

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION, :  
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 Plaintiff, :  
 :  
 -v- :  
 :  
 LEGEND VENTURE PARTNERS LLC, :  
 :  
 Defendant. :  
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No. 1:23-cv-05326-LAK

**MEMORANDUM OF LAW IN SUPPORT OF THE RECEIVER’S MOTION TO  
ESTABLISH PROCEDURES FOR RESOLUTION  
OF INTERESTS AND CLAIMS AND SETTING BAR DATES FOR CLAIMS**

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Melanie L. Cyganowski, the Receiver (the “**Receiver**”) of Legend Venture Partners LLC (“**LVP**”), Legend Ventures Fund 1 LLC, Legend Ventures Fund 2 LLC, Legend Ventures Fund 3 LLC, Legend Ventures Fund 4 LLC, Legend Ventures Fund 5 LLC (collectively, the “**Legend Funds**,” and together with LVP, the “**Receivership Entities**” or “**Legend**”), through her counsel, Otterbourg P.C., respectfully submits this Memorandum of Law and the contemporaneously filed Declaration of Melanie L. Cyganowski (the “**Cyganowski Dec.**”) in support of the Receiver’s motion (the “**Motion**”) to Establish Procedures for Resolution of Interests and Claims and Setting Bar Dates for Claims, and respectfully states as follows:

### I. PRELIMINARY STATEMENT

To effectuate distributions under a plan of distribution, the Receiver needs certainty on the number and amount of Interests and Claims (each as defined below) that are asserted in or against the Receivership Entities. Simultaneously with this Motion, the Receiver is filing her motion for Court approval of her proposed plan of distribution of the Receivership Entities’ assets (the “**Proposed Plan**”). To ensure efficient administration of the Receivership Estate (defined below) and distribution of assets, by this Motion, the Receiver seeks to establish procedures (the “**Proposed Procedures**”) pursuant to which (i) each Investor will be notified of the net amount(s) Legend’s books and records state the Investor invested in the Receivership Entities (the “**Net Amount**”); (ii) creditors (*i.e.*, Claimants) will be provided with the opportunity to submit proof(s) of claim setting forth the alleged value and basis of their asserted Claim(s); and (iii) Investors and Claimants will be able to resolve any disputes with the Receiver concerning their asserted Interests and Claims, as applicable. The Proposed Procedures will allow the Receiver to determine the universe of Interests in, and Claims against, the Receivership Entities and thereby effectuate distributions under the Proposed Plan. Moreover, the Proposed Procedures will provide Investors

and Claimants with the requisite notice and opportunity to be heard on their Interests and/or Claims if a dispute with the Receiver arises.<sup>1</sup> A copy of the Proposed Procedures is annexed to the Cyganowski Dec. as Exhibit A.

The Receiver believes that the Proposed Procedures are fair and equitable. They are also effective -- in *Securities and Exchange Commission v. StraightPath Venture Partners LLC, et al.*, Case No. 22-cv-03897-LAK (“***StraightPath***”), in which Ms. Cyganowski is also the Court-appointed receiver, substantially similar procedures were approved by the Court and have been implemented with substantial success. *See* Dkt. Nos. 166-169, 180.

#### **A. The Investor Verification Process**

As described more fully below, and in the accompanying Cyganowski Dec., the Proposed Procedures are designed to limit the burden on the Investors. An Investor will not be required to take any action unless the Investor disagrees with the Net Amount of the investments and other information set forth in the investor statement that the Receivership<sup>2</sup> will issue to every Investor (each an “**Investor Statement**”). If an Investor agrees with the Investor Statement, the Investor is not required to take any affirmative action and the Investor Statement will form the basis for calculating the amount of any distribution to an Investor in accordance with whatever Plan is ultimately approved by the Court. However, if an Investor disagrees with the Investor Statement, the Investor will be required to serve the Receiver with an objection, triggering a procedure for resolution of the dispute. The Investor will have multiple opportunities to dispute the Investor Statement, first consensually (including through the use of a neutral mediator), or if that is unsuccessful, through a summary process before the Court. *See, infra.* at 15-16. Unless an

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<sup>1</sup> The Receiver reserves the right in the Proposed Plan to have one or more classes of subordinated, disallowed or treated differently from other classes of Interests or Claims.

<sup>2</sup> The term “**Receivership**” includes the Receiver and her retained professionals.

Investor timely disputes the Investor Statement in accordance with the Proposed Procedures, the Investor will be deemed to waive any objection to the Investor Statement.

Set forth below is a timeline of certain salient provisions of the Proposed Procedure relating to Investors (“**Interest Verification Process**”):

Event/Action	Timeline
Receiver will send notice of the Proposed Procedures <sup>3</sup> to Investors by First Class Mail and by email to the extent email addresses are available and will post the notice on the Receivership website.	Within five (5) business days of entry of an order granting the Motion (the “ <b>Procedures Order</b> ”).
Receiver will submit a notice concerning the Proposed Procedures for publication through various media channels via the Business Wire and PR Newswire services.	Within fourteen (14) business days of entry of the Procedures Order.
Receiver will send Investor Statements to Investors by First Class Mail and by email to the extent email addresses are available.	Within twenty-one (21) business days of entry of the Procedures Order.
If an Investor <u>does not</u> disagree with the information in the Investor Statement, no action is required and the information in the Investor Statement will govern.	
If an Investor <u>disagrees</u> with the information in the Investor Statement, such Investor (each a “ <b>Disputing Investor</b> ”) will be required to serve an Investor Objection (defined below) on the Receiver.	Within forty-five (45) days of Receiver’s mailing of the Investor Statement. <sup>4</sup>
Upon receipt of the Investor Objection, negotiations commence between the Disputing Investor and Receiver (“ <b>Bilateral Discussions</b> ”).	Bilateral Discussions conclude within forty-five (45) days of the receipt of an Investor Objection, unless both the Receiver and the Disputing Investor agree to continue.
If Bilateral Discussions are unsuccessful, Mediation before a disinterested Mediator commences (costs to be borne one-half by the Receivership Estate and one-half by the Disputing Investor).	Mediation to be completed within thirty (30) days from commencement of the initial Mediation session unless extended by the Receiver in her discretion.

<sup>3</sup> Such notice is defined below as the “Notice of Interests and Claims Procedures.”

<sup>4</sup> All deadlines for Investors and Claimants to serve documentation on the Claims Agent or the Receiver, as applicable, are subject to extension by the Receiver in her discretion for cause shown without further Court order.

Event/Action	Timeline
If Mediation does not resolve the dispute, Receiver will file a Resolution Motion (defined below) with the Court to commence a summary proceeding.	Resolution Motion to be filed within sixty (60) days after conclusion of the Mediation.

### **B. The Claim Verification Process**

Under the Proposed Procedures, all Claimants will be required to serve the Receiver with a Proof of Claim so that all Claims are identified and, to the extent they are valid, can be accorded appropriate treatment in the Proposed Plan, or can be disputed. The Receivership will review each filed Proof of Claim and notify each Claimant of the Receiver’s determination regarding the Claimant’s filed Proof of Claim. If a Claimant disagrees with the Receiver’s determination, the Claimant will be required to serve the Receiver with an objection, triggering a procedure for resolution of the dispute. The Proposed Procedures provide a framework for resolving Claimants’ disputes, first consensually (including through the use of a neutral mediator), and then, if a consensual resolution is not reached between the Receiver and a disputing claimant (a “**Disputing Claimant**”), through a summary process before the Court.

Set forth below is a timeline of certain salient provisions of the Proposed Procedures relating to Claimants (“**Claim Verification Process**”):

Event/Action	Timeline
Receiver will send notice of the Proposed Procedures <sup>5</sup> to known Claimants by First Class Mail and by email to the extent email addresses are available and will post the notice on the Receivership website.	Within five (5) business days of entry of the Procedures Order.

<sup>5</sup> Such notice is defined below as the “Notice of Interests and Claims Procedures.”

Event/Action	Timeline
Receiver will submit a notice concerning the Proposed Procedures for publication through various media channels via the Business Wire and PR Newswire services.	Within fourteen (14) business days of entry of the Procedures Order.
Claimants (other than Governmental Units, as defined in the Proposed Procedures <sup>6</sup> ) will be required to serve a completed and signed Proof of Claim Form (defined below).	To be received by Receiver's Claims Agent (as defined below) within sixty (60) days of entry of the Procedures Order.
Governmental Units will be required to serve a completed and signed Proof of Claim Form (defined below).	To be received by Receiver's Claims Agent (as defined below) within ninety (90) days of entry of the Procedures Order.
Receiver will file her determinations regarding Proofs of Claim in one or more Claims Analysis Reports (defined below) that will be sent to each Claimant by First Class Mail and/or by email, to the extent email addresses are available, and will also be posted on the Receivership website.	Timing to be determined once the number, amounts, type and complexity of the Proofs of Claim are determined. Subject to the foregoing, the Receiver will seek to file the initial Claims Analysis Report within 180 days following the Bar Date (defined below).
Disputing Claimants are required to serve a Claimant Objection (defined below).	To be received by Receiver's counsel within forty-five (45) days of the Receiver's mailing or emailing of the Claims Analysis Report.
Upon receipt of the Claimant Objection, Bilateral Discussions commence.	Bilateral Discussions conclude within forty-five (45) days of the receipt of a Claimant Objection, unless both the Receiver and the Disputing Claimant agree to continue.
If Bilateral Discussions are unsuccessful, Mediation before a disinterested mediator commences (costs to be borne one-half by the Receivership Estate and one-half by the Disputing Claimant).	Mediation to be completed within thirty (30) days from commencement of the initial Mediation session unless extended by the Receiver in her discretion.
If Mediation does not resolve the dispute, Receiver will file a Resolution Motion (defined below) with the Court to commence a summary proceeding.	Resolution Motion to be filed within sixty (60) days after conclusion of the Mediation.

<sup>6</sup> Under the Proposed Procedures, a "Governmental Unit" is defined as and includes the United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

## II. BACKGROUND

### A. The SEC's Complaint

On June 22, 2023, the Securities and Exchange Commission (the “SEC”) filed a complaint (the “**Complaint**” or “**Compl.**”) commencing this action against LVP, alleging, among other things, violations of various sections of the Securities Act, the Exchange Act, and the Advisers Act, and seeking, among other relief, temporary and permanent injunctive relief, disgorgement of alleged ill-gotten gains, imposition of civil penalties, and appointment of a receiver [Dkt. 1].

In the Complaint, the SEC alleged that from February through October 2022, Legend raised more than \$35 million from more than 300 investors located across the country (Compl. ¶ 2). The SEC alleged that Legend, along with a network of unregistered sales agents, engaged in illegal, unregistered offerings of securities in investment vehicles that purportedly provided access to shares of private companies that Legend told investors were likely to undertake a public offering in the near future (“**Pre-IPO Companies**”).

The SEC further alleged that although Legend told investors it would only receive compensation after the Pre-IPO Companies went public, and that it was not charging upfront fees or commissions, Legend charged investors upfront markups on all investments, averaging between 46% and 105% above the prices Legend paid for the shares of the Pre-IPO Companies, and that Legend’s principals paid themselves more than \$9 million and their sales agents more than \$3.25 million from the markups. (Compl. ¶ 4).

#### Appointment of Receiver and Receivership Order

Simultaneously with the filing of the Complaint, the SEC sought and obtained emergency relief, including a temporary restraining order and an order freezing the assets of the Receivership Entities [Dkt. 6]. On July 7, 2023, the Court entered the Order Appointing Receiver [Dkt. 33] (the “**Receivership Order**”), in which the Court appointed the Receiver for the estate of the

Receivership Entities (the “**Receivership Estate**”).

**B. The Receiver’s Rights and Duties Pursuant to the Receivership Order**

Under the terms of the Receivership Order, the Receiver is authorized and empowered to develop, as appropriate, “a plan for the fair, reasonable, and efficient distribution of the Receivership Property to investors in any of the Legend Funds.” Receivership Order at 14. To effectuate any distributions under the Proposed Plan, the Receiver needs to identify the nature and scope of the investments in, liabilities of and potential claims against, the Receivership Entities. Cyganowski Dec. ¶ 11. The Proposed Procedures are intended to assist the Receiver in complying with that requirement.

**III. THE PROPOSED PROCEDURES**

**A. Treatment of Investors Under the Proposed Procedures**

1. Interest Verification Procedures

Under the Proposed Procedures, an “**Investor**” is defined to include, without limitation, each individual, partnership, corporation, limited liability company, estate, trust, and Governmental Unit “that currently holds or formerly held an Interest.” An “**Interest**” is “an equity interest in any of the Receivership Entities, which interest is based exclusively upon invested capital in any of the Receivership Entities.”

By this Motion, the Receiver seeks to establish the Proposed Procedures under which the Receivership will send Investor Statements to each Investor setting forth information on each Investor’s investment in Legend that the Receivership has been able to derive from Legend’s books and records (including bank statements). Cyganowski Dec. ¶ 13.<sup>7</sup> The general form of an Investor Statement will be substantially in the form annexed to the Cyganowski Dec. as Exhibit B and,

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<sup>7</sup> The information reflected in an Investor Statement will not state the priority, if any, of an Interest or the amount, or type, of distribution an Investor ultimately may receive from the Receivership Entities. Cyganowski Dec. ¶ 13 n.6.

under the Proposed Procedures, will be sent to each Investor within twenty-one (21) business days of entry of the Procedures Order. *Id.* Based on Legend’s books and records, the Investor Statement will contain, for each Investor, the amount(s) and date(s) that the Investor invested in each Receivership Entity, the Pre-IPO Companies and Pre-IPO Shares to which Legend advised the Investors that their investments had been applied, and the amount(s), if any, that an Investor received from the Receivership Entities on account of the Investor’s Interest(s). *Id.*<sup>8</sup> The Receiver will have the authority and discretion to modify the form of Investor Statement to customize it as may be required for each Investor. *Id.* The Receivership may periodically prepare new or modify previous Investor Statements as the Receiver deems necessary, for example, based on newly discovered information. *Id.* In such an instance, the Receivership will notify the applicable Investor of such new Investor Statement, or modification, and provide a commensurate extension of time to respond. *Id.*

Investors only need to respond to the Investor Statement if they disagree with the information contained in it. Cyganowski Dec. ¶ 14. An Investor that does not disagree with the information in the Investor Statement will not be required to take any further action and the Investor’s Interests in the Receivership will be as set forth in the Investor Statement. *Id.*<sup>9</sup>

Each Investor Statement will be sent by First Class Mail to the address for the applicable Investor set forth in the Receivership Entities’ books and records or as set forth in previously

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<sup>8</sup> Nothing in the Investor Statements is intended to state, imply or indicate that any Investor holds any Interest in any Pre-IPO Company or Pre-IPO Shares. Investors invested in Legend, not in any Pre-IPO Company. Cyganowski Dec. ¶ 13 n.7.

<sup>9</sup> All of the Interests associated with a single taxpayer identification number (“**TIN**”) or social security number (“**SSN**”) will be included in one Investor Statement, *except that*, multiple investments associated with a single TIN or SSN will each receive a separate Investor Statement to the extent that any such an investment is in the name of a separate trust, an individual retirement account or a person other than the holder of the TIN or SSN (each an “**Associated Investment**”). In such cases, the Associated Investment will receive a separate Investor Statement with a unique Investor Number through a separate mailing and/or email. Cyganowski Dec. ¶ 14 n.8.

received (i) written notice from the Investor and/or (ii) returned mail with a forwarding address. Cyganowski Dec. ¶ 15. In addition, to the extent email addresses can reasonably be located in the Receivership Entities' email and computer systems, the Investor Statement will also be sent by email. *Id.*

To protect the privacy of Investors, the Investor Statements will assign each Investor an individual investor number unique to that Investor (each an “**Investor Number**”). Cyganowski Dec. ¶ 16. The Receiver will use the respective Investor Numbers to identify individual Investors in public filings with the Court and if the Investor and the Receiver engage in summary disposition litigation as described below, the Investor will be identified in the submission only by Investor Number. *Id.*

2. Resolution of Investor Objections

The Investor Statement will also contain detailed information about how to dispute the information contained in the Investor Statement, and the deadline by which the Investor must do so. Cyganowski Dec. ¶ 17.

Any Investor who disagrees with the information contained in the Investor Statement may dispute the accuracy of the information (each dispute an “**Investor Objection**”) by following the instructions set forth in the Proposed Procedures and the Investor Statement. Cyganowski Dec. ¶ 18. Specifically, as set forth in the Proposed Procedures, an Investor Objection must be served within 45 days from the date of mailing of the Investor Statement. *Id.* The sole basis for an Investor Objection shall be an inaccuracy in the Investor Statement. *Id.* An Investor may serve an Investor Objection directly, through counsel or through another authorized representative. *Id.* An Investor that serves an Investor Objection through an authorized representative shall complete the Investor Authorization Form attached to the Investor Statement and the authorized representative shall serve it on the Claims Agent (defined below) at the time of service of the

Investor Objection. *Id.* Only the Investor or the Investor’s other authorized representative (including counsel) may serve an Investor Objection to the Investor’s Investor Statement, and Investors may not serve an Investor Objection with respect to any other Investors’ Investor Statements. *Id.* Upon the timely service of an Investor Objection, an Interest shall become a “**Disputed Interest.**” *Id.*

Investor Objections must be served within forty-five (45) days from the date the Investor Statement is mailed so as to be received by the Receiver’s claims agent, Stretto, Inc. (the “**Claims Agent**”), by either (i) First Class Mail addressed to Legend Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; (ii) overnight courier or in-person delivery addressed to Legend Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; or (iii) electronic mail, as an attachment in portable document format (.pdf), to [LegendClaims@Stretto.com](mailto:LegendClaims@Stretto.com). Cyganowski Dec. ¶ 19. The Receiver will have the discretion to extend the time for Investors to serve an Investor Objection for cause shown without further Court order. *Id.*

If an Investor fails to timely serve an Investor Objection, then the information set forth in the Investor Statement shall be final and binding on the Investor and shall form the basis for calculating the allowed amount on account of the Investor’s Interest(s), based upon the distribution methodology employed in and pursuant to the Proposed Plan. Cyganowski Dec. ¶ 20.

Under the Proposed Procedures, any person or entity that does not receive an Investor Statement but who asserts ownership of an Interest (a “**Purported Investor**”) will be required to serve the Receiver’s Claims Agent with a written, signed statement identifying the claimed Interest (the “**Purported Interest**”) together with the documentation that the Purported Investor contends establishes the existence of the Purported Interest (collectively, the “**Written Notification**”).

Cyganowski Dec. ¶ 21. The Purported Investor (or the Purported Investor’s counsel or other authorized representative) will be required to serve the Written Notification within sixty (60) days of entry of the Procedures Order in the same manner that an Investor Objection must be served. *Id.* If within thirty (30) days of service of the Written Notification the Receiver and the Purported Investor do not reach agreement regarding the Purported Interest, then the Purported Interest shall become a Disputed Interest and the Purported Investor shall become a Disputing Investor with all of the rights and duties of a Disputing Investor set forth in the Proposed Procedures. *Id.* A Purported Investor’s failure to timely serve a Written Notification concerning a Purported Interest shall permanently preclude the Purported Investor from asserting the Purported Interest. *Id.* The Receiver shall have the discretion to extend the time for Purported Investors to serve Written Notifications for cause shown without further Court order. *Id.*

## **B. Treatment of Claimants Under the Proposed Procedures**

### **1. Claim Verification Process**

Under the Proposed Procedures, and as defined therein, Claimants<sup>10</sup> that assert Claims<sup>11</sup>

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<sup>10</sup> Under the Proposed Procedures, a “**Claimant**” is defined to include, without limitation, individuals, partnerships, corporations, limited liability companies, estates, trusts and Governmental Units that assert a Claim including, without limitation:

based on (i) the provision of goods or services or the sale of securities that has not been paid in whole; (ii) money loaned that has not been paid in whole; (iii) tax liabilities, including those held by federal and state governments; (iv) primary, secondary, direct, indirect, or contingent liability; and/or (v) contract, tort, indemnity, reimbursement, subrogation theories, or other legal or equitable theory. A holder of an Interest... is not a Claimant.

<sup>11</sup> Under the Proposed Procedures, a “**Claim**” is defined as:

(i) a purported right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, against one or more of the Receivership Entities or the Receivership Estate...; or (ii) a purported right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, against one or more of the Receivership Entities or the Receivership Estate. Notwithstanding anything to the contrary herein, an Investor’s investment in Legend does not give rise to a Claim but is instead treated as an Interest.

against any of the Receivership Entities will be required, on or before the applicable Bar Date (defined below), to serve a completed Proof of Claim Form (substantially in the form annexed to the Cyganowski Dec. as Exhibit C, the “Proof of Claim Form”). Cyganowski Dec. ¶ 22. A Claimant may serve the Proof of Claim directly, through counsel or through another authorized representative. *Id.* A Claimant that serves a Proof of Claim through an authorized representative shall complete the Claimant Representative Authorization Form attached to the Proof of Claim Form. *Id.*

The Proposed Procedures establish two bar dates with respect to Claims:

- (i) for Claimants *other than* Governmental Units, the Proposed Procedures set a bar date of sixty (60) days following the entry of the Procedures Order (the “**General Bar Date**”). Cyganowski Dec. ¶ 23(i).
- (ii) for Claimants that are Governmental Units, the Proposed Procedures set a bar date of ninety (90) days following the entry of the Procedures Order (the “**Governmental Bar Date**,” and together with the General Bar Date, the “**Bar Dates**”). Cyganowski Dec. ¶ 23(ii).

The Bar Dates are applicable to all Claims, whether alleged to arise before or after entry of the Receivership Order. The Receiver believes the timing of the Bar Dates provides ample time for all Claimants to prepare their Proofs of Claim. Cyganowski Dec. ¶ 24.<sup>12</sup>

Completed Proof of Claim Forms (inclusive of relevant documentation to support the alleged Claim) must be served so as to be received by the applicable Bar Date on the Receiver’s Claims Agent by either (i) First Class Mail addressed to Legend Claims Processing c/o Stretto,

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<sup>12</sup> The sole exception to the applicability of the Bar Dates is for claims by the Receiver and her retained professionals for fees and expenses as such claims are subject to the provisions of the Receivership Order that set forth specific procedures for Court review of such claims. Cyganowski Dec. ¶ 24 n.11.

410 Exchange, Suite 100, Irvine, CA 92602; (ii) overnight courier or in-person delivery addressed to Legend Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; (iii) by electronic mail, as an attachment in portable document format (.pdf), to [LegendClaims@Stretto.com](mailto:LegendClaims@Stretto.com); or (iv) using the electronic Proof of Claim Form available at <https://www.legendreceivership.com/>. Cyganowski Dec. ¶ 25.

If a Claimant fails to timely serve a Proof of Claim on the Receiver's Claims Agent pursuant to the procedure set out in Section 3 of the Proposed Procedures, that Claim shall be deemed an "**Abandoned Claim**," and the Claimant holding the Abandoned Claim (i) shall not be entitled to a distribution on account of such Abandoned Claim under any Plan; (ii) shall not be entitled to object on account of such Abandoned Claim to any Plan; (iii) shall be forever barred from asserting such Abandoned Claim against the Receivership Entities or the Receivership Estate and their respective property; and (iv) shall receive no further notices on account of such Abandoned Claim. Cyganowski Dec. ¶ 26. The Receiver shall have the discretion to extend the time for a Claimant to complete and serve a Proof of Claim for cause shown without further Court order. *Id.*

Certain of the Receivership Entities may have Claims against other Receivership Entities. Cyganowski Dec. ¶ 27. The Proposed Procedures provide that none of the Receivership Entities are required to file a Proof of Claim against any other Receivership Entity, and any Claims of a Receivership Entity against another Receivership Entity are preserved. *Id.*

## 2. Claims Reconciliation and Claims Analysis Report

After the Bar Dates, and based upon the Proofs of Claim received and other information available (including the Receivership Entities' books and records), the Receiver will issue a "**Claims Analysis Report**." (If appropriate, the Receiver will issue one or more Claims Analysis Reports.) Cyganowski Dec. ¶ 27. The Claims Analysis Report will set forth the Receiver's

determination as to each timely filed Proof of Claim served by each Claimant, and a brief explanation if any Claim is disallowed in whole or in part. *Id.*

To determine whether to allow or disallow each Claim in whole or in part, the Receiver will consider factors including, but not limited to, whether (i) the Claim is properly and timely asserted against one or more Receivership Entities or the Receivership Estate; (ii) the Claim is duplicative of one or more other Claims asserted against the Receivership Entities or the Receivership Estate; (iii) the Claim arose out of any of the activities, agreements, or other obligations of the Receivership Entities against which the Claims are asserted or of the Receivership Estate; (iv) the Claim is consistent with the books and records of the Receivership Entities or the Receivership Estate; (v) the Claim is supported by adequate documentation; (vi) the Claim is subject to any offsets or defenses that may be asserted; (vii) the Claim is properly treated as an Investor Interest; and/or (viii) whether other grounds exist for allowing or disallowing the Claim, in whole or in part. Cyganowski Dec. ¶ 29.

The number, amounts, type, and complexity of the Claims are not fully known at this time and accordingly, the Receiver cannot fix a date certain by which she will issue any Claims Analysis Report. Cyganowski Dec. ¶ 30. The Receiver will endeavor to issue such a Report within one hundred eighty (180) days following the applicable Bar Date. *Id.* With her retained professionals, the Receiver will work expeditiously to determine the status of each filed Proof of Claim and keep the Court and parties-in-interest apprised of the Receiver's progress. *Id.*

### 3. Objections to Disallowance of Claims

If a Claimant disputes the Receiver's determination in the Claims Analysis Report, that Claimant must serve a "**Claimant Objection**" by email to [LegendReceiver@Otterbourg.com](mailto:LegendReceiver@Otterbourg.com) so as to be actually received on or before forty-five (45) days following the Receiver's issuance (by First-Class Mail and/or email) of the applicable Claims Analysis Report. Cyganowski Dec. ¶ 31.

Upon the timely and proper service of a Claimant Objection, a Claim will become a “**Disputed Claim.**” *Id.*

**C. Alternative Dispute Resolution of Disputed Interests and Disputed Claims**

Within forty-five (45) days of receipt of an Investor Objection or a Claimant Objection, the Receivership will communicate with, as applicable, the Disputing Investor or Disputing Claimant (each a “**Disputing Party**”) (or the Disputing Party’s counsel or other authorized representative) to attempt to resolve the Disputed Interest or Disputed Claim through Bilateral Discussions. Cyganowski Dec. ¶ 32. Bilateral Discussions may continue beyond the 45-day period if the Receiver and the respective Disputing Investor or Disputing Claimant both agree. *Id.*

Unless the Disputed Interest or Disputed Claim is consensually resolved through Bilateral Discussions, the Disputed Interest or Disputed Claim will be submitted to Mediation before a disinterested Mediator, to be completed within thirty (30) days from commencement of the initial Mediation session. Cyganowski Dec. ¶ 33. In her discretion, the Receiver may extend the Mediation beyond the initial thirty (30) day period. *Id.* The costs of Mediation will be borne one-half by the Receivership Estate and one-half by the Disputing Party. *Id.*

Under the Proposed Procedures, the Receiver will be empowered to settle and compromise any Disputed Interest or Disputed Claim on terms and for reasons that she deems, in her business judgment, to be appropriate without further Court order. Cyganowski Dec. ¶ 34.

**D. Summary Disposition**

If the foregoing Alternative Dispute Resolution procedures are unsuccessful, the Receiver shall submit the Investor Objection or Claimant Objection to the Court for summary disposition in the following manner:

- (i) Within sixty (60) days after conclusion of the Mediation, the Receiver will

file one or more motions (each a “**Resolution Motion**”) with the Court requesting that the Court confirm the Receiver’s determination(s) as to the particular Disputed Interest(s) or Disputed Claim(s) addressed in the Resolution Motion.<sup>13</sup> The Receiver’s moving papers in support of a Resolution Motion shall attach, as applicable, (i) the Disputed Claim(s) or Disputed Interest(s),<sup>14</sup> (ii) for Disputing Investors: the applicable Investor Statement(s) and Investor Objection(s), (iii) for Disputing Claimants: the applicable Proof(s) of Claim, the applicable Claims Analysis Report, and each applicable Claimant Objection, and (iv) the basis for the Receiver’s determination(s) as to each Disputed Claim or Disputed Interest addressed therein, as well as any relevant declarations, exhibits, documentation and/or testimony. Cyganowski Dec. ¶ 35(i).

(ii) Any response (each a “**Response**”) to a Resolution Motion must be served electronically no later than fourteen (14) days after filing of the Resolution Motion (the “**Response Deadline**”), by delivery to [LegendReceiver@Otterbourg.com](mailto:LegendReceiver@Otterbourg.com). The Receiver shall file each Response on the ECF docket within two (2) business days of the expiration of the Response Deadline. Cyganowski Dec. ¶ 35(ii).

(iii) Within twenty (20) days of the applicable Response Deadline, the Receiver shall file her reply papers, if any, in further support of a Resolution Motion. Cyganowski Dec. ¶ 35(iii).

(iv) At the Receiver’s election, a Resolution Motion may consist of omnibus motion(s) addressing multiple Disputed Interests and Disputed Claims at one time, rather than individually. Cyganowski Dec. ¶ 34(iv).

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<sup>13</sup> As noted above, the Resolution Motion will identify the Investor(s) by Investor Number(s). Cyganowski Dec. ¶ 35(i) n.12.

<sup>14</sup> With appropriate redaction of personally identifiable information in accordance with all applicable laws, rules and orders. Cyganowski Dec. ¶ 35(i) n.13.

**E. Notice of Interests and Claims Procedures**

In order to provide notice to Investors and Claimants of the procedures outlined above and as more fully set forth in the Proposed Procedures, within five (5) business days of entry of the Procedures Order, the Claims Agent will distribute the Notice of Procedures for Verification of Interests and for Submitting and Verifying Proofs of Claim (substantially in the form annexed to the Cyganowski Dec. as Exhibit D, the “**Notice of Interests and Claims Procedures**”). Cyganowski Dec. ¶ 36. The purpose of the Notice of Interests and Claims Procedures is to provide parties-in-interest with notice of the implementation of the procedures described above. *Id.*

The Notice of Interests and Claims Procedures will be distributed as follows:

(i) to all reasonably determinable Investors and Claimants by First Class Mail to the addresses reasonably located for such Investors and Claimants in Legend’s books and records, or as set forth in previously received written notice from the Investor or Claimant and/or returned mail with a forwarding address; and

(ii) by email, to all reasonably determinable Investors and Claimants to the extent known by the Receivership or reasonably located in the Receivership Entities’ books and records.

Additionally, in order to address the possible existence of Investors and Claimants unknown to the Receivership, within five (5) business days of entry of the Procedures Order, the Notice of Interests and Claims Procedures will be posted on the Receivership website at <https://www.legendreceivership.com/> and within fourteen (14) business days of entry of the Procedures Order, the Receiver will forward a notice of the Proposed Procedures for publication through various media channels via the Business Wire and PR Newswires. Given the cost to publish notices in national newspapers, the Receiver believes that use of online wire services,

which have the potential of publication in numerous outlets, is appropriate for this purpose, is cost efficient and has the possibility of reaching substantial numbers of parties-in-interest. Cyganowski Dec. ¶ 38.

#### IV. ARGUMENT

##### A. This Court Has the Requisite Authority to Grant the Relief Requested

The Court has the requisite power and authority to grant this Motion. *See, e.g., StraightPath, supra*, in which the Court granted a motion to establish substantially similar procedures. In an equity receivership, a district court “has broad powers and wide discretion” to fashion relief. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *see also Eberhard v. Marcu*, 530 F.3d 122, 134 (2d Cir. 2008) (“Federal law supplies district courts appointing receivers with ‘broad equitable powers.’”) (citation omitted). “The basis for broad deference to the district court’s supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions.” *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). “It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership,” and the relief the Receiver seeks is well within the limits of the District Court’s discretion. *See SEC v. Safety Fin. Serv.*, 674 F.2d 368, 372–73 (5th Cir. 1982) (quoting *SEC v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9th Cir. 1978)) (internal quotation marks omitted).

Here, by this Motion, the Receiver seeks to establish procedures that are fair and equitable, necessary for the proper administration of the Receivership Estate, and effective, as the experience in the *StraightPath* receivership establishes. It is respectfully submitted, that granting this Motion would be a proper exercise of this Court’s discretion.

**B. The Receiver's Proposed Procedures are Necessary for Her to Effectuate Distributions Under the Proposed Plan**

To effectuate distribution of Receivership Property, the Receiver needs to identify the nature and scope of the Interests in and Claims against the Receivership Entities. Cyganowski Dec. ¶ 11. For this reason, it is necessary to have a process to verify Investors' Interests in the Receivership Entities and to establish a deadline for Claimants to serve Proofs of Claim for review and processing by the Receiver.

This is consistent with the law of receiverships, in which “[e]very person who has any claim or demand against the estate or property in the custody of the court through the receiver . . . must assert such claim or demand in the court in which such receiver was appointed.” RALPH E. CLARK, CLARK ON RECEIVERS § 646, at 1132 (3d ed. 1959) (hereinafter “CLARK”). “The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any.” *Id.* § 651, at 1142. Claimants may present their claims in various ways, including to the receiver pursuant to a “general order of the appointing court” in which case, the receiver may decide whether to allow the claim, and the appointing court must then decide the final status of the claim, which functions as a final order. *Id.* § 646, at 1132. The Proposed Procedures satisfy these requirements and provide a process for a fair and equitable resolution of Interests and Claims.

Moreover, the requested Bar Dates are a necessary component of any claims verification process -- bar dates are generally imposed “to facilitate the proceeding and to promote dispatch in the settlement of the estate.” CLARK § 652, at 1142 (citing *Chicago Title & Trust Co. v. Fox Theatres Corp.*, 91 F.2d 907 (2d Cir. 1937); *People of New York v. Hopkins*, 18 F.2d 731 (2d Cir. 1927)); see also *SEC v. Princeton Econ. Int'l Ltd*, No. 99 CIV. 9667 PKC, 2008 WL 7826694 (S.D.N.Y. Sept. 30, 2008); *SEC v. Cook*, No. CIV.A. 399CV0571R, 2003 WL 22272065 (N.D.

Tex. Sept. 30, 2003). Limiting the time to present claims “is necessary in order to lay the foundation for the court to order payment to creditors and distribution to those entitled to receive.”

*Id.* § 651, at 1142 (citing CLARK § 652).

**C. The Receiver’s Proposed Procedures Afford Investors and Claimants the Requisite Notice and Opportunity to Be Heard**

Courts have held that neither a Court nor a Receiver may resolve a claimant’s claims unless a claimant is afforded notice and an opportunity to be heard. *SEC v. Callahan*, 193 F. Supp. 3d 177, 204 (E.D.N.Y. 2016); *see also SEC v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) (approving summary proceedings to evaluate claims). Therefore, the Proposed Procedures provide a fair process, granting sufficient time for Investors and Claimants to consider the Receiver’s determination of their Interests and Claims. The Proposed Procedures also provide a means for Disputing Investors and Disputing Claimants to amicably settle their disputes with the Receiver or if that proves to be unsuccessful to resolve the dispute before the Court in a summary proceeding. The Proposed Procedures reasonably balance the Investors’ and Claimants’ rights and the Receivership’s need to determine Interests and Claims for Plan purposes.

The Proposed Procedures provide appropriate notice. The Investor Statements and Notice of Interests and Claims Procedures will be sent to each known Investor or Claimant by First Class Mail to the addresses reasonably located in the Receivership Entities’ books and records or as set forth in previously received (i) written notice from the Investor or Claimant and/or (ii) returned mail with a forwarding address. The Investor Statements and Notice of Interests and Claims Procedures will also be sent to all known Investors and Claimants by email to the extent known by the Receivership or reasonably located in the Receivership Entities’ books and records.

