

ENTERED

April 21, 2025

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

RHODIUM ENCORE LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-90448 (ARP)

(Jointly Administered)

AGREED MEDIATION ORDER

Whereas the above-captioned (a) Debtors, through the Special Committee of the Board of Directors of Debtor Rhodium Enterprises (the “Special Committee”); (b) the Ad Hoc Group of SAFE Parties (the “Ad Hoc Group”); (c) the Private Investor Club Feeder Fund 2020-G LLC, Private Investor Club Feeder Fund 2020-H LLC, Private Investor Club Feeder Fund 2020 D LLC, Private Investor Club Feeder Fund 2020 E LLC, and Stadlin Group Investments - Series Rockdale LLC (the “Investors”); (d) the GR Fairbairn Family Trust, Grant Fairbairn Revocable Trust, NC Fairbairn Family Trust, the Nina Claire Fairbairn Revocable Trust, Transcend Partners Legend Fund LLC, Valley High LP, NCF Eagle Trust, GRF Tiger Trust (collectively, the “Transcend Group”); (e) DLT Data Center 1, LLC; (f) the Proof Capital Alternative Growth Fund, Proof Capital Alternative Income Fund, Proof Capital Special Situations Fund, and Proof Proprietary Investment Fund Inc. (the “Proof Group”); (g) the Cross the River LLC, Elysium Mining LLC, and Trine Mining, LLC (the “CET Group”); (h) the Liquid Mining Fund I, LLC; Liquid Mining

¹ The Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (“REI”) (6290), Rhodium Technologies LLC (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



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Fund II, LLC; and Liquid Mining Fund III, LLC (the “Liquid Mining Group”); (i) Imperium Investment Holdings LLC, Nathan Nichols, Nick Cerasuolo, Cameron Blackmon and Chase Blackmon (the “Imperium Parties”); and (j) Distributed Ledger Technologies Ltd. and Risor Shipping Holdings AS (the “Risor Parties”) (collectively, the “Parties”) agree that mediation may be fruitful to consensually resolve several issues related to the proposed plan of reorganization (the “Plan”) filed or to be filed in this case; and

Whereas, the Parties have jointly requested entry of an order for the appointment of the Hon. Russell F. Nelms (Ret.) (the “Mediator”).

It is **HEREBY ORDERED** that:

1. The Parties wish to mediate concerning allocation and distribution of estate assets to stakeholders and related matters (“Mediation”) and have engaged in good faith with respect to the determination and appointment of the Mediator.

2. The Mediation shall be deemed to have commenced upon its filing on the docket, and shall terminate on the date on which the Mediator (or the parties unanimously) determines that the Mediation has terminated. Any Party may terminate such party’s participation in the Mediation by informing the other parties and the Mediator that it no longer desires to continue the Mediation. The confidentiality and other protections of this Order shall be deemed to have commenced upon its filing, and do not terminate upon termination of the Mediation.

3. The Court adopts Section S of the Procedures for Complex cases in the Southern District of Texas; provided, that nothing herein shall alter, modify, or otherwise prejudice or impair any of the Parties’ rights or obligations under any pre-existing confidentiality agreements or protective orders, all of which shall remain in full force and effect. The assignment of the

Mediation does not delay or stay discovery, any hearings scheduled, or any deadlines set by the Court or agreed to by the Parties.

4. Each Party at the Mediation shall participate to the extent practicable with a principal or other representative (or multiple principals or other representatives as needed). Any such principal or representative of a Party shall either have reasonable settlement authority or have sufficient stature in his or her organization to be able to recommend to any ultimate person, board or commission that a proposal or settlement be approved.

5. Current and former members of the full board of directors of REI and investment vehicles owned or controlled by such members, and/or members appointed by them, have individual financial interests in the outcome of the Mediation (“Insiders”), and the Special Committee has determined that, in connection with the Mediation, the question of how consideration is allocated, including in a restructuring or as part of a plan of reorganization, between different constituents who have asserted conflicting legal and equitable theories to support their claims and interests, is an inherent Conflict Matter² (“Allocation Conflict”) over which the Special Committee has authority on behalf of Debtors. Therefore, the Special Committee (Messrs. Eaton and Wells) will direct Debtors’ involvement in the Mediation with the assistance of its independent counsel (Barnes & Thornburg LLP), and Insiders will not act with or on behalf of the Debtors in connection with the Mediation to the extent it involves the Allocation Conflict or any other Conflict Matter, and shall be recused from participating in any deliberations or analysis of the Debtors/Special Committee concerning the Allocation Conflict or any other Conflict Matter.

² As that term is defined in the September 22, 2024 Declaration of David Eaton in Support of the Application for an Order Authorizing the Retention of Barnes & Thornburg LLP as Counsel to the Special Committee of the Board of Directors of REI (ECF No. 175 at 40 of 81).

6. The Special Committee may consult and confer with Debtors' co-Chief Restructuring Officers (Messrs. Dunn and Robinson) and the Debtors' financial advisors. The Special Committee retained, and the estates have paid for, independent counsel (Barnes & Thornburg LLP) for the Special Committee to advise it in connection with Conflict Matters. *See* ECF Nos. 175, 194, 265 (collectively, the "Retention"). Accordingly, concerning the Allocation Conflict and any other Conflict Matter, the Special Committee will seek advice only from Barnes & Thornburg LLP, and will ensure the complete participation in deliberations or consultations from Barnes & Thornburg LLP. Furthermore, neither the Special Committee nor Barnes & Thornburg LLP shall take direction or advice from the Insiders, Quinn Emanuel or any other law firm that reports to the full board of the Debtors concerning the Allocation Conflict or any other Conflict Matter. For the avoidance of doubt, nothing herein precludes the following activities at the Mediation: (i) Insiders participating in the Mediation (personally or through their non-estate funded separate counsel) concerning their individual interest(s), if any, in Mediation matters, including interacting with the Special Committee in that regard, (ii) Quinn Emanuel from acting in its capacity as general counsel to the Debtors, or (iii) the Special Committee from consulting with or seeking advice about non-Conflict Matters from professionals who have advised the full Board; each subject to the limitations provided in the preceding sentences of this paragraph 6 and paragraph 5.

7. Parties' financial advisors may participate in the Mediation, as necessary.

8. The Mediator has absolute discretion as to the timing, means, and methods of the Mediation and may add additional parties to the mediation at his discretion which parties shall be deemed to be bound by the terms of this Order; *provided, however*, that the Mediation shall be

non-binding and that the Mediation may be conducted via live or virtual means and determined by the Mediator.

9. To the extent applicable based on the qualifications of the Mediator, the Mediator will have full, unqualified judicial immunity in his role as a mediator.

10. The Mediator may not be called as a witness in this proceeding concerning his role herein as the Mediator.

11. Each Party shall bear its own costs and expenses incurred in connection with the Mediation, including attorneys' fees, except that Debtors alone will pay the Mediator's fees.

12. The Parties and their respective counsel shall participate in the Mediation in good faith.

13. All communications made by and all submissions prepared by a Party in connection with the Mediation, including but not limited to discussions or communications with or in the presence of the Mediator and all settlement proposals, counterproposals, and offers of compromise made during the Mediation shall (a) be subject to protection under Rule 408 of the Federal Rules of Evidence and any other equivalent or comparable federal and state laws and rules, (b) not be submitted or offered as evidence in any court, tribunal, or other proceeding, including, without limitation, in any pleading or other submission to any court, (c) not be subject to discovery in any pending or forthcoming proceeding, including but not limited to the above-referenced bankruptcy proceeding or any adversary proceeding related thereto, (d) be subject to any applicable confidentiality agreements entered into between the Parties governing the disclosure of confidential information (including, if applicable, any cleansing provisions relating to material non-public information), (e) be protected from disclosure under the Texas Public Information Act, Texas Government Code Chapter 552, and (f) not constitute material nonpublic information.

14. Each Party may share with the Mediator any information it has received pursuant to a protective order without regard to the provisions thereof; *provided, however*, the sharing with the Mediator of any information designated as Confidential or Highly Confidential shall not waive the confidentiality designation of such information and the Mediator shall not disclose such information to anyone else.

15. The Mediator may confer with Judge Mark X. Mullin regarding details from the previous mediation in these chapter 11 cases occurring on February 19, 2025, notwithstanding Paragraph 11 of the previous mediation order entered by this Court. *See* Agreed Mediation Order Appointing Judge Mark Mullin as Mediator, ECF No. 767 (Feb. 11, 2025), at 11.

16. The disclosure by a Party of privileged information to the Mediator does not waive or otherwise adversely affect the privileged nature of the information.

17. As soon as practicable after the conclusion of the Mediation, the Mediator shall file a mediation statement which shall identify who participated in the Mediation and state whether the proceeding was settled or an impasse was declared by the Mediator.

18. The Court retains exclusive jurisdiction with respect to all matters arising out from or related to the implementation, interpretation, and enforcement of this Order.

Signed: April 21, 2025


Alfredo R Pérez
United States Bankruptcy Judge

AGREED AS TO FORM AND CONSENT:

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