

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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 In re: :  
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 THE FINANCIAL OVERSIGHT AND : PROMESA  
 MANAGEMENT BOARD FOR PUERTO RICO, : Title III  
 :  
 as representative of : Case No. 17-BK-3283 (LTS)  
 :  
 THE COMMONWEALTH OF PUERTO RICO, *et al.*, : (Jointly Administered)  
 :  
 Debtors.<sup>1</sup> :  
 ----- X

THE OFFICIAL COMMITTEE OF UNSECURED  
 CREDITORS OF THE COMMONWEALTH OF PUERTO  
 RICO,  
 :  
 as agent of :  
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 THE FINANCIAL OVERSIGHT AND MANAGEMENT :  
 BOARD FOR PUERTO RICO, :  
 : Adv. Proc. No. 17-257 (LTS)  
 as representative of :  
 :  
 THE COMMONWEALTH OF PUERTO RICO, :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 BETTINA WHYTE, :  
 :  
 as agent of :  
 :

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<sup>1</sup> The Debtors in these title III cases, along with each Debtor’s respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566(LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474), and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).



To the Honorable United States District Court Judge Laura T. Swain:

The Commonwealth Agent respectfully submits this omnibus reply (the “Reply”) (i) in response to the Proposed BONY Objection<sup>2</sup> and the AAFAF Response<sup>3</sup> and AAFAF Sur-Reply<sup>4</sup> (together, the “Responses”) and (ii) and in support of the *Commonwealth Agent’s Urgent Motion, Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019, for Order Establishing Procedures Governing 5.5% SUT Revenues Collected On or After July 1, 2018* [Case No. 17-00257-LTS, Docket No. 495] (the “Urgent Motion”).<sup>5</sup> In support of its Reply, the Commonwealth Agent states as follows:

### REPLY

1. Since filing the Urgent Motion, the Commonwealth Agent has received comments from a number of parties. After discussions with these parties, the Commonwealth Agent has been able to consensually resolve virtually all the issues raised; the revised proposed order, attached hereto as Exhibit A, reflects the resolutions of most of these issues (the “Revised

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<sup>2</sup> The “Proposed BONY Objection” is the *Objection of the Bank of New York Mellon, as Trustee, to Commonwealth Agent’s Urgent Motion, Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019, for Order Establishing Procedures Governing 5.5% SUT Revenues Collected On or After July 1, 2018*, attached as Exhibit B to the *Urgent Motion of the Bank of New York Mellon, as Trustee, for Leave to Intervene in the Commonwealth-COFINA Dispute for a Limited Purpose* [Case No. 17-00257-LTS, Docket No. 503] (the “BONY Intervention Motion”). The Commonwealth Agent believes that other than certain limited procedural issues applicable solely to BONY (in contrast to arguments made by BONY on behalf an amorphous group of “Beneficial Holders”), the BONY Intervention Motion should be denied for the reasons set forth in the *Commonwealth Agent’s Objection to Urgent Motion of Bank of New York Mellon as Trustee, for Leave to Intervene in Commonwealth-COFINA Dispute for a Limited Purpose*, filed concurrently herewith.

<sup>3</sup> The “AAFAF Response” is *AAFAF’s Response to the Commonwealth Agent’s Urgent Motion, Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019, for Order Establishing Procedures Governing 5.5% SUT Revenues Collected On or After July 1, 2018* [Case No. 17-00257-LTS, Docket. No. 501].

<sup>4</sup> The “AAFAF Sur-Reply” is the *Sur-Reply to Joint Response of COFINA Senior Stakeholder to Commonwealth Agent’s Urgent Motion, Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019, for Order Establishing Procedures Governing 5.5% SUT Revenues Collected On or After July 1, 2018* [Dkt NO. 510], [Case No. 17-00257-LTS, Docket. No. 515].

<sup>5</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the Urgent Motion.

Proposed Order”).<sup>6</sup> **It is noteworthy that no holder of COFINA bonds has objected to the Urgent Motion**, for the simple reason that the proposed procedures reflected in the Revised Proposed Order are a critical part of the Agreement in Principle, and that creditors on either side of the Commonwealth-COFINA Dispute understand that they cannot pick and choose which parts of the Agreement in Principle they prefer as it is an integrated settlement. **Indeed, the Oversight Board, the COFINA Agent,<sup>7</sup> the COFINA Senior Bondholders’ Coalition and Ambac Assurance Corporation,<sup>8</sup> National Public Finance Guarantee Corporation,<sup>9</sup> and the Ad Hoc Group of GO Bondholders<sup>10</sup> all support (or do not object to the relief requested in) the Urgent Motion.** Therefore, the only outstanding issues are those raised in the Responses. For the reasons set forth below, the Responses should be overruled.

**I. Proposed BONY Objection Should Be Overruled**<sup>11</sup>

(a) *Urgent Motion Preserves Status Quo in Commonwealth-COFINA Dispute*

2. BONY objects to the Urgent Motion on the basis that the Proposed Order does not preserve the *status quo* but instead alters it in favor of the Commonwealth. However, BONY’s arguments actually highlight the need for the relief sought in the Urgent Motion.

3. The Urgent Motion is the result of the Agents’ settlement negotiations and their agreement to preserve the relative rights of the Commonwealth and COFINA to the SUT

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<sup>6</sup> A redline comparing the Revised Proposed Order to the Proposed Order filed with the Urgent Motion is attached hereto as **Exhibit B**.

<sup>7</sup> Case No. 17-00257-LTS, Docket No. 516.

<sup>8</sup> Case No. 17-00257-LTS, Docket No. 510.

<sup>9</sup> Case No. 17-00257-LTS, Docket No. 512.

<sup>10</sup> Case No. 17-00257-LTS, Docket No. 500.

<sup>11</sup> Because BONY has not been, and (other than certain limited procedural issues applicable solely to BONY (in contrast to arguments made by BONY on behalf an amorphous group of “Beneficial Holders”)) should not be, granted leave to intervene in this adversary proceeding, it has no standing to object to the Urgent Motion, and there is no need for the Commonwealth Agent to address the merits of the Proposed BONY Objection. Nonetheless, the Commonwealth Agent does so out of an abundance of caution and in the event the BONY Intervention Motion is granted.

revenues at the time of the execution of the Agreement in Principle and ensure that the complex and critical legal issues at the core of the Commonwealth-COFINA Dispute are resolved through negotiation and settlement and, only if the settlement ultimately fails, by the court—and not the mere passage of time.

4. As explained in the Urgent Motion, it is possible that, if the settlement were to fail, the court<sup>12</sup> eventually could issue a “split ruling” on the merits of the Commonwealth-COFINA Dispute, pursuant to which the Commonwealth would be held to own all future SUT revenues, but COFINA would be held to own SUT revenues already deposited in the BONY accounts. A confluence of factors -- the possibility of such a “split ruling,” the upcoming resumption on July 1, 2018 of the deposit of SUT revenues into accounts with BONY, and the Abeyance Order -- means that the mere passage of time could inequitably improve COFINA’s position. Thus, in the event of a “split ruling,” the daily collection and transfer of SUT would cause the steady erosion of the Commonwealth’s position beginning on July 1, 2018, and the simultaneous and corresponding improvement of COFINA’s position.<sup>13</sup> The procedures proposed in the Urgent Motion avoid this potential prejudicial result by freezing the legal status of future SUT.<sup>14</sup> Critically, because the Agents have agreed that the court’s ruling on the ownership of SUT not yet collected by the Commonwealth (as of June 30, 2018) shall govern the

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<sup>12</sup> The “split ruling” could also be issued by an appellate court.

<sup>13</sup> This shift in value would make no difference if the Commonwealth-COFINA Dispute were adjudicated prior to July 1, 2018 (even in the event of a “split ruling”) because the relative value of BONY cash vis-à-vis future SUT is and will be stable pre-July 1, 2018 while the Commonwealth is collecting its share of the 5.5% SUT for the current fiscal year, pursuant to the Current Flow of Funds. Moreover, even if a decision were reached after July 1, 2018, the relative value of the two sources of value would make no difference if the court were to rule that both BONY cash and future SUT belong completely to either COFINA or the Commonwealth, as the relative change between the two sources of value is irrelevant if one party can claim them both. Similarly, should a settlement be reached as contemplated under the Agreement in Principle (the result that the Commonwealth Agent desires and expects), the issue would also be irrelevant, because the parties’ settlement will govern both the distribution of cash deposited with BONY and the right to future SUT.

<sup>14</sup> To facilitate this agreed-upon treatment of the collected SUT, the Revised Proposed Order establishes that BONY shall separately account for the Pre-July 1, 2018 Funds and Post-July 1, 2018 Funds.

ownership, as between the Commonwealth and COFINA, of the Post-July 1, 2018 Funds, the Urgent Motion does not prejudice the relative rights of the Commonwealth or COFINA either as they currently exist or as they may be determined by the court in any future ruling.

5. BONY ignores this reality. According to BONY, the effect of the Urgent Motion would be that “funds that otherwise would be deposited with BNYM after July 1, 2018, and held by BNYM in trust for the benefit of Bondowners (sic) (and Beneficial Holders) under the terms of the Resolution would be recharacterized automatically as ‘future’ Pledged Sales Tax as if those funds were not held by BNYM and possession of the funds in trust had no legal significance.”<sup>15</sup> BONY’s position could not be more clear: notwithstanding the Interpleader Order,<sup>16</sup> any funds deposited in an account held by BONY are held solely for the benefit of COFINA bondholders, and the mere fact that BONY holds such funds is itself of legal significance.

6. This is precisely why the Urgent Motion should be granted: if BONY’s position is correct (*i.e.* if, notwithstanding the Interpleader Order, the mere act of holding SUT revenues is of legal significance),<sup>17</sup> failure to grant the Urgent Motion could (in the event of a “split ruling”) have the inequitable result that the Commonwealth’s legal position would be weakened simply because it is engaged in ongoing and productive settlement negotiations while SUT revenues are being deposited in BONY accounts.

7. Therefore, the Urgent Motion and the proposed procedures should be approved under Bankruptcy Rule 9019. As the Proposed BONY Objection makes abundantly clear, there are varying views as to whether the continuing deposit of SUT revenues with BONY is in and of

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<sup>15</sup> Proposed BONY Obj. ¶ 28.

<sup>16</sup> As defined in the Proposed BONY Objection.

<sup>17</sup> For the avoidance of doubt, the Commonwealth Agent disputes this and reserves all rights accordingly.

itself legally significant. The procedures proposed in the Urgent Motion avoid costly (and potentially unnecessary) litigation over the status of the Post-July 1, 2018 Funds; this, on its own, justifies granting the Urgent Motion under Bankruptcy Rule 9019. Moreover, the Agents' agreement regarding the treatment of post-July 1, 2018 Funds allows them to focus on documenting and executing, and obtaining court approval of, the settlement agreement, including through COFINA's title III plan of adjustment, rather than litigating over the issues being settled.

8. In sum, the procedures in the Revised Proposed Order ensure that the *status quo* between the Commonwealth and COFINA is preserved, rather than be altered by the passage of time while the Agents work towards finalizing the settlement. The fact that this results in the alteration of rights that may have otherwise accrued to COFINA post-July 1, 2018 is the nature of any settlement under Bankruptcy Rule 9019. It is also precisely why it is within the authority of the Agents, as part of their overall authority under the Stipulation, to settle the Commonwealth-COFINA Dispute, and it is also an integral element of the Agreement in Principle.

9. BONY's argument that the Urgent Motion somehow violates the due process rights of the Beneficial Holders (as defined in the Proposed BONY Objection) fails for the same reason. BONY believes that if the proposed procedures are imposed "but the settlement ultimately is not consummated, [BONY] and the Beneficial Holders may be deprived of [the] legal rights that attend possession of the Post-July 1, 2018 Funds."<sup>18</sup>

10. As BONY itself points out, the pending summary judgment motions include the Commonwealth Agent's argument that the Commonwealth owns the SUT revenues, regardless of whether they have been deposited with BONY. Therefore, from the perspective of the

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<sup>18</sup> Proposed BONY Obj. ¶ 19.

Beneficial Holders that BONY is concerned with, the *status quo* (absent the Abeyance Order) in the Commonwealth-COFINA Dispute includes, and has always included, the possibility that they will have no rights to any SUT revenues, including the Post-July 1, 2018 Funds. This is exactly the same position that Beneficial Holders will be in if the Urgent Motion is granted and the settlement ultimately fails. Accordingly, the Urgent Motion does not prejudice the rights of Beneficial Holders.

*(b) Other Issues Raised in Proposed BONY Objection Are Without Merit*

11. BONY separately asserts that any order should provide that “[n]otwithstanding anything to the contrary contained in the order, nothing in the order shall alter or impair the validity, priority, or extent of any of BNYM’s rights, claims, liens, or security interests under the Resolution or the Interpleader Order.”<sup>19</sup> However, the Revised Proposed Order already makes clear that all SUT funds on deposit or to be deposited into the BONY accounts continue to remain subject to the Interpleader Order, and that nothing in the Revised Proposed Order “shall affect any party’s rights under the Interpleader Order.”<sup>20</sup> Thus, BONY’s rights under the Interpleader Order in such funds are not altered.

12. Lastly, BONY asserts that “accounting for investment gains on Post-July 1, 2018 Funds [] is burdensome and complicated.” BONY therefore requests that the court mandate procedures “governing the calculation and apportionment of investment gains” and protect BONY from liability for complying with a court order.<sup>21</sup> The Commonwealth Agent has no objection to the latter of these, and, accordingly, the Revised Proposed Order has been revised to provide that BONY is released and discharged from any and all claims and liability relating to

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<sup>19</sup> See Proposed BONY Obj. ¶¶ 5, 31 .

<sup>20</sup> Revised Proposed Order ¶ 3.

<sup>21</sup> See Proposed BONY Obj. ¶ 33.

and arising from BONY's compliance the order.<sup>22</sup> In any event, the Commonwealth Agent believes that separately accounting for the investment gains on the various pools of funds is not unduly burdensome and can be accomplished by creating separate accounts for the investment gains from the separate pools of funds. Alternatively, BONY can simply track investment gains on the separate pools of funds and the precise allocation of such investments gains can be deferred for a later date, as it would only become relevant if the settlement ultimately fails and the court issues a "split ruling" in favor of the Commonwealth.

**II. AAFAP Response Seeks to Litigate Issues Beyond Scope of Urgent Motion and Commonwealth-COFINA Dispute and Should Be Overruled**

13. AAFAP states that any order granting the Urgent Motion must include a "full reservation" of AAFAP and the Government's rights and must not affect the Government's sovereignty, or its rights under PROMESA section 303.<sup>23</sup> The Commonwealth Agent does not dispute that AAFAP may have certain rights under the Stipulation, and does not object to AAFAP preserving those rights. However, the Urgent Motion in no way seeks to restrict or infringe on AAFAP's rights under the Stipulation; in fact, the Revised Proposed Order specifically provides that the "rights (if any) of parties in interest to oppose the settlement described in the Agreement in Principle or otherwise object to entry of an order implementing the settlement . . . are expressly preserved." Moreover, the Revised Proposed Order adds clarifying language that "Nothing herein shall limit or otherwise affect the rights of any party under the Stipulation." This modification should fully address AAFAP's concerns.

14. Notwithstanding the Commonwealth Agent's acknowledgement that AAFAP's rights (if any) should be (and are) preserved, it is at least questionable whether the specific rights

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<sup>22</sup> *Id.*

<sup>23</sup> AAFAP Resp. at 2.

AAFAP seeks to “preserve” here are rights that AAFAP actually possesses under the Stipulation. Accordingly, the Commonwealth Agent cannot agree to the language proposed by AAFAP in its revised proposed order,<sup>24</sup> as the scope of AAFAP’s (and any other party’s) rights under the Stipulation should not be litigated in the context of the Urgent Motion.

15. Specifically, AAFAP asserts that the sovereign rights it seeks to “preserve” in connection with section 303 of PROMESA include rights over the “structure” of COFINA, the “treatment and handling of SUT revenue,” and the right to “seek modification of” the Agreement in Principle. Whether the Stipulation grants AAFAP such rights is questionable, given that the Stipulation (i) includes an express waiver of the sovereign protections of section 305 of PROMESA and (ii) is clear that negotiation of a settlement is left to the Agents, and will be “effective upon” the Commonwealth upon the satisfaction of certain conditions, none of which require the Commonwealth or AAFAP’s consent, and, in fact, expressly prohibits AAFAP from “contest[ing] any judgment made by the Agents pursuant to subparagraph f.”<sup>25</sup>

16. Stated otherwise, AAFAP’s rights regarding the Commonwealth-COFINA Dispute and the Agreement in Principle are set forth in the Stipulation and are neither impaired nor affected by the Urgent Motion. Determination of the exact extent of AAFAP’s rights (or any other party’s rights) under the Stipulation are not the subject of the Urgent Motion—which expressly leaves all such rights undisturbed—and can be determined (if necessary) at a later time. Moreover, AAFAP’s request that the order state that it does not affect any SUT revenues collected after the PSTBA is first reached for each fiscal year is unnecessary, as the Revised Proposed Order already clarifies that it does not affect “the collection, transfer, or deposit of SUT revenues that are not deposited with BONY.” (emphasis added)

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<sup>24</sup> See Ex. B to AAFAP Resp.

<sup>25</sup> Stipulation ¶ 4.k.

17. Separate from its demand for a reservation of rights, AAFAF also states that it does not object to the Urgent Motion “provided that the Proposed Order fully reflects the narrow scope of the relief sought.”<sup>26</sup> While benign in theory, AAFAF’s formulation of the narrow scope of the Urgent Motion is not only beyond the scope of the relief sought in the Urgent Motion, it actually would inappropriately expand the scope of the Commonwealth-COFINA Dispute. In particular, AAFAF demands that any order granting the Urgent Motion make clear that its entry does not constitute a breach of the COFINA Amended and Restated Sales Tax Revenue Bond Resolution adopted on July 13, 2007.<sup>27</sup> However, the question of what is a breach of the COFINA resolution is a purely intra-COFINA creditor dispute not properly before the court in this adversary proceeding. As the court knows well, the question of whether there has been a breach of the COFINA resolution is the subject of the interpleader action commenced by BONY separately pending before the court, in which neither of the Agents is a party.

18. Finally, AAFAF states that “the Commonwealth-COFINA Dispute only concerns the ownership of the PSTBA and will not resolve issues antecedent to the question of ownership,” and demands that any order granting the Urgent Motion clarify that any ruling on ownership of the SUT revenues is subject to these “antecedent” issues.<sup>28</sup> The question of exactly what issues are within the “scope” of the Stipulation and can be settled by the Agents is already the subject of multiple court orders;<sup>29</sup> it is wholly inappropriate to use the Urgent Motion to relitigate these issues, and the court should therefore reject AAFAF’s requested language (which is, in any event, ambiguous). Moreover, the Revised Proposed Order now clarifies that the

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<sup>26</sup> AAFAF Resp. at 2.

<sup>27</sup> AAFAF Resp. at 3.

<sup>28</sup> It appears that AAFAF may have intended to refer to “issues *subsequent* to the question of ownership.”

<sup>29</sup> *See, e.g., Order Granting Joint Urgent Motion of the Financial Oversight and Management Board for Puerto Rico, the Commonwealth Agent, and the COFINA Agent for an Order Expanding for Mediation Purposes Only Authority and Immunity Protections* [Case No. 17-00257-LTS, Docket. No. 284].

court's ruling will only determine the ownership issues as between the Commonwealth and COFINA (in contrast to the relationship between COFINA and its creditors), which should more than address the AAFAF's concern.

**III. Other Modifications to Revised Proposed Order**

19. The Revised Proposed Order also resolves concerns informally raised by certain COFINA junior bondholders regarding the open-endedness of the procedures in paragraph 2(c) (*i.e.*, the provision pursuant to which, in the event the settlement fails, post-July 1 funds would be considered future SUT). In particular, the Revised Proposed Order now provides that post-July 1 funds received by BONY after the earlier of (a) 30 days after the end of the abeyance period (as it may be extended or renewed by the court) and (b) a ruling by the court on the pending summary judgment motions, would not receive the benefit of paragraph 2(c).

**IV. Coordination with Other Parties to Avoid Duplication**

20. The Commonwealth Agent has coordinated with the COFINA Agent to avoid undue duplication, and files this separate Reply to address issues not addressed by the COFINA Agent, particularly with respect to the Proposed BONY Objection.

*[Remainder of page intentionally left blank.]*

WHEREFORE, the Commonwealth Agent respectfully requests that the Urgent Motion be granted.

Dated: June 22, 2018

/s/ G. Alexander Bongartz Esq.

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- and -

/s/ Juan J. Casillas Ayala

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**EXHIBIT A**

**Revised Proposed Order**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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In re: :  
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THE FINANCIAL OVERSIGHT AND :  
MANAGEMENT BOARD FOR PUERTO RICO, : PROMESA  
 : Title III  
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as representative of :  
 : Case No. 17-BK-3283 (LTS)  
 :  
THE COMMONWEALTH OF PUERTO RICO *et al.*, :  
 : (Jointly Administered)  
 :  
Debtors.<sup>1</sup> :  
-----X  
THE OFFICIAL COMMITTEE OF UNSECURED :  
CREDITORS OF THE COMMONWEALTH OF :  
PUERTO RICO, :  
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as agent of :  
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THE FINANCIAL OVERSIGHT AND :  
MANAGEMENT BOARD FOR PUERTO RICO :  
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as representative of : Adv. Proc. No. 17-00257-LTS  
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THE COMMONWEALTH OF PUERTO RICO, :  
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Plaintiff, :  
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v. :  
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BETTINA WHYTE, :  
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as agent of :  
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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474), and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).

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| THE FINANCIAL OVERSIGHT AND         | : |
| MANAGEMENT BOARD FOR PUERTO RICO    | : |
|                                     | : |
| as representative of                | : |
|                                     | : |
| THE PUERTO RICO SALES TAX FINANCING | : |
| CORPORATION,                        | : |
|                                     | : |
| Defendant.                          | : |
| -----X                              |   |

**ORDER, PURSUANT TO BANKRUPTCY CODE SECTION 105(a) AND  
BANKRUPTCY RULE 9019, ESTABLISHING PROCEDURES GOVERNING  
5.5% SUT REVENUES COLLECTED ON OR AFTER JULY 1, 2018**

Upon the *Commonwealth Agent’s Urgent Motion, Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019, for Order Establishing Procedures Governing 5.5% SUT Revenues Collected on or After July 1, 2018* (the “Urgent Motion”);<sup>2</sup> and the court having found it has subject matter jurisdiction over this matter pursuant to section 306(a) of PROMESA; and it appearing that venue is proper pursuant to section 307(a) of PROMESA; and the court having found that the relief requested in the Urgent Motion is in the best interests of the Commonwealth, its creditors, and other parties in interest and satisfies the standard for approval of a compromise or settlement in accordance with Bankruptcy Rule 9019; and the court having found that the movants provided adequate and appropriate notice of the Urgent Motion under the circumstances and that no other or further notice is required; and the court having reviewed the Urgent Motion; and the court having determined that the legal and factual bases set forth in the Urgent Motion establish just cause for the relief granted herein; and any objections to the relief requested in the Urgent Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Urgent Motion.

IT IS HEREBY ORDERED THAT:

1. The Urgent Motion is granted to the extent set forth herein.
2. The following procedures shall govern the 5.5% SUT revenues on deposit and to be deposited with BONY:
  - (a) BONY shall separately account for (i) all 5.5% SUT revenues currently in BONY accounts or received on or before June 30, 2018 (the “Pre-July 1 2018 Funds”), (ii) all 5.5% SUT revenues received by BONY on or after July 1, 2018 and prior to the earlier of (x) the end of the 60-day abeyance period provided for in the Abeyance Order (as such period may be extended or subsequently renewed by further order of the Court) plus 30 calendar days or (y) the date of a ruling by this court on the pending motions for summary judgment in this Adversary Proceeding (such period, the “Abeyance Period” and the funds received during such period, the “Abeyance Period Funds”), and (iii) all 5.5% SUT Revenues received by BONY following the conclusion of such Abeyance Period (the “Post-Abeyance Period Funds”), so as to ensure that the three pools of funds (and proceeds from investment of such funds) are clearly identifiable;
  - (b) Upon the effective date of the settlement, the Abeyance Period Funds and Post-Abeyance Period Funds shall be allocated and released to the Commonwealth and COFINA in accordance with the percentage shares of the PSTBA set forth in the settlement agreement (*i.e.*, 53.65% for COFINA, which would be the first dollars of the 5.5% SUT, and 46.35% for the Commonwealth) (as it may be modified by a settlement agreement

or order of this court, including an order confirming a plan of adjustment for COFINA or an order authorizing such settlement agreement pursuant to Rule 9019 in the Commonwealth's Title III case); and

- (c) In the event that either (x) the Agents do not execute a settlement agreement by August 4, 2018 or (y) the effective date of COFINA's Title III plan of adjustment approving and incorporating the settlement does not occur within 200 days after the Commonwealth Agent and the COFINA Agent have executed the settlement agreement (as such deadlines may be extended pursuant to the terms of the Agreement in Principle), then the court's eventual ruling on the ownership of 5.5% SUT not yet collected by the Commonwealth (as of June 30, 2018) shall govern the ownership, as between the Commonwealth and COFINA, of the Abeyance Period Funds (it being understood that neither party is waiving any appellate rights with respect to such determination).

3. For the avoidance of doubt, all SUT funds on deposit or to be deposited into the BONY accounts, including the Pre-July 1, 2018 Funds, the Abeyance Period Funds, and the Post-Abeyance Period Funds, shall continue to remain subject to the *Order Granting Interpleader, Staying Pending and Future Litigation Against Bank of New York Mellon, as Trustee, Pursuant to 28 U.S.C § 2361, and Granting Related Relief* [Docket No. 110 in Adv. Proc. 17-00133 (LTS)] (the "Interpleader Order"), and nothing in this Order shall affect any party's rights under the Interpleader Order. Further, BONY is hereby released and discharged from any and all claims and liability relating to and arising from BONY's compliance with this Order.

4. Nothing in this Order affects the collection, transfer, or deposit of SUT revenues that are not deposited with BONY.

5. To the extent there is any conflict between the terms of the Agreement in Principle and the terms of this Order, this Order shall govern.

6. The Commonwealth, COFINA, BONY, Banco Popular, the GDB, the Commonwealth Agent, and the COFINA Agent are authorized and directed to take all actions necessary to effectuate the relief granted pursuant to this Order.

7. This Order shall not be stayed and shall be valid and fully effective immediately upon entry.

8. The rights (if any) of parties in interest to oppose the settlement described in the Agreement in Principle or otherwise to object to entry of any order implementing the settlement, including an eventual order confirming COFINA's Title III plan of adjustment or an order approving the settlement under Bankruptcy Rule 9019 in the Commonwealth's Title III case, are expressly preserved. Nothing in this Order shall limit or otherwise affect the rights of any party under the Stipulation.

9. This court shall retain exclusive jurisdiction over all matters pertaining to the implementation, interpretation, and enforcement of this Order.

Dated: June \_\_\_, 2018

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HONORABLE LAURA T. SWAIN  
UNITED STATES DISTRICT JUDGE

**EXHIBIT B**

**Redline of Revised Proposed Order**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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x  
In re: :

THE FINANCIAL OVERSIGHT AND :  
MANAGEMENT BOARD FOR PUERTO RICO, : PROMESA  
: Title III  
as representative of :  
: Case No. 17-BK-3283 (LTS)

THE COMMONWEALTH OF PUERTO RICO *et* :  
*al.*, :  
: (Jointly Administered)

Debtors.<sup>1</sup> :

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x  
THE OFFICIAL COMMITTEE OF UNSECURED :  
CREDITORS OF THE COMMONWEALTH OF :  
PUERTO RICO, :

as agent of ÷

as agent of ÷

THE FINANCIAL OVERSIGHT AND :  
MANAGEMENT BOARD FOR PUERTO RICO :

as representative of ÷ Adv. Proc. No. 17-00257-LTS

as representative of ÷ Adv. Proc. No. 17-00257-LTS

THE COMMONWEALTH OF PUERTO RICO, :

÷

÷

<sup>1</sup> The Debtors in these Title III cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474), and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).

|   |   |
|---|---|
| Plaintiff,  | : |
|   | ÷ |
|   | ± |
| v.  | : |
|   | ÷ |
|   | ± |
| BETTINA WHYTE,  | : |
|   | ÷ |
|   | ± |
| as agent of   | : |
|   | ÷ |
|   | ± |
| THE FINANCIAL OVERSIGHT AND<br>MANAGEMENT BOARD FOR PUERTO RICO | : |
|   | ÷ |
|   | ± |
| <u>as representative of</u>                                     | : |
|   | ÷ |
|   | ± |
| <u>as representative of</u>                                     | : |
|   | ÷ |
|   | ± |
| THE PUERTO RICO SALES TAX FINANCING<br>CORPORATION,             | : |
|   | ÷ |
|   | ± |
| Defendant.  | : |

x

**ORDER, PURSUANT TO BANKRUPTCY CODE SECTION 105(a) AND BANKRUPTCY RULE 9019, ESTABLISHING PROCEDURES GOVERNING 5.5% SUT REVENUES COLLECTED ON OR AFTER JULY 1, 2018**

Upon the *Commonwealth Agent’s Urgent Motion, Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019, for Order Establishing Procedures Governing 5.5% SUT Revenues Collected on or After July 1, 2018* (the “Urgent Motion”);<sup>2</sup> and the court having found it has subject matter jurisdiction over this matter pursuant to section 306(a) of PROMESA; and it appearing that venue is proper pursuant to section 307(a) of PROMESA; and the court having found that the relief requested in the Urgent Motion is in the best interests of the Commonwealth, its creditors, and other parties in interest and satisfies the standard for approval of a compromise

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Urgent Motion.

or settlement in accordance with Bankruptcy Rule 9019; and the court having found that the movants provided adequate and appropriate notice of the Urgent Motion under the circumstances and that no other or further notice is required; and the court having reviewed the Urgent Motion; and the court having determined that the legal and factual bases set forth in the Urgent Motion establish just cause for the relief granted herein; and any objections to the relief requested in the Urgent Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Urgent Motion is granted ~~asto the extent~~ set forth herein.
2. The following procedures shall govern the 5.5% SUT revenues on deposit and to be deposited with BONY:

- (a) BONY shall separately account for (i) all 5.5% SUT revenues currently in BONY accounts or received on or before June 30, 2018 (the "Pre-July 1 2018 Funds") ~~and~~, (ii) all 5.5% SUT revenues received by BONY on or after July 1, 2018 (~~the "Post-July 1, 2018~~ and prior to the earlier of (x) the end of the 60-day abeyance period provided for in the Abeyance Order (as such period may be extended or subsequently renewed by further order of the Court) plus 30 calendar days or (y) the date of a ruling by this court on the pending motions for summary judgment in this Adversary Proceeding (such period, the "Abeyance Period" and the funds received during such period, the "Abeyance Period Funds"), and (iii) all 5.5% SUT Revenues received by BONY following the conclusion of such Abeyance Period (the "Post-Abeyance Period Funds")), so as to ensure that the ~~two~~ three pools of

funds (and proceeds from investment of such funds) are clearly identifiable;

- (b) Upon the effective date of the settlement, the ~~Post-July 1, 2018~~Abeyance Period Funds and Post-Abeyance Period Funds shall be allocated and released to the Commonwealth and COFINA in accordance with the percentage shares of the PSTBA set forth in the settlement agreement (*i.e.*, 53.65% for COFINA, which would be the first dollars of the 5.5% SUT, and 46.35% for the Commonwealth) (as it may be modified by a settlement agreement or order of this court, including an order confirming a plan of adjustment for COFINA or an order authorizing such settlement agreement pursuant to Rule 9019 in the Commonwealth's Title III case); and
- (c) In the event that either (x) the Agents do not execute a settlement agreement by August 4, 2018 or (y) the effective date of COFINA's Title III plan of adjustment approving and incorporating the settlement does not occur within 200 days after the Commonwealth Agent and the COFINA Agent have executed the settlement agreement (as such deadlines may be extended pursuant to the terms of the Agreement in Principle), then the court's eventual ruling on the ownership of 5.5% SUT not yet collected by the Commonwealth (as of June 30, 2018) shall govern the ~~disposition of the Post-July 1, 2018~~ownership, as between the Commonwealth and COFINA, of the Abeyance Period Funds (it being understood that neither party is waiving any appellate rights with respect to such determination).

3. For the avoidance of doubt, all SUT funds on deposit or to be deposited into the BONY accounts, including the Pre-July 1, 2018 Funds, [the Abeyance Period Funds](#), and the Post-~~July 1, 2018~~[Abeyance Period](#) Funds, shall continue to remain subject to the *Order Granting Interpleader, Staying Pending and Future Litigation Against Bank of New York Mellon, as Trustee, Pursuant to 28 U.S.C § 2361, and Granting Related Relief* [Docket No. 110 in Adv. Proc. 17-00133 (LTS)] [\(the “Interpleader Order”\)](#), [and nothing in this Order shall affect any party’s rights under the Interpleader Order. Further, BONY is hereby released and discharged from any and all claims and liability relating to and arising from BONY’s compliance with this Order.](#)

4. Nothing in this Order affects the collection, transfer, or deposit of SUT revenues that are not deposited with BONY.

5. To the extent there is any conflict between the terms of the Agreement in Principle and the terms of this Order, this Order shall govern.

6. The Commonwealth, COFINA, BONY, Banco Popular, the GDB, the Commonwealth Agent, and the COFINA Agent are authorized and directed to take all actions necessary to effectuate the relief granted pursuant to this Order.

7. This Order shall not be stayed and shall be valid and fully effective immediately upon entry.

8. The rights (if any) of parties in interest to oppose the settlement described in the Agreement in Principle or otherwise to object to entry of any order implementing the settlement, including an eventual order confirming COFINA’s Title III plan of adjustment or an order approving the settlement under Bankruptcy Rule 9019 in the Commonwealth’s Title III case, are

expressly preserved. Nothing in this Order shall limit or otherwise affect the rights of any party under the Stipulation.

9. This court shall retain exclusive jurisdiction over all matters pertaining to the implementation, interpretation, and enforcement of this Order.

Dated: June \_\_\_, 2018

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HONORABLE LAURA T. SWAIN  
UNITED STATES DISTRICT JUDGE