

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HEMA UK I Limited,

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 20-11936

**DECLARATION OF JOOST JOHANNES HENDRIKUS DE BEIJER AS  
FOREIGN REPRESENTATIVE PURSUANT TO 28 U.S.C. § 1746 IN SUPPORT  
OF VERIFIED PETITION UNDER CHAPTER 15 FOR RECOGNITION OF A  
FOREIGN MAIN PROCEEDING AND RELATED RELIEF**

I, Joost Johannes Hendrikus de Beijer, declare under penalty of perjury as follows:

1. I am a director of HEMA UK I Limited (the “**Debtor**” or “**Scheme Company**”<sup>1</sup>). I have held the position of Director of the Scheme Company since it was incorporated on July 9, 2020. I am also the CFO of the HEMA B.V. and have held that position since February 1, 2020.

2. In my capacity as a director, I have been extensively involved in the negotiations with the Group’s key creditors that have culminated in, among other things, the Scheme that is currently the subject of foreign proceedings before the High Court of Justice of England and Wales (the “**High Court**”). I have detailed knowledge of, and experience with, the Debtor’s affairs and its creditors.

3. On July 10, 2020, I was duly appointed foreign representative pursuant to a resolution of the Debtor’s board of directors. A true and correct copy of the board resolutions of the Scheme Company making this appointment (as contained in minutes of board meetings held on July 10, 2020) is attached hereto as **Exhibit A**.

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<sup>1</sup> Except as otherwise indicated, capitalized terms used herein shall have the meaning ascribed to them in the Petition (as defined below).

4. I am authorized by the Debtor to submit this declaration (the “**Declaration**”) on its behalf in support of the: (i) *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* (the “Verified Petition” [Dkt. No. 2], and together with the *Form of Voluntary Petition* [Dkt. No. 1], filed contemporaneously therewith, the “**Petition**”) and (ii) *Ex Parte Application Pursuant to Federal Rules of Bankruptcy Procedure 2002, 9006 and 9007 for Order Scheduling Hearing and Specifying Form and Manner of Service of Notice* [Dkt. No. 5] (the “**Scheduling Motion**”).

5. Except as otherwise disclosed herein, all statements in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees of or advisors to the Group, or my opinion based upon my experience, knowledge and information concerning the Group’s operations. I am over the age of 18 and, if called upon to testify, I could testify competently to the facts set forth in this Declaration.

6. In this Declaration, I provide a description of, among other things, the following: (a) the Debtor’s business; (b) its current capital structure; (c) events leading up to the Proposed Restructuring; (d) negotiations in relation to the Proposed Restructuring; (e) the Scheme and the Proposed Restructuring; and (f) the English Proceeding.

## **BACKGROUND**

### **A. The Debtor and the Group**

7. The Debtor is a company incorporated in England and Wales as of July 9, 2020. The Debtor has a registered office at 1 Chamberlain Square Cs, Birmingham, B3 3AX, United Kingdom. A certificate of incorporation of the Debtor is attached hereto as **Exhibit B**.

8. The Directors of the Debtor comprise myself and Gerardus Matheus Thomas Jegen (the “**Directors**”). Emiel Arjen Schaeffner is the company secretary of the Debtor.

9. The Debtor is a wholly owned subsidiary of HEMA B.V. and part of the HEMA group of companies (the “**Group**”<sup>2</sup>). The parent of the Group is AMEH XXVI B.V. (the “**Parent**”), a company incorporated in the Netherlands. The Group consists of the subsidiaries of the Parent (but not the Parent itself, which is not treated as a member of the Group). The Parent is ultimately owned by Ramphastos Participaties Coöperatief II U.A.<sup>3</sup>

10. HEMA is one of the largest and oldest retailers in the Netherlands. **Hollandsche Eenheidsprijzen Maatschappij Amsterdam**, quickly known as **HEMA**, opened its first department store in 1926. Located in central Amsterdam, its prices were based on the successful dime store principle; all of the items for sale were priced at 10, 25 or 50 cents.<sup>4</sup> In the 1950s, the Group was the first franchise organization in the Netherlands and is one of the largest franchise operators in the Netherlands. From 1958, HEMA picked up the pace of its expansion, rapidly opening new stores across the country. In 1984, HEMA opened its first store abroad, in Belgium. Today, there are over 775 HEMA stores (including franchise stores) in 12 countries (including the Netherlands, Belgium,

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<sup>2</sup> The Group consists of: HEMA Bondco I (as defined below), HEMA B.V., HEMA Bondco II (as defined below), HEMA UK II Limited, HEMA UK I Limited, HEMA Financial Services B.V., HEMA Bakkerijen B.V., HEMA-Belgie B.V., HEMA Deutschland GmbH, HEMA Duitsland B.V., HEMA Financiering B.V., HEMA Spain S.L., HEMA Far East Ltd., HEMA (Shanghai) Trading Consultancy Co., HEMA France S.A.S., HEMA Austria GmbH, HEMA Retail Limited and HEMA GmbH & Co KG.

<sup>3</sup> Based on publicly available information.

<sup>4</sup> <https://www.hema.com/en-gb/hema-90>.

Luxembourg, France, Germany, Spain, the United Kingdom, Austria, Qatar and the United Arab Emirates). The Group has 19,000 employees serving over 6 million visitors every week.<sup>5</sup> The Group has had a number of different owners in its history. In 2007, it was acquired by Lion Capital, a London-based private equity firm. In 2018, Lion Capital sold the Group to its current owners, Ramphastos Investments.<sup>6</sup>

11. The Group designs, markets, sells and distributes its products through its directly owned stores, a network of branded franchise stores in the Netherlands, e-commerce platforms (including mobile and tablet applications), as well as increasingly through wholesale channels. The Group's products feature original and contemporary designs that are substantially all HEMA-branded.

12. The Group has four product divisions: (1) apparel; (2) household goods and personal care; (3) food and catering and services; and (4) other; and offers an extensive range of products from everyday basic household necessities and a selected food assortment to affordable daily essential items (including cosmetics, stationery, basic ladies and menswear, babywear and towels). Further information with respect to the Group's business can be found in the explanatory statement document the Debtor has made available to Scheme Creditors as part of the English Proceeding (the "**Explanatory Statement**") (Part A, Clause 3.3-3.4), which is attached hereto as **Exhibit C**.

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<sup>5</sup> Figures reflect pre-Covid-19 pandemic statistics.

<sup>6</sup> The ultimate parent company of the Group is Ramphastos Participaties Coöperatief II U.A. (which owns all of the shares of Ramphastos Investments Deelnemingen XXVI B.V.).

**B. Summary of the Group's Capital Structure**

13. The Parent holds the entire share capital of three companies incorporated in the Netherlands: (i) HEMA B.V.; (ii) HEMA Bondco I B.V. ("**Bondco I**"); and (iii) HEMA Bondco II B.V. ("**Bondco II**").

