

**KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP**

200 West 41st Street, 17th Floor

New York, NY 10036

Telephone: (212) 972-3000

Facsimile: (212) 972-2245

Tracy L. Klestadt

John E. Jureller, Jr.

Lauren C. Kiss

Stephanie R. Sweeney

Hearing Date: May 28, 2024 at 2:00 pm

Opposition Deadline: May 21, 2024

*Proposed Counsel to the Debtors and Debtors-
in-Possession*

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

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In re	:
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	:
WEISS MULTI-STRATEGY ADVISERS	:
LLC, <i>et al.</i> , ¹	:
	:
	:
Debtors.	:
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Chapter 11

Case No. 24-10743(MG)

(Joint Administration Requested)

**DEBTORS' MEMORANDUM OF LAW IN OPPOSITION TO MOTION OF JEFFERIES
STRATEGIC INVESTMENTS, LLC AND LEUCADIA ASSET MANAGEMENT
HOLDINGS LLC FOR CONVERSION OF THE DEBTORS' CASES
TO CHAPTER 7 PURSUANT TO 11 U.S.C. §1112(B)**

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 ("WMSA") (7518); GWA, LLC ("GWA") (7079); OGI Associates LLC ("OGI") (4493); and Weiss Special Operations LLC ("WSO") (7626). 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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Weiss Multi-Strategy Advisers LLC, et al., the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by their undersigned proposed counsel, Klestadt Winters Jureller Southard & Stevens, LLP (“KWJS&S”), respectfully submit this opposition (“Opposition”) to the motion of Jefferies Strategic Investments, LLC (“JSI”) and Leucadia Asset Management Holdings LLC (“Leucadia Holdings”, and with JSI and their affiliated entities, the “Jefferies Parties”) for an order converting the Debtors’ chapter 11 cases (the “Bankruptcy Cases”) to chapter 7 cases pursuant to 11 U.S.C. §1112(b) (the “Motion”). In furtherance of the Opposition, the Debtors submit the Declaration of Jeffrey Dillabough, dated May 21, 2024 (“Dillabough Decl.”), and the Declaration of Michele Lanzoni (“Lanzoni Decl.”), dated May 21, 2024, and respectfully represent as follows:

PRELIMINARY STATEMENT

The Debtors, consistent with their fiduciary obligations, in compliance with the strict regulatory requirements (including, without limitation, under requirements of the Securities and Exchange Commission (“SEC”), Commodity Futures Trading Commission (“CFTC”), Investment Advisers Act of 1940, Internal Revenue Service (“IRS”), Employee Retirement Income Security Act of 1974 (“ERISA”), and Department of Treasury), and in their business judgment, have undertaken the necessary steps to wind down their investment funds and ongoing investment advisory business. This winddown was necessitated by, among other things, the Jefferies Parties’ threat in February to attempt to clawback compensation payments made by the Debtors to their employees – all ordinary course payments consistent with the relevant contractual obligations, business history and industry standards. Up until that time, the Debtors were involved in detailed negotiations to secure necessary financing or investment to continue their longstanding and successful investment fund businesses. However, once the deal on the table was effectively killed

by the Jefferies Parties and their actions, the Debtors made the decision to effectuate an orderly winddown of their funds and operations.

Despite all the dramatics in the Motion, including the feigning of shock and surprise, there can be no doubt that at all relevant times the Jefferies Parties had full knowledge of, *inter alia*, the Debtors' financial situation, the Debtors' compensation obligations (and what would happen if not paid), the impending transaction for necessary capital infusion, and the business judgment decision to file for chapter 11 to complete an orderly liquidation of the investment funds for the benefit of their clients and to wind down the investment advisory business in compliance with their fiduciary obligations and strict regulations. It is worth noting that the Jefferies Parties, who had similar fiduciary and regulatory obligations, continued to invest their money and their clients' money with the Debtors until the end, actually achieving a positive income from such investments in 2023 and 2024.

The Jefferies Parties seek to convert the Bankruptcy Cases to chapter 7 merely one (1) week after the Petition Date based upon unsupported and self-serving allegations of "bad faith" on the part of the Debtors and their officers. However, as this Opposition makes clear, the undisputed facts contradict the baseless allegations in the Motion. In fact, the Debtors' actions to date show that their business judgment should continue to be relied upon in the liquidation of their business operations in these chapter 11 Bankruptcy Cases. Since making the informed decision to wind down their investment funds and advisory business, the Debtors have, *inter alia*, successfully: (i) liquidated the assets of the investment funds and distributed the proceeds to their clients (including the Jefferies Parties and their clients) in compliance with their fiduciary obligations and regulatory requirements; (ii) taken steps to reduce costs and expenses including terminating unnecessary staff, vacating premises, and eliminating unnecessary contracts and agreements; (iii) continued to

manage their remaining assets, the preponderance of which are sophisticated and illiquid; (iv) prepared in-depth budgets for the liquidation process; (v) continuously communicated with clients regarding the circumstances of the winddown and the time schedules on which they would have their invested capital returned; and (vi) engaged professionals to efficiently assist with the necessary processes, including bankruptcy, regulatory and compliance, tax and audit, and foreign and domestic litigation counsel. These steps are ongoing and remain vitally necessary, especially in light of the highly regulated securities industry.

During this process, and contrary to the allegations in the Motion, the Debtors continued to engage the Jefferies Parties in good faith efforts to negotiate a resolution of their disputes and claims. The Jefferies Parties, who were at all relevant times unsecured creditors of some of the Debtors (but not creditors of others), rejected the Debtors' efforts at settlement. Yet, during this same time period, the Jefferies Parties took actions counterintuitive to any settlement negotiations. They continued their ongoing threat of suing all of the Debtors' employees for clawback of compensation and filing false fraud claims against the officers and directors. On at least two occasions, the Jefferies Parties circulated proposed draft complaints, with the threat of imminently filing the actions. The Jefferies Parties effectively killed a deal on the table for an investment into the Debtors, which would have provided needed capital including funds to pay-off or pay down the obligations to the Jefferies Parties. The Jefferies Parties forced the Debtors to sign the Amended Forbearance Agreement under duress, which sought to advance their position as against all other general unsecured creditors, by imposing a security interest in all assets, a purported guarantee of all obligations by non-obligated parties and related purported security interests, and a set-off of significant obligations owed to the Debtors for investment advisory services. In

exchange, the Jefferies Parties agreed to a mere *two-day forbearance period*.² The bullying tactics did not work. A settlement never materialized by the deadline self-imposed by the Jefferies Parties, thus necessitating the filing of the Bankruptcy Cases.

Nevertheless, the Debtors had provided notice to the Jefferies Parties since at least the beginning of March 2024 that a bankruptcy filing was going to be necessary because of, among other things, their ongoing fiduciary and regulatory obligations. As an industry insider, the Jefferies Parties are well aware of these strict requirements.

The Debtors, in their business judgment, consider the protections afforded by the bankruptcy process necessary and vital to accomplish the orderly wind down of their affairs. In order to comply with the various rules and regulations that the Debtors are subject to when winding down their affairs, the Debtors' current management and professionals, who have years of experience with the Debtors and extensive knowledge of the Debtors' operations, are best equipped to oversee and carry out the winding up process.

The allegations of "bad faith" in the Motion are unsupported and fail to justify the extreme step of the conversion of these Bankruptcy Cases. The Court should take notice that the Jefferies Parties are unsecured creditors, who unsuccessfully attempted to use their leverage to elevate their position to the detriment of the other creditors of the estates. It is submitted that the chapter 11 process, directed by the Debtors' experienced management team and retained professionals, will provide the best results for an orderly wind down, to the benefit of all of the creditors and the Debtors' estates.

² The adversary complaint ("Adversary Complaint") filed by the Debtors against the Jefferies Parties on the Petition Date (Adv. Pro. No. 24-1350(MG)) seeks to set aside the Amended Forbearance Agreement, and the security interests and other transactions therein, as a preference, among other things.

PROCEDURAL BACKGROUND

On April 29, 2024 (the “Petition Date”), the Debtors commenced with this Court voluntary petitions under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses as debtors and debtors-in-possession. To date, no trustee has been appointed for the Debtors or their estates.³

FACTUAL BACKGROUND⁴

A. The Debtors’ Businesses

GWA is a holding company, which holds the equity interests of the other Debtor entities. See First Day Declaration, ¶12.

WMSA acts as a discretionary investment adviser to a number of private investment funds organized by WMSA, a mutual fund and a UCITS fund. WMSA also advises managed accounts owned by institutional investors over which it exercises sole investment discretion. Id. at ¶18.

On behalf of its clients, WMSA invests and trades in a wide range of U.S. and non-U.S. equities, fixed income securities, convertibles, options, other derivatives such as swaps, credit default protection and contracts for differences, futures, forward contracts, debt instruments and other types of financial instruments. In connection with client trading, WMSA employs short-selling techniques and may utilize leverage and/or make margin purchases. There are generally no restrictions on WMSA’s use of leverage or borrowing, other than those which may be imposed by applicable statutes and regulations or by the owner of a separately managed account. As of

³ On May 17, 2024, the Office of the United States Trustee (the “U.S. Trustee”) filed its *Notice of Inability to Appoint an Official Committee of Unsecured Creditors* [ECF No. 33]; however, the Debtors understand that this remains subject to change in the future as the Bankruptcy Cases progress.

⁴ A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Bankruptcy Cases, is set forth in the Rule 1007-2 Declaration of Pierce Archer (“First Day Declaration”), filed on April 30, 2024 [ECF No. 6]. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

December 31, 2023, WMSA managed approximately \$2.3 billion dollars in net assets on a discretionary basis. Id. at ¶19.

OGI is an investment company that contains GWA's excess capital. Id. at ¶20.

WSO was originally established to provide administrative services for the investment funds. In 2016, it assigned its employees to WMSA and since then has been in the process of liquidating its assets. Id. at ¶22.

B. Agreements with the Jefferies Parties

Over the course of their relationship, certain of the Debtors (GWA and WMSA) and the Jefferies Parties were parties to certain agreements (as amended and restated), including wherein at relevant times the Jefferies Parties held profit interests in certain of the Debtors and were entitled to a share of the revenue of certain of the Debtors.

LAM Holding LLC ("LAM Holding") and GWA entered into that certain Strategic Relationship Agreement dated as of May 1, 2018 (as amended, the "SR Agreement"). Id. at ¶23.

In connection with LAM Holding entering into the SR Agreement, WMSA and JSI (under its former name "Leucadia Fundings LLC") entered into the Investment Management Agreement dated May 1, 2018 (as amended, the "IMA"). Id. at ¶24.

LAM Holding assigned all of its rights under the SR Agreement to Leucadia Holdings (under its former name Jefferies Asset Management Holdings LLC), pursuant to the Assignment and Assumption Agreement dated as of October 18, 2018 between LAM Holding and Leucadia Holdings. Id. at ¶26.

LAM Holding merged with and into Leucadia Holdings as of December 1, 2021, with Leucadia Holdings as the surviving company. Id. at ¶27.

GWA, WMSA, and JSI, as successor in interest to JFG Funding LLC, are parties to that certain Note Purchase Agreement, dated as of December 3, 2019 (as amended, the “2019 Note Purchase Agreement”). Id. at ¶28.

GWA, WMSA, and JSI are parties to that certain Note Purchase Agreement, dated as of September 21, 2022 (as amended, the “2022 Note Purchase Agreement” and collectively with the 2019 Note Purchase Agreement, the “Note Purchase Agreements”). Id. at ¶31.

Pursuant to the Note Purchase Agreements, GWA has issued (i) a \$31,250,000 Note dated December 3, 2019, (ii) a \$18,750,000 Note dated January 13, 2020, and (iii) a \$3,000,000 Note dated September 21, 2022 (collectively, the “Notes”). Id. at ¶¶28, 31.

Under the Note Purchase Agreements and the Notes, JSI was at all relevant times an unsecured creditor of GWA and WMSA. There were no guarantees under the Note Purchase Agreements or the Notes. Further, at all relevant times, Leucadia Holdings was an unsecured creditor under the SR Agreement. None of these agreements were guaranteed by any other party. Id. at ¶¶28, 31, 43.

Prior to February 2024, JSI, on the one hand, and GWA and WMSA, on the other hand, as parties to the Note Purchase Agreements and the Notes, had entered into certain forbearance letters on January 1, 2022, September 1, 2022 and July 25, 2023 (the “Initial Forbearance Agreements”), pursuant to which JSI agreed to forebear from exercising certain remedies subject to certain conditions. Under each of the Initial Forbearance Agreements, GWA and WMSA continued to operate in the ordinary course of business including by paying compensation and bonuses to its employees and portfolio managers. See Dillabough Decl., ¶21.

On December 21, 2023, JSI delivered to GWA that certain Notice of Optional Redemption. See First Day Declaration, ¶35.

C. The Jefferies Parties' Knowledge of and Consent to Compensation

As set forth in the Dillabough Decl., the Jefferies Parties were fully aware of the budget and compensation plan of the Debtors to be paid in February 2024, and the expected cash situation following the execution of this plan. See Dillabough Decl., ¶35. In fact, a similar set of circumstances adhered in the first quarter of 2023, where the Debtors' cash levels were even lower than in 2024. Id. Notwithstanding, at no time in the latter months of 2022 or in 2023 did the parties discuss the non-payment of compensation to the Debtors' employees. Id.

The non-payment of employee compensation for the work they did in 2023 would have resulted in the immediate closure of the companies and would have created a multitude of fiduciary and regulatory issues, as well as the failure of and prevention of any other transaction to secure needed investment into and capacity expansion of the business. Id. at ¶36.

Prior to the payment of the year end compensation or any of the demands to enter into new Forbearance Agreements, the Jefferies Parties were consistently advised of the amount of the compensation owed throughout 2023, including, among other things, in monthly financials sent by the Debtor's Comptroller, Michele Lanzoni each month in 2023 indicating accruals for such compensation; and a series of emails and summaries from Michael Edwards, the Deputy Chief Investment Officer to Mr. Daraviras on December 26-27, 2023 and exhibits thereto. Id. at ¶37.

Up until February 2024, the Jefferies Parties continued to market and support the Debtors' funds and advisory business with its shared clients. Id. at ¶38. The Jefferies Parties, and their clients, continued their investments in the Debtors' investment funds, and in fact these investments had positive earnings in 2023, resulting in a contractual investment team fee payment becoming due to the Debtors in the amount of \$2,581,878.24 (which the Jefferies Parties ultimately refused

to pay). Id. The Jefferies Parties refusal to pay this contractual obligation created additional financial pressures on the Debtors. Id.

The Jefferies Parties were also aware of the potential transaction between the Debtors and a third party, which would have infused capital into the Debtors' businesses, and included funds sufficient to satisfy some or all of the obligations to the Jefferies Parties. Id. at ¶39. If consummated, this third-party transaction would have preserved value for both the Debtors and the Jefferies Parties. Id. The transaction required staff, management, and investment professional continuity, which in turn necessitated ordinary course payment of year end compensation and bonuses, the vast majority of which were contractual in nature. Id. This was more than a "hypothetical transaction" as described in the Motion. See Motion, ¶11. In fact, the Jefferies Parties were provided a summary of the offer and copies of the term sheets and participated in a conference call between the Debtors and a potential investor on February 13, 2024 to affirm the progress of the negotiations. Id. The Jefferies Parties' unreasonable actions severely undermined the negotiations. Id. at ¶40. The Jefferies Parties flatly rejected an offer which would have paid them significant consideration and would have benefited all parties, including the clients of the investment funds. Id.

Overall, the Jefferies Parties fueled an adverse outcome and created a path of dependency by simultaneously (i) accelerating business and funding stress and (ii) creating an atmosphere of distress that threatened business continuity and retention of key personnel, all while continuing to act with clients and in marketing as if the Debtors were financially stable and taking a business-as-usual posture. Id. at ¶41.

WSMA processed the year end compensation and bonus payments to WMSA's employees, through ADP, on February 8, 2024, which were paid on or about February 12, 2024. Id. at ¶26;

see also First Day Declaration, ¶39. The compensation of the majority of WMSA's employees was typically computed as year-end compensation (or bonuses) and paid in February of each subsequent year. See Dillabough Decl., ¶26. This compensation scheme is standard in the industry, and it was a combination of, *inter alia*, contractual, guarantees, and floor amounts. Id. The payment of the compensation was critical to retaining the personnel, especially in the competitive industry and with the third-party transaction in late-stage negotiations. Id. The Jefferies Parties were told when such compensation typically had been paid in the past, but there was no representation regarding when the compensation would (or would not) be paid in February 2024. Id. at ¶42. Mr. Dillabough is not aware of any agreement, verbal or written, to not pay the year-end bonuses or compensation without the Jefferies Parties' consent or approval. Id.

D. Amended Forbearance Agreement

In or about February 12, 2024, under the threat of commencing a state court action to seek clawback of the year-end compensation and bonuses from the Debtors' employees, the Jefferies Parties demanded that the Debtors enter into that certain alleged amended forbearance agreement, dated February 12, 2024 ("Amended Forbearance Agreement"). See Dillabough Decl, **Exhibit A**. The Amended Forbearance Agreement substantially enhanced the nature and priority of the Jefferies Parties' position for repayment of the Notes over all other creditors.

The Amended Forbearance Agreement contained certain new provisions and clauses, involving security interests, guarantees, and offset of indebtedness, each of which provided the Jefferies Parties with significant additional benefits not agreed to in the Note Purchase Agreement and the Notes. See Dillabough Decl, **Exhibit A**, ¶¶3,4, 8.

In exchange for the material benefits received by the Jefferies Parties under the Amended Forbearance Agreement, they were only willing to agree to a Forbearance Period (as defined

therein) of “*the earlier of (i) two Business Days ... or (y) the occurrence of any Forbearance Default*” [as defined therein] (emphasis added). *Id.* at §6.

Under duress of the Jefferies Parties bringing an action to clawback the compensation from their employees, on February 12, 2024 the Debtors executed the Amended Forbearance Agreement. At this time, the Debtors were still hopeful that the third-party transaction would be consummated; unfortunately, it was effectively killed shortly thereafter.

Nonetheless, on February 17, 2024, the Jefferies Parties delivered to the Debtors a draft state court complaint, whereby they further threatened their intention to commence an action against GWA and WMSA for breach of contract, and against each of the 79 employees of the Debtors who had received their annual compensation/bonus payment in February 2024.

This was not the last of the threatened litigation actions. Subsequently, in the midst of ongoing settlement negotiations, the Jefferies Parties forwarded a second draft of a proposed complaint in or about March 26, 2024, which purported to allege, among other things, fraud claims against the Debtors and certain of their officers and directors. While misguided and inaccurate, it was clearly the intent to bully the parties through these allegations, which they full well knew would jeopardize the named parties’ reputation and standing in the industry.

Nonetheless, the Debtors continued the settlement negotiations up until the afternoon of April 29, 2024, at which time it was determined that they were unable to meet the self-imposed deadline of the Jefferies Parties due to circumstances outside of their control.

**E. The Commencement of the Wind Down
of the Investment Funds and the Companies’ Operations**

On February 28, 2024 (internally) and February 29, 2024 (externally), the Debtors and their non-debtor affiliates announced their intentions to cease operations, terminate their advisory and

affiliated businesses, close the managed funds and begin the process of returning capital to their clients.

Since making the informed decision to wind down their investment funds and advisory business, the Debtors have, *inter alia*, successfully:

- liquidated the assets of the investment funds and distributed the proceeds to clients (including the Jefferies Parties) in compliance with regulatory requirements;
- continuously communicated with clients regarding the circumstances of the winddown and the time schedules on which they would have their invested capital returned;
- held back certain proceeds on behalf of the clients for required audit and tax requirements (which will necessarily need to be distributed once completed);
- reduced staff in tranches as necessitated by the winddown;
- vacated unnecessary premises;
- analyzed their contractual relationships and terminated unnecessary contracts and agreements;
- continued to manage their remaining assets, the preponderance of which are sophisticated and illiquid, as required under regulatory requirements;
- prepared budgets for the liquidation process, and
- engaged professionals to assist with the necessary process, including bankruptcy, regulatory and compliance, tax and audit, and foreign and domestic litigation counsel.

See Dillabough Decl., ¶44.

These steps are ongoing and remain vitally necessary, especially in this highly regulated industry.

The majority of the Debtors' managed investment fund assets have been liquidated and the majority of the proceeds have been or are in the process of being distributed to the investors. However, the Debtors will necessarily continue to manage client assets in segregated accounts for the foreseeable future, including with respect to remaining complex, illiquid assets that will take considerable skill and expertise to liquidate, such as:

- each of Weiss Multi-Strategy Partners LLC and OGI hold illiquid Portuguese bonds that are in active litigation in Portugal and the United States, and those particular accounts are named litigants in these pending cases. Weiss Multi-Strategy Partners (Cayman) Ltd. and GWA, LLC 401(k) Profit Sharing Plan, each of which are ERISA funds over which the Debtors are subject to an enhanced fiduciary duty, also hold these bonds indirectly. Portuguese counsel advises that under the Portuguese legal system, transfer of these bonds to a third party would require the courts to grant leave to substitute the litigants, which would be expected to take at least six months. The litigation is not expected to have a final determination in the foreseeable future.

- clients of the Debtors have millions of dollars of cash “held back” in the coming months to pay for on-going administrative activities such as Securities and Exchange Commission-mandated audits, audit adjustments and tax statement preparation, the ultimate distribution of which remains subject to the Debtors’ fiduciary duties.

- Weiss Enhanced Global Macro Fund is under audit by the IRS, the management of which requires employee and consulting expertise. Such audit will be continuing for the foreseeable future.

- GWA (along with Mr. Weiss, who is trustee under the Debtors’ employee 401K plan), are currently defending a class action in the United States District Court for the District of Connecticut (*Andrew-Berry v. GWA, LLC, et al.*, Case No. 3:23-cv-978), which complaint asserts four claims under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) relating to the management of the Plan (the “ERISA Action”). While the Debtors dispute these allegations, the Debtors’ management and retained professionals are required to oversee and participate in the ERISA Action. *Id.* at ¶45.

Having personnel who are not qualified or properly supervised execute transactions for a WMSA managed fund or client or manage these litigations on their behalf would likely cause a breach of these fiduciary duties. *Id.* at ¶46.

As set forth in the Lanzoni Decl., the Debtors have undertaken an analysis of the remaining steps necessary for the orderly winddown of the businesses and have begun to implement these steps. These steps include (i) analysis of necessary personnel for required winddown tasks; (ii)

inventory of assets; (iii) estimation of liquidation and winddown timelines; and (iv) analysis of required regulatory, tax, and fiduciary obligations. While these estimations may change based upon the chapter 11 process, the Debtors are looking ahead to ensure that these steps are taken with the utmost efficiency.

For these reasons and more, the orderly winddown of the investment funds and the investment advisory business, in full compliance with the regulatory requirements, is necessary, all under the guidance of the Debtors' experienced management team and the retained professionals.

ARGUMENT

Section 1112 provides that a bankruptcy court may convert a case from chapter 11 to chapter 7 upon a showing of cause. In re BH S & B Holdings, LLC, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010). "The moving party has the burden of demonstrating cause" for conversion. Id., In re AdBrite Corp., 290 B.R. 209, 218 (Bankr. S.D.N.Y. 2003). "Cause" must be assessed against the backdrop that conversion is a "drastic measure" and should not be done prematurely. In re Waterworks, Inc., 538 B.R. 445, 460 (Bankr. N.D. Ill. 2015) (quoting In re Sal Caruso Cheese, Inc., 107 B.R. 808, 817 (Bankr. N.D.N.Y. 1989)). Only once a court determines that "cause" exists does the court decide whether conversion is in the best interests of the creditors and the estate. BH S & B Holdings, 439 B.R. at 346. A bankruptcy court has broad equitable discretion to determine if cause exists and how to ultimately adjudicate the case. In re The 1031 Tax Group, LLC, 374 B.R. 78, 93 (Bankr. S.D.N.Y. 2007).

The Motion relies upon three overlapping yet unsupported arguments. First, the Jefferies Parties argue that the Bankruptcy Cases should be converted based upon "bad faith" of the Debtors and their directors and officers. In support of this argument, the Jefferies Parties state that (i) the

Debtors do not intend to reorganize; (ii) the case is really just a two-way dispute; (iii) the timing of the bankruptcy filing after the failure of settlement negotiations is evidence of “bad faith”, and (iv) the Debtors made “demonstrably false statements” in their Adversary Complaint against the Jefferies Parties.

Second, the Jefferies Parties argue that the Bankruptcy Cases should be converted because the Debtors have “plundered the estate and have no intent to reorganize.”

Third, the Jefferies Parties allege that the Debtors have “grossly mismanaged the estates.”

Yet, a review of the Motion clearly shows that the Jefferies Parties have provided no material facts or law to support their arguments. Instead, the Motion is replete with self-serving statements, accomplishing nothing more than complaining of the actions taken by the Debtors in their business judgment. The Jefferies Parties’ disagreement with the Debtors’ business judgment does not justify the extreme action of conversion of these Bankruptcy Cases.

I. The Debtors Filed the Bankruptcy Cases Based Upon their Business Judgment

The Debtors have undertaken the necessary steps to wind down their investment funds and ongoing operations. These steps are being taken consistent with their fiduciary obligations, in compliance with the strict regulatory requirements, and in their business judgment.

a. Necessity of Bankruptcy Filing

The Debtors were compelled to file these Bankruptcy Cases due to, in large part, actions taken by the Jefferies Parties. While operating in the ordinary course, the Debtors had been in tight financial condition for several years. The Jefferies Parties confirm that they were aware of this fact in the Motion; yet the Jefferies Parties continued to invest their money and their clients’ money with the Debtors throughout this period.

Up until mid-February 2024, the Debtors were negotiating with a third party to provide a financial investment which would have resulted in needed capital and likely resulted in either taking out the Jefferies Parties' debt, or satisfying a substantial portion of it, up to about \$30 million. The Jefferies Parties rejected the transaction outright.

The rejected strategic relationship and elimination of its capital infusion, along with the Jefferies Parties' threatened lawsuit to seek payment of the Debtors' obligations and the clawback of compensation payments to the Debtors' employees, were material considerations for the Debtors' decision to pursue the winddown of the operations in a bankruptcy proceeding. But again, the Jefferies Parties were aware of these facts. The Debtors' counsel had several conversations with the Jefferies Parties' counsel, including regarding the significant regulatory requirements and likely necessity for a bankruptcy filing, since at least the beginning of March 2024.

b. The Debtors' Prudent Actions to Wind Down Operations

The Debtors prudently took immediate action, in their business judgment, to wind down the investment funds and the companies' advisory business. As set forth above, upon making such determination, the Debtors have, *inter alia*, successfully: (i) liquidated the assets of the investment funds and distributed the proceeds to clients (including the Jefferies Parties and their clients) in compliance with regulatory requirements; (ii) taken steps to reduce costs and expenses including terminating unnecessary staff, vacating premises, and terminating unnecessary contracts and agreements; (iii) continued to manage remaining assets, the preponderance of which are sophisticated and illiquid; (iv) prepared budgets for the liquidation process, (v) continuously communicated with clients regarding the circumstances of the winddown and the time schedules on which they would have their invested capital returned; and (vi) engaged professionals to

efficiently assist with the necessary process, including those with expertise in bankruptcy, regulatory and compliance, tax and audit, and foreign and domestic litigation counsel.

In addition, the Debtors are already planning ahead to efficiently accomplish the necessary steps for an orderly winddown of the Debtors' operations. As set forth in the Lanzoni Decl., these steps include (i) analysis of necessary personnel for required winddown tasks; (ii) inventory of assets; (iii) estimation of liquidation and winddown timelines; and (iv) analysis of required regulatory, tax, and fiduciary obligations. These are prudent actions taken by experienced managers, all for the benefit of the Debtors' estates.

c. Necessity to Comply with Strict Regulatory Requirements and Obligations

The Debtors' businesses are operated under strict regulatory and fiduciary obligations. As set forth more fully in the First Day Declaration, the Debtors' fiduciary and regulatory obligations are continuing. See First Day Declaration, ¶¶ 82-122 [ECF No. 6]. These obligations involve, among other things, the following:

A. Investment Advisers Act of 1940

(i) WMSA will continue to manage client assets in segregated accounts for the foreseeable future, including complex illiquid assets that will take considerable skill and expertise to liquidate. For example, each of the Weiss Multi-Strategy Partners LLC, OGI, and, indirectly, the GWA, LLC 401(k) Profit Sharing Plan hold illiquid Portuguese bonds that are in active litigation in Portugal and the United States, and those accounts are named litigants in the cases. See First Day Declaration, ¶87.

(ii) The Debtors' clients will have millions of dollars of cash "held back" in the coming months to pay for on-going administrative activities such as audits, audit adjustments and tax

statement preparation, the ultimate distribution of which are subject to the Debtors' fiduciary duties. Id.

(iii) The Weiss Enhanced Global Macro Fund is under IRS audit, the management of which requires employee and consulting expertise. Id.

(iv) It will take several months to scope and facilitate the transfer of the records required to be retained by the SEC to a facility in a manner that complies with the agency's requirement of five years. Indeed, those records cannot even be "frozen" to commence facilitation for transfer until the deregistration of the necessary Debtor entities with the SEC, which for regulatory purposes cannot happen until sometime in June 2024 at the earliest. Id. at ¶91.

(v) The administration of an adviser's compliance policies and procedures as well as its code of ethics requires a deep understanding of the adviser's business and takes a considerable amount of time and attention. Many of the mandated policies require constant monitoring in order to seek to protect client assets and information. Id. at ¶94.

(vi) The Investment Advisers Act Rule 204-1(a)(1) requires WMSA to file an annual updating amendment to its Form ADV within 90 days after its fiscal year-end, and Rule 204-3(b) requires WMSA to deliver to each client an updated Form ADV Part 2A within 120 days after the adviser's fiscal year-end if there are material changes. Id. at ¶95.

(vii) The Investment Advisers Act Rule 206(4)-2 generally requires a registered investment adviser in the position of WMSA to, among other requirements: (i) maintain client assets with a "qualified custodian"; (ii) arrange for account statements to be sent to clients at least quarterly by the qualified custodian; and (c) undergo an annual surprise examination by an independent public accountant of those client assets for which the adviser has custody. WMSA's surprise examination for 2023 and 2024 has not been initiated or completed. Id. at ¶96.

(viii) The private funds must be audited at least annually by an independent public accountant registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board. It also requires that the audited financial statements be distributed to all beneficial owners of the private funds within 120 days of the fiscal year-end of the fund, or within 180 days of the fiscal year-end for a fund of funds (Investment Advisers Act Rule 206(4)-2(b)(4)). Audits for the 2023 and 2024 fiscal years of WMSA managed private funds have not been completed and the 2024 audits will take a minimum of several months to complete. Id. at ¶97.

B. Commodity Exchange Act of 1936

Each registered commodity pool operator is required to, *inter alia*, file a number of reports, including some that must be completed promptly upon certain events. Id. at ¶106.

C. Securities Exchange Act of 1934

The Exchange Act of 1934 requires numerous continued filings by WMSA. Id. at ¶111.

D. Investment Company Act of 1940

Since WMSA is the investment adviser to a mutual fund registered as an investment company under the Investment Company Act of 1940, it will need to submit filings to the SEC in connection with the wind-up of this fund. Id. at ¶121.

E. U.S. Department of Treasury

Investment advisers may be required to file certain forms with the Federal Reserve Bank of New York, on behalf of the Department of Treasury, if it or any of its clients takes part in certain cross-border transactions, including managing a U.S. fund that invests in foreign securities (including interests in an offshore master fund) and managing a U.S. fund with foreign investors (including an offshore feeder fund with interests in the U.S. fund). These filings include Form

SLT, Form S, Form SHCA, Form SHC, Form SHLA, Form SHL and Form B. The timing of these filings vary, including monthly, quarterly and annual obligations. Id. at ¶122.

d. The Debtors' Management is Best Situated to Oversee the Wind Down Process

In order to comply with the various rules and regulations set forth above that the Debtors are subject to when winding down their affairs, the Debtors' current management and professionals, who have years of experience with the Debtors and extensive knowledge of the Debtors' operations, are best equipped to oversee and carry out the winding up process.

There is no evidence of any mismanagement, much less the "gross mismanagement" stated (but not supported) in the Motion. In fact, the opposite is true. The Debtors have already begun the process of winding down the operations, liquidating the funds, disbursing the proceeds to clients, and efficiently managing the wind down process to eliminate any unnecessary costs or expenses.

Subject to Bankruptcy Court approval, the Debtors' management has engaged the required professional to provide the necessary bankruptcy, regulatory, tax/audit, and litigation legal and professional services to maximize the Debtors' estates. This group includes the following professionals, with their required services:

- a. Klestadt Winters Jureller Southard & Stevens, LLP as bankruptcy counsel to the Debtors;
- b. Omni Agent Solutions, Inc. as claims and noticing agent for the Debtors;
- c. Seward & Kissel LLP ("S&K"), as corporate, securities and ERISA counsel to the Debtors⁵;
- d. KPMG LLP as auditors and tax accountant to the Debtors;

⁵ S&K has in the past and currently represents Jefferies Group LLC and affiliated companies on matters unrelated to the Bankruptcy Cases. S&K has obtained a waiver from the Jefferies Parties of any conflict of interest arising from S&K acting as corporate, securities and ERISA counsel to the Debtors in the Bankruptcy Cases provided that S&K is only acting in this capacity and not representing the Debtors in any other capacity in the Bankruptcy Cases, litigation, arbitration or other proceeding adverse to the Jefferies Parties.

- e. Citrin Cooperman & Company, LLC (“Citrin”) as auditors for the GWA, LLC 401(k) Profit Sharing Plan⁶;
- f. TR Paul as Inc. as third-party administrator for the GWA, LLC 401(k) Profit Sharing Plan; and
- g. Gama Glória as special litigation counsel for WMSA and OGI with respect to, *inter alia*, the litigation issues concerning the Portuguese bonds.

Even if a chapter 7 trustee was appointed, the trustee would still need to retain professionals for the benefit of the estate. ***These services and requirements are not discretionary, they are mandatory.*** Many of the Debtors’ professionals have been engaged by the Debtors for extensive periods of time, resulting in a significant existing knowledge base. These services are required to meet strict fiduciary obligations and regulatory requirements of the Debtors, and to maximize the value to the Debtors’ estates. By contrast, a chapter 7 trustee’s newly hired professionals would need to spend additional time and expense to get up to speed.

As a result, it is essential for the Debtors to continue to employ current management and professionals, who are qualified to liquidate these assets and wind up the Debtors’ businesses. Having personnel who are not qualified or properly supervised to execute transactions and make the necessary regulatory filings risks breaching these fiduciary duties and applicable law.

II. The Motion Fails to Support Conversion of the Debtors’ Bankruptcy Cases

a. The Bankruptcy Cases were Not Filed in “Bad Faith”

Conversion for a bad faith filing should be exercised “only sparingly and with great caution.” In re Gen. Growth Props., 409 B.R. 43, 56 (Bankr. S.D.N.Y. 2009). In the Second Circuit, a bad faith filing requires a showing of both “objective” and “subjective” bad faith. Id. (citing In re Kingston Square Assoc., 214 B.R. 713, 725 (Bankr. S.D.N.Y. 1997)). The Courts

⁶ While the Debtors had intended to retain Citrin as auditors, the Debtors have been informed that Citrin prepares tax returns for certain of the Jefferies Parties. Citrin requested a waiver from the Jefferies Parties of any conflict of interest arising from Citrin acting as auditors to the Debtors in the Bankruptcy Cases. The Jefferies Parties refused to provide a waiver. As a result, the Debtors are in the process of searching for new auditors.

have framed the inquiry as (a) whether the petition serves a valid bankruptcy purpose and (b) whether the petition was filed merely to obtain tactical advantages in an alternative forum, outside of bankruptcy. Field Station LLC v. Capitol Food Corp. (In re Capitol Food Corp.), 490 F.3d 21, 24 (1st Cir. 2007) (quoting In re SGL Carbon Corp., 200 F.3d 154, 163, 165 (3d Cir. 1999)). Neither factor supports the Motion here.

The orderly wind down and liquidation of an estate is an appropriate use of chapter 11. The Debtors are investment advisors, whose primary remaining business is to oversee the orderly liquidation and distribution of assets (including clients' fund assets) in accordance with strict regulatory requirements, continuing fiduciary obligations, and significant expertise. The Debtors' Bankruptcy Cases were filed to achieve these purposes. See, e.g., 11 U.S.C. §§1129(a)(11), 1123(a)(5), 1123(b)(4). The Supreme Court has recognized that chapter 11 expressly contemplates these purposes through plans of liquidation. Florida Dep't of Revenue v. Piccadilly Cafeterias Inc., 554 U.S. 33, 37 n.2 (2008); see also In re Insilco Techs. Inc., 480 F. 3d 212, 214 n.1 (3d Cir. 2007) ("[i]t is not uncommon for debtors to use the Chapter 11 process to liquidate."); Aslohaibi v. Arcapita Bank B.S.C. (c)(In re Arcapita Bank B.S.C. (c)), No 12-11076, 2014 WL 46552, at *6 (S.D.N.Y. Jan. 6, 2014) ("[T]he Code expressly authorizes chapter 11 plans to liquidate all or some of the debtor's assets.").

The Debtors' decision to wind down in a chapter 11 bankruptcy process is not "bad faith", but to the contrary is a prudent use of their business judgment, especially as a result of the fiduciary obligations and regulatory restrictions and requirements as an investment advisor and manager of investment funds. The Jefferies Parties make much of the fact that the Debtors have not shown an intent to reorganize, "but it is not bad faith to file a chapter 11 petition for the purpose of a more orderly liquidation." In re Soundview Elite Ltd., 503 B.R. 571, 580 (Bankr. S.D.N.Y. 2014)

(inability to reorganize is insufficient cause for conversion where a valid business purpose exists for filing chapter 11 liquidation); In re AAGS Holdings, LLC, 608 B.R. 373, 383-84 (Bankr. S.D.N.Y. 2019) (filing for Chapter 11 to take advantage of specific provisions of the Bankruptcy Code is not bad faith filing).

The Bankruptcy Cases were not filed solely to avoid or adjudicate a two-party dispute. While the Debtors certainly take issue with certain of the actions taken by the Jefferies Parties and allege that these actions were instrumental in the timing of their decision to file chapter 11 bankruptcy cases, the reasons for filing these Bankruptcy Cases go well beyond the dispute with the Jefferies Parties.

As outlined in detail above, the winddown of the Debtors' investment funds and advisory business is subject to substantial fiduciary obligations and regulatory control. This was a material consideration of the Debtors in determining that a wind down under the protections of chapter 11 would be in the best interests of the Debtors' estates, their creditors and their clients. The Debtors provided notice of these requirements to the Jefferies Parties early in their discussions.

While the claims of the Jefferies Parties are likely substantial, there are other creditors and stakeholders of the Debtors' estates which need the protections afforded under chapter 11. These include lessors, vendors, contract counterparties, employees and most importantly, the clients of the Debtors' advisory firm and their managed investment funds. Allowing the Debtors to liquidate, under the guidance of current management, is a proper use of their business judgment.

The Jefferies Parties assert, self-servingly, that the Debtors are "targeting" the Jefferies Parties, and no other parties. This argument is without merit. First, the Bankruptcy Cases had only been filed for one (1) week when the Jefferies Parties filed their Motion. While the U.S. Trustee is currently unable to appoint an official committee of unsecured creditors, this remains

subject to change as the Bankruptcy Cases progress. To the extent there are any claims that the Debtors do not pursue, but certain creditors seek to pursue on behalf of the estates, it is expected that the Court will make a standing determination on that point at the appropriate time. As for the clawback of the compensation payment, the Debtors believe that these payments were made in the ordinary course, were contractual or industry standard, and were proper both in timing and amount, especially with the potential third-party transaction at the late stage at that point in time (which was predicated on the retention of employees). Nonetheless, the Debtors understand that this issue will likely be addressed in the future.

Second, the Adversary Complaint was commenced to avoid, in part, the Amended Forbearance Agreement dated February 12, 2024, which sought to elevate the Jefferies Parties' position as against other creditors and stakeholders within 90 days of the Petition Date. The Debtors had an obligation to immediately commence this action to set aside the purported security interest given to the Jefferies Parties. Furthermore, certain of the substantial payments to the Jefferies Parties were also made within the 90-day period, and certain others were made within the 2 years prior to the Petition Date, when the Debtors were experiencing a financial crunch. There can be no question that the Jefferies Parties improved their position as a result of the Amended Forbearance Agreement.

Third, the Jefferies Parties assert that the timing of the bankruptcy filing is evidence of "bad faith"; however, the facts are more than clear on this point.⁷ The Debtors began preparing for the bankruptcy filing in February 2024 when the proposed third-party capital investment was rejected by the Jefferies Parties and the Jefferies Parties began threatening to commence litigation

⁷ The Motion and supporting declaration contain specific details of settlement discussions, all in violation of Federal Rule of Evidence 408 under which they were made. The Debtors would submit that these settlement discussions should be disregarded by the Court in its consideration of the Motion.

on the outstanding indebtedness and to sue the Debtors' employees to claw back their annual compensation. See Dillabough Decl., ¶7. This lawsuit would have likely triggered indemnification obligations by the Debtors as well. The bankruptcy preparation began in earnest in March 2024 when it became evident that an orderly wind down could not occur outside of court due to the Jefferies Parties' position, as well as an analysis of the significant fiduciary obligations and regulatory requirements of the Debtors in winding down their investment funds and investment advisory business. Even if a deal with the Jefferies Parties could be reached, a bankruptcy filing was more than likely.

The Debtors advised the Jefferies Parties as early as the beginning of March that a bankruptcy filing was imminent. Id. at ¶9. Nonetheless, settlement discussions continued in good faith, all despite the threats of lawsuits by the Jefferies Parties against the Debtors and their employees, officers and directors. Id. at ¶¶49-51. The proposed settlement never materialized by the deadline self-imposed by the Jefferies Parties, thus necessitating the filing of the Bankruptcy Cases. Id. at ¶52. The feigned shock and surprise are obvious attempts to amplify the baseless Motion, as the Jefferies Parties were well aware of the potential bankruptcy filing under the circumstances. In any event, there is no evidence of any "bad faith" on the part of the Debtors.

Fourth, the Jefferies Parties point, albeit incorrectly, to a *single sentence* in the Adversary Complaint to try to support the claim that the Debtors have made "demonstrably false statements in court filings submitted in these Chapter 11 Cases." See Motion, ¶34. The sole support offered is the Jefferies Parties' assertion that the Adversary Complaint states that the payments made by the Debtors to the Jefferies Parties "were not on account of an antecedent debt." Id. However, the Jefferies Parties have either mis-read the complaint, or mischaracterized the claims in the complaint to purposefully mislead this Court. Paragraph 45 of the Adversary Complaint actually

states that “the Avoidable Transfers were made on account of an antecedent debt.” See Adversary Complaint, ¶45. The paragraphs cited in the Motion (i.e. ¶¶ 88-92) merely state, in the alternative, “*Subject to proof, Plaintiffs plead that to the extent one or more of the Avoidable Transfers were not on account of an antecedent debt or were prepayments for goods and/or services subsequently received, Plaintiffs did not receive reasonably equivalent value in exchange for the Avoidable Transfers, ...*” Adversary Complaint, ¶91 (emphasis added). Since this is the sole sentence relied upon by the Motion in support of a claim of the Debtors’ making “demonstrably false statements”, and since it is totally inaccurate, this argument has no merit.

It is clear that none of the purported arguments in the Motion supports a finding of “bad faith” on the part of the Debtors, much less compelling the extreme action of converting the Bankruptcy Cases to chapter 7.

b. There was No Plundering the Estates by the Debtors

Section 1112(b)(4) lists examples of conduct that amounts to “cause” for conversion of a chapter 11 case, including, under section 1112(b)(4)(A) “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation”. 11 U.S.C. § 1112(b)(4)(A). This ground contains two prongs and both prongs must be satisfied in order to find cause under this subsection. See In re BH S &B Holdings, LLC, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010) (“A party seeking to demonstrate cause under section 1112(b)(4)(A) must establish both the ‘substantial or continuing loss’ prong as well as the absence of a reasonable likelihood of rehabilitation prong.”).

The Jefferies Parties argue that conversion is necessary because of “continuing and increasing losses” by the Debtors. However, there is no support for this argument, and it is not accurate. On March 1, 2024, the Debtors notified their clients that they would be winding down

the investment funds and advisory services. When they made the determination to wind down the investment funds and the companies, the Debtors immediately began taking steps for an orderly and efficient liquidation and the maximization of value. Thereafter, all actions were taken to meet the fiduciary obligations associated therewith. Instead of increasing losses, the companies began terminating unnecessary employees, terminating unnecessary agreements and contracts, and vacating leased properties. The Debtors are still receiving income from obligations related to their operations, but at the same time the Debtors continue to eliminate unnecessary costs.

“To determine whether there is a continuing loss or diminution of the estate, a court must make a full evaluation of the *present condition of the estate*, not merely look at the debtor’s financial statements.” In re AdBrite Corp., 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003) (emphasis added). Upon the filing of a chapter 11 petition, a bankruptcy estate is created. See 11 U.S.C. § 541(a) (“[t]he commencement of a case ... creates an estate.”). The seven numbered paragraphs of section 541(a) define what constitutes property of the bankruptcy estate. See 11 U.S.C. § 541(a). Besides speculation of what they think will happen in the Bankruptcy Cases, the sole factor submitted by the Jefferies Parties in support of its argument that there is a continuing loss or diminution of the estates consists of the March 1, 2024 payments made by the Debtors to various parties totaling \$409,279.34⁸. See Motion, p. 12. The Debtors commenced these cases on April 29, 2024, almost two (2) months *after* the payments the Jefferies Parties are complaining of. Because the payments were pre-petition payments, it is not relevant when considering whether there is a continuing loss or diminution of the bankruptcy estates. See, e.g., In re Taub, 427 B.R.

⁸ The Jefferies Parties fail to state how these ordinary course expenses, totaling \$409,279.34, including health insurance premiums for their employees, are improper. In fact, during the course of the settlement negotiations, the Debtors prepared and provided a liquidation plan to the Jefferies Parties, which they disregarded.

208, 231 (Bankr. E.D.N.Y. 2010) (“One indication of continuing loss to the bankruptcy estate is negative cash flow *after* the bankruptcy case is commenced.”) (emphasis added).

With respect to the second prong, the absence of a reasonable likelihood of rehabilitation, in the context of analyzing a motion to dismiss under section 1112(b)(4)(A), this Court focused on, among other things, the debtor’s ability to propose a confirmable plan of reorganization:

At the outset, the Court makes clear that, in these circumstances, it considers ‘rehabilitation’ to mean the Debtor’s proposal of a workable chapter 11 plan ‘within a reasonable period of time,’ as other courts have concluded in cases the Debtor relies on. *See In re Wahlie*, 417 B.R. 8, 11–12 (Bankr. N.D. Ohio 2009). In its briefing, however, the Debtor argued that ‘[r]ehabilitation’ is not synonymous with ‘reorganization.’ *In re Honx, Inc.*, Case No. 22-90035, 2022 WL 17984313 at *3 (Bankr. S.D. Tex. Dec. 28, 2022). Instead, the Debtor contended that it need only ‘demonstrate[] ... [its] commitment to the reorganization effort.’ *In re 221-06 Merrick Blvd. Assocs. LLC*, No. 1-10-45657-JBR, 2010 WL 5018265, at *2 (Bankr. E.D.N.Y. Dec. 3, 2010). In making this argument, the Debtor appears to suggest that simply making continued progress towards reorganization is sufficient to show a reasonable likelihood of rehabilitation. This may be true in the earlier phases of a bankruptcy case, when debtors are finding their bearings and exploring their exit options. Indeed, in the *Honx* case, and every other case cited by Debtor on this point, the debtors had been in bankruptcy for less than a year.

In re Roman Cath. Diocese of Rockville Ctr., New York, Case No. 20-12345 (MG), 2023 WL 4833307, at *1 (Bankr. S.D.N.Y. July 18, 2023) (citations omitted). Here, where the Bankruptcy Cases have been pending for less than one (1) month, the Court can and should find a reasonable likelihood of rehabilitation where the Debtors are using the bankruptcy process to preserve and maximize value for creditors and should be afforded the opportunity to attempt confirmation of a plan of liquidation.⁹ See, e.g., In re Honx, Case No. 22-90035, 2022 WL 17984313, at *3 (Bankr. S.D. Tex. Dec. 28, 2022) (finding that the term “rehabilitation” as used in section 1112(b)(4)(A)

⁹ Pursuant to 11 U.S.C. § 1121(b), the Debtors have the exclusive right to file a plan until August 27, 2024, unless further extended by the Court.

“encompass[es] a debtor’s intentions to use the bankruptcy process to prevent a complete and total loss of value.”); see also In re MatlinPatterson Global Opportunities Partners II L.P., et al., 644 B.R. 418, 436 (Bankr. S.D.N.Y. 2022) (“[T]he Court concludes that here – where the Debtors’ business was and is to solicit and obtain investor funds, and then invest the funds, and then liquidate positions, repay those investors, and then wind down the particular fund in question – what Debtors seeks to do in this case constitutes ‘rehabilitation’ of their business within the meaning of § 1112(b)(4)(A)”).

As a result, conversion under section 1112(b)(4)(A) of the Bankruptcy Code is not appropriate. In furtherance of these proceedings, the Debtors are already preparing a budget for these Bankruptcy Cases.

The Motion asserts that the Debtors’ retention of professionals was somehow evidence of the “plundering” of the estates. In fact, the Jefferies Parties have gone so far as to suggest, under threat of Rule 11 sanctions, that they are reserving their rights to seek the clawback of fees paid to the Debtors’ advisors in furtherance of the commencement of the Bankruptcy Cases. See Motion, ¶27, n.4. Putting aside the clear vitriol and ignorance in making such a statement, there is no evidence in the Motion or otherwise that the Bankruptcy Cases were not filed for valid business reasons, especially with the ongoing fiduciary obligations and regulatory requirements required of the Debtors moving forward.

c. There is No Evidence of Gross Mismanagement of the Estates

Section 1112(b)(4)(B) of the Bankruptcy Code provides that “cause” exists if there has been a “gross mismanagement of the estate.” 11 U.S.C. § 1112(b)(4)(B). “The possibility of a conversion based on gross mismanagement contemplates the presentation of actual proof of gross mismanagement, not merely a statement of suspicions or of a desire for further investigation.” In

re Northwest Company, LLC, Case No. 20-10990 (MEW), 2020 WL 6927661, at *2 (Bankr. S.D.N.Y. Nov. 20, 2020). The sole basis for the argument in the Motion that the Bankruptcy Cases should be converted due to “gross mismanagement” by the Debtors is a statement that the Debtors refused to marshal assets and pursue claims. The single factual allegation asserted is the claim that the Debtors refused to pursue preference actions against their employees for the annual compensation paid in February. As evidenced by the facts, this is nothing more than a purposefully misleading, yet completely inaccurate statement intended to somehow amplify their baseless arguments. First, the Bankruptcy Cases had only been filed for one (1) week at the time of the Motion. There is no obligation, statutory or otherwise, which requires the Debtors to commence such an action within this time frame. Second, while the U.S. Trustee is currently unable to appoint an official committee of unsecured creditors, this remains subject to change as the Bankruptcy Cases progress. To the extent there are any claims that the Debtors do not pursue, but certain creditors seek to pursue on behalf of the estate, it is expected that the Court will make a standing determination on that point at the appropriate time. Third, as set forth above, the Debtors believe that these payments were made in the ordinary course, were contractual or industry standard, and were proper both in timing and amount, especially with the potential transaction at the late stage at that point in time. Nonetheless, while the Debtors understand that this issue will likely be addressed in the future by the Court, this argument does not necessitate the conversion of these Bankruptcy Cases.

[Continued on Next Page]

CONCLUSION

For all the foregoing reasons, the Motion should be denied.

Dated: New York, New York
May 21, 2024

**KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP**

By: /s/ John E. Jureller, Jr.

Tracy L. Klestadt
John E. Jureller, Jr.
Lauren C. Kiss
Stephanie R. Sweeney
200 West 41st Street, 17th Floor
New York, NY 10036
Tel: (212) 972-3000
Fax: (212) 972-2245
Email: tklestadt@klestadt.com
jjureller@klestadt.com
lkiss@klestadt.com
ssweeney@klestadt.com

*Proposed Counsel to the Debtors and
Debtors-in-Possession*