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UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

In re:)	Bankr. No. 18-40580
)	Chapter 7
H & I GRAIN OF HETLAND, INC.)	
TAX ID/EIN: 91-1766841)	NOTICE OF AMENDED
)	CHAPTER 7 TRUSTEE'S
Debtor.)	MOTION TO OBTAIN CREDIT
)	PURSUANT TO 11 USC 364

Lee Ann Pierce, Chapter 7 Trustee, has filed an Amended Motion to Obtain Credit Pursuant to 11 USC §364. Your rights may be affected. You should read the documents carefully and discuss them with your attorney.

If you do not have an attorney, you may wish to consult one. If you do not want the Court to grant the relief requested, you or your attorney must file with the Bankruptcy Clerk, on or before **February 19, 2019**, a typewritten response explaining your position. The response must include the case name and case number and be signed and dated by you or your attorney. The response should also include your daytime telephone number or, if your attorney files the response, your attorney's telephone number. Only an attorney may file a response on behalf of a corporation, a partnership, or another formal legal entity.

If you are an attorney, you must file any response electronically. See the July 14, 2005 general order and additional information regarding electronic filing (CM/ECF) on the Court's website at www.sdb.uscourts.gov. If you are not an attorney, your response may be mailed or delivered to the Bankruptcy Clerk, whose address is 400 S. Phillips Avenue, Room 104, Sioux Falls, SD 57104-6851. The response must be mailed early enough to ensure the Bankruptcy Clerk receives it on or before the deadline stated above.

If you or your attorney files a response, you or your attorney must also mail a copy of the response to parties in interest, as defined by local bankruptcy rule 9001- 1(7), who will not receive electronic notice of the response. You or your attorney may obtain the names and addresses of the parties in interest listed in local bankruptcy rule 9001-1(7)(B) through (H) by contacting the Bankruptcy Clerk's office at (605) 357-2400.

A hearing on the motion may be set by separate order if a response is filed on or before the deadline stated above. If you or your attorney files a response to the relief requested on or before the deadline stated above, the Court will call you or your attorney at the scheduled hearing time using the telephone number provided in the response. If an evidentiary hearing is needed, the Court will set the date, time, and place for the evidentiary hearing during the telephonic hearing. Only an attorney may represent a corporation, a partnership, or another formal legal entity at a hearing.

If no one files a response on or before the deadline stated above, the Court may enter an order granting the relief requested without a hearing.

Dated: February 1, 2019.

FITE, PIERCE & RONNING LAW OFFICE

/s/ Lee Ann Pierce

By: Lee Ann Pierce
Chapter 7 Bankruptcy Trustee
316 Fourth Street/P.O. Box 524
Brookings, SD 57006-0524
Phone: 605/692-9415
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COMES NOW, Lee Ann Pierce, duly appointed and acting Chapter 7 Bankruptcy Trustee in the above-captioned estate and hereby moves the Court for an order granting the Chapter 7 Trustee authority to obtain credit pursuant to 11 USC §364. The motion is predicated upon the following:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. H & I Grain of Hetland, Inc., hereinafter referred to as Debtor, filed a petition for Chapter 7 Bankruptcy on December 17, 2018.

3. The Trustee conducted a meeting of creditors pursuant 11 U.S.C. §341 on January 25, 2019.

4. One of the assets of the bankruptcy estate is a potential recovery in a dispute with CHS Hedging, LLC ("CHS") which is required to be resolved under the contract between the parties in binding arbitration before the National Futures Association ("NFA") or other appropriate arbitral tribunal. This is a specialized type of litigation requiring an attorney experienced in such matters.

