

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹
Debtor.

Chapter 11

Case No. 19-12239 (CSS)

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

The above-captioned debtor and debtor in possession (the “Debtor”) files this motion (this “Motion”) for the entry of an interim order on an expedited basis (the “Interim Order”) substantially in the form attached hereto as **Exhibit A** and, following a final hearing to be set by the Court (the “Final Hearing”), entry of a final order (the “Final Order”) pursuant to sections 105, 361, 362, 363, and 507 of Title 11 of the United States Code (the “Bankruptcy Code”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”): (a) authorizing the Debtor to use cash collateral, (b) providing adequate protection to the Debtor’s prepetition broker and margin creditor, Jefferies LLC (“Jefferies”), (c) authorizing the liquidation of securities by the Debtor, and to cause its non-Debtor affiliates to do the same, in the ordinary course of business, and (d) modifying the automatic stay.

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



The Debtor has a prime brokerage account with Jefferies that contains approximately \$87 million of the Debtor's liquid and illiquid securities. Through such account, the Debtor has borrowed approximately \$30 million on margin from Jefferies. Such margin balance is secured by the Debtor's securities in the account and any proceeds thereof. The Debtor submits that the collateral pledged to secure the margin debt to Jefferies far exceeds the amount due. Nonetheless, the Debtor anticipates that Jefferies may assert an interest in any cash in the account. Although this Motion is filed on a non-consensual basis, the Debtor will endeavor to negotiate the terms of a consensual cash collateral order with Jefferies in advance of the interim hearing on this Motion.

In support of this Motion, the Debtor represents as follows:

JURISDICTION AND VENUE

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

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, and 507 of the Bankruptcy Code.

RELIEF REQUESTED

4. By this Motion, the Debtor seeks the entry of the Interim Order and the Final Order, which:
- i. authorize the Debtor to use cash collateral in which Jefferies has, or asserts, an interest (the “Cash Collateral”);
 - ii. authorize the Debtor to provide adequate protection to Jefferies for any decrease in the value (such decrease being a “Diminution in Value”) of its interests in the Debtor’s property resulting from (i) the use, sale, or lease of the Debtor’s property (including the use of Cash Collateral) or (ii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code;
 - iii. authorize the Debtor to continue to liquidate securities of its own or those of its subsidiaries in the ordinary course of business, as necessary to fund the Debtor’s operations;
 - iv. modify the automatic stay imposed pursuant to section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim Order and the Final Order;
 - v. waive any applicable stays under the Bankruptcy Rules and provide for the immediate effectiveness of the Interim Order and the Final Order; and
 - vi. schedule a Final Hearing to allow for entry of the Final Order within thirty-five (35) days following entry of the Interim Order.

SUMMARY OF PROPOSED ORDERS

5. In accordance with Bankruptcy Rules 4001(b) and (d) and Local Rule 4001-(2), below is a summary² of the terms of the proposed use of Cash Collateral:

² The summary of the Interim Order, the Final Order, and the terms and conditions for the use of Cash Collateral set forth in this Motion is intended solely for informational purposes to provide the Court and parties in interest with an overview of the significant terms thereof. The summary is qualified in its entirety by the Interim Order and the Final

- i. Amount of Cash Collateral to Be Used. The Debtor seeks to use cash, including Cash Collateral, in an amount consistent with the expenditures described in the budget, the initial form of which is attached to the proposed Interim Order as Exhibit 1 (the “Budget”). See Interim Order at ¶¶ 5-6.
- ii. Parties with an Interest in Cash Collateral. The Debtor anticipates that Jefferies may assert an interest in the Cash Collateral under the Brokerage Agreement (as defined below). Certain of the Debtor’s cash that is not contained in the Prime Account (as defined below) is unencumbered.
- iii. Use of Cash Collateral. The Debtor seeks authority to use cash, including Cash Collateral, in accordance with the terms of the Interim Order to, among other things, (a) satisfy postpetition operating expenses of the Debtor as more fully described in the Budget, (b) pay certain prepetition obligations of the Debtor as further described in the Debtor’s “first day” motions filed contemporaneously herewith and authorized pursuant to the “first day” orders approving the same, and (c) pay reorganization expenses, including but not limited to allowed fees and expenses incurred by the professionals retained under sections 327, 328, 363, and, 1102 of the Bankruptcy Code by the Debtor and any statutory committees appointed in the Debtor’s chapter 11 case (the “Chapter 11 Case”) pursuant to section 1102 of the Bankruptcy Code (each, a “Committee”), which reorganization expenses would be funded to a trust account of the Debtor’s general bankruptcy counsel or other segregated account in accordance with the Budget. The Replacement Lien, Adequate Protection Lien, and Adequate Protection Claim (each as defined below) shall be subject and subordinate to all amounts deposited in such segregated account for the payment of professional fees. Disbursements by the Debtor on an aggregate basis during the Interim Budget Period may deviate up to 20% from the amounts specified in the Budget, tested over each successive four-week period of the Budget. See Interim Order at ¶¶ 5, 6, 8.
- iv. Termination Date. The Debtor’s ability to use Cash Collateral pursuant to the Interim Order shall end on the earliest of: (i) the date on which the Final Order is entered, which shall occur within thirty-five (35) days after entry of the Interim Order, (ii) the effective date of a confirmed plan of reorganization in the Chapter 11 Case, (iii) the closing of a sale of substantially all assets of the Debtor, and (iv) the date of a material breach by the Debtor under

Order. In the event that there is any conflict between this Motion and the Interim Order or the Final Order, the Interim Order or the Final Order, as applicable, will control in all respects.

the Interim Order, or such other date as the Debtor and Jefferies may agree to in writing. *See* Interim Order at ¶ 5.

- v. Adequate Protection. The Debtor proposes to provide adequate protection to Jefferies as follows: (i) a continuing security interest in and lien on all collateral of the Debtor of the same type and nature that exists as of the Petition Date with the same validity (or invalidity) and priority as exists as of the Petition Date, including the income and proceeds thereof (the “Replacement Lien”), (ii) solely to the extent of any Diminution in Value, an additional and replacement security interest in and lien on all property and assets of the Debtor’s estate (the “Adequate Protection Lien”), *provided, however*, that (a) such security interest and lien shall be junior to any existing, valid, senior, enforceable and unavoidable prior perfected security interests and liens, (b) in the event that the Debtor obtains postpetition financing in the Chapter 11 Case, such security interest and lien may be junior to any valid, senior, enforceable security interests and liens granted to the postpetition lenders and authorized by the Court in connection with such postpetition financing, and (c) such security interest and lien shall not attach to any claims, defenses, causes of action, or rights of the Debtor arising under chapter 5 of the Bankruptcy Code or applicable state fraudulent transfer law (including all proceeds thereof, the “Avoidance Actions”), and (iii) solely to the extent of any Diminution in Value, to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed administrative claim in the Chapter 11 Case (the “Adequate Protection Claim”), *provided however*, that (a) such claim shall not extend to any Avoidance Actions, and (b) in the event that the Debtor obtains post-petition financing in the Chapter 11 Case, such administrative claim, if any, may be junior to the administrative claim granted to such post-petition lenders and authorized by the Court in connection with such post-petition financing. *See* Interim Order ¶ 7.
- vi. Professional Fees. The (x) professional fees and disbursements incurred by professional persons employed by the Debtor or any official committee (including any expenses of the members of such committee) (collectively, “Professional Fees”), and (y) the fees and charges assessed against the estate under 28 U.S.C. § 1930 and any fees payable to the Clerk of the Court (collectively, “United States Trustee Costs”) may be paid to the extent authorized in the Budget and permitted by the Court.
- vii. Funding of Segregated Account. The amounts set forth in the Budget for the payment of Professional Fees and United States Trustee Costs shall be deposited by the Debtor, at the times

identified in the Budget, into a trust account of the Debtor’s general bankruptcy counsel or other segregated account (“Segregated Account”) for the exclusive purpose of subsequently paying such amounts on the later of (x) the due date, or (y) the date of their allowance by the Court (or when otherwise authorized to be paid pursuant to a customary order of the Court pursuant to section 331 of the Bankruptcy Code). The Replacement Lien, Adequate Protection Lien, and Adequate Protection Claim shall be subject and subordinate to all amounts deposited in the Segregated Account for the payment of Professional Fees.

- viii. Automatic Perfection. The Replacement Lien and the Adequate Protection Lien shall be valid, binding, enforceable, non-avoidable, and automatically perfected, notwithstanding the automatic stay, without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which otherwise may be required under the laws of any jurisdiction to validate or perfect such security interests and liens. See Interim Order at ¶ 9.

DISCLOSURES

6. Pursuant to Bankruptcy Rule 4001(d) and Local Rule 4001-2, a debtor in possession seeking authority to use cash collateral or to obtain financing must disclose the presence and location of certain provisions contained in the documentation evidencing the cash collateral usage or financing. The debtor in possession must also justify the inclusion of such provisions. Set forth below are the disclosures required in accordance with such rules:

Rule	Disclosure
Local Rule 4001-2(a)(i)(A)	The proposed Interim Order and the Final Order do not provide for the granting of cross-collateralization protection to any prepetition secured creditors, except in the form of the Replacement Lien and the Adequate Protection Lien.
Local Rule 4001-2(a)(i)(B) Bankruptcy Rule 4001(c)(1)(B)(iii)	The proposed Interim Order and the Final Order do not contain any stipulations by the Debtor relating to the validity, perfection, enforceability, and amount of any prepetition liens and claims.

Rule	Disclosure
Local Rule 4001-2(a)(i)(C) Bankruptcy Rule 4001(c)(1)(B)(x)	The proposed Interim Order and the Final Order do not provide for a waiver of the Debtor's rights under section 506(c) of the Bankruptcy Code.
Local Rule 4001-2(a)(i)(D)	The proposed Interim Order and the Final Order do not contain any provisions that immediately grant to any prepetition secured creditor liens on the Debtor's claims and causes of action arising under sections 544, 545, 547, 548, and 549 of the Bankruptcy Code. The Adequate Protection Lien and the Adequate Protection Claim specifically exclude Avoidance Actions.
Local Rule 4001-2(a)(i)(E)	The proposed Interim Order and the Final Order do not contain provisions that deem prepetition secured debt to be postpetition debt or use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt (other than as provided in section 552(b) of the Bankruptcy Code).
Local Rule 4001-2(a)(i)(F)	The proposed Interim Order and the Final Order do not provide for disparate treatment for the professionals retained by a Committee from those professionals retained by the Debtor, except that the Budget projects the Debtor's professional fees to exceed Committee professional fees.
Local Rule 4001-2(a)(i)(G)	The proposed Interim Order and the Final Order do not provide for the priming of any secured lien without the consent of that lienholder.
Local Rule 4001-2(a)(i)(H)	The proposed Interim Order and the Final Order do not affect the Court's power to consider the equities of the case under section 552(b)(1) of the Bankruptcy Code.
Bankruptcy Rule 4001(c)(1)(B)(ii)	The proposed Interim Order and the Final Order, at ¶ 7, describe the forms of adequate protection provided to Jefferies.
Bankruptcy Rule 4001(c)(1)(B)(iv)	The proposed Interim Order and the Final Order, at ¶ 9, describe the modification of the automatic stay to the extent necessary to implement the Interim Order.

Rule	Disclosure
Bankruptcy Rule 4001(c)(1)(B)(vii)	The proposed Interim Order and the Final Order, at ¶ 9, include provisions that provide for the automatic perfection and validity of the Replacement Lien and the Adequate Protection Lien without the necessity of any further filing or recording under the laws of any jurisdiction.

BACKGROUND

7. On the date hereof, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or committee has been appointed in this Chapter 11 Case.

8. A more detailed description of the business and operations of the Debtor, and the events leading to the commencement of this Chapter 11 Case, is provided in the *Declaration of Frank Waterhouse in Support of First Day Motions*, filed concurrently herewith (the “Declaration”) and incorporated herein by reference.³

A. Prepetition Capital Structure

i. Jefferies Margin Borrowings (Secured)

9. The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the “Brokerage Agreement”). Pursuant to the terms of the

³ A capitalized term used but not defined herein shall have the meaning ascribed to it in the Declaration.

Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with Jefferies (the "Prime Account").

10. A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker's street name.

11. As of October 11, 2019, the Debtor held approximately \$87 million in liquid and illiquid equity and debt securities (the "Securities") in the Prime Account and had borrowed approximately \$30 million on margin from Jefferies secured by the Securities. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof. As of October 11, 2019, the Debtor had approximately \$9.6 million of excess margin in the Prime Account. The Debtor does not intend to borrow any additional amounts on margin, absent the approval of this Court. As reflected in the Budget, the Debtor intends to liquidate certain of the Securities for cash and to use such cash in the Debtor's operations and to satisfy ongoing chapter 11 administrative expenses. The Debtor may also supplement its liquidity by selling assets at non-Debtor subsidiaries and distributing those proceeds to the Debtor in the ordinary course of business.

ii. The Frontier Bank Loan (Secured)

12. The Debtor and Frontier State Bank ("Frontier Bank") are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the "Original Frontier Loan Agreement"), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of \$9.5

million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain *First Amended and Restated Loan Agreement* (the “Amended Frontier Loan Agreement”), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional \$1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the “Frontier Loan”). The Frontier Loan matures on August 17, 2021.

13. Pursuant to that certain *Security and Pledge Agreement* dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor’s obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the “Frontier Prepetition Collateral”). For the avoidance of doubt, the Debtor does not seek authority to liquidate any portion of the Frontier Prepetition Collateral and is not requesting the use of the Frontier Prepetition Collateral.

14. As of the Petition Date, the aggregate principal balance of the Frontier Loan was approximately \$5.2 million.

iii. The CLO Purchase Agreement (Unsecured)

15. On October 7, 2016, the Debtor and Acis Capital Management L.P. (“Acis”) entered into that certain *Agreement for Purchase and Sale of CLO Participation Interests* (the “CLO Purchase Agreement” and the promissory note therein, the “CLO Note”). Previously, Acis managed certain collateralized loan obligations (“CLOs”) identified in the CLO Purchase Agreement and was entitled to fee compensation in connection therewith (the “Service

Fees”).⁴ The Debtor’s obligations under the CLO Purchase Agreement and CLO Note are unsecured.

16. Pursuant to the CLO Purchase Agreement, Acis sold a portion of its future Servicer Fees to the Debtor in exchange for cash flows from the Debtor, as evidenced in the CLO Note (such Servicer Fees to be paid to the Debtor, the “Debtor Stabilization Fees” and such cash flows from the Debtor, the “Stabilization Payment”).

17. Pursuant to that certain *Agreement for Assignment and Transfer of Promissory Note* dated as of November 3, 2017 (the “CLO Assignment Agreement”), Acis assigned all of its right, title, and interests in the CLO Note, including the right to any and all Stabilization Payments not yet paid to Acis to Highland CLO Management, Ltd. (“HCLOM”). The Debtor does not have any beneficial ownership interest in HCLOM.

18. Pursuant to that certain *Amended and Restated Forbearance Agreement* dated as of May 31, 2019, by and between the Debtor and HCLOM, HCLOM agreed not to demand payment of the Stabilization Payments under the CLO Note for a period of one year (*i.e.*, until June 1, 2020).

19. As of the Petition Date, the aggregate principal balance of the CLO Note was approximately \$9.5 million.

iv. Other Unsecured Obligations

20. The Debtor has various substantial litigation claims asserted against it, including a recent arbitration award in the purported amount of approximately \$189 million.

⁴ Acis was subsequently the subject of an involuntary bankruptcy filing in 2018.

21. In addition, the Debtor has ordinary course trade debt totaling less than \$10 million, accrued and unaccrued employee bonus obligations totaling approximately \$30 million, and contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement obligations that could total in the tens of millions of dollars.

B. Liquidation of Securities in the Ordinary Course of Business

22. As set forth in the Declaration, the Debtor is a multibillion-dollar global alternative investment manager and operates a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, the Debtor's investment capabilities include, among other things, public equities, real estate, private equity and special situations, and structured credit.

23. The Debtor primarily generates revenue from fees collected for management and advisory services provided to its clients, plus a percentage share of the profits from the various investments made with client funds. Such management fees are unencumbered and do not comprise Jefferies' collateral.

24. In addition to the management services that the Debtor provides to its clients, the Debtor invests capital on its own behalf, either directly or through controlled affiliates. Periodically in the ordinary course of business, the Debtor sells securities, or causes its controlled affiliates to do so, including the Securities in the Prime Account, in order to raise cash to fund the Debtor's operations. Out of an abundance of caution, the Debtor requests authority to continue these liquidation transactions in the ordinary course of business.

C. Need for the Continued Use of Cash Collateral

25. As more fully set forth in the Declaration, the Debtor has an urgent and immediate need for the use of cash, including the Cash Collateral. The Debtor has not obtained postpetition financing and, without the use of Cash Collateral, the Debtor will not be able to operate as a going concern or preserve its assets for the benefit of its creditors.

26. The Debtor itself is the operating arm of the Highland business. The Debtor employs approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel. Pursuant to various contractual arrangements, the Debtor provides money management and advisory services to a variety of affiliated and unaffiliated entities with respect to a wide range of asset classes. The Debtor also leases office space, contracts with third party vendors, and maintains banking and brokerage relationships.

27. As set forth in the Budget, the Debtor anticipates funding this Chapter 11 Case with cash on hand, postpetition receipts on account of management services and sales of liquid assets, including the Securities in the Prime Account, and projected distributions from subsidiaries. Proceeds of the Securities in the Prime Account comprise collateral of Jefferies and, pursuant to this Motion, the Debtor seeks authority to use such Cash Collateral in the ordinary course of business to preserve its operations and thereby maximize the value of the Debtor's assets for the benefit of its creditors.

28. Notably, Jefferies will be adequately protected by a substantial equity cushion in the Prime Account and the Replacement Lien, the Adequate Protection Lien, and the Adequate Protection Claim.

BASIS FOR RELIEF REQUESTED

29. Without immediate access to Cash Collateral, the repercussions to the Debtor's restructuring efforts will be catastrophic and likely irreparable, ending its ability to maximize value for the benefit of all constituents. The Debtor needs to fund, among other things, payroll obligations, payments to vendors for ongoing goods, services, and rent, and other administrative obligations.

30. If the Motion is not approved, the Debtor's only alternative would be a piecemeal liquidation that would substantially handicap recoveries by creditors and eliminate the Debtor's going concern value. Hence, the relief sought in this Motion should be granted.

A. The Debtor Has an Immediate Need to Use Cash Collateral

31. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for the use of cash collateral during the 14-day period following the filing of a motion requesting authorization to use cash collateral, "only . . . as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Bankruptcy Rule 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 449 (D. Colo. 1985); *see also In re Ames Dep't Stores Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990). After the

14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent harm to the debtor's business.

32. As previously noted, in order to address its working capital needs and fund other costs and expenses associated with its reorganization efforts, the Debtor requires access to cash, including Cash Collateral. The use of Cash Collateral will provide the Debtor with the necessary capital with which to maintain its assets, including funding the Debtor's obligations to employees. Access to Cash Collateral will: (a) preserve the Debtor's business operations as a going concern, (b) allow the Debtor to continue to generate cash flow from its management of investment funds and other fee-earning agreements, and (c) otherwise preserve the value of the Debtor's assets and avoid a forced liquidation. The Debtor does not have adequate available sources of working capital or financing without the use of Cash Collateral.

33. Further, the alternative in this case is "to force the debtor to close down its operations and thus doom any effort at reorganization which will hopefully extract the maximum value of the assets involved to the benefit of *all* classes of creditors and other constituencies involved in this case." *In re Dynaco Corp.*, 162 B.R. 389, 396 (Bankr. D.N.H. 1993). Because this result would be at fundamental odds to the rehabilitative purposes of chapter 11, approval of this Motion is warranted. *Id.* at 394 (noting that "it is apparent that the Congress intended business under reorganization to proceed in as normal a fashion as possible") (quoting *In re Prime, Inc.*, 15 B.R. 216, 219 (Bankr. W.D. Mo. 1981)).

B. Section 363 of the Bankruptcy Code Authorizes the Debtor's Use of Cash Collateral

34. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (i) each entity that has an interest in such cash collateral provides consent, or (ii) the court approves the use of cash collateral after notice and a hearing. *See* 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

35. Neither section 361 nor any other provision of the Bankruptcy Code defines the nature and extent of the “interest in property” of which a secured creditor is entitled to adequate protection under section 361 of the Bankruptcy Code. However, the statute plainly provides that a qualifying interest demands protection only to the extent that the use of the creditor’s collateral will result in a decrease in “the value of such entity’s interest in such property.” 11 U.S.C. §§ 361, 363(e); *see also General Elec. Mortgage Corp. v. South Village, Inc. (In re South Village, Inc.)*, 25 B.R. 987, 989-90 & n.4 (Bankr. D. Utah 1982).

36. The phrase “value of such entity’s interest,” although not defined in the Bankruptcy Code, was addressed by the Supreme Court in the landmark *Timbers* decision, *United Savings Ass’n of Texas v. Timbers of Inwood Forest Assocs, Ltd.*, 484 U.S. 365, 108 S.Ct. 626 (1988). For the meaning of “value of such entity’s interest,” the Supreme Court was guided by section 506(a), which defines a creditor’s allowed secured claim:

The phrase ‘value of such creditor’s interest’ in § 506(a) means ‘the value of the collateral.’ H.R. Rep. No. 950-595, pp. 181, 356 (1977); *see also* S. Rep. No. 95-989, p. 68 (1978), U.S. Code Cong. & Admin. News, 1978 pp. 5787, 5854, 6141, 6312. We think the phrase ‘value of such entity’s interest’ in § 361(1) and (2), when applied to secured creditors, means the same.

Id. at 630 (emphasis added).

37. *Timbers* teaches that a secured creditor is entitled to “adequate protection” only against diminution in the value of the collateral securing the creditor’s allowed secured claim. Under *Timbers*, therefore, where the “value of the collateral” is not diminishing by its use, sale, or lease, the creditor’s interest is adequately protected. This conclusion flows directly from the equivalency of “value of such entity’s interests” with “value of the collateral.”

38. Here, Jefferies’ interest in the Debtor’s assets is adequately protected. First, Jefferies only has an interest in a portion of the Debtor’s cash and is more than adequately protected by a huge equity cushion in the Securities pledged to it by the Debtor through the Prime Account. As of the Petition Date, the estimated value of the Securities in the Prime Account was approximately \$87 million – nearly three times (3x) the margin balance owed to Jefferies under the Brokerage Agreement.

39. Second, access to Cash Collateral will maximize the value of the Debtor’s assets through the knowledge and expertise of the Debtor’s employees by maintaining the ordinary course value of the Debtor’s business and ongoing management of its investment funds.

40. Third, the Debtor has proposed adequate protection in the form of the Replacement Lien, the Adequate Protection Lien, and the Adequate Protection Claim. Section 361 of the Bankruptcy Code authorizes a debtor to provide adequate protection by granting

replacement liens, making periodic cash payments, or granting such other relief “as will result in the realization by such entity of the indubitable equivalent of such entity’s interest in such property.” *See* 11 U.S.C. § 361.

41. The Debtor believes that the proposed adequate protection components described above are fair and reasonable and compensate Jefferies for any possible Diminution in Value of the Debtor’s assets, of which there should be none. Given the significant value that the Debtor stands to lose in the event that it is denied access to continued use of Cash Collateral, such protections are wholly appropriate and justified.

INTERIM ORDER AND FINAL HEARING

42. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court set a date for the Final Hearing that is as soon as practicable, and fix the time and date prior to the final hearing for parties to file objections to this Motion.

43. The urgent need to preserve the Debtor’s business, and avoid immediate and irreparable harm to the Debtor’s estate, makes it imperative that the Debtor is authorized to use Cash Collateral as of the Petition Date, pending the Final Hearing, in order to continue its business and administer this chapter 11 case. Without the ability to use Cash Collateral, the Debtor would be unable to meet its postpetition obligations or to fund its working capital needs, thus causing irreparable harm to the value of the Debtor’s estate and effectively ending the Debtor’s restructuring efforts. Accordingly, the Debtor respectfully requests that, pending the hearing on a Final Order, the Interim Order be approved in all respects and that the terms and provisions of the Interim Order be implemented and be deemed binding and that, after the Final

Hearing, the Final Order be approved in all respects and the terms and provisions of the Final Order be implemented and be deemed binding.

NOTICE OF MOTION

44. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) the Debtor's twenty largest unsecured creditors; (d) the Debtor's principal secured parties; and (e) the Banks. As the Motion is seeking "first day" relief, within two business days after the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered respecting the Motion as required by Del. Bankr. LR 9013-1(m). The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

NOTICE WITH RESPECT TO FINAL HEARING

45. No trustee, examiner, or statutory committee has been appointed in the Chapter 11 Case. Pursuant to Bankruptcy Rule 4001, the Debtor respectfully requests that it be authorized to provide notice of the Final Hearing by serving a copy of this Motion, together with the Interim Order, by hand, overnight mail, courier service, or email, upon (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) the Debtor's twenty largest unsecured creditors; (d) the Debtor's principal secured parties; (e) the Banks; and (f) all parties that have filed notices of appearance and requests for notices in the Chapter 11 Case. The Debtor respectfully submits that such notice is sufficient and that no further notice of the Final Hearing and Final Order is required.

NO PRIOR REQUEST

46. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, based upon the foregoing, the Debtor requests entry of the Interim Order and the Final Order under sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, Bankruptcy Rule 4001 and Local Rule 4001-2: (a) authorizing the Debtor to use Cash Collateral; (b) providing adequate protection to Jefferies; (c) authorizing the Debtor to liquidate securities, and to cause its non-Debtor affiliates to do the same, in the ordinary course of business, (d) modifying the automatic stay; (e) setting a final hearing, and (f) granting such other and further relief to which the Debtor may be entitled.

Dated: October 16, 2019

PACHULSKI STANG ZIEHL & JONES LLP

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*Proposed Counsel for the Debtor
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EXHIBIT A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

Chapter 11

Case No. 19-12239 (CSS)

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

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

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

² Capitalized terms not defined herein shall have the meanings set forth in the Motion.

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

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

IT IS HEREBY ORDERED THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: October ___, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Interim Budget

DOCS_SF:102002.4

DOCS_SF:102002.4

Highland Capital Management, L.P. - Draft Cash Forecast

Next 13 Weeks Commencing October 14, 2019

(in thousands)

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