

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
PUERTO RICO SALES TAX FINANCING,
CORPORATION ("COFINA")
Debtor.
PROMESA
Title III
Case No. 17-BK-3284 (LTS)

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF THE COMMONWEALTH OF
PUERTO RICO,
as agent of
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO

1 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).



Chardón Street, Federal Building, Office 150, San Juan, Puerto Rico 00918-1767 on **July 25, 2018 at 9:30 a.m. (ET) / 9:30 a.m. (AST)** (the “Hearing”).

**PLEASE TAKE FURTHER NOTICE** that any responses or objections (each such response or objection an “Objection”) to the Renewed Motion by any party shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the District of Puerto Rico, shall be filed with the court (a) by attorneys practicing in the District Court, including attorneys admitted *pro hac vice*, electronically in accordance with Rule 5 of the Local Rules for the District of Puerto Rico, and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF), and served on Paul Hastings LLP so as to be received no later than **July 23, 2018 at 12:00 p.m. (ET) / 12:00 p.m. (AST)** (the “Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that, in accordance with the *Fourth Amended Notice, Case Management and Administrative Procedures* [Docket No. 2839], if no Objections are timely filed, the court may grant the relief requested without a hearing.

Dated: July 3, 2018

/s/ G. Alexander Bongartz

PAUL HASTINGS LLP  
Luc. A. Despins, Esq. (*Pro Hac Vice*)  
James R. Bliss, Esq. (*Pro Hac Vice*)  
James B. Worthington, Esq. (*Pro Hac Vice*)  
G. Alexander Bongartz, Esq. (*Pro Hac Vice*)  
200 Park Avenue  
New York, New York 10166  
Telephone: (212) 318-6000  
lucdespins@paulhastings.com  
alexbongartz@paulhastings.com

*Counsel to the Official Committee of Unsecured  
Creditors of all title III Debtors (other than COFINA),  
as Commonwealth Agent*

- and -

*/s/ Juan J. Casillas Ayala* \_\_\_\_\_

CASILLAS, SANTIAGO & TORRES LLC  
Juan J. Casillas Ayala, Esq., USDC - PR 218312  
Diana M. Batlle-Barasorda, Esq., USDC - PR 213103  
Alberto J. E. Añeses Negrón, Esq., USDC - PR 302710  
Ericka C. Montull-Novoa, Esq., USDC - PR 230601  
El Caribe Office Building  
53 Palmeras Street, Ste. 1601  
San Juan, Puerto Rico 00901-2419  
Telephone: (787) 523-3434  
jcasillas@cstlawpr.com  
dbattle@cstlawpr.com  
aaneses@cstlawpr.com  
emontull@cstlawpr.com

*Local Counsel to the Official Committee of Unsecured  
Creditors of all title III Debtors (other than COFINA),  
as Commonwealth Agent*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
PUERTO RICO SALES TAX FINANCING,
CORPORATION ("COFINA")
Debtor.
PROMESA
Title III
Case No. 17-BK-3284 (LTS)

THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF THE COMMONWEALTH OF
PUERTO RICO,
as agent of
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO

1 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).

as representative of	:	Adv. Proc. No. 17-00257-LTS
THE COMMONWEALTH OF PUERTO RICO,	:	
Plaintiff,	:	
v.	:	
BETTINA WHYTE,	:	
as agent of	:	
THE FINANCIAL OVERSIGHT AND	:	
MANAGEMENT BOARD FOR PUERTO RICO	:	
as representative of	:	
THE PUERTO RICO SALES TAX FINANCING	:	
CORPORATION,	:	
Defendant.	:	
-----	:	X

**COMMONWEALTH AGENT’S RENEWED 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**

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

The Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) (the “Committee”), as the “Commonwealth Agent” with respect to the “Commonwealth-COFINA Dispute,” as defined in the *Stipulation and Order Approving Procedure to Resolve Commonwealth-COFINA Dispute* [Docket No. 996 in Case No. 17-3283 (LTS)] (the “Stipulation”) respectfully submits this motion (the “Renewed Motion”) (i) renewing its SUT Procedures Motion<sup>2</sup> pursuant to the court’s June 29, 2018 *Memorandum Order* [Docket

---

<sup>2</sup> The “SUT Procedures Motion” is 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*

No. 525 in Case No. 17-257 (LTS)] (the “SUT Procedures Order”) denying, without prejudice, the SUT Procedures Motion to the extent it sought to impose a procedure for the treatment of 5.5% SUT deposited with BONY on or after July 1, 2018 if the Commonwealth-COFINA settlement is not finalized and approved by the Court (the “Disposition Procedure”) and (ii) requesting entry of an order (the “Proposed Order”),<sup>3</sup> substantially in the form annexed hereto as **Exhibit A**, approving procedures governing the 5.5% portion of the sales and use taxes (the “5.5% SUT”) collected by the Commonwealth on or after July 1, 2018, **in light of the agreement reached between the Commonwealth Agent and BONY regarding notice to all holders of beneficial interests (the “Beneficial Holders”) in the COFINA bonds**. In support of its Renewed Motion, the Commonwealth Agent states as follows:

**PRELIMINARY STATEMENT**

1. As the court noted in its SUT Procedures Order, BONY filed the only objection to the SUT Procedures Motion, its primary concern being the lack of sufficient notice to the Beneficial Holders. In light of the concerns raised by BONY, the court denied, without prejudice, the SUT Procedures Motion to the extent it sought to impose the Disposition Procedure.<sup>4</sup>

2. Following entry of the SUT Procedures Order, the Commonwealth Agent and BONY engaged in further discussions to address BONY’s concerns regarding notice to Beneficial Holders. As a result of these discussions, the Commonwealth Agent and BONY have

---

*Collected On or After July 1, 2018* [Docket No. 495 in Adv. Proc. No. 17-257 (LTS)]. Capitalized terms used but not defined herein shall have the meanings set forth in the SUT Procedures Motion

<sup>3</sup> Other than (i) inclusion of the Disposition Procedures and (ii) a statement that it replaces the SUT Procedures Order, the Proposed Order is identical to the version filed with the Commonwealth Agent’s reply in support of the SUT Procedures Motion [Docket No. 517 in Case No. 17-257 (LTS)] (the “Reply”), as approved and modified by the SUT Procedures Order.

<sup>4</sup> The SUT Procedures Order (i) granted the remaining relief requested in the SUT Procedures Motion and (ii) directed the parties to confer and, by July 6, 2018, jointly propose an order detailing specific procedures regarding the calculation and apportionment of investment gains. The parties are in the process of negotiating and preparing this order, and will seek to comply with the July 6, 2018 deadline.

agreed to take a number of steps to provide notice of the Renewed Motion to all Beneficial Holders, including notice through The Depository Trust Company, notice on the website of the Municipal Securities Rulemaking Board (a website routinely relied on and used by investors in municipal debt instruments and where municipal debt issuers routinely post materials), and publication notice, with an opportunity to object until **Monday, July 23, at noon (AST)**, *i.e.*, 20 days after the filing of this Renewed Motion, all as further detailed below. BONY has agreed that if notice is provided in accordance with these procedures, and assuming it does not receive a contrary direction from the holders of COFINA bonds in accordance with the applicable bond resolution, it will not object to the Renewed Motion. Accordingly, in light of this resolution, the Commonwealth Agent renews its request for approval of the Disposition Procedure.

### **RELEVANT BACKGROUND**<sup>5</sup>

3. On June 14, 2018, the Commonwealth Agent filed the SUT Procedures Motion, seeking to address an integral and time-sensitive component of the Agreement in Principle as the Commonwealth Agent and the COFINA Agent continue to work towards documenting and obtaining court approval of the settlement. As discussed in the Reply, the procedures proposed in the SUT Procedures Motion, including the Disposition Procedure, have the support of virtually all parties in interest, including the Oversight Board, the COFINA Agent, the COFINA Senior Bondholders' Coalition and Ambac Assurance Corporation, National Public Finance Guarantee Corporation, and the Ad Hoc Group of GO Bondholders. Indeed, the BONY Objection<sup>6</sup> was the only substantive objection to the SUT Procedures Motion.<sup>7</sup>

---

<sup>5</sup> In the interest of economy and to avoid burdening the court with unnecessarily lengthy pleadings, the Commonwealth Agent incorporates by reference the facts and other relevant background information set forth in the SUT Procedures Motion.

<sup>6</sup> The "**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

4. As explained in the SUT Procedures Order, BONY objected to the Disposition Procedure on the ground that Beneficial Holders were not provided sufficient notice of the possibility that “in the event that the Court’s ruling on the ownership of the Pledged SUT is premised on different treatment of funds that have been deposited with [BONY], and funds that have not yet been so deposited,” the rights of such Beneficial Holders could be affected.<sup>8</sup> Noting that paragraphs 4.i and 4.1 of the Stipulation provide for a “detailed settlement approval process, including a notice and hearing procedure for any parties in interest,” the court determined that the “Disposition Procedure cannot be approved **at this time**,” and, accordingly, denied the SUT Procedures Motion “**without prejudice** to the extent it seeks to impose the proposed Disposition Procedure.”<sup>9</sup>

### **RENEWED MOTION**

#### **I. Agreed Notice Procedures**

5. The Commonwealth Agent and BONY have agreed to take the following steps to provide notice of the Disposition Procedure to Beneficial Holders (collectively, the “Agreed Notice Procedures”):

- The Commonwealth Agent will file the Renewed Motion on the docket of the above-captioned adversary proceeding, as well on the main docket in COFINA’s title III case, Case No. 17-BK-3284 (LTS);

---

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* [Docket No. 503 in Adv. Proc. No. 17-257 (LTS)] (the “BONY Intervention Motion”). The BONY Intervention Motion was approved by order dated June 28, 2018. See Docket No. 524 in Adv. Proc. No. 17-257 (LTS).

<sup>7</sup> AAFAF filed a response to the SUT Procedures Motion that did not object to the relief requested, but sought various “clarifications” to any order granting the motion. As recognized in the SUT Procedures Order, these “clarifications” are outside of the scope of the relief requested in the SUT Procedures Motion. See SUT Proc. Order at 3.

<sup>8</sup> See SUT Proc. Order at 4.

<sup>9</sup> *Id.* (emphasis added).

- The Commonwealth Agent will have filed the Renewed Motion in the afternoon on July 3, 2018 such that BONY is able to provide notice of the filing to The Depository Trust Company (“DTC”) (for purposes of distributing notice to Beneficial Holders) by the close of business on July 3, 2018;
- The deadline for Beneficial Holders to object to the Renewed Motion is **12:00 p.m. (AST) on July 23, 2018**;<sup>10</sup>
- Notice of the Renewed Motion, including a cover letter prepared by BONY and a copy of the Renewed Motion and the SUT Procedures Motion, will be posted on the EMMA website as soon as practicable;
- Notice of the Renewed Motion will be published within seven days of filing of the Renewed Motion in (i) the national edition of the *USA Today* and (ii) in Spanish, in *El Nuevo Dia*, a publication of general circulation in Puerto Rico;<sup>11</sup> and
- The Renewed Motion will be heard on **July 25, 2018 at 9:30 a.m. (AST)** (*i.e.*, the next scheduled omnibus hearing).

6. The Commonwealth Agent respectfully submits that the Agreed Notice

Procedures address any concerns regarding the sufficiency of notice to Beneficial Holders and the possible impact of the Disposition Procedure on their rights.

## **II. Notice of SUT Procedures Motion Is Governed by Case Management Procedures**

7. Approval of the SUT Procedures Motion, including the Disposition Procedure and the sufficiency of notice thereof, is governed by the Case Management Procedures, not the Stipulation. Paragraph 4.i of the Stipulation speaks to the approval process of “[a]ny settlement negotiated pursuant to the protocol approved herein,” and states that “[s]uch settlement” will only be effective with respect to COFINA upon confirmation of a title III plan of adjustment for COFINA “incorporating such settlement.”<sup>12</sup> Paragraph 4.l similarly only applies in “the event that the Commonwealth-COFINA Dispute is resolved by a settlement developed under this

---

<sup>10</sup> This objection deadline will apply only to those Beneficial Holders who did not receive notice of the SUT Procedures Motion when it was originally filed. Parties who previously received notice of the SUT Procedures Motion already had their opportunity to object to the requested relief.

<sup>11</sup> A copy of the form of publication notice is attached hereto as **Exhibit B**.

<sup>12</sup> See Stipulation ¶ 4.i.

protocol,” and states that the Oversight Board shall file a title III plan for COFINA that incorporates “such settlement” and provides for distributions of COFINA’s property consistent with the mediation of the Commonwealth-COFINA Dispute.<sup>13</sup>

8. The language “such settlement” that appears throughout Paragraphs 4.i and 4.l of the Stipulation does not apply to the Disposition Procedure because the SUT Procedures Motion is not a settlement of the Commonwealth-COFINA Dispute. The SUT Procedures Motion is designed to clear the path for settlement discussions to continue and **applies only in the event such negotiations fail; it is, therefore, the exact opposite of “such [a] settlement.”**

9. Not every agreement reached between the Agents in the context of the conduct of the Commonwealth-COFINA Dispute is necessarily a “settlement” subject to the “COFINA Plan” approval provisions under the Stipulation. To just give a few hypothetical examples, the approval procedures clearly would not apply to an agreement between the Agents regarding stipulated facts, allocation of burden of proof, and scope of expert testimony, even if any of these agreements could ultimately end up having a material impact on the outcome of the litigation. Moreover, it would appear that treating the SUT Procedures Motion as a “settlement” under these provisions leads to a manifestly illogical result. The Disposition Procedure to which BONY objected applies only if settlement of the Commonwealth-COFINA Dispute fails. If the SUT Procedures Motion is a “settlement” within the meaning of the Stipulation, then it would have to be incorporated into a plan of adjustment for COFINA, and would require creditors to vote on whether they are in favor of a settlement that already failed. Moreover, a plan of adjustment that incorporates—and provides distributions to COFINA creditors based on—a settlement resolving the Commonwealth-COFINA Dispute cannot, at the same time, provide for

---

<sup>13</sup> *Id.* at ¶4.1.

treatment of sales and use tax revenues based on the assumption that the settlement failed.

Accordingly, by its plain terms, the Stipulation's settlement approval procedures are inapplicable to the limited relief sought in the Renewed Motion.

10. For these reasons, notice of the SUT Procedures Motion, including the Disposition Procedure, is governed by the Case Management Procedures approved by the court that govern (among other things) the notice and service of pleadings in these title III cases and related adversary proceedings.<sup>14</sup>

11. The Case Management Procedures state that any creditor or party in interest that wishes to receive notice in these Title III cases must file a Notice of Appearance, and that pleadings related to a compromise or settlement must be served on the Master Service List and on any Affected Parties (as defined in the Case Management Procedures).<sup>15</sup> The Agreed Notice Procedures provide Beneficial Holders that have not filed a Notice of Appearance with sufficient notice under the Case Management Procedures.<sup>16</sup>

### **CONCLUSION**

12. The Disposition Procedure is supported by virtually all parties in interest, including the Oversight Board, the COFINA Agent, the COFINA Senior Bondholders' Coalition and Ambac Assurance Corporation, National Public Finance Guarantee Corporation, and the Ad Hoc Group of GO Bondholders. No party, other than BONY, objected to the Disposition Procedure. Further, as a result of the Agreed Notice Procedures agreed to by the Commonwealth and BONY, BONY has confirmed that it will not object to the Renewed Motion absent contrary

---

<sup>14</sup> The "Case Management Procedures" are the *Fourth Amended Notice, Case Management and Administrative Procedures*, approved by the *Order Further Amending Case Management Procedures* [Docket No. 2839 in Case No. 17-3283 (LTS)].

<sup>15</sup> The SUT Procedures Motion was served on the Master Service List, including counsel to BONY. *See Certificate of Service* [Docket No. 499 in Adv. Proc. No. 17-257 (LTS)] (the "Certificate of Service").

<sup>16</sup> Beneficial Holders that have filed a Notice of Appearance have already received notice. *See id.*

direction from bondholders in accordance with the applicable bond resolution. Moreover, the Agreed Notice Procedures ensure that notice of the Renewed Motion and of the Disposition Procedure will be provided to all beneficial interest holders.

*[Remainder of page intentionally left blank.]*

WHEREFORE, the Commonwealth Agent respectfully requests that the court enter the Proposed Order attached hereto as **Exhibit A**, granting the relief requested herein and any other relief as is just and proper.

Dated: July 3, 2018

/s/ G. Alexander Bongartz

PAUL HASTINGS LLP  
Luc. A. Despins, Esq. (*Pro Hac Vice*)  
James R. Bliss, Esq. (*Pro Hac Vice*)  
James B. Worthington, Esq. (*Pro Hac Vice*)  
G. Alexander Bongartz, Esq. (*Pro Hac Vice*)  
200 Park Avenue  
New York, New York 10166  
Telephone: (212) 318-6000  
lucdespins@paulhastings.com  
alexbongartz@paulhastings.com

*Counsel to the Official Committee of Unsecured  
Creditors of all title III Debtors (other than COFINA),  
as Commonwealth Agent*

- and -

/s/ Juan J. Casillas Ayala

CASILLAS, SANTIAGO & TORRES LLC  
Juan J. Casillas Ayala, Esq., USDC - PR 218312  
Diana M. Batlle-Barasorda, Esq., USDC - PR 213103  
Alberto J. E. Añeses Negrón, Esq., USDC - PR 302710  
Ericka C. Montull-Novoa, Esq., USDC - PR 230601  
El Caribe Office Building  
53 Palmeras Street, Ste. 1601  
San Juan, Puerto Rico 00901-2419  
Telephone: (787) 523-3434  
jcasillas@cstlawpr.com  
dbattle@cstlawpr.com  
aaneses@cstlawpr.com  
emontull@cstlawpr.com

*Local Counsel to the Official Committee of Unsecured  
Creditors of all title III Debtors (other than COFINA),  
as Commonwealth Agent*

**EXHIBIT A**

**Proposed Order**

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

-----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> :  
 -----X

In re: :  
 :  
 THE FINANCIAL OVERSIGHT AND :  
 MANAGEMENT BOARD FOR PUERTO RICO, : PROMESA  
 : Title III  
 as representative of :  
 : Case No. 17-BK-3284 (LTS)  
 PUERTO RICO SALES TAX FINANCING, :  
 CORPORATION (“COFINA”) :  
 Debtor. :  
 -----X

THE OFFICIAL COMMITTEE OF UNSECURED :  
 CREDITORS OF THE COMMONWEALTH OF :  
 PUERTO RICO, :  
 as agent of :  
 THE FINANCIAL OVERSIGHT AND :  
 MANAGEMENT BOARD FOR 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).



found that the movants provided adequate and appropriate notice of the Renewed Motion under the circumstances and that no other or further notice is required; and the court having reviewed the Renewed Motion; and the court having determined that the legal and factual bases set forth in the Renewed Motion establish just cause for the relief granted herein; and any objections to the relief requested in the Renewed 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 Renewed Motion is GRANTED to the extent set forth herein.
2. For the avoidance of doubt, this Order modifies and replaces the SUT Procedures Order.
3. 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).

4. 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.

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

6. 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.

7. 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.

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

9. 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.

