

LATHAM & WATKINS LLP
Andrew Clubok (*pro hac vice*)
Sarah Tomkowiak (*pro hac vice*)
555 Eleventh Street, NW, Suite 1000
Washington, District of Columbia 20004
Telephone: (202) 637-2200
Email: andrew.clubok@lw.com
sarah.tomkowiak@lw.com

and

Jeffrey E. Bjork (*pro hac vice*)
Kimberly A. Posin (*pro hac vice*)
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Telephone: (213) 485-1234
Email: jeff.bjork@lw.com
kim.posin@lw.com

BUTLER SNOW LLP
Martin Sosland (TX Bar No. 18855645)
Candice Carson (TX Bar No. 24074006)
2911 Turtle Creek Boulevard, Suite 1400
Dallas, Texas 75219
Telephone: (469) 680-5502
E-mail: martin.sosland@butlersnow.com
candice.carson@butlersnow.com

*Counsel for UBS Securities LLC and UBS
AG, London Branch*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

-----X
In re : Chapter 11
: :
HIGHLAND CAPITAL MANAGEMENT, L.P.,¹ : Case No. 19-34054-sgj11
: :
Debtor. :
-----X

**RESERVATION OF RIGHTS OF UBS REGARDING DEBTOR’S MOTION FOR
APPROVAL OF THE DEBTOR’S PROPOSED DISCLOSURE STATEMENT AND
CERTAIN SOLICITATION AND NOTICE PROCEDURES**

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



UBS Securities LLC and UBS AG, London Branch (together “**UBS**”), by and through their undersigned counsel, hereby submit this reservation of rights (the “**Reservation**”) regarding (a) the *Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1384] (as may be amended, supplemented, or modified, the “**Disclosure Statement**”)² and (b) the *Debtor’s Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice* [Docket No. 1108] (the “**Motion**”), and, in support of the Reservation, state as follows:

BACKGROUND

1. On October 16, 2019 (the “**Petition Date**”), the Debtor filed a voluntary petition for chapter 11 relief in the Bankruptcy Court for the District of Delaware. Pursuant to an order dated December 4, 2019, the Debtor’s bankruptcy proceedings were transferred to this Court under the above-captioned case number (the “**Chapter 11 Case**”). The Debtor continues to operate its business and manage its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On August 12, 2020, the Debtor filed the heavily redacted *Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] and *Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 945] concurrently with a motion to seal both documents. Following several weeks of mediation ordered by the Court, on

² Capitalized terms used herein, but not defined have the meanings ascribed to such terms in the *Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1383] (as may be further amended, supplemented, or modified, the “**Plan**”) or the Disclosure Statement, as applicable.

September 21, 2020, the Debtor filed an amended plan and disclosure statement, and then, immediately prior to the Initial DS Hearing (defined below), the Debtor filed the Second Amended Plan and Second Amended Disclosure Statement (each as defined below). The current Plan and Disclosure Statement were filed on November 13, 2020.

3. On June 26, 2020, UBS timely filed two substantially identical proofs of claim— Claim No. 190 by UBS Securities, LLC, and Claim No. 191 by UBS AG, London Branch (the “**UBS Claims**”).

4. The UBS Claims derive from a state court action initiated in 2009 against the Debtor and several of its affiliates (amongst other parties) (the “**State Court Action**”). The underlying facts and procedural history of the State Court Action are complex and set forth in detail in *UBS’s Motion for Relief From the Automatic Stay to Proceed with State Court Action* [Docket No. 644]. On November 14, 2019, the Supreme Court of the State of New York (the “**State Court**”) entered a Decision and Order on the first phase of the State Court Action (“**Phase I**”), ruling in favor of UBS on almost every issue presented in Phase I and granting UBS over \$1 billion in damages against certain of the Debtor’s affiliated funds. The second phase of the State Court Action, which includes UBS’s direct claims against the Debtor, is currently stayed by the automatic stay imposed by section 362 of the Bankruptcy Code.

5. On August 7, 2020, the Debtor filed the *Debtor’s Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [Docket No. 928] and on September 25, 2020, UBS filed *UBS’s Omnibus Response to Objections to the UBS Proofs of Claim* [Docket No. 1105]. On October 16, 2020, the Debtor filed *Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [Docket No. 1180], and certain other creditors filed the *Redeemer Committee of the Highland Crusader*

Fund and the Crusader Funds' Motion for Partial Summary Judgment and Joinder in the Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC [Docket No. 1183] (together, the "**MSJs**"), seeking to disallow a significant portion of the UBS Claims. On November 6, 2020, UBS filed *UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request* (the "**MSJ Response**"). Also on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1342] (the "**3018 Motion**"). A hearing on the MSJs, the MSJ Response and the 3018 Motion has been set for November 20, 2020.

RESERVATION OF RIGHTS

6. At a hearing held on October 27, 2020 (the "**Initial DS Hearing**"), the Court declined to approve solicitation of the Debtors' *Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1080] (the "**Second Amended Disclosure Statement**") and continued the Initial DS Hearing citing several deficiencies in the Second Amended Disclosure Statement and the related *Second Amended Plan of Reorganization of Highland Capital Management L.P.* [Docket No. 1079] (the "**Second Amended Plan**"). On November 13, 2020, the Debtor filed the Disclosure Statement and Plan which purport to address such deficiencies.

7. UBS acknowledges that the revisions have fully addressed certain of the problematic aspects of the Second Amended Plan and Second Amended Disclosure Statement. And, UBS also appreciates the Debtor's willingness to engage constructively with UBS and the official committee of unsecured creditors (the "**Committee**") to resolve outstanding issues with the Plan and its implementing documents. UBS and the Debtor have been working to resolve a disclosure-related issue regarding the tax treatment of the Disputed Claims Reserve contemplated

by the Plan and Claimant Trust Agreement. While UBS is hopeful that it will be able to resolve this issue with the Debtor prior to the scheduled hearing to approve the Disclosure Statement (the “**Continued DS Hearing**”), UBS hereby expressly reserves its rights to raise any unresolved disclosure issues with respect to the Disputed Claims Reserve at the Continued DS Hearing.

8. UBS also believes that there may be issues with the Plan that require resolution prior to confirmation, including with respect to releases, the governance of the Claimant Trust, and the Disputed Claims Reserve, and reserves its rights to object to such provisions, and any other grounds at the appropriate time. UBS remains hopeful that it will be able to resolve these issues with the Debtor well in advance of confirmation. UBS expressly reserves all rights, claims, arguments, defenses, and remedies with respect to confirmation of the Plan, or any other issue in this Chapter 11 Case, and to supplement, modify, and amend this Reservation, to seek discovery, and to raise additional objections in writing or orally at the final hearing on the Motion.

[Remainder of Page Left Blank Intentionally]

DATED this 19h day of November, 2020.

LATHAM & WATKINS LLP

By /s/ Martin Sosland
Andrew Clubok (*pro hac vice*)
Sarah Tomkowiak (*pro hac vice*)
555 Eleventh Street, NW, Suite 1000
Washington, District of Columbia 20004
Telephone: (202) 637-2200
Email: andrew.clubok@lw.com
sarah.tomkowiak@lw.com

and

Jeffrey E. Bjork (*pro hac vice*)
Kimberly A. Posin (*pro hac vice*)
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Telephone: (213) 485-1234
Email: jeff.bjork@lw.com
kim.posin@lw.com

BUTLER SNOW LLP

Martin Sosland (TX Bar No. 18855645)
Candice M. Carson (TX Bar No. 24074006)
5430 LBJ Freeway, Suite 1200
Dallas, Texas 75240
Telephone: (469) 680-5502
E-mail: martin.sosland@butlersnow.com
candice.carson@butlersnow.com

*Counsel for UBS Securities LLC and UBS
AG, London Branch*

CERTIFICATE OF SERVICE

I, Martin Sosland, certify that the *Objection of UBS to Debtor's Motion for Approval of the Debtor's Proposed Disclosure Statement and Certain Solicitation and Notice Procedures* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: November 19, 2020.

/s/ Martin Sosland