

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

In re:

RAIT FUNDING, LLC,
a Delaware limited liability company, *et al.*²

Debtors.

Chapter 11

Case No. 19-11915 (BLS)

(Jointly Administered)

Hearing Date: October 22, 2019 at 10:00 a.m. ET
Objection Deadline: October 11, 2019 at 4:00 p.m. ET

**DEBTORS' MOTION FOR ENTRY OF AN ORDER WAIVING THE
BANKRUPTCY RULE 2015.3 REPORTING REQUIREMENT FOR CAUSE**

RAIT Funding, LLC and certain of its affiliates, the debtors and debtors in possession in the above-captioned chapter 11 proceedings (the “Debtors”), hereby move (the “Motion”) for entry of an order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rule 2015.3(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) waiving the Debtors’ reporting requirement under Rule 2015.3 for cause. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of John J. Reyle in Support of Chapter 11 Petitions and First-Day Relief* filed September 2, 2019 [D.I. 7] (the “First-Day Declaration”). In further support of this Motion, the Debtors respectfully represent as follows:

² The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if applicable), are as follows: RAIT Funding, LLC, a Delaware limited liability company (9983); RAIT Financial Trust, a Maryland real estate investment trust (9819); RAIT General, Inc., a Maryland corporation (9987); RAIT Limited, Inc., a Maryland corporation (9773); Taberna Realty Finance Trust, a Maryland real estate investment trust (3577); RAIT JV TRS, LLC, a Delaware limited liability company (3190); and RAIT JV TRS Sub, LLC, a Delaware limited liability company (4870). The mailing address for all Debtors is Two Logan Square, 100 N. 18th Street, 23rd Floor, Philadelphia, Pennsylvania 19103 (Attn: John J. Reyle).

JURISDICTION; VENUE

1. The Court has jurisdiction over these chapter 11 cases and this Motion under 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core matter under 28 U.S.C. § 157(b) and the Court may enter a final order consistent with Article III of the United States Constitution.³

2. Venue of these chapter 11 cases and this Motion is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

3. The statutory and procedural predicates for the relief requested herein are section 105(a) of the Bankruptcy Code, Bankruptcy Rules 2015.3(d) and 9006(b), and Local Rule 9006-2.

BACKGROUND

4. On August 30, 2019 (the “Petition Date”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On September 17, 2019, the Acting United States Trustee for Region Three filed the Notice of Appointment of Committee of Unsecured Creditors [D.I. 65], appointing the Official Committee of Unsecured Creditors (the “Committee”) in these chapter 11 cases. As of the date hereof, no request for appointment of a chapter 11 trustee or examiner has been made.

³ The Debtors consent to the entry of a final order by the Court in connection with this Application if it is determined that the Court, absent consent of the parties, cannot enter a final order consistent with Article III of the United States Constitution.

6. Information regarding the Debtors' history and business operations, their capital structure, and the events leading up to the commencement of these chapter 11 cases are set forth in the First-Day Declaration.

RELIEF REQUESTED

7. By this Motion, the Debtors seek entry of an order, substantially in the form of the proposed order attached as Exhibit A hereto, waiving the requirement for the Debtors to file their reports of financial information on non-Debtor entities in which the Debtors' estates hold a controlling or substantial interest (the "Rule 2015.3 Reports") for cause. Alternatively, to the extent the Court is not inclined to waive the requirement to file the Rule 2015.3 Reports, the Debtors seek extension of the deadline to file such reports through and including the date that is 30 days after the hearing on this Motion.

BASIS FOR THE RELIEF REQUESTED

8. Bankruptcy Rule 2015.3(a) requires the Debtors to file Rule 2015.3 Reports on "the value, operations, and profitability of each entity that is not a publicly traded corporate or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." Fed. R. Bankr. 2015.3(a). Bankruptcy Rule 2015.3(a) also provides that the Rule 2015.3 Reports "shall be based upon the most recent information reasonably . . . available to the debtor in possession." *Id.* The Rule 2015.3 Reports are to be filed seven (7) days before the date first set for the meeting of creditors convened pursuant to section 341 of the Bankruptcy Code. Fed. R. Bankr. P. 2015.3(b). The Debtor's section 341 meeting of creditors has been scheduled for

October 4, 2019. Accordingly, but for the filing of this Motion, the Debtors would be required to file their 2015.3 Reports on or before September 27, 2019.⁴

