

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

EXPRESS GRAIN TERMINALS, LLC¹,

CASE NO. 21-11832-SDM

DEBTORS.

CHAPTER 11
JOINTLY ADMINISTERED

MOTION TO APPROVE COMPROMISE AND SETTLEMENT

The following entities move the Court to approve a compromise and settlement pursuant to Fed. R. Bankr. P. 9019:²

- A. AMCREF Fund 34, LLC (“AMCREF 34”)
- B. AMCREF Fund 47, LLC (“AMCREF 47”);
- C. AMCREF Fund 50, LLC (“AMCREF 50”);
- D. MuniStrategies Sub-CDE#26, LLC (“MuniStrategies”);
- E. Rustic Ventures, L.L.C. (“Rustic”); and
- F. New Markets Investment 126, LLC (“New Markets”).³

In support of the relief requested herein, NMTC Lenders state the following:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §105, and L.U. Civ. R. 83.6 granting automatic reference to this Court. This

¹ The following chapter 11 cases have been consolidated solely for joint administration: *Express Grain Terminal, LLC*, Case No. 21-11832-SDM; *Express Biodiesel, LLC*, Case No. 21-11834-SDM, and *Express Processing, LLC*, Case No. 21-11835-SDM. See *Order Granting Motion for Joint Administration [Dkt. #1158]* dated November 18, 2021 in Case No. 21-11832-SDM. Accordingly, all references to docket entries shall be those pertaining to the Express Grain Terminals, LLC (“EGT”) docket unless stated otherwise. EGT, Express Processing, LLC (“EP”), and Express Biodiesel, LLC (“EB”) are referred to collectively as “Business Debtors.”

² Also parties to this Settlement are the Business Debtors and EGT Leverage, LLC (“EGT Leverage”), who will be filing a joinder in this Motion.

³ Rustic, MuniStrategies, AMCREF 34, AMCREF 47, AMCREF 50, and New Markets are referred to collectively as “NMTC Lenders”. Heartland Renaissance Fund Sub 32, LLC (“Heartland”) is #100473635v6

matter is governed procedurally by Fed. R. Bankr. P. 9019, along with Miss. Bankr. L.R. 9019-1. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

Overview of Relief Requested

2. The Business Debtors and certain of their non-debtor affiliates were parties to three pre-petition transactions pursuant to the New Market Tax Credit Program administered by the U.S. Department of the Treasury's Community Development Financial Institutions Fund. Pursuant to these transactions, the NMTC Lenders extended financing for the development of the Business Debtors' Mississippi facilities.

3. The transactions are complex. Attached hereto as **Exhibits 1-3** are Flow Charts for the transactions. Because the Business Debtors are in a liquidation posture, federal non-bankruptcy law, including the New Market Tax Credit Program, creates various consequences to Movants. Rather than risking litigation in connection with those consequences, Movants have reached a settlement of outstanding issues as detailed herein that includes, among other things: (a) withdrawal of the proofs of claim filed by the NMTC Lenders in the Business Debtors' chapter 11 cases; (b) cancellation of certain indebtedness owed by non-debtor affiliates of the Business Debtors; (c) cancellation of certain indebtedness owed by investment funds to non-debtor affiliates of the Business Debtors; (d) cancellation of certain option agreements; and (e) waiver and release of certain claims and causes of action, including avoidance actions.

Parties

4. On September 29, 2021, the Business Debtors filed petitions for relief under Chapter 11 of title 11 of the United States Code. No trustee has been appointed, and the Business Debtors are operating as debtors-in-possession. Dennis Girard is the court-appointed Chief Restructuring Officer ("**CRO**") for the Business Debtors.

expected to file a joinder in this Motion and upon the filing of its joinder should be deemed included in the defined

5. According to the EGT Schedules, EGT owns 100% of the membership interest in EB. *See Schedule A/B, Docket Entry 1695.*

6. According to the EP Schedules, EP owns 95% of the membership interests in EGT Leverage, which is a non-debtor affiliate of the Business Debtors. *See EP Schedule A/B, EP Docket Entry 72.* The CRO has exercised EP's majority membership interests in order to consent to the relief requested herein on behalf of EGT Leverage, LLC ("EGT Leverage"), a non-debtor affiliate.

7. John Coleman ("Coleman") is a chapter 11 debtor in this Court in Case No. 21-11833-SDM. Coleman, on behalf of the Business Debtors and EGT Leverage, executed all of the documents relating to the transactions with the NMTC Lenders.

8. Rustic is a creditor of EGT and EGT Leverage in the 2015 Transaction (identified hereafter).

9. AMCREF 34 is a creditor of EGT and EGT Leverage in the 2015 Transaction (identified hereafter).

10. MuniStrategies and AMCREF 47 are creditors of EB and EGT in the 2018 Transaction (identified hereafter).

11. New Markets, AMCREF 50, and Heartland are creditors of EGT in the 2020 Transaction (identified hereafter).

Facts Relating to the New Market Tax Credit Transactions⁴

2015 Transaction

12. EGT is indebted to Rustic and AMCREF 34 for the repayment of loans (collectively, the "2015 Loan"), issued pursuant to the terms of a *Loan Agreement* dated

term NMTC Lenders.

⁴ Loan numbers, account numbers, and other potentially confidential information have been redacted pursuant to Fed. R. Bankr. P. 9037.

November 20, 2015 (as amended, supplemented, restated and/or otherwise modified from time to time, the “2015 Loan Agreement”).

Rustic

13. In connection with the 2015 Loan, EGT executed in favor of Rustic the following promissory notes:

(a) *Promissory Note (HRV CDE Promissory Note A)* dated November 20, 2015, in the principal sum of \$3,941,006.00; and

(b) *Promissory Note (HRV CDE Promissory Note B)* dated November 20, 2015, in the principal sum of \$1,938,994.00.

14. In connection with the 2015 Loan, EP and non-debtor affiliate EGT Leverage issued a *Payment and Completion Guaranty* in favor of Rustic dated as of November 20, 2015.

15. Under the terms of the 2015 Loan Agreement, certain proceeds of the 2015 Loan were deposited for the benefit of Rustic in a reserve account held by U.S. Bank National Association, as Depository Bank, Account No. *****8390 (the “Rustic Account”).

16. Rustic holds a first lien in and on the Rustic Account pursuant to a *Bank Account Pledge Agreement* dated as of November 20, 2015. Rustic’s lien was perfected by control pursuant to Miss. Code Ann. § 75-9-327. The Rustic Account is further subject to a *Blocked Account Control Agreement* dated as of November 20, 2015.⁵

17. Rustic filed its Proofs of Claim in the chapter 11 proceedings of EGT and EP that are incorporated herein by reference. See EGT Claim No. 88 and EP Claim No. 3. The Proofs of Claim reflect a principal amount owed of \$5,880,000.00, together with interest and other costs and charges.

⁵ Copies of the documents referenced in paragraphs 13-16 are attached to the following pleading and are incorporated herein by reference: *Rustic Ventures, L.L.C.’s Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection [D.E. 2593]*. Numerous other documents were entered into in connection with the 2015 Transaction. These other documents are voluminous and not attached hereto, but the ones pertinent to the relief requested herein are identified.

18. The Court authorized Rustic to pursue its rights in and to the Rustic Account pursuant to an *Order Granting Rustic Ventures, L.L.C.'s Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection [D.E. 2746]*. Rustic is in the process of arranging for the transfer to it of the approximate amount of \$75,000.00 in the Rustic Account.

AMCREF 34

19. In connection with the 2015 Loan, EGT executed in favor of AMCREF 34 the following promissory notes;

(a) *Note (AMCREF CDE Promissory Note A)* dated November 20, 2015, in the principal sum of \$45,441,776.00;

(b) *Note (AMCREF CDE Promissory Note B)* dated November 20, 2015, in the principal sum of \$2,605,244.00; and

(c) *Note (AMCREF CDE Promissory Note C)* dated November 20, 2015, in the principal sum of \$1,153,000.00.

20. AMCREF 34 does not have a reserve account and has not filed a proof of claim in these proceedings.

EGT Leverage

21. In connection with the 2015 Transaction, EGT Leverage advanced two loans to Twain Investment Fund 139, LLC ("**2015 Investment Fund**") in the aggregate amount of \$10,535,782 ("**2015 Leverage Loans**").

22. Also in connection with the 2015 Transaction, EGT Leverage and U.S. Bancorp Community Development Corporation ("**USBCDC**") executed an *Investment Fund Put and Call Agreement* dated November 20, 2015 ("**2015 Option Agreement**").

2018 Transaction⁶

23. EB is indebted to MuniStrategies and AMCREF 47 for the repayment of loans (collectively, the “**2018 Loan**”), issued pursuant to the terms of a *QLICI Loan and Security Agreement* dated May 10, 2018 (as amended, supplemented, restated and/or otherwise modified from time to time, the “**2018 Loan Agreement**”). In connection with the 2018 Loan, EGT issued a Guaranty Agreement in favor of MuniStrategies and AMCREF 47 dated as of May 10, 2018.

MuniStrategies

24. In connection with the 2018 Loan, EB executed in favor MuniStrategies the following promissory notes:

(a) *Promissory Note (MuniStrategies QLICI A Note)* dated May 10, 2018, in the principal sum of \$4,706,800.00; and

(b) *Promissory Note (MuniStrategies QLICI B Note)* dated May 10, 2018, in the principal sum of \$1,764,560.00; and

(c) *Promissory Note (MuniStrategies QLICI C Note)* dated May 10, 2018, in the principal sum of \$458,640.00.

25. Under the terms of the 2018 Loan Agreement, certain proceeds of the 2018 Loan were deposited for the benefit of MuniStrategies in a reserve account held by Truist Bank, as Depository Bank, Account No. *****1563 (the “**MuniStrategies Account**”). MuniStrategies holds a first lien in and on the MuniStrategies Account pursuant to an *Assignment and Pledge of MS Reserve Account* dated May 10, 2018. MuniStrategies’ lien was perfected by control pursuant to Miss. Code Ann. §75-9-327. The MuniStrategies Account is further subject to an *MS Reserve Account Control Agreement* dated May 10, 2018.

⁶ Copies of the documents referenced in paragraphs 23-25 and 28-30 are attached to the following pleadings and are incorporated herein by reference: (a) *MuniStrategies Sub-CDE#26, LLC’s Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection [D.E. 2595]*; and (b) *AMCREF Fund 47, LLC’S Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection [D.E. 2597]*. Numerous other documents were entered into in connection with the 2018 Transaction. These other documents are voluminous and are not attached hereto, but the ones pertinent to the relief requested herein are identified.

26. On March 25, 2022, MuniStrategies filed its Proofs of Claim in the chapter 11 proceedings of EGT and EB that are incorporated herein by reference. *See* EGT Claim No. 89 and EP Claim No. 4. The Proofs of Claim reflect a principal amount owed of \$6,930,000.00, together with interest and other costs and charges.

27. The Court authorized MuniStrategies to pursue its rights in and to the MuniStrategies Account pursuant to an *Order Granting MuniStrategies Sub-CDE#26, LLC's Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection [D.E. 2747]*. MuniStrategies is in the process of arranging for the transfer to it of the approximate amount of \$180,416.67 in the MuniStrategies Account.

AMCREF 47

28. In connection with the 2018 Loan, EGT executed in favor AMCREF 47 the following promissory notes:

(a) *Promissory Note (AMCREF QLICI A Note)* dated May 10, 2018, in the principal sum of \$3,662,000.00; and

(b) *Promissory Note (AMCREF QLICI B Note)* dated May 10, 2018, in the principal sum of \$1,338,000.00.

29. Under the terms of the 2018 Loan Agreement, certain proceeds of the 2018 Loan were deposited for the benefit of AMCREF 47 in a reserve account held by Truist Bank, as Depository Bank, Account No. *****1555 (the "AMCREF 47 Account").

30. AMCREF 47 holds a first lien in and on the AMCREF 47 Account pursuant to an *Assignment and Pledge of AMCREF Reserve Account* dated May 10, 2018. AMCREF' lien was perfected by control pursuant to Miss. Code Ann. §75-9-327. The Account is further subject to an *AMCREF Reserve Account Control Agreement* ("Control Agreement") dated May 10, 2018.

31. On March 25, 2022, AMCREF 47 filed its Proofs of Claim in the chapter 11 proceedings of EGT and EB that are incorporated herein by reference. *See* EGT Claim No. 92

and EB Claim No. 5. The Proofs of Claim reflect a principal amount owed of \$5,000,000.00, together with interest and other costs and charges.

32. The Court authorized AMCREF 47 to pursue its rights in and to the AMCREF 47 Account pursuant to an *Order Granting AMCREF Fund 47, LLC'S Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection* [**D.E. 2748**]. AMCREF is in the process of arranging for the transfer to it of the approximate amount of \$116,168.12 in the AMCREF 47 Account.

EGT Leverage

33. In connection with the 2018 Transaction, EGT Leverage advanced two loans to Express Biodiesel Greenwood Investment Fund, LLC ("**2018 Investment Fund**") in the aggregate amount of \$8,368,800 ("**2018 Leverage Loans**").

34. Also in connection with the 2018 Transaction, EGT Leverage and SunTrust Community Capital, LLC ("**SCC**") executed a *Put/Call Agreement* entered into as of May 10, 2018 ("**2018 Option Agreement**").

2020 Transaction⁷

35. EGT is indebted to New Markets, AMCREF 50, and Heartland for the repayment of loans (collectively, the "**2020 Loan**"), issued pursuant to the terms of a *QLICI Loan Agreement* dated July 2, 2020 (as amended, supplemented, restated and/or otherwise modified from time to time, the "**2020 Loan Agreement**").

⁷ Copies of the documents referenced in paragraphs 35-38 and 41-42 are attached to the following pleadings and are incorporated herein by reference: : (a) *New Markets Investment 126, LLC's Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection* [**D.E. 2601**]; and (b) *AMCREF Fund 50, LLC'S Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection* [**D.E. 2599**]; and (c) *Heartland Renaissance Fund Sub 32, LLC's Motion for Relief From Automatic Stay and Abandonment of Property* [**D.E. 2712**]. Numerous other documents were entered into in connection with the 2020 Transaction. These other documents are voluminous and are not attached hereto, but the ones pertinent to the relief requested herein are identified.

New Markets

36. In connection with the 2020 Loan, EGT executed in favor New Markets the following promissory notes:

(a) *Promissory Note (NMSC FEDERAL QLICI Note)* dated July 2, 2020, in the principal sum of \$4,800,000.00; and

(b) *Promissory Note (NMSC MS QLICI Note)* dated July 2, 2020, in the principal sum of \$3,333,333.00.

37. Under the terms of the 2020 Loan Agreement, certain proceeds of the 2020 Loan were deposited for the benefit of New Markets in a reserve account held by U.S. Bank National Association, as Depository Bank, Account No. ***** 7966 (the “**New Markets Account**”).

38. New Markets holds a first lien in and on the New Markets Account pursuant to a *Bank Account Pledge Agreement* dated as of July 2, 2020. New Markets’ lien was perfected by control pursuant to Miss. Code Ann. §75-9-327. The Account is further subject to a *Blocked Account Control Agreement* dated as of July 2, 2020.

39. On March 25, 2022, New Markets filed its Proof of Claim in the chapter 11 proceeding of EGT that is incorporated herein by reference. *See* EGT Claim No. 150. The Proof of Claim reflects a principal amount owed of \$8,133,333.00, together with interest and other costs and charges.

40. The Court authorized New Markets to pursue its rights in and to the New Markets Account pursuant to an *Order Granting New Markets Investment 126, LLC’s Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection [D.E. 2750]*. New Markets is in the process of arranging for the transfer to it of the approximate amount of \$279,949.15 in the New Markets Account.

