

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE:	§	
	§	CHAPTER 11
BULLIONDIRECT, INC.,	§	
	§	CASE NO. 15-10940-tmd
Debtor.	§	
EIN: 76-0622534	§	

**PLAN OF REORGANIZATION**

**FILED BY DEBTOR**

**ON APRIL 19, 2016**

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**Summary of Plan:** A sale of assets necessary to the operation of the Debtor’s precious metals trading business to the highest bidder, with Cheryl Huseman and Jack Murph serving as stalking horse bidders with an initial bid of \$100,000, is pending. The Huseman-Murph bid provides for a profits interest, ranging from 80% of profits to 50%, retained for the benefit of creditors for a period of seven (7) years. All other assets, including the contents of the IDS vault, the proceeds of the Profit Interests, and all bankruptcy estate causes of action will be transferred to a Litigation Trust to be administered by a Litigation Trustee. Payments to holders of allowed claims shall be based on the treatment of claims set forth below in the Plan of Reorganization.

**SUMMARY OF TREATMENT OF CLAIMS**

- Class 1** Administrative Claims - Payable from available funds after reservation of \$50,000 for BDI Litigation Trust, any balance to be paid from BDI Litigation Trust
- Class 2** Secured Claims of Governmental Units - Payable over 5 years at 12% interest
- Class 3** Priority Unsecured Claims of Governmental Units - Payable over 5 years at 3% interest
- Class 4** Priority Unsecured Claims [11 U.S.C. § 507(a)(7)] (up to \$2,775 per claimant) - Pro rata payments from BDI Litigation Trust until paid in full
- Class 5** General Unsecured Claims - Payment on pro rata basis from BDI Litigation Trust after payment of Classes 1 through 4
- Class 6** Equity Cancellation of stock – No payment

**NOTE TO HOLDERS OF CLAIMS AGAINST BULLIONDIRECT, INC.:** **Unless you object to the plan, you will be deemed to consent to the treatment proposed in the plan for your claim. This includes the treatment proposed in the plan for potential holders of priority claims for deposits for the purchase of undelivered consumer goods under 11 U.S.C. § 507(a)(7).**

**ARTICLE I**  
**DEFINITIONS**

The following terms, when used in the Plan, shall, unless the context otherwise requires, have the following meanings:

1. “ADMINISTRATIVE CLAIM” shall mean a claim or demand made pursuant to Sections 507(a)(1) of the Bankruptcy Code.

2. “CLAIM” shall mean a duly listed or timely filed claim which is allowed and ordered by the Court. ALL CLAIMS ARE LISTED IN AN AMOUNT WHICH REPRESENTS THE VALUE EACH CREDITOR WILL RECEIVE UNDER THE PLAN, UNLESS SPECIFICALLY STATED OTHERWISE.

3. “CONFIRMATION OF THE PLAN” shall mean the Court’s entry of an order confirming the Plan in accordance with Chapter 11 of the Bankruptcy Code.

4. “CONSUMMATION OF PLAN” shall occur within 180 days after Plan confirmation unless there is a matter pending at that time, then the time for consummation shall be extended until such time as the order(s) resolving the pending matter(s) become(s) final.

5. “COURT” shall mean the United States Bankruptcy Court for the Western District of Texas and the United States Bankruptcy Judge presiding in this Debtor’s Chapter 11 case.

6. “DEBTOR” shall mean the Debtor-in-Possession under this Plan, BULLIONDIRECT, INC. (“BDI”), or its successor-in-interest.

7. “EFFECTIVE DATE” shall mean 15 days after the entry of the Order Confirming the Plan, or in the event an appeal from the Order Confirming Plan is taken, then 21 days after the Notice of Appeal, unless the Order Confirming the Plan is stayed by appropriate Court order.

8. “PLAN” shall mean this Plan of Reorganization in its present form or as it may be amended or supplemented prior to confirmation or incident to the Order Confirming the Plan.

9. “PRIORITY CLAIM” shall mean a claim made pursuant to Sections 507(a)(2) through (a)(7) of the Bankruptcy Code.

10. “PROPERTY” shall mean the property of the estate, if any.

11. “RATE OF INTEREST” shall mean that rate of interest which is specifically set forth in this Plan or is determined by the Court to provide a present value of any annuity to be paid under the Plan equal to the allowed amount of the claim on the Effective Date of the Plan.

12. “SECURED CLAIM” shall mean a claim, debt, or demand against the Debtor as determined in accordance with Section 506 of the Bankruptcy Code and secured by a properly perfected mortgage, deed of trust, or security interest in any of the real or personal property owned by the Debtor.

13. “UNSECURED CLAIM” shall mean any unsecured debt, demand, or claim to the extent as determined and allowed by the Court in accordance with the Bankruptcy Code.

14. “BDI LITIGATION TRUST,” “BDILT,” or “Litigation Trust” shall mean a trust to be created under the Plan under the provisions of a BDI Litigation Trust Agreement, the form of which shall be provided to creditors and parties in interest ten (10) days prior to the deadline set for voting on or objecting to the Plan of Reorganization. The identity of the Litigation Trustee of the BDILT, an individual to be selected by the Creditors Committee and approved by the court, will be disclosed at that time.

15. “BDILT Beneficiaries” shall mean professionals whose fees and expenses have been approved by the court as § 503(b) administrative claims as set forth in Class 1 and holders of allowed claims in Classes 2 through 5. Payments or distributions to beneficiaries shall be according to the priorities set forth under the Bankruptcy Code.

**ARTICLE II**  
**CLAIMS NOT IMPAIRED UNDER THE PLAN**

Class 1 is not a true class; Class 1 claimants are not entitled to vote on the Plan.

**ARTICLE III**  
**CLAIMS IMPAIRED UNDER THE PLAN**

The remaining claims in Classes 2 through 6 are impaired within the meaning of Section 1124 of the Bankruptcy Code. Pursuant to Section 1126(a) of the Bankruptcy Code, any holder of an impaired claim under the Plan will be entitled to vote for or against the Plan.

**ARTICLE IV**  
**GENERAL PROVISIONS APPLICABLE TO ALL CLAIMS**

4.1 Absent a timely allowable election under Section 1111(b) or a plan provision which treats the entire allowed claim as a secured claim, the claim shall be secured to the extent of the value of the holder's interest in the estate's interest in the property as set out in the Plan and unsecured for the balance, if any.

In the event a dispute arises as to the value of the collateral or interest, the Court shall determine the allowed secured claim of any claimant secured by a lien against the collateral upon motion of the Debtor or any other party in interest prior to the Effective Date of the Plan.

4.2 For purposes of voting on the plan of reorganization and unless otherwise fixed by the provisions of this plan, the Court shall estimate any claim when requested to do so at the hearing on the confirmation, including a determination of secured status under Section 506(a) of the Bankruptcy Code. If the Court estimates any claim under the provisions of Section 506(a) and no party timely requests a determination under paragraph 4.1 of this Article, the amounts estimated by the Court under this paragraph become the allowed amounts of the claims.

4.3 The plan provisions which will apply to each class upon confirmation of the plan need not be further reduced to writing and executed by the parties in order to be binding. However, the Debtor or any party may prepare documents appropriate for the execution of the provisions of this plan, and all parties shall execute all documents to effect the provisions of this plan and cause the same to be properly recorded when appropriate. Unless otherwise agreed by the parties, the terms of existing written documents shall control except where modified by, or in conflict with, the provisions of this plan. Where new instruments may be required they shall conform to the official State Bar of Texas forms.

4.4 All temporary orders relating to the administration of the estate including, but not limited to, orders regarding cash collateral, adequate protection or other payments, are abrogated on the confirmation of the plan and the terms of the plan shall control the relationship of the parties thereafter. Any subsequent conversion of this case to Chapter 7 after substantial consummation of the plan shall neither enhance nor diminish the interest of any claimant in, or expand the liquidation estate beyond, any property restricted, retained, or reserved for the payment of claims under the provisions of this plan.

4.5 Any lien against property which is retained pursuant to the provisions of this plan shall be released upon payment of the allowed secured claim as provided in this plan or order confirming this plan. In the event the Court determines that any purported lien claim is wholly unsecured, then confirmation of this plan shall cancel the apparent lien, and the claimant shall execute any documents required to evidence and record the cancellation of the lien.

4.6 The Debtor shall pay to the U.S. Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) on the Effective Date of the plan and shall simultaneously provide to the U.S. Trustee an appropriate affidavit indicating cash disbursements for the relevant period.

**ARTICLE V**  
**MEANS FOR EXECUTION OF THE PLAN**

**BDI Litigation Trust.** The BDI Litigation Trust (“BDILT” or “Litigation Trust”) will be created under the Plan under the provisions of a BDI Litigation Trust Agreement, the form of which shall be provided to creditors and parties in interest ten (10) days prior to the deadline set for voting on or objecting to the Plan of Reorganization. The identity of the Litigation Trustee of the BDILT, an individual to be selected by the Creditors Committee and approved by the court, will be disclosed at that time.