14. HEMA B.V. is the key holding company of the operating subsidiaries of the Group. Bondco I and Bondco II are special-purpose finance companies that exist solely for the purpose of issuing debt instruments.

15. The Group's principal financing arrangements (referred to in this Declaration as the "**Existing Principal Financing Arrangements**"), comprise the following: (i) the Existing SSNs, (ii) the Existing Revolving Credit Facility (the "**Existing RCF**"), (iii) the Senior Notes (the "**SNs**"), and (iv) the Hedging Arrangements.

16. **The Existing SSNs:**<sup>7</sup> €600 million senior secured floating rate notes due 2022 originally issued by Bondco I pursuant to a senior secured notes indenture dated as of July 20, 2017, as amended by way of a supplemental senior secured notes indenture dated as of April 20, 2020 and a second supplemental senior secured notes indenture dated as of June 22, 2020, as further amended and converted into an English law trust deed by way of a third supplemental senior secured notes indenture dated as of July 13, 2020 (the senior secured notes indenture as amended and supplemented, the "**Existing SSNs Trust Deed**") between, among others, GLAS Trustees Limited as the Senior Secured Notes Trustee (the "**SSN Trustee**"), Global Loan Agency Services Limited as the Paying Agent

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<sup>7</sup> The term "indenture" refers to the instrument that governed the Existing SSNs *prior* to the change in governing law and jurisdiction (as amended by the third supplemental indenture on July 13, 2020), and the term "Existing SSNs Trust Deed" refers to the instrument that governs the Existing SSNs *after* the change in governing law and jurisdiction.

and Calculation Agent, GLAS SAS as Registrar and Transfer Agent and GLAS Trust Corporation Limited as the Security Agent (as defined below). The underlying indentures and trust deed related to the Existing SSNs are attached hereto as **Exhibit D**.

17. As further explained below, following a consent solicitation process, on July 13, 2020, the governing law of the indenture governing the Existing SSNs (and the guarantees thereunder) was changed from New York law to English law, and the jurisdiction clause of the indenture governing the Existing SSNs (and the guarantees thereunder) was amended to provide jurisdiction in favor of the courts of England and Wales. At the same time, the Debtor also acceded as co-issuer with respect to the Existing SSNs (assuming liability for the rights and obligations of Bondco I in relation to the Existing SSNs on a primary, joint and several basis). The guarantors in respect of the Existing SSNs are HEMA, Bondco II, HEMA Bakkerijen B.V., HEMA-België B.V., HEMA Duitsland B.V. and HEMA Financial Services B.V. (which together with the Debtor/Scheme Company and Bondco I are the “**Existing Obligors**”).

18. **The Existing RCF:** an €80 million English law-governed super senior secured revolving credit facility. The Existing RCF is currently scheduled to mature in January 2022. HEMA is the borrower under the Existing RCF and all amounts advanced under the Existing RCF are guaranteed by the other Existing Obligors. The Scheme does not affect the rights of the lenders under the RCF (the “**RCF Lenders**”) under the agreement for the Existing RCF (the “**Existing RCF Agreement**”).

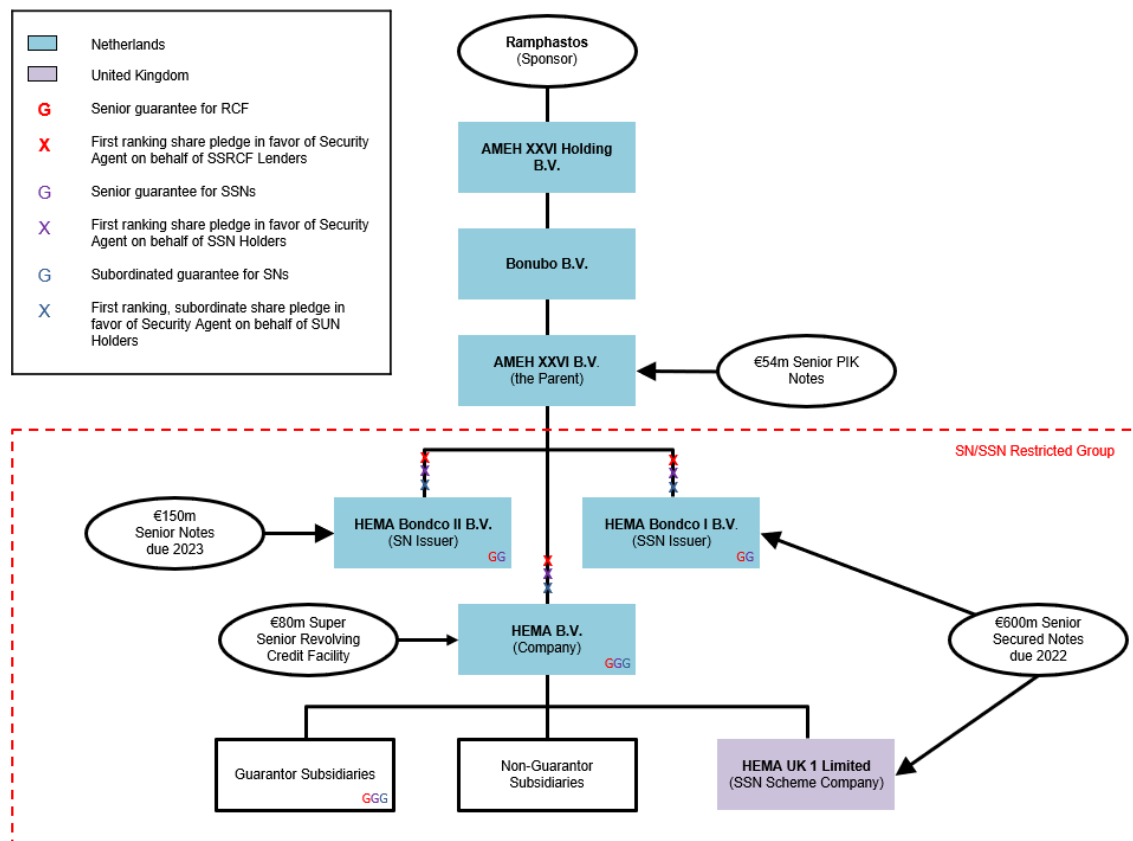
19. **The SNs:** the €150 million senior notes due 2023. Bondco II is the issuer in respect of the SNs, and all amounts advanced under the SNs are guaranteed by the other Existing Obligors. The SNs are currently scheduled to mature on January 15, 2023.

20. **The Hedging Arrangements:** HEMA has entered into a series of secured hedging arrangements, namely:

- i. derivative and foreign exchange forward transactions with ABN AMRO Bank N.V. pursuant to an ISDA Master Agreement dated July 12, 2019; and
- ii. foreign exchange forward transactions with ING Bank N.V. (pursuant to an ISDA Master Agreement dated November 26, 2015).

ABN AMRO Bank N.V. and ING Bank N.V. (together, the “**Hedging Providers**”) are also RCF Lenders.

21. A simplified diagram showing the Group’s current structure and financial arrangements is set forth below:



22. The Existing RCF, the Hedging Arrangements and the Existing SSNs are secured by a number of security interests in assets of the Group. The security interests

include, in particular, share pledges granted by the Parent in respect of its shares in HEMA, Bondco I and Bondco II (the “**Share Pledges**”). The SNs are only secured by a subset of this security package (reflecting the subordinated ranking of the SNs; *see infra* ¶ 23). All of the Existing Principal Financing Arrangements also benefit from guarantees provided by a number of other Group companies.

23. The “**Existing Intercreditor Agreement**” is an English law-governed intercreditor agreement dated July 20, 2017 entered into between, among others, the Existing Obligors, GLAS Trust Corporation Limited as security agent (the “**Security Agent**”), the RCF Lenders, the Hedging Providers, the SSN Trustee and the trustee in respect of the SNs. It governs the relative priority and security enforcement rights in respect of the Existing RCF, the Existing SSNs, the SNs and the Hedging Arrangements. Under the Existing Intercreditor Agreement, the proceeds of enforcing the security in respect of the Existing Principal Financing Arrangements are to be applied in the following order of priority: (i) *first*, the Existing RCF and the Hedging Arrangements on a *pro rata* basis and ranking *pari passu* between the themselves; (ii) *second*, the Existing SSNs; and (iii) *third*, the SNs. The Existing Intercreditor Agreement is attached hereto as **Exhibit E**.

24. In addition to the Existing Principal Financing Arrangements, the Parent is the issuer of the €85 million New York law-governed PIK notes due 2020 (the “**Existing PIK Notes**”). The Existing PIK Notes are unsecured and do not benefit from any guarantees or other forms of credit support from the Group. The terms of the Existing PIK Note documents are not governed by, or subject to, the Existing Intercreditor Agreement. The Existing PIK Notes matured on June 15, 2020, though they have not been redeemed or repaid, and approximately €54 million remains outstanding thereunder.



**C. Events Leading Up to the Proposed Restructuring**

25. The Group’s capital structure, described above, is largely a legacy of the debt incurred in connection with the acquisition of the Group by Lion Capital in 2007. Although at the time the debt was originally incurred, the Group’s financial performance had been sufficient to sustain this debt burden, in recent years the debt has become increasingly more difficult to carry. Physical storefronts have seen a decline in traffic, which has negatively impacted the Group’s performance. While the Group has remained profitable at an operational level, like-for-like sales have been down in the last two fiscal years and pro-forma adjusted EBITDA margin decreased from 10% in the financial year ending January 28, 2018 to 8.3% in the financial year ending February 2, 2020 (unaudited).

26. The following snapshot of the Group’s recent financial performance shows that, while net sales have remained relatively stable, the Group’s net debt and its leverage ratio have remained relatively high in recent years:

	Financial year ending February 2, 2020 (unaudited) <sup>8</sup>	Financial year ending February 3, 2019	Financial year ending January 28, 2018
Net sales	€1,259 million	€1,269.7 million	€1,235.5 million
Net debt	€698.9 million	€737.6 million	€685.7 million
Adjusted EBITDA	€105.5 million	€111.7 million	€123.7 million
Leverage ratio (Net debt/EBITDA)	6.54	6.60	5.54

27. These challenging market conditions (which have persisted over the past few years), accompanied by the cash interest costs required to service the Group’s significant debt obligations (which amount to approximately €50 million per year), led the

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<sup>8</sup> Note that this does not include the financial impact of the Covid-19 pandemic, which is explained further below.

Group to consider its strategic options beginning in January 2020 with a view toward decreasing its leverage to a more sustainable level.

28. Moreover, the Group's need to deleverage its capital structure was made more acute in the period leading up to the maturity of the Existing PIK Notes on June 15, 2020, given that the Group had no indication whether the Parent (and the Group's ultimate owner) would redeem the Existing PIK Notes. The Group forecasted that it would not be able to redeem the Existing PIK Notes itself when they matured at that date. Although the Group is not liable in respect of the Existing PIK Notes, a failure by the Parent to redeem them would (absent any other action being taken) have resulted in a cross-default under the Existing RCF, which, if the lenders thereunder had accelerated their loans, would have led to cross-defaults under the Existing SSNs and the SNs. In addition, given the Parent's evident insolvency, the negative publicity that would have resulted from this would likely have led to customers, suppliers and credit insurers taking adverse action with respect to the Group. Together, this gave rise to a critical risk for the survival of the Group as a going concern unless a way could be found to redeem the Existing PIK Notes at maturity, or effectively insulate the Group from the consequences of a failure to redeem them.

29. Initially (before the Covid-19 crisis struck), the Group explored other deleveraging and liability management options, including those that would have involved raising additional capital, either from the Group's existing owner or from third parties, with the Group's existing owner retaining a majority stake in the business and the potential for the Existing PIK Notes to be redeemed at maturity. However, the onset of the Covid-19 pandemic in the midst of this process put further pressures on the Group's performance,

and continues to do so, as conditions in the retail market have been (and continue to be) exceptionally challenging since March 2020.

30. In the first two weeks of March 2020, in-store traffic deteriorated materially across all of the Group's markets due to Covid-19 related lockdown measures, including mandatory store closures in France, Belgium, Luxembourg, Austria, Spain and the United Kingdom, resulting in a significant impact on Group sales and liquidity. Although nearly all of the 779 Group-owned and franchise stores in the Netherlands remained open in the lockdown period (apart from in-store restaurants), which represents more than 70% of stores and Group net sales, gross consumer sales were down 26% versus the previous year for March and April. Outside of the Netherlands, all 200 stores have been closed since mid-March 2020, resulting in an 80% decline in gross consumer sales for March and April versus last year. As stores have gradually re-opened in the latter half of May 2020, weekly sales, although improving, continue to perform 14% down versus the same period last year. Although the Group has been able to capture online demand through home deliveries, this increased online activity has not offset the decline in in-store activity.

31. Events shortly after June 15, 2020 demonstrated the validity of these concerns. An Existing PIK Notes Holder filed a bankruptcy petition with respect to the Parent following the Group's failure to redeem the Existing PIK Notes, adding to significant adverse media coverage with respect to the Group's financial position in the Dutch press. However, as further described below, the Proposed Restructuring and the Lock-up Agreement (as defined below) that was entered on the date the Existing PIK Notes matured have provided the required insulation for the Group from further consequences of a failure to redeem the Existing PIK Notes.

32. Taking into account the severe impact of the Covid-19 pandemic, the business is forecast to experience an overall decline of 12.6% in net sales in the prior financial year ending January 31, 2021 compared to the financial year ending February 2, 2020 (€1,111 million in the financial year ending January 31, 2021 as against €1,259 million in the financial year ending February 2, 2020) and pro-forma adjusted EBITDA in the financial year ending January 31, 2021 is expected to decline by **56.7%** compared to the financial year ending February 2, 2020 (€46 million in the financial year ending January 31, 2021 as against €105 million in the financial year ending February 2, 2020). If there is a “second wave” of Covid-19, it is expected that even these forecasts will not be met and that they may have to be further revised downward.

33. In addition, due to the impact of the Covid-19 pandemic, the Group announced on May 26, 2020 that it had decided to use the possibility offered by the Dutch government (in connection with the Covid-19 crisis) to extend, by a maximum of five months, the period in which the Group’s annual report must be filed. This increased the need for the Group to engage with its lenders and, particularly as it relates to the Existing RCF, the Group was forced to negotiate a waiver of the relevant covenant which was ultimately included as part of the Lock-up Agreement.

34. The cumulative effect of these conditions, when combined with the timing challenge posed by the Existing PIK Notes’ maturity, meant that those other deleveraging and liability management options the Group had explored ceased to be viable.

35. Instead, it became clear to the Group that absent a comprehensive financial restructuring, it was likely that the Existing Principal Financing Arrangements would have been accelerated and the Security Agent would have been instructed by the Group’s

creditors to enforce the security by selling the Group's assets and business to the highest bidder, with certain members of the Group entering into insolvency proceedings (a "**Distressed Sale**"). The proceeds of any such Distressed Sale would have been distributed to creditors in accordance with the Existing Intercreditor Agreement.

36. The Group appointed PricewaterhouseCoopers ("**PwC**") to provide a financial analysis of the likely returns that creditors would receive in the event of a Distressed Sale. PwC's analysis shows that a Distressed Sale likely would have produced the following returns:

- a. the RCF lenders and the creditors in respect of the Hedging Liabilities would have been repaid in full;
- b. the Existing SSNs would have been repaid in part, with a likely return in the range of 36% to 58%; and
- c. the SNs and the Existing PIK Notes would receive a nil return. These liabilities are thus said to be "out of the money".

A copy of the PwC analysis is included in the Explanatory Statement (Appendix 6).

37. In an effort to avoid a Distressed Sale and to provide a better outcome for its creditors, the Group and certain of its key creditors and stakeholders began to negotiate the terms of the Proposed Restructuring.

38. Further information with respect to the Group's financial position can be found in the Group's announcements dated June 15, 2020 and July 2, 2020, which are available on the website of the Group at [www.hema.net](http://www.hema.net).

#### **D. Negotiations in Relation to the Proposed Restructuring**

39. In April 2020, the Group (represented by De Brauw Blackstone Westbroek N.V. (with respect to Dutch law), Cravath, Swaine & Moore LLP (with respect to U.S. law) and Slaughter and May (with respect to English law) as its legal advisors and Goldman

Sachs International as its financial advisors) and certain of its key stakeholders and creditors, including an ad hoc group of persons holding a beneficial interest in approximately 65% of the Existing SSNs (the “**Ad Hoc Group**”), began to engage proactively with a view to reaching agreement on a consensual transaction that would resolve its short-term liquidity needs, address the impact of the impending Existing PIK Notes maturity and mitigate adverse impacts of the Covid-19 pandemic, while also addressing the Group’s long-term goal of reducing its leverage to a more sustainable level.

40. This engagement culminated in the Existing Obligors (other than the Scheme Company, which acceded to the Lock-up Agreement (as defined below) on July 13, 2020), all of the RCF Lenders and Hedging Providers, and approximately 62% (by value) of the Existing SSN Holders reaching an agreement with respect to the high level terms of the Proposed Restructuring and executing a lock-up agreement (the “**Lock-up Agreement**”) pursuant to which those parties jointly agreed to support the implementation of the Proposed Restructuring. Among other things, the Lock-up Agreement provides for a temporary waiver of the cross-defaults that would have been triggered under the Existing RCF Agreement and the Existing SSNs as a result of the maturity of the Existing PIK Notes. As of the date of this Declaration, approximately 88.56% of Existing SSN Holders by value have acceded to the Lock-up Agreement.

**E. Launch of M&A Process**

41. HEMA has engaged Moelis & Company to run a competitive sales process to identify any third-party interest in acquiring the Group, subject to and following the completion of the Proposed Restructuring.

42. The process formally launched on June 26, 2020, when 57 interested parties were approached. Process letters were ultimately circulated to 15 potential purchasers. Potential bidders were provided the opportunity to engage with the Group's management in the week commencing June 29, 2020.

43. Final binding bids are expected on September 14, 2020. In the event that material interest is received, Scheme Creditors<sup>9</sup> will have the opportunity to approve a possible sale of the Group in their capacity as prospective holders of the New Holdco Shares, New Holdco PIK Notes, Amended SSNs and New PPNs (each as defined below).

**F. The Proposed Restructuring**

44. Pursuant to the Proposed Restructuring, the entire share capital of Bondco I, Bondco II and HEMA will be transferred by the Security Agent to a new company ("**Newco**"). In turn, Newco will be a wholly owned subsidiary of another new company

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<sup>9</sup> Due to the technical way in which the Existing SSNs are held, the trustee with respect to the Existing SSNs (the "**SSN Trustee**") and the nominee of the common depositary that holds the global notes with respect to the Existing SSNs (the "**Common Depositary Nominee**") are, as a matter of English law, treated as "Scheme Creditors" for purposes of the Scheme. However, as both the SSN Trustee and the Common Depositary Nominee have undertaken not to vote with respect to the Scheme (in order to avoid double counting), for ease of reference, references to "Scheme Creditors" in this Petition shall refer to the ultimate beneficial owners of the Existing SSNs only.

(“**New Holdco**”). As explained below, the Senior Secured Noteholders will become the shareholders in New Holdco.

45. A summary of the Proposed Restructuring with respect to the Existing Principal Financing Arrangements and new financing arrangements is set forth below:

Financing Arrangement	Pre-Restructuring	Post-Restructuring <sup>10</sup>
<b>1. Existing SSNs</b>	<ul style="list-style-type: none"> <li>€600 million senior secured floating rate notes due 2022</li> </ul>	<ul style="list-style-type: none"> <li>50% (€300 million) remain in place on amended terms (the “<b>Amended SSNs</b>”).</li> <li>50% (€300 million) discharged in exchange for: (1) €120 million of new “payment-in-kind” notes issued by New Holdco (the “<b>New PIK Notes</b>”) (see below); and (2) 3 million shares (with an aggregate nominal amount of €30,000) in New Holdco (the “<b>New Holdco Shares</b>”) (whereby the Existing SSN Holders will become the sole shareholders of New Holdco).</li> </ul>
<b>2. The Existing RCF</b>	<ul style="list-style-type: none"> <li>€80 million super senior secured revolving credit facility scheduled to mature in January 2022</li> </ul>	<ul style="list-style-type: none"> <li>Total commitment remains the same (€80 million) but amended on new terms, including an extended maturity date of September 2024.</li> </ul>
<b>3. SNs</b>	<ul style="list-style-type: none"> <li>€150 million senior notes due in January 2023</li> </ul>	<ul style="list-style-type: none"> <li>Transferred to Newco in consideration for €1,(reflecting the nominal value of the SNs given that the Group’s value breaks in the Existing SSNs, which is expected to be supported by the Fairness Opinion (as defined below)), and converted into equity in Bondco II.</li> </ul>
<b>4. Existing PIK Notes</b>	<ul style="list-style-type: none"> <li>€85 million New York law-governed PIK notes due 2020 issued by the Parent</li> </ul>	<ul style="list-style-type: none"> <li>Remain outstanding against the Parent (which no longer will be a shareholder of the Group) with no recourse against the Group</li> </ul>

<sup>10</sup> Further information with respect to the New Holdco PIK Notes, the New Holdco Shares, the Amended SSNs, the New PPNs, the Amended RCF Commitments, the SNs and the Existing PIK Notes can be found in the Explanatory Statement (see Part C, Clause 4.32-4.39).



Financing Arrangement	Pre-Restructuring	Post-Restructuring <sup>10</sup>
5. New PPNs	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Existing SSNs Holders will also have an opportunity to lend new money to the Group by subscribing for new private placement notes issued by HEMA with a face value of €42 million (the “New PPNs”).</li> <li>Designed to ensure that the Group has sufficient liquidity to address its cash flow requirements over the medium term. The Existing SSN Holders will be entitled (but not obliged) to subscribe for the New PPNs <i>pro rata</i> to their Existing SSN holdings.</li> <li>In order to create an incentive for the Existing SSN Holders to lend the new money that the Group needs, any Existing SSN Holder who elects to subscribe for New PPNs will receive an enlarged proportion of the Amended SSNs.</li> <li>Further, in order to ensure that the full amount of New PPNs are subscribed for, certain members of the Ad Hoc Group have agreed to backstop the issuance of the New PPNs on a several, not joint, basis in exchange for a cash fee equal to 5% of its total backstop commitment.</li> </ul>
6. New PIK Notes	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Issued by New Holdco with a face value of €120 million scheduled to mature within five and a half years from the effective date of the Proposed Restructuring.</li> </ul>

46. Further information with respect to the New Holdco PIK Notes, the New Holdco Shares, the Amended SSNs and the New PPNs can be found in the Explanatory Statement (see Part C, ¶¶ 4.32-4.35).

47. The detailed terms of the Proposed Restructuring are set out in the restructuring implementation deed to be entered into between, among others, the Scheme Company, the Scheme Creditors, Newco, New Holdco and the RCF Lenders (the “**Restructuring Implementation Deed**”, which is attached hereto as **Exhibit F**).

48. The Security Agent will also be a party to the Restructuring Implementation Deed and will play an important role in the transaction as a whole. For example, the Security Agent will enforce the Share Pledges and thereby transfer the entire share capital of Bondco I, Bondco II and HEMA to Newco. This will require the Security Agent to petition a competent court in Amsterdam (the “**Dutch Court**”) to approve the proposed

enforcement of the Share Pledges (the “**Dutch Court Approval**”), a process that is expected to take several weeks.

49. The Proposed Restructuring has been structured to comply with the “Distressed Disposal” provisions in clause 14.2 of the Existing Intercreditor Agreement.

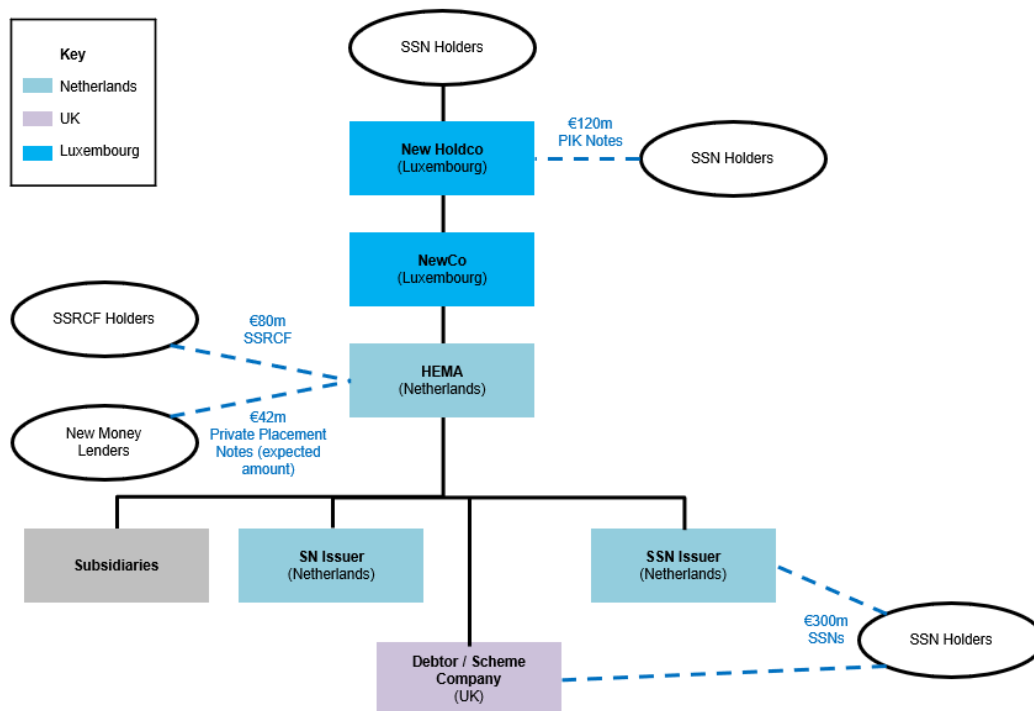
50. There are additional steps that are required to implement the Proposed Restructuring in accordance with the provisions of the Existing Intercreditor Agreement. In short, these provisions provide for the release or transfer of the existing security package and the claims of the Group’s lenders, including the holders of SNs (the “**SN Holders**”), against the Group in the context of a “Distressed Disposal” under the relevant provisions of the Existing Intercreditor Agreement. In order to be able to effect a release of the claims of the SN Holders, the Existing Intercreditor Agreement imposes certain additional requirements on the transactions:

- a. the proceeds of the sale must be in cash or cash and/or other marketable securities or, if they are not, the Security Agent must procure an opinion from an investment bank, firm of accountants or similar that the amount received in connection therewith is fair from a financial point of view taking into account all relevant circumstances including the method of enforcement (a “**Fairness Opinion**”);
- b. all guarantee claims and security interests of the RCF Lenders and the Existing SSN Holders in respect of the entity being sold must be released and discharged (and not assumed by the purchaser or one of its affiliates) simultaneously and concurrently with such sale; and
- c. however, in the event of a “sale” of such claims (instead of a release and discharge), and in circumstances where the Existing SSN Holders are the “Instructing Group” for these purposes (as they would be in this case), the agent in respect of the Existing RCF Agreement and the SSN Trustee may determine (acting reasonably and in good faith) that the RCF Lenders and the Existing SSN Holders will recover more by a sale of their claims than a release or discharge of those claims (although still less than the total amount of those claims). The Security Agent is entitled to transfer such claims to the purchaser, with the consideration for such sale capable of being a credit bid of all or part of the “Senior

Secured Liabilities” (being the liabilities under the Existing RCF and the Existing SSNs).

51. While the Proposed Restructuring does not technically involve a release of the claims of the SN Holders (instead such claims will be transferred to Newco together with the claims of the SSN Holders and the RCF Lenders), and it may be argued that such additional requirements do not apply, the Debtor has formulated steps that are designed to bring the Proposed Restructuring in compliance with the provisions in clause 14.2(g) of the Existing Intercreditor Agreement in the event that they do or are deemed to apply. A detailed overview of these steps are outlined in the Explanatory Statement (Part A, Clause 4.3-4.31).

52. A diagram showing the anticipated make-up of the Group’s capital structure following the completion of the Proposed Restructuring is set forth below:



53. The Directors believe that the benefits of the Proposed Restructuring for the Scheme Creditors are as follows:

- a. the preservation of approximately €427 million (including the anticipated Lock-up Fee (as defined below)) worth of the Existing SSN Holders' debt claims through the Amended SSNs and the issue of the New Holdco PIK Notes;
- b. the opportunity for Scheme Creditors to participate in the Group's future success and capital growth through the issue of 100% of New Holdco Shares to the Existing SSN Holders; and
- c. the opportunity to subscribe for the New PPNs.

54. The Directors believe that the benefits of the Proposed Restructuring for the Group are as follows:

- a. the Group's debt will be reduced from €830 million to approximately €427 million (including the anticipated Lock-up Fee) through the reduction of the principal amount of the SNs to zero and the partial reduction of the principal amount of the Existing SSNs;
- b. the Group's cash interest payments will decrease from approximately €50 million to approximately €30 million per year;
- c. the Group will be granted an injection of additional liquidity through the issue of the New PPNs;
- d. the Group's net leverage will be reduced to approximately 3.60x EBITDA (from 6.60x 2019 EBITDA); and
- e. the strengthened financial position of the Group will enable management to focus its attention on ensuring the continued positive performance of the Group.

## **G. Support for the Scheme**

### *The Lock-up Agreement*

55. On June 15, 2020, the Group announced that a large number of the Group's creditors in respect of the Existing Principal Financing Arrangements, including all of the RCF Lenders and approximately 62% by value of the Existing SSN Holders (the

“**Participating SSN Holders**”) had signed a lock-up agreement (the “**Lock-up Agreement**”) pursuant to which those parties jointly agreed to support the implementation of the Proposed Restructuring (and, in the case of the RCF lenders, a temporary waiver of the cross-default that arose from the payment default on the Existing PIK Notes when they were not repaid at maturity on June 15, 2020). A number of other Existing SSN Holders have subsequently acceded to the Lock-up Agreement and as of the date of this Petition, 88.56% of the Existing SSN Holders have acceded to the Lock-up Agreement.

56. Pursuant to the Lock-up Agreement, among other things, the RCF Lenders and the Participating SSN Holders:

- a. undertook to take all actions reasonably required to be taken in order to support, facilitate, implement, consummate or otherwise give effect to the Proposed Restructuring in accordance with the term sheet and steps plan appended to the Lock-up Agreement (which in the case of the Participating SSN Holders, includes voting in favor of the Scheme);
- b. waived defaults or events of default existing or foreseen under any of the applicable Existing Principal Financing Arrangements at the time the Lock-up Agreement was entered into or that would be triggered as a result of any action required in order to implement the Proposed Restructuring;
- c. agreed to certain transaction milestones, which include:
  - i. issuing the PSL (as defined below) by July 15, 2020;
  - ii. holding a meeting of the Scheme Creditors by August 12, 2020;<sup>11</sup> and
  - iii. the Scheme being sanctioned by August 17, 2020.<sup>12</sup>

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<sup>11</sup> Although the Scheme Meeting took place on August 19, 2020, this is within the five business day grace period provided for in the Lock-up Agreement.

<sup>12</sup> While, on the current timing, the Scheme will not be sanctioned until August 24, 2020, the relevant provisions of the Lock-up Agreement provide for a five business day grace period and a further five business day notice period before the Lock-up Agreement can be terminated by the requisite majorities of RCF Lenders and Participating SSN Holders. In any event, the Group remains confident that the relevant

- d. undertook not to take any enforcement action under any of the applicable Existing Principal Financing Arrangements (other than as permitted under the Lock-up Agreement);
- e. agreed not to transfer their rights, obligations and/or debt under the Existing RCF and/or the Existing SSNs (as applicable) unless the transferee is also a party to the Lock-up Agreement or accedes to the Lock-up Agreement as part of the transfer (subject to a limited exception in relation to the settlement of credit default swaps in respect of the Existing SSNs); and
- f. are entitled to receive a fee for their entry into the Lock-up Agreement (the “**Lock-up Fee**”), which will be payable on the date on which the Proposed Restructuring becomes effective pursuant to the terms set out in the Restructuring Implementation Deed (the “**Restructuring Effective Date**”).

57. The Lock-up Fee was originally set at a different level depending on when the relevant RCF Lender or Participating SSN Holder entered into, or acceded to, the Lock-up Agreement:

- a. any RCF Lender and Participating SSN Holder who entered into, or acceded to, the Lock-up Agreement on or prior to June 29, 2020 would receive an amount equal to 1% of the total outstanding amount of its Existing RCF commitments and/or Existing SSNs (as applicable) as at the Restructuring Effective Date (provided, and only to the extent, that such RCF Lender or Participating SSN Holder held such Existing RCF commitments and/or Existing SSNs as at June 29, 2020); and
- b. any RCF Lender or Participating SSN Holder who acceded to the Lock-up Agreement after June 29, 2020 but on or prior to July 15, 2020 would receive an amount equal to 0.2% of the total outstanding amount of its Existing RCF commitments and/or Existing SSNs (as applicable) as at the Restructuring Effective Date (provided, and only to the extent, that such RCF Lender or Existing SSN Holder held such Existing RCF commitments and/or Existing SSNs on or prior to July 15, 2020).

58. On July 3, 2020, however, the Group announced that the requisite majorities of Participating SSN Holders and RCF Lenders had consented to the extension of the initial

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majorities of Participating SSN Holders and Existing RCF Lenders will accommodate this timing issue, if required.

deadline for the Lock-up Fee from June 29, 2020 to July 15, 2020, meaning that Existing SSN Holders had a longer period to sign up to the Lock-up Agreement in order to receive their 1% fee. As part of this extension process, the 0.2% fee described at paragraph [58(b)] above ceased to apply, such that a single fee (of 1%) is now payable to any Scheme Creditor who entered into the Lock-up Agreement before July 15, 2020.

59. The Lock-up Fee payable to Participating SSN Holders shall be payable in the form of additional Amended SSNs on the Restructuring Effective Date (*i.e.*, in addition to the €300 million of Amended SSNs described at ¶ 45 above). A Participating SSN Holder will be eligible to receive such additional Amended SSNs only if they are eligible to receive debt securities pursuant to the Scheme.

60. The Lock-up Fee payable to RCF Lenders shall be payable in a contractual exit arrangement upon the final repayment or refinancing of the Amended RCF Agreement.

*The Consent Solicitation Process*

61. On June 24, 2020, in order to facilitate the Proposed Restructuring and to enable the Existing SSNs to be compromised by way of a scheme, a consent solicitation process was launched to amend the terms of the Existing SSNs as follows:

- a. permit the accession of the Scheme Company as co-issuer of the Existing SSNs under the Existing SSNs Trust Deed;
- b. change the governing law of the indenture governing the Existing SSNs (and the guarantees thereunder) from New York law to the laws of England and Wales; and
- c. change the jurisdiction clause of the indenture governing the Existing SSNs (and the guarantees thereunder) such that the courts of England and Wales have (i) non-exclusive jurisdiction to settle any disputes or proceedings that arise out of or in connection with the Existing SSNs Trust Deed and (ii) exclusive jurisdiction to settle any such disputes or proceedings instituted by Bondco I, the Scheme Company or any of the

Existing Obligors in relation to any Existing SSN Holders or the SSN Trustee on behalf of the Existing SSN Holders.

62. The consent solicitation was duly approved on July 10, 2020 by **91.097%** (by value) of the Existing SSN Holders. On July 13, 2020, the amendments were brought into effect by way of a supplemental indenture characterized and executed as a supplemental trust deed.

## **H. Implementation of the Proposed the Restructuring**

### *Implementation of the Proposed Restructuring*

63. In order to implement the Proposed Restructuring, certain actions and approvals by the Scheme Creditors, the RCF Lenders and the Hedging Providers are required. Each of these actions and approvals is summarized below.

64. **The Scheme:** if approved, the Scheme will authorize the Scheme Company to sign the Restructuring Implementation Deed and any relevant documents related to the Proposed Restructuring (the “**Restructuring Documents**”<sup>13</sup>) on behalf of the Scheme Creditors (and their permitted transferees and assignees), which will facilitate the completion of the other steps required in order to implement the Proposed Restructuring.

- a. The Restructuring Implementation Deed will, among other things:
  - i. set out the steps required to implement the Proposed Restructuring;
  - ii. set out the conditions precedent to the completion of the Proposed Restructuring;
  - iii. contain certain customary representations and warranties; and
  - iv. contain certain customary releases, as described in paragraph (b).

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<sup>13</sup> A detailed summary of the underlying Restructuring Documents can be found in the Explanatory Statement (Part B).



- b. The Restructuring Implementation Deed, as facilitated by the Scheme, will also authorize the release of third-party claims against all obligors and guarantors in respect of the Existing SSNs, including the Debtor, the other co-issuer (Bondco I) and all other guarantors within the Group (the “**Releases**”).

65. **The RCF Lenders and the Hedging Providers:** each of the RCF Lenders and the Hedging Providers will enter into the Restructuring Implementation Deed and any relevant Restructuring Documents, which will facilitate the implementation of the Proposed Restructuring.

66. **Dutch Court Approval:**<sup>14</sup> following the sanctioning of the Scheme and the enforcement of the Share Pledges, the Security Agent will then petition the Dutch Court to approve the enforcement of the Share Pledges and the transfer of the Group to Newco. The hearing of the Dutch Court with respect to the Dutch Court Approval (the “**Dutch Court Hearing**”) is expected to take place shortly after the date and time at which a certified copy of the Sanction Order is delivered to the Registrar of Companies for registration. The Scheme Company will notify the Scheme Creditors of the anticipated date of the Dutch Court Hearing and the obtaining of the Dutch Court Approval once these are known. Following the granting of the Dutch Court Approval, the share purchase agreement (which provides for the Security Agent (as seller) to transfer the shares currently held by the Parent in HEMA, Bondco I and Bondco II to Newco (as buyer)) will become effective and the remaining Restructuring Steps will take effect in accordance with the Restructuring Implementation Deed.

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<sup>14</sup> The Dutch Court Process is a step of the Proposed Restructuring that will be effectuated outside of the Scheme. Thus, the Foreign Representative and the Debtor are not seeking any recognition of the Dutch Court Process as part of this Chapter 15 Case.

**I. Commencement of the English Proceeding and Activity to Date**

67. On July 15, 2020, GLAS Specialist Services Limited (the “**Information Agent**”) sent the practice statement letter (the “**PSL**”) to the Scheme Creditors via email (to those Scheme Creditors of whose details the Information Agent was aware as a result of the entry into the Lock-up Agreement) and posted publicly on the Group’s website, without the need for Scheme Creditors to make any confirmations or sign a non-disclosure agreement. On July 16, 2020, the PSL was also made available through document management clearing systems maintained by Clearstream Banking S.A. and Euroclear Bank S.A./N.V. (the “**Clearing Systems**”). The PSL included the expected date and format (*i.e.*, virtual) of the Convening Hearing and further indicated that as soon as the details have been confirmed by the Court, the precise date, time and location would be made available at <https://glas.agency/2020/07/15/hema-b-v-scheme-documents/> (the “**Scheme Website**”). A copy of the PSL is attached hereto as **Exhibit G**.

68. On July 27, 2020, the Debtor filed an application under part 26 of the Companies Act, thereby commencing the English Proceeding and requesting that the High Court approve the Debtor’s request to convene the Scheme Meeting of the Scheme Creditors.

69. On July 29, 2020, the High Court held the Convening Hearing. Following the Convening Hearing, on July 29, 2020, the High Court entered an order (the “**Convening Order**”) authorizing the Debtor to, among other things: (i) convene a meeting of the Scheme Creditors for the purpose of voting on the Scheme (the “**Scheme Meeting**”) to be held at 11:00 AM (London time) on August 19, 2020, via webinar, or at such other forum or venue, date or time as the board of the Scheme Company may notify to the Scheme

Creditors; and (ii) distribute the Explanatory Statement to all Scheme Creditors. The Convening Order also noted that I was authorized to act as the foreign representative of the Debtor in respect of this Chapter 15 Case.

70. On July 29, 2020, following the Convening Hearing, the Information Agent published the Scheme and related documents, including the Explanatory Statement, on the Scheme Website and notified Scheme Creditors via email and the Clearing Systems that these documents were available there.

71. In accordance with the Convening Order, the Debtor convened the Scheme Meeting on August 19, 2020, at 11:00 a.m. (British Summer Time). The Scheme was unanimously approved by the Scheme Creditors that voted at the Scheme Meeting. Those voting Scheme Creditors represented 98.07% in value of the Existing SSNs. A copy of the notice sent to the Scheme Creditors regarding the results of the Scheme Meeting is attached hereto as **Exhibit H**. Having received the necessary votes in favor of the Scheme from the Scheme Creditors, the High Court will conduct the Sanction Hearing which is currently scheduled for August 24, 2020.

#### **REQUESTS FOR RECOGNITION AND RELATED RELIEF**

72. I have commenced this Chapter 15 Case and respectfully request entry of the Proposed Order annexed to the Petition to ensure that the Scheme Company may effectuate the Proposed Restructuring without delay.

73. The English Proceeding and the Scheme comport with English law and, I am advised by U.S. counsel, satisfy the requirements for recognition and enforcement under chapter 15 of the Bankruptcy Code. Recognition of the English Proceeding and enforcement of the Scheme and the Sanction Order within the territorial jurisdiction of the

United States will be critical components to implement the Scheme and to effectuate the Proposed Restructuring.

74. The Debtor has property in the United States and, specifically in this jurisdiction. Cravath, Swaine & Moore LLP (“**Cravath**”), as counsel to the Foreign Representative and counsel for the Debtor, holds approximately \$50,000 in a non-interest bearing client trust account located with JPMorgan Chase in New York. The funds remain in the Retainer Account as of the date hereof and are the Debtor’s property (subject to Cravath’s rights under its engagement letter). Thus, the Debtor qualifies as a “debtor” under 11 U.S.C. §109(a).

75. To the best of my knowledge and belief, the English Proceeding: (a) constitutes a “foreign main proceeding” within the meaning of 11 U.S.C. § 1502(4), as the Debtor is headquartered in London, United Kingdom, which is its center of main interests, and (b) is a judicial proceeding in the United Kingdom under English law relating to insolvency or the adjustment of debt in which the assets and affairs of the Debtor is subject to control and supervision of the High Court for purposes of recapitalization or liquidation. Accordingly, I believe the English Proceeding constitutes a “foreign proceeding” within the meaning of 11 U.S.C. § 101(23).

76. I understand and believe that recognizing the English Proceeding as a foreign main proceeding and granting the relief requested therein on a final basis is consistent with the purposes of chapter 15 of the Bankruptcy Code and public policy of the United States. Therefore, I believe that the relief requested in the Petition is necessary and appropriate and in the best interests of the Debtor, its creditors and other parties in interest.

77. Finally, I believe that a waiver of any applicable stay of effectiveness of the order, once granted, is appropriate to ensure timely implementation of the Proposed Restructuring. *First*, the timetable for completion of the Proposed Restructuring is protracted—once the Scheme is sanctioned and the English Proceeding is recognized by this Court under chapter 15 of the Bankruptcy Code, the Debtor will need to petition the Dutch Court for approval to approve the proposed enforcement over the Share Pledges, a process that is expected to take several weeks. In light of the already negative effects Covid-19 has had on the business, extending an already drawn-out restructuring process, even by two weeks, may negatively impact the market’s confidence (among the Group’s customers, suppliers and credit insurers) in the Group’s ability to continue as a going concern, which will inevitably affect the viability of the Group’s business.

78. *Second*, a key requirement of the Proposed Restructuring is the need to address concerns around the Group’s liquidity position (caused in part by suppliers and credit insurers imposing more stringent payment terms as a way of reducing their exposure to the Group). To that end, the Proposed Restructuring provides for the issuance of the New PPNs, which will help to increase the Group’s liquidity buffer to a more manageable level. It is the Directors’ view that any delay in the implementation of the Proposed Restructuring could result in a further deterioration of the Group’s liquidity position (in particular, given the adverse impact of a delay on the behavior of suppliers and credit insurers), and could call into question whether the liquidity buffer provided by the New PPNs is adequate. This also assumes that there is no “second wave” of Covid-19 to further damage the business before the Proposed Restructuring is implemented.

79. Accordingly, I respectfully request that the Court cause the Proposed Order to become effective immediately upon entry, notwithstanding any provision in the Bankruptcy Code or the Bankruptcy Rules that might otherwise require a stay of effectiveness.

**STATEMENT PURSUANT TO  
SECTION 1515(c) OF THE BANKRUPTCY CODE**

80. I am informed by counsel that section 1515(c) of the Bankruptcy Code provides that “[a] petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.”

81. In compliance with section 1515(c) of the Bankruptcy Code, I hereby declare that, to my knowledge, the only foreign proceeding (as such term is defined in section 101(23) of the Bankruptcy Code) pending with respect to the Debtor is the English Proceeding.

**LIST PURSUANT TO BANKRUPTCY RULE 1007(A)(4)**

82. I am informed that Rule 1007(a)(4) of the Federal Rule of Bankruptcy Procedure (the “**Bankruptcy Rules**”) provides that a foreign representative filing a petition for recognition under chapter 15 of the Bankruptcy Code shall file with the petition:

(A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under § 1519 of the [Bankruptcy] Code.

In accordance with Bankruptcy Rule 1007(a)(4), I hereby provide the following information:

a. Corporate Ownership Statement: In accordance with Bankruptcy Rule 7007.1, I confirm that HEMA B.V. directly owns 100% of the Debtor and no other individual, corporation or other entity directly owns 10% or more of the Debtor’s equity interests. AMEH XXVI B.V., a company incorporated in the Netherlands, owns 100% of HEMA B.V., and therefore, indirectly owns 100% of the Debtor’s equity interests.

b. Persons or Bodies Authorized To Administer the Foreign Proceeding: On July 10, 2020, I was duly appointed foreign representative pursuant to the Resolution of Appointment of the Debtor’s board of directors, and the High Court noted on July 29, 2020, that I am authorized and empowered to act as the foreign representative of the Debtor in respect of any chapter 15 case that may be commenced in the United States.

c. Parties to Litigation in the United States: As of the date of this Declaration, the Debtor is not a party to any litigation pending in the United States of which I am aware.

d. Entities Against Whom Provisional Relief Is Sought under Section 1519: Neither the Debtor nor I am currently seeking any provisional relief as I am not aware of any imminent threat to the Debtor’s assets located in the United States or to the English Proceeding by virtue of actions in the United States at this time. Nevertheless, the Debtor and I each reserve the right to seek provisional relief at a later time should the need arise.



I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on August 19, 2020



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Roost Johannes Hendrikus De Beijer

Foreign Representative