Moreover, to address the possible existence of Investors and/or Claimants unknown to her, the Receiver will provide constructive notice. She will post the notice of Interests and Claims

Procedures on the Receivership website. She also will submit a notice of the Proposed Procedures through the Business Wire and PR Newswires for publication in various media channels. “For unknown creditors, constructive notice, such as notice by publication, will suffice” to afford them notice that is “‘reasonably calculated, under all the circumstances to apprise’ them of the pendency of the Bar Date.” *In re BGI, Inc.*, 476 B.R. 812, 820 (Bankr. S.D.N.Y. 2012) (citing *In re Drexel Burnham Lambert Grp., Inc.*, 151 B.R. 674, 680 (Bankr. S.D.N.Y. 1993); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652 (1950)).

Courts have recognized that the publication of press releases may constitute adequate constructive notice to place parties on inquiry notice sufficient to trigger legal obligations or bar untimely claims. *See, e.g., In re NovaGold Res. Inc. Sec. Litig.*, 629 F. Supp. 2d 272, 289 (S.D.N.Y. 2009) (press release was sufficient to place investors on inquiry notice for purposes of the Securities Act’s limitations period); *See also Cross v. 21st Century Holding Co.*, 2001 WL 34808272, at \*7 (S.D.N.Y. Aug. 6, 2001); *In re JWP Inc. Sec. Litig.*, 928 F. Supp. 1239, 1253 (S.D.N.Y. 1996); *Caprin v. Simon Transp. Servs., Inc.*, 99 F. App’x 150, 154 (10th Cir. 2004).

**D. The Utilization of a Summary Proceeding to Resolve Disputed Interests and Disputed Claims Is Proper**

Here, if a Disputed Claim or Disputed Interest cannot be resolved amicably, then the Receiver will file a Resolution Motion. As detailed in Section 5(B) of the Proposed Procedures, a Resolution Motion is a summary proceeding involving the relevant Investor Objection or Claimant Objection, any evidence the Receiver or the Disputing Party deems relevant to the Court’s determination of the Disputed Claim or Disputed Interest, and if appropriate, the legal and factual bases for the parties’ respective positions. For the sake of efficiency, if there are multiple Disputed Interests or Disputed Claims, the Receiver is permitted to consolidate them into one or more omnibus Resolution Motions as she deems appropriate.

Summary proceedings have been upheld when, as here, they are used to implement claims procedures and investors and claimants receive an opportunity to be heard, to object to their interests and claim determinations, and to have their interests and claims considered by a court. *See SEC v. Credit Bancorp, Ltd.*, No. 99 CIV. 11395 RWS, 2000 WL 1752979, at \*33 (S.D.N.Y. Nov. 29, 2000) (finding that summary proceedings used in a receivership appropriate because they afforded claimants an opportunity to be heard regarding the validity of their interest in the receivership estate), *aff'd*, 290 F.3d 80 (2d Cir. 2002); *SEC v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) (approving summary proceedings to evaluate claims). The Proposed Procedures satisfy each of these requirements. As explained in *FDIC v. Bernstein*:

[T]he use of summary proceedings in equity receiverships, as opposed to plenary proceedings under the Federal Rules [of Civil Procedure], is within the jurisdictional authority of a district court.” Such procedures “avoid formalities that would slow down the resolution of disputes. This promotes judicial efficiency and reduces litigation costs to the receivership,” thereby preserving receivership assets for the benefit of creditors.

786 F. Supp. 170, 177-78 (E.D.N.Y. 1992) (citations omitted).

“Rule 56 of the Federal Rules of Civil Procedure gives the district court summary jurisdiction over all the receivership proceedings and allows the district court to disregard the Federal Rules.” *Elliott*, 953 F.2d at 1567 (citing Fed. R. Civ. P. 56). *Cf. SEC v. Callahan*, Case No. 2:12-cv-01065-JMA-AYS, Dkt. No. 186, 13-17 (E.D.N.Y. Feb. 20, 2014) (approving claim verification and objections procedures); *SEC v. Correll*, 4:05-cv-00472-RAS, Dkt. No. 369, 7 (E.D. Tex. Dec. 12, 2008) (approving procedures for resolving disputed claims, including summary proceedings); *SEC v. Platinum Management (NY) LLC, et al.*, 1:16-CV-06848-BMC, Dkt. No. 554, 7–9 (E.D.N.Y. Dec. 1, 2020) (same); *see also Byers*, 637 F. Supp. 2d at 184.

Moreover, the Proposed Procedures provide Investors and Claimants with required notice and an opportunity to be heard and are fair and reasonable. *Cf. Elliott*, 953 F.2d at 1567 (summary

proceedings are inappropriate where parties would be deprived a full and fair opportunity to present claims and defenses). Specifically, the Proposed Procedures provide for (i) notice to Investors of the information with respect to their Interests; (ii) the opportunity for Investors to dispute the information with respect to the Interests; (iii) notice to Claimants of the Receiver's determinations of their Claims; (iv) the opportunity for Claimants to object to the Receiver's determinations; and (v) the review of unresolved Disputed Claims and Disputed Interests by the Court.

**V. CONCLUSION**

**WHEREFORE**, the Receiver respectfully requests that Court grant the Motion and such other and further relief as is just and proper.

Dated: New York, New York  
May 28, 2025

**OTTERBOURG P.C.**

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