

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

CYNERGY DATA, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered  
Related Docket No. 30

**ORDER GRANTING APPLICATION FOR ORDER PURSUANT TO  
11 U.S.C. §§ 327(a) AND 329 AND BANKRUPTCY RULES 2014 AND 2016  
AUTHORIZING THE EMPLOYMENT AND RETENTION OF  
STIFEL, NICOLAUS & COMPANY, INCORPORATED  
AND PETER J. SOLOMON SECURITIES COMPANY, LLC  
AS ADVISERS TO THE DEBTORS**

Upon the Application of the above-referenced debtors and debtors-in-possession (the “Debtors”), for an order, pursuant to §§ 327(a) and 328(a) of title 11, United States Code (the “Bankruptcy Code”), Fed. R. Bankr. P. (“Bankruptcy Rule”) 2014 and Local R. Bankr. P. (“Local Rule”) 2014-1, authorizing the Debtors to employ and retain Stifel, Nicolaus & Company, Incorporated (“Stifel Nicolaus”) and Peter J. Solomon Securities Company, LLC (“PJSC”, and together with Stifel Nicolaus, the “Financial Advisers”) as their financial advisers and investment bankers, *nunc pro tunc* to the Petition Date (the “Application”); and upon consideration of the Kollender Declaration and the Cooper Declaration, which are annexed to such Application, and the Letter Agreements (as that term is defined in the Application) and which are attached as exhibits to the Kollender Declaration and the Cooper Declaration; and it appearing that the Court has jurisdiction to consider the Application; and it appearing that each Financial Adviser is a “disinterested” person within the meaning of § 101(14) and 327(a) of the

<sup>1</sup> The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

Bankruptcy Code; proper jurisdiction over the Application existing in this Court and this matter being a “core” proceeding; and that the relief requested in the Application is reasonable for the purposes of § 328(a) of the Bankruptcy Code and is in the best interests of the Debtors, their creditors, and all parties-in-interest; and it appearing that due and appropriate notice of the Application has been given under the circumstances; and it appearing that no other or further notice need be given; and upon the Application and all of the proceedings before the Court; and after due deliberation; and sufficient cause appearing therefor:

**IT IS HEREBY ORDERED THAT:**

1. The Application is GRANTED.
2. As modified by this Order, and in accordance with Bankruptcy Code sections 327(a) and 328(a), Bankruptcy Rules 2014, and Local Rule 2014-1, the Debtors are authorized to employ and retain the Financial Advisers as their advisers to perform all of the services set forth in the Application, on the terms set forth in the Application and in the Kollander Declaration, the Cooper Declaration and the Letter Agreements, effective *nunc pro tunc* to the Petition Date (as that term is defined in the Application).
3. All of each of Stifel Nicolaus’ and PJS’ retainers, fees and expenses regarding professional services, including, without limitation, the Stifel Nicolaus Sale transaction fee and the PJSC Sale transaction fee, are approved pursuant to Bankruptcy Code § 328(a);
4. Notwithstanding anything to the contrary in this Order, the US Trustee shall retain the right and be entitled to object to each Financial Advisor’s fees and expenses regarding professional services, including, without limitation, the Stifel Nicolaus Sale transaction fee and the PJSC Sale transaction fee, based on the reasonableness standard under Bankruptcy Code sections 330 and 331. The Debtors and each Financial Advisor further stipulate and agree

that this Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the US Trustee to challenge the reasonableness of each Financial Advisor's compensation under Bankruptcy Code sections 330 and 331. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the US Trustee, on appeal or otherwise, with respect to the reasonableness of each Financial Advisor's compensation.

5. The Debtors are authorized to pay each Financial Adviser for its costs and expenses as provided in the Letter Agreements, in accordance with the monthly, interim and final fee application process approved by this Court, and none of the retainers/fees payable either Financial Adviser shall constitute a "bonus" or fee enhancement under applicable law.

6. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of this Court, or any guidelines regarding submission and approval of fee applications, in light of the investment banking and related financial advisory services to be provided by each Financial Adviser as part of a single mandate team and the structure of each Financial Adviser's compensation pursuant to the Letter Agreements for such services, each Financial Adviser and its professionals shall be excused from maintaining time records as set forth in Local Rule 2016-2 and the United Trustee Fee Guidelines in connection with such services to be rendered pursuant to the Letter Agreements; provided, however, that each Financial Adviser shall instead present to the Court reasonably detailed descriptions of those services provided on behalf of the Debtors, the estimated time expended in providing those services and the individuals who provided professional services on behalf of the Debtors.

7. Notwithstanding anything in this Order to the contrary, the OUST (as that term is defined in the Application) shall retain all rights to object to monthly retainers/fees and

the Sale transaction fees based on the reasonableness standard provided for in § 330 of the Bankruptcy Code.

8. The provisions of the Letter Agreements relating to the indemnification of each of Stifel Nicolaus and PJSC are approved, subject during the pendency of these cases to the following:

9. The indemnification provisions found in the Employment Agreement are hereby modified as follows:

a. subject to the provisions of subparagraph (c), infra, the Debtors are authorized to indemnify, and to provide contribution and reimbursement to, and shall indemnify, and provide contribution and reimbursement to, Stifel Nicolaus Indemnified Persons and PJSC Indemnified Persons (as each of those terms are defined in the Letter Agreements) in accordance with the Letter Agreements, for any claim arising from, related to, or in connection with the services described therein;

b. notwithstanding any provisions of the Letter Agreements to the contrary, the Debtors shall have no obligation to indemnify either Financial Adviser, or to provide contribution or reimbursement to either Financial Adviser, (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from either Financial Adviser's bad faith, self-dealing, breach of fiduciary duty (if any), willful misconduct or gross negligence, (ii) for a contractual dispute in which the Debtors allege the breach of either Financial Adviser's contractual obligations if the Court determines that the indemnification, contribution, or reimbursement would not be permissible pursuant to In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but

determined by the Court, after notice and a hearing pursuant to subparagraph (c), infra, to be a claim or expense for which the subject Financial Adviser should not receive indemnity, contribution or reimbursement under the terms of the Letter Agreements, as modified by this Order;


c. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, either Financial Adviser believes that it is entitled to payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Letter Agreements (as modified by this Order), including without limitation the advancement of defense costs, such subject Financial Advisor must file an application therefore with this Court, and the Debtors may not pay any such amounts to the subject Financial Adviser before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by either Financial Adviser for indemnification, contribution, or reimbursement and not a provision limiting the duration of the Debtor's obligation to indemnify either Financial Adviser.

10. The Debtors are authorized, empowered, and directed to take all actions necessary to implement the relief granted pursuant to this Order; and it is

11. During the pendency of these cases, this Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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

Dated: September 15 2009

  
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THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE