

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:	)	Chapter 11 Cases
	)	
AMSCO STEEL COMPANY, L.L.C.,	)	Case No. 15-43239-rfn11
PYNDUS STEEL & ALUMINUM CO., INC.,	)	Case No. 15-43240-dml11
	)	
Debtors.	)	<b>Jointly Administered Under</b>
	)	<b>Case No. 15-43239-rfn11</b>

**FIRST AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE  
UNITED STATES BANKRUPTCY CODE WITH RESPECT TO THE DEBTORS' AND  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS' FIRST AMENDED JOINT CHAPTER  
11 PLAN OF LIQUIDATION OF AMSCO STEEL COMPANY, L.L.C. AND PYNDUS STEEL &  
ALUMINUM CO., INC.**

Dated: June 8, 2016.

J. Robert Forshey  
State Bar No. 07264200  
Matthew G. Maben  
State Bar No. 24037008  
FORSHEY & PROSTOK LLP  
777 Main St., Suite 1290  
Fort Worth, Texas 76102  
Telephone: (817) 877-8855  
Facsimile: (817) 877-4151  
[bforshey@forsheyprostok.com](mailto:bforshey@forsheyprostok.com)  
[mmaben@forsheyprostok.com](mailto:mmaben@forsheyprostok.com)  
**Attorneys for Debtors and  
Debtors in Possession**

**FOX ROTHSCHILD LLP**  
(Formed in the Commonwealth of  
Pennsylvania)  
100 Park Avenue, 15<sup>th</sup> Floor  
New York, New York 10017  
212-878-7900  
212-692-0940 (facsimile)  
Paul J. Labov, Esq.  
Michael G. Menkowitz, Esq.  
[plabov@foxrothschild.com](mailto:plabov@foxrothschild.com)  
[mmenkowitz@foxrothschild.com](mailto:mmenkowitz@foxrothschild.com)  
**Attorneys for the Official  
Committee of Unsecured Creditors**

AMSCO Steel Company, L.L.C. ("AMSCO") and Pyndus Steel & Aluminum Co., Inc. ("Pyndus" and, together with AMSCO, the "Debtors") and the Official Committee of Unsecured Creditors (the "Committee") hereby submit this First Amended Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code with Respect to the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Chapter 11 Plan of Liquidation of AMSCO Steel Company, L.L.C. and Pyndus Steel & Aluminum Co., Inc. (the "Disclosure Statement"). This Disclosure Statement is to be used in connection with the solicitation of votes on the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Chapter 11 Plan of Liquidation of AMSCO Steel Company, L.L.C. and Pyndus Steel & Aluminum Co., Inc. dated June 8, 2016 (the "Plan"). A copy of the Plan is attached hereto as **Exhibit "A"**. Unless otherwise defined herein, terms used herein have the meanings ascribed thereto in the Plan (see Article II.B. of the Plan).

For a general summary of the proposed treatment of Claims or Equity Interests under the Plan, please see the chart below.

## I. NOTICE TO HOLDERS OF CLAIMS

### A. Generally

The purpose of this Disclosure Statement is to enable Creditors whose Claims are Impaired to make an informed decision in exercising their right to vote to accept or reject the Plan.

THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN. PLEASE READ THIS DOCUMENT WITH CARE.

On [REDACTED], 2016, the Bankruptcy Court entered an *Order* (the "Solicitation Procedures Order") conditionally approving this Disclosure Statement for use in soliciting votes to accept or reject the Plan. A copy of the Solicitation Procedures Order is included in the materials accompanying this Disclosure Statement. **CONDITIONAL APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE A FINAL DETERMINATION BY THE BANKRUPTCY COURT THAT THE DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION AS REQUIRED BY SECTION 1125 OF THE BANKRUPTCY CODE OR A DETERMINATION REGARDING THE FAIRNESS OR MERITS OF THE PLAN.**

The statements contained in the Disclosure Statement are made as of the date hereof unless another time is specified, and neither delivery of the Disclosure Statement nor any exchange of rights made in connection with the Plan shall, under any circumstances, create an implication that there has not been any change in the information set forth herein since the date the Disclosure Statement and the materials relied on in preparation of the Disclosure Statement were compiled.

For the convenience of Creditors and parties in interest, this Disclosure Statement summarizes the terms of the Plan, but the Plan itself qualifies all summaries. This Disclosure Statement is qualified in its entirety by the terms of the Plan. If any inconsistency exists between the Plan and the Disclosure Statement, the terms of the Plan are controlling.

Each Creditor should consult the Creditor's individual attorney, accountant and/or financial advisor as to the effect of the Plan on such Creditor.

Each Holder of a Claim or Equity Interest entitled to vote to accept or reject the Plan should read this Disclosure Statement and the Plan in their entirety before voting. No solicitation of votes to

accept or reject the Plan may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. No Holder of a Claim entitled to vote on the Plan should rely upon any information relating to the Debtors, their businesses, or the Plan other than that contained in this Disclosure Statement and the exhibits hereto. Unless otherwise indicated, the source of all information set forth herein is the Debtors.

The Disclosure Statement may not be relied on for any purpose other than to determine whether to vote in favor of or against the Plan and related options and elections, and nothing contained herein shall constitute an offer to sell or purchase a security as defined by state or Federal securities law or an admission of any fact or liability by any party, or be admissible in any proceeding involving the Debtors or any other party, or be deemed conclusive evidence of the tax or other legal effects of the Plan on Holders of Claims or Equity Interests. Certain of the information contained in the Disclosure Statement, by its nature, is forward looking, and contains estimates and assumptions which may prove to be wrong or which may be materially different from actual results.

After carefully reviewing this Disclosure Statement, including the attached exhibits, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot and returning the same to the address set forth on the Ballot, in the enclosed return envelope so that it will be received by no later than 5:00 P.M., CENTRAL TIME, ON [REDACTED], 2016.

If you do not vote to accept the Plan, or if you are the Holder of an Unimpaired Claim or Equity Interest, you may be bound by the Plan if it is accepted by the requisite Holders of Claims or Equity Interests. See "Confirmation of the Plan – Solicitation of Votes; Vote Required for Class Acceptance" beginning on page 33 and "Cramdown" beginning on page 37 of this Disclosure Statement.

TO BE SURE YOUR BALLOT IS COUNTED, YOUR BALLOT MUST BE RECEIVED NO LATER THAN 5:00 P.M., CENTRAL TIME, ON [REDACTED], 2016. For detailed voting instructions and the name, address, and phone number of the person you may contact if you have questions regarding the voting procedures, see "Confirmation of the Plan – Solicitation of Votes; Voting Procedures – Parties In Interest Entitled to Vote" beginning on page 32 of this Disclosure Statement.

The Bankruptcy Court has scheduled a combined hearing on [REDACTED], 2016 at [REDACTED] a.m., Central Time, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division to consider final approval of this Disclosure Statement and confirmation of the Plan. The Bankruptcy Court has directed that objections, if any, to final approval of this Disclosure Statement and/or confirmation of the Plan be filed and served on or before [REDACTED], 2016, in the manner described under the caption, "Confirmation of the Plan – Confirmation Hearing" beginning on page 34 of this Disclosure Statement.

THE DEBTORS AND THE COMMITTEE SUPPORT CONFIRMATION OF THE PLAN AND URGE ALL HOLDERS OF IMPAIRED CLAIMS AND EQUITY INTERESTS TO VOTE TO ACCEPT THE PLAN.

**B. Summary of Treatment under the Plan**

The following is an estimate of the numbers and amounts of classified Claims and Equity Interests to receive treatment under the Plan, and a summary of the proposed treatment of such Claims and Equity Interests under the Plan. Reference should be made to the entire Disclosure Statement and to the Plan for a complete description of the classification and treatment of Claims

and Equity Interests.

The Bar Date (for all Creditors except governmental units) for filing proofs of Claim against the Debtors was January 7, 2016. The table below is drawn from the Debtors' Schedules and filed proofs of Claim. The final universe of Claims, as actually Allowed, may differ from this table.

<b>Class</b>	<b>Treatment</b>
<p><b><u>Class 1</u> - Priority Non-Tax Wage Claims</b></p> <p><b>Estimated Amount: \$67,000.00</b></p> <p><b>Estimated Holders: 30</b></p>	<p>Impaired</p> <ul style="list-style-type: none"> <li>Class One consists of the Claims of those individuals who hold Allowed Priority Non-Tax Claims against the Debtors for wages and benefits as defined under Bankruptcy Code § 507(a)(4). Upon the Effective Date, Class One shall receive either Cash in the full amount of their Allowed Priority Non-Tax Claim, or, if this Class has accepted the Plan, deferred cash payments of a value, as of the Effective Date, equal to the Allowed Non Tax Priority Claims.</li> </ul> <p><b>Estimated Recovery: unknown</b></p>
<p><b><u>Class 2</u> – Other Priority Non-Tax Claims</b></p> <p><b>Estimated Amount: unknown</b></p> <p><b>Holdings: unknown</b></p>	<p>Impaired</p> <ul style="list-style-type: none"> <li>Class Two shall consist of Claims of those individuals who hold Allowed Priority Non-Tax Claims against the Debtors. These claims are either for consumer deposits as defined under Bankruptcy Code § 507(a)(7) or benefits provided to employees under Bankruptcy Code § 507(a)(5). Upon the Effective Date, Class Two shall receive either Cash in the full amount of their Allowed Priority Non-Tax Claim, or, if this Class has accepted the Plan, deferred cash payments of a value, as of the Effective Date, equal to the Allowed Non-Tax Priority Claims.</li> </ul> <p><b>Estimated Recovery: unknown</b></p>
<p><b><u>Class 3</u> – General Unsecured Creditors</b></p> <p><b>Estimated Amount: \$6,280,000.00</b></p> <p><b>Estimated Holders: 210</b></p>	<p>Impaired</p> <ul style="list-style-type: none"> <li>Class Three consists of all Allowed Unsecured Claims against the Debtors. Each Person holding an Allowed Class Three Claim shall be entitled to receive their <i>pro rata</i> share of the proceeds deposited into the Post Confirmation Trust, subordinate to all payments required to be made to holders of Allowed Administrative and Priority Claims. The treatment and consideration to be received by</li> </ul>

Class	Treatment
	<p> Holders of Allowed Class Three Claims shall be in full settlement and final satisfaction of their respective Claims.</p> <p><b>Estimated Recovery: unknown</b></p>
<p><b>Equity Interests</b></p> <p><b>Holders: 7</b></p>	<p>Impaired</p> <ul style="list-style-type: none"> <li>Class Four consists of Equity Interests in the Debtors, including, without limitation, options, warrants and other rights to acquire equity interests in the Debtors. Holders of Class Four Equity Interests will not receive or retain any interest in the Debtors or receive any distribution from the Debtors' estates or the Post Confirmation Trusts on account of their Equity Interests. Accordingly, Class Four is an Impaired Class deemed to have rejected the Plan pursuant to Bankruptcy Code § 1126(g).</li> </ul>

The total universe of Claims, as ultimately Allowed, may be greater or smaller than as reflected in the above analysis.

## II. EXPLANATION OF CHAPTER 11

### A. Overview of Chapter 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11, the debtor-in-possession attempts to reorganize its business for the benefit of the debtor, its creditors, and other parties in interest. The Debtors commenced their Chapter 11 Case with the filing of voluntary chapter 11 petitions on August 10, 2015.

The commencement of a chapter 11 case creates an estate comprising all the legal and equitable interests of the debtor in property as of the date the petition is filed. Sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a "debtor in possession" unless the bankruptcy court orders the appointment of a trustee. In the present Chapter 11 Case, the Debtors operated their businesses as debtors-in-possession until on or about October 30, 2015, at which time the Debtors terminated their employees and ceased ongoing operations following the closing of a sale of substantially all of the Debtors' Assets to DFW Steel, LLC.

The filing of a chapter 11 petition also triggers the automatic stay provisions of the Bankruptcy Code. Section 362 of the Bankruptcy Code provides, *inter alia*, for an automatic stay of all attempts to collect pre-petition claims from the debtor or otherwise interfere with its property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay remains in full force and effect until the effective date of a confirmed plan of reorganization.

The formulation of a plan of reorganization is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying the claims against and interests in the debtor.

Generally, unless a trustee is appointed, only the debtor may file a plan during the first 120 days of a chapter 11 case (the "Exclusive Period"). However, section 1121(d) of the Bankruptcy Code permits the court to extend or reduce the Exclusive Period upon a showing of "cause." After the Exclusive Period has expired, a creditor or any other party in interest may file a plan, unless the debtor has filed a plan within the Exclusive Period, in which case, the debtor is generally given 60 additional days (the "Solicitation Period") during which it may solicit acceptances of its plan. The Solicitation Period may also be extended or reduced by the court upon a showing of "cause."

## **B. Plan of Reorganization**

Although referred to as a plan of reorganization, a plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of the debtor's assets. In the Chapter 11 Case, the Plan, as proposed by the Debtors and the Committee, provides that the Debtors will be substantively consolidated on the Effective Date and provides for a liquidation of the Debtors' remaining Assets.

After a plan of reorganization has been filed, the holders of impaired claims against or interests in a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, section 1125 of the Bankruptcy Code requires the debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. This Disclosure Statement is presented to Holders of Claims against and Equity Interests in the Debtors to satisfy the requirements of section 1125 of the Bankruptcy Code.

If all classes of claims and interests accept a plan of reorganization, the bankruptcy court may nonetheless still not confirm the plan unless the court independently determines that the requirements of section 1129 of the Bankruptcy Code have been satisfied. Section 1129 sets forth the requirements for confirmation of a plan and, among other things, requires that a plan meet the "best interests of creditors" test and be "feasible." The "best interests of creditors" test generally requires that the value of the consideration to be distributed to the holders of claims and interests under a plan may not be less than those parties would receive if the debtor were liquidated pursuant to a hypothetical liquidation occurring under chapter 7 of the Bankruptcy Code. Under the "feasibility" requirement, the court generally must find that there is a reasonable probability that the debtor will be able to meet its obligations under its plan without the need for further financial reorganization.

The Debtors and the Committee believe that the Plan satisfies all the applicable requirements of section 1129(a) of the Bankruptcy Code, including, in particular, the "best interests of creditors" test and the "feasibility" requirement. The Debtors and the Committee support confirmation of the Plan and urge all Holders of Impaired Claims to accept the Plan.

Chapter 11 does not require that each holder of a claim against or interest in a debtor vote in favor of a plan of reorganization in order for the bankruptcy court to confirm the plan. At a minimum, however, the plan must be accepted by a majority in number and two-thirds in amount of those claims actually voting in at least one class of impaired claims under the plan. The Bankruptcy Code also defines acceptance of the plan by a class of interests (equity securities) as acceptance by holders of two-thirds of the number of shares actually voting. In the present cases, only the holders of Claims or Equity Interests who actually vote will be counted as either accepting or rejecting the Plan.

In addition, classes of claims or interests that are not "impaired" under a plan of reorganization are conclusively presumed to have accepted the plan and thus are not entitled to

vote. Accordingly, acceptances of a plan will generally be solicited only from those persons who hold claims or interests in an impaired class. A class is "impaired" if the legal, equitable, or contractual rights attaching to the claims or interests of that class are modified in any way under the plan. However, if holders of the claims or interests in a class do not receive or retain any property on account of such claims or interests, then each such holder is deemed to have voted to reject the plan and does not actually cast a vote to accept or reject the plan.

Equity Interests in the Debtors are impaired under the Plan, but the Holders of such Equity Interests shall retain no property and receive no distributions under the Plan on account of such Equity Interests. All other Classes of Claims are Impaired under the Plan and, therefore, each Holder of a Claim in such other Classes is entitled to vote on the Plan.

The bankruptcy court may also confirm a plan of reorganization even though fewer than all the classes of impaired claims and interests accept it. For a plan of reorganization to be confirmed despite its rejection by a class of impaired claims or interests, the proponents of the plan must show, among other things, that the plan does not "discriminate unfairly" and that the plan is "fair and equitable" with respect to each impaired class of claims or interests that has not accepted the plan.

Under section 1129(b) of the Bankruptcy Code, a plan is "fair and equitable" as to a class of rejecting claims if, among other things, the plan provides: (a) with respect to secured claims, that each such holder will receive or retain on account of its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; and (b) with respect to unsecured claims and interests, that the holder of any claim or interest that is junior to the claims or interests of such class will not receive or retain on account of such junior claim or interest any property at all unless the senior class is paid in full.

A plan does not "discriminate unfairly" against a rejecting class of claims if (a) the relative value of the recovery of such class under the plan does not differ materially from that of any class (or classes) of similarly situated claims, and (b) no senior class of claims is to receive more than 100% of the amount of the claims in such class.

The Debtors and the Committee believe that the Plan has been structured so that it will satisfy these requirements as to any rejecting Class of Claims, and can therefore be confirmed, if necessary, over the objection of any Classes of Claims. The Debtors and the Committee, however, reserve the right to request confirmation of the Plan under the "cramdown" provisions of section 1129 of the Bankruptcy Code.

### **III. THE DEBTORS AND THEIR BUSINESS**

#### **A. The Debtors**

AMSCO was formed in 1952 and was located in Fort Worth, Texas. Pyndus is a wholly owned subsidiary of AMSCO and operated out of a facility in San Antonio, Texas. Prior to ceasing operations, the Debtors were suppliers and processors of steel products for a wide variety of customers throughout the United States and Mexico. The industries served by the Debtors included energy, industrial, HVAC, commercial and residential construction, original equipment manufacturers, precision sheet metal, metal stamping, distributors and warehousing. The products offered by the Debtors to their customers included the following varieties of steel: hot-rolled, cold-rolled, pickled and oiled, galvanized, galvanized, galvalume and electro-galvanized. The Debtors possessed the capability to decoil, slit, cut to length, edge condition, and shear and brake steel to customized specifications for their customers.

## **B. The Debtors' Management**

AMSCO's President is John Clayton Sikes. Stephen Sikes is the Chairman and CEO of Pyndus. The Debtors' CFO was William Monroe. Upon ceasing operations on or about October 30, 2015, the Debtors terminated all employees.

## **C. Pre-petition Financing Structure of the Debtors**

As of the Petition Date, the Debtors were indebted to Marquette pursuant to a loan made by Marquette to the Debtors. Such loan is allegedly evidenced by, *inter alia*, (a) that certain Line of Credit Promissory Note dated December 3, 2013 in the original principal amount of \$6,000,000.00 (the "Note"), and (b) that certain Loan and Security Agreement dated as of December 5, 2013 by and among AMSCO, Pyndus and Posey Steel Supply, L.L.C. Industries, Ltd., as borrowers, and Marquette, as lender (the "Loan Agreement"). The Note and Loan Agreement, together with all related documents and agreements by and between the Debtors as borrowers and Marquette as lender are hereafter referred to as the "Loan Documents." In the months leading up to the Petition Date, the Debtors operated under a series of forbearance agreements with Marquette. The original maturity date of the Note was December 5, 2016, but was accelerated to June 30, 2015 under one of the forbearance agreements.

Under the Loan Documents, the Debtors allegedly granted to Marquette a security interest in and lien on all assets of the Debtors, including accounts and inventory, and all products and proceeds thereof. As of the Petition Date, Marquette asserts a perfected lien to secure payment of the Note, as reflected by certain UCC Financing Statements recorded by Marquette with the Texas Secretary of State.

As of the Petition Date, the Debtors were also indebted to Meridian Bank Texas ("Meridian") as evidenced by (a) that certain Promissory Note dated April 6, 2011 in the original principal amount of \$900,000.00 and (b) that certain Note dated April 6, 2011 in the original principal amount of \$2,000,000.00. The Debtors granted to Meridian a security interest in and liens on certain machinery and equipment of the Debtors to secure payment of the indebtedness to Meridian. Pursuant to certain UCC Financing Statements recorded by Meridian with the Texas Secretary of State, Meridian asserted a perfected lien against such machinery and equipment, with such lien being prior and superior to the lien asserted by Marquette.

The Debtors and Marquette reached an agreement (the "Agreement") resolving all claims between them. A Bankruptcy Rule 9019 Motion setting forth the terms of the settlement can be found at Dkt. No. 206. On February 26, 2016, the Bankruptcy Court entered a Stipulation and Order Transferring the Estates' Claims to the Committee for the purpose of prosecuting any and all claims held by the Estates. The Committee agreed to waive any and all claims against Marquette in exchange for Marquette no longer being a creditor in these Chapter 11 proceedings. Marquette has agreed to waive all claims against the Estates. Bankruptcy Court approval of the Agreement will result in Marquette no longer being a creditor in connection with these Chapter 11 cases.

## **IV. FEASIBILITY**

The Bankruptcy Code conditions confirmation of a plan of reorganization on, among other things, a finding that it is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor. Because the Plan provides for the complete liquidation of the Debtors' remaining Assets in the first instance, the Debtors and the Committee believe that the Plan satisfies the Bankruptcy Code's feasibility requirement.



## V. THE CHAPTER 11 CASE

### A. Factors Leading To Filing of the Chapter 11 Case

As a result of the economic downturn, beginning in 2009 the Debtors began experiencing liquidity issues. The Debtors were able to stabilize operations, but continued to experience liquidity issues. The Debtors defaulted on certain obligations allegedly owing to Marquette. The Debtors then operated under a series of forbearance agreements with Marquette during the months preceding the Petition Date.

The Debtors diligently attempted to locate strategic and/or financial lending sources and/or buyers for their businesses in order to solve their liquidity problems. Although the Debtors engaged Headwaters MB pre-petition as financial advisors to assist in these efforts, the Debtors were unable to obtain refinancing or consummate a sale of the businesses outside of bankruptcy. While operating under the forbearance agreements, Marquette significantly restricted lending to the Debtors and typically advanced the bare minimum of funds necessary to allow the Debtors to operate, while causing the indebtedness to Marquette to be paid down substantially. Marquette ultimately declined to extend the last forbearance agreement and gave notice of its intent to exercise its state law rights to dispose of its collateral before the Debtors could obtain refinancing or consummate a sale of the businesses. Consequently, the Debtors commenced the Chapter 11 Case to preserve the value of the Assets and in an effort to ultimately generate the greatest possible return to all Creditors.

### B. Commencement of the Chapter 11 Cases

On August 10, 2015, the Debtors filed voluntary petitions for protection under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division. Pursuant to an *Order Regarding Filing of Pleadings and Directing Joint Administration of Cases* entered on August 13, 2015 [Docket No. 21], the Debtors' bankruptcy cases are jointly administered under Case No. 15-43239-rfn11 and are presided over by the Honorable Russell F. Nelms, United States Bankruptcy Judge.

### C. Professionals

The following is a list of each of the Professionals that has been employed in the Chapter 11 Case, with a description of the role of each such Professional:

<u>Professional</u>	<u>Role of Professional</u>	<u>Date of Entry and Docket No. of Employment Order</u>
Forshey & Prostok, LLP	Lead bankruptcy counsel for the Debtors	September 25, 2015 [Docket No. 100]
SSG Advisors, LLC and Chiron Financial Group	Investment bankers for the Debtors	August 31, 2015 [Docket No. 79]
Bourland, Wall & Wenzel, P.C.	Special litigation counsel for the Debtors	October 23, 2015 [Docket No. 135]
Mark M. Jones & Associates, P.C.	Outside accountants for the Debtors	October 30, 2015 [Docket No. 144]

Fox Rothschild LLP	Counsel for the Committee	October 1, 2015 [Docket No. 110]
Calderone Advisory Group, LLC	Financial advisors for the Committee	December 18, 2015 [Docket No. 175]

**D. Creditors' Committee**

On August 20, 2015, the United States Trustee appointed the Committee [Docket No. 37].

**E. Professional Fees and Expenses**

Pursuant to certain interim orders authorizing the Debtors' use of cash collateral [see Docket Nos. 75, 81, 104 and 145], the Debtors were authorized to pay certain amounts to Forshey & Prostok, LLP ("Forshey & Prostok") on account of professional fees and expenses incurred by Forshey & Prostok, with such payments to be held in trust pending Court approval of one or more appropriate fee applications. Forshey & Prostok received payments from the Debtors totaling \$45,000, which amount continues to be held in trust by Forshey & Prostok. Forshey & Prostok filed its first interim fee application on April 27, 2016, seeking interim approval of \$176,252.25 for professional fees and reimbursement of \$19,669.52 for out-of-pocket expenses incurred from August 10, 2015 through February 29, 2016. In such fee application, Forshey & Prostok has requested authorization to apply the \$45,000 held in trust by it to any fees and expenses allowed on an interim basis.

Certain of the interim orders authorizing the Debtors' use of cash collateral also authorized the Debtors to pay certain amounts to Fox Rothschild, LLP ("Fox Rothschild") on account of both professional fees and expenses incurred by Fox Rothschild and professional fees and expenses incurred by Calderone Advisory Group, LLC ("Calderone"), with such payments to be held in trust pending Court approval of one or more appropriate fee applications. Fox Rothschild received payments from the Debtors totaling \$45,000 earmarked for payment of professional fees and expenses incurred by Fox Rothschild. Fox Rothschild received additional payments from the Debtors totaling \$12,500 earmarked for payment of professional fees and expenses incurred by Calderone. To date, Fox Rothschild has filed one interim fee application which was granted pursuant to an order [Docket No. 195] entered on February 22, 2016 and which awarded, on an interim basis, \$137,266.50 for professional fees and \$7,889.24 for reimbursement of expenses to Fox Rothschild for the period August 21, 2015 through November 30, 2015. To date, Calderone has filed one interim fee application which was granted pursuant to an order [Docket No. 196] entered on February 22, 2016 and which awarded, on an interim basis, \$20,125.00 for professional fees and \$102.90 for reimbursement of expenses to Calderone for the period September 3, 2015 through December 9, 2015.

The Debtors estimate that the total amount of professional fees and expenses incurred by Forshey & Prostok as of April 30, 2016 is approximately \$205,000. The Debtors estimate that the total amount of professional fees and expenses incurred by its outside accountants, Mark M. Jones & Associates, P.C. as of the Effective Date will be no less than \$45,000. The Debtors' special litigation counsel, Bourland, Wall & Wenzel, P.C., will be owed less than \$5,000 as of the Effective Date, based on limitations placed on such firm's incurrence of professional fees and expenses in the order approving its employment. The Debtors' investment bankers, SSG Advisors LLC and Chiron Financial Group, are owed a fee in the amount of \$25,000 pursuant to the terms of their engagement as a result of the successful closing of the sale of substantially all Assets of the

Debtors to DFW Steel, LLC.

Finally, in addition to professional fees and expenses incurred by professionals employed by the Debtors and Committee, the Debtors' estates may be liable, pursuant to section 506(b) of the Bankruptcy Code, for payment of certain post-petition fees and expenses incurred by professionals retained by their secured creditors, to the extent such fees and expenses are determined to be reasonable by the Bankruptcy Court.

#### **F. Continuation of Business after the Petition Date and Sale of Substantially All Assets**

From the Petition Date until approximately October 30, 2015, the Debtors continued to operate their businesses and manage their affairs as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. Upon closing of the sale of substantially all Assets of the Debtors to DFW Steel, LLC, the Debtors ceased further operations and terminated their employees.

As discussed below, the Debtors sought Bankruptcy Court approval for all transactions that were outside the ordinary course of their businesses. The Debtors also sought and obtained authority from the Bankruptcy Court during the period immediately following their Petition Dates with respect to a number of matters deemed by the Debtors to be essential to their smooth and efficient transition into chapter 11.

##### **1. The Debtors' Use of Cash Collateral**

On the Petition Date, the Debtors filed their *Debtors' Motion for an Interim and Final Order (A) Authorizing Use of Cash Collateral and (B) Granting Related Relief* (the "Cash Collateral Motion") [Docket No. 5]. The Bankruptcy Court conducted a series of hearings on the Cash Collateral Motion and entered four separate interim orders (collectively, the "Interim Cash Collateral Orders") [Docket Nos. 75, 81, 104 and 145] authorizing the Debtors to use cash collateral to maintain operations. The Interim Cash Collateral Orders restricted the Debtors' use of cash collateral in accordance with certain budgets approved by the Bankruptcy Court in connection with each of the Interim Cash Collateral Orders and provided various forms of adequate protection to Marquette. The Debtors' authorization to use cash collateral to pay expenses associated with operation of their businesses terminated on November 13, 2015 pursuant to a *Final Order* [Docket No. 163] entered on November 25, 2015.

##### **2. Employee-Related Relief Immediately Following the Petition Date**

On the Petition Date, the Debtors filed their *Debtors' Motion for an Order Authorizing the Debtors to Pay Prepetition Wages, Employee Benefits, and Insurance Premiums* (the "Employee Wage Motion") [Docket No. 6] seeking authority to, among other things, immediately pay all compensation owed to their employees and to honor all other obligations with respect to employee benefits, regardless of whether such compensation and benefits were earned prior to the Petition Date. The Bankruptcy Court granted the Employee Wage Motion pursuant to an order [Docket No. 22] entered on August 13, 2015.

##### **3. Sale of Substantially All Assets of the Debtors**

Prior to the Petition Date, the Debtors were actively involved in negotiations to sell substantially all of their Assets to DFW Steel, LLC ("DFW Steel"). Shortly after the Petition Date, the Debtors engaged SSG Advisors LLC and Chiron Financial Group (the "Investment Bankers") to continue marketing the Debtors' Assets. On August 19, 2015, the Debtors filed their *Debtors'*

*Amended Motion for Orders (A) Approving Sale of Substantially All Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (B) Approving Bidding Procedures in Advance of Auction, and (C) Granting Related Relief* (the "Bid Procedures and Sale Motion") [Docket No. 35]. In the Bid Procedures and Sale Motion, the Debtors requested authorization to establish procedures for competitive bidding and an auction for the Debtors' Assets, with DFW Steel, an unrelated third party, to act as the stalking horse bidder based on the terms of an Asset Purchase Agreement between the Debtors and DFW Steel (the "APA"). On September 3, 2015, the Bankruptcy Court entered an *Order Approving Bidding and Auction Procedures* (the "Bid Procedures Order") [Docket No. 82] partially granting the Bid Procedures and Sale Motion and establishing procedures for submission of bids for and an auction of the Debtors' Assets.

The Bid Procedures Order deemed DFW Steel as a qualified stalking horse bidder based on the APA and established October 9, 2015 as the deadline for submission of other bids for the Assets. The Investment Bankers thoroughly marketed the Debtors' Assets to numerous prospective purchasers. A number of prospective purchases showed interest in the Debtors' Assets, resulting in the execution of a number of nondisclosure agreements and due diligence of various levels being conducted by certain prospective purchasers. However, no prospective purchasers ultimately submitted any competing bids for any of the Debtors' Assets by the bid deadline. Consequently, DFW Steel's stalking horse bid based on the APA constituted the highest and best bid and no auction was conducted. Marquette's right to credit bid was preserved in the Bid Procedures Order, but Marquette declined to exercise that right.

The Bankruptcy Court approved the sale of substantially all Assets of the Debtors to DFW Steel pursuant to an order (the "Sale Order") [Docket No. 133] entered on October 23, 2015. The Debtors and DFW Steel closed the sale on October 30, 2015. As a result of the sale, \$2,173,983.76 in proceeds were paid to Meridian, leaving an alleged deficiency of less than \$60,000 allegedly owed to Meridian. Marquette received \$268,245.84 in proceeds. The remaining net sale proceeds of \$43,477.84 were deposited in the IOLTA Trust account of Forshey & Prostok in accordance with the Sale Order.

#### **G. Schedules and Bar Dates**

After having received an extension from the Bankruptcy Court, the Debtors filed their respective Schedules and Statements of Financial Affairs on September 25, 2015 [see Docket Nos. 101 and 102 (Case No. 15-43239-rfn11) and 26 and 27 (Case No. 15-43240-rfn11)]. Subsequently, The Debtors each filed two separate amended versions of their Statements of Financial Affairs on October 6, 2015 and October 8, 2015 [see Docket Nos. 116 and 118 (Case No. 15-43239-rfn11) and Docket Nos. 30 and 31 (Case No. 15-43240-rfn11)]. AMSCO also filed an amended version of its Schedule B on October 29, 2015 [Docket No. 143].

Pursuant to the *Notices of Chapter 11 Bankruptcy Case, Meeting of Creditors & Deadlines* entered in the Debtors' bankruptcy cases [Docket No. 20 (Case No. 15-43239-rfn11) and Docket No. 18 (Case No. 15-43240-rfn11)], January 7, 2016 was fixed as the deadline for all holders of alleged Claims against the Debtors (except for governmental units) to file proofs of Claim against the Debtors.

#### **H. Operating Information During Pendency of the Chapter 11 Case**

The Debtors have filed monthly operating reports with the Bankruptcy Court covering operations from the Petition Date through September 30, 2015. Copies of the filed monthly operating reports are available for inspection and copying at the office of the Clerk of the Bankruptcy

Court. Copies of the most recently filed monthly operating reports for the Debtors are attached hereto as **Exhibit “B”** (AMSCO) and **Exhibit “C”** (Pyndus).

**I. Matters Relating to Executory Contracts, Unexpired Leases, and Bar Dates for Rejection Claims**

Section 365 of the Bankruptcy Code grants a debtor the power, subject to the approval of the Bankruptcy Court, to assume or reject executory contracts and unexpired leases. Section 365(d)(4) of the Bankruptcy Code provides that if a debtor does not assume or reject an unexpired lease of nonresidential real property under which a debtor is the lessee (i) within 120 days after the petition date (the “365(d)(4) Deadline”), (ii) within an additional 90-day period as the Bankruptcy Court, for cause, may allow, or (iii) within such additional time as the Bankruptcy Court may permit with the consent of the landlord of the leased premises, then such lease is deemed rejected.

The Plan provides that all executory contracts and unexpired leases of the Debtors shall be deemed rejected and the Confirmation Order shall constitute an order approving such rejections as of Confirmation under section 365 of the Bankruptcy Code. The Plan further provides that if rejection of an executory contract or unexpired lease gives rise to a Claim by the other party or parties to such contract or lease, the Claim Holder must file a proof of Claim within thirty (30) days after the earlier of (i) the date of entry of the first order of the Bankruptcy Court rejecting the contract or lease, or (ii) the date of Confirmation.

On November 13, 2015, American Builders & Contractors Supply Co., Inc. (“ABC”) filed an *Emergency Motion to Compel Assumption or Rejection of Lease* (the “Motion to Compel Rejection”) [Docket No. 159] seeking to compel AMSCO to reject that certain unexpired sublease (the “ABC Lease”) pursuant to which Pyndus operated its business at a facility in San Antonio, Texas. The Debtors, the Committee and ABC reached an agreement resolving the Motion to Compel Rejection. The Bankruptcy Court conducted an expedited hearing on the Motion to Compel Rejection on November 24, 2015 and granted the Motion to Compel Rejection based on the parties’ agreement. Such agreement provides that the ABC Lease shall be deemed rejected on the earlier of (i) the date of entry of an agreed order on the Motion to Compel Rejection or (ii) November 30, 2015. Except for the ABC Lease, no other executory contracts or unexpired leases of the Debtors have been previously assumed or rejected in the Chapter 11 Case.

**J. Relief from the Automatic Stay Granted to Marquette**

On November 5, 2015, Marquette filed its *Motion of Marquette Business Credit SPE I, LLC to Lift the Automatic Stay* (the “Lift Stay Motion”) [Docket No. 147]. The Bankruptcy Court conducted an expedited hearing on the Lift Stay Motion on November 13, 2015. The Lift Stay Motion was granted, in part, pursuant to an *Order Granting in Part Motion of Marquette Business Credit SPE I, LLC to Lift the Automatic Stay* [Docket No. 164] entered on November 25, 2015 which granted relief from the automatic stay to allow Marquette to exercise its rights under its loan documents and applicable state law as to the Debtors’ accounts receivable generated both before and after the Petition Date. Marquette has transferred the Debtors’ remaining accounts receivable to Stephen Sikes and certain non-debtor affiliates of Stephen Sikes in connection with the resolution of certain state court litigation between Marquette and Stephen Sikes and non-debtor affiliates of Stephen Sikes. Therefore, the Debtors’ remaining accounts receivable will not constitute Trust Assets.

**K. Anticipated Post-Confirmation Future of the Debtors**

The Plan provides for the liquidation of the Debtors’ remaining Assets. The Debtors ceased

operating at the time of the closing of the sale of substantially all Assets to DFW Steel. Business operations will not be resumed under the Plan.

**L. Preservation of NOLs**

If applicable, any net operating loss carry-forwards of the Debtors shall be preserved under the Plan.

**M. Projected Avoidance Action Recoveries**

All Assigned Actions (including but not limited to all Avoidance Actions and Rights of Action) belonging to the Debtors shall, upon the occurrence of the Effective Date, be retained by, received by, and vested with Plan Trustee, on behalf of and for the benefit of the Post Confirmation Trust. Included in the Avoidance Actions that will be vested with and may be pursued by the Plan Trustee are all potential actions for recovery of preferential transfers under section 547 of the Bankruptcy Code, including but not limited to such claims against each of the Persons identified on Schedule 3.b. to AMSCO's amended Statement of Financial Affairs, identified in response to question 3.c. in AMSCO's amended Statement of Financial Affairs, and identified in response to questions 3.b. and 3.c. in Pyndus's amended Statement of Financial Affairs. The total amount of transfers made by the Debtors as reflected in the Debtors' amended Statements of Financial Affairs that may constitute avoidable preferential transfers is approximately \$1.5 million. The Debtors and the Committee have not yet conducted an analysis of potential defenses to such Avoidance Actions or the collectability of any awards that may be obtained in prosecuting such Avoidance Actions. Therefore, the Debtors and the Committee are unable at this time to estimate or project the net recoveries that may be obtained by the Plan Trustee through prosecution of Avoidance Actions. Notwithstanding the foregoing, to the extent causes of action exist against Marquette, the Debtors and Committee have agreed to waive those claims pursuant to the Agreement.

**VI. LITIGATION INVOLVING THE DEBTORS**

**A. Litigation By and Against the Debtors**

As of the Petition Date, AMSCO was a defendant in the following breach of contract lawsuit: *Bear Transportation Services, L.P. v. AMSCO Steel Company, LLC*, Cause No. DC-15-05802, in the District Court, 192<sup>nd</sup> Judicial District, Dallas County, Texas. The Debtors believe that any claims asserted in such lawsuit will be resolved through the claims allowance process in the Bankruptcy Court and that no further litigation in shall occur in the court in which such lawsuit was filed. As of the Petition Date, AMSCO was also the petitioner in the following appeal of a Texas Workforce Commission ruling: *AMSCO Steel Company v. Texas Workforce Commission and Byron Alexander*, Cause No. 352-270083-14, in the District Court, 352<sup>nd</sup> Judicial District, Tarrant County, Texas. No further litigation with respect to such matter is contemplated.

As of the Petition Date, Pyndus was a defendant in the following lawsuit by a taxing authority to foreclose a tax lien on a piece of property against which Pyndus asserted a second lien: *Nueces County v. Lauro R. Gonzales, et al.*, Case No. 2014-DCV-3354-B, in the District Court, 117<sup>th</sup> Judicial District, Nueces County, Texas. No further litigation involving Pyndus in the court in which such lawsuit was filed is contemplated.

**B. Additional and Potential Litigation by the Debtors**

Except as expressly provided in the Plan, nothing contained in the Disclosure Statement,

the Plan or the Confirmation Order shall waive, relinquish, release or impair the Debtors' or Plan Trustee's rights to object to any Claim.

The Plan Trustee will retain all rights pursuant to section 505 of the Bankruptcy Code as to any Tax Claim.

Except as expressly set forth in the Plan, all causes of action, claims, counterclaims, defenses and rights of offset or recoupment (including but not limited to all Preserved/Vested Actions) belonging to the Debtors shall, upon the occurrence of the Effective Date, be retained by, received by and vested with the Plan Trustee, on behalf of and for the benefit of the Post Confirmation Trust. Except as expressly set forth in the Plan, the rights of the Plan Trustee to commence, prosecute or settle such causes of action shall be preserved notwithstanding the occurrence of the Effective Date. **No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any cause of action against them as any indication that the Debtors or Plan Trustee will not pursue any and all available causes of action (including all Preserved/Vested Actions) against them. All rights to prosecute any and all causes of action (including all Preserved/Vested Actions) against any Person are expressly reserved by the Debtors and their Estate to be retained by, received by and vested with the Plan Trustee, except as otherwise provided in the Plan.** Unless any causes of action against a Person are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Final Order, all causes of action (including all Preserved/Vested Actions) are expressly reserved for later adjudication, and, therefore, no preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such causes of action upon or after the confirmation or consummation of the Plan.

Without limiting the generality of the foregoing, the Debtors and the Committee anticipate that the causes of action that will be pursued by the Plan Trustee after Confirmation of the Plan will include the following:

a. Causes of action against the Debtors' affiliate, AMSCO Steel Transportation Company: AMSCO Steel Transportation Company ("AMSCO Transportation") is a non-debtor affiliate of the Debtors. In addition to potential Avoidance Actions against AMSCO Transportation, the Debtors' Estate possess claims for recovery of money owed by AMSCO Transportation to the Debtors. This includes, but may not be limited to, a debt owed by AMSCO Transportation to AMSCO in the amount of \$525,705.26, as reflected in AMSCO's amended Schedule B.

b. Causes of action against insiders: The Debtors' Estate possesses various claims and causes of action for recovery of sums from insiders of the Debtors. In addition to potential Avoidance Actions against insiders, other causes of action possessed by the Debtors' Estate against insiders include: (i) a claim for recovery on a promissory note dated December 1, 2009 and executed in favor of AMSCO by Courtney Sikes Moore, as Trustee for the Courtney E. Sikes Irrevocable Trust, the balance of which note was \$593,330.88 as of the Petition Date according to AMSCO's amended Schedule B; (ii) a claim for recovery on a promissory note dated December 1, 2009 and executed in favor of AMSCO by John Clayton Sikes, as Trustee for the John Clayton Sikes Irrevocable Trust, the balance of which note was \$593,330.88 as of the Petition Date according to AMSCO's amended Schedule B; (iii) a claim for recovery on a promissory note dated December 1, 2009 and executed in favor of AMSCO by Courtney Sikes Moore, the balance of which note was \$65,144.64 as of the Petition Date according to AMSCO's amended Schedule B; and (iv) a claim for recovery on a promissory note

dated December 1, 2009 and executed in favor of AMSCO by John Clayton Sikes, the balance of which note was \$65,144.64 as of the Petition Date according to AMSCO's amended Schedule B. The Committee also believes that Stephen Sikes guaranteed the debt owed by AMSCO Transportation to the Debtors and, therefore, the Debtors' Estate possesses additional potential claims against Stephen Sikes to recover on any such guaranty.

c. The Sikes Litigation: The Committee commenced the Sikes Litigation by filing a *Complaint* on March 18, 2016. After Confirmation of the Plan, the Plan Trustee will pursue all claims and causes of action asserted, or that may later be asserted, against any current or subsequently added defendants in the Sikes Litigation.

Nothing contained in the foregoing description of claims and causes of action that the Plan Trustee may pursue shall be construed as limiting in any manner the claims, causes of action, theories of recovery, recovery amounts, and/or Persons against which recovery may be sought.

## VII. THE PLAN

**THE FOLLOWING IS A SUMMARY OF THE MATTERS CONTEMPLATED TO OCCUR EITHER PURSUANT TO OR IN CONNECTION WITH THE CONSUMMATION OF THE PLAN. THIS SUMMARY HIGHLIGHTS THE SUBSTANTIVE PROVISIONS OF THE PLAN AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE DESCRIPTION OR A SUBSTITUTE FOR A FULL AND COMPLETE REVIEW OF THE PLAN. THE FOLLOWING SUMMARY IS COMPLETELY QUALIFIED BY THE TERMS OF THE PLAN. IN THE EVENT OF ANY CONFLICT BETWEEN THE FOLLOWING SUMMARY AND THE PLAN, THE PLAN WILL CONTROL.**

### A. Classification and Treatment Summary

The Plan classifies the various Claims against and Equity Interests in the Debtors. These Classes take into account the different nature and priority of Claims against and Equity Interests in the Debtors. In addition, in accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified for purposes of voting under the Plan. Rather, all such Claims are treated separately as unclassified Claims.

All Classes of Claims and Equity Interests are impaired under the Plan. If a controversy arises as to the classification of any Claim or Equity Interest, or as to whether any Class of Claims or Equity Interests is Impaired under the Plan, the Bankruptcy Court shall determine such controversy as a part of the confirmation process.

#### 1. Unclassified Claims Against the Debtors

Unclassified Claims against the Debtors consist of Administrative Claims and Priority Tax Claims. An Administrative Claim is a Claim based on any cost or expense of administration of the Chapter 11 Case allowed under subsections 503(b) and 507(a)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary expenses of preserving the Estate of the Debtors, any actual and necessary expenses of operating the businesses of the Debtors, all compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code, and any fees or charges assessed against the Estate of the Debtors under section 1930 of title 28 of the United States Code.

Administrative Claims include ordinary post-petition business expenses, Professional



Compensation Claims and statutory fees, including quarterly fees owed to the United States Trustee.

**a. Treatment of Administrative Claims**

In order to confirm a plan under 11 U.S.C. § 1129, a holder of an Administrative Claim with priority under Bankruptcy Code § 507(a)(2) must receive on account of such claim on the Effective Date of the plan, cash equal to the allowed amount of such claim, unless a holder of a particular claim has agreed to a different treatment with respect to such claim.

In accordance with the Plan, any Holder of an Administrative Claim that does not file an administrative proof of claim with the Bankruptcy Court prior to the Administrative Claim Bar Date, is forever barred from doing so and the claim is discharged.

Except to the extent that any entity entitled to payment of an Allowed Administrative Claim agrees to a different treatment, each Holder of an Allowed Administrative Claim shall receive Cash in an amount equal to such Allowed Administrative Claim on the later of the Effective Date and seven (7) Business Days after the entry of a Final Order Allowing such Administrative Claim, or as soon thereafter as is practicable.

To the extent Allowed Administrative Claims are not paid by or from the Estate prior to Confirmation and/or the Effective Date, the Plan Trustee shall pay Allowed Administrative Claims as provided in the Plan. Upon the Effective Date of the Plan, the cash on hand of the Debtors (the "Available Funds"), will be distributed pro rata to the holders of Administrative Claims entitled to priority pursuant to Bankruptcy Code § 507(a)(2). To the extent that the Available Funds are not sufficient to pay all Allowed Administrative Claims under Bankruptcy Code § 507(a)(2), the Holders of such Administrative claims, to the extent their claims are not fully satisfied, will each receive a *pro rata* distribution of any recovery on and/or proceeds of the Debtors' remaining assets obtained by the Plan Trustee (from time to time as funds are recovered or received by the Plan Trustee) until all such Allowed Administrative Claims are fully paid. Any claims for Allowed Administrative Claims, which are not paid on the Effective Date, shall not be discharged and shall retain their administrative priority under Bankruptcy Code § 507(a)(2) in this Chapter 11 Case or in a subsequent case under Chapter 7.

Any Professional Person seeking payment on account of a Professional Compensation Claim shall file its respective final Fee Application no later than sixty (60) days after the Effective Date. Only the amount of Professional Compensation Claims allowed by the Bankruptcy Court (the Allowed Professional Compensation Claims) will be owed and required to be paid under the Plan as an Allowed Administrative Claim. All Allowed Professional Compensation Claims shall be treated as Allowed Administrative Claims as set forth in the Plan, or shall be paid on such other terms as may be mutually agreed upon between the Holder of an Allowed Professional Compensation Claim and the Plan Trustee. Failure by a Professional Person to timely file a final Fee Application shall result in the Professional Compensation Claim of such Professional Person being forever barred and discharged. Notwithstanding anything else contained to the contrary in the Plan or in any other document in relation to the Plan, this Disclosure Statement and/or Post Confirmation Trust Agreement, any monies held in escrow by professionals retained by the Debtors' Estate pursuant to Court order, shall be payable only upon an order of the Bankruptcy Court approving such professionals' fees. Moreover, any Allowed Professional Compensation Claims for those professionals holding funds in escrow shall first be paid using escrowed funds and then funds reserved as set forth herein and in the Post Confirmation Trust Agreement.

**b. Treatment of Priority Tax Claims**

To the extent Holders of Allowed Priority Tax Claims were not paid prior to the Effective Date or have agreed to different treatment, Holders of Allowed Priority Tax Claim shall receive, at the Plan Trustee's option, either (i) Cash in the amount of such Holder's Allowed Claim on the Effective Date, or (ii) the amount of such Holder's Allowed Claim, plus interest accrued at the applicable statutory rate, in deferred regular installment payments in Cash over a period ending not later than five (5) years after the Petition Date.

**c. Treatment of United States Trustee's Fees**

No motion or application is required to fix the fees payable to the Clerk's Office or Office of the United States Trustee as such fees are determined by statute and payable in full on the Effective Date. The Debtors are currently in arrears with respect to the payment of statutory fees in the amount of approximately \$11,000. If any quarterly fees become due and owing subsequent to the appointment of the Plan Trustee, such quarterly fees shall be paid by the Plan Trustee.

**2. Classified Claims and Equity Interests**

Classified Claims and Equity Interests shall receive the treatment as described in Article II of the Plan, which treatment is summarized in the table set forth in Article I.B of this Disclosure Statement above.

**B. Acceptance or Rejection of the Plan**

**1. Voting of Claims**

Each Holder of an Allowed Claim in an Impaired Class of Claims is entitled to vote to accept or reject the Plan. For purposes of calculating the number of Allowed Claims in a Class of Claims that have voted to accept or reject the Plan under Bankruptcy Code § 1126(c), all Allowed Claims in such Class held by a Person, Entity and/or any Affiliate thereof shall be aggregated and treated as one Allowed Claim in such Class. Holders of Interests in Class Four, while Impaired, are not going to receive or retain any value under the Plan and are, therefore, deemed to have rejected the Plan.

**2. Elimination of Vacant Classes**

Any Class of Claims that is not occupied as of the date of the commencement of the Confirmation Hearing by an Allowed Claim or a Claim temporarily Allowed under Bankruptcy Rule 3018 shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to Bankruptcy Code § 1129(a)(8).

**3. Nonconsensual Confirmation**

If any Impaired Class of Claims entitled to vote shall not accept the Plan by the requisite statutory majorities provided in Bankruptcy Code § 1126(c), the Debtors and the Committee reserve the right to amend the Plan in accordance with Article III. F. of the Plan or undertake to have the Bankruptcy Court confirm the Plan under Bankruptcy Code § 1129(b) or both. With respect to any Impaired Classes of Claims that are deemed to reject the Plan, the Debtors and the Committee shall request that the Bankruptcy Court confirm the plan under Bankruptcy Code § 1129(b).

**C. Means of Effectuating the Plan**

**1. Initial Funding for the Plan**

The Plan will be funded by the following sources:

**a. Cash Infusion from Debtors' Remaining Assets**

On the Effective Date, the Debtors shall turnover to the Plan Trustee all remaining cash in their possession, currently estimated at approximately \$60,000<sup>1</sup>, and the Plan Trustee shall distribute such cash as follows: (i) first, to the initial Reserve for incidental costs of the Trust, the sum of \$1000; (ii) second, to the Holders of Allowed Administrative Claims in accordance with the provisions set forth in the Plan; (iii) third, to the extent there is any cash remaining after the payment of the above payments, the available Cash will be used to satisfy Holders of Allowed Class claims as provided for in the priority scheme set forth in the Plan.

**2. Post Confirmation Trust**

**a. Creation of Trust**

On the Effective Date, the Debtors shall create a Post Confirmation Trust from which payment of all remaining Allowed Administrative Claims, Allowed Priority Non-Tax Wage Claims, Allowed Priority Non-Tax Claims, Allowed General Unsecured Claims and Post Effective Date Fees shall be paid. The Debtors shall relinquish any and all rights in and to the Post Confirmation Trust which shall be transferred to the Plan Trustee, for and on behalf of the Holders of Allowed Administrative Claims (which includes Allowed Professional Compensation Claims), Allowed Priority Non-Tax Wage Claims, Allowed Priority Non-Tax Claims, Allowed General Unsecured Claims, and Post Effective Date Fees. The Post Confirmation Trust Agreement shall be substantially in the form attached to this Disclosure Statement as **Exhibit "D"**.

**b. Establishment of Reserve**

The Plan Trustee may retain and engage such attorneys, accountants, other professionals, skilled persons, consultants, agents and persons as may be necessary to carry out his duties, including, without limitation, any accounting firm of which such Trustee is a partner or otherwise affiliated from time to time (the "Trustee's Professionals").

The Plan Trustee shall establish and segregate a fund ("Reserve") in an aggregate amount sufficient to fully pay (i) his compensation ("Trustee Compensation") for performing all of his duties and obligations under the Plan, (ii) the fees, costs and expenses of Trustee's Professionals ("Trustee Professionals Compensation") for services rendered to assist the Plan Trustee in the performance of his duties, and (iii) any other costs and expenses incurred or to be incurred by the Trustee necessary or reasonably required to administer the Post Confirmation Trust and perform his duties under the Post Confirmation Trust Agreement and Plan ("Other Trust Expenses" and together with Trustee Compensation and Trustee Professionals Compensation, collectively referred to as

---

<sup>1</sup> In addition to the \$45,000 received from the Debtors for professional fees pursuant to orders authorizing use of cash collateral, the Debtors' counsel currently maintains approximately \$60,000 in its IOLTA trust account comprised of (a) approximately \$43,000 from the unencumbered proceeds of asset sales, and (b) \$17,500 transferred from the Debtors' debtor-in-possession bank account pursuant to an agreed order [Docket No. 180] entered on December 29, 2015.

"Trust Expenses"). The initial amount of the Reserve on the Effective Date shall be the sum of \$1000. The Plan Trustee shall be permitted to increase or replenish the Reserve during his administration of the Post Confirmation Trust in his discretion and as set forth in the Post Confirmation Trust Agreement.

**c. Appointment of Plan Trustee/Representative of Estate**

On the date of Confirmation, the Plan Trustee will be designated pursuant to Court Order. The Plan Trustee shall be designated as the Estate representative pursuant to and in accordance with Bankruptcy Code § 1123(b)(3)(B). Among other things, and without limitation, the Plan Trustee will have the authority to liquidate all Trust Assets, make Distributions under the Plan, and prosecute the Assigned Actions and any other rights, claims or causes of action belonging to the Debtors, the Committee and/or the Estate. The retention of the Plan Trustee will be pursuant to the Post Confirmation Trust Agreement and he will have the powers and responsibilities of a disbursing agent and trustee as set forth therein. The Plan Trustee shall not be required to provide any bond, surety or security for the performance of his duties under the Post Confirmation Trust Agreement and the Plan.

**d. Transfer of Trust Assets**

On the Effective Date, and in accordance with the Confirmation Order, the Trust Assets will be irrevocably and absolutely transferred and assigned to the Post Confirmation Trust, and will be held in trust for the benefit of all Holders of Allowed Claims pursuant to the terms of the Plan and the Post Confirmation Trust Agreement. The Debtors' and the Estate's title to the Trust Assets will pass to the Post Confirmation Trust on the Effective Date free and clear of all Claims, Liens and interests of Creditors, Equity Interest Holders and other parties in interest in accordance with Bankruptcy Code § 1141. Without limiting the generality of the foregoing, on the Effective Date, all Assigned Actions will be transferred and assigned to the Post Confirmation Trust. The Plan Trustee will pay, or otherwise make distributions on account of, all Allowed Claims against the Debtors in accordance with the terms of the Plan.

**e. Effect of Transfer**

For federal and applicable state income tax purposes, the transfer of the Trust Assets to the Post Confirmation Trust will be a disposition of the Trust Assets directly to and for the benefit of the Beneficiaries (as that term is defined in the Post Confirmation Trust Agreement) of the Post Confirmation Trust in partial satisfaction of their Claims, immediately followed by a deemed contribution of the Trust Assets by the Beneficiaries to the Post Confirmation Trust. The Beneficiaries will be treated as the grantors and deemed owners of the Post Confirmation Trust.

**f. Authority to Settle Claims and Assigned Actions**

In accordance with Bankruptcy Code § 1123(b)(3), the Plan Trustee will own and retain, and may prosecute, enforce, compromise, settle, release, or otherwise dispose of, any and all claims, defenses, counterclaims, setoffs, and recoupments belonging to the Debtors or the Estate, including, without limitation, all Assigned Actions transferred and assigned by the Debtors and/or Committee to the Post Confirmation Trust pursuant to the Plan and pursuant to and in accordance with the terms and provisions of the Post Confirmation Trust Agreement, without first having to seek approval from the Bankruptcy Court. The Plan Trustee will be authorized to challenge and/or settle disputed Claims, without first having to seek approval from the Bankruptcy Court. The Plan Trustee will be authorized and empowered to bind the Post Confirmation Trust thereto. Any settlement by the Plan Trustee pursuant to and in accordance with the terms of the Post Confirmation Trust

Agreement shall be conclusively deemed to be in the best interests of the Estate and the Post Confirmation Trust.

**3. Preservation and Vesting of Claims, Rights, Demands and Assigned Actions**

Pursuant to Bankruptcy Code § 1123(b), the Plan Trustee, on behalf of and for the benefit of the Post Confirmation Trust, shall be vested with and shall retain and may enforce any and all claims, rights, demands and Assigned Actions of any kind or nature whatsoever held by, through, or on behalf of the Debtors, the Committee and/or the Estate against any other Person arising before the Effective Date that have not been fully resolved or disposed of prior to the Effective Date, whether or not such claims or causes of action are specifically identified in this Disclosure Statement accompanying the Plan and whether or not litigation with respect to same has been commenced prior to the Effective Date (collectively referred to as the "Preserved/Vested Actions"). The Preserved/Vested Actions include, without limitation, the following:

**a. The Sikes Litigation**

All claims and causes of action asserted, or that may later be asserted, against any current or subsequently added defendants in the Sikes Litigation.

**b. Avoidance Actions**

Avoidance Actions including, without limitation, all Avoidance Actions against present or former creditors, officers, directors, or insiders of the Debtors who received payments or transfers of property from any of the Debtors at any time, and the proceeds thereof.

**c. Rights of Action**

Rights of Action, including, without limitation, claims, rights and causes of action (and the proceeds thereof) against the Debtors, their officers or directors arising prior to the Petition Date.

**d. Claims Disputes**

Any and all legal or equitable rights to subordinate or disallow Claims, including, without limitation, any prepetition Unsecured Claims, Priority Non-Tax Wage Claims, Priority Non-Tax Claims and any Administrative Claims.

**4. Recoveries**

All cash, proceeds and/or recoveries from the Avoidance Actions, Rights of Action or other Assigned Actions and all other proceeds derived from the Plan Trustee's liquidation of Trust Assets will be deposited into the Post Confirmation Trust.

**5. The Plan Trustee**

**a. Appointment**

In the Confirmation Order, the Plan Trustee will be appointed and will be bound to perform as required by the Plan and Post Confirmation Trust Agreement.

**b. Duties and Powers**

On the Effective Date, the Plan Trustee will be the representative of the Estate and successor to the Debtors and the Estate as that term is used in Bankruptcy Code section 1123(b)(3)(B), and will have the rights and powers provided for in the Bankruptcy Code, in addition to any rights and powers granted in the Plan and in the Post Confirmation Trust Agreement. In the Plan Trustee's capacity as the representative of the Estate and successor to the Debtors and the Estate, the Plan Trustee will be the successor-in-interest to the Debtors and the Committee with respect to all claims, actions, and other interests constituting Trust Assets and with respect to the claims of Creditors. The Plan Trustee will hold all rights, title and interest in and to the Trust Assets of the Post Confirmation Trust on behalf of the Beneficiaries thereof, and will pay from the Post Confirmation Trust all ordinary and necessary costs of protecting, preserving, disposing, liquidating and realizing upon the Trust Assets. The Plan Trustee will administer the Post Confirmation Trust, will liquidate the Trust Assets of the Post Confirmation Trust, will challenge/resolve/determine all Claims, and will make distributions from the Post Confirmation Trust, all in accordance with the terms of the Plan and the Post Confirmation Trust Agreement. Unless otherwise excused or exempted from doing so by the Bankruptcy Code, the Plan Trustee will abide by all laws, including tax laws and regulations, and will prepare or cause to be prepared all local, state, or federal tax returns, filings, and/or reports that are necessary or appropriate. The Plan Trustee (subject to the terms and provisions of the Post Confirmation Trust Agreement) shall have sole and exclusive authority for the retention of Trustee's Professionals to assist the Plan Trustee in any manner after the Effective Date. Fox Rothschild shall be engaged as counsel for the Plan Trustee.

The Plan Trustee will have the power to take any and all actions which, in the business judgment of the Plan Trustee (subject to the terms and provisions of the Post Confirmation Trust Agreement), are necessary or appropriate to fulfill his obligations under the Plan and the Post Confirmation Trust Agreement, including, but not limited to, each of the powers set forth in the Post Confirmation Trust Agreement.

**c. Reporting Requirements**

Approximately 120 days following the Effective Date, the Plan Trustee shall file with the Bankruptcy Court, the U.S. Trustee and those parties who have requested special notice post-confirmation, a status report and a summary financial update explaining what progress has been made toward entry of the Final Decree. Until entry of the Final Decree, further status reports shall be filed periodically approximately every 120 days and served on the same entities. Each status report shall generally include a description of Trust Assets sold or otherwise realized upon during the relevant period, gross and net proceeds received, Distributions and payments made, expenses incurred and paid, and cash on hand, as well as a summary of claims objections and the status of all contested matters and litigation. A standard Post-Confirmation Operating Report as required by the Office of the U.S. Trustee shall meet the requirements of this status report.

**d. Compensation**

The Plan Trustee shall be entitled to receive from the Post Confirmation Trust compensation for his services based on his firm's standard hourly rates for actual time spent, plus out of pocket expenses, which compensation shall not be limited by any provision of law in regard to compensation of a trustee of an express trust, subject to the terms and provisions of the Post Confirmation Trust Agreement. The Plan Trustee shall have the right to employ Trustee's Professionals on such terms and conditions as the Plan Trustee and such Trustee's Professionals shall agree upon, subject to the terms and provisions of the Post Confirmation Trust Agreement. All Trustee Compensation and Trustee Professionals Compensation, shall be paid out of Post

Confirmation Trust (and shall have priority in payment over the payment or Distributions to Holders of Allowed Claims), subject to the terms and provisions of the Post Confirmation Trust Agreement.

**6. Procedures for Resolving and Treating Disputed Administrative Expense Claims and General Unsecured Claims**

**a. Objections to and Resolution of Administrative Claims and Other Claims**

Except as to Professional Compensation Claims, the Plan Trustee shall, on and after the Effective Date, have the exclusive right to make and file objections to Administrative Claims and all other Claims. On and after the Effective Date, the Plan Trustee shall have the exclusive authority to compromise, settle, otherwise resolve or withdraw any objections to Administrative Claims and all other Claims and compromise, settle or otherwise resolve disputed Administrative Claims ("Disputed Administrative Claims") and all other Disputed Claims without approval of the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, on and after the Effective Date, only the Plan Trustee shall file all objections to Administrative Claims that are the subject of proofs of Claim or requests for payment filed with the Bankruptcy Court (other than applications for allowances of Professional Compensation Claims) and all other Claims and serve such objections upon the Holder of the Administrative Claim or other Claim as to which the objection is made as soon as is practicable, but in no event later than ninety (90) days after the Effective Date or such later date as may be approved by the Bankruptcy Court upon motion by the Plan Trustee.

**b. No Distribution Pending Allowance**

Notwithstanding any other provision of the Plan, no pro rata share of Cash shall be distributed under the Plan on account of any Disputed Claim unless and until such Claim is deemed Allowed.

**c. Estimation**

The Debtors and/or Committee (prior to the Effective Date) or Plan Trustee (on and after the Effective Date) may, at any time, request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to Bankruptcy Code § 502(c) regardless of whether the Debtors, Committee or Plan Trustee have previously objected to such Claim. In the event the Bankruptcy Court estimates any contingent or Disputed Claim, the estimated amount may constitute a maximum limitation on such Claim, as determined by the Bankruptcy Court. Notwithstanding this, the Debtors and the Committee (prior to the Effective Date) or the Plan Trustee (on and after the Effective Date) may elect to pursue any supplemental proceedings to object to the allowance and payment of such Claim. All of the aforementioned Claims objection and estimation procedures are cumulative and not exclusive of one another.

**d. Reserve for Disputed General Unsecured Claims**

On and after the Effective Date, the Plan Trustee shall hold in segregated reserve accounts (the "Disputed Claims Reserve"), Cash in an aggregate amount sufficient to distribute its pro rata share of Cash to each Holder of a Disputed Claim at the time distributions are made pursuant to the Plan the amount of Cash that such Holder would have been entitled to receive if such Claim had been an Allowed Claim on the Effective Date. Nothing contained in the Plan shall be deemed to entitle the Holder of a Disputed Claim to post-Petition Date interest on such Claim.

**e. Allowance and Payment of Disputed Claims**

If, on or after the Effective Date, any Disputed Claim is deemed Allowed, the Plan Trustee shall by the fifteenth (15th) Business Day of the first month following the month in which such Claim is Allowed, distribute from the Disputed Claims Reserve to the Holder of such Allowed Claim the amount of Cash that would have been distributed to such Holder under the Plan on the date(s) distribution(s) previously was/were made to Holders of Allowed General Unsecured Claims had such Claim been an Allowed Claim on such date(s). If as of the date the Disputed Claim is deemed Allowed, no such distribution was required, then the Plan Trustee shall make said distribution from the Disputed Claims Reserve at the time all of the Holders of Allowed Claims receive their respective distributions.

**f. Release of Funds from Disputed General Unsecured Claims Reserve**

If at any time or from time to time after the Effective Date, there shall be Cash in the Disputed Claims Reserve in an amount in excess of the Plan Trustee's maximum remaining distribution obligations to the then existing Holders of Disputed Claims under the Plan, such excess Cash shall become available to the Plan Trustee generally and may be (i) added to the Reserve, or (ii) if the Plan Trustee determines not to add it to the Reserve, then distributed to Holders of Allowed General Unsecured Claims to satisfy the costs of administering and consummating the Trust and Plan.

**7. Distributions**

**a. Distributions to Plan Trustee**

On the Effective Date, the Debtors shall transfer all of their respective rights, title and interest in and to the Trust Assets to the Plan Trustee. The Plan Trustee may hold or invest the funds in the Post Confirmation Trusts in one or more accounts; provided that all investments shall be made in accordance with Bankruptcy Code § 345, subject to compliance with the terms and provisions of the Post Confirmation Trust Agreement.

**b. Payment of Administrative Claims, Priority Non-Tax Claims and Post-Effective Date Fees**

On the Effective Date, or upon the approval by the Bankruptcy Court of any application for Professional Compensation Claims filed by Professional Persons as required by the Plan, the Plan Trustee shall pay the Allowed Professional Compensation Claims and other Allowed Administrative Claims from the Post Confirmation Trust as funds become available and as provided for therein. The Plan Trustee shall also be responsible for the payment of properly documented Post Effective Date Fees from the Post Confirmation Trust as provided for therein. For the avoidance of doubt, all retained professionals that received funds required to be held in escrow from the Debtors in accordance with the various cash collateral orders shall be entitled to set off amounts due and owing.

**c. Dates of Distribution**

After payment of, or reserving sufficient sums to pay, all Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Wage Claims, Allowed Priority Non-Tax Claims and Post Effective Date Fees, in addition to setting aside funding for and holding the Reserve, the Plan Trustee shall make distributions to Holders of Class Three Allowed Unsecured Claims commencing within six (6) months after the Effective Date, if funds for same are



available, and shall continue semi-annually (each six months) thereafter until the exhaustion of the Post Confirmation Trust. Any distribution required to be made on the date on which a Claim becomes an Allowed Claim will be deemed to be made on such date if the distribution is made on the nearest distribution date occurring after such date.

**d. Manner of Distributions**

At the option of the Plan Trustee, distributions from the Post Confirmation Trust may be made in cash, by wire transfer or by a check drawn on a domestic bank. No distributions shall be made on Claims that are less than ten (\$10.00) dollars in amount, unless request is made, in writing, to the Plan Trustee.

**e. Undeliverable Distributions**

The Plan Trustee will hold any Unclaimed Distribution and will not be required to take any further action with respect to the delivery of the Unclaimed Distribution. If the Person entitled to such Unclaimed Distribution does not present itself to the Plan Trustee within sixty (60) days following the distribution date, the Unclaimed Distribution will go back into the Post Confirmation Trust for the benefit of other Holders of Allowed Claims in the same class as the Holder of the Unclaimed Distribution, and the Unclaimed Distribution will be distributed to such other Persons in accordance with the Plan terms on the next succeeding distribution date.

**8. Conditions to Occurrence of Effective Date**

Each and all of the following are conditions to the Plan becoming effective, and must be satisfied fully or waived by the Committee:

- a. the Confirmation Order has been entered by the Bankruptcy Court and has become a Final Order;
- b. the Plan Trustee has accepted, in writing, the terms of his service and compensation, and such terms and compensation shall have been approved by the Bankruptcy Court in the Confirmation Order; and;
- c. the Plan Trustee and Debtors have executed the Post Confirmation Trust Agreement and the Post Confirmation Trust has been established.

**9. Waiver of Conditions**

The Committee, in its sole discretion, may waive the Final Order condition of the foregoing Section 8 at any time from and after Confirmation. In that event, the Committee will be entitled to render any or all of their performance under the Plan prior to what otherwise would be the Effective Date if the above-referenced conditions were not waived, including, but not limited to, the right to perform under any circumstances which would moot any appeal, review or other challenge of any kind to the Confirmation Order if the Confirmation Order is not stayed pending such appeal, review or other challenge.

**10. Termination of the Committee**

The Plan Trustee will be designated pursuant to the Confirmation Order. On the Effective Date and upon (i) the creation of the Post Confirmation Trust, (ii) the Plan Trustee executing the Post Confirmation Trust Agreement, (iii) the complete, absolute and indefeasible transfer of all of the

Trust Assets to the Post Confirmation Trust, and (iv) the commencement of his duties and obligations under the Plan and the Post Confirmation Trust Agreement, the Committee will be dissolved and the powers and duties of the Committee will terminate. Any dispute regarding the dissolution of the Committee shall be submitted to the Bankruptcy Court, which shall retain jurisdiction to settle this type of dispute. Upon dissolution of the Committee, it shall have no further rights, duties or obligations.

#### **11. Post Effective Date Service by Debtors' and Committee's Professional Persons and Fees**

The Professional Persons retained by the Debtors and the Committee shall continue to be retained subsequent to the Effective Date for the purpose of rendering services as necessary to consummate the Plan which services shall be limited to those services related to the establishment of the Post Confirmation Trust, preparation, execution and delivery of all required documents to effectuate same, transfer of the Trust Assets into the Post Confirmation Trust, and preparation of the Final Fee Applications. Fox Rothschild shall be engaged as counsel for the Plan Trustee.

The Plan Trustee shall establish a reserve for payment of Post Effective Date Fees in his discretion after consultation with counsel ("Post Effective Date Fee Reserve") from which, and only from which, payment of Post Effective Date Fees shall be made. The Post Confirmation Trust shall not be responsible for and shall not be required to pay any Post Effective Date Fees in excess of the Post Effective Date Fee Reserve. Any balance remaining in the Post Effective Date Fee Reserve after payment in full of all Post Effective Date Fees shall be returned to the Post Confirmation Trust for distribution.

The reasonable fees and expenses of the Debtors' Professional Persons and the Committee's Professional Persons shall constitute the Post Effective Date Fees and shall be payable from the Post Effective Date Fee Reserve upon presentment of a monthly statement for services rendered and for reimbursement of expenses to the Plan Trustee and shall not require Bankruptcy Court approval.

The Plan Trustee shall have ten (10) days from the receipt of the Post Effective Date Fees statement to dispute all or part of such statement. Upon the expiration of the ten (10) days, the Plan Trustee shall pay the Debtors' Professional Persons and the Committee's Professional Persons the undisputed portion of the Post Effective Date Fees. Any disputes shall be submitted to the Bankruptcy Court for determination.

#### **12. Consolidation**

The Plan contemplates and is predicated upon the substantive consolidation of the assets and liabilities of the Debtors and their estates. Entry of the Confirmation Order shall constitute the approval, pursuant to Bankruptcy Code § 105(a), effective as of the Effective Date, of the consolidation of the Debtors' estates for all purposes, including, without limitation, for purposes of voting, confirmation and distribution. On and after the Effective Date: (i) all assets and liabilities of the Debtors shall be deemed substantively consolidated so that all of the assets of the Debtors shall be available to pay all of the liabilities of the Debtors as if they were one entity; (ii) no distributions shall be made under the Plan on account of intercompany claims between the Debtors, (iii) all pre-petition cross company guarantees shall be deemed eliminated; and (iv) each and every Claim filed or to be filed in one of the individual Chapter 11 Cases shall be deemed filed against the Debtors and shall be deemed one Claim against, and obligation of, the Debtors. The substantive consolidation of Debtors shall not expand or reduce the rights of any creditor that asserts a Lien in or against any Collateral.

### **13. Corporation Action**

On the Effective Date, all actions contemplated by the Plan will be deemed authorized and approved in all respects (subject to the provisions of the Plan), including, without limitation, the following: (i) contribution of property (including, without limitation, all Trust Assets) to the Post Confirmation Trust to fund the Plan; and (ii) transfer of the Post Confirmation Trust to the Plan Trustee. On the Effective Date, the appropriate officers of the Debtors shall be authorized and directed to execute and to deliver any and all agreements, documents and instruments contemplated by the Plan and/or necessary for the consummation of the Plan.

#### **D. Other Provisions of the Plan**

##### **1. Executory Contracts and Unexpired Leases to be Rejected**

Except as otherwise provided in the Plan, or pursuant to any order of the Bankruptcy Court, on the Effective Date of the Plan, all executory contracts and unexpired leases of the Debtors shall be deemed rejected. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections as of Confirmation under Bankruptcy Code § 365. Any party to an executory contract or unexpired lease subject to rejection may file with the Bankruptcy Court and serve on the Debtors and Committee an objection to such rejection. Failure to file and serve any such objection within the deadline set for objecting to Confirmation of the Plan shall constitute an agreement to rejection.

If the rejection of any executory contract or unexpired lease gives rise to a Claim by the other party or parties to such contract or lease, the Claim Holder must file and serve on the Committee's counsel (or, in lieu thereof, the Plan Trustee if after the Effective Date) a proof of claim within thirty (30) days after the earlier of (i) the date of entry of the first order of the Bankruptcy Court rejecting the executory contract or unexpired lease, or (ii) the date of Confirmation. Failure to file and serve such proof of claim shall serve as a waiver of any such Claim, and the Holder of such Claim shall be forever barred from asserting such Claim against the Debtors. Persons who are parties to executory contracts that are rejected and who claim damages by reason of such rejection shall become Class Three Creditors and shall be treated in the same manner as other Class Three Creditors.

