

No. 20-cv-3408-G

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

IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P.,
Debtor.

UBS SECURITIES LLC AND UBS AG LONDON BRANCH,
Appellants,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,
Appellee.

On Appeal from the United States Bankruptcy Court
for the Northern District of Texas
(No. 19-bk-34054—Hon. Stacey G. Jernigan)

**APPELLANTS' UNOPPOSED MOTION TO ACCEPT SEALED RECORDS
DESIGNATED AS PART OF THE RECORD ON APPEAL**

Pursuant to Federal Rule of Bankruptcy Procedure 8009(f) and this Court's instructions (*see* ECF No. 1), Appellants UBS Securities LLC and UBS AG London Branch (collectively, UBS) move this Court to accept documents filed under seal with the Bankruptcy Court that are designated as part of the record on appeal. These documents were sealed by the Bankruptcy Court because they were designated as proprietary or confidential (or because they include information that was so



designated) pursuant to either (a) a protective order that the parties entered into during litigation in New York state court, *UBS Securities LLC v. Highland Capital Management L.P.*, No. 650097-2009 (N.Y. Sup. Ct.), or (b) the *Agreed Protective Order* entered by the Bankruptcy Court (Bankr. Dkt., ECF No. 382) (together, the “Protective Orders”). *See also* Bankr. Dkt., ECF Nos. 1091, 1188 (the parties’ motions to seal that explain the bases for the requests to seal).¹

These materials remain subject to the Protective Orders and should thus remain sealed, but they are also designated as part of the record in this bankruptcy appeal. *See* Bankr. Dkt., ECF No. 1484 (UBS’s amended statement of issue and designation of record on appeal). UBS cannot arrange for these documents to be transmitted to the Clerk of Court without an order from this Court accepting the documents under seal pursuant to Federal Rule of Bankruptcy Procedure 8009(f).

CONCLUSION

UBS respectfully requests that the Court grant this motion and issue an order accepting the documents listed below under seal. UBS will then, as directed by the Clerk of Court, submit the sealed materials to the Clerk’s Office for transmission to this Court. *See* Bankr. Dkt., ECF No. 1492.

¹ References to “Bankr. Dkt.” are to the docket in case 19-bk-34054 (Bankr. N.D. Tex.).

DOCUMENTS

<u>Date Filed</u>	<u>Relevant Docket No.</u>	<u>Description</u>
6/8/2020	719	Sealed Exhibit E, 3/20/2009 Termination, Settlement, and Release Agreement per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (related document: 711 Order on motion to seal).
6/8/2020	720	Sealed Exhibit H, UBS and Crusader Fund Settlement Agreement per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (related document: 711 Order on motion to seal).
6/8/2020	721	Sealed Exhibit I, UBS and Credit Strategies Fund Settlement Agreement per court order filed by Interested Party Redeemer Committee of the Highland Crusader Fund (related document 711 Order on motion to seal).
8/7/2020	933	Sealed unredacted version of 933, Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch filed by Interested Party Redeemer Committee of the Highland Crusader Fund, and sealed versions of Exhibits 1, 2, 3, 6, 7, 9, 16, 20, 21, and 22.
8/26/2020	996	Sealed Exhibits B & C to 996, Objection to claim(s) of Creditor(s) Redeemer Committee of the Highland Crusader Fund - Proof of Claim No. 72 filed by UBS.
9/23/2020	1090	Sealed unredacted version of 1090-1, Exhibit 1 to Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith filed by Debtor/Appellee Highland Capital Management, L.P. (related document 1089: Motion to compromise controversy with (a) the Redeemer

<u>Date Filed</u>	<u>Relevant Docket No.</u>	<u>Description</u>
		Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81)).
10/5/2020	1127	Sealed Exhibit B--Cornerstone Monetization Schedule per court order filed by Debtor/Appellee Highland Capital Management, L.P. (related document: 1125 Order on motion to seal).
10/5/2020	1128	Sealed Exhibit 2--Partial Final Award dated March 6, 2019 per court order filed by Debtor/Appellee Highland Capital Management, L.P. (related document: 1125 Order on motion to seal).
10/5/2020	1129	Sealed Exhibit 3--Disposition of Application of Modification of Award dated March 14, 2019 per court order filed by Debtor/Appellee Highland Capital Management, L.P. (related document: 1125 Order on motion to seal).
10/5/2020	1130	Sealed Exhibit 4--Final Award dated April 29, 2019 per court order filed by Debtor/Appellee Highland Capital Management, L.P. (related document 1125 Order on motion to seal).
10/16/2020	1190	Sealed unredacted version of 1190, Objection to 1089 Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81) by Debtor/Appellee Highland Capital Management, L.P., and sealed Exhibits A, B, and C to 1190, filed by UBS.
10/16/2020	1192	Sealed unredacted version of 1192, Declaration of W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), sealed Exhibits 4, 5, and 6 (1192-

<u>Date Filed</u>	<u>Relevant Docket No.</u>	<u>Description</u>
		1), and sealed Attachments A, B, and C (1192-2), filed by UBS.
10/30/2020	1315	Sealed documents submitted by UBS per 1315 Order directing UBS's Offer of Proof: (1) valuation analyses completed for the Debtor regarding Cornerstone Healthcare Group Holding, Inc. ("Cornerstone") as of (a) March 31, 2020, (b) April 30, 2020, (c) May 31, 2020, (d) June 30, 2020, (e) July 31, 2020, and (f) August 31, 2020; (2) valuation analyses completed for the Highland Crusader Funds regarding Cornerstone as of (a) March 31, 2020 and (b) June 30, 2020; and (3) a "Presentation to Redeemer Committee," dated August 6, 2020.

Dated: December 21, 2020

Respectfully submitted,

/s/ Sarah Tomkowiak

Andrew Clubok (DC Bar No. 446935)

(admitted *pro hac vice*)

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

CERTIFICATE OF COMPLIANCE

As required by Federal Rule of Bankruptcy Procedure 8015(h)(1), I certify that this motion complies with the type-volume limitation of Rule 8013(f)(3)(A) because this motion contains 894 words, excluding the caption, signature block, and certificates. And this motion complies with the requirements of Rule 8013(f)(2) because this motion was prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

/s/ Sarah Tomkowiak
Sarah Tomkowiak

CERTIFICATE OF CONFERENCE

As required by Local Rule 7.1, I certify that on December 17 and 18, 2020, counsel for UBS conferred with John Morris, counsel for Appellee-Debtor (Highland Capital Management, L.P.), about the relief requested in this motion. Mr. Morris stated that the Debtor consents to the relief requested in this motion.

/s/ Sarah Tomkowiak
Sarah Tomkowiak

CERTIFICATE OF SERVICE

I certify that this document was filed electronically through the Court's ECF system, which will notify all registered participants as identified on the Notice of Electronic Filing.

Dated: December 21, 2020

/s/ Sarah Tomkowiak
Sarah Tomkowiak

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[PROPOSED] ORDER

Upon consideration of Appellants' unopposed motion to accept sealed records designated as part of the record on appeal pursuant to Federal Rule of Bankruptcy Procedure 8009(f) (ECF No. 21), it is **ORDERED** that Appellants' motion is **GRANTED**.

Dated: _____

The Honorable A. Joe Fish
United States District Judge