IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, et al. Debtors.[1]	PROMESA Title III Case No. 17-BK-3283-LTS (Jointly Administered)
In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE PUERTO RICO ELECTRIC POWER AUTHORITY, Debtor.	PROMESA Title III Case No. 17-BK-4780-LTS (Jointly Administered)

[1] The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (*i*) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (*ii*) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (*iii*) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (*iv*) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (*v*) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (*vi*) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

NOTICE OF APPEAL

Notice is hereby given that U.S. Bank National Association, as Trustee, by and through its undersigned counsel, hereby appeals to the United States Court of Appeals for the First Circuit the *Memorandum Opinion and Order Granting Motion of Commonwealth of Puerto Rico To Enforce Commonwealth Title III Plan Regarding Claim No. 50049 of U.S. Bank National Association*, entered in the United States District Court for the District of Puerto Rico on July 22, 2025 (ECF No. 29687 in Case No. 17-03283 and ECF No. 5731 in Case No. 17-04780) (the "**Subordination Order**," a copy of which is attached hereto as "**Exhibit A**"), which Subordination Order granted the *Motion of Commonwealth of Puerto Rico to Enforce Commonwealth Title III Plan Regarding Claims No. 50049 of U.S. Bank National Association* (ECF No. 29170 in Case No. 17-03283 and ECF No. 5596 in Case No. 17-04780), which motion was joined by the Claims Reconciliation Monitors pursuant to their *Claims Reconciliation Monitors' Supplemental Brief in Support of Motion of Commonwealth of Puerto Rico To Enforce Commonwealth Title III Plan Regarding Claim No. 50049 of U.S. Bank National Association* (Docket Entry No. 29202 in Case No. 17-03283) and *Claims Reconciliation Monitors' Supplemental Reply and Joinder in Support of Motion of the Commonwealth of Puerto Rico to Enforce the Commonwealth Title III Plan Regarding Claim No. 50049 of U.S. Bank National Association* (Docket Entry No. 29366 in Case No. 17-03283).

The other parties to this matter and their respective attorneys are as follows:

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[2] The PREPA Ad Hoc Group, formed by holders of revenue bonds issued by the Puerto Rico Electric Power Authority, includes SIG Structured Products, LLC and funds and accounts managed or advised by AllianceBernstein L.P., Aristeia Capital L.L.C., BNY Mellon Investment Adviser, Inc., Capital Research and Management Company, Columbia Management Investment Advisers, LLC., Delaware Management Company, a series of Macquarie Investment Management Business Trust, Ellington Management Group, L.L.C., Goldman Sachs Asset Management L.P., Invesco Advisers, Inc., MacKay Shields LLC, MFS Investment Management, One William Street Capital Management L.P., Russell Investment Company, T. Rowe Price, and Tower Bay Asset Management LP. The specific funds and accounts participating in the appeal are listed in Schedule 1. *See also Eighth Verified Statement of the PREPA Ad Hoc Group Pursuant to Bankruptcy Rule 2019* (ECF No. 29370 in Case No. 17-03283 and ECF No. 5671 in Case No. 17-04780).

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ATTORNEYS FOR U.S. BANK NATIONAL ASSOCIATION, IN ITS CAPACITY AS THE PREPA BOND TRUSTEE

Exhibit A

Subordination Order

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, *et al.*, Debtors.[1]	PROMESA Title III No. 17 BK 3283-LTS (Jointly Administered)

MEMORANDUM OPINION AND ORDER GRANTING MOTION OF COMMONWEALTH OF PUERTO RICO TO ENFORCE COMMONWEALTH TITLE III PLAN REGARDING CLAIM NO. 50049 OF U.S. BANK NATIONAL ASSOCIATION

Pending before the Court is the *Motion of Commonwealth of Puerto Rico to Enforce Commonwealth Title III Plan Regarding Claim No. 50049 of U.S. Bank National Association* (Docket Entry No. 29170 in Case No. 17-3283 and Docket Entry No. 5596 in Case No. 17-4780)[2] (the "Motion"), filed by the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"). The Motion requests entry of an order enforcing the

[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the: (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (v) Puerto Rico Public Buildings Authority ("PBA", and together with the Commonwealth, HTA, ERS, and PREPA, the "Debtors") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations). On October 30, 2024, the Title III case for the Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) was closed.

[2] All docket entry references herein are to the docket of Case No. 17-3283, unless stated otherwise.

Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. (Docket Entry No. 19784) (the "CW Plan") by determining that proof of claim no. 50049 (the "Trustee POC"), filed by U.S. Bank National Association, in its capacity as trustee (the "Bond Trustee"), is a "Section 510(b) Subordinated Claim" as that term is defined by section 1.456 of the CW Plan and, "[a]s a result, no party is entitled to receive any treatment or distribution on account of the [Trustee POC]." (Mot. Ex. A ¶ 2.) The Motion has been opposed by the Bond Trustee, Assured Guaranty Inc. ("Assured"), the PREPA Ad Hoc Group, GoldenTree Asset Management LP ("GoldenTree"), National Public Finance Guarantee Corporation ("National"), and Syncora Guarantee, Inc. ("Syncora" and, together with the Bond Trustee, Assured, the PREPA Ad Hoc Group, GoldenTree, and National, the "Bondholders").

The Court has subject matter jurisdiction of this motion pursuant to section 306 of the Puerto Rico Oversight, Management, and Economic Stability Act.[3] The Court has considered carefully all of the arguments and submissions made in connection with the Motion[4] and, for the following reasons, the Motion is granted.

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[3] The Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") is codified at 48 U.S.C. § 2101 et seq. References herein to PROMESA section numbers are to the uncodified version of the legislation, unless otherwise indicated. References herein to the provisions of Title 11 of the United States Code (the "Bankruptcy Code" or the "Code") are to sections made applicable in these cases by section 301 of PROMESA. 48 U.S.C. § 2161. The Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") are made applicable in these Title III cases by section 310 of PROMESA. 48 U.S.C. § 2170.

[4] The Court heard oral argument on the Motion at the omnibus hearing on June 11, 2025. (See Docket Entry No. 29546 ("Hr'g Tr.").) In addition to the Motion, the Court has reviewed the *Memorandum of Law in Support of Motion of Commonwealth of Puerto Rico to Enforce Commonwealth Title III Plan Regarding Claim No. 50049 of U.S. Bank National Association* (Docket Entry No. 29171) ("FOMB Br."), the *Claims Reconciliation Monitors' Supplemental Brief in Support of Motion of Commonwealth of Puerto Rico to Enforce Commonwealth Title III Plan Regarding Claim No. 50049 of U.S. Bank National Association* (Docket Entry No. 29202), the *Response of U.S. Bank National Association as PREPA Bond Trustee, Assured Guaranty Inc., the PREPA Ad*

BACKGROUND

PREPA's Revenue Bonds

PREPA is an entity established under a Commonwealth statute, 22 L.P.R.A. § 191 et seq. (the "Authority Act"), to provide electric power to Puerto Rico. See 22 L.P.R.A. § 196. The Authority Act empowers PREPA to issue bonds and to pledge its revenues to secure its bond obligations. See generally 22 L.P.R.A. § 206. The statute provides that the Commonwealth is not liable for principal and interest on bonds issued by PREPA. 22 L.P.R.A. § 210. However, under the Authority Act, the Commonwealth also "pledge[s] to, and agree[s] with, any person, firm or corporation, or any federal, Commonwealth or state agency, subscribing to or acquiring bonds of [PREPA] to finance in whole or in part any undertaking or any part thereof, that it will not limit or alter the rights or powers hereby vested in [PREPA] until all such bonds at any time issued, together with the interest thereon, are fully met and discharged." 22 L.P.R.A. § 215 (the "Statutory Covenant").

In 1974, PREPA executed a trust agreement (the "Trust Agreement") that provided for the issuance of bonds (the "Revenue Bonds") that PREPA would repay over time. Fin. Oversight & Mgmt. Bd. for P.R. v. U.S. Bank Nat'l Ass'n (In re Fin. Oversight & Mgmt.

Hoc Group, GoldenTree Asset Management LP, National Public Finance Guarantee Corporation, and Syncora Guarantee, Inc. to the Motion of Commonwealth of Puerto Rico to Enforce Commonwealth Title III Plan Regarding Claim No. 50049 of U.S. Bank National Association (Docket Entry No. 29265) ("BH Resp."), the *Reply in Support of Motion of the Commonwealth of Puerto Rico to Enforce the Commonwealth Title III Plan Regarding Claim No. 50049 of U.S. Bank National Association* (Docket Entry No. 29362), and the *Claims Reconciliation Monitors' Supplemental Reply and Joinder in Support of Motion of the Commonwealth of Puerto Rico to Enforce the Commonwealth Title III Plan Regarding Claim No. 50049 of U.S. Bank National Association* (Docket Entry No. 29366).

Bd. for P.R.), 121 F.4th 280, 290 (1st Cir. 2024). Over the years, PREPA has issued Revenue Bonds under the Trust Agreement whose face values total billions of dollars. See id.

The PROMESA Title III Cases and the Trustee POC

On May 3, 2017, the Oversight Board commenced a Title III case for the Commonwealth. On July 2, 2017, the Oversight Board commenced a Title III case for PREPA. As of July 2, 2017, Revenue Bonds with a total face value of nearly $8.5 billion remained outstanding. Id. at 312.

On June 13, 2018, the Bond Trustee, acting "solely in its capacity as trustee," filed the Trustee POC in the Commonwealth's Title III case.[5] (Trustee POC Ex. A at 1.) The Trustee POC asserts claims arising out of the alleged breach of obligations related to the Revenue Bonds. According to the Trustee POC, the statutory provisions that form the basis for the claims asserted against the Commonwealth "were a material inducement for investors to purchase" the Revenue Bonds. (Trustee POC Ex. A ¶ 10.) The Trustee POC asserts claims (collectively, the "Non-Constitutional Claims") for breaches of "the rights of the Trustee and Bondholders to enforce certain statutory rights and remedies expressly granted to the Trustee and the Bondholders by the Commonwealth to induce investment in and to secure repayment of the [Revenue] Bonds," including the Statutory Covenant, and for the collection of amounts owed by the Commonwealth to PREPA for electricity. (Trustee POC Ex. A ¶¶ 1-10, 27-31.) The Trustee POC also asserts that the Commonwealth has interfered with the Bondholders' contractual and statutory rights in violation of the Takings Clause and the Contracts Clause of the Constitution of

[5] The Bond Trustee filed a separate proof of claim, proof of claim no. 14133, against PREPA in PREPA's Title III case.

the United States (collectively, the "Constitutional Claims" and, together with the Non-Constitutional Claims, the "Bondholder Claims"). (See Trustee POC Ex. A ¶¶ 11-26.)

Confirmation of the CW Plan

On August 2, 2021, the Court approved a disclosure statement for a proposed plan of adjustment (Docket Entry No. 17628) (the "CW Disclosure Statement") that would, after additional proceedings and numerous amendments and modifications, eventually become the CW Plan. (Docket Entry No. 17639.) The order approving the CW Disclosure Statement also established dates and deadlines concerning the plan confirmation process, including a deadline of October 19, 2021, for objections to the proposed plan. The Bond Trustee did not file an objection to the proposed plan in its capacity as trustee under the Trust Agreement.[6]

On January 18, 2022, the Court confirmed the CW Plan. (See *Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority*, Docket Entry No. 19813 (the "Confirmation Order"); *Findings of Fact and Conclusions of Law in Connection with Confirmation of the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority*, Docket Entry No. 19812 (the "CW FFCL").)

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[6] U.S. Bank National Association did, however, file objections to the proposed plan in its capacity as bond trustee or fiscal agent with respect to bonds issued by the Puerto Rico Public Finance Corporation, the Puerto Rico Public Buildings Authority, and the Puerto Rico Infrastructure Financing Authority. (See Docket Entry Nos. 18631, 18634.)

The Effective Date of the CW Plan occurred on March 15, 2022. (See *Notice of (A) Entry of Order Confirming Modified Eighth Amended Title III Plan of Adjustment of the Commonwealth of Puerto Rico, et al. Pursuant to Title III of PROMESA and (B) Occurrence of the Effective Date*, Docket Entry No. 20349.)

The CW Plan provides for the adjustment of a wide variety of debts of the Commonwealth, the Puerto Rico Public Buildings Authority, and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico. It classifies and specifies treatment for dozens of classes of claims. One of those classes, Class 58, comprises holders of CW General Unsecured Claims[7] (see CW Plan § 62.1(a)), which are defined in the CW Plan as "Claim[s] against the Commonwealth" other than certain kinds of claims that are explicitly excluded from the definition thereof. (CW Plan § 1.178.) One type of claim excluded from the definition of CW General Unsecured Claim is a "Section 510(b) Subordinated Claim" (see CW Plan § 1.178(p)), which is defined as follows:

> Any Claim, to the extent determined pursuant to a Final Order, against the Debtors' [sic] or their Assets arising from or relating to (a) rescission of a purchase or sale of an existing security of a Debtor or an Affiliate of a Debtor, (b) purchase, sale or retention of such a security, or (c) reimbursement, indemnification or contribution allowed under section 502 of the Bankruptcy Code on account of such Claim.

(CW Plan § 1.456.) Section 510(b) Subordinated Claims are treated in Class 64 of the CW Plan. (CW Plan § 68.1.) The CW Plan provides that holders of such claims "shall not receive a distribution pursuant to the Plan and each holder of an Allowed Section 510(b) Subordinated Claim shall be deemed to have rejected the Plan with respect to such Section 510(b)

[7] Unless stated otherwise, capitalized terms used in this Memorandum Opinion and Order to describe the terms of the CW Plan and related orders shall have the meaning provided to them in those documents.

Subordinated Claims." (Id.) Section 92.2 of the CW Plan provides for a broad discharge of claims against the Commonwealth upon the Effective Date of the CW Plan "regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Causes of Action." (See CW Plan § 92.2(a).)

The CW Plan contemplates distributions to holders of CW General Unsecured Claims. (See CW Plan § 62.1(a).) Each holder of a CW General Unsecured Claim, except to the extent that a claimant properly elects to be treated as a Convenience Claim, is entitled to receive distributions in the form of a pro rata share of cash consideration and certain net recoveries by the Avoidance Actions Trust. (See CW Plan §§ 1.181, 62.1(a).) The cash consideration consists of a fixed pool of cash allocable pro rata to holders of CW General Unsecured Claims, so the aggregate dollar amount of Allowed CW General Unsecured Claims will affect the ultimate recoveries of those creditors. (See CW Plan §§ 1.181, 1.354.) As a result, in the time since the CW Plan was confirmed, the Oversight Board has stated that distributions to holders of Allowed CW General Unsecured Claims are not feasible due to uncertainty concerning the resolution of certain unresolved claims, including the Trustee POC. (See, e.g., FOMB Br. ¶ 2; *June Status Report of the Financial Oversight and Management Board for Puerto Rico* ¶ 45 (Docket Entry No. 29511).)

The Claim Objection

The CW Plan included a deadline for the Oversight Board to file objections to claims. (CW Plan § 82.1(a).) That deadline was subsequently extended through September 4, 2023. (BH Resp. ¶ 24.) On August 31, 2023, the Oversight Board filed the *Objection of the Commonwealth of Puerto Rico to Proof of Claim (Claim No. 50049) of U.S. Bank National Association* (Docket Entry No. 25083) (the "Claim Objection") challenging the validity of the

Trustee POC. The Bond Trustee subsequently responded to the Claim Objection (Docket Entry No. 25686); that response was joined by the PREPA Ad Hoc Group, GoldenTree, and Syncora. (See Docket Entry Nos. 25693, 25726.)

