

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

In re:

WAVE SYSTEMS CORP.,

Debtor.

Chapter 11

Case No. 16-10284 (KJC)

**Objection Deadline: March 28, 2018 @ 4:00 p.m.
Hearing Date: April 4, 2018 @ 2:00 p.m.**

**DISTRIBUTION TRUSTEE'S MOTION FOR ENTRY OF
FINAL DECREE CLOSING CHAPTER 11 CASE**

David W. Carickhoff, the Distribution Trustee (in such capacity, the "Distribution Trustee") of the Wave Systems Distribution Trust (the "Distribution Trust"), hereby moves this Court (the "Motion") for entry of an order, substantially in the form attached hereto, pursuant to section 350(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3022-1(a) of the Local Rules Of Bankruptcy Practice and Procedure (the "Local Rules"), closing Case No. 16-10284 (the "Bankruptcy Case"). In support of this Motion, the Distribution Trustee respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. § 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The predicates for the relief requested herein are section 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022, and Local Rule 3022-1(a).

BACKGROUND

4. On February 1, 2016 (the “Petition Date”), Wave Systems Corp. (the “Debtor”) filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). David W. Carickhoff was subsequently appointed as chapter 7 trustee of the Debtor’s estate (the “Estate”).

5. On May 16, 2016, the Bankruptcy Court entered an Order converting the Bankruptcy Case from chapter 7 to chapter 11. David W. Carickhoff was subsequently appointed as chapter 11 trustee of the Estate.

6. On August 25, 2016, the Bankruptcy Court entered an Order [Dkt. No. 303] (the “Confirmation Order”) confirming the *Amended Plan of Reorganization of the Debtor Dated August 23, 2016* [Dkt. No. 285] (the “Plan”). Among other things, the Confirmation Order approves the *Wave Systems Corp. Distribution Trust Agreement* (the “Distribution Trust Agreement”).

7. On August 29, 2016, the Distribution Trustee filed a Notice [Dkt No. 317], indicating, among other things, that the Plan became effective on August 29, 2016 (the “Effective Date”).

8. On the Effective Date, pursuant to the Plan, the Confirmation Order and the Distribution Trust Agreement, the Distribution Trust Assets (as defined in the Plan) vested in the Distribution Trust and David W. Carickhoff was appointed as the Distribution Trustee.

9. Since the Effective Date, among other things, the Distribution Trustee has: (i) reconciled all outstanding claims (resulting in a reduction of the claims pool by approximately \$6 million); (ii) investigated potential causes of action; (iii) liquidated the Distribution Trust Assets; (iv) fully resolved any outstanding adversary proceedings and/or contested matters; and (v) made

distributions on all allowed secured, administrative and priority claims.¹ In addition, prior to the hearing on this Motion, the Distribution Trustee will make a first and final distribution to holders of allowed general unsecured claims who have, thus far, provided a tax identification number or social security number.²

RELIEF REQUESTED

10. Pursuant to section 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022, and Local Rule 3022-1(a), the Distribution Trustee respectfully requests that the Court enter an order, in substantially the form attached hereto, closing the Bankruptcy Case and approving the Distribution Trustee's final report.³

BASIS FOR RELIEF REQUESTED

11. Section 350(a) of the Bankruptcy Code provides that “[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a). Bankruptcy Rule 3022, which implements section 350 of the Bankruptcy Code, also provides that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022.

12. The term “fully administered” is not defined in the Bankruptcy Code or in the Bankruptcy Rules. The 1991 Advisory Committee Note to Bankruptcy Rule 3022 does, however, set forth the following non-exclusive factors a court should consider when determining

¹ Two priority claims are still unpaid and are in the process of being paid. They will have been paid by the time this Motion is heard.

² Either prior to or after closure of the Bankruptcy Case, the Distribution Trustee may make one or more supplemental distribution(s) as necessary in accordance with the terms of the Plan and the Distribution Trust Agreement.

³ The Distribution Trustee will file a final report in accordance with Local Rule 3022-1(c).

whether an estate has been fully administered: (a) whether the order confirming the plan has become final; (b) whether deposits required by the plan have been distributed; (c) whether the property proposed by the plan to be transferred has been transferred; (d) whether the debtor or the successor of the debtor under the plan has assumed the business or management of the property dealt with by the plan; (e) whether payments under the plan have commenced; and (f) whether all motions, contested matters, and adversary proceedings have been fully resolved. *See* 1991 Advisory Comm. Note to Fed. R. Bankr. P. 3022 (“Advisory Committee’s Note”); *see, e.g., In re Union Home & Indus. Inc.*, 375 B.R. 912, 916 (B.A.P. 10th Cir. 2007) (recognizing that bankruptcy courts weigh the Advisory Committee’s Note factors in deciding whether to close a case); *In re Johnson*, 402 B.R. 851, 856 (Bankr. N.D. Ind. 2009) (same).

13. The Advisory Committee’s Note, however, is silent as to the number of factors required to be satisfied before a chapter 11 bankruptcy case is deemed fully administered. Although bankruptcy courts often apply the factors described above, these factors simply serve as a guide to assist in the determination of whether a case is fully administered. Failure to completely satisfy all factors will not prevent a case from being fully administered. *See Walnut Assoc. v. Saidel*, 164 B.R. 487, 493 (E.D. Pa. 1994); *In re Mold Makers*, 124 B.R. 766, 768 (Bankr. N.D. Ill. 1990) (“[A]ll of the factors in the Committee Note need not be present before the Court will enter a final decree. Instead, the Committee Note and the factors merely serve as a guide in assisting the Court in its decision to close a case.”). Indeed, the Editor’s Comment to Bankruptcy Rule 3022 describes it as “a flexible Rule to permit the court to determine that an estate is fully administered and should be closed even though payments or other activities involving the debtor and its creditors might continue.” *In re Gould*, 2010 WL 3834344, at *4 (D. Conn. Sept. 30, 2010) (*quoting* Fed. R. Bankr. 3022 ed. cmt.). As a result, courts have suggested

that substantial consummation alone is sufficient for entry of a final decree. *In re BankEast Corp.*, 132 B.R. 665, 668 (Bankr. N.H. 1991) (“This court deems a chapter 11 estate to be ‘fully administered’ pursuant to Bankruptcy Court 3022 at the point of substantial consummation as defined by § 1101(2) of the Bankruptcy Code”); *accord In re Consol. Pioneer Mortg. Entities*, 248 B.R. 368, 379 (9th Cir. B.A.P. 2000) (indicating entry of a final decree would be appropriate if a plan were substantially consummated).

14. Local Rule 3022-1 supports the conclusion that substantial consummation alone is satisfactory for entry of a final decree closing a chapter 11 case. Local Rule 3022-1 provides, in relevant part, that “a party in interest may seek the entry of a final decree at any time after the *confirmed plan has been fully administered* provided that all required fees due under 28 U.S.C. § 1930 have been paid.” Del. Bankr. L.R. 3022-1(a) (emphasis added).

15. The Bankruptcy Case has been “fully administered” within the meaning of section 350 of the Bankruptcy Code, and the Plan has been substantially consummated within the meaning of section 1102 of the Bankruptcy Code, making it appropriate for the Court to enter a final decree closing the Chapter 11 Case. Among other things: (a) the Confirmation Order has become final and non-appealable; (b) all property proposed to be transferred under the Plan has been transferred; (c) there are no pending adversary proceedings or contested matters in the Bankruptcy Case; (d) the claims administration process has been completed; (e) distributions to holders of allowed secured, administrative and priority claims [see footnote 1] have been completed and distributions to holders of allowed general unsecured claims will have commenced prior to the hearing on this Motion; (f) all reports required in connection with the Chapter 11 Case have been filed or will be filed not later than 14 days before the hearing on the

Motion; and (g) all fees due under 28 U.S.C. § 1930 have been paid or will be paid in the amount due within 30 days of the closure of the Bankruptcy Case⁴.

16. In light of the foregoing, the Distribution Trustee respectfully submits that ample justification exists for entry of a final decree closing the Bankruptcy Case.

NOTICE

17. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) counsel for the Reorganized Debtor; and (c) any party filing a request for notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Distribution Trustee submits that no other or further notice is necessary or required and that notice of the Motion complies with Local Rule 3022-1(b).

WHEREFORE, the Distribution Trustee respectfully requests entry of an order, in substantially the form attached hereto, (i) closing the Bankruptcy Case, and (ii) granting such other relief as is just and proper.

Dated: March 9, 2018

By: /s/ Alan M. Root
Alan M. Root (No. 5427)
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Attorneys for the Liquidating Trustee

⁴ The Distribution Trustee has reserved cash in an amount sufficient to satisfy any such fees.

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

In re:

WAVE SYSTEMS CORP.,

Debtor.

Chapter 11

Case No. 16-10284 (KJC)

Re: Dkt. No. ____

FINAL DECREE CLOSING CHAPTER 11 CASE

Upon the *Distribution Trustee's Motion for Entry of Final Decree Closing Chapter 11 Case* (the "Motion")¹; and it appearing that due and sufficient notice of the Motion has been given under the circumstances; and after due deliberation, and good and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. Effective as of the date of this Order, Case No. 16-10284 (the "Chapter 11 Case") shall be closed.
3. The Distribution Trustee's final report is approved.
4. A docket entry shall be made in the Chapter 11 Case reflecting the entry of this Order.
5. To the extent not already paid, the Distribution Trustee shall pay all U.S. Trustee Fees with respect to the Chapter 11 Case within 30 days hereof.
6. Entry of this Order is without prejudice to the rights of any party to seek to re-open the Chapter 11 Case pursuant to section 350(b) of the Bankruptcy Code.

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

7. The Distribution Trustee and his agents are authorized to take all actions necessary to effect the relief granted pursuant to this Final Decree and Order in accordance with the Motion.

8. The terms and conditions of this Final Decree and Order shall be effective and enforceable upon its entry.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

Dated: April ____, 2018

The Honorable Kevin J. Carey
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

WAVE SYSTEMS CORP.,

Debtor.

Chapter 11

Case No. 16-10284 (KJC)

Objection Deadline: March 28, 2018 @ 4:00 p.m.
Hearing Date: April 4, 2018 @ 2:00 p.m.

**NOTICE OF DISTRIBUTION TRUSTEE'S MOTION FOR ENTRY OF
FINAL DECREE CLOSING CHAPTER 11 CASE**

PLEASE TAKE NOTICE that on March 9, 2018, the Distribution Trustee of the Wave Systems Distribution Trust (the "Distribution Trustee") filed the *Distribution Trustee's Motion for Entry of Final Decree Closing Chapter 11 Case* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court"). A copy of the Motion is attached hereto.

Any responses or objections to the Motion must be filed with the Bankruptcy Court in accordance with the local rules and served upon the undersigned counsel on or before **March 28, 2018 at 4:00 p.m. (ET)**.

IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

IN THE EVENT THAT ANY OBJECTION OR RESPONSE IS FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD BEFORE THE HONORABLE KEVIN J. CAREY AT THE BANKRUPTCY COURT ON **APRIL 4, 2018 AT 2:00 P.M. (ET)**

Dated: March 9, 2018

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