IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 15
ABENGOA CONCESSIONS INVESTMENTS LIMITED,[1]	)	Case No. 16-12590 (KJC)
Debtor in a Foreign Proceeding.	)	

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR CHAPTER 15 RECOGNITION AND FINAL RELIEF

[1] The last four digits of the Foreign Debtor's Registered Number are 8214. The Foreign Debtor's registered office address is St. Martin's House, 1 Lyric Square, London, England W6 0NB.

Dated: November 16, 2016
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

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Abengoa Concessions Investments Limited ("**ACIL**" or the "**Foreign Debtor**"), in its capacity as the duly authorized foreign (the "**Foreign Representative**"), with respect to a foreign proceeding (the **"UK Proceeding"**) pending in the High Court of Justice, Chancery Division, No. CR-2016 007309 (the "**UK Court**"), by and through his undersigned counsel, respectfully submits this memorandum of law (the **"Memorandum of Law"**) in support of the *Motion for Chapter 15 Recognition and Final Relief* (the "**Motion**")[2] and states as follows:

I.
PRELIMINARY STATEMENT

The purpose of this chapter 15 case is to facilitate the fair, efficient, and centralized administration of the UK Proceeding in a manner that preserves and maximizes the value of the Foreign Debtor, protects the interests of all of the Foreign Debtor's creditors, and enables the Foreign Debtor to implement the aspects of a global restructuring and recapitalization of debt, ultimately in order to achieve short- and long-term viability for Abengoa S.A. and its subsidiaries, associates, joint ventures, and partnership (collectively, the "**Abengoa Group**"), of which ACIL is a member.

The UK Proceeding is entitled to recognition as a foreign main proceeding under chapter 15 of title 11 of the United States Code (the **"Bankruptcy Code"**) because it is pending in the place where the Foreign Debtor has its center of main interests. Recognizing the UK Proceeding as a foreign main proceeding and granting the requested relief is justified under the law and is necessary to realize the intent and purposes for which Congress enacted chapter 15. *See* 11 U.S.C. §1501(a)(1).

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the CVA, as applicable.

II.
FACTUAL BACKGROUND

A. ACIL and YieldCo

1. ACIL is an investment holding company with a center of main interests in England and Wales, United Kingdom. ACIL's assets consist of (a) a 41.47% ownership interest in Atlantica Yield PLC ("**YieldCo**"), an English company, the book value of which as of September 30, 2016 was $314,349,000; (b) intercompany receivables with a book value of $333 million (on which little realizable value is placed); (c) cash on hand in the amount of $54,000, (d) interest in a $250,000 retainer held by DLA Piper LLP (US) in Delaware, and (e) rights under various loan documents and indentures, including certain of those that are governed by U.S law. YieldCo is a NASDAQ listed company that owns, manages, and acquires revenue generating assets. YieldCo relies on the Abengoa Group for funding and know-how in relating to the operation of its underlying investments. As such, YieldCo's market value depends on the continued existence of the Abengoa Group and the Nominee's Report indicates that YieldCo's value would be impacted detrimentally if the Abengoa Group were to not reorganize.

2. ACIL's liabilities exceed its assets and consist of (a) secured claims totaling $653 million; (b) unsecured claims totaling $108 million; and (c) the claims of the guarantee creditors in the aggregate amount of $6 billion.

B. The Global Restructuring

The 5 bis Proceedings

3. On several dates (November 25, 2015, December 3, 15, and 28, 2015, January 27, 2016, and February 1, 2016), Abengoa, S.A. and the 5 bis Companies filed notice with the Spanish Court that they had commenced negotiations with their principal creditors in order to reach a global agreement on the refinancing and restructuring of their liabilities to achieve the

viability of the Abengoa Group in the short and long term. The Spanish Court issued orders on December 14 and 22, 2015, and January 15, 2016, admitting the notice and granting the Article 5 bis Companies with the protection of the law of 22/2003, of July 9, on insolvency.

4. The Abengoa Group commenced negotiations with a large and diverse number of its main financial creditors, including a group of lenders that formed a coordinating committee, advised by Sullivan & Cromwell LLP, Uria Menendez, and KPMG, and a group of bondholders, advised by Clifford Chance and Houlihan Lokey. The Abengoa Group, advised by Linklaters, Alvarez & Marsal, Lazard and, Cortés, Abogados, began preparing a business viability plan and the terms of a possible restructuring agreement. During this period, the Abengoa Group negotiated the following facilities during the negotiation process to fund its general liquidity needs:

- A €125,000,000 syndicated facility agreement dated 23 September 2015 between Abengoa, as borrower, and certain companies of its group as guarantors and certain finance entities (the "**Revolving Facilities**");

- A $130,000,000 secured term facility agreement dated October 22, 2015 between ACIL, as borrower, and Talos Capital Limited; and

- A €106,000,000 facility agreement dated December 24, 2015 between ACIL, as borrower, certain companies in the Abengoa Group as guarantors and certain finance entities (the "**December Facility**"). The December Facility was used for general corporate purposes, and the Abengoa Group granted a security interest over certain shares of YieldCo (and at this time also pledged YieldCo shares as security for the Revolving Facilities);

- A €137,094,751.30 facility agreement dated March 21, 2016 between ACIL, as borrower, certain companies in the Abengoa Group as guarantors and certain finance entities (the "**Bondholders Facility**"). The Bondholders Facility was used for general corporate purposes, and ACIL granted a security interest over certain shares of YieldCo.

- A $211,000,000 secured facility agreement entered into on September 18, 2016 between, amongst others, ACIL as borrower and Global Loan Agency Services

Limited as agent. This facility was utilized, in part, to repay the Talos Capital Limited facility (the "**September 2016 Interim Facility**").

5. Alvarez & Marsal prepared a Viability Plan based on a preliminary review of specific projects, the existing project pipelines, and the most recent information and thinking with respect to asset disposals and financial debt. As part of this evaluation, Alvarez & Marsal evaluated (i) 200 projects, each above €2.5 million that covered 90% of the Abengoa Group's €8.6 billion backlog as of December 31, 2015, and (ii) each business line by region and operating division with the head of each business line.

6. On December 30, 2015 and January 25, 2016, Alvarez & Marsal presented the Board of Directors of the Abengoa Group with viability plans that defined the structure of the future activity of the Abengoa Group. This Viability Plan was presented to the public in a conference call held on Wednesday, February 17, 2016. In broad general terms, this Viability Plan analyzed the old Abengoa Group, proposed a new business model for a new Abengoa Group, presented both valuation and cash flows, risks and opportunities, and set forth certain recommendations and conclusions as to the viability of the proposed new Abengoa Group. This plan did not contain a financial restructuring proposal but was an operational plan.

7. In relation to the negotiations between Abengoa S.A. and a group of its creditors comprised of banks and holders of bonds issued by certain companies within the Abengoa Group, Abengoa S.A. announced on March 10, 2016, that it had agreed with creditors on the terms of an agreement to restructure the financial indebtedness and recapitalize the Abengoa Group.

8. On March 16, 2016, the Abengoa Group presented its Business Plan & Financial Restructuring Plan in Madrid and permitted public participation by telephone. At this presentation, Alvarez & Marsal presented the Viability Plan, and Lazard presented the

Restructuring Proposal. The Banks' advisors, KPMG, and the Bondholders' advisor, Houlihan Lokey, presented their key conclusions regarding the Viability Plan and Restructuring Proposal. The Abengoa Group's Spanish law firm, Cortés Abogados set forth the company's plan for presenting a standstill agreement to all financial creditors between March 18 and 27, 2016. A true and correct copy of this presentation is attached to the Martin Declaration as Exhibit 4.

The Standstill Agreement Homologation Proceeding

9. While the Restructuring Proposal presented on March 16, 2016, sets forth the framework for the restructuring of the Abengoa Group, in order for the Spanish Court to homologate such proceeding in accordance with the Spanish Insolvency Law, 75% of the requisite creditors needed to accede to the agreement. In order to permit the Abengoa Group with sufficient time to solicit and obtain the requisite supermajority votes with respect to the Restructuring Proposal, the Abengoa Group requested its financial creditors to adhere to a standstill agreement (the "**Standstill Agreement**") under which the Abengoa Group companies that are signatories to the Standstill Agreement requested its financial creditors to stay certain rights and actions vis-à-vis the relevant Abengoa companies during a period of 7 months from the date of the Standstill Agreement. Abengoa S.A. requested that the beneficial owners of the affected bond issues indicate their accession to the Standstill Agreement through a standstill accession notice (the "**Standstill Accession Notice**") that was made available for the beneficial owners of the Notes through Lucid Issuer Services Limited.

10. The Standstill Agreement had received more than the necessary consents by value of the creditors holding the debt affected by the Standstill Agreement to permit commencement of a Judicial Confirmation Request to apply the Standstill Agreement to all of the holders of the affected debt.

11. On March 28, 2016, certain members of the Abengoa Group filed the Judicial Confirmation Request for homologation of the Standstill Agreement. On that same day, the clerk of the Spanish Court published a resolution *(Providencia)* of the Spanish Court accepting the jurisdiction over the Judicial Confirmation Request and imposing a moratorium on enforcement actions against the members of the Abengoa Group that were party to that proceeding. Certain parties challenged the request for homologation of the Standstill Agreement.

12. The Spanish Court issued an opinion on October 24, 2016, whereby the Spanish Court, among other things, upheld the Standstill Agreement. The Standstill Agreement expired by its terms on October 28, 2016. On that date, October 28, 2016, the Participating Creditors under the Master Restructuring Agreement presented to the Spanish Court the Master Restructuring Agreement for homologation of the Standard Restructuring Terms with respect to the Non-Consenting Creditors, which was acknowledged by the Spanish Court on November 8, 2016.

The Master Restructuring Agreement

13. The Master Restructuring Agreement[3] was executed in Spain by Abengoa, S.A., certain of its subsidiaries, as Original Obligors, the Original Participating Creditors, the Original Intragroup Creditors, the Restructuring Agent, and the Information Agent on September 24, 2016. ACIL executed the Master Restructuring Agreement as an Obligor on October 6, 2016.

14. The Master Restructuring Agreement addresses Existing Financial Indebtedness compromised of Non-Affected Debt, which is generally debt that is secured, Affected Debt, and

[3] Capitalized terms not otherwise defined herein that are used in this discussion of the Master Restructuring Agreement shall have the meaning given to them in the Master Restructuring Agreement. Additionally, this is a summary of the Master Restructuring Agreement, which is a complex document, and all parties are directed to the Master Restructuring, which can be found as an Exhibit to D.I. 577 in the Chapter 11 Proceedings. The terms and conditions of the Master Restructuring Agreement shall govern over this summary should any aspect of this summary be inconsistent with the Master Restructuring Agreement.

Non-Spanish Debt to be Restructured. The Affected Debt consists of Non-Compromised Debt, mostly emergency financing provided during the Abengoa Group' financial distress, and Compromised Debt. The Compromised Debt consists of intragroup debt owed by some Obligors to the Intragroup Creditors, bonds, Existing Bonding Facilities, other guarantees, corporate financing, non-recourse debt in progress, payments by banks, reverse factoring, derivatives which have been closed-out as of the Signing Date of the Master Restructuring Agreement, and any guarantees given by the Spanish Obligors in respect of the non-closed out derivatives as of the Signing Date. This Compromised Debt is listed on Schedule 6 to the Master Restructuring Agreement. Non-Spanish Debt to be Restructured is Existing Financial Indebtedness owed by Non-Spanish Obligors as debtors and guarantors listed in Part D of Schedule 6 to the Master Restructuring Agreement and holders of this debt can consent to the Master Restructuring Agreement and thereby agree to have their debt restructured under the Alternative Restructuring Terms or the Standard Restructuring Terms.

15. In general terms, the Master Restructuring Agreement provides that the Standard Restructuring Terms will result in a 97% write-off of all Affected Debt and Non-Spanish Debt to be Restructured as of the Restructuring Completion Date, except as otherwise stated in Article 3.1.4(a)(ii) of the Master Restructuring Agreement. This write down will be accompanied by an amendment of all payment obligations of the Obligors under the Affected Debt and the Non-Spanish Debt to be Restructured such that these obligations will not fall due until the date that is 10 years after the Restructuring Completion Date, during which time, the amended obligation will not earn interest. These Standard Restructuring Terms will be applied to Non-Consenting Creditors pursuant to the Homologation procedure described in clause 6 of the Master Restructuring Agreement; *provided, however*, that with respect to Liquidating Entity Debt, that

debt will not be subject to the Standard Restructuring Terms (or the Alternative Restructuring Terms) but shall instead be maintained against the Liquidating Entities and will not be subject to or affected by the Master Restructuring Agreement. Intragroup Affected Debt held against the Debtors by Non-Debtor Affiliates that accede to the Master Restructuring Agreement will be granted the Standard Restructuring Terms.

16. The Alternative Restructuring Terms are offered to all of the Existing Creditors except for the Intragroup Creditors and their implementation is optional for each Existing Creditor as an alternative to the Standard Restructuring Terms. As such, each Existing Creditor that would like to receive the Alternative Restructuring Terms needs to accede to the Master Restructuring Agreement and to expressly elect to restructure its Affected Debt and its Non-Spanish Debt to be Restructured in accordance with the Alternative Restructuring Terms. In general terms, under the Alternative Restructuring Terms, Existing Loans/Notes and Existing Bonding Facilities shall be reduced by means of an initial 70% write-off except that no write-off shall be applied to part of the Uncalled Existing Bonding Facilities held by Consenting Existing Creditors. Under sub-clause 3.1.5(b)(C) of the Master Restructuring Agreement, additional write-offs may be applied to ensure that the aggregate amount of Consenting Old Money does not at any time exceed €2.7 billion. Once Existing Creditors elect the Alternative Restructuring Terms, certain of those Existing Creditors may make additional elections, including, but not limited to, electing to participate in the New Money Financing or agreeing to provide New Bonding Facilities, as governed by and subject to the Master Restructuring Agreement and the Term Sheet. The Reorganizing Debtors will provide consideration with respect to these various new debt instruments issued.

17. While the primary focus of the Master Restructuring Agreement is to provide for a contractual resolution of the Spanish Obligors' obligations owing to Existing Creditors, due to the complexity of the Abengoa Group's debt perimeter, certain Non-Spanish Debt to be Restructured is subjected to Non-Spanish Compromise Proceedings, such as the ACIL CVA.

The CVA and the UK Proceeding

18. The Master Restructuring Agreement provides that ACIL will propose the ACIL CVA, which will also be submitted to this Bankruptcy Court for recognition and to permit ACIL to seek additional assistance and appropriate relief from this Bankruptcy Court. On November 9, 2016, ACIL launched the CVA and commenced the UK Proceeding by sending a copy of the CVA proposal to the Nominees. On November 9, 2016, the Nominees issued a report with respect to the CVA and sent that report, together with the CVA, to ACIL's creditors. A true and correct copy of these documents is attached as Exhibits 3, 4, and 5 to the Martin Declaration. The CVA is conditional on the implementation of the restructuring of the Abengoa Group in accordance with the Master Restructuring Agreement, among other things. ACIL's creditors' claims arise primarily from guarantees made in respect of the obligations of other members of the Abengoa Group. The CVA proposes to compromise the liabilities of ACIL as guarantor with respect to certain Guarantee Obligations related to loans and notes owed to Guarantee Creditors who have not acceded to the Master Restructuring Agreement in accordance with the Standard Restructuring Terms.

19. Under the CVA those Guarantee Creditors that have not acceded to the Master Restructuring Agreement and elected to receive Alternative Restructuring Terms either prior to

the meeting of creditors to approve the CVA or during the Supplemental Accession Period (described in detail in the CVA)[4] will have their claims affected as follows:

a. ACIL's Guarantee Obligations owed to Non-Consenting Creditors will be written down by 97%, consistent with the amendment of the principal claims of the Non-Consenting Creditors in respect of the Loans and Notes which will be written down by 97% by the Homologation of the Master Restructuring Agreement and will be amended such that they shall only become due and payable upon default in payment of the principal obligations under the Loans and Notes, as amended;

b. Subject to the amendments imposed by the Standard Restructuring Terms, the Loans and Notes will continue to exist in full force and effect with the same original Obligors, but will be deemed automatically amended upon the Standard Restructuring Terms including immediate disapplication of any mandatory prepayment events, covenants, undertakings, representations, events of default, acceleration events and/or termination events or any clauses of similar effect;

c. All principal payment obligations under the written down Loans and Notes will be amended such that all principal amounts fall due and payable on the 10 Year Maturity Date;

d. The written down and amended principal obligations under the Loan and Notes will be subordinated to the Senior and Junior Old Money Loans/Notes; and

e. There will be no equity interest in consideration of the write down of the obligations.

20. Other key terms of the Global Restructuring (and hence the CVA) include:

a. The claims of ordinary creditors (i.e., non-financial creditors) are excluded from the Global Restructuring (and the CVA), and will be paid in full in the normal course of business;

b. In respect of Intragroup Creditors (i.e., intercompany claims), all relevant Abengoa Group companies have acceded to the Master Restructuring Agreement and have accepted the Standard Restructuring Terms, other than

[4] As noted in the Nominee's Report, Guarantee Creditors holding, by value, 93.69 % of all Guarantee Creditor claims, and 93.43% of all unsecured creditor claims in ACIL, have already acceded to the Master Restructuring Agreement, which obligates them to, among other things, vote in favor of the ACIL CVA, which means, as noted by the Nominees, that ACIL already has the requisite majority for approval of the CVA even prior to the meeting of creditors.

the companies in the Bankruptcy Cases, which will accede upon confirmation of the chapter 11 plan; and

c. The CVA will prevent Guarantee Creditors from making any claim against ACIL's Co-Guarantors (the "**Anti-Suit Provisions**"), the prosecution of which would be inconsistent with the amended principal obligations of the Loans and Note owed to such Guarantee Creditors.

21. The meeting of creditors and members of ACIL to vote on the CVA proposal will be held on November 24, 2016; thereafter, and once the Chairman of the CVA meetings (who will be one of the Nominees) has filed its report with the UK Court, there will be a 28 day period during which challenges can be made to the CVA, which if made, will be decided by the court in the United Kingdom. As noted above, the creditors affected by the CVA have acceded to the Master Restructuring Agreement in large percentages and the likelihood of a challenge to the CVA is minimal.

22. Under the Master Restructuring Agreement, there is a supplemental period to accede thereto (the "**Supplemental Accession Period**"). The Supplemental Accession Period applies to all Guarantee Creditors who did not initially accede to the Master Restructuring Agreement whether or not they voted to approve the CVA at the Creditors' meeting, and provides those parties with an additional five (5) business days following the Restructuring Effective Date to accede to the Master Restructuring Agreement and receive the Alternative Restructuring Terms.

23. In sum, the CVA effectuates the part of the Global Restructuring discussed herein.

A. The Chapter 15 Filing

24. As contemplated by the Global Restructuring and the agreements related thereto, the Foreign Debtor seeks cross-border recognition of the UK Proceeding with respect to the Foreign Debtor within the territorial jurisdiction of the United States of America. Additionally, the Foreign Debtor seeks through the entry of an order in this Chapter 15 case, application of the

automatic stay prohibiting the commencement or continuation of any action prohibited by the CVA within the territorial jurisdiction of the United States and further seeks relief related to the recognition of the UK Proceeding as set forth herein.

III.
ARGUMENT AND AUTHORITY

The Foreign Representative satisfies the Bankruptcy Code definition of a "foreign representative," the UK Proceeding satisfies the Bankruptcy Code definition of a "foreign proceeding," and because the Foreign Debtor's center of main interest is in the United Kingdom, the UK Proceeding is entitled to recognition as a "foreign main proceeding." The Foreign Representative respectfully submits that the UK Proceeding should be recognized by this Court under section 1517 of the Bankruptcy Code.

The Foreign Representative is a person, as contemplated in subsections 101(24) and 101(41) of the Bankruptcy Code, and was duly appointed as the Foreign Representative with respect to the Foreign Debtor for the purpose of representing the Foreign Debtor in the chapter 15 cases and to carry out any actions on behalf of the Foreign Debtor that are deemed necessary or proper to obtain the desired relief from this Court. ACIL was designated as the Foreign Representative by resolutions passed by the directors of ACIL prior to the filing of the chapter 15 petition. The Petition meets the requirements of section 1515 of the Bankruptcy Code. Specifically, as required by section 1515(b) of the Bankruptcy Code, the Petition is accompanied by a copy of the CVA proposal and the Nominees' Report commencing the UK Proceeding and copies of the corporate resolutions appointing the Foreign Representative to present the Petition to this Court. (*See* Martin Decl., Ex. 1) In accordance with section 1515(c) of the Bankruptcy Code, the Foreign Representative has filed a statement identifying all foreign proceedings with respect to the Foreign Debtor that are known to the Foreign Representative. In addition, in

accordance with Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure, the Foreign Representative has filed a statement identifying all parties to litigation with respect to the Foreign Debtor pending within the United States as well as the parties against which provisional relief is requested.

Thus, all of the conditions to entry of an order recognizing the UK Proceeding as a foreign proceeding under the Bankruptcy Code have been satisfied. Additionally, the Foreign Debtor is entitled to have the UK Proceeding recognized as a main proceeding because section 1516(c) of the Bankruptcy Code presumes that the Foreign Debtor's center of main interests and nerve center is in the United Kingdom because the Foreign Debtor's registered offices are in the United Kingdom, where the UK Court has taken jurisdiction over the UK Proceedings. Further, as set forth below in detail, the Foreign Debtor's center of main interests is the United Kingdom. *See also*, Jarvis Decl. ¶ 26 (providing that pursuant to Article 16 of Counsel Regulation (EC) No. 1346/2000 of May 29, 2000 on Insolvency Proceedings (the "**EC Regulation**"), the courts of the European Union member states (other than Denmark) are obliged to recognize a CVA for a company with its center of main interests in England). As noted in the Jarvis Declaration, under the Insolvency Act of 1986, if a creditor or member of the debtor company challenges approval of the CVA the English Court has wide powers in respect of a CVA including the power: (a) to override the decision of the creditors' meeting to approve the proposals underlying a CVA on application by a member; (b) to terminate the appointment of the supervisor under the CVA; (c) to revoke or suspend the approval of a CVA on the grounds of unfair prejudice or material irregularity and to make supplemental directions; (d) to give directions for further meetings to consider a revised version of the original proposals, or to reconsider the original proposal where there was some material irregularity at either of the original meetings and to make supplemental

directions; (e) to confirm, reverse or modify any act or decision of the supervisor; (f) to give directions in relation to any particular matter arising under a CVA, on the application of the supervisor, and (g) to grant such other relief as the High Court considers just and appropriate. (*See* Jarvis Decl. ¶ 23.) Chapter 15: Background and Purpose

Congress added chapter 15 to the Bankruptcy Code when it enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. *See* Pub. L. No. 109-8, § 801 (2005); *see also* 8 COLLIER ON BANKR. ¶ 1501.01. Chapter 15 encourages "cooperation between the United States and foreign countries with respect to transnational insolvency cases." *Id*. Chapter 15 incorporates into United States bankruptcy law the Model Law on Cross-Border Insolvency (the **"Model Law"**) promulgated by the United Nations Commission on International Trade Law (**"UNCITRAL"**) in 1997 following years of international consultation on how best to coordinate and assist cross-border insolvency cases.

As a result, in interpreting chapter 15, the Court is required to "consider its international origin and the need to promote an application of this chapter [15] that is consistent with the application of similar statues adopted by foreign jurisdictions." *See* 11 U.S.C. § 1508. The Guide to Enactment of UNCITRAL's Model Law provides historical and interpretive guidance to the meaning and purpose of the provisions in chapter 15. *See generally* 8 COLLIER ON BANKR. ¶1501.01. Indeed, Congress has instructed that if the Court finds a provision of chapter 15 to be unclear or ambiguous, the Court may view the UNCITRAL Model Law and the Guide to Enactment with respect to the Model Law as legislative history. *See* H.R. Rep. No. 109-31, at 105 (2005). Courts have further suggested that it is also acceptable to consider interpretations of the Model Law rendered by foreign courts. *See, e.g.*, *In re Condor Ins. Ltd.*, 610 F3d 319 (5th Cir. 20120); *In re Loy*, 432 B.R. 551 (E.D. Va. 2010).

Chapter 15 requires a bankruptcy court to recognize a foreign proceeding, if the elements in section 1517 of the Bankruptcy Code are satisfied, which includes requirements that (i) the petition satisfies section 1515 of the Bankruptcy Code, generally a requirement that copies of the relevant filings made with the foreign court or foreign court orders are attached to the petition and translated into English, (ii) the foreign representative is a person or body, and (iii) the foreign proceeding is either a main proceeding or a foreign nonmain proceeding. Beyond the recognition, a chapter 15 case provides the duly authorized foreign representative of such proceeding with various forms of relief to ensure that assets and value of multi-national and cross-border corporate insolvency proceedings are preserved, that the proceedings are coordinated and asset administration is centralized, and to prevent disruption that otherwise could derail a foreign proceeding from achieving that which it is designed to achieve under the applicable local foreign law.

Consistent with these principles, the Foreign Representative petitions this Court to recognize the UK Proceeding and to grant all relief that may be necessary and just to aid the Foreign Debtor in pursuing their restructuring in the UK Proceeding. The Foreign Representative anticipates that through chapter 15 recognition, litigation pending against the Foreign Debtor (of which, to the knowledge of the Foreign Representative, there is none) will be stayed in the United States as well as any other creditor action. At this juncture, it is critical that the value of the Foreign Debtor's assets are maximized for the benefit of the Foreign Debtor, its creditors, and other stakeholders and that the UK Proceeding along with these chapter 15 cases provide a stable platform for the Foreign Debtor to complete its portion of the Global Restructuring. The Foreign Representative must be fully recognized and protected, so that it can be heard with respect to issues in these chapter 15 cases that might impact the UK Proceeding or

the Foreign Debtor's obligations under UK law.

A. The Foreign Debtor is Eligible to Be a Debtor Under the Bankruptcy Code.

While the courts in this district do not require that a foreign debtor have assets in the United States in order to qualify to be a debtor under chapter 15 of the Bankruptcy Code, not all courts have agreed. *Cf. In re Bemarmara Consulting A.S.*, Case No. 13-13037 (KG) (Bankr. D. Del. Dec. 17, 2013) *with Drawbridge Special Opp. Fund LP v. Barnett (In re Barnet)*, 737 F.3d 238 (2d Cir. 2013). The *Drawbridge* court held that, in order to be a debtor in a chapter 15 case, a foreign debtor must be eligible to be a debtor under section 109(a) of the Bankruptcy Code. *See id.* at 247 ("Section 109 . . . applies 'in a case under chapter 15.'"). Section 109(a) states, in relevant part, that "only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title." 11 U.S.C. § 109(a). The Foreign Debtor is eligible to be a debtor under section 109(a) of the Bankruptcy Code because it has property in the United States in the form of a retainer held by DLA Piper LLP (US) in its client trust account in Delaware (the "**DLA Piper Retainer**"). (*See* Martin Decl. ¶ 4.) Additionally, the Foreign Debtor is an obligor or guarantor under bond indentures governed by New York law.

Decisions interpreting section 109(a) of the Bankruptcy Code as applied to foreign debtors under other chapters of the Bankruptcy Code unanimously hold that a debtor satisfies the section 109 requirement even when it only has a nominal amount of property in the United States. *See GMAM Inv. Funds Trust I v. Globo Comunicacoes e Partipacoes S.A. (In re Globo Comunicacoes e Partipacoes S.A.)*, 317 B.R. 235, 249 (S.D. N.Y. 2004) (stating that courts have repeatedly found that there is "'virtually no formal barrier' to having federal courts adjudicate foreign debtors' bankruptcy proceedings") (citing *In re Aerovias Nacionales de Colombia S.A. (In re Avianca)*, 303 B.R. 1, 9 (Bankr. S.D.N.Y. 2003)); *Maxwell Commc'n Corp. plc v. Societe Generale plc (In re Maxwell Commc'n Corp.)*, 186 B.R. 807, 818-19 (S.D.N.Y. 1995); *see also*

In re Yukos Oil Co., 321 B.R. 396, 407 (Bankr. S.D. Tex. 2005) (holding that funds deposited in a Southwest Bank of Texas account was sufficient to make the company eligible to be a debtor); *In re Global Ocean Carriers Ltd.*, 251 B.R. 31 (Bankr. D. Del. 2000) (holding that approximately $10,000 dollars in a bank account and the unearned portions of retainers provided to local counsel constituted property sufficient to form a predicate for a filing in the United States); *In re Iglesias*, 226 B.R. 721, 722-23 (Bankr. S.D. Fla. 1998) (holding that $500 in a bank account was sufficient property to permit a foreign debtor to seek bankruptcy protection). As one court explained, section 109(a) "leave[s] the Court no discretion to consider whether it was the intent of Congress to permit someone to obtain a bankruptcy discharge solely on the basis of having a dollar, a dime or a peppercorn located in the United States." *In re McTague*, 198 B.R. 428, 432 (Bankr. W.D. N.Y. 1996). In short, if the debtor has *any* property in the United States, section 109(a) of the Bankruptcy Code is satisfied.

First, the Foreign Debtor satisfies the requirements under section 109(a) of the Bankruptcy Code because of the DLA Piper Retainer. A foreign debtor's funds in a bank account in the United States satisfy the property requirement set forth in section 109(a) of the Bankruptcy Code in the chapter 15 setting. *See, e.g.*, *In re Octaviar Administration PTY Ltd.*, 511 B.R. 361, 372-74 (Bankr. S.D. N.Y. 2014) (holding that $10,000 in a client trust account was sufficient to satisfy the requirements of section 109(a) of the Bankruptcy Code); *accord In re Suntech Power Holdings Co., Ltd.*, 520 B.R. 399, 413 (Bankr. S.D. N.Y. 2014) ("The Debtor had to establish its eligibility through a domicile, residence, property or a place of business in the United States. The Debtor did not maintain a residence or domicile in the United States, and the JPLs never entertained the belief that the Debtor maintained a place of business in California. Furthermore, the Debtor did not and could not conduct business in California for the reasons

discussed in the next section. The escrow retainer account satisfied the express requirements for eligibility under § 109(a) to permit the JPLs to file the chapter 15 contemplated by the RSA as necessary to restructure the Debtor.").

