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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

-----X
In re :
: Chapter 11
MURPHY & DURIEU, L.P., :
: Case No. 17-_____ (____)
: Debtor. :
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**DECLARATION OF JOSHUA RIZACK, CHIEF RESTRUCTURING
OFFICER OF MURPHY & DURIEU, L.P., CONTAINING
INFORMATION REQUIRED PURSUANT TO
LOCAL BANKRUPTCY RULE 1007-4**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Joshua Rizack, being duly sworn, deposes and states, as follows:

1. I am the Chief Restructuring Officer (the “CRO”) of Murphy & Durieu, L.P., the above-captioned debtor and debtor in possession (“M&D” or the “Debtor”), which filed a voluntary Chapter 11 petition on May 16, 2017 (the “Petition Date”). On October 5, 2016, Richard Murphy, one of the general partners (“Murphy”) of M&D determined to employ me as M&D’s chief restructuring officer given my experience in crisis management, restructuring and liquidating businesses.

2. I submit this declaration (the “Declaration”) in accordance with Local Bankruptcy Rule (“LBR”) 1007-4.

3. I confirmed with M&D's proposed counsel, Klestadt Winters Jureller Southard & Stevens, LLP ("KWJSS"), that it performed a PACER search which revealed that no other or prior bankruptcy case was filed by or against M&D. No committee of unsecured creditors was organized prior to the order for relief in M&D's Chapter 11 case.

4. Unless otherwise indicated, all financial information contained herein is presented on an estimated and unaudited basis.

5. I have reviewed the voluntary petition and all documents filed in connection therewith and I am generally familiar with the facts alleged and relief requested therein. The information contained in this Declaration is based upon (i) my review of certain books and records of M&D; (ii) discussions and information furnished by Murphy; and (iii) my opinion based upon my experience and knowledge with respect to the restructuring and/or liquidation of entities like M&D.

I. M&D

6. Until 2016, M&D was an institutional broker-dealer¹ qualified and operating under the Financial Industry Regulatory Authority Inc. ("FINRA") with offices at 120 Broadway, New York, New York. M&D operated consistently and successfully as a broker-dealer from 1929 until in or around March 2015. M&D's decision to wind-down its broker-dealer business was based upon prevailing market factors that plague the broker-dealer industry. One recent publication explained it as follows:

The number of broker-dealers registered with the Financial Industry Regulatory Authority Inc. – which includes all types of firms, not just

¹ Section 109(d) of the Bankruptcy Code provides that "[o]nly a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or commodity broker) . . . may be a debtor under chapter 11 of this title." 11 U.S.C. § 109(d). Although M&D was a broker-dealer, it does not currently fall under the Bankruptcy Code's definition of "stockbroker" because it no longer (1) has a "customer" as defined in section 741 of the Bankruptcy Code, and (2) "engage[s] in the business of effecting transactions in securities (i) for the account of others or (ii) with members of the general public, from or for such person's own account." 11 U.S.C. § 101(53A)

regionals – has declined steadily since the credit crisis. With technology and compliance costs on the rise, and a decrease in the margins on money market accounts because of record low interest rates, running any type of broker-dealer has become more expensive. FINRA reported 4,020 broker-dealer members as of September [2014]. That's 12.2% fewer brokerage firms than five years ago.

Bruce Kelly, *Inside the death of the regional broker-dealer*, Investment News, Nov. 1, 2015.²

7. As of the Petition Date, in addition to me, the Debtor's active personnel consisted of Richard Murphy and Richard Petri, who has been an employee and/or regular consultant of M&D for over twenty (20) years. It is contemplated that Mr. Petri will continue to assist the Debtor with financial work on an as needed basis in the ordinary course. It is not contemplated that Murphy will be compensated for any services provided after the Petition Date.

