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**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
Debtor.	§	
	§	

**DEBTOR'S MOTION FOR LEAVE TO FILE CERTAIN DOCUMENTS UNDER SEAL
IN CONNECTION WITH DEBTOR'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191
OF UBS SECURITIES LLC AND UBS AG, LONDON BRANCH**

¹ The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), respectfully submits this motion (the “Motion to Seal”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), authorizing the Debtor to file under seal (i) an unredacted version of the *Debtor’s Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the “Opening Brief”), and (ii) unredacted versions of certain exhibits (the “Subject Exhibits”) to the *Appendix of Exhibits in Support of Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the “Appendix”). The Debtor seeks the Court’s permission to file these materials under seal because the Subject Exhibits are documents previously filed under seal by other parties to the Bankruptcy Case, and certain limited sections of the Opening Brief contain non-public financial information derived from the Subject Exhibits.

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and other bases for the relief requested herein are 11 U.S.C. §§ 105(a) and 107(b), Rule 9018 of the Federal Rules of Bankruptcy Procedure, and Rule 9077-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

BACKGROUND

3. In accordance with the *Scheduling Order With Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.E. 1163], the Debtor is filing, concurrently herewith, the *Debtor’s Motion for Partial Summary Judgment on Proof of*

Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch, along with redacted versions of the Opening Brief and the Appendix. The Subject Exhibits are Exhibit Nos. 2, 11-12 and 14-16 to the Appendix, all of which are documents (or excerpts from documents) previously filed under seal in the Bankruptcy Case by either UBS Securities LLC and UBS AG, London Branch (collectively, “UBS”) or the Redeemer Committee of the Highland Crusader Funds (“Redeemer Committee”). In particular:

- Exhibit 2 is an unredacted version of UBS’s omnibus response [D.E. 1105] (“UBS Response”) to the objections to UBS’s Proof of Claim Nos. 190 and 191 (collectively, the “UBS Claim”). UBS filed the unredacted version of the UBS Response under seal [D.E. 1133] pursuant to the Court’s order [D.E. 1131] granting UBS’s motion to seal [D.E. 1107].
- Exhibits 11-12 are unredacted copies of settlement agreements between UBS and certain other parties (collectively, the “Settlement Agreements”). The unredacted copies of the Settlement Agreements were filed under seal [D.E. 953-6 and 953-9] by the Redeemer Committee pursuant to the Court’s order [D.E. 950] granting the Redeemer Committee’s motion to file under seal [D.E. 932] certain documents relating to its objection to the UBS Claim.
- Exhibit 14 is an unredacted version of a June 1, 2015 email chain that was attached as Exhibit 35 to the UBS Response, and filed under seal [D.E. 1133-22] by UBS pursuant to the Court’s order [D.E. 1131] granting UBS’s motion to seal [D.E. 1107].
- Exhibit 15 is an unredacted version of a June 5-7, 2015 email chain that was attached as Exhibit 34 to the UBS Response, and filed under seal [D.E. 1133-21] by UBS pursuant to the Court’s order [D.E. 1131] granting UBS’s motion to seal [D.E. 1107].
- Exhibit 16 is an unredacted excerpt from a report of one of UBS’s designated expert witnesses in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.), which was attached as Exhibit 6 to the UBS Response and filed under seal [D.E. 1133-5] by UBS pursuant to the Court’s order [D.E. 1131] granting UBS’s motion to seal [D.E. 1107].

4. In addition to the foregoing, certain limited sections of the Opening Brief reflect financial information derived from Exhibit 16. The Debtor has redacted that financial

information to the extent it has not otherwise been made a matter of public record in the Bankruptcy Case, and requests the Court's permission to file an unredacted version of the Opening Brief under seal.

5. Finally, UBS has unredacted copies of each of the Subject Exhibits. As noted above, Exhibit 2 is UBS's response to the objections to its claim, and Exhibits 14-16 are exhibits that UBS attached to the UBS Response. Exhibits 11-12 are specifically referenced in the UBS Response and identified by UBS as the settlement agreements it entered into in 2015. UBS Response p. 10. Moreover, the Debtor will provide unredacted versions of its Opening Brief and Appendix to UBS upon request.

RELIEF REQUESTED

6. By this Motion to Seal, the Debtor requests entry of an order, substantially in the form of the Proposed Order, authorizing the Debtor to file unredacted copies of the Subject Exhibits and the Opening Brief under seal.

ARGUMENT AND AUTHORITIES

7. The Bankruptcy Code, Bankruptcy Rules and Local Rules authorize the Court to limit the disclosure of confidential information. Section 107(b) of the Bankruptcy Code provides, in relevant part, as follows:

On request of a party in interest, the bankruptcy court shall ... (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b)(1). Section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers and empowers it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

8. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under 11 U.S.C. § 107(b), providing that:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

FED. R. BANKR. P. 9018. Furthermore, Local Rule 9077-1(a) provides, in relevant part, that “[a] party may file under seal any document that a statute or rule requires or permits to be so filed.”

LOCAL BANKR. R. N.D. TEX. 9077-1(a).

9. Here, as set forth above, all of the Subject Exhibits are exhibits previously filed under seal in the Bankruptcy Case by UBS or the Redeemer Committee, pursuant to the Court’s orders granting those parties’ motions to seal. Filing the Subject Exhibits under seal, along with the limited portions of the Opening Brief that reflect non-public financial information derived from the Subject Exhibits, will be consistent with the manner in which the Subject Exhibits have been treated to date in the Bankruptcy Case.

10. Finally, as noted, UBS has unredacted copies of all of the Subject Exhibits. Thus, UBS will not be prejudiced if the documents are filed under seal. Accordingly, the Debtor respectfully requests that the Motion to Seal be granted.

NOTICE

11. Notice of this Motion to Seal will be provided to: (a) counsel to UBS; (b) counsel to the Redeemer Committee; (c) the Office of the United States Trustee; (d) the Office of the United States Attorney for the Northern District of Texas; (e) the Debtor’s principal secured parties; (f) counsel to the Official Committee of Unsecured Creditors; and (g) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests that the Court (i) grant the relief requested in this Motion to Seal, (ii) enter an order, substantially in the form of the Proposed Order attached hereto as Exhibit A, authorizing the filing of unredacted

versions of the Opening Brief and Subject Exhibits under seal, and (iii) and grant the Debtor such further and additional relief as the Court deems just and proper.

Dated: October 16, 2020.

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Exhibit A

Proposed Order

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

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Chapter 11

Case No. 19-34054-sgj11

**ORDER GRANTING DEBTOR'S MOTION FOR LEAVE TO FILE CERTAIN
DOCUMENTS UNDER SEAL IN CONNECTION WITH DEBTOR'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191
OF UBS SECURITIES LLC AND UBS AG, LONDON BRANCH**

Having considered the motion (the "Motion to Seal") of the above-captioned debtor and debtor-in-possession (the "Debtor") seeking entry of an order (this "Order"), pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9077-1, authorizing the Debtor to file under seal an unredacted version of the *Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the "Opening Brief") and unredacted versions of

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certain exhibits (the “Subject Exhibits”) to the *Appendix of Exhibits in Support of Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the “Appendix”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b) and that this Court may issue a final order consistent with Article III of the United States Constitution; and venue of the Motion to Seal being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion to Seal having been given; and the Court having reviewed and considered the Motion to Seal and any objections thereto; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion to Seal is **GRANTED**.
2. The Debtor is authorized to file an unredacted version of the Opening Brief under seal.
3. The Debtor is authorized to file unredacted versions of the Subject Exhibits to the Appendix under seal.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order.
6. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER