

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
In re:)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹)	Case No. 19-12239 (CSS)
Debtor.)	

**DECLARATION OF FRANK WATERHOUSE
IN SUPPORT OF FIRST DAY MOTIONS**

I, Frank Waterhouse, hereby declare that the following is true and correct to the best of my knowledge, information, and belief:

1. I hold the job title of Chief Financial Officer of the above-captioned debtor and debtor in possession (the “Debtor”). I am also a Partner of the Debtor and Treasurer of the Debtor’s general partner, Strand Advisors, Inc.

2. I initially joined the Debtor as a corporate accountant in October 2006. Since then, I have held various accounting and finance positions with the Debtor and assumed the job title of Chief Financial Officer in December 2011. Prior to joining the Debtor, I was employed with PricewaterhouseCoopers in its Technology Assurance practice. I have had a diverse career spanning cancer research with M.D. Anderson Cancer Center to financial consulting with Salomon Smith Barney. I received an M.P.A. from the University of Texas at Austin, an M.B.A. from the University of Houston and a B.S. in Microbiology and a B.S. in

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Molecular Biology from the University of Texas at Austin. I am a licensed Certified Public Accountant

3. I submit this declaration (the “Declaration”) in support of the Debtor’s petition and “first day” motions, as described further below (collectively, the “First Day Motions”). Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge, my review of the Debtor’s books and records, relevant documents, and other information prepared or collected by the Debtor’s representatives, or my opinion based on my experience with the Debtor’s operations and financial condition. In making my statements based on my review of the foregoing, I have relied upon the Debtor’s representatives accurately recording, preparing, or collecting such documentation and other information. I am authorized to submit this Declaration on behalf of the Debtor.

4. Part I of this Declaration describes the Debtor’s business and the developments that led to the filing for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Part II discloses certain ordinary course transactions that the Debtor intends to continue postpetition. Part III sets forth the relevant facts in support of the First Day Motions filed by the Debtor concurrently herewith in support of its chapter 11 case. Capitalized terms not defined herein shall have the same meanings as set forth in each relevant First Day Motion.

PART I

BACKGROUND

A. Description and History of the Debtor’s Business

5. Highland Capital Management, L.P. (together with its affiliates, “Highland”) is a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm has evolved over 25 years, building on its credit expertise and value-based approach to expand into other asset classes.

6. Today, Highland operates a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, Highland’s investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, Highland provides shared services to its affiliated registered investment advisors.

7. Highland is headquartered in Dallas, Texas and maintains offices in Buenos Aires, Rio de Janeiro, Singapore, and Seoul.

8. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Highland business. The Debtor employs approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. The Debtor also leases office space, contracts with third party vendors, and maintains banking and brokerage relationships. Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for approximately \$2.5 billion of assets under management. Separately, the Debtor provides shared services for approximately \$7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. None of these affiliates are filing for Chapter 11 protection.

9. The Debtor primarily generates revenue from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity as and when needed, the Debtor intends to sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC (“Jefferies”), as described in additional detail below. The Debtor may also supplement its liquidity by selling assets at non-Debtor subsidiaries and distributing those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor’s stand-alone annual revenue totaled approximately \$50 million. Through August 31, 2019, the Debtor’s stand-alone revenue for the year to date totaled approximately \$24 million.

10. The Debtor’s organizational chart is attached hereto as **Exhibit A**. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity. As noted above, the Debtor is a Delaware limited partnership.

B. The Debtor’s Prepetition Capital Structure

i. Jefferies Margin Borrowings (Secured)

11. The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the “Brokerage Agreement”). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with Jefferies (the “Prime Account”).

12. A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker’s street name.

As of October 11, 2019, the Debtor held approximately \$87 million in liquid and illiquid equity and debt securities (the “Securities”) in the Prime Account and had borrowed approximately \$30 million on margin from Jefferies secured by the Securities. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof. As of October 11, 2019, the Debtor had approximately \$9.6 million of excess margin in the Prime Account. The Debtor does not intend to borrow any additional amounts on margin, absent the approval of this Court. As reflected in the Budget, the Debtor intends to liquidate certain of the Securities for cash and to use such cash in the Debtor’s operations and to satisfy ongoing chapter 11 administrative expenses. The Debtor may also supplement its liquidity by selling assets at non-Debtor subsidiaries and distributing those proceeds to the Debtor in the ordinary course of business.

ii. The Frontier Bank Loan (Secured)

13. The Debtor and Frontier State Bank (“Frontier Bank”) are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the “Original Frontier Loan Agreement”), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of \$9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain *First Amended and Restated Loan Agreement* (the “Amended Frontier Loan Agreement”), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional \$1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the “Frontier Loan”). The Frontier Loan matures on August 17, 2021.

14. Pursuant to that certain *Security and Pledge Agreement* dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor's obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the "Frontier Prepetition Collateral"). For the avoidance of doubt, the Debtor does not seek authority to liquidate any portion of the Frontier Prepetition Collateral and is not requesting the use of the Frontier Prepetition Collateral.

15. As of the Petition Date, the aggregate principal balance of the Frontier Loan was approximately \$5.2 million.

iii. The CLO Purchase Agreement (Unsecured)

16. On October 7, 2016, the Debtor and Acis Capital Management L.P. ("Acis") entered into that certain *Agreement for Purchase and Sale of CLO Participation Interests* (the "CLO Purchase Agreement" and the promissory note therein, the "CLO Note"). Previously, Acis managed certain collateralized loan obligations ("CLOs") identified in the CLO Purchase Agreement and was entitled to fee compensation in connection therewith (the "Servicer Fees").² The Debtor's obligations under the CLO Purchase Agreement and CLO Note are unsecured.

17. Pursuant to the CLO Purchase Agreement, Acis sold a portion of its future Servicer Fees to the Debtor in exchange for cash flows from the Debtor, as evidenced in the CLO Note (such Servicer Fees to be paid to the Debtor, the "Debtor Stabilization Fees" and such cash flows from the Debtor, the "Stabilization Payment").

² Acis was subsequently the subject of an involuntary bankruptcy filing in 2018.

18. Pursuant to that certain *Agreement for Assignment and Transfer of Promissory Note* dated as of November 3, 2017 (the “CLO Assignment Agreement”), Acis assigned all of its right, title, and interests in the CLO Note, including the right to any and all Stabilization Payments not yet paid to Acis, to Highland CLO Management, Ltd. (“HCLOM”). The Debtor does not have any beneficial ownership interest in HCLOM.

19. Pursuant to that certain *Amended and Restated Forbearance Agreement* dated as of May 31, 2019, by and between the Debtor and HCLOM, HCLOM agreed not to demand payment of the Stabilization Payments under the CLO Note for a period of one year (*i.e.*, until June 1, 2020).

20. As of the Petition Date, the aggregate principal balance of the CLO Note was approximately \$9.5 million.

iv. Other Unsecured Obligations

21. The Debtor has various substantial litigation claims asserted against it, including a recent arbitration award in the purported amount of approximately \$189 million.

22. In addition, the Debtor has ordinary course trade debt totaling less than \$10 million, accrued and unaccrued employee bonus obligations totaling approximately \$30 million, and contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that could total in the tens of millions of dollars.

C. Events Leading to the Debtor’s Bankruptcy Filing and Commencement of the Chapter 11 Case

26. The Debtor’s filing was precipitated by an arbitration award (the “Award”) initially issued against the Debtor in March 2019, as subsequently modified and finalized, by a panel of the American Arbitration Association, in favor of a Committee of Redeemers in the Highland Crusader Fund (the “Redeemer Committee”).

27. The Debtor was formerly the investment manager for the Highland Crusader Fund (the “Crusader Fund”) that was formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Fund investors, as the Crusader Fund’s assets lost significant value.

28. On October 15, 2008, the Debtor placed the Crusader Fund in wind-down, thereby compulsorily redeeming the Crusader Fund’s limited partnership interests. The Debtor also declared that it would liquidate the Crusader Fund’s remaining assets and distribute the proceeds to investors.

29. However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a *Joint Plan of Distribution of the Crusader Fund* (the “Crusader Plan”), and the *Scheme of Arrangement* between Highland Crusader Fund and its Scheme Creditors (the “Crusader Scheme”), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Fund’s investors to oversee the Debtor’s management of the Crusader Fund.

30. Between October 2011 and January 2013, in accordance with the Crusader Plan and the Crusader Scheme, the Debtor distributed in excess of \$1.2 billion to the Crusader Fund investors. The Debtor distributed a further \$315.3 million through June 2016.

31. However, disputes subsequently arose between the Redeemer Committee and the Debtor. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor (the "Arbitration"), and (c) commenced litigation in Delaware Chancery Court, *inter alia*, to obtain a status quo order in aid of the arbitration, which order was subsequently entered.

32. In September 2018, the Debtor and the Redeemer Committee participated in a multi-day evidentiary hearing. In March 2019, following post-trial briefing, the arbitration panel issued its Award, as subsequently modified and finalized, finding in favor of the Redeemer Committee on a variety of claims and requiring the Debtor to pay a gross amount of \$189 million, which later would be partially netted against certain assets and deferred cash to be sent back to Debtor. The Redeemer Committee set a hearing in the Delaware Chancery Court for October 8, 2019, in order to obtain entry of a judgment with respect to the Award. The hearing was subsequently continued to October 16, 2019. The Debtor has sought to vacate certain aspects of the Award.

33. The Debtor believes that it has substantial liquid and illiquid assets, which include interests in a large number of subsidiaries and contractual rights to receive management fees and other forms of compensation from affiliated and unaffiliated entities. Although the Debtor believes that the aggregate value of its assets exceeds the amount of its liabilities, the Debtor filed this chapter 11 case because it does not have sufficient liquidity to immediately

satisfy the Award or post a supersedeas bond necessary to pursue an appeal. The Debtor intends to utilize the breathing spell provided by the automatic stay to consider all of its restructuring options with the goal of ultimately proposing a chapter 11 plan that will maximize the value of the estate's assets for the benefit of all constituents. To assist and coordinate the restructuring process, the Debtor retained Bradley D. Sharp as Chief Restructuring Officer of the Debtor (the "CRO") on October 7, 2019.

PART II

ORDINARY COURSE ACTIVITIES

34. During the pendency of the chapter 11 case, the Debtor intends to continue operating its business in the ordinary course. Part of that business includes the purchase and sale of securities held through the Prime Account. In order to raise cash for its ordinary course operations and other projected chapter 11 administrative expenses, the Debtor intends to liquidate certain securities held in the Prime Account on a postpetition basis in the ordinary course. Additionally, Debtor is the majority owner and investment manager of a non-Debtor affiliate called Highland Select Equity Fund, L.P. (the "Select Fund").³ Ordinary course operations of Select Fund include the purchase and sale of securities. With respect to any trades in either the Prime Account or the Select Equity Fund, the Debtor will follow the following protocol: (i) all trades will be with unaffiliated third parties; (ii) all securities will be traded through either a public or over-the-counter exchange; and (iii) all trades will be fully disclosed to

³ The Select Fund is a Delaware limited partnership whose limited partnership interests are majority-owned by the Debtor. The balance of such interests are held directly or indirectly by affiliates of the Debtor, including James Dondero. The Select Fund is managed by its general partner, Highland Select Equity Fund GP, L.P., a Delaware limited partnership (the "Select Fund GP"). The Select Fund GP is directly and indirectly wholly-owned by the Debtor. The Debtor, through the Select Fund GP, can cause the Select Fund to buy and sell assets under its Investment Management Agreement.

the CRO.

35. Further, in the ordinary course of business, the Debtor may be the named counterparty with various broker dealers through which the Debtor trades securities on behalf of its clients. Any transactions that the Debtor executes on behalf of its clients are settled through non-Debtor client accounts pursuant to a standardized internal allocation system. As such, the Debtor has no property interest in any such assets, nor is the Debtor likely to have any liability if any trade fails.⁴ The Debtor simply as a matter of convenience interacts in its own name with the various broker dealers on behalf of its clients. Certain dealers have suggested that the Debtor should no longer be the named counterparty now that the Debtor is in bankruptcy and, instead, that a non-Debtor entity act as the “street name” on the trades. The Debtor is considering this request and intends to comply to the extent necessary.

36. Although the Debtor believes that it has the authority to conduct its business going forward in the ordinary course, the Debtor will file a precautionary motion with the Court, out of an abundance of caution, as soon as practicable after the Petition Date seeking approval to continue conducting its business in the ordinary course pursuant to section 363(c)(1) and, to the extent necessary, section 363(b) of the Bankruptcy Code (the “Ordinary Course Motion”).

37. In addition, and as will be set forth more fully in the Ordinary Course Motion, the Debtor also intends to seek authority to continue the operation of its three primary business lines: (i) proprietary trading; (ii) investment management; and (iii) the provision of

⁴ Under the Debtor’s internal policies and procedures, liability for payment on unsettled trades rests solely with the managed funds on whose behalf the trade was executed.

certain middle and back office services to other registered investment advisors (collectively, the “Ordinary Course Services”). Generally speaking, the Ordinary Course Services are as follows:

a. **Proprietary Trading.** The Debtor buys and sells securities for its own account through the Prime Account and the Select Fund and has invested, in its own name, as a limited partner in two unaffiliated private equity style funds (the “PE Entities”). The Debtor has certain obligations to fund capital calls made by the PE Entities, which it intends to continue following the Petition Date.

b. **Investment Management.** The Debtor provides investment management and advisory services to its clients, which include hedge funds, private equity style funds, separately managed accounts, and collateralized loan obligations. As part of these services, the Debtor, in most cases, has the authority to cause its clients to buy or sell assets if the Debtor believes such purchases or sales would be advantageous. With certain exceptions, the clients pay the Debtor a fee for providing these services, which generally consists of a management fee based on the total amount of assets managed and, for certain funds, an incentive fee based on the returns generated for the client.

c. **Shared Services.** The Debtor provides certain middle and back office support to other registered investment advisors pursuant to shared services agreements. The Debtor receives a fee for providing these shared services.

38. The fees and investment returns generated from the foregoing three business lines are the Debtor’s primary source of income and are necessary for the Debtor’s successful reorganization. Although the Debtor believes that it has the authority to continue operating its business in the ordinary course without Court approval, the Debtor intends to file

the Ordinary Course Motion out of an abundance of caution in order to provide clarity to its customers – as well as its creditors – that the Debtor can continue operating as a going concern and generating positive returns. If the Debtor is not able to continue providing such services or is required to seek prior approval from this Court to buy or sell assets in every instance, the Debtor’s ability to generate positive returns for its clients and creditors in this fast moving marketplace will be severely compromised.

PART III

FIRST DAY MOTIONS

39. In order to enable the Debtor to minimize the adverse effects of the commencement of the chapter 11 case, the Debtor has requested various types of relief in the First Day Motions filed simultaneously with this Declaration. A summary of the relief sought in each First Day Motion is set forth below.

40. I have reviewed each of these First Day Motions (including the exhibits and schedules thereto). The facts stated therein are true and correct to the best of my knowledge, information, and belief. I believe that the type of relief sought in each of the First Day Motions: (a) is necessary to enable the Debtor to operate in chapter 11 with minimal disruption; and (b) is essential to maximizing the value of the Debtor’s assets for the benefit of its estate and creditors.

A. Motion of Debtors for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (the “Cash Collateral Motion”)

41. Through the Cash Collateral Motion, the Debtor seeks the entry of interim and final orders: (a) authorizing the Debtor to use cash collateral, (b) providing adequate

protection to the Debtor's prepetition broker and margin creditor, Jefferies LLC

("Jefferies"), (c) authorizing the liquidation of securities by the Debtor, and to cause its non-Debtor affiliates to do the same, in the ordinary course of business, and (d) modifying the automatic stay.

42. The Debtor has a prime brokerage account with Jefferies (*i.e.*, the Prime Account) that contains approximately \$87 million of the Debtor's liquid and illiquid securities. Through the Prime Account, the Debtor has borrowed approximately \$30 million on margin from Jefferies. Such margin balance is secured by the Debtor's securities in the Prime Account and any proceeds thereof. The Debtor submits that the collateral pledged to secure the margin debt to Jefferies far exceeds the amount due. Nonetheless, the Debtor anticipates that Jefferies may assert an interest in any cash in the Prime Account. Although the Cash Collateral Motion is filed on a non-consensual basis, the Debtor will endeavor to negotiate the terms of a consensual cash collateral order with Jefferies in advance of the interim hearing on the Cash Collateral Motion.

43. The Debtor has an urgent and immediate need for the use of cash, including the Cash Collateral. The Debtor has not obtained postpetition financing and, without the use of Cash Collateral, the Debtor will not be able to operate as a going concern or preserve its assets for the benefit of its creditors.

44. The Debtor itself is the operating arm of the Highland business. The Debtor employs approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. Pursuant to various contractual arrangements, the Debtor provides money

management and advisory services to a variety of affiliated and unaffiliated entities with respect to a wide range of asset classes. The Debtor also leases office space, contracts with third party vendors, and maintains banking and brokerage relationships.

45. As set forth in the Budget, the Debtor anticipates funding this Chapter 11 Case with cash on hand, postpetition receipts on account of management services and sales of liquid assets, including the Securities in the Prime Account, and projected distributions from subsidiaries. Proceeds of the Securities in the Prime Account comprise collateral of Jefferies and, pursuant to the Cash Collateral Motion, the Debtor seeks authority to use such Cash Collateral in the ordinary course of business to preserve its operations and thereby maximize the value of the Debtor's assets for the benefit of its creditors.

46. Notably, Jefferies will be adequately protected by a substantial equity cushion in the Prime Account and the Replacement Lien, the Adequate Protection Lien, and the Adequate Protection Claim.

47. Without immediate access to Cash Collateral, the repercussions to the Debtor's restructuring efforts will be catastrophic and likely irreparable, ending its ability to maximize value for the benefit of all constituents. The Debtor needs to fund, among other things, payroll obligations, payments to vendors for ongoing goods, services, and rent, and other administrative obligations.

48. If the Motion is not approved, the Debtor's only alternative would be a piecemeal liquidation that would substantially handicap recoveries by creditors and eliminate the Debtor's going concern value. Hence, the relief sought in the Cash Collateral Motion should be granted as soon as possible, at least on an interim basis.

B. Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (the “Cash Management Motion”)

49. Pursuant to the Cash Management Motion, the Debtor seeks the entry of an order authorizing: (a) the Debtor to continue using its existing cash management system and brokerage relationships in the ordinary course of business; (b) the Debtor to make intercompany transactions; and (c) a limited waiver of section 345(b) deposit and investment requirements.

50. The Debtor’s cash management system (the “Cash Management System”) facilitates the timely and efficient collection, management, and disbursement of funds used in the Debtor’s business. The Cash Management System currently consists of six accounts (collectively, the “Bank Accounts”) held in the name of the Debtor at BBVA USA (“BBVA”) and NexBank, SSB (“NexBank”). BBVA and NexBank are together referenced herein as the “Banks.”

51. BBVA is a bank regulated by the Federal Reserve, and its deposits are insured by the Federal Deposit Insurance Corporation (the “FDIC”). NexBank is Texas-based savings bank that is regulated by the FDIC, and its deposits are FDIC-insured. NexBank is indirectly owned by James Dondero and Mark Okada. Mr. Dondero is an insider of the Debtor and the owner of 100% of the equity in the Debtor’s general partner, Strand Advisors, Inc. Mr. Dondero also has an indirect interest in the Debtor’s Class A limited partnership interests. Mr. Okada is an insider of the Debtor and has an interest in the Debtor’s Class A limited partnership interests.

52. The following chart sets forth the Bank Accounts and their balances as of the close of business on October 15, 2019:

Bank	Account Type	Account No.	Balance
NexBank	Checking Account	XXXX735	\$1,435.40
NexBank	Checking Account	XXXX668	\$0.00
NexBank	Checking Account	XXXX513	\$291,309.27
NexBank	Certificate of Deposit	XXXXXX891	\$135,205.21
NexBank	Money Market Deposit Account	XXXX130	\$190.82
BBVA	Checking Account	XXXXXXXX342	\$2,125,975.28

53. Master Operations Account. The Debtor's main operating account is its account at BBVA (Account No. 342) (the "Master Account"). Except for payment of certain intercompany expenses discussed below, all proceeds from the Debtor's operations flow into the Master Account and, on average, the Debtor receives approximately \$8 million in deposits into the Master Account every month though deposits can vary significantly on a month-to-month basis. Virtually all of the Debtor's expenses, including payroll expenses, are paid from the Master Account either through the issuance of paper checks or via wire or other electronic transfers. As described below, the Debtor also uses the Master Account to fund certain Intercompany Transactions (as defined below).

54. Money Market Account. The Debtor maintains a money market deposit account at NexBank (Account No. 130) (the "Money Market Account"). Although the Debtor does not have a specific policy governing the Money Market Account, the Debtor generally sweeps excess cash from the Master Account into the Money Market Account in order to earn

additional interest.⁵ Conversely, if the Debtor needs additional funds to pay expenses, it will transfer money from the Money Market Account to the Master Account. The Debtor also receives payments into the Money Market Account from certain of its non-Debtor affiliates in consideration for providing certain services, such as back office support, pursuant to the terms of various contracts. The Debtor generally does not pay expenses from the Money Market Account, except for employee bonuses with respect to newly-granted awards paid each February.

55. Insurance Account. The Debtor maintains a self-funded health insurance plan for its employees and the employees of certain of its affiliates. To facilitate this plan, the Debtor maintains an account with NexBank (Account No. 513) (the “Insurance Account”). The Debtor transfers the monthly insurance premiums for its employees from the Master Account to the Insurance Account, and certain of the Debtor’s affiliates that participate in the health insurance plan also fund money into the Insurance Account. The amounts held in the Insurance Account are then used to pay health insurance claims made by the Debtor’s or its affiliates’ employees. If a claim is made against the Insurance Account by an employee of a Debtor affiliate, the Debtor affiliate is billed for the amount of the claim. Besides health insurance claims, the only payments made from the Insurance Account are those made to Blue Cross Blue Shield, which administers the health insurance plan.

56. Certificate of Deposit. The Debtor has a certificate of deposit (Account No. 891) at NexBank (the “Certificate of Deposit”). The Certificate of Deposit was originally

⁵ The Money Market Account is a money market deposit account, not a money market fund. As such, amounts deposited in the Money Market Account are not invested in any other securities, like certificates of deposits. Rather, the Money Market Account is a demand deposit account with a higher interest rate than a regular checking or savings account.

opened in June 2008 with a principal balance of \$1,400,000. The current balance is \$135,205.21. The Certificate of Deposit is renewed every June and currently accrues interest at a rate of 2.67% per annum.

57. The Debtor's remaining two accounts at NexBank – Account No. 735 and Account No. 668 – are legacy accounts that have not been utilized in many years. Account No. 735 holds a *de minimis* amount of cash and is accruing interest. Account No. 668 has a balance of zero dollars.

i. Prime Brokerage Account

58. As described in Part I above, the Debtor maintains the Prime Account with Jefferies. As of October 11, 2019, the Debtor held approximately \$87 million in Securities in the Prime Account and had borrowed approximately \$30 million on margin from Jefferies against the Securities.

ii. Intercompany Transactions.

59. As noted above, the Debtor occasionally engages in intercompany cash transactions with certain of its affiliates. These transfers include (a) the movement of cash to and from the Insurance Account to fund the payment of health insurance claims and (b) the receipt of cash in the Master Account in connection with the provision of services to certain non-Debtor affiliates. In addition to the foregoing, the Debtor also funds the following using the Master Account:

a. **Highland Multi Strategy Credit Fund, L.P.** The Debtor serves as the investment manager for Highland Multi Strategy Credit Fund, L.P. (“MCSF”) and is also a limited partner in MCSF. MCSF invests in and holds life settlement policies that require regular

payment of premiums (generally monthly) to keep the policies from lapsing. If the policies were to lapse, MCSF would be unable to collect when the proceeds of such policies become realizable and, consequently, its ability to make distributions to the Debtor as a limited partner or pay amounts owed to the Debtor as the investment manager would be impaired. Because MSCF has limited liquidity, the Debtor provides MSCF the funding required to pay the premiums on its life settlement policies, among other expenses, in the amount of approximately \$1 million per month. In return, MSCF issues on demand, zero interest notes to the Debtor, which will be repaid once MSCF's investments become liquid.

b. **Highland Capital Management Korea Limited.** Highland Capital Management Korea Limited ("HCM Korea") is a wholly-owned subsidiary of the Debtor and an affiliated investment advisor domiciled in South Korea. HCM Korea is the advisor for, and minority limited partner in, an investment fund (the "HCM Korea Fund"). Each limited partner in the HCM Korea Fund, including HCM Korea, is required to provide capital when called by the HCM Korea Fund, and the failure to fund capital calls could lead to a default under the HCM Korea Fund's partnership agreement. Because of HCM Korea's limited liquidity, the Debtor has provided HCM Korea with a revolving note pursuant to which the Debtor has extended up to \$20 million in credit for HCM Korea to use to fund its commitments to the HCM Korea Fund. The note is at zero percent interest, and there is currently approximately \$3.06 million outstanding on the note. The Debtor anticipates that HCM Korea will draw an additional \$3 million on the note over the next one to two years and will repay the note as the HCM Korea Fund realizes gains on its portfolio and distributes those gains to its investors.

c. **Highland Capital Management Latin America, L.P.** Highland Capital Management Latin America, L.P. (“HCM Latin America”) is a wholly owned subsidiary of the Debtor and an affiliated investment advisor domiciled in the Cayman Islands. HCM Latin America is the advisor for an investment fund investing primarily in Argentina (the “SA Fund”). HCM Latin America employs several consultants to assist in advising and marketing the SA Fund. However, because of the recent instability in the Argentinian market, the value of the SA Fund dropped precipitously and consequently, the SA Fund does not currently generate sufficient fees to cover the cost of these consultants. In addition to its original equity contribution, the Debtor has been contributing equity to HCM Latin America to help cover its costs during the downturn. To date, the Debtor has provided approximately \$0.7 million in additional equity to cover such operating costs. The Debtor anticipates that HCM Latin America will require additional equity contributions of between \$1 million to \$1.5 million per year until the Argentinian market recovers. However, because of HCM Latin America’s fee structure, there are opportunities for HCM Latin America to make outsized returns depending on the SA Fund’s performance, and, in the event of an Argentinian recovery and a concomitant uptick in the SA Fund, HCM Latin America’s fee revenue and profitability will also increase. Consequently, the Debtor believes that contributing equity now will lead to increased returns on its investment in HCM Latin America going forward.

d. **Highland Capital Management (Singapore) Pte Ltd.** Highland Capital Management (Singapore) Pte Ltd. is a wholly owned subsidiary of the Debtor based in Singapore (“HCM Singapore”). Historically, HCM Singapore has been a marketing office that has solicited investments in the Debtor’s managed funds from Asian-based institutional

investors. To facilitate HCM Singapore's marketing efforts, the Debtor agreed to cover HCM Singapore's costs. The Debtor agreed to this arrangement as any capital raised by HCM Singapore would directly increase the management fees – and potentially long-term incentive fees – earned by the Debtor. The Debtor believes such increased revenue, should it materialize, would more than offset the costs paid by the Debtor.

e. **Expense Allocations.** As is customary among investment advisors, the Debtor tasks its employees with researching and evaluating potential investments and opportunities for the Debtor's clients. The Debtor also provides certain back office support for its clients from time to time. In order to provide such services, the Debtor has directly contracted with various service providers and is required to pay for such services. However, pursuant to the Debtor's expense allocation policy, such expenses are then allocated amongst the Debtor and its various clients either pro rata based on the assets owned by a client or otherwise in a manner consistent with the policy. Consequently, although the Debtor fronts these costs, the Debtor is reimbursed for a portion of such costs by its clients. On a monthly basis, the Debtor generally expects to pay approximately \$450,000 for such services and is reimbursed for a substantial majority of such costs by its clients or affiliates.

60. The transactions described in the foregoing paragraphs are referred to collectively as the "Intercompany Transactions."

61. By Cash Management Motion, and out of an abundance of caution, the Debtor seeks authority to make the Intercompany Transactions and to satisfy postpetition obligations associated with the Intercompany Transactions. Moreover, the Debtor seeks

authority, to the extent required, to transfer funds between the Bank Accounts as described above.

62. The Debtor seeks a waiver of the United States Trustee's requirement for the closure of the Bank Accounts (and potentially the Prime Account) and opening of new postpetition bank accounts at depositories authorized by the United States Trustee. If strictly enforced in this chapter 11 case, the requirement to close and open new bank accounts could cause a severe disruption in the Debtor's activities and could impair the Debtor's ability to operate under chapter 11 of the Bankruptcy Code. Maintenance of the Bank Accounts, the Prime Account, and the Cash Management System generally will greatly facilitate the Debtor's operations for the duration of this chapter 11 case.

63. If the Bank Accounts were closed, the Debtor would need to undertake the laborious effort of opening new bank accounts and, with respect to the Prime Account, establishing a new brokerage account to hold and maintain the Securities, which would require the satisfaction of any outstanding margin balances. Any disruption to the Debtor's operations would severely impact its ability to operate at this critical juncture. If the Debtor were required to close the Bank Accounts and the Prime Account, and open new debtor in possession accounts, the Debtor would be forced to reconstruct its cash management system in its entirety. Moreover, as noted above, the closure of the Prime Account would trigger the repayment of the approximately \$30 million that has been borrowed against the Securities.

64. In the ordinary course of the operation and maintenance of the Cash Management System, the Debtor incurs routine charges and fees relating to the administration of the Cash Management System. While it is difficult to readily determine the aggregate amount of

unpaid prepetition account fees and charges as of the Petition Date, on average, the Debtor pays BBVA approximately \$4,500 in quarterly fees and charges. The Debtor does not pay fees to NexBank. The Debtor seeks authority, in its sole discretion, to pay any such routine and ordinary course prepetition fees and charges, and to continue the postpetition payment of such fees and charges in the ordinary course of business.

65. As addressed above, the Debtor may utilize the Cash Management System for the Intercompany Transactions. Other than as described herein, no other Intercompany Transactions occur. The Debtor believes that the Intercompany Transactions described herein are beneficial to its estate and creditors and other parties in interest and, therefore, should be authorized by the Court.

66. In sum, the Debtor submits that the relief requested in the Cash Management Motion is necessary to avoid immediate and irreparable harm and should be granted by this Court.

C. Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (the “Wage Motion”)

67. Pursuant to the Wage Motion, the Debtor seeks the entry of an order authorizing: (a) authorizing the Debtor to (i) to pay all prepetition Workforce Compensation and all costs related to the prepetition Benefit Programs, as set forth in the Wage Motion; and (ii) maintain and continue to honor the Benefit Programs as they were in effect as of the Petition Date and as such may be modified, amended, or supplemented from time to time in the ordinary course of business; and (b) authorizing the Banks to honor and process checks and electronic

transfer requests for payment of prepetition obligations with respect to the Workforce Compensation and Benefit Programs. The Debtor does not seek authority to pay any Employees on account of Wages in excess of the statutory cap of \$13,650.

i. The Debtor's Workforce

68. The Debtor employs approximately 76 employees (the "Employees"), all but one of whom are full-time Employees. Approximately 55 Employees are salaried workers, while approximately 21 are hourly Employees. Except as otherwise noted, the Debtor provides the Benefit Programs (discussed below) to all of its Employees.

69. In addition to the Employees, the Debtor also periodically retains specialized individuals as independent contractors and temporary workers (the "Independent Contractors") to complete certain projects or tasks. As of the Petition Date, the Debtor retained approximately six (6) Independent Contractors. The Independent Contractors are a critical supplement to the efforts of the Employees and integral to the Debtor's operations and business.

70. Typically, the Employees, as well as the Independent Contractors, rely on their compensation and benefits (as applicable) to pay their daily living expenses and to support their families. If the Debtor is not permitted to continue to pay wages and salaries, provide employee benefits, and maintain benefit programs in the ordinary course of business, many of the Employees may be exposed to significant financial constraints. Consequently, the Debtor respectfully submits that the relief requested herein is necessary and appropriate under the facts and circumstances of this chapter 11 case.

71. As explained in more detail below, the Debtor seeks authority to pay, in its discretion, any prepetition amounts owed for the programs and benefits described in the Wage

Motion up to the cap amounts set forth in the chart below. The Debtor also seeks authority to continue to pay amounts related to the programs described in the Wage Motion in the ordinary course of business.

BENEFIT/PROGRAM	CAP AMOUNT⁶
Wages	\$50,000
Independent Contractor Compensation	\$40,000
Payroll Processor	\$2,500
Medical Plan/FSA	\$200,000
Dental Plan	\$15,000
Life and Disability Plans	\$15,000
Workers Compensation Plan	\$5,000
COBRA	\$2,500
401(k) Plan	\$25,000
Other Employee Benefits	\$20,000
Reimbursable Expenses	\$110,000
Independent Contractor Compensation	\$40,000s

ii. Employee and Contractor Compensation

72. Employee compensation is comprised primarily of wages and salaries (“Wages”).⁷ The current average payroll of the Debtor is approximately \$240,000 per calendar week on account of Wages.

⁶ Unless otherwise noted, the dollar caps included in the table above and in the proposed order include reasonable cushions in the event that the Debtor’s estimates herein are understated.

⁷ In addition to Wages, most Employees are eligible to receive bonuses under certain ordinary course programs. No commissions are paid to Employees. The Debtor will file a separate motion relating to ordinary course Employee

73. Employees are paid Wages on a semi-monthly payroll schedule (*i.e.*, on the 15th day of each month, or the business day immediately preceding the 15th day if that day falls on a weekend or holiday, and the last business day of the month). Per the Debtor's direction, payrolls are processed by a third party service provider, Paylocity (the "Payroll Processor"), and are generally funded with money in the Debtor's operating account one (1) business day prior to the applicable payroll date. Although the Payroll Processor typically withdraws funds from the Debtor's operating account using ACH, in some cases where the aggregate amount exceeds \$1,000,000 or the employee needs to be paid off-cycle as in the case of severance payments, the Debtor wires the money to the Payroll Processor or applicable employee recipient. The Payroll Processor then makes the applicable payroll distributions to Employees on the applicable payday.

74. The Debtor's last payroll was paid to Employees on October 11, 2019 (four days early in light of the Debtor's anticipated bankruptcy filing), on account of Wages earned from October 1, 2019, through October 15, 2019. The next payroll date is October 31, 2019, with employees to be paid concurrently. Although the last payroll was paid a few days early, it is nonetheless possible that certain Employees did not receive payment of their prepetition Wages. Accordingly, the Debtor requests authority to pay up to \$50,000 to Employees in the aggregate on account of Wages for prepetition services (excluding any vacation or other paid-time-off, reimbursable expenses, or other compensation).⁸

bonuses. The Debtor further reserves the right to seek approval of an additional bankruptcy-related key employee incentive plan and key employee retention plan.

⁸ As noted, unless stated otherwise, the dollar caps set forth herein include reasonable cushions in the event that the Debtor's estimates are understated.

iii. Payroll Administration Fees

75. As noted above, the Debtor uses the Payroll Processor to administer its payroll. The Debtor estimates that it owes no more than \$2,500 to the Payroll Processor on account of prepetition costs and fees for administrative services as of the Petition Date. The Debtor seeks authority to pay any and all prepetition amounts owing to the Payroll Processor up to the cap requested herein and to continue to make payments on account of such fees and charges in the ordinary course of business postpetition.

iv. Employee Benefits & Insurance Plans

76. The Debtor provides eligible Employees with several Benefit Programs, including (a) medical, dental, life, disability, and other insurance plans, (b) a 401(k) plan, and (c) other benefit programs.

(i) Medical Plan

77. The Debtor offers eligible Employees and their dependents 100% employer-paid PPO health insurance coverage (the "Medical Plan") through BlueCross BlueShield of Texas ("BCBS"). The Medical Plan is self-insured, but the Debtor maintains a stop-loss insurance policy with BCBS to cover catastrophic medical claims (the "Stop-Loss Insurance"). The total premiums cost of the Medical Plan, including the Stop-Loss Insurance, is approximately \$102,000 per month, paid by the Debtor each month in advance into a bank account used to pay medical/dental plan administrative fees and claims. From the total premiums of approximately \$102,000 per month, the Debtor pays approximately \$85,000 per month on average on medical claims asserted under the self-insured Medical Plan. Without the

Medical Plan, the Employees and their dependents would be forced to either forego health insurance coverage entirely or obtain themselves potentially expensive out-of-pocket insurance coverage, which would likely adversely affect the Employees' morale.

78. Relatedly, the Debtor provides Employees who participate in the Medical Plan with access to flexible spending accounts (the "FSA"), administered by Discovery Benefits, which can be used to cover incidental medical costs and dependent childcare. The Debtor pays Discovery Benefits, on average, \$300 per month for the administration of the FSAs. The Debtor does not make any contributions to any Employee's FSA.

79. The Debtor believes that, as of the Petition Date, no more than \$200,000 will be owed on account of obligations associated with the Medical Plan and the FSA. By the Wage Motion, the Debtor seeks authorization to pay any prepetition amounts due on account of or related to the Medical Plan and FSAs (including any medical claims that may have accrued prepetition) up to the cap requested herein and to continue the Medical Plan and the FSA in the ordinary course of business postpetition.

(ii) *Dental Plan*

80. The Debtor offers eligible Employees a PPO dental insurance plan (the "Dental Plan") administered by BlueCross BlueShield of Texas. The Dental Plan premiums for eligible Employees and their dependents are paid by the Debtor. The average cost to the Debtor of maintaining the Dental Plan, including administrative costs and premiums, is approximately \$6,600 per month. As of the Petition Date, the Debtor estimates that no more than \$15,000 will be owed on account of obligations associated with the Dental Plan. By the Wage Motion, the Debtor seeks authorization to pay any prepetition amounts due on account of the Dental Plan up

to the cap requested herein and to continue the Dental Plan in the ordinary course of business postpetition.

(iii) *Life and Disability Plans*

81. The Debtor provides all of its full-time Employees with basic life insurance, accidental death and dismemberment insurance, and short-term and long-term disability insurance (collectively, the “Standard Life and Disability Plans”), which are provided by Lincoln Financial; *provided, however*, the Debtor’s short-term disability insurance coverage is self-insured by the Debtor and administered by Lincoln Financial. Additionally, the Debtor offers its eligible senior personnel with additional life insurance and long-term disability insurance coverage (collectively, the “Executive Life and Disability Plans” and together with the Standard Life and Disability Plans, the “Life and Disability Plans”) provided by Brighthouse/MetLife and The Standard, respectively.

82. The Life and Disability Plans are fully paid for by the Debtor (except with respect to any supplemental coverage that is paid by the Employees through paycheck withholding deductions). In the aggregate, the Debtor’s average annual cost of maintaining the Life and Disability Plans, including administrative costs and premiums, is approximately \$140,000.⁹ As of the Petition Date, the Debtor estimates that no more than \$15,000 in prepetition obligations associated with the Life and Disability Plans will be owed. By the Wage Motion, the Debtor seeks authorization to pay any and all prepetition amounts due on account of the Life and Disability Plans (including, without limitation, any Employee claims payable under

⁹ This aggregate amount excludes any claim amounts that may be paid by the Debtor to recipients under the self-insured short-term disability insurance coverage.

the self-insured short-term disability insurance plan) up to the cap requested herein, and to continue the Life and Disability Plans in the ordinary course of business postpetition.

(iv) *Paid Time Off and Sick Time*

83. The Debtor grants paid time off to all Employees, which includes vacation and sick time (“PTO”), ranging from 15 to 24 days based on certain factors, in addition to holiday pay. Employees are able to carry forward up to 10 days of PTO for each year of service into a subsequent year (*e.g.*, after two years of service, an Employee can potentially roll over 20 days of PTO). In accordance with applicable state law, the Debtor pays all accrued PTO to Employees upon termination. As of the Petition Date, the accrued liabilities of the Debtor with respect to PTO are estimated to total approximately \$940,000. The Debtor seeks authority to allow Employees to use accrued prepetition PTO time after the Petition Date in the ordinary course. The Debtor further seeks authority to pay out any PTO owed to Employees who become separated from the Debtor postpetition to the extent required under the Debtor’s policies and applicable state law.

(v) *Workers’ Compensation Plan*

84. The Debtor provides all eligible Employees with workers’ compensation insurance (the “Workers’ Compensation Plan”) as required by federal and state law. The Workers’ Compensation Plan is a policy-based, fully insured plan provided by Chubb. The average annual cost of maintaining the Workers’ Compensation Plan, including administrative costs and premiums, is approximately \$11,000 in the aggregate. The Debtor makes payments to Chubb monthly in arrears. As of the Petition Date, the Debtor believes that no more than \$5,000 will be owed on account of prepetition obligations under the Workers’ Compensation Plan. By

the Wage Motion, the Debtor seeks authorization to satisfy all obligations related to the Workers' Compensation Plan, including, without limitation, premiums and any related fees, costs, and expenses up to the cap requested herein, and to continue its Workers' Compensation Plan in the ordinary course.

85. The Debtor submits that the continuance of the Workers' Compensation Plan is appropriate in the ordinary course of business, but out of abundance of caution, seeks authority to maintain the Workers' Compensation Plan in accordance with applicable law postpetition. The Debtor also seeks authority for relief from the automatic stay solely to allow holders of workers' compensation claims to proceed with their claims in accordance with the Workers' Compensation Plan and to allow the Workers Compensation Plan insurer to administer, handle, defend, settle and/or pay a claim covered by the Workers' Compensation Plan and the cost related hereto in accordance with such plan.

(vi) *COBRA*

86. Pursuant to the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"), the Debtor provides temporary continuation of healthcare benefits at group rates to former Employees after their termination, retirement, or disability leave. The former Employee or the Debtor bears the costs associated with COBRA, depending on the terms of the separation agreement between the former Employee and the Debtor. As of the Petition Date, the Debtor was responsible for COBRA related costs of approximately \$2,300 per month. The Debtor requests that former Employees and eligible dependents retain the right to coverage under the Medical Plan in accordance with the

requirements of the terms of COBRA and requests authorization to pay obligations arising under such plans, regardless of when such obligations accrued, up to \$2,500.

(vii) 401(k) Plan

87. The Debtor allows eligible Employees to participate in a 401(k) plan (the “401(k) Plan”) administered by an independent third party, BOK Financial (the “401(k) Administrator”). The 401(k) Plan is funded by participating Employees through payroll withholding deductions, and the Debtor makes matching contributions up to 4% of the applicable Employee’s compensation (subject to certain annual caps of \$5,000 for highly compensated employees and \$11,000 for other employees). The Debtor estimates that it will fund approximately \$400,000 in total matching contributions in 2019; more than \$300,000 has been funded by the Debtor for this year to date. The Debtor intends to continue to make ordinary course matching contributions to the 401(k) Plan on a going forward basis.

88. The Debtor also has a discretionary profit sharing plan (the “Profit Sharing Plan”) administered by the 401(k) Administrator. For a given calendar year, Employees who are enrolled in the 401(k) Plan and employed by the Debtor as of December 31 of that year are eligible to participate in the Profit Sharing Plan. If profit sharing is approved for a given year, each eligible Employee would receive a percentage of his or her cash compensation based on various factors, and capped at a certain amount. The profit sharing contribution typically ranges from 4% to 7.5% of eligible compensation (for 2019, the maximum eligible compensation is \$280,000). The award is then paid into the 401(k) Plan for the Employee’s benefit as a Debtor contribution; this award vests upon three (3) years of service (with a year defined as 1,000 hours in a calendar year), but once the initial three (3) years of service has been met, all future awards

vest immediately. The approved profit sharing contributions for 2018 (approximately \$854,000) were previously funded by the Debtor prepetition. No profit sharing for year 2019 has been calculated or approved by the Debtor as yet, but would typically be approved in the ordinary course in February 2020 and would be payable no later than September 15, 2020. The Debtor will be filing a separate motion to seek authority to continue the Profit Sharing Plan on a postpetition basis in the ordinary course.

89. In the aggregate, with respect to 401(k) Plan, the Debtor annually pays approximately \$82,000 in administrative costs to the 401(k) Administrator (typically funded in part out of 401(k) Plan forfeitures), actuarial and legal costs of approximately \$50,000, and audit costs of approximately \$7,000 (audit cost is for 2018 audit which is nearly complete; 2019 audit has not yet been commenced).

90. The Debtor believes that, as of the Petition Date, all of Q3 2019 administrative costs and only a relatively *de minimis* amount of prepetition Q4 2019 administrative costs is owed relating to the 401(k) Plan. The Debtor seeks authorization to continue to pay any prepetition amounts due on account of the 401(k) Plan, including any administrative, audit or advisory fees, up to a cap of \$25,000 and to continue to pay postpetition costs of the 401(k) Plan in the ordinary course of business.

(viii) Other Employee Benefits

91. The Debtor provides eligible Employees with a number of other miscellaneous benefits (the “Other Employee Benefits”), which include, without limitation, (i) flexible spending accounts; (ii) daily catered lunches (the Debtor pays \$16 maximum per workday through GrubHub, *etc.*); (iii) cell phone service reimbursement (the Debtor provides

each eligible Employee \$100 per month in reimbursement); (iv) gym memberships (the Debtor pays gym dues of approximately \$25 per month for each eligible Employee); (v) paid office parking; and (vi) access to stocked office kitchens.

92. As the foregoing descriptions suggest, the aggregate cost of maintaining the Other Employee Benefits is relatively *de minimis*. The Debtor seeks authorization to pay any prepetition amounts that may be due on account of the Other Employee Benefits up to \$20,000, and to continue the Other Employee Benefits in the ordinary course of business postpetition.

v. **Reimbursable Expenses**

93. Prior to the Petition Date, the Debtor reimbursed Employees for Reimbursable Expenses incurred on behalf of the Debtor in the scope of their duties. The Reimbursable Expenses are incurred in the ordinary course of the Debtor's business operations and include, without limitation, reasonable expenses for business meals, travel, relocation, car rentals, and other business-related expenses. As of the Petition Date, the Debtor estimates that it owes no more than \$110,000 in Reimbursable Expenses. Although the Debtor has requested that Employees submit reimbursement requests promptly, Employees may nonetheless submit reimbursement requests for prepetition Reimbursable Expenses after the Petition Date. Absent authority to pay the Reimbursable Expenses incurred prepetition, the Employees could be obligated to pay such amounts out of their personal funds. The Debtor therefore seeks authority to pay all outstanding prepetition Reimbursable Expenses, and to continue its expense reimbursement policies in the ordinary course of business.

vi. **Withholding Obligations**

94. The Debtor routinely deducts amounts from Employees' compensation with respect to certain Withholding Obligations, including, but not limited to, various federal, state, and local income taxes, wage garnishments, flexible spending account contributions, dependent daycare account contributions, and 401(k) contributions (the "Employee Withholdings").

95. The Debtor is also responsible for remitting to third parties, for their own account, various taxes and fees associated with payroll pursuant to the Federal Insurance Contributions Act and federal and state laws regarding unemployment and disability taxes (the "Payroll Taxes"). On average, the Debtor pays approximately \$15,000 in the aggregate for employer-obligated Payroll Taxes each pay period.

96. The Debtor does not believe that any prepetition Withholding Obligations remain to be remitted to the appropriate parties. However, out of caution, the Debtor seeks authority to deduct and remit any outstanding prepetition Employee Withholdings and Payroll Taxes, and to continue to deduct and remit all owed Employee Withholdings and all owed Payroll Taxes to the appropriate third party recipients in the ordinary course of business.

vii. Independent Contractors

97. As noted above, the Debtor also uses and depends on various Independent Contractors. The Debtor makes payments to Independent Contractors ("Independent Contractor Compensation") and together with Wages, "Workforce Compensation") for the performance of certain specialized services important to the Debtor's business and operations, including, among other things, investment management, tax/legal, real estate advisory, executive recruiting, life settlements valuation / actuary, and other miscellaneous consulting services. On average, the

Debtor pays approximately \$80,000 per month in Independent Contractor Compensation. As of the Petition Date, the Debtor estimates that it may owe up to \$40,000 on account of accrued, unpaid Independent Contractor Compensation.

98. Importantly, the Debtor relies on the continuous support of Independent Contractors to handle and/or assist with projects and matters in furtherance of the Debtor's business. The Debtor believes the authority to continue paying the Independent Contractor Compensation, including any prepetition amounts, is critical to minimize disruption of the Debtor's operations. Accordingly, the Debtor seeks authority to satisfy any prepetition accrued but unpaid Independent Contractor Compensation up to \$40,000 and continue to pay the Independent Contractor Compensation on a postpetition basis in the ordinary course of business and consistent with past practices.

viii. Direction to Banks and Financial Institutions

99. The Debtor also seeks an order authorizing its banks and other financial institutions (collectively, the "Banks") to receive, process, honor, and pay all of the Debtor's prepetition checks and fund transfers on account of any prepetition amounts owed on account of or relating to Workforce Compensation or the Benefit Programs, including all checks issued with regard to any Workforce Compensation and Benefit Programs, and prohibiting the Banks from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for prepetition Workforce Compensation and Benefit Programs obligations. The Debtor also seeks an order authorizing the issuance of new postpetition checks or new postpetition funds transfers on account of prepetition Workforce Compensation and Benefit Program obligations to replace any prepetition checks or funds transfer requests that may

be dishonored or rejected, and to reimburse Employees or other applicable party for any fees or expenses incurred in connection with any rejected checks as a result of the Debtor's bankruptcy filing.

D. Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtors to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (the "Critical Vendor Motion")

100. Through the Critical Vendor Motion, the Debtor seeks the entry of interim and final orders (a) authorizing, but not directing, the Debtor to pay certain prepetition claims (each a "Critical Vendor Claim" and, collectively, the "Critical Vendor Claims") of certain essential vendors and service providers (each, a "Critical Vendor" and, collectively, the "Critical Vendors") on an interim basis not to exceed \$250,000 (the "Interim Critical Vendor Cap"), representing the critical expenditures the Debtor will need to make to Critical Vendors during the first four weeks of this case, and, on a final basis, not to exceed \$1,000,000 (the "Critical Vendor Cap") and (b) granting related relief.

101. The Debtor's business relies on continuing access to and relationships with various vendors and service providers. Any disruption in the Debtor's access to the provision of critical goods and services to the Debtor would have a far-reaching and adverse economic and operational impact on its business.

102. The bulk of the remaining goods and services that the Debtor depends on are provided by a critical network of vendors and service providers that, for the most part, conduct business with the Debtor on an invoice by invoice or purchase order by purchase order basis, and not pursuant to long-term contracts. These vendors typically supply their customers with services and products on trade terms based on their experience with and perceived risk of

conducting business with such customers. The Debtor believes that it would be extremely difficult, if not impossible, to replace the Critical Vendors within a reasonable time without severe disruption to the Debtor's business. Such harm would likely far outweigh the cost of payment of the Critical Vendor Claims.

103. Hence, it is essential to the success of the Debtor's restructuring effort that it be able to maintain the flow of goods, and services to its business.

104. Further, as discussed in the Cash Management, the Debtor will be reimbursed for a substantial amount of the payments made to Critical Vendors from the Critical Vendor Cap.

105. The Debtor undertook a process to identify the Critical Vendors using the following criteria: (i) whether certain specifications prevent the Debtor from obtaining a vendor's goods or services from alternative sources within a reasonable timeframe; and (ii) if a vendor is not a sole-source or primary provider of services or products, whether the Debtor can continue to operate in the ordinary course while a replacement vendor is secured. As a result of their critical review and evaluation, the Debtor has identified a narrow subset of vendors as Critical Vendors.

106. The Debtor's Critical Vendors generally fall into the following categories:

- a. Back Office Support Services. The Debtor contracts with certain services to assist in maintaining their back office and supporting the Debtor's investment team. These services consist of, for example, data providers that provide and manage intranet portals necessary to streamline information flow and data accuracy and other service providers that supply telephone services or warehouse necessary files or data.

b. Research Services. The Debtor's business consists of advising its clients on potential investments. To do that, the Debtor subscribes to various services that provide access to real-time data and analytics. These services enable the Debtor to provide accurate analysis of the investments they manage and to satisfy their fiduciary and other obligations to their clients as a registered investment advisor.

107. As of the Petition Date, the Debtor will owe amounts to certain Critical Vendors (a) that have been billed and invoiced and/or (b) that have accrued immediately prior to the Petition Date for which they have not yet been invoiced or payment is not yet due. The Debtor anticipates the total amount of Critical Vendor Claims will not exceed \$1,000,000 of which \$250,000 is being requested on an interim basis. As discussed above, a portion of that amount will also be reimbursed to the Debtor through the ordinary course of the Debtor's business.

108. Given the importance of the goods, and services provided by the Critical Vendors, it is imperative that the Debtor be granted, on an emergency basis, the flexibility and authority to satisfy the prepetition claims of the Critical Vendors up to the Interim Critical Vendor Cap and, if approved on a final basis, the Critical Vendor Cap.

E. Debtor's Motion for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs, and (II) Granting Related Relief (the "Schedules Extension Motion")

109. Through the Schedules Extension Motion, the Debtor seeks the entry of an order extending the deadline by which it must file its schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statement of financial affairs (collectively, the

“Schedules and Statements”) by an additional thirty (30) days, for a total of fifty-eight (58) days from the Petition Date.

110. To prepare the Schedules and Statements, the Debtor must compile information from books, records, and documents relating to creditor claims, as well as the Debtor’s various assets and contracts.

111. Given the amount of work entailed in completing the Schedules and Statements, the Debtor requires more time to complete the Schedules and Statements within the required time period. Accordingly, the Debtor requests that the Court grant the Schedules Extension Motion.

F. Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (the “Motion to Redact Employee Addresses”)

112. Through the Motion to Redact Employee Addresses, the Debtor seeks the entry of an interim order and a final order: (a) authorizing the Debtor to file a redacted version of its creditor matrix without publicly disclosing employee address information, (b) authorizing the Debtor to file under seal an unredacted version of its creditor matrix, and (c) granting such other relief as the Court deems just and proper.

113. In the present case, the Debtor respectfully submits that cause exists to authorize the Debtor to redact the address information of individual employees from the creditor matrix because such information: (a) is private and confidential, (b) could be used to perpetrate identity theft – which has occurred in the past with certain of the Debtor’s employees, (c) would potentially allow competitors to poach the Debtor’s employees at the expense of this estate; and (d) could pose other risks to employees.

114. The benefit of including such information on the publicly filed matrix is far outweighed by the potential risks for the Debtor's individual employees.

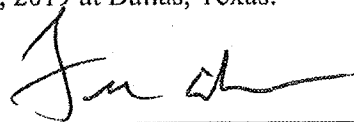
115. If the relief requested in the Motion to Redact Employee Addresses is granted, the unredacted matrix will be filed and remain under seal until further order of the Court. The Debtor will share the unredacted matrix with the Office of the United States Trustee upon request and the Debtor proposes that any party-in-interest who seeks to review the unredacted matrix may submit a request in writing to the Debtor. If the Debtor and the party seeking access to the unredacted matrix are unable to reach agreement on the terms of reviewing the unredacted matrix, the party may seek the assistance of this Court by filing a motion and make an appropriate showing for the Court to evaluate whether or not the unredacted matrix should be made available and under what terms. Upon any such motion seeking access to the unredacted matrix, the Debtor could continue to try and resolve the matter or present its opposition to the Court for consideration at a hearing on appropriate notice.

116. Accordingly, the Debtor requests that the Court grant the Motion to Redact Employee Addresses.

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I declare under penalty of perjury under the United States of America that the foregoing is true and correct.

Executed this 16 day of October, 2019 at Dallas, Texas.



Frank Waterhouse

EXHIBIT A
Organizational Chart

