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

In re:

HIGHLAND CAPITAL
MANAGEMENT, L.P.,¹

Chapter 11

Case No. 19-34054-sgj11

¹ The Reorganized Debtor’s last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850; Dallas, Texas 75201.



Reorganized Debtor.	
NEXPOINT ADVISORS, L.P., Appellant.	Case No. 3:21-cv-03086-K <i>consolidated with:</i>
v.	Case No. 3:21-cv-03088-K Case No. 3:21-cv-03094-K Case No. 3:21-cv-03096-K Case No. 3:21-cv-03104-K
PACHULSKI STANG ZIEHL & JONES LLP, Appellee.	

**APPELLANT NEXPOINT ADVISORS, L.P.’S MOTION FOR
LEAVE TO FILE OPENING BRIEF IN EXCESS OF
PAGE AND TYPE-VOLUME LIMITATIONS OF
FEDERAL RULE OF BANKRUPTCY PROCEDURE 8015(a)(7)**

Appellant NexPoint Advisors, L.P. (the “**Appellant**” or “**NexPoint**”), by and through its counsel of record, the law firms of Schwartz Law, PLLC and Jain Law & Associates PLLC, pursuant to Rules 8013 and 8015(f) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 7.1 of the Local Civil Rules of the United States District Court for the Northern District of Texas (the

“**Local Rules**” or “**LR**”),² hereby moves the Court (the “**Motion**”) for entry of an order for leave to file an Opening Brief in excess of the page and type-volume limitations set by Bankruptcy Rule 8015(a)(7).

This Motion is made and based on the accompanying Memorandum of Points and Authorities, all pleadings and papers on file with the Clerk of the Court in the Bankruptcy Case and the Appeals,³ judicial notice of which is respectfully requested pursuant to Rules 201 and 1101 of the Federal Rules of Evidence, as applicable by incorporation under Bankruptcy Rule 9017, and any arguments of counsel

² Bankruptcy Rule 8013 governs motion practice in bankruptcy appeals. LR 7.1 and 7.2 primarily govern motion practice in cases before the District Court. It is the position of Appellees Pachulski Stang Ziehl & Jones LLP, Wilmer Cutler Pickering Hale and Dorr LLP, Sidley Austin LLP, FTI Consulting, Inc., and Teneo Capital, LLC (each an “**Appellee**,” collectively, the “**Appellees**,” and with Appellant, the “**Parties**”) that the Local Rules do not apply to motion practice in these Appeals. Out of an abundance of caution, Appellant has attempted to comply with all requirements of the Local Rules to the extent that they are “consistent with, but not duplicative of” the Bankruptcy Rules, and do not cause the Parties to “lose any right” or otherwise be subject to “sanction or other disadvantage” for noncompliance without first being provided with “actual notice of the requirement.” *See* Fed. R. Bankr. P. 8026 and 9029.

³ All citations to BK ECF No. shall refer to docket entries in Case No. 19-34054-sgj11 (the “**Bankruptcy Case**”) in the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”). All citations to ECF No. shall refer to docket entries in the lead case of the consolidated appellate cases — Lead Case No. 3:21-cv-03086-K, *consolidated with* Case Nos. 3:21-cv-03088-K, 3:21-cv-03094-K, 3:21-cv-03096-K, and 3:21-cv-03104-K (each an “**Appeal**,” and collectively, the “**Appeals**”) — in the United States District Court for the Northern District of Texas (the “**District Court**”).

entertained by the Court at the time of any hearing on the Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 158(a) and 1334.

2. Venue is proper before this Court pursuant to 28 U.S.C. § 1409(a).

3. The bases for the relief sought herein are Bankruptcy Rules 8013 and 8015(f), and LR 7.1.

II. BACKGROUND AND RELEVANT FACTS

4. On January 7, 2022, Appellant filed its Unopposed Motion to Consolidate Appeals and to Establish Procedures for Consolidation of the Record on Appeal and Briefing [ECF No. 7] (the “**Motion to Consolidate**”).

5. In the Motion to Consolidate, the Parties put forward mutually agreed upon proposed procedures for consolidation of the record on appeal and briefing that contained, *inter alia*, page and type-volume limitations for all briefs which exceeded those set by Bankruptcy Rule 8015(a)(7). ECF No. 7, pp. 10-11, ¶ 24.

6. On January 11, 2022, the Court entered an Order [ECF No. 9] (the “**Scheduling Order**”) granting in part and denying in part the Motion to Consolidate.

7. In the Scheduling Order, the Court adopted all of the Parties’ proposed

procedures for consolidation, except for the increases in page and type-volume limitations for briefing, stating: “The Court **DENIES WITHOUT PREJUDICE** to refiling the parties’ requested page extensions for their respective appellate briefs; parties may later motion the Court for any necessary page extensions should the need arise.” ECF No. 9, p. 2, ¶ 1.

8. On January 17, 2022, Appellees filed their Joint Motion to Dismiss Appeals as Constitutionally Moot [ECF No. 14] (the “**Joint Motion to Dismiss**”). The briefing schedule established in the Scheduling Order is not stayed by the filing of Appellees’ Joint Motion to Dismiss.

9. On January 18, 2022, in accordance with the Scheduling Order, Appellant filed its Consolidated Designation of Items to Be Included in the Record on Appeal and Statement of Issues to Be Presented [BK ECF No. 3187] (the “**Consolidated Designation of Record**”) for the Appeals in the Bankruptcy Case.

10. On January 24, 2022, Appellant filed its Opposition to Appellees’ Joint Motion to Dismiss [ECF No. 24] and Appendix thereto [ECF No. 25].

11. On January 25, 2022, in accordance with the Scheduling Order, Appellees filed their Consolidated Supplemental Designation of Record on Appeal [BK ECF No. 3195] (the “**Consolidated Supplemental Designation of Record**”) for the Appeals in the Bankruptcy Case.

12. On January 31, 2022, Appellees filed their Joint Reply to Appellant’s

Opposition to the Joint Motion to Dismiss [ECF No. 26]. Briefing on the Joint Motion to Dismiss has now been completed.

13. The Bankruptcy Court Clerk is in the process of preparing the consolidated Record on Appeal for transmittal to the District Court Clerk, pursuant to Bankruptcy Rule 8010(b) and Rules 8009.1, 8009.2, and 8009.3 of the Local Bankruptcy Rules of the United States District Court for the Northern District of Texas. Upon the filing of the Record Transmitted by the District Court Clerk pursuant to Bankruptcy Rule 8010(b)(3), Appellant will have thirty (30) days to file its Opening Brief pursuant to Bankruptcy Rule 8014(a). ECF No. 9, p. 2, ¶ 4.

14. Appellant believes extraordinary and compelling reasons exist to request leave from the Court to file an Opening Brief in excess of the page and type-volume limitations set by Bankruptcy Rule 8015(a)(7). Therefore, in an effort to diligently prosecute the Appeals and adequately prepare its Opening Brief, Appellant files the instant Motion to request the same limitations mutually agreed upon by the Parties in the Motion to Consolidate as detailed below.

III. LEGAL ARGUMENT

15. Bankruptcy Rule 8015(a)(7) contains the applicable provisions governing the page and type-volume limitations of the briefs in these Appeals and states, in pertinent part:

(7) *Length.*

(A) *Page Limitation.* A principal brief must not exceed 30 pages . . . unless it complies with subparagraph (B).

(B) *Type-volume Limitation.*

(i) A principal brief is acceptable if it contains a certificate under Rule 8015(h) and:

- contains no more than 13,000 words; or
- uses a monospaced face and contains no more than 1,300 lines of text.

...

Fed. R. Bankr. P. 8015(a)(7). Furthermore, Bankruptcy Rule 8015(f) provides:

(f) LOCAL VARIATION. A district court or BAP ***must accept documents that comply with*** the form requirements of this rule and ***the length limits set by Part VIII of these rules***. By local rule ***or order in a particular case***, a district court or BAP ***may accept documents that do not meet*** all the form requirements of this rule or ***the length limits set by Part VIII of these rules***.

Fed. R. Bankr. P. 8015(f) (emphasis added). Appellant's Opening Brief is currently limited to no more thirty (30) pages or thirteen thousand (13,000) words, excluding the items listed in Bankruptcy Rule 8015(g) that do not count towards computation of length. The District Court is empowered, however, to grant leave to exceed these page and type-volume limitations. Just cause exists to grant Appellant leave to file its Opening Brief with a page limitation of no more than sixty (60) pages or a type-volume limitation of no more than twenty-six thousand (26,000) words, as previously agreed to by the Parties.

16. First, these consolidated Appeals deal with five Orders appealed from the Bankruptcy Court, each relating to a separate Appellee. *See* BK ECF Nos. 3047,

3048, 3056, 3057, and 3058. Moreover, in Appellant's Consolidated Designation of Record, Appellant identified four distinct issues it plans to address for each respective Order and Appellee. BK ECF No. 3187, pp. 68-69, ¶¶ 1-4. A comprehensive examination of these issues will include a multi-factor lodestar analysis of the professional fees and expenses of each Appellee under the provisions of 11 U.S.C. § 330, *et seq.* Appellant asserts that the requested increases in page and type-volume limitations are necessary to make the requisite factual and legal arguments fairly and adequately with respect to each issue before the Court.

17. Second, the issues presented on appeal are complex, and Appellant's analysis will be fact-intensive with numerous citations to the record for each Appellee, as well as the legal authorities. The Record on Appeal is expected to be quite voluminous. Appellant's Consolidated Designation of Record identified more than eleven thousand eight hundred fifty (11,850) pages of material, while Appellees' Consolidated Supplemental Designation of Record listed more than one thousand twenty (1,020) additional pages.⁴ *See* BK ECF Nos. 3187 and 3195. The documents designated include not just those of the main Bankruptcy Case, but

⁴ Appellees' Consolidated Supplemental Designation of Record duplicated the designations of ECF Nos. 1473, 1875, and 2700 made in Appellant's Consolidated Designation of Record, and the aggregate number of pages for these duplicate designations is not included in the above reference to the number of additional pages of material designated by Appellees.

documents from several of the associated adversary proceedings as well, specifically Adv. Pro. Nos. 20-03190-sgj, 21-03010-sgj, and 21-03076-sgj. Since the consolidated Record on Appeal approaches nearly thirteen thousand (13,000) pages from multiple proceedings, Appellant avers that leave to exceed the page and type-volume limitations is wholly appropriate in order to present a careful and thorough analysis of all the issues before the Court for each respective Appellee. Indeed, after the sizable reduction in the length limits for briefs by the 2014 and 2018 Amendments to the Bankruptcy Rules,⁵ the 2018 Advisory Committee noted its expectation for courts to freely grant leave to exceed the new length limitations under appropriate circumstances, like those in these consolidated Appeals:

⁵ Before the 2014 Amendments to the Bankruptcy Rules, Bankruptcy Rule 8010(c) prescribed the page limits for briefs:

(c) LENGTH OF BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule or order otherwise provides, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or similar material.

Fed. R. Bankr. P. 8010(c) (as effective Dec. 1, 2013; superseded Dec. 1, 2014). The 2014 Amendments reduced the page limitation for principal briefs from fifty (50) pages to the current limit of thirty (30) pages, while the 2018 Amendments reduced the type-volume limitation for principal briefs from fourteen thousand (14,000) words to the current limit of thirteen thousand (13,000) words. *See* 2014 and 2018 Advisory Comm. Notes to Fed. R. Bankr. P. 8015.

In a complex case, a party may need to file a brief that exceeds the type-volume limitations specified in these rules, such as to include unusually voluminous information explaining relevant background or legal provisions or to respond to multiple briefs by opposing parties or amici. The Committee expects that courts will accommodate those situations by granting leave to exceed the type-volume limitations as appropriate.

2018 Advisory Comm. Notes to Fed. R. Bankr. P. 8015. Appellant anticipates that it will need at least five pages per Appellee to discuss the relevant factual and procedural history from the Record on Appeal, as well as a minimum of three pages per Appellee applying the facts to its legal arguments on the issues with citations to authorities. These pages are exclusive of the other materials that Appellant's Opening Brief must contain within the remaining pages. *See* Fed. R. Bankr. P. 8014(a). In other words, the Appellant anticipates forty (40) pages of briefing will be necessary to accommodate a fair discussion of the discrete issues facing each Appellee, which is in addition to the briefing authorized by the Bankruptcy Rules.

18. Third, the Bankruptcy Rules require a party who utilizes a proportionally spaced typeface for its brief (such as Times New Roman, the typeface used in this Motion) to use size "14-point or larger." Fed. R. Bankr. P. 8015(a)(5)(A). This is significantly larger than the traditional 12-point typeface required under the rules of most courts for briefs, including those of the District Court. *See* LR 7.2(a).

19. Finally, Appellant's request for leave is made in good faith, and no party will be prejudiced by the granting of this Motion as the Parties previously

agreed to the relief requested herein. Appellant will likewise not oppose any future motion(s) for leave filed by Appellees requesting similar relief for their Answering Brief(s), so long as the relief requested conforms to the previous agreement by the Parties in the Motion to Consolidate. Appellant also reserves the right to request leave to exceed the limitations set by Bankruptcy Rule 8015(a)(7) with respect to Appellant's Reply Brief, if necessary.

20. A proposed form of Order granting the Motion is attached hereto as **Exhibit 1**.

WHEREFORE, based on the extraordinary and compelling reasons expressed herein, Appellant respectfully requests that the Court grant this Motion and enter an order: (1) granting leave for Appellant to exceed the page and type-volume limitations of Bankruptcy Rule 8015(a)(7) and file an Opening Brief limited in size to no more than sixty (60) pages or twenty-six thousand (26,000) words; and (2) granting any and all other such other relief as the Court deems just and proper.

[Signature Page to Follow]

Dated: February 10, 2022.

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L.P.*

- and -

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Counsel for NexPoint Advisors, L.P.

CERTIFICATE OF CONFERENCE

The undersigned counsel for Appellant NexPoint Advisors, L.P. hereby certify that on February 7, 2022, they communicated via electronic mail with: Jeffrey N. Pomerantz, Esq., Ira D. Kharasch, Esq., and Gregory V. Demo, Esq. of Pachulski Stang Ziehl & Jones LLP, counsel for Appellee Pachulski Stang Ziehl & Jones LLP; Timothy F. Silva, Esq. and Benjamin W. Loveland, Esq. of Wilmer Cutler Pickering Hale and Dore LLP, counsel for Appellee Wilmer Cutler Pickering Hale and Dore LLP; and Matthew A. Clemente, Esq., Paige H. Montgomery, Esq., Dennis M. Twomey, Esq., Penny P. Reid, Esq., Alyssa Russell, Esq., and Juliana Hoffman, Esq. of Sidley Austin LLP, counsel for Appellees Sidley Austin LLP, FTI Consulting, Inc., and Teneo Capital, LLC, regarding the relief requested in *Appellant NexPoint Advisors, L.P.'s Motion for Leave to File Opening Brief in Excess of Page and Type-Volume Limitations of Federal Rule of Bankruptcy Procedure 8015(a)(7)*. Counsel for Appellees replied in a single email expressing their view that this appeal is governed by FRBP 8013 and not Local Rule 7.1.

[Signature Page to Follow]

Dated: February 10, 2022.

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**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF
BANKRUPTCY PROCEDURE 8013(f)(3)(A)**

The undersigned hereby certifies that the foregoing *Appellant NexPoint Advisors, L.P.’s Motion for Leave to File Opening Brief in Excess of Page and Type-Volume Limitations of Federal Rule of Bankruptcy Procedure 8015(a)(7)* complies with the type-volume limit of Fed. R. Bankr. P. 8013(f)(3)(A) because, excluding the parts of the document exempted by Fed. R. Bankr. P. 8015(g), this document contains 2,736 words.

[Signature Page to Follow]

Dated: February 10, 2022.

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Counsel for NexPoint Advisors, L.P

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 10, 2022, a true and correct copy of the foregoing *Appellant NexPoint Advisors, L.P.’s Motion for Leave to File Opening Brief in Excess of Page and Type-Volume Limitations of Federal Rule of Bankruptcy Procedure 8015(a)(7)* was served electronically via the Court’s ECF system upon all parties of interest requesting or consenting to such service in this case.

/s/ Samuel A. Schwartz

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EXHIBIT 1

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

<p>In re:</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P.,¹</p> <p style="text-align: center;">Reorganized Debtor.</p>	<p>Chapter 11</p> <p>Case No. 19-34054-sgj11</p>
<hr/> <p>NEXPOINT ADVISORS, L.P.,</p> <p style="text-align: center;">Appellant.</p> <p>v.</p> <p>PACHULSKI STANG ZIEHL & JONES LLP,</p> <p style="text-align: center;">Appellee.</p>	<p>Case No. 3:21-cv-03086-K</p> <p><i>consolidated with:</i></p> <p>Case No. 3:21-cv-03088-K Case No. 3:21-cv-03094-K Case No. 3:21-cv-03096-K Case No. 3:21-cv-03104-K</p>

**ORDER GRANTING APPELLANT NEXPOINT ADVISORS, L.P.’S
MOTION FOR LEAVE TO FILE OPENING BRIEF
IN EXCESS OF PAGE AND TYPE-VOLUME LIMITATIONS OF
FEDERAL RULE OF BANKRUPTCY PROCEDURE 8015(a)(7)**

Appellant NexPoint Advisors, L.P. (the “Appellant” or “NexPoint”), by and through its counsel of record, the law firms of Schwartz Law, PLLC and Jain Law

¹ The Reorganized Debtor’s last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850; Dallas, Texas 75201.

& Associates, PLLC, filed *Appellant NexPoint Advisors, L.P.’s Motion for Leave to File Opening Brief in Excess of Page and Type-Volume Limitations of Federal Rule of Bankruptcy Procedure 8015(a)(7)* (the “**Motion**”),² pursuant to Rules 8013 and 8015(f) of the Federal Rules of Bankruptcy Procedure, and Rule 7.1 of the Local Civil Rules of the United States District Court for the Northern District of Texas.

The Court reviewed and considered the Motion, and other pleadings and papers in the record of the Bankruptcy Case and the Appeals, of which the Court takes judicial notice under Rules 201 and 1101 of the Federal Rules of Evidence.

Having concluded that the Court has jurisdiction to hear the Motion pursuant to 28 U.S.C. §§ 158(a) and 1334; venue is proper before this Court pursuant to 28 U.S.C. § 1409(a); due and sufficient notice of the Motion was given, and no other or further notice need be given; and after due deliberation thereon, and good and sufficient cause appearing therefor,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED AS FOLLOWS:

1. The Motion is **GRANTED**.
2. Appellant is granted leave to exceed the page and type-volume limitations of Bankruptcy Rule 8015(a)(7) and file an Opening Brief limited in size

² All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

to no more than sixty (60) pages or twenty-six thousand (26,000) words.

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

IT IS SO ORDERED.

DATE

UNITED STATE DISTRICT JUDGE

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