

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

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In re) Chapter 11
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QIMONDA RICHMOND, LLC, <u>et al.</u> , ¹) Case No. 09-10589 (MFW)
)
Debtors.) Jointly Administered
) Re: Docket No. 511
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ORDER GRANTING DEBTORS' MOTION, PURSUANT TO SECTIONS 105(a), 105(d) AND 363(b) OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER APPROVING BIDDING PROTECTION PROCEDURES AND BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF CERTAIN ASSETS OF THE DEBTORS

Upon consideration of the *Debtors' Motion, Pursuant to Sections 105(a), 105(d) and 363(b) of the Bankruptcy Code, for Entry of an Order Approving Bidding Protection Procedures and Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors* (the "Motion"); the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157, (iii) notice of the Motion was sufficient under the circumstances and that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors² and their estates and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, that the Motion is GRANTED in its entirety; and it is further

¹ The Debtors in these chapter 11 cases, along with the last four (4) digits of each debtor's federal tax identification number, are: Qimonda Richmond, LLC (7867) and Qimonda North America Corp. (4654).

² All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

ORDERED, that the Bidding Procedures annexed hereto as Exhibit A are approved, and the Debtors are authorized to use such Bidding Procedures in connection with sales of all or a portion of the Debtors' assets and the GECC Assets (as defined below), subject to paragraph (b) below), involving in each case, the transfer of \$1 million or more in total consideration, as measured by the amount of cash and other consideration to be received by the Debtors on account of each asset to be sold (each an "Asset" and, collectively, the "Assets") and, after consultation with the Committee's professionals, and General Electric Capital Corporation (or any of its affiliates, collectively "GECC") if any GECC Equipment (as defined below) is among the Assets to be sold, modify such procedures or include additional requirements in the procedures provided that such modifications or additions are not materially inconsistent with the Bidding Procedures annexed to the Motion; and it is further

ORDERED, that the following Bidding Protection Procedures are approved, and the Debtors are authorized to use such Bidding Protection Procedures in connection with sales of all or a portion of the Assets:

- (a) After the Debtors determine to designate a potential bidder as the Stalking Horse Bidder for certain assets, the Debtors will consult with the Committee's professionals regarding such designation and any Bidding Protections requested in such bid.
- (b) Notwithstanding anything herein or in the Bidding Procedures to the contrary, the Debtors shall not designate any potential bidder as the Stalking Horse Bidder for the equipment set forth on that certain Schedule No. 001 to that certain Master Lease Agreement, dated December 21, 2007, between GECC as Lessor and Qimonda Richmond, LLC ("QR") as Lessee, ("GECC Assets"), or sell any GECC Assets, without obtaining the prior, written consent of GECC and without the need for GECC to file and serve an Objection (as defined below). For any (x) Assets encumbered by liens of GECC (the "GECC Boot Collateral"), including, without limitation, the equipment set forth on the Collateral Schedule to that certain Security Agreement dated as of December 21, 2007 between GECC and QR, and/or (y) any assets co-owned by a Debtor and GECC (collectively with the GECC Assets and the GECC Boot Collateral, the

“GECC Equipment”), after the Debtors determine to designate a potential bidder as the Stalking Horse Bidder for such assets, the Debtors shall consult with GECC regarding such designation and the Bidding Protections required in such bid. Furthermore, notwithstanding anything herein to the contrary, (i) in no event shall the Bid Deadline in any Bidding Procedures with respect to any GECC Equipment be less than ten (10) Business Days from the date of the relevant Bidding Protection Order approving a Stalking Horse Notice and (ii) the Debtors shall obtain the prior, written consent of GECC with respect to the Bidding Procedures with respect to any sale or other disposition of any GECC Assets. Both GECC and the Debtors otherwise reserve all of their rights with respect to the GECC Master Lease, the GECC Security Agreement, the GECC Use and Access Agreement (each as discussed in this Paragraph (b) and Paragraph 15 of the Final Order) and the GECC Equipment.

- (c) Thereafter, the Debtors shall file with the Court a Stalking Horse Notice, which notice shall include (i) a brief summary of the Stalking Horse Agreement, any Bidding Protections required therein and the amount of any Initial Incremental Bid Amount; (ii) a copy of the Stalking Horse Agreement and the final form of the applicable Bidding Procedures related to such Stalking Horse Agreement; (iii) a declaration submitted by the Debtors or an advisor setting forth the factual predicate justifying the bidding protections proposed therein sufficient to meet the applicable legal standards, including Calpine Corp. v. O’Brien Environmental Energy, Inc. (In re O’Brien Environmental Energy, Inc.), 181 F.3d 527 (3d Cir. 1999); and (iv) a proposed form of Bidding Protection Order.
- (d) Such Stalking Horse Notice will be served by overnight mail and/or email on: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Committee; (iii) counsel to the agent for the postpetition lenders; (iv) counsel to the QAG administrator; (v) counsel to GECC; and (vi) any parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”).
- (e) Notwithstanding anything herein to the contrary, (i) GECC shall be deemed a Qualified Bidder, (ii) if GECC submits all Required Bid Documents in accordance with the terms of the Bidding Procedures, such a bid submitted by GECC shall be deemed a Qualified Bid, and (iii) nothing in this Order, the Bidding Procedures or any Bidding Protections Order shall affect any rights GECC has to submit a credit bid pursuant to section 363(k) of the Bankruptcy Code.
- (f) If no objections to the Stalking Horse Notice are filed with the Court within ten (10) business days of the filing and service of the Stalking Horse Notice, the Debtors will submit the Bidding Protection Order under a certificate of no objection for this Court’s consideration.

- (g) If a timely objection is received, the Debtors will schedule an expedited hearing with the Court for approval of the Bidding Protection Order; provided, that such hearing shall occur on at least three (3) business day's notice to the (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel to the Committee, (iii) counsel to the agent for the postpetition lenders, (iv) counsel to the QAG administrator, (v) counsel to GECC, and (vi) counsel to the objecting party; and it is further

ORDERED, that this Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

Dated: July 21, 2009
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE