THIRD REPORT PURSUANT TO SECTION 202(e) OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT PUB L. NO. 111-203 (2010)

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

JULY 2013

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

Third Report Pursuant to Section 202(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act Pub. L. No. 111-203 (2010)

JULY 2013

Contents

I. Introduction

In response to the global economic turmoil that began in late 2007, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Act) introduced a broad array of regulatory reforms in the financial sector. This report focuses on the reforms in Title II of the Act, which are intended to mitigate risks posed by the failure of systemically important financial institutions. Title II directs the Administrative Office of the United States Courts (AOUSC) to study the resolution of these institutions and report on its findings. The AOUSC submitted its first report pursuant to section 202(e) of the Act on July 21, 2011 (First Report), and its second report on July 17, 2012 (Second Report). The AOUSC now submits this third report in compliance with section 202(e).[1]

The report proceeds as follows:

- Part II provides an executive summary of the report's primary findings and analysis with respect to the three issues identified in section 202(e) of the Act.
- Part III describes the mandate for AOUSC reports under Title II of the Act and summarizes the First Report, the Second Report, and the scope of the Third Report.
- Part IV summarizes certain key developments relating to Title II of the Act since the Second Report, including the regulations proposed to implement Title II, and significant chapter 11 case filings during this period.
- Part V focuses on the chapter 11 plan of reorganization process and the requirement that the plan satisfy the "best interest of creditors" test (best interests test) under section 1129 of the Bankruptcy Code—a critical creditor protection mechanism in the plan process.
- Part VI explains the incorporation of the best interests test into the Orderly Liquidation Authority (OLA) and identifies some potential issues concerning its application to that process.

II. Executive Summary

The chapter 11 bankruptcy process affords a distressed company the opportunity to restructure and emerge in a manner that maximizes value for holders of claims and interests against it (stakeholders). The Bankruptcy Code includes a number of tools to assist courts in achieving a fair and equitable result. This report focuses on one of the Bankruptcy Code's provisions for the treatment of stakeholders' claims and interests under a plan of reorganization—the best interests test of section 1129(a)(7) of the Bankruptcy Code. Regardless of the debtor's path through chapter 11, the plan of reorganization confirmation process frequently plays a key role. As discussed in *infra* Part V.A, to confirm a plan of reorganization, the debtor or other plan proponent must satisfy certain conditions set forth

---

1. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 202(e)(2), 124 Stat. 1376, 1449 (2010) [hereinafter Dodd-Frank Act]. The Dodd-Frank Act requires that the AOUSC summarize the results of its study in a report "[n]ot later than 1 year after the date of enactment of th[e] Act [and] in each successive year until the third year" and in every fifth year after date of enactment. The AOUSC appointed a Working Group to study the issues identified in § 202(e). A list of terms used in this report is set forth in Appendix A.

in section 1129(a) of the Bankruptcy Code. The best interests test, which sets the minimum distribution that stakeholders are entitled to receive under a chapter 11 plan, is one of these conditions.

The best interests test provides important protections for individual dissenting and non-voting stakeholders during the plan confirmation process. Under this test, unless every member of a class is deemed to accept or votes to accept the plan, each member of the class must receive or retain not less than it would receive or retain in a hypothetical liquidation of the debtor under chapter 7 of the Bankruptcy Code. A debtor or other plan proponent bears the burden of satisfying the best interests test and typically does so through expert testimony and a liquidation valuation and analysis. The liquidation analysis compares the priority of stakeholders' claims and the amount of proposed distributions in chapter 11 with the expected creditor treatment in chapter 7. The liquidation analysis process and its application are discussed in detail in *infra* Part V.B.

The OLA adopts a number of concepts from the Bankruptcy Code, including, notably, a protection for creditors, known as "minimum recovery," that is similar to the best interests test. The Act requires that creditors receive at least as much in a resolution under the OLA as they would otherwise receive in a hypothetical chapter 7 bankruptcy. Similar to completing a liquidation analysis in the best interests test, this minimum recovery standard necessitates that the Federal Deposit Insurance Corporation (FDIC) estimate recoveries in a bankruptcy setting for comparison with creditor distributions under the OLA. The challenge in comparing creditor recoveries is that, unlike the similarity between chapter 11 and chapter 7 in priority and distribution schemes, the OLA priorities and distribution schemes do not align as well with the relevant provisions of the Bankruptcy Code. A detailed comparison of priority of claims under the OLA and that under the Bankruptcy Code is included in *infra* Part VI.A.

As discussed in *infra* Part VI.B and C, commentators have raised concerns about potential deviations in claims treatment under the OLA versus that under the Bankruptcy Code. There are concerns that not all similarly situated stakeholders will be treated equally because of the apparent limitation of stakeholder participation in the minimum recovery analysis and the ability of the FDIC to transfer liabilities, and thereby effectively treat the liabilities differently. The efficacy of either the bankruptcy or OLA process turns on the stakeholders' confidence in the resolution system and their ability to receive or retain value at least equivalent to that available to stakeholders under a chapter 7 liquidation. It remains unclear how the FDIC will effectively incorporate creditor protections through the minimum recovery standard. There are concerns that not all similarly situated stakeholders will be treated equally because of the apparent limitation of stakeholder participation in the minimum recovery analysis, as well as the ability of the FDIC to transfer liabilities, thereby effectively treating the liabilities differently.

III. AOUSC Reports Under Title II

Title II of the Act mandates various studies to consider the implications and alternatives of the new insolvency scheme created for covered financial companies under the Act.[2] This report relates to the study mandated by section 202(e) of the Act, "Study of Bankruptcy and Orderly Liquidation Process for Financial Companies."

Section 202(e) requires the AOUSC to study the following three issues:

(i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;
(ii) ways to maximize the efficiency and effectiveness of the Court [Title II defines "Court" to mean "the United States District Court for the District of Columbia, unless context otherwise requires"]; and
(iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

Section 202(e) further requires the AOUSC to submit a report summarizing the results of the study "[n]ot later than 1 year after the date of enactment of the Act"—that is July 21, 2011.[3] The AOUSC must file two subsequent annual reports in July 2012 and 2013, and then a report "every fifth year after the date of enactment."[4] This report is the final report of the three annual reports required by the Act.

The Act implemented a series of changes in the regulation of financial institutions, financial products, and various market participants designed to promote financial stability and more adequately address the financial distress of large, complex financial institutions. The provisions most relevant to the AOUSC's reports under section 202(e) of the Act are Title I of the Act, Financial Stability, which creates the Financial Stability Oversight Council (FSOC); and Title II of the Act, Orderly Liquidation Authority (OLA), which creates a regulatory process for the FDIC to act as receiver and liquidate certain covered financial companies, as defined by the Act and implementing regulations.[5]

The First Report and Second Report systematically and objectively evaluated the resolution of distressed financial institutions and compared processes under the Bankruptcy Code with procedures under the OLA. The First Report began by detailing the events preceding the Act, including the failure or near-failure of several large, complex financial institutions, and then provided a broad overview of reorganization provisions in the Bankruptcy Code compared with those in the OLA.[6] The Second Report focused on the claims process procedure, an important component of the bankruptcy process, and highlighted differences between procedures of the Bankruptcy Code and those of the OLA.[7]

---

2. *Id.* §§ 202(e)–(g), 216, 217, 124 Stat. at 1448–49, 1519–20.

3. *Id.* § 202(e)(2), 124 Stat. at 1449.

4. *Id.*

5. *Id.* §§ 111, 203, 124 Stat. at 1392, 1450.

6. Administrative Office of the United States Courts, Report Pursuant to Section 202(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (July 2011).

7. Administrative Office of the United States Courts, Second Report Pursuant to Section 202(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010) (July 2012) [hereinafter Second Report].

This part briefly describes the substance of the First Report and Second Report and the scope of this Third Report.

A. Summary of First Report

The First Report provides a systematic and thorough analysis of the key provisions of the Bankruptcy Code that would be likely to affect the reorganization or liquidation of a financial institution. The report also summarizes key provisions of Title II of the Act for purposes of comparison. It then explains the potential advantages and disadvantages of each resolution scheme in the context of large, complex financial institutions.

The First Report does not draw conclusions about the "effectiveness" of the Bankruptcy Code in facilitating the "orderly" liquidation or reorganization of distressed financial institutions. Rather, it uses a combination of qualitative data (primarily interviews with restructuring professionals, judges, and clerks of court within the United States) and case studies to consider the options available to resolve distressed financial institutions. The First Report also reviews several of the proposals suggested by commentators for better achieving the resolution of financial institutions under the Bankruptcy Code. These proposals generally focus on mitigating the impact of any large, complex financial institution's bankruptcy filing on the global economy and markets by, among other things, encouraging prebankruptcy planning, enhancing the involvement of the FDIC and other governmental agencies in the bankruptcy case, streamlining certain processes, and/or modifying the treatment of financial contracts in bankruptcy.

The research underlying the First Report suggests that many of the issues preceding the Act emerged not only because of the business attributes of large, complex financial institutions but also because of the dire economic conditions facing the United States and other countries beginning in late 2007. Accordingly, it most likely was this confluence of circumstances that was the principal cause of the challenges for Lehman Brothers Holdings Inc. in its chapter 11 case and for the other financial institutions that failed or were resolved under the Bankruptcy Code or the Federal Deposit Insurance Act (FDIA). Nevertheless, certain aspects of the Bankruptcy Code (such as its treatment of financial and derivative contracts) and the FDIA most likely made the challenges greater. The First Report concludes that, on a preliminary basis, the Bankruptcy Code generally functions well to address corporate distress, including that of bank holding companies and non-bank financial institutions.

B. Summary of Second Report

The Second Report focuses on a significant component of the resolution of distressed financial institutions: the claims resolution process. This process preserves and maximizes value by pursuing claims, causes of action, and other assets on behalf of, and scrutinizing claims asserted against, the distressed company. Consequently, increasing asset value and reducing the amount of allowed claims work in tandem to maximize returns to creditors. An efficient and effective claims resolution procedure is important to both distressed companies and their creditors.

The report analyzes the claims resolution process under the Bankruptcy Code and provides examples from selected chapter 11 cases. The basic structure for filing and preserving claims under the Bankruptcy Code provides certainty to parties impacted by a distressed company. Bankruptcy courts and debtors in large, complex bankruptcy cases have streamlined the claims resolution process by implementing a variety of special claims processes, such as alternative dispute resolution procedures, expedited claims objections and settlement procedures, and omnibus objection procedures. Although it can take many years to resolve the tens of thousands of claims frequently asserted in large, complex bankruptcy cases, the court, from the outset, facilitates the resolution process and provides consistent parameters to aid parties' understanding of the structured and clearly established procedures.

The Second Report outlines the claims resolution process contemplated by Title II of the Act and, where relevant or useful, compares it with the federal bankruptcy scheme. Notably, the OLA claims resolution procedure adopts certain aspects of the bankruptcy claims resolution procedure by, among other things, requiring creditors to file proofs of claim and allowing the FDIC, as receiver, to object to claims. The ex post facto judicial review process contemplated by the OLA, in which a creditor's claim is deemed rejected unless the FDIC allows the claim within the 180-day review period, is contrary to the centralized claims resolution procedure fostered by the Bankruptcy Code. The efficiency of either the bankruptcy or the OLA claims resolution procedure may turn largely on the facts of the particular case and the parties managing the process. The report suggests that the flexibility and concurrent court supervision inherent in the bankruptcy claims resolution procedure may allow the process to adapt more easily to the variety of distressed companies that require a claims resolution scheme.

In addition to discussing the claims resolution process, the Second Report highlights a data set that the Federal Judicial Center (FJC) is compiling at the request of the AOUSC Working Group.[8] The data set includes information about the bankruptcy cases of certain large financial institutions filed from 2000 to 2010. The FJC is continuing to refine and enhance these data. The FJC will make its final data set available to the AOUSC Working Group to inform its study in future years.

C. The Third Report

The AOUSC Working Group continues to evaluate issues relevant to the resolution of distressed financial institutions. Specifically, the Working Group has

1. continued to monitor developments relating to Title II and the resolution of distressed financial institutions;
2. reviewed the most recent academic and financial literature on the implementation of Title II and related issues; and
3. studied claim valuation procedures, focusing on the best interests test under the Bankruptcy Code and the minimum recovery standard under the OLA.

8. The Director of the Administrative Office authorized the creation of a working group to assist the Administrative Office in carrying out the study as required under section 202(e) of the Dodd-Frank Act. The working group membership consists of district and bankruptcy judges as well as staff from the Administrative Office and the Federal Judicial Center.

IV. Recent Developments

A. Rules Relating to the OLA

On July 15, 2011, the FDIC issued a final rule entitled Certain Orderly Liquidation Authority Provisions under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (OLA Rule).[9] This rule implements certain provisions of the FDIC's authority to resolve covered financial institutions under the Dodd-Frank Act. Specifically, the rule clarifies certain definitional and miscellaneous matters under the OLA (subchapter A); defines claims priorities, the scope of setoff rights, and the effect of transfers of the distressed companies' assets to a bridge company (subchapter B); and delineates certain claims administration procedures relating to the FDIC's receivership (subchapter C).

Part VI of this report considers the claims priorities established by subchapter B of the OLA Rule. The AOUSC's Second Report reviews the claims procedures set forth in subchapter C of the OLA Rule. In addition, the FDIC has further defined and enhanced this rule and other components of the OLA process in subsequent rules enacted during the latter part of 2011 and 2012. The FDIC's major rulemaking activities during this time are summarized below.

On November 1, 2011, the FDIC and the Federal Reserve published a final rule (The Resolution Plans Final Rule) implementing the Dodd-Frank Act requirement under section 165(d).[10] Under this requirement, bank holding companies with at least $50 billion in total consolidated assets (including foreign banking organizations that are treated as bank holding companies) and nonbank financial companies supervised by the Federal Reserve must periodically submit resolution plans, commonly referred to as "living wills." Essentially they detail the composition of the financial company and set out the ways in which the various components of the company interact. The Federal Reserve noted that the plans would provide additional insights into these companies' structure and complexity, in addition to assisting in supervisory efforts to ensure that the companies operate in a manner that is both safe and sound and does not pose a risk to financial stability generally.

The full plans are filed with the Federal Reserve and the FDIC. A component of these plans, made accessible to the public, generally describes the nature of the financial company, gives a highlighted version of the company financials, and generally describes the hypothetical resolution plan for the entity. Plans for the largest bank holding companies (greater than $250 billion in total nonbank assets as reported to the Federal Reserve) were due in July 2012. The initial resolution plans for medium-size holding companies ($100–$250 billion) and small-size holding companies (less than $100 billion) are due July 1, 2013, and December 31, 2013, respectively.[11]

The FDIC issued a final rule on October 9, 2012, entitled the Enforcement of Subsidiary and Affiliate Contracts by the FDIC as Receiver of a Covered Financial Company

9. 76 Fed. Reg. 41,626 (July 15, 2011) (to be codified at 12 C.F.R. pt. 380).

10. Resolution Plans Required, 76 Fed. Reg. 67,323 (Nov. 1, 2011) (to be codified at 12 C.F.R. pt. 243 and 381).

11. *Id.* at 67,330.

Rule.[12] This rule relates to the FDIC enforcement of subsidiary and affiliate contracts as the receiver of a covered financial company and clarifies the FDIC's authority to preserve the value of a failed financial company's assets and business lines by enforcing certain contracts of subsidiaries and affiliates of the financial company. According to the FDIC, this authority will help enable it to place a financial company at the holding company level into receivership without placing solvent subsidiaries into receivership, while also helping to mitigate systemic risks and maintain financial stability.

Finally, the FDIC considered the definition of "financial company" for purposes of identifying companies potentially subject to the OLA. This rule, issued on June 18, 2012, seeks to better define the concept of "predominantly engaged in activities that are financial in nature or incidental thereto," which is a key factor in determining whether a company is a financial company.[13] The rule clarifies the scope of the activities that would be considered financial activities after recognizing that the FDIC's initial OLA Rule had defined "financial company" slightly differently under Title II (the title of the Act that provides for the OLA) than the Board of Governors had defined it under Title I of the Act.

B. Bankruptcy Developments in 2012

Overall, business bankruptcy filings declined in 2012. There was a decrease of 9 percent in chapter 11 business filings from calendar year 2011 to calendar year 2012.[14] There were 8,900 chapter 11 business bankruptcy filings in 2012, compared with 9,772 in 2011.[15] The largest of the business bankruptcy filings involved a financial company, Residential Capital, LLC (ResCap), a consumer mortgage company and a subsidiary of Ally Financial, Inc.[16]

ResCap and fifty of its affiliates filed chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York on May 14, 2012.[17] The consolidated financial statements for the debtors in the ResCap jointly administered cases disclosed a total of $15.7 billion in assets and $15.3 billion in debt.[18] Assets at ResCap, a recipient of a U.S. government bailout, dwindled to $15.7 billion in the first quarter of 2012 from more than $130 billion in 2006.[19] Prior to filing bankruptcy, ResCap unsuccessfully negotiated with bondholders in an effort to create a prepackaged bankruptcy.[20] A significant portion of the ResCap case concerns potential litigation with creditors over an $8.7 bil-

---

12. 77 Fed. Reg. 63,205 (Oct. 16, 2012) (to be codified at 12 C.F.R. pt. 380).

13. Definition of "Predominantly Engaged in Activities That Are Financial in Nature or Incidental Thereto," 77 Fed. Reg. 36,196 (June 18, 2012) (to be codified at 12 C.F.R. pt. 380).

14. http://www.uscourts.gov/Statistics/BankruptcyStatistics.aspx. These statistics include only chapter 11 cases in which the predominant type of debt was business.

15. *Id.*

16. Steven Church, Phil Milford & Darkin Campbell, *Ally's ResCap Files Bankruptcy, Plans Sale to Fortress*, Bloomberg, May 14, 2014, http://www.bloomberg.com/news/2012-05-14/ally-s-residential-capital-files-for-bankruptcy-protection-1- html.

17. *Id. See also* Charles M. Oellerman & Mark G. Douglas, *The Year in Bankruptcy: 2012*, Jones Day, Jan. 29, 2013, http://www.jonesday.com/the-year-in-bankruptcy-2012-01-29-2013/.

18. *See* Church et al., *supra* note 16.

19. *Id.*

20. *Id.*

lion settlement with mortgage securities investors.[21] Since filing, ResCap has generated billions of dollars by selling portfolios of loans and its mortgage service platform, but thus far has not filed a plan of reorganization.[22]

In 2012, nineteen public and private companies with assets greater than $1 billion emerged from bankruptcy and, in a change from recent years, more reorganized than were liquidated or sold.[23] Two notable cases are discussed in detail in the Second Report. Lehman Brothers Holdings Inc. and Washington Mutual Inc. emerged from bankruptcy in 2012. These cases rank as the first and second largest bankruptcy cases of all time.[24] In 2012, the number of failing banks also decreased; only 51 U.S. banks failed in 2012, compared with 92 in 2011, and 157 in 2010.[25]

V. The Best Interests Test and Chapter 11 of the Bankruptcy Code

The Bankruptcy Code offers a distressed company an opportunity to restructure and emerge in a manner that maximizes value for all of its holders of claims and interests. The Bankruptcy Code does not contain a singular mechanism to facilitate this result; rather, it provides a variety of tools. The Bankruptcy Code mitigates the collective action problem frequently facing a distressed company's creditors by identifying a single forum in which all creditors can appear, be heard, and obtain fair and equitable treatment. This report focuses on one of the Bankruptcy Code's provisions for the treatment of stakeholders' claims and interests under a plan of reorganization—the best interests test of section 1129 of the Bankruptcy Code.[26]

A. The Chapter 11 Plan Process and the Best Interests Test

Business reorganization has a rich history, stemming from the failing railroads of the late nineteenth century and the passage of a statute that introduced the basic conceptual underpinnings for modern bankruptcy law, the Bankruptcy Act of 1898.[27] In response to,

---

21. *See* Joseph Checkler, *Judge Lets ResCap Control Bankruptcy Case for 30 More Days,* Dow Jones Business News, May 7, 2013, http://www.nasdaq.com/article/judge-lets-rescap-control-bankruptcy-case-for-30-more-days-20130507-01072.

22. *Id.*

23. *See* Oellerman & Douglas, *supra* note 17.

24. *Id. See also* Second Report, *supra* note 7, at Part IV. The bankruptcy court confirmed a plan of reorganization for Lehman Brothers on December 6, 2011, and the company began distributions to creditors on April 17, 2012. The company will continue to operate as it sells off its remaining assets before finally closing its doors. *See* Caroline Humer, *Lehman Emerges from 3.5 year Bankruptcy*, Reuters, Mar. 6, 2012, http://www.reuters.com/article/2012/03/06/us-lehman-idUSTRE8250WY20120306. Washington Mutual's plan of reorganization became effective on March 19, 2012. *See* Randall Chase, *Judge Approves WaMu Bankruptcy Plan*, USA Today, Feb. 17, 2012, http://usatoday30.usatoday.com/money/industries/banking/story/2012-02-17/washington-mutual-reorganization-plan/53133432/1.

25. *See* Oellerman & Douglas, *supra* note 17.

26. 11 U.S.C. § 1129(a)(7).

27. For general discussions of the historical development of federal bankruptcy law, see, e.g., David A. Skeel, Jr., Debt's Dominion 56–60 (2001) (explaining equity receivership process); Charles Jordan Tabb, *The History of the Bankruptcy Laws in the United States*, 3 Am. Bankr. Inst. L. Rev. 5, 21–23 (1995) (same). *See also* Donald R. Korobkin, *Rehabilitating Values: A Jurisprudence of Bankruptcy*, 91 Colum. L. Rev. 717, 747–49 (1990) (same).

among other things, the Great Depression of the 1930s, a more formalized process evolved that allowed distressed companies to remain in business while restructuring their debt obligations. These developments led to the passage of sections 77 and 77B of the Bankruptcy Act and then the 1978 Bankruptcy Code's immediate predecessor, the Chandler Act of 1938, which added three new chapters for reorganizing ongoing businesses (chapters X and XI focused on businesses, and chapter XII focused on real estate organizations). Each iteration of the law focused on strengthening business reorganizations and seeking an appropriate balance between the rights and obligations of the debtor and those of its stakeholders.

The Bankruptcy Code incorporates these principles. Chapter 11 business reorganizations have two primary goals that require delicate balancing: (1) making the insolvent or financially distressed corporate debtor economically sound, and (2) preserving stakeholders' claims and interests to the greatest extent possible.[28] Chapter 11 fosters these dual goals by providing the corporate debtor with the opportunity to reorganize its business and financial affairs or, more commonly, to liquidate the business as a continually operating entity (i.e., "going concern").[29]

Regardless of a debtor's path through chapter 11, the plan of reorganization confirmation process frequently plays a key role, to facilitate either the reorganization or the orderly liquidation of the debtor and its estate. The confirmation process serves as the primary mechanism for resolving the debtor's distress, maximizing value, and protecting the interests of stakeholders. The debtor and significant stakeholders typically work together to negotiate and design the plan, and all stakeholders have an opportunity to review and object to the plan.[30]

Moreover, any stakeholder whose interest is impaired under the plan has an opportunity to vote to accept or reject the plan (or may be deemed to reject it).[31] Although a debtor or other plan proponent may seek to confirm a plan over stakeholders' objections, the process ensures stakeholder participation. Dissenting stakeholders have the right to have their concerns heard and considered before any plan is confirmed.[32]

---

28. 7 Collier on Bankruptcy ¶ 1100.01 at 1100-4 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009). *See also* H.R. Rep. No. 95-595, at 220 (1977) ("The purpose of a business reorganization case [under chapter 11] . . . is to restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders."); S. Rep. No. 95-989, at 10 (1978) (discussing dual goals of legislation); Toibb v. Radloff, 501 U.S. 157, 163–64 (1991) (discussing traditional dual goals of chapter 11); Elizabeth Warren, *Bankruptcy Policymaking in an Imperfect World*, 92 Mich. L. Rev. 336, 347 (1993).

29. *See* Collier, *supra* note 28, ¶ 1100.01 at 1100-4. *See also* NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.").

30. A fully consensual plan does not always emerge from negotiations, but most debtors communicate and negotiate with their key stakeholders during the plan process. The process itself, as implemented under the Bankruptcy Code, protects dissenting stakeholders and those who did not have a seat at the negotiating table. *See* 11 U.S.C. §§ 1121–1129 (provisions addressing various aspects of the plan of reorganization process under the Bankruptcy Code).

31. 11 U.S.C. § 1126(a) ("The holder of a claim or interest allowed under section 502 of this title may accept or reject a plan.").

32. *Id.* § 1128 ("(a) After notice, the court shall hold a hearing on confirmation of a plan.
(b) A party in interest may object to confirmation of a plan.").

The best interests test is an important stakeholder protection in the plan process. A debtor or other plan proponent must satisfy a number of conditions to confirm a plan, including the best interests test.[33] At its core, the best interests test requires that each creditor or interest holder in an impaired class accept the plan or receive or retain no less value on account of its claim or interest under the plan than it would in a straight liquidation case under chapter 7 of the Bankruptcy Code.[34] Accordingly, the best interests test safeguards stakeholders' interests. The remainder of this section summarizes a debtor's plan options under chapter 11 and then explores the parameters and application of the best interests test in those contexts.

1. Types of Chapter 11 Plans

The debtor has an initial exclusivity period of 120 days during which it alone can file a plan of reorganization in the case.[35] Section 1123 establishes the basic substantive provisions that a debtor or other plan proponent must include in the plan.[36] Typically, the ultimate plan terms are the product of intense negotiations between the debtor, its significant creditors, and other interested parties.[37]

The debtor's or other plan proponent's proposed plan of reorganization generally emerges through one of three types of chapter 11 cases: (1) prepackaged, (2) prenegotiated, or (3) free fall. Prepackaged plans are developed prior to bankruptcy and involve a negotiated restructuring of the debtor's capital structure. The plan proponent solicits and obtains the creditors' votes prior to filing the petition.[38] Once the case is filed, the debtor or other plan proponent seeks approval of the proposed plan under section 1129 of the Bankruptcy Code.[39] Prepackaged plans can expedite the reorganization process and mitigate the cost and certain other potential challenges often associated with

33. *Id.* § 1129 (requirements for plan confirmation).

34. *Id.* § 1129(a)(7) (the best interests test). *See also infra* Part V.A.2.

35. *Id.* § 1121 (establishing deadlines for filing and soliciting acceptances of debtor's plan of reorganization). The court may increase or decrease the initial exclusivity period for cause, but may not extend the debtor's exclusivity period beyond eighteen months. *Id.* § 1121(d)(2)(A).

36. *Id.* § 1123 (detailing information that must and may be included in a plan of reorganization).

37. *See* Michelle M. Harner & Jamie Marincic, *Committee Capture? An Empirical Analysis of the Role of Creditors' Committees in Business Reorganizations*, 64 Vand. L. Rev. 749, 779 (2011) (explaining chapter 11 plan process and the negotiations that frequently accompany that process). *See also* Harvey R. Miller, *The Changing Face of Chapter 11: A Reemergence of the Bankruptcy Judge as Producer, Director, and Sometimes Star of the Reorganization Passion Play*, 69 Am. Bankr. L.J. 431, 449 (1995) ("The mandatory appointment of a creditors committee was intended to provide dynamic tension with the debtor that would stimulate the reorganization process through effective and efficient oversight and negotiation.").

38. If the debtor or other plan proponent has solicited the vote prior to the petition date in compliance with applicable non-bankruptcy law, it may complete the solicitation after the petition is filed without first seeking the approval of a disclosure statement. 11 U.S.C. § 1125(g).

39. Section 1121(a) permits a debtor to file its plan of reorganization with its chapter 11 petition. 11 U.S.C. § 1121(a). Section 1126(b) recognizes the prepetition solicitation for purposes of plan acceptances under the Bankruptcy Code. 11 U.S.C. § 1126(b). In addition, the bankruptcy court may have additional procedural rules specific to prepackaged plans. *See, e.g.,* Local Bankruptcy Rule 3018-2 and Amended Procedural Guidelines for Prepackaged Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of New York, *available at* http://www.nysb.uscourts.gov/court-info/local-rules-and-orders.

a full-blown chapter 11 case.[40] Nevertheless, the debtor does not receive the benefit of the automatic stay during the prepetition negotiations, and it may have difficulty negotiating with all of the key players. In addition, prepackaged plans are commonly limited to resolving only bank and funded debt claims, and leave trade claims unimpaired.[41]

If the debtor is able to negotiate the terms of a plan with at least a critical mass of creditors (even if not all of them) and can secure a plan support agreement, it then can file what is commonly called a prenegotiated case.[42] In that scenario, the debtor or other plan proponent solicits acceptances of the plan postpetition.[43] A prenegotiated plan addresses the problem of holdouts among key creditor groups. The solicitation of acceptances will take place under the requirements and protections of the Bankruptcy Code, which typically imposes stricter procedural and substantive requirements than otherwise applicable securities laws.[44]

Finally, if a debtor is unable to negotiate and reach agreement with a sufficient number of its creditors, the debtor can work to negotiate and file a plan in the ordinary course and under the protections of the chapter 11 case. This approach is aptly called a "free fall plan."[45] Regardless of the plan offered by the debtor, all plans are subject to the same confirmation standards.

2. Plan Confirmation and the Best Interests Test

The multiple requirements of section 1129(a) are the focus of plan confirmation hearings. The debtor or other plan proponent bears the burden of establishing that all of these requirements are satisfied by a preponderance of the evidence.[46] One of the most important confirmation requirements is the best interests test.

The best interests test of section 1129(a)(7) of the Bankruptcy Code is a "cornerstone of Chapter 11 practice."[47] The test has been a part of statutory bankruptcy law for over 100 years and provides important protections for individual dissenting and non-voting

---

40. *See generally* Conrad B. Duberstein, *Out-of-Court Workouts*, 1 Am. Bankr. Inst. L. Rev. 347, 365 (1993) ("'Since the prepackaged plan is negotiated before the Chapter 11 case starts, it can take advantage of all the benefits available under the [Bankruptcy] Code without the detriments of a prolonged and expensive proceeding . . . .'" (quoting Marc S. Kirschner et al., *Prepackaged Bankruptcy Plans: The Deleveraging Tool of the 90s in the Wake of OID and Tax Concerns*, 21 Seton Hall L. Rev. 643, 663 (1991))).

41. *See* Michelle M. Harner, *The Corporate Governance and Public Policy Implications of Activist Distressed Debt Investing*, 77 Fordham L. Rev. 703, 739 (2008) (explaining the prepackaged plan process).

42. *See, e.g.,* Kurt A. Mayr, *Unlocking the Lockup: The Revival of Plan Support Agreements Under New § 1125(g) of the Bankruptcy Code,* 15 J. Bankr. L. & Prac. 729 (2006) (explaining the prenegotiated plan process).

43. *See* Collier, *supra* note 28, ¶ 1100.10.

44. *Id.*

45. *See* Harner & Marincic, *supra* note 37, at 779.

46. *See* Collier, *supra* note 28, ¶ 1129.02. *See also* Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. P'ship, 115 F.3d 650, 653 (9th Cir. 1997) (discussing confirmation standards); *In re* Exide Techs., 303 B.R. 48, 58 (Bankr. D. Del. 2003) ("The plan proponent bears the burden of establishing the plan's compliance with each of the requirements set forth in § 1129(a), while the objecting parties bear the burden of producing evidence to support their objections."); *In re* DeLuca, 194 B.R. 79, at Case No. 95-11924, 1996 Bankr. LEXIS 1950, at *49 (Bankr. E.D. Va. Apr. 15, 1996) (rejecting "clear and convincing" standard).

47. Collier, *supra* note 28, ¶ 1129.07.

stakeholders during the plan confirmation process.[48] It sets a statutory minimum distribution that stakeholders are entitled to receive, and it operates on the individual creditor or interest holder level. Section 1129(a)(7)(A) provides the following guidelines:

> (a) The court shall confirm a plan only if all the following requirements are met: . . .
>
> > (7) With respect to each impaired class of claims or interests—
> >
> > (A) each holder of a claim or interest of such class—
> >
> > > (i) has accepted the plan; or
> > >
> > > (ii) will receive or retain under the plan on account of such claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of this title on such date.

Under the best interests test, unless every member of a class is deemed to accept or votes to accept the plan, each member of the class must receive or retain not less than it would receive or retain in a hypothetical liquidation of the debtor and its estate under chapter 7 of the Bankruptcy Code. In a chapter 7 liquidation case, secured creditors generally receive their collateral or the value of the collateral, and the remaining assets are then distributed in accordance with the distribution scheme of section 726 of the Bankruptcy Code.

Conceptually, the distributional scheme consists of six classes: the first class is the twelve priority categories of 11 U.S.C. § 507(a), distributed first under § 726(a)(1); the next four are the remaining creditor classes under § 726(a)(2)–(5); and the final class is the debtor under § 726(a)(6). The trustee must pay every claim in a class in full before distributing anything to the next lower prioritized class. If the assets in the estate are insufficient to satisfy all claims in a class, the claimants in that class share pro rata.[49] The following is the § 726(a) distribution schedule:

(1) Class 1—priority unsecured claims as specified in § 507 (superpriority claims, administrative expenses, and priority claims);
   a. the trustee's expenses for administering property to pay domestic support obligations. § 507(a)(1)(C).
   b. allowed unsecured claims for domestic support obligations—debts to the debtor's spouse, former spouse, or child for alimony, maintenance, support, or in connection with a separation agreement, divorce decree, other court order, or property settlement agreement. § 507(a)(1)(A).
   c. allowed unsecured claims for domestic support obligations assigned to or owed directly to a governmental unit. § 507(a)(1)(B).
   d. other administrative expenses allowed under § 503(b)—those administrative claims without the superpriority status above and listed under the other subsections of § 503(b). § 507(a)(2).
   e. the unsecured priority claims "arising in the ordinary course of the debtor's business or financial affairs" and incurred in an involuntary case during the gap period

48. *See* Jonathan Hicks, *Note: Foxes Guarding the Henhouse: The Modern Best Interests of Creditors Test in Chapter 11 Reorganizations,* 5 Nev. L.J. 820, 821 (2005).

49. 11 U.S.C. § 726(b).

(i.e., the time between filing the involuntary petition and the earlier of appointing a trustee or entering an order for relief) allowed under § 502(f). § 507(a)(3).

f. allowed unsecured claims, up to a specified limit, for compensation earned within 180 days of filing the petition or the date business operations stopped, whichever occurred first. This includes "wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual" during the 180 days immediately preceding either the petition date or the date the debtor's business terminated operations, whichever occurred first. § 507(a)(4)(A). It also includes "sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding" the petition date or the cessation of the debtor's business, whichever occurs first, at least 75% of the income earned was earned from the debtor. § 507(a)(4)(B). These claims are subject to time and amount limitations. § 507(a)(4).

g. allowed unsecured claims for contributions to employee benefit plans if the claim meets certain qualifications. The trustee disburses payments for claims under this category to the benefit plan rather than to individual employees directly. As with the priority under § 507(a)(4), claims in this priority are subject to time and amount limitations. § 507(a)(5).

h. allowed unsecured claims of farmers against grain storage facilities and claims of fishermen against fish produce storage or processing facilities. § 507(a)(6). This priority is capped at a certain dollar amount, and any additional amount claimed becomes a general unsecured claim. *Id.*

i. allowed unsecured claims by consumers who deposited money before the petition date for consumer goods or services the debtor never delivered or provided. § 507(a)(7). A claimant's priority under this provision is capped at a certain dollar amount, and any additional amount claimed becomes a general unsecured claim. *Id.*

j. allowed unsecured claims for prepetition tax claims held by governmental units. These priority taxes include: (i) income taxes for the 3 years immediately preceding the petition date, (ii) property taxes assessed before the petition date and last payable without a penalty after 1 year before that date, (iii) taxes withheld from employees' paychecks, if the debtor is an employer, (iv) withholding taxes, (v) excise taxes, (vi) customs duty, and (vii) tax penalties for actual pecuniary loss based on a preceding claim. § 507(a)(8).

k. allowed unsecured claims arising from the debtor's failure to maintain required capital in a federally insured depository institution. § 507(a)(9). These claims are based on a commitment by the debtor to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or the Board of Governors of the Federal Reserve System to maintain the capital of an insured depository institution. *See id.*

l. allowed claims for personal injury or death resulting from the debtor's operation of a motor vehicle while intoxicated. § 507(a)(10).

(2) Class 2—allowed unsecured claims that were timely filed or that were filed late by creditors without notice or actual knowledge of the bankruptcy but filed in time to permit payment. § 726(a)(2);

(3) Class 3—allowed unsecured claims that were filed late by creditors with notice or actual knowledge of the bankruptcy. § 726(a)(3);

(4) Class 4—fines, penalties, forfeitures, or for multiple, exemplary, or punitive damages. § 726(a)(4);
(5) Class 5—postpetition interest on prepetition claims, § 726(a)(5); and
(6) Class 6—the debtor. § 726(a)(6).[50]

The liquidation analysis typically compares "apples to apples," and all of the necessary information is generally included in the supporting exhibit attached to the disclosure statement. In certain cases, however, the comparison is more complicated because the chapter 7 and chapter 11 requirements governing the size of the estate, the amount of the claims, or the priority among creditors may differ.[51] In the chapter 11 context, the following three examples illustrate this point:

1. In a partnership bankruptcy, the chapter 7 estate is generally larger than the chapter 11 estate. The trustee of an insolvent chapter 7 partnership may sue the general partners to recover any deficiencies.[52] Thus, if the partners are solvent, the chapter 7 creditors will be paid in full. The trustee in a chapter 11 partnership case does not have the same right to sue the partners. The "best interest of creditors" test in a partnership chapter 11 case must estimate the probable collection from the general partners, because these additional assets would be available to pay creditors in a hypothetical chapter 7 case.[53]
2. The amount of claims in a chapter 11 case may be greater than the claims in the corresponding hypothetical chapter 7 case. With certain exceptions, section 1111(b)(1) of the Bankruptcy Code gives a secured creditor in chapter 11 an unsecured deficiency claim whether or not the creditor has recourse under nonbankruptcy law.[54] Chapter 7 does not provide a non-recourse creditor with recourse, that is, the creditor does not get the unsecured deficiency claim. The absence of a deficiency claim in chapter 7 can dramatically affect the distribution to the other unsecured creditors in chapter 7 and must be factored into the "best interests" test.
3. Differences in the chapter 11 and chapter 7 priority rules can affect the analysis. Penalty claims are statutorily subordinated to unsecured claims in chapter 7, but there is no comparable subordination of penalty claims under chapter 11.[55] The distribution to the other unsecured creditors will be greater in chapter 7, where the unsecured creditors' claims are given priority over the penalty claim.

---

50. *Id.* § 726(a) (chapter 7 distribution scheme).

51. The difference in priority schemes also is potentially a significant issue under the minimum recovery standard of the OLA, as discussed in Part VI *infra.*

52. *See* 11 U.S.C. § 723(a) (rights of bankruptcy trustee against general partners of partnership debtor).

53. *See* Collier, *supra* note 28, ¶ 1129.02[7][c][iv], at 1129–38. Even though creditors retain their right to sue the nondebtor general partners in a chapter 11, the cost of pursuing those individual rights, particularly where the claims are small, make the creditors' individual recourse rights less valuable than the collective right of the chapter 7 trustee to sue on their behalf. *See, e.g., In re* Union Meeting Partners*,* 165 B.R. 553, 576 (Bankr. E.D. Pa. 1994), *aff'd without op.*, 52 F.3d 317 (3d Cir. 1995).

54. *See* 11 U.S.C. § 1111(b)(1).

55. *See id.* § 726(a)(4). *Cf.* United States v. Reorganized C F & I Fabricators of Utah, Inc., 518 U.S. 213, 228–29 (1996) (holding that bankruptcy court cannot equitably subordinate tax penalty claim based solely on its characteristic as a penalty).

3. *Application of the Best Interests Test*

The liquidation analysis is an involved and sometimes complex process at the core of the best interests test. The Bankruptcy Code requires this "hypothetical liquidation value" to be determined as of the "effective date of the plan," requiring a present value calculation of the distributions on a creditor's claim.[56] This is important because the Bankruptcy Code recognizes that "receipt of a dollar tomorrow by a creditor is worth less than receipt of the dollar today."[57] A plan does "not satisfy the best-interest-of-creditors test merely because it *eventually* provides more to creditors in the aggregate than a hypothetical liquidation. . . . Instead, the test requires a debtor to take all future payments under the plan, discount them back to the effective date, and compare the amount to the hypothetical proceeds creditors would receive from liquidation of the debtor's assets on that date."[58]

A liquidation analysis is not a calculation of the "maximum value that could be realized under ideal conditions during the normal course of business" nor is it "the value received at a forced sale."[59] Rather, the liquidation analysis focuses on values "achievable within an orderly and expedited sale/auction process conducted in Chapter 7."[60] In the view of some, an analysis could include the following steps:

1. determine the net book value of each asset;
2. estimate a fair market value of each asset;
3. estimate a realization factor for assets where appraisals are not available or reliable to determine the estimated fair market value that could be realized during an orderly liquidation; and
4. determine the liquidation value by applying the realization factor to the estimated fair market value for each asset.[61]

Courts typically will allow parties to present valuation evidence on either a forced-sale or a going-concern-sale basis, provided the assumptions are reasonable and supported by the evidence.[62] In this context, courts generally permit a liquidation scenario that does not contemplate an immediate forced sale of the debtor if the liquidation analysis uses a reasonable timeline (typically no longer than twelve months) and an appropriate discount rate to value resulting payments as of the effective date of the plan.[63]

---

56. *See* Gregory G. Hesse & Cameron W. Kinvig, *"Best Interest of Creditors" Test: Why Those Math Classes Weren't a Total Waste After All,* 27 ABI J. 21, 32–33 (2008).

57. Robert E. Ginsberg, Robert D. Martin & Susan V. Kelley, Ginsberg & Martin on Bankruptcy, § 13.13(F) (Aspen Pub. 5th ed. 2011, Supp. 2013).

58. *See* Hesse & Kinvig, *supra* note 56, at 32–33 (citations omitted).

59. Carrianne J.M. Bassler & Scott A. Melf, *Beyond the Best-Interest-of-Creditors Test*, 29 ABI J., 24, 24 (2010).

60. *Id*.

61. *Id.*

62. *In re* Lason, Inc., 300 B.R. 227, 233 (Bankr. D. Del. 2003). *See also* 11 U.S.C. §§ 704 (bankruptcy trustee should liquidate assets "as expeditiously as is compatible with the best interests of parties in interest"), 721 (bankruptcy trustee may "operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate").

63. *See* Wells Fargo Bank N.A. v. Tex. Grand Prairie Hotel Realty, L.L.C. (*In re* Tex. Grand Prairie Hotel Realty, L.L.C.), 710 F.3d 324 (5th Cir. 2013) (collecting cases that discuss appropriate discount rate in chapter 11 cases with respect to deferred payments). *See also In re* Eugene Pipe LLC, No. 11-60920-

The discounted plan payments are then compared with the hypothetical liquidation value to determine if they are sufficient to meet the requirements of the best interests test.[64] It is challenging to calculate the discounted plan payments because of a "broad interpretation" of what constitutes an appropriate discount rate.[65] The proper interest or discount rate that debtors must pay is "one of the most frequently argued economic issues" in the proceeding.[66]

When the analysis of the best interests test is contested (and in the view of some, in all cases), courts consider whether the test was satisfied during confirmation hearings. Courts recognize, however, that valuation for purposes of the best interests test is "not an exact science" even though it must be based on "evidence, not assumptions."[67] The Bankruptcy Code does not provide specific guidelines for how to calculate the liquidation value for comparison purposes. Courts often focus on whether the "methodology used and assumptions made in connection with the liquidation analysis are reasonable"[68] or are "commonly accepted" methodologies.[69] The well-developed case law and resulting guidelines for the best interests test allow debtors or plan proponents to offer, and stakeholders to assess, information concerning the maximization of value principle underlying chapter 11 of the Bankruptcy Code.

B. The Best Interests Test in Practice

As suggested by the descriptions in *supra* Part V.A, the valuation necessary to satisfy the best interests test is rigorous. In most cases, the valuation is performed by a financial consulting firm that has worked with the debtor throughout its restructuring and is intimately familiar with the debtor's business, industry, capital structure, and claims.[70] This

---

fra11, 2012 Bankr. LEXIS 2014, 2012 WL 1597265 (Bankr. D. Or. May 7, 2012) (finding evidence submitted by debtor in support of liquidation analysis reasonable and sufficient to satisfy section 1129(a)(7), despite evidence of competing contingent bid for assets that might be pursued in chapter 7 case).

64. *See In re* Hockenberry, 457 B.R. 646, 654 (Bankr. S.D. Ohio 2011) (explaining application of discount rate to deferred payments under chapter 11 plan); *In re* HRC Joint Venture, 187 B.R. 202 (Bankr. S.D. Ohio 1995) (Mortgagee used excessive discount rate to fail the best interest of creditors test); *In re* Economy Lodging Sys., Inc., 205 B.R. 862 (Bankr. N.D. Ohio 1997) (seemingly high discount rate in debtor's liquidation analysis as to potential recovery in forced sale of motels is justified by adverse impact on value of motels under failure to approve a plan); *In re* Made In Detroit, Inc., 299 B.R. 170 (Bankr. E.D. Mich. 2003) (alternative plan satisfied best interests test, notwithstanding debtor's objection that value of property sale was too low).

65. *See* Bassler & Melf, *supra* note 59.

66. Daniel R. Wong, *Chapter 11 Bankruptcy and Cramdowns: Adopting a Contract Rate Approach,* 106 Nw. U. L. Rev. 1927, 1929 (2012).

67. *In re* Multiut Corp., 449 B.R. 323, 344 (Bankr. N.D. Ill. 2011).

68. *In re* Korea Tech. Indus. Am., Inc., No. BR 11-32259, 2012 WL 5248614, at *3, 2012 Bankr. LEXIS 5045, at *9 (Bankr. D. Utah Oct. 23, 2012). *See also In re* Mortgage Fund '08 LLC, No. 11-49803RLE, 2012 WL 369441, at *3, 2012 Bankr. LEXIS 571, at *8 (Bankr. N.D. Cal. Feb. 3, 2012) (holding that the liquidation analysis estimates are "reasonable" and that confirmation of the plan is preferable to liquidation of the estate under chapter 7, and therefore the plan is in the best interest of the creditor).

69. *In re* R.E. Loans, LLC, No. 11-35865-BJH, 2012 WL 2411877, at *7, 2012 Bankr. LEXIS 2898, at *18 (Bankr. N.D. Tex. June 26, 2012).

70. *See* Hesse & Kinvig, *supra* note 56, at 32 (discussing the aspects of the liquidation analysis underlying the best interests test).

level of expertise is required to develop the assumptions underlying a liquidation analysis, including the type of sale feasible in a compressed time frame, the market for the debtor's assets, the costs associated with a liquidation sale, and the resulting proceeds that are likely to be available for distributions.

The depth of the analysis required is suggested by the introduction presented in many of the plan exhibits offering a liquidation analysis for purposes of the best interests test. The excerpt below demonstrates the basic assumptions often required for this analysis. In addition, the excerpts presented in Appendix B offer other examples of the level of detail and information available to stakeholders through this process.[71]

Excerpt from Liquidation Analysis Exhibit[72]

General Assumptions

In chapter 7, a trustee (the "Chapter 7 Trustee") would be appointed to manage the Debtors' affairs and conduct a liquidation. This Liquidation Analysis assumes that the Debtors would be forced to liquidate. For the reasons described below, the Debtors would be forced to cease substantially all operations almost immediately and use their cash position to liquidate their assets and pay the costs of liquidation and all creditor claims in accordance with the priorities established in chapter 7. For ease of presentation, the Liquidation Analysis presents the results of liquidation of each of the Debtors on a consolidated basis. Even if the presentation were made on an entity-by-entity basis, the result would be the same because the Lenders have blanket liens on all of the Debtors assets to secure claims that are vastly in excess of the estimated liquidation proceeds. The likely consequences of the conversion to chapter 7 include the following:

- The Company's workforce would be terminated, except for a very small number of employees necessary to assist with the liquidation. Even if termination did not occur immediately, with the Company facing certain liquidation, employees would quickly leave the Company and find employment elsewhere. The loss of employees would make an orderly wind down significantly more difficult and would render the possibility of continuing operations in an effort to complete a going concern sale highly remote, if not impossible.
- The Company's approximately 700 franchisees are geographically diverse and in the event of a chapter 7 the best franchisees would be courted by, and would transfer to, competitor's platforms. Outside the tax season, there would be few, if any, operational barriers for a franchisee to transfer to a competitor's platform. Indeed, in a liquidation, with the Debtors unable to operate and support their franchisees, the Chapter 7 Trustee likely would immediately reject all franchise agreements. The rejection would give rise to significant damage claims that would be offset against any claims back against franchisees.
- The bulk of the Company's revenues are derived from tax preparation services. Customers have the ability to very quickly shift their purchases from the Com-

---

71. Appendix B includes excerpts from the disclosure statements of Lehman Brothers Holdings Inc. and CIT Group Inc.

72. This excerpt is taken from Appendix B to the Disclosure Statement with Respect to Joint Prepackaged Plan of Reorganization of Jackson Hewitt Tax Service Inc. and Subsidiaries, dated May 23, 2011, which is reproduced in part as Appendix B-1 of this report.

pany's owned or franchised locations to competition, desktop software, online platforms, or manual returns. It is highly unlikely that any customer would remain in a liquidation.

- Outstanding receivables would be difficult to collect in full. Franchisees likely would hold/slow the payment of royalties because, as noted above, the Debtors likely would no longer provide the services necessary to continue operations, though after some period of time some partial payments would likely be received. The sale of new tax services would cease entirely.
- Prepaid expenses are primarily composed of deferred expenses and various deposit balances. Deferred expenses might be offset against past due balances and, therefore, uncollectible. Deposits would be held by insurance or benefit providers to cover any tail coverage issues. Prepaid rent would be used to offset final bills/obligations.
- The majority of the Company's property, plant and equipment ("PP&E") is substantially depreciated hardware and/or software assets that have been specifically tailored to the [Debtors'] brand and product offering. These assets are of very limited value on the secondary market and it is unlikely that any meaningful value would be realized upon liquidation.
- The bulk of the Company's assets is intangible and is in the form of reacquired franchise rights, customer relationships, patents, trademarks and goodwill. The value of these assets would be severely compromised under a liquidation scenario. Some value may be realized from the sale of the [Debtors'] customer lists and from the Company's brand name, trademarks and URLs.
- The Debtors have a series of legal actions against other parties, the largest of which is the [affiliate] litigation in which the Debtors have sued for damages for, among other things, false advertising, alleging that [affiliate] harmed the Debtors' franchise value. The value of the litigation is uncertain at this time, though in a liquidation where the franchise ceases to exist, the value would be assumed to be very low. There also would be significant costs of maintaining the suit, which would be compounded by the likely need to simultaneously litigate against [affiliate] on its patent infringement claim against the Debtors. The smaller, individual actions are primarily against terminated franchisees. For the reasons mentioned above, we have assumed zero recovery on these individual actions.
- In the 90 days prior to filing the Debtors made payments to vendors, employees and other creditors that could be subject to potential preference actions. This analysis assumes that recoveries from any potential preference action are zero, as such payments were largely made in the ordinary course of business; the amounts for each payee were de minimis; and because the cost to pursue such actions would likely exceed any potential recoveries.

In addition to these types of general assumptions, a liquidation analysis is also likely to include specific assumptions that are unique to the debtor's business or case, a detailed listing of anticipated costs associated with a hypothetical chapter 7 case, an explanation of claims treatment in the chapter 7 case, and other information used by the professional to create the actual breakdown of likely distributions in a hypothetical chapter 7 case. The liquidation analysis often will include a range of potential distribution amounts to stakeholders in the chapter 7 context.[73] To satisfy the best interests test, the proposed distributions under the chapter 11 plan should be no less than the high end of this range.

Although the liquidation analysis valuation is based largely on assumptions, the disclosures provided in the debtor's disclosure statement and the opportunity for parties and the court to challenge the underlying assumptions guard against significant inaccuracies.[74] Parties in interest can object to the debtor's or plan proponent's plan and disclosure statement on a number of grounds, including whether the plan satisfies the best interests test.[75] In those objections, parties can contest, among other things, the value assigned to assets in the hypothetical sale process, the assumptions used in those valuations, the characterization of claims in the priority scheme of section 726 of the Bankruptcy Code, or the discount rate applied to plan payments.[76] As discussed in *supra* Part V.A.3, these objections are heard and resolved in connection with confirmation of the plan of reorganization. Accordingly, in most cases, stakeholders' objections to the proposed treatment of their claims or interests under the plan are considered prior to approval and implementation of the distributions. This process and the best interests test protect an individual dissenting or non-voting creditor or interest holder from being forced to accept less than liquidation value, even if everybody else in the class agrees to do so.[77]

73. *See* liquidation analyses presented in Appendix B.

74. *See supra* Part V.A (discussing stakeholders' rights to participate in the process).

75. 11 U.S.C. § 1109 (defining "party in interest" with standing in bankruptcy matters as "including the debtor, the trustee, a creditor's committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee"). *See also In re* Flintkote Co., 486 B.R. 99, 110–11 (Bankr. D. Del. 2012) (explaining parties who have standing to object to plan confirmation, including parties in interest under section 1109 of the Bankruptcy Code); Ion Media Networks, Inc. v. Cyrus Select Opportunities Master Fund Ltd. (*In re* Ion Media Networks, Inc.), 419 B.R. 585, 595 (Bankr. S.D.N.Y. 2009) (observing "the recognized public policy of liberally permitting parties to appear and be heard in Bankruptcy Court" in the context of enforcing subordination provisions of intercreditor agreement in bankruptcy case).

76. *See, e.g., In re* Draiman, 450 B.R. 777, 809 (Bankr. N.D. Ill. 2011) (creditor objected to the plan based on § 1129(a)(7) because the plan failed to prove with certainty the value of the distribution under the plan to dissenting creditors; court sustained the objection because the debtor failed to meet the burden of showing the best interests test had been met because the debtor's valuation methods were unreliable and the debtor failed to provide independent appraisals or other extrinsic evidence to support valuation); *In re* W.R. Grace & Co., 475 B.R. 34, 142 (D. Del. 2012) (debtor met the burden of showing the plan complies with § 1129(a)(7) based on expert evidence and assumptions; creditor failed to introduce contrary evidence); *In re* Sentinel Mgmt. Group, 398 B.R. 281, 311–14 (Bankr. N.D. Ill. 2008) (court found that the liquidation analysis was sufficient; plan objectors failed to cite any case law, provide any expert analysis, or present any expert testimony to contradict the liquidation analysis); *In re* Affiliated Foods, Inc., 249 B.R. 770, 787–90 (Bankr. W.D. Mo. 2000) (in confirming the plan over a creditor's objection, the court found, among other factors, that there is also a "hidden" expense of the time value of money, that a conversion to chapter 7 would most likely result in a delay in distribution, and that a preponderance of the evidence supported the satisfaction of the best interests test). *See also In re* Enron Corp., No. 01-16034(AJG), 2004 WL 6075307, 2004 Bankr. LEXIS 2549, 225–30 (Bankr. S.D.N.Y. July 15, 2004) (discussing the liquidation analysis process for satisfying the best interest of creditors test).

77. Ginsberg et al., *supra* note 57.

VI. The Best Interests Test and the OLA

Title II of the Dodd-Frank Act defines the framework for the orderly liquidation of "failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard."[78] The FDIC acts as receiver for the covered financial company, and it is instructed to act in a manner that "maximizes the value of the company's assets, minimizes losses, mitigates risk, and minimizes moral hazard."[79] The OLA is modeled largely on sections 11 and 13 of the FDIA, but also adopts a number of concepts from the Bankruptcy Code.[80] In fact, under the Dodd-Frank Act, bankruptcy is the first resolution option in the event of a failure of a systemic financial company.[81]

As receiver, the FDIC possesses broad authority and can take on such duties as "transferring or selling assets, creating bridge financial organizations . . . and approving valid claims against the company that will need to be paid."[82] The FDIC issued a final rule on the OLA on July 15, 2011, that provides "the regulatory framework defining how creditors will be treated and how claims will be resolved in an FDIC receivership."[83] The FDIC satisfies unsecured creditor claims in accordance with the relevant priorities set forth in the Act, and may use funds available to the receivership to make disbursements in partial satisfaction of these claims.[84] The OLA claims process is similar in certain respects to the bankruptcy claims process. The OLA also incorporates a "minimum recovery" standard for claims that is similar to the best interests test.[85] Nevertheless, despite these similarities, there are significant differences that create uncertainty for stakeholders under the OLA.

A. Minimum Recovery and the Best Interests Test

The Act requires a procedure that "will ensure creditors receive at least as much in a resolution as they would otherwise in a Chapter 7 bankruptcy," a protection known as "minimum recovery" and a concept that mirrors the "best interests test."[86] Determining

---

78. FDIC, *The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act,* 5 FDIC Quarterly, no. 2, 2011, at 5.

79. *Id.*

80. *See* DavisPolk, Resolution of Failing Financial Institutions: A Comparison of the FDIC's Orderly Liquidation Authority and the U.S. Bankruptcy Code, Aug. 2012, *available at* http://materials.abi.org/sites/default/files/2012/Oct/AmericaNow.pdf.

81. FDIC, Advisory Committee on Systemic Resolution, Title II Orderly Liquidation Authority, Dec. 10, 2012, *available at* http://www.fdic.gov/about/srac/2012/2012-12-10_title-ii_orderly-liquidation-authority.pdf.

82. FDIC, *supra* note 78, at 5.

83. *See Continued Oversight of the Implementation of the Wall Street Reform Act: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 112th Cong. 4 (2011) (statement of Martin J. Gruenberg, Acting Chairman, FDIC).

84. *See* section 210(b) of the Dodd-Frank Act, *supra* note 1. For an in-depth discussion of the OLA claims process, see the AOUSC's Second Report, *supra* note 7.

85. *See* section 210 of the Dodd-Frank Act, *supra* note 1.

86. Joe Adler, *Bankruptcy Looms Large in New FDIC Takeovers,* Am. Banker, Oct. 30, 2012, http://www.americanbanker.com/issues/177_210/bankruptcy-looms-large-in-new-fdic-takeovers-1053994-1 html. *See also* 12 U.S.C. § 210(a)(7)(B).

this "minimum recovery" is not an easy task because it requires the FDIC to "estimate recoveries in a bankruptcy that will not occur."[87] The FDIC is developing regulations to implement the "minimum recovery" standard. Some commentators are urging the FDIC to adopt a process that "resemble[s] the Bankruptcy Code [and gives] creditors comfort [that] they would face similar treatment under the two systems."[88] Notably, "no means were provided for determining creditors' minimum recoveries or for contesting the FDIC's determination thereof" under the Act.[89]

To assess whether they are receiving amounts greater than they would receive under chapter 7 of the Bankruptcy Code, stakeholders must compare and contrast the claims priorities and distribution schemes of the two resolution statutes. As discussed in *supra* Part V.A, the priorities and distribution schemes under chapter 11 correlate closely with the distribution scheme of section 726 of the Bankruptcy Code (incorporated into chapter 11 by the best interests test) and the priorities of section 507 of the Bankruptcy Code, which apply to cases under both chapter 7 and chapter 11.[90] Any discrepancies between chapter 7 and chapter 11 valuation and priorities are factored into the liquidation analysis and vetted by stakeholders and the court through the confirmation process.

The OLA priorities and distribution scheme do not align as well with the relevant provisions of the Bankruptcy Code. For example, consider the claims priorities in Table 1 below, which are identical in most respects in chapter 7 and chapter 11 cases, but differ—in some ways significantly—from the OLA process.

The most significant differences are

1. that the OLA scheme effectively gives setoff rights priority unsecured status (rather than secured status, since assets can be sold free and clear of setoff claims under 12 C.F.R. § 380.24(a));
2. that claims for wages, salaries, and commissions held by certain executives and directors are subordinated under the OLA; and
3. that a higher level of priority is given to amounts owed to the United States, even unsecured amounts.

This last difference may turn out to be significant if the United States had to make sizable unsecured loans to the failing institution before OLA proceedings commenced.

87. *See* Adler, *supra* note 86.

88. *Id.*

89. Seth Grosshandler, Comment on Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (letter to Robert E. Feldman, Executive Secretary, FDIC, Jan. 18, 2011), at 3, *available at* http://www.fdic.gov/regulations/laws/federal/2010/10c11no2.PDF.

90. 11 U.S.C. §§ 507 (claims priorities), 726 (distribution scheme), 1129 (plan confirmation requirements).

Table 1. Comparison of Claims Priorities

Priority	12 C.F.R. § 380.21(a), OLA	11 U.S.C. § 507(a), Bankruptcy Code
1	Debt obligations incurred or credit obtained by the FDIC as receiver	Certain domestic support obligations, generally not applicable in business reorganizations
2	Subject to certain exceptions, administrative expenses incurred by the FDIC during the OLA, as defined by section 380.22	Subject to certain exceptions, administrative expenses incurred by the debtor-in-possession or trustee during the bankruptcy case, as defined by section 503(b)
3	Amounts owed to the United States, and not paid under the first two priorities, as defined by section 380.23	Claims arising during the gap period in the context of an involuntary bankruptcy case
4	Certain employees' wages, salaries, and commissions earned by an individual during the 180 days prior to the OLA, up to $11,725	Certain employees' wages, salaries, and commissions earned by an individual during the 180 days prior to bankruptcy, up to $12,475
5	Certain contributions to employee benefits plans for services rendered during the 180 days prior to the OLA, up to $11,725	Certain contributions to employee benefits plans for services rendered during the 180 days prior to bankruptcy, up to $12,475
6	Certain claims on account of losses due to setoff rights, as defined by section 380.24	Certain claims arising from the production of grain or by a fisherman against certain types of debtors
7	Any general or senior liability against the covered financial company not otherwise included in lower priority categories	Claims for deposits for the purchase, use, or rental of property or services or personal or household purposes, up to $2,775
8	Claims subordinated to general unsecured creditors	Certain governmental tax claims
9	Wages, salaries, and commissions earned by certain executives and directors	Certain claims of the FDIC for obligations relating to the maintenance of capital of depository institutions
10	Post-insolvency interest on claims of higher priority	Death or personal injury claims resulting from the debtor's operation of a motor vehicle or vessel while intoxicated
11	Distributions to equity holders, including shareholders, members, and partners of covered financial company	N/A

In addition, the administrative claims included in Table 1 at priority 2 of each scheme vary in certain respects. Section 503(b) of the Bankruptcy Code includes certain payments to lessees of nonresidential real property leases that are assumed and then rejected and to providers of goods delivered in the twenty days prior to bankruptcy.[91] Section 380.22 of the regulations, on the other hand, grants priority not only to post-OLA contracts and services but also to "any contract or agreement entered into by the covered financial company before the date of appointment of the receiver that has been expressly approved in writing by the receiver after the date of appointment."[92] These differences may affect a best interests analysis that calls for a comparison between the distributions under the OLA and those under a hypothetical chapter 7 case.

The timing of, and a stakeholder's right to participate in, the minimum recovery analysis also remain unclear. In general, creditors' rights under the OLA are limited to "after the fact" review. The FDIC generally has the ability to set the amount and timing of creditors' distributions within the parameters of the OLA, and creditors bear the burden to challenge those decisions ex post facto (i.e., after the distributions have been set and perhaps even made).[93] Creditors generally do not have a right or an ability to contest or provide information to inform the FDIC's decisions prior to the FDIC making and implementing them.[94] Although this process allows creditors to contest the FDIC's administration of a covered financial company's dissolution in theory, in practice it is significantly different from the due process provided creditors under the Bankruptcy Code and may prove to be a heavy burden and cumbersome process for creditors. This same type of ex post facto participation will be likely to apply to the FDIC's minimum recovery analysis.

B. Other Potential Deviations in Claims Treatment

Commentators have raised concerns that, even with the protection of minimum recovery for creditors, not all similarly situated creditors will be treated the same under the OLA. Such a result would deviate from the protections of sections 1123 and 1129(a) and (b) of the Bankruptcy Code, especially the requirements of sections 1123(a)(4) and 1129(b)(1) that the plan not discriminate unfairly. It also would be contrary to the Act's requirements that "all claimants of a covered financial company that are similarly situated . . . shall be treated in a similar manner."[95]

The FDIC, as receiver, has the power to transfer some or all of the assets or liabilities of a covered financial company to a third party in a quick sale or to a bridge financial company without a creditor's consent or prior court review. As long as the statutory minimum recovery standard is satisfied, the FDIC arguably can "cherry-pick liabilities" and thereby treat similarly situated creditors differently.[96] The FDIC administers the claims process for "left behind" creditors and determines what they receive from the liquidation of any "left behind" assets, including any net value received from transferring

91. 11 U.S.C. § 503(b).

92. 12 C.F.R. § 380.22(a)(3).

93. *Id.* §§ 380.37, 380.38 (explaining the notification and judicial appeals process of the OLA).

94. *Id.* § 380.38(b) (timing of objections to claims disallowed in whole or in part by FDIC).

95. 12 U.S.C. § 5390(b)(4).

96. DavisPolk, *supra* note 80, at 15.

assets and liabilities to a third party or bridge.[97] The FDIC asserts that "by maintaining franchise value and mitigating severe disruption in the financial markets, it is more likely that debt holders and other general creditors will receive greater recoveries on their claims under the Dodd-Frank Act than they would have otherwise received in a Chapter 7 liquidation or a Chapter 11 reorganization."[98] Nevertheless, the FDIC's power in this context leads to less certainty regarding the treatment of individual creditors in an orderly liquidation of the covered financial company.

C. Factors Potentially Influencing Minimum Recovery Analysis

Stakeholders need to have confidence in any resolution system. The best interests test of the Bankruptcy Code fosters such confidence and preserves the integrity of the chapter 11 reorganization process. The test requires the debtor or other plan proponent to justify its valuation of the company and the proposed distributions to stakeholders in an open and meaningful manner.[99] It also protects against a debtor trying to reorganize at the expense of its stakeholders or otherwise shortchanging stakeholders under the plan of reorganization. Stakeholders must receive or retain value at least equivalent to that available to stakeholders under a chapter 7 liquidation.[100]

The OLA seeks to incorporate some of these creditor protections through the minimum recovery standard, but its effectiveness remains to be seen. It is unclear how the FDIC will make this determination or communicate the determination and related justifications to creditors. Under the rules as currently written, the FDIC alone can make the minimum recovery determination and need not include any valuation or other information concerning minimum recoveries in its notice of claims disallowance. In fact, a notice disallowing a claim in whole or in part is required only to provide "a statement of each reason for the disallowance, and the procedures required to file or continue an action in court."[101]

The OLA also limits creditor and judicial review to ex post facto review, which may complicate the valuation of the covered financial company and subject the FDIC's decisions to greater criticism. Hindsight review is always twenty-twenty; assessing the minimum recovery analysis in hindsight and on a one-off basis (one creditor challenge at a time) may create a different economic picture than that actually facing the FDIC in the midst of the resolution. The OLA also is silent on the remedies and source of funds available to creditors who successfully challenge the FDIC's minimum recovery analysis. Incorporation of key procedural safeguards could enhance the process and help the FDIC achieve a process more akin to the bankruptcy scheme.

97. *Id.*
98. *Id.*
99. *See supra* Part V.
100. *Id.*
101. 12 C.F.R. § 380.37(b).

VII. Conclusion

A critical component of any resolution scheme is a process that evokes confidence and is predictable to all stakeholders. The valuation procedures in the bankruptcy plan process, including the best interests test, provide some predictability and protection to creditors as to how their claims will be prioritized and valued. Although the liquidation analysis process is not without its challenges, creditors can anticipate the treatment of their claims and be assured that they will recover at least as much as they would under a chapter 7 liquidation of the distressed company. This same protection, known as the minimum recovery standard, does not appear as effective within the OLA process. For example, as discussed in *supra* Part VI, it is not clear whether creditors can participate in, or contest, the FDIC's minimum recovery analysis.

As the FDIC works to implement the minimum recovery standard, it should consider the well-developed valuation and notice/objection procedures used under section 1129(a)(7) of the Bankruptcy Code. Such a process would further the FDIC's objectives of promoting financial stability, mitigating risk, and minimizing moral hazard in the context of distressed financial institutions deemed subject to the OLA.[102]

---

102. *See supra* note 78 and accompanying text. *See also* Martin J. Gruenberg, Acting Chairman, FDIC, Remarks at the Federal Reserve Bank of Chicago Bank Structure Conference, Chicago, Ill. (May 10, 2012) (explaining the FDIC's key goals under the OLA as "maintaining financial stability, holding investors in the failed firm accountable for the losses of the company, and producing a new, viable private sector company out of the process"), *available at* http://www fdic.gov/news/news/speeches/chairman/spmay1012.html.

Appendix A. List of Terms

Act: Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010)

AOUSC: Administrative Office of the United States Courts

Bankruptcy Code: Title 11 of the United States Code

C.F.R.: Code of Federal Regulations

CIT Group: CIT Group Inc. and CIT Group Funding Company of Delaware LLC

FDIA: Federal Deposit Insurance Act

FDIC: Federal Deposit Insurance Corporation

First Report: Administrative Office of the United States Courts, Report Pursuant to Section 202(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (July 2011)

FJC: Federal Judicial Center

FSOC: Financial Stability Oversight Council

GAO: U.S. Government Accountability Office

Lehman Brothers: Lehman Brothers Holdings Inc.

OLA: Orderly Liquidation Authority

PACER: Public Access to Court Electronic Records

ResCap: Residential Capital, LLC

Second Report: Administrative Office of the United States Courts, Second Report Pursuant to Section 202(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010) (July 2012)

SIPA: Securities Investor Protection Act of 1970

SIPC: Securities Investor Protection Corporation

Appendix B
Disclosure Statements

Appendix B-1
Jackson Hewitt Tax Service Inc.

Jackson Hewitt Tax Service Inc. and subsidiaries (collectively, the "Debtors") are sending you this disclosure statement (the "Disclosure Statement") because you may be a creditor entitled to vote on the Joint Prepackaged Plan of Reorganization of Jackson Hewitt Tax Service Inc. and Subsidiaries (the "Plan"). This solicitation (the "Solicitation") of votes is being conducted to obtain sufficient acceptances of the Plan *prior* to the filing of voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). If sufficient votes to obtain confirmation of the Plan are received and certain other conditions are met, the Debtors intend to file voluntary cases under chapter 11 of the Bankruptcy Code to implement the Plan. Because no chapter 11 cases have yet been commenced, this Disclosure Statement has not been approved by any Bankruptcy Court as containing "adequate information" within the meaning of section 1125(a) of the Bankruptcy Code. Following the commencement of their chapter 11 cases, the Debtors expect to seek promptly an order of the Bankruptcy Court (1) approving (a) this Disclosure Statement as having contained "adequate information" as defined by section 1125(a) of the Bankruptcy Code and (b) the Solicitation as having been in compliance with section 1126(b) of the Bankruptcy Code, and (2) confirming the Plan described herein.

DISCLOSURE STATEMENT

DATED MAY 23, 2011

PREPETITION SOLICITATION OF VOTES WITH RESPECT TO JOINT PREPACKAGED PLAN OF REORGANIZATION

OF

JACKSON HEWITT TAX SERVICE INC. AND SUBSIDIARIES

SPECIAL NOTICE REGARDING FEDERAL AND STATE SECURITIES LAWS

Neither this Disclosure Statement nor the Plan has been filed with or reviewed by the Bankruptcy Court, and the securities to be issued on or after the Effective Date are not the subject of a registration statement filed with the United States Securities and Exchange Commission (the "SEC") under the United States Securities Act of 1933, as amended (the "Securities Act"), or any securities regulatory authority of any state under any state securities law ("Blue Sky Law"). The Debtors are relying on section 4(2) of the Securities Act and similar provisions of state securities law, as well as, to the extent applicable, the exemption from the Securities Act and equivalent state law registration requirements provided by section 1145(a)(1) of the Bankruptcy Code, to exempt from registration under the Securities Act and Blue Sky Law the offer and sale of new securities in connection with the Solicitation and the Plan.

Each holder of a Secured Senior Credit Facility Claim (as defined in the Plan) or authorized signatory for the beneficial owner of a Secured Senior Credit Facility Claim will be required to certify on its Ballot whether such holder or beneficial owner is an Accredited Investor, as that term is defined by Rule 501 of Regulation D of the Securities Act.

The Plan has not been approved or disapproved by the SEC or any state securities commission and neither the SEC nor any state securities commission has passed upon the accuracy or adequacy of the information contained herein. Any representation to the contrary is a criminal offense. Neither the Solicitation nor this Disclosure Statement constitutes an offer to sell, or the solicitation of an offer to buy securities in any state or jurisdiction in which such offer or solicitation is not authorized.

This Disclosure Statement and the information set forth herein are confidential. This Disclosure Statement contains material non-public information concerning the Debtors, their subsidiaries, and their respective securities. Each recipient hereby acknowledges that it (a) is aware that the federal securities laws of the United States prohibit any person who has material non-public information about a company, which is

obtained from the company or its representatives, from purchasing or selling securities of such company or from communicating the information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities and (b) is familiar with the United States Securities Exchange Act of 1934, as amended (the "Securities Exchange Act"), and the rules and regulations promulgated thereunder, and agrees that it will not use or communicate any confidential information to any person, under circumstances where it is reasonably likely that such person is likely to use or cause any person to use, any such confidential information in contravention of the Securities Exchange Act or any of its rules and regulations, including Rule 10b-5.

THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 1:00 P.M. PREVAILING EASTERN TIME ON MAY 24, 2011, UNLESS EXTENDED BY THE DEBTORS (THE "VOTING DEADLINE"). THE RECORD DATE FOR DETERMINING WHETHER A HOLDER OF A SECURED SENIOR CREDIT FACILITY CLAIM IS ENTITLED TO VOTE ON THE PLAN IS MAY 23, 2011 (THE "VOTING RECORD DATE").

THE DEBTORS ARE FURNISHING THIS DISCLOSURE STATEMENT TO EACH HOLDER OF A SECURED SENIOR CREDIT FACILITY CLAIM ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS DISCLOSURE STATEMENT IS TO BE USED BY EACH SUCH HOLDER SOLELY IN CONNECTION WITH ITS EVALUATION OF THE PLAN. USE OF THIS DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE IS NOT AUTHORIZED. WITHOUT THE PRIOR WRITTEN CONSENT OF THE DEBTORS, THIS DISCLOSURE STATEMENT MAY NOT BE REPRODUCED OR PROVIDED TO OTHERS (OTHER THAN THOSE ADVISORS OF ANY RECIPIENT OF THIS DISCLOSURE STATEMENT WHO MAY REVIEW THE INFORMATION CONTAINED HEREIN TO ASSIST SUCH RECIPIENT IN ITS EVALUATION OF THE PLAN).

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square
New York, New York 10036
(212) 735-3000
Mark A. McDermott
J. Gregory Milmoe

One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899
(302) 651-3000
Mark S. Chehi (I.D. No. 2855)

Counsel for Jackson Hewitt Tax Service Inc. and Subsidiaries

INTRODUCTION AND DISCLAIMER

Jackson Hewitt Tax Service Inc. ("Jackson Hewitt"), Jackson Hewitt Inc., Jackson Hewitt Technology Services LLC, Jackson Hewitt Corporate Services Inc., Tax Services of America, Inc., and Hewfant Inc. (collectively, the "Debtors" or the "Company") submit this Disclosure Statement to certain holders of claims in connection with the solicitation of acceptances of the proposed Joint Prepackaged Plan of Reorganization of Jackson Hewitt Tax Service Inc. and Subsidiaries, dated as of May 23, 2011, a copy of which is annexed hereto as Appendix A.[1] In particular, the Company is soliciting such acceptances from holders of secured obligations under that certain Amended and Restated Credit Agreement, dated as of October 6, 2006, as amended, by and among the Company; the lenders from time to time party thereto as lenders and various hedge counterparties (collectively, the "Lenders"); and Wells Fargo Bank, N.A., successor-by-merger to Wachovia Bank, National Association, as administrative agent (the "Administrative Agent") (the "Existing Credit Agreement").

THE TABLE SET FORTH BELOW SUMMARIZES THE CLASSIFICATION AND TREATMENT OF ALL PREPETITION CLAIMS AGAINST AND INTERESTS IN THE DEBTORS. FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ THIS DISCLOSURE STATEMENT, THE PLAN, AND THE APPENDICES AND EXHIBITS THERETO IN THEIR ENTIRETY. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, EACH CLASS CONSISTS OF SUB-CLASSES FOR EACH DEBTOR, AND EACH SUB-CLASS SHALL AND SHALL BE DEEMED TO BE A SEPARATE CLASS FOR ALL PURPOSES UNDER THE BANKRUPTCY CODE. A SCHEDULE OF THE SUB-CLASSES IS SET FORTH IN EXHIBIT D TO THE PLAN.

Description And Amount Of Claims Or Interests	Summary Of Treatment
Administrative Claims	An Administrative Claim is a claim for costs and expenses of administration of the chapter 11 cases. All Allowed Administrative Claims will be paid in full in cash on the Effective Date of the Plan. However, any Allowed Administrative Claim based on a liability incurred by a Debtor in the ordinary course of business during the chapter 11 cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreement or customary payment terms. **Estimated Recovery: 100%**

[1] All capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to such terms in the Plan.

Description And Amount Of Claims Or Interests	Summary Of Treatment
Priority Tax Claims	A Priority Tax Claim is a claim of a governmental unit for taxes accorded priority in right of payment under section 507(a)(8) of the Bankruptcy Code. The Debtors anticipate receiving authority, upon commencement of the chapter 11 cases, to pay all such Claims in the ordinary course, without interruption. To the extent any such Claim is not so paid, then on the Effective Date, each holder of an Allowed Priority Tax Claim shall have its claim Reinstated, which means that such holder's legal, equitable and contractual rights with respect to its Priority Tax Claim will be left unaltered and paid in the ordinary course, unless such holder and the Debtors agree to different treatment. **Estimated Recovery: 100%**
Class 1 – Other Priority Claims	An Other Priority Claim is a Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, including claims for wages, salaries, or commissions earned within 180 days before the petition date, subject to limitations set forth in the Bankruptcy Code. The Debtors anticipate receiving authority, upon commencement of the chapter 11 cases, to pay all known Other Priority Claims, including all employee-related obligations, in the ordinary course, without interruption. To the extent any such Claim is not so paid, then as soon as reasonably practicable after the Effective Date, each holder of an Allowed Other Priority Claim will be paid in full in cash. **Estimated Recovery: 100%**
Class 2 – Other Secured Claims	An Other Secured Claim is any claim that is secured by a lien on the Debtors' property, or that is subject to setoff, other than a Secured Senior Credit Facility Claim. On, or as soon as reasonably practicable after, the Effective Date, each Allowed Other Secured Claim shall be Reinstated, which means that its legal, equitable and contractual rights with respect to its Other Secured Claim will be left unaltered. **Estimated Recovery: 100%**
Class 3 – Secured Senior Credit Facility Claims (Estimated Amount of Senior Credit Facility Claims: $357 million)	A Senior Credit Facility Claim is a claim outstanding under the Existing Credit Agreement or held by a Lender or any hedge party under any related hedge agreement. The Senior Credit Facility Claims are secured by liens on all the Debtors' assets. As described below, the estimated mid-point value of the reorganized Debtors is approximately $225 million. Because this amount is less than the full face amount of such Claims, such Claims are deemed bifurcated into a secured claim, equal to the value of the Debtors, and an unsecured deficiency claim. The secured claim is included in Class 3 as a Secured Senior Credit Facility Claim. On, or as soon as reasonably practicable after, the Effective Date, each holder of an Allowed Secured Senior Credit Facility Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Claim, its pro rata share of (a) a new term loan facility (in the aggregate amount of $100

Description And Amount Of Claims Or Interests	Summary Of Treatment
	million) and (b) 100% of the new common stock of reorganized Jackson Hewitt (subject to dilution on account of a management incentive plan to be implemented by the new board of reorganized Jackson Hewitt). Holders of Secured Senior Credit Facility Claims will also be given the opportunity to participate in their pro rata share of a new $115 million revolving credit facility as described below. Those who participate will receive their pro rata share of cash on the Company's balance sheet in excess of $5 million. The unsecured deficiency claims of the holders of Senior Credit Facility Claims are classified with General Unsecured Claims below. The Lenders shall have the right, amongst themselves, to sell, trade or otherwise convey their specific allocations of new common stock and new term loans, before or after the Effective Date, and certain of such Lenders have already done so. Accordingly, actual percentage recoveries for any particular Lender may differ from the estimate below. **Estimated Recovery: 51.8%**
Class 4 – General Unsecured Claims Estimated Amount (other than the Lenders' deficiency claims): $3.5 million	A General Unsecured Claim means any claim other than an Administrative Claim, a Priority Tax Claim, an Other Priority Claim, an Other Secured Claim, a Secured Senior Credit Facility Claim, a Subordinated 510(b) Claim, or an Intercompany Claim. Such claims include deficiency claims of the Lenders in the estimated amount of approximately $172 million; trade claims; lease rejection claims; and disputed litigation claims. The holders of General Unsecured Claims will receive no recovery under the Plan. **Estimated Recovery: 0%**
Class 5 – Subordinated 510(b) Claims	A Subordinated 510(b) Claim is a claim arising from the purchase or sale, or the rescission of the purchase or sale, of equity securities or debt securities of Jackson Hewitt, and related claims. The holders of Subordinated 510(b) Claims will receive no recovery under the Plan. **Estimated Recovery: 0%**
Class 6 – Interests in Jackson Hewitt	An Interest in Jackson Hewitt is any equity security in Jackson Hewitt, including but not limited to stock, warrants and options. On the Effective Date, all Interests in Jackson Hewitt will be cancelled without further action by the Debtors or Reorganized Debtors. The holders of Interests in Jackson Hewitt will not receive or retain any property under the Plan. **Estimated Recovery: 0%**
Class 7 – Intercompany Claims	An Intercompany Claim is a claim of a Debtor against another Debtor. On or prior to the Effective Date, (i) the Intercompany Claim held by Jackson Hewitt Inc. against Jackson Hewitt shall either be Reinstated, in full or in part, or cancelled and discharged, in full or in part; (ii) the Intercompany Claim held by Jackson Hewitt Corporate Services Inc.

Description And Amount Of Claims Or Interests	Summary Of Treatment
	against Jackson Hewitt Inc. shall be Reinstated; and (iii) the Intercompany Claim held by Jackson Hewitt Inc. against Tax Services of America, Inc. shall be Reinstated. **Estimated Recovery: 0%**
Class 8 – Intercompany Interests	An Intercompany Interest is an Interest in a Debtor held by another Debtor. On the Effective Date, all Allowed Intercompany Interests will be Reinstated. **Estimated Recovery: 0%**

THE DEBTORS HAVE NOT COMMENCED CASES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AT THIS TIME. BECAUSE NO BANKRUPTCY CASES HAVE BEEN COMMENCED, THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY ANY BANKRUPTCY COURT AS CONTAINING "ADEQUATE INFORMATION" WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE. NONETHELESS, IF CHAPTER 11 CASES ARE SUBSEQUENTLY COMMENCED, THE DEBTORS INTEND TO SEEK PROMPTLY AN ORDER OF THE BANKRUPTCY COURT APPROVING THIS DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND DETERMINING THAT THE SOLICITATION OF VOTES ON THE PLAN BY MEANS OF THIS DISCLOSURE STATEMENT COMPLIED WITH SECTION 1126(b) OF THE BANKRUPTCY CODE.

THE CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO THE SATISFACTION OR WAIVER OF MATERIAL CONDITIONS PRECEDENT. THERE CAN BE NO ASSURANCE THAT THOSE CONDITIONS PRECEDENT WILL BE SATISFIED. THE DEBTORS CURRENTLY INTEND TO SEEK TO EFFECTUATE THE PLAN PROMPTLY AFTER CONFIRMATION OF THE PLAN. THERE CAN BE NO ASSURANCE, HOWEVER, AS TO WHEN AND WHETHER CONFIRMATION OF THE PLAN AND THE EFFECTIVE DATE ACTUALLY WILL OCCUR. PROCEDURES FOR DISTRIBUTIONS UNDER THE PLAN, INCLUDING MATTERS THAT ARE EXPECTED TO AFFECT (A) THE TIMING OF THE RECEIPT OF DISTRIBUTIONS BY HOLDERS OF CLAIMS IN CERTAIN CLASSES AND (B) THE AMOUNT OF DISTRIBUTIONS ULTIMATELY RECEIVED BY SUCH HOLDERS ARE DESCRIBED IN **SECTION IV — "SUMMARY OF THE PLAN OF REORGANIZATION."** IF THE PLAN IS NOT CONFIRMED AND/OR EFFECTUATED, THEN THE DEBTORS WILL HAVE TO CONSIDER ALL OF THEIR OPTIONS AS DEBTORS IN BANKRUPTCY.

NO PERSON IS AUTHORIZED BY THE DEBTORS IN CONNECTION WITH THE PLAN OR THE SOLICITATION TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION REGARDING THIS DISCLOSURE STATEMENT OR THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE APPENDICES ATTACHED HERETO OR INCORPORATED HEREIN BY REFERENCE OR REFERRED TO HEREIN. IF SUCH INFORMATION OR REPRESENTATION IS GIVEN OR MADE, IT MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DEBTORS.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. ANY CREDITOR OR INTEREST HOLDER DESIRING ANY SUCH ADVICE OR ANY OTHER ADVICE SHOULD CONSULT WITH ITS OWN ADVISORS.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE INFORMATION REGARDING THE COMPANY'S HISTORY, BUSINESS, AND OPERATIONS, IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN BUT, AS TO CONTESTED MATTERS AND ADVERSARY PROCEEDINGS THAT MAY BE PENDING AS OF THE FILING OF THE DEBTORS' CHAPTER 11 CASES OR COMMENCED AFTER THE FILING OF THE DEBTORS' CHAPTER 11 CASES, IS NOT TO BE CONSTRUED AS AN ADMISSION OR A STIPULATION BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, AND NOTHING STATED HEREIN CONSTITUTES AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR SHALL BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE COMPANY OR ANY OTHER PARTY, OR BE DEEMED A REPRESENTATION OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE COMPANY OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY THEIR NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. ALL HOLDERS OF SECURED SENIOR CREDIT FACILITY CLAIMS SHOULD CAREFULLY READ AND CONSIDER THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY, INCLUDING **SECTION V — "RISK FACTORS TO BE CONSIDERED,"** BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

EXCEPT WITH RESPECT TO THE "FINANCIAL PROJECTIONS" ATTACHED HERETO AS APPENDIX C AND EXCEPT AS OTHERWISE SPECIFICALLY AND EXPRESSLY STATED HEREIN (INCLUDING WITH RESPECT TO THE PLEADINGS THE DEBTORS EXPECT TO FILE IN THE CHAPTER 11 CASES), THIS DISCLOSURE STATEMENT DOES NOT REFLECT ANY EVENTS THAT MAY OCCUR SUBSEQUENT TO THE DATE HEREOF AND THAT MAY HAVE A MATERIAL IMPACT ON THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. ACCORDINGLY, THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT, UNDER ANY CIRCUMSTANCE, IMPLY THAT THE INFORMATION HEREIN IS CORRECT OR COMPLETE AS OF ANY TIME SUBSEQUENT TO THE DATE HEREOF.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, ALL INFORMATION CONTAINED HEREIN HAS BEEN PROVIDED BY THE DEBTORS. UNLESS SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTING FIRM.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS: This Disclosure Statement contains certain forward-looking statements, all of which are based on various estimates and assumptions. Such forward-looking statements are subject to inherent uncertainties and to a wide variety of significant business, economic, and competitive risks, including, among others, those summarized herein. *See* **Section V — "Risk Factors To Be Considered."** When used in this Disclosure Statement, the words "anticipate," "believe," "estimate," "will," "may," "intend," and "expect" and similar expressions generally identify forward-looking statements. Although the Debtors believe that their plans, intentions, and expectations reflected in the forward-looking statements are reasonable, they cannot be sure that they will be achieved. These statements are only predictions and are not guarantees of future performance or results. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated by a forward-looking statement. All forward-looking statements attributable to the Debtors or persons acting on their behalf are expressly qualified in their entirety by the cautionary statements set forth in this Disclosure Statement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, the Debtors expressly disclaim any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

TABLE OF CONTENTS

APPENDICES

APPENDIX A	Joint Prepackaged Plan of Reorganization
APPENDIX B	Liquidation Analysis
APPENDIX C	Financial Projections
APPENDIX D	Valuation Analysis
APPENDIX E	Plan Support Agreement

I. OVERVIEW OF THE COMPANY

This Disclosure Statement contains, among other things, descriptions and summaries of provisions of the Plan. Unless otherwise defined herein, all capitalized terms contained herein have the meanings ascribed to them in the Plan.

A. Corporate Structure

Jackson Hewitt Tax Service Inc. ("Jackson Hewitt"), the ultimate parent of the Jackson Hewitt family of companies, is a publicly-held Delaware corporation. It was incorporated on February 20, 2004, and was formed in connection with Jackson Hewitt's June 2004 initial public offering, which occurred when Cendant Corporation, now known as Avis Budget Group, Inc., divested 100% of its ownership interest in Jackson Hewitt. Since its initial public offering, Jackson Hewitt's stock was traded on the New York Stock Exchange. On May 6, 2011, however, Jackson Hewitt's stock was delisted. The stock is now quoted on the OTCQB Marketplace which is operated by OTC Markets Group Inc.

There are five direct and indirect subsidiaries of Jackson Hewitt: Jackson Hewitt Inc., Jackson Hewitt Technology Services LLC, Jackson Hewitt Corporate Services Inc, Tax Services of America, Inc. and Hewfant Inc. While the corporate family is comprised of six separate entities, they collectively operate a unitary business enterprise. For instance, Jackson Hewitt Technology Services LLC supports the technology needs of all franchised and company-owned locations (discussed further below), and Tax Services of America, Inc. owns and operates the company-owned locations. The Company's executive offices are located at 3 Sylvan Way, Parsippany, New Jersey 07054. The Company's telephone number is (973) 630-1040. The Company's internet address is www.jacksonhewitt.com.

B. Business Operations

The Company provides computerized preparation services for federal, state and local individual income tax returns in the United States through a nationwide network of franchised and company-owned offices operating under the brand name Jackson Hewitt Tax Service. The market for paid tax preparation services is highly fragmented, with tens of thousands of paid tax return preparers throughout the country. The Company is the second largest paid tax return preparer in the United States, having prepared approximately 2.6 million tax returns for the 2011 tax season, which is between 3% and 4% of the total market for paid tax return preparation services.

The core of the Company's business is its franchise network. As of the date hereof, the Company had approximately 700 franchisees who collectively operated a total of 4,846 offices. In 2011, the franchisees prepared approximately 84% of the total number of tax returns prepared by the Company. The franchise business generates revenue for the Company from royalties, marketing and advertising fees, and other revenue. In 2010, this revenue constituted approximately 44% of the Company's total revenue.

The Company also operates approximately 1,110 company-owned offices. These company-owned offices recognize service revenues primarily from the preparation of tax returns. In 2010, revenue from company-owned offices constituted approximately 34% of the Company's total revenue. The balance of the Company's 2010 revenues, which comprised approximately 22% of total revenue in 2010, was derived principally from the sale, by third-party financial institutions, of financial products, including, in particular, assisted refunds ("ARs") and refund anticipation loans ("RALs") in Jackson Hewitt Tax Service locations.

ARs enable customers to pay for tax return preparation fees and other charges out of their tax refunds, so that no out-of-pocket payment is required at the time of tax preparation. Pursuant to this arrangement, the bank establishes a temporary bank account to enable a more accelerated receipt of tax refund amounts than receiving a check in the mail from the Internal Revenue Service ("IRS"). A RAL is a short-term consumer loan made by a third-party financial institution to a customer in anticipation of a refund being paid by the IRS. The customer receives the loan amount within 24 hours of filing his or her tax return, and the loan is repaid when the IRS funds the tax refund. The RAL is secured by the customer's anticipated tax refund.

Another critically important and highly successful aspect of the Company's business is its relationship with Wal-Mart. In 2010, the Company entered into an arrangement with Wal-Mart which granted the Company the exclusive right to provide tax preparation services within Wal-Mart stores during the 2010 and 2011 tax seasons. This led to a significant increase in the number of Company locations. In 2011, the Company, through its franchisees and company-owned stores, operated tax preparation kiosks in over 2,000 Wal-Mart stores. Approximately 24% of the tax returns prepared by the Company in 2011 were generated in Wal-Mart stores.

The Company's business is highly seasonal resulting in substantially all of the Company's revenues and cash flow being generated during the period from January 1st through April 30th of each year, and the Company's workforce also peaks during this period. From May 1, 2010 to April 30, 2011, the Company employed approximately 6,000 employees, but approximately 95% of these employees were hired on a temporary seasonal basis. During the off-season, however, the number of employees is reduced significantly, and is comprised of approximately 315 full-time employees, principally at its corporate headquarters in Parsippany, New Jersey and its technology facility in Sarasota, Florida. The Company generally operates at a loss during the period from May 1st through December 31st, during which time the Company incurs costs associated with preparing for the upcoming tax season.

For fiscal year 2011, the Company estimates that it will generate total revenue of approximately $214.4 million and EBITDA, adjusted for non-recurring items and costs associated with its balance sheet restructuring, of approximately $48.3 million. As of April 30, 2010, which was the end of the Company's 2010 fiscal year, the Company had generated total revenue of approximately $213.8 million and EBITDA of approximately $46.8 million. It had a net loss of approximately $272 million in 2010, largely on account of a goodwill impairment charge of approximately $274 million. At that time, the Debtors had total assets of approximately $346.4 million, and total liabilities of approximately $372 million, in each case as determined in accordance with generally accepted accounting principles.

C. Capital Structure

Jackson Hewitt and its subsidiaries are parties to the Existing Credit Agreement. As of the date hereof, the Company was obligated on (i) approximately $214.4 million principal amount of term loans under the Existing Credit Agreement, (ii) approximately $141 million principal amount of outstanding revolver loans under the Existing Credit Agreement (including capitalized PIK interest, but excluding earned but unpaid cash interest), and (iii) approximately $1.9 million under related hedge agreements, for a total of approximately $357 million. On May 27, 2011, a $30 million amortization payment is due under the Existing Credit Agreement. The balance of the Debtors' obligations under the Existing Credit Agreement is scheduled to mature a few months from now, on October 6, 2011.

The obligations under the Existing Credit Agreement are secured by a first priority lien on substantially all of the Company's assets. The total enterprise value of the Company is estimated in a range between $200 million and $250 million with a mid-point of $225 million. The Lenders have an unsecured deficiency claim of approximately $172 million, which makes them the Debtors' largest unsecured creditors: the Company has no other funded debt obligations, and as of the date hereof, the Company was obligated on a relatively small amount of outstanding trade debt.

D. Events Leading to the Company's Need to Restructure

The Debtors need to restructure their affairs because they can no longer sustain the amount of their debt obligations under the Existing Credit Agreement. The Debtors incurred these debt obligations at a time when their EBITDA was significantly higher than it is now. Specifically, the Debtors' 2009 EBITDA was approximately $75 million, but it dropped to $46.8 million in 2010 and is estimated to be $48.3 million for 2011. The Debtors' declining EBITDA has been driven by several factors, including a several-year decline in the number of tax returns prepared year-over-year and overall operating performance. While the Debtors reversed this trend for the 2011 tax season, the increase in returns over the 2010 tax season was relatively modest. These factors have driven the Debtors' enterprise value down significantly, such that there is insufficient value to pay in full the Lenders under the Existing Credit Agreement.

Moreover, in preparing their go-forward business plan and projections, the Debtors have assumed significantly lower revenues on account of financial products, including no revenues at all on account of RALs. During the last two tax seasons, most lenders who historically provided RALs have exited the business. During the 2011 tax season, H&R Block, the largest paid tax return preparer in the United States, did not provide RALs to its customers. Jackson Hewitt had only one source of RAL products in 2011, and it is doubtful whether that source will provide RALs in 2012.

Accordingly, given significantly lower historical and projected EBITDA levels and hence, an enterprise value that is significantly less than the amount of the debt under the Existing Credit Agreement, and also given the maturity of the Existing Credit Agreement in October of this year, the Company determined that it was in the best interests of its stakeholders to work with the Lenders on a consensual restructuring, which is embodied in the Plan.

E. The Proposed Restructuring Plan

As a general matter, the Plan provides for a balance sheet restructuring whereby (i) the Debtors' outstanding obligations under the Existing Credit Agreement will be forgiven in exchange for each Lender receiving (a) its pro rata share of 100% of the new common stock issued by reorganized Jackson Hewitt, subject to dilution on account of a management incentive plan, (b) its pro rata share of a new term loan facility in the amount of $100 million, and (c) the opportunity to participate pro rata in a new revolving credit facility in the amount of $115 million, and (ii) all existing, outstanding shares of Jackson Hewitt stock and all rights and options to acquire Jackson Hewitt stock, will be cancelled. The terms of the new term loan facility are described in Exhibit A to the Plan and the terms of the New Revolving Credit Facility are described in Exhibit B to the Plan.

The Plan also provides that the Debtors will (a) reject certain unfavorable executory contracts and unexpired leases and (b) assume all of their franchise agreements with their franchisees. Holders of general unsecured claims, including the Lenders, as holders of deficiency claims under the Existing Credit Agreement, will receive no recovery. In addition, on the Effective Date of the Plan, the Debtors and the Lenders will enter into a shareholders' agreement. The material terms and conditions of the shareholders' agreement are set forth in the term sheet attached to the Plan as Exhibit C.

F. Objectives of the Chapter 11 Filing

In connection with the solicitation of votes on the Plan, the Debtors and certain Lenders entered into a plan support agreement pursuant to which the Lenders agreed to support the Plan. Accordingly, assuming the Debtors receive requisite votes accepting the Plan, the Debtors intend to commence chapter 11 cases to implement the Plan as quickly as possible. A copy of the plan support agreement, without exhibits, is attached hereto as Appendix E.

While there is no value for the Debtors' existing stockholders or impaired creditors other than the Lenders, the Debtors strongly believe that the Plan is in the collective best interests of all their stakeholders, including their franchisees, and should be approved. The Plan, if confirmed, will end a prolonged period of uncertainty regarding the Debtors' future prospects by appropriately right-sizing their balance sheet. While RALs may not be part of the Debtors' long-term future, the core tax preparation business remains. Demand will continue for these services. In 2010, more than 139 million tax returns were filed in the United States – historically, 60% or more of all such tax returns have been prepared with the assistance of a paid tax return preparer.

It is imperative that the Debtors exit chapter 11 quickly. While the 2011 tax season has just concluded, preparations for the 2012 tax season must commence immediately. However, these preparations will be negatively affected the longer the Debtors are in chapter 11. Indeed, the Company has aggressive plans for expansion in anticipation of the 2012 tax season, which it must begin to implement now. Confirmation of the Plan will bring closure to the uncertainty that has plagued them for the last several years, thereby allowing the Debtors to move forward towards the 2012 tax season and beyond.

II. PLAN VOTING INSTRUCTIONS AND PROCEDURES

A. Notice to the Lenders

This Disclosure Statement is being transmitted to the Lenders, who are the holders of Class 3 Secured Senior Credit Facility Claims. They are the only creditors entitled to vote on the Plan. The purpose of this Disclosure Statement is to provide adequate information to enable such holders to make a reasonably informed decision with respect to the Plan prior to exercising their right to vote to accept or reject the Plan. With the exception of Class 4 General Unsecured Claims, Class 5 Subordinated 510(b) Claims and Class 6 Interests in Jackson Hewitt, all other Classes are Unimpaired under the Plan and the holders of Claims and Interests in such classes are deemed to have accepted the Plan.

B. Solicitation Package

In soliciting votes for the Plan pursuant to this Disclosure Statement from the Lenders, the Debtors also will send copies of the Plan (attached hereto as Appendix A) and a Ballot to be used by holders of Claims in such Class to vote to accept or reject the Plan.

C. Voting Procedures and Voting Deadline

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot. Please complete and sign your Ballot and return your Ballot to the Garden City Group, Inc. (the "Voting Agent") either by fax to the fax number set forth below; email, to the email address set forth below; or by hand delivery during customary business hours, or overnight courier to the address set forth below, so that it is received by the Voting Deadline.

THE VOTING DEADLINE IS 1:00 P.M. PREVAILING EASTERN TIME ON MAY 24, 2011, UNLESS EXTENDED BY THE DEBTORS. THE VOTING RECORD DATE FOR DETERMINING WHETHER A HOLDER OF A SECURED SENIOR CREDIT FACILITY CLAIM IS ENTITLED TO VOTE ON THE PLAN IS MAY 23, 2011. FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN THE VOTING DEADLINE BY THE VOTING AGENT AT THE ADDRESS, FAX NUMBER OR EMAIL ADDRESS SET FORTH BELOW.

The Garden City Group, Inc.
Attn: JHT Ballot Processing
1985 Marcus Avenue, Suite 200
Lake Success, NY 11042
(888) 476-7162
JHTSolicitation@gcginc.com

If you have any questions about the procedure for voting your Claim, the packet of materials that you have received or the amount of your Claim, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendices or exhibits to such documents, please contact the Voting Agent as follows:

By Email: JHTSolicitation@gcginc.com
By Phone: (631) 470-1889 (Patrick Leathem)
(631) 470-1866 (Craig Johnson)
(631) 470-6834 (Jeff Stein)

Except as provided below, unless the Ballot is timely submitted to the Voting Agent before the Voting Deadline or the Bankruptcy Court orders otherwise, the Debtors may, in their sole discretion, reject such Ballot as invalid, and therefore decline to utilize it in connection with seeking confirmation of the Plan. In the event of a dispute with respect to any Claim, any vote to accept or reject the Plan cast with respect to such Claim will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Bankruptcy Court orders otherwise.

D. Revocation; Waivers of Defects; Irregularities

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, revocation, or withdrawal of Ballots will be determined by the Voting Agent and the Debtors in their sole discretion, which determination will be final and binding. Once a party delivers a valid Ballot for the acceptance or rejection of the Plan, such party may not withdraw or revoke such acceptance or rejection without the Debtors' written consent or an order of the Bankruptcy Court. The Debtors also reserve the right to reject any and all Ballots not in proper form, the acceptance of which would, in the opinion of the Debtors or their counsel, be unlawful.

The Debtors further reserve the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. The interpretation (including the Ballot and the respective instructions therein) by the Debtors, unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtors (or the Bankruptcy Court) determine. Neither the Debtors nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will be invalidated.

E. Confirmation Hearing and Deadline for Objections to Confirmation

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a Confirmation Hearing. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. If and when the Debtors file petitions for relief under chapter 11 of the Bankruptcy Code, they will request that the Bankruptcy Court schedule a Confirmation Hearing to consider the adequacy of this Disclosure Statement and to confirm the Plan. Notice of the Confirmation Hearing will be provided to holders of Claims and Interests or their representatives (the "Confirmation Hearing Notice") pursuant to an order of the Bankruptcy Court. Objections to Confirmation must be filed with the Bankruptcy Court by the date designated in the Confirmation Hearing Notice and are governed by Bankruptcy Rules 3020(b) and 9014 and the local rules of the Bankruptcy Court. UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, SUCH OBJECTION TO CONFIRMATION MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AT THE CONFIRMATION HEARING.

III. THE ANTICIPATED CHAPTER 11 CASES

If the Debtors receive the requisite acceptances in response to the Solicitation occurring pursuant to this Disclosure Statement, the Debtors intend promptly to commence the Chapter 11 Cases. From and after the Petition Date, the Debtors intend to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors do not expect the Chapter 11 Cases to be protracted. To ease their transition into Chapter 11 and to expedite their emergence from Chapter 11, the Debtors intend to seek from the Bankruptcy Court, among other things, the relief detailed below on the Petition Date. If granted, this relief will facilitate the administration of the Chapter 11 Cases. There can be no assurance, however, that the Bankruptcy Court will grant the requested relief. The Debtors may also seek various other forms of administrative and other relief in the early stages of the Chapter 11 Cases.

A. Motions to be Filed on the Petition Date

1. *Motion to Approve Combined Disclosure Statement and Confirmation Hearing*

The Debtors expect to seek an order (i) scheduling a combined Confirmation Hearing and hearing on the adequacy of this Disclosure Statement on the earliest date which is convenient for the Bankruptcy Court (the "Combined Hearing"); (ii) approving the objection deadline and procedures with respect to the Combined Hearing; and (iii) approving the form and manner of notice of the Combined Hearing and the commencement of the Debtors' chapter 11 cases, including a publication notice program to provide notice to unknown creditors. At the Combined Hearing, the Debtors will seek approval of this Disclosure Statement and confirmation of the Plan pursuant to sections 1125, 1128, and 1129 of the Bankruptcy Code. At that time, the Debtors also expect to request the Bankruptcy Court to approve the prepetition solicitation of votes on the Plan.

2. *Motion to Use Cash Collateral*

The Debtors expect to seek authority to use their cash collateral in order to continue their business operations. The Debtors expect to seek authorization to use only such amounts of cash collateral as are necessary or appropriate to continue to operate their businesses in the ordinary course and to avoid any immediate and irreparable harm to their businesses. In exchange for the use of such cash collateral, the Debtors will offer to the Lenders and the Administrative Agent adequate protection in the form of, *inter alia*, replacement liens, superpriority claims and payment of the fees and expenses of the Lenders.

3. *Motion to Continue Using Existing Cash Management Systems*

Because the Debtors expect the Chapter 11 Cases to be pending for approximately 45 days, and because of the administrative hardship that any operating changes would impose, the Debtors expect to seek authority to continue using their existing cash management system, bank accounts, and business forms. Absent the Bankruptcy Court's authorization of the continued use of the cash management system, the Debtors' cash flow could be impeded to the detriment of the Debtors' Estates and their creditors.

4. *Motion to Waive Investment and Deposit Requirements*

The Debtors will seek to waive the investment and deposit requirements imposed by Bankruptcy Code section 345, to the extent that their investment and deposit practices do not conform to such requirements, so as to allow the applicable banking institutions to accept and hold the Debtors' funds consistent with prepetition practices. This relief will enable the Debtors to maintain their centralized cash management system which is inextricably intertwined with their prepetition investment and deposit practices.

5. *Motion for Authority to Pay Prepetition Employee Compensation and Associated Benefits*

The Debtors have a valuable asset in their work force and believe that any delay in paying prepetition compensation or benefits to their employees would destroy their relationships with such employees and irreparably harm employee morale at a time when the continued dedication, confidence and cooperation of their employees is most critical. Accordingly, the Debtors expect to seek authority to pay compensation and benefits which were accrued but unpaid as of the Petition Date, and, through a separate interim motion, authority to continue to pay compensation and benefits which were accrued but unpaid as of the Petition Date during the period between the Petition Date and the hearing on the "first day" motions.

6. *Franchisee/Customer Motion*

In order to maintain the loyalty of their franchisees and customers, the Debtors will seek authority to continue to perform their prepetition and postpetition obligations arising under their franchisee and customer programs. The franchisee programs include, but are not limited to, the regional marketing corporate matching program, the electronic filing fee rebate program and the royalty growth incentive program and the customer programs include, but are not limited to, various guarantee programs. This relief will enable the Debtors to maintain relationships with their franchisees and customers during the pendency of the Chapter 11 Cases, which will, in turn, preserve the value of the Debtors' businesses.

7. *Motion to Pay Taxes/Regulatory Expenses*

The Debtors expect to seek authority to pay prepetition sales taxes, use taxes, and property taxes regardless of when incurred, to the appropriate taxing, licensing and other governmental authorities, and to continue to honor related obligations under surety contracts and to post additional collateral as requested in the ordinary course of the Debtors' businesses and consistent with their past practices.

8. *Motion to Maintain Insurance Policies*

In connection with the operation of their business, the Debtors maintain various insurance policies. Maintenance of insurance is essential to the continued operation of the Debtors' business, and is required under the United States Trustee's Operating Guidelines for Chapter 11 Cases and the laws of the various states in which the Debtors operate. Accordingly, the Debtors will request authority to continue to honor obligations under and related to their insurance policies, and to renew, revise, extend, supplement, change or obtain new insurance coverage, as needed in their business judgment.

9. *Adequate Assurance of Utilities*

In connection with the operation of their businesses and management of their properties, the Debtors obtain electricity, natural gas, water, telephone and other similar services from many different utility companies. Historically, the Debtors have paid these utility companies timely. The Debtors expect to move the Bankruptcy Court on the Petition Date to enter an order approving, as adequate assurance of payment for the utility companies, a cash deposit of $200,000 in the aggregate into a newly created, interest-bearing, segregated account. The amount of the deposit equals the estimate aggregate cost for half of one month of utility services, calculated based on the cost of utility services in May 2010. Further, the motion will request an order prohibiting the utility companies from altering, refusing, or discontinuing services. The Debtors believe that uninterrupted utility services are essential to the Debtors' ongoing operations and, therefore, to the success of the Debtors' reorganization. The Debtors will also seek authority to continue to pay the prepetition and postpetition claims of the utility companies as they become due in the ordinary course of business.

10. *Motion to Reject Unexpired Leases of Nonresidential Real Property*

The Debtors will seek authority to reject certain unexpired leases of nonresidential real property governing premises at which the Debtors no longer conduct business as of the Petition Date and to abandon any equipment, furniture, fixtures, and/or any other personal property located at any of the premises in order to avoid incurring unnecessary costs for facilities that provide no tangible benefit to the Debtors' estates. This relief will relieve the Debtors from their obligations to pay rent, as well as certain other costs including, but not limited to, taxes, insurance, utilities, maintenance and operating expenses associated with the leases, and save the Debtors' bankruptcy estates considerable administrative costs.

11. *Other "First Day" Motions*

Upon the commencement of the Chapter 11 Cases, the Debtors also intend to seek court approval to provide for, among other things:

- the extension of the deadlines to file schedules and statements, and ultimate waiver if the Plan is effectuated;
- joint administration of the Debtors' Chapter 11 Cases; and
- retention of professionals.

B. Anticipated Timetable for the Chapter 11 Cases

The Debtors anticipate that the hearing to consider the adequacy of the Disclosure Statement and confirmation of the Plan will occur within 30 to 45 days after the Petition Date. There can be no assurance, however, that the Bankruptcy Court will permit the chapter 11 cases to proceed as expeditiously as anticipated. Assuming that the Plan is confirmed at that hearing, the Plan provides that the Effective Date will be the first business day on which all conditions to the Plan's effectiveness (as set forth in Article VIII of the Plan) have been satisfied or waived. *See* **Section IV.E.1 — "Summary Of The Plan Of Reorganization – Confirmation And Consummation Of The Plan – Condition To Confirmation."** Based upon information currently available, the Debtors believe that the Effective Date could occur shortly after the Confirmation Date. There can be no assurance, however, that this projected timetable can be achieved.

IV. SUMMARY OF THE PLAN OF REORGANIZATION

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in the documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or the documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statements of such terms and provisions. The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtors under the Plan and will, upon the Effective Date, be binding upon all holders of Claims against and Interests in the Debtors and their Estates, the Reorganized Debtors, and other parties in interest. In the event of any conflict between this Disclosure Statement, on the one hand, and the Plan or any other operative document, on the other hand, the terms of the Plan and such other operative document are controlling.

A. Overview of Chapter 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize or liquidate its business for the benefit of itself, its creditors, and its interest holders. Another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated interest holders with respect to the distribution of a debtor's assets. The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan of reorganization or liquidation is the principal objective of a chapter 11 case. The plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan by the Bankruptcy Court makes that plan binding upon the debtor and any creditor of or equity security holder in the debtor, whether or not such creditor or equity security holder (i) holds a claim or interest that is impaired under the plan; (ii) has voted to accept or reject the plan; or (iii) receives or retains any property under the plan.

B. Classification and Settlement and Treatment of Claims and Interests

The Plan, though proposed jointly, constitutes separate plans proposed by each of the Debtors. Therefore, except as expressly specified in the Plan, the classifications set forth below shall be deemed to apply separately with respect to each plan proposed by each Debtor.

The Plan classifies Claims and Interests separately and provides different treatment for different Classes of Claims and Interests in accordance with the Bankruptcy Code. As described more fully below, the Plan provides, separately for each Class, that holders of Claims and Interests will receive types of consideration based on the different rights of the holders of Claims or Interests in each Class. Except as otherwise provided in the Plan, each Class consists of sub-Classes for each Debtor, and each sub-Class shall and shall be deemed to be a separate Class for all purposes under the Bankruptcy Code. A schedule of the sub-Classes is set forth in Exhibit D to the Plan. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date. Each reference to "Class" or "Classes" shall include all sub-Classes of the respective Class or Classes, as applicable.

Moreover, the Plan implements a compromise and settlement with respect to the Senior Credit Facility Claims, Intercompany Claims, and Intercompany Interests. Pursuant to Bankruptcy Rule 9019 and section 1123(b)(3) of the Bankruptcy Code, the Plan shall constitute a motion for approval of, and the Confirmation Order shall authorize and constitute Bankruptcy Court approval of, such settlement. In particular, the Lenders' Senior Credit Facility Claims are secured by liens on all the Debtors' assets, including all Cash, the Cash Collateral Account, Intercompany Claims, and Intercompany Interests. However, the estimated value of the Debtors is significantly less than the face amount of the Senior Credit Facility Claims. While there is, therefore, no value available for holders of Intercompany Claims and Intercompany Interests, the Lenders nonetheless have agreed to the treatments specified below for such Claims and Interests in order to preserve the Debtors' historical corporate structure and intercompany relationships.

1. *Treatment Of Unclassified Claims*

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified and are not entitled to vote on the Plan.

(a) Administrative Claims. On, or as soon as reasonably practicable after, the later of (a) the Effective Date, (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, or (c) the date on which an Allowed Administrative Claim becomes payable under any agreement relating thereto, each holder of such Allowed Administrative Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Administrative Claim, cash equal to the unpaid portion of such Allowed Administrative Claim. Notwithstanding the foregoing, (x) any Professional Fee Claim shall not be paid except in accordance with an order of the Bankruptcy Court permitting such payment, (y) any Allowed Administrative Claim based on a liability incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreement relating thereto and (z) any Allowed Administrative Claim may be paid on such other terms as may be agreed to between the holder of such Allowed Administrative Claim and the Debtors or the Reorganized Debtors.

(b) Priority Tax Claims. The legal and equitable rights of the holders of Priority Tax Claims are Unimpaired by the Plan. Unless the holder of an Allowed Priority Tax Claim and the Debtors agree to a different treatment, on the Effective Date, each holder of an Allowed Priority Tax Claim shall have such Claim Reinstated.

2. *Classification And Treatment Of Claims And Interests*

(a) Summary Of Classes

Class	**Designation**	**Impairment**	**Entitled to Vote**
Class 1	Other Priority Claims	Unimpaired	No (deemed to accept)
Class 2	Other Secured Claims	Unimpaired	No (deemed to accept)
Class 3	Secured Senior Credit Facility Claims	Impaired	Yes
Class 4	General Unsecured Claims	Impaired	No (deemed to reject)
Class 5	Subordinated 510(b) Claims	Impaired	No (deemed to reject)
Class 6	Interests in Jackson Hewitt	Impaired	No (deemed to reject)
Class 7	Intercompany Claims	Unimpaired	No (deemed to accept)
Class 8	Intercompany Interests	Unimpaired	No (deemed to accept)

(b) Treatment Of Classes

(i) Class 1 – Other Priority Claims. Class 1 consists of separate sub-Classes for all Other Priority Claims that may exist against each Debtor, respectively. On, or as soon as reasonably practicable after, (a) the Effective Date if such Other Priority Claim is an Allowed Other Priority Claim on the Effective Date or (b) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, each holder of an Allowed Class 1 Other Priority Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Other Priority Claim, cash equal to the unpaid portion of such Allowed Other Priority Claim.

(ii) Class 2 – Other Secured Claims. Class 2 consists of separate sub-Classes for all Other Secured Claims that may exist against each Debtor, respectively. On, or as soon as reasonably practicable after, the Effective Date, each holder of an Allowed Class 2 Other Secured Claim shall be Reinstated.

(iii) Class 3 – Secured Senior Credit Facility Claims. Class 3 consists of separate sub-Classes for all Secured Senior Credit Facility Claims against each Debtor, respectively. The Senior Credit Facility Claims are Allowed Claims, for all purposes, in the amount of no less than $357 million and shall not be subject to any avoidance, reductions, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, objection, or any other challenges under any applicable law or regulation by any person or entity. On, or as soon as reasonably practicable after, the Effective Date, each holder of an Allowed Class 3 Secured Senior Credit Facility Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Secured Senior Credit Facility Claim, (i) its pro rata share of the New Term Loan Facility; (ii) its pro rata share of 100% of the New Common Stock, subject to dilution on account of the Management Incentive Plan; and (iii) an opportunity elect to participate pro rata in the New Revolving Credit Facility (and receive the associated pro rata distribution of Cash, as set forth in Section 5.3 of the Plan if such holder elects to so participate).

(iv) Class 4 – General Unsecured Claims. Class 4 consists of separate sub-Classes for all General Unsecured Claims that may exist against each Debtor, respectively. The holders of Class 4 General Unsecured Claims shall not receive or retain any property under the Plan on account of such Class 4 General Unsecured Claims.

(v) Class 5 – Subordinated 510(b) Claims. Class 5 consists of all Subordinated 510(b) Claims. This Class is applicable only to the Chapter 11 Case of Jackson Hewitt. The holders of Class 5 Subordinated 510(b) Claims shall not receive or retain any property under the Plan on account of such Class 5 Subordinated 510(b) Claims.

(vi) Class 6 – Interests in Jackson Hewitt. Class 6 consists of all Interests in Jackson Hewitt. This Class is applicable only to the Chapter 11 Case of Jackson Hewitt. On the Effective Date, all Class 6 Interests in Jackson Hewitt shall be cancelled without further action by the Debtors or Reorganized Debtors. The holders of Class 6 Interests in Jackson Hewitt shall not receive or retain any property under the Plan on account of such Class 6 Interests in Jackson Hewitt.

(vii) Class 7 – Intercompany Claims. Class 7 consists of three sub-Classes each consisting of the following Claims, respectively: (i) the Intercompany Claim held by Jackson Hewitt Inc. against Jackson Hewitt; (ii) the Intercompany Claim held by Jackson Hewitt Corporate Services Inc. against Jackson Hewitt Inc.; and (iii) the Intercompany Claim held by Jackson Hewitt Inc. against Tax Services of America, Inc. On or prior to the Effective Date, (i) the Allowed Intercompany Claim held by Jackson Hewitt Inc. against Jackson Hewitt shall either be Reinstated, in full or in part, or cancelled and discharged, in full or in part; (ii) the Allowed Intercompany Claim held by Jackson Hewitt Corporate Services Inc. against Jackson Hewitt Inc. shall be Reinstated;

and (iii) the Allowed Intercompany Claim held by Jackson Hewitt Inc. against Tax Services of America, Inc. shall be Reinstated.

(viii) Class 8 – Intercompany Interests. Class 8 consists of five sub-Classes each consisting of the following Intercompany Interests, respectively: (i) Jackson Hewitt's Intercompany Interests in Jackson Hewitt Inc.; (ii) Jackson Hewitt Inc.'s Intercompany Interests in Jackson Hewitt Technology Services LLC; (iii) Jackson Hewitt Inc.'s Intercompany Interests in Jackson Hewitt Corporate Services Inc.; (iv) Jackson Hewitt Inc.'s Intercompany Interests in Tax Services of America, Inc.; and (v) Jackson Hewitt Inc.'s Intercompany Interests in Hewfant Inc. On the Effective Date, the Allowed Class 8 Intercompany Interests shall be Reinstated and the legal, equitable, and contractual rights to which the holders of such Allowed Class 8 Intercompany Interests are entitled shall remain unaltered.

(c) Alternative Treatment. Notwithstanding any provision herein to the contrary, any holder of an Allowed Claim may receive, instead of the distribution or treatment to which it is entitled hereunder, any other distribution or treatment to which it and the Debtors or the Reorganized Debtors may agree in writing.

(d) Special Provision Regarding Unimpaired Claims. Except as otherwise provided in the Plan, nothing shall affect the Debtors' or the Reorganized Debtors' rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including but not limited to all rights with respect to legal and equitable defenses to setoffs against or recoupments of Unimpaired Claims.

(e) Procedures For Resolving Disputed, Contingent, And Unliquidated Claims. The Debtors and the Reorganized Debtors may contest the amount and validity of any disputed, contingent or unliquidated Claim in the ordinary course of business in the manner and venue in which such Claim would have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced.

3. *Acceptance Or Rejection Of The Plan*

(a) Acceptance By Class Entitled To Vote. Class 3, which is the only Impaired Class of Claims of the Debtors that is entitled to receive or retain property or any interest in property under the Plan, is entitled to vote to accept or reject the Plan. Class 3 shall have accepted the Plan if (i) the holders of at least two-thirds in amount of the Allowed Claims actually voting in the Class have voted to accept the Plan and (ii) the holders of more than one-half in number of the Allowed Claims actually voting in the Class have voted to accept the Plan, not counting the vote of any holder designated under section 1126(e) of the Bankruptcy Code.

(b) Presumed Acceptance Of The Plan. Classes 1, 2, 7, and 8 are Unimpaired. Therefore, such Classes are deemed to have accepted the Plan by operation of law and are not entitled to vote to accept or reject the Plan.

(c) Presumed Rejection Of The Plan. Classes 4, 5, and 6 are Impaired. Therefore, such Classes are deemed to have rejected the Plan by operation of law and are not entitled to vote to accept or reject the Plan.

(d) Elimination Of Classes. To the extent applicable, any Class (including, for the avoidance of doubt, any sub-Class) that does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, shall be deemed to have been deleted from the Plan for purposes of (i) voting to accept or reject the Plan and (ii) determining whether it has accepted or rejected the Plan under section 1129(a)(8) of the Bankruptcy Code.

(e) Cramdown. The Debtors shall request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

4. *Means For Implementation Of The Plan*

(a) Continued Legal Existence. Except as otherwise provided in the Plan, each of the Debtors will continue to exist after the Effective Date as a separate legal entity, with all the powers of such an entity (whether a corporation, limited liability company or other entity, as appropriate) under applicable law in the jurisdiction in which each applicable Debtor is incorporated or otherwise formed and pursuant to such Debtor's certificate or articles of incorporation and by-laws or other organizational documents in effect prior to the Effective Date, without prejudice to any right to terminate such existence (whether by merger or otherwise) under applicable law after the Effective Date.

(b) Sources Of Cash For Distribution. All cash necessary for the Reorganized Debtors to make payments required by the Plan shall be obtained from (i) existing cash balances, including balances in the Cash Collateral Account, (ii) the operations of the Debtors or Reorganized Debtors and (iii) the New Revolving Credit Facility.

(c) New Revolving Credit Facility. All Lenders will be given the opportunity to participate in the New Revolving Credit Facility on a pro rata basis based upon the amount of their Secured Senior Credit Facility Claims. To the extent the New Revolving Credit Facility is not fully subscribed, subscribing Lenders will "flex" their pro rata share thereof by 10% (by way of example, a 15% Lender would flex to 16.5%). To the extent the New Revolving Credit Facility remains not fully subscribed after such "flex", subscribing Lenders electing to do so may, but shall not be obligated to, further subscribe on a pro rata basis. In exchange for providing the New Revolving Credit Facility, such Lenders will receive (on a pro rata basis based upon their participation in the New Revolving Credit Facility) the Cash on the Reorganized Debtors' balance sheet (including any Cash in the Cash Collateral Account) in excess of $5 million as of the Effective Date. On the Effective Date, the New Revolving Credit Facility will be deemed drawn in an amount (the "Initial Draw") that shall be the lesser of (i) the actual amount of Cash collateral used by the Debtors between April 30, 2011 and the Effective Date (the "Actual Draw") and (ii) an amount based upon the Debtors' projected revolver draw (the "Projected Draw") as set forth on the Projected Draw Schedule attached to the Plan as Exhibit A, provided that during the period between the Petition Date and the Effective Date, all expenses of the Debtors and their estates, other than those related to professional fees, shall be in amounts consistent with the Debtors' ordinary course of operations and the cash budget approved pursuant to the terms of any cash collateral order. If the Initial Draw is deemed to be the Projected Draw and the Effective Date falls between two dates shown on the Projected Draw Schedule, the amount of the Initial Draw shall be prorated based upon the number of days between such Effective Date and the scheduled dates such Effective Date falls between.

(d) Approval And Authorization For The New Term Loan Facility And New Revolving Credit Facility. Confirmation shall be deemed approval of the New Term Loan Facility and the New Revolving Credit Facility and authorization for the Reorganized Debtors to enter into the New Term Loan Facility and the New Revolving Credit Facility and execute such documents as may be required to effectuate the treatment afforded to the Lenders pursuant to the New Term Loan Facility and the New Revolving Credit Facility.

(e) Issuance of New Common Stock. On the Effective Date, Reorganized Jackson Hewitt shall issue shares of New Common Stock for distribution to holders of Allowed Secured Senior Credit Facility Claims. All of the shares of New Common Stock issued pursuant to the Plan shall be duly authorized, validly issued, fully paid and non assessable. The New Common Stock issued to the holders of Allowed Secured Senior Credit Facility Claims shall be subject to dilution by the Management Incentive Plan.

(f) Section 1145 Exemption. Pursuant to section 1145 of the Bankruptcy Code, the issuance and allocation of the New Common Stock to holders of Allowed Secured Senior Credit Facility Claims shall be exempt from registration under the Securities Act and any state or local law requiring registration for offer or sale of a security.

(g) Shareholders' Agreement For New Common Stock. On the Effective Date, Reorganized Jackson Hewitt and the Lenders shall be deemed to have executed and delivered the Shareholders' Agreement. Each holder of an Allowed Class 3 Secured Senior Credit Facility Claim shall be deemed bound by the Shareholders' Agreement as of the Effective Date without the need for execution or delivery by such holder.

(h) Management Incentive Plan. The New Board will implement the Management Incentive Plan.

(i) New Board Of Reorganized Jackson Hewitt. The New Board of Reorganized Jackson Hewitt shall be comprised of five (5) directors elected by a majority of the shareholders. The identity of the members of the New Board will be identified in the Plan Supplement or in a filing with the Bankruptcy Court at or prior to the Confirmation Hearing.

(j) Corporate Action. Each of the matters provided for under the Plan involving the corporate structure of any Debtor or Reorganized Debtor or any corporate action to be taken by or required of any Debtor or Reorganized Debtor 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 stockholders, members, creditors, directors, or managers of the Debtors or the Reorganized Debtors.

(k) Preservation Of Causes Of Action. In accordance with section 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtors will retain and may (but are not required to) enforce all Retained Actions, except that the Debtors waive all Avoidance Actions. After the Effective Date, the Reorganized Debtors, in their sole and absolute discretion, shall have the right to bring, settle, release, compromise, or enforce such Retained Actions (or decline to do any of the foregoing), without further approval of the Bankruptcy Court. The Reorganized Debtors or any successors, in the exercise of their sole discretion, may pursue such Retained Actions so long as it is in the best interests of the Reorganized Debtors or any successors holding such rights of action. The failure of the Debtors to specifically list any claim, right of action, suit, proceeding or other Retained Action in the Plan does not, and will not be deemed to, constitute a waiver or release by the Debtors or the Reorganized Debtors of such claim, right of action, suit, proceeding or other Retained Action, and the Reorganized Debtors will retain the right to pursue such claims, rights of action, suits, proceedings and other Retained Actions in their sole discretion and, therefore, no preclusion doctrine, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise) or laches will apply to such claim, right of action, suit, proceeding, or other Retained Action upon or after the Confirmation or consummation of the Plan.

(l) Effectuating Documents; Further Transactions. Each of the Debtors and Reorganized Debtors, and their respective officers and designees, is authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, 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, or to otherwise comply with applicable law.

(m) Exemption From Certain Transfer Taxes And Recording Fees. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from a Debtor to a Reorganized Debtor or to any other Person or entity pursuant to the Plan, or any agreement regarding the transfer of title to or ownership of any of the Debtors' real or personal property will not be subject to any document recording tax, stamp tax, conveyance fee, sales tax, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform

Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the Confirmation Order will direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

(n) Further Authorization. The Debtors and the Reorganized Debtors shall be entitled to seek such orders, judgments, injunctions, and rulings as they deem necessary to carry out the intentions and purposes, and to give full effect to the provisions, of the Plan.

(o) Dissolution Of Creditors' Committee. A Creditors' Committee, if appointed, shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Creditors' Committee, if appointed, shall be dissolved and the Creditors' Committee's members shall be deemed released of all their duties, responsibilities, and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, accountants, professionals, and other agents shall terminate, except with respect to (a) all Professional Fee Claims and (b) any appeals of the Confirmation Order.

(p) Cancellation Of Existing Securities And Agreements. Except as provided in the Plan or in the Confirmation Order, on the Effective Date, all notes, stock, instruments, certificates, agreements, side letters, fee letters and other documents evidencing or giving rise to Senior Credit Facility Claims and Interests in Jackson Hewitt shall be cancelled, and the obligations of the Debtors thereunder or in any way related thereto shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote, or other approval or authorization by any Person. The holders of or parties to such notes, stock, instruments, certificates, agreements, side letters, fee letters, and other documents shall have no rights arising from or relating to such notes, stock, instruments, certificates, agreements, side letters, fee letters, and other documents or the cancellation thereof, except the rights provided pursuant to the Plan and the Confirmation Order.

C. Provisions Governing Distributions

1. *Allowed Claims*

Notwithstanding any provision herein to the contrary, the Debtors or the Reorganized Debtors shall make distributions only to holders of Allowed Claims. A holder of a Disputed Claim shall receive only a distribution on account thereof when and to the extent that such holder's Disputed Claim becomes an Allowed Claim.

2. *Distributions For Claims Allowed As Of The Effective Date*

Except as otherwise provided under the Plan or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Effective Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to the Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. 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.

3. *Fractional Shares*

No fractional shares of New Common Stock will be issued or distributed under the Plan. The actual distribution of shares of New Common Stock will be rounded to the next higher or lower whole number as follows: (a) fractions less than one-half (½) shall be rounded to the next lower whole number and (b) fractions equal to or greater than one-half (½) shall be rounded to the next higher whole number. The total number of shares of New Common Stock to be distributed herein will be adjusted as necessary to account for such rounding. No consideration will be provided to holders of Secured Senior Credit Facility Claims in lieu of fractional shares that are rounded down.

4. *Interest And Penalties On Claims*

Unless otherwise specifically provided for in the Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest and penalties shall not accrue or be paid on any Claims, including Priority Tax Claims and Other Priority 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 the Plan.

5. *Means Of Cash Payment*

Payments of cash made pursuant to the Plan shall be in U.S. dollars and shall be made, at the option and in the sole discretion of the applicable Reorganized Debtor, by (a) checks drawn on or (b) wire transfer from a domestic bank selected by the Reorganized Debtor. Cash payments to foreign creditors may be made, at the option of the applicable Reorganized Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

6. *Withholding And Reporting Requirements/Allocations*

In connection with the Plan and all distributions thereunder, the Reorganized Debtors shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtors shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Each Holder of an Allowed Class 3 Secured Senior Credit Facility Claim shall be treated as receiving, for U.S. federal income tax purposes, in full satisfaction and discharge of its Claim (i) its pro rata share of the New Term Loan Facility, (ii) its pro rata share of the New Common Stock, and (iii) to the extent that such Holder participates in the New Revolving Credit Facility, its share of the cash on the Reorganized Debtors' balance sheet (including any Cash in the Cash Collateral Account) in excess of $5 million as of the Effective Date, and the Initial Draw under the New Revolving Credit Facility. Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for U.S. federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

7. *Preservation Of Rights*

The Reorganized Debtors shall retain all rights arising under section 558 of the Bankruptcy Code or applicable nonbankruptcy laws, including, but not limited to, the right to set off against any Claim, the payments or other distributions to be made pursuant to the Plan in respect of such Claim, or claims of any nature whatsoever that the Debtors or the Reorganized Debtors may have against the holder of such Claim; *provided*, *however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the

Reorganized Debtors of any such claim that the Debtors or the Reorganized Debtors may have against such holder; *provided*, *further*, that the holder of any Claim must assert any right to setoff prior to the Effective Date or such right shall be deemed waived on the Effective Date.

D. Treatment Of Executory Contracts And Unexpired Leases

1. *Assumption Of Executory Contracts And Unexpired Leases*

Except as otherwise provided in the Plan, on the Effective Date, all executory contracts and unexpired leases of the Debtors shall be deemed assumed in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, unless such executory contract or unexpired lease (a) has previously been rejected by order of the Bankruptcy Court in effect as of the Effective Date (which order may be the Confirmation Order); (b) is the subject of a motion to reject filed on or before the Effective Date; (c) is identified as an executory contract or unexpired lease to be rejected pursuant to the Plan Supplement before the Effective Date; or (d) expired or terminated pursuant to its own terms. An executory contract or unexpired lease that is deemed to be assumed pursuant to the foregoing sentence shall be referred to as an "<u>Assumed Contract</u>."

Entry of the Confirmation Order by the Bankruptcy Court shall constitute findings by the Bankruptcy Court that (a) the Reorganized Debtors had properly provided for the cure of any defaults that might have existed, (b) each assumption is in the best interest of the Reorganized Debtors, their Estates, and all parties in interest in the Chapter 11 Cases and (c) the requirements for assumption of any executory contract or unexpired lease to be assumed had been satisfied. Except as otherwise provided in the following sentence, all cure payments under any Assumed Contract shall be made by the Reorganized Debtors on the Effective Date or as soon as practicable thereafter. In the event of a dispute, cure payments required by section 365(b)(1) of the Bankruptcy Code shall be paid upon entry of a final order resolving such dispute.

2. *Compensation And Benefit Programs*

All of the Debtors' programs, plans, agreements and arrangements relating to employee compensation and benefits, including, without limitation, all savings plans, retirement plans, healthcare plans, disability plans, severance plans, incentive plans, and life, accidental death and dismemberment insurance plans, entered into before the Petition Date and not since terminated, will be deemed to be, and will be treated as though they are (other than any executory contract rejected pursuant to Section 7.1 of the Plan), executory contracts that are assumed under Section 7.1 of the Plan, and the Debtors' and Reorganized Debtors' obligations under such programs, plans, agreements and arrangements will survive Confirmation of the Plan and will be fulfilled in the ordinary course of business.

3. *D&O Liability Insurance Policies*

As of the Effective Date, the D&O Liability Insurance Policies shall be treated as if they were executory contracts that are assumed under the Plan. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each of the D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation shall be deemed and treated as an executory contract that has been assumed by the Debtors under the Plan as to which no proof of claim need be filed.

4. *Indemnification*

Except as otherwise specifically limited in the Plan, any obligations or rights of the Debtors or Reorganized Debtors to defend, indemnify, reimburse, or limit the liability of the Debtors' present and former directors, officers, employees, agents, representatives, attorneys, accountants, financial advisors, investment bankers and consultants (the "Covered Persons") pursuant to the Debtors' or Reorganized Debtors' certificates of incorporation, by-laws, policy of providing employee indemnification, applicable state law, or specific agreement in respect of any claims, demands, suits, causes of action, or proceedings against such Covered Persons based upon any act or omission related to such Covered Persons' service with, for, or on behalf of the Debtors prior to the Effective Date, excluding claims resulting from gross negligence, willful misconduct, breach of fiduciary duty or intentional tort, shall be treated as if they were executory contracts that are assumed under the Plan and shall survive the Effective Date and remain unaffected thereby, and shall not be discharged, irrespective of whether such defense, indemnification, reimbursement, or limitation of liability is owed in connection with an occurrence before or after the Petition Date.

E. Confirmation And Consummation Of The Plan

1. *Condition To Confirmation*

Confirmation of the Plan is conditioned upon the Confirmation Order being reasonably acceptable in form and substance to the Debtors and the Participating Lenders.

2. *Conditions To Effective Date*

The Debtors shall request that the Confirmation Order include a finding by the Bankruptcy Court that, notwithstanding Bankruptcy Rule 3020(e), the Confirmation Order shall take effect immediately upon its entry. The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived by the Debtors and the Participating Lenders in accordance with the terms hereof:

(a) The Confirmation Order, in form and substance reasonably satisfactory to the Debtors and the Participating Lenders, shall have become a Final Order and shall, among other things, provide that the Debtors and the Reorganized Debtors are authorized to take all actions necessary or appropriate to enter into, implement, and consummate the New Term Loan Facility and the New Revolving Credit Facility and other agreements or documents created in connection with the Plan.

(b) All documents related to, provided for therein, or contemplated by the New Term Loan Facility and the New Revolving Credit Facility shall have been executed and delivered, and all conditions precedent thereto shall have been satisfied (other than the occurrence of the Effective Date).

(c) All authorizations, consents, and regulatory approvals required, if any, in connection with the consummation of the Plan shall have been obtained.

(d) All other actions, documents, and agreements necessary to implement the Plan shall have been effected or executed.

(e) The payment in full of all fees and expenses of the Administrative Agent and Bayside and their respective professionals (as set forth in Section 4(b) of the Plan Support Agreement.)

(f) The payment in full of all fees and expenses of the arranger under the New Term Loan Facility and the New Revolving Credit Facility.

3. *Waiver Of Conditions*

Each of the conditions to the Effective Date set forth herein may be waived in whole or in part by the Debtors and the Participating Lenders, without any notice to parties in interest or the Bankruptcy Court and without a hearing. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied, including any action or inaction by the Debtors. The failure of the Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

F. Effect Of Plan Confirmation

1. *Binding Effect*

The Plan shall be binding upon and inure to the benefit of the Debtors, their Estates, all present and former holders of Claims and Interests, and their respective successors and assigns, including but not limited to the Reorganized Debtors.

2. *Revesting Of Assets*

Except as otherwise explicitly provided in the Plan, on the Effective Date, all property comprising the Estates (including Retained Actions, but excluding property that has been abandoned pursuant to an order of the Bankruptcy Court) shall revest in the Reorganized Debtors, free and clear of all Claims, liens, charges, encumbrances, rights and Interests of creditors and equity security holders. As of the Effective Date, the Reorganized Debtors may operate their businesses and use, acquire, and dispose of their property without supervision of the Bankruptcy Court, and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order.

3. *Compromise And Settlement Of Claims And Interests*

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, Interests and controversies relating to the contractual, legal and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, 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 Interests and is fair, equitable and reasonable. Without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against or Interests in them and Causes of Action against other Persons.

4. *Releases And Related Matters*

(a) Releases by the Debtors

As of the Effective Date, for good and valuable consideration provided by each of the Releasees, including, but not limited to, (i) the discharge of debt; (ii) the obligations of the Releasees to provide the support necessary for consummation of the Plan; and (iii) the services of the Releasees in facilitating the expeditious implementation of the restructuring contemplated by the Plan, the adequacy of which is hereby confirmed, each of the Debtors, in their individual capacities and as debtors in possession, their Estates, and the Reorganized Debtors shall be deemed to forever release, waive and discharge the Participating Lenders and each of the Participating Lenders' and the Debtors' respective current and former members, officers, directors, agents, financial advisors, accountants, investment bankers, consultants, attorneys, employees, partners, subsidiaries, affiliates and representatives (in each case only in their capacity as such), and their respective properties from any and all Causes of Action, whether known or unknown, arising from or related in any way to the Debtors, including, without limitation, those that any of the Debtors or Reorganized Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or that any holder of a Claim or Interest or other Entity would have been legally entitled to assert on behalf of any of the Debtors or any of their Estates, and further including those in any way related to the Chapter 11 Cases, the Disclosure Statement or the Plan to the fullest extent of the law; *provided, however*, that the foregoing shall not operate to waive or release any Releasee from any Causes of Action arising under the New Term Loan Facility or the New Revolving Credit Facility.

(b) Releases by the Lenders

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each Participating Lender shall be deemed to have fully discharged and released the Releasees and their respective property from any and all Causes of Action, whether known or unknown, arising from or related in any way to the Debtors, including, without limitation, those in any way related to the Chapter 11 Cases, the Disclosure Statement or the Plan; *provided, however*, that the foregoing shall not operate to waive or release any Releasee from any Causes of Action arising under the New Term Loan Facility or the New Revolving Credit Facility or any Causes of Action by any Participating Lender that provides cash management services to a Releasee to the extent such Causes of Action are for usual and customary cash management fees and charges.

5. *Discharge Of The Debtors*

(a) Upon the Effective Date, the Debtors, and each of them, shall be deemed discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (i) a proof of claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, (iii) a Claim based upon such debt is or has been disallowed by order of the Bankruptcy Court, or (iv) the holder of a Claim based upon such debt accepted the Plan.

(b) As of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Debtors or the Reorganized Debtors, any other or further Claims, debts, rights, Causes of Action, claims for relief, liabilities, or equity interests relating to the Debtors based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against the Debtors, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim.

6. *Injunction*

Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that have held, currently hold, may hold, or allege that they hold, a Claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, or liability that is released or discharged under Article IX of the Plan are permanently enjoined from taking any of the following actions against the Debtors, the Reorganized Debtors, and their respective Affiliates or their property on account of any such released or discharged Claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, or liability: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a setoff, right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to any released Person; or (v) commencing or continuing any action, in each such case in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order.

7. *Exculpation And Limitation Of Liability*

None of the Releasees shall have or incur any liability to any Entity, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the Disclosure Statement, the formulation, negotiation, or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the 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 other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors; *provided*, *however*, that the foregoing provisions of this exculpation shall have no effect on the liability of any Releasee that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided further*, that each Releasee shall be entitled to reasonably rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan.

8. *Term Of Bankruptcy Injunction Or Stays*

Except as provided otherwise in the Plan, from and after the Effective Date, the automatic stay of section 362(a) of the Bankruptcy Code shall terminate.

9. *Post-Effective Date Retention Of Professionals*

Upon the Effective Date, any requirement that professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date will terminate and the Reorganized Debtors will employ and pay professionals in the ordinary course of business.

G. Miscellaneous Provisions

1. *Payment Of Statutory Fees*

All fees payable pursuant to section 1930 of Title 28, United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date.

2. *Amendment Or Modification Of The Plan*

Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, the Debtors reserve the right to alter, amend, or modify the Plan at any time prior to or after the Confirmation Date but prior to the substantial consummation of the Plan, *provided, however,* that the Participating Lenders approve of such alteration, amendment or modification. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such holder.

3. *Severability Of Plan Provisions*

If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

4. *Successors And Assigns*

The Plan shall be binding upon and inure to the benefit of the Debtors, and their respective successors and assigns, including, without limitation, the Reorganized Debtors. The rights, benefits, and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such entity.

5. *Revocation, Withdrawal, Or Non-Consummation*

The Debtors reserve the right, to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file other plans of reorganization. If the Debtors revoke or withdraw the Plan, or if Confirmation or consummation of the Plan does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or Class of Claims), assumption of executory contracts or unexpired leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Person, (ii) prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, or (iii) constitute an admission of any sort by the Debtors or any other Person.

6. *Governing Law*

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an Exhibit or schedule to the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of New York without giving effect to the principles of conflicts of law of such jurisdiction.

V. RISK FACTORS TO BE CONSIDERED

Parties in interest should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan. This information, however, does not describe the only risks involved in connection with the Plan and its implementation.

A. Failure to Confirm the Plan

If the Plan is not confirmed and consummated, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to chapter 7 liquidations. The Bankruptcy Court, which sits as a court of equity, may exercise substantial discretion with respect to the affairs of the Debtors during the Chapter 11 Cases. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan and requires, among other things, that the value of distributions to dissenting creditors and shareholders not be less than the value of distributions such creditors and shareholders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtors believe that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Furthermore, although the Debtors believe that the Effective Date will occur shortly after the Confirmation Date, there can be no assurance as to such timing. In addition, the Debtors could experience material adverse changes in their liquidity as a result of such delay.

B. Potential Adverse Effects of Chapter 11

Although the Debtors will seek to make their stay in chapter 11 as brief as possible and to obtain relief from the Bankruptcy Court so as to minimize any potential disruption to their business operations, it is possible that the commencement of the Chapter 11 Cases could materially adversely affect the relationship among the Debtors and their franchisees, customers, employees, vendors and service providers.

C. Failure to Obtain a Discharge of Unknown Litigation Claims

The Plan will discharge Claims, including, without limitation, any known or unknown litigation Claims arising, or that might arise, from the sale of RALs by third-party financial institutions to the Debtors' customers, through the chapter 11 cases. The Debtors intend to serve notice of the commencement of the cases, the date, time and place of the combined hearing on approval of this disclosure statement and confirmation of the Plan, and the procedures for objecting to the adequacy of this disclosure statement and confirmation of the Plan on all known litigation claimants, and to publish notice of the same information in an effort to provide notice to all unknown litigation claimants. The Debtors believe that these procedures will provide sufficient notice to all parties in interest, whether known or unknown, in the Debtors' chapter 11 cases. However, there is no assurance that the Debtors' proposed notice program, which seeks to bind unknown litigation claimants to the discharge, will be approved by the Bankruptcy Court. In the event that the Bankruptcy Court does not approve such notice program, unknown litigation claimants may not be subject to the discharge and may bring suits against the Company in the future. While the Company believes it has meritorious defenses to possible litigation involving RALs and other possible litigation Claims, the Company cannot ensure that the outcome of such possible future legal proceedings and litigation will not have a material adverse effect on the Company and its results of operations.

D. Business Risks

1. *No Public Market for Securities*

The New Common Stock to be issued pursuant to the Plan will not be registered under the Securities Act. Accordingly, the New Common Stock may only be offered or sold pursuant to an exemption from the registration requirements of the Securities Act or pursuant to an effective registration statement. The Company cannot assure you that an active trading market for the New Common Stock will develop, in which case, you may not be able to resell your New Common Stock at its fair market value or at all. Future trading prices of the New Common Stock will depend on many factors, including, among other things, prevailing interest rates, the Company's operating results and the market for similar securities. Because the value of the New Common Stock cannot be determined with precision due to the absence of a public market for the New Common Stock and the inherent risks related to the Reorganized Debtors' ability to successfully implement their business plan, there can be no assurances of the actual recoveries to holders of Allowed Secured Senior Credit Facility Claims.

2. *Majority Shareholder Control*

Upon emergence, Bayside Capital, Inc and certain of its affiliates ("Bayside") may own a significant majority of the New Common Stock. Pursuant to the Shareholders' Agreement, Bayside will exercise substantial influence over the New Board of Jackson Hewitt and there can be no assurance that Bayside will exercise their control in the best interests of the minority shareholders. This concentration of ownership could delay, defer or prevent a change of control of Reorganized Jackson Hewitt or impede a merger, takeover or other business combination that may be otherwise favorable to Reorganized Jackson Hewitt or to eligible holders who receive New Common Stock pursuant to the Plan.

3. *Inherent Uncertainty of Debtors' Financial Projections*

The Financial Projections attached hereto as Appendix C include projections covering the Reorganized Company's operations through 2013. These projections are based on assumptions that are an integral part of the projections, including confirmation and consummation of the Plan in accordance with its terms, the anticipated future performance of the Company, industry performance, general business and economic conditions and other matters, many of which are beyond the control of the Reorganized Debtors and some or all of which may not materialize.

In addition, unanticipated events and circumstances occurring after the date hereof may affect the actual financial results of the Reorganized Debtors' operations. These variations may be material and may adversely affect the value of the New Common Stock and the ability of the Reorganized Debtors to make payments with respect to their indebtedness. Because the actual results achieved may vary from projected results, perhaps significantly, the projections should not be relied upon as a guaranty or other assurance of the actual results that will occur.

The business plan was developed by the Company with the assistance of its advisors. There can be no assurances that the Company's business plan will not change, perhaps materially, as a result of decisions management and the new Board of Directors make after fully evaluating the strategic direction of the Company and its business plan. Any deviations from the Company's existing business plan would necessarily cause a deviation from the attached projections, and could result in materially different outcomes from those projected.

4. *Lack of Audited and Recent Financial Reports*

Attached to the Company's most recent 10-K is the Company's audited financial statement for the fiscal year ended April, 2010. This is the last period for which an audited financial statement is available. Attached to the Company's most recent 10-Q is the Company's unaudited financial statement for the period ended January, 2011. As of the date hereof, the Company has not prepared financial statements for fiscal periods after January 2011. The information to be contained in these reports is not available at this time and there can be no assurance that such information would not have been material to your decision whether to vote to accept or reject the Plan.

5. *Inability to Execute Strategic Plan and Reverse Declining Profitability*

The key driver of the Company's business is the number of tax returns prepared by its network. From 2008 to 2010, the number of tax returns prepared by the Company declined as compared to the prior fiscal year and the Company's profitability has declined in each of such fiscal years accordingly. In fiscal year 2011, the number of tax returns prepared by the Company increased slightly over 2010. The factors contributing to the decline in fiscal 2010 include the loss of 50% of the Company's RAL program as compared to the prior tax season, a continuing soft economy and related high unemployment, and increased competition, both from other electronic return originators as well as from online tax services. If the Company is not able to execute on its strategic plan to attract and retain customers and increase the number of tax returns prepared by its system, the Company's revenues and profits will likely continue to decline. The failure to reverse the decreasing number of tax returns being prepared by the Company and the associated decline in profitability will also likely discourage franchisees from expanding their business within the Jackson Hewitt network or may discourage franchisees from renewing their franchise agreements with the Company and discourage new franchisees from entering the Jackson Hewitt network, each of which could have a material adverse effect on the Company's business, financial condition and results of operations.

6. *Distribution System*

Building a stronger distribution system is necessary to drive the growth of the Company's business by maximizing the performance of the locations that the Company already possesses and expanding the Company's existing network. As previously discussed, the Company entered into an agreement with Wal-Mart pursuant to which the Company was granted the exclusive right to provide tax preparation services within Wal-Mart stores through the 2011 tax season. This arrangement afforded the Company the opportunity to add a significant number of new, incremental Wal-Mart locations to its distribution network for the 2010 and 2011 tax seasons. If the Company's agreement with Wal-Mart is not extended beyond the 2011 tax season, or is otherwise terminated, the Company's distribution network would be negatively impacted which could have a material adverse effect on the Company's business, financial condition and results of operations. In addition, the Company's strategy for selling new territories and expanding its alliance and partnership activities may not succeed, causing the Company's revenues or profitability to decline.

7. *Regulation of Financial Products*

From time to time, government officials at the federal and state levels introduce and enact legislation and regulations proposing to regulate or prevent financial institutions from offering RALs and other financial products. Certain of the proposed legislation and regulations could, if adopted, increase costs or decrease revenues to the Company, its franchisees and the financial institutions that provide the Company's financial products, or could negatively impact or eliminate the ability of financial institutions to provide RALs and other financial products through tax return preparation offices, which could have a material adverse effect on the Company's business, financial condition and results of operations. As noted above, based on recent developments, the Company assumes that it will not have a source of RAL products beginning in 2012.

8. *Failure to Comply with Regulatory Requirements*

The Company's tax return preparation business, including its franchise operations and financial institutions' ability to offer RALs and other financial products, are subject to extensive regulation and oversight in the United States by the IRS, the FTC and by federal and state regulatory and law enforcement agencies. If governmental agencies having jurisdiction over the Company's operations were to conclude that the Company's business practices, the practices of its franchisees, or those of the financial institutions that provide financial products violate applicable laws, the Company could become subject to sanctions which could have a material adverse effect on the Company's business, financial condition and results of operations. These sanctions may include, without limitation: (a) civil monetary damages and penalties; (b) criminal penalties; and (c) injunctions or other restrictions on the manner in which the Company conducts its business.

In addition, the financial institutions that provide financial products to the Company's customers are also subject to significant regulation and oversight by federal and state regulators, including banking regulators. The failure of these financial institutions to comply with the regulatory requirements of federal and state government regulatory bodies, including banking and consumer protection laws, could affect their ability to continue to provide financial products to the Company's customers, which could have a material adverse effect on the Company's business, financial condition and results of operations. The Company's customers' inability to obtain financial products through the Company's tax return preparation offices could cause the demand for the Company's tax return preparation services to be reduced, causing the Company's revenues or profitability to decline. The Company also may be required to change business practices which could alter the way financial products are offered which could cause the Company's revenues or profitability to decline.

9. *Failure to Grow Franchise System*

The success and growth of the Company's franchise system depends on maintaining a satisfactory working relationship with existing franchisees and attracting new franchisees to the Jackson Hewitt network. Poor performance and the more difficult financial position that results from such poor performance, the Company's inability to provide financial products, and lawsuits and other disputes with its franchisees, could discourage the Company's franchisees from expanding their business within the Jackson Hewitt network or from renewing their existing franchise agreements or lead to negative publicity which could discourage new franchisees from entering the Jackson Hewitt network, and could have a material adverse effect on the Company's business, financial condition and results of operations. In addition, poor performance could result in an increase in franchisee attrition. The failure to grow the Jackson Hewitt network or a loss of a significant number of franchisees could have a material adverse effect on the Company's business, financial condition and results of operations.

10. *Disruption in Retail Relationships*

The failure to successfully execute the Company's operating plan under its agreement with Wal-Mart, the termination of the agreement or the inability to extend the agreement on terms satisfactory to the Company could have a material adverse effect on the Company's business, financial condition and results of operations. The Company also has offices in other retail-partner locations, typically retail stores and shopping malls. In the event the Company is unable to negotiate favorable agreements with these or comparable retail stores or shopping malls or a significant number of these retail stores or shopping malls close, especially immediately prior to or during the tax season, or the Company's operators are unsuccessful in opening these locations, it could cause the Company's revenues or profitability to decline.

11. *Dependence on Key Personnel*

The Company's continued success depends largely on the efforts and abilities of its executive officers and other key employees. Competition for executive, managerial and skilled personnel in the tax service industry remains intense. The Company may experience increased compensation costs in order to attract and retain executives, managers and other skilled employees. The Company may not be able to retain existing management, fill new positions or vacancies or attract or retain the management and personnel necessary to operate its business effectively. Although efforts have been made to retain key personnel, including the implementation, after the Effective Date, of a management incentive plan by the New Board, the Company may not be able to continue to retain key personnel or otherwise attract new personnel, which would cause the Company's business to suffer.

12. *Success Tied to Operations of Franchisees*

The Company's success depends on its franchisees and the manner in which they operate and develop their offices. However, the Company's ability to control the operations of its franchisees is limited because their businesses are independently owned and operated. Franchisees retain control over the employment and management of all personnel, including the large number of seasonal employees required during the tax season. Although the Company can exercise control over its franchisees and their operations to a certain extent under the terms of its franchise agreements to, among other things, maintain signage and equipment, standardize operating procedures, approve suppliers, distributors and products, protect the goodwill of intellectual property and require compliance with law and compliance standards, the quality of their operations may be diminished by any number of factors beyond the Company's control. Consequently, the franchisees may not operate their offices in a manner consistent with the Company's philosophy and standards or may not increase the level of revenues generated compared to prior tax seasons. While the Company ultimately can take action to terminate franchisees that do not comply with the standards contained in the franchise agreements, and even though the Company has implemented thorough compliance and monitoring functions, the Company may not be able to identify problems and take action quickly enough and, as a result, the Company's image and reputation may suffer, causing revenues or profitability to decline.

13. *Litigation*

The Company is, from time to time, subject to various asserted or unasserted legal proceedings and claims. Any such claims, regardless of merit, could be time-consuming and expensive to defend and could divert management's attention and resources. While management believes the Company has adequate insurance coverage and accrues loss contingencies for all known matters that are probable and can be reasonably estimated, the Company cannot ensure that the outcome of all current or future litigation will not have a material adverse effect on the Company and its results of operations.

14. *Seasonal Nature of Business*

As described above, the Company's business is highly seasonal. The Company generates substantially all of its revenues during the period from January 1 through April 30. The concentration of revenue-generating activity during this relatively short period presents a number of operational challenges for the Company and its franchisees, including: (a) cash and resource management during the first eight months of the fiscal year, when the Company generally operates at a loss and incurs fixed costs and costs of preparing for the upcoming tax season; (b) flexible staffing, because the number of employees at the Company's network offices during the peak of the tax season is exponentially higher than at any other time; (c) accurate forecasting of revenues and expenses; and (d) ensuring optimal uninterrupted operations during tax season. If the Company were unable to meet these challenges or were to experience significant business interruptions during the tax season, which may be caused by labor shortages, systems failures, work stoppages, adverse weather, computer viruses, computer hackers, health epidemics or other events, many of which are beyond the Company's control, the Company could experience a loss of business, which could have a material adverse effect on its business, financial condition and results of operations.

15. *Competition*

The paid tax return preparation market is highly competitive. The Company competes with tens of thousands of paid tax return preparers, including H&R Block, which is the largest paid tax return preparation service company, Liberty Tax Service, local and regional tax return preparation companies and regional and national accounting firms and financial service institutions that prepare tax returns as part of their businesses. The Company also faces increased competitive challenges from the online and software self preparer market, including the Free File Alliance, a consortium of the IRS and online preparation services that provides free online tax return preparation, and from volunteer organizations that prepare tax returns at no cost for low-income taxpayers. Certain states may also pass legislation to provide free online tax return preparation and filing from time to time. The availability of these alternatives may reduce demand for the Company's products and limit the amount of fees that the Company can charge. The Company also competes for the sale of tax return preparation franchises with H&R Block, Liberty Tax Service, and other regional franchisors. Inability to continue to sell franchises would have a material adverse effect on the Company's financial condition.

16. *Goodwill Impairment Charges*

The Company evaluates the carrying value of goodwill and other intangible assets for recoverability at least annually in its fourth fiscal quarter. The Company updates the test between annual periods when an event occurs or if circumstances change that would more likely than not reduce the fair value of its franchises or company-owned offices below their carrying value. Due to the loss of approximately 50% of the Company's RAL program in the third quarter of fiscal 2010, the Company concluded that a goodwill triggering event had occurred and recorded a pre-tax goodwill impairment charge of $274.1 million. If the Company continues to experience further declines in its results from these and other factors, it may incur impairment charges related to the remaining value of goodwill and other intangibles and to such amounts arising out of future acquisitions. Any additional impairment of the value of goodwill and other intangible assets could have a significant negative impact on the Company's future operating results.

17. *Credit Markets*

The credit markets have been experiencing unprecedented volatility and disruption causing many lenders and institutional investors to cease providing funding to even the most credit worthy borrowers or to other financial institutions. This continued turmoil could limit the Company's ability to access the capital markets and other sources of funding. The cost and availability of funds has also adversely impacted franchisees' ability to grow and operate their businesses, which could continue to cause the Company's revenues or profitability to decline. In addition, continued disruptions in the credit markets could adversely affect the Company's ability to sell territories to new or existing franchisees, causing the Company's revenues or profitability to decline.

E. Methods of Solicitation

Section 1126(b) of the Bankruptcy Code provides that the holder of a claim or interest that has accepted or rejected a plan before the commencement of a case under the Bankruptcy Code is deemed to have accepted or rejected the plan (i) if the solicitation of such acceptance or rejection was in compliance with applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation or (ii) if there is no such law, rule, or regulation, and such acceptance or rejection was solicited after disclosure to such holder of "adequate information" (as defined by section 1125(a) of the Bankruptcy Code). In addition, Bankruptcy Rule 3018(b) provides that a holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Bankruptcy Code will not be deemed to have accepted or rejected the plan if the court finds after notice and a hearing that the plan was not transmitted in accordance with reasonable solicitation procedures.

The Debtors believe that its Solicitation of votes to accept or reject the Plan from the holders of Secured Senior Credit Facility Claims is proper under applicable nonbankruptcy law, rules, and regulations, if any, and that the Disclosure Statement contains "adequate information" as defined by section 1125(a) of the Bankruptcy Code. The Debtors also believe that they are not required to solicit any other class under the Bankruptcy Code or applicable nonbankruptcy law, rules, or regulations. The Debtors cannot be certain, however, that the Solicitation of acceptances or rejections will be approved by the Bankruptcy Court. If the Bankruptcy Court determines that the Solicitation did not comply with the requirements of section 1126(b) of the Bankruptcy Code, the Debtors may seek to resolicit acceptances, and, in that event, confirmation of the Plan could be delayed and possibly jeopardized.

F. Classification and Treatment of Claims and Interests

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims against and Interests in the Debtors. The Bankruptcy Code also provides that, except for certain Claims classified for administrative convenience, the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtors believe that all Claims and Interests have been appropriately classified in the Plan.

To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors currently anticipate that they would seek to (i) modify the Plan to provide for whatever classification might be required for confirmation and (ii) use the acceptances received from any creditor pursuant to the Solicitation for the purpose of obtaining the approval of the Class or Classes of which such creditor ultimately is deemed to be a member. Any such reclassification of creditors, although subject to the notice and hearing requirements of the Bankruptcy Code, could adversely affect the Class in which such creditor was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required for approval of the Plan.

There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification without requiring the Debtors to resolicit votes. Except to the extent that modification of classification requires resolicitation, the Debtors will, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a determination by the Bankruptcy Court that acceptance of the Plan by any holder of Class 3 Secured Senior Credit Facility Claims pursuant to the Solicitation will constitute a consent to the Plan's treatment of such Claim regardless of the Class as to which such holder is ultimately deemed to be a member. The Debtors believe that, under the Bankruptcy Rules, the Debtors would be required to resolicit votes for or against the Plan only when a modification adversely affects the treatment of Class 3 Claims.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest of a particular Class unless the holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Debtors believe that they have complied with this requirement. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court could deny confirmation of the Plan or the Debtors could be required to modify the Plan.

VI. APPLICABILITY OF FEDERAL AND OTHER SECURITIES LAWS

A. Issuance and Resale of Plan Securities Under the Plan

1. *Exemption from Registration*

The Plan provides for the Debtors to issue New Common Stock (the "Plan Securities") to holders of Class 3 Secured Senior Credit Facility Claims. The Debtors believe that the Plan Securities constitutes "securities," as defined in section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, and applicable Blue Sky Law. Section 4(2) of the Securities Act provides that the registration requirements of section 5 of the Securities Act shall not apply to the offer and sale of a security in connection with transactions not involving any public offering. By virtue of section 18 of the Securities Act, section 4(2) also provides that any state Blue Sky Law requirements shall not apply to such offer or sale.

Section 1145 of the Bankruptcy Code provides that the registration requirements of section 5 of the Securities Act (and any state Blue Sky Law requirements) shall not apply to the offer or sale of stock, options, warrants, or other securities by a debtor if (a) the offer or sale occurs under a plan of reorganization; (b) the recipients of the securities hold a claim against, an interest in, or claim for administrative expense against, the debtor; and (c) the securities are issued in exchange for a claim against or interest in a debtor or are issued principally in such exchange and partly for cash and property.

In reliance upon these exemptions, the offer and sale of the Plan Securities will not be registered under the Securities Act or any state Blue Sky Law. Accordingly, the Plan Securities may be resold without registration under the Securities Act or other federal securities laws, unless the holder is an "underwriter" (as discussed below) with respect to such securities, as that term is defined in section 2(a)(11) of the Securities Act and in the Bankruptcy Code. In addition, the Plan Securities generally may be able to be resold without registration under state securities laws pursuant to various exemptions provided by the respective Blue Sky Law of those states; however, the availability of such exemptions cannot be known unless individual state Blue Sky Laws are examined. Therefore, recipients of the Plan Securities are advised to consult with their own legal advisors as to the availability of any such exemption from registration under state Blue Sky Law in any given instance and as to any applicable requirements or conditions to such availability.

2. *Resales of Plan Securities; Definition of Underwriter*

If the holder of the Plan Securities is an underwriter, the Plan Securities will be "restricted securities" and may not be resold under the Securities Act and applicable state Blue Sky Law absent an effective registration statement under the Securities Act or pursuant to an applicable exemption from registration, including Rule 144 promulgated under the Securities Act. Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions" of an entity that is not an "issuer," (a) purchases a claim against, interest in, or claim for an administrative expense in the case concerning the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; or (b) offers to sell securities offered or sold under a plan for the holders of such securities; or (c) offers to buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (i) with a view to distribution of such securities and (ii) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (d) is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In addition, a Person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

The definition of an "issuer" for purposes of whether a Person is an underwriter under section 1145(b)(1)(D) of the Bankruptcy Code, by reference to section 2(a)(11) of the Securities Act, includes as "statutory underwriters" all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. The reference to "issuer," as used in the definition of "underwriter" contained in section 2(a)(11), is intended to cover "controlling persons" of the issuer of the securities. "Control," as defined in Rule 405 of the Securities Act, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Accordingly, an officer or director of a reorganized debtor or its successor under a plan of reorganization may be deemed to be a "controlling Person" of such debtor or successor, particularly if the management position or directorship is coupled with ownership of a significant percentage of the reorganized debtor's or its successor's voting securities. Moreover, the legislative history of section 1145 of the Bankruptcy Code suggests that a creditor who owns ten percent (10%) or more of a class of securities of a reorganized debtor may be presumed to be a "controlling Person" and, therefore, an underwriter.

Resales of the Plan Securities by Persons deemed to be "underwriters" (which definition includes "controlling Persons") are not exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Under certain circumstances, holders of Plan Securities who are deemed to be "underwriters" may be entitled to resell their Plan Securities pursuant to the limited safe harbor resale provisions of Rule 144. Generally, Rule 144 would permit the public sale of securities received by such person if current information regarding the issuer is publicly available and if volume limitations, manner of sale requirements and certain other conditions are met. However, the Company does not presently intend to make publicly available the requisite current information regarding the Company, and as a result, Rule 144 will not be available for resales of Plan Securities by persons deemed to be underwriters.

Whether any particular Person would be deemed to be an "underwriter" (including whether such Person is a "controlling Person") with respect to the Plan Securities would depend upon various facts and circumstances applicable to that Person. Accordingly, the Debtors express no view whether any Person would be deemed an "underwriter" with respect to the Plan Securities. In view of the complex nature of the question of whether a particular Person may be an "underwriter," the Debtors make no representations concerning the right of any Person to freely resell Plan Securities. Accordingly, the Debtors recommend that potential recipients of Plan Securities consult their own counsel concerning their ability to freely trade such securities without compliance with the federal and state securities laws.

VII. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following is a summary of certain U.S. federal income tax consequences of the Plan to the Debtors and certain holders of Secured Senior Credit Facility Claims that are entitled to vote to accept or reject the Plan. This summary is for informational purposes only and is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury regulations promulgated thereunder, and administrative and judicial interpretations and practice, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations, with possible retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described herein. No opinion of counsel has been obtained as to any of the tax consequences of the Plan and no ruling will be sought from the IRS with respect to any statement or conclusion in this summary. No representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any creditor or equity interest-holder and there can be no assurance that the IRS would not assert, or that a court would not sustain, positions different from those discussed herein.

The following discussion does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address the U.S. federal income tax consequences of the Plan to Non-U.S. Holders (as defined below) and all aspects of U.S. federal income taxation applicable to special classes of taxpayers (including, without limitation, banks and certain other financial institutions, insurance companies, tax-exempt organizations, governmental entities, partnerships or other pass-through entities, persons whose functional currency is not the U.S. dollar, dealers in securities or foreign currencies, employees of the Debtors, and persons who received their claims pursuant to the exercise of an employee stock option or otherwise as compensation). This summary assumes that holders of Claims hold their Claims as capital assets for U.S. federal income tax purposes and will hold any New Common Stock and their interest in the New Term Loan Facility and New Revolving Credit Facility as a capital asset for U.S. federal income tax purposes. Furthermore, the following discussion does not address U.S. federal taxes other than income taxes. Holders of Claims should consult their tax advisors regarding the tax consequences to them of the transactions contemplated by the Plan, including U.S. federal, state, local and foreign tax consequences.

For purposes of this discussion, a "Non-U.S. Holder" is a beneficial owner of a Claim that is neither a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) nor (1) an individual that is a citizen or resident of the United States, (2) a corporation, or other entity treated as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (3) an estate, the income of which is subject to U.S. federal income taxation regardless of its source, or (4) a trust if (i) a court within the United States is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all of the substantial decisions of such trust or (ii) such trust has a valid election in effect under applicable Treasury regulations to be treated as a U.S. person.

If a partnership (including any entity treated as a partnership for U.S. federal income tax purposes) holds Claims, the U.S. federal income tax consequences to the partners of such partnership will depend on the activities of the partnership and the status of the partners. A partnership considering participating in the Plan should consult its tax advisor regarding the consequences to the partnership and its partners of the Plan.

TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, CREDITORS AND INTEREST-HOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE TAX CODE, (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS DISCUSSED HEREIN, AND (C) CREDITORS AND INTEREST-HOLDERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. Certain U.S. Federal Income Tax Consequences to the Debtors

1. *Cancellation of Indebtedness Income*

In general, the discharge of a debt obligation in exchange for cash and other property having a fair market value (or, in the case of a new debt instrument, an "issue price") less than the "adjusted issue price" of the debt gives rise to cancellation of indebtedness ("COD") income to the Debtor. However, COD income is not taxable to the Debtor if the debt discharge occurs in a Title 11 bankruptcy case. Rather, under the Tax Code, such COD income instead should reduce certain of the Debtors' tax attributes, generally in the following order: (a) net operating losses and net operating loss carryforwards (collectively, "NOLs"); (b) general business credit carryforwards; (c) minimum tax credit carryforwards; (d) capital loss carryforwards; (e) the tax basis of the Debtors' depreciable and nondepreciable assets (but not below the amount of its liabilities immediately after the discharge); (f) passive activity loss and credit carryforwards; and (g) foreign tax credit carryforwards. A Debtor may elect to alter the preceding order of attribute reduction and, instead, first reduce the tax basis of its depreciable assets (and, possibly, the depreciable assets of its subsidiaries). Where the Debtor joins in the filing of a consolidated U.S. federal income tax return, applicable Treasury regulations require, in certain circumstances, that certain tax attributes of the consolidated subsidiaries of the Debtor and other members of the group be reduced. The reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined (i.e., such attributes may be available to offset taxable income that is generated between the date of discharge and the end of the Debtors' tax year and/or may be carried back to prior years). Any excess COD income remaining after the required reduction of tax attributes is generally not subject to U.S. federal income tax and generally has no other current U.S. federal income tax impact.

The Debtors do not expect to have a substantial amount of NOLs or other tax attributes listed above, except for tax basis in their assets, after the tax for the year that includes the Effective Date is determined. The Debtors expect to realize a substantial amount of COD income as a result of the discharge of obligations pursuant to the Plan, which, under the attribute reduction rules described above, is generally expected to result in a reduction of certain of such attributes, including tax basis in their assets.

2. *Net Operating Losses – Section 382*

The Debtors anticipate that they will experience an "ownership change" (within the meaning of Section 382 of the Tax Code) on the Effective Date as a result of the issuance of the New Common Stock to holders of Secured Senior Credit Facility Claims pursuant to the Plan. As a result, the Debtors' ability to use any pre-Effective Date NOLs and certain other tax attributes in any post-Effective Date taxable year (and in the portion of the current taxable year beginning after the Effective Date) may be subject to limitations. Section 382 of the Tax Code may also limit the Debtors' ability to use certain "net unrealized built-in losses" to offset future taxable income realized within five years of the Effective Date. It is possible that the basis reduction described above under "Cancellation of Indebtedness Income" may reduce the amount of "net unrealized built-in losses" otherwise subject to such limitations. In addition, the Debtors' NOLs would be subject to further limitations if the Debtors experience additional future ownership changes and could potentially be reduced to zero if they do not continue their business enterprise for at least two years following the Effective Date.

B. Certain U.S. Federal Income Tax Consequences to Holders of Class 3 Secured Senior Credit Facility Claims

The U.S. federal income tax consequences of the transactions contemplated by the Plan to holders of Class 3 Secured Senior Credit Facility Claims (referred to as "holders" for purposes of the discussion under the heading "*Certain U.S. Federal Income Tax Consequences to Holders of Class 3 Secured Senior Credit Facility Claims*") are not entirely clear. The discussion below describes possible U.S. federal income tax consequences of the transactions contemplated by the Plan to holders, however, no assurance can be given as to the treatment of such transactions by the IRS or as to whether such treatment will be sustained by a court. If required under the Tax Code, the Company will notify the holders as to any position the Company is required to take regarding the transactions contemplated by the Plan. Each holder should consult its tax advisor regarding the tax consequences to it of the transactions contemplated by the Plan and information that may be relevant to its particular situation and circumstances.

1. *General U.S. Federal Income Tax Consequences to Holders*

Pursuant to the Plan, in full satisfaction and discharge of its Claim, each holder will receive (i) its pro rata share of the New Term Loan Facility, (ii) its pro rata share of 100% of the New Common Stock, subject to dilution on account of the Management Incentive Plan, and (iii) an opportunity to participate pro rata in the New Revolving Credit Facility. Holders that participate in the New Revolving Credit Facility will receive (on a pro rata basis based upon their participation in the New Revolving Credit Facility) the cash on the Reorganized Debtors' balance sheet in excess of $5 million as of the Effective Date. In addition, on the Effective Date, the New Revolving Credit Facility will be deemed drawn in an amount equal to the Initial Draw and each holder that participates in the New Revolving Credit Facility will receive a pro rata share of such Initial Draw.

The Plan treats each holder as receiving, for U.S. federal income tax purposes, in full satisfaction and discharge of its Claim (i) its pro rata share of the New Term Loan Facility, (ii) its pro rata share of the New Common Stock, and (iii) to the extent that the holder participates in the New Revolving Credit Facility, its share of the cash on the Reorganized Debtors' balance sheet in excess of $5 million as of the Effective Date, and the Initial Draw under the New Revolving Credit Facility. The IRS could take the position, however, that the holders or the Debtors should be treated for U.S. federal income tax purposes in some manner other than that set forth in the Plan.

A published IRS ruling and an IRS private letter ruling issued in reliance on such published ruling with respect to similar transactions to those contemplated by the Plan indicate that the holders may be treated for U.S. federal income tax purposes as exchanging their Claims with JHI for JHI common stock deemed to be issued to such holders, the New Term Loan Facility, the Initial Draw under the New Revolving Credit Facility and cash (the "JHI Exchange"), followed by an exchange by the holders with Jackson Hewitt of the JHI common stock deemed received in satisfaction of their Claims for New Common Stock (the "Stock Exchange"). The U.S. federal income tax consequences of such treatment will depend, in part, on whether the holders' Claims, the obligations under the New Term Loan Facility, and the Initial Draw under the New Revolving Credit Facility constitute "securities" for U.S. federal income tax purposes.

Whether a debt instrument constitutes a "security" is determined based on all the facts and circumstances. Most authorities have held that the length of the term of a debt instrument at initial issuance is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are other factors that may be relevant to the determination, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof with respect to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into equity of the obligor, whether payments of interest are fixed, variable or contingent and whether such payments are made on a current basis or accrued. It is unclear whether holders' Claims, the obligations under the New Term Loan Facility, or the Initial Draw under the New Revolving Credit Facility constitute "securities" for U.S. federal income tax purposes and each holder should consult its tax advisor regarding the treatment of such obligations as "securities".

Subject to the discussion below regarding accrued interest, to the extent that a holder's Claim is a "security" for U.S. federal income tax purposes, and the treatment under the IRS rulings described above otherwise applies, the JHI Exchange should be treated as a "recapitalization" and the Stock Exchange should be treated as a tax-free reorganization. In such case, a holder generally should recognize capital gain (but not loss), subject to the "market discount" rules discussed below, to the extent of the lesser of (i) the amount of gain realized in the JHI Exchange (as described in the following paragraph) or (ii) the amount of cash and fair market value of any obligation treated as received in the JHI Exchange that does not constitute a "security". A holder's tax basis in its New Common Stock and obligations constituting "securities" should be equal to the tax basis of the Claim surrendered in exchange therefor, increased by the amount of any gain recognized and decreased by the amount of cash and the fair market value of any obligation not constituting a "security" treated as received in the JHI Exchange (with such tax basis allocated between the New Common Stock and such obligations in proportion to their respective fair market values), and a holder's holding period for its New Common Stock and obligations constituting "securities" generally should include its holding period for such Claim. A holder's tax basis in any obligation not constituting a "security" deemed received in the JHI Exchange should equal its fair market value on the Effective Date, and a holder's holding period for such obligation should begin on the day following the Effective Date.

Subject to the discussion below regarding accrued interest, to the extent that the JHI Exchange is not treated as a "recapitalization" and the transactions contemplated by the Plan are otherwise taxable to a holder, such holder should recognize gain or loss equal to the difference between (a) the sum of the fair market value of New Common Stock on the Effective Date, the issue price of New Term Loan Facility and the Initial Draw under the New Revolving Credit Facility (which generally should equal their stated principal amount if neither such obligation nor the Claim surrendered in exchange therefor is considered "publicly traded" under applicable Treasury regulations), and cash received pursuant to the Plan and (b) the holder's adjusted tax basis in the Claim surrendered pursuant to the Plan. Such gain or loss should be capital in nature (subject to the "market discount" rules described below) and should be long term capital gain or loss if the holder's holding period for the surrendered Claim exceeded one year. A holder's tax basis in the New Common Stock should equal its fair market value on the Effective Date. A holder's tax basis in the New Term Loan Facility and the Initial Draw under the New Revolving Credit Facility should equal their issue price. A holder's holding period for the New Common Stock, New Term Loan Facility and the Initial Draw under the New Revolving Credit Facility should begin on the day following the Effective Date.

The tax consequences described above are not exclusive and holders may be treated for U.S. federal income tax purposes in some manner other than that set forth herein. Each holder should consult its tax advisor regarding the tax consequences to it of the transactions contemplated by the Plan.

2. *Accrued Interest*

Pursuant to the Plan, the Debtors will allocate for tax purposes all distributions in respect of any Claim first to the principal amount of such Claim, and thereafter to accrued but unpaid interest. Relevant authority indicates that an allocation of consideration between principal and interest provided for in a bankruptcy plan of reorganization should be binding for U.S. federal income tax purposes. However, no assurance can be given that the IRS will not challenge such allocation. To the extent that any consideration is allocated to accrued but unpaid interest, holders of Claims for accrued interest which previously have not included such accrued interest in taxable income should be required to recognize ordinary income equal to the amount of cash or the fair market value of any other property received with respect to such Claims for accrued interest. Holders should consult their tax advisors regarding the particular U.S. federal income tax consequences to them of the treatment of accrued but unpaid interest, as well as the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income.

3. *Market Discount*

The market discount provisions of the Tax Code may apply to holders. In general, a debt obligation, other than a debt obligation with a fixed maturity of one year or less, that is acquired by a holder in the secondary market (or, in certain circumstances, upon original issuance) is a "market discount bond" as to that holder if its stated principal amount exceeds the adjusted tax basis of the obligation in the holder's hands immediately after its acquisition by more than a statutory *de minimis* amount. Gain recognized by a holder with respect to a "market discount bond" should generally be treated as ordinary interest income to the extent of the market discount accrued on such bond during the holder's period of ownership, unless the holder elected to include accrued market discount in taxable income currently. If the JHI Exchange is treated as a "recapitalization" and the Stock Exchange is treated as a tax-free reorganization with respect to a holder, any accrued market discount on the exchanged Claim in excess of the gain recognized in the JHI Exchange should generally carry over to the New Common Stock and obligations treated as "securities" received by such holder.

4. *Backup Withholding and Information Reporting*

Certain payments are generally subject to information reporting to the IRS. Moreover, such reportable payments may be subject to backup withholding unless the taxpayer: (i) comes within certain exempt categories and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a holder's U.S. federal income tax liability, and such holder may obtain a refund of any excess amounts withheld under the backup withholding rules by timely filing an appropriate claim for refund with the IRS.

C. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM OR HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS OF CLAIMS AND INTERESTS SHOULD CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE, AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

VIII. FEASIBILITY, VALUATION, BEST INTERESTS OF CREDITORS AND CONFIRMATION WITHOUT ACCEPTANCE OF ALL IMPAIRED CLASSES

A. Feasibility of the Plan

The Bankruptcy Code requires that the Bankruptcy Court determine that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors. For purposes of showing that the Plan meets this "feasibility" standard, the Debtors have analyzed the ability of the Reorganized Debtors to meet their obligations under the Plan and retain sufficient liquidity and capital resources to conduct their business. To support their belief in the feasibility of the Plan, the Debtors prepared the financial projections (the "Financial Projections") set forth as Appendix C of the Disclosure Statement. The Financial Projections show that the Reorganized Debtors should have sufficient cash to make payments required under the Plan. Accordingly, the Debtors believe the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

THE FINANCIAL PROJECTIONS ARE BY THEIR NATURE FORWARD LOOKING, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE INFORMATION SET FORTH THEREIN. ACCORDINGLY, READERS OF THIS DISCLOSURE STATEMENT ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON THE FINANCIAL PROJECTIONS, AND SHOULD CAREFULLY REVIEW **SECTION V — "RISK FACTORS TO BE CONSIDERED"** HEREIN. THE FINANCIAL PROJECTIONS SHOULD NOT BE RELIED UPON AS NECESSARILY INDICATIVE OF FUTURE, ACTUAL RECOVERIES.

Holders of Claims against and Interests in the Debtors are advised that the Financial Projections were not prepared with a view toward compliance with the published guidelines of the American Institute of Certified Public Accountants or any other regulatory or professional agency or body or generally accepted accounting principles. Furthermore, the Debtors' independent certified public accountants have not compiled or examined the Financial Projections and accordingly do not express any opinion or any other form of assurance with respect thereto and assume no responsibility for the Financial Projections.

In addition to the assumptions footnoted in the Financial Projections themselves, the Financial Projections also assume that (i) the Plan will be confirmed and consummated in accordance with its terms, (ii) there will be no material change in legislation or regulations, or the administration thereof, that will have an unexpected effect on the operations of the Reorganized Debtors, and (iii) there will be no material contingent or unliquidated litigation or indemnity claims applicable to the Reorganized Debtors. Although considered reasonable by the Debtors as of the date hereof, unanticipated events and circumstances occurring after the preparation of the Financial Projections may affect actual recoveries under the Plan.

The Debtors do not intend to update or otherwise revise the Financial Projections, including any revisions to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions do not come to fruition. Furthermore, the Debtors do not intend to update or revise the Financial Projections to reflect changes in general economic or industry conditions.

B. Valuation

Moelis, the Debtors' financial advisor, has determined the estimated range of the reorganization value of the Reorganized Debtors, excluding cash on hand, to be approximately $200 million to $250 million (with a mid-point estimate of approximately $225 million) as of an assumed Effective Date of June 30, 2011. This estimate is based on a number of assumptions, including a successful reorganization of the Debtors' business and finances in a timely manner, the implementation of the Reorganized Debtors' business plan, the achievement of the forecasts reflected in the business plan and the Financial Projections, access to adequate exit financing, market conditions through the period covered by the Financial Projections, and the Plan becoming effective in accordance with the estimates and other assumptions discussed herein. The valuation is supported by the analysis (the "Valuation Analysis") attached hereto as Appendix D, and will be further supported by the Debtors' presentation at the Confirmation Hearing.

The aggregate amount of Senior Credit Facility Claims is approximately $357 million. As noted above, in satisfaction of the Secured Senior Credit Facility Claims, each Lender will receive its pro rata share of the New Common Stock and the New Term Loan. The Plan consideration, which includes the value of the New Common Stock and the New Term Loan, is not sufficient to satisfy the Lenders' Senior Credit Facility Claims in full. Specifically, based upon the mid-point of the Valuation, the Lenders will receive an estimated 51.8% recovery, and will, in turn, have deficiency claims in an aggregate amount of $172 million. The Lenders' deficiency claims are General Unsecured Claims. In addition, the Debtors estimate approximately $3.5 million in other known General Unsecured Claims. Accordingly, the Lenders are the Debtors' largest unsecured creditors.

C. Best Interests Test

Under the Bankruptcy Code, confirmation of a plan also requires a finding that, with respect to each Impaired Class of Claims and Interests, that each holder of an Allowed Claim or Interest in such Impaired Class has accepted the Plan, or will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. This requirement is known as the "best interests of creditors" test.

To calculate the probable distribution to holders of each Impaired Class of Claims and Interests if the Debtors were liquidated under chapter 7, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from the Debtors' assets if their chapter 11 cases were converted to chapter 7 cases under the Bankruptcy Code. This "liquidation value" would consist primarily of the proceeds from a forced sale of the Debtors' assets by a chapter 7 trustee.

The amount of liquidation value available to unsecured creditors would be reduced by, first, the claims of secured creditors to the extent of the value of their collateral, and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the chapter 7 cases and the chapter 11 cases. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the Debtors in their chapter 11 cases (such as compensation of attorneys, financial advisors and accountants) that are allowed in the chapter 7 cases, litigation costs, and claims arising from the operations of the Debtors during the pendency of the chapter 11 cases. The liquidation itself would trigger certain tax and other priority claims that otherwise would be due in the ordinary course of business. Those priority claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general unsecured claims or to make any distribution in respect of equity interests. The liquidation would also prompt the rejection of most, if not all, of the Debtors' executory contracts and unexpired leases, thereby creating a significant increase in general unsecured claims.

The Debtors believe that the Plan meets the "best interests of creditors" test of section 1129(a)(7) of the Bankruptcy Code. As described in more detail in the Liquidation Analysis, attached hereto as Appendix B, the holders of Claims and Interests of each of (i) Impaired Classes 4, 5, and 6 will receive the same distribution under the Plan as in a liquidation (i.e., zero) and (ii) Impaired Class 3 will receive more under the Plan than in a liquidation: in the event of a liquidation of the Debtors, the proceeds available for holders of Class 3 Claims would range from approximately $65 million to $80 million, with a recovery of only 18% to 23% for holders of such Claims. In contrast, under the Plan, holders of Allowed Class 3 Claims will receive an estimated 51.6% recovery based upon the mid-point of the Valuation. Therefore, holders of Impaired Claims and Interests will receive substantially more (as to Class 3) or the same (as to Classes 4, 5, and 6) under the Plan than in a liquidation.

The Plan leaves Class 1 Other Priority Claims, Class 2 Other Secured Claims, Class 7 Intercompany Claims and Class 8 Intercompany Interests Unimpaired, so the best interest test is satisfied with respect to these Classes.

Although the Debtors believe that the Plan meets the "best interests test" of section 1129(a)(7) of the Bankruptcy Code, there can be no assurance that the Bankruptcy Court will determine that the Plan meets this test.

D. Confirmation Without Acceptance of All Impaired Classes

Classes 4, 5, and 6 will receive no recovery under the Plan and are deemed to have rejected the Plan. In view of the deemed rejection by such Classes, the Debtors will seek confirmation of the Plan pursuant to the "cramdown" provisions of section 1129(b) of the Bankruptcy Code. Under section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may confirm a plan over the objection of an impaired rejecting class, if, among other things, at least one Impaired Class of Claims has accepted the plan (not counting the votes of any "insiders" as defined in the Bankruptcy Code) and if the plan does not "discriminate unfairly" against and is "fair and equitable" to each impaired rejecting class.

In general, a plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated substantially equivalent with respect to other classes of equal rank. Courts will take into account a number of factors in determining whether a plan discriminates unfairly, including whether the discrimination has a reasonable basis, whether the debtor can carry out a plan without such discrimination, whether such discrimination is proposed in good faith, and the treatment of the class discriminated against. Courts have also held that it is appropriate to classify unsecured creditors separately if the differences in classification are in the best interest of the creditors, foster reorganization efforts, do not violate the absolute priority rule, and do not needlessly increase the number of classes. All of the Class 4 General Unsecured Claims, Class 5 Subordinated 510(b) Claims, and Class 6 Interests in Jackson Hewitt are placed into their individual classes and given the same respective treatment – zero recovery. The Claims and Interests in theses Classes are likewise properly subordinated to all other Claims of any nature, and are legally distinct. Accordingly, the Plan does not discriminate unfairly against holders of Claims and Interests in Classes 4, 5, and 6.

A plan is fair and equitable as to a class of unsecured claims that rejects a plan if the plan provides (a) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property at all. A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides (a) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (b) that the holder of any interest that is junior to the interests of such class will not receive or retain any property at all on account of such junior interest under the plan.

The Plan is fair and equitable with respect to Classes 4, 5, and 6. First, there are no holders of any Claims against or Interests in the Debtors junior to the Claims and Interests in Classes 4, 5, and 6 who will receive or retain any property under the Plan on account of such junior claim or interest. Second, pursuant to the Plan, no holders of Claims against or Interests in the Debtors senior to Classes 4, 5, and 6 are receiving more than full payment on account of such Claims against or Interests in the Debtors. Thus, the Debtors submit that the Plan is structured such that it does not "discriminate unfairly" and is "fair and equitable" to each impaired rejecting class.

IX. CONCLUSION AND RECOMMENDATION

The Debtors believe that confirmation and implementation of the Plan is preferable to any other alternative under the circumstances. Other alternatives would involve significant delay, uncertainty, substantial additional administrative costs, and lower recovery to the holders of Secured Senior Credit Facility Claims. Consequently, the Debtors urge all holders of Secured Senior Credit Facility Claims to vote to accept the Plan and to evidence their acceptance by duly completing and returning their Ballots so that they will be received on or before 1:00 P.M., Prevailing Eastern Time, on May 24, 2011 by the Voting Agent.

Dated: May 23, 2011

JACKSON HEWITT TAX SERVICE INC.
(for itself and on behalf of the other Debtors)

By: */s/ Daniel P. O'Brien*
Name: Daniel P. O'Brien
Title: Executive Vice President, Chief Financial Officer and Treasurer

Mark A. McDermott
J. Gregory Milmoe
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036
(212) 735-3000
Email: Mark.McDermott@skadden.com
Email: Gregory.Milmoe@skadden.com

Mark S. Chehi (I.D. No. 2855)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899
(302) 651-3000
Email: Mark.Chehi@skadden.com

Counsel for Jackson Hewitt Tax Service Inc. and Subsidiaries

APPENDIX A

JOINT PREPACKAGED PLAN OF REORGANIZATION
OF JACKSON HEWITT TAX SERVICE INC. AND SUBSIDIARIES

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
JACKSON HEWITT TAX SERVICE INC., et al.,	Case No. 11-[_____] (___)
Debtors.[1]	Joint Administration Pending

JOINT PREPACKAGED PLAN OF REORGANIZATION OF JACKSON HEWITT TAX SERVICE INC. AND SUBSIDIARIES

Mark A. McDermott
J. Gregory Milmoe
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036
(212) 735-3000
Email: Mark.McDermott@skadden.com
Email: Gregory.Milmoe@skadden.com

Mark S. Chehi (I.D. No. 2855)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
One Rodney Square, P.O. Box 636
Wilmington, Delaware 19899
(302) 651-3000
Email: Mark.Chehi@skadden.com

Attorneys for Jackson Hewitt Tax Service Inc. and Subsidiaries

Dated: May 23, 2011

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Jackson Hewitt Tax Service Inc. (9692), Jackson Hewitt Inc. (9705), Jackson Hewitt Technology Services LLC (2409), Tax Services of America, Inc. (7427), Jackson Hewitt Corporate Services Inc. (2415), and Hewfant Inc. (0545). The address for each of the Debtors, with the exception of Jackson Hewitt Technology Services LLC, is 3 Sylvan Way, Parsippany, NJ 07054. The address for Jackson Hewitt Technology Services LLC is 501 N. Cattlemen Rd., Sarasota, FL 34232.

APPENDIX B

LIQUIDATION ANALYSIS

This liquidation analysis, a copy of which is at the end of this Appendix B (the "Liquidation Analysis"), was prepared by Alvarez & Marsal for the Debtors and represents their best estimate of the proceeds that would be realized if the Debtors were liquidated in accordance with chapter 7 of the United States Bankruptcy Code. This Liquidation Analysis assumes that the Debtors' chapter 11 Cases are converted into liquidations under chapter 7 as of June 30, 2011.

The Liquidation Analysis is premised upon a number of estimates and assumptions that, although developed and considered reasonable by the Debtors, are inherently subject to significant business, economic and competitive uncertainties beyond the control of the Debtors, and upon assumptions which could be subject to change. Accordingly, there can be no assurance that the values reflected in the Liquidation Analysis would be realized if the Debtors were, in fact, to undergo such a liquidation. In addition, any liquidation ultimately undertaken would take place under future circumstances that cannot be predicted with certainty. Accordingly, although the analysis that follows is necessarily presented with numerical specificity, if the Debtors' estates were in fact liquidated as described herein, the actual liquidation proceeds could vary significantly from the amounts set forth in the Liquidation Analysis. Such actual liquidation proceeds could be materially higher or lower than the amounts set forth above, and no representation or warranty can be or is being made with respect to the actual proceeds that would be generated in the liquidation of the Debtors under chapter 7 of the United States Bankruptcy Code. The liquidation valuations have been prepared solely for purposes of estimating the proceeds available in chapter 7 and do not represent values that may be appropriate for any other purpose, including the values applicable in the context of the Plan. Nothing contained in these valuations is intended as or constitutes a concession or admission for any purpose other than the presentation of a hypothetical liquidation analysis.

General Assumptions

In chapter 7, a trustee (the "Chapter 7 Trustee") would be appointed to manage the Debtors' affairs and conduct a liquidation. This Liquidation Analysis assumes that the Debtors would be forced to liquidate. For the reasons described below, the Debtors would be forced to cease substantially all operations almost immediately and use their cash position to liquidate their assets and pay the costs of liquidation and all creditor claims in accordance with the priorities established in chapter 7. For ease of presentation, the Liquidation Analysis presents the results of liquidation of each of the Debtors on a consolidated basis. Even if the presentation were made on an entity-by-entity basis, the result would be the same because the Lenders have blanket liens on all of the Debtors assets to secure claims that are vastly in excess of the estimated liquidation proceeds. The likely consequences of the conversion to chapter 7 include the following:

- The Company's workforce would be terminated, except for a very small number of employees necessary to assist with the liquidation. Even if termination did not occur immediately, with the Company facing certain liquidation, employees would quickly leave the Company and find employment elsewhere. The loss of employees would make an orderly wind down significantly more difficult and would render the possibility of continuing operations in an effort to complete a going concern sale highly remote, if not impossible.

- The Company's approximately 700 franchisees are geographically diverse and in the event of a chapter 7 the best franchisees would be courted by, and would transfer to, competitor's platforms. Outside the tax season, there would be few, if any, operational barriers for a franchisee to transfer to a competitor's platform. Indeed, in a liquidation, with the Debtors unable to operate and support their franchisees, the Chapter 7 Trustee likely would immediately reject all franchise agreements. The rejection would give rise to significant damage claims that would be offset against any claims back against franchisees.

- The bulk of the Company's revenues are derived from tax preparation services. Customers have the ability to very quickly shift their purchases from the Company's owned or franchised locations to competition, desktop software, online platforms, or manual returns. It is highly unlikely that any customer would remain in a liquidation.

- Outstanding receivables would be difficult to collect in full. Franchisees likely would hold/slow the payment of royalties because, as noted above, the Debtors likely would no longer provide the services necessary to continue operations, though after some period of time some partial payments would likely be received. The sale of new tax services would cease entirely.

- Prepaid expenses are primarily composed of deferred expenses and various deposit balances. Deferred expenses might be offset against past due balances and, therefore, uncollectible. Deposits would be held by insurance or benefit providers to cover any tail coverage issues. Prepaid rent would be used to offset final bills/obligations.

- The majority of the Company's property, plant and equipment ("PP&E") is substantially depreciated hardware and/or software assets that have been specifically tailored to the Jackson Hewitt brand and product offering. These assets are of very limited value on the secondary market and it is unlikely that any meaningful value would be realized upon liquidation.

- The bulk of the Company's assets is intangible and is in the form of reacquired franchise rights, customer relationships, patents, trademarks and goodwill. The value of these assets would be severely compromised under a liquidation scenario. Some value may be realized from the sale of the Jackson Hewitt customer lists and from the Company's brand name, trademarks and URLs.

- The Debtors have a series of legal actions against other parties, the largest of which is the HR Block litigation in which the Debtors have sued for damages for, among other things, false advertising, alleging that HR Block harmed the Debtors' franchise value. The value of the litigation is uncertain at this time, though in a liquidation where the franchise ceases to exist, the value would be assumed to be very low. There also would be significant costs of maintaining the suit, which would be compounded by the likely need to simultaneously litigate against Block on its patent infringement claim against the Debtors. The smaller, individual actions are primarily against terminated franchisees. For the reasons mentioned above, we have assumed zero recovery on these individual actions.

- In the 90 days prior to filing the Debtors made payments to vendors, employees and other creditors that could be subject to potential preference actions. This analysis assumes that recoveries from any potential preference action are zero, as such payments were largely made in the ordinary course of business; the amounts for each payee were de minimis; and because the cost to pursue such actions would likely exceed any potential recoveries.

The bulk of the information concerning the Company's assets for this analysis was taken from the Debtors' public financial statements, and from Appendix C ("The Financial Projections of Reorganized Debtors") of the Debtors' Disclosure Statement dated May 23, 2011 (the "Debtors' Disclosure Statement").

Specific Assumptions

Note 1

The Company projects a consolidated cash balance of approximately $68.2 million at June 30, 2011, all but approximately $3.0 million would be held in a segregated account for the benefit of the lenders. Under a liquidation scenario, it is assumed that all funds in the segregated account would be paid to the lenders.

Note 2:

Accounts receivable: The table below shows the composition of A/R as of January 31, 2011:

(US$ in millions)	1/31/2011
Franchisee royalties, TSA tax prep	$30.1

Revenue accrual	32.3
Financial products, transmitter fees	10.9
Total	$73.2

A/R is projected to approximate $15.9 million, in the aggregate, as of June 30, 2011. The Company was able to collect the majority of its pre-season franchise A/R balances by garnishing a portion of the financial product proceeds due to franchisees over the course of the tax season. The balance outstanding on June 30th would be primarily comprised of slower moving franchisee obligations which are largely uncollectable in the off-season, as franchisees have limited means to fund payment in the off-season and because franchisees would hold payments. The Debtors may recover some final payments, though the vast majority of receivables would be uncollectable in chapter 7 liquidation. This analysis assumes that 10% to 30% of receivables would be able to be collected by the Trustee.

Note 3:

Notes receivable, current and long-term, approximated $15.8 million at January 31, 2011, and are estimated to approximate $11.2 million at June 30, 2011. The balance outstanding on June 30th would be largely uncollectable as these are long and medium-term loans to franchisees, typically either to expand new territory sales or restructure current receivables on a long-term basis. Without the prospect of a future with Jackson Hewitt and limited additional revenues in the off-season, it is probable that the borrowers would cease making payments on their notes. The Debtors may recover some final payments, though the vast majority of receivables would be uncollectable in chapter 7 liquidation. This analysis assumes that 10% to 30% of receivables would be able to be collected by the Trustee.

Note 4:

Prepaid and Other Current Assets: The table below shows the composition of prepaid assets as of January 31, 2011:

(US$ in millions)	1/31/2011
Prepaid Gold Guarantee	$4.9
Other receivable, net	4.5
Deferred financing costs	3.6
Wal-Mart location subsidy to franchisees	3.6
Wal-Mart kiosk lease receivable, net	2.0
Prepaid expenses	1.9
Prepaid rent	1.4
Prepaid insurance	1.4
Total	$23.3

Prepaid expenses and other assets are estimated to approximate $13.4 million at June 30, 2011. The prepaid Gold Guarantee balance is a deferred warranty purchased to cover taxpayer claims for certain errors in the preparation of the customers' tax returns and would be required to cover future obligations as they come due. The Wal-Mart subsidies and kiosk lease receivables would not be realizable in a liquidation scenario, as franchisees have limited means to fund payment in the off-season, and because franchisees would hold payments. Prepaid rent, insurance and other prepaid balances would be used to fund payment of the final invoices and any remaining credit balance would be held as an offset against future costs.

Given the factors mentioned in the above discussion, the Debtors may recover some of the smaller deposits, though the vast majority of prepaid assets would be uncollectable. This analysis assumes that 0% to 5% of prepaid expenses would be collected by the Chapter 7 Trustee.

Note 5:

Property Plant & Equipment, net: The following table shows the composition of the Company's PP&E account as of January 31, 2011:

(US$ in millions)	1/31/2011
Computer hardware and software	$13.7
Construction	2.8
Wal-Mart Kiosks	1.6
Furniture and fixtures	1.5
Leasehold Improvements	1.1
Equipment	1.1
Signage and other	0.3
Total	$22.1

PP&E is estimated to approximate $19.8 million at June 30, 2011. The Debtors' computer hardware, computer software, and signage is very use-specific to the Company's tax preparation business and would have limited or no value in a liquidation. The Wal-Mart kiosks are relatively inexpensive individually and the cost of gathering, inventorying and reselling the kiosks from over 1,900 Wal-Mart stores would exceed any realizable value. Furniture, fixtures and equipment from the Debtors' headquarters in Parsippany, NJ and IT center in Sarasota, FL could be resold to a liquidator though recoveries would be low. Construction and leasehold improvements would yield no economic value. Given the limited resale value of the Debtors' PP&E and factors mentioned above, recovery in liquidation is estimated at a range of 0% to 10% of projected net PP&E.

Note 6:

The following table shows the composition of goodwill as of January 31, 2011:

(US$ in millions)	1/31/2011
Franchise operations	$113.0
Company-owned offices	37.3
Total	$150.3

Goodwill is estimated to approximate $150.3 million at June 30, 2011. In the event of liquidation, goodwill is assumed to have no inherent economic value and would be written down to zero.

Note 7:

The following table shows the composition of other intangible assets as of January 31, 2011:

(US$ in millions)	1/31/2011
Amortizable	
Customer relationships	1.9
Reacquired franchise rights	0.8
Franchise agreements	0.3
Acquired tradenames	0.0
Unamortizable	
Jackson Hewitt trademark	81.0
Reacquired franchise rights	2.6
Total	$86.6

Intangibles are estimated to approximate $86.0 million at June 30, 2011. In the event of liquidation, intangible assets would have limited or no economic value. There would be some value to the Jackson Hewitt customer lists and the Company's trademarks and URLs. While the market for such information is limited, management has estimated a value of approximately 0% to 5% of the Petition Date value.

Note 8:

The following table shows the composition of other long-term assets as of January 31, 2011:

(US$ in millions)	1/31/2011
Development advances – L/T	$4.0
Deferred Gold Guarantee exp. – L/T	3.3
Wal-Mart kiosk lease – L/T	2.3
Prepaid rent	1.0
Deposits	0.3
Other	0.2
Total	$11.1

Long-term assets are estimated to approximate $11.1 million at June 30, 2011. In the event of liquidation, deferred Gold Guantantee expense and Wal-Mart kiosk leases would be assumed to have no inherent economic value and would be written down to zero. Pre-paid rent balances would be set off against future losses by landlords. Deposits would be realizable. Development advances and other long-term assets would be difficult to collect and have been assumed to have an estimated value of approximately 0% to 5%.

Note 9:

The costs of liquidation include the following:

- Chapter 7 Trustee fees - estimated at 3.0% of the net proceeds, excluding cash, from the sale/wind down of assets/business units, net of cash on hand.
- Professional fees - estimated at $250,000 per month for one month in a best case scenario and three months in a worst case scenario.
- Payroll - estimated to approximate 30 days of off-peak season payroll expense at $2.5 million per month. The Worker Adjustment and Retraining Notification Act (29 U.S.C. section 2101) may require 60 days notice for all full-time employees. The actual payroll expense could be lower to the extent the liquidation is completed more quickly, but could increase to pay necessary stay bonuses or WARN Act liabilities, if applicable.
- General and administrative expenses - estimated at 15% of the approximately $998,000 per month run rate based on June 2010 SG&A expense and assumed to run for one month in a best case scenario and three months in a worst case scenario.

Note 10:

Secured debt balances (including capitalized PIK interest, but excluding earned but unpaid cash interest), as of the petition date are as indicated below. These amounts are comprised of the Debtors' obligations under the Credit Agreement, which are secured by perfected liens on all of the Debtors' assets. Accordingly there are no de minimis or unencumbered assets.

(US$ in millions)	5/24/2011
Term loan	$214.4
Non-revolving revolver	65.8
Revolver	75.2
Swaps	1.9
Total	$357.3

Cash and PIK interest have not been paid or accrued post-petition.

Note 11:

Administrative and professional fees claims, including post-petition trade, are paid monthly. The Debtors are assuming that, at conversion, the remaining fees, which have priority status in chapter 7, would approximate $1.0 million in a best case scenario and $2.0 million in a worse case scenario.

Note 12:

Priority claims are primarily comprised of approximately $5,000 for sales tax claims, approximately $20,000 for property tax claims, and approximately $26.6 million for estimated income tax. The Debtors' tax year is January 1st to December 31st. The Debtors make the bulk of their revenues in the first quarter and typically show losses through the second through fourth quarters. In a normal year, estimated quarterly tax payments would be based on forecast pre-tax income through December 31. If the Debtors entered liquidation they would show a sizable income tax liability as a result of income during the first quarter, offset by only a small tax loss as result of projected losses during the second quarter. Unlike prior years, they would not be able to utilize the projected income tax losses during the third and fourth quarters to offset first quarter taxable income, hence there would be an unusually large income tax bill.

Note 13:

The Debtors' estimated unsecured claims as of June 30, 2011 are as follows:

(US$ in millions)	6/30/2011
Lender unsecured deficiency claims	$283.7
Contract rejection damage claims	48.3
Lease rejection damage claims	16.2
Unsecured trade claims	3.0
Total	$351.2

Lender unsecured deficiency claims are shown as the midpoint between the high and low recovery estimate for the secured lenders and includes principal and interest on a term loan, revolver, non-revolving revolver and two swap facilities as of the petition date. Contract rejection damage claims, including franchise agreements, were estimated to approximate one year's accounts payable for vendors with contracts at approximately $48.3 million. Bankruptcy code section 502(b)(6) calculates lease rejection damage claims as the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease. Since the bulk of the company's approximately 700 real estate leases are one to three years in duration, lease rejection damage claims are estimated to approximate one year's rent at approximately $16.2 million per annum. Unsecured trade claims as of June 30, 2011 are estimated to approximate $2.5 million.

In addition, the Debtors would have a number of litigation claims, including the RAL-related claims listed in the body of the Disclosure Statements, though those amounts could not be quantified at this time.

Jackson Hewitt Tax Service, Inc.
Chapter 7 Liquidation Analysis
(US$000's)
Estimated as of 6/30/2011

	Notes	Net Book Value as of 1/31/2011 (Unaudited)	Additions and/or (Eliminations)	Remaining Book Value as of 6/30/2011 Low	Remaining Book Value as of 6/30/2011 High	Estimated Recovery Percentage Low	Estimated Recovery Percentage High	Estimated Liquidation Low	Estimated Liquidation High
Cash	1	$ 6,246	$ 61,939	$ 68,185	$ 68,185	100%	100%	$ 68,185	$ 68,185
Accounts receivable	2	73,180	(57,242)	15,938	15,938	10%	30%	1,594	4,782
Notes receivable	3	15,791	(4,632)	11,159	11,159	10%	30%	1,116	3,348
Prepaid and other current assets	4	23,314	(9,924)	13,390	13,390	0%	5%	-	670
Property & equipment, net	5	22,053	(2,266)	19,787	19,787	0%	10%	-	1,979
Goodwill, net	6	150,339	(0)	150,339	150,339	0%	0%	-	-
Intangible assets, net	7	86,576	(551)	86,025	86,025	0%	5%	-	4,301
Other long-term assets	8	11,075	118	11,193	11,193	0%	5%	-	560
Total		$ 388,574	$ (12,558)	$ 376,016	$ 376,016			$ 70,895	$ 83,823
Less:									
Liquidation Costs									
Trustee fees (calc excludes cash)		3 0%	of proceeds	(81)	(469)			(81)	(469)
Ch 7 Professional fees		250	/month	(750)	(250)			(750)	(250)
Payroll		2,500	/month	(5,000)	(2,500)			(5,000)	(2,500)
SG&A expenses		150	/month	(449)	(150)			(449)	(150)
Estimated cost of ch 7 liquidation	9					100%	100%	$ (6,280)	$ (3,369)
Secured lender claims	10			$ (357,347)	$ (357,347)	18%	23%	$ (64,614)	$ (80,455)
Amount available (shortfall to) for admin, priority, and unsecured claims								$ (292,732)	$ (276,892)
Ch 11 admin/professional claims	11			$ (2,000)	$ (1,000)	0%	0%	$ -	$ -
Priority claims/tax claims	12			$ (26,025)	$ (26,025)	0%	0%	$ -	$ -
Unsecured claims	13			$ (351,200)	$ (351,200)	0%	0%	$ -	$ -

This analysis should be read only in conjunction with the assumptions, qualifications and explanations set forth in the attached assumptions and those in the Disclosure Statement, including, without limitation, those set forth in Article VIII.C "Best Interests Test" and Appendix B "Liquidation Analysis."

Appendix B-2
Lehman Brothers Holdings Inc.

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11 Case No.**
LEHMAN BROTHERS HOLDINGS INC., et al.	:	**08-13555 (JMP)**
Debtors.	:	**(Jointly Administered)**

DEBTORS' DISCLOSURE STATEMENT FOR
SECOND AMENDED JOINT CHAPTER 11 PLAN OF LEHMAN
BROTHERS HOLDINGS INC. AND ITS AFFILIATED DEBTORS
<u>PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE</u>

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Tel: (212) 310-8000
Fax: (212) 310-8007

Attorneys for Debtors and
Debtors in Possession

Dated: June 30, 2011
New York, New York

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

**TABLE OF CONTENTS
(continued)**

Page

TABLE OF CONTENTS
(continued)

Page

Exhibits

D. Withholding on Distributions, and Information Reporting

All distributions to holders of Allowed Claims under the Plan are subject to any applicable tax withholding, including employment tax withholding. Under federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable withholding rate (currently 28%). Backup withholding generally applies if the holder (a) fails to furnish its social security number or other taxpayer identification number, (b) furnishes an incorrect taxpayer identification number, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the tax identification number provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions. These categories are very broad; however, there are numerous exceptions. Holders of Allowed Claims are urged to consult their tax advisors regarding the Treasury Regulations governing backup withholding and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations.

In addition, a holder of an Allowed Claim or a Liquidating Trust Beneficiary that is a *not* a U.S. person may be subject to up to 30% withholding, depending on, among other things, the particular type of income and whether the type of income is subject to a lower treaty rate. As to certain Claims, it is possible that withholding may be required with respect to Distributions by the Debtors even if no withholding would have been required if payment was made prior to the Chapter 11 Cases. *A non-U.S. holder may also be subject to other adverse consequences in connection with the implementation of the Plan. As discussed above, the foregoing discussion of the U.S. federal income tax consequences of the Plan does not generally address the consequences to non-U.S. holders. Holders are urged to consult their tax advisors regarding potential withholding on Distributions by the Debtors or payments from the Liquidating Trustee.*

In addition, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these Treasury Regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the holder's tax returns.

XVI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Plan affords holders of Allowed Claims the potential for the greatest realization on the Debtors' assets and, therefore, is in the best interests of such holders. If, however, the requisite acceptances are not received, or the requisite acceptances are received but the Plan is not subsequently confirmed and consummated, the theoretical alternatives include: (i) formulation of an alternative plan or plans of reorganization or (ii) liquidation of all of the Debtors under chapter 7 of the Bankruptcy Code.

A. Alternative Plan(s)

The Debtors have evaluated numerous alternatives in connection with the Plan. After evaluating these alternatives the Debtors concluded that the Plan, assuming confirmation and successful implementation, is the best alternative to maximize recoveries by holders of Claims. If the Plan is not confirmed, alternative plans proposed by the Debtors or any other party may contemplate global substantive consolidation of the Debtors, strict recognition of the Debtors as separate corporate entities, or a compromise and settlement that differs from the economic proposal embodied by the Plan.

An alternative chapter 11 plan has been filed by each of (i) the Ad Hoc Group which provides for the substantive consolidation of the Debtors and certain of its non-Debtor foreign Affiliates and (ii) the Non-Con Plan Proponents which does not substantively consolidate the Debtors and their Affiliates but instead strictly recognizes the corporate integrity of each of the Debtors.

An alternative plan that seeks to substantively consolidate the Debtors' estates generally would result in (i) the consolidation of the assets and liabilities of the Debtors; (ii) the elimination of Affiliate Claims, subsidiary equity or ownership interests, multiple creditor Claims, joint and several liability Claims and Guarantee Claims; and (iii) the payment of allowed Claims from a common pool of assets. Specifically related to the Debtors' Chapter 11 Cases and Claims, it is likely that Affiliate Claims and Guarantee Claims would be disregarded and the Debtors would not make any distributions in respect thereof.

An alternative plan that does not substantively consolidate the Debtors and their Affiliates but instead strictly recognizes the corporate integrity of each of the Debtors would yield a very divergent result from the plan based on substantive consolidation. In a plan that strictly recognizes the corporate integrity of the Debtors, all Allowed Guarantee Claims and Affiliate Claims would be recognized in full and receive distributions based on their full amount. Holders of Allowed Claims of a particular Debtor would be entitled to receive a Distribution only from the assets of that particular Debtor. In the Debtors' Chapter 11 Cases, in a plan that strictly recognizes the corporate integrity of each Debtor, the holders of Allowed Claims of the different Debtors would receive disparate Distributions, as certain Debtors have more assets or liabilities than others. As the ultimate parent company for Lehman, LBHI issued various guarantees and had significant Intercompany liabilities. As compared to Distributions under the Plan, distributions by LBHI would be greatly diluted and spread across a large group of holders of Allowed Claims based on direct obligations of LBHI, Guarantees Claims and Affiliate Claims.

A plan (i) based on substantive consolidation or (ii) that strictly recognizes the corporate integrity of each Debtor, would both invite protracted litigation with respect to such determination and the Claims which would take years to resolve. Any additional distributions received by a particular Class under such plan would be diminished by the time value of money from having waited years to receive such payments.

If the Plan is not confirmed, the Debtors may remain in chapter 11 for an extended period of time and incur significant additional expenses in the management of their assets. The Plan enables holders of Allowed Claims to realize a fair and equitable recovery and value under the circumstances, and the best opportunity for an expeditious conclusion of these atypical Chapter 11 Cases.

B. Liquidation under Chapter 7

If no plan is confirmed, the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate all of the Debtors' assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective holders of Claims against or Equity Interests in the Debtors.

In liquidation under Chapter 7, before creditors received any distribution, additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants and other professionals to assist such trustees would cause a substantial diminution in the value of the Debtors' assets. The assets available for distribution to creditors would be sold at distressed prices and reduced by such additional expenses and by Claims, some of which would be entitled to priority, which would arise by reason of the liquidation and from the rejection of leases and other executory contracts in connection with the cessation of operations and the failure to realize the greater orderly liquidation value of the Debtors' assets.

In a liquidation under chapter 11, the Debtors' assets could be sold in an orderly fashion over a more extended period of time than in a liquidation under chapter 7. Thus, a Chapter 11 liquidation is likely to result in greater recoveries than in a chapter 7 liquidation for all Classes. In addition, the Plan provides that initial distributions from the liquidation of the Debtors could be made earlier pursuant to the Plan, if confirmed, than distributions could be made in a liquidation of such Debtors under chapter 7.

THE PLAN AFFORDS SUBSTANTIALLY GREATER BENEFITS TO HOLDERS OF IMPAIRED CLAIMS THAN WOULD ANY OTHER REASONABLY CONFIRMABLE REORGANIZATION PLAN OR LIQUIDATION UNDER ANY CHAPTER OF THE BANKRUPTCY CODE.

The Liquidation Analysis, prepared by the Debtors with their financial advisors and attached hereto as Exhibit 5, is premised upon a liquidation in a chapter 7 case. In the analysis, the Debtors have taken into account the nature, status, and underlying value of the assets of the Debtors, the ultimate realizable value of such assets, and the extent to which the assets are subject to liens and security interests.

THE RECOVERIES ESTIMATED TO BE AVAILABLE IN LIQUIDATION ARE NOT LIKELY TO AFFORD HOLDERS OF CLAIMS AS GREAT A REALIZATION POTENTIAL AS DOES THE PLAN.

Exhibit 5

Liquidation Analysis for Each Debtor

Pursuant to section 1129(a)(7) of the Bankruptcy Code (the "Best Interest Test"), each holder of an impaired Claim or Equity Interest must either (i) accept the Plan, or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such non-accepting holder would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. In determining whether the Best Interest Test has been met, the first step is to determine the dollar amount that would be generated from a hypothetical liquidation of the Debtors' assets in chapter 7. The gross amount of Cash available would be the sum of the proceeds from the disposition of the Debtors' assets and the Cash held by the Debtors at the commencement of their chapter 7 cases. Such amount then would be reduced by the costs and expenses of the liquidation. Prior to determining whether the Best Interest Test has been met for general unsecured creditors, further reductions would be required to eliminate Cash and asset liquidation proceeds that would be applied to Secured Claims and amounts necessary to satisfy chapter 7 and chapter 11 Administrative Expense Claims, Priority Tax Claims, and Priority Non-Tax Claims that are senior to General Unsecured Claims, including any incremental Administrative Expense Claims that may result from the termination of the Debtors' businesses and the liquidation of assets. Any remaining Cash would be available for Distribution to general unsecured creditors and Equity Interest holders in accordance with the distribution hierarchy established by section 726 of the Bankruptcy Code.

The Liquidation Analyses (the "Liquidation Analyses") below reflect the estimated Cash proceeds, net of liquidation-related costs that would be available to each of the Debtors' creditors if each Debtor were to be liquidated in a separate chapter 7 case. Underlying the Liquidation Analyses are a number of estimates and assumptions regarding liquidation proceeds that, although developed and considered reasonable by the Debtors, are inherently subject to significant business, economic, and competitive uncertainties and contingencies beyond the control of the Debtors. ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED IN THE LIQUIDATION ANALYSES WOULD BE REALIZED IF THE DEBTORS WERE, IN FACT, TO UNDERGO SUCH A LIQUIDATION, AND ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE SHOWN HERE.

For certain asset classes, estimates of the liquidation proceeds were made for each asset individually. For other assets, liquidation values were assessed for general classes of assets by estimating the percentage recoveries that a chapter 7 trustee might achieve through their disposition. A Liquidation Analysis was performed for the assets in each asset class held by the Debtors, and then allocated to each Debtor based on such Debtor's pro rata share of assets in the asset classes, and assumes that the Debtors' liquidation proceeds would be distributed in accordance with sections 726 and 1129(b) of the Bankruptcy Code. Each of the following Liquidation Analyses should be read in conjunction with the following notes.

1. Assumptions

For purposes of each Liquidation Analysis, the Debtors considered many factors and made certain assumptions. Those assumptions that the Debtors consider significant are described below.

2. General

a. **Conversion:** Each of the Chapter 11 Cases are converted to chapter 7 in 2012.

b. **Appointment of Chapter 7 Trustee:** One chapter 7 trustee is appointed to liquidate and wind down the Debtors' estates. It should be noted that the selection of a separate chapter 7 trustee for one or more of the Debtors' estates could result in substantially higher administrative expenses associated with the chapter 7 cases from a large duplication of effort by each trustee and his/her professionals.

c. **Chapter 7 Trustee:** The chapter 7 trustee would retain professionals (investment bankers, law firms, accounting firms, consultants, forensic experts, etc.) to assist in the liquidation and wind down of the Debtors' estates. Although the chapter 7 trustee may retain certain of the Debtors' professionals for discrete projects, it is assumed that the trustee's primary investment banking, legal, accounting, consulting and forensic support would be provided by new professionals, because most (if not all) of these professionals will hold Claims in the chapter 7 cases. Nevertheless, given that the Debtors have been managing the orderly wind down of their estates with over 500 employees and financial advisor professionals, and have stayed current on tax filings, regulatory and judicial inquiries, and financials records for hundreds of entities and bank accounts, it is reasonable to expect that the chapter 7 trustee will require the assistance of some portion of the Debtors' professionals and/or their employees to assist in maintaining regulatory compliance and in the short-term liquidations due to their institutional knowledge.

d. **Start-Up Time:** Given the complexity of the Chapter 11 Cases and the underlying assets and Claims, it is anticipated that the chapter 7 trustee and any newly retained professionals will require at least three to six months to familiarize themselves with the Debtors' estates, the assets, the Claims and related matters before they begin marketing assets or litigating Claims.

e. **Duration of Liquidation** The Liquidation Analyses assume that after the start-up period the actual liquidation of assets of the Debtors would continue for 9 to 12 months, during which time all of the Debtors' major assets would either be sold or conveyed to the applicable lien holders and the Cash proceeds, net of liquidation-related costs, would be available for Distribution to creditors.

Approximately 67,000 Claims were filed against the Debtors prior to the Bar Date, in amounts totaling approximately $1.2 trillion (including duplicate Claims and estimated amounts for certain unliquidated claims). As of May 13, 2011, approximately 48,000 Filed Claims remain on the Claims register against all of the Debtors in an aggregate amount of approximately $764 billion.[5] It is unlikely that the chapter 7 trustee could adequately reconcile all Claims during 12 to 18 month period of assessment and asset recovery. Therefore, a large number of the Claims in these cases will be reconciled, valued, negotiated and settled, and/or litigated to conclusion only after the asset recovery work is mostly complete. The Debtors estimate that a chapter 7 trustee will require at least an additional 12 to 18 months to reconcile Claims and initiate litigation including, but not limited to, claim objections and avoidance actions (to the extent the applicable statute of limitations has been extended pursuant to tolling agreements). It is possible that some Distributions could be made prior to such period, but Claims would be subject to reserves.

It is not uncommon in large cases for liquidations to last many years while chapter 7 trustees prosecute difficult Claims-related and other litigation.

f. Consolidation for Administrative Purposes. This analysis assumes that the Debtors are consolidated for administrative purposes during the chapter 7 cases. Should one or more Debtors be liquidated in a separately administered chapter 7 case, the total administrative costs of the Debtors' chapter 7 cases could be substantially higher than the costs assumed in this analysis.

3. Assets

a. Cash: Beginning Cash is based on restricted and unrestricted Cash balances.

b. Assets: This analysis assumes that the assets of each Debtor are sold, transferred, abandoned or otherwise liquidated on or before 18 months from the date that the Chapter 11 Cases are converted. With respect to the different asset classes of the Debtors, the following assumptions were made when calculating the liquidation amount:

(i) Derivative Contracts

The settlement or disposition of Derivative Contracts requires experienced derivatives and financial services experts. In a chapter 7 liquidation, it is assumed that the chapter 7 trustee will reduce the number of the Debtors' current employees, and that other employees will leave for other market opportunities. It is estimated that headcount is reduced significantly, which will result in the loss of legacy knowledge relating to the derivatives portfolio and will disrupt ongoing settlement discussions with counterparties. This will make a chapter 7 liquidation significantly more difficult and will result in lower recoveries as compared to current projections.

---

5 In addition, after May 13, 2011, approximately $3 billion of claims have been expunged or withdrawn, reducing the aggregate amount of outstanding Claims to approximately $761 billion. The Debtors continue aggressively to mitigate Claims by filing objections to Claims on a monthly basis that result in either an order of the Bankruptcy Court that certain Claims be expunged or reduced in amount, Claim withdrawals, or settlements.

(ii) Real Estate Assets

A forced liquidation of Real Estate Assets over a 12-month period (after the 3-6 month transition period) would have an adverse impact on the value of the Debtors' recoveries from their Real Estate Assets. Additional discounts on current valuations would be required due to the following assumptions:

- Lack of liquidity in the market – Potential purchasers may not be able to obtain the requisite financing to purchase the Debtors' Real Estate Assets.

- Supply and demand imbalances – Given the size of the Debtors' portfolio of Real Estate Assets, if offered for sale in its entirety, the market equilibrium in certain markets or geographies may be disturbed. Assets available for sale may outweigh existing demand, inviting further discounts in order to attract non-traditional buyers.

- Bulk sales – Liquidation of the Debtors' entire portfolio of Real Estate Assets within a 12-month period would require bundling multiple positions together for purchasers (most likely by geography, property type or lien type); valuations would likely reflect discounts for what would amount to bulk purchases.

- Inability to offer seller representations or warranties – Liquidation would preclude the Trustee/Debtors' willingness or ability to offer representations and warranties on positions for sale. Additional discounts would be necessary to compensate buyers for the risk of not securing certain guarantees or indemnities.

Taking these assumptions into account, liquidation discounts have been applied based on lien type and property type. Discounts relative to lien type are a reflection of the priority of Claims on underlying collateral (so senior positions generally have lower discounts than equity discounts). Discounts relative to property type (office, condo/multifamily, hospitality, land, etc.) are a reflection of unique features in the markets for those assets.

In addition, there are certain Real Estate Assets within the commercial real estate portfolio that possess unique characteristics and as a result, individual liquidation discounts have been applied. This situation generally applies to larger projects that may involve multiple positions across lien and property types (*e.g.*, a condo development with some undeveloped land), and/or debt positions whereby a liquid market for a security establishes a market price.

- Other considerations

A quick liquidation of the Debtors' portfolio of Real Estate Assets would likely entail significant involvement on the part of third party investment bankers, real estate brokers, and legal resources (including representation by local counsel). For the purposes of this analysis, the Debtors included fees for brokers and bankers and additional amounts to cover legal and other contingencies.

It is possible that some of the Debtors' Real Estate Assets cannot be sold in the liquidation time frame. Outstanding litigation and structural impediments (transfer consents, regulatory or environmental restrictions, rights of first refusal, *etc.*) may require that certain positions be held beyond the self-imposed deadline.

(iii) Private Equity/Principal Investments:

The assumptions used are based on estimates and are by definition subject to variability in ultimate outcome.

(a) Liquidation Impediments

Contractual and Structural Impediments

- Tag-Along Rights: Investors in certain Private Equity/Principal Investments have a right to dispose of a portion of their interest in any transaction in which the Debtors' transfer an interest. Such right may limit the amount of any Private Equity/Principal Investment that the Debtors are able to sell in any one transaction.

- Regulatory Restrictions: Certain Private Equity/Principal Investments impose regulatory restrictions on the type of buyer or quantity of ownership of such investment. Potential purchasers might demand a discount for any such Private Equity/Principal Investment due to the uncertainty of obtaining such approvals and the time necessary to obtain regulatory approvals.

- Structural Impediments: With respect to certain Private Equity/Principal Investments which are held in more complicated structures (e.g., co-investment vehicles, limited partnerships), purchasers are likely to apply discounts in a forced sale process (see also "Market Psychology" below).

Procedural Impediments

- Market Psychology: In a chapter 7 liquidation, potential purchasers will be aware of the Debtors' desire to liquidate its Private Equity/Principal Investments in a limited time frame, and resultant pressure to accept highest price available, regardless of the inherent value of the asset.

- Higher Expenses: The complexity of selling a large number of Private Equity/Principal Investments in a limited timeframe is likely to increase costs (e.g. financial and legal advisors) as compared to a medium-term orderly liquidation of such assets.

(b) Liquidation Process/Assumptions

For a variety of reasons, it is possible that some Private Equity/Principal Investments cannot be sold in the liquidation time frame. Outstanding litigation and structural impediments (transfer consents, regulatory restrictions, rights of first refusal, etc.) may require that certain positions be held beyond the 9 to 12-month period assumed in this liquidation analysis. In addition, certain positions are subject to confidentiality restrictions and transfer restrictions for which the Debtors would need consent from sponsors, general partners and/or portfolio companies in order to (i) share information regarding such positions with prospective buyers and/or (ii) transfer such position to a buyer. There is no assurance that consent would be obtained in a liquidation scenario.

Many of these assets are in non-Debtor entities so the normal bankruptcy sale protections are not available to the buyer.

(c) Direct Portfolio

Given the concentration inherent in the portfolio of direct Private Equity/Principal Investments, with the largest 40 positions accounting for approximately 98% of the carrying value, it is assumed that each of the largest 40 positions are sold individually as opposed to as part of a block transaction. The remaining approximately 36 smaller direct Private Equity/Principal Investments in the portfolio can be divided into better known positions (sponsor co-invests) and non-sponsor positions. It is assumed that sponsor co-invests can be sold individually, while the non-sponsor positions can be sold as a block.

To sell the direct portfolio positions over a 9 to 12-month period would require the retention of multiple investment banks. The investment banks would likely run a controlled competitive auction process (bound, to a certain extent, by the transfer and other restrictions inherent in the governing documents).

Finally, in addition to other impediments described above, in certain instances either the company or other investors have the right to buy back the position (e.g., via right of first refusal). In general, company management and/or sponsor support will be critical to the sale of these direct positions.

(d) GP/LP Investments

The Private Equity/Principal Investment structured as limited partnership interests would be sold through an auction process conducted by a third party. Given that it is unlikely that one buyer would acquire the entire portfolio, multiple sales would be necessary. Furthermore, because each position in this portfolio requires general partner consent, the 9 – 12 month liquidation time frame would be challenging and would likely result in substantial discounts.

The hedge fund limited partnership interests would also be sold through an auction process conducted by a third party. The buyer universe for such interests is much more limited. Also, given the significant concentration in this portfolio, as well as the length of many lock-ups, discounts would be very significant. Finally, general partner consent is required in every case.

The general partnership interests would be sold individually. Although two are public equity positions, the size of the positions and lack of trading volume make the positions highly illiquid. Third parties would be used in each case.

The aggregate cost of third parties to liquidate the GP/LP investments would be substantial.

(iv) Loans

Below outlines the liquidation impediments and the process that would be employed to effectuate the liquidation.

To the extent that loans are fully funded, liquidation of these assets will depend on current market conditions. Liquidity of an asset is a function of a combination of factors that may include (but is not limited to) price, position size, time horizon, how actively the loan is traded in the marketplace, and general financial market conditions. Given the volume of Loans available for sale, however, and market participants' knowledge of the Debtors' mandate to liquidate their portfolio of Loans in a limited time frame, it is possible that a significant discount to market will be necessary to liquidate the portfolio. A description of the disposition of the different types of Loans held by the Debtors is set forth below:

(a) Loan Positions

- Special Purpose Vehicles: Loans to special purpose vehicles are illiquid and are not traded in any commercial market. As a result, a steep discount for purchase is likely required.
- Commercial Loans: Commercial Loans are generally liquid and trade in commercial markets. However, many of the Debtors' Loans include future commitments to make additional funding, so the disposition of these Loans would require an additional discount to offset the buyer's obligations and additional risk. Larger positions would require a substantial discount as a result of the expedited sale.

- Distressed Debt or Claims Against Other Chapter 11 Debtors: Claims against entities in a chapter 11 proceeding are generally illiquid. The Debtors would realize significant discounts to current market value.
- Loans Participated to CLOs: Loans participated to collateralized loan obligations are generally liquid and trade in the commercial markets. To the extent that the revolvers are unfunded, these positions would be priced at an a discount.

c. Avoidance Actions: Due to uncertainty and litigation risk, there are no significant amounts reflected in the liquidation analysis for avoidance actions.

d. Other Litigation: Consistent with the calculation of the estimated recoveries under the Plan, no values are included for recoveries from other litigation.

4. Costs

a. Employees: The chapter 7 trustee will require a significant number of employees to liquidate the assets. To the extent that the chapter 7 trustee terminates the post-petition employment contracts of any of the Debtors' current employees, the Debtors' estates would be subject to additional Administrative Expense Claims.

b. Trustee Fees: The chapter 7 trustee would be compensated in accordance with the guidelines of section 326 of the Bankruptcy Code. The liquidation analysis assumes that the chapter 7 trustee's fees would not be greater than 1% of total Distributions by the Debtors. However, the arrangements with a Trustee may result in a different percentage.

c. Professional Fees: Given that the chapter 7 trustee and, to the extent applicable, the trustee's professionals must familiarize themselves with the Debtors, their estates, their assets and the Claims asserted against them, it is anticipated that the Debtors' estates would incur significant professionals' fees in the context of a chapter 7 liquidation.

d. Compromise and Settlement of Plan Issues: The Liquidation Analysis takes into account the compromises and settlements included in the Plan. The Debtors assume that a chapter 7 trustee would determine that the compromises and settlements included in the Plan are reasonable and the most efficient means to avoid extensive and protracted litigation of the Plan Issues.

5. Estimated Recoveries

a. Classes of Claims: The estimated recoveries use the Classes established by the Plan to facilitate creditors' ability to compare the recoveries under the Plan versus recoveries in a chapter 7 liquidation.

b. Timing of Distributions: While cash may be realized sooner, it is currently contemplated that the first Distributions under the Plan would commence in early 2012. In contrast, the Debtors anticipate that the first Distribution to Creditors in a chapter 7 would not be made until early 2013. This assumption is based, in part, upon the belief that the chapter 7 trustee would be reluctant to make significant interim Distributions prior to the determination of at least 50% of the disputed Claims, which would take longer with fewer employees with institutional knowledge.

c. Additional Claims: The liquidation of the Debtors will result in additional Claims being satisfied under chapter 7, including, but not limited to, Claims arising from the rejection of any remaining executory contracts, unexpired leases, and post-petition contracts. However, due to the uncertainty as to which contracts or leases would ultimately be rejected and the determination of the amount of any rejection damages (if any), no Claims related to the rejection of executory contracts are included in the estimated recoveries. Any such Claims, if filed, would further dilute any recoveries in a chapter 7 liquidation.

In connection with the settlements, LBHI entered into capital maintenance agreements and agreed to sell the Banks within 18 months or, if the Banks could not be sold, to purchase the remaining assets of the Banks at a value that would be sufficient to satisfy the Banks' liabilities. If the case were converted to a chapter 7 liquidation and the Banks were liquidated in a substantially shorter period than the 18-month period provided for in the capital maintenance agreements, LBHI is likely to recover a depressed value for the assets of the Banks. In that event, pursuant to its obligations under the capital maintenance agreement, LBHI would have to make up for the shortfall (approximated at $1 billion) to satisfy the Banks' liabilities as an administrative expense of its estate.

d. Amount of Allowed Claims: The determination of the Allowed Claims is an uncertain process given the number of disputed, contingent and/or unliquidated Claims in the Chapter 11 Cases. Furthermore, the accelerated wind down timeline and the substantial loss of experienced workforce, that could result from conversion to a chapter 7, would result in a significant impairment to the Claims process. No order or findings have been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Allowed Claims used in the liquidation analysis. To the extent that Claims have been reduced due to elimination of duplicate and superseded Claims, this is the basis for the Claims used in the liquidation analysis. The actual amount of Allowed Claims could vary materially.

6. Notes to Liquidation Analysis

a. Secured Claims

To the extent that the value of the collateral securing a Secured Claim is less than the Secured Claim, the remaining amount would be a deficiency Claim and a General Unsecured Claim against the applicable Debtor.

b. Estimated Aggregate Unpaid Administrative Expense Claims, Priority Tax Claims, and Priority Non-Tax Claims

The amount of Cash that would be available for Distributions to general unsecured creditors in a chapter 7 case would be reduced by any Allowed Administrative Expense Claims, Priority Tax Claims, and Priority Non-Tax Claims that are senior to General Unsecured Claims in the Chapter 11 Cases. Any remaining Cash after satisfaction of these Claims would be available for Distribution to general unsecured creditors and Equity Interest holders in accordance with the Distribution hierarchy established by section 726 of the Bankruptcy Code.

c. Liquidation Analysis

The Liquidation Analysis for each Debtor is attached below.

Liquidation Analysis for LBHI

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$2,723	$2,723
Restricted Cash	3,515	3,515
Financial Instruments & Other Inventory		
Real Estate	2,838	4,353
Loans	586	596
Principal Investments	1,079	1,613
Derivatives & Other Contracts	--	--
Other Assets	1,937	2,486
Operating Asset Recoveries	**$12,679**	**$15,285**
Recovery on Intercompany Receivables	20,494	25,913
Recovery on Other Receivables	2,110	2,946
Equity Interests in Affiliates	1,960	2,727
TOTAL ASSETS	**$37,243**	**$46,872**
Administrative Expenses[1]		
Administrative Expenses & Other[2]	($3,592)	($2,592)
Post-Petition Intercompany Payables	(2,316)	(2,316)
Operating Disbursements	(651)	(641)
DISTRIBUTABLE ASSETS	**$30,684**	**$41,322**
Recovery From Plan Adjustments	1,907	2,390
NET DISTRIBUTABLE ASSETS	**$32,590**	**$43,712**

		Liquidation Estimated Allowed Claims[3]	Estimated Recovery – Liquidation $	Estimated Recovery – Liquidation %	Estimated Recovery – Plan $	Estimated Recovery – Plan %[4]
Class 1:[3]	Priority Non-Tax Claims	$3	$3	100 0%	$3	100 0%
Class 2:	Secured Claims	2,481	2,481	100 0%	2,481	100 0%
Class 3:	Senior Unsecured Claims	83,724	12,979	15 5%	17,678	21 1%
Class 4A:[5]	Senior Affiliate Claims	52,327	5,911	11 3%	8,147	15 6%
Class 4B:[5]	Senior Affiliate Guarantee Claims	11,563	1,276	11 0%	1,758	15 2%
Class 5A:	Senior Third-Party Guarantee Claims	52,702	4,651	8 8%	6,410	12 2%
Class 6A:	Convenience Claims	54	14	26 0%	14	26 0%
Class 6B:	Convenience Guarantee Claims	332	56	17 0%	56	17 0%
Class 7:	General Unsecured Claims	11,390	1,665	14 6%	2,267	19 9%
Class 8:[5]	Affiliate Claims	1,446	151	10 4%	208	14 4%
Class 9A:	Third-Party Guarantee Claims other than those of the Racers Trusts	39,658	3,305	8 3%	4,555	11 5%
Class 9B:	Third-Party Guarantee Claims of the Racers Trusts	1,948	99	5 1%	136	7 0%
Class 10A:	Subordinated Class 10A Claims	3,436	--	--	--	--
Class 10B:	Subordinated Class 10B Claims	10,343	--	--	--	--
Class 10C:	Subordinated Class 10C Claims	1,499	--	--	--	--
Class 11:	Section 510(b) Claims	--	--	--	--	--
Class 12:	Equity Interests	--	--	--	--	--
TOTALS		**$272,904**	**$32,590**		**$43,712**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--" Values between zero and $500,000 appear as "0"

1 Comprised of administrative expenses, professional compensation and priority tax claims Liquidation scenario includes $1 billion of incremental liquidation administrative expenses

2 Includes $300 million for Debtor Allocation Agreement in accordance with Section 6 3 of the Plan

3 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario

4 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims

5 Represents Claims after the effects of setoff

Liquidation Analysis for LCPI
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$2,951	$2,951
Restricted Cash	41	41
Financial Instruments & Other Inventory		
Real Estate	2,744	5,334
Loans	2,823	4,093
Principal Investments	426	663
Derivatives & Other Contracts	27	49
Other Assets	124	124
Operating Asset Recoveries	**$9,136**	**$13,255**
Recovery on Intercompany Receivables	$3,353	$4,096
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	110	273
TOTAL ASSETS	**$12,599**	**$17,624**
Administrative Expenses[1]		
Administrative Expenses & Other	($585)	($585)
Post-Petition Intercompany Payables	(124)	(124)
Operating Disbursements	(552)	(668)
DISTRIBUTABLE ASSETS	**$11,338**	**$16,248**
Contribution to Plan Adjustments	($890)	($1,280)
NET DISTRIBUTABLE ASSETS	**$10,448**	**$14,967**

		Estimated Allowed Claims[2]	Estimated Recovery – Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	$144	$144	100.0%	$144	100.0%
Class 3:	Convenience Claims	1	0	60.0%	0	60.0%
Class 4A:[5]	General Unsecured Claims other than those of Designated Entities	2,752	1,096	39.8%	1,533	55.7%
Class 4B:	General Unsecured Claims of Designated Entities	5,230	1,761	33.7%	2,534	48.4%
Class 5A:[4,5]	Affiliate Claims of LBHI	17,857	5,681	31.8%	8,216	46.0%
Class 5B:[4]	Affiliate Claims of Participating Subsidiary Debtors	5	2	33.7%	3	48.4%
Class 5C:[4]	Affiliate Claims other than those of Participating Debtors	4,871	1,763	36 2%	2,537	52.1%
Class 6:[4]	Equity Interests	--	--	--	--	--
TOTALS		**$30,861**	**$10,448**		**$14,967**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.
5 The first $100 million of Distributions made to Class 5A on account of its Allowed Affiliate Claim has been redistributed to Class 4A in accordance with Section 6.5(e) of the Plan.

Liquidation Analysis for LBCS

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$1,601	$1,601
Restricted Cash	38	38
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	272	326
Other Assets	9	10
Operating Asset Recoveries	**$1,920**	**$1,975**
Recovery on Intercompany Receivables	$89	$99
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$2,008**	**$2,074**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	($16)	($16)
Operating Disbursements	(36)	(7)
DISTRIBUTABLE ASSETS	**$1,956**	**$2,050**
Contribution to Plan Adjustments	($189)	($198)
NET DISTRIBUTABLE ASSETS	**$1,767**	**$1,852**

		Estimated Allowed Claims[2]	Estimated Recovery – Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	$38	$38	100.0%	$38	100.0%
Class 3:	Convenience Claims	0	0	55.0%	0	55.0%
Class 4:	General Unsecured Claims	2,371	1,149	48 5%	1,205	50.8%
Class 5A:[4]	Affiliate Claims of LBHI	1,515	571	37.7%	599	39.5%
Class 5B:[4]	Affiliate Claims of Participating Subsidiary Debtors	--	--	--	--	--
Class 5C:[4]	Affiliate Claims other than those of Participating Debtors	20	10	48 5%	10	50.8%
Class 6:[4]	Equity Interests	--	--	--	--	--
TOTALS		**$3,944**	**$1,767**		**$1,852**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

Liquidation Analysis for LBSF

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$7,937	$7,937
Restricted Cash	657	657
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	1	1
Principal Investments	--	--
Derivatives & Other Contracts	3,067	4,033
Other Assets	16	16
Operating Asset Recoveries	**$11,678**	**$12,644**
Recovery on Intercompany Receivables	$980	$1,163
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	281	349
TOTAL ASSETS	**$12,939**	**$14,156**
Administrative Expenses[1]		
Administrative Expenses & Other	($19)	($19)
Post-Petition Intercompany Payables	(122)	(122)
Operating Disbursements	(536)	(500)
Debtors' Cost Allocation[2]	300	300
DISTRIBUTABLE ASSETS	**$12,563**	**$13,516**
Contribution to Plan Adjustments	($717)	($793)
NET DISTRIBUTABLE ASSETS	**$11,846**	**$13,023**

		Estimated Allowed Claims[3]	Estimated Recovery			
			Liquidation		Plan	
			$	%	$	%[4]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	$765	$765	100.0%	$765	100.0%
Class 3:	Convenience Claims	$7	$2	32.0%	2	32.0%
Class 4A:[6,7]	General Unsecured Claims other than those of the Racers Trust	22,685	5,728	25 3%	6,326	27.9%
Class 4B:	General Unsecured Claims of the Racers Trust	1,948	250	12.8%	277	14.2%
Class 5A:[5,6]	Affiliate Claims of LBHI	18,320	3,949	21.6%	4,379	23.9%
Class 5B:[5]	Affiliate Claims of Participating Subsidiary Debtors	$522	$110	21 1%	$122	23.4%
Class 5C:[5,7]	Affiliate Claims other than those of Participating Debtors	4,195	1,041	24.8%	1,151	27.4%
Class 6:[5]	Equity Interests	--	--	--	--	--
TOTALS		**$48,441**	**$11,846**		**$13,023**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 In accordance with Debtor Allocation Agreement, Section 6.3 of the Plan.

3 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

4 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

5 Represents Claims after the effects of setoff.

6 The first $100 million of Distributions made to Class 5A on account of its Allowed Affiliate Claim has been redistributed to Class 4A in accordance with Section 6.5(f) of the Plan.

7 Recovery percentage before potential Distribution in accordance with Section 6.5(d) of the Plan.

Liquidation Analysis for LOTC
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$233	$233
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	137	163
Other Assets	--	--
Operating Asset Recoveries	**$369**	**$396**
Recovery on Intercompany Receivables	--	--
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$369**	**$396**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	($5)	($5)
Operating Disbursements	(26)	(15)
DISTRIBUTABLE ASSETS	**$338**	**$376**
Contribution to Plan Adjustments	($24)	($26)
NET DISTRIBUTABLE ASSETS	**$314**	**$350**

		Estimated Allowed Claims[2]	Estimated Recovery: Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	Convenience Claims	$0	$0	34.0%	$0	34.0%
Class 4:	General Unsecured Claims	$590	$157	26.6%	175	29.6%
Class 5A:[4]	Affiliate Claims of LBHI	194	45	23 1%	50	25.8%
Class 5B:[4]	Affiliate Claims of Participating Subsidiary Debtors	8	2	23 1%	2	25.8%
Class 5C:[4]	Affiliate Claims other than those of Participating Debtors	414	110	26.6%	123	29.6%
Class 6:[4]	Equity Interests	--	--	--	--	--
TOTALS		**$1,207**	**$314**		**$350**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.

Liquidation Analysis for LBCC
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$535	$535
Restricted Cash	5	5
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	154	175
Other Assets	--	--
Operating Asset Recoveries	**$694**	**$715**
Recovery on Intercompany Receivables	$0	$0
Recovery on Affiliate Guarantees	2	3
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$697**	**$718**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	(7)	(7)
Operating Disbursements	($29)	($18)
DISTRIBUTABLE ASSETS	**$660**	**$693**
Contribution to Plan Adjustments	($87)	($92)
NET DISTRIBUTABLE ASSETS	**$573**	**$602**

		Estimated Allowed Claims[2]	Estimated Recovery: Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	$5	$5	100.0%	$5	100.0%
Class 3:	Convenience Claims	$0	$0	40.0%	0	40.0%
Class 4:	General Unsecured Claims	609	208	34 1%	218	35.8%
Class 5A:[4]	Affiliate Claims of LBHI	133	--	--	--	--
Class 5B:[4]	Affiliate Claims of Participating Subsidiary Debtors	572	173	30 3%	182	31.8%
Class 5C:[4]	Affiliate Claims other than those of Participating Debtors	550	187	34 1%	197	35.8%
Class 6:[4]	Equity Interests	--	--	--	--	--
TOTALS		**$1,869**	**$573**		**$602**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.

Liquidation Analysis for LBDP

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$390	$390
Restricted Cash	0	0
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	9	10
Other Assets	--	--
Operating Asset Recoveries	**$399**	**$401**
Recovery on Intercompany Receivables	$0	$0
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$399**	**$401**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	($0)	($0)
Operating Disbursements	(5)	(0)
DISTRIBUTABLE ASSETS	**$394**	**$400**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$394**	**$400**

		Estimated Allowed Claims[2]	Estimated Recovery: Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	$0	$0	100.0%	$0	100.0%
Class 3:[5]	General Unsecured Claims	76	76	100.0%	76	100.0%
Class 4A:[4]	Affiliate Claims of LBHI	--	--	--	--	--
Class 4B:[45]	Affiliate Claims of Affiliates other than those of LBHI	123	123	100.0%	123	100.0%
Class 5:	Equity Interests	--	195	--	201	--
TOTALS		**$199**	**$394**		**$400**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

5 These claims may be entitled to post-petition interest at a rate to be determined by the Bankruptcy Court.

Liquidation Analysis for LBFP

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$423	$423
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	57	67
Other Assets	--	--
Operating Asset Recoveries	**$480**	**$491**
Recovery on Intercompany Receivables	$0	$0
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$480**	**$491**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	($1)	($1)
Operating Disbursements	(12)	(2)
DISTRIBUTABLE ASSETS	**$468**	**$488**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$468**	**$488**

		Estimated Allowed Claims[2]	Estimated Recovery – Liquidation $	Estimated Recovery – Liquidation %	Estimated Recovery – Plan $	Estimated Recovery – Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:[5]	General Unsecured Claims	$60	$60	100.0%	$60	100.0%
Class 4A:[4,5]	Affiliate Claims of LBHI	1	1	80.0%	1	80.0%
Class 4B:[4,5]	Affiliate Claims of Affiliates other than those of LBHI	203	203	100.0%	203	100.0%
Class 5:	Equity Interests	--	203	--	223	--
TOTALS		**$265**	**$468**		**$488**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

5 These claims may be entitled to post-petition interest at a rate to be determined by the Bankruptcy Court.

Liquidation Analysis for LB 745

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	--	--
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**--**	**--**
Recovery on Intercompany Receivables	$336	$348
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$336**	**$348**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	--	--
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	**$336**	**$348**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$336**	**$348**

		Estimated Allowed Claims[2]	Estimated Recovery – Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:[5]	General Unsecured Claims	$2	$2	100.0%	$2	100.0%
Class 4A:[45]	Affiliate Claims of LBHI	46	36	79 1%	36	79.1%
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	--	--	--	--	--
Class 5:	Equity Interests	--	298	--	310	--
TOTALS		**$48**	**$336**		**$348**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

5 These claims may be entitled to post-petition interest at a rate to be determined by the Bankruptcy Court.

Liquidation Analysis for PAMI STATLER

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	--	--
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	$10	$13
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**$10**	**$13**
Recovery on Intercompany Receivables	--	--
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$10**	**$13**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	(13)	(13)
Operating Disbursements	(2)	--
DISTRIBUTABLE ASSETS	--	--
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	--	--

		Estimated Allowed Claims[2]	Estimated Recovery Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	$0	--	--	--	--
Class 4A:[4]	Affiliate Claims of LBHI	0	--	--	--	--
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	--	--	--	--	--
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		**$0**	**--**		**--**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

Liquidation Analysis for CES
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$0	$0
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**$0**	**$0**
Recovery on Intercompany Receivables	$23	$23
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$24**	**$24**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	--	--
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	**$24**	**$24**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$24**	**$24**

		Estimated Allowed Claims[2]	Estimated Recovery Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:[5]	General Unsecured Claims	$0	$0	100.0%	$0	100.0%
Class 4A:[45]	Affiliate Claims of LBHI	22	17	80.0%	17	80.0%
Class 4B:[45]	Affiliate Claims of Affiliates other than those of LBHI	1	1	100.0%	1	100.0%
Class 5:	Equity Interests	--	5	--	5	--
TOTALS		**$23**	**$24**		**$24**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.
5 These claims may be entitled to post-petition interest at a rate to be determined by the Bankruptcy Court.

Liquidation Analysis for CES V
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$0	$0
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**$0**	**$0**
Recovery on Intercompany Receivables	$3	$3
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$3**	**$3**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	--	--
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	**$3**	**$3**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$3**	**$3**

		Estimated Allowed Claims[2]	Estimated Recovery Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	$0	$0	51 9%	$0	51.9%
Class 4A:[4]	Affiliate Claims of LBHI	8	3	41 5%	3	41.5%
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	0	0	51 9%	0	51.9%
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		**$8**	**$3**		**$3**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.

Liquidation Analysis for CES IX

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$0	$0
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**$0**	**$0**
Recovery on Intercompany Receivables	$6	$6
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$6**	**$6**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	--	--
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	**$6**	**$6**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$6**	**$6**

		Estimated Allowed Claims[2]	Estimated Recovery Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	$0	$0	77 1%	$0	77.1%
Class 4A:[4]	Affiliate Claims of LBHI	9	5	61.7%	5	61.7%
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	0	0	77 1%	0	77.1%
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		**$9**	**$6**		**$6**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

Liquidation Analysis for East Dover
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$0	$0
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**$0**	**$0**
Recovery on Intercompany Receivables	$36	$52
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	0	0
TOTAL ASSETS	**$36**	**$52**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	(0)	(0)
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	**$36**	**$52**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$36**	**$52**

		Estimated Allowed Claims[2]	Estimated Recovery: Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:[5]	General Unsecured Claims	$0	$0	100.0%	$0	100.0%
Class 4A:[4,5]	Affiliate Claims of LBHI	3	3	78 9%	3	78.9%
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	--	--	--	--	--
Class 5:	Equity Interests	--	34	--	49	--
TOTALS		**$3**	**$36**		**$52**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.
5 These claims may be entitled to post-petition interest at a rate to be determined by the Bankruptcy Court.

Liquidation Analysis for LS Finance
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	--	--
Restricted Cash	$2	$2
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**$2**	**$2**
Recovery on Intercompany Receivables	$2	$2
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$3**	**$3**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	(0)	(0)
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	**$3**	**$3**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$3**	**$3**

		Estimated Allowed Claims[2]	Estimated Recovery Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	$2	$2	100.0%	$2	100.0%
Class 3:	General Unsecured Claims	--	--	--	--	--
Class 4A:[4]	Affiliate Claims of LBHI	--	--	--	--	--
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	--	--	--	--	--
Class 5:	Equity Interests	--	2	--	2	--
TOTALS		**$2**	**$3**		**$3**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.

Liquidation Analysis for LUXCO
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$7	$7
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	225	405
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**$232**	**$413**
Recovery on Intercompany Receivables	$0	$0
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$232**	**$413**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	($286)	($286)
Operating Disbursements	(17)	(31)
DISTRIBUTABLE ASSETS	**--**	**$96**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**--**	**$96**

		Estimated Allowed Claims[2]	Estimated Recovery: Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	--	--	--	--	--
Class 4A:[4]	Affiliate Claims of LBHI	--	--	--	--	--
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	$593	--	--	$96	16.1%
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		**$593**	**--**		**$96**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.

Liquidation Analysis for BNC
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$17	$17
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**$17**	**$17**
Recovery on Intercompany Receivables	--	0
Recovery on Affiliate Guarantees	0	0
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$17**	**$17**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	($0)	($0)
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	**$17**	**$17**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$17**	**$17**

		Estimated Allowed Claims[2]	Estimated Recovery – Liquidation $	Estimated Recovery – Liquidation %	Estimated Recovery – Plan $	Estimated Recovery – Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:[5]	General Unsecured Claims	$13	$13	100.0%	$13	100.0%
Class 4A:[4]	Affiliate Claims of LBHI	--	--	--	--	--
Class 4B:[4,5]	Affiliate Claims of Affiliates other than those of LBHI	1	1	100.0%	1	100.0%
Class 5:	Equity Interests	--	3	--	3	--
TOTALS		**$14**	**$17**		**$17**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.
5 These claims may be entitled to post-petition interest at a rate to be determined by the Bankruptcy Court.

Liquidation Analysis for LB Rose Ranch
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$2	$2
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	2	8
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**$4**	**$10**
Recovery on Intercompany Receivables	--	--
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$4**	**$10**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	($6)	($6)
Operating Disbursements	(0)	(0)
DISTRIBUTABLE ASSETS	**--**	**$4**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**--**	**$4**

		Estimated Allowed Claims[2]	Estimated Recovery – Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	$6	--	--	$4	61.0%
Class 4A:[4]	Affiliate Claims of LBHI	--	--	--	--	--
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	--	--	--	--	--
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		**$6**	**--**		**$4**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.

Liquidation Analysis for SASCO

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	--	--
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	**--**	**--**
Recovery on Intercompany Receivables	$222	$319
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$222**	**$319**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	(0)	(0)
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	**$222**	**$319**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$222**	**$319**

		Estimated Allowed Claims[2]	Estimated Recovery: Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	$162	$57	35 1%	$82	50.5%
Class 4A:[4]	Affiliate Claims of LBHI	588	165	28 1%	237	40.4%
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	0	0	35 1%	0	50.5%
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		$751	$222		$319	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

Liquidation Analysis for LB 2080
($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	--	--
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	--	--
Recovery on Intercompany Receivables	$0	$0
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$0**	**$0**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	($0)	($0)
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	**$0**	**$0**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$0**	**$0**

		Estimated Allowed Claims[2]	Estimated Recovery: Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	$9	$0	0.8%	$0	0.8%
Class 4A:[4]	Affiliate Claims of LBHI	--	--	--	--	--
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	31	0	0.8%	0	0.8%
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		**$40**	**$0**		**$0**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".
1 Comprised of administrative expenses, professional compensation and priority tax claims.
2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.
3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.
4 Represents Claims after the effects of setoff.

Liquidation Analysis for Merit

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	$0	$0
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	$25	$25
Other Assets	--	--
Operating Asset Recoveries	**$25**	**$25**
Recovery on Intercompany Receivables	$5	$6
Recovery on Affiliate Guarantees	2	3
Equity Interests in Affiliates	--	--
TOTAL ASSETS	**$32**	**$34**
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	($0)	($0)
Operating Disbursements	(5)	(1)
DISTRIBUTABLE ASSETS	**$27**	**$32**
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	**$27**	**$32**

		Estimated Allowed Claims[2]	Estimated Recovery: Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	--	--	--	--	--
Class 4A:[4]	Affiliate Claims of LBHI	--	--	--	--	--
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	324	27	8.3%	32	10.0%
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		**$324**	**$27**		**$32**	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

Liquidation Analysis for Somerset

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	--	--
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	--	--
Recovery on Intercompany Receivables	--	--
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	--	--
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	--	--
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	--	--
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	--	--

		Estimated Allowed Claims[2]	Estimated Recovery: Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	$0	--	--	--	--
Class 4A:[4]	Affiliate Claims of LBHI	--	--	--	--	--
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	7	--	--	--	--
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		$8	--		--	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

Liquidation Analysis for Preferred Somerset

($ in millions)

	Estimated Liquidation Assets	Estimated Plan Assets
Cash & Cash Equivalents	--	--
Restricted Cash	--	--
Financial Instruments & Other Inventory		
Real Estate	--	--
Loans	--	--
Principal Investments	--	--
Derivatives & Other Contracts	--	--
Other Assets	--	--
Operating Asset Recoveries	--	--
Recovery on Intercompany Receivables	--	--
Recovery on Affiliate Guarantees	--	--
Equity Interests in Affiliates	--	--
TOTAL ASSETS	--	--
Administrative Expenses[1]		
Administrative Expenses & Other	--	--
Post-Petition Intercompany Payables	--	--
Operating Disbursements	--	--
DISTRIBUTABLE ASSETS	--	--
Contribution to Plan Adjustments	--	--
NET DISTRIBUTABLE ASSETS	--	--

		Estimated Allowed Claims[2]	Estimated Recovery Liquidation $	Liquidation %	Plan $	Plan %[3]
Class 1:	Priority Non-Tax Claims	--	--	--	--	--
Class 2:	Secured Claims	--	--	--	--	--
Class 3:	General Unsecured Claims	$0	--	--	--	--
Class 4A:[4]	Affiliate Claims of LBHI	--	--	--	--	--
Class 4B:[4]	Affiliate Claims of Affiliates other than those of LBHI	10	--	--	--	--
Class 5:	Equity Interests	--	--	--	--	--
TOTALS		**$10**	--		--	

Note: All values that are exactly zero and all recovery percentages where the corresponding recovery amount is zero are shown as "--". Values between zero and $500,000 appear as "0".

1 Comprised of administrative expenses, professional compensation and priority tax claims.

2 Debtor's best estimate of the amount of claims ultimately allowed in a Liquidation scenario.

3 Represents Plan recovery amount as a percentage of Liquidation Estimated Allowed Claims.

4 Represents Claims after the effects of setoff.

Appendix B-3
CIT Group Inc.

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP
Four Times Square
New York, New York 10036
(212) 735-3000
Gregg M. Galardi
J. Gregory St. Clair

Proposed Counsel for Debtors and
Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- -	x	
	:	
In re:	:	Chapter 11
	:	
CIT GROUP INC. and	:	Case No. 09-16565
CIT GROUP FUNDING COMPANY	:	
OF DELAWARE LLC,	:	
	:	
Debtors.	:	(Motion for Joint Administration Pending)
	:	
- -	x	

NOTICE OF FILING

PLEASE TAKE NOTICE that on November 2, 2009, the debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors")[1] filed (1) the Amended Offering Memorandum, Disclosure Statement and Solicitation of Acceptances of a Prepackaged Plan of Reorganization, dated October 16, 2009 (as supplemented on October 23, 2009 by Supplement No. 1, the "Disclosure Statement"), attached hereto as Exhibit A; (2) the Annex to the Disclosure Statement for Class 6, attached hereto as Exhibit B; (3) the Annex to the

[1] CIT Group Inc. is located at 505 Fifth Avenue, New York, NY 10017. Its tax identification number is 65-xxx1192. In addition to CIT Group Inc., CIT Group Funding Company of Delaware LLC, Case No. 09-16566, is a debtor in these related cases. CIT Group Funding Company of Delaware LLC is located at 1 CIT Drive, Livingston, NJ 07039. Its tax identification number is 98-xxx9146.

Disclosure Statement for Class 10, attached hereto as Exhibit C; (4) the Annex to the Disclosure Statement for Class 11, attached hereto as Exhibit D; and (5) the Second Amended Prepackaged Reorganization Plan of CIT Group Inc. and CIT Group Funding Company of Delaware LLC, dated October 23, 2009, attached hereto as Exhibit E.

Dated: New York, New York
November 2, 2009

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

By: */s/ Gregg M. Galardi*
Gregg M. Galardi
J. Gregory St. Clair
Four Times Square
New York, New York 10036
(212) 735-3000

Proposed Counsel for Debtors and
Debtors-in-Possession

Exhibit A

AMENDED OFFERING MEMORANDUM, DISCLOSURE STATEMENT AND SOLICITATION OF ACCEPTANCES OF A PREPACKAGED PLAN OF REORGANIZATION

CIT Group Inc.
&
CIT Group Funding Company of Delaware LLC

Offers to Exchange Relating to Any and All of Their Respective Outstanding Notes Listed Below and Solicitation of Acceptances of a Prepackaged Plan of Reorganization

EACH OF THE OCTOBER 1 OFFERS (AS DEFINED HEREIN) TO EXCHANGE AND SOLICITATION OF ACCEPTANCES OF THE PREPACKAGED PLAN OF REORGANIZATION WILL EXPIRE AT 11:59 P.M., NEW YORK CITY TIME, ON OCTOBER 29, 2009, UNLESS EXTENDED BY US (SUCH DATE AND TIME, AS THE SAME MAY BE EXTENDED, THE "ORIGINAL EXPIRATION DATE"). EACH OF THE LONG TERM CIT OFFERS (AS DEFINED HEREIN) TO EXCHANGE AND SOLICITATION OF ACCEPTANCES OF THE PREPACKAGED PLAN OF REORGANIZATION WILL EXPIRE AT 11:59 P.M., NEW YORK CITY TIME, ON NOVEMBER 13, 2009, UNLESS EXTENDED BY US (SUCH DATE AND TIME, AS THE SAME MAY BE EXTENDED, THE "LONG TERM EXPIRATION DATE"). HOLDERS MAY TENDER CIT LONG TERM OLD NOTES BY 11:59 P.M., NEW YORK CITY TIME, ON OR PRIOR TO OCTOBER 29, 2009, UNLESS EXTENDED BY US (SUCH DATE AND TIME, AS THE SAME MAY BE EXTENDED, THE "LONG TERM NOTES EARLY ACCEPTANCE DATE"), FOR EARLY ACCEPTANCE. NO ADDITIONAL CONSIDERATION WILL BE PROVIDED TO HOLDERS OF LONG TERM OLD NOTES WHO TENDER BY THE LONG TERM NOTES EARLY ACCEPTANCE DATE. HOLDERS OF PUBLICLY TRADED NOTES SHOULD REFER TO THE BALLOT ATTACHED HERETO AS APPENDIX E FOR INSTRUCTIONS ON HOW TO TENDER AND/OR VOTE ON THE PLAN OF REORGANIZATION.

Upon the terms and subject to the conditions set forth in this offering memorandum, disclosure statement and solicitation of acceptances of a prepackaged plan of reorganization, attached hereto as Appendix C (the "Plan of Reorganization") (as it may be supplemented and amended from time to time, collectively the "Offering Memorandum and Disclosure Statement"), and the related letter of transmittal ("Letter of Transmittal") and/or ballot ("Ballot") for accepting or rejecting the Plan of Reorganization, (i) CIT Group Inc. is offering, in exchange for any and all of the outstanding notes of CIT Group Inc. listed in the table "CIT Outstanding Notes" beginning on the inside cover page, each of five series of its newly issued Series A secured notes denominated in the stated currency of the outstanding notes (except for outstanding notes denominated in Swiss francs which will be exchanged for new notes denominated in U.S. dollars) which are referred to herein as the "Series A Notes" and/or its newly issued preferred stock (which are referred to herein as the "New Preferred Stock") (the "Original CIT Offers"), (ii) CIT Group Inc. is offering, in exchange for any and all of the outstanding notes of CIT Group Inc. listed in the table "CIT Outstanding Long Term Notes" beginning on the inside cover page, each of five series of its newly issued Series A Notes denominated in U.S. dollars and New Preferred Stock (the "Long Term CIT Offers") and (iii) CIT Group Funding Company of Delaware LLC ("Delaware Funding" also referred to herein as "CIT Funding") is offering, in exchange for any and all of the outstanding notes listed in the table "Delaware Funding Outstanding Notes" beginning on the inside cover page, each of five series of its newly issued Series B secured notes (which are referred to herein as the "Series B Notes" and together with the Series A Notes, the "New Notes") (the "Delaware Funding Offers" and together with the Original CIT Offers, the "October 1 Offers"), in each case, as applicable, as specified in the tables below. The Original CIT Offers and the Long Term CIT Offers, are referred to herein collectively as the "CIT Offers," and the CIT Offers and the Delaware Funding Offers together are referred to herein as the "Offers." The notes to be tendered in the Original CIT Offers are referred to herein as the "Original CIT Old Notes," the notes to be tendered into the Long Term CIT Offers are referred to herein as the "CIT Long Term Old Notes" and the Original CIT Old Notes and the CIT Long Term Old Notes together are referred to herein as the "CIT Old Notes." The notes to be tendered in the Delaware Funding Offers are referred to herein as the "Canadian Senior Unsecured Notes" or the "Delaware Funding Old Notes," and the CIT Old Notes and the Delaware Funding Old Notes together are referred to herein as the "Old Notes." The New Notes will be secured by the collateral as described herein. The Series A Notes will be guaranteed by all of CIT Group Inc.'s current and future domestic wholly owned subsidiaries, with the exception of Delaware Funding, CIT Bank and other regulated subsidiaries, special purpose entities and immaterial subsidiaries (the "CIT Guarantees"). The Series B Notes will be guaranteed by CIT Group Inc., on an unsecured basis (except for the Parent Pledge (as defined herein)), and on a secured basis by all current and future domestic wholly owned subsidiaries of CIT Group Inc., with the exception of Delaware Funding, CIT Bank and other regulated subsidiaries, special purpose entities and immaterial subsidiaries, (the "Delaware Funding Guarantees," and together with the CIT Guarantees, the "Guarantees").

Consummation of the Offers is subject to a number of conditions, including a liquidity and leverage condition that states that the Offers cannot be consummated if an insufficient number of Old Notes are tendered into the exchange, and/or certain other debt instruments have not been renegotiated so that, after giving effect to the Offers and such renegotiations, the face amount of CIT Group Inc.'s and its direct and indirect subsidiaries' total debt would not be reduced by at least $5.7 billion (excluding any CIT Long Term Old Notes tendered) and its remaining unsecured debt maturities (excluding foreign vendor facilities) would exceed $500 million in 2009, $2.5 billion during the period from 2009 to 2010, $4.5 billion during the period from 2009 to 2011 and $6.0 billion during the period from 2009 to 2012, in each case on a cumulative basis (the "Liquidity and Leverage Condition"). In addition, consummation of each of the Delaware Funding Offers and the Long Term CIT Offers is subject to the consummation of the Original CIT Offers. The Liquidity and Leverage Condition cannot be waived. In the event that the conditions to the Offers are not satisfied or waived, to the extent waivable, or if we for any reason determine that it would be more advantageous or expeditious, and there is sufficient support for the Plan of Reorganization, CIT Group Inc. and Delaware Funding may seek to file a case under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") to consummate the restructuring described in this Offering Memorandum and Disclosure Statement although no decision has been made to pursue a bankruptcy filing. Through the Plan of Reorganization, all holders of Old Notes would receive New Notes and new common stock, as further set forth in the section entitled "The Plan of Reorganization," provided that sufficient holders of Old Notes (i.e., holders representing at least 66⅔% in amount and more than 50% in number of those impaired creditors entitled to vote in certain classes who actually vote) vote to accept the Plan of Reorganization and the other conditions to consummation of the Plan of Reorganization are satisfied. Only those parties who actually vote are counted for these purposes and therefore it is important that you provide the appropriate instruction to your broker, dealer, commercial bank, trust company, or other nominee (each, a "Nominee") to cast the appropriate vote on your behalf. Your election to tender your Old Notes into the Offers will also constitute a vote to accept the Plan of Reorganization, and you may only change that vote by withdrawing, to the extent permitted, the Old Notes you have tendered. If you choose not to tender your Old Notes into the Offers, or if you withdraw Old Notes previously tendered, you may vote separately to accept or reject the Plan of Reorganization by providing the appropriate instruction to your Nominee. By providing an instruction to your Nominee to participate in the Offers or vote to accept or reject the Plan of Reorganization, you are making certain certifications, as contained in the Ballot, and agreeing to certain provisions contained in the Plan of Reorganization including exculpation, injunction and release provisions. The class in which your Old Notes will be classified is set forth in the tables beginning on the inside cover page.

THIS SOLICITATION OF ACCEPTANCES OF THE PLAN OF REORGANIZATION IS BEING CONDUCTED TO OBTAIN SUFFICIENT ACCEPTANCES OF THE PLAN OF REORGANIZATION PRIOR TO THE FILING OF A VOLUNTARY CASE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE. BECAUSE NO CHAPTER 11 CASE HAS YET BEEN COMMENCED, THIS OFFERING MEMORANDUM AND DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY ANY COURT AS CONTAINING ADEQUATE INFORMATION WITHIN THE MEANING OF SECTION 1125(A) OF THE BANKRUPTCY CODE. WE HAVE NOT AT THIS TIME TAKEN ANY ACTION APPROVING A BANKRUPTCY FILING AND, IF THE OFFERS ARE CONSUMMATED, NEITHER CIT GROUP INC. NOR DELAWARE FUNDING WILL COMMENCE A BANKRUPTCY FILING TO CONSUMMATE THE PLAN OF REORGANIZATION ANNEXED HERETO.

October 16, 2009

(continued on next page)

(*continued from previous page*)

Subject to applicable securities laws and the terms set forth in this Offering Memorandum and Disclosure Statement, we reserve the right to waive, to the extent waivable, any and all conditions to the Offers, to extend or terminate the Offers and voting deadlines with respect to the Plan of Reorganization in our sole and absolute discretion, which may be for any or no reason, and otherwise to amend the Offers or Plan of Reorganization in any respect.

You should consider the risk factors beginning on page 36 of this Offering Memorandum and Disclosure Statement before you decide whether to participate in the Offers or vote on the Plan of Reorganization.

Prior to tendering the Old Notes or voting on the Plan of Reorganization, holders of Old Notes are encouraged to read and consider carefully this entire Offering Memorandum and Disclosure Statement, including the Plan of Reorganization annexed hereto as Appendix C and the matters described in this Offering Memorandum and Disclosure Statement, the Letter of Transmittal and/or the Ballot.

In making a decision in connection with the Offers or the Plan of Reorganization, holders of Old Notes must rely on their own examination of the Company and the terms of the Offers, the restructuring transactions, and the Plan of Reorganization, including the merits and risks involved. Holders of Old Notes should not construe the contents of this Offering Memorandum and Disclosure Statement as providing any legal, business, financial or tax advice. Each holder of Old Notes should consult with its own legal, business, financial and tax advisors with respect to any such matters concerning this Offering Memorandum and Disclosure Statement, the Offers, the Plan of Reorganization and the restructuring transactions contemplated thereby.

The Offers are exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act") with respect to the exchange of the Old Notes and the New Preferred Stock by virtue of the exemption from such registration contained in Section 3(a)(9) of the Securities Act. The Offers and the solicitation of acceptances of the Plan of Reorganization are exempt from state securities law requirements by virtue of Section 18(b)(4)(C) of the Securities Act.

All of the Old Notes are freely tradeable securities and not subject to restriction on transfer, and, therefore upon consummation of the Offers, holders of the Old Notes who tender Old Notes will receive New Notes and/or New Preferred Stock that are also freely tradeable securities and not subject to restriction on transfer by virtue of our reliance on the exemption from registration contained in Section 3(a)(9) of the Securities Act.

[This Page Intentionally Left Blank]

The following three tables set forth the series of Old Notes subject to the Offers and indicate the consideration to be received by holders of Old Notes in the Offers. Holders of Old Notes accepted for exchange in the Offers will receive New Notes denominated in the stated currency of the Old Notes (except for Old Notes denominated in Swiss Franc and Japanese Yen which will be exchanged for New Notes denominated in U.S. dollars) and also receive a cash payment (paid in the stated currency of such Old Notes) equal to the accrued and unpaid interest in respect of such Old Notes from the most recent interest payment date to, but not including, the Settlement Date (as defined herein). Interest on each New Note will accrue from the Settlement Date. The principal amount of Series A Notes and Series B Notes offered in exchange for CIT Old Notes and Delaware Funding Old Notes, respectively, as reflected in the tables below will consist of 10% of New Notes due in 2013, 15% of New Notes due 2014, 15% of New Notes due 2015, 25% of New Notes due 2016 and 35% of New Notes due 2017. Approximately $30.2 billion in outstanding principal amount of Old Notes are subject to Offers and approximately $22.2 billion of aggregate principal amount of New Notes and approximately 68.3 million shares of New Preferred Stock will be issued in the event that there is 100% participation in the Offers.

If the Offers are not consummated, the Old Notes will be subject to the Plan of Reorganization, to the extent it is approved and implemented, and placed in the class identified in the following tables. For a complete description of the persons and securities subject to the Plan of Reorganization and their potential treatment thereunder, see "The Plan of Reorganization" and the Plan of Reorganization annexed hereto as Appendix C.

The CIT Old Notes tendered pursuant to the CIT Offers will be exchanged for Series A Notes and New Preferred Stock in the exchange, and the three series of Delaware Funding Old Notes tendered pursuant to the Delaware Funding Offers will be exchanged for Series B Notes in the exchange.

CIT Outstanding Notes

			Consideration per Principal Amount of Old Notes Tendered		
			per 1,000 Notional	per 1,000 USD Equivalent	
Title of Old Notes to be Tendered	**Outstanding Principal Amount**	**CUSIP/ISIN**	**Principal Amount of New Notes to be Issued**	**Number of Shares of New Preferred Stock to be Issued(1)**	**Plan of Reorganization Class**
6.875% Notes due November 1, 2009	USD 300,000,000	12560PCL3	USD 900	0.35108	Class 9
4.125% Notes due November 3, 2009	USD 500,000,000	125581AM0	USD 900	0.35108	Class 9
3.85% Notes due November 15, 2009	USD 1,959,000	12557WJP7	USD 900	0.35108	Class 9
4.63% Notes due November 15, 2009	USD 1,349,000	12557WLV1	USD 900	0.35108	Class 9
5.05% Notes due November 15, 2009	USD 2,800,000	12557WPC9	USD 900	0.35108	Class 9
5.00% Notes due November 15, 2009	USD 4,217,000	12557WB26	USD 900	0.35108	Class 9
5.00% Notes due November 15, 2009	USD 5,083,000	12557WB59	USD 900	0.35108	Class 9
5.00% Notes due November 15, 2009	USD 6,146,000	12557WB83	USD 900	0.35108	Class 9
3.95% Notes due December 15, 2009	USD 3,314,000	12557WJV4	USD 900	0.35108	Class 9
4.80% Notes due December 15, 2009	USD 2,073,000	12557WMB4	USD 900	0.35108	Class 9
4.70% Notes due December 15, 2009	USD 285,000	12557WPL9	USD 900	0.35108	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered — per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered — per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
4.85% Notes due December 15, 2009	USD 582,000	12557WPU9	USD 900	0.35108	Class 9
6.25% Notes due December 15, 2009	USD 63,703,000	12557WSJ1	USD 900	0.35108	Class 9
6.50% Notes due December 15, 2009	USD 40,994,000	12557WSM4	USD 900	0.35108	Class 9
Floating Rate Notes due December 21, 2009	USD 113,000,000	12560PDL2	USD 900	0.35108	Class 9
4.25% Notes due February 1, 2010	USD 750,000,000	125581AQ1	USD 850	1.05323	Class 9
4.05% Notes due February 15, 2010	USD 4,172,000	12557WKE0	USD 850	1.05323	Class 9
5.15% Notes due February 15, 2010	USD 1,918,000	12557WQC8	USD 850	1.05323	Class 9
5.05% Notes due February 15, 2010	USD 1,497,000	12557WQL8	USD 850	1.05323	Class 9
6.50% Notes due February 15, 2010	USD 58,219,000	12557WSX0	USD 850	1.05323	Class 9
6.25% Notes due February 15, 2010	USD 44,138,000	12557WTE1	USD 850	1.05323	Class 9
Floating Rate Notes due March 1, 2010	CHF 100,000,000	CH0029382659	CHF 850(7)	1.05323	Class 9
2.75% Notes due March 1, 2010	CHF 50,000,000	CH0029407191	CHF 850(7)	1.05323	Class 9
Floating Rate Notes due March 12, 2010	USD 1,000,000,000	125581CX4	USD 850	1.05323	Class 9
4.30% Notes due March 15, 2010	USD 1,822,000	12557WKL4	USD 850	1.05323	Class 9
5.05% Notes due March 15, 2010	USD 4,241,000	12557WMH1	USD 850	1.05323	Class 9
5.15% Notes due March 15, 2010	USD 6,375,000	12557WMP3	USD 850	1.05323	Class 9
4.90% Notes due March 15, 2010	USD 297,000	12557WQU8	USD 850	1.05323	Class 9
4.85% Notes due March 15, 2010	USD 784,000	12557WRC7	USD 850	1.05323	Class 9
6.50% Notes due March 15, 2010	USD 33,677,000	12557WTL5	USD 850	1.05323	Class 9
Floating Rate Notes due March 22, 2010	USD 150,000,000	12560PFN6	USD 850	1.05323	Class 9
4.45% Notes due May 15, 2010	USD 3,980,000	12557WKS9	USD 850	1.05323	Class 9
5.25% Notes due May 15, 2010	USD 2,414,000	12557WMV0	USD 850	1.05323	Class 9
5.38% Notes due June 15, 2017(2)	GBP 300,000,000	XS0276327342	GBP 850	1.05323	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered: per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered: per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
4.30% Notes due June 15, 2010	USD 1,013,000	12557WKX8	USD 850	1.05323	Class 9
4.35% Notes due June 15, 2010	USD 1,419,000	12557WLE9	USD 850	1.05323	Class 9
5.30% Notes due June 15, 2010	USD 2,622,000	12557WNB3	USD 850	1.05323	Class 9
4.60% Notes due August 15, 2010	USD 1,131,000	12557WLL3	USD 850	1.05323	Class 9
5.45% Notes due August 15, 2010	USD 11,920,000	12557WNH0	USD 850	1.05323	Class 9
5.50% Notes due August 15, 2010	USD 1,511,000	12557WA92	USD 850	1.05323	Class 9
4.25% Notes due September 15, 2010	USD 295,000	12557WLS8	USD 850	1.05323	Class 9
5.25% Notes due September 15, 2010	USD 11,403,000	12557WNR8	USD 850	1.05323	Class 9
5.20% Notes due November 3, 2010	USD 500,000,000	125577AS5	USD 850	1.05323	Class 9
Floating Rate Notes due November 3, 2010	USD 474,000,000	125577AT3	USD 850	1.05323	Class 9
5.05% Notes due November 15, 2010	USD 9,054,000	12557WLY5	USD 850	1.05323	Class 9
5.25% Notes due November 15, 2010	USD 6,349,000	12557WNZ0	USD 850	1.05323	Class 9
5.25% Notes due November 15, 2010	USD 12,292,000	12557WC33	USD 850	1.05323	Class 9
5.25% Notes due November 15, 2010	USD 1,686,000	12557WC74	USD 850	1.05323	Class 9
4.75% Notes due December 15, 2010	USD 750,000,000	12560PDB4	USD 850	1.05323	Class 9
5.00% Notes due December 15, 2010	USD 5,842,000	12557WME8	USD 850	1.05323	Class 9
5.05% Notes due December 15, 2010	USD 5,926,000	12557WPH8	USD 850	1.05323	Class 9
4.90% Notes due December 15, 2010	USD 3,188,000	12557WPR6	USD 850	1.05323	Class 9
5.25% Notes due December 15, 2010	USD 807,000	12557WSE2	USD 850	1.05323	Class 9
6.50% Notes due December 15, 2010	USD 12,177,000	12557WSR3	USD 850	1.05323	Class 9
6.50% Notes due January 15, 2011	USD 17,752,000	12557WSV4	USD 800	1.75539	Class 9
4.72% Notes due February 10, 2011	CAD 400,000,000	125581AU2	CAD 800	1.75539	Class 9
5.15% Notes due February 15, 2011	USD 2,158,000	12557WPZ8	USD 800	1.75539	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered — per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered — per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
5.15% Notes due February 15, 2011	USD 1,458,000	12557WQH7	USD 800	1.75539	Class 9
6.60% Notes due February 15, 2011	USD 25,229,000	12557WTB7	USD 800	1.75539	Class 9
Floating Rate Notes due February 28, 2011(3)	GBP 70,000,000	XS0245933121	GBP 800	1.75539	Class 9
5.05% Notes due March 15, 2011	USD 1,560,000	12557WML2	USD 800	1.75539	Class 9
5.00% Notes due March 15, 2011	USD 1,001,000	12557WQR5	USD 800	1.75539	Class 9
4.90% Notes due March 15, 2011	USD 806,000	12557WQZ7	USD 800	1.75539	Class 9
5.00% Notes due March 15, 2011	USD 1,589,000	12557WRH6	USD 800	1.75539	Class 9
6.75% Notes due March 15, 2011	USD 7,604,000	12557WTJ0	USD 800	1.75539	Class 9
6.50% Notes due March 15, 2011	USD 6,187,000	12557WTQ4	USD 800	1.75539	Class 9
5.15% Notes due April 15, 2011	USD 957,000	12557WMS7	USD 800	1.75539	Class 9
Floating Rate Notes due April 27, 2011	USD 280,225,000	125581BA5	USD 800	1.75539	Class 9
5.60% Notes due April 27, 2011	USD 750,000,000	125581AZ1	USD 800	1.75539	Class 9
5.40% Notes due May 15, 2011	USD 1,283,000	12557WMY4	USD 800	1.75539	Class 9
5.35% Notes due June 15, 2011	USD 558,000	12557WNE7	USD 800	1.75539	Class 9
Floating Rate Notes due July 28, 2011	USD 669,500,000	125581BE7	USD 800	1.75539	Class 9
5.80% Notes due July 28, 2011	USD 550,000,000	125581BF4	USD 800	1.75539	Class 9
5.35% Notes due August 15, 2011	USD 2,254,000	12557WNM9	USD 800	1.75539	Class 9
5.20% Notes due September 15, 2011	USD 2,685,000	12557WNV9	USD 800	1.75539	Class 9
Floating Rate Notes due September 21, 2011(3)	GBP 40,000,000	XS0268935698	GBP 800	1.75539	Class 9
4.25% Notes due September 22, 2011(4)	EUR 750,000,000	XS0201605192	EUR 800	1.75539	Class 9
5.20% Notes due November 15, 2011	USD 7,392,000	12557WPD7	USD 800	1.75539	Class 9
5.25% Notes due November 15, 2011	USD 4,427,000	12557WB34	USD 800	1.75539	Class 9
5.25% Notes due November 15, 2011	USD 5,175,000	12557WB67	USD 800	1.75539	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered: per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered: per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
5.25% Notes due November 15, 2011	USD 4,944,000	12557WB91	USD 800	1.75539	Class 9
Floating Rate Notes due November 30, 2011(3)	EUR 500,000,000	XS0275670965	EUR 800	1.75539	Class 9
4.85% Notes due December 15, 2011	USD 482,000	12557WPM7	USD 800	1.75539	Class 9
5.00% Notes due December 15, 2011	USD 1,685,000	12557WPV7	USD 800	1.75539	Class 9
5.40% Notes due February 13, 2012	USD 479,996,000	125581CT3	USD 800	1.75539	Class 9
Floating Rate Notes due February 13, 2012	USD 654,250,000	125581CU0	USD 800	1.75539	Class 9
5.25% Notes due February 15, 2012	USD 2,937,000	12557WQD6	USD 800	1.75539	Class 9
5.15% Notes due February 15, 2012	USD 1,532,000	12557WQM6	USD 800	1.75539	Class 9
7.25% Notes due February 15, 2012	USD 30,577,000	12557WSY8	USD 800	1.75539	Class 9
7.00% Notes due February 15, 2012	USD 17,676,000	12557WTF8	USD 800	1.75539	Class 9
5.00% Notes due March 15, 2012	USD 482,000	12557WQV6	USD 800	1.75539	Class 9
5.00% Notes due March 15, 2012	USD 1,059,000	12557WRD5	USD 800	1.75539	Class 9
7.25% Notes due March 15, 2012	USD 13,609,000	12557WTM3	USD 800	1.75539	Class 9
7.75% Notes due April 2, 2012	USD 259,646,000	125581AB4	USD 800	1.75539	Class 9
5.75% Notes due August 15, 2012	USD 466,000	12557WA68	USD 800	1.75539	Class 9
3.80% Notes due November 14, 2012(3)	EUR 450,000,000	XS0234935434	EUR 800	1.75539	Class 9
5.50% Notes due November 15, 2012	USD 2,711,000	12557WC41	USD 800	1.75539	Class 9
5.50% Notes due November 15, 2012	USD 1,381,000	12557WC82	USD 800	1.75539	Class 9
7.63% Notes due November 30, 2012	USD 1,277,653,000	125577AZ9	USD 800	1.75539	Class 9
5.50% Notes due December 15, 2012	USD 495,000	12557WSF9	USD 800	1.75539	Class 9
7.00% Notes due December 15, 2012	USD 36,343,000	12557WSK8	USD 800	1.75539	Class 9
7.25% Notes due December 15, 2012	USD 19,425,000	12557WSN2	USD 800	1.75539	Class 9
7.30% Notes due December 15, 2012	USD 11,775,000	12557WSS1	USD 800	1.75539	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered: per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered: per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
Floating Rate Notes due December 21, 2012	USD 290,705,000	12560PEP2	USD 800	1.75539	Class 9
6.15% Notes due January 15, 2013	USD 29,038,000	12557WAZ4	USD 700	2.80862	Class 9
6.25% Notes due January 15, 2013	USD 62,461,000	12557WBC4	USD 700	2.80862	Class 9
6.15% Notes due January 15, 2013	USD 52,560,000	12557WBF7	USD 700	2.80862	Class 9
6.25% Notes due January 15, 2013	USD 53,967,000	12557WBJ9	USD 700	2.80862	Class 9
7.50% Notes due January 15, 2013	USD 27,292,000	12557WSW2	USD 700	2.80862	Class 9
6.25% Notes due February 15, 2013	USD 22,781,000	12557WBM2	USD 700	2.80862	Class 9
6.20% Notes due February 15, 2013	USD 24,387,000	12557WBQ3	USD 700	2.80862	Class 9
6.00% Notes due February 15, 2013	USD 22,368,000	12557WBT7	USD 700	2.80862	Class 9
7.60% Notes due February 15, 2013	USD 23,615,000	12557WTC5	USD 700	2.80862	Class 9
6.15% Notes due February 15, 2013	USD 23,318,000	12557WBW0	USD 700	2.80862	Class 9
5.40% Notes due March 7, 2013	USD 483,516,000	125581AX6	USD 700	2.80862	Class 9
7.75% Notes due March 15, 2013	USD 18,242,000	12557WTK7	USD 700	2.80862	Class 9
7.90% Notes due March 15, 2013	USD 17,591,000	12557WTN1	USD 700	2.80862	Class 9
7.25% Notes due March 15, 2013	USD 5,350,000	12557WTR2	USD 700	2.80862	Class 9
6.00% Notes due March 15, 2013	USD 26,178,000	12557WBZ3	USD 700	2.80862	Class 9
6.00% Notes due March 15, 2013	USD 27,547,000	12557WCC3	USD 700	2.80862	Class 9
6.10% Notes due March 15, 2013	USD 27,499,000	12557WCF6	USD 700	2.80862	Class 9
6.25% Notes due March 15, 2013	USD 26,121,000	12557WCJ8	USD 700	2.80862	Class 9
6.15% Notes due April 15, 2013	USD 24,593,000	12557WCM1	USD 700	2.80862	Class 9
6.15% Notes due April 15, 2013	USD 28,983,000	12557WCQ2	USD 700	2.80862	Class 9
6.05% Notes due April 15, 2013	USD 19,386,000	12557WCT6	USD 700	2.80862	Class 9
6.05% Notes due May 15, 2013	USD 44,494,000	12557WCW9	USD 700	2.80862	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered: per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered: per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
4.95% Notes due May 15, 2013	USD 9,133,000	12557WCZ2	USD 700	2.80862	Class 9
4.95% Notes due May 15, 2013	USD 11,492,000	12557WDC2	USD 700	2.80862	Class 9
4.88% Notes due June 15, 2013	USD 6,237,000	12557WDF5	USD 700	2.80862	Class 9
4.85% Notes due June 15, 2013	USD 7,956,000	12557WDJ7	USD 700	2.80862	Class 9
4.60% Notes due June 15, 2013	USD 9,421,000	12557WDM0	USD 700	2.80862	Class 9
4.45% Notes due June 15, 2013	USD 5,051,000	12557WDQ1	USD 700	2.80862	Class 9
Floating Rate Notes due June 20, 2013(3)	EUR 500,000,000	XS0258343564	EUR 700	2.80862	Class 9
5.05% Notes due July 15, 2013	USD 5,228,000	12557WEF4	USD 700	2.80862	Class 9
4.65% Notes due July 15, 2013	USD 9,267,000	12557WDT5	USD 700	2.80862	Class 9
4.75% Notes due July 15, 2013	USD 2,318,000	12557WDW8	USD 700	2.80862	Class 9
5.00% Notes due July 15, 2013	USD 15,182,000	12557WDZ1	USD 700	2.80862	Class 9
4.75% Notes due July 15, 2013	USD 5,779,000	12557WEC1	USD 700	2.80862	Class 9
5.30% Notes due August 15, 2013	USD 7,479,000	12557WEJ6	USD 700	2.80862	Class 9
5.50% Notes due August 15, 2013	USD 2,903,000	12557WEM9	USD 700	2.80862	Class 9
5.50% Notes due August 15, 2013	USD 6,810,000	12557WEQ0	USD 700	2.80862	Class 9
5.40% Notes due September 15, 2013	USD 2,445,000	12557WET4	USD 700	2.80862	Class 9
5.50% Notes due September 15, 2013	USD 4,171,000	12557WEW7	USD 700	2.80862	Class 9
5.25% Notes due September 15, 2013	USD 4,374,000	12557WEZ0	USD 700	2.80862	Class 9
5.20% Notes due September 15, 2013	USD 4,378,000	12557WFC0	USD 700	2.80862	Class 9
5.20% Notes due October 15, 2013	USD 5,497,000	12557WFF3	USD 700	2.80862	Class 9
5.20% Notes due October 15, 2013	USD 8,130,000	12557WFJ5	USD 700	2.80862	Class 9
5.25% Notes due October 15, 2013	USD 3,359,000	12557WFM8	USD 700	2.80862	Class 9
5.30% Notes due November 15, 2013	USD 3,146,000	12557WFQ9	USD 700	2.80862	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered — per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered — per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
5.10% Notes due November 15, 2013	USD 7,480,000	12557WFT3	USD 700	2.80862	Class 9
5.40% Notes due December 15, 2013	USD 5,783,000	12557WFW6	USD 700	2.80862	Class 9
5.20% Notes due December 15, 2013	USD 7,241,000	12557WFZ9	USD 700	2.80862	Class 9
5.10% Notes due January 15, 2014	USD 2,897,000	12557WGC9	USD 700	2.80862	Class 9
4.85% Notes due January 15, 2014	USD 1,333,000	12557WGF2	USD 700	2.80862	Class 9
5.00% Notes due February 13, 2014	USD 671,749,000	125581AH1	USD 700	2.80862	Class 9
5.00% Notes due February 15, 2014	USD 5,957,000	12557WGJ4	USD 700	2.80862	Class 9
4.90% Notes due February 15, 2014	USD 1,958,000	12557WGM7	USD 700	2.80862	Class 9
7.85% Notes due February 15, 2014	USD 23,034,000	12557WSZ5	USD 700	2.80862	Class 9
7.65% Notes due February 15, 2014	USD 10,897,000	12557WTG6	USD 700	2.80862	Class 9
4.80% Notes due March 15, 2014	USD 4,492,000	12557WGQ8	USD 700	2.80862	Class 9
4.60% Notes due March 15, 2014	USD 4,211,000	12557WGT2	USD 700	2.80862	Class 9
7.85% Notes due March 15, 2014	USD 4,573,000	12557WTS0	USD 700	2.80862	Class 9
4.80% Notes due April 15, 2014	USD 2,177,000	12557WGW5	USD 700	2.80862	Class 9
5.10% Notes due April 15, 2014	USD 5,735,000	12557WGZ8	USD 700	2.80862	Class 9
5.00% Notes due May 13, 2014(4)	EUR 463,405,000	XS0192461837	EUR 700	2.80862	Class 9
5.25% Notes due May 15, 2014	USD 4,898,000	12557WHC8	USD 700	2.80862	Class 9
5.80% Notes due May 15, 2014	USD 11,357,000	12557WHF1	USD 700	2.80862	Class 9
5.70% Notes due June 15, 2014	USD 8,890,000	12557WHJ3	USD 700	2.80862	Class 9
5.75% Notes due June 15, 2014	USD 10,815,000	12557WHM6	USD 700	2.80862	Class 9
5.75% Notes due June 15, 2014	USD 1,930,000	12557WRU7	USD 700	2.80862	Class 9
5.85% Notes due June 15, 2014	USD 1,593,000	12557WRX1	USD 700	2.80862	Class 9
6.00% Notes due June 15, 2014	USD 10,892,000	12557WSA0	USD 700	2.80862	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered — per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered — per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
5.65% Notes due July 15, 2014	USD 8,504,000	12557WHQ7	USD 700	2.80862	Class 9
5.30% Notes due July 15, 2014	USD 10,005,000	12557WHT1	USD 700	2.80862	Class 9
5.20% Notes due August 15, 2014	USD 5,691,000	12557WHW4	USD 700	2.80862	Class 9
5.30% Notes due August 15, 2014	USD 3,915,000	12557WHZ7	USD 700	2.80862	Class 9
6.00% Notes due August 15, 2014	USD 2,555,000	12557WA27	USD 700	2.80862	Class 9
6.00% Notes due August 15, 2014	USD 2,389,000	12557WA76	USD 700	2.80862	Class 9
5.25% Notes due September 15, 2014	USD 16,332,000	12557WJC6	USD 700	2.80862	Class 9
5.05% Notes due September 15, 2014	USD 17,112,000	12557WJF9	USD 700	2.80862	Class 9
5.125% Notes due September 30, 2014	USD 638,267,000	125581AK4	USD 700	2.80862	Class 9
4.90% Notes due October 15, 2014	USD 5,520,000	12557WJJ1	USD 700	2.80862	Class 9
5.10% Notes due October 15, 2014	USD 13,944,000	12557WJM4	USD 700	2.80862	Class 9
5.05% Notes due November 15, 2014	USD 7,238,000	12557WJQ5	USD 700	2.80862	Class 9
5.50% Notes due December 1, 2014(4)	GBP 480,000,000	XS0207079764	GBP 700	2.80862	Class 9
5.125% Notes due December 15, 2014	USD 7,632,000	12557WJT9	USD 700	2.80862	Class 9
5.10% Notes due December 15, 2014	USD 18,101,000	12557WJW2	USD 700	2.80862	Class 9
5.05% Notes due January 15, 2015	USD 6,302,000	12557WJZ5	USD 700	2.80862	Class 9
5.00% Notes due February 1, 2015	USD 671,141,000	125581AR9	USD 700	2.80862	Class 9
4.95% Notes due February 15, 2015	USD 6,678,000	12557WKC4	USD 700	2.80862	Class 9
4.90% Notes due February 15, 2015	USD 6,848,000	12557WKF7	USD 700	2.80862	Class 9
7.90% Notes due February 15, 2015	USD 24,329,000	12557WTD3	USD 700	2.80862	Class 9
5.10% Notes due March 15, 2015	USD 12,247,000	12557WKJ9	USD 700	2.80862	Class 9
5.05% Notes due March 15, 2015	USD 2,575,000	12557WKM2	USD 700	2.80862	Class 9
4.25% Notes due March 17, 2015(4)	EUR 412,500,000	XS0215269670	EUR 700	2.80862	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered — per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered — per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
5.375% Notes due April 15, 2015	USD 6,369,000	12557WKQ3	USD 700	2.80862	Class 9
5.25% Notes due May 15, 2015	USD 15,954,000	12557WKT7	USD 700	2.80862	Class 9
5.30% Notes due May 15, 2015	USD 27,090,000	12557WKW0	USD 700	2.80862	Class 9
5.10% Notes due June 15, 2015	USD 14,930,000	12557WKZ3	USD 700	2.80862	Class 9
5.05% Notes due June 15, 2015	USD 10,912,000	12557WLA7	USD 700	2.80862	Class 9
5.20% Notes due June 15, 2015	USD 8,322,000	12557WLF6	USD 700	2.80862	Class 9
5.30% Notes due August 15, 2015	USD 10,741,000	12557WLJ8	USD 700	2.80862	Class 9
5.375% Notes due August 15, 2015	USD 15,892,000	12557WLM1	USD 700	2.80862	Class 9
5.25% Notes due September 15, 2015	USD 11,241,000	12557WLQ2	USD 700	2.80862	Class 9
5.10% Notes due September 15, 2015	USD 4,898,000	12557WLT6	USD 700	2.80862	Class 9
5.50% Notes due November 15, 2015	USD 4,016,000	12557WLW9	USD 700	2.80862	Class 9
5.80% Notes due November 15, 2015	USD 7,456,000	12557WLZ2	USD 700	2.80862	Class 9
5.75% Notes due December 15, 2015	USD 8,155,000	12557WMC2	USD 700	2.80862	Class 9
5.80% Notes due December 15, 2015	USD 12,621,000	12557WMF5	USD 700	2.80862	Class 9
5.40% Notes due January 30, 2016	USD 604,263,000	125581AW8	USD 700	2.80862	Class 9
5.85% Notes due March 15, 2016	USD 14,372,000	12557WMJ7	USD 700	2.80862	Class 9
5.80% Notes due March 15, 2016	USD 11,705,000	12557WMM0	USD 700	2.80862	Class 9
6.00% Notes due March 15, 2016	USD 69,046,000	12557WMQ1	USD 700	2.80862	Class 9
5.88% Notes due April 15, 2016	USD 4,888,000	12557WMT5	USD 700	2.80862	Class 9
6.05% Notes due May 15, 2016	USD 14,943,000	12557WMW8	USD 700	2.80862	Class 9
6.15% Notes due May 15, 2016	USD 18,636,000	12557WMZ1	USD 700	2.80862	Class 9
6.10% Notes due June 15, 2016	USD 15,478,000	12557WNC1	USD 700	2.80862	Class 9
6.10% Notes due June 15, 2016	USD 17,660,000	12557WNF4	USD 700	2.80862	Class 9

			Consideration per Principal Amount of Old Notes Tendered		
			per 1,000 Notional	per 1,000 USD Equivalent	
Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Principal Amount of New Notes to be Issued	Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
6.20% Notes due August 15, 2016	USD 37,135,000	12557WNJ6	USD 700	2.80862	Class 9
6.13% Notes due August 15, 2016	USD 36,401,000	12557WNN7	USD 700	2.80862	Class 9
5.85% Notes due September 15, 2016	USD 391,533,000	125581CS5	USD 700	2.80862	Class 9
6.05% Notes due September 15, 2016	USD 31,772,000	12557WNS6	USD 700	2.80862	Class 9
5.95% Notes due September 15, 2016	USD 11,219,000	12557WNW7	USD 700	2.80862	Class 9
4.65% Notes due September 19, 2016	EUR 474,000,000	XS0268133799	EUR 700	2.80862	Class 9
6.00% Notes due November 15, 2016	USD 29,155,000	12557WPA3	USD 700	2.80862	Class 9
5.95% Notes due November 15, 2016	USD 13,264,000	12557WPE5	USD 700	2.80862	Class 9
Floating Rate Notes due December 14, 2016	USD 34,452,000	12560PDK4	USD 700	2.80862	Class 9
5.80% Notes due December 15, 2016	USD 35,842,000	12557WPJ4	USD 700	2.80862	Class 9
5.65% Notes due December 15, 2016	USD 8,701,000	12557WPN5	USD 700	2.80862	Class 9
5.70% Notes due December 15, 2016	USD 9,571,000	12557WPS4	USD 700	2.80862	Class 9
5.70% Notes due December 15, 2016	USD 9,817,000	12557WPW5	USD 700	2.80862	Class 9
5.50% Notes due December 20, 2016	GBP 367,400,000	XS0278525992	GBP 700	2.80862	Class 9
5.65% Notes due February 13, 2017	USD 548,087,000	125577AY2	USD 700	2.80862	Class 9
5.85% Notes due February 15, 2017	USD 7,724,000	12557WQA2	USD 700	2.80862	Class 9
5.95% Notes due February 15, 2017	USD 11,074,000	12557WQE4	USD 700	2.80862	Class 9
5.85% Notes due February 15, 2017	USD 6,471,000	12557WQJ3	USD 700	2.80862	Class 9
5.80% Notes due February 15, 2017	USD 7,792,000	12557WQN4	USD 700	2.80862	Class 9
Floating Rate Notes due March 15, 2017	USD 50,000,000	12560PDR9	USD 700	2.80862	Class 9
5.75% Notes due March 15, 2017	USD 6,741,000	12557WQS3	USD 700	2.80862	Class 9
5.75% Notes due March 15, 2017	USD 13,498,000	12557WQW4	USD 700	2.80862	Class 9
5.70% Notes due March 15, 2017	USD 9,533,000	12557WRA1	USD 700	2.80862	Class 9

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered — per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered — per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
5.65% Notes due March 15, 2017	USD 5,935,000	12557WRE3	USD 700	2.80862	Class 9
5.75% Notes due March 15, 2017	USD 10,298,000	12557WRJ2	USD 700	2.80862	Class 9
5.75% Notes due May 15, 2017	USD 2,708,000	12557WRL7	USD 700	2.80862	Class 9
5.80% Notes due May 15, 2017	USD 3,779,000	12557WRN3	USD 700	2.80862	Class 9
5.80% Notes due May 15, 2017	USD 5,038,000	12557WRQ6	USD 700	2.80862	Class 9
6.00% Notes due June 15, 2017	USD 23,842,000	12557WRS2	USD 700	2.80862	Class 9
6.00% Notes due June 15, 2017	USD 8,205,000	12557WRV5	USD 700	2.80862	Class 9
6.10% Notes due June 15, 2017	USD 6,648,000	12557WRY9	USD 700	2.80862	Class 9
6.25% Notes due June 15, 2017	USD 10,535,000	12557WSB8	USD 700	2.80862	Class 9
6.25% Notes due August 15, 2017	USD 1,190,000	12557WA35	USD 700	2.80862	Class 9
6.25% Notes due November 15, 2017	USD 8,958,000	12557WB42	USD 700	2.80862	Class 9
6.25% Notes due November 15, 2017	USD 11,778,000	12557WB75	USD 700	2.80862	Class 9
6.25% Notes due November 15, 2017	USD 6,339,000	12557WC25	USD 700	2.80862	Class 9
6.40% Notes due November 15, 2017	USD 3,404,000	12557WC58	USD 700	2.80862	Class 9
6.50% Notes due November 15, 2017	USD 2,197,000	12557WC90	USD 700	2.80862	Class 9
10-Year Forward Rate Bias Notes due December 11, 2017(5)	USD 500,000,000	N/A	USD 700	2.80862	Class 9
6.50% Notes due December 15, 2017	USD 556,000	12557WSG7	USD 700	2.80862	Class 9
7.50% Notes due December 15, 2017	USD 24,275,000	12557WSL6	USD 700	2.80862	Class 9
7.75% Notes due December 15, 2017	USD 14,936,000	12557WSP7	USD 700	2.80862	Class 9
7.80% Notes due December 15, 2017	USD 8,731,000	12557WST9	USD 700	2.80862	Class 9
5.80% Senior Notes due October 1, 2036(6)	USD 316,015,000	12560PFP1	USD 700	2.80862	Class 9
12.00% Subordinated Notes due December 18, 2018	USD 1,117,448,000	125581FS2	USD 0	7.54816	Class 12
12.00% Subordinated Notes due December 18, 2018	USD 31,559,000	U17186AF1	USD 0	7.54816	Class 12

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Old Notes Tendered: per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Old Notes Tendered: per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
6.10% Junior Subordinated Notes due March 15, 2067 . .	USD 750,000,000	125577AX4	USD 0	1.75539	Class 13

(1) The New Preferred Stock will have a liquidation preference per share of $1,400 and be entitled to 58.6 votes per share on all matters presented to our stockholders for a vote. See "Description of the New Preferred Stock." Assuming the exchange of 100% of the Old Notes for the New Notes and/or the New Preferred Stock in the Offers, the New Preferred Stock issued will consist of approximately 68.3 million shares having an aggregate liquidation preference of approximately $95.6 billion and representing approximately 91.1% of the aggregate voting power of our capital stock generally entitled to vote on matters presented to our stockholders. If we receive the minimum level of participation in the Offers required to satisfy the Liquidity and Leverage Condition, the New Preferred Stock issued will consist of approximately 45.0 million shares having an aggregate liquidation preference of approximately $63.0 billion and representing approximately 87.1% of the aggregate voting power of our capital stock generally entitled to vote on matters presented to our stockholders.

(2) Holders of the 5.38% Notes due June 15, 2017 have a put right on June 15, 2010.

(3) Listed on the London Stock Exchange. Following consummation of the Offers, we intend to delist the Old Notes from the London Stock Exchange's Gilt Edged and Fixed Interest Market.

(4) Listed on the Luxembourg Stock Exchange. Following consummation of the Offers, we intend to delist the Old Notes from the Luxembourg Stock Exchange.

(5) These securities are not listed with The Depository Trust Company ("DTC").

(6) Holders of the 5.80% Senior Notes due October 1, 2036 have a put right on October 1, 2018.

(7) Holders will receive the U.S. dollar value of the stated amount.

CIT Outstanding Long Term Notes

Title of Long Term Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Long Term Notes Tendered: per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Long Term Notes Tendered: per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
6.25% Notes due August 15, 2021	USD 43,204,000	12557WNP2	USD 700	2.80862	Class 8
6.35% Notes due August 15, 2021	USD 19,139,000	12557WNK3	USD 700	2.80862	Class 8
6.15% Notes due September 15, 2021	USD 27,174,000	12557WNX5	USD 700	2.80862	Class 8
6.25% Notes due September 15, 2021	USD 38,817,000	12557WNT4	USD 700	2.80862	Class 8
6.10% Notes due November 15, 2021	USD 63,647,000	12557WPF2	USD 700	2.80862	Class 8
6.25% Notes due November 15, 2021	USD 35,172,000	12557WPB1	USD 700	2.80862	Class 8

Title of Long Term Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Long Term Notes Tendered — per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Long Term Notes Tendered — per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
5.85% Notes due December 15, 2021	USD 14,529,000	12557WPP0	USD 700	2.80862	Class 8
5.875% Notes due December 15, 2021	USD 18,181,000	12557WPT2	USD 700	2.80862	Class 8
5.90% Notes due December 15, 2021	USD 18,463,000	12557WPX3	USD 700	2.80862	Class 8
6.00% Notes due December 15, 2021	USD 58,477,000	12557WPK1	USD 700	2.80862	Class 8
5.95% Notes due February 15, 2022	USD 12,325,000	12557WQP9	USD 700	2.80862	Class 8
6.00% Notes due February 15, 2022	USD 47,741,000	12557WQB0	USD 700	2.80862	Class 8
6.00% Notes due February 15, 2022	USD 36,570,000	12557WQK0	USD 700	2.80862	Class 8
6.05% Notes due February 15, 2022	USD 24,258,000	12557WQF1	USD 700	2.80862	Class 8
5.85% Notes due March 15, 2022	USD 12,016,000	12557WQX2	USD 700	2.80862	Class 8
5.85% Notes due March 15, 2022	USD 15,025,000	12557WRB9	USD 700	2.80862	Class 8
5.85% Notes due March 15, 2022	USD 19,227,000	12557WRF0	USD 700	2.80862	Class 8
5.90% Notes due March 15, 2022	USD 8,296,000	12557WQT1	USD 700	2.80862	Class 8
5.95% Notes due March 15, 2022	USD 27,181,000	12557WRK9	USD 700	2.80862	Class 8
6.00% Notes due May 15, 2022	USD 13,726,000	12557WRM5	USD 700	2.80862	Class 8
6.00% Notes due May 15, 2022	USD 18,355,000	12557WRP8	USD 700	2.80862	Class 8
6.00% Notes due May 15, 2022	USD 11,441,000	12557WRR4	USD 700	2.80862	Class 8
6.15% Notes due June 15, 2022	USD 30,302,000	12557WRT0	USD 700	2.80862	Class 8
6.20% Notes due June 15, 2022	USD 6,819,000	12557WRW3	USD 700	2.80862	Class 8
6.25% Notes due June 15, 2022	USD 4,611,000	12557WRZ6	USD 700	2.80862	Class 8
6.50% Notes due June 15, 2022	USD 15,028,000	12557WSC6	USD 700	2.80862	Class 8
6.50% Notes due August 15, 2022	USD 1,457,000	12557WA43	USD 700	2.80862	Class 8
6.50% Notes due August 15, 2022	USD 397,000	12557WA84	USD 700	2.80862	Class 8
6.70% Notes due November 15, 2022	USD 1,930,000	12557WC66	USD 700	2.80862	Class 8

Title of Long Term Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Consideration per Principal Amount of Long Term Notes Tendered: per 1,000 Notional — Principal Amount of New Notes to be Issued	Consideration per Principal Amount of Long Term Notes Tendered: per 1,000 USD Equivalent — Number of Shares of New Preferred Stock to be Issued(1)	Plan of Reorganization Class
6.75% Notes due November 15, 2022	USD 2,609,000	12557WSD4	USD 700	2.80862	Class 8
6.75% Notes due December 15, 2022	USD 676,000	12557WSH5	USD 700	2.80862	Class 8
6.00% Notes due April 1, 2036	USD 309,021,000	125581AY4	USD 700	2.80862	Class 8
2.83% Notes due April 2, 2036(2)	JPY 20,000,000	XS0249719534	JPY 700(3)	2.80862	Class 8

(1) The New Preferred Stock will have a liquidation preference per share of $1,400 and be entitled to 58.6 votes per share on all matters presented to our stockholders for a vote. See "Description of the New Preferred Stock." Assuming the exchange of 100% of the Old Notes for the New Notes and/or the New Preferred Stock in the Offers, the New Preferred Stock issued will consist of approximately 68.3 million shares having an aggregate liquidation preference of approximately $95.6 billion and representing approximately 91.1% of the aggregate voting power of our capital stock generally entitled to vote on matters presented to our stockholders. If we receive the minimum level of participation in the Offers required to satisfy the Liquidity and Leverage Condition, the New Preferred Stock issued will consist of approximately 45.0 million shares having an aggregate liquidation preference of approximately $63.0 billion and representing approximately 87.1% of the aggregate voting power of our capital stock generally entitled to vote on matters presented to our stockholders.

(2) These securities are not listed with the Depository Trust Company ("DTC").

(3) Holders will receive the U.S. dollar value of the stated amount.

Delaware Funding Outstanding Notes

Title of Old Notes to be Tendered	Outstanding Principal Amount	CUSIP/ISIN	Principal Amount of New Notes to be Issued per USD 1,000 Principal Amount of Old Notes Tendered	Plan of Reorganization Class
4.65% Notes due July 1, 2010	USD 1,000,000,000	125568AA3/125568AB1	USD 1,000	Class 7
5.60% Notes due November 2, 2011	USD 487,000,000	125568AE5	USD 1,000	Class 7
5.20% Notes due June 1, 2015	USD 657,408,000	125568AC9/125568AD7	USD 1,000	Class 7

The Equity Units (CUSIP 125581405) issued by CIT Group Inc. have not been included in the Offers but are included in solicitation of acceptances for the Plan of Reorganization. Further, the 6.00% Fixed Rate Notes due 3 March 2011 (CUSIP AU300CGAL010) and the 3 month BBSW plus 34bp Floating Rate Notes due 3 March 2011 (CUSIP AU300CGAL028) issued by CIT Group (Australia) Limited, a subsidiary of the CIT Group Inc., have not been included in the Offers and will be reinstated pursuant to the Plan of Reorganization. As a result, holders of these notes and other debt securities will not be entitled to participate in the Offers and will be treated as indicated in the Plan of Reorganization.

[This Page Intentionally Left Blank]

TABLE OF CONTENTS

You should rely only on the information contained in this Offering Memorandum and Disclosure Statement or to which this Offering Memorandum and Disclosure Statement refers you. We have not authorized anyone to provide you with different information. We are not making an offer of the New Notes and the New Preferred Stock in any jurisdiction where such offers are not permitted. You should not assume that the information provided in this Offering Memorandum and Disclosure Statement is accurate as of any date other than the date of this Offering Memorandum and Disclosure Statement, or that the information incorporated by reference into this Offering Memorandum and Disclosure Statement is accurate as of any date other than the date of such information.

APPENDIX A-1

LIQUIDATION ANALYSIS

CIT GROUP INC.

The Bankruptcy Code requires that each holder of an Impaired Claim or Interest either (a) accept the Plan of Reorganization or (b) receive or retain property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if CIT Group Inc. ("CIT" or the "Debtor") were liquidated under Chapter 7 of the Bankruptcy Code on December 31, 2009. The first step in determining whether this test has been met is to determine the estimated amount that would be generated from the liquidation of the Debtor's assets and properties in the context of the Chapter 7 liquidation case. The gross amount of cash available to the holders of Impaired Claims or Interests would be the sum of the proceeds from the disposition of the Debtor's assets through the liquidation proceedings and the cash held by the Debtor at the time of the commencement of the Chapter 7 case. This gross amount of cash available is reduced by the amount of any Claims secured by the estate's assets, the costs and expenses of the liquidation, and additional administrative expenses that may result from the termination of the Debtor's businesses and the use of Chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated to creditors and shareholders in strict priority in accordance with Section 726 of the Bankruptcy Code. For purposes of this liquidation analysis, it is assumed that the assets of CIT Group Inc. are liquidated for the benefit of CIT's creditors. A general summary of the assumptions used by CIT management in preparing this liquidation analysis follows. The more specific assumptions are discussed below.

Estimate of Net Proceeds

Estimates were made of the cash proceeds which might be realized from the liquidation of the Debtor's assets. The Chapter 7 liquidation period is assumed to commence on December 31, 2009 and to last twelve months following the appointment of a Chapter 7 trustee. Recoveries to creditors are presented on an undiscounted basis. For purposes of the analysis, estimated asset balances as of June 30, 2009 with certain proforma adjustments were used to estimate recoveries. There can be no assurance that the liquidation would be completed in a limited time frame, nor is there any assurance that the recoveries assigned to the assets would in fact be realized. Under Section 704 of the Bankruptcy Code, an appointed trustee must, among other duties, collect and convert the property of the estate as expeditiously (generally at distressed prices) as is compatible with the best interests of the parties-in-interest. The liquidation analysis assumes that there would be pressure to complete the sales process within twelve months. In addition, it is assumed that CIT Bank, a direct subsidiary of CIT Group Inc., would be seized by the FDIC. Although CIT Group Inc. presently has equity in CIT Bank, upon such a seizure the ability of CIT Bank to receive such value is uncertain. Additionally, CIT Group Inc. may have continuing obligations to CIT Bank. Thus, this analysis assumes that CIT Bank neither contributes proceeds to nor imposes costs on the estate.

Estimate of Costs

The Debtor's cost of liquidation under Chapter 7 would include fees payable to a Chapter 7 trustee, as well as those which might be payable to attorneys and other professionals that such a trustee may engage. Further, costs of liquidation would include any obligations and unpaid expenses incurred by the Debtor until conclusion of the Chapter 7 case.

Additional Claims would arise by reason of the breach or rejection of obligations incurred under executory contracts, or leases entered into by the Debtor. It is possible that in a Chapter 7 case, the wind-down expenses may be greater or less than the estimated amount. Such expenses are in part dependent on the length of time of the liquidation.

Distribution of Net Proceeds under Absolute Priority

The costs, expenses, fees and such other Claims that may arise and constitute necessary costs and expenses in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to General Unsecured Claims and the Senior Subordinated Note Claims and the Junior Subordinated Note Claims (together, the "Subordinated Unsecured Claims"). Under the absolute priority rule, no junior creditor would receive any distribution until all senior creditors are paid in full. The Debtor believes that in the Chapter 7 case, general unsecured creditors at CIT may receive a recovery within the range of 2% to 35%.The Debtor further believes that subordinated unsecured creditors will likely receive no recovery.

After consideration of the effects that a Chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, including (i) the increased costs and expenses of a liquidation under Chapter 7 arising from fees payable to a trustee in a bankruptcy and professional advisors to such trustee, (ii) an erosion in the value of assets in the Chapter 7 case in the context of the expeditious liquidation required under Chapter 7 and the forced sales atmosphere that would likely prevail, and (iii) the substantial increase in Claims that would need to be satisfied on a priority basis. THE DEBTOR HAS DETERMINED, AS SUMMARIZED ON THE FOLLOWING CHART, THAT CONFIRMATION OF THE PLAN OF REORGANIZATION WILL PROVIDE EACH CREDITOR AND EQUITY HOLDER WITH A RECOVERY EQUAL OR GREATER THAN IT WOULD RECEIVE PURSUANT TO A LIQUIDATION OF THE DEBTOR UNDER CHAPTER 7 OF THE BANKRUPTCY CODE.

THE DEBTOR'S LIQUIDATION ANALYSIS IS AN ESTIMATE OF THE PROCEEDS THAT MAY BE GENERATED AS A RESULT OF A HYPOTHETICAL CHAPTER 7 LIQUIDATION OF THE ASSETS OF THE DEBTOR. Underlying the liquidation analysis are a number of estimates and assumptions that are inherently subject to significant economic, competitive, and operational uncertainties, and contingencies beyond the control of the Debtor or a Chapter 7 trustee. In addition, various liquidation decisions upon which certain assumptions are based are subject to change. Therefore, there can be no assurance that the assumptions and estimates employed in determining the liquidation values of the assets will result in an accurate estimate of the proceeds that would be realized were the Debtor to undergo an actual liquidation. The actual amounts of Claims against the estate could vary significantly from the estimate set forth herein, depending on the Claims asserted during the pendency of the Chapter 7 case. Moreover, this liquidation analysis does not include liabilities that may arise as a result of litigation, certain new tax assessments, or other potential Claims. This analysis also does not include potential recoveries from avoidance actions. No value was assigned to additional proceeds that might result from the sale of certain items with intangible value. Therefore, the actual liquidation value of the Debtor could vary materially from the estimates provided herein.

THE LIQUIDATION ANALYSIS SET FORTH HEREIN WAS BASED ON THE VALUES OF DEBTOR'S ASSETS ON JUNE 30, 2009 WITH CERTAIN PROFORMA ADJUSTMENTS. TO THE EXTENT THAT OPERATIONS THROUGH SUCH DATE WERE DIFFERENT THAN ESTIMATED, THE ASSET VALUES MAY CHANGE. PRICEWATERHOUSECOOPERS LLP, THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR CIT, HAS NOT EXAMINED, COMPILED OR OTHERWISE APPLIED PROCEDURES TO THESE VALUES AND, CONSEQUENTLY, DOES NOT EXPRESS AN OPINION OR ANY OTHER FORM OF ASSURANCE WITH RESPECT TO THE VALUES IN THE LIQUIDATION ANALYSIS.

Estimated net proceeds may be realized from the liquidation of CIT's subsidiaries. The method of liquidation may vary greatly from subsidiary to subsidiary depending on the jurisdiction or country in which it resides or was formed. The obligations are assumed to be satisfied at the individual entity level, and the excess would then flow upward to the next ownership level and ultimately to CIT Group Inc., to the extent available.

CIT Group Inc.

LIQUIDATION ANALYSIS[1]

	Low	High
	($ in millions)	
I Proceeds:		
Cash	$ 2,030	$ 2,030
Equity Investments in Subsidiaries[2]	5,980	17,371
Finance Receivables	0	0
Operating Lease Equipment	0	0
Other Assets	1,162	1,226
Total Proceeds	9,172	20,627
Less:		
Wind-Down Operating Costs	(160)	(240)
Trustee Fees	(275)	(619)
Professional Fees	(75)	(150)
Proceeds Available for Distributions to Secured Claims	8,662	19,618

	Claim	Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
II Secured Claims:					
Secured Borrowings[3]	7,500	7,500	7,500	100.0%	100.0%
Proceeds Available for Distributions to Priority Unsecured Claims		1,162	12,118		

	Claim	Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
III Priority Unsecured Claims:					
Taxes	246	246	246	100.0%	100.0%
Other Priority Claims	76	76	76	100.0%	100.0%
Total	322	322	322		
Proceeds Available for Distributions to General Unsecured Claims		840	11,796		

	Claim	Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
IV General Unsecured Claims:[4]					
Canadian Senior Unsecured Note Guarantee	2,188	53	744	2.4%	34.0%
Long-Dated Senior Unsecured Note Claims	1,189	29	404	2.4%	34.0%
Senior Unsecured Note Claims	25,869	627	8,801	2.4%	34.0%
Senior Unsecured Term Loan Claims	321	8	109	2.4%	34.0%
Senior Unsecured Credit Agreement Claims	3,101	75	1,055	2.4%	34.0%
Other Unsecured Liabilities	954	23	325	2.4%	34.0%
Accrued Liabilities & Accounts Payable	1,052	25	358	2.4%	34.0%
Total	34,674	840	11,796		
Proceeds Available for Distributions to Subordinated Unsecured Claims		0	0		

	Claim	Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
V Subordinated Unsecured Claims:[5]					
Senior Subordinated Notes	1,200	0	0	0.0%	0.0%
Junior Subordinated Notes	779	0	0	0.0%	0.0%
Total	1,979	0	0		
Proceeds Available for Distribution to Residual Stakeholders		$ 0	$ 0		

(1) This analysis assumes liquidation commences on January 1, 2010 and lasts 12 months.

(2) The Equity Investments in Subsidiaries include a net increase of $3.3 billion in value attributed to the Company refinancing certain secured borrowings, the funds for such refinancings being provided by the incremental $4.5 billion of funding that the Company is seeking from its existing secured lenders and third parties.

(3) This balance reflects $4.5 billion of incremental funding provided under (a) an expansion of the existing Senior Credit Facility funded by existing secured lenders, or (b) a new senior credit facility provided by another group. Assets collateralizing the incremental borrowings from the expansion facility or the new senior credit facility are in CIT Group's subsidiaries, the value of which is reflected in the Equity Investment in Subsidiaries.

(4) JPM Letter of Credit facility is assumed to be either undrawn or satisfied by the Company or one of its subsidiaries.

(5) The Senior and Junior Subordinated Notes are contractually subordinated and therefore would not receive any distribution.

Proceeds

Cash

Cash consists of all unrestricted cash in banks or operating accounts and cash held at divisions as of June 30, 2009. In addition, CIT's cash balance includes proforma adjustments from cash received from the July 2009 new debt facility. Cash is assumed to be fully recoverable. The cash recovered may be materially different if financial institutions have rights of off-set against cash, or if cash is unrecoverable from the non-US subsidiaries.

Equity Investments in Subsidiaries

All of the finance receivables and operating leases owned by CIT on a consolidated basis are held by CIT's subsidiary entities. Certain of those assets held by CIT's subsidiary entities are subject to liens securing prior financings, such as securitization transactions, conduit facilities, secured loans and other forms of secured financing. In addition, certain of CIT's subsidiary entities owe unsecured debts and liabilities that must be satisfied before the assets of such entities can be used to satisfy the liabilities of their parent entities. CIT's equity investments in subsidiaries represent the assets remaining at all subsidiary entities after these entities have fully satisfied their subsidiary-level debts and liabilities. Recovery of these excess assets may be adversely impacted in a Chapter 7 liquidation by the same risks described in the cash, finance receivables, operating leases, and other assets sections. As a result of $4.5 billion incremental borrowings by CIT Group, Inc. under the Senior Credit Facility or a new senior credit facility provided by another group, the Equity Investments in Subsidiaries has increased by $3.3 billion, that reduces debt at the subsidiary levels and increases the value of unencumbered assets. The increase in Equity Investments in Subsidiaries is, however, offset by the additional $4.5 billion increase in Secured Claims.

Finance Receivables

The Debtor's finance receivables primarily consist of various loans and capital leases extended to customers in the form of asset and cash flow based loans, capital leases, factored receivables and other types of recourse and non recourse loans, among others. The effect of a Chapter 7 liquidation and the specific direct costs that would have to be incurred to collect on receivables would adversely impact the recovery on receivables. As such, an estimated recovery of 38% to 80% is applied (with an average blended recovery of 50%), to the estimated amount outstanding at June 30, 2009 that pertains to these assets. All of the finance receivables are held at CIT's subsidiary entities.

Operating Leases

The Debtor's operating leases are contracts primarily extended to customers that allow the use of an asset, but do not convey the rights of ownership to the customer. The largest concentrations of accounts are primarily with companies in the transportation industries. The effect of a Chapter 7 liquidation, and the specific direct costs that would have to be incurred to collect on operating leases, would adversely impact the recovery on operating leases. As such, an estimated recovery of 48% to 75% is applied (with an average blended recovery of 62%), to the estimated amount outstanding at June 30, 2009 that pertains to these assets. All of the operating leases are held at CIT's subsidiary entities.

Other Assets

Other assets primarily include miscellaneous receivables, receivables from derivative counterparties, interest bearing deposits, and investments. The effect of a Chapter 7 liquidation, and the specific direct costs that would have to be incurred in order to monetize these assets, would adversely impact the recovery on these assets. As such, an estimated recovery of 0% to 100% is applied (with an average blended recovery of 40%) to the estimated amount outstanding at June 30, 2009 that pertains to these assets. Other assets are held at CIT and its subsidiaries.

Wind-down Operating Costs

Ongoing operating expenses consist of corporate overhead and occupancy costs to be incurred during the Chapter 7 liquidation period. The Debtor assumes that the liquidation would occur over a twelve-month period and that such expenses, costs and overhead would decrease over time, especially after January 2011 when agreements are assumed to be reached for the sale of all of the assets. Any positive income from operating businesses generated during this time was assumed to offset wind-down operating costs.

Trustee & Professional Fees

Based on CIT management's review of the nature of these costs and the outcomes of similar liquidations, fees were estimated at $350 million to $769 million in total for the Debtor. This figure is comprised of approximately $275 million to $619 million of trustee fees (3.0% of the proceeds available for distribution based on the Bankruptcy Code) and $75 million to $150 million of other professional fees. The amount of professional fees is related to the large size and complexity of the liquidation.

Secured Claims

Secured Claims are given priority under the Bankruptcy Code and are entitled to payment prior to any payment on unsecured claims.

Priority Unsecured Claims

Priority Unsecured Claims are given priority under the Bankruptcy Code and are entitled to payment prior to any payment on most other unsecured claims. Federal taxes, sales and local income taxes, and foreign taxes are included in this category.

General Unsecured Claims

At CIT, General Unsecured Claims consist of $2.2 billion of Canadian Senior Unsecured Note Guarantee, $1.2 billion of Long-Dated Senior Unsecured Note Claims, $25.9 billion of Senior Unsecured Note Claims, $321 million of Senior Unsecured Term Loan Claims, $3.1 billion of Senior Unsecured Credit Agreement Claims, $1.0 billion of Other Unsecured Liabilities, and $1.1 billion of Accrued Liabilities and Accounts Payable. General Unsecured Claims were adjusted from the June 30, 2009 balances to reflect the most current amounts and allocations of all outstanding debt loans and notes.

Subordinated Unsecured Claims

Subordinated Unsecured Claims includes $779 million of Junior Subordinated Note Claims and $1.2 billion of Senior Subordinated Note Claims. Subordinated Unsecured Claims were adjusted from the June 30, 2009 balances to reflect the most current amounts and allocations of outstanding debt loans and notes.

The Debtor believes that the value of any distributions from the liquidation proceeds to each class of Allowed Claims in a Chapter 7 liquidation may not occur for a substantial period of time. In this regard, it is possible that distribution of the proceeds of the liquidation could be delayed for a year or more after the completion of such liquidation in order to resolve the Claims and prepare for distributions. In the event litigation was necessary to resolve Claims asserted in the Chapter 7 case, the delay could be further prolonged and administrative expenses further increased. The effects of this delay on the value of distributions under the hypothetical liquidation have not been considered.

THE DEBTOR'S LIQUIDATION ANALYSIS IS AN ESTIMATE OF THE PROCEEDS THAT MAY BE GENERATED AS A RESULT OF A HYPOTHETICAL CHAPTER 7 LIQUIDATION OF THE ASSETS OF THE DEBTOR. Underlying the liquidation analysis is a number of estimates and assumptions that are inherently subject to significant economic, competitive, and operational uncertainties and contingencies beyond the control of the Debtor or a Chapter 7 trustee. In addition, various liquidation decisions upon which certain assumptions are based are subject to change. Therefore, there can be no assurance that the assumptions and estimates employed in determining the liquidation values of the Debtor will result in an accurate estimate of the proceeds that would be realized were the Debtor to undergo an actual liquidation. General Unsecured Claims and Subordinated Unsecured Claims to the estate could vary significantly from the estimates set forth herein, depending on the Claims asserted during the pendency of the Chapter 7 case. Moreover, this liquidation analysis does not include liabilities that may arise as a result of litigation, certain new tax assessments, or other potential Claims. This analysis also does not include potential recoveries from avoidance actions. No value was assigned to additional proceeds that might result from the sale of certain items with intangible value. Therefore, the actual liquidation value of the Debtor could vary materially from the estimates provided herein.

APPENDIX A-2

LIQUIDATION ANALYSIS

CIT GROUP FUNDING COMPANY OF DELAWARE LLC

The Bankruptcy Code requires that each holder of an Impaired Claim or Interest either (a) accepts the Plan of Reorganization or (b) receive or retain property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if CIT Group Funding Company of Delaware LLC ("Delaware Funding" or the "Debtor") was liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date. The first step in determining whether this test has been met is to determine the estimated amount that would be generated from the liquidation of the Debtor's assets and properties in the context of the Chapter 7 liquidation case. The gross amount of cash available to the holders of Impaired Claims or Interests would be the sum of the proceeds from the disposition of Debtor's assets through the liquidation proceedings and the cash held by the Debtor at the time of the commencement of the Chapter 7 case. This gross amount of cash available is reduced by the amount of any Claims secured by the estate's assets, the costs and expenses of the liquidation, and additional administrative expenses that may result from the termination of the Debtor's businesses and the use of Chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated to creditors and shareholders in strict priority in accordance with Section 726 of the Bankruptcy Code. For purposes of this liquidation analysis, it is assumed that the assets of Delaware Funding are liquidated for the benefit of the creditors of Delaware Funding. In addition, this analysis presents two scenarios. The first scenario assumes that the pre-packaged plan for CIT Group, Inc. is consummated and Delaware Funding commences a liquidation under Chapter 7 immediately thereafter. See Exhibit A — 2.1. The second scenario assumes a liquidation of CIT Group Inc. and Delaware Funding. See Exhibit A — 2.2. A general summary of the assumptions used by management in preparing this liquidation analysis follows. The more specific assumptions are discussed below.

Exhibit A — 2.1

Estimate of Net Proceeds

Estimates were made of the cash proceeds that might be realized from the liquidation of the Debtor's assets. This analysis assumes the consummation of the Prepackaged Plan of Reorganization for CIT Group Inc. on December 31, 2009 and that Delaware Funding commences Chapter 7 liquidation on January 1, 2010 that lasts for 12 months following the appointment of a Chapter 7 trustee. Recoveries to creditors are presented on an undiscounted basis. For purposes of the analysis, the Intercompany Note Proceeds reflect potential payments to Delaware Funding pursuant to the five Intercompany Notes issued by CIT Financial Ltd. ("CFL") contemporaneously with the issuance of the Canadian Senior Unsecured Notes. The low value incorporates an estimate of proceeds that may be available to Delaware Funding in the event that CFL is unable to meet its debts as they become due and determines to commence liquidation or insolvency proceedings in Canada; the high value of proceeds incorporates the face amount of the Intercompany Notes. Moreover, the analysis assumes that CIT Leasing is unable to satisfy its obligation to maintain the solvency of Delaware Funding under Support Agreements dated July 5, 2005 and November 1, 2006 between Delaware Funding and CIT Leasing. In the event that CIT Leasing is able to satisfy its obligations under such Support Agreements, creditors may receive recoveries that are materially higher or actually be paid in full.

There can be no assurance that a liquidation of Delaware Funding would be completed in the limited time frame assumed, nor is there any assurance that the recoveries assigned to the assets would in fact be realized. Under Section 704 of the Bankruptcy Code, an appointed trustee must, among other duties, collect and convert the property of the estate as expeditiously (generally at distressed prices) as is compatible with the best interests of the parties-in-interest. The liquidation analysis assumes that there would be pressure to complete the sales process within twelve months.

Estimate of Costs

The Debtor's cost of liquidation under Chapter 7 would include fees payable to a Chapter 7 trustee, as well as those which might be payable to attorneys and other professionals that such a trustee may engage. Further, costs of liquidation would include any obligations and unpaid expenses incurred by the Debtor until conclusion of the Chapter 7 case.

Secured Claims

Secured Claims are given priority under the Bankruptcy Code and are entitled to payment prior to any payment on unsecured claims. The Secured Claims consist of the CIT Barbados secured claim in the amount of $2.2 billion which amount reflects obligations secured by the CIT Funding Security Agreements pursuant to which a security interest was granted to CIT Barbados in each of five Intercompany Notes. The CIT Funding Security Agreements consist of three security agreements dated as of July 5, 2005 and two security agreements dated as of November 1, 2006 and were entered into for tax planning purposes. Additionally, the Secured Claims include the $3.0 billion outstanding under the Existing Senior Credit Facility which claim is secured by a lien on the assets of Delaware Funding. Because the Canadian Note Holders are assumed to vote against the Pre-Packaged Plan, the lien securing the $3 billion secured claim is assumed not to be released. This lien is, however, also being challenged pursuant to the Canadian Senior Unsecured Note Litigation. Finally, the Secured Claims do not include the $4.5 billion of incremental senior secured borrowings the Company is seeking from its existing secured lenders and third parties.

Priority Unsecured Claims

Priority Unsecured Claims are given priority under the Bankruptcy Code and are entitled to payment prior to any payment on most other unsecured claims. Federal taxes, sales and local income taxes, and foreign taxes are included in this category.

General Unsecured Claims

The General Unsecured Claims consist of $164 million of Remaining Canadian Senior Unsecured Note Claims the value remaining after holders receive the projected distributions from CIT Group and $23 million of Accrued Liabilities and Accounts Payable.

Subrogated Claims

Subrogated Claims include $2.0 billion of CIT Group Inc. subrogated claims on account of guarantee payments made on behalf of Delaware Funding by CIT Group Inc.

CIT Group Funding Company of Delaware LLC

LIQUIDATION ANALYSIS[1]

	Low	High
	($ in millions)	
I Proceeds:		
Cash	$ 1	$ 1
Equity Investments in Subsidiaries	0	0
Finance Receivables	0	0
Operating Lease Equipment	0	0
Intercompany Note Proceeds[2]	588	2,207
Other Assets	5	7
Total Proceeds	594	2,215
Less:		
Wind-Down Operating Costs	(1)	(2)
Trustee Fees	(18)	(66)
Professional Fees	(2)	(4)
Proceeds Available for Distributions to Secured Claims	573	2,143

	Claim	Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
II Secured Claims:					
CIT Barbados Secured Claims[3]	2,188	242	904	11.0%	41.3%
Existing Senior Credit Facility[4]	3,000	331	1,239	11.0%	41.3%
Total	5,188	573	2,143		
Proceeds Available for Distributions to Priority Unsecured Claims		0	0		
III Priority Unsecured Claims:	0	0	0	0.0%	0.0%
Proceeds Available for Distributions to General Unsecured Claims		0	0		

	Claim	Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
IV General Unsecured Claims:					
Remaining Canadian Senior Unsecured Note Claim[5]	164	0	0	0.0%	0.0%
Accrued Liabilities & Accounts Payable	23	0	0	0.0%	0.0%
Total	187	0	0		
Proceeds Available for Distributions to Subrogated Claims		0	0		

	Claim	Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
V Subrogated Claims:					
CIT Group Subrogated Claim on Account of Guarantee Payment	2,024	0	0	0.0%	0.0%
Total	2,024	0	0		
Proceeds Available for Distributions to Residual Stakeholders		$ 0	$ 0		

(1) This analysis assumes the consummation of the Prepackaged Plan of Reorganization for CIT Group Inc. on December 31, 2009 and that CIT Group Funding Company of Delaware commences Chapter 7 liquidation on January 1, 2010 that lasts for 12 months.

(2) The Intercompany Note Proceeds reflect potential payments to Delaware Funding pursuant to the five Intercompany Notes issued by CIT Financial Ltd. in connection with the issuance of the Canadian Senior Unsecured Notes. This analysis assumes that CFL is unable to satisfy its obligations on two Intercompany Notes due in July 2010 in the approximate amount of $1 billion. As a result of that failure, CFL is assumed to commence insolvency or other liquidation proceedings in Canada, and, as a consequence, Delaware Funding is forced to convert its case into a Chapter 7 liquidation. This liquidation is assumed to last 12 months and presumes that Delaware Funding will receive proceeds from the liquidation of the two Intercompany Notes due in July 2010 as well as three additional Intercompany Notes in the aggregate face amount of $1.2 billion within the following 12 month period. The low value is an estimate of the proceeds that may be available to Delaware Funding in the event that CIT Financial Ltd. is unable to meet its debts as they become due and determines to commence liquidation or insolvency proceedings in Canada; the high value reflects the face amount of the Intercompany Notes.

(3) The amount of the CIT Barbados Secured Claim reflects the secured obligations under the CIT Funding Security Agreements pursuant to which a security interest was granted to CIT Barbados in each of the Intercompany Notes. Three such security agreements are dated as of July 5, 2005 and two security agreements are dated as of November 1, 2006. These secured obligations were put into place at the time of the issuance of the Intercompany Notes for tax planning purposes. This Recovery analysis also assumes that CIT Leasing cannot meet its obligation under the two Support Agreements between CIT Leasing and Delaware Funding, pursuant to which agreements CIT Leasing must maintain the solvency of Delaware Funding. To the extent that CIT Leasing is able to honor its obligation under the Support Agreements, creditors may receive recoveries that are materially higher or actually be paid in full.

(4) The $3.0 billion claim under the Existing Senior Credit Facility does not reflect $4.5 billion of incremental senior secured borrowings the Company is presently seeking Moreover, the lien securing such borrowings and reflects that the lien securing the facility is not released because it is assumed the Canadian Note Holders vote against the Pre-Packaged Plan. That lien is, however, being challenged pursuant to the Canadian Senior Unsecured Note Litigation and may be avoided.

(5) This amount constitutes the value of the Canadian Senior Unsecured Note Claims remaining after holders receive the projected Class 7 distribution of 92.5% under the CIT Group Prepackaged Plan (see Exhibit C — 16). If CIT Leasing is able to honor its obligations under the Support Agreements this Claim may be paid in full.

Exhibit A — 2.2:

Estimate of Net Proceeds

Estimates were made of the cash proceeds which might be realized from the liquidation of the Debtor's assets. This analysis assumes that CIT Group Inc. and its subsidiaries as well as Delaware Funding commence a Chapter 7 liquidation on January 1, 2010 that lasts for 12 months following the appointment of a Chapter 7 trustee. Recoveries to creditors are presented on an undiscounted basis. There can be no assurance that the liquidation would be completed in a limited time frame, nor is there any assurance that the recoveries assigned to the assets would in fact be realized. Under Section 704 of the Bankruptcy Code, an appointed trustee must, among other duties, collect and convert the property of the estate as expeditiously (generally at distressed prices) as is compatible with the best interests of the parties-in-interest. The liquidation analysis assumes that there would be pressure to complete the sales process within twelve months.

Estimate of Costs

The Debtor's cost of liquidation under Chapter 7 would include fees payable to a Chapter 7 trustee, as well as those which might be payable to attorneys and other professionals that such a trustee may engage. Further, costs of liquidation would include any obligations and unpaid expenses incurred by the Debtor until conclusion of the Chapter 7 case.

Secured Claims

Secured Claims are given priority under the Bankruptcy Rules and are entitled to payment prior to any payment on unsecured claims. The Secured Claims are $2.2 billion that reflect the amount of secured obligations under the CIT Funding Security Agreements pursuant to which a security interest was granted to CIT Barbados in each of five Intercompany Notes. The CIT Funding Security Agreements consist of three security agreements dated as of July 5, 2005 and two security agreements dated as of November 1, 2006 tax planning laws. Additionally, the Secured Claims include the $3.0 billion outstanding under the Senior Credit Facility which claims is secured by a lien on the assets of Delaware Funding. Because the Canadian Note Holders are assumed to vote against the Pre-Packaged Plan and the lien securing the $3 billion Secured Claim is assumed not to be released. Finally, the Secured Claims do not include the $4.5 billion of incrementally senior secured borrowings the Company is seeking for its Secured Lenders or third parties. This lien is being challenged pursuant to the Canadian Senior Unsecured Note Litigation.

Priority Unsecured Claims

Priority Unsecured Claims are given priority under the Bankruptcy Code and are entitled to payment prior to any payment on most other unsecured claims. Federal taxes, sales and local income taxes, and foreign taxes are included in this category.

General Unsecured Claims

The amount of the Canadian Senior Unsecured Note claims remaining after CIT Group Inc. makes a distribution on such claims in the amount of the estimated recoveries set forth in the liquidation analysis in Appendix A-1. Because this analysis also includes estimates for the separate, assumed liquidation of CFL, the estimated liquidation percentages recoveries in Appendix A-1 are higher by a de minimis amount.

At Delaware Funding, General Unsecured Claims consist of a range of Canadian Senior Unsecured Note Claims from $1.4 billion to $2.1 billion, and $23 million of Accrued Liabilities and Accounts Payable.

Subrogated Claims

Subrogated Claims include a range of $53 million to $774 million of CIT Group Inc. subrogated claims on account of guarantee payments made on behalf of Delaware Funding at CIT Group Inc.

CIT Group Funding Company of Delaware LLC

LIQUIDATION ANALYSIS[1]

	Low	High
	($ in millions)	
I Proceeds:		
Cash	$ 1	$ 1
Equity Investments in Subsidiaries	0	0
Finance Receivables	0	0
Operating Lease Equipment	0	0
Intercompany Note Proceeds[2]	588	1,288
Other Assets	5	7
Total Proceeds	594	1,296
Less:		
Wind-Down Operating Costs	(1)	(2)
Trustee Fees	(18)	(39)
Professional Fees	(2)	(4)
Proceeds Available for Distributions to Secured Claims	573	1,251

	Claim	Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
II Secured Claims:[3]					
CIT Barbados Secured Claim	2,188	573	1,251	26.2%	57.2%
Proceeds Available for Distributions to Priority Unsecured Claims		573	1,251		

	Claim	Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
III Priority Unsecured Claims:	0	0	0	0.0%	0.0%
Proceeds Available for Distributions on General Unsecured Claims		0	0		

	Claims Range		Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
IV General Unsecured Claims:						
Remaining Canadian Senior Unsecured Note Claim[4]	2,135	1,444	0	0	0.0%	0.0%
Accrued Liabilities & Accounts Payable	23	23	0	0	0.0%	0.0%
Total	2,158	1,467	0	0		
Proceeds Available for Distributions to Subrogated Claims			0	0		

	Claims Range		Recovery Low	Recovery High	Percentage Recovery Low	Percentage Recovery High
V Subrogated Claims:						
CIT Group Subrogated Claim on Account of Guarantee Payment	53	744	0	0	0.0%	0.0%
Total	53	744	0	0		
Proceeds Available for Distributions to Residual Stakeholders			$ 0	$ 0		

(1) This analysis assumes liquidation commences on December 31, 2009 and lasts 12 months.

(2) This analysis assumes that CIT Financial Ltd. is unable to satisfy its obligations on two Intercompany Notes due in July 2010 in the approximate amount of $1 billion. As a result of that failure, CIT Financial Ltd. is assumed to commence insolvency or other liquidation proceedings in Canada, and, as a consequence, Delaware Funding is forced to convert its case into a Chapter 7 liquidation. The liquidation is assumed to last 12 months and presumes that Delaware Funding will also receive proceeds from the liquidation of three additional Intercompany Notes in the aggregate face amount of $1.2 billion within the following 12-month period.

(3) The CIT Barbados Secured Claim represents the amount of secured obligations under the CIT Funding Security Agreements pursuant to which a security interest was granted to CIT Barbados in each of the Intercompany Notes, three such security agreements are dated as of July 5, 2005 and two security agreements are dated as of November 1, 2006. This secured obligation was put into place at the time of the issuance of the notes for tax planning purposes. The Recovery analysis assumes that $3 billion of the existing Senior Credit Facility as well as the incremental $4.5 billion of senior secured borrowings is paid in full from the proceeds received as a result of the liquidation of other assets of CIT Group Inc. This analysis assumes that CIT Leasing cannot meet its obligation to maintain the solvency of Delaware Funding under the Support Agreements between CIT Leasing and Delaware Funding. To the extent that CIT Leasing is able to honor its obligations under the Support Agreements, creditors may receive recoveries that are materially higher or possibly be paid in full.

(4) The Canadian Senior Unsecured Note Claim reflects the amount remaining after CIT Group Inc. makes a distribution in the amount of the estimated recoveries set forth in the liquidation analysis in Appendix A-1. Because this analysis also includes estimates for the separate, assumed liquidation of CFL, the estimated liquidation percentages recoveries in Appendix A-1 are higher by a de minimis amount.

CIT Group Funding
Company of Delaware LLC

	Balance Sheet 6/30/2009 ($ in millions)
Assets	
Total Cash	1
Investment Security & Securitizations	8
Unrealized loss on MTM	46
Intercompany Receivable from CIT Financial Ltd.	2,287
Other Miscellaneous Assets	3
Total Assets	2,345
Liabilities	
Current Term Debt	1,000
Long Term Debt	1,207
Accrued Liabilities & Payables	33
Total Liabilities	2,240
Equity	105
Liabilities and Shareholders Equity	$2,345

Additional Claims would arise by reason of the breach or rejections of obligations incurred under executory contracts or leases entered into by the Debtor. It is possible that in a Chapter 7 case, the wind-down expenses may be greater or less than the estimated amount. Such expenses are in part dependent on the length of time of the liquidation.

Distribution of Net Proceeds under Absolute Priority

The foregoing types of Claims, costs, expenses, fees and such other Claims that may arise in a liquidation case would provide partial to full payment from the liquidation proceeds before the balance of those proceeds would be made available to General Unsecured Claims and the Subrogated Claims. Under the absolute priority rule, no junior creditor would receive any distribution until all senior creditors are paid in full. The Debtor believes that in the Chapter 7 case, general unsecured creditors at Delaware Funding may receive a de minimis recovery.

After consideration of the effects that a Chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, including (i) the increased costs and expenses of a liquidation under Chapter 7 arising from fees payable to a trustee in a bankruptcy and professional advisors to such trustee, (ii) the erosion in value of assets in the Chapter 7 case in the context of the expeditious liquidation required under Chapter 7 and the forced sales atmosphere that would likely prevail, and (iii) the substantial increase in Claims which would be satisfied on a priority basis, THE DEBTOR HAS DETERMINED THAT CONFIRMATION OF THE PLAN OF REORGANIZATION WILL PROVIDE EACH CREDITOR AND EQUITY HOLDER WITH A RECOVERY EQUAL OR GREATER THAN IT WOULD RECEIVE PURSUANT TO A LIQUIDATION OF THE DEBTOR UNDER CHAPTER 7 OF THE BANKRUPTCY CODE.

THE DEBTOR'S LIQUIDATION ANALYSIS IS AN ESTIMATE OF THE PROCEEDS THAT MAY BE GENERATED AS A RESULT OF A HYPOTHETICAL CHAPTER 7 LIQUIDATION OF THE ASSETS OF THE DEBTOR. Underlying the liquidation analysis are a number of estimates and assumptions that are inherently subject to significant economic, competitive and operational uncertainties and contingencies beyond the control of the Debtor or a Chapter 7 trustee. In addition, various liquidation decisions upon which certain assumptions are based are subject to change. Therefore, there can be no assurance that the assumptions and estimates employed in determining the liquidation values of the assets will result in an accurate estimate of the proceeds that would be realized were the Debtor to undergo an actual liquidation. The actual amounts of

Claims against the estate could vary significantly from the estimate set forth herein, depending on the Claims asserted during the pendency of the Chapter 7 case. Moreover, this liquidation analysis does not include liabilities that may arise as a result of litigation, certain new tax assessments, or other potential Claims. This analysis also does not include potential recoveries from avoidance actions. No value was assigned to additional proceeds that might result from the sale of certain items with intangible value. Therefore, the actual liquidation value of the Debtor could vary materially from the estimates provided herein.

THE LIQUIDATION ANALYSIS SET FORTH HEREIN WAS BASED ON THE VALUES OF DEBTOR'S ASSETS ON JANUARY 1, 2010 WITH CERTAIN PROFORMA ADJUSTMENTS. TO THE EXTENT THAT OPERATIONS THROUGH SUCH DATE WERE DIFFERENT THAN ESTIMATED, THE ASSET VALUES MAY CHANGE. PRICEWATERHOUSECOOPERS LLP, THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR CIT, HAS NOT EXAMINED, COMPILED OR OTHERWISE APPLIED PROCEDURES TO THESE VALUES AND, CONSEQUENTLY, DOES NOT EXPRESS AN OPINION OR ANY OTHER FORM OF ASSURANCE WITH RESPECT TO THE VALUES IN THE LIQUIDATION ANALYSIS.

The Debtor believes that the value of any distributions from the liquidation proceeds to each class of Allowed Claims in a Chapter 7 liquidation may not occur for a substantial period of time. In this regard, it is possible that distribution of the proceeds of the liquidation could be delayed for a year or more after the completion of such liquidation in order to resolve the Claims and prepare for distributions. In the event litigation were necessary to resolve Claims asserted in the Chapter 7 case, the delay could be further prolonged and administrative expenses further increased. The effects of this delay on the value of distributions under the hypothetical liquidation have not been considered.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS