Docket #1301 Date Filed: 06/18/2025

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

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

SAFE CLAIMANT RESPONSE TO CLAIM OBJECTION

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Celsius Holdings US LLC ("**SAFE Claimant**") respectfully submits this response to the Omnibus Objection to SAFE Claims (the "**Omnibus Objection**") filed by counsel reporting to the plenary board of directors of the Debtors (the "**Conflicted Board**").[1]

PRELIMINARY STATEMENT

1. At a hearing on May 27, 2025, counsel reporting to the Conflicted Board argued that "whether the SAFEs are debt or equity" is the "$68,000 [sic] question" in these cases, and will dictate the terms of any confirmable plan. *See In re Rhodium Encore LLC,* Case No. 24-90448 (ARP) [Docket No. 1215] May 27, 2025 Hr'g Tr. at 11-12 (the "**May 27 Transcript**"). Based on the plain terms of the Bankruptcy Code and the SAFEs themselves, the Debtors' public reporting and private accounting analyses, the U.S. Trustee's recent appointment of a SAFE party to the unsecured creditors' committee, and even the words of counsel herself, the answer is clear: SAFEs are debt, not equity.

2. Equally clearly, the Debtors' recent transaction with Whinstone US Inc. ("**Whinstone**") triggered the SAFE parties' formerly contingent right to payment of the Cash-Out Amount—about $87 million in cash. The Whinstone Transaction disposed of all of the Debtors computer mining rigs and other operating assets, terminated the Whinstone power contracts (without which the Debtors claim they "could not exist"), and required Rhodium to vacate (within three days) Rockdale, the only site at which they had any operations. As a consequence, the Debtors indicate that, after repayment of administrative costs and senior debt, the Debtors' assets

[1] The Conflicted Board was appointed by Imperium Investments Holdings LLC ("**Imperium**"), and its members include two Imperium founders, Chase Blackmon and Cameron Blackmon, as well as a director (Jonas Norr) [redacted] persons who would benefit personally and financially, were the arguments in the Omnibus Objection (signed only by counsel reporting to the Conflicted Board) adopted. [redacted]

now consist of approximately $100 million in cash realized from the liquidation of their assets, which is available for distribution to stakeholders.

3. Payment of the Cash-Out Amount is defined in the SAFEs as a "liquidation preference," to which "common stock" and "as converted to common stock" recoveries expressly are "junior." Hence, as a matter of both contract law and the absolute priority rule, the SAFE claims must be satisfied in full before equity is entitled to any recovery. The Debtors argue that the SAFE parties' right to the Cash-Out Amount is subject to subordination under Bankruptcy Code section 510(b). But that section expressly applies only to claims "arising from rescission" or "for damages." The SAFE parties do not seek recission, do not claim any breach, and do not demand damages of any kind. Rather, the SAFE parties argue that any plan of reorganization or liquidation in these cases must distribute the estates' assets in accordance with the Bankruptcy Code, and all of the Debtors contractual obligations, including the terms of the SAFEs.

4. Notably, moreover, the SAFE parties do not own, never have owned, and never will own, stock in the Debtors. Nor did SAFE parties take on the "risk and return expectations" of shareholders. Until the Whinstone Transaction triggered the Cash-Out Amount, the SAFE parties had only contingent rights that might never have matured into either a right to stock or a right to cash. Unlike common stock, SAFE parties were not guaranteed to participate if Rhodium turned into a "home run." Rather, SAFE parties signed a contract that provided for limited upside, and limited downside, including that if all they got was their money back (because Rhodium dissolved or liquidated), at least they would be paid before common stock, which would operate as a "cushion" for payment of the Cash-Out Amount. As discussed below, Section 510(b) simply has no application under these circumstances.

5. In short, the Debtors' Omnibus Objection is without merit and their bid to invalidate and subordinate the SAFE claims should be rejected.[2]

DISCUSSION

I. THE SAFES ARE DEBT, NOT EQUITY

6. The Omnibus Objection argues that SAFE parties are not "creditors" and do not have "claims," but largely ignore the definitions for those terms supplied by the Bankruptcy Code, which clearly encompass the SAFE parties' claims, both before and after the Whinstone Transaction. Also, in every non-litigation context, the Debtors have expressly acknowledged that the SAFEs are "long-term liabilities," or "long-term debts." As discussed below, that conclusion is the correct one.

A. The SAFE Parties Are Creditors Under The Bankruptcy Code

7. As the U.S. Trustee has recognized, the SAFE parties are unsecured creditors. *See The United States Trustee's Notice of Reconstitution of Committee of Unsecured Creditors* [Docket No. 1255] (June 9, 2025 notice appointing SAFE holder Infinite Mining LLC ("**Infinite Mining**") to the unsecured creditors' committee); *Second Supplemental Verified Statement of Ad Hoc Group of SAFE Parties Pursuant to Bankruptcy Rule 2019* [Docket No. 1264] (the SAFE AHG's amended 2019 Statement notifying of Infinite Mining's resignation from the SAFE AHG and its service on the unsecured creditors' committee). The only immovable requirement for membership on an unsecured creditors committee is that the proposed member "hold[s] [an] unsecured claim[]." *In re Barney's, Inc*., 197 B.R. 431, 440 (Bankr. S.D.N.Y. 1996); *see* 11 U.S.C.

[2] The Omnibus Objection seeks relief, including recharacterization of the SAFE claims as equity, and subordination, that is available only through an adversary proceeding. *See* Fed R. Bankr. P. 3007(b) & 7001(b), (h), (i). The SAFE Claimant reserves all of its rights, remedies, claims, defenses and objections concerning the Omnibus Objection's disregard of governing rules.

§ 1102 ("[T]he United States trustee shall appoint a committee of creditors holding unsecured claims . . . .").

8. SAFE parties easily qualify as "creditors" within the meaning of the Bankruptcy Code, including after the recently consummated Whinstone Transaction. The term SAFE—Simple Agreement for Future Equity—is in some respects a misnomer. To be sure, the SAFEs are "agreements," and the SAFEs contemplate certain circumstances under which the SAFEs convert to shares in REI stock. However, the SAFEs also contemplate other circumstances under which the SAFE parties have the right to payment of the entire amount the SAFE holders paid to REI. *See* Ex. A, Simple Agreement for Future Equity of Infinite Mining LLC ("**Infinite Mining SAFE Agreement**"), at §§ 1(b), 1(c). Specifically, "if there is a Liquidity Event" or a "Dissolution Event" the SAFE holder becomes "automatically entitled" to "receive a portion of Proceeds [of the Liquidity Event or Dissolution Event] equal to the Cash-Out Amount (defined as the amount paid to REI by the SAFE investor), ***due and payable"*** by the Debtors. *Id.* at 11.

9. The Bankruptcy Code defines "creditor" to include any "entity that has a claim against the debtor that arose at the time of or before the order of relief." 11 U.S.C. § 101(10). "Claim," in turn, is defined to include, *inter alia,* any "***right to payment,*** whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, ***contingent,*** matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A) (emphasis added). On the Petition Date, the SAFE holders' right to receive "payment" of the Cash-Out Amount was still contingent, because there had not yet been a triggering event (there has been now, as discussed below). But even on the Petition Date, the SAFE parties still were creditors within the plain meaning of the Bankruptcy Code. *See In re JNL Funding Corp.*, 438 B.R. 356, 363 (Bankr. E.D.N.Y. 2010) ("[A] contingent right to payment constitutes a claim, and the holder of such a

contingent right is a creditor."); *see also* 11 U.S.C. § 101(12) (defining "debt" as "liability on a claim"). As a consequence, SAFE parties were creditors even before the Whinstone Transaction triggered their right to the Cash-Out Amount.

B. In Non-Litigation Contexts, Rhodium Admits That SAFEs Are "Debt"

10. Notably, until the Debtors recently changed their tune in the context of these cases, the Debtors routinely identified the SAFEs specifically as "Long-term liabilities" or "Long-term debt" alongside "promissory notes" and classified them separately from "equity." As the Debtors' chief restructuring officer explained in his first day declaration, REI "controls and is responsible for operational, management and administrative decisions" of the Debtors and "consolidates the financial results" of its subsidiaries. *Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief* [Docket No. 35] ("**First Day Decl.**") ¶ 58. According to those consolidated financial results, SAFEs are "long term liabilities" and "debt":

Long-term liabilities:				
Notes payable – noncurrent	$ 54,600	$ —		$ 54,600
SAFE Agreements	86,993	(86,993)	(b)	—
Other long-term liabilities	85	—		85
Total long-term liabilities	141,678		(b)	54,685
Total liabilities	$ 189,148	$ (118,028)	(a)(b)	$ 71,120

	As of September 30, 2021		
	Actual	As Adjusted	As Further Adjusted
	(in thousands)		
Cash and cash equivalents[1]	$ 103,799	$ 106,349	$ 165,975
Short-term debt:	$ 30,000	$ 30,000	$ —
Long-term debt:			
Promissory Notes	$ 54,600	$ 54,600	$ 54,600
SAFE Agreements	$ 86,993	$ 89,543	$ —
Other long-term liabilities	$ 85	$ 85	$ 85
Temporary Equity:			
Redeemable Class B	$ —	$ —	$ 7
Total Indebtedness	$ 171,678	$ 174,228	$ 54,685
Stockholders' equity:			
Class A common stock – $0.0001 par value; 400,000,000 shares authorized, 110,593,401 shares issued and outstanding, actual and as adjusted; 1,000,000,000 shares authorized, 56,839,846 shares issued and outstanding, as further adjusted	11	11	6
Class B common stock – $0.0001 par value; 100 shares authorized, issued and outstanding, actual and as adjusted; 300,000,000 shares authorized, 67,500,411 shares issued and outstanding, as further adjusted	—	—	—
Additional paid-in-capital	$ —	$ —	$ 178,341
Retained earnings	$ 63,735	$ 63,735	$ 63,735
Non-controlling interest	$ 19,240	$ 19,240	$ 19,240
Total partners' capital/stockholders' equity	$ 82,986	$ 82,986	$ 261,322
Total capitalization	$ 254,664	$ 257,214	$ 316,001

See Ex. B, Amendment No. 6 to Form S-1 Registration Statement of Rhodium Enterprises, Inc. (Jan. 18, 2022) (excerpted), at Index F-4 ("Long-term liabilities"); 60 ("Long-term debt").

11. REI's categorization of SAFEs as debt was not a decision it took lightly. Rather, Rhodium's finance department prepared a specific accounting policy memorandum [redacted] In determining

appropriate accounting treatment, [redacted]

12. [redacted] Based on the discount mechanism included in the SAFE, the Company [redacted]

[redacted]

Id. Again, according to the Debtors themselves, [redacted] *Id.* As REI's accounting Memorandum makes clear, [redacted]

C. Just As Clearly, the SAFES Are *Not* Equity

13. The Bankruptcy Code and counsel's own prior admissions make crystal-clear that the SAFEs do ***not*** constitute equity. The definition of "equity security" in the Bankruptcy Code includes a "share in a corporation," "interest of a limited partner in a limited partnership," or "warrant or right, ***other than a right to convert***, to purchase, sell, or subscribe to a share, security,

[3] The Debtors point out that their finance department included a misinterpretation of Section 1(d) of the SAFE agreements in a January 18, 2022 Form S-1 (a form that the Debtors later withdrew). However, deploying settled principles of Delaware law to construe Section 1(d) of the SAFEs is the province of this Court, not Rhodium's accountants. Conversely, identifying correctly the Company's liabilities and assets ***is*** the province of Rhodium's accountants, and they clearly and repeatedly agreed that SAFEs are debt, not equity.

or interest" specified elsewhere in the definition. 11 U.S.C. § 101(16)(A)-(C) (emphasis added). The SAFE contemplates scenarios where SAFE holders may become holders of stock in the Debtors, but solely by means of ***conversion***, not purchase. For example, in the event of an Equity Financing or Listing Event, the SAFEs would "***automatically convert***" into the number of shares of stock equal to $87 million (the "**Purchase Amount**"). As explained below, there will be no Listing Event in these cases; instead, the Whinstone Transaction constitutes a Liquidity Event or Dissolution Event, entitling SAFE holders to cash. But even the stock-based contingencies contemplated by the SAFEs expressly call for "conversion," further confirming that the parties to the SAFE agreements are ***creditors*****,** not equity.

14. According to the Omnibus Objection, SAFEs are "equity securities." But that is the exact opposite of the position that the Debtors took at the outset of these cases in correspondence with the U.S. Trustee. The Debtors have long been desperate to avoid appointment of a stakeholder committee of any kind, with counsel going so far as to claim at the first day hearing that Rhodium's bankruptcy was filed "with no unsecured creditors." *In re Rhodium Encore LLC*, Case No. 24-90448 (ARP) [Docket No. 135] Aug. 30, 2024 Hr'g Tr. at 10:7-13 ("**August 30 Transcript**") (Ms. Tomasco representing that "there is no unsecured debt of any—no funded unsecured debt, no vendor debt"). That claim was false, not only because it mischaracterized the SAFE claims, but also because, as the Debtors later were forced to admit, the Debtors were obligated on certain unsecured notes and vendor claims, resulting in the belated formation of the UCC in November 2024.[4] And in addition to the notes, the Debtors had to be aware of the claim

[4] The SAFE Claimant remains concerned about use of estate resources to advocate for the individual financial interests of the members of the Conflicted Board. On September 20, 2024, presumably in part to ward off appointment of a trustee, Chase Blackmon, Cameron Blackmon, Jonas Norr, and other board members executed a "Resolution" appointing a two-person Special Committee with "sole" authority to, among other things, make "any decisions and tak[e] any actions respecting any . . . matter . . . in which a Related Party has an interest," and in respect of "Conflict Matters." *See, e.g., Application for an Order Authorizing the Retention of Barnes & Thornburg LLP as Counsel to the Special Committee of the Rhodium Enterprises, Inc. Board of Directors* [Docket

asserted by Midas Green Technologies, Inc. arising out of ongoing litigation captioned *Midas Green Technologies, LLC v. Rhodium Enterprises, Inc., et. al.,* Case No. 6:22-cv-0050-ADA, pending in the U.S. District Court for the Western District of Texas.

15. The Conflicted Board also fought the request for the appointment of a SAFE committee in September 2024, claiming illogically that SAFEs are ***neither*** debt ***nor*** equity. In a letter to the U.S. Trustee dated September 25, 2024, Ms. Tomasco cited the Bankruptcy Code definition of "equity security" to argue that *"**SAFEs are not equity**."* Specifically, Ms. Tomasco argued:

> ***Under the Bankruptcy Code, SAFEs are not equity***. Section 101(16) defines "equity security" as "(A) share in a corporation, whether or not transferable or denominated 'stock', or similar security; (B) interest of a limited partner in a limited partnership; or (C) warrant or right, ***other than a right to convert,*** to purchase, sell, or subscribe ***to a share,*** security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph." (emphasis added). ***In other words, warrants, options and contingent rights to convert to stock are not equity under the Bankruptcy Code.***

See Letter from Patty Tomasco to Ha Nguyen, Esq., Office of the U.S. Trustee [Docket No. 1124-10] (second and third emphases in original). Counsel's parsing of the Bankruptcy Code definition of "equity security" was obviously right the first time. Indeed, as discussed above, the Debtors' actual accounting team recognized in a non-litigation context that the SAFEs constitute "long-term liabilities" or "long-term debt," not equity.

No. 175] ("**B&T Retention Application**") at 43, ¶ 7. In connection with mediation, the Special Committee and the Debtors expressly recognized that "the question of how consideration is allocated … between different constituents who have asserted conflicting legal equitable theories to support their claims and interests is an inherent Conflict Matter" over which the Special Committee is supposed to exercise sole "authority on behalf of Debtors," advised exclusively by its separate counsel, Barnes & Thornburg LLP ("**B&T**"). *Agreed Mediation Order* [Docket No. 966]; *but see supra* B&T Retention Application [Docket No. 175] at 44, ¶ 9 (acknowledging that B&T itself originally was hired by the Conflicted Board). Nevertheless, the Conflicted Board and counsel reporting to the Conflicted Board have continually inserted themselves into clear Conflict Matters, including by preparing and filing the Omnibus Objection at estate expense. The SAFE Claimant reserves all of its rights, remedies, claims, objections and defenses with respect to any violations of the Debtors' charter and resolutions, and any misuse of estate assets, concerning Related Party and Conflict Matters.

16. The SAFE itself also makes crystal-clear that it is not equity. For example, the SAFE provides that SAFE parties are "not entitled, as a holder of this SAFE, to vote or to be deemed a holder of Capital Stock for any purpose other than tax purposes." The contract goes on to provide that nothing in the SAFE shall "be construed to confer on the [holder] . . . 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." *See supra* Ex. A, Infinite Mining SAFE Agreement, at § 5(c).

II. THE SAFES ARE ENTITLED TO PAYMENT OF THE $87 MILLION CASH-OUT AMOUNT

17. Under the SAFE agreements, the occurrence of a "Liquidity Event" or a "Dissolution Event" requires REI to pay the Cash-Out Amount to SAFE creditors. The Cash-Out Amount is defined as the full amount paid by SAFE holders to REI pursuant to the SAFE agreement—$87 million, in the aggregate. *See id.* §§ 1(b), 1(c). That obligation was triggered by the Whinstone Transaction.

A. The Whinstone Transaction Qualifies As A Dissolution Event

18. The term "'Dissolution Event' includes "a voluntary termination of operations." The Whinstone Transaction undoubtedly terminated the Debtors operations, thus triggering the SAFE creditors' right to payment of the Cash-Out Amount. According to the First Day Decl., the company's operations formerly consisted exclusively of "mining digital currency assets ***utilizing Company owned-computer equipment (the miners)***." First Day Decl. at ¶ 62. On the Petition Date, the company had two mining operations—one located in Temple, Texas, and the other located in Rockdale, Texas. *Id.* The Debtors sold the Temple facility post-petition in a deal that closed on or around December 18, 2024. After closing, according to the Debtors' recently filed Disclosure Statement, "the Debtors installed the [company-owned] miners formerly housed at the

Temple Site into the Rockdale Site" (together with the miners already at Rockdale, the "**Mining Rigs**"). Thereafter, Rockdale became the Debtors' lone site for operations. *See Disclosure Statement for Joint Chapter 11 Plan of Rhodium Encore LLC and Its Affiliated Debtors* [Docket No. 1179] (the "**Disclosure Statement**"); *see also Rhodium JV LLC et al. v. Whinstone US, Inc.*, Adv. Pro. No. 25-03047 [Docket No. 1] (the "**Complaint**"), at ¶ 3 (alleging on February 11, 2025 that "Rhodium is a bitcoin mining company that ***operates at Whinstone's facility in Rockdale Texas***.").

19. The Debtors literally cannot exist without the below market power contracts ("**Power Contracts**") that were terminated in connection with the Whinstone Transaction. *See Debtors' Motion to Assume Certain Executory Contracts with Whinstone US, Inc.* [Docket No. 7]. As the Debtors explained when they sought to assume the Power Contracts on the first day of their cases, "bitcoin mining requires massive processing power that consumes equally massive amounts of energy." *Id.* at ¶ 5. Indeed, as the Debtors argued, the Power Contracts are so "vital" to the Debtors' operations, that ***"the company could not exist without them***." Complaint, at ¶ 3. In recent sworn testimony, Charles Topping recently reaffirmed under questioning by Debtors' counsel that, without the Power Contracts, Rhodium would ***"no longer [be] able to operate in Rockdale,"*** the Debtors' sole operating facility at the time of the Whinstone Transaction. *See In re Rhodium Encore LLC,* Case No. 24-90448 (ARP), [Docket No. 1258], June 4, 2025 Hr'g Tr. at 38 ("**June 4 Transcript**").

20. The Whinstone Transaction closed on April 28, 2025 (the "**Effective Date**"). On the Effective Date, [redacted] Likewise, [redacted]

[redacted] There can be no serious doubt that the Whinstone Transaction resulted in a "voluntary termination of operations" and triggered the SAFEs right to receive the Cash-Out Amount.[5]

B. The Whinstone Transaction Qualifies As A Liquidity Event

21. The Whinstone Transaction also constitutes a Liquidity Event, which likewise entitles SAFE parties to the Cash-Out Amount.[6] The SAFE defines "Liquidity Event" as "a Change of Control other than a Listing Event." *Id.* at § 2. A "Change of Control," in turn, is defined to include "a sale, lease or other disposition of all or substantially all of the assets of the Company," among other things. *Id.* The SAFE agreements are governed by Delaware law. *Id.* at § 5(f).

22. Delaware eschews a "definitional approach" to the term "all or substantially all" in favor of a contextual approach focusing upon whether a transaction involves the sale "of assets

[5] Counsel reporting to the Conflicted Board at a hearing on May 27, 2025 told the Court, "I think there are still operations, Your Honor, and – but on a very small scale." May 27 Transcript,. at 10. This contention was materially false. Coordinating the final liquidation of whatever small amount of non-operating property may be left with Debtors following the Whinstone Transaction—which terminated the Debtors' actual business—does not constitute "operations," certainly not as the Debtors' "operations" were described under oath by the Debtors' co-Chief Restructuring Officer.

[6] A Liquidity Event also can give rise to a right to payment of the Conversion Amount, if "greater" than the Cash Out Amount. The Conversion Amount will be "greater" than the Cash-Out Amount only if Proceeds of the Liquidity Event exceed the $3 billion "Valuation Cap." Here, of course, the Proceeds are approximately $100 million, and the SAFE parties therefore are entitled to the Cash-Out Amount.

quantitatively vital to the operation of the corporation," and is "out of the ordinary," and "substantially effects the existence and purpose of the corporation." *Gimbel v. Signal Cos., Inc.*, 316 A.2d 599, 606 (Del. Ch. 1974), *aff'd* 316 A.2d 619 (Del. 1974). This "interpretive choice" necessarily involves "a policy preference for doing equity in specific cases," based on their specific facts. *Hollinger Inc. v. Hollinger Int'l, Inc.*, 858 A.2d, 342, 377-78 (Del. Ch. 2004). To that end, Delaware courts evaluate both the quantitative and qualitative importance of the transaction at issue. *See Gimbel*, 316 A.2d at 606. The purpose of the *Gimbel* analysis is to determine whether the transaction "struck 'at the heart of the corporate existence and purpose,' in the sense that it involved the 'destruction of the means to accomplish the purpose or objects for which the corporation was incorporated and actually performs.'" *Hollinger*, 316 A.2d at 379 (citing *Gimbel*, 316 A.2d at 606); *see also Winston v. Mandor*, 710 A.2d 835, 843 (Del. Ch. 1997) (noting that a transaction must be analyzed "in terms of its overall effect on the corporation"). The Whinstone Transaction easily satisfies both tests.

1. The Qualitative Test Is Satisfied

23. First, the Whinstone Transaction plainly was transformative of the Debtors' activities, and satisfies the "qualitative" test. *See, e.g. Katz v. Bregman*, 431 A.2d 1274, 1275-76 (Del. Ch. 1981). The only business in which the Debtors were engaged before the Whinstone Transaction was mining bitcoin using company-owned Mining Rigs located at the Rockdale Site. First Dey Decl. ¶ 7 (describing "business activities" as "mining digital currency assets using Company-owned computer equipment (the miners)"). "The Company invested over $150 million building out the Rockdale Site over two years, which involved installing complex and proprietary infrastructure that ***cannot readily be used anywhere else***." *Id.* ¶ 40 (emphasis added). Rockdale's operations required the Power Contracts, without which the company "could not exist." The Debtors estimated the value of the Power Contracts alone at as much as $180 million (before

applying present-value discount). *See In re Rhodium Encore LLC,* Case No. 24-90448 (ARP) [Docket No. 556], Nov. 12, 2024 Hr'g Tr. at 55:1.

24. The Whinstone Transaction terminated the Power Contracts, sold all of the company-owned Mining Rigs to Whinstone, and required Debtors to immediately vacate the Rockdale premises, its only operational site. In short, the Whinstone Transaction ended the Debtors' continuing ability to "accomplish the purpose and objects for which" Debtors were formed, and would satisfy the "qualitative" test even if the Debtors did not also dispose of all of their operating assets and revenue to Whinstone (and they did). *Id.* (holding that transaction so altered the nature of the corporation's business that it constituted an "all or substantially all" sale under the "qualitative" test, even though the corporation sold only 51% of its assets by value, 44.9% of its revenue and 52.4% of pre-tax net operating income").

25. Though unnecessary to the analysis, we note that the Whinstone Transaction also transformed the activities of REI in particular. According to the Debtors, prior to the Whinstone Transaction, REI "control[ed] and [was] responsible for all operational, management and administrative decisions" and activities of Technologies and the Debtors' operating subsidiaries. First Day Decl. ¶ 58. REI's activities have therefore not only been radically transformed, but effectively eliminated, by the Whinstone Transaction. Among other things, there no longer are any "operational, management [or] administrative decisions" of the Debtors for REI to "control" and be "responsible for." Pre-Whinstone Transaction, REI "controlled" a "bitcoin mining business." Post-transaction, REI does nothing, other than facilitate the distribution of proceeds and the dissolution and winding up of the Debtors in these bankruptcy cases. The Whinstone Transaction undoubtedly "struck at the heart" of REI's "corporate existence and purpose." *Hollinger*, 858 A.2d at 379.

2. The Quantitative Test is Satisfied

26. The Whinstone Transaction also easily satisfies the "quantitative" test for an "all or substantially all" sale. This test asks whether the assets sold are "quantitatively vital" to the operations of the Debtors. Even if the Debtors had not ***also*** sold all of their Mining Rigs, their termination of the Power Contracts alone would be enough to cause the answer to this question to be a resounding "yes." As the Debtors expressly and repeatedly alleged before this Court, the Power Contracts were so "***vital to Rhodium***" that ***"the company could not exist without them***." Complaint, at ¶ 3. In contrast, following the Rhodium Transaction the Debtors retained ***no*** operating assets, much less assets that are "quantitatively vital." *See Hollinger*, 858 A.2d at 383 (finding that the assets sold were not necessary to the continuation of the company's existence or effectiveness).

27. As already discussed, the Debtors' assets consisted almost entirely of the company-owned Mining Rigs and the Power Contracts, which were sold and terminated pursuant to the Whinstone Transaction. Prior to the Winstone Transaction, the Debtors represented that they "generate substantially all of their revenue at the Rockdale Site from bitcoin mining." First Day Decl. ¶9. Hence, the Whinstone Transaction resulted in the elimination of "substantially all" of the Debtors' revenue, including because the Debtors were required to vacate Rockdale on or before May 1, 2025, as required under the Whinstone Purchase Agreement, and because without the Power Contracts, Rhodium would "no longer [be] able to operate in Rockdale." *See* June 4 Transcript, at 38. While the "quantitative" test for an "all or substantially all" transaction under Delaware law does not establish "any necessary qualifying percentage," there can be no doubt the test is satisfied where, as here, the transaction disposes of essentially all assets. *See, e.g.*, *Hollinger*, 858 A.2d at 377 ("A fair and succinct equivalent to the term 'substantially all' would therefore be 'essentially everything.'").

28. Nevertheless, the Debtors argue that the Whinstone Transaction does not constitute an "all or substantially all sale of the assets of the Company" because REI subsidiaries are the *direct* owners of some of the assets beings sold to Whinstone, not REI itself. *See* Omnibus Objection ¶ 18, n.5. The fact that REI owns directly or indirectly the entities that own individual assets does not change the character of the Whinstone Transaction as a sale of all or substantially all of REI's assets. REI is a Delaware corporation. Under the Delaware General Corporation Law, when considering whether a transaction constitutes a sale of "all or substantially all" of a corporation's assets, "the property and assets of the corporation include the property and assets of any subsidiary of the corporation." DGCL § 271(c). Hence, REI's assets include those of its subsidiaries for purposes of considering whether the Whinstone Transaction was an "all or substantially all" sale within the meaning of the SAFEs. *See generally Winston*, 710 A.2d at 843 (looking to DGCL § 271, and related case law, to consider whether transaction met contractual definition of sale of "all or substantially all" of corporate assets); *see also Hollinger*, 858 A.2d at 377-79 (same).

29. In a footnote, the Debtors rely on *Veloric v. J.G. Wentworth, Inc.*, No. 9051-CB, 2014 WL 4639217 (Del. Ch. Sept. 18, 2014) to argue that subsidiaries should be excluded from the "all or substantially all" equation. That decision, however, was based on the peculiar terms of the agreement at issue, which suggested the parties intended to depart from the presumption under Delaware law that subsidiary assets are included in considering a "substantially all" transaction. *See Johnson Revocable Living Trust v. Davies US LLC*, No. N22C-03-148 EMD CCLD, 2022 WL 17347775, *5 (Del. Nov. 18, 2022) ("The Court of Chancery found that 'Wentworth's assets' referred only to its assets, and not the assets of its subsidiaries because (1) the contractual language specified Wentworth's assets and (2) because in the preceding paragraph the term 'subsidiaries'

was used such that 'when the parties to the [Agreement] intended to include subsidiaries, they did so expressly.' That is not the case here."). The SAFEs here, in contrast, do not reference REI's subsidiaries separately, nor provide any other evidence to suggest the SAFEs are meant to exclude any assets from the "all or substantially all" inquiry that would be included under prevailing Delaware law.

30. The Debtors' current position, once again, is inconsistent with the Debtors' pre-bankruptcy approach. In 2022, Rhodium announced plans to merge with Silversun Technologies, Inc. ("**Silversun**"), and claimed that the merger would constitute a "Liquidity Event," because it would result in the sale of "all or substantially all" of REI's assets. *See Rhodium Enterprises, Inc. v. Celsius Mining LLC,* No. 23-01101 (S.D.N.Y.), Docket No. 1 ¶ 11 (adversary proceeding commenced by REI alleging that "the merger will dispose of all Rhodium assets"). ***But no assets were contemplated to be sold pursuant to the Silversun merger by REI, or by any other Debtor entity***. Rather, REI planned to merge into a Silversun subsidiary. *Id*. *passim* (calling for no assignment, sale, transfer or other disposition of any Debtor assets). Nevertheless, the Debtors correctly recognized the merger as an effective "all or substantially all" transaction because of its transformative impact on the company as a whole. That logic applies with even greater force here, where essentially all of the assets and operations "controlled" by REI have been transferred to Whinstone. *See, e.g. Hollinger*, 858 A.2d at 377 ("A fair and succinct equivalent to the term 'substantially all' would therefore be 'essentially everything.'").

31. The Debtors' current argument also is deeply inequitable, and utterly contrary to representations they made when soliciting investments in REI in the first place. For example, [redacted]

[redacted] The insiders [redacted]

[redacted]

32. SAFE parties were present at the [redacted] and at least some of them later invested in a SAFE. [redacted] On [redacted], the insiders [redacted] and [redacted] According to Imperium founder Nicholas Cerasuolo, for example, [redacted]

[redacted] As Cerasuolo put it, [redacted] Incredibly, the Conflicted Board now claims Rockdale is too remote from REI for its sale to result in a sale of "all or substantially all" of REI's assets within the meaning of the SAFEs.

33. Perhaps most egregious, none of the SAFE proceeds were kept by REI. Instead, in 2021, the insiders caused all $87 million to be transferred down to Technologies, and into the operating subsidiaries whose assets have since been liquidated. Technologies signed a contract in 2021 agreeing to repatriate the $87 million to REI in the event of a liquidation. However, the Debtors now seek to simply "cancel" that intercompany contract, so that the $87 million remains at Technologies (where Imperium owns its equity). The Debtors also argue that selling the Rockdale assets—which are substantially all of the Debtors' assets, and [redacted]—does not trigger Technologies' obligation to repatriate the SAFE proceeds to REI (which would of course be a massive and unjustified boon to Imperium and the other insiders) because, suddenly, the Rockdale assets "don't count" for REI. Equitable principles recognized by Delaware law and the Bankruptcy Code forbid Debtors from seizing recoveries belonging to SAFE holders based on this kind of double talk.

E.g., Hollinger, 858 A.2d at 377-78 ("all or substantially all" cases reflect "a policy preference for doing equity in specific cases," based on their unique facts). [7]

C. Debtors' Proposed Plan Terms Would Trigger the Cash-Out Amount

34. As discussed above, the Whinstone Transaction already has triggered the SAFEs' right to the Cash-Out Amount. But even if somehow it did not, inevitably these liquidating bankruptcy cases would constitute or result in a Dissolution Event. In addition to the definition discussed above ("(i) a voluntary termination of operations"), Dissolution Event also is defined to include "(iii) any other liquidation, dissolution or winding up of the Company (excluding a Liquidity Event), whether voluntary or involuntary." Ex. A, Infinite Mining SAFE Agreement, § 2.

35. As the Court recognized after reviewing the Placeholder Plan and Disclosure Statement, even that approach represented a liquidation, not a reorganization.[8] The Plan Support Agreement ("**PSA**") filed by the Debtors likewise calls for the Debtors to "promptly liquidate all of their remaining real and personal property" (worth a tiny fraction of the assets already liquidated through the Whinstone Transaction) and for Technologies to be "dissolved." If the Debtors' plan is "not capable of being confirmed," Debtors propose depositing their assets with the Court and proceeding to distribute them via interpleader. These contemplated steps would constitute a Dissolution or Liquidity Event triggering SAFE parties' rights to the Cash-Out Amount if the Whinstone Transaction had not already done so (which it has, the SAFE Claimant respectfully submits).

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[7] It is worth noting that the Dissolution Event trigger discussed above is not qualified by "the Company." It refers only to "a voluntary termination of operations." Hence, even if the Debtors' over-emphasis of that phrase in the definition of Liquidity Event could be adopted—despite DGCL § 217, the Debtors' own treatment of Company Assets, and the equities (discussed below)—the Whinstone Transaction still would qualify as a Dissolution Event.

[8] May 27 Transcript, at 9:18-19.

III. THE DEBTORS' BID TO "SUBORDINATE" SAFE CLAIMS SHOULD BE DISMISSED

36. The SAFE creditors' right to payment of the Cash-Out Amount is senior to any recoveries to equity under the "absolute priority rule." *See generally., In re Eletson Holdings Inc.*, 664 B.R. 569 (Bankr. S.D.N.Y. 2024) (rejecting debtor plan that violated "absolute priority rule" by providing recoveries to equity without paying creditors in full, and adopting competing creditor plan instead). Hence, to pay common stockholders ahead of SAFE creditors as contemplated by the PSA, the Debtors must subordinate the SAFEs' right to payment of the Cash-Out Amount down to the level of equity. They cannot do so.

A. The SAFEs Did Not Agree To Subordinate Their Claims to the Level of Equity Under 510(a)

37. Pursuant to Section 510(a), "a subordination agreement is enforceable" in a bankruptcy case "to the same **extent** that such agreement is enforceable under applicable nonbankruptcy law." 11 U.S.C. 510(a). There is just one agreement that addresses the priority of SAFE parties' right to the Cash-Out Amount—the SAFE agreement itself—and it provides just the opposite of what the Debtors contend.

1. The SAFE Contracts Provide Expressly That The SAFE Cash-Out Amount Is A Liquidation Preference That Recovers Ahead of Common Stock Recoveries

38. Section 1(d) of the SAFE agreements is titled "Liquidation Priority," and addresses the priority of payment of the Cash-Out Amount (which it defines as a "liquidation preference"). Section 1(d) identifies three categories of investor priorities: (i) those that are ***senior*** to the Cash-Out Amount (other indebtedness and creditor claims, except to the extent convertible instruments have been conferred to stock), (ii) those that are "***on par with***" the Cash-Out Amount (other SAFEs entitled to receive the Cash-Out Amount), and (iii) those that are ***junior*** to Cash-Out Amount (Common Stock and other SAFEs entitled to the Conversion Amount and "similar as-converted to

Common Stock" recoveries). Specifically, "the 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);
>
> (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 ***the 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***).

Ex. A, Infinite Mining SAFE Agreement § 1(d) (emphases added).

39. Based on the plain meaning of the SAFE, the SAFE parties are entitled to receive payment of the Cash-Out Amount before any "payments for common stock." As an initial matter, the Cash-Out Amount is expressly defined as a "***liquidation preference***," and not only in Section 1(d).[9] As relevant here, Black's Law Dictionary defines "preference" to mean "Priority of payment given to one or more creditors by a debtor; a creditor's right to receive such priority." *Preference*, Black's Law Dictionary (12th ed. 2024); *see also Preference*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/preference (last visited June 17, 2025) (defining "preference" as a "priority in the right to demand and receive satisfaction of an obligation").[10] Since the Cash-Out Amount is a right to a cash payment, and expressly is junior to other debt, the

[9] *See also* Ex. A, Infinite Mining SAFE Agreement § 2 (defining "Liquidity Capitalization" to include "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") (first emphasis and underscore in original).

[10] Under Delaware law, courts "can look to dictionaries for assistance in determining the intended meaning of terms of contract terms." *See Prime Victor Int'l Ltd. v. Simulacra Corp.*, 682 F.Supp.3d., 428, 438 (D. Del. 2023).

only class as to which the Cash-Out Amount could have that priority is Common Stock, and other interests receiving payments on an "as converted to Common Stock basis" (like the Conversion Amount).[11]

40. And that is the inescapable meaning of the final clause of 1(d), which provides expressly that the Conversion Amount and other "as converted to Common Stock" payments are "on par with" payments for Common Stock" and "***junior"*** to payment of the "Cash-Out Amounts or similar liquidation preferences." *Id*. If the Conversion Amount has the same priority as Common Stock—is "on par with" Common Stock—and is "junior" to payments of the Cash-Out Amount, then "payments for Common Stock" must also be junior to the Cash-Out Amount. Moreover, if "Common Stock" were meant to recover "on par with" SAFEs receiving the Cash-Out Amount, it would have been included in the second paragraph 1(d), which ***expressly*** identifies investors that are "***on par with***" the Cash-Out Amount. Instead, the only reference to the priority of Common Stock is in the third paragraph if 1(d), which ***expressly*** provides that Common Stock is on par with the Conversion Amount and other "as converted to Common Stock" recoveries, and ***junior*** to the Cash-Out Amount.

2. Claims For Cash Payments of the Cash-Out Amounts *Cannot* Recover "Pro Rata" With Interests In Common Stock

41. The fact that the Cash-Out Amount must be paid ahead of Common Stock (and other "as converted to Common Stock" recoveries like the Conversion Amount) also is the only interpretation that makes sense. Apart from contradicting the actual words in the SAFEs, it is meaningless to suggest that the SAFE creditors' entitlement to payment of $87 million in cash is

[11] The Conversion Amount is calculated based on a "number of shares" of REI equal to the Purchase Price. When the Conversion Amount is operative, the SAFE holder recovers "pro rata" with REI common stockholders based on that number of shares. As discussed below, there is no provision in the SAFE agreements for the Cash-Out Amount—denominated in cash—to be paid "pro rata" with 118 million shares of common stock.

"on par with" 118 million shares of REI common stock. The phrase "on par with" expressly calls for a "pro rata," "proportional" distribution to investors in the "par" category. For example, Section 1(d)(ii) provides that all SAFE creditors receiving payment of the Cash-Out Amount are "on par with" other SAFEs entitled to the Cash-Out Amount.[12] To the extent "Proceeds" are insufficient to satisfy all SAFE Cash-Out Amounts, Proceeds are to be "distributed Pro rata to the Investor and such other SAFEs in proportion to the full payments that would otherwise be due."

42. That calculation is determined readily. For example, if there were only $50 million of available Proceeds, that would be insufficient to satisfy the full $87 million in Cash-Out Amount payments due collectively to SAFE parties. Under Section 1(d)(ii), all $50 million would be distributed to SAFEs entitled to receive the Cash-Out Amount, on a "pro rata" basis. Since each SAFE creditor's claim is denominated in cash, its "pro rata" share of the $50 million in proceeds is the face amount of its claim divided by $87 million. For example, Infinite Mining, the SAFE creditor recently appointed to the UCC, is party to SAFEs in the total face amount of $1.65 million, or about 1.9% of the total Cash-Out Amount owed to SAFEs. *See* Claim Nos. 197, 198. In this hypothetical, Infinite Mining would be entitled to receive approximately $948,276 of the available $50 million in Proceeds on the "pro rata," "proportional" basis called for by Section 1(d)(ii).

43. No corresponding basis exists for determining Infinite Mining's "proportional" distribution with owners of 118 million shares of Common Stock. Stockholders have no cash-denominated claim, but instead own stock in REI. Tellingly, neither the Debtors in their Omnibus Objection, nor the parties to the PSA even try to explain what it would mean for Infinite Mining's claim for $1.65 million in cash Proceeds to recover "pro rata" with, for example, DLT's interest

[12] In a Liquidity Event or Dissolution Event, SAFEs are entitled either to the Cash-Out Amount or the Conversion Amount. Since the third clause of 1(d) provides that the Conversion Amount is junior to the Cash-Out Amount, the second clause concerning SAFE priority in a Liquidity Event or Dissolution event necessarily refers to other SAFEs receiving the Cash-Out Amount.

in 8,451,513 shares of common stock. *See Notice of Filing of the Second Amended Equity List of Rhodium Enterprises, Inc.* [Docket No. 1054]; Omnibus Objection *passim* (claiming repeatedly that SAFEs recover "on par" with equity, contrary to the plain terms of 1(d), with no effort to reconcile how claims for $87 million in cash could recover "pro rata" with interests in 118 million shares of stock). In reality, the Debtors' spin cannot be reconciled with the actual terms of the contract, nor with the ordinary meaning of "pro rata." That is because the SAFE does not call for such a distribution; instead it plainly provides that the Cash-Out Amount will be paid as a "preference" senior to Common Stock.

3. Forms The Conflicted Board Found On The Internet Are Not Relevant

44. In arguing against the plain meaning of the SAFE, the Conflicted Board relies primarily on words that ***do not*** appear anywhere in the SAFE agreements. According to the Conflicted Board, the Court should compare the SAFEs to documents available on the internet and conclude based on that extrinsic evidence that the SAFEs actually mean something different than what they say. *See, e.g.* Omnibus Objection, at ¶ 21, Ex. 3 (redlining one of the SAFEs in these cases "against a document … located at www.ycombinator.com/documents"). Although serpentine, the Conflicted Board's argument seems to be as follows: because a form SAFE exists on the internet that also provides that the Cash-Out Amount has priority over Common Stock, but does so differently than the REI SAFEs at issue in these cases, the Cash-Out Amount in the REI SAFEs must be payable "on par" with Common Stock, despite language providing just the opposite in the SAFEs that the parties actually signed, and despite the fact that a cash claim cannot recover "in proportion" to equity interests.

45. The Debtors' argument is without merit. As an initial matter, the Court cannot even consider the material offered by Debtors to construe the REI SAFEs unless the Debtors first demonstrate (without reference to extrinsic evidence) that the REI SAFEs are ambiguous.

"'Unless there is ambiguity, Delaware courts interpret contract terms according to their plain, ordinary meaning,' without resorting to extrinsic evidence." *Prime Victor*, 682 F.Supp.3d at 442. Evidence extrinsic to the contract cannot be used to create an ambiguity, and merely because parties disagree about a contract's proper interpretation, does not render it ambiguous. *See In re Advanced Vascular Res. of Johnstown, LLC*, 590 B.R. 323, 328 (Bankr. W.D. Pa. 2018) (applying Delaware law and refusing to consider K-1 tax documents because they were extrinsic to the contract and no ambiguity had been shown).

46. Nowhere in the Debtors' twenty-three-page Omnibus Objection do they argue that the SAFEs at issue in these cases are ambiguous. *See* Omnibus Objection, *passim* (omitting any form of the word "ambiguous," or any synonym). That is because these Debtors firmly believe, and have argued repeatedly in other court proceedings, that the terms of the SAFEs are "unusually straightforward" and "unambiguous." In litigation in the Celsius bankruptcy, for example, Rhodium asked the court to construe terms relevant here, including "Liquidity Event," "Dissolution Event" and "Proceeds." On behalf of Rhodium, Stris & Maher sought to justify a proposed ***pre-discovery*** motion for summary judgment by arguing that the SAFE agreements are utterly without ambiguity:

> Certainly, many contracts contain sufficient ambiguity as to warrant the introduction of extrinsic evidence. But not here. Not only are the SAFE's terms simple (as the name "Simple Agreement for Future Equity" implies), but they are so detailed and on-point that they preclude any argument that the parties intended to confer other, unspecified rights.

47. On this issue, at least, the Debtors do not appear to have changed their minds. As noted, the Omnibus Objection nowhere contends that the SAFEs are ambiguous. Rhodium's request for the Court to consider extrinsic evidence in construing the SAFE agreements therefore must be rejected. *See, e.g., Continental Warranty Inc. v. Warner*, 198 F.Supp.3d 256, 260 (D. Del.

2015) (applying Delaware law and refusing to "consider parol evidence" where "plaintiff has not satisfied the threshold step of showing the terms are ambiguous").

48. But even if the extrinsic materials on which Debtors rely could be considered, it would not help the Debtors carry their burden to prove the REI SAFE holders agreed to subordinate their right to payment of the Cash-Out Amount to the level of equity. The Debtors focus primarily on the inclusion of a phrase in the REI SAFEs that is missing from the non-party SAFE document: "in a Liquidity Event or Dissolution Event, this SAFE is intended to operate like standard Common Stock." That phrase is general, of course, and does not specify ***how*** SAFEs are intended to operate like common stock. To be sure, SAFEs act like Common Stock in some ways. For example, in a liquidation or dissolution, SAFEs are entitled to residual assets of the Company.[13] But the generic phrase focused on by Debtors says nothing about ***seniority*** of Cash-Out Amount payments. Certainly, it cannot be read in a manner that would contradict the specific language in the same paragraph providing expressly that payments to Common Stock, like payments of the Conversion Amount, are "junior to payments" of the "Cash-Out Amounts or similar liquidation preferences." *Ross v. Nissan of North America, Inc.*, 727 F.Supp.3d 841, 850-51 (M.D. Tenn. 2024) (declining to read a contract in a manner that "results in a contradiction" where the contract can be read in a manner that provides harmony among its terms).

49. Moreover, under settled Delaware law, the specific language establishing seniority of the SAFEs over common stock must be read to "qualify" the meaning of the general phrase focused on by the Debtors. *Thompson Street Cap. Partners IV, L.P. v. Sonova United States Hearing Instruments, LLC*, No. 166, 2024, 2025 WL 1213667, at *8 (Del. Apr. 28, 2025). "This

[13] Likewise, to the extent the Conversion Amount is "greater than" the Cash-Out Amount, the SAFE "operates like" common stock in that the Conversion Amount (the share in the Company's value equal to the Purchase Amount) recovers "on par" with Common Stock.

principle 'can be thought of as reading the specific as an exception to the general, which allows a harmonizing of otherwise conflicting provision[s].'" *Id.*[14] Here, the same section that includes the general phrase focused on by the Debtors ***specifically*** provides that the Cash-Out Amount is a "liquidation preference," ***specifically*** provides that Common Stock is on par with the Conversion Amount and other "as converted to stock" recoveries, and ***specifically*** provides that recoveries on par with the Conversion Amount are "junior" to payment of the Cash-Out Amount. These specific terms must be read to qualify—provide an "exception" to—the Debtors' general language.

50. Hence, in accordance with settled Delaware law, Section 1(d) should be read to provide that in a Liquidity Event or Dissolution Event SAFEs act like common stock ***except*** that payment of the Cash-Out Amount "liquidation preference" must be paid before recoveries to "junior" Common Stock. *See id.; see also Kan-Di-Ki, LLC v. Suer*, 2014 WL 4503210, at *24 (Del. Ch. Jul. 22, 2015) (refusing to "apply a general clause" to "override the specific language" of the contract allegedly relating to the same subject matter); *see also Katell v. Morgan Stanley Grp., Inc.*, No 12343, 1993 WL 205033, at *4 (Del. Ch. June 8, 1993) (holding that specific provisions must be read to qualify general ones "due to the reasonable inference that specific provisions express more exactly what the parties intended").[15] In contrast, the Conflicted Board's

[14] *See also DCV Holdings, Inc. v. ConAgra, Inc.*, 889 A.2d 954, 961 (Del. 2005) ("Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one."); *see also Flexiworld Techs., Inc. v. Roku Inc.*, No. W-20-CV-00819-ADA, 2022 WL 2019297, at *6 (W.D. Tex. June 6, 2022) (holding that "specific language controls over general language" when interpreting a contractual agreement); *see also Bank of Commerce v. Hoffman*, 829 F.3d 542, 548 (7th Cir. 2016) (holding that in the event of a "conflict between two of its provisions, the more specific provision relating to the same subject matter controls over the more general provision."); Restatement (Second) of Contracts § 203 (1981) ("In the interpretation of a promise or agreement or a term thereof . . . specific terms and exact terms are given greater weight than general language."); 11 Williston on Contracts § 32:10 (4th ed.) ("When general and specific clauses conflict, the specific clause governs the meaning of the contract.").

[15] The non-party form relied on by the Debtors has an additional sentence providing that payment of the Cash-Out Amount is "senior" to payments for Common Stock. *See* Omnibus Objection, at ¶ 21. In other words, it is entirely consistent with the final paragraph of 1(d) of the contracts actually at issue in these cases, which provide that Common Stock is "junior" to the Cash-Out Amount. The fact that the REI SAFEs provide "only" once that Cash-Out Amounts are paid as a liquidation priority ahead of Common Stock does not make that provision any less effective.

interpretation would violate hornbook principles of contract construction by yielding the "nonsensical result" of a cash-denominated claim being satisfied "in proportion to" shares of stock. *See, e.g., ITG Brands, LLC v. Reynolds American, Inc.*, No. 2017-0129-AGB, 2017 WL 5903355, at *12 (Del. Ch. Nov. 30, 2017) (holding that Delaware courts "avoid adopting" contract interpretation that "produces absurd result," and rejecting construction that would have "a nonsensical result"); *In re Orion Refining Corp.*, 341 B.R. 476, 481 (Bankr. D. Del. 2006) ("Contracts should not be interpreted to make any provision . . . nonsensical.").

B. The SAFE Claims Are Not Subject to Subordination Under 510(b)

51. Next, the Debtors argue that the SAFE claims are subordinated under Section 510(b). But that section of the Bankruptcy Code applies, in pertinent part, only to claims "arising from rescission of a purchase or sale of a security of the debtor" or "for damages arising from the purchase or sale of such a security." 11 U.S.C. 510(b). The SAFE parties' claims do not arise from the "rescission" of anything, nor do the SAFE parties seek "damages" of any kind. Rather, the SAFE parties assert that, based on post-petition events, the terms of the SAFE agreements require the estates to distribute payment of the Cash-Out Amounts ahead of payments to equity.

52. Claims to enforce the terms of a "financing contract" are not for "rescission" or "damages," and are not subject to subordination under Section 510(b). *See In re Equip. Equity Holdings, Inc.*, 491 B.R. 792, 863 (Bankr. N.D. Tex. 2013) ("[A]ll claims of security holders are not subordinated under Section 510(b). For example, claims of noteholders for payments required by the note, based upon the instrument itself, are not claims 'for damages arising from the purchase or sale of such a security' and are accordingly not subject to subordination under section 510(b).") (citing 4 COLLIER ON BANKRUPTCY, § 510.04[6] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.)); *In re Blondheim Real Estate, Inc*., 91 B.R. 639, 642 (Bankr. D.N.H. 1988) (holding that claim for recovery on debtor's promissory note should not be subordinated under 510(b)); *see also*

In re Wyeth Co., 134 B.R. 920, 921–22 (Bankr. W.D. Mo. 1991) (finding that payment on notes given to repurchase claimant's equity were not subject to subordination since there was no claim for "damages," and holding that "the use of the term 'damages' implies more than a simple debt"). A claim seeking damages for a pre-petition failure to issue stock, in contrast, or for fraud in the sale of stock, could be subject to Section 510(b) subordination.

53. The Debtors rely primarily on *In re SeaQuest Diving* in support of their subordination argument, but that case is readily distinguishable. 579 F.3d 411, 422 (5th Cir. 2009). Pre-petition, a SeaQuest limited partner ("**S&J**") settled disputes with the debtor by agreeing, among other things, to "rescind[] its partnership interest" in SeaQuest in return for cash and other consideration (the "**Settlement Agreement**"). After SeaQuest defaulted on the Settlement Agreement, S&J obtained a judgment awarding S&J damages in the amount of approximately $2.7 million. *Id.* at 416. The debtor filed for bankruptcy and, later, commenced an adversary proceeding seeking to subordinate S&J's claim based on the state court judgment, and the court agreed. *Id*.

54. The facts of *SeaQuest* were unlike those presented here. In *SeaQuest*, it was undisputed that the creditor's claim was based on the "rescission" of a "purchase or sale" of an equity interest in the debtor. The "only remaining issue" was whether Section 510(b) applies to contractual rescission, or only rescission as a court-imposed remedy for securities fraud:

> Although ***the [] Settlement Agreement resulted in a rescission*** of S&J's equity investment by mutual agreement of the parties, the plain language of § 510(b) does not distinguish between rescission by the court and rescission by the parties … In order to address this ambiguity … we must … examine the prior application, legislative history, and policy of the statute.

Id. at 418 (emphasis added). Here in contrast, there is no ambiguity with which the Court must contend. Section 510(b), by its clear and unambiguous terms, does not apply in the absence of a

"rescission" or claim for "damages." *See id.* Neither is present with respect to the SAFE claims, and the lengthy discussion of legislative history in the Omnibus Objection is simply irrelevant. *Id.* ("A court should only turn to legislative history if the statute is ambiguous.").[16]

55. *Ebert v. Gecker* is similarly distinguishable. Ebert paid $750,000 for shares in the debtor, a casino, that were to be issued to Ebert if and when Ebert was recognized as a qualified buyer by the Illinois Gaming Board ("**IGB**"). *Ebert v. Gecker*, 609 F. Supp. 3d 645, 649 (N.D. Ill. 2022). If Ebert were rejected by the IGB, Ebert's "stock subscription agreement" required the debtor to return her $750,000. *Id.* at 650. The Bankruptcy Court held that Ebert had an equity interest, rather than a claim. The District Court reversed that holding, despite the fact that Ebert "enjoyed shareholder privileges," "was party to the shareholders' agreement," "attended shareholder meetings where her vote was solicited" and was identified "as a shareholder" in all of the debtor's books and records. *Id.* at 654. The District Court found that Ebert had a "claim," not an interest, because her "contractual right to payment . . . falls squarely within the Bankruptcy Code's definition of ***claim***: it is a right to payment by the debtor." *Id.* at 653 (emphasis in original).

56. The District Court determined, however that Ebert's claim was for damages, and had to be subordinated. *Id.* (characterizing Ebert's entitlement to repayment as a "claim" because "claims for contract ***damages*** are routinely classified as general unsecured claims") (emphasis added). The IGB did not render an explicit decision on Ebert's suitability to own a casino; instead, the IGB revoked the debtor's gaming license pre-petition. According to the court, that pre-petition revocation "served as a *de facto* disapproval" of Ebert as a shareholder, and gave rise to a claim for damages "premised on a theory of unjust enrichment." *Id.* at 659. Hence, while Ebert had a

[16] The SAFE Claimant also does not seek "reimbursement or contribution" under Section 502.

claim, it was one for "damages," which the court therefore determined was subject to Section 510(b) subordination.

57. The SAFEs, in contrast, merely point out that their "right to payment" of the Cash-Out Amount was triggered (post-petition) by the Whinstone Transaction. The Bankruptcy Code requires that any plan of reorganization or liquidation distribute estate assets to SAFEs in a manner consistent with the Debtors contractual and other obligations (just like the Debtors' secured and unsecured promissory notes and other agreements). *Compare SeaQuest*, 579 F.3d at 421 (applying 510(b) to claim arising from "rescission," and noting that 510(b) may also apply in cases involving claims for "breach" and "damages" that arise "from failure to deliver stock (*Betacom*), failure to register stock (*Telegroup*), failure to exchange stock (*Med Diversified*) and fraudulent inducement to retain stock (*Geneva Steel*)"). The Debtors cite the same cases, but to no effect. *See* Omnibus Objection, at n.18. Unlike *Betacom, Telegroup* and *Med Diversified*, the SAFEs allege no breach and no damages.[17]

58. In any case, the policy considerations underlying Section 510(b) are not implicated here. "The purpose of section 510(b) is to prevent shareholders, who assume the risk of a business' failure" by investing in stock, "from filing claims as creditors when the debtor does fail." *See In re Marketxt Holdings Corp.*, 361 B.R. 369, 388-90 (Bankr. S.D.N.Y. 2007) (refusing to

[17] *Ebert* is distinguishable in numerous other ways as well. As already discussed, Ebert was "a shareholder in all but name," and even was allowed to vote at shareholder meetings, and she had no contractual "liquidation preference" requiring that any cash claim be paid before stockholders. *Ebert*, 609 F.Supp.3d at 654. The court also held that Ebert never could have expected anything other than issuance of stock, because the gaming commission's decision was based on "***her*** intrinsic characteristics," and she had to know "whether she was eligible to become" a casino owner "prior to executing her stock subscription." *Id*. at 658-59 (emphasis in original). "If, alternatively, approval of her shareholder status turned on some intrinsic quality" ***of the debtor***, the conditional repayment could be viewed as "a bargained-for escape hatch," and not subject to subordination. *Id*. Unlike Ebert, the SAFE parties had no foreknowledge or control over whether payment of the Cash-Out Amount would be triggered, and knew they might never receive any Rhodium stock, even if the business succeeded and was bought out at a premium. Instead, they signed a contract that provided for limited upside, and limited downside, including that if all they got was their money back, at least it would be paid before common stock.

subordinate creditor whose stock converted into a promissory note). Here, SAFE parties have never owned a single share of Rhodium stock, and never will. Unlike common stockholders, SAFE parties had no automatic right to participate in Rhodium's potentially unlimited upside. Until the Whinstone Transaction triggered the Cash-Out Amount, the SAFEs had nothing but a conditional obligation from Rhodium, which might have resulted in the receipt of equity instead of cash, or might never have been triggered at all.

59. Hence, the SAFEs' participation in any Rhodium upside was not guaranteed, like that of common stock. But the SAFEs also limit SAFE parties' downside. If Rhodium's business liquidated or dissolved, Debtors agreed to return the SAFE parties' Purchase Amounts—just the cash they paid in—as a "liquidation preference," paid ahead of Common Stock. In short, the SAFE parties did not take on the "risk and return expectations of a shareholder." *Id.* at 389. Instead, the SAFE parties invested "in reliance on the equity cushion" provided by common stock, without any guarantees of participation in Rhodium's future success (if it had any), while agreeing that in a liquidation or dissolution, it would be paid after other creditors but before equity. Subordination would not be not appropriate under these circumstances even if other 510(b) predicates were present, and they are not. *Id.* at 389 (holding that "critical issues in determining whether subordination is required under § 510(b)" include whether "the party to be subordinated took on the risk and return expectations of a shareholder," and is seeking to recover from pool of value relied upon by other creditors).[18]

[18] Not only is the element of "rescission" and "damages" missing, the SAFE only ever contemplated that SAFE parties might one day "automatically convert" into shares of stock, it did not provide for the "purchase or sale" of stock under any circumstances.

CONCLUSION

For the foregoing reasons, the SAFE Claimant respectfully requests that the Court dismiss and overrule the Omnibus Objection and the arguments made therein with prejudice, and provide such other and further relief as may be just and proper.

Dated: June 18, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ *Sarah Link Schultz*
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Counsel to Celsius Holdings US LLC

EXHIBIT A

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 Infinite Mining LLC, a Montana limited liability company (the "**Investor**") of **ONE MILLION FOUR HUNDRED FIFTY THOUSAND and 00/100's DOLLARS ($1,450,000.00)** (the "**Purchase Amount**") on 09 / 07 / 2021 **, 2021**, Rhodium Enterprises, Inc., a Delaware corporation (the "**Company**"), hereby issues to the Investor the right to certain shares of the Company's Capital Stock, subject to the terms set forth below.

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

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

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

1. ***Events***

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

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

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

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

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

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

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

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

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

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

2. ***Definitions***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. ***Company Representations***

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

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

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

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

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

4. ***Investor Representations***

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

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

5. ***Miscellaneous***

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

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

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

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

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

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

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

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

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

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

(*Signature page follows*)

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

RHODIUM ENTERPRISES, INC.

By: Cameron Blackmon
Cameron Blackmon
Co-President

Address:

4146 W US Highway 79
Rockdale, TX 76567-5278

Email: Cameronblackmon@rhodiummining.io

INVESTOR:

INFINITE MINING LLC

Richard Camara

Name: Richard Camara

Title: Infinite Mining, LLC Manager

Address: 321 Hodge Creek Rd.
Kila, MT 59920

Email: richardcamara@me.com

HELLOSIGN

Audit Trail

TITLE	Rhodium Enterprises SAFE for CS - Infinite Mining
FILE NAME	Rhodium Enterpris...ning - signed.pdf
DOCUMENT ID	05a2bcf4657224e47dd78f1852d3bbc5b107c343
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
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SIGNED	**09 / 13 / 2021** 15:42:20 UTC-5	Signed by Cameron Blackmon (cameronblackmon@rhodiummining.io) IP: 107.194.108.213
COMPLETED	**09 / 13 / 2021** 15:42:20 UTC-5	The document has been completed.

EXHIBIT B

S-1/A 1 fs12022a6_rhodium.htm REGISTRATION STATEMENT

As filed with the Securities and Exchange Commission on January 18, 2022

Registration No. 333-260575

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

Amendment No. 6 to
Form S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

RHODIUM ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Delaware	7374	87-1586290
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

4146 W US Hwy 79
Rockdale, TX 76567
(956) 746-3486
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Nathan Nichols
Chief Executive Officer
Rhodium Enterprises, Inc.
4146 W US Hwy 79
Rockdale, TX 76567
(956) 746-3486
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Matthew R. Pacey, P.C.
Anne G. Peetz
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609 Main Street, Suite 4700
Houston, Texas 77002
(713) 836-3600

Jonathan H. Talcott
E. Peter Strand
Michael K. Bradshaw, Jr.
Nelson Mullins Riley & Scarborough LLP
101 Constitution Avenue NW, Suite 900
Washington, D.C. 20001
(202) 689-2806

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☒	Smaller reporting company ☐
	Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

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CALCULATION OF REGISTRATION FEE

Title of each Class of Securities to be Registered	Amount to be Registered[1]	Proposed Maximum Aggregate Offering Price[2]	Proposed Maximum Aggregate Offering Price[1][2]	Amount of Registration Fee
Class A common stock, par value $0.0001 per share	8,846,153	$ 14.00	$ 123,846,142	$ 11,480.54[3]

(1) Includes 1,153,846 additional shares of Class A common stock that the underwriters have the option to purchase.
(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(a) under the Securities Act of 1933, as amended.
(3) Previously paid.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. The prospectus is not an offer to sell these securities nor a solicitation of an offer to buy these securities in any jurisdiction where the offer and sale is not permitted.

Subject to Completion, dated January 18, 2022

PRELIMINARY PROSPECTUS

7,692,307 Shares

RHODIUM

Rhodium Enterprises, Inc.

Class A Common Stock

This is the initial public offering of the shares of Class A common stock of Rhodium Enterprises, Inc., a Delaware corporation. We are offering 7,692,307 shares of our Class A common stock. We are a holding company and the sole managing member of Rhodium Technologies LLC ("Rhodium Holdings"), and our principal asset consists of units of Rhodium Holdings ("Rhodium Units"). We intend to contribute the net proceeds of this offering to Rhodium Holdings in exchange for Rhodium Units. Rhodium Holdings will use such proceeds to repay our outstanding borrowings and accrued interest under the Bridge Loan (as defined below), to construct new sites and for general corporate purposes, including the purchase of miners. Please see "Use of Proceeds."

Prior to this offering, there has been no public market for our Class A common stock. We have applied to list our Class A common stock on the Nasdaq Global Select Market ("Nasdaq") under the symbol "RHDM." We anticipate that the initial public offering price will be between $12.00 and $14.00 per share.

We have two classes of common stock: Class A common stock and Class B common stock. Upon completion of this offering and the related reorganization, holders of shares of our Class A common stock and Class B common stock will be entitled to one vote for each share of Class A common stock and Class B common stock, respectively, held of record on all matters on which stockholders are entitled to vote generally. See "Description of Capital Stock." Upon consummation of this offering, Imperium Investment Holdings LLC ("Imperium"), an entity controlled by certain members of our management, will hold 100% of the shares of Class B common stock that will entitle them to 54.3% of the combined voting power of our common stock (or 53.8% if the underwriters exercise their option to purchase additional shares of Class A common stock in full). Because Imperium will hold over 50% of the total voting stock outstanding, we will be a "controlled company" within the meaning of the Nasdaq rules. See "Management — Status as a Controlled Company." This offering is being conducted through what is commonly referred to as an "Up-C" structure. The Up-C structure provides Imperium, as the existing owner of Rhodium Holdings, with the tax advantage of continuing to own interests in a pass-through structure and provides potential future tax benefits for both the public company and Imperium when Imperium ultimately exchanges its Rhodium Units (together with its shares of Class B common stock) for shares of Class A common stock. See "Corporate Reorganization."

Investing in our Class A common stock involves risks, including those described under "Risk Factors" beginning on page 18 of this prospectus.

	Per share	Total
Price to the public	$	$
Underwriting discounts and commissions[(1)]	$	$
Proceeds to us (before expenses)	$	$

(1) See "Underwriting" for additional information regarding underwriter compensation.

We are an "emerging growth company" as that term is used in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), and as such, we have elected to take advantage of certain reduced public company reporting requirements for

this prospectus and future filings. “Risk Factors” and “Prospectus Summary — Emerging Growth Company Status” contain additional information about our status as an emerging growth company.

We have granted the underwriters the option to purchase up to 1,153,846 additional shares of Class A common stock at the initial public offering price, less the underwriting discount and commissions, for 30 days after the date of the final prospectus.

Neither the Securities and Exchange Commission (the “SEC”) nor any state securities commission has approved or disapproved of these securities or passed on the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of Class A common stock on or about , 2022.

Bookrunners

B. Riley Securities **Cowen**

Lead Manager

Needham & Company

Co-Managers

D.A. Davidson & Co. **Northland Capital Markets**

Prospectus dated , 2022

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You should rely only on the information contained in this prospectus and any free writing prospectus prepared by us or on behalf of us or to the information which we have referred you. Neither we nor the underwriters have authorized anyone to provide you with information different from that contained in this prospectus and any free writing prospectus. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We and the underwriters are offering to sell shares of our Class A common stock and seeking offers to buy shares of our Class A common stock only in jurisdictions where offers and sales are permitted. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of the Class A common stock. Our business, financial condition, results of operations and prospects may have changed since that date. We will update this prospectus as required by law, including with respect to any material change affecting us or our business prior to the completion of this offering.

This prospectus contains forward-looking statements that are subject to a number of risks and uncertainties, many of which are beyond our control. "Risk Factors" and "Cautionary Statement Regarding Forward-Looking Statements" contain additional information regarding these risks.

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CAPITALIZATION

The following table sets forth our cash position and capitalization as of September 30, 2021:

- on an actual basis;
- on an as adjusted basis to give effect to the SAFE Transactions entered into after September 30, 2021; and
- on an as further adjusted basis to give effect to (1) the adjustments describe above, (2) the issuance of shares of Class A common stock in accordance with the SAFE Transactions described under "Management's Discussion & Analysis of Financial Condition and Results of Operations — SAFE Transactions," and (3) the sale and issuance by us of 7,692,307 shares of our Class A common stock offered in this offering at an assumed IPO price of $13.00 per share (the midpoint of the price range set forth on the cover of this prospectus), including the application of the net proceeds as set forth under "Use of Proceeds."

The information set forth in the table below is illustrative only and will be adjusted based on the actual initial public offering price and other final terms of this offering. This table should be read in conjunction with, and is qualified in its entirety by reference to, "Use of Proceeds" and our financial statements and related notes appearing elsewhere in this prospectus.

	As of September 30, 2021		
	Actual	As Adjusted	As Further Adjusted
	(in thousands)		
Cash and cash equivalents[(1)]	$ 103,799	$ 106,349	$ 165,975
Short-term debt:	$ 30,000	$ 30,000	$ —
Long-term debt:			
Promissory Notes	$ 54,600	$ 54,600	$ 54,600
SAFE Agreements	$ 86,993	$ 89,543	$ —
Other long-term liabilities	$ 85	$ 85	$ 85
Temporary Equity:			
Redeemable Class B	$ —	$ —	$ 7
Total Indebtedness	$ 171,678	$ 174,228	$ 54,685
Stockholders' equity:			
Class A common stock – $0.0001 par value; 400,000,000 shares authorized, 110,593,401 shares issued and outstanding, actual and as adjusted; 1,000,000,000 shares authorized, 56,839,846 shares issued and outstanding, as further adjusted	11	11	6
Class B common stock – $0.0001 par value; 100 shares authorized, issued and outstanding, actual and as adjusted; 300,000,000 shares authorized, 67,500,411 shares issued and outstanding, as further adjusted	—	—	—
Additional paid-in-capital	$ —	$ —	$ 178,341
Retained earnings	$ 63,735	$ 63,735	$ 63,735
Non-controlling interest	$ 19,240	$ 19,240	$ 19,240
Total partners' capital/stockholders' equity	$ 82,986	$ 82,986	$ 261,322
Total capitalization	$ 254,664	$ 257,214	$ 316,001

(1) Cash and cash equivalents, as further adjusted, does not give effect to the dividend payment declared on December 7, 2021 in the aggregate amount of approximately $1.1 million to the holders of Class A common stock and the payment of approximately $0.1 million to the investors in the SAFEs.

The information above excludes 13,815,584 shares of Class A common stock reserved for issuance under our long-term incentive plan that we intend to adopt in connection with the completion of this offering. Actual

and as adjusted share information does not give effect to the consummation of the Reverse Stock Split to be effected immediately prior to and contingent upon the closing of this offering. As further adjusted share information gives effect to the consummation of the Reverse Stock Split.

A $1.00 change in the assumed initial public offering price of $13.00 per share (the midpoint of the price range set forth on the cover of this prospectus) would cause the net proceeds from this offering, after deducting the underwriting discounts and commissions and estimated offering expenses, received by us to change, respectively, by $7.2 million, assuming no change to the number of shares offered by us, as set forth on the cover page of this prospectus. Each 1,000,000 share increase (decrease) in the number of shares offered in this offering would increase (decrease) the amount of net proceeds to us from this offering by approximately $12.1 million, assuming the initial public offering price remains $13.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

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RHODIUM ENTERPRISES, INC.

PRO FORMA BALANCE SHEET
September 30, 2021
(Unaudited)

	Rhodium Enterprises, Inc. Historical	Offering Adjustments		Pro Forma
	(in thousands, except share and per share amounts)			
Assets				
Current assets:				
Cash and cash equivalents	$ 103,799	$ 62,176	(a)(c)	$ 165,975
Digital assets	8,424	—		8,424
Accounts receivable	16	—		16
Right-of-use asset, net	—	—		—
Deposits on equipment, current	48,667	—		48,667
Prepaid expenses and other current assets	5,249	(1,861)	(a)	3,388
Total current assets	166,155	60,315	(a)(c)	226,470
Other assets				
Property and equipment, net	88,337	—		88,337
Deferred tax assets, net	—	—		—
Electrical deposits, long-term	6,120	—		6,120
Deposits on equipment, long-term	3,922	—		3,922
Other long-term assets	7,600	—		7,600
Total other assets	105,979	—		105,979
Total assets	$ 272,134	$ 60,315	(a)	$ 332,449
Liabilities and stockholders' equity				
Current liabilities:				
Accounts payable	$ 1,582	$ —		$ 1,582
Accrued expenses	1,322	—		1,322
Lease liability	19	—		19
Notes payable – related parties	30,000	(30,000)	(a)	—
Income tax payable	13,071	—		13,071
Other current liabilities	1,476	(1,035)	(a)	441
Total current liabilities	$ 47,470	$ (31,035)	(a)	$ 16,435
Long-term liabilities:				
Notes payable – noncurrent	$ 54,600	$ —		$ 54,600
SAFE Agreements	86,993	(86,993)	(b)	—
Other long-term liabilities	85	—		85
Total long-term liabilities	141,678		(b)	54,685

Total liabilities	$ 189,148	$ (118,028)	(a)(b)	$ 71,120
Commitments and contingencies (Note 12)				
Temporary equity				
Redeemable Class B common stock ($0.0001 par value, 100 authorized and outstanding as of September 30, 2021)	—	7	(f)	7
Total temporary equity	$ —	$ 7		$ 7

FILED UNDER SEAL

EXHIBIT C

EXHIBIT D
[Reserved]

FILED UNDER SEAL

EXHIBIT E

FILED UNDER SEAL

EXHIBIT F

FILED UNDER SEAL

EXHIBIT G

FILED UNDER SEAL

EXHIBIT H

FILED UNDER SEAL

EXHIBIT I