

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

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, <i>et al.</i> , <sup>1</sup>	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

**DEBTORS' OMNIBUS OBJECTION TO CLAIMS PURSUANT TO BANKRUPTCY  
CODE SECTIONS 502(B), BANKRUPTCY RULE 3007, AND  
LOCAL RULE 3007-1 BECAUSE SAFE HOLDERS DO NOT HOLD CLAIMS**

**This is an objection to your claim. This objection asks the Court to disallow the claim that you filed in this bankruptcy case. If you do not file a response within 30 days after the objection was served on you, your claim may be disallowed without a hearing.**

Pursuant to section 502 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of Texas (the “Local Rules”), Rhodium Encore LLC, and its affiliates, as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (these “Chapter 11 Cases”), hereby file this objection (the “Objection”) to Proofs of Claim Nos. 11, 13, 18, 19, 20, 25, 26, 28, 32, 34, 35, 41, 42, 45, 46, 51,

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

83, 84, 102, 107, 111, 149, 152, 183, 197, 198, 223, 224, and 231 (the “Disputed Claims”). In support of this Objection, the Debtors respectfully state as follows:

**PRELIMINARY STATEMENT**<sup>2</sup>

1. The Debtors object to the Disputed Claims—totaling \$70,820,411.76 in asserted amount—because all of the purported claims are actually contingent equity interests that are not claims.

2. The Disputed Claims emanate from simple agreements for future equity (the “SAFE Agreements”) with Rhodium Enterprises, security instruments that provide for the SAFE Holders (defined below) to receive equity in Rhodium Enterprises upon the occurrence of certain events: equity financing or an initial public offering. The SAFE Agreements alternatively provide that in the event of a change in voting control of Rhodium Enterprises or a liquidation or disposition of substantially all of Rhodium Enterprises’ assets, the SAFE Agreements will “operate like standard Common Stock,” meaning that in that event, SAFE Holders will receive payment of available proceeds—*after* payment of all “outstanding indebtedness and creditor claims” and on par with common equity. Because the SAFE Agreements treat SAFE Holders the same as interest holders in all events, they do not possess claims.

3. The SAFE Agreements do not create claims. Instead, the SAFE Agreements provide the Holders only with contingent equity interests. Even if the SAFE Holders could assert claims related to the SAFE Agreements, those claims are subordinated to all other general unsecured creditors pursuant to 11 U.S.C. § 510(b) and statutorily on par with common equity.

4. Accordingly, the Debtors respectfully request that the Court disallow the Disputed Claims.

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<sup>2</sup> Capitalized terms that are not defined in the Preliminary Statement are defined in other sections of the Objection.

### **RELIEF REQUESTED**

5. By this Objection, the Debtors seek entry of an order (the “Proposed Order”):

- (i) disallowing each proof of claim identified on Schedule 1 to the Proposed Order (the “SAFE Claims”) because each such proof of claim represents a contingent interest; and
- (ii) granting such other and further relief as the Court deems just and proper.

6. In support of this Objection, the Debtors submit the *Declaration of Michael Robinson in Support of the Debtors’ Omnibus Objection to Claims Pursuant to Bankruptcy Code Section 502(b), Bankruptcy Rule 3007, and Local Rule 3007-1* (the “Robinson Declaration”), attached hereto as **Exhibit A**. This Objection complies in all respects with Local Rule 3007-1.

### **JURISDICTION**

7. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the Court’s entry of a final order in connection with this Objection.

8. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The bases for the relief requested are section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1.

### **BACKGROUND**

#### **A. The Bankruptcy Cases**

10. On August 24 and August 29, 2024, each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The cases are jointly administered.

11. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On

November 22, 2024, the U.S. Trustee appointed an official committee of unsecured creditors (the “Committee”). No trustee or examiner has been appointed in these Chapter 11 Cases.

12. On October 15, 2024, the Debtors filed the *Emergency Motion of Debtors for Entry of an Order (I) Setting Bar Dates for Filing Proofs of Claim, (II) Approving the Form of Proofs of Claim and the Manner of Filing, (III) Approving Notice of Bar Dates, and (IV) Granting Related Relief* (ECF No. 269), which the Court granted on October 18, 2024, setting November 22, 2024, as the general bar date for filing proofs of claim. The Debtors promptly served notice of the bar date on all creditors. *See* ECF No. 284.

13. Further details of the Debtors’ business, capital structure, governing bodies, and the circumstances leading to the commencement of these Chapter 11 Cases are set forth in the *Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief* (ECF No. 35).

## **B. The SAFE Agreements**

14. Between June 2, 2021, and October 19, 2021, to raise equity capital, Rhodium Enterprises, Inc. (“Rhodium Enterprises”) entered into multiple SAFE Agreements<sup>3</sup> with certain investors (the “SAFE Holders” or “Investors”) for a total of \$87 million in aggregate. The SAFE Agreements specify the treatment of SAFE Holders’ contingent interests in multiple scenarios. SAFE agreements became popular vehicles for investing in startup companies starting in 2013.<sup>4</sup> The website [ycombinator.com](https://www.ycombinator.com), the first proponent of SAFE agreements, provides form SAFE agreements for the public’s use. The SAFE Agreements here follow that general form but with

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<sup>3</sup> All terms not defined herein have the meaning ascribed to them in the SAFE Agreement attached hereto as Exhibit “2” to the Robinson Declaration.

<sup>4</sup> <https://www.ycombinator.com/documents>.



very important differences, and a redline between the SAFE Agreements here and the form agreement found on ycombinator.com is attached to the Robinson Declaration as Exhibit “3”.

15. *First*, in an “Equity Financing or Listing Event” before termination of the SAFE Agreements, the SAFE automatically converts to: (i) in the case of 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 Rhodium Enterprises equal to the Purchase Amount divided by the applicable Conversion Price. SAFE Agreement § 1(a). “Equity Financing” is 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 ....” SAFE Agreement § 2. A “Listing Event” is an initial public offering, an acquisition of Rhodium Enterprises by a special purpose acquisition company (“SPAC”), or if Rhodium Enterprises otherwise lists its common stock on a national securities exchange. *Id.*

16. In other words, the SAFE Holders are only entitled to the treatment set forth in section 1(a) if Rhodium Enterprises sells its capital stock with the principal purpose of raising capital, or if Rhodium Enterprises lists its common stock for sale or is acquired by a SPAC.

17. *Second*, if there is a “Liquidity Event” before termination of the SAFE Agreements, the Safe Holders will be entitled to receive a portion of proceeds due and payable to each 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”), in both cases subject to the Liquidation Priority. SAFE Agreement

§ 1(b). A “Liquidity Event” is a “Change of Control” other than a Listing Event, and a “Change of Control” is defined as:

(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.

18. In other words, there is only a “Liquidity Event,” entitling the SAFE Holders to the Cash-Out Amount or Conversion Amount, if there is: (i) a change in ownership of more than 50% of *Rhodium Enterprises* voting securities; (ii) a reorganization of *Rhodium Enterprises* **unless** holders of voting securities before the reorganization retain a majority of the voting power following the reorganization; or (iii) a disposition of substantially all of the assets of *Rhodium Enterprises*.<sup>5</sup>

19. *Third*, if there is a “Dissolution Event,” the SAFE Holders will be entitled (subject to the Liquidation Priority (defined below)) to receive a portion of Proceeds equal to the Cash-Out Amount, due and payable to each Investor immediately prior to the consummation of the Dissolution Event. SAFE Agreement § 1(c). A “Dissolution Event” occurs upon the voluntary termination of operations, a general assignment for the benefit of *Rhodium Enterprises*’ creditors,

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<sup>5</sup> *Rhodium Enterprises* is a holding company. Its only assets are cash in three bank accounts, internet domains and websites, net operating losses, intercompany receivables, and the stock it holds in *Rhodium Technologies, LLC*. See ECF 687. See also *Veloric v. J.G. Wentworth, Inc.*, 2014 WL 4639217, at \*9, (Del. Ch. Sep. 18, 2014) (declining to read “substantially all of the assets” as inclusive of assets of subsidiaries where the contract did not so provide).

or “any other liquidation, dissolution, or winding up” of *Rhodium Enterprises* other than a Liquidity Event.

20. The “Liquidation Priority” does not provide for a liquidation priority for the SAFE Holders, **but instead specifies that SAFE Holders have *no* priority.** Specifically, the Liquidation Priority provides that in a Liquidity or Dissolution Event, the SAFE Agreement is “intended to operate like standard Common Stock,” and states that each Investor’s “right to receive the 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.” SAFE Agreement § 1(d). The “Liquidation Priority” further specifies that each 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).” *Id.*<sup>6</sup>

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<sup>6</sup> The Y Combinator form SAFE Agreement in contrast contains a definition of Liquidation Priority that *does* provide for a liquidation priority. See <https://www.ycombinator.com/documents:> “d) **Liquidation Priority.** In a Liquidity Event or Dissolution Event, this Safe is intended to operate like standard non-participating Preferred 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); (ii) On par with payments for other Safes and/or Preferred Stock, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other Safes and/or Preferred Stock, the applicable Proceeds will be distributed pro rata to the Investor and such other Safes and/or Preferred Stock in proportion to the full payments that would otherwise be due; and (iii) **Senior to payments for Common Stock.**” (Emphasis added.)

21. When comparing the SAFE Agreements at issue here with their online origins, the *lack* of any priority over common stock becomes even more stark.

(d) **Liquidation Priority.** In a Liquidity Event or Dissolution Event, this Safe is intended to operate like standard ~~non-participating Preferred~~ 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/or Preferred Stock~~, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other Safes ~~and/or Preferred Stock~~, the applicable Proceeds will be distributed pro rata to the Investor and such other Safes ~~and/or Preferred Stock~~ in proportion to the full payments that would otherwise be due; ~~and~~.

~~(iii) Senior to payments for Common Stock.~~

22. Here, because Rhodium Enterprises has no preferred shares, there could be no priority over common stock. By its Certificate of Incorporation, REI can only issue common shares.

**FIFTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is 400,000,100, comprised of the following classes (i) 400,000,000 shares of Class A Common Stock, \$0.0001 par value per share ("**Class A Common Stock**"), and (ii) 100 shares of Class B Common Stock, \$0.0001 par value per share ("**Class B Common Stock**").

23. Because any Liquidation Priority must relate to an authorized security, such as preferred shares with a liquidation preference, the SAFEs cannot have any higher priority than other Common Stock. Tellingly, holders of Rhodium Enterprises' Common Stock never agreed to have an equity instrument with a higher priority or liquidation priority given that, unlike some SAFE structures, Rhodium Enterprises has no preferred stock. In fact, in public filings, Rhodium described the SAFE Agreements as follows:<sup>7</sup>

<sup>7</sup> [https://www.sec.gov/Archives/edgar/data/1874985/000121390022002442/fs12022a6\\_rhodium.htm](https://www.sec.gov/Archives/edgar/data/1874985/000121390022002442/fs12022a6_rhodium.htm).

**Rhodium Enterprises Inc.**  
**Notes to Condensed Consolidated Financial Statements (unaudited)**  
(in thousands, except for minor amounts, share and per share amounts)

**Note 11. Simple Agreement for Future Equity (cont.)**

The number of shares to be received by the SAFE Agreements investors was based on a 15% discount of the pricing in the triggering equity financing and includes a valuation cap for the overall enterprise value. In a liquidity or dissolution event, the investors' right to receive cash out is junior to payment of outstanding indebtedness and creditor claims and on par for other SAFE Agreements and common stock. The SAFE Agreements have no interest rate or maturity date, and the SAFE investors have no voting right prior to conversion.

As of September 30, 2021, the SAFE Agreements had not yet converted as a qualifying financing had not yet occurred. Pursuant to the guidance under ASC 480, *Distinguishing Liabilities from Equity*, the Company determined that the value of the SAFE Agreements should be recorded as a liability in the accompanying condensed consolidated balance sheets. For the nine months ended September 30, 2021, the Company recognized \$(2,618), and \$0 for the period from April 1, 2020 (inception) to September 30, 2020, which is recorded in SAFE valuation gain (loss) in the accompanying condensed consolidated statements of operations.

**C. The Disputed Claims**

24. The chart below outlines the Disputed Claims:

<b>Claimant<sup>8</sup></b>	<b>Claim Number</b>	<b>Asserted Claim Amount</b>	<b>Debtor Claim Asserted Against</b>
Celsius Holdings US LLC	11 (amended by Claim 111)	\$50,000,000.00	Rhodium Enterprises, Inc.
RH Fund III, a Series of Telegraph Treehouse, LP	13 (amended by Claim 84)	\$721,000.00	Rhodium Enterprises, Inc.
Christopher McBee	18	\$100,000.00	Rhodium Enterprises, Inc.
BT Real Estate LLC	19	\$50,000.00	Rhodium Enterprises, Inc.
Alfred Murray Capital, LLC	20	\$50,000.00	Rhodium Enterprises, Inc.
Philip M. Fornaro Trust dated January 9, 2017	25	\$50,000.00	Rhodium Enterprises, Inc.
Noble Crest Capital, LLC	26	\$50,000.00	Rhodium Enterprises, Inc.
Brad Weber	28	\$140,000.00	Rhodium Enterprises, Inc.
Proof Capital Special Situations Fund	32	\$2,425,000.00	Rhodium Enterprises, Inc.

<sup>8</sup> Mr. and Ms. Farrar, Infinite Mining, LLC, RH Fund III, a Series of Telegraph Treehouse, LP, and Thomas Lienhart have also asserted unliquidated claims based on alleged contract and/or tort causes of action. Objecting to unliquidated claims is not necessary at this time, and the Debtors reserve the right to object to these claims at a later, appropriate time.

