projected on page 12 of the Fiscal Plan and incorporated in the Budget, including a fully functional version of any model used. This Request explicitly includes any backup or linked spreadsheets and all data run through any piece of these model(s). *See, e.g.,* Reserva para Reintegro, Ingresos Netos Al Fondo General, Año Fiscal 2015 - 2016 - Fiscal Year 2016 - 2017 (reflecting \$480m deduction from “gross” general fund revenues to the “reported” general fund revenues), *available at* [http://www.hacienda.gobierno.pr/sites/default/files/ingresos\\_netos\\_junio\\_2016-17.pdf](http://www.hacienda.gobierno.pr/sites/default/files/ingresos_netos_junio_2016-17.pdf).

**REQUEST NO. 43.**

Documents, Communications, analyses or models (in native format) relating to any government “right sizing” expense measures cited on page 15, 18 and 20 of the Fiscal Plan; or reflected in the Budget; discussed in a presentation regarding the Budget, which was held on June 30, 2017; discussed at the meeting of the FOMB, which was held on August 4, 2017; or referenced in the August 4 Letter. This request explicitly includes any Documents, Communications, analyses, or models regarding the historic and projected number of employees employed in each agency, instrumentality, or component unit of Puerto Rico as well as the governor’s decision not to (1) adjust the size of the public work force in light of a declining population requiring government services and the privatization of government services, *see, e.g.*, Press Release, Government Denies Statistics On Temporary Jobs And Ensures No Layoffs (July 13, 2017) (“Our government has not laid off public employees, nor will it do so, according to the commitment of the governor.”), (2) implement the furlough program required by the FOMB, *see generally* August 4 Letter. To the extent that a model was used in calculating this line item in the Fiscal Plan, a fully functional version of that model (in native format) should be provided. This Request explicitly includes any backup or linked spreadsheets and all data run through any piece of these model(s).

**REQUEST NO. 44.**

Documents sufficient to identify the total number of permanent employees, temporary hires, subcontractors and consultants, of the Territorial Government. This information should be provided by department or instrumentality. To the extent that You have information regarding the number of employees of municipalities, this Request explicitly includes such information. The time period for this Request is 2000 to the present.

**REQUEST NO. 45.**

Documents sufficient to identify any trade creditors who have been paid or taxpayers who have received refunds since the passage of PROMESA. This Request explicitly includes Documents sufficient to identify whether those trade creditors possessed a lien over the funds used to pay them.

**REQUEST NO. 46.**

Any non-privileged Documents, analyses or Communications that reflect Your basis for stating, “No podemos considerar el reintegro de un contribuyente como una deuda del gobierno con un acreedor.” House Bill 1135.

**REQUEST NO. 47.**

Documents sufficient to identify the amounts, origin, and historical use of any budgetary reserve, including but not limited to, the “Fondo Presupuestario”, the “Reserva Presupuestaria” and any emergency, contingency, or tax refund reserve. *See, e.g.,* [http://www.hacienda.gobierno.pr/sites/default/files/Inversionistas/ingresos\\_netos\\_junio\\_2015-16\\_ingresos\\_netos\\_junio\\_2015-16\\_0.pdf/](http://www.hacienda.gobierno.pr/sites/default/files/Inversionistas/ingresos_netos_junio_2015-16_ingresos_netos_junio_2015-16_0.pdf/). This Request explicitly includes any Documents, Communications, analyses or models (in native format) that demonstrate why payment of any tax refunds from the General Fund is necessary in light of the existence of such reserves.

**REQUEST NO. 48.**

Documents sufficient to disaggregate expenses associated with the Territorial Government’s various pension systems, including a breakdown of expenses associated with (1) defined benefit rather than defined contribution accounts; (2) base benefits rather than system administered benefits; (3) retirees rather than active employees; and (4) any “catch up” expenses accrued before the passage of PROMESA rather than ongoing costs of the programs. *See, e.g.,*

Fiscal Plan at 22; Act 2013-3. With regard to the Employment Retirement System, which covers multiple sponsoring employers, this Request explicitly includes information that tracks each sponsoring employer to the pension expenses for which it is responsible.

**REQUEST NO. 49.**

Documents, Communications, analyses or models (in native format) regarding the potential impact of the pension reforms discussed in the FOMB, Explanatory Memorandum on Pension Reform (Aug. 4, 2017), or Senate Bill 603, which was signed into law on August 23, 2017, if implemented on (1) the Territorial Government's fiscal situation, (2) compliance with the Fiscal Plan; or (3) projected recoveries of holders of general obligation debt issued or guaranteed by the Commonwealth.

**REQUEST NO. 50.**

Documents, Communications, analyses or models (in native format) regarding expenses relating to health care, including but not limited to:

1. Detailed breakdowns of MCO and TPA disbursements per year, including by use, number of beneficiaries, and assumptions regarding eligibility and level of service provided;
2. Detail and build-up for eligibility, benefits, and pricing requirements imposed under federal programs, including Medicare, Medicaid, and the ACA;
3. Any models used to estimate healthcare expense growth rates (to the extent not already produced in response to Request 9);
4. Any supporting healthcare cost indices (*see* March 9 Letter at 3-4);
5. Efforts to control health care expenses (Fiscal Plan at 20);

6. Initiatives to eliminate waste in the healthcare system (*see, e.g.*, “Areas for possible cuts in Health identified,” EL VOCERO (Feb. 2, 2017);
7. And any assumptions made regarding enrollment in light of projected population declines.

To the extent that any model(s) were used to estimate the growth in health care expenses, this Request explicitly includes any backup or linked spreadsheets and all data run through any piece of these model(s).

**REQUEST NO. 51.**

Communications, Documents, or analysis regarding how deficits relating to health care are accounted for in the Fiscal Plan or the Budget. To the extent that any model(s) were used to estimate these deficits, this Request explicitly includes any backup or linked spreadsheets and all data run through any piece of these model(s).

**REQUEST NO. 52.**

Documents, Communications, analyses or models (in native format) regarding (1) any budget cuts identified by the Territorial Government that it can or will take if funding provided by the Affordable Care Act is not replaced; and (2) discussions with any representative of the federal government regarding replacement of the funding in the Affordable Care Act or a policy known as healthcare “parity”.

**REQUEST NO. 53.**

Documents relating to the FOMB’s request for “Amendment No. 1: Furlough and Christmas Bonus Amendment to the Commonwealth’s Proposed Fiscal Plan,” in the March 13 Resolution, which required a furlough program rather than a reduction in the government work force.

**REQUEST NO. 54.**

Documents relating to the FOMB's request for "Amendment No. 2: Pension Amendment to the Commonwealth's Proposed Fiscal Plan" the March 13 Resolution, which required certain alterations to the treatment of pension plans under the Fiscal Plan. This Request explicitly includes, but is not limited to, both the basis for the Board's request and any Documents, Communications, or analyses relating to the "system overhaul [that was] to be formulated by the Commonwealth and the Board on or before June 30, 2017." See March 13 Resolution at 4.

**REQUEST NO. 55.**

Documents sufficient to identify the source of and efforts to control substantial projected deficits at Puerto Rico's instrumentalities and component units as projected on page 12 and discussed on page 15 of the Fiscal Plan, as well as the Fiscal Plan recently certified by any instrumentality of the Territorial Government. This Request explicitly includes any analysis regarding (1) how further efforts to such substantial projected deficits would impact the analysis of Andrew Wolfe cited in and incorporated by the *Peaje* Opposition or *PREPA* Opposition, and (2) any analysis of the impact of any revenue or expense measures contemplated by the certified fiscal plan of any unit or instrumentality of the Territorial Government.

**REQUEST NO. 56.**

Documents, Communications, or analyses regarding how actual expenses differ from budgeted expenses, including but not limited to, Documents sufficient to identify the source of and efforts to control cash disbursements for supplier payables and other expenses, which are over and above the original budget for the particular Fiscal Year in which the disbursements are made. This Request explicitly includes any document describing the process by which (and the legal basis on which) such payments are made as well as any budget-to-actual reports provided

to the FOMB and any budget-to-actual reports prepared for the FOMB since the passage of PROMESA.

**REQUEST NO. 57.**

Documents, Communications, analyses or models relating to the Territorial Government's liquidity position and cash balances, including but not limited to Documents and Communications concerning (1) the location and proof of such cash balances, (2) the uses of clawback revenue since 2015, (3) the basis for the demands to improve the Commonwealth's liquidity, as discussed in Chairman Carrion's March 8, 2017 letter to Governor Rosselló; (4) source and intended use of the funds reflected in the document titled "Puerto Rico Treasury Department Treasury Single Account (TSA) Cash Flow Current-to-Forecast Comparison," which was dated May 26, 2017; and (5) source and intended use of the funds reflected in the announcement on August 3, 2017, that the Territorial Government had \$1.799 billion cash on hand; and (6) any efforts to investigate further pockets of liquidity in light of the statement by Elias Gutierrez that "I do not rule out there being a lot of money which has [been] lost, since information systems are flawed and there are no ways to reflect anything. God knows what other surprises will be revealed."<sup>3</sup> To the extent that any model(s) were used to estimate the needs for a liquidity reserve of any sort, this Request explicitly includes any backup or linked spreadsheets (in native format) and all data run through any piece of these model(s). This Request also includes the intended use of any reserves incorporated in the Budget and the impact of such reserves on Andrew Wolfe's conclusions as cited by or incorporated in the *Peaje* Opposition.

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<sup>3</sup> Illeanexis Vera Rosado, *Another \$395 Million in Government Accounts*, El Vocero (June 15, 2017).



**REQUEST NO. 58.**

Documents, Communications analyses, or models (in native format) relating to any subsidies provided to the University of Puerto Rico, municipalities or other entities, including those discussed on pages 45-48 of the February 28, 2017 version of the Fiscal Plan. To the extent that the Territorial Government intends to replace such subsidies through indirect means (e.g., changing property taxes, municipal licensing fees, etc.), this Request explicitly includes Documents relating to those efforts. To the extent that any model(s) were used to estimate the need for these subsidies or the effect that reducing such subsidies will impact economic growth, this Request explicitly includes any backup or linked spreadsheets (in native format) and all data run through any piece of these model(s). To the extent these subsidies are maintained, this Request also includes any analysis regarding how such subsidies are reflected in the positions taken in the *Assured Motion* and *Peaje Opposition*.

**REQUEST NO. 59.**

To the extent not produced in response to any prior Request, Documents, Communications, analyses, or models (in native format) relating to the continued need for such subsidies to municipalities. This Request explicitly includes any information regarding the number of municipalities, population of those municipalities, services provided by such municipalities, and employees hired to provide services to those municipalities. The time period for this Request shall be 2000 to the present.

**REQUEST NO. 60.**

Documents, Communications, analyses or models (in native format) relating to any contemplated P3s, including but not limited to the intended uses of the \$38 million appropriated to the Public Private Partnerships Authority. This Request explicitly includes the nature and cost

of any P3s that have been identified since June 13, 2017, when counsel for AAFAF and the FOMB represented that “[n]o specific public private partnerships are currently being negotiated.”

**REQUEST NO. 61.**

Documents, Communications or analyses breaking down any non-publicly traded loans or other debt issued by any element of the Territorial Government and any contingent liabilities recognized for payment on explicit or implicit guarantees by the Commonwealth on debt issued by any other part of the Territorial Government from FY 2008 to the present.

**REQUEST NO. 62.**

To the extent not produced in response to any prior request, Documents, Communications or analyses relating to proposed capital expenditures of the Territorial Government included in the Fiscal Plan or the FY 2018 budget, including but not limited to the “Compra de Equipo” and “Inversión en Mejoras Permanentes” categories in the FY 2018 budget, that might impact the positions taken in the *Peaje* Opposition and *PREPA* Opposition as well as Documents provided by the prior administration.

**REQUEST NO. 63.**

Documents, Communications or analyses regarding any obligations between the Territorial Government and the GDB—including, but not limited to the historical amounts and present status of any funds held by the GDB on behalf of the Territorial Government—and the intended treatment of such obligations under the GDB RSA. This Request explicitly includes any analyses regarding how any write-off, write-down, or other impairment of any obligation owed to the Commonwealth in the GDB RSA comports with the analysis of Dr. Andrew Wolfe as cited by and incorporated in the *Peaje* Opposition or the *PREPA* Opposition. This Request

also includes the division of assets between the New Issuer and the Public Entity Trust in the GDB RSA.

**REQUEST NO. 64.**

Documents and Communications between the Commonwealth and financial institutions regarding the deposit or withdrawal of funds belonging to the Territorial Government, including but not limited to clawback revenues, special property tax related funds, PBA related funds, SUT related funds or COFINA-related Funds.

**REQUEST NO. 65.**

Documents, Communications, analyses or models (in native format) relating to the GDB Municipal Loan portfolio, including but not limited to (1) any valuation of the portfolio, (2) loan and deposit agreements, (3) current loan balances, and (4) Documents identifying the source of repayment for SUT-backed GDB Municipality loans, as that term is used in the GDB RSA and associated Documents released on February 28, 2017. This Request includes Documents sufficient to identify how SUT flowing to municipalities (if any) in excess of municipal loan debt service is distributed or spent.

**REQUEST NO. 66.**

Documents, Communications or analysis projecting the impact of the FOMB's rejection of the PREPA RSA or the certification of fiscal plans of any territorial instrumentalities on (1) other aspects of the Territorial Government, including but not limited to the General Fund, or (2) the expected recoveries of any creditor of the Territorial Government. To the extent that any certified fiscal plan of any territorial instrumentality contemplates the write-off, write-down, or other impairment of any obligation to the Commonwealth, this Request includes any analysis of

such impairment on any position taken in the *Assured* Motion, *Peaje* Opposition, or *PREPA* Opposition.

**REQUEST NO. 67.**

Documents sufficient to identify any participation by or ownership interest of any member of the FOMB in any bond issued by any part of the Territorial Government.

**REQUEST NO. 68.**

Documents sufficient to identify any interest (financial or otherwise) or any other relationship that any member of the FOMB, including the Governor's ex officio representative(s), has or had in any creditor or vendor of the Territorial Government during the Relevant Time Period.

**REQUEST NO. 69.**

Documents sufficient to identify any interest (financial or otherwise) that any member of the FOMB has in any financial institution insured by the Corporación Pública para Supervisión y Seguro de Cooperativas de. Puerto Rico, frequently known as "COSSEC."

**REQUEST NO. 70.**

Documents sufficient to identify any benefits, perquisites, or emoluments (in whatever form) received by any member of the FOMB as a result of such membership. This Request includes any benefits, perquisites or emoluments provided to a Board member's immediate family.

**REQUEST NO. 71.**

To the extent not produced in response to prior Requests, all Documents, Communications, or analyses concerning whether the Commonwealth's "available resources are insufficient" to pay Constitutional Debt, including any and all Documents that were incorporated

into or formed the basis of any position taken in the *Peaje* Opposition. *E.g.*, *Peaje* Opposition at 33 (“As explained by Andrew Wolfe, the CW Fiscal Plan projects real economic growth of 1.01% after 10 years, which would be sufficient to sustain growth and enable Puerto Rico to regain access to capital markets.”).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,  
Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 3283-LTS  
(Jointly Administered)

**DECLARATION OF LANORA C. PETTIT IN SUPPORT OF  
JOINT MOTION BY THE AD HOC GROUP OF GENERAL OBLIGATION BOND-  
HOLDERS, ASSURED GUARANTY CORP., ASSURED GUARANTY  
MUNICIPAL CORP., AND THE MUTUAL FUND GROUP  
FOR ORDER AUTHORIZING RULE 2004 EXAMINATION**

1. I am an attorney associated with the law firm of Robbins, Russell, Englert, Orseck, Untereiner, and Sauber LLP, counsel, along with Paul, Weiss, Rifkind, Wharton & Garrison, LLP and Jiménez, Graffam & Lausell, for movants the Ad Hoc Group of General Obligation Bondholders. I submit this declaration in support of the Joint Motion By The Ad Hoc Group Of General Obligation Bondholders, Assured Guaranty Corp. And Assured Guaranty Municipal Corp. for Order Authorizing Rule 2004 Examination.

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<sup>1</sup> The Debtors in these title III cases (collectively, the “Title III Cases”), along with each Debtor’s respective Title III Case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686). (Title III Case numbers are listed as bankruptcy case numbers due to software limitations).

2. Attached hereto as Exhibit A is a true and correct copy of a letter dated June 2, 2017 from Gary A. Orseck and Mark C. Ellenberg to John J. Rapisardi and Martin J. Bienenstock.

3. Attached hereto as Exhibit B is a true and correct copy of a letter dated June 13, 2017 from John J. Rapisardi and Martin J. Bienenstock to Gary A. Orseck and Mark C. Ellenberg.

4. Attached hereto as Exhibit C is a true and correct copy of a letter dated June 14, 2017 from Gary A. Orseck to John J. Rapisardi and Martin J. Bienenstock.

5. Attached hereto as Exhibit D is a transcript of the Ninth Public Meeting of the Financial Oversight and Management Board for Puerto Rico, which was held on August 4, 2017. The transcript was prepared by Alderson Court Reporting from a recording of the meeting.

6. Attached hereto as Exhibit E is a true and correct copy of a document titled "Resolutions Adopted At The Ninth Public Meeting of the Financial Oversight And Management Board For Puerto Rico Held On August 4, 2017 in Fajardo, Puerto Rico," which is available for download at <https://juntasupervision.pr.gov/index.php/en/documents/>.

7. Attached hereto as Exhibit F is a true and correct copy of a letter sent from Governor Ricardo Rosselló Nevares to President Donald J. Trump, Speaker Paul D. Ryan, Jr., and Senate Majority Leader A. Mitchell McConnell, Jr., which is dated August 4, 2017.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Executed on August 25, 2017 in Washington, D.C.

By:

  
Lanora C. Pettit



# EXHIBIT A

June 2, 2017

***Via Mail and E-mail***

John J. Rapisardi  
O'Melveny & Myers LLP  
Time Square Tower  
7 Times Square  
New York, NY 10036

Martin J. Bienenstock  
Proskauer Rose LLP  
Eleven Time Square  
New York, NY 10036

Re: *In re Commonwealth of Puerto Rico*, No. 17-cv-01578 (D.P.R)

Dear Mr. Rapisardi and Mr. Bienenstock:

We write on behalf of the Ad Hoc Group of Puerto Rico General Obligation Bondholders (the “GO Group”) and Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (“Assured”), to request that the Commonwealth and Oversight Board promptly produce all documents and materials that underlie or relate to the March 13, 2017, Fiscal Plan, as amended, for Puerto Rico (“Fiscal Plan”), and the Oversight Board’s approval of that Plan.<sup>1</sup>

We plainly are entitled to this information. If the Commonwealth and the Oversight Board are genuine in their stated intention to negotiate a consensual resolution even as the Title III action is pending, the materials we request will be integral to that process. The materials are relevant because according to PROMESA, any plan of restructuring must be “consistent with” the Fiscal Plan. PROMESA § 314(b)(7), 48 U.S.C. § 2174(b)(7). But without the ability to examine and consider the bases for the Fiscal Plan—which does not comply with the requirements of PROMESA, and about which we have expressed substantial concerns—the GO Group, Assured, and other creditor groups will not be in a position to determine whether any portion of the current Fiscal Plan is acceptable.

Moreover, in a contested confirmation, we would have the right to object to the proposed plan for not “compl[ying] with the provisions of” of PROMESA because it fails to respect the GO Group’s and Assured’s first lien on and first priority claim to all “available resources,” *id.* § 314(b)(2); not being “in the best interests of creditors,” *id.* § 314(b)(6); and not being “fair and equitable” under the circumstances, or discriminating unfairly. 11 U.S.C. § 1129(b)(1). Again, if the Commonwealth and Oversight Board are genuine in their stated intention to negotiate a consensual resolution even as the Title III action is pending, we must have complete transparency as to the underlying bases for any proposed plan of adjustment, and an open dialogue as to any possible revisions.

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<sup>1</sup> Unless otherwise specified, all page numbers correspond to the version of the Fiscal Plan filed with the Court as Exhibit A to Title III Petition for Covered Territory or Covered Instrumentality, *In re Commonwealth of Puerto Rico*, No. 3:17-cv-01578 (May 3, 2017).

In recognition of these rights, Bankruptcy Rule 2004 broadly permits discovery into any matter regarding the “nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred.” *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004); *see also In re Washington Mutual, Inc.*, 408 B.R. 45, 50 (Bankr. D. Del. 2009) (“[T]he right to object to immaterial or improper questions is limited.”). Indeed, although our requests are carefully tailored to information that is relevant to the Title III proceeding, Rule 2014’s scope is expansive. *See In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002).<sup>2</sup>

Despite multiple requests made on behalf of our clients (including in a letter sent by both the GO Group and Assured on March 27; in follow-up letters by Assured on April 5, 2017 and April 27, 2017; in a written due diligence request sent by the GO Group on April 7, 2017; and via oral communications by the GO Group on April 6 and April 25, 2017), however, almost none of this information has been provided.<sup>3</sup> At the May 17, 2017 hearing, Mr. Rapisardi insisted that “a very extensive effort went into preparing a data room of thousands of pages of documents.” May 17, 2017 Hearing Tr. at 145. In fact, the data room contains only around 50 documents, which consist largely of hardcoded spreadsheets that hide from creditors and their advisors the actual models used to create the Fiscal Plan. To the extent the Commonwealth has posted live models to the data room, these models were not accompanied by the backup files, schedules, and assumptions underlying those models. And contrary to Mr. Rapisardi’s suggestion, the data room omits the most basic documents required to understand the assumptions and projections underlying the Fiscal Plan, including categories of information that we have repeatedly requested. Such a lack of transparency by the debtor is not permitted under the law, and could not be what Judge Swain had in mind when she directed that you submit a status report on this issue by mid-June. May 17 Tr. at 147.

We are prepared to invoke our rights to formal discovery pursuant to Federal Rules of Bankruptcy Procedure 2004, 7026-37 and 9014. But in the spirit of cooperation that counsel for all parties pledged to pursue during the May 17 hearing, we thought it best in the first instance simply to send you this letter request. So, without prejudice to our rights to propound further formal and informal discovery, we ask that you produce each of the following materials on or before June 12, 2017. All of these materials were, or should have been, considered as part of formulating the Fiscal Plan, and thus should be readily accessible to you. If you decline for any reason to produce any responsive documents, please state the basis for your position.

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<sup>2</sup> The Bankruptcy Rules are fully applicable to any action under Title III. PROMESA § 310, 48 U.S.C. § 2170.

<sup>3</sup> While the Commonwealth did provide additional material on or around April 11, 2017 that was responsive to certain of our requests, this information was unusable, inadequate, or both.

*General*

- (1) A complete version of the Fiscal Plan, including any amendments mandated by the Board Resolution Adopted on March 13, 2017. This should include functional versions of any embedded Excel charts;<sup>4</sup>
- (2) The Fiscal Year 2018 budget for the Territorial Government or any Covered Instrumentality, including any preliminary drafts;
- (3) A functional version of the macroeconomic growth model used to calculate all forward-looking projections included in the certified Fiscal Plan as well as any data fed into that model. We also request similar information for any prior proposed fiscal plan as well as the presentation known as *Technical Meeting Discussion Materials* (which was presented by the prior administration on Nov. 16, 2016), and in the *Revised Baseline Projections* (which was presented by the prior administration on Dec. 20, 2016);
- (4) A functional version of the cash flow models used to prepare the Fiscal Plan, including any data that was fed into the model;
- (5) Documents sufficient to identify the makeup of the *pro forma* revenue and expense measures discussed in the Fiscal Plan at 8, 10, 17-22;
- (6) To the extent any advisor to the Board, including Andrew Wolfe, used a different model than the models referenced in Items (3) and (4) above, a functional version of that model or those models, including any data that was fed into the model(s);
- (7) Any additional documentation relating to the assumptions used in formulating the Fiscal Plan, including, for example, the fiscal multiplier used to calculate the impact that proposed revenue and expense measures are expected to have on the Puerto Rico economy and inflation assumptions;
- (8) Any sensitivity analyses that measure the impact of growth initiatives, including those discussed on page 24 of the Fiscal Plan, and recommendations included in Congressional Task Force on Economic Growth in Puerto Rico, *Report to the House and Senate* (Dec. 20, 2016);

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<sup>4</sup> There are a number of discrepancies in the Fiscal Plan's figures and calculations. For example, the Fiscal Plan lists FY23 revenues pre-measures to be \$16.746 billion. The sum of the figures in the column in question, however, is \$16.744. While insignificant on its own, that single chart has similar errors for Fiscal Years 2019, 2022, 2025 and 2026. Without the underlying Excel charts, it is impossible to tell whether these are due to simple rounding errors, incomplete information, or some other cause. Similarly, a number of documents in the data room are spreadsheets that purport to show data or underlying models regarding how certain calculations were made. But the data is useless in the format in which it was provided because it is "hard-coded" to prevent creditors from seeing anything other than the incomplete figures on the face of the spreadsheet.

- (9) A copy of the Fiscal Plan Comparison to Historical Results, prepared by the Territorial Government<sup>5</sup> at the request of the Oversight Board (the “Bridge”) as well as any underlying data and models;
- (10) Any and all documents provided to the Oversight Board prior to its approval of the Fiscal Plan;
- (11) Any and all documents provided to Ernst & Young in connection with its preparation of *Fiscal Oversight and Management Board for Puerto Rico: Financial Bridge Analysis* (Mar. 7, 2017) (“Bridge Analysis”). See Bridge Analysis at 7 (“E&Y submitted a detailed data/document request to the Government, and . . . these parties were generally timely and diligent in fulfilling this request to the extent the information was readily available.”);
- (12) Any and all documents provided to KPMG in connection with its preparation of the *Commonwealth of Puerto Rico Tax Reform Assessment Project* (2014);
- (13) Any and all documents provided to Anne Krueger (or her colleagues or assistants) in connection with her preparation of *Puerto Rico – A Way Forward* (2015), commonly known as the “Krueger Report”;
- (14) Any and all documents provided to Conway Mackenzie in connection with its work to prepare fiscal projections contained in the presentation entitled *Technical Meeting Discussion Materials* (Nov. 16, 2016);
- (15) Any and all documents provided to Pension Trustee Advisors in connection with any actuarial assessment performed on a public pension system maintained by the Territorial Government;
- (16) Any analyses that quantify the financial impact of the financial control reforms discussed in the Fiscal Plan at 34-38;
- (17) Documents sufficient to identify any expert or consultant whose services were used in analyzing Puerto Rico’s fiscal situation since January 1, 2014, and any analysis, reports or recommendations offered by such experts or consultants;

***Documents Relating To Revenues***

- (18) For any revenue line item in the Fiscal Plan that does not grow at the rate of nominal GNP (see Fiscal Plan at 10), documents demonstrating or relating to how those growth rates are derived, including any supporting indices on which you may have relied;

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<sup>5</sup> Unless otherwise specified, capitalized terms are given the meanings they are supplied in PROMESA.

- (19) Any documents or analyses that reconcile the special revenue funds considered in the Bridge or Bridge Analysis (see for example Bridge Analysis at 11, 18, 28) to special revenue funds in the Fiscal Plan (at 12, 15);
- (20) Any documents, analyses or data underlying the estimated collection rates on all local revenue streams cited in the Fiscal Plan at page 11, as well as any sales and use tax currently collected on behalf of municipalities, including the basis for the Board's statement in the Letter from Jose Carrion to Gov. Ricardo A. Rosselló Nevares dated March 9, 2017 ("March 9 Letter") (at 2-3) that the Commonwealth had overstated the possibility for increased revenue collections in its proposed February 28, 2017 Fiscal Plan;
- (21) Documents sufficient to determine the historical amounts (by month and by fiscal year) and present location of so-called "clawback revenues" discussed on page 28 of the Fiscal Plan, including whether such funds have been placed in escrow, and for whose benefit. To the extent that annual projections of any future revenues subject to clawback exist, those should be provided as well;
- (22) Documents sufficient to ascertain the status and treatment of (a) any sales and use tax currently being collected on behalf of municipalities, and (b) the special property tax, which under Puerto Rico law should be collected and segregated in a trust "for the amortization and redemption of the general obligations of the Commonwealth," 21 L.P.R.A. § 5002, see also 21 L.P.R.A. § 5004(a), neither of which is addressed in the Fiscal Plan. To the extent that annual projections of those revenues exist, those should be provided as well;
- (23) Any communications, documents, or analyses regarding potential changes to the tax code in connection with the formulation of the Fiscal Plan, including, but not limited to, documents relating to reassessing real estate property valuations for the first time since 1958, increasing property tax rates to the levels proposed in the February 28, 2017 version of the Fiscal Plan (at 48), extending Act 154, reassessing the Tax Incentives Act of 1998, or transitioning the Commonwealth's sales and use tax to a broad-based value added tax;
- (24) Documents sufficient to identify the source of increased revenues from the "Fees & Charges" revenue measure discussed on page 19 of the Fiscal Plan, and the accounts into which such increased revenues are expected to flow;<sup>6</sup>
- (25) The Report on Discretionary Tax Abatement Agreements that the Governor was required to submit to the Oversight Board within six months of the establishment of the Board, by PROMESA § 208, 48 U.S.C. § 2148;

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<sup>6</sup> If you prefer, a list of the bank accounts into which the funds are expected to flow will suffice.

- (26) Documents sufficient to identify any public private partnerships that are contemplated during the Fiscal Plan period, including anticipated revenue impacts, cash flow projections, and funding sources (*see* February 28 Fiscal Plan at 74-80);
- (27) Any communications, documents, or analyses regarding anticipated revenues relating to health care. This information should include any assumptions, models or data used to project anticipated federal transfers, returns from any Commonwealth-run medical facility, municipal employer or employee contributions, or Commonwealth Fund collections;

***Documents Relating To Expenses***

- (28) For any expense line item in the Fiscal Plan that does not grow at the rate of nominal GNP, documents demonstrating or relating to how those growth rates are derived;<sup>7</sup>
- (29) A functional version of any model used by the Territorial Government or Ernst & Young to “normalize” expenses so that they can be compared across years in the Bridge or Bridge Analysis;
- (30) All documents relating to the Board’s basis for its “recommendation” in the March 9 Letter (at 2) that FY17 expenses be increased by \$585 million, including the type and amount of “historical expenditures” in FY 14-FY16 that Ernst & Young discusses on page 13 of the Bridge Analysis;
- (31) A functional model or workbook showing how the Reconciliation Adjustment discussed on page 15 of the Fiscal Plan was calculated;
- (32) Any data, models, analyses or communications regarding the meaning of the term “essential services” in the Fiscal Plan;
- (33) Documents reflecting the calculation of the “other non-recurring” expenses projected on page 12 of the Fiscal Plan, including a functioning version of any model used;
- (34) Any documents, analyses or data regarding the non-personnel “right sizing” expense measures cited on page 15, 18 and 20 of the Fiscal Plan. To the extent that a model was used in calculating this line item in the Fiscal Plan, a functioning version of that model should be provided;
- (35) Documents sufficient to identify the nature, cost, status and proposed timeline of any project being funded from the capital expenditures line item in the Fiscal Plan as projected on page 12 and discussed on page 14;
- (36) Documents sufficient to identify how \$2.2 billion in legal expenses from the Commonwealth of Puerto Rico, *Financial Information and Operating Report* 283 (Dec. 18, 2016), are treated under the Fiscal Plan;

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<sup>7</sup> For example, the healthcare expense growth rate appears higher than the projected nominal growth rate. Fiscal Plan at 21.



- (37) Documents sufficient to show the source of any funds used to pay down any trade debt, overdue tax refund or any other outstanding payable since the passage of PROMESA (Fiscal Plan at 10, 15, 18);
- (38) Documents sufficient to disaggregate expenses associated with the Territorial Government's various pension systems, including a breakdown of expenses associated with (a) defined benefit rather than defined contribution accounts; (b) base benefits rather than system administered benefits; (c) retirees rather than active employees; and (d) any "catch up" expenses accrued before the passage of PROMESA rather than ongoing costs of the programs (*see* Fiscal Plan at 22);<sup>8</sup>
- (39) Any communications, documents, or analyses regarding expenses relating to health care. This information should include detail regarding the healthcare expense growth rates (to the extent not already produced in response to Request 28), any supporting healthcare cost indices (see March 9 Letter at 3-4), efforts to control health care expenses (Fiscal Plan at 20), and any assumptions made regarding enrollment in light of projected population declines;
- (40) Any communications, documents, or analysis regarding how deficits relating to health care are accounted for in the Fiscal Plan;
- (41) Any communications, documents or analysis regarding historical reimbursements from the Center for Medicare and Medicaid Services or analysis regarding the projected impact of the newly enacted "Modified Adjusted Growth Impact" or "MAGI" standards;
- (42) Documents that reflect the basis for the Board's request for "Amendment No. 1: Furlough and Christmas Bonus Amendment to the Commonwealth's Proposed Fiscal Plan," in in *Board Resolution Adopted on March 13, 2017 (Fiscal Plan Certification)* ("March 13 Resolution"), which required a furlough program rather than a reduction in the government work force;
- (43) Documents that reflect the basis for the Board's request for "Amendment No. 2: Pension Amendment to the Commonwealth's Proposed Fiscal Plan" the March 13 Resolution, which required certain alterations to the treatment of pension plans under the Fiscal Plan;
- (44) Documents sufficient to identify the source of and efforts to control substantial projected deficits at Puerto Rico's instrumentalities and component units as projected on page 12 and discussed on page 15 of the Fiscal Plan, as well as the Fiscal Plan recently certified by the Puerto Rico Highway Transportation Authority;

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<sup>8</sup> With regard to the Employment Retirement System, which covers multiple sponsoring employers, this information should be provided in sufficient detail to track each sponsoring employer to the pension expenses for which it is responsible.



- (45) Documents, models, analyses or communications that reflect the basis for the demands to improve the Commonwealth's liquidity, as discussed in Chairman Carrion's March 8, 2017 letter to Governor Rosselló;
- (46) Documents sufficient to identify any rents paid by the Territorial Government or any Territorial Government Instrumentality to the Public Building Authority ("PBA"). This material should include the terms and documents of any leases of PBA-owned or managed property and any Territorial Government Instrumentality;
- (47) Documents, models, analyses, or communications regarding any decision to reduce subsidies to the University of Puerto Rico, municipalities or other entities that are discussed on pages 45-48 of the February 28, 2017 version of the Fiscal Plan. To the extent that the certified Fiscal Plan seeks to replace those direct subsidies through indirect means (e.g., changing property taxes or municipal licensing fees), documents regarding those efforts should be provided as well;

***Documents Relating To Puerto Rico's Debt Sustainability***

- (48) Any analyses, including models and data, regarding how the amounts available for debt service proposed on page 8 of the Fiscal Plan will, if implemented, affect Puerto Rico's future ability to access the capital markets;
- (49) Any analyses comparing Puerto Rico's debt situation to that of other economies that were relied upon in determining what would be a sustainable debt load (*cf.* Fiscal Plan at 27-29), including documents sufficient to identify any comparable economies considered;
- (50) Any projections, including both underlying data and models, regarding macroeconomic growth following the end of the Fiscal Plan period and the projected maturity of any proposed restructured obligation. See, *e.g.*, March 9, 2017 Letter at 2 (describing February 28, 2017 proposed Fiscal Plan as too optimistic with respect to "a) economic growth rates and the time to return to nominal economic growth; and, b) the failure to reflect near-certain declines in baseline revenues associated with corporate taxes and non-resident withholding taxes"); GO/COFINA Title VI proposal made public by the Commonwealth on April 28, 2017 at 4 (term sheet proposes a 30 year restructured bond subject to "optional amortization...sized based on Fiscal Plan forecast");

***Documents Relating To GDB Restructuring Or Wind Down***

- (51) Documents reflecting the historical amounts and present status of any funds or accounts held by the Government Development Bank of Puerto Rico ("GDB") on behalf of the Territorial Government, including, but not limited to, the balance of any accounts at the GDB into which any so-called "clawback revenues" were deposited and the intended treatment of such funds in the Restructuring Support Agreement announced by the Commonwealth on May 15, 2017 ("GDB RSA");

- (52) Documents sufficient to identify any accounts held on behalf of the Territorial Government at financial institutions other than the GDB, including but not limited to accounts that were transferred from the GDB since January 1, 2015;
- (53) Documents regarding the division of assets between the New Issuer and the Public Entity Trust in the GDB RSA;
- (54) Loan level detail on the GDB Municipal Loan portfolio, including all loan and deposit agreements as well as current loan balances;
- (55) Documents that reflect the source of repayment for SUT-backed GDB Municipality loans, as that term is used in the GDB RSA and associated documents released on February 28, 2017;
- (56) Documents sufficient to identify how SUT flowing to municipalities (if any) in excess of municipal loan debt service is distributed or spent.

Please contact us if you would like to discuss the above.

Very truly yours,

**Robbins, Russell, Englert, Orseck,  
Untereiner, & Sauber LLP**  
as counsel to and on behalf of the GO Group

By: /s/ Gary A. Orseck

Name: Gary A. Orseck

Title: Partner

**Cadwalader, Wickersham & Taft LLP**  
as counsel to and on behalf of Assured

By: /s/ Mark C. Ellenberg

Name: Mark C. Ellenberg

Title: Consulting Attorney

# EXHIBIT B

June 13, 2017

**VIA E-MAIL**

Gary A. Orseck  
Robbins, Russell, Englert, Orseck, Untereiner, & Sauber LLP  
1801 K Street, N.W.  
Suite 411L  
Washington, D.C. 20006

Mark C. Ellenberg  
Cadwalader, Wickersham & Taft  
LLP700 Sixth Street, N.W.  
Washington, DC 20001

**Re: Creditors' Diligence Information Access**

Dear Messrs. Orseck and Ellenberg:

We write on behalf of Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") and the Financial Oversight and Management Board for Puerto Rico (the "FOMB") in response to your June 2, 2017 letter on behalf of the Ad Hoc Group of Puerto Rico General Obligation Bondholders (the "GO Group") and Assured Guaranty Corp. and Assured Guaranty Municipal Corp. ("Assured"). As an initial matter, we reject the assertion in your letter that creditors have not been provided with substantial and meaningful information about the finances of the Commonwealth of Puerto Rico ("Puerto Rico"). As explained below, this is untrue and remains untrue, no matter how often it is falsely repeated by your client group.

AAFAF and the FOMB have each made publicly available extensive and robust data (a list of all publicly available websites and descriptions is attached as **Exhibit A**). In that regard, Puerto Rico has extensively disclosed its finances and contracts, and the FOMB has made available information concerning proceedings, as well as contracts and official correspondence with the government of Puerto Rico inclusive of correspondence addressing specific Fiscal Plan components. In addition to this public material, AAFAF has provided voluminous data to your firms, and your clients and their financial advisors. AAFAF has met with creditors numerous times on April 6, 2017 and April 11, 2017, made senior government officials and advisors available to your clients on April 6, 2017 and April 11, 2017, made information available at mediation meetings on April 13, 2017, April 17, 2017, April 20, 2017, and April 25, 2017, and provided answers to multitudes of your clients' questions. As we think you well know, the problem here is not any lack of disclosure, but rather what the disclosure shows. Your clients advised us they were refusing to negotiate because they do not like or accept what the

disclosure shows. In turn, they demanded disclosures going to the FOMB's certification of the Fiscal Plan. But, in PROMESA § 106(e), Congress expressly barred challenges to all certification determinations.

AAFAF strongly objects to the baseless contention that “almost none” of the information you have requested has been provided and that the Intralinks Data Room (the “Data Room”) provided to you is unhelpful. Those complaints are based on a fundamental distortion of the Data Room's contents. The Data Room has abundant relevant data that includes Puerto Rico's entire Fiscal Plan Model in a highly-detailed live Excel file that includes formulas, links, and interrelated tabs summarizing the projected financial and operating performance of the Government of Puerto Rico from FY 2017 through FY 2026. The information in the Data Room is readily useful and should be understandable to any experienced financial professional willing to examine such data in good faith. Nevertheless, AAFAF is providing a narrative drafted by its financial advisor, Rothschild & Co, that explains in detail the Fiscal Plan's contents and how its formulas, links, and tabs can be helpful (attached as **Exhibit B**).

Puerto Rico has also produced or otherwise made available a substantial volume of additional documents pertaining to its financial condition to further explain the finances and operations of the government. Your clients have refused to acknowledge these efforts and have instead put forth false accusations that no information has been coming from Puerto Rico. The fact is that AAFAF has been closely working with the FOMB and each of their professionals to locate and provide additional materials to you and your clients.

Our clients, however, will not fulfill unduly burdensome, vague or harassing requests (which covers many of the 50 plus categories of information demanded in your letter), nor will it make available information covered by the Attorney-Client, Work Product, and Executive and Deliberative Process Privileges. Of course, if privileged material is or has been inadvertently provided, we reserve the right to delete it from the Data Room and demand its return. We also will not provide proprietary models created by outside consultants, nor will our clients provide information obviously sought for no purpose other than challenging the FOMB's certification determination that the Fiscal Plan satisfied PROMESA.<sup>1</sup>

We note that we are providing the additional information mentioned in this letter in the spirit of cooperation, and not due to your letter's threat of Rule 2004 discovery. The jurisprudence is clear that Rule 2004 discovery is not allowed once adversary proceedings are filed. Currently, there are many pending adversary proceedings launched by various parties (including Assured) at AAFAF, Puerto Rico, and the FOMB. See, e.g., *In re Enron Corp.*, 281 B.R. 836, 840–41 (Bankr. S.D.N.Y. 2002) (denying motion for discovery under Rule 2004 because of “the well recognized rule that once an adversary proceeding or contested matter is commenced, discovery should be pursued under the Federal Rules of Civil Procedure and not by Rule 2004.”); *In re 2435 Plainfield Ave., Inc.*, 223 B.R. 440, 455 (Bankr. D.N.J. 1998) (denying discovery under Rule 2004 in a pending adversary proceeding because “[t]he majority

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<sup>1</sup> Any factual inquiries made into “determinations” by the FOMB are statutorily mandated to be within its “sole discretion” pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

of courts that have addressed this issue have prohibited a Rule 2004 exam of parties involved in or affected by an adversary proceeding while it is pending" (collecting cases)).

While we could restrict further disclosure to discovery in adversary proceedings, in the hope your clients will turn to constructive negotiations, we are outlining below preliminary responses to your inquiries which encompass further disclosures. We reserve our right to supplement these responses as additional information becomes available or as we further consider your requests. Please note that we reserve all rights with respect to information we are providing, including but not limited to the right to argue that none of it is admissible in any Title III case or other proceedings. Please be further advised that with respect to any additional information requested to the extent it implicates determinations by the FOMB as it pertains to certification of the Fiscal Plan, we reserve all rights including the right to assert that such requests are not subject to the Court's jurisdiction pursuant to PROMESA Section 106(e). Also note that our clients will not provide any underlying materials that contain work product of advisors, or are otherwise protected by any applicable privilege. We are also willing to have discussions with you about our responses and would consider additional information sessions with our advisors, although preferably after your financial advisors are familiar with the data we provide.

With these general parameters in mind, below we list our specific responses to the data requests made in your June 2 letter. Our responses are not in the form of formal discovery request responses, as no formal discovery has been served. We reserve the right to set forth general and specific responses to any of these requests to the extent set forth in formal discovery requests.

#### **"General" Category**

##### ***Request 1***

*A complete version of the Fiscal Plan, including any amendments mandated by the Board Resolution Adopted on March 13, 2017. This should include functional versions of any embedded Excel charts.*

A complete, live version of the Fiscal Plan has already been uploaded to the Data Room.

##### ***Request 2***

*The Fiscal Year 2018 budget for the Territorial Government or any Covered Instrumentality, including any preliminary drafts.*

AAFAF directs Assured and the GO Group to the following government websites. Notably, Reorg Research found all this data and listed its sources in an article published on June 1, 2017.

- FY2018 Budget Breakdown by Agency:  
<http://www2.pr.gov/presupuestos/PresupuestoRecomendado2017-2018/Pages/PRESUPUESTO-POR-AGENCIA.aspx>

- FY2018 General Fund Budget Proposal:  
<http://www.fortaleza.pr.gov/sites/default/files/PRESUPUESTO%20DEL%20FONDO%20GENERAL%20AF%202015%20AL%202018.pdf>
- OMB Report on FY2018 Budget Proposal:  
<http://www2.pr.gov/presupuestos/PresupuestoRecomendado2017-2018/Captulo%20de%20la%20Oficina%20de%20Gerencia%20y%20Presupuesto/PRESUPUESTO%20RECOMENDADO%20AÑO%20FISCAL%202017-2018.pdf>

### ***Request 3***

*A functional version of the macroeconomic growth model used to calculate all forward-looking projections included in the certified Fiscal Plan as well as any data fed into that model. We also request similar information for any prior proposed fiscal plan as well as the presentation known as Technical Meeting Discussion Materials (which was presented by the prior administration on Nov. 16, 2016), and in the Revised Baseline Projections (which was presented by the prior administration on Dec. 20, 2016).*

AAFAF will upload to the Data Room underlying raw data used in the macroeconomic growth model (i.e., revenues, cash flow data) used in the certified Fiscal Plan. Insofar as this request seeks materials relating to draft fiscal plans developed by the previous administration, the request is burdensome and invades the Executive and Deliberative Process Privileges. And the growth models requested (as opposed to the underlying data) are proprietary. AAFAF will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into "determinations" by the FOMB are statutorily mandated to be within its "sole discretion" pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

### ***Request 4***

*A functional version of the cash flow models used to prepare the Fiscal Plan, including any data that was fed into the model.*

A functional version of the cash flow model, including the underlying data that was fed into the model will be uploaded to the Data Room. AAFAF and the FOMB, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into "determinations" by the FOMB are statutorily mandated to be within its "sole discretion" pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.



**Request 5**

*Documents sufficient to identify the makeup of the pro forma revenue and expense measures discussed in the Fiscal Plan at 8, 10, 17-22.*

Relevant information will be uploaded to the Data Room. AAFAF and the FOMB, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into "determinations" by the FOMB are statutorily mandated to be within its "sole discretion" pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 6**

*To the extent any advisor to the Board, including Andrew Wolfe, used a different model than the models referenced in Items (3) and (4) above, a functional version of that model or those models, including any data that was fed into the model(s).*

Pursuant to PROMESA, the FOMB's rationales for its input on Puerto Rico's Fiscal Plan are not subject to challenge.

**Request 7**

*Any additional documentation relating to the assumptions used in formulating the Fiscal Plan, including, for example, the fiscal multiplier used to calculate the impact that proposed revenue and expense measures are expected to have on the Puerto Rico economy and inflation assumptions.*

AAFAF will upload raw data responsive to this request into the Data Room, to the extent such data exists. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into "determinations" by the FOMB are statutorily mandated to be within its "sole discretion" pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 8**

*Any sensitivity analyses that measure the impact of growth initiatives, including those discussed on page 24 of the Fiscal Plan, and recommendations included in Congressional Task Force on Economic Growth in Puerto Rico, Report to the House and Senate (Dec. 20, 2016).*

AAFAF will upload underlying raw data responsive to this request to the Data Room, to the extent such data exists. AAFAF, however, will not provide proprietary models created by



outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into "determinations" by the FOMB are statutorily mandated to be within in its "sole discretion" pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 9**

*A copy of the Fiscal Plan Comparison to Historical Results, prepared by the Territorial Government at the request of the Oversight Board (the "Bridge") as well as any underlying data and models.*

The Bridge is publicly available. AAFAF and the FOMB will upload underlying raw data relating to the Bridge into the Data Room. AAFAF and the FOMB, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into "determinations" by the FOMB are statutorily mandated to be within in its "sole discretion" pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 10**

*Any and all documents provided to the Oversight Board prior to its approval of the Fiscal Plan.*

Under the facts of this situation, this request is overbroad and is designed to invade multiple privileges. While our clients have provided and will provide your clients with substantial data and diligence, they will not fulfill this request specifically.

**Request 11**

*Any and all documents provided to Ernst & Young in connection with its preparation of Fiscal Oversight and Management Board for Puerto Rico: Financial Bridge Analysis (Mar. 7, 2017) ("Bridge Analysis"). See Bridge Analysis at 7 ("E&Y submitted a detailed data/document request to the Government, and . . . these parties were generally timely and diligent in fulfilling this request to the extent the information was readily available.").*

The FOMB already provided your clients the Bridge Analysis, even though (a) the FOMB is allowed to certify or not certify a fiscal plan in its sole discretion, and (b) its determination is not subject to review by the Court. This request seeks to go behind the Bridge Analysis. Under the facts of this situation, this request is overbroad and is designed to invade multiple privileges and inquires into matters PROMESA renders not subject to review. While, as indicated in other responses, our clients have provided and will provide your clients substantial data and diligence, they will not fulfill this request specifically.

### **Requests 12–13**

*Any and all documents provided to KPMG in connection with its preparation of the Commonwealth of Puerto Rico Tax Reform Assessment Project (2014).*

*Any and all documents provided to Anne Krueger (or her colleagues or assistants) in connection with her preparation of Puerto Rico – A Way Forward (2015), commonly known as the “Krueger Report.”*

Under the facts of this situation, these requests are overbroad and seek information that has no relevance. The reports referenced in these requests pre-date the current administration, AAFAF's, and the FOMB's existence, and will not be searched for or provided.

### **Requests 14–15**

*Any and all documents provided to Conway Mackenzie in connection with its work to prepare fiscal projections contained in the presentation entitled Technical Meeting Discussion Materials (Nov. 16, 2016).*

*Any and all documents provided to Pension Trustee Advisors in connection with any actuarial assessment performed on a public pension system maintained by the Territorial Government.*

AAFAF and the FOMB direct you to Puerto Rico's publicly available quarterly report published on December 18, 2016<sup>2</sup> for information responsive to “Technical Meeting Discussion Materials” (request 14) and to the publicly available Government Development Bank of Puerto Rico's (“GDB”) website<sup>3</sup> for responsive information relating to public pensions (request 15).

### **Request 16**

*Any analyses that quantify the financial impact of the financial control reforms discussed in the Fiscal Plan at 34-38.*

AAFAF and the FOMB will upload underlying raw data responsive to this request to the Data Room, to the extent such data exists. AAFAF and the FOMB, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into “determinations” by the FOMB are statutorily mandated to be within in its “sole discretion” pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

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<sup>2</sup> See <http://www.aafaf.pr.gov/documents.html> (last visited June 8, 2017); <http://www.gdb-pur.com/documents/CommonwealthofPuertoRicoFinancialInfoFY201612-18-16.pdf> (last visited June 8, 2017).

<sup>3</sup> See [http://www.gdb-pur.com/investors\\_resources/introduction.html](http://www.gdb-pur.com/investors_resources/introduction.html) (last visited June 8, 2017).

**Request 17**

*Documents sufficient to identify any expert or consultant whose services were used in analyzing Puerto Rico's fiscal situation since January 1, 2014, and any analysis, reports or recommendations offered by such experts or consultants.*

AAFAF and the FOMB direct you to their publicly available contract database, inclusive of their contracts with consultants, for documents responsive to this request.

**“Documents Relating to Revenues” Category**

**Request 18**

*For any revenue line item in the Fiscal Plan that does not grow at the rate of nominal GNP (see Fiscal Plan at 10), documents demonstrating or relating to how those growth rates are derived, including any supporting indices on which you may have relied.*

AAFAF will upload underlying raw data responsive to this request to the Data Room, to the extent such data exists. Under the facts of this situation, this request is overbroad. Moreover, this request seeks documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive and Deliberative Process Privileges. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into “determinations” by the FOMB are statutorily mandated to be within in its “sole discretion” pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 19**

*Any documents or analyses that reconcile the special revenue funds considered in the Bridge or Bridge Analysis (see for example Bridge Analysis at 11, 18, 28) to special revenue funds in the Fiscal Plan (at 12, 15).*

AAFAF will upload underlying raw data responsive to this request to the Data Room, to the extent such data exists. Under the facts of this situation, this request is overbroad. Moreover, this request seeks documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive and Deliberative Process Privileges. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into “determinations” by the FOMB are statutorily mandated to be within in its “sole discretion” pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 20**

*Any documents, analyses or data underlying the estimated collection rates on all local revenue streams cited in the Fiscal Plan at page 11, as well as any sales and use tax currently collected on behalf of municipalities, including the basis for the Board's statement in the Letter from Jose Carrion to Gov. Ricardo A. Rosselló Nevares dated March 9, 2017 ("March 9 Letter") (at 2-3) that the Commonwealth had overstated the possibility for increased revenue collections in its proposed February 28, 2017 Fiscal Plan.*

AAFAF will upload underlying raw data responsive to this request to the Data Room, to the extent such data exists. Under the facts of this situation, this request is overbroad. Moreover, this request seeks documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive and Deliberative Process Privileges. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into "determinations" by the FOMB are statutorily mandated to be within in its "sole discretion" pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 21**

*Documents sufficient to determine the historical amounts (by month and by fiscal year) and present location of so-called "clawback revenues" discussed on page 28 of the Fiscal Plan, including whether such funds have been placed in escrow, and for whose benefit. To the extent that annual projections of any future revenues subject to clawback exist, those should be provided as well.*

AAFAF will upload available summary data relating to the historical amounts of "clawback revenues" to the Data Room. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into "determinations" by the FOMB are statutorily mandated to be within in its "sole discretion" pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA. With respect to "projections of any future revenues" AAFAF and the FOMB direct you to the certified Fiscal Plans of each covered territorial entity.

**Request 22**

*Documents sufficient to ascertain the status and treatment of (a) any sales and use tax currently being collected on behalf of municipalities, and (b) the special property tax, which under Puerto Rico law should be collected and segregated in a trust "for the amortization and redemption of the general obligations of the Commonwealth," 21 L.P.R.A. § 5002, see*

*also 21 L.P.R.A. § 5004(a), neither of which is addressed in the Fiscal Plan. To the extent that annual projections of those revenues exist, those should be provided as well.*

AAFAF will provide a narrative response drafted by its financial consultants responsive to this request.

**Request 23**

*Any communications, documents, or analyses regarding potential changes to the tax code in connection with the formulation of the Fiscal Plan, including, but not limited to, documents relating to reassessing real estate property valuations for the first time since 1958, increasing property tax rates to the levels proposed in the February 28, 2017 version of the Fiscal Plan (at 48), extending Act 154, reassessing the Tax Incentives Act of 1998, or transitioning the Commonwealth's sales and use tax to a broad-based value added tax.*

Under the facts of this situation, this request is overbroad. Moreover, the requested documents consist of AAFAF's and the FOMB's deliberations to formulate the Fiscal Plan, as well as requests for information regarding core governmental policy functions. As such, they are protected from disclosure by the Executive and Deliberative Process Privileges.

**Request 24**

*Documents sufficient to identify the source of increased revenues from the "Fees & Charges" revenue measure discussed on page 19 of the Fiscal Plan, and the accounts into which such increased revenues are expected to flow.*

We will take this request under advisement and consider what data may be made available to creditors.

**Request 25**

*The Report on Discretionary Tax Abatement Agreements that the Governor was required to submit to the Oversight Board within six months of the establishment of the Board, by PROMESA § 208, 48 U.S.C. § 2148.*

AAFAF will look into the extent that "Discretionary Tax Abatement Agreements" are available and will provide what is readily available. The agreements have not yet been provided to the FOMB.

**Request 26**

*Documents sufficient to identify any public private partnerships that are contemplated during the Fiscal Plan period, including anticipated revenue impacts, cash flow projections, and funding sources (see February 28 Fiscal Plan at 74-80).*

No specific public private partnerships are currently being negotiated. AAFAF and the FOMB hope to attract such partnerships as part of their efforts to increase investment in Puerto Rico and to render services more efficiently. To the extent any such partnerships are formed, appropriate information will be made available.

***Request 27***

*Any communications, documents, or analyses regarding anticipated revenues relating to health care. This information should include any assumptions, models or data used to project anticipated federal transfers, returns from any Commonwealth-run medical facility, municipal employer or employee contributions, or Commonwealth Fund collections.*

Under the facts of this situation, this request is overbroad. We are prepared to discuss a more reasonable, targeted approach to health care data with you.

**“Documents Relating to Expenses” Category**

***Requests 28–32***

*For any expense line item in the Fiscal Plan that does not grow at the rate of nominal GNP, documents demonstrating or relating to how those growth rates are derived.*

*A functional version of any model used by the Territorial Government or Ernst & Young to “normalize” expenses so that they can be compared across years in the Bridge or Bridge Analysis.*

*All documents relating to the Board’s basis for its “recommendation” in the March 9 Letter (at 2) that FY17 expenses be increased by \$585 million, including the type and amount of “historical expenditures” in FY 14-FY16 that Ernst & Young discusses on page 13 of the Bridge Analysis.*

*A functional model or workbook showing how the Reconciliation Adjustment discussed on page 15 of the Fiscal Plan was calculated.*

*Any data, models, analyses or communications regarding the meaning of the term “essential services” in the Fiscal Plan.*

AAFAF will upload underlying raw data responsive to these requests to the Data Room. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB’s certification of the Fiscal Plan. Under the facts of this situation, this request is overbroad. Moreover, to the extent they seek documents that are the product of deliberations of government officials, those documents are protected from disclosure by the Attorney-Client, Work Product, and Executive and Deliberative Process Privileges. Any factual inquiries made into “determinations” by the FOMB are statutorily mandated to be within in its “sole discretion”



pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 33**

*Documents reflecting the calculation of the “other non-recurring” expenses projected on page 12 of the Fiscal Plan, including a functioning version of any model used.*

AAFAF will upload underlying raw data responsive to this request to the Data Room, to the extent such data exists. Under the facts of this situation, this request is overbroad. Moreover, this request seeks documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive and Deliberative Process Privileges. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB’s certification of the Fiscal Plan. Any factual inquiries made into “determinations” by the FOMB are statutorily mandated to be within in its “sole discretion” pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 34**

*Any documents, analyses or data regarding the non-personnel “right sizing” expense measures cited on page 15, 18 and 20 of the Fiscal Plan. To the extent that a model was used in calculating this line item in the Fiscal Plan, a functioning version of that model should be provided.*

AAFAF will upload underlying raw data responsive to this request to the Data Room, to the extent such data exists. Under the facts of this situation, this request is overbroad. Moreover, this request seeks documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive and Deliberative Process Privileges. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB’s certification of the Fiscal Plan. Any factual inquiries made into “determinations” by the FOMB are statutorily mandated to be within in its “sole discretion” pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 35**

*Documents sufficient to identify the nature, cost, status and proposed timeline of any project being funded from the capital expenditures line item in the Fiscal Plan as projected on page 12 and discussed on page 14.*

AAFAF will upload underlying raw data responsive to this request to the Data Room, to the extent such data exists. Under the facts of this situation, this request is overbroad.

Moreover, this request seeks documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive and Deliberative Process Privileges. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB's certification of the Fiscal Plan. Any factual inquiries made into "determinations" by the FOMB are statutorily mandated to be within its "sole discretion" pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**Request 36**

*Documents sufficient to identify how \$2.2 billion in legal expenses from the Commonwealth of Puerto Rico, Financial Information and Operating Report 283 (Dec. 18, 2016), are treated under the Fiscal Plan.*

Under the facts of this situation, this request is vague, particularly insofar as this request is not included in the Fiscal Plan. We invite you to meet to clarify this request, and we would be happy to discuss it with you.

**Request 37**

*Documents sufficient to show the source of any funds used to pay down any trade debt, overdue tax refund or any other outstanding payable since the passage of PROMESA (Fiscal Plan at 10, 15, 18).*

Under the facts of this situation, this request is vague. We invite you to meet to clarify this request, and we would be happy to discuss it with you, but note that the funds used to pay all debts and obligations are the funds in Puerto Rico's possession.

**Request 38**

*Documents sufficient to disaggregate expenses associated with the Territorial Government's various pension systems, including a breakdown of expenses associated with (a) defined benefit rather than defined contribution accounts; (b) base benefits rather than system administered benefits; (c) retirees rather than active employees; and (d) any "catch up" expenses accrued before the passage of PROMESA rather than ongoing costs of the programs (see Fiscal Plan at 22).*

We will take this request under advisement and provide a further response as soon as practicable.

**Request 39**

*Any communications, documents, or analyses regarding expenses relating to health care. This information should include detail regarding the healthcare expense growth rates (to the extent not already produced in response to Request 28), any supporting healthcare cost indices (see*



*March 9 Letter at 3-4), efforts to control health care expenses (Fiscal Plan at 20), and any assumptions made regarding enrollment in light of projected population declines.*

Under the facts of this situation, this request is overbroad and vague. We invite you to meet to clarify this request, and we would be happy to discuss it with you to clarify and narrow the scope of this request.

**Request 40**

*Any communications, documents, or analysis regarding how deficits relating to health care are accounted for in the Fiscal Plan.*

AAFAF and the FOMB direct you to the Fiscal Plan model.

**Request 41**

*Any communications, documents or analysis regarding historical reimbursements from the Center for Medicare and Medicaid Services or analysis regarding the projected impact of the newly enacted “Modified Adjusted Growth Impact” or “MAGI” standards.*

No such analysis has been completed. Moreover, under the facts of this situation, this request is overbroad. In addition, this request seeks documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive and Deliberative Process Privileges.

**Request 42–43**

*Documents that reflect the basis for the Board’s request for “Amendment No. 1: Furlough and Christmas Bonus Amendment to the Commonwealth’s Proposed Fiscal Plan,” in in Board Resolution Adopted on March 13, 2017 (Fiscal Plan Certification) (“March 13 Resolution”), which required a furlough program rather than a reduction in the government work force.*

*Documents that reflect the basis for the Board’s request for “Amendment No. 2: Pension Amendment to the Commonwealth’s Proposed Fiscal Plan” the March 13 Resolution, which required certain alterations to the treatment of pension plans under the Fiscal Plan.*

The FOMB states that its resolutions speak for themselves. As a practical matter, Amendment #1 demonstrates by its express terms that it was imposed to provide liquidity if Puerto Rico does not otherwise manage to maintain sufficient funds. Amendment #2 was imposed to save money in a progressive manner while ensuring that retirees (many of whom are ineligible for Social Security) receive at least sufficient funds to keep them above the federal poverty level.

**Request 44**

*Documents sufficient to identify the source of and efforts to control substantial projected deficits at Puerto Rico's instrumentalities and component units as projected on page 12 and discussed on page 15 of the Fiscal Plan, as well as the Fiscal Plan recently certified by the Puerto Rico Highway Transportation Authority.*

This request seeks documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive and Deliberative Process Privileges. Nevertheless, in the spirit of cooperation, and without waiving its privilege objections, we agree to further consider what materials may be provided in response to this request.

**Request 45**

*Documents, models, analyses or communications that reflect the basis for the demands to improve the Commonwealth's liquidity, as discussed in Chairman Carrion's March 8, 2017 letter to Governor Rosselló.*

Under the facts of this situation, this request is overbroad. Moreover, this request seeks documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive Privilege and Deliberative Process Privileges. Moreover, this request clearly attempts to go behind the FOMB's determination to certify Puerto Rico's Fiscal Plan which is not subject to review under PROMESA.

**Request 46**

*Documents sufficient to identify any rents paid by the Territorial Government or any Territorial Government Instrumentality to the Public Building Authority ("PBA"). This material should include the terms and documents of any leases of PBA-owned or managed property and any Territorial Government Instrumentality.*

AAFAF and the FOMB direct you to publicly available information relating to "[d]ocuments sufficient to identify any rents paid by the Territorial Government or any Territorial Government Instrumentality to the Public Building Authority ("PBA")."<sup>4</sup>

**Request 47**

*Documents, models, analyses, or communications regarding any decision to reduce subsidies to the University of Puerto Rico, municipalities or other entities that are discussed on pages 45-48 of the February 28, 2017 version of the Fiscal Plan. To the extent that the certified Fiscal Plan*

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<sup>4</sup> See [http://www.bgfpr.com/investors\\_resources/commonwealth-cfiodr.html](http://www.bgfpr.com/investors_resources/commonwealth-cfiodr.html) (last visited June 8, 2017) (containing Commonwealth Financial Information and Operating Data Reports which contain details regarding the total rent payments made to PBA).

*seeks to replace those direct subsidies through indirect means (e.g., changing property taxes or municipal licensing fees), documents regarding those efforts should be provided as well.*

Under the facts of this situation, this request is overbroad and seeks production of materials related to a draft fiscal plan that was not certified. We will not be producing such documents.

#### **“Documents Relating To Puerto Rico’s Debt Sustainability” Category**

##### ***Requests 48–50***

*Any analyses, including models and data, regarding how the amounts available for debt service proposed on page 8 of the Fiscal Plan will, if implemented, affect Puerto Rico’s future ability to access the capital markets.*

*Any analyses comparing Puerto Rico’s debt situation to that of other economies that were relied upon in determining what would be a sustainable debt load (cf. Fiscal Plan at 27-29), including documents sufficient to identify any comparable economies considered.*

*Any projections, including both underlying data and models, regarding macroeconomic growth following the end of the Fiscal Plan period and the projected maturity of any proposed restructured obligation. See, e.g., March 9, 2017 Letter at 2 (describing February 28, 2017 proposed Fiscal Plan as too optimistic with respect to “a) economic growth rates and the time to return to nominal economic growth; and, b) the failure to reflect near-certain declines in baseline revenues associated with corporate taxes and non-resident withholding taxes”); GO/COFINA Title VI proposal made public by the Commonwealth on April 28, 2017 at 4 (term sheet proposes a 30 year restructured bond subject to “optional amortization...sized based on Fiscal Plan forecast”).*

AAFAF will upload underlying raw data responsive to these requests to the Data Room, to the extent such data exists. Under the facts of this situation, this request is overbroad. Moreover, these requests seek documents that are the product of deliberations of AAFAF, Puerto Rico, or the FOMB. Those documents are protected from disclosure by the Executive and Deliberative Process Privileges. AAFAF, however, will not provide proprietary models created by outside consultants, nor provide information obviously sought for no purpose other than litigating the propriety of the FOMB’s certification of the Fiscal Plan. Any factual inquiries made into “determinations” by the FOMB are statutorily mandated to be within in its “sole discretion” pursuant to PROMESA Section 201(c)(3) and certification of the proposed Fiscal Plan is not reviewable by any court pursuant to PROMESA.

**“Documents Relating To GDB Restructuring Or Wind Down” Category**

***Requests 51–56***

*Documents reflecting the historical amounts and present status of any funds or accounts held by the Government Development Bank of Puerto Rico (“GDB”) on behalf of the Territorial Government, including, but not limited to, the balance of any accounts at the GDB into which any so-called “clawback revenues” were deposited and the intended treatment of such funds in the Restructuring Support Agreement announced by the Commonwealth on May 15, 2017 (“GDB RSA”).*

*Documents sufficient to identify any accounts held on behalf of the Territorial Government at financial institutions other than the GDB, including but not limited to accounts that were transferred from the GDB since January 1, 2015.*

*Documents regarding the division of assets between the New Issuer and the Public Entity Trust in the GDB RSA.*

*Loan level detail on the GDB Municipal Loan portfolio, including all loan and deposit agreements as well as current loan balances.*

*Documents that reflect the source of repayment for SUT-backed GDB Municipality loans, as that term is used in the GDB RSA and associated documents released on February 28, 2017.*

*Documents sufficient to identify how SUT flowing to municipalities (if any) in excess of municipal loan debt service is distributed or spent.*

We direct you to GDB’s publicly available financial statements. Additionally, pursuant to GDB’s recently negotiated RSA, if the FOMB authorizes GDB to implement the RSA in Title VI of PROMESA, there will be extensive disclosure documents provided pursuant to PROMESA § 601(f). Under the facts of this situation, these requests are overbroad and harassing. Moreover, these requests have no relevance whatsoever to the Commonwealth Title III case.

\* \* \*

AAFAF and the FOMB remain committed to working cooperatively with you to provide information to which creditors are entitled. We look forward to discussing these matters with you further.

Very truly yours,

By: /s/ Martin J. Bienenstock

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*Attorney for the Financial Oversight and  
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By: /s/ John J. Rapisardi

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New York, NY 10036

*Attorney for the Puerto Rico Fiscal Agency and  
Financial Advisory Authority*

**Exhibit A**

***Publicly Available Information***

Entity	Web link	Type of information publicly available
<b>Office of the Comptroller</b>	<a href="https://www.ocpr.gov.pr/inicio/">https://www.ocpr.gov.pr/inicio/</a>	Governmental Contract Registry Employees and Payroll Registry Audits Reports Annual Reports Privatization Reports
<b>Office of Management and Budget</b>	<a href="http://www.ogp.pr.gov/">http://www.ogp.pr.gov/</a>	Budgets of Puerto Rico Relevant Statistics Federal Funds Management Governmental Contract Processing Government's Organization Chart Governmental Restructures
		Commonwealth CAFR Commonwealth Financial

<b>Government Development Bank</b>	<a href="http://www.bgfpr.com/index.html">http://www.bgfpr.com/index.html</a>	<p>Information and Operating Data Report</p> <p>Commonwealth Cash Flow Projection</p> <p>General Fund Net Revenues and Cash Flow Projection</p> <p>P.R. Tax-Exempt Securities by Issuer (Official Statements and Bonds Resolutions)</p> <p>Economic Activity Index</p>
<b>EMMA (Municipal Securities Rulemaking Board)</b>	<a href="https://emma.msrb.org/">https://emma.msrb.org/</a>	<p>P.R. Tax-Exempt Securities disclosures pursuant to Rule 15c2-12</p>
<b>P.R. Department of State</b>	<a href="http://estado.pr.gov/en/">http://estado.pr.gov/en/</a>	<p>Regulations</p> <p>Executives Orders</p> <p>Registry of Commercial Transactions</p>
<b>Office of Legislative Services</b>	<a href="http://www.oslpr.org/v2/">http://www.oslpr.org/v2/</a>	<p>P.R. Legislation (from 1993 to present)</p> <p>Legislative Process related documents</p>

<b>P.R. Institute of Statistics</b>	<a href="http://www.estadisticas.gobierno.pr/iepr/">http://www.estadisticas.gobierno.pr/iepr/</a>	Cost of Living Index Group Quarter Report Statistics of government entities and the private sector
<b>P.R. Department of Treasury</b>	<a href="http://www.hacienda.gobierno.pr/">http://www.hacienda.gobierno.pr/</a>	Statistics of the General Fund Net Revenues Tax Credits Public Rulings Commonwealth's Financial Information and Operational Data Reporting Sales and Use Tax Collection Index Commonwealth's Financial Statements
<b>P.R. Planning Board</b>	<a href="http://www.jp.gobierno.pr/">http://www.jp.gobierno.pr/</a>	Macroeconomic Data Center Municipal Data Center Economic Cycles Economic Reports Economic Development Strategy (CEDS), among other information.



<b>Puerto Rico Fiscal Agency and Financial Advisory Authority</b>	<a href="http://www.aafaf.pr.gov/index.html">http://www.aafaf.pr.gov/index.html</a>	Fiscal Plans Oversight Board's Communications
<b>Employees Retirement System of the Government of Puerto Rico</b>	<a href="http://www.retiro.pr.gov/">http://www.retiro.pr.gov/</a>	Historical Financial Statements for ERS and JRS  Historical Actuarial Valuation Reports for ERS and JRS
<b>Puerto Rico Teachers Retirement System</b>	<a href="https://www.srm.pr.gov/">https://www.srm.pr.gov/</a>	Historical Actuarial Valuation Reports

\* This table contains the agencies that have information publicly available that would be relevant to an investor. However, there are many other agencies with additional information on their web pages about other topics.

## **Exhibit B**

### **Overview of the Fiscal Plan Model**

The Fiscal Plan Model is an Excel file that summarizes the projected financial and operating performance of the Government of Puerto Rico from FY 2017 (July 1, 2016 to June 30, 2017) through FY 2026 (July 1, 2025 to June 30, 2026). The Fiscal Plan Model incorporates projected revenue to be generated and expenses to be incurred by the Central Government as well as Component Units (“CUs”) that are covered by the certified March 13, 2017 Fiscal Plan. Additionally, the Fiscal Plan Model accounts for the revenue and expense measures that the Central Government will implement as early as FY 2018. Taking into account the projected revenue, expenses, and measures, the Fiscal Plan Model provides an annual projection of cash flows that are expected to be available for debt service (principal and interest) from FY 2017 through FY 2026.

The Fiscal Plan Model was provided to the various creditor groups via the Intralinks Project AAFA Dataroom (the “Dataroom”) on April 5, 2017. A “live” version of the Fiscal Plan Model, which includes formulas and links between tabs of the file, was provided to the various creditor groups via the Dataroom on June 6, 2017.

The following is an overview of each of the 10 tabs of the Fiscal Plan Model, how they relate to each other, and what relevant sources and documents have been made available to the various creditor groups via the Dataroom.

#### **“Sum” tab**

The Sum tab is linked to the remaining tabs of the Fiscal Plan model, discussed below, and summarizes the detailed financial projections included in those tabs. The first section of the tab exhibits the projected revenue from the General Fund (i.e. Individual Income Taxes, Corporate Income Taxes, Non-Resident Withholdings, Taxes on Alcoholic Beverages and Cigarettes, General Fund portion of SUT), as well as other sources such Additional SUT, Other Tax Revenues, Other Non-Tax Revenues, Federal Transfers, and the Impact of Loss of Affordable Care Act (“ACA”) Funding. These items provide the projected Revenues Before Measures.

The second section of the tab exhibits projected expenses. General Fund Expenses include Direct Payroll, Direct Operational Expenses, Utilities, and Special Appropriations. Other Expenses include Paygo Contributions, Run-Rate Capital Expenditures, Net Deficits of Special Revenue Funds, Component Units, HTA Operational Expenses, Disbursements to Entities Outside of the Fiscal Plan, Federal Programs, the Reconciliation Adjustment, and Non-Recurring Expenses. These items provide the projected Expenses Before Measures.

By subtracting the total annual Expenses Before Measures from the total annual Revenues Before Measures, The Sum tab presents the annual projection of Cash Flows Pre-Measures. The third section of the Sum tab summarizes the Net Impact of Measures, which is the sum of the savings projected from the implementation of revenue and expense measures. Adding the total annual Net Impact of Measures to the annual Cash Flows Pre-Measures provides the annual Cash Flows Post-Measures, Before Debt Service.

#### **“Rev. build” tab**

The Rev. build tab provides the more detailed financial projections that serve as the basis for the annual Revenues Before Measures in the Sum tab. The tab includes projected revenue

related to the General Fund and other sources, as described in the “Sum” tab section above. In general, revenue was projected through FY 2017 or FY 2018, with revenue in the remaining years growing based on the Puerto Rico nominal GNP growth factor. The sources of the FY 2017 and FY 2018 projections and the Puerto Rico nominal GNP growth factor are explicitly referenced in the Rev. build tab and are available in the Dataroom. Certain revenue line items are linked to other tabs in the Fiscal Plan model and will be discussed in the sections that follow (i.e. Cigarette Tax revenue and Excise on Off-Shore Shipments of Rum are linked to the “Cig & Rum” tab).

#### “Exp. build” tab

The Exp. build tab provides the more detailed financial projections that serve as the basis for the annual Expenses Before Measures in the Sum tab. The tab includes projected expenses related to the General Fund and other areas of the Government, as described in the Sum tab section above. The expenses related to certain line items were projected for FY 2017, with expenses in the remaining years growing based on projected inflation for Puerto Rico. Other line items, such as those related to CUs, were explicitly forecasted over the projection period. The sources of the FY 2017 projections and the projected inflation for Puerto Rico are explicitly referenced in the Exp. build tab and are available in the Dataroom. Certain expense line items are linked to other tabs in the Fiscal Plan model and will be discussed in the sections that follow (i.e. Paygo Retirement System Appropriations are linked to the “Retire” tab).

#### “Measures” tab

The Measures tab provides the more detailed projections of the annual savings from Revenue Measures and Expense Measures summarized in the Sum tab. The Revenue Measures include enhancements from Stabilizing Corporate Tax Revenue, Improved Tax Compliance, Right-Rate Fees, and Additional Revenue Enhancements. In general, Revenue Measures were projected through FY 2019 or FY 2020, with the revenue enhancements in the remaining years growing based on the Puerto Rico nominal GNP growth factor. The Expense Measures include savings from Right-Sizing the Puerto Rico Government, Reducing Healthcare Spending, Pension System Reform, Rehabilitation of Trade Terms With Local Suppliers, and Payroll and Operational Expense Freeze Through FY 2019. The sources of the projections and the macroeconomic assumptions related to growth are explicitly referenced in the Measures tab and are available in the Dataroom.

#### “SUT” tab

The SUT tab provides the detailed projections of the annual SUT revenue and the distribution to the General Fund, COFINA, Municipal Administration Fund (FAM), and the Corporation for the Development of the Arts, Science and Film Industry of Puerto Rico (CINE). Certain line items in the SUT tab flow into the Sum and Exp. build tabs. The source of the projections is explicitly referenced in the SUT tab and is available in the Dataroom.

#### “Retire” tab

The Retire tab provides the detailed projections of the annual pension paygo contributions by the Government of Puerto Rico for the Employees’ Retirement System (“ERS”), the Teachers’ Retirement System (“TRS”), and the Judiciary Retirement System (“JRS”). Certain line items in the Retire tab flow into the Exp. build tab. The source of the projections is explicitly referenced in the Retire tab and is available in the Dataroom.

“Cig & Rum” tab

The Cig and Rum tab provides the detailed projections of the annual revenue associated with Cigarette Taxes and Excise Taxes on Off-Shore Shipments of Rum. The projections are distinguished between revenues that will be directed to the General Fund and revenues that will be directed elsewhere. Certain line items in the Cig & Rum tab flow into the Rev. build and Exp. build tabs. The source of the projections is explicitly referenced in the Cig & Rum tab and is available in the Dataroom. A document named “Additional Appendix Pages” provides further detail regarding assumptions and methodology and is also available in the Dataroom.

“ASES” tab

The ASES tab provides the detailed projections of the sources of funding and disbursements related to ASES (Health Insurance Administration). The projections estimate a surplus in FY 2018 and FY 2019 and a deficit in all other years, inclusive of the forecasted receipt of ACA funding from the Federal Government. Certain line items in the ASES tab flow into the Rev. build and Exp. build tabs. The source of the projections is explicitly referenced in the ASES tab and is available in the Dataroom. A document named “Additional Appendix Pages” provides further detail regarding assumptions and methodology and is also available in the Dataroom.

“UPR” tab

The UPR tab provides the detailed projections of the sources of revenue and expenses related to the University of Puerto Rico. Sources of revenue include Tuition Charges, State Grants, Federal Transfers, Appropriations, Federal Pell Grants, and Slot Machine Revenue. Expenses include Operating Disbursements (net of General Fund Appropriations and Federal Transfers). Certain line items in the UPR tab flow into the Rev. build and Exp. build tabs. The sources of the projections are explicitly referenced in the Cig & Rum tab and are available in the Dataroom. A document named “Additional Appendix Pages” provides further detail regarding assumptions and methodology and is also available in the Dataroom.

“HTA” tab

The HTA tab provides the detailed projections of the sources of revenue and expenses related to the Highway & Transportation Authority of Puerto Rico. Sources of revenue include Gasoline and Diesel Taxes, Toll Receipts, Vehicle License Fees, Petroleum Taxes, Tren Urbano Receipts, and others. Expenses include Salaries and Benefits, Pension and Early Retirement Benefits, Repairs & Maintenance, Utilities, and others. Certain line items in the HTA tab flow into the Rev. build tab.

# EXHIBIT C

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June 14, 2017

***Via E-mail***

John J. Rapisardi  
O'Melveny & Myers LLP  
Time Square Tower  
7 Times Square  
New York, NY 10036

Martin J. Bienenstock  
Proskauer Rose LLP  
Eleven Time Square  
New York, NY 10036

Re: *In re Commonwealth of Puerto Rico*, No. 17-bk-3283 (Bankr. D.P.R)

Dear Messrs. Rapisardi and Bienenstock:

I write in response to your June 13, 2017, letter. We are still in the process of reviewing that letter and exhibits, and will also review the material you have committed to upload to the data room.<sup>1</sup> When that exercise is complete, we will provide a point-by-point response to your letter, as appropriate. In the meantime, we note that you have refused to produce many categories of requested documents on the basis of objections that are legally unfounded and inapplicable to this matter. We want to address those issues immediately, in advance of your June 15 report to the Court on the status of disclosure.

*First*, there is no basis to resist disclosure on the ground that Section 106 of PROMESA allows you to withhold from production any information used to create the Fiscal Plan (*e.g.*, Letter at 6). We do not concede that Section 106 grants the Board unreviewable discretion to certify any Fiscal Plan, regardless of its compliance with the terms of PROMESA. In any event, as Judge Swain acknowledged (*Peaje Tr.*, June 5, 2017, at 21), a fundamental issue in this matter is whether a plan of adjustment proposed by the Oversight Board can be confirmed. See PROMESA § 314(b). And given that one of the requirements of confirmation is that a plan of adjustment be consistent with the Fiscal Plan, *id.* § 314(b)(7), both the Court and creditors must fully understand the latter to evaluate the former.

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<sup>1</sup> For the avoidance of doubt, we construe your production of disclosure materials to the data room as a waiver of the provision in the Non-Disclosure Agreement that prohibits the use of information contained therein as part of this court proceeding.

J. Rapisardi and M. Bienenstock  
June 14, 2017  
Page 2

*Second*, you appear to take the position that any proposal or report that was not directly incorporated into the Fiscal Plan is irrelevant to this proceeding, regardless of when it was prepared, by whom, or for what purpose. See, e.g., Letter at 4 (objecting to request for information prepared by prior administration), 15-16 (objecting to request for information prepared by current administration). That is wrong. Creditors are entitled to broad discovery,<sup>2</sup> including information adequate to allow creditors to evaluate any proposal of voluntary restructuring and to challenge as necessary any proposed plan of restructuring at confirmation. Moreover, the current Fiscal Plan builds upon earlier efforts. Indeed, your letter contends that you have provided meaningful information about Puerto Rico's fiscal situation because, you say, there is ample publicly available information that was similarly prepared before—and not explicitly included in—the current Fiscal Plan. You cannot have it both ways: if you choose to take credit for information not incorporated into the Fiscal Plan, then you cannot refuse production on that very ground.

*Third*, you assert that vast swaths of factual information regarding the Commonwealth's financial situation are subject to the deliberative process and executive privileges. Letter at 2, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16. These privileges are extremely limited. Among other things, they protect only “advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). The vast majority of the information covered by our requests is factual in nature or statements designed to explain and justify a decision already made, which fall well outside the scope of this very limited privilege. *Texaco PR., Inc. Dep't of Consumer Affairs*, 60 F.3d 867, 884-85 (1st Cir. 1995); *McCormick on Evidence* § 108n (7th ed.).

*Fourth*, you object to production of “proprietary” models prepared by any number of third party consultants. Letter at 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 16. You do not claim that these models are privileged or that they would not be subject to production if they had been prepared by employees of the Commonwealth. They do not become protected simply because your clients opted, in their discretion, to employ professional consultants rather than hire employees to perform the same work. Moreover, they are critical to understanding what you are (or will be) providing, which you characterize as simply “raw data.”

We urge you promptly to reconsider the meritless objections you have asserted, which we address above. Please contact me if you would like to discuss further. Judge Swain clearly anticipated transparency in the sharing of financial information with creditors, and the Commonwealth's and the Board's approach has been anything but. If we cannot resolve these issues, we intend to seek an order from the court compelling production.

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<sup>2</sup> We do not agree with your contention that Rule 2004 discovery is prohibited once any party has filed an adversary proceeding (Letter at 2-3). See *In re Buick*, 174 B.R. 299, 305 (Bankr. Colo. 1994). In any event, the requested information is plainly discoverable under Rules 7026 and 26. See Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense. . . .”); Fed. R. Bank. P. 7026 (incorporating Fed. R. Civ. P. 26).

J. Rapisardi and M. Bienenstock  
June 14, 2017  
Page 3

Sincerely,

/s/ Gary A. Orseck

Gary A. Orseck



# EXHIBIT D

# Alderson®

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## COURT REPORTING

### Transcript of **9th Public Meeting**

August 4, 2017

*Transcription for Robbins Russell*

Alderson Reporting  
1-800-367-3376  
info@aldersonreporting.com  
<http://www.aldersonreporting.com>

Alderson Reference Number: 72434

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3 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD

4 FOR PUERTO RICO

5

6

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8 SEXTA REUNION DE LA JUNTA

9

10

11 9TH PUBLIC MEETING

12

13

14 9:00 a.m.

15 August 4, 2017

16

17

18

19 El Conquistador Business Meeting Facilities

20 Dr. Pedro Rossello Gonzalez

21 100 Convention Boulevard, Meeting Room 209

22 San Juan, Puerto Rico

1 PARTICIPANTS

2 BOARD MEMBERS:

3 JOSE B. CARRION (Chair), President and Principal  
4 Partner, HUB International CLC, LLC, San Juan, Puerto  
5 Rico

6 CARLOS M. GARCIA, CEO, BayBoston Managers LLC, and  
7 Managing Partner, BayBoston Capital L.P., Newton  
8 Centre, Massachusetts

9 HONORABLE ARTHUR J. GONZALEZ, Senior Fellow, New  
10 York University School of Law, New York, New York; and  
11 Former Judge, Bankruptcy Court, Southern District of  
12 New York, New York, New York

13 ANA J. MATOSANTOS, President, Matosantos  
14 Consulting, Sacramento, California

15 DAVID A. SKEEL, Professor, University of  
16 Pennsylvania Law School, Philadelphia, Pennsylvania

17

18 EX OFFICIO MEMBER:

19 ELIAS SANCHEZ SIFONTE, Former Secretary General of  
20 the Puerto Rico New Progressive Party

21

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1 PARTICIPANTS (CONTINUED)

2 EXECUTIVE TEAM:

3 RAMON RUIZ COMAS, Executive Director

4 JAIME A. EL KOURY, Legal Counsel

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6 PANEL 1:

7 ANDREW WOLFE, Adjunct Professorial Lecturer,  
8 School of International Service, American University,  
9 Washington, D.C.

10 GUSTAVO VELEZ, President and Founder, Inteligencia  
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12 JOSE JOAQUIN VILLAMIL, Chairman and CEO, Estudios  
13 Tecnicos

14 PANEL 2:

15 RICARDO ROSSELLO NEVARES, Governor of Puerto Rico

16 JULIA KELEHER, Secretary of Education, Puerto Rico

17 RAUL MALDONADO, Treasury Secretary, Puerto Rico

18 PANEL 3:

19 JENNIFFER GONZALEZ COLON, Puerto Rico Resident  
20 Commissioner

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1 PARTICIPANTS (CONTINUED)

2 PANEL 4:

3 RAMON M. RUIZ, Deputy Executive Director,  
4 Financial Oversight and Management Board

5 NEYSSA VARELA, Past President, Associated General  
6 Contractors, Puerto Rico Chapter

7 OMAR MARRERO, Executive Director, Puerto Rico  
8 Public-Private Partnerships Authority

9 PANEL 5:

10 DR. NELSON I. COLON TARRATS, President, Community  
11 Foundation of Puerto Rico

12 RAFAEL CORTES DAPENA, President, Angel Ramos  
13 Foundation

14 DRA. NILDA MORALES, President and CEO, Education  
15 and Rehabilitation Society of Puerto Rico (SER de  
16 Puerto Rico)

17 APRIL MANZANO, Finance Director, SER de Puerto  
18 Rico

19 SAMUEL GONZALEZ CARDONA, President and CEO, United  
20 Way of Puerto Rico

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1 PARTICIPANTS (CONTINUED)

2 PANEL 6:

3 ELSIE RUIZ SANTANA, J.D., M.S.S., Director,  
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9 ISABEL RULLAN, Co-Founder and Managing Director,  
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11 PANEL 7:

12 MANUEL J. FERNOS LOPEZ-CEPERO, President, Inter  
13 American University of Puerto Rico

14 ERNESTO VAZQUEZ BARQUET, President, Polytechnic  
15 University of Puerto Rico

16 DR. CARMEN MIRABAL, Institutional Development  
17 Director, Liceo de Arte y Tecnologia

18 PANEL 8:

19 CLARISSA JIMENEZ, President and CEO, Puerto Rico  
20 Hotel and Tourism Association

21 MIGUEL VEGA, Chairman of the Board, Puerto Rico  
22 Hotel and Tourism Association

1 PARTICIPANTS (CONTINUED)

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3 AGUSTIN ARELLANO, Chief Executive Officer,  
4 Aerostar Airport Holdings

5 ARNALDO CRUZ, Director of Research and Analytics,  
6 Foundation for Puerto Rico

7 PANEL 9:

8 FELIPE PALACIOS, Chairperson, Puerto Rico  
9 Pharmaceutical Industry Association

10 KERRI INGALLS, Vice President and Site Leader,  
11 Amgen Manufacturing Ltd., Juncos, Puerto Rico

12 LUCY CRESPO, CEO, Puerto Rico Science, Technology  
13 and Research Trust

14 PANEL 10:

15 IGNACIO ALVAREZ, President and COO, Popular, Inc.

16 SEBASTIAN VIDAL, Executive Director, Parallel 18

17 ALBERTO LUGO, President, Invid

18 LORENZO DRAGONI, Board Member, Aireko Foundation

19 RICARDO ALVAREZ DIAZ, President, Puerto Rico  
20 Builders Association

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1 P R O C E E D I N G S

2 CHAIRMAN CARRION: -- Management Board for Puerto  
3 Rico and we're going to be -- yes, we're giving out the  
4 roll. (Inaudible) from you.

5 (Speaking Spanish)

6 CHAIRMAN CARRION: And I'd like to ask attendance  
7 to please cooperate. We all have in the past to  
8 conducting a productive meeting including keeping cell  
9 phones in silent mode and abstaining from conversation  
10 and comments. Let's proceed and I'd like to conduct a  
11 roll call to determine whose present and quorum. Mr.  
12 Andrew Biggs?

13 MR. BIGGS: Present.

14 CHAIRMAN CARRION: Mr. Carlos Garcia?

15 MR. GARCIA: Present.

16 CHAIRMAN CARRION: Judge Arthur Gonzalez? By  
17 phone, Judge Arthur Gonzalez? All right, we'll --

18 JUDGE GONZALEZ: Present.

19 CHAIRMAN CARRION: Thank you, Judge. (Inaudible)  
20 Gonzalez will be absent from today's meeting. Ana  
21 Matosantos?

22 MS. MATOSANTOS: Present.

1 CHAIRMAN CARRION: And Professor David Skeel?

2 David?

3 MR. SKEEL: I'm present.

4 CHAIRMAN CARRION: Thank you, David.

5 MR. SKEEL: I'm present.

6 CHAIRMAN CARRION: Yes, thank you, David. The Ex  
7 Officio Member of the Governor and his representative,  
8 Christian Sobrino with us here today.

9 MR. SOBRINO: Present.

10 CHAIRMAN CARRION: Welcome. A quorum is present,  
11 and now I'd like to call the meeting to order.

12 I would like to ask General Counsel, Mr. El Koury,  
13 to act as secretary for this meeting.

14 And again, I would like to extend a heartfelt  
15 welcome to Mr. Christian Sobrino, this being his first  
16 public meeting since his appointment as the Governor's  
17 representative to our Board and I would like to take  
18 this opportunity to thank Elías Sánchez for his work  
19 and contribution and for his service to the Board  
20 during his tenure.

21 This morning, I would like to recognize the  
22 presence of Mr. Gerry Portela, Executive Director of

1 the Fiscal Agency -- Fiscal Agency and Financial  
2 Advisory Authority and welcome Gerry, and his  
3 associated colleagues.

4 I'd like to thank all of you in attendance, all of  
5 those here today for this meeting, the ninth meeting of  
6 the Board being held in Puerto Rico and to let  
7 everybody know once again that anyone who is watching  
8 the livestream of the website via the Board's website  
9 [www.oversightboard.pr.gov](http://www.oversightboard.pr.gov). I am pleased to say that  
10 the audio of the meeting via the website is available  
11 in English and in simultaneous Spanish translation. If  
12 you log into the English website, the audio will be in  
13 English. And if you log into the Spanish website, you  
14 will hear the simultaneous translation. So, welcome to  
15 all of you, all of those who are maybe listening in or  
16 watching via the website.

17 Today, we will be dealing with the following  
18 topics that are part of our agenda. Number one,  
19 approval of the June 30th, 2017 meeting minutes; report  
20 by the Chair; administrative matters and the fourth  
21 point, the presentation of the proposed Fiscal Plan for  
22 the Public Corporation for the Supervision and

1 Insurance of Cooperatives, known as COSSEC, by its  
2 acronym in Spanish; assessment and recommendations of  
3 the proposed Fiscal Plan for COSSEC; public comment on  
4 the proposed Fiscal Plan for COSSEC; discussion and  
5 consideration for certification of the proposed Fiscal  
6 Plan for COSSEC. Number five is discussion of an  
7 independent debt investigation and the establishment of  
8 a special committee. Number six is discussion of  
9 pension reforms and number seven is discussion and  
10 public comment and proposed actions regarding  
11 rightsizing measures in the Commonwealth Fiscal Plan.

12 The Board will not be considering today the Fiscal  
13 Plan of the University of Puerto Rico although we are  
14 pleased to announce that the Board has received from  
15 the University its proposed Fiscal Plan, which the  
16 Board will promptly review and eventually certify  
17 should it comply with the certification requirements.

18 Now, let's begin today's work.

19 Our first order of business is to approve the  
20 meetings of the Board's last meeting held on June 30th,  
21 2017. The proposed meetings are included in your  
22 meeting materials. Does anybody have any questions

1 about these minutes?

2 (No response.)

3 CHAIRMAN CARRION: There being no questions, I  
4 would like to ask for a motion to approve said minutes.

5 MS. MATOSANTOS: Mr. Chair, I'd like to move for  
6 approval of the minutes.

7 CHAIRMAN CARRION: Would anybody like to second  
8 that motion?

9 MR. GARCIA: Mr. Chairman, I will second that  
10 motion.

11 CHAIRMAN CARRION: I would like to ask for a voice  
12 vote, please.

13 Those in favor, please say yes.

14 (A chorus of yeses.)

15 CHAIRMAN CARRION: Having no opposition and all  
16 members having voted in favor of the motion, the  
17 minutes are approved.

18 Let me continue now by providing the Board with my  
19 brief report. The Board, as you know, has been  
20 established under PROMESA and Puerto Rico Oversight  
21 Management and Economic Stability Act and the Board's  
22 purpose is to provide a method for Puerto Rico to

1 achieve fiscal responsibility, including appropriate  
2 fiscal reforms, access to capital markets and  
3 infrastructure revitalization.

4 The Board also feels compelled to embrace the  
5 urgent task of working with the people in the  
6 government of Puerto Rico to create the necessary  
7 foundation for economic growth and to restore  
8 opportunity to our people.

9 At our previous public meeting, I have recounted  
10 the Board's steps as required or allowed by PROMESA to  
11 accomplish its statutory mandates. Today, I will  
12 restrict my remarks to progress made after the Eighth  
13 Public Meeting on June 30th of this year.

14 Earlier this week, we issued our first Annual  
15 Report to the President, Congress and the Governor of  
16 Puerto Rico and the legislature as required by PROMESA.  
17 In that report, we reviewed the commerce activities and  
18 milestones of our first year in operation and singled  
19 out efforts of the Board at developing a process for  
20 selecting, implementing and evaluating critical  
21 infrastructure projects under Title V of PROMESA.

22 In addition, recognition of the vital role that

1 economic development plays in the Board's efforts, the  
2 Board made several recommendations in areas which the  
3 federal government can assist the government of Puerto  
4 Rico and the Board to achieve the objectives of PROMESA  
5 as well as to unleash greater, more dynamic economic  
6 activity in the territory.

7 One of those recommendations was to grant Puerto  
8 Rico the flexibility and discretion to shape federal,  
9 social welfare programs to incentivize work.

10 (pause)

11 CHAIRMAN CARRION: All right. We have the  
12 majority of the folks here, so when they come back on,  
13 we'll -- we'll circle back to that vote but in order to  
14 move forward, those in favor, please say yes.

15 (A chorus of yeses.)

16 CHAIRMAN CARRION: Yes. The -- the resolution  
17 passes with the majority of members present.

18 MR. BIGGS: Mr. Chairman, I would like to make the  
19 following motion. Between the adjournment of this  
20 meeting and the opening of the Board's next public  
21 meeting, the Board may consider an executive session  
22 any and all matters it is authorized to consider under

1 PROMESA including one, any certification determinations  
2 authorized by PROMESA including certification  
3 determinations under Section 206 of PROMESA. Second,  
4 any submissions or authorizations authorized by PROMESA  
5 and third, any filings authorized under Title III of  
6 PROMESA in each case that are set forth as part of the  
7 vote to convene such an executive session. The Board  
8 may also act by unanimous written consent between  
9 meetings in accordance with the by-laws with such  
10 consent to include consent by e-vote.

11 MR. GARCIA: Mr. Chair, I will second that motion.

12 CHAIRMAN CARRION: I'd like to ask for a voice  
13 vote. Those in favor of the motion, please say yes.

14 (A chorus of yeses.)

15 CHAIRMAN CARRION: And David and Judge Gonzalez,  
16 would you be voting affirmatively as well for the  
17 motion that Ana Matosantos previously presented?

18 (A chorus of yeses.)

19 CHAIRMAN CARRION: All right. So that would also  
20 -- let the record reflect that -- that resolution  
21 passed unanimously. All the members having voted in  
22 favor of the motion, the resolution is approved and has



1 passed unanimously.

2 Now, I would like to ask Ana Matosantos to give us  
3 a report on the actions the Board took Wednesday to  
4 commence an independent investigation of Puerto Rico's  
5 debt.

6 MS. MATOSANTOS: Thanks, Mr. Chair. As you're  
7 aware and as the Board announced on Wednesday, the  
8 Board intends to initiate a comprehensive investigation  
9 of Puerto Rico's debt and its relationship with fiscal  
10 crisis consistent with the procedures for conducting a  
11 PROMESA investigation adopted by the Board on May 26th,  
12 2017. The investigation will include a review of the  
13 fiscal crisis, its contributors, an examination of  
14 Puerto Rico's debt, an issuance -- and its issuance  
15 including disclosure and selling practices when  
16 issuance of prior debt. The Board will conduct its  
17 investigation pursuant to the authority granted to it  
18 by Congress and the President of the PROMESA.

19 AS you know, the Board has been specifically given  
20 the authority by Congress under PROMESA to conduct an  
21 investigation of Puerto Rico's debt and its connection  
22 to the current fiscal crisis. We consider this

1 investigation an integral part of our mission to  
2 restore fiscal balance and economic opportunity and to  
3 promote Puerto Rico's re-entry into capital markets  
4 pursuant to our responsibilities under law. To carry  
5 the investigation forward, I recommend that a special  
6 committee of the Board be established for the purposes  
7 of among other things, developing in more detail, the  
8 scope of the investigation and appointing an  
9 independent investigator to carry out the  
10 investigation.

11 CHAIRMAN CARRION: Thank you, Ana. Following up  
12 on your recommendation and pursuant to Section 3.9 of  
13 the Board's By-laws, I would like to proceed to  
14 establish the special committee of the Board that will  
15 be in charge of this investigation and hereby designate  
16 and appoint Board members Judge Arthur Gonzalez, Ana  
17 Matosantos, Professor David Skeel and myself to  
18 constitute such special committee.

19 MS. MATOSANTOS: Thank you, Mr. Chair. As we  
20 continue to develop the perimeters of the investigation  
21 and move forward with the employment of the independent  
22 examiners, I think we should be provided this

1 information and I think that as required under PROMESA,  
2 we should make the findings from this investigation  
3 public.

4 CHAIRMAN CARRION: So noted. Now, let's proceed  
5 to the presentation of the proposed Fiscal Plan for the  
6 Public Corporation of the Supervision and Insurance  
7 Cooperatives (COSSEC). I would like to welcome once  
8 again Mr. Portela, the Executive Director of the Puerto  
9 Rico Fiscal Agency and Financial Advisor Authority who  
10 will present the proposed Fiscal Plan for the Public  
11 Corporation for the Supervision and Deposit Insurance  
12 of Puerto Rico (COSSEC). After his presentation, the  
13 Board may proceed to ask questions about the proposed  
14 Fiscal plan.

15 Welcome Gerry.

16 MR. PORTELA: Good morning to all members of the  
17 Financial Oversight and Management Board of Puerto  
18 Rico, Executive Director, Natalie Jaresko, advisors and  
19 general public in attendance. Before you, Gerardo  
20 Portela, Executive Director of the Puerto Rico Fiscal  
21 Agency and Financial Advisory Authority (inaudible).  
22 Today, we'll be discussing the Fiscal Plan for the

1 Corporation for the Supervision and Insurance of the  
2 Cooperatives, better known as COSSEC, for its Spanish  
3 acronym. COSSEC, though designed as a cover entity by  
4 the Oversight Board has not issued public debt, is not  
5 a debtor of obligations that require restructuring, has  
6 no structural deficit and is able to pay all  
7 operational expenses and is not dependent on the  
8 central government funds. COSSEC is the insurer of  
9 deposits and shares in the savings and loans  
10 cooperatives (inaudible) and in such capacity faces  
11 heightened risks related to the claims from insured  
12 clients of Cooperatives due to potential essential  
13 losses (inaudible) invested in bonds issued by the  
14 government of Puerto Rico and its instrumentalities  
15 and/or a run-off of client deposits and shares through  
16 a perceived lack of confidence in the strength of  
17 confidence in the strength of the Cooperatives.

18 Those risks are shared by traditional financial  
19 institutions as well. The Cooperative movement has a  
20 strong following in Puerto Rico with 160 Cooperatives  
21 holding around \$7.9 billion of deposits and shares for  
22 nearly one million customers. This compares

1 approximately to \$45 billion of deposits held by banks  
2 operating in Puerto Rico. COSSEC has adequate capital  
3 to perform its regulatory and insurance duties under  
4 ordinary and relatively stress scenarios.

5 Cooperatives have gained popularity in Puerto Rico  
6 as customers feel a greater sense of loyalty to their  
7 local institutions especially given that the coops are  
8 owned by their members or associates rather than  
9 stockholders. For a (inaudible) in COSSEC, it is of  
10 great importance to collaborate with the government and  
11 the Oversight Board's efforts to proactively seek  
12 alternatives to strengthen the savings and loans  
13 Cooperatives through reforms and other actions that  
14 will support the Cooperatives and their key involvement  
15 and participation in the economic development of Puerto  
16 Rico.

17 Additional, COSSEC (inaudible) in cooperation with  
18 the Oversight Board have requested technical assistance  
19 to the National Credit Union Association to further  
20 strengthen the Cooperatives and make it a more robust  
21 and strong financial sector in Puerto Rico's economy.  
22 Puerto Rico's economy is the safeguard in diversity of

1 capital structures offered by Cooperatives to ensure  
2 balanced, responsible and sustainable economic model  
3 going forward. The Fiscal Plan analyzes COSSEC's  
4 financial condition and its ability to meet the  
5 challenges that may be posed by the Puerto Rico  
6 renegotiation and set forth structural reforms that  
7 strengthen COSSEC'S governance and regulatory powers.  
8 This Fiscal Plan is motivated by the potential role of  
9 Cooperatives as a community-based financial institution  
10 and the measures contemplated therein are designed to  
11 increase their capacity and efficiency in providing  
12 services to their members or associates. They provide  
13 financial services to their members that contribute to  
14 economic development while abiding by cooperative  
15 principles that emphasize the importance of service to  
16 the community and a democratic control.

17 Now, I will leave you with Mr. Alejandro  
18 (inaudible), chief operating officer of FAFAA, who will  
19 present to the Oversight Board a summary of the COSSEC  
20 Fiscal Plan.

21 MR. ALEJANDO (Inaudible). Good morning. Before I  
22 begin, I would like to point out that COSSEC is

1 currently directed by the Cooperative Development  
2 Commissioner, (Inaudible). The Commissioner has  
3 excused herself from this board meeting as she is  
4 currently attending previously scheduled personal  
5 matters. Today, COSSEC is represented by Mr. Pedro  
6 (Inaudible) Assistant Vice President and Mr.  
7 (Inaudible) senior analyst and special aide to the  
8 Executive Director, who are here with us to answer any  
9 technical inquiries that the Board may have and I would  
10 ask they come forward and sit near us, with us.

11 Now, to begin, COSSEC main rules include insurer  
12 of deposits and shares up to \$250,000; two, regulator  
13 of all savings and loans; two, regulator of all savings  
14 and loans cooperatives and non-financial cooperatives;  
15 and, three, promoter of the cooperative model. COSSEC  
16 does not have a structural deficit and comfortably  
17 covers its operating costs, including employee  
18 benefits. It is not dependent on general funds but on  
19 premiums paid by member cooperatives and interests on  
20 its investments. Now, as said by Mr. Portela, COSSEC's  
21 risk is mainly driven by external factors and  
22 reputational risks that stem from the fact that some, I

1 repeat some, of the cooperatives have higher  
2 concentration risks in Puerto Rico bonds and the  
3 reduction and value of set bonds due to a renegotiation  
4 may impact these cooperatives' capital and income.

5 Although recognized as a serious risk, this Fiscal Plan  
6 confirms that COSSEC has the ability to withstand the  
7 impact of the renegotiation under relatively stressed  
8 scenarios. The cooperative system is a pillar of the  
9 Puerto Rico economy serving as the main alternative to  
10 the commercial banking sector.

11 While its funding sources have remained stable  
12 over the years, the cooperatives have been able to grow  
13 their asset base. System assets experienced five  
14 percent growth between fiscal year 2012 and fiscal year  
15 2016. This was primarily due to a \$400 million  
16 increase in loan balances while cash and other assets  
17 remain flat. Some cooperatives are heavily invested  
18 in securities issued by the Puerto Rican government and  
19 its instrumentalities. Although the cooperative system  
20 loan portfolio has been performing adequately showing  
21 great resilience during the economic recession, there  
22 is as high degree of concentration in Puerto Rico debt



1 along the cooperative systems that would compromise the  
2 solvency of some cooperatives. Puerto Rico government  
3 securities account for approximately 65 percent of the  
4 cooperatives' total investment portfolio. In order to  
5 gauge COSSEC's ability to withstand a Puerto Rico debt  
6 renegotiation by its members, the COSSEC team along  
7 with the FAFAA Oversight Board's guidance performed  
8 four different stress tests in this Fiscal Plan. These  
9 stress scenarios were completed in accordance with the  
10 guidelines set by the Fiscal Oversight Board.

11 The first analysis, the capital reserve report.  
12 This is the actuarial report that measures the  
13 sustainability of cooperatives based on the ability to  
14 amortize the government's securities losses over time  
15 by projecting historical return on assets. During the  
16 second half of fiscal year 2017, COSSEC's management  
17 requested an updated version of this actuarial report  
18 for fourth quarter 2016 financial data and the market  
19 value of its investments as of April 2017.

20 The second analysis was based on the same report,  
21 the net research were impacted by subtracting total  
22 Puerto Rico debt losses instead of its amortized amount

1 under regulatory accounting treatment provided by Act  
2 220.

3 The third analysis -- a short term liquidity  
4 analysis stressing the cash and equivalent items  
5 available to (inaudible) subtracting cross deposits  
6 among cooperatives and under deposit runup scenarios in  
7 order to project possible individual needs.

8 Then the fourth analysis which we call the NCUA  
9 analysis, it was replicated by COSSEC. The NCUA  
10 performed an analysis of the Puerto Rico cooperative  
11 system in March 2016. COSSEC updated the report to  
12 include market -- market -- the market value of Puerto  
13 Rico government securities as of April 2017 and the  
14 most recent data available for all insured  
15 cooperatives. This analysis combined capital and  
16 liquidity considerations, so it combines the contents  
17 of the first two analysis. All scenarios reinforced  
18 that under current regulatory framework, COSSEC will  
19 have the adequate capital to perform its duties even  
20 under relatively stressed scenarios.

21 COSSEC also created a liquidity vehicle to  
22 strengthen its position. The newly created cooperative

1 will provide depositor confidence and insure the long-  
2 term sustainability of the coop system and the  
3 corporation. The program is designed to aggregate and  
4 organize system-wide resources to be deployed to  
5 strengthen the capital base of individual cooperatives  
6 and provide additional liquidity if needed.

7 The initial proposal totaling \$533 million in  
8 combined commitments is comprised of approximately \$383  
9 million available for capital injections and an  
10 additional \$150 million for liquidity in exchange for  
11 loan assets. The program will also aim to steer the  
12 system towards a path of long-term sustainability. The  
13 oversight and implementation of the program will be  
14 administered by the cooperative's technical, financial  
15 taskforce as per Memorandum of Understanding which will  
16 be executed.

17 Under the MOU, the parties will exchange  
18 information and provide assistance in connection with  
19 the monitoring of the financial situation, crisis  
20 management, recovery and mitigation. Simultaneously,  
21 the governance reform must be implemented as part of  
22 the new governance model, the committee will steer

1 COSSEC while its Fiscal Plan is in effect and being  
2 implemented. This committee shall exercise all powers  
3 granted to COSSEC's Board of Directors by virtue of any  
4 other law or regulation of the government of Puerto  
5 Rico. The committee shall be the operating arms  
6 spearheading reforms and other actions to further  
7 strengthen the cooperative system and the corporation  
8 and insure an effective and timely execution of the  
9 Fiscal Plan measures.

10 In summary, the plan one, confirms COSSEC's  
11 capacity to perform its regulatory and insurance duties  
12 with adequate capital to support the system under  
13 ordinary and relatively stress scenarios; two,  
14 implements the right governance structure to steer  
15 COSSEC through the current challenges and  
16 implementation of necessary reforms; three, establishes  
17 a coordinated liquidity and capital response to the  
18 Coop-Self initiative with system-wide resources.

19 We are certain that the COSSEC Fiscal Plan  
20 addresses system weaknesses with the utmost  
21 responsibility and that it aims to maintain the  
22 cooperative system as one of the main pillars of the

1 economy.

2 This administration strongly believes that the  
3 measures set forth for the consideration and approval  
4 of the Board will comply with the requirements in  
5 PROMESA while improving COSSEC's role through enhanced  
6 oversight and stronger governance structure.

7 CHAIRMAN CARRION: Thank you, very much, Mr.  
8 (inaudible). Do any Board members have any questions  
9 for management of COSSEC or Mr. Portela or Mr.  
10 (inaudible)?

11 MS. MATOSANTOS: I do but I'll follow other  
12 members if they have questions.

13 CHAIRMAN CARRION: Mr. Garcia?

14 MR. GARCIA: My first question is could you please  
15 expand on what's going to be the composition of that  
16 new committee and what would it entail for that  
17 committee to be implemented and what's the timing that  
18 you currently envision for that committee to be in  
19 place?

20 MR. PORTELA: The committee would be comprised of  
21 three members. One will be the cooperative  
22 commissioner and chairman of the Board of Directors of

1 COSSEC. The second will be the Commissioner of the  
2 Financial Institutions of Puerto Rico and the Executive  
3 Director of FAFAA.

4 MR. GARCIA: Thank you.

5 CHAIRMAN CARRION: Did you have a question, Ms.  
6 Matosantos?

7 MS. MATOSANTOS: Can you -- the information you  
8 shared around the fact that 65 percent of COSSEC's  
9 assets are invested in Puerto Rico's securities was  
10 striking. Can you talk to us a bit more about the  
11 stress case scenarios and how they've been incorporated  
12 into the Fiscal Plan?

13 MALE: Well, the first -- it's not 65 percent of  
14 COSSEC's assets are COSSEC's investment portfolio --

15 MS. MATOSANTOS: Investment portfolio, sorry.

16 MALE: -- is -- does not have a high concentration  
17 of Puerto Rico investment. It's more the stress tests  
18 were performed throughout the Cooperative system,  
19 taking into account that Cooperative members are --  
20 have individual investment policies and portfolios.  
21 There were four stress tests that were performed. The  
22 first one takes into account the special act 220 which

1 allows for a 15-year amortization of losses in Puerto  
2 Rico investments which are classified as special  
3 investments. The second one is the -- does not take  
4 into account that cushion, that 15-year period of  
5 amortization and is obviously a more acid test than the  
6 first one. The third one then took into consideration  
7 different run-off scenarios. Historically, the run-off  
8 percentage has been fairly low, under three percent but  
9 we took -- we were very conservative and stressed  
10 (inaudible) to five, 10, 20 percent scenarios and still  
11 COSSEC had enough capital to withstand such run-offs.  
12 Of course there is a timing issue and something that  
13 cannot be predicted in terms of timing and necessity  
14 but it was taken into consideration in the stress test  
15 and reflected a very good resilience from COSSEC's  
16 perspective. And then the fourth analysis, which is  
17 the one that replicates NCUA exercise, takes into  
18 account both scenarios, the capital stress and the  
19 liquidity scenario and it combines them and it paints a  
20 picture of a relatively strong COSSEC ability to  
21 respond to a possible scenario of stress and in  
22 addition to that, that's why we created that Coop-Self

1 instrument so we could raise capital and liquidity if  
2 it was necessary after getting into the emergency  
3 situation.

4 MS. MATOSANTOS: Sorry, I just want to double back  
5 on the liquidity point because I was referring to the  
6 statement on Page 13 of the Fiscal Plan where you talk  
7 about Puerto Rico government securities account for 65  
8 percent of the (inaudible) portfolio and I want to  
9 understand, your expansion is the issue that that's not  
10 necessarily -- that that is an issue of particular  
11 cooperatives and not necessarily (inaudible)?

12 MALE: Yes. The 65 percent takes into account the  
13 total cooperatives so it's not necessarily one  
14 cooperative might have more concentration than others.  
15 And if that is the case, not all cooperatives are  
16 created equal. Some cooperatives may show weakness but  
17 it's totally unrelated to any type of investment. It's  
18 more of a business as usual type of deal. Though, it  
19 is important that it is highlighted that not all  
20 cooperatives are under the same situation.

21 MS. MATOSANTOS: Can you talk to us about a bit  
22 more about, you know, NCUA and the technical assistance



1 work they provided to date and some of your sense of  
2 how they might assist going forward?

3 MALE: Yes. Well, NCUA, we sent a communication  
4 and we established some cooperation with regards to  
5 technical assistance and technical assistance in this  
6 sense means more support for an aspirational transition  
7 of COSSEC to move to a more robust governance  
8 structure, to a more robust examination process, to  
9 establish more controls and to ensure that these  
10 situations that have occurred in the past don't occur  
11 again. The technical assistance has been offered but  
12 we are still in the conversation periods in looking to  
13 see what the opportunity is and what we can gather from  
14 them and collaborate.

15 MR. PORTELA: I would like to add and go back to  
16 the 65 percent, Ana. Basically, Ms. Matosantos, it's  
17 around \$976 million approximately, the investment  
18 portfolio comprise of around 90 Cooperatives but a very  
19 important fact regarding the stress scenario is that  
20 GDB which represents approximately 44 percent of that  
21 portfolio is -- you know, we're not including the RSA,  
22 we're not including the up-tick on the pricing of the

1 funds. It's basically on an amortized cost of 60  
2 percent and the scenarios passed so basically all  
3 scenarios were reinforced that that COSSEC will have  
4 adequate capital. So, I just want to add to that as  
5 well.

6 MS. MATOSANTOS: And you mentioned the Self  
7 program and other efforts embedded in the Fiscal Plan  
8 to ensure the continued assets, so I appreciate that.  
9 Thanks.

10 MR. GARCIA: If I may, I would like to ask the  
11 Executive of COSSEC if they could give us just a  
12 general overview of how they feel what is the current  
13 status of the Cooperatives as a whole. I mean where do  
14 they see issues at right now? What are they doing on a  
15 practical basis, on a day-to-day basis to deal with it  
16 and also about their commitment to the implementation  
17 of this Fiscal Plan.

18 MALE: Good morning. Basically, what we're doing  
19 right now is monitoring the critical capacity of the  
20 Cooperatives on a weekly basis. Some Cooperative may  
21 be having a little bit of trouble meeting their  
22 standards and deposit, but right now, there's not a big

1 issue on that. Last year, there was a run of deposits  
2 around April. It was below 2.4 percent. It was and  
3 all Cooperatives were able to manage that run quite  
4 well. And right now, about -- the biggest issue is  
5 like we said in our Fiscal Plan, is the Puerto Rico  
6 bonds. That's the main issue with Cooperatives right  
7 now.

8 MR. GARCIA: Would you speak in general of the  
9 total number of Cooperatives? I mean how many do you  
10 feel that are facing liquidity issues as a whole?

11 MALE: As of this moment, maybe about five  
12 Cooperatives that might have liquidity issues and we're  
13 dealing with them on a daily basis. Right now, we're  
14 trying to implement with them some considerations,  
15 voluntarily considerations, so a bigger Cooperative can  
16 absorb the smaller ones. Right now, there's not a  
17 major concern about these Cooperatives.

18 MALE: Yes, I would like to add to that even not  
19 having the Fiscal Plan certified, COSSEC has the legal  
20 capacity to enforce a lot of powers that allow them to  
21 intervene and to manage or administer any cooperative  
22 that faces liquidity or capital issues. So, the

1 framework is there. It's more that our goal with this  
2 Fiscal Plan is to strengthen the ability to execute  
3 those powers at all. So, they are in fact already  
4 implementing some of the preventive measures.

5 MR. GARCIA: And does COSSEC feel that the Fiscal  
6 Plan that is being currently presented to the Board  
7 will give them additional tools to be able to deal I  
8 mean with some of the challenges that the Cooperatives  
9 are facing at this point?

10 MALE: Yes, we do.

11 MR. GARCIA: And are you also committed to the  
12 implementation of this Plan?

13 MALE: Yes, we are very committed to  
14 implementation of the Plan once it's certified by the  
15 Board.

16 MR. GARCIA: And my last question is could you  
17 tell us how the funding, of the COSSEC, the Coop-Self  
18 program will be obtained?

19 MALE: Yes. Essentially, the Coop-Self vehicle  
20 would include the COSSEC available cash which COSSEC  
21 has \$122.5 million in capital available. It has \$107.9  
22 million in reserve for expected losses which are

1 already recognized in 2016 financial statements. It  
2 has an additional \$52.5 million in reserve for  
3 unexpected losses and then there is the opportunity to  
4 enter into an agreement in which the Coop would  
5 compromise or pledge additional cash and the compromise  
6 to purchase loans up to \$150 million for a total of  
7 \$533 million in additional capital that could be  
8 readily injected into the system.

9 MR. GARCIA: Thank you for your responses and I  
10 have no further questions, Mr. Chair.

11 MS. MATOSANTOS: We appreciate, you know, the  
12 stress test, the attention you're taking to this  
13 matter. I'm a 15-year credit union consumer on the  
14 state-side of the equation and a big believer in the  
15 credit union system and their role in overall banking.  
16 You know, looking at the exposure and the inter-  
17 relatedness with where the assets are invested, and the  
18 internal relationship with the overall debt  
19 restructuring situation we find ourselves in, as well  
20 as overall the economic situation and the stress,  
21 appreciate the efforts made thinking closely about  
22 Natalie's assessment of this and steps that might be

1 necessary to ensure that there's adequate support  
2 oversight in place to ensure a continued stable system.

3 CHAIRMAN CARRION: Thank you, Ms. Matosantos. Any  
4 additional questions from the members present? David,  
5 Arthur, any questions?

6 Then, I would like to ask our Executive Director -  
7 -

8 MR. GONZALEZ: I don't have any. Thank you.

9 CHAIRMAN CARRION: Yeah, thank you, Arthur. Then  
10 I would like to proceed to ask our Executive Director,  
11 Ms. Natalie Jaresko, to walk us through the process by  
12 which the Board reviewed and assessed COSSEC's proposed  
13 Fiscal Plan and to present to the Board certain  
14 recommendations regarding the same.

15 MS. JARESKO: Thank you, Mr. Chairman. The Board  
16 and its advisors reviewed COSSEC's proposed Fiscal Plan  
17 for compliance with PROMESA and with the same  
18 principles against which we've evaluated the other  
19 Fiscal Plans. Compliance with PROMESA meaning the  
20 successful fulfillment of Section 201 of PROMESA which  
21 outlines 14 statutory requirements all Fiscal Plans  
22 must achieve. Adherence to the principles outlined by

1 this Board for a once and done approach which ensures  
2 that the plans achieve sustainability and balance  
3 without further measures not already included in the  
4 Plan. As was noted, COSSEC has not issued any debt and  
5 is not a debtor of obligations that require  
6 restructuring. As the insurer of Puerto Rican  
7 Cooperatives, however, COSSEC may face higher demands  
8 on its resources as the institutions that it covers are  
9 affected by losses on the Puerto Rican debt that they  
10 hold as investments. COSSEC has modeled aggressive  
11 stress scenarios comparable to previous analyses done  
12 with federal assistance.

13 While the Board and its advisors recognize the  
14 economics of COSSEC's plan and the reserves it has set  
15 aside for assisting Cooperatives, additional  
16 modifications are needed to ensure the long-term  
17 stability and proper regulation of the Cooperative  
18 system. We wish to stay ahead of any potential  
19 problems.

20 So, first, the Plan should reflect the impact of a  
21 more extensive and realistic resource plan based  
22 primarily on those updated stress scenarios. The

1 Fiscal Plan should be amended to include a detailed  
2 implementation plan with dates for the Coop-Self  
3 program that is also based primarily on the updated  
4 stress scenarios and includes a sufficient human and  
5 financial resource requirements, internal and external  
6 necessary for the success of the program.

7 Second, the Fiscal Plan should be amended to  
8 include a reform plan that re-defines the mission and  
9 governance of COSSEC to eliminate conflicting  
10 regulatory and insurance missions and captive  
11 governance or moves Cooperatives to federal charters  
12 and oversight under the National Credit Union  
13 Administration, NCUA, or other agency with expertise in  
14 the financial supervision field, such as the Office of  
15 Commissioner of Financial Institutions of Puerto Rico  
16 or that reforms the Cooperative charters to reflect  
17 oversight and methodologies comparable to those of the  
18 NCUA.

19 Third, the Fiscal Plan should be amended to  
20 outline the scope of activities that should be  
21 addressed through a request for external assistance  
22 from federal agencies or through the use of external



1 contractors. In addition, current law limits COSSEC's  
2 ability to provide the necessary and adequate health to  
3 Cooperatives that may need it. COSSEC, FAFAA and its  
4 advisors have identified the legislative changes that  
5 will enable COSSEC to provide the regulatory assistance  
6 required to mitigate the effect of any losses on Puerto  
7 Rican debt.

8 The Board has also worked with the government and  
9 its advisors to identify the best way to ensure  
10 independent, unbiased decision making necessary to  
11 deploy COSSEC's program. To support that program, the  
12 Fiscal Plan must be modified to incorporate the  
13 following amendments that describe legislation the  
14 government will submit to the legislature.

15 First, the COSSEC's enabling act be amended to  
16 provide that during the implementation of the Fiscal  
17 Plan, the government will constitute a Committee  
18 composed of the President of the COSSEC Board, the  
19 Executive Director of FAFAA and the Commissioner of  
20 Financial Institutions as Mr. Portela said earlier, in  
21 order to ensure independent management and decision  
22 making of COSSEC's assistance program. The Committee

1 should marshal the regulatory and supervisory expertise  
2 of the Office of the Commissioner of Financial  
3 Institutions to assist with the implementation of the  
4 Fiscal Plan.

5 The committee shall supersede the COSSEC Board and  
6 its powers will be exercised by a majority of its three  
7 members. The committee will be in effect during the  
8 implementation of the Fiscal Plan.

9 Second, to facilitate the assistance program  
10 described in the Fiscal Plan, that the Cooperative  
11 Savings and Credit Unions Act be amended to authorize  
12 the Cooperative to issue preferred shares in an amount  
13 in excess of the amount of its common stock. In  
14 addition, that the act and the COSSEC enabling act be  
15 amended to expressly authorize COSSEC to sell the  
16 assets of a Cooperative to a non-cooperative entity in  
17 the event that COSSEC orders the liquidation,  
18 consolidation or merger of such cooperative.

19 Third, that Act 220 and 2015 must be amended in  
20 order that COSSEC's regulatory powers over a  
21 Cooperative are not limited in any way due to a  
22 Cooperative's investments in bonds or notes issues by

1 the Commonwealth or its instrumentalities.

2 In light of these findings, I'd like to recommend  
3 that the Board certify the COSSEC Fiscal Plan with  
4 these amendments to provide a more detailed  
5 implementation plan to outline a more robust vision for  
6 long-term reform and to describe and submit the  
7 necessary legislation that will enable COSSEC to assist  
8 Cooperatives to its fullest capacity.

9 CHAIRMAN CARRION: Thank you, Ms. Jaresko. Before  
10 we move on the public comment section, another question  
11 has been posed by Ms. Matosantos.

12 MS. MATOSANTOS: Sorry, but just as follow-up  
13 question. You know, I appreciate your work in  
14 analyzing the Fiscal Plan and the suggestions and  
15 changes here. Anything else that we need to be keeping  
16 in mind to ensure that we're staying ahead of this and  
17 that we are keeping the interests of depositors, that  
18 COSSEC is keeping the interests of depositors first and  
19 foremost as it thinks about carrying out its duties.

20 MS. JARESKO: I think besides legislation, these  
21 amendments to the Fiscal Plan, what is going to be most  
22 critical is implementation and having a specific plan,

1 specific named persons and dates to ensure that we are  
2 working on time.

3 MS. MATOSANTOS: Thank you.

4 CHAIRMAN CARRION: Thank you, both. Now, I'd like  
5 to open the floor for public comments. Each person  
6 will have up to three minutes to express their views.  
7 Any person interested in a turn, please stand up and  
8 once I recognize you, we will turn the microphone on  
9 and you will begin your questions or exposition.  
10 Please state your full name and your affiliation if you  
11 have one and speak as clearly as possible.

12 MR. MUDD: Good morning.

13 CHAIRMAN CARRION: Good morning.

14 MR. MUDD: John Mudd and I have a question as to  
15 the -- there's a \$533 million and I was wondering if  
16 that's to cover the losses of the credit union members,  
17 number one. And number two, has there been an  
18 evaluation of the probability of the RSA, if it is  
19 approved, to its continued payment since it depends on  
20 the municipalities and the public corporations of  
21 paying their debts.

22 MALE: The \$533 million that you mentioned, yes,

1 it does deposits as well as any capital shortfalls  
2 resulting from any restructuring of the Puerto Rican  
3 debt.

4 MR. PORTELA: In terms of, I think I expressed  
5 this earlier, the stress scenarios did not include the  
6 RSA for GDB. As of right now, we're in the midst of  
7 legislation for GDB RSA and we're planning accordingly  
8 to close this transaction in the next few months.

9 CHAIRMAN CARRION: Thank you. Anything else, Mr.  
10 Mudd?

11 MR. MUDD: Well, don't you expect, the last answer  
12 was not an answer at all, but that's okay.

13 CHAIRMAN CARRION: Any additional questions from  
14 those present? Very good. Let's proceed to discussion  
15 and consideration for certification of the proposed  
16 Fiscal Plan for the Public Corporation and Supervision  
17 and Insurance Cooperatives, COSSEC. In light of the  
18 importance of the decision by the Board that will be  
19 taken today, I would like to ask for any Board members  
20 that would like to express any additional views.

21 Let's begin with the representative of the  
22 Governor of Puerto Rico. I would like to offer that

1 opportunity to Mr. Christian Sobrino.

2 MR. SOBRINO: Thank you, Mr. Chairman. I'd like  
3 to first congratulate the teams of FAFAA and the team  
4 of COSSEC who have worked for the past month to prepare  
5 a Fiscal Plan that adequately protects the Cooperative  
6 movement of Puerto Rico which is key to our economy.  
7 It is key to our communities throughout the island and  
8 provides credit and banking services to a large part of  
9 the population, more than a millions and that has been  
10 relevant to every consideration we've had in other  
11 parts of the government, including the GDB and the  
12 central government. To the extent I think that they  
13 have done outstanding work and the implementation of  
14 their Fiscal Plan will be carried out in an effective  
15 plan. So, thank you again, Gerry, Dino, and the COSSEC  
16 team.

17 CHAIRMAN CARRION: Thank you, Mr. Sobrino. Would  
18 any additional Board member like to speak and express  
19 themselves about this topic? On the basis of the  
20 report presented by the Board's Executive Director, on  
21 the proposed Fiscal Plan for COSSEC and her  
22 recommendations including the proposed amendments

1 summarized in her presentation, the Chair requests from  
2 the Executive Director whether she would like to  
3 propose a resolution for the Board to consider and vote  
4 upon?

5 MS. JARESKO: Yes, Mr. Chair. I'd like to propose  
6 a resolution and request that Mr. El Koury read the  
7 same into the record.

8 MR. EL KOURY: WHEREAS, on June 30, 2016, the  
9 Federal Puerto Rico Oversight Management and Economics  
10 Stability Act, PROMESA was enacted; and,

11 WHEREAS, Section 101 of PROMESA created the  
12 Financial Oversight and Management Board for Puerto  
13 Rico; and,

14 WHEREAS, Section 201 of PROMESA establishes a  
15 multi-step procedure for the development, review, and  
16 approval of fiscal plans for covered territorial  
17 instrumentalities requiring that one, the proposed  
18 fiscal plan be submitted to the Board; two, the Board  
19 must review the proposed plan and determine whether it  
20 satisfies PROMESA's requirement or that it does not, in  
21 which case the Board must issue a Notice of Violation  
22 and recommended revisions, giving an opportunity to

1 correct the violations; three, revised proposed plan be  
2 then submitted to the Board; and four, if there is a  
3 failure to submit timely a proposed plan and the Board  
4 determines in its sole discretion satisfies PROMESA's  
5 requirement, the Board shall develop and submit to the  
6 Governor and the legislature, its own compliant Fiscal  
7 Plan; and,

8 WHEREAS, on August 1st, 2017, the Board received a  
9 proposed Fiscal Plan for the Public Corporation for the  
10 Supervision and Insurance of Cooperatives, COSSEC; and,

11 WHEREAS, after reviewing the proposed Plan with  
12 the Governor's representatives and analyzing and  
13 deliberating over it with the Board's members,  
14 economists, consultants and attorneys, the Board  
15 recommended revisions to the same and gave the  
16 Governor's representatives the opportunity to revise  
17 the proposed Fiscal Plan; and,

18 WHEREAS, representatives of the Governor and the  
19 Board's experts, consultants and attorneys engaged in  
20 an extensive discussions about the proposed Fiscal Plan  
21 and voiced concerns about the plan, resulting in  
22 further changes incorporated into the proposed Plan;



1 and,

2 WHEREAS, on August 4, 2017, the Board held an open  
3 meeting in which the Governor's representatives  
4 presented the final proposed Fiscal Plan to the Board  
5 and the Public; and,

6 WHEREAS, the Board has had the opportunity to  
7 consider the latest proposed plan and discuss it with  
8 its experts, consultants and attorneys and believes  
9 that with certain amendment, the Plan complies with  
10 PROMESA; and,

11 WHEREAS, the Board provided an opportunity for  
12 public comment on the proposed Fiscal Plan and on the  
13 Board's recommended modifications to such Fiscal Plan;  
14 and,

15 WHEREAS, after substantial deliberations, the  
16 Board has determined to approve and certify the latest  
17 proposed Plan as modified by the following amendments:

18

19 Amendment number one: Impact of a more extensive  
20 and realistic resource plan made (inaudible) an updated  
21 stress scenarios.

22 The Fiscal Plan should be amended to include a

1 detailed implementation plan for the Coop Self program  
2 that is also based primarily on updated stress  
3 scenarios and includes efficient human and financial  
4 resource requirements, internal and external necessary  
5 for the success of the program.

6 The plan should confirm the ability to deploy  
7 resources and the processes for coordinating with  
8 internal and external partners, define decision making  
9 processes for deciding and prioritizing liquidity or  
10 capital infusions for Cooperative consolidation or  
11 wind-down resolutions, address the potential for  
12 greater scope and speed of intervention due and define  
13 a contingency plan if requirements for capital  
14 liquidity assistance exceed COSSEC and partner  
15 resources.

16 Amendment number two, long-term vision for reform.

17 This compliance should be amended to include a reform  
18 plan that redefines the mission and governance of  
19 COSSEC's to eliminate conflicting regulatory and  
20 insurance missions and (inaudible) or moves  
21 Cooperatives after completion of the COSSEC assistance  
22 program to federal charters and oversight under the

1 National Credit Union Administration, NCUA, or another  
2 agency with expertise in the financial supervision  
3 field such as the Office of Commissioner of Financial  
4 Institutions of Puerto Rico, or that reforms  
5 Cooperative charters to reflect oversight and  
6 methodologies comparable to those of the NCUA. The  
7 goal should be a once and done approach to structural  
8 reform for both COSSEC and the corporate entity  
9 supervising COSSEC.

10 Amendment number three, engagement with external  
11 partners. This COSSEC plan should be amended to  
12 outline the scope of activities that should be  
13 addressed when request for external assistance from  
14 federal agencies including the NCUA, the Office of the  
15 Commissioner of Financial Institutions of Puerto Rico,  
16 or through use of external contractors. This amendment  
17 should indicate the scale of external help needed,  
18 should resolve problems in the system widely and the  
19 resources and mechanism for contracting should federal  
20 help be unavailable or inadequate.

21 Amendment number four, Governor's reform. The  
22 composition of COSSEC's Board of Directors and COSSEC

1 Board (inaudible) resulting conflicts of interest that  
2 could prevent COSSEC from not exercising its regulatory  
3 powers. Therefore Act 114 of 2011 as amended, the  
4 COSSEC Enabling Act, must be amended to provide that  
5 during the implementation of the Fiscal Plan, the  
6 Governor will (inaudible) a committee composed of the  
7 President of the COSSEC Board, the Executive Director  
8 of the Puerto Rico and Financial Advisory Authority,  
9 FAFAA, and three, the Commissioner of Financial  
10 Institutions for Puerto Rico. The Committee shall  
11 marshal the regulatory and supervising expertise of the  
12 Office of the Commissioner of Financial Institutions to  
13 assist with the implementation of the Fiscal Plan.

14 The Committee shall supersede the COSSEC Board and  
15 its powers will be exercised by a majority of its three  
16 members. The term of the Committee should be  
17 (inaudible) with the implementation of the Fiscal Plan.

18 Also to avoid any statutory inconsistencies and  
19 impossible authorities of the Cooperative to develop a  
20 commission created pursuant to Act 247-2008, related to  
21 COSSEC, shall be dormant while the Committee is in  
22 effect. And under Amendment number five, Coop Self

1 program, access to liquidity. To facilitate the Coop  
2 Self program described in the Fiscal Plan, Act 2.5-  
3 2002, as amended, the Coop's Act, must be amended to  
4 authorize a Coop to issue preferred shares in an amount  
5 in excess of the amount of its common stock in order to  
6 provide a Cooperative system, access to more sources of  
7 liquidity, the COSSEC act and the enabling act must be  
8 amended to expressly authorize COSSEC to sell the  
9 assets of a coop to a non-coop entity in the event that  
10 COSSEC orders liquidation, consolidation or merger of  
11 such Coop.

12 Amendment number six, COSSEC's oversight  
13 authorities relating to a Coop's holding of government  
14 securities, Act 220-2015 must be amended in order that  
15 COSSEC's regulatory powers (inaudible) are not limited  
16 in any way due to a Coop's investments in bonds or  
17 notes issued by the Commonwealth or its  
18 instrumentalities. Implementation plan and revised  
19 Fiscal Plan. The government shall present to the Board  
20 a plan to implement the above amendments not later than  
21 30 days from the date of adoption of said amendments  
22 and a revised Fiscal Plan that complies with the

1 measures described in said amendments no later than 15  
2 days thereafter, which revised Fiscal Plan shall be  
3 subject to the Board's approval; and,

4 NOW THEREFORE, it is hereby resolved that the  
5 Board approves and certifies the latest proposed Fiscal  
6 Plan for COSSEC pursuant to PROMESA Section 201e as  
7 modified by amendments described above; and,

8 IT IS FURTHER RESOLVED that the Board shall issue  
9 a compliance certification for such Fiscal Plan as  
10 amended to the Governor and the legislature pursuant to  
11 PROMESA Section 201(e).

12 Thank you.

13 MS. MATOSANTOS: Mr. Chair, I'd like to move for  
14 adoption of the resolution to certify the Fiscal Plan  
15 of COSSEC as amended.

16 MR. GARCIA: Mr. Chairman, I will second that  
17 motion.

18 CHAIRMAN CARRION: I'd like a voice vote, please.  
19 Those in favor, please say yes.

20 (Chorus of yeses)

21 CHAIRMAN CARRION: All members having voted --  
22 thank you. All members having voted in favor of the

1 motion, the resolution is approved, and has been passed  
2 unanimously. Now, let us move on to the discussion of  
3 pension reform. I would like to ask member Andrew  
4 Biggs to give us an update regarding the work the Board  
5 has been doing with respect to pension reform in Puerto  
6 Rico.

7 MR. BIGGS: Thank you, Mr. Chairman. As you all  
8 know, when the Board certified the Commonwealth's  
9 Fiscal Plan, it amended it to include changes to Puerto  
10 Rico's government pension systems as part of the  
11 Board's mandate to provide for adequate funding of the  
12 public pension systems under PROMESA. These changes  
13 dealt principally with a system-wide overhaul to  
14 accomplish three things.

15 First, to fund existing pension obligations on  
16 what's called a pay as you go basis, which means that  
17 the government will pay benefits to retirees directly  
18 as those benefits come due rather than attempting to  
19 pre-fund the future benefits via a retirement systems'  
20 investment fund. This aspect would be accomplished  
21 through recently introduced legislation. The following  
22 two aspects of pension reform will be accomplished by a

1 plan of adjustment that the Board is actively working  
2 on at this time.

3 The second aspect is to enroll both active  
4 employees and newly hired workers in a true defined  
5 contribution retirement system in which each employee  
6 has an individual account that segregates their  
7 contributions, both from the government and from the  
8 funds of other employee accounts and protects  
9 employee's contributions to pay for their own future  
10 retirement benefits.

11 Finally, reform will ensure that all newly hired  
12 employees are enrolled in social security. While most  
13 Puerto Rico government employees pay into social  
14 security and will receive benefits from it when they  
15 retire, most teachers, police officers and judges are  
16 not enrolled in social security. Enrolling newly hired  
17 employees and potentially current employees as old as  
18 age 40 in social security would provide those employees  
19 with a more solid and more diversified sources of  
20 income in retirement.

21 Finally, the Board's amendment to the  
22 Commonwealth's Fiscal Plan provided for reduction in



1 benefit outlays of 10 percent by fiscal year 2020 to  
2 ensure the systems can meet their obligations. These  
3 pension benefit reductions would be enacted in a  
4 progressive manner with protections to ensure that no  
5 retiree is pushed below the federal poverty line as a  
6 result of these reductions.

7 In sum, the philosophy behind our approach is  
8 we're trying to end the government's decades long  
9 practice of making promises for pensions that it is not  
10 able to keep. The pension systems will not look as  
11 attractive going forward but they will be more solid  
12 and employees will be more confident that they can  
13 receive the benefits they've come to expect.

14 As part of our continuing dialogue with  
15 stakeholders, representatives of the Board preview  
16 these changes with advisors of the official retiree  
17 committee and the Title III case for the Commonwealth.

18 To provide more detailed information, we have prepared  
19 and today are releasing an explanatory memorandum in  
20 Spanish and in English that describes the changes to  
21 the government's pension systems and provides clarity  
22 with respect to the various aspects of these measures.

1 CHAIRMAN CARRION: Thank you, Andrew. I neglected  
2 to thank Mr. Portela and Mr. (inaudible) and his  
3 colleagues from COSSEC for their presentation so thank  
4 you very much. Thank you, Andrew, for presenting the  
5 Board's position and now, Mr. Christian Sobrino would  
6 like to comment on the Board's position.

7 MR. SOBRINO: Okay. And thank you, Mr. Chairman.  
8 I'd like a moment to comment on the public policy of  
9 the government of Puerto Rico regarding pension reform  
10 as it's being included in the legislation that's being  
11 worked now through the legislative process locally.  
12 The key aspects of the Puerto Rico pension system  
13 reform included in the bill provide for the protection  
14 of workers from the insolvency of the retirement  
15 systems. The employee retirement system would become  
16 insolvent in August and the teachers' retirement system  
17 would become insolvent in September (inaudible). The  
18 government is committed to funding 100 percent of  
19 accumulated benefits for teachers and government  
20 employees. Those people who have spent their life in  
21 service for Puerto Rico should be made whole. The new  
22 law is designed to assume the payment of pensions by

1 the pay/go system which maintains benefits accumulated  
2 to the date the law is enacted for all employees. For  
3 teachers, the defined benefit remains as it is.

4 The payment of pensions to existing retirees was  
5 assumed by the general fund on July 1st since the  
6 retirement systems are unable to meet the payments. In  
7 addition to the pay/go system, we will create a new  
8 defined contribution plan, much like a 401K fund in the  
9 private sector. It is specifically contemplated under  
10 our Fiscal Plan. Employee contribution to this new  
11 plan are already being segregated for this purpose and  
12 will be managed externally. Under this plan, the  
13 retirement savings of government workers and teachers  
14 in Puerto Rico will be segregated from government funds  
15 and managed by a third party external manager with deep  
16 expertise in managing public pension funds. The fund  
17 manager will be selected as part of a competitive  
18 process. It will be the employer's responsibility to  
19 segregate these funds and the government of Puerto Rico  
20 will have not access to them. In fact, the employer  
21 become personally liable if the funds are not  
22 segregated.

1 Relocate all retirement system employees. As part  
2 of a rightsizing measure of the administrative function  
3 any of the employees who work at the retirement system  
4 will be relocated to other government agencies through  
5 the use of a single employer government labor reform  
6 that was recently enacted. As part of this initiative,  
7 we are establishing the retirement committee of the  
8 government of Puerto Rico. As an eleven member  
9 committee made up of both public and private sector  
10 representatives, as Executive Director of FAFAA,  
11 Executive Director Portela will serve as president of  
12 the committee. That is what is included in the bill  
13 and I thought it was adequate to include that in the  
14 public discussion today.

15 CHAIRMAN CARRION: Thank you very much, Mr.  
16 Sobrino. Would any additional board members like to  
17 comment?

18 MS. MATOSANTOS: I'd like to speak to that. I  
19 appreciate the public policy interest in honoring 100  
20 percent of pension obligations and commitments made to  
21 date. I find that interesting in light of the fact  
22 that the initially submitted Fiscal Plan assumed the

1 reduction in pension benefits and the certified Fiscal  
2 Plan that the Board is operating from and that all of  
3 us are operating from as it is the Plan that is  
4 certified decidedly reflects the amendments that were  
5 adopted which include, you know, a ten percent  
6 reduction as outlined by Mr. Biggs and as will be  
7 further described in the paper that is going to be  
8 released later today. I, you know, appreciate the  
9 interest in maintaining the retirement security. I  
10 appreciate the fact that the retirement benefits  
11 average around \$14,000 and the role of those retirement  
12 benefits in terms of the expenditures by retirees in  
13 Puerto Rico as well as the contributions that have been  
14 made, it's good that contributions are now being  
15 segregated as recommended by the Board and as reflected  
16 in the budget going forward. But, unfortunately, we  
17 find ourselves in a situation where honoring 100  
18 percent of the obligations is not workable or, you  
19 know, equal treatment of all of the different folks who  
20 have received promises from the government of Puerto  
21 Rico and are not in a position for those to be honored.  
22 The package as outlined by Mr. Biggs that is

1 consistent with the certified Fiscal Plan and with the  
2 amendments that were adopted with consent at the time,  
3 is the responsible way of moving forward to ensure that  
4 promises are aligned with available resources and that  
5 they're honored on a going forward basis.

6 CHAIRMAN CARRION: Thank you, Ms. Matosantos.  
7 Would you like to comment on that, Mr. Sobrino?

8 MR. SOBRINO: Yes. We will be honoring,  
9 (inaudible) the public policy of the government of  
10 Puerto Rico, it will be legislated. It will be part of  
11 the law of the land here and we will comply with the  
12 funding requirements necessary to keep those promises.  
13 Again, we can have a discussion on that but that is the  
14 policy of the government.

15 CHAIRMAN CARRION: Thank you very much. Any  
16 additional comments from board members? Let's move on  
17 then to discussion of rightsizing measures in the  
18 Commonwealth Fiscal Plan. As you know, the Board's  
19 actions -- I'd like to turn to the Board's actions to  
20 implement the rightsizing measures that we approved on  
21 March 13th of 2017 as part of the certified Fiscal Plan  
22 for the Commonwealth of Puerto Rico.

1           By way of background during the certification  
2   process of the Commonwealth Fiscal Plan, we agreed with  
3   the Governor that our fundamental goal for promoting  
4   structural balance and achieving near term liquidity  
5   over the next three years was to reduce the overall  
6   size of government. In discussing this problem, we  
7   agreed that reducing the size of government was  
8   important, not only to achieve fiscal discipline but  
9   also to encourage a greater share of private sector  
10   development and employment. In pursuit of these goals,  
11   we agreed that rightsizing would include reduction of  
12   subsidies in both personnel and non-personnel measures  
13   to be taken over three years to accomplish an overall  
14   30 percent reduction in the government's operating  
15   expenditures. It was with these shared goals that on  
16   March 13th, 2017, the Board delivered to the Governor  
17   and the legislature its certification of the Fiscal  
18   Plan subject to the inclusion of two amendments as part  
19   of the Fiscal Plan.

20           One of those amendments, the furlough amendment,  
21   stated that the furlough program shall take effect on  
22   the first of July, 2017, unless the Board determined in

1 its sole discretion that all of the following  
2 conditions have been met.

3 Number one, submission of an implementation plan  
4 with \$851 million in rightsizing measures for fiscal  
5 year 2018; and

6 Number two, submission of a liquidity plan with  
7 \$200 million in additional cash reserves by June 30th,  
8 2017.

9 The Board extended the deadline for receiving  
10 these plans from April 30th, 2017, to June 15th, 2017  
11 to allow sufficient time to develop the implementation  
12 plans that are required by the agreed-to Fiscal Plan.  
13 The Board has carefully reviewed the plan submitted by  
14 the government to determine whether they meet the  
15 criteria set forth in the agreed Fiscal Plan. In light  
16 of this background, I would like to ask our Executive  
17 Director, Ms. Jaresko, to describe our review of the  
18 government's plan and present the conclusion of the  
19 Board regarding implementation of the rightsizing  
20 measures contained in the agreed-to Commonwealth Fiscal  
21 Plan. Ms. Jaresko.

22 MS. JARESKO: Thank you, Mr. Chair. First of all,



1 we recognize that the government has made significant  
2 progress in enacting meaningful spending controls to  
3 curb Puerto Rico's history of poor fiscal discipline  
4 and in demonstrating a commitment to bringing spending  
5 in line with Puerto Rico's dire fiscal reality.

6 Notwithstanding these encouraging steps, however,  
7 I'd like to share the Board's perspective on the path  
8 forward. When the Board certified the Fiscal Plan for  
9 the Commonwealth of Puerto Rico, it did so under the  
10 belief that all of Puerto Rico's stakeholders not only  
11 hoped for and deserve but require material change to  
12 the way the government operates. The government has  
13 grown to an unsustainable and unaffordable size and  
14 that trend needs to be reversed starting now.

15 The rightsizing measures were a strategic  
16 objective in and of themselves. Reducing the size of  
17 the Puerto Rican government is not only a means of cost  
18 containment, it is a path towards more reasonable  
19 management of and improvement in the quality of  
20 government services. To accomplish the step change  
21 that is necessary, we need to think differently.  
22 Simply put, we need to adopt a new normal. As with any

1 major transformation, rightsizing the government will  
2 not be easy and we need to think about not only what we  
3 are not going to do anymore, but also what we are going  
4 to do differently and how we are going to translate  
5 these changes into savings.

6 The savings targets laid out in the Fiscal Plan  
7 for fiscal year '18 are just the beginning. The amount  
8 of rightsizing savings the government will need to  
9 achieve to meet its fiscal targets for fiscal year '19  
10 and fiscal year '20 more than double. The only way the  
11 government will achieve these levels of savings is to  
12 begin now, not only removing the obvious areas of  
13 excess in agencies but laying the groundwork for  
14 structural changes to the way it approaches the  
15 delivery of services, staffing, procurement and other  
16 operating norms. It will be difficult to identify what  
17 needs to change and how but it will be significantly  
18 more challenging to execute on that plan.

19 We are pleased to see this government's efforts to  
20 change the status quo but also acknowledge that all  
21 transformations of this scale have deep complexities  
22 and unforeseen hurdles. It is our goal to help ensure

1 the administration is as prepared as possible for this  
2 effort and the Board has evaluated the submitted  
3 rightsizing plans in accordance with that objective.

4 The Board used the standard set of criteria to  
5 evaluate the rightsizing implementation plans described  
6 as follows:

7 First, rightsizing efforts must have a clear path  
8 to implementation. Second, they must represent  
9 permanent and recurring savings. Third, they must  
10 ultimately lead to a sustainable reduction in the size  
11 of the government either through reducing, eliminating  
12 or otherwise changing the nature of services delivered.

13 Let me explain what each of these means.

14 A clear path to implementation includes the  
15 following: the sources of savings is clearly  
16 identified and the savings estimates are based on  
17 reasonable assumptions. Discrete steps to execution  
18 are outlined with a defined owner for each. The  
19 timeline to implementation is feasible and the  
20 implementation costs are identified including both one  
21 time and run rate costs.

22 To be recurring and permanent, the second

1 criterion, the initiative must be characterized by one  
2 or more of the following: a statutory change, a  
3 regulatory change, an issuance of a permanent order,  
4 OMB strict controls or other centralized government  
5 controls or obvious high switching costs, for example  
6 capital investment that would make reversal difficult.  
7 To lead to a sustainable reduction in the size of the  
8 government, the initiative must exhibit a clear and  
9 direct impact on the number and nature of services  
10 provided and /or improvement in the operating model  
11 that enables greater efficiencies. This includes the  
12 implementation of best practice operating models, for  
13 example, centralized procurement, elimination of non-  
14 critical services or change in services or service  
15 level reductions to reflect fluctuating demand or a  
16 more realistic level of demand, for example, lower  
17 utilization of hospitals, schools of population decline  
18 as recently reported by the Secretary of Education.

19 Over the past months, we have worked closely with  
20 the government to understand and assess the plans they  
21 submitted on June 15th for rightsizing according to the  
22 criteria just described. Starting on the left side of

1 the chart with the rightsizing target of \$851 million  
2 as described in the certified Fiscal Plan, we then add  
3 in the reserved reallocations to reach the revised  
4 target as agreed to by the government of \$880 million.

5 The government was able to demonstrate a clear path to  
6 recurring and permanent changes reflected through a  
7 reduction in the size of the government for \$662  
8 million of the \$880 million. That \$662 million is  
9 comprised of \$188 million of savings derived from  
10 personnel measures and \$33 million derived from  
11 additional non-personnel measures. And lastly, the  
12 government reduced a total of \$441 million in direct  
13 subsidies financed by the central government. The  
14 government's effort to develop and share these plans is  
15 a strong indicator of the changing tide in Puerto Rico.  
16 Unfortunately, a gap of \$218 million against the \$880  
17 million rightsizing target still remains as shown in  
18 red. The government's recent announcement that it  
19 intends to implement an incentivized transition program  
20 which could produce significant long-term savings is an  
21 important and promising step in the right direction if  
22 paired with the specifics of which government services

1 will be discontinued, externalized or implemented  
2 differently. Even under the most optimistic of  
3 scenarios, however, the incentivized transition program  
4 will not produce budgetary savings in this fiscal year  
5 fiscal year 2018. Therefore, despite the encouraging  
6 news, it does not alter the Board's conclusion that the  
7 furlough program is necessary this fiscal year to  
8 achieve the rightsizing targets in the Fiscal Plan.

9 After careful and deliberate consideration, it is  
10 the Board's determination that the government must plan  
11 for and execute a furlough program commencing on  
12 September 1st, 2017. The implementation of this  
13 furlough program must result in a net savings of at  
14 least \$218 million for the fiscal year 2018. The Board  
15 will be communicating in writing this determination to  
16 the Governor.

17 In light of the significant progress the  
18 government has made on rightsizing, we want to be clear  
19 that the furlough program being outlined here will have  
20 a far smaller impact on the average public employee  
21 than the one originally contemplated in the Fiscal  
22 Plan. To meet the gap in rightsizing initiatives, this

1 would represent up to a two day per month furlough for  
2 all government employees, with the exclusion only of  
3 front line police and only for the period from  
4 September through the end of fiscal year 2018. This is  
5 in contrast to the furlough program that the certified  
6 Fiscal Plan had incorporated which included four days  
7 per month over the course of the entire fiscal year.  
8 For the average government employee, the substantial  
9 work that was done by this government means a total of  
10 no more than 20 days over the remainder of the fiscal  
11 year versus what was originally envisions as nearly 50  
12 days. The Board is therefore reducing the size of the  
13 furlough program but not repealing it.

14 As the government designs the furlough program, it  
15 is advisable that it adhere to the following  
16 principles: prevent adverse effect on public safety or  
17 critical health services; minimize the impact on any  
18 single government employee, including but not limited  
19 to requiring the participation of all government  
20 employees with the only exceptions being those required  
21 to satisfy the principle of preserving public safety;  
22 and, minimize the crude liability of different

1 furloughs by establishing strict criteria for any  
2 deviation from a standard furlough schedule.

3 Perhaps most important, we want to make clear that  
4 these furloughs are not permanent and it is entirely  
5 within the control of the government to bring them to  
6 an earlier end. The furlough program required by the  
7 Fiscal Plan will remain active until two criteria are  
8 met. First, the required savings of \$218 million have  
9 been achieved or are reasonably expected to be achieved  
10 based on actual fiscal year to date and projected  
11 fiscal year performance; and two, the Board determines  
12 in its sole discretion that the government has made  
13 material and sufficient progress toward identifying  
14 opportunities, developing the plans and beginning to  
15 execute the transformational changes required to truly  
16 right size the government as I have previously  
17 described.

18 Separately, I am announcing that the Board is not  
19 taking any action or requiring that the government  
20 taking any action with respect to Christmas bonuses at  
21 this time. However, we will be monitoring the  
22 government's progress on implementing rightsizing



1 measures including compliance with the furlough program  
2 and make a determination regarding Christmas bonuses in  
3 September.

4 CHAIRMAN CARRION: Thank you, Ms. Jaresko. A few  
5 members have some questions regarding your  
6 presentation.

7 MR. GARCIA: Yes, Mr. Chair, if I may, I would  
8 like to ask a question of Ms. Jaresko. So aside from  
9 the \$200 million in the liquidity plan that was one of  
10 the requirements of the amendment that as I understand  
11 the government has provided in line with the Fiscal  
12 Plan, how much confidence do you have in the financial  
13 controls with regards to the overall budget and the  
14 liquidity of the Commonwealth?

15 MS. JARESKO: As we think about controls over  
16 budget and liquidity, there are three key things that  
17 matter to us: visibility, reporting that is accurate  
18 and timely and effective management. Historically,  
19 Puerto Rico has not had adequate controls which has  
20 been a critical contributor to the dire financial  
21 situation that Puerto Rico finds itself in today. And  
22 while the government has made progress against these

1 objectives, where we are today is still very concerning  
2 and there are still substantial gaps. Yesterday, the  
3 Governor reported that the Commonwealth had \$1.799  
4 billion in cash on hand as of June 30th. While the  
5 Board is pleased with the higher than expected  
6 liquidity balance, the significant variance to prior  
7 expectations highlights the need for more to be done to  
8 ensure transparency, timeliness and accuracy of the  
9 cash forecasting and reporting. Further, to date,  
10 reporting has lacked critical analysis regarding the  
11 variances and the relationship between any one cash  
12 report and Puerto Rico's structural deficit.

13 MS. MATOSANTOS: I have a question. Following up  
14 on Mr. Garcia's question, Mr. Chair, I have a question.

15 CHAIRMAN CARRION: Yes. Go ahead, Ms. Matosantos.

16 MS. MATOSANTOS: Given your experience with  
17 turnaround efforts and what it takes to lead this and  
18 as I appreciate your comments about the fact that  
19 thinking about it is hard, developing the plan is hard,  
20 but implementing is harder, can you talk to us about  
21 what are some measures and some things that you think  
22 are effective in ensuring that, you know, the proof is

1 in fact in the pudding.

2 MS. JARESKO: In my experience, what's become  
3 clear here as time has progressed is that the  
4 Commonwealth is made up of an extraordinary complex set  
5 of inter-related entities that in many cases are  
6 independently managed and then others where there is  
7 some but never complete coordination. And right now  
8 there is no single agency, no group, no person that is  
9 responsible for or has access to a complete picture of  
10 the financial standing and liquidity. As such, one of  
11 the largest gaps around controls that I recommend be  
12 addressed is the ability to have true transparency and  
13 centralized oversight over key budgetary and liquidity  
14 functions across the Commonwealth. When comparing the  
15 situation to other similar municipal corporate  
16 transformations, there have been multiple instances  
17 where an emergency manager or an interim treasury  
18 manager has been appointed to address these issues.  
19 Stepping back to beyond simply establishing appropriate  
20 control mechanisms to provide the necessary  
21 transparency and visibility, it's essential that the  
22 government provides a liquidity plan for all the cash

1 flow of the Commonwealth. To date the information that  
2 is provided by the government has failed to provide a  
3 comprehensive picture of the liquidity flows across all  
4 Commonwealth entities, not just the TSA. In order to  
5 accurately track and evaluate performance, it's  
6 essential that consistent reporting be put in place  
7 across the Commonwealth that has sufficient detail to  
8 monitor and evaluate activity and while some of the  
9 amount of reporting -- some of this reporting has  
10 begun, and that is the good news, a roadmap needs to be  
11 developed for future reporting because it's critical  
12 that we ensure that what we have produced is  
13 comprehensive, reliable, explainable and relatable back  
14 from cash to budget, liquidity to budget.

15 MS. MATOSANTOS: Ms. Jaresko, I really appreciate  
16 your comments because I think it seems -- it's  
17 important to have transparency, it's important to have  
18 information, but it's also, I'm always reminded of the  
19 fact that one data point does not a trend make and  
20 understanding what, why and what it means strikes me as  
21 the critical questions consistent with the three points  
22 as you outlined as important goals in ensuring fiscal

1 discipline (inaudible).

2 CHAIRMAN CARRION: Mr. Sobrino, you will be  
3 recognized shortly. Mr. Garcia, do you have a comment?

4 MR. GARCIA: Yeah. I mean Mr. Chair, if I may, I  
5 mean I believe that there's no doubt that it's critical  
6 to have a timely and comprehensive view of the  
7 government finances and the liquidity position to be  
8 able to achieve the shared goal that both the Board and  
9 the government have to be able to have as much  
10 transparency and visibility as possible. I mean I'm  
11 pleased to hear about the efforts that are being  
12 conducted by the government and the progress that has  
13 been done but it seems that we still require a whole  
14 lot more to be able to achieve that transparency. So,  
15 upon considering the remarks by the Board's Executive  
16 Director about the challenges that we're still facing  
17 with the Commonwealth both budgetary and liquidity  
18 reporting, the oversight and controls, I would like to  
19 propose the following resolution and that resolution  
20 would read as follows:

21 WHEREAS, the Board is tasked with providing a  
22 method for the government of Puerto Rico to achieve

1     fiscal responsibility and access to the capital markets  
2     for which it is critical that the government improve  
3     its fiscal governance, accountability and internal  
4     controls.

5           NOW, THERFORE, IT IS HEREY RESOLVED that the  
6     Executive Director shall one, develop and present to  
7     the Board within 15 days proposals to implement  
8     mechanisms to ensure the effective one, monitoring,  
9     two, oversight, three, transparency, four, reporting,  
10    and fifth, controls in relation to the consolidated  
11    liquidity position and performance against budget for  
12    the Commonwealth of Puerto Rico and to ensure  
13    compliance with implementation of the certified Fiscal  
14    Plan. Two, the Executive Director shall also consider  
15    and recommend to the Board whether it should require  
16    the appointment of a central Commonwealth treasury  
17    manager to oversee the implementation of the Executive  
18    Director's proposal.

19           CHAIRMAN CARRION: There's a motion on the floor.

20           MS. MATOSANTOS: I'd like to second that motion,  
21     Mr. Chair.

22           CHAIRMAN CARRION: I'd like to propose that the

1 motion be approved. Mr. Biggs, would you second the  
2 motion?

3 MR. BIGGS: I second the motion.

4 CHAIRMAN CARRION: Then, I'd like a voice vote  
5 please. Those in favor, say yes.

6 (A chorus of yeses.)

7 CHAIRMAN CARRION: All the members having voted in  
8 favor of the motion, the resolution is approved and has  
9 passed unanimously. Now, the Chair would like to  
10 recognize Mr. Sobrino for some remarks.

11 MR. SOBRINO: Mr. Chairman, I will make my remarks  
12 but I would like as a member of the Board to have the  
13 same opportunity to ask the Executive Director certain  
14 questions before my remarks.

15 CHAIRMAN CARRION: Go ahead.

16 MR. SOBRINO: Preferably it would be before that  
17 resolution. Executive Director, can we agree that the  
18 liquidity forecast of the Board in March was that the  
19 Commonwealth of Puerto Rico would have \$230 million  
20 liquid by June 30th?

21 MS. JARESKO: Yes, that was the forecast of the  
22 Board at the time based on the lack of concrete

1 information and controls that were in place at that  
2 time. And the fact that these two numbers differs is  
3 the point of this discussion.

4 MR. SOBRINO: And can we agree that the current  
5 liquidity shown by the government of Puerto Rico has  
6 demonstrated that that forecast by the Board was wrong?

7 MS. JARESKO: Yes, again I repeat and underline,  
8 it was wrong because of lack of controls, lack of a  
9 system and today we have another number which we hope  
10 is more accurate but we still have a situation where  
11 the lack of controls and systems are in place.

12 MR. SOBRINO: It's a --

13 MS. MATOSANTOS: If I -- if I -- sorry, hold on  
14 for one second. If I may, Ms. Jaresko, just a point of  
15 clarification, the forecast of \$291 million was the  
16 forecast submitted by the government as part of the  
17 certified Fiscal Plan so it was not a Board forecast.  
18 Just making sure we are working from the same set of  
19 data.

20 MR. SOBRINO: It was also part of the Board  
21 forecast and that is what I have been told by everybody  
22 involved and I would appreciate --



1 MS. JARESKO: I think -- I think --

2 MR. SOBRINO: -- and I would appreciate --0

3 MS. JARESKO: Christian. Christian --

4 MR. SOBRINO: Sorry, Madam Executive Director, I  
5 would like --

6 MS. JARESKO: The issue isn't whose forecast it  
7 is. It was the forecast.

8 MR. SOBRINO: It was the forecast. I would just  
9 like my turn to ask questions and not have them  
10 interrupted. Can you tell me, Executive Director, do  
11 you think in your opinion that the senior leadership of  
12 the government of Puerto Rico now is committed to  
13 comply with the Fiscal Plan and to right size  
14 government?

15 MS. JARESKO: Mr. Sobrino, you just announced a  
16 pension policy that's in conflict with the Fiscal Plan  
17 so I unfortunately have to say that today, you said you  
18 would not comply with the Fiscal Plan.

19 MR. SOBRINO: But with the rightsizing of  
20 government, do you agree that we have -- are committed  
21 --

22 MS. JARESKO: I believe that you have commitment

1 but I -- but you have not complied with the Fiscal Plan  
2 in terms of the submission of implementable plans by  
3 the date in the Fiscal Plan.

4 MR. SOBRINO: Okay. And can we agree that over  
5 the past weeks, we have been in works and discussions  
6 to establish the timeline and the reporting structure  
7 that you made reference to in your -- in your comments?

8 MS. JARESKO: Yes.

9 MR. SOBRINO: Okay. So, indeed we have been  
10 working on that same reporting structure, timelines  
11 have been provided and are being executed in connection  
12 with the Board.

13 MS. JARESKO: To date, we've been working on a  
14 timeline for monitoring and reporting that's primarily  
15 related to the TSA. As we ask further questions in  
16 this discussion about the broader Commonwealth  
17 position, we came to this point where we need to  
18 broaden and look at controls across the Commonwealth  
19 and not just over TSA.

20 MR. SOBRINO: And timelines have been provided for  
21 that purpose.

22 MS. JARESKO: Yes.

1 MR. SOBRINO: Yes. So, we are working together in  
2 providing that (inaudible)?

3 MR. JARESKO: Yes.

4 MR. SOBRINO: Okay. Now, Mr. Chairman, I would  
5 actually like to make my remarks.

6 CHAIRMAN CARRION: Proceed.

7 MR. SOBRINO: Mr. Chairman and other members and  
8 other colleagues of the Board, Ms. Jaresko and Mr.  
9 (Inaudible), and good morning to everyone else here  
10 today. Today's agenda included as this last item  
11 discussion, public comment and proposed actions  
12 regarding rightsizing measures in the Commonwealth  
13 Fiscal Plan. Yet, Mr. Chairman, discussion, I do not  
14 believe was truly the spirit behind this portion of the  
15 event.

16 Anonymous statements provided to the press over  
17 the past few days from within sources identified in the  
18 Board, in the personnel, indicated that the matter was  
19 set. The Board wishes today to decree and to impose a  
20 furlough program to the employees of the government of  
21 Puerto Rico. The fact that no agency of the government  
22 was provided a turn to counter present Ms. Jaresko's

1 presentation underlines this concern. Now, Mr.  
2 Chairman, to step back a moment, over the past seven or  
3 eight months, the Board and the government have been  
4 able to work together and overcome differences to push  
5 forward an agenda of fiscal responsibility and economic  
6 stability for the island. And to be clear, the  
7 government, its officials and myself are still and  
8 continue committed to working with the Board and to  
9 meet our targets in the Fiscal Plan, the certified  
10 budget and the Governor's public policy platform.

11 But Mr. Chairman, today on this issue of  
12 furloughs, the government understands that the line  
13 needs to be drawn. There will be no furloughs. You  
14 can take that to the bank and the reasons for that are  
15 many.

16 The first reason is that the public and the people  
17 of Puerto Rico must be assured that there's only one  
18 government in the island and that government is led by  
19 Ricardo Rossello. This fact is recognized and  
20 enshrined in PROMESA as the legislative history of  
21 PROMESA indicates. Through the words of former  
22 commissioner Pedro (Inaudible), the Board will provide

1 guardrails but will not supplant or replace the  
2 territory's elected leaders who will retain primary  
3 control over budgeting and fiscal policy making.  
4 Indeed, in one event where I was present you described  
5 it as setting the size of the room but we get to put  
6 the furniture. This is also the spirit within Section  
7 205 of PROMESA regarding recommendations to promote  
8 financial stability and management efficiencies.

9 Section 205 specifically contemplates measures on  
10 personnel such as furlough as recommendations. As  
11 again Mr. (Inaudible) pointed out in Congress the goal  
12 of Section 205 is not to have parallel governing  
13 structures. The Board does not have the power to  
14 impose its recommendations and in that effect PROMESA  
15 is clear.

16 The second reason is that there also must be  
17 assurance that there is one Fiscal Plan and it is this  
18 document right here. Unilateral amendments in a  
19 separate document are recommendations even if under the  
20 Board's letterhead. The Fiscal Plan provides  
21 rightsizing targets and the government's commitment to  
22 reform the government's framework and operation.

1 Indeed, the Fiscal Plan specifically includes a  
2 provision expressly stating the Fiscal Plan objectives  
3 the government may consider additional measures. The  
4 government of Puerto Rico is committed to rightsizing.  
5 The Governor ran on a platform of rightsizing  
6 government that predates the Board and predates the  
7 enactment of PROMESA itself.

8 The government will meet its fiscal goals but  
9 under the policy established by the government itself  
10 consistent with the Fiscal plan.

11 Since day one, this administration and the  
12 legislature have unenacted unprecedented measures to  
13 place Puerto Rico on the path to fiscal health. This  
14 includes significant cuts to payments to the general  
15 fund that have already today impacted every sector of  
16 the government, including municipalities, NGOs, public  
17 corporations, and the central government itself.

18 The numbers speak for themselves, from the \$230  
19 liquidity projection. For June 2017 the number was  
20 surpassed by almost \$1.6 billion and the sources of  
21 those funds have been shown to the Board.

22 This places Puerto Rico in a much better position

1 to face the grave fiscal challenges ahead and that we  
2 have publicly recognized, like the payment of pensions  
3 and health care.

4 To be clear, we beat the expectations once already  
5 and I commit that we will beat those expectations  
6 again. The Board recognized this on June 30th when it  
7 certified the \$230 billion cash reserve.

8 Mr. Chairman, we will right size the government of  
9 Puerto Rico because we want to and because we need to  
10 for the good of Puerto Rico, not because of the minutes  
11 of an (inaudible) position. We have provided numerous  
12 reports, working papers and other identified sources  
13 for those cuts or those reforms that need to be done,  
14 but we did not participate in the scoring process.

15 Third, we have started on a path of renewing trust  
16 in our tax system, in our financial information and we  
17 have established again unprecedented cost controls that  
18 this Board has even acknowledged in its report to  
19 Congress.

20 It's not perfect but it's definitely much better  
21 than what was there before. Rome was not built in a  
22 day and the government of Puerto Rico will not be

1 reformed in two days. The government will commence its  
2 reporting responsibilities under PROMESA and the Fiscal  
3 Plan in the upcoming weeks as established in those  
4 documents and then we would have a basis of facts on  
5 which to decide what recommendations are appropriate  
6 and which are not.

7 Furthermore, we cannot take lightly the impact on  
8 the economy that this furlough program could have in  
9 conjunction with the cuts that we have already  
10 established in the budget and that we are committed to  
11 taking into effect. This impact may actually unravel  
12 the progress that we have already made.

13 Again, I must reiterate the position -- repeat the  
14 position of the Governor of Puerto Rico. There will be  
15 no furloughs and although we may have a contentious  
16 discussion on this effect, please rest assured that our  
17 commitment to cooperate in all other efforts remains  
18 intact. Thank you.

19 CHAIRMAN CARRION: Thank you, Mr. Sobrino. Before  
20 I open the floor for public comments, would any  
21 additional Board members like to make a statement or  
22 speak?



1 MS. MATOSANTOS: I have some comments and I don't  
2 know if any of my colleagues have comments. We can --

3 MR. GARCIA: I also have some comments, Mr. Chair.

4 CHAIRMAN CARRION: Mr. Garcia, let's begin.

5 MR. GARCIA: So, first of all, thank you, Mr.  
6 Sobrino for the passionate appeal and all the items  
7 that he has discussed but I think it's important that  
8 for the background, for the knowledge of the Board,  
9 maybe for the knowledge of Mr. Sobrino, who was not  
10 involved in some of the discussions. I want to go back  
11 to some of the history and how the Fiscal Plan was  
12 certified because I think this is going to be very  
13 critical to be able to shed light. So under the  
14 discussions in the process of certifying the Fiscal  
15 Plan, the Board imposed certain conditions, which those  
16 conditions were critical and essential in order to  
17 achieve the certification of the Fiscal Plan. There  
18 would have not been a certification by this Board of  
19 that Fiscal Plan if those conditions would have not  
20 been included. Those were conditions that were not  
21 (inaudible), they were not imposed. I mean those were  
22 conditions that were presented to the government.

1 Those conditions were discussed with FAFAA. Those  
2 conditions were discussed with the Governor's  
3 representative and those conditions were even some of  
4 them modified.

5 Those conditions were discussed about the  
6 difficulty of the implementation of some of those  
7 measures and the government requested time in order to  
8 be able to represent that they would be able to comply.  
9 And the Board, I mean the Board wishes this government  
10 to be very successful and to be able to implement and  
11 the Board has and wants to have faith that the  
12 government will be able to comply.

13 But the truth of the matter is the following. I  
14 mean we're already on the second month of the fiscal  
15 budget in which a lot of implementation plans were  
16 presented. I mean 75 percent of those plans have shown  
17 that you can get to 75 percent of what those  
18 requirements are. But there's 25 percent in which to  
19 the satisfaction of the Board after thorough review and  
20 conversation, after extending time so the government  
21 could provide more details on those plans. I mean  
22 those details were not able to be provided.

1           The concern of this Board in terms of our  
2   responsibility is that the effect on the government  
3   employees and on Puerto Rico could be significantly  
4   larger if for some reason which there is a lot of  
5   difficulty in being able to implement solutions. I  
6   mean we all know this is not an easy task. This is a  
7   very difficult task, if in the case that the furlough  
8   is not commenced at this appropriate time, that amount  
9   could be significantly higher. I mean is for some  
10   reason, it is missed. I mean instead of talking about  
11   two days, it is four days. I mean that's a risk that  
12   would be too large. It would be too significant. I  
13   mean this Board has spent a lot of time just going  
14   through every single plan and every single measure. We  
15   want the government to be successful. I mean that is  
16   our job. That's the common interest of all of us here.  
17   But it cannot be at the expense of putting at risk, I  
18   mean further reductions that have planned and that --  
19   and what was included in that Plan. So, I think it's  
20   important to weigh all these requirements as obviously,  
21   I mean this Board would want to have as we have tried  
22   to have a good solution having worked with the

1 government. But this was not a recommendation. I mean  
2 this was a condition to the Plan. This is something  
3 that was consented by the government. I mean there was  
4 no opposition when these conditions were part of that  
5 certified plan. The government representative didn't  
6 say anything. That was March of this year and then  
7 several months passed. We sent the letter to the  
8 government and nobody said that there was an opposition  
9 and that has been an integral part of that. So, I just  
10 want to be able to state all these elements because I  
11 think this is important that this is nothing that is  
12 being done in a capricious way. I mean the government  
13 has known about these. We have had plenty of  
14 discussions of it. You have been working very hard in  
15 trying to comply with those conditions. You have  
16 complied with most of the conditions but unfortunately  
17 not all of them.

18 MR. SOBRINO: Mr. Garcia, I would like to just  
19 state as a matter of record and I am authorized to  
20 state as a matter of record, that the Governor did not  
21 agree to those conditions. Those conditions were  
22 notified to him unilaterally and since the moment that

1 the Fiscal Plan was certified with those "amendments,"  
2 the Governor has been clear that he does not agree with  
3 them. And that is also fact. Regarding the other  
4 items you have mentioned, we have been providing a lot  
5 more line items and a lot more descriptions of how we  
6 plan to get to our target. The scoring process the  
7 Board took upon itself did not include us in the  
8 discussion until later in the -- late in the process  
9 and at that time, a decision had essentially already  
10 been made.

11 So, again, I am happy that we share a commitment  
12 to the fiscal soundness of the island, but we cannot  
13 agree and we cannot implement this program and we  
14 won't. That is the policy; that is the determination  
15 of the government. We take seriously the risk that you  
16 mentioned. It is something that we have taken into  
17 account in making this determination but again, those  
18 conditions were notified but they were never agreed to  
19 and the government has been expressly clear on that  
20 since day one after they were made public.

21 CHAIRMAN CARRION: Thank you, Mr. Garcia. Thank  
22 you, Mr. Sobrino. Do you have something to add, Ms.

1 Matosantos?

2 MS. MATOSANTOS: Sure, Mr. Chair. I want to  
3 concur with Mr. Garcia's points, recollection and  
4 restatement of how we arrived to this point and the  
5 elements of the Commonwealth's Fiscal Plan. I also  
6 want to reiterate and build on the fact that we  
7 recognize the significant work that has been done to  
8 date, the significant progress that has been made, the  
9 significant effort that it's taken to get to a place of  
10 having a certified Fiscal Plan, having a budget that's  
11 generally consistent with that certified Fiscal Plan  
12 and moving in a positive direction. It's not -- as I  
13 think about it, it's not a question of whether there's  
14 a movement in the right direction. It's a question of  
15 degree. It's a question of risk tolerance. It's a  
16 question of an assessment of what are the implications  
17 if efforts fall short. I am reminded of Ms. Jaresko's  
18 comments and consideration that the furlough program  
19 based on those efforts would be substantially smaller  
20 than what was envisioned at the time of certification  
21 of the Fiscal Plan.

22 You know, I am also reminded of her point and I

1 wholeheartedly concur with this that the work is really  
2 hard and substantially harder than one -- than one  
3 things initially. The turnaround efforts, the extent  
4 to which, the way in which I think of it is one has to  
5 manage everything you can possibly manage because  
6 frequently you end up getting curve balls and they  
7 don't necessarily go in the direction they're needed  
8 and the repercussions, the human impact of error is way  
9 too high. It's too late at the last moment to realize  
10 that there's not enough room and that one is facing  
11 either a bigger furlough program or one is facing  
12 challenges in choosing people or, you know, meeting  
13 other critical elements that we're ensuring that the  
14 pension systems can be able to continue making those  
15 payments. Having lived through the cash management  
16 crisis, having lived through the turnaround crisis, I  
17 have an acute sense of what it's like to get the call  
18 from your Director of Corrections that their food  
19 vendors are looking at stopping delivery of food and  
20 what that's going to mean to the institution. That  
21 means to ensure that people can continue to eat. So,  
22 the risk is too high. The, you know, the considerable

1 effort has been made. Mr. Sobrino spoke to the  
2 economic impact of measures and the economic impact is  
3 significant and one that I very much keep in mind but  
4 beyond this for me, it's the human impact. There's  
5 definitely human impact with measures and there's a  
6 human impact associated with reductions in recognize  
7 it, see it with pensioners, see it with employees, see  
8 it in all the different areas of folks that rely on the  
9 critical services the government provides.

10 But the human impact is greater when not enough is  
11 done to manage and thinking about the implementation  
12 plans that we have received, it's just in my view not  
13 there and a furlough program is necessary to ensure  
14 that the budget savings are achieved.

15 And beyond that, I think about it from the  
16 perspective that year one of this Fiscal Plan is the  
17 easiest of the three years. Getting to year three, the  
18 level of transformation required, what it means to  
19 restructure the (inaudible) program so that you can  
20 achieve savings of close to 30 percent from today's  
21 level of expenditure, what it means to transform  
22 government to be able to maintain essential services in



1 a responsible manner at 30 percent less costs, it is  
2 very difficult to develop, let alone actually  
3 implement.

4 So, while I recognize the human impact, while I  
5 recognize the difficulty of this and while I recognize  
6 -- and I'm pleased with the progress that allows for a  
7 reduction of the size of the furlough program, it is my  
8 view that it's imperative that we move forward pursuant  
9 to the certified Fiscal Plan and our determination of  
10 what is needed to achieve and restore fiscal balance in  
11 the islands.

12 MR. SOBRINO: Ms. Matosantos --

13 CHAIRMAN CARRION: Mr. Sobrino, I'd like to  
14 recognize that Mr. Biggs --

15 MR. BIGGS: Thank you. I would like to just make  
16 a quick point regarding pensions. The Fiscal Plan as  
17 submitted by the Governor back in March I believe  
18 contains around a two and a half percent cut in pension  
19 benefits. That is not a level that the Board would  
20 have approved the Fiscal Plan under. We amended it to  
21 include a ten percent reduction in benefits.  
22 Regardless, the position of the government today

1 appears that there will be a zero percent cut in  
2 pension benefits and so, you know, even to the degree  
3 we're referencing the Fiscal Plan as submitted by the  
4 Governor, I don't believe the Governor's current  
5 position is consistent with that plan much less with  
6 the plan as amended by the Board.

7 CHAIRMAN CARRION: Thank you, Mr. Biggs. Mr.  
8 Sobrino, would you like to say something?

9 MR. SOBRINO: Yes, I would like and with this, I  
10 think I can close and allow the public to make  
11 additional remarks. And my remarks are in response to  
12 the human element referenced by Ms. Matosantos. I have  
13 lived my adult life in Puerto Rico under crisis. I  
14 have seen every administration. They have all promised  
15 to establish fiscal responsibility in one year. None  
16 has been able to cut multi-year appropriations. None  
17 has been able to resolve the issues with the GDB. None  
18 have been establishing the controls on tax breaks that  
19 we have established. None have been able to pass labor  
20 reform in under a month. None have been able to pass  
21 comprehensive permitting reform in under a month. None  
22 has been able to do the things that we have been able

1 to do. So, if we're talking about the facts and the  
2 human element, especially in a population that sees its  
3 family members and sees its friends and its colleagues  
4 move to the state side. Every month we have done  
5 everything. We are a present commitment that has not  
6 been seen in this island since probably the times of  
7 (inaudible). So, I can tell you, we will prove this  
8 assumption wrong. We will succeed and the government  
9 of Puerto Rico will be reform as we in Puerto Rico see  
10 fit.

11 CHAIRMAN CARRION: Thank you very much, Mr.  
12 Sobrino. No, I'd like to open the floor for public  
13 comment. Each person has again up to three minutes to  
14 express their views. Any person interested in a turn,  
15 please stand up and once I recognize you, we will turn  
16 the microphone on and it will be taken to your seat.  
17 Please state your name and your affiliation if you have  
18 one and speak as clearly as possible.

19 MR. ROTELL: Jerry Rotell. May I approach the  
20 table?

21 CHAIRMAN CARRION: Of course.

22 MR. ROTELL: I don't have three minutes but I just

1 wanted to first of all congratulate my brother at arms,  
2 Christian Sobrino for the extremely passionate and  
3 factual presentation. Anyway, just wanted to express a  
4 few things regarding the presentation given by  
5 Executive Director Natalie Jaresko. We disagree in a  
6 few things, obviously. We, the government of Puerto  
7 Rico, we have implemented aggressive legislative  
8 actions for the past seven months, over 30 of them,  
9 state of orders all geared toward fiscal  
10 responsibility. We are -- we have the political will.  
11 We are aligned with the legislative assembly as well,  
12 all towards, you know, complying with the Fiscal Plan.  
13 In terms of, you know, they saying that it's an issue  
14 under non-personnel rightsizing, I mean we just  
15 approved the budget a month ago. You're just giving us  
16 a month to make a decision. So, you know, by Section  
17 204(b), I think it's (b) or (a), you know, the  
18 government of Puerto Rico has to comply with the Board  
19 to provide quarterly reports, which all will be due  
20 October 15th and that way the Board can make a decision  
21 whether the government of Puerto Rico is complying with  
22 or not complying with the different measures in terms

1 of cash, budget (inaudible), et cetera, et cetera. So  
2 you're making a decision on August 4th that's two and a  
3 half months before the deadline of the first quarterly  
4 report. So, I mean that kind of concerns me a little  
5 bit.

6 Third, you know, I don't know if you analyzed  
7 this, but possibly the furloughs would impact  
8 economically for the next two fiscal years around \$600  
9 million in the economy. How are we supposed to, you  
10 know, swim if you're putting down pressure of \$600  
11 million in the economy? So that's for me, that's kind  
12 of interesting as well.

13 In terms of the, you know, you've said about  
14 collaboration, we received the scorecard in an informal  
15 way about 10 days ago. How are we supposed to counter  
16 argue or collaborate, you know, in terms of the non-  
17 personnel measures? That's something that also we  
18 (inaudible).

19 So, you know, just want to express, I think we've  
20 had a great collaboration for the past seven months.  
21 We've accomplished a lot -- seven fiscal plans,  
22 liquidity plans, bridge reports, you name it, approved

1 budget, and this item specifically I guess we have not  
2 collaborated directly. And as what I expressed, you  
3 know, that with the government, we have the political  
4 will. We will do this. We will (inaudible) on this.

5 And, to finish it off, you know, I just kind of  
6 wanted to talk about the scorecard specifically. You  
7 know, just to, if the Board can express a little bit on  
8 their methodology on how you went about scoring these  
9 measures. I kind of wanted a little bit more feedback  
10 on that. That will be all. Thank you.

11 CHAIRMAN CARRION: Thank you for expressing your  
12 views. Does anybody have any additional comments? Mr.  
13 (Inaudible)

14 MALE: Yes, my name is Jorge (inaudible). I am  
15 the executive director of (inaudible) and I just wanted  
16 to add our perspective on the different topics that  
17 have been discussed today. Of course, you know, the  
18 discussion going on most recently highlights the  
19 challenges that Puerto Rico faces and the job and the  
20 intention of both the Board and the Governor and this  
21 team to come together and to address those problems.

22 But, as we went through the different topics, I

1 just want to highlight one that has not come up and  
2 I'll start with the pension reform. We applaud,  
3 (inaudible) applaud that pensions be paid to the  
4 fullest possible extent to the government employees.  
5 And, within (inaudible) there are a majority probably  
6 of the 60,000 people that are also retired and are  
7 suffering a much more dramatic impact on their  
8 pensions. The typical Puerto Rico bondholder saved up  
9 their money during their career and invested it.  
10 Unfortunately, in hindsight, 100 percent in Puerto Rico  
11 bonds, which currently are not paying. So, the average  
12 government pensioner gets around \$1200 a month. That  
13 average I don't think is going to be effective in any  
14 instance. But, that's not very different from the  
15 average that a Puerto Rico bondholder would expect to  
16 receive from his investment in bonds. Yet the Fiscal  
17 Plan, which proposes ten percent cuts perhaps in  
18 pensions, two percent cuts in pensions or 100 percent  
19 payment. In contrast to that, in dramatic contrast to  
20 that, the person hold Puerto Rico bonds, a resident in  
21 Puerto Rico, would face a 76 percent cut in what he  
22 gets from -- what he or she gets from their investment

1 in Puerto Rico bonds saving all their life. Now, the  
2 Fiscal Plan, you know, the essential government  
3 component units, spend - in the Fiscal Plan are  
4 spending in the area of \$17 to \$18 billion currently,  
5 of which according to the Fiscal Plan, 96 percent is  
6 essential, although we haven't gotten a clear  
7 definition of what is essential. And overtime, comes  
8 down slightly but then increases to about \$21 billion  
9 in year 10. So within that, all the expenses go down  
10 and then go back up. The debt service is still held as  
11 you know around \$787 million of the \$3.4 billion  
12 average that those 10 years would require.

13 So, what I'm highlighting here is that there are  
14 60,000 people in Puerto Rico and of those, not all are  
15 that needy but certainly the very wealthy of those,  
16 even if there were 5,000 which there are not, there  
17 would still be 54,000 that do depend on their savings.

18 And those are not being - those are being affected  
19 dramatically as I said, in the Fiscal Plan proposing 74  
20 percent cut in those payments, you know, the debt  
21 service payments, and those are not being mentioned.

22 And the payments to a local bondholder represent



1 more than one and half percent GNP. That's going to be  
2 cut by 76 percent, that one and a half. So, how are we  
3 going to have economic growth -- that all these things  
4 affect economic growth, not just the government  
5 spending. The payment of the debt service affect  
6 economic growth dramatically, over one and a half  
7 percent. And the other part is people are -- the local  
8 population at one point held over 30 percent of the  
9 total outstanding debt. In 2012, it was \$25 million of  
10 the approximately \$70 held by Puerto Ricans. So, to  
11 return -- that 30 percent of the borrowing came from  
12 the local market. To the extent those bondholders are  
13 not treated more equitably, more reasonably, they will  
14 never return to lend money to the government.

15 So, return to capital markets is one of the  
16 Board's objectives as well as balancing the budget.  
17 But, we just don't see how those can -- how economic  
18 growth and return to capital markets can be achieved  
19 given the Fiscal Plan. And again, we applaud paying  
20 the pensions. We recognize the Coops who is the only  
21 sector within the financial industry in Puerto Rico  
22 that has grown since the last five years, they've

1 grown. All the other sectors have reduced their assets  
2 by almost 50 percent. So, it's dramatic that the Coops  
3 are there and they are a big bondholder as was  
4 mentioned here. They have \$965 million at stake here.  
5 So, that's what I wanted to bring up which hadn't been  
6 mentioned in the discussion. Thank you.

7 CHAIRMAN CARRION: Thank you, Mr. (inaudible).  
8 Would anybody like to express -- anybody else like to  
9 express their views regarding the furlough issue? No.  
10 Well, thank you very much.

11 Now, I'd like to move on. On the basis of the  
12 report presented by the Board's Executive Director on  
13 the implementation of the furlough program, the Chair  
14 requests from the Executive Director whether she would  
15 like to propose a resolution for the Board to consider  
16 and vote upon?

17 MS. JARESKO: Yes, Mr. Chair. I would like to  
18 propose a resolution and I would request Mr. El Koury  
19 to read the same into the record.

20 MR. EL KOURY: On June 30, 2016, the Federal  
21 Puerto Rico Oversight Management and Economics  
22 Stability Act, PROMESA was enacted; and,

1 WHEREAS, Section 101 of PROMESA created the  
2 Financial Oversight and Management Board for Puerto  
3 Rico; the Board, and,

4 WHEREAS, on March 13, 2017, after holding a public  
5 hearing, the Board certified the Governor's proposed  
6 Fiscal Plan for the Commonwealth subject to certain  
7 amendments adopted at the March 13, 2017 meeting; and,

8 WHEREAS, on April 15, 2017 and May 31st, 2017, the  
9 Board approved certain revisions to the previously  
10 certified Fiscal Plan for the Commonwealth and  
11 recertified the Fiscal Plan as so revised; and,

12 WHEREAS, the certified Fiscal Plan for the  
13 Commonwealth of Puerto Rico provides for the  
14 implemental of a furlough program if the Board  
15 determines in its sole discretion that certain  
16 conditions are not met; and,

17 WHEREAS, the Board has determined in its sole  
18 discretion that such conditions have not been met.

19 NOW, THEREFORE, IT IS HEREBY RESOLVED that the  
20 government must plan for and execute a furlough program  
21 commencing on September 1, 2017, the implementation of  
22 which must result in a net savings of at least \$280

1 million for fiscal year 2018 and two, the furlough  
2 program will remain active until two criteria are met.

3 One, the required savings of \$280 million having been  
4 achieved or are reasonably expected to be achieved  
5 based on actual fiscal year to date and predicted  
6 fiscal year performance and, two, the Oversight Board  
7 determines in its sole discretion that the government  
8 has made material and sufficient progress toward  
9 identifying opportunities, developing plans and  
10 beginning to execute transformational changes required  
11 to truly right size the government.

12 CHAIRMAN CARRION: Thank you, Mr. El Koury. I  
13 move that that resolution be approved.

14 MR. BIGGS: I second the motion.

15 CHAIRMAN CARRION: I would like to ask for a voice  
16 vote.

17 Those in favor of yes - in favor, please say yes.

18 (A chorus of yeses.)

19 CHAIRMAN CARRION: All members having voted in  
20 favor of the motion, the resolution is approved and it  
21 has passed unanimously. Since we have no other matters  
22 to cover, I move that we adjourn this meeting.

1 MS. MATOSANTOS: I second that motion.

2 CHAIRMAN CARRION: I would like to ask for a voice  
3 vote.

4 Those in favor, please say yes.

5 (A chorus of yeses.)

6 CHAIRMAN CARRION: All members having voted in  
7 favor -- thank you, all members having voted in favor,  
8 the meeting is now adjourned.

9 Thank you very much.

10 (Whereupon, the meeting was adjourned.)

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# EXHIBIT E



**RESOLUTIONS ADOPTED AT THE NINTH PUBLIC MEETING OF THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO HELD ON AUGUST 4, 2017 IN FAJARDO, PUERTO RICO**

**Resolution # 1**

The Board confirms and approves the following Unanimous Written Consents adopted by the Board since the adjournment of the Board's last public meeting:

1. Unanimous Written Consent dated July 11, 2017 Approving Revised, Compliant Budget for the Commonwealth of Puerto Rico, as Corrected
2. Unanimous Written Consent dated July 12, 2017 Approving Certified Fiscal Plan for Government Development Bank for Puerto Rico, as Revised
3. Unanimous Written Consent dated July 12, 2017 Approving Authorization of Government Development Bank for Puerto Rico and Certification of Restructuring Support Agreement pursuant to Title VI of PROMESA.

**Resolution # 2**

Between the adjournment of this meeting and the opening of the Board's next public meeting, the Board may consider in executive session any and all matters that it is authorized to consider under PROMESA, including (1) any certification determinations authorized by PROMESA, including certification determinations under Section 206 of PROMESA, (2) any submissions or authorizations authorized by PROMESA and (3) any filings authorized under Title III of PROMESA, in each case that are set forth as part of the vote to convene such executive session. The Board may also act by unanimous written consent between meetings in accordance with the Bylaws, with such consent to include consent by email.

**Resolution # 3**

WHEREAS, on June 30, 2016, the federal Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") was enacted; and

WHEREAS section 101 of PROMESA created the Financial Oversight and Management Board for Puerto Rico (“the Board”); and

WHEREAS section 201 of PROMESA establishes a multi-step procedure for the development, review, and approval of fiscal plans for covered territorial instrumentalities, requiring that (i) the proposed fiscal plan be submitted to the Board; (ii) the Board must review the proposed plan and determine either that it satisfies PROMESA’s requirements or that it does not, in which case, the Board must issue a notice of violation and recommended revisions giving an opportunity to correct the violations; (iii) revised proposed plan be then submitted to the Board; and (iv) if there is a failure to submit timely a proposed plan the Board determines in its sole discretion satisfies PROMESA’s requirements, the Board shall develop and submit to the Governor and the Legislature its own compliant fiscal plan; and

WHEREAS, on August 1, 2017, the Board received a proposed fiscal plan for the Public Corporation for the Supervision and Insurance of Cooperatives (“COSSEC”); and

WHEREAS, after reviewing the proposed plan with the Governor’s representatives and analyzing and deliberating over it with the Board’s members, economist, consultants, and attorneys, the Board recommended revisions to the same and gave the Governor’s representatives the opportunity to revise the proposed fiscal plan; and

WHEREAS representatives of the Governor and the Board’s experts, consultants, and attorneys engaged in extensive discussions about the proposed fiscal plan and the Board’s concerns about the plan, resulting in further changes incorporated into the proposed plan; and

WHEREAS, on August 4, 2017, the Board held an open meeting at which the Governor’s representatives presented the final proposed fiscal plan to the Board and the public; and

WHEREAS the Board has had the opportunity to consider the latest proposed plan and discuss it with its experts, consultants, and attorneys, and believes that, with certain amendments, the plan complies with PROMESA; and

WHEREAS the Board provided an opportunity for public comment on the proposed fiscal plan and on the Board’s recommended modifications to such fiscal plan; and

WHEREAS, after substantial deliberations, the Board has determined to approve and certify the latest proposed fiscal plan, as modified by the following amendments:

**Amendment No. 1 – Impact of a more extensive and realistic resource plan, based primarily on updated stress scenarios.** The Fiscal Plan should be amended to include a detailed implementation plan for the COOP-SELF program that is also based primarily on the updated stress scenarios and includes sufficient human and financial resource requirements, internal and external, necessary for the success of the program. The plan should: confirm the ability to deploy resources and the processes for coordinating with internal and external partners; define the decision making process for deciding and prioritizing liquidity or capital infusions, cooperatives consolidation, or wind-down resolutions; address the potential for greater scope and speed of intervention due; and define a contingency plan if requirements for capital and liquidity assistance exceed COSSEC and partners’ resources.



**Amendment No. 2 – Long-term vision for reform.** The Fiscal Plan should be amended to include a reform plan that redefines the mission and governance of COSSEC to eliminate conflicting regulatory and insurance missions and captive governance; or moves cooperatives (after completion of the COSSEC assistance program) to federal charters and oversight under the National Credit Union Administration (“NCUA”) or another agency with expertise in the financial supervision field, such as the Office of Commissioner of Financial Institutions of Puerto Rico, or that reforms cooperative charters to reflect oversight and methodologies comparable to those of the NCUA. The goal should be a “once-and-done” approach to structural reform for both COSSEC and the cooperatives it supervises.

**Amendment No. 3 – Engagement with external partners.** The Fiscal Plan should be amended to outline the scope of activities that should be addressed through requests for external assistance from federal agencies, including the NCUA, the Office of the Commissioner of Financial Institutions of Puerto Rico or through use of external contractors. This amendment should indicate the scale of external help needed should problems in the system widen, and the sources and mechanisms for contracting should federal help be unavailable or inadequate.

**Amendment No. 4 – Governance Reform.** The composition of COSSEC’s Board of Directors (the “COSSEC Board”) may result in conflicts of interest that could prevent COSSEC from properly exercising its regulatory powers. Therefore, Act 114-2001 (as amended, the “COSSEC Enabling Act”) must be amended to provide that during the implementation of the fiscal plan the Government will constitute a committee (the “Committee”) composed of: (1) the President of the COSSEC Board; (2) the Executive Director of the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF,” for its Spanish acronym); and (3) the Commissioner of Financial Institutions. The Committee shall marshal the regulatory and supervising expertise of the Office of the Commissioner of Financial Institutions to assist with the implementation of the fiscal plan.

The Committee shall supersede the COSSEC Board and its powers will be exercised by a majority of its three members. The term of the Committee should be coterminous with the implementation of the fiscal plan. Also, to avoid any statutory inconsistencies, any possible authorities of the Cooperative Development Commission created pursuant to Act 247-2008 related to COSSEC shall be dormant while the Committee is in effect.

**Amendment No. 5 – COOP-SELF Program; Access to Liquidity.** To facilitate the COOP-SELF program described in the fiscal plan, Act 255-2002 (as amended, the “Coops Act”) must be amended to authorize a coop to issue preferred shares in an amount in excess of the amount of its common stock.

Moreover, to provide the cooperative system access to more sources of liquidity the COSSEC Enabling Act and the Coops Act must be amended to expressly authorize COSSEC to sell the assets of a coop to a non-coop entity in the event that COSSEC orders the liquidation, consolidation or merger of such coop.

**Amendment No. 6 – COSSEC’s Oversight Authorities Relating to a Coop’s Holdings of Government Securities.** Act 220-2015 must be amended in order that COSSEC’s regulatory powers over a cooperative are not limited in any way due to a coop’s investments in bonds or notes issued by the Commonwealth or its instrumentalities.

**Implementation Plan and Revised Fiscal Plan:**

The Government shall present to the Board a plan to implement the above amendments by no later than 30 days from the date of adoption of said amendments and a revised fiscal plan that complies with the measures described in said amendments no later than 15 days thereafter, which revised fiscal plan shall be subject to the Board's approval; and

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Board approves and certifies the latest proposed fiscal plan for COSSEC pursuant to PROMESA § 201(e), as modified by the amendments described above; and it is

FURTHER RESOLVED that the Board shall issue a compliance certification for such fiscal plan, as amended, to the Governor and the Legislature pursuant to PROMESA § 201(e).

**Resolution # 4**

WHEREAS, the Board is tasked with providing a method for the Government of Puerto Rico to achieve fiscal responsibility and access to the capital markets, for which it is critical that the Government improves its fiscal governance, accountability and internal controls;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT, the Executive Director shall:

1. Develop and present to the Board, within fifteen (15) days, proposals to implement mechanisms to ensure the effective (i) monitoring, (ii) oversight, (iii) transparency, (iv) reporting and (v) controls in relation to the consolidated liquidity position and performance against budget for the Commonwealth of Puerto Rico, and to ensure compliance with implementation of the certified Fiscal Plan.

2. The Executive Director shall also consider and recommend to the Board whether it should require the appointment of a Central Commonwealth Treasury Manager to oversee the implementation of the Executive Director’s proposals.

**Resolution # 5**

WHEREAS, on June 30, 2016, the federal Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”) was enacted; and

WHEREAS section 101 of PROMESA created the Financial Oversight and Management Board for Puerto Rico (“the Board”); and

WHEREAS, on March 13, 2017, after holding a public hearing, the Board certified the Governor’s proposed fiscal plan for the Commonwealth, subject to certain amendments adopted at the March 13, 2017 meeting; and

WHEREAS, on April 15, 2017 and May 31, 2017, the Board approved certain revisions to the previously certified fiscal plan for the Commonwealth and recertified the fiscal plan as so revised; and

WHEREAS the certified fiscal plan for the Commonwealth of Puerto Rico provides for the implementation of a furlough program if the Board determines in its sole discretion that certain conditions are not met; and

WHEREAS the Board has determined in its sole discretion that such conditions have not been met;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Government must plan for and execute a furlough program, commencing on September 1, 2017, the implementation of which must result in a net savings of at least \$218 million for fiscal year 2018.

2. The furlough program will remain active until two criteria are met: (1) the required savings of \$218 million have been achieved or are reasonably expected to be achieved based on actual fiscal year to date and projected fiscal year performance; and (2) the Oversight Board determines in its sole discretion that the Government has made material and sufficient progress toward identifying opportunities, developing plans, and beginning to execute the transformational changes required to truly right-size the Government.

# EXHIBIT F



GOVERNOR OF PUERTO RICO

Ricardo Rosselló Nevares

August 4, 2017

P2  
The President  
The White House  
1600 Pennsylvania Avenue, Northwest  
Washington, DC 20500

The Majority Leader of the Senate  
United States Capitol  
Washington, DC 20515

The Speaker of the House of Representatives  
United States Capitol  
Washington, DC 20515

Re: Explanation for Government of Puerto Rico's Rejection of Financial Oversight Board's Furlough Program Recommendation Made Pursuant to Section 205(a) of the Puerto Rico Oversight, Management, and Economic Stability Act

Dear Mr. President, Mr. Majority Leader, and Mr. Speaker:

I am submitting this letter pursuant to section 205(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* ("PROMESA"), in response to the recommendation of the Financial Oversight and Management Board for Puerto Rico (the "Board") that the Government of Puerto Rico (the "Government") implement a Furlough Program (as defined below) that would impact approximately 138,000 government employees. Today, August 4, 2017, the Board passed a Resolution adopting the Furlough Program (the "Board Recommendation") and attempting to impose the Furlough Program on the Government beginning September 1, 2017. The Government has notified the Board, in accordance with PROMESA section 205(b)(1), that it disagrees with the Board Recommendation.<sup>1</sup>

<sup>1</sup> PROMESA § 205(b)(1) provides that "In the case of any recommendations submitted under subsection (a) that are within the authority of the territorial government to adopt, not later than 90 days after receiving the recommendations, the Governor or the Legislature (whichever has authority to adopt the recommendation) shall



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Set forth below is a statement explaining the Government's decision to reject the Board Recommendation.<sup>2</sup>

## I. Background

On June 30, 2016, PROMESA was signed into law. In enacting PROMESA, Congress found that “[a] combination of severe economic decline, and, at times, accumulated operating deficits, lack of financial transparency, management inefficiencies, and excessive borrowing has created a fiscal emergency in Puerto Rico.”<sup>3</sup> The current fiscal emergency threatens the Government's ability to provide its citizens with essential services and “has also affected the long-term economic stability of Puerto Rico by contributing to accelerated outmigration of residents and businesses.”<sup>4</sup> Accordingly, PROMESA was enacted to provide a “comprehensive approach to fiscal, management, and structural problems.”<sup>5</sup>

In order to better understand the nature of the fiscal emergency facing Puerto Rico, Congress established a Congressional Task Force on Economic Growth in Puerto Rico (the “Task Force”).<sup>6</sup> On December 20, 2016, the Task Force issued a Report to the House and Senate finding that a deep history of significant economic, financial, and social challenges has led to the current crisis.<sup>7</sup> The Task Force emphasized that the current challenges facing Puerto Rico “are enduring, not transitory.”<sup>8</sup>

PROMESA also established the Board to provide independent oversight and work with the Government to achieve fiscal responsibility and access to the capital markets.<sup>9</sup> On August 31, 2016, President Obama appointed seven members of the

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submit a statement to the Oversight Board that provide notice as to whether the territorial government will adopt the recommendations.”

<sup>2</sup> PROMESA § 205(b)(3) provides that “If the Governor or the Legislature (whichever is applicable) notifies the Oversight Board under paragraph (1) that the territorial government will not adopt any recommendation submitted under subsection (a) that the territorial government has authority to adopt, the Governor or the Legislature shall include in the statement explanations for the rejection of the recommendations, and the Governor or the Legislature shall submit such statement of explanations to the President and Congress.”

<sup>3</sup> PROMESA § 405(m)(1).

<sup>4</sup> PROMESA § 405(m)(2) and (3).

<sup>5</sup> PROMESA § 405(m)(4).

<sup>6</sup> PROMESA § 409(a).

<sup>7</sup> Congressional Task Force on Economic Growth in Puerto Rico, Report to the House and Senate at 7 (Dec. 12, 2016).

<sup>8</sup> *Id.*

<sup>9</sup> PROMESA §§ 101(b)(1), 405(m).

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Board. PROMESA requires the Governor to put forward a fiscal plan to provide a foundation for the Government's budgets and efforts to restructure the Government's obligations.<sup>10</sup> The Board then, in its sole discretion, reviews the proposed fiscal plan and determines whether it satisfies the requirements of PROMESA.<sup>11</sup>

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**II. Significant Progress Towards Achieving Fiscal Responsibility**

In the middle of a fiscal emergency of unprecedented severity this administration was sworn into office in the early hours of January 2, 2017. After the prior administration failed for six months to put forward an acceptable fiscal plan, within fifty-seven days after taking office we submitted a fiscal plan that was certified by the Board on March 13, 2017 (as subsequently amended, the "Fiscal Plan"). During the last six months much progress has been made to ensure that the Government complies with the revenue enhancement and expenditure control measures in the Fiscal Plan, including significant efforts to right size the Government.

The Government has enacted significant structural reform measures that (i) dismantle structural barriers to fiscal reform; (ii) empower a single government agency with the necessary legal authority to implement fiscal and structural reform across all governmental units; (iii) institute emergency powers giving wide latitude to the Governor to effectuate necessary fiscal policy; (iv) reduce excessive governmental regulation that hampers economic development; and (v) enhance the economic competitiveness of Puerto Rico. Meaningful reform of the Government's operations will not be possible absent these legal and regulatory structural reforms that are directed at removing the historical impediments that have caused many prior efforts at reform to fail.

The structural reforms put into place by the Government established a framework that allowed for timely approval of the first balanced budget in the history of Puerto Rico. The Government and Board have worked in cooperation to propose and approve a budget for Fiscal Year 2018 (the "Budget"). The baseline assumptions and forecasts in the Fiscal Plan work hand-in-hand with the Budget. It is for this reason that under PROMESA a budget cannot be proposed until a fiscal plan has been certified by the Board.<sup>12</sup> With the Fiscal Plan as the foundation of the Government's finances, the Budget represents the implementation of necessary controls over expenditures and revenues in order to ensure compliance with the Fiscal Plan.

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<sup>10</sup> PROMESA § 202.

<sup>11</sup> *Id.*

<sup>12</sup> PROMESA § 202(c).



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In addition to the measures provided for in the Fiscal Plan and Budget, the Government has taken significant actions over the last six months, beyond those required by PROMESA and the Board, directed at enhancing revenue and controlling expenditures through Government right sizing.<sup>13</sup> These significant revenue enhancement and expenditure control measures have resulted in over \$200 million in savings to the Government.

The Government and the Board have also worked together to prepare and initiate cases under Title III of PROMESA for the Commonwealth of Puerto Rico, the Puerto Rico Highways and Transportation Authority, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, the Puerto Rico Sales Tax Financing Corporation, and the Puerto Rico Electric Power Authority (collectively, the "Title III Cases"). The first of the Title III Cases were commenced on May 3, 2017. In accordance with PROMESA, Chief Justice John Roberts appointed United States District Judge Laura Taylor Swain to preside over the Title III Cases. In order to bring the Title III Cases to a swift conclusion, Judge Swain appointed a mediation panel consisting of five distinguished sitting federal judges.<sup>14</sup> The Board, the Government, and all major creditor consistencies have agreed to participate in mediation.

<sup>13</sup> These actions include: (i) directing government agencies to cut their total fiscal year 2017 budgets by 10% from January to June 2017 pursuant to Executive Order 2017-001; (ii) creating a Center for Federal Opportunities within the Governor's office to provide consulting services to agencies and NGOs to better take advantage of federal funding opportunities pursuant to Executive Order 2017-002; (iii) declaring an infrastructure state of emergency and providing an expedited process for approval and implementation of critical infrastructure projects pursuant to Executive Order 2017-003; (iv) creating an interagency group to coordinate work by various agencies to streamline permitting and regulatory approvals for critical infrastructure projects pursuant to Executive Order 2017-004; (v) establishing a public policy requirement that government agencies have zero-based budgets starting in fiscal year 2018 pursuant to Executive Order 2017-005; (vi) ordering additional budget cuts of 5% in all Government acquisitions, pursuant to Executive Order 2017-009; (vii) enacting Law 3-2017, which allows for taking immediate emergency and cost cutting measures to reduce the Government's operating expenses; (viii) enacting the Puerto Rico Financial Emergency and Fiscal Responsibility Act (Act 5-2017), which amended the prior Act 21-2016 to prioritize essential services over debt payments and extended the emergency period for revenue clawbacks to August 1, 2017 pursuant to Executive Order 2017-3 1; (ix) directing executive branch agencies to submit reports detailing steps taken and savings achieved under fiscal control orders pursuant to AAFAF Administrative Order 2017-02; (x) authorizing AAFAF, the OMB, and the Treasury Department to supervise the implementation of the budget control measures, pursuant to Executive Order 2017-033; (xi) enacting Law 8-2017, which allows for the transfer of workers across the Government to save \$ 100 million through mobility and attrition; (xii) enacting Law 20-2017, which consolidates law enforcement and other public safety agencies under a Public Safety Department, saving \$25 million; (xiii) enacting Law 25-2017, which provides measures for enforcing collection of sales taxes on internet transactions to generate \$35 million to \$55 million in new revenue; and (xiv) enacting Law 26-2017, which levels out marginal benefits across the Government and its instrumentalities to generate \$130 million in savings, increase revenues, and expedite the process of asset disposition.

<sup>14</sup> Order Appointing Mediation Team, No. 17 BK 3283-LTS (June 23, 2017) (Dkt. No. 430). The court appointed mediation team includes: Chief Judge Barbara J. Houser of the United States Bankruptcy Court, Northern District of Texas (Mediation Team Leader); Judge Thomas Ambro of the United States Court of Appeals, Third Circuit;



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After extensive negotiations with creditors, the Government has also entered into a restructuring support agreement with the creditors of the Government Development Bank for Puerto Rico ("GDB"). The Board certified the agreement and authorized the Government to commence solicitation of GDB's creditors for approval.

The record of the Government and Board over the past six months speaks for itself. Despite the historical experience of Puerto Rico, the actions taken by this Government demonstrate that there is the political will necessary to make difficult, and at times painful, policy decisions. The Government and Board have succeed in overcoming differences in approach and opinion to certify the Fiscal Plan, approve the Budget, and advance efforts to adjust the obligations of the Government and its instrumentalities through court supervised Title III cases and out-of-court restructuring. At this historical juncture, the Government and the Board have achieved agreement on the vast majority of the proposed revenue enhancement and cost control measures included in the Fiscal Plan and Budget.

### III. Proposed Furlough Program

It is against this backdrop of cooperation and significant progress that the Board has taken action to impose a furlough program. The Fiscal Plan requires that the Government achieve \$440 million in cost savings through government right-sizing measures in Fiscal Year 2018. When the Board certified the Fiscal Plan on March 13, 2017, it made certain reservations intended to ensure sufficient liquidity upon future completion of the budgeting process in June 2017 to pay for essential services in the event that the Government's implementation plan for its right-sizing measures failed to generate the expected cost savings.<sup>15</sup> These reservations are not part of the Fiscal Plan, but rather were supplement contingent recommendations proposed by the Board in the event cost saving targets set by the Board were not made.

Among the recommendations included in the reservations was a furlough program that would affect approximately 138,000 government employees (the "Furlough Program").<sup>16</sup> The recommended Furlough Program would require that each employee be furloughed two days out of each month for nine consecutive months. The Board estimates that the cost savings realized by the Furlough

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Judge Nancy Friedman Atlas of the United States District Court, Southern District of Texas; Christopher M. Klein of the United States Bankruptcy Court, Eastern District of California; and Judge Victor Marrero of the United States District Court, Southern District of New York.

<sup>15</sup> Board Resolution Adopted on March 13, 2017 (Fiscal Plan Certification) at 2.

<sup>16</sup> *Id.*



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Program would result in an approximately \$218 million for Fiscal Year 2018. The economic impact on each employee would be significant, reducing monthly salaries by 6.7%.

Despite the fact that the recommended furlough program could not be addressed or considered by the Government until the budgetary process was completed, José Carrión III, Chairman of the Board, sent a letter to the Governor, the President of the Senate of Puerto Rico, and the Speaker of the House of Representatives of Puerto Rico, dated June 16, 2017, asserting that the Government has not adequately implemented necessary right-sizing measures.

For the reasons discussed below, the Government disagrees with the Board's assessment regarding the necessity of the Furlough Program identified by the Board as a recommended "right-sizing measure."

#### IV. Furloughs are Unnecessary and Counterproductive

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In March 2017, the Board, in certifying the Fiscal Plan, could not have assessed the economic impact of the proposed furlough program without the benefit of evaluating the Budget which was yet to be developed and submitted to the Board. Through the approved Budget and other measures detailed above, the Government has achieved sufficient cost savings. Accordingly, the Board Recommendation, which the Government acknowledges may have been an appropriate contingency in March, is no longer necessary in light of the significant progress made by the Government and Board in the last six months.

"At present, the Government's liquid cash position is approximately \$1.8 billion at end of Fiscal Year 2017, as compared to the forecasted amount of \$291 million. In light of Puerto Rico's improved liquidity position, and the significant revenue enhancement measures and expenditure controls implemented by this administration, the Government believes that imposition of the Board Recommendations are unnecessary and, at best, premature until the Government is allowed time to implement its proposed right-sizing measures. Taken together, the liquidity provisions and current right-sizing measures will enable the Government to realize sufficient cost savings for Fiscal Year 2018, as necessary to comply with the Fiscal Plan."

Implementing the Board Recommendation is not only unnecessary to achieve compliance with the Fiscal Plan, the Government strongly believes that the proposed furloughs could significantly depress macro-economic growth, which is an important cornerstone of the Fiscal Plan. The substantial risk of negative effects on economic growth far outweigh any additional cost savings. In the Government's view, the Board Recommendation carries with it the significant threat of triggering



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a substantial drag on Puerto Rico's economy, which could quickly spiral out of control. Indeed, the proposed Furlough Program will lead to the opposite result of what is required under PROMESA section 205(a): *"to ensure compliance with the Fiscal Plan or to otherwise promote the financial stability, economic growth, management responsibility, and service delivery efficiency of the territorial government."* (emphasis added).

The Board Recommendation would have a negative short- and medium-term impact on economic growth, and could also undermine Puerto Rico's long-term prospects for economic growth. For example, under the recommended Furlough Program, government employees would be trapped in a temporary partial employment status where they are not fully employed, nor are they forced to find new employment. In such a scenario, the economy does not adjust. Instead, furloughs run the risk of reducing labor productivity, as well as delaying other labor market reforms that are critical to improve economic growth.

73 An analysis conducted by the Government indicates that if furloughs are imposed in addition to other right-sizing measures, Puerto Rico will experience an approximately 0.5% reduction in gross national product ("GNP") over the short-term (through fiscal year 2019). The Government's analysis suggests that it would be counterproductive to impose furloughs at this time. And in the event furloughs are implemented, duplicative right-sizing measures should be avoided. Rather than pursue a narrowly tailored approach aimed at reducing the negative economic consequences attendant to the Furlough Program, the Board insists on arbitrarily imposing this regressive measure, which would place a significant burden on public employees, on top of the other right-sizing measures being implemented by the Government. The Board's approach would significantly increase the likelihood of negative consequences to economic growth.

Accordingly, the Government rejects the Board Recommendation at this time because the risk posed to future economic growth, which is a key assumption of the Fiscal Plan, is too great. This is especially true when considering the more tailored right-sizing measures the Government is implementing, which are expected to result in similar savings with diminished, if any, negative economic impact.

In order to further assess the merits of such a drastic measure, the Government requests that the Furlough Program be put on hold for six months to allow for the Government right-sizing measures to be implemented and properly assessed. At that time, the Government and Board will have a clearer view of the necessity of further right-sizing measures and more insight into the potential negative impact of any furloughs.



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V. The Government's Assessment of Furlough Program Falls Within Its Political Authority

While the Board has the authority to propose certain appropriate recommendations to the Government with respect to the Fiscal Plan, it cannot interfere with the Government's policy making authority to take steps to ensure compliance with the Budget and Fiscal Plan. In that regard, the Government has sole authority to take action to carry out policy as approved in the Budget.

In certifying the Fiscal Plan, the Board found that it satisfied each of the fourteen requirements set forth under PROMESA section 201(b)(1). One of these requirements is that a certifiable fiscal plan must "adopt *appropriate* recommendations submitted by the Oversight Board under [PROMESA] section 205(a)."<sup>17</sup>

PROMESA section 205(a) provides that the Oversight Board may "submit recommendations to the Governor or the Legislature on actions the territorial government may take to ensure compliance with the Fiscal Plan . . . ." These recommendations, which are subject to the Government's self-determination, may include, among other things:

- "the management of the territorial government's financial affairs, including . . . placing controls on expenditures for personnel, reducing benefit costs . . . and placing other controls on expenditures";<sup>18</sup>
- "the establishment of alternatives for meeting obligations to pay for the pensions of territorial government employees";<sup>19</sup>
- "the establishment of a personnel system for employees of the territorial government that is based upon employee performance standards";<sup>20</sup> and
- "the adjustment of staffing levels . . . ."<sup>21</sup>

PROMESA section 205 is intended to give the Government sole discretion whether or not to adopt the Board's recommendations. As noted in PROMESA's legislative history, "[PROMESA] section 205 [was] substantially improved from the March 29th discussion draft" by removing "the anti-democratic provision empowering the oversight board to impose its recommendations over the objection

<sup>17</sup> PROMESA § 201(b)(1)(K).

<sup>18</sup> PROMESA § 205(a)(1).

<sup>19</sup> PROMESA § 205(a)(4).

<sup>20</sup> PROMESA § 205(a)(8).

<sup>21</sup> PROMESA § 205(a)(9).



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of the Puerto Rico government.”<sup>22</sup> Although, “[PROMESA] section 201 does require the fiscal plan put forward by the Puerto Rico governor to ‘adopt appropriate recommendations’ submitted by the oversight board under [PROMESA] section 205, . . . the term ‘appropriate’ provides the governor with significant flexibility to adopt sound recommendations and to decline to adopt unsound recommendations.”<sup>23</sup> The purpose of this change was to ensure that the Government and Board “work together for the benefit of the people of Puerto Rico, [and] not to have parallel governing structures.”<sup>24</sup>

As recognized by PROMESA section 205, the Government, in the exercise of its political and governmental powers, is the party charged with establishing and implementing public policy for Puerto Rico. The Government must make the difficult public policy decisions regarding where cuts and adjustments should be made within the Budget to achieve compliance with the Fiscal Plan. In making those decisions, the Government is within its authority to implement certain right-sizing measures and reject others, provided that such measures ultimately ensure compliance with the Fiscal Plan and Budget.

PROMESA envisions both the Government and the Board working in partnership to address the fiscal emergency facing Puerto Rico through a systematic approach aimed at achieving fiscal responsibility and access to capital markets. However, while the Board is to provide “a method for [Puerto Rico] to achieve” the purposes of PROMESA and oversight with respect to implementation, the difficult public policy decisions regarding the means of achieving those purposes are left to the Government.

## VI. Conclusion

Please be assured that although the Government strongly believes the Board Recommendation is inappropriate at this time, it remains committed to working with the Board to achieve financial stability and economic growth, in part, through appropriate right-sizing measures. The Government has maintained an exceptionally cooperative and close working relationship with the Board. Together with the Board, the Government has been able to achieve many notable accomplishments over the course of the last six months. The Government desires to maintain that cooperative relationship and strongly believes that its ability to work closely and productively with the Board is the key to ensuring that the progress made to date will be preserved and additional progress will be made going forward. In the spirit of continued cooperation and dialogue, the Government remains open

<sup>22</sup> H.R. Rep. 114-602(I), 2016 WL 3124840, at \*114.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

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to discussing, within the mediation process or otherwise, additional right-sizing measures as maybe required to ensure continued budgetary compliance during the Fiscal Plan period.

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Mr. President, Mr. Majority Leader, and Mr. Speaker, I am available together with the members of my staff to provide any additional information or answer any questions as deemed necessary by you and your respective staffs. On behalf of the 3.5 million United States citizens residing in Puerto Rico, I am grateful for your time and attention to this matter, which is of the utmost importance for Puerto Rico's emergence from its fiscal and economic crisis.

Respectfully submitted,



Ricardo Rosselló Nevares