



## INTRODUCTION<sup>1</sup>

Pursuant to Section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Stephen B. Darr, the Chapter 11 Trustee (“Chapter 11 Trustee”) of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (together, “TelexFree” or the “Debtors”) provides this disclosure statement (the “Disclosure Statement”) to all of TelexFree’s known creditors<sup>2</sup> and parties in interest. The purpose of this Disclosure Statement is to provide the information deemed necessary for creditors to make an informed decision in exercising their rights to vote on the *Liquidating Plan of Reorganization of Stephen B. Darr, Chapter 11 Trustee of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.* (the “Plan”) dated as of the date of this Disclosure Statement. The Chapter 11 Trustee has filed the Plan simultaneously with the filing of this Disclosure Statement. The description of the Plan in this Disclosure Statement is in summary form and is qualified by reference to the actual terms and conditions of the Plan, which should be reviewed carefully before making a decision to accept or reject the Plan.

The information contained in this Disclosure Statement has been provided by the Chapter 11 Trustee based upon information available to the Chapter 11 Trustee regarding TelexFree’s records, business and affairs. Except as otherwise expressly indicated, such information has not been subject to audit or independent review. Although great effort has been made to be accurate, neither the Chapter 11 Trustee nor his respective professional advisors warrant the accuracy of the information contained in this Disclosure Statement.

No representations concerning TelexFree, including the value of their Assets or the aggregate dollar amount of Claims which may be allowed, are authorized other than as set forth in this Disclosure Statement. Any representations, warranties or agreements made to secure acceptance or rejection of the Plan that differ from those contained in this Disclosure Statement should not be relied upon in voting on the Plan.

Any descriptions of legal principles contained in this Disclosure Statement do not constitute a legal opinion and may not be relied upon by any creditor or party in interest. Each creditor or party in interest should consult with their own legal advisors with respect to any legal principles described in this Disclosure Statement.

This Disclosure Statement has been prepared by the Chapter 11 Trustee to provide creditors with adequate information so that they can make an informed judgment about the Plan. Each creditor should read this Disclosure Statement or the Plan Summary and the Plan in their entirety before voting on the Plan.

**Subject to Bankruptcy Court approval, Participants will receive an “Important Notice Regarding Liquidating Plan” (the “Plan Summary”) which will provide a summary of the Participants’ Plan treatment, options, and procedures for completing the Ballot and**

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<sup>1</sup> Capitalized terms not otherwise defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan.

<sup>2</sup> For purposes of the Disclosure Statement, “creditors” shall mean any person who has filed a Claim against TelexFree, including Participants and Vendors, and whose claim has not been disallowed.

**obtaining payment from the Estates. The Plan Summary will refer Participants to the website <http://www.kccllc.net/telexfree> so that they can review the Plan and Disclosure Statement.**

The Chapter 11 Trustee believes that the Plan provides the quickest and largest recovery to creditors. **ACCORDINGLY, THE CHAPTER 11 TRUSTEE URGES ALL CREDITORS TO VOTE IN FAVOR OF THE PLAN.**

## **I. QUESTIONS AND ANSWERS REGARDING THIS DISCLOSURE STATEMENT AND PLAN**

### **A. What is Chapter 11?**

Chapter 11 is the primary chapter of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) that addresses reorganization of business enterprises. Chapter 11 is designed to promote equality of treatment for creditors, subject to certain priority distribution rules of the Bankruptcy Code.

The filing of a Chapter 11 case creates a bankruptcy “Estate” that includes all of the property interests of the debtor, in this case TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.

Confirmation of a plan of reorganization by the Bankruptcy Court is the principal objective of a Chapter 11 case. The Plan provides for the distribution of assets to creditors and is binding upon TelexFree, all creditors or equity interest holders of TelexFree, and any other person as may be ordered by the Bankruptcy Court.

### **B. Why is the Chapter 11 Trustee sending me this Disclosure Statement?**

Stephen B. Darr, the Chapter 11 Trustee of TelexFree, is requesting Bankruptcy Court approval of the Plan filed with this Disclosure Statement. Before soliciting votes to accept the Plan, the Chapter 11 Trustee is required by the Bankruptcy Code to prepare and circulate a Disclosure Statement containing adequate information to enable creditors to make an informed judgment regarding acceptance of the Plan. This Disclosure Statement is being submitted in accordance with these requirements.

### **C. Am I entitled to vote on the Plan?**

Your ability to vote on, and your distribution under, the Plan, if any, depends upon the type of Claim you hold. Each category of holders of Claims and Equity Interests, as set forth in Article III of the Plan, is referred to as a “Class”. Each Class’s voting status is described below. If you joined TelexFree as a member or promoter to purchase and sell Membership Plans and/or VoIP Plans, you are a “Participant” and a member of either Class 2 (for Participants who hold an Allowed Claim of \$4,250 or less) or Class 3 (for all other Participants holding Allowed Claims).

| Class | Claims and Equity Interests    | Status     | Voting Rights        |
|-------|--------------------------------|------------|----------------------|
| 1     | Priority Claims                | Unimpaired | Not entitled to vote |
| 2     | Participant Convenience Claims | Impaired   | Entitled to vote     |
| 3     | General Participant Claims     | Impaired   | Entitled to vote     |
| 4     | Vendor Claims                  | Impaired   | Entitled to vote     |
| 5     | Equity Interests               | Impaired   | Not entitled to vote |

**D. How do I vote for or against the Plan and what is the voting deadline?**

Detailed instructions regarding how to vote on the Plan are contained on the ballots distributed to holders of Claims that are entitled to vote on the Plan. Each ballot must be properly executed, completed, and delivered in accordance with the instructions provided.

The deadline to vote on the Plan is \_\_\_\_\_.

**E. What are the sources of funds to make payments to Participants under the Plan?**

The Plan will be funded from Restitution Funds, SEC Settlement Funds, and Available Cash.

Restitution Funds consist of those monies recovered by the United States after the filing of the Bankruptcy Cases and turned over to the Chapter 11 Trustee. To date, the United States has turned over to the Chapter 11 Trustee the sum of \$145,471,294. The Chapter 11 Trustee is informed that additional Restitution Funds will be turned over to him by the United States in the approximate amount of \$11,000,000. The Restitution Funds will be paid to holders of Allowed Participant Claims, less Restitution Costs up to \$7,500,000. Restitution Costs are those costs associated with resolving Participant Claims and distributing the Restitution Funds to Participants.

The SEC Settlement Funds consists of those monies recovered by the Chapter 11 Trustee in connection with certain settlements involving the Chapter 11 Trustee, the SEC, and third parties. To date, the Chapter 11 Trustee has recovered approximately \$2,500,000 in SEC Settlement Funds. The SEC Settlement Funds will be paid to holders of Allowed Participant Claims, net of SEC Settlement Costs equal to ten percent (10%) of such funds to cover the costs associated with implementing the SEC settlements and distributing the SEC Settlement Funds.

Available Cash consists of all Cash recovered by the Chapter 11 Trustee, less amounts necessary to pay Allowed Claims under the Plan other than Participant Claims and less costs of administration. Excluding the Restitution and SEC Settlement Costs, the Cash in the Estates is currently approximately \$18,000,000. Additional funds in an undetermined amount are expected to be recovered in the future from the Class Action Litigation and other avoidance actions.

**F. How much will I receive from the TelexFree Estates if the Plan is approved?**

Only Participants who have Allowed Claims will be entitled to receive a distribution. If your claim is subject to a pending objection, you will not be entitled to receive a distribution until and unless the Claim has been Allowed; holders of claims that have already been disallowed and Participants who have not filed a claim will not receive a distribution.

The following chart provides a summary of the anticipated recovery to holders of Allowed Claims and Equity Interests under the Plan. Any estimates of Claims and Equity Interests in this Disclosure Statement may vary from the final amounts allowed by the Bankruptcy Court. Your right to receive distributions under the Plan depends upon the ability of the Chapter 11 Trustee to obtain confirmation of the Plan and meet the conditions necessary to consummate the Plan.

The proposed distributions and classifications under the Plan are based upon a number of factors, including amounts actually recovered by the United States and turned over to the Chapter 11 Trustee for distribution, as well as the total amount of Claims that are Allowed. Accordingly, recoveries actually received by holders of Claims may differ materially from the projected recoveries listed in the table below.

**THE PROJECTED RECOVERIES SET FORTH BELOW ARE ESTIMATES ONLY AND THEREFORE ARE SUBJECT TO CHANGE. FOR A COMPLETE DESCRIPTION OF THE CHAPTER 11 TRUSTEE'S CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS, YOU SHOULD REFER TO THE ENTIRE PLAN.**

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| <b>Class</b> | <b>Claim or Equity Interest</b>  | <b>Treatment</b>   | <b>Estimated Amount of Claims</b> | <b>Projected Plan Recovery</b>                                    |
|--------------|--|--|-----------------------------------|---|
| N/A          | Service Settlement Claim   | Payment in full on or about Effective Date.  | \$7,741,220                       | 100%  |
| N/A          | Service Subordinated Tax Claims  | Subordinated to payment in full of Allowed Administrative Expense Claims and Allowed Participant Claims.   | \$7,741,220                       | 0%  |
|              | Miscellaneous State Tax Claims   | Payment in full upon the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim.   | \$200,000                         | 100%  |
| 1            | Other Priority Claims  | Payment in full in full upon the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim.   | \$0                               | 100%  |
| 2            | Participant with claims of \$4,250 or less (estimated number of claims 78,759) | A single distribution from the Restitution Funds as soon as practicable after the later of the Effective Date or entry of an order of the Bankruptcy Court allowing such Claim.  | \$125,000,000                     | 43%   |
| 3            | Participant Claims other than Class 2 (estimated number of claims 22,327)      | One or more distributions as follows:<br>(i) An initial distribution from the Restitution Funds, the SEC Settlement Funds, and Available Cash, in the approximate amount of 39% of each Allowed Claim, as soon as practicable after the later of the Effective Date or the entry of an order of the Bankruptcy Court allowing such Claim,;<br>(ii) Additional distributions from Restitution Funds, SEC Settlement Funds, and Available Cash as and when such proceeds become available to the Liquidating Trustee, in the estimated range of 2-10% of each Allowed Class 3 Claim. | \$230,000,000                     | Initial distribution (39%); additional distribution range (2-10%) |
| 4            | Vendor Claims (estimated number of claims less than 10)                        | A single distribution from Available Cash as soon as practicable after the later of the Effective Date or the entry of an order of the Bankruptcy Court allowing such Claim equal to a <i>pro rata</i> share of \$50,000.  | \$75,000 to \$125,000             | 40% to 65%  |
| 5            | Equity Interests   | Equity Interests shall be deemed canceled and terminated as of the Effective Date, and the holders of Equity Interests shall not receive or retain any property or interest in property on account of such Equity Interest.  | \$0                               | 0%  |

**G. When do I get my distribution, upon Confirmation or when the Plan becomes effective, and what is meant by “Confirmation” and “Effective Date”?**

“Confirmation” of the Plan refers to approval of the Plan by the Bankruptcy Court. The Plan does not become effective, however (the “Effective Date”) until the conditions set forth in the Plan have been satisfied including sufficient number of votes in favor of the Plan are submitted by Participants. Initial distributions to holders of Allowed Participant Claims will occur as soon as practicable after the Effective Date, as specified in the Plan. The timing and amount of any additional distributions to holders of Allowed Participant Claims will depend upon the Liquidating Trustee’s recovery of additional funds and the determination of the final amount of Allowed Participant Claims.

**H. What do I need to do to get my distribution?**

**You should receive electronically the Plan Summary containing a link to the Ballot. In order to receive a distribution on an Allowed Claim, you must complete and submit the Ballot. The Ballot will require you to provide certain information, including the method of electronic payment to you. Claimants who are not United States residents will not receive a distribution unless they provide the Ballot information to ensure that the distribution is in compliance with the Office of Foreign Asset Control.**

**I. What happens to my recovery if the Plan is not confirmed or does not go effective?**

If the Plan is not confirmed or does not go effective, there will be a substantial delay in you receiving a distribution and it is likely that you will receive less than the amounts proposed in the Plan. For a more detailed discussion of the consequences of failure to confirm the Plan, see Article XV of this Disclosure Statement.

**J. Will the final amount of Participant Claims affect my distribution under the Plan?**

The final amount of Allowed Participant Claims will not affect distributions to holders of Allowed Class 2 Claims. The final amount of Allowed Participant Claim will affect the ultimate recovery to holders of Allowed Class 3 Claims.

**K. Why is the Bankruptcy Court holding a Confirmation Hearing and when is the hearing?**

The Bankruptcy Code requires the Bankruptcy Court to hold a hearing on confirmation of the Plan. The Confirmation Hearing, once set, may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served in accordance with the Bankruptcy Rules, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put into place additional procedures governing the Confirmation Hearing. Subject to Section 1127 of the Bankruptcy Code, the Plan may be modified, if

necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

The Bankruptcy Code provides that a party in interest may object to Confirmation. An objection to Confirmation of the Plan must be filed with the Bankruptcy Court and served on the Chapter 11 Trustee on \_\_\_\_\_ in accordance with the applicable order of the Bankruptcy Court so that it is actually received on or before the deadline to file such objections as set forth therein.

The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to commence on \_\_\_\_\_, or as soon thereafter as the parties can be heard. The Confirmation Hearing will be held before the Honorable Melvin S. Hoffman, United States Bankruptcy Judge, John W. McCormack Post Office and Court House, 12th Floor, 5 Post Office Square, Boston, Massachusetts, 02109. At the hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of the Bankruptcy Code, including whether it is feasible and whether it is in the best interests of holders of Claims and Equity Interests. The Bankruptcy Court will also receive and consider a Report of Plan Voting prepared by the Chapter 11 Trustee and his agents and summarizing the votes for acceptance or rejection of the Plan by the parties entitled to vote.

**L. Who do I contact if I have additional questions regarding the Disclosure Statement and the Plan?**

If you have any questions regarding this Disclosure Statement or the Plan, please contact the Chapter 11 Trustee by electronic mail at: [ClaimResponse@TelexFreeClaims.com](mailto:ClaimResponse@TelexFreeClaims.com).

**M. Does the Chapter 11 Trustee recommend voting in favor of the Plan?**

Yes, the Chapter 11 Trustee believes that the Plan is in the best interests of creditors because it will provide for the largest and fastest return to creditors.

**II. GENERAL INFORMATION**

**2.1 Introduction**

TelexFree commenced these Chapter 11 cases by filing voluntary Chapter 11 petitions for relief on April 13, 2014 (the "Petition Date") in the United States Bankruptcy Court for the District of Nevada.

On or about April 22, 2014, the Office of the United States Trustee filed a motion for the appointment of a Chapter 11 Trustee based upon the allegations that TelexFree was operating a Ponzi scheme. On April 23, 2014, the Securities and Exchange Commission ("SEC") filed a motion to transfer venue of the TelexFree bankruptcy cases to the Bankruptcy Court for the District of Massachusetts. By order dated May 6, 2014, the motion to change venue was allowed, and the TelexFree bankruptcy cases were transferred to the United States Bankruptcy Court for the District of Massachusetts (hereinafter, the "Bankruptcy Court").



On May 30, 2014, the Bankruptcy Court approved the motion to appoint a Chapter 11 Trustee. On June 6, 2014, Stephen B. Darr was appointed the Chapter 11 Trustee of the Bankruptcy Estates of TelexFree.

## **2.2 Description of the Debtors**

TelexFree, Inc. is a Massachusetts corporation. Carlos Wanzeler and James Merrill are identified as the shareholders of TelexFree, Inc. TelexFree, LLC is a Nevada corporation that was incorporated by Wanzeler, Merrill, and Carlos Costa, a resident of Brazil. Wanzeler and Merrill are believed to be the sole members of TelexFree, LLC. TelexFree Financial, Inc. is a Florida corporation formed in 2013. TelexFree Financial, Inc. is wholly owned by TelexFree, LLC.

TelexFree ostensibly operated a multi-level marketing enterprise engaged in the sale of voice over internet protocol (“VOIP”) services, but, in actuality, TelexFree operated a Ponzi and pyramid scheme involving as many as a million or more participants in multiple countries (hereinafter, persons who became involved in TelexFree’s Ponzi and pyramid scheme shall be referred to as “Participants”). TelexFree, and an affiliated company located in Brazil known as Ympactus Comercial Ltda. (“Ympactus”), together extracted as much as \$1,800,000,000 from individuals located throughout the world over a period of approximately two years.<sup>3</sup>

While TelexFree offered to provide a VOIP service for a monthly charge of \$49.90 to conduct international phone calls, TelexFree’s primary business was the recruitment of new Participants to generate revenues to enable it to perpetrate the Ponzi scheme while benefiting Wanzeler, Merrill, Costa and certain Participants.

## **2.3 Nature of TelexFree Business and Compensation**

While Participants could purchase a VOIP plan, Participants overwhelmingly purchased membership plans which allowed the Participants to earn ‘credits’. Each time that a Participant purchased a membership plan, the Participant established a User Account with TelexFree. Depending on the membership plan purchased, Participants received a number of VOIP service packages and were required to place daily internet advertisements. In exchange for the placement of the advertisements, Participants received TelexFree “credits” on a weekly basis. Participants could also receive credits based upon bonuses or commissions “earned” during their involvement in the scheme. Bonuses and commissions were principally based upon the recruitment of new Participants into the scheme as part of a Participant’s “downline.”

Participants could also receive credits for commissions arising from the sale of the VOIP service. There was no requirement, however, that Participants actually sell the VOIP service, and VOIP sale revenues were an insignificant portion of the total revenues collected by TelexFree. The credits issued to Participants could be redeemed for cash, transferred to another Participant, or applied in satisfaction of an invoice for the purchase of a membership plan.

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<sup>3</sup> Individuals who participated in Ympactus are not eligible to make a claim in the TelexFree bankruptcy for their participation in Ympactus.

TelexFree's business plan was complicated in and of itself. The scheme's complexity was expanded further, however, through a web of inter-Participant activity. Participants could purchase membership plans by making payment directly to TelexFree. Transactions where Participants paid TelexFree directly to satisfy an invoice for a membership plan or VoIP Package are referred to as "Direct Transactions". Rather than paying funds directly to TelexFree, many Participants became involved in TelexFree by paying their membership fee (and on occasion a VoIP plan fee) directly to a recruiting Participant. In these circumstances, the recruiting Participant retained the payment received from the recruited Participant and satisfied the TelexFree invoice to the recruited Participant by redeeming his/her accumulated credits (hereinafter referred to as "Triangular Transactions").

There also appears to have been an active secondary market of buying and selling credits between Participants, unrelated to the issuance of a TelexFree invoice. In some instances, Participants sold credits "earned" through their involvement in the Ponzi scheme. In other instances, TelexFree issued to Participants "manual credits," that is, credits issued by TelexFree not based upon any aspect of the compensation scheme, which credits could then be sold to other Participants. As discussed in more detail below, some of the manual credits were issued to associates of Wanzeler and Costa without consideration and who in turn are believed to have sold those manual credits for cash.

The TelexFree Ponzi and pyramid scheme was modeled after a similar scheme run by Wanzeler and Costa in Brazil through an entity known as Ympactus. Ympactus initially grew much more rapidly than TelexFree, with growth accelerating in the fall of 2012 through the early summer of 2013. In June 2013, the Brazilian authorities suspended the operations of Ympactus and froze its assets in Brazil based upon allegations that it was a Ponzi scheme. Following the shutdown of Ympactus, the focus of the Ponzi scheme shifted to expanding TelexFree. TelexFree's revenues increased dramatically such that by the end of 2013 and early 2014, TelexFree was generating as much as \$50,000,000 per month, without regard to inter-Participant transactions for which cash did not pass to TelexFree. As their operations grew in size and complexity, TelexFree was unable to maintain any semblance of normal banking relationships. Multiple banks closed TelexFree's operating accounts apparently based upon suspicious activity in those accounts.

In March 2014, TelexFree introduced a new business plan in a vain attempt to address the illegal nature of the scheme. The new plan was unanimously rejected by the Participants and triggered a 'run on the bank' where \$58,000,000 or more was paid out to certain Participants in several weeks. During the same period, an additional \$100,000,000 was requested by Participants but was not paid. As a consequence, the Debtors filed their Chapter 11 cases in the United States Bankruptcy Court for the District of Nevada on April 13, 2014.

After the bankruptcy cases were transferred to Massachusetts and the Chapter 11 Trustee was appointed, the Department of Justice ("DOJ") brought a criminal action against the Debtors' then principals, Carlos Wanzeler and James Merrill. Merrill entered a guilty plea and was sentenced to seventy-two (72) months in prison. Wanzeler fled the country. Upon

information and belief, the United States and Brazil are negotiating an agreement for Wanzeler's return to the United States.

### III. SIGNIFICANT POST PETITION EVENTS

#### 3.1 Reconstruction of Debtors' Records

Immediately following the filing by TelexFree of its bankruptcy cases, the SEC commenced an action against TelexFree, its officers and certain high-level Participants and Promoters in the United States District Court in Massachusetts.<sup>4</sup> The SEC action alleged, among other things, that TelexFree was engaged in a Ponzi and pyramid scheme and was raising funds through the fraudulent and unregistered offering of securities. Contemporaneously with the commencement of an action by the SEC, federal authorities including Homeland Securities Investigations ("HSI") seized TelexFree's assets, books, and records, including among other things, forty-six (46) computers and servers that housed substantially all of the data to reconcile Participant activity. The information on the computers and servers comprised the backbone of TelexFree's system of accounting for Participant activity.

Most of TelexFree's records were kept electronically on the computers and servers that were seized by HSI. Following the Chapter 11 Trustee's appointment, HSI made copies of TelexFree's electronic records available to the Chapter 11 Trustee. Upon receipt of the electronic records, the Chapter 11 Trustee undertook the laborious task of reconstructing TelexFree's financial records.

TelexFree's principal electronic recordkeeping system was known by the acronym "SIG." SIG was used by TelexFree to record and track Participants' activity. TelexFree's database contains the combined activity of both Ympactus and TelexFree. It was therefore necessary to separately identify activity of the Participants from that of the participants in the Ympactus scheme (the "Ympactus Participants") for purposes of administering TelexFree bankruptcy cases. The Chapter 11 Trustee was able to identify and segregate the TelexFree Participants from Ympactus Participants based on various factors including the currency used for payment of the membership invoice, the country of origin for a Participant's bank accounts, electronic mail addresses, and physical mail addresses.

The database identified more than 2,100,000 electronic mail addresses for Participants in the operations of both TelexFree and Ympactus. Of these, the Chapter 11 Trustee identified approximately 1,000,000 as belonging to Participants in TelexFree, with the balance related to Ympactus. The database also identified more than 17,000,000 different User Accounts, of which approximately 12,000,000 were those of TelexFree Participants and 5,000,000 were those of Ympactus Participants.

After reconstructing SIG, the Chapter 11 Trustee worked to better understand the SIG database structure. Because a new User Account was established each time a Participant purchased a membership plan, it was essential for the Chapter 11 Trustee to be able to determine

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<sup>4</sup> In addition to the SEC, the Commonwealth of Massachusetts, Securities Division commenced an administrative proceeding against TelexFree.

which User Accounts should be linked to specific Participants. Unfortunately, the database did not link individuals to their User Accounts. Thus, the Chapter 11 Trustee developed an algorithm to link User Accounts to Participants to enable a means to link all of an individual Participant's User Accounts.

Once the Chapter 11 Trustee was able to reconstruct TelexFree's financial records and develop the algorithm to link User Accounts, he was able to better understand the complex web of transactions that made up the TelexFree scheme. The Chapter 11 Trustee was further able to extract detailed information from the records to determine the amount each Participant invested in TelexFree and the payments each Participant received from TelexFree. The ability to link individual User Accounts and determine the amount each Participant invested and received from TelexFree was critical to a determination by the Chapter 11 Trustee of which Participants were Net Losers, that is, Participants who invested more in TelexFree than the Participants received back from TelexFree, and which Participants were Net Winners, that is, Participants who received more from TelexFree than the Participants invested in TelexFree.

### **3.2 Critical Rulings by the Bankruptcy Court**

#### **A. Bankruptcy Court determines TelexFree to be a Ponzi and Pyramid Scheme**

In addition to the examination of the financial records of TelexFree and the development of the algorithm, the Chapter 11 Trustee conducted interviews with former employees of TelexFree and a sample of Participants. After evaluating all of the information which he gathered through his various investigations and in consultation with his counsel, the Chapter 11 Trustee concluded that the TelexFree scheme had aspects of both a Ponzi scheme and a pyramid scheme.

TelexFree was a Ponzi scheme because the membership fees paid by new Participants were used largely to satisfy compensation requirements for existing Participants. It was a pyramid scheme because existing Participants were paid to recruit new Participants into their "downline", thereby forming a triangle, or pyramid, underneath them, and were compensated based in part upon the efforts of those Participants who were members of their downline, without regard to the sale of an actual product, the VoIP Plan. The Chapter 11 Trustee further determined that a finding by the Bankruptcy Court that TelexFree operated a Ponzi and pyramid scheme would establish certain presumptions that would facilitate the pursuit of recovery actions and the resolution of Participant claims.

Accordingly, on or about October 7, 2015, the Chapter 11 Trustee filed a motion for a determination that TelexFree was operating a Ponzi and pyramid scheme (the "Ponzi Motion"). Judge Hoffman of the Bankruptcy Court conducted an evidentiary hearing on the Ponzi Motion on November 24, 2015. On November 25, 2015, Judge Hoffman found that TelexFree had perpetrated a Ponzi and pyramid scheme and that such finding was the law of the cases. The Ponzi finding was important because it created a presumption that transfers made by or on behalf of TelexFree to Participants were made by TelexFree with actual intent to defraud creditors, and that TelexFree was insolvent from its inception. As discussed later, these findings were critical to the Chapter 11 Trustee's ability to pursue recovery from Net Winners.

**B. Bankruptcy Court determines that Net Equity Formula governs the Allowance of Participant Claims**

The Ponzi Motion further sought a determination from the Bankruptcy Court that the amount of a Participant's claim should be based upon the amount that the Participant paid to TelexFree, less the amount the Participant received from TelexFree. This methodology for determining claims is referred to as "Net Equity Formula." Under the Net Equity Formula, only Participants who paid more to TelexFree than they received from TelexFree ("Net Losers") would be entitled to receive a distribution from the bankruptcy cases.

Establishing a methodology for allowance of Participant claims was central to the administration of the bankruptcy cases. Claims of Participants in a Ponzi scheme bankruptcy case are typically determined based upon some variation of the "Net Equity" methodology – that is, an investor has a claim only to the extent that he can establish that he is a "Net Loser", that is, the amount of his investment exceeded any money he received from his participation in the Ponzi scheme. Conversely, "Net Winners" are subject to actions by an estate representative to recover amounts received in excess of the principal invested. Lost interest, fictitious profits, and other types of losses are generally not permitted.

The use of the Net Equity Formula in the TelexFree bankruptcy cases was complicated by the unique circumstances presented in these cases by the Triangular Transactions. The calculation of Net Equity was unique because Participants often paid into the scheme through the use of Triangular Transactions. The Chapter 11 Trustee concluded that amounts paid by new Participants for a TelexFree Membership Plan or VoIP Plan pursuant to a Triangular Transaction should be included in determining Net Equity. Otherwise, the result would be inequitable, in that Participants who purchased TelexFree plans directly from TelexFree would be allowed a claim, while those purchasing a membership plan through a Triangular Transaction would be deprived of a claim. Because the bankruptcy Estates would recognize a claim for amounts paid to purchase a TelexFree plan through a Triangular Transaction, fairness required that Participant's claims should be reduced for amounts paid by a recruited Participant to a recruiting Participant through a Triangular Transaction.

By order dated January 26, 2016, Judge Hoffman approved the use of the Net Equity Formula for determining Participant Claims. The order provided that Participant Claims would be determined based upon the difference between amounts invested into the TelexFree scheme and amounts recovered, including account activity in Triangular Transactions.

To further ensure that only Net Losers were receiving distributions, the Chapter 11 Trustee applied the algorithm that he had developed to link User Accounts to capture all of the Participants' accounts so that all of the transactions were properly counted in making the Net Equity determination as to the Participant's right to participate in the distribution.

**C. Bankruptcy Court determines that the Chapter 11 Trustee had the exclusive right to pursue Net Winners**

During the course of the bankruptcy cases, Judge Hoffman was called upon to determine the Chapter 11 Trustee's right as the exclusive person to pursue recovery against Net Winners

arising from Triangular Transactions. On September 23, 2015, a group of creditors who separately pursued recovery in multi-district litigation in the United States District Court for the District of Massachusetts amended their complaint to pursue claims against certain Net Winners. Those creditors asserted that they, and not the Chapter 11 Trustee, had the right to sue and collect from those Net Winners. The action by those creditors and their assertion of the right to pursue such claims was in direct conflict with the Chapter 11 Trustee's exclusive right to pursue claims against the same Net Winners for the benefit of the bankruptcy Estates. As a consequence, on October 7, 2015, the Chapter 11 Trustee brought an action before the Bankruptcy Court seeking a determination that the Chapter 11 Trustee had the exclusive right to pursue Net Winners in Triangular Transactions.<sup>5</sup>

After briefing by the parties, Judge Hoffman determined on December 18, 2017 that the Chapter 11 Trustee had the sole and exclusive right to pursue claims against Net Winners on account of amounts received from Triangular Transactions. Judge Hoffman's proposed findings of fact and conclusions of law were adopted by the United States District Court on October 1, 2018. The creditors then appealed the findings and conclusions to the Court of Appeals for the First Circuit which also affirmed Judge Hoffman's ruling as adopted by the United States District Court by judgment dated October 29, 2019.

**D. The Bankruptcy Court determines that the Service's claim for return of the tax refund is a prepetition claim.**

After his appointment, the Chapter 11 Trustee filed original and/or amended tax returns for TelexFree for years 2012, 2013, and 2014 asserting no tax liability and requesting refunds for 2012 in the amount of \$886,700 and for 2013 in the amount of \$15,792,982. In December 2016, the Internal Revenue Service (the "Service") issued a refund for 2013 in the amount of \$15,532,440 (the "2013 Tax Refund"). Subsequently, the Service asserted that the 2013 Tax Refund had been paid in error and demanded that the Chapter 11 Trustee return the monies or that the Service have an administrative claim for the amount of the 2013 Tax Refund. The Chapter 11 Trustee commenced an action on July 30, 2018 to, among other things, dispute the administrative status of the Service's claims and the issue was presented to the Bankruptcy Court on a motion for summary judgment. By judgment dated March 26, 2020, the Bankruptcy Court found in favor of the Chapter 11 Trustee, finding the Service's claim for the 2013 Tax Refund was a prepetition unsecured claim. As discussed below, this determination was a significant factor leading to a settlement of the disputes between the Chapter 11 Trustee and the Service and the formulation of the Plan.

#### **IV POST PETITION ASSET RECOVERIES**

The Chapter 11 Trustee with the assistance of his professionals Murphy & King, P.C. and Huron Consulting Group (and Huron's predecessor Mesirov Financial Consulting LLC) pursued recovery from third parties on account of various claims and causes of action of the Estates. Set forth below is a summary of the significant actions pursued by the Chapter 11 Trustee and recoveries obtained therefrom.

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<sup>5</sup> See adversary proceeding 15-4055.

#### **4.1 Fees Paid to Debtor's Professionals**

Shortly after his appointment, the Chapter 11 Trustee requested the Court establish a bar date by which professionals retained by TelexFree before the appointment of the Chapter 11 Trustee were required to submit applications detailing the amount they had been paid by TelexFree and what services they had rendered. On or about August 4, 2014, those professionals filed applications for compensation and reimbursement of expenses which sought aggregate compensation of approximately \$2,250,000. Certain of the professionals also disclosed that they had been paid substantial retainers by TelexFree.

The Chapter 11 Trustee reviewed the applications for compensation and based upon this review and analysis, the Chapter 11 Trustee with the assistance of his counsel objected to each of the compensation requests. The Chapter 11 Trustee and his counsel reached settlements of the disputed fee requests. These settlements resulted in a reduction in the aggregate compensation sought by those professionals of nearly \$1,200,000. In addition, because those professionals had been paid retainers totaling nearly \$5,600,000, the settlement of the fee requests resulted in the Chapter 11 Trustee's recovery of approximately \$4,300,000 from the TelexFree professionals for the benefit of the bankruptcy Estates. In addition, the Chapter 11 Trustee recovered approximately \$1,000,000 from attorney Garvey Schubert and the law firm of Babener & Associates, both of whom had represented TelexFree prior to the bankruptcy filings.

#### **4.2 Allied Wallet**

In order to facilitate transfers of funds by and between TelexFree and the Participants, TelexFree contracted with various payment processing companies. One of TelexFree's principal payment processors was Allied Wallet. The Chapter 11 Trustee analyzed the various payment processor accounts, particularly the Allied Wallet account, to determine what, if any, monies of TelexFree the payment processors were holding. The Chapter 11 Trustee determined that Allied Wallet was holding substantial sums of TelexFree's monies. After detailed analysis of TelexFree's account at Allied Wallet and establishment of a reasonable reserve, the Chapter 11 Trustee was able to recover from Allied Wallet on behalf of the bankruptcy Estates in excess of \$11,000,000.

#### **4.3 Restitution Funds**

Merrill and Wanzeler each were charged with various violations of the United States criminal code in connection with the implementation of the TelexFree Ponzi and pyramid scheme, in the case styled *United States of America v. James Merrill and Carlos Wanzeler*, case no. 14-CR-40028-TSH (the "Criminal Action") pending in the United States District Court for the District of Massachusetts (the "District Court").

The indictment also contained a Forfeiture Allegation, which provided notice that the United States sought forfeiture upon conviction of one or more of the offenses charged, of any property, real or personal, that constituted, or was derived from, proceeds traceable to the commission of the offenses. The United States further sought to have the forfeited assets made available for distribution to victims of the Ponzi scheme.

On October 24, 2016, Merrill pled guilty to several counts of the indictment pursuant to a written plea agreement executed on October 24, 2016. As part of the plea agreement, Merrill consented to the forfeiture of the assets identified in an exhibit to the plea agreement. In connection with Merrill's plea, the United States submitted its Sentencing Memorandum to the District Court which stated the intention of the United States to use the pending TelexFree bankruptcy cases and the claims filing process developed by the Chapter 11 Trustee to funds from the forfeited assets to victims of the TelexFree scheme who were Net Losers. The United States stated its intention was to distribute the forfeited assets by transferring such assets to the Chapter 11 Trustee under an agreement that the Chapter 11 Trustee would use the assets to compensate victims. The United States acknowledged that without the use of the Chapter 11 Trustee's claims process, restitution would be impractical and costly.

On March 22, 2017, the District Court accepted Merrill's plea and sentenced Merrill to seventy-two (72) months in prison. On that same date, the District Court entered a Preliminary Order of Forfeiture (the "Preliminary Order"). Pursuant to the Preliminary Order, Merrill's interest in the forfeited assets, consisting of approximately \$145,000,000 in cash, real and personal property, was forfeited to the United States, subject to any claims of third parties.

Fabio Wanzeler and Priscilla Costa were the only parties to assert any claims to any of the forfeited assets. Their claims were limited to certain real properties located in Florida and both of their objections were resolved by agreement. Fabio Wanzeler agreed to release any interest in one parcel of real property, which was to be sold by the Chapter 11 Trustee, and to pay \$250,000 to purchase another parcel of real property. Priscilla Costa agreed that eight of the ten condominiums subject to the forfeiture Order would be forfeited to the United States for sale by the Chapter 11 Trustee, with the proceeds to be distributed to compensate victims through the bankruptcy cases.

On July 11, 2017, the District Court entered the Restitution Order. The Restitution Order provides for restitution to Participants in coordination with the Chapter 11 Trustee to avoid duplication of effort and inconsistent findings, and to reduce administrative costs, conserve judicial resources, and facilitate global accounting of funds distributed to Participants. The Restitution Order provides that restitution will be limited to Participants who have allowed, timely filed claims determined in accordance with the Net Equity Formula previously approved by the Bankruptcy Court by order dated January 26, 2016.

Pursuant to the Restitution Order, the United States has delivered \$145,471,294 to the Chapter 11 Trustee, representing certain of the forfeited assets. Funds turned over to the Chapter 11 Trustee by the United States, net of the Restitution Costs (as defined below) shall be referred to as the "Restitution Funds". The Chapter 11 Trustee has been informed that he is likely to receive approximately \$11,000,000 in additional Restitution Funds after certain assets have been liquidated.

On April 22, 2020, the Chapter 11 Trustee with the assent of the United States Attorney for Massachusetts, filed a motion to Modify the Restitution Order. Pursuant to the motion, the Chapter 11 Trustee sought authority to use up to \$7,500,000 (the "Restitution Costs") of the Restitution Funds to reimburse the bankruptcy Estates for the costs associated with the Trustee's



performance of his obligations under the Restitution Order. On April 23, 2020, the District Court allowed the Trustee's Motion to Modify the Restitution Order.

The amount sought for the Restitution Costs is substantially less than the amount of fees and expenses incurred and to be incurred by the Chapter 11 Trustee in resolving Participant Claims and making distribution of funds in accordance with the Restitution Order. Through the spring of 2018, the fees and expenses of the bankruptcy Estates, including those incurred in connection with the claim allowance process, were paid from recoveries obtained by the Chapter 11 Trustee. Since the spring of 2018, the Chapter 11 Trustee has incurred fees and expenses associated with the claims allowance process which have not been paid because of the pending litigation with the Service, as described below. The Chapter 11 Trustee will incur additional fees and expenses in obtaining Bankruptcy Court approval of the Plan, making multiple distributions to Participants, and filing reports with the District Court in accordance with the Restitution Order. The fees and expenses incurred and to be incurred by the Chapter 11 Trustee and his professionals will be subject to the approval of the Bankruptcy Court

#### **4.4 SEC Settlement Funds**

The Chapter 11 Trustee has worked cooperatively with the SEC in obtaining recoveries against several high-level Participants and members of TelexFree's senior management that were defendants in either civil actions brought by the SEC, litigation brought by the Chapter 11 Trustee, or both. Settlements were made with Sanderley Rodrigues; (ii) Randy and Sonia Crosby; (iii) Santiago de la Rosa; (iv) Fabio Wanzeler. A settlement was also reached with Joseph Craft, the former chief financial officer of TelexFree and his affiliated entities. These settlements generated more than \$2,500,000 in payments to the bankruptcy Estates. The SEC Settlement Funds, net of an amount equal to ten percent (10%) of the recoveries (the "SEC Settlement Costs"), are available for distribution to holders of Allowed Participant Claims.

#### **4.5 Class Action Litigation against Net Winners**

The Bankruptcy Court's finding that TelexFree was engaged in a Ponzi and pyramid scheme gave rise to a presumption that distributions to Participants in excess of their investments constituted fictitious profits that can be recovered by the Chapter 11 as a fraudulent transfer.

Because of this finding and presumption, the Chapter 11 Trustee undertook a detailed analysis of all the Participants' transactions to determine which Participants were Net Winners. The Chapter 11 Trustee accomplished this analysis by applying the various algorithms that had been developed to aggregate Participants' User Accounts and to match the counterparties to the Triangular Transactions. Upon the completion of his analysis, the Chapter 11 Trustee brought two adversary proceedings under the seldom-used procedure of defendant class action. A defendant class action differs from the usual class action litigation in that in a defendant class action, there is a single or limited number of plaintiffs and numerous defendants, whereas in the usual class action there are numerous plaintiffs with a discrete and limited number of defendants. The Chapter 11 Trustee employed this novel procedure in order to obtain binding determinations by the Bankruptcy Court with respect to certain issues common to all Net Winners.

The Chapter 11 Trustee brought two defendant Class Actions. In one defendant Class Action, the Chapter 11 Trustee designated a class of approximately 15,000 defendants who were Net Winners residing in the United States (referred to as the “Domestic Class Action”). In the other defendant Class Action, the Chapter 11 Trustee named approximately 78,000 Net Winners who resided outside of the United States (the “Foreign Class Action”). Each Class Action sought a determination that the Net Winnings of each Net Winner were fraudulent transfers that could be recovered by the Chapter 11 Trustee and to ultimately obtain a judgment against each individual Net Winner in the amount of his/her Net Winnings. The Bankruptcy Court has certified the Domestic Class Action and the Foreign Class Action, and counsel has been appointed with respect to those Class Actions.

The prosecution of the Domestic and Foreign Class Actions was impeded by certain competing litigation in the District Court. Prior to the commencement of the TelexFree bankruptcy proceeding, various individuals brought civil class actions against TelexFree and its various senior managers, promoters, payment processors and banks, as well as TelexFree’s lawyers and accountants. All of these various class-action complaints were consolidated in one action before the District Court. In the consolidated action, the District Court appointed a Plaintiffs’ Interim Executive Committee (“PIEC”) to prosecute the consolidated actions.

As part of its amended complaint, the PIEC sought to pursue claims against substantially the same Net Winners who were defendants in the Domestic Class Action. The action by the PIEC created a conflict as to who was the proper person to prosecute the class actions against the Net Winners and who had the authority to settle those claims. The overlapping of the PIEC action and the Domestic Class Action substantially impaired the Chapter 11 Trustee’s ability to prosecute and collect from the Net Winners who received at least a portion of their Net Winnings from Triangular Transactions. Accordingly, the Chapter 11 Trustee commenced an action in the Bankruptcy Court to confirm his exclusive right to prosecute, settle and/or collect the claims against Net Winners who had received a portion of their Net Winnings in Triangular Transactions. As described above, the Chapter 11 Trustee was found to have the exclusive standing to prosecute the claims against the Net Winners.

Presently it is not possible to estimate the likely recovery from the two Defendant Class Actions. There are uncertainties in obtaining judgments against each individual Net Winner and then collecting those judgments from individuals, many of whom are located outside the United States. The Chapter 11 Trustee has reached settlement with several Net Winners. The Chapter 11 Trustee commenced a separate action against David and Linda Hackett for fraudulent transfer of property and ultimately settled all claims against the Hacketts for \$455,000. The Chapter 11 Trustee settled claims against Net Winners Priscilla Costa and Fabio Wanzeler, in coordination with the United States, resulting in recovery of more than \$1,000,000.

#### **4.6 Litigation against Wanzeler and Affiliates**

The Chapter 11 Trustee used the reconstructed TelexFree electronic records, along with the various algorithms he had developed, to investigate suspicious transactions involving Wanzeler, his family and individuals closely associated with him. Upon completion of his investigation, the Chapter 11 Trustee concluded that there were numerous fraudulent transactions in accounts associated with Wanzeler and related parties. Accordingly, the Chapter 11 Trustee

filed a Complaint asserting that Wanzeler and others engaged in fraudulent transactions primarily concerning the issuance of manual credits to his family and friends which were then converted to cash, either by being redeemed through TelexFree, sold to other Participants or used in Triangular Transactions.

Certain of the Defendants, primarily Wanzeler and Wanzeler family members, have answered the Complaint and denied the allegations. The other Defendants named therein have been defaulted. Certain of the Defendants in this action were also defendants in actions brought by the SEC and entered into the settlements discussed above in Section 4.4.

The Chapter 11 Trustee does not have an estimate as to the likely recovery against the remaining defendants. It is anticipated that any recovery from Wanzeler and his family and associates will be achieved through the combination of this litigation and the criminal actions brought by the United States against Wanzeler once he has been returned to the United States. The Chapter 11 Trustee anticipates coordinating his collection efforts with those of the United States and arriving at a resolution similar to that which was reached between the Chapter 11 Trustee and the United States with respect to James Merrill.

#### **4.7 Other Recoveries**

During the course of the Bankruptcy Cases, the Chapter 11 commenced approximately ten (10) avoidance actions against parties other than Participants. The Chapter 11 negotiated resolutions of these avoidance actions, resulting in judgments totaling in excess of \$200,000 and the waiver of approximately \$100,000 in administrative claims.

After the appointment of the Chapter 11 Trustee, the United States turned over to the Chapter 11 Trustee numerous cashier's checks payable to TelexFree. When the Chapter 11 Trustee attempted to negotiate the checks, the financial institutions that issued the cashier's checks refused to honor the checks. The Chapter 11 Trustee and his attorneys reviewed the Estates' rights in connection with the dishonored checks and made demand on the various financial institutions to honor the checks. Ultimately, as a result of the Chapter 11 Trustee's efforts, a total of approximately \$700,000 of the cashier's checks were honored and paid to the bankruptcy Estates.

Prior to the Petition Date, TelexFree invested more than \$2,000,000 in Sunwind Energy and its affiliates (collectively "Sunwind") for the development of a wind farm project in the mid-western United States. The documents evidencing the investment were incomplete in several material respects. The Chapter 11 Trustee was able to reconstruct the transactions and TelexFree's claim against Sunwind. After lengthy negotiations with representatives of Sunwind and exchange of documents, the parties agreed to the terms of TelexFree's investment in Sunwind and Sunwind's obligation to TelexFree. Pursuant to this agreement, Sunwind acknowledged an indebtedness of approximately \$3,000,000 to the bankruptcy Estates. Further, Sunwind agreed that this amount would be paid upon either financing, the sale or lease of Sunwind's assets or a change in control of Sunwind's ownership. Sunwind was never able to obtain financing necessary to pay its obligation to the bankruptcy Estates or to develop the project. Subsequently, Sunwind did enter into an agreement to sell its assets to a third party. The Chapter 11 Trustee and the buyer reached an agreement to allow the sale to proceed and for the bankruptcy Estates to receive money from the sale. The agreement as approved by the

Bankruptcy Court provided for the Chapter 11 Trustee to receive \$150,000 at the closing of the sale to the buyer and to receive up to an additional \$1,000,000 based upon the buyer's success in developing the project.

## V. RESOLUTION OF DISPUTES WITH SERVICE

After his appointment, the Chapter 11 Trustee with the assistance of his accountants KPMG, LLC filed original and/or amended tax returns for TelexFree for years 2012, 2013, and 2014 asserting no tax liability, requesting refunds for 2012 in the amount of \$886,700 and for 2013 in the amount of \$15,792,982. Following the Chapter 11 Trustee's receipt of the 2013 Tax Refund, the Service (i) provided notice of the disallowance of substantially all of the expenses deducted by the Chapter 11 Trustee for 2012, 2013, and 2014, (ii) asserted administrative claims totaling \$69,000,000 and prepetition priority and nonpriority claims in excess of \$300,000,000; (iii) demanded a return of the 2013 Tax Refund, and (iv) disallowed the request for refund for 2012.

After extensive negotiations, the Service agreed to subordinate the prepetition Claims of \$300,000,000 and \$52,593,821 of its \$69,000,000 in Administrative Claims to the payment of Allowed Administrative Claims and Allowed Participant Claims. The Service did not, however, agree to subordinate its claim for return of the 2013 Tax Refund nor \$1,334,143 of its Administrative Claim for alleged income tax liability for the year 2014. The Service's continued pursuit of its remaining Administrative Claims created a substantial impediment to the Chapter 11 Trustee's ability to finalize a plan to distribute money to Participants holding Allowed Claims. Accordingly, the Chapter 11 Trustee commenced litigation against the Service seeking a determination that: (1) no tax was due was 2012, 2013, and 2014, (2) the bankruptcy Estates were entitled to retain the 2013 Tax Refund, (3) the Service be compel to turnover to the bankruptcy Estates the 2012 refund, and (4) the Service's claims be disallowed (the "Service Litigation").

The Chapter 11 Trustee moved for summary judgment on the issue of the Service's assertion of Administrative Claim status for the 2013 Tax Refund and for disallowance of the Service's asserted Administrative Claim for the 2014 taxes. The motion was opposed by the Service. Before the Bankruptcy Court determined the Chapter 11 Trustee's motion for summary judgment, the Service moved for summary judgment on its assertions that its disallowance of the advertising expenses, commission expenses, Ympactus bad debt, and casualty loss deduction were all appropriate.

On March 26, 2020, the Court determined both motions for summary judgment. Judge Hoffman ruled in favor of the Chapter 11 Trustee, disallowing the Service's asserted administrative status for the Service's claim for the 2013 Tax Refund and for taxes allegedly due for the 2014 tax year. The Court declined to rule on the deductibility of the claimed business expenses and casualty loss, finding that there were genuine issues of material fact with respect to the allowance of those deductions which precluded the granting of summary judgment. Accordingly, a trial would be necessary to determine those issues. While the Court decision on the issue of the status of the Service's Administrative Claim was significant, there remained significant issues to be resolved and the Service and the Chapter 11 Trustee continued to pursue settlement discussions.

On April 22, 2020, after lengthy negotiations and approval process, the Chapter 11 Trustee and the Service entered into a settlement agreement subject to approval by the Bankruptcy Court. The purpose of the settlement is to resolve all of the disputes concerning the Service's claims thereby enabling the Chapter 11 Trustee to among other things proceed to propose and obtain approval of a Plan to distribute the Restitution Funds, SEC Settlement Funds, and Available Cash to Participants who are the holders of Allowed Claims. The terms of the settlement provide essentially as follows:

- (i) The Service shall retain the payments made by TelexFree for tax year 2012 and the Chapter 11 Trustee shall waive his claim for a tax refund for 2012 in the amount of \$886,700;
- (ii) The 2013 Tax Refund shall be distributed as follows:
  - (a) \$7,741,220.39 to the Chapter 11 Trustee for payment of Administrative Claims and Allowed Claims of Participants;
  - (b) \$7,741,220 to the Service (the "Settlement Payment"); and
  - (c) \$50,000 for distribution to holders of Allowed Vendor Claims;
- (iii) The Service shall have an Allowed Priority Tax Claim, subordinated to the payment of all Allowed Administrative Expense Claims and Allowed Participant Claims, in the amount of \$7,741,220.39;
- (iv) TelexFree shall retain a net operating loss ("NOL") for tax year 2014 in the approximate amount of \$500,000,000 to the extent the Debtors or Reorganized Debtors have taxable income during the bankruptcy cases. TelexFree shall not be able to transfer, assign or sell the NOL, and the NOL may be used to offset taxable income arising from the liquidation and distribution of assets of the Debtors and the Reorganized Debtors, including any Restitution Funds; and
- (v) The terms of the settlement will be incorporated into the Plan and the Service shall not oppose such Plan.

The proposed settlement with the Service is fair and reasonable and in the best interests of the bankruptcy Estates and their creditors including the Participants who are the holders of Allowed Claims. The settlement agreement finally resolves the Services' substantial Administrative and Priority Claims for tax years 2012 through 2014 thereby removing a major impediment to confirmation of the Plan and distribution to Participants who are holders of Allowed Claims. The settlement also provides assurance that the Liquidating Trustee will not become embroiled in further litigation with the Service. Importantly, the agreement allows the Debtors and the Reorganized Debtors to retain the NOL to offset any income realized by the Debtors and Reorganized Debtors.

Absent approval of the Service Settlement, the Chapter 11 Trustee and the Service would need to continue with their litigation, which would result in the bankruptcy Estates continuing to incur administrative costs and would further delay the implementation of a Plan and distribution to creditors. While the Bankruptcy Court decision disallowed the Service's Administrative Claim based upon the 2013 Tax Refund and the asserted taxes for 2014, the decision did not

resolve the amount of the Service's claim because the Bankruptcy Court found that there were factual issues to be determined at trial.

It is likely that if the Chapter 11 Trustee were to prevail after a trial in the Bankruptcy Court with respect to the deductibility of the advertising expenses, commissions, Ympactus bad debt, and casualty loss deduction, the Service would also appeal that decision. Any such appeal by the Service would come only after the Bankruptcy Court entered a final decision, after conducting a trial, on all of the issues in the litigation. While the Chapter 11 Trustee believes that he would ultimately prevail in the litigation, there would be a substantial delay and a substantial increase in costs in resolving the disputes with the Service. Most significantly, the lack of finality with respect to the status and amount of the Service's claim would result in continued delay in the Chapter 11 Trustee's ability to distribute money to the Participants holding Allowed Claims.

In reaching his decision to settle with the Service, the Chapter 11 Trustee carefully weighed all of the costs and benefits associated with the continued litigation against the terms of the settlement, including but not limited to the uncertainty of his ultimate success in the litigation with the Service and the cost and delay that would result from the continued and protracted litigation. A particularly significant factor motivating the Chapter 11 Trustee's decision to proceed with settlement is that the settlement is the most expeditious way to effectuate a resolution of the disputes with the Service thereby clearing a major obstacle to confirming the Plan and to preserve \$500,000,000 in NOL's to eliminate any further tax liability. The Chapter 11 Trustee has taken into consideration all of factors detailed above in concluding that the proposed settlement with the Service is fair and reasonable and in the best interest of the bankruptcy Estates, and should be approved in conjunction with confirmation of the Plan.

## **VI. CLAIMS DETERMINATION AND ALLOWANCE**

### **6.1 Claims Administration**

In the initial stages of the Chapter 11 cases, Participants filed claims both with the Bankruptcy Court and with the Chapter 11 Trustee's claims agent, Kurtzman Carson Consultants ("KCC"). Claims or victim notification forms were also filed with the Federal Bureau of Investigation and the Massachusetts Secretary of State. An initial review showed that these claims were deficient in numerous respects. The claims asserted wildly differing amounts, including claims for accumulated credits, punitive damages, lost profits, and other claims not allowable in accordance with the Net Equity Formula. The claims were largely handwritten, and often did not clearly identify the User Accounts owned by the Participant or provide sufficient information to identify the Participant's User Accounts. It became evident that these claims would have to be reconciled with the TelexFree records on a painstaking, claim-by-claim basis. Because there were upwards of one million Participants and more than one billion Participant transactions, a manual reconciliation of all claims could potentially have consumed all of the resources in these cases.

The Chapter 11 Trustee determined that an automated system was needed to confirm the accuracy of Participant claims, based upon the Net Equity Formula, against the TelexFree records. In order for the Chapter 11 Trustee to address these issues, an electronic claim filing process needed to be established that would enable Participants to access the TelexFree records

and provide Participants an opportunity to confirm or deny Net Equity activity as reflected in the TelexFree records, or to make other adjustments.

On October 7, 2015, the Chapter 11 Trustee filed his *Motion by Chapter 11 Trustee for Entry of Order Fixing Bar Date for Filing Proofs of Claim, Approving Form and Manner of Providing Notice, Directing that Claims Be Filed Electronically, and Approving Content of Electronic Proofs of Claim* (the “Claims Motion”). Pursuant to the Claims Motion, the Chapter 11 Trustee sought to establish an electronic process for the filing of claims by Participants that would supersede the claims that had been earlier submitted in multiple locations.

On January 26, 2016, the Court entered an order approving the Claims Motion (the “Claims Order”). The Claims Order provided for a bar date of not less than ninety (90) days after the Electronic Portal became operational and notice of the bar date had been sent to all creditors. The Claims Order approved the form and manner of notice of the bar date, including electronic mail notice to all known Participants in English, Spanish and Portuguese, and constructive notice through certain multi-level marketing websites. The Claims Order further directed Participants to file claims using the form specifically designed for Participants (the “Participant Claim Form”) and for Vendors to file claims using a form more closely resembling the official claim form (the “Standard Claim Form”).

The Claims Order provides that the submission of an electronic proof of claim (“ePOC”) through the Electronic Portal:

shall be the sole and exclusive method of filing claims in these cases. Any claims previously filed or hereinafter filed that do not comply with the ePOC process set forth herein shall be disallowed without further order of the Court, including any proofs of claim previously filed with KCC or the Court and any victim notification forms submitted to the FBI or the Massachusetts Secretary of State. Participants and other claimants are instructed not to file any proofs of claim with the Bankruptcy Court or with KCC. [Docket entry 688, ¶15].

Upon entering the Electronic Portal, Participants were provided an opportunity to enter all personally identifiable information that was used in opening User Accounts with TelexFree, including name, User Account number, address and phone information and passcodes. This information was then matched against TelexFree’s records to identify User Accounts attributable to the Participant. Participants then had an opportunity to accept or reject any User Account that were ascribed to them.

After the User Account identification process was completed, Participants were provided the detailed transaction activity associated with each User Account, including both Direct Transactions and Triangular Transactions. The ePOC aggregated the transaction activity in all of the User Accounts to arrive at a proposed claim amount. The Participant could then add, delete, or modify transactions and provide supporting documentation for any changes made. The claim was then submitted through the Electronic Portal.

On May 27, 2016, after the Electronic Portal became operational, the Chapter 11 Trustee filed a *Notice of Deadline for Filing Electronic Proofs of Claim and Claims Procedures* (the “Bar Date Notice”). The Bar Date Notice established an initial bar date of September 26, 2016

(the “First Bar Date”) for the filing of electronic claims and was served in accordance with the provisions of the Claims Order. On or about September 21, 2016, the Chapter 11 Trustee filed a motion to extend the First Bar Date to December 31, 2016 (the “Second Bar Date”). This motion was granted by order dated September 23, 2016, and notice of the Second Bar Date was served in accordance with the terms of the Claims Order. In light of the wide publicity emanating from Merrill’s anticipated entry of a guilty plea, on or about December 8, 2016, the Chapter 11 Trustee filed a second motion to extend the deadline for filing an ePOC to March 15, 2017 [docket entry 827, the “Final Bar Date”]. This motion was granted by order dated December 21, 2016 and notice of the Final Bar Date was served in accordance with the terms of the Claims Order.

There were 131,351 timely filed Participant Claims and 777 late filed Participant Claims submitted through the Electronic Portal, which was closed shortly after the Final Bar Date. Due to the number of claims filed and because Participants are typically unrepresented, dispersed throughout the world, and often speak a primary language other than English, the Chapter 11 Trustee needed to establish a specially tailored process to resolved disputed claims.

On or about October 16, 2017, the Chapter 11 Trustee filed a *Motion by Chapter 11 Trustee to Establish Omnibus Procedures for the Resolution of Disputed Participant Claims*, which was approved by the Bankruptcy Court by order dated December 26, 2017 (the “Claims Procedure Order”). Pursuant to the Claims Procedure Order, the Bankruptcy Court established a two-part process for the resolution of disputed claims. The first step, which did not entail any Bankruptcy Court involvement, provided for the Chapter 11 Trustee to send a Participant with a disputed claim a notice of proposed adjustment in his/her claim amount (the “First Notice”). If a Participant submitted a timely response to the First Notice, the Chapter 11 Trustee would attempt to resolve the dispute by agreement and, absent resolution, the Chapter 11 Trustee would file an objection to the disputed Participant claim with the Bankruptcy Court. If a Participant did not submit a timely response to the First Notice, the Chapter 11 Trustee would file a second notice with the Bankruptcy Court requesting claim disallowance, or reduction, in accordance with the First Notice.

The Chapter 11 Trustee sent First Notices to 21,135 Participants in accordance with the Claims Procedure Order. Of this amount, 19,136 Participants did not respond and were sent Second Notices. The Chapter 11 Trustee filed three omnibus objections to claims with respect to those Participants who filed responses to the First Notice and whose claims could not be resolved by agreement.

The Chapter 11 Trustee filed thirty-two motions to disallow approximately 8,000 claims that showed a negative balance (that is, the claims reflected that the Participants were Net Winners under the Net Equity Formula). The Chapter 11 Trustee also filed sixteen motions to disallow approximately 4,000 claims that showed a balance due of \$0 based upon the Net Equity Formula.

The aggregate amount claimed by Participants was in excess of \$1,000,000,000. As a result of the Chapter 11 Trustee’s claims resolution efforts, 100,320 Participant Claims have been conditionally allowed either in the amount filed with the Electronic Portal or in a reduced amount, reflecting aggregate allowed claims in the amount of \$350,351,049. There are 18,509 Participant claims filed showing a net loss that have been disallowed, and there are 11,686



Participants claims filed as Net Winners or as Zero Dollar Claims that have been disallowed. There are approximately 1,600 claims that remain unresolved.

Approximately 3,000 persons filed Standard Claim Forms, which was the form reserved for Vendor claims. The Chapter 11 Trustee believes, based upon a review of the Standard Claims, that substantially all of these claims represent claims of Participants that were misfiled. The dollar amount of actual Vendor claims that are potentially allowable is expected to be less than \$100,000. The Chapter 11 Trustee notified each party who submitted a Standard Claim Form that, if they were a Participant, they would need to file a Participant Claim Form to be considered for allowance. Participants were given thirty (30) days to submit a corrected form before the Electronic Portal was closed.

## **6.2 Claims against the Estates**

The following is an estimate of the claims against the Estates. The actual amount of such claims may vary depending upon the resolution of disputed claims and administrative costs that may be incurred as a result of unforeseen circumstances.

### **A. Administrative Claims**

Since his appointment, the Chapter 11 Trustee has been paying the Estates' obligations in the ordinary course of business and, therefore, does not believe that there will be any substantial unpaid administrative claims on account of post-petition trade debt.

Since the Chapter 11 Trustee's appointment, the professionals retained by the Chapter 11 Trustee have filed for and obtained Bankruptcy Court approval for interim compensation for the period from their appointment until the spring of 2018. Since his appointment, the Chapter 11 Trustee has not sought or been paid any commission to date. The estimated unpaid fees and expenses of the Chapter 11 professionals through the anticipated Effective Date of June 30, 2020 are as follows: (i) Huron Consulting Group, financial advisors to the Chapter 11 Trustee, fees and expenses for the period April 1, 2018 through the Effective Date of \$4,900,000; (ii) Murphy & King, P.C., counsel to the Chapter 11 Trustee, fees and expenses for the period April 1, 2018 through the Effective Date of \$2,500,000; (iii) KPMG, LLC, tax advisors to the Chapter 11 Trustee, fees and expenses for the period March 1, 2018 through the Effective Date of \$800,000; (iv) Milligan Rona, Duran & King, counsel to the class action defendants, for potential fees and expenses totaling \$175,000; and (v) Stoneturn, financial advisors to the class action defendants, for potential fees and expenses totaling \$33,000.<sup>6</sup> The Chapter 11 Trustee has indicated that he intends to seek approval of a commission to him for his services during the Chapter 11 cases in the approximate amount of \$3,000,000.

The Professional Fee Claims will be paid by the Chapter 11 Trustee or Liquidating Trustee subject to the filing of applications for compensation and approval by the Bankruptcy Court after notice and hearing. The Chapter 11 Trustee also estimates that fees may be due to

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<sup>6</sup> The amounts stated for Milligan Rona and Stoneturn reflect the difference between the budget for such professionals authorized by the Bankruptcy Court to be paid from the Estates, subject to court approval, and amounts paid to date.

the Office of the United States Trustee in the amount of approximately \$250,000 based upon the Plan distributions to be made shortly after the Effective Date.

#### **B. Tax Claims**

The Settlement Payment to the Service shall be paid following the Effective Date. The Service Settlement also grants the Service an Allowed Priority Tax Claim in the amount of \$7,741,220.39 subordinated to the payment of all Allowed Administrative Expense Claims and Allowed Participant Claims. Because holders of Allowed Participant Claims are not expected to receive one hundred percent (100%) of their Allowed Claims, it is highly unlikely that the Service will receive a distribution on account of its subordinated tax claim.

The Chapter 11 Trustee believes that the Estates may have miscellaneous tax liability to certain states, in an amount not to exceed \$200,000. Any such Claims will be paid on the later of the Effective Date or the date of allowance of such Claims.

#### **C. Participant Claims**

The Chapter 11 Trustee estimates that the total allowed Participant Claims will be in the range of \$350,000,000 to \$360,000,000. The total amount of Allowed Participant claims will not be known until all disputed claims are resolved.

#### **D. Vendor Claims**

The Chapter 11 Trustee projects that the number of Allowed Vendor Claims, consisting of unpaid operating expenses incurred by TelexFree prior to the Chapter 11 filings, are less than ten and the aggregate amount of such Allowed Claims is likely to be in the range of \$75,000 to \$125,000.

### **6.3 Participant Recovery**

There are approximately 78,759 holders of Allowed (Class 2) Participant Convenience Claims holding aggregate Allowed Claims of approximately \$125,000,000. Under the Plan, holders of Allowed Class 2 Claims will be entitled to receive a one-time distribution of 43% to be made as soon as practicable after the Effective Date. If each holder of an Allowed Class 2 Claim were to accept the Class 2 treatment rather than elect Class 3 treatment, the total distributions to holders of Allowed Class 2 Claims will be approximately \$54,000,000.

There are approximately 22,327 holders of other Allowed (Class 3) Participant Claims holding aggregate Allowed Claims of approximately \$230,000,000, in addition to any Class 2 claimants that elect Class 3 treatment. Under the Plan, holders of Allowed Class 3 Claims will receive an initial *Pro Rata* distribution of Restitution Funds, SEC Settlement Funds, and Available Cash as soon as practicable after the Effective Date in the estimated amount of approximately 39%. If no holders of Allowed Class 2 Claims elect Class 3 treatment, the total initial distribution to holders of Allowed Class 3 Claims will be approximately \$91,000,000. Allowed Class 3 Claims shall also be entitled to receive additional *Pro Rata* distributions as proceeds become available.

The amount of the distributions to holders of Allowed Class 3 Claims will be impacted by both the amount of Assets available for distribution as well as the total amount of Allowed Class 3 Claims after the claims determination process is completed. If all holders of Allowed Class 2 Claims accept the treatment in Class 2, the pool of Allowed Claims in Class 3 is estimated to be approximately \$230,000,000, but the final amount will be subject to completion of the claims determination process.

Additional distributions to holders of Allowed Class 3 Claims will be funded principally from the additional Restitution Funds and recoveries from the Class Action Litigation or other avoidance actions. As referenced earlier, herein, the Chapter 11 Trustee is informed that additional Restitution Funds are estimated to be approximately \$11,000,000. Additional recoveries from the Class Action Litigation and other avoidance actions are difficult to estimate. The Class Action Litigation is not concluded and, while the Chapter 11 Trustee believes he will prevail in the litigation, there is no guaranty that the litigation will be successful. Assuming that the Liquidating Trustee does prevail in the litigation, the Chapter 11 Trustee anticipates there may be difficulties in collecting judgments. With respect to domestic defendants, many of them may have suffered adverse economic consequences from COVID-19 and with respect to the nonresident defendants, there are issues respecting the foreign recognition of United States judgments as well as collectability issues. Finally, the costs of obtaining judgments, including the associated legal fees and expenses, could be substantial. The foregoing considerations render a projection of recoveries speculative.

Based upon the foregoing, the Chapter 11 Trustee estimates that holders of Allowed Class 3 Claims could receive one or more additional distributions in the aggregate range of 2-10% of Allowed Claims. These amounts may vary depending upon the actual recoveries.

## **VII. MEANS FOR IMPLEMENTATION OF THE PLAN**

### **7.1 Vesting of Assets**

All Assets shall re-vest in the Reorganized Debtors on the Effective Date, free and clear of all Liens and encumbrances, but subject to the payment of claims as provided in the Plan. Except as may be expressly provided in this Plan or in a Non-Appealable Order of the Bankruptcy Court, no Asset shall be deemed abandoned and no defense, set-off, counterclaim or right of recoupment of the Debtors shall be deemed waived, released or compromised. The Liquidating Trustee shall maintain custody of the Restitution Funds and the SEC Settlement Funds and he shall distribute such assets to holders of Allowed Participant Claims in accordance with the terms of the Plan.

### **7.2 Substantive Consolidation.**

#### **A. Consolidation of the Estates**

The entry of the Confirmation Order shall constitute approval by the Bankruptcy Court of the substantive consolidation of the Debtors and their respective Estates for all purposes relating to the Plan, including for purposes of voting, confirmation and distributions. If this substantive consolidation is approved, (a) for all purposes associated with the confirmation and consummation of the Plan, all assets and liabilities of the Debtors shall be treated as though they

were merged into a single economic unit, (b) no distribution shall be made under the Plan on account of any Claim held by any one of the Debtors against any of the other Debtors and such intercompany Claims will be extinguished, (c) no distribution shall be made under the Plan on account of any intercompany interest held by any one of the Debtors in any of the other Debtors except to the extent necessary to effect the substantive consolidation provided for herein, (d) all guarantees of any one of the Debtors of the obligations of any of the other Debtors, to the extent such exist, shall be eliminated so that any Claim against any one of the Debtors, and any guarantee thereof executed by any of the other Debtors, shall be one obligation of the consolidated Debtors' Estates, and (e) every Claim that is timely filed in the Chapter 11 Cases of any of the Debtors shall be deemed filed against the consolidated Estates and shall be one Claim against, and one obligation of, the Estates.

#### **B. Allowance of Claims against Multiple Debtors**

Claims against more than one of the Debtors arising from the same injury, damage, cause of action or common facts shall be Allowed only once as if such Claim were against a single Debtor.

#### **C. Cure of Defaults**

Any alleged defaults under any applicable agreement, including executory contracts and unexpired leases, with the Debtors arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.

#### **D. Administration of Consolidated Estate**

As soon as practicable after the Effective Date, the Liquidating Trustee is authorized to submit an order to the Bankruptcy Court in form and substance acceptable to the United States Trustee that closes each of the Chapter 11 Cases except the case of TelexFree LLC, case no. 14-40987. The Debtors' consolidated estate shall be administered through TelexFree, LLC.

#### **E. Setoff and Defenses.**

The substantive consolidation effected pursuant to the Plan shall not affect, without limitation, the Estates' defenses to any claim or cause of action, including (i) the ability to assert any counterclaim; (ii) the Estates' setoff or recoupment rights; (iii) requirements for any third party to establish mutuality prior to substantive consolidation in order to assert a right of setoff against the Estates.

### **7.3 Corporate Action.**

Confirmation of the Plan shall constitute authorization for the Chapter 11 Trustee and the Liquidating Trustee to effectuate the Plan and to execute, issue, deliver, file or record all contracts, instruments and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan without further notice to or action, order or approval of the Bankruptcy Court or any other entity except for those expressly required pursuant to the Plan. All matters provided for in the Plan involving any corporate action to be taken by or required of the Chapter 11 Trustee in connection

with the Plan shall be deemed to have occurred, and be effective as provided herein, and shall be authorized, approved and, to the extent taken prior to the Effective Date, ratified in all respects, without any requirement of further action by the Liquidating Trustee, his agents, representatives, or employees.

#### **7.4 Preservation of Causes of Action.**

Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order, any Non-Appealable Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, the Liquidating Trustee will exclusively retain and may enforce, and the Liquidating Trustee expressly reserves and preserves for these purposes, in accordance with Sections 1123(a)(5)(A) and 1123(b)(3) of the Bankruptcy Code, any Claims, Causes of Action and demands and rights relating thereto that the Debtors or their Estates may hold against any Person or entity. No preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to them by virtue of or in connection with the Confirmation, consummation or effectiveness of the Plan.

#### **7.5 Default.**

No event of default under the Plan shall occur unless, in the event of a breach of the Liquidating Trustee's obligations under the Plan, the holder of the Allowed Claim asserting the default shall provide written notice of such breach to the Liquidating Trustee and such breach is not cured: (i) in the event of a breach that can be cured by the payment of a sum of money, within fifteen (15) days of the Liquidating Trustee's receipt of such notice; and (ii) for any other breach, within thirty (30) days of the Liquidating Trustee's receipt of such notice, provided that, if such non-monetary breach cannot reasonably be cured within such 30-day period and the Liquidating Trustee has commenced curing such breach and continues to cure such breach, the thirty (30) day period shall be extended for such time as is reasonably necessary to cure such breach.

#### **7.6 Resignation of Officers and Directors.**

Upon the Effective Date, all of the Debtors' officers and members of its board of directors shall be deemed to have resigned without the necessity of any further action or writing and they shall be released from any responsibilities, duties and obligations that arise after the Effective Date to the Debtor or its Creditors under the Plan or applicable law. Under no circumstances shall such parties be entitled to any compensation from the Debtor or the Liquidating Trustee for services provided after the Effective Date.

#### **7.7 Dissolution of the Debtors.**

Upon the completion of the administration of Assets and the distributions under the Plan, the Reorganized Debtors shall be deemed to be dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Reorganized Debtor or payments to be made in connection therewith; provided, however, that the Liquidating Trustee, on behalf of the Debtors, shall file with the appropriate state authority or authorities a certificate

or statement of dissolution referencing this Plan. The Reorganized Debtors shall not be required to file any documents, or take any other action, to withdraw their business operations from any states in which the Debtors were previously conducting business operations.

### **7.8 Further Authorization.**

The Liquidating Trustee, on behalf of the Estates, shall be entitled to seek such orders, judgments, injunctions, and rulings and take such actions as deemed necessary to carry out the intentions and purposes, and to give full effect to the provisions, of the Plan.

Except as otherwise set forth in the Plan and the Confirmation Order, as of the Effective Date, the Liquidating Trusts shall be the successors to TelexFree for all purposes. The Restitution Assets shall vest in the Restitution Liquidating Trust, and the Estate Assets shall vest in the Estate Liquidating Trust, free and clear of all Liens and encumbrances, but subject to payment of the Claims as provided in the Plan.

## **VIII. DISTRIBUTIONS ON CLAIMS AND RESOLUTION OF DISPUTED CLAIMS**

### **8.1 Method of Distributions Under the Plan.**

(a) In General. Subject to Bankruptcy Rule 9010, and except as otherwise provided in the Plan, all distributions under the Plan to be made by, or on behalf of, the Liquidating Trustee to the holder of each Allowed Claim shall be made principally by electronic transfer or physical check. The Liquidating Trustee shall have no obligation to locate such holders whose distributions or notices are properly sent but nevertheless returned.

(b) Distributions to be on Business Days. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

(c) Fractional Dollars. Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment may reflect a rounding of such fraction to the nearest whole dollar (rounding down in the case of \$0.50 or less, and rounding up in the case of more than \$0.50).

(d) Minimum Distributions. The Liquidating Trustee reserves the right to defer or forgo distributions if the amount of a distribution will result in a *de minimus* dividend. The Liquidating Trustee will determine the minimum amount of Available Cash that must be available to issue a dividend to holders of Allowed Class 3 Claims, in consultation with the Office of the United States Attorney.

(e) Distributions to Holders as of the Distribution Record Date. The Liquidating Trustee shall be entitled to rely upon the register of Claims as of the Distribution Record Date.

(f) Office of Foreign Assets Control (OFAC). The Liquidating Trustee may withhold distributions otherwise payable to holders of Allowed Claims if the claimant is located outside of the United States and has not provided information to the Liquidating Trustee to ensure compliance with the Office of Foreign Assets Control (“OFAC”). If a claimant fails to respond

to a request for OFAC certification for more than six months, the Liquidating Trustee may expunge the claim, in which case the party otherwise entitled to such distribution shall be deemed to have forfeited its right to the distribution and any future distributions, and the Liquidating Trustee may redistribute the Cash to other beneficiaries under the Plan as if such Claim was disallowed.

(g) Interest and Penalties on Claims. Unless otherwise specifically provided for in the Plan or the Confirmation Order, post-petition interest and penalties shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest and penalties accruing on or after the Petition Date through the date such Claim is satisfied in accordance with the terms of this Plan.

## **8.2 Objections to Disputed Claims.**

Prior to the Effective Date, any objections to Claims against the Estates shall be prosecuted by the Chapter 11 Trustee. On and after the Effective Date, any objections to Claims against the Estates shall be prosecuted by the Liquidating Trustee and such objections to Claims shall be filed within one year after the Effective Date.

## **8.3 Estimation of Claims.**

After the Effective Date, the Liquidating Trustee may, at any time, estimate any Disputed Claim in his reasonable discretion regardless of whether the Chapter 11 Trustee or the Liquidating Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall have jurisdiction to estimate a Disputed Claim at any time, including, without limitation, during litigation concerning such Claim or an objection to such Claim. If the Bankruptcy Court determines the maximum limitation of a Disputed Claim, such determination shall not preclude the Liquidating Trustee from pursuing any supplemental proceedings to object to any payment of such Claim. All of the aforementioned Claims objections, estimation and resolution procedures are cumulative and not exclusive remedies.

## **8.4 Disputed Claims Reserve.**

(a) Establishment. A reserve shall be maintained equal to 100% of the distributions which the Chapter 11 Trustee reasonably believes that the holders of Disputed Claims would be entitled to under the Plan if the Disputed Claim Amounts were Allowed Claims or such lesser amount as required by a Non-Appealable Order.

(b) **Investment of Cash.** Cash in the Disputed Claims Reserve may be invested only in Cash Equivalents having maturities sufficient to enable the holder of the Disputed Claim Reserve to make all necessary payments to holders of Disputed Claims if, and when, such Disputed Claims become Allowed Claims. Any interest, income, distributions or accretions on account of such investment in Cash Equivalents in the Disputed Claims Reserve shall be for the sole benefit and account of the Liquidating Trustee, and the Liquidating Trustee shall be solely responsible for the payment of any income or other taxes arising therefrom.

(c) **Distributions Upon Allowance of Disputed Claims.** The holder of a Disputed Claim that becomes an Allowed Claim after the Effective Date shall receive distributions of Cash from the Disputed Claims Reserve as soon as practicable following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Non-Appealable Order. Such distributions shall be made in accordance with the Plan based upon the distributions that would have been made to the holder of such a Claim under the Plan if the Disputed Claim had been an Allowed Claim on or prior to the Effective Date. No holder of a Disputed Claim shall have any claim against the respective Disputed Claims Reserve with respect to such Claim until the Disputed Claim shall become an Allowed Claim.

#### **8.5 Reversion of Unclaimed Checks.**

If a check or other payment remains unclaimed for a period of six months after distribution, the party otherwise entitled to such distribution shall be deemed to have forfeited its right to the distribution and any future distributions, and the Liquidating Trustee may redistribute the Cash to other beneficiaries under the Plan as if such Claim was disallowed.

### **IX. LIQUIDATING TRUSTEE**

#### **9.1 Appointment of Liquidating Trustee, Administration of Reorganized Debtors.**

As of the Effective Date, Stephen Darr shall be the Liquidating Trustee. The Reorganized Debtors shall remain in existence for the purpose of permitting the Liquidating Trustee to: (a) retain and compensate agents to assist in implementing the terms of the Plan; (b) administer, manage, invest, liquidate, sell or otherwise dispose of the Assets, (c) to resolve Disputed Claims and make distributions of Available Cash in accordance with the Plan; and (d) conduct an orderly wind down of the Reorganized Debtors' business and affairs.

#### **9.2 Corporate Authority.**

As set forth in Section VII of this Disclosure Statement, as of the Effective Date the Liquidating Trustee shall have the exclusive right and duty to manage the Reorganized Debtors, subject, however, to any limitations of liability set forth in this Plan. As of the Effective Date, the Liquidating Trustee is empowered and authorized to satisfy such responsibilities, duties and obligations without any further corporate authority (such as approval by any shareholders) that may have been required prior to the Effective Date. As of the Effective Date, all actions of the Debtors shall be taken by the Liquidating Trustee, or his designee, in the name of and on behalf of the Reorganized Debtors and/or the Estates. The Liquidating Trustee shall be authorized to



enter his appearance on behalf of the Reorganized Debtors in any litigation or other legal proceeding pending as of the Effective Date.

### **9.3 Liquidating Trustee's Rights and Powers.**

The Liquidating Trustees rights and powers shall include, subject to any limitations set forth in this Plan, the right and power to:

- (a) Sell at public or private sale, lease, exchange, transfer, convey or otherwise dispose of, on such terms and conditions, and at such time or times as the Liquidating Trustee shall determine, any or all of the Estate Assets (whether tangible or intangible);
  - (b) Grant options, make contracts, retain brokers, deliver deeds or other instruments of conveyance or transfer, and/or delegate to an attorney in fact the power to execute all documents necessary to accomplish a sale, lease, exchange, transfer, conveyance or other disposal of any Estate Asset;
  - (c) Obtain and maintain such space, facilities, equipment, supplies and personnel as shall be reasonably necessary for the performance of the Liquidating Trustee's duties;
  - (d) Open and close accounts on behalf of the Reorganized Debtors with any banking, financial or investment institution, make deposits and withdrawals of cash and other property into or from any such account, make or endorse checks with respect to any such account;
  - (e) Complete and file federal and state tax returns on behalf of the Reorganized Debtors;
  - (f) Pay all reasonable and necessary costs of administration, including professional fees, associated with the administration of this Plan, the Reorganized Debtors and/or the Assets;
  - (g) Subject to the limitations contained in this Plan, pay, compromise, settle, adjust, agree to, investigate, pursue, or contest any and all Claims;
  - (h) Make the distributions in accordance with the terms of this Plan;
  - (i) Investigate, prosecute, litigate, sell, transfer or abandon any Cause of Action, including, but not limited to, Avoidance Actions;
  - (j) Employ, consult with, and compensate counsel, brokers, consultants, custodians, investment advisors, asset services, expert witnesses, auditors, accountants, other agents and any other individuals and/or professionals (any of which may be the Liquidating Trustee and his or her firm) in connection with the administration of this Plan, the Reorganized Debtors and/or the Assets;
  - (k) File a suit in interpleader or in the nature of interpleader in any court of competent jurisdiction with respect to any Estate Asset;
  - (l) File any other appropriate action for relief in a court of competent jurisdiction;
- and

(m) Take such steps as provided as necessary and proper to close the Bankruptcy Case and dissolve the Reorganized Debtors.

#### **9.4 Vesting of Estate Powers.**

Upon the Effective Date, the Liquidating Trustee shall be vested with the standing of and with all rights, powers and benefits afforded to a “trustee” under the Bankruptcy Code with respect to all Assets and rights belonging to the Estate and/or the Reorganized Debtors, including, without limitation the standing and authority to commence, prosecute and compromise objections to Claims and Causes of Action, whether initially filed by the Debtors or the Chapter 11 Trustee or as may be filed by the Liquidating Trustee. The Liquidating Trustee shall stand in the same position as the Debtors and/or the Estates with respect to any claim the Debtors and/or the Estates may have had to an attorney-client privilege, the work product doctrine, or any other privilege against production, and the Liquidating Trustee shall succeed to all of the Debtors’ and/or the Estates’ rights to preserve, assert or waive any such privilege.

#### **9.5 Limitations on Liquidating Trustee’s Liabilities as to Losses.**

The Liquidating Trustee shall not be responsible, and shall have no liability whatsoever to any person for any loss to the Reorganized Debtors resulting from the investment of the Assets, or their proceeds, in any Permitted Investments. The Liquidating Trustee shall not invest or reinvest any Assets other than in a Permitted Investment. The Liquidating Trustee shall not have any liability to any retirement, employee benefit, or pension plan of the Debtors in excess of the amounts available to be distributed from such Plans.

#### **9.6 Selection of Agents.**

The Liquidating Trustee may retain his or her firm or company to provide professional services in conjunction with his duties under this Plan. The Liquidating Trustee shall not be liable for any loss to the Reorganized Debtors or any person with an interest in the Reorganized Debtors by reason of any mistake or default of any such agent or consultant unless such mistake or default breaches the standard of care set forth in Section 7.8(a) of this Plan.

#### **9.7 Maintenance of Register.**

The Liquidating Trustee shall at all times maintain a register of the names, addresses, and amount of the Claims and Equity Interests in the Reorganized Debtors as of the Effective Date and as revised from time to time thereafter.

#### **9.8 Liability of Liquidating Trustee.**

(a) Standard of Care. The Liquidating Trustee shall not be liable for any action taken or omitted to be taken by him in good faith and in the exercise of reasonable judgment and believed to be within the discretion or power conferred by this Plan, or be responsible for the consequences of any act or failure to act, except for bad faith, gross negligence or willful misconduct. The Liquidating Trustee shall not have any fiduciary relationship with any party by virtue of this Plan except as specifically set forth in this Agreement:

- (i) The Liquidating Trustee shall not, solely by virtue of his position as Liquidating Trustee, be liable or in any way responsible for the acts or omissions of the Debtors, its board of directors, officers, employees, or agents, that occurred prior to the Effective Date.
  - (ii) Unless indemnified to his satisfaction against liability and expense, the Liquidating Trustee shall not be compelled to do any act or to take any action toward the execution or enforcement of the powers created under this Plan or to prosecute or defend any suit in respect of this Plan. If the Liquidating Trustee requests approval from the Bankruptcy Court with respect to any act or action in connection with this Plan, the Liquidating Trustee shall be entitled (but shall not be required) to refrain (without incurring any liability to any person by so refraining) from such act or action unless and until he has received such instructions or approval. In no event shall the Liquidating Trustee or any of his representatives be required to take any action which he reasonably determines could lead to criminal or civil liability.
  - (iii) The Liquidating Trustee shall not be responsible in any manner to the Debtors, the Estates, any holder of a Claim or Interest, or any party-in-interest for:
    - (i) the creditworthiness of any party and the risks involved to the Reorganized Debtors or such holder or party-in-interest;
    - (ii) the effectiveness, enforceability, genuineness, validity, or any due execution of this Plan as to any person other than the Liquidating Trustee;
    - (iii) any representation, warranty, document, certificate, report, or statement made herein or furnished hereunder or in connection with this Plan that does not constitute a breach of the standard of care set forth in Section 7.8(a) of this Plan on the part of the Liquidating Trustee;
    - (iv) the existence, priority or perfection of any existing Lien; or
    - (v) the observation or compliance with any of the terms, covenants, or conditions of this Plan on the part of any party thereto other than the Liquidating Trustee.
  - (iv) The Debtors, holders of Claims or Equity Interests and parties-in-interest, by voting for this Plan and/or accepting the benefits of this Plan, have agreed not to sue or otherwise pursue or seek damages from the Liquidating Trustee except for actions or omissions which violate the standard of care set forth in Section 9.8(a) herein.
- (b) No Liability for Acts of Predecessor. No successor Liquidating Trustee shall be in any way responsible for the acts or omissions of any preceding Liquidating Trustee, nor shall he be obligated to inquire into the validity or propriety of any such act or omission unless such successor Liquidating Trustee expressly assumes such responsibility. Any successor Liquidating Trustee shall be entitled to accept as conclusive any final accounting and statement of Assets

furnished to such successor Liquidating Trustee by any preceding Liquidating Trustee and shall be responsible only for those Assets included in such statement.

(c) No Implied Obligations. The Liquidating Trustee's liability shall be limited to the performance of such duties and obligations as are specifically set forth in this Plan. The Liquidating Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties in this Plan, in the Disclosure Statement or in any documents or instrument evidencing or otherwise constituting a part of the Assets. The Liquidating Trustee makes no representations as to the value of the Assets.

(d) Reliance by Liquidating Trustee on Documents or Advice of Counsel or Other persons. The Liquidating Trustee may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel, statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Agent to be genuine and to be signed or presented by the proper persons. Subject to his obligation to meet the standard of care in Section 9.8(a), the Liquidating Trustee shall have no liability for any act which he may do or omit to do in reliance upon the foregoing.

(e) No Personal Obligation for the Debtors' Liabilities. Holders of Claims and Equity Interests, and other persons transacting business with the Liquidating Trustee in his capacity as Liquidating Trustee, shall be limited to the Estate Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of this Plan, and the Liquidating Trustee shall have no personal obligation to satisfy any such liability.

## **9.9 Reports; Tax Returns.**

The Liquidating Trustee shall prepare and submit any and all reports required under the Plan and as may be further ordered by the Bankruptcy Court. After the Effective Date, the Liquidating Trustee shall be responsible for the filing of any and all federal and state tax returns required by law to be filed by the Reorganized Debtors, including the final tax returns, and shall pay all tax liabilities arising from such tax returns.

## **9.10 Liquidating Trustee's Compensation.**

It is anticipated that the Liquidating Trustee can fulfill his duties on a part-time basis. The Liquidating Trustee's shall be entitled to compensation, at an hourly fee equal to the regular rates for the Liquidating Trustee as then in effect, provided that such hourly rate may be adjusted from time to time in the ordinary course of business. The Liquidating Trustee shall be entitled to reimbursement for all reasonable out-of-pocket expenses incurred in the performance of his duties under the Plan. The Liquidating Trustee shall not be entitled to a commission.

## **9.11 Liquidating Trustee's Indemnification.**

The Liquidating Trustee shall be indemnified by, held harmless, and receive reimbursement from the Estate Assets for any and all claims, actions, demands, losses, damages, expenses, and liabilities, including without limitation court costs, attorneys' fees and accountants' fees incurred, except in the event that a court of competent jurisdiction determines

that such losses or claims were the result of a breach of the standard of care set forth in Section 9.8(a) herein.

#### **9.12 Removal of Liquidating Trustee.**

The Liquidating Trustee may be removed only for cause upon a motion to the Court. If the Liquidating Trustee is removed for cause, the Liquidating Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation unless approved by the Bankruptcy Court. The term "cause" shall mean: (a) the Liquidating Trustee's gross negligence or willful failure to perform his duties under this Plan, (b) the Liquidating Trustee's misappropriation or embezzlement of any Assets or the proceeds of the Assets, or (c) the Liquidating Trustee's continued or repeated negligence or failure to perform his duties under this Plan. If a Liquidating Trustee is unwilling or unable to serve by virtue of his inability to perform his duties due to death, illness, or other physical or mental disability, subject to a final accounting, such Liquidating Trustee shall be entitled to receive all accrued and unpaid fees, reimbursement of expenses, and other compensation incurred before his removal, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Liquidating Trustee.

#### **9.13 Resignation of Liquidating Trustee.**

A Liquidating Trustee may resign upon motion to the Bankruptcy Court, which resignation shall become effective at the time specified by the Court. If a Liquidating Trustee resigns from his position hereunder, subject to a final accounting, such Liquidating Trustee shall be entitled to receive all accrued unpaid fees, reimbursement of expenses, and other compensation incurred before his resignation, and any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Liquidating Trustee.

#### **9.14 Successor Liquidating Trustee.**

In the event that a Liquidating Trustee is removed, resigns, or otherwise ceases to serve as Liquidating Trustee, a successor Liquidating Trustee may be appointed by the Office of the United States Trustee, subject to approval by the Bankruptcy Court, or *sua sponte* by order of the Bankruptcy Court.

#### **9.15 Third Parties.**

There is no obligation on the part of any party transacting business with the Reorganized Debtors or any agent of the Reorganized Debtors (including the Liquidating Trustee) to: (a) inquire into the validity, expediency, or propriety of any transaction, (b) inquire into the authority of the Liquidating Trustee, or any agent of the Liquidating Trustee, to enter into or consummate the transaction, or (c) to monitor the application of the purchase money or other consideration paid or delivered to the Reorganized Debtors.

## **X. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **10.1 Assumption of Executory Contracts and Unexpired Leases.**

Pursuant to Sections 1123(b)(2) and 365(a) of the Bankruptcy Code, any Executory Contract or Unexpired Lease (excluding insurance policies) that (a) has not expired by its own terms on or prior to the Confirmation Date, (b) has not been assumed, assumed and assigned or rejected with the approval of the Bankruptcy Court on or prior to the Confirmation Date, (c) is not the subject of a motion to assume or reject which is pending at the time of the Confirmation Date, or (d) is not designated by the Chapter 11 Trustee as being an Executory Contract or Unexpired Lease to be assumed at the time of Confirmation of the Plan, shall be deemed rejected on the Effective Date. The entry of the Confirmation Order by the Bankruptcy Court shall constitute the approval of the rejection of Executory Contracts and Unexpired Leases pursuant to this section of the Plan and Sections 365(a) and 1123(b)(2) of the Bankruptcy Code. The Chapter 11 Trustee is not aware of the existence of any Executory Contracts or Unexpired Leases at this time.

### **10.2 Payments Related to the Assumption of Executory Contracts and Unexpired Leases.**

(a) Payment of Claims Arising from Assumed Contracts and Leases. Cure Claims arising from the assumption of an Executory Contract or Unexpired Lease shall be paid in such amounts as are or have been determined by the Bankruptcy Court, in full and complete satisfaction, settlement and release of such Claims.

(b) Disputed Claims and Bar Date. If there is a dispute regarding (i) the amount of any claim arising from the assumption or rejection of an Executory Contract or Unexpired Lease, (ii) the ability of the Estates or Estate Liquidating Trust or any assignee to provide “adequate assurance of further performance,” within the meaning of Section 365 of the Bankruptcy Code, under an Executory Contract or Unexpired Lease to be assumed, or (iii) any other matter pertaining to the assumption or assumption and assignment of any Executory Contract or Unexpired Lease, the payment of any Claim related to the foregoing will be made following entry of a Non-Appealable Order resolving the dispute and approving the assumption.

### **10.3 Rejection Damage Claims.**

If the rejection of an Executory Contract or Unexpired Lease by the Estates pursuant to the Confirmation Order results in a Claim by the other party or parties to such Executory Contract or Unexpired Lease, any claim for damages, if not previously evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Estates, the Estate Liquidating Trust and their respective properties, agents, successors, or assigns, unless a statement of claim is filed with the Bankruptcy Court and served upon the Chapter 11 Trustee or Estate Liquidating Trustee and his counsel on or before thirty (30) days following the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all such Claims for which statements of claim are timely filed and served on the Chapter 11 Trustee or Estate Liquidating Trustee will be treated as Nonpriority Unsecured Claims subject to the provisions of the Plan. The Estate Liquidating Trustee shall have the right to object to any such Claim for rejection damages in accordance with the Plan. This section shall pertain only to

those claimants that are not Participants and who are parties to an Executory Contract or Unexpired Lease.

## **XI. SOLICITATION AND VOTING PROCEDURES**

### **11.1 Voting Rights.**

This Disclosure Statement is being distributed to holders of Claims in those Classes that are entitled to vote to accept or reject the Plan. If your Claim or Equity Interest is not included in the Voting Classes, you are not entitled to vote and you will not receive a solicitation package. If you are a holder of a Claim in a Voting Class, you should read your ballot and carefully follow the instructions included in the ballot. The Chapter 11 Trustee is only soliciting votes from holders of Allowed Claims in Classes 2, 3, and 4.

### **11.2 Required Acceptances for Confirmation.**

At the Confirmation Hearing, the Bankruptcy Court must determine, among other things, whether each Impaired Class has accepted the Plan. Under Section 1126 of the Bankruptcy Code, an Impaired Class of Claims is deemed to have accepted the Plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Claims of Class members who have voted to accept or reject the Plan have voted for acceptance of the Plan. Unless there is acceptance of the Plan by all members of an Impaired Class, the Bankruptcy Court must also determine that Class members will receive under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Class members would receive or retain if TelexFree was liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

The Plan may be confirmed notwithstanding that one or more Impaired Classes have not accepted the Plan if the Bankruptcy Court finds that the Plan does not discriminate unfairly against, and is fair and equitable as to, such Class or Classes. This provision is set forth in Section 1129(b) of the Bankruptcy Code and requires that, among other things, the class of Claims or Equity Interests must either receive the full value of their Claims or Equity Interests or, if they receive less, no Class with junior distribution priority may receive or retain anything from the Estates on account of such junior interest unless the junior class provides “new value” or other consideration to TelexFree. The Chapter 11 Trustee intends to proceed toward confirmation provided that at least one Impaired Class has voted to accept the Plan. The Chapter 11 Trustee reserves the right to seek to confirm the Plan under Section 1129(b) of the Bankruptcy Code.

### **11.3 Risk Factors**

There are a variety of factors that all holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan include:

(i) the financial information contained in the Disclosure Statement has not been audited and is based upon an analysis of data available at the time of the preparation of the Plan and Disclosure Statement;

(ii) although the Chapter 11 Trustee believes that the Plan complies with all applicable provisions of the Bankruptcy Code, the Chapter 11 Trustee can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan;

(iii) Any delays in Confirmation of the Plan could result in, among other things, increased Administrative Claims and delays in distributing funds to creditors.

#### **11.4 Voting Deadline**

The voting deadline is \_\_\_\_\_. In order to be counted as votes to accept or reject the Plan, all ballots must be properly executed, completed, and delivered in accordance with the instructions on the ballot so that the ballots are received on or prior to the voting deadline. If a ballot is received after the voting deadline, it will not be counted unless the Chapter 11 Trustee determines otherwise. The Chapter 11 Trustee may extend the voting deadline for any reason and for any holder of a Claim in a Voting Class without further notice or solicitation to any party.

#### **11.5 Electronic Ballot Submissions**

Participants will be provided access to their voting ballots electronically through the Plan Summary. The following ballots will not be counted in determining the acceptance or rejection of the Plan, absent further order of the Bankruptcy Court:

- (i) Any ballot that contains insufficient information to permit the identification of the holder of the Claim;
- (ii) Any ballot cast by a person or entity that does not hold a Claim that is Allowed or otherwise entitled to vote on the Plan; and
- (iii) Any ballot received after the voting deadline.

In the case of the foregoing, the Chapter 11 Trustee shall separately schedule and report such ballots to the Bankruptcy Court, reserving all rights to seek the entry of an order treating those ballots as votes accepting the Plan, after review and determination by the Bankruptcy Court.

## **XII. RELEASE AND SATISFACTION OF CLAIMS**

### **12.1 Compromise and Settlement of Claims, Interests and Controversies.**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Equity Interests and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim or Equity Interest, or any distribution to be made on account of such Allowed Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the full and complete compromise or settlement of all such Claims, Equity Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and holders of Claims and Equity Interests and



is fair, equitable and reasonable. Following the Effective Date, the Liquidating Trustee may compromise and settle Claims against the Debtors and their Estates and Causes of Action without any further notice to or action, order or approval of the Bankruptcy Court.

### **12.2 Release of Claims.**

Pursuant to Section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the distributions, rights and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, and release, effective as of the Effective Date, of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Equity Interests in, the Debtors, the Assets, the Estates, and the Reorganized Debtors, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands and liabilities that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a proof of Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is filed or deemed filed pursuant to Section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is Allowed pursuant to Section 502 of the Bankruptcy Code; or (iii) the holder of such a Claim or Equity Interest has accepted the Plan. Except as otherwise provided herein, any default by the Debtors with respect to any Claim or Equity Interest that existed before or on account of the filing of the Bankruptcy Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the release of all Claims and Equity Interests subject to the Effective Date occurring, except as otherwise expressly provided in the Plan.

### **12.3 Release by TelexFree**

Pursuant to Section 1123(b) of the Bankruptcy Code and to the extent allowed by applicable law, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, the Estate Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of TelexFree, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that the Debtors, the Reorganized Debtors, or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Equity Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Bankruptcy Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Estate Released Party, the restructuring of Claims and Equity Interests before or during the Bankruptcy Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Confirmation Date, other than Claims or liabilities arising out of or relating to any act or omission of an Estate Released Party that constitutes a failure to perform the duty to act in good faith, with the care of an ordinarily prudent person and in a manner the

Estate Released Party reasonably believed to be in the best interests of the Estates (to the extent such duty is imposed by applicable non-bankruptcy law) where such failure to perform constitutes willful misconduct or gross negligence.

#### **12.4 Exculpation**

Notwithstanding anything contained in the Plan to the contrary, effective as of the Effective Date, the Estates and the Estate Released Parties shall not have or incur any liability for any act or omission taken or not taken between the Petition Date and the Effective Date in connection with, relating to, or arising out of the Bankruptcy Cases, the negotiation and filing of the Disclosure Statement, the Plan or any document implementing the Plan, the settlement of Claims or renegotiation of executory contracts and leases, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, or any obligations that they have under or in connection with the Plan or the transactions contemplated in the Plan, except for their willful misconduct or gross negligence and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

#### **12.5 Injunction**

From and after the Effective Date, all Persons are permanently enjoined from commencing or continuing in any manner against the Chapter 11 Trustee, TelexFree, their Estates, the Reorganized Debtors, the Liquidating Trustee, their successors and assigns, and any of their assets and properties, any suit, action or other proceeding, on account of or respecting any Claim, demand, liability, obligation, debt, right, cause of action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order. The distributions, rights and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, and release, effective as of the Effective Date, of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Equity Interests in, the Debtors, the Assets, the Estates, and the Reorganized Debtors and the Liquidating Trustee, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands and liabilities that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a proof of Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is filed or deemed filed pursuant to Section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest based upon such Claim, debt, right or Equity Interest is Allowed pursuant to Section 502 of the Bankruptcy Code; or (iii) the holder of such a Claim or Equity Interest has accepted the Plan.

#### **12.6 Release of Liens**

Except as otherwise expressly provided in the Plan or in the Confirmation Order, on the Effective Date, to the extent such exist, all mortgages, deeds of trust, liens, pledges or other security interests against property of the Estates shall be fully released and discharged and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens, pledges or other

security interest shall revert to the Estates and the Liquidating Trustee. To the extent deemed necessary or advisable by the Liquidating Trustee, any holder of a Claim shall promptly provide the Liquidating Trustee with an appropriate instrument of cancellation, discharge or release, as the case may be, in suitable form for recording wherever necessary to evidence such cancellation, discharge or release, including the cancellation, discharge or release of any Lien securing such Claim.

### **12.7 Setoffs.**

Except as otherwise provided in the Plan, nothing contained in the Plan shall constitute a waiver or release by the Estates of any rights of setoff the Estates may have against any Person.

## **XIII. TAX CONSIDERATIONS**

The following is a general summary of certain material federal income tax consequences of the Plan and the distributions provided under the Plan. This summary does not discuss all aspects of federal taxation that may be relevant to a particular creditor in light of its individual investment circumstances or to certain creditors or shareholders subject to special treatment under the federal income tax laws (for example, tax-exempt organizations, financial institutions, broker-dealers, life insurance companies, foreign corporations or individuals who are not citizens or residents of the United States). This summary does not discuss any aspects of state, local or foreign taxation. The impact on foreign holders of claims and equity interests is not discussed.

This summary is based upon the Internal Revenue Code of 1986, as amended (the "IRC"), the Treasury regulations (including temporary regulations) promulgated thereunder, judicial authorities and current administrative rulings, all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, administrative action or judicial decision. Moreover, due to a lack of definitive judicial or administrative authority or interpretation and the complexity of the transactions contemplated in the Plan, substantial uncertainties exist with respect to various tax consequences of the Plan. The Chapter 11 Trustee has not requested a ruling from the Service with respect to these matters and no opinion of counsel has been sought or obtained by the Chapter 11 Trustee with respect thereto. There can be no assurance that the Service or any state or local taxing authorities will not challenge any or all of the tax consequences of the Plan, or that such a challenge, if asserted, would not be sustained. **FOR THE FOREGOING REASONS, CREDITORS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE SPECIFIC TAX CONSEQUENCES (FOREIGN, FEDERAL, STATE AND LOCAL) TO THEM OF THE PLAN. THE CHAPTER 11 TRUSTEE IS NOT MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE CONFIRMATION AND CONSUMMATION OF THE PLAN AS TO ANY CREDITOR, NOR IS THE CHAPTER 11 TRUSTEE RENDERING ANY FORM OF LEGAL OPINION AS TO SUCH TAX CONSEQUENCES.**

### **A. Federal Income Tax Consequences to the Debtors.**

Cancellation of Indebtedness. Generally, the Debtors and Reorganized Debtors will realize cancellation of debt ("COD") income to the extent, if at all, that the Liquidating Trustee pays a creditor pursuant to the Plan an amount of consideration in respect of a Claim against the

Debtors that is worth less than the amount of such Claim. For this purpose, the amount of consideration paid to a creditor generally will equal the amount of cash or the fair market value of property paid to such creditor. Because the Debtors will be in a bankruptcy case at the time the COD income is realized (if any is realized), the Liquidating Trustee will not be required to include COD income in gross income, but rather will be required to reduce tax attributes by the amount of COD income so excluded.

## **B. Tax Consequences to Creditors.**

In General. The federal income tax consequences of the implementation of the Plan to a holder of a Claim will depend, among other things, on: (a) whether such Claim constitutes a debt or a security for federal income tax purposes, (b) whether the holder of the Claim receives consideration in more than one tax year, (c) whether the holder of the Claim is a resident of the United States, (d) whether all the consideration received by the holder of the Claim is deemed to be received by the holder of the Claim as part of an integrated transaction, (e) whether the holder of the Claim reports income using the accrual or cash method of accounting, and (f) whether the holder has previously taken a bad debt deduction or worthless security deduction with respect to the Claim.

Gain or Loss on Exchange. Generally, a holder of an Allowed Claim will realize a gain or loss on the exchange under the Plan of his or her Allowed Claim for cash and other property in an amount equal to the difference between (i) the sum of the amount of any cash and the fair market value on the date of the exchange of any other property received by the holder (other than any consideration attributable to accrued but unpaid interest on the Allowed Claim), and (ii) the adjusted basis of the Allowed Claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the holder's taxable income). Any gain recognized generally will be a capital gain (except to the extent the gain is attributable to accrued but unpaid interest or accrued market discount, as described below) if the Claim was a capital asset in the hands of an exchanging holder, and such gain would be a long-term capital gain if the holder's holding period for the Claim surrendered exceeded one (1) year at the time of the exchange.

Any loss recognized by a holder of an Allowed Claim will be a capital loss if the Claim constitutes a "security" for federal income tax purposes or is otherwise held as a capital asset. For this purpose, a "security" is a debt instrument with interest coupons or in registered form.

**THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING SUCH TAX CONSEQUENCES.**

## **XIV. PLAN FEASIBILITY**

On the Effective Date, the Chapter 11 Trustee will have sufficient funds to pay in full the Service Settlement, projected Allowed Administrative Expense Claims, Allowed Priority Claims, and Allowed Priority Tax Claims that have not been voluntarily subordinated. There are no

Allowed Secured Claims. The Chapter 11 Trustee will use \$50,000 from the Service Settlement to pay Class 4 Allowed Claims. The Restitution Fund, SEC Settlement Funds, and Available Cash will be utilized to make the required distributions to holders of Allowed Participant Claims in Classes 2 and 3. Accordingly, the Plan satisfies the feasibility requirements of Section 1129 of the Bankruptcy Code.

#### XV. BEST INTERESTS OF CREDITORS

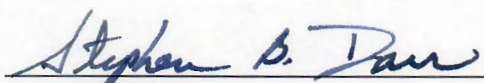
In the event of a conversion of the bankruptcy cases to Chapter 7, the Chapter 11 Trustee believes that the amount and timing of distributions would be adversely affected. Conversion of the bankruptcy cases would require the appointment of a Chapter 7 Trustee. The Bankruptcy Court could appoint a person other than the Chapter 11 Trustee as Chapter 7 trustee, which would create a substantial learning curve and delay in administering the bankruptcy cases.

The Bankruptcy Court is also required to establish a new bar date for the filing of Claims upon conversion to Chapter 7. The Estates have already invested many months and substantial resources in the claims determination process, including the establishment of the Electronic Portal, the noticing of an initial bar date and extended bar dates over a period of nearly a year, the examination of more than 130,000 claims timely filed, and the implementation of a process for resolving disputed claims. Any effort to alter or replicate this process would cause substantial delays, greatly increase administrative costs, and create significant confusion to the Participants throughout the world who invested in TelexFree. Thus, the amount to be distributed would be less, and any distribution would likely be delayed by a year or more. There would be no cognizable benefit to a conversion to Chapter 7, as a Chapter 7 trustee and his professionals would administer the bankruptcy cases in the same manner as is currently being performed

For the reasons set forth above, creditors will receive or retain under the Plan at least the amount or value that such creditors would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code, and such distribution will likely occur in a more expeditious manner. Consequently, the best interests of creditors requirement set forth in Section 1129(a)(7) of the Bankruptcy Code has been satisfied.

Based upon the prospects for reduced costs and earlier payment to creditors, the Chapter 11 Trustee recommends that the wind-down and liquidation of TelexFree's financial affairs be completed pursuant to the terms of the Plan.

Dated: May 6, 2020

By:   
Stephen B. Darr  
Chapter 11 Trustee  
TelexFree LLC, TelexFree, Inc., and  
TelexFree Financial, Inc.

/s/ Andrew G. Lizotte  
MURPHY & KING, Professional Corporation  
One Beacon Street  
Boston, MA 02108  
Attn: Harold B. Murphy, Esq. (BBO #362610)  
Andrew G. Lizotte, Esq. (BBO #559609)  
Telephone: (617) 423-0400  
Facsimile: (617) 556-8985

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