

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
SENTINEL MANAGEMENT GROUP, INC.,) Case No. 07 B 14987
)
Debtor.) Hon. John H. Squires

**PLAN PROPONENTS' POST-HEARING MEMORANDUM OF LAW
IN SUPPORT OF CONFIRMATION OF THE
SECOND AMENDED CHAPTER 11 PLAN OF LIQUIDATION**

Frederick J. Grede, the chapter 11 trustee (the "Trustee") for Sentinel Management Group, Inc. ("Sentinel" or the "Debtor"), and the Official Committee of Unsecured Creditors (the "Committee") and together with the Trustee, the "Plan Proponents") submit this post-hearing memorandum of law (this "Memorandum") in support of confirmation of the Second Amended Chapter 11 Plan of Liquidation, dated as of August 25, 2008 (Docket No. 1018) (the "Plan").¹

ARGUMENT

On August 10, 2008, the Plan Proponents filed their Confirmation Brief, which among other things addressed arguments raised in written objections to the plan. The Plan Proponents have endeavored not to restate herein responses to objections that already were addressed in the Confirmation Brief, including but not limited to why *Till* does not apply (addressed in the Confirmation Brief at pp. 32-36) and why the Claims of SEG 1 Customers are properly classified with the Claims of SEG 3 Customers (addressed in the Confirmation Brief at pp. 3-4). The Confirmation Brief is incorporated herein by reference.

At the Confirmation Hearing, the Plan Proponents demonstrated that the Plan meets each of the applicable elements required for confirmation of the Plan under sections 1129(a) and 1129(b) of the Bankruptcy Code. Accordingly, this Court should confirm the Plan over the objections of BONY and the Seg 1 Objectors.

¹ The Plan Proponents have also filed a proposed order confirming the Plan, modified to take into account modifications that have been made to the Plan post-Confirmation Hearing.

I. THE PLAN SHOULD BE CONFIRMED OVER THE OBJECTIONS OF BONY.

A. The BONY Reserve and Plan Treatment Described Below Provide for the Realization by BONY of the Indubitable Equivalent of its Claim, If Allowed.

BONY's principle objection to confirmation of the Plan is the amount of the reserve to be set pending resolution of its Disputed Claim. While BONY has never stated the amount of the reserve that should be set, during the two day confirmation trial, BONY provided testimony about a number of assumptions that it contended should be considered in setting a reserve. The Plan Proponents disputed these assumptions at trial and continue to contest their reasonableness. Nonetheless, in the interests of resolving this matter, the Plan Proponents have decided to enhance their reserve offer using BONY's assumptions. Mindful of the Court's admonition that it would prefer the parties to reach an agreement on this issue, the Plan Proponents have modified the Plan to provide for further enhanced, multi-part, protection for BONY's Disputed Claim and hereby propose the following, which more than satisfies the requirements of the Bankruptcy Code:

- The Trustee will deposit \$360.19 million in the BONY Reserve;
- BONY will be given Replacement Liens on the property transferred to the Liquidation Trust (excluding reserves created for other constituents, as set forth in the Plan). The Trustee would be permitted to distribute property pursuant to the Plan, but would be required to retain at least \$10 million in cash at all times subject to these Replacement Liens (in addition to the BONY Reserve). Thus, BONY's total cash security would be \$370.19 million on the Effective Date, which grows by the return earned by the Dreyfus Fund. This represents an increase of over \$30 million above the proposed reserve amount to which BONY objected at the Confirmation Hearing;
- The Plan has been modified to make clear that BONY is entitled to a provisional distribution on its Claim if and to the extent the trial court upholds BONY's Claim as an Allowed Secured Claim not subject to subordination; and
- As before, in the event circumstances prior to the conclusion of the BONY adversary proceeding create uncertainty about whether BONY is fully protected, either the Trustee or BONY would be entitled to seek a modification of these provisions, or even a provisional payment of BONY's Claim.

See Plan §§ 4.3, 7.12.

In arriving at the minimum \$370.19 million in cash that will be set aside for BONY (\$360.19 million in the BONY Reserve plus at least \$10 million subject to the Replacement Liens), the Trustee has acceded to substantially all of BONY's demands, no matter how unreasonable, and used BONY's own numbers to arrive at this reserve. Specifically, (1) despite the fact that the Trustee believes the sum is absurd, this reserve includes sufficient cash to pay the high end of BONY's estimate of professional fees -- \$32 million (*see* Aug. 12 Tr. at 29:24-30:2); (2) despite the fact that it would be an utter historical anomaly, the Trustee has assumed that the "Negative Interest Spread" between the interest earned on the Dreyfus Fund and the interest accrued on BONY's Disputed Claim will be and remain, day in and day out, from the Effective Date of the Plan to the conclusion of the BONY adversary proceeding, 1.62%, a full two standard deviations higher than the daily mean Negative Interest Spread of 1.26% calculated by BONY (*see* Aug. 13 Tr. at 46:13-47:6); and (3) despite the fact that Judge Zagel said he planned to try the BONY adversary proceeding in early 2009, the Trustee used a baseline assumption that there will be no resolution of the BONY adversary proceeding until the end of 2010. Importantly, unless the Negative Interest Spread wildly deviates from historical spreads, there will be a several million dollar additional cushion to take resolution of the BONY adversary proceeding well beyond 2010.

BONY calculated that the amount needed to cover principal and interest through December 31, 2010, assuming the extreme outlier scenario in which the Negative Interest Spread remained a constant two standard deviations higher than the historical mean, was \$338,190,000. (*See* Aug. 13 Tr. at 47:15-47:20.) That sum, plus BONY's extravagant \$32 million high-end estimate of its legal fees, equals the \$370.19 million. This reserve, together with the other rights and protections described above, are more than sufficient to provide BONY with both adequate protection and realization of the indubitable equivalent of its Claim, if Allowed. Moreover, given that this reserve is based upon BONY's own assumptions, BONY has no legitimate basis to complain about this reserve.

B. If the Court Finds the Trustee’s Modified Reserve Proposal Inadequate, It Can and Should Set the Reserve Amount as Provided in the Plan.

Because the parties have not been able to agree on the amount of the reserve, Section 7.12 of the Plan provides that the Court will set the reserve. The Plan Proponents have proposed a reserve amount and other protections which they submit should be adopted by the Court even though BONY has refused to respond the Trustee’s efforts to resolve this issue. But if the Court determines that a different reserve should be provided, it can and should set that amount. At the confirmation hearing, this Court asked whether “there are any other cases where this [the setting of a reserve] has been thrown in the lap of the bankruptcy judge at a contested confirmation hearing to come up with the effective adequate protection on a reserve pendente lite like what we’ve got here?” (Aug. 13 Tr. at 139:7-11) While doing so may not be the Court’s *raison d’etre*, courts can and do sometimes give more than a “yea” or “nea” to adequate protection and reserve proposals.

In re Oakwood Homes Corp., 329 B.R. 19 (D. Del. 2005) is a case that involved a plan provision very similar to Section 7.12 of the Plan at issue here. That plan created certain trusts and provided for them to

reserve the Ratable proportion of all Cash, New Common Stock, New Warrants or other property allocated for distribution on account of each Disputed Claim based upon the asserted amount of each such Disputed Claim, or such lesser amount as may be agreed to be [sic] the Holder of the Claim on the one hand and the [trusts] on the other hand, as applicable, or as may otherwise be determined by order of the Bankruptcy Court.

