

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SGR WINDDOWN, INC., *et al.*

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11973 (MFW)  
(Jointly Administered)

**D.I. 563**

**ORDER (I) APPROVING THE ADEQUACY OF INFORMATION IN THE  
REVISED DISCLOSURE STATEMENT, (II) APPROVING THE SOLICITATION  
AND NOTICE PROCEDURES, (III) APPROVING THE FORMS OF BALLOTS  
AND NOTICES IN CONNECTION THEREWITH, (IV) SCHEDULING CERTAIN  
DATES WITH RESPECT THERETO, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) approving (a) the revised disclosure statement (the “Disclosure Statement”) for the Plan of Reorganization for SGR Winddown, Inc. and Affiliated Debtors (as may be modified, amended, or supplemented from time to time, the “Plan”); (b) the Disclosure Statement Hearing Notice; (c) the Voting Record Date, Solicitation Deadline, and Voting Deadline; (d) the manner and form of the Solicitation Packages and the materials contained therein; (e) the Plan Supplement Notice; (g) the Non-Voting Status Notices; (f) the form of notices to counterparties to Executory Contracts and Unexpired Leases that will be assumed or rejected pursuant to the Plan; (g) the Solicitation and Voting Procedures; (h) the Plan Objection Deadline, Confirmation Hearing Date, and Confirmation Hearing Notice; and (i) dates and deadlines related thereto, all as more fully set forth in the Motion; and upon the Declaration of Lance Miller in Support of the First Day Motions; this Court having jurisdiction

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian Revenue Agency, as applicable are (1) SGR Winddown, Inc. (4356), (2) SGR Winddown International, LLC (1254) and (3) SGR Canada Winddown Legacy, Ltd. (4480). The location of the Debtors' corporate headquarters is 1700 E. Walnut Ave., 5th Floor, El Segundo, California 90245.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Disclosure Statement is hereby approved as providing Holders of Claims or Interests entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125(a)(1) of the Bankruptcy Code.
3. The Disclosure Statement (including all applicable exhibits thereto) provides Holders of Claims, Holders of Interests, and other parties in interest with sufficient notice of the injunction, exculpation, and release provisions contained in Article VIII of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).
4. The Disclosure Statement Hearing Notices, forms of which are attached hereto as Exhibit 3, Exhibit 4, and Exhibit 5, filed by the Debtors and served upon parties in interest in these

chapter 11 cases beginning on April 3, 2020, constitutes adequate and sufficient notice of the hearing to consider approval of the Disclosure Statement, the manner in which a copy of the Disclosure Statement (and exhibits thereto, including the Plan) could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

5. The following dates are hereby established (subject to modification as necessary) with respect to the solicitation of votes to accept, and voting on, the Plan:

- a. March 26, 2020 as the date for determining (i) which Holders of Claims or Interests in the Voting Classes are entitled to vote to accept or reject the Plan and receive Solicitation Packages in connection therewith and (ii) whether Claims or Interests have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the Holder of the respective Claim or Interest (the “Voting Record Date”);
- b. the Debtors shall distribute Solicitation Packages to Holders of Claims or Interests entitled to vote on the Plan no later than April 3, 2020 (the “Solicitation Deadline”); and
- c. all Holders of Claims or Interests entitled to vote on the Plan must complete, execute, and return their Ballots so that they are actually received by the Notice and Claims Agent pursuant to the Solicitation and Voting Procedures, no later than May 1, 2020 (the “Voting Deadline”).

6. In addition to the Disclosure Statement and exhibits thereto, including the Plan and this Order (without exhibits, except the Solicitation and Voting Procedures), the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those Holders of Claims or Interests in the Voting Classes entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

- a. an appropriate form of Ballot attached hereto as Exhibit 2
- b. the Cover Letter attached hereto as Exhibit 6; and
- c. the Confirmation Hearing Notice attached hereto as Exhibit 7.

7. The Solicitation Packages provide the Holders of Claims or Interests entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on

the Plan in accordance with Bankruptcy Rules 2002(b) and 3017(d), the Bankruptcy Code, and the Local Rules.

8. The Debtors shall distribute Solicitation Packages to all Holders of Claims or Interests entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

9. The Debtors are authorized, but not directed or required, to distribute the Plan, the Disclosure Statement, and this Order to Holders of Claims or Interests entitled to vote on the Plan in electronic format. The Ballots as well as the Cover Letter and the Confirmation Hearing Notice will only be provided in paper form. On or before the Solicitation Deadline, the Debtors shall provide complete Solicitation Packages to the U.S. Trustee and to all parties on the 2002 List as of the Voting Record Date.

10. Any party that receives the materials in electronic format but would prefer to receive materials in paper format may contact the Notice and Claims Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

11. The Notice and Claims Agent is authorized to assist the Debtors in (a) distributing the Solicitation Package, (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by Holders of Claims or Interests against the Debtors, (c) responding to inquiries from Holders of Claims or Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (d) soliciting votes on the Plan, and (e) if necessary, contacting creditors regarding the Plan as soon as practicable thereafter.

12. The Notice and Claims Agent is also authorized to accept Ballots via electronic online transmission solely through a customized online balloting portal on the Debtors' case website. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner, and the creditor's electronic signature will be deemed to be immediately legally valid and effective. Ballots submitted via the customized online balloting portal shall be deemed to contain an original signature.

13. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first-class mail, in the return envelope provided with each Ballot; (b) overnight delivery; or (c) personal delivery, so that the Ballots are actually received by the Notice and Claims Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Alternatively, Ballots may be submitted via an electronic Ballot through the Notice and Claims Agent's on-line electronic Ballot submission portal at <https://ballots.bmcgroup.com/sugarfina> by no later than the Voting Deadline. The Debtors are authorized to extend the Voting Deadline in their sole discretion, without further order of the Court.

14. The Confirmation Hearing Notice, in the form attached hereto as Exhibit 7 filed by the Debtors and served upon parties in interest in these chapter 11 cases on or before the Solicitation Deadline, constitutes adequate and sufficient notice of the hearings to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The Debtors shall publish the Confirmation Hearing Notice (in a format modified for publication) one time in a national edition of a newspaper no later than April 3, 2020.

15. The Debtors are authorized to send notice of the filing of the Plan Supplement, which will be filed no later than April 24, 2020 substantially in the form attached hereto as Exhibit 8, on the date the Plan Supplement is filed pursuant to the terms of the Plan.

16. Except to the extent the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to Holders of Claims or Interests in Non-Voting Classes, as such Holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Notice and Claims Agent shall mail (first-class postage pre-paid) a Non-Voting Status Notice in lieu of Solicitation Packages, the form of each of which is hereby approved, to those parties, outlined below, who are not entitled to vote on the Plan.

- Unimpaired Claims—Conclusively Presumed to Accept. Holders of Claims in Class 1 (Serene Facility Claims) and Class 3 (Other Secured Claims) and Class 4 (Other Priority Claims) are not Impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan. As such, Holders of such Claims will receive a notice, substantially in the form attached to the Order as Exhibit 3, in lieu of a Solicitation Package.
- Impaired Claims and Interests—Deemed to Reject. Holders of Claims in Class 6 (Intercompany Claims) and Interests in Class 7 (Equity Interests) are deemed to have rejected the Plan pursuant to section 1126(f) or section 1126(g) of the Bankruptcy Code and will receive a notice, substantially in the form attached to the Order as Exhibit 4, in lieu of a Solicitation Package.
- Disputed Claims. Holders of Claims or Interests that are subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their Claim or Interest. As such, any Holders of such Claims or Interests will receive a notice, substantially in the form attached to the order as Exhibit 5.

17. The Debtors will not provide the Holders of Claims in Class 6 (Intercompany Claims) or Holders of Interests in Class 7 (Equity Interests) with a Solicitation Package or any other type of notice in connection with this solicitation, other than as set forth herein.

18. The Debtors are not required to mail Solicitation Packages or other solicitation materials to: (a) Holders of Claims or Interests that have already been paid in full during these chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant

to an order previously entered by this Court or (b) any party to whom the Disclosure Statement Hearing Notice was sent but was subsequently returned as undeliverable.

