

FEDERAL DEPOSIT INSURANCE CORPORATION

In Re: GMAC Bank
Midvale, Salt Lake County, Utah
Request for Waiver of Certain Conditions

ORDER

The Board of Directors of the Federal Deposit Insurance Corporation (“FDIC”) has fully considered the facts and circumstances relevant to the factors required to be considered by Section 7(j) of the Federal Deposit Insurance Act in evaluating the request of Cerberus FIM, LLC, New York, New York (“CF”); Cerberus FIM Investors, LLC, New York, New York (“CF Investors”); FIM Holdings LLC, New York, New York (“FIM”); for a waiver of the requirement to become depository institution holding companies, terminate the deposit insurance of GMAC Bank, Midvale, UT (“Bank”) or divest control of the Bank by November 30, 2008 (“Waiver”) as specified in a certain Two-Year Disposition Agreement dated November 16, 2006 by and among CF, CF Investors, FIM and the FDIC.

Accordingly, it is hereby ORDERED, for the reasons set forth in the attached Statement that the requested Waiver be, addressed through the execution of an Extended Disposition Agreement subject to the following conditions:

1. CF, CF Investors, and FIM (collectively, referred to as the “Acquirers”) shall complete one of the following actions no later than November 30, 2018:
 - a. become registered with the appropriate federal banking agency as depository institution holding companies pursuant to the Bank Holding Company Act, 12 U.S.C. §§ 1841 -- 1850, or the Home Owners’ Loan Act, 12 U.S.C. §§ 1461 -- 1470;
 - b. divest control (as that term is used in Section 7(j) and in the presumption of control in 12 C.F.R. § 303.82(b)(2)) of the Bank to one or more persons or entities other than prohibited transferees; for purposes of the preceding clause, prohibited transferees include the Acquirers, Stephen A. Feinberg, Citicorp Inc., Aozora Bank Limited and The PNC Financial Services Group, Inc. (collectively, the “Notificants”) and each company that controls, is controlled by, or is under common control with, one or more of the Notificants, provided that notwithstanding the foregoing, any Notificant or company that is or upon such transfer will become a registered depository institution holding company is not a prohibited transferee;

- c. cause the Bank's status as an FDIC-insured depository institution to be terminated pursuant to section 8 of the FDI Act, 12 U.S.C. § 1818; or
- d. obtain from the FDIC a waiver of the requirements of this provision on the ground that applicable law and FDIC policy permit similarly situated companies to acquire or retain control of FDIC-insured industrial banks, provided any such request for waiver is in writing and is based upon the applicable law and FDIC policy in effect on the date the waiver request is filed with the FDIC,

provided that any application, request, or notice desirable or necessary to effect any of the above actions must be received, in substantially complete form, by the appropriate federal banking agency no later than May 30, 2018.

2. The Acquirers shall execute the Extended Disposition Agreement substantially in the form attached hereto as Exhibit A.
3. Mr. Stephen A. Feinberg ("Mr. Feinberg"), the ultimate control owner of CF, CF Investors, and FIM, shall provide to the Bank a list of all investment management companies, investment funds, portfolio companies controlled by these investment funds or investment management companies and all other companies, funds, or entities that will be controlled by Mr. Feinberg following the effective date of the Extended Disposition Agreement (collectively, "Feinberg Entities"), other than GMAC and all companies controlled, directly or indirectly, by GMAC, and shall provide monthly updates of changes to this list to the Bank (as used herein, and except for purposes of calculating the amount of covered transactions in paragraph 7.g. below, the term "control" has the meaning given it in the Change in Bank Control Act, 12 U.S.C. § 1817(j)(8) and includes the presumption of control at 12 C.F.R. § 303.82(b)(2)).
4. Mr. Feinberg shall provide the FDIC with such information as the FDIC deems necessary concerning any Feinberg Entity and its relationship with the Bank as well as its impact or effect on the Bank. If disclosure of information concerning any non-U.S. Feinberg Entity is prohibited by law or otherwise, Mr. Feinberg shall cooperate with the FDIC, including without limitation, by seeking timely waivers or exemptions from any applicable confidentiality or secrecy restrictions or requirements, to enable the disclosure of such information to the FDIC, written in English and expressed in U.S. dollars.
5. The Extended Disposition Agreement shall not become effective until CF, CF Investors, FIM, and their direct and indirect subsidiaries: GMAC LLC, ("GMAC"); IB Finance Holding Company, LLC, ("IB Finance"); (collectively, CF, CF Investors, FIM, GMAC, and IB Finance are herein referred to as the "Parent Companies") and the Bank execute the Parent Company Agreement in substantially the form attached as Exhibit B and the Capital and Liquidity Maintenance Agreement in substantially the form attached as Exhibit C.

6. The Parent Companies shall:
- a. consent to such examinations by the FDIC as the FDIC deems necessary of each Parent Company and each of their subsidiaries to monitor compliance with the provisions of the Extended Disposition Agreement; any amended non-disapproval; any agreements executed in connection with the Extended Disposition Agreement or any amended non-disapproval, including without limitation, the Parent Company Agreement and the Capital and Liquidity Maintenance Agreement; the Federal Deposit Insurance Act (the “FDI Act”) and any other federal law that the FDIC has specific jurisdiction to enforce against such company or subsidiary including, without limitation, those laws and regulations governing transactions and relationships between any depository institution subsidiary and its affiliates (as used herein, the term “affiliate” means a company that controls, is controlled by, or is under common control with, another company, and the term “subsidiary” means any company that is directly or indirectly controlled by another company);
 - b. except for GMAC and IB Finance, each submit to the FDIC an initial listing of all of its affiliates and update the list annually;
 - c. each submit to the FDIC an annual report regarding its operations and activities, in the form and manner prescribed by the FDIC, and such other reports as may be requested by the FDIC to keep the FDIC informed as to financial condition, systems for monitoring and controlling financial and operating risks, and transactions with the Bank; and compliance by such Parent Company and its subsidiaries with applicable provisions of the Extended Disposition Agreement , any amended non-disapproval, the agreements executed in connection with any amended non-disapproval, the FDI Act, and any other Federal laws that the FDIC has specific jurisdiction to enforce against such company or subsidiary;
 - d. cause an independent annual audit of the Bank to be performed during the first seven years of operation after the effective date of the Extended Disposition Agreement;
 - e. each provide written notification to the FDIC within thirty days of becoming aware of any person who acquires control, directly or indirectly, of 10 percent or more of the voting shares or member’s interests of any of the Parent Companies;
 - f. obtain written approval from the New York Regional Director of the FDIC (“Regional Director”) prior to adding a member to the Bank’s board of directors during the first seven years of operation after the effective date of the Extended Disposition Agreement;

- g. each serve as a source of strength to the Bank;
 - h. maintain the Bank's capital at such levels as the FDIC deems appropriate, as reflected in the terms of a Capital and Liquidity Maintenance Agreement ("CALMA") entered into by the Parent Companies, the FDIC, the Bank, and such other parties as the FDIC deems appropriate, and/or take such other actions as the FDIC deems appropriate to provide the Bank with a resource for additional capital and liquidity;
 - i. each notify the FDIC within five days of any non-compliance with any of the covenants in any agreements with (i) its lenders, including credit agreements, bond indentures, or similar documents, and (ii) any funding or related agreements including those related to securitizations and issuances of preferred securities (as used herein, such covenants are herein collectively referred to as "Covenants", and the term "lender" means any entity that extends credit to another entity, including without limitation, a bondholder);
 - j. each provide the FDIC with copies of any executed agreements with its lenders within thirty days after execution, and if any Covenants are modified after the effective date of the Extended Disposition Agreement, each affected company shall notify the FDIC of the modification within thirty days after execution of the modification;
 - k. each notify the FDIC within thirty days after incurring any additional debt, other than borrowings in the normal course of business;
 - l. each provide written notice to the FDIC within thirty days after the transfer of any of its assets (including any interest in the Bank or any other subsidiary) to any other party, except any transfers in the normal course of business, and except any transfer of an interest in the Bank that is subject to the notice requirements of the Change in Bank Control Act, 12 U.S.C. § 1817(j);
 - m. each obtain the Regional Director's approval prior to transferring any interest in the Bank amounting to control of the Bank to any other Feinberg Entity; and
 - n. each maintain such records as the FDIC may deem necessary to assess the risks to the Bank or to the Deposit Insurance Fund.
7. In addition to its obligations under paragraph 6. above, GMAC shall:
- a. within 10 days after the effective date of the Extended Disposition Agreement, provide to the Bank a list of all companies controlled, directly

or indirectly, by GMAC (collectively, "GMAC Companies"), and shall provide to the Bank annual updates of any changes to this list;

- b. at such intervals as the FDIC deems appropriate, provide the FDIC with such information as the FDIC deems appropriate concerning any GMAC affiliate and its relationship with the Bank as well as its impact or effect on the Bank, and if disclosure of information concerning any non-U.S. GMAC Company is prohibited by law or otherwise, GMAC shall cooperate with the FDIC, including without limitation, by seeking timely waivers or exemptions from any applicable confidentiality or secrecy restrictions or requirements, to enable the disclosure of such information to the FDIC, written in English and expressed in U.S. dollars;
- c. maintain its capital at a level such that
 - (i) on the effective date of the Extended Disposition Agreement and thereafter, the ratio of its Total Equity Capital to Total Assets is at least 5 percent; for purposes of calculating this ratio, (A) Total Equity Capital means total equity as reported in GMAC LLC's consolidated balance sheet, as reported in its Securities and Exchange Commission filings (SEC Form 10K and Form 10Q) and (B) Total Assets means total assets as reported in the consolidated balance sheet portion of GMAC LLC's SEC filings; and
 - (ii) as of December 31, 2008 and at each quarter-end thereafter, the ratio of its Tangible Equity Capital to Total Assets is at least 5 percent; for purposes of calculating this ratio, (A) Tangible Equity Capital means total equity as reported in GMAC LLC's consolidated balance sheet, minus goodwill and intangible assets, net of accumulated amortization (other than mortgage servicing assets), as reported in its Securities and Exchange Commission filings (SEC Form 10K and Form 10Q) and (B) Total Assets means total assets less all goodwill and intangible assets (other than mortgage servicing assets) as reported in the consolidated balance sheet portion of GMAC LLC's SEC filings;

provided that no later than thirty days after each month-end until December 31, 2008, and thereafter no later than thirty days after each quarter-end unless otherwise directed by the Regional Director, GMAC shall report to the Regional Director its calculation of the above capital ratios as of each month-end or quarter-end, as appropriate; and provided further that, in the event that GMAC does not maintain its capital ratios as specified in paragraphs (i) and (ii) above, GMAC shall submit to the Regional Director within thirty days after discovery of such noncompliance its plan to restore compliance with those capital ratios.

- d. limit GM's representation, direct and indirect, on the Bank's board of directors to no more than 25 percent of the members of such board of directors, in the aggregate, provided that in the event of the resignation, death, or removal of a director who does not represent GM, GMAC will have 120 days to fill the vacancy; and
- e. limit the representation, direct and indirect, of all Feinberg Entities, other than GMAC and its subsidiaries, on the Bank's board of directors to no more than 25 percent of the members of such board of directors, in the aggregate, provided that in the event of the resignation, death, or removal of a director who does not represent such a Feinberg Entity, GMAC will have 120 days to fill the vacancy.

8. The Bank shall:

- a. obtain written approval from the Regional Director prior to engaging in any transaction with a non-U.S. affiliate;
- b. prior to entering into any transaction with a non-U.S. affiliate, and until such transaction is consummated or terminated, obtain and maintain current financial information on that affiliate and make that information available for examiner review at the Bank's main office in the U.S.; at a minimum, such financial information shall include an annual income statement and balance sheet no more than 18-months old, expressed in U.S. dollars, written in English, and audited by a reputable accounting firm;
- c. obtain written approval from the Regional Director prior to hiring any senior executive officer during the first seven years of operation after the effective date of the Extended Disposition Agreement;
- d. obtain written approval from the Regional Director prior to hiring a senior executive officer who is associated in any manner (e.g., as a director, officer, employee, agent, owner, partner, adviser or consultant) (i) with any Feinberg Entity or (ii) with Mr. Feinberg;
- e. obtain written approval from the Regional Director prior to entering into any contract for essential services with any affiliate;
- f. obtain written approval from the Regional Director prior to consummating any proposed major deviation or material change from its business plan during the first seven years of operation after the effective date of the Extended Disposition Agreement;

- g. notify the FDIC in writing at least thirty days before the aggregate amount of covered transactions between the Bank and its affiliates, except for those transactions that satisfy the collateral requirements in 12 C.F.R. § 223.42(c), exceeds 10 percent of the Bank's capital stock and surplus (For purposes of this provision, "covered transaction" and "affiliate" have the same meanings as in 12 C.F.R. part 223 subpart A);
 - h. notify the FDIC in writing within five days after discovery of any material change to the financial condition of any Parent Company, any third party counter-party, or any other Bank affiliate, which has, or is likely to have, an adverse effect on the ability of those companies to comply with their obligations under the CALMA;
 - i. complete and maintain on an ongoing basis, an independent risk assessment of its relationship with, and dependence on, any Parent Company, focusing on the identification, measurement, monitoring, and management of any risk factors that could potentially and negatively impact the Bank; at a minimum, the independent assessment will consider each such company's financial condition and performance, the quality of its management and corporate governance, and an appropriate variety of negative scenarios, and based on this assessment, the Bank shall take actions to ensure that appropriate corporate separateness will be maintained between the Bank and such companies, that appropriate contingency plans are maintained and encompass deposit activities and any other services or support provided by the relationship, and that any potential deterioration of any such company will not negatively impact the Bank;
 - j. in connection with the requirement in paragraph 5.d. above for an annual independent audit, submit to the FDIC: (i) a copy of the audited annual financial statements and the independent public auditor's report thereon within 90 days after the end of the depository institution's fiscal year, (ii) a copy of any other reports by the independent auditor (including any management letters) within 15 days after their receipt by the institution, and (iii) written notification within 15 days after a change in the institution's independent auditor occurs; and
 - k. not establish or maintain on any property owned, leased or occupied by a Feinberg Entity, other than the Bank, a branch, loan production office, deposit production office, or ATM, or otherwise provide, offer, or market financial services on such property.
9. Until the Extended Disposition Agreement becomes effective, the FDIC retains the right to alter, suspend or withdraw its Extended Disposition Agreement should any interim development be deemed to warrant such action.

10. The Extended Disposition Agreement expires on November 30, 2008 unless, before that date, both the Parent Company Agreement and the Capital and Liquidity Maintenance Agreement are fully executed by all parties to those agreements.


It is further ORDERED that the Director of the Division of Supervision and Consumer Protection or her designee (the "Director of DSC"), with the concurrence of the General Counsel or her designee (the "General Counsel"), be, and is hereby, authorized to execute and issue an amended letter of non-disapproval with respect to the acquisition of control of the Bank by an investor group led by Mr. Feinberg in November 2006 substantially in the form attached as Exhibit D replacing and superseding the FDIC's letter of non-disapproval dated November 15, 2006.

It is further ORDERED that the Director of DSC, with the concurrence of the General Counsel, be, and is hereby, authorized to make technical, nonsubstantive changes to Exhibits A through D in order to fully carry out the Board's intent regarding this matter.

It is further ORDERED that the Director of DSC, with the concurrence of the General Counsel, be, and is hereby, authorized to execute such other documents necessary or appropriate in order to fully carry out the Board's intent regarding this matter.

Dated at Washington, D.C. this 15th day of July 2008.

FEDERAL DEPOSIT INSURANCE CORPORATION

By:  _____
Robert E. Feldman
Executive Secretary

