

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
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NAUTILUS HOLDINGS LIMITED, et al., : Case No. 14-22885 (RDD)
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Debtors.¹ :
: (Jointly Administered)
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**INTERIM ORDER (I) SCHEDULING A FINAL HEARING PURSUANT
TO BANKRUPTCY RULES 4001 AND 9014 AND (II) AUTHORIZING
DEBTORS TO OBTAIN POSTPETITION FINANCING
PURSUANT TO SECTION 364(c) OF THE BANKRUPTCY CODE**

Upon the Motion² of the Debtors for entry of an interim order pursuant to section 364(c) of the Bankruptcy Code, Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Bankruptcy Rules") seeking, among other things:

(1) pursuant to Bankruptcy Rule 4001, that an interim hearing (the "Interim Hearing") on the Motion be held before this Court to consider entry of this interim order (the "Interim Order");

(2) authority, pursuant to the Interim Order, to execute and enter into the secured debtor-in-possession credit agreement (the "DIP Agreement," the DIP

¹ The Debtors and, where applicable, the last four digits of their Hong Kong taxpayer identification codes are as follows: Nautilus Holdings Limited, Nautilus Holdings No. 2 Limited, Nautilus Shipholdings No. 1 Limited, Nautilus Shipholdings No. 2 Limited, Nautilus Shipholdings No. 3 Limited, Able Challenger Limited (8877), Charming Energetic Limited (0936), Dynamic Continental Limited (0928), Earlstown Limited (1898), Findhorn Osprey Limited (8075), Floral Peninsula Limited (4549), Golden Knighthead Limited (6376), Magic Peninsula Limited (0950), Metropolitan Harbour Limited (7969), Metropolitan Vitality Limited (9019), Miltons Way Limited (6180), Perpetual Joy Limited (0897), Regal Stone Limited (3636), Resplendent Spirit Limited (8114), Superior Integrity Limited (0934), and Vivid Mind Limited (7935). The Debtors maintain offices at 445 Hamilton Avenue, 11th Floor, White Plains, New York, 10601; 16/F-19/F Prince's Building, 10 Chater Road, Central, Hong Kong; and Canon's Court, 22 Victoria Street, Hamilton HM12, Bermuda.

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

Agreement, together with the other documents entered into in connection therewith, the "DIP Documents") and to obtain subordinated (with respect to prepetition secured obligations), secured postpetition financing in the form of a revolving credit facility (the "DIP Facility") on the terms and conditions set forth in the DIP Agreement;

(3) authority, pursuant to this Interim Order, to immediately obtain revolving loans under the DIP Facility up to a maximum aggregate principal amount outstanding of \$550,000 to pay postpetition operating expenses of and restructuring costs of the Debtors (including DIP Lender's costs) to the extent that such operating expenses and restructuring costs are in excess of the Debtors' operating revenue, in accordance with the terms and conditions set forth in the DIP Agreement; and

(4) that this Court schedule a final hearing on the Motion (the "Final Hearing") to consider entry of a final order (the "Final Order") granting all of the relief requested in the Motion on a final basis and authorizing the Debtors to obtain subordinated (with respect to prepetition secured obligations), secured postpetition financing on substantially the same terms as the Interim Order;

and it appearing that the relief requested in the Motion is necessary to provide the Debtors with sufficient capital to continue operations, to preserve the going concern value of their businesses and to continue their restructuring efforts; and it further appearing that notice of the Motion was provided in the form and manner set forth in the Motion; and it also appearing that notice of the Interim Hearing and copies of the proposed form of order approving the Motion and a draft of the DIP Agreement were filed and served on the Initial Notice Parties, and any other party that filed a request for notices with this Court; and such notice constituting good and sufficient notice of the Interim Hearing under the circumstances in accordance with Bankruptcy Rules 4001(c)

and 4001(d), section 102(1) of the Bankruptcy Code, and Local Bankruptcy Rule 4001-2, as required by section 364(c) of the Bankruptcy Code in light of the nature of the relief requested in the Motion; and for good cause shown;

Upon the record made by the Debtors at the Interim Hearing on June 23, 2014 and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has jurisdiction over the Debtors' chapter 11 cases (the "Chapter 11 Cases"), the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief granted herein are section 364 of the Bankruptcy Code, Bankruptcy Rules 4001 and 9014, and Local Bankruptcy Rule 4001-2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Under the circumstances, the notice given by the Debtors of the Motion and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001 (c) and (d) and Local Bankruptcy Rule 4001-2, and no other notice is required or need be given except as set forth herein.

3. *Findings Regarding the Financing.*

(a) Good and sufficient cause has been shown for the entry of this Interim Order.

(b) The Debtors have an immediate need to obtain financing under the DIP Agreement in order to permit, among other things, the orderly continuation of the operation of their businesses, to pay the fees and expenses of their restructuring and to satisfy other working

capital and operational needs. The immediate access of the Debtors to sufficient working capital and liquidity through the incurrence of additional indebtedness for borrowed money is vital to the preservation and maintenance of the going concern values of the Debtors and to complete their restructuring efforts.

(c) The terms of the DIP Agreement appear to be fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(d) The DIP Agreement has been negotiated in good faith between the Debtors and Synergy Management Services Limited (the "DIP Lender"), and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Facility and the DIP Documents, shall be deemed to have been extended by the DIP Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(e) Absent granting the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Documents on an interim basis is therefore in the best interest of the Debtors' estates.

4. *No Objections; Approval of the Motion.* Except to the extent as may be related to final approval of the DIP Documents, there were no objections or reservations of rights with respect to the interim relief sought in the Motion. The Motion is granted in all respects on an interim basis as provided herein.

5. *Authorization of the DIP Agreement.*

(a) The DIP Agreement is approved in all respects on an interim basis. The Debtors are hereby authorized to enter into and execute the DIP Documents on an interim basis. The Debtors are hereby authorized to immediately borrow money pursuant to and subject to the terms of the DIP Agreement up to a maximum aggregate principal amount of \$550,000 (in accordance with the terms of the DIP Agreement), subject to any limitations of borrowings under the DIP Documents, and in accordance with the terms of this Interim Order and the DIP Documents, which shall be used solely in accordance with the terms of the DIP Documents.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is expressly authorized and directed on an interim basis to perform all acts, to make, execute and deliver all instruments and documents, to perform all obligations thereunder and to pay all fees, that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Agreement, including, without limitation:

(i) the negotiation, execution, delivery and performance of the DIP Documents, and

(ii) the performance of all other acts required under or in connection with the DIP Agreement.

6. Upon execution and delivery of the DIP Documents and the entry of this Interim Order, each of the DIP Documents shall constitute a valid and binding obligation of the Debtors, enforceable against each Debtor party thereto in accordance with the terms of such DIP Document. The DIP Obligations of the Debtors shall be joint and several. In accordance with the terms of the DIP Agreement, if one Debtor's liability under the DIP Facility is ultimately for the benefit of another Debtor, the Debtor undertaking such liability shall have an intercompany claim against such benefitting Debtor.

7. *Superpriority Claims.* Pursuant to section 364(c)(1) of the Bankruptcy Code, the obligations of the Debtors under the DIP Agreement and the other DIP Documents (collectively, the "DIP Obligations") shall constitute obligations of the Debtors with priority over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims under sections 105, 326, 328, 330, 331, 506(c), 507(a) or 726 of the Bankruptcy Code (the "Superpriority Claims"); provided that all Superpriority Claims shall be subject to the Carve-Out (as defined below). The Superpriority Claims shall be payable from all property of each Debtor's estate except avoidance actions under Chapter 5 of the Bankruptcy Code, and on an interim basis, the proceeds thereof.

8. *DIP Liens.* As security for the Debtors' DIP Obligations as provided for under the DIP Documents, effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other similar documents, the DIP Lender is hereby granted the following security interests and liens, subject in each case to the Carve-Out (all property identified in clauses (a) and (b) below being collectively referred to as the "Collateral"; and all such liens and security interests granted to the DIP Lender pursuant to this Interim Order and the DIP Documents, the "DIP Liens"):

(a) First Lien on Unencumbered Property. A valid, binding, continuing, enforceable, fully-perfected first priority security interest in and lien upon all tangible and intangible prepetition and postpetition property and assets of the Debtors and their respective estates wherever located, and any proceeds and products thereof, whether existing on the date of filing of the Debtors' chapter 11 petitions (the "Petition Date") or thereafter acquired, that is not

subject to valid, perfected, non-avoidable and enforceable liens in existence immediately prior to the Petition Date; provided, however, the Collateral shall not include avoidance actions under Chapter 5 of the Bankruptcy Code, and on an interim basis, the proceeds thereof.