On November 30, 2023, the Court so-ordered a stipulation executed by the Oversight Board, the Bond Trustee, the PREPA Ad Hoc Group, GoldenTree, and Syncora holding in abeyance all deadlines relating to the Claim Objection sine die, subject to the parties' authority to resume litigation of the Claim Objection on thirty days' notice. (See Docket Entry No. 25791.)

DISCUSSION

In the Motion, the Oversight Board seeks a judicial determination that the claims asserted in the Trustee POC all constitute Section 510(b) Subordinated Claims covered by Class 64 of the CW Plan, and, as a result, are not entitled to receive any distributions under the CW Plan. That relief would necessarily determine that the Bondholder Claims are not CW General Unsecured Claims within Class 58 of the CW Plan, because the definition of CW General Unsecured Claims expressly excludes Section 510(b) Subordinated Claims and because holders of claims in Class 58 are entitled to certain distributions. (See CW Plan §§ 1.178, 62.1(a); see also Hr'g Tr. 36:12-20.)

Broadly speaking, the Bondholders' arguments in opposition to the Motion can be grouped into two categories. First, the Bondholders contend that the Motion is untimely under section 82.1(a) of the CW Plan. Second, the Bondholders contend that the CW Plan should not be construed to classify the Bondholder Claims as Section 510(b) Subordinated Claims. This Memorandum Opinion and Order will begin by addressing the timeliness issue. Then, it will address the scope of the positions taken by the Bondholders to provide some context for the

substantive discussion. Finally, the Court will address the parties' arguments concerning the classification of the Trustee POC under the CW Plan.

1. The Timeliness of the Motion Under Section 82.1(a) of the CW Plan

Although the order confirming the CW Plan provides that the Oversight Board retains authority to enforce the CW Plan until the Oversight Board is terminated (Conf. Ord. ¶ 77), the Bondholders contend that section 82.1(a) of the CW Plan should be construed to bar the Motion as untimely. The Bondholders' position can be summarized as follows: Section 1.456 of the CW Plan defines Section 510(b) Subordinated Claims to include "[a]ny Claim, to the extent determined pursuant to a Final Order," to, among other things, "aris[e] from or relat[e] to . . . a purchase or sale of an existing security of a Debtor or an Affiliate of a Debtor." (CW Plan § 1.456.) Furthermore, section 82.1(a) of the CW Plan provides in relevant part as follows:

> Except with respect to Allowed Claims, and subject to the terms and conditions of the ADR Procedures and the ADR Order, Reorganized Debtors, by and through the Oversight Board, and in consultation with AAFAF, shall object to, and shall assume any pending objection filed by the Debtors to, the allowance of Claims filed with the Title III Court with respect to which it disputes liability, priority or amount, including, without limitation, objections to Claims that have been assigned and the assertion of the doctrine of equitable subordination with respect thereto. All objections, affirmative defenses and counterclaims shall be litigated to Final Order . . . . Unless otherwise ordered by the Title III Court, to the extent not already objected to by the Debtors, Reorganized Debtors shall file and serve all objections to Claims as soon as practicable, but, in each instance, not later than one hundred eighty (180) days following the Effective Date or such later date as may be approved by the Title III Court.

(CW Plan § 82.1(a).) The Bondholders contend that the term "Final Order," as used in section 1.456 (the definition of the term "Section 510(b) Subordinated Claim") should be read have the same meaning as the term "Final Order" as used in section 82.1(a), such that the only means by which the Oversight Board may obtain a determination that a particular Claim is a Section

510(b) Subordinated Claim is through the claim objection process described in section 82.1(a). (See BH Resp. ¶¶ 10, 57-62, 67, 83-86.) The deadline referenced in section 82.1(a) for claim objections (the "Claim Objection Deadline") was subsequently extended by the Court, but it expired approximately a year and a half before the Oversight Board filed the Motion, and the Bondholders argue that there is no basis in law or fact to extend the Claim Objection Deadline. (BH Resp. ¶¶ 68-82.)

Nothing in the CW Plan, however, precludes use of this Motion as the procedural vehicle to obtain a Final Order determining that the Trustee POC arises from the purchase or sale of securities of an Affiliate of a Debtor. (CW Plan § 1.456.) The term "Final Order" is not specific to objections to claims or to section 82.1(a) of the CW Plan (CW Plan § 1.253); rather, that term is used dozens of times in the CW Plan in a variety of contexts. Accordingly, for the Bondholders' view of section 82.1(a) to prevail, the Court must construe section 82.1(a)'s reference to "objections to Claims" (the antecedent of which is that provision's reference to "object[ing] to . . . the allowance of Claims . . . with respect to which [the Oversight Board] disputes liability, priority or amount") to necessarily encompass the relief sought in the Motion, namely, requests for judicial determinations concerning how claims are classified by the CW Plan and the treatment provided by the CW Plan for such claims.

Those terms were not used in the CW Plan in a vacuum. In context and against the backdrop of restructuring cases under Title III of PROMESA (and, more generally, applicable concepts in the Bankruptcy Code), those terms refer to litigation concerning the legal and factual validity of a claim. See Hann v. Educ. Credit Mgmt. Corp (In re Hann), 476 B.R. 344, 355 (B.A.P. 1st Cir. 2012) ("[U]pon an objection to [a] claim, the bankruptcy court has the power under § 502(b) to determine the validity and amount of the claim."), aff'd, 711 F.3d 235

(1st Cir. 2013); 4 Collier on Bankruptcy ¶ 502.03[1] (16th ed. 2025) ("Section 502 [of the Bankruptcy Code] 'lays down general instructions for the bankruptcy court in considering whether a claim should be allowed or disallowed.' . . . To the extent all or part of any claim falls within any of [the exceptions enumerated in section 502(b)], upon proper objection, the claim is not allowable."); see also Gordon Sel-Way, Inc. v. United States (In re Gordon Sel-Way, Inc.), No. 95-CV-76223-DT, 1996 WL 571652, at *4 (E.D. Mich. July 16, 1996) ("[A] plan provision setting the time for objections does not address or prescribe a time period for filing complaints for subordination."). Unlike an objection to a claim, the Motion does not challenge the legal or factual validity of the Trustee POC in whole or part. (See Hr'g Tr. 36:4-6 ("[MR. MCCARTHY:] [I]t is important to note what is not before the Court this morning, and that is the merits of the Trustee's claim."); Hr'g Tr. 22:23-24 ("[MR. ROSEN:] [W]e are not here today to delve into the merits of the claim itself and the consequent objection.").) To the contrary, the Motion assumes the validity of the Trustee POC (subject, of course, to the Claim Objection) and seeks a judicial determination concerning the classification and resulting treatment of the Trustee POC pursuant to the CW Plan's classification scheme. (FOMB Br. ¶¶ 1-2.)[8]

[8] Although the Bondholders have cited two cases in which courts have construed the term "objection" somewhat more broadly (see BH Resp. ¶ 86 n.24), those cases held that a debtor's reservation of authority to object to claims did not act as a waiver of the debtor's right to seek subordination of claims, and they broadly construed the reservation of rights language to ensure consistency with other plan provisions and the applicable disclosure statement, and to ensure that such claims could be pursued by the estate. See In re Worldwide Direct, Inc., 280 B.R. 819, 822-23 (Bankr. D. Del. 2002) ("[W]e hold that it is simply impractical and unwarranted to require a debtor to provide in excruciating detail all of the possible defenses or objections which the estate may have to every single claim being treated in the plan. . . . [W]e conclude that a broad reservation of the right to object to the amount and priority of a claim is sufficient to reserve a right to seek subordination under section 510(b)."); NM Enters., Inc. v. Harrington (In re Flying Star Cafes, Inc.), 568 B.R. 129, 136-37 & n.12 (Bankr. D.N.M. 2017) (noting that other cases have construed the term "objection" more narrowly in different circumstances).

The use of the word "priority" in section 82.1(a) does not undermine the clear meaning of section 82.1(a). The Motion does not seek to resolve the priority of the Trustee POC or to subordinate the Trustee POC pursuant to section 510(b) of the Bankruptcy Code; the priority question was addressed years ago when the Court confirmed the CW Plan, approving the classification scheme and the treatment for each class that is set forth in the CW Plan.[9] (See CW FFCL ¶ 71 ("Because [Section 510(b) Subordinated Claims] have a lower priority than general unsecured claims, they are sufficiently dissimilar to general unsecured claims to warrant separate classification and treatment."), ¶ 73 ("The Plan separately classifies Claims not similarly situated to other Claims based upon differences in the legal nature and/or priority of such Claims . . . ."); see also CW FFCL ¶ 56 (determining that the CW Plan satisfies the Bankruptcy Code's classification requirements).) The result of that confirmation proceeding was a classification scheme that is binding on all parties under principles of res judicata. See New Hampshire v. McGrahan (In re McGrahan), 459 B.R. 869, 874 (B.A.P. 1st Cir. 2011) ("The binding effect of confirmation has led courts to conclude that once a plan is confirmed, a creditor's rights and interests are defined within the boundaries of the plan . . . ."); Burrell v. Town of Marion (In re Burrell), 346 B.R. 561, 569-70 (B.A.P. 1st Cir. 2006) (holding that confirmed plan's treatment of claim was binding on a creditor). The Motion simply asks the Court to enforce that classification scheme.[10]

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[9] The reference to "priority" in section 82.1(a) is not, however, superfluous. Creditors can and have asserted administrative expense claims claims against the Commonwealth; if valid, such claims receive priority above other claims pursuant to the applicable subsection of the Bankruptcy Code section titled "Priorities." See 11 U.S.C. § 507(a)(2). Consistent with section 1123(a)(1) of the Bankruptcy Code, section 507(a)(2) priority claims are not classified by the CW Plan. (See CW FFCL ¶¶ 76-77.)

[10] Although the Bondholders assert that the Bond Trustee did not receive a Notice of Non-Voting Status pursuant to the order approving the disclosure statement (BH Resp. ¶ 82), they have also acknowledged that the Bond Trustee neither sought nor received

Furthermore, as a practical matter, the administration of the confirmed CW Plan requires the Court and the Reorganized Debtors to retain the ability to resolve disputes concerning the proper classification of claims. (Cf. CW Plan § 91.1(a) (providing for the retention of jurisdiction "to allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of" claims "including . . . the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims not compromised or settled hereby"); Conf. Ord. ¶ 77.) That is all that the Motion requests.

As the Court will explain in subsequent sections of this Memorandum Opinion and Order, the Bondholder Claims are Section 510(b) Subordinated Claims. Failing to enforce the terms of the CW Plan would result in substantial prejudice to the holders of CW General Unsecured Claims by subjecting those creditors to additional unnecessary delays while the validity of the Trustee POC is litigated. Additionally, to the extent the Trustee POC were to be allowed as a CW General Unsecured Claim, holders of CW General Unsecured Claims would have to share a fixed pool of consideration with the Bondholders, reducing the pro rata distributions to which such creditors are entitled under the CW Plan.[11]

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solicitation and voting materials consistent with classification as a CW General Unsecured Claim. (Hr'g Tr. 39:2-9.) The figures in the disclosure statement's estimates of claims and recoveries for Class 58 were also materially inconsistent with the classification of an $8.5 billion claim in that class. (See CW Disclosure Statement at 24.) In any event, the Bondholders had notice of the CW Plan and the terms on which it proposed classifying and treating claims, and they are barred from collaterally attacking it after the fact. See Monarch Life Ins. Co. v. Ropes & Gray, 65 F.3d 973, 983 (1st Cir. 1995) (explaining that a creditor may not "elect[] to treat the obvious breadth of" a plan provision as ambiguity to escape the preclusive effect of a confirmed plan).

[11] The Bondholders have also argued that the Court is obligated to apply the terms of the CW Plan in a manner that does not deviate from the priority scheme of the Bankruptcy Code, including section 510(b). (See BH Resp. ¶¶ 9, 54 & n.14 ("A plan cannot alter the Bankruptcy Code's priority scheme in a manner that the Bankruptcy Code itself would

In the alternative, if the Motion were construed as an "objection" to the Trustee POC and therefore subject to the Claim Objection Deadline, it would be appropriate to deem the Motion to be an amendment supplementing the timely Claim Objection. While neither the CW Plan nor applicable law or rules provide direct guidance as to requests to amend a motion in a contested matter, the Court has discretion to apply Bankruptcy Rule 7015, which incorporates Rule 15 of the Federal Rules of Civil Procedure. See Gens v. Resol. Tr. Corp., 112 F.3d 569, 575 n.8 (1st Cir. 1997) ("[Bankruptcy Rule] 9014 permits Bankruptcy Rule 7015 to be applied in contested matters."); see also In re Yeckel, No. 05-39136-SGJ, 2010 WL 4697695, at *5 (Bankr. N.D. Tex. Nov. 12, 2010) (permitting amendment of motion in contested matter), aff'd, No. 3:11-CV-047-B, 2011 WL 3758965 (N.D. Tex. Aug. 24, 2011).

Under Rule 15(a), "leave to amend should be freely given in instances in which justice so requires." Nikitine v. Wilmington Tr. Co., 715 F.3d 388, 390 (1st Cir. 2013). However, "[i]n appropriate circumstances—undue delay, bad faith, futility, and the absence of due diligence on the movant's part are paradigmatic examples—leave to amend may be denied." Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006). Thus, a court must "examine the totality of the circumstances and . . . exercise its informed discretion in constructing a balance of pertinent considerations." Id. at 30-31. Under Rule 15(c), a new claim in "an amended pleading relates back to the date of the original pleading if . . . the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in

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not allow.").) To the extent that proposition is correct, it militates against the Bondholders' position that the operation of section 82.1(a) precludes the Court from applying the Bankruptcy Code's mandatory subordination provision pursuant to section 68.1 of the CW Plan.

the original pleading." Trindade v. Grove Servs., Inc., 91 F.4th 486, 494-95 (1st Cir. 2024) (quoting Fed. R. Civ. P. 15(c)(1)(B)).

While the Motion is timely under the Court's interpretation of section 82.1(a) of the CW Plan, the Court would otherwise apply Rule 15(a) and deem the Motion one to amend and supplement the Claim Objection based upon its consideration of the totality of the circumstances. The Bondholders first staked out their position that the Trustee POC asserts a CW General Unsecured Claim when they responded to the Claim Objection after the Claim Objection Deadline had elapsed. (See Claim Obj. ¶ 41.) Since then, the Oversight Board and the Claims Reconciliation Monitors have not unduly delayed seeking to resolve the issue in response to that argument. The Bondholders have not identified any appreciable prejudice that would result from the Court performing its role of interpreting and enforcing the CW Plan according to its terms. Adjudication of the Motion would not, as the Bondholders suggest, adversely affect administration of the CW Plan and the Commonwealth's Title III case. (See BH Resp. ¶ 81.) To the contrary, by enforcing the CW Plan's classification and treatment scheme, resolution of the Motion will aid the Commonwealth's efforts to administer the CW Plan and provide distributions to general unsecured creditors who have been waiting for years. As the Court has explained, failing to address the merits of the issues raised in the Motion would prejudice holders of actual Allowed CW General Unsecured Claims by subjecting them to further delays and potentially diluting the recoveries that they are entitled to under the CW Plan.

2. The Scope of the Parties' Dispute Regarding Classification

The CW Plan, including its classification scheme and its broad discharge of claims, was confirmed by the Court and is binding on all creditors under section 944 of the Bankruptcy Code and principles of res judicata. See 11 U.S.C. § 944; New Hampshire v.

