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ATTORNEYS FOR THE DUGABOY INVESTMENT TRUST

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

<b>IN RE:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT,</b>	§	<b>Case No. 19-34054</b>
<b>L.P.,</b>	§	
	§	
<b>Debtor.</b>	§	<b>Chapter 11</b>

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**THE DUGABOY INVESTMENT TRUST'S MOTION FOR  
LEAVE TO AMEND CERTAIN PROOFS OF CLAIM  
[Relates to Claim Nos. 131 and 177]**

**NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT THE EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS 75242 BEFORE CLOSE OF BUSINESS ON OCTOBER 30, 2020, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.**

**ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.**

**IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.**



The Dugaboy Investment Trust (“Dugaboy”), a creditor, equity security holder, and party in interest in the above-captioned bankruptcy case, hereby files this Motion for Leave to Amend Certain Proofs of Claim (the “Motion”). In support thereof, Dugaboy respectfully represents as follows:

### **I. BACKGROUND**

1. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

2. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee.

3. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s Bankruptcy Case to this Court [Docket No. 186].

4. On March 2, 2020, the Court issued a bar date order which set the general proof of claim bar date as April 8, 2020. The order also established April 23, 2020 as the bar date for fund investors to file proofs of claim against the Debtor. *See* Docket No. 488.

5. On April 8, 2020, Dugaboy timely filed its Proof of Claim 131, asserting a claim against the Debtor related to a loan made by Dugaboy to Highland Select Equity Master Fund, LP. As set forth in greater detail below, Dugaboy believes that the Debtor is obligated to repay the loans made by Dugaboy to Highland Select Equity Master Fund, L.P.

6. On April 23, 2020, Dugaboy timely filed its Proof of Claim 177, asserting a claim against the Debtor related to Dugaboy’s investments in certain funds managed by the Debtor and the Debtor’s actions or inactions in managing these funds.

7. On July 30, 2020, the Debtor filed the Omnibus Claim Objection. Through the

objection, the Debtor asserts that a large number of claims identified on Schedules 5 and 6 attached to the Omnibus Claim Objection, including the claims of Dugaboy, should be disallowed in their entirety as purported “no liability” claims. The Debtor asserts that the claims should be disallowed solely on the basis that the Debtor does not show the liabilities in its books and records.

8. The deadline for parties to respond to the Omnibus Claim Objection was initially set for September 1, 2020. Dugaboy and the Debtor thereafter agreed that Dugaboy’s response to the Omnibus Claim Objection would not be due until October 8, 2020.

9. On October 8, 2020, Dugaboy filed the *Response of The Dugaboy Investment Trust to the Debtor’s First Omnibus Objection to Certain Proofs of Claim* [Docket No. 1153].

## **II. SUMMARY OF PROOFS OF CLAIM**

### **A. Dugaboy Proof of Claim Number 131**

10. Dugaboy’s Proof of Claim Number 131 arises out of a lending transaction that Dugaboy entered into with an entity controlled and substantially owned by the Debtor, Highland Select Equity Master Fund, L.P. (“Select”).

11. Specifically, on October 2014, Dugaboy and Select entered into that certain Master Securities Loan Agreement, dated as of October 14, 2014 (the “2014 MSLA”).

12. In March 2015, Dugaboy and Select entered into that certain Master Securities Loan Agreement, dated as of March 10, 2015 (the “2015 MSLA”, and collectively with the 2014 MSLA, the “Loan Agreements”).

13. Pursuant to the Loan Agreements, commencing in October 2014 and continuing until termination of the Loan Agreements in July 2019, Dugaboy made various loans to Select in shares of NexPoint Credit Strategies Fund. The total shares loaned by Dugaboy to Select under the Loan Agreements have a current market value of approximately \$29,461,089.

14. From 2015 to the termination of the Loan Agreements in 2019, Select and/or the Debtor partially repaid Dugaboy in shares that have a total market value of approximately \$17,419,651. Thus, the total market value of the shares now owed to Dugaboy is approximately \$12,041,438.

15. On or about July 23, 2019, Dugaboy and Select executed the Termination of Loan, effective as of July 23, 2019. Pursuant to the Termination of Loan, Select and Dugaboy agreed to terminate the Loan Agreements and commemorate that a large number of shares remained due and owing to Dugaboy under the Loan Agreements.

16. As of the Petition Date, Dugaboy has not been repaid the outstanding shares and remains owed approximately \$12,041,438 as of approximately October 1, 2020.

17. The Debtor effectively utilizes Select as a brokerage account. In essence, the funds and other assets held by Select are, and have been, utilized by the Debtor in the ordinary course of its business. Accordingly, loans that were made by Dugaboy to or for the benefit of Select have also been made to or for the benefit of the Debtor. Dugaboy believes that the loans made by it under the Loan Agreements were utilized by the Debtor and the Debtor is obligated to repay them as a result.

#### **B. Dugaboy Proof of Claim Number 177**

18. Dugaboy's claim number 177 was filed to preserve prepetition damages resulting from post-petition treatment of the contracts and the Debtor's post-petition actions or inactions in managing certain funds in which Dugaboy is invested. Depending on how the contracts are dealt with in the bankruptcy the prepetition and post-petition claim amounts will vary. It is estimated that Dugaboy's damages are not less than \$700,000. These damages relate directly to Dugaboy's

role as an investor in certain funds managed by the Debtor, including, without limitation, Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd.

19. The filed proof of claim makes clear that Dugaboy's potential claim relates primarily to the "post-petition actions or inactions of the fund investment manager" in managing the funds to which Dugaboy is invested, including the Multi-Strat funds. Specifically, Dugaboy may have claims against the Debtor relating to the Debtor's sale of certain assets, namely life settlement policies and Omnimax, held by Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd. Dugaboy believes that the sale of these assets was improper, did not maximize value, was detrimental to the investors in these funds, and not in the best interest of the Debtor or its estate. As a result of these actions by the Debtor, Dugaboy and the other fund investors have been significantly damaged. Dugaboy's damages as a result of this transaction are not less than \$700,000.

20. The filing of this proof of claim was necessary to preserve any prepetition damages that may result from post-petition activity, including the Multi-Strat transaction. In addition, Dugaboy filed this claim to protect its claims and ensure the Debtor is on notice of its potential claims, to ensure satisfaction of the "fund investor" bar date, and to preserve all of its rights, remedies, and potential claims as a fund investor in the Debtor, including as those rights relate to the prepetition Fourth Amended and Restated Limited Partnership Agreement and that certain Third Amended Restated Investment Management Agreement by and between Highland Multi-Strategy Credit Fund, L.P., Highland Multi-Strategy Credit Fund, Ltd., and the Debtor.

21. Dugaboy continues to research and analyze these claims to determine whether asserting an adversary proceeding against the Debtor is proper. Because the potential claims have accrued post-petition, Dugaboy may be authorized to pursue these claims through the filing of an

adversary proceeding which, when filed, may ultimately render the filed proof of claim redundant. Notwithstanding, the proof of claim was filed to preserve Dugaboy's rights regarding these and other, similar claims that are accruing against the Debtor related to its actions or inactions as fund investment manager.

### **III. RELIEF REQUESTED AND BASIS FOR RELIEF**

22. In this case, while Dugaboy believes its claims are *prima facie* valid as filed, and that Dugaboy can prove its claims by a preponderance of the evidence at any claim objection hearing, Dugaboy seeks leave of Court to amend its proofs of claim to describe the claims with greater particularity and cure any ministerial defects in the claims. Dugaboy believes that amending the claims may provide greater clarity and ultimately assist the parties in narrowing the disputed issues and resolving the claim objections.

23. "Amendments to timely creditor proofs of claim have been liberally permitted to cure a defect in the claim as originally filed, to describe the claim with greater particularity or to plead a new theory of recovery on the facts set forth in the original claim." *United States (IRS) v. Kolstad (In re Kolstad)*, 928 F.2d 171, 175 (5th Cir. 1991) (internal quotations omitted); *see also In re Edison Bros. Stores, Inc.*, 2002 Bankr. LEXIS 1228 at \*9 (Bankr. D. Del. May 15, 2002) ("[A]bsent contrary equitable considerations or prejudice to the opposing party, amendments to proofs of claim should be freely permitted.").

24. Under Bankruptcy Rule 7015, amendments to claims are governed by Rule 15 of the Federal Rules of Civil Procedure. *In re Edison Bros. Stores*, 2002 Bankr. LEXIS 1228, at \*9 (Bankr. D. Del. May 15, 2002).<sup>1</sup> Under Rule 15 of the Federal Rules of Civil Procedure, leave to

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<sup>1</sup> Although an objection to a proof of claim initiates a contested matter, and not an adversary proceeding, many courts reason by analogy to find that Bankruptcy Rule 7015 applies in contested matters governing objections to proofs of claim because of the similarity in proceedings and to foster consistency between practice in bankruptcy courts and district courts. *See, e.g., In re Stavriotis*, 977 F.2d 1202, 1204 (7th Cir. 1992) ("even though bankruptcy courts are not

amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). “The policy of the federal rules is to permit liberal amendment to facilitate determination of claims on the merits and to prevent litigation from becoming a technical exercise in the fine points of pleading.” *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594, 597-98 (5th Cir. 1981) (noting that “rule 15(a) severely restricts the judge’s freedom” and “evinces a bias in favor of granting leave to amend.”)).

25. In accordance with this principle, courts consistently permit amendments to a proof of claim after the bar date. *See, e.g., In re Edison Bros. Stores*, 2002 Bankr. LEXIS 1228, at \*9 (Bankr. D. Del. May 15, 2002) (allowing amendment to assert additional claim arising from same agreement underlying original proof of claim and explaining “a post-bar date proof of claim seeking to increase the amount of a timely-filed claim is not the assertion of a new claim”).

26. The amended claim must be of the “same basic genre as, or bear a sufficient relationship to, the claim or claims included in the original filing.” *In re Friesenhahn*, 169 B.R. 615, 618 (Bankr. W.D. Tex. 1994). Whether the amended claims are filed before or after the bar date, the amendments “relate back to the original filing they amend.” *In re Puccio*, No. 09-31646, 2009 Bankr. LEXIS 3928, at \*7 (Bankr. S.D. Tex. Dec. 7, 2009).

27. Here, Dugaboy, out of an abundance of caution, seeks leave to amend its claims to describe its claims with greater particularity, include additional documentation in support of the claims, and to cure any ministerial defects in the claims. The proposed amendments will not seek to assert any new claims against the Debtor, but instead will relate to the same conduct, transaction, or occurrence underlying the original filed claims. While Dugaboy does not believe any amendment is necessarily required, it requests leave to amend out of an abundance of caution and

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required to do so, many such courts choose to apply Rule 7015 by analogy”); *Katchadurian v. NGP Energy Capital Mgmt., LLC (In re Northstar Offshore Grp., LLC)*, 616 B.R. 695, 719 (Bankr. S.D. Tex. 2020) (“Bankruptcy Rule 7015 makes Rule 15 applicable in contested matters in bankruptcy court.”).

to provide greater detail in the hopes that this will ultimately foster a prompt resolution of these claims.

28. Good cause exists to grant Dugaboy leave to amend its claims. Dugaboy's claims, both of which were timely filed, sufficiently describe the basis for each of the claims and give the Debtor fair notice of the basis for its claims. The proposed amendments will not seek to assert any new claims against the Debtor. Rather, the proposed amendments will, as allowed under the Bankruptcy Code, be made to do nothing more than "to cure defects in a claim already filed, to describe a claim with greater particularity, or to plead a new theory of recovery on the facts of the original claim." See *Woburn Associates v. Kahn (In re Hemingway Transp., Inc.)*, 954 F.2d 1, 10 (1st Cir. 1992).

29. Further, the Debtor will not be prejudiced by the amendments. As explained, the amended claims will be made simply to expand upon the allegations made in the original claims and will relate to the same transactions or occurrences underlying the original claims. Given that, there will be no prejudice to the Debtor as a result of the amendments. In addition, because confirmation of the Debtor's proposed plan is still at least approximately two months away, the amended claims will be filed well in advance of confirmation or voting so that there is no potential for unfair surprise or prejudice to the Debtor or other parties in interest.

### **CONCLUSION AND PRAYER**

For the reasons set forth above, Dugaboy respectfully requests that the Court enter an order (i) providing Dugaboy with leave to amend proofs of claim numbers 131 and 177; and (ii) granting Dugaboy such other and further relief to which it may be justly entitled.



Dated: October 9, 2020

Respectfully submitted,

/s/ Bryan C. Assink

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**ATTORNEYS FOR THE DUGABOY INVESTMENT  
TRUST**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on October 9, 2020, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink

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

**IN RE:**

**HIGHLAND CAPITAL MANAGEMENT,  
L.P.,**

**Debtor.**

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**Case No. 19-34054**

**Chapter 11**

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**ORDER GRANTING THE DUGABOY INVESTMENT TRUST’S  
MOTION FOR LEAVE TO AMEND CERTAIN PROOFS OF CLAIM**

Having considered the *Motion for Leave to Amend Certain Proofs of Claim* (the “Motion”)<sup>1</sup> filed by The Dugaboy Investment Trust (“Dugaboy”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

having reviewed the Motion, any and all other documents filed in support of the Motion and any responses thereto; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. Dugaboy is authorized to amend its proofs of claim numbers 131 and 177 as requested in the Motion.

**### END OF ORDER ###**

Respectfully submitted by:

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