5. Daniel J. Brooks, of Scarola Zubatov Schaffzin PLLC, 1700 Broadway, New York, NY 10019, 646-412-3247, is an attorney and is qualified by reason of practice and experience to render such representation or assistance. For over thirty years, Attorney Brooks has had an active practice (nearly 100 separate cases) representing parties (broker/dealers, futures commission merchants, their employees, and customers) in disputes involving securities, derivatives, and futures trading. Sometimes he has represented institutional clients in these cases (e.g., *Ruiz v. Charles Schwab & Co., Inc.*, 736 F. Supp. 461 (S.D.N.Y. 1990) (denying summary judgment in a case alleging churning and unauthorized trading of naked puts, resulting in a jury trial in which his client, Schwab, was found not liable and recovered on its cross-claims and counterclaims); *Coppola v. Charles Schwab & Co.*, 1991 WL 180345 (S.D.N.Y. 1991), *aff'd*, 969 F.2d 1042 (2d Cir. 1992) (confirming arbitration award dismissing wrongful liquidation claim in a substantial securities account during the 1987 stock market crash)). He has also successfully represented customers claiming commodities fraud before the National Futures Association, as in the case at hand. In one case, he successfully represented a currency trader located in Dubai whose large short British pound position was wrongfully liquidated, resulting in an award of \$12,993,750, at the time the largest ever handed down by a panel of NFA arbitrators. That award was confirmed by a federal court. *Matter of Arbitration Between Ashraf and Republic New York Securities Corp.*, 14 F. Supp. 2d 461 (S.D.N.Y. 1998). More recently, he successfully represented a customer in an NFA arbitration claiming that his oil futures contracts were wrongfully liquidated due to the futures commission merchant's defective margin algorithm. *Marshall v. Interactive Brokers, LLC*, NFA Case No. 13-ARB-5 (May 8, 2014).

6. The Trustee will be filing an application for approval of appointment of attorney Daniel J. Brooks to represent her in the litigation against CHS; however, the Trustee does not have the funds available to pay a retainer and to pay expenses for the litigation. The Trustee proposes to obtain credit

in the amount of \$150,000.00 to fund the litigation, which shall be an unsecured loan. The funds borrowed will be used by the Trustee to litigate the claim against CHS.

7. The compensation for Attorney Brooks will be as follows: A flat, nonrefundable fee of \$75,000.00 plus an additional sum of \$75,000.00 available to pay expenses, such as the NFA filing fee, travel and lodging, court reporter fees, overnight courier charges, etc. and expert witness fees. It is anticipated that expert witness fees will be approximately \$45,000.00. In addition to the flat fee of \$75,000.00, Attorney Brooks shall be entitled to be paid 5% of any recovery up to the sum of two million dollars and 3% of that portion of any recovery which exceeds two million dollars, whether the recovery is by way of settlement with CHS or any other party, pursuant to an arbitral award, or pursuant to a court judgment enforcing an arbitral award.

8. Great Western Bank and H & I Trucking, LLC, who are both creditors in the bankruptcy case, have each agreed to lend the Trustee \$75,000.00, which total sum of \$150,000.00 shall be forwarded to Attorney Brooks for the purpose of funding the litigation. H & I Trucking, LLC is owned by Tonya Norgaard and Joshua Steffensen, who are the adult children of Duane and JoAnn Steffensen, the owners of H & I Grain of Hetland, Inc. Great Western Bank and H & I Trucking, LLC are unsecured creditors as relates to the dispute with CHS.

9. In the event of a recovery on the case, the Trustee would be authorized to treat repayment of the \$150,000.00 plus interest at 7.5% as an administrative priority claim. In the event there is no recovery on the case, the Trustee will not be responsible for repaying the \$150,000.00 or any interest to Great Western Bank and H & I Trucking, LLC.

10. This credit transaction is necessary to preserve an asset of the estate, i.e. the cause of action against CHS. The Debtor's schedules list only two assets, patronage dividends in the amount of \$16,347.33, and the potential cause of action against CHS Hedging valued at twenty million dollars. The Trustee estimates that absent recovery in the litigation with CHS, for which the funding is sought, there will be no meaningful recovery in this case for the general unsecured creditors.

11. The Debtor is not conducting business and has no projected income or projected expenses in the Chapter 7 bankruptcy.

12. Based upon information and belief, the Trustee advises the Court that it appears the statute of limitations for the litigation against CHS may be at the beginning of March 2019.

WHEREFORE, the Chapter 7 Trustee requests authority to obtain unsecured credit of \$150,000.00 for the purpose of funding the lawsuit against CHS, upon the terms and condition as set forth in this motion, and for such other and further relief as the Court may deem just and equitable in the premises and that the Court confirm the real estate sale is fair and reasonable.

Dated this 1st day of February, 2019.

FITE, PIERCE & RONNING LAW OFFICE

/s/ Lee Ann Pierce
Chapter 7 Bankruptcy Trustee
316 Fourth Street
P.O. Box 524
Brookings, SD 57006
Phone: 605/692-9415
Fax: 605/692-1433