**BDILT Beneficiaries.** Beneficiaries of the BDILT will be professionals whose fees and expenses have been approved by the court as § 503(b) administrative claims as set forth in Class 1 and holders of allowed claims in Classes 2 through 5. Payments or distributions to beneficiaries shall be according to the priorities set forth under the Bankruptcy Code.

**BDILT Distributions Under the Plan.** Payments to holders of allowed claims under Classes 1 through 5 of the Plan, as set forth under the Plan, from funds transferred by the Debtor to the BDILT or generated by the BDILT from asset sales, settlement of claims or litigation. The Trustee of the BDILT shall be obligated to make distributions only from funds not reasonably required, in the sole discretion of the Litigation Trustee, for the administration of the BDILT and the costs of investigating and pursuing claims assigned to it by the Debtor.

**BDILT Assets.** All assets of the Debtor, as described in 11 U.S.C. § 541, which have not been sold prior to confirmation, will be transferred to the BDILT pursuant to § 1123, including all Chapter 5 causes of action and legal remedies, including but not limited to, §§ 542, 544, 547, 548, 549 and 550 of the Bankruptcy Code, as well as causes of action and legal remedies arising under non-bankruptcy federal, state or common law (collectively “Estate Causes of Action”).

**Precious Metals Inventories.** The inventory of precious metals in the possession of the Debtor and in the IDS vault will be transferred to the BDI Litigation Trust free and clear of all liens, claims and encumbrances.

**ARTICLE VI**  
**TREATMENT OF CLAIMS UNDER THE PLAN**

Each creditor will be paid in the manner set forth below which applies to that particular creditor. In the event that Debtor discovers a potential voidable preference, fraudulent conveyance, or equitable subordinate claim, Debtor specifically retains the right to pursue such cause of action.

**A. Classification and Treatment of Classes under Plan**

**Class 1 Administrative Claims**

Class 1 administrative claims for fees which occurred prior to confirmation, and for which application is made, shall be paid in full or as the same are allowed, approved, and ordered paid by the Court from estate funds after payment of other Class 1 claims and after transfer of \$50,000 to the BDI Litigation Trust. By voluntary agreement and concessions made by estate and Committee professionals, payment of approved professional fees and expenses shall be



subordinated to payment of other approved administrative claims. If approved professional fees and expenses are not paid in full from estate funds, the balance of such claims shall be the BDI Litigation Trustee ahead of all other Classes of claims after reservation of reasonably necessary funds for the administration of the BDI Litigation Trust. The estimated amounts of professional fees, through April 19, 2016<sup>1</sup>, are as follows:

<u>FIRM</u>	<u>Fees</u>	<u>Expenses</u>
Unique Strategies Group (Bensimon)	\$159,000.00 <sup>2</sup>	\$12,500.00
Martinec Winn & Vickers, PC	\$178,000.00	\$6,800.00
Dykema Cox & Smith	\$60,000.00	\$0.00

The Debtor shall pay to the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) on the Effective Date<sup>3</sup> of the Plan of Reorganization and simultaneously provide to the United States Trustee an appropriate affidavit indicating cash disbursements for the relevant period. Quarterly payments will be paid through the quarter the case is dismissed, converted, or closed, or sooner as provided by law.

Class 1 is not a true class and is neither impaired nor unimpaired.

**Class 2      Secured Claims of Governmental Units**

Ad valorem taxing authorities will retain statutory liens, and allowed claims will be paid in full with 12% interest in 60 monthly installments, beginning on the first day of the first calendar month after the Effective Date. The BDILT Trustee may elect to provide such claims with more favorable treatment, such as paying the claims in full.

Class 2 is impaired.

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<sup>1</sup> The professionals in the case will accrue additional fees and expenses through the date of plan confirmation. The amount of those fees and expenses will depend on the complexity of issues relating to the Plan and other administrative matters.

<sup>2</sup> Does not include a contractual “success fee” of \$100,000 for obtaining a plan confirmation within one year of the Petition Date. Unique Strategies Group has agreed to cap that fee at \$50,000.

<sup>3</sup> “Effective Date” shall mean 15 days after the entry of the Order Confirming the Plan, or in the event an appeal from the Order Confirming Plan is taken, then 21 days after the Notice of Appeal, unless the Order Confirming the Plan is stayed by appropriate Court order.

**Class 3 Priority Unsecured Claims of Governmental Units**

Allowed Priority Unsecured Claims of Governmental Units will be paid in full with 3% interest in 60 monthly installments, beginning on the first day of the first calendar month after the Effective Date. The BDILT Trustee may elect to provide such claims with more favorable treatment, such as paying the claims in full.

Class 3 is impaired.

**Class 4 Priority Unsecured Claims - § 507(a)(7)**

Allowed Priority Unsecured Claims pursuant to 11 U.S.C. § 507(a)(7) will be paid from funds available for distribution from the BDILT on a pro rata basis, up to an aggregate amount of \$2,775 per individual. Payments or distributions from the BDILT will occur only if the BDILT Trustee determines that funds are available for distribution after reserving funds needed for administration of the BDILT.

Class 4 is impaired.

**Class 5 General Unsecured Claims**

Allowed General Unsecured Claims will be paid after Class 4 claims have been paid in full from funds available for distribution from the BDILT, on a pro rata basis. Payments or distributions from the BDILT will occur only if the BDILT Trustee determines that funds are available for distribution after reserving funds needed for administration of the BDILT.

Class 5 is impaired.

**Class 6 Equity Claims**

All equity interests in BullionDirect, Inc. will be cancelled upon entry of an order approving the Plan.

Class 6 is impaired.

**ARTICLE VII**  
**CREDITORS' REMEDIES UPON DEFAULT**

**7.1** In the event that a creditor does not receive a payment required under the Plan, a creditor can send notice of said default to the BDILT Litigation Trustee, requesting a response

within fourteen (14) days of receipt. If the BDILT Litigation Trustee fails to respond satisfactorily within 14 days, that creditor may seek relief from the Bankruptcy Court. Failure to seek relief within the applicable statute of limitations after the BDILT Litigation Trustee's failure to make payment required by the terms of this Plan, without regard to whether there has been given notice of failure to pay and without regard to whether default has occurred, shall cause the claim to be barred by limitations and waiver.

## **7.2 Internal Revenue Service:**

(a) That the debt owed by the Debtor to the Internal Revenue Service (IRS) is a Non-Dischargeable debt, except as otherwise provided for in the Bankruptcy Code, and that if the Debtor defaults, the IRS is not subject to the provisions of the Bankruptcy Code so that the IRS can take whatever actions are necessary to collect said debt in the event of default; the federal tax liens survive the plan confirmation, a bankruptcy discharge, and dismissal of the case. The Liens continue to be enforceable against all of the Debtor's property under federal law.

(b) A failure by the Debtor to make a payment to the Internal Revenue Service pursuant to the terms of the Plan and/or failure to remain current on filing and paying post-confirmation taxes, shall be an event of default, and as to the Internal Revenue Service, there is an event of default if payment is not received by the 15<sup>th</sup> day of each month. If there is a default, the Internal Revenue Service must send written demand for payment, and said payment must be received by the Internal Revenue Service within 15 days of the date of the demand letter. The Debtor can receive up to three notices of default from the Internal Revenue Service; however, on the third notice of default from the Internal Revenue Service the third notice cannot be cured, and the Internal Revenue Service may accelerate its allowed claim(s), past and future, and declare the outstanding amount of such claim(s) to be immediately due and owing and pursue any and all available state and federal rights and remedies. These default provisions pertain to the entire claim(s) of the Internal Revenue Service, secured, unsecured priority and unsecured general.

(c) The IRS is bound by the provisions of the confirmed plan and is barred under 11 U.S.C. § 1141 from taking any collection actions against the Debtor for prepetition claims during the duration of the Plan (provided there is no default as to the IRS). The period of limitations on collection remains suspended under 26 U.S.C. § 6503(h) for the tax periods being paid under the Plan and terminates on the earlier of (1) all required payments to the IRS have been made; or (2) 30 days after the date of the demand letter (described above) for which the Debtor failed to cure the default.

**ARTICLE VIII**  
**DISPUTED CLAIMS AND OBJECTIONS TO CLAIMS**

**8.1** Any party in interest may file an objection to any claim on or before ninety (90) days after the entry of the Confirmation Order. All objections not filed within such time shall be deemed waived.

**8.2** Claims which the Debtor has listed in its Disclosure Statement as disputed, or claims to which any objection is filed prior to the hearing on the confirmation of the Plan, shall be estimated by the Court for the purpose of establishing the amount which any particular creditor is entitled to vote on the Plan.

**8.3** After confirmation of the Plan, the Litigation Trustee may commence any adversary proceeding under Sections 542, 544, 545, 547, 548, 549, 550, 553(b) or 724(a) of the Bankruptcy Code. Any adversary proceeding commenced under these sections must be filed with the Court within 180 days of the Effective Date of this Plan or the cause of action is waived.

**8.4** If there is an objection to any claim filed within the allotted time, the Litigation Trustee shall segregate and set aside a portion of the funds on hand for distribution to the claimant's class. The funds shall be sufficient to satisfy the payment otherwise due on the claim according to the provisions of the Plan. Funds not so segregated shall be distributed in accordance with the Plan. In the event the objection is overruled or a dispute is resolved favorably to the party asserting the claim, then the funds shall be paid to the creditor in accordance with applicable class provisions. In the event the disputed claim is disallowed, the funds segregated in deference to the claim shall be disbursed according to the applicable provisions of the Plan.

**ARTICLE IX**  
**RETENTION OF JURISDICTION**

The Court shall retain jurisdiction of this case after confirmation with respect to the following matters:

- a) To insure that the purpose and intent of this Plan are carried out.

- b) To consider any modification of this Plan under Section 1127 of the Bankruptcy Code.
- c) To hear and determine all claims, controversies, suits and disputes against the Debtor.
- d) To hear and determine all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of this Plan.
- e) To hear and determine all requests for compensation and/or reimbursement of expenses which may be made after the Effective Date of the Plan which relate to services rendered prior to confirmation of the Plan.
- f) To hear and determine all objections to claims, controversies, suits and disputes that may be pending at or initiated after the Effective Date of the Plan, except as provided in the confirmation order.
- g) To consider and act on the compromise and settlement of any claim against or cause of action on behalf of the Debtor or the estate.
- h) To enforce and interpret by injunction or otherwise the terms and conditions of the Plan.
- i) To enter an order concluding and terminating this case.
- j) To correct any defect, cure any omission, or reconcile any inconsistency in the Plan or confirmation order which may be necessary or helpful to carry out the purposes and intent of the Plan.
- k) To determine all questions and disputes regarding titles to the assets of the Debtor or the estate.
- l) To classify the claims of any creditor and to re-examine claims which have been allowed for purposes of voting, and to determine objections which may be filed to creditors' claims (the failure by the Debtor to object to, or examine any claim for the purposes of voting shall not be deemed a waiver of the Debtor's or Litigation Trustee's right to object to, or re-examine the claim in whole or part).

m) To consider and act on such other matters consistent with this Plan as may be provided in the confirmation order.

n) To consider the rejection of executory contracts that are not discovered prior to confirmation and allow claims for damages with respect to the rejection of any such executory contracts within such further time as this Court may direct.

**ARTICLE X**  
**RETENTION AND LIQUIDATION OF ASSETS**

Upon confirmation of the Plan, all property will be transferred to and vested in the BDILT pursuant to 11 U.S.C. § 1141.

**ARTICLE XI**  
**MODIFICATION OF THE PLAN**

The Debtor may propose amendments or modifications of this plan at any time prior to confirmation, so long as the modification complies with the requirements of Sections 1122 and 1123 of the Bankruptcy Code. After confirmation, the Debtor or Litigation Trustee may, so long as it does not materially or adversely affect the interest of the creditors, remedy any defect, omission, or reconcile any inconsistencies in the Plan or in the Order of Confirmation. This may be done in such manner as may be necessary to carry out the purposes and effect of this Plan.

**ARTICLE XII**  
**PRIOR ORDERS**

Any prior order of this Court shall be deemed temporary, unless otherwise stated, and upon confirmation of the Plan shall merge with and become subordinated to the terms of the Plan.

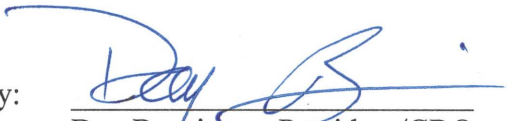
**ARTICLE XIII**  
**ASSUMPTION OF EXECUTORY CONTRACTS AND LEASES**

Debtor scheduled several executory contracts and leases. Said contracts and leases are identified on Exhibit C to the Disclosure Statement. A list of executory contracts to be accepted or rejected will be provided ten (10) days prior to the deadline for voting on or objecting to Debtor's Plan. Those to be accepted will be assumed upon confirmation of the Plan pursuant to 11 U.S.C. § 365(d)(2). Any executory contracts not accepted are deemed rejected. **THE BAR DATE FOR FILING CLAIMS ON REJECTED EXECUTORY CONTRACTS SHALL BE THE SAME DATE AS THE DEADLINE FOR FILING OBJECTIONS TO DEBTOR'S PLAN OF REORGANIZATION.**

Respectfully submitted,

BULLIONDIRECT, INC.

By:

  
Dan Bensimon, President/CRO  
Debtor-in-Possession

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Plan of Reorganization has been served via the Court's ECF Noticing System, by First Class Mail, postage prepaid, or by e-mail upon the current Master Limited Service List on this 19<sup>th</sup> day of April, 2016.

U. S. Trustee  
903 San Jacinto Blvd., Ste. 230  
Austin, TX 78701  
(Via ECF)

  
Joseph D. Martinec