(b) Liens Junior to Existing Liens. A valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon all tangible and intangible prepetition and postpetition property and assets of the Debtors and their respective estates wherever located, and any proceeds and products thereof, whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens (if any) in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date but perfected thereafter as permitted by section 546(b) of the Bankruptcy Code (collectively, the "Existing Liens").

9. *DIP Lien Priority*. The DIP Liens shall be senior to any liens granted by any Debtor on or after the Petition Date (including, without limitation, any liens granted pursuant to an order of this Court, including an order approving the use of any cash collateral).

10. *Protection of DIP Lender's Rights*.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to permit the DIP Lender to exercise, during the continuance of an Event of Default, all rights and remedies under the DIP Documents provided, that, notwithstanding anything to the contrary contained herein or in the DIP Documents, no less than seven days written notice shall first be provided to counsel to the Debtors, counsel to any statutory creditors' committee appointed in these Chapter 11 Cases, counsel to the administrative agents (the "Agents") that are party to the Debtors' six prepetition secured loan agreements (the "Prepetition

Facilities), counsel to the lenders that are parties to the Prepetition Facilities (the "Prepetition Lenders"), and the United States Trustee prior to the exercise of any such right.

(b) In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors hereby waive their right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender set forth in this Interim Order or the DIP Documents.

11. *Perfection of DIP Liens.* The DIP Lender is hereby authorized, but not required, to file or record financing statements, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the liens and security interests granted to it hereunder. Whether the DIP Lender shall, in its sole discretion, choose to file such financing statements, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to it hereunder, such liens and security interests shall be deemed valid and perfected at the time and on the date of entry of the Interim Order.

12. *Carve-Out.* Notwithstanding anything to the contrary contained in this Interim Order or other order of this Court, the liens and claims of or granted to the DIP Lender in this Interim Order and/or the DIP Documents shall be subject and subordinate to the payment, without duplication, of the following fees and claims (the amounts set forth below, together with the limitations set forth therein, collectively, the "Carve-Out"):

(a) the claims of the respective retained professionals of the Debtors and any statutory committee appointed in the Chapter 11 Cases (collectively, the "Retained

Professionals") for fees and expenses incurred at any time on and after the Petition Date and prior to the occurrence of an Event of Default and delivery of a notice from the DIP Lender to the Debtors that the DIP Lender desires to trigger the Carve-Out; provided that, in each case, such fees and expenses of the Retained Professionals are ultimately allowed on a final basis by this Court under sections 327, 328, 330, 331 or 363 of the Bankruptcy Code;

(b) (i) the claims of the Retained Professionals for fees and expenses which were incurred on and after the occurrence of an Event of Default and delivery of a notice from the DIP Lender to the Debtors that the DIP Lender desires to trigger the Carve-Out; provided that, in each case, such fees and expenses of the Retained Professionals are ultimately allowed on a final basis by this Court under sections 327, 328, 330, 331 or 363 of the Bankruptcy Code and do not exceed \$1,000,000 in the aggregate plus (ii) the fees and expenses incurred by any professionals engaged by any successor to the Debtors, including, without limitation, any trustee appointed under Chapter 11 or 7 of the Bankruptcy Code or any examiner with expanded powers, in an aggregate amount not to exceed \$250,000; and

(c) the unpaid fees payable to the United States Trustee and Clerk of the Bankruptcy Court pursuant to Section 1930 of Title 28 of the United States Code; provided that, except as otherwise provided herein or in the Final Order, no portion of the Carve-Out shall be utilized for the payment of professional fees and expenses incurred in connection with any challenge to the amount, extent, priority, validity, perfection or enforcement of the Indebtedness (as defined in the DIP Agreement) of the Debtors owing to the DIP Lender or indemnified parties under the DIP Facility or to the collateral securing the DIP Facility; provided further that so long as no Event of Default shall have occurred and be continuing, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable

under sections 330 and 331 of the Bankruptcy Code, as long as the same may be due and payable, and the same shall not reduce the Carve-Out; provided, however, that the foregoing shall not be construed as authorization to the allowance of any fees and expenses referenced herein and shall not affect the right of any parties to object to the allowance and payment of such amounts.

13. *Events of Default.* Except as otherwise provided herein, or to the extent the Lender may otherwise agree in writing, (i) any violation of any of the terms of this Interim Order, or (ii) any occurrence of an “Event of Default” under the DIP Agreement or the DIP Documents, as applicable, shall be deemed to be an Event of Default under this Interim Order.

14. *Order Governs.* In the event of any conflict between the provisions of the DIP Documents and this Interim Order, the provisions of this Interim Order shall govern.

15. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Interim Order, including, without limitation, all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Lender, any creditors' committee appointed in these Chapter 11 Cases, any other committee appointed in these Chapter 11 Cases, the Agents, the Prepetition Lenders, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the DIP Lender and the Debtors and their respective successors and assigns; *provided, however*, that the DIP Lender shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

16. *No Third Party Rights.* Except as explicitly provided herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary.

17. *No Deemed Control.* In making decisions to advance any extensions of credit under the DIP Facility, or in taking any other actions related to this Interim Order or the DIP Documents, the DIP Lender shall have no liability to any third party and shall not be deemed to be in control of the operations of the Debtors and the DIP Lender's relationship with the Debtors shall not constitute or be deemed to constitute a joint venture or partnership of any kind. Further, the Debtors are authorized and directed to indemnify Lender against any liability arising in connection with the DIP Agreement or the DIP Documents to the extent set forth in the DIP Agreements and the DIP Documents.

18. *Final Hearing.* The Final Hearing is scheduled for July 11, 2014 at 10:00 a.m. before this Court.

19. The Debtors shall promptly mail copies of this Interim Order and a notice of the Final Hearing (which shall constitute adequate notice of the Final Hearing) to the Initial Notice Parties.

20. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections, which objections shall be served upon (a) the U.S. Trustee for the Southern District of New York; (b) Skadden, Arps, Slate, Meagher & Flom LLP; (c) Togut, Segal & Segal LLP, Att'n: Frank A. Oswald, Esq. and Brian F. Moore, Esq., One Penn Plaza, Suite 3335 New York, NY 10119, as counsel to the DIP Lender; (d) the parties listed in the consolidated list of thirty (30) largest unsecured creditors filed by the Debtors in these chapter 11 cases; (e) the Securities Exchange Commission; (f) HSH Nordbank, AG, Gerhart-

Hauptmann-Platz 50, 20095 Hamburg, Germany; (g) UniCredit Bank AG, Global Shipping, Neuer Wall 64, 20354 Hamburg, Germany; (h) Commerzbank AG, PO Box 11 19 13, 20419 Hamburg, Germany; (i) DVB Bank AG, 80 Cheapside, London EC2V 6EE; Platz der Republik 6, 60325 Frankfurt/Main, and P.O. Box 11 05 32, 60040 Frankfurt/Main, Germany; (j) Citibank, N.A., Citigroup Centre, 33 Canada Square, Canary Wharf, London E14 5LB; (k) Citibank International plc, Attn: Loans Agency, European Loans Agency Office, Securities and Banking, Citigroup Centre, 33 Canada Square, Canary Wharf, London, United Kingdom E14 5LB; (l) Bank of Scotland plc, Corporate, Marine Finance, Pentland House, 8 Lochside Avenue, Edinburgh EH12 9DJ; 6th Floor, 33 Old Broad Street, London, United Kingdom EC2N 1HZ; and Faryners House, 25 Monument Street, London, United Kingdom EC3R 8BQ; (m) Lloyds TSB Bank plc, 10 Gresham Street, London EC2V 7AE; New Uberior House, 11 Earl Grey Street, Edinburgh, United Kingdom EH3 9BN; and 6th Floor, 33 Old Broad Street, London, United Kingdom EC2N 1HZ; (n) Goldman Sachs Bank (Europe) Plc, Hardwicke House, Upper Hatch Street, Dublin 2, Ireland; (o) Goldman Sachs International Bank, Peterborough Court, 133 Fleet Street, London EC4A 2BB; (p) Sculptor Investments S.a.r.l., 2 Rue J. Hachin, C-1746 Luxemburg, c/o Och-Ziff Capital Management Group, 9 West 57th Street, 13th Floor, New York, NY 10019 USA and shall be filed with the Clerk of the United States Bankruptcy Court, Southern District New York, in each case to allow actual receipt by the foregoing no later than July 3, 2014 at 5:00 p.m., prevailing Eastern time.

Dated: White Plains, New York
June 25, 2014

/s/ Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE