

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

-----X  
In re: : Chapter 11  
 :  
Thomas O. Eifler, Sr. : Case No. 17-31862-THF  
 :  
Debtor. :  
 : Honorable Thomas H. Fulton  
 :  
-----X

**MOTION OF THE DEBTOR FOR ENTRY  
OF AN ORDER APPROVING AND AUTHORIZING THE DEBTOR  
TO ENTER INTO WEALTH ADVISOR TRANSITION AGREEMENT**

Thomas O. Eifler, Sr., the debtor and debtor in possession (the “Debtor”) in the above-captioned Chapter 11 case, by and through his undersigned counsel, hereby moves under section 363 of title 11 of the United States Code (the “Bankruptcy Code”), for entry of an order approving and authorizing the Debtor to enter into the *Wealth Advisor Transition Agreement* (the “Agreement”), a copy of which is attached hereto as **Exhibit A**. Under the terms of the Agreement, in anticipation of his departure from J.J.B. Hilliard, W.L. Lyons, LLC (“Hilliard”) the Debtor will transfer his rights to manage, service and generate commissions from his customer accounts (the Debtor’s “Book of Business”). In support of this Motion, the Debtor respectfully states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this case under 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue for this case is proper under 28 U.S.C. §§ 1408 and 1409.

**BACKGROUND**

2. On June 6, 2017, the Debtor filed his voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Western District of

Kentucky (the “Bankruptcy Court”). The Debtor continues to manage and operate his affairs as a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. To date, the Office of the United States Trustee (the “U.S. Trustee”) has not appointed an official committee of unsecured creditors in this chapter 11 bankruptcy case (the “Chapter 11 Case”).

3. Hilliard currently employs the Debtor as a wealth advisor, and this employment represents the primary source of revenue for the Debtor’s bankruptcy estate. Specifically, the Debtor has a network of clients and customer accounts which constitute his Book of Business. That Book of Business engages in trading and commercial activity with Hilliard, which generates revenue that is paid to the Debtor. To be clear, the Debtor’s network of clients and customer accounts are free to trade and do business with who they like, and are not contractually required to continue doing business with the Debtor or Hilliard.

4. The Debtor is 76 years old and is seeking to transition his Book of Business in a manner that will provide value for him and the Debtor’s bankruptcy estate. Accordingly, in order to protect the value of the Book of Business from losing its value in the event of his death or disability, the Debtor negotiated the Agreement with three wealth advisors employed by Hilliard, Eric M. Vegh, Mark C. Naber, and Kit B. Carter (collectively, the “Successors”).

5. The Debtor’s employment with Hilliard will terminate effective as of December 31, 2018 (the “Retirement Date”). Upon the Debtor’s retirement Hilliard will have a regulatory and contractual obligation to continue to service its customer accounts and clients, including those who are associated with the Debtor and fall within the “Book of Business.” Therefore, if the Debtor retires and does not enter into the Agreement, Hilliard shall be obligated to continue to service the Book of Business but the Debtor will not derive any revenue or benefit from the Book of Business. Indeed, it is the customary practice when a wealth advisor resigns, or is otherwise unable to service his or her client accounts for Hilliard to redistribute that advisor’s

book of business among other wealth advisors with no compensation to the retiring advisor if a transition agreement is not in place. It is necessary and routine for a financial services firm to immediately re-distribute client accounts when there is no transition agreement in place to avoid any lapse in service to the client. Such immediate reassignment is critical given the importance of timing with respect to certain financial decisions.

6. Under the terms of the Agreement, the Debtor will use his best efforts to transition his Book of Business to the Successors. In exchange, Hilliard has agreed to facilitate a payment of \$1,000,000.00 (the “Purchase Price”) to be paid by the Successors. The Purchase Price is payable to the Debtor in equal, monthly installments of Twenty Thousand Eight-Hundred Thirty-Three Dollars and Thirty-Four Cents (\$20,833.34). The payments shall be made over a period not to exceed four (4) years, beginning on or about the fifteenth day of the second month following the Retirement Date and continuing on or about the fifteenth day of each month thereafter until fully paid as contemplated herein.

7. In determining the Purchase Price for the Agreement, the Successors have agreed to facilitate a payment to the Debtor based upon the “trailing twelve month” commissions generated from the Book of Business. A “trailing twelve” commission number, as commonly used in the financial industry, is a calculation of the total commissions generated by a financial advisor in the preceding 12 months from any given date.

8. Significantly, the transaction set forth in the Agreement is the product of an arms-length negotiated transaction between the Debtor and the Successors, and is an arrangement that is standard to the financial industry. Hilliard routinely facilitates into agreements substantially similar to the Agreement with its wealth advisors as a method to preserve client relationships, as a well as to give security to retiring advisors and ensure they are appropriately compensated for the relationships they have cultivated and maintained. This also allows for continuity in

customers relationships with Hilliard so as to avoid unnecessary disruption to clients' financial plans. Without such an arrangement the Debtor risks retiring without any compensation.

### **REQUEST FOR RELIEF**

9. The Debtor requests that the Bankruptcy Court enter an order approving and authorizing the Debtor to enter into the Agreement, thereby transitioning his role at Hilliard and transferring his interests in the Book of Business free and clear of all liens, claims, interests and encumbrances under section 363 of the Bankruptcy Code.

### **ARGUMENT**

#### **I. Entering into the Agreement is a Sound Exercise of the Debtor's Business Judgment.**

10. Section 363 of the Bankruptcy Code provides that a trustee, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Arguably, a debtor's right to manage accounts (such as the Book of Business) constitutes an "interests in property" such that it may be the subject of a transaction under section 363 of the Bankruptcy Code. *Togut v. RBC Dain Correspondent Servs. (In re: S.W.Bach & Co.)*, 435 B.R. 866, 877-84 (S.D.NY August 10, 2010) (Recognizing that the right to earn fees from managing accounts is customarily bought and sold among broker dealers in the financial advisory business, and therefore the debtor's interests in such rights was property of the bankruptcy estate).

11. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor's assets should be authorized if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 289, 295 (3d Cir. 1996); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 P.2d 143 (2d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (Bankr. W.D. Pa. 1991); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (Bankr.

D. Del. 1991); *see also Official Committee of Unsecured Creditors v. The LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Committee of Asbestos-Related Litigation and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

12. It is generally understood that “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). If a valid business justification exists, there is a strong presumption that the agreement at issue was negotiated “in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citation and internal quotation marks omitted).

13. Once a court is satisfied that there is a sound business justification for the proposed use or sale, the court must then determine whether (i) the debtor has provided the interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable, and (iii) the purchaser is proceeding in good faith. *See, e.g., Polvay v. B.O. Acquisitions (In re Betty Owens Sch.)*, 96 Civ. 576 (PKL), 1997 U.S. Dist. LEXIS 5877, at \*12 (S.D.N.Y. Apr. 16, 1997); *accord In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

14. Here, the Debtor has a sound business justification for entering into the Agreement. Specifically, the Debtor is leaving Hilliard as of the Retirement Date. If the Debtor does not enter into the Agreement, he will receive no value for the Book of Business. Therefore, now is the last best time to transition the Book of Business in order to receive full value for it, as

it would be much more difficult to enter into any deal for the Book of Business after the Debtor is terminated as a regular employee of Hilliard.

15. The Debtor has also met the other requirements for approval of the Agreement under section 363 of the Bankruptcy Code. Adequate notice has been provided. The sale price is fair and reasonable, as it comports with industry standards and offers far more value to the Debtor's bankruptcy estate than attempting to market the Book of Business on the open market. Likewise, the Agreement has been fully and fairly negotiated at arms-length with both the Debtor and the Successors having their own, separate outside counsel.

**II. A Private Sale of the Book of Business is in the Best Interest of the Debtor's Bankruptcy Estate.**

16. Rule 6004(f)(1) of the Federal Rules of Bankruptcy Procedure provides that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." FED R. BANKR. P. 6004(f)(1). Private sales of a debtor's assets are routinely approved by bankruptcy courts. *See, e.g., In re Lehman Bros. Holdings Inc.*, No. 08-13555 (SCC) (Bankr. S.D.N.Y. Apr. 16, 2012 & Jan. 13, 2012); *In re Loral Space & Commc'ns Ltd.*, No. 03-41710 (RDD) (Bankr. S.D.N.Y. Sep. 30, 2005); *In re Int'l Wire Group, Inc.*, Case No. 04-11991 (BRL) (Bankr. S.D.N.Y. June 10, 2004); *see Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.)*, 233 B.R. 619 (D.P.R. 1999) (upholding the bankruptcy court's approval of a private sale conducted by debtor).

17. Here, the Debtor has determined that the Sale of the Book of Business by private sale will enable him to obtain the highest and best offer for these assets, thereby maximizing the value of his bankruptcy estate. The Agreement is the result of comprehensive, arms-length negotiations, and the transaction to be made pursuant to the terms of the Agreement will provide a fair value for the Debtor's creditors.

18. A private sale is the only practical way the Debtor can be certain to be compensated for his Book of Business. Selling the Book of Business by public auction would require the Debtors to potentially have to commit to new employment with another wealth management firm, become registered with the new firm and convince the clients comprising his Book of Business to transfer their accounts to the new firm. Given the Debtor's age, his complicated licensure status with various regulatory bodies, the litigation involving the Debtor, and the nature of the Book of Business (i.e. it is composed of numerous clients who could each determine to simply do business with another financial advisor), it is therefore not practical to conduct a public sale of the Book of Business. Moreover, the Debtor would have to locate suitable financial advisors within the new firm to buy and service to service the book, as well as take on the financial and other obligations that come with obtaining the Book of Business. A public auction would likewise create a potential regulatory problem given the privacy rights afforded to the public by 15 U.S.C § 6807, *et seq.* (otherwise referred to as the Graham-Leach-Bliley Act) which governs wealth management firms with respect to protecting the privacy of client information.

19. A private sale to the Successors is also the only practical way to ensure that the Book of Business remains intact and does not diminish in value. For instance, even if Debtor were able to orchestrate a public auction of his Book of Business, the Debtor cannot require clients to transfer their accounts to the purchasing firm. Indeed, if the clients and customers who constitute the Book of Business were asked to move their accounts to a new firm, those clients and customers would have to evaluate the terms and conditions imposed by the new firm, review and sign various documents, and possibly pay certain fees. These impositions on the clients and customers would almost certainly result in some of the clients and customers not "following" the Debtor to a new firm, and therefore the value of the Book of Business would be diminished.

Accordingly, even assuming another firm would make a purchase price contingent upon the successful transfer of a certain number of client accounts, the Debtor's bankruptcy estate risks losing substantial value.

20. There is a limited universe of potential acquirers of the Book of Business for public auction, namely other financial advisors. Based on the limited marketplace for the Book of Business, and the Debtor's business judgement, the Debtor submits that the Successors' offer is the best (and potentially only) offer that he can reasonably expect to receive.

21. The Debtor believes that the value the Debtor's bankruptcy estate – and, thus, the Debtor's creditors – will receive for the Book of Business exceeds any value the Debtor's bankruptcy estate could get if the Debtor were required to attempt to find a new buyer or sell the Book of Business in any other matter. The Debtor believes that the value of the consideration to be received for the Book of Business under the Retirement Agreement is fair and reasonable.

### **III. Hilliard and the Successors Should Be Afforded All Protections Under Section 363(m) as a Good Faith Purchaser.**

22. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from the Debtor's estate notwithstanding that the sale conducted under section 363(b) of the Bankruptcy Code is later reversed or modified on appeal. Specifically, section 363(m) of the Bankruptcy Code states that:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code “fosters the ‘policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.’” *In re Chateaugay Corp.*, 92 Civ.



7094 (PKL), 1993 U.S. Dist. LEXIS 6130, \* 9 (S.D.N.Y. May 10, 1993) (citations omitted). The Debtor's selection of the Successors in entering into the Agreement is the product of arm-length, good faith negotiations. The Debtor requests a finding by this Court that the Successors, and Hilliard as the Successors' employer, are good faith purchasers entitled to the protections of section 363(m) of the Bankruptcy Code.

WHEREFORE, Debtor respectfully requests that the Bankruptcy Court enter an order authorizing the Debtor to enter into the Agreement and granting such other and further relief as is just and equitable.

Respectfully submitted,

/s/ James E. McGhee III

Charity S. Bird

James E. McGhee III

KAPLAN JOHNSON ABATTE & BIRD LLP

710 West Main Street

4<sup>th</sup> Floor

Louisville, Kentucky 40202

E-mail: [cbird@kaplanjohnsonlaw.com](mailto:cbird@kaplanjohnsonlaw.com)

E-mail: [jmcghee@kaplanjohnsonlaw.com](mailto:jmcghee@kaplanjohnsonlaw.com)

*COUNSEL FOR DEBTOR*

### **CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2018, a copy of the foregoing Motion was filed electronically and served via the Court's CM/ECF system upon all parties who have made an appearance in the Bankruptcy Case. Likewise, a copy of the Motion was served on the Debtor's entire creditor matrix that same day.

/s/James E. McGhee III

James E. McGhee III

## Wealth Advisor Transition Agreement

This Wealth Advisor Transition Agreement (hereinafter, "Agreement") is primarily a Compensation Agreement among Thomas O. Eifler, Sr. (hereinafter, "Eifler") and the team of Eric M. Vegh, Mark C. Naber, and Kit B. Carter (hereinafter, "Vegh Naber Carter Group") who are Wealth Advisors (hereinafter, collectively, "Parties", and individually, "Party") employed by J.J.B. Hilliard, W.L. Lyons, LLC (hereinafter, "Hilliard Lyons"). Eifler is based at the St. Matthews Branch in Louisville, Kentucky; and the Vegh Naber Carter Group is based at the Hurstbourne Branch in Louisville, Kentucky. In agreeing to work with one another for the purpose of conducting financial services business at Hilliard Lyons, the Parties do not intend to create a partnership, joint venture, or other type of legal entity, and accordingly, shall not be bound by a fiduciary standard of care in their dealing with each other. Hilliard Lyons is not a party to this Agreement. However, in approving this Agreement, Hilliard Lyons stipulates that the terms of the Agreement are acceptable to it as the employer of the Parties, and that Hilliard Lyons will fulfill its role in facilitating the terms of this Agreement.

WHEREAS, the Parties wish to set forth their respective rights and obligations with respect to Eifler's retirement from employment at Hilliard Lyons, effective on or prior to December 31, 2018, and the transition of his book of business (i.e., client relationships, assets, and accounts) as housed under his individual representative number (EG01) to the Vegh Naber Carter Group as set forth herein.

WHEREAS, Eifler is a debtor in possession in the case pending as *In re Thomas O. Eifler*, Chapter 11 Case No. 17-31862-thf (the "Bankruptcy Case") before the United States Bankruptcy Court for the Western District of Kentucky (the "Bankruptcy Court").

WHEREAS, as agreed upon by the Parties, effective upon the Parties' signing of this Agreement and the entry of an order by the Bankruptcy Court authorizing Eifler to enter into the Agreement, Eifler agrees to join on a team with the Vegh Naber Carter Group for the purpose of transitioning his book of business, as housed under his EG01 representative number, to the Vegh Naber Carter Group; and remain a Wealth Advisor on the team until the date of his retirement on or prior to December 31, 2018.

WHEREAS, the Parties agree, for the transition of Eifler's book of business to the Vegh Naber Carter Group, the Vegh Naber Carter Group shall pay Eifler a Total Sum of One Million Dollars (\$1,000,000.00) payable to Eifler in equal, monthly installments of Twenty Thousand Eight-Hundred Thirty-Three Dollars and Thirty-Four Cents (\$20,833.34), the "Installment Payments" over a period not to exceed four (4) years, beginning on or about the fifteenth day of the second month following the date of Eifler's retirement from Hilliard Lyons and continuing on or about the fifteenth day of each month thereafter until fully paid as contemplated herein. As set forth in Exhibit "A" of this Agreement, annexed hereto, the Parties further agree that during the term of this Agreement, the Total Sum and the corresponding Installment Payments may be adjusted on a quarterly basis in the event of account attrition and in spite of the good faith efforts of the Vegh Naber Carter Group to retain the book of business transferred from Eifler to the Vegh Naber Carter Group. It is anticipated that payments made to Eifler as a non-employee of Hilliard Lyons shall be reported on IRS Form 1099-MISC, Box "3".

WHEREAS, Hilliard Lyons agrees to facilitate payment of the Installment Payments totaling One Million Dollars (\$1,000,000.00) from the Vegh Naber Carter Group to Eifler, and may be adjusted as set forth in Exhibit "A" of this Agreement, in exchange for the Vegh Naber Carter Group signing prior to the time of first payment an Earnings Deduction Authorization (EDA) to allow Hilliard Lyons to facilitate the full amount of each Installment Payment made to Eifler. Funds must be earned prior to payments being made. In the event that available funds are short of a scheduled payment, only the available funds shall be paid out; and the remaining difference shall be paid out from available funds in the next scheduled payment(s) due to Eifler.

NOW THEREFORE, in consideration of the respective promises and agreements of the Parties, the Recitals contained in the preceding paragraphs, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. The Vegh Naber Carter Group is considered as the successor to Eifler's book of business as housed under his EG01 representative number. It is anticipated that the Vegh Naber Carter Group shall have no contractual payment obligation to Eifler once payment is made in full of the Installment Payments, anticipated as on or about January 15, 2023.
2. The intent of this agreement is to allow Eifler to transition his book of business as housed under his EG01 representative number to the Vegh Naber Carter Group in order to maximize the retention of these clients by the Vegh Naber Carter Group and Hilliard Lyons. It is understood that Eifler shall expend his best efforts in transitioning his current client relationships, as housed under his EG01 representative number, to the Vegh Naber Carter Group until the date of his retirement, effective on or prior December 31, 2018. The Parties agree that Eifler shall have two primary roles during this period of the transition:
  - a. Assist the Vegh Naber Carter Group in maximizing client retention by positioning his client relationships, as housed under his EG01 representative number, as client relationships of the Vegh Naber Carter Group by furthering introductions of said clients to the Vegh Naber Carter Group and encouraging said clients to remain clients of the Vegh Naber Carter Group upon his retirement. The intent is for Eifler's clients to become equally comfortable being served by the registered representatives of the Vegh Naber Carter Group so that they remain clients of the Vegh Naber Carter Group after Eifler retires from employment with Hilliard Lyons. The Parties agree to apportion \$2,000.00 per month of the Installment Payments to Eifler's continuing obligations under this Paragraph. Eifler's obligations under this Paragraph shall continue until June 30, 2019. The means used to introduce the Vegh Naber Carter Group to Eifler's clients and to encourage them to stay with the Vegh Naber Carter Group shall be at the discretion of and as agreed upon by the Parties and as approved by the Regional Director responsible for supervising the Parties; and

- b. Refrain from soliciting new or existing business, opening new accounts, contacting clients to discuss securities related matters, servicing the accounts generating the revenue in the Book of Business or otherwise engaging in any securities related matters of a registered representative.
3. The Parties agree that effective through the date of Eifler's retirement of employment from Hilliard Lyons on or prior to December 31, 2018, Eifler shall be credited one-hundred percent (100%) of the monthly net commissions generated under his individual representative number (EG01). Effective upon the day after Eifler's date of retirement from Hilliard Lyons and thereafter, the Vegh Naber Carter Group shall be credited one-hundred percent (100%) of the monthly net commissions generated by accounts currently housed under EG01. Net commission payments will be made through Hilliard Lyons' payroll system, less elected employee deductions and tax withholdings as required by law.
4. Eifler's book of business as housed under EG01 shall be considered the client relationships, assets and accounts of the Vegh Naber Carter Group, effective January 1, 2019, or upon the day after Eifler's date of retirement from Hilliard Lyons, whichever occurs first; and shall transfer to a representative number designated to the Vegh Naber Carter Group. All portions of the Installment Payments not otherwise apportioned to any other obligation under this Agreement are apportioned to this Paragraph. Eifler shall have no further obligations under this Paragraph.
5. Should Eifler, prior to January 15, 2023, encourage clients of the book of business he transferred to the Vegh Naber Carter Group or the clients of the Vegh Naber Carter Group to transfer their accounts from Hilliard Lyons, the Vegh Naber Carter Group may cease payments to Eifler upon obtaining written approval from both the Hilliard Lyons' executive in charge of Private Wealth and the Regional Director responsible for supervising the Parties. Eifler agrees that Hilliard Lyons and the Vegh Naber Carter Group will be entitled to injunctive relief; and that money damages will not be adequate to compensate Hilliard Lyons and the Vegh Naber Carter Group or to protect and preserve the status quo. Therefore, EIFLER CONSENTS TO THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER, or a PRELIMINARY or PERMANENT INJUNCTION ordering:
  - a. that he immediately return to Hilliard Lyons and the Vegh Naber Carter Group admission to all records whether original, duplicated, computerized, handwritten, or in any other form whatsoever relating to accounts held by the Vegh Naber Carter Group or transitioned from Eifler to the Vegh Naber Carter Group and that he be enjoined and restrained from using or disclosing any information contained in such records; and
  - b. that for a period of one (1) year from the date relief is granted, he be enjoined and restrained from soliciting any account held by the Vegh Naber Carter Group or transitioned from Eifler to the Vegh Naber Carter Group.

6. Should the Vegh Naber Carter Group leave their team partnership with Eifler prior to Eifler's date of retirement from Hilliard Lyons and prior to the transfer of Eifler's book of business to them and encourage clients of Eifler to transfer their accounts from Hilliard Lyons, the Vegh Naber Carter Group agrees that Hilliard Lyons and Eifler will be entitled to injunctive relief; and that money damages will not be adequate to compensate Hilliard Lyons and Eifler or to protect and preserve the status quo. Therefore, THE VEGH NABER CARTER GROUP CONSENTS TO THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER, or a PRELIMINARY or PERMANENT INJUNCTION ordering:
  - a. that they immediately return to Hilliard Lyons and Eifler admission to all records whether original, duplicated, computerized, handwritten, or in any other form whatsoever relating to accounts held by Eifler and that they be enjoined and restrained from using or disclosing any information contained in such records; and
  - b. that for a period of one (1) year from the date relief is granted, they be enjoined and restrained from soliciting any account held by Eifler.

The above language shall not prohibit the Vegh Naber Carter Group from taking client information, as defined by the Protocol for Broker Recruiting (the "Protocol"), to which Hilliard Lyons is a signatory, for clients under their representative codes or client information for clients they brought to the team. Nothing in this Agreement alters Hilliard Lyons' privacy obligations to its clients under relevant laws, rules, regulations, and contracts.

7. The Parties recognize and agree that all records, whether original, duplicated, computerized, memorized, handwritten, or in any other form, and all information ("Information") of any account of each Party are confidential and the sole and exclusive property of Hilliard Lyons. This Information is not generally known outside of Hilliard Lyons and is confidential and used only on a "need to know" basis. Further, this Information is unique and cannot be easily duplicated or acquired. Consequently, the Parties will not use this Information or remove any such records from any office of Hilliard Lyons except for the sole purpose of conducting business on behalf of Hilliard Lyons. The Parties agree not to divulge or disclose this Information to any third party either during their employment or at any time thereafter unless required by order of a court or regulating agency having jurisdiction. Notwithstanding Paragraphs 5, 6, and 7 of this Agreement, if one of the Parties voluntarily leaves Hilliard Lyons, the departing Party may take his or her client information allowed under the Protocol for Broker Recruiting (the "Protocol"), which Hilliard Lyons is a signatory. Nothing in this Agreement alters Hilliard Lyons' privacy obligations to its clients under relevant laws, rules, regulations, and contracts. As set forth in this Agreement, the ability of the Vegh Naber Carter Group to take client information received from Eifler will be governed and controlled by the terms of their EDA, which is hereby incorporated by reference.

8. Except in the event of Eifler's death, the portions of the Installment Payments identified in Paragraph 2 or Paragraph 5, shall be payable to Eifler only upon Eifler's quarterly certification in a writing, beginning the date of execution and for a period of one-year thereafter, that Eifler has complied with the provisions of such Paragraphs for such month.
9. In the event of Eifler's death prior to his date of retirement from Hilliard Lyons, Eifler's estate shall be entitled to receive from Hilliard Lyons his compensation earned through the end of the month of the date of his death and those benefits made available by Hilliard Lyons. Eifler's estate and other beneficiaries shall not be entitled to any further compensation, benefits, or payments from Hilliard Lyons.
10. In the event of Eifler's death prior to his date of retirement from Hilliard Lyons, the Parties agree that Eifler's book of business as housed under EG01 shall immediately transfer to the Vegh Naber Carter Group. Therefore, in the event of Eifler's death at any time prior to the end of this Agreement, the Parties agree that the Vegh Naber Carter Group shall continue to make any remaining Installment Payments of the Total Sum to the designated beneficiaries of Eifler as further set forth in Exhibits "A" and "B", annexed hereto. It is anticipated that these payments will be made by Hilliard Lyons deducting the Installment Payments from the monthly net commissions of the Vegh Naber Carter Group and then issuing the payments to Eifler's designated beneficiaries and reporting the compensation on IRS Form 1099-MISC, Box "3". Hilliard Lyons does not assume any tax responsibility arising out of these transactions. Notwithstanding any other provision in this Paragraph 10 or elsewhere in this Agreement, nothing in this Agreement shall be construed to entitle the designated beneficiaries of Eifler to receive commission payments. Eifler's estate and other beneficiaries shall not be entitled to any further compensation, benefits, or payments from the Vegh Naber Carter Group.
11. The Parties acknowledge that because Eifler is a debtor in the Bankruptcy Case, the Bankruptcy Court must enter an order authorizing Eifler to enter into the Agreement, and that the Agreement shall not be binding upon any party until such order is entered. The Parties acknowledge that to the extent there is any inconsistency between the terms of that order and this Agreement, the order shall govern.
12. Should the Vegh Naber Carter Group no longer be affiliated with Hilliard Lyons, the Vegh Naber Carter Group agrees to continue making the Installment Payments specified in this Agreement to Eifler without any further obligation to or by Hilliard Lyons, with the exception of any loan and bonus agreements, promissory notes, compensation outlines, trainee agreements, performance agreements, and earnings deduction authorizations signed by the Parties.
13. This Agreement constitutes the entire agreement between the Parties. No representation, promise, inducement or statement, or intention has been made by the Parties that is not embodied in this Agreement. This Agreement may not be

amended, modified, or terminated except by a written instrument signed by all parties hereto.

