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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

WEISS MULTI-STRATEGY ADVISERS
LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10743 (MG)
Case No. 24-10744 (MG)
Case No. 24-10745 (MG)
Case No. 24-10746 (MG)
Case No. 24-11075 (MG)

(Jointly Administered)

**OBJECTION OF JEFFERIES STRATEGIC INVESTMENTS, LLC,
LEUCADIA ASSET MANAGEMENT HOLDINGS LLC, AND JEFFERIES LLC
TO THE DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
CERTAIN DEBTORS TO BORROW PURSUANT TO A POST-PETITION FIRST
PRIORITY SECURED FINANCING FACILITY**

¹ The "Debtors" in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Weiss Multi-Strategy Advisers LLC (7518); GWA, LLC (7079); OGI Associates LLC (4493); Weiss Special Operations LLC (7626); and Weiss Multi-Strategy Funds LLC (8004). The location of Debtor Weiss Multi-Strategy Advisers LLC's principal place of business is 320 Park Avenue, 20th Floor, New York, New York 10022 and the Debtors' service address in these Chapter 11 Cases is P.O. Box 2857, Meriden, Connecticut 06450.

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Creditors Jefferies Strategic Investments, LLC (“JSI”), Leucadia Asset Management Holdings LLC (“LAM Holdings”), and Jefferies LLC (“Jefferies,” and with JSI and LAM Holdings, the “Jefferies Entities”), by and through their undersigned counsel, hereby file this objection (the “Objection”) to the Debtors’ motion, pursuant to Sections 105, 363, 364, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), for entry of an order authorizing certain of the Debtors to borrow pursuant to a post-petition first priority secured financing facility (ECF No. 156, the “Motion”) and respectfully state as follows:

PRELIMINARY STATEMENT

1. These Chapter 11 cases are being pursued for a narrow purpose: to liquidate the Debtors’ assets, wind down their businesses, and then oversee a distribution of whatever remains to the Debtors’ creditors.

2. Three months ago, at the commencement of the cases, the Debtors prepared a schedule of the “necessary material tasks to be completed through the chapter 11 cases.” That schedule indicated that those “necessary material tasks,” with limited reporting exceptions, would be completed by the end of July 2024.

3. Yet now, in an apparent about-face, the Debtors claim that whatever activity their current management team has been pursuing—at the apparent cost of millions of dollars per month in general and administrative expenses—will need to continue through the end of the year.

4. The Debtors also claim that they will face a cash crunch in the coming weeks, driven primarily by the Debtors’ obligation to pay approximately \$230,000 in employee

compensation per month, and a nearly equivalent amount in legal fees, for activities that were supposed to have been finished by the end of July.

5. To assist the Debtors in avoiding the consequences of this cash crunch (which are entirely unexplained), the Debtors' founder, Chief Executive Officer, and majority equity owner proposes to obtain a lien over the Debtors' most valuable assets, all in exchange for a \$1 million liquidity facility. That motion should be denied for two reasons.

6. *First*, the Debtors have failed to explain how this additional borrowing is necessary to preserve the assets of the estate, as is required. Instead, the Debtors are proposing to provide their insiders with additional cash, funded by a lending facility (the "DIP facility") which would grant a separate insider with a first priority lien over what little assets may remain following these proceedings. That additional cash would only extend the timeline for the Debtors to continue burning through whatever assets the Debtors currently own for no identified purpose at all.

7. *Second*, because the proposed DIP facility is with an insider, the Debtors must demonstrate the entire fairness of the transaction. The Debtors do not even attempt to argue that the transaction meets this standard, instead relying on their legally incorrect assumption that the fairness of the DIP facility should be evaluated under the less rigorous business judgment rule.

8. For any of these reasons, the Motion should be denied.

FACTUAL BACKGROUND

9. On April 29, 2024, the Debtors initiated these Chapter 11 cases for the stated purpose of "effectuat[ing] an orderly liquidation of the [Debtors'] assets under Chapter 11 of the Bankruptcy Code." (ECF No. 6 ¶ 8).

10. As part of those efforts, either before or shortly after the filing of these cases, the Debtors “liquidated the assets of the investment funds and distributed the proceeds to [their] clients.” (ECF No. 40 ¶ 44). As of May 21, 2024, the Debtors claimed that the “majority of the Debtors’ managed investment fund assets ha[d] been liquidated and the majority of the proceeds ha[d] been or [were] in the process of being distributed to the investors.” (ECF No. 40 ¶ 45).

11. Based in part upon the Debtors’ admission that they had no intention of reorganizing or otherwise rehabilitating their respective businesses, the Jefferies Entities filed a motion seeking to convert the case to a Chapter 7 proceeding. (*See generally* ECF No. 20).

12. In response to that motion, the Debtors claimed to “undert[ake] an analysis of the necessary material tasks to be completed through the chapter 11 cases and the timing for [the] same.” (ECF No. 41 ¶ 23). In general, the Debtors represented that the overwhelming majority of activity necessary to these Chapter 11 cases would be completed before August 1. Specifically, the Debtors announced their intention to:

- a. Complete all of the “2024 liquidation audits” on or before July 31, 2024. (*Id.* ¶ 23(A)(a)).
- b. Complete the distribution of 99% of all client monies by July 15, 2024. (*Id.* ¶ 23(A)(b)). The remaining 1% of client monies are apparently invested in illiquid Portuguese bonds, which are subject to litigation in Portugal. (*Id.*).
- c. Complete a series of “[r]equired [a]udits” on or before July 31, 2024. (ECF No. 41 ¶ 23(B) (emphasis removed)).
- d. Complete the de-registration of various Debtor entities from certain regulatory agencies, including FINRA, the SEC, and the NFA, all apparently before the end of June 2024. (*Id.* ¶¶ 16, 23(B)).

13. The only tasks that the Debtors identified in the set of “necessary material tasks to be completed,” and which were scheduled to take place following July 2024, were some required audits, the preparation of tax returns and beneficial ownership reporting to the U.S. Treasury, the filing of a series of regulatory reports, and the continued retention of various records. (*Id.* ¶ 23).

14. Ultimately, this Court denied the Jefferies Entities’ motion to convert the case to a Chapter 7 liquidation proceeding, without prejudice. (ECF No. 50). Accordingly, since the petition date, the Debtors’ current management team has purportedly continued to carry out the liquidation and wind-down of the Debtors’ businesses.

15. As best the Jefferies Entities are aware, the Debtors have continued to pursue the liquidation of assets and winding down consistent with the Debtors’ prior representations. Yet those activities, as well as the administration of these Chapter 11 cases, have come at substantial expense. According to some of the Debtors’ recently filed operating reports, in June of 2024, the Debtors incurred at least \$1.2 million in general and administrative expenses. (*See* ECF No. 146 at pt. 4(e) (\$819,200 of monthly G&A expenses for Weiss Multi-Strategy Advisers, LLC); ECF No. 147 at pt. 4(e) (\$404,832 in monthly G&A expenses for GWA, LLC)).

16. Based upon their rapid use of available cash since the commencement of these cases, the Debtors claim that following a payroll payment on August 16, the Debtors will be “unable to meet all of their anticipated expenses through the end of August.” (ECF No. 156-3 ¶ 8). In support of that statement, the Debtors have attached a schedule listing a variety of anticipated cash expenses. (ECF No. 156-3 Ex. C). That schedule does not provide any

explanation for why any of the listed expenses are necessary or will assist in preserving the value of the Debtors' estates. (*See generally id.*). It does, however, reveal two troubling facts.

17. *First*, the Debtors have no sustainable plan for administering these Chapter 11 cases. Indeed, *even if* the Debtors were to receive their requested DIP facility, they will still burn through all of their available cash by the end of September. (*Id.* at 12). And by the end of December, the Debtors will apparently have an additional \$2.75 million of unfunded liabilities. (*Id.*)

18. *Second*, the single largest driver of the Debtors' expenses are payroll and counsel fees. As shown in the chart set forth on **Appendix A** to this Opposition, these costs account for roughly 73% of all of the anticipated costs of carrying out Debtors' Chapter 11 activities through the end of the year. Based on payments made by the Debtors to insiders to date, it appears that these payroll obligations include paying the Debtors' general counsel, Jeffrey Dillabough, an annual salary of approximately \$840,000 (or \$70,000 per month). (ECF No. 146 at 20). Three other executives, meanwhile, appear to be receiving annual salaries of approximately \$600,000 per year (or \$50,000 a month). (*Id.*). Yet Debtors have proffered zero explanation for why they must continue to incur these expenses when their stated task—of liquidating and returning assets to creditors—should require so little activity now that the majority of the “necessary material tasks” to complete as part of these Chapter 11 cases have been completed.

19. Notwithstanding the above, the Debtors filed the instant Motion, seeking authorization under Section 364(c) of the Bankruptcy Code to enter into the DIP facility with their founder, Chief Executive Officer, and primary liquidity holder, George Weiss. The DIP facility will be secured by a lien on the Debtors' rights to recover on the OGI Portuguese Bonds

and two other receivables, which appear to reflect more than half of the Debtors' assets. *Compare* ECF No. 156-3 ¶¶ 8–10 (reflecting \$4.1 million in receivables and Portuguese Bonds valued at \$5.3 million), *with* ECF Nos. 146 at 16 (WMSA total assets valued at \$6.13 million); 147 at 2 (GWA total assets of \$5.13 million); 148 at 2, 14 (OGI's total assets of \$5.3 million, comprised almost entirely of the Portuguese Bonds); 149 (WSO assets of \$4,499); 150 at 16 (WMSF assets valued at \$173,247).

20. In the Debtors' Motion, they assert that they "approached several parties" in good faith to serve as a potential lender. (Motion ¶ 22). To support that contention, the Debtors attach a declaration from their own counsel, averring that he "made informal inquiries of several potential debtor-in-possession financing lenders." (ECF No. 156-4 ¶ 3). Two of those sources were apparently not interested in lending at all. (*Id.* ¶ 4). The third apparently demanded interest at "15% plus points, plus an exit fee." (*Id.*). On the basis of these three informal discussions, the Debtors determined that the DIP facility offered by their own founder and Chief Executive Officer was "substantially more favorable" than what was available on the market, and did not pursue any further discussions with potential financiers. (*Id.* ¶ 5).

ARGUMENT

21. Section 364(c) of the Bankruptcy Code states that:

[i]f the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c)(3).

22. “The factors that courts consider in assessing the merits of a debtor’s motion to obtain financing under section 364(c) are: “(1) [whether] the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code, *i.e.*, by allowing a lender only an administrative claim; (2) whether the credit transaction is necessary to preserve the assets of the estate; and (3) whether the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lender.” *In re Republic Airways Holdings Inc.*, 2016 WL 2616717, at *11 (Bankr. S.D.N.Y. May 4, 2016) (citing *In re Los Angeles Dodgers LLC*, 457 B.R. 308, 312–13 (Bankr. D. Del. 2011)).²

23. In this case, both the second and third factors weigh against granting the Motion.

24. *First*, the Debtors have not established that the DIP facility is “necessary to preserve the assets of the estate.” As was explained in *In re Aqua Assocs.*, “credit should not be approved when it is sought for the primary benefit of a party other than the debtor or when funds are readily available from insiders or others without providing the lender with the benefits of any priority.” 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991). It is therefore the Debtors’ burden to show how the proposed DIP facility is “necessary” to “preserve the assets of the estate.”

25. The Debtors claim that the DIP facility is necessary to “provide the Debtors with immediate and ongoing access to liquidity,” absent which, the Debtors’ “operations and regulatory reporting” would purportedly be brought to “an immediate halt.” (Motion ¶ 18). Yet the Debtors do not even attempt to show either: (i) why that is the case; (ii) how the legal and

² In their Motion, the Debtors allege that they are not seeking authority to obtain the DIP facility pursuant to Section 364(d) because the Jefferies Entities’ liens and security interests are voidable, and in turn, the Debtors’ assets are unencumbered. While the Jefferies Entities disagree with that contention, because the Debtors have not even satisfied the less onerous standard of justifying the DIP financing under Section 364(c), they do not address its merits here.

payroll expenses they anticipate incurring are tied to any such activity; or (iii) how the Debtors' ongoing operations or regulatory reporting efforts are "necessary to preserve the assets of the estate." And because the Debtors have made "no demonstration that providing further funding for this business . . . will have any benefit to the estate," the Motion should be denied. *In re Barbara K. Enters., Inc.*, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (denying motion for DIP financing).

26. *Second*, the Debtors have not shown that the terms of the transaction are fair, reasonable, and adequate. In their Motion, the Debtors imply that they may satisfy this test under the deferential business judgment standard. (*See* Motion ¶ 22). That is wrong.

27. As this Court recently explained in *In re Latam Airlines Grp. S.A.*, "[b]y definition, the business judgment rule is not applicable to transactions among a debtor and an insider of the debtor." 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020). Because "[t]hose kinds of transactions are inherently suspect," courts are instead required to "apply a 'heightened scrutiny' test," which is "concerned with the integrity and entire fairness of the transaction at issue, typically examining whether the process and price of a proposed transaction not only appear fair but are fair and whether fiduciary duties were properly taken into consideration." *Id.* (collecting authority). As a result, "the insider bear[s] the burden of showing the 'entire fairness' of the transaction at issue." *Id.*

28. Here, the Debtors have not attempted to meet the entire fairness standard. Instead, the Debtors' only showing is that their counsel informally reached out to three potential lenders, who were not interested in providing the financing. (ECF No. 156-4 ¶ 4). The Debtors do not offer any evidence regarding any negotiations between themselves and the DIP lender to

determine the terms of the loan itself, how offering to provide their founder and chief executive officer a lien over some of the Debtors' most valuable assets was necessary to any anticipated loan, or that the Debtors (or their counsel) did anything aside from making informal requests of potential counterparties to test the market. Absent any such showing, the Motion should be denied. *See, e.g., In re Los Angeles Dodgers LLC*, 457 B.R. at 311 (denying motion to approve insider DIP where debtors failed to satisfy the statutory predicate for DIP financing).

CONCLUSION

29. For the foregoing reasons, the Jefferies Entities respectfully request that the Court deny the Motion.

Respectfully submitted,

Dated: New York, New York
August 6, 2024

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SCHEDULE A

Data Taken from Lanzoni DIP Declaration Exhibit C (ECF No. 156-3)

	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	Week 22	Week 23	Week 24	Week 25	Week 26
Payroll	234,235.97		233,968.79		233,968.79			233,968.79		218,128.62	
Counsel Fees		246,252.14				240,000.00				240,000.00	
Total Expected Costs	253,741.17	284,466.36	283,993.21	122,750.53	250,636.01	294,206.54	6,625.00	385,200.57	15,330.68	510,654.93	27,779.02

	Week 27	Week 28	Week 29	Week 30	Week 31	Week 32	Week 33	Week 34	Week 35	Week 36	<u>Total</u>	<u>Percentage</u>
Payroll	216,531.29		216,531.29		216,531.29		172,562.54		172,562.54		2,148,989	46.98
Counsel Fees				250,000.00					250,000.00	200,000.00	1,176,252	25.72
Total Expected Costs	245,779.02	135,281.05	251,109.58	350,750.00	247,896.26	16,997.88	186,457.99	750.00	434,299.87	269,332.54	4,574,038	100