

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

<p>In re:</p> <p>TRIAD GUARANTY INC.,<sup>1</sup></p> <p style="text-align: right;">Debtor.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 13-11452 (MFW)</p> <p><b>Objections Due: November 6, 2013 at 4:00 p.m. EDT</b></p> <p><b>Hearing Date: November 13, 2013 at 10:30 a.m. EDT</b></p>
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**DEBTOR’S APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF KPMG LLP AS TAX COMPLIANCE AND TAX CONSULTING  
SERVICES PROVIDER FOR THE DEBTOR AND DEBTOR IN POSSESSION  
PURSUANT TO 11 U.S.C. § 327(a), NUNC PRO TUNC TO OCTOBER 22, 2013**

Triad Guaranty Inc. (the “Debtor” or “Triad”), as debtor and debtor in possession in the above-captioned chapter 11 case, hereby submits this Application (the “Application”) for entry of an order (the “Order”), substantially in the form attached hereto as Exhibit A, authorizing the Debtor to employ and retain KPMG LLP (“KPMG”) as tax services provider to the Debtor in this chapter 11 case pursuant to section 327(a) of title 11 of the United States Code, 11 U.S.C. §§101 et seq. (the “Bankruptcy Code”), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Rules”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (“Local Rules”), nunc pro tunc to October 22, 2013. In support of this Application the Debtor submits the Declaration of Craig L. Pichette, a partner of KPMG (the “KPMG Declaration”), a copy of which is attached hereto as Exhibit B and incorporated herein by reference. In further support of this Application, the Debtor respectfully states as follows:

**JURISDICTION**

1. This Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and

<sup>1</sup> The last four digits of the Debtor’s federal taxpayer identification number are 8519. The location of the Debtor’s headquarters and the Debtor’s service address is 1900 Crestwood Blvd., Birmingham, AL 35210.

1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Bankruptcy Code sections 327(a), 328(a) and 1107, Rule 2014(a), and Local Rule 2014-1.

### **BACKGROUND**

3. On June 3, 2013 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing to operate its business as debtor and debtor in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or official committee of unsecured creditors has been appointed in the bankruptcy case.

4. An in-depth description of the Debtor’s business, the reasons for commencing this bankruptcy case, and the relief sought from the Court to allow the Debtor to smoothly transition into Chapter 11 is set forth in the First Day Declaration of William Ratliff, III in Support of the Debtor's Chapter 11 Petition and First Day Motions [D.I. 3], which is incorporated herein by reference.

5. On July 31, 2013, the Debtor filed its Application for an Order Authorizing the Retention and Employment of Ernst & Young LLP (“Ernst & Young”) as Tax Services Provider for the Debtor and Debtor in Possession Pursuant to 11 U.S.C. § 327(a), Nunc Pro Tunc to July 23, 2013 [D.I. 97]. On August 20, 2013, this Court entered that certain Order Authorizing the Retention and Employment of Ernst & Young LLP as Tax Services Provider for the Debtor and Debtor in Possession Pursuant to 11 U.S.C. § 327(a), Nunc Pro Tunc to July 23, 2013 [D.I. 123].

6. During the course of Ernst & Young’s engagement as tax services provider for the Debtor, there have emerged conflicting professional views between the Debtor’s tax counsel and Ernst & Young on a significant issue. As a consequence of these differing views, the Debtor and

its Chief Executive Officer do not believe they can sign the Debtor's 2012 tax returns before these differences are resolved.

7. For this reason, after discussion with Ernst & Young, the Debtor has determined to retain KPMG to render tax advice on the significant issue, tax compliance, and tax consulting services independent of Ernst & Young. By doing so, the Debtor believes it will resolve the conflict in favor of one of the two differing views. The Debtor anticipates accepting KPMG's advice on this issue, and then upon KPMG's completion of the 2012 tax returns signing and filing these tax returns.

### **RELIEF REQUESTED**

8. By this Application, the Debtor requests entry of the proposed Order substantially in the form attached hereto as Exhibit A authorizing the retention and employment of KPMG, nunc pro tunc to October 22, 2013, to provide tax compliance and tax consulting services in this chapter 11 case, pursuant to the terms and conditions of the engagement letter between KPMG and the Debtor ("Engagement Letter"). A copy of the Engagement Letter is attached hereto as Exhibit C.

9. The Engagement Letter describes the services that the Debtor anticipates requiring from KPMG in this bankruptcy case and the terms and conditions of the Debtor's proposed engagement of KPMG. The Debtor now seeks authority to employ KPMG in this case on the terms set forth in the Engagement Letter.

10. The Debtor respectfully submits that the services of KPMG are necessary to maximize the value of the Debtor's estate and to reorganize successfully. KPMG has indicated a willingness to provide services to the Debtor, subject to court approval of the Engagement Letter and subject to its terms and conditions. Additionally, the Debtor will coordinate KPMG's

services with those of other retained professionals in this bankruptcy case to eliminate unnecessary duplication or overlap of work. In furtherance of such efforts, Ernst & Young, with the Debtor's consent, has agreed to step down from its engagement and therefore only KPMG will be providing tax compliance and tax consulting services for the Debtor going forward. The Debtor submits that the employment and retention of KPMG would be in the best interest of the Debtor, its estate, and its creditors.

### **SERVICES TO BE RENDERED**

11. As set forth in further detail in the Engagement Letter, subject to Court approval, KPMG has agreed to provide certain services (the "Services"). Specifically, KPMG will be engaged to provide the following services:

- a. Prepare federal and state income tax returns beginning with the taxable year 2012;
- b. Perform preliminary engagement planning activities related to the tax returns for the immediately succeeding tax year;
- c. If requested by Triad, review the statutory annual statements of the Triad consolidated tax group, the draft return prepared to date by Ernst & Young, and other information;
- d. If requested by Triad, discuss with Triad the alternative treatments of the unpaid claims for U.S. federal income tax purposes;
- e. Document KPMG's conclusions in written tax advice if requested by Triad;
- f. If requested by Triad, review and analyze section 382 issues, monitor changes in ownership for purposes of section 382 and analyze any potential worthless stock deduction(s);
- g. If requested by Triad, advise on strategic and/or financing transactions, including debtor-in-possession financing proposals and facilities and proposals from plan sponsors or other investors; and
- h. Provide other tax consulting services as may be requested by Triad.

12. As the term is used in the Engagement Letter, “Tax Compliance Services” include (a) the preparation of federal and state income tax return(s) and supporting schedules for Triad’s 2012 tax year, and (b) preliminary engagement planning activities related to the tax returns specified above for the immediately succeeding tax year.

13. As the term is used in the Engagement Letter, “Tax Consulting Services” include (a) routine tax advice concerning the federal, state, local, and foreign tax matters related to the preparation of the prior year’s federal, state, local, and foreign tax returns; (b) routine tax advice concerning the federal, state, local, and foreign tax matters related to the computation of Triad’s taxable income for the current year or future years; and (c) routine dealings with a federal, state, local, or foreign tax authority (e.g., responding to automated interest and penalty notices, preparing tax computations based upon the taxpayer’s concession or settlement of an issue with the relevant tax authority).

#### **DISINTERESTEDNESS OF PROFESSIONALS**

14. Based upon the Debtor’s review of the KPMG Declaration, and subject to any exceptions disclosed or described therein, the Debtor believes that, to the best of the Debtor’s knowledge, KPMG (a) is a “disinterested person” as that term is defined in Bankruptcy Code section 101(14) and (b) does not hold or represent an interest adverse to the Debtor’s estate.

#### **PROFESSIONAL COMPENSATION**

15. Pursuant to the terms and conditions of the Engagement Letter, the Debtor proposes to compensate KPMG for tax consulting services based on the agreed hourly rates described in the Engagement Letter. These rates, by classification of professional, as follows:

<i>Professional</i>	<i>Hourly Rate</i>
Partner	\$650
Director	\$550
Senior Manager	\$500
Manager	\$400
Senior Tax Associate	\$275
Tax Associate	\$225

16. For tax compliance services relating to the 2012 Federal income tax return, KPMG's fee will be the lesser of (a) actual time incurred to complete the work at the hourly rates for the individuals involved in providing the services detailed in the chart below; or (b) \$50,000.

<i>Professional</i>	<i>Hourly Rate</i>
Partner	\$500
Director	\$450
Senior Manager	\$400
Manager	\$350
Senior Tax Associate	\$250
Tax Associate	\$200

17. In addition to the fees set forth above, the Debtor and KPMG have agreed that KPMG shall be reimbursed for KPMG's out of pocket expenses, including, but not limited to, meals, lodging, travel, photocopying, delivery service, postage, vendor charges and other out-of-pocket expenses incurred in providing professional services to the Debtor.

18. The Debtor believes the compensation arrangements provided for in the Engagement Letter are consistent with and typical of arrangements entered into by KPMG and other accounting firms with respect to rendering similar services for clients such as the Debtor.

19. KPMG intends to apply to this Court for payment of compensation and reimbursement of fees and expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and orders of this Court, and this Court's Order

Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Official Committee Members [D.I. 57].

WHEREFORE, the Debtor respectfully requests that this Court enter an order, in substantially the form attached hereto as Exhibit A, (i) authorizing the employment and retention of KPMG LLP as tax services provider to the Debtor pursuant to 11 U.S.C. § 327(a), nunc pro tunc to October 22, 2013, and (ii) granting such other and further relief as this Court deems appropriate.

[Signature page follows.]

Dated: October 23, 2013

  
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William T. Ratliff, III  
Chairman, President, and Chief Executive  
Officer