

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

In re:	Chapter 11
CYNERGY DATA, LLC, <i>et al.</i> , ¹	Case No. 09-13038 (KG)
Debtors.	(Jointly Administered) Obj. Deadline: 11/9/09 at 4:00 p.m. (ET)

**FIRST MONTHLY APPLICATION OF STIFEL, NICOLAUS & COMPANY,
INCORPORATED AS ADVISOR TO THE DEBTORS AND DEBTORS-IN-POSSESSION
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE
PERIOD SEPTEMBER 1, 2009 THROUGH SEPTEMBER 30, 2009**

Name of Applicant: Stifel, Nicolaus & Company, Incorporated

Authorized to provide professional services to: Advisor/Industry Expert Consultant to the Debtors and Debtors-in-Possession

Date of Retention: September 15, 2009 *nunc pro tunc* to September 1, 2009

Period for which compensation and reimbursement are sought: September 1, 2009 through September 30, 2009

Amount of compensation sought as actual, reasonable, and necessary: \$30,000.00

Amount of expense reimbursement sought as actual, reasonable, and necessary: \$4,179.74

This is an: X monthly interim final application.

The Applicant intends to seek compensation in connection with the preparation of this Application at a later date.

COMPENSATION BY TIME PERIOD

<u>Name of Professional Person</u>	<u>Time Period</u>	<u>Total Hours</u>	<u>Total Compensation</u>
Michael Kollender	9/1/2009 – 9/30/2009	18.5	\$4,051.10
Brett Pogany	9/1/2009 – 9/30/2009	67.0	\$14,671.53
Kaycee Shoemaker	9/1/2009 – 9/30/2009	51.5	\$11,277.37
TOTAL COMPENSATION			\$30,000.00

EXPENSE SUMMARY

<u>Expense Category</u>	<u>Service Provider</u>	<u>Total Expenses</u>
Travel/Meals		\$1,431.20
Legal		\$1,979.25
Research		\$710.13
Telecommunications		\$59.16
TOTAL EXPENSES:		\$4,179.74

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

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

(Jointly Administered)

Obj. Deadline: 11/9/09 at 4:00 p.m. (ET)

**FIRST MONTHLY APPLICATION OF STIFEL, NICOLAUS & COMPANY,
INCORPORATED AS ADVISOR TO THE DEBTORS AND DEBTORS-IN-POSSESSION
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE
PERIOD SEPTEMBER 1, 2009 THROUGH SEPTEMBER 30, 2009**

For its First Monthly Application for Compensation and Reimbursement of Expenses (the “Application”), Stifel, Nicolaus & Company, Incorporated (the “Applicant”), advisor to the above referenced debtors and debtors in possession (the “Debtors”), respectfully represents as follows:

A. BACKGROUND

1. On September 1, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Pursuant to the Order Authorizing the Employment and Retention of Stifel, Nicolaus & Company, Incorporated (“Stifel”) as Advisor to the Debtors (the “Retention Order”), which was entered on September 15, 2009, the employment of Applicant as advisor/consultant to the Debtors was authorized effective as of September 1, 2009. A copy of the Retention Order is attached hereto as Exhibit A.

3. Applicant has rendered services on behalf of the Debtors from September 1, 2009 through September 30, 2009, and in connection therewith requests allowance of interim compensation in the amount of \$30,000.00 and reimbursement of expenses in the amount of \$4,179.74.

4. Applicant maintains records of the professional services and expenses related thereto with respect to its performance in connection with these Chapter 11 cases. Attached hereto as Exhibit B is a description of the services rendered and expenses incurred during the period for which this Application is being made.

**B. DESCRIPTION OF SERVICES AND
EXPENSES AND RELIEF REQUESTED**

5. Applicant believes that the post-petition services rendered during the period September 1, 2009 through September 30, 2009 on behalf of the Debtors are reasonably worth the sum of \$30,000.00 and Applicant requests the allowance of such sum.

6. Applicant further requests reimbursement of costs expended on behalf of the Debtors for the period from September 1, 2009 through September 30, 2009 in connection with these Chapter 11 proceedings in the sum of \$4,179.74 as set forth in the summary attached hereto as Exhibit C. The expenses set forth in Exhibit C reflect Applicant's actual cost of each expense incurred.

7. Applicant has reviewed the requirements of Del.Bankr.LR 2016-2 and believes that this Application complies with the requirements of the same.

WHEREFORE, Applicant prays this Court enter an Order (i) allowing Applicant interim compensation from September 1, 2009 through September 30, 2009 in the sum of \$30,000.00 and reimbursement of costs expended from September 1, 2009 through September 30, 2009 in the sum of \$4,179.74; (ii) directing prompt payment of the same by the Debtors to the extent not previously paid and (iii) granting such other and further relief as may be just.

Dated: October 20, 2009
Wilmington, Delaware

Stifel Nicolaus & Company, Incorporated



Michael J. Kollender
Managing Director

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

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

Hearing Date: TBD

Objection Deadline: November 9, 2009 at 4:00 p.m.

**NOTICE OF FIRST MONTHLY APPLICATION OF STIFEL, NICOLAUS & COMPANY,
INCORPORATED AS ADVISOR TO THE DEBTORS AND DEBTORS-IN-POSSESSION
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE
PERIOD SEPTEMBER 1, 2009 THROUGH SEPTEMBER 30, 2009**

TO: All parties on the Attached Service List

Stifel, Nicolaus & Company, Incorporated, advisor to the Debtors (hereinafter referred to as “Applicant”) has filed its **First Monthly Application of Stifel, Nicolaus & Company, Incorporated as Advisor to the Debtors and Debtors-in-Possession for Compensation and Reimbursement of Expenses Incurred for the Period September 1, 2009 through September 30, 2009** (the “Application”).

All objections and other responses (collectively, “Objections”) to the Application must be: (i) filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **November 9, 2009 at 4:00 p.m. (ET) (the “Objection Deadline”)**; and (ii) served so as to be actually received no later than the Objection Deadline by the following entities:

Office of the United States Trustee
844 King Street
Room 2313
Wilmington, Delaware 19801
Attn: Thomas P. Tinker, Esq.

Cynergy Data, LLC
30-30 47th Avenue
9th Floor
Long Island City, NY 11101

Nixon Peabody LLP
437 Madison Avenue
New York, NY 10056
Attn: Dennis J. Drebsky, Esq.

Pepper Hamilton LLP
Hercules Plaza, Suite 5100
1313 N. Market Street, P.O. Box 1709
Wilmington, Delaware 19899-1709
Attn: David B. Stratton, Esq.
Evelyn J. Meltzer, Esq.
John H. Schanne, II, Esq.

¹ 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.

Ashby & Geddes
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
Attn: Gregory Alan Taylor, Esq.
Karen B. Skomorucha, Esq.

A HEARING ON THE APPLICATION WILL BE SCHEDULED at the Court's convenience before the Honorable Kevin Gross, United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, only in the event there are one or more objection(s) to the Application as filed and served in accordance herewith.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED IN THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

Dated: October 20, 2009
Wilmington, Delaware

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer
David B. Stratton (DE No. 960)
Evelyn J. Meltzer (DE No. 4581)
John H. Schanne, II (DE No. 5260)
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
Wilmington, DE 19899-1709
Telephone: (302) 777-6500
Facsimile: (302) 421-8390

-and-

NIXON PEABODY LLP
Mark N. Berman
Dennis J. Drebsky
Lee Harrington (DE No. 4046)
437 Madison Avenue
New York, New York 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111

*Counsel for the Debtors
and Debtors in Possession*

EXHIBIT A

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

In re:

CYNERGY DATA, LLC, *et al.*,¹

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

¹ 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



THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Stifel Nicolaus Hourly Tracking of Project Fusion

