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Case No. CR-2020-002802



CR-2020-002802

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMPANIES LIST (ChD)**

Before the Honourable Mr Justice Miles

On the 27th day of July 2020

IN THE MATTER OF MATALAN FINANCE PLC

AND IN THE MATTER OF THE COMPANIES ACT 2006

MINUTE OF ORDER

UPON THE APPLICATION by Part 8 Claim Form dated 19 June 2020 (the "**Claim Form**")
of Matalan Finance Plc (the "**Company**")

AND UPON HEARING Ms Felicity Toubé QC and Mr Adam Al-Attar for the Company

AND UPON READING the Claim Form and the written evidence filed in these proceedings

IT IS ORDERED AND DIRECTED THAT:

1. The Court hereby sanctions the scheme of arrangement (the "**Scheme**") as set out in the Schedule hereto.
2. The Company or its solicitors shall deliver, as soon as reasonably practicable, an office copy of this Order to the Registrar of Companies for England and Wales.

Service of this order

The Court has provided three sealed copies of this Order to the serving party:

Clifford Chance LLP at 10 Upper Bank Street, London E14 5JJ

DATED 27 July 2020

MONDAY



R9A7981V
RM 27/07/2020 #161
COMPANIES HOUSE

IN THE HIGH COURT OF JUSTICE

CR-2020-002802

**BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES**

**INSOLVENCY AND COMPANIES
COURT (ChD)**

**IN THE MATTER OF
MATALAN FINANCE PLC
(THE "COMPANY")**

AND

IN THE MATTER OF THE COMPANIES ACT 2006

**SCHEME OF ARRANGEMENT
(UNDER PART 26 OF THE COMPANIES ACT 2006)**

BETWEEN

**MATALAN FINANCE PLC
(A COMPANY INCORPORATED IN ENGLAND AND
WALES)**

AND

**THE SCHEME CREDITORS OF THE COMPANY
(AS DEFINED IN THE SCHEME)**

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PRELIMINARY

1. DEFINITIONS

The following definitions shall apply to words and phrases used in this Scheme, except where the context otherwise requires.

"Account Holder" means any person recorded directly in the records of a Clearing System as holding an interest in any Second Lien Notes in an account with the relevant Clearing System either for its own account or on behalf of its client.

"Account Holder Letter" means the account holder letter substantially in the form set out in Appendix E (*Account Holder Letter*) of the Explanatory Statement, subject to any amendments made in accordance with this Scheme Document.

"Additional Liquidity Arrangements" means the additional liquidity package being provided to the Group pursuant to the CLBILS Facilities, the Additional Notes, the cancellation of £50,000,000 of the principal amount of Second Lien Notes held by the Shareholder in exchange for the Shareholder PIK Notes as well as amendments to be effected by this Scheme.

"Additional Noteholders" means the holders of the Additional Notes.

"Additional Notes" means the additional 16.5 per cent. notes due July 2022 generating net proceeds of £25,000,000 issued by the Company to certain holders of the First Lien Notes.

"Additional Waivers" means the waivers with respect to certain terms of the Second Lien Notes and the Intercreditor Agreement contained within the Second Lien Supplemental Indenture and the Intercreditor Agreement Side Letter.

"Advisers" means each of:

- (a) Clifford Chance LLP, as legal adviser to the Company and Affiliates;
- (b) Cahill Gordon & Reindel (UK) LLP, as legal adviser to the Company and Affiliates;
- (c) Deloitte LLP, as financial adviser to the Company and certain of its Affiliates;
- (d) DLA Piper International LLP, as legal adviser to the Company and Affiliates;
- (e) Kirkland & Ellis International LLP, as legal adviser to the Additional Noteholders;
- (f) Perella Weinberg Partners, as financial adviser to the Additional Noteholders;
- (g) Latham & Watkins, as legal adviser to the Existing RCF Lenders and the Security Agent;
- (h) White & Case LLP, as legal adviser to the Trustee;

- (i) Paul Hastings LLP, as legal adviser to the Shareholder;
- (j) Lucid Issuer Services Limited, as Information Agent; and
- (k) any of the foregoing's partners, employees and affiliated partnerships and the partners and employees of such affiliated partnerships and their respective Subsidiaries and Holding Companies and any local counsel engaged by any of the foregoing on behalf of their client or by the client directly in connection with the Additional Liquidity Arrangements.

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company or a Related Fund, as at the Scheme Effective Date.

"Allowed Proceeding" means any Proceeding against a Released Party to enforce rights in accordance with Clause 7.3.

"Amended Global Notes" means the Global Notes as amended, substantially in the form appended to the Explanatory Statement, subject to any amendments made in accordance with the Scheme.

"Book Entry Interests" means, in relation to the Second Lien Notes, a beneficial interest in a Global Note, in each case held through and shown on, and transferred only through, records maintained in book entry form by a Clearing System or an Account Holder.

"Business Day" means a day other than a Saturday, Sunday or other day on which banking institutions in London or New York are authorised or required by law to close.

"CLBILS Facilities" means the CLBILS super senior revolving facilities in an aggregate amount of £25,000,000 provided by Barclays Bank Plc, and Lloyds Bank Plc on 8 June 2020.

"Clearing Systems" means either or both of Euroclear and Clearstream, as applicable, and any other system designed for similar or analogous purposes, and each of their nominees and successors.

"Chapter 15 Filing" means the petition prepared for filing for recognition under Chapter 15 of the US Bankruptcy Code.

"Clearstream" means Clearstream Banking, S.A.

"Common Depositary" means Deutsche Bank AG, London Branch.

"Companies Act" means the Companies Act 2006 (as amended from time to time).

"Company" means Matalan Finance Plc.

"Court" means the High Court of Justice, the Court of Appeal of England and Wales and the UK Supreme Court.

"Deed of Release" means the English law deed of release between, among others, the Company and the Scheme Creditors which gives effect to the release set out in Clause 7 of this Scheme, substantially in the form appended to the Explanatory Statement, subject to any amendments made in accordance with the Scheme.

"Director or Former Director" means any person who is, or has been at any time, a director, manager, general partner, officer (or equivalent) of the Company and/or any member of the Group.

"Euroclear" means Euroclear Bank SA/NV.

"Excluded Person" has the meaning given to it in Clause 16 of this Scheme Document.

"Existing RCF Lenders" has the meaning given to the term Senior Lenders in the Intercreditor Agreement.

"Explanatory Statement" means the explanatory statement issued by the Company relating to the Scheme provided to Scheme Creditors pursuant to section 897 of the Companies Act and dated on or around the date of this Scheme Document.

"First Lien Notes" means the £350,000,000 6¾ per cent. first lien secured notes due 2023 issued by the Company.

"First Lien Notes Indenture" means the first lien notes indenture dated 25 January 2018 between, among others, the Company and Deutsche Trustee Company Limited as trustee, as supplemented, amended and restated from time to time.

"Global Notes" means individually and collectively, each of the global notes deposited with the Common Depositary and registered in the name of the nominee of the Common Depositary, substantially in the form of Exhibit A of the Second Lien Indenture.

"Group" means the Parent and its Subsidiaries as at the Scheme Effective Date.

"Holder" means a person with a Book Entry Interest in the Second Lien Notes.

"Holding Company" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"Information Agent" means Lucid Issuer Services Limited, a company incorporated in England and Wales with registered number 05098454, whose registered office is at Tankerton Works, 12 Argyle Walk London, WC1H 8HA (or any successor in title) as the information agent with respect to the Scheme.

"Instruction Letters" means the Security Agent Instruction Letter and the Trustee Instruction Letter.

"Intercreditor Agreement" means the intercreditor agreement dated 25 January 2018 as amended and restated on 8 June 2020, between, amongst others, the Parent, the Company and Lloyds Bank plc as security agent and Barclays Bank plc, Lloyds Bank plc, Morgan Stanley Senior Funding, Inc. as senior lenders.

"Intercreditor Agreement Side Letter" means the waiver letter between, among others, the Company, the Trustee and the Security Agent in respect of the amendments to the Intercreditor Agreement, substantially in the form appended to the Explanatory Statement, subject to any amendments made in accordance with the Scheme.

"Liability" or "Liabilities" means any present or future obligation, liability, claim, counterclaim, debt, demand, action, right of set-off, indemnity, cause of action or right or interest of any kind or nature whatsoever at any time including without limitation, for the payment of money, performance of an act or obligation, or otherwise, whether in respect of principal, interest or otherwise, whether actual or contingent, whether fixed or undetermined, whether known or unknown, whether suspected or unsuspected, whether direct or indirect, whether owed jointly or severally and whether owed as principal, surety or in any capacity whatsoever and whether it arises at common law, in equity, in contract, in tort, by statute in the State of New York or England and Wales or in any other jurisdiction under whatever applicable law, under any legal theory, and in any manner whatsoever, including any amount which would constitute such a liability but for any discharge, non-provability, unenforceability or non-allowance of the same in any insolvency or other Proceedings, including any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other Liability falling within this definition, and any claim for damages or restitution.

"Lock-Up Agreement" means the lock-up agreement dated 8 June 2020 between the Company and the Participating Second Lien Noteholders (as defined therein).

"Longstop Date" means 5:00 p.m. on 15 August 2020 or such other date as may be agreed in accordance with the terms of the Lock-up Agreement.

"Proceeding" means any process, suit, action, legal or other proceeding in any jurisdiction, including without limitation any arbitration, mediation, alternative dispute resolution, judicial review, adjudication, demand, execution, distraint, restraint, forfeiture, re-entry, seizure, lien, enforcement of judgment or enforcement of any security.

"Prohibited Proceeding" has the meaning given to such term in Clause 7.8.

"Parent" means Missouri Topco Limited.

"PIK Interest" means payment-in-kind interest.

"Related Fund" means, in relation to a fund (the **"First Fund"**), a fund which is (i) managed or advised by the same investment manager or investment adviser as the First Fund or (ii) if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the First Fund.

"Released Party" means any party released in accordance with Clause 7.2.

"Scheme" means this scheme of arrangement in respect of the Company under Part 26 of the Companies Act, the terms and conditions of which are set out in this document

in its present form or subject to any modification, addition or condition which the Court may think fit to approve or impose.

"Scheme Claims" means, in respect of the Second Lien Notes:

- (a) the right to the cash interest coupon payable, including any cash interest accrued and unpaid; and
- (b) the rights which are the subject of the Additional Waivers,

in each case in respect of the Second Lien Notes in accordance with the terms of the Second Lien Amendments Documents.

"Scheme Consideration" means the Second Lien Deferral Fee and the go forward PIK Interest coupon payable in accordance with the terms of the Second Lien Amendments Documents.

"Scheme Creditors" means a Holder of the Second Lien Notes in its capacity as a creditor of the Company, and **"Scheme Creditor"** shall mean any one of them.

"Scheme Document" means this document setting out the terms and conditions of the Scheme in its present form or with and subject to any modifications made pursuant to Clause 5 to this Scheme Document.

"Scheme Effective Date" means the date on which an office copy of the Scheme Sanction Order is delivered for registration to the Registrar of Companies in England and Wales, within the meaning of the Companies Act.

"Scheme Effective Date Notice" means the notice to be sent by the Company substantially in the form set out in Schedule 1 (*Scheme Effective Date Notice*).

"Scheme Effective Time" means the earliest time at which the Scheme Effective Date Notice is issued by the Company to one or more addressees in accordance with Clause 3.2 of this Scheme Document.

"Scheme Meeting" means the meeting of the Scheme Creditors convened at the direction of the Court for the purposes of considering and, if thought fit, approving the terms of the Scheme.

"Scheme Sanction Hearing" means the Court hearing in the Companies Court, Business List (ChD) to be held on or around 27 July 2020 for the purposes of obtaining the Scheme Sanction Order.

"Scheme Sanction Order" means the order or orders of the Court sanctioning the Scheme under section 899 of the Companies Act.

"Scheme Steps" has the meaning given to it in Clause 6.

"Scheme Undertaking Party" means each of the Trustee, the Security Agent, the Second Lien Notes Guarantors and any other party that provides an undertaking in connection with this Scheme.

"Scheme Website" means the website set up for Scheme Creditors by the Information Agent at www.lucid-is.com/matalan.

"Second Lien Amendments" means the amendments to the Second Lien Notes Documents and the Intercreditor Agreement in substantially the form contemplated by the terms of the Scheme, the Explanatory Statement and the Second Lien Amendments Documents, taken as a whole.

"Second Lien Amendments Documents" means the following documents:

- (a) Security Agent Instruction Letter;
- (b) Trustee Instruction Letter;
- (c) Second Lien Supplemental Indenture;
- (d) Intercreditor Agreement Side Letter;
- (e) Amended Global Notes;
- (f) Deed of Release, and

any other documents which in the reasonable opinion of the Company are necessary for the implementation of the Scheme.

"Second Lien Amendments Effective Date" means the date on which the Second Lien Amendments become effective in accordance with the terms of the Second Lien Amendments Documents.

"Second Lien Deferral Fee" means a cash payment of £5.00 per £1,000 principal amount of Second Lien Notes, calculated as at the Voting Instruction Deadline.

"Second Lien Notes" means the 9.5% senior secured notes due 2024 issued by the Company under the Second Lien Notes Indenture of which an aggregate principal of £80,000,000 is outstanding as at the date of the Explanatory Statement.

"Second Lien Notes Documents" means each of the Second Lien Indenture, the Second Lien Notes Guarantee, the Global Notes, the Intercreditor Agreement and any other documents entered into in connection therewith.

"Second Lien Notes Guarantees" means the guarantees provided by each Second Lien Notes Guarantor in accordance with article 11 of the Second Lien Notes Indenture, of obligations under the Second Lien Notes Indenture and the Second Lien Notes and any other guarantee granted by any member of the Group in relation to the Second Lien Notes.

"Second Lien Notes Guarantors" means the providers of the Second Lien Notes Guarantees including, without limitation, those listed in Schedule 4 (*Second Lien Guarantors*).

"Second Lien Notes Guarantors Undertaking" means the undertaking provided by the Second Lien Notes Guarantors to, among other things, be bound by the Scheme.

"Second Lien Notes Indenture" means the senior notes indenture dated 25 January 2018 between, among others, the Company and the Trustee, as supplemented, amended and restated from time to time.

"Second Lien Supplemental Indenture" means the supplemental indenture to the Second Lien Notes Indenture to be entered into by, amongst others, the Company, the Second Lien Notes Guarantors substantially in the form appended to the Explanatory Statement, subject to any amendments made in accordance with the Scheme.

"Security Agent" means Lloyds Bank plc as security agent under the Intercreditor Agreement.

"Security Agent Instruction Letter" means the instruction letter from the Company (for and on behalf of the Scheme Creditors) instructing the Security Agent to enter into the Second Lien Supplemental Indenture, the Intercreditor Agreement Side Letter, and the Deed of Release and to carry out all other legally permitted steps within their control as may be necessary or desirable to be carried out by it for the purposes of facilitating the implementation of, and giving effect to, the terms of the Scheme and the Second Lien Amendments, substantially in the form set out in Schedule 3 (*Form of Security Agent Instruction Letter*) to this Scheme Document.

"Security Agent Undertaking" means the undertaking provided by the Security Agent to, among other things, be bound by the Scheme.

"Shareholder" means John Hargreaves.

"Shareholder PIK Notes" means the £50,000,000 aggregate principal amount of subordinated unsecured notes issued by the Company pursuant to an indenture dated 9 June 2020 in exchange for the £50,000,000 principal amount of Second Lien Notes (which were cancelled upon completion of the exchange).

"Subsidiary" means a subsidiary within the meaning of section 1159 of the Companies Act and a subsidiary undertaking within the meaning of section 1162 of the Companies Act.

"Trustee" means Deutsche Trustee Company Limited in its capacity as trustee under the Second Lien Notes Indenture.

"Trustee Instruction Letter" means the instruction letter from the Company (for and on behalf of the Scheme Creditors) instructing the Trustee to enter into the Second Lien Supplemental Indenture, the Amended Global Notes, and the Intercreditor Agreement Side Letter and to carry out all other legally permitted steps within their control as may be necessary or desirable to be carried out by it for the purposes of facilitating the implementation of, and giving effect to, the terms of the Scheme and the Second Lien Amendments, substantially in the form set out in Schedule 2 (*Form of Trustee Instruction Letter*) to this Scheme Document.

"Trustee Undertaking" means the undertaking provided by the Trustee to, among other things, be bound by the Scheme.

"Voting Instruction Deadline" means 5:00 p.m. on 16 July 2020.

2. INTERPRETATION

Unless the context otherwise requires:

- (a) references to any provision of any law or regulation are to be construed as referring to that provision as it may have been, or may from time to time be, amended or re-enacted, and as referring to all by-laws, instruments, orders and regulations for the time being made under or deriving validity from that provision;
- (b) a reference to any party or person shall be construed as including its and any subsequent successors in title, permitted transferees and permitted assigns, in each case in accordance with their respective interests;
- (c) a reference to an agreement, indenture, deed or other document is a reference to such agreement, indenture, deed or other document as amended and an amendment includes a supplement, novation, restatement or replacement (however fundamental) and "**as amended**" will be construed accordingly;
- (d) references to "**include**" mean including without limitation;
- (e) references to "**Clauses**" or "**Schedules**" are to clauses or schedules (as applicable) of this Scheme Document;
- (f) references to a "**person**" include references to an individual, firm, partnership, company, corporation, other legal entity, unincorporated body of persons or any state or state agency;
- (g) the singular includes the plural and vice versa and words importing one gender include the other gender;
- (h) headings to paragraphs and schedules, are for ease of reference only and shall not affect the interpretation of this Scheme Document;
- (i) to the extent that there is any conflict or inconsistency between the terms of this Scheme Document and the Explanatory Statement, the terms of this Scheme Document shall prevail;
- (j) any obligation or Liability of a Scheme Creditor shall apply to its successors, transferees and assigns; and
- (k) unless otherwise stated, all references to a time of day in this Scheme Document are to the time in London (Greenwich Mean Time or British Summer Time as applicable).

3. SCHEME EFFECTIVENESS

- 3.1 The Scheme shall become effective and legally binding on the Company and its Scheme Creditors in accordance with its terms for all purposes, on and from the Scheme Effective Date. The arrangements effected by the Scheme shall apply to all Scheme Claims and shall bind all Scheme Creditors and each of their respective successors and assigns.

3.2 Upon the occurrence of the Scheme Effective Date, the Company shall issue the Scheme Effective Date Notice confirming that the Scheme Effective Date has occurred.

3.3 Unless the Scheme has become effective on or before the Longstop Date the Scheme shall never become effective.

4. AUTHORISATION TO EXECUTE AND UNDERTAKING TO BE BOUND BY THE SECOND LIEN AMENDMENTS DOCUMENTS

4.1 With effect on and from the Scheme Effective Time, in consideration of the rights provided to the Scheme Creditors under this Scheme and notwithstanding any term of any relevant document, each Scheme Creditor hereby appoints, and shall for all purposes be treated as having hereby appointed, the Company as its attorney and agent and irrevocably authorises, directs, instructs and empowers the Company (represented by any duly authorised representative) to:

(a) enter into, execute and deliver (whether as a deed or otherwise), for and on behalf of such Scheme Creditors, the Second Lien Amendments Documents to which the Scheme Creditors, or any of them, are named as a party and any other document referred to, contemplated by or ancillary to any of the foregoing, and, where applicable, complete, date and release the Second Lien Amendments Documents; and

(b) for and on behalf of Scheme Creditors, to take all actions necessary to ensure that the books and records of the Clearing Systems are updated to reflect the terms of this Scheme Document, including without limitation to take or carry out any other step or procedure reasonably required to give effect to the provisions of this Scheme Document.

4.2 The authority and power granted and conferred on the Company under Clause 4.1 and 4.4 shall be treated, for all purposes whatsoever and without limitation, as having been granted and conferred by deed and the Company shall be entitled to delegate the authority granted and conferred by Clause 4.1 and 4.4 to any duly authorised officer or agent of the Company as necessary.

4.3 Notwithstanding any other provision of this Scheme, each Scheme Creditor agrees to and shall be bound by and shall comply with, and shall for all purposes be treated as having agreed to and be bound by, each of its obligations under each applicable Second Lien Amendments Document after it has been executed by the Company (or any delegate appointed pursuant to Clause 4.2) on its behalf in accordance with this Clause 4.

4.4 Without prejudice to the authority conferred on the Company pursuant to Clause 4.1, the Scheme Creditors hereby irrevocably authorise and instruct, and shall for all purposes be treated as having hereby irrevocably authorised and instructed, the Company, the Security Agent and the Trustee (as applicable) to enter into, execute and deliver (as a deed or otherwise) the Instruction Letters and to take all steps reasonably necessary to comply with their respective obligations under the Instruction Letters and any other Second Lien Amendments Document to which they are a party. For the avoidance of doubt, each Scheme Creditor hereby confirms and shall for all purposes be treated as having hereby confirmed each instruction, authorisation, direction and

confirmation given on its behalf in the Instruction Letters and as having agreed that each of the Company, the Security Agent and the Trustee shall be entitled to enforce and enjoy the benefit of, and rely upon each term in, this Scheme and the Instruction Letters.

5. AMENDMENTS TO THE SECOND LIEN AMENDMENTS DOCUMENTS

5.1 With effect on and from the Scheme Effective Time, each Scheme Creditor hereby irrevocably authorises, directs, instructs and empowers, and shall be treated for all purposes as having hereby irrevocably authorised, directed, instructed and empowered, the Company (represented by any duly authorised representative) to, in respect of the Second Lien Amendments Documents:

- (a) agree on their behalf to any amendments which the Company may deem necessary or desirable in order to correct any manifest error or otherwise to ensure that they reflect the terms of the Scheme and the transactions intended to be entered into in order to effect the Second Lien Amendments;
- (b) complete any blanks including, without limitation, any dates, times, figures, bank account details, notice provisions or legal entity names, lists of parties and/or signature blocks;
- (c) make any other minor amendments which would not have an adverse effect on the interests of the Company or the Scheme Creditors;
- (d) make or agree amendments to ensure that they are legal, valid, binding and enforceable upon the parties to them in accordance with this Scheme, **provided that** such amendments do not have a material adverse effect on the interests of the Company or the Scheme Creditors; and/or
- (e) make or agree amendments to take into account any modification of, or addition to, this Scheme and/or the Second Lien Amendments Documents approved or imposed by the Court in accordance with Clause 10 or otherwise,

provided that none of the above amendments impose on a Scheme Creditor an additional obligation not already contained in or contemplated by the Scheme or the Second Lien Amendments Documents.

6. SCHEME STEPS

Following the Scheme Effective Time, the following steps shall take effect in the order set out below (each a "**Scheme Step**" and together, the "**Scheme Steps**").

Step 1 (Instructions)

- (a) The Company shall execute and deliver the Trustee Instruction Letter.
- (b) The Company shall execute and deliver the Security Agent Instruction Letter.

Step 2 (Amendments and waivers under the Second Lien Notes Indenture, the Intercreditor Agreement and the Global Notes)

- (a) The Company (for and on behalf of itself and the Scheme Creditors as appropriate), the Second Lien Notes Guarantors (in accordance with the Second Lien Notes Guarantors Undertaking), the Trustee (in accordance with the Trustee Instruction Letter) and the Security Agent (in accordance with the Security Agent Undertaking) shall execute and deliver (as applicable):
 - (i) the Second Lien Supplemental Indenture;
 - (ii) the Amended Global Notes; and
 - (iii) the Intercreditor Agreement Side Letter.

Step 3 (Releases)

Immediately following Step 2 (*Amendments and waivers under the Second Lien Notes Indenture, the Intercreditor Agreement and the Global Notes*) above:

- (a) all of the rights, title and interest of the Scheme Creditors to and in the Scheme Claims shall be discharged and released fully and absolutely and treated as discharged and released fully and absolutely by operation of the Scheme and without any action on the part of the Scheme Creditors, in each case so as to bind the Scheme Creditors; and
- (b) the Company (for and on behalf of itself and the Scheme Creditors) and the Security Agent shall execute and deliver the Deed of Release.

Step 4 (Payment of Second Lien Deferral Fee)

The Company shall within two Business Days of the Second Lien Amendments Effective Date pay all Scheme Creditors the Second Lien Deferral Fee.

7. RELEASES, WAIVERS AND UNDERTAKINGS IN CONNECTION WITH THE SECOND LIEN AMENDMENTS DOCUMENTS

- 7.1 In accordance with the terms of the Deed of Release and at the time and sequence specified in the Scheme Steps, all of the rights, title and interest of each Scheme Creditor to its Scheme Claims shall be discharged and released fully and absolutely by operation of this Scheme, without any action on the part of that Scheme Creditor, in each case so as to bind that Scheme Creditor.
- 7.2 Subject to Clause 7.3 and at the time and sequence specified in the Scheme Steps, each Scheme Creditor shall, irrevocably and unconditionally, fully and finally waive and release and forever discharge to the fullest extent permitted by applicable law any and all Liabilities, in each case that it ever had, may have or hereafter can, shall or may have, against each of the following (in each case, in its or their capacity as such):
 - (a) the Company;
 - (b) the Second Lien Notes Guarantors;
 - (c) the Advisers;

- (d) the Trustee;
- (e) the Security Agent;
- (f) the Directors and Former Directors;
- (g) any other Scheme Creditor; and

in each case, their Affiliates and all of their respective present or past officers, directors, employees, agents, representatives and advisers (in each case excluding, for the avoidance of doubt, any past or present auditors of the Group and any Liability of any Adviser arising under or relating to a duty of care to such Adviser's client or arising under a duty of care to another person which has been specifically accepted or acknowledged in writing by the relevant Adviser),

(each person referred to above in this Clause a "**Released Party**", and together the "**Released Parties**"),

whatsoever and howsoever arising, in connection with or by reason of or resulting directly or indirectly from a Released Party's participation (as applicable) prior to the Second Lien Amendments Effective Date:

- (i) in the formulation, negotiation, promotion or provision of the Additional Liquidity Arrangements; and/or
- (ii) in the formulation, negotiation, promotion or the entry into this Scheme and the Second Lien Amendments.

7.3 Clause 7.2 shall not:

- (a) have the effect of waiving, releasing or discharging any rights of any Scheme Creditor arising under:
 - (i) this Scheme or any Second Lien Amendments Documents;
 - (ii) any report or advice provided by any Adviser, on which report or advice such Scheme Creditor is entitled to rely; and
 - (iii) any claims arising as a result of any breach of any Second Lien Amendments Document that remains in effect following the Second Lien Amendments Effective Date,
 or any remedy in respect of any such rights arising under the documents described at sub-paragraphs (i) to (iii) hereof; or
- (b) apply to any Liability in respect of fraud, wilful misconduct, or gross negligence by any Released Party.

7.4 A Released Party shall be entitled to enforce and enjoy the benefit of and rely upon this Clause 7, whether or not it is a party to the Scheme. The parties to this Scheme shall not be entitled to rescind or vary any term of this Clause 7 in a manner prejudicial to a Released Party without the consent of the relevant Released Party.

Waivers and undertakings

- 7.5 Each Scheme Creditor hereby irrevocably acknowledges and agrees, and shall for all purposes be treated as having hereby acknowledged and agreed, that any action taken by the Company in accordance with this Scheme, the Chapter 15 Filing, the Additional Liquidity Arrangements, or the Second Lien Amendments Documents will not constitute a breach of, or default under, the Second Lien Notes Documents or the Intercreditor Agreement (or any other agreement or document governing the terms of any Scheme Claim) or the Second Lien Amendments Documents, which would otherwise restrict the implementation of the Scheme.
- 7.6 On and from the Scheme Effective Date, the Scheme Creditors shall for all purposes agree, and shall for all purposes be treated as having agreed, that the Scheme shall, fully, finally and irrevocably waive and release each and every default or event of default howsoever described that has occurred or may occur or arise and any acts or omissions of the Trustee or the Security Agent, in each case under the Second Lien Notes Documents or the Intercreditor Agreement.
- 7.7 Each Scheme Creditor shall agree, and shall for all purposes be treated as having hereby agreed, on and from the Scheme Effective Date:
- (a) irrevocably to ratify and confirm everything which the Company, the Trustee, and the Security Agent, and their respective Affiliates, directors, managers and officers may lawfully do or cause to be done pursuant to the terms of this Scheme; and
 - (b) to undertake to the Company, the Trustee and the Security Agent and their respective Affiliates, directors, managers and officers to take all such actions as may be reasonably required to implement the Scheme.

Stay of Prohibited Proceedings

- 7.8 Subject to Clause 7.9, on and from the Scheme Effective Date, no Scheme Creditor shall be permitted to commence or continue any Proceedings, or support any person commencing, or instruct any person to commence any Proceedings, or other judicial, quasi-judicial, administrative or regulatory process in any jurisdiction whatsoever against any Released Party in each case, arising out of or in connection with the Additional Liquidity Arrangements or the Second Lien Amendments, including but not limited to:
- (a) the execution of:
 - (i) the Second Lien Amendments Documents; and/or
 - (ii) any other documents required in order to implement the Scheme; and
 - (b) actions, omissions or circumstances on or prior to the Second Lien Amendments Effective Date arising out of or in connection with the Scheme Claims and/or the negotiation and the implementation of this Scheme and the Second Lien Amendments,
- any such Proceeding being a "**Prohibited Proceeding**".

- 7.9 On and from the Scheme Effective Date, a Scheme Creditor may commence or continue, or support any person commencing, or instruct any person to commence, an Allowed Proceeding.
- 7.10 Each Scheme Creditor will hold on trust for the benefit of the Company any recovery made pursuant to any Prohibited Proceeding in breach of Clause 7.8 and will turn over any such recovery forthwith upon demand being made by the Company without set-off, counterclaim or deduction. To the extent that the asset comprising the recovery cannot be held on trust by the Scheme Creditor, the Scheme Creditor shall pay to the Company an amount equal to that recovery immediately upon demand being made by the Company without set-off, counterclaim or deduction, to be held on trust by the Company for the persons entitled to it.
- 7.11 The directions, instructions, ratifications, authorisations and authority granted under this Clause 7 shall be treated for all purposes whatsoever, and without limitation, as having been granted by deed.

8. TERMINATION OF THE SCHEME

If the Second Lien Amendments Effective Date does not occur on or before the Longstop Date, the terms of and the obligations on, and rights granted to, the parties under or pursuant to this Scheme shall lapse and all and any of the compromises and arrangements provided by this Scheme and any releases granted pursuant to this Scheme shall be of no effect and shall be construed as if it had never become effective, and the rights and obligations of the Scheme Creditors shall not be affected and shall be reinstated and remain in full force and effect, and any defaults under the Second Lien Notes and any consequences thereof, including any alleged deemed or actual acceleration, shall be reinstated as if such default has been continuing since the date it originally occurred or was deemed to occur.

9. COSTS

Without prejudice to any other agreements between the Company and any other party, the Company (or, to the extent legally permitted, another member of the Group) shall pay in full all costs, charges, expenses and disbursements reasonably incurred by or on behalf of the Company in respect of the implementation of the Scheme by the Company, including but not limited to the costs of holding the Scheme Meeting as convened by the Court, the costs of obtaining the Scheme Sanction Order and the costs of placing any notices required by the Scheme.

10. SANCTION HEARING MODIFICATIONS

Without prejudice to Clause 5.1, the Scheme Creditors agree, and shall be treated for all purposes as having agreed, that the Company may, at the Scheme Sanction Hearing, consent on behalf of the Scheme Creditors to any modification of the Scheme, the Scheme Document and the Second Lien Amendments Documents that the Court may think fit to approve or impose for the purpose of implementing and/or consummating the Scheme. However, if such modifications could reasonably be expected directly or indirectly to have a material adverse effect on the rights of one or more of the Scheme Creditors as Scheme Creditors then the Company may not give such consent without the prior written consent of the relevant Scheme Creditor(s).

11. OBLIGATIONS ON DAYS OTHER THAN A BUSINESS DAY

If any obligation is to be performed under the terms of the Scheme on a day other than a Business Day, the relevant obligation shall be performed on the next Business Day.

12. PROVISION OF INFORMATION BY SCHEME CREDITORS

12.1 An Account Holder Letter submitted by or on behalf of any Scheme Creditor shall be submitted in accordance with the instructions set out in the Account Holder Letter and this Scheme.

12.2 If the Information Agent refuses to accept an Account Holder Letter, it shall promptly prepare a written statement setting out the basis for its determination and send that statement by electronic mail to the party that provided such Account Holder Letter. A Scheme Creditor may resubmit such Account Holder Letter together with such additional information as may be required by the Information Agent.

12.3 The Company may disclose the Account Holder Letter and its contents to such persons and Advisers as are necessary to facilitate the Second Lien Amendments.

13. EXERCISE OF DISCRETION

13.1 Where, under or pursuant to any provision of this Scheme, a matter is to be determined by:

- (a) the Company, it shall be determined by the board of directors of the Company, in their discretion in such manner as they may consider appropriate for the Company and the Scheme Creditors and any other affected party; or
- (b) the Information Agent, it shall be determined in its discretion in such manner as it considers reasonable in all the circumstances having regard to the interest of the Company and the Scheme Creditors.

14. NOTICES

14.1 Any notice or other written communication to be given under or in relation to the Scheme (other than any Account Holder Letter), which are to be delivered in accordance with the instructions therein) shall be given in writing in the English language and shall be duly given if:

- (a) in the case of the Company, it is sent by email to lodder_w@matalan.co.uk, **provided that** a copy of the notice or written communication is also sent to projectkansascorccc@cliffordchance.com, marked for the attention of Melissa Coakley and Philip Hertz, and matalan@lucid-is.com, marked for the attention of David Shilson;
- (b) in the case of the Scheme Creditors (other than the Trustee) it is sent by the Information Agent to the Clearing Systems and posted on the Scheme Website for the attention of the Scheme Creditors;

- (c) in the case of the Information Agent, it is sent by email to matalan@lucid-is.com, marked for the attention of David Shilson;
- (d) in the case of the Trustee, it is sent by email to tss-gds.eur@db.com, marked for the attention of: Managing Director;
- (e) in the case of the Security Agent, it is sent by letter, fax, or email to New Ubertior House, 11 Earl Grey Street, Edinburgh, EH3 9BN, fax: 0131 229 0234, email: John.Togher@lloydsbanking.com (respectively), in each case marked for the attention of: John Togher – Agency; and
- (f) in the case of any other person, any address set forth for that person in any agreement entered into in connection with this Scheme shall be their address for notices.

14.2 Any notice or other written communication to be given under the Scheme shall be duly served:

- (a) if posted on the Clearing Systems, on the Business Day on which it is posted or (if not a Business Day or it is posted after 5:00 p.m. (London time)) at 9:00 a.m. on the first Business Day after posting;
- (b) if posted on the Scheme Website, at the time of being published; and
- (c) if sent by email, on the Business Day on which it is sent or (if not a Business Day or it is sent after 5:00 p.m. (London Time)) at 9:00 a.m. on the first Business Day after sending.

In proving service, it shall be sufficient proof, in the case of a notice sent by post, that the envelope was properly stamped, addressed and placed in the post.

14.3 The accidental omission to send any notice, written communication or other document in accordance with this Clause 14, or the non-receipt of any such notice by any Scheme Creditor or Company, shall not affect the operation of the Scheme or the validity of anything done in accordance with its terms.

14.4 The Company shall not be responsible for any loss or delay in the transmission of any notices, other documents or payments posted by or to any Scheme Creditors which shall be posted at the risk of such Scheme Creditors.

15. **ASSIGNMENTS AND TRANSFERS AFTER THE VOTING INSTRUCTION DEADLINE**

15.1 Unless expressly provided otherwise herein, all Scheme Consideration shall be determined in respect of the Scheme Creditors as at the Voting Instruction Deadline.

15.2 The Company shall not be under any obligation to recognise any assignment or transfer of a Scheme Claim that occurs after the Voting Instruction Deadline for the purposes of the Scheme or the Scheme Amendment Documents; or have any obligations hereunder to any person other than a Scheme Creditor, **provided that**, where the Company has received from the relevant parties notice in writing of an assignment or transfer prior to the Scheme Effective Date, the Company, may, in its sole discretion

and subject to the production of such other evidence in relation to such transfer or assignment as they may require and to any other terms and conditions which the Company may consider necessary or desirable, agree to recognise such assignment or transfer for the purposes of the Scheme. Any assignee or transferee of a Scheme Claim so recognised by the Company shall be bound by the terms of the Scheme as a Scheme Creditor and shall produce such evidence as the Company may reasonably require to confirm that it has agreed to be bound by the terms of the Scheme.

- 15.3 Without prejudice to Clause 15.2, any assignee, successor or transferee of a Scheme Creditor after the Voting Instruction Deadline shall be bound by the terms of this Scheme and the Second Lien Amendments Documents and will be a Scheme Creditor for the purposes of this Scheme and the Second Lien Amendments Documents.

16. **EXCLUSION OF LIABILITY**

- 16.1 To the extent permitted by law, no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith by any of the Advisers, the Second Lien Notes Trustee, the Security Agent, or the Second Lien Notes Guarantors (or any of their respective authorised signatories, agents, employees and/or delegates) (the "**Excluded Persons**") in connection with their actions or omissions pursuant to the provisions of this Scheme or the exercise by any of the Excluded Persons in good faith of any power conferred upon them for the purposes of this Scheme if exercised in accordance with the provisions of this Scheme.
- 16.2 To the extent permitted by law, the Company shall not be entitled to challenge the validity of any act done or omitted to be done in good faith by the Excluded Persons in accordance with the provisions of this Scheme or the exercise by the Excluded Persons in good faith of any power conferred upon it for the purposes of this Scheme if exercised in accordance with the provisions of this Scheme.
- 16.3 No Excluded Person shall be liable for any cost, loss or Liability in connection with this Scheme unless such loss is attributable to its gross negligence, wilful misconduct or fraud.

17. **GOVERNING LAW AND JURISDICTION**

- 17.1 The Scheme and any non-contractual obligations arising out of or in connection with the Scheme shall be governed by, and construed in accordance with, the laws of England and Wales.
- 17.2 The Court shall, and the Scheme Creditors shall agree, and for all purposes be treated as having agreed that the Court shall, have exclusive jurisdiction to hear and determine any suit, action or Proceeding and to settle any dispute which may arise out of or in connection with the Explanatory Statement or any provision of the Scheme, or out of any action taken or omitted to be taken under the Scheme or the Scheme Document or any non-contractual obligations arising out of or in connection with the Scheme. For such purposes the Scheme Creditors irrevocably submit, and shall for all purposes be treated as having irrevocably submitted to the jurisdiction of the Court **provided, however, that** nothing in this Clause 17.2 shall:

- (a) affect the validity of other provisions determining governing law and jurisdiction as between the Company and any of the Scheme Creditors whether contained in any contract (including the Second Lien Amendments Documents) or otherwise; or
- (b) prevent the Company from relying upon the provisions of the Scheme in any foreign court or in any foreign Proceedings.

18. SCHEME SUBJECT TO PROVISIONS OF MANDATORY LAW

The terms of this Scheme and the obligations imposed on the Company and the Scheme Creditors (and, for the avoidance of doubt, those terms and obligations which may be construed as being imposed on any Scheme Undertaking Party) hereunder shall take effect subject to any prohibition or condition imposed by applicable law.

**SCHEDULE 1
FORM OF SCHEME EFFECTIVE DATE NOTICE**

To: The Scheme Creditors

To: Deutsche Trustee Company Limited as trustee under the Second Lien Notes Indenture

To: Deutsche Bank Luxembourg S.A. as transfer agent and registrar under the Second Lien Notes Indenture

To: Deutsche Bank AG, London Branch as paying agent under the Second Lien Notes Indenture

To: Lucid Issuer Services Limited as Information Agent under the Scheme

To: Lloyds Bank Plc as Security Agent

To: The Second Lien Guarantors

From: Matalan Finance plc

Dear Sir or Madam

Date: [•] 2020

**Scheme of arrangement in respect of Matalan Finance plc under Part 26 of the
Companies Act 2006 (the "Scheme")**

1. We refer to the Scheme. Capitalised terms defined in the Scheme shall have the same meaning when used in this letter.
2. By an order dated [*insert date*] July 2020, the High Court of Justice of England and Wales sanctioned the Scheme (appended hereto as Appendix A).
3. This is the Scheme Effective Date Notice as contemplated by Clause 3 of the Scheme.
4. We hereby confirm that the Scheme Effective Date is [*insert date*] 2020.

This notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

.....
For and on behalf of
MATALAN FINANCE PLC

SCHEDULE 2
FORM OF TRUSTEE INSTRUCTION LETTER

From: Matalan Finance plc (the "Company") on behalf of each of the Scheme Creditors

To: Deutsche Trustee Company Limited as trustee under the Second Lien Notes Indenture

[•] 2020

Dear Sir or Madam

1. The Company proposed a scheme of arrangement under Part 26 of the Companies Act 2006 (the "**Scheme**") between the Company and its Scheme Creditors, which is set out in the scheme document provided by the Company to the Scheme Creditors on or around [insert date] pursuant to Section 897 of the Companies Act 2006 (the "**Scheme Document**") and which was sanctioned by the Court on [insert date] (*attached*).
2. Capitalised terms used but not defined in this Trustee Instruction Letter shall, unless otherwise indicated, have the meaning given to them in the Scheme Document. This is a Trustee Instruction Letter for the purposes of the Scheme.
3. Pursuant to Clause 4 of the Scheme Document, the Scheme Creditors (other than the Trustee) have irrevocably instructed and authorised the Company, upon the Scheme Effective Time, to execute this Trustee Instruction Letter and deliver it to the Trustee on behalf of the Scheme Creditors.

Instructions

4. The Company (acting on behalf of the Scheme Creditors pursuant to the authority granted by Clause 4 of the Scheme Document) hereby instructs, authorises and directs the Trustee, pursuant to the terms of the Scheme Document and at the cost of the Company to:
 - (a) enter into (as trustee in respect of the Second Lien Amendments Documents, as applicable) the Trustee Undertaking, and each of the Second Lien Amendments Documents to which the Trustee is a party, subject to any modifications that the Company confirms in writing to the Trustee are authorised pursuant to Clause 5 of the Scheme Document; and
 - (b) execute, deliver (if applicable) and perform its obligations under any agreement, letter or other document, and do all such acts or things as may be reasonably necessary or desirable to be executed or done by it for the purposes facilitating the implementation of, and giving effect to, the terms of the Scheme and/or the implementing the Second Lien Amendments.

Miscellaneous

5. Pursuant to this Trustee Instruction Letter, each party hereto shall perform and execute, or procure to be done and executed, all necessary acts, deeds, documents and things reasonably within its power to give effect to this Trustee Instruction Letter.
6. This Trustee Instruction Letter may be executed in any number of counterparts and it shall have the same effect as if the signatures on the counterparts were on a single copy of this Trustee Instruction Letter.
7. This Trustee Instruction Letter and any obligations arising out of or in connection with this Trustee Instruction Letter shall be governed by, and construed in accordance with, the laws of England and Wales, and the Company, the Scheme Creditors and the Trustee hereby agree that the courts of England and Wales shall have the exclusive jurisdiction to hear and determine any claim, action, Proceeding or dispute (whether contractual or non-contractual) arising out of or in connection with this Trustee Instruction Letter and, for such purposes, each of the Scheme Creditors and the Trustee irrevocably submits to the jurisdiction of the courts of England and Wales.

Yours faithfully,

Signed

For and on behalf of

THE SCHEME CREDITORS

(other than the "Trustee")

by MATALAN FINANCE PLC

pursuant to the irrevocable instructions and authorisations of the Scheme Creditors (other than the "Trustee") under Clause 4 of the Scheme Document and without personal liability

SCHEDULE 3
FORM OF SECURITY AGENT INSTRUCTION LETTER

From: Matalan Finance plc (the "**Company**") on behalf of each of the Scheme Creditors

To: Lloyds Bank plc as security trustee under the Intercreditor Agreement

[•] 2020

Dear Sir or Madam

1. The Company proposed a scheme of arrangement under Part 26 of the Companies Act 2006 (the "**Scheme**") between the Company and its Scheme Creditors, which is set out in the scheme document provided by the Company to the Scheme Creditors on or around [insert date] pursuant to Section 897 of the Companies Act 2006 (the "**Scheme Document**") and which was sanctioned by the Court on [insert date] (*attached*).
2. Capitalised terms used but not defined in this Security Agent Instruction Letter shall, unless otherwise indicated, have the meaning given to them in the Scheme Document. This is a Security Agent Instruction Letter for the purposes of the Scheme.
3. Pursuant to Clause 4 of the Scheme Document, the Scheme Creditors (other than the Trustee) have irrevocably instructed and authorised the Company, upon the Scheme Effective Time, to execute this Security Agent Instruction Letter and deliver it to the Trustee on behalf of the Scheme Creditors.

Instructions

4. The Company (acting on behalf of the Scheme Creditors pursuant to the authority granted by Clause 4 of the Scheme Document) hereby instructs, authorises and directs the Security Agent, pursuant to the terms of the Scheme Document and at the cost of the Company to:
 - (a) enter into (for itself and, as security agent) the Security Agent Undertaking, and each of the Second Lien Amendments Documents to which the Security Agent is a party, subject to any modifications that the Company confirms in writing to the Security Agent are authorised pursuant to Clause 5 of the Scheme Document; and
 - (b) execute, deliver (if applicable) and perform its obligations under any agreement, letter or other document, and do all such acts or things as may be necessary or desirable to be executed or done by it for the purposes of giving effect to, the terms of the Scheme.

Miscellaneous

5. Pursuant to this Security Agent Instruction Letter and the Security Agent Undertaking, the parties hereto shall perform and execute, or procure to be done and executed, all necessary acts, deeds, documents and things reasonably within its power to give effect to this Security Agent Instruction Letter.

6. This Security Agent Instruction Letter may be executed in any number of counterparts and it shall have the same effect as if the signatures on the counterparts were on a single copy of this Security Agent Instruction Letter.
7. This Security Agent Instruction Letter and any obligations arising out of or in connection with this Security Agent Instruction Letter shall be governed by, and construed in accordance with, the laws of England and Wales, and the Company, the Scheme Creditors and the Security Agent hereby agree that the courts of England and Wales shall have the exclusive jurisdiction to hear and determine any claim, action, Proceeding or dispute (whether contractual or non-contractual) arising out of or in connection with this Security Agent Instruction Letter and, for such purposes, each of the Scheme Creditors and the Security Agent irrevocably submits to the jurisdiction of the courts of England and Wales.

Yours faithfully,

Signed

For and on behalf of

THE SCHEME CREDITORS

(other than the "Trustee")

by MATALAN FINANCE PLC

pursuant to the irrevocable instructions and authorisations of the Scheme Creditors (other than the "Trustee") under Clause 4 of the Scheme Document and without personal liability

SCHEDULE 4
SECOND LIEN GUARANTORS

1. Missouri Topco Limited
2. Matalan Group Limited
3. Matalan Limited
4. Matalan Investments Limited
5. Matalan Retail Limited
6. Matalan Holding Company Limited
7. Jonmar Limited
8. Matalan Travel Limited
9. Matalan Direct Limited
10. HPO1 Nominees Limited