

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

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

**SAFE AHG OBJECTION TO DEBTORS' AMENDED THIRD MOTION FOR
ENTRY OF AN ORDER (I) EXTENDING THE DEBTORS' EXCLUSIVE
PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCE
THEREOF PURSUANT TO SECTION 1121 OF THE BANKRUPTCY
CODE AND (II) GRANTING RELATED RELIEF**

The Ad Hoc Group of SAFE Parties (the “**SAFE AHG**”)¹ in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) of Rhodium Encore LLC and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”), by and through their undersigned counsel, respectfully submit this objection (the “**Objection**”) to the *Debtors' Amended Third Motion for Entry of an Order (I) Extending the Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptance Thereof Pursuant to Section 1121 of the Bankruptcy Code and (II) Granting Related Relief* [Docket No. 1185] (the “**Third Exclusivity Motion**”).² In support of this Objection, the SAFE AHG respectfully represents as follows:

OBJECTION

1. The Third Exclusivity Motion,³ which seeks to extend the Exclusive Solicitation Period through August 31, 2025, is premature and should be denied or, in the alternative, the

¹ As defined in *Second Supplemental Verified Statement of Ad Hoc Group of SAFE Parties Pursuant to Bankruptcy Rule 2019* [Docket No. 1264].

² Capitalized terms used but not defined herein shall have the meanings given to them in the Third Exclusivity Motion.

³ Although the Third Extended Motion also sought to extend the Exclusive Filing Period through and including May 22, 2025, that date has come and gone, rendering that portion of the requested relief moot.



Exclusive Solicitation Period should only be extended through no later than July 31, subject in all respects to the *SAFE AHG Amended Emergency Motion to Terminate Exclusivity* [Docket No. 1247] (the “**Exclusivity Termination Motion**”).

2. On May 22, 2025, the day that the Exclusive Periods were set to expire, the Debtors filed their Placeholder Plan. Of import, the Placeholder Plan, which although it contains certain hallmarks of a plan of reorganization,⁴ is, as this Court noted,⁵ really a plan of liquidation. And, as acknowledged by Debtors’ counsel on May 27, 2025, the Placeholder Plan will require “significant” revisions prior to approval of any disclosure statement.⁶ On June 7, 2025, the SAFE AHG filed the Exclusivity Termination Motion. On June 9, 2025, the United States Trustee reconstituted the Official Committee of Unsecured Creditors, including by adding SAFE party Infinite Mining LLC as a member.

3. On June 10, 2025, the Special Committee filed its *Notice of Filing Plan Support Agreement* [Docket No. 1257] (the “**Plan Support Agreement Notice**”), attaching Plan Settlement Structure Principal Terms for a chapter 11 plan for the Debtors (the “**Plan Term Sheet**”).⁷ The Plan Support Agreement has an effective date of June 1, 2025. The Plan Term Sheet contains a proposed distribution of the Debtors’ assets that would divert consideration from the SAFE parties to the Debtors’ equity interest holders, despite the plain payment priority of the SAFE parties.

⁴ See Placeholder Plan, at ¶ 1.100 (definition of “Reorganized Debtor”), ¶ 10.3 (Discharges); ¶ 5.4 (Continued Corporate Existence), ¶ 8.7 and ¶ 10.1 (Vesting of Assets in Reorganized Debtors)

⁵ May 27 Transcript, at 9:18-19.

⁶ May 27 Transcript, at 14:19-21.

⁷ The Special Committee’s Plan Support Agreement Notice errantly states that it is “the product of discussions among the Debtors’ principal stakeholders that took place with the Court-ordered mediation from April 2025 through finalization of the Plan Support Agreement.” As noted, the Debtors and the Special Committee refused to engage in plan negotiations with the SAFE AHG after May 16, 2025 and on information and belief, the Debtors and the Special Committee also failed to engage with the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) in negotiating the Plan Support Agreement.

4. From even a cursory review of the Plan Term Sheet attached to the Plan Support Agreement, it is clear that even under that proposal, no legally supportable plan construct has been put forward.⁸ Of particular note, the Plan Term Sheet:⁹

- a. Has no legal justification for allocating less than full value of the SAFE Claims (as defined in the Plan Support Agreement), in violation of Bankruptcy Code section 1129(b);
- b. Contains no explanation for the cancellation of valid intercompany claims and contracts, including the contract between Debtor and SAFE-counterparty Rhodium Enterprises Inc. (“REI”) requiring Rhodium Technologies LLC (where Imperium holds its equity interest) to repay to REI the \$87 million in SAFE proceeds that REI transferred to Technologies in 2021, in the event that a liquidation or dissolution triggers REI’s obligation pay the Cash Out Amount to SAFE investors;
- c. Proposes a recovery of “at least” \$15 million to a group of equity owners, providing that equity group with a substantial return on investment on their equity *in a bankrupt company*, while expecting SAFE creditors to take an approximately 60% haircut on their claims;
- d. Inexplicably proposes that Class A Common Stock associated with the Transcend Group warrants, which are currently unexercised and are deemed to have been exercised as part of the plan and authorized by the associated confirmation order, will be entitled to vote;
- e. Includes no justification for the allocations to the SAFE Claims beyond asserting that this was a settlement negotiated by other parties (and excluding the SAFE AHG);

⁸ At a status conference on June 16, Debtors’ counsel indicated that the proposal in the Plan Term Sheet will be incorporated into an amended plan and disclosure statement forthcoming that day. As of the filing of this pleading, no such amended plan or disclosure statement been filed. The SAFE AHG reserves all rights to object to both. Additionally, at the June 16 status conference, the Debtors indicated a desire to maintain their current confirmation schedule. In response, both the SAFE AHG and the Creditors’ Committee raised that continuing on the confirmation schedule risked providing stakeholders with insufficient time to review and comment on what will necessarily be a near complete re-write of the Debtors’ existing plan and disclosure statement. The SAFE AHG will meet and confer with other stakeholders regarding upcoming dates including, deadlines related to the Debtors’ amended plan. To the extent an agreement is not reached, the SAFE AHG reserves all rights.

⁹ The concerns set forth regarding the Term Sheet are preliminary in nature and not intended to provide a comprehensive list of objections that may be put forward by the SAFE AHG.

- f. Contains no explanation for releasing estate claims and causes of action against insiders that the Special Committee itself values at multiples more, and instead providing nine figure distributions of cash to those same insiders, and, shockingly, *proposing to pay the insiders' income taxes on the windfall distribution proposed in the PSA*;¹⁰ and
- g. Purports to reserve the question of whether the plan will be a liquidating plan or a plan of reorganization based on “tax matters and other relevant factors”, despite the fact that when viewed in balance, the Plan Term Sheet plainly calls for the complete liquidation of the Debtors’ assets.

5. As the Court is aware, the SAFE AHG is not a signatory to, was not involved in the development of, and does not support, the Plan Term Sheet.¹¹ And, as the SAFE AHG has made clear, it will not support a plan that provides less than 100% recovery to the SAFE parties and contains a release of the insiders. Accordingly, to the extent the SAFE parties are correct, and they hold claims, the plan outlined in the Plan Term Sheet violates the absolute priority rule and is not confirmable. 11 U.S.C. §1129(a)(10). Given this concern, the SAFE AHG would submit that it is premature to extend the Exclusive Solicitation Period until the end of August. At a minimum, the Debtors’ request should be reined in until it has been demonstrated to stakeholders and this Court that the plan will survive the disclosure statement approval process. At that time, and once all parties have an opportunity to review the new plan and disclosure statement, such request may be renewed.

6. To the extent the Court determines to consider the Third Exclusivity Request at this time, the SAFE AHG would submit that the Debtors, who carry the burden of establishing cause for an extension, have failed to do so. *See In re New Millennium Mgmt, LLC*, No. 13-35719,

¹⁰ The Court may recall that the insiders are alleged to have committed certain pre-petition frauds related to the payment of taxes. For Debtors to propose another Debtor-funded tax holiday in connection with a plan was not something even the SAFE AHG would have believed until it read the PSA. *See* Plan Term Sheet, at 4-5.

¹¹ Instead of engaging with their largest creditors, the Special Committee spent its time cutting a deal that diverts value away from creditors to equity holders and limits the liability of the very insiders who indisputably stole from the Debtors and whose actions drove the Debtors into chapter 11. To that end, Special Committee has not has any discussions with the SAFE AHG since May 16, 2025.

2014 WL 792115, at *18 (Bankr. S.D. Tex. Feb. 25, 2014). The request to extend the Exclusive Solicitation Period is governed by what is more commonly known as the *Adelphia* factors.¹² A complete analysis of the application of the *Adelphia* factors is set forth in Exclusivity Termination Motion and is incorporated as set forth in full herein. Although the Third Exclusivity Motion mentions each of the *Adelphia* factors, it only substantively addresses the question of whether the Debtors have had sufficient time to propose a confirmable plan. The SAFE AHG submits that the Debtors have had more than sufficient time.

7. However, instead of engaging with their largest creditor constituency—the SAFEs—the Special Committee entered into the Plan Support Agreement in support of the Plan Term Sheet that, as currently drafted, is not confirmable. And, a full 16 days after the effective date of the Plan Support Agreement, the Debtors finally filed an amended plan and disclosure statement. To be clear, the filing of an amended plan does not, as the Debtors assert, moot or in any way obviate the fact that the Debtors have had more than 300 days to put forward a confirmable plan. Yet, they have failed to do so, despite the fact that the SAFE AHG has been

¹² The Bankruptcy Court “may for cause reduce or increase” the initial exclusivity periods upon the request of a party in interest and after notice and a hearing, and upon a showing of “cause.” 11 U.S.C. § 1121(d)(1). “To divine whether there is cause to extend or reduce exclusivity, courts typically apply a number of non-exclusive factors.” *In re New Meatco Provisions, LLC*, No. 2:13-BK-22155-PC, 2014 WL 917335, *3 (Bankr. C.D. Cal. Mar. 10, 2014). The *Adelphia* factors include:

- (i) whether the debtor has made progress in negotiations with its creditors;
- (ii) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- (iii) the existence of good faith progress toward reorganization;
- (iv) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- (v) the amount of time which has elapsed in the case;
- (vi) the size and complexity of the case;
- (vii) whether an unresolved contingency exists;
- (viii) the fact that the debtor is paying its bills as they become due; and
- (ix) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor’s reorganization demands.

See id.

available for plan negotiations all along, including since the day it became clear that the Whinstone Litigation would settle resulting in an influx of value into the Debtors' estates. In the face of this, the SAFE AHG has objected and sought the opportunity to put forward its own plan—a plan that, unlike the plan outlined in the Plan Term Sheet, does not siphon value to the insiders and instead maximizes value for all innocent stakeholders. In a case where the professional fee burn is significant, there is simply no room for further delay. The Third Exclusivity Motion does not meet the *Adelphia* standard. The Debtors have failed to meet their burden. And Extending the Exclusive Solicitation Period, at this time, will only have the effect of furthering this delay.

8. For the reasons set forth herein, the SAFE AHG requests that the Court deny the Third Exclusivity Motion.

RESERVATION OF RIGHTS

9. This Objection is submitted without prejudice to, and with a full reservation of, the SAFE AHG's rights, claims, defenses and remedies, including the right to amend, modify or supplement this Objection to raise additional objections and to object to and introduce evidence at any hearing relating to the Third Exclusivity Motion, and without in any way limiting any other rights of the SAFE AHG, as may be appropriate.

CONCLUSION

For the foregoing reasons, the SAFE AHG respectfully requests that the Court (i) deny the Third Exclusivity Motion, or, in the alternative, extend the Exclusive Solicitation Period through no later than July 31; and (ii) grant such other relief as may be just and proper.

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Dated: June 16, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

Sarah Link Schultz (State Bar No. 24033047;
S.D. Tex. 30555)

Elizabeth D. Scott (State Bar No. 24059699;
S.D. Tex. 2255287)

2300 N. Field Street, Suite 1800

Dallas, TX 75201-2481

Telephone: (214) 969-2800

Email: sschultz@akingump.com

Email: edscott@akingump.com

- and -

Mitchell P. Hurley (admitted *pro hac vice*)

One Bryant Park

New York, NY 10036-6745

Telephone: (212) 872-1000

Email: mhurley@akingump.com

Counsel to the Ad Hoc Group of SAFE Parties

CERTIFICATE OF CONFERENCE

I hereby certify that on May 22, 2025, counsel to the SAFE AHG, in response to a request from Trace Schmeltz, counsel to the Special Committee, advised that they do not consent to a further extension of the Exclusive Periods. Mr. Schmeltz responded by adding Patty Tomasco, counsel to the Debtors to the communication and advising that the Debtors would proceed with filing a plan. Thereafter, on June 6, 2025 the SAFE AHG filed the Exclusivity Termination Motion. The dispute regarding the continuation of the Exclusive Periods remains unresolved.

/s/ Sarah Link Schultz
Sarah Link Schultz

Certificate of Service

I hereby certify that on June 16, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Sarah Link Schultz
Sarah Link Schultz