<b>Claimant<sup>8</sup></b>	<b>Claim Number</b>	<b>Asserted Claim Amount</b>	<b>Debtor Claim Asserted Against</b>
JWS QRP Holdings LLC	34	\$75,000.00	Rhodium Enterprises, Inc.
AnnMarie Fornaro Trust dated January 9, 2017	35	\$50,000.00	Rhodium Enterprises, Inc.
Alexander Matthew Salvadori	41	\$25,000.00	Rhodium Enterprises, Inc.
Sean Michael Gilbert	42	\$25,000.00	Rhodium Enterprises, Inc.
Emil Stefkov	46	\$3,529,411.76	Rhodium Enterprises, Inc.
Pepper Grove Holdings Limited	51	\$5,000,000.00	Rhodium Enterprises, Inc.
James M Farrar and Adda Delgadillo Farrar	83 (amended by Claim 149)	\$160,000.00	Rhodium Enterprises, Inc.
RH Fund III, a Series of Telegraph Treehouse, LP	84 (amending Claim 13)	\$721,000.00	Rhodium Enterprises, Inc.
Liquid Mining Fund III, LLC	102	\$1,620,000.00	Rhodium Enterprises, Inc.
Ranger Private Investment Partners, L.P.	107	\$3,000,000.00	Rhodium Enterprises, Inc.
Celsius Holdings US LLC	111 (amending Claim 11)	\$50,000,000.00	Rhodium Enterprises, Inc.
James M Farrar and Adda Delgadillo Farrar	149	\$160,000.00	Rhodium Enterprises, Inc.
Thomas Lienhart	152	\$100,000.00	Rhodium Enterprises, Inc.
Winchester Partners, L.P.	183	\$1,500,000.00	Rhodium Enterprises, Inc.
Infinite Mining, LLC (Infinite)	197	\$200,000.00	Rhodium Enterprises, Inc.
Infinite Mining, LLC (Infinite)	198	\$1,450,000.00	Rhodium Enterprises, Inc.
Ten R Ten, LLC	223	\$50,000.00	Rhodium Enterprises, Inc.
Magic Circle Trust	224	\$150,000.00	Rhodium Enterprises, Inc.
Jeffrey Smith	231	\$300,000.00	Rhodium Enterprises, Inc.



25. The Disputed Claims total \$70,820,411.76.<sup>9</sup> Claim No. 28, filed by Brad Weber, correctly notes that the SAFE Holders hold contingent equity interests, and do not hold claims. Mr. Weber asserted a claim for \$140,000 but attached a “Statement of Contingent Equity Rights for Proof of Claim,” explaining that “[d]ue to the bankruptcy filing, Rhodium has not completed an equity financing or liquidity event, meaning that the investment remains in the form of a contingent right to future equity or other recovery if any value is provided to similarly situated investors under this bankruptcy proceeding.” Mr. Weber further requests that his proof of claim “be recognized as an equity-based, contingent investment claim,” and that *“[g]iven the SAFE’s structure, the investment should be included in any recovery or distribution allocated to equity holders or equity-like investments, ....”*

26. BRIC, on the other hand, cannot decide what kind of claim it has. *See* Claim No. 111. It asserts that a “Dissolution Event or a Liquidity Event either has occurred or may occur in connection with these cases. Celsius has either a current or contingent Claim.” *Id.*<sup>10</sup>

27. At the outset of these bankruptcy cases, BRIC conceded that, at a minimum, its treatment in these cases depends on the contours of whatever plan is ultimately approved in this proceeding. BRIC acknowledged that it is an open question whether any such plan would result in a contingency that actually gives rise to any SAFE Holder’s entitlement. In September 2024, BRIC requested that the United States Trustee create an official “SAFE Committee,” Ex. 1 to the Robinson Declaration, which the United States Trustee declined. In that request, BRIC stated:

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<sup>9</sup> Seven of the SAFE Holders have formed an ad hoc group (“SAFE AHG”) and retained counsel for the Blockchain Recovery Investment Consortium, LLC acting in its capacity as the Complex Asset Recovery Manager and Litigation Administrator for Celsius Holding LLC (“BRIC” or “Celsius”). ECF No. 500.

<sup>10</sup> Time seems not to heal BRIC’s understanding regarding its alleged claim. In one of its latest filings, the SAFE AHG asserted having a “right to cash out amount” that is “no longer contingent” based on either a “Liquidity Event” or a “Dissolution Event.” *See* ECF No. 1080 ¶ 4. Yet it failed to identify the “Liquidity Event” or its relevant contractual basis.

SAFEs occupy a unique position in Rhodium’s capital structure. The SAFEs are material, non-executory agreements that entitle their holders to certain identified types of consideration upon the occurrence of certain identified events or transactions. Whether or not the Rhodium bankruptcy has resulted or will result in such a transaction – and which category of transaction – are questions that will need to be determined in these cases. It is possible, for example, that a plan of reorganization or liquidation in these cases would result in a “Liquidity Event” or a “Dissolution Event” within the meaning of the SAFEs. ***In those events, Celsius could be entitled to the \$50 million Cash Out Amount, with a “liquidation priority” junior to “creditor claims,” but senior to common stock. Other types of triggering transactions arguably could result in SAFE investors being entitled to receive common stock.*** While the treatment that SAFEs will receive in any plan or other disposition of these cases is yet to be determined, it likely will depart materially from the treatment that would be afforded any other stakeholders in these cases, including secured creditors, general unsecured creditors (if Rhodium has any), and existing common stockholders.

Ex. 1 to the Robinson Declaration (emphases added and footnotes omitted). The BRIC even conceded that it may ultimately “recover *pari passu* with common stock.” *Id.* Of course, nothing in the SAFE Agreements provides for any priority for the SAFE Holders over common equity, nor do the SAFE Agreements give rise to a claim.

28. According to the Debtors’ records, the SAFE Agreements emanated from negotiations with Celsius Core LLC represented by Akin Gump as counsel, who marked up the SAFE Agreements but did not change the definition of Liquidation Priority. Ex. 1 of the *Declaration of Patricia B. Tomasco in Support of the Debtors’ Omnibus Objection to Claims Pursuant to Bankruptcy Code Section 502(b), Bankruptcy Rule 3007, and Local Rule 3007-1* (the “Tomasco Declaration”).

### **BASIS FOR RELIEF**

29. Section 502 of the Bankruptcy Code provides that: “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects.” 11 U.S.C. §502(a). The proper filing of a proof of claim constitutes *prima facie* evidence of the claim’s validity and amount. *Matter of O’Connor*, 153 F.3d 258, 260 (5th Cir. 1998) (citing



Bankruptcy Rule 3001(f)). A proof of claim loses the presumption of prima facie validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim's legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988) (holding "[if] evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to 'prove the validity of the claim by a preponderance of the evidence'"). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, "the ultimate burden of proof always lies with the claimant." *Id.*

## **I. The SAFE Holders Do Not Have Claims**

30. As set forth above, each of the Disputed Claims assert general unsecured creditors against Rhodium Enterprises based on contingent equity interests, namely, the entitlement to issuance of stock upon the occurrence of Equity Financing or a Listing Event. The occurrence of a triggering event (a Cash-Out Amount or the Conversion Amount) simply provide for an allocation to those equity interests and are intended to operate like common stock in a liquidation. Therefore, the SAFE Agreements are at best contingent equity interests that may or may not give rise to an entitlement to an equity dividend, rather than a "claim" against Rhodium Enterprises. The Disputed Claims should be disallowed.

31. To start, a "claim" under section 101(5) of the Bankruptcy Code excludes equity interests from its ambit.<sup>11</sup> *See In re Insilco Techs., Inc.*, 480 F.3d 212, 218 (3d Cir. 2007) ("[An equity interest] is not a claim at all"); *In re Hedged Invs.*, 84 F.3d 1267, 1272 (10th Cir. 1996) ("Simply put, an equity interest is not a claim against the debtor . . .") (quotations omitted)). That

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<sup>11</sup> The Bankruptcy Code defines a "claim" as a "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).

is because “[e]quity investment brings not a right to payment, but a share of ownership in the debtor’s assets....” *Insilco Techs.*, 480 F.3d at 218.

32. The Bankruptcy Code defines an “equity security” to include not only a “share in a corporation,” but also a “similar security,” 11 U.S.C. § 101(16). The Bankruptcy Code then enumerates 15 interests that are a “security,” including a “residual clause” that covers “other claim[s] or interest[s] commonly known as ‘security.’” 11 U.S.C. § 101(49)(A)(xiv); *In re Lehman Bros. Holdings Inc.*, 855 F.3d 459, 475 (2d Cir. 2017).<sup>12</sup> The Fifth Circuit has interpreted section 101(49)(A)(xiv) to mean that a claim or interest is a security so long as it “‘bear[s] hallmarks of interests commonly known as securities.’” *In re Linn Energy, L.L.C.*, 936 F.3d 334, 342 (5th Cir. 2019) (quoting *Lehman Bros. Holdings*, 855 F.3d at 475). Those hallmarks include the ability to receive dividends, “risk and benefit expectations” similar to those of shareholders, and the potential to “‘participate in firm profits.’” *Lehman Bros. Holdings*, 855 F.3d at 474 (holding that restricted stock units are “securities”).

33. Here, the SAFE Agreements create merely a contingent right to a “security” within the meaning of section 101(49)(A)(xiv) and because they are a “similar security [to a share]” within the meaning of section 101(16). The SAFE Agreements explicitly state that, upon the happening of specified events, they are “intended to operate like standard Common Stock.” SAFE Agreement § 1(d), *In re Wash. Mut., Inc.*, 464 B.R. 656, 666 (Bankr. D. Del. 2012) (stating that courts consider the “intent of the parties” when determining whether an instrument is equity or debt). They also provide that if Rhodium Enterprises pays a cash dividend to outstanding shares of Common Stock, it must pay a dividend to the Investors at the same time. SAFE Agreement §

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<sup>12</sup> Section 101(49)(b) lists seven “items excluded from the definition of a security ...; it does not include a residual clause.” *Lehman Bros. Holdings*, 855 F.3d at 473.

5(c); *Lehman Bros. Holdings*, 855 F.3d at 467 (stating holders of restricted stock units received benefits “similar to” holders of common stock because, among other things, they were paid dividends).

34. The SAFE Agreements further provide the Investors the ability to receive shares of stock if there is an “Equity Financing” or a “Listing Event.” SAFE Agreement § 1(a); *KIT digital, Inc. v. Invigor Grp. Ltd. (In re KIT digital, Inc.)*, 497 B.R. 170, 183 (Bankr. S.D.N.Y. 2013) (holding that a debtor’s obligation to pay stock to a claimant is a security because the claimant bore the risk and benefits of fluctuations in the value of the stock); *Wash. Mut.*, 464 B.R. at 666 (“Finally, though the LTWs had no voting rights, they would have had such rights upon receiving their distribution of common stock.”). Moreover, the Agreements bear no maturity date. SAFE Agreement § 1(e) (stating that the SAFE Agreement terminates upon the occurrence of Equity Financing, a Listing Event, Liquidity Event, or Dissolution Event); *Wash. Mut.*, 464 B.R. at 666 (“There was no fixed maturity date or right to payment of a fixed amount of principal or interest, suggesting that the LTWs are not debt.”). And even if there is a “Liquidity Event” or “Dissolution Event,” the liquidation priority in the SAFE Agreement states that it is intended to operate the same as common stock. SAFE Agreement § 1(d); *Wash. Mut.*, 464 B.R. at 666 (courts consider the “holder’s priority in payment”). In other words, only if triggered, the SAFE Agreements then operate like stock.

35. The Debtors searched and found no cases allowing claims against an estate by counterparties to SAFE Agreements. Ex. 1 to the Robinson Declaration (“Indeed, based on a recent review, there are just 12 published cases in any context discussing SAFEs, and none determining SAFE priorities in bankruptcy.”). The few cases that discuss SAFE Agreements in the non-bankruptcy context confirm that while SAFE Agreements are “securities,” they are

“nondebt” instruments that allow entities to “contribute capital” in exchange for future equity. *LifeVoxel Virginia SPV, LLC v. LifeVoxel.AI, Inc.*, 622 F. Supp. 3d 935, 943 n.1 (S.D. Cal. 2022) (“SAFE Notes are a type of security which allow investors to contribute capital to a business entity that will convert into equity upon the occurrence of a future ‘conversion’ event specified in the SAFE Note.”); *LifeVoxel Virginia SPV, LLC v. LifeVoxel.AI, Inc.*, 2024 WL 5264872, at \*1 (S.D. Cal. Dec. 30, 2024) (stating that SAFE Agreements are “nondebt convertible securities”). Likewise, the Securities and Exchange Commission (“SEC”) classifies SAFE Agreements as “securities.” *LifeVoxel*, 622 F. Supp. 3d at 943 n.1.<sup>13</sup>

36. Additionally, bankruptcy courts frequently find that instruments, such as the SAFE Agreements, that have no interest rate and no maturity date, but instead have the right to receive dividends and upside potential after payment of debts, are equity instruments that do not give rise to claims under the Bankruptcy Code.<sup>14</sup> This is true even when an instrument purports to be a

<sup>13</sup> See also <https://www.sec.gov/resources-small-businesses/cutting-through-jargon-z#SAFE> (“A simple agreement for future equity (SAFE) is an agreement between a company and an investor in which the company promises to give the investor a future ownership interest in the company if certain triggering events occur, such as a future equity financing or an acquisition of the company.”).

