MILBANK LLP
Dennis F. Dunne
Matthew L. Brod
55 Hudson Yards
New York, NY 10003
Tel: (212) 530-5000
Fax: (212) 530-5219

-and-

Andrew M. Leblanc
1850 K Street, NW, Suite 1100
Washington, DC US 20006
Tel: (202) 835-7500
Fax: (202) 263-7586

Counsel to The Baupost Group, L.L.C., Oaktree Capital Management, L.P., and Silver Point Capital, L.P.

AKIN GUMP STRAUSS HAUER & FELD LLP
David H. Botter
Abid Qureshi
Jason P. Rubin
One Bryant Park
New York, NY 10036
Tel: (212) 872-1000
Fax: (212) 872-1002

Counsel to the Ad Hoc Group of Senior Noteholders

GIBSON, DUNN & CRUTCHER LLP
Scott J. Greenberg
Joshua K. Brody
Matthew J. Williams
200 Park Avenue
New York, NY 10166
Tel: (212) 351-4000
Fax: (212) 351-4035

Counsel to the Ad Hoc Group of Unsecured Claimholders

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
GRUPO AEROMÉXICO, S.A.B. de C.V. *et al*.,	:	Case No. 20-11563 (SCC)
Debtors.[1]	:	(Jointly Administered)

THE COMMITMENT PARTIES' STATEMENT IN SUPPORT OF DEBTORS' EXIT FINANCING AND DISCLOSURE STATEMENT MOTIONS

[1] The Debtors in these cases, along with each Debtor's registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors' corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

The Baupost Group, L.L.C., Oaktree Capital Management, L.P., and Silver Point Capital, L.P., each acting solely in its capacity as an investment manager, advisor or subadvisor on behalf of certain funds, accounts or sub-accounts directly or indirectly under their respective management (collectively, the "BSPO Investors"), certain members of the Ad Hoc Group of Senior Noteholders represented by Akin Gump Strauss Hauer & Feld LLP that, as applicable, serve as investment manager, advisor or subadvisor of accounts or sub-accounts directly or indirectly under their respective management, each of which hold 7.000% senior notes due 2025 issued pursuant to that certain Indenture, dated as of February 5, 2020, by and among Aerovías de México, S.A. de C.V. ("Aerovías"), as issuer, Grupo Aeroméxico, S.A.B. de C.V., as guarantor, and the Bank of New York Mellon, as trustee, transfer agent, registrar and paying agent (the "Noteholder Investors"), and the Ad Hoc Group of Unsecured Claimholders represented by Gibson, Dunn & Crutcher LLP (the "Claimholder Investors" and, collectively with the BSPO Investors and the Noteholder Investors, the "Commitment Parties"), submit the following statement in support of the (i) *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors' Entry Into, and Performance Under, the Debt Financing Commitment Letter, (II) Authorizing The Debtors' Entry Into, and Performance Under, the Equity Commitment Letter, (III) Authorizing the Debtors' Entry Into, and Performance Under, the Subscription Agreement and (IV) Authorizing Incurrence, Payment, and Allowance of Related Premiums, Fees, Costs, and Expenses as Superpriority Administrative Expense Claims* [ECF No. 1860] (as supplemented on November 19, 2021 [ECF No. 2168], the "Exit Financing Motion") and (ii) *Debtors' Motion to Approve the (I) the Shortened Notice and Objection Periods for Debtors' Disclosure Statement Motion, (II) Adequacy of Information in the Disclosure Statement, (III) Solicitation and Voting Procedures, (IV) Forms of Ballots, Notices and Notice Procedures in Connection Therewith, and (V) Certain Dates with Respect Thereto* [ECF

No. 1808] (the "Disclosure Statement Motion" and, together with the Exit Financing Motion, the "Motions"):[2]

STATEMENT

1. After nearly one and a half years of operating under chapter 11 protection and following a six-month intensive marketing and negotiation process, the Debtors have reached a pivotal moment when, with this Court's approval, they can move forward with a plan of reorganization that will allow the Debtors to emerge from bankruptcy as a healthy and competitive enterprise. Obtaining commitments for the Exit Financing – which is supported by Delta, Apollo, the Mexican Investors, the Noteholder Investors, the Claimholder Investors, and the BSPO Investors – was a crucial step towards achieving the Debtors' successful exit from these Chapter 11 Cases.

2. The Exit Financing will provide the Reorganized Debtors with $720 million of new equity capital and $762.5 million of new debt and will allow them to, among other things, (i) repay the Tranche 1 DIP Loan, (ii) repay any portion of the Tranche 2 DIP Loan that is not converting into reorganized equity, (iii) maximize distributions to unsecured creditors, and (iv) successfully emerge from chapter 11 with sufficient capital to sustain their ongoing operations and position them for success.

3. Critically, through the transactions contemplated by the Exit Financing, the parties also were able to resolve key gating issues for the Debtors' successful emergence from bankruptcy, including (i) settling Apollo's claims in connection with alleged defaults under the DIP Facility and potential litigation regarding the conversion price in respect of the Tranche 2 DIP Loans,

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the applicable Motion.

(ii) reaching an agreement with Apollo (with no associated fee) on an extension of the DIP Facility maturity date to ensure that the Plan can be consummated, (iii) ensuring that Delta remains a critical strategic partner of the Reorganized Debtors and (iv) ensuring that the Reorganized Debtors comply with Mexican law by maintaining Minimum Ownership Requirements. These are not individual compromises and agreements that can be segmented into piecemeal agreements that simply can be slotted into an alternative proposal as the OpCo Creditors suggest. The Exit Financing, and all of the agreements contemplated thereby, is a remarkable achievement by any objective measure.

4. Reaching this moment was not easy. The Commitment Parties first committed themselves to providing exit financing to the Debtors in the summer of 2021, shortly after the commencement of the Debtors' exit financing marketing process. The Commitment Parties' substantial commitments remained firm through each subsequent stage of the negotiations and bidding process, even though the Commitment Parties had no guarantee of success or any bid protections. Ultimately, after good faith, hard fought negotiations, the Commitment Parties, at the encouragement of the mediator and the Debtors, partnered with certain other parties in interest to submit the Exit Financing proposal.

A. The Commitment Premium is Appropriate Under the Facts and Circumstances of these Chapter 11 Cases

5. In exchange for the critical commitments provided by each of the Commitment Parties, the Debtors have agreed to pay the Commitment Premium. In its objection, the Official Committee of Unsecured Creditors (the "Committee") argues that, in light of the Committee's "doubts" that the Plan is confirmable, if the Court is inclined to grant the Exit Financing Motion, the Court should either condition payment of the Commitment Premium on confirmation of the Plan or limit the Commitment Premium to 12% (and in the event the Plan is not confirmed, further

limit the Commitment Premium to 1-3%). Both of these requests are unreasonable. The proposed Commitment Premium is unquestionably justified by the unique facts and circumstances of these cases – namely, a new money investment being provided at ***plan value*** (i.e., without any discount), the risk profile of the proposed investment in particularly uncertain market conditions, and the Commitment Parties locking up substantial capital through a protracted marketing process without any protection:

- **First**, the Commitment Premium is tailored to compensate the Commitment Parties for the specific and unusual risks involved in providing financing to a Mexican airline in the midst of a global pandemic that shows no signs of abating. Notwithstanding the declining valuations of public airlines and the overall uncertain economic environment caused by the COVID-19 pandemic (including the continued emergence of new virus variants), the total enterprise value at which the Commitment Parties are willing to invest has remain unchanged.

- **Second**, the Commitment Parties have been unwaveringly committed to provide exit financing to the Debtors since the summer of 2021, when they submitted their initial commitment letters. To have financing commitments locked in during a months-long marketing process in an unstable economic environment, particularly for an airline, is highly unusual, and the Commitment Parties should be fairly compensated for the risks they undertook (and will continue to take) when their capital could have been deployed elsewhere.

- **Third**, the Commitment Premium is reasonable when compared to commitment premiums in other chapter 11 cases given that the Commitment Parties are investing at plan value whereas commitment premiums are commonly issued at a discount to plan value.

- **Fourth**, the Commitment Premium is but one component of a highly complex Exit Financing transaction. Each of the Commitment Parties negotiated its Commitment Premium in exchange for their capital commitment and, without the approval of the Commitment Premium, the Exit Financing transaction cannot proceed.

- **Fifth**, the Debtors are seeking approval of the Exit Financing only after months of a highly competitive and robust marketing process that included Court-ordered mediation, pursuant to which the Debtors ultimately determined that the Exit Financing is the most value-maximizing and only viable exit strategy.

6. The Committee argues that the Debtors have failed to provide a satisfactory reason as to why the Commitment Premium increased from 12% to 15% during the bidding process. But

that reason is clear. As the Committee is well aware, when the Commitment Parties submitted their commitment papers to the Debtors on September 9, 2021, the inclusion of a 12% fee was subject to a very important qualification. Specifically, the commitment papers contained an express requirement for the Debtors to work with the Commitment Parties in good faith to provide for mutually acceptable additional economics for the benefit of the Commitment Parties, so long as such additional economics did not result in the Debtors applying a discount to plan value for purposes of any conversion of the Tranche 2 DIP Loans. Those additional economics were intended to account for the fact that the price per share would not be calculated at a discount to plan value. What the Committee conveniently ignores, however, is that when the Commitment Premium was increased just two weeks later (i.e., on September 22, 2021) to 15%, it was done in the context of the Commitment Parties agreeing to remove the aforementioned right to negotiate additional economics. Notably, the Ad Hoc Group of OpCo Creditors (the "OpCo Creditors"), which is objecting to the Exit Financing Motion, consists of two members who previously supported the 15% Commitment Premium when, as recently as last month, they were members of the investor group alongside the Commitment Parties.

7. That said, based on further discussions with the Debtors, the Commitment Parties have agreed that if the Plan is not confirmed, the Commitment Premium would be reduced to 7.5%. The Commitment Parties believe that this material concession provides a meaningful benefit to the Debtors' estates and that the Commitment Premium, as revised, should be approved.

B. The OpCo Creditors' Objections to the Motions Are Without Merit

8. The OpCo Creditors contend in their objection that the Court should deny approval of the relief sought in the Motions because the Plan based on the Exit Financing is "patently unconfirmable." This objection is wholly without merit. The OpCo Creditors ignore the relevant

facts and circumstances of these cases, mischaracterize applicable law, and prematurely raise confirmation issues that are simply not ripe. Indeed, courts have consistently held that objections regarding confirmability of a plan are to be reserved for the confirmation stage of a chapter 11 case. See, e.g., In re Innkeepers USA Trust, 448 B.R. 131, 148 (Bankr. S.D.N.Y. 2011) (deferring objections that were "best categorized as confirmation objections"); In re WorldCom, Inc., No. M-47, 2003 WL 21498904, at *9 (S.D.N.Y. June 30, 2003) ("Whether the proposed classification is improper is a matter to be decided at the confirmation hearing . . . ."); In re One Canandaigua Props., Inc., 140 B.R. 616, 618 (Bankr. W.D.N.Y. 1992) (holding that, prior to a confirmation hearing, disputes over confirmation issues must be deferred as "the Court ought not to be drawn into the process of drafting of plans"); In re Featherworks Corp., Inc., 45 B.R. 455, 457 (Bankr. E.D.N.Y. 1984) ("[I]t is too early before the hearing on confirmation to conclude that the present plan cannot be confirmed. That determination must await examination of the evidence offered at the hearing on confirmation.").

9. Although this is a confirmation issue reserved for another day, despite the OpCo Creditors' allegations to the contrary, the Plan clearly does not violate section 1123(a)(4) of the Bankruptcy Code. The Plan offers the exact same treatment to all unsecured creditors on account of their claims against the Debtors. Property given in exchange for a new investment made by some, but not all, members of a class of creditors does not implicate section 1123(a)(4). In Peabody Energy, for example, the Eight Circuit affirmed confirmation of a plan in which some creditors were afforded the right to invest in preferred stock of the reorganized debtor via a private placement. The court held that:

> [T]he opportunity to participate in the Private Placement was not "treatment for" the participating creditors' claims. 11 U.S.C. § 1123(a)(4). It was consideration for valuable new commitments made by the participating creditors. The participating creditors were investors who promised to support the plan, buy preferred stock that did not sell in the

> Private Placement, and backstop the Rights Offering. In exchange, they received the opportunity to buy preferred stock at a discount as well as premiums designed to compensate them for shouldering significant risks.

In re Peabody Energy Corp., 933 F.3d 918, 925 (8th Cir. 2019); see also id. at 927 ("The right to participate in the Private Placement was consideration for valuable new commitments. Consequently, the plan did not violate the equal-treatment rule of § 1123(a)(4).").

10. Importantly, the proposed transaction bears no resemblance to the financing proposed in In re Pacific Drilling, No. 17-13193, 2018 Bankr. LEXIS 3024, at *15 (Bankr. S.D.N.Y. Oct. 1, 2018). In Pacific Drilling, the investors were to acquire stock at a ***46.9% discount*** to expected plan value and receive a backstop fee payable in stock issued at the same steep discount to plan value, making the proposal "just an extra payment and an extra recovery rather than a reasonable, stand-alone financing term." Id. at *15. The Commitment Parties, by contrast, will be purchasing reorganized equity at ***plan value***. This is not an "extra recovery" by the Commitment Parties on account of their claims under the Plan. Accordingly, section 1123(a)(4) is not implicated.

11. Critically, the Debtors are not asking the Court to make any ruling that would prevent the Court from considering the confirmability of the Plan at the appropriate time. Neither the Debtors' entry into the Commitment Letters nor the approval of the Disclosure Statement will deprive any party in interest of the opportunity it otherwise would have to object to confirmation. All parties in interest, including the Committee and the OpCo Creditors, will have the opportunity to object to the Plan before this Court decides whether to confirm it.

CONCLUSION

12. For the reasons set forth above and in the Motions, the Commitment Parties respectfully request that the Court (i) overrule the Objections, (ii) grant the relief sought in each Motion (as modified herein), and (iii) grant such other and further relief to the Commitment Parties as the Court deems just and proper.

New York, New York
Dated: December 4, 2021

/s/ *Dennis F. Dunne*
MILBANK LLP
Dennis F. Dunne
Matthew L. Brod
55 Hudson Yards
New York, NY 10003
Tel: (212) 530-5000
Fax: (212) 530-5219

-and-

Andrew M. Leblanc
1850 K Street, NW, Suite 1100
Washington, DC US 20006
Tel: (202) 835-7500
Fax: (202) 263-7586

Counsel to The Baupost Group, L.L.C., Oaktree Capital Management, L.P., and Silver Point Capital, L.P.

/s/ *David H. Botter*
AKIN GUMP STRAUSS HAUER & FELD LLP
David H. Botter
Abid Qureshi
Jason P. Rubin
One Bryant Park
New York, NY 10036
Tel: (212) 872-1000
Fax: (212) 872-1002

Counsel to the Ad Hoc Group of Senior Noteholders

/s/ *Joshua K. Brody*
GIBSON, DUNN & CRUTCHER LLP
Scott J. Greenberg
Joshua K. Brody
Matthew J. Williams
200 Park Avenue
New York, NY 10166
Tel: (212) 351-4000
Fax: (212) 351-4035

Counsel to the Ad Hoc Group of Unsecured Claimholders