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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
SUNEDISON, INC., *et al.*,[1]	:	Case No. 16-10992 (SMB)
	:	
Debtors.	:	(Jointly Administered)

[1] The Debtors in these chapter 11 cases are SunEdison, Inc.; SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc; SUNE Hawaii Solar Holdings, LLC; First Wind Solar Portfolio, LLC; First Wind California Holdings, LLC; SunEdison Holdings Corporation; SunEdison Utility Holdings, Inc.; SunEdison International, Inc.; SUNE ML 1, LLC; MEMC Pasadena, Inc.; Solaicx; SunEdison Contracting, LLC; NVT, LLC; NVT Licenses, LLC; Team-Solar, Inc.; SunEdison Canada, LLC; Enflex Corporation; Fotowatio Renewable Ventures, Inc.; Silver Ridge Power Holdings, LLC; SunEdison International, LLC; Sun Edison LLC; SunEdison Products Singapore Pte. Ltd.; SunEdison Residential Services, LLC; PVT Solar, Inc.; SEV Merger Sub Inc.; Sunflower Renewable Holdings 1, LLC; Blue Sky West Capital, LLC; First Wind Oakfield Portfolio, LLC; First Wind Panhandle Holdings III, LLC; DSP Renewables, LLC; Hancock Renewables Holdings, LLC; EverStream HoldCo Fund I, LLC; Buckthorn Renewables Holdings, LLC; Greenmountain Wind Holdings, LLC; Rattlesnake Flat Holdings, LLC; Somerset Wind Holdings, LLC; SunE Waiawa Holdings, LLC; SunE MN Development, LLC; SunE MN Development Holdings, LLC; SunE Minnesota Holdings, LLC; TerraForm Private Holdings, LLC; SunEdison Products, LLC; Hudson Energy Solar Corporation; SunE REIT-D PR, LLC; First Wind Energy, LLC; First Wind Holdings, LLC; Vaughn Wind, LLC; Maine Wind Holdings, LLC; SunEdison International Construction, LLC; and EchoFirst Finance Co., LLC.

SUPPLEMENTAL OBJECTION OF AD HOC SHAREHOLDER COMMITTEE TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING ADEQUACY OF THE DEBTORS' AMENDED DISCLOSURE STATEMENT, DATED MAY 26, 2017; (B) APPROVING SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS' AMENDED JOINT PROPOSED PLAN; (C) APPROVING THE FORM OF VARIOUS BALLOTS AND NOTICES IN CONNECTION THEREWITH; AND (D) SCHEDULING CERTAIN DATES WITH RESPECT THERETO

The *ad hoc* committee of equity interest holders (the "Ad Hoc Shareholder Committee") in the above-captioned chapter 11 cases of SunEdison, Inc., *et al.* (referred to herein as the "Debtors" or "SunEdison"), by and through its undersigned counsel, hereby submits this supplemental objection[2] to the Debtors' Motion [Docket No. 2722] for, *inter alia*, entry of an order approving the amended Disclosure Statement [Docket No. 3217] (the "Amended Disclosure Statement") for the amended Plan of Reorganization [Docket No. 3218] (the "Amended Plan"). In support of this supplemental objection (the "Supplemental Objection"),[3] the Ad Hoc Shareholder Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. In their second attempt to get it right, the Debtors again fail to disclose the most basic and fundamental information about their businesses and operations, their assets and liabilities, and the Amended Plan, including:

- What caused the failure and bankruptcy filing of SunEdison?
- Why did the Debtors decide not to reorganize around viable divisions of the business?

[2] The Ad Hoc Shareholder Committee previously filed a Preliminary Objection to approval of the Disclosure Statement, dated May 8, 2017 [Docket No. 2914] (the "Original Objection"). The Original Objection is incorporated herein as if fully set forth below.

[3] The Ad Hoc Shareholder Committee reserves its rights to amend or supplement this objection and file other or additional pleadings and documents in support hereof.

- What happened to $24 billion in capital raised in the run-up to the filing of their chapter 11 petitions, such that the Amended Plan can only provide $1.2 billion in distributions?

- Why do the Debtors have two thousand related entities, what is the status and value of each (including the projects each maintains) – and how did the Debtors' investment of billions of dollars in these entities apparently evaporate?

- How and why did the Debtors decide to exit their lucrative servicing business by transferring the lions' share to TerraForm Power[4] under the YieldCo Settlement?[5]

- Have the Debtors investigated whether there are any third parties with potential liability for SunEdison's collapse, and if so, what did they learn – and why are all such claims, though never discussed, gratuitously released under the Plan?

2. While packaged and branded as an "amended" document, the Amended Disclosure Statement – an admitted "draft" – makes no attempt to cure the informational deficiencies identified by the Ad Hoc Shareholder Committee in its Original Objection. These deficiencies fly in the face of disclosures made in other comparable cases in this district – notably including Enron, Adelphia, WorldCom and Global Crossing. Compared to the breadth and depth of disclosure contained in each of these benchmark cases, the Amended Disclosure Statement seems child's play, and the information requested by the Ad Hoc Shareholder Committee exceptionally modest.

3. In stark contrast to the benchmark cases, key terms of the Amended Plan are either missing (as is the case with the Committee/BOKF Plan Settlement Term Sheet, describing a settlement that is a cornerstone of the Amended Plan), or so vague as to be unintelligible (as is the

[4] Unless otherwise noted, capitalized terms shall have the same meaning as that ascribed to them in the Amended Disclosure Statement.

[5] Late last night, the Debtors filed the Motion for Order Pursuant to Bankruptcy Code Sections 105, 362, 363(b), and 365(a) and Bankruptcy Rule 6004 and 9019 Authorizing and Approving Entry Into a Transition Services Agreement with Terraform Power, Inc. Regarding Transition of a Portion of the GAM Business [Docket No. 3247]. Whether such motion does or does not provide some of the information that the Ad Hoc Shareholder Committee has been requesting with respect to the fate of the servicing business is irrelevant to the instant objection, as all of the questions with respect thereto remain unaddressed in the Amended Disclosure Statement.

case with value of distributions to the Second Lien Lenders, leaving open the distinct possibility that the Amended Plan violates the absolute priority rule). In keeping with this theme, the financial analysis – supplied for the first time in this iteration of the Disclosure Statement – is conclusory and superficial, and raises many more questions than it answers.

4. For all of the reasons set forth below, the Ad Hoc Shareholder Committee submits that the Amended Disclosure Statement should not be approved.

BACKGROUND

5. At a hearing held on May 19, 2017 (the "May 19 Hearing"), the Court addressed various material inadequacies in the Disclosure Statement and directed the Debtors to make the appropriate corrections. The Court and counsel to the Debtors engaged in the following colloquy:

> THE COURT: One of the questions that's come up, and it's a subject of the objections, and they're kind of related: what happened to twenty-four billion dollars? And secondly, is there still value in the nondebtor entities, which essentially render the enterprise value -- the enterprise solvent? And that's really not clear from the documents. In other words, when you say that the future cash flow's going to be 62 million or 61.5 million or something like that, does that reflect all of the value in all the nondebtor and debtor –
>
> MR. MAZZA: It does. It's the enterprise, Your Honor.
>
> THE COURT: Well, there's got to be greater disclosure about how you got to that.
>
> MR. MAZZA: And I think that is something that will be – we haven't filed a --
>
> THE COURT: You're going to have to do it -- you're going to have to do it at confirmation anyway, because you're going to cram down equity.
>
> MR. MAZZA: Sure.
>
> THE COURT: So, you're going to have to prove value.

(May 19 Hearing Tr. 15:13 - 16:4).

6. At the conclusion of the May 19 Hearing, over the objection of the Ad Hoc Shareholder Committee, the Court set June 1, 2017 as the hearing date to consider approval of the revised document (the "June 1 Hearing"). Though the Ad Hoc Shareholder Committee requested that the Debtors commit to a time by which they would file the Amended Disclosure Statement, the Debtors declined. (*Id.* at 217:24 - 219:6).

7. On Saturday, May 27, 2017 at approximately 1:32 a.m., the Debtors served the Amended Disclosure Statement, the Amended Plan and related documents. The service was completed over the Memorial Day weekend, and effectively provided parties-in-interest and their professionals with only two business days' notice in advance of the June 1 Hearing.

8. In the notice describing the Amended Disclosure Statement, the Debtors advise that the Amended Disclosure Statement is a "draft" subject to the following sweeping disclaimer:

> The Draft Amended Disclosure Statement reflects comments and requested changes that the Debtors have received from numerous parties in interest, but ***does not reflect all comments and requested changes*** that the Debtors intend to incorporate, and ***remains subject to further review and revision.*** The Draft Amended Disclosure Statement ***has not been approved by the Supporting Second Lien Parties, the Official Committee of Unsecured Creditors, or the Debtors.*** The Debtors intend to continue working with constituents to finalize the Draft Amended Disclosure Statement and intend to file finalized documents, including copies marked against those filed with this Notice, in advance of the Disclosure Statement Hearing scheduled for June 1, 2017 at 10:30 a.m.

See Notice of Filing and Notice of Hearing on Proposed Modifications to Disclosure Statement for Joint Plan of Reorganization of SunEdison, Inc. and Its Debtor Affiliates, p. 2 [Docket No. 3217] (the "Amended Disclosure Statement Notice") (emphasis supplied). *See also Notice of Filing of Proposed Modifications to Joint Plan of Reorganization of SunEdison, Inc. and Its Debtor Affiliates,* p. 2 [Docket No. 3218] (setting forth a similar disclaimer with respect to the Amended Plan).

9. Given the lack of adequate notice, by letter to the Court dated May 30, 2017 (a copy of which is annexed hereto as Exhibit "A"), the Ad Hoc Shareholder Committee requested that the June 1 Hearing be adjourned (the "Adjournment Request"). On May 30, 2017, in a telephonic conference with the Court, the Debtors and other parties in interest, the Adjournment Request was granted and the hearing to consider approval of the Amended Disclosure Statement was adjourned to June 6, 2017 (the "June 6 Hearing").

10. At the telephonic conference, the Debtors stated their intention to file further amendments to the Amended Disclosure Statement prior to the June 6 Hearing but declined to commit to a date certain by which such amended documents would be filed. As of the date hereof, the Debtors have filed no additional documents or pleadings related to the Amended Disclosure Statement. Assuming new iterations of the documents will be filed prior to the June 6 Hearing – and depending on the level of revision thereto – the Ad Hoc Shareholder Committee remains concerned about adequacy of notice and the impairment of its due process rights.

OBJECTION

11. As the Second Circuit has explained, a debtor's obligation to provide "full and fair disclosure . . . does not attach only to the preparation of disclosure statements. 'Full and fair' disclosure is required during the entire reorganization process; it begins 'on day one, with the filing of the chapter 11 petition.'" *In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994). Where, as here, full and fair disclosure has been lacking throughout the entirety of the Debtors' thirteen months stay in chapter 11, adequacy of disclosure in the Amended Disclosure Statement takes on exceptional significance. Where, as here, billions of dollars have somehow disappeared and the Debtors have never attempted to explain where it went, the significance of the Debtors' duty to disclose becomes even more imperative.

12. It is well established that a disclosure statement cannot rely on conclusory statements, effectively putting parties at the mercy of the opinions of the debtor. Instead, a disclosure statement must affirmatively provide an adequate factual basis for its assertions so that parties can independently evaluate the merits of the plan. *See, e.g.*, *In re East Redley Corporation*, 16 B.R. 429, 430 (Bankr. E.D. Pa. 1982) (information must be sufficient for parties "to arrive at an independent and informed judgment."); *In re Civitella*, 15 B.R. 206 (Bankr. E.D. Pa. 1981) (approval denied where allegation in disclosure statement that plan was superior to forced sale was unsupported by factual information so that voting parties were unable to independently evaluate merits of plan). Accordingly, a disclosure statement fails to provide "adequate information" if parties in interest must take extensive discovery or conduct their own expert analysis in order to properly evaluate the plan. *See Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 719 (Bankr. E.D. Cal. 1992) (*citing In re Braten Apparel Corp.*, 21 B.R. 239, 259-60 (Bankr. S.D.N.Y. 1982)).

13. The Ad Hoc Shareholder Committee submits that the Amended Disclosure Statement fails to cure the informational deficiencies that plagued the original version of same. Moreover, when compared to the information contained in disclosure statements filed in other comparable chapter 11 cases in this district, the Amended Disclosure Statement's decided failure to provide "adequate information" is, quite simply, irrefutable. For the reasons set forth below, the Ad Hoc Shareholder Committee submits that the Amended Disclosure Statement should not be approved.

A. Disclosure Provided In Similar Cases Validates the Inadequacy of The Information Contained in the Amended Disclosure Statement

14. The Ad Hoc Shareholder Committee has identified several cases in this district which are analogous to the Debtors' circumstances in terms of size, scope and basis for filing:

Adelphia, Enron, Global Crossing and WorldCom (collectively referred to as the "Benchmark Cases").[6] A chart summarizing the nature and scope of the disclosures in the Benchmark Cases (the "Benchmark Chart") is annexed hereto as Exhibit "B."

15. While no single element from any of the disclosure statements approved in the Benchmark Cases is necessarily determinative of the adequacy of disclosure therein, the failure of the Amended Disclosure Statement to provide anything approaching the type, breadth and depth of the information provided in the Benchmark Cases is palpable. Either the Debtors do not have the requisite information – which would be a stunning breach of their responsibilities. Or the Debtors do have such information – in which case there is no justification for not providing it to all parties-in-interest, including the Ad Hoc Shareholder Committee and its constituents, whose interests are slated to be eliminated under the Amended Plan.

16. **Explaining Why the Company Failed.** In each of the Benchmark Cases, management investigated prepetition misconduct and reported its findings, in significant depth, in the disclosure statement, often attaching the report of an official investigation. (Benchmark Chart, Row 2). In fact, every one of the Benchmark Cases explains in significant detail the fraud, accounting errors or improprieties, and asset transfers that led to the bankruptcy case. (*Id.*).

17. The Debtors' Amended Disclosure Statement provides none of this information. It notes an Audit Committee Investigation which cited an "overly optimistic culture" and weaknesses in cash forecasting and liquidating management practices, but concluded that there "were no material misstatements in SunEdison's historic financial statements, as well as no substantial evidence to support a finding of fraud or willful misconduct of management, other than with

[6] The Declaration of Ancela R. Nastasi in Support of this Supplemental Objection, dated June 2, 2017 (the "Nastasi Declaration"), is being filed contemporaneously with this objection. Annexed as exhibits to the Nastasi Declaration are copies of the disclosure statements filed in each of the Benchmark Cases.

respect to one former non-executive employee." (Amended Disclosure Statement, p. 24.) Taking the Audit Committee's findings at face value, the $24 billion question still looms: namely, given the $24 billion in investment capital which SunEdison raised in the three short years prior to its bankruptcy, and given the fact that the Amended Plan is slated to distribute only about $1.2 billion to creditors, where is the rest of the money? The Ad Hoc Shareholder Committee submits that if this question had been asked in any of the Benchmark Cases, the answer would have been readily ascertainable in any of the respective disclosure statements.

18. **Explaining Why the Debtor Decided Not to Reorganize.** One of the primary purposes of chapter 11 is to preserve going concern value, and in three of the Benchmark Cases, the company's operating businesses were preserved as going concerns: Adelphia, Global Crossing, and WorldCom. (Benchmark Chart, Row 3). Enron was a mixture, a partial liquidation with a reorganized debtor holding some subsidiaries for future operation or sale. The decision to liquidate SunEdison thus stands out as an exceptional choice, and one that requires explanation.

19. The Amended Disclosure Statement simply does not explain why SunEdison, the self-proclaimed leader of the renewable energy industry, could not reorganize around successful aspects of its operations and thereby preserve going concern value for stakeholders. The Amended Disclosure Statement's silence is quite astonishing given the size of SunEdison's pre-petition operations, the level of investment the company attracted and the fact that renewable energy is a dynamic, high-growth industry. Under these circumstances, the dénouement of a magician's act comes to mind: with the audience eagerly waiting to see what happens to the company, the Debtors respond, with the simple waive of a wand, "Poof, it is gone."

20. **Full Accounting of Assets and Value of the Debtor.** In two of the Benchmark Cases, the value of the company was clearly established by a sale to a third party after an extensive

marketing process. (Benchmark Chart, Row 5: Adelphia, Global Crossing). WorldCom was a standalone plan, and Enron a mixture. Complex as these cases were, the assets they owned and the basis for valuing those assets was clearly provided in all of them. (Benchmark Chart, Row 5). In contrast, the Debtors' Amended Disclosure Statement provides zero information about the location, identity or status of, or the Debtors' investment in any of the companies' actual assets – let alone the method by which the Debtors assigned value to those assets – limiting itself to conclusory statements of their aggregate value. (*See infra* ¶¶ 24-29).

21. The Amended Disclosure Statement's section on "Events Leading to the Commencement of the Chapter 11 Cases" provides information on the series of events that led directly to the filings. (Amended Disclosure Statement, pp. 22-25). However, it does not explain, or even attempt to explain, how nearly all of the value of these companies disappeared. It states that SunEdison "committed to in excess of $18 billion in acquisitions," and "from 2013 to 2016, SunEdison raised $24 billion dollars through debt and equity offerings." (*Id*. at 22). It identifies five specific transactions with figures for approximately $5.1 billion of committed capital – $2.4 of which was for the Vivint deal, which never closed. These gaps in accounting are staggering.

22. As discussed in detail below (*infra* ¶¶ 25-30) the Amended Disclosure Statement provides no meaningful information on the Debtors' assets, including their subsidiaries, potential causes of action against third parties, intercompany claims (including many that may be with nondebtor subsidiaries that are not wholly-owned), or the disappearance of supposedly valuable servicing contracts.

23. **Adequate Financial Disclosure and Analysis.** In each of the Benchmark Cases, financial disclosure and analysis is provided with sufficient clarity and detail to enable parties in interest to make informed judgments on the merits of the plan. These disclosure statements include

(a) estimated recoveries, by class, both under the plan and in a hypothetical liquidation; (b) extensive analysis of the debtor's subsidiaries, including their activities, assets and values; and (c) detailed explanations, and reconciliations or settlements, of issues pertaining to intercompany accounts. (Benchmark Chart, Row 4). Each of the Benchmark Cases provided a substantive and procedural foundation for confidence and accuracy, such as extensive sharing of information with creditors and equity holders and/or preparation or participation by third parties with access to company records. The details obviously vary, as the relevant importance of different categories of information depends on the nature of the debtor and the plan. But what is crystal clear is that by comparison, the Debtors' own financial analysis does not measure up.

24. In the Amended Disclosure Statement, the Cash Flow Projections supplied in the "Financial Projections" [Docket No. 3219] provide aggregate data expected to be realized through the end of 2020 from asset sales. However, there is no possible way to form a judgment on the reasonableness of those naked assertions as the Debtors have provided no information at all on the assets to be sold. We do not know what the assets are, where they are located, what the status of each one is, how much was invested in it, who the partners or creditors are, or anything else about any of them.

25. Similarly, in the "Liquidation Analysis" [Docket No. 3220], the Debtors provide assertions of the value that would be received from the sale of entirely unidentified assets, providing no means of judging whether that "data" is the least bit credible. For example, the Debtors list fifty-one Debtor-entities, and offer estimated recoveries in "High" and "Low" scenarios for each. Though the point is to compare the amounts expected to be recovered in liquidation with the value to be distributed under the Amended Plan, the Debtors have inexplicably left blank the column for distributions under the Amended Plan. The Debtors then provide their

projected recoveries on account of general unsecured claims for ten of the Debtor-entities, stating that the rest would result in no recovery. (Liquidation Analysis, Ex. 1). The Debtors decline to indicate the value of the assets at each entity, or how much secured creditors will realize from each.

26. The Debtors do explain that three direct subsidiaries "have distributable unencumbered value," but no recoveries are provided for them as "there have been no general unsecured claims asserted at these entities." (Liquidation Analysis, Ex. 1, first footnote.) In other words, it appears that at least these three Debtor-entities have value in excess of project level financing that will be retained by the Reorganized Debtors, but the Debtors will not disclose how much was invested in those companies, what assets they own or how much they are worth today.

27. The Debtors indicate that there is no distributable unencumbered value at thirty-seven other direct subsidiaries – apparently meaning that any value in these entities will flow to project-level secured creditors. However, rather than provide any information on these entities, the Amended Disclosure Statement notes that the amounts to be realized by secured creditors are "included within the Debtor SunEdison Inc.'s recovery analysis." (*Id.*, third footnote). Effectively, this data has been "lumped" in a manner that hides any information that would potentially identify those subsidiaries with value or the amount of that value.

28. In stark contrast to the Benchmark Cases, the Amended Disclosure Statement provides no information on the 1900+ non-Debtors Affiliates. Whatever they own, whatever they are worth, who they are partnered with and what potential obligations they owe to SunEdison is – and remains – a complete mystery. With no concrete information about these subsidiaries, the Debtors are directing the Ad Hoc Shareholder Committee to take a leap of faith and assume that: the value of these subsidiaries is being maximized, this value is fully accounted for in the

distributions under the Amended Plan, and that such distributions comply with section 1129. Its interests slated for extinction under the Amended Plan, the Ad Hoc Shareholder Committee is well-founded in refusing to take this leap with the Debtors.

29. Finally, in addressing intercompany receivables, the Liquidation Analysis is equally opaque. It indicates that these receivables total $7.14 billion, but have an expected recovery (in either the "High" or "Low" scenario) of $56 million – less than 1% of the outstanding total amount. There is no explanation of the $7.14 billion figure, how it was derived or why it is considered largely unrecoverable. The Ad Hoc Shareholder Committee submits that this level of disclosure violates both the letter and spirit of section 1125.

30. **Investigation of Claims Against Third Parties.** All of the Benchmark Cases included investigations of the potential liability of third parties on account of prepetition asset transfers, negligence or malfeasance, and the results are discussed in the respective disclosure statements. (Benchmark Chart, Row 6). In two of the Benchmark Cases, litigation trusts were established, and in those cases, the disclosure statements accordingly explained the major causes of action to be pursued so that investors could form a judgment on the adequacy of those efforts and their potential value. (Benchmark Chart, Row 6: Adelphia, Enron).

31. Contrast the Benchmark Cases' essential disclosures to the Amended Disclosure Statement: it identifies suits against former directors and officers (Amended Disclosure Statement, p. 37) and preference allegations and disputes with the YieldCos (Amended Disclosure Statement, pp. 41-45), but there is no indication that the Debtors ever conducted a systematic examination of the potential liability of prepetition financial advisors, accountants, contractual counterparties or others. Quite astoundingly, the Amended Disclosure Statement does not address whether there are potentially valuable causes of against solvent, culpable nondebtor parties.

32. Despite the failure of the Amended Disclosure Statement to identify or explore possible third party liability, the Amended Plan releases any such claims the Debtors may have – with an exception for the claims being brought by the Second Lien Lenders. (*See infra* ¶¶ 40-41). These unexplained and unjustified releases stand in stark contrast with the Benchmark Cases, not one of which waived the debtor's rights against noncontributing third parties. As a result, there is no way to tell whether valuable assets of these estates are, in effect, canceled out when they could support greater distributions to all stakeholders of these estates.

B. The Amended Disclosure Statement Does Not Address the Informational Deficiencies Identified in the Original Objection

33. In the Original Objection, the Ad Hoc Shareholder Committee identified several broad categories of information that the Disclosure Statement did not address. Though entitled "Amended," the latest "draft" of the Disclosure Statement does not address the vast majority of the requested disclosures – information critical to providing "adequate disclosure" within the meaning of section 1125 of the Bankruptcy Code.

34. **Failure to Explain Decision Not to Reorganize.** Though identified in the Original Objection as providing inadequate disclosure (*see* Original Obj., ¶¶ 12-13), the Amended Disclosure Statement fails to explain the Debtors' decision not to reorganize around successful divisions of the company. (*See supra,* ¶¶ 18-19).

35. **Failure to Explain Dissipation of Billions of Dollars of Investment Capital.** Though identified in the Original Objection as providing inadequate disclosure (*see* Original Obj., ¶ 14), the Amended Disclosure Statement fails to explain what happened to approximately $23 billion in investment capital. (*See supra,* ¶ 17).

36. **Failure to Account for $9 Billion Investment in Subsidiaries.** In attempting to address the Original Objection's concerns about the opacity of information pertaining to

SunEdison's subsidiaries (*see* Original Obj., ¶¶ 15-16, 20-22), the Amended Disclosure Statement simply states that the company had a "complex corporate structure consisting of approximately two thousand entities" (Amended Disclosure Statement, p. 25), with "hundreds of domestic and foreign subsidiaries [operating] throughout the world." (Amended Disclosure Statement, p. 15). Because that is where disclosure about these "thousands" of entities begins and ends, left unanswered are the following basic questions:

- What are these subsidiaries?
- How much was invested in each of them (or at least the largest of them)?
- What partners, if any, did SunEdison have in each subsidiary?
- What is the value of these subsidiaries today?
- What claims exist against each of them, for loans, goods, services, assets transfers or otherwise?
- Which subsidiaries were transferred prepetition or postpetition, to whom and for how much?
- Why are they apparently worth so much less than SunEdison invested?

37. The Amended Disclosure Statement's attempted answer – namely, noting that the $9 billion accounting entry for "Investments in Subsidiaries" is not market value and that the method of calculating that figure in the monthly operating reports results in double counting of equity (Amended Disclosure Statement, p. 46 n. 50) – ducks all of these questions. In fact, it appears that the Debtors have decided to actually reduce the amount of information provided in the Amended Disclosure Statement, as the original Disclosure Statement at least indicated that a corporate organizational chart would be attached as Exhibit E, but even that has been stricken from the Amended Disclosure Statement. (*See* Amended Disclosure Statement, pp. 230, 382 (redline showing the deletion)).

38. **Failure to Explain Eradication of Debtors' Prized Servicing Business.** In response to the concerns raised in the Original Objection (*see* Original Obj., ¶¶ 17-19), the Amended Disclosure Statement has added a statement that the Debtors "have conducted an ongoing marketing process for divestiture of SunEdison's GAM business." (Amended Disclosure Statement, p. 36). It then explains that pursuant to a letter agreement SunEdison "will provide for the orderly transition of employees who provide asset management and operating and maintenance services" to TerraForm Power. (Amended Disclosure Statement, p. xvi). The Amended Disclosure Statement is devoid of any information regarding the consideration flowing to the Debtors for this business, let alone an explanation of why shedding this lucrative operation made any sense.[7]

39. **Failure to Describe Key Terms of a Potentially Unconfirmable Plan.** As set forth in the Original Objection, critical aspects of the Amended Plan remain unaddressed or inadequately explained (*see* Original Obj., ¶¶ 23-30). None of this was explained in the Amended Disclosure Statement, including:

- *Failure to Fully Describe the Committee/BOKF Plan Settlement.* The term sheet in respect of this landmark settlement is not attached. (*See* Amended Plan, Ex. 6.1).

- *Failure to Quantify Assets and Value Being Distributed to the Second Lien Lenders.* Assets to be retained by the Reorganized Debtors are not disclosed or quantified, leaving the distinct possibility that this class will realize more than the value of their claims, in violation of the absolute priority rule. (*See* Original Objection, ¶ 25).

- *Failure to Quantify Assets and Value Being Transferred to the GUC/Litigation Trust.* With certain exceptions, the GUC/Litigation Trust is to receive "all Causes of Action," but only "to the extent such Causes of Action are not released." (Amended Plan, § 1.117.) It appears that the Debtors are releasing nearly all claims against anyone involved with the Debtors either pre- or post-

[7] *See* footnote 5, *supra.*

petition. (*See infra*, ¶¶ 40-41.) So what then is going into the GUC/Litigation Trust?

40. The lack of information which characterize the Amended Disclosure Statement is even more disturbing when considering the scope of the proposed releases of all claims against current and former Affiliates[8] -- whether wholly or partly-owned by SunEdison -- except for claims based on fraud, willful misconduct or gross negligence. (Amended Plan, §§ 1.191, 11.5). Similarly, the Amended Plan abandons all avoidance actions other than those specifically reserved, as identified on Exhibit 6.17 of the Amended Plan – an exhibit which has not yet been provided. However, there is no discussion of such claims, and no explanation for releasing them, as opposed to, say, transferring them to the GUC/Litigation Trust.

41. The impact of these releases could be huge, but is completely unaddressed. As an example, as we understand it: If SunEdison holds a 25% economic interest in an indirect subsidiary, and that subsidiary owes SunEdison $10 million for a loan, the loan is being released without any disclosure or justification. We have no way of knowing, for example, if current creditors, or former officers or directors, have direct or indirect interests in these entities and may profit from these releases, *a la* Enron. The number of potential variations on these facts, with two thousand entities, is endless – loans, fees due for goods or services provided by SunEdison's development team or servicing business, avoidance actions, other causes of action. And it is all being washed away without examination or justification by the releases in the Amended Plan.

[8] The Amended Disclosure Statement provides that the Released Parties include current and former Affiliates. (Amended Disclosure Statement, p. 105). The Plan, without explanation, puts the words "and former" and "Affiliates" in square brackets in the definition in § 1.191. (Amended Plan, p. 26).

WHEREFORE, for the reasons set forth herein, the Ad Hoc Shareholder Committee respectfully requests that the Court (i) deny the approval of the Amended Disclosure Statement, and (ii) grant such other and further relief as is just and proper.

Dated: June 2, 2017

/s/ Ancela R. Nastasi

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May 30, 2017

Via Email: bernstein.chambers@nysb.uscourts.gov

The Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004-1408

Re: In re SunEdison, Inc., et al., Case No. 16-10992 (SMB) (collectively, the "Debtors")

Dear Judge Bernstein:

Our firm is counsel to the Ad Hoc Shareholder Committee in the above-referenced cases. We are writing today to request that the Court adjourn the hearing on the Debtors' Disclosure Statement currently scheduled for June 1, 2017 at 10:30 a.m. to a date that is at least ten business days from the filing and service of the final version of the Debtors' Disclosure Statement.

To briefly review the background for this request: On May 8, 2017, we filed a timely objection to the Debtors' Disclosure Statement [Docket No. 2914]. On May 19, 2017, a hearing was held at which the Court addressed multiple deficiencies and issues with the Disclosure Statement; our Objection however, was not addressed or resolved at that time.

At the conclusion of the May 19th hearing, the Court determined to continue the hearing on the Disclosure Statement pending the filing of amended documents. The Debtors requested that the continued hearing be held on June 1, 2017. In light of the fact that the Debtors still needed to affect broad changes to their Plan and Disclosure Statement, and the fact that the proposed hearing date of June 1 would occur in only eight business days, I requested that the continued hearing be scheduled on a later date. At the insistence of the Debtors, Your Honor scheduled the continued hearing on June 1, 2017, but also stated that the Court would be amenable to a request for an adjournment if circumstances so warranted. For the reasons set forth herein, we respectfully submit that circumstances warrant an adjournment.

At 1:32 a.m. on Saturday, May 27th, the Debtors served the so-called "Draft Amended Disclosure Statement" and related attachments via email. As part of their filings, the Debtors served a notice regarding the Draft Amended Disclosure Statement [Docket No.

3217] (the "Notice"). In the Notice, the Debtors advise that the annexed document is a "draft," and state that the Draft Amended Disclosure Statement "***does not reflect all comments and requested changes that the Debtors intend to incorporate, and remains subject to further review and revision***." (Notice, p. 2; emphasis supplied). The Notice goes on to state that the Draft Amended Disclosure Statement has ***not*** been approved by the Debtors or any of the major constituencies in these cases. (Id.) While the Notice advises that revised documents will be provided "in advance" of the June 1 hearing, it does not provide a deadline for transmission of same. (Id.) [1]

Taken together, the Debtors' actions over the past 72 hours effectively preclude meaningful review of the Draft Amended Disclosure Statement. These filings comprise wholesale changes to the Disclosure Statement and Plan – not simply "technical amendments" – and for the first time include the financial projections and liquidation analysis upon which the Draft Amended Plan is premised. Served on the Saturday morning of a holiday weekend, parties-in-interest and their legal and financial professionals have been provided only two business days to evaluate and respond. Importantly, because they are ***"drafts" that have not been approved by the Debtors*****,** any response that might be filed prior to the hearing may end up being moot when the new – and approved – version of the Disclosure Statement is filed. Moreover, and equally troubling, while information about the recently achieved settlement with the Creditors' Committee and other constituents is referenced, vital information about that settlement is simply not included in the newly filed materials.[2]

We acknowledge that debtors typically receive great deference in setting the confirmation agenda, but at a certain point, basic notions of due process must be taken into account to allow parties adequate time to evaluate and respond. This is especially true where, as here, there is no urgency mandating a hearing on an expedited schedule.

In light of the importance of the plan and disclosure statement in all cases, Bankruptcy Rules 2002(b) and 3017(a) require that parties receive 28 days' notice of the hearing on approval of a disclosure statement and the deadline for filing objections. While Bankruptcy Rule 9006(c) provides the means by which the notice period may be shortened, courts have allowed such reduction with respect to amended disclosure statements only when all parties are provided a "meaningful opportunity" to oppose the disclosure statement. *In re Berry*

[1] The Debtors also filed a Notice of Filing of Proposed Modifications To Joint Plan of Reorganization of SunEdison, Inc. and Its Debtor Affiliates [Doc. No. 3218] along with the so-called "Draft Amended Plan," which has similar language making clear that the filed plan document is not the "Approved Plan" but rather a draft that has not been approved by the Debtors or any of the settling parties.

[2] A term sheet in respect of the settlement is referenced as attached as Exhibit 6.1 to the Draft Amended Plan. (Draft Amended Disclosure Statement, p. x; Draft Amended Plan, p. 2). However, such term sheet was not attached to the Draft Amended Plan or the Draft Amended Disclosure Statement. Both the Draft Amended Disclosure Statement and Draft Amended Plan state that if there are any inconsistencies between the term sheet and the Draft Amended Plan, the term sheet will prevail. (Draft Amended Disclosure Statement, p. x; Draft Amended Plan, p. 2, n. 4). Without this term sheet, it is impossible for any outside party to know the final terms of this settlement which is supposedly the linchpin of these cases, and whether the Draft Amended Disclosure Statement contains adequate information about such settlement.

& Berry Wings, LLC, 2014 WL 6705779, at *5 (Bankr. M.D.Fla.). *See also In re El Comandante Mgmt. Co., LLC*, 359 B.R. 410, 415 (Bankr. D.P.R. 2006). The Debtors' recent actions as outlined above have effectively denied any meaningful opportunity to properly respond to the Draft Amended Disclosure Statement.

Finally, we note that June 1, 2017 is the second day of the Jewish holiday of Shavuot. Moshie Solomon, who is of counsel to our firm and a crucial member of our team in this matter, is an Orthodox Jew. Given the holiday, Mr. Solomon will not be able to prepare for or attend the June 1 hearing.

For all the reasons set forth above, we respectfully request that the Court adjourn the June 1 hearing and schedule a hearing to consider approval of the Disclosure Statement on at least ten business days' notice following receipt of the final version of the Disclosure Statement.

Respectfully submitted,

/s/ Ancela R. Nastasi

cc: J. Eric Ivester, Esq. (via email)
Jacqueline Marcus, Esq. (via email)
Matthew Barr, Esq. (via email)
J. Christopher Shore, Esq. (via email)
Arik Preis, Esq. (via email)

	Adelphia	Enron	Global Crossing	WorldCom
1. Overview	Company controlled by Rigas family, which misappropriated billions of dollars, engaged in accounting and securities fraud. Board forced their resignations. Most of Rigas family interests were forfeited to company or US government. Two family members sent to prison.	Related party transactions to misappropriate value to insiders and to exaggerate operating results.	Overinvested in network, problematic accounting (overstated revenues). $10 billion of write-downs. Used chapter 11 to effectuate sale of equity to new investors.	Years of accounting fraud to prop up stock price, fueling acquisitions binge that culminated in $40 billion acquisition of MCI.
2. Why the Company Failed	Board investigation, and company, SEC and DOJ actions against Rigas family. Facts and outcomes reported in detail in disclosure statement (pp. 409-411, 417-21).	Board appointed committee to investigate. Issued 200+ page report referenced in the Disclosure Statement, with web link to the actual report. More than 80 pages in disclosure statement on specific financing transactions, and critical related party transactions are described and explained. Examiner actively participated in essentially all aspects of the case.	Parties had agreed to appointment of an examiner, but not yet appointed when disclosure statement was filed (pp. 59-60). Discussion of over-investment, industry overcapacity and downturn, SEC Investigation (pp. 35-36, 55-56) and securities class actions (pp. 53-56).	Board-appointed Special Committee issued 340 page report. Disclosure statement contained explanation of accounting fraud and the Executive Summary of that report (35 pages). Examiner appointed upon commencement of the case; issued interim reports, summarized in disclosure statement (pp. 30-32) and attached as exhibits. SEC and other investigations also discussed (pp. 20-32).
3. Nature of Plan	Sale of all essentially all operating assets to Comcast and Time Warner ("TWC").	Some subsidiaries were sold during pendency of case. Reorganized Debtors to own other subsidiaries, to be operated or sold post-confirmation. Litigation held by several trusts with proceeds to be distributed to creditors.	Reorganization as ongoing business through sale of equity to third-party investor.	Reorganization as operating company.

	Adelphia	Enron	Global Crossing	WorldCom
4. Financial Disclosure **(a) Estimated recovery, by class, under plan and under hypothetical liquidation**	**(a) Recoveries** Detailed chart of estimated recoveries by class, including recoveries under various scenarios (pp. 15-47).	**(a) Recoveries** Detailed estimates of recoveries by class (pp. 31-93; Appendix P: Calculation of Distributions Under the Plan).	**(a) Recoveries** Estimated recoveries by class (p. 87).	**(a) Recoveries** Expected recovery percentages laid out (pp. 5-7); extensive analysis of recoveries under alternative scenarios by FAs for Debtor and for Creditors Committee (p. 42).
(b) Disclosure regarding subsidiaries activities, assets and valuation.	**(b) Subsidiaries** Detailed information on corporate structure; plan consolidated debtors into 18 groups (pp. 75-84)	**(b) Subsidiaries** Discussion of major subsidiaries and their business operations, assets, and value (pp. 400-521). Detailed estimates of assets, claims and distributions by Debtor entity, with significant detail for every debtor (196 pages). (App. C – C-III). Core trading operations eradicated by loss of reputation and effects of the bankruptcy. No unaccounted for dissipation of assets.	**(b) Subsidiaries** Corporate structure explained (pp. 48-51)	**(b) Subsidiaries** Retained by reorganized debtor, so no need for separate analyses, but corporate structure
(c) Reconciliation of intercompany transactions or claims	**(c) Intercompany Claims** Impact of treatment options (p. 42-44). Plan Provides for Inter-Creditor Dispute Resolution to address this, with detailed analysis (Ex. P).	**(c) Intercompany Claims** Extensive discussion of intercompany claims (App. N, 8 pages) and substantive consolidation (App. M). Plan Recovery data includes extensive information on intercompany claims (App. C-I) for both debtor and nondebtor entities.	**(c) Intercompany Claims** Consolidation for voting and distribution in part due to difficulty of fully addressing intercompany claims (pp. 26-27)	**(c) Intercompany Claims** Intercompany Claims / Disputes (pp. 39-47); extensive analysis of alternative scenarios by financial advisors for Debtor and for Creditors Committee (p. 42).
(d) Financial statements and projections	**(d) Fin. Statements/Projections** Historical data 2002-04 (pp. 55-58). Unaudited Balance Sheet and Statement of Operations to demonstrate effect of sale transactions (pp. 337-352). Projected income statements for TWC through 2007 (352-360). Valuation of TWC Equity (pp. 361-65).	**(d) Fin. Statements/Projections** Three year financial projections for reorganized entities, including various audited historical financials. (App. H, J and K).	**(d) Fin. Statements/Projections** Historical financial information (pp. 31-16) Projected financials for 2003-06 including Balance Sheet, Statements of Operations, Sources and Uses of Cash (pp. 37-47). Liquidation Analysis (pp. 86-98) Examiner appointed to report on any need for restating or adjusting financial statements (pp. 59-60).	**(d) Fin. Statements/Projections** No missing assets. Overstated earnings by $9B from 1999-2002. Restated Balance Sheets as of December 21, 2002 (Exhibit C., 12 pages). Pro Forma Reorganized Balance Sheet and Projected Statements of Operations for 2003-2005. (Ex. D.)

	Adelphia	**Enron**	**Global Crossing**	**WorldCom**
5. Valuation Methodology	Value established by sale of nearly all assets to third parties under the plan. Consideration includes TWC stock, so disclosure statement included projected income statements for TWC through 2007 (352-360); valuation of TWC equity (pp. 361-65).	Extensive discussion of major subsidiaries and their business operations, assets, and value, to be retained in three entities (pp. 400-521). Liquidation Analysis breaks down expected recoveries by Debtor entity from Liquidation and under the plan. (Appendix L).	Plan provided for sale of 61% of equity to third-party, not insider or creditor, after extensive marketing by Debtor in conjunction with other parties-in-interest, thereby providing basis for valuation (p. 47); (pp. 67 -71).	Used traditional valuation methodologies: Publicly traded company analysis, discounted cash flow, and precedent transactions (pp. 86-90 and Exhibits C-E). Valuation and substantive consolidation are contested by Dissenting MCI Creditors (pp. 47-48). Liquidation Analysis is consolidated into two groups, WorldCom debtors and Intermedia Debtors. (Exhibit E.)
6. Investigation and Description of Claims Against Third Parties	List of causes of action being transferred to "Contingent Value Vehicle" (pp. 228-30) and indication that Equity Committee intended to partially contest as infringing their rights. Discussions of Debtor's unresolved litigation claims against third parties including suit against Deloitte (pp. 421-22), Creditors Committee suit against Prepetition Lenders (pp. 423-25) and Avoidance Actions (pp. 431-32).	Comprehensive discussion of litigation to which Enron was a party, including nature of the claims, amounts in dispute, and status of each case (pp. 254-309), investigation and pursuit of avoidance actions (pp. 258-64; 326-28, Appendix O: Potential Causes of Action, Appendix O-I: Accounts Receivable Collection Actions; Appendix O-II: Potential Avoidance Actions; Appendix S: Additional Pending Avoidance Actions (21 pages)).	Discussion of class actions against D&Os and underwriters, on which trial was pending, as well as other pending investigations (pp. 53-56).	Summarized findings of the examiner, including need to further investigate relationship with prepetition investment bankers (pp. 20-25).
7. Nondebtor Releases **(a) Did debtor release prepetition causes of action against noncontributing third parties?** **(b) Did plan release causes of action by claim or interest holders against nondebtors?**	(a) No, unless Debtor so chooses due to, e.g., indemnification rights (pp. 200, 223-25). (b) No (pp. 223-25).	(a) No (p. 373). (b) No.	(a) No, unless current or future vendors or otherwise would have adverse effect on Reorganized Debtor; the Purchasers ("Investors") are also released (pp.23, 79-80). (b) No, except for claims against the purchasers ("Investors") (pp. 79-80).	(a) No (p. 72). (b) No (p. 67).