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

In re:	:	
	:	Chapter 11
METRO FUEL OIL CORP., <i>et al.</i> ,	:	
	:	Case Nos.
	:	12-46913 (ESS)
	:	12-46914 (ESS)
	:	12-46915 (ESS)
Debtors.	:	12-46917 (ESS)
	:	12-46918 (ESS)
	:	12-46919 (ESS)
	:	12-46920 (ESS)
	:	12-46921 (ESS)
	:	12-46922 (ESS)
	:	
	:	Jointly Administered

PRE-HEARING STATEMENT

New York Commercial Bank “(NYCB)”, by and through its counsel, Loeb & Loeb LLP, and the other parties whose signatures appear below (collectively, the “Parties”), by their respective counsel, hereby jointly submit this “Pre-Hearing Statement,” with regard to the Court’s determination of NYCB’s Amended Conversion Motion,¹ and respectfully state as follows:

¹ The Court entered the Pre-Hearing Order dated September 27, 2013 [Docket No. 654] (the “Order”) in contemplation of setting a hearing on NYCB’s motion to convert these cases from chapter 11 to chapter 7. In the Order, the Court defined the “Conversion Motion” as the Motion of New York Commercial Bank for (A) Conversion of the Debtors’ Cases to Chapter 7 Pursuant to 11 U.S.C. § 1112(b), (B) Stay Relief pursuant to 11 U.S.C. §§362(d)(1) and (d)(2) to Enforce Rights against Property of Debtors and Collect Indebtedness Owed by Debtors, and (C) for Prohibition of the Further Use of any Cash Collateral dated January 29, 2013 [Docket No. 329]

I. Parties Agreement on Factual Admissions

1. The Parties agree to these facts for purposes of the Amended Conversion Motion only and do not intend for any Party or non-Party to be bound by them for any purpose other than the Court's determination of the Amended Conversion Motion, including without limitation for the purpose of determining the allowability of any claims or the rights of any parties in any sale proceeds, whether through the doctrines of collateral estoppel, law of the case or otherwise.

II. Statement of Disputed Facts Proposed by NYCB (Disputed by the Committee).²

A. The DIP Facility/NYCB Adequate Protection.

2. In seeking approval of the \$10 million DIP loan facility (the "DIP Facility"), the Debtors (defined below) represented to the Court that the property known as "Lot 14" had a value in excess of \$39 million, such that, as of the Petition Date, the Debtors retained "approximately \$23 million of equity above the \$16.4 million aggregate" of NYCB's term loan indebtedness and the term loan indebtedness of Valley National Bank ("Valley").

3. NYCB objected to the authorization of the DIP Facility on the grounds that, among other things, NYCB would not be adequately protected. However, in reliance on, among other things, the Debtors' representations regarding value and the purported equity cushion that NYCB would enjoy, the Court approved \$3 million of initial, interim borrowing under the priming DIP Facility and cash collateral usage at the first day hearing in the Chapter 11 Cases, pursuant to the First Interim DIP Order [Docket No. 27].

(the "Original Conversion Motion"). However, NYCB amended the Original Conversion Motion by its Amended Motion of New York Commercial Bank for Conversion of the Debtors' Cases to Chapter 7 Pursuant to 11 U.S.C. § 1112(b) dated May 10, 2013 [Docket No. 525] (the "Amended Conversion Motion"). Accordingly, this Pre-Hearing Statement was prepared in order to facilitate the Court's setting a hearing on, and its determination of, the Amended Conversion Motion.

² Refers to the Official Committee of Unsecured Creditors in these bankruptcy cases.

4. Payment of the DIP Facility (in the amount of \$11,680,792) was made from the sale proceeds of either Lot 14, the Challenge Collateral (defined below) or previously unencumbered assets. All of those proceeds were subject either to NYCB's prepetition liens or its asserted adequate protection liens.

5. As the DIP Facility was repaid from the proceeds of NYCB's prepetition collateral, the payment of the DIP Facility diminished NYCB's collateral value for which NYCB is entitled to adequate protection. Similarly, NYCB is entitled to adequate protection to the extent of any diminution of its collateral value resulting from the use of NYCB's cash collateral and any other diminution of value of the NYCB Prepetition Collateral during the pendency of these cases. NYCB is entitled to a superpriority claim under Section 507(b) of the Bankruptcy Code (a "Superpriority Claim") in the amount of any diminution, secured by the adequate protection liens on all of the Debtors' unencumbered assets, including all causes of action. Final DIP Order (defined below), ¶¶ 17(a) (granting Adequate Protection Liens on all "Collateral"); 17(b) (granting Section 507(b) superpriority claims to NYCB); 13 (defining "Collateral" to include essentially all of the Debtors' assets, including, "all real and personal property . . . claims and causes of action, and any proceeds thereof").

6. At a minimum, NYCB's Superpriority Claim is equal to or exceeds the value of the sale proceeds attributable to those assets that were unencumbered or constituted Challenge Collateral (as defined in paragraph 5(d) of the Final DIP Order), such that the proceeds of those assets are fully encumbered by the adequate protection liens.

B. The Sale Process and Asset Sales.

7. The Debtors held an auction for the Sale of their assets on February 4 and 5, 2013. After two days of bidding, United Refining Energy Corp. ("United Refining") was declared the successful bidder for substantially all of the Debtors' operating assets (other than accounts

receivable) with a bid of \$27 million in cash, plus assumption of any cure costs in connection with assumed contracts and certain additional amounts based on the value of the Debtors' inventory on hand at the time of closing.

8. The Sale to United Refining was approved by order entered on February 15, 2013 (the "First Sale Order") authorizing (a) the sale of substantially all of the Debtors' assets free and clear of all liens, claims, interests and encumbrances; (b) the Debtors to enter into and perform their obligations under the asset purchase agreement; and (c) the Debtors to assume and assign certain executory contracts and unexpired leases [Docket 381]. The Debtor assets sold under the First Sale Order consisted primarily of the Debtors' interests in Lot 14, Lot 150, the parcels known as Calverton and Kingsland, improvements on the foregoing real property, inventory, equipment, general intangibles and rolling stock.

9. In connection with the sale auction held on February 4 and 5, 2013, the Debtors selected back-up bidders for the Debtors' assets, including those assets that were not subject to NYCB's prepetition security interests and liens or assets that constituted Challenge Collateral (as defined in Paragraph 5(d) of the Final DIP Order). Specifically, United Refining Energy Corp. was the backup bidder for the property known as "Calverton" with a \$2.9 million bid; affiliates of Hackman Capital were the backup bidder for certain vehicle assets with a bid of \$500,000; and NYCB was the backup bidder for the property known as "Kingsland" with a \$750,000 credit bid. In total, the auction resulted in specific backup bids for the previously unencumbered assets and Challenge Collateral of \$4.15 million.

10. The Debtors' estates conveyed no benefit on NYCB by funding and facilitating the sale process and closing the Sales (defined below). The sale process was to NYCB's detriment.

C. NYCB's Remaining Indebtedness.

11. After application of the payments received by NYCB from the proceeds of the Sales, NYCB's remaining indebtedness under its revolver is not less than \$16,299,963.19, and the outstanding term indebtedness is not less than \$9.5 million. NYCB also asserts additional amounts for fees, costs and expenses. In addition, interest continues to accrue on NYCB's indebtedness.

D. The Debtors' Losses Since the Petition Date.

12. As stated in the Debtors' operating reports, in the period of just over six months between the Petition Date and the end of March 2013, the Debtors lost nearly \$12 million, exclusive of losses arising from the sale of the Debtors' assets. The Debtors assert that this amount includes \$7.6 million of professional fees, \$500,000 for depreciation and \$1.8 million of interest expenses. The EBITDA loss for this period was approximately \$2.3 million.

13. For the Petition Date through the end of February 2013, the last full month of operations before consummation of the asset sales, the Debtors' cumulative loss was \$6,582,694. Of this loss, professional fees represented \$3,747,750; interest on the DIP Facility accounted for \$1,658,440; and \$1,176,504 of losses arose from business operations. The Debtors assert that the EBITDA loss for this period was approximately \$581,388.

14. In March 2013, the Debtors' loss increased by \$5,360,103 to \$11,942,797, before recognition of the \$21,637,172 loss arising from the Sales. This increased loss is primarily attributable to recognition of an additional \$3,836,168 in professional fees and a further \$1,503,206 loss from operations of the business. These loss figures, which are taken from the Debtors' operating reports, are summarized on the chart below.

Summary of Losses from Inception through March 31, 2013

	Cumulative February 2013	March 2013	Cumulative March 2013
Loss from Operations	(1,176,504)	(1,503,206)	\$ (2,679,710)
Professional Fees	(3,747,750)	(3,836,168)	(7,583,918)
DIP Interest	(1,658,440)	(20,729)	(1,679,169)
Loss before March Sale of Assets	(6,582,694)	(5,360,103)	(11,942,797)
Loss on March Sale of Assets	-	(21,637,172)	(21,637,172)
Total Losses	<u>\$ (6,582,694)</u>	<u>\$ (26,997,275)</u>	<u>\$ (33,579,969)</u>

15. The remaining amounts being held in the Carve-Out (as defined in the Final DIP Order) will be depleted or substantially depleted upon the payment of Debtor and Committee professional fees accrued through the date of the Sales.

E. Post-Sale Operations, Assets and Administrative Expense Accrual.

16. No causes of action have been commenced by or on behalf of the Debtors' estates, and it is possible any causes of action the Debtors' estates may bring would be opposed and subject to litigation. NYCB would contest any action commenced against it.

17. For just the month of March, 2013 – the month when the Sales closed – the fees and expenses of Debtor and Committee counsel were not less than \$463,094.53. AP Service's fees and expenses were an additional \$205,552.25. In total, the fees and expenses of estate professionals exceeded \$715,000 (exclusive of the one-time \$650,000 "success fee" claimed by Carl Marks Advisory Group regarding the Sales).

18. Approximately \$105,000 of the attorney fees for that period was directly attributable to the Sale process. Specifically, during March 2013, (i) Kelley Drye & Warren LLP billed \$27,836 to the Sale process; (ii) Kirkland & Ellis LLP billed \$69,227.50 to the Sale process; and (iii) Curtis, Mallet-Prevost Colt & Mosle LLP (the other Debtors' counsel) billed \$6,260.40 to the Sale process.

19. The fee statements of professionals of the Debtors estates and the Committee filed since the Sales' consummation, for the period beginning April 1, 2013 through September, 2013 (to the extent available), reflect fees and expenses which these professionals intend to seek from the estates, in the aggregate amount of \$1,708,988.62, as follows:

Billing Firm	Billing Period	Fees	Expenses	Fees & Expense Total
AP Services (Debtors' Management)				
	April 1, 2013 - April 30, 2013	\$77,652.00	\$1,846.87	\$79,498.87
	May 1, 2013 - May 31, 2013	\$93,568.50	\$1,408.41	\$94,976.91
	June 1, 2013 - June 30, 2013	\$111,445.00	\$679.40	\$112,124.40
	July 1, 2013 - July 31, 2013	\$154,963.50	\$90,664.08	\$245,627.58
Kelley Drye (Committee's Counsel)				
	April 1, 2013 - April 30, 2013	\$94,753.50	\$527.73	\$95,281.23
	May 1, 2013 - May 31, 2013	\$140,468.50	\$525.23	\$141,011.73
	June 1, 2013 - June 30, 2013	\$128,274.00	\$4,089.47	\$132,363.47
	July 1, 2013 - July 31, 2013	\$39,938.00	\$198.26	\$40,136.26
	August 1, 2013 - August 31, 2013	\$57,816.00	\$1,028.34	\$58,844.34
Kirkland & Ellis (Debtors' Counsel)				
	April 1, 2013 - April 30, 2013	\$25,797.00	\$1,566.29	\$27,363.29
	May 1, 2013 - May 31, 2013	\$15,775.50	\$664.93	\$16,440.43

	June 1, 2013 - June 30, 2013	\$9,004.50	\$137.99	\$9,142.49
	July 1, 2013 - July 31, 2013	\$16,064.00	\$4,713.43	\$20,777.43
	August 1, 2013 - August 31, 2013	\$3,066.50	\$1,437.41	\$4,503.91
Curtis, Mallet- Prevost (Debtors' Counsel)				
	April 1, 2013- April 30, 2013	\$45,433.80	\$244.15	\$42,677.95
	May 1, 2013- May 31, 2013	\$210,482.10	\$4,546.35	\$215,028.45
	June 1-June 30, 2013	\$182,787.30	\$2,534.72	\$185,322.02
	July 1, 2013 - July 31, 2013	\$39,759.30	\$3,097.55	\$42,856.85
	August 1, 2013 - August 31, 2013	\$51,748.65	\$394.58	\$52,143.23
FTI (Committee's financial consultant)				
	April 1-June 30, 2013	\$86,050.50	\$12.18	\$86,062.68
	July 1-July 31, 2013	\$3,527.50	\$4.60	\$3,532.10
			Total Fees and Expenses Asserted and Sought:	\$1,708,988.62

20. NYCB has not consented to any use of its cash collateral, nor of the proceeds of any other collateral, for the payment of these professionals or for any other purpose.

F. Administrative Expense and Priority Claims.

21. The Debtors admit that they owe approximately \$4.5 million in administrative claims under § 503(b)(9) of the Bankruptcy Code for goods sold to the Debtors in the twenty-day period before the Petition Date. No payment has been made against these administrative

obligations. These obligations have no right to payment from the Carve Out (to the extent any funds remain therein).

