

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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THQ INC., : Case No. 12-13398 (MFW)

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Debtor.¹ : Substantively Consolidated

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**STATUS REPORT OF THQ INC. WITH RESPECT TO WIND-DOWN OF THQ INC.’S
FOREIGN SUBSIDIARIES, CAUSES OF ACTION AND DERIVATIVE CLAIMS,
RESOLUTION OF CLAIMS AND IMPLEMENTATION OF THE PLAN**

THQ Inc. (“THQI”) hereby files this status report with respect to post-confirmation status of the wind-down of THQI’s foreign subsidiaries, prosecution of THQI’s causes of action, resolution of claims against THQI, and the implementation of THQI’s confirmed plan of liquidation.

BACKGROUND

1. On December 19, 2012 (the “Petition Date”), THQI and certain of its wholly owned subsidiaries (the “Debtors”) each filed a petition for relief under the Bankruptcy Code with this Court.

2. On July 16, 2013, the Debtors filed the Second Amended Chapter 11 Plan of Liquidation of THQ Inc. and its Affiliated Debtors [D.I. 925] (the “Plan”).² On July 17, 2013, the Court entered the Findings of Fact, Conclusions of Law, and Order Confirming Second

¹ The Debtor in this proceeding, along with the last four digits of its taxpayer identification number, is THQ Inc. (1686). The Debtor’s current mailing address is c/o FTI Consulting, 350 South Grand Avenue, Suite 3000, Los Angeles, CA 90071.

² All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Plan.



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Amended Chapter 11 Plan of Liquidation of THQ Inc. and its Affiliated Debtors [D.I. 929] (the “Confirmation Order”). The Plan became effective on August 2, 2013 (the “Effective Date”).

3. Pursuant to the Confirmation Order, the Debtors’ estates were substantively consolidated in accordance with sections 105(a), 541, 1123, and 1129 of the Bankruptcy Code on the Effective Date. *See* Confirmation Order, at ¶ 7. THQ Inc. (“THQI”) is the authorized representative of the Debtors’ consolidated estate.

4. THQI has filed periodic status reports with the Court with respect to its post-confirmation activity. The most recent report was the *Status Report of THQ Inc. with Respect to Wind-Down of THQ Inc.’s Foreign Subsidiaries, Causes of Action and Derivative Claims, Resolution of Claims and Implementation of the Plan*, dated August 27, 2018 [D.I. 1754]. The following information provides a status update concerning THQI’s post-confirmation activity with respect to the wind-down and liquidation of the Foreign Subsidiaries (defined below), the status of implementation of the Plan, and the review, prosecution and resolution of Causes of Action and Derivative Actions, and resolution of Claims against the Debtors.

5. To date, THQI has made distributions on account of allowed general unsecured claims equaling approximately 56% of the aggregate unsecured claim amount.

WIND-DOWN AND LIQUIDATION OF THQI’S FOREIGN SUBSIDIARIES

6. As of the Petition Date, THQI owned 100% of the equity in THQ International GmbH, a Swiss company (“TIG”), which held certain direct and indirect subsidiaries (together with TIG, the “Foreign Subsidiaries”) that historically distributed the Debtors’ games in countries outside of North America and were involved in the development of video games. These Foreign Subsidiaries have not filed petitions for relief under the Bankruptcy Code with this Court or in any foreign jurisdiction.

7. On June 21, 2013, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Equitably Subordinating the Claims of their Foreign Subsidiaries or, in the Alternative, (II) Determining that the Foreign Subsidiaries Claims Should Be Estimated at Zero Dollars for Voting Purposes and the Debtors Should Not Be Required to Reserve for the Foreign Subsidiaries Claims* [D.I. 773] (the "Subordination Motion"). Pursuant to the Subordination Motion, the Debtors sought, among other things, to equitably subordinate the unsecured claims of the Foreign Subsidiaries to the claims of all other creditors.

8. After the Effective Date, on March 5, 2014, THQI filed the *Notice of Withdrawal of Motion Regarding Claims of Foreign Subsidiaries* [D.I. 1332] (the "Notice of Withdrawal"). Pursuant to the Notice of Withdrawal, THQI withdrew the Subordination Motion and submitted the following agreements between THQI and the Foreign Subsidiaries (collectively, the "Settlement Agreements"):

a. Agreement to Establish Liquidity Reserve for THQ International GmbH Pending Final Liquidations, dated February 22, 2014, by and between THQI and TIG on behalf of itself and on behalf of the following direct and indirect subsidiaries of TIG: THQ Italy, THQ Interactive Entertainment Espana SL ("THQ Spain"), THQ Korea, Ltd. ("THQ Korea"), THQ Software Development (Shanghai) Co., Ltd. ("THQ China") and THQ Japan K.K. ("THQ Japan");

b. Agreement to Settle and Satisfy Transfer Pricing Claims and Establish Liquidity Reserve for Subsidiaries Pending Final Liquidation (THQ France S.a.r.l.) ("THQ France"), dated February 27, 2014, by and between THQI and THQ France ("THQ France Agreement");

c. Agreement to Settle and Satisfy Transfer Pricing Claims and Establish Liquidity Reserve for THQ Entertainment GmbH (“THQ Germany”) Pending Final Liquidation, dated February 27, 2014, by and between THQI and THQ Germany;

d. Agreement to Settle and Satisfy Transfer Pricing Claims and Establish Liquidity Reserve for Subsidiaries Pending Final Liquidations, THQ (UK) Limited (“THQ UK”) and T.HQ (Holdings) Limited (“THQ Holdings”), dated February 27, 2014, by and among THQI, THQ UK and THQ Holdings (“THQ UK Agreement”); and

e. Mutual Release by and among the Debtors, on the one hand, and (i) TIG on behalf of itself and THQ Italy, THQ Spain, THQ Korea, THQ China and THQ Korea, (ii) THQ UK, (iii) THQ Holdings, (iv) THQ France, and (v) THQ Germany.

9. The Settlement Agreements (amended as noted below with respect to THQ France and THQ Holdings) provide, among other things, that the Foreign Subsidiaries will not receive any distributions from THQI on account of the Claims asserted by the Foreign Subsidiaries against THQI. Instead, THQI has established liquidity funds that each Foreign Subsidiary or its liquidator (as applicable) may draw from under certain conditions if that Foreign Subsidiary does not otherwise have sufficient cash to pay all its debts as they become due. THQI believes that, after considering the liquidity funds, each of the Foreign Subsidiaries is solvent and can be liquidated without commencement of any insolvency proceedings, although not all subsidiaries have received relevant tax clearances to date.

10. Currently, all of the Foreign Subsidiaries have either fully liquidated or are in the process of liquidating under the laws of the relevant jurisdiction as described below:

a. During 2015, TIG distributed its investment in the other Foreign Subsidiaries to THQI by dividend of its equity interests in the other Foreign Subsidiaries to THQI (the “TIG Distribution”). Accordingly, TIG no longer holds equity in any of the Foreign

Subsidiaries. TIG is incorporated under the laws of Switzerland. THQI anticipates that TIG will commence its formal liquidation proceeding under Swiss law in 2019 and will complete that liquidation by the end of 2019.

b. THQ Spain, THQ Korea and THQ Japan closed and liquidated prior to the TIG Distribution.

c. There were two subsidiaries in the United Kingdom, THQ UK and THQ Holdings. THQ UK was an operating entity that was dissolved on September 3, 2016. Prior to its dissolution, THQ UK made two distributions to THQI, the first for approximately \$6.4 million in January 2016, and its final distribution to THQI of approximately \$173,000 in April 2016. THQ Holdings has two wholly owned subsidiaries, THQ France and THQ Germany, each of which has completed its liquidation. In early 2018, THQI negotiated an amendment to the THQ France Agreement and THQ UK Agreement (executed on March 15, 2018), to provide for the release of \$4,500,000 to THQI from the liquidity fund available for their respective liquidations. THQ Germany distributed approximately \$1.2 million to THQ Holdings, which distributed this amount to THQI as an interim distribution in September 2016. THQ Holdings is expected to complete its liquidation in the first half of 2019.

d. THQ Italy has completed its wind-down, however, an Italian VAT refund has yet to be collected from the governmental authority. The face amount of the Italian VAT refund is approximately €600,000. In July of 2018, THQI entered into an agreement to sell its interest in the Italian VAT refund and expects to receive approximately \$400,000 from the buyer soon.

e. THQ China is in the process of deregistration in China. In the second half of 2018, THQ China resolved its remaining issues with the relevant tax authorities

and paid its final outstanding tax balance. THQ China is now in the process of completing its liquidation report and finalizing its wind-down with local authorities.

11. Based on current estimates of potential final tax refunds and wind-down costs, it is possible that over \$1 million of additional funds will be distributed from the remaining Foreign Entities to THQI. In addition, THQI is currently holding approximately \$1.8 million in escrow pursuant to the Settlement Agreements. Of such \$1.8 million, \$1.0 million is being held pending the liquidation of THQ Holdings, with the balance pending the liquidations of THQ China and TIG. Once the wind-down of the Foreign Subsidiaries is complete, pursuant to the Settlement Agreements, the escrow amounts then remaining (if not otherwise utilized by the Foreign Subsidiaries to complete their liquidations), and any other money that may be received from the Foreign Subsidiaries, will be released to THQI and become available for distribution to the Debtors' unsecured creditors. There is no assurance or certainty that THQI will receive any additional money from the Foreign Subsidiaries. Moreover, if THQI does receive any additional money from the Foreign Subsidiaries, THQI cannot predict when it will receive any such payment(s). The amounts received may also be subject to exchange rate fluctuations and to decisions of foreign taxing authorities. In any event, THQI cannot guarantee when all of the Foreign Subsidiaries will be fully liquidated, although it appears at the present time that this should be completed by the end of 2019. THQI intends, however, to continue to work aggressively to expedite the return of foreign funds and to achieve the release of as close to the full amount of the escrowed funds as soon as practicable.

THQI'S CAUSES OF ACTION AND DERIVATIVE ACTIONS

12. THQI commenced ninety-one (91) preference actions against parties in the United States Bankruptcy Court for the District of Delaware (collectively, the "Preference Proceedings"). The Preference Proceedings have been voluntarily dismissed by THQI as a result

of settlements reached by THQI with the defendants named in such proceedings or have been closed due to entry of default judgment by the Court. In addition, prior to commencing the Preference Proceedings, THQI made preference demands on certain parties that resulted in settlements of potential Preference Proceedings. As of the date hereof, settlements of preference demands and Preference Proceedings by THQI have generated in excess of \$630,000 in value for the Debtors' estates.³

RESOLUTION OF CLAIMS AGAINST THE DEBTORS

13. From the Effective Date until December 19, 2014, THQI and its professionals reviewed, analyzed, and resolved Claims on an ongoing basis as part of the claims reconciliation process. This process included, among other things, (i) negotiating with purported claimants to resolve alleged Claims against the Debtors and (ii), if appropriate, pursuing and successfully resolving objections to Claims. The deadline to object to Claims passed on December 19, 2014. All Claim objections have been resolved.

14. During the Debtors' Chapter 11 Cases, parties alleged General Unsecured Claims against the Debtors totaling, in the aggregate, approximately \$254,000,000. As a result of the efforts expended by the Debtors, THQI, and their professionals during the claims reconciliation process, the total amount of Allowed General Unsecured Claims against the Debtors' estates has been reduced by over \$120,000,000.⁴

IMPLEMENTATION OF THE PLAN

15. Attached as Exhibit A hereto is a schedule containing detailed information regarding the implementation of the Plan through November 30, 2018. Unless otherwise noted,

³ Such amount includes cash received by THQI and the waiver of alleged Claims against the Debtors by defendants, and is net of payment of fees owed in connection with the Avoidance Actions.

⁴ Such amount includes the waiver by the Foreign Subsidiaries of Claims or the agreement by such Foreign Subsidiaries that THQI shall have no obligation to maintain reserves for the Claim or Claims alleged by such Foreign Subsidiaries.

the amounts provided in Exhibit A are estimates and intended to be used for information purposes only and, among other things, shall not in any way be deemed an admission as to the validity or Allowed amount of any Claim by THQI, a waiver of any objection to any Claim by THQI, or a representation as to the ultimate Claim, distribution and/or recovery amounts by THQI. The amounts set forth on Exhibit A do not take into account checks which have not been cashed.

Dated: December 27, 2018
Wilmington, Delaware

/s/ Jaime Luton Chapman

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EXHIBIT A

ADMINISTRATIVE CLAIMS, SECURED TAX CLAIMS, OTHER SECURED CLAIMS, AND PRIORITY NON-TAX CLAIMS:

Estimated Remaining Aggregate Claim Amounts: Approximately \$0 - \$0
Estimated Remaining Aggregate Distribution Amounts: Approximately \$0 - \$0
Estimated Recovery: 100%
Aggregate Amounts Distributed to Date: Approximately \$1,908,000

CONVENIENCE CLAIMS:

Estimated Remaining Aggregate Claim Amounts: Approximately \$0
Estimated Remaining Aggregate Distribution Amounts: Approximately \$0
Estimated Recovery: 30%
Aggregate Amounts Distributed to Date: Approximately \$198,000

GENERAL UNSECURED CLAIMS:¹

Estimated Aggregate Claim Amounts: Approximately \$132,528,000²
Estimated Aggregate Distribution Amounts (related to still unsatisfied unsecured claims): Approximately \$73,785,000 - \$77,023,000
Estimated Recovery: Approximately 55.7% - 58.1%
Aggregate Amounts Distributed to Date: Approximately \$76,476,000³

THQI CASH-ON-HAND:⁴

Aggregate Cash on Hand: Approximately \$2,730,000

¹ The “low-end” distribution estimate is based on payments made to-date and assumes that no additional amounts are received from Foreign Subsidiaries or the reserves held related to them (or other reserves). The “high-end” distribution and recovery estimates for General Unsecured Claims reflect THQI’s estimated potential upside case receipts from THQI’s Foreign Subsidiaries upon the completion of such Foreign Subsidiaries’ liquidations, as well as the release of amounts held in reserve pending the liquidation of the Foreign Subsidiaries and released funds from the operating reserve.

² While all unsecured claims have been reconciled, the total amount of unsecured claims may be reduced as a result of waived claims due to uncashed distributions pursuant to the Plan.

³ This amount reflects the actual cash distributions made to date. Such amount differs from the “Estimated Aggregate Distribution Amounts” above in that it includes certain one-time settlement payments of approximately \$2.5 million that were made on account of unsecured claims (that are now fully resolved), consistent with Court-approved settlements. In addition, the Estimated Aggregate Distribution Amounts exclude amounts distributed on account of claims that have since been eliminated due to uncashed checks with no response to follow up correspondence.

⁴ A portion of THQI’s cash-on-hand consists of Reserves maintained in accordance with the terms of the Plan, including remaining Reserves of approximately \$1.8 million established pursuant to agreements entered into by the Debtors with the Foreign Subsidiaries. See D.I. 1332. As of November 30, 2018, \$1.0 million of the Debtors’ cash on hand is being held pending the successful completion of the liquidation of THQ Holdings, approximately \$0.8 million is being held pending the successful completion of the liquidations of TIG and THQ China, and the balance is being held in the Operating Reserve, certain other required reserves, or is available cash.