IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
CYNERGY DATA, LLC, *et al.*,[1]	Case No. 09-_____ ( )
Debtors.	Jointly Administered

DEBTORS' MOTION FOR INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 345, 363, 364, AND 503(b)(1) AUTHORIZING (A) CONTINUED MAINTENANCE OF EXISTING BANK ACCOUNTS, (B) CONTINUED USE OF EXISTING BUSINESS FORMS, (C) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (D) CONTINUED PAYMENTS TO ISOs AND MERCHANTS IN ACCORDANCE WITH CUSTOMARY PRACTICE, (E) WAIVER OF CERTAIN GUIDELINES RELATING TO BANK ACCOUNTS, AND (F) SCHEDULING A FINAL HEARING

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), hereby move this Court (the "Motion") for entry of an interim order and a final order, under sections 105(a), 345, 363, 364, and 503(b)(1) of Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 101 et. seq. as amended, the "Bankruptcy Code") authorizing, but not directing (a) continued maintenance of existing bank accounts; (b) continued use of existing business forms; (c) continued use of existing cash management system; (d) continued payment of ISOs (defined below) and Merchants (defined below) in accordance with customary practice; (e) a waiver of certain operating guidelines relating to bank accounts; and (f) scheduling a final hearing, to be held on or before the day that is thirty (30) days after the filing of the Debtors' chapter 11 petition. In support of the Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent:

[1] The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 345, 363, 364, and 503(b)(1).

BACKGROUND

2. On the date hereof (the "Petition Date"), the Debtors filed their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

3. The Debtors continue to operate their business and manage their property as debtors in possession under Bankruptcy Code sections 1107(a) and 1108.

4. No trustee, examiner or creditors' committee has been appointed in these cases.

5. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the declaration of Charles M. Moore, filed concurrently herewith and fully incorporated herein by reference (the "Moore Declaration").[2] Additional facts in support of the specific relief sought in this Motion are set forth below.

RELIEF REQUESTED

6. By this Motion, the Debtors seek an order, under Bankruptcy Code sections 105(a), 345, 363, 364, and 503(b)(1), authorizing, but not directing, (a) continued maintenance of existing bank accounts; (b) continued use of existing business forms, (c) continued use of existing cash management system; (d) continued payment of ISOs (defined below) and Merchants (defined below) in accordance with customary practice; (e) waiving

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Moore Declaration.

certain operating guidelines relating to bank accounts set forth in the U.S. Department of Justice, Office of the United States Trustee: Operating Guidelines for Chapter 11 Cases (the "U.S. Trustee Guidelines"), adopted by the United States Trustee for the District of Delaware (the "U.S. Trustee"); and (f) scheduling a final hearing on the relief requested by this Motion.

BASIS FOR RELIEF

I. THE DEBTORS SHOULD BE GRANTED AUTHORITY TO MAINTAIN THEIR EXISTING BANK ACCOUNTS

7. The U.S. Trustee has established the U.S. Trustee Guidelines for debtors in possession in order to supervise the administration of chapter 11 cases. These U.S. Trustee Guidelines require chapter 11 debtors to, among other obligations, (a) close all existing bank accounts and open new debtor in possession bank accounts; (b) establish one debtor in possession account for all estate monies required for the payment of taxes including payroll taxes; (c) maintain a separate debtor in possession account for cash collateral; and (d) obtain checks for all debtor in possession accounts which bear the designation "Debtor-in-Possession." The last requirement is designed to draw a clear line of demarcation between prepetition and postpetition transactions and operations and prevent the inadvertent postpetition payment of prepetition claims. Under Bankruptcy Code sections 105(a) and 363, the Debtors seek a waiver of these requirements and authorization to continue using their existing bank accounts.

8. Prior to the commencement of these chapter 11 cases, in the ordinary course of their business, the Debtors maintained approximately fourteen (14) accounts out of which they manage cash receipts and disbursements (the "Bank Accounts"). The Bank Accounts are set forth on Exhibit A.

9. The Debtors believe that all of the Bank Accounts are in financially stable banking institutions insured by the Federal Deposit Insurance Corporation ("FDIC") or the

Federal Savings and Loan Insurance Corporation ("FSLIC"), up to an applicable limit per financial institution.

10. The Debtors seek a waiver of the requirement in the U.S. Trustee Guidelines that the prepetition Bank Accounts be closed and that new postpetition bank accounts be opened. If enforced in these cases, such requirements would cause enormous disruption to the Debtors' business and would impair the Debtors' efforts to reorganize and pursue other alternatives to maximize the value of their estates. Indeed, as explained in more detail below, the Bank Accounts comprise an established cash management system that the Debtors need to maintain in order to ensure smooth collections and disbursements in the ordinary course.

11. In other large cases, this Court has waived the strict enforcement of bank account closing requirements and replaced them with an alternative procedure that provides the same protection. See, e.g., In re Dura Automotive Systems, Inc., Case No. 06-11202 (KJC) (Bankr. D. Del. Nov. 21, 2006); In re J.L. French Automotive Castings, Inc., Case No. 06 10119 (MFW) (Bankr. D. Del. Mar. 9, 2006); In re Pliant Corporation, Case No. 06-10001 (MFW) (Bankr. D. Del. January 4, 2006) (MFW); In re Nobex Corporation, Case No. 05-20050 (MFW) (Bankr. D. Del., Dec. 6, 2005); In re FLYi, Inc., Case No. 05-20011 (MFW) (Bankr. D. Del. Nov. 7, 2005); In re Meridian Automotive Systems–Composite Operations, Inc., Case No. 05-11168 (MFW) (Bankr. D. Del. Apr. 27, 2005); In re W. R. Grace & Co., Case No. 01-1139 (JKF) (Bankr. D. Del. Apr. 2, 2001); In re Trans World Airlines, Inc.,Case No. 01-0056 (PJW) (Bankr. D. Del. Jan. 10, 2001); In re United Artists Theatre Co., Case No. 00-3514 (SLR) (Bankr. D. Del. Sept. 5, 2000); In re Harnischfeger Indus., Inc., Case No. 99-2171 (PJW) (Bankr. D. Del. June 7, 1999). To guard against improper transfers resulting from the postpetition honoring of

prepetition checks, the Court can order the Debtors' banks, with some exceptions, not to honor any checks drawn on the Debtors' accounts before the Petition Date.

12. Accordingly, in order to avoid delays in payments to administrative creditors, to ensure as smooth a transition into chapter 11 as possible with minimal disruption, and to aid in the Debtors' efforts to complete these cases successfully and rapidly, the Debtors must be permitted to (a) continue to maintain the existing Bank Accounts, (b) if necessary, open new accounts (and give the U.S. Trustee notice of such newly opened accounts), wherever they are needed, whether or not such banks are designated depositories in the District of Delaware; provided, however, that any new bank account shall be with a bank that is insured by the FDIC or the FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a "debtor-in-possession" or "DIP" account by the respective bank and (c) treat the Bank Accounts and any such newly opened accounts for all purposes as accounts of the Debtors in their capacity as debtors-in-possession.

13. Courts have recognized that a bankruptcy court has the discretion to allow the continued use of existing pre-petition bank accounts and that the strict enforcement of bank account closing requirements does not serve the rehabilitative purposes of chapter 11 in cases of this size and nature. See In re Grant Broad., Inc., 75 B.R. 819, 820 (E.D. Pa. 1987) (referring to order authorizing use of cash collateral and pre-petition bank accounts); In re New York City Shoes, Inc., 78 B.R. 426, 427 (Bankr. E.D. Pa. 1987) (debtor depositing post-petition funds into pre-petition bank accounts). Because of the severe disruption to the Debtors' cash management system and, by extension, the Debtors' business, which would result if the Debtors were forced to open new accounts, the Debtors believe it is important that this Court grant their request for maintaining the Bank Accounts.

14. In sum, subject to a prohibition against honoring prepetition checks without specific authorization from this Court except as expressly set forth herein, the Debtors request that the Bank Accounts be deemed to be debtor-in-possession accounts and that their maintenance and continued use, in the same manner and with the same account numbers, styles and document forms as those employed during the prepetition period, be authorized.

15. The Debtors also seek a waiver of the requirement to establish specific bank accounts for tax payments. The Debtors believe that they can pay their tax obligations most efficiently out of their existing Bank Accounts, that the U.S. Trustee can adequately monitor the flow of funds into, among, and out of such accounts, and that the creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessary and inefficient.

16. The Debtors represent that, if the relief requested in this Motion is granted, that except as expressly requested herein, it will not pay, and each of the banks (the "Banks") at which the Bank Accounts are maintained will be directed not to pay, any debts incurred before the Petition Date, other than as authorized by this Court.

II. THE DEBTORS SHOULD BE GRANTED AUTHORITY TO CONTINUE TO USE EXISTING BUSINESS FORMS AND CHECKS

17. In order to minimize expenses to their estates, the Debtors also seek authorization to continue using all correspondence, business forms (including, but not limited to, letterhead, purchase orders and invoices) and checks existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors in possession.

18. Most parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors in possession as each of the Debtors' vendors and creditors will receive direct notice of the commencement of these cases.

19. Changing correspondence and business forms would be expensive, unnecessary and burdensome to the Debtors' estates and disruptive to the Debtors' business operations and would not confer any benefit upon those dealing with the Debtors. For these reasons, the Debtors request that they be authorized to use existing checks and business forms without being required to place the label "Debtor-In-Possession" on each. However, in the event that the Debtors needs to purchase new check stock or any other business forms during the pendency of these chapter 11 cases, such check stock or other business forms will include a legend referring to the Debtors as "Debtor in Possession" or "DIP".

20. In other large cases, this Court has allowed debtors to use their prepetition check forms without the "debtor-in-possession" label, at least until the debtors' existing check stock was depleted. See, e.g., In re Dura Automotive Systems, Inc., Case No. 06-11202 (MFW) (Bankr. D. Del. Nov. 21, 2006); In re J.L. French Automotive Castings, Inc., Case No. 06 10119 (MFW) (Bankr. D. Del. Mar. 9, 2006); In re Nobex Corporation, Case No. 05-20050 (MFW) (Bankr. D. Del., Dec. 6, 2005); In re FLYi, Inc., Case No. 05-20011 (MFW) (Bankr. D. Del. Nov. 7, 2005).[3]

III. THE DEBTORS SHOULD BE AUTHORIZED TO CONTINUE TO USE THE EXISTING CASH MANAGEMENT SYSTEM

21. The cash management procedures utilized by the Debtors constitute ordinary, usual and essential business practices and are similar to those used by other major corporate

[3] See also In re Meridian Automotive Systems–Composite Operations, Inc., Case No. 05-11168 (MFW) (Bankr. D. Del. Apr. 27, 2005); In re AstroPower, Inc., Case No. 04-10322 (MFW) (Bankr. D. Del. 2004); In re The Thaxton Group, Inc., Case No. 03-13183 (PJW) (Bankr. D. Del. 2003); In re Orion Refining Corp., Case No. 03-11483 (MFW) (Bankr. D. Del. 2003); In re Fleming Cos., Inc., Case No. 03-10945 (MFW) (Bankr. D. Del. 2003); In re Wherehouse Entm't, Inc., Case No. 03-10224 (PJW) (Bankr. D. Del. 2003); In re FAO, Inc., Case No. 03-10119 (LK) (Bankr. D. Del. 2003); In re Favorite Brands Int'l Holding Corp., Case No. 99-726 (PJW) (Bankr. D. Del. 1999); In re FPA Med. Mgmt., Inc., Case No. 98-1596 (PJW) (Bankr. D. Del. 1998); In re Venture Stores, Inc., Case No. 98-101 (RRM) (Bankr. D. Del. 1998); In re Levitz Furniture, Inc., Case No. 97-1842 (JJF) (Bankr. D. Del. 1997); In re Montgomery Ward Holding Corp., Case No. 97-1409 (PJW) (Bankr. D. Del. 1997).

retail enterprises. The cash management system facilitates cash forecasting and reporting, monitors collection and disbursement of funds, reduces administrative expenses by facilitating the movement of funds and the development of more timely and accurate balance and presentment information and administers the various bank accounts required to effect the collection, disbursement and movement of cash. The movement of funds through the Debtors' cash management system is described further below.

The Debtors' Cash Management System

The Revenue, Reserve and Merchant Financing Accounts

22. All cash coming into Cynergy Data enters first through Harris N.A ("Harris"). There are three sources of cash receipts for Cynergy Data: revenue from processing (the "Processing Revenue"), reserves (the "Reserves"), and merchant financing ("Merchant Financing"). These are all part of an account settlement process (the "Daily Recap") between Harris and Cynergy Data.

23. The central mechanism of the Debtors' operations and cash flow is its obligations to Harris under a certain BIN Sponsor Agreement dated as of November 1, 2008, as amended, restated, supplemented or otherwise modified prior to the Petition Date, various merchant agreements entered into among Harris, Debtors (or agents of Debtors) and merchants for the processing of credit card purchases and various other documents and instruments executed by Debtors and Harris including, but not limited to, that certain Forbearance Agreement dated as of July 24, 2009 (collectively, "Prepetition Harris Documents").

24. Processing Revenue is Cynergy Data's share of a credit card transaction. When a transaction occurs and is approved, the bank that issued the credit card is directed to send the transaction funds to the acquiring bank. For Cynergy Data merchants (the "Merchants"), the

acquiring bank is Harris. Harris then directs funds, net of Cynergy Data's revenue, for approved transactions to the appropriate Merchants. Cynergy Data's revenue is then deposited by Harris into the Harris Corporate Checking account (the "Harris Checking Account"). Out of this revenue, fees such as interchange and dues and assessments are automatically paid by Harris to the appropriate associations.

25. Cynergy Data has two types of Merchants, those that settle their accounts on a daily basis (the "Daily Settlement Merchants") and those that settle their accounts on a monthly basis (the "Monthly Settlement Merchants"). While interchange fees have to be paid by Cynergy Data on a daily basis for transactions, only about thirty percent (30%)of Cynergy Data's Merchants are Daily Settlement Merchants. Therefore, the majority of Cynergy Data's processing revenue is received on a monthly basis.

26. In June of 2009, Cynergy Data's working capital was strained by having to "finance" the interchange costs for certain of the Monthly Settlement Merchants. As a result, Harris provided to Cynergy Data an interchange financing program to cover any shortfall. The program is set up to fund the difference between Cynergy Data's daily processing revenue and daily interchange costs (the "Interchange Costs"). Then, out of the monthly revenue, Cynergy Data repays to Harris the amount financed, with interest on such amount pursuant to agreement. Because daily Interchange Costs always exceed the amount of daily revenue coming in, Cynergy Data only receives cash from processing revenue at the time of the monthly settlement (the "Monthly Settlement"), which occurs on or about the fifth business day of each month, for the prior month's processing activity. Aside from automatically deducting the amounts due under the interchange financing from the Monthly Settlement, certain Cynergy Data processing vendors are paid automatically by Harris out of Cynergy Data's Monthly Settlement.

27. When a chargeback or reject occurs, the reverse process happens. Cynergy Data keeps its revenue from the initial transaction, but it also must refund the net transaction cost to the issuing bank automatically from the Harris Checking Account (the "Chargebacks and Rejects"). It is then incumbent upon Cynergy Data to obtain reimbursement or pay the funds from the respective Merchant(s). Cynergy Data gets hundreds of such Chargebacks and Rejects daily and there is usually a significant lag in addressing them.

28. Debit card revenue also flows through the Daily Recap and the Harris Checking Account. Debit card funds are sent to the Merchant from this account and then Cynergy Data obtains reimbursement from the issuing bank network.

29. Cynergy Data has several types of reserve accounts including: the Questionable Merchant ("QM") reserves, the Executive Partner ("EP") reserves and the Merchant rolling reserves ("MR"). Cynergy Data's risk management system evaluates transaction details. If certain parameters are exceeded, the risk management system will direct Harris to divert Merchant transaction funds into the Harris QM account. If the transactions are deemed valid, the funds are issued from the Harris Checking Account. The Harris Checking Account subsequently is replenished through a transfer of funds from the QM account. If the transactions are deemed fraudulent, the funds remain in the QM account and are available to set-off future losses related to that Merchant.

30. The EP reserves and MR reserves are for "riskier" Merchants (Merchants with a higher likelihood of, among other things, returns, Chargebacks and Rejects) and are meant to offset potential future losses due to transactions with those Merchants. These reserves come through the Daily Recap with the Processing Revenue, and into the Harris Checking Account.

EP reserve accounts are set up at Comerica Bank and are for the benefit of specific Independent Sales Organizations (the "ISOs") characterized as executive partners.

31. The MR reserves are not segregated and remain commingled with Cynergy Data's operating funds, which are manually transferred from Harris to Comerica Bank ("Comerica") on an as-required basis. When a Merchant ends its processing relationship with Cynergy Data, or negotiates a lower reserve balance, the MR reserves are released from Cynergy Data's checking account at Comerica or from Harris and are sent to the Merchants and ISOs through the cash management system.

32. Cynergy Data also offers its Merchants a cash advance program. Merchant-financed companies (the "Merchant-Financed Companies") lend funds to Cynergy Data Merchants and Cynergy Data recoups these funds through the Merchants' daily revenue and pays the third-party financed companies daily (on a four day lag). These funds ultimately are disbursed from the Cynergy Data's operating account at Comerica.

Payment to ISOs, Merchants and Related Prepetition Obligations According to Customary Practice

33. As of the Petition Date, in connection with its cash management system, Cynergy Data has certain outstanding prepetition obligations relating to the QM reserve, the EP reserve, the MR reserve, Interchange Costs, Chargebacks and Rejects, ISO Commissions (defined below), obligations to Harris, obligations to ISOs, obligations to Merchants and obligations to the Merchant Financing Companies (collectively the "Operating Obligations"). As part of the relief requested herein, and in order to maintain regular relationships with its Merchants and ISOs that form the basis of their business and the value to be realized in these cases, the Debtors seek authority, in connection with maintaining their cash management system, to continue to satisfy, postpetition, the Operating Obligations. Any interference with the regular processing of

such obligations will severely harm the value of the Debtors' assets and jeopardize their ability to realize that value for their creditors.

34. For example, the ISOs form a critical link in the Debtors' business operation. The ISOs are independent sales organizations that provide Merchants to the Debtors. The ISOs can grow the Debtors' business by delivering additional Merchants to the Debtors. The ISOs also have direct and strong relationships with the Merchants who use the Debtors' services, and can use that relationship to encourage Merchants to terminate their relationship with the Debtors.

35. When the Debtors receive their monthly revenue on or about the fifth day of each month, a portion is payable to the ISOs ("ISO Commissions"). The ISO Commissions represent a share of the commissions earned by the Debtors on every Merchant sale. The ISOs are wholly dependent on the steady stream of commissions to fund their operations and a failure to pay those ISO commissions to the ISOs will likely cause the ISOs great harm. In this sense, the ISOs are very similar to the Debtors' employee wage earners who also depend on a regular payment from the Debtors. The ISO Commissions are paid on or about the twentieth of each month in satisfaction of the previous months' earned ISO Commissions, and a failure to pay those commissions on a monthly basis at this critical juncture could cause substantial harm to the Debtors' assets, their business, jeopardize the proposed sale of the Debtors' interest in, among other things, the Debtors' Merchant Processing Agreements and otherwise be harmful to the prospects of a successful chapter 11 process and benefit to the estate.

36. As of the Petition Date, the ISOs will have earned commissions for the month of August that will be due, in the ordinary course on or about September 20, 2009. As of the Petition Date, it is estimated that the outstanding an unpaid ISO Commissions for August 2009 is approximately $7,200,000.00. The Debtors believe that through the Monthly Settlement

received on or about September 5, 2009 in combination with anticipated post-petition borrowings, they will have sufficient funds to satisfy the August 2009 ISO Commissions. It further is anticipated, at this time, that most if not all of the Debtors' contracts with the ISOs will be assumed as part of the sale process and assigned to the Purchaser of the Debtors' assets. Therefore, the proposed current payment of the ISO Commissions should not result in payment to the ISOs of any more than the ISOs would otherwise receive once the sale process is completed.

37. The ISOs' are an essential component to the Debtors' operations and maintaining those relationships is vital to maximizing value in the proposed sale process. All of the ISO Commissions proposed to be paid are those due for the month of August 2009. Cynergy Data seeks to pay the outstanding amounts owed as of the Petition Date for accrued and unpaid ISO Commissions in accordance with their cash management system.

38. Payment to the ISO Commissions and all other Operating Obligations pursuant to the Debtors' cash management system, is akin to payments to critical vendors, relief that is generally authorized under sections 363 and 364 of the Bankruptcy Code. See In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002) (essential trade motion relying upon section 363 of the Bankruptcy Code is "completely consistent with the Bankruptcy Code;" payments to critical trade vendors have further support when debtor seeks "the extension of credit under section 364 on different than usual terms, terms that might include the payment of a prepetition obligation").

39. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity

owners." In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor-in-possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." Id.

40. Courts have noted that there are instances in which a debtor-in-possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." Id. The CoServ court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate," and also when the payment was to "sole suppliers of a given product." Id. at 498. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

> First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.
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> Id. at 498.

41. Payment of the ISO Commissions and all other Operating Obligations meets the essential elements of the CoServ court's standard. The ISOs: (a) are a "sole-source" provider; (b) the Debtors cannot obtain these services from alternative sources without interruption to the Debtors' business and within a reasonable timeframe; and (c) the ISOs are likely to refuse to provide services to the Debtors postpetition if its prepetition balances are not paid.

42. Without these ISOs, the Debtors' operations would be disrupted for a significant period of time due to the time and expense that would be involved in transitioning to a new provider and the proposed sale of assets would be severely undermined if not lost to the Debtors. The potential harm and economic disadvantage that would stem from the failure of any of the

ISOs to perform is grossly disproportionate to the amount of any prepetition claim that may be paid. Finally, with respect to the ISOs, the Debtors have examined other options short of payment of the ISO Commissions and the other Operating Obligations and have determined that to avoid significant disruption of the Debtors' business operations and preserve the going concern value for the anticipated asset sale, there exists no practical or legal alternative other than payment of the ISO Commissions and other Operating Obligations.[4]

43. To the extent any of the contracts or agreements related to the ISO Commissions and satisfaction of the other Operating Obligations are executory within the meaning of section 365 of the Bankruptcy Code, the Debtors do not, at this time, seek to assume such contract, but are reviewing such contracts to make this determination in the near term. Should the Debtors decide to assume any of these contracts, which would be in the near term due to the importance of these contracts to the Debtors' business operations, the Debtors would need to cure any defaults. Therefore, in all likelihood this is simply a timing issue; essentially, by approving the relief sought herein, the Debtors would be keeping their ISO Commissions and other Operating Obligations current now and alleviating the need to make cure payments later.

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[4] The Debtors' proposed payment of the ISO Commissions and other Operating Obligations also should be authorized under the "doctrine of necessity" and section 105(a) of the Bankruptcy Code. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the chapter 11 case where the payment of such claims is necessary to the restructuring efforts. See In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor "cannot survive" absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment). This Court has granted similar relief in other chapter 11 cases. See, e.g., In re Werner Holding Co., (DE), Inc., et al., Case No. 06-10578 (KJC) (Bankr. D. Del. June 13, 2006); In re Pliant Corp., Case No. 06-10001 (MFW) (Bankr. D. Del. Jan. 4, 2006); In re Birch Telecom, Inc., Case No. *05-12*237 (PJW) (Bankr. D. Del. Aug. 16, 2005); In re Chart Indus., Inc., Case No. 03-12114 (JWV) (Bankr. D. Del. Jul. 10, 2003).

The Operating Accounts

44. Aside from Harris, Cynergy Data's main operating accounts are at Comerica. Excess funds at Harris are manually transferred to Comerica as required.

45. Cynergy Data has accounts at Capital One Bank (USA), N.A. for payroll and Sterling National Bank for petty cash.

46. There is an inactive but open account at Bank of America, N.A. that is a remnant from Cynergy Data previously using Bank of America, N.A. as its acquiring bank.

47. Employees are reimbursed for business expenses by submitting a monthly expense report, which is reviewed to ensure all expenses are authorized and then processed through the accounts payable Disbursement Account.

48. The Debtors' cash management system is highly automated and computerized. This allows the Debtors to manage centrally all of their cash flow needs and include the necessary accounting controls to enable the Debtors, as well as creditors and the Court, to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable. The Debtors will continue to maintain detailed records reflecting all transfers of funds.

49. The cash management procedures that the Debtors use constitute ordinary, usual and essential business practices and are similar to those used by other major corporate enterprises. The cash management system benefits the Debtors in significant ways, including the ability to (a) control corporate funds centrally, (b) ensure availability of funds when necessary, and (c) reduce administrative expenses by facilitating the movement of funds and the development of more timely and accurate balance and presentment information.

50. In furtherance of this goal, the Debtors request that all Banks at which the Bank Accounts are maintained be authorized and directed to continue to administer the Bank Accounts as such accounts were maintained prepetition, without interruption and in the usual and ordinary course, and to pay any and all checks, drafts, wires or automated clearing house transfers ("ACH Transfers") issued or drawn on the Bank Accounts on account of a claim arising on or after the Petition Date, so long as sufficient funds are in the Bank Accounts.

51. The Debtors further request that, except as expressly ordered in connection with satisfaction of the Operating Obligations, or in connection with other motions filed with this Court seeking authority to honor certain prepetition checks, drafts, wires or ACH Transfer, the Banks be restrained from honoring any check, draft, wire or ACH Transfer presented, issued or drawn on the Bank Accounts on account of a prepetition claim unless (a) authorized by an order of this Court, (b) not otherwise prohibited by a "stop payment" request received by the Banks from the Debtors and (c) supported by sufficient funds in the Bank Account in question.

52. Concurrently with the filing of this Motion, the Debtors have filed motions requesting authority to pay, in their sole discretion and in the ordinary course of their business, certain prepetition obligations to employees, essential services, taxing authorities and other entities. With respect to some of this debt, prior to the Petition Date, the Debtors issued checks that have yet to clear the banking system. In other cases, the Debtors would issue the relevant checks postpetition on account of such prepetition debt once the Court entered an order permitting the Debtors to do so. The Debtors intend to inform the Banks which prepetition checks should be honored pursuant to orders of the Court authorizing such payment.

53. Therefore, the Debtors request that the Banks be authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires or ACH transfers should be

honored or dishonored consistent with any order(s) of this Court and governing law, whether such checks, drafts, wires or ACH transfers are dated prior to, on or subsequent to the Petition Date. To the extent that the Debtors direct that any prepetition checks, drafts, wires or ACH Transfers be dishonored, the Debtors may issue replacement checks, drafts, wires or ACH Transfers to pay the amounts related to such dishonored checks, drafts, wires or ACH Transfers consistent with the orders of this Court.

54. To effectuate the foregoing, the Debtors request that each Bank that maintains a Disbursement Account shall implement reasonable handling procedures designed to effectuate the terms of any order granting this Motion. Pursuant to the relief requested in this Motion, no Bank that implements such handling procedures and then honors a prepetition check, draft, wire, ACH transfer (excluding any ACH Transfer that the Banks are obligated to settle) or other item presented, issued or drawn on any Bank Account that is the subject of this Order (a) at the direction of the Debtors to honor such prepetition check, draft, ACH transfer or other item, (b) in good-faith belief that the Court has authorized such prepetition check, draft, wire, ACH transfer or other item to be honored or (c) as a result of an innocent mistake made despite implementation of such handling procedures, shall be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with the Court's order or otherwise.

55. In addition, the Debtors request that they be authorized, but not directed, to implement reasonable changes to the Debtors' cash management system, including, but not limited to, the opening of any additional bank accounts or closing of any Bank Account(s) as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors'

request to open or close, as the case may be, such bank accounts; provided, however, that any new account shall be with a Bank that is insured by the FDIC or the FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a "debtor-in-possession" or "DIP" account by the respective Bank.

56. The operation of the Debtors' business requires that the cash management system continue during the pendency of these chapter 11 cases. Requiring the Debtors to adopt new, segmented cash management systems at this early and critical stage of these cases would be expensive, would create unnecessary administrative problems and would likely be much more disruptive than productive. Any such disruption could have an adverse impact upon the Debtors' ability to reorganize. Consequently, maintenance of the existing cash management system, as it may be modified under the proposed postpetition financing, during these chapter 11 cases is in the best interests of all creditors and other parties in interest.

57. Bankruptcy courts routinely grant chapter 11 debtors authority to continue using their existing cash management systems and treat such requests for such authority as a relatively "simple matter." In re Baldwin United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). This is particularly true where, as here, these Chapter 11 cases involve complex financial affairs. In fact, some courts have specifically held that a debtor's use of its pre-petition "routine cash management system" is "entirely consistent" with the provisions of the Bankruptcy Code. See In re Charter Co., 778 F.2d 617, 621 (11th Cir. 1985). Likewise, in another context, this Court has explained that a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for many different purposes that require cash." In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1993), aff'd in part and rev'd in part, 997 F.2d 1039 (3d Cir. 1993), cert denied sub nom.

Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp., 510 U.S. 110 (1994) . The Third Circuit agreed, emphasizing that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." In re Columbia Gas Sys., Inc., 997 F.2d 1039, 1061 (3d Cir. 1993). See also In re Southmark Corp., 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor to "administer more efficiently and effectively its financial operations and assets"); In re UNR Indus., Inc., 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984).

IV. THE DEBTORS SHOULD BE AUTHORIZED TO COMPLY WITH INVESTMENT GUIDELINES

58. Consistent with the objectives of section 345(b) of the Bankruptcy Code, the Debtors respectfully request authority to deposit any excess funds in domestic bank accounts insured by the United States (through the FDIC or the FSLIC), including the Bank Accounts (the "Investment Guidelines"), notwithstanding that such Investment Guidelines may not strictly comply in all respects with those set forth in section 345 of the Bankruptcy Code.[5] The Debtors further request that the applicable institutions be authorized and directed to accept and hold or invest such funds, at the Debtors' direction, in accordance with the Investment Guidelines. The Debtors also seek a waiver of the deposit guidelines set forth in section 345(b) of the Bankruptcy Code to the extent necessary to allow the Debtors to maintain their Bank Accounts and the existing cash management procedures.

59. Under section 345(b) of the Bankruptcy Code, any deposit or other investment made by a debtor, except those insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United

[5] The Debtors request authority to follow the Investment Guidelines as they may be modified by the requirements of any order of the Court approving the proposed postpetition financing.

States, must be secured by either a bond in favor of the United States that is secured by the undertaking of a corporate surety approved by the U.S. Trustee or the deposit of securities of the kind specified in 31 U.S.C. § 9303. Section 345(b) provides further, however, that a bankruptcy court may allow the use of alternatives to these approved investment guidelines "for cause." See 11 U.S.C. § 345(b); see also In re Serv. Merch. Co., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

60. In the Service Merchandise case, the court identified the following factors as a guide for determining whether cause exists to waive the requirements of section 345(b) of the Bankruptcy Code:

(a) the sophistication of the debtor's business;

(b) the size of the debtor's business operations;

(c) the amount of investments involved;

(d) the bank ratings of the financial institutions where the debtor's funds are held;

(e) the complexity of the case;

(f) the safeguards in place within the debtor's own business for insuring the safety of the funds;

(g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;

(h) the benefit to the debtor of current practices;

(i) the harm, if any, to the estate; and

(j) the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case.

Serv. Merch., 240 B.R. at 896. Examining these factors, the Service Merchandise court concluded that "cause" existed in that case because the debtors were "large, sophisticated [companies] with a complex cash management system" who had the ability to shift money as

needed to insure the safety of their funds. Id. Moreover, the benefits to the debtor of waiving the section 345(b) requirements far outweighed any potential harm to the estate, and the failure to waive the requirements "would 'needlessly handcuff' these debtors' reorganization efforts." Id. at 896-97.

61. Although the Investment Guidelines may not strictly comply with the guidelines identified in section 345 of the Bankruptcy Code in all respects, the Debtors' deposits nevertheless are safe, prudent and designed to yield the maximum reasonable net return on the funds invested, taking into account the safety of such deposits and investments.

62. As in Service Merchandise, and in the other chapter 11 cases in which courts have approved the use of investment and deposit guidelines that did not strictly comply with section 345 of the Bankruptcy Code, the Debtors comprise a large, sophisticated enterprise with a complex cash management system that provides the Debtors with the ability to transfer funds rapidly to ensure their safety. The Debtors submit that the Investment Guidelines generally conform to the intent of section 345(b) to protect and maximize the value of their estates. In light of these factors and the safety of the bank accounts that the Debtors proposes to utilize to invest any excess funds, the Debtors believe that sufficient cause exists under section 345(b) of the Bankruptcy Code to allow the Debtors to deviate from the investment guidelines set forth therein.

63. Courts have routinely granted the same relief as, or relief substantially similar to, the relief requested in this Motion. See, e.g., In re PLVTZ, Inc., Case No. 07013532 (REG) (Bankr. S.D.N.Y. Nov. 9, 2007); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006); In re Calpine Corp., No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 21, 2006); In re Delphi Corp., Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 14, 2005); In re Winn-Dixie

Stores, Inc., Case No. 05-11063 (RDD) (Bankr. S.D.N.Y. Feb. 22, 2005); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 12, 2007).

64. Moreover, the Debtors believe that the deposits at issue are safe because of the relative strength of the Banks where the Bank Accounts are maintained. Requiring the Debtors to open multiple accounts at different banks so that the deposits in each such bank would be insured by the FDIC or the FSLIC would be unnecessarily burdensome and would lead to the same delays and disruption to the Debtors' business that this Motion seeks to avoid.

65. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interest of the Debtors and their estates, creditors and other parties-in-interest.

66. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their business and preserve value for their estates. The Debtors respectfully request that the Court waive the ten-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

67. Bankruptcy Rule 6003 provides that to the extent "relief is necessary to avoid immediate and irreparable harm," a Bankruptcy Court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty days after the Commencement Date. Fed. R. Bankr. P. 6003. The Debtors' business operations rely heavily on their relationships with the banks and depository institutions that are the subject of this Motion.

Similarly, the Debtors ongoing relationships with their ISOs and Merchants are critical to maintaining value in these estates. Absent the relief requested herein, the Debtors' ability to operate and maintain value for their estates and constituents would be irreparable damaged. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

68. Any objection to the relief requested in the Motion on a permanent basis must (a) be filed in writing with the Court, at 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 by 4:00 p.m. (Eastern time) on the date that is fifteen (15) days after the entry of this Order (the "Objection Deadline") and (b) served so as to be actually received by the following parties by the Objection Deadline: (i) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Thomas P. Tinker, Esq.), (ii) proposed counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022 (Attn: Dennis J. Drebsky, Esq.), (iii) proposed local counsel to the Debtors, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, Wilmington, Delaware 19899-1709 (Attn: David B. Stratton, Esq.), and (iv) the official committee of unsecured creditors, if one has been appointed in these chapter 11 cases.

69. If any timely objections are received, a hearing shall be held to consider such objections at the first regularly-scheduled omnibus hearing in these cases. The interim order shall remain in effect until such hearing.

70. If no objections are timely filed and served as set forth herein, the proposed order shall be deemed a final order with no further notice or opportunity to be heard afforded to any party.

NOTICE

71. The Debtors have provided notice of this Motion by facsimile, electronic transmission, overnight delivery, or hand delivery to: (a) the United States Trustee for the District of Delaware; (b) the Debtors' twenty-five (25) largest unsecured creditors on a consolidated basis; (c) counsel to Comerica Bank; (d) counsel to Wells Fargo Foothill LLC; (e) counsel to Dymas Funding Company LLC; (f) counsel to Ableco Finance LLC; (g) counsel to A3 Funding LP; (h) counsel to Garrison Credit Investments; (i) counsel to Harris, N.A; (j) all other parties required to receive notice pursuant to Bankruptcy Rule 2002; and (k) each of the institutions holding or managing the accounts set forth in Exhibit A hereto. The Debtors submit that, under the circumstances, no other or further notice is necessary.

NO PRIOR REQUEST

72. No prior request for the relief requested herein has been made to this or any other Court.

[Remainder of page left intentionally blank]

CONCLUSION

WHEREFORE, the Debtors respectfully request this Court enter an order, substantially in the form annexed hereto, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: September 1, 2009
Wilmington, Delaware

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer
David B. Stratton (DE No. 960)
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-and-

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Facsimile: (212) 940-3111

Proposed Counsel for the Debtors and Debtors in Possession

Exhibit A

Debtors' Bank Accounts

BANK NAME	ACCOUNT NUMBER
Capital One	5024020686
Capital One	5224006733
Comerica	1852184116/366000 23300
Comerica	1852252996
Comerica	1852196722
Comerica	1852252988
Comerica	ORJ896667
Comerica	Multiple Accounts
Harris	2362556
Harris	2781011
Wells Fargo	32722514
Wells Fargo	412150772
Sterling National Bank	4400123745

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
CYNERGY DATA, LLC, *et al.*,[1]	Case No. 09-_____ ( )
Debtors.	Jointly Administered

ORDER UNDER 11 U.S.C. §§ 105(a), 345, 363, 364, AND 503(b)(1) AUTHORIZING (A) CONTINUED MAINTENANCE OF EXISTING BANK ACCOUNTS; (B) CONTINUED USE OF EXISTING BUSINESS FORMS; (C) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM; (D) WAIVER OF CERTAIN GUIDELINES RELATING TO BANK ACCOUNTS; AND (E) SCHEDULING FINAL HEARING

Upon the motion (the "Motion")[2] of the Debtors for an Order, under Bankruptcy Code sections 105, 345, 363, 364, and 503(b)(1) of the Bankruptcy Code, authorizing (a) continued maintenance of existing Bank Accounts, (b) continued use of existing business forms, (c) continued use of existing cash management system, (d) a waiver of certain operating guidelines relating to the Bank Accounts, (e) scheduling a final hearing; and upon the Moore Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that the Rule 6003(b) standard has been met; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby

[1] The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED as set forth in this Order.

II. MAINTENANCE OF BANK ACCOUNTS.

2. Under sections 105 and 363 of the Bankruptcy Code, the Debtors, in their sole discretion, are authorized, but not directed, to (a) designate, maintain and continue to use any and all of their respective Bank Accounts in existence as of the Petition Date, with the same account numbers, including, without limitation, the accounts identified in Exhibit A annexed hereto; (b) if necessary, open new accounts and give the U.S. Trustee prompt notice of each such newly opened account, wherever they are needed, whether or not such banks are designated depositories in the District of Delaware; provided, however, that any new bank account shall be with a bank that is insured by the FDIC or FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a "debtor-in-possession" or "DIP" account by the respective bank; (c) treat the Bank Accounts and any such newly opened accounts for all purposes as accounts of the Debtors in their capacity as debtors-in-possession and (d) to pay their tax obligations out of their existing Bank Accounts rather than opening new Bank Accounts solely for tax payments.

III. USE OF BUSINESS FORMS.

3. The Debtors are authorized to continue to use their existing business forms and checks without alteration or change and without the designation "Debtor In Possession" or a "debtor in possession case number" imprinted upon them provided, however, in the event that the Debtors need to purchase new check stock or any other business forms during the pendency of these chapter 11 cases, such check stock or other business forms will include a legend referring to the Debtors as "Debtor-in-Possession" or "DIP".

IV. CASH MANAGEMENT SYSTEM.

4. The Debtors are authorized to continue to use their existing cash management system, and shall maintain through the use thereof detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Debtors' cash management system, except as modified by this Order. In connection with the ongoing utilization of the cash management systems, the Debtors shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced and recorded properly on the applicable accounts.

5. The Debtors are authorized, in connection with maintaining their cash management system, to continue to satisfy, postpetition, the Operating Obligations, including any of those obligations that arose prepetition.

6. Debtors are authorized to perform all of their obligations under the Prepetition Harris Documents, and Harris shall perform all of its obligations under the Prepetition Harris Documents (provided, that Debtors and their Merchants are in compliance with their respective obligations thereunder.)

7. After the Petition Date, and subject to the terms of this Order, all Banks at which the Bank Accounts are maintained are authorized and directed to continue to administer the Bank Accounts as such accounts were maintained prepetition, without interruption and in the usual and ordinary course, and to pay any and all checks, wire transfers, ACH transfers, electronic fund transfers or other items presented, issued or drawn on the Bank Accounts on account of a claim arising on or after the Petition Date, so long as sufficient funds are in the Bank Accounts.

8. Except as expressly authorized hereby, the Banks shall be restrained from honoring any check, draft, wire or ACH Transfer presented, issued or drawn on the Bank Accounts on account of a prepetition claim unless (a) authorized by an order of this Court,

(b) not otherwise prohibited by a "stop payment" request received by the Banks from the Debtors and (c) supported by sufficient funds in the Bank Account in question.

9. Subject to the provisions of this Order, the Banks are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires or ACH transfers should be honored or dishonored consistent with any order(s) of this Court and governing law, whether such checks, drafts, wires or ACH transfers are dated prior to, on or subsequent to the Petition Date. To the extent that the Debtors direct that any prepetition checks, drafts, wires or ACH Transfers be dishonored, the Debtors may issue replacement checks, drafts, wires or ACH Transfers to pay the amounts related to such dishonored checks, drafts, wires or ACH Transfers consistent with the orders of this Court.

10. Each Bank that maintains any checking account shall implement reasonable handling procedures designed to effectuate the terms of this Order. No Bank that implements such handling procedures and then honors a prepetition check, draft, wire, ACH transfer (excluding any ACH Transfer that the Banks are obligated to settle) or other item presented, issued or drawn on any Bank Account that is the subject of this Order (a) at the direction of the Debtors to honor such prepetition check, draft, ACH transfer or other item, (b) in good-faith belief that the Court has authorized such prepetition check, draft, wire, ACH transfer or other item to be honored or (c) as a result of an innocent mistake made despite implementation of such handling procedures shall be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

11. Nothing contained in this Order shall prevent the Debtors and the Banks from implementing reasonable changes to the Debtors' cash management system, including, but not limited to, the opening of any additional bank accounts or closing of any Bank Account(s) as

they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors' requests to open or close, as the case may be, such Bank Accounts; provided, however, that any new account shall be with a Bank that is insured by the FDIC or the FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a "debtor-in-possession" or "DIP" account by the respective Bank.

V. INVESTMENT GUIDELINES.

12. The Debtors are authorized to deposit and invest funds in accordance with the Investment Guidelines (as they may be modified by the requirements of any order of the Court approving the proposed postpetition financing), notwithstanding that the Investment Guidelines may not strictly comply in all respects with the investment guidelines expressly set forth in section 345 of the Bankruptcy Code. The Debtors' Banks are authorized and directed to accept and hold funds, at the Debtors' direction, in accordance with the Investment Guidelines.

13. The Debtors are hereby authorized to take such actions and execute such documents as may be required to carry out the intent and purpose of this Order.

14. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

15. Any objection to the relief requested in the Motion on a permanent basis must (a) be filed in writing with the Court, at 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 by 4:00 p.m. (Eastern time) on the date that is 15 days after the entry of this Order (the "Objection Deadline") and (b) served so as to be actually received by the following parties by the Objection Deadline: (i) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Mark Kenney, Esq.), (ii) proposed counsel to the Debtors, Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022 (Attn: Dennis

J. Drebsky, Esq.), (iii) proposed local counsel to the Debtors, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, Wilmington, Delaware 19899-1709 (Attn: David B. Stratton, Esq.,) and (iv) the official committee of unsecured creditors, if one has been appointed in this chapter 11 case.

16. If any timely objections are received, a hearing shall be held on ___ _____, 2009 at _____ .m. to consider such objections. This order shall remain in effect until such hearing.

17. If no objections are timely filed and served as set forth herein, the Order shall be deemed a final order with no further notice or opportunity to be heard afforded to any party.

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

Dated: _____, 2009

_____
UNITED STATES BANKRUPTCY JUDGE