

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

In re

Unique Broadband Systems Ltd., *et al.*,

Debtors in a Foreign Proceeding.¹

Chapter 15

Case No. 19-11321 (BLS)

Jointly Administered

Objection Deadline:

April 27, 2020 at 4:00 p.m. (ET)

Hearing Date:

To be determined if necessary

**FINAL REPORT AND MOTION OF THE
RECEIVER FOR ENTRY OF A FINAL DECREE ORDER**

BDO Canada Limited, solely in its capacity as court-appointed receiver (the “Receiver”), manager, and authorized foreign representative of Unique Broadband Systems Ltd. (“UBS”) and UBS-Axcera, Inc. (“UBS-Axcera,” and, with UBS, the “Debtors”), and not in its personal or corporate capacity, hereby moves (the “Motion”) for entry of a final decree order closing each of the above-captioned chapter 15 cases and, in support, respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Recognition of a foreign proceeding and other matters

¹ The Debtors and the last four digits of their U.S. Federal Employer Identification Numbers or other unique identifier are as follows: Unique Broadband Systems Ltd. (2249) (Ontario Corporation No.) and UBS-Axcera, Inc. (3865) (FEIN). The Debtors’ mailing address is 400 Spinnaker Way, Concord, ON L4K 5Y9, Canada. The Receiver and Foreign Representative is BDO Canada Limited, 20 Wellington Street East, Suite 500 Toronto, ON M5E 1C5, Canada.

under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P). Venue in this district is proper pursuant to 28 U.S.C. § 1410.

2. The Receiver, solely in its capacity as authorized foreign representative, and not in its personal or corporate capacity, consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory predicates for the relief requested herein are sections 105(a), 350 and 1517(d) of title 11 of the United States Code (the “Bankruptcy Code”), as supplemented by rules 2002 and 5009 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 5009-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

BACKGROUND AND FINAL REPORT

4. On May 28, 2019, the Superior Court of Justice (Commercial List) in Ontario, Canada (the “Canadian Court”) entered the Receivership Order appointing the Receiver as receiver and manager of all assets, undertakings and properties of the Debtors pursuant to section 101 of Ontario’s *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and section 243(1) of Canada’s *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended. The proceeding before the Canadian Court is captioned under Court File No.: CV-19-620769-00CL (the “Canadian Proceeding”).

5. On June 10, 2019, the Receiver filed petitions in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) under chapter 15 of the Bankruptcy Code for recognition of the Canadian Proceeding as a foreign main proceeding.

6. As set forth in more detail in the *Declaration of Gary Cerrato in Support of (I) Chapter 15 Petitions for Recognition of Foreign Proceeding, (II) Motion of the Receiver for Entry of Provisional and Final Relief in Aid of Foreign Proceeding, and (III) Certain Related Relief* (D.I. 2), the Receiver commenced these chapter 15 cases to protect and preserve the Debtors' assets located in the United States to allow the Receiver to conduct an orderly liquidation of the Debtors' assets.

7. The Receiver sought and obtained certain emergency, provisional relief in the United States by order entered on June 13, 2019 (D.I. 12), including enforcing sections 362 and 365 of the Bankruptcy Code on a provisional basis to protect the assets of the Debtors in the United States.

8. The Receiver then sought and obtained a final order (D.I. 18) entered on July 8, 2019, granting recognition of the Canadian Proceeding as a foreign main proceeding and the Receiver as the duly appointed foreign representative of the Debtors.

9. Thereafter, the Receiver sought the disposition of the Debtors' remaining assets in the United States. Consistent with these efforts, the Receiver, on behalf of the Debtors, entered into that certain Settlement Agreement and Release (the "Settlement") with Teodori Enterprises, LP (the "Landlord") relating to a lease agreement (the "Lease") between debtor UBS-Axcera, as tenant, and the Landlord for the lease of certain nonresidential real property located in Pennsylvania (the "Premises"). Under the terms of the Settlement, among other things, the Receiver abandoned certain personal property of UBS-Axcera located within the Premises (the "Personalty") in exchange for a release from the Landlord for any and all existing or potential claims arising out of or in any way related to the Lease, Premises and Personalty, including, but not limited to, all unpaid rent.

10. On March 27, 2020, the Receiver filed a motion (D.I. 23) seeking entry of an order approving the Settlement (the “Settlement Order”). The Receiver believes entry of the Settlement Order will conclude the disposition of the Debtors’ assets in the United States.

11. Accordingly, the purpose of the Receiver’s appearance in this Court has been completed.

Relief Requested

12. The Receiver seeks entry of a final decree order closing each of the above-captioned chapter 15 cases.

Basis for Relief

13. Section 1517(d) of the Bankruptcy Code provides that a chapter 15 case may be closed in the manner prescribed under section 350 of the Bankruptcy Code. 11 U.S.C. §1517(d). Under section 350(a) of the Bankruptcy Code, a bankruptcy court shall close a case after the estate is fully administered. 11 U.S.C. §350(a).

14. A case may be considered fully administered when all claims have been administered and there are no outstanding motions, contested matters, or adversary proceedings. *See, e.g., In re Kliegl Bros.*, 238 B.R. 531 (Bankr. E.D.N.Y. 1999).

15. Bankruptcy Rule 5009(c) establishes certain conditions under which a court may presume that a case under chapter 15 has been fully administered:

A foreign representative in a proceeding recognized under §1517 of the Code shall file a final report when the purpose of the representative’s appearance in the court is completed. The report shall describe the nature and results of the representative’s activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may

direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States Trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.

Fed. R. Bankr. P. 5009(c).

16. Local Rule 5009-2 similarly requires that, in seeking to close a chapter 15 case, a foreign representative must “describe the nature and results of the foreign representative’s activities in the Court.” The Local Rule requires closure to be sought by motion seeking a final decree order.

17. Entry of a final decree order is appropriate in these cases. There are no claims to be administered in these chapter 15 cases, and there are no outstanding motions, contested matters, or adversary proceedings. Thus, these chapter 15 cases are fully administered. Further, as described above, the purpose of the Receiver’s appearance in this Court is completed. The background above describes the nature and results of the Receiver’s activities in this Court and serves as the Receiver’s final report, thereby satisfying the requirements of Bankruptcy Rule 5009(c) and Local Rule 5009-2.

Notice

18. The Receiver will serve a copy of this Motion on all parties required to be served pursuant to Bankruptcy Rule 5009(c) and Local Rule 5009-2(b).

[Signature follows]

WHEREFORE, the Receiver respectfully requests that the Court enter a final decree order, substantially in the form attached hereto as **Exhibit A**, closing these chapter 15 cases.

Dated: March 27, 2020
Wilmington, Delaware

Respectfully Submitted,

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

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Counsel for the Receiver as Foreign Representative

EXHIBIT A

Proposed Order

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

In re Unique Broadband Systems Ltd., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 19-11321 (BLS)
In re UBS-Axcera, Inc., Debtor in a Foreign Proceeding. ¹	Chapter 15 Case No. 19-11322 (BLS)

FINAL DECREE ORDER CLOSING CHAPTER 15 CASES

Upon the Motion (the “Motion”) of BDO Canada Limited, solely in its capacity as court-appointed receiver (the “Receiver”), manager, and authorized foreign representative of Unique Broadband Systems Ltd. (“UBS”) and UBS-Axcera, Inc. (“UBS-Axcera,” and, with UBS, the “Debtors”), and not in its personal or corporate capacity, for entry of a final decree order closing the above-captioned chapter 15 cases; and notice of the Motion having been provided in accordance with Local Rule 5009-2; and after due deliberation thereon, and good cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. The above-captioned chapter 15 cases, identified further as follows, are

hereby CLOSED:

¹ The Debtors and the last four digits of their U.S. Federal Employer Identification Numbers or other unique identifier are as follows: Unique Broadband Systems Ltd. (2249) (Ontario Corporation No.) and UBS-Axcera, Inc. (3865) (FEIN). The Debtors’ mailing address is 400 Spinnaker Way, Concord, ON L4K 5Y9, Canada. The Receiver and Foreign Representative is BDO Canada Limited, 20 Wellington Street East, Suite 500 Toronto, ON M5E 1C5, Canada.

<u>Case Number</u>	<u>Case Name</u>
19-11321 (BLS)	Unique Broadband Systems Ltd.
19-11322 (BLS)	UBS-Axcera, Inc.

3. The Clerk of the court shall enter this Order on the docket of each of the foregoing cases and such case and docket shall thereafter be marked as closed.

4. There will be no distributions on account of any claims in these chapter 15 cases, and any proofs of claim filed in these chapter 15 cases will be of no force or effect.

5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: Wilmington, Delaware
_____, 2020

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

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

In re

Unique Broadband Systems Ltd., *et al.*,

Debtors in a Foreign Proceeding.¹

Chapter 15

Case No. 19-11321 (BLS)

Jointly Administered

Hearing Date:

To be determined if necessary

Objection Deadline:

April 27, 2020 at 4:00 p.m. (ET)

**NOTICE OF FINAL REPORT AND MOTION OF THE
RECEIVER FOR ENTRY OF A FINAL DECREE ORDER**

PLEASE TAKE NOTICE that, today BDO Canada Limited, solely in its capacity as court-appointed receiver (the “Receiver”), manager, and authorized foreign representative of Unique Broadband Systems Ltd. (“UBS”) and UBS-Axcera, Inc. (“UBS-Axcera,” and, with UBS, the “Debtors”), filed the **Motion of the Receiver for Entry of a Final Decree Order** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to approval of the Motion must (a) be in writing and served on or before **April 27, 2020, at 4:00 p.m. (ET)** (the “Objection Deadline”); (b) be filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801; and (c) be served as to be received on or before the Objection Deadline by the undersigned attorneys for the Receivers.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD **ON A DATE TO BE DETERMINED ONLY IF NECESSARY** BEFORE THE HONORABLE BRENDAN L. SHANNON, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6TH FLOOR, COURTROOM #1, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

¹ The Debtors and the last four digits of their U.S. Federal Employer Identification Numbers or other unique identifier are as follows: Unique Broadband Systems Ltd. (2249) (Ontario Corporation No.) and UBS-Axcera, Inc. (3865) (FEIN). The Debtors’ mailing address is 400 Spinnaker Way, Concord, ON L4K 5Y9, Canada. The Receiver and Foreign Representative is BDO Canada Limited, 20 Wellington Street East, Suite 500 Toronto, ON M5E 1C5, Canada.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 27, 2020
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

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