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

In re:	§	Chapter 11
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)

EMERGENCY MOTION OF THE SAFE AHG TO COMPEL PRODUCTION BY IMPERIUM PARTIES AND DEBTORS

Emergency relief has been requested. If the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response. Emergency relief is requested by May 21, 2025.

[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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). 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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The Ad Hoc Group (the "SAFE AHG") of parties to Simple Agreements for Future Equity ("SAFEs") with Debtor Rhodium Enterprises, Inc. ("REI") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") of Rhodium Encore LLC and its affiliated debtors and debtors in possession (the "Debtors" or "Rhodium"), respectfully submits this motion (the "Motion") to compel production of documents by Imperium Holdings LLC ("Imperium") and insiders Chase Blackmon, Cameron Blackmon, Nathan Nichols, and Nicholas Cerasuolo (collectively with Imperium, the "Imperium Parties") and the Debtors, including the Special Committee of REI's board of directors (the "Special Committee") as appropriate.

PRELIMINARY STATEMENT

Parties to SAFE agreements are the largest single class of creditors in these cases by far, having invested $87 million in cash in the Debtors. As the representative of approximately 80% of those SAFEs by value, the SAFE AHG has taken an active role in these cases, including as a key participant in the mediation before Judge Mark X. Mullin on February 19, 2025 (the "February Mediation"). The February Mediation led directly to the recently closed transaction with Whinstone, pursuant to which the Debtors sold all or substantially all of their assets and ceased operations (the "Whinstone Transaction"). As a result of the Whinstone Transaction, the SAFEs' right to receive the "Cash Out Amount" – repayment in full of the aggregate $87 million advanced to the Debtors – has been triggered. According to the Debtors, they will have at least approximately $90 million in tangible and intangible asset value for distribution to the SAFEs and other remaining stakeholders, after repayment of administrative costs and senior creditors. This figure appears to be substantially understated, likely by at least $10 million, including because it materially overestimates tax and professional fee liability.

The SAFE AHG is concerned, however, that the Imperium Parties – including current and

former Rhodium board members Nathan Nichols, Chase Blackmon, Cameron Blackmon and Nicholas Cerasuolo, and Imperium, the investment vehicle they own and control – will seek unfairly to siphon off much of that value for themselves. To accomplish that end, the Imperium Parties may try to take advantage of their continuing domination and control of the Debtors' plenary board of directors, and transactions that they fraudulently engineered pre-petition. Worse, the Imperium Parties may even try to push through a plan that diverts millions of dollars of Debtor assets to pay them in respect of claims and interests that are entitled to recover nothing, including on grounds of equitable subordination, all while gifting themselves with releases of claims against the insiders that are among the estates' most valuable assets.

The SAFE AHG has sought for months to investigate the claims and allegations arrayed against the insiders, and the results already are damning. As discussed in more detail below, evidence suggests that the Imperium Parties (i) usurped the Debtors' corporate opportunity by pocketing for themselves more than [redacted] in investment proceeds that should have been used to build, and potentially save, the Debtors' businesses (the "Private Sale"), [redacted], (iii) engaged in widespread fraud (by commission and omission) in connection with the so-called "Roll-Up Transaction" and solicitation of SAFE and other outside investors, among other matters, (iv) wrongfully took a "control premium" for their own benefit that artificially increased the insiders' ownership in the Debtors' enterprise at the expense of stakeholders in REI, including SAFEs and outside equity, (v) cost the Debtors and their innocent stakeholders $50 million or more through their gross negligence related to Winter Storm Uri power credits, and (vi) engaged in other rank self-dealing, including by advancing their own financial interests over those of REI stakeholders while purportedly acting as REI fiduciaries (collectively, the "Insider Allegations").

Unfortunately, the SAFE AHG's efforts to investigate the Insider Allegations have been met with substantial resistance from both Imperium and the Debtors, and important categories of documents relevant to the Insider Allegations and plan issues remain unproduced. For example, on supposed "privileged grounds," Imperium has refused to produce key documents that Imperium previously produced to the Special Committee of the Debtors' board of directors (the "Special Committee") in connection with the Special Committee's investigation. To the extent such materials ever were privileged – a contention that the SAFE AHG does not concede [2] – the privilege was waived by their disclosure to the Special Committee, and they must be turned over to the SAFE AHG without further delay. Imperium also should be ordered remove its "professional eyes only" designation from documents related to the insiders' alleged tax fraud, so that these critical materials can be shared with and considered by parties in interest in these cases.

For its part, the Debtors have refused to provide correspondence exchanged with Imperium concerning the Insider Allegations, except on terms that unduly limit their use. The correspondence at issue is not privileged and should be produced without delay. Likewise, the Special Committee has finished its investigation of Insider Allegations and prepared a detailed report, but has refused to provide the full report to the SAFE AHG or other stakeholders. The investigation was conducted and the report prepared at substantial estate expense, and it should be made available promptly and in full to Rhodium's stakeholders, just as Debtors have long promised. Indeed, in correspondence copied to the Special Committee, the Debtors specifically refused to produce further discovery until the Special Committee's "investigation is complete and the Special Committee has published its conclusions," and then only if "the SAFE AHG (or another

[2] As discussed below, Imperium never produced the privilege log required under applicable rules. *See* FED. R. BANKR. P. 7026.

party)" can "point to flaws in the investigation" or "disagrees with the Special Committee's conclusions." Ex. A, Letter from Debtors to the SAFE AHG (Jan. 23, 2025). Having for months induced reliance by parties-in-interest on receipt of these "findings," the Debtors and Special Committee cannot now refuse their promised "publication."

The Debtors also should be required to turn over non-privileged correspondence with their directors and officers insurance carriers, and to remove the "professional eyes only" designation from their years-old general ledgers and other documents that relate directly to Imperium's alleged tax fraud. Plan and estate asset-related documents also have been improperly withheld from disclosure by the Debtors. For instance, the Debtors notified the SAFE AHG for the first time just days ago that they purport to have engaged ***post-petition*** in a transaction "equitizing" a debt holder. But they have refused to produce the documents memorializing the transaction except pursuant to "mediation privilege," and have failed to produce correspondence and other material relating to this extraordinary and unauthorized transaction. The Debtors also have failed and refused to produce documents concerning payments made to law firms and others pre-petition that relate to, among other things, potential preference liability.

Production of these materials is urgent. The Debtors recently sought a brief extension of exclusivity but also noted that they may file what their counsel refers to as a "food fight" plan, leaving stakeholders to contend among themselves for shares in the Debtors' liquidated assets. Certainly, any plan that calls for, or could result in, a material recovery to Imperium (much less a release of the estates' valuable claims against the insiders) will require careful examination by the Court of the veracity of the Insider Allegations, including the Special Committee's own findings concerning valuable claims against the Imperium Parties. The materials sought also will be relevant to depositions relating to the Insider Allegations and plan proposals, which are beginning

this week. The SAFE AHG respectfully asks the Court to order the Debtors and Imperium to make the requested disclosures without further delay.

BACKGROUND

I. Debtors Sell Substantially All Assets To Whinstone, And Cease Operations

1. When these cases were filed, the Debtors' operations consisted in their entirety of two mining facilities: One located in Temple, Texas, and one located in Rockdale, Texas. Post-petition, the Debtors sold their Temple facility to a third party, leaving Rockdale as the Debtors' only operating asset as of approximately December 18, 2025. On February 19, 2025, a mediation was convened before Judge Mark X. Mullin amongst (a) the Debtors, (b) Whinstone, (c) its publicly traded parent company, Riot, Inc., (d) the SAFE AHG and (e) the Official Committee of Unsecured Creditors ("UCC"). With the SAFE AHG's active participation, the mediation was successful, as the Debtors have since acknowledged publicly. Audio Rec. of Mar. 19, 2025 Hearing, *Whinstone US, Inc. v. Imperium Inv. Holdings LLC, et al.*, Case No. 24-03240 (ARP) [Docket No. 46]. Among other things, Whinstone agreed to acquire all of the Debtors' tangible assets located at Rockdale (previously defined as the "Whinstone Transaction"). On or around April 28, 2025, the Whinstone Transaction closed, all or substantially all of the Debtors' assets were transferred to Whinstone, and the Debtors' ceased operations. *See* Riot Platforms, Inc., *Riot Platforms Announces Closing of the Acquisition of Rhodium Assets at the Rockdale Facility Following the Previously Announced Settlement Agreement,* Riot Platforms (Apr. 28, 2025), https://www.riotplatforms.com/riot-platforms-announces-closing-of-the-acquisition-of-rhodium-assets-at-the-rockdale-facility-following-the-previously-announced-settlement-agreement.

2. In return, Whinstone transferred to the Debtors proceeds of the Whinstone Transaction then valued at $185 million: $129.9 million in cash, $6.1 million in the form of a

returned security deposit, and $49 million in publicly traded Riot stock using the volume-weighted average price for the 10 days preceding the closing to set the number of shares of stock. *Id.* The SAFE AHG understands that favorable price action related to Riot stock increased the value of the Whinstone Transaction proceeds by at least several million dollars above the $185 million amount identified in the Sale Motion. After repaying the Debtors' secured and unsecured notes and administrative costs, the Debtors have indicated at least $90 million in proceeds will remain for other stakeholders, before adding in the value of claims against the insiders.

II. The Whinstone Transaction Triggered SAFEs Right to Cash Out Amount

3. The SAFE parties provided more capital to the Debtors than any other stakeholder in these cases – $87 million.[3] The SAFE agreements provide that REI is required to repay the full amount that the SAFE holders advanced – referred to in the agreements as the "Cash Out Amount" – upon the occurrence of either a Liquidity Event or a Dissolution Event. On the petition date, no triggering event had yet occurred, and the SAFE holders therefore were contingent "creditors" within the plain terms of the United States Bankruptcy Code (the "Bankruptcy Code").[4]

[3] In fact, the value of the SAFEs' claims is greater than the value of all of Rhodium's other creditors ***combined***. As of the Petition Date, the face value of notes in Rhodium Encore and Rhodium 2.0 totaled approximately $50 million. *See, e.g.*, Decl. of David M. Dunn in Supp. of Chapter 11 Pets. and First Day Relief, *In re Rhodium Encore LLC*, No. 24-90448 (Bankr. S.D. Tex. Aug. 29, 2024), ECF No. 35 ("First Day Decl.") at ¶ 76. The value of the Rhodium Technologies promissory notes, whose holders comprise six of the seven members of the UCC, is approximately $14.5 million. The total value of the Debtors' trade debt appears to be modest, with the exception of an approximately $4.5 million claim by a pre-petition law firm that likely will be subject to challenge.

[4] "Creditor" is defined by the Bankruptcy Code to include any "entity that has a claim against the debtor that arose at the time of or before the order of relief." "Claim," in turn, is defined to include any "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." 11 U.S.C. § 101(5)(A) (emphasis added). When the petition was filed in these cases, the SAFE holders right to receive "payment" of the Cash Out Amount was still contingent, because there had not yet been a Liquidity Event or Dissolution Event. Hence, even prior to the Whinstone Transaction, the SAFE holders were creditors, since a contingent right to payment is a "claim" within the meaning of the Bankruptcy Code. *See In re JNL Funding Corp.,* 438 B.R. 356, 363 (Bankr. E.D.N.Y. 2010) ("A contingent right to payment constitutes a claim, and the holder of such a contingent right is a creditor.").

4. The SAFEs' right to the cash out amount is no longer contingent. The Whinstone Transaction either constitutes a Liquidity Event, which includes an "all or substantially all" asset sale, or a Dissolution Event, which includes a "voluntary termination of operations" or "any other liquidation, dissolution or winding up" that is not a Liquidity Event. *See* Ex. B, SAFE Agreement of James M. Farrar and Adda B. Delgadillo Farrar, at 3 (containing materially identical terms to other SAFE Agreements). Upon the occurrence of either event, the SAFE holders are entitled to receive "a portion of Proceeds" from the Liquidity Event or Dissolution Event "equal to" the "Cash Out Amount," which in turn is equal to the total amount paid by the SAFE holders to REI pursuant to the SAFE. *See id.* at 1-2. Here, the Proceeds of the Whinstone Transaction include cash, and Riot stock that has since been converted to cash, in an amount equal to at least $185 million. In the aggregate, SAFE holders are entitled to payment of $87 million worth of those Proceeds in the form of the Cash Out Amount. Under the absolute priority rule, and the terms of the SAFEs themselves, the SAFE holders have the right to be repaid the Cash Out Amount in full before any recoveries are provided to equity.

III. The SAFE AHG Investigates Insider Allegations

5. Despite their status as creditors, the SAFEs have an interest in ensuring that insiders are properly subordinated, since substantial value could be trapped by Imperium at Rhodium Technologies LLC ("Technologies"). The insiders organized the Debtors in a manner designed to provide themselves with a structural payment advantage by holding Imperium equity at Technologies. Remarkably, moreover, the insiders handed board control of REI – the entity that is the SAFEs' counterparty, and issuer of outside common stock – to Imperium, despite its lack of an economic interest in that entity.

6. The insiders' scheme ultimately will not succeed in robbing REI and its stakeholders of recoveries. For one thing, Technologies is required by contract and otherwise to repay to REI at least $87 million in SAFE proceeds that REI transferred to Technologies in 2021, a claim that is of course senior to any Imperium equity interest at Technologies. In addition, the claims and interests of the insiders to whatever residual value is left at Technologies after REI is repaid must be subordinated in view of the insiders' remarkable pre-petition fraud and other misconduct, some of which is discussed below.

A. Usurping Debtors' Corporate Opportunity, Insiders Pocket [redacted]

[redacted]

[redacted].

8. A clearer breach of the duty of loyalty by the insiders could hardly be imagined, with the resulting harm simply staggering. [redacted] The notion that these insiders should recover even a penny before satisfaction in full of all innocent creditors, and distributions to other non-insider stakeholders, is all but unthinkable under these circumstances.

B. [redacted]

9. Compounding their malfeasance, [redacted]

[5] As discussed below, when that representation was made, the insiders knew or should have known that it was false or misleading, because by then they already had fleeced the Debtors out of the cash that otherwise would have been available to develop Building D.

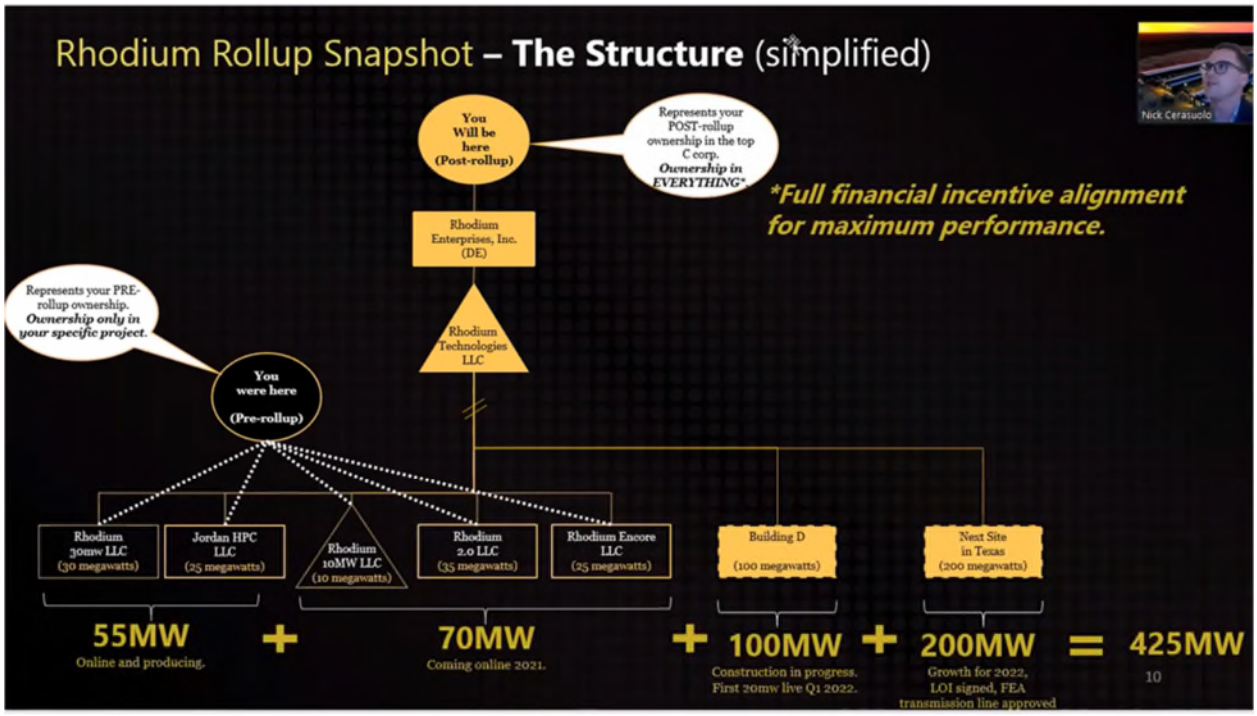
[redacted] these allegations would give rise to claims against the Insiders of the most serious kind, including for fraud, conversion and breach of the fiduciary duty of loyalty, liability for knowing receipt of illegal distributions in violation of DEL CODE ANN. tit. 6 § 18-607, and to claw back sale proceeds and other transfers that may have been fraudulently transferred. Notably, both the Debtors and Imperium have "over-designated" documents concerning these allegations as "professional eyes' only" under the protective order, preventing the Debtors' actual stakeholders from evaluating the relevant evidence for themselves. As discussed below, Imperium and the Debtors should be required to remove those designations.

C. Fraud On SAFEs And Other Investors

1. Roll-Up Transaction Fraud and Breaches of Fiduciary Duty

10. The Insiders also masterminded a corporate restructuring that closed on or around June 30, 2021 (the "Roll-Up Transaction") that resulted in an immediate, and incurable, fiduciary conflict of interest. Pursuant to the Roll-Up Transaction, outside investors were induced to trade their equity interests at the operating company level for shares in REI, the newly created ultimate Rhodium holding company, while Imperium kept its economic interest at Rhodium Technologies. Incredibly, however, the Roll-Up Transaction provided exclusive voting control over REI, and control of REI's board of directors, to ***Imperium***, even though Imperium had no economic interest at REI (only at Technologies, one step down the chain). Hence, the economic interests of REI's board, and those of REI's outside stakeholders, were not aligned.

11. The insiders sought to conceal this aspect of the transaction at their May 13, 2021 investor presentation. [redacted] In a slide displayed during a presentation regarding the Roll-Up Transaction, the Insiders correctly disclosed that outsiders were trading their interests in the operating companies ("You were here") for REI interests ("You will be here"), but failed to point out Imperium would own its interests at Rhodium Technologies (indeed, they did not mention Imperium at all):



See supra Ex. D, at 10.

12. The diversion of interests between the Imperium insiders in control of REI, and the actual economic stakeholders of REI, unsurprisingly, led to deeply inequitable outcomes. Indeed, the conflicted board of REI (also the managing member of Technologies) repeatedly took steps designed to advance the interests of Technologies at the expense of REI. As just one example, the

conflicted REI board caused Technologies to amend its operating agreement in a manner designed (ultimately unsuccessfully, the SAFE AHG will argue) to free Technologies from its obligation to repatriate $87 million in SAFE proceeds that REI transferred to Technologies before making any "pro rata" distributions to Imperium. The conflicted REI board engaged in more clumsy self-dealing when it agreed to make the SAFEs an obligation of REI in the first place, rather than an obligation of Technologies. Other examples of Imperium using its control over REI (an entity in which it had no economic interest) to favor itself abound.

13. But when they sought to induce investors to agree to the Roll-Up Transaction, the insiders made-believe that it would be good for everyone. That was flatly false. Among other things, Imperium used the Roll-Up Transaction to help itself to a so-called "control premium," which increased Insider ownership of the enterprise by about [redacted] at the expense of REI and its non-Insider stakeholders. *See, e.g.*, Ex. E, [redacted] and indeed, there can be no doubt that the insiders were required either to allocate the control premium entirely to REI – since it was REI (as Imperium's marionette) that in fact controlled the enterprise – or at least distribute that interest to Imperium and REI on a pro rata basis. Instead, REI "fiduciaries" turned that value over disproportionally to themselves, choosing yet again enrich themselves at the expense of innocent REI stakeholders.

14. The Insiders also touted the Roll-Up Transaction as a means of participating in profits generated by "Building D." *See, e.g., id.* During the May 13, 2021 presentation, [redacted]

[redacted]. The Insiders failed to disclose, however, that they had just scooped up for themselves [redacted] that could and should have been available for the build out, thus dooming Building D to failure. On or around June 21, 2021, Whinstone sent an email to the Insiders cancelling the power contract for Building D, signaling its final death-knell. Ex. F, Email from Chad Harris to Nathan Nichols (June 21, 2021). Incredibly, however, when the Insiders circulated an "Amended Disclosure" for the Roll-Up Transaction to investors on June 23, 2021, they did not bother to advise investors that Building D had been cancelled a week earlier. *See* Ex. G, Email from Rhodium Management to Investors (June 23, 2021); Ex. H, Roll-Up Transaction Addendum dated June 22, 2021 (attached to the foregoing email). The Roll-Up Transaction closed two days later with full participation by the Debtors' investors, including based on knowingly false information. This kind of fraud by commission and omission would warrant, if proven, equitable subordination of the Insiders' claims and interests in these cases, among other remedies.

2. Winter Storm Uri Fiduciary Breaches By Insiders

15. The Insiders appear also to have committed clear breaches of their fiduciary duties when they settled Rhodium's claims against Whinstone relating to Winter Storm Uri for pennies on the dollar. Pursuant to Rhodium's power agreements with Whinstone, Whinstone was required to sell power to the grid, and turn the profits over to Rhodium whenever the price for power exceeds [redacted]

16. During Winter Storm Uri in February 2021, power prices spiked as high as $9,000 per MW or more, resulting in Whinstone receiving an estimated $125 million in power credits, a substantial portion of which contractually should have been turned over to Rhodium, as Rhodium's Insiders were well aware. *See, e.g.*, Ex. K, Riot Blockchain, Inc., Quarterly Report (Form 10-Q) (Aug. 23, 2021) (excerpted). Indeed, even as the storm raged, Insider Nathan Nichols boasted about the "windfall" Rhodium would receive related to "this huge credit from this winter storm." *See* Ex. L, WhatsApp Conversation between Chad Harris (Whinstone) and Nathan Nichols (Rhodium) (Feb. 15, 2021, 8:31 PM) (excerpted). Incredibly, however, [redacted] The Insiders apparently claimed they had been tricked by Whinstone into believing that Whinstone did not sell power back to the grid during the storm, and that there were no profits to share with Debtors.

17. As the SAFE AHG explained in a January 10, 2025 letter to the Special Committee, however, the sale by Whinstone of power back to the grid was disclosed publicly weeks before the insiders released Debtors' claims against Whinstone. On April 8, 2021, Riot publicly filed the stock purchase agreement (the "SPA") pursuant to which it acquired Whinstone. The SPA contained an entire section (titled "Energy Credits") revealing that Whinstone in fact had sold power to the grid in connection with Winter Storm Uri. Remarkably, [redacted] No competent fiduciary would have accepted Whinstone's alleged representations under these circumstances.

18. Moreover, the power contracts ***required*** Whinstone to sell power to the grid during Winter Storm Uri and turn the profits over to the Debtors. [redacted] If, as the insiders claim to have believed, Whinstone had failed to do so, the Debtors would have had a breach of contract claim against Whinstone equal to the amount of profits lost as a result. [redacted], without first acquainting themselves with readily available pertinent facts, constitutes a clear violation of (at least) the Insiders' fiduciary duties of care. *See, e.g.*, *In re Bridgeport Holdings, Inc.*, 388 B.R. 548, 569 (Bankr. D. Del. 2008) (holding that the failure of directors and officers to consider "all material information reasonably available" to them in making a consequential business decision constituted a breach of the duty of care); *see also San Antonio Fire & Police Pension Fund v. Amylin Pharm., Inc.*, 983 A.2d 304, 318 (Del. Ch. 2009) (same).

3. Additional Insider Self-Dealing And Breaches of Fiduciary Duty

19. The SAFE AHG anticipates still more other examples of insider self-dealing, fraud and breaches of duty will be revealed when discovery is completed. Indeed, as discussed above, every step taken by the Imperium-dominated REI board was subject to a debilitating conflict of interest, given Imperium owned its economic interest not at REI, but at Technologies. Compliance with the SAFE AHG's long-outstanding discovery demands is critical to seeking to surface as much of the associated misconduct as is possible before any plan is considered or confirmed.

IV. The SAFE AHG Discovery Concerning Insider Allegations And Plan Issues

20. The SAFE AHG sought Rule 2004 discovery from the Debtors beginning on October 8, 2024, and added additional requests for information concerning the Insider Allegations by letter dated November 7, 2024. *See, e.g.*, Ex. N, Letter from the SAFE AHG to the Debtors (Oct. 8, 2024); Ex. O, Letter from the SAFE AHG to Debtors (Nov. 7, 2024). The Debtors agreed

to produce responsive documents without requiring the SAFE AHG to file a Rule 2004 notice or motion. *Id.* As an accommodation to the Debtors, who claimed that they needed to focus their energy on pending litigation with Whinstone, the SAFE AHG was patient with the Debtors' failure promptly to respond to its requests.[6]

21. After Phase I of the Whinstone litigation concluded, however, the Debtors still failed to produce much of the information sought by the SAFE AHG. Among other things, the Debtors repeatedly claimed that the SAFE AHG should simply rely on the Special Committee to carry out a diligent investigation of insider misconduct, and report back the results. *See, e.g.*, *supra*, Ex. A, Letter from Debtors to the SAFE AHG (Jan. 23, 2025) (refusing to produce any further documents to the SAFE AHG responsive to its search terms until the Special Committee produced its findings). Given its position as the potential fulcrum creditor in these cases, and its views of the merits of the claims against the insiders, the SAFE AHG was unwilling to stand down. Ex. P, Response Letter from the SAFE AHG to Debtors (Jan. 27, 2025) (refusing to accede and requesting again that Debtors produce responsive documents to the SAFE AHG's search terms). The SAFE AHG's decision turned out to be prescient, including because the Special Committee has since refused to produce the report of its investigation (as discussed below and elsewhere).

22. On or around January 8, 2025, the Debtors offered to disclose documents reviewed by the Special Committee as part of its investigation. The SAFE AHG quickly realized, however, that the electronically stored information ("ESI") against which the Special Committee had run its

[6] The Debtors' initial production, made on or around October 10, 2024, was comprised almost entirely of a package of information Debtors previously had prepared to satisfy books and records requests made by other parties, and that Debtors were able to provide to the SAFE AHG at the push of a button. As of November 22, 2024, the Debtors had produced only 319 documents total to the SAFE AHG. The vast majority of these documents were already gathered and produced previously to others in connection with prepetition demands, or constitute Whinstone litigation materials, other pleadings, SAFE agreements, joinder agreements, and promissory notes – all of which should have required very little effort on Debtors' part to collect and produce.

search terms omitted critical documents. For example, [redacted] The search terms initially employed by the Special Committee also omitted concepts critical to evaluating the Insider Allegations. [redacted] *See supra*, Ex. Q, Letter from the SAFE AHG to the Special Committee (Jan. 10, 2025) (identifying Special Committee criteria for gathering ESI, including custodians and search terms).

23. The SAFE AHG pointed out that it understood that the Debtors already had gathered all ESI from the insiders and others, including Imperium-domained emails, without date restriction, in connection with the Whinstone assumption litigation (the "Litigation ESI"), and proposed that more robust search terms be applied to that already-gathered Litigation ESI. At first, the Debtors argued that their provision to the Special Committee of Litigation ESI that Debtors produced to Whinstone in the assumption litigation was sufficient, even though most of the documents relevant to the Insider Allegations would have been irrelevant to the assumption litigation, and therefore not included amongst the Litigation ESI produced to Whinstone. Finally, on February 5, 2025, the Special Committee advised that [redacted] *See* Ex. R, Email from the Special Committee to the SAFE AHG (Feb. 5,

2025). The Special Committee never explained why it did not simply run additional searches against the Debtors' existing database of Litigation ESI, and never identified any basis for the Omitted Searches.

24. After much wrangling, the Debtors agreed to run the SAFE AHG's search terms against the full Litigation ESI universe, and de-duplicate the results against ESI otherwise produced by the Debtors to the SAFE AHG. On or around May 2, 2025, the Debtors made a substantial production, but have withheld approximately 2,900 documents on grounds of privilege. The Debtors have refused to provide the SAFE AHG with the search terms used by the Debtors as an initial "privilege screen." To save resources, the SAFE AHG asked the Debtors to prepare a metadata log – an entirely automated report that can be run at the push of a button – but nearly two weeks later, none has been produced.[7] Like Imperium, the Debtors also have failed and refused to produce certain discrete categories of documents of manifest relevance to these cases, and should be ordered to do so without further delay.

ARGUMENT

I. Imperium Should Be Compelled To Produce Responsive, Non-Privileged Documents, And Modify Overly Restrictive Confidentiality Designations

A. Imperium's Assertion of Privilege Is Meritless

25. In or around early 2025, Imperium produced a substantial number of documents to the Special Committee, including based on the Special Committee's revised search terms, and addressed to Imperium ESI omitted from prior productions to the Special Committee (the "Imperium Special Committee Production"). On or around March 25, 2025, Imperium agreed to produce to the SAFE AHG only a subset of the Imperium Special Committee Production

[7] On May 9, 2025, the Debtors advised that they "think" they will be able to get the metadata log to the SAFE AHG "early" this week. It has not yet arrived.

comprising "approximately 1,700 documents" that the Special Committee apparently had identified as particularly relevant to the Insider Allegations (the "Special Committee Production Subset"). Initially, Imperium said it would produce all approximately 1,700 documents during the week March 31, 2025. *See* Email from SAFE AHG to Imperium (Apr. 2, 2025). They did not. On or around April 17, 2025, for the first time, Imperium claimed the production of the Special Committee Production Subset had to wait until Imperium had completed a "privilege review." Ex. S, Imperium Email to the SAFE AHG (Apr. 17, 2025). Imperium finally produced what it claimed was most of the Special Committee Production Subset on April 21, 2025, but excluded approximately 80 such documents on alleged grounds of privilege.

26. Imperium's privilege claim is meritless on its face. As an initial matter, Imperium never bothered to provide a privilege log, in violation of applicable rules. *See* Fed. R. Bank. P. 7026 (incorporating by reference Fed R. Proc. 26(5) providing that "when a party withholds information … by claiming that the information is privileged … the party must … describe the nature of the documents … not produced … in a manner that … will enable other parties to assess the claim"). The obligation to produce a log is mandatory, and automatic. *See, e.g. id.; In re Harmon*, 2011 WL 302859, *10 (Bankr. S.D. Tex. Jan. 26, 2011) (Isgur, J.) ("It is fundamental that [producing party] had a duty to produce a privilege log listing withheld documents, even without request from [the requesting party].").

27. But no matter the basis that Imperium might one day claim for privilege (if Imperium ever provides the log required by the rules), that protection from disclosure would have been waived. Every single document subject to this prong of the SAFE AHG's motion was, by definition, produced previously by Imperium to the Debtors' Special Committee, in connection with the Special Committee's investigation of claims against Imperium and its principals worth

tens of millions of dollars. It is axiomatic that disclosure of documents to a current or potential adversary waives any immunity from production that might otherwise have prevailed. *S.E.C. v. Brady*, 238 F.R.D. 429, 441, 444 (N.D. Tex. 2006).

28. Imperium claimed that it had an email agreement of some kind with the Special Committee that served to protect Imperium's privilege, notwithstanding its disclosure. The SAFE AHG repeatedly requested a copy of the alleged agreement, but it was never produced. Needless to say, Imperium's *ipse dixit* assertion that it has an effective no-waiver agreement does not satisfy its burden of establishing the existence of a privilege. Notably, Imperium does not contend that its agreement with the Special Committee was incorporated in a Court order pursuant to Federal Rule of Evidence 502(d). But even a 502(d) agreement does not prevent waiver based on the ***deliberate*** disclosure of attorney-client communications that appears to be at issue here. *See, e.g., Hosteler v. Dillard*, 2014 WL 6871262, *4 (S.D. Miss. Dec. 3, 2014) ("Fed R. Evid. 502(d) [is] not applicable to the ***intentional*** disclosures at issue.") (emphasis in original); *see also T&W Holding Co., LLC v. City of Kemah, Tex.*, 641 F. Supp. 3d 378, 383 (S.D. Tex. 2022) (deliberate production of documents inclusive of privileged materials not "inadvertent" within meaning of Rule 502).[8]

29. Moreover, the attorney client privilege will be waived even by an inadvertent disclosure if the disclosing party fails to promptly claw them back. Here, Imperium produced the documents at issue to the Special Committee months ago, and did so deliberately, and to a party

[8] Several courts have noted that extending Rule 502(d) to intentional disclosures may enable a party to use the rule as a means to produce documents favorable to its position while holding back harmful materials. *See RTC Indus., Inc. v. Fasteners for Retail, Inc.*, 2020 WL 1148813, at *8 (N.D. Ill. Mar. 9, 2020) (stating that the court's prior comments regarding a Rule 502(d) order were not "inten[ded] to give [plaintiff] license to selectively disclose and withhold privileged documents at its will"); *XY, LLC v. Trans Ova Genetics*, Lc, 2018 WL 11000694, at *4 (D. Colo. May 14, 2018) ("this court concludes that Rule 502 does not permit the selective, intentional waiver of communications protected by the attorney-client privilege").

that expressly was seeking to develop viable claims against Imperium and its insiders. Imperium does not claim ever to have tried to "claw back" any of the subject documents from the Special Committee, nor indicated it has any intention of trying to recover those materials. That makes sense, because Imperium apparently agreed the Special Committee could use the allegedly "privileged" documents in its investigation. In any event, Imperium's inaction would constitute a further waiver. *Apex Mun. Fund v. N-Group Sec.*, 841 F. Supp. 1423, 1433–34 (S.D. Tex. 1993) (holding that documents inadvertently disclosed without any effort to timely retrieve the documents constituted a waiver of privilege); *Zapmedia Services, Inc. v. Apple Inc.*, 2010 WL 5140672, at *2 (E.D. Tex. Sept. 24, 2010) (similar); *Adaptix, Inc. v. Alcatel-Lucent USA, Inc.*, 2015 WL 12815316, at *3 (E.D. Tex. July 23, 2015) (similar). The Imperium Parties should be required to produce the entirety of the Imperium Special Committee Production, without further delay; or, at a minimum, all documents withheld from the Special Committee Production Subset.

B. Imperium's Overly Restrictive Confidentiality Designations Must Be Modified

30. Imperium also should be required to remove the "Professional Eyes Only" designation from income tax-related documents it produced to the SAFE AHG on or around February 2, 2025 (the "Tax Materials"). The Tax Materials are directly related to one of the most serious charges against the insiders: that they used Debtor assets to pay [redacted]

31. While perhaps confidential (despite their age), the Tax Materials do not constitute trade secrets or confidential research development or commercial information, nor defamatory matter, and do not warrant the undue restriction associated with a Professional Eyes' Only designation. The SAFE AHG and its constituents who have signed onto this Court's protective

order should be permitted to examine the Tax Materials to consider the merits of the tax-related claims arrayed against the insiders and decide for themselves whether any proposed plan release is appropriate. Client access is particularly important because the SAFE AHG does not have an outside financial advisor, and instead relies on the expertise of one of its members, the Blockchain Recovery Investment Consortium., to analyze complex financial information, including the kind embodied in the Tax Materials. Imperium's unduly restrictive designation should be removed. *See, e.g.*, *Martinez v. City of Ogden*, 2009 WL 424785, *1 (D. Utah Feb. 18, 2009) (rejecting attorneys' eyes only label because it improperly impeded client's "ability to direct his own litigation").

II. The Debtors Should Be Ordered To Make Additional Disclosures

A. The Debtors Must Produce Documents Concerning Post-Petition Equitization

32. The SAFE AHG recently learned that the insiders may, post-petition, have caused the Debtors to "equitize" a loan agreement with Proof Capital Alternative Growth Fund ("Proof"), without any prior notice to the Debtors' stakeholders, approval by the Court, or apparent oversight from the Debtors' Special Committee. The SAFE AHG reserves all of its rights, remedies, claims and objections relating to this unauthorized transaction. However, to the extent valid, the transaction could impact the Debtors' capital structure, and plan negotiations. The SAFE AHG promptly requested that the Debtors turn over the relevant transaction materials, and all related documents. After ignoring the SAFE AHG's request for about ten days, the Debtors finally produced a single document (with attachments), which they purported to designate as being subject to "Rule 408" and "Mediation Privilege." The document in question constitutes a business record, and is subject to a valid document request from the SAFE AHG. The Debtors cannot hide behind the mediation order to prevent it from being produced, and to the extent appropriate, examined and used in connection with these cases. They should be ordered to produce it without restriction.

33. The Debtors must also be required to produce all non-privileged documents and communications relating to the transaction at issue. It would be highly irregular, to say the least, for conflicted insiders to have caused the Debtors to engage in a purported capital transaction post-petition, without notice to or consent from any stakeholders or the Court. The SAFE AHG and other stakeholders are entitled to discovery, without delay, concerning all of the circumstances surrounding this transaction, including any analysis of the relevant decision-makers and any communications between the Debtors and Proof or other parties concerning or relating to the transaction.

B. The Special Committee's Correspondence with Imperium, And Its Report And Conclusions Concerning Its Investigation, Must Be Produced Without More Delay

34. The Special Committee provided the SAFE AHG with copies of two letters it sent to Imperium to the SAFE AHG on or around April 5, 2025 and April 19, 2025, but subject to mediation privilege (and subject to the SAFE AHG's right to argue that restriction is inappropriate). Presumably, the Special Committee engaged in other correspondence with Imperium related to their April 5 and 19 letters, but none has been produced. All such correspondence, at least through April 21, 2025, should be disclosed in its entirety, and without any restriction on its use. By definition, the material sought is not subject to any privilege, nor could it be. It is an exchange of arguments between two adversaries – the insiders on the one hand, and the Special Committee investigating serious claims against the insiders on the other. *See, e.g.*, *In re Nw. Senior Hous. Corp.*, 661 B.R. 345, 361 (Bankr. N.D. Tex. 2024) (disclosure to a third person waives work product privilege if protected material is either given to an adversary or treated in a manner that "substantially increases the likelihood that an adversary will come into possession of the material").

35. Nor are the communications protected by "mediation privilege." The pertinent mediation order provides that "the confidentiality and other protections of this Order," like the mediation itself, "shall be deemed to have commenced upon its filing" (i.e., on April 21, 2025). ECF No. 960. The Special Committee letters at issue were sent on April 5 and 19, 2025. The Special Committee may argue that some of the identified correspondence is subject to Rule 408, but that does not make it immune from discovery. "By its terms, Rule 408 limits the ***admissibility*** of evidence, not its ***discoverability***." *See, e.g. Travelers Prop. Cas. Co. of Am. V. Bobrick Washroom Equip., Inc.*, 2024 WL 4289897, *3 (M.D. Pa. Sept. 25, 2024) (affirming order requiring production of Rule 408 communications) (emphasis in original). Notably, Rule 408 material is not inadmissible for ***all*** purposes. *Id.* (noting that settlement communications are admissible for a variety of purposes). But whether or not the communications at issue here are admissible is a question for another day. For now, the SAFE AHG simply seeks their production, relief to which it plainly is entitled. *Id.* (even if "not admissible in evidence," production of Rule 408 material "remains available so long as it is otherwise within the scope of discovery").

36. Likewise, the Special Committee's report should be produced in its entirety. To be sure, the Special Committee provided a redacted version of the "fact" section of its report to the SAFE AHG and others, but on conditions that limit its use in these cases. The Special Committee also provided slides concerning its legal conclusions relating to those facts, but again only on the condition that those slides remain off the record. It would be entirely unfair for the Debtors to authorize the expenditure of vast sums from stakeholder recoveries to fund the Special Committee's investigation without giving those same stakeholders full access to the Special Committee's findings and conclusions.

37. This is particularly so given the Debtors' repeated admonition in these cases that stakeholders should limit their own discovery because they could rely on the Special Committee's investigation instead. For example, in a letter copied to counsel for the Special Committee on January 23, 2025, the Debtors argued that additional discovery should be limited:

> "…until the investigation is complete and ***the Special Committee has published its conclusions***. If at that point, the SAFE AHG (or another party) disagrees with the Special Committee's conclusions and can point to any flaws in the investigation, the Debtors will revisit any such contention at that time. The updates and productions the Debtors are giving to the SAFE AHG are more than sufficient for the SAFE AHG to know immediately ***upon publication*** if it disagrees with the conclusions of the Special Committee."

Ex. A at 4 (emphasis added). Debtors went on to contend that the SAFE AHG should "allow the Special Committee to complete its investigation, and then, ***only after the Special Committee has produced its findings***, if the SAFE AHG can identify specific facts that support a contrary result, will further document requests be entertained." *Id.* at 5. The Debtors and Special Committee cannot now withhold the report they promised could be relied on by stakeholders in lieu of additional discovery.

C. D&O Insurance Carrier Correspondence Should Be Produced

38. The SAFE AHG wrote to the Special Committee on December 26, 2024 to outline many of the serious claims against the insiders and demanded that "all the Debtors D&O insurance carriers (and any other potentially relevant insurers) are put on notice concerning the Claims and allegations discussed herein, and any other potentially covered claims and allegations of which you may be aware." Ex. T, Letter from the SAFE AHG to Debtors and the Special Committee (Dec. 26, 2024), at 1-2 . The SAFE AHG provided additional evidence and detail concerning the claims against the Debtors' insiders on January 10, 2025. *See* Ex. Q. The SAFE AHG understands

that the Debtors provided the SAFE AHG's correspondence to certain insurance carriers as requested, and have received responses from at least some of those carriers.

39. The insurance carriers' position concerning coverage in these cases is obviously of great relevance to all of Rhodium's stakeholders, and to ongoing negotiations concerning a potential plan structure. Nevertheless, the Debtors have refused to produce carrier correspondence, based on what we understand to be unfounded claims of attorney-client privilege. As the party asserting privilege, the burden is on the Debtors to demonstrate how the coverage correspondence satisfies each element of privilege. *Lanelogic, Inc. v. Great American Spirit Ins. Co.*, 2010 WL 1839294, at *2 (N.D. Tex. May 6, 2010). The Debtors have failed to meet this burden. Indeed, neither Debtors nor the Special Committee ever bothered even to provide a privilege log identifying specific communications, and the basis for withholding each such communication. *In re Harmon*, 2011 WL 302859, *10 (Bankr. S.D. Tex. Jan. 26, 2011) (Isgur, J.) ("It is fundamental that [producing party] had a duty to produce a privilege log listing withheld documents, even without request from [the requesting party].").

40. In any case, assertion of privilege under these circumstances would be substantively meritless, and inconsistent with the Debtors' own prior treatment of coverage correspondence in these cases. Courts do not recognize a general "insurance carrier-insured" privilege that protects communications between the carrier and insured simply by virtue of a carrier-insured relationship. *See, e.g., Aiena v. Olsen*, 194 F.R.D. 134, 136 (S.D.N.Y. 2000). Moreover where, as here, communications are sent for the purpose of obtaining coverage, courts recognize that such communications fall within the regular course of business and are not created for the purpose of either seeking or providing legal advice. *See, e.g., Linde Thomson Langworthy Kohn & Van Dyke v. RTC*, 5 F.3d 1508, 1515 (D.C. Cir. 1993) ("if what is sought is not legal advice, but insurance,

no privilege can or should exist"); *In re Residential Capital, LLC*, 575 B.R. 29 (Bankr. S.D.N.Y. 2017) (recognizing that "an insurance company's claim handling activities are generally subject to discovery even if they were performed by an attorney" and requiring production of documents typical of claims handlers); *In re Pfizer Inc. Securities Litig*., 1993 WL 561125 at *8 (S.D.N.Y. Dec. 23, 1993) (privilege was not applicable to communications between insured and carrier, where the purpose of the communications was the seeking of insurance coverage from the carrier and not the provision of legal advice); *Aiena*, 194 F.R.D. at 135 (holding that communications between defendants and their insurers relating to a coverage dispute between them were not privileged); *Appalachian Regional Healthcare, Inc. v. U.S. Nursing Corp*., 2017 WL 9690398, *4 (E.D. Ky. Apr. 5, 2017) (communications with insurer regarding applicability of insurance coverage and exclusions discoverable; attorney-client privilege and work product are not implicated where the communications were "regarding insurance coverage").

41. Consistent with this case law, numerous courts have compelled the production of letters from insurers responding to an insured's claim for coverage. *See, e.g*., *Crum & Forster Specialty Ins. Co. v. Great W. Cas. Co*., 2016 WL 10459397, *10 (W.D. Tex. Dec. 28, 2016); *Gabiola v. Mugshots.com, LLC*, 2019 WL 426143, *3 (N.D. Ill. Feb. 4, 2019); *Ramos v. Town of East Hartford*, 2016 WL 7340282, *9 (D. Conn. Dec. 19, 2016). Similarly, the Debtors in these cases have previously produced letters with insurers concerning coverage on claims other than those arising out of the Insider Allegations. [redacted] Notably, the letters that have been produced presumptively concern the same policies at issue in respect of the claims arising out of the Insider Allegations, yet the Debtors did not assert privilege over those communications. The

Debtors have not explained why letters with insurers in respect of coverage of claims concerning the Insider Allegations would be privileged, when comparable letters with those same insurers concerning other claims are not.

42. The letters at issue in this Motion were exchanged between the Debtors and the D&O insurance carriers for the purposes of seeking insurance coverage and responding to that claim. The communications were not sent for the "pursuit of legal representation or the procurement of legal advice," to seek "legal advice with respect to a concrete claim," or to aid an "insurer-provided attorney in preparing a specific legal case." *Linde Thomson Langworthy Kohn & Van Dyke*, 5 F.3d at 1514. Nor could they reasonably "be viewed as implicitly designed to convey facts to a carrier-appointed attorney for use in the defense of the insureds." *Aiena*, 194 F.R.D. at 135–36. Rather, they were sent as part of the typical claims handling process and consequently "bear[] only the most attenuated nexus to the attorney-client relationship and [do] not come within the ambit of the privilege." *Linde Thomson Langworthy Kohn & Van Dyke*, 5 F.3d at 1514.

D. Information Concerning Law Firms, Including Potential Preference Payments

43. On March 10, 2025, the SAFE AHG sought all communications concerning any modified proposed engagement of Lehotsky Keller Cohn LLP ("LKC"), such as the March 4, 2025 engagement letter between LKC and Debtors that is the subject of the Debtors March 6, 2025 motion to modify the terms of LKC's engagement. Ex. W, Letter from the SAFE AHG to Debtors (Mar. 10, 2025). The Debtors said they would produce any non-privileged documents, but no production was forthcoming, and Debtors specifically refused to prepare a privilege log. Ex. X, Email from the SAFE AHG to Debtors (Mar. 20, 2025). Particularly in light of LKC's insinuation that it may have claims against Quinn arising from the fee application, preparation of a log of

related communications through the current date is essential, required by the rules, and should be ordered.

44. The SAFE AHG also requested production of documents sufficient to identify the dates and amounts of all payments, including any "retainer" or "retainer replenishment" payments, made by the Debtors to LKC and Stris & Maher LLP ("Stris"), including before these bankruptcy cases were filed. See *supra*, Ex. W. Based on available information, LKC may have received [redacted] The SAFE AHG sought information concerning the historical circumstances of payments to LKC and Stris including in anticipation of any ordinary course defense either firm may make. The SAFE AHG also seeks production of pre-petition invoices and related documents concerning LKC's services, including as they relate to LKC's claim that LKC's pre-petition fee arrangement with the Debtors' somehow justifies a modification of the terms proposed in the initial LKC retention application in these cases. Although the SAFE AHG explained this purpose for its request to the Debtors during the parties' March 20, 2025 meet and confer, the Debtors have not produced any of the requested information. The SAFE AHG respectfully asks that the Court require them to do so.

EMERGENCY CONSIDERATION

45. Pursuant to Local Rule 9013-1, the SAFE AHG respectfully requests emergency consideration of this Motion. Any delay in granting the relief requested herein would cause irreparable harm to the SAFE AHG as these bankruptcy cases are proceeding through a critical phase, and the documents sought by the Motion are necessary for ongoing depositions and global settlement-related discussions. To the extent certain parties, including but not limited to

Imperium, seek to progress these cases and/or negotiate resolutions without these disclosures, then SAFE AHG and other interested parties may be irreparably harmed. Accordingly, the SAFE AHG respectfully request that the Court grant the relief requests in this Motion on an emergency basis, on or before May 21, 2025.

CONCLUSION

For the foregoing reasons, the SAFE AHG respectfully requests that the Court enter an order, substantially in the form of the proposed order attached hereto, compelling the Debtors to produce the materials described in more detail herein.

Dated: May 12, 2025

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

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Counsel to the SAFE AHG

CERTIFICATE OF CONFERENCE

I certify that, beginning at least around January 6, 2025 and culminating on May 9, 2025, the SAFE AHG conferred with Debtors, the Special Committee, and Imperium on numerous occasions concerning the matters set forth in this Motion, and we have been unable to resolve these matters.

/s/ Sarah Link Schultz
Sarah Link Schultz

CERTIFICATE OF SERVICE

I certify that on May 12, 2025, I caused a true and correct copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Sarah Link Schultz
Sarah Link Schultz

EXHIBIT A

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January 23, 2025

VIA ELECTRONIC MAIL
MHURLEY@AKINGUMP.COM
Mitchell P. Hurley
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
Bank of America Tower
New York, NY 10036

Re: ***Rhodium Encore LLC, et al., Case No. 24-90448***

Dear Mitchell:

We write in response to your letter dated January 21, 2025 ("Letter").[1] As has been the case in our previous and unnecessarily iterative correspondence, your concerns and demands are misinformed and unwarranted. As relevant to your latest requests: (i) the Tax Returns are not "readily available to Debtors," though, as you note, the Special Committee may have obtained access to them (a process in which the Debtors are not involved); (ii) the Debtors did not refuse to produce the requested hit report, but are coordinating with Debtors' litigation counsel to run ESI hit reports, and despite your predictions to the contrary, it is proving to be time consuming and has diverted their time away from litigation matters against Whinstone; (iii) the Debtors' production of the Special Committee Documents conforms with our prior agreements and is eminently sufficient; and (iv) to the extent the SAFE AHG is requesting the production of privileged documents, the Debtors have never waived privilege, the Debtors have never produced any documents to the SAFE AHG on a common interest basis, and have serious doubts whether a common interest agreement would hold against a third party.

The Debtors have worked constructively with the SAFE AHG throughout these cases and intend to continue to do so, but have not been afforded the same courtesy. In addition to the multiple document productions and responses to the SAFE AHG's requests, which to date has consisted of 14 volumes and total over 42,000 documents, the Debtors provided a draft plan of

[1] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Letter.

reorganization ("Plan") to the SAFE AHG for comment on January 3, 2025, and were met with radio silence, having only received comments today, almost three weeks later. In an effort to move these cases forward constructively, the Debtors request that the SAFE AHG cease with their incessant demands for productions and instead turn their attention to the Plan and progressing these chapter 11 cases.

As Debtors have stated consistently and repeatedly throughout these cases, equity interests and claims based on contracts to receive equity fall below creditor recoveries both under the Bankruptcy Code and the structural seniority of unsecured creditors at the operating company levels. The SAFE AHG seeks to duplicate the work of the Special Committee, and the Debtors and Special Committee have been accommodating, providing responsive documents from the Special Committee (and will continue to do so on a rolling basis) subject only to review for privilege.

The specific allegations and requests in the Letter are addressed in more detail below.

Tax Returns

As referenced in the Letter, the Debtors' position on the production of the Tax Returns has always been, and remains, that the Debtors will search for documents in their possession and provide anything responsive. To the extent the Debtors ever "promised to produce the Tax Returns," as misleadingly alleged in the Letter, they did so in the context of producing any documents Debtors discovered *in their possession*, and the Debtors have in fact provided all tax returns it located within its possession. Nothing in the applicable rules or law requires anything more.

Debtors strongly disagree with the assertion that the Tax Returns are "readily available to [Debtors]" by virtue of the fact that they are within the possession, custody, or control of the Debtors' insiders, and no case law stands for this proposition. Nor are the Debtors aware of any authority for the proposition that the fiduciary status of any insider mandates the production of his or her personal tax return. The SAFE AHG's position would be the same as us insisting that Akin Gump Hauer Strauss Hauer & Feld LLP has constructive possession, custody, or control of your personal tax returns—a ludicrous proposition. The Debtors welcome any authority establishing the notion that an organization has effective possession of the personal tax returns of its insiders and, moreover, that these sensitive documents should be produced without a sufficient showing of need.[2]

[2] "Although courts do not extend a privilege or protection to tax returns, the privacy interests they implicate is recognized. *See, e.g., Natural Gas Pipeline Co. of Am. v. Energy Gathering, Inc.,* 2 F.3d 1397, 1411 (5th Cir. 1993) (summary calendar). The Fifth Circuit recognizes that discovery of tax returns requires that the requesting party demonstrate both: (1) "that the requested tax information is relevant to the subject matter of the action"; and (2) that there is a "compelling need" for the information because the information contained in the tax

As noted in the Letter, the SAFE AHG should know that the Special Committee has made arrangements to review the Tax Returns, which it believes is sufficient for purposes of its investigation. The Letter, for all of its bluster and threatening menace, gives no reason for why that process is in any way deficient. The Special Committee continues to perform its investigative function—incorporating where appropriate outside suggestions from the SAFE AHG, and has or will examine the Tax Returns, but the Letter contends that the location of such review renders the process irreparably lacking. The Debtors welcome an explanation for why this constitutes a fatal flaw, but in any event, cannot produce non-debtors' documents that Debtors do not have and could not compel.

ESI Hit Report

As referenced in the introductory paragraph, the Debtors are currently coordinating with Debtors' litigation counsel to provide the requested hit reports of the Litigation ESI, and believe that this should resolve that portion of the Letter.

Though Debtors believe that this adequately addresses all requests in the Letter, and the Letter acknowledges that "[f]or the moment, the SAFE AHG has not asked the Debtors to actually review or produce any additional Litigation ESI," the Debtors respond to two other intimations contained in the Letter.

The Domains/Chats

First, the Debtors agreed to provide the requested hit run report on the Litigation ESI, but the Debtors are not doing this merely "for the moment." The investigation belongs to the Special Committee and the Special Committee only. As stated above, the Debtors understand the SAFE AHG's desire to remain apprised of developments in the Special Committee's investigation, and will continue to coordinate discussions and document exchanges between the Special Committee and SAFE AHG. However, your intimation that the Special Committee's materials exclude categories of "information of critical relevance" is flatly incorrect. The Special Committee has been given access to all of the productions from the Whinstone assumption litigation, which include the domains and chats that you complain about. The SAFE AHG has provided not a single shred of evidence that any documents are missing from the Debtors' multiple productions but simply keeps contending that "something is missing" without foundation. This parlor trick cannot replace actually showing that something is missing with concrete evidence, and the false allegations that documents are being withheld must stop.

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returns is not "otherwise readily obtainable" through alternative forms of discovery, such as depositions or sworn interrogatory answers. *Trudeau v. N. Y. State Consumer Prot. Bd.*, 237 F.R.D. 325, 331 (N.D.N.Y. 2006) (citing cases); s*ee Asset Funding Group, LLC v. Adams & Reese*, LLP, No. 07-02965, 2008 WL 927937, at *8 (E.D. La. Apr. 4, 2008).

While the Debtors are willing to provide a hit report, given the substantial productions made to date, the substantial costs incurred to make those productions, the Debtors are reluctant to do any more make-work demanded by the SAFE AHG. The Debtors will make a production of responsive materials in connection with the searches they previously agreed to conduct, and will continue to make rolling productions of documents from the Special Committee, but will not produce any more documents until the investigation is complete and the Special Committee has published its conclusions. If, at that point, the SAFE AHG (or another party) disagrees with the Special Committee's conclusions and can point to flaws in the investigation, the Debtors will revisit any such contention at that time. The updates and productions the Debtors are giving to the SAFE AHG are more than sufficient for the SAFE AHG to know immediately upon publication if it disagrees with the conclusions of the Special Committee.

Privileged Documents

Second, and relatedly, the Letter suggests in a footnote that privileged documents can be produced by Debtors on a common interest basis and that "the Special Committee previously provid[ed] material to the SAFE AHG on an express 'common interest' basis." The Debtors flatly disagree with this suggestion, as the Debtors are not aware that anybody has provided the SAFE AHG privileged documents, much less on a common interest basis. To the extent that the Special Committee previously provided materials on that basis, the Debtors request that the SAFE AHG provide a list of any such materials to the Debtors with sufficient detail for the Debtors to determine if any such materials need to be clawed back.

The timing of your requests compounds their misinformed nature. As we have told you several times, the Debtors are at a critical juncture in their bankruptcy cases. The Debtors have already produced to you over 42,000 documents, and while the Debtors are working on gathering and producing additional documents, they must devote their attention to the events in the bankruptcy cases that will actually maximize value for all constituencies. While we welcome constructive suggestions regarding the Debtors' assets, liabilities, and causes of action, the Letter reflects regurgitation of the requests for documentation that have been addressed by the Debtors numerous times before. As you know, the Office of the United States Trustee ("UST") has declined to appoint an official SAFE committee, and the Debtors cannot waste resources continuing to indulge the SAFE AHG's requests for broader and never-ending discovery, when those resources must be devoted to far more pressing matters.

Your latest letter continues a haranguing drumbeat of supposed discovery deficiencies as a pretext to usurp an investigation of claims that your clients do not own to exert leverage to enforce contract rights that do not exist. No doubt you intend to submit a long litany of facially fulsome but substantively vacuous letters to the Court to suggest that something is amiss with the Special Committee's investigation. No one is buying it. Burdening the Debtors with yet additional production requests—particularly when the SAFE AHG has not identified **any substantive hole** in the production to date—only creates more make-work, imposes unnecessary costs, and fails to benefit any of the parties in interest in these cases, including your clients. After expending

considerable resources, the Debtors produced non-privileged Special Committee Documents to the SAFE AHG on Friday, January 17, 2025, and informed the SAFE AHG that more documents were forthcoming. The Letter was sent ***before*** the Debtors were even able to finish the anticipated production from your last requests. This timeline further evidences the SAFE AHG's tactic of shoot first, claim vague and unsubstantiated discovery abuses, and refuse to actually look at the documents already produced. At this juncture, the wise and efficient path forward is to allow the Special Committee to complete its investigation, and then, only after the Special Committee has produced its findings, if the SAFE AHG can identify specific facts that support a contrary result, will further document requests be entertained.

The Debtors reserve all rights.

Sincerely,

Patricia Tomasco

EXHIBIT B

THIS INSTRUMENT AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED IN THIS SAFE AND UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

RHODIUM ENTERPRISES, INC.

SAFE
(Simple Agreement for Future Equity)

THIS CERTIFIES THAT in exchange for the payment by James M. Farrar, an individual, and Adda B. Delgadillo Farrar, an individual, as joint tenants with rights of survivorship (the "**Investor**") of **ONE HUNDRED SIXTY THOUSAND and 00/100's DOLLARS ($160,000.00)** (the "**Purchase Amount**") on 09 / 07 / 2021 **, 2021**, Rhodium Enterprises, Inc., a Delaware corporation (the "**Company**"), hereby issues to the Investor the right to certain shares of the Company's Capital Stock, subject to the terms set forth below.

The "**Valuation Cap**" is $3,000,000,000.

The "**Discount Rate**" is 85%.

See **Section 2** for certain additional defined terms.

1. ***Events***

(a) **<u>Equity Financing or Listing Event</u>**. If there is an Equity Financing or a Listing Event before the termination of this Simple Agreement for Future Equity ("**this SAFE**"), on the initial closing of such Equity Financing or, in the case of a Listing Event, immediately prior to the consummation of such Listing Event, the Company will automatically issue to the Investor either (i) in the case of an Equity Financing, the number of shares of stock issued in the Equity Financing equal to the Purchase Amount divided by the applicable Conversion Price or (ii) in the case of a Listing Event, the number of shares of Common Stock of the Company equal to the Purchase Amount divided by the applicable Conversion Price (such shares issued upon conversion in the case of clause (i) or clause (ii), the "**Conversion Shares**").

In connection with the issuance of Conversion Shares, the Investor will execute and deliver to the Company all of the transaction documents related to the Equity Financing or Listing Event; provided, that such documents (i) are the same documents to be entered into with the purchasers of stock issued in the Equity Financing or other holders of Common Stock in the case of a Listing Event, with appropriate variations for the Conversion Shares if applicable, and (ii) have customary exceptions to any drag-along applicable to the Investor, including (without limitation) limited representations, warranties, liability and indemnification obligations for the Investor.

(b) **<u>Liquidity Event</u>**. If there is a Liquidity Event before the termination of this SAFE, the Investor will automatically be entitled (subject to the liquidation priority set forth in Section 1(d) below) to receive a portion of Proceeds due and payable to the Investor immediately prior to, or concurrent with, the consummation of such Liquidity Event, equal to the greater of (i) the Purchase Amount (the "**Cash-Out Amount**") or (ii) the amount payable on the number of shares of Common Stock equal to the Purchase Amount divided by the Liquidity Price (the "**Conversion Amount**"). If any of the Company's securityholders are given a choice as to the form and amount of Proceeds to be received in a Liquidity Event, the Investor will be given the same choice, *provided* that the Investor may not choose to receive a form of consideration that the Investor would be ineligible to receive as a result of the Investor's failure to satisfy any requirement or limitation generally applicable to the Company's securityholders, or under any applicable laws.

Notwithstanding the foregoing, in connection with a Change of Control intended to qualify as a tax-free reorganization, the Company may reduce the cash portion of Proceeds payable to the Investor by the amount determined by its board of directors in good faith for such Change of Control to qualify as a tax-free reorganization for U.S. federal income tax purposes, provided that such reduction (A) does not reduce the total Proceeds payable to such Investor and (B) is applied in the same manner and on a pro rata basis to all securityholders who have equal priority to the Investor under Section 1(d).

(c) **Dissolution Event**. If there is a Dissolution Event before the termination of this SAFE, the Investor will automatically be entitled (subject to the liquidation priority set forth in Section 1(d) below) to receive a portion of Proceeds equal to the Cash-Out Amount, due and payable to the Investor immediately prior to the consummation of the Dissolution Event.

(d) **Liquidation Priority**. In a Liquidity Event or Dissolution Event, this SAFE is intended to operate like standard Common Stock. The Investor's right to receive its Cash-Out Amount is:

(i) Junior to payment of outstanding indebtedness and creditor claims, including contractual claims for payment and convertible promissory notes (to the extent such convertible promissory notes are not actually or notionally converted into Capital Stock); and

(ii) On par with payments for other SAFEs, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other SAFEs, the applicable Proceeds will be distributed pro rata to the Investor and such other SAFEs in proportion to the full payments that would otherwise be due.

The Investor's right to receive its Conversion Amount is (A) on par with payments for Common Stock and other SAFEs who are also receiving Conversion Amounts or Proceeds on a similar as-converted to Common Stock basis, and (B) junior to payments described in clauses (i) and (ii) above (in the latter case, to the extent such payments are Cash-Out Amounts or similar liquidation preferences).

(e) **Termination**. This SAFE will automatically terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this SAFE) immediately following the earliest to occur of: (i) the issuance of Capital Stock to the Investor pursuant to Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due to the Investor pursuant to Section 1(b) or Section 1(c).

2. ***Definitions***

"**Capital Stock**" means the capital stock of the Company, including, without limitation, the Common Stock.

"**Change of Control**" means (i) a transaction or series of related transactions in which any "person" or "group" (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company's board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

"**Common Stock**" means the Class A Common Stock of the Company, par value $0.0001 per share.

"**Company Capitalization**" is an amount of shares, calculated immediately prior to the Equity Financing or Listing Event, as applicable, and without double-counting, in each case calculated on an as-converted to Common Stock basis equal to the sum of:

- all shares of Capital Stock issued and outstanding;
- all Converting Securities;
- all (i) issued and outstanding Options and (ii) Promised Options; and
- the Unissued Option Pool, except that any increase to the Unissued Option Pool in connection with the Equity Financing or Listing Event, as applicable, shall only be included to the extent that the number of Promised Options exceeds the Unissued Option Pool prior to such increase.

"**Conversion Price**" means the either: (1) the SAFE Price or (2) the Discount Price, whichever calculation results in a greater number of Conversion Shares.

"**Converting Securities**" includes this SAFE and other convertible or exchangeable securities issued by the Company, including but not limited to: (i) other SAFEs; (ii) convertible promissory notes and other convertible debt instruments; (iii) Class B Common Stock of the Company, $0.0001 par value per share and (iv) convertible securities that have the right to convert into shares of Capital Stock.

"**Direct Listing**" means the Company's initial listing of its Common Stock (other than shares of Common Stock not eligible for resale under Rule 144 under the Securities Act) on a national securities exchange by means of an effective registration statement on Form S-1 filed by the Company with the SEC that registers shares of existing capital stock of the Company for resale, as approved by the Company's board of directors. For the avoidance of doubt, a Direct Listing shall not be deemed to be an underwritten offering and shall not involve any underwriting services.

"**Discount Price**" means the price per share of the Capital Stock sold in the Equity Financing or upon the closing of the Listing Event, as applicable, multiplied by the Discount Rate.

"**Dissolution Event**" means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary.

"**Dividend Amount**" means, with respect to any date on which the Company pays a dividend on its outstanding Common Stock, the amount of such dividend that is paid per share of Common Stock multiplied by (x) the Purchase Amount divided by (y) the Liquidity Price (treating the dividend date as a Liquidity Event solely for purposes of calculating such Liquidity Price).

"**Equity Financing**" means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells Capital Stock at a fixed valuation, including but not limited to, a pre-money or post-money valuation, and includes the conversion of any warrants, options or Simple Agreement for Future Equity agreements (other than this SAFE and any other Simple Agreement for Future Equity agreements between Investor and the Company), all at the conversion amounts set forth in those instruments; provided, however, that at Investor's election, "Equity Financing" shall not include any transaction or series of transactions resulting in aggregate capital proceeds of less than $20,000,000 where the aggregate implied value of all outstanding Capital Stock at the closing of such transaction(s) exceeds the Valuation Cap.

"**Initial Public Offering**" means the closing of the Company's first firm commitment underwritten public offering of Common Stock pursuant to a registration statement filed under the Securities Act.

"**Liquidity Capitalization**" is calculated as of immediately prior to the Liquidity Event, and (without double-counting, in each case calculated on an as-converted to Common Stock basis):

- Includes all shares of Capital Stock issued and outstanding;
- Includes all (i) issued and outstanding Options and (ii) to the extent receiving Proceeds, Promised Options;
- Includes all Converting Securities, **other than** any SAFEs and other convertible securities where the holders of such securities are receiving Cash-Out Amounts or similar liquidation preference payments in lieu of Conversion Amounts or similar "as-converted" payments; and
- Excludes the Unissued Option Pool.

"**Liquidity Event**" means a Change of Control other than a Listing Event.

"**Liquidity Price**" means the price per share equal to the Valuation Cap divided by the Liquidity Capitalization.

"**Listing Event**" means either (i) an Initial Public Offering, (ii) a SPAC Event, or (iii) a Direct Listing.

"**Options**" includes options, restricted stock awards or purchases, RSUs, SARs, warrants or similar securities, vested or unvested.

"**Proceeds**" means cash and other assets (including without limitation stock consideration) that are proceeds from the Liquidity Event or the Dissolution Event, as applicable, and legally available for distribution.

"**Promised Options**" means promised but ungranted Options that are the greater of those (i) promised pursuant to agreements or understandings made prior to the execution of, or in connection with, the term sheet or letter of intent for the Equity Financing or Liquidity Event, as applicable (or the initial closing of the Equity Financing or consummation of the Liquidity Event, if there is no term sheet or letter of intent), (ii) in the case of an Equity Financing, treated as outstanding Options in the calculation of the Capital Stock's price per share, or (iii) in the case of a Liquidity Event, treated as outstanding Options in the calculation of the distribution of the Proceeds.

"**SAFE**" means an instrument containing a future right to shares of Capital Stock, similar in form and content to this instrument, purchased by investors for the purpose of funding the Company's business operations. References to "this SAFE" mean this specific instrument.

"**SAFE Price**" means the price per share equal to the Valuation Cap divided by the Company Capitalization (as adjusted for any stock splits, stock dividends, reorganizations, recapitalizations and the like effected in connection with a Listing Event).

"**SPAC Event**" means the direct or indirect acquisition of the Company by a special purpose acquisition company (a "**SPAC**") that (x) results in the capital stock of the Company being listed on a U.S. securities exchange and (y) constitutes such SPAC's "initial business combination" (as such term is used in such SPAC's constituent documents).

"**Subsequent Convertible Securities**" means convertible securities that the Company may issue after the issuance of this instrument with the principal purpose of raising capital, including but not limited to, other SAFEs, convertible debt instruments and other convertible securities.

"**Unissued Option Pool**" means all shares of Capital Stock that are reserved, available for future grant and not subject to any outstanding Options or Promised Options (but in the case of a Liquidity Event, only to the extent Proceeds are payable on such Promised Options) under any equity incentive or similar Company plan.

3. ***Company Representations***

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has the power and authority to own, lease and operate its properties and carry on its business as now conducted. As of the date hereof, the Company has no preferred stock authorized or issued and outstanding.

(b) The execution, delivery and performance by the Company of this SAFE is within the power of the Company and, other than with respect to the actions to be taken when equity is issued to the Investor, has been duly authorized by all necessary actions on the part of the Company (subject to section 4(d)). This SAFE constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity. To its knowledge, the Company is not in violation of (i) its current certificate of incorporation or bylaws, (ii) any material statute, rule or regulation applicable to the Company or (iii) any material debt or contract to which the Company is a party or by which it is bound, where, in each case, such violation or default, individually, or together with all such violations or defaults, could reasonably be expected to have a material adverse effect on the Company.

(c) The performance and consummation of the transactions contemplated by this SAFE do not and will not: (i) violate any material judgment, statute, rule or regulation applicable to the Company; (ii) result in the acceleration of any material debt or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien on any property, asset or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license or authorization applicable to the Company, its business or operations.

(d) No consents or approvals are required in connection with the performance of this SAFE, other than: (i) the Company's corporate approvals; (ii) any qualifications or filings under applicable securities laws; and (iii) necessary corporate approvals for the authorization of Capital Stock issuable pursuant to Section 1.

(e) To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with, or infringement of the rights of, others.

4. ***Investor Representations***

(a) The Investor has full legal capacity, power and authority to execute and deliver this SAFE and to perform its obligations hereunder. This SAFE constitutes valid and binding obligation of the Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) The Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act, and acknowledges and agrees that if not an accredited investor at the time of an Equity Financing, the Company may void this SAFE and return the Purchase Amount. The Investor has been advised that this SAFE and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Investor is purchasing this SAFE and the securities to be acquired by the Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing the Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time.

5. ***Miscellaneous***

(a) Any provision of this SAFE may be amended, waived or modified by written consent of the Company and either (i) the Investor or (ii) the majority-in-interest of all then-outstanding SAFEs with the same "Valuation Cap" and "Discount Rate" as this SAFE (and SAFEs lacking one or both of such terms will be considered to be the same with respect to such term(s)), *provided that* with respect to clause (ii): (A) the Purchase Amount may not be amended, waived or modified in this manner, (B) the consent of the Investor and each holder of such SAFEs must be solicited (even if not obtained), and (C) such amendment, waiver or modification treats all such holders in the same manner. "**Majority-in-interest**" refers to the holders of the applicable group of SAFEs whose SAFEs have a total Purchase Amount greater than 50% of the total Purchase Amount of all of such applicable group of SAFEs.

(b) Any notice required or permitted by this SAFE will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address listed on the signature page, as subsequently modified by written notice.

(c) The Investor is not entitled, as a holder of this SAFE, to vote or be deemed a holder of Capital Stock for any purpose other than tax purposes, nor will anything in this SAFE be construed to confer on the Investor, as such, any rights of a Company stockholder or rights to vote for the election of directors or on any matter submitted to Company stockholders, or to give or withhold consent to any corporate action or to receive notice of meetings, until shares have been issued on the terms described in Section 1. However, if the Company pays a dividend on outstanding shares of Common Stock (that is not payable in shares of Common Stock) while this SAFE is outstanding, the Company will pay the Dividend Amount to the Investor at the same time.

(d) In the event of an Initial Public Offering, if required by the underwriters, the Investor will enter into a lock-up agreement in respect of the Conversion Shares, on terms no less favorable than those agreed to by the Company's

executive officers and directors. The Investor appoints the Company as its agent and attorney to execute, on the Investor's behalf, any such lock-up agreement.

(e) Neither this SAFE nor the rights in this SAFE are transferable or assignable, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this SAFE and/or its rights may be assigned without the Company's consent by the Investor (i) to the Investor's estate, heirs, executors, administrators, guardians and/or successors in the event of Investor's death or disability, or (ii) to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including, without limitation, any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this SAFE in whole, without the consent of the Investor, in connection with a reincorporation to change the Company's domicile.

(f) In the event any one or more of the provisions of this SAFE is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this SAFE operate or would prospectively operate to invalidate this SAFE, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this SAFE and the remaining provisions of this SAFE will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(g) All rights and obligations hereunder will be governed by the laws of the State of the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction. Any legal proceeding or action arising out of or relating to this SAFE or the transactions contemplated hereby shall be brought in the chancery or federal courts in the State of Delaware, and the parties hereto shall submit to the exclusive jurisdiction of each such court in any such proceeding or action. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR CLAIM, ARISING OUT OF OR IN CONNECTION WITH THIS SAFE OR ANY MATTER ARISING HEREUNDER.

(h) The parties acknowledge and agree that for United States federal and state income tax purposes this SAFE is, and at all times has been, intended to be characterized as stock, and more particularly as common stock for purposes of Sections 304, 305, 306, 354, 368, 1036 and 1202 of the Internal Revenue Code of 1986, as amended. Accordingly, the parties agree to treat this SAFE consistent with the foregoing intent for all United States federal and state income tax purposes (including, without limitation, on their respective tax returns or other informational statements).

(i) This SAFE may be executed and delivered in two or more separate counterparts (including any such counterpart executed or delivered via electronic submission), any one of which need not contain the signatures of more than one party, but each of which will be an original and all of which together shall constitute one and the same agreement binding on the parties hereto.

(*Signature page follows*)

IN WITNESS WHEREOF, the undersigned have caused this SAFE to be duly executed and delivered.

RHODIUM ENTERPRISES, INC.

By: Cameron Blackmon
Cameron Blackmon
Co-President

Address:

4146 W US Highway 79
Rockdale, TX 76567-5278

Email: Cameronblackmon@rhodiummining.io

INVESTOR:

James M. Farrar

Name: James M. Farrar

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Modesto, CA 95355

Email: jmfbox@sbcglobal.net

Adda B. D. Farrar

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Address: 2805 Kings Park Lane

Modesto, CA 95355

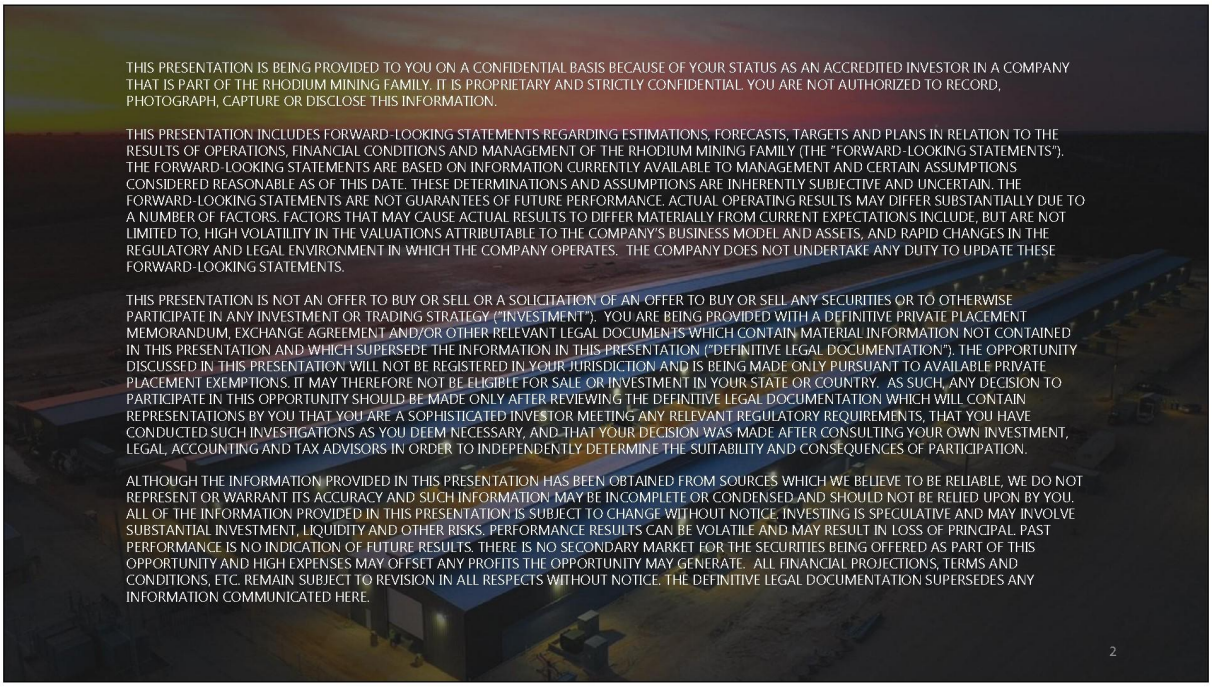
Email: jmfinvest@sbcglobal.net

EXHIBIT C

[Redacted]

EXHIBIT D


RHODIUM
MAY2021



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THIS PRESENTATION INCLUDES FORWARD-LOOKING STATEMENTS REGARDING ESTIMATIONS, FORECASTS, TARGETS AND PLANS IN RELATION TO THE RESULTS OF OPERATIONS, FINANCIAL CONDITIONS AND MANAGEMENT OF THE RHODIUM MINING FAMILY (THE "FORWARD-LOOKING STATEMENTS"). THE FORWARD-LOOKING STATEMENTS ARE BASED ON INFORMATION CURRENTLY AVAILABLE TO MANAGEMENT AND CERTAIN ASSUMPTIONS CONSIDERED REASONABLE AS OF THIS DATE. THESE DETERMINATIONS AND ASSUMPTIONS ARE INHERENTLY SUBJECTIVE AND UNCERTAIN. THE FORWARD-LOOKING STATEMENTS ARE NOT GUARANTEES OF FUTURE PERFORMANCE. ACTUAL OPERATING RESULTS MAY DIFFER SUBSTANTIALLY DUE TO A NUMBER OF FACTORS. FACTORS THAT MAY CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM CURRENT EXPECTATIONS INCLUDE, BUT ARE NOT LIMITED TO, HIGH VOLATILITY IN THE VALUATIONS ATTRIBUTABLE TO THE COMPANY'S BUSINESS MODEL AND ASSETS, AND RAPID CHANGES IN THE REGULATORY AND LEGAL ENVIRONMENT IN WHICH THE COMPANY OPERATES. THE COMPANY DOES NOT UNDERTAKE ANY DUTY TO UPDATE THESE FORWARD-LOOKING STATEMENTS.

THIS PRESENTATION IS NOT AN OFFER TO BUY OR SELL OR A SOLICITATION OF AN OFFER TO BUY OR SELL ANY SECURITIES OR TO OTHERWISE PARTICIPATE IN ANY INVESTMENT OR TRADING STRATEGY ("INVESTMENT"). YOU ARE BEING PROVIDED WITH A DEFINITIVE PRIVATE PLACEMENT MEMORANDUM, EXCHANGE AGREEMENT AND/OR OTHER RELEVANT LEGAL DOCUMENTS WHICH CONTAIN MATERIAL INFORMATION NOT CONTAINED IN THIS PRESENTATION AND WHICH SUPERSEDE THE INFORMATION IN THIS PRESENTATION ("DEFINITIVE LEGAL DOCUMENTATION"). THE OPPORTUNITY DISCUSSED IN THIS PRESENTATION WILL NOT BE REGISTERED IN YOUR JURISDICTION AND IS BEING MADE ONLY PURSUANT TO AVAILABLE PRIVATE PLACEMENT EXEMPTIONS. IT MAY THEREFORE NOT BE ELIGIBLE FOR SALE OR INVESTMENT IN YOUR STATE OR COUNTRY. AS SUCH, ANY DECISION TO PARTICIPATE IN THIS OPPORTUNITY SHOULD BE MADE ONLY AFTER REVIEWING THE DEFINITIVE LEGAL DOCUMENTATION WHICH WILL CONTAIN REPRESENTATIONS BY YOU THAT YOU ARE A SOPHISTICATED INVESTOR MEETING ANY RELEVANT REGULATORY REQUIREMENTS, THAT YOU HAVE CONDUCTED SUCH INVESTIGATIONS AS YOU DEEM NECESSARY, AND THAT YOUR DECISION WAS MADE AFTER CONSULTING YOUR OWN INVESTMENT, LEGAL, ACCOUNTING AND TAX ADVISORS IN ORDER TO INDEPENDENTLY DETERMINE THE SUITABILITY AND CONSEQUENCES OF PARTICIPATION.

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RHODIUM

The Rhodium Standard

Rhodium is setting the standard for what constitutes a great mining company. Rhodium believes in full transparency and standardized metrics. Rhodium is best-in-class across all measurements. Rhodium will be the benchmark to which all others are measured.

We are the Rhodium Standard.

We are Rhodium.

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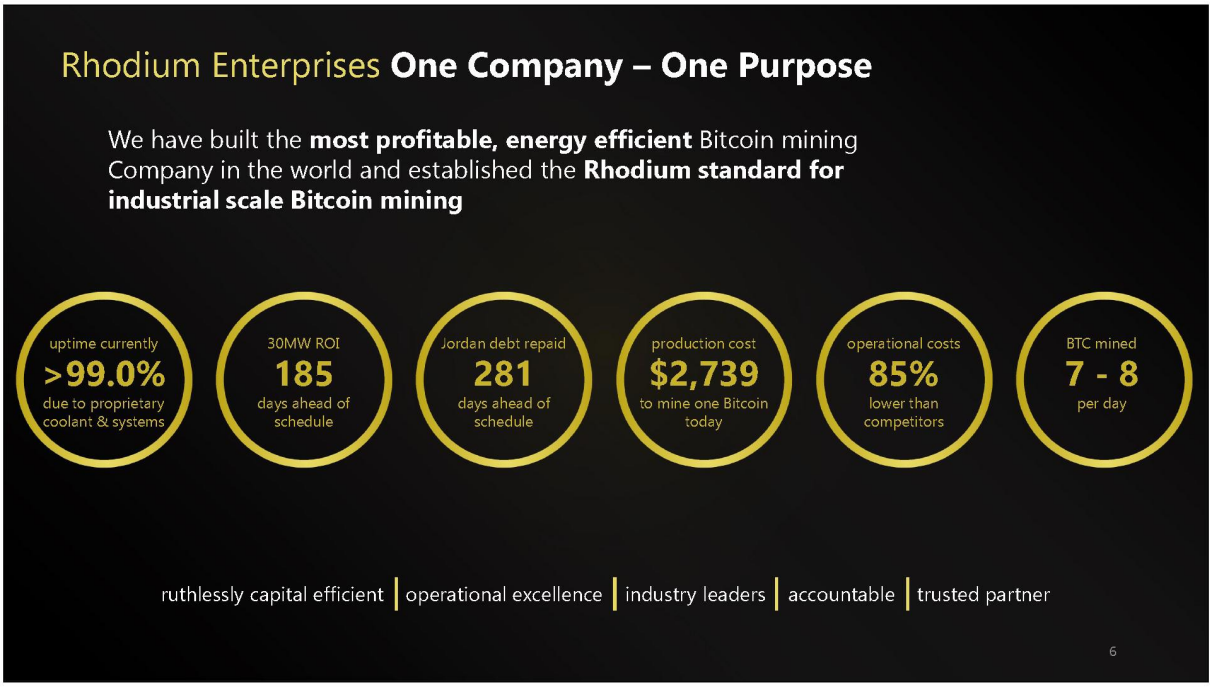

Rhodium Enterprises One Company – One Purpose
We have built the most profitable, energy efficient Bitcoin mining Company in the world and established the Rhodium standard for industrial scale Bitcoin mining
uptime currently
>99.0%
due to proprietary coolant & systems
30MW ROI
185
days ahead of schedule
Jordan debt repaid
281
days ahead of schedule
production cost
$2,739
to mine one Bitcoin today
operational costs
85%
lower than competitors
BTC mined
7 - 8
per day
ruthlessly capital efficient | operational excellence | industry leaders | accountable | trusted partner
6


Rhodium Enterprises One Company – One Purpose
We are executing on rapid and profitable growth through our best-in-class commercial operations
Multi-Site
diversification
targets identified
M&A
stock for stock acquisitions
Vertical Integration
signed capacity
300MW
coming online in 2022
raising
$225M
of growth capital
award winning
ESG
infrastructure partnership
liquid coolant | R&D house | next-gen systems | proprietary software | environmentally focused
7

Rhodium Rollup Snapshot – The Why

We have decided to rollup the Company because we will become a **stronger, more effective organization**, as we rewrite the script on Bitcoin mining and **revolutionize the industry**

Rollup to unify the organization and position for growth

- We've completed our 3rd party rollup assessment and are ready to execute the reorganization
- All investors combine into a single, unified organization, harnessing the full power of the Rhodium entities
- The top Company will be named "**Rhodium Enterprises, Inc.**"

Why did we decide to rollup?

- Full financial incentive alignment among all shareholders
  - One company, one purpose
  - Everyone participates and benefits from future growth
- Creates immediate, significant value and greater diversification for all stakeholders
- Enables all stakeholders to share in the upside of our rapidly expanding business
- Increases purchasing power, strengthens balance sheet, and improves operational efficiencies
- Positions the Company to vertically integrate
- Facilitates efficient access to growth financing and the broader capital markets

8

Rhodium Rollup Snapshot – The How

Transaction mechanics
- Value-for-value exchange of all minority member units for Rhodium Enterprises, Inc. parent company stock
- The value of the new shares in Rhodium Enterprises, Inc. is approximately $10.29 per share (with some fractional rounding)

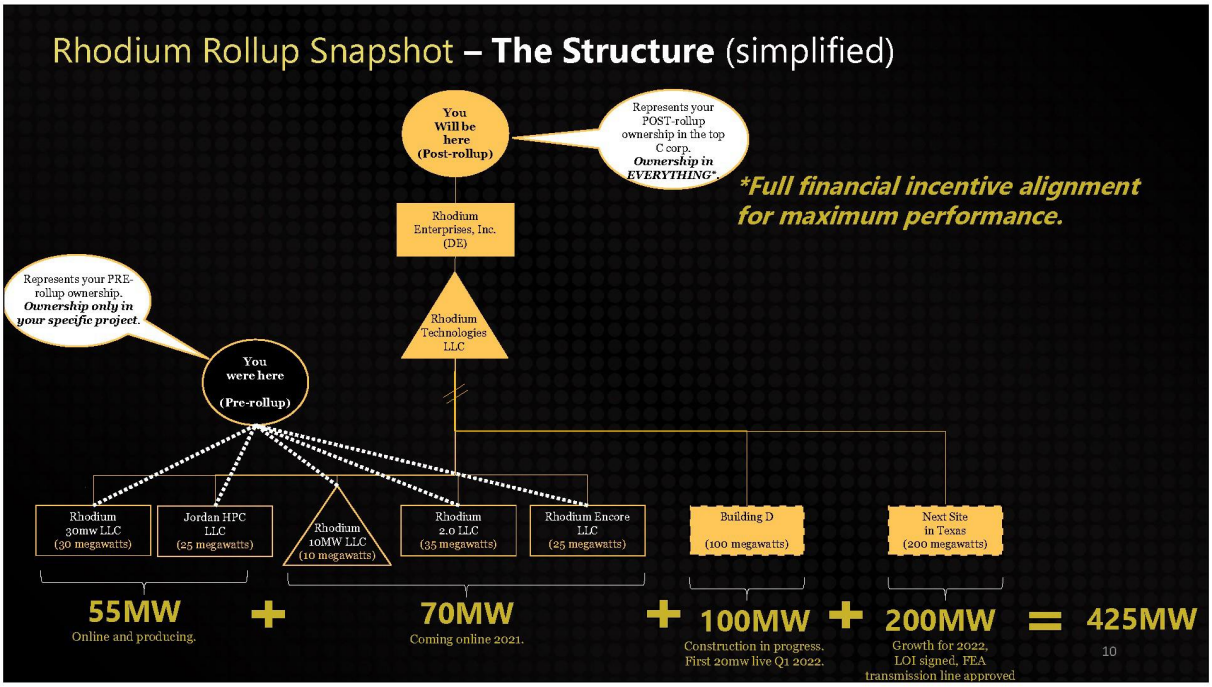
How were old shares valued?
- Third party valuation firm (Teknos) engaged and consistent valuation applied to all units
- See 3rd party Rollup Assessment Report for detail

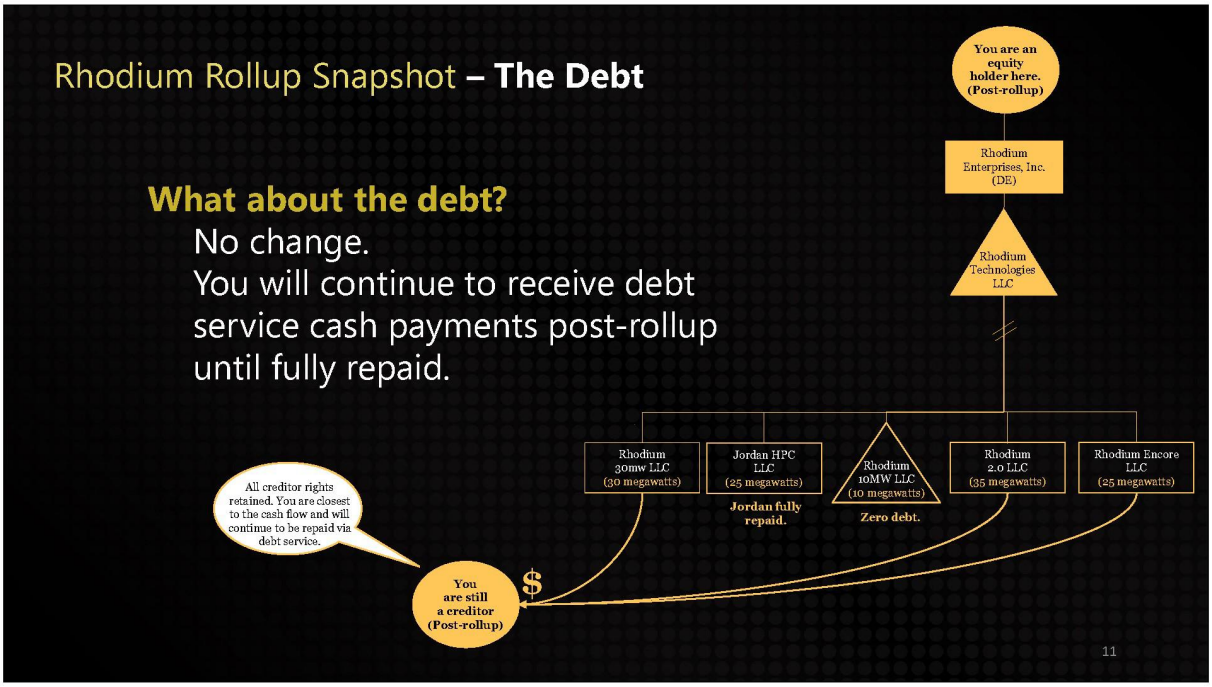
What are my new shares worth?
- **$10.29 per share.** Multiple your number of new shares by $10.29 to get the value of your stock
- Number of shares were sent via AdobeSign to each individual investor for execution.

Equity
- Equity-for-equity exchange (does not include debt).

Debt
- Debt remains. No change.
- Debt owed will continue to be repaid from cash flow from operations.
- Specific to each debt holder.

9


Rhodium Rollup Snapshot – The Structure (simplified)
You Will be here (Post-rollup)
Represents your POST-rollup ownership in the top C corp. Ownership in EVERYTHING*.
*Full financial incentive alignment for maximum performance.
Rhodium Enterprises, Inc. (DE)
Rhodium Technologies LLC
Represents your PRE-rollup ownership. Ownership only in your specific project.
You were here (Pre-rollup)
Rhodium 30mw LLC (30 megawatts)
Jordan HPC LLC (25 megawatts)
Rhodium 10MW LLC (10 megawatts)
Rhodium 2.0 LLC (35 megawatts)
Rhodium Encore LLC (25 megawatts)
Building D (100 megawatts)
Next Site in Texas (200 megawatts)
55MW
Online and producing.
+
70MW
Coming online 2021.
+
100MW
Construction in progress. First 20mw live Q1 2022.
+
200MW
Growth for 2022, LOI signed, FEA transmission line approved
=
425MW
10


Rhodium Rollup Snapshot – The Debt
What about the debt?
No change.
You will continue to receive debt service cash payments post-rollup until fully repaid.
You are an equity holder here. (Post-rollup)
Rhodium Enterprises, Inc. (DE)
Rhodium Technologies LLC
Rhodium 30mw LLC (30 megawatts)
Jordan HPC LLC (25 megawatts)
Jordan fully repaid.
Rhodium 10MW LLC (10 megawatts)
Zero debt.
Rhodium 2.0 LLC (35 megawatts)
Rhodium Encore LLC (25 megawatts)
All creditor rights retained. You are closest to the cash flow and will continue to be repaid via debt service.
You are still a creditor (Post-rollup)
$
11

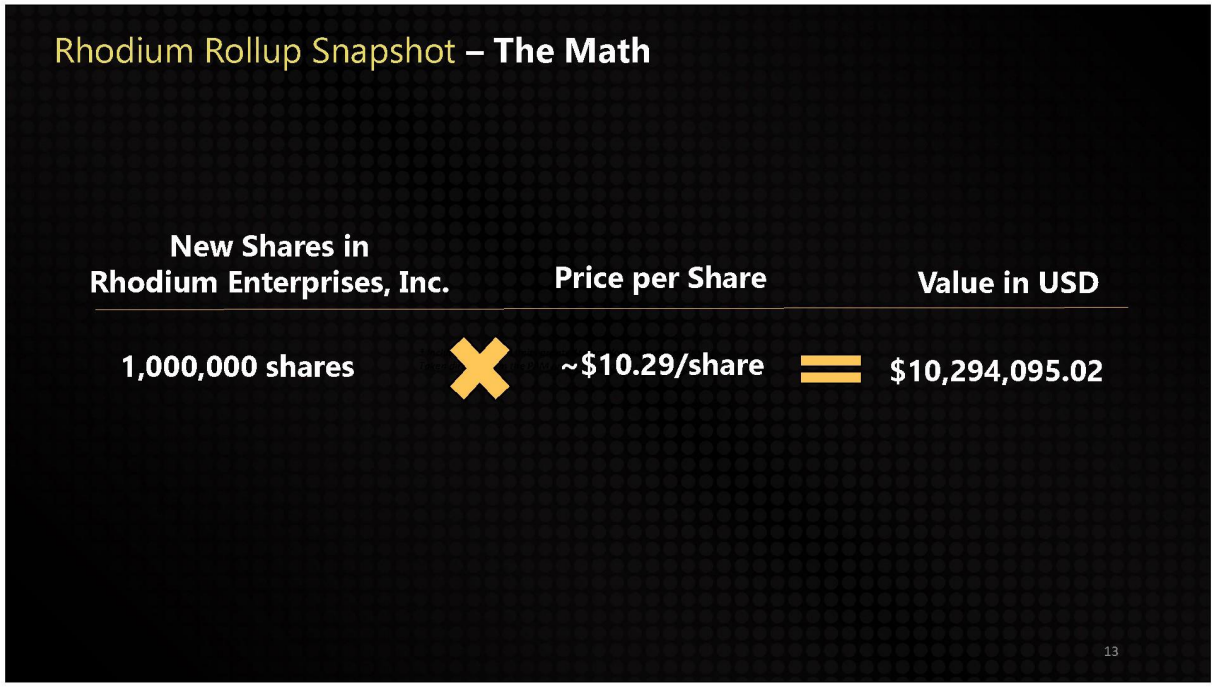
Rhodium Rollup Snapshot – **The Cap Table**

100% of Rhodium Enterprises, Inc. will be owned by the Rollup-Participants. This represents approximately 32% of all economics in the business. If an IPO occurs, it will be an IPO of Rhodium Enterprises, Inc.

Summary Cap Table of Rhodium Technologies, LLC
Assuming full participation in the Rollup Transaction

Member	% Ownership
Imperium*	68%
Rhodium Enterprises, Inc.	32%
Total	100%

** Including incentive units granted to employees and consultants*
Taken directly from the PPM provided to rollup participants


Rhodium Rollup Snapshot – The Math
New Shares in Rhodium Enterprises, Inc.
Price per Share
Value in USD
1,000,000 shares
~$10.29/share
$10,294,095.02
13

Rhodium Rollup Snapshot – **The Next Steps**

1. Check your email for executable transfer agreements.
   Search for: adobesign@adobesign.com

2. Review transfer agreement and Schedule A.
   Note, multiply your new shares by ~$10.29 to get the approximate value of your investment.

3. Execute.

4. Relax, you are done!

14

Rhodium Rollup Snapshot – Here is what you'll see

EXCHANGE AGREEMENT

Exchange Agreement (the "**Agreement**") dated as of May 8, 2021 by and between the party identified as the Transferor on the signature page hereto (the "**Transferor**") and Rhodium Enterprises, Inc. a Delaware corporation (the "**Company**").

WHEREAS, the Transferor is a member of the limited liability company identified on Schedule A annexed hereto (the "**Rhodium LLC**") and the owner of the number of Class B Non-Voting Units of the Rhodium LLC identified on Schedule A annexed hereto (the "**Class B Units**");

WHEREAS, the Transferor wishes to transfer and assign the Class B Units to the Company in exchange for the number of shares of Class A Common Stock of the Company set forth on Schedule A annexed hereto (the "**Class A Shares**") and the Company wishes to issue to the Transferor the Class A Shares in exchange for the Class B Units (the "**Exchange**");

WHEREAS, the Transferor has carefully reviewed the Confidential Private Placement Memorandum provided to the Transferor in connection with the Exchange (the "**Memorandum**") and has completed the Investor Questionnaire attached hereto as Exhibit A (the "**Questionnaire**");

NOW, THEREFORE, in consideration of the premises set forth above, and the agreements, representations, warranties, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

15

Rhodium Rollup Snapshot – Here is what you'll see

SCHEDULE A

Name of Rhodium LLC	YOUR PROJECT NAME HERE
Number of Class B Non-Voting Units of Rhodium LLC	1.129 (Your OLD units here)
Number of shares of Class A Common Stock of the Company	292,004 (Your NEW units here. Multiply by ~$10.29)

16

Rhodium Rollup Snapshot – Questions?

Questions?

Instructions for next steps:

1. Check your email for executable transfer agreements.
   Search for: adobesign@adobesign.com
2. Review transfer agreement and Schedule A.
3. Execute.
4. Relax, you are done!

17

THANK YOU!!!

EXHIBIT E

[Redacted]

EXHIBIT F

From: c.harris@whinstone.us [c.harris@whinstone.us]
Sent: 6/21/2021 11:51:27 AM
To: Nathan Nichols [nathannichols@rhodiummining.io]
Subject: Re: Redraft of Building D and E LOI

Nathan,

At this time I am resending the potential D&E project with Rhodium. Whinstone has made financial commitments that have required me to adjust Whinstone's forward project plans. Our companies are rapidly changing and Team Rhodium is working on their own plans which I am sure will be successful.

When future capacity is available, If you'd like, I will provide the details.

Thanks,

Chad Harris
Chief Executive Officer
Whinstone US, INC
2721 Charles Martin Hall Road
Rockdale, Texas 76567
504-415-6669
c.harris@whinstone.us

On May 28, 2021, at 2:55 PM, Nathan Nichols <nathannichols@rhodiummining.io> wrote:

Hi Chad,

We are in the process of preparing. Agree to simple and to the point.

Look forward to getting this in your hands.

All the best,
Nathan

From: "c.harris@whinstone.us" <c.harris@whinstone.us>
Date: Thursday, May 27, 2021 at 8:08 PM
To: Nathan Nichols <nathannichols@rhodiummining.io>
Cc: Nick Cerasuolo <nickcerasuolo@imperiumholdings.io>, Charles Topping <chucktopping@rhodiummining.io>, Jared Melillo <jaredmelillo@rhodiummining.io>, Anthony Ausiello <anthonyausiello@rhodiummining.io>, Chase Blackmon <chaseblackmon@rhodiummining.io>, Cameron Blackmon <cameronblackmon@rhodiummining.io>
Subject: Re: Redraft of Building D and E LOI

Nathan,

Sorry for the delay.

I do not believe you have left anything out of what we agreed in principal in our meeting. I ask that Chuck keeps the letter of intent simple and to the point. Once I receive it, I review and work towards an agreeable document for both parties.

Thanks,

Chad

Chad Harris
Whinstone US, INC
2721 Charles Martin Hall Road
Rockdale, Texas 76567
c.harris@whinstone.us

On May 27, 2021, at 3:09 PM, Nathan Nichols <nathannichols@rhodiummining.io> wrote:

Chad,

Can you confirm this is good for us to write up?

Thanks,
Nathan

From: Nathan Nichols <nathannichols@rhodiummining.io>
Date: Wednesday, May 26, 2021 at 3:56 PM
To: "c.harris@whinstone.us" <c.harris@whinstone.us>
Cc: Nick Cerasuolo <nickcerasuolo@imperiumholdings.io>, Charles Topping <chucktopping@rhodiummining.io>, Jared Melillo <jaredmelillo@rhodiummining.io>, Anthony Ausiello <anthonyausiello@rhodiummining.io>, Chase Blackmon <chaseblackmon@rhodiummining.io>, Cameron Blackmon <cameronblackmon@rhodiummining.io>
Subject: Redraft of Building D and E LOI

Chad,

Great chat, thank you for being so easy to work with, truly. This structure will simplify things greatly for both sides.

I have added our transaction team (and the partners for visibility) so we can get the correct documentation back over to you as quickly as possible.

To simplify things:

1. Whinstone US will let Rhodium Enterprises know what the timeline is for the "go live" date by Friday (5/4) of next week.
2. The *rough* budget from Whinstone US for air buildout is $8.4MM/20MW or ~$42MM for full completion of the facility (Building D) – glad to hear costs of raw materials have gone down some.
3. Rhodium Enterprises will be receiving our complete proposal from the mining manufacturers (likely MicroBT) as to when the machines can be readily available, luckily the availability of miners now seems to be plentiful.
   a. We will align the "go live" date with our machine procurement to lower any cost leakage on paying an additional premium for miners we can't plug in earlier.

4. We will combine the cost of the miners (now FAR lower than originally anticipated, meaning much quicker ROI ☺) + the cost of the facility to come up with what the total repayment will be to recoup the reinvestment.
5. During the recuperation period, Whinstone will be allocated 10% of the profit from the operation + the power costs at the $17.05/MWH rate, for 10 years.
6. After the recuperation period, and for the life of the contract, Whinstone will be allocated 25% of the profit from the new facility (Building D).

Please let me know if I missed anything before we proceed with amending the LOI to correctly reflect the above.

All the best,
Nathan

<image001.png>

Nathan Nichols | Chief Executive Officer

Rhodium Enterprises | 7546 Pebble Drive, Fort Worth | TX
e: nathannichols@rhodiummining.io
m: (434) 249-2648

From: "c.harris@whinstone.us" <c.harris@whinstone.us>
Date: Wednesday, May 26, 2021 at 12:28 PM
To: Nathan Nichols <nathannichols@imperiumholdings.io>
Cc: Nick Cerasuolo <nickcerasuolo@imperiumholdings.io>, Charles Topping <chucktopping@rhodiummining.io>
Subject: Building D and E

Nathan,

To simplify this process fo preparing a LOI for building D & E. I have provided the basis of the hosting agreement with the reference to the Capex Cost.

If you have any questions, please let me know.

Chad Harris
Whinstone US, INC
2721 Charles Martin Hall Road
Rockdale, Texas 76567
c.harris@whinstone.us

EXHIBIT G

From:	Updates
To:	Rhodium 30MW Subscribers; Jordan HPC Subscribers; Rhodium Encore Subscribers; Rhodium 10MW Subscribers; Rhodium 2.0 Subscribers; Rhodium Enterprises Subscribers
Cc:	Rhodium Enterprises
Subject:	Rhodium Enterprises, Inc. - 100% Investor Participation
Date:	Wednesday, June 23, 2021 12:21:38 PM
Attachments:	image001.png Addendum to PPM.pdf

****STRICTLY CONFIDENTIAL; THIS MESSAGE IN ITS ENTIRETY IS SUBJECT TO THE LEGAL NOTICE APPEARING BELOW****

Dear Roll-Up Participants,

We sure have been busy! See video of our progress HERE *(Password = Rhodium2021).*

We are pleased to announce that we have 100% participation in the rollup! We are excited to have accomplished this milestone and thank you for your support and confidence in the Rhodium team. We could not have made it here if it was not for all the support, guidance, and faith from our amazing investor base. Management is truly grateful to have such wonderful investors. THANK YOU! Starting July 1st, we will operate as **Rhodium Enterprises, Inc**.

This rest of this email is intended to (1) provide final numbers for the rollup equity percentages, (2) provide an addendum to the private placement memorandum ("PPM") for your review along with an executive summary, (3) provide a brief update on recent transactions and (4) alert you to additional investment opportunities.

1: Final Equity Percentages in Rhodium Technologies LLC

- 38% Rhodium Enterprises, Inc. ("REI"). Note that REI also has 51% control.
- 62% Imperium

2: Addendum to the PPM

- A 5-page addendum to the PPM is attached. This addendum clarifies and corrects certain aspects of the original PPM.
- The original PPM and Roll Up Assessment Report can be viewed HERE.
- Executive Summary of the Addendum:
  - REI ownership increased to 38% (up from 32%). This was largely due to employees that held equity participating in the rollup as well.
  - $10.29 share price remains unchanged.
  - REI holds 51% voting control. This was required for securities law purposes.
  - Due to employees participating in the rollup, the outstanding shares were increased to 110.637 million. Employees transferred fully vested Rhodium Technologies LLC units on the same terms as investors.
  - The legal documents will be effective July 1, 2021. This date was chosen to simplify financial reporting for Q2.

3: Recent transactions and updates

- ***Next 200-megawatt facility:*** Planning for Rhodium's next 200-megawatt facility is well underway, with capacity up to 500MW. We have partnered with a best-in-class (and ESG award winning) infrastructure partner, secured contracts for 100 megawatts worth of machines at very favorable terms (due to our supplier relationships and the China crackdown on miners) and anticipate having the facility online and hashing by early Q2 2022.
- ***Celsius leads our next round with a $50mm investment***. We are thrilled to partner with one of the largest, well-funded, most sophisticated companies in crypto. Management believes the Celsius team and relationships will position Rhodium for success, giving us another competitive advantage in the industry.
- You can view the press release here: Celsius invests $50mm into Rhodium. *Note, this is the first time we've ever made any type of press release.*

4: Investment opportunity

- Our next round likely will be a $175-250mm equity round.
- This may be done via a public offering or via a private offering, depending on capital markets, which change rapidly.
- Existing investors will be offered a simple agreement for future equity ("SAFE") investment opportunity, which is the same type of investment vehicle offered to Celsius. It will provide investors with a 15% discount to the next round. The key terms of the SAFE investment opportunity are as follows:
  - 15% discount
  - $3B Cap
- Please contact NathanNichols@rhodiummining.io for more information.

LEGAL NOTICE: THE ROLLUP TRANSACTION IS DESCRIBED IN MORE DETAIL IN THE PPM AND ADDENDUM THAT YOU CAN ACCESS THROUGH THE SECURE LINK ABOVE. THIS PPM, ITS EXHIBITS, AND THE ADDENDUM CONTAIN IMPORTANT INFORMATION ABOUT THE ROLLUP TRANSACTION. NO REGISTRATION STATEMENT OR APPLICATION TO REGISTER THE SHARES OF RHODIUM ENTERPRISES, INC. HAS BEEN FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION. THE SHARES OFFERED IN THE ROLLUP REMAIN SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE.

*THIS MESSAGE INCLUDES FORWARD-LOOKING STATEMENTS REGARDING ESTIMATIONS, TARGETS AND PLANS (THE "**FORWARD-LOOKING STATEMENTS**"). THE FORWARD-LOOKING STATEMENTS ARE BASED ON INFORMATION CURRENTLY AVAILABLE TO MANAGEMENT AND CERTAIN ASSUMPTIONS CONSIDERED REASONABLE AS OF THIS DATE. THESE DETERMINATIONS AND ASSUMPTIONS ARE INHERENTLY SUBJECTIVE AND UNCERTAIN. THE FORWARD-LOOKING STATEMENTS ARE NOT GUARANTEES OF FUTURE PERFORMANCE. ACTUAL OPERATING RESULTS MAY DIFFER SUBSTANTIALLY DUE TO A NUMBER OF FACTORS. FACTORS THAT MAY CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM CURRENT EXPECTATIONS INCLUDE, BUT ARE NOT LIMITED TO, HIGH VOLATILITY IN THE VALUATIONS ATTRIBUTABLE TO THE COMPANY'S BUSINESS MODEL AND ASSETS, CHANGES AFFECTING THE PERFORMANCE OF OUR INFRASTRUCTURE PARTNER, AND RAPID CHANGES IN THE REGULATORY AND LEGAL ENVIRONMENT IN WHICH THE COMPANY OPERATES. THE COMPANY DOES NOT UNDERTAKE ANY DUTY TO UPDATE THESE FORWARD-LOOKING STATEMENTS.*

*THE DESCRIPTION OF THE INVESTMENT OPPORTUNITY IN ITEM 4 ABOVE IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT AN OFFER TO BUY OR SELL OR A SOLICITATION OF AN OFFER TO BUY OR SELL ANY SECURITIES OR TO OTHERWISE PARTICIPATE IN ANY INVESTMENT OR TRADING STRATEGY ("**INVESTMENT**"). IF YOU ARE INTERESTED, AND BEFORE MAKING AN INVESTMENT DECISION, YOU WILL BE PROVIDED WITH DEFINITIVE LEGAL DOCUMENTS WHICH WILL CONTAIN MATERIAL INFORMATION NOT CONTAINED IN THIS MESSAGE ("**DEFINITIVE LEGAL DOCUMENTATION**"). THE INVESTMENT WILL NOT BE REGISTERED IN YOUR JURISDICTION AND WILL BE MADE ONLY PURSUANT TO AVAILABLE PRIVATE PLACEMENT EXEMPTIONS. IT MAY THEREFORE NOT BE ELIGIBLE FOR SALE OR INVESTMENT IN YOUR STATE OR COUNTRY. AS SUCH, ANY DECISION TO PARTICIPATE IN THIS OPPORTUNITY SHOULD BE MADE ONLY AFTER REVIEWING THE DEFINITIVE LEGAL DOCUMENTATION WHICH WILL CONTAIN REPRESENTATIONS BY YOU THAT YOU ARE A SOPHISTICATED INVESTOR MEETING ANY RELEVANT REGULATORY REQUIREMENTS, THAT YOU HAVE CONDUCTED SUCH INVESTIGATIONS AS YOU DEEM NECESSARY, AND THAT YOUR DECISION WAS MADE AFTER CONSULTING YOUR OWN INVESTMENT, LEGAL, ACCOUNTING AND TAX ADVISORS IN ORDER TO INDEPENDENTLY DETERMINE THE SUITABILITY AND CONSEQUENCES OF PARTICIPATION. THE DEFINITIVE LEGAL DOCUMENTATION WILL SUPERSEDE ANY INFORMATION COMMUNICATED HERE.*

Thank you for your continued support and trust in the Rhodium Management team.

Respectfully,

Management

Logo

Rhodium Enterprises, Inc.

Rhodium Enterprises | 7546 Pebble Dr, Fort Worth | TX, 76118
e: updates@rhodiummining.io

EXHIBIT H

RHODIUM ENTERPRISES, INC.

A Delaware corporation

ADDENDUM

Dated June 22, 2021

to

Exchange Offer

Shares of Class A Common Stock of Rhodium Enterprises, Inc.

For

Class B Non-Voting Units in each of the following entities:

Rhodium 2.0 LLC
Rhodium 30MW LLC
Rhodium Encore LLC
Rhodium 10MW LLC
Jordan HPC LLC

And

Class A Units of Rhodium Technologies LLC

And

Incentive Units of Rhodium Technologies LLC

The Confidential Private Placement Memorandum dated May 8, 2021 (the "**Memorandum**") of Rhodium Enterprises, Inc. describes a Rollup Transaction in which the Company is offering to exchange shares of its Class A Common Stock for (i) Class B Non-Voting Units of the five Operating Subsidiaries and (ii) Class A Units of Rhodium Technologies held by members other than Imperium Investments Holdings LLC. Capitalized terms used but not defined herein have the meanings set forth in the Memorandum.

The purpose of this Addendum is to supplement certain information contained in the Memorandum.

The Rollup Transaction has been expanded to include Incentive Units that were issued by Rhodium Technologies to certain employees and consultants of Rhodium. Accordingly, as part of the Rollup Transaction, Rhodium Enterprises is offering to exchange shares of its Class A Common Stock for Incentive Units of Rhodium Technologies. As an interim step, the Incentive Units of participating holders will be exchanged for Class A Units of Rhodium Technologies prior to the Rollup Transaction. The exchange of Incentive Units of Rhodium Technologies for shares of Class A Common Stock of the Company in the Rollup Transaction will result in the Company owning a larger economic interest in Rhodium Technologies and the Company issuing additional shares of its Class A Common Stock.

The certificate of incorporation of the Company has been amended to increase the authorized number of shares of Class A Common Stock from 100 million to 400 million. This change was made (i) to enable future equity financings and (ii) to authorize the issuance of additional shares of Class A Common Stock to holders of Class A Units and Incentive Units of Rhodium Technologies that participate in the Rollup Transaction. The number of shares of Class A Common Stock issued to holders of Class A Units and Incentive Units of Rhodium Technologies in the Rollup Transaction has been increased to correct an error in the determination of the value of these units. Assuming all holders elect to participate in the Rollup Transaction, the Company will issue and have outstanding approximately 110.637 million shares of Class A Common Stock.

The Rollup Transaction is based on a Rollup Assessment Report prepared for the Company by Teknos Associates LLC, a copy of which was provided with the Memorandum. The Teknos report sets forth a valuation for each Operating Subsidiary, which is repeated in the chart below. Several of these valuations differ slightly from the valuations presented in the Memorandum, but are consistent with the valuations set forth in the Teknos report. Please refer to the Teknos report for more information on these valuations.

Operating Subsidiary	Median Valuation (based on projected discounted cash flows)
Rhodium 2.0 LLC	$548.1 million
Rhodium 30MW LLC	$887.5 million
Rhodium Encore LLC	$510.8 million
Rhodium 10MW LLC	$174.0 million
Jordan HPC LLC	$375.5 million

At the conclusion of the Rollup Transaction, the Class B Non-Voting Units of the Operating Subsidiaries that are received by the Company will be contributed to Rhodium Technologies in exchange for newly issued Class A Units of Rhodium Technologies. These Class A Units, together with the Class A Units in Rhodium Technologies exchanged for shares of Class A Common Stock of the Company, will constitute the principal assets of the Company.

As noted in the Memorandum, the number of Class A Units of Rhodium Technologies owned by the Company at the conclusion of the Rollup Transaction will depend on the total number of (i) Class B Non-Voting Units of the Operating Subsidiaries that are received by the Company and exchanged for Class A Units of Rhodium Technologies and (ii) Class A Units of Rhodium Technologies that are received by the Company. In the event all investors in the Operating Subsidiaries, all holders of Class A Units in Rhodium Technologies (other than Imperium) and all holders of Incentive Units in Rhodium Technologies elect to participate in the Rollup Transaction, the Company will own approximately 38% of the outstanding Class A Units of Rhodium Technologies. The Memorandum previously stated that this percentage would be approximately 32%.

The Operating Agreement for Rhodium Technologies will be amended to provide that the Class A Units of Rhodium Technologies that are owned by the Company are entitled to exercise not less than 51% of the voting power of all Class A Units. This provision will be added to the Operating Agreement of Rhodium Technologies on advice of counsel in order that the Company not be classified as an investment company under the Investment Company Act of 1940. Accordingly, the Company will exercise voting control over Rhodium Technologies following completion of the Rollup Transaction.

The following summary cap table sets forth (i) the approximate economic interest of Imperium and the Company in Rhodium Technologies, assuming all investors participate in the Rollup Transaction, and (ii) the voting power of Imperium and the Company in Rhodium Technologies, in each case upon consummation of the Rollup Transaction.

Summary Cap Table of Rhodium Technologies, LLC

Member	Percentage of Economic Interest	Percentage of Voting Power
Imperium	62%	49%
Rhodium Enterprises, Inc.	38%	51%
Total	100%	100%

If some holders elect not to participate in the Rollup Transaction, the Company will receive fewer Class B Non-Voting Units of the Operating Subsidiaries and/or Class A Units of Rhodium Technologies. As a consequence, (i) the Company will own a smaller percentage of the

outstanding Class A Units of Rhodium Technologies and (ii) the Company will have fewer shares of Class A Common Stock outstanding. In any case, the Class A Units of Rhodium Technologies owned by the Company will be entitled to exercise not less than 51% of the voting power of the Class A Units. At the conclusion of the Rollup Transaction, the Company will inform investors as to the level of participation in the Rollup Transaction and the resulting percentage ownership in Rhodium Technologies.

The Memorandum and an email communication from the Company to investors on May 8, 2021 stated that the exchange value of the new Class A Common Stock is approximately $10.06 per share. This number was based on an earlier version of the Teknos report. On May 10, 2021, Teknos provided the Company with an updated version of its report reflecting a revised exchange value of approximately $10.29 per share (with fractional rounding). The exchange value of approximately $10.29 per share is the value that was used to calculate the number of shares of Class A Common Stock that appear in each investor's Exchange Agreement. As such, the Exchange Agreements provided to investors are based on an exchange value of approximately $10.29 per share (with fractional rounding). During the company webinar for investors that took place on May 13, 2021, the approximately $10.29 per share exchange value was confirmed by the Company. This value supersedes and replaces the previously discussed value of approximately $10.06 per share that was set forth in the Memorandum.

The decision to participate in the Rollup Transaction rests with the holders of Class B Non-Voting Units of the Operating Subsidiaries and the holders of Class A Units and Incentive Units of Rhodium Technologies. There is no obligation to participate.

The Company intends to accept as of July 1, 2021 all exchange offers submitted in the Rollup Transaction. Accordingly, this date will be the effective date of all exchanges of Class B Non-Voting Units of the Operating Subsidiaries and Class A Units of Rhodium Technologies for shares of Class A Common Stock of the Company.

EXHIBIT I

[Redacted]

EXHIBIT J

[Redacted]

EXHIBIT K

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

X QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2021

OR

☐ TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 001-33675

Riot Blockchain, Inc.

(Exact name of registrant as specified in its charter)

Nevada	**84-1553387**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

202 6th Street, Suite 401, Castle Rock, CO 80104
(Address of principal executive offices) (Zip Code)

(303) 794-2000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class:	**Trading Symbol(s):**	**Name of each exchange on which registered:**
Common Stock, no par value	RIOT	Nasdaq Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes X No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes X No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See definition of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer	☐	Accelerated Filer	☐
Non-Accelerated Filer	X	Smaller Reporting Company	X
Emerging Growth Company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No X

The number of shares of no-par value common stock outstanding as of August 20, 2021 was 95,948,232.

In February 2021, the State of Texas experienced an extreme and unprecedented winter weather event that resulted in prolonged freezing temperatures and caused an electricity generation shortage that was severely disruptive to the whole state. While demand for electricity reached extraordinary levels due to the extreme cold, the supply of electricity significantly decreased in part because of the inability of certain power generation facilities to supply electric power to the grid. Due to the extreme market price of electricity during this time, Whinstone stopped supplying power to its customers and instead sold power back to the grid.

In April 2021, under the provisions of the TXU Power Supply Agreement, Whinstone entered into a Qualified Scheduling Entity ("QSE") Letter Agreement, which resulted in Whinstone being entitled to receive approximately $125.1 million for its power sales during the February winter storm, all under the terms and conditions of the QSE Letter Agreement. Whinstone received cash of $29.0 million in April 2021 (after deducting $10.0 million in power management fees owed by Whinstone), approximately $59.7 million is scheduled to be credited against future power bills of Whinstone beginning in 2022 and the remaining $26.3 million is contingent upon ERCOT's future remittance. These amounts are gross before fair value adjustments and expenses incurred by Whinstone for power management fees noted above and customer settlements. The fair value of the settlement agreement was estimated and recognized as an asset as part of acquisition accounting. Additionally, pursuant to the Northern Data stock purchase agreement, the Company agreed to pay Seller additional consideration in cash in the amount of the future power credits, net of income taxes, when and if realized by Whinstone. See Note 4, "Acquisitions".

Fair Value Measurement

The Company follows the accounting guidance in ASC 820 for its fair value measurements of financial assets and liabilities measured at fair value on a recurring basis. Under this accounting guidance, fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability.

The accounting guidance requires fair value measurements be classified and disclosed in one of the following three categories:

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Observable inputs other than Level 1 prices, for similar assets or liabilities that are directly or indirectly observable in the marketplace.

Level 3: Unobservable inputs which are supported by little or no market activity and that are financial instruments whose values are determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant judgment or estimation.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Assets and liabilities measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement.

The Company's derivative asset related to its Power Supply Agreement is classified within Level 3 of the fair value hierarchy because the fair value is estimated by utilizing valuation models and significant unobservable inputs. The Company's only financial liability based on Level 3 inputs is a contingent consideration arrangement related to its acquisition of Whinstone. The Company is contractually obligated to pay contingent consideration payments to the Seller if Whinstone realizes certain power credits. (See Note 14, "Fair Value Measurement")

The Company will update its assumptions each reporting period based on new developments and record such amounts at fair value based on the revised assumptions until the agreements expire or contingency is resolved, as applicable.

EXHIBIT L

[2/15/21, 5:32:36 PM] Nathan: ‎<attached: 00005100-PHOTO-2021-02-15-17-32-36.jpg>
[2/15/21, 5:32:44 PM] Nathan: Section 5.8
[2/15/21, 5:33:17 PM] Chad Everett Harris: Ok - so we are going to have to decide which document we work off of - because when we unwound the JV -we have a different document
[2/15/21, 5:34:11 PM] Chad Everett Harris: additional - we are going to have to discuss how Rhodium claims the 30mw when they have never pay for 30 mw- to be clear
[2/15/21, 5:34:51 PM] Chad Everett Harris: I have no issues- but this will be fair not one sided
[2/15/21, 5:35:33 PM] Nathan: That's all we're asking for.
[2/15/21, 5:38:09 PM] Nathan: We've always been fair, we'll be fair here too. Let just figure out what we're going to do here and moving forward that can set precedent.
[2/15/21, 5:38:55 PM] Chad Everett Harris: I just have a hard time when the opportunity for Whinstone to reduce its risk - turns into= what are we going to get.
[2/15/21, 6:07:24 PM] Nathan: Power is out but we're making $10s of millions, bittersweet 😂
[2/15/21, 6:08:22 PM] Chad Everett Harris: Haha. Yeah. It's been out at home now for 2hrs. It's cold. But I'll suffer
[2/15/21, 6:08:25 PM] Nathan: ‎<attached: 00005110-PHOTO-2021-02-15-18-08-25.jpg>
[2/15/21, 6:08:43 PM] Nathan: Exactly 🤣😂🤣
[2/15/21, 8:26:15 PM] Chad Everett Harris: ‎<attached: 00005112-PHOTO-2021-02-15-20-26-15.jpg>
[2/15/21, 8:27:08 PM] Nathan: #1 pray no one gets hurt
#2 $$$$$
[2/15/21, 8:27:23 PM] Nathan: Sitting in the dark, you have power?
[2/15/21, 8:27:34 PM] Chad Everett Harris: Got it 3 mins ago
[2/15/21, 8:27:43 PM] Chad Everett Harris: House is now 55
[2/15/21, 8:29:16 PM] Nathan: It's supposed to get a lot worse after midnight looks like
[2/15/21, 8:29:28 PM] Nathan: Load wise
[2/15/21, 8:29:33 PM] Chad Everett Harris: Yes
[2/15/21, 8:29:37 PM] Chad Everett Harris: That's correct
[2/15/21, 8:31:00 PM] Nathan: Well, it'll all be okay in a few days. Such a windfall though. We are really lucky people all the way around. Bitcoin goes to $50k and one in 100 years back to back cold fronts
[2/15/21, 8:31:28 PM] Chad Everett Harris: Yeah
[2/16/21, 8:40:28 AM] Nathan: ‎<attached: 00005123-PHOTO-2021-02-16-08-40-28.jpg>
[2/16/21, 9:32:51 AM] Chad Everett Harris: that is great news - congrats
[2/16/21, 9:56:37 AM] Nathan: ‎This message was deleted.
[2/16/21, 9:57:16 AM] Nathan: Chad at this rate you're not going to be paying for power for like two years. It has consistently been around $9,000 basically all night.
[2/16/21, 10:15:45 AM] Chad Everett Harris: You are right. Now I'm concerned about bankruptcy w TXU
[2/16/21, 10:16:32 AM] Nathan: You think that's possible?
[2/16/21, 10:17:00 AM] Chad Everett Harris: I'm just thinking how can it be possible to manage this
[2/16/21, 10:17:25 AM] Chad Everett Harris: The margin call now is over 40mm
[2/16/21, 10:17:32 AM] Chad Everett Harris: And I'm just one customer
[2/16/21, 10:17:49 AM] Nathan: I mean they're just a clearing house right? It has to be balanced on both sides, buyers and sellers?
[2/16/21, 10:22:24 AM] Chad Everett Harris: I just know that when I talked to PPM, they were like, people are dying in hospitals right this minute because they have been without power since 2am
[2/16/21, 10:22:41 AM] Nathan: :(
[2/16/21, 10:23:04 AM] Chad Everett Harris: I am hopeful this all works out, I just see that this could turn into something that happened to me during Katrina
[2/16/21, 10:23:25 AM] Nathan: What do you mean?
[2/16/21, 10:23:31 AM] Chad Everett Harris: the Feds took all my fuel - 20K worth of it - and I got zeor
[2/16/21, 10:23:39 AM] Chad Everett Harris: zero dollars -
[2/16/21, 10:24:01 AM] Chad Everett Harris: because it was a declared emergency
[2/16/21, 10:24:12 AM] Nathan: There's no way that can happen here. You have a contract, you can sue the federal government.
[2/16/21, 10:24:51 AM] Chad Everett Harris: I understand - I am just concerned. that is all
[2/16/21, 10:25:19 AM] Nathan: I would try to get that TXU margin call in your account as soon as possible.

EXHIBIT M

[Redacted]

EXHIBIT N

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October 8, 2024

VIA E-MAIL (pattytomasco@quinnemanuel.com)

Patricia B. Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana Street, Suite 3900
Houston, Texas 77002

Re: *In re Rhodium Encore, LLC, et al.*, Case No. 22-10964 (MG) (Bankr. S.D.N.Y.)

Dear Ms. Tomasco:

We write in connection with the Simple Agreement for Future Equity ("SAFE") between Celsius Holdings U.S. LLC and Debtor Rhodium Enterprises, Inc. ("REI") in the above referenced chapter 11 proceedings (the "Chapter 11 Cases").[1] As you know, the Office of the United States Trustee ("UST") is considering the BRIC's request for appointment of an official SAFE committee pursuant to 11 U.S.C. 1102.

In the meantime, the BRIC respectfully requests that it immediately be provided diligence materials as set forth in detail below. As you know, an exceptionally brief challenge period for certain putatively secured debt has been established in the Cash Collateral Order.[2] In addition, the parties to the Whinstone/Riot assumption litigation have set an aggressive schedule for discovery and trial, and the Debtors have indicated that Rhodium's bankruptcy may be completed in as little as two months. Based on the Debtors positions concerning the treatment of the Celsius SAFE in correspondence with the UST, the SAFE holders believe they must swiftly intervene in that litigation and become active in the bankrtupcy to protect their interests.

As we have also previously discussed, the BRIC is also concerned by the existence of potential conflicts of interest on the Rhodium side, and alleged potential insider misconduct.

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[1] Our client, the Blockchain Recovery Investment Consortium ("BRIC"), acts as the Complex Asset Recovery Manager for Celsius Network LLC and its affiliated post-Effective Date Debtors (collectively, "Celsius"), and is charged with, among other things, maximizing value for the benefit of Celsius' creditors in connection with the SAFE.

[2] *Final Order (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; and (IV) Granting Related Relief* [ECF No. 178] (the "Cash Collateral Order").

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Among other things, it has been alleged that Rhodium insiders, at least some of whom own putative Rhodium debt and equity, engaged in various forms of inequitable and illegal conduct, including by withholding information and/or making material misrepresentations in connection with SAFE agreements and other interests in Rhodium, and engaging in breaches of fiduciary duty and self-dealing relating to the "rollup" transactions, as well as other matters involving the Debtors.[3]

In addition, Quinn recently disclosed that it currently represents Whinstone and Riot in active litigation against other tenants of the Rockdale facility, while at the same time defending the Debtors against Whinstone and Riot in connection with the Debtors' tenancy at the same Rockdale facility. Quinn's concurrent representation of the Malcom P and Emily T Fairbairn 2021 Charitable Remainder ("Fairbairn"), identified as among the Debtors' "Top Shareholders," likewise presents a potential conflict of concern to the BRIC. We look forward to receiving information promptly from you to help us determine the extent to which these issues can be resolved amicably.

Regarding the pending Whinstone litigation, the BRIC has been surprised to learn of what appear to be spiraling and out-of-control costs, including the parties' apparent plans to schedule ***more than 25 depositions***. As a SAFE holder – the fulcrum security here – the BRIC and other SAFE holders bear 100% of the costs associated with these cases. We ask to be provided all relevant information concerning that Whinstone litigation, and included in discussions going forward concerning its pace and progress, so we can weigh in as may be necessary or appropriate, including on what appears to be extraordinary expenditure of estate resources in connection with the assumption litigation. In an effort to spare BRIC and the Debtors' estates additional unnecessary expenditure and delay, BRIC would like to work collaboratively with the Debtors to obtain the documents and information necessary to its investigation through voluntary disclosures rather than costly and time-consuming motion practice pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure. As indicated, however, time is short. We therefore ask you to please confirm by October 10, 2024 that the Debtors will respond to the information requests from the BRIC, including those identified below, without requiring a Rule 2004 examination order.[4]

[3] The BRIC reserves all of its rights, remedies, claims and defenses respecting these matters.

[4] For the avoidance of doubt, we are not asking you to confirm by October 9, 2024 that Debtors will provide all requested information, only that you confirm by that date that the Debtors will respond to, and work with us concerning, requests from the BRIC without requiring a formal Rule 2004 motion, notice or order.

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To that end, the BRIC requests that the Debtors agree to voluntarily produce documents and information in response to the following preliminary diligence requests on an expedited basis:[5]

1. All documents and information concerning or relating to any valuation of the Debtors or any of the Debtor entities, including any reports, presentations or other analyses prepared by the Debtors or their financial advisors concerning the value of the Debtors, their business or assets, or any portion thereof;

2. Unredacted copies of the following agreements signed between Whinstone and the Debtors: (1) the Water Supply Agreement signed between Whinstone and the Debtors in August 2021, (2) the operating agreements signed between the parties in July 2020 ("the "5MW Agreements" and "30MW Agreement"), and (3) the Colocation Agreement signed between the parties in November 2020.

3. Copies of all of the Debtors' debt obligations and related agreements and other documentation, including, without limitation, such materials relating to the Consenting Prepetition Obligations, Collateral and Liens[6];

4. Copies of all private placement memoranda, marketing materials or other documentation related to any Debtor fundraising or offering activity of any kind, including copies of all recordings, transcripts, and materials relating to any presentations, webinars, or similar materials prepared by the Debtors or provided to potential investors;

5. Board materials, board minutes or agendas, management presentations, written policies and procedures and any similar materials concerning (a) appointment or removal of any directors, (b) any SAFE, any activities or transactions relating to SAFEs and use of funds raised via SAFEs, (c) valuation of the Company or any of its assets, (d) any actual or potential third party lending or financing transaction involving any Debtor; (e) any distributions, (f) any matter as to which approval rights are provided under Section 6 of the

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[5] Until such time as a protective order is entered into the main case, BRIC is prepared to treat documents produced in connection with the diligence requests on a confidential basis as that term is used in the *Stipulated Protective Order*, dated September 18, 2024 [ECF No. 152] (the "Protective Order") and entered into between Debtors and Whinstone, U.S., Inc., as if the BRIC were a "party" within the meaning of the Protective Order. If you prefer a different approach to confidentiality, please just let us know and we will consider it in good faith.

[6] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Cash Collateral Order.

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Celsius side letter; (g) any payments or other transactions involving lenders during the year preceding the petition date and (h) Riot or Whinstone.

6. Documents and information sufficient to identify all debt instruments, SAFE agreements, and/or any other type of interest in the Debtors, including the identity of the holder, and whether he, she or it is, or is affiliated with, any current and/or former officers, directors, or high-level management of any Debtor entity or their family members;

7. All pleadings and submissions in connection with any arbitration between or among any Debtor entity or affiliate and any Whinstone entity or affiliate, including without limitation *Rhodium JV LLC, et. al. v. Whinstone US, Inc.*, Case No. 01-23-0005-7116, with the American Arbitration Association ("AAA") on December 11, 2023, and unredacted copies of any pleadings involving Debtors that are available publicly only in redacted form, including an unredacted copy of the Complaint filed in *Trine Mining, LLC, et. al. v. Nichols, et. al.*, No. 2022-1029-PAF (Del. Ch. Nov. 18, 2022);

8. The May 13, 2021 presentation that Rhodium executives made to non-Imperium investors regarding the proposed Rollup Transaction;

9. Copies of all documents produced or received and, to the extent not available on the public docket, unredacted pleadings and other submissions filed, in connection with the ongoing assumption litigation between Rhodium and Whinstone in these bankruptcy cases;

10. All documents, communications and information of the Debtors relating to the following topics:

    a. Riot Blockchain, Inc.'s acquisition of Whinstone US, Inc. and its affiliates;

    b. Fundraising, development, and construction of expansion facilities at the Rockdale Site, referred to as "Building D";

    c. Valuation and other modeling provided by Teknos Associates to the Debtors.

11. Copies of all relevant insurance policies, including any policies providing directors and officers liability insurance.

12. Copies of Quinn's engagement agreements and any related materials concerning its contemporaneous representation of the Debtors on the one-hand, and Whinstone and Riot on the other, the Debtors' adversaries in the referenced lease assumption litigation, and any

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communications with Whinstone or Riot concerning or relating to these cases (or, if privilege is claimed, a log thereof).

13. Copies of Quinn's engagement agreement and any related materials concerning its contemporaneous representation of the Debtors on the one-hand, and Fairbairn, one of the Debtors' "Top Shareholders," on the other, and any communications with Fairbairn concerning or relating to the Debtors and/or these cases (or, if privilege is claimed, a log thereof).

14. Documents sufficient to identify the nature of Quinn's work for DLT (another "Top Shareholder" of Debtors) and Elysium Mining, LLC, and the date upon which that engagement ended.

15. Documents sufficient to determine fees earned by Quinn from its engagements with Whinstone, Riot and Fairbairn, and the terms of any ethical wall or other measures taken by Quinn in connection with their concurrent representations, and the identity of any professionals representing those parties in connection with these cases.

These requests are not intended to be exhaustive but rather are meant to identify priority documents for expedited production. BRIC reserves its right to seek additional documents and information as its review continues. Please note that given the very aggressive schedule you have established for these proceedings, BRIC believes that relief will be required concerning the Challenge Period provided in the Cash Collateral Order so that adequate time is provided for parties-in-interest and their representatives to conduct an appropriate investigation (hopefully with the benefit of any analysis the Debtors themselves may have undertaken) ahead of the Challenge Deadline.

We look forward to hearing from you and working cooperatively together. Nothing herein constitutes a waiver or relinquishment of any of BRIC's claims, defenses, rights, or remedies, all of which are expressly reserved.

Sincerely,

/s/ *Mitchell P. Hurley*
Mitchell P. Hurley

EXHIBIT O

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November 7, 2024

VIA E-MAIL (pattytomasco@quinnemanuel.com)

Patricia B. Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana Street, Suite 3900
Houston, Texas 77002

Re: *In re Rhodium Encore, LLC, et al.*, Case No. 22-10964 (MG) (Bankr. S.D.N.Y.)

Dear Ms. Tomasco:

We write on behalf of the BRIC to seek certain additional diligence information in connection with the above referenced chapter 11 proceedings (the "Chapter 11 Cases"). The requests below are not intended to be exhaustive, nor to modify or limit any prior requests.[1]

1. All agreements, including any purchase options or similar contracts, entered into by Rhodium Enterprises, Inc. or any of its debtor or non-debtor affiliates, including but not limited to Imperium Investment Holdings LLC ("Imperium"), for or relating to the purchase of mining rigs ("Rig Agreements"), including but not limited to any such agreement(s) in which MicroBT or Inshingle are counterparties;

2. Documents sufficient to identify any transactions involving, pursuant to, or relating to any Rig Agreements, including any purchase, sale or re-sale of any mining rigs, the assignment or other disposition of any Rig Agreements, and the disposition and current location of any proceeds of such transactions.

3. Documents sufficient to identify, on an at least quarterly basis, any travel or entertainment expenses in connection with any activities involving any insiders of Rhodium, and the purpose for each such expense;

4. Document sufficient to identify any payments made by Rhodium to or on behalf of insiders with respect to any tax obligations, including in connection with any sale by insiders of interests in Rhodium, and tax returns for Rhodium insiders for

[1] Capitalized terms used but not defined here have the meanings ascribed to them in the BRIC's October 8, 2024 diligence request. We understand that this letter is subject to the Debtors' prior agreement that it will not require a formal 2004 motion, notice or order in connection with the BRIC's diligence requests, but please advise us immediately if Debtors disagree.

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the year(s) in which proceeds for any sales of Rhodium interests by insiders were reported;

5. Documents sufficient to identify any power credits, payments, or other value of any kind that were or could have been provided to or claimed by Rhodium in connection with Winter Storm Uri ("Credits"), and all documents concerning or relating to any sale, transfer, release, or other disposition of such Credits, including the disposition and current location of any proceeds relating to the Credits;

6. Marketing materials and subscription agreements (or similar materials memorializing any purchases) concerning or relating to the Rhodium Renewables capital raise in 2022;

7. Documents and communications concerning or relating to the discovery by any Rhodium insider that Riot would or might acquire Winstone, and any communications concerning the potential impact of the acquisition on Rhodium, its business and affairs, fundraising, equity, and investors;

8. All communications concerning valuation analyses, reports or similar prepared by Teknos Associates or any other person or entity concerning the value of any of the Debtors or their assets;

9. Board and other materials, including any minutes or other recordings, concerning the departure of Nick Cerasuolo, and the departure and return of Nathan Nichols, and communications concerning the actual or potential appointment of independent members to Rhodium's board, including such communications with investors;

10. Communications concerning putative Rhodium secured debt, including any potential defaults, changes in terms of any securities issued by Rhodium, or conversions of debt to equity, perfection issues, and any board materials concerning same;

11. Documents concerning or relating to any SAFE Agreement, including any actual, contemplated or potential transactions or events that did or could constitute a Liquidation Event, Dissolution Event, or other "trigger" event of the SAFE.

12. Documents sufficient to identify any use of insurance policy proceeds or erosion of insurance policy limits.

As you know, we still are waiting for productions that the Debtors previously committed to providing in connection with our October 8, 2024 diligence request and follow-ups. Please advise when

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we can expect to receive those materials, and your availability to discuss delivery of the materials identified above. Nothing herein constitutes a waiver or relinquishment of any of BRIC's claims, defenses, rights, or remedies, all of which are expressly reserved.

We look forward to hearing from you.

Sincerely,

/s/ Mitchell Hurley
Mitchell P. Hurley

EXHIBIT P

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January 27, 2025

VIA E-MAIL

Patricia Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana Street, Suite 3900
Houston, Texas 77002

Re: *In re Rhodium Encore, LLC, et al.*, No. 24-90448 (ARP) (Bankr. S.D. Tex.)

Dear Patty:

We write on behalf of the ad hoc group of parties to Simple Agreements for Future Equity ("SAFE AHG") with Debtor Rhodium Enterprises, Inc. ("REI"), in response to your letter dated January 23, 2025 (the "Letter"), and to further identify the issues we spoke about briefly during our telephone call this morning.

Tax Returns

As you know, the SAFE AHG is investigating a host of alleged inequitable and other wrongful conduct by the Debtors' insiders, including the Debtors "ultimate parent" and controlling shareholder, Imperium Holdings LLC ("Imperium"), and the Debtor directors and officers who own and control Imperium ("Insiders"). Among other things, the Insiders are alleged to have sold their personal stockholdings in the Debtors at a time when the Debtors were actively fundraising, and to have caused the Debtors to pay the personal capital gains taxes of the Insiders relating to those sales. As part of its 2004 examination of the Debtors, on November 7, 2024, the SAFE AHG asked the Debtors to produce the Tax Returns. As detailed in our prior correspondence, the Debtors agreed to do so on multiple occasions, but the Tax Returns were never delivered. In their January 23, 2025 Letter, the Debtors argue for the first time that they are not required to produce the Tax Returns because they are not in the Debtors' immediate possession. Apparently, the Debtors never even asked their Insiders for the Tax Returns.

In any case, the Debtors have incorrectly identified the standard applicable to the SAFE AHG's outstanding discovery requests. The Debtors are required to produce responsive documents in their "*possession, custody or control*." *Mir v. L–3 Communications Integrated Systems, L.P.*, 319 F.R.D. 220, 230 (N.D. Tex. 2016). The "definition of 'possession, custody, or

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control,' includes more than actual possession or control of the materials; it also contemplates a party's legal right or practical ability to obtain the materials from a nonparty to the action." *Id.* (internal citations omitted); *see also Mirlis v. Greer*, 80 F.4th 377, 382 (2d Cir. 2023) ("Control" does not require "actual physical possession of the documents at issue"). "A business entity has the legal right and practical ability to obtain documents from its employees and agents," and from its directors, officers and affiliates. *See, e.g.*, *Calsep A/S v. Intelligent Petroleum Software Solutions, LLC*, No. 4:19-CV-1118, 2020 WL 10759435, at *1 (S.D. Tex. 2020) (compelling defendant to produce documents in the possession of one of its shareholders who referred to himself as the defendant's Chief Technology Officer); *Arconic Inc. v. Novelis Inc.*, No. 17-1434, 2018 WL 4958976, at *2-3 (W.D. Pa. Oct. 15, 2018) (holding that a corporation must search a board member's electronic communications housed on non-party emails and servers when responding to document requests, reasoning that the company's directors had a fiduciary duty to produce the documents, and the documents were, therefore, within the company's control); *CA, Inc. v. AppDynamics, Inc.*, No. 13-2111 (WFK) (SIL), 2014 WL 12860591, at *3-4 (E.D.N.Y. Sept. 8, 2014) (similar).

The Tax returns are in the immediate possession of the Debtors' current and former directors and officers, as well as the Debtors' "ultimate parent," *see* Decl. of David M. Dunn in Support of First Day Relief, ¶ 99, and are therefore in the Debtors' "possession, custody or control." *See, e.g.*, *First Am. Bankcard, Inc. v. Smart Bus. Tech., Inc.*, No. 15-CV-638, 2017 WL 2267149, at *3 (E.D. La. May 24, 2017) ("As former owners and top officers of defendant, Fuente and Romero are precisely the kind of individuals who owe an obligation to their ex-corporate employer to provide the requested materials upon request and from whom the corporate defendant would be expected to have a practical ability to obtain them."); *see also Arconic Inc.*, 2018 WL 4958976, at *2-3; *CA, Inc.*, 2014 WL 12860591, at *3-4. Indeed, as discussed below, the Debtors acknowledge that they gathered all Imperium emails and director-maintained texts and chat messages for production in connection with the Whinstone litigation. It seems clear, in other words, that the Debtors do in fact have "the practical ability to obtain" documents in the immediate possession of Imperium and the other Insiders. They are required to do so. *See, e.g.*, *Ruby Slipper Café v. Belou*, No. 18-1548, 2020 WL 4905796 (E.D. La. Jan. 15, 2020) ("The meaning of possession, custody, and control" includes "whether the responding party could come into possession of the requested document upon reasonable inquiry," and places the "onus on the responding party to check with its sources to determine whether they have any documents responsive.")

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Documents Not Included in Special Committee Review

Important categories of information were not made available to the Special Committee in connection with its investigation of the Insiders. For example, in connection with the Whinstone litigation, the Debtors gathered (i) all Imperium emails and (ii) all telephone-based texts, WhatsApp messages and Teams messages for seven custodians ("Chats") and loaded that material on a Debtor review platform (the "Litigation ESI").[1] We understand, however, the Special Committee did not run its investigation-related search terms against the Litigation ESI. Instead, the Special Committee ran its investigation searches against a substantially more limited universe of ESI. For example, the Special Committee searched only Rhodium-hosted email addresses (no Imperium domains) for just four custodians, and searched Chats for only three custodians, and then only to the extent the Chat also included a Whinstone employee. That means, among other things, that the Special Committee ran its investigation-related searches against ESI that excluded Insider-only Chats, and thus excluded communications likely to reflect the Insiders' most candid and unguarded statements concerning the topics under investigation by the Special Committee.[2]

Immediately upon learning of the key information overlooked by the Special Committee, the SAFE AHG provided the Debtors with search terms specific to the allegations against the Insiders, and asked the Debtors to run a hit report against the Litigation ESI. Although the SAFE AHG's request is virtually burden-free, the Debtors still have not complied. In your Letter, you also indicate that the Debtors will not produce any of the ESI overlooked by the Special Committee, no matter what any hit report discloses. You say only that you *might* consider requests for additional documents, but only *after* the Special Committee produces a report of its investigation on some unspecified date in the future. By definition, however, any Special Committee report will be based on information that omits sources likely to include the most probative evidence concerning the allegations against Imperium and the other Insiders that are under review. And given the pace at which the Debtors have said they wish to move these cases,

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[1] Quinn advised the SAFE AHG on January 17, 2025, that the Litigation ESI includes all Imperium and Rhodium emails, native texts, WhatsApp messages, and Teams messages, with no date or other restrictions, from Chase Blackmon, Cameron Blackmon, Nathan Nichols, Nick Cerasuolo, Brendan Cottrell, Alex Peloubet and Pete Richison. *See* Email from Razmig Izakelian to Counsel to the SAFE AHG dated January 17, 2025.

[2] Running investigation-specific search terms against the Litigation ESI is required, whether or not the Debtors made available to the Special Committee documents produced to Whinstone in the contract assumption litigation, including because the investigation of Insiders covers issues unlikely to have been explored in the Whinstone litigation. And to the extent any duplication does exist between the investigation-related Litigation ESI and Whinstone-related Litigation ESI, that duplication can be eliminated at the press of a button.

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it would be imprudent and impractical to wait even another day longer than necessary to run investigation-specific searches against this critical material and identify additional documents for review.

As you know, members of the Special Committee agreed this morning to join a call with us and their counsel tomorrow to discuss our concerns relating to the Tax Returns and ESI. We view resolution of these issues as critically urgent, and hope that agreement can be reached during tomorrow's call.

Nothing herein constitutes a wavier or relinquishment of any of the SAFE AHG's rights, remedies, claims or defenses, all of which expressly are reserved.

Sincerely,

/s/ Mitchell P. Hurley
Mitchell P. Hurley

Cc: Trace Schmeltz

EXHIBIT Q

[Redacted]

EXHIBIT R

[Redacted]

EXHIBIT S

Yang, Karen

From: Rhonda Mates <mates@slollp.com>
Sent: Thursday, April 17, 2025 9:40 AM
To: Hurley, Mitchell; Schultz, Sarah A.; Yang, Karen; Chase Potter; Funk, Brenda
Cc: Schmeltz, Trace; Stephen Lemmon; Underwood, Charlotte
Subject: Imperium Document Production (IMP000001-IMP000368)

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL Email

Counsel,
Thank you for your patience as I have worked to get documents together to send to you. The first set of "Imperium" documents can be downloaded using this link:
[redacted]

I want to make a few observations to try to head off some of the questions/complaints I anticipate coming my way. I think it might be helpful for you to understand the history of the Imperium document saga. I have copied Trace and Charlotte on this email just in case he disagrees with my characterization of events.

The Special Committee's Initial Data Collection:

- As part of the investigation of the Rhodium directors and officers, the Special Committee ("SC") gathered documents that were potentially relevant to alleged claims against the D&Os. Because of the overlap in ownership and management of Rhodium and Imperium, relevant documents existed in multiple places: (1) Rhodium emails and files, (2) Imperium emails, and (3) the cell phones of the founders (Chase, Cameron, Nathan, and Nick).
- After the SC collected data from the Debtors, they realized there was a gap in the text messages and emails:
    - *Text Messages*: In connection with the Whinstone litigation, the Stris firm had a third-party vendor image the cell phones of Chase, Cameron, Nathan, and Nick. The vendor imaged the entire phones, but then extracted certain texts based on the sender/receiver and sent that subset (the "Whinstone Texts") to Stris. Stris later provided the Whinstone Texts to the Debtors, which then provided them to the SC. (The vendor retained a copy of the fully imaged phones.)
    - *Emails*: The SC collected emails from Rhodium-domain accounts. The SC later learned that potentially relevant information might also be located within emails from Imperium-domain accounts.

The Imperium Data Collection and Production to the SC (via SLOL):

- In late November, Trace and his team reached out to my partner Steve Lemmon about running searches on the texts that were not included in the Whinstone Texts.
- On December 10, Steve enlisted me to help with the data collections issues.
- On December 11, I began working to collect the Imperium data to provide to our ESI vendor, but a series of incompetencies resulted in the data not being available to review until January 6.

- The SC demanded that I run certain searches and provide all search results to them. Because the search terms were way overbroad and Imperium emails and texts included a lot of information unrelated to Rhodium or the SC's inquiries, including highly confidential and personal information, as well as privileged communications, I was not comfortable providing them to the SC without reviewing them first. However, because of the delay in getting control of the data, and in an effort to not stall the SC's objective, we agreed to provide the bulk of the search results to the SC without a thorough review, *on certain conditions*.
    - The documents were provided to the SC on a Professionals' Eyes Only basis, were not to be shared with anyone outside of Rhodium and the SC without Imperium's consent, were subject to Imperium's rights to claw back privileged documents, and documents not relevant to the SC's investigation were to be returned to Imperium or destroyed.

SAFE AHG's/Transcend's Requests:

- The SAFE AHG and Transcend parties have requested all documents Imperium provided to the SC. For the reasons explained above, that is not possible. A considerable number of the documents are entirely irrelevant to Rhodium or the issues at hand.
- We will provide you with the non-privileged Imperium documents the SC identified as relevant to its investigation. The SC identified approximately 1700 documents that fit this description. I am in the process of reviewing those for privilege and will produce on a rolling basis.
- The set contained in the link above includes the documents specifically referenced in the SC's report and presentation.
- I retained the original bates numbers (IMP-BT) to make cross referencing easier, but I also added a generic bates number so I can track the document provided to parties other than the SC. I was not able to remove the PEO/AEO designation, but you may treat these as if only the Confidential designation remains in place. When I have more time, I will re-run the production with the corrected designations.

I am happy to talk about this if you have any questions.

Rhonda Mates

STREUSAND | LANDON | OZBURN | LEMMON LLP
Spyglass Point | 1801 S. MoPac Expressway | Suite 320 | Austin, Texas 78739
(d) (512) 220-2689 | (o) (512) 236-9900 | (f) (512- 236-9904
mates@slollp.com | www.slollp.com

EXHIBIT T

[Redacted]

EXHIBIT U

[Redacted]

EXHIBIT V

[Redacted]

EXHIBIT W

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Mitchell P. Hurley
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March 10, 2025

VIA E-MAIL (pattytomasco@quinnemanuel.com, mates@slollp.com)

Patricia B. Tomasco
Quinn Emanuel Urquhart & Sullivan, LLP
700 Louisiana Street, Suite 3900
Houston, Texas 77002

Rhonda Mates
Streusand, Landon, Ozburn & Lemmon LLP
Spyglass Point, 1801 S. MoPac Expy. #320
Austin, TX 78746

Re: *In re Rhodium Encore, LLC, et al.*, Case No. 24-90448 (ARP) (Bankr. S.D. Tex.)

Dear Ms. Tomasco and Ms. Mates:

We write on behalf of the ad hoc group of parties to Simple Agreements for Future Equity (the "SAFE AHG") to seek from the Debtors[1] certain diligence information in connection with the above referenced chapter 11 proceedings (the "Chapter 11 Cases"). The requests below are not intended to be exhaustive, nor to modify or limit any prior requests.

1. All agreements between Lehotsky Keller Cohn ("LKC") or Stris & Maher LLP ("Stris") on the one hand, and any of the Debtors or any insiders (as defined in the Bankruptcy Code, and collectively with Debtors, the "Clients") on the other.

2. All LKC and Stris invoices, billing correspondence or similar documents sent to any Client, and other documents sufficient to identify, for each month or other billing period, the relevant timekeepers billing to the matter, the periodic and

[1] 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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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cumulative number of hours each such timekeeper billed to the matter (including, without limitation, documents sufficient to identify the hours devoted to Client matters by Jonathan Cohn while LKC was receiving a monthly $25,000 payment for Mr. Cohn's services), the periodic and cumulative value of time, and the period and cumulative amounts actually billed to the Client.

3. Documents sufficient to identify the dates and amounts of all payments made to LKC or Stris by any Client, including, without limitation, the dates and amounts of all "retainer" and "retainer replenishment" payments made by any Client to LKC or Stris, and copies of all invoices, agreements, or other similar documents related to such payments.

4. All documents and communications concerning any modified proposed engagement of LKC, such as the proposed modified terms provided in the March 4, 2025 engagement letter between LKC and Debtors (the "New Engagement Letter"), as attached at Exhibit A to the *Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* (the "New Retention Application").

5. The email dated May 16, 2023 that forms a part of the May 16, 2023 engagement letter, and apparently was attached to that letter, but that was not included with the Debtors' submission in connection with the New Retention Application.

6. Documents sufficient to identify projected LKC and Stris fees, and how they fit into (i) the Debtors' projections, and (ii) the 13-week budget filed by Debtors at Exhibit A to the *Notice of Filing of Exhibit A to the Emergency Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors' Use of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (the "Cash Collateral Budget").

7. Any disclosures from LKC or Stris to Debtors regarding any potential conflicts of interest, including whether LKC or Stris hold or represent any interests adverse to the estate.

Production of the requested materials is urgent, including in light of the Debtors' recent application concerning the engagement of LKC. We will make ourselves available to meet and confer concerning the foregoing requests at your reasonable convenience, including March 11 or 12, 2025 between 10:00 a.m. and 5:00 p.m. Central Time. Please advise your availability in those windows. Nothing herein constitutes a waiver or relinquishment of any of the SAFE AHG's claims, defenses, rights, or remedies, all of which are expressly reserved.

We look forward to hearing from you.

Akin

Sincerely,

/s/ Mitchell Hurley
Mitchell Hurley

Cc: Peter Stris, Jonathan Cohn

EXHIBIT X

Yang, Karen

From: Yang, Karen
Sent: Thursday, March 20, 2025 6:14 PM
To: Patty Tomasco; Razmig Izakelian
Cc: jon@lkcfirm.com; Rhonda Mates; pstris@stris.com; Schmeltz, Trace; Underwood, Charlotte; Hurley, Mitchell; Schultz, Sarah A.; Scott, Elizabeth D.
Subject: RE: In re Rhodium Encore, LLC, et al., Case No. 24-90448 (ARP) (Bankr. S.D. Tex.) - 3.10.2025 SAFE AHG Diligence Letter
Attachments: In re Rhodium Encore LLC et al, No. 24-90448 - 3.10.2025 SAFE AHG Diligence Letter.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Raz and Patty:

Thank you for the call on March 14 regarding our March 10 diligence letter. Below is our understanding following that call. We have reattached the diligence letter for your convenience.

- Regarding item #1, we explained that the material we seek is not publicly available and that we requested all insider engagement agreements with LKC and Stris, including engagement agreements pursuant to which LKC and/or Stris acted individually for the insiders (alongside or instead of the Debtors). You represented that the Debtors do not have the engagement agreements between LKC and Stris, on one hand, and the Debtors' insiders, on the other hand, and indicated and that the Debtors would not even ask the insiders to provide them, despite the fact that the insiders also are members of the Debtors' board of directors, and own Debtors "ultimate parent," Imperium. During our call, you complained repeatedly about the supposed costs of responding to the SAFE AHG's requests, but your refusal to take steps required by applicable rules (like at least asking your client's fiduciaries to provide documents responsive to our requests) and repeated breaches of the Debtors' promises to deliver agreed discovery are the real driver of the costs of which you complain.
- Regarding items #2 -3, we explained again that the information we seek is not publicly available and is not limited to retention applications or post-petition fees and explained why we believe these materials are clearly relevant. We explained, for example, that we are entitled to know exactly how much the Debtors have paid LKC and Stris up to March 4, 2025 in connection with both **pre- and** post-petition matters, including to examine (i) whether paying $25,000 per month to a lawyer actually qualifies as a "discount," (ii) whether the claimed hourly fee discounts were actually provided to Debtors, and (iii) how those rates and payments compare to those charged by, and paid to, the Stris firm in connection with the Whinstone matter. Also, Stris and LKC have received substantial preference payments, and the cadence of Debtors' pre-petition receipt and payment of Stris and LKC bills may be relevant to the estate's claims in that regard. You said that you would take our explanation regarding the relevance of these items back to the Debtors and let us know if you will agree to produce anything further. The material sought is of obvious relevance to the motion Debtors just filed, and to the estates' valuable preference claims, and is not unduly burdensome to produce. We have now received documents concerning request #2, but **not** #3, for the **post-**petition period, and have received no documents covering either request #2 or #3 for the **pre-**petition period, which should include, inter alia, LKC's invoices from inception of the engagement. Please confirm that you will produce all such missing documents from request #2 and #3 by **Monday, March 24** at 5:00 CT, or we will assume we are at an impasse and proceed accordingly.
- Regarding item #4, you agreed to produce responsive documents to the extent not privileged and stated that you would do so by **March 21, 2025**. You refused on burden grounds to provide a privilege log with respect to any responsive documents that you are withholding on the basis of privilege. We are at an

impasse concerning your refusal to provide a privilege log (required, as you surely must be aware, under applicable law) and will proceed accordingly.

- Regarding item #5, you confirmed that you are refusing to produce this May 16, 2023 email on privilege grounds. We understand that we are at an impasse and will proceed accordingly.
- Regarding item #6, you agreed to produce documents regarding the projected amount of fees for LKC and Stris going forward in the projections and stated that you would do so by **March 21, 2025.**
- Regarding #7, you confirmed that Debtors are representing that all disclosures made by Stris and LKC to the Debtors concerning potential conflicts of interests have been included in their publicly filed fee applications. For the avoidance of doubt, the SAFE AHG is relying on the accuracy of this representation, and reserves all of its rights, remedies, claims and defenses if any aspect of it turns out to be false.

The SAFE AHG reserves all of its rights, remedies, claims and defenses.

Thank you,
Karen

Karen A. Yang
Akin
2300 N. Field Street | Suite 1800 | Dallas, TX 75201 | USA | Direct: +1 214.969.4325
kyang@akingump.com | akingump.com | Bio

From: Yang, Karen
Sent: Monday, March 10, 2025 12:21 PM
To: Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Rhonda Mates <mates@slollp.com>
Cc: jon@lkcfirm.com; pstris@stris.com; Schmeltz, Trace <TSchmeltz@btlaw.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Scott, Elizabeth D. <EDScott@AKINGUMP.com>
Subject: In re Rhodium Encore, LLC, et al., Case No. 24-90448 (ARP) (Bankr. S.D. Tex.) - 3.10.2025 SAFE AHG Diligence Letter

Counsel,

Please see the attached correspondence.

Thanks,
Karen

Karen A. Yang
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)

ORDER GRANTING THE
EMERGENCY MOTION OF THE SAFE AHG TO COMPEL
PRODUCTION BY IMPERIUM PARTIES AND DEBTORS

Upon the emergency motion (the "Motion")[2] of the Ad Hoc Group (the "SAFE AHG") of parties to Simple Agreements for Future Equity with Debtor Rhodium Enterprises, Inc. ("REI") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") of Rhodium Encore LLC and its affiliated debtors and debtors in possession (the "Debtors") for entry of an order, pursuant to the Federal Rules of Civil Procedure, as incorporated by the Federal Rules of Bankruptcy Procedure, compelling the production of documents by Imperium Holdings LLC ("Imperium"), Cameron Blackmon, Chase Blackmon, Nathan Nichols and Nick Cerasuolo (collectively with Imperium, the "Imperium Parties") and the Debtors and/or the special committee of the REI's board of directors (the "Special Committee"), as set forth in greater detail in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that venue of this proceeding in this district is proper pursuant to 28 U.S.C. § 1408; and

[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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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

this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is GRANTED.

2. The Imperium Parties shall, within five (5) calendar days after entry of this Order, produce to the SAFE AHG:

   a. the entirety of the Imperium Special Committee Production, including any document that Imperium has withheld, or would withhold, from the SAFE AHG on alleged grounds of privilege, or, in the alternative,

   b. the entirety of the Special Committee Production Subset, including any document that Imperium has withheld, or would withhold, from the SAFE AHG on alleged grounds of privilege.

3. The Debtors and/or the Special Committee, as applicable, shall, within five (5) calendar days after entry of this Order, without redactions or "Rule 408," "Mediation Confidentiality" or any other use or disclosure restrictions (except as may be permissible under the Protective Order and subject to paragraph 6 thereof), produce:

   a. all non-privileged documents and communications relating to the post-petition transaction purporting to "equitize" a loan agreement with Proof Capital Alternative Growth Fund, including in connection with resolutions of the Debtors' full board dated December 4, 2024 and a "Certificate of the Secretary" signed by Charles Topping and dated April 28, 2025, and, to the extent any responsive documents are withheld on the grounds of privilege or any other

claimed immunity from disclosure, a log identifying such documents compliant with Fed R. Bankr. P. 7026 and Fed. R. Civ. P. 26;

b. the April 5, 2025 and April 19, 2025 letters from the Debtors and/or Special Committee, on the one hand, to Imperium and/or the Imperium Parties, on the other hand, and any related correspondence between those parties that is dated prior to April 21, 2025 (or that otherwise is not subject to protection from disclosure under the April 21, 2025 mediation order);

c. the Special Committee's report on its investigation of allegations concerning the Imperium Parties, including its written factual and legal conclusions in connection with its investigation;

d. all communications with any of the Debtors' insurance carriers regarding any potential claims against insiders, including all responses from such insurance carriers;

e. all communications concerning any modified proposed engagement of LKC, including but not limited to the March 4, 2025 engagement letter between LKC and Debtors that is the subject of the Debtors March 6, 2025 motion to modify the terms of LKC's engagement and, to the extent any responsive documents are withheld on the grounds of privilege or any other claimed immunity from disclosure, a log identifying such documents compliant with Fed R. Bankr. P. 7026 and Fed. R. Civ. P. 26; and

f. documents sufficient to identify the dates and amounts of all payments, including any "retainer" or "retainer replenishment" payments, made by the Debtors to LKC

and Stris, including within the 90 day period before these bankruptcy cases were filed.

4. The Professional Eyes' Only designations on documents produced by the Imperium Parties bates numbered Cerasuolo00001, Cerasuolo00108, Cerasuolo00176; Imperium_0000001 through Imperium_0000010 and documents produced by the Debtors bates numbered RHOD-BK-00092677 through RHOD-BK-00092681 (collectively the "Subject Documents") shall be deemed immediately ineffective; and parties may treat the Subject Documents as if they had been marked Confidential within the meaning of the Protective Order, and subject to such parties' continuing rights pursuant to paragraph 6 thereof.

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

SO ORDERED.

Dated: _____, 2025
Houston, Texas

THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE