

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
SII LIQUIDATION COMPANY,	)	Case No. 10-60702-rk
	)	(Jointly Administered)
Debtor.	)	
	)	Judge Russ Kendig

**AMENDED NOTICE OF OBJECTION AND HEARING**

John B. Pidcock, not individually but as Creditor Trustee of the Schwab Industries, Inc. Creditor Trust appointed in the above-captioned chapter 11 cases, by and through his undersigned counsel, has filed the *Creditor Trustee's Amended First Omnibus Objection to Claims* (the "*Amended First Omnibus Objection*").

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in these bankruptcy cases. (If you do not have an attorney, you may wish to consult one.)**

A hearing on the Amended First Omnibus Objection is set for March 22, 2011, at 2:00 p.m. at the United States Bankruptcy Court, Ralph Regula Federal Building & U.S. Courthouse, 401 McKinley Avenue, S.W., Canton, Ohio 44702-1745. Pursuant to Local Bankruptcy Rule 9013-1, if you do not want the Court to grant the relief requested in the Amended First Omnibus Objection, or if you want the Court to consider your views on the Amended First Omnibus Objection, then on or before **March 10, 2011 at 4:00 p.m. E.T.** (the "*Deadline*"), you or your attorney must:

1. File with the Court a written response to the Amended First Omnibus Objection, stating with particularity why your Claim(s) should not be disallowed, reduced or reclassified in the manner requested by the Creditor Trustee in the Amended First Omnibus Objection;<sup>1</sup> and
2. Provide a copy of your response to counsel for the Creditor Trustee, either electronically through the Court's ECF System or by mail at the following address, such as to be **received** on or before the date stated above to:

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<sup>1</sup> Copies of the Court's Administrative Procedures for electronic Court filings can be found at the following website: <http://www.ohnb.uscourts.gov>.

Aaron L. Hammer, Esq.  
Thomas R. Fawkes, Esq.  
FREEBORN & PETERS LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606-6677  
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**If you or your attorney do not take these steps and file a response by or before the Deadline, the Court may decide that you do not oppose the relief sought in the Amended First Omnibus Objection and may enter an order granting the relief without further notice or hearing.**

Dated: February 8, 2011

**JOHN B. PIDCOCK, NOT INDIVIDUALLY  
BUT AS CREDITOR TRUSTEE OF THE  
SCHWAB INDUSTRIES, INC. CREDITOR  
TRUST**

By: /s/ Thomas R. Fawkes  
One of His Attorneys

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SII LIQUIDATION COMPANY,	)	Case No. 10-60702-rk
	)	(Jointly Administered)
Debtor.	)	
	)	Judge Russ Kendig

**CREDITOR TRUSTEE’S AMENDED FIRST OMNIBUS OBJECTION TO CLAIMS  
(Objection to Overstated and Misclassified Administrative Claims, Duplicative  
Administrative Claims, Late Filed Administrative and Priority Claims, Improper Section  
503(b)(9) Claims and Resolved or Withdrawn Administrative and Secured Claims)**

John B. Pidcock, not individually but as the trustee (the “*Creditor Trustee*”) of the Schwab Industries, Inc. Creditor Trust (the “*Creditor Trust*”) appointed in the above-captioned chapter 11 bankruptcy cases, hereby objects (the “*Amended First Omnibus Objection*”) to those administrative expense and other claims asserted against the Debtors as listed on *Exhibits A* through *E* attached hereto. In support of this Amended First Omnibus Objection, the Creditor Trustee respectfully states:

**BACKGROUND**

**The Chapter 11 Cases**

1. On February 28, 2010 (the “*Petition Date*”), the above-captioned debtors and debtors-in-possession (the “*Debtors*”) each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Ohio (the “*Court*”).

2. On December 15, 2010, the Court entered an order (the “*Confirmation Order*”) confirming the *First Amended Joint Plan of Liquidation Dated October 26, 2010* (the “*Joint Plan*”), which was proposed jointly by the Official Committee of Unsecured Creditors and the Debtors. Pursuant to the Joint Plan and the *Schwab Industries, Inc. Creditor Trust Agreement*

(the “*Creditor Trust Agreement*”) entered into between the Debtors, the Committee and John B. Pidcock, the initial Creditor Trustee appointed under the Joint Plan, most of the remaining property of the Debtors’ estates vested in a creditor trust (the “*Creditor Trust*”), pursuant to which the Creditor Trustee will liquidate such assets, pursue various causes of action and distribute all resulting proceeds to the Debtors’ creditors in accordance with the Joint Plan.