II. The Pershing Accounts and SDNs

8. M&D has already managed a significant portion of its wind-down activities prior to the Petition Date. It surrendered its leased office space at 120 Broadway, New York, New York. It resolved any and all customer claims and most debtor-creditor issues. The General Partner loaned over \$550,000 to M&D prior to the Petition Date for use in the wind-down. At this time, M&D has cash and securities in a single Clearing Account, which is segregated into fourteen (14) sub-accounts ("Sub-Accounts") for accounting purposes, at its previous clearing firm, Pershing LLC, a wholly owned subsidiary of The Bank of New York Mellon Corporation ("Pershing"). Certain of the Sub-Accounts have negative balances and certain have positive balances. In order to determine the aggregate amount of cash and securities M&D holds in its accounts at Pershing, the negative balances must be subtracted from the positive balances because the Sub-Accounts comprise a single Clearing Account. The current balances of the Sub-Accounts are as follows:

² Available at: <http://www.investmentnews.com/article/20151101/FREE/151039987/inside-the-death-of-the-regional-broker-dealer>.

a. Cash and Securities held in Pershing LLC clearing account and its various sub accounts

Account No.	Account Description	Cash	Securites	Balance/Net Worth as of March 31, 2017
*****777	M&D SDN for J May 1	\$ 274,375.60	\$ 732,666.65	\$ 1,007,042.25
*****874	Allocation Account K May 1	\$ 210,634.67	\$ 422,265.42	\$ 632,900.09
*****908	Allocation Account SDN for J May 2	\$ 870,257.71	\$ 850,198.16	\$ 1,720,455.87
*****916	Allocation Account SDN for K May 2	\$ 165,099.41	\$ 311,739.83	\$ 476,839.24
*****940	Allocation Account SDN for T Pournarass	\$ 279,863.23	\$ -	\$ 279,863.23
*****218	M&D Riskless Principal Account	\$ 25,338.48	\$ (1,014.96)	\$ 24,323.52
*****366	M&D Hugh Finkel Bond Trading	\$ 0.40	\$ -	\$ 0.40
*****319	M&D Commission Account	\$ (279.01)	\$ -	\$ (279.01)
*****681	M&D Sundry Charge Account	\$ (567,886.96)	\$ -	\$ (567,886.96)
*****168	M&D Pure Prop/Tomassino	\$ (24.71)	\$ -	\$ (24.71)
*****341	M&D Dead Box	\$ (236,414.29)	\$ 2,624.89	\$ (233,789.40)
*****679	M&D Agency/Silk	\$ (0.07)	\$ -	\$ (0.07)
*****007	M&D Wiring Account	\$ (18,265.91)	\$ -	\$ (18,265.91)
*****333	M&D House A/C	\$ (389,889.33)	\$ 25,796.52	\$ (364,092.81)
TOTALS:		\$ 612,809.22	\$ 2,344,276.51	\$ 2,957,085.73

9. Among other liabilities, M&D has obligations to the holders (each an “SDN Lender,” collectively “SDN Lenders”) of certain secured demand notes (each an “SDN,” collectively, “SDNs”), which M&D believes are subordinated to all other obligations of M&D, in the form of: (i) the obligation to repay the face amount of each SDN (the “SDN Face Amount”), (ii) the obligation to repay any amount of the excess collateral securities already liquidated and utilized by pledge or otherwise by M&D, and (iii) the obligation to return any currently held excess collateral securities in the SDN Collateral Accounts beyond the face amount of the SDN to the SDN Lender. In connection with each of the aforementioned obligations, there exists a legal dispute with regard to whether the collateral securities in SDN

Collateral Accounts are property of M&D (making the SDN Lender a creditor for the value of held collateral securities) or the SDN Lender (warranting M&D's turnover of the accounts to their respective SDN Lender). As set forth below, M&D believes that the cash and securities in all of the Pershing accounts are property of M&D and any obligation to return that collateral or any other claim of the SDN lenders is a subordinated debt obligation.

10. By way of background, broker-dealers are required by law to maintain adequate capital. Capital can be obtained by way of contributions by the owners of a firm. An alternative means of capitalizing a broker-dealer is by way of a secured demand note. Pursuant to a secured demand note, a secured demand note lender agrees to contribute principal in the face amount of a secured demand note to the firm on demand under certain conditions. The lender must then collateralize its obligations to the firm with cash or securities equal to the face amount of the secured demand note, plus some margin. That collateral, be it cash or securities, is then held by the firm in the firm's name and can be pledged by the firm as collateral for other loans. In the event the firm requires, it may demand that the lender pay the face amount of the secured demand note. If the lender fails to pay the face amount of the secured demand note, the firm may liquidate the collateral in order to raise the face amount of the secured demand note. The obligation to return the face amount of the secured demand note is, by its own terms, subordinate to all other obligations of the firm. Further, such lenders are not "customers," and thus, are not protected by the Securities Investor Protection Corporation ("SIPC").

11. The SDN Lenders bear significant risk, so it begs the question why anyone would want to be a lender under a secured demand note. Typically, a lender gets a substantial rate of return, as was the case here with those who pledged cash. Also, in this case, M&D allowed certain SDN Lenders to direct M&D to replace the collateral securities held in SDN Collateral

Accounts with other securities or cash in accordance with NYSE (FINRA) rules and regulations, notwithstanding the fact that such accounts were held in the name of M&D. M&D also agreed to cover all clearing costs, thus allowing the SDN Lenders (many of which were professional brokers and employees of M&D) to obtain the benefit of swapping positions in the SDN Collateral Accounts without cost, while receiving a healthy rate of return. In addition, the SDN Lenders had the ability to withdraw excess collateral in cash or securities, as long as M&D was able to meet the request. Notably, certain of the SDN Lenders made such withdrawals over the years.

12. M&D had the following SDN obligations as of March 31, 2017:

Information About SDN		Claim of SDN Lender			TOTALS
SDN Lender	Collateral - Cash Only or Cash and Securities	Subordinated Obligation on SDN Face	Subordinated Obligation to Return Collateral - Cash	Subordinated Obligation to Return Collateral - Securities at Market Value	Aggregate Claim Including Face Amount of SDN and Obligation to Return Collateral
Louis DeAngelo	Cash	\$200,000	200,000	None	\$200,000
Janine May Scharff	Securities	\$30,000	274,375	\$732,667	\$1,007,042
Janine May Scharff	Securities	\$95,000	870,258	\$850,198	\$1,720,456
Kristin May Galvin	Securities	\$72,000	210,635	\$422,265	\$632,900
Kristin May Galvin	Securities	\$53,000	165,099	\$311,740	\$476,839
Thomas Pournaras	Securities	\$100,000	279,863	None	\$279,863
Richard Ricciardi	Cash	\$100,000	100,000	None	\$100,000
Anthony Riccio	<u>Cash</u>	<u>\$100,000</u>	<u>100,000</u>	<u>None</u>	<u>\$100,000</u>
TOTALS	<u>N/A</u>	<u>\$750,000.00</u>	<u>\$2,200,230</u>	<u>\$2,316,870</u>	<u>\$4,517,100</u>

13. M&D believes, based upon the law and the terms of the controlling agreements, that the SDN Collateral Accounts are property of M&D's estate and the obligation to return excess collateral is an obligation that is subordinated to all other obligations of M&D.³

³ See, e.g., 02-32 SEC Approves NASD Rule Requiring Members to Require Investors to Sign a Disclosure Document as Part of a Subordinated Loan Agreement, Jul. 15, 2002 ("All securities pledged as collateral for the

However, certain of the SDN Lenders dispute whether the SDN Collateral Accounts are property of the estate. Even if the SDN Collateral Accounts are deemed to be property of the estate, those same SDN Lenders would also dispute whether the obligation to return excess collateral held in such accounts gives rise to a general unsecured claim or a subordinated obligation.

14. To make matters more complicated, M&D has not had the ability to withdraw funds from the Pershing Accounts since February 2015, when Pershing decided unilaterally to prohibit M&D from making withdrawals, and has not had any access at all to the Pershing Accounts since late summer of 2016, when Pershing unilaterally froze the accounts and prohibited M&D from engaging in any activity in the Pershing Accounts. Pershing has not acquiesced to demands to provide M&D with access to its accounts and Murphy has had to fund all of the ongoing expenses of M&D as a result.

15. M&D's efforts to obtain access to its funds and complete the liquidation of its assets without a bankruptcy filing were unsuccessful. On or around February 15, 2017, SDN Lenders Janine May Scharff and Kirstin May Galvin (collectively, the "Mays") commenced arbitration before FINRA Dispute Resolution against M&D and Pershing under FINRA Arbitration No. 17-00421 (the "May Arbitration"). Among other things, the Mays seek a determination that M&D has no further rights to use assets in their SDN Collateral Accounts beyond what was already used to the extent of the relevant SDN Face Amount, and that any SDN

SDN, including excess collateral, are subordinated to the claims of the broker/dealer's customers and creditors. Thus, if the firm becomes insolvent, the investor's ability to retrieve his/her collateral may be at risk."); Wisnouse v. Telsey, 367 F. Supp. 855, 858 (S.D.N.Y. 1973) (holding that where SDN lender subordinated his right to payment with respect to securities with a value of \$150,601, and the broker/dealer realized \$157,857.95 upon the sale of such securities, the lender was entitled to a claim against the broker, subordinate to the claims of customers and other creditors, for \$157,857.95, *pari passu* with other subordinated lenders). The suggestion that M&D does not own and control the contents of the SDN Collateral Accounts does not square with the fact that cash and securities provided to M&D by the SDN Lenders qualified as M&D capital under the rules of the NYSE, FINRA and the SEC. If M&D did not own the cash and securities, such assets could not qualify as capital. Additionally, NYSE, FINRA and the SEC rules also did not require M&D to provide "customer" information relating to SDN Accounts, which would have been required if the SDN Accounts were the property of the SDN Lenders.

Collateral Accounts attributable to the Mays constitute property of the Mays, not M&D. M&D disputes the Mays' position.

16. Although we adamantly disagree with the Mays position, the importance of this dispute is that if the Mays are right, all SDN Collateral Accounts are the property of the SDN Lenders, not the chapter 11 estate, and there would be insufficient assets to pay other non-subordinated creditors. Because they over-collateralized their SDNs, presumably to take advantage of the cost-free trading privileges at M&D, this is very much an issue that affects other creditors and requires resolution in this forum.

17. The principal aims of this bankruptcy case are to (a) create an appropriate forum to resolve the dispute with respect to ownership of the assets held in the SDN Collateral Accounts after providing notice to all of M&D's creditors, (b) obtain turnover to the Chapter 11 Estate of all assets currently held in the Pershing Accounts, (c) liquidate and prioritize all claims against M&D, and (d) distribute M&D's assets to its creditors in accordance with the provisions of the Bankruptcy Code and other applicable law. M&D believes the Bankruptcy Court is the best forum for resolving all of these matters, the majority of which are core bankruptcy issues, *e.g.* determining issues regarding property of the estate, and the proper priority and amounts of creditor claims.

III. The Balance Sheet – Other Assets and Liabilities

18. In addition to the Pershing Positive Accounts and SDN Collateral Accounts, M&D also has cash held in a deposit account at JP Morgan Chase Bank, N.A. in the amount of \$41,136 as of April 30, 2017.

19. M&D has potential liabilities in addition to those to the SDN Lenders, including

(a) potential sales tax liability owed to New York State,⁴ and (b) liability to Murphy for funds loaned to M&D during the wind down.

20. Thus, M&D's balance sheet if you consider the SDN Collateral Accounts to be property of the estate is approximately as follows:

Assets:

Cash and Securities Held in Pershing Accounts (including Pershing offset for Negative Accounts):	\$2,957,086
Cash at JP Morgan Chase Bank, N.A.	<u>\$41,136</u>
Total Assets	<u>\$2,988,222</u>

Liabilities:

General Liabilities:

New York State Sales Tax Liability (Estimated)	\$150,000
Loan Obligation to R. Murphy	<u>\$565,000</u>
Total General Liabilities	\$715,000

Subordinated Liabilities:

Obligation to Return Face Amounts of SDNs (\$750,000) and Excess Collateral Held in SDN Collateral Accounts (\$3,767,100)	<u>\$4,517,100</u>
Total Liabilities:	<u>\$5,232,100</u>

IV. Instant Case Strategy

21. As a threshold matter, as set forth above, M&D wants a determination that the

⁴ The State of New York is currently engaged in a sales tax audit of M&D for the period from December 1, 2010 through February 28, 2014. M&D is uncertain of the amount of liability it may have in relation to the audit but has estimated the liability at \$150,000.

SDN Collateral Accounts are property of the estate.

22. M&D anticipates requesting that the Court impose a claims bar date in the early stages of this Case. Upon the occurrence of the bar date, M&D anticipates proposing a plan of liquidation.

23.

V. Other Information

24. M&D's case was originally commenced under chapter 11 of the Bankruptcy Code. Accordingly, no prior trustee was appointed in M&D's case.

25. No official or unofficial committee of creditors was formed prior to the Petition Date.

26. M&D does not anticipate filing any first day motions or motions seeking emergency relief in the early stages of this Case.

(a) Twenty Largest Unsecured Creditors

27. A list setting forth M&D's twenty (20) largest unsecured creditors, excluding those persons who constitute "insiders" under Bankruptcy Code section 101(31), is attached hereto as **Exhibit A**. As required by Local Rule 1007-2(a)(4), **Exhibit A** includes the creditors' names, addresses, telephone numbers (for persons familiar with the account, if available), amount of each claim, and an indication of whether the claims are contingent, unliquidated, disputed, or partially secured.

(b) Five Largest Secured Creditors

28. M&D has no secured creditors.

(c) Assets and Liabilities

29. As required by Local Rule 1007-2(a)(6), a summary of M&D's assets and

liabilities is included above.

(vii) Publicly Held Stock

30. As required by Local Rule 1007-2(a)(7), no classes of shares of stock, debentures, or other securities of M&D are publicly held.

(viii) Debtor Property Held By Others

31. M&D has no property in possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents or secured creditor, or agent for any such entity other than as follows:

(i) M&D has accounts with an aggregate value in the amount of \$2,957,079, which are currently held by Pershing, as discussed above.

(ii) In addition, M&D has a single deposit account in the amount of \$41,136 as of April 30, 2017, held at JP Morgan Chase Bank, N.A.

(ix) Debtor's Office Space

32. As required by Local Rule 1007-2(a)(9), M&D leases office space located at 50 Main Street, Suite 1000, White Plains, New York 10606 (the "Office Space").

(x) Location of Debtor's Assets and Books and Records

33. Pursuant to Local Rule 1007-2(a)(10), the majority of M&D's books and records are maintained at 175B Kerrs Corner Road, Blairstown, New Jersey.

(xi) Threatened or Pending Actions Against M&D

34. Pursuant to Local Rule 1007-2(a)(11), a list of pending or threatened actions is included in the Statement of Financial Affairs which are being filed contemporaneously herewith.

(xii) M&D's Senior Management

35. Pursuant to Local Rule 1007-2(a)(12), Richard Murphy is M&D's general partner.

B. Additional Information Required by Local Rule 1007-2(b)

36. In accordance with Local Rule 1007-2(b), M&D intends to continue the operation of its business and the management of its properties as Debtor and Debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

37. In accordance with Local Rule 1007-2(b)(1), the estimated amount of the weekly payroll to employees (exclusive of officers, directors, stockholders and partners) for the thirty (30) day period following the Petition Date is \$0.

38. In accordance with Local Rule 1007-2(b)(2), the amounts paid and proposed to be paid for the thirty (30) day period following the Petition Date for services rendered by M&D's officers and directors is \$0. M&D does not anticipate making any payments for services rendered by M&D's officers and directors without an order of the Court.

39. M&D has not engaged a financial or business consultant, therefore Local Rule 1007-2(b)(2)(C) is not applicable.

40. In accordance with Local Rule 1007-2(b)(3), M&D does not anticipate any cash receipts or disbursements, or any net cash gain or loss, and it does not anticipate any obligations or receivables will accrue but remain unpaid.

D. Conclusion

41. M&D reserves the right to amend or supplement any of the attached schedules in the event additional information is obtained by M&D.

42. M&D believes that the protection of the Bankruptcy Court will enable it to

maximize the value of its assets for the benefit of the estate and its creditors.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on the 16th day of May, 2016.


Joshua Rizaek