

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (admitted pro hac vice)
Ira D. Kharasch (CA Bar No. 109084) (admitted pro hac vice)
John A. Morris (NY Bar No. 2405397) (admitted pro hac vice)
Gregory V. Demo (NY Bar No. 5371992) (admitted pro hac vice)
Hayley R. Winograd (NY Bar No. 5612569) (admitted pro hac vice)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	21-03010-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. AND NEXPOINT ADVISORS, L.P.,	§	
	§	
Defendants.	§	

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Cresce



**HIGHLAND’S SECOND AMENDED NOTICE OF
RULE 30(b)(6) DEPOSITION TO (A) HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P. and (B) NEXPOINT ADVISORS, L.P.**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable herein pursuant to Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P., the reorganized debtor² (“Highland” or, as may be temporally required, the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”) and plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), shall take the deposition of Highland Capital Management Fund Advisors, L.P. (“HCMFA”) and NexPoint Advisors, L.P. (“NexPoint”) by the person(s) most qualified to testify on the Advisors’ behalf with respect to the topics described in **Exhibit A** attached hereto on **Friday, March 4, 2022**, commencing at **9:30 a.m. Central Time** or at such other date and time as Highland may agree in writing. The deposition will be taken under oath before a notary public or other person authorized by law to administer oaths and will be visually recorded by video or otherwise.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime.

² On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943] (the “Confirmation Order”) which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, as modified (the “Plan”). The Plan went Effective (as defined in the Plan) on August 11, 2021, and Highland is the Reorganized Debtor (as defined in the Plan) since the Effective Date. See *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Bankr. Docket No. 2700].

Dated: February 26, 2022.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT A

DEFINITIONS

1. “Admin Claim” means the administrative claim asserted by the Advisors against Highland at Docket No. 1826.³

2. “Advisors” means HCMFA and NexPoint Advisors, L.P., individually and collectively, and together with anyone authorized to act on their behalf.

3. “Communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

4. “Concerning” means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

5. “Discovery Requests” means (i) the *Debtor’s First Requests for Admission Directed to NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P.*, (ii) the *Debtor’s First Request for Production of Documents Directed to NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P.*, and (iii) the *Debtor’s First Interrogatories Directed to NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P.*

6. “Document” means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, “writings” as

³ Refers to docket numbers maintained in the main Bankruptcy Case.

defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

7. “Former Dual Employees” refers to the employees who were dual employees of Highland and the Advisors under the PRAs, as alleged in the Advisors’ Admin Claim ¶¶ 9-11.

8. “Mandatory Injunction Hearing” refers to the evidentiary hearing held on February 23, 2021, Concerning *Debtor’s Emergency Motion for a Mandatory Injunction Requiring Advisors to Adopt and Implement a Plan for the Transition of Services by February 28, 2021* [Adv. Pro. Docket No. 2], and all pleadings filed, and depositions taken, in connection therewith. *See, e.g.*, Adv. Docket Nos. 10, 15-20.

9. “Objection” refers to the Debtor’s First Omnibus Objection to Claims filed on July 30, 2020 and lodged on the main docket at Docket No. 906.

10. “PRAs” refer to (i) the *Payroll Reimbursement Agreement* between Highland and NexPoint, entered into on or about May 1, 2018, and amended on December 14, 2018 pursuant to that certain *Amendment Number One to Payroll Reimbursement Agreement* and (ii) the *Payroll Reimbursement Agreement* between Highland and HCMFA, entered into on or about May 1, 2018, and amended on December 14, 2018 pursuant to that certain *Amendment Number One to Payroll Reimbursement Agreement*.

11. “Proofs of Claim” refer individually and collectively to Proofs of Claim numbers 95 and 119 filed by HCMFA, and Proofs of Claim numbers 104 and 108 filed by NexPoint.

12. “Response” refers to the Response that You filed on December 22, 2021, and lodged at Docket No. 49 in the Adversary Proceeding.

13. “Retail Board” refers to any board that purports to manage any fund subject to an advisory or other agreement with either of the Advisors.

14. “Shared Services Agreements” refer to: (i) the *Amended and Restated Shared Services Agreement*, effective as of January 1, 2018, between Highland and NexPoint; and (ii) the *Second Amended and Restated Shared Services Agreement*, effective as of February 8, 2013, between Highland and HCMFA.

15. “You” or “Your” refers to the Advisors, individually and collectively, and anyone person or entity authorized to act on behalf of either of the Advisors.

Rule 30(b)(6) Topics

Topic No. 1:

Your Admin Claim, including but not limited to all facts and the identification of all Documents that you contend support, evince, or concern the following allegations:

- “[B]eginning around July 2020, Mr. Seery directed the Debtor to cease providing services to the Advisors as otherwise contemplated under the SSAs and PRAs” [Admin Claim ¶ 16];
- “Debtor has booked net income from the SSAs of approximately \$10 million since the Petition Date” [Admin Claim ¶ 17];
- “[T]he Advisors have incurred significant additional expenses obtaining services elsewhere that the Debtor was required to provide under the SSAs” [Admin Claim ¶ 17];
- [T]he Advisors estimate that, since the Petition Date, they have overpaid under the PRA’s [sic] over \$9 million” [Admin Claim ¶ 18];
- “The Advisors have brought these issues to Mr. Seery’s attention . . .” [Admin Claim ¶19]; and
- The Advisors’ belief that the alleged overpayments “total approximately \$14 million” [Admin Claim ¶ 23].

Topic No. 2:

The PRAs, including (i) services provided to You thereunder, (ii) payments made or owing by You thereunder, (iii) any alleged breaches by Highland thereunder, as alleged in Your Admin Claim, (iv) all Communications with Highland Concerning Highland's compliance or failure to comply with the PRAs, including any demands, notices, or requests concerning such compliance or failure to comply; (v) all requests for modification of the terms and conditions of HCMFA's reimbursement made by You pursuant to section 4.02 of the PRAs, including the identification of any Documents Concerning any such requests, and (vi) the purpose and negotiation of the PRAs, including the purpose and negotiation of any amendments thereto.

Topic No. 3:

The Shared Services Agreements, including (i) services provided to You thereunder, (ii) payments made or owing by You thereunder, (iii) any alleged breaches by Highland thereunder, as alleged in Your Admin Claim, (iv) all Communications with Highland Concerning Highland's compliance or failure to comply with the Shared Services Agreements, including any demands, notices, or requests concerning such compliance or failure to comply; and (v) the purpose and negotiation of the Shared Services Agreements, including the purpose and negotiation of any amendments thereto..

Topic No. 4:

The Former Dual Employees, including the dates of employment by HCMLP and the dates You first learned that each Former Dual Employee was no longer employed by HCMLP.

Topic No. 5:

Damages You claim regarding Highland's alleged breaches under the (i) Shared Services Agreements and (ii) the PRAs, including (a) which services You allege Highland did not provide

under each Agreement, (b) the timeframe of such alleged breach, and (c) a calculation of such damages.

Topic No. 6:

The Mandatory Injunction Hearing, including all statements, arguments, allegations, testimony and documentary evidence offered by the Advisors in connection the Mandatory Injunction Hearing.

Topic No. 7:

All facts Concerning Your allegation that “mistakes of fact” were made precluding application of the Voluntary Payment Rule (*see*, Response ¶¶ 20-21), including the date on which You learned that each alleged mistake of fact was made and the circumstances that lead you to believe that each mistake of fact was made.

Topic No. 8:

All Communications with the Retail Board Concerning the Debtor’s performance under the Shared Services Agreements.

Topic No. 9:

Your Proofs of Claim, including the reasons for not contesting the Objection.

Topic No. 9:

Your responses to the Discovery Requests.