

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

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In re: : Chapter 11
THQ, INC., *et al.*, :
 : Case No. 12-13998 (MFW)
 :
 : Jointly Administered
Debtors. :
 :
 : **Hearing Date and Time: January 4, 2013 at 10:30 a.m. ET**
 : **Objection Deadline: January 2, 2013 at 4:00 p.m. ET**
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**OBJECTION TO DEBTORS’ MOTION FOR FINAL ORDER
AUTHORIZING THE DEBTORS TO OBTAIN POST
PETITION FINANCING AND USE OF CASH COLLATERAL**

The Ad Hoc Committee of Convertible Noteholders (the “Convertible Committee”),¹ consisting of certain holders of 5.00% Convertible Senior Notes Due 2014 (the “Convertible Notes”) issued by THQ Inc. (“THQ” and, together with its affiliated debtors, the “Debtors”),² for its Objection (this “Objection”) to Debtors’ Motion for Final Order Authorizing the Debtors to Obtain Postpetition Financing and Use of Cash Collateral [Docket No. 13] (“the “DIP Motion”), respectfully represent:

¹ The undersigned represented a pre-petition ad hoc committee of holders of Convertible Notes. The post-petition Convertible Committee is in “formation” given that a significant portion of the Convertible Notes have traded since the Petition Date. The current members of the Convertible Committee are: (i) Silverback Asset Management, LLC; (ii) Third Avenue Focused Credit Fund; and (iii) Wolverine Flagship Fund Trading Limited. The present members of the Convertible Committee collectively hold, in the aggregate, approximately \$41 million, or 41%, of original principal amount of the Convertible Notes. Holders of Convertible Notes are *pari passu* with general unsecured trade claims. Certain holders of Convertible Notes will also seek membership on the official committee of unsecured creditors (the “Official Committee”) in these cases, which is scheduled to be appointed on January 3, 2013. Andrews Kurth LLP intends on seeking to be selected as counsel to the Official Committee, given that the Convertible Notes and other general unsecured claims are *pari passu* and aligned.

² The Debtors in these chapter 11 cases are: (i) THQ Inc.; (ii) THQ Digital Studios Phoenix, Inc.; (iii) THQ Wireless, Inc.; (iv) Volition, Inc.; and (v) Vigil Games, Inc.

INTRODUCTION

1. As described at length in the Convertible Committee's objection [Docket No. 69] (the "Bidding Procedures Objection")³ to the Debtors' motion seeking approval of bidding procedures with respect to the proposed sale of the Debtors' business "as a whole" to Clearlake Capital Group, L.P. ("Clearlake"), the Debtors' and their advisors pre- and post-petition conduct appear designed to ensure that the sale to Clearlake is consummated, regardless of whether such sale will maximize the value of the Debtors' estates and the recoveries of unsecured creditors.

2. The DIP Motion, which seeks, among other things, final approval by this Court of superpriority post-petition financing in an amount of \$10 million is part of such process. The terms of the proposed DIP financing, including, among other things, the onerous deadlines and milestones proposed therein, appear to have been "manufactured" by the Debtors' management and their advisors to make it appear necessary for the Clearlake sale to be consummated by January 15, 2013. The DIP financing terms, including but not limited to the deadlines and milestones therein, serve to benefit Clearlake unjustifiably at the expense of the Debtors' unsecured creditors, as they are designed to force a "fast-track" sale rather than allowing for a fair and robust 363 sale process, including a *bona fide* process to sell the various pieces or titles among the Debtors' businesses. For these reasons, and for those set forth in the Bidding Procedures Objection, the terms of the DIP Financing should not be approved.

³ The Bidding Procedures Objection contains a lengthy factual and procedural "Background" section which contains an overview of the Company's business, a description of the Debtors' and their advisors' pre-petition actions and other events that preceded the Debtors' bankruptcy filing, and a description of various pleadings the Debtors have filed in these Cases. That "Background" section is incorporated into this Objection in its entirety. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Objection.

OBJECTION

3. Debtor-in-possession financing should not be approved unless the terms are “fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.” *In re Aqua Associates*, 123 B.R. 192, 195-97 (Bankr. E.D. Pa. 1991) (citing *In re Crouse Group, Inc.*, 71 B.R. 544 (Bankr. E.D. Pa. 1987)). Postpetition financing should also not be approved where “it is apparent that the purpose of the financing is to benefit a creditor rather than the estate.” *In re Ames Dep’t. Stores, Inc.*, 115 B.R. 34, 39 (Bankr. S.D.N.Y. 1990).

4. Here, the terms of the proposed DIP financing (in particular, the proposed deadlines and milestones therein) are not fair and reasonable. At the “first-day” hearings in these cases, this Court approved DIP financing on an interim basis, in part, on the “short-form” DIP budget for the four week period from December 17, 2012 through January 7, 2013 that the Debtors attached to their First Day Declaration. That DIP budget reflected a significant reduction in cash flow receipts, and increase in cash disbursements, compared to budgets prepared by the Debtors immediately prior to the Petition Date. Under that DIP Budget, the Debtors forecasted that they would run out of money promptly on or about January 15, 2013 (the same date that the forbearance period expires under the Debtors’ pre-petition secured facility and the deadline for closing of the Clearlake sale).

5. Upon information and belief, however, the Debtors’ present forecasts (created less than two weeks following the filing of the original DIP Budget) now show that the amount of cash the Debtors originally claimed they needed was significantly exaggerated. Under the Debtors’ current forecasts, the Debtors now contend that they have sufficient cash to finance their operations for at least several weeks beyond January 15, 2013. The timing of this revision, among other things, suggests that the Debtors’ original DIP budget was part of a process to

“manufacture” the January 15, 2013 “cliff” that is purportedly driving the need for the expedited sale to Clearlake. The goal in these cases seems to be focused on doing whatever is necessary to consummate a sale of the Debtors’ business “as a whole” to Clearlake. The deadlines and milestones set forth in the DIP Motion and the DIP credit facility should not be approved.

WHEREFORE, the Convertible Committee respectfully requests that the Court (i) deny the Debtors' request for a Final Order approving the DIP Motion (as set forth herein), and (ii) grant such other and further relief as may be just and proper.

Dated: January 2, 2013
Wilmington, Delaware

ANDREWS KURTH LLP

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