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

Dated: July \_\_\_\_\_, 2018

---

HONORABLE LAURA T. SWAIN  
UNITED STATES DISTRICT JUDGE

**EXHIBIT B**

**Publication Notice**

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

-----X		
In re:	:	
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 <i>et al.</i> ,	:	(Jointly Administered)
Debtors. <sup>1</sup>	:	
-----X		
In re:	:	
THE FINANCIAL OVERSIGHT AND	:	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,	:	Title III
as representative of	:	Case No. 17-BK-3284 (LTS)
PUERTO RICO SALES TAX FINANCING <i>et al.</i> ,	:	
CORPORATION (“COFINA”),	:	
Debtor.	:	
-----X		
THE OFFICIAL COMMITTEE OF UNSECURED	:	
CREDITORS OF THE COMMONWEALTH OF	:	
PUERTO RICO,	:	
as agent of	:	
THE FINANCIAL OVERSIGHT AND	:	
MANAGEMENT BOARD FOR PUERTO RICO	:	
as representative of	:	Adv. Proc. No. 17-00257-LTS
THE COMMONWEALTH OF PUERTO RICO,	:	
Plaintiff,	:	
v.	:	
BETTINA WHYTE,	:	
as agent of	:	
THE FINANCIAL OVERSIGHT AND	:	
MANAGEMENT BOARD FOR PUERTO RICO	:	
as representative of	:	
THE PUERTO RICO SALES TAX FINANCING	:	
CORPORATION,	:	
Defendant.	:	
-----X		

**NOTICE TO BENEFICIAL OWNERS OF COFINA BONDS OF (A) COMMONWEALTH AGENT’S  
RENEWED MOTION FOR ORDER ESTABLISHING PROCEDURES GOVERNING 5.5% SUT  
REVENUES COLLECTED ON OR AFTER JULY 1, 2018 AND (B) JULY 25, 2018 HEARING THEREON**

**PLEASE TAKE NOTICE THAT:**

1. On September 8, 2017, the Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) (the “Committee”), as the “Commonwealth Agent” with respect to the “Commonwealth-COFINA Dispute,” as defined in the *Stipulation and Order Approving Procedure to Resolve Commonwealth-COFINA Dispute* [Docket No. 996 in Case No. 17-3283 (LTS)] (the “Stipulation”), commenced an adversary proceeding [Adv. Pro. No. 17-257 (LTS)] in the United States District Court for the District of Puerto Rico (the “District Court”) to resolve the question whether after considering all procedural and substantive defenses and counterclaims, including constitutional issues, the sales and use taxes purportedly pledged by COFINA to secure debt (the “Pledged Sales Taxes”) are property of the Commonwealth or COFINA under applicable law (the “Commonwealth-COFINA”).

<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).

Dispute”). Capitalized terms used but not defined herein have the meanings set forth in the Stipulation. On February 21, 2018, the Commonwealth Agent and the COFINA Agent (and certain permitted intervenors) filed motions for summary judgment. The District Court heard oral argument on the summary judgment motions on April 10, 2018. As of the date hereof, the District Court has not issued a ruling on the summary judgment motions.

2. On June 5, 2018, the Commonwealth Agent and COFINA Agent entered into an agreement in principle (the “Agreement in Principle”) to settle the Commonwealth-COFINA Dispute and those related issues that may be mediated pursuant to the order expanding the scope of the Agents’ mediation authority. A copy of the term sheet documenting the Agreement in Principle was filed with the District Court on June 7, 2018 [Docket No. 486 in Adv. Proc. No. 17-257 (LTS)]. The settlement contemplated under the Agreement in Principle is subject to various conditions precedent and subsequent; however, certain provisions of the Agreement in Principle became effective as between the Agents upon the execution by the Agents on June 5, 2018, including procedures governing the 5.5% SUT collected by the Commonwealth on or after July 1, 2018.

3. On June 11, 2018, the District Court granted the Agents’ request to hold any rulings on the pending summary judgment motions in abeyance for a period of 60-days, to allow the Agents to document and execute a settlement agreement. *See Order Holding Decision on Motions for Summary Judgment in Abeyance for 60-Day Period*, dated June 11, 2018 [Docket No. 492 in Adv. Proc. No. 17-257 (LTS)] (the “Abeyance Order”). The Abeyance Order also provides that the Agents may file another joint motion requesting an extension of this deadline.

4. On June 14, 2018, the Commonwealth Agent filed its original motion (the “Original Motion”) requesting entry of an order establishing procedures governing the 5.5% portion of the sales and use taxes (the “5.5% SUT”) collected by the Commonwealth on or after July 1, 2018, pending implementation of the Commonwealth-COFINA settlement (the “5.5% SUT Procedures”). Among other things, under the 5.5% SUT Procedures, if 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 execution of the settlement agreement (as such deadlines may be extended pursuant to the terms of the Agreement in Principle), then the District Court’s eventual ruling on the ownership of the 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 5.5% SUT revenues deposited with The Bank of New York Mellon (“BNYM”), as trustee for the COFINA bondholders, after July 1, 2018 but prior to the end of the Abeyance Period (as defined in the Original Motion) – it being understood that neither Agent is waiving any appellate rights with respect to such determination.

5. On June 30, 2018, the District Court issued a memorandum decision [Docket No. 525 in Adv. Proc. No. 257 (LTS)] (the “Memorandum Decision”) granting in part and denying in part the Original Motion. In particular, at the urging of BNYM through its limited objection to the Original Motion, the District Court declined to approve the portion of the 5.5% SUT Procedures that would have treated 5.5% SUT revenues collected on or after July 1, 2018 as future SUT, on the basis that this portion of the procedures affected the substantive rights of beneficial holders of COFINA bonds who had not been provided with notice of the relief requested.

6. On July 3, 2018, after discussions with BNYM regarding notice to beneficial holders of COFINA bonds, the Commonwealth Agent filed its renewed motion (the “Renewed Motion”) seeking the identical relief as the relief sought in the Original Motion, including the treatment of 5.5% SUT deposited with BNYM on or after July 1, 2018 as future SUT. Per agreement with BNYM, notice of the Renewed Motion is being provided to beneficial holders of COFINA bonds through: (a) posting a notice and the Renewed Motion on the Municipal Securities Rulemaking Board’s website at <https://emma.msrb.org>; (b) distributing a notice to beneficial holders through The Depository Trust Company; and (c) publishing a notice in a Puerto Rico newspaper of general circulation and the *USA Today* (national edition). BNYM has confirmed that, in light of the foregoing additional notice and absent contrary direction in accordance with the applicable resolution, it has no objection to the Renewed Motion.

7. The hearing (the “Hearing”) to consider approval of the Renewed Motion is scheduled for **July 25, 2018 at 9:30 a.m. (Atlantic Standard Time)** before the Honorable Judge Laura Taylor Swain, United States District Court Judge, in Courtroom 3 of the United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767, and by video teleconference in Courtroom 17C of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY 10007.

8. Any responses or objections (“Objections”) to the Renewed Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the District of Puerto Rico, shall be filed with the District Court (a) by attorneys practicing in the District Court, including attorneys admitted *pro hac vice*, electronically in accordance with Rule 5 of the Local Rules for the District of Puerto Rico (the “Local District Court Rules”), and (b) by all other parties in interest, on a CD-ROM, in text-searchable portable document format (PDF), to the extent applicable, and shall be served in accordance with the Fourth Amended Case Management

Procedures (Docket No. 2839-1), so as to be so filed and received no later than **July 23, 2018 at noon (Atlantic Standard Time)** (the “Objection Deadline”).

9. If an Objection to the Renewed Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the District Court may enter an order granting the relief sought without a hearing pursuant to the Fourth Amended Case Management Procedures.

10. Copies of the Renewed Motion, the Original Motion, the Memorandum Decision, the Stipulation, the Agreement in Principle, the Abeyance Order, and related pleadings filed with the District Court may be examined free of charge at <https://cases.primeclerk.com/puertorico> or the Committee’s website at <http://creditorspr.com>. All filings with the District Court may also be viewed by accessing the court’s website at [www.prd.uscourts.gov](http://www.prd.uscourts.gov). To access documents on the District Court’s website, you will need a PACER password and login, which can be obtained at [www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov).

Dated: July [\_\_\_], 2018

PAUL HASTINGS LLP  
200 Park Avenue  
New York, New York 10166

*Counsel to the Official Committee of Unsecured  
Creditors of all title III Debtors (other than COFINA),  
as Commonwealth Agent*