

Tops MBO Corporation
\$160 million Exit Term Loan Facility
Disclosure Pursuant to U.S. Treasury Regulation Section 1.1273-2(f)(9)

On February 21, 2018, Tops Holding II Corporation (“Tops” or “Issuer”), a direct, wholly owned subsidiary of Tops MBO Corporation (the “Company”), and certain of its U.S. subsidiaries and affiliates (the “Debtors”) filed voluntary petitions for relief (the “Bankruptcy Filing”) under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). On November 8, 2018 (the “Confirmation Date”), the Bankruptcy Court entered an order approving and confirming the *Second Amended Joint Chapter 11 Plan of Reorganization of Tops Holding II Corporation and its Affiliated Debtors (with Technical Modifications)*, filed with the Bankruptcy Court on November 6, 2018 (the “Plan”). On November 19, 2018 (the “Effective Date”), Tops satisfied the conditions of the Plan and the Plan became effective. Unless otherwise defined herein, capitalized terms are defined as used in the Plan or in the *Disclosure Statement for the Second Amended Joint Chapter 11 Plan of Reorganization of Tops Holding II Corporation and its Affiliated Debtors* (the “Disclosure Statement”), filed with the Bankruptcy Court on September 28, 2018.

Pursuant to the Plan, reorganized Tops Markets, LLC, as borrower, entered into a senior secured term loan exit credit facility (the “Exit Term Loan Facility,” and notes issued under the Exit Term Loan Facility the “Exit Term Loan Notes”) in an aggregate principal amount not to exceed \$160,000,000. The interest rate applicable to the Exit Term Loan Facility is LIBOR (subject to a 1.00% floor) plus 8.50% per annum, and is payable at the end of the applicable LIBOR interest period, but not less frequently than every three months. The Exit Term Loan Facility has a five-year term that matures on November 19, 2023 and amortizes at a stated rate of 1.00% annually.

As part of the Plan, on the Effective Date, Tops borrowed \$160 million on the new Exit Term Loan Facility and used the proceeds, in part, to: (i) fully repay approximately \$110 million of the DIP Term Loan Facility that was drawn during the course of the bankruptcy case, of which the lenders on the DIP Term Loan Facility are substantially similar to the lenders of the Exit Term Loan Facility; (ii) pay the approximately \$15 million remaining outstanding balance of the DIP ABL Facility in cash; (iii) fund \$4.8 million of closing fees to the lending group (the “Closing Fee”); and (iv) pay approximately \$600 thousand in other related expenses. The remaining approximately \$29.6 million cash proceeds from the Exit Term Loan Facility represents cash proceeds to Tops.

With respect to the Closing Fee, Tops paid an up-front fee of \$4.8 million (*i.e.*, 3.0% of the aggregate principal amount of commitments in respect of the Exit Term Loan Facility) directly to the lenders of the Exit Term Loan Facility, which was deducted from the initial proceeds received under the Exit Term Loan Facility. The Closing Fee was paid ratably to all of the participating lenders, based on their proportion of the Exit Term Loan Facility commitment.

Because the lenders on the Exit Term Loan Facility were similar to those for the DIP Term Loan Facility, the repayment of the DIP Term Loan Facility with proceeds from the Exit

Term Loan Facility may be characterized as an exchange of publicly traded debt instruments for property for U.S. federal income tax purposes under Treas. Reg. § 1.1273-2(b).¹ However, because a substantial portion of the proceeds from the Exit Term Loan Facility were received in cash, the determination of the issue price of the entire issuance of the Exit Term Loan Facility for U.S. federal income tax purposes would be based on the amount of money received under Treas. Reg. § 1.1273-2(a)(1).

Accordingly, taking into account the 3.00% up-front fee (\$4.8 million) withheld by the lending group, the proceeds received on the entire issuance of the Exit Term Loan Facility would be \$155.2 million, resulting in an issue price of \$155.2 million (*i.e.*, 97.0% of the stated amount of debt outstanding) and original issue discount (“OID”) of \$4.8 million, which will be amortized over the term of the Exit Term Loan Facility consistent with the approach outlined in Treas. Reg. § 1.1272-1.²

For more information related to the issuance of the Exit Term Loan Facility, please see the Plan or the Disclosure Statement, which can be found at the following address:
<https://dm.epiq11.com/#/case/TOPS/dockets>

¹ Pursuant to Treas. Reg. § 1.1273-2(f)(9), the Company has determined that Exit Term Loan Facility was “traded on an established market” within the meaning of Treas. Reg. § 1.1273-2(f) and would be considered publicly traded debt.

² The Closing Fee of \$4.8 million was determined not to meet the *de minimis* OID threshold of \$2 million. Treasury Regulation § 1.1273-1(d) provides that if the amount of OID with respect to a debt instrument is less than the “*de minimis*” amount, the amount of OID is treated as zero, and all stated interest (including stated interest that would otherwise be characterized as OID) is treated as qualified stated interest. The *de minimis* amount is an amount equal to 0.0025 multiplied by the product of the stated redemption price at maturity and the number of complete years to maturity from the issue date.