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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re** : **Chapter 11 Case No.**  
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**CHRYSLER LLC, et al.** : **09 – 50002 (AJG)**  
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**Debtors.** : **(Jointly Administered)**  
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**CHRYSLER FINANCIAL SERVICES AMERICAS LLC'S  
OBJECTION TO DEBTORS' MOTION TO APPROVE THE  
GMAC MOTION AND FILE THE GMAC TERM SHEET UNDER SEAL**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Chrysler Financial Services Americas LLC ("Chrysler Financial") submits this objection ("Objection") to (i) the Motion of Debtors and Debtors in Possession Pursuant to Sections 105, 363, 364 and 503 of the Bankruptcy Code, for an Order Authorizing Them to (A) Enter Into the GMAC Master Financial Services Agreement and Related Agreements and (B) Obtain Unsecured Credit, dated May 1, 2009 [Docket No. 170] (the "GMAC Motion") and (ii) the Motion of Debtors and Debtors in Possession Pursuant to 11 U.S.C. § 107(B) and Fed. R. Bank. P. 9018 for an Order Authorizing Them to File Documents Under Seal [Docket No. 172] (the "Seal Motion," together with the GMAC Motion, the "Motions"), and respectfully represents as follows:

### **Lack of Due Process**

1. The Debtors filed the Motions on Friday evening. The Motions were not fashioned as "emergency motions" and they did not provide a time and date for a hearing or when objections would be due. Indeed, the only hint that the Motions may be heard on an accelerated schedule was given by a one-line request at the very end of the GMAC Motion requesting a waiver of the notice requirements under Bankruptcy Rule 6004(a). This request was neither expressed in the title of the GMAC Motion nor in the "Relief Requested" section. Moreover, the Seal Motion does not include a similar request to waive applicable notice requirements.

2. With the above in mind, we ask for due process – the right to read the term sheet for which the Debtors seek approval, and the right to determine its impact on Chrysler Financial, and the right to prepare for a hearing. To be sure, Chrysler Financial fully supports Chrysler's rehabilitation as a going concern and the preservation of jobs. Chrysler Financial's objection here is not to saving Chrysler. It is to acting outside all bounds of fairness

3. As this Court is aware, at the conclusion of yesterday's hearing, the Debtors asked this Court to schedule the Motions for a hearing this afternoon. While we understand that some requests for relief require an accelerated schedule, the Motions do not qualify for such special treatment. In fact, granting the relief requested in the GMAC motion will be a nullity without Chrysler Financial's consent and the execution and approval by this Court of a certain Risk Sharing Agreement ("RSA") currently under negotiation by, among others, Chrysler, Chrysler Financial, and Fiat.

**Chrysler Financial Has Not Been Provided With a Copy of GMAC Term Sheet**

4. Debtors purport to move this Court simultaneously for approval of the GMAC Term Sheet, as well as for authority to seal the very term sheet for which approval is sought. As explained below, Chrysler Financial may be the only party whose interests may be affected by the GMAC Motion. As such, we asked Debtors' counsel on Saturday, May 2, for a copy of the GMAC Term Sheet. We were informed that GMAC's counsel had to approve the request. Despite discussions regarding the matter following yesterday's hearing, Chrysler Financial has yet to receive a copy of the GMAC Term Sheet. We respectfully declined GMAC's peekaboo proposal whereby we could sit in their office and read (quickly) the portions of the term sheet they determine to disclose.

**GMAC Cannot Finance the Dealers Without Chrysler Financial's Consent**

5. As of the filing of these chapter 11 cases, Chrysler Financial was the primary source of financing for Chrysler's automotive operations, including wholesale financing of transactions between Chrysler and 2,500 of its dealers (the "Dealers"). In addition, Chrysler and Chrysler Financial are parties to various agreements in which each party provides a number of essential services to the other party, including the Master Autofinance Agreement (the "Chrysler Financial MAFA").

6. To provide the financing necessary for the Dealers to acquire vehicles from Chrysler, each Dealer and Chrysler Financial entered into a standard Master Loan and Security Agreement ("MLSA") that sets forth the terms and conditions upon which Chrysler Financial will lend to the Dealers.<sup>1</sup> The MLSA provides, among other things, that, in exchange for lending to the Dealers, Chrysler Financial receives a security interest in "Collateral" that continues until it is released by Chrysler Financial.

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<sup>1</sup> Chrysler is not a party to the MLSA's between Chrysler Financial and each of the Dealers.

Collateral is defined in the MLSA to include, among others, (a) all inventory, including all new and used vehicles and parts, (b) all equipment, including, without limitation, all furniture, fixtures, machinery, and tools, (c) all general intangibles, (d) all proceeds of the Collateral, including cash and other funds held in deposit accounts.

7. Notably, the MLSA prohibits the Dealers from granting any liens or encumbrances on the Collateral, or from taking other actions that may be adverse to the Collateral. To do so would be an event of default under the MLSA and trigger the right of Chrysler Financial to exercise all available remedies against the Dealers. Because none of the Dealers are debtors in these chapter 11 cases, the automatic stay does not prohibit Chrysler Financial from immediately exercising any of the remedies set forth in the MLSA. Clearly, it is extremely prejudicial to Chrysler Financial to allow another lender to have liens against Dealer property while these Dealers owe Chrysler Financial substantial sums.

8. Despite this explicit prohibition in the MLSA, Chrysler is now asking this Court to approve an agreement that substitutes GMAC for Chrysler Financial as the primary financing source to the Dealers. It is inconceivable that GMAC would finance the operations of the Dealers without receiving first-lien security interests in the Dealers' assets. The only way GMAC can achieve that objective is if Chrysler Financial consents.

9. Indeed, Chrysler Financial has been engaged in ongoing, intense negotiations with Chrysler, Fiat, Cerberus and others to complete the RSA setting forth the terms and conditions upon which Chrysler Financial would be willing to consent to any future GMAC financing of Chrysler Dealers. Such negotiations were initiated

precisely because the parties involved in these discussions recognized that GMAC would be unable to provide wholesale financing to Chrysler's Dealers absent Chrysler Financial's consent. Chrysler Financial will not consent if (i) the RSA is not finalized, or (ii) the GMAC Term Sheet contains any provisions adverse to Chrysler Financial's interests as against the Chrysler Dealers or inconsistent with the terms of the RSA. Accordingly, it is imperative that Chrysler Financial be provided with a copy of the GMAC Term Sheet before the Debtors purport to bring it before the court for approval, and to seal it in the record.

10. The RSA and the GMAC Term Sheet are inextricably linked and should be presented for court approval at the same time, after Chrysler Financial has had a fair opportunity to review the GMAC Term Sheet. This would allow the Court and creditors to see the full picture. Other than merely filing their motions, the Debtors provided neither Chrysler Financial nor anyone fair notice of the proposed motions, despite Debtors' belated efforts to seek expedited hearings on same. Chrysler Financial is entitled to due process and this Court should adjourn Debtors' motions to sometime later this week to allow the RSA negotiations to conclude and to permit Chrysler Financial to review the Term Sheet to confirm its interests are not adversely affected, thereby enabling both agreements to be approved concurrently.

11. Given that Chrysler Financial's consent is indisputably integral to any potential approval of the GMAC Motion, it necessarily follows there is no compelling need to shield the GMAC Term Sheet from Chrysler Financial. *See In re Orion Pictures Corp.*, 21 F.3d 24, 26 (2d Cir. 1994) (“a judge must carefully and skeptically review sealing requests to insure that there is really an extraordinary

circumstance of compelling need.”); *In re Itel Corp.*, 17 B.R. 942, 944 (9th Cir. BAP 1982) (section 107(b)(1) was intended to avoid affording an unfair advantage to competitors by providing them information as to the commercial operations of another).

12. Moreover, the sealing of documents is not required under Bankruptcy Code section 107(b), only the *protection* of an entity. *See* 11 U.S.C. § 107(b)(1) (“ . . . the bankruptcy court may – (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information”). This Court has wide discretion in determining the sort of *protection* required under Bankruptcy Code section 107(b). *See, e.g., In re Food Management Group, LLC*, 359 B.R. 543, 554 (Bankr. S.D.N.Y. 2007); *In re Gitto Global Corp.*, 422 F.3d 1, 9 (1st Cir. 2005) (“It is true that § 107(b)(2) speaks of protection in general terms rather than of wholesale sealing, and that courts must therefore exercise some discretion in determining what form of protection to grant.”). Indeed, “[m]otions to seal documents are ‘disfavored as a general rule’ and ‘should be entered only when actually necessary to protect a party from harm.’” *In re Chase*, 2008 WL 2945997 \*6 (Bankr. S.D.N.Y. 2008) (citing *In re Sherman-Noyes & Prairie Apartments Real Estate Investment Partnership*, 59 B.R. 905, 909 (Bankr.N.D.Ill.1986)).

13. Sealing the GMAC Term Sheet as to Chrysler Financial would result in an overly broad application of Bankruptcy Code section 107(b)(1). *See United States v. Amodeo*, 71 F.3d 1044, 1051 (2d Cir. 1995) (order should be no broader than necessary to serve the interests that require protection). The Debtors’ and GMAC’s interests could be protected in alternative ways, such as by conditioning Chrysler Financial’s access to the GMAC Term Sheet on Chrysler Financial’s entry into a

confidentiality agreement. *See, e.g., In re Nunn*, 49 B.R. 963 (Bankr. E.D. Va. 1985) (“for the Court to enter a protective order, limitation of access must not only be an appropriately responsive remedy, but also, there can be no less drastic alternative available.”).

WHEREFORE this Court should adjourn the hearing on the Motions until such time as (i) Chrysler Financial has been provided with a fair opportunity to review and analyze the GMAC Term Sheet and to prepare a response, and (ii) the RSA has been finalized and propounded.

Dated: New York, New York  
May 5, 2009

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