

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
TMT USA SHIPMANAGEMENT LLC, et al.,¹	§	Case No. 13-33740
	§	
DEBTORS.	§	(Joint Administration Requested)

**DEBTORS' EMERGENCY MOTION FOR ORDER (I) AUTHORIZING CONTINUED
USE OF EXISTING BUSINESS FORMS AND RECORDS; (II) AUTHORIZING
MAINTENANCE OF EXISTING BANK ACCOUNTS AND CASH MANAGEMENT
SYSTEM; AND (III) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(b)**

IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING AND YOU MUST RESPOND SPECIFICALLY TO EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY ONE (21) DAYS FROM THE DATE YOU WERE SERVED AND GIVE A COPY TO THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF.

IF A PARTY REQUESTS EMERGENCY CONSIDERATION, THE COURT MAY ACT EXPEDITIOUSLY ON THE MATTER. IF THE COURT ALLOWS A SHORTER RESPONSE TIME THAN TWENTY ONE (21) DAYS, YOU MUST RESPOND WITHIN THAT TIME. IF THE COURT SETS AN EMERGENCY HEARING BEFORE THE RESPONSE TIME WILL EXPIRE, ONLY ATTENDANCE AT THE HEARING IS NECESSARY TO PRESERVE YOUR RIGHTS. IF AN EMERGENCY HEARING IS NOT SET, YOU MUST RESPOND BEFORE THE RESPONSE TIME EXPIRES.

THE DEBTORS HAVE REQUESTED THAT THIS MOTION BE CONSIDERED AT THE DEBTORS' FIRST DAY HEARINGS.

¹ The Debtors in these chapter 11 cases are: (1) A Whale Corporation; (2) B Whale Corporation; (3) C Whale Corporation; (4) D Whale Corporation; (5) E Whale Corporation; (6) G Whale Corporation; (7) H Whale Corporation; (8) A Duckling Corporation; (9) F Elephant Corporation; (10) F Elephant Inc.; (11) A Ladybug Corporation; (12) C Ladybug Corporation; (13) D Ladybug Corporation; (14) A Handy Corporation; (15) B Handy Corporation; (16) C Handy Corporation; (17) B Max Corporation; (18) New Flagship Investment Co., Ltd; (19) RoRo Line Corporation; (20) Ugly Duckling Holding Corporation; (21) Great Elephant Corporation; (22) TMT Procurement Corporation; and (23) TMT USA Shipmanagement LLC.

TMT USA Shipmanagement LLC, *et al.*, the above-captioned debtors and debtors in possession (together, the “Debtors”), by and through their undersigned proposed attorneys, hereby file this motion (the “Motion”) for an Order (i) Authorizing Continued Use of Existing Business Forms and Records; (ii) Authorizing Maintenance of Existing Bank Accounts and Cash Management System; and (iii) Waiving the Requirements of 11 U.S.C. § 345(b) and in support thereof, respectfully represent as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over these cases and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157. Venue of these chapter 11 cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested in this Motion are Bankruptcy Code §§ 105, 345, 363, 503(b)(1), 549 and Bankruptcy Rule 2002.

II. BACKGROUND

Business Description

2. On June 20, 2013 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11, Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”). Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtors are operating their businesses and managing their property as debtors in possession. The Debtors have requested joint administration of these chapter 11 cases by motion filed concurrently herewith. No trustees or examiners have been appointed in these cases.

3. Together, the Debtors are known in the industry as the TMT Group (“TMT”) based on the original company known as Taiwan Marine Transport Co. Ltd. (a non-debtor),

which was founded in 1958 as a banana boat operator with inter-Asia routes.² Since then, the TMT Group has grown into a provider of worldwide sea borne transportation services. The Debtors' fleet consists of 17 vessels (the "Vessels"), each held by an individual ship owning company (a common corporate structure in the industry). The TMT fleet is diversified to span several sectors of maritime transportation, such as the bulk sector, vehicle sector, ore sector, and oil sector. Vessels range in size from approximately 27,000 dead weight tons (dwt) to approximately 320,000 dwt. The Debtors' total dwt capacity is approximately 3.2 million dwt, and the average age of the fleet is younger than two and a half years (excluding *M/V A Duckling*, which is 14 years old, and *F Elephant*, which is 23 years old). Vessels are variously flagged in Liberia, Panama, and the Marshall Islands.

4. TMT generates revenues by employing its fleet of Vessels on time charters as well as in the spot market. Additionally, TMT charters out its "Whale" and "Elephant" vessels to the affiliated non-debtor Blue Whale Corporation under bareboat charters. Technical and commercial management of the Vessels are carried out by various non-debtor affiliate entities.

Cash Management

5. Prior to commencing these cases, in the ordinary course of their businesses, the Debtors used a cash management system (the "Cash Management System") to efficiently collect, transfer, and disburse funds generated by their business operations. The Cash Management System consists of the accounts listed on **Exhibit A**, attached hereto. All such accounts together are collectively referred to herein as the "Accounts."

6. The Cash Management System of the Debtors is extremely straightforward. Each Debtor maintains a cash intake account (each a "Cash Intake Account") used to collect accounts

² The "TMT" acronym was changed from Taiwan Marine Transport to Today Makes Tomorrow in 2007 as the TMT Group expanded operations throughout the world.

receivable and to satisfy operating expenses. Each Debtor that is a borrower, except for TMT Procurement Corporation, also maintains a retention account for each loan for which it is liable (each a “Retention Account”) at the applicable lead arranger bank. With respect to all of their Accounts, the Debtors maintain accounting controls to accurately trace the funds through the Cash Management System to ensure that all transactions are adequately documented and readily ascertainable.

III. RELIEF REQUESTED AND BASIS THEREFOR

7. The Debtors request, pursuant to §§ 105, 345, 363, 503(b)(1), and 549 of the Bankruptcy Code, the entry of an order (i) authorizing the Debtors to continue using their existing business forms and records; (ii) authorizing the Debtors to maintain their bank accounts and Cash Management System; and (iii) waiving the requirements of 11 U.S.C. § 345(b).

A. The U.S. Trustee Guidelines and Section 345(b) of the Bankruptcy Code

8. The Office of the United States Trustee for the Southern District of Texas (the “U.S. Trustee”) has established its Guidelines for Chapter 11 Debtors-in-Possession (the “Guidelines”) in order to supervise the administration of chapter 11 cases. The Guidelines require chapter 11 debtors in possession to, among other things, close all existing bank accounts and open new debtor-in-possession (“DIP”) bank accounts, establish one DIP account for all estate monies required for the payment of taxes (including payroll taxes), maintain a separate DIP account for cash collateral, and obtain checks for all DIP accounts that bear the designation, “debtor in possession,” the bankruptcy case number, and the type of account. The Guidelines also require debtors to close their books and records as of the petition date and to open new books and records. The Guidelines are designed to provide, among other things, a clear demarcation between prepetition and postpetition transactions and operations, which would, in theory, prevent the inadvertent postpetition payment of a prepetition claim.

9. As set forth below, the Debtors seek a waiver of certain requirements of the Guidelines. The Debtors' operations would be harmed by the disruption, confusion, delay, and cost that would most certainly result from rigid compliance with the Guidelines.

10. Likewise, § 345(b) of the Bankruptcy Code establishes certain requirements related to money of the estates as follows:

- (b) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested—
 - (i) a bond—
 - (A) in favor of the United States;
 - (B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and
 - (C) conditioned on—
 - (i) a proper accounting for all money so deposited or invested and for any return on such money;
 - (ii) prompt repayment of such money and return; and
 - (iii) faithful performance of duties as a depository; or
 - (ii) the deposit of securities of the kind specified in section 9303 of title 31; unless the court for cause orders otherwise.

11 U.S.C. § 345(b).

B. Existing Business Forms and Records

11. The Debtors seek a waiver of the Guidelines' requirement that they open a new set of books and records as of the Petition Date. Opening a new set of books and records would create unnecessary administrative burdens and hardship and would cause unnecessary expense, utilization of resources, and delay. The Debtors, in the ordinary course of their business, use

many invoices, stationery, and other business forms. By virtue of the nature and scope of the business in which the Debtors are engaged and the numerous other parties with whom they deal, the Debtors need to use their existing business forms without alteration or change. Printing new business forms would take an undue amount of time and expense. Accordingly, the Debtors respectfully request that they be authorized to continue to use their existing business forms and to maintain their existing business records.

C. Continued Use of Bank Accounts and Cash Management System

12. The Debtors respectfully request authority to maintain the Accounts and the Cash Management System in accordance with their usual and customary practices to ensure a smooth transition into chapter 11 with minimal disruption to operations. The Debtors also request authority to close any of the Accounts if, in the exercise of their business judgment, the Debtors determine that such action is in the best interest of their estates.

13. In order to conduct their postpetition business, the Debtors need to be able to issue checks to vendors, service providers, employees, and others. To open new accounts and obtain checks for those accounts will cause delay and disruption to the Debtors' business and a delay in receipt of funds needed for the Debtors' operations. The Debtors instruct the appropriate banks to add a "Debtor in Possession" designation to current and future Accounts.

14. The Debtors' Cash Management System constitutes an ordinary course, essential business practice providing significant benefits to the Debtors including, among other things, the ability to (i) control funds, (ii) ensure the availability of funds when necessary, and (iii) reduce costs and administrative expenses by facilitating the movement of funds and the development of more timely and accurate account balance information. Any disruption of the Cash Management System could have a severe and adverse impact upon the Debtors' reorganization efforts.

15. The relief requested in this motion is vital to ensuring the Debtors' seamless transition into bankruptcy. Authorizing the Debtors to maintain their Cash Management System, as modified, will avoid many of the possible disruptions and distractions that could divert the Debtors' attention from more pressing matters during the initial days of these chapter 11 cases.

16. No checks issued prior to the Petition Date will be honored, except as otherwise provided by separate order of this Court. The Debtors reserve their rights pursuant to § 549 of the Bankruptcy Code with respect to any check issued prepetition that is inadvertently honored postpetition. The Debtors will continue to maintain records respecting all transfers between and among the Accounts so that all transactions can be ascertained after they have occurred.

D. Payment of Banking Fees

17. Additionally, certain banks charge monthly fees to the Debtors for maintaining the Accounts, which may vary monthly based on actual usage. The fees are assessed according to the kind of transaction. The Debtors were current on payment of these monthly fees as of the Petition Date. The Debtors request authority to continue paying the monthly fees in the ordinary course of business, including any portion of the fee attributable to prepetition services.

E. Waiver of Requirements of Guidelines and 11 U.S.C. § 345(b)

18. Extensive authority supports the relief the Debtors seek in the Motion. In other chapter 11 cases, courts have recognized that strict enforcement of the United States Trustee requirements does not always serve the purposes of a chapter 11 bankruptcy. Accordingly, courts in this District and other districts have often waived such requirements and replaced them with alternative procedures in large, complex cases where the debtors had sophisticated existing cash management systems such as those of the Debtors. *See, e.g., In re Lack's Stores, Inc.*, Case No. 10-60149 (Bankr. S.D. Tex. Jan. 26, 2011); *In re Energy Partners, Ltd.*, Case No. 09-32957

(Bankr. S.D. Tex. May 8, 2009); *In re CDX Gas, LLC*, Case No. 08-37922 (Bankr. S.D. Tex. Jan. 13, 2009); *In re Dewey & LeBoeuf LLP*, Case No. 12-12321 (Bankr. S.D.N.Y. July 12, 2012); *In re Reddy Ice Holdings, Inc.*, Case No. 12-32349 (Bankr. N.D. Tex. Apr. 13, 2012); *In re LSP Energy Limited Partnership*, Case No. 12-10460 (Bankr. D. Del. Mar. 12, 2012).

19. Likewise, pursuant to § 105(a) of the Bankruptcy Code, the Debtors seek a waiver of the requirements of § 345(b) of the Bankruptcy Code. This Court has authority to modify the literal requirements of § 345 “for cause” as provided in § 345(b)(2) and by virtue of § 105(a), which permits this Court to issue an order “necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a).

20. Courts have long recognized that the power granted by § 105(a) was expressly meant to be exercised to effectuate the rehabilitation of the debtor. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 16 (1977)). The relief requested in this Motion is critical to the Debtors’ successful reorganization, and is justified under § 105(a).

21. In fact, debtors are often authorized to use their existing depository accounts, even when such accounts are located at foreign banks. *See, e.g., In re Aerovias, Nacionales de Colombia S.A.*, Case No. 03-11678 (Bankr. S.D.N.Y. June 4, 2003) (order allowing maintenance of over 100 foreign bank accounts in dozens of foreign banks); *In re Global Crossing Ltd.*, Case No. 02-40188 (Bankr. S.D.N.Y. May 20, 2002) (order allowing maintenance of bank accounts, including over 30 foreign accounts); *In re TBS Int’l Ltd.*, Case No. 00-41696 (Bankr. S.D.N.Y. July 7, 2000) (order explicitly waiving requirement for § 345 and allowing maintenance of foreign bank accounts in England, Bermuda and Gibraltar); *In re Service Merchandise Co.*, 240 B.R. 894 (Bankr. M.D. Tenn. 1999) (cause existed to waive § 345(b) so that large debtor was not

“hand-cuffed”); *In re Pan Am Corp., et al.*, Nos. 91 B 10080 through 10087 (Bankr. S.D.N.Y. Jan. 25, 1991) (order allowing maintenance of bank accounts including more than 200 accounts in approximately 75 foreign banks).

22. Additionally, § 363(c)(1) of the Bankruptcy Code authorizes the debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of § 363(c)(1) of the Bankruptcy Code is to provide a debtor in possession with the flexibility to engage in the ordinary course transactions required to operate its business without unnecessary oversight by its creditors or the Court. *Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997); *In re Git-N-Go, Inc.*, 322 B.R. 164, 171 (Bankr. N.D. Okla. 2004); *In re Enron Corp.*, No. 01-16034 (ALG), 2003 WL 1562202, at *15 (Bankr. S.D.N.Y. Mar. 21, 2003); *In re Atlanta Retail, Inc.*, 287 B.R. 849, 856 (Bankr. N.D. Ga. 2002); *Chaney v. Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.)*, 207 B.R. 406, 409 (S.D.N.Y. 1997). Included within the purview of § 363(c) is a debtor’s ability to continue the “routine transactions” necessitated by a debtor’s cash management system. *Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtors seek authority under § 363(c)(1) of the Bankruptcy Code to continue the collection, concentration, and disbursement, of cash pursuant to their Cash Management System, as described above.

23. Cause exists to modify the provisions of § 345 because requiring the Debtors to change their deposits and other procedures would severely disrupt the Cash Management System. Additionally, the Accounts are maintained with financial institutions that are financially stable. For instance, the Debtors maintain Cash Intake Accounts and Retention Accounts at the following banks, which maintain the following ratings:

- (a) Cathay United Bank
 - (i) S&P – LT Foreign Issuer Credit A-
 - (ii) Moody’s – Foreign LT Bank Deposits A2
- (b) Shanghai Commercial & Savings Bank Ltd.
 - (i) S&P – LT Foreign Issuer Credit BBB+
- (c) Mega International Commercial Bank
 - (i) S&P – LT Foreign Issuer Credit A
 - (ii) Moody’s – Foreign LT Bank Deposits A1

24. For each of the foregoing reasons, a waiver of the requirement to comply with the Guidelines and with § 345(b) should not pose any risk to the Debtors’ estates.

IV. NOTICE

25. Notice of this Motion has been or will be provided to (a) the Office of the United States Trustee for the Southern District of Texas, (b) all known or alleged secured creditors, (c) the 30 largest unsecured non-insider creditors of the Debtors (on a consolidated basis), (d) all known shareholders holding over 5% of a class of equity interests of any Debtor, (e) all Debtor professionals, (f) the United States Attorney’s Office for the Southern District of Texas, (g) the Internal Revenue Service, (h) any persons who have filed a request for notice pursuant to Bankruptcy Rule 2002, and (i) any such other government agencies to the extent required by the Bankruptcy Rules and Local Rules. The Debtors submit that no further notice of this Motion is required.

WHEREFORE, premises considered, the Debtors respectfully request that the Court grant the Motion, authorize the Debtors to continue using their existing business forms and records, authorize the Debtors to maintain their existing corporate bank accounts and cash management system, waive the requirements of 11 U.S.C. § 345(b), and grant such other and further relief as is just and proper.

Respectfully submitted,

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