McGrahan (In re McGrahan), 459 B.R. 869, 874 (B.A.P. 1st Cir. 2011); Burrell v. Town of Marion (In re Burrell), 346 B.R. 561, 569-70 (B.A.P. 1st Cir. 2006). The Motion requests that the Court enforce the CW Plan by determining where the Bondholder Claims fall within the CW Plan's classification scheme. To that end, the Motion squarely argues that all of the Bondholder Claims, including the Constitutional Claims, are subject to classification as Section 510(b) Subordinated Claims and therefore are not entitled to any distributions under the CW Plan. (See FOMB Br. ¶¶ 4, 47; Mot. Ex. A ¶ 2.) The Court will address the merits of the Bondholders' argument that the Bondholder Claims fall, in whole or in part, into the CW General Unsecured Claims class in the next section, but it may be helpful first to provide some context concerning arguments that are not before the Court.

The Bondholders' position is that their Non-Constitutional Claims are CW General Unsecured Claims within the classification scheme of the CW Plan. (BH Resp. ¶ 62.) With respect to the Constitutional Claims, the Bondholders' position is that such claims are non-dischargeable and "may survive, . . . and, therefore, may be partially payable under the [CW General Unsecured Claims class], and may ride through [the Title III case]."[12] (Hr'g Tr. 37:10-13.) For this position to be responsive to the Motion, the Bondholders would need to advance a theory as to how such claims are dealt with by the CW Plan. For example, the Bondholders might logically have opposed the Motion by arguing that the Bond Trustee's Constitutional Claims belong in a different class of the CW Plan or that there is ambiguity in the CW Plan as to the applicable classification of the Constitutional Claims. The Bondholders' Response does not,

[12] By "ride through," counsel was positing that the Constitutional Claims would be unaffected by the CW Plan's discharge and therefore remain enforceable pursuant to applicable non-bankruptcy law. Cf. NLRB v. Bildisco & Bildisco, 465 U.S. 513, 546 n.12 (1984) (Brennan, J., concurring).

however, present arguments along those lines. As acknowledged at oral argument by counsel to the Bond Trustee, the Bondholders have not argued (in their brief or otherwise) that the Constitutional Claims fit within any class of the CW Plan other than the CW General Unsecured Claims class. (See Hr'g Tr. 37:15-21 ("THE COURT: Have you articulated any position as to where any constitutional claims that you may have asserted or preserved somehow through all of this would fit within the scheme of the plan as confirmed, which, by its terms, discharged claims that aren't provided for in the buckets that are in the plan? MR. MCCARTHY: Other than in the [CW General Unsecured Claims class], no.").) Counsel to the Bond Trustee also deflected the Court's attempt to determine whether the Bondholders were arguing that there was "any . . . possibility as to [the Bondholder Claims] being in some other class as well [as Class 64]." (Hr'g Tr. 36:23-37:5 ("MR. MCCARTHY: If you say it's subordinated under 510(b), I don't believe that -- I mean, if you say both the statutory and constitutional claims are subordinated, then I think we're probably looking at an appeal at that point and not anything else.").)

The Bondholders are sophisticated parties represented in this motion practice by thirteen law firms, and there is therefore little doubt that they acted knowingly and voluntarily when they decided to not offer any argument as to how the Constitutional Claims are treated within the terms of the CW Plan. The Court declines to speculate about the strategic rationale for that decision. Nor will the Court proffer such an argument on counsel's behalf, "create the ossature for the argument[], and put flesh on [its] bones." Oliveras-Villafañe v. Baxter Healthcare SA, 140 F.4th 29, 30 (1st Cir. 2025) (quoting Quintana-Dieppa v. Dep't of the Army, 130 F.4th 1, 12 n.12 (1st Cir. 2025)).

Accordingly, because the Bondholders have not proffered any argument that their Constitutional Claims should be subject to treatment under the CW Plan other than as CW

General Unsecured Claims, resolution of the merits of the Motion only requires the Court to determine whether the Bondholder Claims fit within the CW Plan's definition of Section 510(b) Subordinated Claims. If they do fit within that definition, then they are excluded from the definition of CW General Unsecured Claims by the plain terms of the CW Plan. (See CW Plan § 1.178 ("[U]nder all circumstances, 'CW General Unsecured Claim' shall not include . . . a Section 510(b) Subordinated Claim . . . .").)

3. Section 510(b) Subordinated Claims

The Court next addresses whether the claims asserted in the Trustee POC are within the scope of section 510(b) of the Bankruptcy Code, the language of which is substantially incorporated into the CW Plan's definition of Section 510(b) Subordinated Claims.[13] (CW Plan § 1.456.)

The Bondholders present four arguments against construing the Bondholder Claims as Section 510(b) Subordinated Claims. First, the Bondholders argue that the "principles underlying Section 510(b)" apply only to claims arising from the purchase or sale of equity securities, and do not apply to claims arising from the purchase or sale of debt securities. (BH Resp. ¶¶ 38-41.) Second, the Bondholders argue that the Bondholder Claims do not arise from the purchase or sale of a security because their claims concern conduct that occurred after the

[13] In their briefs and at oral argument, the parties have argued about whether the CW Plan's definition of Section 510(b) Subordinated Claims embraces claims that would not otherwise be within the scope of section 510(b) of the Code and, if so, whether the Bondholders may challenge any such discrepancy notwithstanding the finality of the order confirming the CW Plan. However, because the Court concludes that the claims in the Trustee POC are comfortably within the scope of section 510(b) of the Bankruptcy Code, those issues need not be addressed. The Court's analysis will therefore focus on the terms of section 510(b), with the understanding that the Bondholder Claims are Section 510(b) Subordinated Claims if they are within the scope of section 510(b).

Revenue Bonds were issued and do not concern fraud or violations of the law occurring during the sale of the Revenue Bonds. (BH Resp. ¶¶ 42-45.) Third, the Bondholders argue that their claims do not seek "damages" because the term "damages" refers only to changes in the market value of securities. (BH Resp. ¶¶ 46-48.) Fourth, the Bondholders argue that the canon of constitutional avoidance compels the Court to interpret the CW Plan so as not to subordinate the Bondholder Claims. (BH Resp. ¶¶ 63-66.) As noted above, the Bondholders' position is that their Non-Constitutional Claims are CW General Unsecured Claims within the classification scheme of the CW Plan (BH Resp. ¶ 62), and they have declined to offer a view as to how the CW Plan classifies the Constitutional Claims.

> Section 510(b) of the Bankruptcy Code provides as follows:
>
> > For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

11 U.S.C.A. § 510(b) (West 2016). Courts applying section 510(b) construe it broadly. See ANZ Sec., Inc. v. Giddens (In re Lehman Bros. Inc.), 808 F.3d 942, 948 (2d Cir. 2015) ("[Section] 510(b) case law—our own and that of other courts—endorses a 'broad' interpretation of the section (at least to the extent that such an interpretation is plausibly supported by the text)."). "A claim (no matter how it is characterized by the claimant) arises from a securities transaction so long as the transaction is part of the causal link leading to the alleged injury." Adler v. Lehman Bros. Holdings Inc. (In re Lehman Bros. Holdings Inc.), 855 F.3d 459, 478 (2d Cir. 2017); see Templeton v. O'Cheskey (In re Am. Hous. Found.), 785 F.3d 143, 155 (5th Cir. 2015) ("For a claim to 'arise from' the purchase or sale of a security, there must be some nexus

or causal relationship between the claim and the sale.") (quoting SeaQuest Diving LP v. S&J Diving Inc. (In re SeaQuest Diving, LP), 579 F.3d 411, 421 (5th Cir. 2009)); In re WorldCom, Inc., 329 B.R. 10, 14-16 (Bankr. S.D.N.Y. 2005).

The Bondholder Claims fall within the plain terms of section 510(b). The Bondholders do not dispute (i) that the Revenue Bonds were issued by PREPA, (ii) that PREPA is an affiliate of the Commonwealth, and (iii) that the Commonwealth is a Title III debtor against whom the Bond Trustee has filed the Trustee POC. The Bondholders' primary textual arguments are that the Bondholder Claims do not seek "damages" and do not "aris[e] from" the purchase or sale of the Revenue Bonds within the meaning of section 510(b).

Here, the causal link between the claim and the securities transaction is stated outright in the Trustee POC. The Trustee POC alleges that the Commonwealth has breached "liens, remedies, protections, and special statutory rights" that were granted to the Bondholders as "material inducement[s] for investors to purchase" PREPA's bonds. (Trustee POC Ex. A ¶¶ 2, 10; see also Trustee POC Ex. A at 1.) While the Trustee POC cites several different sources of obligations that allegedly induced investment in Revenue Bonds, all are alleged to have caused the same ultimate harm: "interfere[nce] with the fixed-debt payments of principal and interest on the Bonds and related property rights." (BH Resp. ¶ 8; see also BH Resp. ¶¶ 46-48, Trustee POC Ex. A ¶ 18.)

The Statutory Covenant, which is the principal inducement cited in the Bondholders' brief (see BH Resp. ¶¶ 1-2, 15), is by its own terms expressly directed at and made for the benefit of persons who purchase PREPA's bonds. See 22 L.P.R.A. § 215 (providing a "pledge to, and agree[ment] with" persons "acquiring bonds of [PREPA]" that lasts until "all such bonds . . . are fully met and discharged"). The Trustee POC states that the purpose of this

pledge (and other undertakings in the Authority Act pursuant to which PREPA was granted authority to issue bonds) was "to secure payment of the bonds." (Trustee POC Ex. A ¶ 14.) Thus, the underlying alleged duties are closely intertwined with the sale of securities, the claims set forth in the Trustee POC are pleaded on behalf of purchasers of securities, and the breaches are alleged to have harmed holders of the securities due to the ongoing failure to provide those holders with the benefit of their bargain. See In re WorldCom, Inc., 329 B.R. at 14-16 ("The damage and harm sustained by Merck, whether proximately caused by fraud in the inducement of its purchase, or the retention of its ownership, or misappropriation or other malfeasance of management, arises from and is based upon Merck's purchase and ownership of WorldCom stock and as such is squarely within the scope of Section 510(b)."); In re Am. Hous. Found., 785 F.3d at 154-55 (subordinating claims of creditor asserting claim "under guaranties which the bankruptcy court found to be 'intimately intertwined' with the [limited partnership] agreements" because "the guaranties, at least in part, induced [the creditor] to make these investments").

The Court will next address the specific arguments made by the Bondholders concerning the application of section 510(b).

a. Applicability to Debt Securities

As counsel to the PREPA Ad Hoc Group acknowledged at oral argument, section 510(b) applies to claims arising from the purchase or sale of debt securities as well as equity securities.[14] See In re Lehman Bros. Inc., 519 B.R. 434, 442 (S.D.N.Y. 2014) (explaining that

[14] At oral argument, counsel to the PREPA Ad Hoc Group argued that there are "two buckets of cases" where subordination under section 510(b) is appropriate. (Hr'g Tr. 50:19-21.) In his formulation, the first appropriate application is "where equity security holders are trying to elevate their claim by bringing a fraudulent inducement or something like that to elevate their status or equity to debt," and the second is "where a debt holder is trying to also assert, in addition to money that's owed, a claim for fraudulent inducement to sort of double count [his or her claim]." (Hr'g Tr. 50:19-51:3.)

the term "security" in section 510(b) is defined by section 101(46) of the Bankruptcy Code to include bonds), aff'd, 808 F.3d 942 (2d Cir. 2015); In re Mid-Am. Waste Sys., Inc., 228 B.R. 816, 825 (Bankr. D. Del. 1999) ("[B]y its plain terms § 510(b) is intended to apply to both debtholders and equityholders."). Consistent with the statute's plain text, courts have applied section 510(b) to claims by holders of debt securities.[15] See e.g., Allen v. Geneva Steel Co. (In re Geneva Steel Co.), 281 F.3d 1173, 1179-80 (10th Cir. 2002) (subordinating claims of noteholder alleging that debtor fraudulently induced him to retain notes); In re Lehman Bros. Inc., 519 B.R. at 447 (subordinating claims asserted by underwriters of affiliate's notes); Marro v. Gen. Mar. Corp. (In re Gen. Mar. Corp.), No. 13 CIV. 5019 ER, 2014 WL 5089406, at *4 (S.D.N.Y. Sept. 29, 2014) (subordinating claims for "fraudulent inducement, fraudulent

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Thus, counsel seemingly abandoned the argument that claims arising from the purchase or sale of debt securities are categorically outside of the scope of section 510(b). (See BH Resp. ¶¶ 38-41 (asserting that "courts have refused to subordinate prepetition *debt* claims, as opposed to equity claims").)

[15] The cases cited by the Bondholders to support their argument that section 510(b) does not apply (or only applies narrowly) to claims arising from debt securities (see BH Resp. ¶ 40) are materially distinguishable from the instant legal and factual context. For example, there is no dispute that an issuer's liability for principal and interest on a debt security is not subordinated by section 510(b). See In re Swift Instruments, Inc., No. ADV. 09-5335-CN, 2012 WL 762833, at *2 (B.A.P. 9th Cir. Mar. 8, 2012) ("The Trustee filed her complaint pursuant to § 510(b) of the Bankruptcy Code, seeking to subordinate the claims represented by the promissory notes . . . ."); In re Wash. Bancorporation, No. 90-00597, 1996 WL 148533, at *20 (D.D.C. Mar. 19, 1996) ("FDIC-C seeks to recover solely on WBC's debt obligations under the commercial paper . . . . FDIC-C . . . merely asserts the claim for the debt."). That remains true even if the owners of debt securities used to be equityholders and received the debt in exchange for their equity. See In re Mobile Tool Int'l, Inc., 306 B.R. 778, 781 (Bankr. D. Del. 2004) ("When the stock is exchanged and a separate debt instrument is issued by the debtor, however, the claimant is converted from an owner of stock to a creditor."); In re Marketxt Holdings Corp., 361 B.R. 369, 382, 388-89 (Bankr. S.D.N.Y. 2007). The Bondholders, in contrast, are asserting their claims based on rights that they contend that they have against the Commonwealth on account of their present ownership of Revenue Bonds. Cf. In re Mobile Tool, 306 B.R. at 781 ("[T]he nexus or causal connection required to employ section 510(b) exists where stock is retained by the claimant.").

retention, breach of contract (the bond indenture), and breach of fiduciary duty" asserted by noteholder); NationsBank, N.A. v. Com. Fin. Servs., Inc. (In re Com. Fin. Servs., Inc.), 268 B.R. 579, 599-600 (Bankr. N.D. Okla. 2001) (subordinating claims asserted by owners of notes issued by affiliate). While a substantial majority of case law concerning section 510(b) has been developed in the context of claims arising from the purchase or sale of equity securities, the statute "cannot be selectively enforced based on the type of *security* at issue." In re Gen. Mar. Corp., 2014 WL 5089406, at *4 ("The plain text of the statute, which expressly includes debt instruments within the definition of 'security,' precludes such a result."). The Court is obligated to interpret and apply the unambiguous terms of the statute, including its express reference to the term "security" regardless of the policy rationale underlying section 510(b). See In re Lehman Bros. Inc., 808 F.3d at 950 (stating that the court "need not determine whether" the policy rationale underlying section 510(b) "is strong enough to warrant subordination" under particular circumstances because the text of section 510(b) demonstrates that "Congress has already determined that it is"); In re Gen. Mar. Corp., 2014 WL 5089406, at *4 n.11; see also Pub. Int. Legal Found., Inc. v. Bellows, 92 F.4th 36, 45 (1st Cir. 2024) (explaining that statutory interpretation begins with the text of the statute and, absent ambiguity, ends there as well).

In any event, application of section 510(b) under the present circumstances also comports with the policy rationale underlying the statute. With respect to claims arising from transactions in equity securities, courts generally recognize two related policy rationales: (1) the "risk allocation rationale," which recognizes the "dissimilar risk and return expectation of shareholders and creditors," and (2) the "equity cushion rationale," which is concerned with "the reliance of creditors on the equity cushion provided by shareholder investment." In re Lehman Bros. Inc., 808 F.3d at 949; but see In re Lehman Bros. Inc., 519 B.R. at 442 (observing that "the

risk-allocation rationale is incomplete" in part because "section 510(b) is not limited to shareholder claims"). Here, the Bondholders have taken on the "risk-return expectations of investors" in debt securities issued by PREPA, while general unsecured creditors of the Commonwealth have not. In re Lehman Bros. Inc., 808 F.3d at 949; see In re Com. Fin. Servs., Inc., 268 B.R. at 599-600 (noting the "inequitable consequence of permitting [the holder of debt securities] to make a claim against [the debtor's] *unsegregated assets*, diluting the general unsecured creditors' potential recovery" because the notes "entitled [the noteholder] to be repaid from pools of Loans that were transferred by [the debtor] into a remote entity, which shielded those assets from [the debtor's] general unsecured creditors"); see also In re Geneva Steel Co., 281 F.3d at 1179-80. The inclusion in section 510(b) of claims arising from securities issued by affiliates is indicative of legislative intent to allocate risk among creditors of affiliated entities in this manner. As counsel to the PREPA Ad Hoc Group acknowledged, section 510(b) properly applies to attempts to "double count" a bondholder's claim. (Hr'g Tr. 50:19-51:2.) Thus, section 510(b) permits an investor to pursue recovery on a debt instrument against the issuer of the security, but prevents the investor from recovering pari passu with other creditors on related claims against the debtor or an affiliate, such as a claim on a guaranty or for mismanagement or breach of fiduciary duty. Cf. In re Am. Hous. Found., 785 F.3d at 154 (determining that section 510(b) applied to claim against debtor that "issued guaranties of [creditor's] investments" in affiliate of debtor, promising to repay the investment with interest).

b. Nexus to the Purchase or Sale of a Security

The Bondholders argue next that their claims cannot be subordinated under section 510(b) because they only arose after PREPA issued the Revenue Bonds. In their view, section 510(b) only applies to claims that directly concern the purchase or sale of securities (such

as rescission of a securities transaction, fraud in marketing securities, or violations of the securities laws governing the issuance of securities). (BH Resp. ¶¶ 42-45.)

The Bondholders' narrow view of section 510(b) is not supported by the text of the statute, which broadly subordinates any claim for damages "arising from" the purchase or sale of a security. Nor is it supported by the weight of precedent. Although some courts have in the past adopted a narrow view of section 510(b), "more recent cases have uniformly rejected the restricted reading of section 510(b)," In re Enron Corp., 341 B.R. 141, 154 (Bankr. S.D.N.Y. 2006), and "the circuit courts agree that a claim arising from the purchase or sale of a security can include a claim predicated on post-issuance conduct, such as breach of contract." In re SeaQuest Diving, LP, 579 F.3d at 421. Notably, although the Bondholders attempt to distinguish the facts of certain of the cases cited in the Oversight Board's memorandum of law, the Bondholders cite no case law or other authority applying their view of section 510(b). (See BH Resp. ¶¶ 42-45.) In practice, courts have subordinated a wide range of post-issuance/post-investment claims, including alleged contractual violations, fraud, breaches of fiduciary duty, and financial malfeasance. See, e.g., In re Am. Hous. Found., 785 F.3d at 154 (guaranties of limited partnership interests); Baroda Hill Invs., Ltd. v. Telegroup, Inc. (In re Telegroup, Inc.), 281 F.3d 133, 143 (3d Cir. 2002) (breach of debtor's contractual obligation to use best efforts to register stock); In re Geneva Steel Co., 281 F.3d at 1180 ("post-investment fraud"); In re Gen. Mar. Corp., 2014 WL 5089406, at *3 (post-acquisition fraudulent retention, breach of fiduciary duty, and breach of contract); In re WorldCom, Inc., 329 B.R. at 14-16 (Bankr. S.D.N.Y. 2005) (false "financial reporting, accounting manipulations, misrepresentations and malfeasance of [the debtor] and its agents"); In re Int'l Wireless Commc'ns Holdings, Inc., 257 B.R. 739, 747 (Bankr. D. Del. 2001) (breach of debtor's contractual obligation to consummate an IPO or issue

additional stock which "prevented [the creditor] from selling its stock or realizing the value of its investment"), aff'd, 279 B.R. 463 (D. Del. 2002), aff'd, 68 F. App'x 275 (3d Cir. 2003).

This widely adopted view of section 510(b) does not, however, "authorize subordination simply because the identity of the claimant happens to be a security holder." (Hr'g Tr. 45:14-16.) Rather, "the key . . . is whether the requisite nexus is present to tie the specific claim at issue to the claimant's initial purchase of his securities." In re Gen. Mar. Corp., 2014 WL 5089406, at *4 (citing Enron, 341 B.R. at 162). Thus, as explained by Judge Gonzalez in WorldCom, tort claims and contract claims arising out of obligations unrelated to the Bondholders' status as owners of Revenue Bonds would not be subject to subordination:

> Obviously, owners of securities of a debtor may also hold a variety of claims against the debtor not derived from their purchase or sale of the debtor's securities. For example: (i) a stockholder who is injured by a vehicle owned and operated by the debtor may have a tort claim which is quite unrelated to his ownership of stock; (ii) a debenture holder may have a claim against the debtor for breach of contract to supply widgets which is entirely independent of his status as a debenture holder; (iii) a stockholder may have a claim against the debtor for money loaned to the corporation which is independent of his ownership of stock.

329 B.R. at 14 n.2 (Bankr. S.D.N.Y. 2005). Here, however, the Trustee POC does not assert any claim that is not derived from the Bondholders' status as purchasers of Revenue Bonds. To the contrary, the Bondholders became beneficiaries of the relevant rights and duties when they purchased the Revenue Bonds, and the Bondholder Claims have their origin in obligations assumed by the Commonwealth to support and enhance investors' propensity to purchase PREPA's bonds. Although the alleged violation of those rights by the Commonwealth may not have occurred until after the Revenue Bonds were issued to investors, the obligations ultimately relate back to the initial bargain. See id. at 15-16 (holding that section 510(b) is unambiguous in its application to a claim by a holder of securities to "post-purchase fraud, embezzlement,

looting, or other corporate misconduct which undermined the value of his stock"). That relationship is confirmed by the fact that the Bondholders' asserted damages arise from and are measured by PREPA's failure to make scheduled principal and interest payments. (See BH. Resp. ¶ 8.)

c. Damages Arising from Purchase or Sale

The Bondholders also argue that the "damages" referred to in section 510(b) are limited to "changes in the *market value* or *trading price* of a security" and do not include "'damages' flowing from non-payment of principal and interest." (BH Resp. ¶¶ 46-48.) To support this argument, the Bondholders attempt to expand an uncontroversial principle in case law interpreting section 510(b). Specifically, many courts have recognized that section 510(b) does not mandate subordination of a claim for principal and interest owed by the obligor on a debt security. See In re Blondheim Real Est., Inc., 91 B.R. 639, 640 (Bankr. D.N.H. 1988). These courts reason that "the concept of 'damages' has the connotation of some recovery *other than* the simple recovery of an unpaid debt due upon an instrument." Id.

The Bondholder Claims do not, however, seek the simple recovery of an unpaid debt due upon the Revenue Bonds. The obligor on the Revenue Bonds is the issuer of the bonds, PREPA. The Commonwealth did not issue the Revenue Bonds, and it has no liability for principal and interest on the Revenue Bonds pursuant to statute, 22 L.P.R.A. § 210, and the express terms of the Trust Agreement. (Trust Agreement § 701 (stating that the Revenue Bonds are not "a debt or obligation of the Commonwealth" and the Commonwealth "shall [not] be liable for the payment of the principal of or the interest on the bonds"). Thus, the Bondholder Claims seek compensation from the Commonwealth for its alleged violations of the Statutory Covenant and other obligations. Such claims are claims for damages, even though the liability

may ultimately be measured by the amount of principal and interest that PREPA cannot or will not pay to the Bondholders. See O'Donnell v. Tristar Esperanza Props., LLC (In re Tristar Esperanza Props., LLC), 488 B.R. 394, 400 (B.A.P. 9th Cir. 2013) ("[Damages] generally means money 'claimed by, or ordered to be paid to, a person as compensation for loss or injury.'") (quoting Damages, Black's Law Dictionary (9th ed. 2009)), aff'd, 782 F.3d 492 (9th Cir. 2015).

The Bondholders cite no authority holding that such claims are excluded from section 510(b). Applicable case law interprets the term "damages" in accordance with its ordinary meaning and to effectuate the purposes of section 510(b).[16] See id. ("[Section] 510(b) 'damages' include all forms of 'damages' known to the law so long as they arise from the purchase or sale of a security of the debtor."); In re Tristar Esperanza Props., LLC, 782 F.3d at 495 ("We see no reason to stray from this broad interpretation here. O'Donnell's basic claim is that Tristar failed to pay her the amount she was due under Tristar's operating agreement for the purchase of her membership interest. This is a claim for damages for Tristar's breach of contract."); In re Am. Hous. Found., 785 F.3d at 154 (noting that "various circuits . . . have

[16] In the context of claims against an affiliate of a debt issuer, it is not clear to the Court that the Bondholders' proposed distinction between "[d]amages based on changes in the market value or sale price of securities" and "payments due on debt instruments" withstands analytical scrutiny. Although credit risk is not the only factor affecting the value of a debt security, the failure to pay principal and interest obviously bears a significant and meaningful relationship with the market value of a bond. See City of Memphis v. Brown, 87 U.S. 289, 316-17 (1873) ("The market value of a bond security depends chiefly upon the confidence or want of confidence in its ultimate payment."); Huffington v. T.C. Grp., LLC, 637 F.3d 18, 20 (1st Cir. 2011) ("The value of such securities depends, of course, on the cash flow generated by the mortgages and the prospects that the principal and interest will be paid."). In the context of claims against an affiliate of an issuer that is not itself liable on the underlying debt security, there does not appear to be any principled reason why the applicability of section 510(b) should depend on whether a claim is framed as seeking to recover damages for unpaid principal and interest as opposed to recovering the loss in value resulting from the non-payment of principal and interest.

adopted [a] broad reading of the damages category contained in Section 510(b)") (quotation marks omitted); In re WorldCom, Inc., 329 B.R. at 14 ("[I]t is not up to the courts to decide that certain types of damage or harm were not contemplated by Congress or should otherwise not be included within the scope of the statute.").

d. Constitutional Avoidance

The Bondholders argue that the Court should apply the canon of constitutional avoidance to construe the CW Plan in a manner that does not result in the subordination of the Bondholders' claims for violation of the Takings Clause and Contracts Clause of the United States Constitution. (BH Resp. ¶¶ 63-66.)

The canon of constitutional avoidance "provides that [w]hen a serious doubt is raised about the constitutionality of an act of Congress, [a court] will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." Nielsen v. Preap, 586 U.S. 392, 418-19 (2019) (quotation marks omitted). However, the canon of constitutional avoidance is "not a method of adjudicating constitutional questions by other means." Clark v. Martinez, 543 U.S. 371, 381 (2005). It "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." Jennings v. Rodriguez, 583 U.S. 281, 296 (2018) (quoting Clark, 543 U.S. at 384). Thus, "[t]he canon has no application absent ambiguity." Nielsen, 586 U.S. at 419 (quotation marks omitted).

Here, the Bondholders have not identified any relevant ambiguity. As discussed above, the Bondholders have declined—even when specifically asked by the Court at oral argument—to offer an interpretation of the confirmed CW Plan that does not impair the Constitutional Claims. (See Hr'g Tr. 37:15-21.). Thus, the dispute presented to the Court is

reducible to whether the Bondholder Claims fit within section 510(b) of the Bankruptcy Code and section 1.456 of the CW Plan. As explained above, those provisions are unambiguous in their application to the Bondholder Claims.

Furthermore, to the extent that the Bondholders' position is that the CW Plan should have preserved the Constitutional Claims, that argument is not cognizable as an issue of constitutional avoidance, which is only an interpretive canon for resolving ambiguity. Clark, 543 U.S. at 381. It is also barred by res judicata because the Court determined upon confirmation of the CW Plan that the CW Plan lawfully classified and treated existing claims against the Commonwealth (see generally CW FFCL ¶¶ 76-86, 151-183 & n.33), and the Bondholders cannot now collaterally attack the final order approving the CW Plan. In the confirmation proceeding for the CW Plan, other parties presented timely objections to confirmation concerning the treatment and dischargeability of their claims, including claims that were asserted to have constitutional character. (See, e.g., CW FFCL ¶¶ 156 n.33, 161.) Certain of those objections were sustained, and the Court directed the Oversight Board to amend the proposed plan of adjustment accordingly; that instruction resulted in modifications to section 58.1 of the CW Plan to ensure full payment of Allowed Eminent Domain/Inverse Condemnation Claims in Class 54. (See CW FFCL ¶ 161.)

Ultimately, the Court held that the CW Plan, as amended, was consistent with applicable law and satisfied the provisions of the Bankruptcy Code that require a plan to specify classification and treatment for claims, including identification of any class of claims that is not impaired.[17] (See CW FFCL ¶ 56 (determining that the CW Plan satisfied the requirements of,

[17] The Bondholders are not aided by the Court's determination, affirmed by the First Circuit, that claims arising from alleged takings of real property may not be impaired. (See BH Resp. ¶ 64 (quoting Fin. Oversight & Mgmt. Bd. for P.R. v. Cooperativa de

inter alia, subsections 1123(a)(1), (2), and (3) of the Bankruptcy Code), ¶ 170 (determining that "the Plan's treatment of Eminent Domain/Inverse Condemnation Claims is not a barrier to confirmation" because the Debtors proposed full payment of the allowed amount of such claims).) However, as explained earlier, the Bondholders have not put forward any argument that the Constitutional Claims belong in a different class of the CW Plan (except for the Bondholders' argument that their claims are CW General Unsecured Claims, which are impaired under the CW Plan). Accordingly, the Bondholders have waived any argument that they might have had as to the applicability of Class 54 to the Trustee POC. The Court therefore sees no basis to conclude that the CW Plan can be construed to exclude the Trustee POC from classification as a Section 510(b) Subordinated Claim.

CONCLUSION

For the foregoing reasons, the Motion is granted. The CW Plan's classification scheme is hereby enforced against the Trustee POC. The Trustee POC is a Section 510(b) Subordinated Claim under the terms of the CW Plan. As a result, no party is entitled to receive any treatment or distribution on account of the Trustee POC.

This Memorandum Opinion and Order resolves Docket Entry No. 29170 in Case No. 17-3283 and Docket Entry No. 5596 in Case No. 17-4780. The Clerk of Court is

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Ahorro y Credito Abraham Rosa (In re Fin. Oversight & Mgmt. Bd. for P.R.), 41 F.4th 29, 45 (1st Cir. 2022) ("Cooperativa") and In re Fin. Oversight & Mgmt. Bd. for P.R., 637 B.R. 223, 294 (D.P.R. 2022)).) Those decisions resolved timely objections to the terms of the proposed plan. They do not stand for the proposition that a creditor may sit on its rights and challenge a confirmed bankruptcy plan after the time for objections and appeals has run. Cf. Cooperativa, 41 F.4th at 45-46 (rejecting the "conflat[ion of] what makes the denial of just compensation substantively unlawful with what may make a claim for just compensation procedurally inactionable or waivable by the claimant").

respectfully directed to terminate Docket Entry Nos. 25083 and 25686 as moot in light of this Memorandum Opinion and Order.

SO ORDERED.

Dated: July 22, 2025

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge