

**Hearing Date: May 31, 2017 at 2:00 p.m.**

**Objection Deadline: May 25, 2017 at 12:00 p.m.**

**KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP**

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Attorneys for the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
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TRANSMAR COMMODITY GROUP LTD. <sup>1</sup>	:	
	:	
Debtor.	:	Case No. 16-13625(JLG)
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	:	
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**NOTICE OF HEARING ON DEBTOR’S MOTION FOR ORDERS PURSUANT TO 11 U.S.C. §§ 105, 363 AND 365, AND RULES 2002, 6004 AND 6006: (A) FIXING THE TIME, DATE AND PLACE FOR HEARING TO CONSIDER BIDDING PROCEDURES IN CONNECTION WITH THE DEBTOR’S SALE AND ASSIGNMENT OF ITS FORWARD BOOK; (B)(I) ESTABLISHING BIDDING PROCEDURES AND BID PROTECTIONS, (II) APPROVING THE FORM AND MANNER OF NOTICES, (III) ESTABLISHING FCSTONE MERCHANT SERVICES, LLC AS STALKING HORSE, (IV) APPROVING ASSET PURCHASE AGREEMENT FOR STALKING HORSE TRANSACTION, (V)**

<sup>1</sup> The Debtor in this chapter 11 case and the last four digits of the Debtor’s taxpayer identification number is as follows: Transmar Commodity Group Ltd. (5889). The Debtor’s principal office is located at 200 South Street, 4<sup>th</sup> Floor, Morristown, NJ 07960.

**SETTING HEARING DATE FOR THE HEARING ON SALE AND ASSIGNMENT OF FORWARD BOOK; AND (C)(I) APPROVING THE SALE AND ASSIGNMENT OF THE DEBTOR'S FORWARD BOOK FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND (II) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that a hearing (the "Hearing") on the *Debtor's Motion for Orders Pursuant to 11 U.S.C. §§ 105, 363 and 365, and Rules 2002, 6004 and 6006: (A) Fixing the Time, Date and Place for Hearing to Consider Bidding Procedures in Connection with the Debtor's Sale and Assignment of its Forward Book; (B)(i) Establishing Bidding Procedures and Bid Protections, (ii) Approving the Form and Manner of Notices, (iii) Establishing FCStone Merchant Services, LLC as Stalking Horse, (iv) Approving Asset Purchase Agreement for Stalking Horse Transaction, (v) Setting Hearing Date for the Hearing on Sale and Assignment of Forward Book; and (C)(i) Approving the Sale and Assignment of the Debtor's Forward Book Free and Clear of Liens, Claims and Encumbrances and (ii) Granting Related Relief* (the "Motion") shall be held on **May 31, 2017, at 2:00 p.m. (EST)** before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, in Courtroom 601 at the United States Bankruptcy Court, Southern District of New York, Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004-1408.

**PLEASE TAKE FURTHER NOTICE** that responses or objections to the Motion and the relief requested therein, if any, shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall set forth the basis for the response or objection and the specific grounds therefore, and shall be filed with the Court electronically in accordance with General Order M-399 by registered users of the Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at <http://www.nysb.uscourts.gov>, the official website for the Court), with two hard copies delivered directly to Chambers pursuant to Local Bankruptcy Rule 9028-1 and served so as to be actually received no later than **May 25, 2017 at 12:00 p.m.** (prevailing Eastern Time) (the "Objection Deadline"), by (a) counsel for Transmar Commodity Group, Ltd., Riker Danzig Scherer Hyland & Perretti LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, New Jersey 07960 Attn: Joseph L. Schwartz; (b) local counsel for Transmar Commodity Group, Ltd., Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036-7203, Attn.: Tracy L. Klestadt; (c) counsel for FCStone Merchant Services, LLC, Husch Blackwell LLP, 4801 Main Street, Suite 1000, Kansas City, MO 64112 Attn: Benjamin F. Mann, (d) counsel to ABN AMRO Capital USA LLC, administrative agent and collateral agent under that certain Amended and Restated Credit Agreement, dated as of February 26, 2016, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attn.: Andrew P. DeNatale; (e) counsel for the Official Committee of Unsecured Creditors, Tarter Krinsky & Drogin LLP, 1350 Broadway, 11<sup>th</sup> Floor, New York, New York 10018, Attn.: Rocco Cavaliere, (f) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Serene Nakano; and (g) all parties filing a notice of appearance herein.

**PLEASE TAKE FURTHER NOTICE** that copies of the above-referenced Motion is available on the Bankruptcy Court's official website [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) for registered users of the Bankruptcy Court's case filing system, or free-of charge from the Debtor's bankruptcy website, <http://www.donlinrecano.com/transmar>.

Dated: New York, New York  
May 12, 2017

KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP

By: /s/ Tracy L. Klestadt

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In re	:	Chapter 11
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TRANSMAR COMMODITY GROUP LTD. <sup>1</sup>	:	
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Debtor.	:	Case No. 16-13625 (JLG)
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**DEBTOR’S MOTION FOR ORDERS PURSUANT TO 11 U.S.C. §§ 105, 363 AND 365, AND RULES 2002, 6004 AND 6006: (A) FIXING THE TIME, DATE AND PLACE FOR HEARING TO CONSIDER BIDDING PROCEDURES IN CONNECTION WITH THE DEBTOR’S SALE AND ASSIGNMENT OF ITS FORWARD BOOK; (B)(i) ESTABLISHING BIDDING PROCEDURES AND BID PROTECTIONS, (ii) APPROVING THE FORM AND MANNER OF NOTICES, (iii) ESTABLISHING FCSTONE MERCHANT SERVICES, LLC AS STALKING HORSE, (iv) APPROVING**

<sup>1</sup> The Debtor in this chapter 11 case and the last four digits of the Debtor’s taxpayer identification number is as follows: Transmar Commodity Group Ltd. (5889). The Debtor’s principal office is located at 200 South Street, 4<sup>th</sup> Floor, Morristown, NJ 07960.

**ASSET PURCHASE AGREEMENT FOR STALKING HORSE TRANSACTION, (v)  
SETTING HEARING DATE FOR THE HEARING ON SALE AND ASSIGNMENT OF  
FORWARD BOOK; AND (C)(i) APPROVING THE SALE AND ASSIGNMENT OF THE  
DEBTOR'S FORWARD BOOK FREE AND CLEAR OF LIENS, CLAIMS AND  
ENCUMBRANCES AND (ii) GRANTING RELATED RELIEF**

Transmar Commodity Group Ltd., the above-captioned debtor and debtor-in-possession (the "Debtor") hereby submits this motion (the "Sale Motion") seeking the following relief:

- a. Entry of an order, substantially in the form attached hereto as **Exhibit B** (the "Bidding Procedures Order"): (a) establishing bidding procedures and bid protections, including an auction, as set forth herein (the "Bidding Procedures"), with respect to the Debtor's sale and assignment of its Forward Book (as defined herein), (b) approving the form and manner of notices thereof (the "Bidding Procedures Notice", attached hereto as **Exhibit D**), (c) establishing FCStone Merchant Services, LLC ("FCStone") as the stalking horse bidder for certain of the Debtor's forward book contracts, (d) approving the form of Asset Purchase Agreement by and between the Debtor and FCStone (the "APA"), pursuant to which the Debtor proposes to sell and assign certain of its forward book contracts to FCStone or a third party that makes a higher and/or better offer for those forward book contracts, or any of the other Forward Contracts (the "Proposed Sale"), and (e) setting a hearing to consider approval of the Debtor's sale and assignment of its Forward Book (the "Sale Hearing").
- b. Entry of an order pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, substantially in the form attached hereto as **Exhibit C** (the "Sale Order"), (i) approving the sale and assignment of the Debtor's forward book free and clear of liens, claims and encumbrances, and (ii) granting related relief.

In support of the Sale Motion, the Debtor submits the Declaration of Robert J. Frezza in Support of Debtor's Motion for Orders Pursuant to 11 U.S.C. §§ 105, 363 and 365, and Rules 2002, 6004 and 6006: (A) Fixing the Time, Date and Place for Hearing to Consider Bidding Procedures in Connection with the Debtor's Sale and Assignment of its Forward Book; (B)(i) Establishing Bidding Procedures and Bid Protections, (ii) Approving the Form and Manner of Notices, (iii) Establishing FCStone Merchant Services, LLC as Stalking Horse, (iv) Approving Asset Purchase Agreement for Stalking Horse Transaction, (v) Setting Hearing Date for the Hearing on Sale and

Assignment of Forward Book; and (C)(i) Approving the Sale and Assignment of the Debtor's Forward Book Free and Clear of Liens, Claims and Encumbrances and (ii) Granting Related Relief (the "Frezza Declaration"), attached hereto as **Exhibit E**, submitted contemporaneously herewith, and respectfully states as follows:

**JURISDICTION, VENUE AND STATUTORY PREDICATE**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are sections 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et. seq.* (the "Bankruptcy Code"), and Rule 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

**BACKGROUND**

4. On December 31, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code, commencing the above-referenced chapter 11 case (the "Bankruptcy Case") in the United States Bankruptcy Court for the Southern District of New York (the "Court").
5. Since the Petition Date, the Debtor has remained in possession of its assets and has continued management of its business as a debtor-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.
6. On January 18, 2017, an official committee of unsecured creditors was appointed in the Bankruptcy Case (the "Committee") [Docket No. 68]. No trustee or examiner has been appointed in the Bankruptcy Case.
7. The Debtor is winding down its business operations and liquidating its assets in this Bankruptcy Case.

8. A detailed description of the Debtor's business and the facts precipitating the filing of the Debtor's Bankruptcy Case are set forth in the Declaration of Robert J. Frezza in Support of Debtor's Chapter 11 Petition and First Day Motions [Docket No. 4].

### **THE DEBTOR'S FORWARD BOOK**

9. The cocoa market is notoriously volatile and impacted by weather, geopolitical and economic fluctuations, which create an atmosphere of uncertainty within the cocoa industry. As a result, in the normal course of its cocoa trading business, the Debtor routinely enters into derivative financial instruments, including derivative contracts, forward contracts, futures contracts, repurchase agreements or combinations of the foregoing to manage its exposure.

10. As a general matter, derivative contracts are financial contracts the values of which are based on, or "derived" from, the price of a traditional security such as a stock or bond, an asset such as a commodity or currency, a market index or measures such as interest rates or currency exchange rates. The use of derivative contracts is common and customary in the Debtor's industry, and the Debtor routinely entered into such transactions prior to the Petition Date.

11. A "forward contract" is a binding contract under which a commodity or financial instrument is bought or sold at the market price (spot price) as of today (date of making the contract), but is to be delivered on a stated future (forward) date in settlement of the contract. Stated differently, a forward contract obligates the purchaser of the contract to acquire a security or asset on a specified future date at a specified price (fixed), ratio (unfixed), or differential (unfixed) to the market price. If, on the specified date, the actual price of the security or asset is higher than the specified price in the contract, the purchaser will pay less for the asset than if the purchaser had not entered into the forward contract; if the actual price is lower than the price specified in the contract, the purchaser will pay more for the asset by virtue of having entered

into the forward contract than had the purchaser not done so. Forward contracts, unlike futures contracts, are not exchange traded.<sup>2</sup>

12. Historically, the Debtor entered into forward contracts with counterparties to those contracts in the ordinary course of its business. The Debtor also utilized the futures market to hedge or reduce existing and/or expected risks associated with fluctuations in the prices of certain cocoa products.

13. As of the Petition Date, the Debtor was a party to many forward contracts (each a “Forward Contract” and together the “Forward Contracts” or “Forward Book”)<sup>3</sup> to both purchase and to supply cocoa beans and cocoa products (“Product”) to various counterparties (each a “Counterparty,” and together, the “Counterparties”). The Forward Book consists of two (2) parts:

- (i) The Forward Sale Contracts. The Debtor is party to certain Forward Contracts pursuant to which the Debtor agrees to sell, and the Counterparty agrees to purchase, Product in certain quantities (each a “Forward Sale Contract,” and together, the “Forward Sale Contracts” or “Forward Sale Book”); and
- (ii) The Forward Purchase Contracts. The Debtor is also party to certain Forward Contracts pursuant to which a Counterparty agrees to sell, and the Debtor agrees to purchase, Product in certain quantities (the “Forward Purchase Contracts”).

14. The Forward Book, which includes both the Debtor’s Forward Sale Contracts and the Debtor’s Forward Purchase Contracts, serves as part of the collateral of the Debtor’s pre-petition lenders (the “Pre-Petition Lenders”) pursuant to the Pre-Petition Lenders’ blanket first-priority lien on virtually all of the Debtor’s assets (excluding any pledge of the equity interests in

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<sup>2</sup> Futures contracts provide market participants with the ability to hedge against or speculate on the expected change in the commodity price. Due to their greater liquidity and marketability, market participants often use futures contracts in conjunction with forward contracts.

<sup>3</sup> For purposes of this Motion, the term “Forward Book” excludes: (i) forward contracts entered into between the Debtor and the Debtor’s affiliate, Transmar Ecuador S.A., and (i) certain Forward Sale Contracts for the sale of cocoa powder; however, these cocoa powder contracts may be added to the sale process at the Debtor’s election.

the Debtor's subsidiaries) pursuant to that certain Amended and Restated Security Agreement dated as of February 26, 2016, along with other collateral documentation.

**THE MARKETING OF THE FORWARD BOOK**

15. Beginning in February 2017, the Debtor began actively marketing the Forward Book for sale. In connection with this marketing process, in February 2017, the Debtor established a due diligence data room for potential bidders, all of which were required to execute confidentiality agreements in order to participate. In connection with this process, the Debtor initially contacted at least nineteen (19) separate potential strategic and/or financial bidders, including those suggested by the Pre-Petition Lenders, and to date has provided detailed information regarding the Forward Book to at least seven (7) different potential bidders, each of which has executed a confidentiality agreement, and which were provided access to the Debtor's electronic data room.

16. As a result of these marketing efforts, the Debtor received two (2) firm bids for certain contracts that are within the Forward Book.

17. The Debtor, after consulting with the Pre-Petition Lenders, determined that the bid presented by one of those two bidders, FCStone, was the superior bid of the two and determined in its business judgment to designate FC Stone's bid as the "stalking horse" bid.

18. Prior to the hearing on the Service Agreement Motion (defined herein), the Debtor received an alternative offer from TRC Cocoa LLC ("TRC") to serve both as the counterparty to the Service Agreement (also defined herein) and the "stalking horse" for the Proposed Sale. Subsequently, the Debtor received revised bids from both FCStone and TRC. Ultimately, after reviewing the revised bids and consulting with the Pre-Petition Lenders, and after due consideration, the Debtor, in its business judgment, determined to proceed with FCStone as the counterparty to the Service Agreement. As is set forth in further detail herein,

the Debtor's decision to choose FCStone as the counterparty to the Service Agreement was ultimately approved by the Court.

### **THE SERVICE AGREEMENT**

19. On March 28, 2017, the Debtor filed a motion to authorize the Debtor to enter into a services agreement (the "Service Agreement")<sup>4</sup> with FCStone outside of the ordinary course of business in connection with the Debtor's anticipated sale of its Forward Book [Docket No. 193] (the "Service Agreement Motion").

20. Through the Service Agreement Motion, the Debtor sought to continue to perform under certain of its Forward Contracts in order to preserve the value of the Forward Book. In particular, given the fact that the Debtor neither has the liquidity nor the financing necessary to continue to purchase inventory, the value of certain of the Forward Contracts was at risk due to the fact that the Debtor would be unable to fulfill its obligations to acquire or supply Product during the pendency of the Proposed Sale.

21. As a result of the foregoing, as part of its bid for a portion of the Forward Book, FCStone agreed to independently purchase Product and fund processing costs and other costs sufficient to bridge performance of the Debtor's obligations under certain of the Forward Contracts settling between the effective date of that transaction, April 10, 2017, and the date of the Debtor's sale of the Forward Book (the "Bridge Transaction").

22. A summary of the Service Agreement is as follows:

- (i) In the case of certain Forward Sale Contracts, FCStone will acquire, with support from the Debtor and its current employees, Product sufficient to fulfill the Debtor's obligations under the Forward Sale Contracts that are required to be performed on or prior to the End Date (as defined in the Service Agreement). FCStone may source Product (a) from its own inventory, (b) from third parties

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<sup>4</sup> To the extent that there are any discrepancies between this summary and the Services Agreement, the terms and language of the Service Agreement shall govern. Unless defined herein, capitalized terms used in this summary shall have the meaning ascribed to them in the Services Agreement.

(including affiliates), or (c) by utilizing certain of the Debtor's outstanding Forward Purchase Contracts.

- (ii) FCStone will pay for logistics related to the transportation of Product and any necessary melting and/or other processing required to fulfill the Forward Sale Contracts and will be assisted by the Debtor and its current employees in coordinating for these arrangements.
- (iii) In the case of certain Forward Purchase Contracts not used to source Product with which to satisfy Forward Sale Contracts, FCStone may, but shall in no event be required to, make the payments to the Counterparty thereto necessary for the Debtor to purchase the quantity of Product required to satisfy all of the Debtor's purchase obligations under such Contract that are required to be performed on or prior to the End Date. If FCStone does make any such payments, FCStone shall, as soon as reasonably practicable thereafter, facilitate the sale of such Product by the Debtor to a third party (a "Third Party Sale").
- (iv) In connection with FCStone's performance of the Services (as defined in the Service Agreement), the Debtor shall provide timely instructions to FCStone with respect to the sourcing, processing and transportation of inventory, including payment of related fees and charges, and FCStone shall use its reasonable best efforts to comply with such instructions.
- (v) Whenever FCStone takes delivery of Product in satisfaction of an obligation of the Debtor to take delivery under a Purchase Contract, it shall do so on behalf of, and as agent of, the Debtor, such that the Debtor shall have satisfied such obligation. Immediately after FCStone takes delivery of such Product, title thereto shall pass from the Debtor to FCStone. Whenever FCStone delivers Product to a counterparty to satisfy the Debtor's delivery obligations under a relevant Forward Sale Contract or to satisfy the Debtor's delivery obligation to a third party pursuant to a Third Party Sale, FCStone shall transfer title to such Product to the Debtor immediately prior to the ultimate sale of such Product.
- (vi) All amounts payable to the Debtor under a Forward Sale Contract or in connection with a Third Party sale shall be paid to the Debtor in accordance with the terms of such Forward Sale Contract or Third Party Sale, which funds will be held by the Debtor in a segregated bank account.
- (vii) As soon as reasonably practicable after satisfying a delivery obligation under a Forward Sale Contract or in connection with a Third Party Sale, FCStone will invoice the Debtor for its reasonable costs incurred in connection with delivery, and the Debtor will pay to FCStone out of the segregated bank account: (a) the amount of invoiced costs plus (b) as FCStone's sole and exclusive compensation for its services in connection with such delivery obligation, eighty percent (80%) of the net amount of consideration remaining after the payment of such invoices costs.

23. The Court conducted hearings to consider the approval of the Service Agreement Motion on April 5 and 6, 2017. After the Debtor considered an alternative offer from TRC to serve as the counterparty to the Service Agreement, as well as to serve as stalking horse for the Proposed Sale, and after the Debtor presented evidence to the Court to support its decision to move forward with FCStone, on April 7, 2017, the Court entered an order granting the Service Agreement Motion [Docket No. 226].

### **THE SALE TRANSACTION WITH FC STONE**<sup>5</sup>

24. The following is a summary of the principal terms of the APA,<sup>6</sup> attached hereto as **Exhibit A**:

(a) **Purchase Price**. In consideration for the Purchased Assets, the purchase price shall be (i) \$3,500,000, less (x) the Cure Amount, (y) amounts actually received and retained or estimated to be received and retained by the Debtor pursuant to the Service Agreement prior to Closing (the “Cash Amount”)<sup>7</sup>, which is subject to certain other adjustments set forth in Section 2.06 of the APA, including but not limited to the following: (a) adjustments for terminated Forward Contracts; (b) adjustments for market price movement in the cocoa products market; (c) adjustment in the event that any of Guan Chong, JB Cocoa, or United Confectioners (or any of their affiliates) (collectively, the “Non-U.S. Counterparties”) do not indicate its acceptance of the anticipated assignment of such Forward Contracts; and (d) adjustments with respect to partial performance other than by FCStone; and (ii) the assumption of the Assumed Liabilities, including the payment of the Cure Amounts relating to the Assigned Contracts. (See APA at Section 2.05 and Section 2.06.) FCStone has delivered to the Debtor a deposit of \$350,000 (10% of the base amount used in determining the Cash Amount), which is being held by the Debtor’s counsel (the “Deposit”). (See APA Section 3.02(b)(i).)

(b) **Purchased Assets**. Subject to terms and conditions set forth in the APA, the Debtor will transfer all right, title and interest in all forward

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<sup>5</sup> As part of the Proposed Sale, FCStone has hired one employee of one of the Debtor’s affiliates to facilitate the successful continuation of certain of the Assigned Contracts and enable FCStone to leverage the experience and contacts of this employee if the Court approves the Proposed Sale. It is uncertain at this time whether FCStone will make offers to any other current or former employees of the Debtor or any affiliates of the Debtor.

<sup>6</sup> To the extent that there are any discrepancies between this summary and the APA, the terms and language of the APA shall govern. Unless defined herein, capitalized terms used in this summary shall have the meanings ascribed to them in the APA.

<sup>7</sup> The Cash Amount is also subject to certain adjustments set forth in Section 2.06 of the APA.

contracts set forth on Section 2.01(a) of the Disclosure Schedules other than contracts that are terminated (as described in the APA), fully performed through the Bridge Transaction or the cure amount associated with the contract exceeds the applicable value of the contract as determined under the APA (the “Assigned Contracts”) and all of the Debtor’s rights under warranties, indemnities and similar rights against third parties to the extent related to the Assigned Contracts (the “Purchased Assets”). (See APA at Section 2.01.) To effectuate the assumption of the Assigned Contracts to FCStone, FCStone and Debtor shall execute and deliver at or before the Closing the Assignment and Assumption Agreement. (See APA at Exhibit A.)

(c) Assumed Liabilities. Subject to terms and conditions set forth in the APA, FCStone shall assume and agree to pay, perform and discharge when due any and all liabilities and obligations of the Debtor arising out of or relating to the Purchased Assets, including the Cure Amount relating to the Assigned Contracts. (See APA at Section 2.03.) To effectuate the assumption of the Assumed Liabilities by FCStone hereunder, FCStone and Debtor shall execute and deliver at or before the Closing the Assignment and Assumption Agreement. (See APA at Exhibit A.)

(d) Representations and Warranties. The Debtor has represented and warranted that, subject to approval by the Court, it has the requisite legal authority to sell and assign the Purchased Assets to FCStone, and that all of the other representations and warranties provided under the APA are true and correct as detailed more fully in Article IV of the APA. FCStone has represented and warranted that it is a limited liability company duly formed under the laws of the State of Delaware, and subject to satisfaction of the conditions and requirements under the APA, has the requisite power, authority, and financial capability to consummate the transactions contemplated hereunder, and that all of the other representations and warranties provided under the APA are true and correct as detailed more fully in Article IV of the APA.

(e) Termination Rights. The APA may be terminated at any time prior to the Closing Date by mutual consent, or by either party if a permanent injunction or other order is entered that prevents the consummation of the transactions contemplated thereunder, if the Court approves a Competing Bid (including higher and better offer), upon the voluntary or involuntary dismissal of the Bankruptcy Case or the conversion into a case under chapter 7 of the Bankruptcy Code or a chapter 7 or chapter 11 trustee or examiner is appointed, if there has been a material breach of any of the representations, warranties, covenant or other agreements set forth in the APA by the other party that would give rise to the failure of any conditions to Closing as set forth in Article VII, or the failure of any such condition to Closing, which breach or failure is not curable or is not cured by the Drop Dead Date, and as more fully detailed in Article X of the Asset Purchase Agreement. Within two (2) Business Days of the termination of the APA (other than a termination by the Debtor for FCStone’s failure to meet certain conditions), the Deposit shall be refunded to FCStone.

**PROPOSED BIDDING PROCEDURES, BID PROTECTIONS, AUCTION AND  
OVERBID PROCEDURES**

**A. Overview**

25. In connection with the Proposed Sale, the Debtor seeks approval of the Bidding Procedures, which the Debtor submits are designed to maximize the value of the Forward Book.

26. The Debtor proposes that third party offers received for some or all of the Forward Book, including the Purchased Assets or any other Forward Contracts of the Debtor (each, an "Offer"), be governed by the following Bidding Procedures:<sup>8</sup>

- (1) Offer Deadline: Any person or entity interested in participating in the Auction (defined below) (each, a "Prospective Bidder") shall make an Offer in writing and serve the Offer upon the Debtor (Attn: Joseph L. Schwartz, Esq. and Jason D. Navarino, Esq. of Riker Danzig Scherer Hyland & Perretti, LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962); the Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq. of Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038); and the Committee (Attn: Rocco A. Cavaliere, Esq. and Michael Z. Brownstein, Esq. of Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, NY 10018) by no later than **June 14, 2017 at 5:00 p.m.** (prevailing Eastern Time (the "Offer Deadline")).<sup>9</sup> The Debtor may, after consulting with the Consultation Parties and after providing notice to the Notice Parties (as defined herein), extend the Offer Deadline for any reason, in its reasonable business judgment. The Debtor shall promptly provide copies of all Offers received to the Consultation Parties; provided that the Debtor shall not be required to provide to any Consultation Party any material, nonpublic information regarding bids for the Forward Book if such Consultation Party or any related entities to that Consultation Party submits a bid to purchase all or any portion of the Forward Book, provided however that if a member of the Committee makes an offer for the Forward Book, the Debtor may provide the bids to Committee counsel and other Committee

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<sup>8</sup> To the extent that there are any discrepancies between this summary and the Bidding Procedures Order, the terms of the Bidding Procedures Order shall govern. Further, unless otherwise defined herein, capitalized terms defined in the Bidding Procedures shall have the meaning ascribed to them either in the Bidding Procedures Order or the APA.

<sup>9</sup> Throughout the sale process, as necessary or appropriate, the Debtor will consult with the Agent for the Pre-Petition Lenders and the Committee (together, the "Consultation Parties").

members that are not participating in the bid. Further, the Debtor shall not be required to consult with any Consultation Party regarding a particular Offer if that Consultation Party is an active bidder for the same Forward Contracts at the applicable time.

- (2) Diligence: To be eligible to participate in the Auction, each Prospective Bidder must execute a confidentiality agreement in form and on terms satisfactory to the Debtor. Any Prospective Bidder identified by the Debtor as reasonably likely to be a Qualified Party that wishes to conduct due diligence on the Forward Book may be granted access to all material information regarding the Forward Book. The Pre-Petition Agent for the Pre-Petition Lenders shall also be provided access to due diligence materials.
- (3) Qualified Bid Requirements: To qualify as a “Qualified Bid,” the a Prospective Bidder must submit a written Offer by the Offer Deadline, and the Debtor, in consultation with the Consultation Parties, must determine that the Offer satisfies the following requirements:
  - (a) List of Forward Contracts. Each Offer must include a proposed list of the Forward Contracts to be assumed, assigned and sold to it in connection with the proposed transaction.
  - (b) Modified APA. Each written offer must include: (i) an executed copy of the APA as modified by the Prospective Bidder in accordance with its Offer (the “Modified APA”);<sup>10</sup> and (ii) a marked-up copy of the Modified APA reflecting the difference between the Modified APA and the APA.<sup>11</sup> The Debtor, in consultation with the Consultation Parties, shall determine whether any Modified APA that modifies the APA in any respect beyond the identity of the purchaser, the purchase price under the agreement and the particular Forward Contracts covered by the Offer is a Qualified Bid.
  - (c) Bidding Requirements. If an Offer is for exactly all of the Purchased Assets, the payment of a purchase price to the Debtor shall not be less than \$3,700,000 (\$3,500,000 plus Transaction Expenses (defined herein) plus \$100,000 initial overbid). If an Offer is for Forward Contracts other than or in addition to some or all of the Purchased Assets, the Prospective Bidder shall allocate the proposed purchase

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<sup>10</sup> For the avoidance of doubt, the APA with FCStone is deemed a Modified APA.

<sup>11</sup> The Modified APA, at the Prospective Bidder’s option, may, among other things, remove Section 2.06(c) of the APA.

price among such Forward Contracts. If an Offer is for some subset of the Purchased Assets, the proposed purchase price shall be subject to the allocation set forth on Section 2.06 of the Disclosure Schedules to the APA, and the Prospective Bidder shall allocate the remainder of the purchase price among any additional Forward Contracts that are part of the Offer.<sup>12</sup> All Offers for any portion of the Forward Book shall require a minimum bid of \$200,000.

- (d) Identification of Bidder. A Qualified Bid must fully disclose the legal identity of each entity that will be bidding for the implicated Forward Contracts or otherwise participating in connection with such bid (including but not limited to any equity holder or other financial backer if the Prospective Bidder is an entity specifically formed for purposes of effectuating the Proposed Sale, and the complete terms of any such participation) and must also disclose any connections or agreements with the Debtor, any other known Prospective Bidder or Qualified Party, and/or any officer or director of the foregoing.
- (e) Credit Bidding. In connection with the Proposed Sale of all or any portion of the Forward Book, a person or entity holding a perfected security interest in the Forward Book may seek to credit bid some or all of its claims for its collateral (each such bid, a “Credit Bid”) pursuant to section 363(k) of the Bankruptcy Code. A Credit Bid may only be applied to reduce the cash consideration with respect to the Forward Contracts in which the party submitting the Credit Bid holds a security interest. Each person or entity making a Credit Bid shall be deemed a Qualified Bidder to the extent that it has the right to Credit Bid.
- (f) Financial Information. Any Prospective Bidder that wishes to make an Offer for some or all of the forward contracts contained within the Forward Book must provide the Debtor with sufficient and adequate information to demonstrate, to the satisfaction of the Debtor, in consultation with the Consultation Parties, that its Offer: (i) is being made by an entity that has the financial

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<sup>12</sup> In the event that FCStone purchases Product pursuant to a Purchase Contract in anticipation of using that Product to satisfy the Debtor's obligations under a Sales Contract but the Court approves a sale and assignment of the Assigned Contracts to a party other than FCStone, consistent with FCStone's obligation to cooperate with the Proposed Sale as set forth in Section 2.6 of the Service Agreement, the Debtor requests that the Sale Order require that FCStone sell that Product to the Winning Bidder at cost so as to allow the Winning Bidder to realize the aggregate value of that Forward Purchase Contract and the corresponding Forward Sale Contract.

wherewithal and ability to consummate the transaction, including evidence of adequate financing; and (ii) provides information to demonstrate that it is able to fulfill all obligations in connection with all implicated Forward Contracts so as to satisfy the requirement of providing adequate assurance of future performance, as contemplated by section 365 of the Bankruptcy Code (the “Adequate Assurance Information”).

- (g) Other Requirements. Each Offer shall (i) state that the bid is formal, binding and unconditional, is not subject to further due diligence, and is irrevocable until the earlier to occur of: (x) the first business day following the closing of the Proposed Sale or (y) thirty (30) days following the last date of the Auction (as may be adjourned); (ii) not contain any financing contingencies of any kind; (iii) not contain any condition to closing the Proposed Sale on the receipt of any third party approvals (excluding Bankruptcy Court and any applicable required governmental and/or regulatory approval); (iv) represent that all necessary filings under applicable law and regulation will be made and that the payment of the fees associated therewith will be made by the Prospective Bidder; (v) expressly state that the Prospective Bidder agrees to serve as a backup bidder (a “Backup Bidder”) if such bidder’s Qualified Bid is selected as the next highest or next best bid after the Winning Bid for the implicated Forward Contracts; (vi) include contract information for the person(s) the Debtor should contact with questions about the Prospective Bidder’s bid; and (vii) be received by the Debtor and Consultation Parties by the Offer Deadline.
- (h) Good Faith Deposit. All Qualified Bids (other than one that includes a Credit Bid) must be accompanied by a good faith deposit in the amount of 10% of the Offer, in the form of a certified or cashier’s check, payable to “RIKER DANZIG SCHERER HYLAND & PERRETTI LLP TRUST ACCOUNT.” All such deposits shall be retained by the Debtor pending the hearing to consider the Sale Motion and shall be returned within ten (10) days after entry of a Sale Order, except that the Debtor shall hold: (i) the deposit of the Winning Bidder (defined below), and apply such deposit(s) to the Purchase Price at closing, and (ii) the deposit of the Backup Bidder, until the first business day following the closing of the Proposed Sale with the Winning Bidder.

- (4) Selecting Qualified Parties. The Debtor shall, in consultation with the Consultation Parties, make a determination whether an Offer is a Qualified Bid and shall notify Prospective Bidders whether their Offers have qualified as Qualified Bids by not later than **June 16, 2017 at 5:00 p.m.** (prevailing Eastern Time); provided that, if an Offer is made by the Offer Deadline that is not determined to be a Qualified Bid, the Debtor will promptly advise the Prospective Bidder of the deficiencies, if any, and allow such Prospective Bidder one (1) day to submit a revised offer. In addition, if the Debtor, after consulting with the Consultation Parties and after providing notice to the Notice Parties, determines to extend the Offer Deadline, the Debtor shall be required to notify Prospective Bidders whether their bids have qualified as Qualified Bids by no later than two (2) days after the newly-scheduled Offer Deadline. Any Prospective Bidder whose Offer that is deemed a Qualified Bid shall be designated as a “Qualified Party.”

With the goal and primary purpose of selling the entire Forward Book, the Debtor, may, after consultation with the Consultation Parties, accept as a single Qualified Bid, multiple bids for non-overlapping material portions of the Forward Book such that, when taken together in the aggregate, such bids would otherwise meet the standards for a single Qualified Bid. The Debtor may, after consultation with the Consultation Parties, permit otherwise Qualified Parties who submitted bids by the Bid Deadline for less than a substantial (but nevertheless a material) portion of the Forward Book but who were not identified as a component of a single Qualified Bid consisting of such multiple bids, to participate in the Auction and to submit higher or otherwise better bids that in subsequent rounds of bidding may be considered, together with other bids for nonoverlapping material portions of the Forward Book, as part of such a single Qualified Bid for overbid purposes. The Debtor may, after consulting with the Consultation Parties, amend the conditions precedent to being a Qualified Party at any time, in its reasonable business judgment.

The Pre-Petition Agent for the Pre-Petition Lenders and its respective designees, affiliates, and assigns shall automatically be deemed a Qualified Party, and its respective bid(s) shall automatically be deemed to constitute Qualified Bids, regardless of whether its respective Credit Bids meet the requirements set forth above, provided however that parties retain the right to object to a credit bid “for cause” under section 363(k) of the Bankruptcy Code. The Pre-Petition Agent shall not be required to submit a Good Faith Deposit in connection with any Credit Bid.

FCStone shall automatically be deemed a Qualified Party, and FCStone's bid, as reflected in the APA, shall be deemed a Qualified Bid.

- (5) Bid Protections: In the event that the APA is terminated because the Court approves a sale and assignment of all of the Purchased Assets to a party or parties other than FCStone, the Debtor shall pay FCStone a fee of \$50,000 (the "Break-Up Fee"), plus reimbursement of expenses, including professional fees and expenses incurred in pursuit of its bid and preparation of the APA and related documents, not to exceed \$50,000 ("Expense Reimbursement," and together with the Break-Up Fee, the "Transaction Expenses"), to compensate FCStone for its efforts in connection with it being the "stalking horse" bidder for the Purchased Assets, including the costs of the FCStone incurred in performing due diligence, negotiating and documenting the terms of the APA and the Service Agreement and representing its interests with respect to the Proposed Sale. The Transaction Expenses shall constitute a first priority administrative expense of the Debtor pursuant to Section 503(b)<sup>13</sup> and shall be paid within two (2) business days of any closing in connection with the Purchased Assets and without further order or application to the Court.
- (6) The Auction: If the Debtor receives at least two (2) Qualified Bids with an acceptable purchase price for the same Forward Contracts, the Debtor shall conduct an Auction (the "Auction"). The Auction, if required, shall be held at the offices of Riker Danzig Scherer Hyland & Perretti LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962, or at such alternative location as the Debtor may determine, after consultation with the Consultation Parties, and after providing notice to the Notice Parties. The Auction shall commence on **June 20, 2017 at 10:00 a.m. (EST)**. The Consultation Parties and/or their representatives will be permitted to attend the Auction.
- (a) Each Qualified Party shall appear in person at the Auction or through a duly authorized representative. Only Qualified Parties shall be entitled to make any subsequent bids at the Auction. Each Qualified Party shall be required to confirm that (i) it has not engaged in any collusion with respect to the bidding or the Proposed Sale; and (ii) its Qualified Bid

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<sup>13</sup> The Debtor and the Pre-Petition Lenders agree that the Transaction Expenses shall not be deemed to be a default pursuant to paragraph 7 of the Stipulation and Final Agreed Order Pursuant to Sections 105, 361, 362, 363 and 507 of title 11 of the Bankruptcy Code, Rules 4001(b) and 9014 of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York Authorizing Debtor's Use of Cash Collateral and Providing Adequate Protection Thereof [Docket No. 115], or any amendments thereto.

represents a binding, good faith, and bona fide offer to purchase the Forward Contracts identified if such bid is selected as the Winning Bidder.

The Debtor, in consultation with the Consultation Parties, shall, after the Offer Deadline and prior to the Auction, evaluate all Qualified Bids or combination of Qualified Bids received, and, in consultation with the Consultation Parties, determine which Qualified Bids or combination of Qualified Bids, as the case may be, reflect the highest or best offers for some or all of the Forward Book, whether in whole or in lots, at that time (the “Baseline Bid(s)”). The Debtor shall announce such determination at the commencement of the Auction.

(b) Minimum Overbid Procedures. The following procedures shall govern overbids (collectively, the “Overbid Procedures”):

- i. Any further bids made at the Auction for the Purchased Assets shall be in increments of at least \$25,000 (or, if for only certain of the Purchased Assets, such amount multiplied by the sum of the percentages corresponding to such Purchased Assets set forth on Section 2.06 of the Disclosure Schedules to the APA) greater than the preceding bid.
- ii. For any further bids made at the Auction for Forward Contracts other than or in addition to some or all of the Purchased Assets: (x) if the applicable portion of the Baseline Bid is for \$500,000 or less, such further bids shall be in increments of at least \$10,000 and (y) if the applicable portion of the Baseline Bid is for more than \$500,000, such further bids shall be increments of at least \$25,000.
- iii. The Debtor may, in its reasonable business judgment, and after consulting with the Consultation Parties, announce increases or reductions to the Overbid Procedures at any time during the Auction.

(c) Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, the Debtor, after consulting with the Consultation Parties, shall announce the bid that it determines in its business judgment to be the highest or otherwise best offer for the relevant Forward Contracts (the “Leading Bid”). Each round of bidding will conclude after each participating Qualified Party has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid.

- (d) Winning Bid. Immediately prior to the conclusion of the Auction, the Debtor shall, in consultation with the Consultation Parties, (i) determine, consistent with these Bidding Procedures, which bid constitutes the Winning Bid for the implicated Forward Contracts; and (ii) notify all Qualified Parties at the Auction for the implicated Forward Contracts of the identity of the bidder that submitted the Winning Bid (each such bidder, the “Winning Bidder”) and the amount of the purchase price and other material terms of the Winning Bid.

The Auction may include open bidding in the presence of all other Qualified Parties. All Qualified Parties shall have the right to submit additional bids at the Auction to improve their bids. The Debtor may, in its reasonable business judgment, negotiate with any and all Qualified Parties participating in the Auction.

The Debtor shall have the right, after consulting with the Consultation Parties, to determine, in its reasonable business judgment, without liability, which bid is the highest or otherwise best bid and reject at any time, any bid that the Debtor deems to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, Bankruptcy Rules, or the Local Rules, these Bidding Procedures, any order of the Bankruptcy Court, or the best interests of the Debtor and its estate.

At least one (1) day prior to the Sale Hearing, the Winning Bidder shall be required to supplement its Good Faith Deposit by the difference between its Qualified Bid and the Winning Bid.

- (e) Backup Bid. Immediately prior to the conclusion of the Auction, the Debtor shall, in consultation with the Consultation Parties, (i) determine, consistent with these Bidding Procedures, which Qualified Bid is the next highest or otherwise best Qualified Bid for the relevant Forward Contracts after the Winning Bid (each such Qualified Bid, a “Backup Bid”); and (ii) notify all Qualified Parties at the Auction for the implicated Forward Contracts of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid. Backup Bids shall be open and irrevocable until the earlier of (x) the first business day following closing of the Proposed Sale or (y) thirty (30) days following the last date of the Auction (as may be adjourned). If the Winning Bidder for the implicated Forward Contract fails to consummate a Proposed Sale, the Backup Bidder shall be

deemed the new Winning Bidder, and the Debtor will be authorized, but not required, to consummate a Proposed Sale for the implicated Forward Contracts with the Backup Bidder.

In the event that a Winning Bidder fails to consummate the proposed transaction by the Closing Date, such bidder's deposit shall be forfeited to the Debtor (but not as liquidated damages, the Debtor reserving the right to pursue all remedies that may be available to it) and the Debtor shall be free to consummate the proposed transaction with the Backup Bidder at the final price bid by such bidder at the Auction (or, if that bidder is unable to consummate the transaction at that price, the Debtor may consummate the transaction with the next higher bidder, and so forth) without the need for an additional hearing or order of the Court.

- (f) Modification of Procedure. The Debtor may, after consulting with the Consultation Parties, announce at the Auction modified or additional procedures for conducting the Auction or otherwise modifying these Bidding Procedures.
- (7) Auction Results: Within one (1) business day following the Auction, the Debtor will cause the results of the Auction to be filed with the Court, docketed on the Court's electronic case filing ("ECF") system, and published on the website of the Debtor's Court-approved claims agent, Donlin Recano, at (<https://www.donlinrecano.com/Clients/tcg/Index>) (the "Donlin Recano Website"), which filing will include a list of the implicated Forward Contracts to be sold and assigned to the Winning Bidder(s), subject to revision prior to Closing, as further set forth below.
- (8) Bankruptcy Court Approval: All bids for the purchase of some or all of the Forward Book shall be subject to approval of the Court and conditioned upon entry of a Sale Order.
- (9) Sale Objection: Objections to the Proposed Sale (each, a "Sale Objection"), including any objection to the sale of any Forward Contracts free and clear of liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and entry of any Sale Order (other than Adequate Assurance Objections and Cure Objections (as hereinafter defined)), must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; and (iii) be filed with the Court and served on: (a) counsel for the Debtor (Attn: Joseph L. Schwartz, Esq.), (b) the

Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (c) Husch Blackwell LLP, as counsel to FCStone (Attn: Benjamin F. Mann, Esq.); (d) the attorneys (if applicable) of any Winning Bidder(s); (e) the attorneys (if applicable) of any applicable Backup Bidder(s); (f) Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq.) and (e) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere, Esq.) (the foregoing parties, the “Objection Recipients”) **by June 21, 2017, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”).

All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the Sale Hearing. The failure of any party to timely file with the Court and serve on the Objection Recipients a Sale Objection by the Sale Objection Deadline forever shall be barred from asserting, at the Sale Hearing or thereafter, any objection to the relief requested in the Sale Motion, or to the consummation and performance of the applicable Proposed Sale(s) contemplated by an applicable asset purchase agreement with a Winning Bidder, including the transfer of the Forward Contracts to the applicable Winning Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

27. The Debtor submits that the Bidding Procedures are fair and reasonable.

**B. Key Dates and Deadlines**

28. Consistent with the Guidelines for the Conduct of Asset Sales established by the Bankruptcy Court for the Southern District of New York, the Debtor proposes the following key dates and deadlines for the Proposed Sale:

May 31, 2017 at 2:00 p.m.	Hearing on Bidding Procedures Motion
June 3, 2017	Deadline to Mail Bidding Procedures Notice and Sale Motion
June 14, 2017	Offer Deadline
June 16, 2017	Deadline for Debtor to notify Prospective Bidders of their status as Qualified Parties
June 20, 2017 at 10:00 a.m.	Auction
June 21, 2017 at 4:00 p.m.	Deadline to file Sale Objection, Cure Objections and Adequate Assurance Objections to FCStone
June 23, 2017 at 4:00 p.m.	Deadline to file Adequate Assurance Objections to Winning Bidders Selected at the Auction, Excluding FCStone
June 28, 2017 at 10:00 a.m.	Sale Hearing

**C. Notice**

29. The Debtor proposes that, within three (3) days filing of this Sale Motion, the Debtor shall serve a copy of this Sale Motion, the proposed Bidding Procedures Order, the proposed Bidding Procedures Notice, the proposed Sale Order, and all exhibits to such orders upon the following persons by first-class mail, postage prepaid: (i) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (ii) Husch Blackwell LLP, as counsel to FCStone (Attn: Benjamin F. Man, Esq.); (iii) all Counterparties to the Forward Contracts; (iv) all parties who have made an offer on the Forward Book or expressed an interest in making an offer on the Forward Book; (v) Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq.); (vi) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere, Esq.); (vii) all taxing authorities that have jurisdiction over the Forward Book; (viii) all known persons holding a lien on any of the Forward Book Contracts; and (ix) all entities who have requested notice under Bankruptcy Rule 2002 (collectively, the “Notice Parties”).

30. Further, within three (3) days after entry of the Bidding Procedures Order, the Debtor shall serve the Bidding Procedures Order and the Bidding Procedures Notice on the Notice Parties via first class mail.

31. The Debtor submits that the foregoing notice is sufficient to provide effective notice of the Bidding Procedures, the Auction and the Proposed Sale to potentially-interested parties in a manner designed to maximize the chance of obtaining the broadest possible participation in the Auction, while minimizing the costs to the estate.

**ASSUMPTION AND ASSIGNMENT  
OF DESIGNATED CONTRACTS**

32. In connection with the Proposed Sale, the Debtor seeks authority under section 365 of the Bankruptcy Code to (a) assume and assign the Assigned Contracts and all other Forward Contracts for which Offers are made (the “Designated Contracts”), and (b) execute and deliver to FCStone (and/or any other Winning Bidder, as the case may be) such documents or other instruments as may be necessary to assign and transfer the Designated Contracts.

33. The Debtor believes that there will be no cure amounts associated with the Designated Contracts as a result of revised delivery schedules agreed to between FCStone and Counterparties to the Designated Contract; however, the Debtor seeks to implement the following Assumption and Assignment Procedures (the “Assumption and Assignment Procedures”) in order to facilitate a smooth process:

- a. Notice of Potential Assumption and Assignment. Within two (2) days after the entry of the Bidding Procedures Order, the Debtor shall file with the Court, serve on the Notice Parties, including each Counterparty to the Forward Contracts, and cause to be published on the Donlin Recano Website, the Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit F**, which shall (i) identify all of the Forward Contracts; (ii) list the Debtor’s good faith calculation of the cure costs with respect to each Forward Contract; (iii) expressly state that

assumption or assignment of a Forward Contract is subject to Court approval; and (iv) prominently display the deadline to file objections to the assumption, assignment, and sale of the Forward Contracts (the “Proposed Assumed Contracts Notice”).

b. Cure Objections.

- (1) Cure Objection Deadline. Any Counterparty to a Forward Contract that wishes to object to the proposed assumption, assignment, and sale of the Forward Contract, the subject of which objection is the Debtor’s proposed costs to cure any outstanding monetary defaults then existing (“Cure Costs”) under such contract (each, a “Cure Objection”), shall file with the Court and serve on the Objection Recipients its Cure Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **June 21, 2017 at 4:00 p.m. (prevailing Eastern Time)**.
- (2) Resolution of Cure Objections. The Debtor and a Counterparty that has filed a Cure Objection shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined by the Court at the Sale Hearing. The Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph.<sup>14</sup>
- (3) Adjourned Cure Objections. If a timely Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtor’s discretion, after consulting with the Consultation Parties and the applicable Winning Bidder, be adjourned with the Court’s consent (an “Adjourned Cure Objection”) to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Proposed Sale; provided that, the Debtor maintains a cash reserve equal to the Cure Costs the objecting Counterparty believes is required to cure the asserted monetary default under the implicated Forward Contracts. Upon resolution of an Adjourned Cure Objection and the payment of the applicable Cure Costs, if any, the implicated Forward Contract that was the subject of such Adjourned Cure Objection shall be

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<sup>14</sup> All other objections to the proposed assumption and assignment of the Debtor’s right, title, and interest in, to, and under a Forward Contract, if it is ultimately designated as a contract to be assumed or assigned by a Winning Bidder, will be heard at the Sale Hearing.

deemed assumed and assigned to the applicable Winning Bidder, as of the closing date of the applicable Proposed Sale.

- (4) Failure to File Timely Cure Objection.<sup>15</sup> If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Forward Contract (unless such Counterparty has timely filed an Adequate Assurance Objection with respect to the Forward Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale. Further, in the event no objections are timely filed and served, the Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Forward Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Forward contract, or any other document, and the Counterparty to the Forward Contract shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such Forward Contract against the Debtor or any Winning Bidder(s), or the property of any of them.

c. Adequate Assurance Objections.

- (1) Adequate Assurance Information. The Debtor shall provide, with respect to FCStone and each Qualified Party, the Adequate Assurance Information. The Debtor shall: (a) within 24 hours of receipt of an Offer from a Potential Bidder (other than FCStone) and (b) with respect to FCStone, by no later than twenty (20) days before the Sale Hearing, or by **June 8, 2017 at 4:00 p.m.** (the later of (a) and (b), the "Adequate Assurance Deadline"), provide a copy of the Adequate Assurance Information to those Counterparties (or their counsel) who have (x) submitted a written request (e-mail to Debtor's counsel is acceptable) for Adequate Assurance Information and (y) confirmed in writing to the Debtor's counsel (e-mail is acceptable) their agreement to keep such Adequate Assurance Information strictly confidential and use it solely for the purpose of evaluating whether a Potential Bidder, including FCStone, has provided adequate assurance of future performance under the implicated Forward Contracts.

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<sup>15</sup> Three (3) of the Non-U.S. Counterparties – GCB Cocoa Singapore PTE LTD, JB Cocoa SDN BHD, and JB Foods Global Pte. Ltd. – have sent post-petition notices to the Debtor attempting to cancel their contracts with the Debtor. Copies of such notices are attached as Exhibit 1 to the Frezza Declaration. The Debtor has advised these Counterparties that such purported terminations are improper and ineffective. The Debtor seeks to assign these contracts in accordance with this Sale Motion, subject to the terms of the APA. Any written objection to this assignment, if any, by these or other Counterparties, shall be addressed at the Sale Hearing. The Debtor reserves any and all rights against such Counterparties to seek damages arising from their actions.

- (2) Adequate Assurance Objection Deadline. Any Counterparty to a Forward Contract that wishes to object to the proposed assumption, assignment, and sale of the Forward Contract (including but not limited to any assertion that a Forward Contract is terminated), the subject of which objection is a Winning Bidder's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection") shall file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including submitting any appropriate documentation in support thereof, by (i) no later than **June 21, 2017 at 4:00 p.m.** if such Adequate Assurance Objection relates to FC Stone or (ii) no later than **June 23, 2017 at 4:00 p.m.** with respect to such Qualified Bidder other than FCStone.
  - (3) Resolution of Adequate Assurance Objections. The Debtor and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance by the applicable Winning Bidder shall be determined by the Court at the Sale Hearing.
  - (4) Failure to File Timely Adequate Assurance Objection. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Forward Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Forward Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale. Further, in the event no objections are filed and served, the applicable Winning Bidder shall be deemed to have provided adequate assurance of future performance with respect to the implicated Forward Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Forward Contract, or any other document.
- d. Other Sale Objections by Counterparties.
- (1) Objection Deadline. Any Counterparty to a Forward Contract that wishes to file a Sale Objection (other than a Cure Objection or an Adequate Assurance Objection) to the proposed assumption, assignment and sale of the Forward Contract shall file with the Court and serve on the Objection Recipients its Sale

Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than the Sale Objection Deadline of **June 21, 2017 at 4:00 p.m. (prevailing Eastern Time)**.

- (2) Failure of Counterparties to File Timely Sale Objection. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Sale Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Forward Contract (unless the Counterparty has filed a timely Cure Objection or Adequate Assurance Objection with respect to the Forward Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale.
- e. Reservation of Rights. The inclusion of a Forward Contract or Cure Costs on the Proposed Assumed Contracts Notice shall not constitute or be deemed a determination or admission by the Debtor, the applicable Winning Bidder(s), or any other party in interest that such contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Costs are due (all rights with respect thereto being expressly reserved). The Debtor reserves all of its rights, claims, and causes of action with respect to each Forward Contract or other document listed on the Proposed Assumed Contracts Notice. The Debtor's inclusion of any Forward Contract on the Proposed Assumed Contract Notice shall not be a guarantee that such contract ultimately will be assumed and assigned and sold. The Proposed Assumed Contract Notice shall be without prejudice to each Winning Bidder's rights, if any, under the applicable asset purchase agreement, to subsequently exclude any Forward Contracts from the assumption or assignment prior to the closing of an applicable Proposed Sale, pursuant to the terms of the APA or Modified APA.

34. The Debtor submits that the foregoing Assumption and Assignment Procedures and deadlines are fair and reasonable, and will provide sufficient notice to the non-debtor Counterparties to the Designated Contracts.

**RELIEF REQUESTED AND BASIS THEREOF**

**A. The Proposed Sale is Within the Debtor's Sound Business Judgment/Notice is Good and Sufficient**

35. The Debtor submits that ample authority exists for approval of the Proposed Sale. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

36. In applying this provision, courts in this and other districts have required that the sale of a debtor's assets be based upon the sound business judgment of the debtor. See, e.g., Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143-145 (2d Cir. 1992) (holding that a judge reviewing a section 363(b) application must find from the evidence presented a good business reason to grant such application); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (same).

37. In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983), one of the seminal and most widely followed cases dealing with asset sales, the Second Circuit held that the factors to be considered in determining whether a sound business reason exists include the following:

the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, *most importantly perhaps, whether the asset is increasing or decreasing in value.*

Id. at 1071 (emphasis supplied).

38. The Lionel decision has been widely accepted and applied by various courts considering a debtor's request to sell assets, including requests to approve a sale of certain of the

assets of a debtor's estate. See, e.g., In re the Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991); In re Eng'g Prod. Co., 121 B.R. 246 (Bankr. E.D. Wis. 1990); In re Thomson McKinnon Sec., Inc., 120 B.R. 301 (Bankr. S.D.N.Y. 1990); In re Channel One Communications, Inc., 117 B.R. 493 (Bankr. E.D. Mo. 1990); In re Brethren Care, 98 B.R. 927 (Bankr. N.D. Ind. 1989). As will be demonstrated below, application of the above-listed factors demonstrates that approval of the APA is warranted at this time.

39. Once a court is satisfied that there is a sound business justification for the proposed sale, the court must then determine whether: (i) the debtor has provided the interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable, and (iii) the purchaser is proceeding in good faith. Polvay v. B.O. Acquisitions, Inc. (In re Betty Owens Sch., Inc.), No. 96 Civ. 3576 (PKL), 1997 WL 188127, at \*4 (S.D.N.Y. Apr. 17, 1997); In re Del. & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991); In re Decora Indus., Inc., No. 00-4459 (JJF), 2002 WL 32332749, at \*2 (D. Del. May 20, 2002).

40. Fair and accurate notice should inform all interested parties of the liquidation of the debtor's business; disclose accurately the terms of the sale; explain the effect of the sale upon the debtor's business; and explain why the sale is in the best interests of the debtor's estate. In re Delaware & Hudson Ry., 124 B.R. at 180; Naron & Wagner, Chartered, 88 B.R. 85, 88 (Bankr. D.Md. 1988).

41. The Proposed Sale provides the Debtor with an opportunity to maximize the value of the Forward Book. The purchase price for the Purchased Assets is \$3,500,000, subject to adjustment, as set forth in Section 2.05 and Section 2.06 of the APA. The Proposed Sale also provides for the potential sale of other Forward Contracts within the Forward Book. The Debtor believes that the proposed purchase price for the Purchased Assets, which sets a floor for the

Purchased Assets, represents the highest and/or best value available for the Purchased Assets, particularly in light of the limited market for this specialized asset and the targeted marketing efforts by the Debtor. Further, the APA is subject to higher and better offers, thereby ensuring that the best possible offer has been or will be received.

42. Moreover, the Debtor submits that the notice provisions previously described herein to the Notice Parties will ensure that full and fair disclosure, as well as the opportunity to object, will be afforded to all creditors and parties in interest.

43. For these reasons, the Debtor submits that the Proposed Sale meets the requirements of Section 363(b) of the Bankruptcy Code.

**B. Sale Free and Clear of Liens, Claims, Encumbrances and Interests**

44. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell property of the estate:

free and clear of any interest in such property of an entity other than the estate if (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest, (2) such entity consents, (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property, (4) such interest is in bona fide dispute, or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

45. The Debtor submits that the Proposed Sale of the Forward Book, along with the Bidding Procedures related thereto, meets the test set forth in section 363(f)(2), in that the Pre-Petition Lenders, which hold liens against the Forward Book, have consented to the Proposed Sale. In addition, the Pre-Petition Lenders' liens against the Forward Book will attach to the net proceeds from the Proposed Sale with the same validity, enforceability, priority, force and effect that they now have as against the Forward Book.

46. Accordingly, the Debtor submits that its sale and assignment of some or all of the Forward Contracts free and clear of all liens, claims, encumbrances and interests, meets the requirements of Section 363(f) of the Bankruptcy Code.

**C. Protections as a Good Faith Purchaser**

47. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from a debtor in the event that the sale conducted under section 363(b) of the Bankruptcy Code is later reversed or modified on appeal. Specifically, section 363(m) provides:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal.

