

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. |) |) | |

Hearing Date: October 18, 2019 at 10:00 a.m. (ET)

NOTICE OF INTERIM HEARING ON MOTION OF DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING THE USE OF CASH COLLATERAL, (B) PROVIDING ADEQUATE PROTECTION, (C) AUTHORIZING THE LIQUIDATION OF SECURITIES, (D) MODIFYING THE AUTOMATIC STAY, AND (E) SCHEDULING A FINAL HEARING

PLEASE TAKE NOTICE that on October 16, 2019, the above-captioned debtor and debtor in possession (collectively, the “Debtor”) filed the *Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing* [Docket No. 6] (the “Cash Collateral Motion”).

PLEASE TAKE FURTHER NOTICE that the Debtor attached to the Cash Collateral Motion the proposed *Interim Order (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing* (the “Proposed Interim Order”). A copy of the Proposed Interim Order is attached hereto as **Exhibit A**.

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.



PLEASE TAKE FURTHER NOTICE that the Debtor intends to seek interim approval of the Cash Collateral Motion and entry of the Proposed Interim Order in substantially the form attached hereto at a hearing (the “Interim Hearing”) before the Honorable Christopher S. Sontchi at the United States Bankruptcy Court for the District of Delaware (the “Court”), located at 824 North Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19801, on **October 18, 2019 at 10:00 a.m. (Eastern Time)**. A copy of the Cash Collateral Motion may be obtained for a fee through the Court’s website at www.deb.uscourts.gov, referencing Case No. 19-12239 (CSS).

PLEASE TAKE FURTHER NOTICE that after the Interim Hearing, the Debtor will serve upon you a complete copy of (a) the Cash Collateral Motion, (b) any Interim Order entered by the Court at the Interim Hearing, and (c) notice of the final hearing on the Cash Collateral Motion.

PLEASE TAKE FURTHER NOTICE that the Debtor’s reserve the right to modify, if necessary, the Proposed Interim Order before or at the Interim Hearing.

Dated: October 17, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

Chapter 11

Case No. 19-12239 (CSS)

**INTERIM ORDER (A) AUTHORIZING THE USE
OF CASH COLLATERAL, (B) PROVIDING ADEQUATE PROTECTION,
(C) AUTHORIZING THE LIQUIDATION OF SECURITIES, (D) MODIFYING
THE AUTOMATIC STAY, AND (E) SCHEDULING A FINAL HEARING**

This matter has come before the Court upon the motion (the "Motion")² of the above-captioned debtor and debtor in possession (the "Debtor") under sections 105, 361, 362, 363, and 507 of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for interim and final orders: (a) authorizing the Debtor to use cash collateral, (b) providing adequate protection to the Debtor's prepetition broker and margin creditor, Jefferies LLC ("Jefferies"), (c) authorizing the liquidation of securities by the Debtor, and to cause its non-Debtor affiliates to do the same, in the ordinary course of business, and (d) modifying the automatic stay.

¹ The last four digits of the Debtor's 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 defined herein shall have the meanings set forth in the Motion.

The Debtor has provided notice of the Motion as is appropriate under the circumstances, as required under sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rule 4001(b), and Local Rule 4001-2.

A hearing was held by this Court on October ____, 2019 (the "Interim Hearing"). Upon the record made by the Debtor at the Interim Hearing, after considering the Motion and the arguments and evidence presented at the Interim Hearing, and after due deliberation and consideration and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. *Disposition.* The Motion is granted on an interim basis on the terms set forth herein. Any objections to the interim relief sought in the Motion, and any reservations of rights with respect to such interim relief that have not been previously resolved or withdrawn are overruled on the merits. This Interim Order shall be valid, binding, and enforceable on all parties in interest and fully effective immediately upon entry.

2. *Jurisdiction and Venue.* This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor has confirmed its consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with

Article III of the United States Constitution. No request has been made for the appointment of a trustee or examiner and no statutory committee has yet been appointed in the Chapter 11 Case.

3. *No Waivers.* The Debtor makes no representation, warranty, acknowledgement, or admission regarding whether it has (or does not have) any defenses, setoffs, counterclaims or recoupments that could be asserted against Jefferies and the Debtor reserves all rights, claims, and defenses with respect thereto. In addition, the Debtor makes no representation, warranty, acknowledgement, or admission with respect to the enforceability, perfection, priority, avoidability, or validity of Jefferies' (or any other prepetition creditor's) security interests in the Debtor's assets.

4. *Findings Regarding the Use of Cash Collateral.*

- a. Cause Shown. Good cause has been shown for the entry of this Interim Order.
- b. Business Justification. The Debtor has an immediate and critical need to use cash, including the Cash Collateral, in order to permit, among other things, maintenance of the Debtor's business operations and its assets. The Debtor's access to sufficient working capital and liquidity through the use of Cash Collateral is vital to maximizing the value of the Debtor's estate and funding its reorganization efforts.
- c. Fair and Reasonable Terms. Based on the record presented to the Court at the Interim Hearing, the terms of use of the Cash Collateral are fair and reasonable and reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties.
- d. Immediate and Irreparable Harm. The Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and the Local Rules. Absent granting the relief sought by this Interim Order, the Debtor's estate will be immediately and irreparably harmed. Authorization of the use of the Cash

Collateral in accordance with this Interim Order is therefore in the best interests of the Debtor's estate and its creditors.

5. *Authorization to Use Cash Collateral.* Subject to the terms of this Interim Order, the Debtor is hereby authorized to use Cash Collateral from the date hereof through the earliest of: (i) entry of the Final Order, which shall occur within thirty-five (35) days following entry of this Interim Order, (ii) the effective date of a confirmed plan of reorganization in the Chapter 11 Case, (iii) the closing of a sale of substantially all assets of the Debtor; and (iv) the date of a material breach by the Debtor under this Interim Order (the "Interim Budget Period"), or such other date as the Debtor and Jefferies may agree to in writing when, as and to the extent permitted under the budget attached hereto as Exhibit 1, or when, as and to the extent permitted by such other budget as the Debtor and Jefferies may agree to in writing from time to time (the "Budget").

6. *Disbursements Subject to Budget.* The Debtor is only authorized to use Cash Collateral during the Interim Budget Period in a manner consistent with the Budget; *provided that*, disbursements may occur earlier or later than the dates forecasted in the Budget so long as such disbursements occur during the Interim Budget Period. Cash Collateral shall only be used for the purposes permitted under the Budget, including (i) to provide working capital needs of the Debtor and for general corporate purposes of the Debtor, (ii) to make the payments or fund amounts otherwise permitted in this Interim Order and the Budget, and (iii) to fund or reserve amounts necessary to fund professional fees accrued in accordance with the Budget.

Notwithstanding the foregoing, disbursements by the Debtor on an aggregate basis during the Interim Budget Period may deviate up to 20% from the amounts specified in the Budget, tested over each successive four-week period of the Budget.

7. *Adequate Protection.* Jefferies is entitled, pursuant to sections 361, 362(d), and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Debtor's property, for and equal in amount to any aggregate diminution in the value of Jefferies' interests in the Debtor's property (including Cash Collateral) (the "Diminution in Value") resulting from the use, sale, or lease by the Debtor (or other decline in value) of the Cash Collateral and any other asset of the Debtor that is the subject of existing liens and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, Jefferies is hereby granted the following:

- a. a continuing security interest in and lien on all collateral of the Debtor of the same type and nature that exists as of the Petition Date with the same validity (or invalidity) and priority as exists as of the Petition Date, including the proceeds thereof (the "Replacement Lien");
- b. solely to the extent of any Diminution in Value, an additional and replacement security interest in and lien on all property and assets of the Debtor's estates (the "Adequate Protection Lien"), *provided, however*, that (a) such security interest and lien shall be junior to any existing, valid, senior, enforceable, and unavoidable prior perfected security interests and liens, (b) in the event that the Debtor obtains postpetition financing in the Chapter 11 Case, such security interest and lien may be junior to any valid, senior, enforceable security interests and liens granted to the postpetition lenders and authorized by the Court in connection with such postpetition financing, and (c) such security interest and lien shall not attach to any claims, defenses, causes of action or rights of the Debtor arising under chapter 5 of the Bankruptcy Code and

applicable state fraudulent transfer law (including all proceeds thereof, the "Avoidance Actions"); and

- c. solely to the extent of any Diminution in Value, to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed administrative claim in the Chapter 11 Case (the "Adequate Protection Claim"), *provided, however*, that (a) such claim shall not extend to any Avoidance Actions, and (b) in the event that the Debtor obtains postpetition financing in the Chapter 11 Case, such administrative claim, if any, may be junior to the administrative claim granted to such postpetition lenders and authorized by the Court in connection with such postpetition financing.

8. *Segregated Account or Reserve for Professional Fees.*

- a. Authorized Payments Pursuant to the Budget. The (x) professional fees and disbursements incurred by professional persons employed by the Debtor or any official committee (including any expenses of the members of such committee) (collectively, "Professional Fees"), and (y) the fees and charges assessed against the estate under 28 U.S.C. § 1930 and any fees payable to the Clerk of the Court (collectively, "United States Trustee Costs") may be paid to the extent authorized in the Budget and permitted by the Court.
- b. Funding of Segregated Account. The amounts set forth in the Budget for the payment of Professional Fees and United States Trustee Costs shall be deposited by the Debtor, at the times identified in the Budget, into a trust account of the Debtor's general bankruptcy counsel or other segregated account ("Segregated Account") for the exclusive purpose of subsequently paying such amounts on the later of (x) the due date, or (y) the date of their allowance by the Court (or when otherwise authorized to be paid pursuant to a customary order of the Court pursuant to section 331 of the Bankruptcy Code). The Replacement Lien and Adequate Protection Lien shall be subject and subordinate to all amounts deposited in the Segregated Account for the payment of Professional Fees.

9. *Perfection of Adequate Protection Liens.* The Replacement Lien and the

Adequate Protection Lien shall be valid, binding, enforceable, non-avoidable, and automatically

perfected, notwithstanding the automatic stay, without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which otherwise may be required under the laws of any jurisdiction to validate or perfect such security interests and liens.

10. *Liquidation of Securities.* The Debtor, either directly or through its non-Debtor affiliates, is authorized to liquidate securities, including the Securities in the Prime Account, in the ordinary course of business, as necessary to fund the Debtor, without further order of this Court.

11. *Preservation of Rights Granted Under This Interim Order.* The liens and claims granted by the provisions of this Interim Order shall survive, and shall not be modified, impaired, or discharged by (i) the entry of an order converting this Chapter 11 Case to a case under chapter 7 or dismissing such Chapter 11 Case, or (ii) the entry of an order confirming a chapter 11 plan in this Chapter 11 Case.

12. *Binding Effect; Successors and Assigns.* The provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Case, including, without limitation, Jefferies, any official committee, and the Debtor and its respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the Debtor's estate) and shall inure to the benefit of Jefferies and the Debtor, and their respective successors and assigns.

13. *Reservation of Rights.* The Debtor reserves all rights to seek other or additional use of its Cash Collateral on such further or different terms and conditions as may be approved by the Court.

14. *Effectiveness.* Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution of effectiveness of this Interim Order as provided in such Rules.

15. *Objections.* Objections to the entry of the Final Order shall be in writing and shall be filed with the Clerk of this Court, on or before _____, 2019 at 4:00 p.m. (Eastern Time), with a copy served upon: (i) counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19899-8705 (Attn: James E. O'Neill); (ii) Jefferies; (iii) counsel to be selected by any official committee upon its formation if selected by such date; (iv) all parties that have filed notices of appearance and requests for notices in the Chapter 11 Case; and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801.

16. *Final Hearing.* The Final Hearing is scheduled for _____, 2019 at _____.m. (Eastern Time) before this Court.

Dated: October ____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Interim Budget

DOCS_SF:102002.4

DOCS_SF:102002.4

Highland Capital Management, L.P. - Draft Cash Forecast
Next 13 Weeks Commencing October 14, 2019
(in thousands)

| Week Beginning | 10/14 | 10/21 | 10/28 | 11/4 | 11/11 | 11/18 | 11/25 | 12/2 | 12/9 | 12/16 | 12/23 | 12/30 | 1/6 | 1/13 | 13 Weeks |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------|
| Beginning unrestricted cash | \$ 2,102 | \$ 1,248 | \$ 6,760 | \$ 4,874 | \$ 6,646 | \$ 4,911 | \$ 7,142 | \$ 5,260 | \$ 6,071 | \$ 4,286 | \$ 3,625 | \$ 2,424 | \$ 2,645 | \$ 2,645 | \$ 2,102 |
| Operating Receipts | | | | | | | | | | | | | | | |
| Management fees and other related receipts | \$ - | \$ 1,022 | \$ 105 | \$ 2,462 | \$ - | \$ 1,849 | \$ 27 | \$ 1,437 | \$ - | \$ - | \$ - | \$ 1,155 | \$ 583 | \$ 8,639 | |
| Compensation and benefits | | | | | | | | | | | | | | | |
| Payroll, benefits, and taxes + exp reimb | - | - | (644) | - | (644) | - | (644) | - | (659) | - | - | (659) | - | (3,250) | |
| Severance payments | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| Cash bonus awards (including deferred) | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| Total compensation and benefits | \$ - | \$ - | \$ (644) | \$ - | \$ (644) | \$ - | \$ (644) | \$ - | \$ (659) | \$ - | \$ - | \$ (659) | \$ - | \$ (3,250) | |
| General overhead | | | | | | | | | | | | | | | |
| Outside legal (ordinary course) | - | - | (75) | - | - | - | (75) | - | - | - | (75) | - | - | (225) | |
| General overhead - critical vendors | - | (73) | (73) | (73) | (73) | (73) | (73) | (58) | (58) | (58) | (58) | (58) | (73) | (801) | |
| General overhead - other vendors | - | (104) | (244) | (262) | (162) | (162) | (162) | (212) | (212) | (212) | (212) | (212) | (188) | (2,343) | |
| Singapore service fees | (35) | - | - | - | - | (35) | - | - | - | (35) | - | - | - | (106) | |
| Total general overhead | \$ (35) | \$ (176) | \$ (391) | \$ (334) | \$ (234) | \$ (270) | \$ (309) | \$ (270) | \$ (270) | \$ (306) | \$ (345) | \$ (270) | \$ (261) | \$ (3,475) | |
| Re-org related | | | | | | | | | | | | | | | |
| Debtor bankruptcy counsel | (269) | (269) | (269) | (269) | (269) | (269) | (269) | (269) | (269) | (269) | (269) | (269) | (269) | (3,500) | |
| Debtor FA/CRO | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (50) | (650) | |
| Committee counsel | - | - | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (200) | |
| Committee FA | - | - | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (18) | (200) | |
| US Trustee quarterly fees | - | - | - | - | - | - | - | - | - | - | - | - | - | (250) | |
| Total re-org related | \$ (319) | \$ (319) | \$ (356) | \$ (356) | \$ (356) | \$ (356) | \$ (356) | \$ (356) | \$ (356) | \$ (356) | \$ (356) | \$ (356) | \$ (606) | \$ (4,800) | |
| Net change in cash due to operating activity | (354) | 526 | (1,286) | 1,772 | (1,234) | 1,224 | (1,282) | 811 | (1,285) | (661) | (701) | (380) | (33) | (2,885) | |
| Investing cash flows (principal only on notes) | | | | | | | | | | | | | | | |
| Jefferies prime brokerage (security sales), net | - | 4,986 | - | - | - | 2,257 | - | - | - | - | - | - | - | 7,243 | |
| Third party fund capital call obligations | - | - | - | - | - | (1,250) | - | - | - | - | - | - | - | (1,250) | |
| Highland Capital Management Korea | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| Multi Strategy Credit Fund | (500) | - | (500) | - | (500) | - | (500) | - | (500) | - | (500) | - | (500) | (3,500) | |
| Highland Capital Management Latin America | - | - | (100) | - | - | - | (100) | - | - | - | - | (100) | - | (300) | |
| Proceeds from outstanding notes | - | - | - | - | - | - | - | - | - | - | - | 701 | - | 701 | |
| Proceeds from other investments (non-PIB) | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| Net Change in Cash Due to Investing Activities | (500) | 4,986 | (600) | - | (500) | 1,007 | (600) | - | (500) | - | (500) | 601 | (500) | 2,895 | |
| Financing Cash Flows | | | | | | | | | | | | | | | |
| Required equity distributions | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| Equity contributions | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| Existing debt pay-downs | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| Net Change in Cash Due to Financing Activities | - | |
| Ending Cash | \$ 1,248 | \$ 6,760 | \$ 4,874 | \$ 6,646 | \$ 4,911 | \$ 7,142 | \$ 5,260 | \$ 6,071 | \$ 4,286 | \$ 3,625 | \$ 2,424 | \$ 2,645 | \$ 2,112 | \$ 2,112 | |