<sup>14</sup> See, e.g., *Carrieri v. Jobs.com, Inc.*, 393 F.3d 508, 522 (5th Cir. 2004) (holding that warrants with redemption provisions were equity interests because the right to redeem stock is not guaranteed but rather conditioned upon events); *In re Dornier Aviation (N. Am.), Inc.*, 453 F.3d 225, 235 (4th Cir. 2006) (finding that a transaction was a capital contribution rather than a loan because there was no fixed maturity date and no requirement to pay until the company became profitable); *Wash Mut.*, 464 B.R. at 666-67 (holding that litigation tracking warrants were equity, and not debt, because the holders’ rights to receive stock were contingent on the financial solvency of the company, there was no fixed maturity date and no fixed interest); *In re Einstein/Noah Bagel Corp.*, 257 B.R. 499, 506-07 (Bankr. D. Ariz. 2000) (holding that put rights were an equity security rather than a claim because they only provided a mechanism to liquidate an otherwise illiquid investment, rather than guarantee a payment); *In re Revco D.S., Inc.*, 118 B.R. 468, at 474-75 (Bankr. N.D. Ohio 1990) (holding that redeemable preferred stockholders were not “creditors” within the meaning of the Uniform Fraudulent Transfer Act because the instruments lacked interest payments, and the rights to redeem the stock were dependent on the occurrence of triggering events); *In re Color Tile, Inc.*, 2000 WL 152129, at \*4 (D. Del. Feb. 9, 2000) (holding that payments were not preferences because the payments were dividends rather than payments on an antecedent debt, because the underlying instrument represented equity, where it only provided for payment of dividends and stated that the interests of holders were junior to those of creditors); *Harbinger Cap. Partners Master Fund I, Ltd. v. Granite Broad. Corp.*, 906 A.2d 218, 230 (Del. Ch. 2006) (holding that instrument was equity rather than debt because there was no guaranteed right to payment and distributions were tied to the value of the company’s assets available for distribution after payment of claims of creditors).

claim, but has equity-like characteristics. *See, e.g., In re Lothian Oil Inc.*, 650 F.3d 539, 544 (5th Cir. 2011) (holding that instrument titled a “loan” was nevertheless equity because it did not have an interest rate, term of repayment, and maturity date, and included a royalty payment that depended on the success of the business).

37. Based on the plain language of the SAFE Agreements, authority treating SAFEs as nondebt securities, and voluminous authority treating equity-like instruments as equity, the contingent interests set forth in the SAFE Agreement are contingent equity interests rather than a “claim.” *See, e.g., In re Pine Lake Village Apartment Co.*, 21 B.R. 478, 480 (Bankr. S.D.N.Y. 1982) (“The limited partners’ interests do not constitute ‘claims’ .... They are equity security holders ..., holding equity securities .... Simply put, an equity interest is not a claim against the debtor for which the equity holder may assert a right to payment.”).

38. The SAFE AHG recently argued that they hold a non-contingent “right to cash out amount” based on either a “Liquidity Event” or a “Dissolution Event.” *See* ECF No. 1080 ¶ 4. But that argument fails because Cash-Out Amounts (and even Conversion Amount) are designed to operate like stock.

39. At the outset, the SAFE Agreements explicitly state that: “[i]n a Liquidity Event or Dissolution Event, this Safe is intended to operate like standard Common Stock.” SAFE Agreement § 1(d).

40. Moreover, the “Liquidity Event” does not trigger a claim. If there is a Liquidity Event, the SAFE Holders are to receive a portion of the proceeds of a qualifying transaction “***equal to the greater of***” the Cash-Out Amount or the Conversion Amount. SAFE Agreement § 1(b). The Cash-Out Amount is the amount the SAFE Holder paid to Rhodium Enterprises. The Conversion Amount, however, is calculated based on the value of common stock implied by the

triggering event. In other words, if there is a “Liquidity Event,” the SAFE Holders receive the upside potential of a valuable business, a quintessential feature of equity, not debt. *Lehman Bros. Holdings*, 855 F.3d at 474 (RSUs deemed equity because, among other things, their value was tied to the value of common stock).

41. The “Dissolution Event” likewise does not trigger a claim. If there is a Dissolution Event, the SAFE Agreement provides that any payment is subject to the liquidation priority, which provides that the Cash-Out Amount is junior to payment of all “outstanding indebtedness and creditor claims,” and that payments will be on par with common stock and pro rata with other SAFE Holders “if the applicable Proceeds are insufficient to permit full payments.” This mimics an interest, *i.e.*, only receiving pro rata payments after payment in full of creditor claims. *Color Tile*, 2000 WL 15212, at \*4 (holding that an instrument represented equity, where, among other things, it stated that the interests of holders were junior to those of creditors).

42. In sum, there is no “right to payment”—which are payments “guaranteed at specific intervals or at a specific time or event.” *Carrieri*, 393 F.3d at 525.<sup>15</sup> Instead, as discussed in detail above, if triggered, the SAFE Agreements operate exactly the same as stock, not a contingent *claim*. And even if there was any doubt from the language of the SAFE Agreements (which there is not), Rhodium Enterprises has described the SAFE Agreements as providing rights that “convert into shares,” the SAFE Agreements have “no interest rate or maturity date,” and that the right to receive cash in a Liquidity or Dissolution Event is “junior to payment of outstanding indebtedness

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<sup>15</sup> Even if the SAFE Holders were provided a cash option (which they were not), courts will not elevate equity interests with some “debt-like qualities” to claims unless the trigger event occurs before the petition date, which has not happened here. *Carrieri*, 464 B.R. 656, 667 (holding that “warrants with [cash] redemption provisions ... are equity interests until their expiration (or until the right to receive a cash payment properly matures on or before the petition date)"); *Wash. Mut.*, 464 B.R. at 667 (holding that litigation tracking warrants were equity instruments even though they required a cash payment upon receipt of funds from a litigation because that event had not occurred before the petition date).

and creditor claims and on par for other SAFE Agreements and common stock.” January 18, 2022 Amendment No. 6 to Form S-1 Filed by Rhodium Enterprises, Inc., at F-28.<sup>16</sup>

43. Therefore, the plain language of the SAFE Agreements, SEC guidance, and the Bankruptcy Code’s statutory framework point to SAFE Agreements constituting contingent equity interests, not claims.

**II. To The Extent That The SAFE Holders Have Claims Against Rhodium Enterprises, Those Claims Are Subordinated To All Other General Unsecured Claims Under Section 510(b)**

44. To the extent that the SAFE Holders assert damages against any of the Debtors in the nature of “litigation claims,” such claims should be classified as claims arising from a purchase or sale of a security of the debtor, which fall within section 510(b) of the Bankruptcy Code, which states:

For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

45. Section 510(b) requires the subordination of three distinct categories of claims: (1) a claim arising from rescission of a purchase or sale of a security of the debtor (the rescission category); (2) a claim for damages arising from the purchase or sale of a security of the debtor (the damages category); and (3) a claim for reimbursement or contribution allowed under 11 U.S.C. § 502 on account of either (1) or (2). *In re SeaQuest Diving, LP*, 579 F.3d 411, 418 (5th Cir. 2009) (citing *In re Geneva Steel Co.*, 281 F.3d 1173, 1177 (10th Cir. 2002)).

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<sup>16</sup> [https://www.sec.gov/Archives/edgar/data/1874985/000121390022002442/fs12022a6\\_rhodium.htm](https://www.sec.gov/Archives/edgar/data/1874985/000121390022002442/fs12022a6_rhodium.htm).

46. Claims in connection with the purchase of security, to wit, the SAFE Agreements, fall within the broad reach of section 510(b)'s language for claims "arising from" the purchase or sale of a security. 11 U.S.C. § 510(b); *see In re Worldcom, Inc.*, 329 B.R. 10, 14 (Bankr. S.D.N.Y. 2005) ("So long as the nature of the damage or harm complained of by a shareholder can be said to result as a consequence of his having purchased or sold share of stock or other securities of the debtor, the claimant falls within the scope of Section 510(b)."); *see also In re MF Glob. Holdings, Ltd.*, 2014 WL 3882363, at \*5 (Bankr. S.D.N.Y. Aug. 6, 2014) (noting that "courts have interpreted [§ 510(b)] broadly").

47. For example, in *SeaQuest Diving*, a partnership filed for chapter 11 relief. 579 F.3d at 41. A limited partner filed proof of claim, seeking to recover sums awarded by state court pursuant to settlement resolving a dispute between the limited partner and holders of other partnership interests. The debtor sought to subordinate the claim.<sup>17</sup> On appeal, the Fifth Circuit held that the claim had to be subordinated because it arose "from the rescission of a purchase or sale of a security of the debtor." *See* 11 U.S.C. § 510(b).

48. The court focused on the legislative intent behind section 510(b), which is premised upon the allocation of certain risks between investors and creditors. 579 F.3d at 420 (citing *In re Granite Partners, L.P.*, 208 B.R. 332, 336 (Bankr. S.D.N.Y. 1997)). The Fifth Circuit explained that "both investors and creditors accept the risk of enterprise insolvency, but to differing degrees, as reflected in the absolute priority rule." *Id.* (citations omitted). Further, "[w]hile the creditor anticipates repayment of a fixed debt, the investor anticipates a potentially unlimited share of future profits," and "[i]n exchange for this 'unique right to participate in the profits,' the investor

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<sup>17</sup> While subordination generally requires an adversary proceeding, an adversary proceeding is not required, where a plan provides for such subordination. Fed. R. Bankr. P. 7001(8).



risks the loss of his capital investment, which provides an ‘equity cushion’ for the repayment of creditors’ claims.” *Id.* (citing *Granite Partners*, 208 B.R. at 336). The court then contrasted the position of investors and creditors: “In contrast, investors alone bear the risk of illegality in the issuance of securities because it would be improper to reallocate this risk to creditors who (1) never bargained for an equity position in the debtor and (2) extended credit to the debtor in reliance on the equity cushion provided by the investors.” *Id.* (quotations marks and citations omitted).

49. The Fifth Circuit further pointed out that “[t]here is nothing in [this] analysis to suggest that Congress’s concern with creditor expectations and equitable risk allocation was limited to cases of debtor fraud.” *Id.* at 420-21 (quoting *In re Betacom of Phoenix, Inc.*, 240 F.3d 823, 829 (9th Cir. 2001)). Instead, the court pointed out that “Congress’s larger concern was the effort of disaffected stockholders to recapture their investments from the debtors, regardless of the exact nature of their claims.” *Id.* at 421 (citing *Granite Partners*, 208 B.R. at 337). The Fifth Circuit stressed that “[i]n *Betacom*, the Ninth Circuit rejected the plaintiffs’ argument that § 510(b) only applies to securities fraud claims” and “held that a claim arising from the debtor’s failure to deliver stock pursuant to a merger agreement was subject to mandatory subordination.” *Id.* (citing *Betacom* 240 F.3d at 828–29, 831–32). Again, the Fifth Circuit explained that “[b]y bargaining with the debtor to receive equity instead of debt, the plaintiffs entered the transaction with greater financial expectations than a creditor, and the unsecured creditors presumably relied on the plaintiffs’ contribution to the equity pool when extending credit to the debtor.” *Id.* (citations omitted). Therefore, “a claim arising from the purchase or sale of a security can include a claim predicated on post-issuance conduct, such as breach of contract,” *Sequest*, 579 F.3d at 421

(citations omitted), so long as there is “some nexus or causal relationship between the claim and the sale.” *Id.*<sup>18</sup>

50. Thus, under section 510(b) of the Bankruptcy Code, any potential SAFE Holders’ claims arising from the SAFE Agreements are subordinated to other “all claims or interests that are senior to or equal to the claim or interest represented by such security, *except that if such security is common stock, such claim shall have the same priority as common stock.*” 11 U.S.C. § 510(b) (emphasis added); *In re SeaQuest Diving*, 579 F.3d at 420-21. And because the SAFE Holders’ claims contractually can only be “common” equity, section 510(b) also dictates that they shall be treated *pari passu* with common stock in the Debtor Rhodium Enterprises only.

#### **Separate Contested Matters**

51. To the extent that a response is filed regarding any Disputed Claim identified in this Objection and the Debtors are unable to resolve the response, the objection by the Debtors to each such Disputed Claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in this Objection shall be deemed a separate order with respect to each such Disputed Claim.

#### **Reservation of Rights**

52. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors’ or any

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<sup>18</sup> Other circuits have adopted the broad reading of the damages category adopted by the Ninth Circuit in *Betacom*. See *Betacom*, 240 F.3d at 830 (applying section 510(b) to a damages claim predicated on a “purported breach of contract in a merger agreement” because the claim was “one ‘surrounding’ the sale or purchase of a security of the debtor.”); *In re Med Diversified, Inc.*, 461 F.3d 251, 256 (2d Cir. 2006) (a claim arising from breach of a stock exchange provision in a termination agreement was subject to mandatory subordination); *In re Telegroup, Inc.*, 281 F.3d 133, 136, 141-42 (3d Cir. 2002) (subordinating stockholder claims arising from failure to deliver stock); *Geneva Steel Co.*, 281 F.3d at 1180-81 (a claim arising from post-issuance fraud of the debtor, which caused an investor to hold rather than sell his securities, was subject to mandatory subordination).

party in interest's rights to dispute the amount of, basis for, or validity of any claim or to amend this Objection in any respect, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

#### **Notice**

53. Notice of this Objection will be provided to (i) the Office of the United States Trustee; (ii) counsel to the Committee; (iii) counsel to the SAFE AHG; (iv) all parties identified as notice parties in the Disputed Claims; (v) any other party that has requested notice pursuant to Bankruptcy Rule 2002; and (vi) any other party entitled to notice pursuant to Local Rule 9013-1(d).

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 19th day of May, 2025.

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

/s/ Patricia B. Tomasco

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*Counsel to the Debtors and  
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**Certificate of Service**

I, Patricia B. Tomasco, hereby certify that on the 19th day of May, 2025, a copy of the foregoing Objection was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Patricia B. Tomasco

Patricia B. Tomasco

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

In re:	§	Chapter 11
RHODIUM ENCORE LLC, <i>et al.</i> , <sup>1</sup>	§	Case No. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)
	§	
	§	

**DECLARATION OF MICHAEL ROBINSON IN SUPPORT OF DEBTORS’ OMNIBUS  
OBJECTION TO CLAIMS PURSUANT TO BANKRUPTCY CODE SECTIONS 502(B),  
BANKRUPTCY RULE 3007, AND LOCAL RULE 3007-1 BECAUSE SAFE HOLDERS  
DO NOT HOLD CLAIMS**

I, Michael Robinson, pursuant to section 1746 of title 28 of the United States Code, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am above 18 years of age and am competent to testify. I am the Co-Chief Restructuring Officer for the above-captioned debtors and debtors in possession (collectively, the “Debtors”), having served in that role since August 2024. I am also a Partner of the Debtors’ financial advisor, Province, LLC (“Province”), a US-based nationally recognized financial advisory firm focusing on corporate strategy and transformation, transaction advisory, valuation, dispute resolution, and fiduciary-related services, where I have worked in various positions since 2019. I have over thirteen (13) years of experience in the financial services sector, initially through my work in investment banking advisory, where I advised on a number of significant

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

transactions across diverse industry verticals, and then through my work in restructuring advisory in which I have directly managed many in-court and out-of-court restructurings. Additionally, I am a Certified Insolvency and Restructuring Advisor, awarded from the Association of Insolvency and Restructuring Advisors, of which I am a member.

2. I submit this declaration (the “Declaration”) in support of *Debtors’ Omnibus Objection to Claims Pursuant to Bankruptcy Code Sections 502(b), Bankruptcy Rule 3007, and Local Rule 3007-1 because SAFE Holders do not Hold Claims* (the “Objection”), contemporaneously filed herein.<sup>2</sup>

3. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge, my review (or the review of others under my supervision) of (i) business books and records kept by the Debtors in the ordinary course of business; (ii) the relevant proofs of claim; (iii) the schedules of assets and liabilities and statements of financial affairs, and/or (iv) the official register of claims filed in these chapter 11 cases. If called as a witness, I could and would competently testify to the facts set forth in this Declaration.

4. The Claims were reviewed and analyzed in good faith using due diligence by Province (which includes myself), appropriate personnel of the Debtors, and Quinn Emanuel Urquhart & Sullivan, LLP.

5. Attached hereto as Exhibit 1 is a true and correct copy of a September 19, 2024, letter from Mitchell P. Hurley to Ha Nguyen and C. Ross Travis.

6. Attached here to as Exhibit 2 is a true and correct copy of the Simple Agreement for Future Equity dated June 2, 2021, between Celsius Core LLC and Rhodium Enterprises, Inc. (the “Celsius SAFE Agreement”).

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Objection.

7. Attached hereto as **Exhibit 3** is a true and correct copy of a “redline” of the Celsius SAFE Agreement against a document titled “Postmoney Safe – Valuation Cap Only” located at [www.ycombinator.com/documents](http://www.ycombinator.com/documents).

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and beliefs.

Dated: May 19, 2025

Respectfully submitted,

/s/ Michael Robinson

Michael Robinson

Co-Chief Restructuring Officer



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September 19, 2024

VIA E-MAIL

Ha Nguyen, Esq.  
C. Ross Travis, Esq.  
Office of the United States Trustee  
515 Rusk Street, Suite 3516  
Houston, Texas 77002

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

Dear Ha:

Thank you for the time on the telephone yesterday concerning Rhodium Encore LLC and its affiliated Debtors (“**Rhodium**,” or “**Debtors**”). Further to our call, we write to respectfully request that the Office of the United States Trustee exercise its discretion under Bankruptcy Code Section 1102(a)(1) to appoint an official committee to represent the unique interests of holders of Simple Agreements for Future Equity (“**SAFEs**”) with Debtor Rhodium Enterprises, Inc. (“**REI**”).

As discussed yesterday, we represent the Blockchain Recovery Investment Consortium (“**BRIC**”). In its capacity as the Complex Asset Recovery Manager for Celsius Network LLC and affiliated post-Effective Date Debtors (collectively, “**Celsius**”), BRIC is charged with, among other things, maximizing the value for the benefit of Celsius’ creditors of a \$50 million SAFE between the entity formerly known as Celsius Core LLC, and REI. We understand that numerous parties unrelated to Celsius own dozens of other SAFE instruments with terms materially similar to the Celsius SAFE. Inclusive of Celsius, the SAFEs together have an aggregate value of \$87 million, and are likely entitled to material recoveries in these cases. When Rhodium filed for bankruptcy last month, it indicated that it has assets worth about \$225 million, and secured debt of about \$64 million. At the first day hearing before Judge Perez on August 30, 2024, counsel for the Debtors indicated that Debtors have no unsecured creditors.<sup>1</sup>

SAFEs occupy a unique position in Rhodium’s capital structure. The SAFEs are material, non-executory agreements that entitle their holders to certain identified types of consideration upon the occurrence of certain identified events or transactions. Whether or not the Rhodium bankruptcy has resulted or will result in such a transaction – and which category of transaction – are questions that will need to be determined in these cases. It is possible, for example, that a plan of reorganization or liquidation in these

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<sup>1</sup> Counsel indicated that certain Rhodium entities are engaged in litigation with Whinstone, their landlord. Our understanding is that the Rhodium entities are primarily plaintiffs in those cases, and the nature and validity of any claim or counterclaim that Whinstone may have against the Rhodium entities is unclear.



Ha Nguyen, Esq.  
C. Ross Travis, Esq.  
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cases would result in a “Liquidity Event” or a “Dissolution Event” within the meaning of the SAFEs.<sup>2</sup> In those events, Celsius could be entitled to the \$50 million Cash Out Amount, with a “liquidation priority” junior to “creditor claims,” but senior to common stock. Other types of triggering transactions arguably could result in SAFE investors being entitled to receive common stock. While the treatment that SAFEs will receive in any plan or other disposition of these cases is yet to be determined, it likely will depart materially from the treatment that would be afforded any other stakeholders in these cases, including secured creditors, general unsecured creditors (if Rhodium has any), and existing common stockholders.<sup>3</sup>

Celsius respectfully submits that formation of a SAFE committee is warranted under the circumstances. When considering whether to appoint committees under section 1102(a)(2) of the Bankruptcy Code, courts consider the following types of factors: (i) whether debtors are likely to prove solvent, (ii) whether the class of security seeking a committee is adequately represented by stakeholders already at the table, (iii) the complexity of the Debtors’ cases; and (iv) the likely cost to Debtors’ estates of the requested committee. *In re Pilgrim’s Pride Corp.*, 407 B.R. 211, 216 (N.D. Tex. Bankr. 2009). We respectfully submit that all of these factors support forming an official committee to safeguard the interests of SAFEs in these cases.

*Solvency.* Rhodium asserts in its first day declaration that its assets exceed its liabilities, and nowhere contends that the Debtors are insolvent. At the first day hearing, Rhodium identified only about \$64 million in secured debt, and no unsecured creditors, against its claimed \$225 million asset value. In other words, even if the SAFEs were to recover *pari passu* with common stock, they still likely would have a right at least to some recovery. As discussed, moreover, the SAFEs are a potential “fulcrum” security, recovering after debt and before equity, and therefore would be likely to recover even if Rhodium were not deemed solvent. This is especially so given our understanding that Rhodium’s secured debt is owned at least in part by insiders, and that recharacterization, subordination or other challenges to these securities may be available. SAFE investors deserve representation by an official committee to ensure that their interests are actively protected throughout the Chapter 11 Cases.

*Adequacy of representation.* The SAFE holders’ interests are not adequately represented by any stakeholder now at the table. As a preliminary matter, it is unclear that an unsecured creditors committee even will be appointed, or is warranted. The only potential unsecured creditor identified by the Debtors at the first day hearing is Debtors’ litigation adversary, Whinstone. But Whinstone is alleged to have engaged in a sustained pattern of misconduct aimed at crippling the Debtors business, and its interests are not aligned with those of SAFE holders, or any other stakeholder that wishes to see the value of these estates maximized. And even if Rhodium had general unsecured creditors, and an unsecured creditors committee

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<sup>2</sup> “Liquidity Event” is defined to include, among other things, “any reorganization,” while “Dissolution Event” is defined to include, among other things, any “liquidation, dissolution or winding up of the Company.”

<sup>3</sup> The BRIC writes merely to illustrate why a SAFE committee is warranted here, and reserves all of its rights concerning the Celsius SAFE, including with respect to any proposed construction or treatment of the Celsius SAFE in these cases.



Ha Nguyen, Esq.  
C. Ross Travis, Esq.  
September 19, 2024  
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were formed, GUCs would have no incentive to protect SAFE holder recoveries, which in at least some cases are expressly subordinated to “creditor claims.”

Likewise, SAFEs provide for interests in and rights against the Debtors that are separate and distinct from the rights and interests of common equity holders. As a preliminary matter, while SAFEs contemplate certain kinds of transactions that could result in SAFE holders being entitled to receive company stock, to Celsius’ knowledge, none of the SAFEs actually have been converted to stock. If such a triggering transaction were deemed to occur, substantial analysis would be required to determine the number of shares to which SAFE holders would be entitled. Common stock holders would be incentivized to seek to minimize SAFE holder recoveries, which would threaten to prime or reduce common stock recoveries. As noted, moreover, other contemplated transactions would entitle SAFE holders to cash, with a liquidation priority ahead of common stock. In either case, SAFE holders’ interests would be different than common stock. While certain of Rhodium’s managers may own SAFE interests, those same insiders also appear to have substantial positions in Rhodium secured debt and common stock, securities in competition with the SAFE for recoveries. It appears clear, in short, that the interests of the SAFE are not adequately represented by existing stakeholders.

*Complexity and cost.* These Chapter 11 Cases feature debt in excess of \$60 million, SAFEs worth \$87 million, and a significant number of parties-in-interest, many of which may be insiders. The parties and Court will be required to grapple with many complex issues, including potentially novel issues concerning the SAFEs. Indeed, based on a recent review, there are just 12 published cases in any context discussing SAFEs, and none determining SAFE priorities in bankruptcy. Further, a vigorous prosecution of these Chapter 11 Cases is likely to require investigating transactions leading up to the filing of the Chapter 11 Cases and into the actions of the Debtors’ insiders in connection with those transactions. It is therefore urgent that an official committee of SAFE investors serves as a fiduciary, and helps ensure that a fulsome investigation is conducted. An active SAFE committee could create value for stakeholders in these cases well in excess of any costs it might incur, and those costs would in any case be subject to review by the Court and other parties in interest. *See In re Roman Catholic Church Archdiocese of New Orleans*, 2021 WL 454220, \*14 (Bankr. E.D. La. Aug. 8, 2021) (appointing 1102(a) committee and finding that “the value created will outweigh the costs associated with the ... additional committee, particularly when the Debtor, the UST, other parties in interest, and the Court will continue to monitor closely the fees and expenses generated by all professionals in this case.”).

For the foregoing reasons, we respectfully ask the U.S. Trustee to exercise his discretion to appoint an official SAFE committee. Please let us know if we can provide any other information or assistance, or if you would like to have another telephone call to discuss, and thanks again for your attention to this matter.

Very truly yours,

/s/ Mitchell Hurley  
Mitchell P. Hurley

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 Celsius Core LLC (the “**Investor**”) of **FIFTY MILLION DOLLARS (\$50,000,000)** (the “**Purchase Amount**”) on **Wednesday, June 2, 2021**, Rhodium Enterprises, Inc., a Delaware corporation, (the “**Company**”), issues to the Investor the right to certain shares of the Company’s Capital Stock, subject to the terms described 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) **Equity Financing or Listing Event.** If there is an Equity Financing or a Listing Event before the termination of 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, this Safe will automatically convert into (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 automatic conversion of this Safe into 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, 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) **Liquidity Event.** If there is a Liquidity Event before the termination of this Safe, this Safe 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 the automatic conversion of this Safe under Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due 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 calculated as of immediately prior to the Equity Financing 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 Converting Securities;
- Includes all (i) issued and outstanding Options and (ii) Promised Options; and
- Includes the Unissued Option Pool, except that any increase to the Unissued Option Pool in connection with the Equity Financing 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 securities issued by the Company, including but not limited to: (i) other Safes; (ii) convertible promissory notes and other convertible debt instruments; and (iii) 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 Celsius’s election, “Equity Financing” shall not include any transaction or series of transaction 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.

**“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. **“MFN” Amendment Provision.** If, prior to termination of this Safe, the Company issues any Subsequent Convertible Securities with a Valuation Cap or Discount Rate (or equivalent economic concepts) that are preferable to the terms of this instrument, the Company will promptly provide the Investor with written notice thereof, together with a copy of all documentation relating to such Subsequent Convertible Securities and, upon written request of the Investor, any additional information related to such Subsequent Convertible Securities as may be reasonably requested by the Investor. At the election of the Investor, the Company shall amend and restate this instrument to provide for the same Valuation Cap or Discount Rate (or equivalent concepts) as are set forth in the instrument(s) evidencing the Subsequent Convertible Securities.

#### 4. ***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 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.

#### **5. *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) 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.

(e) 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.

(f) 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.

(g) 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).

*(Signature page follows)*

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

RHODIUM ENTERPRISES, INC.

DocuSigned by:  
By: Cameron Blackmon  
2AB54288FCE44BC  
Cameron Blackmon  
Authorized Signatory

Address:

7546 Pebble Drive,  
Fort Worth, TX 76118

Email: Cameronblackmon@imperiumholdings.io

**INVESTOR:**

**CELSIUS CORE LLC**

DocuSigned by:  
By: Ron Deutsch  
E2E23C810E9341D...

Name: Ron Deutsch

Title: General Counsel

Address: 221 River Road, 9<sup>th</sup> Flr

Hoboken, New Jersey 07030

Email: ron.deutsch@celsius.network

**POST-MONEY VALUATION CAP**

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.****{COMPANY NAME}**  
**SAFE****(Simple Agreement for Future Equity)**

THIS CERTIFIES THAT in exchange for the payment by ~~{Investor Name}~~ Celsius Core LLC (the "Investor") of **FIFTY MILLION DOLLARS (\$**~~\_\_\_\_\_~~**50,000,000)** (the "Purchase Amount") on ~~or about~~ {Date of Safe}, {Company Name}, a {State of Incorporation} Wednesday, June 2, 2021, Rhodium Enterprises, Inc., a Delaware corporation, (the "Company"), issues to the Investor the right to certain shares of the Company's Capital Stock, subject to the terms described below.

~~This Safe is one of the forms available at <http://ycombinator.com/documents> and the Company and the Investor agree that neither one has modified the form, except to fill in blanks and bracketed terms.~~

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

The "Discount Rate" is 85%.

~~The "Post-Money Valuation Cap" is \$~~\_\_\_\_\_~~.~~ See **Section 2** for certain additional defined terms.

1. *Events*

(a) **Equity Financing or Listing Event.** If there is an Equity Financing or a Listing Event before the termination of 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, this Safe will automatically convert into ~~the greater of: (1) (i) in the case of an Equity Financing, the number of shares of Standard Preferred Stock~~stock issued in the Equity Financing equal to the Purchase Amount divided by the lowest price per share of the Standard Preferred Stock; or (2) applicable Conversion Price or (ii) in the case of a Listing Event, the number of shares of Safe Preferred Common Stock of the Company equal to the Purchase Amount divided by the Safe Priceapplicable Conversion Price (such shares issued upon conversion in the case of clause (i) or clause (ii), the "Conversion Shares").

In connection with the automatic conversion of this Safe into ~~shares of Standard Preferred Stock or Safe Preferred Stock~~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 ~~Standard Preferred Stock, with appropriate variations for the Safe Preferred Stock if applicable~~stock issued in the Equity Financing or other holders of Common Stock in the case of a Listing Event, 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) **Liquidity Event.** If there is a Liquidity Event before the termination of this Safe, ~~the Investor~~this Safe 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

**POST-MONEY VALUATION CAP**

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~~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 ~~non-participating Preferred~~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/or Preferred Stock~~, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other Safes ~~and/or Preferred Stock~~, the applicable Proceeds will be distributed pro rata to the Investor and such other Safes ~~and/or Preferred Stock~~ in proportion to the full payments that would otherwise be due; ~~and~~.

~~(iii) Senior to payments for Common Stock.~~

The Investor’s right to receive its Conversion Amount is (A) on par with payments for Common Stock and other Safes ~~and/or Preferred Stock~~ 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 the automatic conversion of this Safe under Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due 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” and the “Preferred 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~~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

**POST-MONEY VALUATION CAP**

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 calculated as of immediately prior to the Equity Financing and (without ~~double-counting~~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 Converting Securities;
- Includes all (i) issued and outstanding Options and (ii) Promised Options; and
- Includes the Unissued Option Pool, except that any increase to the Unissued Option Pool in connection with the Equity Financing willshall 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~~ included this Safe and other convertible securities issued by the Company, including but not limited to: (i) other Safes; (ii) convertible promissory notes and other convertible debt instruments; and (iii) 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 willshall not be deemed to be an underwritten offering and willshall 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 ~~Preferred~~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 Celsius’s election, “Equity Financing”

**POST-MONEY VALUATION CAP**

shall not include any transaction or series of transaction 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 ~~initial~~ 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 ~~(including without limitation shares of Preferred Stock)~~ 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, ~~a Direct~~ other than a Listing ~~or an Initial Public Offering~~ Event.

**“Liquidity Price”** means the price per share equal to the ~~Post-Money~~ 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 ~~Standard Preferred~~ 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 Preferred Stock” means the shares of the series of Preferred Stock issued to the Investor in an Equity Financing, having the identical rights, privileges, preferences, seniority, liquidation multiple and restrictions as the shares of Standard Preferred Stock, except that any price-based preferences (such as the per share liquidation amount, initial conversion price and per share dividend amount) will be based on the Safe Price.~~



~~POST-MONEY VALUATION CAP~~

**“Safe Price”** means the price per share equal to the ~~Post-Money~~ Valuation Cap divided by the Company Capitalization.

~~“Standard Preferred Stock” means the shares of the series of Preferred Stock issued to the investors investing new money in the Company in connection with the initial closing of the Equity Financing.~~

**“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. **“MFN” Amendment Provision.** If, prior to termination of this Safe, the Company issues any Subsequent Convertible Securities with a Valuation Cap or Discount Rate (or equivalent economic concepts) that are preferable to the terms of this instrument, the Company will promptly provide the Investor with written notice thereof, together with a copy of all documentation relating to such Subsequent Convertible Securities and, upon written request of the Investor, any additional information related to such Subsequent Convertible Securities as may be reasonably requested by the Investor. At the election of the Investor, the Company shall amend and restate this instrument to provide for the same Valuation Cap or Discount Rate (or equivalent concepts) as are set forth in the instrument(s) evidencing the Subsequent Convertible Securities.

~~34.~~ **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 has been duly authorized by all necessary actions on the part of the Company (subject to section ~~34~~(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

~~POST-MONEY VALUATION CAP~~

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.

#### 45. *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 a 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 "~~Post-Money~~ 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~~as 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



**POST-MONEY VALUATION CAP**

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) 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

(e) 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.

(f) All rights and obligations hereunder will be governed by the laws of the State of ~~Governing Law Jurisdiction~~ the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction.

(g) 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).

*(Signature page follows)*

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*[Link-to-previous setting changed from on in original to off in modified.]*

EXECUTION VERSION

**Version 1.2**

**POST-MONEY VALUATION CAP**

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

RHODIUM ENTERPRISES, INC.

**[COMPANY]**

By: \_\_\_\_\_

~~[name]~~ Cameron Blackmon

~~[title]~~

~~Address:~~ \_\_\_\_\_

Authorized Signatory

~~Email:~~ \_\_\_\_\_

**INVESTOR:**

~~By:~~ \_\_\_\_\_

~~Name:~~ \_\_\_\_\_

~~Title:~~ \_\_\_\_\_

Address:

7546 Pebble Drive,  
Fort Worth, TX 76118

Email: Cameronblackmon@imperiumholdings.io

INVESTOR:

CELSIUS CORE LLC

~~Email~~By: \_\_\_\_\_

Name: Ron Deutsch

Title: General Counsel

Address: 221 River Road, 9th Flr  
Hoboken, New Jersey 07030

Email: ron.deutsch@celsius.network

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*[Link-to-previous setting changed from on in original to off in modified.]*

*[Different first page setting changed from on in original to off in modified.]*

*[Link-to-previous setting changed from on in original to off in modified.]*

EXECUTION VERSION

~~Version 1.2~~

**~~POST-MONEY VALUATION CAP~~**

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*[Link-to-previous setting changed from on in original to off in modified.]*

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

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, <i>et al.</i> , <sup>1</sup>	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

**DECLARATION OF PATRICIA B. TOMASCO IN SUPPORT OF DEBTORS’  
OMNIBUS OBJECTION TO CLAIMS PURSUANT TO BANKRUPTCY CODE  
SECTIONS 502(B), BANKRUPTCY RULE 3007, AND LOCAL RULE 3007-1 BECAUSE  
SAFE HOLDERS DO NOT HOLD CLAIMS**

I, Patricia B. Tomasco, pursuant to section 1746 of title 28 of the United States Code, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am above 18 years of age and am competent to testify. I am a partner at Quinn Emanuel Urquhart & Sullivan, LLP and lead counsel for the above-captioned debtors and debtors in possession (collectively, the “Debtors”).

2. I submit this declaration (the “Declaration”) in support of *Debtors’ Omnibus Objection to Claims Pursuant to Bankruptcy Code Sections 502(b), Bankruptcy Rule 3007, and Local Rule 3007-1 because SAFE Holders do not Hold Claims* (the “Objection”), contemporaneously filed herein.<sup>2</sup>

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

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Objection.

3. If called as a witness, I could and would competently testify to the facts set forth in this Declaration.

4. Attached hereto as **Exhibit 1** is a true and correct copy of the document bearing Bates number REI-SC-0141039.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and beliefs.

Dated: May 19, 2025

Respectfully submitted,

/s/ Patricia B. Tomasco

Patricia B. Tomasco  
Partner at Quinn Emanuel Urquhart & Sullivan,  
LLP  
Counsel to the Debtors

## Message

**From:** ron.deutsch@celsius.network [ron.deutsch@celsius.network]  
**Sent:** 5/30/2021 6:53:04 PM  
**To:** 'Nathan Nichols' [nathannichols@rhodiummining.io]; 'Patrick Holert' [patrick.holert@celsius.network]  
**CC:** 'Alex Mashinsky' [alex@celsius.network]; 'Quinn Lawlor' [Quinn.lawlor@celsius.network]; 'Nick Cerasuolo' [nickcerasuolo@imperiumholdings.io]; 'Jared Melillo' [jaredmelillo@rhodiummining.io]; 'Charles Topping' [chucktopping@rhodiummining.io]; 'Withers, Sarah' [swithers@akingump.com]; 'Hilkemann, Adam' [ahilkemann@AKINGUMP.com]; 'Joseph Golding-Ochsner' [joseph.golding-ochsner@celsius.network]  
**Subject:** RE: Celsius/Rhodium -- Recap of Call  
**Attachments:** image001.png; image002.png; image003.png; image004.png; SAFE - Rhodium Enterprises Inc. 4841-9860-9900, 4.docx; Redline - SAFE - Rhodium Enterprises Inc (versus 4-20-21 Version).pdf; Celsius - Rhodium Side Letter 4818-8642-0460, 3.docx; Celsius - Rhodium Diligence Request List 4844-0106-0588, 1.docx

Nathan,

Thank you again for the calls and helpful subsequent correspondence.

We worked with our outside counsel diligently to reduce everything we discussed to a short side letter which is attached.

We also attach a few comments on the SAFE which are mostly technical comments (for instance, so it works the way it is expected upon an IPO/SPAC).

Please review and let us know if you have any questions or comments.

Also, attached is a short legal diligence request list from our counsel Akin Gump. Sarah and Adam from Akin are copied as well. May we ask that you please provide data room access to them or send here the relevant documents so that we can sign off from a legal standpoint.

We look forward to finalizing this with you quickly and proceed to funding of the rig order and SAFE.

Best regards,  
 Ron



**Ron Deutsch**  
**General Counsel & Head of M&A | Celsius**

Phone: +1-917-847-7783

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**From:** Nathan Nichols <nathannichols@rhodiummining.io>  
**Sent:** Thursday, May 27, 2021 1:55 PM  
**To:** Patrick Holert <patrick.holert@celsius.network>  
**Cc:** Ron Deutsch <ron.deutsch@celsius.network>; Alex Mashinsky <alex@celsius.network>; Quinn Lawlor <Quinn.lawlor@celsius.network>; Nick Cerasuolo <nickcerasuolo@imperiumholdings.io>; Jared Melillo <jaredmelillo@rhodiummining.io>; Charles Topping <chucktopping@rhodiummining.io>  
**Subject:** Re: Celsius/Rhodium -- Recap of Call

Hi Patrick,

Sorry missed the message with edits from Ron, thanks for pointing it out.

Most of the language Ron provided is fair, with light tweaks overall. Thank you for being reasonable.

In General, we'd like to change the language to be a little more loose on checking on pricing and availability. We'd prefer at least once a quarter with an understanding that it could be more frequent based off of the needs of Celsius (best efforts). I believe that checking on pricing every month would tax the relationship based off of my own experience. The way that we have nurtured the relationship with MicroBT is very much so working. I would consider Vincent (Head of Sales of MicroBT) as a friend as much as a business relationship. We have exchanged gifts back and forth celebrating successes, etc. I need you all to trust that we will continue to nurture this relationship in the best way possible *to provide maximum value to Celsius and Rhodium*.

Rhodium will help to the best of its ability to source machines for Celsius as long as it does not cause harm to the MicroBT relationship, I know this gives us some breathing room on our side, but that is what we need. In the end, you are trusting our guidance to help secure growth for your mining arm. When you all push and it is not the right time, we will push back. In that same light, we will contact you when it is a good time to push, even if that timing was unknown to Celsius. We need to avoid Rhodium becoming just a transactional procurement arm of Celsius. I think realistically your side would likely not need to look at machines more than roughly 2 times per quarter. I'd be comfortable checking at least once and having some language that "From time to time Celsius may need to ask more frequently about MicroBT's inventory based off of market conditions, Rhodium agrees to provide best efforts to help Celsius as long as the requests are reasonable."

I know this current equity investment/side letter between Rhodium and Celsius is a transaction, but the way I have gotten so far with the MicroBT relationship is by *not* being transactional unless absolutely necessary with MicroBT. That has paid off in spades.

In reality, we, Celsius and Rhodium, will likely work together to combine orders to increase purchasing power, so I anticipate us strategizing together on a quarterly basis on the combined needs of Celsius and Rhodium. We would love to have Alex and any other executive from your team to participate in the call.

Celsius invests **initially \$50 (and can upsize up to a total of 150mm)** in equity (via a SAFE instrument to avoid pricing, but with a 3B cap)

There needs to be language added that this \$50-\$150MM is only available until the round is successfully filled or closed, it is not a warrant to purchase equity at a later date when the valuation has increased.

– equity investment plus **at least 8,000 (plus Rhodium's best efforts to obtain up to 15,000**

As far as the 8,000 to 15,000 machines, pushing for additional machines will tax the relationship and I have no guarantee of it working. I think 8,000 is a good place to start. If you wanted to look to increase the investment from your side, we would consider losing relationship capital with MicroBT for additional investment. If you are not interested in that currently, we understand and should leave it at 8,000 for now AND will promise to provide best efforts to fill the additional 7,000 next quarter. We will give our best efforts to secure the additional machines at a later date for you, but we wouldn't push right now, it wouldn't be smart for us unless there was additional consideration. Maybe a ladder of increased capital investment for additional machine allocation? However, I recommend us just staying at 8,000 and you all trusting our guidance and us helping on the additional 7,000 unless it's absolutely necessary to secure the additional 7,000 machines right now. We can keep the best efforts language in there as long as you understand the best efforts wouldn't necessarily mean pushing **\*today\***.

**"This will be done once a month and terms from MicroBT (or such other source) are non-negotiable from what MicroBT provides us for pricing terms etc."** I am not sure what this sentence means, can you clarify? We won't charge a spread if that's what you're asking.



**Micro BT M31S+ (80 TH, 40 watts/TH) units with delivery over June-Dec 2021** To add some color to this, large contracts are based off of an overall average efficiency (w/th) and combined hash rate. Some machines may be 78<sup>TH</sup> some machines may be 84<sup>th</sup>, some machines may be 38w/th and some may be 44w/th. For example, our first order was for 7,900 miners, we ended up getting >8,300. The manufacturer cannot promise exact quantities. So we need to make the language a little more flexible here to be realistic. But in general the deviation will not be +/- 5% on efficiency and hashrate yield, this is standard to any large contract purchase.

**i - Rhodium will use good faith best efforts to include Celsius Core on all bids for future rigs and increase each of the purchase orders such that Celsius Core can purchase additional rigs on the same terms, including pricing and delivery times or other terms as Rhodium, and will not permit or grant similar rights to other parties without first permitting Celsius Core to fulfill its desired purchase.** We are good with this, we wouldn't want to provide additional mining capacity support to a different large scale operation. We do have other projects we will be doing in other parts of the world (that we're happy to have Celsius look at if it makes sense), mobile mining units, flare gas capture, etc is on the docket. As long as Rhodium and it's subsidiaries is allowed, this should be fine.

Rhodium will check monthly to see what supply is available from MicroBT **or other available foundries or procurement sources**. If excess supply is immediately available, Rhodium will get terms/pricing and provide Celsius with market options to purchase through Rhodium **on the same terms and conditions as Rhodium (other than delivery destination)**. This will be done once a month and terms from MicroBT **(or such other source)** are non-negotiable from what MicroBT provides us for pricing terms etc.

Can we change this to inevitably get you guys what you want, which is knowledge of available machines? "Rhodium will make Celsius aware of additional machines availability in excess of supply needed by Rhodium as it becomes known to Rhodium"?

Also, I am not a lawyer, so I haven't had this language "lawyered" just trying to get to the spirit of the deal.

Thanks,  
Nathan



**Nathan Nichols | Chief Executive Officer**

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

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**From:** Patrick Holert <[patrick.holert@celsius.network](mailto:patrick.holert@celsius.network)>  
**Date:** Thursday, May 27, 2021 at 5:17 AM  
**To:** Nathan Nichols <[nathannichols@rhodiummining.io](mailto:nathannichols@rhodiummining.io)>  
**Cc:** Ron Deutsch <[ron.deutsch@celsius.network](mailto:ron.deutsch@celsius.network)>, Alex Mashinsky <[alex@celsius.network](mailto:alex@celsius.network)>, Quinn Lawlor <[Quinn.lawlor@celsius.network](mailto:Quinn.lawlor@celsius.network)>, Nick Cerasuolo <[nickcerasuolo@imperiumholdings.io](mailto:nickcerasuolo@imperiumholdings.io)>, Jared Melillo <[jaredmelillo@rhodiummining.io](mailto:jaredmelillo@rhodiummining.io)>  
**Subject:** Re: Celsius/Rhodium -- Recap of Call

Hi Nathan:

Thanks for clarifying that we will have a fixed price on the rigs, once full details are negotiated. Quinn and I had thought all of your rigs were subject to a formula that would adjust prices. Right now, we definitely prefer to have a fixed price on rigs, especially ones delivered this year.



Do you have any comments on our edits to your email on terms? As Ron noted, we would like to draft a side letter to the SAFE that includes these terms. Please confirm whether you agree on the terms as edited.

Thanks,

Patrick

On Thu, May 27, 2021 at 1:15 AM Nathan Nichols <[nathannichols@rhodiummining.io](mailto:nathannichols@rhodiummining.io)> wrote:

Hi Ron,

Thanks for the quick responses from your team.

Recapping some things I told Patrick today:

For miners in this year (not pre-order), there is no formula. I let Patrick know this. For miners that will be delivered in 2022, we will be able to get:

1. Fixed Pricing

OR

2. The *potential* to reuse the pricing formula that we have already used for an additional 21,000 miners with MicroBT. MicroBT messed up on the way they did the formula, which was a big (~30%) windfall for Rhodium, which was great. However it left a bad taste in the mouth of MicroBT's CEO. Rest assured, we are pushing to get this reinstated. If we get the formula, Celsius will get the formula and be able to participate alongside us in any excess miners we do not need.

Back to this year's (2021) pricing (spot-pricing):

Unfortunately, spot-pricing from the manufacturers is an art, not a science, and they will not agree to a formula. Quinn will let you know this is the case.

Luckily (at least for right now), spot pricing is based off of their current supply and BTC price. Both of those are in our favor in a very significant way, this was not the case 4 weeks ago.

I do not know what the exact pricing is, spot price is given to us on a "bid" format that is correlated with Bitcoin price and current supply. We get offered a price, we have 48 hours to execute on spot price or it gets re-priced. It is important not to ask for multiple rebids or it creates friction with the relationship which I will avoid at all costs.

In case you were wondering, I have asked, many times, how they calculate spot pricing. They (both Bitmain and MicroBT) will not give us this information nor will they give this to anyone else in the industry. I've called around to the other largest customers of MicroBT, they've had no success either.

The important thing to note is we have a window of opportunity right now for Celsius to receive these 8,000 machines starting *next month*. If you noticed my tone on our zoom when you all were on the call asking about miners this year, I

immediately shot down this idea "there is no way we can get machines this year" I believed it was completely unrealistic. I am honestly *shocked* that they have 8,000 machines available.

The window was created because China has cancelled large quantities of orders and also BTC price has fallen drastically.

So in short, I am not sure what the pricing will be, no one does until we ask and are ready to move on it within 48 hours. I know it's very frustrating, but that is the reality.

Your ask from our side was to get you a purchase order, I am confident I can get that for you. I am not sure exactly where the price will land but I will do my best to negotiate the pricing the same way I would for our own machines.

What I can guarantee is that Celsius will have the most leverage right now for the 8,000 machines because of:

1. Potential China Ban FUD
2. Bitcoin price drop
3. Our 280MW order we are in the final stages of closing for next year's delivery (we look to sign next Tuesday).

I do know that there will need to be an immediate deposit of \$1,000 per machine to lock the supply. So \$8MM in this case for you all to secure 8,000 machines.

I am open to going back to MicroBT and asking for more machines for you all to get to 15,000 once the first stage of this deal is signed. MicroBT offered me 4,000 machines, I pushed for 8,000 and got a yes. That was a big W.

I understand you all have rack space for 15,000 miners because Core cancelled the Canaan order. I realize that you all need to fill them or you might lose your spot in line or maybe there's a PPA (power purchase agreement) that you're on the hook for. We will help the best that we can to make sure you can monetize the power. After all, even higher cost machines are better to plug in today as long as you make more BTC profit over time than the increased price per TH.

I'd like to discuss your team's interest in the second \$50MM tranche *after* we close this deal. As for now, I'd like to keep things simple so we can have you guys lock in these miners.

Maybe we could get the other 7,000 machines as part of that? But honestly as long as it doesn't hurt Rhodium, we are here to help.

After this transaction I hope the relationship becomes less... transactional 😊.

Yes to ROFR/matching rights assuming we can complete due diligence to get comfortable before working together.

All the best,

Nathan Nichols | Chief  
Executive Officer

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



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**From:** Ron Deutsch <[ron.deutsch@celsius.network](mailto:ron.deutsch@celsius.network)>  
**Date:** Wednesday, May 26, 2021 at 11:29 PM  
**To:** Nathan Nichols <[nathannichols@rhodiummining.io](mailto:nathannichols@rhodiummining.io)>  
**Cc:** Patrick Holert <[patrick.holert@celsius.network](mailto:patrick.holert@celsius.network)>, Alex Mashinsky <[alex@celsius.network](mailto:alex@celsius.network)>, Quinn Lawlor <[Quinn.lawlor@celsius.network](mailto:Quinn.lawlor@celsius.network)>, Nick Cerasuolo <[nickcerasuolo@imperiumholdings.io](mailto:nickcerasuolo@imperiumholdings.io)>, Jared Melillo <[jaredmelillo@rhodiummining.io](mailto:jaredmelillo@rhodiummining.io)>  
**Subject:** Re: Celsius/Rhodium -- Recap of Call

Nathan,

Thanks again for the productive call.

Please see a few clarifying comments below. If acceptable, let's turn this into a side letter that can be signed simultaneously with the SAFE.

A few questions:

What is the formula for pricing on the equipment? When does the price lock in? Can we get 15k rigs this year?

In addition, we would like to see if we could add a ROFR or matching rights for Celsius to be your platform for activities regarding:

- Your borrowing fiat or stable coins against BTC
- Crypto lending to Rhodium
- Hedging BTC
- Providing yield on your BTC

Thanks and regards,

Ron

1. Contract 1 – equity investment plus at least 8,000 (plus Rhodium's best efforts to obtain up to 15,000) machines Micro BT M31S+ (80 TH, 40 watts/TH) units with delivery over June-Dec 2021. Our order would be separate from Rhodium's but on exactly the same terms including pricing (except for possible earlier delivery schedule for Celsius (other than delivery destination for the Celsius Core order). We will agree on terms and sign the purchase order by June 1. Funding on the SAFE will be within 14 days.

a. Celsius invests initially \$50 (and can upsize up to a total of 150mm) in equity (via a SAFE instrument to avoid pricing, but with a 3B cap)

i. SAFE = 15% discount to next round at the lower of (1) next qualified financing of 50mm or more or (2) \$3B cap

ii. Note – we've communicated this to existing shareholders already so we'd prefer to do a single investment round

b. Conditions to close on the equity investment

i. ~~Rhodium to either (1) Purchase order signed for 8,000 to 15,000 rigs per above~~ carve out 8,000 machines from its next machine order and assign the machine purchase order to Celsius at the exact same timing/delivery/terms/price as Rhodium (expected Q1 2022) or (2) provide Celsius with an the ability to purchase 8,000 machines for immediate delivery at best available market prices.

2. Contract 2 -- Future option contract on machine purchase

a. Timeframe #1: Bucket 1 --- Utilization of the next 280MW worth of machines

i - Rhodium will use good faith best efforts to include Celsius Core on all bids for future rigs and increase each of the purchase orders such that Celsius Core can purchase additional rigs on the same terms, including pricing and delivery times or other terms as Rhodium, and will not permit or grant similar rights to other parties without first permitting Celsius Core to fulfill its desired purchase.

ii. If limited hardware is available despite its best efforts, Rhodium is not required to reduce their own order, only excess over its desired order is required to be allocated to Celsius Core ~~Rhodium will receive the next 280MW worth of miners. If Rhodium doesn't have space when they are delivered, Rhodium will offer them to Celsius to either (1) purchase, (2) lease or (3) co-located and revenue share.~~

ii. The determination will be made on a month-by-month basis based on (1) Rhodium's construction progress and site capacity, (2) market conditions and (3) future supply schedules.

b. Timeframe #1: Bucket 2 --- Excess capacity available above and beyond the 280MW ordered during the same timeframe

i. Rhodium will check monthly to see what supply is available from MicroBT or other available foundries or procurement sources . If excess supply is immediately available, Rhodium will get terms/pricing and provide Celsius with market options to purchase through Rhodium on the same terms and conditions as Rhodium (other than delivery destination). This will be done once a month and terms from MicroBT (or such other source) are non-negotiable from what MicroBT provides us for pricing terms etc.

On Wed, May 26, 2021 at 8:08 PM Nathan Nichols <[nathannichols@rhodiummining.io](mailto:nathannichols@rhodiummining.io)> wrote:

Sounds great, thank you!

**From:** Patrick Holert <[patrick.holert@celsius.network](mailto:patrick.holert@celsius.network)>

**Sent:** Wednesday, May 26, 2021 6:32:52 PM

**To:** Nathan Nichols <[nathannichols@rhodiummining.io](mailto:nathannichols@rhodiummining.io)>

**Cc:** Alex Mashinsky <[alex@celsius.network](mailto:alex@celsius.network)>; Ron Deutsch <[ron.deutsch@celsius.network](mailto:ron.deutsch@celsius.network)>; Quinn Lawlor <[Quinn.lawlor@celsius.network](mailto:Quinn.lawlor@celsius.network)>; Nick Cerasuolo <[nickcerasuolo@imperiumholdings.io](mailto:nickcerasuolo@imperiumholdings.io)>; Jared Melillo <[jaredmelillo@rhodiummining.io](mailto:jaredmelillo@rhodiummining.io)>

**Subject:** Re: Celsius/Rhodium -- Recap of Call

Hi Nathan:

It was great to talk with you this morning. As discussed, I sent comments to Ron and Quinn, and will be talking with them this evening. Our plan is to send joint comments to you tonight in order to proceed with a SAFE investment and purchase of Micro BT M31S+ rigs. Talk with you soon.

Best,

Patrick

On Wed, May 26, 2021 at 12:53 PM Patrick Holert <[patrick.holert@celsius.network](mailto:patrick.holert@celsius.network)> wrote:

Please note that I just talked with Nathan, and will be sending comments to Ron and Quinn shortly.

Best,

Patrick

On Wed, May 26, 2021 at 12:22 PM Nathan Nichols <[nathannichols@rhodiummining.io](mailto:nathannichols@rhodiummining.io)> wrote:

Alex and Ron,

Good news!

Spoke again with MicroBT. We have a window of opportunity to take advantage of this influx of machines in the market. We do have the ability to secure 8,000 machines for you spread evenly through the end of this year. Supply starting in JUNE (next month).

Let's get this papered ASAP.

Thanks,

Nathan



**From:** Nathan Nichols <[nathannichols@rhodiummining.io](mailto:nathannichols@rhodiummining.io)>

**Sent:** Tuesday, May 25, 2021 10:13:51 PM

**To:** Alex Mashinsky <[alex@celsius.network](mailto:alex@celsius.network)>

**Cc:** Ron Deutsch <[ron.deutsch@celsius.network](mailto:ron.deutsch@celsius.network)>; Quinn Lawlor <[Quinn.lawlor@celsius.network](mailto:Quinn.lawlor@celsius.network)>; Patrick Holert <[patrick.holert@celsius.network](mailto:patrick.holert@celsius.network)>; Nick Cerasuolo <[nickcerasuolo@imperiumholdings.io](mailto:nickcerasuolo@imperiumholdings.io)>; Jared Melillo <[jaredmelillo@rhodiummining.io](mailto:jaredmelillo@rhodiummining.io)>

**Subject:** Celsius/Rhodium -- Recap of Call

Alex, Ron, Quinn, Patrick,

Thanks for the call. Quick notes on what we discussed. If anything is off, give us a call and let's quickly correct any misunderstanding.

Notes from call for contracting:

1. Contract 1 – equity investment plus 8,000 machines

a. Celsius invests \$50-150mm in equity (via a SAFE instrument to avoid pricing, but with a 3B cap)

i. SAFE = 15% discount to next round at the lower of (1) next qualified financing of 50mm or more or (2) \$3B cap

ii. Note – we've communicated this to existing shareholders already so we'd prefer to do a single investment round

b. Conditions to close on the equity investment

i. Rhodium to either (1) carve out 8,000 machines from its next machine order and assign the machine purchase order to Celsius at the exact same timing/delivery/terms/price as Rhodium (expected Q1 2022) or (2) provide Celsius with an the ability to purchase 8,000 machines for immediate delivery at best available market prices.

2. Contract 2 -- Future option contract on machine purchase

a. Timeframe #1: Bucket 1 --- Utilization of the next 280MW worth of machines

i. Rhodium will receive the next 280MW worth of miners. If Rhodium doesn't have space when they are delivered, Rhodium will offer them to Celsius to either (1) purchase, (2) lease or (3) co-located and revenue share.

ii. The determination will be made on a month-by-month basis based on (1) Rhodium's construction progress and site capacity, (2) market conditions and (3) future supply schedules.

b. Timeframe #1: Bucket 2 --- Excess capacity available above and beyond the 280MW ordered during the same timeframe

i. Rhodium will check monthly to see what supply is available from MicroBT. If excess supply is immediately available, Rhodium will get terms/pricing and provide Celsius with market options to purchase through Rhodium. This will be done once a month and terms from MicroBT are non-negotiable from what MicroBT provides us for pricing terms etc.

c. Timeframe #2: Post-280MW

i. Celsius gets first rights after Rhodium.

1. Example – 50mw worth of machines available. Rhodium needs 40MW. Rhodium will ask Celsius if they want the 10MW excess. If yes, Rhodium will procure the purchase order for Celsius (but Celsius must fund deposits, guarantee contract, etc.).

All the best,  
Nathan



**Nathan Nichols | Chief  
Executive Officer**

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

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**Patrick Holert, CFA, CAIA, ERP  
Mining | Celsius**

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**Patrick Holert, CFA, CAIA, ERP  
Mining | Celsius**

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**Patrick Holert, CFA, CAIA, ERP**  
Mining | Celsius

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**RHODIUM ENTERPRISES, INC.**

**SAFE**  
**(Simple Agreement for Future Equity)**

THIS CERTIFIES THAT in exchange for the payment by Celsius Core LLC (the “**Investor**”) of **FIFTY MILLION DOLLARS (\$50,000,000)** (the “**Purchase Amount**”) on **Tuesday, June 1, 2021**, Rhodium Enterprises, Inc., a Delaware corporation, (the “**Company**”), issues to the Investor the right to certain shares of the Company’s Capital Stock, subject to the terms described 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) **Equity Financing or Listing Event.** If there is an Equity Financing or a Listing Event before the termination of 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, this Safe will automatically convert into (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 automatic conversion of this Safe into 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, 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) **Liquidity Event.** If there is a Liquidity Event before the termination of this Safe, this Safe 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 the automatic conversion of this Safe under Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due 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.

**"Company Capitalization"** is calculated as of immediately prior to the Equity Financing 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 Converting Securities;
- Includes all (i) issued and outstanding Options and (ii) Promised Options; and
- Includes the Unissued Option Pool, except that any increase to the Unissued Option Pool in connection with the Equity Financing 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 securities issued by the Company, including but not limited to: (i) other Safes; (ii) convertible promissory notes and other convertible debt instruments; and (iii) 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.

**“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.

**"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. Subsequent Convertible Securities excludes: (i) options issued pursuant to any equity incentive or similar plan of the Company; (ii) convertible securities issued or issuable to (A) banks, equipment lessors, financial institutions or other persons engaged in the business of making loans pursuant to a debt financing or commercial leasing or (B) suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions; and (iii) convertible securities issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships.

**"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. **"MFN" Amendment Provision.** If the Company issues any Subsequent Convertible Securities prior to termination of this Safe, the Company will promptly provide the Investor with written notice thereof, together with a copy of all documentation relating to such Subsequent Convertible Securities and, upon written request of the Investor, any additional information related to such Subsequent Convertible Securities as may be reasonably requested by the Investor. In the event the Investor determines that the terms of the Subsequent Convertible Securities are preferable to the terms of this instrument, the Investor will notify the Company in writing. Promptly after receipt of such written notice from the Investor, the Company agrees to amend and restate this instrument to be identical to the instrument(s) evidencing the Subsequent Convertible Securities.

#### 4. **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 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.

## 5. *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.

## 6. *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) 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.

(e) 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.

(f) All rights and obligations hereunder will be governed by the laws of the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction.

(g) 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).

*(Signature page follows)*



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

**RHODIUM ENTERPRISES, INC.**

By: \_\_\_\_\_  
Cameron Blackmon  
Authorized Signatory

Address:

7546 Pebble Drive,  
Fort Worth, TX 76118

Email: Cameronblackmon@imperiumholdings.io

**INVESTOR:**

**CELSIUS CORE LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 221 River Road, 9<sup>th</sup> Flr

Hoboken, New Jersey 07030

Email: \_\_\_\_\_

EXECUTION VERSION - JUNE 1, 2021

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 Celsius Core LLC (the “**Investor**”) of ~~ONE HUNDRED SIXTY FIFTY~~ **ONE HUNDRED SIXTY FIFTY** MILLION DOLLARS (~~\$160,000,000~~ **\$50,000,000**) (the “**Purchase Amount**”) on ~~Tuesday April 20th, June 1, 2021~~, Rhodium Enterprises, Inc., a Delaware corporation, (the “**Company**”), issues to the Investor the right to certain shares of the Company’s Capital Stock, subject to the terms described 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) **Equity Financing or Listing Event**. If there is an Equity Financing or a Listing Event before the termination of 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, this Safe will automatically convert into (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 automatic conversion of this Safe into 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, 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) **Liquidity Event**. If there is a Liquidity Event before the termination of this Safe, this Safe 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 the automatic conversion of this Safe under Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due 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.

**"Company Capitalization"** is calculated as of immediately prior to the Equity Financing 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 Converting Securities;
- Includes all (i) issued and outstanding Options and (ii) Promised Options; and
- Includes the Unissued Option Pool, except that any increase to the Unissued Option Pool in connection with the Equity Financing 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 securities issued by the Company, including but not limited to: (i) other Safes; (ii) convertible promissory notes and other convertible debt instruments; and (iii) 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.

**“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.

**“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. Subsequent Convertible Securities excludes: (i) options issued pursuant to any equity incentive or similar plan of the Company; (ii) convertible securities issued or issuable to (A) banks, equipment lessors, financial institutions or other persons engaged in the business of making loans pursuant to a debt financing or commercial leasing or (B) suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions; and (iii) convertible securities issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships.

**“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. **“MFN” Amendment Provision.** If the Company issues any Subsequent Convertible Securities prior to termination of this Safe, the Company will promptly provide the Investor with written notice thereof, together with a copy of all documentation relating to such Subsequent Convertible Securities and, upon written request of the Investor, any additional information related to such Subsequent Convertible Securities as may be reasonably requested by the Investor. In the event the Investor determines that the terms of the Subsequent Convertible Securities are preferable to the terms of this instrument, the Investor will notify the Company in writing. Promptly after receipt of such written notice from the Investor, the Company agrees to amend and restate this instrument to be identical to the instrument(s) evidencing the Subsequent Convertible Securities.

### ~~34.~~ **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 has been duly authorized by all necessary actions on the part of the Company (subject to section ~~34~~(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.

#### 45. 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.

#### 56. 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) 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.

(e) 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.

(f) All rights and obligations hereunder will be governed by the laws of the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction.

(g) 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).

*(Signature page follows)*



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

RHODIUM ENTERPRISES, INC.

By: \_\_\_\_\_  
Cameron Blackmon  
Authorized Signatory

Address:

7546 Pebble Drive,  
Fort Worth, TX 76118

Email: Cameronblackmon@imperiumholdings.io

**INVESTOR:**

**CELSIUS CORE LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 221 River Road, 9<sup>th</sup> Flr

Hoboken, New Jersey 07030

Email: \_\_\_\_\_

~~EXECUTIBLE~~EXECUTION VERSION - ~~APRIL 20~~JUNE 1, 2021

<b>Summary report:</b> <b>Litera® Change-Pro for Word 10.13.0.36 Document comparison</b> <b>done on 5/30/2021 5:31:16 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> nd://4841-9860-9900/1/SAFE - Rhodium Enterprises Inc..docx	
<b>Modified DMS:</b> nd://4841-9860-9900/4/SAFE - Rhodium Enterprises Inc..docx	
<b>Changes:</b>	
<u>Add</u>	33
<del>Delete</del>	14
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>47</b>

Celsius Core LLC  
221 River Road, 9<sup>th</sup> Flr  
Hoboken, New Jersey 07030

June [1], 2021

Rhodium Enterprises, Inc.  
7546 Pebble Drive  
Fort Worth, Texas  
Attention: Nathan Nichols, Chief Executive Officer

Dear Nathan:

Reference is hereby made to (i) that certain Simple Agreement for Future Equity attached hereto as Exhibit A (the “*Safe*”) pursuant to which Celsius Core LLC, a Delaware limited liability company (“*Celsius*”) will pay Fifty Million Dollars (\$50,000,000) to Rhodium Enterprises, Inc., a Delaware corporation (“*Rhodium*”) in exchange for the right to certain shares of Rhodium’s capital stock, all on the terms set forth in the Safe, and (ii) that certain purchase order<sup>1</sup> attached hereto as Exhibit B, pursuant to which Celsius will order [8,000] Micro BT M31S+ cryptocurrency mining rigs from Shenzhen MicroBT Electronics Technology Co., Ltd. (“*MicroBT*”). This agreement (this “*Agreement*”) is entered into in connection with the investment by Celsius in Rhodium pursuant to the Safe.

In exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto, intending to be legally bound, hereby agree as set forth below.

1. Safe Funding. On or prior to June [15], 2021, Celsius shall fund the Purchase Amount (as defined in the Safe).

2. Additional Investments. Celsius shall have the right (but not the obligation), from time to time after the date hereof until the later of (x) [July 16], 2021 and (y) completion of the Company’s current round of capital raising pursuant to Simple Agreement for Future Equity agreements containing the same Valuation Cap and Discount Rate set forth in the Safe, to contribute up to an additional One Hundred Million Dollars (\$100,000,000) to Rhodium in exchange for the right to certain shares of Rhodium’s capital stock, such contributions to be made pursuant to one or more additional Simple Agreement for Future Equity agreements on the same terms (including, without limitation, the Valuation Cap and Discount Rate) as set forth in the Safe.