AMCREF 50

41. In connection with the 2020 Loan, EGT executed in favor of AMCREF 50 the following promissory notes:

(a) *Promissory Note (AMCREF QLICI A Note)* dated July 2, 2020, in the principal sum of \$6,053,962.00;

(b) *Promissory Note (AMCREF QLICI B Note)* dated July 2, 2020, in the principal sum of \$2,116,114.00; and

(c) *Promissory Note (AMCREF QLICI C Note)* dated July 2, 2020, in the principal sum of \$467,124.00.

42. Under the terms of the Loan Agreement, certain proceeds of the Loan were deposited in a reserve account held by U.S. Bank National Association, as Depository Bank, Account No. *****7958 (the “AMCREF 50 Account”).

43. AMCREF 50 holds a first lien in and on the AMCREF 50 Account pursuant to a *Bank Account Pledge Agreement* dated as of July 2, 2020. AMCREF’s lien was perfected by control pursuant to Miss. Code Ann. §75-9-327. The AMCREF 50 Account is further subject to a *Blocked Account Control Agreement* dated as of July 2, 2020.

44. On March 25, 2022, AMCREF 50 filed its Proofs of Claim in the chapter 11 proceeding of EGT that is incorporated herein by reference. See EGT Claim No. 93. The Proof of Claim reflects a principal amount owed of \$8,637,200, together with interest and other costs and charges.

45. The Court authorized AMCREF 50 to pursue its rights in and to the AMCREF 50 Account pursuant to *Order Granting AMCREF Fund 50, LLC’S Motion for Abandonment and Relief From Automatic Stay or, Alternatively, for Adequate Protection [D.E. 2749]*. AMCREF 50 is in the process of arranging for the transfer to it of the approximate amount of \$489,233.47 in the AMCREF 50 Account.

Heartland

46. In connection with the 2020 Loan, EGT executed in favor Heartland the following promissory notes:

(a) *Promissory Note (HRF QLICI A Note)* dated July 2, 2020, in the principal sum of \$3,842,900;

(b) *Promissory Note (HRF QLICI B Note)* dated July 2, 2020, in the principal sum of \$1,157,100.

47. Under the terms of the 2020 Loan Agreement, certain proceeds of the Loan were deposited for the benefit of Heartland in a reserve account held by U.S. Bank National Association, as Depository Bank, Account No. ***** 7974 (the “**Heartland Account**”).

48. Heartland holds a first lien in and on the Heartland Account pursuant to a *Bank Account Pledge Agreement* dated as of July 2, 2020. Heartland’ lien was perfected by control pursuant to Miss. Code Ann. §75-9-327. The Heartland Account is further subject to a *Blocked Account Control Agreement* dated as of July 2, 2020.

49. On March 25, 2022, Heartland filed its Proof of Claim in the chapter 11 proceeding of EGT that is incorporated herein by reference. See EGT Claim No. 94. The Proof of Claim reflects a principal amount owed of \$5,000,000, together with interest and other costs and charges.

50. The Court authorized Heartland to pursue its rights in and to the Heartland Account pursuant to an *Order Granting Heartland Renaissance Fund Sub 32, LLC’s Motion for Relief From Automatic Stay and Abandonment of Property [D.E. 2805]*. Heartland is in the process of arranging for the transfer to it of the approximate amount of \$172,000 in the Heartland Account.

EGT Leverage

51. In connection with the 2020 Transaction, EGT Leverage advanced two loans to USBCDC Investment Fund 284, LLC (“**2020 Investment Fund**”) in the aggregate amount of \$17,572,640 (the “**2020 Leverage Loans**”).

52. Also in connection with the 2020 Transaction, EGT Leverage and USBCDC executed an *Investment Fund Put and Call Agreement* dated July 2, 2020 (“**2020 Option Agreement**”).

Facts Common to the 2015, 2018, and 2020 Transactions

53. In addition to respective NMTC Lenders’ first liens on the Rustic Account, MuniStrategies Account, AMCREF 47 and 50 Accounts, New Markets Account, and Heartland Account, the NMTC Lenders also held subordinate liens on substantially all other assets of one or more of the Business Debtors.

54. The NMTC Lenders entered into various agreements with UMB Bank, N.A. (“**UMB**”) establishing the relative lien positions amongst the NMTC Lenders and UMB.

55. One or more of the Business Debtors have filed pleadings reflecting the following payments made to the NMTC Lenders (or their affiliates) within the 90-day period preceding the bankruptcy filing:

- (a) AMCREF Community Capital LLC: \$61,092.87;
- (b) AMCREF Fund 47 LLC: \$13,554.14;
- (c) MuniStrategies LLC: \$26,749.80;
- (d) New Markets Support Company: \$35,042.37;
- (e) Rustic/Hampton Road Ventures LLC: \$30,753.83; and
- (f) Heartland Renaissance Fund: \$15,138.75.

Procedural Status

56. On April 11, 2022, the Court entered its *Order Granting Motion to Sell Substantially All of the Assets Owned by Express Grain Terminals, LLC, Free and Clear of liens, Claims and Interests, with Liens Attaching to Proceeds of Sale, Outside the Ordinary Course of Business* [D.E. 2708] ("**Sale Order**") confirming the sale of substantially all of the assets of EGT to UMB.

57. Based upon UMB's credit bid approved by the Sale Order, there is no equity in the EGT assets for the subordinate liens of the NMTC Lenders. Furthermore, the Schedules of EP and EB reflect no material assets with any equity for the NMTC Lenders beyond their respective Accounts.⁸

Settlement Terms

58. NMTC Lenders, the Business Debtors, and EGT Leverage have agreed to resolve all issues on the following terms, subject to this Court's approval:

(a) NMTC Lenders and Business Debtors (along with EGT Leverage acting through the CRO) have stipulated that the 2015, 2018, and 2020 Leverage Loans are not collectible and that there is no value to the equity interests that are the subject of the 2015, 2018, and 2020 Option Agreements. Accordingly, the 2015, 2018, and 2020 Leverage Loans will be cancelled and the 2015, 2018, and 2020 Option Agreements will be cancelled.

(b) Upon Rustic, MuniStrategies, AMCREF 47, AMCREF 50, New Markets, and Heartland receiving the funds from their respective Accounts, they shall be authorized to apply such funds as provided in their respective loan documents, close their respective Accounts, and the balance of their Proofs of Claim filed in these chapter 11 cases will be deemed withdrawn

⁸ EP Schedule A, Docket Entry 72, lists assets valued at less than \$900,000. EB Schedule A, Docket Entry 145, lists assets valued at less than \$300,000.

without further order of the Court. The Debtors will disclaim any further interest in said Accounts;

(c) The Business Debtors will release the NMTC Lenders from all causes of action, including avoidance actions under chapter 5 of title 11; and

(d) EGT Leverage will release: the 2015 Investment Fund from the 2015 Leverage Loans; the 2018 Investment Fund from the 2018 Leverage Loans; and the 2020 Investment Fund from the 2020 Leverage Loans.

Standards for Approval of Compromise and Settlement

59. A basic policy in bankruptcy cases is that compromise is favored. Lawrence P. King, Collier on Bankruptcy, ¶ 9019.01. Courts have built on this policy by adopting the standards set forth in the U. S. Supreme Court decision, *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). In *TMT*, the Supreme Court held that a compromise would be approved by the bankruptcy court only after it apprise[s itself] of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties in collecting on any judgment that might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. *Id.* at 424.

60. “Settlement agreements have always been a favored means of resolving disputes’ in the Fifth Circuit.” *Hyperion Foundation, Inc. v. Academy Health Ctr., Inc.*, 2009 WL 3633878 at 3 (Bankr. S.D. Miss. Oct. 27, 2009). The Fifth Circuit standard for the approval of settlements has been stated in *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop., Inc.*:

- (1) [t]he probability of success in the litigation, with due consideration for the uncertainty in fact and law,
- (2) [t]he complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
- (3) [a]ll other factors bearing on the wisdom of the compromise. 119 F.3d 349, 356 (5th Cir. 1997).

61. These factors have been summarized as requiring the compromise to be "fair and equitable" and "in the best interests of the estate." *TMT*, 390 U.S. at 424; *Cajun Elec.*, 119 F.3d at 355.

62. The settlement complies with the Fifth Circuit standards for approving compromises and settlements. The settlement terms stated herein are fair and reasonable, and are the product of arm's length negotiation between parties represented by competent counsel. Factors demonstrating the satisfaction of settlement standards include the following:

A. As noted previously, 2015, 2018, and 2020 Transactions are complex. The settlement proposed herein is an efficient means of finalizing complex transactions.

B. Approval of this proposed settlement will avoid the expense and delays associated with multiple kinds of complex litigation, with likely appeals, including:

1. litigation over repayment of the 2015, 2018, and 2020 Leverage Loans, involving multiple parties and non-parties to the Business Debtors' bankruptcy cases, in connection with the New Markets Tax Program;
2. litigation over the 2015, 2018, and 2020 Option Agreements;

3. litigation over whether the Business Debtors submitted inaccurate or fraudulent financial documents to any of the NMTC Lenders, as it has been determined were submitted to the Mississippi Dept. of Agriculture and Commerce;⁹

4. avoidance litigation over relatively small amounts of money received by the NMTC Lenders during the 90-days preceding the bankruptcy filings.

While all parties believe their positions or defenses have merit, the uncertainty of litigation warrants settlement.

C. Withdrawal of the NMTC Lenders' Proofs of Claim in a collective amount in excess of \$40,000,000 will increase the *pro rata* share of other creditors to any distribution that may result in these cases.

D. The proposed settlement resolves a number of claims and brings the Business Debtors' estates closer to completion.

Procedural Matters

63. In accordance with Miss. Bankr. L.R. 5005-1, a proposed *Agreed Order Granting Joint Motion to Approve Compromise and Settlement* is attached hereto. After notice and opportunity for a hearing, entry by this Court of a final and non-appealable order in substantially the form attached hereto should be binding upon all creditors, parties-in-interest and anyone sent notice of the Motion.

⁹ See *Memorandum Opinion And Order Granting In Part And Denying In Part Motion For Relief From Automatic Stay And Denying Amended Joint Motion To Convert To Chapter 7 Or In The Alternative Appoint A Trustee*, p. 3 [Dkt. No. 2695] (“Based on the testimony and evidence presented at the administrative hearings, the Commissioner concluded and testified that the Business Debtors’ licenses were only obtained through the materially altered financial audit reports. The Commissioner also testified that the financial audit reports were ‘fake’ and ‘false’ and amounted to “forgery”).

WHEREFORE, NMTC Lenders request that the Court approve the settlement and enter the Agreed Order in substantially the form attached hereto. Alternatively, NMTC Lenders request such other and further relief as the Court deems just and appropriate.

DATED: November 23, 2022.

Respectfully submitted,

AMCREF FUND 34, LLC; AMCREF FUND 47,
LLC; AMCREF FUND 50, LLC;
MUNISTRATEGIES SUB-CDE#26, LLC; RUSTIC
VENTURES, L.L.C.; NEW MARKETS
INVESTMENT 126, LLC

By Their Attorneys,
JONES WALKER LLP

/s/ Jeffrey R. Barber

Jeffrey R. Barber, MSB #1982
JONES WALKER LLP
190 East Capitol Street, Suite 800 (39201)
Post Office Box 427
Jackson, Mississippi 39205-0427
Telephone (601) 949-4900
Telecopy (601) 949-4804
jbarber@joneswalker.com

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2022, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the parties set forth in the Electronic Mail Notice List as of the date hereof, including the following:

Office of U. S. Trustee
USTPRegion05.AB.ECF@usdoj.gov

DATED: November 23, 2022.

/s/ Jeffrey R. Barber