Date	Michael Kollender		Brett Pogany		Kaycee Shoemaker		Total Hours
	Hours	Activity	Hours	Activity	Hours	Activity	
9/2/2009	1.0	Calls with Dean Leavitt	1.0	Prep due diligence materials			2.0
9/3/2009			3.0	Prep due diligence materials	7.0	Prep due diligence materials	10.0
9/4/2009			1.0	Prep due diligence materials			1.0
9/5/2009							0.0
9/6/2009							0.0
9/7/2009							0.0
9/8/2009	2.0	Review of marketing materials and discussions with Dean Leavitt	6.0	Calls with potential buyers	4.0	Data site maintenance	12.0
9/9/2009			4.0	Calls with potential buyers	2.0	Data site maintenance	6.0
9/10/2009			6.0	Calls with potential buyers	3.0	Data site maintenance	9.0
9/11/2009			4.0	Calls with potential buyers	2.0	Data site maintenance	6.0
9/12/2009							0.0
9/13/2009	2.0	Various calls	4.0	Calls with potential buyers	2.0	Reviewed potential buyers	8.0
9/14/2009	2.0	Objections	6.0	Calls with potential buyers	1.0	Reviewed potential buyers	9.0
9/15/2009	7.5	Prepared for court Court-related travel	8.0	Calls with potential buyers	9.0	Called on potential buyers Data site maintenance	24.5
9/16/2009	2.0	Various calls	6.0	Called on potential buyers Prepared for court	8.0	Called on potential buyers Data site maintenance	16.0
9/17/2009	1.0	Various calls	2.0	Buyer diligence Talking to potential buyers	4.0	Called on potential buyers Data site maintenance	7.0
9/18/2009			3.0	Diligence requests Worked with potential buyers	0.5	Data site maintenance	3.5
9/19/2009							0.0
9/20/2009			3.0	Call log			3.0
9/21/2009			3.0	Buyer diligence call Other buyer communication	6.0	Called on potential buyers Data site maintenance	9.0
9/22/2009			1.0	Calls with potential buyers	1.0	Called on potential buyers	2.0
9/23/2009							0.0
9/24/2009					1.0	Data site maintenance	1.0
9/25/2009	1.0	Various calls	3.0	Potential buyer discussions Diligence, status report prep			4.0
9/26/2009							0.0
9/27/2009							0.0
9/28/2009							0.0
9/29/2009			2.0	Talked with potential buyers	0.5	Data site maintenance	2.5
9/30/2009			1.0	Conference call with potential buyer	0.5	Conference call with potential buyer	1.5
Total	18.5		67.0		51.5		137.0

Summary	
Calls with potential buyers	66.5
Court related	12.5
Data site maintenance	20.0
Due diligence	23.0
Reviewed buyers list / reports	6.0
Various other calls	9.0

EXHIBIT C

STIFEL NICOLAUS

October 20, 2009

Private and Confidential

Cynergy Data, LLC
30-30 47th Avenue
9th Floor
Long Island City, NY 11101

Attn: Mr. Marcelo Paladini

Invoice #A1421 - 09/30/09

Expenses posted internally through September 30, 2009:

Travel/Meals.....	\$1,431.20
Legal	1,979.25
Research	710.13
Telecommunications	59.16
Total Invoice Due and Payable upon Receipt.....	\$4,179.74

Check Payment:

Stifel, Nicolaus & Company, Incorporated
501 North Broadway
St. Louis, MO 63102
Attn: Angela Ocker, Corp Accounting

Checks should be made payable to:
Stifel, Nicolaus & Company, Incorporated

For proper credit please include a copy of the
invoice with payment: #A1421 - 09/30/09

Wire Transfer:

JP Morgan Chase Bank
New York, NY
Bank A/C #: 5157730
A/C Name: Stifel, Nicolaus & Company, Inc
ABA Routing #: 021000021

Additional Information:
FFC: 28930100 87J
Attention: Angela Ocker A1421

CERTIFICATE OF SERVICE

I, Evelyn J. Meltzer, hereby certify that on the 20th day of October, 2009, I caused the foregoing **First Monthly Application of Stifel, Nicolaus & Company, Incorporated as Advisor to the Debtors and Debtors-in-Possession for Compensation and Reimbursement of Expenses Incurred for the Period September 1, 2009 through September 30, 2009** to be served upon the following individuals by first-class mail, postage prepaid.

Office of the United States Trustee
844 King Street
Room 2313
Wilmington, Delaware 19801
Attn: Thomas P. Tinker, Esq.

Cynergy Data, LLC
30-30 47th Avenue
9th Floor
Long Island City, NY 11101

Ashby & Geddes
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
Gregory Alan Taylor, Esq.
Karen B. Skomorucha, Esq.

/s/ Evelyn J. Meltzer
Evelyn J. Meltzer