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Proposed Counsel to the Debtor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11
: :
Doral Financial Corporation,¹ : Case No. 15- _____ ()
: :
Debtor. :
-----X

**DEBTOR’S MOTION FOR AN ORDER
ESTABLISHING PROCEDURES FOR INTERIM MONTHLY
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

The debtor in the above-captioned case (the “Debtor”) submits this motion (the “Motion”) for entry of an order establishing procedures for interim monthly compensation and reimbursement of expenses of professionals. In support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

¹ The last four digits of the taxpayer identification number of the Debtor are 2162.

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a) and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), and General Order M-412.

Background

2. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. Sections 1107(a) and 1108 of the Bankruptcy Code authorize the Debtor to continue to operate its businesses and manage its properties as a debtor in possession. No request for the appointment of a trustee or examiner has been made in this chapter 11 case, and no committee has been appointed or designated.

3. A summary of the Debtor’s business, the Debtor’s capital structure, and the events leading to this chapter 11 case, as well as the facts and circumstances supporting this Motion, are set forth in the *Declaration of Carol Flaton in Support of First Day Motions* (the “Flaton Declaration”)², filed contemporaneously herewith.

Relief Requested

4. By the Motion, the Debtor requests entry of an order establishing a process for the monthly allowance and payment of compensation and reimbursement of expenses for

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Flaton Declaration.

professionals whose services are authorized by this Court and who will be required to file applications for allowance of such compensation and expenses.

5. The Debtor proposes that the monthly payment of compensation and reimbursement of expenses of professionals (the “Compensation Procedures”) be structured as follows:

- a. On or before the thirtieth (30th) day of each month following the month for which compensation is sought, or as soon as practicable thereafter, each professional seeking compensation under the Order (each a “Retained Professional”) will serve a monthly fee statement (a “Monthly Statement”), by electronic mail, hand or overnight delivery, on (i) the Debtor; (ii) proposed counsel to the Debtor, Ropes & Gray LLP, Prudential Tower, 800 Boylston Street Boston, MA 02199-3600 (Attention: James A. Wright III); (iii) the Office of the U.S. Trustee, 201 Varick Street, Suite 1006, New York, NY 10004; and (iv) counsel to any statutory committee appointed in the chapter 11 case (collectively, the “Notice Parties” and, each, a “Notice Party”).
- b. On or before the thirtieth (30th) day of each month following the month for which compensation is sought, or as soon as practicable thereafter, each Retained Professional seeking compensation and/or reimbursement shall file its Monthly Statement with the Court. A courtesy copy need not be delivered to chambers, since the Order is not intended to alter the fee application requirements outlined in sections 330 and 331 of the Bankruptcy Code, and since Retained Professionals are still required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, and any applicable orders of the Court.
- c. For those Retained Professionals who bill based on time, each Monthly Statement must contain a list of the individuals and their respective titles (e.g., attorney, accountant or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, contemporaneously maintained time entries for each individual in increments of one-tenth (1/10) of an hour, and a reasonably detailed breakdown of the disbursements incurred (no Retained Professional should seek reimbursement of an expense that would otherwise not be allowed pursuant to the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases (“General Order M-447”).
- d. Each Notice Party will have fifteen (15) days after the receipt of the Monthly Statement to review such statement (the “Review Period”) and, in the event that the Notice Party has an objection to the compensation or reimbursement sought in

a particular statement, the Notice Party shall, by no later than the later of the last day of the Review Period and the forty-fifth (45th) day following the last day of the month for which compensation is sought (the “Objection Deadline”), serve upon the Retained Professional whose statement is objected to and the other Notice Parties, a written “Notice of Objection to Fee Statement” setting forth the nature of the objection and the specific amount of fees or expenses in dispute.

- e. At the expiration of the Objection Deadline, the Debtor shall promptly pay, (i) eighty percent (80%) of the undisputed fees and (ii) one hundred percent (100%) of the undisputed expenses identified in each Monthly Statement to which no objection has been served in accordance with paragraph (d).
- f. If the Debtor receives an objection to a particular Monthly Statement, it shall withhold payment of that portion of such statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e).
- g. Similarly, if the parties to an objection are able to resolve their dispute following the service of a Notice of Objection to Fee Statement and, if the Retained Professional whose Monthly Statement was objected to serves on all Notice Parties a statement indicating that the objection is withdrawn and describing the terms of the resolution, then the Debtor shall promptly pay, in accordance with the percentages set forth in paragraph (e), that portion of the Monthly Statement which is no longer subject to an objection.
- h. All objections that are not resolved by the parties shall be preserved and presented to the Court at the next interim or final fee application hearing to be heard by the Court in accordance with paragraph (j) below.
- i. The service of an objection in accordance with paragraph (d) above shall not prejudice the objecting party’s right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Statement shall not be a waiver of any kind or prejudice that party’s right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code.
- j. Approximately every one hundred twenty (120) days, but no more than every one hundred fifty (150) days, each Retained Professional shall serve and file with the Court an application for interim or final Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested.
- k. No notice of hearing should be filed by any Retained Professional in connection therewith, as the Debtor will schedule a hearing at which all fee applications will be heard. At least thirty (30) days before the hearing, the Debtor’s attorneys shall file a notice with the Court, served upon the U.S. Trustee and each Retained

Professional, which sets forth the time, date, and location of the fee hearing, the date by which the fee applications must be filed, the period covered by such application, and the objection deadline. Any Retained Professional unable to file its own fee application with the Court shall deliver to the Debtor's attorneys a fully executed copy of such, with original signatures, along with service copies, three (3) days before the filing deadline. The Debtor's attorneys shall file and serve such application.

- l. The pendency of a fee application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular Monthly Fee Statement shall not disqualify a Retained Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.
 - m. Neither the payment, nor the failure to pay, in whole or in part, of monthly compensation and reimbursement as provided herein shall have any effect on the Court's interim or final allowance of compensation and reimbursement of expenses of any Retained Professional.
 - n. Counsel for any statutory committee appointed in the chapter 11 case may, in accordance with the foregoing procedures for monthly compensation and reimbursement of Retained Professionals, collect and submit statements of expenses, with supporting vouchers, from members of the committee such counsel represents; provided, however, that such committee counsel ensures that these reimbursement requests comply with the General Order M-447.
6. The Debtor proposes that all fees and expenses paid to professionals under the Compensation Procedures will be subject to disgorgement until final allowance by the Court.
7. The Debtor further requests that the Court limit service of interim and final fee applications (collectively, the "Applications") to the Notice Parties, with notices of any hearings on the Applications (the "Hearing Notices") to be served on all other parties that have filed a notice of appearance with the Court and requested notice of pleadings in the chapter 11 case. The Debtor additionally requests that the Court require all Retained Professionals to provide a copy of any Application to any party other than the Notice Parties upon receipt of a written request from such party. The Debtor submits that serving the Applications and the Hearing Notices in this manner will permit the parties most active in the chapter 11 case to review and object to the

Retained Professionals' fees efficiently and will save unnecessary duplications and mailing expenses.

Basis for Relief

8. The authority for establishing procedures for interim compensation and reimbursement of expenses of professionals is found within section 331 of the Bankruptcy Code, which provides, in relevant part:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

11 U.S.C. § 331.

9. Pursuant to section 331 of the Bankruptcy Code, all professionals are entitled to submit applications for interim compensation and reimbursement of expenses every one hundred twenty (120) days, or more often if the bankruptcy court permits. Id. The underlying purpose of section 331 of the Bankruptcy Code is to provide financial relief to court-appointed professionals engaged in protracted bankruptcy proceedings and cases, so that these professionals do not have to endure unexpected delays before receiving compensation. See Leichty v. Neary (In re Strand), 375 F.3d 854, 858 (9th Cir. 2004); In re Tri-State Ethanol Co., No. 03-10194, 2007 WL 2033344 (Bankr. D.S.D. July 10, 2007). "Courts have generally recognized that in large cases it is appropriate to allow payment of professionals more frequently." In re Mariner Post-Acute Network, Inc., 257 B.R. 723, 727 (Bankr. D. Del. 2000).

10. Additionally, section 105(a) of the Bankruptcy Code authorizes the Court to issue any order "that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §

105(a). And Local Bankruptcy Rule 2016-1 specifically authorizes the use of interim compensation procedures, as it states that “[a] person requesting an award of compensation or reimbursement of expenses for a professional shall comply with the Amended Guidelines for Fees and Disbursements. . . .” Local Bankruptcy Rule 2016-1(a).

11. The Debtor believes that the proposed Compensation Procedures will enable it and other core parties in interest to closely monitor costs of administration, maintain a level cash flow availability and implement efficient cash management procedures. Moreover, the Compensation Procedures will allow the Court and key parties in interest to ensure the reasonableness and necessity of the compensation and reimbursement sought by the Retained Professionals.

12. The Debtor respectfully submits that the efficient administration of the chapter 11 case will be significantly aided by establishing the proposed Compensation Procedures. Absent streamlined compensation procedures, the professional fee application and review process could be exceptionally burdensome to the Debtor, the Retained Professionals, the Court, and other parties. By contrast, under the proposed Compensation Procedures, the mechanism for payment of Retained Professionals’ fees will be simplified and will avoid unnecessary Court involvement. Accordingly, the relief requested is in the best interests of the Debtor, its estate and its creditors.

