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.	)	**Related to Docket Nos. 5, 75, 77**

OMNIBUS REPLY OF THE DEBTOR IN SUPPORT OF: (I) MOTION FOR FINAL ORDER AUTHORIZING CONTINUANCE OF THE EXISTING CASH MANAGEMENT SYSTEM, (II) MOTION TO EMPLOY AND RETAIN DEVELOPMENT SPECIALISTS, INC. TO PROVIDE A CHIEF RESTRUCTURING OFFICER, AND (III) PRECAUTIONARY MOTION FOR APPROVAL OF PROTOCOLS FOR ORDINARY COURSE TRANSACTIONS

The above-captioned debtor and debtor in possession (the "Debtor") hereby files this reply in support of (I) the *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* [Docket No. 5] (the "Cash Management Motion"), (II) the *Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc as of the Petition Date* [Docket No. 75] (the "DSI Retention Motion"), and (III) the *Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business* [Docket No. 77] (the

[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.

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"Ordinary Course Protocols Motion," and together with the DSI Retention and the Cash Management Motion, the "Motions").[2] The Official Committee of Unsecured Creditors (the "Committee") has filed an omnibus objection to the Motions [Docket No. 125] and the United States Trustee has objected to the DSI Retention Motion [Docket No. 130].[3]

In support of this reply, the Debtor respectfully states as follows:

Preliminary Statement

1. Through the Motions, the Debtor seeks approval of Bradley D. Sharp as CRO with broad-ranging authority over aspects of the Debtor's business and restructuring efforts and to continue to implement certain customary transactions and cash management functions in the ordinary course. The Motions are in the nature of traditional "second day" relief and the hearing on the Motions should be treated as such. However, the Committee's objections to the appointment of the CRO are clearly designed to lay the groundwork for a motion for the appointment of a chapter 11 trustee. The Committee understands that the appointment of the CRO with broad-ranging authority will mean that its trustee motion will have little chance of success. This point is evident from the Committee's request that there be no CRO and that DSI should be employed only as a financial advisor to the Debtor. Instead of attacking this issue head-on by carrying its burden of proof on a trustee motion, the Committee attempts to shift the burden to the Debtor, understanding that the only alternatives are either a CRO or a trustee.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motions.

[3] Jefferies, LLC ("Jefferies") also filed a reservation of rights [Docket No. 117] with respect to the Ordinary Course Protocols Motion, seeking clarification that the Debtor does not intend to trade in the Select Fund without Jefferies' consent and to otherwise preserve rights. The Select Fund is held through a non-Debtor affiliate. To confirm, the Debtor will not trade in either the Prime Account or the Select Fund without Jefferies' consent or an order of this Court, and the Debtor acknowledges that all of Jefferies' rights with respect thereto are preserved.

2. If the Committee had its way, the Debtor would not benefit from the CRO's services and the Debtor's ordinary course business operations would be shut-down, pending the Committee's detailed review and analysis of every proposed ordinary course transaction – each of which would likely have adverse consequences for the estate. The Motions are not a proper vehicle for the Committee to conduct a mini-trial as to the legitimacy of the Debtor's management or to second guess the Debtor's business judgment when it comes to ordinary course transactions or cash management functions.

3. The Committee also employs a shotgun approach in its objections to the Debtor's proposed engagement of the CRO and approval of the ordinary course Protocols. Rather than suggesting potential constructive changes to the Debtor's proposals or to the CRO's engagement, the Committee simply objects to them in a wholesale fashion. Nonetheless, in a good faith effort to address certain of the Committee's concerns, the Debtor is proposing materially revised Protocols that contemplate advance notice to the Committee of transactions that exceed an applicable threshold and a variety of other revisions designed to provide additional transparency to the Committee and other parties in interest. For instance, the revised Protocols limit the Debtor's authority to consummate affiliated transactions to a period of sixty (60) days and allow the Debtor to renew its request at that time. This limited time period will give the Debtor the opportunity to continue its dialogue with the Committee regarding the nature of intercompany transactions and whether there are any alternatives available. Also during these sixty (60) days, the CRO will prepare a report on shared services provided by the Debtor to affiliates. A redline order comparing the revised Protocols against the original filed Protocols is attached hereto as **Exhibit A**. The revised Protocols are designed to provide an appropriate

balance between the needs of the CRO and the Committee to review material transactions against the exigencies of operating the Debtor's business in the ordinary course.

4. Regardless of whether the revised Protocols are acceptable to the Committee, the Debtor's governance structure is not subject to the Committee's approval and consent. There is no motion pending to appoint a chapter 11 trustee in this case. And there is no evidence, nor even any suggestion, of impropriety by the Debtor or its management in their actions on a postpetition basis. Yet, the Committee's objections to the Motions primarily revolve around the inadequacy of the Debtor's oversight mechanisms and authority of the CRO. Decisions regarding the Debtor's governance are not for the Committee to make and there is no basis under the Bankruptcy Code, short of seeking the appointment of a trustee, for the Committee to attempt to impose its will in terms of who is calling the shots for the Debtor.

5. James Dondero is the Debtor's principal. Through the Debtor's general partner, Strand Advisors, Inc. ("Strand"), Mr. Dondero exercises authority over the Debtor. There are significant and important economic relationships between the Debtor and certain non-Debtor affiliates of Mr. Dondero. Approximately 60% of the Debtor's operating revenue comes from non-Debtor affiliates of Mr. Dondero that are not subject to the control of the Debtor's estate. Additionally, several of the funds managed or sub-advised by the Debtor have key-man provisions that would trigger an event of default if Mr. Dondero no longer controls the Debtor. Mr. Dondero is the named portfolio manager on most of the Debtor's advised and sub-advised assets under management. Finally, the offering memoranda and prospectuses of almost every fund either directly advised or sub-advised by the Debtor names Mr. Dondero as the President and ultimate decision maker of the Debtor. Removal of Mr. Dondero would require an update to

fund offering documents, notice to investors, and notice of a change of control in an SEC filing. This turn of events likely would prompt a wave of investor redemptions and/or terminations of advisory contracts. In short, removal of Mr. Dondero would have a crippling impact on the Debtor's ongoing business and its ability to develop a plan for the benefit for all constituents.

6. However, recognizing the needs and practicalities of this bankruptcy case and the need for complete transparency, Mr. Dondero has agreed to the Debtor's engagement of the CRO. This is a critical change in governance that the Debtor is willing to implement in order to address the needs of the bankruptcy process. The CRO will take the lead with respect to the Debtor's restructuring efforts. Significantly, the CRO will have *exclusive authority* when it comes to insider transactions and potential rights or claims that the estate may have against insiders.

7. The retention of the CRO is subject to the Debtor's business judgment. The Committee is not entitled to second guess that judgment based on contested assertions of impropriety that are alleged to have occurred prepetition and which continue to be the subject of pending litigation. Similarly, the ordinary course Protocols are primarily a disclosure item. The Debtor does not need Court approval to continue to consummate transactions in the ordinary course, but seeks such approval here for the sake of transparency. If the Committee has any constructive suggestions in order to make the Protocols more attuned to the needs of this case, the Debtor is prepared to consider them and, as reflected herein, is already proposing revised Protocols to address certain of the Committee's concerns. However, the Committee's wholesale objection to the Protocols is inappropriate and misplaced. As to the cash management system, the Committee again seeks to supplant the Debtor's sound business judgment with the

Committee's own tainted views of where the Debtor's accounts should reside and what should or should not be paid. In fact, under the CRO's direction, the Debtor has now established new debtor in possession accounts at East West Bank for its primary operating accounts. A redline form of final order approving the Cash Management Motion is attached hereto as **Exhibit B**. The redline is against the interim order previously entered by the Court.

8. Aside from focusing on an inapplicable legal standard (section 327 versus section 363 of the Bankruptcy Code), the United States Trustee seeks to impose governance requirements on the Debtor that do not exist outside of bankruptcy. The Debtor is a limited partnership. The Debtor is controlled by its general partner, Strand, which entity is controlled by Mr. Dondero. There is no board of directors at the Debtor. In this chapter 11 case, the governance structure of the Debtor remains the same, except that Mr. Dondero has delegated certain of Strand's authority, including on insider matters, to the CRO that would otherwise be within the purview of the CEO. The Debtor, through Strand, reserves the right to terminate the CRO on thirty (30) days' notice to this Court and parties in interest. The CRO will not wear more than "one hat" in this case. He will be the CRO and certain employees of his firm will assist the CRO. Neither the CRO nor his colleagues will assume any other roles with the Debtor and will not unilaterally control the Debtor. The CRO will not be, and has not been, a director, owner, or general partner of the Debtor. A redline form of order approving the DSI Retention Motion is attached hereto as **Exhibit C**. The redline is against the proposed form of order originally submitted with the DSI Retention Motion.

9. Hence, there is no reason for this Court to go beyond the relief requested in the Motions. It is within the Debtor's business judgment whether to hire a CRO and the scope

of authority of the CRO. It is within the Debtor's business judgment whether to implement certain Protocols, as revised hereby, on ordinary course transfers. And it is within the Debtor's business judgment which cash management system to use and ordinary course intercompany transfers to make. It is neither practical, nor appropriate, for the Debtor to seek, as the Committee suggests, Court approval of every intercompany transaction to determine whether it is ordinary course or not. Although the Court should certainly consider the Committee's concerns with respect to the Motions (as the Debtor has done in proposing the revised Protocols), that does not mean that the Committee should be given a blank check to impose changes on the Debtor's governance or operational structure without any legal or factual basis to do so. If the Committee feels the need to bring a motion to appoint a trustee in these cases, the Committee can do so, but it is inappropriate for the Committee to attempt to hijack the proposed employment of the CRO or the Debtor's ability to implement ordinary course practices and cash management functions based on allegations of disputed prepetition improprieties in order to increase the Committee's chances of success on an anticipated trustee motion.

Reply

A. The DSI Retention Motion

10. The Debtor seeks to retain the CRO and his firm, DSI, to lead the Debtor's restructuring efforts in this case. There are three principal categories governing the proposed authority of the CRO:

> Category One: the CRO will have exclusive authority over insider transactions and potential claims against insiders.
>
> Category Two: the CRO will direct the Company's reorganization, subject to oversight by the Debtor.

> Category Three: the Debtor may continue to engage in ordinary course transactions.

11. As stated in the DSI Retention Motion, the retention of corporate officers, including in conjunction with the retention of associated turnaround and advisory firms to provide related services, is governed by section 363 of the Bankruptcy Code, and courts in this District and elsewhere have determined that such retention is an appropriate exercise of a debtor's business judgment. *See, e.g. In re Variant Holding Company, LLC,* Case No. 14-12021 (BLS) (Bankr. D. Del. Nov. 3, 2014) (order authorizing retention of DSI to provide a chief restructuring officer and certain additional personnel); *In re Harry & David Holdings, Inc.*, Case No. 11-10884 (MFW) (Bankr. D. Del. Apr. 27, 2011) (order authorizing retention of Alvarez & Marsal to provide an interim chief executive officer and chief restructuring officer and certain additional officers and personnel); *In re Archbrook Laguna Holdings LLC*, No. 11-13292 (SCC) (Bankr. S.D.N.Y. Aug. 3, 2011) (order authorizing retention of chief restructuring officer pursuant to sections 363(b) and 105(a) of the Bankruptcy Code); *In re Calpine Corp.*, No.05-60200 (BRL) (Bankr. S.D.N.Y. Jan. 17, 2007) (order authorizing employment of interim chief financial officer pursuant to section 363 of the Bankruptcy Code); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 29, 2006) (order designating chief restructuring officer and chief financial officer pursuant to section 363 of the Bankruptcy Code).

12. The Committee does not object to DSI's retention by the Debtor, but seeks to supplant the Debtor's business judgment as to the nature of this engagement. The Committee suggests that DSI should be retained as the Debtor's financial advisor under section 327 of the

Bankruptcy Code, as opposed to DSI's proposed role as the Debtor's CRO under section 363 of the Bankruptcy Code.

13. There is no legal basis for the Committee's position and, indeed, the Committee cites no legal authorities in support. The Committee has no right to require the Debtor to hire DSI as a financial advisor when the Debtor and DSI have already agreed to engage DSI as CRO. The Committee's position also makes no logical sense. If the Committee is so concerned with the Debtor's ability to manage this estate for the benefit of its stakeholders, then why would the Committee want to rid the Debtor of someone as capable, qualified, and independent as the CRO? The answer is blatantly obvious: the Committee wants to have this Court deny DSI's retention as CRO in order to set up the Debtor for a subsequent motion to appoint a trustee.

14. Specifically, the Committee objects to the CRO having exclusive authority to investigate and pursue claims against insiders at this early stage of the case. The reference to "exclusive" in the DSI Retention Application is obviously *vis-a-vis* the Debtor and Mr. Dondero; not *vis-à-vis* the Committee. The revised Protocols squarely address this point by stating that: "Nothing herein or in the Engagement Letter shall limit the Committee's rights to seek standing to pursue any estate rights of action." The Committee is not precluded from taking any position as to insider claims or seeking standing to pursue such insider claims, if warranted, at the appropriate time. Although the CRO will not be required to answer to anyone at the Debtor with respect to his investigation or decisions regarding insider transactions or insider claims, he can be terminated by the Debtor on thirty (30) days' notice to the Court and parties in interest.

15. The Committee is also concerned with the Debtor continuing to have authority over ordinary course transactions without oversight of the CRO. But that is the law. The Debtor is authorized to continue to engage in ordinary transactions, as addressed further below, without need for Court supervision or approval. However, the revised Protocols contemplate CRO approval and advance notice to the Committee of ordinary course related party transactions above applicable thresholds. The Committee and its professionals have had and will continue to have access to information about the Debtor and its assets and operations. If there are any transactions deemed as outside the ordinary course that the Committee wishes to challenge, it will be able to do so. It is not feasible or necessary for the Debtor to seek prior Court approval for each ordinary course transaction. Further, the Committee's solution of unilaterally converting DSI's retention from CRO to financial advisor would only exacerbate the problem that the Committee asserts is there. Would the Committee really rather have no CRO?

16. The United States Trustee's opposition to the DSI Retention Motion is also misplaced. The United States Trustee asserts that DSI's proposed retention does not satisfy the requisites of section 327 of the Bankruptcy Code, but the Debtor does not seek to retain DSI under that provision. The Debtor seeks to retain DSI as CRO under section 363 of the Bankruptcy Code. In this regard, the CRO will only wear one hat in this case. He will not act as a director, financial advisor, or general partner of the Debtor, and neither will DSI. The CRO also will not unilaterally control the Debtor. The general partner has simply delegated certain authority to the CRO that would otherwise be vested in the CEO. Further, the CRO may be terminated by the Debtor on thirty (30) days' notice to the Court and parties in interest, so there is a backstop to the CRO's authority.

17. In sum, the Debtor proposes to engage a CRO who is extremely qualified to handle the often divergent interests facing the constituencies in these cases. His proposed engagement is balanced such that the interests of all parties in interest can be properly represented, while also providing an appropriate amount of deference to the debtor in possession. The Debtor therefore urges the Court to approve the DSI Retention Motion on the terms set forth in the revised proposed order attached hereto.

B. The Ordinary Course Protocols Motion

18. The Ordinary Course Protocols Motion is filed as a "precautionary" motion for a reason. The Debtor does not need Court approval or the Committee's blessing to engage in ordinary course transactions. Having said that, and correctly anticipating the Committee's objections, the Debtor filed the Ordinary Course Protocols Motion in order to outline in detail the variety of ordinary course transactions that may take place on a postpetition basis and proposed certain Protocols with respect thereto. The Debtor was not required to file this motion, but it did so to provide complete transparency to parties in interest and this Court. And taking into account certain of the Committee's concerns, the Debtor is now proposing revised Protocols designed to further equalize the information level between the Debtor and the Committee.

19. The revised Protocols provide as follows:

- The Debtor may continue to liquidate and purchase securities in the ordinary course of its business in both the Prime Account (subject to Jefferies' consent) and the Select Fund (subject to Jefferies' consent), *provided that* (i) all such trades will be with third parties unaffiliated with any non-publicly traded entity in which James Dondero has any direct or indirect economic or ownership interest; (ii) all securities will be sold through either a public or over-the-counter exchange; (iii) all trades are disclosed to the CRO; and (iv) with regard to any trades exceeding

$5,000,000 in value (trades of a single security occurring within a 14-day period shall be aggregated for purposes of this threshold), the Debtor will provide at least three (3) business days' advance notice (the "Notice Period") to counsel for the Official Committee of Unsecured Creditors (the "Committee") of such trades. With respect to trades covered by item (iv), the Debtor may proceed with these trades unless the Committee files an objection during the Notice Period and concurrently seeks an order on an expedited basis preventing the Debtor from consummating such trades. Notwithstanding the foregoing, if a trade within item (iv) above is required in order to meet a margin or capital call and the exigencies of the situation do not permit the Debtor to provide advance notice to the Committee, the Debtor may proceed with such trade so long as the Debtor provides the Committee with notice of the margin or capital call, or to cover an existing short position, or to liquidate an existing long position, and the action to be taken by the Debtor to comply with such margin or capital call as soon as reasonably practicable;

- The Debtor may continue to invest in its own name as an investor in various companies or investment partnerships that are managed by independent third parties and unaffiliated with any entity in which James Dondero has any direct or indirect economic or ownership interest. The Debtor may make any capital contributions to support these investments, *provided that* all such transactions are disclosed in advance to the CRO and the Debtor provides at least three (3) business days' advance notice to counsel for the Committee of all investments exceeding $1,000,000 in value. The Debtor may proceed with these transactions unless the Committee files an objection during the Notice Period and concurrently seeks an order on an expedited basis preventing the Debtor from consummating such transactions;

- For a period of sixty (60) days from the date of entry of this Order (the "Outside Date"), unless extended with the written consent of the Committee, the Debtor may continue to engage in transactions with entities in which James Dondero has any direct or indirect economic or ownership interest (an "Interested Party Transaction"), including without limitation the Intercompany Transactions, *provided that* all such transactions are approved by the CRO in advance and the Debtor provides at least three (3) business days' advance notice to counsel for the Committee of all such transactions exceeding $500,000 in value. The Debtor may proceed with these transactions unless the Committee files an objection during the Notice Period and concurrently seeks an order on an expedited basis preventing the Debtor from consummating such transactions. The Debtor may seek an extension of the Outside Date, without need for a motion, by filing a notice with the Court and setting the matter for hearing at the next available hearing date;

- The Debtor may continue to provide the Investment Services, including where the Debtor is a direct or indirect investor in such entities, and to direct its Clients to buy or sell assets and implement restructuring transactions, *provided that* all such purchases, sales, and transactions that constitute an Interested Party Transaction are approved by the CRO in advance and the Debtor provides at least three (3)

business days' advance notice to counsel for the Committee of all such purchases, sales, and transactions exceeding $500,000 in value. The Debtor may proceed with these transactions unless the Committee files an objection during the Notice Period and concurrently seeks an order on an expedited basis preventing the Debtor from consummating such transactions;

- The Debtor shall not amend or modify any agreements for Shared Services without approval of the CRO and at least three (3) business days' advance notice to counsel for the Committee. The CRO shall prepare a report, which shall be delivered to the Committee within sixty (60) days from the date of entry of this order, analyzing the economics of the Shared Services from the perspective of the Debtor and considering any alternatives thereto.

- Any transactions not in the ordinary course will require Court approval; and

- The Debtor will provide a summary, subject to appropriate confidentiality restrictions, of all trades and asset sales or purchases to the U.S. Trustee and the Committee on a monthly basis, *provided that* trades and asset sales or purchases by the Debtor, the Select Fund, Highland Multi Strategy Credit Fund, L.P., and Restoration Capital Partners shall be delivered on a weekly basis. Nothing herein shall limit the Committee's rights to seek additional information or reporting from the Debtor. Nothing herein or in the Engagement Letter shall limit the Committee's rights to seek standing to pursue any estate rights of action.

20. The revised Protocols provide additional transparency to the Committee and other parties in interest with respect to the Debtor's various ordinary course activities. The revised Protocols contemplate advance notice to the Committee of transactions that exceed an applicable threshold and the revised Protocols limit the Debtor's authority to consummate affiliated transactions to a period of sixty (60) days, subject to the Debtor's right to seek a further extension. In the interim, the Debtor will continue to engage with the Committee regarding the nature of the Debtor's intercompany transactions and whether there are any alternatives available. The CRO will also prepare a report that will be delivered to the United States Trustee and the Committee on shared services provided by the Debtor to affiliates.

21. Under section 363(c)(1) of the Bankruptcy Code, the Debtor may use property of the estate and enter into transactions, including the sale or lease of property of the

estate, in the ordinary course of business, without notice or a hearing. 11 U.S.C. § 363(c)(1). Courts generally defer to the debtor's reasoned business judgment when it comes to a disposition of the estate's property. *See Northview Motors, Inc. v. Chrysler Motors Corp.*, 186 F.3d 346, 350-51 (3d Cir. 1999) (courts normally defer to the debtor's business judgment so long as there is a legitimate business justification); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999) (trustee need only have a "sound business purpose" to justify use of estate property pursuant to section 363(b)).

22. Through the Ordinary Course Protocols Motion, the Debtor is not seeking authority to do anything more than what it already has the right to do under section 363(c)(1). The Debtor will continue to consummate certain transactions in the ordinary course, subject to applicable CRO approval and Committee notice requirements, and will report all trades as set forth in the revised Protocols.

23. If the Committee's objections to the Ordinary Course Protocols Motion were sustained, the Debtor's business would simply grind to a halt while the Committee investigated every transaction that could potentially have some nominal effect on an insider or affiliate of the Debtor. The Committee raises particular concerns with certain of the Debtor's business decisions to continue to invest in affiliated non-Debtor companies. The Committee can investigate all of these transactions (as the CRO and his team are doing) at the appropriate time and can assert objections as necessary, but it is simply not workable for the Committee to second guess every transaction that the Debtor intends to consummate. It is also not economically feasible to extricate the Debtor from all intercompany relationships. The bulk of the Debtor's

revenue is derived from affiliated entities not subject to control by the Debtor's estate. The Debtor is in the business of managing and investing in assets on behalf of itself and others, including non-Debtor affiliates.[4] If the Debtor cannot timely and efficiently continue to provide these services and to invest capital where necessary, then the Debtor's ability to generate revenues from operations will be severely curtailed and its ability to function as a going concern will be at considerable risk, all with disastrous consequences for the Debtor's estate.

24. Nonetheless, the Debtor has revised the Protocols to provide additional transparency to the Committee, including advance notice of transactions exceeding certain applicable thresholds. The Debtor submits that the Protocols, as revised, are reasonable and appropriate under the circumstances of this case.

C. The Cash Management Motion

25. The Debtor has been properly functioning under the interim order approving the Cash Management Motion since the earliest stages of this case. Contrary to the Committee's assertion, the Debtor has not "mov[ed] value away" from the Debtor's creditors since the Petition Date. Consequently, the Committee is left to object to the Cash Management Motion by challenging the proper exercise of the Debtor's business judgment. As noted above, courts generally defer to the Debtor's business judgment when it comes to uses of property of the estate.

26. The Cash Management Motion outlines in detail various intercompany transactions required for the Debtor to maintain the value of its interests in certain non-Debtor

[4] Notably, while the Debtor employs most of the investment personnel servicing both the Debtor and its affiliates, employees of non-Debtor affiliates provide certain specialized investment advice to the Debtor and its managed funds.

affiliates. For instance, as the Court may recall from the testimony at the first day hearing, the Debtor needs to continue to fund its life settlement assets held through Highland Multi Strategy Credit Fund, L.P. ("MSCF"). If such funding is not available, then the applicable life settlement assets will simply expire leaving no value to the Debtor. MSCF is in the process of generating liquidity so that it is able to fund the life settlements premiums without assistance from the Debtor, but the fund may continue in the short term to need such assistance until it can generate sufficient liquidity. A chart summarizing the Debtor's ordinary course intercompany transfers and responding to certain of the Committee's issues is attached hereto as **Exhibit D**. The CRO (and his team) continue to monitor and evaluate all intercompany transactions on a daily basis and reserves the right to terminate such transactions if they are determined not to be in the best interests of the Debtor's estate.

27. Like the CRO, the Committee is welcome to investigate all of the Debtor's intercompany transactions and relationships. However, it is not productive for the Committee to assert a general objection to every intercompany transaction while the Committee conducts its due diligence. The Debtor has various obligations that come due at subsidiary levels that, if not satisfied, will lead to a forfeiture or dilution of assets or other potentially dire consequences. In the interim, the Debtor should be permitted to continue to operate in the ordinary course, just as it has been doing since entry of the interim order on the Cash Management Motion. Further, all intercompany transactions contemplated by the Cash Management Motion will be subject to the requirements of the revised Protocols.

28. Finally, the Committee expressed concern that most of the Debtor's bank accounts are held at NexBank, which is an affiliate of Mr. Dondero. In fact, at the CRO's

direction, the Debtor has now established new debtor in possession accounts at East West Bank.[5] The Debtor will utilize such accounts for its operating expenses on a going forward basis. Hence, this portion of the Committee's objection is moot.

Conclusion

29. In sum, the Committee's generalized concerns with the Debtor's governance and operating structure are not a proper basis to preclude the Debtor from retaining its selected CRO or continuing its ordinary course transactions and cash management functions. The Debtor must be permitted to operate in the ordinary course and to pursue its restructuring options with the assistance and oversight of the CRO. The Committee has been, and will continue to be granted, wide-ranging access to the Debtor, the CRO and his staff, and the Debtor's business, subject to appropriate confidentiality restrictions. If the Committee identifies any specific concerns, then they can be addressed or brought to this Court's attention, but that process should not interfere with the Debtor's ordinary course operations. At the same time, the Debtor has further revised the proposed Protocols to address certain of the Committee's concerns. The Debtor submits that the revised Protocols, in conjunction with the employment of the CRO, provide appropriate transparency to the Committee and other parties in interest while also balancing the Debtor's interests in conducting its business in an orderly and efficient manner.

[5] The Debtor has one account remaining at NexBank, which account contains approximately $125,000 that has been pledged to secure an outstanding letter of credit issued by NexBank in favor of a third party landlord.

WHEREFORE, the Debtor respectfully requests that this Court enter an order approving the Motions, including the Protocols as revised, and granting such other and further relief as this Court deems appropriate.

Dated: November 21, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

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EXHIBIT A

Redline Order Approving Ordinary Course Protocols Motion

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 1919-12239 (CSS)
Debtor.	)	Related to Docket No. 77

ORDER APPROVING PROTOCOLS FOR THE DEBTOR TO IMPLEMENT CERTAIN TRANSACTIONS IN THE ORDINARY COURSE OF BUSINESS

Upon the *Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course* (the "Motion"),[2] filed by the above-captioned debtor and debtor in possession (the "Debtor"); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein.

2. ~~The~~Notwithstanding anything to the contrary in the Engagement Letter, the Debtor is authorized~~, but not required,~~ to provide the Ordinary Course Services and engage 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.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Interested Party Transactions (as defined below) and the Intercompany Transactions~~, as requested in the Motion~~, subject to the following Protocols:

- ~~Notwithstanding any other Protocol to the contrary, the CRO will have all authority and responsibilities set forth in the Engagement Letter;~~

- The Debtor may continue to liquidate and purchase securities in the ordinary course of its business in both the Prime Account (subject to Jefferies' consent) and the Select Fund (subject to Jefferies' consent), *provided that* (i) all such trades will be with ~~unaffiliated~~ third parties unaffiliated with any non-publicly traded entity in which James Dondero has any direct or indirect economic or ownership interest; (ii) all securities will be sold through either a public or over-the- counter exchange; ~~and (iii) all trades will be disclosed to the CRO.~~(iii) all trades are disclosed to the CRO; and (iv) with regard to any trades exceeding $5,000,000 in value (trades of a single security occurring within a 14-day period shall be aggregated for purposes of this threshold), the Debtor will provide at least three (3) business days' advance notice (the "Notice Period") to counsel for the Official Committee of Unsecured Creditors (the "Committee") of such trades. With respect to trades covered by item (iv), the Debtor may proceed with these trades unless the Committee files an objection during the Notice Period and concurrently seeks an order on an expedited basis preventing the Debtor from consummating such trades. Notwithstanding the foregoing, if a trade within item (iv) above is required in order to meet a margin or capital call, or to cover an existing short position, or to liquidate an existing long position, and the exigencies of the situation do not permit the Debtor to provide advance notice to the Committee, the Debtor may proceed with such trade so long as the Debtor provides the Committee with notice of the margin or capital call and the action to be taken by the Debtor to comply with such margin or capital call as soon as reasonably practicable;

- The Debtor may continue to invest in its own name as an investor in various companies or investment partnerships that are managed by independent third parties and unaffiliated with any entity in which James Dondero has any direct or indirect economic or ownership interest. The Debtor may make any capital contributions to support these investments, ~~including with respect to the Petrocap Interests,~~ *provided that* all such transactions are disclosed in advance to the CRO~~.~~ and the Debtor provides at least three (3) business days' advance notice to counsel for the Committee of all investments exceeding $1,000,000 in value. The Debtor may proceed with these transactions unless the Committee files an objection during the Notice Period and concurrently seeks an order on an expedited basis preventing the Debtor from consummating such transactions;

- ~~The~~For a period of sixty (60) days from the date of entry of this Order (the "Outside Date"), unless extended with the written consent of the Committee, the

Debtor may continue to engage in transactions with entities in which James Dondero has any direct or indirect economic or ownership interest (an "Interested Party Transaction"), including without limitation the Intercompany Transactions, *provided that* all such transactions are ~~disclosed in advance to the CRO.~~approved by the CRO in advance and the Debtor provides at least three (3) business days' advance notice to counsel for the Committee of all such transactions exceeding $500,000 in value. The Debtor may proceed with these transactions unless the Committee files an objection during the Notice Period and concurrently seeks an order on an expedited basis preventing the Debtor from consummating such transactions. The Debtor may seek an extension of the Outside Date, without need for a motion, by filing a notice with the Court and setting the matter for hearing at the next available hearing date;

- The Debtor may continue to provide the Investment ~~Management~~ Services, including where the Debtor is a direct or indirect investor in such entities, and to direct its Clients to buy or sell assets and implement restructuring transactions, *provided that* all such purchases, sales, and transactions ~~are disclosed to the CRO~~that constitute an Interested Party Transaction are approved by the CRO in advance and the Debtor provides at least three (3) business days' advance notice to counsel for the Committee of all such purchases, sales, and transactions exceeding $500,000 in value. The Debtor may proceed with these transactions unless the Committee files an objection during the Notice Period and concurrently seeks an order on an expedited basis preventing the Debtor from consummating such transactions;

- The Debtor shall not amend or modify any agreements for Shared Services without approval of the CRO and at least three (3) business days' advance notice to counsel for the Committee. The CRO shall prepare a report, which shall be delivered to the Committee within sixty (60) days from the date of entry of this order, analyzing the economics of the Shared Services from the perspective of the Debtor and considering any alternatives thereto.

- Any transactions not in the ordinary course will require Court approval; and

- The Debtor will provide a summary, subject to appropriate confidentiality restrictions, of all trades and asset sales or purchases to the ~~Court, the~~ U.S. Trustee~~, and any statutory committee appointed in this case on a quarterly basis~~ and the Committee on a monthly basis, *provided that* trades and asset sales or purchases by the Debtor, the Select Fund, Highland Multi Strategy Credit Fund, L.P., and Restoration Capital Partners shall be delivered on a weekly basis. Nothing herein shall limit the Committee's rights to seek additional information or reporting from the Debtor. Nothing herein or in the Engagement Letter shall limit the Committee's rights to seek standing to pursue any estate rights of action.

3. The Ordinary Course Trades and the Street Name Change are approved.

4. Nothing herein or in the Motion shall be deemed to constitute an assumption of any executory contract, whether under section 365 of the Bankruptcy Code or otherwise.

5. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

6. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

Dated: ~~_____~~December ___, 2019

CHIEF JUDGE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

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EXHIBIT B

Redline Order Approving Cash Management Motion

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.	)	**Related to Docket No. 5**

~~INTERIM~~FINAL ORDER AUTHORIZING (A) CONTINUANCE OF EXISTING CASH MANAGEMENT SYSTEM, (B) CONTINUED USE OF THE PRIME ACCOUNT, (C) LIMITED WAIVER OF SECTION 345(b) DEPOSIT AND INVESTMENT REQUIREMENTS, AND (D) GRANTING RELATED RELIEF

Upon consideration of the *Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief* (the "Motion")[2] filed by the above-captioned debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case; and this Court finding that (a) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (c) due and adequate notice of the Motion was given under the circumstances; and after due deliberation and cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** on ~~an interim~~a final basis as set forth herein.

[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.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtor is authorized to continue operating the Cash Management System as described in the Motion and as modified by this Order and in a manner consistent with the Debtor's prepetition practices and this Order.

3. The Debtor is authorized to maintain the Certificate of Deposit with NexBank, SSB.

4. The Debtor is authorized to transfer all of its Bank Accounts, with the exception of the Certificate of Deposit, to East West Bank and is authorized, but not directed, in the reasonable exercise of its business judgment, to: (a) designate, maintain and continue to use~~,~~ the Bank Accounts as transferred to East West Bank; (b) designate, maintain and continue to use the Certificate of Deposit and the Prime Account with the same account numbers~~, the Bank Accounts and the Prime Account~~ in existence as of the Petition Date; (~~b~~c) treat the Bank Accounts and the Prime Account for all purposes as debtor in possession accounts; and (c) use all existing Business Forms without reference to the Debtor's status as "debtor in possession" until such supply is depleted, after which the Debtor will use new Business Forms with the "debtor in possession" reference and the corresponding bankruptcy case number; provided that, with respect to checks which the Debtor or its agents print themselves, the Debtor shall begin printing the "Debtor in Possession" legend and the bankruptcy case number on such items within ten (10) days of the date of entry of this Order.

5. ~~4. The Banks –~~East West Bank and NexBank, SSB~~, and BBVA USA –~~ (solely as the depository for the Certificate of Deposit) are authorized to continue to service and administer the Bank Accounts as debtor in possession accounts without interruption and in the usual and ordinary course of business, and to receive, process, honor, and pay any and all checks

and drafts drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided, however*, that any check that the Debtor advises to have been drawn or issued by the Debtor before the Petition Date may be honored only if specifically authorized by order of this Court.

6. ~~5.~~ Except as modified by this Order, the Debtor's existing agreements with the Banks and with respect to the transfers to and from the Bank Accounts shall continue to govern the postpetition cash management relationship between the Debtor and the Banks. In the course of providing cash management services to the Debtor, the Banks are authorized, without further order of this Court, to continue to deduct from the appropriate accounts of the Debtor, their routine and ordinary course fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtor.

7. ~~6.~~ The Debtor shall maintain detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System. In connection with the ongoing utilization of its Cash Management System, the Debtor shall continue to maintain accurate and detailed records in the ordinary course of business with respect to all transfers including intercompany transfers so that all transactions may be readily ascertained, traced and recorded properly on the applicable accounts and distinguished between prepetition and postpetition transactions.

8. ~~7.~~ Nothing contained herein shall prevent the Debtor from closing any Accounts as they may deem necessary, and any relevant Bank is authorized to honor the Debtor's

request to close such Accounts, and the Debtor shall give notice of the closure of any Accounts to the U.S. Trustee and to any statutory committee appointed in this case.

9. ~~8.~~ The Debtor is authorized to open new bank accounts; provided, however, that all accounts opened by the Debtor on or after the Petition Date at any bank shall, for purposes of this Order, be deemed a Bank Account as if it had been listed in the Motion; provided, further, that (a) any such new bank account shall be opened at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at a bank that is willing to immediately execute such an agreement, (b) any such new bank account shall be designated as a "debtor in possession" account by the relevant bank, and (c) such opening shall be timely indicated on the Debtor's monthly operating report and notice of such opening shall be provided within 14 days to the U.S. Trustee and counsel to any statutory committee appointed in this chapter 11 case.

~~9. The Debtor is authorized to make the Intercompany Transactions consistent with the Motion and this Order; provided, however, that Intercompany Transactions shall not exceed $1,700,000.00 on an interim basis absent further Order of the Court.~~

~~10. The Debtor is authorized to continue using the Prime Account as described in the Motion and in a manner consistent with the Debtor's prepetition practices and this Order; provided, however that the Debtor does not intend to borrow any additional amounts on margin, absent further order of this Court.~~

10. ~~11.~~ The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

11. ~~12.~~ Nothing herein shall, or is intended to, (i) create any rights in favor of or enhance the status of any claim held by any party or (ii) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

12. ~~13. The Debtor is granted a 30 day extension of time to comply with the investment and deposit requirements of section 345 of the Bankruptcy Code, which extension is without prejudice to the Debtor's ability to seek a further extension or final waiver of those requirements. For banks at which the Debtor holds accounts that are party to a Uniform Depository agreement with the Office of the United States Trustee for the District of Delaware, within fifteen (15) days from the date of entry of this Order the Debtor shall (a) contact each bank, (b) provide the bank with the Debtor's employer identification numbers, and (c) identify each of the accounts held at such banks as being held by a debtor in possession. For banks that are not party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, the Debtor shall use its good faith efforts to cause the bank to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within thirty (30) days of the date of entry of this Order.~~With the exception of the Certificate of Deposit, the Bank Accounts comply with the requirements imposed under Section 345(b) of the Bankruptcy Code. The requirements of Section 345(b) are deemed satisifed.

13. The requirements of Section 345(b) are waived with respect to the Certificate of Deposit.

14. The notice requirements under Bankruptcy Rule 6004(a) and the stay under Bankruptcy Rule 6004(h) are hereby waived, to the extent that they apply.

15. This Order shall be served promptly by the Debtor on the Banks and all parties in interest who were served by the Motion and all other parties who file a request for notice under Bankruptcy Rule 2002.

~~16. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2019, at __:__ _.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2019, and shall be served on: (a) proposed counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, DE 19801, Attn: James E. O'Neill, Esq.; (b) counsel to any statutory committee appointed in this case; and (c) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.~~

16.

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

Dated: _____, 2019

Honorable Christopher S. Sontchi
United States Bankruptcy Judge

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EXHIBIT C

Redline Order Approving DSI Retention Motion

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.	)	**Related Docket No. 75**

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN DEVELOPMENT SPECIALISTS, INC. TO PROVIDE A CHIEF RESTRUCTURING OFFICER, ADDITIONAL PERSONNEL, AND FINANCIAL ADVISORY AND RESTRUCTURING-RELATED SERVICES FOR SUCH DEBTOR, *NUNC PRO TUNC* AS OF THE PETITION DATE

This matter coming before the Court on the *Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date* (the "Motion"),[2] filed by Highland Capital Management, L.P. (the "Debtor"); the Court having reviewed the Motion and the Sharp Declaration; the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (d) notice of the Motion was sufficient under the circumstances; after due deliberation the Court having determined that the relief requested in the Motion is necessary and essential for the Debtor's estate and such relief is in the best interests of the Debtor, its estate, and its creditors; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

[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.

[2] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

1. The Motion is GRANTED, as set forth herein, *nunc pro tunc* as of the Petition Date.

2. The Debtor is authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to employ and retain DSI to provide Mr. Sharp as CRO, the Additional Personnel, and financial advisory and restructuring-related services in accordance with the terms and conditions set forth in the Engagement Letter, as modified herein, effective *nunc pro tunc* as of the Petition Date.

3. The terms of the Engagement Letter are approved in all respects except as limited or modified herein.

4. In the event the Debtor seeks to have DSI personnel assume executive officer positions that are different than the positions disclosed in the Motion, or to materially change the terms of the engagement by either (a) modifying the functions of personnel, (b) adding new personnel, or (c) altering or expanding the scope of the engagement, a motion to modify the retention shall be filed.

5. Notwithstanding any provision to the contrary in the Engagement Letter, DSI shall file with the Court and serve on the Notice Parties a Staffing Report by the twentieth (20th) day of each month for the previous month, which shall include the names and functions filled by all DSI personnel assigned to the engagement. The Staffing Report (and DSI's staffing for this matter) shall remain subject to review by the Court in the event so requested by any of the Notice Parties.

6. Notwithstanding any provision to the contrary in the Engagement Letter, DSI shall file with this Court, and serve upon the Notice Parties, Compensation Reports on at

least a quarterly basis. The Compensation Reports shall summarize the service provided, identify the compensation earned, itemize expenses incurred and provide for an objection period of at least five (5) business days. All such compensation shall remain subject to review by this Court if any objection is filed. Time records shall (i) be appended to the Compensation Reports, (ii) contain detailed time entries describing the task(s) performed, and (iii) be organized by project category. Where personnel are providing services at an hourly rate, the time entries shall identify the time spent completing each task in 1/10 hour increments and the corresponding charge (time multiplied by hourly rate) for each task; where personnel are providing services at a "flat" rate, the time entries shall be kept in hourly increments.

7. Notwithstanding any provision to the contrary in the Engagement Letter, the Debtor is permitted to indemnify those persons acting as executive officers only on the same terms as provided to the Debtor's other officers and directors under applicable governance documents and state law, in addition to insurance coverage under the Debtor's director and officer insurance policies. There will be no other indemnification of DSI or any of its affiliates.

8. Notwithstanding any provision to the contrary in the Engagement Letter, DSI shall be deemed to have waived, and shall not raise or assert any defense, based upon jurisdiction, venue, abstention or otherwise to the jurisdiction and venue of this Court or, if the reference is withdrawn, the District Court for the District of Delaware to hear or determine any controversy or claims with respect to, in connection with, arising out of, or in any way related to DSI's engagement in this case.

9. DSI and its affiliates shall not act in any other capacity (for example, and without limitation, as a financial advisor, claims agent/claims administrator, or investor/acquirer) in connection with the above-captioned case.

10. No principal, employee or independent contractor of DSI and its affiliates shall serve as a director of any of the above-captioned Debtor during the pendency of the above-captioned case.

11. Success fees, transaction fees, or other back-end fees shall be approved by the Court at the conclusion of the case on a reasonableness standard and are not being pre-approved by entry of this Order. No success fee, transaction fee or back-end fee shall be sought upon conversion of the case, dismissal of the case for cause, or appointment of a trustee.

12. ~~9.~~ For a period of three years after the conclusion of DSI's engagement, neither DSI nor any of its affiliates shall make any investments in the Debtor or any reorganized Debtor.

13. ~~10.~~ DSI shall disclose any and all facts that may have a bearing on whether DSI, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtor, its creditors, or other parties in interest. The obligation to disclose identified in this paragraph is a continuing obligation.

14. ~~11.~~ The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

15. ~~12.~~ The terms and conditions of this Order shall be immediately effective and enforceable upon its entry notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, or 9014.

16. ~~13.~~ To the extent that this Order is inconsistent with the Engagement Letter, the terms of this Order shall govern.

17. ~~14.~~ The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: _____, 2019

CHIEF JUDGE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

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EXHIBIT D

Summary of Intercompany Transactions

Highland Multi Strategy Credit Fund, L.P. ("MSCF")	
Committee Concerns	Response
• Business justification for not requiring interest on the notes • Why other owners are not funding their pro rata share of the notes • Why are other owners' equity not being diluted • Current outstanding balance of the notes • Repayments on the notes	**Business Justification:** • As the investment manager for, and limited partner in, MSCF, the Debtor believes it will receive substantial gains once MSCF's assets are realized. If the expenses discussed below are not funded, the Debtor risks losing the gains in MSCF's investments, the fees that the Debtor earns as investment manager, and potentially breaching its fiduciary duties. **Background:** • The Debtor is MSCF's investment manager and, as such, is entitled to management fees and performance fees in accordance with its investment management agreement with MSCF. • The Debtor is also a material limited partner in MSCF with a direct and indirect interest in MSCF of approximately 35%. The majority of MSCF's equity interests are held directly or indirectly by James Dondero. The Debtor has disclosed MSCF's ownership to the Committee. • Under MSCF's governing documents, no limited partner is obligated to contribute additional capital. The Debtor is lending the money in its role as investment manager. • Without capital, MSCF could not pay premiums on its life settlement policies, its obligations to NexBank, SSB, and its operating expenses. If premiums are not paid, the life settlement policies will lapse. • Protecting the life settlement policies protects the Debtor's actual and contingent fees streams and the value of its partnership interest in MSCF. The life settlement policies are approximately 20% of the fair market value of MSCF's assets and substantially more based on notional value. • Charging interest on the loan would create a principal conflict between the Debtor (as investment manager) and MSCF, which would require separate independent approval. • The loan is a debt instrument and has priority over MSCF's limited partners' interests and is repaid prior to limited partners receiving distributions. The limited partners thus pay their pro rata share of the loan from distributions. • MSCF issued nine notes to the Debtor. One note has been repaid, and there is currently $3,629,000 outstanding on the remaining eight notes. • Following the Petition Date, MSCF received a pay down that will provide temporary liquidity to MSCF and reduce the amounts to be borrowed.
Highland Capital Management Korea Limited ("HCM Korea")	
Committee Concerns	Response
• Business justification for loan to HCM Korea • Ownership structure of HCM Korea	**Business Justification:** • As the sole equity owner of HCM Korea, the Debtor will realize gains on its investment only if HCM Korea is profitable. If HCM Korea cannot fund its capital contributions to the HCM Korea Fund (defined below), it risks losing both its position as investment manager for, and its investment in, the HCM Korea Fund, both of which would severely impact the value of the Debtor's investment in HCM Korea.

• Why is Debtor funding note and not the beneficiary of the investment in HCM Korea. • Harm to Debtor if HCM Korea cannot fund capital commitments	**Background:** • The Debtor is the sole equity owner of HCM Korea, and there are no other investors in HCM Korea to provide funding. • HCM Korea is the co-general partner of Stonebridge-Highland Healthcare Private Equity Fund (the "HCM Korea Fund"). • HCM Korea made a capital commitment to the HCM Korea Fund, along with other investors. HCM Korea's initial capital commitment was KRW 10 billion (approximately $8.6 million). • When the HCM Korea Fund calls capital, all investors, including HCM Korea, are required to fund their pro rata portion of such capital call. • If HCM Korea fails to fund capital when called, (i) its capital interest could be diluted; (ii) it could be required to transfer its interest at the lesser of 50% of (a) paid in capital or (b) fair market value of its interest in the HCM Korea Fund's investments, and (iii) investors could vote to remove HCM Korea as a general partner and terminate its management fees and carried interest. • The Debtor, as the sole equity holder, provides financing so that HCM Korea does not lose its capital contribution in the HCM Korea Fund and/or management fees and carried interest. • Because the Debtor is the sole equity owner in HCM Korea, a zero interest loan and an interest bearing loan have the same economic impact on the Debtor.
Highland Capital Management Latin America ("HCM Latin America")	
Committee Concerns	Response
• Business justification for equity contribution • Why is the Debtor contributing equity and not the beneficiaries of the investment in HCM Latin America	**Business Justification:** • HCM Latin America is being wound down, and the Debtor will not contribute additional equity following the wind down. **Background:** • The Debtor is the sole equity holder in HCM Latin America, and there are no other investors in HCM Latin America to provide funding. • Since the Petition Date, there have been sizeable redemptions in the funds managed by HCM Latin America, and HCM Latin America is being wound down. • Since the Petition Date, the Debtor has contributed $100,000 in equity to HCM Latin America. Once wound down, HCM Latin America will not receive any additional equity contributions. The Debtor is currently preparing a budget for the wind down.
Highland Capital Management (Singapore) Pte Ltd ("HCM Singapore")	
Committee Concerns	Response
• Business justification for paying costs • Increase in management fees/revenue from HCM Singapore	Business Justification: • HCM Singapore raises money for the Debtor's managed funds from Asian-based investors. New money increases the fee-generating assets in such funds and the amount of management (and potentially incentive) fees paid to the Debtor for managing those funds. If HCM Singapore shuts down, the Debtor will lose access to the Asian market and such fee generating assets.

• Does HCM Singapore solicit investments for non-wholly owned funds	Background: • HCM Singapore solicits investments in the Debtor's managed funds from Asian-based institutional investors. • Capital invested in the managed funds increases management fees (and potentially incentive fees) by increasing the fee-generating assets in those funds. • The managed funds have non-Debtor investors, but management fees are generally calculated based on the fund's assets under management and are not contingent on the Debtor having direct ownership in the managed fund. The Debtor has provided the Committee with a description of the assets in funds that are the Debtor's affiliates. • The Debtor anticipates that HCM Singapore will require up to $120,000 in funding between the Petition Date and calendar year-end.
Back Office Support/Shared Services	
Committee Concerns	Response
• Debtor provides back office support to clients and allocates expenses for reimbursement • Certain clients may be related to the Debtor and could lead to cost manipulation	**Business Justification:** • The Debtor is contractually obligated to provide certain back office support to its clients and receives payments for those services. If the Debtor does not provide such services, it risks breaching its agreements and losing revenue. **Background:** • The Debtor provides back office support to clients (referred to as the "Shared Services") pursuant to certain contracts and is paid a fee for providing those services. Those clients include entities related to the Debtor. • The agreements provide for reimbursement by such clients of certain expenses initially borne by the Debtor. • The CRO is reviewing all expense allocations and reimbursements to ensure that they are allocated among all entities, including related entities, consistent with the contracts and will be monitoring such allocations and reimbursements going forward. • The CRO has committed to drafting a report that will disclose information concerning allocations and reimbursements to the Committee.
Governance Re – Directors & Officers Insurance ("D&O Insurance")	
Committee Concerns	Response
• D&O Insurance is provided by an entity owned by Dondero and Okada • No evidence that D&O Insurance is market	**Business Justification** • The Debtor requires D&O Insurance to operate in the ordinary course of its business and to retain its directors and officers. **Background** • Governance Re is a Bermudan insurance company that is indirectly owned 75% by James Dondero. • The CRO has agreed to provide the Committee with information concerning Governance Re's financial ability to support its obligations under the D&O Insurance. • The Debtor uses an insurance broker, Willis, to provide information on current market rates, and the D&O Insurance is consistent with those rates.

	• The CRO has also agreed to provide the Committee with information received from Willis.
Petrocap Interests	
Committee Concerns	Response
• Unclear whether continued investments in the Petrocap Entities makes sense • Unclear whether the Debtor's affiliates or insiders are also invested in the Petrocap Entities	**Business Justification** • The Debtor is a limited partner in the Petrocap Entities and is contractually required to fund capital calls when made. If the Debtor fails to fund capital calls, it risks losing the value of its entire investment in the Petrocap Entities. • The Debtor does not have discretion regarding whether to continue investing. It either funds its obligations or risks losing its investment. **Background** • The Petrocap Entities are run by former employees of the Debtor but are not managed or controlled by the Debtor. • Certain affiliates of the Debtor have an economic interest in some, but not all, of the Petrocap Entities. The Debtor has disclosed information regarding such economic interest and the Petrocap Entities' management to the Committee.