19. The Debtors are authorized to mail a notice of assumption or rejection of any Executory Contracts or Unexpired Leases (and any corresponding cure claims), in the form attached hereto as Exhibit 9 and Exhibit 10, respectively, to the applicable counterparties to Executory Contracts and Unexpired Leases that will be assumed or rejected pursuant to the Plan (as the case may be), within the time periods specified in the Plan.

20. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures attached hereto as Exhibit 1, which are hereby approved in their entirety.

21. Any party wishing to file a motion under Bankruptcy Rule 3018(a) to temporarily allow its Claim or Interest for purposes of voting to accept or reject the Plan shall file such prior to motion on or prior to April 17, 2020. The Debtors and other parties in interest shall have until April 28, 2020 as the deadline by which the Debtors or other parties in interest must file objections to any motion filed pursuant to Bankruptcy Rule 3018(a).

22. The following dates are hereby established with respect to filing objections to the Plan and confirming the Plan:

- a. May 1, 2020 at 5:00 p.m. prevailing Eastern Time shall be date by which objections to the Plan must be filed with the Court and served so as to be actually received by the appropriate notice parties (as identified in the Confirmation Hearing Notice) (the “Plan Objection Deadline”);
- b. May 1, 2020, at 5:00 p.m. prevailing Eastern Time shall be the date by which responses to objections to the Plan must be filed with the Court (the “Plan Objection Reply Deadline”), and the Debtors (and any other parties in interest that support confirmation of the Plan) shall file their brief or other pleadings in support of Confirmation of the Plan (the “Confirmation Brief Deadline”) no later than May 8, 2020 at 11:59 p.m.;
- c. May 8, 2020 at 4:00 p.m. shall be the date by which the voting certification must be filed with the Court; and

- d. the Court shall consider Confirmation of the Plan at the hearing to be held on May 12, 2020, at 2:00 p.m. prevailing Eastern Time (the “Confirmation Hearing Date”).

23. Objections to the Plan will not be considered by the Court unless such objections are timely filed and properly served in accordance with this Order. Specifically, all objections to confirmation of the Plan or requests for modifications to the Plan, if any, must: (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Rules; (c) state, with particularity, the legal and factual bases for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the notice parties so as to be actually received on or before May 1, 2020, at 5:00 p.m. prevailing Eastern Time by each of the notice parties identified in the Confirmation Hearing.

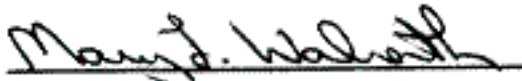
24. Nothing in this Order shall be construed as a waiver of the right of the Debtors or any other party in interest, as applicable, to object to a proof of claim after the Voting Record Date.

25. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

26. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

27. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

**Dated: March 30th, 2020**  
**Wilmington, Delaware**

  
**MARY F. WALRATH**  
**UNITED STATES BANKRUPTCY JUDGE**



## Exhibit 1

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SGR WINDDOWN, INC., *et al.*

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11973 (MFW)  
(Jointly Administered)

**SOLICITATION AND VOTING PROCEDURES**

PLEASE TAKE NOTICE THAT on March 30, 2020, the United States Bankruptcy Court for the District of Delaware (the “Court”)<sup>2</sup> entered an order (the “Disclosure Statement Order”) (a) approving the Revised Disclosure Statement for the Plan of Reorganization for SGR Winddown, Inc. and Affiliated Debtors (the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (b) authorizing SGR Winddown, Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”), to solicit acceptances for the Plan of Reorganization for SGR Winddown, Inc. and Affiliated Debtors (as may be modified, amended, or supplemented from time to time, the “Plan”); (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

**A. The Voting Record Date.**

The Court has approved March 26, 2020 as the record date for purposes of determining which Holders are entitled to vote on the Plan (the “Voting Record Date”).

**B. The Voting Deadline.**

The Court has approved May 1, 2020, at 5:00 p.m. (prevailing Eastern Time) as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors may extend the Voting Deadline, in their discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots sent to Holders of Claims or Interests (“Ballots”) must be properly executed, completed, and returned in the pre-paid, pre-addressed return envelope included in the Solicitation Package or delivered by: (1) first class mail; (2) overnight courier; or (3) personal delivery so that they are actually received, in any case, no later than the Voting Deadline by BMC Group, Inc. (the “Notice and Claims Agent”). All Ballots returned by mail or personal delivery should be sent to:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian Revenue Agency, as applicable are (1) SGR Winddown, Inc. (4356), (2) SGR Winddown International, LLC (1254) and (3) SGR Canada Winddown Legacy, Ltd. (4480). The location of the Debtors' corporate headquarters is 1700 E. Walnut Ave., 5th Floor, El Segundo, California 90245.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have meanings ascribed to them in the Plan.

**If by Hand Delivery or Overnight Mail**

Sugarfina Ballot Processing  
c/o BMC Group  
3732 W. 120th Street  
Hawthorne, CA 90250

**If by First Class Mail**

Sugarfina Ballot Processing  
c/o BMC Group  
PO Box 90100  
Los Angeles, CA 90009

Alternatively, Ballots may be submitted via an electronic Ballot through the Notice and Claims Agent's online electronic Ballot submission portal at <https://ballots.bmcgroup.com/sugarfina> by no later than the Voting Deadline.

**C. Form, Content, and Manner of Notices.**

**1. The Solicitation Package.**

The following materials shall constitute the solicitation package (the "Solicitation Package"):

- a. a copy of these Solicitation and Voting Procedures;
- b. the Disclosure Statement Order (without exhibits);
- c. the applicable form of Ballot, in substantially the form of Ballots annexed as Exhibit 3 to the Disclosure Statement Order, as applicable, including a pre-paid, pre-addressed return envelope;
- d. a cover letter, in substantially the form annexed as Exhibit 6 to the Disclosure Statement Order describing the contents of the Solicitation Package and urging the Holders of Claims or Interests in each of the Voting Classes to vote to accept the Plan;
- e. the Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed By the Debtors and Related Voting and Objection Deadlines, in substantially the form annexed as Exhibit 7 to the Disclosure Statement Order (the "Confirmation Hearing Notice");
- f. the approved Disclosure Statement (and exhibits thereto, including the Plan); and
- g. any additional documents that the Court has ordered to be made available.

**2. Distribution of the Solicitation Package.**

The Solicitation Package shall provide the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits, except the Solicitation and Voting Procedures) in electronic format (CD-ROM or flash drive), and all other contents of the Solicitation Package, including Ballots, shall be provided in paper format. Any party that receives the materials in electronic format but would prefer paper format may contact request a copy by contacting the Debtors' counsel in writing; (b) visiting the Debtors' Case restructuring website at <https://bmcgroup.com/sugarfina>.

The Debtors shall serve, or cause to be served, all of the materials in the Solicitation Package (excluding the Ballots) on the U.S. Trustee and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the Debtors shall mail, or cause to be mailed, the Solicitation Package to all Holders of Claims or

Interests in the Voting Classes on or before April 3, 2020 who are entitled to vote, as described in section D below.

To avoid duplication and reduce expenses, the Debtors will make every reasonable effort to ensure that any Holder of a Claim who has filed duplicative Claims against a Debtor (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class as against that Debtor.

3. Resolution of Disputed Claims for Voting Purposes; Resolution Event.

- a. If a Claim in a Voting Class is subject to an objection that is filed with the Court on or prior to seven days before the Voting Deadline: (i) the Debtors shall cause the applicable Holder to be served with a Disputed Claim Notice substantially in the form annexed as Exhibit 5 to the Disclosure Statement Order; and (ii) the applicable Holder shall not be entitled to vote to accept or reject the Plan on account of such Claim unless a Resolution Event (as defined herein) occurs as provided herein.
- b. If a Claim in a Voting Class is subject to an objection that is filed with the Court on or prior to April 17, 2020, the applicable Claim shall be deemed temporarily allowed for voting purposes only, without further action by the Holder of such Claim and without further order of the Court, unless the Court orders otherwise.
- c. A “Resolution Event” means the occurrence of one or more of the following events no later than April 3, 2020:
  - i. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
  - ii. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
  - iii. a stipulation or other agreement is executed between the Holder of such Claim and the Debtors resolving the objection and allowing such Claim in an agreed upon amount; or
  - iv. the pending objection is voluntarily withdrawn by the objecting party.
- d. No later than one business day following the occurrence of a Resolution Event, the Debtors shall cause the Notice and Claims Agent to distribute via email, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant Holder.

4. Non-Voting Status Notices for Unimpaired Classes and Classes Deemed to Reject the Plan.

Certain Holders of Claims and Interests that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan, substantially in the form annexed as Exhibit 3 to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). Certain Holders of Claims or Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the Notice of Non-Voting Status to Holders of Impaired Claims and Interests Deemed to Reject the Plan, substantially in the form annexed as Exhibit 4 to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). In addition, Holders of Claims or Interests in the classes deemed to reject the Plan will also receive the Disclosure Statement (together with the Plan attached as Exhibit A thereto).

5. Notices in Respect of Executory Contracts and Unexpired Leases.

Counterparties to Executory Contracts and Unexpired Leases that receive a Notice of Assumption of Executory Contracts and Unexpired Leases or Notice of Rejection of Executory Contracts and Unexpired Leases substantially in the forms attached as Exhibit 9 and Exhibit 10 to the Disclosure Statement Order, respectively, may file an objection to the Debtors' proposed assumption, rejection, or cure amount, as applicable. Such objections must be actually received by the Notice and Claims Agent by May 1, 2020, at 5:00 p.m. prevailing Eastern Time.

**D. Voting and Tabulation Procedures.**

1. Holders of Claims or Interests Entitled to Vote.

Only the following Holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

- a. Holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim (or an untimely Proof of Claim that has been Allowed as timely by the Court under applicable law on or before the Voting Record Date) that: (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection filed with the Court on or prior to April 17, 2020, pending a Resolution Event as provided herein; provided that a Holder of a Claim that is the subject of a pending objection on a "reduce and allow" basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Bankruptcy Court;
- b. Holders of Claims that are listed in the Schedules, provided that Claims that are scheduled as contingent, unliquidated, or disputed (excluding such scheduled disputed, contingent, or unliquidated Claims that have been paid or superseded by a timely Filed Proof of Claim) shall be allowed to vote only in the amounts set forth in section C(3) of these Solicitation and Voting Procedures;
- c. Holders whose Claims arise:

- (i) pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Court;
  - (ii) from an order entered by the Court; or
  - (iii) from a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed or the Claim was scheduled as contingent, unliquidated, or disputed;
- d. Holders of any Disputed Claim that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018; and
- e. with respect to any Entity described in subparagraphs (a) through (d) above, who, on or before the Voting Record Date, has transferred such Entity's Claim to another Entity, the assignee of such Claim; provided that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.

## 2. Establishing Claim Amounts for Voting Purposes.

Class 2 (Goldman Sachs Secured Facility Claims) and Class 5 General Unsecured Claims. The Claims amount of claims in Class 2 and Class 5 shall be entitled to vote the amount of its Claim Allowed in accordance with the procedures set forth below.<sup>3</sup> In tabulating votes, the amount of the Claim associated with each claimant's vote shall be determined as follows:

- a. the Claim amount: (i) settled and/or agreed upon by the Debtors, as reflected in a document filed with the Court; (ii) set forth in an order of the Court; or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Bankruptcy Court;
- b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event;
- c. the Claim amount contained in a Proof of Claim that has been timely filed (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; provided, however, that Ballots cast by Holders of Claims who timely file a Proof of Claim in respect of a contingent Claim (for example, a claim based on litigation) or in a wholly-unliquidated or unknown amount that is not the subject of a pending objection, based on a reasonable review of the Proof of Claim and supporting documentation by the Debtors or their advisors, will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and, if a Proof of Claim is filed as partially liquidated and partially unliquidated, such Claim will be Allowed for voting purposes only in the liquidated amount; provided, further, however, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court referenced in

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<sup>3</sup> The Claim amounts established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through the Notice and Claims Agent, as applicable, are not binding for purposes of allowance and distribution.

subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim;

d. the Claim amount listed in the Schedules, provided that such Claim is not scheduled as contingent, disputed, or unliquidated; if a Claim is liquidated in the Debtors' Schedules as contingent, unliquidated, or disputed and a proof of claim was not (i) filed by the applicable bar date for filing Proofs of Claim established by the Court or (ii) deemed timely filed by an order of the Court prior to the Voting Record Date, such Claim shall be disallowed for voting purposes; provided, however, if the applicable bar date has not yet passed, such Claim shall be entitled to vote at \$1.00;

e. Holders of Proofs of Claim filed for \$0.00 are not entitled to vote;

f. Claims that have been paid or otherwise satisfied are disallowed for voting purposes;

g. notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased duplicate Claims within the same Voting Class shall, to the extent possible, be provided with only one Solicitation Package and one Ballot for voting a single Claim in such Class, regardless of whether the Debtors have objected to such duplicate Claims; and

h. in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes. If a Proof of Claim is amended, the last filed Claim shall be subject to these rules and will supersede any earlier filed Claim, and any earlier filed Claim will be disallowed for voting purposes.

3. Voting and Ballot Tabulation Procedures. The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Debtors' right to waive, any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Rules.

a. except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtors), the Debtors shall reject such Ballot as invalid and, therefore, shall not count it in connection with Confirmation of the Plan;

b. the Notice and Claims Agent will date-stamp all Ballots when received. The Notice and Claims Agent shall retain the original Ballots of hard copy Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court;

c. the Debtors will file with the Court no later than May 8, 2020, a voting report (the "Voting Report"). The Voting Report shall, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile or damaged ("Irregular Ballots"). The Voting Report shall indicate the Debtors' intentions with regard to such Irregular Ballots;

d. the method of delivery of Ballots to be sent to the Notice and Claims Agent is at the election and risk of each Holder, and except as otherwise provided, a Ballot

will be deemed delivered only when the Notice and Claims Agent actually receives the executed Ballot;

e. each Ballot has to be executed by the Entity submitting such Ballot. Delivery of a Ballot to the Notice and Claims Agent by facsimile, or any electronic means other than expressly provided in these Solicitation and Voting Procedures will not be valid;

f. no Ballot should be sent to the Debtors, the Debtors' agents (other than the Notice and Claims Agent), or the Debtors' financial or legal advisors, and if so sent will not be counted;

g. if multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot;

h. Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims or Interests within the same Class, the Debtor may, in their discretion, aggregate the Claims or Interests of any particular Holder within a Class for the purpose of counting votes; i. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a Holder of Claims must indicate such capacity when signing;

j. the Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;

k. neither the Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;

l. unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;

m. in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted or rejected;

n. subject to any contrary order of the Court, the Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtors, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; provided that any such rejections will be documented in the Voting Report;

o. if a Claim has been estimated or otherwise Allowed for voting purposes only by order of the Court, such Claim shall be temporarily Allowed in the amount



so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

p. if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein;

q. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Irregular Ballot; (ii) any Ballot cast by any Entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed; (iv) any unsigned Ballot or Ballot lacking an original signature (for the avoidance of doubt, a Ballot cast via the online balloting portal will be deemed to be an original signature); (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;

r. after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Debtors;

s. the Debtors are authorized to enter into stipulations with the Holder of any Claim agreeing to the amount of a Claim for voting purposes; and

t. where any portion of a single Claim has been transferred to a transferee, all Holders of any portion of such single Claim or Interest will be: (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein), and (ii) required to vote every portion of such Claim or Interest collectively to accept or reject the Plan. In the event that: (x) a Ballot, (y) a group of Ballots within a Voting Class received from a single creditor, or (z) a group of Ballots received from the various Holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

#### **E. Amendments to the Plan and Solicitation and Voting Procedures.**

The Debtors reserve the right to make non-substantive or immaterial changes to the Disclosure Statement, Disclosure Statement Hearing Notice, Plan, Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Publication Notice, Cover Letter, Solicitation and Voting Procedures, Plan Supplement Notice, Assumption and Rejection Notices, Voting and Tabulation Procedures, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.