Id. at 22. The bankruptcy court in *Oakwood Homes* had set the reserve for a \$61 million disputed claim held by JP Morgan at \$0 (the claim had been disallowed and was on appeal). *Id.* at 21. Despite that, on appeal the District Court had no difficulty with a plan provision permitting the bankruptcy court to set a reserve amount, and affirmed the bankruptcy court’s action, concluding that “[i]f the reserve amount is to be set by the Bankruptcy Court, the Court concludes that the Bankruptcy Court is afforded complete discretion to set that amount.” *Id.* at 22; see also *In re Treasure Bay Corp.*, 212 B.R. 520, 548 (Bankr. S.D. Miss. 1997) (confirming a

plan that required the court to set a reserve for disputed secured claims of construction contractors and setting reserve).

In the adequate protection context, the court in *In re McKillips*, 81 B.R. 454 (Bankr. N.D. Ill. 1987), broke the logjam between the debtors and a recalcitrant secured creditor to determine the protection package the creditor would get. *McKillips* involved three different secured creditors, including a first lienholder (Home Federal) and second lienholder (M&I) of mortgages on the debtors' real estate, and another creditor (First National) which held liens on two vehicles. *Id.* at 455. The Court found that Home Federal was oversecured, with an equity cushion of 14.5-16.5% which was deteriorating due to the accrual of interest and unpaid property taxes, *id.* at 458, and it appears that M&I, as second lienholder, was undersecured. *Id.* at 459.

The debtors took the position that Home Federal's equity cushion was sufficient to provide it adequate protection, and offered payments equal to 5% of M&I's secured claim to adequately protect M&I. It is not clear the debtors offered any adequate protection to First National, though the court believed the vehicles that secured its claim were depreciating due to wear and tear. *Id.*

The *McKillips* court first found that the debtor's proposal "would not adequately protect any of the creditors." *Id.* It then questioned whether its "raison d'être . . . include[d] fashioning adequate protection orders" and noted that ordinarily it would "limit itself to determining whether the Debtors' proposal constitutes adequate protection." *Id.* But it stated that:

[t]he principal creditor, Home Federal, has been unusually protective of its rights in an area of law which past experience has shown that all parties tend to benefit more from negotiating. The Court suspects that no matter what the Debtors offered, Home Federal would not deem itself protected. The Court would be forced to hold hearing after hearing until the Debtors happen to offer what the Court determines is appropriate.

Id. In that context, the court found that the more constructive approach was to "short circuit[]" the problem by entering an adequate protection order requiring specific protection for each secured creditor. *Id.*; see also *In re Mr. D Realty Co.*, 27 B.R. 359, 365-66 (Bankr. S.D. Ohio

1983) (accepting debtor's request to suggest a protection proposal that the court would find adequate).

This Court faces a problem very similar to that faced by the *McKillips* court. There is no doubt that the Plan Proponents can provide BONY an acceptable level of protection. The question is and always has been, simply -- how much is enough? BONY, for its part, like Home Federal, has not only been exceptionally protective of what it perceives as its rights, but also exceptionally coy about specifying a level of protection with which it would be satisfied. The Trustee attempted for months to engage BONY in a discussion of the reserve amount, to no avail. BONY would discuss nothing but the repayment of its Disputed Claim in cash. The Trustee then filed a cash collateral motion in an effort to tee up the issue of the amount of the reserve needed. BONY opposed the motion aggressively but, despite admitting that it held over \$510 million in cash (plus other securities) to protect a claim it asserts is \$335 million, BONY still did not provide a number it believed would protect it. *See* Docket Nos. 686, 741 and 866. Indeed, except for a couple of unsuccessful settlement discussions immediately leading up to the Confirmation Hearing, BONY has refused to discuss a settlement of the BONY Reserve amount, and its radio silence has continued since the Confirmation Hearing, despite several attempts by the Trustee to reignite those discussions. Thus, this is, if there ever was one, a case where negotiations should be able to resolve this issue, but they cannot because "no matter what the [Trustee] offered, [BONY] would not deem itself protected." 81 B.R. at 459. Under these circumstances, and particularly in light of the fact that the real victims of BONY's unwillingness to negotiate are Sentinel's Customers, if for some reason the Court does not find the Trustee's generous proposal to be adequate, it should enter an order directing the amount of the BONY Reserve.

C. The Appropriate Interest Rate for BONY's Disputed Claim is the Contract Rate.

The Trustee's reserve proposal presumes that the contract rate is the relevant rate for determining the amount to be reserved on account of post-confirmation interest. Without reiterating the entire explanation in the Confirmation Brief (*see* Confirmation Brief at 32-36,

incorporated herein by reference) of why *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) does not require application of the prime or prime plus rate² to BONY's Disputed Claim post-confirmation, it is worth pointing out a few of the key differences between *Till* and this case.

The *Till* Court emphasized that what it was called upon to do was to interpret Section 1325(a)(5)(B)(ii) of the Bankruptcy Code. *Till*, 541 U.S. at 474. That section requires that “with respect to each *allowed* secured claim provided for by a [Chapter 13] plan” a secured creditor’s treatment under a plan provide that “*the value, as of the effective date of the plan*, of property to be distributed under the plan on account of such claim is not less than the *allowed* amount of such claim.” 11 U.S.C. § 1325(a)(5)(B)(ii) (emphasis added). In interpreting the statutory language, in the context of a plan providing for a restructured stream of payments over time on account of an allowed secured claim, the *Till* Court’s entire analysis was driven to ensure that the “present value” of those payments (“the value, as of the effective date of the plan”) equal the *allowed* amount of the claim. In short, the *Till* Court was focused on satisfying an express statutory standard.

Unlike *Till*, this case is a case under Chapter 11 of the Bankruptcy Code, and Chapter 11 provides different options for treating secured claims than does Chapter 13. While Section 1129(b)(2)(A)(i) contains language similar to that interpreted by the *Till* Court, the section on which the Plan Proponents are relying, Section 1129(b)(2)(A)(iii), does not, and merely requires that a secured creditor realize “the indubitable equivalent of [its] claims.” This is the relevant provision where, as here, an alleged secured creditor’s liens and claims are hotly in dispute. It is noteworthy that the same “indubitable equivalence” standard satisfies the requirement of adequate protection for a secured claim under Section 363 as well. *See* 11 U.S.C. § 361. It

² Even BONY does not seriously contend here that an upward risk adjustment, as was applied in *Till*, should be applicable here. Nor could it. Unlike the automobile that served as collateral in *Till*, BONY’s Disputed Claim here will be protected with a cash reserve. And as even the *Till* Court noted, if the risk of non-payment is virtually zero, no upward adjustment is necessary. *Till*, 541 U.S. at 479 n.18. Moreover, *Till* “place[d] the evidentiary burden squarely on the creditors” to show the need for any upward adjustment. *Id.* at 479. Here BONY did not even make the pretense of making such an evidentiary showing.

would be unheard of to suggest that the provision of adequate protection or indubitable equivalence in the section 363 context required the *modification* of the interest rate applicable to the claim. There is no reason the phrase should have a different meaning when it is used in Section 1129(b) especially where, as here, the delay in paying the claim is due only to the need to resolve disputes over its allowance.

Here the Plan provides the indubitable equivalent in the form of payment in full, in cash, of BONY's pre-petition claim if it is ever allowed as a secured, unsubordinated claim. It would make no sense to provide BONY with other than that under these circumstances. Unlike *Till*, BONY will have no "allowed" claim as of the Effective Date of the Plan. *See* 11 U.S.C. §§ 502(a) and (d). And, the Plan promises no restructured stream of future payments which can be discounted back to ensure that their present value equals the allowed amount of BONY's Claim as of the Effective Date. Thus both the statutory language at issue in *Till*, and the entire purpose of the *Till* Court's exercise are inapposite here. All that the Court needs to determine in this case is that the Plan provides for BONY's realization of the indubitable equivalent of its pre-petition secured Claim, if it is ever allowed. As the Plan Proponents have explained elsewhere, a reserve of more than sufficient size to ensure payment of that Claim, held in nothing less than cash equivalents, together with the other protections built into the Plan, satisfies this standard.

II. THE PLAN SHOULD BE CONFIRMED OVER THE OBJECTIONS OF THE SEG 1 OBJECTORS.

A. The Plan Does Not Charge Interest to the Citadel-Beneficiary Customers.

The Seg 1 Objectors continue to misconstrue Section 4.5 of the Plan, asserting that the Plan *charges* Citadel-Beneficiary Customers with imputed interest on the Citadel Sale Distributions and the SEG 1 Special Distributions. In actuality, the Plan was drafted to provide treatment of NonCitadel-Beneficiary Customers' Claims mirroring, to the extent possible, the value realized by Citadel-Beneficiary Customers on account of their Claims.

As the Trustee testified, based on his extensive forensic and other analysis of Sentinel's business, all Customers should be treated the same and share *pro rata* in distributions from Sentinel's Estate. That is made more difficult, however, in view of the \$297 million in

distributions received by Citadel-Beneficiary Customers at the onset of this case -- a distribution that, in the Trustee's view, never should have been made.

Nevertheless, to accomplish the equality of treatment that is mandated here, the Plan calculates a "point of parity" at which it would be fair and equitable for the Citadel-Beneficiary Customers to share in further distributions with the other Customers and Creditors who unlike the Citadel-Beneficiary Customers to date have received nothing. As the Trustee testified, Citadel-Beneficiary Customers do not share in distributions under the Plan until the NonCitadel-Beneficiary Customers "catch-up" to the amounts (as a percentage of their Claim) yielded by the Citadel Sale Distributions plus Interest calculated only for the period commencing on the dates of such distributions. (*See* Aug. 12 Tr. at 144:25-145:9.) Significantly, the NonCitadel-Beneficiary Customers are not awarded a separate Claim for post-petition interest, nor are their Claims increased based upon any interest calculation. Given that Citadel-Beneficiary Customers have had use and dominion of the funds since the time of their distribution (particularly for investment purposes), the Plan provides equal treatment to similarly-situated creditors that always should have been afforded equal rights to payment from Sentinel, as is required under the Bankruptcy Code.

The Plan Proponents assert that given an honest evaluation of the Plan's mechanics, it does not award the NonCitadel-Beneficiary Customers post-petition interest on account of their Claims or otherwise expand their rights to payment *vis-à-vis* the Estate. Rather, in arriving at the Plan's equitable point of parity, it takes into account the obvious fact that the Citadel-Beneficiary Customers received the Citadel Sale Distributions over a year ago while most Customers (and *their* customers) to this day have received absolutely nothing.

The Objectors' refusal to interpret Section 4.5 objectively and in accordance with its plain meaning is nothing more than an attempt to obfuscate. Notwithstanding, the Plan Proponents submit that even if Section 4.5 of the Plan were interpreted to provide a Claim to NonCitadel-Beneficiary Customers for post-petition interest, such an award is supported by applicable law where assets produce income after the petition date. *See Matter of Walsh*

Construction, Inc., 669 F.2d 1325, 1330 (9th Cir. 1982); *In re Kerber Packing Co.*, 276 F.2d 245, 246 (7th Cir. 1960). See, e.g., *In re Federated Dep't Stores*, 1992 Bankr. LEXIS 392, *263 (Bankr. S.D. Ohio Jan. 10, 1992) (confirming plan providing for the payment of interest earned on cash amounts to be distributed to unsecured creditors).³ This exception is not a rigid doctrinal category, but a flexible guideline developed by the courts in the exercise of their equitable powers in bankruptcy proceedings. *In re Boston & Maine Corp.*, 719 F.2d 493, 496 (1st Cir. 1983). A bankruptcy court must consider whether to grant post-petition interest (which the Plan does not even do), “not as an abstract matter, but in light of the nature of each claim and the equities of the case before it.” *Id.* at 496. “It is manifest that the touchstone of each decision on allowance of interest in bankruptcy . . . has been a balance of equities between *creditor and creditor*. . . .” *Id.* (quoting *Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 165 (U.S. 1946)) (emphasis added.); see also *In re Armstrong World Indus.*, 348 B.R. 223, 233 (Bankr. D. Del. 2006) (confirming plan which provided for payment of interest on disputed claims upon allowance). Given that Citadel-Beneficiary Customers received funds constituting the Citadel Sale Distributions shortly after the Petition Date, and the Estate was significantly reduced by the transfer of such funds, the Plan fits squarely into such an exception.⁴

³ In its objection, Penson relies on *In re Fesco Plastics Corp., Inc.* 996 F.2d 152, 155 (7th Cir. 1993). However, *Fesco* concerns creditors who received court-authorized bankruptcy distributions at different points in time in a chapter 7 liquidation. In *Fesco*, the express language of section 726 requires that claims (both timely and late) be paid in full before interest is paid on account on claims. In *Fesco* there was no room for the flexibility of a chapter 11 plan and no extraordinary distributions giving rise to the need for a mechanism to ensure fair and equitable treatment among similarly situated creditors.

⁴ The case law cited by the Ad Hoc Committee is distinguishable because it concerns the collection of prejudgment interest from transferees, not the establishment of an equitable catch-up point for sharing in plan distributions going forward. Significantly, nowhere does the Plan require payment of prejudgment interest by the Citadel-Beneficiary Customers. Nonetheless, and notwithstanding this critical distinction, such cases support the Plan’s catch-up provision by explicitly endorsing the very equitable underpinnings of the Plan’s construct. See *In re Masters*, 137 B.R. 254, 262 (Bankr. S.D. Ohio 1992); *DuVoisin v. Anderson (In re Southern Indus. Banking Corp.)*, 87 B.R. 518, 522 (Bankr. E.D. Tenn. 1988); *In re Roco Corp.*, 37 Bankr. 770, 774 (Bankr. R.I. 1984).

The Plan Proponents submit that the Plan does not “charge” interest to the Citadel-Beneficiary Customers nor award NonCitadel-Beneficiary Customers a Claim for post-petition interest. Moreover, the equities of the case, especially when viewed “between creditor and creditor,” support the construct of the Plan and its inherent confirmability. Therefore, the Plan should be confirmed with this provision intact.

B. The Plan Appropriately Calculates the SEG 1 Claims for Allowance and Distribution Purposes.

Counsel for the Ad Hoc Committee asserted during closing argument that the Plan unfairly used two different methodologies to calculate SEG 1 Claims for allowance and distribution (catch-up) purposes. Due to the extraordinary nature of the SEG 1 Special Distributions and their connection to the Citadel Sale Distributions, and so as to treat similarly situated creditors alike, the Plan originally provided a “catch-up” mechanism that accounted for both distributions even though the former took place hours before the filing of the bankruptcy petition. Nonetheless, in response to this objection the Plan Proponents have modified the definition of “Percentage Recovery” so that the same methodology -- one based on Petition Date account balances -- is now used both for purposes of establishing claim amounts and for purposes of determining at what point NonCitadel-Beneficiary Customers have “caught up” to Citadel-Beneficiary Customers (this modified definition does not apply to Section 10.10 of the Plan, where Customers accepting the settlement have agreed, for consideration received, to different treatment). *See* Plan § 1.1. The Plan Proponents submit that this modification adequately disposes of this objection raised during closing argument.

C. The Treatment of Class 3 Customer Claims as *Pari Passu* with Class 4 General Unsecured Claims is Appropriate as Provided in the Plan.

In response to Lehman’s objection, Sections 4.3 and 4.4 of the Plan were modified to provide that Holders of Allowed Class 4 Claims (General Unsecured Claims) will share *pro rata* in all funds distributed to Holders of Allowed Class 3 Claims (Customer Claims). The Ad Hoc Committee asserted during closing arguments that the modifications made by the Plan Proponents were confusing and unworkable. Counsel also argued that language in Section 4.4

indicating that distributions would be “applied towards” claims was confusing. Although the Plan Proponents believe that the Plan provisions were in fact appropriate, in order to resolve the Ad Hoc Committee’s objection the Plan Proponents have (without changing the underlying treatment) re-worded Sections 4.3 and 4.4 of the Plan to simplify them and clarify the sharing of distributions among Holders of Class 3 and Class 4 Claims.

The Ad Hoc Committee also reiterated its unpersuasive arguments that the Claims of SEG 1 Customers are distinct from the Claims of SEG 3 Customers, and further argued that Customer Claims are distinct from General Unsecured Claims such that they should not be classified in the same Class. The Plan continues to classify the Customer Claims separately from General Unsecured Claims, so to the extent they are not “substantially similar” for classification purposes, the Plan does not violate section 1122. *See* Plan §§ 4.4, 4.5. However, the Ad Hoc Committee’s real concern appears to be with the concept that Customers will share *pro rata* with holders of General Unsecured Claims. This treatment is proper since both Customers and Creditors with allowed unsecured claims hold unsecured claims against the Debtor. It also is proper given the manner in which the Debtor commingled and misused funds, which rendered all assets of the Debtor property of the estate and available to satisfy all Claims against the Debtor. (*See* Aug. 12 Tr. at 34:20-35:16; 37:6-38:20.) In any event, the Plan Proponents have established reserves to address the Seg 1 Objectors’ contention that certain funds are not property of the estate, *see* Plan § 7.20, and, as such, Customers will share *pro rata* with Holders of General Unsecured Claims only in property that the Court determines is property of the estate. Accordingly, this objection should be overruled.

Finally, the Ad Hoc Committee argued that the ultimate treatment of BONY’s Claim, in the event that BONY’s lien is avoided but its claim is allowed as a General Unsecured Claim, elevates the importance of this otherwise immaterial Plan amendment to such a level that a new solicitation of votes should be required. This argument is of no consequence. Even before the Plan amendments, the possibility always existed that BONY’s claim, if allowed as a General Unsecured Claim, would share with other unsecured creditors. Moreover, the Trustee’s

challenge to BONY's claims was described in significant detail in the Disclosure Statement, which included more than sufficient information for any creditor to make a decision concerning how potential settlement or litigation outcomes might impact the treatment of BONY's claims. *See* Disclosure Statement § V(I)(2). Most importantly, for purposes of the Disclosure Statement the Plan Proponents were highly conservative and ascribed no value to the estate's claims against BONY (and made no assumptions concerning the eventual treatment of BONY's claims). Instead, the Plan Proponents disclosed that a reserve for 100% of the amount of BONY's Claim would be established. *See* Disclosure Statement § VI(M)(2). Thus, if allowed as a General Unsecured Claim, BONY's Claim will be satisfied using funds solely from the BONY Reserve (described in the Disclosure Statement at section VI(M)(2)), with respect to which creditors had more than sufficient information to evaluate the likelihood that some or all of such reserve might not be available for distribution to them. As such, proper disclosure concerning the ultimate potential treatment of BONY's Claim was contained in the Disclosure Statement, and the plan modifications did not materially change the risk that BONY's claim might be allowed and be entitled to *pro rata* treatment with other Creditors. Moreover, no Creditor who voted in favor of the Plan has asserted any objection of this kind, making any re-solicitation an irrelevant and wasteful exercise. Accordingly, this objection also should be overruled.

D. The Plan Makes No Assumptions about the Recipients of Transfers or the Legal Capacity of the Holders of Claims, but Instead Leaves those Issues for the Claims Allowance Process.

Counsel for Farr Financial and IPGL raised several interrelated arguments, the essence of which are that the Plan improperly presumes (1) that Sentinel's SEG 1 Customers (as opposed to Sentinel's Customer's customers) received the Citadel Sale Distributions, and (2) that the Claims of FCMs arising out of SEG 3 and 4 accounts are held in the same legal capacity as their Claims arising out of SEG 1 accounts (which certain FCMs dispute). The Plan makes neither of these assumptions.

Farr Financial and IPGL are confusing the plan confirmation process with the individual claims allowance process. Whether individual Sentinel SEG 1 Customers (as opposed to

customers of Sentinel's SEG 1 Customers) were the recipients or transferees of the Citadel Sale Distributions will be decided either in the context of the claims allowance process, or as part of any avoidance action litigation (the Plan Proponents note that this issue will be irrelevant in the context of avoidance actions in any event, as the transfers plainly were made "for the benefit of" the FCMs, whose direct obligations to their customers were satisfied as a result of the transfers). Similarly, whether multiple accounts are held in different legal capacities is an issue for the claims allowance process. Thus, these objections have no impact whatsoever on the confirmability of the Plan; rather, they go to whether individual claims will be allowed or disallowed, which is a fight left for another day.

E. The Plan's Use of Petition Date Account Balances for Calculating All Customer Claims and Distributions is Equitable.

Counsel for Farr Financial and IPGL questioned the Trustee about why the Plan Proponents were using Petition Date account balances for purposes of calculating Customer Claim amounts. Counsel suggested that because the securities reflected on account statements of SEG 3 "prime" portfolio Customers were riskier and higher yielding than securities appearing on account statements of other SEG 3 Customers, and ultimately were liquidated at significant discounts, those Customers should not receive distributions *pro rata* with other Customers whose deposits were supposed to be invested in low-risk, highly liquid securities.

One hundred percent of the NonCitadel-Beneficiary SEG 3 Customers voting on the Plan (including the over 75% whose funds were supposed to be invested in low-risk securities) voted in favor of the Plan, and accepted and agreed to the claim calculation and distribution methodology proposed by the Plan Proponents. Moreover, the Trustee's uncontroverted testimony supports *pro rata* treatment for all Customer Claims, irrespective of the types of securities reflected on individual account statements. Among other things, the Trustee testified that contrary to Sentinel's representations to Customers, Sentinel treated all securities, customer and house, as one large pool. He further testified that there was very little correlation between the returns Sentinel agreed to pay to different Customers and the securities appearing on

customer statements, and that after considering numerous potential methodologies for calculating the amount of Customer Claims, the Trustee determined that using Petition Date account balances was the most equitable and simplest way to calculate Customer Claims. (See Aug. 13 Tr. at 29:12-36:2.) Thus, the only evidence in the record on these points supports the Plan's *pro rata* treatment of Customer Claims and distributions, and any objections based on the customer claim calculation and distribution methodologies used in the Plan should be overruled.

CONCLUSION

Based upon the foregoing, the Plan Proponents respectfully submit that the Plan complies with and satisfies all of the applicable requirements of sections 1129(a) and (b) of the Bankruptcy Code, request that the Court confirm the Plan, and grant such further relief as is just.

Dated: September 5, 2008

Respectfully submitted,

FREDERICK J. GREDE, not individually
but as Chapter 11 Trustee of Sentinel
Management Group, Inc.

The Official Committee of Unsecured
Creditors of Sentinel Management Group,
Inc.

By: /s/ Vincent E. Lazar
One of his attorneys

By: /s/ Susheel Kirpalani
One of its Attorneys

Catherine L. Steege (ARDC # 6183529)
Vincent E. Lazar (ARDC # 6204916)
Christine L. Childers (ARDC # 6377245)
JENNER & BLOCK LLP
330 N. Wabash Ave.
Chicago, IL 60611
Phone: (312) 222-9350

Mark A. Berkoff
Marc Fenton
DLA PIPER US LLP
203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601
(312) 368-7090

Susheel Kirpalani
Benjamin I. Finestone
QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000