3. Mandatory Distributions. If prior to April 1, 2022 Rhodium has not consummated a transaction that results in the capital stock of Rhodium being listed on a U.S. securities exchange, whether pursuant to an underwritten public offering pursuant to a registration statement filed under the Securities Act, a business combination with a Special Purpose Acquisition Company, or

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<sup>1</sup> NTD: The purchase order to include a \$1,000 per rig down deposit that ensures the option to purchase or pass on a monthly spot price quote from MicroBT. The down deposit will be fully refundable at the end of the contract or upon early termination in proportion to the unexecuted portion of the 8,000 rig purchase allotment. The purchase option contract will be in effect from June 2021 to December 2021.

otherwise (a “**Listing Event**”), then, from April 1, 2022 until the consummation of a Listing Event, (a) Rhodium shall make regular (and in any event no less frequently than quarterly) distributions to its stockholders of Available Cash (such distributions to be made either in cash or in cryptocurrency) and (b) for so long as there are any outstanding Simple Agreement for Future Equity agreements between Celsius and Rhodium, concurrently upon Rhodium making any distribution to its stockholders, Rhodium shall also make a payment (in cash or in cryptocurrency) to Celsius equal to the amount Celsius would have received in connection with such distribution if any such outstanding Simple Agreement for Future Equity had converted to capital stock of Rhodium in accordance with its terms immediately prior to the record date for the applicable dividend or other distribution. As used in this Agreement, “**Available Cash**” at any time means that portion of the cash (including cryptocurrency) then on hand or in accounts of Rhodium or its subsidiaries at a bank or other financial institution, including cryptocurrency held in wallets directly or through any custodian, that is available for distribution at such time, subject to any restrictions on distributions set forth in any debt agreements or other contracts to which Rhodium or its subsidiaries is a party.

4. Information Rights. Rhodium shall furnish to Celsius the following information:

(a) within 45 days after the end of each fiscal quarter, an unaudited, consolidated balance sheet of Rhodium and its subsidiaries as of the end of such quarter and an unaudited consolidated income statement, statement of members’ equity and statement of cash flows of Rhodium and its subsidiaries for such quarter prepared in accordance with GAAP (with the exception of normal year-end adjustments and the absence of footnotes), consistently applied;

(b) within 90 days after the end of each fiscal year, an audited, consolidated balance sheet of Rhodium and its subsidiaries as of the end of such fiscal year and a consolidated income statement, statement of members’ equity and statement of cash flows of Rhodium and its subsidiaries for such fiscal year prepared in accordance with GAAP, consistently applied, and a signed audit letter from Rhodium’s auditors; and

(c) such other information as Celsius or its advisors may reasonably request.

5. Certain Approval Rights.<sup>2</sup> The prior written consent of Celsius will be required with respect to the following matters: (a) a change in domicile or tax status of Rhodium; (b) any transaction between Rhodium, on the one hand, and any affiliate, stockholder, manager, director, officer or employee of Rhodium or any affiliate of Rhodium, on the other hand, in each case except for transactions on fair and reasonable terms no less favorable to Rhodium than would be obtainable in a comparable arm’s length transaction with a unaffiliated third party; (c) commencement of a voluntary bankruptcy by Rhodium, or Rhodium’s consent to the appointment of a receiver, liquidator, assignee, custodian, or trustee for the purposes of winding up the affairs of Rhodium; (d) uninstallation of any mining machines (other than with respect to defunct, disabled or damaged mining machines in the ordinary course of business); and (e) any amendment of the organizational documents of Rhodium.

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<sup>2</sup> NTD: Celsius reserves for further comments based on review of existing stockholder agreements.

6. Future Orders for Mining Rigs. In the event that Rhodium or any of its subsidiaries or controlled affiliates (collectively, the “**Rhodium Group**”) proposes to submit a bid to acquire cryptocurrency mining rigs from a third party (a “**Seller**”), Rhodium shall provide Celsius with advance notice (a “**Bid Notice**”) of such bid submission. Such Bid Notice shall include all relevant terms and conditions of the proposed bid (including, without limitation, pricing and delivery terms). Upon receipt of a Bid Notice, Celsius shall promptly respond to Rhodium and indicate whether Celsius desires to participate in the proposed bid. If Celsius desires to participate in the proposed bid, Celsius shall promptly provide Rhodium with notice indicating the number of rigs Celsius desires to bid upon, the applicable delivery location, and any other information reasonably requested by Rhodium (the “**Piggyback Bid**”). Rhodium shall use its best efforts to include the Piggyback Bid in Rhodium’s bid to the applicable Seller; provided, however, that in the event a Seller enforces bid limitations, Rhodium shall not be obligated to reduce its own bid to accommodate Celsius’s Piggyback Bid. Celsius acknowledges and agrees that any Piggyback Bid shall be subject to the same terms and conditions (other than delivery location) applicable to Rhodium’s bid, as set forth in the Bid Notice. Rhodium represents and warrants to Celsius that it has not granted similar rights to those set forth in this Section [ REF Ref73024921 \r \h \\* MERGEFORMAT ] to any other person, and Rhodium further covenants that it shall not offer any other person the opportunity to participate (directly or indirectly) in any such bid without first complying with its obligations set forth in this Section [ REF Ref73024921 \r \h \\* MERGEFORMAT ]. Notwithstanding anything to the contrary herein, Rhodium shall grant Celsius the option to purchase a minimum of [7,000] Micro BT M30S+ cryptocurrency mining rigs or equivalent from MicroBT in 2022 on the same terms and conditions (other than delivery location) applicable to Rhodium’s contemporaneous purchase order.

7. Available Inventory. Rhodium shall notify Celsius promptly upon becoming aware of available inventory of cryptocurrency mining rigs from Sellers, regardless of whether or not any member of the Rhodium Group proposes to submit a bid for such inventory. Without limiting the foregoing, Rhodium shall inquire periodically (and in no event less frequently than quarterly) as to inventory availability with Sellers specified by Celsius; provided, that Rhodium shall not be required to make an inquiry of a specific Seller if Rhodium makes a good faith determination that such inquiry would have a material adverse impact on the relationship between Rhodium and such Seller. If any member of the Rhodium Group intends to submit a bid, the provisions of Section [ REF Ref73024921 \r \h \\* MERGEFORMAT ] shall apply. If no member of the Rhodium Group intends to submit a bid, then Rhodium shall so notify Celsius and, upon Celsius’s request, Rhodium shall use its best efforts to obtain a quote from the applicable Seller of relevant terms and conditions (including, without limitation, pricing and delivery terms) and, at Celsius’s direction, promptly submit a bid to such Seller. Celsius acknowledges and agrees that any such bid shall be subject to the same terms and conditions (other than delivery location) as would otherwise be applicable to a bid by a member of the Rhodium Group.

8. Exclusive Platform. From and after the date of this Agreement, Rhodium agrees that Celsius shall have a right of first refusal with respect to any Cryptofinancing Transaction undertaken by any member of the Rhodium Group. If any member of the Rhodium Group proposes to engage in a Cryptofinancing Transaction, Rhodium shall first provide written notice to Celsius and offer Celsius the opportunity to service such Cryptofinancing Transaction. Within five business days of receipt of such notice, Celsius shall provide Rhodium with written notice of the pricing and other material terms and conditions pursuant to which Celsius would be willing to



service such Cryptofinancing Transaction (the “**Material Terms**”). If Celsius fails to respond to Rhodium pursuant to the immediately preceding sentence, Celsius shall be deemed to have declined such opportunity. No member of the Rhodium Group shall, directly or indirectly, enter into any agreement relating to, or consummate, any Financing Transaction with any person other than Celsius or a Celsius affiliate unless (a) Celsius declines (or is deemed to have declined) such opportunity pursuant to this Section [ REF \_Ref73264365 \w \h ] or (b) Rhodium obtains an offer from a third party with respect to such proposed Cryptofinancing Transaction, and such offer is on terms and conditions materially more favorable to the applicable member of the Rhodium Group than the Material Terms (provided; that Rhodium must first provide Celsius with notice and an opportunity to service such Cryptofinancing Transaction on substantially the same terms and conditions as offered by such third party). As used in this Agreement, “**Cryptofinancing Transaction**” means (i) any borrowings of fiat or other stablecoins by Rhodium or any of its subsidiaries or controlled affiliates, (ii) any other cryptolending transaction where Rhodium or any of its subsidiaries or controlled affiliates is the borrower, (iii) any hedging transaction with respect to cryptocurrencies, and (iv) any other transaction pursuant to which Rhodium or any of its subsidiaries or controlled affiliates earns interest or other yield on cryptocurrency holdings.

9. Miscellaneous.

(a) Term. This Agreement shall remain in full force and effect until the date on which Celsius no longer holds any capital stock of any member of the Rhodium Group (including rights in or to capital stock pursuant to a Simple Agreement for Future Equity).

(b) Notices. Any notices pursuant to this Agreement shall be in writing and shall be deemed sufficiently given upon the earlier of actual receipt, or (i) personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient’s next business day, or (iii) one business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective addresses of the parties set forth above, or to any other address specified by any party by written notice to the other party in accordance with this Section [ REF \_Ref73027529 \w \h \\* MERGEFORMAT ].

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of New York, without giving effect to any choice of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the applicable laws of any jurisdiction other than the State of New York to be applied.

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, that neither party may assign its rights or obligations under this Agreement without the prior written approval of the other party; provided, further, that Celsius may assign its rights and obligations under this Agreement, in whole or in part, to one or more of its Affiliates without the consent of Rhodium.

(e) Amendment. This Agreement may be amended only with the consent of Celsius and Rhodium. Any such amendment shall be by a written instrument duly executed and delivered on behalf of each of the parties.



(f) Effect of Waiver or Consent. The failure of any person to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such person's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder

(g) Further Assurances. In connection with this Agreement, each party hereto shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement

(h) Counterparts. This Agreement may be executed in multiple counterparts which, taken together, shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

If the above correctly reflects our understanding and agreement with respect to the foregoing matters, please so confirm by signing and returning to us the enclosed copy of this Agreement.

CELSIUS CORE LLC

By: \_\_\_\_\_

Name:

Title:

**ACCEPTED, ACKNOWLEDGED AND  
AGREED:**

RHODIUM ENTERPRISES, INC.

By: \_\_\_\_\_

Name: Nathan Nichols

Title: Chief Executive Officer

Exhibit A  
Simple Agreement for Future Equity  
(Attached.)

Exhibit B  
MicroBT Purchase Order  
(Attached.)

**Celsius Core LLC**

**Due Diligence Requests for Rhodium Enterprises, Inc. (the “Company”)**

**May 30, 2021**

1. Organizational documents of the Company and its subsidiaries and any amendments thereto (e.g. articles of incorporation or organization, bylaws, certificates of designation, limited liability company agreements).
2. Organizational structure chart of the Company and its subsidiaries, and a separate list of each, identifying the legal name, type of entity, ownership, jurisdiction of organization, jurisdiction(s) where qualified to do business, and any rigs owned by such entity.
3. Capitalization tables detailing the aggregate issued and outstanding share capital of the Company and its subsidiaries.
4. All contracts relating to the Company’s or any of its subsidiaries’ securities to which the Company or any of its subsidiaries is a party, including but not limited to agreements requiring the Company or any of its subsidiaries to issue securities or register securities (whether with the SEC or any other similar governmental bodies or regulatory agencies), specifically including all Simple Agreements for Future Equity currently outstanding.
5. Information regarding any rights to acquire shares or equity interests in the Company or any subsidiary, to the extent not included above.
6. List of all entities that are not subsidiaries of the Company but in which the Company or any of its subsidiaries owns an interest, together with a description of the nature of the interest.

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

In re:	§	Chapter 11
RHODIUM ENCORE LLC, <i>et al.</i> , <sup>1</sup>	§	Case No. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)
	§	

**ORDER DISALLOWING THE PROOFS OF CLAIM  
FILED BY THE SAFE HOLDERS  
(Relates to ECF No. \_\_\_\_)**

Upon consideration of the Debtors’ Omnibus Objection to Claims Pursuant to Bankruptcy Code Sections 502(b), Bankruptcy Rule 3007, and Local Rule 3007-1 because SAFE Holders Do Not Hold Claims (the “Objection”);<sup>2</sup> and this Court having jurisdiction to consider the Objection and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Objection and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having found and determined that the legal and factual bases set forth in

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.



the Objection establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED, AND DECREED** that:

1. The Objection is **SUSTAINED** and the SAFE Holders' Claims are **DISALLOWED**.

2. The Debtors and the Clerk of the Court are authorized to modify the official Claims Register for these chapter 11 cases in compliance with the terms of this order (the "Order") and to take all steps necessary or appropriate to carry out the relief granted in this Order.

3. Nothing in the Objection or this Order, nor any actions taken by the Debtors pursuant to this Order, shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (f) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

4. This Order is immediately effective and enforceable.

Dated: \_\_\_\_\_ 2025

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ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE

## SCHEDULE 1

CLAIM NO.	CASE NO.	CLAIMANT
11	24-90454	Celsius Holdings US LLC
13	24-90448	RH Fund III, a series of Telegraph Treehouse, LP
18	24-90454	Christopher McBee
19	24-90454	BT Real Estate LLC
20	24-90454	Alfred Murray Capital, LLC
25	24-90454	Philip M. Fornaro Trust dated January 9, 2017
26	24-90454	Noble Crest Capital, LLC
28	24-90454	Brad Weber
32	24-90454	Proof Capital Special Situations Fund
34	24-90454	Jonathan Spaeth
35	24-90454	AnnMarie Fornaro Trust dated January 9, 2017
41	24-90454	Alex M. Salvadori
42	24-90454	Sean Michael Gilbert
45	24-90448	Patty Yang
46	24-90454	Emil Stefkov
51	24-90454	Pepper Grove Holdings Limited
83	24-90451	Gaurav Parikh 2020 Revocable Trust
84	24-90454	RH Fund III, a series of Telegraph Treehouse, LP
102	24-90454	Liquid Mining Fund III, LLC
107	24-90454	Ranger Private Investment Partners, L.P.
111	24-90454	Celsius Holdings US LLC
149	24-90454	James M Farrar and Adda Delgadillo Farrar
152	24-90454	Thomas Lienhart
183	24-90454	Winchester Partners, L.P.
197	24-90454	Infinite Mining, LLC
198	24-90454	Infinite Mining, LLC
223	24-90454	Ten R Ten, LLC
224	24-90454	Magic Circle Trust
231	24-90454	Jeffrey Smith