

Charles R. Gibbs (admitted *pro hac vice*)
 Keefe Bernstein (admitted *pro hac vice*)
 Sarah Link Schultz (admitted *pro hac vice*)
 AKIN GUMP STRAUSS HAUER & FELD LLP
 1700 Pacific Avenue, Suite 4100
 Dallas, Texas 75201
 Telephone: 214.969.2800
 Facsimile: 214.969.4343

Lynn Tavenner (Virginia Bar No. 30083)
 Paula S. Beran (Virginia Bar No. 34679)
 TAVENNER & BERAN, PLC
 20 North Eighth Street, Second Floor
 Richmond, VA 23219
 Telephone: 804.783.8300
 Facsimile: 804.783.0178

*Attorneys for The Official Committee of Unsecured
 Creditors of LandAmerica 1031 Exchange Services, Inc.*

-and-

Catherine Creely (Virginia Bar No. 74796)
 AKIN GUMP STRAUSS HAUER & FELD LLP
 1333 New Hampshire Avenue, N.W.
 Washington, D.C. 20036
 Telephone: 202.887.4000
 Facsimile: 202.887.4288

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
LandAmerica Financial Group, Inc., <u>et al.</u> ,	:	Case No. 08-35994 (KRH)
	:	
Debtors.	:	Jointly Administered
	X	

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
 CREDITORS OF LANDAMERICA 1031 EXCHANGE SERVICES, INC.
 FOR ENTRY OF AN ORDER APPROVING FORM OF LETTER TO
UNSECURED CREDITORS IN SUPPORT OF DEBTORS' CHAPTER 11 PLAN**

The Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. (the "LES Committee") files this Motion of the Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. for Entry of an Order Approving Form of Letter to Unsecured Creditors in Support of Debtors' Chapter 11 Plan (the "Motion"). In support of the Motion, the LES Committee states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory predicates for the relief sought herein are section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

II. BACKGROUND

3. On November 26, 2008, the LandAmerica Financial Group, Inc. (“LFG”) and LES each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On March 6, 2009, March 27, 2009, March 31, 2009 and July 17, 2009, various other LFG affiliates each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (collectively, the “Debtors”).

4. The Debtors are continuing in possession of their property and have continued to operate and maintain their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

5. On December 3, 2008, the United States Trustee for the Eastern District of Virginia (the “U.S. Trustee”) appointed (i) the Official Committee of Unsecured Creditors of LFG (the “LFG Committee”) and (ii) the LES Committee. On June 4, 2009, the U.S. Trustee filed his Amended Appointment of Unsecured Creditors’ Committee, adding two additional members to the LES Committee.

6. On September 9, 2009, the Debtors filed a proposed Disclosure Statement With Respect to the Joint Chapter 11 Plan of Liquidation for LandAmerica Financial Group, Inc. and Its Affiliated Debtors (the “Disclosure Statement”) pursuant to Bankruptcy Code section 1125,

together with the Debtors' Joint Chapter 11 Plan (the "Plan").¹ The hearing to consider the adequacy of the Disclosure Statement is scheduled for October 13, 2009.

III. RELIEF REQUESTED

7. By this Motion, the LES Committee requests that the Court enter an order approving the form of letter from the LES Committee to the unsecured creditors of LES in support of the Plan (the "Support Letter"), substantially in the form attached hereto as **Exhibit A**, to be distributed to such unsecured creditors in conjunction with the Plan and Disclosure Statement, once approved.

8. Bankruptcy Rule 3017(d) specifies the materials to be distributed to holders of allowed claims and/or interests upon approval of a disclosure statement. Unless otherwise ordered, such materials include the plan or a court-approved summary of the plan, the court-approved disclosure statement, notice of the voting deadline and "any other information as the court may direct." *See* Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3017(d)(4) "provides for much discretion as to what other information the court may deem appropriate to send out with the disclosure statement." *In re Tenn-Fla Partners*, 1993 WL 151346 at *1 (Bankr. W.D. Tenn. Apr. 29, 1983).

9. Moreover, Bankruptcy Code section 105(a) gives this Court broad authority under its equitable powers to fashion any order or decree that is in the best interest of the Debtors' estates. *Tidewater Finance Co. v. Williams*, 498 F.3d 249, 258 (4th Cir. 2007) (section 105(a) authorizes bankruptcy courts to take any action or make any determination necessary or appropriate to carry out the provisions of the Bankruptcy Code); *Kreiser v. Goldberg*, 478 F.3d

¹ Capitalized terms used and not defined in this Motion shall have the meanings ascribed to such terms in the Plan.

209, 215 (4th Cir. 2007) (same); *Litton v. Wachovia Bank (In re Litton)*, 330 F.3d 636, 647 (4th Cir. 2003) (same).

10. The LES Committee believes that it is important for the unsecured creditors of LES to understand, in a communication directly from the LES Committee (rather than the Debtors), the specific reasons why the LES Committee believes that the Plan deserves their support and that the Plan is more favorable to the LES unsecured creditors than other alternatives. Accordingly, the LES Committee requests that the Court approve the transmission of the Support Letter to the unsecured creditors of LES in conjunction with the distribution of the Plan and Disclosure Statement, once approved.

IV. NO PRIOR REQUESTS

11. No previous request for the relief sought herein has been made to this or any other court.

V. WAIVER OF MEMORANDUM OF LAW

12. Pursuant to Local Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the LES Committee requests a waiver of the requirement that all motions be accompanied by a separate written memorandum of law.

VI. CONCLUSION

13. WHEREFORE, the LES Committee respectfully requests that the Court enter an order (i) approving the form and transmission of the Support Letter to the unsecured creditors of LES in conjunction with the Plan and Disclosure Statement, once approved; and (ii) granting such other and further relief as the Court deems appropriate.

Dated: Richmond, Virginia
October 2, 2009

/s/ Catherine Creely

Charles R. Gibbs (admitted *pro hac vice*)
Keefe Bernstein (admitted *pro hac vice*)
Sarah Link Schultz (admitted *pro hac vice*)
AKIN GUMP STRAUSS HAUER & FELD LLP
1700 Pacific Avenue, Suite 4100
Dallas, Texas 75201
Telephone: 214.969.2800
Facsimile: 214.969.4343

Catherine Creely (Virginia Bar No. 74796)
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Telephone: 202.887.4000
Facsimile: 202.887.4288

-and-

Lynn Tavenner (Virginia Bar No. 30083)
Paula S. Beran (Virginia Bar No. 34679)
TAVENNER & BERAN, PLC
20 North Eighth Street, Second Floor
Richmond, VA 23219
Telephone: 804.783.8300
Facsimile: 804.783.0178

*Attorneys for The Official Committee of Unsecured
Creditors of LandAmerica 1031 Exchange Services,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October 2009, a true and correct copy of the foregoing *Motion of the Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. for Entry of an Order Approving Form of Letter to Unsecured Creditors in Support of Debtors' Chapter 11 Plan* was served: (i) via United States mail, first class, postage prepaid; and (ii) via email on the parties listed below and on all parties receiving notification through the Court's ECF system.

Rachel Strickland
Paul V. Shalhoub
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, New York 10019
rstrickland@willkie.com
pshalhoub@willkie.com

Dion W. Hayes
John H. Maddock, III
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219
dhayes@mcguirewoods.com
jmaddock@mcguirewoods.com

Robert B. Van Arsdale
Office of the United States Trustee
701 East Broad St. Suite 4304
Richmond, Virginia 23219
Robert.B.Van.Arsdale@usdoj.gov

Jeffrey S. Sabin
Mark M. Elliott
Justin G. Imperato
Bingham McCutchen LLP
399 Park Avenue
New York, NY 10022
jeffrey.sabin@bingham.com
mark.elliott@bingham.com
justin.imperato@bingham.com

Bruce H. Matson
Christian K. Vogel
Christopher L. Perkins
LeClair Ryan, A Professional Corporation
951 East Byrd Street, 8th Floor
P.O. Box 2499
Richmond, VA 23218-2499
bruce.matson@leclairryan.com
christian.vogel@leclairryan.com
christopher.perkins@leclairryan.com

/s/ Sarah Link Schultz

Sarah Link Schultz

EXHIBIT A

Support Letter

LES COMMITTEE
[address]
[telephone]

October ___, 2009

VIA REGULAR MAIL

All General Unsecured Creditors (the “Unsecured Creditors”) of LandAmerica 1031 Exchange Services, Inc. (“LES”)

Re: Case No. 08-35994; *In re LandAmerica Financial Group, Inc.*, et al., in the United States Bankruptcy Court, Eastern District of Virginia

Dear Exchange Customers:

Enclosed with this letter is a copy of the Joint Chapter 11 Plan (the “Plan”) of LandAmerica Financial Group, Inc. (“LFG”) and its affiliated debtors (collectively, the “Debtors”) including LES along with the accompanying Disclosure Statement (the “Disclosure Statement”) and a ballot (a “Ballot”). Because these documents are both voluminous and written in legalese, they may be difficult to understand. To assist you in reviewing these documents and deciding how to vote, this letter contains a brief discussion regarding the purpose of each of the documents you have received as well as a summary of the proposed Plan and a discussion of the alternatives considered by the Official Committee of Unsecured Creditors of LES (the “LES Committee”) in deciding to recommend that you vote to accept the Plan.

The LES Committee strongly urges all LES Unsecured Creditors (which includes all exchangers and LES “trade” creditors) to vote in favor of the Plan because we believe that:

- The expected recoveries to LES Unsecured Creditors under the Plan represent the most favorable outcome under the circumstances and as compared to other alternatives
- The Plan provides for the return of exchange funds to the exchangers in the most fair and expedited manner possible
- The Plan contains a mechanism for monetizing currently illiquid assets of LES
- The Plan provides a mechanism for maximizing the value of the Debtors’ insurance policies for the benefit of all unsecured creditors of these estates
- The Plan provides a mechanism for avoiding continuation of expensive and protracted litigation, including litigation regarding the inter-company issues between LFG and LES and test case litigation involving the exchangers.

What Do All of These Documents Mean?

The **Plan** is the legal contract that will govern the gathering and distribution of the assets of the Debtors. If the proposed Plan is approved (or confirmed) by the Bankruptcy Court with respect to LES, all creditors of LES, including exchangers, will be bound by the terms of the Plan even if they decided not to vote or voted to reject the Plan.

The **Disclosure Statement** is a summary of the events that caused the Debtors to file for chapter 11 protection, the events that have occurred since the Debtors filed for chapter 11, and the material terms of the Plan. Although we recommend that you read the entire Disclosure Statement, we recommend that you pay special attention to Articles [] on pages [].

The **Ballot** is the document that allows you to vote to accept or reject the Plan. If you want your vote to accept or reject the Plan to be counted, you must return your original signed Ballot so that it is received by the Debtors' voting agent (the "Voting Agent") no later than []. The Voting Agent will not accept Ballots by email or facsimile. The Voting Agent's address is:

LandAmerica Financial Group, Inc., Ballot Processing
c/o Epiq Bankruptcy Solutions, LLC
757 Third Avenue, 3rd Floor
New York, NY 10017

You should have also received a notice of the **Confirmation Hearing** in your packet. The Bankruptcy Court will hold a hearing on [November 19, 2009] beginning at [] a.m. (ET) to determine whether to confirm (or approve) the proposed Plan. At that time, counsel for the Debtors and each of the LES and LFG Creditors' Committees will present evidence in support of the Plan.

Under the Bankruptcy Code for the Plan to be approved consensually, at least 1/2 in number of voting creditors and 2/3 in amount of such creditors' claims of each class must vote to accept the Plan. For example, if there is a class with five (5) voting creditors whose claims total \$150, at least three (3) creditors with a total of \$100 in claims must vote to accept the Plan.

If a class of creditors votes to reject the Plan, the Plan may still be confirmed if (a) at least one class of impaired creditors votes to accept the Plan, and (b) the Debtors can establish

that the Plan is fair and equitable.¹ This “cramdown” right is expressly provided for in the Bankruptcy Code.

What Does the Plan Say?

Plan Distributions That We Anticipate Will Be Paid Shortly After Plan Confirmation

Before distributions can be made to LES Unsecured Creditors, the Bankruptcy Code provides that LES must pay certain post-petition expenses, referred to as “Administrative Expenses,” in amounts approved by the Bankruptcy Court. After these Administrative Expenses are paid, we anticipate that LES will have approximately \$108.5 million cash on hand.² In addition, the claims of certain creditors entitled to priority in recovery, including the IRS³ and the PBGC,⁴ must be satisfied before distributions can be made to LES Unsecured Creditors. In this case, as a result of the settlements negotiated at the Court-ordered mediation,⁵ the Plan limits LES’s total obligations to pay the claims of the IRS and the PBGC to \$5,500,000.⁶ We anticipate that after these obligations are satisfied and \$3 million is reserved to fund the LES Trust

¹ To establish that a plan is fair and equitable to unsecured creditors (like exchangers) the Debtors must show either (a) that the creditors will receive payments equal to the value of their claims, or (b) that no junior creditors or interest holders are receiving anything under the Plan. 11 U.S.C. § 1129(b)(2)(B). Here, the Debtors meet this requirement with respect to exchangers because junior creditors and interest holders are not receiving anything under the Plan.

² This includes cash from accounts designated as segregated accounts and commingled accounts, as well as interest earned on the auction rate securities and cash generated from several settlements during the LES case.

³ The IRS filed a proof of claim against LES in the amount of \$127,889.14. Additionally, because the Debtors were part of a consolidated tax group pre-petition, LFG has asserted that LES may also be responsible for certain of the Debtors’ collective liabilities to the IRS. The IRS has asserted claims of more than \$55 million for such potential liabilities.

⁴ The Pension Benefit Guaranty Corporation (“PBGC”) filed proofs of claim against LES in the aggregate amount of \$35,700,000.00.

⁵ Counsel to the Debtors and counsel and members of the LES and LFG Committee participated in phase I of the mediation (which addressed the disputes between LFG and LES). In addition to these parties, lawyers who have asserted they represent approximately 100 individual Commingled Exchangers as well as several of their clients and lawyers representing one Segregated Exchanger and their client participated in phase II of the mediation (which addressed the allocation of LES assets between Segregated Exchangers and Commingled Exchangers).

⁶ The amount to be distributed on account of the claim of the PBGC against LES is the lesser of: (a) \$5 million or (b) 25% of any amount paid by the Debtors on account of allowed claims of the PBGC. To the extent the IRS has an allowed claim against the Debtors’ consolidated tax group, LES is obligated to pay \$500,000 on account of such claim. If the IRS or PBGC has an allowed claim against LES in excess of these stated amounts, LFG has agreed to indemnify LES on a dollar-for-dollar basis.

(discussed below), approximately \$100 million in cash will be available for immediate distribution to LES Unsecured Creditors. Of this cash, the Plan provides (again, as a result of the mediated settlement) for the immediate distribution of (a) the greater of 51% or \$50 million to the Segregated Exchangers,⁷ and (b) the remainder to other LES Unsecured Creditors (i.e., the Commingled Exchangers⁸ and a small amount of “trade” debt⁹). We believe that this initial distribution will occur on or before December 31, 2009 if the current Plan confirmation timeline is kept. If these estimates are correct, the cash held by LES that will be available for immediate distribution to Exchangers will be sufficient to satisfy approximately 70% of the principal claims¹⁰ asserted by Segregated Exchangers and 25% of the principal claims asserted by Commingled Exchangers.¹¹ None of the cash will be used to satisfy the LFG estate’s alleged \$65 million claim for cash transferred from LFG to LES.¹²

Anticipated Longer Term Distributions

At the mediations, the parties settled claims between LES and LFG, resolved how to jointly pursue third-party claims held by both LES and LFG to maximize recoveries, and resolved how to share any recoveries between the creditors of LES and LFG.¹³ As a result of the mediations, the Plan creates two litigation trusts: one for LES and one for LFG (the “LES Trust” and the “LFG Trust,” and together, the “Trusts”). The LES Trust will be administered by an independent trustee selected by the LES Committee and the LFG Trust will be administered by an independent trustee selected by the LFG Committee (collectively, the “Trustees”). Each of

⁷ According to the Debtors’ schedules, on the day LES filed chapter 11, there were approximately \$76.5 million of principal claims held by Segregated Exchangers.

⁸ According to the Debtors’ schedules, on the day LES filed chapter 11, there were approximately \$191.5 million of principal claims held by Commingled Exchangers.

⁹ Based on a review of the timely filed proofs of claim, we believe trade claims to be approximately \$4.2 million (inclusive of the \$3.2 million claim asserted by LFG and discussed in footnote 11 herein).

¹⁰ Principal claims are defined by the Plan to mean the principal amount of the exchange funds received by LES from an exchanger, including accrued interest, if any, if specifically provided for in the relevant exchange agreement.

¹¹ These are current estimates only.

¹² In addition to the alleged claim for \$65 million for cash transferred from LFG to LES, LFG has asserted a claim in the amount of approximately \$3.2 million for LES operating expenses paid by LFG. The financial advisor for the LES Committee has reviewed the \$3.2 million claim for operating expenses and has determined that such claim is likely valid. As a result, the LFG claim against LES for \$3.2 million, which is defined as the “Operating I/C Claim” in the Plan, will be paid the same way other “trade” claims against LES will be paid.

¹³ When LFG filed chapter 11, its owed non-insider creditors approximately \$1.3 billion. Any recoveries paid to the LFG estate will go to LFG’s non-insider creditors.

the Trustees will be supervised by oversight committees¹⁴ and will select their own post-confirmation counsel.¹⁵

The LES Trust will be responsible for prosecuting causes of action related to the auction rate securities (“ARS”) that could be asserted by either LES or LFG. The law firm of Jenner & Block has been retained to pursue the ARS litigation and prepare the case to be filed; they have begun their analysis of causes of action related to the ARS. Any proposed settlement and/or resolution of the causes of action related to the ARS must be approved by the Bankruptcy Court.

The LFG Trust will be responsible for prosecuting causes of action against the Debtors’ directors and officers and other professionals that relate to bad acts that occurred prior to the Debtors’ chapter 11 cases that could be asserted by either LES or LFG. Any proposed settlement and/or resolution of these causes of action must be approved by the Bankruptcy Court.

As money is obtained from recoveries (the “Proceeds”)¹⁶ under any of these causes of action, it will be distributed in the following order:

- **First**, \$8 million of the Proceeds will be distributed to the LFG Trust
- **Second**, \$65 million of Proceeds will be distributed to the LES Trust
- **Third**, \$3 million of Proceeds will be distributed to the LFG Trust
- **Fourth**, 65% of the next \$159 million of Proceeds will be distributed to the LES Trust, and the remaining 35% of such Proceeds will be distributed to the LFG Trust

¹⁴ The oversight committee for the LES Trust will be made up of exchangers.

¹⁵ It is not currently contemplated that Akin Gump Strauss Hauer & Feld LLP will serve as counsel to the LES Trust (aside from providing transition services).

¹⁶ The LFG estate is receiving a portion of the Proceeds because, among other reasons, (a) it contributed causes of actions that are unique to the LFG estate including claims related to the auction rate securities; (b) the Proceeds are anticipated to include recoveries from available insurance proceeds under insurance policies that would be available to satisfy claims of both the LFG and the LES estate; and (c) it agreed to delay its recovery on account of the \$65 million transferred from LFG to LES and not seek such recovery from LES’s liquid assets (absent this agreement the LES estate would have likely incurred significant cost in connection with any effort to subordinate or recharacterize this claim asserted by LFG and defend against LFG’s claim that the transfer was a fraudulent conveyance).