

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re

Swissport Fuelling Ltd,<sup>1</sup>

Debtor in a Foreign Proceeding.

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Chapter 15

Case No. 20-11524 (MWF)

**PETITIONER'S DECLARATION AND VERIFIED PETITION FOR RECOGNITION  
OF UK SCHEME OF ARRANGEMENT AND MOTION FOR ORDER GRANTING  
ADDITIONAL RELIEF**

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<sup>1</sup> The Debtor in this Chapter 15 case, and the last four identifying digits of Debtor's UK company identifier, is Swissport Fuelling Ltd (United Kingdom –2071).

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I, Donald William Christopher Mallon (the “**Petitioner**” or the “**Foreign Representative**”), duly appointed by a May 21, 2020 resolution (the “**Resolution of Appointment**”)<sup>2</sup> of the board of directors of Swissport Fuelling Ltd (the “**Debtor**”), a private limited company incorporated under the laws of England and Wales with registered number 5282071 and declared as authorized to act by a June 5, 2020 order (the “**Convening Order**”)<sup>3</sup> of the Chancery Division (Companies List) of the High Court of Justice of England and Wales (the “**UK Court**”) as the foreign representative of a voluntary proceeding (the “**UK Proceeding**”) concerning the Debtor pursuant to Part 26 of the United Kingdom Companies Act 2006 (as amended, the “**UK Act**”), by and through my undersigned counsel, respectfully submit this Declaration<sup>4</sup> and Verified Petition (the “**Verified Petition**”) in furtherance of the form of voluntary petition [ECF No. 1] (the “**Form of Petition**,” and together with the Form of Petition, the “**Petition**”) filed concurrently herewith, and hereby request that the Court enter an order substantially in the form annexed hereto as Exhibit A (the “**Proposed Order**”), including (i) granting recognition of the UK Proceeding pursuant to section 1517 of title 11 of the United States Code (the “**Bankruptcy Code**”) as the “foreign main proceeding” (as defined in section 1502(4) of the Bankruptcy Code) of the Debtor, and all relief included therewith as provided in section 1520 of the Bankruptcy Code; (ii) recognizing the Petitioner as the “foreign representative” (as defined in section 101(24) of the Bankruptcy Code) of the UK Proceeding; (iii) granting full force and effect and comity to the scheme of arrangement (the “**Scheme**”) proposed in the UK Proceeding, if approved by requisite creditors and sanctioned by the UK Court, and the additional

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<sup>2</sup> A copy of the Resolution of Appointment is attached to the Form of Petition.

<sup>3</sup> A copy of the Convening Order is attached to the Form of Petition.

<sup>4</sup> The Petitioner submits this Declaration in support of the Verified Petition. The Petitioner’s verification with respect to the factual contents of this Verified Petition is set forth below in the section titled “Verification of Chapter 15 Petition.”

relief set forth herein pursuant to sections 105(a), 1521(a) or 1507(a) of the Bankruptcy Code; (iv) immediately closing this chapter 15 case, and (iv) granting such other and further relief as the Court deems just and proper.

In support of this request, the Petitioner relies upon and incorporates by reference: (i) the *Declaration of Christian Pilkington Pursuant to 28 U.S.C. § 1746* (the “**Counsel Declaration**”) and (ii) the *Declaration of Samuel P. Hershey* (the “**Hershey Declaration**”) each filed concurrently herewith, along with the exhibits thereto. In further support of this Verified Petition, the Petitioner respectfully represents to the Court as follows:

### **PRELIMINARY STATEMENT**

By this Petition, the Foreign Representative seeks recognition of the Debtor’s UK Proceeding and requests that this Court enter an order giving the Debtor’s English law scheme of arrangement full force and effect within the territorial jurisdiction of the U.S. The Scheme is limited in nature — it does not seek to impair any of the Debtor’s financial obligations to its lenders or compromise the claims of any creditors. Rather, the primary objective of the Scheme is to facilitate certain amendments to the credit agreement and a related intercreditor agreement governing the Debtor’s financial indebtedness, which would permit the Debtor to incur interim liquidity on a super senior basis if a majority of its senior secured creditors provide their consent. The Scheme also seeks to change the consent thresholds required to amend certain provisions of the credit agreement, which would provide the Debtor and its affiliates with greater flexibility to negotiate and implement a long-term holistic financial restructuring, if that becomes necessary. The Debtor and its various affiliates that form the Swissport<sup>5</sup> group will continue to operate in the

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<sup>5</sup> The capitalized term “Swissport” when used herein refers to Swissport Group S.à r.l. and each of its direct and indirect subsidiaries, which together comprise the Swissport group of companies.



ordinary course of business and their respective creditors will not otherwise be affected by the Scheme or this Chapter 15 process, except with respect to the specific amendments detailed herein relating to the credit agreement and the related intercreditor agreement.

The Swissport group is the world's leading independent provider of ground and cargo handling services to the aviation industry based on revenue and number of airports served. As of December 31, 2019, Swissport provided ground handling and cargo services at 300 airports in 47 countries across six continents. During 2019, Swissport served approximately 265 million passengers on behalf of its airline clients and handled approximately 4.6 million tons of cargo.

Swissport offers a full range of ground and cargo handling services. Its employees can be found throughout the airports in which the group operates, both in passenger-facing roles (such as counter check-in, gate services and boarding, security screening and lounge services), in ramp services (such as baggage handling and ramp handling), in cargo services (including ramp services, cargo handling and warehouse roles), as well as ancillary services (such as aircraft maintenance, de-icing and fueling).

Swissport's business is highly correlated to the global rate of air travel. While nearly every segment of the global economy has been affected, the COVID-19 crisis had an early and significant effect on the travel sector. Airlines throughout the world have significantly reduced their flight schedules, with activities at many airports almost coming to a standstill. This reduction in flights has severely curtailed Swissport's core business, with volumes down by approximately 90% in ground handling and approximately 30% for cargo by the end of March 2020 and in April 2020.

The overall impact of the COVID-19 crisis has reduced Swissport's revenue and put pressure on its liquidity. When the effects of the crisis first began to manifest, Swissport moved quickly to adjust, implementing cost reduction and liquidity management measures, including

making the difficult decision to reduce its employee costs through a combination of furloughs, unpaid leave and redundancies.

Notwithstanding the urgent measures implemented by the group in response to COVID-19, Swissport requires new liquidity to withstand the continued effects of the pandemic on the aviation sector. Accordingly, Swissport is in the process of negotiating interim liquidity on a super senior basis (the “**New Money Financing**”), which will provide it with the time and flexibility needed to continue negotiating and assessing a group-wide financial restructuring process. While the Debtor sought to obtain the unanimous consent of its lenders to the proposed amendments to its debt documents, such unanimous consent was not achieved within the requisite timeframe. Accordingly, the solicitation process was terminated in favor of the Scheme.

Since the relevant debt documents are governed by New York law, the Petitioner requests that this Court grant comity to the Scheme, to ensure that the Scheme has the force of law within the U.S. Thus, and for the other reasons set forth herein, the Petitioner requests that this Court grant the relief requested in the Proposed Order, including, without limitation (i) recognizing the UK Proceeding as a foreign main proceeding;<sup>6</sup> (ii) recognizing the Petitioner as the “foreign representative” in respect thereof; (iii) granting full force and effect and comity to the Scheme and the Sanction Order; (iv) immediately closing this chapter 15 case, and (v) granting such other relief as the Court deems just and proper.

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<sup>6</sup> Alternatively, as discussed herein, the Petitioner respectfully requests that the Court recognize such proceeding as a foreign nonmain proceeding (as defined in section 1502(5) of the Bankruptcy Code) of the Debtor, and grant the discretionary relief requested herein pursuant to sections 1521(a), 1507(a) and 105(a) of the Bankruptcy Code.

## **BACKGROUND**

### **I. OVERVIEW OF THE GROUP**

#### **A. Corporate Structure**

1. Swissport operates under a Luxembourg holding structure which historically was ultimately held by Swissport Group S.à r.l.<sup>7</sup> The Debtor (and, in general, Swissport’s other subsidiaries) operate their businesses independently, but under the guidelines and supervision of three regional headquarters: Europe, Middle East and Africa (“**EMEA**”), Americas, and Asia-Pacific. A high-level organizational chart with capital structure overlay is attached to the Hershey Declaration as Exhibit A.

#### **B. Capital Structure**

2. As of the date hereof (the “**Petition Date**”), Swissport was liable for approximately €2 billion (USD 2.3 billion)<sup>8</sup> in aggregate funded-debt obligations, approximately €1.7 billion (USD 1.9 billion) of which was guaranteed by the Debtor. The table below summarizes the group’s prepetition capital structure, which is described in further detail below.

<b>Facility</b>	<b>Approximate amount outstanding<sup>9</sup></b>	<b>Approximate amount outstanding in USD</b>
Term Facility	€908.5 million	\$1 billion
Revolving Facility	€35 million – cash (drawn) €17.4 million – letters of credit	\$39.9 million – cash (drawn) \$19.8 million – letters of credit

<sup>7</sup> On February 10, 2016, HNA Group Co. Limited, a global enterprise based in Haikou, China, acquired Swissport. After the transaction, the Swissport group of entities became a standalone business within the HNA group, complimenting HNA’s existing activities in the aviation, airport management, logistics and tourism industries.

<sup>8</sup> Amounts specified in U.S. dollars (USD or \$) herein were converted from the applicable foreign currency to U.S. dollars using the prevailing foreign exchange rates as of the Petition Date. Figures specified in USD are therefore approximate and illustrative only and are rounded to the nearest \$0.1 million.

<sup>9</sup> Amounts include principal plus interest accrued to March 31, 2020. The PIK Facility includes capitalized interest of €11.4 million (USD 13 million) as of December 31, 2019. Figures are rounded to the nearest €0.1 million.

Delayed Draw Facility	€50.1 million	\$57.1 million
SSNs	€412.7 million	\$470.5 million
SUNs	€252.8 million	\$288.2 million
PIK Facility*	€209.3 million	\$238.6 million
2021 Senior Secured Stub Notes*	€37.2 million	\$42.4 million
2022 Senior Stub Notes*	€16.3 million	\$18.6 million
Local loans*	€84 million	\$95.8 million
<b>Total</b>	<b>€2 billion</b>	<b>\$2.3 billion</b>

\* Debtor is not an obligor under facilities denoted by an asterisk.

(i) *The Credit Agreement*

3. Pursuant to that certain New York law-governed Credit Agreement (the “**Credit Agreement**”) dated August 14, 2019, as amended from time to time, by and among Swissport Financing S.à r.l. (“**Swissport Financing**”) and Swissport International AG (together, the “**Borrowers**”), Swissport Holding International S.à r.l. (“**Swissport Holding**”) as parent guarantor, the Debtor and certain other Subsidiary Guarantors (as defined in the Credit Agreement), the entities party thereto as lenders of record (the “**Lenders**”), and Barclays Bank plc as administrative agent and collateral agent (the “**Administrative Agent**”), three credit facilities (the Term Facility,<sup>10</sup> Delayed Draw Facility and Revolving Facility,<sup>11</sup> together the “**Credit Agreement Liabilities**”) were made available to the Borrowers.<sup>12</sup>

<sup>10</sup> Swissport Financing is the borrower under the Term Facility and the Delayed Draw Facility. Under the Term Facility, Swissport Financing borrowed an aggregate principal amount equal to €850 million (USD 969 million), which was increased to €900 million (USD 1 billion) on March 3, 2020. Swissport has drawn €50 million (USD 57 million) of the Delayed Draw Facility. The Term Facility and the Delayed Draw Facility mature on August 14, 2024.

<sup>11</sup> Swissport International is the borrower under the Revolving Facility and may draw up to €75 million (USD 85.5 million) under that facility for general corporate and working capital purposes. The Revolving Facility also includes a sub-facility for the issuance of letters of credit in an aggregate amount not to exceed €50 million (USD 57 million). The Revolving Facility, which matures on February 14, 2024, is partially drawn.

<sup>12</sup> A copy of the Credit Agreement is attached to the Hershey Declaration as Exhibit B.

4. The Credit Agreement Liabilities are supported by guarantees (the “**CA Guarantees**”) and security from over 40 of Swissport Holding’s subsidiaries (the “**Subsidiary Guarantors**”), incorporated throughout the world, including the Debtor. The CA Guarantees are secured by a first lien security interest over the shares and assets of certain group entities (the “**Collateral**”).

5. The Debtor, together with certain other English-incorporated guarantors of the Credit Agreement, has entered into an English law debenture granting a security interest in favor of Barclays Bank PLC as collateral agent for and on behalf of the Lenders in respect of all of its assets. The Debtor’s direct parent, Swissport GB Limited, has also entered into an English law debenture pursuant to which it has granted security over, among other things, the entire issued share capital of the Debtor.

*(ii) The Senior Secured Notes*

6. On August 14, 2019 Swissport Financing issued 5.25% senior secured notes (the “**SSNs**”) in aggregate principal amount of €410 million (USD 467.4 million) due August 2024 pursuant to that certain New York law-governed Indenture (the “**SSN Indenture**”), as amended from time to time, by and among Swissport Financing, Swissport Holding and U.S. Bank Trustees Limited as trustee (the “**Trustee**”). The SSNs are listed on the official list of the Luxembourg Stock Exchange and are traded on the Euro MTF Market. The SSNs are secured by the same Collateral as the Credit Agreement (the “**SSN Guarantees**”), on an equal and ratable basis, including the guarantee and collateral provided by the Debtor.<sup>13</sup>

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<sup>13</sup> A copy of the SSN Indenture is attached to the Hershey Declaration as Exhibit C.

(iii) *The Senior Unsecured Notes*

7. On August 14, 2019, Swissport Financing issued 9.00% senior notes due August 2025 in the aggregate principal amount of €250 million (USD 285 million) (the “**SUNs**”) pursuant to the terms of a New York law-governed indenture dated the same date (the “**SUN Indenture**”) by and among Swissport Financing, Swissport Holding (as Parent Guarantor), and the Trustee. The Subsidiary Guarantors, including the Debtor, have granted unsecured guarantees in respect of the SUNs (the “**SUN Guarantees**”), but the SUNs are otherwise unsecured. The SUNs are listed on the official list of the Luxembourg Stock Exchange and are traded on the Euro MTF Market.<sup>14</sup>

(iv) *The Intercreditor Agreement*

8. The respective rights as and between the (i) holders of the SSNs, (ii) holders of the SUNs, and (iii) lenders under the Credit Agreement are memorialized in a New York law-governed Intercreditor Agreement dated August 14, 2019 (the “**Intercreditor Agreement**”).<sup>15</sup>

9. Pursuant to the Intercreditor Agreement, the liabilities under the Credit Agreement and the SSNs (together, the “**Senior Secured Liabilities**”) constitute senior secured liabilities that rank *pari passu* between themselves.<sup>16</sup>

10. The SUN Guarantees are expressly subordinated to the CA Guarantees and the SSN Guarantees pursuant to the Intercreditor Agreement. *See* Intercreditor Agreement § 2.1(a)(ii) and the definition of “Senior Subordinated Guarantees.”

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<sup>14</sup> A copy of the SUN Indenture is attached to the Hershey Declaration as Exhibit D.

<sup>15</sup> A copy of the Intercreditor Agreement is attached to the Hershey Declaration as Exhibit E.

<sup>16</sup> *See* Intercreditor Agreement §§ 2.1(a)(i), 2.1(b)(i), 18.1(a)(iii)(A) and (C) (“Senior Secured Obligations” includes the obligations owed under the Credit Agreement and the SSNs and in respect of the proceeds of any enforcement of guarantees and collateral in respect of the obligations under the Credit Agreement and the SSNs.).

11. The Intercreditor Agreement does not currently provide for a category of super senior debt ranking ahead of the Senior Secured Liabilities with respect to priority of payment and the proceeds of any enforcement of guarantees and collateral. Moreover, amendments to the Intercreditor Agreement require unanimous consent of the Lenders.

(v) *The PIK Facility*

12. On August 14, 2019, Swissport Global Services Holding S.à r.l. as borrower, Aguila 2 S.à r.l. as parent guarantor, and Barclays Bank PLC, as administrative agent and collateral agent, entered into a PIK Loan Agreement (the “**PIK Loan Agreement**”), through which a term facility of €190 million (USD 216.6 million) (the “**PIK Facility**”) with an applicable interest rate of 15.50% per annum was made available to the Swissport Global Services Holding S.à r.l. Swissport Global Services Holding S.à r.l. drew the PIK Facility in full, and the proceeds were used to refinance existing indebtedness of Swissport Global Services Holding S.à r.l. and to pay certain other costs and expenses. The Debtor is not an obligor under the PIK Facility, and thus reference to this facility is for completeness only.

13. The collateral package for the PIK Facility is entirely independent from the Senior Secured Liabilities, the Collateral and the SUN Guarantees. The PIK Facility is also structurally subordinated to the Credit Agreement Liabilities, the SSNs and the SUNs.

(vi) *The Stub 2024 Senior Secured Notes and the Stub 2025 Senior Notes*

14. On December 14, 2015, Swissport Investments S.A. issued: (i) 6.750% senior secured notes due in December 2021 in aggregate principal amount of €400 million (USD 456 million) (the “**Stub 2021 Notes**”); and (ii) 9.75% senior unsecured notes due in December, 2022 in aggregate principal amount of €290 million (USD 330.6 million) (the “**Stub 2022 Notes**,” together with the Stub 2021 Notes, the “**Stub Notes**”). All guarantees and security associated with

the Stub Notes, including the guarantee and collateral provided by the Debtor, were released in 2017 pursuant to an exchange offer and consent solicitation process.

*(vii) Other Facilities*

15. Certain entities within the Swissport group have also entered into other local facilities. These facilities are noted for completeness only, as the Debtor is not an obligor thereunder:

- (a) As of March 31, 2020, the drawn amount of Swissport's local bank facilities totaled approximately €84 million (USD 95.8 million);
- (b) Swissport International is party to a Swiss-law master guarantee facility with UBS AG as lender. Pursuant to the guarantee facility, certain members of the group may request bank guarantees from UBS AG up to a maximum aggregate amount of CHF 25 million (USD 26.5 million). As of the Petition Date, CHF 18.9 million (USD 20 million) has been drawn under the guarantee facility;
- (c) Swissport North America, Inc., as a party to the Letter of Credit Agreement dated August 2019, by and among Swissport North America, Inc. (as "Applicant") and Macquarie Bank Limited, represented by its Corporate and Asset Finance division (as "Issuer"), pursuant to which the Issuer has agreed to issue a standby letter of credit in a maximum aggregate amount of USD 41,100,000 for the account of the Applicant with Arch Insurance Company and Arch Indemnity Insurance Company as beneficiaries; and
- (d) Swissport International Ltd is party to a non-recourse master factoring agreement whereby the factoring provider assumes the risk of Swissport's customers' insolvency. Certain Swissport entities have acceded to the factoring agreement as a means of financing their working capital needs, with the committed amount under



the factoring agreement being €50 million (USD 57 million) as of the Petition Date.<sup>17</sup>

## **II. OVERVIEW OF THE DEBTOR**

### **A. The Debtor's Operations**

16. The Debtor is a trading entity that has been providing “on runway” aircraft refueling services at Newcastle airport in England since 2005. It employs 13 people, all of whom are located in the UK.

17. By reason of its operations, the Debtor is subject to UK-regulatory regimes, including contract law, employment law, environmental law, and regulatory/licensing approvals necessary for the conduct of its operations.

### **B. Location of the Debtor's Registered Office and Records**

18. The Debtor was incorporated in England on November 9, 2004 as a private limited company. *See* Hershey Decl. Ex. F (Certificate of Incorporation, Change of Name Certificate). It has carried on its business in England continually since its incorporation and continues to exist in accordance with the laws of England and Wales. *See* Hershey Decl. Ex. G (Companies House Register Extract). The Debtor is also an English tax resident.

19. The Debtor has maintained its registered office at Swissport House, in Runcorn, England since June 2014. *See* Hershey Decl. Ex. H (Companies House Change of Registered Address Form).

20. The physical location of the Debtor's headquarters (which displays a sign stating its name) and all of its other tangible assets, is at the registered address. All correspondence of the

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<sup>17</sup> This facility is suspended owing to the unavailability of credit insurance. (The factoring provider is not obligated to fund new receivables unless at least 90% of the receivable is insured and indemnifiable under an applicable credit insurance policy.)

Debtor is sent from its registered office, which is clearly displayed on the letterhead of all letter correspondence.

21. The Debtor's statutory books and records are held in England.

22. The Debtor's membership interests are also located in England & Wales, and general meetings of the Debtor's shareholders are held in England.

**C. Location of the Debtor's Management**

23. The Debtor's central administration, management and control takes place in England, and all key management decisions are taken there, albeit that it operates its business under the guidelines and supervision of the EMEA headquarters, located in Switzerland.

24. All board meetings of the Debtor have been conducted in Runcorn, England in recent years. Four of the five directors of the Debtor are residents of England.

25. The Debtor's principal ordinary course advisors and auditors are located in London, England. In connection with the Scheme and this Chapter 15 case, the Debtor has retained counsel in London and the United States.

**D. Location of the Debtor's Assets and Operations**

26. As of December 31, 2019, the Debtor had assets worth approximately €3.6 million (USD 4.1 million), which comprised primarily intercompany receivables, and receivables generated from the Debtor's operations in England.

27. The Debtor maintains all its bank accounts in England, and also has a client trust account with Fox Rothschild LLP, in Wilmington, Delaware, with a balance of USD 24,980 (the "Escrow Account").

**E. The Debtor's Capital Structure and Location of its Creditors**

28. As set forth above, the Debtor is a guarantor and grantor in respect of the Credit Agreement and SSNs, and has granted an unsecured guarantee in respect of the SUNs. It is jointly

and severally liable for all principal indebtedness thereunder, and as such, its guarantee obligations comprise its primary indebtedness. The Debtor is not an obligor under the PIK Facility, the Stub Notes or any local facilities.

29. The Lenders under the Credit Agreement and the holders of the SSNs and SUNs are a group of sophisticated financial institutions, located throughout the world. Since Swissport's recent liquidity issues arose, a significant portion of the negotiations and dialogue between the Group and its main creditor groups or their advisors (specifically, the Ad Hoc Group (as defined below) as well as an unconnected ad hoc group of holders of the SUNs and the lenders under the PIK Facility) have been coordinated by Swissport and its advisors from England.

30. The Debtor also has 17 trade creditors, who as of May 19, 2020 were owed €241,938 (USD 275,809), all of whom are located in England.

31. The Debtor has also entered into a deed pursuant to which it has undertaken in favor of the Borrowers (being Swissport entities incorporated in Luxembourg and Switzerland) to contribute to any amounts that are paid by the Borrowers towards their obligations under the Credit Agreement (the "**Contribution Deed**"). The Contribution Deed results in the Borrowers and the Debtor having rights of contribution against each other, and the Subsidiary Guarantors (being entities incorporated in Luxembourg, Australia, Belgium, England, Canada, Germany, Ireland, Mexico, the Netherlands, Spain, Switzerland and the U.S.) having rights of contribution against each other. *See* Hershey Decl. Ex. B (Credit Agreement) § 8.10; *Id.* Ex. I (Contribution Deed).

### **III. OVERVIEW OF THE SCHEME**

#### **A. Background to the Commencement of the UK Proceeding**

32. As a result of the liquidity pressure caused by the COVID-19 crisis, in April 2020, Swissport commenced discussions with potentially interested financing providers, including (but

not limited to) an ad hoc group of creditors holding positions across the Senior Secured Liabilities (the “**Ad Hoc Group**”), with respect to the capital structure, liquidity and funding requirements of the group. The anticipated quantum of new money required by the group is currently expected to be between €250-350 million (USD 285-399 million) in the short term, and potentially additional amounts thereafter.

33. While the terms of the New Money Financing have not yet been agreed, the Ad Hoc Group has provided a draft term sheet to Swissport. Based on the term sheet and its discussions with potential lenders, Swissport has determined that, in order to be sufficiently attractive to financiers, the New Money Financing would likely need to be secured on a super senior basis, ranking ahead of the Senior Secured Liabilities with respect to the proceeds of any enforcement under the Intercreditor Agreement. However, the terms of Swissport’s existing financial indebtedness do not allow the group to incur a super senior tranche of indebtedness. Accordingly, amendments to the relevant debt documents are required.

34. As set forth in more detail below, pursuant to their terms, the required amendments to the Credit Agreement and Intercreditor Agreement can only be effected by the unanimous consent of the Lenders thereto. While the Debtor sought to obtain the unanimous consent of its Lenders to the proposed amendments via a consent request, unanimous consent was not achieved. Although over 78% of Lenders provided their consent during the consent solicitation process (and none voted against the proposal), the Debtor determined that achieving unanimous consent was not possible in the required timeframe, and was not certain that extending such timeframe would necessarily lead to unanimous consent being obtained. Accordingly, the Debtor elected to terminate the consent request and seek to effect the amendments via the Scheme instead. By terminating the consent request, unsettled trades that were not permitted to settle by the

Administrative Agent while the consent request was ongoing (including a significant volume of trades with Ad Hoc Group members seeking to increase their holdings) are now allowed to settle. Accordingly, by terminating the consent request when it did, the Debtor sought to maximize the period of time in which those unsettled trades would be permitted to settle prior to the voting record date for the Scheme, pursuant to which the incoming lenders are elevated to lender of record status and become entitled to vote on the Scheme proposals, thereby increasing the prospects of the Scheme being approved.

**B. Process for Approval of the Scheme Under UK Law**

35. A scheme of arrangement is a statutory, court-supervised arrangement between a company and its creditors. Counsel Decl. ¶¶ 8, 10. It is a collective procedure, as a duly-approved scheme becomes binding on all creditors affected by the scheme, whether or not they (i) attended the creditors’ meeting (described below), (ii) voted at the meeting, or (iii) voted against the scheme. *Id.* ¶ 17.

36. The scheme process begins when a company proposes the scheme and then submits it to the UK Court, seeking its permission at a “convening hearing” to convene a creditors’ meeting (or meetings) to vote on the scheme proposal, *i.e.*, the “compromise” or “arrangement” being put to the creditors. *Id.* ¶ 10.

37. At the convening hearing affected creditors are entitled to raise objections (primarily at this stage as to the composition of creditor classes and jurisdiction issues). The UK Court then decides whether to order that a creditors’ meeting (or meetings) be convened to consider and, if thought fit, approve the proposed scheme. *Id.*

38. A convening hearing (the “**Convening Hearing**”) in this instance was held on June 5, 2020, at which the UK Court, *inter alia*, ordered that a creditors’ meeting (the “**Creditors’**

**Meeting**”) be convened (in this instance via webinar) on June 19, 2020. *See* Form of Petition, Ex. 1 (Convening Order).

39. Notice of the Creditors’ Meeting must be delivered to creditors directly affected by the scheme before the meeting. *Id.* ¶ 13. In this case, the Scheme has only one class, which is composed of the Lenders (the “**Scheme Creditors**”). Such notice must set forth the time and place of the creditors’ meeting, and an explanatory statement (such statement in this case, the “**Explanatory Statement**”) must be distributed to such creditors in a form that contains sufficient information for a creditor whose claim is being affected by the terms of the scheme to make a reasonable decision about whether to support the scheme. *Id.* *See* Hershey Decl. Ex. L (Explanatory Statement, attaching Scheme). Notice of the Convening Hearing and the Creditors’ Meeting was provided to the Lenders as follows:

- (a) On May 20, 2020, Swissport issued a press release announcing its intention to implement the Scheme, and on May 27, 2020, a practice statement letter (the “**Practice Statement Letter**”) was distributed to the Lenders under the Credit Agreement as anticipated scheme creditors. The Practice Statement Letter gave notice to the Scheme Creditors that the Debtor was intending to apply to the UK Court, at a hearing to be held on or around June 5, 2020, for directions in relation to the Scheme, including permission to convene a meeting of creditors’ for the purpose of considering and, if thought fit, approving the Scheme. The Practice Statement Letter also describes the proposed objectives of the Scheme and the effects of the Scheme on creditors. *See* Hershey Decl. Ex. J (Practice Statement Letter).
- (b) I understand from Lucid Issuer Services Limited (the “**Information Agent**”), the Debtor’s information agent in respect of the Scheme, that the Practice Statement Letter was made available to the Scheme Creditors on May 27, 2020 on the Information Agent’s website (the “**Scheme Website**”) for Scheme Creditors at

www.lucid-is.com/swissport, which is a restricted-access website established to make Scheme documentation available to Scheme Creditors.

- (c) In addition, on May 27, 2020, Barclays Bank PLC, as Administrative Agent under the Credit Agreement, shared the Practice Statement Letter with the Lenders through its online “DealVault” platform used for sharing notifications with and issuing documents to the Lenders (“**DealVault**”). Concurrently, a press release (the “**May 27 Press Release**”) was also published through Bloomberg, Debtwire, Reorg Research and Capital Structure (being major financial news and market intelligence providers) inviting the Scheme Creditors to access the website for Scheme Creditors referred to above. *See* Hershey Decl. Ex. K (May 27 Press Release).
- (d) On June 5, 2020, following the entry of (and in accordance with) the Convening Order, a notice stating that the UK Court has ordered the convening of the Scheme Meeting (the “**Notice of Scheme Meeting**”) and enclosing copies of the Explanatory Statement (which includes the Scheme and a form of proxy) (together, the “**Notification Documents**”), were (a) made available to all Scheme Creditors to download on the Scheme Website; and (b) uploaded by the Administrative Agent to DealVault and the Lenders were notified by an email from the Administrative Agent (using the email addresses notified to it by the Lenders for this purpose) that the Notification Documents were available to be reviewed and downloaded on DealVault. The Notice of Scheme Meeting also set forth the time and place for the Scheme Meeting. *See* Hershey Decl. Ex. L (Notice of Scheme Meeting). If the Scheme is duly-approved by Scheme Creditors, notice of the Sanction Hearing (as defined and described below) will be provided to Lenders via DealVault and by the Information Agent publishing the same on the Scheme Website. A press release, published on Bloomberg, Debtwire, Reorg Research and Capital Structure, will also be issued setting forth the time and date of the Sanction Hearing.

40. A scheme is considered approved at the Creditors’ Meeting only if it is supported by a simple majority (by number) of the creditors present and voting (in person or by proxy) and representing at least 75% by value (*i.e.*, amount of the claims) of voters of the relevant class of

creditors. Counsel Decl. ¶ 14. All creditors whose claims would be affected by the scheme are entitled to vote at one or more of the creditors' meetings. *Id.* The voting majorities will normally be scrutinized and confirmed by an independent third party. *Id.* In this case, they will be scrutinized by the Information Agent in its capacity as scrutineer.

41. In order for the scheme to become binding on the creditors following the creditors' meeting or meetings (assuming the requisite majority votes in favor have been obtained), it must also be approved by the UK Court at a fairness hearing at which it may enter an order "sanctioning" (*i.e.*, approving) the Scheme. *Id.* ¶ 15. The UK Court has full discretion to grant or withhold its approval of the scheme at the Sanction Hearing, and may hear argument from scheme creditors whose rights would be directly affected by the scheme, and from persons whose rights were not directly affected but who claim they would be prejudiced by the scheme if it were given the Court's sanction. *Id.* In particular, it will examine whether the applicable statutory requirements are met; for example, whether the requisite majorities of voting creditors have approved the scheme, and whether the overall scheme is fair, taking into account the interests of the creditors and the nature of the scheme's impact upon dissenting creditors. *Id.*

42. The sanction hearing in this case (the "**Sanction Hearing**") is anticipated to be held on or about June 24, 2020. If the UK Court, after notice and a hearing, enters the order approving the Scheme (the "**Sanction Order**"), all that will remain for the Scheme to become fully effective is for its conditions to effectiveness, including for this Court to grant the relief requested herein, to be met or validly waived, and for the Scheme to be filed with the UK registrar of companies ("**Companies House**"). *Id.* ¶ 17.

### C. Purpose of the Scheme

43. The Scheme does not itself reduce any financial debt. Instead, the limited purpose of the Scheme is to facilitate certain amendments to the Intercreditor Agreement and the Credit



Agreement to (i) allow Swissport to obtain the New Money Financing, and (ii) provide Swissport with flexibility to negotiate and implement a holistic restructuring of its balance sheet in due course. The amendments that the Debtor is seeking to effect via the Scheme are set forth below.

**D. The Intercreditor Agreement Amendments**

44. As noted above, the Intercreditor Agreement currently does not provide for the possibility of borrowing super senior debt ranking above the Senior Secured Liabilities. The Intercreditor Agreement must therefore be amended in various respects to enable the New Money Financing to be borrowed and to have super priority status. At present, such amendments would require the unanimous consent of the Lenders to the Credit Agreement, as the Intercreditor Agreement provides that Lenders must consent to a change when such Lenders would be “adversely affected” by it.<sup>18</sup>

45. One purpose of the Scheme is therefore to facilitate necessary amendments to the Intercreditor Agreement by obtaining the consent of the scheme creditors, *i.e.*, the Lenders to the Credit Agreement, at a lower consent threshold (a 75% majority by value and majority in number) than the unanimity currently required by the Credit Agreement.

46. Specifically, the key amendments to the Intercreditor Agreement that the Debtor seeks to implement through the Scheme to facilitate the incurrence of the New Money Financing include):

- (a) permitting the designation of certain indebtedness to be incurred by Swissport (to the extent permitted under the Credit Agreement) as “super senior” with the consent of the Majority Senior Secured Lenders/ Holders (as defined in the Credit Agreement Amendments (as defined below));

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<sup>18</sup> See Intercreditor Agreement § 28.1(c) (any amendment which changes or relates to the order of priority or subordination under the Intercreditor Agreement or Section 18 (*Application of Proceeds*) may not be made without the consent of each category of creditor “adversely affected” by the relevant amendment).

- (b) acknowledging that such super senior debt shall be secured by the Collateral on a senior and priority basis to the Senior Secured Liabilities;
- (c) amending the enforcement proceeds waterfall to facilitate payments being applied in respect of the super senior debt in priority to existing obligations in respect of the Senior Secured Liabilities;
- (d) amending provisions with respect to any instructions as to the enforcement of the Transaction Security (as defined in the Intercreditor Agreement) to account for such super senior debt; and
- (e) making amendments to allow for the incurrence of super senior debt with the consent of the holders of a simple majority in aggregate principal amount of the Senior Secured Liabilities rather than any higher creditor consent threshold which might otherwise apply,

(such amendments, together with any consequential amendments, the “**Intercreditor Amendments**”).

47. Subject to the Scheme becoming effective, the Debtor (on its own behalf and on behalf of the Scheme Creditors) shall execute the “Amendment Consent and Instruction,” which will in turn instruct and authorize the Administrative Agent and the Collateral Agent under the Credit Agreement and the Intercreditor Agreement (as defined therein) to execute the documents necessary to effect the Intercreditor Agreement Amendments and Credit Agreement Amendments (as defined below).

#### **E. The Credit Agreement Amendments**

48. As noted above, the Scheme Creditors will also be asked to provide their consent to the Credit Agreement Amendments to provide flexibility in respect of a holistic restructuring of Swissport’s indebtedness in due course. Such a restructuring would need to be on a group-wide

basis, and may be completed by consent or could involve a US, English or other reorganization proceeding.

49. To implement the restructuring efficiently, Swissport may need to change to the identity of the borrower under the Revolving Facility. This is because the borrower is presently a Swiss-incorporated entity (Swissport International AG), and recognition of foreign proceedings in Switzerland is not straightforward. In addition, if such future restructuring proceedings were to take place in England (which is yet to be determined), it would aid such proceedings if the Credit Agreement were to be governed by English law rather than New York law. In this regard, the Debtor seeks to make the following amendments to the Credit Agreement pursuant to the Scheme:

- (a) reducing the consent threshold to permit a future change to the borrower under the Revolving Facility from all Lenders to all Revolving Lenders (as defined in the Credit Agreement), and to allow borrowers under the Revolving Facility to assign or transfer their rights with the prior written consent of all Revolving Lenders and the Administrative Agent; and
- (b) reducing the consent threshold to permit a future change to the governing law and submission to jurisdiction clauses in the Credit Agreement from all Lenders to the Required Lenders (as defined in the Credit Agreement),

together with certain other amendments to the Credit Agreement, the “**Credit Agreement Amendments**,” and together with the ICA Amendments, the “**Amendments**”).

50. It is not intended that the Revolving Facility borrower or the governing law and jurisdiction clauses be changed at this time; rather, the Debtor merely seeks to reduce the consent thresholds required to implement such changes to provide Swissport with the flexibility that may be needed to implement a long-term solution to the group’s capital structure in due course.

**F. Other Consents and Contractual Amendments Necessary to Permit the Debtor to Incur the New Money Financing**

*(i) The SSNs*

51. As set forth above, the SSNs are secured by the same collateral as the Credit Agreement. Thus, certain amendments are required to the SSN Indenture to facilitate the incurrence of super senior debt in the form of the New Money Financing (the “**Senior Secured Notes Indenture Amendments**”). However, the applicable consent threshold for the SSNs is a simple majority by principal value of outstanding notes. *See* SSN Indenture § 9.02. Thus, the relevant majority of the SSNs may instruct the Senior Secured Notes Representative (as defined in the SSN Indenture) to consent to the Intercreditor Agreement Amendments. The effectiveness of the Amendments is conditional upon the requisite majority of the SSNs approving the Senior Secured Notes Indenture Amendments.

52. The requisite consents for such amendments were sought outside of the Scheme pursuant to a consent solicitation process. The required level of consent has been secured — indeed, as of the Petition Date, more than 75% of the holders of the SSNs by principal value outstanding have consented to the Senior Secured Notes Indenture Amendments.

*(ii) The SUNs*

53. Further, as described above, the grantors of the same Collateral as the Credit Agreement (including the Debtor) also provided unsecured guarantees in respect of the SUNs. However, the Scheme will not make any amendments to the SUN Indenture, which governs the SUNs. This is because the SUN Indenture already specifically permits the incurrence by Swissport of certain “Permitted Debt” (as defined therein), which may rank ahead of the SUNs. *See* SUN Indenture § 4.09(b). According to Swissport’s calculations, there is capacity under the SUN Indenture for up to €380 million (USD 433.2 million) of such Permitted Debt. As of the Petition

Date, the Debtor anticipates that the New Money Financing will not exceed the Permitted Debt threshold provided under the SUN Indenture.

#### **G. Ancillary Compromises and Scheme Releases**

54. A key feature of the Scheme is that it will have the effect of varying the Scheme Creditors' rights not only as against the Debtor but also against the Borrowers and Subsidiary Guarantors other than the Debtor (the "**Relevant Obligors**," and such effect, the "**Ancillary Compromises**").<sup>19</sup> Specifically, the "(direct and indirect) rights and obligations of each Scheme Creditor under the Intercreditor Agreement, the Credit Agreement and in respect of its Scheme Claims shall each be varied in accordance with the terms of the Amendment Agreements." Scheme § 4.1. "Scheme Claims" means any (direct or indirect) claim of a Scheme Creditor in respect of any Liability of the Scheme Company *i.e.*, the Debtor and/or Relevant Obligor to a Scheme Creditor in relation to, or arising out of or in connection with, the Credit Agreement (including any claim to interest). See Scheme § 1.1 (definitions). Accordingly, the Scheme and the Amendments, if the New Money Financing is obtained, will ultimately operate to subordinate the claims of the Scheme Creditors against the Relevant Obligors so that they rank behind the claims of the lenders under the New Money Financing against the Relevant Obligors.

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<sup>19</sup> The Relevant Obligors comprise: Swissport Pty Ltd; Swissport ANZ Pty Ltd; Swissport Cargo Services Belgium N.V.; Swissport Ltd; Swissport Cargo Services UK Ltd; Swissport UK Holding Limited; Swissport Group UK Limited; Swissport GB Limited; Flightcare Multiservices UK Limited; Heathrow Cargo Handling Limited; Swissport Financing S.à r.l.; Swissport Holding International S.à r.l.; Swissport Nederland B.V.; Swissport Cargo Services The Netherlands B.V.; Swissport Holding B.V.; Cargo Service Center East Africa B.V.; Swissport New Zealand Ltd; Aguila Bid AG; Swissport International AG; Swissport Group Services GmbH; Swissport DACH Holding AG; Swissport Europe Holding AG; Swissport LATAM Holding AG; Swissport MEA Holding AG; Swissport North America, Inc.; Swissport Cargo Services, Inc.; Swissport SA, LLC; Swissport Fueling, Inc.; Swissport USA, Inc.; Swissport SA Fuel Services, LLC; Servisair Fuel Leasing Corporation; Swissport SA USA, LLC; Swissport North America Holdings, Inc.; Swissport Canada Handling Inc.; Swissport Canada Inc.; Swissport Canada Holding Inc.; Swissport Cargo Services Deutschland GmbH; Swissport Germany Holding GmbH; Swissport Deutschland GmbH; Swissport Ireland Ltd; Swissport Holding Spain, S.L.; Swissport Handling, S.A.U.; Cargo Service Center de México, S.A. de C.V.; and Swissport México Holding, S. de R.L. de C.V.

55. Given the shared liability between the Debtor and each of the Relevant Obligors (arising in part from the Contribution Deed described above at paragraph 31), this type of “ancillary compromise” is necessary to give effect to the Scheme, as the Debtor cannot effectively seek a release or variation of the Scheme Creditors’ rights against it without also seeking to release or vary the Scheme Creditors’ rights as against the Relevant Obligors. Although incurring debt under the terms of the New Money Financing would not be a breach in respect of the Debtor’s obligations under the Intercreditor Agreement or Credit Agreement, without binding the Lenders to the Ancillary Compromises, the Relevant Obligors would be in breach and could pursue contribution claims against the Debtor for claims of or by the Lenders against them, defeating the practical purpose of the Scheme, which is to facilitate the incurrence of such debt financing.

56. The Scheme also effects a limited release of potential liability against certain third parties in connection with activity related to the Scheme. That is, each Scheme Creditor “irrevocably and unconditionally, fully and finally waives and releases and forever discharges with effect from the Effective Date each Protected Party from all Liabilities which it has or may have in relation to or arising out of or in connection with the preparation, negotiation or implementation of the Scheme, the Scheme Steps and/or the Amendments” (the “**Scheme Releases**”). Scheme § 4.2. Liability arising from, among other things, fraud, gross negligence or willful misconduct are excluded from the Scheme Releases. *Id.* § 4.3. The “Protected Parties” are (i) the members of the Board of Directors; (ii) the Advisers; (iii) the members of the Ad Hoc Group; (iv) the Administrative Agent; (v) the Collateral Agent; (vi) each member of the Group; and (vii) any of such parties’ directors, officers, co-investors, investment committee members, partners,

employees, consultants and other representatives, each as defined pursuant to the Scheme. *See* Scheme § 1.1 (definitions).<sup>20</sup>

#### **H. Final Report Pursuant to Bankruptcy Rule 5009**

57. The Foreign Representative has determined that, upon entry of the Proposed Order, the relief provided by chapter 15 of the Bankruptcy Code will no longer be required. Given the limited scope of this proceeding, if no objections to this Verified Petition are filed, the Foreign Representative does not propose to take any further action in this chapter 15 case. In these circumstances there will be no outstanding motions, contested matters or adversary proceedings pending in this chapter 15 case. Moreover, the UK Court shall have exclusive jurisdiction to hear and determine any suit, action, or proceeding and to settle any dispute which may arise in connection with the Scheme. *See* Hershey Decl. Ex. L (Scheme) § 7.17. Accordingly, the Foreign Representative does not anticipate requiring the further assistance of this Court in connection with the Scheme. In order to limit costs and relieve the burden on this Court, the Foreign Representative respectfully requests that the Court close this chapter 15 immediately following entry of the Proposed Order.

#### **IV. CONNECTIONS TO THE U.S.**

58. As set forth above, the Debtor maintains the Delaware Escrow Account, and all of the Debtor's obligations pursuant to the CA Guarantee, the SSN Guarantee, the Credit Agreement,

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<sup>20</sup> The Scheme Releases and the Ancillary Compromises are also supported by undertakings granted by the Scheme Creditors that they will not "commence any Proceedings against the Scheme Company or any Relevant Obligor, or any Protected Party." Scheme § 6.1(d). With respect to the Ancillary Compromises, the Scheme further provides that "each Scheme Creditor shall be prohibited from asserting any right or taking any action (in each case either directly or indirectly) against the Scheme Company and/or any such Relevant Obligor that would be inconsistent with this Scheme and/or the Intercreditor Agreement and/or the Credit Agreement (in each case as amended by the Amendment Agreements)." Scheme § 4.1(b).

the SSN Indenture, the SUN Indenture and the Intercreditor Agreement are governed by New York law. *Supra* ¶¶ 3-11, 27. The Debtor has no place of business in the U.S.

### **JURISDICTION, ELIGIBILITY AND VENUE**

59. This Court has jurisdiction to consider the relief requested herein pursuant to sections 157 and 1334 of title 28 of the United States Code, as well as the Amended Standing Order of Reference of the United States District Court for the District of Delaware, dated February 29, 2012 (Sleet, C.J.).

60. This chapter 15 proceeding has been properly commenced with respect to the Debtor in accordance with sections 1504 and 1509(a) of the Bankruptcy Code by the filing of the Petition. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code.

61. Venue is proper in this Court pursuant to section 1410(1) of title 28 of the United States Code, as the principal U.S. assets of the Debtor, being primarily its interest in the Delaware Escrow Account, are located within this District.

### **BASIS FOR RELIEF**

#### **V. THE PETITIONER HAS SATISFIED THE REQUIREMENTS FOR RECOGNITION OF THE UK PROCEEDING**

##### **A. The Requirements of Section 1517(a) of the Bankruptcy Code are Satisfied**

62. Under section 1517(a) of the Bankruptcy Code, subject to the public policy exception contained in section 1506, a foreign proceeding must be granted chapter 15 recognition if each of the following three requirements are met: (1) such foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515. *See* 11 U.S.C. § 1517(a). As set forth below, the Petitioner satisfies



each of the requirements of section 1517(a), and, therefore, the UK Proceeding should be recognized as a foreign main proceeding.

(i) *The UK Proceeding is a “Foreign Proceeding”*

63. The UK Proceeding satisfies the definition of “foreign proceeding” as required by section 1517(a)(1) of the Bankruptcy Code. Section 101(23) defines a “foreign proceeding” as (1) a collective judicial or administrative proceeding under a law relating to insolvency or adjustment of debt, (2) pending in a foreign country, (3) in which the assets and affairs of the debtor are subject to control or supervision of a foreign court, and (4) for the purpose of reorganization or liquidation. 11 U.S.C. § 101(23); *see also In re ABC Learning Ctrs Ltd.*, 728 F.3d 301, 308 (3d Cir. 2013); *In re Ir. Bank Resolution Corp. (In Special Liquidation)*, No. 13-12159 (CSS), 2014 Bankr. LEXIS 1990, \*4-5 (Bankr. D. Del. Apr. 30, 2014).

64. As an initial matter, section 1516(a) of the Bankruptcy Code entitles this Court to presume that a foreign proceeding is a “foreign proceeding” if the decision commencing the foreign proceeding so indicates. *See* 11 U.S.C. §§ 1516(a), 1515(b)(1). Here, the UK Court declared in the Convening Order that the Petitioner:

has been validly appointed as the Scheme Company’s [*i.e.*, the debtor’s] Foreign Representative, including as that term is defined in section 101(24) of the United States Bankruptcy Code, with authority to commence, if and when needed, any ancillary recognition or other proceeding in support of the Scheme, including but not limited to proceedings before a United States Bankruptcy Court seeking an order recognising these proceedings in respect of the Scheme under Chapter 15 of the U.S. Bankruptcy Code[, and] duly authorised to seek all relief available to a foreign representative in ancillary recognition . . . .

Convening Order ¶¶ 16-17. This language indicates that the UK Court considers the UK Proceeding a “foreign proceeding.” Accordingly, this Court is entitled to presume that the UK Proceeding is a “foreign proceeding.”

65. In any event, the UK Proceeding meets the Bankruptcy Code definition. The Scheme is a collective court-supervised arrangement between the company and a class of its creditors. *Supra* ¶ 35. The UK Proceeding is a judicial proceeding, formally commenced by the Convening Order, and the UK Court’s Sanction Order must be entered to enable the Scheme to become effective. *Supra* ¶¶ 36-38, 41-42. Both the Convening Order and the Sanction Order are issued by the UK Court, a judicial body of the United Kingdom, which, under the Scheme, will have “exclusive jurisdiction to hear and determine any suit, action, or proceeding and to settle any dispute which may arise [in connection with] the Explanatory Statement or any provision of [the] Scheme, or out of any action taken or omitted to be taken under [the] Scheme or in connection with the administration of [the] Scheme . . . .” *See* Hershey Decl. Ex. L (Scheme) § 7.17. Thus, the UK Court will supervise the affairs of the Debtor in connection with the Scheme.

66. The UK Proceeding is “collective” in that it provides due process to all creditors whose rights and interests will be directly impacted by the Scheme. *Supra* ¶¶ 37, 39-41. Such Scheme Creditors are entitled to vote on the Scheme at a Creditors’ Meeting convened by order of the UK Court, and are entitled to be heard at both the Convening Hearing and Sanction Hearing. *Id.* But no matter whether or how an individual Scheme Creditor may have voted, the Scheme is intended to deal with all Scheme Creditors collectively, rather than any single creditor alone. *Supra* ¶ 35.

67. The UK Proceeding is pending in a foreign country – England (a member of the political union comprising the United Kingdom) – under a law relating to the adjustment of debt (the UK Act). Counsel Decl. ¶ 8. As set forth above, the Scheme has a reorganizational purpose, in that it will allow the Debtor to incur the New Money Financing and make amendments to the

documents governing its prepetition indebtedness to pave the way for a comprehensive and orderly restructuring. *Supra* ¶¶ 43-50.

68. U.S. courts, including this Court, have routinely recognized English proceedings commenced for the purpose of effecting schemes of arrangements as “foreign proceedings.” *See, e.g., In re Metinvest B.V.*, No. 16-11424 (LSS), 2016 Bankr. LEXIS 4693 (Bankr. D. Del. June 30, 2016), [ECF No. 24]; *In re Zodiac Pool Sols. SAS.*, No. 14-11818 (KJC) (Bankr. D. Del. Aug. 29, 2014), [ECF No. 27]; *In re Hellas Telecomms. (Luxembourg) V.*, No. 10-13651 (KJC) (Bankr. D. Del. Dec. 13, 2010), [ECF No. 38]; *see also In re Avanti Commc’ns Grp.*, 582 B.R. 603 (Bankr. S.D.N.Y. 2018), [ECF No. 16]; *In re Tokio Marine Eur. Ins. Ltd.*, No. 11-13420 (MG), 2011 Bankr. LEXIS 5805 (Bankr. S.D.N.Y. Sept. 8, 2011), [ECF No. 13]; *In re Highlands Ins. Co. (U.K.) Ltd.*, No. 07-13970 (MG), 2009 Bankr. LEXIS 5744 (Bankr. S.D.N.Y. Aug. 18, 2009), [ECF No. 40].

(ii) *The Petitioner should be recognized as Foreign Representative in respect of the UK Proceeding*

69. A chapter 15 case is properly commenced by the filing of a petition for recognition by a “foreign representative.” *See* 11 U.S.C. §§ 1504, 1515(a). The Bankruptcy Code defines a “foreign representative” as “a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.” 11 U.S.C. § 101(24). The Petitioner in this case is an individual who has been (1) duly appointed by the Debtor’s board of directors as “‘foreign representative’ for the purpose of recognition proceedings under Chapter 15 of the US Bankruptcy Code” (*see* Form of Petition, Ex. 2 (Resolution of Appointment) § 6.6) and (2) declared as authorized to act as “foreign representative” pursuant to the Convening Order (*see* Form of Petition, Ex. 1 ¶¶ 16-17). As such, the Petitioner is the proper

“foreign representative” of the Scheme, thereby satisfying the requirements of section 1517(a)(2) of the Bankruptcy Code.

(iii) *The Petition meets the additional requirements of section 1515 and Bankruptcy Rule 1007(a)(4)*

70. Recognition of a foreign proceeding further requires that the petition meet the filing requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517(a)(3). Sections 1515(b) and (c) require that a recognition petition include a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative, as well as a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative. *See* 11 U.S.C. §§ 1515(b), (c). The Petitioner has satisfied these requirements. This Verified Petition was filed pursuant to section 1515(a) and includes all disclosures and documents required by sections 1515(b) and (c). *See* Form of Petition, Ex. 4 (1515(c) statement); *Id.*, Ex. 1 (Convening Order).

71. The Foreign Representative has also satisfied the additional filing requirements set forth in Bankruptcy Rule<sup>21</sup> 1007(a)(4) by filing: (a) corporate ownership statements containing the information described in rule 7007.1 of the Bankruptcy Rules, as required by Bankruptcy Rule 1007(a)(4)(A); and (b) lists containing the names and addresses of all person or bodies authorized to administer the foreign proceedings of the Debtor and all parties to litigation pending in the U.S. in which the Debtor is a party at the time of the filing of the Petition. *See* Form of Petition, Ex. 5 (Corporate Ownership Statement), Ex. 3 (Rule 1007(a)(4)(B) statement). This chapter 15 case was properly commenced with respect to the Debtor in accordance with sections 1504, 1509(a) and 1515.

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<sup>21</sup> References herein to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure promulgated pursuant to section 2075 of title 28 of the United States Code.

**B. The Scheme Satisfies the Requirements for Recognition as a “Foreign Main Proceeding”**

72. In addition to qualifying as a “foreign proceeding” under section 101(23), the UK Proceeding is a “foreign main proceeding” within the meaning of section 1502(4) of the Bankruptcy Code. Section 1502(4) defines a “foreign main proceeding” as a “foreign proceeding pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1502(4). While the Bankruptcy Code does not define “center of main interests,” section 1516(c) provides that, in the absence of evidence to the contrary, a debtor’s registered office or habitual residence “is presumed to be the center of the debtor’s main interests.” 11 U.S.C. § 1516(c). The legislative history indicates that this rebuttable presumption was “designed to make recognition as simple and expedient as possible” in cases where the center of main interests, or “COMI” of a Debtor, is not controversial. H. Rep. No. 109-31, pt. 1, at 112-13 (2005).

73. In assessing whether the registered office presumption withstands scrutiny, courts, have developed a “widely adopted” list of non-exclusive factors for determining COMI, which, while not to be applied “mechanically,” are helpful in assessing an entity’s COMI. *See In re Serviços De Petróleo Constellation S.A.*, 613 B.R. 497, 507 (Bankr. S.D.N.Y. 2020) (referring to and citing the COMI factors developed by the court in *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006) and applied by the Second Circuit in *Morning Mist Holdings Ltd. v. Kryz (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 137 (2d Cir. 2013)).

74. Those factors include: (i) the location of the debtor’s headquarters; (ii) the location of those who actually manage the debtor; (iii) the location of the debtor’s primary assets; (iv) the location of the majority of the debtor’s creditors or a majority of the creditors who would be affected by the case; and (v) the jurisdiction whose law would apply to most disputes. *See In re ABC Learning Ctrs. Ltd.*, 445 B.R. 318, 333 (Bankr. D. Del. 2010) (applying the aforementioned

COMI factors and finding the foreign proceeding was a “foreign main” proceeding), *aff’d*, 728 F.3d 301 (3d Cir. 2013); *In re Irish Bank Resolution Corp. (In Special Liquidation)*, No. 13-12159 (CSS), 2014 Bankr. LEXIS 1990, at \*52 (Bankr. D. Del. Apr. 30, 2014) (same).

75. In addition, courts have placed emphasis on the need for the debtor’s COMI to be readily ascertainable by third parties. *In re Grand Prix Assocs.*, No. 09-16545 (DHS), 2009 Bankr. LEXIS 1239, at \*20 (Bankr. D.N.J. May 18, 2009) (the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency explained that the COMI was modeled after the European Union Convention on Insolvency Proceedings, which states: “the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties”) (citations omitted); *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 130 (2d Cir. 2013) (holding that relevant principle to determine debtor’s COMI is that COMI lies where debtor conducts its regular business, so that the place is ascertainable by third parties, and among other factors to be considered are location of headquarters, decision-makers, assets, creditors, and law applicable to most disputes).

76. Some courts have also employed the concept of “principal place of business” to guide their COMI analysis and, accordingly, have applied the Supreme Court’s definition of that concept in the context of subject matter jurisdiction, which looks at a corporation’s “nerve center,” *i.e.*, “where a corporation’s officers direct, control, and coordinate the corporation’s activities.” *See In re Fairfield Sentry Ltd.*, 714 F.3d at 138 n.10 (emphasis added) (citing *Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1192 (2010)). Given Congress’s choice to use “COMI” instead of “principal place of business” in chapter 15, the “nerve center” concept does not control, “[b]ut to the extent that the concepts are similar, a court may certainly consider a debtor’s ‘nerve center,’

including from where the debtor's activities are directed and controlled, in determining a debtor's COMI." *Id.*

77. As of the Petition Date, the statutory presumption that the Debtor's COMI lies in the UK is consistent with reality. The Debtor is incorporated and registered in England, where its directors reside and conduct board meetings. *Supra* ¶¶ 18, 23. While the Debtor has adopted policies and procedures set forth by the EMEA head office in Switzerland, its day-to-day management and UK-based aircraft refueling operations are directed, controlled and coordinated from its headquarters in Rumson, England. *Id.* Its primary assets and bank accounts are all located in England, as are its 13 employees. *Supra* ¶ 26. While the terms of its financial indebtedness are governed by New York law, the collateral it has pledged in respect of the relevant secured obligations is governed by an English law debenture, and is located in England. *Supra* ¶ 5. Further, by reason of its UK-based refueling operations, it is subject to UK-regulatory regimes, including contract law, employment law, environmental law, and regulatory/licensing approvals necessary for the conduct of its operations. Accordingly, legal disputes arising from the Debtor's operations are likely to be governed by UK law and litigated in the courts of that country.

78. Moreover, the location of its COMI has been made public and is therefore ascertainable by creditors and third parties via (i) the public record of the registrar at Companies' House of its status as an English company with a registered office in England, (ii) the physical location of its corporate headquarters, which displays a sign stating its name, (iii) all correspondence with creditors being addressed as being sent from its registered office in England using letterhead setting forth that address, and (iv) its UK tax residency. *Supra* ¶¶ 18, 20. In addition, since the Group's recent liquidity issues arose, a significant portion of the negotiations and dialogue between Swissport and its main creditor constituencies and their advisors have been

coordinated by Swissport and its advisors from England. *Supra* ¶ 29. Based on this spectrum of factors, assessed at the time of this filing, the Petitioner submits that the Debtor's COMI is the UK.<sup>22</sup>

**VI. THE COURT SHOULD GRANT THE PETITIONER'S REQUEST FOR DISCRETIONARY RELIEF PURSUANT TO SECTIONS 1521, 1507 AND 105 OF THE BANKRUPTCY CODE**

79. The Petitioner requests that pursuant to sections 1521(a), 1507(a) and 105(a) of the Bankruptcy Code, the Court (i) grant full force and effect to the Scheme within the territorial jurisdiction of the U.S.; and (ii) issue a permanent injunction enjoining actions that would interfere with the implementation of the Scheme and Sanction Order. As set forth below, granting this relief is an appropriate extension of comity to the decision of the UK Court to sanction the Scheme.

**A. Applicable Standards**

80. Upon recognition of a foreign proceeding, section 1521(a) of the Bankruptcy Code authorizes the Court to grant "any appropriate relief" to a foreign representative "where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors," provided that the interests of creditors and other interested entities are sufficiently

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<sup>22</sup> Alternatively, if the Court is not satisfied that the Debtor's COMI is in the UK, the Petitioner respectfully requests that the Court recognize such proceeding as a foreign nonmain proceeding of the Debtor, and grant the discretionary relief requested herein pursuant to sections 1521(a), 1507(a) and 105(a) of the Bankruptcy Code. The Petitioner submits that the matters described further herein, including the Debtor's long-standing aircraft fueling operations at Newcastle airport in England since 2005, associated employment of 13 individuals, and engagement with at least 17 local vendors are sufficient to demonstrate a non-transitory effect on the local marketplace and satisfy the requirements of the "establishment" test. *See* 11 U.S.C. § 1517(b)(2); § 1502(2) (defining "establishment" as "any place of operations where the debtor carries out a nontransitory economic activity"); *In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 70 (Bankr. S.D.N.Y. 2011), *aff'd*, 474 B.R. 88 (S.D.N.Y. 2012) (noting "paucity of U.S. authority" on the interpretation of the "establishment" test but holding that several factors "contribute to identifying an establishment: the economic impact of the debtor's operations on the market, the maintenance of a 'minimum level of organization' for a period of time, and the objective appearance to creditors whether the debtor has a local presence.").



protected. 11 U.S.C. §§ 1521(a), 1522(a). The purpose of chapter 15 is to “provide effective mechanisms for dealing with cases of cross-border insolvency with the following objectives:

- a. cooperation between . . . courts of the United States, . . . and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
- b. greater legal certainty for trade and investment;
- c. fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;
- d. protection and maximization of the value of the debtor's assets; and
- e. facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.”

*ABC Learning Ctrs*, 728 F.3d at 304-05 (citing 11 U.S.C. § 1501(a)(1)).

81. Pursuant to section 1507, the Court may also grant discretionary relief to provide additional assistance beyond that permitted under section 1521 to a foreign representative. 11 U.S.C. § 1507(a); H. Rep. No. 109-31, pt. 1, at 109 (2005). In exercising discretion to grant relief under section 1507(a), courts are guided by the standards set forth in section 1507(b), which provides that:

- a. In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure —
- b. just treatment of all holders of claims against or interests in the debtor's property;
- c. protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
- d. prevention of preferential or fraudulent dispositions of property of the debtor;
- e. distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

- f. if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

11 U.S.C. § 1507(b).<sup>23</sup> Additionally, section 105(a) provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

11 U.S.C. § 105(a).

**B. This Court Should, in the Exercise of Comity, Enforce the Scheme and the Sanction Order within the Territorial Jurisdiction of the United States**

82. The U.S. has long granted comity to foreign plans and schemes, because doing so accords with statutory objectives of section 1501. The Supreme Court long ago recognized the necessity of giving effect to foreign schemes of arrangement in order to further these goals, reasoning that

[u]nless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries.

*Canada S. Ry. Co. v. Gebhard*, 109 U.S. 527, 539 (1883); *see also ABC Learning Ctrs.*, 728 F.3d at 306 (“Chapter 15 embraces the universalism approach.”).

83. Accordingly, U.S. courts, including this Court, have previously held that “appropriate relief” under section 1521 or “additional assistance” under section 1507 should

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<sup>23</sup> The interplay between the relief available under sections 1507 and 1521 is “far from clear.” *See In re Atlas Shipping A/S*, 404 B.R. 726, 741 (Bankr. S.D.N.Y. 2009). The Fifth Circuit set forth a three-part analysis to aid courts in assessing which provision to use in granting relief in chapter 15 cases. *Ad Hoc Grp. of Vitro Noteholders v. Vitro SAB De CV (In re Vitro S.A.B. de C.V.)*, 701 F.3d 1031, 1054 (5th Cir. 2012). Under this approach, courts first consider the relief specified in sections 1521(a) and (b), and, if the relief requested is not provided there, consider whether the relief falls more generally under section 1521’s grant of “any appropriate relief.” *Id.* “[A]ppropriate relief” is “relief previously available under Chapter 15’s predecessor, § 304.” *Id.*; *In re Atlas Shipping A/S*, 404 B.R. at 726; *In re Oi S.A.*, No. 16-11791 (SHL), 2018 Bankr. LEXIS 2053, at \*29 (Bankr. S.D.N.Y. July 9, 2018), [ECF 280]. Finally, “[o]nly if a court determines that the requested relief was not formerly available under § 304 should a court consider whether relief would be appropriate as ‘additional assistance’ under § 1507.” *Vitro*, 701 F.3d at 1054. It is open to the Court, however, to separately conclude whether relief is available under section 1507 and, if it is, the Court need not decide whether the “any appropriate relief” language in section 1521 would also provide a basis for relief. *In re Sino-Forest Corp.*, 501 B.R. 655, 663 n.3 (Bankr. S.D.N.Y. 2013).

include recognizing and enforcing an English law scheme of arrangement. *In re Metinvest B.V.*, No. 17-10130 (LSS), 2017 Bankr. LEXIS 4546 (Bankr. D. Del. Feb. 8, 2017), [ECF No. 19]; *In re Zodiac Pool Sols. SAS*, No. 14-11818 (KJC), [ECF No. 27]; *In re Hellas Telecomms. (Luxembourg) V.*, No. 10-13651 (KJC), [ECF No. 38]; *In re Avanti*, 582 B.R. 603; *In re Tokio Marine Eur. Ins. Ltd.*, No. 11-13420 (MG), 2011 Bankr. LEXIS 5805, [ECF No. 13]; *In re Highlands Ins. Co. (U.K.) Ltd.*, No. 07-13970 (MG), 2009 Bankr. LEXIS 5744, [ECF No. 40].

84. In light of the statutory objectives set forth above, recognizing and enforcing the Scheme here, once the Sanction Order is entered, is a necessary and appropriate exercise of comity. The relief requested herein is required to maximize Swissport's prospects of securing the New Money Financing and thereby providing it with the time and flexibility necessary to negotiate and implement a broader restructuring. The New Money Financing would also avert a liquidity crisis that may result in value-destructive, uncoordinated international insolvency proceedings, including potential liquidation proceedings in some jurisdictions. These aims are well within the scope of the statutory objectives, because if realized, they will afford "protection and maximization of the value of the [Debtor's] assets" and the "facilitation of the rescue" of not only its business, but also that of the Swissport group.

**C. The Scheme Creditors are Sufficiently Protected, Accorded Just Treatment and Not Prejudiced**

85. "In deciding whether to grant appropriate relief or additional assistance under chapter 15, courts are guided by principles of comity and cooperation with foreign courts." *In re Avanti*, 582 B.R. at 616. The Supreme Court has held that a foreign judgment should not be challenged in the U.S. if the foreign forum provides:

[A] full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of

jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it [is] sitting . . . .”

*Hilton v. Guyot*, 159 U.S. 113, 202-03 (1895); *see also* *Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713 (2d Cir. 1987) (“Federal courts generally extend comity whenever the foreign court had proper jurisdiction and enforcement does not prejudice the rights of United States citizens or violate domestic public policy.”); *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. 685, 698 (Bankr. S.D.N.Y. 2010) (Citing *Hilton* and noting that when “the foreign proceeding is in a sister common law jurisdiction with procedures akin to our own, comity should be extended with less hesitation, there being fewer concerns over the procedural safeguards employed in those foreign proceedings.” (internal quotation marks and citations omitted)).

86. Recognition and enforcement of the Scheme is also entirely appropriate given that U.S. and UK share the same common law traditions and fundamental principles of law, including an emphasis on procedural fairness, which has been observed at all times during the UK Proceeding and the Scheme process. *Supra* ¶¶ 35-42. Specifically, the Lenders received ample notice of the Debtor’s proposed Scheme via distribution of the Practice Statement Letter through the Administrative Agent’s online platform, the Information Agent’s website, and press releases. *Supra* ¶¶ 39. After the Convening Order was entered, they also received notice of the time and date of the Scheme Meeting and the Explanatory Statement, which provides all relevant information the Scheme Creditors require to make an informed decision with respect to voting on the Scheme, including a copy of the Scheme itself. *Id.*

87. Additionally, the Lenders will be given notice of this chapter 15 case by both mail service (to the extent that their addresses are known to and have been delivered to the Foreign Representative by the Administrative Agent), via the Barclays online platform and will be directed

to access the chapter 15 papers on a publicly available website set up by the Information Agent (the “**Chapter 15 Website**”). Further, the Trustee will receive mail service of the papers filed in this proceeding, and the Information Agent will provide notice of this proceeding to individual noteholders via the clearing systems, directing them to access the chapter 15 papers using the Chapter 15 Website. Trade creditors of the Debtor will also receive mail service of the chapter 15 papers to the extent their addresses are known, and a notice will be published in the New York Times to effect notice to any unknown creditors or parties in interest of this chapter 15 proceeding.

88. Scheme Creditors had a full and fair opportunity to be heard at the Convening Hearing, and will have the opportunity to vote on and be heard in connection with approval of the Scheme, in a manner that is consistent with U.S. standards of due process. *Supra* ¶¶ 37. No Scheme Creditor was prejudiced because it was foreign-based. Counsel Decl. ¶ 18. Finally, the Scheme must be approved by the UK Court, following the Sanction Hearing, at which Scheme Creditors may present objections and evidence and the UK Court will specifically consider whether the applicable statutory requirements are met; for example, whether adequate notice was provided, whether the requisite majorities of voting creditors have approved the Scheme, and whether the Scheme is fair, taking into account the interests of the creditors and the nature of the Scheme’s impact upon dissenting creditors. *Supra* ¶¶ 41-42, Counsel Decl. ¶ 16. An opportunity to appeal also exists. Counsel Decl. ¶ 17 n. 5.

89. The matters considered by the UK Court, in approving the Scheme, including notice and disclosure requirements and the proper classification of creditors, reflect similar sensitivity to issues of due process and just treatment of creditors considered by U.S. bankruptcy courts in approving plans of reorganization pursuant to a confirmation hearing under section 1128 of the

Bankruptcy Code. *Supra* ¶¶ 41-42. Accordingly, this Court should grant comity to the Scheme and Sanction Order.

90. The Ancillary Compromises and Scheme Releases do not alter this analysis. As with the other features of the Scheme, the “key determination” in whether to grant comity to the Ancillary Compromises and Scheme Releases is whether the procedures used in the foreign jurisdiction meet U.S. “fundamental standards of fairness.” *Metcalf*, 421 B.R. at 697 (citing *Salen Reefer*, 773 F.2d at 457). Notably, that does not mean that the relief granted in the foreign proceeding and the relief available in a U.S. proceeding need to be identical. *See In re Bd. of Dirs. of Multicanal S.A.*, 307 B.R. 384, 391 (Bankr. S.D.N.Y. 2004) (noting that neither case law nor section 304, the statutory predecessor to chapter 15, requires a determination that the foreign proceeding is identical to the U.S. proceeding). A U.S. bankruptcy court is not required to make an independent determination about the propriety of individual acts of a foreign court. *See Metcalf*, 421 B.R. at 697. The *Metcalf* court framed the issue as whether the U.S. law and the foreign law “both reflect similar sensitivity to the circumstances justifying approving such [release] provisions” (*id.*, 421 B.R. at 697-98), and whether the foreign proceeding provided “a full and fair opportunity [for creditors] to be heard in a manner consistent with standards of U.S. due process”, and whether the plan was approved by the debtor’s creditors and the foreign court. *Id.* at 698; *see also Agrokor d.d.*, 591 B.R. at 189; *In re Gee*, 53 B.R. 891, 902, 904 (Bankr. S.D.N.Y. 1985) (stating that “[f]or comity to be extended, it is necessary only that the foreign court abide by fundamental standards of procedural fairness” and noting that the ancillary court, if satisfied with the procedural fairness of the foreign proceeding, “should not sit as an appellate court over the foreign proceedings”).

91. Here, the Scheme Releases are necessary to prevent any objecting parties from interfering with the Scheme. They are narrowly tailored to release the Protected Parties solely from claims in respect of preparation, negotiation or implementation of the Scheme, the Scheme Steps and/or the Amendments (each as defined in the Scheme) and, similar to exculpation provision in chapter 11 plans, appropriately exclude liability arising from fraud gross negligence or willful misconduct. Moreover, the Scheme Releases do not seek to bind anyone other than the Scheme Creditors, who will be provided with a full and fair opportunity to be heard with respect to the Scheme, and ultimately will need to vote in favor of the Scheme by a 75% majority by value and number of those present and voting to approve it. *Supra* ¶¶ 37, 40-42.

92. The Ancillary Compromises are necessary to properly implement the Scheme as the Relevant Obligors covered by the Ancillary Compromises are obligors under the same facilities that the Scheme seeks to amend. Without the Ancillary Compromises, the Amendments would be effective only with respect to the Debtor, rendering the Scheme futile. *Supra* ¶¶ 54-56. Similarly, the scope of the Ancillary Compromises is narrow: the Scheme is not compromising the Relevant Obligors' debt obligations, it is merely lowering the consent thresholds required for the Debtor and Relevant Obligors to be able to incur the New Money Financing. *Supra* ¶¶ 43-50, 54-56.

93. As set forth in detail above, the UK Proceeding accords with fundamental U.S. standards of due process. *Supra* ¶¶ 35-42. Thus, so long as the Scheme Releases and Ancillary Compromises are granted by the UK Court, this Court may give effect to them under sections 1521(a) and 1507 pursuant to the doctrine of international comity, even if they go beyond what might be available in a chapter 11 proceeding. *Metcalf*, 421 B.R. at 696 ("This Court is not being asked to approve [releases] in a plenary case; rather, the Court is being asked to order enforcement of provisions approved by the Canadian courts. The correct inquiry, therefore, is whether the

foreign orders should be enforced in the United States in this chapter 15 case.”); *Avanti*, 582 B.R. at 616 (“The issue in chapter 15 cases then is whether to recognize and enforce the foreign court order based on comity[.]”); *Sino-Forest Corp.*, 501 B.R. at 661-62 (same).<sup>24</sup>

94. Accordingly, U.S. bankruptcy courts have regularly granted comity to schemes of arrangement that included these types of releases. See *In re Hellas Telecomms. (Luxembourg) V.*, No. 10-13651 (KJC) (Bankr. D. Del. Dec. 13, 2010); *In re Lecta Paper UK*, No. 19-13990 (Bankr. S.D.N.Y., Feb. 4, 2020); *In re New Look Secured Issuer plc*, No. 19-11005-SMB (Bankr. S.D.N.Y. May 3, 2019); *In re Bibby Offshore Servs. PLC*, No. 17-13588-MG (Bankr. S.D.N.Y. Jan. 8, 2018); *In re Ocean Rig UDW Inc.*, 570 B.R. 687 (Bankr. S.D.N.Y. 2017); *In re YH Ltd.*, No. 16-12262-SCC (Bankr. S.D.N.Y. Sep. 8, 2016); *In re Towergate Finance plc.*, No. 15-10509 (Bankr. S.D.N.Y. Mar. 27, 2015); *In re Codere Fin. (U.K.) Ltd.*, No. 15-13017-JLG (Bankr. S.D.N.Y. Dec. 22, 2015); *In re Zlomrex Int’l Fin. S.A.*, No. 13-14138-SHL (Bankr. S.D.N.Y. Jan. 31, 2014); *In re Magyar Telecom B.V.*, No. 13-13508-SHL, 2013 WL 10399944 (Bankr. S.D.N.Y. Dec. 11, 2013); *In re Tokio Marine Eur. Ins. Ltd.*, No. 11-13420-MG (Bankr. S.D.N.Y. Sep. 8, 2011); *In re Allianz Glob. Corp. & Specialty (Fr.)*, No. 10-4990-SMB (Bankr. S.D.N.Y. Nov. 4, 2011); see also *In re Arctic Glacier Int’l, Inc.*, 901 F.3d 162, 167-68 (3d Cir. 2018) (affirming bankruptcy court order enforcing releases in foreign debtor’s Canadian plan of arrangement).

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<sup>24</sup> The Fifth Circuit holding in *In re Vitro, S.A.B. de C.V.* does not control and is distinguishable. 473 B.R. 117 (Bankr. N.D. Tex. 2012), *aff’d*, 701 F.3d 1031 (5th Cir. 2012). The court of appeals decision affirming the bankruptcy court focused on the fact that the plan in Vitro was only approved with “insider” votes (though the court recognized that, in appropriate circumstances, foreign plans releasing third parties could be granted comity). As a result, it concluded that the bankruptcy court did not abuse its discretion in refusing to grant comity and enforce the Mexican plan in that case. Such considerations do not arise here. The Scheme and surrounding facts are much more analogous to the circumstances of the *Metcalfe & Mansfield* and *Sino Forest* - where the scheme in question will require the support of the requisite majority of Scheme Creditors in order to secure approval by the UK Court.



95. Similarly, U.S. bankruptcy courts have regularly recognized and given full force and effect to English schemes of arrangement that effect ancillary compromises with respect to non-debtor obligors. *See In re Bibby Offshore Servs. PLC*, No. 17-13588-MG (Bankr. S.D.N.Y. Jan. 8, 2018) (Bankr. S.D.N.Y. Mar. 27, 2015) (granting recognition to English scheme of arrangement, including with respect to the release of affiliates who had guaranteed the debtor's obligations to scheme creditors); *Avanti*, 582 B.R. at 617 (same); *In re New World Resources, N.V.* No. 14-12226-SMB (Bankr. S.D.N.Y. Sept. 9, 2014) (same); *In re Zlomrex Int'l Fin. S.A.*, No. 13-14138-SHL (Bankr. S.D.N.Y. Jan. 31, 2014) (same); *see also In re Ocean Rig UDW Inc.*, 570 B.R. 687 (Bankr. S.D.N.Y. 2017) (recognizing and enforcing Cayman scheme of arrangement that released affiliate guarantees); *Agrokor d.d.*, 591 B.R. at 190 (recognizing and enforcing Croatian settlement agreement that included releases and discharges of written guarantees by non-debtor affiliates).

**D. This Court Should Grant a Permanent Injunction Barring Claims Against the Debtor and the Relevant Obligors to Prevent Irreparable Harm and Support the Proper Implementation of the Scheme**

96. U.S. bankruptcy courts, including this Court, have granted permanent injunctions in numerous chapter 15 cases to support the proper implementation of foreign schemes of arrangement and restructuring plans, including enjoining persons from taking action against third parties. *See In re Hellas Telecomms. (Luxembourg) V.*, No. 10-13651 (KJC), [ECF No. 38] ¶ H (permanently enjoining all scheme creditors and related parties from taking any and all actions inconsistent with UK scheme of arrangement, including against protected parties); *see also In re Serviços de Petróleo Constellation S.A.*, [ECF No. 194] 600 B.R. 237 (Bankr. S.D.N.Y. 2019) (enforcing third-party releases granted in Brazilian RJ proceeding and enjoining all entities from taking action against released parties); *In re Avanti*, 582 B.R. at 619 (enjoining parties from taking

any action inconsistent with the Scheme in the U.S., including giving effect to the releases set out in the English scheme); *In re Oi S.A.*, 2018 Bankr. LEXIS 2053, at \*40 n. 3 (enforcing exculpations and related injunctions granted in a Brazilian RJ proceeding); *In re Ocean Rig*, No. 17-10736 (MG) (Bankr. S.D.N.Y. Sept. 20, 2017), [ECF No. 153] (permanently enjoining all entities from taking *inter alia* any action inconsistent with Cayman schemes or against parties released thereby); *In re Winsway Enters. Holdings Ltd.*, No. 16-10833 (MG) (Bankr. S.D.N.Y. June 16, 2016), [ECF No. 22] ¶ 5(b) (permanently enjoining creditors of nonmain debtor from commencing any suit, action or proceeding in the territorial jurisdiction of the U.S. to settle any dispute arising out of or relating to Hong Kong scheme of arrangement); *In re Magyar Telecom B.V.*, No. 13-13508-SHL, 2013 Bankr. LEXIS 5716 (Bankr. S.D.N.Y. Dec. 11, 2013) (granting full force and effect to English scheme of arrangement and ordering broad injunctive relief to effect third-party releases); *In re Tokio Marine Eur. Ins. Ltd.*, 2011 Bankr. LEXIS 5805, [ECF No. 13] at \*8 (permanently enjoining creditors from taking any actions in contravention of or inconsistent with the terms of the English scheme of arrangement); *In re Highlands Ins. Co. (U.K.) Ltd.*, 2009 Bankr. LEXIS 5744, [ECF No. 40] at \*5 (same).

97. Pursuant to section 1521(e), the federal standard for injunctive relief, which requires a party to show that it is likely to suffer irreparable harm in the absence of an injunction, applies in chapter 15 cases. 11 U.S.C. § 1521(e); *MF Glob. Holdings Ltd. v. Allied World Assurance Co. (In re MF Glob. Holdings Ltd.)*, 562 B.R. 55, 64 (Bankr. S.D.N.Y. 2017). In the context of the enforcement of a foreign confirmation order, there is threat of irreparable harm where the orderly determination of claims against a debtor and the fair distribution of its assets could be disrupted. *See, e.g., Cunard S.S. Co. v. Salen Reefer Servs. AB*, 773 F.2d 452, 458 (2d

Cir. 1985) (“Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail.”) (citation omitted).

98. In this instance, the requested injunctive relief is more modest than the relief sought in many chapter 15 cases involving enforcement of a non-U.S. plan or scheme, as the Scheme here does not involve resolving claims or distributing assets. Nevertheless, it will function to enable the Debtor and Swissport to increase liquidity and offer flexibility that the Debtor (and the Swissport group) believes will benefit all creditors. Unless this Court issues the requested permanent injunction, one or more persons or entities may take action that is inconsistent with or in contravention of the terms of the Scheme, including taking action against one or more of the entities within the Swissport group and their property in the U.S.<sup>25</sup> Such action would interfere with, and cause harm to, the administration of the Scheme, and may jeopardize Swissport’s ability to negotiate and raise the New Money Financing that it needs to provide it with the time and flexibility necessary to facilitate the group’s orderly, comprehensive restructuring. As a result, the Debtor and its creditors are exposed to irreparable injury for which there is no adequate remedy at law. Thus, if the Petitioner is successful on the merits in obtaining an order granting comity to the Scheme, a permanent injunction should issue to support its proper implementation.

## **VII. RECOGNITION AND ENFORCEMENT OF THE SCHEME WOULD NOT BE MANIFESTLY CONTRARY TO U.S. PUBLIC POLICY**

99. Section 1506 provides that a bankruptcy court may decline to grant relief requested if the action would be “manifestly contrary to the public policy of the United States.” 11 U.S.C. §§ 1506, 1517(a). This public policy exception is “narrowly construed, because the

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<sup>25</sup> As of March 31, 2020 Swissport held in excess of € 374 million (USD 426.4 million) in assets in the US, comprised of receivables, cash and cash equivalents, and ground service equipment used in the group’s U.S. operations.

‘word “manifestly” in international usage restricts the public policy exception to the most fundamental policies of the United States.’” *In re ABC Learning Ctrs.*, 728 F.3d at 309 (quoting H.R. Rep. No. 109-31); *In re Sino-Forest Corp.*, 501 B.R. at 665; *In re Toft*, 453 B.R. 186, 195 (Bankr. S.D.N.Y. 2011) (“[T]hose courts that have considered the public policy exception codified in [section] 1506 have uniformly read it narrowly and applied it sparingly”). The Scheme will permit Swissport to incur super senior financing, providing it additional time and flexibility to proceed with the orderly and efficient reorganization of its financial indebtedness, consistent with the public policy of the U.S. embodied by the Bankruptcy Code. Thus, recognition and enforcement of the Scheme advances the public policy objectives of sections 1501(a) and 1508. The purpose of chapter 15, as noted in section 1501(a), is to facilitate cross-border insolvency cases, and section 1508 directs courts, in interpreting chapter 15, to consider its international origins. 11 U.S.C. §§ 1501(a), 1508. Nothing has transpired in the course of the Scheme or arises under the UK Act that touches upon the policy concerns underlying section 1506 and thus this Court may grant the requested relief.

### **VIII. THIS COURT SHOULD CLOSE THE DEBTOR’S CHAPTER 15 CASE**

100. Section 1517(d) of the Bankruptcy Code provides that “[a] case under . . . [Chapter 15] may be closed in the manner prescribed under section 350.” 11 U.S.C. § 1517(d). Pursuant to section 350 of the Bankruptcy Code, a bankruptcy case may be closed “[a]fter an estate is fully administered.” 11 U.S.C. § 350(a). “The purpose of section 350 is to expedite disposition of the case and ensure fair treatment of all interested parties.” *In re Lupatech S.A.*, 611 B.R. 496, 503 (Bankr. S.D.N.Y. 2020) (closing chapter 15 case pursuant to order granting full force and effect to foreign court orders) (citations omitted). As an “estate” is not created in a chapter 15 case, thus “fully administered” in this context means, at a minimum, that administrative claims have been

provided for, and there are no outstanding motions, contested matters or adversary proceedings. *Id.* (citations omitted). Fed. R. Bankr. P. 5009(c) provides that a foreign representative shall “file a final report when the purpose of the representative’s appearance in the court is completed. The report shall describe the nature and results of the representative’s activities in the court.” Fed. R. Bankr. P. 5009(c). If there is no objection by the United States trustee or a party in interest within 30 days, the estate is presumed to have been fully administered and may be closed. See Rule 5009(c); Rule 5009-2(b) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”); *In re Ginsberg*, 164 B.R. 870, 873 (Bankr. S.D.N.Y. 1994). “The intended meaning of section 1517(d) of the Bankruptcy Code and Bankruptcy Rule 5009(c) is clear: once the need for a chapter 15 case no longer exists and the purpose of the representative’s appearance in the U.S. court is completed, the case may be closed.” *In re Lupatech S.A.*, 611 B.R. at 503.

101. In accordance with Bankruptcy Rule 5009(c), the Final Report set forth herein describes the Petitioner’s limited activities this case, and the Petitioner respectfully submits that once the Proposed Order has been entered, the relief and protections afforded by chapter 15 will have been fully realized and this proceeding will have served its purpose. *Supra* ¶ 57. The Petitioner does not anticipate that there will be any other outstanding motions, objections (including to the Final Report), contested matters or adversary proceedings pending before this Court at the time the relief requested in this Verified Petition is heard. In these circumstances, prompt closure of this case will reduce costs and relieve the burden on this Court. Accordingly the Petitioner respectfully requests that the Court (i) reduce the applicable 30 day notice period set forth in Bankruptcy Rule 5009(c) and Rule 5009-2 of the Local Rules in order to permit the Court

to hear the Petitioner's request to close the case at the Recognition Hearing,<sup>26</sup> thereby limiting costs and relieving the burden on this Court, and (ii) close the chapter 15 case immediately following entry of the Proposed Order, pursuant to the proposed form of Final Decree attached hereto as Exhibit B.

### **NOTICE**

102. Notice of the Verified Petition has been provided to the parties (the “**Notice Parties**”) set forth in Exhibit C annexed hereto (the “**Notice List**”). The Petitioner respectfully submits that no other or further notice is required.

### **CONCLUSION**

103. WHEREFORE, the Petitioner respectfully requests that the Court grant the relief requested in the Proposed Order, including (i) recognizing the UK Proceeding as a foreign main proceeding; (ii) recognizing the Petitioner as the “foreign representative” in respect of the UK Proceeding; (iii) granting full force and effect and comity to the Scheme and the Sanction Order (when entered), and (iv) immediately closing this chapter 15 case, and (v) granting such other relief as the Court deems just and proper to facilitate the implementation of the Scheme in the territorial jurisdiction of the United States.

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<sup>26</sup> See Fed R. Bankr. P 9006(c)(1) (allowing Bankruptcy Court to reduce notice periods for cause).

Dated: June 12, 2020  
Wilmington, Delaware

Respectfully submitted,

**FOX ROTHSCHILD LLP**

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*Attorneys for Donald William Christopher Mallon,  
as Petitioner and Foreign Representative*



**VERIFICATION OF CHAPTER 15 PETITION**

Pursuant to 28 U.S.C. § 1746, I, Donald William Christopher Mallon, declare as follows:

I am the authorized foreign representative of the Debtor with respect to the UK Proceeding for purposes of this Chapter 15 Case. I declare under penalty of perjury that the factual contents of the foregoing Verified Petition are true and accurate to the best of my knowledge, information and belief, and I respectfully represent as follows:

- (a) I was engaged as a restructuring consultant to Swissport in April 2020, and was subsequently appointed to the position of director of the Debtor. Prior to that, I served as Head of European Corporate Restructuring Practice of Skadden, Arps, Slate, Meagher & Flom LLP from 2008-2018. I was also previously a partner and Head of Business Finance and Restructuring in the London office of Weil, Gotshal & Manges LLP from 2001-2008. My restructuring and insolvency credentials span cross-border reorganizations involving several jurisdictions, including England, the U.S., Ireland, India, Russia, the Cayman Islands, Bermuda, Poland, Germany, Holland, Italy and Luxembourg. I have been selected for inclusion among Chambers Global, Chambers UK and Chambers Europe as a leading lawyer across the world on numerous occasions and have been consistently ranked at the very top of the Most Highly Recommended Individuals list for England in Who's Who Legal: Restructuring & Insolvency. I have a bachelor of laws from the University of Western Australia, was admitted as a barrister and solicitor of the Supreme Court of Western Australia in 1982 and as a solicitor in England in 1987.
- (b) On May 21, 2020, the Debtor's board of directors passed a resolution authorizing me to act as the foreign representative of the UK Proceeding for the purpose of any proceedings commenced in the U.S. under chapter 15 of the U.S. Bankruptcy Code, and on June 5, 2020 the UK Court further declared me to be the authorized foreign representative of the UK Proceeding. As such, I have full authority to verify the foregoing Petition on behalf of the Debtor and take related action.

Unless otherwise indicated, all facts set forth in this Verified Petition are based upon:

(a) my review of relevant information, data and documents (including oral information) furnished to me by the Debtor and its legal advisors; (b) information supplied to me by the Debtor's officers, directors, employees, and professionals; or (c) my analyses of the information I have received on the Debtor's operations and financial condition. I have also been kept abreast of major discussions with stakeholders, including the Debtor's primary financial creditors and its shareholders. I am an individual over the age of 18. If I am called to testify, I will do so competently and based on the facts set forth herein.

Dated: June 12, 2020  
Perthshire, Scotland

Respectfully submitted,

A handwritten signature in cursive script that reads "Chris Mallon".

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Donald William Christopher Mallon