

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Obj. Deadline: 7/23/25 at 4:00 p.m. (ET)

Hrg. Date: 9/3/25 at 11:00 a.m. (ET)

**MOTION OF THE LIQUIDATING TRUSTEE FOR ENTRY
OF AN ORDER DIRECTING THE PRODUCTION OF DOCUMENTS**

Matthew Dundon, solely in his capacity as the Liquidating Trustee (the “Liquidating Trustee”) of the Fisker Liquidating Trust (the “Liquidating Trust”), hereby moves (the “Motion”), pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2004-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), directing the production of documents by Cowen Inc. (“TD Cowen”).² In support of this Motion, the Liquidating Trustee respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the Debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

² Since March 2023, Cowen Inc. is a wholly-owned subsidiary of Toronto Dominion Holdings (U.S.A.), Inc., whose ultimate corporate parent is The Toronto-Dominion Bank.



February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Liquidating Trustee confirms his consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with the Motion in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. The statutory predicates for the relief sought herein are Bankruptcy Code section 105(a), Bankruptcy Rule 2004, and Local Rule 2004-1.

BACKGROUND

A. General Background

1. On June 17 and 19, 2024, as applicable (the “Petition Date”), Fisker Inc. and its debtor affiliates (the “Debtors”) commenced the above-captioned cases (the “Chapter 11 Cases”) in the Court under chapter 11 of the Bankruptcy Code.

2. On October 15, 2024, the Debtors filed their fourth amended *Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Fisker Inc. and its Debtor Affiliates* [Docket No. 713] (as amended, the “Plan”).³

3. On October 16, 2024, the Court entered the *Findings of Fact, Conclusions of Law, and Order, Approving the Disclosure Statement on a Final Basis, Confirming the Debtors’ Joint Chapter 11 Plan of Liquidation, and Granting Related Relief* [Docket No. 722] (the “Confirmation Order”), thereby confirming the Plan. On October 17, 2024 (the “Effective Date”), the Plan went effective. *See* Docket No. 730.

³ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

4. Pursuant to the Confirmation Order, the appointment of the Liquidating Trustee was approved in all respects, including:

[T]o (a) carry out all rights and duties set forth in the Plan and Liquidating Trust Agreement, (b) appear and be heard on all matters related to the Chapter 11 Cases (as a representative of the Liquidating Trust and/or the Debtors, as applicable), (c) as set forth in Article VIII.B.3 of the Plan and this Order, investigate, prosecute and resolve, in the name of the Debtors and/or the name of the Liquidating Trustee, any Preserved Estate Claims (including, for the avoidance of doubt, any criminal causes of action), and (d) present to creditors and other courts of competent jurisdiction this Order as evidence of such authority.

Confirmation Order at ¶ 73.

5. On the Effective Date, the Debtors transferred “all of the Debtors’ and Estates’ rights, title, and interest in and to all of the Liquidating Trust Assets, and, in accordance with section 1141 of the Bankruptcy Code, the Liquidating Trust Assets, ... automatically vest[ed] in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, or interests.” Confirmation Order at ¶ 75. Moreover, “all attorney-client privileges, work product protections and other privileges, immunities, or protections from disclosure . . . held by any one or more of the Debtors (including any prepetition or post-petition committee or subcommittee of the board of directors or equivalent governing body of any of the Debtors and their predecessors) and the Committee . . . related in any way to the Liquidating Trust Assets and the purpose of the Liquidating Trust [were] transferred and assigned to the Liquidating Trust.” *Id.* at ¶ 104.

6. The Plan provides that, after the Effective Date, the Liquidating Trustee: “[s]hall have the sole authority to: (a) file, withdraw or litigate to judgment, objections to Claims; [and] (b) settle or compromise any Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court (other than a Professional Fee Claim).” Plan, Article X.B. In addition, the Liquidating Trust Agreement empowers the Liquidating Trustee to “seek the

examination of any Entity or Person, with respect to the Retained Causes of Action.” Liquidating Trust Agreement, Section 4.11(r).

B. The Rule 2004 Requests

7. On May 29, 2025, pursuant to its rights under the Liquidating Trust Agreement, the Liquidating Trustee sent TD Cowen, via email, a *Notice of First Request for the Production of Documents of the Fisker Liquidating Trust*, pursuant to Bankruptcy Rule 2004, substantially in the form attached hereto as **Exhibit B** (the “Rule 2004 Requests”).

8. The Rule 2004 Requests seek information that will assist the Liquidating Trustee with his investigation into potential causes of action against non-released parties. TD Cowen served as a financial and investment advisor for Fisker Inc. in various capacities from at least 2022 through Fisker’s bankruptcy, including, but not limited to pursuant to engagement letters between Fisker Inc. and TD Cowen from January 2023, and June 2023.

9. The Rule 2004 Requests seek information that properly relates to “the debtor’s acts, conduct, or property,” “the debtor’s liabilities and financial condition,” or other “matter[s] that may affect the administration of the debtor’s estate” Fed. R. Bankr. P. 2004(b). The information requested by the Rule 2004 Requests is not available by any other means and will be essential to the recovery of significant assets by the Liquidating Trustee.

RELIEF REQUESTED

10. By this Motion, the Liquidating Trustee requests entry of the Proposed Order, pursuant to Bankruptcy Rule 2004, in the form attached hereto as **Exhibit A** directing the production of documents from TD Cowen.

BASIS FOR RELIEF REQUESTED

11. Under Bankruptcy Rule 2004, “[o]n a party in interest’s motion, the court may order the examination of any entity.” Fed. R. Bankr. P. 2004(a). Moreover, “an entity may be compelled

under Rule 9016 to attend and produce documents or electronically stored information.” Fed. R. Bankr. P. 2004(c). Further, under Bankruptcy Code section 105(a), the Court maintains broad equitable powers to fashion an order or decree in aid of the enhancement of the value of the Liquidating Trust for the benefit of all stakeholders. *See* 11 U.S.C. § 105(a).

12. The examination of an entity may permissibly relate to “the debtor’s acts, conduct, or property,” “the debtor’s liabilities and financial condition,” and other “matter[s] that may affect the administration of the debtor’s estate” Fed. R. Bankr. P. 2004(b); *see also Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 278 (3d Cir. 2013) (“A Rule 2004 examination may be used to cover a wide range of subjects relating to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate.”) (internal citations omitted).

13. The scope of Bankruptcy Rule 2004 “has been explained as a broad investigation into the financial affairs of the debtor for the purpose of the discovery of assets of the estate and the discovery of fraudulent conduct.” *In re Lev*, 2008 WL 207523, at *4 (Bankr. D.N.J. Jan. 23, 2008) (citations omitted). Bankruptcy Rule 2004 examinations are “broad and unfettered, and ha[ve] been likened to a ‘fishing expedition’ and ‘an inquisition.’” *In re Millennium Lab Holdings II, LLC*, 562 B.R. 614, 625-27 (Bankr. D. Del. 2016) (internal citations omitted); *see also In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 400 (Bankr. W.D. Pa. 2008) (inquiry into any matter that may affect administration of the estate “comfortably falls within the allowed limits under Rule 2004(b)”). A party seeking authority to use Bankruptcy Rule 2004 must establish good cause for the relief requested. *See id.* at 627 (citing *Official Comm. of Unsecured Creditors v. Eagle-Picher Indus., Inc.*, 169 B.R. 130, 134 (Bankr. S.D. Ohio 1994)).

14. As detailed below (*infra* ¶¶ 20-22), the Liquidating Trustee has conferred with TD Cowen about TD Cowen's voluntary production of responsive information. Due to the nature of the information sought, some of which TD Cowen asserts is highly confidential and/or involves third party data, TD Cowen has declined to provide materials to the Liquidating Trustee absent issuance of a Court order, but it does not object to issuance of the order requested herein so long as its right to object to the Liquidating Trustee's requests (as to scope, burden, cost and/or confidentiality/privilege) is preserved.

15. In an effort to seek discovery and information from TD Cowen in a cost-efficient and expedient manner, the Proposed Order provides that Rule 2004 discovery will initially be conducted through document production only, while reserving the Liquidating Trustee's rights for a Rule 2004 examination.

16. The Rule 2004 Requests fit squarely within the purpose of Bankruptcy Rule 2004, as the Liquidating Trustee seeks to examine TD Cowen for the purpose of "discovering assets, examining transactions, and determining whether wrongdoing has occurred." *In re Gawker Media LLC*, No. 16-11700, 2017 WL 2804870, at *5 (Bankr. D. Del. 2017). TD Cowen served as Fisker's financial advisor during the relevant period and is likely to have relevant information critical to the objectives of the Liquidating Trust. Upon information and belief, TD Cowen has information in its possession relevant to the Liquidating Trustee's investigation of potential causes of action against non-released parties, including, but not limited to, TD Cowen's role advising Fisker in its financing transactions and in its capacity as Fisker's financial advisor more generally as it pursued a variety of potential financing options. Accordingly, the Liquidating Trustee has demonstrated good cause exists for issuing the Proposed Order.

RESERVATION OF RIGHTS

17. The Liquidating Trustee reserves the right to seek a further order from the Court in the event that the Liquidating Trustee subsequently determines that additional information is required.

18. The Liquidating Trust reserves all rights, claims, defenses, and remedies, including, without limitation, the right to amend, modify, or supplement this Motion, to seek additional discovery from any party, to add additional parties, or to raise additional grounds for granting this Motion during any hearing on the Motion, if one should be held.

19. TD Cowen reserves its right to object to the Rule 2004 Requests and any subsequent discovery and does not waive its right to seek Court intervention if the Parties are unable to resolve any disputes between them concerning the Rule 2004 Requests.

LOCAL RULE 2004-1 CERTIFICATION

20. Pursuant to Local Rule 2004-1(a), undersigned counsel certifies that, prior to filing this Motion, the Liquidating Trustee attempted to obtain the discovery sought herein on a consensual basis.

21. Pursuant to Local Rule 2004-1, since June 5, 2025, counsel for the Liquidating Trustee and counsel for TD Cowen, Duane Morris LLP, exchanged a series of emails and participated in a telephonic conference to discuss the Rule 2004 Requests and the relief sought in the Proposed Order.

22. In a telephonic conference on June 11, 2025, TD Cowen's counsel indicated that TD Cowen would not proceed on a voluntary basis and without an order entered by the Court. However, by email dated June 26, 2025, TD Cowen confirmed that it does not object to issuance of the requested Rule 2004 order provided that the order states that TD Cowen retains all rights to object to the scope of the Liquidating Trustee's Rule 2004 Requests.

NOTICE

23. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to TD Cowen; and (iii) those parties that have requested notice pursuant to Bankruptcy Rule 2002. The Liquidating Trustee submits that such notice is sufficient under the circumstances and that no other or further notice is required.

WHEREFORE, for the reasons stated herein, the Liquidating Trustee respectfully requests that the Court enter the Proposed Order, pursuant to Bankruptcy Rule 2004, substantially in the form attached hereto as **Exhibit A**, authorizing the issuance of a subpoena for production of documents by TD Cowen and granting the Liquidating Trustee such other and further relief as this Court may deem just and proper.

Dated: July 16, 2025
Wilmington, Delaware

MCDERMOTT WILL & EMERY LLP

/s/ David R. Hurst

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Counsel to the Liquidating Trustee

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

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Obj. Deadline: 7/23/25 at 4:00 p.m. (ET)

Hrg. Date: 9/3/25 at 11:00 a.m. (ET)

**NOTICE OF MOTION OF THE LIQUIDATING TRUSTEE FOR
ENTRY OF AN ORDER DIRECTING THE PRODUCTION OF DOCUMENTS**

TO: (a) the United States Trustee for the District of Delaware; (b) counsel to TD Cowen; and
(c) those parties that have requested notice pursuant to Bankruptcy Rule 2002

PLEASE TAKE NOTICE that, on July 16, 2025, Matthew Dundon, solely in his capacity as the Liquidating Trustee (the “Liquidating Trustee”) of the Fisker Liquidating Trust, filed the *Motion of the Liquidating Trustee for Entry of an Order Directing the Production of Documents* (the “Motion”) with the United States Bankruptcy Court in the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that objections or responses, if any, to the Motion must be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **July 23, 2025 at 4:00 p.m. (ET)** (the “Objection Deadline”). At the same time, you must serve a copy of the objection or response upon the undersigned counsel so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that, if an objection or response is timely filed and served, and such objection or response is not otherwise timely resolved, a hearing with respect to the Motion will be held before The Honorable Thomas M. Horan, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 5th Floor, Courtroom #5, Wilmington, Delaware 19801 on **September 3, 2025 at 11:00 a.m. (ET)** (the “Hearing”).

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¹ The Debtors in these Chapter 11 Cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the Debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTION OR RESPONSE IS RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY ENTER THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: July 16, 2025
Wilmington, Delaware

MCDERMOTT WILL & EMERY LLP

/s/ David R. Hurst

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Counsel to the Fisker Liquidating Trustee

EXHIBIT A

Proposed Order

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

<p>In re:</p> <p>FISKER INC., <i>et al.</i>,</p> <p style="text-align: right;">Debtors.¹</p>	<p>Chapter 11</p> <p>Case No. 24-11390 (TMH)</p> <p>(Jointly Administered)</p> <p>Related to Docket No. ____</p>
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**ORDER DIRECTING THE PRODUCTION OF
DOCUMENTS AND GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Matthew Dundon, solely in his capacity as the Liquidating Trustee (the “Liquidating Trustee”) of the Fisker Liquidating Trust, for entry of an order pursuant to Bankruptcy Code section 105(a), Bankruptcy Rule 2004, and Local Rule 2004-1 directing the production of documents from Cowen Inc. (“TD Cowen”)³; and the Court having jurisdiction to decide the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and upon consideration of the Motion; and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and finding that adequate notice of the Motion having been given, and that no other or further notice need be given; and the Court finding that directing TD Cowen to produce documents under Bankruptcy Rule 2004 is appropriate

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the Debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

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

³ Since March 2023, Cowen Inc. is a wholly-owned subsidiary of Toronto Dominion Holdings (U.S.A.), Inc., whose ultimate corporate parent is The Toronto-Dominion Bank.

for the reasons set forth in the Motion; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. The Liquidating Trustee is authorized, pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1, to serve a subpoena, substantially in the form of the Rule 2004 Requests, requesting information and the production of documents (the “Document Requests”) from TD Cowen.
3. Subject to its right to object to the Document Requests (as to scope, burden, cost and/or confidentiality/privilege) and without waiving its right to seek Court intervention if the Parties cannot resolve any disputes between the Parties concerning the Document Requests, TD Cowen shall respond to the Document Requests and produce the requested documents on or before thirty (30) days from service of such Document Requests to the offices of McDermott Will & Emery LLP, 1 Vanderbilt Avenue, New York, NY, 10017, or at such other time or location or in such other form as TD Cowen and the Liquidating Trustee may hereafter agree.
4. The Liquidating Trustee is authorized to take any and all actions necessary to implement the terms of this Order, including, but not limited to, issuing the Document Requests.
5. The Liquidating Trustee’s rights are reserved to request additional discovery and/or examination, including, without limitation, requests based on any information that may be revealed as a result of the discovery authorized pursuant to this Order, and TD Cowen reserves its rights to object to any such future discovery to the extent that it is directed at TD Cowen.
6. This Order is without prejudice to the right of the Liquidating Trustee to seek further discovery of any other entity.
7. The terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

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

EXHIBIT B

Rule 2004 Requests

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

In re:

Fisker Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

**NOTICE OF FIRST REQUEST FOR THE PRODUCTION
OF DOCUMENTS OF THE FISHER LIQUIDATING TRUST**

TO: TD Cowen Securities (f/k/a Cowen Inc.) (“TD Cowen”)

PLEASE TAKE NOTICE that, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and Rule 2004-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the post-effective Liquidating Trust of Fisker Inc., *et al.*, (the “Trust”), by and through its undersigned counsel, hereby requests that TD Cowen produce the documents and electronic information identified in Schedule A (the “Requests”) in its possession, custody, or control to the offices of McDermott Will & Emery LLP, One Vanderbilt Ave., New York, NY 10017, on or before **June 19, 2025**, or by such other date as may be ordered by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that the Trust reserves its rights under 11 U.S.C. §§ 101-1532, *et seq.* (the “Bankruptcy Code”), the Bankruptcy Rules (as defined herein), the Local Rules, any other applicable law regarding the subject matter hereof to amend, supplement, and/or modify Schedule A in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Dr, La Palma, CA 90623.

Rules, and any other applicable law. The Requests are provided without prejudice to, or waiver of, the Trust's right to conduct further discovery at a later date.

Dated: May 29, 2025
Wilmington, DE

MCDERMOTT WILL & EMERY LLP

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Counsel to the Fisker Liquidating Trust

SCHEDULE A

PLEASE TAKE NOTICE that, pursuant to Rule 2004(c) of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) and Rule 45 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 9016 of the Bankruptcy Rules, and Rule 2004-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, the Fisker Liquidating Trust (the “Trust”) of Fisker, Inc., *et al.*, hereby requests that TD Cowen produce the following Documents and information in response to the requests contained herein (the “Requests”) in TD Cowen’s possession, custody, or control to the offices of McDermott Will & Emery LLP, One Vanderbilt Ave, New York, NY 10017, at such date and time upon which the parties may mutually agree or may be ordered by the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that the Trust reserves its rights under the Bankruptcy Code and any applicable law regarding the subject matter hereof to amend, supplement, and/or modify the Requests in accordance with the Bankruptcy Code, the Bankruptcy Rules, and other applicable law.

DEFINITIONS

The following definitions of terms apply to all Requests. All words and phrases used herein shall be accorded their usual meaning and shall be interpreted in their common, ordinary sense.

1. The following rules of construction shall apply to all Requests:
 - a. the connectives “**and**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope;

b. the use of the present or past tense shall be construed to include both the present and past tenses as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope;

c. “**including**” shall not be construed as limiting any Request, and shall mean the same as “including, but not limited to.”

d. “**any**” and “**each**” shall be construed to include and encompass “**all**”; and

e. the use of the singular form of any word includes the plural and vice versa.

2. Any references to a corporation, partnership, proprietorship, association, organization, or any other business or legal entity (including any of the Fisker debtors) shall be deemed to include the corporation’s, partnership’s, proprietorship’s, association’s, organization’s, or other business or legal entities’ agents, accountants, advisors, employees, attorneys, officers, directors, direct or indirect shareholders, members, representatives, affiliates, subsidiaries, predecessors, successors, assigns, or any other Person (as defined below) acting or purporting to act on behalf of the corporation, partnership, proprietorship, association, organization, or other business or legal entity.

3. “2023 10-K” means Fisker’s annual report filed on Form 10-K pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, on or about April 23, 2024, for the period ending December 31, 2023.

4. “Alternate Conversion” shall mean the alternate conversion right as set forth in any Term Sheets and/or the Heights Agreement, including without limitation, section 4(e) of the Notes entitled “Right of Alternate Conversion Upon a Triggering Event.”

5. “Board Member(s)” shall mean any Person who has ever served as a director on the board of directors for Fisker (“Fisker Board of Directors”), or on the audit committee for the Fisker

Board of Directors (the “Audit Committee”) including but not limited to Henrik Fisker, Dr. Geeta Gupta-Fisker, John S. Dubel, Wendy J. Greuel, Mark Hickson, William R. McDermott, Roderick K. Randall, Henry Ward, Nadine I. Watt, and Mitchell S. Zuklie.

6. “Communication” shall mean the transmittal of information (in the form of facts, ideas, inquiries, or otherwise). For the avoidance of doubt, this may encompass any oral, written, or electronic transmission of information without limitation, including meetings, discussions, conversations, telephone calls, e-mail messages, text messages, chats, iMessages, Bloomberg, Telegram, WhatsApp, GroupMe, WeChat, Signal, Dust, Slack, Proton, QQ, memoranda, letters, analyst reports, telecopies, telefaxes, telexes, conferences, seminars, messages, notes, videotapes, photographs, microfilm, microfiche, magnetic disks, or other media of any kind.

7. “Concerning” shall mean relating to, referring to, describing, evidencing, or constituting.

8. “Documents” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A). For the avoidance of doubt, this encompasses hardcopy and electronic information (including electronic mail, text messages, and data from messaging applications (such as Slack)), all written, graphic, or printed matter of any kind, however produced or reproduced, including all originals, drafts, working papers, and non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, and all electronic records or representations of any kind or other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonable usable form, and any associated metadata. A draft or non-identical copy is a separate Document within the meaning of this term.

9. “Fisker” shall mean Fisker Inc., Fisker Group Inc., Fisker TN LLC, Blue Current Holding LLC, Platinum IPR LLC, and Terra Energy Inc., and all other entities affiliated with what is commonly known as Fisker (<https://www.fiskerinc.com>), including, as applicable, its predecessors, successors, partners, joint ventures, subsidiaries, affiliates, divisions, directors, Officers, principals, trustees, employees, agents, representatives, consultants, attorneys, auditors, accountants, consultants or any other Person(s) now or heretofore under the control of the foregoing or acting or purporting to act on its behalf.

10. “Heights” shall mean Heights Capital Management, Inc., as well as any predecessors, successors, partners, joint ventures, subsidiaries, affiliates, divisions, directors, officers, principals, trustees, employees, agents, representatives, consultants, attorneys, auditors, accountants, consultants or any other Person(s) now or heretofore under the control of the foregoing or acting or purporting to act on its behalf, including, but not limited, to CVI Investment, Inc., Susquehanna International Group, LLC, and Martin Kobinger.

11. “Heights Agreement” shall mean the financing transaction that Fisker considered, proposed, negotiated and/or consummated with Heights, with the aid of Heights’ advisors at Kelley Drye & Warren LLP, including, but not limited to the July 10, 2023 Securities Purchase Agreement (“SPA”); the \$340 million of senior unsecured convertible notes due July 10, 2025 at a 12% original issue discount (the “Notes”); and any subsequent amendments to the SPA entered into or series of Notes purchased. For the avoidance of doubt, this includes the September 29, 2023, amendment, which, among other things, increased the aggregate principal amount of senior unsecured convertible notes to \$793.4 million, and purchased an additional \$170 million Notes.

12. “Internal Controls” shall have the meaning ascribed to that term by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) 1992 report titled, “The

Internal Control-Integrated Framework” as follows: “Internal control is a process, effected by an entity’s board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance.”

13. “Officer” shall mean any Person who has ever served as the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Accounting Officer, or any similar position. For the avoidance of doubt, this includes, without limitation, Henrik Fisker, Dr. Geeta Gupta-Fisker, John Finnucan, Florus Beuting, and Joseph Lyden.

14. “Person” shall mean any individual, natural person, or business entity, including sole proprietorship, partnership, association, corporation, organization, joint venture, company, or any other legal, business, formal, or informal entity, including governmental bodies and/or agencies, and any department, affiliate, joint enterprise, or representative thereof.

15. “Pledge Agreement” shall mean the November 22, 2023, Agreement between Heights and Fisker pursuant to which the Prepetition 2025 Convertible Notes and the Additional Prepetition 2025 Convertible Notes became secured by a first-priority security interest in all of Fisker’s assets.

16. “Project Extreme” shall mean TD Cowen’s work as it relates to Fisker’s engagement of Cowen and Company, LLC (d/b/a TD Cowen) to act as financial advisor to Fisker Inc. in connection with Fisker’s proposed convertible debt financing with Heights.

17. “Project Flash” shall mean TD Cowen’s work to secure additional investment or financing opportunities for Fisker in 2022 and 2023, under this or any other project name, and including but not limited to the scope of work as defined in the December 26, 2022 Engagement Letter memorializing Fisker’s engagement of Cowen and Company, LLC to act as exclusive

financing advisor in connection with the Company's proposed debt financing as memorialized in a corresponding December 26, 2022 Engagement Letter.

18. "Q3 10-Q" shall mean Fisker's quarterly report filed on Form 10-Q pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, on or about November 22, 2023, for the period ending September 30, 2023.

19. "SAP Software" means any software, resource, or business solution offered by SAP SE and as used by Fisker, including but not limited to SAP's Enterprise Resource Planning (ERP) software.

20. "SEC" means the Securities and Exchange Commission, as well as any affiliates, divisions, directors, officers, principals, employees, agents, representatives, consultants, attorneys, auditors, accountants, consultants or any other Person(s) now or heretofore under the control of the foregoing or acting or purporting to act on its behalf.

21. "SEC Form S-1" means the registration statement the SEC requires domestic issuers to file in order to publicly offer new securities, including any related or ancillary forms, filings, statements, or documentation.

22. "SEC Form S-3" means the registration statement the SEC requires reporting company issuers to file in order to issue shelf offerings, including any related or ancillary forms, filings, statements, or documentation.

23. "TD Cowen" means TD Cowen as a division of TD Securities including, as applicable, its subsidiaries, affiliates, divisions, directors, officers, principals, trustees, employees, agents, representatives, or any other Person(s) now or heretofore under the control of the foregoing or acting or purporting to act on its behalf. For the avoidance of doubt, TD Cowen also includes Cowen, Inc. and/or Cowen and Company, LLC prior to its acquisition by TD Bank Group.

24. “Term Sheet” means the Term Sheet for Fisker, Inc., executed on June 13, 2023, between Fisker and Heights and regarding \$340 million in aggregate principal amount of OID Amortizing Senior Convertible Notes (the “Initial Notes”), based on a \$300 million investment.

25. “Third Party Fisker Professional” shall mean any provider of professional services, whether an individual or entity, that has ever advised Fisker, including but not limited to Blythe Global Advisors, LLC; Davis Polk & Wardwell LLP; Ernst & Young; Huron Consulting Group Inc.; JPMorgan Chase & Co.; Michael Healy as Chief Restructuring Officer; Mayer Brown LLP; Orrick, Herrington & Sutcliffe LLP; PricewaterhouseCoopers LLP; and SAP SE, as well as any predecessors, successors, partners, joint ventures, subsidiaries, affiliates, divisions, directors, officers, principals, trustees, employees, agents, representatives, consultants, attorneys, auditors, accountants, consultants or any other Person(s) now or heretofore under the control of the foregoing or acting or purporting to act on its behalf.

26. “Waiver Agreement” shall mean the November 22, 2023, Agreement between Heights and Fisker pursuant to which Heights agreed to waive a covenant event of default resulting from the late filing of Fisker Inc.’s quarterly report on Form 10-Q for the third quarter of 2023.

27. “You,” or “Your,” means TD Cowen.

INSTRUCTIONS

1. Capitalized terms used herein but not otherwise defined have the same meaning ascribed to them in the Heights Agreement.

2. The preceding definitions apply to these Instructions and each of the succeeding Requests.

3. You are required to produce all responsive Documents in Your possession, custody, or control, wherever located, including those in the custody of Your representatives, agents, professionals, affiliates, or anyone acting on your behalf. If no Document exists that is responsive

to a particular request, You must state so in writing.

4. These Requests are continuing requests pursuant to the Bankruptcy Rules. You must supplement any production of Documents that are received, discovered, or created after any of your responses to the Requests, or that are otherwise within Your possession, custody, or control, wherever located, including those in the custody of Your representatives, agents, professional, affiliates, or anyone acting on your behalf.

5. If You object to any part of any Request, You must produce all Documents that are responsive to the portions of the Request to which You do not object. You also must state the nature of, and grounds for, the objection.

6. If You cannot comply with any Request in full, You must comply to the fullest extent possible, and You should provide an explanation as to why full compliance is not possible.

7. Where You assert a claim of privilege or any other grounds for withholding in objecting to a Request and withhold a responsive Document on this basis, You must provide a withholding log setting forth (a) the nature of the privilege being claimed, (b) the type of Document being withheld, (c) the general subject matter of the Document, (d) the date of the Document, and (e) such other information sufficient to permit evaluation of the claim of privilege or other asserted basis for withholding, including, where appropriate, the author of the Document, the title or subject line of the Document, the addressee of the Document, and, where not apparent, the relationship of the author and the addressee to each other.

8. If a Document contains both privileged and non-privileged material, You must disclose the non-privileged material to the fullest extent possible without thereby disclosing the privileged material. If a party asserts a privilege to part of the material contained in a Document, the party asserting the privilege must clearly indicate the portions as to which it claims the

privilege. When a Document has been redacted or altered in any fashion, you must identify as to each Document the reason for the redaction or alteration, the date of the redaction or alteration, and the Person performing the redaction or alteration. Any redaction must be clearly visible on the redacted Documents.

9. All Documents produced in electronic format shall be in their native format and shall be OCR (Optical Character Recognition) capable and shall be produced with Relativity compatible load files.

10. Additional special processing of certain electronically stored information shall be as follows: Microsoft Excel spreadsheet fields shall not be converted to TIFF files and shall be produced in native format. A placeholder TIFF image shall be created, Bates numbered, and the produced Excel file shall be renamed to match the Bates number on its corresponding placeholder page. The exception shall be for redacted spreadsheets which shall be produced in TIFF format. Images for the redacted spreadsheets shall display the content in the same manner as if it were printed. The extractable metadata and text shall be provided for native files, and OCR will be provided for the un-redacted portions of the Documents. In producing Documents, all Documents that are physically attached to each other, or segregated or separated from other Documents, when originally located, should be produced as is.

11. If any Document called for by these Requests has been destroyed or discarded, you must identify that Document in writing by providing the following information: (a) any sender/author and any addressee; (b) any indicated or blind copies; (c) the Document's date, subject matter, number of pages, and attachments or appendices; (d) all Persons to whom the Document was distributed, shown, or explained; (e) its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; (f) the Persons who authorized and

carried out such destruction or discard; and (g) whether any copies of the Document presently exist and, if so, the name of the custodian of each copy.

12. Unless otherwise specified, the Document Requests seek Documents dated, created, or otherwise obtained on or between January 1, 2022, and May 31, 2024.

13. With the exception of Request 8, the Document Requests do not seek email messages to or from an “@fiskerinc.com” address. Apart from Request 8, the Document Requests seek internal TD Cowen Documents and Communications and/or Documents and Communications by or among Persons employed by TD Cowen and any third party other than Fisker, including without limitation, Communications between TD Cowen and any Officer or Board Member that did not utilize the @fiskerinc.com email address, and Communications between TD Cowen and any Third Party Fisker Professional and/or with Heights.

REQUESTS

1. All Documents and Communications, including internal Communications and drafts, Concerning Project Extreme, the Term Sheet, the Heights Agreement, the Pledge Agreement, and/or the Waiver Agreement, including but not limited to:

- a. Negotiations leading up to the execution of each of those documents;
- b. TD Cowen’s Communications with Heights relating to them;
- c. Analyses, summaries, recommendations, and/or presentations given by TD Cowen or any Person Concerning any of those documents, the advisability of Debtors entering into the transactions contemplated therein, and/or the advisability of Debtors agreeing to any of the terms contained therein;
- d. Discussions Concerning any of the representations, warranties, and covenants to be contained therein;

e. Discussions Concerning whether any breach of the representations, warranties, and covenants therein must be material in order to constitute a Triggering Event or Event of Default under the Heights Agreement;

f. Discussions Concerning cure rights and/or the ability to cure breaches of the representations, warranties, and covenants therein;

g. Discussions Concerning the Alternate Conversion rights and features in the Heights Agreement and/or its impact or potential impact on any Debtor.

2. For the period covering from January 1, 2023 through May 31, 2024, all Documents and Communications, including internal Communications and drafts, Concerning Fisker's efforts (or Your efforts on Fisker's behalf) to secure financing or investment from any entity other than Heights, including but not limited to:

a. Project Flash or other outreach or solicitation by You to any third-party Concerning financing for and/or investment in Fisker, and the responses to same;

b. Any unsolicited interest from third-parties in providing financing to and/or investing in Fisker;

c. Any statements by Fisker Concerning the availability, viability, and/or desirability of financing or investment opportunities from entities other than Heights;

3. All Documents and Communications Concerning any concerns or issues raised, management or operational decisions, omissions, deficiencies, weaknesses, issues, and/or any other matters that have or may negatively impact Fisker's ability to raise capital (through debt or equity), pay-off existing debt, or meet debt obligations, including, but not limited to, Internal Controls deficiencies or weaknesses, lack of adequate and/or qualified personnel, implementation and/or use of SAP Software, Fisker's stock price, Heights, the Heights Agreement, the Alternate

Conversion, the Pledge Agreement, the Waiver Agreement, issues or concerns with any Officer or Board Member (individually or collectively), or with any Third Party Fisker Professional, and/or general market conditions.

4. All Documents and Communications, including internal Communications and drafts, Concerning the delays in Fisker's filing of its Q3 10-Q and/or 2023 10-K, including but not limited to, the reasons or cause(s) of the delay(s) and/or its/their impact on Fisker.

5. All Documents and Communications, including internal Communications and drafts, Concerning the effect of Fisker's delay in filing its Q3 10-Q and 2023 10-K on its ability to utilize SEC Form S-1 and/or SEC Form S-3.

6. All Documents and Communications Concerning the impact that Heights' exercise of its Alternate Conversion rights, including without limitation, impacts on Fisker's stock price, ability to raise capital (through debt or equity), ability to pay-off existing debt, and/or meet its debt obligations.

7. All Documents and Communications Concerning TD Cowen's advice, counsel, and/or recommendations to Fisker, its Officers, Board Members, the Audit Committee (collectively or individually), and/or Third Party Fisker Professionals relating to any of the matters set forth in Requests 1-6.

8. All memoranda, PowerPoints, summaries, and/or presentations of any kind regardless of form that TD Cowen made to Fisker, its Officers, Board Members, Audit Committee (collectively or individually), and/or any Third Party Fisker Professional (Concerning Fisker).