

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X	:	
In re	:	Chapter 11
	:	
Telogy, LLC, <u>et al.</u> ,	:	Case No. 10- <u>10206</u> ( )
	:	
Debtors.	:	Joint Administration Pending
	:	
-----X		

**DEBTORS' MOTION FOR ORDER AUTHORIZING:  
(A) CONTINUED USE OF THE DEBTORS' CASH MANAGEMENT  
SYSTEM AND PROCEDURES; (B) MAINTENANCE AND CONTINUED  
USE OF EXISTING BANK ACCOUNTS; (C) WAIVER OF CERTAIN  
OPERATING GUIDELINES RELATING TO THE  
DEBTORS' BANK ACCOUNTS AND BUSINESS FORMS;  
AND (D) WAIVER OF THE REQUIREMENTS OF SECTION  
345 OF THE BANKRUPTCY CODE ON AN INTERIM AND FINAL BASIS**

The debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**")<sup>1</sup> hereby move for entry of an order, pursuant to sections 105(a), 345, and 363 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), authorizing: (i) the continued use of the Debtors' cash management system and procedures (the "**Cash Management System**"); (ii) maintenance and continued use of the Debtors' existing bank accounts; (iii) a waiver of certain operating guidelines relating to bank accounts set forth in the U.S. Department of Justice, Office of the United States Trustee, District of Delaware (the "**U.S. Trustee**"), Operating Guidelines for

---

<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors' executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

Chapter 11 Cases (the “**U.S. Trustee Guidelines**”); and (iv) a waiver of the requirements of section 345(b) of the Bankruptcy Code on an interim basis and on a final basis on the terms set forth herein (the “**Motion**”). In support of the Motion, the Debtors rely upon and incorporate by reference the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings (the “**Phillips Affidavit**”), which was filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their undersigned co-counsel, respectfully represent:

### **JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 345 and 363 of the Bankruptcy Code, as supplemented by Bankruptcy Rule 6003 and Local Rule 2015-2.

### **BACKGROUND**

2. On January 24, 2010 (the “**Petition Date**”), Telogy, LLC and e-Cycle, LLC filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be consolidated for procedural purposes. As of the date hereof, no official committee of unsecured creditors has been appointed.

3. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Phillips Affidavit.

## RELIEF REQUESTED

4. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a), 345, and 363 of the Bankruptcy Code, as supplemented by Bankruptcy Rule 6003 and Local Rule 2015-2, authorizing: (i) the continued use of the Debtors' Cash Management System; (ii) maintenance and continued use of the Debtors' existing bank accounts; (iii) a waiver of certain operating guidelines relating to bank accounts set forth in the U.S. Trustee Guidelines; and (iv) waiver of the requirements of section 345(b) of the Bankruptcy Code on an interim basis and on a final basis on the terms set forth herein.

5. The relief requested herein will help ensure the Debtors' orderly transition into chapter 11 and will avoid many of the possible disruptions and distractions that could divert the Debtors' attention from more pressing matters during the initial stage of these chapter 11 cases.

## THE DEBTORS' EXISTING BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM

6. Prior to the Petition Date, and in the ordinary course of their businesses, the Debtors maintained a Cash Management System similar to those utilized by other companies that operate their businesses in many different states and locations, to efficiently collect, transfer, and disburse funds generated by the Debtors' business operations. The Debtors' Cash Management System includes four bank accounts (collectively, the "**Bank Accounts**")<sup>2</sup> at three different banks (collectively, the "**Banks**"). The Debtors believe that each of the Banks is a sound financial institution.

---

<sup>2</sup> A non-exhaustive list of the Bank Accounts is annexed hereto as Exhibit A. If any other accounts are later identified, such accounts are hereby included in the definition of "Bank Accounts."

7. The Bank Accounts include one lockbox account, one investment account, and two disbursement accounts.<sup>3</sup> The Bank Accounts are described below.

A. The Lockbox Account

8. The Debtors maintain a lockbox account (the “**Lockbox Account**”) at Bank of America, N.A. (“**BofA**”) 231 S. La Salle Street, Chicago, Illinois 60697- 0001 bearing account number XXXXX-X2729. Each of the Debtors’ customers has been instructed to make payments to the Debtors by mailing deposits directly to a BofA branch, which are then deposited in the Lockbox Account. The Debtors do not write checks drawn against the Lockbox Account. As customer deposits clear, BofA transfers such deposits from the Lockbox Account to the Debtors’ Controlled Disbursement Account (as defined below). The average daily balance for the Lockbox Account is typically between \$25,000 and \$150,000 at the end of each business day.

B. The Disbursement Accounts

9. The Debtors have two disbursement accounts from which they pay all of their obligations. The Debtors’ main disbursement account (the “**Controlled Disbursement Account**”) is maintained at BofA. Operating expenses, other than payroll, and other miscellaneous disbursements are paid directly from the Controlled Disbursement Account by check or wire transfer. The Controlled Disbursement Account receives funds from the Lockbox Account as customer remittances to the Lockbox Account clear, and is funded from the Investment Account only if the Controlled Disbursement Account has insufficient funds to cover immediate wire transfers or honor checks that are presented for payment, or to make a necessary payroll transfer to the Payroll Disbursement Account (defined below). In addition, customers

---

<sup>3</sup> A cash management schematic reflecting the flow of funds through the Bank Accounts is annexed hereto as Exhibit B.

who remit payment by ACH or wire transfer make payments directly to the Controlled Disbursement Account. Excess funds in the Controlled Disbursement Account are transferred to the Debtors' Investment Account (defined below). The average daily balance of the Controlled Disbursement Account is typically between \$50,000 and \$300,000.

10. The Debtors also maintain a disbursement account that is used only for payroll (the "**Payroll Disbursement Account**" and, collectively with the Controlled Disbursement Account, the "**Disbursement Accounts**"). The Payroll Disbursement Account is also maintained at BofA. Ceridian Corporation ("**Ceridian**") acts as the Debtors' agent with respect to payroll disbursements, and sends checks and wire transfers out of the Payroll Disbursement Account to the Debtors' employees and makes direct deposits into such employees' accounts, as the case may be for each employee. The Payroll Disbursement Account is typically funded twice a month immediately in advance of the next scheduled payroll. After each payroll is paid the only funds that remain in the Payroll Disbursement Account relate to payroll checks that have not yet been presented by employees for payment. Accordingly, the average daily balance of the Payroll Disbursement Account is approximately \$10,000, except immediately prior to payroll.

C. The Investment Account

11. The Debtors maintain an investment account (the "**Investment Account**") at Banc of America Securities LLC.<sup>4</sup> Excess funds from the Controlled Disbursement Account are transferred to the Investment Account. In addition, funds from the Investment Account are

---

<sup>4</sup> Banc of America Securities LLC is not listed as an "authorized depository"/"cooperating depository" under the guidelines of the United States Trustee, and the Investment Account is not FDIC-insured.

disbursed to the Debtors' Controlled Disbursement Account on an as-needed basis to cover draws against such account.

12. The cash balances in the Investment Account are typically invested in Banc of America Securities LLC's Nations Funds Cash Reserves 371 (the "**BofA Cash Reserves Fund**"). The BofA Cash Reserves Fund invests in United States Treasury obligations, other United States government obligations, repurchase agreements, investment grade commercial paper and short-term corporate obligations, and bank obligations. The Debtors do not write checks drawn against the Investment Account. The average daily balance for this account typically ranges from \$1,250,000 to \$4,250,000.

#### **U.S. TRUSTEE GUIDELINES**

13. The U.S. Trustee Guidelines were adopted in order to assist the U.S. Trustee in supervising the administration of chapter 11 cases. The U.S. Trustee Guidelines require chapter 11 debtors to, among other things:

- (a) close all existing bank accounts and open new accounts which must be designated debtor in possession bank accounts;
- (b) establish and maintain separate debtor in possession accounts for the payment of taxes and separate debtor in possession accounts for cash collateral; and
- (c) obtain and utilize new checks for all debtor in possession accounts which bear the designation "Debtor in Possession" and contain certain other information related to the chapter 11 case.

14. Notwithstanding the U.S. Trustee Guidelines, the continued use of the Bank Accounts is essential to a smooth and orderly transition into chapter 11. All parties in interest will be best served by the continued use of such Bank Accounts as it will minimize disruption of the Debtors' businesses. Moreover, a changeover of the Bank Accounts is unnecessary because the Debtors will perform a "hard close" of their books (including

recordation of account balances) as of the Petition Date, which will ensure the Debtors and others will be able to differentiate between pre- and postpetition transactions, account balances and obligations. Accordingly, the Debtors request a waiver of the U.S. Trustee Guidelines requiring that they close all existing Bank Accounts and open new debtor in possession accounts.

15. The Debtors further request that all Banks where the Debtors hold Bank Accounts be authorized to: (a) continue to administer (and, in the case of the Investment Account, invest the funds in) the Bank Accounts in the manner maintained prior to the Petition Date, without interruption, in the usual and ordinary course; and (b) to receive, process and honor and pay any and all checks, drafts, wires or ACH transfers issued or initiated by the Debtors, and drawn on the Bank Accounts by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by any Bank only if specifically authorized by order of this Court.

16. The Debtors also request that, except for those checks that may be honored and paid to comply with any order(s) of this Court authorizing payment of certain prepetition claims,<sup>5</sup> no checks or drafts issued on the Bank Accounts before the Petition Date, but presented for payment after the Petition Date, be honored or paid.

---

<sup>5</sup> The Debtors have filed the following motions seeking relief to pay prepetition amounts owed: (i) Debtors' Motion for Order Pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code and Bankruptcy Rule 6003: (I) Authorizing Debtors to (A) Continue Insurance Policies and Agreements Relating Thereto, and (B) Honor Certain Prepetition Obligations in Respect Thereof; and (II) Granting Related Relief; (ii) Debtors' Motion for Order Authorizing Debtors to Honor Prepetition Obligations to Customers and to Continue Customer Programs; (iii) Debtors' Motion for Order: (I) Authorizing Debtors to (A) Pay Prepetition Employee Wages, Salaries, and Other Compensation, Prepetition Employee Business Expenses, and Other Miscellaneous Employee Expenses and Employee Benefits; and (B) Continue Employee Benefit Programs; and (II) Granting Related Relief; (iv) Debtors' Motion for Order Authorizing Payment of Certain Prepetition Taxes Pursuant to Sections 105(a), 363 and 541 of the Bankruptcy Code; and (v) Debtors' Motion for Order Authorizing Payment of Prepetition Obligations to Common Carriers.

17. The Debtors also seek a waiver of the requirement to establish specific bank accounts for tax payments. The Debtors believe that their tax obligations can be paid most efficiently out of their existing Bank Accounts, that the U.S. Trustee can adequately monitor the flow of funds into, among, and out of such accounts, and that the creation of new debtor in possession accounts designated solely for tax obligations would be unnecessary and inefficient.

18. Furthermore, to minimize administrative expense and delay, the Debtors request authority to continue to use their checks and other business forms (including, but not necessarily limited to, purchase orders, checks, letterhead, envelopes, and promotional materials) without reference to their status as debtors in possession. Pursuant to Local Rule 2015-2(a), in the event the Debtors need to purchase new check stock during the pendency of these chapter 11 cases, such check stock will include a legend referring to the Debtors as “Debtors in Possession” or “DIP.”

### **BASIS FOR RELIEF**

#### A. Section 345 Deposit and Investment Requirements

19. Section 345 of the Bankruptcy Code governs a debtor’s deposit and investment of cash during a chapter 11 case and authorizes the deposits or investments of money as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit on investment.” 11 U.S.C. § 345(a).

20. Section 345(b) of the Bankruptcy Code provides:

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—

(1) 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

(2) 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) (emphasis added).

21. Local Rule 2015-2(b) provides that no waiver of “section 345 shall be granted without notice and an opportunity for hearing in accordance with these Local Rules.” Local Rule 2015-2(b). Nevertheless, Local Rule 2015-2(b) further provides that “if a motion for such waiver is filed on the first day of a chapter 11 case in which there are more than 200 creditors, the Court may grant an interim waiver until a hearing on the debtor’s motion can be held.”

22. The purpose of section 345(b) of the Bankruptcy Code is to protect creditors of an estate against a loss of funds of the estate through deposit or investment. See 3 COLLIER ON BANKRUPTCY ¶345.04 (Lawrence P. King, 15<sup>th</sup> ed. rev’d 2008). However, in 1994, in order to avoid “needlessly handcuff[ing] larger, more sophisticated debtors,” the Bankruptcy Code was amended to allow bankruptcy courts to waive or modify the stringent requirements of

section 345(b) of the Bankruptcy Code. See 140 Cong. Rec. H10,767 (daily ed. October 4, 1994).

23. As this Motion has been filed on the first day of the Debtors' chapter 11 cases and the Debtors have in excess of 200 creditors, the Debtors request that the Court enter an order waiving, on an interim basis, the requirements of section 345(b) of the Bankruptcy Code for sixty (60) days, without prejudice to the Debtors' ability to seek a further interim waiver or a final waiver upon a final hearing.

24. The Debtors believe that there is ample "cause" to waive the deposit, investment and reporting requirements because the Debtors maintain their Bank Accounts with reputable banking institutions and the size of the Debtors' business operations and the costs associated with satisfying the requirements of section 345(b) make satisfying such requirements impracticable. See, e.g., In re Serv. Merch., 240 B.R. 894 (Bankr. M.D. Tenn. 1999).

25. The Debtors believe it is in the best interests of the estates to continue to follow the banking practices necessitated by the Cash Management System, notwithstanding the requirements of section 345(b) and the U.S. Trustee Guidelines. With the exception of the Investment Account, all of the Debtors' accounts are maintained at BofA, which has executed the Uniform Depository Agreement required by U.S. Trustee for compliance with the requirements of section 345(b) of the Bankruptcy Code. As discussed above, the Investment Account is held at Banc of America Securities LLC, an affiliate of BofA. The Investment Account is conservatively invested, despite the fact that such investments are not strictly in accordance with the U.S. Trustee Guidelines. Such investments are safe and prudent, and are designed to yield the maximum net return obtainable for funds invested with safety as a primary objective. Considering the complexity of the Debtors' operations and the conservative nature of

their investments, the Debtors submit that they should be authorized, on an interim basis, to maintain the Investment Account in accordance with their current practices.

26. Courts in this District have granted requests to approve similar relief as requested herein. See, e.g., In re Source Interlink Companies Inc., et al., No. 09-11424 (KG) (Bankr. D. Del. April 29, 2009); In re Dayton Superior Corp., No. 09-11351 (BLS) (Bankr. D. Del. April 21, 2009); In re Magna Entertainment Corp., et al., No. 09-10720 (MFW) (Bankr. D. Del. March 6, 2009); In re Aleris Int'l, Inc., et al., No. 09-10478 (BLS) (Bankr. D. Del. Feb. 13, 2009); In re Interlake Material Handling, Inc., et al., No. 09-10019 (KJC) (Bankr. D. Del. Jan. 30 2009); In re HPG Int'l, Inc., et al., No. 09-10231 (BLS) (Bankr. D. Del. Jan. 27, 2009); In re Gottschalks, Inc., No. 09-10157 (KJC) (Bankr. D. Del. Jan 15, 2009); In re Recycled Paper Greetings, Inc., et al., No. 09-10002 (KG) (Bankr. D. Del. Jan. 5, 2009); ); In re GWLS Holdings, et al., No. 08-12430 (PJW) (Bankr. D. Del. Oct. 22, 2008). The Debtors submit that cause exists for an interim waiver of the investment and deposit restrictions of section 345(b) of the Bankruptcy Code.

B. Continuation of the Cash Management System is in the Best Interests of the Debtors, Their Creditors, and All Other Parties in Interest

27. The Debtors' cash management procedures constitute ordinary course, essential business practices for the Debtors. The Cash Management System provides significant benefits to the Debtors including, inter alia, the ability to: (i) control corporate funds; (ii) ensure the maximum availability of funds when necessary; and (iii) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance information.

28. The Debtors' business operations require that the existing Cash Management System continue, as any serious disruption could have a severe and adverse impact on the Debtors' operations. The Debtors will take reasonable steps to ensure that maintaining the present system will not result in any prejudice to any party in interest.

29. In other large chapter 11 cases, this Court has granted substantially similar relief. See, e.g., In re Source Interlink Companies Inc., et al., No. 09-11424 (KG) (Bankr. D. Del. April 29, 2009); In re Dayton Superior Corp., No. 09-11351 (BLS) (Bankr. D. Del. April 21, 2009); In re Magna Entertainment Corp., et al., No. 09-10720 (MFW) (Bankr. D. Del. March 6, 2009); In re Aleris Int'l, Inc., et al., No. 09-10478 (BLS) (Bankr. D. Del. Feb. 13, 2009); In re Interlake Material Handling, Inc., et al., No. 09-10019 (KJC) (Bankr. D. Del. Jan. 30 2009); In re HPG Int'l, Inc., et al., No. 09-10231 (BLS) (Bankr. D. Del. Jan. 27, 2009); In re Gottschalks, Inc., No. 09-10157 (KJC) (Bankr. D. Del. Jan 15, 2009); In re Recycled Paper Greetings, Inc., et al., No. 09-10002 (KG) (Bankr. D. Del. Jan. 5, 2009); In re GWLS Holdings, et al., No. 08-12430 (PJW) (Bankr. D. Del. Oct. 22, 2008). The Debtors respectfully submit that such relief should be granted here.

30. Based on the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and all other interested parties, and should be granted in all respects.

31. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, the requirements of Bankruptcy Rule 6003 has been satisfied.

**NOTICE**

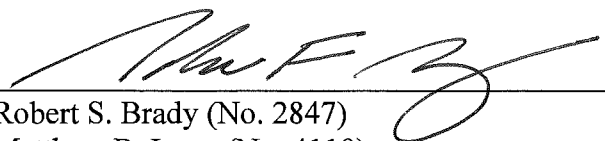
32. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' prepetition secured lenders; and (c) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis. The Debtors will serve copies of the Motion pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit C, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware  
January 24, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Robert S. Brady (No. 2847)  
Matthew B. Lunn (No. 4119)  
Donald J. Bowman, Jr. (No. 4383)  
Robert F. Poppiti, Jr. (No. 5052)  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

-and-

WILLKIE FARR & GALLAGHER LLP  
John C. Longmire  
Shaunna D. Jones  
Andrew D. Sorkin  
787 Seventh Avenue  
New York, New York 10019  
(212) 728-8000

*Proposed Co-Counsel for the Debtors and  
Debtors in Possession*

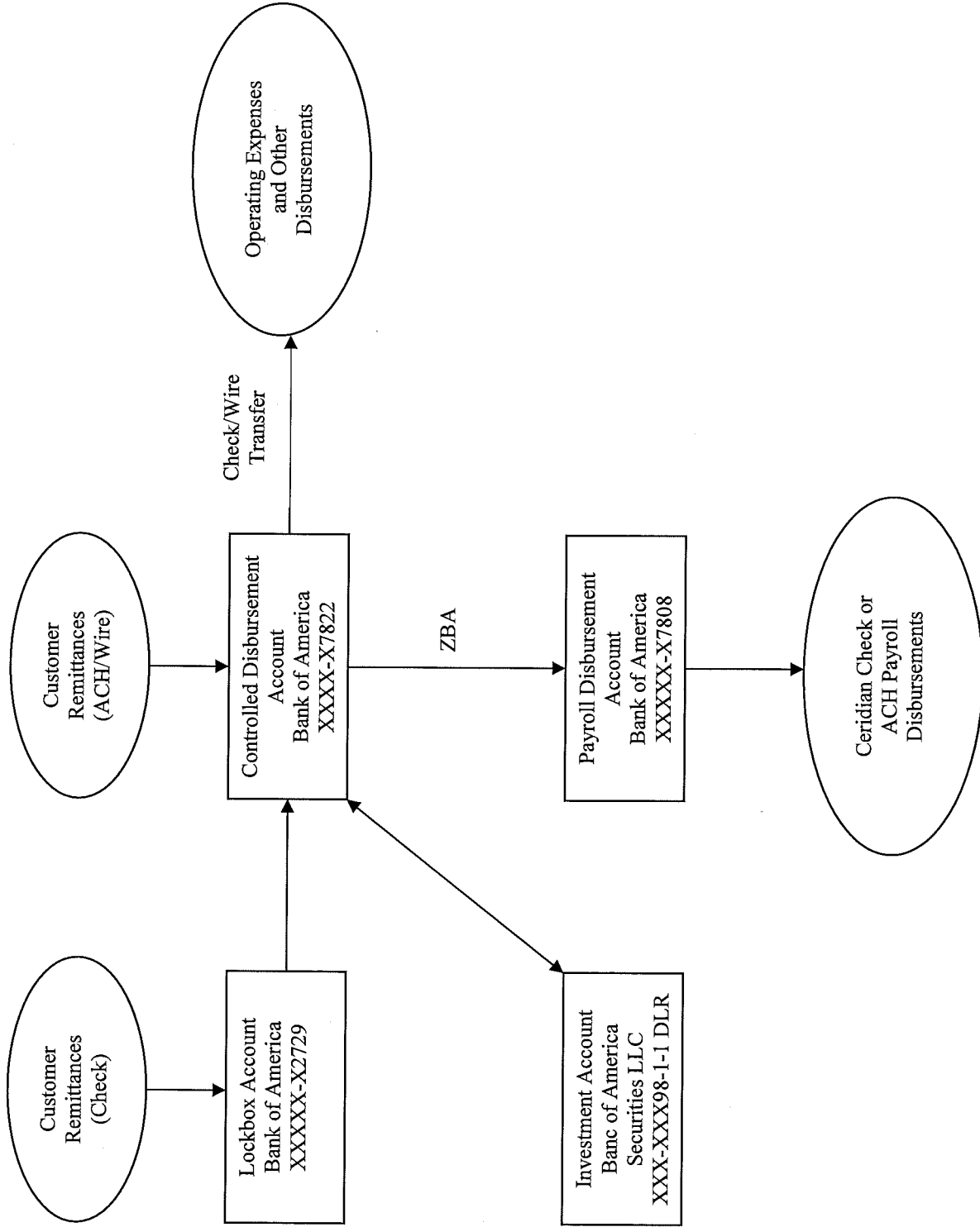
**EXHIBIT A**

**Bank Accounts**

<b>Bank Name and Address</b>	<b>Bank Acct Number</b>	<b>Acct Description</b>
Bank of America, N.A. 231 La Salle Street Chicago, IL 60697-0001	XXXXXX-X2729	Lockbox Account
Bank of America, N.A. 231 La Salle Street Chicago, IL 60697-0001	XXXXX-X7822	Controlled Disbursement Account
Bank of America, N.A. 600 Montgomery Street San Francisco, CA 94111	XXXXXX-X7808	Payroll Disbursement Account
Banc of America Securities LLC 600 Montgomery Street San Francisco, CA 94111	XXX-XXX98-1-1 DLR	Investment Account

**EXHIBIT B**

**Bank Account Schematic**



**EXHIBIT C**

**Proposed Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
In re : Chapter 11  
 :  
Telogy LLC., et al., : Case No. 10-~~10206~~ ( )  
 :  
Debtors. : Jointly Administered  
 :  
 : Ref. Docket No. \_\_\_\_\_  
----- X

**ORDER AUTHORIZING:  
(A) CONTINUED USE OF THE DEBTORS' CASH MANAGEMENT  
SYSTEM AND PROCEDURES; (B) MAINTENANCE AND CONTINUED  
USE OF EXISTING BANK ACCOUNTS; (C) WAIVER OF CERTAIN  
OPERATING GUIDELINES RELATING TO THE  
DEBTORS' BANK ACCOUNTS AND BUSINESS FORMS;  
AND (D) WAIVER OF THE REQUIREMENTS OF SECTION  
345 OF THE BANKRUPTCY CODE ON AN INTERIM AND FINAL BASIS**

Upon the motion (the "**Motion**") of the debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**")<sup>1</sup> for an order, pursuant to sections 105(a), 345, and 363 of title 11 of the United States Code (the "**Bankruptcy Code**"), as supplemented by Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Code for the District of Delaware (the "**Local Rules**"), authorizing: (i) the continued use of the Debtors' cash management system and procedures (the "**Cash Management System**"); (ii) maintenance and continued use of the Debtors' existing bank accounts; (iii) a waiver of certain operating guidelines relating to bank accounts; and (iv) waiver of the requirements of section 345(b) of the Bankruptcy Code on an interim basis and on a final basis

---

<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors' executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

on the terms set forth in the Motion; and upon the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings (the “**Phillips Affidavit**”); and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of these estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted.
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.
3. The Debtors are authorized and empowered to continue to manage their cash pursuant to the Cash Management System maintained by the Debtors prior to the commencement of these chapter 11 cases and to collect and disburse cash in accordance with the Cash Management System.
4. The requirement of the U.S. Trustee Guidelines that the Debtors close all existing bank accounts and open new debtor in possession accounts is hereby waived. Further, the requirement of the U.S. Trustee Guidelines that the Debtors establish specific bank accounts for tax payments is hereby waived.
5. The Debtors may disburse funds by checks, drafts, wires, debits, ACH transfers or by any other means.
6. The Debtors are authorized to use their checks and other business forms, substantially in the forms existing immediately prior to the Petition Date, without reference to their status as debtors in possession; provided, however, in the event that the Debtors need to

purchase new check stock during the pendency of these chapter 11 cases, such check stock will include a legend referring to the Debtors as “Debtors in Possession” or “DIP.”

7. The Debtors are authorized to continue to invest and deposit funds in the Bank Accounts in accordance with their prepetition practices, without the need for a bond or other collateral as required by section 345(b) of the Bankruptcy Code, notwithstanding that this practice may not strictly comply with the requirements of section 345(b) of the Bankruptcy Code, and that the entities with which the Debtors’ money is invested shall be excused from compliance with the requirements of section 345(b) of the Bankruptcy Code for a period of sixty (60) days from the Petition Date, without prejudice to the Debtors’ right to seek a further interim waiver or final waiver upon final hearing.

8. Subject to terms of the immediately preceding paragraph, all applicable Banks and other financial institutions are authorized to accept and hold or invest funds as directed by the Debtors.

9. The Banks where the Debtors maintain the Bank Accounts are authorized and directed to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process and honor and pay any and all checks, drafts, wires or ACH transfers issued or initiated by the Debtors, and drawn on the Bank Accounts, after the Petition Date by the holders or makers thereof, as the case may be, provided there are sufficient funds, whether deposited prior or subsequent to the Petition Date, in the requisite Bank Account, or otherwise available to cover and permit payment thereof; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by any Bank only if specifically authorized by order of this Court.

10. Except for those checks that may be honored and paid to comply with any order(s) of this Court authorizing payment of certain prepetition claims, no checks or drafts issued on the Bank Accounts before the Petition Date but presented for payment after the Petition Date shall be honored or paid. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to orders of this Court.

11. Notwithstanding any other provision of this Order, no Bank that honors a prepetition check or other item drawn on any account that is the subject of this Order: (a) at the direction of the Debtors; (b) in a good faith belief that the Court has authorized such prepetition check or item; or (c) as the result of a good faith error made despite implementation of reasonable item handling procedures, shall be liable to the Debtors or their estates or otherwise in violation of this Order.

12. For Banks that are a party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), within fifteen (15) days from the date of entry of this Order, the Debtors shall (a) contact each Bank, (b) provide the Bank with each of the Debtors’ employer identification numbers, and (c) identify each of their accounts held at such banks as being held by a debtor in possession.

13. For Banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause the Bank to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within forty-five (45) days of the date of entry of this Order.

14. The Debtors shall record the consolidated balances of each of their Bank Accounts as of the Petition Date so that all postpetition transfers and transactions respecting such

Bank Accounts shall be adequately and promptly documented in, and readily ascertainable from, their books and records, to the same extent maintained by the Debtors prior to the commencement of these chapter 11 cases.

15. Nothing contained herein shall prevent the Debtors from opening any additional bank accounts, or closing any existing Bank Accounts, as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors request to open or close, as applicable, such Bank Accounts or other bank accounts, and the Debtors shall provide notice of same in their monthly operating report filed in these cases.

16. As promptly as possible, but in no event later than five (5) business days after entry of this Order, the Debtors shall serve a copy of this Order on all Banks whose Bank Accounts are listed on Exhibit A attached to the Motion.

17. The relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors, and timely entry of this Order is not prohibited by Bankruptcy Rule 6003(b).

18. The notice requirements of Bankruptcy Rule 6004(a) are hereby deemed waived.

19. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

20. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware  
January \_\_, 2010

---

UNITED STATES BANKRUPTCY JUDGE