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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	:
DITECH HOLDING CORPORATION, <i>et al.</i> ,	: Case No. 19-10412 (JLG)
	:
Debtors. <sup>1</sup>	:
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**REPORT OF THE CONSUMER PRIVACY OMBUDSMAN**

*(Forward Business)*

Elise S. Frejka, the consumer privacy ombudsman (the “Ombudsman”)<sup>2</sup> in the jointly administered chapter 11 cases of Ditech Holding Corporation and its affiliated debtors (collectively, the “Debtors”), respectfully files this report (the “Report”) to assist the Bankruptcy Court in its consideration of the facts, circumstances and conditions of the proposed sale (“Sale”) of certain of the Debtor’s assets related to its forward business, including underlying loan and servicing records containing personally identifiable information (“Personally Identifiable”).

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Ditech Holding Corporation (0486); DF Insurance Agency LLC (6918); Ditech Financial LLC (5868); Green Tree Credit LLC (5864); Green Tree Credit Solutions LLC (1565); Green Tree Insurance Agency of Nevada, Inc. (7331); Green Tree Investment Holdings III LLC (1008); Green Tree Servicing Corp. (3552); Marix Servicing LLC (6101); Mortgage Asset Systems, LLC (8148); REO Management Solutions, LLC (7787); Reverse Mortgage Solutions, Inc. (2274); Walter Management Holding Company LLC (9818); and Walter Reverse Acquisition LLC (8837). The Debtors’ principal offices are located at 1100 Virginia Drive, Suite 100, Fort Washington, Pennsylvania 19034.

<sup>2</sup> See Order Directing the Appointment of Consumer Privacy Ombudsman [Dkt. No. 1157]; Notice of Appointment of Consumer Privacy Ombudsman [Dkt. No. 1159]; Order Approving the Appointment of Consumer Privacy Ombudsman [Dkt. No. 1206].

Information”),<sup>3</sup> to New Residential Investment Corp. or its designee ( “NRZ”) pursuant to the Asset Purchase Agreement by and among Ditech Holding Corporation, Ditech Financial LLC and NRZ dated June 17, 2019 (the “NRZ Asset Purchase Agreement”).

### **RECOMMENDATION**

After a review of the facts and circumstances, and as more fully discussed in this Report, the Ombudsman recommends, from a consumer privacy perspective, that the Bankruptcy Court approve the proposed sale and transfer of the Debtors’ assets and related loan files containing Personally Identifiable Information, subject to continued compliance with applicable federal and state law.

### **BACKGROUND**

1. On February 11, 2019 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11, United States Code, as amended (the “Bankruptcy Code”). The Debtors are operating their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in these chapter 11 cases.

2. The Debtors filed, on March 5, 2019, a proposed plan of reorganization, as subsequently amended, and related disclosure statement, as subsequently amended. See Dkt. Nos. 145, 146. Also on March 5, 2019, the Debtors filed the *Motion of Debtors for Entry of an*

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<sup>3</sup> Pursuant to 11 U.S.C. § 101(41(A)), [t]he term “PII” means—

(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

- (i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;
- (ii) the geographical address or a physical place of residence of such individual;
- (iii) an electronic address (including an e-mail address) of such individual;
- (iv) a telephone number dedicated to contacting such individual at such physical place of residence;
- (v) a social security account number issued to such individual; or
- (vi) the account number of a credit card issued to such individual[.]

11 U.S.C. § 101(41A).

*Order (I) Approving Disclosure Statement and Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Sale and Confirmation Hearing, (IV) Approving Sale and Confirmation Objection Procedures and Notice of Sale and Confirmation Hearing, (V) Approving Bidding Procedures, (VI) Approving Assumption and Assignment Procedures, and (VII) Granting Related Relief* [Dkt. No. 147] (the “Disclosure Statement and Bidding Procedures Motion”). The Disclosure Statement and Bidding Procedures Motion sought, among other things, the approval of bidding procedures governing the sale of assets pursuant to section 363 of the Bankruptcy Code (the “Bidding Procedures”). The Bidding Procedures were approved on April 23, 2019. *See Order (I) Approving the Bidding Procedures, (II) Approving Assumption and Assignment Procedures, and (III) Granting Related Relief* [Dkt. No. 456] (the “Bidding Procedures Order”).

3. On June 18, 2019, pursuant to the Bidding Procedures Order, the Debtors filed the *Notice of Designation of Stalking Horse Bid and Request for Approval of Stalking Horse Bid Protections* for the Debtors’ forward business (the “Forward Business”) [Dkt. No. 722].

4. The Debtors’ Forward Business, as set forth in the *Declaration of Gerald A. Lombardo Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York* [Dkt. No. 2], originates forward mortgage loans that are conventional conforming loans eligible for securitization by government-sponsored enterprises or guarantees by government-sponsored enterprises. These mortgage loans are originated or acquired through three channels: consumer originations (mortgage loans resulting from direct consumer solicitation), correspondent lending (purchasing mortgage loans from a network of lenders), and wholesale lending (originating mortgage loans through a network of approved brokers). In addition to originating mortgage

loans, the Debtors perform loan servicing of mortgage loans for loans that the Debtors own the mortgage servicing rights and subservice for third party owners of mortgage servicing rights.

5. For purposes of this Report and evaluating whether the proposed sale of the Forward Business is consistent with the Debtors' privacy policy, the Forward Business can be further demarcated as follows: (a) mortgage loans where servicing is complete and no further action is required (the "Fully Serviced Mortgage Loans"); (b) mortgage loans where the loan is in process but has not yet closed and funded (the "Pipeline Loans"); and (c) mortgage loans that are active and being serviced by the Debtors ("MSR Loans").<sup>4</sup>

6. NRZ and the Debtors have confirmed to the Ombudsman that (a) no customer files with respect to Fully Serviced Mortgage Loans will be transferred to NRZ; (b) Pipeline Loans<sup>5</sup> and associated customer files will only be transferred to NRZ once the mortgage loan has closed and the mortgage loan is acquired by NRZ as set forth in the NRZ Asset Purchase Agreement; and (c) MSR Loans and associated customer files will be transferred to NRZ upon the closing of the sale.

7. The proposed sale to NRZ of the Forward Business contemplates the sale of the MSR Loans and, once funded and closed, the Pipeline Loans. By necessity, the sale requires the Debtors to transfer to NRZ highly sensitive Personally Identifiable Information that was provided by consumers in order to apply for and obtain a mortgage loan. The transfer of

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<sup>4</sup> To the extent there are litigation holds on certain MSR Loan files, the Debtors will retain a copy of such file.

<sup>5</sup> NRZ is acquiring the Ditech.com domain, but it is entering into a licensing agreement with the Debtors pursuant to which the Debtors will continue to exclusively use the site and the customer portal until it is no longer needed by the Debtors for any servicing or origination operations. NRZ will not be using the site or any features to take any applications or perform any origination or servicing functions for any customers and therefore will not have access to any Personally Identifiable Information unless and until it owns or services the loans.

Personally Identifiable Information under these circumstances is permitted under both the Debtors' privacy policy and applicable law.

Scope of Ombudsman's Review

8. In performing her duties, the Ombudsman has relied upon and reviewed, among other things, the following:
- a. The Debtors' privacy policies in effect on the Petition Date.<sup>6</sup>
  - b. Telephone interviews, emails and discussions with counsel for the Debtor and counsel for NRZ;
  - c. The Plan, the Disclosure Statement, the Disclosure Statement and Bidding Procedures Motion, and the NRZ Asset Purchase Agreement;
  - d. The Debtor's privacy practices and collection procedures concerning Personally Identifiable Information;
  - e. Research and review of case law, commentaries, and court orders from bankruptcy cases involving the sale of Personally Identifiable Information; and
  - f. Applicable United States federal and state privacy laws, regulations, enforcement actions, guidance and industry best practices.

Customer Information Collected by the Debtors and the Debtors' Privacy Policy

9. Mortgage Loan files maintained by the Debtors contain, among other things, Personally Identifiable Information such as a borrower's name, physical address, email address, date of birth, social security number, credit history, employment and income information. The Gramm-Leach-Bliley Act ("GLBA"), 15 U.S.C. §§ 6801-6827 (1999), regulates the privacy and security of consumer information provided to a mortgage lender or servicer. Under the GLBA, Personally Identifiable Information is termed "nonpublic personal information," and the definition is more expansive as the statute defines "personally identifiable financial information"

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<sup>6</sup> The Debtors privacy policies and annual privacy notices are consistent with the GLBA (as described below). Stricter state laws are not preempted under the GLBA. Where a specific state has enacted a stricter standard, the Debtors' privacy notice have been modified accordingly.

as information “(i) provided by a consumer to a financial institution; (ii) resulting from any transaction with the consumer or any service performed for the consumer; or (iii) otherwise obtained by the financial institution.” Gramm-Leach-Bliley Act, 15 U.S.C. Subchapter 1, § 6809.

10. The Debtor’s privacy policy, modified as necessary to comply with specific state laws, generally follows the Model Privacy Form Under the Gramm-Leach-Bliley Act. Specifically, the privacy policy, communicated to customers at the commencement of a relationship and then annually, provides that “nonpublic personal information” is shared by the Debtors as follows:

Reasons we can share your personal information	Does Ditech share?	Can you limit this sharing
<b>For our everyday business purposes</b> – such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
<b>For our marketing purposes</b> – to offer our products and services to you	Yes	No
<b>For joint marketing with other financial companies</b>	Yes	No
<b>For our affiliates’ everyday business purposes</b> – information about your transactions and experiences	Yes	No
<b>For our affiliates’ everyday business purposes</b> – information about your credit worthiness	Yes	Yes
<b>For our affiliates to market to you</b>	Yes	Yes
<b>For nonaffiliates to market to you</b>	Yes	Yes

Annexed hereto as Exhibit A is the Debtors’ Multistate Privacy Notice.

### **ANALYSIS**

11. Section 363(b)(1) of the Bankruptcy Code governs a debtor’s ability to “use, sell, or lease” Personally Identifiable Information. Generally, a debtor may not sell or lease Personally Identifiable Information if, at the time of the commencement of a bankruptcy case, the debtor’s privacy policy prohibits the transfer of Personally Identifiable Information to unaffiliated

entities.<sup>7</sup> Notwithstanding this general prohibition, a sale is permitted, pursuant to section 363(b)(1)(B) of the Bankruptcy Code, if:

after the appointment of a consumer privacy ombudsman, the court approves the sale (i) giving consideration to the facts, circumstances, and conditions of the sale and (ii) finding that no showing was made that the sale would violate applicable nonbankruptcy law.

See 11 U.S.C. § 363(b)(1)(B).

12. Both the Debtors' privacy policy and the GLBA generally prohibit the sharing of Personally Identifiable Information and nonpublic personal information with unaffiliated third parties. However, the GLBA contains a general exception that permits the disclosure of nonpublic personal information to an unaffiliated third party in connection with a sale to the extent that the disclosure is necessary to administer a transaction authorized by a consumer. See 15 U.S.C. 6802(e)(1). The transfer of the mortgage loan files containing a borrower's Personally Identifiable Information is therefore permissible as this protected information is necessary to effectively administer and service the Pipeline Loans and the MSR Loans.

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<sup>7</sup> See 11 U.S.C. § 363(b)(1).

## CONCLUSION

For the foregoing reasons, the sale of the Forward Business to NRZ is permissible under the GLBA subject to NRZ's continued compliance with applicable federal and state law.

Dated: New York, New York  
August 27, 2019

RESPECTFULLY SUBMITTED,



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*Consumer Privacy Ombudsman*



**Exhibit A**

*(Multi-State Privacy Policy)*

FACTS	WHAT DOES DITECH FINANCIAL LLC (“Ditech”) DO WITH YOUR PERSONAL INFORMATION?		
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.		
What?	The types of personal information we collect and share depend on the product or service you have with us and can include: <ul style="list-style-type: none"><li>• Social Security number and income</li><li>• Account balances and payment history</li><li>• Credit history and mortgage rates and payments</li></ul>		
How?	All financial companies need to share customers’ personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers’ personal information; the reasons Ditech chooses to share; and whether you can limit this sharing.		
Reasons we can share your personal information		Does Ditech share?	Can you limit this sharing?
For our everyday business purposes – such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		Yes	No
For our marketing purposes – to offer our products and services to you		Yes	No
For joint marketing with other financial companies		Yes	No
For our affiliates’ everyday business purposes – information about your transactions and experiences		Yes	No
For our affiliates’ everyday business purposes – information about your credit worthiness		Yes	Yes
For our affiliates to market to you		Yes	Yes
For nonaffiliates to market to you		Yes	Yes
To limit our sharing	<ul style="list-style-type: none"><li>• Visit us online: <a href="https://www.ditech.com/privacy">https://www.ditech.com/privacy</a></li></ul> <p><b>Please note:</b></p> <p>If you are a <i>new</i> customer, we can begin sharing your information 30 days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p> <p>However, you can contact us at any time to limit our sharing by calling 1-800-643-0202.</p>		
Questions?	Call toll free 1-800-643-0202 or go to <a href="http://www.ditech.com/contact.html">http://www.ditech.com/contact.html</a>		

**Who we are****Who is providing this notice?****Ditech Financial LLC****What we do****How does Ditech protect my information?**

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. Our security practices include limiting access to this information to those employees and business associates with appropriate authority and for intended business purposes only.

**How does Ditech collect my personal information?**

We collect your personal information, for example, when you

- Apply for a loan or give us your income information
- Provide employment information or give us your employment history
- Provide your mortgage information

We also collect your personal information from others, such as credit bureaus, affiliates or other companies.

**Why can't I limit all sharing?**

Federal law gives you the right to limit sharing only

- Affiliates' everyday business purposes – information about your credit worthiness
- Affiliates from using your information to market to you
- Sharing for nonaffiliates to market to you

See below for more on your rights under state law.

**What happens when I limit sharing for an account I hold jointly with someone else?**

Your choices will apply to everyone on your account.

**Definitions****Affiliates**

Companies related by common ownership or control. They can be financial and non-financial companies.

- *Our affiliates include financial companies such as DF Insurance Agency LLC; Green Tree Credit LLC; Green Tree Investment Holdings III LLC; Reverse Mortgage Solutions, Inc.; and Walter Investment Management Corp.*

**Non-affiliates**

Companies not related by common ownership or control. They can be financial and non-financial companies.

- *Nonaffiliates we share with can include providers of financial services or insurance, such as mortgage bankers or insurance companies and agents and non-financial companies such as retailers, direct marketing companies or contractors.*

**Joint marketing**

A formal agreement between non-affiliated financial companies that together market financial products or services to you.

- *Our joint marketing partners include providers of financial services or insurance, such as mortgage bankers or insurance companies and agents; and non-financial companies, such as retailers, direct marketers or contractors.*

**Other important information**

**Alaska residents:** The information that you provide to us will **not** be shared, except as required or permitted by law, **unless** you complete the information and sign the attached Addendum.

**Texas residents:** See attached Addendum.