

Case No. 21-90011

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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In re: HIGHLAND CAPITAL MANAGEMENT, L.P.

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On Appeal from the United States Bankruptcy Court for  
the Northern District of Texas, Dallas Division  
Bankruptcy Case No. 19-34054 (SGJ11)

MOTION FOR AUTHORITY TO ACCEPT  
DOCUMENTS UNDER SEAL

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TO THE HONORABLE UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT:

COMES NOW, The Dugaboy Investment Trust and Get Good Trust (the  
“*Appellants*”) in the above referenced appeal from the bankruptcy case, *In re  
Highland Capital Management LP*, chapter 11, case no. 19-34054, United States  
Bankruptcy Court Northern District of Texas, Dallas Division (“*Bankruptcy  
Case*”), and file this *Motion for Authority to Accept Documents Under Seal* (the  
“*Motion*”), and in support respectfully aver as follows:



## SUMMARY OF THE PROCEEDINGS

1. The Bankruptcy Case was filed by Highland Capital Management, LP (the “*Debtor*”) on October 16, 2019. To date, the Debtor continues to manage its estate as debtor in possession.

2. Pursuant to Order dated January 21, 2020, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, (the “*Bankruptcy Court*”), docketed the *Agreed Protective Order* (the “*Protective Order*”) [Dkt. # 382]. See Attached *Exhibit A*. The Documents Under Seal are part of the Bankruptcy Case and are sealed subject to the Protective Order.

3. On March 4, 2021, the Appellants filed the *Notice of Appeal and Statement of Election* in the Bankruptcy Court appealing the Bankruptcy Court’s *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified); and (ii) Granting Related Relief* (the “Confirmation Order”). On March 11, 2021, the Appellants filed the *Amended Notice of Appeal and Statement of Election* in the Bankruptcy Case.

4. On March 16, 2021, the Bankruptcy Court entered an *Order Certifying Appeals of the Confirmation Order for Direct Appeal to the United States Court of Appeals for the Fifth Circuit* (“Certification Order”).

5. On April 14, 2021, the Appellants filed a *Petition for Direct Appeal Under 28 U.S.C. § 158(d)* [Document 515824511] (the “Petition for Direct Appeal”).

6. On June 2, 2021, this Court entered an Order granting the Petition for Direct Appeal [Document 515884861].

7. On March 18, 2021, the Appellants filed a *Designation of Record Pursuant to Fed. R. Bankr. P. 8009*. Included in the designation of the record is the following record that is confidential and subject to the Protection Order (the “*Document Under Seal*”):

DATE	DKT. #	DESCRIPTION
02/03/2021	1915	Court admitted exhibits date of hearing February 3, 2021 (RE: related document(s) 1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).) (COURT ADMITTED ALL THE DEBTOR’S EXHIBITS THAT APPEAR AT <b>DOC. # 1866 – LLLL HIGHLAND CLO FUNDING SUBSCRIPTION AND TRANSFER AGREEMENT [TO BE OFFERED UNDER SEAL]</b> )

**RELIEF REQUESTED**

8. The Appellants, as the designating parties, are submitting this Motion under Federal Rule of Bankruptcy Procedure 8009(f) seeking an order directing the Clerk of the Bankruptcy Court to transmit the Document Under Seal.

9. Pursuant to Federal Rule of Bankruptcy Procedure 8009(f):

Sealed Documents. A document placed under seal by the bankruptcy court may be designated as part of the record on appeal. In doing so, a party must identify it without revealing confidential or secret information, but the bankruptcy clerk must not transmit it to the clerk of the court where the appeal is pending as part of the record. Instead, a party must file a motion with the court where the appeal is pending to accept the document under seal. If the motion is granted, the movant must notify the bankruptcy court of the ruling, and the bankruptcy clerk must promptly transmit the sealed document to the clerk of the court where the appeal is pending.

10. The Appellants state that they complied with the requirements of Rule 8009(f). The Document Under Seal: (i) was placed under seal by the Bankruptcy Court pursuant to the Protective Order; and (ii) the Document Under Seal was identified in the designation of the record without revealing confidential information. Therefore, the Appellants are seeking an order allowing this Court to accept the Document Under Seal and directing the Clerk of the Bankruptcy Court to transmit the Document Under Seal after proper notification by the Appellants of a ruling providing for the transmittal. To facilitate the transmittal, the Appellants have delivered to the Clerk of the Bankruptcy Court the Document Under Seal in sealed envelopes, marked with the case number and a description of the document inside.

WHEREFORE PREMISES CONSIDERED, the Appellants respectfully request that this Court, under Rule 8009(f), enter an order allowing the Clerk of the Bankruptcy Court to transmit and this Court to accept the Document Under Seal as designated by the Appellants, and for any other relief that is just.

Respectfully submitted,

/s/ Douglas S. Draper  
Douglas S. Draper, (*pro hac vice admittance  
requested*)  
Heller, Draper & Horn, L.L.C.  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Phone: 504-299-3300/Fax: 504-299-3399  
e-mail: [ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)

### CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2021, I caused to be electronically filed the foregoing document with the clerk of court for the United States Court of Appeals for the Fifth Circuit, using the electronic case filing system. The electronic case filing system served upon those parties receiving the Court's ECF-email notification, on this the 21st day of June 2021.

/s/ Douglas S. Draper

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

June 21, 2021

Mr. Douglas Scott Draper  
Heller, Draper & Horn, L.L.C.  
650 Poydras Street  
Suite 2500  
New Orleans, LA 70130-0000

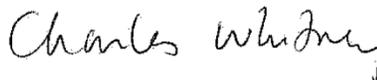
No. 21-90011 NexPoint v. Highland Capital  
USDC No. 19-34054

Dear Mr. Draper,

We received your motion for authority to accept documents under seal. Because the motions for permission to appeal were granted, this case is closed. The motion must be filed in the open appeal. For this reason, we are taking no action on this motion.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Charles B. Whitney, Deputy Clerk  
504-310-7679

cc:

Mr. Zachery Z. Annable  
Mr. Bryan Christopher Assink  
Mr. David R. Fine  
Ms. Melissa Sue Hayward  
Mr. Jeffrey N. Pomerantz  
Mr. Davor Rukavina  
Mr. Clay Marshall Taylor