22. The Debtors had not less than \$3.26 million in unpaid postpetition administrative liabilities at the end of March, 2013, in addition to the administrative claims described in the immediately preceding paragraph. As of the end of August, 2013, these postpetition administrative liabilities had increased to not less than \$3.87 million.³ These outstanding postpetition liabilities are net of all payments that were previously made from the Carve Out, the proceeds of the Sales, and other post-petition cash use by the Debtors through the end of August, 2013. Payments by the Debtors to estate professionals since the Petition Date totaled \$6,044,256 through August, 2013.

23. The amount of unpaid postpetition administrative liabilities described in the immediately preceding paragraph does not include any Superpriority Claim. NYCB asserts that the amount of its Superpriority Claim exceeds \$8 million. The Committee disputes this calculation.

24. The Debtors further assert that at least approximately \$2.35 million of sales, use and excise taxes are owing by the Debtors' estates. The Debtors describe these amounts in their motion at Docket No. 5.⁴

25. The following is a summary of the asserted administrative and priority claims against the Debtors' estates (in addition to asserted Superpriority Claim by Valley as well, which is not set forth below and is in addition to the below amounts):

- Superpriority Claims of NYCB: More than \$8 million

³ It is unclear why administrative expense claims reported by the Debtors increased only by about \$610,000 during this period, while professional fees of approximately \$1.7 million have been incurred.

⁴ All of the other Parties reserve the right to contest the amount and priority nature of such asserted tax claims.

- Administrative claims under § 503(b)(9): Not less than \$4.5 million
- Other administrative expense claims: Not less than \$3.87 millions
- Asserted priority tax claims: Not less than \$2.35 million
- **Total:** **Not less than \$18.72 million**
- **Total without NYCB Superpriority Claim:** **Not less than \$10.72 million**

G. Remaining Assets in the Estates.

26. All of the Remaining Cash (defined below) is subject to the liens and security interests of NYCB; Valley, U.S. Bank, National Association, as indenture trustee for the Indenture Noteholders (“U.S. Bank”); and Trufund (defined below), except to the extent the estate is entitled to surcharge such Remaining Cash under Section 506(c). NYCB, Valley, U.S. Bank and Trufund dispute that the estates are entitled to surcharge any portion of the Remaining Cash. NYCB asserts that its pre-petition security interests and liens and Adequate Protection Liens of NYCB apply to and account for all Remaining Cash.

27. Other than as set forth in paragraph 28 of the Second Sale Order with respect to up to \$590,000 of the Wind-Down Amount, the Debtors’ estates have no authority to satisfy claims of unsecured creditors from the Remaining Cash.

28. The Debtors are administratively insolvent.

III. Disputed Facts Proposed by the Committee (Disputed by NYCB).

29. The Committee disputes all factual allegations regarding (i) the extent of any diminution in value of NYCB’s collateral during the pendency of the Debtors’ chapter 11 cases, (ii) the scope of NYCB’s adequate protection liens stemming from the alleged diminution in

⁵ The Carve-Out has been set aside to satisfy up to \$1,353,725 of this amount, according to information set forth in the Debtors’ operating reports.

value of NYCB's collateral, and (iii) the amount, if any, of NYCB's alleged Superiority Claim.

30. The estate conveyed a benefit on NYCB by funding and facilitating the sale process and closing of the sale.

31. The Committee has estate surcharge claims against the secured parties, including NYCB, pursuant to section 506(c) of the Bankruptcy Code.

32. The formal claims resolution and reconciliation process regarding NYCB's claims against the Debtors' estates and the claims held by the Debtors' estates against NYCB has not been completed.

33. The Committee intends promptly to file a chapter 11 plan of liquidation. All remaining assets (including causes of action) will, upon the effective date of this proposed plan, be transferred to a liquidation trust for prosecution and/or settlement. The Committee's proposed plan of liquidation contemplates a substantial contribution from the Pullos via a plan settlement or otherwise.

34. There are approximately \$4.5 million in claims under section 503(b)(9) of the Bankruptcy Code asserted against the Debtors' estates, although the Debtors have not completed a formal claims reconciliation of such claims. The Committee is aware of efforts by the Debtors to mitigate the amount of such tax claims. Priority tax claims, once reconciled, will be resolved pursuant to the Committee's proposed plan of liquidation.

35. Accrued professional fees and administrative expenses do not justify conversion of the Debtors' Chapter 11 cases to cases under Chapter 7 given that such claims will be resolved pursuant to the Committee's proposed plan of liquidation.

36. The prosecution of any lawsuits by the Committee against NYCB and certain participants in the Debtors' financing facility and Paul and Gene Pullo (the "Pullos") has been

in held abeyance by the parties and the Court to permit mediation and negotiations over a potential global settlement.

37. NYCB's claims remain subject to resolution of the Challenge Collateral (pursuant to Paragraph 42 of the Final DIP Order) and the Committee's pending request for derivative standing to assert estate claims against NYCB and certain other secured creditors.

IV. Statement of the Material Facts Not in Dispute.

A. Background of the Bankruptcy Cases of Metro Fuel Oil Corp., *et al.*

38. On September 27, 2012 ("Petition Date"), Metro Fuel Oil Corp. ("Metro Fuel") and nine of its affiliates filed for Chapter 11 protection (collectively, the "Debtors") in this Court. The nine affiliates consist of the following Debtors: Apollo Petroleum Transport, Inc.; Apollo Petroleum Transport, LLC ("Apollo Transport"); Apollo Pipeline, LLC; Kings Land Realty, Inc. ("Kings Land"); Metro Biofuels, LLC ("Metro Biofuels"); Metro Energy Group LLC ("Metro Energy"); Metro Plumbing Services Corp.; Metro Terminals Corp. ("Metro Terminals"); and Metro Terminals of Long Island, LLC ("Metro Long Island").

39. On October 4, 2012 the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors ("Committee") consisting initially of five members. On October 16, 2012, two additional unsecured creditors were appointed to the Committee, for a total of seven members. No trustee or examiner has been appointed in the cases.

B. NYCB's Amended Conversion Motion.

40. On May 10, 2013, NYCB filed the Amended Conversion Motion by which it sought conversion of the Debtors' chapter 11 cases to cases under chapter 7. The Amended Motion superseded the Original Conversion Motion, filed by NYCB on January 29, 2013, which also sought conversion of these chapter 11 cases.

41. No objection to the Amended Conversion Motion has been filed, though the Parties contemplate that parties both supporting and opposing the Amended Conversion Motion will have the opportunity to file papers in furtherance of their positions.

C. The Debtors' Indebtedness to NYCB.

42. Pursuant to the terms and conditions of Paragraph 5 of the Final DIP Order,⁶ NYCB is a pre-petition secured creditor of the Debtors in the aggregate amount of \$41,245,933.29 (as of the Petition Date), with such indebtedness in the form of a revolving credit facility and two terms loans. The Debtor borrowers and guarantors are identified in Paragraph 5(a) of the Final DIP Order. NYCB's indebtedness is secured as provided in paragraph 5 of the Final DIP Order.