##### **2. Retention of Jurisdiction**

Notwithstanding entry of the Confirmation Order, or the occurrence of the Effective Date or "substantial consummation" of the Plan, the Bankruptcy Case having been closed, or a Final Decree having been entered, the Bankruptcy Court (or the District Court, as the case may be) shall have and retain jurisdiction of matters arising out of, and related to the Bankruptcy Case and the Plan under, and for the purposes of, Bankruptcy Code §§ 105(a), 1127, 1142 and 1144 and for, among other things, the following purposes:

a. To consider any modification of the Plan under Bankruptcy Code § 1127 and/or modification of the Plan before "substantial consummation" as defined in Bankruptcy Code § 1101(2) and to consider any modification of the Plan to cure any defect or omission, or reconcile any inconsistency in the Plan, the Disclosure Statement, or in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order.

b. To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases, if any, and allowance of Claims resulting therefrom.

c. To (i) hear and determine any claim or cause of action arising in or related to

the Chapter 11 Case; and (ii) to adjudicate any causes of action or other proceedings currently pending or which may be commenced by the Plan Trustee after the Effective Date or otherwise referenced in the Plan, including, but not limited to, the adjudication of the Avoidance Actions, the Rights of Actions, any other Assigned Actions, and any and all "core proceedings" under 28 U.S.C. § 157(b), which are or may be pertinent to the Chapter 11 Case and which the Plan Trustee may deem appropriate to commence and prosecute in support of implementation of the Plan.

d. To determine any and all adversary proceedings, applications, and contested matters filed or commenced by the Plan Trustee after the date of Confirmation, including, without limitation, Avoidance Actions, Rights of Actions and any other Assigned Actions.

e. To consider and determine any and all adversary proceedings, applications and contested matters filed or commenced by the Plan Trustee.

f. To ensure that distributions are accomplished as provided in the Plan.

g. To hear and determine any objections to Administrative Claims, to Proofs of Claim, or to Claims and Equity Interests filed and/or asserted both before and after the date of Confirmation, including any objections to the classification of any Claim or Equity Interest, and to allow or disallow any disputed Administrative Claim, Claim, or Equity Interest, in whole or in part, and any request for estimation of Claims.

h. To protect the property of the Estate from adverse Claims or interference inconsistent with the Plan, including, without limitation, to hear actions to quiet or otherwise clear title to such property based upon the terms and provisions of the Plan, or to determine the Plan Trustee's exclusive ownership of the Trust Assets, including, without limitation, the Assigned Actions.

i. To hear and determine matters pertaining to abandonment of property of the Estate and to recover all assets of the Debtors and property of the Estate, wherever located.

j. To (i) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated; (ii) to issue such orders in aid of execution of the Plan as may be necessary and appropriate, to the extent authorized by Bankruptcy Code § 1142; and (iii) to interpret and enforce any Orders previously entered in the Chapter 11 Case to the extent such Orders are not superseded or inconsistent with the Plan.

k. To hear and determine all applications for compensation and reimbursement of expenses of Professional Persons under Bankruptcy Code §§ 330, 331, and 503(b) for services rendered and expenses incurred prior or subsequent to the date of Confirmation.

l. To hear and determine all litigation, causes of action and all controversies, suits and disputes that may arise in connection with the interpretation, implementation or enforcement of the Plan, including but not limited to, any and all litigation and/or causes of action brought by the Debtors, Committee or Plan Trustee, whether such litigation and/or causes of action is/are commenced either prior to or after the Effective Date.

m. To hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code §§ 345, 505, and 1146.

n. To enter a Final Decree closing one Debtor's or both Debtors' Chapter 11 Case.

o. To consider and act on the compromise and settlement of any litigation, Claim against or cause of action on behalf of the Estate.

p. Without limiting the generality of the foregoing and notwithstanding the Effective Date and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Post Confirmation Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, the Post Confirmation Trust Agreement, or any Person's obligations incurred in connection herewith, including without limitation, any action against the Plan Trustee or any or all of the Plan Trustee's professionals or the Post Confirmation Trust.

### **3. Notices under the Plan**

All notices, requests, and demands to or upon the Debtors or Committee to be effective shall be in writing (including, without limitation, by telex or facsimile transmission) and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or in the case of telex notice, when sent, answer back received, or in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

**To Debtors:**

J. Robert Forshey  
Matthew G. Maben  
FORSHEY & PROSTOK, LLP  
777 Main Street, Suite 1290  
Fort Worth, TX 76102  
Fax: (817) 877-4151  
Email: [bforshey@forsheyprostok.com](mailto:bforshey@forsheyprostok.com)  
Email: [mmaben@forsheyprostok.com](mailto:mmaben@forsheyprostok.com)

**To The Committee:**

Paul J. Labov, Esq.  
Michael G. Menkowitz, Esq.  
Fox Rothschild, LLP  
100 Park Avenue, 15<sup>th</sup> Floor  
New York, New York 10017  
Fax: 212-692-0940  
Email: [plabov@foxrothschild.com](mailto:plabov@foxrothschild.com)  
Email: [mmenkowitz@foxrothschild.com](mailto:mmenkowitz@foxrothschild.com)

## **E. Effect of Confirmation of the Plan**

### **1. Exculpation**

To the extent allowed by Bankruptcy Code § 1125(e), and without prejudice to the rights of the Plan Trustee to the extent set forth in the Plan, neither (i) the Debtors, (ii) the Committee and its members (solely in their capacity as members of the Committee), (iii) the Plan Trustee, nor (iv) any of the Professional Persons (collectively, the "Released Persons") shall have or incur any liability to any Holder of a Claim or Equity Interest, or any other party-in-interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, affiliates or any of their successors or assigns, for any act or omission occurring after the Petition Date and in connection with, relating to, or arising out of the Bankruptcy Case, formulation, negotiation, implementation of the Plan, solicitation of acceptances of the Plan, the pursuit of and/or Confirmation of the Plan, the

consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their bad faith, willful malfeasance, reckless disregard of duty, gross negligence, or willful fraud. The foregoing release and exculpation of the members of the Committee as set forth in this Section shall not release each such person from any liability arising from any act or omission taken by such person in its individual capacity and/or claim or cause of action against such person in its individual capacity (and not in its capacity as a member of the Committee), including, without limitation, from any Avoidance Action claims or Rights of Action claims against such members. The Post Confirmation Trust is deemed to release each person exculpated under the Plan from any liability arising from any act or omission occurring after the Petition Date and in connection with, relating to or arising out of the Chapter 11 Case; provided, however, that nothing in the Plan shall be deemed a release or waiver of any claims or causes of action against the Debtors' officers, directors, agents, professionals or employees for actions and events prior to the Petition Date. In all respects, the Debtors, Committee, Plan Trustee and each of their respective members, officers, directors, employees, advisors and agents shall be entitled to rely upon advice of counsel with respect to their duties and responsibilities under the Plan.

## **2. Injunction**

Except as otherwise provided in the Plan or Confirmation Order, on or after the Effective Date all entities that have held, currently hold or may hold a Debt, Claim, other liability or interest against or in the Debtors that would be discharged upon Confirmation of the Plan and the Effective Date but for the provisions of Bankruptcy Code § 1141(d)(3) are permanently enjoined from taking any of the following actions on account of such Debt, Claim, liability, interest or right: (i) commencing or continuing in any manner any action or other proceeding on account of such Debt, Claim, liability, interest or right against property that is to be distributed under the Plan or; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against any property to be distributed to creditors under the Plan.

On and after the Effective Date, each Holder of an Equity Interest in the Debtors is permanently enjoined from taking or participating in any action that would interfere or otherwise hinder the Plan Trustee from implementing the Plan or the Confirmation Order.

Except as otherwise provided in the Plan or the Confirmation Order, on or after the Effective Date all creditors of, claimants against, stockholders of, and persons having or claiming an interest of any nature in the property or assets of the Debtors are hereby permanently enjoined and stayed from pursuing or attempting to pursue any action, commencing or continuing any action, employing any process, or any act against the Debtors and/or Plan Trustee on account of or based upon any right, claim or interest which any such creditor, claimant, equity security holder, or other person may have had prior to the entry of the Confirmation Order.

## **3. No Limitations on Effect of Confirmation**

Nothing contained in the Plan or the Disclosure Statement will limit the effect of Confirmation as set forth in Bankruptcy Code §1141. Confirmation will bind the Debtors, all Creditors, Equity Interest Holders and other parties in interest to the provisions of the Plan, whether or not the Claim or Equity Interest of such Creditor or Equity Interest Holder is Impaired under the Plan and whether or not such Creditor or Equity Interest Holder has accepted the Plan.

## **4. Preservation of Avoidance Actions and Rights of Action**

The Committee is and, after the Effective Date, the Plan Trustee, will be reviewing information regarding potential Avoidance Actions and Rights of Action, which review is ongoing.

Assigned Actions shall be assigned to the Plan Trustee along with all other Trust Assets. There may be numerous Assigned Actions, which currently exist or may subsequently arise. The potential proceeds from these Assigned Actions are uncertain and speculative and therefore, no value has been assigned to such recoveries.

The Plan Trustee reserves the right to commence prosecution of, or continue to prosecute, the Assigned Actions, whether arising prior to or after the Petition Date, in any court or other tribunal. Unless an Assigned Action is expressly waived, relinquished, released, compromised or settled in the Plan or by any Final Order, the Committee, on behalf of itself, the Debtors and the Plan Trustee expressly reserve all Assigned Actions for later adjudication and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to any such Assigned Action upon Confirmation or consummation of the Plan.

#### **5. Vesting of Debtors' Property in the Plan Trustee**

Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, without any further action, all of the property of the Estate shall vest in the Plan Trustee, free and clear of all Claims, Liens and interests. The Plan Trustee shall distribute all property of the Debtors in accordance with the Plan.

#### **6. Modification of Plan**

The Proponent may alter, amend or modify the Plan at any time prior to Confirmation and thereafter as provided in Bankruptcy Code § 1127(b). However, the Bankruptcy Court may require a new disclosure statement and/or revoting on the Plan if the Debtors and/or Committee modifies the Plan before Confirmation.

The Debtors and Committee may also seek to modify the Plan at any time after confirmation so long as (a) the Plan has not been substantially consummated and (b) the Bankruptcy Court authorizes the proposed modification after notice and a hearing. The Proponent further reserves the right to modify the treatment of any Allowed Claims at any time after the Effective Date of the Plan upon the consent of the Creditor whose Allowed Claim treatment is being modified, so long as no other Creditors are materially adversely affected.

#### **7. Withdrawal of the Plan**

The Committee reserves the right to withdraw the Plan at any time before the entry of the Confirmation Order, in which event the Plan shall be deemed null and void.

#### **8. Good Faith**

Confirmation of the Plan will constitute a finding that the Plan has been proposed in good faith and in compliance with all applicable provisions of the Bankruptcy Code.

#### **9. Post-Confirmation Conversion/Dismissal**

A creditor or party in interest may bring a motion to convert or dismiss the Bankruptcy Case under Bankruptcy Code § 1112(b), after the Plan is confirmed, if there is a default in performance of the Plan or if cause exists under Bankruptcy Code § 1112(b). If the Bankruptcy Court orders the case converted to chapter 7 after the Plan is confirmed, then all property that had been property of the chapter 11 estate, and that has not been disbursed pursuant to the Plan, will revert in the

chapter 7 estate, and the automatic stay will be reimposed upon the revested property only to the extent that relief from stay was not previously granted by the Bankruptcy Court during this case. In addition, any Allowed Administrative Claims for Administrative Expenses which are not paid on the Effective Date, and those Post Effective Date Fees which are not paid prior to conversion, shall continue to be entitled to administrative priority, under 11 U.S.C. § 507(a)(2) in any such subsequent Chapter 7 case to which this case is converted.

Quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) continue to be payable to the Office of the United States Trustee post-confirmation until such time as the case is converted, dismissed, or closed pursuant to Final Decree.

### **VIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

THE PLAN AND ITS RELATED TAX CONSEQUENCES ARE COMPLEX. MOREOVER, MANY OF THE INTERNAL REVENUE CODE PROVISIONS DEALING WITH THE FEDERAL INCOME TAX ISSUES ARISING FROM THE PLAN HAVE BEEN THE SUBJECT OF RECENT LEGISLATION AND, AS A RESULT, MAY BE SUBJECT TO AS YET UNKNOWN ADMINISTRATIVE OR JUDICIAL INTERPRETATIONS. THE DEBTORS HAVE NOT REQUESTED A RULING FROM THE INTERNAL REVENUE SERVICE (THE "IRS") OR AN OPINION OF COUNSEL WITH RESPECT TO THESE MATTERS. ACCORDINGLY, NO ASSURANCE CAN BE GIVEN AS TO THE INTERPRETATION THAT THE IRS WILL ADOPT. THERE ALSO MAY BE STATE, LOCAL OR OTHER TAX CONSIDERATIONS APPLICABLE TO EACH CREDITOR. CREDITORS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE CONSEQUENCES OF THE PLAN TO THEM UNDER FEDERAL AND APPLICABLE STATE, LOCAL AND OTHER TAX LAWS.

### **IX. CONFIRMATION OF THE PLAN**

#### **A. Solicitation of Votes; Voting Procedures**

##### **1. Ballots and Voting Deadlines**

A Ballot to be used for voting to accept or reject the Plan, together with a postage-paid return envelope, is enclosed with all copies of this Disclosure Statement mailed to all holders of Claims and Equity Interests entitled to vote. BEFORE COMPLETING YOUR BALLOT, PLEASE READ CAREFULLY THE INSTRUCTION SHEET THAT ACCOMPANIES THE BALLOT.

The Bankruptcy Court has directed that, in order to be counted for voting purposes, Ballots for the acceptance or rejection of the Plan must be received no later than 5:00 p.m., Central Time, on [REDACTED], 2016 at the following address:

Forshey & Prostok, L.L.P.  
777 Main Street, Suite 1290  
Fort Worth, Texas 76102  
Attn: Linda Breedlove

YOUR BALLOT MAY NOT BE COUNTED IF IT IS RECEIVED AT THE ABOVE ADDRESS AFTER 5:00 P.M., CENTRAL TIME, ON [REDACTED], 2016.

##### **2. Parties in Interest Entitled to Vote**

The Holder of a Claim or Equity Interest may vote to accept or reject the Plan only if the Plan



impairs the Class in which such Claim or Equity Interest is classified. Under the Plan, all Classes of Claims and Equity Interests are Impaired. However, holders of Class Four Equity Interests are deemed to have rejected the Plan because such holders shall not receive or retain any property under the Plan on account of their Equity Interests in the Debtors.

Any Claim or Equity Interest as to which an Objection has been filed is not entitled to vote unless the Bankruptcy Court, upon application of the Holder to whose Claim or Equity Interest an Objection has been made, temporarily allows such Claim or Equity Interest in an amount that it deems proper for the purpose of accepting or rejecting the Plan. Any such application must be heard and determined by the Bankruptcy Court on or before commencement of the Confirmation Hearing. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such vote was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

IF YOU HAVE ANY QUESTIONS REGARDING THE PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT COUNSEL FOR THE DEBTORS OR THE COMMITTEE AT THE FOLLOWING ADDRESSES:

J. Robert Forshey  
Matthew G. Maben  
Forshey & Prostok, L.L.P.  
777 Main Street, Suite 1290  
Fort Worth, Texas 76102  
(817) 877-8855  
(817) 877-4151 fax  
Email: [bforshey@forsheyprostok.com](mailto:bforshey@forsheyprostok.com)  
Email: [mmaben@forsheyprostok.com](mailto:mmaben@forsheyprostok.com)  
(Counsel for the Debtors)

Paul J. Labov, Esq.  
Michael G. Menkowitz, Esq.  
Fox Rothschild, LLP  
100 Park Avenue, 15<sup>th</sup> Floor  
New York, New York 10017  
Fax: 212-692-0940  
Email: [plabov@foxrothschild.com](mailto:plabov@foxrothschild.com)  
Email: [mmenkowitz@foxrothschild.com](mailto:mmenkowitz@foxrothschild.com)  
(Counsel for the Committee)

### **3. Vote Required for Class Acceptance**

The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the claims of that class which actually cast ballots for acceptance or rejection of the plan. Thus, class acceptance takes place only if at least two-thirds in amount and a majority in number of the holders of claims voting cast their ballots in favor of acceptance.

The Bankruptcy Code defines acceptance of a plan by a class of interests as acceptance by holders of at least two-thirds in amount of the interests of that class that actually cast ballots for acceptance or rejection of the plan. Thus, class acceptance takes place only if at least two-thirds in amount of the holders of interests voting cast their ballots in favor of acceptance.

**B. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of a plan. By order of the Bankruptcy Court, the Confirmation Hearing has been scheduled for [REDACTED], 2016, at [REDACTED] .m. Central Time, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division. In addition to considering confirmation of the Plan, the Bankruptcy Court will consider final approval of this Disclosure Statement at such hearing. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjournment thereof.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Any objection to confirmation of the Plan and/or final approval of this Disclosure Statement must be made in writing and filed with the Bankruptcy Court on or before [REDACTED], 2016, at the following address:

Office of the Clerk  
U.S. Bankruptcy Court  
Eldon B. Mahon U.S. Courthouse  
501 W. Tenth Street  
Fort Worth, Texas 76102-3643

In addition, any such objection must be served, together with proof of service, (a) by United States Mail on any parties who have filed notices of appearance and requests for notice in the Chapter 11 Case and (b) by email or fax, with a hard copy served by United States Mail, upon the following parties on or before [REDACTED], 2016:

J. Robert Forshey  
Matthew G. Maben  
Forshey & Prostok, L.L.P.  
777 Main Street, Suite 1290  
Fort Worth, Texas 76102  
(817) 877-4151 fax  
Email: [bforshey@forsheyprostok.com](mailto:bforshey@forsheyprostok.com)  
Email: [mmaben@forsheyprostok.com](mailto:mmaben@forsheyprostok.com)

United States Trustee  
Attn: Erin Schmidt, Trial Attorney  
1100 Commerce Street, Room 976  
Dallas, TX 75242  
Email: [Erin.Schmidt2@usdoj.gov](mailto:Erin.Schmidt2@usdoj.gov)

Paul J. Labov, Esq.  
Michael G. Menkowitz, Esq.  
Fox Rothschild, LLP  
100 Park Avenue, 15<sup>th</sup> Floor  
New York, New York 10017  
Fax: 212-692-0940  
Email: [plabov@foxrothschild.com](mailto:plabov@foxrothschild.com)  
Email: [mmenkowitz@foxrothschild.com](mailto:mmenkowitz@foxrothschild.com)

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

**C. Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court must determine whether the Bankruptcy Code's requirements for confirmation of the Plan have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. As set forth in section 1129 of the Bankruptcy Code, these requirements are as follows:

1. The plan complies with the applicable provisions of the Bankruptcy Code.
2. The proponents of the plan complied with the applicable provisions of the Bankruptcy Code.
3. The plan has been proposed in good faith and not by any means forbidden by law.
4. Any payment made or promised by the debtor, by the plan proponent, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in, or in connection with, the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of the Bankruptcy Court as reasonable.
5. (a) (i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and  
(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and  
(b) the proponent of the plan has disclosed the identity of any Insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.
6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.
7. With respect to each impaired class of claims or interests:
  - (a) each holder of a claim or interest of such class has accepted the plan or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date; or
  - (b) if section 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, the holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.
8. With respect to each class of claims or interests:
  - (a) such class has accepted the plan; or

(b) such class is not impaired under the plan.

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that:

(a) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(b) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive:

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and

(c) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash:

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b) of the Bankruptcy Code); and

(d) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code, but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in 9(c) above.

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim of such class.

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

12. All fees payable under 28 U.S.C. section 1930, as determined by the Bankruptcy Court at the hearing on confirmation of the plan, have been paid or the plan provides for the payments of all such fees on the effective date of the plan.

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established

pursuant to subsection (e)(1)(B) or (g) of section 1114, at any time prior to confirmation of the plan, for the duration of the period the Debtor has obligated itself to provide such benefits.

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan:

(a) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(b) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2) of the Bankruptcy Code) to be received during the five year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

16. All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

The Debtors and Committee believe that the Plan satisfies all the applicable statutory requirements of chapter 11 of the Bankruptcy Code, that the Debtors and Committee have complied or will have complied with all the requirements of chapter 11, and that the Plan is proposed in good faith.

The Debtors and Committee believe that holders of all Allowed Claims and Equity Interests Impaired under the Plan will receive payments under the Plan having a present value, as of the Effective Date, not less than the amounts likely to be received if the Debtors were liquidated in a case under chapter 7 of the Bankruptcy Code. At the Confirmation Hearing, the Bankruptcy Court will determine whether holders of Allowed Claims or Allowed Equity Interests would receive greater distributions under the Plan than they would receive in a liquidation under chapter 7.

These facts and others demonstrating the confirmability of the Plan will be shown at the Confirmation Hearing.

#### **D. Cramdown**

In the event that any Impaired Class of Claims or Equity Interests does not accept the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Proponent if, as to each impaired Class which has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to that Class. A plan of reorganization "does not discriminate unfairly" within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its claims or interests.

"Fair and equitable" has different meanings with respect to the treatment of secured and unsecured claims. As set forth in section 1129(b)(2) of the Bankruptcy Code, those meanings are as follows:

1. With respect to a class of secured claims, the plan provides:

(a) (i) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(ii) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(b) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (a) and (b) of this subparagraph; or

(c) the realization by such holders of the "indubitable equivalent" of such claims.

2. With respect to a class of unsecured claims, the plan provides:

(a) that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(b) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115 of the Bankruptcy Code, subject to the requirements of section 1129(a)(14) of the Bankruptcy Code.

3. With respect to a class of interests, the plan provides:

(a) that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled or the value of such interest; or

(b) that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

In the event that one or more Classes of Impaired Claims or Equity Interests reject the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable with respect to, and does not discriminate unfairly against, any rejecting impaired Class of Claims or Equity Interests. For the reasons set forth above, the Debtors and Committee believe the Plan does not discriminate unfairly against, and is fair and equitable with respect to, each impaired Class of Claims or Equity Interests.

## **X. RISK FACTORS**

The following is intended as a summary of certain risks associated with the Plan, but it is not exhaustive and must be supplemented by the analysis and evaluation made by each Holder of a Claim or Equity Interest of the Plan and this Disclosure Statement as a whole with such Holder's own advisors.

**A. Insufficient Acceptances**

For the Plan to be confirmed, each impaired Class of Claims or Equity Interest is given the opportunity to vote to accept or reject the Plan, with the exception of Class Four, which is deemed to have rejected the Plan. With regard to such Impaired voting Classes, the Plan will be deemed accepted by a Class of impaired Claims if the Plan is accepted by Holders of Claims of such Class actually voting on the Plan who hold at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the total Allowed Claims of the Class voted. Only those members of a Class who vote to accept or reject the Plan will be counted for voting purposes. The Debtors and Committee reserve the right to request confirmation pursuant to the cramdown provisions in section 1129(b) of the Bankruptcy Code, which will allow confirmation of the Plan regardless of the fact that a particular Class of Claims has not accepted the Plan. However, there can be no assurance that any impaired Class of Claims under the Plan will accept the Plan or that the Debtors or Committee would be able to use the cramdown provisions of the Bankruptcy Code for confirmation of the Plan.

**B. Confirmation Risks**

The following specific risks exist with respect to confirmation of the Plan:

(a) Any objection to confirmation of the Plan can either prevent confirmation of the Plan, or delay such confirmation for a significant period of time.

(b) Since the Debtors and Committee may be seeking to obtain approval of the Plan over the rejection of one or more impaired Classes of Claims, the cramdown process could delay confirmation.

**C. Conditions Precedent**

Confirmation of the Plan and occurrence of the Effective Date are subject to certain conditions precedent that may not occur.

**XI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Debtors and Committee believe the only practical alternative to the Plan, which provides for a liquidation of the Debtors' remaining Assets, is conversion of the Chapter 11 Case to chapter 7 and liquidation under chapter 7. The Debtors and the Committee believe that liquidation through the Plan will provide a greater return to Holders of Allowed Claims than liquidation in a chapter 7 case.

The Debtors and Committee believe that liquidation in a chapter 7 case would diminish the value to be realized by holders of Claims because of additional administrative expenses involved in the appointment of a chapter 7 trustee or trustees, attorneys, accountants, and other professionals to assist such trustee(s) in the case of chapter 7 proceedings. The Debtors and Committee also believe that liquidation in a chapter 7 case could result in delay of distributions to holders of Allowed Claims as compared to liquidation under the Plan.

**XII. CONCLUSION**

The Debtors and Committee urge holders of Claims in Impaired Classes to vote to **ACCEPT** the Plan and to evidence such acceptance by returning their Ballots so that they will be received on or before 5:00 p.m., Central Time, on \_\_\_\_\_, 2016.

[The remainder of this page has been left intentionally blank]

Dated: June 8, 2016.

Respectfully submitted,

**AMSCO Steel Company, L.L.C.**

By: /s/ Stephen S. Sikes  
Stephen S. Sikes, Member

**Pyndus Steel & Aluminum Co., Inc.**

By: /s/ Stephen S. Sikes  
Stephen S. Sikes, Chairman & CEO

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITOR OF  
AMSCO STEEL COMPANY, L.L.C, and  
PYNDUS STEEL & ALUMINUM CO., INC.**

**By: Delaware Steel Company of Pennsylvania  
Committee Chair**

By: /s/ Lisa Goldenberg  
Name: Lisa Goldenberg.  
Title: President

APPROVED:

/s/ J. Robert Forshey  
J. Robert Forshey  
State Bar No. 07264200  
Matthew G. Maben  
State Bar No. 00798518  
FORSHEY & PROSTOK LLP  
777 Main St., Suite 1290  
Ft. Worth, TX 76102  
Telephone: (817) 877-8855  
Facsimile: (817) 877-4151  
[bforshey@forsheyprostok.com](mailto:bforshey@forsheyprostok.com)  
[mmaben@forsheyprostok.com](mailto:mmaben@forsheyprostok.com)

***Attorneys for Debtors and  
Debtors in Possession***

APPROVED:

/s/ Paul J. Labov  
**FOX ROTHSCHILD LLP**  
(Formed in the Commonwealth of  
Pennsylvania)  
100 Park Avenue, 15<sup>th</sup> Floor  
New York, New York 10017  
212-878-7900  
212-692-0940 (facsimile)  
Paul J. Labov, Esq.  
Michael G. Menkowitz, Esq.  
[plabov@foxrothschild.com](mailto:plabov@foxrothschild.com)  
[mmenkowitz@foxrothschild.com](mailto:mmenkowitz@foxrothschild.com)

***Attorneys for the Official  
Committee of Unsecured Creditors***