13. Courts in this district have regularly granted relief similar to that requested herein in other chapter 11 cases. See, e.g., In re Genco Shipping & Trading Ltd., Case No. 14-11108 (SHL) (Bankr. S.D.N.Y. May 16, 2014) [Docket No. 183]; In re Excel Maritime Carriers Ltd., Case No. 13-23060 (RDD) (Bankr. S.D.N.Y. Sept. 3, 2012) [Docket No. 289]; In re LightSquared, Inc., Case No. 12-12080 (SCC) (Bankr. S.D.N.Y. June 11, 2012) [Docket No. 122]; In re Old HB, Inc., Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012) [Docket

No. 212]; In re Gen. Maritime Corp., Case No. 11-15285 (MG) (Bankr. S.D.N.Y. Dec. 12, 2011) [Docket No. 94]; In re Sbarro, Inc., Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 3, 2011) [Docket No. 147]; In re The Great Atl. & Pac. Tea Co., Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2011) [Docket No. 505]; In re ION Media Networks, Inc., No. 09-13125 (Bankr. S.D.N.Y. June 25, 2009) [Docket No. 102]; In re DBSD N. Am. Inc., No. 09-13061 (Bankr. S.D.N.Y. June 5, 2009) [Docket No. 91].

14. Accordingly, the Debtor respectfully submits that the relief requested herein should be granted in all respects because it is (i) necessary and appropriate in light of the foregoing, (ii) consistent with the procedures approved in the above-cited cases, and (iii) in the best interests of the Debtor's estate, its creditors and other parties in interest.

Notice

15. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); and (c) the indenture trustees for the DFC Notes and the AFICA Bonds. In light of the nature of the relief requested, the Debtor submits that no other or further notice is necessary.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief for the Debtor as may be just or proper.

Dated: March 11, 2015
New York, New York

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Proposed Counsel to the Debtor

EXHIBIT A

Proposed Order

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

-----X
In re : Chapter 11
 :
Doral Financial Corporation,¹ : Case No. 15-_____ ()
 :
Debtor. :
-----X

**ORDER ESTABLISHING PROCEDURES FOR
INTERIM MONTHLY COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Upon the motion (the “Motion”)² of the above-captioned debtor (the “Debtor”), for entry of an order (the “Order,” or the “Compensation Procedures Order”) pursuant to sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, Local Rule 2016-1, and General Order M-412, authorizing and establishing procedures for interim compensation and reimbursement of expenses for Retained Professionals; and upon the Flaton Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this Court being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and the Flaton Declaration and having heard statements in support of the Motion at a hearing held before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the relief requested in the Motion being in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and any objections to the relief requested in the Motion having been

¹ The last four digits of the taxpayer identification number of the Debtor are 2162.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, THAT:

1. The Motion is GRANTED to the extent provided herein.

2. Except as may otherwise be provided in orders of the Court authorizing the retention of specific Retained Professionals, all Retained Professionals whose retentions are approved by order of this Court shall seek compensation for professional services rendered and reimbursement of expenses incurred in accordance with the following Compensation Procedures (the “Compensation Procedures”):

- a. On or before the thirtieth (30th) day of each month following the month for which compensation is sought, or as soon as practicable thereafter, each professional seeking compensation under the Order (each a “Retained Professional”) will serve a monthly fee statement (a “Monthly Statement”), by electronic mail, hand or overnight delivery, on (i) the Debtor; (ii) proposed counsel to the Debtor, Ropes & Gray LLP, Prudential Tower, 800 Boylston Street Boston, MA 02199-3600 (Attention: James A. Wright III); (iii) the Office of the U.S. Trustee, 201 Varick Street, Suite 1006, New York, NY 10004; and (iv) counsel to any statutory committee appointed in the chapter 11 case (collectively, the “Notice Parties” and, each, a “Notice Party”).
- b. On or before the thirtieth (30th) day of each month following the month for which compensation is sought, or as soon as practicable thereafter, each Retained Professional seeking compensation and/or reimbursement shall file its Monthly Statement with the Court. A courtesy copy need not be delivered to chambers, since the Order is not intended to alter the fee application requirements outlined in sections 330 and 331 of the Bankruptcy Code, and since Retained Professionals are still required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, and any applicable orders of the Court.
- c. For those Retained Professionals who bill based on time, each Monthly Statement must contain a list of the individuals and their respective titles (e.g., attorney, accountant or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, contemporaneously maintained time entries for each individual in increments of one-tenth (1/10) of an hour, and a reasonably detailed breakdown of the disbursements incurred (no Retained Professional should seek reimbursement of

an expense that would otherwise not be allowed pursuant to the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases (“General Order M-447”).

- d. Each Notice Party will have fifteen (15) days after the receipt of the Monthly Statement to review such statement (the “Review Period”) and, in the event that the Notice Party has an objection to the compensation or reimbursement sought in a particular statement, the Notice Party shall, by no later than the later of the last day of the Review Period and the forty-fifth (45th) day following the last day of the month for which compensation is sought (the “Objection Deadline”), serve upon the Retained Professional whose statement is objected to and the other Notice Parties, a written “Notice of Objection to Fee Statement” setting forth the nature of the objection and the specific amount of fees or expenses in dispute.
- e. At the expiration of the Objection Deadline, the Debtor shall promptly pay, (i) eighty percent (80%) of the undisputed fees and (ii) one hundred percent (100%) of the undisputed expenses identified in each Monthly Statement to which no objection has been served in accordance with paragraph (e).
- f. If the Debtor receives an objection to a particular Monthly Statement, it shall withhold payment of that portion of such statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e).
- g. Similarly, if the parties to an objection are able to resolve their dispute following the service of a Notice of Objection to Fee Statement and, if the Retained Professional whose Monthly Statement was objected to serves on all Notice Parties a statement indicating that the objection is withdrawn and describing the terms of the resolution, then the Debtor shall promptly pay, in accordance with the percentages set forth in paragraph (e), that portion of the Monthly Statement which is no longer subject to an objection.
- h. All objections that are not resolved by the parties shall be preserved and presented to the Court at the next interim or final fee application hearing to be heard by the Court in accordance with paragraph (j) below.
- i. The service of an objection in accordance with paragraph (d) above shall not prejudice the objecting party’s right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Statement shall not be a waiver of any kind or prejudice that party’s right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code.
- j. Approximately every one hundred twenty (120) days, but no more than every one hundred fifty (150) days, each Retained Professional shall serve and file with the Court an application for interim or final Court approval and allowance, pursuant

to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested.

- k. No notice of hearing should be filed by any Retained Professional in connection therewith, as the Debtor will schedule a hearing at which all fee applications will be heard. At least thirty (30) days before the hearing, the Debtor's attorneys shall file a notice with the Court, served upon the U.S. Trustee and each Retained Professional, which sets forth the time, date, and location of the fee hearing, the date by which the fee applications must be filed, the period covered by such application, and the objection deadline. Any Retained Professional unable to file its own fee application with the Court shall deliver to the Debtor's attorneys a fully executed copy of such, with original signatures, along with service copies, three (3) days before the filing deadline. The Debtor's attorneys shall file and serve such application.
 - l. The pendency of a fee application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular Monthly Fee Statement shall not disqualify a Retained Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.
 - m. Neither the payment, nor the failure to pay, in whole or in part, of monthly compensation and reimbursement as provided herein shall have any effect on the Court's interim or final allowance of compensation and reimbursement of expenses of any Retained Professional.
 - n. Counsel for any statutory committee appointed in the chapter 11 case may, in accordance with the foregoing procedures for monthly compensation and reimbursement of Retained Professionals, collect and submit statements of expenses, with supporting vouchers, from members of the committee such counsel represents; provided, however, that such committee counsel ensures that these reimbursement requests comply with the General Order M-447.
3. All fees and expenses paid to professionals under the Compensation Procedures will be subject to disgorgement until final allowance by the Court.
4. Notice of interim and final fee applications shall be served on the Notice Parties. Notice given in accordance with this paragraph is deemed sufficient and adequate and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules of this Court.

5. Notice of the hearing on interim and final fee applications shall be served on the Notice Parties and all parties that have filed a notice of appearance with the Court and requested such notice. Notice given in accordance with this paragraph is deemed sufficient and adequate and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules of this Court and/or the Case Management Order approved in the chapter 11 case.

6. The Debtor shall include all payments to Retained Professionals on its monthly operating reports, detailed so as to state the amount paid to each of the Retained Professionals, unless, by order of the Court, the Debtor's requirement to file monthly operating reports has been waived.

7. All time periods referenced in this Order shall be calculated in accordance with Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

8. The Debtor is authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Court retains jurisdiction with respect to all matters arising from, or related to, the implementation and interpretation of this Order.

Dated: _____, 2015
New York, New York

/s/
UNITED STATES BANKRUPTCY JUDGE