3. The Joint Plan and the Creditor Trust Agreement vest with the Creditor Trustee standing to file objections to, reconcile and resolve claims filed against the Debtors’ estates, including Other Administrative Expense Claims (as defined in the Joint Plan). Accordingly, the Creditor Trustee has the authority to prosecute this Amended First Omnibus Objection.

#### **Administrative Claims Bar Dates**

4. On July 9, 2010, the Court entered an order (the “*Bar Date Order*”) fixing a deadline of August 12, 2010 (the “*Initial Bar Date*”) for all persons and entities, excluding government entities, to file proofs of claim against the Debtors.

5. This Initial Bar Date applied not only to general unsecured claims – which are not the subject of this Amended First Omnibus Objection – but also claims for unpaid administrative expenses incurred by the Debtors on or prior to July 13, 2010, including

any claims arising under sections 503(b), 507(a)(8), 507(b) or 546(c)(2), including without limitation: (i) fees payable under 28 U.S.C. § 1930, (ii) actual and necessary costs and expenses incurred in the ordinary course of the Debtors’ business, (iii) actual and necessary costs and expenses of preserving the Estate or administering these Chapter 11 Cases (specifically excluding any professional fee claims to the extent allowed by final order of this Court).

Docket No. 529, at ¶ 5.

6. The Bar Date Order further provided that proofs of claim filed thereunder, including administrative claims of the nature described above, were to be filed so as to be

received by the Debtors' claims and noticing agent, The Garden City Group, Inc. ("*Garden City*"), by the Initial Bar Date.

7. Upon information and belief, notice of the Initial Bar Date was timely served on all known creditors by Garden City.

8. The Confirmation Order provided for a supplemental administrative claims bar date of January 14, 2011 (the "*Supplemental Bar Date*") for those Other Administrative Expense Claims (as defined in the Joint Plan) arising after July 12, 2010. Paragraph 16 of the Confirmation Order states:

[A]ll other persons requesting payments of Other Administrative Expense Claims arising after July 12, 2010 shall be entitled to file an application for allowance of such Claims until not later than thirty (30) days after the Confirmation Date.

Confirmation Order, at ¶ 16.

9. The *Notice of (A) Entry of Order Confirming First Amended Joint Plan of Liquidation Dated October 26, 2010 and (B) Bar Date for Filing Administrative Claims* (the "*Supplemental Bar Date Notice*"), which was served by Garden City on all known creditors of the Debtors, similarly provides that holders of Other Administrative Expense Claims must file an application for allowance of such Claims by the Supplemental Bar Date; failure to timely file an application results in such Claims being forever barred. *See* Docket No. 704.

10. Accordingly, holders of administrative expense claims must have taken the following steps to assert their claims, depending on when such claims arose:

- *Claims arising prior to July 13, 2010* were to be filed with Garden City by no later than August 12, 2010; and

- *Claims arising after July 12, 2010* were to be set forth in an application for allowance of administrative expense claims filed with the Court by no later than January 14, 2010.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this Amended First Omnibus Objection pursuant to 28 U.S.C. § 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

12. The statutory predicates for the relief requested herein are sections 105(a), 502(b), and 507(a)(3) of the Bankruptcy Code and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

### **RELIEF REQUESTED**

13. By this Amended First Omnibus Objection, the Creditor Trustee seeks entry of an order pursuant to sections 502(b) and 507(a)(3) of the Bankruptcy Code, substantially in the form attached hereto (the “*Proposed Order*”), disallowing, reducing, reclassifying, and/or allowing certain administrative and other priority claims (collectively, the “*Claims*”) listed in *Exhibits A* through *E* to this Amended First Omnibus Objection for the reasons described below.

### **ARGUMENT**

#### **I. Overstated and Misclassified Administrative Claims**

14. Prior to the commencement of these cases, the Debtors maintained, in the ordinary course of business, books and records (the “*Books and Records*”) that reflected, among other things, the Debtors’ liabilities and the amounts owed by the Debtors to their creditors. The Creditor Trustee has reviewed each of the Claims and the Books and Records related thereto. For the reasons set forth in more detail below, the Creditor Trustee has determined that certain of

the Claims asserted against the Debtors are objectionable and, therefore, objects to the allowance of such claims.

15. During the review process described above, the Creditor Trustee has determined that certain of the Claims filed by the Debtors' vendors, employees, and other creditors (collectively, the "*Reduce/Reclassify Claims*") overstate the liability of the Debtors. Stating further, the Creditor Trustee has determined that certain of the Reduce/Reclassify Claims assert amounts in excess of the liabilities set forth in the Books and Records. In addition, the Creditor Trustee has determined that certain of the Reduce/Reclassify Claims improperly assert an administrative expense claim, when such claimant is only entitled to a unsecured priority or general unsecured claim. Accordingly, the Creditor Trustee wishes to reduce and/or reclassify such claims, as the case may be, to reflect the liabilities and priorities set forth in the Books and Records.

16. Set forth in *Exhibit A* is a list of the Reduce/Reclassify Claims identified by the Creditor Trustee. The Creditor Trustee: (i) objects to the Reduce/Reclassify Claims; and (ii) seeks an order: (a) reducing the Reduce/Reclassify Claims to the Reduced Amounts as set forth on *Exhibit A*; and (b) reclassifying such Reduce/Reclassify Claims in the manner set forth in *Exhibit A*.

## **II. Multi-Debtor and Duplicate Administrative Claims**

17. During the review process described above, the Creditor Trustee determined that certain creditors filed Claims against more than one Debtor entity in these cases despite: (i) having only one claim against one Debtor entity (the "*Multi-Debtor Claims*"); or (ii) elimination of Multi-Debtor Claims resulting from the substantive consolidation of the Debtors' bankruptcy estates. Additionally, the Creditor Trustee determined that certain creditors filed multiple

identical claims against a single debtor (the “*Duplicative Claims*”). It is axiomatic that creditors are not entitled to multiple recoveries for a single liability against a single debtor. Therefore, the Creditor Trustee now seeks to disallow any Multi-Debtor Claims and Duplicative Claims other than those claims properly asserted against a single Debtor.

18. Set forth in *Exhibit B* is a list of the Claims that the Creditor Trustee has identified as Multi-Debtor Claims or Duplicative Claims. In *Exhibit B*, the Claim to be Disallowed is the claim that the Creditor Trustee seeks to expunge, and the Remaining Claim is the claim that the Creditor Trustee seeks to have remaining on the Debtors’ claims register. The Creditor Trustee: (i) objects to the Multi-Debtor Claims and Duplicative Claims; and (ii) seeks entry of an order expunging the Claims to be Disallowed in their entirety.

### **III. Late Filed Claims**

19. As noted above, the Bankruptcy Court entered the (i) Bar Date Order, which fixed the Initial Bar Date as August 12, 2010 for those administrative Claims arising prior to July 13, 2010; and (ii) the Confirmation Order, which fixed the Supplemental Bar Date as January 14, 2011 for those administrative Claims arising after July 12, 2010. The Bar Date Order and Confirmation Order specifically stated that the form of the notice of the Claims Bar Date proposed by the Debtors to the Debtors’ known and unknown creditors was appropriate and sufficient. In addition, the Bar Date Order held that a claimant that failed to file an administrative Claim by the Initial Bar Date was forever barred from asserting claims against the Debtors in these cases arising prior to July 13, 2010. Additionally, the Confirmation Order states:

[N]otwithstanding any thing in this Confirmation Order or the Plan to the contrary, no Other Administrative Expense Claim arising before July 12, 2010 that is not properly evidenced by a proof of claim or application for allowance of such Claim filed in advance of the applicable bar date shall be an Allowed Other



Administrative Expense Claim and shall be disallowed and forever barred.

Confirmation Order, at ¶ 16.

20. Accordingly, (i) any administrative Claims arising prior to July 13, 2010 that were filed after the Initial Bar Date and (ii) any administrative Claims arising after July 12, 2010 that were not the subject of an application for allowance of administrative expenses filed on or before the Supplemental Bar Date are late filed and should be disallowed in their entirety. The Claims to be Disallowed listed in *Exhibit C* were filed after the relevant Bar Dates (the “*Late Filed Claims*”).

21. The Creditor Trustee therefore: (i) objects to the Late Filed Claims; and (ii) seeks an order disallowing and expunging the Late Filed Claims.

#### **IV. Improperly Asserted Section 503(b)(9) Claims**

22. The Creditor Trustee has determined that a number of Claims filed against the Debtors under section 503(b)(9) of the Bankruptcy Code were improperly filed. Section 503(b)(9) states:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including – the value of any *goods* received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.

11 U.S.C. § 503(b)(9) (emphasis added).

23. Accordingly, under the plain language of section 503(b)(9), a creditor providing goods received by the debtor outside of the 20-day period preceding a debtor’s bankruptcy filing, or a creditor providing pre-petition *services* – regardless of whether those services were provided in the 20-day period – is not entitled to an administrative expense claim under section 503(b)(9).

24. In its review of the section 503(b)(9) claims filed in these cases, the Creditor Trustee has determined that certain claims either: (i) relate to goods received by the Debtors outside of the 20-day period preceding the Petition Date; (ii) relate solely to services, rather than goods, provided to the Debtors; or (iii) lack evidentiary support that the claim relates to goods provided during the 20-day period preceding the Petition Date (collectively, the “*Improper 503(b)(9) Claims*”). The Creditor Trustee submits that all Improper 503(b)(9) Claims should be reclassified as general unsecured claims against the Debtors’ estates not entitled to priority treatment.

25. Attached as *Exhibit D* is a list of the Improper 503(b)(9) Claims identified by the Creditor Trustee. The Creditor Trustee therefore: (i) objects to the Improper 503(b)(9) Claims; and (ii) seeks entry of an order reclassifying the Improper 503(b)(9) Claims in the manner set forth on *Exhibit D*. The remaining general unsecured claims are not allowed claims, and remain subject to further objection.

**V. Resolved and Withdrawn Claims**

26. During these chapter 11 cases, the Debtors, the Committee and the Creditor Trustee have reached settlements with several purported holders of administrative and secured Claims, the terms of which are reflected in orders previously entered by this Court (the “*Resolved/Withdrawn Claims*”). In order to maintain an accurate claims register, and to ensure that future distributions made to holders of administrative and other priority Claims are correct, the Creditor Trustee seeks an order expunging and/or allowing the Resolved/Withdrawn Claims as appropriate.

27. Attached as *Exhibit E* is a list of the Resolved/Withdrawn Claims identified by the Creditor Trustee. The Creditor Trustee therefore: (i) objects to the Resolved/Withdrawn Claims

marked as “Claims to be Expunged”; and (ii) seeks entry of an order (a) expunging the “Claims to be Expunged” from the claims register maintained in this case and (b) allowing those claims marked as “Allowed Claims.”

#### **SEPARATE CONTESTED MATTERS**

28. To the extent that a response is filed with respect to any Claim listed in this Amended First Omnibus Objection and the Creditor Trustee is unable to resolve the response prior to the hearing on the Amended First Omnibus Objection, each such Claim and the objection thereto asserted in this Amended First Omnibus Objection shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court with respect to an objection asserted in this Amended First Omnibus Objection shall be deemed a separate order with respect to such Claim.

#### **RESERVATION OF RIGHTS**

29. The Creditor Trustee expressly reserves the right to amend, modify, or supplement this Amended First Omnibus Objection and to file additional objections to the Claims objected to herein or any other Claims (filed or not) which may be asserted against the Debtors. Should one or more of the grounds of objection stated in this Amended First Omnibus Objection be dismissed, the Creditor Trustee reserves his rights to object on other stated grounds or on any other grounds that the Creditor Trustee discovers during the pendency of these cases. In addition, the Creditor Trustee reserves the right to seek further reduction of any Claim to the extent that such Claim has been paid. Finally, the Creditor Trustee reserves the right to object to any other Claims filed against the Debtors (regardless of priority, and whether set forth in this Amended First Omnibus Objection or not) in accordance with the Plan and Confirmation Order.

## **RESPONSES TO OBJECTIONS**

### **A. Filing and Service of Responses**

30. To contest an objection, an Claimant must file a written response to this Amended First Omnibus Objection (a “*Response*”) with the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division, Ralph Regula Federal Building & U.S. Courthouse, 401 McKinley Avenue, S.W., Canton, Ohio 44702-1745 and served so as to be actually received by 4:00 p.m. (Eastern Time) on March 10, 2011 (the “*Response Deadline*”) by counsel for the Creditor Trustee, Freeborn & Peters LLP, 311 South Wacker Drive, Suite 3000, Chicago, Illinois 60606 (Attn: Thomas R. Fawkes, Esq.).

### **B. Contents of Responses**

31. Every Response to this Amended First Omnibus Objection must contain, at a minimum, the following:

(a) a caption setting forth the name of the Court, the names of the Debtors, the case number, and the title of the objection to which the Response is directed;

(b) the name of the Claimant and description of the basis for the amount, priority, or validity of the Claim;

(c) a concise statement setting forth the reasons why the Claim should not be disallowed or modified for the reasons set forth in the Amended First Omnibus Objection, including, but not limited to, the specific factual and legal bases upon which the Claimant will rely in opposing the Amended First Omnibus Objection;

(d) all documentation or other evidence of the Claim, to the extent not included with a proof of claim or application for allowance of administrative expense previously filed with the Court, upon which the Claimant will rely in opposing the Amended First Omnibus Objection;

(e) the address(es) to which the Creditor Trustee must return any reply to the Response, if different from that presented in the proof of claim or application for allowance of administrative expense; and

(f) the name, address, and telephone number of the person (which may be the Claimant or his/her/its legal representative) possessing ultimate authority to reconcile, settle, or otherwise resolve the Claim on behalf of the Claimant.

**C. Response Required**

32. If a Response is properly and timely filed and served in accordance with the above procedures, and the Creditor Trustee is unable to reach a consensual resolution with the Claimant, a hearing with respect to the Amended First Omnibus Objection and the Response related thereto will be held on March 22, 2011 at 2:00 p.m. (prevailing Eastern time) at the United States Courthouse, Ralph Regula Federal Building & U.S. Courthouse, 401 McKinley Avenue, S.W., Canton, Ohio 44702-1745.

33. Only those Responses made in writing and timely filed and received will be considered by the Court at any such hearing. The Creditor Trustee reserves the right to adjourn a hearing with respect to a specific objection set forth herein and any Response thereto.

34. If a Claimant whose Claim is subject to this Amended First Omnibus Objection and who is served with the Objection fails to file and serve a timely Response in compliance with the foregoing procedures, the Creditor Trustee will present to the Court an appropriate order with respect to the claim without further notice to the Claimant.

**D. Service Address**

35. If a Response contains an address for the Claimant different from that stated on the proof of claim or application for allowance of administrative expenses, the address in the Response shall constitute the service address for future service of papers upon that Claimant until the Creditor Trustee receives written notice from the Claimant or the Claimant's counsel of a changed service address.

### **REPLIES TO RESPONSES**

36. The Creditor Trustee may, at his option, file and serve a reply to a Response. The Creditor Trustee may file a reply before any hearing on the Amended First Omnibus Objection, or may request leave of the Court to file a response subsequent to such hearing.

### **FURTHER INFORMATION**

37. Questions about the Amended First Omnibus Objection or requests for additional information about the proposed disposition of claims thereunder should be directed to the Creditor Trustee's counsel in writing at the address listed below (attn: Thomas R. Fawkes, Esq.) or by telephone at (312) 360-6000. Claimants should not contact the Clerk of the Bankruptcy Court to discuss the merits of their claims.

### **NOTICE**

38. The Creditor Trustee has provided thirty (30) days' notice of this Amended First Omnibus Objection by service of the Amended First Omnibus Objection itself and the notice of the Amended First Omnibus Objection upon each of the Claimants at the addresses listed in the applicable proofs of claim or applications for allowance of administrative expenses. Copies of this Amended First Omnibus Objection also shall be served upon the United States Trustee and counsel to the Debtors.

WHEREFORE, the Creditor Trustee respectfully requests the entry of an order:

(a) disallowing, allowing, reducing and/or reclassifying the claims in the manner set forth in the proposed order attached hereto; and

(b) granting the Creditor Trustee such other and further relief as is just and proper.

Dated: February 8, 2011

**JOHN B. PIDCOCK, NOT INDIVIDUALLY  
BUT AS CREDITOR TRUSTEE OF THE  
SCHWAB INDUSTRIES, INC. CREDITOR  
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By: /s/ Thomas R. Fawkes  
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