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*Counsel for UBS Securities LLC and UBS  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

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<i>In re</i>	:	
	:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	:	
	:	Case No. 19-34054-sgj11
Debtor.	:	
-----	X	

**UBS'S MOTION FOR LEAVE TO FILE  
ADVERSARY COMPLAINT AND OTHER MATERIALS UNDER SEAL**

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



UBS Securities LLC and UBS AG London Branch (together “UBS”), by and through their undersigned counsel, respectfully submit this motion (the “Motion to Seal”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), granting UBS leave to file under seal, on a temporary basis, (i) UBS’s *Original Complaint for Injunctive Relief* (the “Injunction Complaint”) initiating an adversary proceeding against Highland Capital Management, L.P. (“Highland” or the “Debtor”), filed under seal and attached to this Motion to Seal as **Exhibit B**, and (ii) *Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction* and the accompanying Memorandum of Law and Appendix (collectively, the “Injunction Motion”),<sup>2</sup> filed under seal and attached to this Motion to Seal as **Exhibit C**, **Exhibit D**, and **Exhibit E**, respectively. In support of this Motion to Seal, UBS states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion to Seal under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

### **BACKGROUND**

2. On February 24, 2009, UBS initiated an action in the Supreme Court of the State of New York (the “N.Y. State Court”) against Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company (together the “Funds”), and Highland, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (as was amended and consolidated, the “UBS Litigation”).

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the definition ascribed to them in the Injunction Motion.

3. The UBS Litigation was bifurcated into two trial phases. On February 10, 2020, following the Phase I trial, the N.Y. State Court entered a judgment against the Funds in the amount of \$1,039,957,799.44 as of January 22, 2020 (the “Phase I Judgment”), with interest continuing to accrue. No part of the Phase I Judgment has been satisfied by the Funds to date.

4. On October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), which initiated the above-captioned chapter 11 case (the “Chapter 11 Case”) and automatically stayed Phase II of the UBS Litigation as to HCMLP.

5. On January 22, 2020, this Court entered the *Agreed Protective Order* [Docket No. 382] to protect the confidentiality of documents and information exchanged in this Chapter 11 Case (the “Protective Order”). Under Section 5 of the Protective Order, parties can designate proprietary, personal, commercial, financial, business, or otherwise sensitive materials as “Confidential” or “Highly Confidential” in this proceeding.

6. On June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (together, the “UBS Claim”).

7. As of early January 2021, UBS and the Debtor had reached a settlement in principle of the UBS Claim and certain of the remaining Phase II claims in the UBS Litigation (the contemplated “Settlement”).

8. While negotiating the terms of the contemplated Settlement, the Debtor shared with UBS previously undisclosed documents pertaining to the UBS Litigation and the UBS Claim. The Debtor shared these documents pursuant to the Protective Order entered in this Chapter 11 Case.

**RELIEF REQUESTED**

9. By this Motion to Seal, UBS respectfully requests entry of an order, substantially in the form of the Proposed Order, allowing UBS to file the Injunction Complaint and Injunction Motion under seal with this Court, pending any hearing on UBS's request for a preliminary injunction or such earlier time that UBS may request that certain of the foregoing materials be unsealed.

**BASIS FOR RELIEF REQUESTED**

10. The Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "Local Rules") authorize the Court to limit the disclosure of confidential information.

11. Pursuant to Rule 9018 of the Bankruptcy Rules, a party may move for such relief by filing a motion to protect (1) "trade secret[s] or other confidential research, development, or commercial information," (2) "any entity against scandalous or defamatory matter," or (3) "governmental matters that are made confidential by statute or regulation." Fed. R. Bankr. P. 9018(1); *see also* 11 U.S.C. § 107(b)(1).

12. Rule 9077-1 of the Local Rules provides that a "party may file under seal any document that a statute or rule requires or permits to be so filed." L.B.R. 9077-1(a). When not provided for by statute or rule, "a party may file a document under seal only on motion and by permission of the Presiding Judge." L.B.R. 9077-1(b).

13. UBS's Injunction Complaint and Injunction Motion rely on and contain protectable information and/or information pursuant to the Protective Order in this Chapter 11 Case. UBS believes that such information should remain under seal pending any hearing on UBS's request for a preliminary injunction is held or until such earlier time that UBS may request that certain of the

foregoing materials be unsealed, without prejudice to any subsequent request from UBS or any other party in interest that such information remain under seal after such time.

14. Counsel for UBS has conferred with counsel to the Debtor, and the Debtor does not oppose the relief requested in this Motion to Seal. UBS will provide unredacted versions of the Injunction Complaint and Injunction Motion to the Debtor. UBS is also providing unredacted versions of such documents to the Court for its consideration as attachments to this Motion to Seal. Accordingly, UBS respectfully requests the Court grant this Motion to Seal.

### **NOTICE**

15. Notice of this Motion to Seal shall be provided to: (a) the Debtor; (b) counsel to the Debtor; and (c) the United States Trustee. UBS respectfully submits that such notice is sufficient and that no further notice of this Motion to Seal is required.

### **CONCLUSION**

UBS thus respectfully requests that the Court enter an order, substantially in the form of the Proposed Order, granting UBS leave to the Injunction Complaint and Injunction Motion under seal as set forth therein.

DATED this 29th day of March, 2021.

**LATHAM & WATKINS LLP**

By /s/ Andrew Clubok

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*Counsel for UBS Securities LLC and UBS  
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**CERTIFICATE OF SERVICE**

I, Martin Sosland, certify that *UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: March 29, 2021.

/s/ Martin Sosland

**EXHIBIT A**

**PROPOSED ORDER**



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

-----	X	
<i>In re</i>	:	
	:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>3</sup>	:	
	:	Case No. 19-34054-sgj11
Debtor.	:	
-----	X	

**ORDER GRANTING LEAVE FOR UBS TO FILE  
ADVERSARY COMPLAINT AND OTHER MATERIALS UNDER SEAL**

Upon consideration of *UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal* (the "**Motion to Seal**")<sup>4</sup> filed by UBS Securities LLC and UBS AG London Branch (together "**UBS**"); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and the Motion to Seal is

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<sup>3</sup> The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>4</sup> Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Motion to Seal.

proper in this District pursuant to 28 U.S.C. §§ 1408-1409; and due, adequate, and sufficient notice of the Motion to Seal having been given; and having determined that the legal and factual bases set forth in the Motion to Seal establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor it is hereby **ORDERED**:

1. The Motion to Seal is GRANTED.
2. UBS is authorized to file the Injunction Complaint and Injunction Motion under seal, which materials shall remain under seal until any hearing on UBS's request for a preliminary injunction is held or such earlier time that UBS may request that certain of the foregoing materials be unsealed, without prejudice to any subsequent request from UBS or any other party in interest that such materials remain under seal after such time.
3. All parties receiving the sealed Injunction Complaint and Injunction Motion shall maintain its confidentiality until any hearing on UBS's request for a preliminary injunction is held or such earlier time that UBS may request that certain of the foregoing materials be unsealed.

**### End of Order ###**

Order prepared by:

**LATHAM & WATKINS LLP**

By /s/ Andrew Clubok

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# **EXHIBIT B**

**REQUEST TO FILE UNDER SEAL PENDING**

# **EXHIBIT C**

**REQUEST TO FILE UNDER SEAL PENDING**

# **EXHIBIT D**

**REQUEST TO FILE UNDER SEAL PENDING**

# **EXHIBIT E**

**REQUEST TO FILE UNDER SEAL PENDING**