11 U.S.C. § 363(m).

48. Section 363(m) of the Bankruptcy Code “affords ‘finality to judgment by protecting good faith purchasers, the innocent third parties who rely on the finality of bankruptcy judgments in making their offers and bids.’” Reloeb Co. v. LTV Corp. (In re Chateaugay Corp.), No. 92 Civ. 7054 (PKL), 1993 WL 159969, at \*3 (S.D.N.Y. May 10, 1993) (quoting Anheuser-Busch, Inc. v. Miller (In re Stadium Mgmt. Corp.), 895 F.2d 845, 847 (1st Cir. 1990)); see also Allstate Ins. Co. v. Hughes, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”); In re Stein & Day, Inc., 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (“[P]ursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal.”)

49. The Second Circuit has indicated that, generally, a party would have to show fraud or collusion between the buyer and the debtor in possession or trustee or other bidders in order to demonstrate a lack of good faith. See Kabro Assocs. of W. Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997) (“Typically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”); see also In re Angelika Films 57th, Inc., Nos. 97 Civ. 2239 (MBM), 97 Civ. 2241 (MBM), 1997 WL 283412, at \*7 (S.D.N.Y. 1997) (same; holding that purchaser’s status as an insider was not *per se* bad faith).

50. Here, the Debtor submits that FCStone has engaged in the sale and assignment process in good faith as part of an arm’s length transaction negotiated over the course of several weeks. FCStone is an independent entity, unaffiliated with the Debtor, its officers, directors or shareholders, and the resulting APA is the product of the parties’ arm’s length, good-faith negotiations.

51. Further, the officers and directors of the Debtor and the managers of FCStone have no existing or former business or commercial relationship. However, as noted, FCStone recently hired an employee of one of the Debtor’s affiliates and is currently having discussions with other employees of the Debtor to potentially play roles in facilitating the successful continuation of certain of the Forward Contracts.

52. Moreover, by exposing the Forward Book to the market through the Auction, the Debtor submits that the consideration to be received for the Forward Book is fair and reasonable.

53. For these reasons, the Debtor requests a finding that FCStone is a good-faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

**D. The Bidding Procedures are Fair and Reasonable and are in the Best Interests of the Debtor's Estate and Creditors**

54. In order to maximize the value of the Forward Book for the benefit of the Debtor, its creditors and its chapter 11 estate, the Debtor seeks to implement a competitive bidding process for the Forward Book that is designed to generate a maximum recovery. The Debtor believes that the Auction and proposed Bidding Procedures will encourage participation by financially-capable bidders. Furthermore, the Bidding Procedures are consistent with other procedures previously approved by this and other courts, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. See e.g., In re Kmart, Case No. 02-B02474 (SPS) (Bankr. N.D. 111 May 10, 2002); In re Global Crossing, Case No. 02-40188 (S.D.N.Y. March 25, 2002) (REG); In re Randall's Island Family Golf Ctrs., Inc., 261 B.R. 96 (S.D.N.Y. 2001); In re Integrated Resources, Inc., 147 B.R. 650 (S.D.N.Y. 1992).

55. Further, bidding incentives, such as the Break-Up Fee and Expense Reimbursement, encourage a potential purchaser to invest the requisite time, money and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. See e.g., In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding bidding incentives may be “legitimately necessary to convince a ‘white knight’ to enter the bidding by providing some form of compensation for the risks it is undertaking”) (citation omitted); In re Marrose Corp., 89 B 12171-12179 (CB), 1992 WL 33848, at \*5 (Bankr. S.D.N.Y. 1992) (stating that “[a]greements to provide breakup fees or reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”).

56. Further, the Debtor submits that the Bidding Procedures are a normal and necessary component of sales outside the ordinary course of business under section 363 of the Bankruptcy Code. See e.g., In re Kmart, Case No. 02 B02474 (SPS) (Bankr. N.D. Ill. May 10, 2002) (authorizing a termination fee and bid protections for potential bidders); In re Comdisco, Inc., Case No. 01 24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (approving a termination fee as, *inter alia*, an actual and necessary cost and expense of preserving the debtor's estate, of substantial benefit to the debtor's estate, and a necessary inducement for, and a condition to, the proposed purchaser's entry into the Asset Purchase Agreement); In re Integrated Resources, Inc., 147 B.R. at 660 (noting that break up fees may be legitimately necessary to convince a "white knight" to offer an initial bid by providing some form of compensation for the expenses such bidder incurs, and the risks such bidder faces by having its offer held open, subject to higher and better offers); In re Crowthers McCall Pattern, Inc., 114 B.R. 877 (Bankr. S.D.N.Y. 1990) (approving an overbid requirement in an amount equal to the approved break up fee); In re Kupp Acquisition Corp., Case No. 96 1223 (PJW) (Bankr. D. Del. March 3, 1997).

57. Here, the proposed Break-up Fee is 1.4% of the proposed purchase price, or \$50,000, plus FCStone's additional expenses for performing its due diligence, negotiating and documenting the terms of the APA. As a result, the Transaction Expenses are within the range of fees typically paid in other significant sales transactions that have been consummated in a bankruptcy setting. See e.g., Consumer News & Bus. Channel P'ship v. Financial News Network, Inc. (In re Financial News Network, Inc.), 980 F.2d 165, 167 (2d Cir. 1992) (noting that transaction at issue provided for a \$8.2 million breakup fee on a \$149.3 million transaction (5.5%)); Doehring v. Crown Corp. (In re Crown Corp.), 679 F.2d 774 (9th Cir. 1982) (bid protection of 4.9% approved).

58. Further, the amount of the Transaction Expenses is reasonably calculated to compensate FCStone (a) for committing the time to perform due diligence, (b) for lost opportunity in being bound to a transaction that could be topped in a competitive auction process and (c) for serving as a “stalking horse” to encourage the submission of other bids.

59. For these reasons, the Debtor submits that the Bidding Procedures, which include the Transaction Expenses, should be approved.

**E. Assumption and Assignment of Designated Contracts**

60. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). A debtor’s decision to assume an executory contract or unexpired lease must be an exercise of its sound business judgment for the court to approve the assumption under section 365(a) of the Bankruptcy Code. See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.), 78 F.3d 18, 25 (2d Cir. 1996); Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993).

61. Further, section 365(k) of the Bankruptcy Code provides that assignment by a debtor to a third party assignee of a contract or lease “relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.” 11 U.S.C. § 365(k). Therefore, upon the closing of the Proposed Sale, the Debtor will be relieved of its obligations under the Designated Contracts, thereby further decreasing the obligations of the estate and creating value for creditors.

62. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under forward contracts that will be assumed must be cured or that adequate assurance be provided to the counterparties that such defaults will be promptly cured.

63. In addition, pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2)(B). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr D.N.J. 1988) (internal citations omitted); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (holding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. See In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance when prospective assignee of lease had financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; in the leasing context, chief consideration with respect to adequate assurance is whether rent will be paid).

64. To the extent that defaults exist under the Designated Contracts, the Debtor will ensure that the Winning Bidding will cure or provide adequate assurance of cure of such defaults within the meaning of section 365(b)(1)(A) of the Bankruptcy Code.

65. Further, the Debtor will be prepared to proffer testimony or present evidence to demonstrate FCStone’s (and/or the Winning Bidder’s, as the case may be) financial credibility,

experience in the industry and willingness and ability to perform under the Designated Contracts. Therefore, the Sale Hearing will provide the Court and other interested parties with an opportunity to evaluate and if necessary, challenge the ability of FCStone (and/or the Winning Bidder, as the case may be) to provide adequate assurance of future performance under the Designated Contracts.

66. For these reasons, the Debtor submits that it meets all of the requirements of section 365 of the Bankruptcy Code necessary to assume and assign the Designated Contracts.

**F. Request for Relief Pursuant to Bankruptcy Rules 6004(h) and 6006(d)**

67. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

68. To preserve the value of the Forward Book and limit the costs of administering and preserving the Forward Book, it is very important that the Debtor close on the Proposed Sale as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtor requests that the Court waive the stay periods under Bankruptcy Rules 6004(g) and 6006(d).

**NOTICE**

69. Notice of this Motion will be given to in accordance with the notice procedures set forth herein. The Debtor submits that such notice is sufficient and requests that this Court find that no other or further notice is necessary.

**NO PRIOR REQUEST**

70. No previous request of the relief sought herein has been made by the Debtor to this or any other court.

**CONCLUSION**

**WHEREFORE**, for all the foregoing reasons, the Debtor respectfully requests that this Court enter orders, substantially in the form annexed hereto, granting the Motion and such other further relief as the Court deems just and equitable.

Dated: May 12, 2017  
New York, New York

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Attorneys for the Debtor and  
Debtor-in-Possession

**Exhibit A**

**ASSET PURCHASE AGREEMENT**

between

**TRANSMAR COMMODITY GROUP LTD.**  
**Seller**

and

**FCSTONE MERCHANT SERVICES, LLC**  
**Buyer**

dated as of

May 9, 2017

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**EXHIBITS**

- Exhibit A**     **Assignment and Assumption Agreement**
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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of May 9, 2017, is entered into by and between Transmar Commodity Group Ltd., a New York corporation (“**Seller**”) and FCStone Merchant Services, LLC, a Delaware limited liability company (“**Buyer**”).

### RECITALS

WHEREAS, Seller is a full service cocoa trading and cocoa product supplier to the international confectionary industry (the “**Business**”); and

WHEREAS, on December 31, 2016, Seller filed a voluntary petition for bankruptcy commencing a case (the “**Bankruptcy Case**”) under chapter 11 of title 11 of the United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*, the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”);

WHEREAS, subject to the terms and conditions set forth herein, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, the Purchased Assets, in a sale authorized by the Bankruptcy Court free and clear of all liens, claims and encumbrances pursuant to sections 105, 363 and 365 of the Bankruptcy Code;

WHEREAS, the transactions contemplated by this Agreement will be subject to the approval of the Bankruptcy Court and will be consummated only pursuant to a Sale Order (as defined herein) to be entered in the Bankruptcy Case and other applicable provisions of the Bankruptcy Code;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this **Article I**:

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Applicable Percentage**” has the meaning set forth in Section 2.06(a).

“**Assigned Contracts**” has the meaning set forth in Section 2.01(a).

“**Assignment and Assumption Agreement**” has the meaning set forth in Section 3.02(a)(i).

“**Assumed Liabilities**” has the meaning set forth in Section 2.03.

“**Auction**” means the auction conducted by Seller pursuant to the Bidding Procedures Order.

“**Base Price**” has the meaning set forth in Section 2.05.

“**Bankruptcy Case**” has the meaning set forth in the recitals.

“**Bankruptcy Code**” has the meaning set forth in the recitals.

“**Bankruptcy Court**” has the meaning set forth in the recitals.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure.

“**Benefit Plan**” means each benefit, retirement, employment, consulting, compensation, incentive, bonus, stock option, restricted stock, stock appreciation right, phantom equity, change in control, severance, vacation, paid time off, welfare and fringe-benefit agreement, plan, policy and program in effect and covering one or more employees or former employees of the Business, current or former directors of the Business or the beneficiaries or dependents of any such Persons, and is maintained, sponsored, contributed to, or required to be contributed to by Seller, or under which Seller has any material liability for premiums or benefits.

“**Bidding Procedures Order**” has the meaning set forth in Section 9.01(a).

“**Break-Up Fee**” has the meaning set forth in Section 9.01(a)(ii).

“**Business**” has the meaning set forth in the recitals.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York, United States are authorized or required by Law to be closed for business.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Closing Certificate**” has the meaning set forth in Section 7.03(d).

“**Cash Amount**” has the meaning set forth in Section 2.05.

“**Closing**” has the meaning set forth in Section 3.01.

“**Closing Date**” has the meaning set forth in Section 3.01.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Competing Bid**” has the meaning set forth in Section 9.02(a).

“**Confidentiality Agreement**” means the Confidentiality Agreement, dated as of February 27, 2017, between Buyer and Seller.

“**Contracts**” means all legally binding written contracts, leases, mortgages, licenses, instruments, notes, commitments, undertakings, indentures and other agreements.

“**Cure Amount**” means all amounts, costs and expenses required to cure all defaults under the Assigned Contracts so that they may be sold and assigned to Buyer pursuant to section 365(b)(1) of the Bankruptcy Code.

“**Data Room**” means the electronic documentation site made available by or on behalf of Seller in connection with the transactions contemplated by this Agreement to which access was given to Buyer, its Affiliates, and their Representatives.

“**Deposit**” has the meaning set forth in Section 3.02(b)(i).

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

“**Dollars or \$**” means the lawful currency of the United States.

“**Drop Dead Date**” has the meaning set forth in Section 10.01(b)(i).

“**Encumbrance**” means any Lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

“**Excluded Assets**” has the meaning set forth in Section 2.02.

“**Excluded Liabilities**” has the meaning set forth in Section 2.04.

“**Expense Reimbursement**” has the meaning set forth in Section 9.01(a)(ii).

“**Final Order**” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in the Bankruptcy Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for a new trial, reargument or rehearing shall then be pending or (ii) if an appeal, writ of certiorari, new trial reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such order was appealed, or

certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Bankruptcy Rules; *provided* that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order not to be a Final Order.

“**Forward Contracts**” has the meaning set forth in Section 2.01(a).

“**GAAP**” means United States generally accepted accounting principles in effect from time to time.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Intellectual Property**” means any and all of the following in any jurisdiction throughout the world: (a) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights, including all applications and registrations, and works of authorship, whether or not copyrightable; (c) trade secrets and confidential know-how; (d) patents and patent applications; (e) websites and internet domain name registrations; and (f) all other intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing.

“**Knowledge of Seller**” or “**Seller’s Knowledge**” or any other similar knowledge qualification, means the actual knowledge of those persons listed on Section 1.01(a) of the Disclosure Schedules.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Lien**” means any charge against or interest in property to secure payment of a debt (as such term is defined in section 101(12) of the Bankruptcy Code) or performance of an obligation.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is materially adverse to (a) the business, results of operations, financial condition or assets of the Business, taken as a whole, or (b) the ability of Seller to consummate the transactions

contemplated hereby; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Business operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (vi) any matter of which Buyer is aware on the date hereof; (vii) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof; (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Seller and the Business; (ix) any natural or man-made disaster or acts of God; (x) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded); or (xi) the financial condition or operations of Seller or Seller’s chapter 11 petition and the Bankruptcy Case.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations and consents required to be obtained from Governmental Authorities.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Purchase Contract**” has the meaning given to it in the Services Agreement.

“**Purchased Assets**” has the meaning set forth in Section 2.01.

“**Purchase Price**” has the meaning set forth in Section 2.05.

“**Receivables**” means, any and all accounts receivable, notes, book debts and other amounts due or accruing to Seller as of the Closing, and any security, claim, remedy or other right related to any of the foregoing.

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Sale Order**” has the meaning set forth in Section 9.01(c).

“**Sale Motion**” has the meaning set forth in Section 9.01(a).

“**Sales Contract**” has the meaning given to it in the Services Agreement.

“**Seller**” has the meaning set forth in the preamble.

“**Seller Closing Certificate**” has the meaning set forth in Section 7.02(d)Section 7.02(d).

“**Services Agreement**” means the Services Agreement, dated as of March 28, 2017, between Buyer and Seller, a copy of which is attached hereto as **Exhibit B**.

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Transaction Documents**” means this Agreement, the Assignment and Assumption Agreement and the other agreements, instruments and documents required to be delivered at the Closing.

“**Transaction Expenses**” has the meaning set forth in Section 9.01(a)(ii).

## ARTICLE II PURCHASE AND SALE

**Section 2.01 Purchase and Sale of Assets.** Subject to the terms and conditions set forth herein, and pursuant to sections 105, 363 and 365 of the Bankruptcy Code, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all Encumbrances, all of Seller’s right, title and interest in, to and under the following assets, properties and rights of Seller, to the extent that such assets, properties and rights exist as of the Closing Date (collectively, the “**Purchased Assets**”):

(a) all of the forward Contracts set forth on Section 2.01(a) of the Disclosure Schedules (collectively, the “**Forward Contracts**”), other than each Forward Contract (i) that has been terminated prior to the Closing; (ii) in the case of a Forward Contract that is a Sales Contract, under which all of Seller’s obligations have been satisfied prior to the Closing; (iii) in the case of a Forward Contract that is a Purchase Contract, under which all of the obligations of the counterparty thereto have been satisfied prior to the Closing; and (iv) with a particular counterparty if the portion of the Cure Amount (determined without regard to this clause (iv) of Section 2.01(a)) applicable to the Forward Contracts with such counterparty exceeds the product of the Base Price (as adjusted on account of such Forward Contract under Section 2.05(a), Section 2.05(b), Section 2.06(b), and Section 2.06(d)) and the sum of Applicable Percentages assigned to the Forward Contracts with such counterparty

(the Forward Contracts other than those described in clauses (i), (ii), (iii) and (iv), the “**Assigned Contracts**”); and

(b) all of Seller’s rights under warranties, indemnities and all similar rights against third parties to the extent related to any of the Assigned Contracts.

For purposes of this Agreement, a Forward Contract shall be treated as terminated only if (x) the counterparty thereto has delivered a notice of termination with respect to such Forward Contract, Seller and Buyer agree that such Forward Contract has been duly terminated, and such termination is not due to the complete performance of such Forward Contract pursuant to the Services Agreement; (y) the Bankruptcy Court has determined that such Forward Contract (1) has been duly terminated in accordance with its own terms and the applicable provisions of the Bankruptcy Code, and such termination is not due to the complete performance of such Forward Contract pursuant to the Services Agreement, or (2) may not be otherwise assigned to or enforced after the Closing by Buyer; or (z) such Forward Contract is excluded from the Purchased Assets pursuant to Section 2.06(c).

**Section 2.02 Excluded Assets.** Other than the Purchased Assets subject to Section 2.01, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (the “**Excluded Assets**”). Excluded Assets include the following assets and properties of Seller:

- (a) all cash and cash equivalents, bank accounts and securities of Seller;
- (b) all inventory;
- (c) all Contracts that are not Assigned Contracts;
- (d) all Receivables, including any Receivables arising under or associated with the Assigned Contracts, but subject in all cases to the Services Agreement;
- (e) all membership and other equity interests in any Person;
- (f) all Intellectual Property;
- (g) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee benefit-related files or records, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain;
- (h) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
- (i) all Benefit Plans and trusts or other assets attributable thereto;

(j) all Tax assets (including duty and Tax refunds and prepayments) of Seller or any of its Affiliates;

(k) all rights to any action, suit or claim of any nature available to or being pursued by Seller other than those relating to enforcement of the Purchased Assets, whether arising by way of counterclaim or otherwise; and

(l) the rights which accrue or will accrue to Seller under the Transaction Documents.

**Section 2.03 Assumed Liabilities.** Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge when due any and all liabilities and obligations of Seller arising out of or relating to the Business or the Purchased Assets on or after the Closing, other than the Excluded Liabilities (collectively, the “**Assumed Liabilities**”), including, without limitation, the following:

(a) all liabilities and obligations arising under or relating to the Assigned Contracts; and

(b) the Cure Amount.

**Section 2.04 Excluded Liabilities.** Buyer shall not assume and shall not be responsible to pay, perform or discharge any liabilities or obligations of the Seller (other than the Assumed Liabilities pursuant to Section 2.03 hereof), including, but not limited to, any of the following liabilities or obligations of Seller (collectively, the “**Excluded Liabilities**”):

(a) any liabilities or obligations relating to or arising out of the Excluded Assets;

(b) any liabilities or obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period ending on or prior to the Closing Date and (ii) any other Taxes of Seller (other than Taxes allocated to Buyer under Section 6.08) for any taxable period;

(c) any liabilities or obligations of Seller relating to or arising out of (i) the employment, or termination of employment, of any employee prior to the Closing, or (ii) workers’ compensation claims of any employee which relate to events occurring prior to the Closing Date; and

(d) any liabilities or obligations of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others.

**Section 2.05 Consideration.** The aggregate consideration for the sale and transfer of the Purchased Assets shall be \$3,500,000 (the “**Base Price**”), reduced by (a) amounts actually received and retained by Seller pursuant to the Services Agreement prior to the Closing, (b) the amount estimated in good faith by Seller and Buyer at the time of the Closing to be received and retained by Seller pursuant to the Services Agreement after the Closing as a result of Services (as such term is defined in the Services Agreement) performed prior to the Closing in respect of (i) Sales Contracts and (ii) Purchase Contracts described in Section 1.2 of the Services Agreement (taking into account actual and anticipated Third Party Sales, as such term is defined in the Services Agreement), and (c) the Cure Amount, and as further adjusted pursuant to Section 2.06 (the Base Price as so reduced and further adjusted, the “**Cash Amount**”), plus the assumption of the Assumed Liabilities (together with the Cash Amount, the “**Purchase Price**”). The Cash Amount shall be paid by wire transfer of immediately available funds, to an account that is designated in writing by Seller to Buyer no later than two (2) Business Days prior to the Closing Date.

**Section 2.06 Adjustment to Cash Amount.** The Cash Amount shall be adjusted as follows:

(a) *Terminated Contracts.* Buyer and Seller have assigned a percentage value (which may be positive or negative) to each of the Forward Contracts, as set forth on Section 2.06 of the Disclosure Schedules (each, an “**Applicable Percentage**”), such that the sum of the Applicable Percentages equals 100%. If a Forward Contract is described in clause (i) or clause (iv) of Section 2.01(a), an amount equal to the product of the unadjusted Base Price and the Applicable Percentage assigned to such Forward Contract shall be subtracted from the Base Price. For the avoidance of doubt, an adjustment pursuant to this Section 2.06(a) with respect to a Forward Contract with a negative Applicable Percentage would result in an increase to the Cash Amount.

(b) *Market Price Movements.* With respect to each Assigned Contract, the product of the following three amounts (which may be positive or negative) shall be added to the Base Price:

(i) The Base Futures Price with respect to such Forward Contract, as set forth in Section 2.06 of the Disclosure Schedules, minus the Final Futures Price with respect to such Forward Contract;

(ii) The Multiplier for Price Adjustment with respect to such Forward Contract, as set forth in Section 2.06 of the Disclosure Schedules; and

(iii) A fraction, the numerator of which equals the number of metric tons outstanding for delivery under such Forward Contract as of the Closing Date, and the denominator of which equals the total number of metric tons outstanding for delivery under such Forward Contract as set forth in Section 2.06 of the Disclosure Schedules (for the avoidance of doubt, if the numerator equals zero for a particular Forward Contract, this Section 2.06(b) price adjustment shall not apply to such Forward Contract).

Notwithstanding the foregoing, in no event shall the Cash Amount be reduced below \$100,000 on account of this Section 2.06(b).

For purposes of this Section 2.06(b) and Section 2.06 of the Disclosure Schedules:

(x) The Base Futures Price is the settlement price of cocoa on the referenced exchange on April 10, 2017 (or such other date as set forth in Schedule 2.06 of the Disclosure Schedules), for the contract month immediately following the anticipated month of delivery, converted into Dollars (if necessary) based on the exchange rates identified in Section 2.06 of the Disclosure Schedules.

(y) The Final Futures Price for unperformed Forward Contracts or open quantities of partially performed Forward Contracts shall be determined one day prior to the Closing by reference to the settlement price of cocoa on the same exchange for such Forward Contract for the contract month immediately following the actual month of delivery, and with the same assumptions, as identified in Section 2.06 of the Disclosure Schedules as having been used in determining the Base Futures Price, and converted into Dollars (if necessary) based on the exchange rates identified in Section 2.06 of the Disclosure Schedules.

(z) The Multiplier for Price Adjustment is derived from the quantity of product in metric tons factored by estimated market ratios for the value of the product multiplied by the anticipated purchase discounts of the Forward Contracts.

(c) *Failure of Non-U.S. Counterparties to Confirm.* In the case of a Forward Contract with Guan Chong, JB Cocoa or United Confectioners (or any of their Affiliates), if the counterparty thereto has not indicated its acceptance of the anticipated assignment of such Forward Contract pursuant to this Agreement (or any similar agreement) to the reasonable satisfaction of Buyer and, if there are past due delivery obligations under such Forward Contract, has not agreed with Seller or Buyer as to an updated delivery schedule, in each case on or before the day before the Auction, then such Forward Contract (together with all other Forward Contracts with such counterparty and its Affiliates) shall be excluded from the Purchased Assets unless Buyer, on notice to Seller no later than the day before the Auction, elects to waive the application of this Section 2.06(c).

(d) *Partial Performance Other than by Buyer.* With respect to each Assigned Contract for which the quantity of product outstanding for delivery has changed from the quantity identified in Section 2.06 of the Disclosure Schedules, other than by way of Buyer's performance under the Services Agreement, an amount equal to the product of

- (i) the unadjusted Base Price;
- (ii) the Applicable Percentage assigned to such Assigned Contract; and

(iii) a fraction, the numerator of which equals the total number of metric tons outstanding for delivery under such Assigned Contract as set forth on Section 2.06 of the Disclosure Schedules minus the number of metric tons outstanding for delivery under such Assigned Contract as of the Closing Date minus the number of metric tons delivered under such Assigned Contract by way of Buyer's performance under the Services Agreement, and the denominator of which equals the total number of metric tons outstanding for delivery under such Assigned Contract as set forth on Section 2.06 of the Disclosure Schedules

shall be subtracted from the Base Price. For the avoidance of doubt, an adjustment pursuant to this Section 2.06(d) with respect to a Forward Contract with a negative Applicable Percentage would result in an increase to the Cash Amount.

### **Section 2.07 Non-assignable Assets.**

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.07 as well as the provisions of sections 363 and 365 of the Bankruptcy Code, to the extent that the sale, assignment, transfer, conveyance or delivery, or attempted sale, assignment, transfer, conveyance or delivery, to Buyer of any Purchased Asset would result in a violation of applicable Law, or would require the consent, authorization, approval or waiver of a Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (including any Governmental Authority), and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or an attempted sale, assignment, transfer, conveyance or delivery, thereof; *provided, however*, that, subject to the satisfaction or waiver of the conditions contained in ARTICLE VII, the Closing shall occur notwithstanding the foregoing without any adjustment to the Purchase Price on account thereof, except as otherwise provided in Section 2.05. Following the Closing, and subject to any necessary authority from the Bankruptcy Court, Seller and Buyer shall use commercially reasonable efforts, and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution or amendment required to novate all liabilities and obligations under any and all Assigned Contracts or other liabilities that constitute Assumed Liabilities or to obtain in writing the unconditional release of all parties to such arrangements, so that, in any case, Buyer shall be solely responsible for such liabilities and obligations from and after the Closing Date; *provided, however*, that neither Seller nor Buyer shall be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, and subject to any necessary authority from the Bankruptcy Court, Seller shall sell, assign, transfer, convey and deliver to Buyer the relevant Purchased Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Applicable sales, transfer and other similar Taxes in connection with such sale, assignment, transfer, conveyance or license shall be paid by Buyer in accordance with Section 6.08.

(b) To the extent that any Purchased Asset and/or Assumed Liability cannot be transferred to Buyer following the Closing pursuant to this Section 2.07, the failure of Seller or Buyer to obtain any such consent, authorization, approval, waiver, or other consent shall not in and of itself constitute a breach of any representation or warranty under any provision of this Agreement.

**Section 2.08 Cure Payments.** Not later than five (5) Business Days prior to the Closing Date, Seller shall deliver to Buyer a detailed calculation of the Cure Amount determined with and without regard to clause (iv) of Section 2.01(a).

**Section 2.09 Services Agreement Receivables.** For the avoidance of doubt, the Services Agreement, including its treatment of Receivables arising under the Assigned Contracts, shall survive the execution of this Agreement and the Closing to the extent provided therein.

### ARTICLE III CLOSING

**Section 3.01 Closing.** Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of Riker Danzig Scherer Hyland & Perretti LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, New Jersey, on the second Business Day after all of the conditions to Closing set forth in ARTICLE VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “**Closing Date**”.

#### **Section 3.02 Closing Deliverables.**

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) an assignment and assumption agreement in the form of **Exhibit A** hereto (the “**Assignment and Assumption Agreement**”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(ii) the Seller Closing Certificate;

(iii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement; and

(iv) a copy of the Sale Order entered by the Bankruptcy Court.

(b) At the Closing, Buyer shall deliver to Seller the following:

- (i) the Cash Amount, less the \$350,000 deposited with or for the benefit of Seller upon the signing of this Agreement (the “**Deposit**”) by wire transfer of immediately available funds, to be held in escrow by Seller’s counsel;
- (ii) the Assignment and Assumption Agreement duly executed by Buyer;
- (iii) the Buyer Closing Certificate; and
- (iv) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE IV are true and correct as of the date hereof.

**Section 4.01 Organization and Qualification of Seller.** Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of New York and, subject to any necessary authority from the Bankruptcy Court, has all necessary corporate power and authority to own the assets now owned by it and to carry on the Business as currently conducted. Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not have a Material Adverse Effect.

**Section 4.02 Authority of Seller.** Subject to any necessary authority from the Bankruptcy Court, Seller has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Subject to the entry of the Sale Order, the execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. Subject to the entry of the Sale Order, this Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Subject to the entry of the Sale Order, when each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party

thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 4.03 No Conflicts; Consents.** Subject to the entry of the Sale Order, the execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Seller; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; or (c) except as set forth in Section 4.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any Assigned Contract; except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect. Subject to the entry of the Sale Order, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have a Material Adverse Effect.

**Section 4.04 Assigned Contracts.** Except as set forth on Section 4.04 of the Disclosure Schedules, Seller is not in breach of, or default under, any Assigned Contract.

**Section 4.05 Legal Proceedings; Governmental Orders.**

(a) Except as set forth in Section 4.05(a) of the Disclosure Schedules, there are no actions, suits, claims, investigations or other legal proceedings pending or, to Seller's Knowledge, threatened against or by Seller relating to or affecting the Purchased Assets or the Assumed Liabilities, which if determined adversely to Seller would result in a Material Adverse Effect.

(b) Except as set forth in Section 4.05(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Purchased Assets which would have a Material Adverse Effect.

**Section 4.06 Compliance With Laws.** Except as set forth in Section 4.06 of the Disclosure Schedules, Seller is in compliance with all Laws applicable to the ownership and use of the Purchased Assets, except where the failure to be in compliance would not have a Material Adverse Effect.

**Section 4.07 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

**Section 4.08 No Other Representations and Warranties.** Except for the representations and warranties contained in this Article IV (including the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Purchased Assets furnished or made available to Buyer and its Representatives (including any information, documents or material made available to Buyer in the Data Room, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Purchased Assets, or any representation or warranty arising from statute or otherwise in law.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date hereof.

**Section 5.01 Organization and Authority of Buyer.** Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Delaware.

**Section 5.02 Authority of Buyer.** Buyer has all necessary power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general

principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 5.03 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Buyer; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby and thereby.

**Section 5.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

**Section 5.05 Sufficiency of Funds.** Buyer has sufficient cash on hand or other sources of immediately-available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

**Section 5.06 Solvency.** Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

**Section 5.07 Legal Proceedings.** There are no actions, suits, claims, investigations or other legal proceedings pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

**Section 5.08 Independent Investigation.** Buyer has conducted its own independent investigation, review and analysis of the Business and the Purchased Assets, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in Article IV of this Agreement (including related portions of the Disclosure Schedules); and (b) neither Seller nor any other Person has made any representation or warranty as to Seller, the Business, the Purchased Assets or this Agreement, except as expressly set forth in Article IV of this Agreement (including the related portions of the Disclosure Schedules). Without limiting the foregoing, Buyer acknowledges that the Purchased Assets are conveyed “as is”, “where is” and “with all faults” and that all warranties of merchantability or fitness for a particular purpose are disclaimed.

## **ARTICLE VI COVENANTS**

**Section 6.01 Conduct of Business Prior to the Closing.** From the date hereof until the Closing, except as otherwise provided in the Services Agreement, or this Agreement, or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), or required by the Bankruptcy Code or ordered by the Bankruptcy Court, Seller shall (a) conduct the Business in the ordinary course of business; and (b) use commercially reasonable efforts to maintain and preserve intact the Purchased Assets.

**Section 6.02 Access to Information.** From the date hereof until the Closing, Seller shall (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the Assigned Contracts and other related documents and data; (b) furnish Buyer and its Representatives with such data and information related to the Purchased Assets as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the Purchased Assets; *provided, however*, that any such investigation shall be conducted during normal business hours upon reasonable advance notice to Seller, under the supervision of Seller’s personnel and in such a manner as not to interfere with the conduct of the Business or any other businesses of Seller. All requests by Buyer for access pursuant to this Section 6.02 shall be submitted or directed exclusively to Seller’s Chief Restructuring Officer or such other individuals as Seller may designate in writing from time to time. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to disclose any information to Buyer if such disclosure would, in Seller’s sole discretion: (x) cause significant competitive harm to Seller and its businesses, including the Business, if the transactions contemplated by this Agreement are not consummated; (y) jeopardize any attorney-client or other privilege; or (z) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the date of this Agreement. Prior to the Closing, without the prior written consent of Seller, which may not be unreasonably withheld or delayed, Buyer shall not contact any suppliers to, or customers of, the Business. Buyer shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement with respect to any access or information provided pursuant to this Section 6.02. For the avoidance of doubt,

nothing in this Section 6.02 shall impact Seller's obligations to provide Buyer with access to information as contemplated by the Services Agreement.

**Section 6.03 Supplement to Disclosure Schedules.** From time to time prior to the Closing, Seller shall have the right (but not the obligation) to supplement or amend the Disclosure Schedules hereto with respect to any matter hereafter arising or of which it becomes aware after the date hereof (each a "**Schedule Supplement**"). Any disclosure in any such Schedule Supplement shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of termination rights contained in this Agreement or of determining whether or not the conditions set forth in Section 7.02(a) have been satisfied; *provided, however*, that if Buyer has the right to, but does not elect to, terminate this Agreement within two (2) Business Days of its receipt of such Schedule Supplement, then Buyer shall be deemed to have irrevocably waived any right to terminate this Agreement with respect to such matter.

**Section 6.04 Confidentiality.** Buyer acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided to Buyer pursuant to this Agreement. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 6.04 shall nonetheless continue in full force and effect.

**Section 6.05 Governmental Approvals and Consents.**

(a) Each party hereto shall, as promptly as possible, use its reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Seller and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.03 of the Disclosure Schedules; *provided, however*, that Seller shall not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested.

**Section 6.06 Closing Conditions.** From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII hereof.

**Section 6.07 Bulk Sales Laws.** The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

**Section 6.08 Transfer Taxes.** All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

**Section 6.09 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

**Section 6.10 Third-Party Processing Rates.** To the extent it is legally and contractually able to do so, Seller shall use commercially reasonable efforts to make available to Buyer any third-party processing arrangements of which Seller would otherwise have availed itself in fulfilling the Assigned Contacts, including the services of Cocoa Services, L.L.C. and Cocoa Services West, L.L.C., subject to payment of such third parties at their regular applicable rates (or, in the case of Cocoa Services, L.L.C. and Cocoa Services West, L.L.C., at their existing applicable rates for services performed for Seller as of the date hereof for as long as Seller shall continue to own Cocoa Services, L.L.C. and/or Cocoa Services West, L.L.C.).

## ARTICLE VII CONDITIONS TO CLOSING

**Section 7.01 Conditions to Obligations of All Parties.** The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) The Bankruptcy Court shall have entered the Sale Order consistent with the requirements of Section 9.01, which shall be a Final Order and be in full force and effect on the Closing Date. On the Closing Date there shall be no Governmental Order staying, reversing, modifying, vacating or amending the Sale Order and there shall be no preliminary or permanent injunction or other Governmental Order of any court or Government Authority declaring this Agreement

invalid or unenforceable in any material respect or otherwise preventing the transactions contemplated herein from being consummated.

(c) With respect to each Assigned Contract with Guittard and Mars (or any of their Affiliates) under which there are past due delivery obligations, the counterparty thereto has agreed with Seller or Buyer as to an updated delivery schedule.

**Section 7.02 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in ARTICLE IV shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect.

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(a).

(d) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied (the "**Seller Closing Certificate**").

(e) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

**Section 7.03 Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in Article V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Seller the Cash Amount, duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(b).

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied (the "**Buyer Closing Certificate**").

(e) Seller shall have received a certificate of a manager of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the managers of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(f) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(g) Buyer shall, consistent with section 365(b)(1)(A) of the Bankruptcy Code, but subject to its rights otherwise provided under this Agreement, have paid and/or provided for a reservation of funds sufficient to pay the Cure Amount, and the Cure Amount (determined without regard to clause (iv) of Section 2.01(a)) shall not exceed \$1,000,000.

## **ARTICLE VIII SURVIVAL**

**Section 8.01 Survival.** The representations and warranties contained herein shall not survive the Closing. None of the covenants or other agreements contained in this Agreement

shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

## **ARTICLE IX BANKRUPTCY COURT MATTERS**

### **Section 9.01 Submission to Bankruptcy Court of Bid Protections and the Sale Order.**

(a) In consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof, as promptly as practicable following the execution of this Agreement, Seller shall seek the approval from the Bankruptcy Court of a motion pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code (the “**Sale Motion**”) seeking entry of an order of the Bankruptcy Court (the “**Bidding Procedures Order**”), which shall approve, among other things:

(i) the bid protections set forth in Section 9.01(b); and

(ii) Buyer’s right to receive (at the time set forth in Section 10.02(c)), a break-up fee in an amount equal to \$50,000 (the “**Break-Up Fee**”), plus expense reimbursement up to \$50,000 (the “**Expense Reimbursement**” and together with the Break-Up Fee, the “**Transaction Expenses**”), within two (2) Business Days of the closing of a transaction that is a Competing Bid (as hereinafter defined) if this Agreement is terminated pursuant to Section 10.01(d)(v).

Seller acknowledges and agrees that (A) the approval of the Transaction Expenses are an integral part of the contemplated transactions, (B) in the absence of Seller’s obligations to pay the Transaction Expenses, Buyer would not have entered into this Agreement, (C) the entry of Buyer into this Agreement is beneficial to Seller, and (D) the Transaction Expenses are reasonable in relation to Buyer’s efforts and to the magnitude of the transactions contemplated hereby.

(b) The Bidding Procedures Order shall include customary public auction terms and conditions reasonably acceptable to the parties with respect to any Competing Bid, including, without limitation:

(i) the recognition of Buyer’s status as a “stalking horse” bidder;

(ii) approval of the payment of the Transaction Expenses;

(iii) relevant bidding procedures, including requirements for a proposed purchaser who makes an offer to be deemed a “Qualified Party” and appropriate overbid protections; and

(iv) a provision stating that any Deposit paid by Buyer shall be returned to Buyer within two (2) Business Days if this Agreement is terminated pursuant to Section 10.01(a)Section 10.01(a), Section 10.01(b), or Section 10.01(d).

(c) The Sale Motion shall also seek the entry of a second order of the Bankruptcy Court (the “**Sale Order**”), which shall contain, among other terms reasonably acceptable to Buyer (assuming this Agreement is not terminated following the Auction) and Seller, the following provisions:

(i) that the terms and conditions of the sale of the Purchased Assets to Buyer as set forth herein are approved;

(ii) that the sale of the Purchased Assets to Buyer is free and clear, pursuant to section 363(f) of the Bankruptcy Code, of any and all liabilities and liens of any type or nature whatsoever, other than for Assumed Liabilities, and that all claims of Encumbrances including the pre-petition and post-petition claims of any secured creditors of Seller or creditors of Seller whose claims could act as a Lien against the Purchased Assets, are transferred and shall attach to the proceeds of the sale;

(iii) that Seller has good and marketable title to the Purchased Assets and has the authority to transfer the Purchased Assets to Buyer;

(iv) that the Purchase Price constitutes fair value for the Purchased Assets;

(v) that Buyer acted in good faith in all respects and that Buyer and its assignees and designees are entitled to the protections of section 363(m) of the Bankruptcy Code;

(vi) that notice of the transactions contemplated hereby was good and sufficient and was provided timely to all parties in interest in the Bankruptcy Case who are entitled or required to receive notice pursuant to the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court, or other applicable law;

(vii) that Seller is authorized to assume and assign to Buyer each of the Assigned Contracts pursuant to section 365 of the Bankruptcy Code; *provided, however,* that Buyer shall have sole responsibility for paying the Cure Amount, if any;

(viii) that Seller is authorized and directed to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;

(ix) that the Assigned Contracts are valid Contracts, enforceable on their terms (as modified by any updated delivery schedule agreed upon by the counterparty thereto and either Seller or Buyer), and Buyer shall have all of the rights of Seller thereunder;

(x) that the sale process conducted by Seller and/or its agent was non-collusive, fair and reasonable and was conducted in good faith;

(xi) that Buyer and Seller did not engage in any conduct that would allow the transactions contemplated by this Agreement to be set aside pursuant to section 363(n) of the Bankruptcy Code;

(xii) that Buyer is not a successor to, or otherwise liable for, the liabilities, debts or obligations of Seller under any theory of law, other than as specifically set forth in this Agreement with respect to the Assumed Liabilities; and

(xiii) that the Sale Order is binding upon any successors to Seller, including any chapter 7 or liquidating trustee that may be appointed in the Bankruptcy Case.

(d) Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Bidding Procedures Order and the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. In the event the entry of the Bidding Procedures Order or the Sale Order shall be appealed, each party shall use their respective commercially reasonable efforts to defend against such appeal.

(e) Seller shall use its reasonable best efforts to obtain approval of the Bidding Procedures Order and the Sale Order as soon as practicable.

(f) In the event that an appeal is taken, or a stay pending appeal or application for reconsideration is requested from the Bidding Procedures Order or the Sale Order, Seller shall promptly notify Buyer of such appeal or stay request and shall provide Buyer within two (2) Business Days a copy of the relevant notice of appeal or order of stay or application for reconsideration. Seller shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from either of such orders or application for reconsideration.

## **Section 9.02 Competing Transaction.**

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or otherwise better competing bids at the Auction (each a “**Competing Bid**”).

(b) Following the entry of the Bidding Procedures Order by the Bankruptcy Court and until the Bankruptcy Court’s approval of the Sale Order approving this Agreement, Seller is permitted to market and solicit other proposals or offers by any Person in connection with any sale or other disposition of all or any part of the Purchased Assets. In addition, during such time period, Seller has the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Purchased Assets (and other assets of Seller) and perform any and all other acts related thereto that are required under the Bankruptcy Code or other applicable Law, including supplying information relating to the Business and the assets of Seller to prospective purchasers.

**Section 9.03 Notice of Sale.** Seller shall take such steps as are necessary to notify all Persons and parties in interest (including creditors) required to receive notice in accordance with applicable Law (including, to the extent applicable, Bankruptcy Rules 2002, 3016, 3017 and 6004 and any local rules or orders of the Bankruptcy Court) and any bidding procedures order on all Persons (including creditors) required to receive notice under applicable Law.

## **ARTICLE X TERMINATION**

**Section 10.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure cannot be cured by Seller within 16 days after the Bankruptcy Court enters the Sale Order approving and authorizing the sale of the Purchased Assets to Buyer (as may be extended by written agreement between the parties) (the “**Drop Dead Date**”); or

(ii) any of the conditions set forth in Section 7.02 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Seller by written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure cannot be cured by Buyer by the Drop Dead Date; or

(ii) any of the conditions set forth in Section 7.03 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited;

(ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable;

(iii) the Sale Order ceases to be in full force and effect, or is revoked, rescinded, vacated, materially modified, reversed or stayed, or otherwise rendered ineffective by a court of competent jurisdiction;

(iv) the Bankruptcy Case is dismissed or converted into a case under chapter 7 of the Bankruptcy Code or a chapter 7 or chapter 11 trustee or an examiner with expanded powers is appointed for the Seller; or

(v) as a result of the Auction, Seller determines that none of the Assigned Contracts have been sold to Buyer.

**Section 10.02 Effect of Termination.** In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this ARTICLE X, Section 6.05 and ARTICLE XI hereof;

(b) that in the event that the termination occurs pursuant to Section 10.01(a), Section 10.01(b), or Section 10.01(d), Buyer shall be refunded the Deposit at the time provided in Section 9.01(b)(iv);

(c) that in the event that the termination occurs pursuant to Section 10.01(d)(v), Buyer shall be entitled to the Transaction Expenses at the time provided in Section 9.01(a)(ii); and

(d) that nothing herein shall relieve any party hereto from liability for any intentional breach of any provision hereof.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.01 Expenses.** Except as otherwise expressly provided herein (including Section 6.08 hereof), all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

**Section 11.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.02):

If to Seller: 200 South Street, 4<sup>th</sup> Floor  
Morristown, New Jersey 07920  
Facsimile: 855-405-0544  
E-mail: [bfrezza@deloitte.com](mailto:bfrezza@deloitte.com)  
Attention: Chief Restructuring Officer

with a copy to: Riker Danzig Scherer Hyland & Perretti LLP  
Headquarters Plaza, One Speedwell Avenue  
P.O. Box 1981  
Facsimile: 973-451-8668  
E-mail: [jnavarino@riker.com](mailto:jnavarino@riker.com)  
[jschwartz@riker.com](mailto:jschwartz@riker.com)  
Attention: Jason D. Navarino, Esq.  
Joseph L. Schwartz, Esq.

If to Buyer: 1251 NW Briarcliff Parkway, Suite 800  
Kansas City, Missouri 64116  
E-mail: [brent.grecian@intlfcstone.com](mailto:brent.grecian@intlfcstone.com)

Attention: President

with a copy to:

Husch Blackwell LLP  
4801 Main Street, Suite 1000  
Facsimile: 816-983-8080  
E-mail: Benjamin.mann@huschblackwell.com  
Attention: Benjamin F. Mann, Esq.

**Section 11.03 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Whenever the masculine is used in this Agreement, the same shall include the feminine and whenever the feminine is used herein, the same shall include the masculine, where appropriate. Whenever the singular is used in this Agreement, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 11.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 11.05 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 11.06 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure

Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 11.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 11.08 No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 11.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto and approved by the Bankruptcy Court by way of the Sale Order or a modification thereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 11.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction).

(b) Any legal suit, action or proceeding arising out of or based upon this agreement, the other transaction documents or the transactions contemplated hereby or thereby may be instituted in the Bankruptcy Court (or, if such court declines jurisdiction, the United States District Court for the Southern District of New York or the courts of the State of New York sitting in New York County (Manhattan), and any appellate court with jurisdiction over appeals taken therefrom), and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in

any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.10(c).

**Section 11.11 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

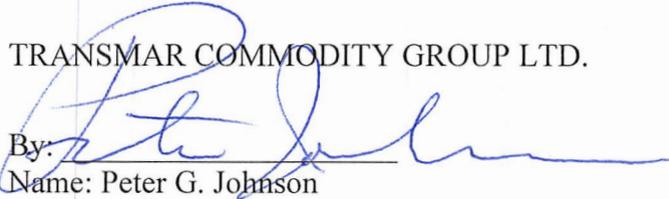
**Section 11.12 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 11.13 Non-recourse.** This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other Representative of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim, action, suit or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

TRANSMAR COMMODITY GROUP LTD.

By: 

Name: Peter G. Johnson

Title: Chairman, President, and Chief  
Executing Officer

FCSTONE MERCHANT SERVICES, LLC

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

TRANSMAR COMMODITY GROUP LTD.

By: \_\_\_\_\_  
Name: Peter G. Johnson  
Title: Chairman, President, and Chief  
Executing Officer

FCSTONE MERCHANT SERVICES, LLC

By:   
Name: Brent Grecian  
Title: President

**EXHIBIT A**  
**Assignment and Assumption Agreement**

This Assignment and Assumption Agreement (the “**Agreement**”), effective as of [DATE] (the “**Effective Date**”), is by and between Transmar Commodity Group Ltd., a New York corporation (“**Seller**”), and FCStone Merchant Services, LLC, a Delaware limited liability (“**Buyer**”).

WHEREAS, Seller is the debtor and debtor-in-possession in a Chapter 11 case now pending before the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”); and

WHEREAS, Seller and Buyer have entered into a certain Asset Purchase Agreement, dated as of [DATE] (the “**Purchase Agreement**”), pursuant to which, among other things, Seller has agreed to assign all of its right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement), and Buyer has agreed to assume the Assumed Liabilities (as defined in the Purchase Agreement) of Seller pursuant to Sections 363 and 365 of the United States Bankruptcy Code; and

WHEREAS, the Bankruptcy Court has entered an order (the “**Sale Order**”) approving the assignment of the Purchased Assets and the assumption of the Assumed Liabilities on the terms and conditions set forth in the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Purchase Agreement.
2. Assignment and Assumption. Seller hereby sells, assigns, grants, conveys and transfers to Buyer all of Seller’s right, title and interest in and to the Purchased Assets. Buyer hereby accepts such assignment and assumes all of Seller’s duties and obligations under the Assumed Liabilities of Seller.
3. Terms of the Purchase Agreement. The terms of the Purchase Agreement, including, but not limited to, the representations, warranties, covenants, and agreements relating to the Purchased Assets and Assumed Liabilities are incorporated herein by this reference. The parties hereto acknowledge and agree that the representations, warranties, covenants, and agreements contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement or the Sale Order and the terms hereof, the terms of the Purchase Agreement or the Sale Order shall govern.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction).

5. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

TRANSMAR COMMODITY GROUP LTD.

By: \_\_\_\_\_

Name: Peter G. Johnson

Title: Chairman, President, and Chief  
Executing Officer

FCSTONE MERCHANT SERVICES, LLC

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT B**  
**Services Agreement**

(to be attached)

## SERVICES AGREEMENT

This Services Agreement (this “**Agreement**”), dated as of March 28, 2017, is entered into by and between FCStone Merchant Services, LLC, a Delaware limited liability company with offices located at 1251 NW Briarcliff Parkway, Suite 800, Kansas City, Missouri 64116 (“**FCStone**”) and Transmar Commodity Group Ltd., a New York corporation with offices located at 200 South Street, 4<sup>th</sup> Floor, Morristown, New Jersey 07960 (“**TCG**”).

**WHEREAS**, TCG is the debtor and debtor-in-possession in a Chapter 11 case (the “**Chapter 11 Case**”) now pending before the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”);

**WHEREAS**, TCG is a party to certain contracts listed on Schedule A attached hereto, pursuant to which TCG is obligated to (1) supply to the counterparties certain amounts of cocoa beans or cocoa butter (such contracts, the “**Sales Contracts**”) or (2) purchase from the counterparties certain amounts of cocoa butter (such contracts, the “**Purchase Contracts**”, and together with the Sales Contracts, the “**Contracts**”);

**WHEREAS**, the Contracts, along with other forward contracts to which TCG is a party, are currently being marketed for sale by TCG, with the understanding that such sale will be subject to the approval of the Bankruptcy Court (such sale, the “**Sale Transaction**”);

**WHEREAS**, to preserve the value of the Contracts until such time as the Sale Transaction is completed, TCG desires to retain FCStone to acquire inventory and make third-party payments necessary for TCG to satisfy its obligations under the Contracts on an interim basis, on the terms and conditions set forth herein, and FCStone desires to perform such services on such terms and conditions.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FCStone and TCG (hereinafter, collectively, the “**Parties**”, or each, individually, a “**Party**”) agree as follows:

1. Services.

1.1 With respect to each Sales Contract, FCStone shall acquire such quantities of cocoa beans or cocoa butter (each, a “**Product**”), cause such Product to be processed, and deliver such Product as processed, in each case as may be necessary to satisfy all of TCG’s obligations under such Sales Contract that are required to be performed on or prior to the End Date (as defined below). FCStone may source Product (x) from its own inventory, (y) from third parties (including affiliates), or (z) by utilizing TCG’s outstanding Purchase Contracts.

1.2 With respect to any Purchase Contract that will not be used to source Product pursuant to Section 1.1, FCStone may, but shall in no event be required to, make the payments to the counterparty thereto necessary for TCG to purchase the quantity of Product required to satisfy all of TCG’s purchase obligations under such Contract that are required to be performed on or prior to the End Date. If FCStone does make any such payments,

FCStone shall, as soon as reasonably practicable thereafter, facilitate the sale of such Product by TCG to a third party (a “**Third Party Sale**”). The services performed by FCStone pursuant to Sections 1.1 and 1.2 are hereinafter collectively referred to as the “**Services**.”

1.3 The “**End Date**” shall be April 30, 2017, *provided* that, if any of the Contracts has not been fully performed and therefore satisfied, terminated pursuant to its own terms or assigned to FCStone or a third-party by April 15, 2017, the End Date shall automatically be extended to May 31, 2017, and if any of the Contracts has not been fully performed, terminated pursuant to its own terms or assigned to FCStone or a third-party by May 15, 2017, the End Date shall automatically be extended to June 30, 2017, and so on and so forth until the termination of this Agreement pursuant hereto. Notwithstanding the foregoing, the End Date shall not extend beyond August 31, 2017 without the prior written consent of TCG.

1.4 The Parties shall confer on an as needed basis with respect to FCStone’s provision of the Services and the Parties shall agree on any proposed purchases or sales of Product and any delivery or processing arrangements related thereto. For the avoidance of doubt, FCStone shall not, without the prior approval of TCG (which may be given orally), (i) enter into any Product purchase or processing or delivery arrangement under Section 1.1, or (ii) make any payment under any Purchase Agreement. In connection with FCStone’s performance of the Services and to the extent necessary, TCG shall provide timely instructions to FCStone with respect to the sourcing, processing and transportation of Product, including payment of related fees and charges, and FCStone shall use its reasonable best efforts to comply with such instructions.

1.5 For the avoidance of doubt, except as provided in the next sentence, FCStone shall have no liability to TCG or any counterparty under a Contract on account of any failure by TCG to satisfy its obligations under a Contract that may have been due prior to the Effective Date (as defined below). FCStone shall cooperate with TCG and use its reasonable best efforts to assist TCG in satisfying any such past due obligations.

1.6 Whenever FCStone takes delivery of a Product in satisfaction of an obligation of TCG to take delivery under a Purchase Contract, it shall do so on behalf of, and as agent of, TCG, such that TCG shall have satisfied such obligation. Immediately after FCStone takes delivery of such Product, title thereto shall pass from TCG to FCStone. Whenever FCStone delivers Product to a counterparty to satisfy TCG’s delivery obligations under a relevant Sales Contract or to satisfy TCG’s delivery obligation to a third party pursuant to a Third Party Sale, FCStone shall transfer title to such Product to TCG immediately prior to the ultimate sale of such Product, free and clear of all liens, claims and encumbrances (other than, in the case of Product to which TCG previously held title, liens, claims and encumbrances that would not have attached thereto but for TCG’s ownership thereof).

1.7 FCStone shall provide the Services (a) in accordance with the terms and subject to the conditions set forth in the respective Contract (including any modified delivery schedule agreed upon by TCG and the relevant counterparty) and this Agreement; (b) using personnel of required skill, experience, and qualifications; (c) in a timely,

workmanlike, and professional manner; and (d) in accordance with generally recognized industry standards.

2. FCStone Obligations. FCStone shall:

2.1 Appoint a primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the “**FCStone Contract Manager**”), with such designation to remain in force unless and until a successor FCStone Contract Manager is appointed;

2.2 Assign only qualified, legally authorized employees or contractors to provide the Services;

2.3 Comply with all applicable laws and regulations in providing the Services;

2.4 Comply with all material TCG rules, regulations, and policies of which it has been made aware in its provision of the Services;

2.5 Maintain complete and accurate records relating to the provision of the Services under this Agreement. During the term of the Agreement (as defined in Section 7.1) and for a period of seven years thereafter, upon TCG’s written request, FCStone shall allow TCG or TCG’s representatives to inspect and make copies of such records; provided that TCG provides FCStone with reasonable advance written notice of the planned inspection, and any such inspection shall take place during regular business hours; and

2.6 With respect to any Contract that may be assigned to a third party (in the Sale Transaction or otherwise), use its reasonable best efforts to assist TCG in transitioning the performance of such Contract from FCStone to such third party, and not interfere with the assignment of such Contract. For the avoidance of doubt, upon such an assignment of a Sales Contract, neither TCG nor the assignee of such Contract shall be under any obligation to buy from FCStone Product that FCStone acquired, or pay or reimburse FCStone on account of Services FCStone performed, with respect to such Contract prior to the assignment thereof.

3. TCG Obligations. TCG shall:

3.1 Designate one of its employees or agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “**TCG Contract Manager**”), with such designation to remain in force unless and until a successor TCG Contract Manager is appointed;

3.2 Require that the TCG Contract Manager respond promptly to any reasonable requests from FCStone for instructions, information, or approvals required by FCStone to provide the Services;

3.3 Cooperate with FCStone in its performance of the Services, including providing access during regular business hours to TCG personnel, as reasonably requested by FCStone; and

3.4 To the extent it is legally and contractually able to do so, make available to FCStone any third-party processing arrangements of which TCG would otherwise have availed itself in fulfilling the Contracts itself, including the services of Cocoa Services, L.L.C. and Cocoa Services West, L.L.C., subject to payment of such third parties at their regular applicable rates (or, in the case of Cocoa Services, L.L.C. and Cocoa Services West, L.L.C., at their existing applicable rates for services performed for TCG as of the date hereof). For the avoidance of doubt, FCStone shall be responsible for paying such third parties for their processing services. The Parties acknowledge that the operating assets of Cocoa Services, L.L.C. and Cocoa Services West, L.L.C. are being marketed for sale, and that the buyer(s) of such assets may not agree to continue providing services to or for the benefit of TCG or FCStone at historic rates.

4. Fees & Costs.

4.1 All amounts payable to TCG under a Sales Contract or in connection with a Third Party Sale shall be paid to TCG in accordance with the terms of such Sales Contract or Third Party Sale. Subject to Section 4.4, TCG shall deposit such amounts in a segregated bank account of TCG opened and maintained solely for purposes of this Agreement (the “**Segregated Account**”), which account shall not permit any disbursements to be made out of it without the approval of both Parties (or, if this is not feasible, shall provide for FCStone to have real-time knowledge of any such disbursements made by TCG), and with respect to which both Parties shall receive regular statements as to the account’s balance and transaction history.

4.2 As soon as reasonably practicable after satisfying a delivery obligation under a Sales Contract or in connection with a Third Party Sale, FCStone shall invoice TCG for its reasonable costs (including Product acquisition, processing and shipping costs) incurred by FCStone in connection with such delivery (such costs, the “**Invoiced Costs**”), such invoice to be accompanied by final invoices received by FCStone, receipts, proof of payment and other supporting documentation. In the case of Product acquired by FCStone prior to March 23, 2017, or acquired by FCStone from one or more of its affiliates, the amount that FCStone may invoice TCG with respect to the acquisition of such inventory shall not exceed the lesser of FCStone’s actual costs in acquiring such Product and the market price of such Product (or similar product) at the time of such delivery.

4.3 TCG shall, within 5 business days of the later to occur of (a) TCG’s receipt of the consideration payable to it with respect to the satisfaction of a delivery obligation under a Sales Contract or in connection with a Third Party Sale, and such consideration no longer being subject to adjustment, and (b) TCG’s receipt of the relevant invoice from FCStone, pay to FCStone out of the Segregated Account (1) the amount of the applicable Invoiced Costs plus (2) as FCStone’s sole and exclusive compensation for its Services in connection with such delivery obligation, 80% of the net amount of such consideration remaining after the payment of such Invoiced Costs and, without duplication, any out-of-pocket costs and expenses incurred by TCG in connection with the applicable delivery obligations (such costs and expenses, the “**TCG Costs**”). Notwithstanding the foregoing, the Parties may agree to have TCG pay less than the full amount estimated to be due to FCStone in connection with a Sales Contract or Third Party Sale sooner than the time provided in the previous sentence,

subject to such subsequent adjustments as may be agreed upon by the Parties. TCG shall not be obligated to (x) reimburse FCStone for any Invoiced Costs with respect to any Sales Contract or Third Party Sale that are in excess of the amounts actually received by TCG from the applicable counterparty under such Sales Contract or Third Party Sale or (y) compensate FCStone for its Services in connection with any Sales Contract or Third Party if the amounts actually received by TCG from the applicable counterparty under such Sales Contract or Third Party Sale do not exceed the sum of the Invoiced Costs and TCG Costs with respect to such Sales Contract or Third Party Sale, *provided* that, if any such counterparty effectuates a legally valid setoff against an amount it would otherwise owe to TCG in connection with a Sales Contract or Third Party Sale on account of a debt or obligation of TCG to such counterparty that arose after the commencement of the Chapter 11 Case and that is unrelated to FCStone's Services with respect to such Sales Contract or Third Party Sale, FCStone's rights and TCG's obligations with respect to such Sales Contract or Third Party Sale shall be determined as though such setoff had not been effectuated and TCG had received the amount otherwise due to TCG in connection with such Sales Contract or Third Party Sale.

4.4 FCStone shall have no right, title or interest in or to any outstanding receivables owed to TCG under any Sales Contract with respect to the period prior to (including with respect to any deliveries made prior to) the Effective Date (such receivables, the "**Outstanding Receivables**"). Notwithstanding anything herein to the contrary, all payment amounts received by TCG under any Sales Contract shall be applied first to satisfy any Outstanding Receivables balance under such Contract, and, to the extent payment amounts are applied to satisfy any Outstanding Receivables balance, such payment amounts shall not be subject to this Agreement, *provided* that, in the event a counterparty to a Sales Contract submits a partial payment and asserts an obligation owed to it by TCG that arose prior to the commencement of the Chapter 11 Case in setoff of the balance of the payment amount due, the amount of the setoff shall be first credited to the Outstanding Receivables and the partial payment shall then be applied to any remaining Outstanding Receivables and then to receivables arising under the Sales Contract on or after the Effective Date, and the Parties shall cooperate as provided in Section 4.5 below to invalidate the setoff and enforce payment of the counterparty's remaining obligation.

4.5 For the avoidance of doubt, TCG shall have no liability to FCStone on account of any default or breach under a Contract by the counterparty thereto, and TCG shall not be (i) responsible for paying or reimbursing FCStone for any Services performed by FCStone in connection with such Contract if the counterparty thereto fails to satisfy its payment obligations thereunder, or (ii) required to deliver any Product to FCStone to the extent that TCG has not received such Product under the corresponding Purchase Contract. The Parties shall cooperate with one another in addressing any default or breach under a Contract by the counterparty thereto, and if TCG fails to exercise its rights with respect to the enforcement of such Contract in connection with such default or breach, FCStone may, on notice to TCG and subject to the next sentence, assume TCG's right to enforce such Contract. Neither Party may agree to the settlement of any dispute arising under the Contracts in connection with the Services without the prior written consent of the other Party.

5. Conditions Precedent. The obligations of the Parties under this Agreement are subject to the satisfaction of the following conditions precedent:

5.1 The approval of this Agreement by the Bankruptcy Court; and

5.2 TCG and FCStone entering into a non-binding letter of intent, in form and substance acceptable to each Party, to enter into an Asset Purchase Agreement for the purchase of the Contracts (and possibly other Contracts), which shall ultimately be subject to the approval of the Bankruptcy Court.

6. Confidentiality. All non-public, confidential, or proprietary information of TCG (“**Confidential Information**”) disclosed by or on behalf of TCG to FCStone, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” in connection with this Agreement is confidential, solely for FCStone’s use in performing this Agreement and may not be disclosed or copied unless authorized by TCG in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of FCStone’s breach of this Agreement; (b) is obtained by FCStone on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; (c) was in FCStone’s possession prior to TCG’s disclosure hereunder; or (d) was or is independently developed by FCStone without using any Confidential Information. Upon TCG’s request, FCStone shall promptly return all documents and other materials received from TCG. TCG shall be entitled to injunctive relief for any violation of this Section.

7. Term, Termination, and Survival.

7.1 This Agreement shall commence upon satisfaction of the conditions set forth in Section 5 (the “**Effective Date**”) and shall continue thereafter until the earlier to occur of (i) the End Date and (ii) the date on which all of the Contracts have been fully performed and therefore satisfied, terminated pursuant to their own terms, or assigned to FCStone or a third-party, and any Product acquired by FCStone hereunder in connection with a Purchase Contract has been sold pursuant to a Sales Contract or through a Third Party Sale, unless sooner terminated pursuant to Section 7.2. Subject to Section 7.4, this Agreement shall cease to apply to any Contract that (i) has been fully performed, (ii) has terminated in accordance with its terms, or (iii) has been assigned to FCStone or a third party.

7.2 Either Party may terminate this Agreement, effective upon written notice to the other Party (the “**Defaulting Party**”), if the Defaulting Party materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days (or, after the ultimate buyer of the Contracts in the Sale Transaction has been determined in accordance with the applicable procedures approved by the Bankruptcy Court and solely with respect to TCG as the non-defaulting party, within 5 days) after receipt of written notice of such breach.

7.3 Upon expiration or termination of this Agreement for any reason, FCStone shall promptly:

(a) Deliver to TCG all documents, work product, and other materials, whether or not complete, prepared by or on behalf of FCStone in the course of performing the Services for which TCG has paid.

(b) Return to TCG all TCG-owned property, equipment, or materials in its possession or control.

(c) Deliver to TCG all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on TCG's Confidential Information.

(d) Use its reasonable best efforts to assist TCG in transitioning the Services to an alternate service provider.

(e) Permanently erase all of TCG's Confidential Information from its computer systems.

7.4 The rights and obligations of the Parties set forth in this Section 7 and Section 2.5, Section 2.6, Section 4, Section 8, Section 9, Section 10, Section 11, Section 13, Section 20, Section 21, and Section 22, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement (in general or with respect to any Contract), will survive any such termination or expiration of this Agreement.

## 8. Independent Contractor.

8.1 It is understood and acknowledged that the Services which FCStone will provide to TCG hereunder shall be in the capacity of an independent contractor and not as an employee or agent of the TCG. Subject to the other provisions of this Agreement, FCStone shall control the conditions, time, details, and means by which FCStone performs the Services. TCG shall have the right to inspect the work of FCStone as it progresses solely for the purpose of determining whether the work is completed according to the applicable Contract.

8.2 FCStone has no authority to commit, act for or on behalf of TCG (except as provided herein), or bind TCG to any obligation or liability.

8.3 FCStone shall not be eligible for and shall not receive any employee benefits from TCG and shall be solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by FCStone hereunder.

9. Indemnification. FCStone shall indemnify, defend, and hold harmless TCG and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and expenses, incurred by Indemnified Party relating to any claim of a third party arising out of or occurring in connection with FCStone's negligence,

willful misconduct, or breach of this Agreement. FCStone shall not enter into any settlement without TCG's or Indemnified Party's prior written consent.

10. Remedies.

10.1 If a Party violates any provision of this Agreement, the other Party shall, in addition to any damages to which it is entitled, be entitled to seek immediate injunctive relief against the first Party prohibiting further actions inconsistent with its obligations under this Agreement.

10.2 All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

11. Insurance.

11.1 For a period of one year after the Effective Date, FCStone shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers that includes commercial general liability with limits no less than \$1,000,000 per occurrence, including bodily injury and property damage, which policy will include contractual liability coverage insuring the activities of FCStone under this Agreement. Upon TCG's reasonable request, FCStone shall provide TCG with a certificate of insurance from FCStone's insurer evidencing the insurance coverage specified in this Agreement.

11.2 If it shall have any employees providing services for TCG, FCStone shall also provide workers' compensation insurance covering those employees for at least the minimum amount required by applicable law and shall provide a certificate of insurance to TCG evidencing such coverage.

12. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

13. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, certified or registered mail (in each case, return receipt requested, postage prepaid), or electronic mail. Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 13.

If to TCG:

200 South Street, 4<sup>th</sup> Floor

Morristown, New Jersey 07960  
Attention: Chief Restructuring Officer  
Email: [bfrezza@deloitte.com](mailto:bfrezza@deloitte.com)

With a copy to:

Riker Danzig Scherer Hyland & Perretti LLP  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07962-1981  
Attention: Jason D. Navarino, Esq.  
Joseph L. Schwartz, Esq.  
Email: [jnavarino@riker.com](mailto:jnavarino@riker.com)  
[jschwartz@riker.com](mailto:jschwartz@riker.com)

If to FCStone:

1251 NW Briarcliff Parkway, Suite 800  
Kansas City, Missouri 64116  
Attention: President  
Email: [brent.grecian@intlfcstone.com](mailto:brent.grecian@intlfcstone.com)

With a copy to:

Husch Blackwell LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112  
Attention: Benjamin F. Mann, Esq.  
Email: [benjamin.mann@huschblackwell.com](mailto:benjamin.mann@huschblackwell.com)

14. Severability; Construction. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and the Parties shall use their reasonable best efforts to modify this Agreement in order to give effect to the original intention of the Parties. As used in this Agreement, the term “including” means “including without limitation.”

15. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed and dated by an authorized representative of each Party.

16. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. Assignment. Neither Party may assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement (other than, in the case of FCStone, to an affiliate of FCStone) without the prior written consent of the other Party. No assignment, transfer, delegation or subcontract shall relieve the assigning, transferring, delegating or subcontracting Party of any of its obligations hereunder.

18. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

19. No Third-Party Beneficiaries. This Agreement benefits solely the Parties and their respective successors and permitted assigns and nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

20. Choice of Law. This Agreement, including all exhibits, schedules, attachments, and appendices attached hereto, is governed by, and is to be construed in accordance with, the laws of the State of New York, without regard to the conflict of laws provisions thereof or of any other jurisdiction, and without regard to the United Nations Convention on Contracts for the International Sale of Goods, if otherwise applicable.

21. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached hereto, in any forum other than the Bankruptcy Court (or, if such court declines jurisdiction, the United States District Court for the Southern District of New York or the courts of the State of New York sitting in New York County (Manhattan)), and any appellate court with jurisdiction over appeals taken therefrom. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts.

22. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

23. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 13, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

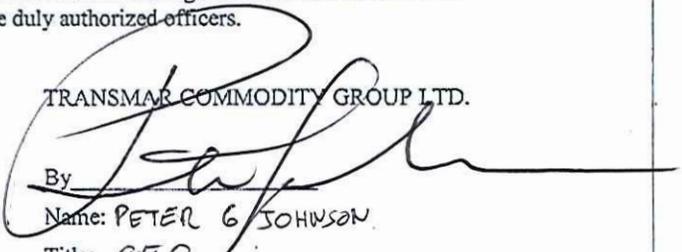
24. Force Majeure. Any delay or failure of either Party to perform its obligations under this Agreement (other than a Party's obligation to make a payment pursuant to this Agreement) will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control (each, a "**Force Majeure Event**"), *provided* that, in the case of FCStone's performance of Services with respect to any Contract, such performance shall only be excused to the extent that TCG's performance would be excused thereunder on account of such Force Majeure Event. FCStone shall give TCG prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event and the anticipated duration of such Force Majeure Event. FCStone shall use all diligent efforts to end the Force Majeure Event and resume

full performance under this Agreement; provided that, if any Force Majeure Event shall continue for 30 days or more, TCG may immediately terminate this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective duly authorized officers.

TRANSMAR COMMODITY GROUP LTD.

By 

Name: PETER G. JOHNSON

Title: CEO

FCSTONE MERCHANT SERVICES, LLC

By 

Name: ERNESTO RAMBALDINI

Title: HD OF STRUCTURED FINANCE

  
Ryan McNearney

Director of Corporate Risk and Counsel

**SCHEDULE A**

**Contracts**

**Cocoa Bean Sales Contracts**

<b>Contract Number</b>	<b>Product Description</b>	<b>MT Open Total</b>	<b>Counterparty</b>
S008645	CCN51	-105.984	GC SING
S008646	CCN51	-500.25	GC SING
S008647	CCN51	-500.25	GC SING
S008648	CCN51	-500.25	GC SING
S008649	CCN51	-500.25	GC SING
S008650	CCN51	-500.25	GC SING
S008651	CCN51	-500.25	GC SING
S008652	CCN51	-500.25	GC SING
S008653	CCN51	-500.25	GC SING
S008654	CCN51	-500.25	GC SING
S007693	IVBN	-180.375	UNICONF
S007694	IVBN	-180.375	UNICONF
S007695	IVBN	-180.375	UNICONF
S007696	IVBN	-540.475	UNICONF
S007697	IVBN	-450.125	UNICONF
S007698	IVBN	-450.125	UNICONF
S007699	IVBN FP 2	-405.34	UNICONF
S007703	GHBN	-0.688	UNICONF
S007705	GHBN	-315	UNICONF
S007706	GHBN	-315	UNICONF
S007707	GHBN	-405	UNICONF
S007708	GHBN	-315	UNICONF
S007690	IVBN FP 1	-40.64	UNICONF
S007696	IVBN PF 1	-90.025	UNICONF
S007689	IVBN 62.5-2	-1.451	UNICONF
S007697	IVBN FP 1	-450.125	UNICONF
S007689	IVBN 69KG	-3.036	UNICONF
S007698	IVBN PF 1	-450.125	UNICONF
S007699	IVBN FP 1	-360.035	UNICONF
S008820	IVBN	-765.05	UNICONF
S008823	GHBN	-225	UNICONF
S008821	IVBN	-765.05	UNICONF
S008824	GHBN	-225	UNICONF
S008822	IVBN	-765.05	UNICONF
S008825	GHBN	-225	UNICONF

**Cocoa Butter Sales Contracts**

<b>Contract Number</b>	<b>Product Description</b>	<b>MT Open Total</b>	<b>Counterparty</b>
S007540	LID Butter	-43	Guittard
S008077	LID Butter	-43	Guittard

S008494	LID Butter	-86	Guittard
S008507	LID Butter	-64.5	Guittard
S009087	LID Butter	-21.5	Guittard
S008078	LID Butter	-21.5	Guittard
S008508	LID Butter	-64.5	Guittard
S009088	LID Butter	-21.5	Guittard
S008079	LID Butter	-21.5	Guittard
S008509	LID Butter	-64.5	Guittard
S009089	LID Butter	-21.5	Guittard
S008080	LID Butter	-21.5	Guittard
S008510	LID Butter	-43	Guittard
S008081	LID Butter	-21.5	Guittard
S008511	LID Butter	-43	Guittard
S008082	LID Butter	-21.5	Guittard
S008512	LID Butter	-150.5	Guittard
S008083	LID Butter	-21.5	Guittard
S008513	LID Butter	-150.5	Guittard
S008084	LID Butter	-21.5	Guittard
S008514	LID Butter	-43	Guittard
S008085	LID Butter	-21.5	Guittard
S008515	LID Butter	-43	Guittard
S008086	LID Butter	-21.5	Guittard
S008516	LID Butter	-64.5	Guittard
S008087	LID Butter	-21.5	Guittard
S008517	LID Butter	-64.5	Guittard
S008088	LID Butter	-21.5	Guittard
S008518	LID Butter	-64.5	Guittard
S008316	LID Butter	-22.095	Mars
S008319	LID Butter	-301	Mars
S008317	LIUT Butter	-107.912	Mars
S008318	LID Butter	-301	Mars

**Cocoa Butter Purchase Contracts**

<b>Contract Number</b>	<b>Product Description</b>	<b>MT Open Total</b>	<b>Counterparty</b>
P008968	INBT	100	Guan Chong
P008969	INBT	200	Guan Chong
P008970	INBT	200	Guan Chong
P008981	INBT	300	Guan Chong
P008982	INBT	300	Guan Chong
P008983	INBT	300	Guan Chong
P008968	INDEBT	100	Guan Chong
P008971	INBT	200	Guan Chong
P008984	INBT	300	Guan Chong
P008972	INBT	200	Guan Chong
P008985	INBT	300	Guan Chong
P008973	INBT	200	Guan Chong

P008986	INBT	300	Guan Chong
P008974	INBT	200	Guan Chong
P008987	INBT	300	Guan Chong
P008975	INBT	200	Guan Chong
P008988	INBT	300	Guan Chong
P008976	INBT	200	Guan Chong
P008989	INBT	300	Guan Chong
P008977	INBT	200	Guan Chong
P008990	INBT	300	Guan Chong
P008978	INBT	200	Guan Chong
P008991	INBT	300	Guan Chong
P008979	INBT	200	Guan Chong
P008992	INBT	300	Guan Chong
P008798	INBT	100	JB COCO
P008799	INBT	100	JB COCO
P008800	INBT	100	JB COCO
P008801	INBT	100	JB COCO
P008802	INBT	100	JB COCO

4826193v14

**Exhibit B**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
TRANSMAR COMMODITY GROUP LTD. <sup>1</sup>	:	
	:	
Debtor.	:	Case No. 16-13625(JLG)
	:	
	:	
	:	
-----	x	

**ORDER ESTABLISHING BIDDING PROCEDURES AND RELATED RELIEF  
REGARDING THE SALE AND ASSIGNMENT OF THE DEBTOR’S FORWARD BOOK  
AND NOTICE THEREOF**

Upon consideration of the Motion (the “Sale Motion”) of Transmar Commodity Group Ltd. (the “Debtor”), as debtor-in-possession, for an order (the “Bidding Procedures Order”) (a) establishing bidding procedures and bid protections, including an auction (the “Bidding Procedures”), with respect to the Debtor’s sale/assignment of its Forward Book,<sup>2</sup> (b) approving the form and manner of notices thereof (the “Bidding Procedures Notice”), (c) establishing FCStone Merchant Services, LLC (“FCStone”) as the stalking horse bidder for certain of the Debtor’s forward book contracts, (d) approving the form of Asset Purchase Agreement (the “APA”) by and between the Debtor and FCStone (“FCStone”), pursuant to which the Debtor proposes to sell and assign certain of its forward book contracts to FCStone or a third party that makes a higher and/or better offer for those forward book contracts, as well as sell and assign other of its forward book contracts to third party bidders (the “Proposed Sale”), (e) setting a

<sup>1</sup> The Debtor in this chapter 11 case and the last four digits of the Debtor’s taxpayer identification number is as follows: Transmar Commodity Group Ltd. (5889). The Debtor’s principal office is located at 200 South Street, 4<sup>th</sup> Floor, Morristown, NJ 07960.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Sale Motion.

hearing to consider approval of the Debtor's sale/assignment of its Forward Book (the "Sale Hearing"), and (f) granting other relief; and it appearing that the Debtor has provided good and sufficient notice to interested parties of the Sale Motion, as evidenced by the proof of service filed on May \_\_, 2017; and it further appearing that this Court has jurisdiction to grant the requested relief pursuant to 28 U.S.C. §§ 157 and 1334; and after considering all objections to the Sale Motion, if any; and the Court having conducted a hearing on May 31, 2017, at which time the Court considered, among other things, the Bidding Procedures, any objections thereto and the oral arguments of counsel; and it further appearing that the relief requested is reasonable and necessary to protect the interests of the Debtor, its estate, and creditors; and after due deliberation, sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**<sup>3</sup>

A. The statutory and legal predicates for the relief requested in this Order are sections 105, 363 and 365 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 6004-1 and 6006-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules").

B. The Debtor has provided good and sufficient notice of the relief granted by the Bidding Procedures Order to all parties in interest. The notice provided is appropriate and is calculated to provide interested parties with timely and proper notice of the Bidding Procedures and the Auction. No further notice is required. A reasonable opportunity to object or be heard

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 6004(a).

C. The Debtor has engaged in a marketing process with respect to its Forward Book to solicit and develop the highest and best offers for the Forward Book.

D. The Bidding Procedures attached hereto as **Exhibit 1** are fair, reasonable, appropriate and are designed to maximize recovery to the Debtor's estate.

E. The Debtor has demonstrated compelling and sound business justifications for entering into the APA and incurring the obligations arising thereunder or in connection therewith, including the provisions related to the Transaction Expenses.

F. FCStone's role as a "stalking-horse" and the APA as the "stalking-horse" sale agreement is in the best interest of the Debtor and the Debtor's estate, and it reflects a sound exercise of the Debtor's business judgment. The APA provides the Debtor with the opportunity to sell certain of the Forward Contracts in order to maximize value.

G. The Bid Protections, including, but not limited to, the Transaction Expenses, (i) have been negotiated by the Debtor and FCStone at arms' length and in good faith, (ii) are a material inducement for, and consideration of, FCStone's execution of the APA, and (iii) are necessary to ensure that FCStone will continue to pursue the APA and the sale transaction contemplated thereby. The Transaction Expenses, to the extent payable under the APA, (x) are (i) an actual and necessary cost and expense of preserving the Debtor's estate within the meaning of section 503(b) of the Bankruptcy Code and (ii) shall be treated as an allowed administrative expense claim against the Debtor's estates pursuant to sections 105(a), 503(b) and 507(a)(2) of the Bankruptcy Code, (y) are commensurate to the real and material benefits conferred upon the Debtor's estate, (z) are fair, reasonable and appropriate, particularly in light of the size and

nature of the Proposed Sale to FCStone and the efforts that have been and will be expended by FCStone.

H. The Debtor has demonstrated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the Assumption and Assignment Procedures, (iii) the Bid Protections, including, but not limited to, the Transaction Expenses (to the extent payable under the APA), and (iv) the form and manner of notice of the Auction and Sale Hearing.

I. The Bidding Procedures comply with the requirements of Local Rule 6004-1 and the Sale Guidelines. The Bidding Procedures were negotiated in good faith and at arms' length and are reasonably designed to promote participation and active bidding and ensure that the highest or best value is generated for the Forward Book.

J. The Assumption and Assignment Procedures, including notice of proposed Cure Costs, are reasonable and appropriate and consistent with section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures have been tailored to provide adequate opportunity for all Counterparties to the Forward Contracts to raise objections, if any.

K. The Bidding Procedures Notice is reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Assumption and Assignment Procedures, the Auction, the Sale Hearing and the Proposed Sale, and the objection deadlines related thereto.

IT IS HEREBY ORDERED THAT:

**The Bidding Procedures/The Auction**

1. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby approved in all respects, are incorporated herein and shall apply with respect to any bids for the Forward Book.

The Debtor is authorized to take all action necessary or appropriate to implement the Bidding Procedures.

2. The deadline for submitting an Offer for some or all of the Forward Book shall be **June 14, 2017 at 5:00 p.m. (prevailing Eastern Time)** (the “Offer Deadline”); provided that, the Debtor may, after consulting with the Consultation Parties and after providing notice to the Notice Parties, extend the Offer Deadline for any reason, in its reasonable business judgment. The Debtor shall provide copies of all bids to each of the Consultation Parties, in accordance with Bidding Procedures.

3. If the Debtor receives at least two (2) Qualified Bids for the same Forward Contracts by the Offer Deadline, the Debtor shall conduct the Auction. The Auction shall take place at the offices of Riker, Danzig, Scherer, Hyland & Perretti LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, New Jersey 07962 on **June 20, 2017 at 10:00 a.m. (prevailing Eastern Time)**, or at such other time and location as the Debtor, after consulting with the Consultation Parties and after providing notice to the Notice Parties, may determine in its reasonable business judgment. The Consultation Parties and/or their representatives shall be permitted to attend the Auction.

4. The Auction shall be conducted openly and shall be transcribed or videotaped, at the Debtor’s option after consultation with the Consultation Parties.

5. Subject to the Bidding Procedures and this Order, the Debtor shall have the right, after consulting with the Consultation Parties, in its reasonable business judgment, to: (i) determine which bidders qualify as Qualified Parties; (ii) determine which bids qualify as Qualified Bids; (iii) determine which Qualified Bids qualify as Baseline Bids; (iv) determine the amount of each Minimum Overbid; (v) determine which Qualified Bids are the Winning Bids

and the Backup Bids; (vi) reject any bid that is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bidding Procedures, Bankruptcy Code, this Order, or any other order of this Court; or (c) contrary to the best interests of the Debtor and its estate; (vii) adjourn or cancel the Auction, after providing notice of such adjournment or cancellation in accordance with the Bidding Procedures; (viii) modify the Bidding Procedures in a manner consistent with applicable law.

6. All bidders submitting a Qualified Bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the sale or transfer of the implicated Forward Contracts.

7. FCStone's bid, as reflected in the APA, is deemed a Qualified Bid pursuant to the Bidding Procedures for all purposes.

#### **The Sale Hearing/Objection Deadline**

8. The Court shall conduct the Sale Hearing on **June 28, 2017 at 10:00 a.m. (ET)**. The Debtor may, after consultation with the Consultation Parties and upon notice to the Notice Parties, seek an adjournment of the Sale Hearing as the Debtor deems appropriate in the exercise of its reasonable business judgment.

9. Responses or objections (collectively, "Sale Objections") if any, to the relief requested in the Sale Motion (other than Cure Objections and Adequate Assurance Objections discussed below) shall be in writing, shall state the name of the objecting party, shall state with particularity the reasons and basis for the Sale Objection, and shall be (a) filed with the Court and (b) served upon (i) the attorneys for the Debtor, Riker Danzig Scherer Hyland & Perretti, LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962 (Attn: Joseph L. Schwartz, Esq.); (ii) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (iii) Husch

Blackwell LLP, as counsel to FCStone (Attn: Benjamin F. Mann, Esq.); (iv) the attorneys (if applicable) of any Winning Bidder(s); (v) the attorneys (if applicable) of any Backup Bidder(s); (vi) Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq.); and (vii) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere, Esq.) (the “Objection Recipients”), so as to be actually received by no later than **June 21, 2017 at 4:00 p.m.** (the “Sale Objection Deadline”). Any reply by the Debtor shall be filed and served by no later than **June 23, 2017 at 5:00 p.m.**

#### **Notice Procedures**

10. The Bidding Procedures Notice, attached to the Sale Motion as Exhibit D, provides adequate and sufficient notice to all interested parties of the Bidding Procedures, Auction, Sale Motion, Sale Hearing, and the Proposed Sale pursuant to Bankruptcy Rules 2002 and 6004 and Local Rules 4001-1 and 6004-1, and is hereby approved.

11. As soon as is reasonably practicable, but by no later than three (3) days after entry of the Bidding Procedures Order, the Debtor shall serve a copy of this Order, with exhibit, and the Bidding Procedures Notice upon the following persons by first-class mail, postage prepaid: (i) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (ii) Husch Blackwell LLP, as counsel to FCStone (Attn: Benjamin F. Man, Esq.); (iii) all Counterparties to the Forward Contracts; (iv) all parties who have made an offer on the Forward Book or expressed an interest in making an offer on the Forward Book; (v) Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq.); (vi) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere, Esq.); (vii) all taxing authorities that have jurisdiction over the Forward Book; (viii)

all known persons holding a lien on any of the Forward Book Contracts; and (ix) all entities who have requested notice under Bankruptcy Rule 2002 (collectively, the “Notice Parties”).

### **The Assumption and Assignment Procedures**

12. The Proposed Assumed Contracts Notice, attached to the Sale Motion as Exhibit F, provides adequate and sufficient notice to any applicable Counterparty of any proposed assumption and/or assignment of any Forward Contract, and is hereby approved.

13. The Assumption and Assignment Procedures (as set forth in the Sale Motion) are reasonable, fair, and appropriate, and contain the type of information required under Bankruptcy Rule 2002, Local Rule 2002-1, and comply in all respects with all other applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and are hereby approved.

14. Within two (2) days after entry of this Order, the Debtor shall file with the Court, serve on the Notice Parties, including each applicable Counterparty, and cause to be published on the Donlin Recano Website the Proposed Assumed Contracts Notice.

15. Any and all objections to the Cure Amounts (any such objection, a “Cure Objection”) shall be in writing, shall state with specificity the legal and factual bases thereof and include any appropriate supporting documentation, filed with the Court and shall be simultaneously served on the following Objection Recipients, so as to be actually received by the Objection Recipients no later than **June 21, 2017 at 4:00 p.m.** (the “Cure Objection Deadline”).

16. The Debtor and any Counterparty that has filed a Cure Objection shall confer in good faith in an effort to resolve the Cure Objection without Court intervention, after consultation with the Consultation Parties. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the Court shall determine the amount to be paid or reserved with respect to such objection at the Sale Hearing; provided that, a

Cure Objection (and only a Cure Objection) may, at the Debtor's discretion, after consulting with the Consultation Parties and the applicable Winning Bidder, be adjourned with the Court's consent (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Proposed Sale, provided that the Debtor maintains a cash reserve equal to the Cure Costs the objecting Counterparty believes is required to cure the asserted monetary default under the implicated Forward Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable Cure Costs, if any, the implicated Forward Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Winning Bidder, as of the closing date of the applicable Proposed Sale.

17. All other Sale Objections to the proposed assumption and assignment of the Debtor's right, title, and interest in, to, and under a Forward Contract, if it is ultimately designated for assumption and assignment by the Winning Bidder(s), will be heard at the Sale Hearing.

18. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the implicated Forward Contract (unless such Counterparty has timely filed an Adequate Assurance Objection with respect to the implicated Forward Contract) to the applicable Winning Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment, and sale. The Cure Costs set forth in the Proposed Assumed Contracts Notice shall be controlling and will be the only amount necessary to cure outstanding monetary defaults under the implicated Forward Contract under 11 § U.S.C. 365(b), notwithstanding anything to the contrary in any Forward Contract, or any other

document, and the Counterparty to the Forward Contract shall be deemed to have consented to the Cure Costs and shall forever shall be barred from asserting any other claims related to such Forward Contract against the Debtors or the Winning Bidders, or the property of any of them.

19. To the extent requested by a Counterparty, the Debtor shall provide, with respect to FCStone and each Qualified Party, information to demonstrate that FCStone or such other Qualified Party is able to fulfill all obligations in connection with satisfying adequate assurance of future performance under any Forward Contract (“Adequate Assurance Information”). In particular, the Debtor shall: (a) within 24 hours of receipt of an Offer from a Potential Bidder (other than FCStone) and (b) with respect to FCStone, by no later than twenty (20) days before the Sale Hearing, or by **June 8, 2017 at 4:00 p.m.** (the later of (a) and (b), the “Adequate Assurance Deadline”), provide a copy of the Adequate Assurance Information to those Counterparties (or their counsel) who have: (x) submitted a written request (e-mail to Debtor’s counsel is acceptable) for Adequate Assurance Information and (y) confirmed in writing to the Debtor’s counsel (e-mail is acceptable) their agreement to keep such Adequate Assurance Information strictly confidential and use it solely for the purpose of evaluating whether a Potential Bidder, including FCStone, has provided adequate assurance of future performance under the implicated Forward Contracts.

20. Any Counterparty to a Forward Contract that has an objection to the proposed assumption, assignment, and/or sale of the Forward Contract (including but not limited to any assertion that a Forward Contract is terminated), the subject of which objection is a Winning Bidder’s proposed form of adequate assurance of future performance with respect to such contract (each, an “Adequate Assurance Objection”), shall file with the Court and simultaneously serve on the Objection Recipients an Adequate Assurance Objection, which must state, with

specificity, the legal and factual bases thereof, including submitting any appropriate supporting documentation, by (i) no later than **June 21, 2017 at 4:00 p.m. (prevailing Eastern Time)** if such Adequate Assurance Objection relates to FCStone or (ii) no later than **June 23, 2017 at 4:00 p.m. (prevailing Eastern Time)** with respect to such Qualified Bidder other than FCStone.

21. The Debtor, after consultation with the Consultation Parties, and any Counterparty that has filed an Adequate Assurance Objection shall confer in good faith in an effort to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Court shall determine any issues of adequate assurance of future performance by the applicable Winning Bidder at the Sale Hearing.

22. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and/or sale of the implicated Forward Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Forward Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and/or sale. Further, in the event no objections are filed and served, the applicable Winning Bidder shall be deemed to have provided adequate assurance of future performance with respect to the implicated Forward Contract in accordance with 11 U.S.C. § 365(f)(2)(B), notwithstanding anything to the contrary in the Forward Contract, or any other document.

23. Any Counterparty to a Forward Contract that wishes to file a Sale Objection (other than a Cure Objection or an Adequate Assurance Objection) to the proposed assumption, assignment and sale of the Forward Contract shall file with the Court and serve on the Objection

Recipients its Sale Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than the Sale Objection Deadline of **June 21, 2017, at 4:00 p.m. (prevailing Eastern Time)**.

24. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Sale Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Forward Contract (unless the Counterparty has filed a timely Cure Objection or Adequate Assurance Objection with respect to the Forward Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale.

25. The Debtor reserves all of its rights, claims, and causes of action with respect to each Forward Contract or other document listed on the Proposed Assumed Contracts Notice. The Debtor's inclusion of any Forward Contract on the Proposed Assumed Contracts Notice shall not be a guarantee that such contract ultimately will be assumed and assigned and sold.

#### **Debtors' Entry Into Asset Purchase Agreement**

26. The Debtor is authorized to perform all of its respective pre-closing obligations under the APA; provided that, for the avoidance of doubt, consummation of the transactions contemplated by the APA shall be subject to entry of the Sale Order and the satisfaction or waiver of the other conditions to closing on the terms set forth in the APA.

#### **Bid Protections**

27. The Transaction Expenses, and the provisions of the APA relating thereto or amendments thereto, are hereby approved.

28. The Transaction Expenses, to the extent payable under the APA, shall constitute an allowed administrative expense claim against the Debtor's estate pursuant to sections 105(a), 503(b) and 507(a)(2) of the Bankruptcy Code.

29. The Transaction Expenses shall not be deemed to be a default pursuant to paragraph 7 of the Stipulation and Final Agreed Order Pursuant to Sections 105, 361, 362, 363 and 507 of title 11 of the Bankruptcy Code, Rules 4001(b) and 9014 of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York Authorizing Debtor's Use of Cash Collateral and Providing Adequate Protection Thereof [Docket No. 115].

**Other Relief Granted**

30. In the event there is a conflict between this Order and the Sale Motion or the APA, this Order shall control and govern.

31. This Order shall become effective immediately upon its entry.

32. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: New York, New York  
May \_\_\_\_, 2017

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

Bidding Procedures



### **Description of the Assets**

The Debtor is seeking to sell substantially all of its forward contracts to both purchase and to supply cocoa beans and cocoa products to various counterparties (the “Forward Book”) free and clear of all liens, claims, interests, or other encumbrances.

### **Consultation Parties**

Throughout the sale process, as necessary or appropriate, the Debtor will consult with the following parties: (i) the Agent for the Pre-Petition Lenders and (ii) the Committee (together, the “Consultation Parties”).

### **Bidder Qualifications**

Each person or entity that desires to participate in the Auction (each, a “Prospective Bidder”) must be determined by the Debtor, in consultation with the Consultation Parties, to satisfy the following eligibility requirements:

#### **A. Due Diligence**

Any Prospective Bidder identified by the Debtor as reasonably likely to be a Qualified Party (defined below) that wishes to conduct due diligence on the Forward Book must execute a confidentiality agreement in form and on terms satisfactory to the Debtor in order to be granted access to all material information regarding the Forward Book. The Pre-Petition Agent for the Pre-Petition Lender shall also be provided access to due diligence materials.

The Debtor will work to accommodate all reasonable requests for additional information and due diligence access from Prospective Bidders. All due diligence requests shall be directed to (i) the Debtor, Transmar Commodity Group, Ltd., 200 South Street, 4<sup>th</sup> Floor, Morristown, New Jersey 07960 (Attn: Jonathan Steinway (josteinway@deloitte.com)).

If the Debtor determines, after consultation with the Consultation Parties, that a Prospective Bidder does not qualify as a Qualified Party, such Prospective Bidder shall not be entitled to receive due diligence access or additional non-public information.

#### **B. Offer Deadline**

Any Prospective Bidder interested in participating in the Auction (defined below) for some or all of the Forward Book, including the Assigned Contracts or any other Forward Contracts of the Debtor, shall make an offer (each, a “Offer”) in writing and serve the Offer upon the Debtor (Attn: Joseph L. Schwartz, Esq. and Jason D. Navarino, Esq. of Riker Danzig Scherer Hyland & Perretti, LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962); the Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq. of Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038); and the Committee (Attn: Rocco A. Cavaliere, Esq. and Michael Z. Brownstein, Esq. of Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, NY 10018) no later than **June 14, 2017 at 5:00 p.m. (prevailing Eastern Time)** (the “Offer Deadline”).

The Debtor may, after consulting with the Consultation Parties and after providing notice to the Notice Parties (as defined herein), extend the Offer Deadline for any reason, in its reasonable business judgment. The Debtor shall promptly provide copies of all Offers received to the Consultation Parties; provided that the Debtor shall not be required to provide to any Consultation Party any material, nonpublic information regarding bids for the Forward Book if such Consultation Party or any related entities to that Consultation Party submits a bid to purchase all or any position of the Forward Book, provided however that if a member of the Committee makes an offer for the Forward Book, the Debtor may provide the bids to Committee counsel and other Committee members that are not participating in the bid. Further, the Debtor shall not be required to consult with any Consultation Party regarding a particular Offer if that Consultation Party is an active bidder for the same Forward Contracts at the applicable time.

### **C. Qualified Bid Requirements**

To qualify as a "Qualified Bid," the Offer must be in writing and the Debtor, in consultation with the Consultation Parties, must determine that the Offer satisfies the following requirements:

1. Modified APA. Each written offer must include (i) an executed copy of the APA as modified by the Prospective Bidder in accordance with its Offer (the "Modified APA");<sup>2</sup> and (ii) a marked-up copy of the Modified APA reflecting the difference between the Modified APA and the APA. The Modified APA, at the Prospective Bidder's option, may, among other things, remove Section 2.06(c) of the APA. The Debtor, in consultation with the Consultation Parties, shall determine whether any Modified APA that modifies the APA in any respect beyond the identity of the purchaser, the purchase price under the agreement and the particular Forward Contracts covered by the Offer is a Qualified Bid.
2. Bidding Requirements. If an Offer is for exactly all of the Purchased Assets, the payment of a purchase price to the Debtor shall not be less than \$3,700,000 (\$3,500,000 plus Transaction Expenses (defined herein) plus \$100,000 initial overbid). If an Offer is for Forward Contracts other than or in addition to some or all of the Purchased Assets, the Prospective Bidder shall allocate the proposed purchase price among such Forward Contracts. If an Offer is for some subset of the Purchased Assets, the proposed purchase price shall be subject to the allocation set forth on Section 2.06 of the Disclosure Schedules to the APA, and the Prospective Bidder shall allocate the remainder of the purchase price among any additional Forward Contracts that are part of the Offer.<sup>3</sup> All Offers for any portion of the Forward Book shall require a minimum bid of \$200,000.

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<sup>2</sup> For the avoidance of doubt, the APA with FCStone is deemed a Modified APA.

<sup>3</sup> In the event that FCStone purchases Product pursuant to a Purchase Contract in anticipation of using that Product to satisfy the Debtor's obligations under a Sales Contract but the Court approves a sale and assignment of the Assigned Contracts to a party other than FCStone, consistent with FCStone's obligation to cooperate with the Proposed Sale as set forth in Section 2.6 of the Service Agreement, the Debtor requests that the Sale Order require

3. Identification of Bidder. A Qualified Bid must fully disclose the legal identity of each entity that will be bidding for the implicated Forward Contracts or otherwise participating in connection with such bid (including but not limited to any equity holder or other financial backer if the Prospective Bidder is an entity specifically formed for purposes of effectuating the Proposed Sale, and the complete terms of any such participation) and must also disclose any connections or agreements with the Debtor, any other known Prospective Bidder or Qualified Party, and/or any officer or director of the foregoing.
4. Credit Bidding. In connection with the Proposed Sale of all or any portion of the Forward Book, a person or entity holding a perfected security interest in the Forward Book may seek to credit bid some or all of its claims for its collateral (each such bid, a “Credit Bid”) pursuant to section 363(k) of the Bankruptcy Code. A Credit Bid may only be applied to reduce the cash consideration with respect to the Forward Contracts in which the party submitting the Credit Bid holds a security interest. Each person or entity making a Credit Bid shall be deemed a Qualified Bidder to the extent that it has the right to Credit Bid.
5. Financial Information. Any Prospective Bidder that wishes to make an Offer for some or all of the forward contracts contained within the Forward Book must provide the Debtor with sufficient and adequate information to demonstrate, to the satisfaction of the Debtor, in consultation with the Consultation Parties, that its Offer:
  - (i) is being made by an entity that has the financial wherewithal and ability to consummate the transaction, including evidence of adequate financing;
  - (ii) provides all non-debtor Counterparties to the implicated Forward Contracts with adequate assurance of future performance, as contemplated by section 365 of the Bankruptcy Code; and
  - (iii) will be on terms and conditions substantially similar as those set forth in the APA, as modified to the extent different Forward Book Contracts are implicated.
6. Good Faith Deposit. All Qualified Bids (other than one that includes a Credit Bid) must be accompanied by a good faith deposit in the amount of 10% of the Offer, in the form of a certified or cashier’s check, payable to “RIKER DANZIG SCHERER HYLAND & PERRETTI LLP TRUST

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that FCStone sell that Product to the Winning Bidder at cost so as to allow the Winning Bidder to realize the aggregate value of that Purchase Contract and the corresponding Sales Contract.

ACCOUNT.” All such deposits shall be retained by the Debtor pending the hearing to consider the Sale Motion and shall be returned within ten (10) days after entry of a Sale Order, except that the Debtor shall hold (i) the deposit of the Winning Bidder (defined below), and apply such deposit(s) to the Purchase Price at closing, and (ii) the deposit of the Backup Bidder, until the first business day following the closing of the Proposed Sale with the Winning Bidder.

7. Other Requirements. A Qualified Bid shall:

(i) state that the bid is formal, binding and unconditional, is not subject to further due diligence, and is irrevocable until the earlier to occur of: (x) the first business day following the closing of the Proposed Sale or (y) thirty (30) days following the last date of the Auction (as may be adjourned);

(ii) not contain any financing contingencies of any kind;

(iii) not contain any condition to closing the Proposed Sale on the receipt of any third party approvals (excluding Bankruptcy Court and any applicable required governmental and/or regulatory approval);

(iv) represent that all necessary filings under applicable law and regulation will be made and that the payment of the fees associated therewith will be made by the Prospective Bidder;

(v) expressly state that the Prospective Bidder agrees to serve as a backup bidder (a “Backup Bidder”) if such bidder’s Qualified Bid is selected as the next highest or next best bid after the Winning Bid for the implicated Forward Contracts;

(vi) include contract information for the person(s) the Debtor should contact with questions about the Prospective Bidder’s bid; and

(vii) be received by the Debtor and Consultation Parties by the Offer Deadline.

**D. Qualified Bidders**

The Debtor shall, in consultation with the Consultation Parties, make a determination whether an Offer is a Qualified Bid and shall notify Prospective Bidders whether their Offer have qualified as Qualified Bids by not later than **June 16, 2017 at 5:00 p.m. (prevailing Eastern Time)**; provide that, if an Offer is made by the Offer Deadline that is not determined to be a Qualified Bid, the Debtor will promptly advise the Prospective Bidder of the deficiencies, if any, and allow such Prospective Bidder one (1) day to submit a revised offer. In addition, if the

Debtor, after consulting with the Consultation Parties and after providing notice to the Notice Parties, determine to extend the Offer Deadline, the Debtor shall be required to notify Prospective Bidders whether their bids have qualified as Qualified Bids by no later than two (2) days after the newly-scheduled Offer Deadline. Any Prospective Bidder's Offer that is deemed a Qualified bid shall be designated as a "Qualified Party."

The Debtor may, after consultation with the Consultation Parties, accept as a single Qualified Bid, multiple bids for non-overlapping material portions of the Forward Book such that, when taken together in the aggregate, such bids would otherwise meet the standards for a single Qualified Bid. The Debtor may, after consultation with the Consultation Parties, permit otherwise Qualified Parties who submitted bids by the Bid Deadline for less than a substantial (but nevertheless a material) portion of the Forward Book but who were not identified as a component of a single Qualified Bid consisting of such multiple bids, to participate in the Auction and to submit higher or otherwise better bids that in subsequent rounds of bidding may be considered, together with other bids for nonoverlapping material portions of the Forward Book, as part of such a single Qualified Bid for overbid purposes. The Debtor may, after consulting with the Consultation Parties, amend the conditions precedent to being a Qualified Party at any time, in its reasonable business judgment.

The Pre-Petition Agent for the Pre-Petition Lenders and its respective designees, affiliates, and assigns shall automatically be deemed a Qualified Party, and its respective bid(s) shall automatically be deemed to constitute Qualified Bids, regardless of whether its respective Credit Bids meet the requirements set forth above, provided however that parties retain the right to object to a credit bid "for cause" under section 363(k) of the Bankruptcy Code. The Pre-Petition Agent shall not be required to submit a Good Faith Deposit in connection with any Credit Bid.

FCStone shall automatically be deemed a Qualified Party, and FCStone's bid, as reflected in the APA, shall be deemed a Qualified Bid.

**E. Participants and Attendees**

Each Qualified Party shall appear in person at the Auction or through a duly authorized representative. Only Qualified Parties shall be entitled to make any subsequent bids at the Auction. Each Qualified Party shall be required to confirm that (i) it has not engaged in any collusion with respect to the bidding or the Proposed Sale; and (ii) its Qualified Bid represents a binding, good faith, and bona fide offer to purchase the Forward Contracts identified if such bid is selected as the Winning Bidder.

The Debtor, in consultation with the Consultation Parties, shall, after the Offer Deadline and prior to the Auction, evaluate all Qualified Bids or combination of Qualified Bids received, and, in consultation with the Consultation Parties, determine which Qualified Bids or combination of Qualified Bids, as the case may be, reflect the highest or best offers for some or all of the Forward Book, whether in whole or in lots, at that time (the "Baseline Bid(s)"). The Debtor shall announce such determination at the commencement of the Auction.

**F. Auction Procedures**

The Auction shall be governed by the following procedures, subject to the Debtor's right, after consultation with the Consultation Parties, to modify such procedures in their reasonable business judgment:

1. Minimum Overbid Procedures. The following procedures shall govern overbids (collectively, the "Overbid Procedures"):
  - a) Any further bids made at the Auction for the Purchased Assets shall be in increments of at least \$25,000 (or, if for only certain of the Purchased Assets, such amount multiplied by the sum of the percentages corresponding to such Purchased Assets set forth on Section 2.06 of the Disclosure Schedules to the APA) greater than the preceding bid.
  - b) For any further bids made on the Auction for Forward Contracts other than or in addition to some or all of the Purchased Assets: (x) if the applicable portion of the Baseline Bid is for \$500,000 or less, such further bids shall be in increments of at least \$10,000 and (y) if the applicable portion of the Baseline Bid is for more than \$500,000, such further bids shall be increments of at least \$25,000.
  - c) The Debtor may, in its reasonable business judgment, and after consulting with the Consultation Parties, announce increases or reductions to the Overbid Procedures at any time during the Auction.
2. Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, the Debtor, after consulting with the Consultation Parties, shall announce the bid that it determines in its business judgment to be the highest or otherwise best offer for the relevant Forward Contracts (the "Leading Bid"). Each round of bidding will conclude after each participating Qualified Party has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid.
3. Modification of Procedure. The Debtor may, after consulting with the Consultation Parties, announce at the Auction modified or additional procedures for conducting the Auction or otherwise modifying these Bidding Procedures.

**G. Auction Results**

1. Winning Bid. Immediately prior to the conclusion of the Auction, the Debtor shall, in consultation with the Consultation Parties, (i) determine, consistent with these Bidding Procedures, which bid constitutes the Winning Bid for the implicated Forward Contracts; and (ii) notify all

Qualified Parties at the Auction for the implicated Forward Contracts of the identity of the bidder that submitted the Winning Bid (each such bidder, the “Winning Bidder”) and the amount of the purchase price and other material terms of the Winning Bid.

The Auction may include open bidding in the presence of all other Qualified Parties. All Qualified Parties shall have the right to submit additional bids at the Auction to improve their bids. The Debtor may, in its reasonable business judgment, negotiate with any and all Qualified Parties participating in the Auction.

The Debtor shall have the right, after consulting with the Consultation Parties, to determine, in its reasonable business judgment, without liability, which bid is the highest or otherwise best bid and reject at any time any bid that the Debtor deems to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, Bankruptcy Rules, or the Local Rules, these Bidding Procedures, any order of the Bankruptcy Court, or the best interests of the Debtor and its estate.

At least one (1) day prior to the Sale Hearing, the Winning Bidder shall be required to supplement its Good Faith Deposit by the difference between its Qualified Bid and the Winning Bid.

2. Backup Bid. Immediately prior to the conclusion of the Auction, the Debtor shall, in consultation with the Consultation Parties, (i) determine, consistent with these Bidding Procedures, which Qualified Bid is the next highest or otherwise best Qualified Bid for the relevant Forward Contracts after the Winning Bid (each such Qualified Bid, a “Backup Bid”); and (ii) notify all Qualified Parties at the Auction for the implicated Forward Contracts of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid. Backup Bids shall be open and irrevocable until the earlier of (x) the first business day following closing of the Proposed Sale or (y) thirty (30) days following the last date of the Auction (as may be adjourned). If the Winning Bidder for the implicated Forward Contracts fails to consummate a Proposed Sale, the Backup Bidder shall be deemed the new Winning Bidder, and the Debtor will be authorized, but not required, to consummate a Proposed Sale for the implicated Forward Contracts with the Backup Bidder.

In the event that a Winning Bidder fails to consummate the proposed transaction by the Closing Date, such bidder’s deposit shall be forfeited to the Debtor (but not as liquidated damages, the Debtor reserving the right to pursue all remedies that may be available to it) and the Debtor shall be free to consummate the proposed transaction with the Backup Bidder at the final price bid by such bidder at the Auction (or, if that bidder is unable to consummate the transaction at that price, the Debtor may

consummate the transaction with the next higher bidder, and so forth) without the need for an additional hearing or order of the Court.

3. Auction Results: Within one (1) business day following the Auction, the Debtor will cause the results of the Auction to be filed with the Court, docketed on the Court's electronic case filing ("ECF") system, and published on the website of the Debtor's Court-approved claims agent, Donlin Recano, at (<https://www.donlinrecano.com/Clients/tcg/Index>) (the "Donlin Recano Website"), which filing will include a list of the Forward Contracts to be sold and assigned to the Winning Bidder(s), subject to revision prior to Closing.
4. Bankruptcy Court Approval: All bids for the purchase of some or all of the Forward Book shall be subject to approval of the Court and conditioned upon entry of a Sale Order.

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**Exhibit C**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
TRANSMAR COMMODITY GROUP LTD. <sup>1</sup>	:	
	:	
Debtor.	:	Case No. 16-13625(JLG)
	:	
	:	
	:	
-----	X	

**ORDER (A) APPROVING THE SALE AND ASSIGNMENT OF CERTAIN OF THE DEBTOR’S FORWARD CONTRACTS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, AND (C) GRANTING RELATED RELIEF PURSUANT TO BANKRUPTCY CODE § 105 AND GRANTING RELATED RELIEF**

Upon consideration of the motion dated May 12, 2017 (the “Sale Motion”), of Transmar Commodity Group Ltd. (the “Debtor”), as debtor-in-possession, for an order (the “Order”), *inter alia*, pursuant to Sections 105, 363 and 365 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Bankruptcy Rules 2002, 6004 and 6006 authorizing and approving (a) the sale and assignment of certain of the Debtor’s forward book contracts (the “Assigned Contracts”) and all of the Debtor’s rights under warranties, indemnities and similar rights against third parties to the extent related to the Assigned Contracts (the “Purchased Assets”), free and clear of liens, claims and encumbrances, described in and pursuant to the terms and conditions of an executed Asset Purchase Agreement, dated as of May 9, 2017 (the “APA”), by and between the Debtor, as seller, and FCStone Merchant Services, LLC, as buyer (the “FCStone”), and (b) granting related relief; and the Court having conducted a hearing on the Sale Motion on June 28,

<sup>1</sup> The Debtor in this chapter 11 case and the last four digits of the Debtor’s taxpayer identification number is as follows: Transmar Commodity Group Ltd. (5889). The Debtor’s principal office is located at 200 South Street, 4<sup>th</sup> Floor, Morristown, NJ 07960.

2017 (the “Sale Hearing”) and the Court having considered the Sale Motion, all responses filed thereto, if any, as well as any evidence presented at the hearing; and the Court having jurisdiction to consider and determine the Sale Motion in accordance with 28 U.S.C. §§ 157 and 1334; and due notice of the Sale Motion having been provided, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor; the Court hereby finds and determines the following:

**General**

A. The Court has jurisdiction to consider the Sale Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334. The Sale Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in the Court under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Sale Motion are 11 U.S.C. §§ 105, 363 and 365 and Fed. R. Bankr. P. 2002, 6004 and 6006.

C. On May 31, 2017, the Court entered the Order Establishing Bidding Procedures and Related Relief Regarding Certain of the Debtor's Assigned Contracts (the “Bidding Procedures Order”) [Docket No. \_\_\_\_], establishing, among other things: (a) Bidding Procedures (as defined in the Sale Motion), including manner and form of notice to be applied during a sale of certain assets of the Debtor and assumption and assignment of related forward contracts, (b) a date for an auction (the “Auction”), and (c) a date for hearing to consider approval of the Auction results (the “Sale Hearing”).

D. As evidenced by the certificates of service filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, and sufficient notice of the Sale Motion, the transactions contemplated therein (including the assumption and assignment of the Assigned Contracts), the Bidding Procedures Order, the Bidding Procedures, the Auction and the Sale Hearing has been provided in accordance with Sections 105, 363, and 365 of the

Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006; (ii) such notice was good and sufficient under the particular circumstances; and (iii) no other or further notice of the Sale Motion, the transactions contemplated therein (including the assumption and assignment of the Assigned Contracts), the Bidding Procedures Order, the Bidding Procedures, the Auction, the Sale Hearing and the entry of this Order is required.

E. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including, but not limited to: (i) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (ii) Husch Blackwell LLP, as counsel to FCStone (Attn: Benjamin F. Mann, Esq.); (iii) all Counterparties to the Assigned Contracts and all other Forward Contracts<sup>2</sup>; (iv) all parties who have made an offer on the Forward Book or expressed an interest in making an offer on the Forward Book; (v) Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale); (vi) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere); (vii) all taxing authorities that have jurisdiction over the Forward Contracts; (viii) all known persons holding a lien on any of the Forward Book Contracts; and (ix) all entities who have requested notice under Bankruptcy Rule 2002. Counsel for the Debtor has filed with the Court affidavits of service of Notice of the Bidding Procedures Order, detailing the manners of service of, and the persons served with, the Bidding Procedure Order.

### **The Bankruptcy Case**

F. On December 31, 2016, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. While it is winding down its business

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Sale Motion.

operations and liquidating its assets, the Debtor continues to operate its business and manage its assets as a debtor-in-possession under 11 U.S.C. §§ 1107(a) and 1108.

**The Marketing Process for the Forward Book**

G. Beginning in February 2017, the Debtor began actively marketing the Forward Book for sale. In connection with this marketing process, in February 2017, the Debtor established a due diligence data room for potential bidders, all of which were required to execute confidentiality agreements in order to participate. In connection with this process, the Debtor contacted at least nineteen (19) separate potential strategic and/or financial bidders, including those suggested by the Pre-Petition Lenders, and thereafter provided detailed information regarding the Forward Book to at least seven (7) different potential bidders, each of which executed a confidentiality agreement, and which were provided access to the Debtor's electronic data room.

H. As a result of these marketing efforts, the Debtor received two (2) firm bids for certain contracts that are within the Forward Book.

I. The Debtor, after consulting with the Pre-Petition Lenders, determined that the bid presented by one of those two bidders, FCStone, was the superior bid of the two and determined, in its reasonable business judgment, to designate FCStone's bid as the "stalking horse" bid.

J. On March 28, 2017, the Debtor filed a motion to authorize the Debtor to enter into a services agreement (the "Service Agreement") with FCStone outside of the ordinary course of business in connection with the Debtor's anticipated sale of its Forward Book [Docket No 193] (the "Service Agreement Motion").

K. Through the Service Agreement Motion, the Debtor sought to continue to perform under certain of its Forward Contracts in order to preserve the value of the Forward Book. In

particular, given the fact that the Debtor neither has the liquidity nor the financing necessary to continue to purchase inventory, the value of certain of the Forward Contracts was at risk due to the fact that the Debtor would be unable to fulfill its obligations to acquire or supply Product during the pendency of the Proposed Sale.

L. As a result of the foregoing, as part of its bid for a portion of the Forward Book, FCStone agreed to independently purchase Product and fund processing costs and other costs sufficient to bridge performance of the Debtor's obligations under certain of the Forward Contract Contracts settling between now and the date of the Debtor's sale of the Forward Book (the "Bridge Transaction").

M. The Debtor later received an alternative offer from TRC Cocoa LLC ("TRC") to serve both as the counterparty to the Service Agreement (also defined herein) and the "stalking horse." Subsequently, the Debtor received revised bids from both FCStone and TRC. Ultimately, after reviewing the revised bids and consulting with the Pre-Petition Lenders, and after due consideration, the Debtor, in its reasonable business judgment, determined to proceed with FCStone as the counterparty to the Service Agreement.

N. On April 7, 2017, the Court entered an order granting the Service Agreement Motion [Docket No. 226].

O. On May 9, 2017, the Debtor and FCStone entered into the APA, whereby the FCStone would, subject to the approval of the Court: (i) acquire the Purchased Assets for \$3,500,000, less the Cure Amount and amounts actually received and retained or estimated to be received and retained by the Debtor pursuant to the Service Agreement prior to Closing, and subject to certain other adjustments set forth in the APA (the "Cash Amount") and (ii) the

assumption of the Assumed Liabilities, including the payment of Cure Amounts relating to the Assigned Contracts.

P. The Debtor provided notice to all parties required under the Bidding Procedures Order.

Q. At the Auction, the Debtor determined that FCStone submitted the highest and best offer for the Purchased Assets.

R. The Bidding Procedures afforded a full, fair and reasonable opportunity for any entity to make a higher or better offer to purchase the Purchased Assets.

S. The Debtor and FCStone have complied with the Bidding Procedures Order in all respects.

#### **The Sale of the Purchased Assets to FCStone**

T. The transactions effectuating, and the terms and conditions governing, the sale of the Purchased Assets to FCStone are embodied in the APA, which is attached to the Sale Motion as **Exhibit A**.

U. The APA contemplates that the sale of the Purchased Assets shall be free and clear of all liens, claims, interests, and other encumbrances within the meaning of 11 U.S.C. § 363(f).

V. FCStone's obligation to consummate the transactions contemplated in the APA is subject to the specific conditions outlined in the APA, including the condition of Court approval. As of the date of entry of this Order, there has been no failure of any condition under the APA to FCStone's obligation to consummate the Sale.

W. The APA was negotiated, proposed, and entered into by and between FCStone and the Debtor without collusion, in good faith, and from arm's length bargaining positions.

Neither the Debtor nor FCStone has engaged in any conduct that would cause or permit the application of 11 U.S.C. § 363(n) to the sale, including having the APA voided.

X. FCStone is a good faith purchaser in accordance with 11 U.S.C. § 363(m) and, as such, FCStone is entitled to all of the protections afforded thereby. Absent a stay of the effectiveness of this Order, if any, FCStone will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transaction under the APA, including the assumption and assignment of the Assigned Contracts, at any time after the expiration of any stay of this Order, whether pursuant to Bankruptcy Rule 6004(g) or otherwise.

Y. The Assigned Contracts to be assumed and assigned to FCStone are valid and binding, in full force and effect, and enforceable in accordance with their terms (as modified by any updated delivery scheduled agreed upon by the Counterparty thereto and either the Debtor or FCStone), and are property of the Debtor's estate pursuant to Section 541(a) of the Bankruptcy Code, and FCStone shall have all of the rights of the Debtor thereunder.

Z. The terms and conditions of the APA to be complied with by FCStone under the APA: (i) are fair and reasonable; (ii) valid, binding and enforceable; (iii) constitute the highest and best offer for the Purchased Assets; (iv) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative; and (v) constitute reasonably equivalent value and fair consideration for the Purchased Assets.

AA. The transactions contemplated by the APA will, upon consummation thereof (the "Closing"), (i) be a legal, valid, and effective transfer of the Purchased Assets to FCStone with no further action required on the part of the Debtor and (ii) vest FCStone with good title to the Purchased Assets free and clear of all liens, claims and encumbrances within the meaning of 11 U.S.C. § 363(f).

BB. The relief sought in the Sale Motion, including approval of the APA and consummation of the transactions contemplated thereof is in the best interests of the Debtor, its bankruptcy estate, creditors, and all parties in interest. The Proposed Sale must be approved and consummated promptly in order to maximize the value of the Debtor' estate.

CC. Upon entry of this Order, the Debtor has good and marketable title to the Purchased Assets and all the corporate or organizational power and authority necessary to consummate the transactions contemplated by the APA.

DD. The Debtor has demonstrated good, sound and sufficient business purpose and justification, and it is a reasonable exercise of its business judgment, to: (i) sell the Purchased Assets on the terms and conditions set forth in the APA; (ii) assume and assign the Assigned Contracts to FCStone; and (iii) consummate all transactions contemplated by the APA, and the sale, assumption and assignment of the Purchased Assets is in the best interests of the Debtor, its estate and its creditors.

EE. The provisions of Sections 363 and 365 of the Bankruptcy Code have been complied with and are applicable to the sale of the Purchased Assets.

FF. The Debtor may consummate the transactions and transfer the Purchased Assets free and clear of all liens, claims and encumbrances, because one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. All liens, claims or encumbrances against the Purchased Assets shall attach to the proceeds of the transactions with the same validity, enforceability, priority, force and effect that they now have as against the Purchased Assets.

GG. FCStone has: (i) cured, or has provided adequate assurance of cure, of all defaults under the Assigned Contracts, if any, existing before the date of this Order, within the meaning of Section 365(b)(1)(A) of the Bankruptcy Code and (ii) provided compensation or adequate

assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default before the date of this Order under the Assigned Contracts, if any, within the meaning of Section 365(b)(1)(B) of the Bankruptcy Code, and FCStone has provided adequate assurance of its future performance of and under the Assigned Contracts, within the meaning of Section 365(b)(1)(C) of the Bankruptcy Code.

**ACCORDINGLY, THE COURT HEREBY ORDERS THAT:**

**General Provisions**

1. The findings of fact entered above and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014. To the extent that any finding of fact shall later be determined to be a conclusion of law, it shall be so deemed, and to the extent that any conclusion of law shall later be determined to be a finding of fact, it shall be so deemed.

2. The Sale Motion is granted in its entirety on the terms and conditions set forth herein.

3. All parties in interest have had the opportunity to object to the relief requested by the Debtor in the Sale Motion, and to the extent that objections to the Sale Motion or the relief requested therein have not been withdrawn, waived or settled, such objections and all reservations of right included therein, are overruled on the merits. The parties who did not object, or who withdrew their objections, to the Sale Motion, are deemed to have consented to the relief set forth therein.

**Approval of the APA**

4. The APA and all of the terms and conditions contained therein is approved in its entirety. The APA is fully enforceable by the parties thereto in accordance with and subject to

its terms and conditions. The Debtor is hereby authorized to perform each of its covenants and undertakings and to take such actions as may be necessary to effectuate the terms of this Order and as provided in the APA.

5. The sale of the Purchased Assets and the terms and conditions contemplated by the APA, including, without limitation, the closing of the transactions contemplated by the APA, are hereby approved pursuant to 11 U.S.C. §§ 105(a), 363 and 365.

6. The Debtor and FCStone are authorized and directed, pursuant to 11 U.S.C. §§ 105(a), 363(b) and 365, to perform all of their obligations pursuant to the APA and to execute such other documents and take such other actions as are reasonably necessary to effectuate the transactions contemplated by the APA.

#### **Transfer of the Purchased Assets to FCStone**

7. Except as expressly provided in the APA, pursuant to 11 U.S.C. §§ 105(a), 363(f) and 365, upon the Closing, the Purchased Assets shall be sold, transferred or otherwise assigned to Purchaser free and clear of all liens, claims and encumbrances, with all such liens, claims and encumbrances to attach to the proceeds of sale in the order of their priority, and with the same validity, priority, force and effect which they now have as against the Purchased Assets.

8. No bulk sale or any similar law of any state, including but not limited to N.J.S.A. 54:32B-22(c) and N.J.S.A. 54:50-38, apply in any way to the sale and transfer of the Purchased Assets hereunder.

#### **Assumption and Assignment of the Assigned Contracts**

9. The Debtor is authorized pursuant to 11 U.S.C. § 365(a) to assume and assign the Assigned Contracts set forth on Section 2.01(a) of the Disclosure Schedules delivered in connection with the APA, including, but not limited to, the Assigned Contracts with GCB Cocoa Singapore PTE LTD; JB Cocoa SDN BHD; and JB Foods Global Pte. Ltd.

10. Pursuant to 11 U.S.C. §§ 105(a) and 365, the Debtor's assumption and assignment of the Assigned Contracts to FCStone, on the terms contained in the APA, is approved, and the requirements of 11 U.S.C. § 365(b)(1) with respect thereto are deemed satisfied. The assignment by the Debtor of the Assigned Contracts to FCStone pursuant to 11 U.S.C. § 365(f) are binding on the Counterparties to those contracts.

11. Upon Closing pursuant to the APA, the Assigned Contracts shall be transferred to, and remain in full force and effect for the benefit of, FCStone in accordance with their terms, notwithstanding any provision in the Assigned Contracts (including, without limitation, those described in Sections 365(b)(2) and (1) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to 11 U.S.C. § 365(k), the Debtor is hereby relieved from any further obligation or liability for any breach of the Assigned Contracts.

12. The Cure Amounts set forth in (i) the relevant Cure Notice or (ii) any stipulation entered into between the Debtor and the nondebtor party to an Assumed Contract, as applicable, shall be controlling notwithstanding anything to the contrary in any Assumed Contract or other document, and the nondebtor Counterparty to each Assumed Contract shall be forever barred from asserting any other claim arising prior to the date of entry of this Order against either the Debtor or FCStone.

13. The failure of the Debtor or FCStone to enforce any term or condition of any Assumed Contract shall not constitute a waiver of such term or condition or of the Debtor's or FCStone's rights to enforce every term and condition of the Assigned Contracts.

#### **Miscellaneous Provisions**

14. The consideration to be paid by FCStone for the Purchased Assets under the APA is fair and reasonable and may not be avoided under 11 U.S.C. § 363(n).

15. This Order: (a) is and shall be effective as a determination that, upon the Closing, except as expressly provided in the APA, all liens, claims and encumbrances existing as to the Purchased Assets prior to the date of entry of this Order have been unconditionally released, discharged and terminated in each case as to the Purchased Assets and (b) is and shall be binding upon and shall govern acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities, who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that FCStone is the assignee of the Purchased Assets free and clear of liens, claims and encumbrances. In addition, upon the Closing, each of the Debtor's creditors are authorized and directed to execute such documents and take all other actions to release its liens, claims or encumbrances in or on the Purchased Assets as may have been recorded or may otherwise exist.

16. Except as otherwise provided in the APA or in this Order, consummation of the transactions in the APA will not subject FCStone to any debts, liabilities, obligations, commitments, responsibilities or claims of any kind or nature whatsoever, by reason of assignments of the Assigned Contracts, including, without limitation, based on any theory of successor or transferee liability.

17. The APA and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written document signed by the parties in accordance with the terms thereof without further order of the Court after consultation with the

Consultation Parties; provided, however, that any such modification, amendment or supplement is neither material nor changes the economic substance of the transactions contemplated hereby.

18. FCStone, as a purchaser in good faith, shall be entitled to the protections of 11 U.S.C. § 363(m).

19. The provisions of this Order are self-executing and each and every federal, state, and local governmental agency or department is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

20. The Court shall retain exclusive jurisdiction: (a) to enforce and implement the terms and provisions of the APA and each of the agreements, documents and instruments executed therewith; (b) to resolve any disputes, controversies or claims arising out of or relating to the APA; and (c) to interpret, implement and enforce the provisions of this Order.

21. The terms of this Order and the APA shall be binding on and inure to the benefit of the Debtor, FCStone and all other parties in interest, and any successors of the Debtor, FCStone and the Debtor's creditors, including any trustee or examiner appointed in this or any subsequent case.

22. The failure to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of that provision, it being the intent of the Court and the parties that the APA be authorized in its entirety.

23. Any conflict between the terms and provisions of this Order and the APA shall be resolved in favor of this Order.

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Dated: New York, New York  
June \_\_, 2017

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United States Bankruptcy Judge

4826723v6

**Exhibit D**

**KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP**

Tracy L. Klestadt  
Joseph C. Corneau  
200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10036  
Telephone: (212) 972-3000  
Facsimile: (212) 972-2245

-and-

**RIKER DANZIG SCHERER HYLAND & PERRETTI LLP**

Joseph L. Schwartz (admitted *pro hac vice*)  
Tara J. Schellhorn  
Rachel F. Gillen (admitted *pro hac vice*)  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07960  
Telephone: (973) 538-0800  
Facsimile: (973) 538-1984

Attorneys for the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
	:	
TRANSMAR COMMODITY GROUP LTD. <sup>1</sup>	:	
	:	
Debtor.	:	Case No. 16-13625 (JLG)
	:	
	:	
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**NOTICE OF SALE AND ASSIGNMENT OF DEBTOR'S FORWARD BOOK, AND  
BIDDING PROCEDURES AND AUCTION RELATED THERETO**

**PLEASE TAKE NOTICE** that, on May 31, 2017, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered an Order (the “Bidding Procedures”

<sup>1</sup> The Debtor in this chapter 11 case and the last four digits of the Debtor’s taxpayer identification number is as follows: Transmar Commodity Group Ltd. (5889). The Debtor’s principal office is located at 200 South Street, 4<sup>th</sup> Floor, Morristown, NJ 07960.

Order”) (a) establishing bidding procedures and bid protections, including an auction, as set forth herein (the “Bidding Procedures”), with respect to the Debtor’s sale and assignment of its forward book, (b) approving the form and manner of notices thereof (the “Bidding Procedures Notice”), (c) establish FCStone Merchant Services, LLC (“FCStone”) as the stalking horse bidder for certain of the Debtor’s forward book contracts, (d) approving the form of Asset Purchase Agreement by and between the Debtor and FCStone (the “APA”)<sup>2</sup>, pursuant to which the Debtor proposes to sell and assign certain of its forward book contracts to FCStone or a third party that makes a higher and/or better offer for those forward book contracts, as well as sell and assign other of its forward book contracts to third party bidders at an auction (the “Proposed Sale”), and (e) setting a hearing to consider approval of the Debtor’s sale and assignment of its Forward Book<sup>3</sup> (the “Sale Hearing”);

Pursuant to the Bidding Procedures Order, an auction for the Forward Book will take place on **June 20, 2017** at the law offices of Riker Danzig Scherer Hyland & Perretti LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962, or at such alternative location as the Debtor may determine or the Court may direct, **commencing at 10:00 a.m. (EST)**;

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<sup>2</sup> A copy of the APA is attached as Exhibit A to the Sale Motion(defined herein).

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Debtor’s Motion for Orders Pursuant to 11 U.S.C. §§ 105, 363 and 365, and Rules 2002, 6004 and 6006: (A) Fixing the Time, Date and Place for Hearing to Consider Bidding Procedures in Connection with the Debtor’s Sale and Assignment of its Forward Book; (B)(i) Establishing Bidding Procedures and Bid Protections, (ii) Approving the Form and Manner of Notices, (iii) Establishing FCStone Merchant Services, LLC as Stalking Horse, (iv) Approving Asset Purchase Agreement for Stalking Horse Transaction, (v) Setting Hearing Date for the Hearing on Sale and Assignment of Forward Book; and (C)(i) Approving the Sale and Assignment of the Debtor’s Forward Book Free and Clear of Liens, Claims and Encumbrances and (ii) Granting Related Relief (the “Sale Motion”).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Bidding Procedures Order, the following procedures (the "Bid Procedures") shall govern the sale of the Forward Book, including third party offers received for some or all of the Forward Book (each, an "Offer"):

- (1) Offer Deadline: Any person or entity interested in participating in the Auction (defined below) (each, a "Prospective Bidder") shall make an Offer in writing and serve the Offer upon the Debtor (Attn: Joseph L. Schwartz, Esq. and Jason D. Navarino, Esq. of Riker Danzig Scherer Hyland & Perretti, LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962); the Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq. of Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038); and the Committee (Attn: Rocco A. Cavaliere, Esq. and Michael Z. Brownstein, Esq. of Tarter Krinsky & Drogin LLP, 1350 Broadway, New York, NY 10018) by no later than **June 14, 2017 at 5:00 p.m.** (prevailing Eastern Time (the "Offer Deadline"). The Debtor may, after providing notice to the Notice Parties extend the Offer Deadline for any reason, in its reasonable business judgment.
- (2) Diligence: To be eligible to participate in the Auction, each Prospective Bidder must execute a confidentiality agreement in form and on terms satisfactory to the Debtor. Any Prospective Bidder identified by the Debtor as reasonably likely to be a Qualified Party that wishes to conduct due diligence on the Forward Book may be granted access to all material information regarding the Forward Book. The Pre-Petition Agent for the Pre-Petition Lenders shall also be provided access to due diligence materials.
- (3) Qualified Bid Requirements: To qualify as a "Qualified Bid," the a Prospective Bidder must submit a written Offer by the Offer Deadline, and the Debtor, in consultation with the Consultation Parties, must determine that the Offer satisfies the following requirements:
  - (a) List of Forward Contracts. Each Offer must include a proposed list of the Forward Contracts to be assumed, assigned and sold to it in connection with the proposed transaction.
  - (b) Modified APA. Each written offer must include: (i) an executed copy of the APA as modified by the Prospective

Bidder in accordance with its Offer (the “Modified APA”);<sup>4</sup> and (ii) a marked up copy of the Modified APA reflecting the difference between the Modified APA and the APA.<sup>5</sup> The Debtor shall determine whether any Modified APA that modifies the APA in any respect beyond the identity of the purchaser, the purchase price under the agreement and the particular Forward Contracts covered by the Offer is a Qualified Bid.

- (c) Bidding Requirements. If an Offer is for exactly all of the Purchased Assets, the payment of a purchase price to the Debtor shall not be less than \$3,700,000 (\$3,500,000 plus Transaction Expenses (defined herein) plus \$100,000 initial overbid). If an Offer is for Forward Contracts other than or in addition to some or all of the Purchased Assets, the Prospective Bidder shall allocate the proposed purchase price among such Forward Contracts. If an Offer is for some subset of the Purchased Assets, the proposed purchase price shall be subject to the allocation set forth on Section 2.06 of the Disclosure Schedules to the APA, and the Prospective Bidder shall allocate the remainder of the purchase price among any additional Forward Contracts that are part of the Offer. All Offers for any portion of the Forward Book shall require a minimum bid of \$200,000.
- (d) Identification of Bidder. A Qualified Bid must fully disclose the legal identity of each entity that will be bidding for the implicated Forward Contracts or otherwise participating in connection with such bid (including but not limited to any equity holder or other financial backer if the Prospective Bidder is an entity specifically formed for purposes of effectuating the Proposed Sale, and the complete terms of any such participation) and must also disclose any connections or agreements with the Debtor, any other known Prospective Bidder or Qualified Party, and/or any officer or director of the foregoing.
- (e) Credit Bidding. In connection with the Proposed Sale of all or any portion of the Forward Book, a person or entity holding a perfected security interest in the Forward Book may seek to credit bid some or all of its claims for its collateral (each such bid, a “Credit Bid”) pursuant to section 363(k) of the Bankruptcy Code. A Credit Bid may only be applied to reduce the cash consideration with

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<sup>4</sup> For the avoidance of doubt, the APA with FCStone is deemed a Modified APA.

<sup>5</sup> The Modified APA, at the Prospective Bidder’s option, may, among other things, remove Section 2.06(c) of the APA.

respect to the Forward Contracts in which the party submitting the Credit Bid holds a security interest. Each person or entity making a Credit Bid shall be deemed a Qualified Bidder to the extent that it has the right to Credit Bid.

- (f) Financial Information. Any Prospective Bidder that wishes to make an Offer for some or all of the forward contracts contained within the Forward Book must provide the Debtor with sufficient and adequate information to demonstrate, to the satisfaction of the Debtor that its Offer: (i) is being made by an entity that has the financial wherewithal and ability to consummate the transaction, including evidence of adequate financing; and (ii) provides information to demonstrate that it is able to fulfill all obligations in connection with all implicated Forward Contracts so as to satisfy the requirement of providing adequate assurance of future performance, as contemplated by section 365 of the Bankruptcy Code (the “Adequate Assurance Information”).
- (g) Other Requirements. Each Offer shall (i) state that the bid is formal, binding and unconditional, is not subject to further due diligence, and is irrevocable until the earlier to occur of: (x) the first business day following the closing of the Proposed Sale or (y) thirty (30) days following the last date of the Auction (as may be adjourned); (ii) not contain any financing contingencies of any kind; (iii) not contain any condition to closing the Proposed Sale on the receipt of any third party approvals (excluding Bankruptcy Court and any applicable required governmental and/or regulatory approval); (iv) represent that all necessary filings under applicable law and regulation will be made and that the payment of the fees associated therewith will be made by the Prospective Bidder; (v) expressly state that the Prospective Bidder agrees to serve as a backup bidder (a “Backup Bidder”) if such bidder’s Qualified Bid is selected as the next highest or next best bid after the Winning Bid for the implicated Forward Contracts; (vi) include contract information for the person(s) the Debtor should contact with questions about the Prospective Bidder’s bid; and (vii) be received by the Debtor and Consultation Parties by the Offer Deadline.
- (h) Good Faith Deposit. All Qualified Bids (other than one that includes a Credit Bid) must be accompanied by a good faith deposit in the amount of 10% of the Offer, in the form of a certified or cashier’s check, payable to “RIKER DANZIG

SCHERER HYLAND & PERRETTI LLP TRUST ACCOUNT.” All such deposits shall be retained by the Debtor pending the hearing to consider the Sale Motion and shall be returned within ten (10) days after entry of a Sale Order, except that the Debtor shall hold: (i) the deposit of the Winning Bidder (defined below), and apply such deposit(s) to the Purchase Price at closing, and (ii) the deposit of the Backup Bidder, until the first business day following the closing of the Proposed Sale with the Winning Bidder.

- (4) Selecting Qualified Parties. The Debtor shall make a determination whether an Offer is a Qualified Bid and shall notify Prospective Bidders whether their Offers have qualified as Qualified Bids by not later than **June 16, 2017 at 5:00 p.m.** (prevailing Eastern Time); provided that, if an Offer is made by the Offer Deadline that is not determined to be a Qualified Bid, the Debtor will promptly advise the Prospective Bidder of the deficiencies, if any, and allow such Prospective Bidder one (1) day to submit a revised offer. In addition, if the Debtor, after providing notice to the Notice Parties, determines to extend the Offer Deadline, the Debtor shall be required to notify Prospective Bidders whether their bids have qualified as Qualified Bids by no later than two (2) days after the newly-scheduled Offer Deadline. Any Prospective Bidder whose Offer that is deemed a Qualified Bid shall be designated as a “Qualified Party.”
- (5) Bid Protections: In the event that the APA is terminated because the Court approves a sale and assignment of all of the Purchased Assets to a party or parties other than FCStone, the Debtor shall pay FCStone a fee of \$50,000 (the “Break-Up Fee”), plus reimbursement of expenses, including professional fees and expenses incurred in pursuit of its bid and preparation of the APA and related documents, not to exceed \$50,000 (“Expense Reimbursement,” and together with the Break-Up Fee, the “Transaction Expenses”), to compensate FCStone for its efforts in connection with it being the “stalking horse” bidder for the Purchased Assets, including the costs of the FCStone incurred in performing due diligence, negotiating and documenting the terms of the APA and the Service Agreement and representing its interests with respect to the Proposed Sale.
- (6) The Auction: If the Debtor receives at least two (2) Qualified Bids with an acceptable purchase price for the same Forward Contracts, the Debtor shall conduct an Auction (the “Auction”). The Auction, if required, shall be held at the offices of Riker Danzig Scherer Hyland & Perretti LLP, Headquarters Plaza, One

Speedwell Avenue, Morristown, NJ 07962, or at such alternative location as the Debtor may determine, after providing notice to the Notice Parties. The Auction shall commence on **June 20, 2017 at 10:00 a.m. (EST)**.

- (a) Each Qualified Party shall appear in person at the Auction or through a duly authorized representative. Only Qualified Parties shall be entitled to make any subsequent bids at the Auction. Each Qualified Party shall be required to confirm that (i) it has not engaged in any collusion with respect to the bidding or the Proposed Sale; and (ii) its Qualified Bid represents a binding, good faith, and bona fide offer to purchase the Forward Contracts identified if such bid is selected as the Winning Bidder.

The Debtor shall, after the Offer Deadline and prior to the Auction, evaluate all Qualified Bids or combination of Qualified Bids received, and determine which Qualified Bids or combination of Qualified Bids, as the case may be, reflect the highest or best offers for some or all of the Forward Book, whether in whole or in lots, at that time (the "Baseline Bid(s)"). The Debtor shall announce such determination at the commencement of the Auction.

- (b) Minimum Overbid Procedures. The following procedures shall govern overbids (collectively, the "Overbid Procedures"):
- i. Any further bids made at the Auction for the Purchased Assets shall be in increments of at least \$25,000 (or, if for only certain of the Purchased Assets, such amount multiplied by the sum of the percentages corresponding to such Purchased Assets set forth on Section 2.06 of the Disclosure Schedules to the APA) greater than the preceding bid.
  - ii. For any further bids made at the Auction for Forward Contracts other than or in addition to some or all of the Purchased Assets: (x) if the applicable portion of the Baseline Bid is for \$500,000 or less, such further bids shall be in increments of at least \$10,000 and (y) if the applicable portion of the Baseline Bid is for more than \$500,000, such further bids shall be increments of at least \$25,000.
  - iii. The Debtor may, in its reasonable business judgment, announce increases or reductions to the Overbid Procedures at any time during the Auction.

- (c) Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, the Debtor, after consultation with the Consultation Parties, shall announce the bid that it determines in its business judgment to be the highest or otherwise best offer for the relevant Forward Contracts (the "Leading Bid"). Each round of bidding will conclude after each participating Qualified Party has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid.
- (d) Winning Bid. Immediately prior to the conclusion of the Auction, the Debtor shall (i) determine, consistent with these Bidding Procedures, which bid constitutes the Winning Bid for the implicated Forward Contracts; and (ii) notify all Qualified Parties at the Auction for the implicated Forward Contracts of the identity of the bidder that submitted the Winning Bid (each such bidder, the "Winning Bidder") and the amount of the purchase price and other material terms of the Winning Bid.

The Auction may include open bidding in the presence of all other Qualified Parties. All Qualified Parties shall have the right to submit additional bids at the Auction to improve their bids. The Debtor may, in its reasonable business judgment, negotiate with any and all Qualified Parties participating in the Auction.

At least one (1) day prior to the Sale Hearing, the Winning Bidder shall be required to supplement its Good Faith Deposit by the difference between its Qualified Bid and the Winning Bid.

- (e) Backup Bid. Immediately prior to the conclusion of the Auction, the Debtor shall: (i) determine, consistent with these Bidding Procedures, which Qualified Bid is the next highest or otherwise best Qualified Bid for the relevant Forward Contracts after the Winning Bid (each such Qualified Bid, a "Backup Bid"); and (ii) notify all Qualified Parties at the Auction for the implicated Forward Contracts of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid. Backup Bids shall be open and irrevocable until the earlier of (x) the first business day following closing of the Proposed Sale or (y) thirty (30) days following the last date of the Auction (as may be adjourned). If the Winning Bidder for the implicated Forward Contract fails to consummate a Proposed Sale, the Backup Bidder shall be deemed the new Winning Bidder, and the Debtor will be authorized, but not required, to consummate a Proposed

Sale for the implicated Forward Contracts with the Backup Bidder.

In the event that a Winning Bidder fails to consummate the proposed transaction by the Closing Date, such bidder's deposit shall be forfeited to the Debtor (but not as liquidated damages, the Debtor reserving the right to pursue all remedies that may be available to it) and the Debtor shall be free to consummate the proposed transaction with the Backup Bidder at the final price bid by such bidder at the Auction (or, if that bidder is unable to consummate the transaction at that price, the Debtor may consummate the transaction with the next higher bidder, and so forth) without the need for an additional hearing or order of the Court.

- (f) Modification of Procedure. The Debtor may, after consulting with the Consultation Parties, announce at the Auction modified or additional procedures for conducting the Auction or otherwise modifying these Bidding Procedures.
- (7) Auction Results: Within one (1) business day following the Auction, the Debtor will cause the results of the Auction to be filed with the Court, docketed on the Court's electronic case filing ("ECF") system, and published on the website of the Debtor's Court-approved claims agent, Donlin Recano, at (<https://www.donlinrecano.com/Clients/tcg/Index>) (the "Donlin Recano Website"), which filing will include a list of the implicated Forward Contracts to be sold and assigned to the Winning Bidder(s), subject to revision prior to Closing, as further set forth below.
- (8) Bankruptcy Court Approval: All bids for the purchase of some or all of the Forward Book shall be subject to approval of the Court and conditioned upon entry of a Sale Order.
- (9) Sale Objection: Objections to the Proposed Sale (each, a "Sale Objection"), including any objection to the sale of any Forward Contracts and entry of any Sale Order (other than Cure Objections and Adequate Assurance Objections), must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; and (iii) be filed with the Court and served on: (a) counsel for the Debtor (Attn: Joseph L. Schwartz, Esq.), (b) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (c) Husch Blackwell LLP, as counsel to FCStone (Attn: Benjamin F. Mann, Esq.); (d) the attorneys (if applicable) of any Winning Bidder(s); (e) the attorneys (if applicable) of any applicable Backup Bidder(s); (f)

Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq.) and (e) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere, Esq.) (the foregoing parties, the “Objection Recipients”) **by June 21, 2017, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”).

All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the Sale Hearing. The failure of any party to timely file with the Court and serve on the Objection Recipients a Sale Objection by the Sale Objection Deadline forever shall be barred from asserting, at the Sale Hearing or thereafter, any objection to the relief requested in the Sale Motion, or to the consummation and performance of the applicable Proposed Sale(s) contemplated by an applicable asset purchase agreement with a Winning Bidder, including the transfer of the Forward Contracts to the applicable Winning Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

[Remainder of Page Intentionally Left Blank]

**PLEASE TAKE FURTHER NOTICE** that copies of the Sale Motion, the Bidding Procedures Order and the form of APA can be obtained, free of charge, from the website maintained by the Debtor's designated claims and noticing agent (<https://www.donlinrecano.com/Clients/tcg>) or from the Bankruptcy Court docket for this case.

Dated: May \_\_, 2017  
New York, New York

KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP

By: \_\_\_\_\_

Tracy Klestadt  
Tracy L. Klestadt  
Joseph C. Corneau  
200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10036  
Tel: (212) 972-3000  
Fax: (212) 972-2245  
Email: [tklestadt@klestadt.com](mailto:tklestadt@klestadt.com)  
[jcorneau@klestadt.com](mailto:jcorneau@klestadt.com)

- and -

RIKER DANZIG SCHERER HYLAND &  
PERRETTI LLP  
Joseph L. Schwartz (admitted *pro hac vice*)  
Tara J. Schellhorn  
Rachel F. Gillen (admitted *pro hac vice*)  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07960  
Telephone: (973) 538-0800  
Facsimile: (973) 538-1984  
Email: [jschwartz@riker.com](mailto:jschwartz@riker.com)  
[tschellhorn@riker.com](mailto:tschellhorn@riker.com)  
[rgillen@riker.com](mailto:rgillen@riker.com)

Attorneys for the Debtor and  
Debtor-in-Possession

**Exhibit E**

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP  
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Joseph C. Corneau  
200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10036  
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Facsimile: (212) 972-2245

-and-

RIKER DANZIG SCHERER HYLAND & PERRETTI LLP  
Joseph L. Schwartz (admitted *pro hac vice*)  
Tara J. Schellhorn  
Rachel F. Gillen (admitted *pro hac vice*)  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07960  
Telephone: (973) 538-0800  
Facsimile: (973) 538-1984

Attorneys for the Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
TRANSMAR COMMODITY GROUP LTD. <sup>1</sup>	:	
	:	
Debtor.	:	Case No. 16-13625 (JLG)
	:	
	:	
	:	
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**DECLARATION OF ROBERT J. FREZZA IN SUPPORT OF DEBTOR’S MOTION FOR ORDERS PURSUANT TO 11 U.S.C. §§ 105, 363 AND 365, AND RULES 2002, 6004 AND 6006: (A) FIXING THE TIME, DATE AND PLACE FOR HEARING TO CONSIDER BIDDING PROCEDURES IN CONNECTION WITH THE DEBTOR’S SALE AND ASSIGNMENT OF ITS FORWARD BOOK; (B)(i) ESTABLISHING BIDDING PROCEDURES AND BID PROTECTIONS, (ii) APPROVING THE FORM AND MANNER OF NOTICES, (iii) ESTABLISHING FCSTONE MERCHANT SERVICES, LLC AS STALKING HORSE, (iv) APPROVING ASSET PURCHASE AGREEMENT FOR STALKING HORSE TRANSACTION, (v) SETTING HEARING**

<sup>1</sup> The Debtor in this chapter 11 case and the last four digits of the Debtor’s taxpayer identification number is as follows: Transmar Commodity Group Ltd. (5889). The Debtor’s principal office is located at 200 South Street, 4<sup>th</sup> Floor, Morristown, NJ 07960.

**DATE FOR THE HEARING ON SALE AND ASSIGNMENT OF FORWARD BOOK;  
AND (C)(i) APPROVING THE SALE AND ASSIGNMENT OF THE DEBTOR'S  
FORWARD BOOK FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES  
AND (ii) GRANTING RELATED RELIEF**

I, Robert J. Frezza, declare, pursuant to section 1746 of title 28 of the United States Code, that:

1. I am a Managing Director with Deloitte CRG ("Deloitte"). I have more than 30 years of experience providing financial advisory services to clients across numerous industries in the United States and Europe.

2. I was engaged to serve as Chief Restructuring Officer by Transmar Commodity Group Ltd., the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor") shortly before the Debtor's bankruptcy filing. In performing the duties of Chief Restructuring Officer, I have become familiar with the Debtor's business history, its corporate and capital structures, its business operations and financial affairs and its books and records.

3. I submit the Declaration in support of the Debtor's motion for entry of orders pursuant to 11 U.S.C. §§ 105, 363, and 365, and Rules 2002, 6004 and 6006: (a) fixing the time, date and place for a hearing to consider bidding procedures in connection with the Debtor's sale and assignment of its Forward Book; (b)(i) establishing bidding procedures and bid protections, (ii) approving the form and manner of notices, (iii) establishing FCStone Merchant Services, LLC as the "stalking horse", (iv) approving the Asset Purchase Agreement for the stalking horse transaction with FCStone, (v) setting a hearing date for the hearing on the sale and assignment of the Forward Book; and (c)(i) approving the sale and assignment of the Debtor's Forward Book free and clear of liens, claims and encumbrances and (ii) granting related relief (the "Sale Motion").

### **THE DEBTOR'S FORWARD BOOK**

4. Historically, the Debtor entered into forward contracts with counterparties to those contracts in the ordinary course of its business. The Debtor also utilized the futures market to hedge or reduce existing and/or expected risks associated with fluctuations in the prices of certain cocoa products.

5. As of the Petition Date, the Debtor was a party to many forward contracts (each a "Forward Contract" and together the "Forward Contracts" or "Forward Book")<sup>2</sup> to both purchase and to supply cocoa beans and cocoa products ("Product") to various counterparties (each a "Counterparty," and together, the "Counterparties"). The Forward Book consists of two (2) parts:

- (i) The Forward Sale Contracts. The Debtor is party to certain Forward Contracts pursuant to which the Debtor agrees to sell, and the Counterparty agrees to purchase, Product in certain quantities (each a "Forward Sale Contract," and together, the "Forward Sale Contracts" or "Forward Sale Book"); and
- (ii) The Forward Purchase Contracts. The Debtor is also party to certain Forward Contracts pursuant to which a Counterparty agrees to sell, and the Debtor agrees to purchase, Product in certain quantities (the "Forward Purchase Contracts").

6. The Forward Book, which includes both the Debtor's Forward Sale Contracts and the Debtor's Forward Purchase Contracts, serves as part of the collateral of the Debtor's pre-petition lenders (the "Pre-Petition Lenders") pursuant to the Pre-Petition Lenders' blanket first-priority lien on virtually all of the Debtor's assets (excluding any pledge of the equity interests in the Debtor's subsidiaries) pursuant to that certain Amended and Restated Security Agreement dated as of February 26, 2016, along with other collateral documentation.

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<sup>2</sup> For purposes of this Motion, the term "Forward Book" excludes: (i) forward contracts entered into between the Debtor and the Debtor's affiliate, Transmar Ecuador S.A., and (i) certain Forward Sale Contracts for the sale of cocoa powder; however, these cocoa powder contracts may be added to the sale process at the Debtor's election.

**THE MARKETING OF THE FORWARD BOOK**

7. Beginning in February 2017, the Debtor began actively marketing the Forward Book for sale. In connection with this marketing process, in February 2017, the Debtor established a due diligence data room for potential bidders, all of which were required to execute confidentiality agreements in order to participate. In connection with this process, the Debtor initially contacted at least nineteen (19) separate potential strategic and/or financial bidders, including those suggested by the Pre-Petition Lenders, and to date has provided detailed information regarding the Forward Book to at least seven (7) different potential bidders, each of which has executed a confidentiality agreement, and which were provided access to the Debtor's electronic data room.

8. As a result of these marketing efforts, the Debtor received two (2) firm bids for certain contracts that are within the Forward Book.

9. The Debtor, after consulting with the Pre-Petition Lenders, determined that the bid presented by one of those two bidders, FCStone, was the superior bid of the two and determined in its business judgment to designate FC Stone's bid as the "stalking horse" bid.

10. Prior to the hearing on the Service Agreement Motion (defined herein), the Debtor received an alternative offer from TRC Cocoa LLC ("TRC") to serve both as the counterparty to the Service Agreement (also defined herein) and the "stalking horse" for the Proposed Sale. Subsequently, the Debtor received revised bids from both FCStone and TRC. Ultimately, after reviewing the revised bids and consulting with the Pre-Petition Lenders, and after due consideration, the Debtor, in its business judgment, determined to proceed with FCStone as the counterparty to the Service Agreement. the Debtor's decision to choose FCStone as the counterparty to the Service Agreement was ultimately approved by the Court.

### **THE SERVICE AGREEMENT**

11. On March 28, 2017, the Debtor filed a motion to authorize the Debtor to enter into a services agreement (the “Service Agreement”) with FCStone outside of the ordinary course of business in connection with the Debtor’s anticipated sale of its Forward Book [Docket No. 193] (the “Service Agreement Motion”).

12. Through the Service Agreement Motion, the Debtor sought to continue to perform under certain of its Forward Contracts in order to preserve the value of the Forward Book. In particular, given the fact that the Debtor neither has the liquidity nor the financing necessary to continue to purchase inventory, the value of certain of the Forward Contracts was at risk due to the fact that the Debtor would be unable to fulfill its obligations to acquire or supply Product during the pendency of the Proposed Sale.

13. As a result of the foregoing, as part of its bid for a portion of the Forward Book, FCStone agreed to independently purchase Product and fund processing costs and other costs sufficient to bridge performance of the Debtor’s obligations under certain of the Forward Contracts settling between now and the date of the Debtor’s sale of the Forward Book.

### **ATTEMPTED CANCELLATION NOTICES**

14. Three (3) of the Non-U.S. Counterparties<sup>3</sup> – GCB Cocoa Singapore PTE LTD, JB Cocoa SDN BHD, and JB Foods Global Pte. Ltd. – have sent post-petition notices to the Debtor attempting to cancel their contracts with the Debtor, copies of which are attached hereto as **Exhibit 1**. The Debtor has advised these Counterparties that such purported terminations are improper and ineffective. The Debtor seeks to assign these contracts in accordance with this Sale Motion, subject to the terms of the APA.

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<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Sale Motion.

I hereby certify, under penalty of perjury, that the foregoing factual statements made by me are true.

Executed on May 12, 2017

*/s/ Robert J. Frezza*

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Robert J. Frezza, Chief Restructuring Officer  
Transmar Commodity Group, Ltd.

**Exhibit 1**

**Gillen, Rachel**

---

**From:** Frezza, Bob (US - Parsippany) <bfrezza@deloitte.com>  
**Sent:** Monday, April 03, 2017 11:28 AM  
**To:** Schwartz, Joseph; Schellhorn, Tara; Navarino, Jason  
**Subject:** Guan Chung Cancellation

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Begin forwarded message:

**From:** "Elsa Tay" <[elsa@favorich.com](mailto:elsa@favorich.com)>  
**Date:** March 31, 2017 at 6:12:45 AM EDT  
**To:** "'Steinway, Jon \ (US - Parsippany)'" <[josteinway@deloitte.com](mailto:josteinway@deloitte.com)>  
**Cc:** "hiacheng" <[hiacheng@favorich.com](mailto:hiacheng@favorich.com)>  
**Subject:** **RE: Steinway, Jon (US - Parsippany) has shared 'Cocoa Powder Contracts'**

Dear Jon

As per CMAA's rules under scenario of chapter 11, all the butter sales contracts which are not yet delivered by now, are considered defaulted by Transmar. Hence, we are officially cancelling all the "open" contracts for cocoa butters.

At last but not the least, we do not have any open contract of cocoa powder with Transmar. Thank you.

**Best Regards,**

**Elsa Tay**

**Commercial Director**

Mobile (S'pore): +65 9169 4051 | Mobile (M'sia): +6 012 704 8075

**GUAN CHONG COCOA MANUFACTURER SDN BHD**

Office: + 6 07 2511588 | Fax: +6 07 251 1711 | Address: PLO 273, Jalan Timah 2, 81700 Pasir Gudang, Johor, Malaysia

**GCB COCOA SINGAPORE PTE LTD**

Office: + 65 6635 1338 | Fax: +65 6635 1339 | Address: 1 Commonwealth Lane, One Commonwealth #08-04, Singapore 149544

**PT. GCB COCOA INDONESIA**

Office: + 62 21 2900 6309 | Fax: +62 21 2900 6310 | Address: Kawasan Daan Mogot Arcadia, Rukan Daan Mogot Permai Blok G15 No. 5, JL. Raya Daan Mogot KM 21 Batu Ceper, Tangerang 15122, Indonesia

*CONFIDENTIALITY NOTICE: This email is confidential and may also be privileged. If received in error, kindly notify the sender by return email and delete this email from your email system*

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**From:** Steinway, Jon (US - Parsippany) [<mailto:josteinway@deloitte.com>]  
**Sent:** Thursday, 23 March, 2017 3:31 AM  
**To:** [elsa@favorich.com](mailto:elsa@favorich.com)  
**Subject:** Steinway, Jon (US - Parsippany) has shared 'Cocoa Powder Contracts'

Elsa - Please find attached TCG's powder contracts. There may be some fluctuations as they are active. Please let the TCG team know when you like to discuss or if you have questions.

Go to [Cocoa Powder Contracts](#)

**This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.**

v.E.1

**Gillen, Rachel**

---

**From:** Frezza, Bob (US - Parsippany) <bfrezza@deloitte.com>  
**Sent:** Monday, April 03, 2017 11:29 AM  
**To:** Schwartz, Joseph; Schellhorn, Tara; Navarino, Jason  
**Subject:** FW: JB - Contract Confirmation  
**Attachments:** JB Cocoa SDN BHD - Contract Confirmation.pdf; JB Foods Global - Contract Confirmation.pdf

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

JB Cocoa cancellation

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**From:** Tey How Keong [<mailto:hktey@jbcocoa.com>]  
**Sent:** Friday, March 31, 2017 6:46 AM  
**To:** [emoneal@deloitte.com](mailto:emoneal@deloitte.com)  
**Cc:** Goh Lee Beng <[lbgoh@jbcocoa.com](mailto:lbgoh@jbcocoa.com)>; Edward Wong Wing Hong <[edwardwong@jbcocoa.com](mailto:edwardwong@jbcocoa.com)>; Saw Poh Chin <[pcsaw@jbcocoa.com](mailto:pcsaw@jbcocoa.com)>; Sim Tan Qi Zhi <[gizhi@jbcocoa.com](mailto:gizhi@jbcocoa.com)>; Daniel McNamara <[daniel.mcnamara@transmargroup.com](mailto:daniel.mcnamara@transmargroup.com)>  
**Subject:** FW: JB - Contract Confirmation

Dear Emma,

Thanks for your email and info enclosed.

According to the rules and regulation of CMAA and FCC, Transmar Commodity Group Ltd is in default of enclosed contracts. We hereby declared that all the enclosed contracts are cancelled.

We hope have been informed you well.

Best regards,  
Keong

---

**From:** O'neal, Emma (US - New York) [<mailto:emoneal@deloitte.com>]  
**Sent:** Friday, 10 March, 2017 1:24 AM  
**To:** Goh Lee Beng <[lbgoh@jbcocoa.com](mailto:lbgoh@jbcocoa.com)>  
**Cc:** Tey How Keong <[hktey@jbcocoa.com](mailto:hktey@jbcocoa.com)>; Eng Eve Lyn <[engel@jbcocoa.com](mailto:engel@jbcocoa.com)>; Francis Sia Swee Chin <[siasc@jbcocoa.com](mailto:siasc@jbcocoa.com)>; Noorhasikin Binti Umar <[hasikin@jbcocoa.com](mailto:hasikin@jbcocoa.com)>; Daniel McNamara <[daniel.mcnamara@transmargroup.com](mailto:daniel.mcnamara@transmargroup.com)>  
**Subject:** JB - Contract Confirmation

Good morning,

I hope you are well.

I would be grateful if you could please review the attached and confirm contracts with Transmar Commodity Group listed in Schedule A.

Kind regards,  
Emma

**Emma O'Neal**

Deloitte LLP  
30 Rockefeller Plaza, New York, NY, 10112  
Direct: +1 212 653 5878 | Mobile: +1 917 690 2836  
[emoneal@deloitte.com](mailto:emoneal@deloitte.com)

Please consider the environment before printing.

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v.E.1

**Exhibit F**

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP  
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200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10036  
Telephone: (212) 972-3000  
Facsimile: (212) 972-2245

-and-

RIKER DANZIG SCHERER HYLAND & PERRETTI LLP  
Joseph L. Schwartz (admitted *pro hac vice*)  
Tara J. Schellhorn  
Rachel F. Gillen (admitted *pro hac vice*)  
Headquarters Plaza, One Speedwell Avenue  
Morristown, New Jersey 07960  
Telephone: (973) 538-0800  
Facsimile: (973) 538-1984

Attorneys for the Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
TRANSMAR COMMODITY GROUP LTD. <sup>1</sup>	:	
	:	
Debtor.	:	Case No. 16-13625 (JLG)
	:	
	:	
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**NOTICE OF POTENTIAL ASSUMPTION  
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS IN CONNECTION  
WITH THE SALE AND ASSIGNMENT OF THE DEBTOR’S FORWARD BOOK**

<sup>1</sup> The Debtor in this chapter 11 case and the last four digits of the Debtor’s taxpayer identification number is as follows: Transmar Commodity Group Ltd. (5889). The Debtor’s principal office is located at 200 South Street, 4<sup>th</sup> Floor, Morristown, NJ 07960.

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On May 12, 2017, Transmar Commodity Group Ltd. the debtor in the above-captioned case (the “**Debtor**”) filed with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) a motion (the “**Sale Motion**”) for the entry of (i) an order (the “**Bidding Procedures Order**”)<sup>2</sup> (a) authorizing and approving bidding procedures (the “**Bidding Procedures**”) with respect to the Debtor’s sale and assignment of its Forward Book (as defined in the Motion), (b) approving the form and manner of notices thereof, (c) establishing FCStone Merchant Services, LLC (“**FCStone**”) as the stalking horse bidder for certain of the Debtor’s forward book contracts, (d) approving the form of Asset Purchase Agreement by and between the Debtor and FCStone, pursuant to which the Debtor proposes to sell and assign certain of its forward book contracts to FCStone or a third party that makes a higher and/or better offer for those forward book contracts (the “**Proposed Sale**”), and (e) setting a hearing to consider approval of the Debtor’s sale and assignment of its Forward Book (the “**Sale Hearing**”); (ii) entry of an order approving the sale and assignment of the Debtor’s forward book free and clear of liens, claims and encumbrances and (iii) granting related relief.

2. On May 31, 2017, the Bankruptcy Court entered the Bidding Procedures Order [Doc. No. \_\_\_\_] approving the relief requested in the Motion.

3. The Sale Hearing will take place on **June 28, 2017 at 10:00 a.m.** before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, in the Bankruptcy Court, located at One Bowling Green, New York, NY 10004. The Debtor will have accepted the terms of the Winning Bidder only when such bid has been approved by the Bankruptcy Court pursuant to a Sale Order.

4. In connection with the Proposed Sale, and in accordance with the Assumption and Assignment Procedures set forth in the Motion and the Bidding Procedures Order, the Debtor will seek to assume and assign the Designated Contracts (as defined in the Motion) and execute and deliver to any Winning Bidder such documents or other instruments as may be necessary to assign and transfer the Designated Contracts. Each of the Forward Contracts are identified on the Contracts Schedule attached hereto as **Schedule 1** (the “**Proposed Assumed Contracts Notice**”). The cure costs (the “**Cure Costs**”) under the Forward Contracts, if any, that the Debtor believes is required to be paid to the applicable counterparty (the “**Counterparty**”) to each of the Forward Contracts to cure any monetary defaults under such contracts pursuant to 11 U.S.C. §§ 365(b)(1)(A) and (B) is set forth on the Proposed Assumed Contracts Notice.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures and the Bidding Procedures Order, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

5. Cure Objections.

- a) Cure Objection Deadline. Any Counterparty to a Forward Contract that wishes to object to the proposed assumption, assignment, and sale of the Forward Contract, the subject of which objection is the Debtor's proposed Cure Costs to cure any outstanding monetary defaults then existing under such contract (each, a "Cure Objection") shall file with the Court and serve its Cure Objection on (i) the attorneys for the Debtor, Riker Danzig Scherer Hyland & Perretti, LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962 (Attn: Joseph L. Schwartz, Esq.); (ii) the Office of the U.S. Trustee (Attn: Serene Nakano, Esq.); (iii) Husch Blackwell LLP, as counsel to FCStone (Attn: Benjamin F. Mann, Esq.); (vi) Stroock & Stroock & Lavan LLP, as counsel to ABN AMRO Capital USA LLC, as Agent for the Pre-Petition Lenders (Attn: Andrew P. DeNatale, Esq.); (vii) the attorneys (if applicable) of any Winning Bidder(s); (viii) the attorneys (if applicable) of any applicable Backup Bidders(s), and (ix) Tarter Krinsky & Drogin LLP, as counsel to the Committee (Attn: Rocco Cavaliere, Esq.) (the foregoing parties, the "Objection Recipients") by **June 21, 2017, at 4:00 p.m. (prevailing Eastern Time)** (the "Cure Objection Deadline"). Any Cure Objection must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof.
- b) Resolution of Cure Objections. The Bidding Procedures Order requires that the Debtor and a Counterparty that has filed a Cure Objection first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined by the Court at the Sale Hearing. The Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph.<sup>3</sup>
- c) Adjournment of Cure Objections. If a timely Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtor's discretion, after consulting with the Consultation Parties and the Winning Bidder, be adjourned (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Proposed Sale, provided that, the Debtor maintain a cash reserve equal to the Cure Costs the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Forward Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable Cure Costs, if any, the applicable Forward Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the Winning Bidder, as of the closing date of the applicable Proposed Sale.

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<sup>3</sup> All other Sale Objections to the proposed assumption and assignment of the Debtor's right, title, and interest in, to, and under a Forward Contract, if it is ultimately designated as a contract to be assumed or assigned by a Winning Bidder, will be heard at the Sale Hearing.

- d) **Failure to File Timely Cure Objection.** If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Forward Contract (unless such Counterparty has timely filed an Adequate Assurance Objection (as hereinafter defined) with respect to the Forward Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale. Further, in the event no objections are timely filed and served, the Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Forward Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Forward Contract, or any other document, and the Counterparty to the Forward Contract shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such Forward Contract against the Debtors or any Winning Bidder(s), or the property of any of them.
6. Adequate Assurance.
- a) Adequate Assurance Information. The Debtor shall provide, with respect to FCStone and each Qualified Party, such information, as is reasonably requested by a Counterparty, to demonstrate that FCStone or such other Qualified Party is able to fulfill all obligations in connection with satisfying adequate assurance of future performance under any Forward Contract (“Adequate Assurance Information”). The Debtor shall: (a) **within 24 hours of receipt of an Offer from a Potential Bidder (other than FCStone) and (b) with respect to FCStone, by no later than twenty (20) days before the Sale Hearing, or by June 8, 2017 at 4:00 p.m.** (the later of (a) and (b), the “Adequate Assurance Deadline”), provide a copy of the Adequate Assurance Information to those Counterparties (or their counsel) who have (x) submitted a written request (e-mail to Debtor’s counsel is acceptable) for Adequate Assurance Information and (y) confirmed in writing to the Debtor’s counsel (e-mail is acceptable) their agreement to keep such Adequate Assurance Information strictly confidential and use it solely for the purpose of evaluating whether a Potential Bidder, including FCStone, has provided adequate assurance of future performance under the applicable Forward Contracts.
- b) Adequate Assurance Objection Deadline. Any Counterparty to a Forward Contract that wishes to object to the proposed assumption, assignment, and sale of the Forward Contract (including but not limited to any assertion that a Forward Contract is terminated), the subject of which objection is a Winning Bidder’s proposed form of adequate assurance of future performance with respect to such contract (each, an “Adequate Assurance Objection”) shall file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including submitting any appropriate documentation in support thereof, by (i) no later than **June 21, 2017 at 4:00 p.m.** if such Adequate Assurance Objection relates to FCStone or (ii) no later than **June 23, 2017 at 4:00 p.m.** with respect to such Qualified Bidder other than FCStone.

- c) Resolution of Adequate Assurance Objections. The Bidding Procedures Order requires that the Debtor and a Counterparty that has filed an Adequate Assurance Objection first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance by the applicable Winning Bidder shall be determined by the Court at the Sale Hearing.
- d) **Failure to File Timely Adequate Assurance Objection.** If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Forward Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Forward Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale. Further, in the event no objections are filed and served, the applicable Winning Bidder shall be deemed to have provided adequate assurance of future performance with respect to the applicable Forward Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Forward Contract, or any other document.

7. Sale Objections by Counterparties.

- a) Sale Objection Deadline. Any Counterparty to a Forward Contract that wishes to file a Sale Objection (other than a Cure Objection or an Adequate Assurance Objection) to the proposed assumption, assignment and sale of the Forward Contract shall file with the Court and serve on the Objection Recipients its Sale Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than the Sale Objection Deadline of **June 21, 2017 at 4:00 p.m. (prevailing Eastern Time).**
- b) **Failure of Counterparties to File Timely Sale Objection.** If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Sale Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Forward Contract (unless the Counterparty has filed a timely Cure Objection or Adequate Assurance Objection with respect to the Forward Contract) to the applicable Winning Bidder and shall be forever barred from asserting any objection with regard to such assumption, assignment, and sale.

8. The inclusion of a Forward Contract or Cure Costs on the Proposed Assumed Contracts Notice shall not constitute or be deemed a determination or admission by the Debtor, the Winning Bidder(s), or any other party in interest that such contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Costs are due (all rights with respect thereto being expressly reserved). The Debtor

reserves all of its rights, claims, and causes of action with respect to each Forward Contract or other document listed on the Proposed Assumed Contracts Notice. The Presumed Assumed Contracts Notice shall be without prejudice to each Winning Bidder's rights, if any, under the applicable asset purchase agreement, to subsequently exclude any Forward Contracts from the assumption or assignment prior to the closing of an applicable Proposed Sale.

9. The Debtor's assumption and/or assignment of a Forward Contract is subject to approval by the Bankruptcy Court and consummation of the Proposed Sale. Absent consummation of the Proposed Sale and entry of a Sale Order approving the assumption and assignment of the Designed Contracts, the Forward Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtor.

10. Copies of the Motion, the Bidding Procedures Order, and the Bidding Procedures may be obtained free of charge at the website dedicated to the Debtor's chapter 11 case maintained by its claims and noticing agent and administrative advisor, Donlin Recano ([donlinrecano.com/Clients/tcg/Index](http://donlinrecano.com/Clients/tcg/Index)). Copies of these documents also are available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, located at One Bowling Green, New York, NY 10004, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.nysb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

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Dated: May \_\_, 2017  
New York, New York

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