

Strategic Materials Holding Corp.
EIN 20-0924439
Attachment to Form 8937
Date of Organizational Action: January 23, 2024

The information contained herein does not constitute tax advice and does not purport to be complete or to describe the consequences that may apply to particular categories of securityholders. Each securityholder is advised to consult such securityholder's tax advisor regarding the tax treatment of the reorganization. Further discussion of the tax consequences of the reorganization can be found in the Disclosure Statement for the Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization (together with all schedules and exhibits thereto, and as modified, amended, and supplemented, the "Disclosure Statement"), accessible here: <https://cases.ra.kroll.com/SMISolicitation/>. Terms used but not defined herein shall have the meaning set forth in the Disclosure Statement or the Plan (as defined herein).

PROTECTIVE FILING. ISSUER IS UNCERTAIN OF THE EXTENT TO WHICH THE REORGANIZATION "AFFECTS" HOLDERS' BASIS IN THE EQUITY AND DEBT OF SMI TOPCO HOLDINGS, LLC ("SMI TOPCO") AND ITS SUBSIDIARIES, AS FURTHER DISCUSSED BELOW.

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First Lien Credit Facility Claims
1.5 Lien Credit Facility Claims
Second Lien Credit Facility Claims
Allowed SMI Topco Interests

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On December 4, 2023, Strategic Materials Inc. and 15 affiliated debtors (collectively, the "Debtors") each filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas Houston Division (the "Bankruptcy Court"). On December 29, 2023, the Debtors filed the Debtors' Amended Joint Prepackaged Chapter 11 Plan of Reorganization (together with the Plan Supplements, all schedules, and exhibits thereto, as modified, amended, or supplemented, the "Plan"), and on January 10, 2024, the Bankruptcy Court entered an order approving and confirming the Plan. On January 23, 2024 (the "Effective Date"), the Debtors satisfied the conditions precedent to the Effective Date and the Plan became effective and was consummated.

On the Effective Date, to facilitate the Debtors' emergence from bankruptcy, the Reorganized SMI Topco Interests were issued pursuant to the Plan and the Restructuring Transactions Exhibit, whereby the Reorganized SMI Topco Interests were contributed by SMI Topco indirectly into Strategic Materials Holding Corp. ("SMHC") for distribution pursuant to the Plan in exchange for the satisfaction of certain outstanding debt securities listed on Line 9. Reorganized SMI Topco indirectly owns 100% of the stock of SMHC and is the common parent of the U.S. federal consolidated tax group of which SMHC is a member. The U.S. federal income tax treatment of certain U.S. holders of Debt Claims and Allowed SMI Topco Interests is discussed in further detail below in Box 15.

Treatment of First Lien Credit Facility Claims

Pursuant to the Plan, on the Effective Date, in exchange for the full and final satisfaction, settlement, release, and discharge of the First Lien Credit Facility Claims and any Adequate Protection Claims in respect thereof, each Holder of an Allowed First Lien Credit Facility Claim or its designated Affiliate was entitled to receive its Pro Rata share of the Second Out Exit Term Loans, and 96.5% of the Reorganized SMI Topco Interests (subject to dilution on account of the MIP).

Treatment of 1.5 Lien Credit Facility Claims

Pursuant to the Plan, on the Effective Date, in exchange for the full and final satisfaction, settlement, release, and discharge of the 1.5 Lien Credit Facility Claims and any Adequate Protection Claims in respect thereof, each Holder of an Allowed 1.5 Lien Credit Facility Claim or its designated Affiliate was entitled to receive its Pro Rata share of 2.5% of the Reorganized SMI Topco Interests (subject to dilution on account of the MIP).

Treatment of Second Lien Credit Facility Claims

Pursuant to the Plan, on the Effective Date, in exchange for the full and final satisfaction, settlement, release, and discharge of the Second Lien Credit Facility Claims and any Adequate Protection Claims in respect thereof, each Holder of an Allowed Second Lien Credit Facility Claim or its designated Affiliate was entitled to receive its Pro Rata share of 1.0% of the Reorganized SMI Topco Interests (subject to dilution on account of the MIP).

Treatment of Allowed SMI Topco Interests

Pursuant to the Plan, on the Effective Date, Holders of Allowed SMI Topco Interests, on account of their Class 10 Claims, exchanged their Allowed SMI Topco Interests for an allocation of the Reorganized SMI Topco Interests and Second Out Exit Term Loans that SMI Topco would have otherwise received on account of its Allowed First Lien Credit Facility Claims, Allowed 1.5 Lien Credit Facility Claims, and Allowed Second Lien Credit Facility Claims pursuant to the treatment set forth in Classes 3, 4, and 5.

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Pursuant to the Plan, a U.S. holder of (a) an Allowed First Lien Credit Facility Claim will be treated as exchanging such Claim on the Effective Date for its pro rata share of (i) the Second Out Exit Term Loan and (ii) the Reorganized SMI Topco Interests (such exchange, the “First Lien Claims Exchange”), (b) an Allowed 1.5 Lien Credit Facility Claim will be treated as exchanging such Claim on the Effective Date for its pro rata share of the Reorganized SMI Topco Interests (such exchange, the “1.5 Lien Claims Exchange”), and (c) an Allowed Second Lien Credit Facility Claim will be treated as exchanging such Claim on the Effective Date for its pro rata share of the Reorganized SMI Topco Interests (such exchange, the “Second Lien Claims Exchange” and, together with the First Lien Claims Exchange, the “Debt Exchanges”).

The U.S. federal income tax treatment of the First Lien Claims Exchange is uncertain. The discussion below describes the U.S. federal income tax consequences associated with the potential characterization of the First Lien Claims Exchange as either a taxable exchange or a recapitalization for U.S. federal income tax purposes. The valuations related to the issue price of the new debt and fair market value of the Reorganized SMI Topco Interests are pending.

a. Taxable Exchange

If each of the Debt Exchanges is treated as a taxable exchange, each U.S. holder of a Debt Claim should recognize gain or loss equal to the difference between (x) the amount realized on a Debt Exchange and (y) such U.S. holder's adjusted basis in such Debt Claim with respect to such Debt Exchange. The amount realized will include (1) in the case of an Allowed First Lien Credit Facility Claim, the sum of the issue price of any Second Out Exit Term Loans and the fair market value of the Reorganized SMI Topco Interests received in the First Lien Claims Exchange, (2) in the case of an Allowed 1.5 Lien Credit Facility Claim, the fair market value of the Reorganized SMI Topco Interests received in the 1.5 Lien Claims Exchange and (3) in the case of an Allowed Second Lien Credit Facility Claim, the fair market value of the Reorganized SMI Topco Interests received in the Second Lien Claims Exchange. Whether such gain or loss is capital or ordinary in character will be determined by a number of factors, including the tax status of the U.S. holder, the nature of the Debt Claim in such U.S. holder's hands and whether and to what extent the U.S. holder previously has claimed a bad debt deduction with respect to such Claim. A U.S. holder's tax basis in the Second Out Exit Term Loan received in a First Lien Claims Exchange treated as a taxable exchange generally should equal the issue price of the Second Out Exit Term Loan. A U.S. holder's initial tax basis in the Reorganized SMI Topco Interests received in a Debt Exchange treated as a taxable exchange generally will be equal to the fair market value of such Reorganized SMI Topco Interests.

b. Recapitalization

Whether and to the extent that all or a portion of the First Lien Claims Exchange qualifies as a recapitalization depends on whether any of the loans under the First Lien Credit Facility and Second Out Exit Term Loans qualify as "securities" for U.S. federal income tax purposes. Neither the Tax Code nor the Treasury Regulations define the term "security" for this purpose, and the term has not been clearly defined by judicial decisions. Rather, whether a debt instrument is a security is based on all of the facts and circumstances, including the degree of participation and continuing interest in the affairs of the business and the extent of the proprietary interest of the debt instrument in the corporate assets. Most authorities have held that the term to maturity of the debt instrument is one of the most significant factors in determining whether a debt instrument is a security. In this regard, debt instruments with a term of ten years or more generally qualify as securities, debt instruments with a term between five and ten years may qualify as securities, and debt instruments with a term of less than five years generally do not qualify as securities.

It is unclear whether all or a portion of the loans under the First Lien Credit Facility will be treated as securities for U.S. federal income tax purposes. The term of the initial term loans under the First Lien Credit Facility was seven years. The term of the revolver loans under the First Lien Credit Facility was originally five years but was extended to have an overall term of approximately 6.8 years. The incremental term loans under the First Lien Credit Facility were issued after the initial term loans and have the same maturity date as the initial term loans. Whether the Second Out Exit Term Loans will qualify as securities for U.S. federal income tax purposes is uncertain, as the term of the Second Out Exit Term Loans is exactly five years. To the extent any of the loans under the First Lien Credit Facility and the Second Out Exit Term Loans constitute securities for U.S. federal income tax purposes, any such

loans under the First Lien Credit Facility exchanged for such Second Out Exit Term Loans in the First Lien Claims Exchange may be treated as a recapitalization.

If the exchange of any loan under the First Lien Credit Facility in a First Lien Claims Exchange is treated as a recapitalization, a U.S. holder of such loan under the First Lien Credit Facility in such First Lien Claims Exchange should not recognize gain or loss with respect to such First Lien Claims Exchange except a U.S. holder may recognize gain as a result of the Reorganized SMI Topco Interests being treated as “boot” in such recapitalization. In this case, a U.S. holder should recognize gain, if any, but not loss, in respect of any loans under the First Lien Claims Facility in a First Lien Claims Exchange treated as a recapitalization, but not in excess of the fair market value of the Reorganized SMI Topco Interests received in exchange therefor. Any gain attributable to accrued but unrecognized market discount would be subject to tax as ordinary income. A U.S. holder’s tax basis in the Second Out Exit Term Loan received in a First Lien Claims Exchange treated as a recapitalization should equal its tax basis in the Allowed First Lien Credit Facility Claim exchanged therefor, decreased by the amount of “boot” received and increased by the amount of gain recognized. A U.S. holder’s initial tax basis in the Reorganized SMI Topco Interests will be equal to the fair market value of such Reorganized SMI Topco Interests and its holding period would begin the day after the First Liens Claims Exchange. The holding period for the Second Out Exit Term Loans received in the First Lien Claims Exchange treated as a recapitalization should include the holding period for loans under the First Lien Credit Facility exchanged therefor (except to the extent any of the Second Out Exit Term Loan is allocable to accrued but unpaid interest, in which case its holding period would begin on the day following the Effective Date).

As described in Article III.B of the Plan, on the Effective Date, Holders of Allowed SMI Topco Interests, on account of their Class 10 Claims, exchanged their Allowed SMI Topco Interests for an allocation of the Reorganized SMI Topco Interests and Second Out Exit Term Loans that SMI Topco would have otherwise received on account of its Allowed First Lien Credit Facility Claims, Allowed 1.5 Lien Credit Facility Claims, and Allowed Second Lien Credit Facility Claims pursuant to the treatment set forth in Classes 3, 4, and 5.

For U.S. federal income and applicable state and local income tax purposes, it is intended that (a) the distribution of Reorganized SMI Topco Interests and Second Out Exit Term Loans to Holders of Allowed SMI Topco Interests on account of their Allowed SMI Topco Interests be treated as a recapitalization within the meaning of IRC §368(a)(1)(E) with the Second Out Exit Term Loan constituting “boot” described in IRC §356 and (b) the Plan constitute a “plan of reorganization” within the meaning of Treasury Regulations §1.368-2(g) and §1.368-3(a). A U.S. holder’s tax basis in the Reorganized SMI Topco Interests received in connection with such recapitalization should equal its tax basis in the Allowed SMI Topco Interests exchanged therefor, decreased by the amount of “boot” received and increased by the amount of gain recognized. A U.S. holder’s initial tax basis in the Second Out Exit Term Loan will be equal to the issue price of such Second Out Exit Term Loan.

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See response to Box 15, above. Additionally, the valuations related to issue price of the new debt and fair market value of the reorganized equity interests are pending. This filing will be updated within 45 days of receipt of the final debt and equity valuations.

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U.S. holders should consult their own tax advisors regarding the tax consequences to them of the Debt Exchanges, including whether the First Lien Claims Exchange qualifies as (1) a taxable transaction under Internal Revenue Code of 1986, as amended (“IRC”) §1001, or (2) a recapitalization for U.S. federal income tax purposes under IRC §368(a)(1)(E) and the associated tax consequences to the related thereto.

As discussed in the response to Box 15 above, for U.S. federal income and applicable state and local income tax purposes, it is intended that (a) the distribution of Reorganized SMI Topco Interests and Second Out Exit Term Loans to Holders of Allowed SMI Topco Interests on account of their Allowed SMI Topco Interests be treated as a recapitalization within the meaning of IRC §368(a)(1)(E) with the Second Out Exit Term Loan constituting “boot” described in IRC §356 and (b) the Plan constitute a “plan of reorganization” within the meaning of Treasury Regulations §1.368-2(g) and §1.368-3(a).

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See response to Box 15, above.

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The reorganization was consummated on January 23, 2024. Consequently, the reportable taxable year of the holders of equity and debt for reporting the tax effect of the reorganization is the taxable year that includes the January 23, 2024 reorganization date.