14. Should any provision or provisions of this Agreement prove to be invalid, void, illegal, or the subject of a legal attack, this shall in no way affect, impair, or invalidate the remaining provisions hereof.
15. The Parties represent and agree that they have been given an opportunity to consult with their attorneys; that they have carefully read and understand all the provisions of this Agreement; that they have taken as much time as they needed for full consideration of it; and they have the capacity and are voluntarily entering into this Agreement.
16. The Parties agree that any and all controversies arising from or in connection with the enforcement of this Agreement shall be determined by arbitration. Any arbitration under this Agreement shall be before the Financial Industry Regulatory Authority (FINRA). The award of the arbitrators, or of the majority of them, shall be final, and judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction. The Parties agree that any and all legal costs and expenses, including but not limited to attorneys' fees, are not recoverable in arbitration to settle any and all controversies arising from or in connection with the enforcement of this Agreement. This provision is not applicable for any disputes arising under a whistleblower statute that prohibits the use of predispute arbitration agreements. Parties may arbitrate such a dispute if they agree to arbitrate after the dispute arises.
17. This Agreement is not intended to create and shall not create any contract of employment for any fixed term or duration between Hilliard Lyons and any of the Parties. The Parties shall at all times be employees at will of Hilliard Lyons who can quit Hilliard Lyons or whom Hilliard Lyons can discharge at any time with or without cause. The Parties expressly agree and acknowledge that this Agreement is not an employment contract or an agreement to employ them for a specified period of time or a promise of continued employment with Hilliard Lyons for any period of time whatsoever. Nothing in this Agreement shall be construed to in any way terminate, supersede, undermine, or otherwise modify the "at-will" status of the employment relationship between Hilliard Lyons and the Parties, pursuant to which either Hilliard Lyons or the Parties may terminate the employment relationship at any time, with or without cause, with or without notice.
18. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
19. This Agreement shall be governed by the laws of the Commonwealth of Kentucky without regard to conflicts-of-law principles.

*THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK*

## Agreement Approval

This Agreement among the Parties is adopted effective upon the date of signing this Agreement.

Signed:

\_\_\_\_\_  
Thomas O. Eifler, Sr., Senior Vice President  
Wealth Advisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric M. Vegh, Senior Vice President  
Wealth Advisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mark C. Naber, Sr., Senior Vice President  
Wealth Advisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kit B. Carter, First Vice President  
Wealth Advisor

\_\_\_\_\_  
Date

Approved on behalf of J.J.B. Hilliard, W.L. Lyons, LLC:

\_\_\_\_\_  
David McDonald, Senior Vice President  
Regional Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Alan H. Newman, Executive Vice President  
Executive Director of Private Wealth

\_\_\_\_\_  
Date

\_\_\_\_\_  
J. Curtis McCubbin, Senior Vice President  
Chief Legal Officer

\_\_\_\_\_  
Date



**Exhibit A**  
**Account Attrition**

The Parties agree that the Total Sum and the corresponding monthly Installment Payments due to Eifler from the Vegh Naber Carter Group shall be adjusted on a quarterly basis during the term of this Agreement when certain criteria are met as described below. Adjustments shall be based upon the account attrition occurring within the book of business transferred from Eifler to the Vegh Naber Carter Group despite the good faith efforts of the Vegh Naber Carter Group to retain such accounts. The initial adjustment shall apply when a total in excess of \$50,000.00 (Fifty Thousand Dollars) in trailing twelve months' gross revenue generated by such accounts transfers away from the Vegh Naber Carter Group. Once this threshold is crossed, and upon quarterly review thereafter, the Parties agree that the balance of the Total Sum shall be reduced by 100% (one hundred percent) of the trailing twelve months' gross revenue generated by the departed client relationships (above, and not including, the \$50,000.00 threshold), effective upon the date of account departure, and divided equally over the remaining months of the term of this Agreement as a reduction to the corresponding Installment Payments; and as approved by the executive in charge of Private Wealth and the Regional Director responsible for supervising the Parties.

The term "trailing twelve months' gross revenue" shall have the meaning ordinarily attributable to such terms by Hilliard Lyons in its ordinary course of business.

*THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK*

**Exhibit B**  
**Designated Beneficiaries of Eifler**

Primary Beneficiary

Diana M. Eifler, Spouse  
Date of Birth: 2/17/1943  
Allocation: 100%

Contingent Beneficiaries

Timothy J. Eifler, Son  
Date of Birth: 5/1/1969  
Allocation: 50%

Julie E. Corbett, Daughter  
Date of Birth: 7/1/1973  
Allocation: 50%

*THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK*

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

-----X  
 In re: : Chapter 11  
 :  
 Thomas O. Eifler, Sr. : Case No. 17-31862-THF  
 :  
 Debtor. :  
 : Honorable Thomas H. Fulton  
 -----X

**ORDER GRANTING MOTION OF THE DEBTOR FOR ENTRY  
OF AN ORDER APPROVING AND AUTHORIZING THE DEBTOR  
TO ENTER INTO WEALTH ADVISOR TRANSITION AGREEMENT**

Upon the *Motion of the Debtor for Entry of an Order Approving and Authorizing the Debtor to Enter Into Wealth Advisor Transition Agreement* (the “Motion”)<sup>1</sup> filed by Thomas O. Eifler, Sr. (the “Debtor”); and the Court having reviewed and considered the Motion and the objections thereto; and due and sufficient notice of the Motion having been given; and it appearing that the relief requested in the Motion is in the best interest of the Debtor, the Debtor’s estate, the creditor and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor; it is hereby

**FOUND AND DETERMINED THAT:<sup>2</sup>**

A. **Jurisdiction and Venue.** This Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue for this adversary proceeding is proper under 28 U.S.C. §§ 1408 and 1409.

<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Motion.

<sup>2</sup> These findings and determinations constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. Where appropriate, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact.

B. **Legal Predicates.** The legal predicate for the relief sought in the Motion is section 363 of the Bankruptcy Code.

C. **Final Order.** This Order constitutes a final order within the meaning of 28 U.S.C §158(a). Notwithstanding Bankruptcy Rules 6004(h) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein.

D. **Notice.** Based on the representations of counsel, (i) proper, timely, adequate and sufficient notice of the Motion has been provided to each party entitled to such notice; (ii) such notice was good, sufficient and appropriate under the particular circumstances; and (iii) no other or further notice of the Motion is or shall be required.

E. **Sale Transaction is in the Best Interests.** The consideration provided by the Successors under the Agreement constitutes the highest or otherwise best offer for the Book of Business and provides fair consideration to the Debtor. Consummation of the Agreement at this time is in the best interests of Debtor, his creditors, his estate and other parties in interest.

F. **Business Justification.** Sound business reasons exist for the Debtor to enter into the Agreement. Entry into the Agreement and the consummation of the transactions contemplated thereby constitute the Debtor's exercise of sound business judgment and such acts are in the best interests of Debtor, his estate and all parties in interest. The terms and conditions of the Agreement, including, without limitation, the consideration to be realized by the Debtor, are fair and reasonable.

G. **Good Faith Purchaser.** The Successors, and to the extent applicable Hilliard as the Successors' employer, are good faith purchasers within the meaning of section 363(m) of the Bankruptcy Code and, as such, are entitled to the full protections of the same.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED to the extent set forth herein.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits and denied with prejudice.
3. The Agreement is approved
4. The Debtor is hereby authorized and empowered to: (i) execute the Agreement, along with any additional instruments or documents that may be necessary to implement the Agreements, provided that such additional documents do not materially alter its terms; and (ii) take any actions necessary to consummate the Agreement in accordance with its terms and conditions.

SO ORDERED.

Tendered by:

Charity S. BIRD  
James E. McGhee III  
KAPLAN JOHNSON ABATE & BIRD LLP  
710 West Main Street  
4<sup>th</sup> Floor  
Louisville, Kentucky 40202  
E-mail: [cbird@kaplanjohnsonlaw.com](mailto:cbird@kaplanjohnsonlaw.com)  
[jmcghee@kaplanjohnsonlaw.com](mailto:jmcghee@kaplanjohnsonlaw.com)

*COUNSEL FOR DEBTOR*