Docket #0836 Date Filed: 10/19/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
Debtors.[1]	§	**(Jointly Administered)**

OMNIBUS REPLY OF DEBTORS TO
OBJECTIONS TO DISCLOSURE STATEMENT

SpeedCast International Limited and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), respectfully reply (this "**Reply**") to the objections to the *Emergency Motion of Debtors for Entry of Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of Plan; (II) Conditionally Approving Disclosure Statement; (III) Approving Solicitation Procedures and Form and Manner of Notice of Combined Hearing and Objection Deadline; (IV) Fixing Deadline to Object to Disclosure Statement and Plan; (V) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (VI) Approving Plan Sponsor Selection Procedures; and (VIII) Granting Related Relief* [ECF No. 811] (the "**Motion**") as follows:[2]

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

[2] Those capitalized terms not otherwise defined herein shall have the meaning attributed to the in the Motion or the Disclosure Statement (as defined herein), as applicable.

Preliminary Statement

1. Speedcast is pursuing the restructuring and recapitalization of its business through a plan of reorganization that provides for the investment of $500 million by its plan sponsor and one of the Debtors' two largest lenders, affiliates of Centerbridge Partners, L.P. ("**Centerbridge**") for the equity of reorganized Speedcast. The Debtors' proposed Plan and Disclosure Statement (each as defined herein) benefits from the support of the Official Committee of Unsecured Creditors ("**UCC**"), and embodies the settlement reached with the UCC. The Debtors are not pursuing a sale of all or substantially all of their assets.

2. The Debtors' proposed Plan results from extensive discussions among the Debtors, Black Diamond and Centerbridge as their two largest lenders, and the UCC. The Plan is also the result, in part, of the competitive tension and competing proposals submitted by Black Diamond and Centerbridge to the Debtors following the Debtors' filing on August 12 of their *Emergency Motion for Order (I) Authorizing Debtors to Pay Expense Reimbursement Under Equity Commitment Agreement, (II) Granting Relief from Final DIP Order in Connection Therewith, and (III) Granting Related Relief* [ECF No. 586].

3. The Debtors are now seeking conditional approval of the Disclosure Statement for the Debtors' Plan, as well as the approval of procedures to continue soliciting higher or better plan sponsor proposals while solicitation of the Debtors' Plan is underway. This dual-track process has the treble-benefit of (i) providing the certainty of an exit-path through the Centerbridge-sponsored plan, (ii) maintaining and potentially increasing the competitive tension that has, to date, driven increasing and better proposals, and (iii) ensuring an end date to the Debtors' time in chapter 11 within their existing liquidity runway.

4. In the Debtors' business judgment, the equity investment contemplated by the Plan, together with the dual solicitation process, is the best way forward for the Debtors and

their estates. If consummated, the Plan will effectuate a comprehensive restructuring of the Debtors' debt through an investment in equity, which restructuring will include:

(a) repayment of the DIP Facility;

(b) a complete discharge of the Company's debt under the Syndicated Facility Agreement in the amount of approximately $633.9 million, and a $150 million recovery to holders of Allowed Syndicated Facility Secured Claims in cash (or such greater recovery as may be determined pursuant to the Plan Sponsor Selection Process);[3]

(c) a $500 million equity investment provided by the Plan Sponsor(s) in cash (or such greater amount as may be determined pursuant to the Plan Sponsor Selection Process);

(d) a $25 million recovery to holders of Unsecured Trade Claims; and

(e) establishment of a litigation trust for the benefit of Other Unsecured Claims.

5. The Objections before the Court (collectively, the "**Objections**") were filed by: (a) Black Diamond Capital Management, L.L.C. [ECF No. 827] ("**Black Diamond**"),[4] and (b) Inmarsat Global Limited, Inmarsat Solutions B.V. and their affiliates [ECF No. 830] (collectively, "**Inmarsat**"). The arguments raised in the Objections principally fall into two categories: (x) objections to the adequacy of the disclosure in the Disclosure Statement with respect to particular matters (the "**Disclosure Objections**"), and (y) objections raising issues with respect to plan confirmation and the confirmability of the Plan (the "**Confirmation Objections**").

[3] As part of the Debtors' original DIP facility, certain lenders funding the DIP facility rolled-up $90 million in SFA claims in to the Debtors' DIP facility. The original DIP facility was refinanced on September 30, 2020, and these lenders have had the full amount of these rolled-up claims repaid in cash. The $150mm recovery to Class 3 Syndicated Facility Secured Claims is in addition to the repayment of the roll-up.

[4] On October 18, 2020, Black Diamond Commercial Finance, L.L.C., in its capacity as administrative agent, collateral agent and security trustee under the Syndicated Facility Agreement, dated as of May 15, 2018, filed an Objection to the Motion [ECF No. 831]. The arguments asserted in this Objection are also asserted in the Black Diamond Objection, and for this reason, this Objection is not addressed in detail in this Reply.

6. Black Diamond's Objection is almost entirely predicated on its argument that the Plan is in fact a disguised 363 sale. For the reasons explained below, Black Diamond's characterization of the structure of the Plan, a straightforward restructuring and recapitalization of the Debtors, is wholly incorrect, but in any event is an objection more properly reserved for confirmation.

7. In addition, certain objections were raised to the Plan Sponsor Selection Procedures and the Debtors' Solicitation Procedures, which are also addressed herein. The Objections are further detailed in a schedule attached hereto as **Exhibit A** (the "**Objection Chart**") that identifies (a) the objecting party, (b) the arguments asserted in the Objections, and (c) a summary of the Debtors' responses thereto.

8. First, with respect to the Disclosure Objections, the Debtors have amended the Disclosure Statement to provide certain additional disclosures where appropriate.[5] These modifications provide more than "adequate" disclosure as required by section 1125 of the Bankruptcy Code. The Disclosure Statement is clearly "adequate" as evidenced by over 70 pages of information, inclusive of exhibits and attachments, describing, among other things, the Debtors' businesses, their assets and liabilities, the circumstances giving rise to the commencement of these chapter 11 cases, financial projections and valuation, the terms of the Plan and its treatment of the Debtors' creditors and equity interest holders, a discussion of tax consequences, and the risks associated with the Debtors' proposed restructuring. The additional disclosures set forth herein,

[5] On October 10, 2020, the Debtors filed the Disclosure Statement for Joint Chapter 11 Plan of Reorganization of SpeedCast International Limited and its Debtor Affiliates [ECF No. 810], and the Joint Chapter 11 Plan of SpeedCast International Limited and its Debtor Affiliates, attached as Exhibit A to the Disclosure Statement. Contemporaneously herewith, the Debtors filed the revised Disclosure Statement for Joint Chapter 11 Plan of Reorganization of SpeedCast International Limited and its Debtor Affiliates (the "**Disclosure Statement**"), and the revised Joint Chapter 11 Plan of SpeedCast International Limited and its Debtor Affiliates (the "**Plan**"), attached as **Exhibit A** to the Disclosure Statement.

as well as any additional disclosures that may be provided at the hearing to come, serve to only further support the adequacy of information within the Disclosure Statement.

9. Although the Debtors remain committed to addressing any remaining disclosure-related requests, the Disclosure Statement does not include all information requested in the Objections, as further described in the Objection Chart. To the extent necessary, the Debtors will produce additional evidence in the context of a customary discovery schedule ahead of confirmation, and the Debtors have already produced a substantial volume of documents to Black Diamond in connection with its discovery requests, and Black Diamond has already had the benefit of a deposition with the Chair of Speedcast's board of directors.[6]

10. A Disclosure Statement is simply not a substitute for the formal discovery process or plan confirmation.

11. Second, both Black Diamond and Inmarsat assert that the Disclosure Statement should not be approved because the Plan is "patently unconfirmable." Issues cited by the objectors in this regard include plan classification and treatment and Plan releases, among other matters.

12. The "patently unconfirmable" standard is a heavy burden for the objectors and one they cannot satisfy. Courts in this Circuit and others have repeatedly held that issues with

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[6] On September 25, 2020, Black Diamond filed the *Notice of Examination of Debtors Pursuant to Federal Rule of Bankruptcy Procedure 2004* [ECF No. 754] (the "**2004 Requests**"). In response, the Debtors have already produced, and are continuing to produce, documents. The 2004 Requests include 36 discrete categories covering a wide range of topics such as the ECA, the Plan, the Debtors' liquidity requirements and financial performance, cure negotiations and payments, communications with customers, and valuation. The 2004 Requests are aimed at confirmation issues.

Further, on October 12, 2020, in response to the Disclosure Statement, the Debtors received *Black Diamond Capital Management, L.L.C.'s Expedited Request for the Production of Documents* and *Black Diamond Capital Management, L.L.C.'s Notice of Deposition of Stephe Wilks*. The Debtors fully responded to these expedited requests and produced responsive documents on October 15 and produced Mr. Wilks for deposition on October 16, 2020.

plan provisions like the provisions cited in the Objections are confirmation issues. Simply put, the Confirmation Objections are, at best, premature. But the fact remains that the objectors have not and cannot carry the extraordinary burden to establish that any aspect of the Plan is so fatally flawed as to render it "patently unconfirmable."[7]

13. For the reasons stated in this Reply, the Court should overrule each of the Objections that are not already resolved or mooted.

The Objections Should Be Overruled

A. The Disclosure Statement Contains Adequate Information as Required by Section 1125(b) of the Bankruptcy Code

14. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a chapter 11 plan must provide holders of impaired claims and interests entitled to vote on a plan with "adequate information" regarding the plan. *See* 11 U.S.C. § 1125(a)(1). Section 1125(a)(1) of the Bankruptcy Code defines "adequate information" as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

Id. (emphasis added).

[7] The Debtors respectfully submit that the Plan complies with every applicable provision of the Bankruptcy Code and non-bankruptcy law, although the Debtors further acknowledge that is all a question for another day.

15. The determination of whether a disclosure statement contains adequate information is made on a case-by-case basis, focusing on the unique facts and circumstances of each case. *See In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988). In determining whether a disclosure statement contained adequate information, Bankruptcy Courts in the Fifth Circuit have considered the so-called *Metrocraft* factors when determining whether the information contained in a disclosure statement is adequate. *In re Divine Ripe, L.L.C.*, 554 B.R. 395, 401-402 (Bankr. S.D. Tex. 2016) (citing *In re Metrocraft Pub. Servs. Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984)); *In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996). Those non-exhaustive factors to be considered for the purposes of determining the sufficiency of "adequate information" include the following:

> (1) the events which led to the filing of a bankruptcy petition;
> (2) a description of the available assets and their value;
> (3) the anticipated future of the company;
> (4) the source of information stated in the disclosures statement;
> (5) a disclaimer;
> (6) the present condition of the debtor while in chapter 11;
> (7) the scheduled claims;
> (8) the estimated return to creditors under a chapter 7 liquidation;
> (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information;
> (10) the future management of the debtor;
> (11) the chapter 11 plan or a summary thereof;
> (12) the estimated administrative expenses, including attorneys' and accountants' fees;
> (13) the collectability of accounts receivable;
> (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the chapter 11 plan;
> (15) information relevant to the risks posed to creditors under the plan;
> (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers;
> (17) litigation likely to arise in a non-bankruptcy context;
> (18) tax attributes of the debtor; and
> (19) the relationship of the debtor with the affiliates.

Divine Ripe, 554 B.R. at 401-02. The Debtors' Disclosure Statement includes information responsive to almost all of these factors. Therefore, the Disclosure Statement provides sufficient information to allow creditors to make a decision, and, certainly provides "adequate information" under the standard required by section 1125 of the Bankruptcy Code.

16. The Debtors have specifically addressed all Disclosure Objections in the Objections Chart, indicating where they have added additional information and where the information already provided is sufficient to satisfy the applicable standard. As stated above, since the filing of the initial Disclosure Statement on October 10, 2020, the Debtors have added substantial additional disclosures, including, among other disclosures, to address the following topics raised in the Objections:

- Additional information regarding the Debtors' process for identifying vendors, suppliers, and other contract counterparties who are essential to the Debtors' business;
- Additional information regarding treatment of Class 3 for voting purposes;
- Additional information regarding the role of the Special Restructuring Committee;
- Additional information on the Liquidation Analysis by entity; and
- Information regarding ongoing discussions with Inmarsat.

17. In the context of these chapter 11 cases, the cost of additional disclosures would outweigh the benefits of any additional disclosures. If the Debtors were required to satisfy what are, in effect, back door discovery requests from Black Diamond and Inmarsat, such disclosure will not reasonably provide meaningful information to assist the proverbial 'typical investor' in considering whether to accept or reject the Plan. *See, e.g.*, *In re Stanley Hotel, Inc*., 13 B.R. 926, 933-34 (Bankr. D. Colo. 1981) ("[C]ompounding a disclosure statement for the sake of a lawyer's notion of completeness, or because some additional information might enhance one's

understanding, may not always be necessary or desirable, and the length of a document should not be the test of its effectiveness."). Accordingly, the Debtors submit that the information contained in the Disclosure Statement and corresponding attachments exceeds the requirements for adequate disclosure under section 1125 of the Bankruptcy Code.

B. The Plan Is Confirmable, and the "Patently Unconfirmable" Objections Should Be Considered at the Confirmation Hearing

18. At this juncture, the Court is required to determine only whether the Disclosure Statement contains "adequate information" to enable a hypothetical creditor to make an informed judgment on whether to vote to accept the Plan. *See, e.g.*, *In re Sea Trail Corp.*, No. 11-07370-8-SWH, 2012 WL 5247175, at *5 (Bankr. E.D.N.C. Oct. 23, 2012); *In re Quigley Co.*, 377 B.R. 110, 115–16 (Bankr. S.D.N.Y. 2007). Indeed, considering Confirmation Objections at this time would effectively convert the hearing on the Disclosure Statement into a confirmation hearing, without the benefit of the evidentiary record necessary to determine confirmation issues. *See, e.g.*, *U.S. Brass*, 194 B.R. at 423 ("The purpose of the disclosure statement is not to assure acceptance or rejection of a plan, but to provide enough information to interested persons so they may make an informed choice between two alternatives."); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 980 (Bankr. N.D.N.Y. 1988) ("[C]are must be taken to ensure that the hearing on the disclosure statement does not turn into a confirmation hearing, due process considerations are protected and objections are restricted to those defects that could not be cured by voting . . . .").

19. The very limited exception permitting the Court to hear plan confirmation issues at the disclosure statement stage applies if the objecting party proves as a matter of law that the plan "is so fatally flawed that confirmation is impossible." *See In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990) (citations omitted). That exception does not apply here. To meet this standard, Black Diamond and Inmarsat would need to show the Plan cannot be

confirmed as a matter of law. *U.S. Brass*, 194 B.R. at 424. They cannot make that showing. Any purported defects in the Plan can be overcome by creditor voting results and do not concern matters upon which all material facts are not in dispute or have been fully developed as of the hearing. Thus, any purported defects can be cured at confirmation, and rejection of the Disclosure Statement here is inappropriate. *See id.* at 423–24; *In re ReoStar Energy Corp.*, No. 10–47176, 2012 WL 1945801, at *3 (Bankr. N.D. Tex. May 30, 2012).

20. The case law is clear that objections concerning third party releases, the absolute priority rule, classification, and the best interest test, among others, are all matters properly addressed at confirmation. *See, e.g.*, Discl. Stmt. Hr'g Tr. 17:4–19, *In re iHeartMedia, Inc.*, No. 18-31274-H1-11 (Bankr. S.D. Tex. Sept. 13, 2018), ECF No. 1461 (noting that, other than objections requesting more information as to the justification of the releases and their benefit to the estate, objections to releases are generally best addressed at confirmation); Discl. Stmt. Hr'g Tr. at 81:5–11, 82:7–22, *In re Exco Res., Inc.*, No. 18-30155-H1-11 (Bankr. S.D. Tex. Nov. 5, 2018), ECF No. 1240 (preserving best interest, absolute priority, release objections for the confirmation hearing); Discl. Stmt. Hr'g Tr. 19:8–9, *In re Arcapita Bank B.S.C. (C)*, No. 12-11076-SHL (Bankr. S.D.N.Y. Apr. 26, 2013), ECF No. 1057 (noting at the disclosure statement hearing that: "There was a lot [in the disclosure statement objections] about third party releases, obviously. And that's a plan issue."); *In re N.Y.C. Off-Track Betting Corp.*, No. 09-17121 (MG) (Bankr. S.D.N.Y. Dec. 1, 2010), ECF No. 234 (approving disclosure statement over objections relating to subject matter jurisdiction to grant third party releases and propriety of third party release and exculpation provisions); *Quigley*, 377 B.R. at 119 (approving disclosure statement and holding that plan-related issues are confirmation issues, including the scope of third party releases and vote designation); *In re Ellipso, Inc.*, No. 09-00148, 2012 WL 368281, at *2

(Bankr. D.D.C. Feb. 3, 2012) (holding certain disclosure statement objections were confirmation issues "more appropriately dealt with at a confirmation hearing" including the contention that the classification of claims is improper).

The Debtors' Plan is a Reorganization and Not an Asset Sale

21. The Debtors have proposed a plan of reorganization that seeks to reorganize Speedcast through an investment from a plan sponsor in the equity of reorganized Speedcast. Many of the arguments in Black Diamond's Objection hinge on the false premise that the Debtors' proposed Plan is an asset sale. This premise is easily debunked. As a result, Black Diamond's arguments on their entitlement to credit bid, the treatment of Intercompany Interests violating the absolute priority rule, and its objections to the Plan Sponsor Selection Procedures, must fail.

22. The Debtors need significant additional capital to be able to reorganize their business and exit chapter 11 and, as a result, are pursuing a plan of reorganization that provides the capital infusion through an investment by a plan sponsor in the equity of reorganized Speedcast. The Debtors' plan sponsor transaction is supported by an Equity Commitment Agreement from Centerbridge, one of the Debtors' two largest lenders, which provides for an equity investment of $500 million in the Debtors, an amount sufficient to, among other things, repay the Debtors' debtor in possession financing, cover exit costs, provide a $150 million recovery to first lien lenders, a $25 million recovery to vendors that are crucial to Speedcast's ongoing business, and provide sufficient liquidity on the Company's balance sheet.

23. An equity investment, like the one contemplated by the Plan, is not an asset sale. *See In re NNN 3500 Maple 26, LLC*, No. 13-30402-HDH-11, 2014 WL 1407320, at *8 (Bankr. N.D. Tex. Apr. 10, 2014) (finding that where "real property itself is not really being sold,"

the plan "is a transfer of equity in the Debtors, not a sale of real property," and is "best characterized as recapitalizations.").

24. Black Diamond relies in large part on *In re Pacific Lumber* to support its premise that the Debtors' plan of reorganization is an asset sale. *See* Black Diamond Obj. at ¶¶ 15–17 (citing 584 F.3d 229 (5th Cir. 2009)). The plan at issue and the facts of *Pacific Lumber* are materially different to the Debtors' proposed Plan, and Black Diamond's reliance on this case to support its position is misguided.

25. The plan at issue in *Pacific Lumber* proposed to "dissolve . . . entities, cancel intercompany debts, and create new entities." 584 F.3d at 237. Once the new entities were created, the plan proposed to transfer "[a]lmost all of [the debtor entities'] assets" into each of the new entities. *Id.* Accordingly, the new entities "received title to the assets in exchange for this purchase." *Id.* at 245. The Debtors' plan here contemplates something completely different: the investment in equity of the reorganized debtors. *See* Disclosure Statement at 2–3; Plan § 5.9(a). Under the Debtors' proposed plan sponsor transaction, a new entity is being created that is acquiring interest in the reorganized debtors. It is this critical distinction that Black Diamond fundamentally misconstrues—the new entities in *Pacific Lumber* directly received assets. And it was the transfer of assets that brought the *Pacific Lumber* plan within the concept of a "sale" and, by extension, within § 1129(b)(2)(A)(ii). *Accord In re Olde Prairie Block Owner, LLC*, 464 B.R. 337, 347 (Bankr. N.D. Ill. 2011) (finding a sale where a "[p]lan . . . provide[d] that all Debtor's assets be transferred to control of new principals in exchange for assumption of the Debtor's liabilities to all creditors" because "neither entity [was] related to the Debtor" at the time).

26. Taken to its logical end, Black Diamond's all-encompassing definition of the concept of a sale effectively nullifies core provisions of the Bankruptcy Code. If this Court

were to accept Black Diamond's concept of a "sale," the "indubitable equivalent" provision of § 1129(b)(2)(A)(iii) would effectively be written out of the Bankruptcy Code, and every plan of reorganization would be subject to a lender's credit bid rights under § 363(k) as a result of the mandatory application of § 1129(b)(2)(A)(ii). The cram down of a secured class of claims could never be accomplished under this world view, and the provisions of section 506 would be rendered meaningless. To reiterate: the Debtors' proposed plan sponsor transaction contemplates an investment in equity by a plan sponsor, and not a transfer of assets. It cannot be properly characterized as a sale.

27. Black Diamond also attempts to use the U.S. Tax Code to argue that the Plan is not a reorganization, but instead, a sale, by misinterpreting the part of the Debtors' Disclosure Statement detailing federal income tax consequences of the transactions proposed by the Plan. In this regard, the Objection reflects either a fundamental lack of knowledge of U.S. federal income tax law or a self-serving attempt to supplant the definition of "reorganization" for bankruptcy purposes with that of the U.S. federal income tax law.

28. To the extent Black Diamond argues that the Plan is not a "reorganization" within the meaning of applicable bankruptcy law because it may not constitute a "reorganization" for purposes of Section 368(a) of the Tax Code, "Reorganization" for U.S. federal income tax purposes is a term of art and limited to those transactions that both meet one of the definitions of "reorganization" enumerated in Section 368(a) of the Tax Code and satisfy the range of non-statutory requirements found in the Treasury Regulations promulgated thereunder. U.S. federal income tax law heeds little attention to labels used to describe the transaction for non-U.S. federal income tax purposes or by the parties themselves. This is especially true in a bankruptcy context. A Section 363 sale, a transaction that is unambiguously considered a sale under bankruptcy law,

can, and often does, qualify as a reorganization for U.S. federal income tax purposes.[8] In fact, parties often go to great lengths to ensure that a Section 363 sale is not a reorganization for U.S. federal income tax purposes if that is the desired outcome.[9] The converse is also true—a transaction that is considered a "reorganization" for bankruptcy purposes is not automatically, or even presumptively, considered a "reorganization" for U.S. federal income tax purposes if it does not meet the statutory and non-statutory requirements of Section 368(a)(1) of the Tax Code.[10]

29. Given this disconnect between the definition of "reorganization" for U.S. federal income tax purposes and bankruptcy purposes, Black Diamond's reliance on *In re Olde Prairie Block Owner, LLC*, 464 B.R. 337, 345 (Bankr. N.D. Ill. 2011), is misplaced. In that case, "recapitalization" was not defined in the Bankruptcy Code, so the court looked to the Tax Code for guidance. Here, whether the Plan transactions constitute a "reorganization" under the Tax Code does not inform whether such transactions are a "sale" under the Bankruptcy Code.

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[8] *See In re Motors Liquidation Co.*, 430 B.R. 65, 87 (S.D.N.Y. 2010) ("These terms establish that the concept of a plan of reorganization for 'G' reorganization purposes is a tax concept and not a chapter 11 concept."); *see also id.* at 88 (citing *Helvering v. Ala. Asphaltic Limestone Co.*, 315 U.S. 179, 184, 62 S.Ct. 540, 86 L.Ed. 775 (1942)) ("However, the Supreme Court has held that a transfer of substantially all of a corporation's assets to a creditor owned entity pursuant to a bankruptcy court-approved credit bid for the assets can qualify as a 'plan of reorganization' for tax reorganization purposes."); *In re Sears Holdings Corp.*, No. 18-23538 (RDD) (Bankr. S.D.N.Y. July 9, 2019), ECF No. 4478; *In re Dendreon*, No. 14-12515 (LSS) (Bankr. Del. Apr. 4, 2015) ECF No. 606; I.R.S. Priv. Ltr. Rul. 201025018 (June 25, 2010).

[9] *See* Suresh T. Advani, *Busting Tax-Free Treatment*, *in* 13 STRATEGIES FOR ACQUISITIONS, DISPOSITIONS, SPIN-OFFS, JOINT VENTURES, FINANCINGS, REORGANIZATIONS & RESTRUCTURINGS 11 (Louis Freeman ed., 2018) ("Busting transactions are common in the bankruptcy arena. In the so-called 'Bruno's' transaction, creditors of a bankrupt corporation form a new corporation to acquire the assets of the old. The goal is to fall outside the definition of a reorganization, oftentimes using a combination of the busting techniques described above."); *see also* Gordon D. Henderson & Stuart J. Goldring, *Tax Planning for Troubled Corporations - § 709* (2020) ("Such transactions, when done successfully, have come to be called 'Bruno's' transactions, because they were successfully employed in the Bruno's bankruptcy. To make them work, one must be careful to ensure that they are not treated as 'G' or other acquisitive or divisive reorganizations, or as Code §351 transactions.").

[10] *See, e.g.*, *Neville Coke & Chem. Co. v. Comm'r*, 148 F.2d 599, 602–03 (3d Cir. 1945) (holding that three-, four-, and five-year notes evidencing advances were not securities); *Comm'r v. Sisto Fin. Corp.*, 139 F.2d 253, 255–56 (2d Cir. 1943) (holding that second mortgage notes payable in six months or less were not securities); *Pinellas Ice & Cold Storage Co. v. Comm'r*, 287 U.S. 462, 468–69, 53 S.Ct. 257, 77 L.Ed. 428 (1933) (holding that notes payable in four months were not securities); *Wellington Fund, Inc. v. Comm'r*, 4 T.C. 185, 190 (1944), *acq.* 1945 C.B. 7 (holding that a note evidencing 12-month loan with covenant protections was not a security).

30. Moreover, the discussion in the Disclosure Statement of treatment as reorganization for U.S. federal income tax purposes is only "puzzling" if one does not know the basic facts about the Debtor entities or the purpose of the Disclosure Statement tax discussion. Black Diamond's concern over the U.S. federal income tax return filing requirements represents yet another fundamental misunderstanding. Speedcast's Parent, the only Debtor that can be considered "a party to a reorganization" for U.S. federal income tax purposes, is an Australian corporation, and therefore, has no requirement to file a U.S. federal income tax return. The purpose of the Disclosure Statement is to describe the material U.S. federal income tax consequences of the Plan transactions, including acknowledging unknowns and risks, which allows a reasonable claimholder to make a reasoned decision on whether to vote to accept the Plan. In this case, the two classes of claims entitled to vote on the Plan, which the Disclosure Statement addresses, are receiving cash, or "other property" within the meaning of Section 356 of the Tax Code. Thus, it is not material whether the transaction is considered a reorganization for U.S. federal income tax purposes; the treatment is materially the same. Finally, the Disclosure Statement enumerates some of the factors that must be considered in determining whether the transaction qualifies as a reorganization within the meaning of Section 368(a) of the Tax Code. These factors, such as whether the Syndicated Facility Claims qualify as "securities" for U.S. federal income tax purposes or whether Speedcast International Limited will liquidate, have absolutely no bearing to the determination of whether the Plan is a "reorganization" or "sale" for bankruptcy purposes.

31. For all of the reasons stated above, there is simply no support, in law or in fact, for Black Diamond's assertion that the transactions contemplated by the Plan amount to a "sale."

There is No Independent Right to Credit Bid Under § 1129(b)

32. Black Diamond incorrectly asserts in its Objection that it is entitled to credit bid in the context of the Debtors' proposed plan to reorganize, based on its argument that the Plan seeks to accomplish a sale of the Debtors' assets. *See* Black Diamond Obj. at ⁋⁋ 14-23. This argument is mistaken.

33. As described in detail above, the Debtors are not pursuing a 'sale.' The Debtors have filed Plan Sponsor Selection Procedures to determine whether any other plan sponsor is willing to make a higher equity investment in Speedcast as part of Speedcast's reorganization, on the basis of a plan structure that has already been developed, is supported by major constituencies in the Debtors' chapter 11 cases including the Official Committee of Unsecured Creditors and a secured lender holding more than 40% of the secured claims against the Debtors, and provides the Debtors with an exit path from these chapter 11 cases within the timeline afforded to them by their current debtor in possession financing.

34. The Debtors are not required by the Bankruptcy Code to pursue any marketing process in order to proceed to confirmation of the proposed Plan. *See, e.g.*, *In re Emerge Energy Servs. LP, No. 19-11563 (KBO), 2019 WL 7634308, at *5* (Bankr. D. Del. Dec. 5, 2019) (finding that marketing process is not required in the context of confirmation).

35. As part of the Plan Sponsor Selection Procedures, the Debtors will accept non-cash currency in the form of SFA claims from Black Diamond. This is being done solely as an accommodation to Black Diamond, is not required by law, and is intended to support, incentivize and encourage Black Diamond in submitting a higher and better plan sponsor proposal than the one sponsored by Centerbridge, and to promote a further increase in recoveries to creditors above the existing Centerbridge transaction.

36. Without any support in law or fact, Black Diamond asserts that it should be entitled to credit bid under § 363 of the Bankruptcy Code under the Debtors' proposed Plan Sponsor Procedures, again relying on the false premise that the Debtors' plan of reorganization is an asset sale transaction.

37. When assets are sold pursuant to § 363(k) (which is not the case here), a creditor may "'offset such claim against the purchase price of such property'—*i.e.*, the creditor may credit-bid at the sale, up to the amount of the claim." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 644 (2012) (citing 11 U.S.C. § 363(k)).[11] The right to credit bid also extends to any plan that "provides for the sale of collateral free and clear of the [creditor's] lien." *Id.* at 649.

38. The Debtors are not seeking authority under § 363 in connection with their Plan; nor are they seeking to sell their assets through the Plan at all. Rather, as detailed above, the Debtors are proposing to reorganize pursuant to a plan sponsor transaction, through an investment in equity from their existing lenders. The Debtors' proposed Plan Sponsors Selection Procedures, therefore, fall outside the ambit of § 363(k), which section allows for credit bids in certain circumstances. *See NNN 3500 Maple 26*, 2014 WL 1407320, at *9 ("Given that the Plans would each consummate a recapitalization, not a sale, the Lender does not have any right under § 363 or otherwise to credit bid."). Furthermore, § 1129(b)(2)(A)(ii), which provides for the treatment of secured claims when assets are being sold under a plan pursuant to § 363(k), in order to meet the fair and equitable requirement, is inapplicable for the same reasons. There is simply no independent right to credit bid outside of a § 363 sale (or sale of collateral free and clear), under

[11] The Debtors note that the plan in *RadLAX* contemplated an asset sale pursuant to an asset purchase agreement, and is therefore distinguishable from the Debtors' Plan which contemplates a recapitalization through an Equity Commitment Agreement.

the Bankruptcy Code or under existing case law, and Black Diamond cannot point to a single case where this was required by a court in a plan sponsor transaction or equity investment.

39. Even if the Debtors *did* intend to sell assets under the Plan (which they do not), case law suggests that § 363 will not always apply to such a sale. *See In re Ditech Holding Corp.*, 606 B.R. 544, 592 (Bankr. S.D.N.Y. 2019) ("While it is true that chapter 3 of the Bankruptcy Code applies in chapter 11 cases—*see* 11 U.S.C. § 103(a)—it does not follow that all such provisions are applicable in every chapter 11 case. Here, where a debtor proposes a sale pursuant to a plan, the sale is not under section 363 and, by its plain terms, section 363(f) is inapplicable."). As the *Ditech* court discusses and the Bankruptcy Code recognizes, there are many ways to reorganize, and an asset or collateral sale, where credit bid provisions may or may not be applicable, is but one path among many. As already stated above and as the Plan provides, that is not the path the Debtors are taking.

40. Black Diamond's counsel has recently taken the same position as the Debtors in determining that there is no independent right to credit bid under § 1129 in the case *In re Stearns Holdings, LLC*, Case No. 19-12226 (SCC), in the Bankruptcy Court for the Southern District of New York. In that case, like in this one, the debtors had proposed plan sponsor selection procedures for a new money investment and equity acquisition, rather than an asset sale. Black Diamond's counsel in that case argued on behalf of the debtors (as the Debtors do here) that there is no credit bid entitlement in such circumstances. *See Motion of Debtors for an Order (A) Approving the Plan Sponsor Selection Procedures; (B) Establishing Notice Procedures; and (C) Granting Related Relief, In re Stearns Holdings, LLC*, Case No. 19-12226 (SCC) (Bankr. S.D.N.Y. July 9, 2019), ECF No. 33 ¶¶ 17–20 (arguing that because there is no sale under section 363(k) there is no right to credit bid).

41. It is well within the Debtors' business judgment in these circumstances to require investments to be made in cash—whether in full or in part. Here, the Debtors require part of any competing proposal to be in cash, in order to enable the Debtors to pay off the DIP and pay various exit costs, among other things, which require liquidity in any chapter 11 reorganization. In addition to that, even though the Debtors are not permitting credit bids, as an accommodation to their lenders only, the Debtors have proposed that a Qualified Plan Sponsor Proposal may be partially composed of Non-Cash Consideration under certain circumstances, as detailed in the Plan Sponsor Selection Procedures. The Debtors have done all this with the support of their other lenders and the Creditors' Committee.

42. Black Diamond asking for anything more of the Debtors' estates is without support in law, and will benefit no other stakeholders. For all of the reasons stated herein, the Debtors respectfully request that Black Diamond's Objection be overruled.

The Plan Does Not Include Impermissible Classes

43. Black Diamond and Inmarsat's objections to the classification scheme as impermissible gerrymandering are premature Confirmation Objections. *See* Black Diamond Obj. at ¶¶ 34-37; Inmarsat Obj. at pp. 16-17. Furthermore, these Confirmation objections are speculative, wholly conclusory, and fail on the merits. A debtor may classify substantially similar claims into different classes for "good business reasons." *Pac. Lumber*, 584 F.3d at 251. "Good business reasons" include separate treatment for vendors who are difficult to replace and essential to business operations. *See In re Bernhard Steiner Pianos USA, Inc*., 292 B.R. 109, 114 (Bankr. N.D. Tex. 2002); *see also In re Trimm, Inc*., No. B-97-16637-C-11D, 2000 WL 33673795, at *5 (Bankr. M.D.N.C. Feb. 17, 2000). As the Debtors will establish at confirmation, valid business reasons exist for the Plan's providing for two classes of general unsecured claims—Class 4A

(unsecured trade claims) and Class 4B (other unsecured claims)—and this classification scheme therefore complies with section 1122 of the Bankruptcy Code.

44. As stated above, Black Diamond's and Inmarsat's classification objections are premature Confirmation Objections. The propriety of the classification scheme is a question of fact hinging on evidence that the Debtors will present at the confirmation hearing. *See In re Greystone III Joint Venture*, 995 F.2d 1274, 1281 n.7 (5th Cir. 1991) (finding that the question whether a debtor has good business reasons to separate similar claims into different classes is a question of fact). Any assertion that the classification scheme fails is therefore premature and improper at this stage. *See Bernhard Steiner Pianos*, 292 B.R. at 114 (approving separate classification scheme based on evidence presented at confirmation hearing).

45. At the confirmation hearing, the Debtors will submit evidence establishing valid business justifications for the separate classification scheme, including evidence that the Debtors exercised their business judgment in determining to propose separate classification to maintain crucial business relationships with certain vendors, suppliers, and other contract counterparties who would be difficult to replace and whose continued work with the Company, on the same or better terms as currently in effect, is essential to the Debtors' go-forward business and operations. *See* Disclosure Statement at pp. 7-8. This evidence will prove fatal to Black Diamond's and Inmarsat's conclusory (and incorrect) assertions that the classification scheme was created to gerrymander the vote. Moreover, the UCC—the fiduciary for members of both classes of general unsecured creditors—has expressly stated that it supports the Debtors' Plan and Disclosure Statement and, by extension, the Debtors' classification scheme. This undermines any assertion of gerrymandering and suggests that the Plan is indeed confirmable. For all of the foregoing reasons, the Debtors respectfully request that these Objections be overruled.

The Plan Does Not Unfairly Discriminate and Is Fair and Equitable

46. Inmarsat's unfair discrimination objection is premature. *See* Inmarsat Obj. at 18. The Bankruptcy Code requires that a plan "not discriminate unfairly … with respect to each class of claims or interests that is impaired under, ***and has not accepted***, the plan." 11 U.S.C. § 1129(b)(1). Because no vote has occurred—and therefore no class has accepted or rejected the Plan—it is unclear whether any class members will even be able to raise an objection based on the unfair discrimination standard under section 1129(b)(1). Inmarsat's objection is thus hypothetical and premature, and should be addressed at the confirmation hearing, if at all. *U.S. Brass Corp.*, 194 B.R. at 422 (courts should take care not to consider objections to a disclosure statement that would "convert the disclosure statement hearing into a confirmation hearing").

47. Even so, the Bankruptcy Code does not prohibit discrimination between classes—it only prohibits *unfair* discrimination. *See id*. A plan unfairly discriminates where similarly situated classes are treated differently without a reasonable basis for the disparate treatment. *In re Cypresswood Land Partners, I*, 409 B.R. 396, 434 (Bankr. S.D. Tex. 2009); *In re Mortgage Inv. Co. of El Paso, Tex.*, 111 B.R. 604, 614 (Bankr. W.D. Tex. 1990); *In re Idearc Inc.*, 423 B.R. 138, 171 (Bankr. N.D. Tex. 2009). As explained above, the Debtors will establish their valid business justifications for the classification scheme and its different treatment of Classes 4A and 4B at the confirmation hearing.

The Syndicated Facility Secured Claims are Properly Classified

48. Black Diamond asserts that the Plan improperly designates its secured claim under the SFA as unimpaired and deemed to accept the Plan. *See* Black Diamond Obj. ⁋⁋ 6-13. First, this is clearly a Confirmation Objection, and it does not render the Plan patently unconfirmable.

49. Black Diamond's argument appears to be that its secured claim should be considered "impaired" because at the time its claim would be bifurcated by the Court, the liens securing its claims will not yet be stripped by the Plan. The Debtors disagree with this analysis, and submit their Plan properly provides for the bifurcation of secured claims and the release of liens on the collateral securing the SFA claims, which will all take effect, subject to this Court's approval, at the same moment—the Effective Date of the Plan.

50. The Debtors are not seeking a determination under section 506(b) or regarding impairment at this time, as that is appropriately reserved for confirmation. However, to address any concern that the Solicitation Procedures fail to provide creditors with the right to vote on account of a purportedly impaired class of claims, the Debtors have revised the Disclosure Statement and Plan provide that holders of Syndicated Facility Secured Claims may vote to accept or reject the Plan. The Debtors are soliciting votes from such holders to the extent Class 3 is determined to be Impaired under the Plan by the Bankruptcy Court. *See* Disclosure Statement at pp. 6, 54.

The Plan Does Not Violate the Absolute Priority Rule

51. Black Diamond incorrectly asserts that the Plan is patently unconfirmable because it violates the absolute priority rule by proposing to reinstate Intercompany Interests. *See* Black Diamond Obj. at ¶¶ 28-33. This objection is an objection to confirmation of the Plan rather than to the adequacy of information contained in the Disclosure Statement and should be deferred to the Confirmation Hearing. Furthermore, the Plan's treatment of Intercompany Interests is permissible and does not render the Plan patently unconfirmable.

52. The Plan provides that Allowed Intercompany Claims may be, in the Debtors' discretion, "adjusted, continued, settled, reinstated, discharged, eliminated, or otherwise

managed," and Allowed Intercompany Interests may, in the Debtors' discretion, remain unaffected, or be cancelled. *See* Plan at §4.6. This treatment is entirely consistent with precedent in this district and others, and does not violate the absolute priority rule.

53. There is no cash or consideration being distributed under the Plan on account of the intercompany claims or interests, which may be reinstated or remain unaffected, as applicable, solely as an administrative convenience to preserve the Debtors' corporate structure. Accordingly, recovery for other creditors, including general unsecured creditors, would not change regardless of whether intercompany claims and interests are cancelled or reinstated for the purpose of maintaining a corporate structure. In fact, no creditor will actually benefit if the Debtors were to amend the Plan to require that intercompany claims and interests be cancelled—including Black Diamond.

54. The fact that intercompany claims and intercompany interests may be unimpaired, and to the extent they are reinstated or remain unaffected under the Plan, is justified and does not violate the absolute priority rule. The Debtors and their non-Debtor subsidiaries have a complex corporate structure, and the reinstatement of the intercompany claims and intercompany interests is a key component in preserving the Debtors' structure, and supports the Debtors' unambiguous position that they are pursuing a reorganization of Speedcast through the Plan, and not an asset sale. In addition, courts have routinely found, in this district and others, that plans are "fair and equitable" under section 1129 of the Bankruptcy Code where they provide for the reinstatement of a parent debtor's equity interests in a subsidiary debtor but does not provide for recoveries with respect to claims in higher priority classes. *See, e.g., In re Tarrant Cnty. Senior Living Ctr., Inc.*, No. 19-33756 (SGJ), 2019 WL 9856221, at *35 (N.D. Tex. Dec. 20, 2019); *Ion Media Networks v. Cyrus Select Opportunities Master Fund, Ltd. (In re Ion Media Networks, Inc.*),

419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009); *In re Am. Media, Inc.*, No. 10-16140 (MG), 2010 WL 5483463, at *14–15 (Bankr. S.D.N.Y. Dec. 20, 2020).

55. Finally, courts in the Fifth Circuit have approved plans of reorganization that provided for similar reinstatement or preservation of intercompany claims and/or interests. *In re Reddy Ice Holdings, Inc.*, No. 12-32349-sgj11, (Bankr. N.D. Tex. May 22, 2015), ECF No. 432 ¶ SS (holding that preservation of intercompany claims "is a means to preserve the Reorganized Company's corporate structure that does not have any economic substance and that does not enable any claimholder or interest holder junior to the Rejecting Classes to retain or recover any value under the Plan"); *In re Tarrant Cnty. Senior Living Center, Inc.*, Case No. 19-33756 (SGJ), 2019 WL 9856221, at *35 (N.D. Tex. Dec. 20, 2019) (confirming plan that reinstated intercompany claims).

56. Black Diamond's attempt to undermine these well-established principles by asserting that the Debtors "will find no refuge in cases permitting the technical reinstatement of intercompany equity interests for administrative convenience" is premised on a misreading of *In re Ion Media Networks, Inc.*, 419 B.R. 585 (Bankr. S.D.N.Y. 2009). Black Diamond Obj. at ¶¶ 32-33. Pointing to *Ion*, Black Diamond contends that preserving intercompany claims as a means to preserve corporate structure requires circumstances similar to those present in *Ion—i.e.*, a plan that equitizes a fulcrum class of claims. Black Diamond Obj. at ¶ 33. *Ion* does not stand for the proposition that a plan can preserve intercompany claims *only* when a plan equitizes a fulcrum class of claims. *See, generally, Ion Media Networks*. 419 B.R. at 601 (holding that plan did not violate the absolute priority rule). Black Diamond's argument, therefore, misses the mark. In any event, setting aside *Ion*, courts in the Fifth Circuit have approved plans of reorganization that

provide for similar reinstatement or preservation of intercompany claims and/or interests. *See supra* ¶ 55.

57. For all of the above-stated reasons, the Debtors request that this Objection be overruled.

Release Provisions of the Plan are Appropriate

58. Black Diamond asserts that the Plan impermissibly provides for releases for non-Debtor parties to the SFA, and related injunction provisions, with respect to non-Debtor guaranties and the proposed release of liens on the property of the non-debtor SFA Loan Parties. Black Diamond Obj. at ¶¶ 24-27. These are typical Confirmation Objections that should be deferred to the confirmation hearing. *See* supra ⁋ 20. Moreover, Black Diamond does not satisfy its burden of demonstrating that the release and injunction provisions make the Plan patently unconfirmable.

The Non-Debtor Releases are Appropriate

59. Article 10.6 of the Plan provides for the release of claims by the Debtors (the "**Debtors' Releases**"), as well as by Non-Debtor Affiliate holders of certain Claims and Interests (the "**Non-Debtor Subsidiary Releases**"), in favor of the Released Parties. The Loan Parties to the Syndicated Facility Agreement include both the Debtors and the Government Business. The Government Business is comprised of a number of non-debtor subsidiaries wholly-owned by the Debtors. The value of the Government Business is included in and forms part of the recovery that holders of Class 3 Syndicated Facility Secured Claims receive under the proposed Plan. Article 10.6 of the Plan provides for the release and discharge of all liens, claims and causes of action under the Syndicated Facility Agreement against the Debtors and the Government Business on the Effective Date of the Plan. The Debtors' Government Business provides essential

services to the U.S. government, intelligence agencies, and branches of the military. This business is—and will remain—valuable to the Debtors' go-forward enterprise.

60. As discussed below, the Non-Debtor Subsidiary Releases are fair and equitable, are in the best interest of the Non-Debtor Affiliates, are integral components of the Plan, and the consideration in the Non-Debtor Subsidiary Releases are consistent with the Bankruptcy Code and comply with applicable case law.

61. Under section 1123(b)(3)(A) of the Bankruptcy Code, a chapter 11 plan may provide for the "settlement or adjustment of any claim or interest belonging to the debtor or to the estate." *See, e.g.*, *In re Bigler LP*, 442 B.R. 537, 547 (Bankr. S.D. Tex. 2010) (plan release provision "constitutes an acceptable settlement under § 1123(b)(3) because the Debtors and the Estate are releasing claims that are property of the Estate in consideration for funding of the Plan"); *In re Heritage Org., LLC*, 375 B.R. 230, 308 (Bankr. N.D. Tex. 2007) ("[T]he plain language of § 1123(b)(3) provides for the inclusion in a plan of a settlement of claims belonging to the debtor or to the estate . . . ."); (emphasis omitted); *In re Gen. Homes Corp.*, 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991) ("To the extent that . . . the plan purports to release any causes of action against the [creditor] which the Debtor could assert, such provision is authorized by § 1123(b)(3)(A) . . . .").

62. Additionally, the Non-Debtor Subsidiary Releases are not expressly prohibited by section 524(e) the Bankruptcy Code. In fact, many courts have noted that the language of section 524(e) "does not purport to limit or restrain the power of a bankruptcy court to otherwise grant a release of third-parties." *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 934 (Bankr. W.D.Mo. 1994); *In re Specialty Equip. Co.*, 3 F.3d 1043, 1047 (7th Cir. 1993); *see also SE Prop. Holdings LLC v. Seaside Eng'g & Surveying, Inc.* (*In re Seaside Eng'g & Surveying,*

Inc.), 780 F.3d 1070, 1078 (11th Cir. 2015); *Behrmann v. Nat'l Heritage Found.*, 663 F.3d 704, 711 (4th Cir. 2011); *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 293 (2d Cir. 1992) (stating that third-party releases are allowed under the Bankruptcy Code).

63. The Non-Debtor Subsidiary Releases are part of a package deal as part and parcel to the overall Plan settlement and cannot be viewed in vacuum. And while nonconsensual third-party releases are generally disfavored in the Fifth Circuit, they are not unprecedented, and the Plan's Non-Debtor Subsidiary Releases are appropriate here for at least six reasons.

64. ***First***, the releases are not properly characterized as third-party in nature. The entities being released are wholly-owned subsidiaries of the Debtors, not unaffiliated corporate entities. The Debtors' Government Business provides essential services to the U.S. government, intelligence agencies, and branches of the military. This business is—and will remain—valuable to the Debtors' go-forward enterprise.

65. ***Second***, the Government Business has provided significant consideration in these Chapter 11 Cases. For example, among other things, the Government Business agreed to be a guarantor under the original and refinanced DIP Facility, a critical component for the Debtors to obtain the necessary post-petition DIP financing, and without which it is likely the Debtors would have had to liquidate.

66. ***Third,*** the recovery to secured lenders under the Debtors' proposed Plan already includes the value of the Government Business. Allowing secured lenders to receive their recovery in Class 3, while simultaneously maintaining liens and claims against the Government Business, results in a double recovery to the secured lenders based on the underlying collateral. The Plan sponsor is making its investment in the Debtors' business enterprise based in part on the Plan providing for a release of all claims against the Debtors and their subsidiaries upon emergence

from chapter 11. The releases for the non-debtor Government Business entities in the Plan are therefore proper and essential to the Debtors' reorganization. Additionally, there are no valid Fifth Amendment concerns here, as the creditors' recovery value is predicated on the value the Government Business contributes to the Debtors' enterprise value. Simply put, Black Diamond is receiving more than "just compensation" as it will receive a full recovery on the secured portion of its claim—which is only made possible by the value the Government Business contributes to Debtors.

67. ***Fourth***, the Non-Debtor Subsidiary Releases are not being requested for any improper purpose; nor are they unrelated to the Debtors' conduct in these Chapter 11 Cases. *Cf. Pac. Lumber*, 584 F.3d at 252–53 (seeking to absolve non-debtor from negligent conduct that occurred during chapter 11 proceedings); *Feld v. Zale Corp. (In re Zale Corp.*), 62 F.3d 746, 755–56 (5th Cir. 1995) (seeking to purchase immunity for their own liabilities unrelated to the debtors' conduct).

68. ***Fifth***, at least one court in the Fifth Circuit has approved a chapter 11 plan with similar releases and permanent injunctions barring claims against released non-debtors. *See, e.g.*, *In re CHC Grp. Ltd.*, No. 16-31854 (BJH) (Bankr. N.D. Tex. Feb. 16, 2017), ECF No. 1701 (providing for the release of claims against certain non-debtor entities, including the Debtors' predecessors, professionals, successors, assigns, *subsidiaries, affiliates*, and a permanent injunction).

69. ***Sixth***, even assuming the Court considered the Non-Debtor Subsidiary Releases to be third-party in nature, the five-factor balancing test previously applied by courts in this Circuit weighs in favor of the releases. *See In re Wool Growers Cent. Storage Co.*, 371 B.R. 768, 777 (Bankr. N.D. Tex. 2007); *In re Seatco, Inc.*, 257 B.R. 469, 474 (Bankr. N.D. Tex. 2001)

(citing *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 934-35 (Bankr. W.D. Mo. 1994)). Specifically, in *In re Wool Growers Cent. Storage Co.*, the Bankruptcy Court for the Northern District of Texas applied the following five factors when analyzing whether the releases were appropriate:

> (1) identity of interest between the debtor and the third-party;
>
> (2) substantial contribution of assets to the reorganization;
>
> (3) release is necessary to the reorganization;
>
> (4) majority of affected creditors have overwhelmingly accepted plan treatment; and
>
> (5) plan provides payment of all, or substantially all, of the affected classes' claims.

Wool Growers, 371 B.R. at 777 (explaining that not all of the factors need to be present to approve the nonconsensual non-debtor release, and that courts generally balance the factors and look at the specifics of each case).

70. At least four of the five factors weigh in the Debtors' favor here, and as the confirmation evidence will show: (1) the entities being released are subsidiaries of the Debtors and, year-to-date, contribute nearly one-fifth of all revenue; (2) the released parties have contributed to the Debtors' reorganization by contributing cash, enterprise value, insurance proceeds, and subordination of future claims; (3) without such releases, the Government Business would lose valuable contracts, negatively impacting the value of the Debtors' go-forward business; and (4) the Plan contemplates that secured creditors, like Black Diamond, will be paid 100% in full on the secured portion of their claims, the value of which has been calculated taking into account the value of the subsidiaries unburdened by the guarantees and liens. As such, on balance and considering the totality of the circumstances, the *Wool Growers* factors weigh in favor of the Non-Debtor Subsidiary Releases.

71. Thus, for all of the foregoing reasons, the Plan's proposed Non-Debtor Subsidiary Releases are appropriate.

The Plan Injunctions are Appropriate

72. The injunction provisions set forth in Sections 10.5 and 10.9 of the Plan (the "**Plan Injunctions**"), which provide a means to enforce the Debtor Releases, Third-Party Release, and exculpations, comply with the Bankruptcy Code and are appropriate pursuant to section 105 of the same for at least three reasons. *See, generally, In re Camp Arrowhead, Ltd.*, 451 B.R. 678, 701–02 (Bankr. W.D. Tex. 2011); *In re CJ Holding Co.*, 597 B.R. 597, 607–08 (S.D. Tex. 2019) (finding under section 105, "[a] bankruptcy court may confirm a plan that modifies a relationship between a creditor and a nondebtor third-party").

73. ***First***, among other things, the Plan Injunctions provide certainty to the Debtors and the Reorganized Debtors that the Plan will be enforceable in accordance with its terms. *See In re Weatherford Int'l PLC*, No. 19-33694 (DRJ) (Bankr. S.D. Tex. Sept. 11, 2019), ECF No. 343 ¶ 28 (finding that injunctions are "an integral part of th[e] Plan and essential to its implementation"); *In re Goodrich Petroleum Corp*., No. 16-31975 (MI) (Bankr. S.D. Tex. Sept. 28, 2016), ECF No. 531 ¶¶ 29, 108 (approving injunctions as being "necessary to implement, preserve, and enforce the Debtors' discharge, the Debtor Releases, the Third-Party Release, and the Exculpation, and . . . narrowly tailored to achieve this purpose.").

74. ***Second***, the Plan Injunctions are essential to protect the Debtors, Reorganized Debtors, and the assets of the Debtors' estates from potential litigation from prepetition creditors on or after the Effective Date.

75. ***Third, and finally***, similar injunction provisions, including injunctions that apply to non-debtor subsidiaries, have been approved in other, similarly complex chapter 11 cases

in this court. *See, e.g.*, *In re SandRidge Energy, Inc.*, No. 16-32488 (DRJ) (Bankr. S.D. Tex. Sept. 20, 2016), ECF No. 901 ¶¶ 43, 88 (approving substantially similar "injunction provisions [as being] essential to the Plan and are necessary to implement the Plan and to preserve and enforce the discharge, Debtor Release, the Third Party Release, and the exculpation provisions . . . .").

76. Thus, similar to the Non-Debtor Subsidiary Releases, the Plan Injunctions are also appropriate.

C. The Plan Sponsor Selection Procedures Should be Approved

77. Black Diamond objects to various aspects of the Debtors' proposed Plan Sponsor Selection Procedures, including the marketing process and length, NDA requirements, the criteria for a Qualified Plan Sponsor Proposal, and other aspects of the Debtors' Plan Sponsor Selection Procedures, asserting that they are not fair or transparent. Black Diamond Obj. at ¶ 38. In addition, Black Diamond submitted a heavy mark-up of the Plan Sponsor Selection Procedures to the Debtors.

78. The Debtors submit that their Plan Sponsor Selection Procedures are appropriate, and tailored to both promote the submission of higher and better plan sponsor proposals, and to enable the Debtors to reorganize prior to the March 15, 2021 maturity of their DIP facility. Furthermore, with respect to the marketing period length and any other timing concerns, the Debtors structured their procedures and timeline to account for their liquidity runway and the various approvals that will be required for the Debtors to close the transactions contemplated by the Plan, including approvals from the FCC and various other authorities.

79. In order to exit these chapter 11 cases under the proposed Plan, the Debtors and their advisors have calculated that they require a minimum of $350 million in cash exclusive of the minimum recovery to prepetition secured lenders of $150 million. This amount includes repayment of the DIP in full in cash, payment of all administrative and priority claims including

professional advisor fees and 503(b)(9) claims, providing cash collateral for letters of credit, payment of prepetition contract cure claims, payment of certain lease and vendor exit costs, payment to unsecured trade claims and funding of the litigation trust. Depending on the date of their emergence from chapter 11, the Debtors anticipate sufficient cash being on their balance sheet to ensure feasibility of the Plan and their ability to pay their debts as they fall due in the ordinary course post-emergence. This $350 million is defined in the Plan Sponsor Selection Procedures as the Required Base Cash Amount, and a schedule setting forth the uses for the Required Base Cash Amount has been made available to all potential Plan Sponsors in the Debtors' data room. Given the fixed exit costs for the Debtors under the proposed Plan, the Debtors' proposed Plan Sponsor Selection Process contemplates any higher and better offers from other potential Plan Sponsors to result in a dollar for dollar increase to Class 3 Syndicated Facility Secured Claims.

80. The Debtors have agreed to make certain changes to their Plan Sponsor Selection Procedures where they deemed such changes appropriate, and as an accommodation for Black Diamond. These changes are reflected on the revised Plan Sponsor Selection Procedures that are annexed as Exhibit H to the Disclosure Statement, and on the chart summarizing Black Diamond's requested changes to the Plan Sponsor Selection Procedures and the Debtors' responses to those requests, attached hereto as **Exhibit B**. In their business judgement, the Debtors do not believe any further changes are required or advisable, and would not increase their chances of receiving additional or better plan sponsor proposals.

81. For the reasons stated above, the Debtors respectfully request that the Court approve the Plan Sponsor Selection Procedures, as amended.

D. The Solicitation Procedures Should be Approved

82. Inmarsat objects to the timeline proposed by the Debtors for objections to claims and the Debtors' proposed confirmation schedule, arguing that it deprives creditors of the

time they need to exercise their rights. *See* Inmarsat Obj. at pp. 19-23. However, the Debtors had no improper motives in constructing their confirmation timeline, and instead had no choice but to be governed by (a) the fact that the DIP facility matures on March 15, 2021, and so the Plan must be confirmed and consummated by that time, and (b) that in order to consummate the transactions comprising the Plan, the Debtors will need to obtain approvals from numerous governmental authorities, which require a substantial amount of time to be received. The Debtors' proposed timeline reflects the time that the Debtors have been advised they will need to meet these requirements. For these reasons, Inmarsat's Objection to Solicitation Procedures should be overruled.

Conclusion

WHEREFORE the Debtors respectfully request that the Court overrule the Objections, conditionally approve the Disclosure Statement, and grant the relief requested in the Motion and such other and further relief as the Court deems just and proper.

Dated: October 19, 2020
Houston, Texas

Respectfully submitted,

/s/ Alfredo R. Pérez

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Certificate of Service

I hereby certify that, on October 19, 2020, a true and correct copy of the foregoing document was served as provided by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Alfredo R. Pérez
Alfredo R. Pérez

Exhibit A

Objection Chart

Objection Summary Chart[1]

Objecting Party	Summary of Objection	Debtors' Response
Black Diamond Capital Management, LLC (ECF No. 827)	a) The Plan is patently unconfirmable because it classifies Syndicated Facility Secured Claims as unimpaired. Black Diamond Obj. at ¶¶ 6-13.	• This is a Confirmation Objection, and is addressed in the body of the Reply. *See* Reply at ¶¶ 48-50. • In addition, the Debtors have revised the Disclosure Statement and Plan provide that holders of Syndicated Facility Secured Claims may vote to accept or reject the Plan. The Debtors are soliciting votes from such holders to the extent Class 3 is determined to be Impaired under the Plan by the Bankruptcy Court. *See* Disclosure Statement at pp. 6, 54.
	b) The Plan contemplates a "sale." The Plan fails to provide Prepetition Lenders with the opportunity to credit bid. Black Diamond Obj. at ¶¶ 14-18, 21-23.	• These objections are addressed in the body of the Reply. *See* Reply at ¶¶ 21-42.
	c) The Plan is patently unconfirmable because it provides for third-party releases of claims and liens for all SFA Loan Parties under the SFA Loan Documents. Black Diamond Obj. at ¶¶ 24-27.	• This is a Confirmation Objection that is properly deferred to confirmation, and is addressed in the body of the Reply. *See* Reply at ¶¶ 58-71.

[1] On October 18, 2020, Black Diamond Commercial Finance, L.L.C., in its capacity as administrative agent, collateral agent and security trustee under the Syndicated Facility Agreement, dated as of May 15, 2018, filed an Objection to the Motion [ECF No. 831]. The arguments asserted in this Objection are also asserted in the Black Diamond Objection, and for this reason, this Objection is not addressed in detail in this Objection Summary Chart.

	d) The Plan is patently unconfirmable because it enjoins enforcement of the Syndicated Facility Agreement against the non-SFA Loan Parties contrary to code section 524(e). Black Diamond Obj. at ¶¶ 25.	• This is a Confirmation Objection that is properly deferred to confirmation, and is addressed in the body of the Reply. *See* Reply at ¶¶ 72-76.
	e) The proposed classification and treatment of General Unsecured Claims violates the absolute priority rule because Class 8 intercompany interests can be reinstated in full while Class 4B claims will only receive pro rata share of net proceeds from the Litigation Trust. Black Diamond Obj. at ¶¶ 28-33.	• This is a Confirmation Objection that is properly deferred to confirmation, and is addressed in the body of the Reply. *See* Reply at ¶¶ 51-57.
	f) The separate classification of the unsecured trade claims and "other unsecured claims" constitutes impermissible gerrymandering. Black Diamond Obj. at ¶¶ 33-37.	• This is a Confirmation Objection that is properly deferred to confirmation, and is addressed in the body of the Reply. *See* Reply at ¶¶ 43-45.
	g) Black Diamond objects to various aspects of the Plan Sponsor Selection Procedures (the "**PSSP**"), including the following (Black Diamond Obj. at ¶¶ 42-56), and including the mark-up of the PSSP provided by Black Diamond: • The PSSP inappropriately purport to establish the amount of the allowed Syndicated Facility Secured Claim; the $150 mil cash payment the Plan contemplates as the amount of the allowed Syndicated Facility Secured Claim is not the indubitable equivalent of the Prepetition Lenders' secured claims.	• This objection is addressed in the body of the Reply. *See* Reply at ¶¶ 77-81. • In addition, the Debtors have agreed to make certain changes to their Plan Sponsor Selection Procedures where they deemed such changes appropriate, and as an accommodation for Black Diamond. These changes are reflected on Exhibit B to the Reply. In their business judgement, the Debtors do not believe any further changes are required or advisable, and would not increase their chances of receiving additional or better plan sponsor proposals.

	• The PSSP unreasonably require prepetition lenders with existing confidentiality obligations to enter into an additional NDA. • The criteria for a "qualified plan sponsor proposal" and the plan sponsor proposal factors are unduly restrictive. • A $505 million minimum bid amount overstates the value of the Centerbridge proposal. • The PSSP improperly does not permit proposals for acquisition structures other than for 100% of the New Speedcast Equity Interests. • The $350 million minimum Required Base Cash Amount is artificially inflated by the $25 million Trade Cash Claim Amount, and is in excess of DIP borrowings and anticipated exit costs. • PSSP requires unnecessary disclosures in each proposal. • The requirement that competing plan sponsors serve as back-up plan sponsors for an unlimited period is unreasonable. • The PSSP should not prohibit multiple simultaneous bids. • The 25-day marketing period for the PSSP is too short to attract meaningful competition.	

	• The PSSP fail to describe how the debtors will conduct the "final selection process". • The PSSP afford the Debtors excessive flexibility to modify the procedures.	
	h) The Disclosure Statement lacks sufficient disclosure concerning the Debtors' valuation of the prepetition collateral, specifically the $150 million asserted Allowed SFA Secured Claim Amount, and the Plan does not explain how the Direct Investment Amount is reconciled with the Valuation Analysis. Black Diamond Obj. at ¶¶ 58-59.	• The Debtors' Valuation Analysis is set forth on Exhibit F to the Disclosure Statement. The Debtors have provided more information than required to enable creditors to decide how to vote on a plan. *See* 11 U.S.C. § 1125(b) ("The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets"). • Furthermore, valuation is a confirmation issue, as it necessarily concerns factual analysis and evidence. The Debtors will be prepared to defend their Valuation Analysis at confirmation.
	i) The Disclosure Statement contains inadequate information concerning the treatment of and recoveries for unsecured trade claims and other unsecured claims. Black Diamond Obj. at ¶¶ 60-62.	• This is a Confirmation Objection that is properly deferred to confirmation, and is addressed in the body of the Reply. *See* Reply at ¶¶ 43-45. • Furthermore, the Debtors have amended the Disclosure Statement to include additional information regarding the classification and treatment of general unsecured claims. See Disclosure Statement at pp. 6-8.
	j) The Disclosure Statement does not adequately disclose the federal income tax consequences of the Plan because the Debtors do not take a position whether the Plan is a "reorganization"	• This objection is addressed in the body of the Reply. *See* Reply at ¶¶ 27-31.

	under section 368 of the Tax Code, or a sale Black Diamond Obj. at ¶¶ 63-64.	
	k) The Disclosure Statement does not adequately disclose the role of the Special Restructuring Committee in the plan selection process – whether advisory only or if it has decision-making authority. Black Diamond Obj. at ¶ 65.	• The Debtors have amended the Disclosure Statement to include additional information regarding the Special Restructuring Committee's role. *See* Disclosure Statement at p. 23. As amended, the Debtors believe the Disclosure Statement provides more than adequate information for creditors to make a decision.
Inmarsat Global Limited, Inmarsat Solutions B.V. and their affiliates [ECF No. 830]	a) The Disclosure Statement does not contain adequate information regarding the different classification between Unsecured Trade Claims and Other Unsecured Claims. Inmarsat Obj. at pp. 8-10. b) The Disclosure Statement does not contain adequate information regarding potential recoveries of other unsecured creditors. Inmarsat Obj. at pp. 10-11.	• This is a Confirmation Objection that is properly deferred to confirmation, and is addressed in the body of the Reply. *See* Reply at ¶¶ 43-45. • In addition, the Debtors amended the Disclosure Statement to include additional information regarding the classification of trade vendor claims. *See* Disclosure Statement at pp. 6-8.
	c) The Litigation Trust Agreement will be attached to the Plan Supplement, which is too late for meaningful creditor review. Inmarsat Obj. at 10-11.	• The Debtors have included sufficient information about the Litigation Trust Agreement in the Disclosure Statement. Filing such agreements with the Plan Supplement is a common practice in this Circuit and others. Furthermore, the Debtors do not believe that reviewing the terms of this agreement would have any meaningful impact on a creditor's decision with respect to the Plan.

	d) A separate liquidation analysis should be provided for each Debtor entity. Inmarsat Obj. at pp. 11-12.	• The Debtors' liquidation analysis has been prepared on a by-entity basis. *See* Disclosure Statement Exhibit D.
	e) The Disclosure Statement fails to disclose the proposed Inmarsat transaction. Inmarsat Obj. at pp. 12-14.	• The Debtors have amended the Disclosure Statement to include additional information regarding the Inmarsat transaction. *See* Disclosure Statement at p. 39. As amended, the Debtors believe the Disclosure Statement provides more than adequate information for creditors to make a decision.
	f) The Plan is patently unconfirmable because the Debtors are gerrymandering classes 4A and 4B, without explanation or legitimate reason. Inmarsat Obj. at pp. 16.	• This is a Confirmation Objection and it is addressed in the body of the Reply. *See* Reply at ¶¶ 43-45.
	g) The Plan provides disparate treatment to creditors of the same priority and thus unfairly discriminates. Inmarsat Obj. at p. 18.	• This is a Confirmation Objection and is addressed in the body of the Reply. *See* Reply at ¶¶ 46-47.
	h) Inmarsat objections to various Solicitation Procedures, in particular with respect to the scheduling of dates associated with the procedures (Inmarsat Obj. pp. 19-24), including with respect to: • The Rule 3018(a) procedures • The October 19 Voting Record Date	• This objection is addressed in the body of the Reply. *See* Reply at ¶¶ 82.

	• The time provided for review of the Disclosure Statement prior to the hearing on conditional approval of same • Timing of filing the Plan Supplement	

Exhibit B

Plan Sponsor Selection Procedures

Objections of Black Diamond Capital Management, L.L.C. to Plan Sponsor Selection Procedures

Objection	Debtors' Response
a) **Section II(A) – ¶¶ 39-41**: The Plan Sponsor Selection Procedures impermissibly deny the Syndicated Facility Agent the right to credit bid	a) The Plan does not provide for the sale of any creditor's collateral. Instead, the Plan and the Plan Sponsor Selection Procedures contemplate a Plan Sponsor making a new money investment to recapitalize the Debtors. There is therefore no independent right to credit bid.
b) **Section II(B) – ¶¶ 42-43**: The Plan Sponsor Selection Procedures purport to establish the amount of the Allowed SFA Secured Claim. The $150 million cash payment the Plan contemplates as the amount of the allowed Syndicated Facility Secured Claim is not the indubitable equivalent of the Prepetition Lenders' secured claims.	b) The Debtors believe that the $150 million cash payment is the indubitable equivalent of the Prepetition Lenders' secured claims, and are prepared to prove this point at the Confirmation Hearing.
c) **Section II(C) – ¶ 44**: The Plan Sponsor Selection Procedures unreasonably require Prepetition Lenders with existing confidentiality obligations to enter into additional NDAs.	c) The Debtors have prepared an additional Letter Agreement for Black Diamond to support its ability to submit a bid with a strategic partner. Absent execution of this additional Letter Agreement, Black Diamond will be able to share information it received in its capacity as a lender (not a bidder) with Co-bidders that, in the reasonable business judgment of the Debtors, should not be shared with bidders at a particular stage of the process, including, for example, competitively sensitive information which, absent appropriate procedures being put in place, could give rise to antitrust issues.
d) **Section II(D)(i) – ¶ 46**: The Minimum Bid Amount is excessive and does not reflect the actual value of the Centerbridge proposal.	d) Centerbridge has proposed a $500 million equity commitment through the Equity Commitment Agreement. The Minimum Bid Amount of $505 million is reasonable in the Debtors' business judgment.

Objection	Debtors' Response
e) **Section II(D)(ii) – ¶ 47**: The Prospective Plan Sponsors should be permitted to submit proposals to acquire the Debtors' assets.	e) The Debtors are not seeking to sell all or substantially all of their assets under the Plan Sponsor Selection Procedures.
f) **Section II(D)(iii) – ¶¶ 48-50**: The Plan Sponsor Selection Procedures should not dictate the application of the Required Base Cash Amount.	f) The Plan Sponsor Transaction has defined sources and uses requiring the application of the Required Base Cash Amount.
g) **Section II(D)(iv) – ¶ 52**: The requirement that competing Plan Sponsors serve as the Back-Up Plan Sponsor for an unlimited period is unreasonable and may chill bidding.	g) The Debtors agree to set the Back-Up Termination Date as 120 days from the Confirmation Hearing. This date is based on the timeline needed for all regulatory approvals to reasonably be received.
h) **Section II(D)(v) – ¶ 53**: The Plan Sponsor Selection Procedures should not prohibit multiple bids.	h) The Debtors are willing to accept a proposal from Black Diamond and, separately, a consortium Proposal from Black Diamond together with one or more strategic partners.
i) **Section II(E) – ¶ 54**: The Marketing Period should be extended to attract more meaningful competition.	i) The marketing period was tailored to align with other critical dates relevant to the Debtors' restructuring efforts. The Debtors' liquidity runway and DIP Facility maturity date do not allow for a further extended marketing period.
j) **Section II(F)** – **¶ 55**: The Plan Sponsor Selection Procedures fail to describe how the Debtors will conduct the Final Selection Process.	j) The Debtors intend to review Plan Sponsor Proposals once submitted and determine, in their business judgement and in consultation with the Consultation Parties, a Final Selection Process that maximizes value for all creditors.

Objection	Debtors' Response
k) **Section II(G) – ¶ 56**: The Plan Sponsor Selection Procedures afford the Debtors with excessive flexibility to modify the procedures.	k) A debtor's ability to modify Plan Sponsor Selection Procedures in customary in chapter 11 cases. The Official Committee of Unsecured Creditors is a Consultation Party and will have oversight over any modifications to these procedures. The Plan Sponsor Selection Process is always subject to the scrutiny of the United States Bankruptcy Court for the Southern District of Texas.

Markup of Plan Sponsor Selection Procedures

Comment	Debtors' Response
a) **Page 2**: Added language regarding a 363 sale: seeking, among other things, approval of the Plan Sponsor Selection Procedures for soliciting proposals for all or substantially all of the Debtor's assets (the "**Assets**"), including through either purchasing equity interests in any entity or entities owning all or substantially all of the Debtors' Assets or through the purchase of 100% of the New Speedcast Equity Interests, in each case pursuant to a chapter 11 plan or, to the extent that a chapter 11 plan cannot be confirmed, pursuant to a section 363 sale (the "**Plan Sponsor Transaction**").	a) Not Accepted. The Debtors are not seeking to sell all or substantially all of their assets.
b) **Page 2**: Removed Debtors' reservation of rights language: The Debtors reserve the right, subject to the exercise of their reasonable business judgment, and in consultation with the Consultation Parties (as defined herein), to modify or terminate these Plan Sponsor Selection Procedures, to waive terms and conditions set forth herein, to extend any of the deadlines or other dates set forth herein, and/or terminate discussions with any and all Prospective Plan Sponsors (as defined herein) at any time and without specifying the reasons therefor, in each case, to the extent not in any material respect inconsistent with the Plan Procedures Order.	b) Not Accepted. The Debtors are fiduciaries and need the ability to exercise their business judgment.
c) **Page 2**: Removed reference to reorganizing through issuance of New Speedcast Equity Interests, and replaced with "effectuate the Plan Sponsor Transaction"	c) Not Accepted. The Debtors are not seeking to sell all or substantially all of their assets
d) **Page 3**: Changed Consultation Parties flat consent right to "not to be unreasonably withheld, conditioned, or delayed" for Groups of parties submitting proposal to acquire the new Speedcast Equity Interests, and added "to acquire the Assets or the New Speedcast Equity Interests (each such proposal, whether a cash bid or Credit Bid (defined below), a "**Plan Sponsor Proposal**").	d) Accept change with respect to consent rights language.

Comment	Debtors' Response
e) **Page 3**: Removed limitation that any party or group of parties may submit only one Plan Sponsor Proposal. "Any party, whether submitting a Plan Sponsor Proposal as an individual party or with a group of parties, may only submit one Plan Sponsor Proposal"	e) Not Accepted. The Debtors are willing to accept a proposal from Black Diamond and, separately, a consortium Proposal from Black Diamond together with one or more strategic partners
f) **Page 3**: Made changes to Marketing Period timeline generally pushing the dates back approximately 2 weeks.	f) Not Accepted. The Marketing Period was tailored to align with other critical dates relevant to the Debtors' restructuring efforts. The Debtors' liquidity runway and DIP Facility maturity date do not allow for a further extended Marketing Period.
g) **Page 4**: Added: For the avoidance of doubt, the consultation rights afforded to the Consultation Parties by these Plan Sponsor Selection Procedures shall not limit the Debtors' discretion in the exercise of the Debtors' reasonable business judgment and subject to the terms of Plan Sponsor Selection Procedures and the Plan Procedures Order	g) Accepted.
h) **Page 5**: Added requirement that only Prospective Plan Sponsors that are not a Diligence Lender must first execute an NDA prior to receiving access to due diligence materials	h) The Debtors have prepared an additional Letter Agreement for Black Diamond to support its ability to submit a bid with a strategic partner. Absent execution of this additional Letter Agreement, Black Diamond will be able to share information it received in its capacity as a lender (not a bidder) with Co-bidders that, in the reasonable business judgment of the Debtors, should not be shared with bidders at a particular stage of the process, including, for example, competitively sensitive information which, absent appropriate procedures being put in place, could give rise to antitrust issues.

Comment	Debtors' Response
i) **Page 5**: Removed the following language: *provided*, that to the extent such Diligence Lender notifies the Debtors that it may participate in the Plan Sponsor Selection Process through the submission of a joint Plan Sponsor Proposal, the Debtors may require such Diligence Lender to execute an additional confidentiality agreement or information sharing procedures reasonably satisfactory to the Debtors (and any other person joining in the submission of such joint Plan Sponsor Proposal shall be required to execute a confidentiality agreement in form and substance satisfactory to the Debtors)	i) Not Accepted. As above.
j) **Page 6**: Added that Debtors and Diligence Parties shall consult with the Consultation Parties, and, if such issues are not satisfactorily resolved, either the Debtors or the Diligence Party may seek relief from the Bankruptcy Court.	j) Accepted.
k) **Page 6**: For Phase 2 Diligence, removed "at the discretion of the Debtors" and added: After consultation with the Consultation Parties, following a submission of a Non-Binding Indication of Interest as set forth below, a Diligence Party shall granted access to the data room	k) Not accepted. If a party submits a Non-Binding Indication of Interest that is deemed insufficient, then the Debtors, in consultation with the Consultation Parties, may not allow access to Phase 2 Diligence to such party.
l) **Page 6**: Added additional information to be included in the dataroom and (ix) sensitive, material, customer or supplier contract terms; provided, however, that the materials described in this clause (ix) shall be subject to the clean team process described in the previous paragraph	l) The Debtors are providing potential Plan Sponsors with sufficient information to be able to form a view on value and to be in a position to submit a Non Binding Indication of Interest, and subsequently a binding Plan Sponsor Proposal. Disclosure of commercially sensitive information to potential Plan Sponsors prior to the Phase 3 Diligence stage of the Plan Sponsor Selection Process will irreparably harm the Debtors if such Potential Plan Sponsor is not the Successful Plan Sponsor. The Debtors' Plan Sponsor Procedures, including the phased diligence process, are appropriate in the Debtors' business judgment.

Comment	Debtors' Response
m) **Page 6**: Removed entirely "Phase 3 Diligence"	m) Not accepted. As above.
n) **Page 7**: Changed Non-Binding Indication of Interest requirements: a preliminary indication of the amount and type of value for the purchase of the Assets or New Speedcast Equity Interests; *provided, however*, no preference shall be given between a Credit Bid or cash up to the amount of the Credit Bid	n) Not accepted. The Debtors are not seeking to sell all or substantially all of their assets.
o) **Page 7**: Changed Non-Binding Indication of Interest requirements: Removed "a description of the expected operational role of the current Speedcast management team and employees following the Transaction, including, but not limited to, level of integration if appropriate"	o) Not accepted. Understanding how the management team and employees will be treated as part of a Plan Sponsor Proposal is a customary provision in Plan Sponsor Procedures.
p) **Page 8**: Changed Non-Binding Indication of Interest requirements: Removed "a detailed description of the intended sources of financing for the Transaction, including intended capital structure, amount of debt financing, equity contribution and any contingencies thereto, as well as an indication of the timing and steps required to secure such financing;"	p) Not accepted. Understanding the intended sources of financing for the Transaction is customary and is necessary to, among other things, ensure feasibility of the Plan, and deal certainty.
q) **Page 8**: Changed Non-Binding Indication of Interest requirements: Removed "a detailed description of the specific due diligence issues that must be resolved and any additional information that will be required in order to submit a Qualified Plan Sponsor Proposal"	q) Not accepted. The specificity requested in this section ensures that that the Debtors receive a roadmap for the information that a potential Plan Sponsor requires in order to submit a binding Plan Sponsor Proposal.
r) **Page 8**: Changed Non-Binding Indication of Interest requirements: Removed: "any other material terms to be included in a Plan Sponsor Proposal by such Prospective Plan Sponsor(s)"	r) Not accepted. This is a customary provision in Plan Sponsor Procedures and allows potential Plan Sponsors to highlight any issues that are specific to that Plan Sponsor.

Comment	Debtors' Response
s) **Page 8**: Removed "The Debtors will determine in their full discretion, but in consultation with the Consultation Parties, whether a Non-Binding Indication of Interest has met the requirements to allow a Prospective Plan Sponsor to progress to Phase 2 Diligence"	s) Not accepted. The Debtors, in consultation with the Consultation Parties, must exercise their business judgement in accordance with the Plan Sponsor Procedures to determine what parties have access to their commercially sensitive and confidential information.
t) **Page 8**: Added that "A Prospective Plan Sponsor who submits a Non-Binding Indication of Interest shall progress to Phase 2 Diligence"	t) Not accepted. The Debtors, together with the Consultation Parties, must be able to exercise their business judgment to determine which parties to move forward to Phase 2 Diligence and to expend estate resources working to develop a binding Plan Sponsor Proposal. A Prospective Plan Sponsor who submits a Non-Binding Indication of Interest that does not meet the requirements set forth therein will not progress to Phase 2 Diligence.
u) **Page 9**:Changed in "Identification of Plan Sponsor" to remove "and, in the case of any joint Plan Sponsor Proposal, the nature of any economic arrangements between or among such participants"	u) Not accepted. This information is necessary to validate regulatory consents required in order for any Transaction to be consummated. Debt and equity financing information is necessary to evaluate feasibility of the Plan Sponsor Proposal.
v) **Page 9**: Changed "Transaction Structure" to remove "and the Qualified Plan Sponsor Proposal must include a description of the pro forma capital structure, including any debt or equity financing. The Prospective Plan Sponsor"	v) Not accepted changes to "Transaction Structure" section. As above.
w) **Pages 9-10**: Changed "Higher or Better Terms" Section to alter "Aggregate Consideration" amount	w) Not accepted. These provisions ensures that all parties have a uniform starting point for their Plan Sponsor Proposals and ensures the Debtors' ability to evaluate such Proposals on an equal basis.

Comment	Debtors' Response
x) **Page 10**: Added new "Cashless Value" section and removed old "Cashless Value" section	x) Not accepted. The Debtors are not pursuing an asset sale. The "Cashless Value" provision is an accommodation to Black Diamond.
y) **Page 10**: Removed entirely "Cash Consideration Requirement"	y) Not accepted. The Debtors are not pursuing an asset sale. The "Cash Consideration Requirement" section is an accommodation to Black Diamond.
z) **Page 11**: Changed the "Good Faith Deposit" section so that a Qualified Plan Sponsor Proposal must be accompanied by 10% of the cash portion of the Aggregate Consideration, and removed the below language: "To the extent that a Plan Sponsor Proposal is modified at or prior to the Final Selection Process, the Prospective Plan Sponsor must adjust its Good-Faith Deposit so that it equals ten percent (10%) of the amounts described above as so modified in no event later than one (1) business day following the conclusion of the Final Selection Process"	z) Not accepted. Good-Faith Deposits are customary for Plan Sponsor Procedures.
aa) **Page 12**: Renamed "Proposed Equity Commitment Agreement" Section to be "Proposed Equity Transaction Agreement" – and removed: "pursuant to which the Prospective Plan Sponsor commits to effectuate a Transaction (a "**Modified Transaction Agreement**") based on the Plan and the relevant exhibits and schedules thereto (as further supplemented or superseded by the documents included in the Plan Supplement (as defined in the Plan))" and "In addition, a Qualified Plan Sponsor Proposal must be accompanied by a proposed Confirmation Order accompanied by a redline marked to reflect differences between the form Confirmation Order provided to Prospective Plan Sponsors"	aa) Not accepted. The Debtors require these documents in order to make an informed assessment of a Plan Sponsor Proposal and move swiftly within their limited liquidity timeframe.
bb) **Page 12**: In "Employee and Labor Terms" – changed "Transaction" to "transaction"	bb) Not accepted. As above.

Comment	Debtors' Response
cc) **Pages 12-13**: In "Financial Information" – removed requirement that a Qualified Plan Sponsor Proposal must include evidence of a firm commitment for financing to consummate the proposed transaction "including to pay any Specified Cash Amount"	cc) Not accepted. This is customary in Plan Sponsor Procedures and goes to the Debtors' evaluation of Transaction certainty.
dd) **Page 14**: In "Authorization" section, changed "Final Selection Process" to "Auction"	dd) Not accepted. This is customary in Plan Sponsor Procedures and goes to the Debtors' evaluation of Transaction certainty. The Debtors will determine a Final Selection Process that maximizes value for all creditors in their business judgment and in consultation with the Consultation Parties once binding Plan Sponsor Proposals are submitted.
ee) **Page 14**: In "Other Requirements" Section, added that a Qualified Plan Sponsor Proposal shall expressly state that the Prospective Plan Sponsor agrees to serve as a back-up plan sponsor "until the Back-Up Termination Date"	ee) The Debtors agree to set the Back-Up Termination Date as 120 days from the Confirmation Hearing. This date is based on the timeline needed for all regulatory approvals to reasonably be received.
ff) **Page 14**: In "Other Requirements" Section, changed that Plan Sponsor Proposals are irrevocable until "the 60th day following the Plan Sponsor Selection Date"	ff) The Debtors agree to set the Back-Up Termination Date as 120 days from the Confirmation Hearing. This date is based on the timeline needed for all regulatory approvals to reasonably be received.
gg) **Page 16**: Added in Plan Sponsor Proposal Factors to be considered in reviewing Plan Sponsor Proposals: "the form of consideration (*provided, however*, no preference shall be given between a Credit Bid or cash bid up to the amount of the Credit Bid)" "the Assets included or excluded from the Plan Sponsor Proposal"	gg) Accepted in part. The Debtors have modified the Plan Sponsor Selection Procedures so as to ensure no preference being given between Cashless Value and Cash.
hh) **Page 16**: Removed from Plan Sponsor Proposal Factors: "the confirmability of the plan proposed in the Modified Transaction Agreement"	hh) Not accepted. Confirmability of any Plan Sponsor Proposal is a core part of the Plan Sponsor Selection Process.

Comment	Debtors' Response
ii) **Page 17**: Added that: "No director, officer, or other insider of the Debtors that is a Prospective Plan Sponsor or is participating or investing in a proposed Plan Sponsor Transaction shall participate in the Debtors' evaluation of Plan Sponsor Proposals or Qualified Plan Sponsor Proposals or any other matters described in this Section VI"	ii) Accepted.
jj) **Page 18**: Added "Auction" sub-heading and changed references to "Auction" instead of "Final Selection Process"	jj) Reject. Not accepted. The Debtors will determine a Final Selection Process that maximizes value for all creditors in their business judgment and in consultation with the Consultation Parties once binding Plan Sponsor Proposals are submitted.
kk) **Pages 18-19**: Inserted Auction Procedures.	kk) Not Accepted. As above.
ll) **Page 19**: Made the following change: "The Debtors shall have the right to determine, in their reasonable business judgment, and in consultation with Consultation Parties~~, to determine which~~ not connected to any Plan Sponsor Proposal, which Qualified Plan Sponsor Proposal is the highest or otherwise best Qualified Plan Sponsor Proposal~~,~~ and reject, at any time, any ~~Qualified~~ Plan Sponsor Proposal ~~(other than the Initial Plan Sponsor Transaction) that the Debtors, in consultation with the Consultation Parties, deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules,~~that is inconsistent with these Plan Sponsor Selection Procedures~~, any order of the Bankruptcy Court, or the best interests of the Debtors and their estates~~"	ll) Accepted.
mm) **Page 20**: In the "Successful Plan Sponsor Proposal" section, removed that the Debtors shall, on the Final Selection Date: "notify all Qualified Plan Sponsors of the identity of the Plan Sponsor that submitted the Successful Plan Sponsor Proposal (the "**Plan Sponsor**") and the amount of the Aggregate Consideration, Non-Cash Consideration (if any) and other material terms of the Successful Plan Sponsor Proposal"	mm) Accepted.

Comment	Debtors' Response
nn) **Page 20**: In the "Successful Plan Sponsor Proposal" section, removed that the Successful Plan Sponsor(s) shall, within 48 hours after being notified that it is the Plan Sponsor, "confirm its Successful Plan Sponsor Proposal in accordance with the Phase 3 Diligence provisions herein"	nn) Not Accepted. As above.
oo) **Page 20**: Removed "Non-Cash Consideration" language from Back-Up Plan Sponsor Proposal section	oo) Not Accepted. As above.
pp) **Page 20**: Removed proviso from "Back-Up Plan Sponsor Proposal" Section	pp) Not Accepted. As above.
qq) **Page 21**: Removed "If the Successful Plan Sponsor Proposal is not the Initial Plan Sponsor Transaction, then for purposes of the Plan, the Allowed SFA Secured Claim Amount (as defined in the Plan) shall be deemed to be an amount equal to (A) the Aggregate Consideration offered in such Successful Plan Sponsor Proposal, *minus* (B) the Required Base Cash Amount. Promptly following the Plan Sponsor Selection Date, the Debtors shall file a supplement to the Plan identifying the updated Allowed SFA Secured Claim Amount (as defined in the Plan) and the amount of the Non-Cash Consideration (if any) in each case as determined pursuant to this Plan Sponsor Selection Process"	qq) Not Accepted. As above.
rr) **Page 21**: Removed "The Debtors in the exercise of their fiduciary duties and for the purpose of maximizing value for their estates from the Plan Sponsor Selection Process, may modify the Plan Sponsor Selection Procedures and implement additional procedural rules for determining the Successful Plan Sponsor, in each case in consultation with the Consultation Parties"	rr) Not Accepted. As above.

Comment	Debtors' Response
ss) **Page 22**: In the "Confirmation Hearing" Section, added language referencing that a Confirmation Hearing will be held, or "if such chapter 11 plan is not confirmed, approval of the transaction pursuant to a 363 sale."	ss) Not Accepted. The Debtors are not pursuing a sale of substantially all of their assets at this time.
tt) **Page 23**: Made various changes to the "Consent to Jurisdiction" section, narrowing the consent to the jurisdiction of the Bankruptcy Court.	tt) Not Accepted. The proposed changes impermissibly narrow this provision.
uu) **Page 23**: Made various changes to Reservation of Rights section.	uu) Not Accepted. The Debtors are fiduciaries and need the ability to exercise their business judgment