

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

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In re:

BULLION DIRECT, INC.

Debtor.

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§

CHAPTER 11 CASE

CASE NO. 15-10940-TMD

APPLICATION FOR APPROVAL OF THE EMPLOYMENT OF  
DYKEMA COX SMITH AS ATTORNEYS FOR THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

**THIS PLEADING REQUESTS RELIEF THAT MAY BE  
ADVERSE TO YOUR INTERESTS.**

**IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-  
ONE (21) DAYS FROM THE DATE OF SERVICE, THE  
RELIEF REQUESTED HEREIN MAY BE GRANTED  
WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A  
FINAL HEARING TO BE HELD.**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

The Official Committee of Unsecured Creditors (the “Committee”) of BullionDirect, Inc. (the “Debtor”) in the above captioned case (the “Case”), hereby files this *Application for Approval of the Employment of Dykema Cox Smith as Attorneys for the Official Committee of Unsecured Creditors* (the “Application”). In support of the Application, the Committee relies upon the *Declaration of Jesse T. Moore in Support of the Application for Approval of the Employment of Dykema Cox Smith as Attorneys for the Committee* (the “Moore Affidavit”) attached hereto as *Exhibit A*. The Committee presents this Application and respectfully represents the following:

**I. JURISDICTION, VENUE AND BACKGROUND**

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are §§ 328 and 1103 of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014 of the Local Rules of Bankruptcy Procedures for the Western District of Texas.

3. On July 20, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”).

4. The Debtor, under the management of a Chief Restructuring Officer, continues to manage and operate its business as Debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. The Committee was appointed on August 20, 2015. The undersigned Chairman of the Committee was elected on that date. No trustee or examiner has been requested or appointed.

**II. RETENTION OF DYKEMA COX SMITH**

5. By this application, the Committee seeks to employ and retain Dykema Cox Smith (“Dykema”) as its counsel effective as of August 20, 2015 in connection with the Case. Pursuant to Local Bankruptcy Rule 2014(c), this Application need not be filed on a *nunc pro tunc* basis because the Application is being filed within thirty (30) days of the actual retention of Dykema.

6. Pursuant to § 1103 of the Bankruptcy Code, the Committee requests that the Court approve the employment of Dykema as its counsel to perform the extensive legal services that will be necessary. The Debtor has been informed that Jesse T. Moore will act as lead

Dykema counsel for the Committee in the Case. Jesse can be contacted at Dykema Cox Smith, 111 Congress Ave., Suite 1800, Austin, Texas 78701, facsimile: (512) 703-6399, phone: (512) 703-6325, e-mail: jmoore@dykema.com. Jesse's State Bar Number is 24056001.

7. Dykema will be employed pursuant to the engagement agreement attached hereto as *Exhibit B* (the "Engagement Agreement"). In addition to this contract, as required by Local Bankruptcy Rule 2014(b)(2), a FRBP 2016(b) disclosure of compensation is attached hereto as *Exhibit C*.

8. The employment of Dykema is appropriate and necessary to enable the Committee to execute faithfully its duties. Subject to further order of this Court, it is proposed that Dykema be employed as primary bankruptcy counsel to provide legal services as follows:

- a. Monitor the chapter 11 case;
- b. Investigate estate causes of action;
- c. Evaluate estate assets and sale processes;
- d. Communicate with creditors;
- e. Ensure the fairness and efficiency of chapter 11 processes such as claims reconciliation and plan formulation and confirmation; and
- f. Assist the Committee with its other duties under § 1103(c) of the Bankruptcy Code.

9. The Committee through its counsel will also submit expense reimbursement applications for its members pursuant to § 503(b)(3)(F) of the Bankruptcy Code.

10. It is necessary that the Committee employ counsel to render the foregoing professional services. Dykema has stated its desire and willingness to act as counsel in the Case and render the necessary professional services as attorneys for the Committee.

11. Section 1103(a) of the Bankruptcy Code states that "with the court's approval, such committee may select and authorize the employment by such committee of one or more

attorneys, accountants, or other agents, to represent or perform services for such committee.” 11 U.S.C. § 1103(a). Section 328(a) of the Bankruptcy Code states that “a committee ... with the court’s approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including ... on an hourly basis[.]” *Id.* § 1103(a). Dykema will be retained on an hourly basis, as set forth in the Engagement Agreement.

### **III. DYKEMA’S CONNECTIONS AND LACK OF CONFLICTS**

#### **A. Connections with the Debtor**

12. The Committee is unaware of any circumstances where Dykema was adverse to or connected with the Debtor. The Committee has been informed that Dykema’s conflicts database management system (the “System”) holds no information that would suggest that Dykema is now or has ever been adverse to or connected with the Debtor.

#### **B. Connections with Creditors and Other Parties in Interest**

13. Other than Dykema’s representation of parties in interest as described in the Moore Declaration, Debtor and Dykema have not identified any other connections between the Debtor’s creditors or parties in interest and Dykema. To the best of the Committee’s knowledge, the partners, counsel, and associates of Dykema do not have any other connection with or any interest adverse to the Debtor, its creditors, or any other party in interest, or their respective attorneys and accountants or the United States Trustee or any person employed in the office of the United States Trustee, except as set forth herein and in the attached Moore Declaration. To the best of the Committee’s knowledge, none of these connections relate to the Debtor.

14. Fed. R. Bankr. P. 2014(a) also requires a disclosure of all connections with the “Debtors, creditors, any other party in interest, their respective attorneys and accountants. . . .” Dykema did not search its System for all of the thousands of creditors listed in the Debtor’s

schedules. Instead, it searched for its System for creditors on the Debtor’s original and amended lists of the twenty largest creditors filed in the Case and for equity security holders.

15. As expected, while the results of these searches revealed no conflict of interest with regard to Dykema’s anticipated representation of the Committee, connections to parties in interest were revealed. Those connections are specifically described in the Moore Declaration. Each of the connections described is a present, former, or affiliate relationship between Dykema and its clients, and each is wholly unrelated to the Debtor in this Case. Nevertheless, each relationship constitutes a “connection” that Dykema feels should be disclosed for these purposes. The Committee and Dykema do not believe that a potential or actual conflict of interest exists with respect to its representation of the Debtor and any of the representations described above. In the event disputes arise in the Case regarding current Dykema clients, Dykema may not be able to represent the Committee in those disputes.

16. The primary attorneys within Dykema who will represent the Committee are set forth below:

Jesse Moore, Senior Attorney	\$335.00
Travis Plummer, Associate	\$280.00
Paralegal rate	\$180.00

17. The Hourly Rates are set at a level designed to fairly compensate Dykema for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. It is Dykema’s policy, in all areas of its practice, to charge its clients for additional expenses incurred in connection with the client’s case. The expenses charged to Dykema’s clients include, among other things, postage and express mail charges at the rates charged by the U.S. Postal Service, special or hand delivery charges, external photocopying charges at the actual cost charged,

not charge for long distance calls other than conference calls. Dykema does not charge for incoming or outgoing telecopier services. Dykema will charge the estate for expenses in a manner and at rates consistent with charges made generally to Dykema's other clients and consistent with the applicable Bankruptcy Local Rules and United States Trustee guidelines.

18. Dykema has not agreed to share any compensation received with any other entity.

19. Dykema's compliance with the requirements of Sections 328, 1103, and 504 of the Bankruptcy Code and Bankruptcy Rule 2014, is set forth in detail in the Moore Declaration attached as *Exhibit A*.

#### IV. NOTICE

20. The Committee has caused a summary of this Application pursuant to Local Bankruptcy Rule 2014(d) in the form attached hereto as *Exhibit D* to be served upon the attached current Master Service List pursuant to the *Agreed Order Granting Debtor's Emergency Motion for Order Limiting Notice and Implementing Certain Notice Procedures*, entered August 7, 2015, Docket No. 36 via the Court's electronic case filing system, electronic mail, or US mail, postage pre-paid, on September 3, 2015. The Committee submits that no other or further notice need be provided.

21. No previous application for employment of counsel for the Committee has been made to this Court or any other court.

WHEREFORE, the Committee respectfully request that the Court enter an order approving the *Application for Approval of the Employment of Dykema Cox Smith as Attorneys for the Committee*, effective as of August 20, 2015, as set forth above, and granting such other relief as is just and proper.

Dated: September \_\_\_\_, 2015

Respectfully submitted,

**DR. LOUIS MCCANN, COMMITTEE CHAIR**

By:   
James Hoeffner, Counsel to Dr. McCann

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE: §  
§ CHAPTER 11  
BULLIONDIRECT, INC., § CASE NO. 15-10940-tmd  
Debtor. §

**FOURTH MASTER LIMITED SERVICE LIST**  
(August 31, 2015)

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**United States Trustee:**

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