Second, the Foreign Debtor is obligated on financial contracts governed by New York law. In a recent chapter 15 case pending in the Southern District of New York, a bankruptcy court held that contract rights under a bond indenture constitute property in the United States for the purposes of satisfying the jurisdictional requirements under the Bankruptcy Code. *See In re Berau Capital Res. PTE Ltd.*, Case No. 15-11804 (MG), 2015 WL 6507871 (Bankr. S.D.N.Y. Oct. 28, 2015).

As of the filing of the Verified Petition, the Foreign Debtor had property in the United States in the form of the undrawn DLA Piper Retainer. As demonstrated in the Martin Declaration, the Foreign Debtor deposited a retainer into DLA Piper LLP (US)'s client trust account (the "**Account**") located in Delaware. The DLA Piper Retainer is in the Account as of the date hereof and the funds remain the property of Foreign Debtor until applied to pay any unpaid legal fee statements.

Because the Foreign Debtor has funds in the Account located in Delaware, they are eligible to be a debtor under section 109(a) of the Bankruptcy Code.

B. <u>The UK Proceeding Is a Foreign Proceeding</u>

Chapter 15 permits recognition of a "foreign proceedings." As defined in section 101(23) of the Bankruptcy Code, a "foreign proceeding" as used in the Bankruptcy Code means:

> a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23).

This Court has held that in determining whether a specific proceeding is a "foreign proceeding" the court should examine whether the foreign proceeding meets the following factors:

a. It is a proceeding;

b. either judicial or administrative in character;

c. collective in nature;

d. in a foreign country;

e. authorized or conducted under a law related to insolvency or the adjustment of debts;

f. in which the debtor's assets and affairs are subject to the control or supervision of a

g. foreign court; and

h. which is for the purpose of reorganization or liquidation.

See In re ABC Learning Centres Ltd., 445 B.R. 318, 327 (Bankr. D. Del. 2010) (citing *In re Betcorp Ltd.*, 400 B.R. 266, 277 (Bankr. D. Nev. 2009)).

The UK Proceeding is a "foreign proceeding" within the meaning of the Bankruptcy Code. As set forth in the Jarvis Declaration, the UK Proceeding is a proceeding in a foreign country – the United Kingdom – that is judicial in character and collective in nature. The UK Proceeding was commenced according to the governing provisions of the Insolvency Act of 1986, which provides for a robust, controlled reorganization procedure designed to enable financially distressed companies to maximize the company's value as a going concern for the benefit of creditors and other parties in interest. The UK Court applies the Insolvency Act of 1986, which by its terms is a law related to insolvency or the adjustment of debts for the purpose

of reorganization or liquidation.

As more fully described in the Petition, the CVA is a statutory procedure under Part I of the UK Insolvency Act, which enables the company to agree with its creditors to a composition in satisfaction of its debts as a scheme of arrangement of its affairs subject to review by the UK Court. Further, pursuant to EC Regulation, the courts of the European Union member states (other than Denmark) are obliged to recognize a CVA for a debtor with its center of main interests (COMI) located in the United Kingdom, and a company voluntary arrangement is listed as a collective insolvency proceeding in Annex A to the EC Regulation. *See* Jarvis Declaration, ¶ 26.

In addition, English insolvency proceedings, as well as similar proceedings in other jurisdictions with insolvency laws that derive from English law, have been uniformly recognized as foreign proceedings within the meaning of chapter 15 of the Bankruptcy Code. *See, e.g., In re Schefenacker PLC*, Case No. 07-11482 (SMB) (Bankr. S.D. N.Y. June 14, 2007 (recognizing a CVA proceeding as a foreign main proceeding); *In re TXU Europe*; Case No. 04-11335 (SMB) (Bankr. S.D. N.Y. 2005) (recognizing a CVA in an English administration proceeding); *In re Brierely*, 145 B.R. 151, 163 (Bankr. S.D. N.Y. 1992) (recognizing English proceeding, "where foreign proceeding is in a sister common law jurisdiction with procedures akin to our own, exceptions to the doctrine of comity are narrowly construed.") (citation omitted); *see, e.g., Allstate Life Ins. Co. v. Linter Group, Ltd.*, 994 F.2d 996 (2d Cir. 1993) (Australian proceeding); *In re Axona Int'l Credit & Commerce, Ltd.*, 88 B.R. 597 (Bankr. S.D. N.Y. 1988), *aff'd*, 115 B.R. 442 (S.D. N.Y. 1990), *appeal dismissed*, 924 F.2d 31 (2d Cir. 1991) (Hong Kong proceeding); *In re Kingscroft Ins. Co.*, 150 B.R. 77, 80-81 (Bankr. S.D. Fla. 1992) (UK proceeding); *In re Lines*, 81 B.R. 267, 270 (Bankr. S.D. N.Y. 1988) (Bermuda proceedings); *In*

re Culmer, 25 B.R. 621 (S.D. N.Y. 1982) (Bahamian proceedings); *In re Premier Oil ONS Ltd.*, No. 09-12641 (RDD) (Bankr. S.D.N.Y.).[5]

The Foreign Debtor, as the subject of a company voluntary arrangement under the UK Insolvency Act, is in a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code. Accordingly, the UK Proceeding is a "foreign proceeding" for the purpose of recognition under chapter 15.

C. The Foreign Representative Qualifies As a Foreign Representative

A "foreign representative" that has been duly appointed and authorized in a foreign proceeding to administer the reorganization is a proper applicant for recognition of a foreign proceeding and may commence a chapter 15 case by filing a petition for recognition of a foreign proceeding. *See* 11 U.S.C. §§ 1504 and 1515. Section 101(24) of the Bankruptcy Code defines the term "foreign representative" as:

> a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24).

As discussed above, ACIL is a person within the meaning of section 101(41) of the Bankruptcy Code was appointed as the Foreign Representative in a resolution of its directors on November 15, 2016. (*See* Martin Decl., Ex. 1.) Bankruptcy courts in this District have held that a governing body of an entity may authorize a person or entity to act as that entity's foreign representative in a Chapter 15 proceeding. *See In re Hollinger Inc.*, Case 07-11029 (PJW) (Bankr. D. Del. Aug. 28, 2007); *In re Abitibi-Consolidated Inc.*, Case No. 09-11348 (KJC)

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[5] Copies of these orders are attached in *Exhibit 6* to the Martin Declaration.

(Bankr. D. Del. Aug. 3, 2009); *In re Fraser Papers Inc.*, Case No. 09-12123 (KJC) (Bankr. D. Del. July 14, 2009). *See also In re Vitro, S.A.B. de C. V.*, 470 B.R. 408, 412 (N.D. Tex. 2012), *aff'd sub nom., In re Vitro S.A.B. de CV*, 701 F.3d 1031 (5th Cir. 2012), *cert. dismissed*, 133 S. Ct. 1862 (2013) (recognizing that the board of directors of a corporation could authorize a person to act as the corporation's foreign representative in a chapter 15 proceeding); *In re Compania Mexicana de Aviacion, S.A. de C.V.*, No. 10-14182 (MG) (Bankr. S.D.N.Y. Nov. 8, 2010) (holding same). Moreover, section 1515(b) of the Bankruptcy Code provides that in the absence of a "certified copy of the decision commencing such foreign proceeding and appointing the foreign representative" or "a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative," a petition for recognition should be accompanied by "any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative." 11 U.S.C. § 1515(b). Accordingly, ACIL is a "person" as defined in section 101(41) of the Bankruptcy Code which has been "authorized in a foreign proceeding to administer the reorganization . . . of the debtor's assets or affairs or to act as a representative of such foreign proceeding."

D. The UK Proceeding Is a Foreign Main Proceeding

A Bankruptcy Court is obligated to enter an order recognizing a foreign proceeding after notice and a hearing if, among other conditions,[6] the foreign proceeding for which recognition is sought is either a "foreign main proceeding" or a "foreign nonmain proceeding." *See* 11 U.S.C. § 1517(a)(1). Section 1502 of the Bankruptcy Code provides that a "foreign main proceeding" means "a foreign proceeding pending in the country where the debtor has its center of its main

[6] The other conditions are that the foreign representative applying for recognition is a person or body and the petition meets the requirements of section 1515 of the Bankruptcy Code. *See generally* 11 U.S.C. § 1517(a). This condition is satisfied here as explained in the prior section.

interests."[7] The term "center of main interests" or "COMI" is not defined in chapter 15. However, chapter 15 includes a presumption that the foreign debtor's COMI is the place where the debtor's registered office is located. 11 U.S.C. § 1516.

The COMI concept in chapter 15 derives from Model Law and is also used in the European Counsel (EC) Regulation No. 1346/2000 of May 29, 2000 on European Cross-Border Insolvency Proceedings. The Legislative Guide provides that the EC Regulation "indicates that the term should correspond to 'the place where the debtor conducts the administration of his interest on a regular basis and is therefore ascertainable by third parties.'" *See* UNCITRAL—Legislative Guide on Insolvency Law, 2004, ¶ 13. The Guide to Enactment of the Model Law indicated that it is "not advisable to include more than one criterion for qualifying a foreign proceeding as a main proceeding and provide that on the basis of any of these criteria a proceeding could be deemed a main proceeding" because such an approach "involving 'multiple criteria' would raise the risk of competing claims from foreign proceedings for recognition as a main proceeding." *See* UNCITRAL—Model Law on Cross-Border Insolvency, with Guide to Enactment, 1997, ¶ 127.

In other words, a debtor in a chapter 15 case should only have one COMI, and chapter 15 provides a rebuttable presumption that a debtor's COMI is the place where it is registered. *See, e.g., In re Betcorp, Ltd.*, 400 B.R. at 291 (suggesting that competing COMI's undermine the purpose of chapter 15 and lead to sub-optimal distribution of assets). Additionally, as best demonstrated by Judge Lifland's discussion in the *Fairfield Sentry* case, what has come to be termed the "nerve center test" is a preferred test for determining COMI. The nerve center test

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[7] Section 1502(1) of the Bankruptcy Code provides that for purposes of chapter 15, the term "debtor" means "an entity that is the subject of a foreign proceeding."

looks at the ascertainable location of a chapter 15 debtor even if that means COMI shifted as a result of a liquidation and appointment of a foreign representative in the foreign proceeding so long as such shift does not reflect some type of mischief. *See In re Fairfield Sentry Ltd.*, 440 B.R. 60 (Bankr. S.D.N.Y. 2010, *aff'd*, 2011 WL 4357421 (S.D.N.Y. Sept. 16, 2011).

In considering facts which might rebut the registered office COMI presumption, United States bankruptcy courts have created a number of non-exclusive, non-mandatory factors to consider the location of the debtor's COMI, including:

(1) the location of the debtor's headquarters;

(2) the location of those who actually manage the debtor;

(3) the location of the debtors' primary assets;

(4) the location of the majority of the debtors' creditors or a majority of the creditors who would be affected by the case; and

(5) the jurisdiction whose law would apply to most disputes.

See, e.g., In re Irish Bank Resolution Corp., No. 13-12159, 2014 WL 9953792, at *16 (Bankr. D. Del. Apr. 30, 2014); *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D. N.Y. 2006); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd. (In Provisional Liquidation)*, 374 B.R. 122, 128 (Bankr. S.D. N.Y. 2007); *In re British American Ins. Co. Ltd.*, 425 B.R. 884, 909 (Bankr. S.D. Fla. 2010).

As Foreign Debtor's registered office is in London, the center of its main interests is presumed to be in England, where the UK Proceeding is pending. Furthermore, the analysis of the factors determining the center of main interests reinforces, rather than rebuts, the presumption that the Foreign Debtor's COMI is the United Kingdom. Specifically, (a) the Foreign Debtor's headquarters are in England from where the Foreign Debtor is managed; (b)

one of ACIL's two directors is domiciled in London; the majority of ACIL's board meetings since the beginning of 2015 have been held physically, or originated, in London; (c) ACIL's key creditors are aware that ACIL's COMI is in London, and in particular, ACIL made the following express representations concerning its COMI in clause 18.33 of the Bondholders Facility, and again in clause 18.32 of the September 2016 Interim Facility: (i) ACIL's COMI is situated in England for the purposes of EC Regulation and ACIL has no other "establishment" in any other jurisdiction; (ii) ACIL is incorporated in England and Wales; (iii) ACIL's registered offices are in England and Wales and it has not at any other time had a registered office located outside of England or Wales; (iv) ACIL's secretarial, administrative, and managerial functions are in England and Wales and they have not at any time been located outside of England or Wales; (v) ACIL's accounts are and have always been filed at Companies House in England and Wales; (vi) ACIL's auditor is located in England and Wales; (vii) ACIL's main asset is shares in an English incorporated plc; (viii) ACIL's principal business is holding the YieldCo shares; and (ix) at all times, at one director of ACIL shall be a resident of England or Wales. Further, pursuant to clause 22.27 of the Bondholders Facility, and clause 22.26 of the September 2016 Interim Facility, ACIL has provide broad undertakings to maintain its COMI in England and Wales to support the representations described above. Finally, as noted in the Jarvis Declaration, pursuant to the EC Regulation, the courts of the European Union (other than Denmark) are obliged to recognize the CVA for a company with its COMI in England, and further, the UK Court has wide powers in respect of a CVA, including granting any such relief as the UK Court considers just and appropriate. *See* Jarvis Declaration, ¶¶ 23, 26. For all of these reasons, the Foreign Debtor's COMI is in the United Kingdom, and the Court should recognize the UK Proceeding as a foreign main proceeding.

E. These Chapter 15 Cases Were Properly Filed

These cases were duly and properly commenced as required by sections 1504 and 1509(a) of the Bankruptcy Code, by the filing of the Petitions in accordance with section 1515(a) of the Bankruptcy Code, which were accompanied by all documents and information required by subsections 1515(b) and (c). *See In re Irish Bank*, 2014 WL 9953792, at *17 ("The final requirement for recognition under § 1517 is that the petition for recognition meets the procedural requirements of [section] 1515"), *aff'd*, 538 B.R. 692 (D. Del. 2015). In satisfaction of section 1515(c) of the Bankruptcy Code, the Foreign Representative has filed, accompanying each Debtor's petition, a statement identifying the UK Proceeding as the only foreign proceeding with respect to the Foreign Debtor that is known to the Foreign Representative. In addition, in accordance with Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure, the Foreign Representative has filed a statement identifying all parties to litigation with respect to the Foreign Debtor pending within the United States as well as the parties against which relief is requested. Because the Foreign Representative has satisfied the requirements set forth in section 1515 of the Bankruptcy Code and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure, these chapter 15 cases have been properly commenced.

F. Recognition Would Not Be Manifestly Contrary to the Public Policy of the United States

The UK Proceeding should be recognized as a foreign main proceeding because doing so would not be "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. To the contrary, recognition will further the purposes of chapter 15 by providing for cooperation between this Court and the UK Court in order to ensure that the Foreign Debtor's insolvency is handled in a fair, efficient, and centralized manner, to protect and maximize the value of the Foreign Debtor's assets in the United States, to protect the interests of the Foreign Debtor's

creditors in the UK Proceeding, and to enable the Foreign Debtor to accomplish its part of the Global Restructuring. *See generally* 11 U.S.C. § 1501 (discussing the purpose and scope of Chapter 15). Furthermore, the narrow public policy exception in section 1506 of the Bankruptcy Code should only be invoked under exceptional circumstances not present here. *See In re Tri-Continental Exch., Ltd.*, 349 B.R. 627, 638 n.16 (Bankr. E.D. Cal. 2006) (noting that "Congress has indicated, with its use of the phrase 'manifestly contrary,' that this exception is to be narrowly construed," and, in accordance with the Guide to Enactment to the UNCITRAL Model Law on Cross-Border Insolvency, the public policy exception is "only intended to be invoked under exceptional circumstances concerning matters of fundamental importance") (citing Guide to Enactment to the UNCITRAL Model Law on Cross-Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess., U.N. Doc. A/CN.9/422 (1997)).

G. The Requested Relief Should Be Granted

The relief requested by the Foreign Representative in his proposed form of order is either required to be entered or may be entered in the Court's discretion. Specifically, because the Foreign Representative has satisfied all the provisions of sections 1515 and 1517 of the Bankruptcy Code, recognition is mandatory. *See* 11 U.S.C. § 1517(a) (stating that "an order recognizing a foreign proceeding ***shall***" be entered if the requisite conditions are satisfied) (emphasis added). As set forth in this Memorandum of Law, the Foreign Representative and the UK Proceeding satisfy the definitional and documentary provisions of the Bankruptcy Code. Similarly, where the foreign proceeding is pending in a country where the debtor has the center of its main interests, the court must recognize it as a foreign main proceeding. *See* 11 U.S.C. § 1517(b) (also using the "shall" construct for such recognition).

The proposed form of order contains the relief that essentially is self-executing upon recognition. *See* 11 U.S.C. § 1520. The remaining provisions of the form of order rely on the

discretionary relief available, such as entrusting the Foreign Debtor's assets to the Foreign Representative, and granting the Foreign Representative powers and relief available to a trustee. *See* 11 U.S.C. §§ 1520 & 1521. For the reasons set forth in this Memorandum of Law, the Petition, the Jarvis Declaration, the Martin Declaration, and other papers filed with this Court, the Foreign Representative submits that such relief is necessary and proper and it would be just for the Court to use its discretion to grant this relief.

Finally, Rule 1018 of the Federal Rules of Bankruptcy Procedure provides that unless the Court orders otherwise, the provisions of Rule 7062, among others, applies to all proceedings "contesting . . . a chapter 15 petition for recognition . . . ." *See* FED. R. BANKR. PR. 1018. While it is not known at this time whether any party will contest this recognition, the Foreign Representative requests that, if a contest is presented and is overruled, the Court should direct that the stay provisions in Rule 7062 should not apply and that any order on recognition should be immediately applicable and final, so as not to cause decentralization of the Foreign Debtor's judicial restructuring or hinder their global restructuring efforts.

IV.
CONCLUSION

For the reasons stated herein, it is respectfully submitted that the Court should enter an Order substantially in the form of attached as Exhibit A to the Motion, recognizing the UK Proceeding as a foreign main proceeding, granting the relief in aid thereof requested by the Motion, and granting such other and further relief as the Court finds necessary and appropriate under the circumstances presented.

Dated: November 16, 2016
Wilmington, Delaware

Respectfully submitted,

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