9. However, under Bankruptcy Rule 2015.3(d), the Court is authorized to waive the Rule 2015.3 reporting requirement “for cause, including” (but not limited to) “that the . . . debtor in possession is not able, after a good faith effort, to comply with those reporting requirements, or that the information required by subdivision (a) is publicly available.” Fed. R. Bankr. P. 2015.3(d); 11 U.S.C. § 102(3) (providing that the term “including,” as used in the Bankruptcy Code, is “not limiting”). In addition, under section 105(a) of the Bankruptcy Code, the Court may issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

10. The Debtors submit that cause exists to waive the Rule 2015.3 reporting requirement because its underlying purpose will be fulfilled during the administration of these cases without need for Rule 2015.3 Reports, and the preparation of such reports would serve only to increase the administrative expenses to the Debtors’ estates without any concomitant benefit to creditors.

11. Section 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 provides that the purpose of the Rule 2015.3 requirement is “to assist parties in interest taking steps to ensure that the debtor’s interest in any entity . . . is used for the payment of allowed claims against [the] debtor.” Pub. L. No. 109-8, § 419, 119 Stat. 23 (2005). Here, the Debtors are pursuing a sale of substantially all of their assets under section 363 of the

⁴ Pursuant to Del. Bankr. L.R. 9006-2, the filing of this Motion shall serve to extend such deadline through and including the date of the hearing on this Motion, without necessity of a bridge order.

Bankruptcy Code, which includes their interests in their operating non-debtor subsidiaries.⁵ Thus, the value of the Debtors' interests in these subsidiaries will be determined by a market process (as opposed to conclusions that might be drawn from a Rule 2015.3 Report as to the entities' operations and profitability), and realized upon closing of the sale transaction, which is targeted for year end. The Debtors will then use the proceeds from the sale to fund a chapter 11 plan for the benefit of their creditors, consistent with the Restructuring and Plan Support Agreements that were filed with the Court on September 9, 2019 [D.I. 52].

12. Further cause exists because RAIT Financial Trust, the ultimate parent, has historically filed periodic reports with the United States Securities and Exchange Commission (the "SEC") as required by the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*, and the regulations promulgated thereunder, as amended from time to time (collectively, the "Securities Laws"). These periodic reports have included an annual report on Form 10-K (the "10-Ks"), quarterly reports on Form 10-Q (the "10-Qs"), current reports on Form 8-K (the "8-Ks"), and various other reports required under the Securities Laws (together, with the 10-Ks, 10-Qs, and 8-Ks, the "SEC Filings"). As discussed at length in the First-Day Declaration, the Debtors' corporate enterprise consists of approximately eighty-five (85) entities, approximately seventy-eight (78) of which are non-debtors in which the Debtors hold a substantial or controlling interest either directly or indirectly. The value, operations, and profitability of each entity in the

⁵ The non-debtor subsidiaries that are not being sold as part of this sale process are non-operational, so Rule 2015.3 Reports for them would largely be blank forms.

Debtors' corporate enterprise are accounted for on a consolidated basis in these SEC Filings, which are available publicly at <http://www.snl.com/IRW/Docs/113624> and <http://www.sec.gov>.⁶

13. RAIT Financial Trust consolidates its financial information in its SEC Filings in compliance with the instruction to Part 210.3A-02 of Regulation S-X, titled "Consolidated financial statements of the registrant and its subsidiaries," which provides, in part, as follows:

In deciding upon consolidation policy, the registrant must consider what financial presentation is most meaningful in the circumstances and should follow in the consolidated financial statements principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the registrant. *There is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has a controlling financial interest in another entity.*

17 C.F.R. § 210.3A-02 (emphasis added).

14. The Debtors submit that compliance with the reporting requirements under Bankruptcy Rule 2015.3 would be unnecessary, duplicative, and unduly burdensome. The Company's current financial reporting system is designed to report financial results on a consolidated basis. To prepare the Rule 2015.3 Reports, the Debtors would need to separately compile information from books, records, and documents relating to a multitude of transactions for approximately seventy-eight (78) entities. Assembling and compiling the financial reports of the value, operations, and profitability of the operating subsidiaries in the form required by Bankruptcy Rule 2015.3—and in the very brief time mandated by the rule—would pose significant challenges and require the Debtors' employees and advisors to expend considerable

⁶ RAIT Financial Trust filed its most recent 10-K on March 26, 2019 for the calendar year ending December 31, 2018 (which was subsequently amended on April 30, 2019, solely to present the information required by Part III of Form 10-K). As discussed in the First-Day Declaration (at ¶ 57), RAIT Financial Trust has not filed its Form 10-Qs for the first and second quarters of 2019, pending resolution of a request for accounting guidance from the SEC's Office of the Chief Accountant regarding the accounting treatment for its preferred equity interests.

resources and time to the detriment of the Debtors' estate and its creditors, all in service of the preparation of reports that will be of dubious utility given the impending sale of the Debtors' assets, which include their interests in their operational non-debtor subsidiaries.

15. Accordingly, the Debtors respectfully request that the Court waive the Debtors' reporting requirements under Bankruptcy Rule 2015.3.

NOTICE

16. Notice of this Motion will be provided to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Committee; and (c) all parties that have filed a notice of appearance and request for service of papers under Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice is necessary.

CONCLUSION

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: Wilmington, Delaware
September 27, 2019

DRINKER BIDDLE & REATH LLP

/s/ Patrick A. Jackson

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*Proposed Counsel to the Debtors and
Debtors in Possession*

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

In re:

RAIT FUNDING, LLC,
a Delaware limited liability company, *et al.*¹,

Debtors.

Chapter 11

Case No. 19-11915 (BLS)
(Jointly Administered)

Hearing Date: October 22, 2019 at 10:00 a.m. ET
Objection Deadline: October 11, 2019 at 4:00 p.m. ET

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER WAIVING THE
BANKRUPTCY RULE 2015.3 REPORTING REQUIREMENT FOR CAUSE**

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) PROPOSED COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS; (III) COUNSEL TO THE STALKING HORSE PURCHASER; AND (IV) ALL PARTIES THAT, AS OF THE FILING OF THIS NOTICE, HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that on September 27, 2019, the above captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Debtors' Motion for Entry of an Order Waiving the Bankruptcy Rule 2015.3 Reporting Requirement for Cause* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that any objections to the relief sought in the Motion must be filed on or before **4:00 p.m. (prevailing Eastern Time) on October 11, 2019** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned proposed counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held on **October 22, 2019, at 10:00 a.m. (prevailing Eastern Time)** before The Honorable Brendan

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: RAIT Funding, LLC, a Delaware limited liability company (9983); RAIT Financial Trust, a Maryland real estate investment trust (9819); RAIT General, Inc., a Maryland corporation (9987); RAIT Limited, Inc., a Maryland corporation (9773); Taberna Realty Finance Trust, a Maryland real estate investment trust (3577); RAIT JV TRS, LLC, a Delaware limited liability company (3190); and RAIT JV TRS Sub, LLC, a Delaware limited liability company (4870). The mailing address for all Debtors is Two Logan Square, 100 N. 18th Street, 23rd Floor, Philadelphia, Pennsylvania 19103 (Attn: John J. Reyle).

L. Shannon at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware
September 27, 2019

DRINKER BIDDLE & REATH LLP

/s/ Patrick A. Jackson

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*Proposed Counsel to the Debtors
and Debtors in Possession*

EXHIBIT A

Proposed Order

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

In re:

RAIT FUNDING, LLC,
a Delaware limited liability company, *et al.*¹

Debtors.

Chapter 11

Case No. 19-11915 (BLS)
(Jointly Administered)

Re: Docket No. ____

**ORDER WAIVING THE DEBTORS'
BANKRUPTCY RULE 2015.3 REPORTING REQUIREMENTS**

Upon the Motion of RAIT Funding, LLC and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 case (the “Debtors”), under sections 105(a) of the Bankruptcy Code, Bankruptcy Rules 2015.3(d) and 9006(b), and Local Rule 9006-2, requesting entry of an order waiving the requirement for the Debtors to file their reports of financial information on entities in which the Debtors’ estates hold a controlling or substantial interest (the “Rule 2015.3 Reports”) for cause, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and

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proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and this Court having held a hearing, if necessary, to consider the relief requested in the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is GRANTED as set forth herein.
2. The requirement for the Debtors to file Rule 2015.3 Reports is hereby waived for cause.
3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.