43. Paragraph 42 of the Final DIP Order provides that until the expiration of the "Challenge Deadline" (as defined in the Final DIP Order; to the extent not already expired), "the Debtors and the Creditors' Committee, assuming and subject to the Creditors' Committee obtaining standing prior thereto . . . shall have the right to (i) bring claims and causes of action for money damages only against the Existing Senior Lenders and (ii) challenge the validity and/or priority of the liens on and security interests in the Challenge Collateral only" The Committee has moved for standing to assert certain claims against NYCB, but that motion has yet to be decided. NYCB has objected, and objects to, this motion.

44. The Parties stipulate to the Court record at the first day hearing regarding the First Interim DIP Order, as well as to the terms and conditions of such order as entered.

⁶ The term "Final DIP Order" means the Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507(A) Authorizing Post-Petition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, and (D) Granting Related Relief dated November 20, 2012 [Docket No. 187].

D. Other Creditors Asserting Secured Claims.

45. Pursuant to the terms and conditions of Paragraph 5(m)-(o) of the Final DIP Order, Valley is a pre-petition secured creditor of the Debtors in the amount of \$7,300,000 (as of the Petition Date) plus unpaid interest, prepetition fees, and expenses in an unliquidated amount. Valley has received no payment against this indebtedness since the Petition Date. Valley's indebtedness is secured as provided in paragraph 5 of the Final DIP Order.

46. Pursuant to the terms and conditions of Paragraphs 5(r)-(s) of the Final DIP Order, the Debtors admit that the Indenture Noteholders (as defined in the Final DIP Order) are prepetition secured creditors in the amount approximate amount of \$9.1 million (as of the Petition Date), plus any additional fees and expenses. U.S. Bank is the trustee. (Final DIP Order, ¶ 5(r)). The Committee, to date, has not yet completed its investigation of the Indenture Noteholders' claims but is not aware of any estate claims or causes of action against them or U.S. Bank, National Association ("U.S. Bank"), the indenture trustee for the Indenture Noteholders, other than claims or causes of action related to allocation of the escrowed sale proceeds and section 506(c) of the Bankruptcy Code (which U.S. Bank and the Indenture Noteholders reserve the right to oppose). The Indenture Noteholders have received no payment against this indebtedness since the Petition Date. The Debtors admit that the Indenture Noteholders' indebtedness is secured as provided in paragraph 5 of the Final DIP Order.

47. Pursuant to the terms and conditions of Paragraph 5(r)-(s) of the Final DIP Order, the Debtors admit that Trufund Financial Services, Inc. (f/k/a/ Seedco Financial Service, Inc.) ("Trufund"), is a prepetition secured creditor of the Debtors in the aggregate principal and accrued and unpaid interest amount of \$1,430,656.47 (as of the Petition Date) plus any additional fees and expenses. The Committee, to date, has not yet completed its investigation of Trufund's claims and is not aware of any estate claims or causes of action against Trufund other than

claims or causes of action related to allocation of the escrowed sale proceeds and section 506(c) of the Bankruptcy Code (which Trufund reserves the right to oppose). Trufund has received no payment against its indebtedness since the Petition Date. The Debtors admit that Trufund's indebtedness is secured as provided in paragraph 5 of the Final DIP Order.

48. All of the findings, recitations, acknowledgements, protections and other terms concerning the indebtedness and the security therefor of NYCB, Valley, the Indenture Noteholders and Trufund set forth in paragraph 5 of the Final DIP Order are incorporated herein by reference, including without limitation, the descriptions of the liens and security interests granted to each of the foregoing lenders to secure their respective indebtedness. The Parties acknowledge and agree that the terms of paragraph 5 of the Final DIP Order speak for themselves.

E. The DIP Facility.

49. The Debtors borrowed \$10 million in principal under the DIP Facility approved by this Court, subject to the terms of the Final DIP Order, a series of orders approving the DIP Facility on an interim basis [Docket Nos. 27, 114, 150 and 176] and two extension orders by which the maturity date of the DIP Facility was extended [Docket Nos. 360 and 373] (the "DIP Orders"). The DIP Facility was secured by liens on substantially all of the Debtors' assets. (Final DIP Order at ¶ 13). Those liens primed the liens of NYCB and Valley in connection with their prepetition collateral. *Id.*

50. The First Interim DIP Order was entered over the objection of NYCB. The subsequent interim DIP Orders and the Final DIP Order were entered without objection of any parties, subject to the terms thereof.

51. The DIP Orders also provided for the Debtors' use of Pre-Petition Secured Parties' (as defined in the Final DIP Order) cash collateral pursuant to a series of approved budgets. (*See, e.g.*, Final DIP Order, ¶ 16).

52. On or about March 6, 2013, substantially simultaneously with the closing of the sales of the Debtors' assets and accounts receivable (together, the "Sales"), the Debtors paid the DIP Facility in the aggregate amount of \$11,680,791.16, consisting of principal, interest and fees, from the Sale proceeds, other than the proceeds of the collateral securing the Indenture Noteholder and Trufund indebtedness.

53. The Final DIP Order provided for the establishment of a Carve-Out on the terms set forth therein.

F. Measures to Provide NYCB with Adequate Protection.

54. In consideration for the use of the Prepetition Bank Debt Collateral (as defined in the Final DIP Order), including Cash Collateral (as defined in the Final DIP Order), from and after the Petition Date, and also as protection against the effect of the priming by the DIP Facility, NYCB was granted the "adequate protection" specified in paragraph 17 of the Final DIP Order. Valley was also granted "adequate protection" against the effect of the priming by the DIP Facility, as specified in paragraph 17 of the Final DIP Order. The terms of such paragraph 17 are incorporated herein by reference.

G. The Asset Sales.

55. On February 15, 2013, the Court entered the First Sale Order, approving the sale of all or substantially all of the Debtors' real estate and physical plant assets for \$27 million in cash to United Refining Energy Corp. [Docket No. 381], which closed on or about March 6, 2013. As discussed above, the proceeds were first used to satisfy the Debtors' postpetition financing in the total amount of \$11,680,791 (consisting of principal, interest and fees). The

approximate remaining amount is escrowed with the Debtors (as discussed below). The Debtors also sold all inventory on hand at the closing of the February 2013 sale and received payment therefor in the amount of \$3,628,910. The First Sale Order provided, among other things, that liens, claims, interests and encumbrances in and against the assets sold would attach to the sale proceeds thereof.

56. Subsequently, an affiliate of United Refining agreed to acquire a substantial portion of the Debtors' accounts receivable for \$10,170,446 (the "Initial A/R Sale Payment"), plus certain other amounts dependent on subsequent collection of the Debtors' accounts receivable. That sale was approved by Court order entered on March 7, 2013 [Docket No. 417] (the "Second Sale Order" and, together with the First Sale Order, the "Sale Orders") and closed on or about March 8, 2013. The Second Sale Order provided that liens, claims, interests and encumbrances in and against the accounts receivables sold would attach to the Sale proceeds thereof.

57. Pursuant to Paragraph 25 of the Second Sale Order, NCYB received on account of its secured claim (as set forth in the Final DIP Order) payment of (i) the Initial A/R Sale Payment; (ii) \$916,439 in the form of the Debtors' remaining Cash Collateral (as defined in the Final DIP Order); (iii) \$3,628,910 on account of the sale of the Debtors' inventory; and (iv) \$112,564 on account of the NYCB PPI Escrow (as defined in the Final DIP Order). As of October 15, 2013, NYCB has further received \$638,426 on account of the sale of the accounts receivable, which are in addition to the Initial A/R Sale Payment.

58. NYCB asserts that it applied the amounts identified in subsections (i), (ii) and (iii) above in partial satisfaction of its revolver indebtedness and the amounts identified in subsection (iv) above against its term loan indebtedness. The Committee has not investigated

this assertion and on that basis disputes it.

59. Pursuant to Paragraph 28 of the Second Sale Order, the Debtors withheld \$990,000 of NYCB's cash collateral (the "Wind-Down Amounts"), and such amount (to the extent not dissipated) remains subject to the liens, claims and protections afforded NYCB pursuant to the Final DIP Order. NYCB asserts that the Debtors were not allowed to spend the Wind-Down Amounts except on certain, specified expenses.

60. Aside from wind-down activities, the Debtors have had no operating business since early March, 2013, when the Sales were consummated. The Debtors transferred all of their operating assets pursuant to the Sales.

H. Remaining Debtor Assets.

61. According to the Debtors, the remaining assets in the Debtors' estates consist of (i) the escrowed Sale proceeds in the amount of \$15,319,208, (ii) certain other cash totaling approximately \$800,000, (iii) the remaining "Carve Out" amount, totaling \$1,390,170, and (iv) claims and causes of action of the Debtors' estates. The funds referenced in (i) through (ii) comprise the Debtors' remaining cash ("Remaining Cash"). Included in the Remaining Cash are the remaining Wind-Down Amounts. The foregoing assets are subject to paragraphs 5 and 17 of the Final DIP Order.

62. The Committee has a pending motion for standing to sue NYCB and certain participants in the Debtors' prepetition financing facility, and has already obtained standing to sue the Paul J. Pullo and Gene V. Pullo (collectively, the "Pullos"). The Committee has not been granted standing to commence any law suit against NYCB or the aforementioned participants.

I. Miscellaneous.

63. The Parties agree that the Debtors submitted monthly operating reports and that those monthly operating reports speak for themselves.

64. The Parties further agree that the following professionals for the Debtors and the Committee filed monthly fee statements and/or interim or final fee applications and that those monthly fee statements and fee applications speak for themselves: (i) Kelley Drye & Warren LLP (counsel to the Committee), (ii) FTI Consulting, Inc. (financial advisor to the Committee), (iii) Kirkland & Ellis LLP (counsel for the Debtors), (iv) Curtis Mallet-Prevost Colt & Mosle LLP (counsel for the Debtors), (v) Carl Marks Advisory Group LLC (investment bankers to the Debtors), (vi) AP Services, Inc. (financial advisor to the Debtors).

65. None of the professionals have been paid for fees and expenses incurred after March 6, 2013.

66. The Parties have spent a great deal of time in good faith negotiations with the Debtors' insiders and significant stakeholders to achieve a global resolution to these cases.

67. The Committee helped to orchestrate the involuntary chapter 11 filing of the Pullos that occurred on June 12, 2013.

J. Agreed Facts Concerning Exhibits.

68. Exhibits, including M-31, M-32, M-34, M-35, M-36, M-37, M-39, M-40, M-41, M-42, M-44, M-45, M-47, M-48, M-49, M-50, M-52, M-53, M-54, M-55, M-56, M-57, M-59, M-75, M-76, M-77, M-78, M-79 and M-80 are statements of fees and expenses, and interim fee applications, of the various respective professionals retained by the Debtors or the Committee in these cases for which the professionals seek payment. These professionals have been retained by the Debtors and the Committee pursuant to the orders set forth as exhibits M-8, M-9, M-14, M-17 and M-18.

69. If any specific item on the docket in these cases is not identified as an exhibit, the Court may take judicial notice of the content of any docket entry and the filed pleading referenced therein as the statements and representations of the party-in-interest that filed such

pleading (subject to the terms thereof). To the extent such docket entries are orders, the Court may take judicial notice of its own orders.

**V. A Description of the Legal and Factual Issues
to be Decided by the Court, and Any Anticipated Dispositive Motion Practice.**

A. Factual Issues to be Decided by the Court.

70. See above sections regarding alleged factual issues that are disputed. The Parties anticipate that they will be able to narrow the universe of disputed facts after briefing is completed on the Amended Conversion Motion and, to that end, reserve the right to amend or supplement this pre-hearing statement as appropriate for such purposes (subject to the Court's authorization to do so).

B. Legal Issues to be Decided by the Court.

71. **Jurisdiction/venue/core:** Does subject matter jurisdiction exist for this Court to determine the Amended Conversion Motion? Is venue appropriate before this Court? Is the Amended Conversion Motion a "core" proceeding? All Parties concur that jurisdiction exists, venue is appropriate, and the matter is "core".

72. **Conversion:** Should the bankruptcy cases of the Debtors be converted from Chapter 11 cases to Chapter 7 of the Bankruptcy Code, pursuant to §§ 1112(a) and (b) and 105(a) of the Bankruptcy Code? NYCB believes that the Court should immediately convert these cases. The Committee and the Debtors disagree. Further,

(a) the Committee intends to promptly file a plan of liquidation upon the Court authorizing such filing in light of sections 1121 (Committee co-exclusivity) and 1125 (not an improper solicitation) of the Bankruptcy Code. The Committee asserts that the relevant legal issue before the Court is whether such liquidating plan has a reasonable possibility of being confirmed. It is the Committee's position that the plan is confirmable, even over an objection by the secured lenders, and as a result conversion is inappropriate.

(b) NYCB disputes that any plan proposed by the Committee has a reasonable possibility of being confirmed, disputes that the Committee will or could be permitted to

file or seek confirmation of such a plan, and asserts that grounds exist for conversion whether or not any plan has a reasonable possibility of being confirmed and that under §§ 1112(a) and (b) of the Bankruptcy Code, considered with or without § 105(a) of the Bankruptcy Code, this Court should immediately convert these case to Chapter 7.

C. No Dispositive Motions are Anticipated.⁷

VI. The Estimated Length of the Evidentiary Hearing.

73. **NYCB's Response:** NYCB does not believe that the disputed facts proposed by NYCB are actually subject to any bona fide dispute. On the contrary, NYCB asserts that those purportedly disputed facts are supported by the record in these cases, as set forth in the Amended Conversion Motion. As such, NYCB believes that no evidentiary hearing is required and that argument on the Amended Conversion Motion is anticipated to be three hours.

74. However, should the Court conclude that the disputed facts proposed by NYCB are subject to bona fide dispute, NYCB believes that an evidentiary hearing regarding same would take approximately 4 – 5 hours, exclusive of argument. NYCB would propose to use the exhibits indicated herein below at such hearing. NYCB would call one or two witnesses to testify to the facts asserted by NYCB, as set forth herein above.

75. **Committee's Response:** The Committee asserts that many of the disputed facts above are irrelevant to the determination of the Amended Conversion Motion. To the extent such disputed facts are deemed irrelevant, then the Committee does not believe that an evidentiary hearing will be necessary. If the disputed facts proposed by NYCB are deemed relevant, then the Committee believes an evidentiary hearing lasting approximately two days will be necessary to resolve those disputed factual issues. The Committee would call one or two witnesses to testify to the facts asserted by the Committee.

⁷ Other than the Amended Conversion Motion itself.

**VII. Statement Regarding Attempts to Resolve
the Issues in Dispute, Results, and Whether Mediation Would be of Assistance.**

A. Attempts to Resolve the Issues.

76. The Parties participated in a two-day mediation in August, 2013, conducted by the Honorable Robert E. Grossman, pursuant to the Stipulation and Mediation Order entered on July 25, 2013 [Docket No. 615], the Supplemental Stipulation and Mediation Order with Respect to Trufund Financial Service, Inc. entered on August 1, 2013 [Docket No. 622], and the telephonic conference call by and between counsel to the Parties and Judge Grossman's chambers on August 1, 2013.

77. The Parties have also engaged in discussions, both in person and telephonically, in an effort to negotiate the terms of a plan of reorganization, or otherwise to achieve a consensual resolution of these cases.

B. Results.

78. None of the foregoing efforts resulted in a settlement of the issues set forth in the Amended Conversion Motion.

C. Whether (Further) Mediation Would be of Assistance.

79. **NYCB's Response:** Does not believe that any further mediation would be of assistance.

80. **Committee's Response:** The Committee does not believe that any further mediation would be of assistance until such time that the Committee has been authorized to file its plan of liquidation and supporting disclosure statement, which it is prepared to file forthwith. The Committee believes that additional mediation would be useful after the key parties have had an opportunity to assess the proposed plan.

VIII. List of Exhibits to be Offered; Any Anticipated Objection to Admissibility.**A. Exhibits to be Offered by NYCB:**

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-1	Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Taxes and Fees and (II) Directing Financial Institutions to Honor and Process Related Checks and Transfers, dated September 27, 2012 [Docket No. 5]	No objection.
M-2	First Day Hearing Transcript, dated September 27, 2012	No objection.
M-3	First Interim Order Pursuant to 11 U.S.C. §§ 105. 361, 362, 363, 364 and 507 (A) Authorizing Post-Petition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, (D) Scheduling a Final Hearing, and (E) Granting Related Relief, dated September 28, 2012 [Docket No. 27]	No objection.
M-4	Debtors' Motion for Entry of an Order Authorizing the Debtors (I) to Employ and Retain AP Services, LLC as Crisis Managers for the Debtors Nunc Pro Tunc to the Commencement Date, (II) to Appoint David Johnston as Chief Restructuring Officer and (III) to Appoint Thomas Studebaker as Chief Financial Officer, dated October 08, 2012 [Docket No. 77]	No objection.
M-5	Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Kirkland & Ellis LLP as Attorneys for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Commencement Date, dated October 9, 2012 [Docket No. 79]	No objection.
M-6	Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Curtis, Mallet-Prevost, Colt & Mosle LLP as Co-Counsel for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Commencement Date, dated October 9, 2012 [Docket No. 81]	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-7	Second Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (A) Authorizing Post-Petition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, (D) Scheduling a Final Hearing, and (E) Granting Related Relief, dated October 16, 2012 [Docket No. 114] (together with the exhibit thereto)	No objection.
M-8	Order Authorizing the Employment and Retention of Kirkland & Ellis LLP as Attorneys for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Commencement Date dated October 23, 2012 [Docket No. 134]	No objection.
M-9	Order Authorizing the Employment and Retention of Curtis Mallet-Prevost, Colt & Mosle LLP as Co-Counsel for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Commencement Date, dated October 24, 2012 [Docket No. 137]	No objection.
M-10	Third Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (A) Authorizing Post-Petition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, (D) Scheduling a Final Hearing, and (E) Granting Related Relief, dated October 31, 2012 [Docket No. 150] (together with the exhibit thereto)	No objection.
M-11	Application of the Official Committee of Unsecured Creditors of Metro Fuel Oil Corp., et al., to Retain and Employ Kelley Drye & Warren LLP as Counsel, Nunc Pro Tunc to October 4, 2012, dated November 6, 2012 [Docket No. 158]	No objection.
M-12	Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to October 8, 2012, dated November 6, 2013 [Docket No. 159]	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-13	Fourth Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (A) Authorizing Post-Petition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, (D) Scheduling a Final Hearing, and (E) Granting Related Relief, dated November 13, 2012 [Docket No. 176]	No objection.
M-14	Order Authorizing the Debtors (I) to Employ and Retain AP Services, LLC as Crisis Managers for the Debtors Effective as of the Commencement Date, (II) to Appoint David Johnston as Chief Restructuring Officer and (II) to Appoint Thomas Studebaker as Chief Financial Officer, dated November 14, 2012 [Docket No. 178]	No objection.
M-15	Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507(A) Authorizing Post-Petition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, and (D) Granting Related Relief dated November 20, 2012 [Docket No. 187]	No objection.
M-16	Operating Report for October, 2012 [Docket No. 189]	No objection.
M-17	Order Authorizing Retention of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, dated November 30, 2012 [Docket No. 209]	No objection.
M-18	Order Authorizing the Retention and Employment of Kelley Drye & Warren LLP as Counsel to the Official Committee of Unsecured Creditors of Metro Fuel Oil Corp., et al., Effective as of October 4, 2012, dated November 30, 2012 [Docket No. 210]	No objection.
M-19	Operating Report for November, 2012 [Docket No. 244]	No objection.
M-20	Operating Report for December, 2012 [Docket No. 310]	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-21	Motion of New York Commercial Bank for (A) Conversion of the Debtors' Cases to Chapter 7 Pursuant to 11 U.S.C. § 1112(b), (B) Stay Relief pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to Enforce Rights against Property of Debtors and Collect Indebtedness Owed by Debtors, and (C) for Prohibition of the Further Use of any Cash Collateral, dated January 29, 2013 [Docket No. 329]	<u>Committee's Response:</u> Subject to briefing schedule to be established by the Court.
M-22	Agreed Order Amending the Terms of the Debtors' Post-Petition Financing Facility and Temporarily Extending Use of Cash Collateral, dated February 8, 2013 [Docket No. 360] (together with the exhibit thereto)	No objection.
M-23	Auction Transcript, dated February 4-5, 2013	No objection.
M-24	Second Agreed Order Amending the Terms of the Debtors' Post-Petition Financing Facility, Temporarily Extending Use of Cash Collateral and Providing Stay Relief to New York Commercial Bank, dated February 13, 2013 [Docket No. 373] (together with the exhibit thereto)	No objection.
M-25	Declaration of Christopher K. Wu in Support of Debtors' Motion for Entry of an Order Authorizing and Approving (A) the Sale of all or any Portion of the Debtors' Assets and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases, dated February 14, 2013 [Docket No. 379]	No objection.
M-26	Order Authorizing (A) the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances; (B) the Debtors to Enter into and Perform their Obligations under the Asset Purchase Agreement; and (C) the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases dated February 15, 2013 [Docket No. 381] (together with the exhibit thereto)	No objection.
M-27	Operating Report for January, 2013 [Docket No. 388]	No objection.
M-28	Debtors' Closing Statement regarding sales, dated March 6, 2013	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-29	Order Authorizing (A) the Sale of the Debtors' Accounts Receivable Free and Clear of All Liens, Claims, Interests and Encumbrances and (B) the Debtors to Enter into and Perform Their Obligations Under the Accounts Receivable Purchase Agreement, dated March 7, 2013 [Docket No. 417] (together with the three exhibits thereto)	No objection.
M-30	Operating Report for February, 2013 [Docket No. 450]	No objection.
M-31	Fifth Statement Submitted in Compliance with Order Pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals for the Period March 1, 2013 through March 31, 2013 (FTI Consulting) [Docket No. 496] (offered only as proof of the amount asserted and sought)	No objection.
M-32	Monthly Fee Statement for March 2013 (Professional Fees and Disbursements of Kelley Drye & Warren LLP, Committee's Counsel) [Docket No. 497] (offered only as proof of the amount asserted and sought)	No objection.
M-33	Operating Report for March, 2013 [Docket No. 505]	No objection.
M-34	Fee Statement of Kirkland & Ellis LLP for Compensation for Services and Reimbursement of Expenses as Attorneys to the Debtors and Debtors in Possession for the Period from March 1, 2013 through March 31, 2013 [Docket No. 506] (offered only as proof of the amount asserted and sought)	No objection.
M-35	Fee Statement of Curtis, Mallet-Prevost, Colt & Mosle LLP for Compensation for Services And Reimbursement of Expenses as Co-Counsel to the Debtors and Debtors in Possession for the Period from March 1, 2013 through March 31, 2013 [Docket No. 518] (offered only as proof of the amount asserted and sought)	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-36	Monthly Fee Statement for April 2013 (Professional fees and Disbursements of Kelley Drye & Warren LLP, Committee's Counsel) [Docket No. 540] (offered only as proof of the amount asserted and sought)	No objection.
M-37	Fee Statement of Kirkland & Ellis LLP for Compensation for Services and Reimbursement of Expenses as Attorneys to the Debtors and Debtors in Possession for the Period from April 1, 2013 through April 30, 2013 [Docket No. 541] (offered only as proof of the amount asserted and sought)	No objection.
M-38	Operating Report for April, 2013 [Docket No. 542]	No objection.
M-39	Fee Statement of Curtis, Mallet-Prevost, Colt & Mosle LLP for Compensation for Services And Reimbursement of Expenses as Co-Counsel to the Debtors and Debtors in Possession for the Period from April 1, 2013 through April 30, 2013 [Docket No. 543] (offered only as proof of the amount asserted and sought)	No objection.
M-40	Notice of Filing by AP Services, LLC of the Second Report of Compensation Earned and Expenses Incurred for the Period from February 1, 2013 through April 30, 2013 dated June 3, 2013 (with attached exhibits) [Docket No. 563] (offered only as proof of the amount asserted and sought)	No objection.
M-41	Fee Statement of Kirkland & Ellis LLP for Compensation for Services and Reimbursement of Expenses as Attorneys to the Debtors and Debtors in Possession for the Period from May 1, 2013 through May 31, 2013 [Docket No. 592] (offered only as proof of the amount asserted and sought)	No objection.
M-42	Monthly Fee Statement for May 2013 (Professional Fees and Disbursements of Kelley Drye & Warren LLP, Committee's Counsel) [Docket No. 593] (offered only as proof of the amount asserted and sought)	No objection.
M-43	Operating Report for May, 2013 [Docket No. 594]	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-44	Fee Statement of Kirkland & Ellis LLP for Compensation for Services and Reimbursement of Expenses as Attorneys to the Debtors and Debtors in Possession for the Period from June 1, 2013 through June 30, 2013 [Docket No. 607] (offered only as proof of the amount asserted and sought)	No objection.
M-45	Fee Statement of Curtis, Mallet-Prevost, Colt & Mosle LLP for Compensation for Services And Reimbursement of Expenses as Co-Counsel to the Debtors and Debtors in Possession for the Period from May 1, 2013 through May 31, 2013 [Docket No. 608] (offered only as proof of the amount asserted and sought)	No objection.
M-46	Operating Report for June, 2013 [Docket No. 610]	No objection.
M-47	Monthly Fee Statement for June 2013(Professional fees and Disbursements of Kelley Drye & Warren LLP, Committee's Counsel) [Docket No. 612] (offered only as proof of the amount asserted and sought)	No objection.
M-48	Sixth Statement Submitted in Compliance with Order Pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals for the Period April 1, 2013 through June 30, 2013 (FTI Consulting) [Docket No. 624] (offered only as proof of the amount asserted and sought)	No objection.
M-49	Monthly Fee Statement for July 2013(Professional Fees and Disbursements of Kelley Drye & Warren LLP, Committee's Counsel) [Docket No. 626] (offered only as proof of the amount asserted and sought)	No objection.
M-50	Seventh Statement Submitted in Compliance with Order Pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals for the Period July 1, 2013 through July 31, 2013 (FTI Consulting) [Docket No. 627] (offered only as proof of the amount asserted and sought)	No objection.
M-51	Operating Report for July, 2013 [Docket No. 629]	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-52	Fee Statement of Curtis, Mallet-Prevost, Colt & Mosle LLP for Compensation for Services And Reimbursement of Expenses as Co-Counsel to the Debtors and Debtors in Possession for the Period from June 1, 2013 through June 30, 2013 [Docket No. 630] (offered only as proof of the amount asserted and sought)	No objection.
M-53	Fee Statement of Kirkland & Ellis LLP for Compensation for Services and Reimbursement of Expenses as Attorneys to the Debtors and Debtors in Possession for the Period from July 1, 2013 through July 31, 2013 [Docket No. 631] (offered only as proof of the amount asserted and sought)	No objection.
M-54	Fee Statement of Curtis, Mallet-Prevost, Colt & Mosle LLP for Compensation for Services And Reimbursement of Expenses as Co-Counsel to the Debtors and Debtors in Possession for the Period from July 1, 2013 through July 31, 2013 [Docket No. 633] (offered only as proof of the amount asserted and sought)	No objection.
M-55	Notice of Filing by AP Services, LLC of the Third Report of Compensation Earned and Expenses Incurred for the Period from May 1, 2013 through July 31, 2013 (with attached exhibits) [Docket No. 643] (offered only as proof of the amount asserted and sought)	No objection.
M-56	Monthly Fee Statement for August 2013(Professional Fees and Disbursements of Kelley Drye & Warren LLP, Committee's Counsel) [Docket No. 646] (offered only as proof of the amount asserted and sought)	No objection.
M-57	Fee Statement of Kirkland & Ellis LLP for Compensation for Services and Reimbursement of Expenses as Attorneys to the Debtors and Debtors in Possession for the Period from August 1, 2013 through August 31, 2013 [Docket No. 647] (offered only as proof of the amount asserted and sought)	No objection.
M-58	Operating Report for August, 2013 [Docket No. 648]	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-59	Fee Statement of Curtis, Mallet-Prevost, Colt & Mosle LLP for Compensation for Services And Reimbursement of Expenses as Co-Counsel to the Debtors and Debtors in Possession for the Period from August 1, 2013 Through August 31, 2013 [Docket No. 655] (offered only as proof of the amount asserted and sought)	No objection.
M-60	Docket of Debtors' bankruptcy cases through October 10, 2013	No objection.
M-61	NYCB Proof of Claim as filed	No objection.
M-62	Valley Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-63	Trufund Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-64	U.S. Bank Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-65	T.J. Mycon Industries Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-66	Petroleum Kings LLC Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-67	Bayside Fuel Oil Depot Corporation Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-68	Cowboys Electrical Supply Inc. Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-69	Control Associates Inc. Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-70	FCC Environmental, LLC Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-71	Big Apple Energy, LLC Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-72	Safety-Kleen Systems Inc. Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-73	NIC Holding Corp. Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-74	Philips 66 Company Proof of Claim as filed (offered only as proof of the indebtedness and collateral security asserted; not an admission by NYCB)	No objection.
M-75	Summary/Cover Sheet of First Interim Application of Kelley Drye & Warren LLP, Counsel for the Official Committee of Unsecured Creditors of Metro Fuel Oil Corp., et al., for Interim Allowance of Compensation for Professional Services Rendered and for Reimbursement of Expenses for the First Interim Fee Period from October 4, 2012 through January 31, 2013 [Docket No. 394] (offered only as proof of the amount asserted and sought)	No objection.
M-76	First Interim Application of FTI Consulting, Inc., Financial Advisor to the Official Committee of Unsecured Creditors of Metro Fuel Oil Corp., et al., for Interim Allowance of Compensation and Reimbursement of Expenses for Services Rendered During the Period October 8, 2012 through January 31, 2013 [Docket 395] (offered only as proof of the amount asserted and sought)	No objection.

Exh. No.	Identity of Exhibit	Objection to Admission and Objector
M-77	Summary Cover Sheet for First Interim Fee Application of Kirkland & Ellis LLP, Counsel to the Debtors, for the Period from September 27, 2012 through and including January 31, 2013 [Docket 418] (offered only as proof of the amount asserted and sought)	No objection.
M-78	Summary of the First Interim and Final Application of Carl Marks Advisory Group LLC, as Financial Advisor and Investment Banker for the Debtors and Debtors in Possession, for Allowance and Payment of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred from October 2, 2012 through February 28, 2013 [Docket 419] (offered only as proof of the amount asserted and sought)	No objection.
M-79	Summary Cover Sheet of First Interim Fee Application of Curtis, Mallet-Prevost, Colt & Mosle LLP, Co-Counsel to the Debtors, for the Period from September 27, 2012 through and including January 31, 2013 [Docket No. 420] (offered only as proof of the amount asserted and sought)	No objection.
M-80	Notice of Filing AP Services, LLC of the First Report of Compensation Earned and Expenses Incurred for the Period from September 27, 2012 through January 31, 2013 [Docket No. 433] (offered only as proof of the amount asserted and sought)	No objection.
M-81	Amended Motion of New York Commercial Bank for Conversion of the Debtors' Cases to Chapter 7 Pursuant to 11 U.S.C. § 1112(B), dated May 10, 2013 [Docket No. 525]	Committee's Response: Subject to briefing schedule to be established by the Court.

B. Exhibits to be Offered by Other Parties:**81. Committee's Response:**

C-1	Motion of Committee for modification of exclusivity to file liquidating plan.	Not yet filed. NYCB reserves the right to object upon its review of such motion. NYCB objects to these exhibits being designated, including because the documents do not exist. NYCB reserves its rights.
C-2	Motion of Committee to file under seal.	Not yet filed. NYCB reserves the right to object upon its review of such motion. NYCB objects to these exhibits being designated, including because the documents do not exist. NYCB reserves its rights.
C-3	Motion to shorten time on filing of foregoing.	Not yet filed. NYCB reserves the right to object upon its review of such motion. NYCB objects to these exhibits being designated, including because the documents do not exist. NYCB reserves its rights.
C-4	Disclosure Statement	Not yet filed. NYCB reserves the right to object upon its review of such motion. NYCB objects to these exhibits being designated, including because the documents do not exist. NYCB reserves its rights.
C-5	Plan	Not yet filed. NYCB reserves the right to object upon its review of such motion. NYCB objects to these exhibits being designated, including because the documents do not exist. NYCB reserves its rights.

IX. List of Fact and Expert Witnesses to be Called by Each Party and a Statement as to Which Disputed Issues of Fact such Witness' Testimony Will Be Directed.

The witnesses that NYCB anticipates calling as described in VI. above are Andrew Baltz and/or Richard Szekelyi, at NYCB's option. These witnesses would testify to the facts asserted herein by NYCB, as necessary to rebut and respond to any allegations raised by the Committee and/or Debtors and as otherwise permitted under the Federal Rules of Bankruptcy Procedure.

The witnesses that the Committee anticipates calling as described in VI. above are Matt Diaz of FTI Consulting and David Johnston, Jon Labovitz, and Thomas Studebaker of AP Services, at the Committee's option. These witnesses would testify to the facts asserted herein by the Committee, as necessary to rebut and respond to any allegations raised by NYCB and as otherwise permitted under the Federal Rules of Bankruptcy Procedure.

Dated: New York, New York

October 16, 2013

LOEB & LOEB LLP

CURTIS, MALLET-PREVOST COLT
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