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10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SANTA ANA DIVISION**

12 In re:
13 American Suzuki Motor Corporation,¹
14 Debtor.

Case No.: 8:12-bk-22808 (SCC)

Chapter 11

**DISCLOSURE STATEMENT IN
SUPPORT OF DEBTOR'S CHAPTER 11
PLAN OF REORGANIZATION**

Related Docket No. 17

Disclosure Statement Hearing:

Date: _____, 2012

Time: __: __.m.

Place: Courtroom 5C

United States Bankruptcy Court

411 West Fourth Street

Santa Ana, California 92701

Judge: Honorable Scott C. Clarkson

22 **THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS**
23 **NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THIS IS NOT A**
24 **SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE**
25 **OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS**
26 **BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THE**
27 **DISCLOSURE STATEMENT IS SUBJECT TO CHANGE.**

28 ¹ The last four digits of the Debtor's federal tax identification number are (8739). The Debtor's address is: 3251 East Imperial Highway, Brea, CA 92821.

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PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

1 American Suzuki Motor Corporation, as debtor and debtor in possession (the “Debtor”), has
2 proposed a plan of reorganization (as may be amended or modified, the “Plan”) under chapter 11 of
3 title 11 of the United States Code, as modified (the “Bankruptcy Code”), and submits this disclosure
4 statement in support of the Plan (as may be amended or modified, the “Disclosure Statement”). The
5 definitions contained in the Bankruptcy Code are incorporated in this Disclosure Statement by this
6 reference, and the definitions set forth in the Plan will apply to capitalized terms used in the
7 Disclosure Statement.

8 **I.**

9 **INTRODUCTION AND OVERVIEW**

10 **A. Introduction**

11 The Debtor, a California corporation, filed a voluntary petition under chapter 11 of the
12 Bankruptcy Code on November 5, 2012 (the “Petition Date”), thereby commencing the above-
13 captioned case (the “Chapter 11 Case”). The Debtor remains in possession of and manages its
14 businesses and assets as debtor in possession.

15 This Disclosure Statement, submitted in accordance with Section 1125 of the Bankruptcy
16 Code, contains information regarding the Plan proposed by the Debtor. A copy of the Plan
17 accompanies this Disclosure Statement. The Disclosure Statement is being distributed to you for the
18 purpose of enabling you to make an informed judgment about the Plan.

19 The Disclosure Statement describes the Plan and contains information concerning, among
20 other matters, (i) the history, business, historical financial information, assets and liabilities of the
21 Debtor, (ii) the Chapter 11 Case, (iii) a discussion of the Plan’s feasibility and a liquidation analysis
22 setting forth what holders of Claims against the Debtor could potentially recover if the Debtor were
23 liquidated under chapter 7 of the Bankruptcy Code, and (iv) the assets available for distribution to
24 Creditors under the Plan. The Debtor urges you to carefully review the contents of the Disclosure
25 Statement and Plan before making a decision to accept or reject the Plan. Particular attention should
26 be paid to the provisions affecting or impairing your rights as a Creditor.

27 On _____, 2012, after notice and a hearing, the Bankruptcy Court approved this
28 Disclosure Statement as containing sufficient information to enable a hypothetical reasonable

1 investor, typical of holders of Claims receiving this Disclosure Statement, to make an informed
2 judgment about the Plan. Under Section 1125 of the Bankruptcy Code, this approval enabled the
3 Debtor to send you this Disclosure Statement and solicit your acceptance of the Plan. The
4 Bankruptcy Court has not, however, reviewed the Plan, nor conducted a detailed investigation into
5 the contents of this Disclosure Statement.

6 Your vote on the Plan is important. This Disclosure Statement is being distributed to you for
7 the purpose of enabling you to make an informed judgment about the Plan. Absent acceptance of the
8 Plan, there may be protracted delays in payment of your claim, a chapter 7 liquidation, or the
9 confirmation of another plan. The Debtor has examined various alternatives and, based on the
10 information contained in this Disclosure Statement and for the reasons set forth below, the Debtor
11 has concluded that the Plan provides the most favorable recovery to holders of Allowed Claims
12 under the circumstances. Accordingly, the Debtor urges you to accept the Plan by completing and
13 returning the enclosed Ballot(s) no later than 5:00 p.m. Pacific time on _____, 2013 (the
14 “Voting Deadline”). The Voting Deadline is set forth in the Bankruptcy Court’s order approving the
15 Disclosure Statement, fixing the time for filing acceptances or rejections of the Plan and other
16 deadlines, and granting related relief (“Disclosure Statement Approval Order”), a copy of which
17 accompanies the Disclosure Statement.

18 Attached as Exhibits to the Disclosure Statement are copies of the following documents:

- 19 • The Plan (**Exhibit A**).
- 20 • Historical financial information of the Debtor (**Exhibit B**).
- 21 • The Debtor’s Plan Distribution Analysis prepared by the Debtor and its
22 advisors (**Exhibit C**).
- 23 • A preliminary discussion of the Debtor’s potential claims and defenses
24 against Suzuki Motor Corporation (“SMC”) (**Exhibit D**).

25 In addition, a Ballot for the acceptance or rejection of the Plan is enclosed with the
26 Disclosure Statement submitted to those holders of Claims that the Debtor believes are entitled to
27 vote on the Plan.
28

1 **B. Disclaimers**

2 FOR THE CONVENIENCE OF CREDITORS, THIS DISCLOSURE STATEMENT
3 SUMMARIZES THE TERMS OF THE PLAN, BUT IF ANY INCONSISTENCY EXISTS
4 BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN
5 ARE CONTROLLING.

6 NO REPRESENTATIONS CONCERNING THE DEBTOR'S FINANCIAL CONDITION
7 OR ANY ASPECT OF THE PLAN ARE AUTHORIZED BY THE BANKRUPTCY COURT OR
8 THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT OR
9 PRIOR COURT ORDERS. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO
10 SECURE YOUR ACCEPTANCE OF THE PLAN THAT ARE OTHER THAN AS CONTAINED
11 IN OR INCLUDED WITH THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED
12 UPON BY YOU IN ARRIVING AT YOUR DECISION.

13 THIS DISCLOSURE STATEMENT IS CURRENT AS OF THE DATE SET FORTH IN
14 ITS TITLE. THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT, UNDER ANY
15 CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THE INFORMATION IN THE
16 DISCLOSURE STATEMENT IS CORRECT AS OF ANY TIME AFTER THE DATE IN ITS
17 TITLE, OR THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE DEBTOR AS
18 OF SUCH LATER DATE.

19 CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE
20 STATEMENT, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND
21 ASSUMPTIONS. THE WORDS "ANTICIPATE," "BELIEVE," "ESTIMATE," "WILL,"
22 "INTEND," AND "EXPECT" AND SIMILAR EXPRESSIONS IDENTIFY FORWARD-
23 LOOKING STATEMENTS. ALTHOUGH THE DEBTOR BELIEVES THAT ITS ESTIMATES
24 AND ASSUMPTIONS REFLECTED IN THOSE FORWARD-LOOKING STATEMENTS ARE
25 REASONABLE, THE DEBTOR CAN GIVE NO ASSURANCE THAT THESE ESTIMATES
26 AND ASSUMPTIONS WILL BE REALIZED. FORWARD-LOOKING STATEMENTS ARE
27 BASED ON ASSUMPTIONS THAT ARE UNAVOIDABLY AND INHERENTLY IMPRECISE.
28 ACTUAL RESULTS, PERFORMANCE, OR ACHIEVEMENTS WILL LIKELY DIFFER

1 MATERIALLY FROM THOSE CONTEMPLATED, EXPRESSED, OR IMPLIED BY THE
2 FORWARD-LOOKING STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT.
3 THE DEBTOR UNDERTAKES NO OBLIGATION TO UPDATE OR REVISE ANY FORWARD-
4 LOOKING STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, WHETHER
5 AS A RESULT OF NEW DEVELOPMENTS OR OTHERWISE.

6 THE FINANCIAL INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT
7 AND IN ANY EXHIBITS TO THE DISCLOSURE STATEMENT, UNLESS OTHERWISE
8 INDICATED, IS UNAUDITED. MOREOVER, BECAUSE OF THE COMPLEXITY OF THE
9 DEBTOR'S FINANCIAL MATTERS, THE BOOKS AND RECORDS OF THE DEBTOR, UPON
10 WHICH THIS DISCLOSURE STATEMENT IN PART IS BASED, MAY BE INCOMPLETE OR
11 INACCURATE. REASONABLE EFFORT HAS BEEN MADE, HOWEVER, TO ENSURE THAT
12 ALL SUCH INFORMATION IS FAIRLY PRESENTED.

13 ALL ADVISORS TO THE DEBTOR HAVE RELIED UPON INFORMATION
14 PROVIDED BY THE DEBTOR IN CONNECTION WITH PREPARATION OF THIS
15 DISCLOSURE STATEMENT. ALTHOUGH ADVISORS TO THE DEBTOR HAVE
16 PERFORMED CERTAIN LIMITED DUE DILIGENCE IN CONNECTION WITH THE
17 PREPARATION OF THIS DISCLOSURE STATEMENT, THE ADVISORS HAVE NOT
18 INDEPENDENTLY VERIFIED ALL OF THE INFORMATION CONTAINED IN OR
19 ATTACHED TO THE DISCLOSURE STATEMENT.

20 THIS DISCLOSURE STATEMENT HAS NOT BEEN SUBMITTED FOR APPROVAL
21 UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE
22 SECURITIES LAWS. ALTHOUGH A COPY OF THE DISCLOSURE STATEMENT HAS BEEN
23 SERVED ON THE SECURITIES & EXCHANGE COMMISSION (THE "SEC") AND THE SEC
24 HAS BEEN GIVEN AN OPPORTUNITY TO OBJECT TO THE ADEQUACY OF THE
25 DISCLOSURE STATEMENT, NEITHER THE SEC NOR ANY STATE REGULATORY
26 AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS
27 DISCLOSURE STATEMENT, THE EXHIBITS TO THE DISCLOSURE STATEMENT OR THE
28 STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT.

1 THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE
2 CONSTRUED AS LEGAL, BUSINESS, OR TAX ADVICE. CREDITORS SHOULD CONSULT
3 THEIR OWN LEGAL COUNSEL AND ACCOUNTANT AS TO LEGAL, TAX, AND OTHER
4 MATTERS CONCERNING THEIR CLAIMS.

5 UNLESS YOUR CLAIM IS ALLOWED, IN WHOLE OR IN PART, UNDER THE PLAN
6 OR IN PRIOR ORDERS, THE ABILITY OF THE DEBTOR AND OTHER CREDITORS OR
7 PARTIES IN INTEREST TO OBJECT TO YOUR CLAIM IN ACCORDANCE WITH THE PLAN
8 AND APPLICABLE LAW IS BEING PRESERVED AND NOT WAIVED UNDER THE PLAN.

9 MOREOVER, ANY RIGHTS OF ACTION AGAINST YOU IN FAVOR OF THE DEBTOR ARE
10 BEING PRESERVED UNDER THE PLAN UNLESS OTHERWISE EXPRESSLY PROVIDED
11 UNDER THE PLAN. THE DEBTOR IS ATTEMPTING TO PROVIDE YOU ADEQUATE
12 INFORMATION TO MAKE AN INFORMED JUDGMENT AS TO WHETHER TO ACCEPT OR
13 REJECT THE PLAN. THE DEBTOR DOES NOT BELIEVE THAT THIS RESERVATION OF
14 RIGHTS SHOULD AFFECT YOUR DECISION ON HOW TO VOTE ON THE PLAN.

15 ALTHOUGH THE DEBTOR BELIEVES THAT THE CONFIRMATION OF THE PLAN IS IN
16 THE INTERESTS OF CREDITORS OF THE DEBTOR, THIS ADVISORY IS PROVIDED TO
17 ENSURE THAT YOU DO NOT ASSUME, BY THE DEBTOR'S SOLICITATION OF YOUR
18 VOTE, BY THE ESTIMATES CONTAINED IN THE DISCLOSURE STATEMENT, OR BY
19 ANY OTHER PROVISIONS OF THE PLAN OR DISCLOSURE STATEMENT (OTHER THAN
20 AN EXPRESS PROVISION OF THE PLAN ALLOWING YOUR CLAIM OR WAIVING
21 SPECIFIED RIGHTS OF ACTION AGAINST YOU) THAT THE DEBTOR, THE POST-
22 EFFECTIVE-DATE DEBTOR, OTHER CREDITORS, OR OTHER PARTIES IN INTEREST
23 WILL NOT OBJECT TO YOUR CLAIM OR INTEREST OR THAT THE DEBTOR WILL NOT
24 PURSUE ANY RIGHT OF ACTION AGAINST YOU. INSTEAD, FOR THE PURPOSE OF
25 DECIDING HOW TO VOTE ON THE PLAN, IF YOUR CLAIM IS NOT EXPRESSLY
26 ALLOWED UNDER THE PLAN OR PRIOR COURT ORDERS, YOU SHOULD ASSUME
27 THAT THE DEBTOR, THE POST-EFFECTIVE-DATE DEBTOR, OR THEIR RESPECTIVE
28 SUCCESSORS OR REPRESENTATIVES WILL (A) OBJECT TO YOUR CLAIM AND (B)

1 ASSERT ALL SETOFFS, RECOUPMENTS, RIGHTS TO SUBORDINATE, OR AFFIRMATIVE
2 CLAIMS THAT THE DEBTOR, THE POST-EFFECTIVE-DATE DEBTOR, OR THEIR
3 RESPECTIVE SUCCESSORS MAY HAVE WITH RESPECT TO YOU AND/OR YOUR
4 CLAIMS AGAINST THE DEBTOR.

5 THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE
6 OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN,
7 AND NOTHING STATED THEREIN WILL CONSTITUTE AN ADMISSION OF ANY FACT
8 OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING
9 THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF
10 THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTOR OR CREDITORS.

11 SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERENCED IN THIS
12 DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT
13 TO, AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE FULL TEXT OF
14 THE APPLICABLE AGREEMENT, INCLUDING THE DEFINITION OF TERMS CONTAINED
15 IN SUCH AGREEMENT.

16 **C. Overview of Chapter 11**

17 Chapter 11 (“Chapter 11”) is the principal business reorganization chapter of the Bankruptcy
18 Code. Under Chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize or liquidate
19 its business for the benefit of itself, its creditors, and equity interest holders. Another goal of
20 Chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated
21 equity interest holders with respect to the distribution of a debtor’s assets.

22 The commencement of a Chapter 11 case creates an estate that is composed of all of the legal
23 and equitable interests of a debtor as of the filing date. The Bankruptcy Code provides that the
24 debtor may continue to operate its business and remain in possession of its property as a “debtor in
25 possession.”

26 The consummation of a plan of reorganization is the principal objective of a Chapter 11
27 reorganization case. A plan of reorganization sets forth the means for satisfying claims against, and
28 interests in, a debtor. Confirmation of a plan of reorganization by the bankruptcy court makes the

1 plan binding upon the debtor, any issuer of securities under the plan, any person acquiring property
2 under the plan, and any creditor, interest holder, or general partner in the debtor. The provisions of
3 the Plan are summarized in Section IV of the Disclosure Statement.

4 As noted above, certain holders of claims against and equity interests in a debtor are
5 permitted to vote to accept or reject a plan. Prior to soliciting acceptances of a proposed plan,
6 however, Section 1125 of the Bankruptcy Code requires a debtor and any other plan proponents to
7 prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to
8 enable a hypothetical reasonable investor to make an informed judgment about the plan. The Debtor
9 is submitting this Disclosure Statement to holders of Claims against and Interests in the Debtor to
10 satisfy the requirements of Section 1125.

11 **D. Overview of the Plan**

12 The proposed Plan effectuates, among other things, the sale of property, rights, and interests
13 comprising and/or relating to the Debtor's motorcycle, all-terrain vehicle ("ATV"), marine and other
14 non-automotive business lines ("Non-Auto Business Lines"), the Debtor's automotive parts/service
15 business line ("Auto Parts/Service Business"), and certain other surplus assets (the "Purchased
16 Assets") to NounCo, Inc. (the "Purchaser"), a subsidiary of SMC, the holder of 100% equity
17 interests in the Debtor, in exchange for a payment by the Purchaser or SMC of \$95,000,000 and the
18 Purchaser's assumption of the Assumed Liabilities (as defined in the proposed Asset Purchase
19 Agreement (the "APA")).

20 The Purchased Assets will include, without limitation, the Non-Auto Business Lines and the
21 Auto Parts/Service Business (the "Purchased Businesses"), including in relation to the Purchased
22 Businesses, all inventory, parts, equipment, accounts receivable, contracts and leases as designated
23 by the Purchaser ("Designated Contracts"), other contractual rights, claims and causes of action
24 (including Avoidance Actions relating to the Purchased Assets), deposits, licenses and permits (to
25 the extent transferrable), prepaid expenses, books and records, insurance policies, goodwill and other
26 intangible property, and all intellectual property rights. The Purchased Assets expressly exclude,
27 among other things, assets comprising or relating to the Debtor's automotive sales business ("Auto
28 Sales Business"); cash and cash equivalents held by the Debtor on the Effective Date; contracts and

1 leases that are not Designated Contracts; other assets including real property, facilities, and
2 equipment that are not necessary or beneficial to the continued operation of the Purchased
3 Businesses; and the Estate's avoidance actions, claims and causes of action that have not been
4 designated for assignment to the Purchaser (together with the proceeds thereof, the "Retained
5 Assets").

6 As of the Effective Date, the Purchased Assets will be transferred, and the Designated
7 Contracts (subject to any requisite consents, if applicable) will be assumed by the Debtor and sold
8 and assigned to the Purchaser, under the Plan pursuant to sections 363, 365, 1123, and 1129 of the
9 Bankruptcy Code, free and clear of all liens, interests, claims, and encumbrances. After the
10 Effective Date, the Debtor, as the Post-Effective-Date Debtor, will administer, liquidate to cash
11 and/or abandon the Retained Assets (including litigating retained causes of action, claims objections,
12 and Avoidance Actions), wind down the Auto Sales Business and liquidate or otherwise dispose of
13 all related assets, and distribute all net proceeds of the foregoing, together with the net Consideration
14 proceeds, to creditors with allowed claims generally in accordance with the priority scheme under
15 the Bankruptcy Code. Under the Plan, the Purchaser will assume and honor all contractual and
16 statutory warranty and service obligations, whether express or implied, undertaken by the Debtor as
17 the factory authorized U.S. distributor of Suzuki Products (including Suzuki-brand automobiles,
18 motorcycles, ATVs, marine and other non-automotive products), whether arising prior to or after the
19 Effective Date, pursuant to a post-Effective Date warranty program ("Post-Effective-Date Warranty
20 Program").

21 The Plan will be funded through a combination of Cash on hand, net proceeds from ordinary
22 course operations, the liquidation of the Retained Assets, and the Consideration proceeds.
23 Generally, all creditors, other than general unsecured creditors, will be paid in full in cash on or as
24 soon as practicable after the Effective Date or in deferred cash payments, with interest, as permitted
25 under the Bankruptcy Code. In particular, all Allowed Administrative Claims, Priority Tax Claims,
26 Priority Non-Tax Claims and Secured Claims, will be paid or otherwise satisfied pursuant to the
27 terms of the Plan; provided, however, as discussed herein, SMC will voluntarily subordinate certain
28 of its Secured Claims vis-à-vis the Settling Creditors in order to effectuate the payment in full of

1 these creditors' allowed claims, subject to the terms and conditions set forth in the Plan. Provided
2 that the Plan is otherwise confirmable, as of the Effective Date, all existing Interests in the Debtor,
3 including the common stock of the Debtor held by SMC, will remain unaffected and unimpaired by
4 the Plan and will remain existing as of the Effective Date; provided, however, in the event that SMC
5 elects otherwise or any of Classes 3, 4 and 5 votes against the Plan, all Interests will be cancelled on
6 the Effective Date. In the event that all Interests are cancelled under the Plan, after all Allowed
7 Claims and Plan Expenses have been paid or otherwise satisfied in full, any remaining funds of the
8 Post-Effective-Date Debtor will be distributed to SMC.

9 With respect to general unsecured creditors, the Plan separately classifies the claims of (i) the
10 Settling Auto Dealers, (ii) Other Settling Creditors, (iii) all Non-Settling Creditors, and (iv) the
11 holders of Warranty Claims. The Settling Auto Dealers are those Auto Dealers that enter into Auto
12 Dealer Letter Agreements with the Debtor that provide for, among other things, (i) the consensual
13 rejection of the applicable Pre-Petition Auto Dealer Agreement, (ii) the liquidation of the Settling
14 Auto Dealer's rejection claims and all other claims against the Debtor other than the Dealer
15 Incentive Program Claims, (iii) authorization for the Auto Dealer to remain an authorized dealer of
16 new Suzuki Cars to sell off remaining inventory during a defined period for the wind down of sales
17 of new Suzuki Cars, and (iv) entry into a Service and Parts Agreement by which the Auto Dealer will
18 be authorized to continue providing authorized warranty and non-warranty service, as well as sell
19 genuine Suzuki brand parts for Suzuki Cars, for a defined period of years after the Effective Date
20 (specifically eight years with the parties having the option to extend this term if mutually agreeable).

21 Under the Plan, holders of Settling Auto Dealer Claims will receive the following Plan
22 treatment: (i) if applicable, the Debtor will assign the Service and Parts Agreement between the
23 Debtor and the Settling Auto Dealer to the Purchaser, with such assignment to be effective as of the
24 Effective Date; (ii) on or as soon as practicable following the Effective Date, in one or more
25 distributions, the holder will receive, as a result of the voluntary subordination by SMC, *pro rata*,
26 fractional payments as described in Sections 4.2.2 and 4.3.2 of the Plan, based on the fraction of (x)
27 the amount of the holder's Allowed Class 3 Claim as the numerator, and (y) the aggregate sum of all
28 Allowed Class 3 Claims and Allowed Class 4 Claims as the denominator; and (iii) on or as soon as

1 practicable following the Effective Date, the holder will receive its applicable GUC Distribution, if
2 any. As described further herein, SMC has voluntarily consented to the subordination of the SMC
3 Secured Revolver Claim and, if and to the extent necessary, the SMC Secured Inventory Loan
4 Claim, to Allowed Class 3 Claims and Allowed Class 4 Claims, such that Available Cash payable to
5 SMC on account of such SMC Secured Claims will be reallocated to Allowed Class 3 Claims and
6 Allowed Class 4 Claims, to the extent necessary to permit payment in full of an amount equal to
7 these claims, without interest.

8 Other settling unsecured creditors (“Other Settling Creditors”) are those creditors holding
9 non-priority, general unsecured claims against the Debtor that (i) enter into an agreement with the
10 Debtor liquidating their allowed claim amounts pursuant to a formula established by the Debtor, in
11 accordance with the Debtor’s books and records, or as otherwise agreed to by the Debtor,² and (ii)
12 elect on their Ballot to provide a general release covering any and all claims and causes of action,
13 whether known or unknown, accruing prior to the Effective Date, against (i) the Debtor, SMC, and
14 their respective subsidiaries and affiliates, and (ii) the current and former Agents of each of the
15 foregoing (but excluding assertion of Other Settling Creditor Claims against the Debtor). Each
16 Other Settling Creditor will be treated in the following manner: (a) on or as soon as practicable
17 following the Effective Date, in one or more distributions, the holder will receive, as a result of the
18 voluntary subordination by SMC, its *pro rata*, fractional payments pursuant to Sections 4.2.2 and
19 4.3.2 of the Plan; and (iii) as soon as practicable following the Effective Date, the holder will receive
20 its applicable GUC Distribution, if any. As noted, SMC has voluntarily consented to the
21 subordination of certain of its Secured Claims such that Available Cash payable to SMC will be
22 reallocated to Allowed Class 4 Claims (in addition to Allowed Class 3 Claims), to the extent
23 necessary to pay such claims in full, without interest.

24 With respect to Warranty Claims, from and after the Effective Date, all such Claims will be
25 administered and honored by the Purchaser under the Post-Effective-Date Warranty Program.
26 Holders of Allowed Warranty Claims will receive no other distribution or consideration pursuant to
27

28 ² The Debtor will file a Plan Supplement listing the proposed Allowed claim amounts of Creditors that may elect to be
Class 5 members.

1 the Plan.

2 The remaining non-priority, general unsecured claims under the Plan (including, without
3 limitation, any non-settling dealer rejection claims and other claims asserted by creditors, as well as
4 any products liability claims and the Allowed SMC General Unsecured Claims) will be classified
5 together as Non-Settling General Unsecured Claims, and the holders thereof will be entitled to their
6 applicable GUC Distribution, if any, in Cash. Holders of General Unsecured Claims will not receive
7 any post-petition interest and will not receive payment(s) on account of their claims under the Plan
8 in excess of the allowed claim amount.

9 In the event that the Plan is not confirmed or the Debtor otherwise determines the Plan to be
10 undesirable, the Debtor may instead elect to implement a sale of the Purchased Assets to the
11 Purchaser or another designee of SMC, subject to overbidding, through a sale outside of the Plan
12 pursuant to Sections 363 and 365 of the Bankruptcy Code.

13 The following chart briefly summarizes the treatment of Creditors and holders of Interests
14 under the Plan. The amounts listed below are based on the Debtor's books and records, and are only
15 estimates based on various assumptions, including those set forth in **Exhibit C** attached hereto.
16 Actual Claims and distributions to the holders of Allowed Claims will vary depending upon the
17 outcome of objections to Claims, the collection of proceeds, and other factors. For a complete
18 description of the treatment of Allowed Claims, Creditors should review the Plan.

19 **Chart 1**

CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS ³	ESTIMATED PROJECTED PAYMENT/TREATMENT
N/A	DIP Financing Claims	\$17,916,000 ⁴	Except to the extent the DIP Lender agrees to less favorable treatment, and except to the extent constituting an "Assumed Liability" under the APA, any and all DIP Claims will be paid in full or otherwise satisfied by the Debtor by the earlier of (i) the Effective Date and (ii) such other maturity date as set forth in the DIP Financing Agreement and the DIP Financing/Cash Collateral Order.

26 _____
27 ³ The aggregate figures provided herein are estimates only and subject to all qualifications and conditions described in
28 **Exhibit C** attached hereto, and may be different from the corresponding figures set forth in **Exhibit C** due to rounding
for presentation purposes.

⁴ As described herein, the proposed DIP Facility will consist of \$50,000,000 in postpetition advances and \$50,000,000 in
inventory loans following entry of the Final DIP Order. The figure above reflects the estimated DIP revolver advance

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CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS ³	ESTIMATED PROJECTED PAYMENT/TREATMENT
N/A	Administrative Claims	TBD ⁵	Unless the holder agrees to less favorable treatment, full payment in Cash on or soon as practicable after the Effective Date.
N/A	Priority Tax Claims	TBD ⁶	Unless the holder agrees to less favorable treatment, at the option of the Debtor, either (a) full payment in Cash, without interest, by the Debtor on the latest of: (i) the Effective Date, or as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as practicable; (iii) the tenth (10 th) Business Day after such Claim is Allowed, or as soon thereafter as practicable; and (iv) such date as the holder of such Claim and the Debtor may agree, or (b) deferred Cash payments to the extent permitted by Section 1129(a)(9) of the Bankruptcy Code with interest on the unpaid portion of such Claim at the statutory rate under applicable non-bankruptcy law or at a rate to be agreed upon by the Debtor and the appropriate governmental unit or, if they are unable to agree, to be determined by the Bankruptcy Court; <u>provided, however</u> , that the Debtor may prepay any or all such Claims at any time, without premium or penalty. For the purpose of option (b), payment will be made in equal quarterly installments with the first installment due on the latest of: (1) the first Business Day following the end of the first full calendar quarter following the Effective Date, (2) the first Business Day following the end of the first full calendar quarter following the date an order allowing such claim becomes a Final Order, and (3) such other time or times as may be agreed with the holder of such claim. Each installment will include simple interest on the unpaid balance of the Allowed Priority Tax Claim, without penalty of any kind, at the non-default rate of interest prescribed, agreed to or determined under option (b).
1	Priority Non-Tax Claims	TBD ⁷	Full payment in Cash on or soon as practicable after the Effective Date.

balance as of the Effective Date. As set forth in **Exhibit C**, the Debtor has assumed for purposes of its analysis that the DIP inventory loans will be assumed by the Purchaser.

⁵ See **Exhibit C** attached hereto.

⁶ As set forth in **Exhibit C**, the Debtor anticipates that certain Priority Tax Claims will be paid in the ordinary course, subject to Court approval, and certain portions of such claims may be payable by the Purchaser, under and subject to the terms of the APA.

⁷ As set forth in **Exhibit C**, the Debtor anticipates that unpaid Priority Non-Tax Claims will be of relatively *de minimis* amount as of the Effective Date.

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CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS ³	ESTIMATED PROJECTED PAYMENT/TREATMENT
2A-1	SMC Secured Revolver Claim	approx. \$32,000,000	<p>SMC has voluntarily consented to the subordination of the SMC Secured Revolver Claim to Allowed Class 3 Claims and Allowed Class 4 Claims, such that Available Cash payable to SMC on account of the SMC Secured Revolver Claim will be reallocated to Allowed Class 3 Claims and Allowed Class 4 Claims, to the extent necessary to permit payment in full of an amount equal to these claims, without interest. On or as soon as practicable after the Effective Date, in one or more distributions, the Post-Effective-Date Debtor will pay in Cash, to the extent there is Available Cash, up to the full amount of the Allowed SMC Secured Revolver Claim, to holders of Allowed Class 3 Claims and Allowed Class 4 Claims pursuant to Sections 4.5.2 and 4.6.2 of the Plan, in an amount equal to the Allowed amounts of such Claims (including the portion of Allowed Class 3 Claims subject to rights in favor of Participation Party pursuant to the SMC Participation Agreements). After the payment or reserve for an amount equal to payment in full of all Allowed Class 3 Claims and Allowed Class 4 Claims through a combination of the voluntary subordination described above and GUC Distributions, if any, all remaining Available Cash will be paid by the Post-Effective-Date Debtor to SMC on account of the Allowed SMC Secured Revolver Claim (less any amounts that have previously been paid to SMC on account of the SMC Secured Revolver Claim and to holders of Allowed Class 3 Claims and Allowed Class 4 Claims pursuant to the voluntary subordination described above). To the extent payments on account of the Allowed SMC Secured Revolver Claim are paid to holders of Allowed Class 3 Claims and Allowed Class 4 Claims in accordance with Section 4.2.2 of the Plan, SMC will be subrogated to the Allowed Class 3 Claims and Allowed Class 4 Claims, including rights to any distributions from the Post-Effective-Date Debtor under the Plan on account of such Allowed Class 3 Claims and Allowed Class 4 Claims. After the holders of Allowed Class 3 Claims and Allowed Class 4 Claims have received total payments equal to 100% of their Allowed Claims (including the portion of Allowed Class 3 Claims subject to rights in favor of Participation Party pursuant to the SMC Participation Agreements) as a result of the voluntary subordination and any GUC Distributions, all additional GUC Distributions to such holders will be remitted to SMC on account of SMC's subrogation rights. For the avoidance of doubt, no GUC Distributions will be made until an amount equal to the Allowed SMC Secured Claims has been distributed or reserved for distribution by the Debtor (to SMC or to holders of Allowed Class 3 Claims and Allowed Class 4 Claims pursuant to the subordination).</p>

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CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS ³	ESTIMATED PROJECTED PAYMENT/TREATMENT
2A-2	SMC Secured Inventory Loan Claim	approx. \$120,000,000	<p>In the event there is insufficient Available Cash and Net Available Cash, as applicable, to pay or reserve for an amount equal to Allowed Class 3 Claims and Allowed Class 4 Claims through the payments pursuant to Section 4.2.2 of the Plan and GUC Distributions, if any, then an additional voluntary subordination by SMC of the SMC Secured Inventory Loan Claim will be implemented pursuant to Section 4.3.2 of the Plan. SMC has voluntarily consented to the subordination of the SMC Secured Inventory Loan Claim to Allowed Class 3 Claims and Allowed Class 4 Claims, such that Available Cash payable to SMC on account of the SMC Secured Inventory Loan Claim will be reallocated to Allowed Class 3 Claims and Allowed Class 4 Claims, to the extent necessary to permit payment in full of an amount equal to these claims, without interest. On or as soon as practicable after the Effective Date, in one or more distributions, the Post-Effective-Date Debtor will pay in Cash, to the extent there is Available Cash, up to the full amount of the Allowed SMC Secured Inventory Loan Claim, to holders of Allowed Class 3 Claims and Allowed Class 4 Claims pursuant to Sections 4.5.2 and 4.6.2 of the Plan, in an amount equal to the unpaid Allowed amounts of such Claims.</p> <p>After the payment or reserve for an amount equal to payment in full of all Allowed Class 3 Claims and Allowed Class 4 Claims through a combination of the voluntary subordination described above and GUC Distributions, if any, all remaining Available Cash will be paid by the Post-Effective-Date Debtor to SMC on account of the Allowed SMC Secured Inventory Loan Claim (less any amounts that have previously been paid to SMC on account of the SMC Secured Inventory Loan Claim and to holders of Allowed Class 3 Claims and Allowed Class 4 Claims pursuant to the voluntary subordination).</p> <p>To the extent payments on account of the Allowed SMC Secured Inventory Loan Claim are paid to holders of Allowed Class 3 Claims and Allowed Class 4 Claims in accordance with Section 4.3.2 of the Plan, SMC will be subrogated to the Allowed Class 3 Claims and Allowed Class 4 Claims, including rights to any distributions from the Post-Effective-Date Debtor under the Plan on account of such Allowed Class 3 Claims and Allowed Class 4 Claims. After the holders of Allowed Class 3 Claims and Allowed Class 4 Claims have received total payments equal to 100% of their Allowed Claims as a result of the voluntary subordination and the GUC Distributions, if any, all additional GUC Distributions to such holders will be remitted to SMC on account of SMC's subrogation rights. For the avoidance of doubt, no GUC Distributions will be made until an amount equal to the Allowed SMC Secured Claims has been distributed or reserved for distribution by the Debtor (to SMC or to the holders of Allowed Class 3 Claims and Allowed Class 4 Claims pursuant to the voluntary subordination).</p>

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CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS ³	ESTIMATED PROJECTED PAYMENT/TREATMENT
2B	Other Secured Claims ⁸	TBD ⁹	The Post-Effective-Date Debtor will select, in its discretion, one of the following alternative treatments: (i) the Post-Effective-Date Debtor will abandon or surrender to the holder of such Claim the property securing such Claim, in full satisfaction and release of such Claim; (ii) the Post-Effective-Date Debtor will pay to the holder Cash equal to the amount of such Claim, or such lesser amount to which the holder of such Claim and the Debtor agree; or (iii) the Debtor will leave the rights of the holder unimpaired or provide for such other treatment as necessary to otherwise satisfy the requirements of the Bankruptcy Code.
3	Settling Auto Dealer Liquidated Claims	TBD ¹⁰	<p>Each holder will be treated in the following manner: (i) if applicable, the Debtor will assign the Service and Parts Agreement between the Debtor and the Settling Auto Dealer to the Purchaser, with such assignment to be effective as of the Effective Date; (ii) on or as soon as practicable following the Effective Date, in one or more distributions, the holder will receive, as a result of the voluntary subordination by SMC, <i>pro rata</i>, fractional payments as described in Sections 4.2.2 and 4.3.2 of the Plan, based on the fraction of (x) the amount of the holder's Allowed Class 3 Claim as the numerator, and (y) the aggregate sum of all Allowed Class 3 Claims and Allowed Class 4 Claims as the denominator; and (iii) on or as soon as practicable following the Effective Date, the holder will receive its applicable GUC Distribution, if any.</p> <p>Subject to the right of the Participation Party, after a holder of an Allowed Class 3 Claim has received total payments, as a result of the voluntary subordination by SMC and any GUC Distributions, equal to 100% of its Allowed Claim including the portion of Allowed Class 3 Claims subject to rights in favor of Participation Party pursuant to the SMC Participation Agreements, all additional GUC Distributions to such holder will be remitted to SMC on account of SMC's subrogation rights. See Exhibit C for estimated potential recovery (100% recovery based on assumptions).</p>

⁸ Each holder of a Secured Claim will be in its own separate subclass.

⁹ Other than the SMC Secured Claims, the Debtor does not believe that there will be substantial Secured Claims that will have to be paid on the Effective Date.

¹⁰ The Debtor has prepared an analysis of hypothetical recoveries under the Plan based on a range of potential aggregate amounts of Settling Auto Dealer Claims. See **Exhibit C**.

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CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS ³	ESTIMATED PROJECTED PAYMENT/TREATMENT
4	Other Settling Creditor Claims	TBD ¹¹	<p>Each Other Settling Creditor will be treated in the following manner: (i) on or as soon as practicable following the Effective Date, in one or more distributions, the holder will receive, as a result of the voluntary subordination by SMC, its <i>pro rata</i>, fractional payments pursuant to Sections 4.2.2 and 4.3.2 of the Plan, based on the fraction of (x) the amount of the holder's Allowed Class 4 Claim as the numerator, and (y) the aggregate sum of all Allowed Class 3 Claims and Allowed Class 4 Claims as the denominator; and (iii) on or as soon as practicable following the Effective Date, the holder will receive its applicable GUC Distribution, if any.</p> <p>Each holder of an Allowed Class 4 Claim will receive its applicable GUC Distribution, in full and final satisfaction, settlement, release, and discharge of, and exchange for, such holder's Allowed Class 4 Claim and any other Claims against the Debtor, SMC, the Purchaser, the Participation Party, and their respective subsidiaries and affiliates, and each of the foregoing party's respective current and former Agents. After a holder of an Allowed Class 4 Claim has received total payments, as a result of the voluntary subordination by SMC and any GUC Distributions, equal to 100% of its Allowed Claim, all additional GUC Distributions to such holder will be remitted to SMC on account of SMC's subrogation rights. In order to receive the foregoing treatment, each Other Settling Creditor, for itself and its respective successors, assigns, subsidiaries, affiliates, and current and former Agents, must provide on its Ballot the Class 4 Release. <i>See Exhibit C</i> for estimated potential recovery (100% recovery based on assumptions).</p>
5	Non-Settling Creditor Claims	TBD ¹²	<p>On or as soon as practicable following the Effective Date, each holder of an Allowed Class 5 Claim will receive, on account of said Allowed Claim, in full and final satisfaction, settlement, release, and discharge of, and exchange for, such holder's Allowed Class 5 Claim, its applicable GUC Distribution, if any, in Cash from the Post-Effective-Date Debtor (for the avoidance of doubt, after the payment or reserve for in full of all Allowed Secured Claims, Allowed Administrative Claims, Allowed Priority Claims, Allowed Priority Non-Tax Claims, and Plan Expenses). No holder of an Allowed Class 5 Claim will receive, on account of such Claim, any post-petition interest, or any distribution under the Plan in excess of its Allowed Class 5 Claim amount. <i>See Exhibit C</i> for estimated potential recovery.</p>
6	Warranty Claims	N/A	<p>From and after the Effective Date, all Warranty Claims will be administered and honored by the Purchaser under the Post-Effective-Date Warranty Program. Holders of Allowed Warranty Claims will receive no other distribution or consideration pursuant to the Plan.</p>

¹¹ The Debtor has prepared an analysis of hypothetical recoveries under the Plan based on a range of potential aggregate amounts of Other Settling Creditor Claims. *See Exhibit C*.

¹² The Debtor has prepared an analysis of hypothetical recoveries under the Plan based on a range of potential aggregate amounts of Settling Auto Dealer Claims and Other Settling Creditor Claims. GUC Distribution Claims that are not Settling Auto Dealer Claims or Other Settling Creditor Claims are Non-Settling Creditor Claims. *See Exhibit C*.

CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS ³	ESTIMATED PROJECTED PAYMENT/TREATMENT
7	Interests	N/A	Provided that the Plan is otherwise confirmable, as of the Effective Date, all existing Interests in the Debtor will remain unaffected and unimpaired by the Plan and will remain existing as of the Effective Date; provided, however, in the event that SMC makes the Interests Cancellation Election or the Plan is not otherwise confirmable, all Interests will be cancelled on the Effective Date; provided further that if any of Classes 3, 4 or 5 votes against the Plan, Section 4.9.2 of the Plan will be deemed automatically modified to provide that all Interests will be cancelled as of the Effective Date. After all Allowed Claims and Plan Expenses have been paid or otherwise satisfied in full, any remaining funds of the Post-Effective-Date Debtor will be distributed to SMC.

E. Voting Instructions

The Disclosure Statement Approval Order sets forth in detail the deadlines, procedures and instructions for voting to accept or reject the Plan and for filing objections to confirmation of the Plan, and applicable procedures for tabulating Ballots.

1. How to Vote

A Ballot is enclosed herewith for Creditors to use in voting on the Plan. To vote on the Plan, indicate on the enclosed Ballot that you accept or reject the Plan, provide the requested information, sign your name, and mail the Ballot in the envelope provided for this purpose. Further, applicable Ballots contain instructions on how to opt into Class 4 (Other Settling Creditor Claims), if eligible and desired.

In order to be counted, Ballots must be completed, signed and returned so that they are actually **received no later than 5:00 p.m., prevailing Pacific time, on the Voting Deadline,** _____, 2013, by Rust Consulting/Omni Bankruptcy, a division of Rust Consulting, Inc. (the "Claims/Solicitation Agent") at the following address:

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

1 American Suzuki Motor Corporation
2 c/o Rust Consulting/Omni Bankruptcy
3 Attn: Ballot Processing
4 5955 DeSoto Ave., Suite 100
5 Woodland Hills, CA 91367
6 818-906-8300

7 Ballots must be received by the Claims/Solicitation Agent at its address set forth on the
8 applicable Ballot. To be counted for purposes of voting on the Plan, all of the information requested
9 on the Ballot must be provided. If your Ballot is not properly completed, signed and returned as
10 described, it will not be counted. If your Ballot is damaged or lost, you may request a replacement
11 by sending a written request to this same address.

12 **2. Who Is Being Solicited to Vote**

13 Pursuant to the provisions of the Bankruptcy Code, only holders of claims in classes of
14 claims that are impaired are entitled to vote to accept or reject a proposed plan. Classes of claims in
15 which the holders are unimpaired are deemed to have accepted a plan and are not entitled to vote to
16 accept or reject a plan. Under the Plan, Administrative Claims, Priority Tax Claims and DIP
17 Financing Claims are unclassified and are not entitled to vote.

18 Class 1 (Priority Non-Tax Claims), Class 2B (Other Secured Claims), Class 6 (Warranty
19 Claims), and Class 7 (Interests) are not impaired under the Plan and are deemed to have accepted the
20 Plan (except in the case of Class 7 in the event that the Interests Cancellation Election is made in
21 accordance with the Plan or Class 3, 4 or 5 rejects the Plan). Class 2A-1 (SMC Secured Revolver
22 Claim), Class 2A-2 (SMC Secured Inventory Loan Claim), Class 3 (Settling Auto Dealer Liquidated
23 Claims), Class 4 (Other Settling Creditor Claims), and Class 5 (Non-Settling Creditor Claims) are
24 impaired under the Plan and entitled to vote to accept or reject the Plan. For a detailed description of
25 the treatment of Claims under the Plan, *see* Section IV of this Disclosure Statement.

26 The Ballot form that you received does not constitute a proof of Claim. If you are in any way
27 uncertain whether or if your Claim has been correctly scheduled, you should review the Debtor's
28 Schedules which will be filed with the Bankruptcy Court located at 411 West Fourth St., Santa Ana,

1 California 92701.¹³ The Debtor's Schedules may also be viewed free of charge on the
2 Claims/Solicitation Agent's website at www.omnimgt.com/asmc. Further, upon the Debtor's motion
3 and the Bankruptcy Court's order thereon, the following dates have been established as the Bar
4 Dates by which Creditors must file proofs of claim against the Debtor: _____.

5 **3. Record Date**

6 THE RECORD DATE FOR VOTING ON THE PLAN IS _____, 2013. To be entitled
7 to vote to accept or reject the Plan, a holder of a Claim against the Debtor must be the record holder
8 of such Claim at the close of business on the Record Date. Holders who purchase Claims against the
9 Debtor after the Record Date must arrange with their seller to receive a proxy from the holder of
10 record of such Claim on the Record Date.

11 **4. Voting Procedures**

12 All votes to accept or reject the Plan must be cast by using the Ballot. Votes that are cast in
13 any other manner will not be counted. Ballots must be received by the Claim/Solicitation Agent no
14 later than 5:00 p.m., Pacific time, on the Voting Deadline. As discussed further herein and on the
15 Ballots, the Ballots as to certain Classes provide for certain other elections. Parties who elect to vote
16 on the Plan should complete and sign the Ballot in accordance with the instructions thereon, being
17 sure to check the appropriate box entitled "Accept the Plan" or "Reject the Plan." **BALLOTS**
18 **THAT ARE PROPERLY EXECUTED BUT FAIL TO INDICATE WHETHER THE**
19 **VOTING PARTY ACCEPTS OR REJECTS THE PLAN WILL CONSTITUTE**
20 **ABSTENTIONS BY SUCH PARTY WITH RESPECT TO A VOTE ON THE PLAN.**
21 **ABSTENTIONS WILL NOT BE COUNTED AS EITHER ACCEPTANCES OR**
22 **REJECTIONS OF THE PLAN. FAILURE BY A HOLDER TO DELIVER A DULY**
23 **COMPLETED AND SIGNED BALLOT WILL ALSO CONSTITUTE AN ABSTENTION BY**
24 **SUCH HOLDER WITH RESPECT TO A VOTE ON THE PLAN. BECAUSE**
25 **ABSTENTIONS WILL HAVE NO EFFECT ON VOTING WITH RESPECT TO THE PLAN,**
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27
28 ¹³ The Debtor has sought an extension of time for it to file its Schedules, and subject to approval thereof, the Debtor plans on filing its Schedules prior to or on December 4, 2012.

1 **IT IS EXTREMELY IMPORTANT THAT YOU INDICATE WHETHER YOU ACCEPT OR**
2 **REJECT THE PLAN ON THE BALLOT.**

3 **5. Withdrawal of Votes on the Plan**

4 The solicitation of acceptances of the Plan will expire on the Voting Deadline. A properly
5 submitted Ballot may be withdrawn by delivering a written notice of withdrawal to the
6 Claims/Solicitation Agent at its address set forth on the Ballot at any time prior to the Voting
7 Deadline. Thereafter, withdrawal may be effected only with the approval of the Bankruptcy Court,
8 pursuant to Bankruptcy Rule 3018(a).

9 To be valid, a notice of withdrawal must (i) specify the name of the holder who submitted the
10 vote on the Plan to be withdrawn, (ii) contain the description of the Claim to which it relates and the
11 amount of such Claim, and (iii) be signed by the holder in the same manner as on the Ballot. The
12 Debtor reserves the right to contest the timeliness or validity of any such withdrawals of votes on the
13 Plan.

14 In addition to withdrawal as specified above, any holder who has previously submitted to the
15 Claims/Solicitation Agent prior to the Voting Deadline a properly completed Ballot may revoke and
16 change such vote by submitting to the Claims/Solicitation Agent prior to the Voting Deadline a
17 subsequent properly completed Ballot for acceptance or rejection of the Plan. In the case where
18 more than one timely, properly completed Ballot is received, only the Ballot that bears the latest date
19 will be counted for purposes of determining whether acceptances sufficient to seek Confirmation of
20 the Plan have been received.

21 **6. Solicitation Agent**

22 Rust Consulting/Omni Bankruptcy, a division of Rust Consulting, Inc., has been proposed by
23 the Debtor as the Claims/Solicitation Agent for the Plan. Questions and requests for assistance and
24 requests for additional copies of this Disclosure Statement or Ballots should be directed to the
25 Claims/Solicitation Agent at its address set forth above in Section I.E.1 or at (818) 906-8300.
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1 **F. Confirmation**

2 “Confirmation” is the technical term for a bankruptcy court’s approval of a plan of
3 reorganization. At the Confirmation Hearing, in order to confirm the Plan, the Debtor must
4 demonstrate that it has met the requirements of Section 1129 of the Bankruptcy Code. If the
5 Bankruptcy Court determines that all of the requirements of Section 1129 have been satisfied, the
6 Bankruptcy Court will enter an order confirming the Plan. The Debtor believes that the Plan
7 satisfies all the statutory requirements of Chapter 11 of the Bankruptcy Code.

8 Your vote on the Plan is important. Rejection of the Plan may lead to a conversion of the
9 Debtor’s case to chapter 7 of the Bankruptcy Code and subsequent liquidation of the Debtor by a
10 trustee who would be appointed as of the date of such conversion. This alternative will likely not
11 provide for a distribution of as much value to holders of Allowed Claims under the Plan.
12 Accordingly, the Debtor urges you to accept the Plan by completing and returning the enclosed
13 Ballot so as to be received no later than 5:00 p.m., prevailing Pacific time, on _____, 2013.

14 Voting is tabulated by Class. An impaired Class of Claims that votes will have accepted the
15 Plan if (a) the holders (other than any holder designated by the Bankruptcy Court based on its vote or
16 its solicitation not being in good faith under Section 1126(e) of the Bankruptcy Code) of at least
17 two-thirds in amount of the Claims actually voting in such Class have voted to accept the Plan and
18 (b) the holders (other than any holder designated under Section 1126(e) of the Bankruptcy Code) of
19 more than one-half in number of the Claims actually voting in such Class have voted to accept the
20 Plan.

21 If a Class of Claims entitled to vote on the Plan rejects the Plan, the Debtor reserves the right
22 to amend the Plan or request confirmation of the Plan pursuant to Section 1129(b) of the Bankruptcy
23 Code, or both. Section 1129(b) permits the confirmation of a plan of reorganization notwithstanding
24 the nonacceptance of a plan by one or more impaired classes of claims or equity interests. Under
25 that statute, a plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and
26 is “fair and equitable” with respect to each nonaccepting class. See Section VI.D of the Disclosure
27 Statement, “Confirmation of the Plan Without Acceptance by All Impaired Classes.”
28

1 The Bankruptcy Court has set _____, 2013, at ____:____ __.m. Pacific time, for the
2 Confirmation Hearing at which it will determine whether the Plan has been accepted by the requisite
3 number of Creditors and whether the other requirements for Confirmation of the Plan have been
4 satisfied. The Confirmation Hearing may be continued from time to time and day to day without
5 further notice. If the Bankruptcy Court confirms the Plan, it will enter the Confirmation Order. Any
6 objections to Confirmation of the Plan must be in writing and must be filed with the Clerk of the
7 Bankruptcy Court and served on respective counsel for the Debtor, the Purchaser and the Official
8 Committee of Unsecured Creditors, if any is appointed in the Chapter 11 Case of the Debtor (the
9 "Committee"), and the Office of the U.S. Trustee on or before the date set forth in the notice of the
10 Confirmation Hearing sent to you with this Disclosure Statement and the Plan.

11 The parties on whom objections must be served are:

12 Counsel for the Debtor:

13 Pachulski Stang Ziehl & Jones LLP
14 10100 Santa Monica Blvd., Suite 1300
15 Los Angeles, CA 90067
16 Tel: (310) 277-6910
17 Fax: (310) 201-0760
18 Attn: Richard M. Pachulski, Esq.
James I. Stang, Esq.
Linda F. Cantor, Esq.
Jonathan J. Kim, Esq.

19 Counsel for the Committee:

20 [TBD]

21 Office of the U.S. Trustee:

22 U.S. Trustee
23 411 West Fourth St., Suite 9041
24 Santa Ana, CA 92701
25 Tel: (714) 338-3400
26 Fax: (714) 338-3421
27 Attn: Frank Cadigan, Esq.
28 Michael Hauser, Esq.

Counsel for the Purchaser:

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II.

HISTORY, ORGANIZATION AND OPERATIONS OF THE DEBTOR

A. **General Description of the Debtor’s Business and Operations**

The Debtor is the sole distributor in the continental United States of Suzuki automobiles, motorcycles, ATVs, and marine outboard engines (the “Suzuki Products”). As of the Petition Date, the Debtor wholesaled the Suzuki Products through three primary business divisions: automotive (the “Automotive Division”), motorcycles and ATV (the “Motorcycles/ATV Division”), and outboard marine motors and related products (the “Marine Division” and together with the Automotive Division and Motorcycles/ATV Division, the “Divisions”).

In the operation of its business, the Debtor purchases Suzuki Products from SMC, Suzuki Manufacturing American Corporation (“SMAC”), an affiliate of the Debtor¹⁴; and certain other non-debtor affiliates. In turn, the Debtor wholesales virtually all of its inventory through a network of independently owned and unaffiliated dealerships located throughout the continental United States. The dealers then market and sell the Suzuki Products to retail customers. As of the Petition Date, there are approximately 220 automotive remaining dealerships (from a high of over 500), over 900 motorcycle/ATV dealerships, and over 780 outboard marine dealerships.

SMC and its affiliates manufacture virtually all of the Suzuki Products, including SMAC which manufactures most of the ATVs in a facility located in Rome, Georgia. In addition, the truck model named “Equator” is manufactured by Nissan. Each of the Divisions is described in greater detail below.

The purchase of Suzuki vehicles and products by the Debtor’s authorized dealers, and in, turn, by the dealers’ customers, is the primary source of revenue for the Debtor. The Debtor’s

¹⁴ SMC and SMAC are not debtors in this chapter 11 case or any other insolvency proceeding.

1 revenues for the 2011 fiscal year (12 months ending March 31, 2012) were approximately \$1,044
2 million and the revenues for the six months ending September 30, 2012 was approximately \$490
3 million. As of September 30, 2012, the Debtor had assets of approximately \$233,000,000,¹⁵ and
4 liabilities of approximately \$346,000,000. Attached hereto as **Exhibit B** is a balance sheet of the
5 Debtor's assets and liabilities as of September 30, 2012, which is unaudited and subject to change.

6 **B. Corporate/Organizational Structure**

7 The Debtor is a California corporation that was organized in 1986. The Debtor is privately
8 owned by SMC, a Japanese corporation. The Debtor also owns 80% of SMAC, a Georgia
9 corporation, which is the primary manufacturer of ATVs distributed by the Debtor. The remaining
10 20% of SMAC is owned by SMC. Although SMC is the sole equity holder of the Debtor, the Debtor
11 and SMC are separately represented by counsel and, as discussed below, the Debtor has two
12 independent members on its board of directors (the "Board").

13 The Board consists of five (5) members: Takashi Iwatsuki, Seiichi Maruyama, Toru Muraki,
14 Michael M. Ozawa, and R. Todd Neilson. Mr. Iwatsuki is the Chairman of the Board and oversees
15 the Divisions. Mr. Maruyama is President of the Debtor and manages the day-to-day operations of
16 the Divisions. Mr. Muraki is an Executive Vice President that oversees the Motorcycles/ATV
17 Division. Mr. Ozawa and Mr. Neilson recently were appointed to the Board to advise the Debtor
18 with its restructuring efforts (on September 10, 2012 in the case of Mr. Ozawa, and October 3, 2012
19 in Mr. Neilson's case). Mr. Ozawa and Mr. Neilson are each independent Board members as they
20 have no current or prior affiliation with SMC or any of its affiliates.

21 Mr. Ozawa is a Managing Director and Partner of Avant Advisory Group. He has more than
22 20 years of experience in restructuring and bankruptcy, transaction/M&A advisory and forensic
23 accounting matters. He is a Certified Insolvency & Restructuring Advisor (CIRA), a licensed CPA
24 with a financial forensics specialization credential (CPA/CFF), a Certified Global Management
25 Accountant (CGMA) and a Certified Fraud Examiner. He has led numerous out-of-court
26 restructurings and bankruptcy engagements representing the company, the debtor, equity holders,
27 secured lenders, unsecured creditors' committees, unsecured debt holders, trustees and receivers.

28 _____
¹⁵ As noted, this figure is based on book value which is not the same as fair market value.

1 Some of the issues addressed and solutions implemented involved liquidity, solvency, cash flow
2 projections and business plan reviews. The businesses ranged from private enterprises with annual
3 revenues of \$20 million to public entities with revenues in excess of \$2 billion.

4 Mr. Neilson is currently a Director at Berkeley Research Group LLC. Previously, Mr.
5 Neilson was a Director with LECG LLC and was a founding partner of Neilson Elggren LLP
6 (formerly Neilson, Elggren, Durkin & Co.). He is one of the nation's foremost experts in bankruptcy
7 and forensic accounting with over thirty years combined experience in public accounting and as a
8 Special Agent with the FBI. Mr. Neilson is a seasoned professional having acted as a trustee,
9 financial consultant and expert witness in numerous high-profile accounting related litigation
10 engagements involving complex bankruptcy reorganization matters including accounting and fraud
11 issues, tracing of funds, financial data reconstruction, damages and lost profits, Ponzi and RICO
12 matters, valuation, and business viability issues. Mr. Neilson has also acted as a bankruptcy trustee
13 for many notable clients. As such, he has operated large businesses and negotiated the sales of an
14 extensive and diverse array of assets, including one of the largest Ford dealerships in the nation, an
15 ownership interest in both the Los Angeles Kings' and Nashville Predators' hockey franchises,
16 luxury hotels, sand and rock quarries, antique art collections, real estate, and trucking companies.
17 Having evaluated and sold well over \$1 billion dollars of assets, Mr. Neilson brings substantial
18 practical experience and credibility to the Board.

19 **C. Debtor's Workforce and Facilities**

20 As of the Petition Date, the Debtor employed approximately 292 full-time and 2 part-time
21 employees across the three Divisions. Most of these employees are located at the Debtor's Brea,
22 California facility, while the other employees are located in Marietta, Georgia and Mechanicsburg,
23 Pennsylvania. Approximately twenty of the Debtor's employees belong to Local Union No. 2295 of
24 The International Brotherhood of Electrical Workers AFL-CIO.

25 As noted, the Debtor owns several facilities in the United States including the following:

26 (i) the Debtor's approximately 40-acre headquarters campus in Brea, California, which
27 includes the Debtor's headquarters building, its parts distribution center, 12.9 acres of undeveloped
28 land, and real property thereon (including a warehouse and parking spaces) leased to third parties;

- 1 (ii) the Debtor's South parts distribution center in Marietta, Georgia;
- 2 (iii) the Debtor's East parts distribution center in Mechanicsburg, Pennsylvania;
- 3 (iv) an office in Wixom, Michigan owned by the Debtor; and
- 4 (v) two corporate houses in Yorba Linda and Orange, California.

5 **D. Debtor's Automotive Operations**

6 The Debtor sells the majority of its automotive inventory to its network of dealers (the "Auto
7 Dealers") within the continental United States. The Debtor sells a portion of its automotive
8 inventory (less than 10%) to car rental companies and others that lease the vehicles (less than 2%) to
9 retail customers. The Debtor purchases all of its new vehicles and the majority of its automotive
10 parts from SMC and certain unaffiliated companies. The Debtor does not have any standing
11 relationship with automotive part retailers. Instead, the Debtor generally resells automotive parts
12 directly to the Auto Dealers and other authorized warranty service providers.

13 The Auto Dealers generally submit purchase orders to the Debtor for new automobiles two or
14 three months in advance of the time they expect to take delivery. However, it takes approximately
15 four to five months for the Debtor to deliver the automotive vehicle from the time the order is placed
16 with SMC. Accordingly, the Debtor attempts to forecast what the Auto Dealer will want based on
17 market share estimates and local demand.

18 Prepetition, the Debtor placed automobile orders with SMC approximately once per month.
19 After the new vehicles arrived, they were allocated among the Auto Dealers; however, dealers were
20 permitted to reject a proposed vehicle allocation. If an Auto Dealer was holding more than four
21 months' inventory, the Debtor generally did not allocate any new inventory to such dealer.

22 New automobile shipments from Japan generally arrived daily to one of the following ports:
23 Hueneme, California, Seattle, Washington, Jacksonville, Florida, and Baltimore, Maryland. After
24 their arrival, new automobiles generally remained on the shipping vessel for approximately two
25 weeks, then at the port for up to twenty days, during which time the new automobiles were
26 inspected. The new automobiles were then shipped to the Auto Dealers by rail and truck.

27 The Debtor has arrangements with certain lenders, including American Suzuki Financial
28 Services Co. (which is independently owned and not affiliated or related to the Debtor) and

1 Automotive Finance Corporation / AFC Cal, LLC, that provide flooring financing to the Debtor's
2 dealers and/or retail financing to consumers to purchase the Debtor's automobiles, which such
3 arrangements are facilitated by the Debtor through finance/lease program, repurchase, marketing and
4 other agreements with such lenders.

5 For the fiscal years 2011 and 2012, the Debtor's sales for its automotive products have
6 averaged approximately 25,000 units. For the same periods, the Debtor's market share was
7 approximately 0.2%.

8 **E. The Motorcycles/ATV Division**

9 Through the Motorcycles/ATV Division, the Debtor offers a full line-up of motorcycles
10 (sport-bike, dual-sport, motocross, super-moto, off-road, and touring) and ATVs (utility and sport).
11 Generally, the Debtor only sells Suzuki brand motorcycles and ATVs to its unaffiliated motorcycle
12 and ATV dealer network (the "Motorcycles/ATV Dealers"). However, at times, the Debtor sells
13 overstocked motorcycle and ATV units to other countries through a trading company.

14 Generally, Motorcycles/ATV Dealers submit orders every three to four months. The
15 motorcycles and ATVs are shipped to the four ports described above and also to Long Beach,
16 California. After the new motorcycles and ATVs arrive at port, they generally remain on the
17 shipping vessel for approximately two weeks, then at the port for up to twenty days during which
18 time the new motorcycles and ATVs are inspected. The motorcycles and ATVs are then shipped to
19 distribution warehouses and then immediately to the Motorcycles/ATV Dealers.

20 The Debtor has flooring financing contracts with GE Commercial Distribution Finance
21 Corporation ("GE Commercial"). The Debtor receives payment from GE Commercial within
22 approximately fifteen days after the Suzuki Product is invoiced to the Motorcycles/ATV Dealer. In
23 addition, GE Capital Retail Finance (formerly known as GE Money Bank) ("GE Retail") and
24 Sheffield Financial ("Sheffield") provide retail financing to consumers that purchase the Debtor's
25 motorcycles, ATVs and similar products. As discussed below, given the critical importance of these
26 finance companies continuing to provide financing to the Debtor's customers and dealers, the Debtor
27 filed motions to assume the Debtor's pre-petition agreements with GE Commercial, GE Retail and
28 Sheffield, in connection with these parties' provision of such financing.

1 For the fiscal years ending March 2011 and 2012, the Debtor's sales for its motorcycle
2 products have averaged approximately 22,000 units per year. For the same periods, the Debtor's
3 market-share for its motorcycle products was approximately 6%-7%. Prior to the recession, the
4 Debtor's market-share had reached as high as 14.1%. As economic conditions stabilize, the Debtor
5 estimates that its sales will increase.

6 For the fiscal years ending March 2011 and 2012, the Debtor's sales for its ATV products
7 have been approximately 5,000 and 7,000 units, respectively. For the same periods, the Debtor's
8 market-share for its ATV products was approximately 5% and 5.4%, respectively. The Debtor
9 believes that its motorcycles and ATVs are the most competitive Suzuki Products in the
10 marketplace. The overwhelming majority of the Motorcycles/ATV Dealers are performing well in
11 the marketplace.

12 **F. The Marine Division**

13 The Marine Division distributes marine products through approximately 780 marine dealers
14 (the "Marine Dealers"). The Debtor's Marine Division has a long history of advancements
15 contributing to a line of powerful, fuel efficient, and long-lasting marine products. The Debtor's
16 marine outboard motors are powered by 4-stroke technology that is ideally suited to today's boats.
17 The Debtor's outboard motors include the industry's largest all-4-stroke lineup. The sales to the
18 Marine Dealers primarily consist of marine products that are easily movable or not a permanent
19 fixture to the boat. The Debtor estimates that approximately 40% of its marine related sales are
20 directly to Marine Dealers.

21 In addition to the sales to Marine Dealers, the Debtor also sells marine products directly to
22 approximately 150 boat manufacturers (the "Boat Manufacturers"). The marine products sold to the
23 Boat Manufacturers are large and generally built into the boat as a permanent fixture. Once the boats
24 are complete, they are sold to the Marine Dealers as a complete unit. The Debtor estimates that
25 approximately 60% of its marine related sales are directly to the Boat Manufacturers.

26 Each year, the Debtor collects manufacturing forecasts from the Boat Manufacturers. In turn,
27 the Debtor uses these forecasts to place orders with SMC on a monthly basis. All units are shipped
28 to a port in Los Angeles, California, then shipped to one of two distribution warehouses (either

1 Industry, California or Jonesborough, Georgia) where the units remain for approximately one week
2 before being delivered to the Boat Manufacturers. There is an approximate three-month lead time
3 between order by and delivery to the Boat Manufacturer.

4 The Debtor has flooring financing related contracts with GE Commercial for its marine
5 related Suzuki Products. The Debtor receives payment from GE Commercial within approximately
6 fifteen days after the Suzuki Product is invoiced to the Marine Dealer. Given the importance of GE
7 Commercial in providing financing to the Debtor's dealers, based on discussions with GE
8 Commercial, the Debtor has filed a motion with the Court for authorization to assume the parties'
9 agreements as discussed below.

10 At its peak in the continental U.S. market, the Debtor's sales of marine products reached
11 approximately 300,000 units. However, after the recession, the market size has decreased. For the
12 fiscal years ending March 2011 and 2012, the Debtor's market share for its marine related products
13 was approximately 7%. As economic conditions stabilize, the Debtor estimates it should increase its
14 sales.

15 **G. Brief History of the Debtor, Its Operations and Suzuki Products**

16 **1. Early Suzuki Products**

17 The manufacturing of Suzuki Products began in 1909 by Suzuki Loom Works in
18 Hamamatsu, Japan. In 1920, Suzuki Loom Works was organized as Suzuki Loom Manufacturing
19 Co., the predecessor to SMC. Later, SMC began developing a variety of products that have
20 continued to influence the transportation and recreation industry to this day.

21 In 1953, the company created a motorized bicycle called the "Power Free," featuring a 36cc
22 two-stroke engine with a double sprocket gear system that enabled the rider to pedal with the engine
23 assisting, pedal without the engine assisting, or disconnect the pedals and run on engine power alone.

24 In 1955, SMC manufactured its first mass-produced car, the "Suzulight," which was
25 recognized as a technical marvel. It included radical innovations for the time such as front-wheel
26 drive, four-wheel suspension, and rack-and-pinion steering. In 1963, SMC brought its innovative
27 motorcycle lineup to the United States, and quickly became a major player in the motorcycle market.
28

1 In 1977, SMC launched its marine product division to market its proven marine outboard motors in
2 the United States.

3 **2. The Rise of the Motorcycles/ATV Division and Marine Division**

4 In 1983, SMC took the lead in the ATV market by introducing the first four-wheeled ATV,
5 the QuadRunner LT 125. The QuadRunner had a huge impact on the ATV industry as it ushered in
6 the 4-wheel revolution. The success of this ATV was followed by a release of a wide-ranging line-
7 up of 4-wheel ATVs.

8 In 1985, SMC introduced the first-generation GSX-R motorcycle, with the company's first
9 aluminum frame for unprecedented light weight and superb torsional rigidity and an oil-cooled, 4-
10 stroke, 4-cylinder engine. The GSX-R750 was designed to win national and world championships
11 while bringing the sporting experience to street riders. The GSX-R Suzuki sport-bikes have gone on
12 to win an unprecedented 11 American Superbike Championships.

13 In 2004, SMC launched revolutionary, compact 4-stroke V6 outboard motors with 200, 225,
14 and 250 horsepower to compliment the full line of 4-stroke outboard motors. These engines
15 included the industry's most powerful V6 4-stroke motors that are also light and compact. SMC's
16 marine division was honored with the NMMA® (National Marine Manufacturers Association)
17 Innovation Award.

18 **3. The Automotive Division**

19 In 1985, prior to the establishment of the Debtor, Suzuki of America Automotive Corp. was
20 the sales subsidiary of SMC. At that time, through an agreement between SMC and General Motors,
21 Suzuki of America Automotive Corp. began selling a version of its Suzuki Cultus in the continental
22 United States as the Chevrolet Sprint. This model was initially sold as a 3-door hatchback and was
23 at that time Chevrolet's smallest model.

24 In 1986, the Samurai was the first automobile introduced to the continental United States by
25 the newly created Suzuki of America Automotive Corp. Notably, no other Japanese company sold
26 more cars in the United States in its first year than Suzuki of America Automotive Corp., whose
27 name was later changed to American Suzuki Motor Corporation in 1986. The Samurai was available
28

1 as a convertible or hardtop and the Debtor's automotive sales substantially increased in 1987 with
2 approximately 81,350 units sold.

3 In 1999, the Debtor's automotive sales began to climb. In 2000, the Debtor became the
4 "Fastest Growing Japanese Auto Company in America" as reported by Automotive News. In 2001,
5 the Debtor introduced the first affordable seven passenger SUV, the Suzuki XL-7. In 2006 and
6 2007, the Debtor's automotive sales reached its highest levels, exceeding 100,000 units. Around this
7 same period, the Debtor introduced the Verona and Forenza sedans, the Reno and Forenza wagons,
8 and the Grand Vitara, and its sales continued to grow.

9 **H. Significant Indebtedness**

10 **1. Funding From SMC**

11 Pursuant to memoranda of understandings entered into between SMC and the Debtor, SMC
12 agreed to extend credit to the Debtor in connection with the purchase of products from SMC, and
13 agreed that the Debtor could request deferrals of amounts owing based on economic conditions and
14 the Debtor's financial needs. Prepetition, SMC extended credit on approximately 105-day terms.
15 Each year from 2009 until 2012, SMC confirmed its agreement to provide financial support to the
16 Debtor in accordance with the memoranda of understandings, and necessary working capital
17 financing necessary to maintain the Debtor's normal operations and the Debtor as a going concern.
18 In July of 2012, SMC and the Debtor entered into that certain Loan and Security Agreement, dated
19 July 27, 2012 (the "Pre-Petition Loan and Security Agreement") governing SMC's extension of
20 financial accommodations to the Debtor in the form of inventory financing (the "Inventory
21 Financing") and a line of credit (the "Revolver") that the Debtor utilized for the day-to-day
22 operations of the Divisions. The Pre-Petition Loan and Security Agreement covered only extensions
23 of credit made on and after the effectiveness of that agreement.

24 The Debtor's capital structure consists primarily of the line of credit provided by the Pre-
25 Petition Loan and Security Agreement. The amount outstanding under this agreement for the
26 Revolver as of the Petition Date is approximately \$32,000,000. As of the Petition Date, the amount
27 outstanding for Inventory Financing under the Pre-Petition Loan and Security Agreement is
28

1 approximately \$120,000,000. The Debtor also has approximately \$9,430,000 in inventory loans
2 outstanding to SMC that are not secured by the Pre-Petition Loan and Security Agreement.

3 **2. Warranty, Service, Similar and Other Claims**

4 Prior to the Petition Date, the Debtor maintained certain warranty and customer programs,
5 policies and practices for the benefit of its customers, as modified from time to time, including,
6 without limitation, as to most Suzuki automobiles, a seven year / 100,000 mile limited warranty,
7 scheduled maintenance programs, and a roadside assistance program, which programs and practices
8 are in addition to any statutory and other obligations relating to Suzuki automobiles. The Debtor
9 estimates that there are approximately 25,000 Suzuki automobiles sold in the United States in 2011
10 and 2012. Given the number of Suzuki automobiles and other Suzuki Products including
11 motorcycles and ATVs, and the extent of the Debtor's prior and current customer and warranty
12 related programs, there may be substantial contingent and/or unliquidated liabilities relating to
13 warranty and similar obligations and product liability claims. Further, with respect to warranty
14 claims, generally, the Debtor reimburses dealers for certain warranty and recall costs incurred, for
15 which the Debtor is then reimbursed by SMC (or other manufacturers) for certain amounts.

16 **3. Auto Dealers' and Floor Lenders' Claims**

17 Prior to the Petition Date, in the event of a dealership agreement termination, generally, the
18 Debtor repurchased unused and marketable Suzuki automobiles and current parts and accessories.
19 Additionally, the Debtor is party to various agreements with finance companies (vendor, repurchase,
20 financing and other agreements) that have flooring arrangements with certain of the Auto Dealers to,
21 among other things, repurchase unlicensed, unused vehicles acquired by the finance companies in
22 the event of default by the dealer. The Debtor expects that, in connection with its rejection of
23 various dealership and related agreements, dealers, as well as finance parties, will assert, in the
24 aggregate, substantially large amounts of claims against the Debtor, including repurchase obligation
25 claims (typically damages for the difference between the repurchase obligation amounts and the
26 amounts realized upon vehicle disposition), claims for reimbursement and warranty work,
27 reimbursement for property improvements, claims for failure to deliver title and vehicles, lost profits
28

1 and loss of goodwill. At this juncture, the Debtor cannot estimate with precise accuracy the potential
2 amount of all such claims, but the Debtor has provided estimates in **Exhibit C** attached hereto based
3 on certain assumptions and qualifications as stated therein.

4 **4. Other Ordinary Course Debt**

5 In addition to the indebtedness described above, the Debtor incurs trade debt in the ordinary
6 course of its business. The trade debt outstanding as of the Petition Date is not substantial and totals
7 approximately \$4,000,000 (not including accrued but unbilled payables for October 2012). In
8 addition to the unsecured trade debt, the Debtor expects that additional non-priority, general
9 unsecured claims will result from the wind-down of the Automotive Division and from some limited
10 measures implemented in the Debtor's other divisions.

11 **I. Significant Assets**

12 **1. In General**

13 The principal assets of the Debtor consist of the Debtor's businesses, which include the
14 following:

Asset	Estimated Book Value as of Petition Date ¹⁶
Cash & cash equivalents	\$13,000,000
Notes and accounts receivable (including from automobile, motorcycle/ATV and marine outboard dealers)	\$29,956,000
Spare parts & accessories	\$29,887,000
Finished goods	\$71,707,000
Real property (including Debtor's fee interests in facilities in Brea, CA; Marietta, GA; Wixom, MI; Mechanicsburg, PA; Yorba Linda, CA; Orange, CA)	\$21,782,000
Machinery & equipment	\$350,000
Intangible fixed assets	\$780,000
Investments in affiliated companies (SMAC)	\$24,000,000
Litigation / causes of action	TBD
Miscellaneous other assets	\$2,839,000
Estimated Total:	\$194,301,000

16 As noted above, these figures are based on book value, which may not represent the fair market value of such assets.

1 SMC's claims under the Pre-Petition Loan and Security Agreement are secured by liens against
2 substantially all of the Debtor's assets.

3 **2. Potential Claims and Causes of Action**

4 The Debtor will investigate potential Avoidance Actions and other causes of action against
5 third parties. The Debtor will conduct appropriate investigation and analysis of all such matters. At
6 this juncture, the Debtor cannot accurately estimate the potential recoveries from Causes of Action
7 and Defenses.

8 With respect to SMC, under the direction of a subcommittee of the Debtor's Board of
9 Directors composed of independent Directors, the Debtor's counsel and its financial advisors are
10 evaluating potential claims and defenses that might be asserted against SMC in an effort to reduce or
11 offset SMC's claim or subordinate it to claims of unsecured creditors. Attached hereto as **Exhibit D**
12 is a preliminary discussion of such matters.

13 **J. Circumstances Leading to the Debtor's Bankruptcy Filing**

14 **1. Decline in the Debtor's Auto Sales Business and Other Factors**

15 After the global subprime recession began in 2008, the Debtor's continental United States
16 automotive sales declined along with the rest of the United States automotive industry. With
17 declining sales, the Debtor faced and will continue to face a number of serious financial and
18 operational challenges in the highly regulated and competitive automotive industry in the continental
19 United States market. These challenges include declining market share, declining sales volume,
20 unfavorable foreign currency exchange rates, the rising cost associated with growing and
21 maintaining a distribution system in the continental United States, a limited number of models in its
22 line-up, disproportionately high and increasing costs associated with meeting more stringent state and
23 federal automotive regulatory requirements unique to the continental United States market, and
24 existing and potential litigation costs.

25 The Debtor's automobile sales volume in the continental United States is not competitive. Its
26 most recent market share is only approximately 0.2%. Further, as a result of the declining sales
27 volume, the Debtor's fixed cost per automotive unit, including development, production, marketing,
28

1 and sales activities, is substantially higher than its competitors' fixed cost. These factors have and
2 will continue to have direct adverse effect on the Debtor's competitiveness and profitability.

3 While many of the Debtor's automotive competitors, including Japanese brands, produce
4 their main models in North America, all of the Debtor's automotive models, except Equator,¹⁷ are
5 produced abroad. As a result, the manufacturing costs are greater than its competitors' costs due to
6 the unfavorable foreign currency exchange rate. However, with respect to motorcycles, ATVs, and
7 marine products, the Debtor's Japanese competitors are similarly impacted by foreign currency
8 exchange rates.

9 In addition, the Debtor has been solely responsible for the development of its automotive
10 distribution system in the continental United States. This is an expensive endeavor that requires
11 continuing commitment of time and money to maintain an exclusive network of dealers that are able
12 to sustain healthy sales. Currently, the Debtor's Automotive Dealer network under-performs relative
13 to the dealers associated with the Motorcycles/ATV and Marine Divisions. For example, out of the
14 approximate 220 automotive dealers, only approximately 90 automotive dealers sell significant units
15 of new vehicles. Approximately 130 of the automotive dealers sell fewer than five units per month
16 and others may sell as few as one or two units per month. Approximately 60% of the Debtor's
17 automotive related revenue is derived from the Northeast, where notable demand exists (due to the
18 weather) for the economically priced 4-wheel drive Suzuki Products. This is one reason why
19 automotive Suzuki Products account for only a 0.2% market share in the continental United States.
20 The fact that there is a modest demand for Suzuki automobiles in certain regions of the United
21 States, however, do not offset that fact that the Debtor's overall sales are flat at best and are
22 generally declining even in regions where the Debtor has competitive products to offer consumers.

23 In response to consumer demands in the continental United States, most of the Debtor's
24 competitors offer larger sized automobile models. The automotive Suzuki Products are geared
25 toward compact and economy models. In comparison with larger automobiles, per unit, compact
26 automobiles end up bearing higher development and manufacturing costs to meet applicable
27 environmental and regulatory requirements. Competitors' larger automobiles, on the other hand, sell

28 _____
¹⁷ As noted above, the Equator is manufactured by Nissan in the United States

1 at higher prices and generate larger profits and more easily offset the regulatory costs. The Debtor
2 does not have the capacity to deliver larger, higher priced automobiles to help sustain the sale of
3 smaller more costly automobiles, as the Debtor's competitors do.

4 In an attempt to address each of these economic pressures prepetition, the Debtor took a
5 variety of measures to reduce the cost of operations. Lay-offs were implemented, employee benefits
6 were reduced, vendor prices were reduced through negotiations, the marketing budget was revised,
7 and certain dealer operations within the Automotive Division were discontinued. These efforts, and
8 the sacrifices of the Debtor's employees, went a great distance to reduce costs and move the business
9 toward profitability. Unfortunately, however, the Debtor's efforts did not provide an economically
10 viable means for the Debtors to continue distributing automobiles in the continental United States.
11 Thus, after exhausting all reasonable business options, the Debtor made the difficult but necessary
12 decision to orderly wind down and discontinue new automobile sales in the continental United
13 States. The Debtor determined that the best way to preserve and enhance the value of its overall
14 business is to wind down new sales of the Automotive Division (*i.e.*, the Auto Sales Business) in the
15 continental United States and realign its business focus on the long-term growth of its
16 Motorcycles/ATV and Marine Divisions while also maintaining service and part centers for existing
17 automobile consumers.

18 **2. Debtor's Determination to Commence the Chapter 11 Case and the Filing**
19 **Thereof**

20 On November 5, 2012, the Debtor filed a voluntary petition for relief under Chapter 11 of the
21 Bankruptcy Code. Since the Petition Date, the Debtor has been managing its assets and operating its
22 businesses as a debtor in possession.

23 The Debtor commenced this chapter 11 case to restructure its Automotive Division. The
24 Automotive Division has recently faced and will continue to face numerous adverse business issues
25 including: (a) declining sales volume and market-share, (b) unfavorable foreign currency exchange
26 rates for products manufactured outside the United States, (c) the high cost associated with growing
27 and maintaining an automotive distribution system in the continental United States, (d) having a
28 limited number of models in its line-up that are being offered to consumers in an already highly

1 competitive automotive market, (e) disproportionately high and increasing compliance costs
2 associated with stringent state and federal automotive regulatory requirements unique to the
3 continental United States market, and (f) existing and potential litigation costs. In the face of these
4 business challenges, the Debtor's efforts to reduce operating costs have proven to be insufficient to
5 meet the rising cost of maintaining a competitive and profitable automobile distribution network in
6 the continental United States.

7 As part of the Automotive Division restructuring, the Debtor will discontinue new
8 automotive sales after its existing automotive inventory is sold. Certain of its existing automotive
9 dealers will be extended an offer to transition their existing dealerships from new sales to provide
10 only service and parts. Through the service and parts dealers, manufacturer's warranties relating to
11 the Debtor's automobiles will be honored to the extent authorized under the Debtor's emergency
12 motion discussed below, and the cost associated with such service will continue to be reimbursed to
13 the participating dealers as part of the Continuing Business (as defined below).

14 By restructuring the Automotive Division in the manner proposed, the Debtor will be able to
15 devote its resources to the Motorcycles/ATV and Marine Divisions. The Motorcycles/ATV and
16 Marine Divisions should remain largely unaffected by the proposed restructuring and the
17 manufacturer's warranties associated with the products sold from these divisions will be honored as
18 set forth in the Debtor's Dealer/Customer Programs Motion discussed below. While the Debtor
19 expects to implement some limited measures to effectuate operational efficiencies within these
20 divisions, the Debtor generally intends to continue operating the Motorcycles/ATV and Marine
21 Divisions in the ordinary course of business (together with the parts and service operation, the
22 "Continuing Business"), pending implementation of the Plan.

23 As discussed in greater detail herein, the Debtor intends to effectuate the Automotive
24 Division restructuring through the proposed Plan. Through the Plan, the Debtor will transfer the
25 Continuing Business through a private sale to an entity designated by SMC. The Plan and other
26 motions filed contemporaneously therewith are designed to maximize the value of the Debtor's
27 Estate so that Creditors receive the greatest amount available to satisfy their Claims resulting from
28 this Chapter 11 Case.

1 III.

2 **ANTICIPATED EVENTS OF THE CHAPTER 11 CASE**

3 **A. The Debtor's Exit Strategy and Expected Timetable of the Chapter 11 Case**

4 The Debtor has determined to pursue a reorganization strategy in its Chapter 11 Case that
5 includes a proposed Plan of reorganization by which a private sale of substantially all of the Debtor's
6 assets, with certain exceptions as described in the Plan and herein, to the Purchaser, a wholly-owned
7 subsidiary of SMC, the 100% interest holder in the Debtor.

8 As discussed below, the Debtor will be engaging in extensive efforts to facilitate the wind-
9 down of the Auto Sales Business. The Debtor cannot ensure how many Auto Dealers will enter into
10 Auto Dealer Letter Agreements, but subject to Bankruptcy Court order, the Debtor does not
11 anticipate any disruption in service for owners of Suzuki automobiles during the Chapter 11 Case
12 and after the Effective Date. Subject to Bankruptcy Court approval, the Debtor anticipates
13 completing the Plan process as smoothly and efficiently as possible.

14 Specifically, the Debtor intends to sell certain assets, pursuant to the terms of a proposed
15 asset purchase agreement (the "APA") (filed in the Chapter 11 Case), that will include, without
16 limitation, all property, rights, and interests comprising and/or relating to the Non-Auto Business
17 Lines and the Auto Parts/Service Business, including in relation to the Purchased Businesses, all
18 inventory, parts, equipment, accounts receivable, contracts, leases, claims and causes of action
19 (including related avoidance actions) as designated by Purchaser ("Designated Contracts"), other
20 contractual rights, deposits, licenses and permits (to the extent transferrable), prepaid expenses,
21 books and records, insurance policies, goodwill and other intangible property, and all intellectual
22 property rights.

23 In connection with the sale under the Plan, the Purchaser intends to honor all contractual and
24 statutory warranty and service obligations, whether express or implied, undertaken by the Debtor as
25 the factory authorized U.S. distributor of Suzuki Products (including Suzuki-brand automobiles,
26 motorcycles, ATVs, marine and other non-automotive products), whether arising prior to or after the
27 Effective Date, pursuant to the Post-Effective Date Warranty Program.
28

1 The Purchased Assets will not include the Debtor’s Auto Sales Business; the cash and cash
2 equivalents held by the Debtor on the Effective Date of Plan; contracts and leases that are not
3 Designated Contracts; certain assets (including real property, facilities, and equipment) that are not
4 necessary or beneficial to the continued operation of the Purchased Businesses; and the Estate’s
5 avoidance actions, claims and causes of action that have not been designated for assignment to
6 Purchaser. To effectuate an orderly wind down and discontinuance of the Automobile Sales
7 Business in the continental United States, the Debtor intends to market and sell its remaining United
8 States automobile inventory through its automotive dealers.

9 Upon the Effective Date, the Purchased Assets will be transferred, and the Designated
10 Contracts will be assumed by the Debtor and sold and assigned to the Purchaser, under the Plan
11 pursuant to sections 363, 365, 1123, and 1129 of the Bankruptcy Code and applicable non-
12 bankruptcy law, free and clear of liens, interests, claims, and encumbrances. Obligations under the
13 Post-Effective-Date Warranty Program will be assumed by the Purchaser on the Effective Date.

14 In the event that the Debtor ultimately determines that selling certain of its operations
15 through the Plan is not feasible, the Debtor will instead seek the Court’s authorization to sell the
16 Purchased Assets through a stand-alone sale (“363 Sale”) pursuant to sections 363 and 365 of the
17 Bankruptcy Code. In this context, the sale of assets will be subject to bidding procedures in which
18 bids will be solicited from third parties for the highest and best offer. Further, unlike the proposed
19 sale through the Plan, the stand-alone sale process will not provide for the distribution of sale
20 proceeds to holders of allowed claims. Instead, any distribution of the sale proceeds will be subject
21 to the confirmation of a proposed plan.

22 As discussed further below, the Debtor will file a motion for approval of a 363 Sale and
23 related bidding and notice procedures. As part of this process, the Debtor will seek the Court’s
24 authorization to retain Imperial Capital, LLC as its investment banker to market the Purchased
25 Assets with the goal of obtaining the highest and best offer for the benefit of all parties in interest. If
26 the Debtor proceeds with the 363 Sale, the Plan will be modified or withdrawn.

27 Whether the Debtor’s proposed restructuring is effectuated through the Plan or a 363 Sale,
28 during the pendency of the Chapter 11 Case, the Debtor intends to honor its warranty program,

1 subject to the terms of the Dealer/Customer Programs Motion and the Auto Dealer Settlement
2 Procedures Motion. Subject to Court approval, the Dealer/Customer Programs Motion is intended
3 to, among other things, provide consumers the uninterrupted provision of warranty and service repair
4 work that is essential to maintaining the high quality of the Debtor's products as well as to
5 promoting consumer safety. In some cases, the Debtor's warranty and service obligations may be
6 mandated by federal or state law, such as, for example, compliance with federal EPA emission
7 standards and seatbelt safety laws.

8 While the Debtor expects the Chapter 11 Case to proceed expeditiously, the Debtor cannot
9 assure any parties that the Bankruptcy Court will enter various orders on the timetable anticipated by
10 the Debtor. On the Petition Date, the Debtor will request the Bankruptcy Court to set a hearing date
11 to approve this Disclosure Statement and to schedule a hearing to confirm the Plan in March 2013;
12 the Debtor will also seek the approval of certain sale, bidding and auction procedures ("Bidding
13 Procedures") and propose holding an auction in or about March 2013 in the event that a 363 Sale is
14 pursued.

15 If the Plan is confirmed, the Plan is projected to become effective shortly after the date the
16 Bankruptcy Court enters the Confirmation Order and all of the conditions to the occurrence of the
17 Effective Date are either satisfied or waived. The Debtor will attempt as soon as practicable to
18 emerge from protection under chapter 11.

19 **B. Debtor's Anticipated Settlements with Auto Dealers and Other Creditors**

20 As a result of the restructuring of the Automotive Division, the Debtor expects that the
21 majority of Claims against the Debtor's Estate will be asserted by Auto Dealers and trade
22 counterparties that primarily provide goods and services to the Automotive Division.

23 To address these Claims, the Debtor has filed the *Emergency Motion for Order (i)*
24 *Authorizing Debtor to Enter into Service and Parts Agreements with Automobile Dealers; (ii)*
25 *Approving Uniform Procedures for Consensual Rejection of Pre-Petition Agreements and*
26 *Resolution of Claims and (iii) Granting Related Relief* (the "Auto Dealer Settlement Procedures
27 Motion"), which seeks authorization for the Debtor to, among other things, consensually reject its
28 pre-petition agreements with Auto Dealers and resolve the Auto Dealers' claims.

1 If the Auto Dealer Settlement Procedures Motion is approved by the Court, the Debtor
2 intends to make offers to Auto Dealers that includes the resolution of the following: (a) the
3 consensual rejection by the Debtor of the automotive dealership agreement and ancillary contracts
4 (“Pre-Petition Auto Dealer Agreement”) between each Settling Auto Dealer and the Debtor, (b) the
5 liquidation of substantially all claims against the Debtor by the applicable dealer, including claims
6 arising from the rejection of the Pre-Petition Auto Dealer Agreement (the “Settling Auto Dealer
7 Liquidated Claim”) (but excluding the Dealer Incentive Program Claims which will be addressed by
8 the Dealer/Customer Program Motion),¹⁸ (c) authorization for the Auto Dealer to remain an
9 authorized dealer of new Suzuki Cars to sell off remaining inventory during a defined period for the
10 wind down of sales of new Suzuki Cars, and (d) entry into a service and parts agreement pursuant to
11 which the applicable Automotive Dealer will continue providing authorized warranty and non-
12 warranty service and selling genuine SMC brand parts for a defined period of time (the “Service and
13 Parts Agreement”), which will be assigned to and assumed by the Purchaser on the Effective Date.
14 Each Auto Dealer Letter Agreement resolving the foregoing matters will be signed by the Debtor
15 and the applicable Settling Auto Dealer.

16 As part of the transactions, SMC or its designee will offer to enter into a separate agreement
17 (the “SMC Participation Agreement”) with the applicable Auto Dealer on the following terms: (a)
18 the applicable Auto Dealer will provide a general release (the “Settling Auto Dealer Release”)
19 covering any and all claims and causes of action, whether known or unknown, against SMC, its
20 subsidiaries and affiliates, and their respective present and former officers, directors, managers,
21 employees, professionals, advisors and other agents (collectively, “Agents”) (but excluding the
22 Debtor and the assertion of the Settling Auto Dealer Claims against the Debtor), effective upon the
23 parties’ entry into the Auto Dealer Letter Agreements (“Settlement Date”); (b) in consideration for
24 the Settling Auto Dealer Release, SMC or the Purchaser will provide an early cash payment

25 _____
26 ¹⁸ More specifically, “Settling Auto Dealer Liquidated Claim” is defined in the Plan as, as to a particular Settling Auto
27 Dealer, (i) its General Unsecured Claim against the Debtor arising from or relating to the Debtor’s rejection of the
28 parties’ Pre-Petition Auto Dealer Agreement pursuant to Section 365 of the Bankruptcy Code, and (ii) any other unpaid
General Unsecured Claims (excluding Dealer Incentive Program Claims) as established in the amount set forth in the
applicable Auto Dealer Letter Agreement, as all such Claims have been Allowed in accordance with the Auto Dealer
Settlement Procedures. Auto Dealers’ Dealer Incentive Program Claims are addressed in the Debtor’s Dealer/Customer
Program Motion, which is discussed further in the Disclosure Statement.

1 (“Participation Payment”) equal to approximately 50% of the Settling Auto Dealer Liquidated
2 Claim, provided the Settling Auto Dealer executes and returns the Auto Dealer Letter Agreement,
3 the SMC Participation Agreement and the Service and Parts Agreement (as applicable) on or before
4 November 30, 2012; (c) SMC or its designee will obtain the right to participate (“Dealer-Claim
5 Participation Rights”) in any distribution by or on behalf of the Debtor’s estate on account of the
6 Settling Auto Dealer Liquidated Claim after the Settling Auto Dealer has been paid for the portion of
7 the claim not subject to the Participation Payment in the chapter 11 case or in any subsequent
8 chapter 7 case, (d) under any Plan for the Debtor, SMC will agree to subordinate its Secured Claims
9 to the extent necessary to permit payment in full of the Settling Auto Dealer Liquidated Claims, and
10 (e) if for any reason the Service and Parts Agreement is not assigned by the Debtor to the Purchaser
11 on the Effective Date, the applicable Settling Auto Dealer will promptly enter into the Service and
12 Parts Agreement with the Purchaser. If the Settling Auto Dealer does not return the foregoing
13 documents by November 30, 2012, it will not receive a Participation Payment and will not be
14 assured of a Service and Parts Agreement, but it will receive the benefit of SMC’s voluntary
15 subordination. The offer contained in the Auto Dealer Letter Agreement is null and void if the
16 Service and Parts Agreement (as applicable) is not executed and returned on or before December 28,
17 2012.

18 On the Effective Date of the Plan, distributions made on account of the Settling Auto Dealer
19 Liquidated Claims will be made first to the Settling Auto Dealers to the extent of the unpaid claim,
20 with the remaining distribution made directly to SMC on account of the Participation Payment.
21 Each Settling Auto Dealer will retain the right to vote the full amount of its claims set forth under its
22 Auto Dealer Letter Agreement.

23 The purpose of the Auto Dealer Settlement Procedures Motion is to maximize the assets
24 available to Auto Dealers and to promote public safety by the preservation of a network of service
25 and parts dealers. The prompt and efficient liquidation of the dealer’s claims and the Participation
26 Payment and voluntary subordination by SMC provide the additional benefit of mitigating the
27 financial impact of the Debtor’s withdrawal from the new vehicle automobile market in the
28 continental United States. The Auto Dealer Settlement Procedures are critical to the Debtor’s Plan

1 confirmation efforts and its efforts to preserve the going concern value of the Estate. These
2 procedures will: (a) facilitate an uninterrupted transition of critical warranty and service repair work
3 and parts for hundreds of thousands of Suzuki automobile owners and thereby promote public safety;
4 (b) provide greater certainty in administering the claims objection process by providing an overall
5 framework for a consensual resolution of what would otherwise be contingent and disputed damages
6 claims; (c) provide a mechanism for the agreed rejection of Pre-Petition Auto Dealer Agreements,
7 while providing appropriate notice to parties in interest and an opportunity for them to object; (d)
8 ease the financial burden of the chapter 11 process and rejection of the Pre-Petition Auto Dealer
9 Agreement by providing Settling Auto Dealers with a means to receive cash upon the Settlement
10 Date; (e) establish an efficient mechanism to settle and allow Claims, while providing appropriate
11 notice to parties in interest and an opportunity for them to object, and (f) help minimize the expense,
12 delay and uncertainty in the claims objection and settlement process, which, in turn, will help
13 conserve the resources of the Court and the Debtor's Estate.

14 The Debtor proposes that other general unsecured creditors would also be entitled to
15 treatment similar in certain respects (*e.g.*, the benefit of SMC's voluntary subordination), provided
16 (a) their asserted claim is liquidated in the amount reflected in the Debtor's books and records or in
17 an amount that is agreed to between the Debtor and each applicable creditor, and (b) such creditor
18 elects on its ballot to provide a release of the Debtor, SMC and certain other releasees. By virtue of
19 SMC's voluntary subordination of its Secured Claims to the extent provided under the Plan, such
20 Other Settling Creditors are expected to be paid in full under the Plan.

21 **C. First Day and Other Relief**

22 In order to facilitate the Chapter 11 Case and minimize disruption to the Debtor's operations,
23 the Debtor filed certain motions with the Bankruptcy Court on or shortly after the Petition Date
24 seeking certain relief, including but not limited to, the relief summarized below. The relief sought,
25 which is typical in a chapter 11 case of this size and complexity, will facilitate the administration of
26 the Chapter 11 Case; provided, however, there is no guarantee that the Bankruptcy Court will grant
27 any or all of the requested relief. Copies of all relevant pleadings are on file with the Bankruptcy
28 Court and can be obtained free of charge by accessing the Claims/Solicitation Agent's website at

1 www.omnimgt.com/asmc. The pleadings filed by the Debtor on or shortly after the Petition Date
2 may include, but are not necessarily limited to, the following:

3 **1. Use of Cash Collateral / DIP Financing**

4 The Debtor will require the use of cash collateral of SMC, and access to a debtor-in-
5 possession (DIP) financing facility ("DIP Facility") to be provided by SMC in order to operate
6 efficiently and pay its obligations as the Chapter 11 Case progresses throughout the realignment of
7 its operations and completion of the restructuring. Accordingly, the Debtor will seek an order of the
8 Bankruptcy Court authorizing the Debtor to use cash collateral and approving the DIP Facility on an
9 interim and final basis pursuant to agreed terms negotiated with SMC.

10 Subject to Court approval, the proposed DIP Facility will consist of \$50,000,000 in
11 postpetition advances and \$50,000,000 in inventory loans following entry of the Final DIP Order, of
12 which \$15,000,000 in postpetition advances and \$30,000,000 in inventory loans would be available
13 under the proposed Interim DIP Order. SMC, as the DIP Lender, will be granted first priority liens
14 in substantially all of the Debtor's assets (excluding Avoidance Actions), subject to certain limited
15 exceptions, and superpriority administrative claims, subject to certain limited exceptions and a
16 carve-out. SMC will also be granted adequate protection in respect to its prepetition Secured Claims
17 in the form of replacement liens in the collateral, subject to the DIP Facility liens and carve-out.
18 Further, the DIP Facility has certain timeline milestones, including, without limitation, (a) entry of
19 an order approving bidding procedures by no later than December 5, 2012; (b) subject to entry of the
20 Final DIP Order, entry of an order approving the Disclosure Statement by no later than December
21 21, 2012; (c) subject to entry of the Final DIP Order, entry of a final order of the Bankruptcy Court
22 either (i) confirming the Plan or (ii) approving the sale (either, the "Approval Order") by no later
23 than February 28, 2013; and (d) subject to entry of the Final DIP Order, consummation of the Plan or
24 closing of the sale by no later than March 29, 2013.

25 The Debtor has requested that the Court hold an emergency interim hearing and approve the
26 proposed DIP Facility and Debtor's use of cash collateral on an interim basis, and to schedule a final
27 hearing.
28

1 **2. Parallel Track Sale and Bidding Procedures Motion**

2 The Debtor filed a motion seeking an order: (i) approving certain proposed sale procedures,
3 including overbid provisions (the “Bid Procedures”), in connection with the proposed sale at auction
4 (the “Auction”) of the Purchased Assets, pursuant to the terms of the APA, free and clear of all liens,
5 claims, interests and encumbrances, to the Purchaser or such other party making a higher and better
6 bid at the Auction; (ii) authorizing the sale of the Purchased Assets to Purchaser pursuant to the
7 APA, or, alternatively, to the other successful bidder(s) pursuant to the applicable agreement(s) with
8 such other successful bidder(s) entered into in accordance with the Bid Procedures; (iii) approving
9 the assumption, sale and assignment, as of the Effective Date, of the Designated Contracts under
10 Bankruptcy Code sections 363 and 365, and subject to any requisite consents or approvals in
11 connection therewith; (iv) approving expense reimbursement for the Purchaser, up to a \$750,000
12 cap, payable in accordance with the APA; (v) scheduling the place, date and time of the Auction and
13 establishing a mechanism by which the date and time of the hearing to consider the approval of the
14 sale of the Purchased Assets will be selected; and (v) approving the proposed form of the notices of
15 the Auction, the Sale Hearing and related matters, and the manner of service of same, and setting
16 applicable deadlines.

17 As discussed above, the Debtor has determined to pursue a reorganization strategy in the
18 Chapter 11 Case that includes a Plan by which a sale of substantially all of the Debtor’s assets, with
19 certain exceptions as described in the Plan, to the Purchaser will be implemented. The Debtor’s
20 willingness to proceed with the proposed Plan is predicated on certain factors, including that a
21 sufficient number of the dealerships in the Debtor’s automobile dealership network as of the Petition
22 Date agrees to certain settlements and stipulations. In the event that the Debtor ultimately
23 determines not to proceed with the proposed Plan, the Debtor expects to proceed with the 363 Sale.
24 Accordingly, the Debtor filed this motion to facilitate a parallel track transaction in such event.

25 **3. Global Auto Dealer Settlement Procedures Motion**

26 As discussed above, the Debtor filed its Dealer Settlement Procedures Motion, seeking
27 approval of certain procedures in order for the Debtor and Auto Dealers to enter into the Auto Dealer
28

1 Letter Agreements and for SMC and the Auto Dealers to enter into the SMC Participation
2 Agreements.

3 **4. Assumption of GE, GE Retail and Sheffield Finance Related Agreements**

4 The Debtor will seek Bankruptcy Court authorization, pursuant to, *inter alia*, sections 362,
5 363, 365 and 503(b) of the Bankruptcy Code, (i) to assume certain pre-petition executory contracts
6 with GE Commercial Distribution Finance Corporation, GE Capital Retail Bank (formerly known as
7 GE Money Bank), and Sheffield Financial, or (ii) in the alternative, if the Court does not allow
8 immediate assumption, to continue honoring and making payments (including on account of pre-
9 petition obligations) and otherwise performing under these agreements during this chapter 11 case,
10 subject to further Court orders. As discussed above, pre-petition, many of the Debtor's authorized
11 dealers purchased Suzuki Products, including motorcycles, ATVs and outboard motors, from the
12 Debtor through floor financing provided by GE; in addition, GE Retail and Sheffield offer financing
13 to consumer purchasers of the Debtor's motorcycles, ATVs and similar products at the dealership
14 level. The continued provision of dealer and consumer financing by these finance companies is
15 essential to the Debtor's business operations. Absent these finance companies continuing to provide
16 such financing and other arrangements post-petition, many of the Debtor's dealers and customers
17 would be unable to finance the purchase of Suzuki vehicles and products distributed by the Debtor,
18 and the Debtor's flow of revenue would be substantially harmed. By its motions, the Debtor seeks
19 to assume the subject agreements to ensure that these finance companies continue to perform under
20 the agreements and provide dealer and customer financing in connection therewith. GE, GE Retail
21 and Sheffield consent to such assumptions as set forth in the motions. Alternatively, the Debtor
22 seeks authorization from the Bankruptcy Court allowing the Debtor to continue operating and
23 honoring its obligations under the parties' pre-petition arrangements, pending assumption of the pre-
24 petition agreements, in order to incentivize the finance companies to continue to furnish services
25 under the existing agreements and financing to dealers and customers, as applicable.
26
27
28

1 **5. Debtor's Critical Vendors**

2 The Debtor filed the *Emergency Motion of the Debtor for Order Authorizing Payment of*
3 *Prepetition Claims of Critical Vendors*, pursuant to which the Debtor seeks authority to pay the pre-
4 petition claims of certain Critical Vendors, as defined therein. The Debtor will experience
5 irreparable harm if the Critical Vendors are not paid as proposed in the motion. The Debtor requires
6 the goods and services supplied by these vendors because they are essential to the operation of its
7 ongoing businesses and the preservation of the Debtor's business as a going concern enterprise. The
8 critical vendors fall into one of four general categories: (i) sole-source suppliers or original
9 equipment manufacturers whose goods are irreplaceable in the marketplace and without which the
10 Debtor would not be able to sell its products or provide critical warranty and service repair for its
11 products; (ii) suppliers of parts and accessories who, although the Debtor may be able to eventually
12 replace, because of quality control issues, cannot be replaced without a lengthy approval process,
13 which could take years; (iii) vendors who maintain the Debtor's information technology systems,
14 including the Debtor's website and internal dealer network its systems, who have gained specialized
15 knowledge of the Debtor's operations and cannot be easily replaced without months of disruption to
16 bring another vendor up to speed; and (iv) various vendors or claims relating to government
17 requirements or regulations. The Debtor believes that it is fairly current with all Critical Vendors
18 and estimates that it may owe Critical Vendors approximately \$900,000 as of the Petition Date. Of
19 this amount, the Debtor estimates that a large portion, or 60%, of this amount is entitled to priority
20 under section 503(b)(9) of the Bankruptcy Code as such goods were delivered within 20 days of the
21 Petition Date.

22 **6. Motion for Use of Existing Cash Management System, Accounts and Business**
23 **Forms and Related Relief**

24 The Debtor will seek authority to maintain its prepetition cash management system -- which
25 was designed to facilitate the timely and efficient collection, management, and disbursement of
26 funds used in the Debtor's day-to-day businesses -- after commencement of the Chapter 11 Case,
27 including the Debtor's use of its existing 14 bank accounts and its current business forms. Given the
28 size of the Chapter 11 Case and the complexity of the Debtor's cash management system, requiring

1 the Debtor to close the existing bank accounts and open new ones will substantially disrupt the
2 Debtor's operations, increase the work of the Debtor's accounting personnel who are already dealing
3 with the many, varied issues related to the Chapter 11 Case, and needlessly cost the Debtor time and
4 money while not resulting in any discernible benefit to the Estate.

5 **7. Employee Wages and Benefits**

6 The Debtor filed its *Emergency Motion for Order (1) Authorizing Debtor to Pay Prepetition*
7 *(A) Wages, Salaries, and Other Compensation, (B) Employee Medical, Workers' Compensation and*
8 *Similar Benefits, (C) Employee Deductions, (D) Reimbursable Employee Expenses; and (2)*
9 *Authorizing and Directing Applicable Banks and Other Financial Institutions to Receive, Process,*
10 *Honor and Pay Checks Presented for Payment and to Honor Funds Transfer Requests Relating to*
11 *the Foregoing*. By this motion, the Debtor seeks to, among other things, honor and pay prepetition
12 wages and employee-related obligations of its workforce of approximately 294 employees. The
13 requested relief is justified and in the best interest of the Debtor, the Estate and its creditors; absent
14 such relief, the potential resulting employee departures and deterioration in employee morale will
15 substantially and adversely impact the Debtor's businesses and result in immediate and irreparable
16 harm to the Estate.

17 **8. Customer and Dealer Obligations, Programs and Practices**

18 On the Petition Date, the Debtor filed its *Emergency Motion for an Order Authorizing the*
19 *Debtor to Honor Certain Prepetition Obligations for the Benefit of Its Dealers and Other Customers*
20 *and to Otherwise Continue Customer Programs and Practices Including Warranty Obligations in*
21 *the Ordinary Course* (the "Dealer/Customer Program Motion"). As a distributor of automobiles,
22 motorcycles, ATVs, and marine outboard motors, the Debtor offers various limited warranties for
23 parts, systems, and accessories. In some instances, these warranties are offered to ensure compliance
24 with federal and state health and safety regulations, such as, for example, to ensure compliance with
25 government-established emission standards and seatbelt safety laws. The Debtor's ability to
26 seamlessly continue warranty service and repair work on its products is essential to public safety as
27 well as to preserving the Debtor's value as a going concern.
28

1 As discussed above, end consumers generally interface with the Debtor’s authorized dealers
2 rather than the Debtor directly in respect to its Suzuki Products. During the Chapter 11 Case, the
3 Debtor must be able to provide a “business as usual” experience to the ultimate retail consumer of
4 Suzuki Products. Maintaining the continuing support of customers is essential to the preservation
5 and protection of the Suzuki brand and the Debtor’s Estate. Ensuring that customer warranty claims
6 are satisfied without interruption is imperative to preserving going concern value. To that end, it is
7 essential to obtain authority to continue honoring the Debtor’s various customer programs which
8 generally are provided through the authorized dealers.

9 Based on the foregoing, the Debtor has sought an order authorizing it to honor and perform,
10 in its sole discretion, prepetition obligations related to (i) sales promotions and incentives for the
11 purchase of Suzuki Products (the “Sales Incentives”), including, as described in the Debtor’s motion,
12 cash incentives, sales personnel incentives, employee cash back, the Suzuki No-Charge First Service
13 for certain Suzuki automobiles, fleet incentives, and certain volume discounts; (ii) dealer support
14 programs (the “Dealer Support Programs”), which facilitate cash flows between the Debtor and its
15 dealers, the dealers’ ability to finance their inventory, and shared advertising costs; and (iii) limited
16 warranty programs under which the Debtor is contractually obligated to repair or replace parts or
17 components that may be defective or provide general service repair obligations under the terms of
18 the applicable limited warranty for a specified period of time (the “Warranty Programs”, and
19 together with the Sales Incentives, and Dealer Support Programs, the “Customer Programs”), and to
20 the extent the Court’s authorization is necessary, continue, renew, replace, implement or terminate
21 such Customer Programs in the ordinary course of business, without further order of the Court.
22 Honoring the Customer Programs is essential to the Debtor’s business operations in that it ensures
23 that the Debtor remains competitive among its major competitors and assists the Debtor in
24 maintaining customer confidence and satisfaction.

25 **9. Motion to Pay Shippers’ Claims**

26 The Debtor filed its *Emergency Motion for Order Authorizing Debtor to Pay Prepetition*
27 *Claims of Shippers, Warehousemen, Customs Brokers, and Other Transportation Lien Claimants*.
28 As discussed above, the Debtor does not manufacture any Suzuki Products; rather, these products

1 and related parts are purchased from SMC or the Debtor's non-debtor affiliates who are located
2 overseas in four Asian countries, from its non-debtor domestic affiliate located in Rome, Georgia,
3 and from various third-party suppliers. In addition to the shipment of automobiles, motorcycles/
4 ATVs, and marine outboard motors, the Debtor also relies on a steady supply of parts from its non-
5 SMC suppliers to ship to its authorized dealers, who then service such vehicles under various
6 warranty programs. The Debtor also exports parts and products to its non-debtor affiliate in Canada
7 to support sales of Suzuki vehicles in Canada.

8 In order to ensure the steady movement of products as noted above, the Debtor relies on a
9 complex and international network of shippers, railroad carriers, freight carriers (the "Transporters")
10 who ship the Suzuki Products, parts, and accessories (collectively, the "Goods") from their
11 warehouses or to warehouses operated by third-parties (the "Warehousemen"). Suzuki Products that
12 are received from overseas affiliates are shipped to various ports in the United States, cleared for
13 customs, loaded onto railroad containers, and finally moved onto trucks, which transport the
14 products to the six warehouse facilities located throughout the United States. From the warehouse
15 facilities, the Goods are shipped to the Debtor's various authorized dealers.

16 To the extent that Goods are received from international sources, the Debtor is required to
17 pay customs duty charges and the Debtor utilizes the services of customs brokers (the "Customs
18 Brokers") who facilitate the payment of the customs duty charges and fees. If the Debtor fails to pay
19 any Customs Broker, Transporter, or Warehouseman (collectively, the "Lien Claimants") for charges
20 incurred in connection with the use, storage, or transport of the products, various statutes, tariffs and
21 agreements permit the Lien Claimants to assert liens against the products in their possession. With
22 respect to Suzuki Products purchased from the Debtor's non-debtor domestic affiliate, the process is
23 similar except that the Suzuki Products do not need to clear customs and are shipped directly by rail
24 or truck from the Rome, Georgia facility to the Debtor's U.S. warehouse facilities or directly to
25 authorized dealers.

26 The Debtor's business is dependent upon the ability to timely deliver the Goods to its
27 authorized dealers for sale to customers. While the Debtor believes that it is relatively current on its
28 payments to the Lien Claimants, to the extent that additional amounts are found to be outstanding

1 (most likely due to delayed invoicing or the timing of certain shipments), the Debtor must be able to
2 pay such amounts to gain access to the Goods. The Debtor requires timely receipt of the Goods to
3 be able to sell them and to timely service consumers' vehicles and marine motors. Any disruption in
4 the Debtor's complex movement of Goods could result in devastating consequences to the Debtor's
5 business, including potential safety issues for the Debtor's ultimate retail customer if critical service
6 and warranty repair work cannot be completed in a timely manner because of any delay in the
7 Debtor's supply chain. As such, the Debtor proposes to pay such claims when, in the Debtor's
8 business judgment, such creditors' exercise of their legitimate remedies would unduly disrupt the
9 Debtor's business.

10 **10. Motion to Pay Prepetition Sales, Use, Franchise, Property and Other Taxes**

11 In connection with the normal operation of its business, the Debtor incurs various taxes,
12 including (a) personal property taxes on the Debtor's tangible assets, (b) sales and use taxes on
13 goods that the Debtor has sold or assets that the Debtor acquires, (c) franchise taxes payable to
14 various states where the Debtor conducts business, (d) property taxes on the various real properties
15 owned by the Debtor, and (e) other taxes or assessments that may be imposed by various state or
16 local authorities, which are payable to various governmental taxing and licensing authorities. The
17 timely payment of the foregoing taxes in the ordinary course, whether relating to prepetition or
18 postpetition periods, is necessary to allow the Debtor to continue operations during the Debtor's
19 reorganization and to avoid the accrual of unnecessary interest and other penalties. Thus, the Debtor
20 filed a motion for authority to pay such taxes to the relevant governmental authorities in the ordinary
21 course of business.

22 **11. Adequate Assurance to Utilities**

23 The Debtor will move the Court to enter orders approving procedures for, among other
24 things, determining adequate assurance for utility providers, prohibiting utility providers from
25 altering, refusing, or discontinuing services, and determining that the Debtor is not required to
26 provide any additional adequate assurance pending entry of a Final Order. The Debtor believes that
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28

1 uninterrupted utility services are essential to the Debtor's ongoing operations and, therefore, to the
2 success of the Debtor's reorganization.

3 **12. Motion to Honor Indemnity Agreements With Directors and Chief**
4 **Restructuring Officer**

5 Like all other companies, in order to induce highly competent persons to serve the Debtor as
6 directors and officers, the Debtor must provide such persons with adequate protection against risks
7 of claims and actions against them arising out of their service to and activities on behalf of the
8 Debtor. Typically, companies provide such protection through directors' and officers' liability
9 insurance ("D&O Insurance"). However, the Debtor does not maintain a D&O Insurance policy in
10 the ordinary course of business and has been unable to obtain cost-effective D&O Insurance on
11 satisfactory terms. Therefore, the Board of Directors of the Debtor has determined that (1) it is
12 essential to the best interests of all of the Debtor's stakeholders that the Debtor act to assure its
13 current Directors as of the Petition Date and Chief Restructuring Officer ("CRO") that there will be
14 increased certainty of such protection in the future, and that (2) it is reasonable, prudent and
15 necessary for the Debtor contractually to obligate itself to indemnify such persons to the fullest
16 extent permitted by applicable law so that they will continue to serve the Debtor free from undue
17 concern that they will not be so indemnified. Accordingly, the Debtor entered into the Director
18 Indemnity Agreement with its Directors immediately prior to the Petition Date, which provides
19 indemnification for the Director signatories thereto effective as of (and for services rendered
20 commencing on and after) September 10, 2012 (or October 3, 2012 in the case of Mr. R. Todd
21 Neilson who was appointed as a Director on October 3, 2012). The Debtor also entered into the
22 Officer Indemnity Agreement immediately prior to the Petition Date, which provides for the
23 indemnification of M. Freddie Reiss, the proposed CRO, effective as of the date the Debtor is
24 authorized to engage him pursuant to Bankruptcy Court Order for services rendered commencing on
25 and after such date. The Indemnity Agreements generally provide for indemnification to the
26 maximum extent permissible under applicable California law and grant certain security to the
27 Directors and CRO in the form of the DIP Carveout and the Cash Indemnification Reserve, as set
28 forth in those agreements.

1 **13. Employment Applications/Motions**

2 The Debtor has also applied for orders authorizing it to employ: (i) M. Freddie Reiss as the
3 Debtor’s CRO and FTI Consulting, Inc. to assist the CRO; (ii) Pachulski Stang Ziehl & Jones LLP
4 as the Debtor’s bankruptcy counsel; (iii) Nelson Mullins Riley & Scarborough, LLP as the Debtor’s
5 special dealer network counsel; (iv) Imperial Capital, LLC as the Debtor’s investment banker; (v)
6 Urban Science Applications, Inc. as automotive retail consultant; and (vi) Rust Consulting/Omni
7 Bankruptcy, a division of Rust Consulting, Inc., as the noticing, claims and balloting agent for the
8 Bankruptcy Court. The Debtor may file additional retention applications.

9 Further, the Debtor filed a motion for authority to employ and compensate ordinary course
10 professionals. The Debtor customarily retains the services of various attorneys, accountants, and
11 other professionals in matters arising in the ordinary course of business that are unrelated to the
12 Chapter 11 Case (“OCPs”). The Debtor requires the services of the OCPs whose services may be
13 required in order to continue to operate its business as a debtor in possession. The work of the
14 OCPs, albeit ordinary course, is directly related to the preservation of the value of the Debtor’s
15 estate, even though the amount of fees and expenses incurred by the OCPs is relatively small. The
16 uninterrupted services of the OCPs are important to the Debtor’s continuing operations and its ability
17 to move toward a successful reorganization.

18 **14. Schedules Extension Motion**

19 The Debtor will also seek an approximately 15 day extension of time to prepare and file its
20 Schedules, to and including December 4, 2012. Due to the demands on the Debtor created by,
21 among other things, filing the Chapter 11 Case and the financial difficulties giving rise thereto, the
22 need to maintain continuity in the Debtor’s businesses, and the need to prepare and file numerous
23 “First Day Motions” and comply with other U.S. Trustee filing requirements, the Debtor needs a
24 modest extension of time to compile the requisite information necessary to ensure that accurate and
25 complete Schedules will be filed.
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1 **15. Interim Compensation of Case Professionals**

2 Given the size and complexity of the Chapter 11 Case and the amounts of fees and expenses
3 that will likely be incurred by the professionals employed in the Chapter 11 Case, the Debtor sought
4 the entry of an order establishing an orderly, regular process for the monthly compensation and
5 reimbursement of such professionals that are consistent with the procedures adopted by courts for
6 the interim compensation of professionals in other large chapter 11 cases.

7 **16. Case Management Procedures**

8 The Debtor filed a motion seeking approval of a limited notice procedure, the establishment
9 of omnibus hearing dates, and other case management procedures that will promote efficient and
10 orderly administration of the Chapter 11 Case.

11 **D. The Debtor's Liabilities**

12 The Debtor has set forth in **Exhibit C** estimates of certain of their liabilities, including
13 potential auto dealer rejection claims and other General Unsecured Claims. In connection with
14 voting on the Plan, Confirmation, or other purpose, the Debtor may file with the Bankruptcy Court a
15 motion or motions to have disputed, contingent and/or unliquidated Claims estimated by the
16 Bankruptcy Court pursuant to Section 502(c) of the Bankruptcy Code.

17 THE DEBTOR IS NOT WAIVING UNDER THE PLAN OR IN THIS DISCLOSURE
18 STATEMENT ANY RIGHT TO, AMONG OTHER THINGS, OBJECT TO THE CLAIM OF ANY
19 CREDITOR. IN VOTING ON THE PLAN, CREDITORS SHOULD ASSUME THAT THEIR
20 CLAIM MIGHT BE OBJECTED TO BY THE DEBTOR, THE POST-EFFECTIVE-DATE
21 DEBTOR, OTHER CREDITORS, OR OTHER PARTIES IN INTEREST.

22 **1. Secured Claims**

23 As noted above, prior to the Petition Date, SMC provided certain financing to the Debtor,
24 secured by substantially all of the Debtor's assets. As of the Petition Date, SMC's Secured Claims
25 against the Debtor were over \$150 million, including accrued interest, fees and other charges.

26 The Debtor is aware of certain UCC-1 financing statements filed by parties such as
27 equipment lessors. Further, certain letter of credits and/or other arrangements are collateralized by
28

1 accounts with cash deposited by the Debtor, in favor of Avalon Risk Management and Argonaut
2 Insurance, and the Debtor also has an account with Bank of America as collateral for the Debtor's
3 obligations in respect to the Debtor's credit card program. In addition to the foregoing secured
4 indebtedness, the Debtor has certain undrawn lines of credit with Union Bank, N.A., Bank of Tokyo-
5 Mitsubishi, The Shizuoka Bank, Ltd., and Mizuho Corporate Bank, Ltd.

6 To the extent that there may be any Secured Claims against the Debtor other than the
7 foregoing, the Debtor believes that such claims would be of relatively *de minimis* amount, and for
8 purposes of its analysis of distributions under the Plan attached hereto as **Exhibit C**, subject to all
9 qualifications and conditions set forth therein, the Debtor has not estimated any Secured Claims
10 other than the SMC Secured Claims.

11 Under the Plan, Creditors with Allowed Secured Claims that have not been paid or otherwise
12 satisfied prior to the Effective Date will be paid in full, will have the applicable collateral abandoned
13 or surrendered to them, or their respective claims will otherwise be unimpaired under the Plan;
14 provided, however, solely in respect to Settling Creditors, SMC has agreed to the voluntary
15 subordination of certain of its Secured Claims in order to effectuate the payment in full of holders of
16 Allowed Class 3 Claims and Allowed Class 4 Claims.

17 **2. Administrative Claims**

18 The Plan provides for the payment as an Administrative Claim of the actual and necessary
19 costs or expenses of preserving the Debtor's Estate and/or conducting the affairs of the Debtor.
20 Certain expenses will arise during the Chapter 11 Case that would constitute Administrative Claims
21 that will not be paid in the ordinary course of the Debtor's post-Petition Date affairs. Further, the
22 Plan provides that fees and expenses for the Professionals retained by the Debtor and any Committee
23 that may be subsequently appointed for services rendered and costs incurred after the Petition Date
24 and prior to the Effective Date will be paid following approval by the Bankruptcy Court after notice
25 and a hearing or pursuant to another order of the Bankruptcy Court.

26 The aggregate amount of Administrative Claims incurred during the Chapter 11 Case will be
27 substantial, and the Debtor and its advisors have made certain assumptions regarding the potential
28 amount of Professional Fees and other Administrative Claims as well as Plan Expenses, in

1 estimating a net available cash amount of approximately \$99 million (before repayment of DIP
2 Financing Claims) (collected over time) that will be used to pay Allowed Claims pursuant to the
3 Plan. See **Exhibit C** attached hereto.

4 **3. Priority Tax Claims**

5 Generally, Allowed Priority Tax Claims will be paid in full under the Plan. The aggregate
6 amount of such claims is to be determined. As set forth in **Exhibit C** and discussed further below,
7 the Debtor anticipates that certain Priority Tax Claims will be paid in the ordinary course, subject to
8 Court approval, and certain portions of such claims may be payable by the Purchaser, under and
9 subject to the terms of the APA.

10 **4. Priority Non-Tax Claims**

11 Generally, Allowed Priority Non-Tax Claims will be paid in full under the Plan. The
12 aggregate amount of such claims is to be determined. As set forth in **Exhibit C**, the Debtor
13 anticipates that unpaid Priority Non-Tax Claims will be of relatively *de minimis* amount as of the
14 Effective Date.

15 **5. General Unsecured Claims**

16 After the passage of the Bar Date, and subject to the progress of the Debtor's discussions
17 with Auto Dealers and other creditors during the early stage of the Chapter 11 Case, the Debtor will
18 be able to more accurately estimate the potential aggregate amount of all General Unsecured Claims,
19 comprised of Settling Auto Dealer Claims, Other Settling Creditor Claims, Non-Settling Creditor
20 Claims, and Warranty Claims. As discussed herein, after the Effective Date, Warranty Claims will
21 be administered by the Purchaser under the Post-Effective-Date Warranty Program.

22 The aggregate amount of each of the Classes of Settling Auto Dealer Claims (Class 4), Other
23 Settling Creditor Claims (Class 5), and Non-Settling Creditor Claims (Class 6) will depend on,
24 among other things, how many creditors eligible to be a member of Class 3 or Class 4 meet the
25 requirements to be such a member. Those holders of GUC Distribution Claims who do not take the
26 requisite actions to become a member of Class 3 (if eligible) or Class 4 will be members of Class 5.
27 The Debtor has estimated potential ranges of aggregate amounts of Class 3, Class 4 and Class 5
28

1 Claims, based on various assumptions, for purposes of its Plan distribution analysis attached as
2 **Exhibit C.**

3 **IV.**

4 **DESCRIPTION OF THE PLAN**

5 A discussion of the principal provisions of the Plan as they relate to the treatment of Classes
6 of Allowed Claims and Interests is set forth below. The discussion of the Plan that follows
7 constitutes a summary only and should not be relied upon for voting purposes. You are urged to
8 read the Plan in full in evaluating whether to accept or reject the Plan proposed by the Debtor. If any
9 inconsistency exists between this summary and the Plan, the terms of the Plan will control.

10 **A. Unclassified Claims**

11 As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and
12 Priority Tax Claims against the Debtor are not classified for purposes of voting on, or receiving
13 distributions under, the Plan. Holders of such Claims are not entitled to vote on the Plan. All such
14 Claims, together with DIP Financing Claims, are instead treated separately in accordance with
15 Article 2 of the Plan and in accordance with the requirements set forth in Section 1129(a)(9) of the
16 Bankruptcy Code.

17 **1. DIP Financing Claims**

18 Except to the extent the DIP Lender agrees to less favorable treatment, and except to the
19 extent constituting an “Assumed Liability” under the APA, any and all DIP Claims will be paid in
20 full or otherwise satisfied by the Debtor by the earlier of (i) the Effective Date and (ii) such other
21 maturity date as set forth in the DIP Financing Agreement and the DIP Financing/Cash Collateral
22 Order.

23 **2. Administrative Claims**

24 **a. Administrative Claim Bar Dates**

25 All requests for payment of Administrative Claims as of _____, 201__ (except with
26 respect to Professional Fees, which will instead be subject to the Professional Fees Bar Date) must
27 be Filed by the First Administrative Claim Bar Date or the holders thereof will be forever barred
28

1 from asserting such Administrative Claims against the Debtor or from sharing in any distribution
2 under the Plan.

3 Except as otherwise provided by separate order of the Court, the date that is thirty (30) days
4 after the Effective Date will be the “Second Administrative Claim Bar Date” for all parties to File
5 with the Court any requests for payment or any other means of preserving and obtaining payment of
6 an Administrative Claim to the extent such Claim (i) arose or was incurred between _____,
7 201__ and the Effective Date and (ii) has not been paid, released, or otherwise settled, excluding all
8 requests for payment of Professional Fee claims. Any request for payment of an Administrative
9 Claim (other than a Professional Fee claim) that is not timely Filed either as set forth above or, if
10 applicable, by the First Administrative Claim Bar Date, will be forever barred, and holders of such
11 Administrative Claims will not be able to assert such Claims in any manner against the Debtor, the
12 Estate, the Post-Effective-Date Debtor or the Plan Representative. Notwithstanding any of the
13 foregoing, SMC will not be required to File a request for payment of any Administrative Claims that
14 it may hold.

15 **b. Generally**

16 Each Allowed Administrative Claim (except for Professional Fees, which will be treated as
17 set forth in Section 2.5 of the Plan) will, unless the holder of such Claim will have agreed to
18 different treatment of such Claim, be paid in full in Cash by the Post-Effective-Date Debtor on the
19 latest of: (a) the Effective Date, or as soon thereafter as practicable; (b) such date as may be fixed by
20 the Bankruptcy Court, or as soon thereafter as practicable; (c) the tenth (10th) Business Day after
21 such Claim is Allowed, or as soon thereafter as practicable; (d) such date as the holder of such Claim
22 and the Debtor may agree; and (e) the date such Claim is otherwise due according to its terms.

23 **c. Ordinary Course**

24 Notwithstanding anything in Section 2.3.1 of the Plan to the contrary, holders of
25 Administrative Claims based on liabilities incurred in the ordinary course of the Debtor’s business
26 following the Petition Date will not be required to comply with the Administrative Claims Bar Date,
27 provided, however, that such holders have otherwise submitted an invoice, billing statement or other
28 evidence of indebtedness to the Debtor in the ordinary course of business, and provided, further, that

1 the Debtor and/or Post-Effective-Date Debtor, to the extent of any disagreement with any such
2 invoice, billing statement or other evidence of indebtedness, may File with the Bankruptcy Court an
3 objection to such invoice, billing statement or other evidence of indebtedness as though the claimant
4 thereunder had Filed an Administrative Claim with the Bankruptcy Court.

5 **3. Allowed Priority Tax Claims**

6 Each Allowed Priority Tax Claim will, at the option of the Debtor, unless the holder of such
7 Claim will have agreed to different treatment of such Claim: (a) be paid in full in Cash, without
8 interest, by the Debtor on the latest of: (i) the Effective Date, or as soon thereafter as practicable; (ii)
9 such date as may be fixed by the Bankruptcy Court, or as soon thereafter as practicable; (iii) the
10 tenth (10th) Business Day after such Claim is Allowed, or as soon thereafter as practicable; and (iv)
11 such date as the holder of such Claim and the Debtor may agree, or (b) receive deferred Cash
12 payments to the extent permitted by Section 1129(a)(9) of the Bankruptcy Code with interest on the
13 unpaid portion of such Claim at the statutory rate under applicable non-bankruptcy law or at a rate to
14 be agreed upon by the Debtor and the appropriate governmental unit or, if they are unable to agree,
15 to be determined by the Bankruptcy Court; provided, however, that the Debtor may prepay any or all
16 such Claims at any time, without premium or penalty. For the purpose of option (b), the payment of
17 each Allowed Priority Tax Claim will be made in equal quarterly installments with the first
18 installment due on the latest of: (i) the first Business Day following the end of the first full calendar
19 quarter following the Effective Date, (ii) the first Business Day following the end of the first full
20 calendar quarter following the date an order allowing such claim becomes a Final Order, and (iii)
21 such other time or times as may be agreed with the holder of such claim. Each installment will
22 include simple interest on the unpaid balance of the Allowed Priority Tax Claim, without penalty of
23 any kind, at the non-default rate of interest prescribed, agreed to or determined under option (b).

24 **4. Claims for Professional Fees**

25 Each Professional seeking an award by the Bankruptcy Court of Professional Fees: (a) must
26 File its final application for allowance of compensation for services rendered and reimbursement of
27 expenses incurred through the Effective Date on or before the Professional Fees Bar Date; and (b) if
28

1 the Bankruptcy Court grants such an award, each such Person will be paid in full in Cash by the
2 Post-Effective-Date Debtor, in such amounts as are allowed by the Bankruptcy Court as soon as
3 practicable following the first day after such order has been entered by the Bankruptcy Court and is
4 not stayed. All final applications for allowance and disbursement of Professional Fees must be in
5 compliance with all of the terms and provisions of any applicable order of the Bankruptcy Court,
6 including the Confirmation Order.

7 **B. Classification of Claims and Interests**

8 In accordance with Section 1123(a)(1) of the Bankruptcy Code, all Claims of Creditors
9 (except those Claims receiving treatment as set forth in Article 2 of the Plan) and holders of Interests
10 are placed in the Classes described below and in Sections 3.2 and 3.3 of the Plan for all purposes,
11 including voting on, confirmation of, and distribution under, the Plan:

12	Class 1	Priority Non-Tax Claims	Unimpaired, deemed to accept
13	Class 2A-1	SMC Secured Revolver Claim	Impaired, entitled to vote
14	Class 2A-2	SMC Secured Inventory Loan Claim	Impaired, entitled to vote
15	Class 2B	Other Secured Claims (each secured creditor in a separate class identified as Class 2B-1, Class 2B-2, etc.)	Unimpaired, deemed to accept
16	Class 3	Settling Auto Dealer Liquidated Claims	Impaired, entitled to vote
17	Class 4	Other Settling Creditor Claims	Impaired, entitled to vote
18	Class 5	Non-Settling Creditor Claims	Impaired, entitled to vote
19	Class 6	Warranty Claims	Unimpaired, deemed to accept
20	Class 7	Interests	Unimpaired, deemed to accept; provided, however, all Interests may be cancelled pursuant to Section 4.9; in case of such cancellation, impaired and deemed to reject
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26 Holders of General Unsecured Claims will be placed into one or more of four separate
27 Classes – Class 3, Class 4, Class 5, and Class 6. The Debtor believes that there are material
28 distinctions among these Classes of Claims and other justifications for separate classification

1 thereof. In no event has the Debtor separately classified General Unsecured Claims in order to
2 create or “gerrymander” an assenting impaired Class (voting in favor of the Plan).

3 **C. Treatment of Claims and Interests**

4 **1. Class 1 – Priority Non-Tax Claims**

5 Class 1 is unimpaired under the Plan. Holders of Priority Non-Tax Claims are deemed to
6 have accepted the Plan under Section 1126(f) of the Bankruptcy Code and are not entitled to vote on
7 the Plan.

8 Each holder of an Allowed Priority Non-Tax Claim will, unless the holder of such Claim will
9 have agreed to different treatment of such Claim, receive, in full and final satisfaction, settlement,
10 release, and discharge of, and exchange for, such Allowed Priority Non-Tax Claim, a Cash payment
11 in an amount equal to the Allowed Priority Non-Tax Claim on the latest of: (i) the Effective Date, or
12 as soon thereafter as practicable; (ii) such date as may be fixed by the Bankruptcy Court, or as soon
13 thereafter as practicable; (iii) the tenth (10th) Business Day after such Claim is Allowed, or as soon
14 thereafter as practicable; and (iv) such date as the holder of such Claim and the Debtor may agree.

15 **2. Class 2A-1 – SMC Secured Revolver Claim**

16 This Class is comprised of any and all of the Secured Claims of SMC against the Debtor
17 arising from or relating to pre-petition revolver loan advances made by SMC to the Debtor under the
18 Pre-Petition Loan and Security Agreement. Class 2A-1 is impaired under the Plan and entitled to
19 vote on the Plan. The Debtor anticipates that SMC will vote in favor of the Plan.

20 SMC, as the holder of the SMC Secured Revolver Claim, is entitled to full payment of such
21 Claim from Available Cash of the Debtor. SMC has voluntarily consented to the subordination of
22 such SMC Secured Revolver Claim to Allowed Class 3 Claims and Allowed Class 4 Claims, such
23 that Available Cash payable to SMC on account of the SMC Secured Revolver Claim will be
24 reallocated to Allowed Class 3 Claims and Allowed Class 4 Claims, to the extent necessary to permit
25 payment in full of an amount equal to these claims, without interest..

26 Specifically, on or as soon as practicable after the Effective Date, in one or more
27 distributions, the Post-Effective-Date Debtor will pay in Cash, to the extent there is Available Cash,
28 up to the full amount of the Allowed SMC Secured Revolver Claim, to holders of Allowed Class 3

1 Claims and Allowed Class 4 Claims pursuant to Sections 4.5.2 and 4.6.2 of the Plan and as discussed
2 below, in an amount equal to the Allowed amounts of such Claims (including the portion of Allowed
3 Class 3 Claims subject to rights in favor of Participation Party pursuant to the SMC Participation
4 Agreements).

5 After the payment or reserve for an amount equal to payment in full of all Allowed Class 3
6 Claims and Allowed Class 4 Claims through a combination of the voluntary subordination described
7 above and GUC Distributions, if any, all remaining Available Cash will be paid by the Post-
8 Effective-Date Debtor to SMC on account of the Allowed SMC Secured Revolver Claim (less any
9 amounts that have previously been paid to SMC on account of the SMC Secured Revolver Claim
10 and to holders of Allowed Class 3 Claims and Allowed Class 4 Claims pursuant to the voluntary
11 subordination described above).

12 To the extent payments on account of the Allowed SMC Secured Revolver Claim are paid to
13 holders of Allowed Class 3 Claims and Allowed Class 4 Claims in accordance herewith and with
14 Section 4.2.2 of the Plan, SMC will be subrogated to the Allowed Class 3 Claims and Allowed Class
15 4 Claims, including rights to any distributions from the Post-Effective-Date Debtor under the Plan
16 on account of such Allowed Class 3 Claims and Allowed Class 4 Claims. After the holders of
17 Allowed Class 3 Claims and Allowed Class 4 Claims have received total payments equal to 100% of
18 their Allowed Claims (including the portion of Allowed Class 3 Claims subject to rights in favor of
19 Participation Party pursuant to the SMC Participation Agreements) as a result of the voluntary
20 subordination and any GUC Distributions, all additional GUC Distributions to such holders will be
21 remitted to SMC on account of SMC's subrogation rights. For the avoidance of doubt, no GUC
22 Distributions will be made until an amount equal to the Allowed SMC Secured Claims has been
23 distributed or reserved for distribution by the Debtor (to SMC or to holders of Allowed Class 3
24 Claims and Allowed Class 4 Claims pursuant to the subordination).

25 **3. Class 2A-2 – SMC Secured Inventory Loan Claim**

26 This Class is comprised of any and all of the Secured Claims of SMC against the Debtor
27 arising from or relating to pre-petition extensions of credit made by SMC to the Debtor for the
28 purchase of inventory under the Pre-Petition Loan and Security Agreement. Class 2A-2 is impaired

1 under the Plan and entitled to vote on the Plan. The Debtor anticipates that SMC will vote in favor
2 of the Plan.

3 SMC, as the holder of the SMC Secured Inventory Loan Claim, is entitled to full payment of
4 such Claim from Available Cash of the Debtor. In the event there is insufficient Available Cash and
5 Net Available Cash, as applicable, to pay or reserve for an amount equal to Allowed Class 3 Claims
6 and Allowed Class 4 Claims through the payments described above (pursuant to Section 4.2.2 of the
7 Plan) and GUC Distributions, if any, then an additional voluntary subordination by SMC of the SMC
8 Secured Inventory Loan Claim will be implemented pursuant hereto and Section 4.3.2 of the Plan.
9 Specifically, SMC has voluntarily consented to the subordination of the SMC Secured Inventory
10 Loan Claim to Allowed Class 3 Claims and Allowed Class 4 Claims, such that Available Cash
11 payable to SMC on account of the SMC Secured Inventory Loan Claim will be reallocated to
12 Allowed Class 3 Claims and Allowed Class 4 Claims, to the extent necessary to permit payment in
13 full of an amount equal to these claims, without interest.

14 On or as soon as practicable after the Effective Date, in one or more distributions, the Post-
15 Effective-Date Debtor will pay in Cash, to the extent there is Available Cash, up to the full amount
16 of the Allowed SMC Secured Inventory Loan Claim, to holders of Allowed Class 3 Claims and
17 Allowed Class 4 Claims pursuant to Sections 4.5.2 and 4.6.2 of the Plan, as described below, in an
18 amount equal to the unpaid Allowed amounts of such Claims.

19 After the payment or reserve for an amount equal to payment in full of all Allowed Class 3
20 Claims and Allowed Class 4 Claims through a combination of the voluntary subordination described
21 above and GUC Distributions, if any, all remaining Available Cash will be paid by the Post-
22 Effective-Date Debtor to SMC on account of the Allowed SMC Secured Inventory Loan Claim (less
23 any amounts that have previously been paid to SMC on account of the SMC Secured Inventory Loan
24 Claim and to holders of Allowed Class 3 Claims and Allowed Class 4 Claims pursuant to the
25 voluntary subordination described above).

26 To the extent payments on account of the Allowed SMC Secured Inventory Loan Claim are
27 paid to holders of Allowed Class 3 Claims and Allowed Class 4 Claims in accordance herewith and
28 with Section 4.3.2 of the Plan, SMC will be subrogated to the Allowed Class 3 Claims and Allowed

1 Class 4 Claims, including rights to any distributions from the Post-Effective-Date Debtor under the
2 Plan on account of such Allowed Class 3 Claims and Allowed Class 4 Claims. After the holders of
3 Allowed Class 3 Claims and Allowed Class 4 Claims have received total payments equal to 100% of
4 their Allowed Claims as a result of the voluntary subordination and the GUC Distributions, if any,
5 all additional GUC Distributions to such holders will be remitted to SMC on account of SMC's
6 subrogation rights. For the avoidance of doubt, no GUC Distributions will be made until an amount
7 equal to the Allowed SMC Secured Claims has been distributed or reserved for distribution by the
8 Debtor (to SMC or to the holders of Allowed Class 3 Claims and Allowed Class 4 Claims pursuant
9 to the voluntary subordination).

10 **4. Class 2B – Other Secured Claims**

11 Class 2B is unimpaired under the Plan. Holders of Other Secured Claims are deemed to have
12 accepted the Plan under Section 1126(f) of the Bankruptcy Code and are not entitled to vote on the
13 Plan. For purposes of distributions under the Plan, each holder of an Other Secured Claim in Class
14 2B is considered to be in its own separate subclass within Class 2B (*i.e.*, Class 2B-1, Class 2B-2,
15 *etc.*), and each such subclass is deemed to be a separate Class for purposes of the Plan.

16 On or as soon as practicable following the Effective Date, the Post-Effective-Date Debtor
17 will select, in its discretion, one of the following alternative treatments for each Allowed Other
18 Secured Claim in Class 2B, which treatment will be in full and final satisfaction, settlement, release,
19 and discharge of, and exchange for, such Allowed Other Secured Claim:

20 (a) Abandonment or Surrender. The Post-Effective-Date Debtor will abandon or
21 surrender to the holder of such Claim the property securing such Claim, in full satisfaction and
22 release of such Claim.

23 (b) Cash Payment. The Post-Effective-Date Debtor will pay to the holder of such
24 Claim Cash equal to the amount of such Claim, or such lesser amount to which the holder of such
25 Claim and the Debtor will agree, in full satisfaction and release of such Claim.

26 (c) Unimpairment. The Debtor will leave the rights of the holder of such Claim
27 unimpaired or provide for such other treatment as necessary to otherwise satisfy the requirements of
28 the Bankruptcy Code.

1 Any Unsecured Deficiency Claim asserted by a holder of an Allowed Other Secured Claim in
2 Class 2B will be Filed with the Bankruptcy Court within thirty (30) days following the date of the
3 abandonment or surrender of such Creditor's collateral or such Creditor's receipt of its distribution
4 under the Plan. Any such Allowed Unsecured Deficiency Claim will be treated in accordance with
5 Section 4.5 or 4.6 of the Plan, as applicable.

6 **5. Class 3 – Settling Auto Dealer Liquidated Claims**

7 This Class is comprised of Settling Auto Dealer Liquidated Claims, which are, as to a
8 particular Settling Auto Dealer, (i) its General Unsecured Claim against the Debtor arising from or
9 relating to the Debtor's rejection of the parties' Pre-Petition Auto Dealer Agreement pursuant to
10 Section 365 of the Bankruptcy Code, and (ii) any other unpaid General Unsecured Claims
11 (excluding Dealer Incentive Program Claims) as established in the amount set forth in the applicable
12 Auto Dealer Letter Agreement, as all such Claims have been Allowed in accordance with the Auto
13 Dealer Settlement Procedures. Class 3 is impaired under the Plan. Holders of Settling Auto Dealer
14 Claims are entitled to vote on the Plan. Settling Auto Dealers are automatically a member of this
15 Class.

16 Each holder of an Allowed Settling Auto Dealer Liquidated Claim will be treated in the
17 following manner:

18 (i) if applicable, the Debtor will assign the Service and Parts Agreement between
19 the Debtor and the Settling Auto Dealer to the Purchaser, with such assignment to be effective as of
20 the Effective Date;

21 (ii) on or as soon as practicable following the Effective Date, in one or more
22 distributions, the holder will receive, as a result of the voluntary subordination by SMC, *pro rata*,
23 fractional payments as described in Sections 4.2.2 and 4.3.2 of the Plan, based on the fraction of (x)
24 the amount of the holder's Allowed Class 3 Claim as the numerator, and (y) the aggregate sum of all
25 Allowed Class 3 Claims and Allowed Class 4 Claims as the denominator; and

26 (iii) on or as soon as practicable following the Effective Date, the holder will
27 receive its applicable GUC Distribution, if any.

28 The GUC Distribution for a particular holder of an Allowed Class 3 Claim is its fractional

1 share of the Net Available Cash, based on the fraction of (x) the amount of the holder's Allowed
2 Class 3 Claim as the numerator, and (y) the aggregate sum of all Allowed GUC Distribution Claims
3 as the denominator, after all GUC Distribution Claims have been Allowed or Disallowed.

4 Upon consultation with SMC, the Post-Effective-Date Debtor may elect to make interim
5 Cash distributions prior to the resolution of all asserted GUC Distribution Claims, after making
6 appropriate reserves for Disputed GUC Claims.

7 Each holder of an Allowed Class 3 Claim will receive its applicable GUC Distribution, in full
8 and final satisfaction, settlement, release, and discharge of, and exchange for, such holder's Allowed
9 Class 3 Claim.

10 Subject to the right of the Participation Party, after a holder of an Allowed Class 3 Claim has
11 received total payments, as a result of the voluntary subordination by SMC and any GUC
12 Distributions, equal to 100% of its Allowed Claim including the portion of Allowed Class 3 Claims
13 subject to rights in favor of Participation Party pursuant to the SMC Participation Agreements, all
14 additional GUC Distributions to such holder will be remitted to SMC on account of SMC's
15 subrogation rights.

16 Nothing herein or in the Plan will modify the Dealer-Claim Participation Rights of the
17 Participation Party in respect to any distributions on account of Allowed Class 3 Claims.

18 **6. Class 4 – Other Settling Creditor Claims**

19 This Class is comprised of Other Settling Creditor Claims which are, as to a particular Other
20 Settling Creditor, the aggregate amount of its General Unsecured Claim(s) against the Debtor, as set
21 forth in a Plan Supplement to be Filed and served on the applicable Creditors and to be Allowed
22 pursuant to the Confirmation Order. An Other Settling Creditor is a holder of a GUC Distribution
23 Claim - other than a Settling Auto Dealer - that (i) has entered or enters into an Other Settling
24 Creditor Agreement; (ii) timely submits to the Debtor an executed Ballot opting into Class 4 under
25 the Plan; and (iii) elects on said Ballot to provide the Class 4 Release. To qualify as an Other
26 Settling Creditor, such holder of a General Unsecured Claim must comply with all of the foregoing
27 requirements. Auto Dealers cannot be members of Class 4 but instead will be either members of
28 Class 3 (Settling Auto Dealer Claims) as provided above or of Class 5 (Non-Settling Creditor

1 Claims). Class 4 is impaired under the Plan. Holders of Other Settling Creditor Claims are entitled
2 to vote on the Plan.

3 Each holder of an Other Settling Creditor Claim will be treated in the following manner:

4 (i) on or as soon as practicable following the Effective Date, in one or more
5 distributions, the holder will receive, as a result of the voluntary subordination by SMC, its *pro rata*,
6 fractional payments pursuant to Sections 4.2.2 and 4.3.2 of the Plan, based on the fraction of (x) the
7 amount of the holder's Allowed Class 4 Claim as the numerator, and (y) the aggregate sum of all
8 Allowed Class 3 Claims and Allowed Class 4 Claims as the denominator; and

9 (ii) on or as soon as practicable following the Effective Date, the holder will
10 receive its applicable GUC Distribution, if any.

11 The GUC Distribution for a particular holder of an Allowed Class 4 Claim is its fractional
12 share of the Net Available Cash, based on the fraction of (x) the amount of the holder's Allowed
13 Class 4 Claim as the numerator, and (y) the aggregate sum of all Allowed GUC Distribution Claims
14 as the denominator, after all GUC Distribution Claims have been Allowed or Disallowed.

15 Upon consultation with SMC, the Post-Effective-Date Debtor may elect to make interim
16 Cash distributions prior to the resolution of all asserted GUC Distribution Claims, after making
17 appropriate reserves for Disputed GUC Claims.

18 Each holder of an Allowed Class 4 Claim will receive its applicable GUC Distribution, in full
19 and final satisfaction, settlement, release, and discharge of, and exchange for, such holder's Allowed
20 Class 4 Claim and any other Claims against the Debtor, SMC, the Purchaser, the Participation Party,
21 and their respective subsidiaries and affiliates, and each of the foregoing party's respective current
22 and former Agents.

23 After a holder of an Allowed Class 4 Claim has received total payments, as a result of the
24 voluntary subordination by SMC and any GUC Distributions, equal to 100% of its Allowed Claim,
25 all additional GUC Distributions to such holder will be remitted to SMC on account of SMC's
26 subrogation rights.

27 In order to receive the foregoing treatment, each Other Settling Creditor, for itself and its
28 respective successors, assigns, subsidiaries, affiliates, and current and former Agents, must elect on

1 its Ballot to release (the “Class 4 Release”) the Debtor, SMC, the Purchaser, the Participation Party,
2 and their respective successors, assigns, subsidiaries and affiliates, and each of the foregoing party’s
3 respective current and former Agents, from any and all claims, obligations, rights, suits, damages,
4 causes of action, and liabilities, whether known or unknown, foreseen or unforeseen, existing or
5 hereafter arising, arising prior to the Effective Date (but excluding assertion of Other Settling
6 Creditor Claims against the Debtor). As part of the Class 4 Release, each Other Settling Creditor,
7 for itself and its respective successors, assigns, subsidiaries, affiliates, and current and former
8 Agents, will acknowledge that it is familiar with California Civil Code section 1542, which provides
9 that:

10 **A general release does not extend to claims which the creditor does**
11 **not know or suspect to exist in his favor at the time of executing**
12 **the release, which if known by him must have materially affected**
13 **his settlement with the debtor.**

14 To the full extent that it may lawfully do so, each Other Settling Creditor, for itself and its respective
15 successors, assigns, subsidiaries, affiliates, and current and former Agents, waives and relinquishes
16 all rights and benefits that each party has or may have under California Civil Code section 1542 or
17 any similar law; each such party expressly assumes the risk that the facts or law may be different
18 than it now believes them to be, and each party agrees that this release will be effective
19 notwithstanding any such differences.

20 **7. Class 5 – Non-Settling Creditor Claims**

21 All other holders of GUC Distribution Claims, excluding Settling Auto Dealer Claims, Other
22 Settling Creditor Claims, and Warranty Claims, are automatically classified into Class 5 under the
23 Plan. For the avoidance of doubt, all General Unsecured Claims of SMC are classified into Class 5.
24 Class 5 is impaired under the Plan. Holders of Class 5 Claims are entitled to vote on the Plan.

25 On or as soon as practicable following the Effective Date, each holder of an Allowed Class 5
26 Claim will receive, on account of said Allowed Claim, in full and final satisfaction, settlement,
27 release, and discharge of, and exchange for, such holder’s Allowed Class 5 Claim, its applicable
28 GUC Distribution, if any, in Cash from the Post-Effective-Date Debtor (for the avoidance of doubt,

1 after the payment or reserve for in full of all Allowed Secured Claims, Allowed Administrative
2 Claims, Allowed Priority Claims, Allowed Priority Non-Tax Claims, and Plan Expenses).

3 The GUC Distribution for a particular holder of an Allowed Class 5 Claim is its fractional
4 share of the Net Available Cash, based on the fraction of (x) the amount of the holder's Allowed
5 Class 5 Claim as the numerator, and (y) the aggregate sum of all Allowed GUC Distribution Claims
6 as the denominator, after all GUC Distribution Claims have been Allowed or Disallowed.

7 No holder of an Allowed Class 5 Claim will receive, on account of such Claim, any post-
8 petition interest, or any distribution under the Plan in excess of its Allowed Class 5 Claim amount.

9 **8. Class 6 – Warranty Claims**

10 Class 6 is unimpaired under the Plan. Holders of Class 6 Claims are not entitled to vote on
11 the Plan, and are presumed to have accepted the Plan.

12 From and after the Effective Date, all Warranty Claims will be administered and honored by
13 the Purchaser under the Post-Effective-Date Warranty Program. Holders of Allowed Warranty
14 Claims will receive no other distribution or consideration pursuant to the Plan.

15 **9. Class 7 – Interests**

16 Class 7 is unimpaired under the Plan, unless (i) SMC makes the Interests Cancellation
17 Election to have all Interests cancelled pursuant to Section 4.9.2 of the Plan or (ii) either Class 3, 4
18 or 5 vote against the Plan; if either condition (i) or (ii) is triggered, Class 7 is impaired. Holders of
19 Interests are deemed to accept the Plan under Section 1126(f) of the Bankruptcy Code and are not
20 entitled to vote on the Plan; provided, however, if either of the foregoing conditions (i) or (ii) is met,
21 holders of Interests will be deemed to reject the Plan under Section 1126(g) of the Bankruptcy Code
22 and will not be entitled to vote on the Plan.

23 Provided that the Plan is otherwise confirmable, as of the Effective Date, all existing Interests
24 in the Debtor, including the common stock of the Debtor held by SMC, will remain unaffected and
25 unimpaired by the Plan and will remain existing as of the Effective Date; provided, however, in the
26 event that SMC elects otherwise (the "Interests Cancellation Election") or the Plan is not otherwise
27 confirmable, all Interests will be cancelled on the Effective Date; provided further that if any of
28

1 Classes 3, 4 or 5 votes against the Plan, Section 4.9.2 of the Plan will be deemed automatically
2 modified to provide that all Interests will be cancelled as of the Effective Date. After all Allowed
3 Claims and Plan Expenses have been paid or otherwise satisfied in full, any remaining funds of the
4 Post-Effective-Date Debtor will be distributed to SMC.

5 **10. Nonconsensual Confirmation**

6 Section 1129(a)(10) of the Bankruptcy Code will be satisfied for purposes of Confirmation
7 by acceptance of the Plan by an impaired Class. The Debtor requests Confirmation of the Plan under
8 Section 1129(b) of the Bankruptcy Code with respect to any impaired Class of Claims that does not
9 accept the Plan pursuant to Section 1126 of the Bankruptcy Code. The Debtor reserves the right to
10 modify the Plan to the extent, if any, that Confirmation pursuant to Section 1129(b) of the
11 Bankruptcy Code requires any such modification.

12 **D. Implementation of the Plan**

13 The Plan will be implemented on the Effective Date. In addition to the provisions set forth
14 elsewhere in the Plan regarding means of execution, the following will constitute the principal
15 means for the implementation of the Plan.

16 **1. Sale Transaction; Transfer of Purchased Assets**

17 On the Effective Date, subject to the terms and conditions set forth in the Plan and the APA
18 (attached to the Plan as **Exhibit A**), in exchange for the Consideration and the Purchaser's
19 assumption of certain Assumed Liabilities (as defined in the APA), the Debtor will sell and transfer
20 the Purchased Assets, and assume, assign and sell the Designated Contracts, to the Purchaser, free
21 and clear of all Claims, Liens and any other encumbrances against the Purchased Assets, pursuant to
22 Sections 363, 365 and 1123(a)(5) and (b)(4) of the Bankruptcy Code, with such Claims, Liens and
23 encumbrances to attach to the net proceeds of the Sale Transaction with the same validity,
24 enforceability and priority as had existed against the Purchased Assets. On the Effective Date, any
25 and all acts and transactions required to be consummated in connection with the Sale Transaction
26 and any and all documents entered into in connection therewith will be deemed authorized, approved
27 and consummated. Any and all Claims asserted against the Purchased Assets will be deemed
28

1 asserted against the Post-Effective-Date Debtor and will be classified in accordance with Article 4 of
2 the Plan for distribution purposes. The Confirmation Order will contain a finding by the Bankruptcy
3 Court that the Purchaser and SMC have acted in good faith and are entitled to the full protections
4 provided under Section 363(m) of the Bankruptcy Code.

5 The Purchaser will have no responsibility for any liabilities or obligations of the Debtor,
6 other than those obligations expressly assumed by the Purchaser under the APA (including
7 obligations under the Post-Effective-Date Warranty Program) and obligations under the Designated
8 Contracts first arising after the Effective Date. Unless otherwise agreed to by the applicable parties,
9 the Purchaser will pay all Cure Claims, if any, related to the Designated Contracts in order for the
10 Debtor to assume and assign such contracts to the Purchaser under Section 365 of the Bankruptcy
11 Code.

12 **2. SMC Voluntary Subordination**

13 In order to ensure full payment of Allowed Class 3 Claims and Allowed Class 4 Claims
14 pursuant to Sections 4.5 and 4.6 of the Plan (which are described above), SMC has consented to the
15 subordination of certain of its Claims pursuant to Sections 4.2.2 and 4.3.2 of the Plan.

16 **3. Corporate Action; Transition of Purchased Businesses and Winding Up 17 of Auto Sales Business**

18 Generally, on and after the Effective Date, the Post-Effective-Date Debtor, through the Plan
19 Representative, will (i) to the extent reasonable or necessary to transition the Purchased Businesses
20 and Purchased Assets from the Debtor to the Purchaser pursuant to the Sale Transaction, assist with,
21 implement and otherwise cooperate in connection with such transition, subject to the terms set forth
22 in the APA; and (ii) administer, monetize, transfer, abandon and/or otherwise dispose of the
23 Retained Assets (including prosecuting any Retained Claims and/or Defenses), wind down the Auto
24 Sales Business and dispose of all related assets, administer and operate the Post-Effective-Date
25 Debtor's affairs pursuant to the Plan, and distribute all net proceeds and other net available Cash,
26 together with the net Consideration proceeds, to holders of Allowed Claims in accordance with the
27 Plan, unless a Creditor agrees to different treatment. Notwithstanding the foregoing, the Purchaser
28

1 will honor all Warranty Claims, whether arising prior to or after the Effective Date, pursuant to the
2 Post-Effective-Date Warranty Program.

3 In the event that Interests are cancelled pursuant to Section 4.9.2 of the Plan, each existing
4 director and officer of the Debtor will be deemed to have resigned on the Effective Date without any
5 further corporate action. Further, on the Effective Date and automatically and without further action,
6 (i) the Plan Representative will have full power and authority as an officer and a representative of
7 the Post-Effective-Date Debtor to exercise the rights, power and authority of the Post-Effective-Date
8 Debtor under applicable provisions of the Plan and bankruptcy and non-bankruptcy law, and (ii) all
9 matters provided under the Plan will be deemed to be authorized and approved without further
10 approval from the Bankruptcy Court. Generally, the Plan will be administered by the Plan
11 Representative, and all actions taken thereunder in the name of the Post-Effective-Date Debtor will
12 be taken through the Plan Representative.

13 The Confirmation Order will act as an order modifying the Debtor's by-laws such that the
14 provisions of the Plan can be effectuated.

15 Following the Effective Date, the Post-Effective-Date Debtor will engage in business
16 activities and take any actions reasonable and necessary to (i) effectuate the Plan, (ii) administer,
17 liquidate or otherwise dispose of the Retained Assets, and (iii) wind up the affairs of the Debtor as
18 soon as reasonably practicable. On and after the Effective Date, the Plan Representative may, in the
19 name of the Post-Effective-Date Debtor, take such actions without supervision or approval by the
20 Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules,
21 other than any restrictions expressly imposed by the Plan or the Confirmation Order. Without
22 limiting the foregoing, the Plan Representative may, without application to or approval of the
23 Bankruptcy Court, pay, from the Post-Effective-Date Debtor's available Cash, the charges that he or
24 she incurs after the Effective Date for professional fees and expenses that, but for the occurrence of
25 the Effective Date, would constitute Allowed Administrative Claims.

26 Once the Plan Representative has determined that his or her duties under the Plan have been
27 completed, the Post-Effective-Date Debtor will be dissolved for all purposes by the Plan
28 Representative without the necessity for any other or further actions to be taken by or on behalf of

1 the Post-Effective-Date Debtor or payments to be made in connection therewith; provided, however,
2 without the need of any further approval, the Plan Representative in his or her discretion may
3 execute and file documents and take all other actions as he or she deems appropriate relating to the
4 dissolution of the Post-Effective-Date Debtor under the laws of California and/or any other
5 applicable states, and in such event, all applicable regulatory or governmental agencies will take all
6 steps necessary to allow and effect the prompt dissolution of the Post-Effective-Date Debtor as
7 provided herein, without the payment of any fee, tax, or charge and without need for the filing of
8 reports or certificates.

9 **4. Plan Representative**

10 On the Effective Date, the Plan Representative will begin acting for the Post-Effective-Date
11 Debtor, subject to the provisions hereof. The Plan Representative will serve in such capacity
12 through the earlier of the date the Debtor is dissolved in accordance with the Plan and the date such
13 Plan Representative resigns, is terminated or otherwise unable to serve; provided, however, that, any
14 successor Plan Representative appointed pursuant to the Plan, will serve in such capacities after the
15 effective date of such persons appointment as Plan Representative.

16 The qualifications and proposed compensation of and other disclosures regarding the Plan
17 Representative, as well as the Post-Effective-Date Debtor's board of directors in the event that the
18 Interests remain existing and unmodified as of the Effective Date pursuant to Section 4.9.2 of the
19 Plan, will be set forth in a notice to be Filed with the Court as part of the Plan Supplement; such
20 compensation may be paid from the Post-Effective-Date Debtor's available Cash without further
21 order of the Bankruptcy Court. Further, the Plan Representative will be entitled to reimbursement,
22 from the Post-Effective-Date Debtor's available Cash, for his or her actual, reasonable, and
23 necessary expenses incurred in connection with the performance of his or her duties, without the
24 need for further Bankruptcy Court approval. All distributions to be made to Creditors under the Plan
25 will be made by the Plan Representative (or his or her designated agent), except as otherwise
26 provided in Section 6.1 of the Plan. The Plan Representative will deposit and hold all Cash in trust
27 for the benefit of Creditors (including Professionals) receiving distributions under the Plan. The
28 duties and powers of the Plan Representative will include, without limitation, the following (without

1 need of further Court approval):

2 (i) To exercise all power and authority that may be exercised, to commence all
3 proceedings (including the power to continue any actions and proceedings that may have been
4 commenced by the Debtor prior to the Effective Date) that may be commenced, and to take all
5 actions that may be taken by any officer of the Post-Effective-Date Debtor with like effect as if
6 authorized, exercised, and taken by unanimous action of such officers, including consummating the
7 Plan and all transfers thereunder on behalf of the Post-Effective-Date Debtor;

8 (ii) To the extent reasonable or necessary to transition the Purchased Businesses
9 and Purchased Assets from the Debtor to the Purchaser pursuant to the Sale Transaction, to assist
10 with, implement and otherwise cooperate in connection with such transition, subject to the terms set
11 forth in the APA;

12 (iii) To wind up the affairs of the Post-Effective-Date Debtor and any or all of its
13 subsidiaries and affiliates to the extent necessary as expeditiously as reasonably possible;

14 (iv) To maintain all accounts, make distributions, and take other actions required
15 under or consistent with the Plan, including the maintenance of appropriate reserves, in the name of
16 the Post-Effective-Date Debtor;

17 (v) To use, manage, sell, abandon, convert to Cash and/or otherwise dispose of
18 the Retained Assets, for the purpose of administering and liquidating all remaining property of the
19 Estate, making distributions and fully consummating the Plan;

20 (vi) To take all steps necessary to terminate the corporate existence of the Debtor;

21 (vii) To prosecute objections to Claims and compromise or settle any Claims
22 (Disputed or otherwise), and in this regard, the Plan Representative will utilize and compensate
23 professionals, having due regard for preserving the Estate for the benefit of Creditors;

24 (viii) To prosecute any and all Retained Claims and/or Defenses;

25 (ix) To prepare and file tax returns to the extent required by law;

26 (x) To employ and compensate any and all such professionals as the Plan
27 Representative, in his or her sole discretion, deems reasonably necessary to perform his or her duties
28 under the Plan without further order of the Bankruptcy Court; and

1 (xi) To take all other actions not inconsistent with the provisions of the Plan that
2 the Plan Representative deems reasonably necessary or desirable in connection with the
3 administration of the Plan, including, without limitation, filing all motions, pleadings, reports, and
4 other documents in connection with the administration and closing of the Chapter 11 Case.

5 **5. Resignation, Death or Removal of Plan Representative**

6 The Plan Representative may be removed by the Bankruptcy Court upon application for good
7 cause shown. In the event of the resignation, removal, death, or incapacity of the Plan
8 Representative, the Post-Effective-Date Debtor's board of directors if such board exists pursuant to
9 Section 5.3 of the Plan, will appoint another Person to become the Plan Representative, with notice
10 thereof provided to the Post-Effective Date Service List, and subject to Bankruptcy Court approval.
11 If no Post-Effective-Date Debtor's board of directors exists pursuant to Section 5.3 of the Plan, then
12 the Creditors' Committee, otherwise dissolved pursuant to Section 5.13.1, will be reconstituted for
13 the sole purpose of selecting a successor Plan Representative, subject to the foregoing notice and
14 approval requirements. The successor Plan Representative without any further act will become fully
15 vested with all of the rights, powers, duties, and obligations of his or her predecessor.

16 **6. Source of Funds**

17 Funding for the Debtor's obligations under the Plan will be provided by (i) Cash on hand; (ii)
18 net proceeds from the Consideration; and (iii) net proceeds from the sale, liquidation or other
19 disposition of the Retained Assets (including the litigation of causes of action and claims that are
20 Retained Assets). The aggregate amounts to be funded by the Purchaser in connection with the Plan
21 will be subject to aggregate caps as set forth in the APA.

22 **7. Subordinated Claims**

23 Pursuant to Section 510(a) of the Bankruptcy Code, to the extent there is any subordination
24 agreement in place between creditors that is enforceable under nonbankruptcy law, the Debtor will
25 honor such subordination agreement and turn over any distributions required to be turned over
26 pursuant to the terms of such agreements and the Bankruptcy Code. Any claims subordinated under
27 Section 510(b) or (c) of the Bankruptcy Code or any other applicable law will not receive or retain
28 any property under the Plan unless and until the subordination is effectuated.

1 **8. Settlement Agreements with Auto Dealers**

2 Nothing herein or in the Plan is intended to or will modify the Auto Dealer Letter
3 Agreements and the SMC Participation Agreements.

4 **9. Revesting of Retained Assets**

5 Upon the Effective Date, the Post-Effective-Date Debtor will be vested with all right, title
6 and interest in the Retained Assets of the Post-Effective-Date Debtor, including the Retained Claims
7 and/or Defenses, and such property will become the property of the Post-Effective-Date Debtor free
8 and clear of all claims, liens, charges, other encumbrances and Interests, except as expressly set forth
9 in the Plan.

10 **10. Retained Claims and/or Defenses**

11 Unless any Retained Claim and/or Defense is expressly waived, relinquished, released,
12 compromised, or settled in the Plan or any Final Order (including, without limitation, the
13 Confirmation Order), the Debtor and the Post-Effective-Date Debtor expressly reserve such Retained
14 Claim and/or Defense for later adjudication by the Post-Effective-Date Debtor. The reservation set
15 forth herein and in Section 5.10 of the Plan will include, without limitation, a reservation by the
16 Debtor and Post-Effective-Date Debtor of any Retained Claims and/or Defenses not specifically
17 identified in the Plan or Disclosure Statement, or of which the Debtor may presently be unaware, or
18 which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at
19 this time or facts or circumstances that may change or be different from those the Debtor now
20 believes to exist and, therefore, no preclusion doctrine, including, without limitation, the doctrines of
21 res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial,
22 equitable or otherwise), or laches will apply to such Retained Claims and/or Defenses upon or after
23 the Confirmation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order,
24 except where such Retained Claims and/or Defenses have been expressly waived, relinquished,
25 released, compromised, or settled in the Plan or a Final Order. Following the Effective Date, the
26 Post-Effective-Date Debtor may assert, compromise or dispose of the Retained Claims and/or
27 Defenses without further notice to Creditors or authorization of the Bankruptcy Court.
28

1 **11. Administration of Warranty Claims**

2 From and after the Effective Date, Warranty Claims will be administered and honored by the
3 Purchaser to the extent provided in the Post-Effective-Date Warranty Program.

4 **12. Creditors Committee**

5 On the Effective Date, the Committee will be dissolved and the members thereof will be
6 released and discharged from any further authority, duties, responsibilities, liabilities and obligations
7 related to, or arising from, the Chapter 11 Case, except that the Committee will continue in existence
8 and have standing and capacity to prepare and prosecute applications for the payment of fees and
9 reimbursement of expenses incurred by the Committee or its Professionals.

10 **13. Records**

11 The Post-Effective-Date Debtor and Plan Representative will maintain good and sufficient
12 books and records of accounting relating to the assets of the Estate, all transactions undertaken by
13 such parties, all expenses incurred by or on behalf of the Debtor and Plan Representative, and all
14 distributions contemplated or effectuated under the Plan. Upon the entry of a final decree closing
15 the Chapter 11 Case, unless otherwise ordered by the Court, the Post-Effective-Date Debtor and Plan
16 Representative may destroy or otherwise dispose of all records maintained by the Post-Effective-
17 Date Debtor and/or Plan Representative.

18 **14. Final Decree**

19 At any time following the Effective Date, the Post-Effective-Date Debtor will be authorized
20 to File a motion for the entry of a final decree closing the Chapter 11 Case pursuant to Section 350
21 of the Bankruptcy Code.

22 **E. Provisions Governing Distributions**

23 **1. Distributions by the Debtor**

24 The Post-Effective-Date Debtor will administer Claims and make distributions to holders of
25 Allowed Claims against the Post-Effective-Date Debtor as of the Distribution Record Date.
26 Distributions to be made by the Post-Effective-Date Debtor may be made by any Person designated
27 or retained by it to serve as disbursing agent without the need for any further order of the Bankruptcy
28 Court.

1 **2. Addresses for Delivery of Distributions**

2 Except as otherwise agreed with the holder of an Allowed Claim in respect thereof or as
3 provided in the Plan, any property to be distributed on account of an Allowed Claim will be
4 distributed by mail, upon compliance by the holder with the provisions of the Plan, to (a) the latest
5 mailing address Filed for the holder of an Allowed Claim entitled to a distribution under the Plan, (b)
6 the latest mailing address Filed for a holder of a Filed power of attorney designated by the holder of
7 such Claim to receive distributions, (c) the latest mailing address Filed for the holder's transferee as
8 identified in a Filed notice served on the Debtor pursuant to Bankruptcy Rule 3001(e), or (d) if no
9 such mailing address has been Filed, the mailing address reflected on the Schedules or in the
10 Debtor's books and records.

11 **3. Distributions on Account of Claims Allowed as of the Effective Date**

12 Except as otherwise provided in the Plan, a Final Order, or as agreed by the relevant parties,
13 distributions on account of Allowed Claims that become Allowed prior to the Effective Date will be
14 made by the Post-Effective-Date Debtor on or as soon as reasonably practicable after the Effective
15 Date.

16 **3. Estimation**

17 In order to establish reserves under the Plan or to otherwise facilitate confirmation and
18 implementation of the Plan, the Debtor and the Post-Effective-Date Debtor will have the right to
19 seek an order or orders of the Bankruptcy Court pursuant to Section 502(c) of the Bankruptcy Code,
20 estimating the amount of any Claim or Claims against the Debtor.

21 **4. Distributions on Account of Claims Allowed After the Effective Date**

22 Except as otherwise provided in the Plan, a Final Order, or as agreed by the relevant parties,
23 distributions on account of Disputed Claims and Estimated Claims that become Allowed after the
24 Effective Date will be made by the Post-Effective-Date Debtor, at such periodic intervals as it
25 determines to be reasonably prudent.

26 Notwithstanding anything herein or in the Plan to the contrary: (a) no distribution will be
27 made with respect to any Disputed Claim or Estimated Claim until such Claim becomes an Allowed
28 Claim, and (b) unless determined otherwise by the Post-Effective-Date Debtor in its sole and

1 absolute discretion, no distribution will be made to any Person that holds both an Allowed Claim and
2 either a Disputed Claim or an Estimated Claim until such Person's Disputed Claims and Estimated
3 Claims have been resolved by settlement or Final Order.

4 The Post-Effective-Date Debtor will File all objections to Disputed Claims, and will File all
5 motions to estimate Claims under Section 502(c) of the Bankruptcy Code, on or before the Claims
6 Objection Deadline.

7 On and after the Effective Date, the Post-Effective-Date Debtor will maintain in reserve such
8 Cash as the Post-Effective-Date Debtor estimates to be reasonably necessary to satisfy the
9 distributions required to be made under the Plan if each Disputed Claim and Estimated Claim against
10 the Post-Effective-Date Debtor becomes an Allowed Claim against the Post-Effective-Date Debtor.

11 The Post-Effective-Date Debtor will be authorized to settle, or withdraw any objections to,
12 any Disputed Claims following the Effective Date pursuant to procedures as may be authorized by
13 the Bankruptcy Court.

14 **5. Distributions in Cash**

15 The Post-Effective-Date Debtor will make any required Cash payments to the holders of
16 Allowed Claims: (X) in U.S. dollars by check, draft or warrant, drawn on a domestic bank selected
17 by the Post-Effective-Date Debtor in its sole discretion, or by wire transfer from a domestic bank, at
18 its option, and (Y) by first-class mail (or by other equivalent or superior means as determined by the
19 Post-Effective-Date Debtor).

20 **6. Unclaimed Distributions**

21 Any entity which fails to claim any Cash within one hundred twenty (120) days from the date
22 upon which a distribution is first made to such entity will forfeit all rights to any distribution under
23 the Plan and the Post-Effective-Date Debtor will be authorized to cancel any distribution that is not
24 timely claimed. Pursuant to Section 347(b) of the Bankruptcy Code, upon forfeiture, such Cash
25 (including interest thereon, if any) will revert to the Post-Effective-Date Debtor, free of any
26 restrictions under the Plan, the Bankruptcy Code or the Bankruptcy Rules. Notwithstanding any
27 federal or state escheat laws to the contrary, upon forfeiture, the claim of any Creditor with respect
28 to such funds will be discharged and forever barred, and neither such Creditors or any other entity

1 will have any claim whatsoever with respect to such forfeited distribution against the Debtor and the
2 Post-Effective-Date Debtor or any holder of an Allowed Claim to whom distributions are made by
3 the Post-Effective-Date Debtor.

4 **7. Setoff**

5 Nothing contained herein or in the Plan will constitute a waiver or release by the Debtor of
6 any right of setoff or recoupment the Debtor may have against any Creditor. To the extent permitted
7 by applicable law, the Post-Effective-Date Debtor or its successor(s) under the Plan may, but is not
8 required to, set off or recoup against any Claim and the payments or other distributions to be made
9 under the Plan in respect of such Claim, claims of any nature whatsoever that arose before the
10 Petition Date that the Debtor may have against the holder of such Claim or Interest.

11 **8. Taxes**

12 Pursuant to Section 346(f) of the Bankruptcy Code, the Post-Effective-Date Debtor will be
13 entitled to deduct any federal, state or local withholding taxes from any Cash payments made with
14 respect to Allowed Claims, as appropriate. The Post-Effective-Date Debtor will be authorized to
15 take all actions necessary to comply with applicable withholding and recording requirements.
16 Notwithstanding any other provision of the Plan, each holder of an Allowed Claim that has received
17 a distribution of Cash will have sole and exclusive responsibility for the satisfaction or payment of
18 any tax obligation imposed by any governmental unit, including income, withholding and other tax
19 obligation, on account of such distribution. For tax purposes, distributions received in respect of
20 Allowed Claims will be allocated first to the principal amount of such Claims, with any excess
21 allocated to unpaid accrued interest.

22 **9. De Minimis and Fractional Distributions**

23 If any interim distribution under the Plan to the holder of an Allowed Claim would be less
24 than \$100.00, the Post-Effective-Date Debtor, as applicable, may withhold such distribution until a
25 final distribution is made to such holder. If any final distribution under the Plan to the holder of an
26 Allowed Claim would be less than \$25.00, the Post-Effective-Date Debtor may cancel such
27 distribution. Any unclaimed distributions pursuant hereto will be treated as unclaimed property
28 under Section 6.7 of the Plan.

1 Any other provision of the Plan to the contrary notwithstanding, no payment of fractions of
2 cents will be made. Whenever any distribution of a fraction of a cent would otherwise be called for,
3 the actual distribution will reflect a rounding down of such fraction to the nearest whole cent.

4 **F. Executory Contracts and Unexpired Leases**

5 **1. Assumption/Assignment**

6 On the Effective Date, pursuant to Section 1123(b)(2) of the Bankruptcy Code, the Post-
7 Effective-Date Debtor will (i) assume, assign and sell to the Purchaser the Designated Contracts and
8 (ii) assume executory contracts and unexpired leases of the Debtor that have been expressly
9 identified in the Plan Supplement (together with any additions, deletions, modifications or other
10 revisions to such exhibit as may be made by the Debtor prior to the Confirmation Date).

11 **2. Rejection**

12 Except as set forth in Section 7.1, on the Effective Date, pursuant to Section 1123(b)(2) of
13 the Bankruptcy Code, the Post-Effective-Date Debtor will reject any and all executory contracts and
14 unexpired leases of the Debtor, including, without limitation, those executory contracts and
15 unexpired leases expressly identified for rejection in the Plan Supplement (together with any
16 additions, deletions, modifications or other revisions to such exhibit as may be made by the Debtor
17 prior to the Confirmation Date). Any Person asserting any Claim for damages arising from the
18 rejection of an executory contract or unexpired lease of the Debtor under the Plan, excluding any
19 Settling Auto Dealers and Other Settling Creditors, will File such Claim on or before the Rejection
20 Claim Bar Date, or be forever barred from: (a) asserting such Claim against the Debtor, the Post-
21 Effective-Date Debtor, or the Estate Assets, and (b) sharing in any distribution under the Plan.

22 **3. Cure Claims**

23 The Purchaser will satisfy all Cure Claims (if any) with respect to the Designated Contracts
24 in order for the Debtor to assume and assign such contracts to the Purchaser under Section 365 of the
25 Bankruptcy Code, by making a Cash payment in the manner provided in Section 2.3.2 of the Plan,
26 equal to the amount specified in the Plan Supplement, unless an objection to such proposed amount
27 is Filed with the Bankruptcy Court and served on Debtor's counsel and Purchaser's counsel on or
28 prior to the date set by the Bankruptcy Court for filing objections to Confirmation of the Plan and the

1 Bankruptcy Court, after notice and hearing, determines that the Debtor or the Purchaser is obligated
2 to pay a different amount under Section 365 of the Bankruptcy Code, in which case, the Purchaser
3 will have the right to remove the applicable contract or lease from designation as a Designated
4 Contract in accordance with the APA, and the Debtor will have the right within ten (10) days after
5 such determination to seek an order of the Bankruptcy Court rejecting such executory contract or
6 unexpired lease. Any Person that fails to object to the Cure Claims specified in the Plan Supplement
7 on or prior to the date set by the Bankruptcy Court for filing objections to Confirmation of the Plan
8 will be forever barred from: (a) asserting any other, additional or different amount on account of
9 such obligation against the Purchaser, the Post-Effective-Date Debtor, the Debtor or the Estate
10 Assets, and (b) sharing in any other, additional or different distribution under the Plan on account of
11 such obligation.

12 **G. Effect of Confirmation Order**

13 The Confirmation Order will constitute an order of the Bankruptcy Court approving, as of the
14 Effective Date, the assumption, assignment, and sale, or rejection (as applicable) by the
15 Post-Effective-Date Debtor, pursuant to Sections 365 and 1123(b)(2) of the Bankruptcy Code, of all
16 executory contracts and unexpired leases identified under Article 7 of the Plan. The contracts and
17 leases identified pursuant to the Plan will be assumed, assigned, and sold, or rejected,
18 respectively, only to the extent that such contracts or leases constitute pre-petition executory
19 contracts or unexpired leases of the Debtor, and the identification of such agreements under the Plan
20 does not constitute an admission with respect to the characterization of such agreements or the
21 existence of any unperformed obligations, defaults, or damages thereunder. The Plan does not affect
22 any executory contracts or unexpired leases that: (a) have been assumed, rejected or terminated prior
23 to the Confirmation Date, or (b) are the subject of a pending motion to assume, reject or terminate as
24 of the Confirmation Date.

25 **H. Post-Petition Agreements**

26 Unless inconsistent with the provisions of the Plan, all contracts, leases and other agreements
27 entered into or restated by the Debtor on or after the Petition Date, or previously assumed by the
28 Debtor prior to the Confirmation Date (or the subject of a pending motion to assume by the Debtor

1 as of the Confirmation Date that is granted by the Bankruptcy Court), which have not expired or
2 been terminated in accordance with their terms, will be performed by the Debtor (or if applicable,
3 the Purchaser) in the ordinary course of business and will survive and remain in full force and effect
4 following the Effective Date.

5 **I. Insurance of Debtor**

6 Except as set forth in the Plan Supplement, any insurance policy acquired for the benefit of
7 the Debtor (or any officers and directors of the Debtor) before or after the Petition Date will remain
8 in full force and effect after the Effective Date according to its terms.

9 **J. Conditions Precedent to Plan Confirmation and Effectiveness**

10 The following are conditions precedent to confirmation of the Plan:

11 (i) The Bankruptcy Court will have entered a Final Order approving a Disclosure
12 Statement with respect to the Plan in form and substance satisfactory to the Debtor;

13 (ii) The Confirmation Order will include the provisions contained in the Sale
14 Order, as modified to reflect the Sale Transaction under the Plan, and otherwise be in a form and
15 substance reasonably acceptable to the Debtor and SMC; and

16 (iii) Approval of substantially all of the Auto Dealer Letter Agreements by the
17 Bankruptcy Court to the satisfaction of the Debtor, SMC and the Purchaser.

18 The following are conditions precedent to the occurrence of the Effective Date:

19 (a) The Confirmation Date will have occurred;

20 (b) The Confirmation Order will be a Final Order;

21 (c) Except to the extent that the DIP Lender may agree to less favorable treatment
22 and, except to the extent constituting an "Assumed Liability" under the APA, to the extent not
23 previously paid by the Debtor, any and all claims of, and any other amounts that may be due and
24 payable to, the DIP Lender arising under and pursuant to the DIP Financing/Cash Collateral Order
25 and DIP Financing Agreement will have been paid or otherwise satisfied by the Debtor;

26 (d) The Debtor will have received any authorization, consent, regulatory
27 approval, ruling, letter, opinion or other documents that may be necessary to implement the Plan or
28 that is required by any law, regulation or order; and

1 (e) The conditions to the closing of the APA will have been satisfied or waived in
2 accordance with the terms of the APA.

3 Conditions to Confirmation and the Effective Date as set forth above may be waived, in
4 whole or in part, by the Debtor, and solely in respect to the conditions set forth in Section 8.1(c) and
5 8.2 of the Plan, the Debtor, SMC and the Purchaser may waive said condition in their respective
6 discretion, at any time without notice, an order of the Bankruptcy Court, or any further action other
7 than proceeding to Confirmation and consummation of the Plan.

8 **K. Effects of Confirmation, Releases, Exculpation and Related Provisions**

9 **1. Discharge**

10 Pursuant to Section 1141(d) of the Bankruptcy Code, and except as otherwise specifically
11 provided in the Plan, the rights afforded under the Plan and the Confirmation Order and the
12 treatment of Claims and Interests thereunder will be in exchange for, and in complete satisfaction,
13 discharge and release of, all Claims and satisfaction or termination of all Interests. Except as
14 otherwise expressly provided in the Plan or the Confirmation Order, upon the occurrence of the
15 Effective Date, the Debtor will be discharged, effective immediately, from any Claim and any “debt”
16 (as that term is defined in Section 101(12) of the Bankruptcy Code), and the Debtor’s liability in
17 respect thereof will be extinguished completely, whether reduced to judgment or not, liquidated or
18 unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or
19 unmatured, disputed or undisputed, legal or equitable, known or unknown, that arose from any
20 agreement of the Debtor entered into or obligation of the Debtor incurred before the Effective Date,
21 or from any conduct of the Debtor prior to the Effective Date, or that otherwise arose before the
22 Effective Date, including, without limitation, all interest accrued and expenses incurred, if any, on
23 any such debts, whether such interest accrued or such expenses were incurred before or after the
24 Petition Date, and including, without limitation, any liability of a kind specified in Sections 502(g),
25 502(h) and 502(i) of the Bankruptcy Code, whether or not a proof of Claim was Filed or is deemed
26 Filed under Section 501 of the Bankruptcy Code, such Claim is allowed under Section 502 of the
27 Bankruptcy Code or the Person holding such Claim has accepted the Plan. The discharge granted
28

1 under Section 9.1 of the Plan will void any judgment obtained against the Debtor or the Post-
2 Effective-Date Debtor at any time, to the extent that such judgment relates to a discharged Claim.

3 **2. Property Reverts Free and Clear**

4 Upon the Effective Date, title to all remaining Estate Assets of the Debtor will vest in the
5 Post-Effective-Date Debtor for the purposes contemplated under the Plan and will no longer
6 constitute property of the Debtor's Estate. Except as otherwise provided in the Plan, upon the
7 Effective Date, all Estate Assets will be free and clear of all Claims and Interests, including Liens,
8 charges or other encumbrances of Creditors of the Debtor.

9 **3. Releases Implemented by the Auto Dealer Related Settlements**

10 For the avoidance of doubt, nothing herein or in the Plan is intended to limit, affect or
11 otherwise modify the releases set forth in and implemented by the Auto Dealer Letter Agreements
12 and the SMC Participation Agreements.

13 **4. Releases by Members of Class 4**

14 As provided in Section 4.6.2 of the Plan, members of Class 4 (Other Settling Creditors) must
15 provide the Class 4 Release in order to be a member of said Class.

16 **5. Release by Opt-In Creditors in Class 5**

17 As of and subject to the occurrence of the Effective Date, each holder of a Class 5 Claim that
18 affirmatively elects to grant this release ("Opt-In-Releasor(s)") by checking the appropriate box on
19 the Ballot provided to such Opt-In-Releasor in connection with solicitation of such Opt-In-
20 Releasor's vote to accept or to reject the Plan, for itself and its respective successors, assigns,
21 subsidiaries, affiliates and current and former Agents will, by virtue of its affirmative election, be
22 deemed to have released (i) the Debtor, the Post-Effective-Date Debtor, the Estate, the Plan
23 Representative, SMC, the Purchaser, the Participation Party, and their respective successors, assigns,
24 subsidiaries and affiliates, and (ii) each of the foregoing entity's current and former Agents, from
25 any and all claims, obligations, rights, suits, damages, causes of action, and liabilities, whether
26 known or unknown, foreseen or unforeseen, existing or hereafter arising, based on or relating to in
27 any way the Debtor, the Debtor's operations and businesses, the Chapter 11 Case, the Plan or the
28 Disclosure Statement, arising prior to the Effective Date, other than claims or liabilities arising out

1 of or relating to any act or omission of the afore-mentioned released parties that constitutes willful
2 misconduct or gross negligence. For the avoidance of doubt, the afore-mentioned released parties
3 will not be released from any obligations under the Auto Dealer Letter Agreements, the SMC
4 Participation Agreements, the Plan and any document, instrument, or agreement executed to
5 implement the Plan.

6 **6. Exculpation**

7 The Exculpated Parties will not have nor will they incur any liability to any Person for any
8 act taken or omission made in connection with or in any way related to negotiating, formulating,
9 implementing, confirming, consummating or administering the Plan, the Disclosure Statement, or
10 any contract, instrument, release, or other agreement or document created in connection with or
11 related to the Plan or the Chapter 11 Case, including, without limitation, relating to the powers and
12 duties conferred upon the Exculpated Parties by the Plan, or any order of the Bankruptcy Court
13 entered pursuant to or in furtherance of the Plan, or any other act taken or omission made in
14 connection with the Chapter 11 Case; provided that the foregoing provisions of this Section will
15 have no effect on the liability of any Exculpated Parties that results from any act or omission that is
16 determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.
17 Notwithstanding anything in the Plan to the contrary, no Person serving as Plan Representative will
18 have or incur any personal liability as the shareholder, director or officer of the Debtor or Post-
19 Effective-Date Debtor for any act taken or omission made in connection with the wind-up or
20 dissolution of the Post-Effective-Date Debtor or any nondebtor subsidiary or affiliate, except for any
21 personal liability of such Person that would not have resulted but for an act or omission of such
22 Person that is determined in a Final Order to have constituted fraud, gross negligence or willful
23 misconduct.

24 The Exculpated Parties are (i) the Debtor, SMC, the Plan Representative, the Purchaser, the
25 Participation Party, and their respective successors, assigns, subsidiaries and affiliates, and (ii) each
26 of the foregoing entity's current and former Agents.
27
28

1 **7. Injunction**

2 Except as otherwise provided in the Plan, on and after the Effective Date, all Persons who
3 have held, hold or may hold Claims against the Debtor or Interests in the Debtor are, with respect to
4 any such Claims or Interests, permanently enjoined from and after the Effective Date from: (a)
5 commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other
6 proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral,
7 administrative or other forum) against or affecting the Debtor or the Estate, any of their property, or
8 any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any
9 of the foregoing Persons, including, without limitation, the Post-Effective-Date Debtor and Plan
10 Representative, or any property of any such transferee or successor; (b) enforcing, levying, attaching
11 (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by
12 any manner or means whether directly or indirectly, of any judgment, award, decree or order against
13 the Debtor or the Estate, any of their property, or any direct or indirect transferee of any property of,
14 or direct or indirect successor in interest to any of the foregoing Persons, including, without
15 limitation, the Post-Effective-Date Debtor and Plan Representative; (c) creating, perfecting or
16 otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the
17 Debtor or the Estate, any of their property, or any direct or indirect transferee of any property of, or
18 direct or indirect successor in interest to any of the foregoing Persons, including, without limitation,
19 the Post-Effective-Date Debtor and Plan Representative; (d) asserting any right of setoff, of any
20 kind, directly or indirectly, against any obligation due the Debtor or the Estate, any of their property,
21 or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing
22 Persons, including, without limitation, the Post-Effective-Date Debtor and Plan Representative; and
23 (e) taking any actions in any place and in any manner whatsoever that do not conform to or comply
24 with the provisions of the Plan. Notwithstanding the foregoing, nothing herein or in the Plan will
25 prohibit any Person from enforcing the terms of the Plan or the Confirmation Order in the
26 Bankruptcy Court.

27 Further, the Confirmation Order will include the provisions contained in the Sale Order, as
28 modified to reflect the Sale Transaction under the Plan, that protect the Purchaser and other entities

1 from certain actions through injunctions as set forth therein, including, without limitation, (1)
2 effective upon the closing of the Sale Transaction, all persons and entities are forever prohibited and
3 enjoined from commencing or continuing in any manner any action or other proceeding, whether in
4 law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser
5 Parties (as defined in the Sale Order) with respect to any such liens, claims, encumbrances and
6 interests, including those based on successor liability, including (a) commencing or continuing any
7 action or other proceeding pending or threatened against the Debtor as against the Purchaser; (b)
8 enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order
9 against the Debtor as against the Purchaser; (c) creating, perfecting, or enforcing any lien, claim,
10 interest, or Encumbrance against the Debtor as against the Purchaser; (d) asserting any setoff, right
11 of subrogation, or recoupment of any kind; (e) commencing or continuing any action, in any manner
12 or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of
13 this Court, or the agreements or actions contemplated or taken in respect thereof; or (f) revoking,
14 terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the
15 Purchased Assets or conduct any of the businesses operated with such asset; and (2) subject to
16 payment of the Cure Claims, if any, with respect to each Designated Contract, each of the non-
17 Debtor parties thereto is barred, estopped and permanently enjoined from asserting against the
18 Purchaser any defaults, breaches or claims of pecuniary loss based upon facts existing as of the
19 closing of the Sale Transaction, by reason of the closing, or by reason of the Debtor's financial
20 condition.

21 **L. Retention of Jurisdiction**

22 Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective
23 Date, the Bankruptcy Court will retain jurisdiction over the Chapter 11 Case after the Effective Date
24 to the extent legally permissible, including, without limitation, as to the matters enumerated in
25 Article 10 of the Plan.

26 **M. Amendment of the Plan**

27 At any time before the Confirmation Date, the Debtor may, with the consent of SMC and the
28 Purchaser, alter, amend, or modify the Plan, subject only to the restrictions on modifications set forth

1 in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. After the Confirmation Date,
2 the Debtor may, under Section 1127(b) of the Bankruptcy Code, and with the consent of SMC and
3 the Purchaser, institute proceedings in the Bankruptcy Court to remedy any defect or omission or
4 reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, or as
5 otherwise may be necessary to carry out the purposes and effects of the Plan so long as such
6 proceedings do not materially and adversely affect the treatment of holders of Claims under the Plan;
7 provided, however, that prior notice of such proceedings will be served in accordance with the
8 Bankruptcy Rules or applicable order of the Bankruptcy Court.

9 **N. Amendment of the Plan Revocation or Withdrawal of the Plan**

10 The Debtor reserves the right, in consultation with SMC and the Purchaser, to revoke or
11 withdraw the Plan. If the Plan is withdrawn or revoked, then the Plan will be deemed null and void,
12 and nothing contained in the Plan will be deemed a waiver of any Claims by or against the Debtor or
13 any other Person in any further proceedings involving the Debtor or an admission of any sort, and
14 the Plan and any transaction contemplated by the Plan will not be admitted into evidence in any
15 proceeding.

16 **O. Effectuating Documents; Further Transactions; Timing**

17 The Debtor, the Post-Effective-Date Debtor, the Plan Representative, the Purchaser, SMC
18 and their respective Agents will be authorized and directed to execute, deliver, file, or record such
19 contracts, instruments, releases, and other agreements or documents, and to take such actions as may
20 be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.
21 All transactions required to occur on the Effective Date under the terms of the Plan will be deemed
22 to have occurred simultaneously.

23 **M. Exemption From Transfer Taxes**

24 In accordance with Section 1146(c) of the Bankruptcy Code, the making, delivery, or
25 recording of a deed or other instrument of transfer under the Plan will not be subject to any stamp
26 tax or similar tax and the appropriate state or local government officials or agents will be directed to
27 forego the collection of any such tax and to accept for filing or recordation any of the foregoing
28 instruments or other documents without the payment of any such tax.

1 **N. Quarterly Fees to the U.S. Trustee**

2 All fees payable under 28 U.S.C. § 1930(a)(6) will be paid by the Debtor in the amounts and
3 at the times such fees may become due up to and including the Effective Date. Thereafter, the Post-
4 Effective-Date Debtor will pay all fees payable under 28 U.S.C. § 1930(a)(6) until the Chapter 11
5 Case is closed, dismissed or converted. Upon the Effective Date, the Post-Effective-Date Debtor
6 will be relieved from the duty to make the reports and summaries required under Bankruptcy Rule
7 2015(a). Notwithstanding the foregoing, the Post-Effective-Date Debtor will File and serve the
8 status reports required by Local Bankruptcy Rule 3020-1(b) at such times and for such period as may
9 be set forth in the Confirmation Order.

10 **O. Reservation of Rights**

11 Neither the filing of the Plan nor any statement or provision contained in the Plan or in the
12 Disclosure Statement, nor the taking by any party in interest of any action with respect to the Plan,
13 will: (a) be or be deemed to be an admission against interest, and (b) until the Effective Date, be or
14 be deemed to be a waiver of any rights any party in interest may have (i) against any other party in
15 interest, or (ii) in any of the assets of any other party in interest, and, until the Effective Date, all
16 such rights are specifically reserved. In the event that the Plan is not confirmed or fails to become
17 effective, neither the Plan nor the Disclosure Statement nor any statement contained in the Plan or in
18 the Disclosure Statement may be used or relied upon in any manner in any suit, action, proceeding or
19 controversy within or without the Chapter 11 Case involving the Debtor, except with respect to
20 Confirmation of the Plan.

21 **P. Successors and Assigns**

22 The Plan is binding upon and will inure to the benefit of the Debtor, the Post-Effective-Date
23 Debtor, and each of their respective Agents, successors, and assigns, including, without limitation,
24 any bankruptcy trustees or estate representatives.

25 **Q. Severability of Plan Provisions**

26 If, prior to Confirmation, any non-material term or provision of the Plan is held by the
27 Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to
28 alter and interpret such term or provision to make it valid or enforceable to the maximum extent

1 practicable, consistent with the original purpose of the term or provision held to be invalid, void or
2 unenforceable, and such term or provision will then be applicable as altered or interpreted.
3 Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and
4 provisions of the Plan will remain in full force and effect and will in no way be affected, Impaired or
5 invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a
6 judicial determination that each term and provision of the Plan, as it may have been altered or
7 interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

8 **V.**

9 **OTHER IMPORTANT INFORMATION REGARDING THE PLAN**

10 **A. Potential Litigation**

11 **1. Avoidance Action Analysis**

12 The Debtor has not yet comprehensively evaluated potential preference, fraudulent transfer
13 and other avoidance claims that the Debtor may have against third parties. The Debtor will file its
14 Schedules listing all transfers that the Debtor made within 90 days of the Petition Date and all
15 transfers to insiders made by the Debtor within one year of the Petition Date. All such transfers
16 listed in the Schedules may be the subject of an Avoidance Action to set aside the transfer if the
17 transfer is avoidable under Bankruptcy Code Sections 544, 545, 547, 548, 549, or 550, or otherwise.
18 Accordingly, the Debtor reserves, on behalf of itself, the Post-Effective-Date Debtor, their respective
19 successors, and any estate representative, all rights to seek to avoid any transfer made within 90 days
20 of the Petition Date and one year of the Petition Date (as to Insiders) or such longer periods as may
21 be available under applicable non-bankruptcy law.

22 The listing of transfers made by the Debtor within 90 days (for non-insiders) and one year
23 (for Insiders) that may be potentially avoidable as preferences are not included in this Disclosure
24 Statement. Copies of the Schedules (which include the identification of prepetition transfers made
25 by the Debtor) will timely be on file with the Bankruptcy Court and also available for review on the
26 Claims/Solicitation Agent's website at www.omnimgt.com/asmc. Creditors and interested parties
27 are encouraged to review such Schedules once filed to determine if any transfers made to a particular
28 Creditor are included thereon. Any such transfers listed in the Schedules may be the subject of an

1 Avoidance Action to set aside the transfer if the transfer is avoidable. However, with respect to such
2 transfers listed on the Debtor's Schedules, the Debtor has not yet determined whether the transferees
3 of those transfers would have defenses to an avoidance action.

4 Notwithstanding the foregoing, the Debtor is informed by the Purchaser that any Avoidance
5 Actions that are related to the Purchased Assets will not be pursued in order to avoid damage to the
6 Purchased Businesses.

7 **2. Other Potential Litigation Recoveries.**

8 In addition to Avoidance Actions, the Debtor has been reviewing available information
9 regarding potential causes of action against third parties and, possibly, affiliates and/or Insiders of
10 the Debtor, which review is ongoing and which will continue to be conducted by the Debtor and/or
11 its successor or representatives after the Effective Date. Due to the size and scope of the business
12 operations of the Debtor and the multitude of business transactions therein, there may be various
13 causes of action that currently exist or may subsequently arise in addition to any matters identified
14 herein. The potential net proceeds from the potential causes of action identified herein or that may
15 subsequently arise or be pursued are speculative and uncertain.

16 Existing or potential causes of action that may be pursued by the Debtor and/or its respective
17 successors or representatives (as applicable) include, without implied limitation, the following: (a)
18 any and all Avoidance Actions (provided, however, as noted above, Avoidance Actions that are
19 Purchased Assets are not expected to be pursued by the Purchaser); (b) any and all causes of action
20 relating to the matters listed on the Debtor's Schedules; (c) any other litigation, whether legal,
21 equitable or statutory in nature, arising out of, or in connection with the Debtor's businesses and
22 operations, including, without limitation, disputes with suppliers and customers; overpayments; any
23 amounts owed by any creditor, vendor or other entity; employee, management, or operational
24 matters; disputes with current or former employees; financial reporting; environmental matters;
25 insurance matters; accounts receivable; warranties; contractual obligations; or tort claims that may
26 exist or subsequently arise; (d) all other Causes of Action and Defenses; and (e) any other causes of
27 action not expressly identified herein.
28

1 **3. Estimation of Claims**

2 The Debtor and/or its respective successors or representatives under the Plan may, at any
3 time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to
4 502(c) of the Bankruptcy Code regardless of whether the Debtor, the Post-Effective-Date Debtor
5 and/or their respective successors have previously objected to such Claim or whether the Bankruptcy
6 Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate
7 any Claim at any time during litigation concerning any objection to any Claim, including during the
8 pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court
9 estimates any contingent or unliquidated Claim, that estimated amount will constitute either the
10 allowed amount of such Claim or a maximum limitation on such Claim, as determined by the
11 Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the
12 Debtor and/or its respective successors or representatives under the Plan may elect to pursue any
13 supplemental proceedings to object to any ultimate payment on such Claim.

14 **B. Risk Factors**

15 Although the Debtor believes that the Plan is confirmable, there are some risks to the
16 performance of the Plan. Certain specific risks to performance of the Plan are described below.
17 Additionally, because of the significant issues that must be addressed with respect to the allowance
18 of Claims, there may be significant delay before any distribution is made on account of Allowed
19 Claims. However, the Debtor believes the very same risks described herein are present in, and
20 significantly greater to creditors in, chapter 7 cases.

21 The following is intended as a summary of certain material risks associated with the Plan,
22 and is not exclusive and should be supplemented by an analysis and evaluation of the Plan and the
23 Disclosure Statement as a whole by each holder of an impaired Claim with its advisors.

24 **1. The Plan Distribution Analysis and Chapter 7 Liquidation Analysis Are Based**
25 **on Estimates and Numerous Assumptions**

26 Underlying the Plan Distribution Analysis attached hereto as **Exhibit C** and the Debtor's
27 liquidation analysis set forth in Article VII below are a number of estimates and assumptions that,
28 although developed and considered reasonable by the Debtor and its advisors, are inherently subject

1 to economic, business and other uncertainties and contingencies beyond the Debtor's control.
2 Accordingly, there can be no assurance that the values or other outcomes assumed in the Plan
3 Distribution Analysis and the liquidation analysis will be realized. Further, the Plan Distribution
4 Analysis and related information are based upon a hypothetical business model, and the projections
5 underlying **Exhibit C** do not take into account present values.

6 **2. The Debtor May Be Unable to Obtain Necessary Consents/Approvals or a**
7 **Sufficient Number of Settling Auto Dealers**

8 One condition precedent to the effectiveness of the Plan (set forth in Section 8.2(d)) is that
9 the Debtor will have received any and all authorizations, consents, regulatory approvals, rulings,
10 opinions or other documents that may be necessary to implement the Plan (including the Sale
11 Transaction and the transfer of certain assets to the Purchaser) or that may be otherwise required by
12 any law, regulation or order. There is a risk that not all such requisite approvals may be successfully
13 obtained by the Debtor (or, if applicable, the Purchaser or other party in interest) or that there may be
14 significant delays in obtaining such approvals.

15 Further, the efficacy of the Plan and/or the transactions contemplated thereby depends on
16 various factors, including that the Debtor determines that an adequate number of Auto Dealers have
17 agreed to enter into Auto Dealer Letter Agreements to facilitate the Plan and Sale Transaction. The
18 Debtor reserves all rights to amend or withdraw the Plan, depending on this factor and other
19 developing circumstances.

20 **3. The Post-Effective-Date Debtor May Lose the Services of Important Employees**
21 **with Extensive Knowledge of Operations**

22 The Debtor's ability to efficiently wind down its Auto Sales Business, maximize the value of
23 the Retained Assets, and transition the Purchased Businesses to the Purchaser pursuant to the Plan
24 may be negatively affected if certain employees currently working for the Debtor, which personnel
25 have substantial experience with and knowledge of the Debtor's businesses, operations and assets,
26 were to no longer provide services. In such case, the business related efforts undertaken pursuant to
27 the Plan and the recovery for Creditors may be adversely impacted.
28

1 **4. The Debtor May Not Be Successful With Respect to Contested Claims**

2 If the Debtor, the Post-Effective-Date Debtor and/or their successors or representatives under
3 the Plan are unsuccessful in their objections to contested and contingent Claims that have been filed
4 against the Estate or Avoidance Actions (to the extent these are Retained Assets), the Estate's total
5 liabilities will be greater than expected, and there may be less cash available for distribution to
6 holders of General Unsecured Claims. The Debtor and its successors intend to vigorously oppose
7 the allowance of all Claims that they believe are either entirely or in part without merit and prosecute
8 avoidance and other actions. However, if the Debtor's or its successors' objections and actions are
9 not upheld by the Bankruptcy Court, and the applicable Claims are allowed in amounts in excess of
10 the amounts that have been estimated by the Debtor, the total liabilities of the Debtor will be greater
11 than expected, and there will be less cash than expected available for distribution to Creditors.

12 **5. Any Litigation Results and Recoveries Are Highly Speculative and Uncertain**

13 The success of the Debtor and/or its successors or representatives under the Plan in pursuing
14 Avoidance Actions and/or other Causes of Action and Defenses, to the extent these are Retained
15 Assets, is speculative and uncertain. Litigation may be complex and involve significant expense and
16 delay. Furthermore, even if successful in the causes of action, in some cases, the Debtor and/or its
17 successors or representatives under the Plan may encounter difficulty in collection. Although
18 potential litigation recoveries are not included in the Debtor's analysis of potential distributions
19 under the Plan as compared to a chapter 7 liquidation, such recoveries may potentially have a
20 material impact upon the distributions that may be made to Creditors.

21 **C. Certain Federal Income Tax Consequences of the Plan**

22 **1. Introduction**

23 The following discussion addresses certain United States federal income tax consequences of
24 the consummation of the Plan. This discussion is based upon the Internal Revenue Code of 1986, as
25 amended (the "Tax Code"), existing and proposed regulations thereunder, current administrative
26 rulings, and judicial decisions as in effect on the date hereof, all of which are subject to change,
27 possibly retroactively. No rulings or determinations by the Internal Revenue Service have been
28 obtained or sought by the Debtor with respect to the Plan. An opinion of counsel has not been

1 obtained with respect to the tax aspects of the Plan. This discussion does not purport to address the
2 federal income tax consequences of the Plan to particular classes of taxpayers (such as foreign
3 persons, S corporations, mutual funds, small business investment companies, regulated investment
4 companies, broker-dealers, insurance companies, tax-exempt organizations and financial
5 institutions) or the state, local, or foreign income and other tax consequences of the Plan. NO
6 REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES
7 OF THE PLAN TO ANY HOLDER OF A CLAIM OR INTEREST. EACH HOLDER OF A
8 CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT A TAX ADVISOR
9 REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF
10 THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.

11 **2. Federal Income Tax Consequences to Creditors**

12 A holder of an Allowed Claim will generally recognize ordinary income to the extent that the
13 amount of Cash or property received (or to be received) under the Plan is attributable to interest that
14 accrued on a Claim but was not previously paid by the Debtor or included in income by the holder of
15 the Allowed Claim. A holder of an Allowed Claim will generally recognize gain or loss equal to the
16 difference between the Holder's adjusted basis in its Claim and the amount realized by the holder
17 upon consummation of the Plan that is not attributable to accrued but unpaid interest. The amount
18 realized will equal the sum of Cash and the fair market value of other consideration received (or to
19 be received).

20 The character of any gain or loss that is recognized will depend upon a number of factors,
21 including the status of the Creditor, the nature of the Claim in its hands, whether the Claim was
22 purchased at a discount, whether and to what extent the Creditor has previously claimed a bad debt
23 deduction with respect to the Claim, and the Creditor's holding period of the Claim. If the Claim in
24 the Creditor's hands is a capital asset, the gain or loss realized will generally be characterized as a
25 capital gain or loss. Such gain or loss will constitute long-term capital gain or loss if the Creditor is
26 a non-corporate taxpayer and held such Claim for longer than one year or short-term capital gain or
27 loss if the Creditor held such Claim for less than one year.
28

1 A Holder of an Allowed Claim who receives, in respect of its Claim, an amount that is less
2 than its tax basis in such Claim may be entitled to a bad debt deduction if either: (i) the Holder is a
3 corporation; or (ii) the Claim constituted (a) a debt created or acquired (as the case may be) in
4 connection with a trade or business of the holder or (b) a debt the loss from the worthlessness of
5 which is incurred in the holder's trade or business. A holder that has previously recognized a loss or
6 deduction in respect of its Claim may be required to include in its gross income (as ordinary income)
7 any amounts received under the Plan to the extent such amounts exceed the holder's adjusted basis in
8 such Claim.

9 Holders of Claims who were not previously required to include any accrued but unpaid
10 interest with respect to in their gross income on a Claim may be treated as receiving taxable interest
11 income to the extent any consideration they receive under the Plan is allocable to such interest.
12 Holders previously required to include in their gross income any accrued but unpaid interest on a
13 Claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under
14 the Plan.

15 Holders of a Claim constituting any installment obligation for tax purposes may be required
16 to currently recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the
17 obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold or
18 otherwise disposed of within the meaning of section 453B of the Tax Code.

19 Based on certain assumptions, it is possible that the holders of General Unsecured Claims
20 will receive only a partial distribution of their Allowed General Unsecured Claims. Whether the
21 holder of such Claims will recognize a loss or any other tax treatment will depend upon facts and
22 circumstances that are specific to the nature of the holder and its Claims. Accordingly, the holders
23 of Class 3, Class 4 and Class 5 Claims should consult their own tax advisors.

24 **3. Federal Income Tax Consequences to the Debtor**

25 Under the Tax Code, a taxpayer generally must include in gross income the amount of any
26 cancellation of indebtedness income ("COD income") realized during the taxable year. Section 108
27 of the Tax Code provides an exception to this general rule, however, if the cancellation occurs in a
28

1 case under the Bankruptcy Code but only if the taxpayer is under the jurisdiction of the bankruptcy
2 court and the cancellation is granted by the court or is pursuant to a plan approved by the court.

3 Section 108 of the Tax Code requires the amount of COD income so excluded from gross
4 income to be applied to reduce certain tax attributes of the taxpayer. The tax attributes that may be
5 subject to reduction include the taxpayer's net operating losses and net operating loss carryovers
6 (collectively, "NOLs"), certain tax credits and most tax credit carryovers, capital losses and capital
7 loss carryovers, tax bases in assets, and foreign tax credit carryovers. Attribute reduction is
8 calculated only after the tax for the year of the discharge has been determined. Section 108 of the
9 Tax Code further provides that a taxpayer does not realize COD income from cancellation of
10 indebtedness to the extent that payment of such indebtedness would have given rise to a deduction.

11 Under the Plan, as noted, it is possible that holders of Class 3, Class 4 and Class 5 Claims
12 will receive less than full payment on their Claims. The Debtor's liability to the holders of Claims in
13 excess of the amount satisfied by distributions under the Plan will be canceled and therefore, will
14 result in COD income to the Debtor. The Debtor should not realize any COD income, however, to
15 the extent that payment of such Claims would have given rise to a deduction to the Debtor had such
16 amounts been paid. In addition, any COD income that the Debtor realizes should be excluded from
17 the Debtor's gross income pursuant to the bankruptcy exception to Section 108 of the Tax Code
18 described in the preceding paragraphs.

19 The exclusion of COD income, however, will result in a reduction of certain tax attributes of
20 the Debtor. Because attribute reduction is calculated only after the tax for the year of discharge has
21 been determined, the COD income realized by the Debtor under the Plan should not diminish any
22 NOLs and other tax attributes that may be available to offset any income and gains recognized by
23 the Debtor in the taxable year that includes the Effective Date.

24 **4. Importance of Obtaining Professional Tax Assistance**

25 The foregoing is intended to be only a summary of certain of the United States federal
26 income tax consequences of the Plan and is not a substitute for careful tax planning with a tax
27 professional. Holders of Claims or Interests are strongly urged to consult with their own tax
28 advisors regarding the federal, state, local and foreign income and other tax consequences of the

1 Plan, including, in addition to the issues discussed above, whether a bad debt deduction may be
2 available with respect to their Claims and if so, when such deduction or loss would be available.

3 THE FOREGOING DISCUSSION OF CERTAIN FEDERAL INCOME TAX
4 CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE.
5 ACCORDINGLY, HOLDERS OF CLAIMS OR INTERESTS SHOULD CONSULT THEIR TAX
6 ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES OF THE PLAN, INCLUDING
7 THE APPLICABILITY AND EFFECT OF FEDERAL, STATE, LOCAL, FOREIGN AND OTHER
8 TAX LAWS.

9 PURSUANT TO U.S. TREASURY DEPARTMENT CIRCULAR 230, WE ARE
10 INFORMING YOU THAT (A) THIS DISCUSSION IS NOT INTENDED AND WAS NOT
11 WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE
12 PURPOSE OF AVOIDING PENALTIES UNDER THE U.S. FEDERAL TAX LAWS THAT MAY
13 BE IMPOSED ON THE TAXPAYER, (B) THIS DISCUSSION WAS WRITTEN IN
14 CONNECTION WITH THE DEBTOR SOLICITING ACCEPTANCES OF THE PLAN
15 THROUGH THIS DISCLOSURE STATEMENT, AND (C) EACH TAXPAYER SHOULD SEEK
16 ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX
17 ADVISOR.

18 VI.

19 REQUIREMENTS FOR CONFIRMATION

20 Section 1129 of the Bankruptcy Code sets forth the requirements that must be satisfied to
21 confirm a plan of reorganization. A number of the more significant Confirmation requirements are
22 discussed in this Section VI of the Disclosure Statement. The Debtor believes that it has complied or
23 will comply with each of these requirements.

24 A. Good Faith and Compliance with Law

25 The Bankruptcy Code requires that a plan of reorganization be proposed in good faith and
26 disclose certain relevant information regarding payments due and the nature of compensation to
27
28

1 insiders. The Debtor believes that it has satisfied these requirements and will seek a ruling to that
2 effect from the Bankruptcy Court in connection with Confirmation of the Plan.

3 **B. Best Interests**

4 Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired
5 Class, each member of such Class either (a) has accepted the Plan or (b) will receive or retain under
6 the Plan on account of its Claim or Interest property of a value, as of the Effective Date, that is at
7 least equal to the amount that such member of the Class would receive or retain if the Debtor were
8 liquidated under chapter 7 of the Bankruptcy Code. The Debtor believes that the Plan meets this test
9 and will seek appropriate findings from the Bankruptcy Court in connection with the Confirmation
10 of the Plan. *See* Section VII and **Exhibit C** of the Disclosure Statement.

11 **C. Plan Acceptance**

12 The Bankruptcy Code requires, subject to an exception described in the following Section
13 VI.D, that the Plan be accepted by all impaired Classes of Claims. Classes of claims and interests
14 that are not impaired (*i.e.*, are unimpaired) under a plan are deemed to have accepted the plan and
15 are not entitled to vote. Class 1 (Priority Non-Tax Claims), Class 2B (Other Secured Claims), Class
16 6 (Warranty Claims), and Class 7 (Interests) are unimpaired and deemed to have accepted the Plan
17 (except Class 7 will be impaired in the event of the Interests Cancellation Election or if Class 3, 4 or
18 5 votes against the Plan).

19 The Bankruptcy Code defines acceptance of a plan of reorganization by a class of claims as
20 acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of
21 the allowed claims in that class, but for this purpose counts only those claims that have been voted
22 on the plan. Holders of Claims who fail to vote or who abstain will not be counted to determine the
23 acceptance or rejection of the Plan by any impaired class of Claims. Additionally, the vote of any
24 holder will not be counted if the holder is designated by the Bankruptcy Court based on its vote or its
25 solicitation not being in good faith under Bankruptcy Code Section 1126(e). The Debtor will solicit
26 the votes of holders of Claims in Class 3 (Settling Auto Dealers), Class 4 (Other Settling Creditor
27 Claims) and Class 5 (Non-Settling Creditor Claims).
28

1 **D. Confirmation of the Plan Without Acceptance by All Impaired Classes**

2 The Bankruptcy Code provides an exception to the requirement that every class must accept
3 a plan of reorganization. This exception is commonly known as the “cram down” provision. This
4 provision allows the Debtor to confirm the Plan notwithstanding the rejection by any Class that votes
5 on the Plan. If the Debtor can demonstrate to the Bankruptcy Court that the Plan satisfies the
6 requirements of the “cram down” provision, each impaired Class that voted to reject the Plan or that
7 is deemed to reject the Plan would be bound to the treatment afforded to that Class under the Plan.

8 To obtain Confirmation of the Plan using the “cram down” provision, the Debtor must
9 demonstrate to the Bankruptcy Court that, as to each Class that has rejected the Plan, the treatment
10 afforded to such Class under the Plan “does not discriminate unfairly” and is “fair and equitable.”

11 In general, a plan does not discriminate unfairly if it provides a treatment to the class that is
12 substantially equivalent to the treatment that is provided to other classes that have equal rank. In
13 determining whether a plan discriminates unfairly, courts will take into account a number of factors,
14 including the effect of applicable subordination agreements between parties. Accordingly, two
15 classes of unsecured creditors could be treated differently without unfairly discriminating against
16 either class.

17 In general, the Bankruptcy Code applies a different test to holders of secured claims,
18 unsecured claims, and interests to determine whether the treatment proposed in a plan of
19 reorganization is “fair and equitable.” In general, a plan of reorganization is “fair and equitable” to a
20 holder of

21 - secured claims if the plan provides that the holder (i) will retain the lien or liens
22 securing its claim and (ii) will receive cash payments, normally evidenced by a note, that total at
23 least the amount of its claim, with such payments having a present value at least equal to the value of
24 the collateral securing the claim;

25 - unsecured claims if the plan provides that the holder (i) will retain property equal to
26 the amount of its claim or (ii) no holder of a claim or interest that is junior to the creditor receives
27 any value under the plan of reorganization; and

28 - equity interests if the plan provides that the holder (i) will retain property equal to

1 the greatest of the allowed amount of any liquidation preference to which such holder is entitled, any
2 redemption price to which such holder is entitled or the value of such interest or (ii) no holder of an
3 interest that is junior to the holder will receive any value under the plan of reorganization.

4 As set forth above, the Plan may be confirmed if certain conditions are met even if the Plan is
5 not accepted by each Class of Claims entitled to vote. The Debtor reserves the right to modify the
6 terms of the Plan as necessary for the Confirmation of the Plan without acceptance by any impaired
7 Classes. Such modification could result in a less favorable treatment to holders of certain Classes of
8 Claims or Interests than the treatment currently provided in the Plan.

9 **E. Feasibility**

10 Under Section 1129(a)(11) of the Bankruptcy Code, the Debtor must show that confirmation
11 of the Plan is not likely to be followed by the liquidation, or the need for further financial
12 reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or
13 reorganization is proposed in the Plan. The Plan complies with this requirement. Generally the
14 Debtor's remaining Assets will be distributed to Creditors pursuant to the terms of the Plan and,
15 provided the Plan is confirmed and consummated, the Estate will no longer exist to be subject to
16 future reorganization or liquidation. Further, on the Effective Date, the Debtor believes it will have
17 sufficient funds to satisfy Claims pursuant to the treatment set forth in the Plan as well as to
18 implement the Plan.

19 With respect to the Purchaser, as will be demonstrated, to the extent necessary, prior to or at
20 the Confirmation Hearing, the Debtor will provide evidence as to the adequate capitalization and
21 funding of the Purchaser for purposes of providing adequate assurance of future performance of
22 Designated Contracts that are assigned to the Purchaser.

23 **VII.**

24 **LIQUIDATION ANALYSIS**

25 Pursuant to Bankruptcy Code Section 1129(a)(7), unless there is unanimous acceptance of
26 the Plan by an impaired Class, the Debtor must demonstrate, and the Bankruptcy Court must
27 determine that, with respect to such Class, each holder of a Claim will receive property of a value,
28 that is not less than the amount that such holder would receive if the Debtor were liquidated under

1 chapter 7 of the Bankruptcy Code. This requirement is commonly referred to as the “Best Interests
2 Test.” The Plan satisfies the Best Interests Test.

3 In a chapter 7 liquidation, holders of Allowed Claims receive distributions based on the
4 collection and liquidation of the Debtor’s assets. Such assets would include the same assets to be
5 liquidated pursuant to the Plan or that will have already been collected or liquidated during the
6 Chapter 11 Case. However, the net proceeds from the collection and sale of property of the Estate
7 available for distribution to Creditors would be reduced by the commission payable to the chapter 7
8 trustee and the trustee’s attorneys and accounting fees, in addition to the administrative costs of the
9 Chapter 11 Case. Therefore, Creditors would “pay again” for any proceeds resulting from asset
10 sales that either closed during the Chapter 11 Case or closed after a hypothetical chapter 7
11 conversion (even though such dispositions may have been fully negotiated and arranged during the
12 Chapter 11 Case), because the chapter 7 trustee would be entitled to receive a commission in some
13 amount for distributing the funds essentially “handed over” to the trustee by the Debtor.¹⁹

14 In addition, a chapter 7 trustee would employ legal counsel and other professionals and
15 advisors such as accountants. If the Debtor’s current counsel and advisors were not retained by the
16 chapter 7 trustee or they decided not to take on such engagements, the chapter 7 trustee would
17 employ new professionals who would have to expend significant time and resources to “get up to
18 speed” with respect to the Debtor, its businesses and assets, and the bankruptcy case. These
19 additional administrative expenses would in likelihood be substantial and would be paid ahead of
20 general unsecured creditors.

21 It must also be noted that the Debtor’s business affairs are complex. Matters of accounting
22 and account reconciliation are best handled by the Debtor’s own experienced staff. These persons
23 are especially important because of their knowledge of the Debtor and their collective memory of
24

25 ¹⁹ A chapter 7 trustee is entitled to seek a sliding scale commission based upon the funds distributed by such trustee to
26 Creditors. Pursuant to the Bankruptcy Code’s guidelines for compensation to chapter 7 trustees, based on certain
27 assumptions, a trustee could be entitled to seek many millions of dollars in compensation for distribution of funds in a
28 chapter 7 case. Although under Bankruptcy Code Section 326, the trustee’s compensation is capped by this sliding scale,
and the trustee should be required to demonstrate the reasonableness of commissions in relation to work actually
performed or results obtained, the Debtor cannot predict whether the trustee will seek or obtain a straight commission
based solely on distributions or some lesser amount.

1 events and issues that may not easily be accessed by a trustee reading “cold” records. In addition,
2 there is no assurance the staff would remain available in a chapter 7 liquidation.

3 Holders of all Allowed Claims will receive under the Plan proposed by the Debtor property
4 of a value that is not less than the amount such Creditors would receive in a chapter 7 case.
5 However, the Plan proposed by the Debtor presents a better alternative to Creditors than a chapter 7
6 liquidation because, among other factors, the Debtor’s successor and representatives (specifically,
7 the Plan Representative, which role will be filled on the Effective Date by M. Freddie Reiss, the
8 Debtor’s current Chief Restructuring Officer) will in all likelihood be able to manage and realize
9 upon the Estate’s assets more expeditiously and cost-effectively than a chapter 7 trustee and his or
10 her professionals and agents who are unfamiliar with the Debtor’s businesses, assets and liabilities.
11 Further, as suggested above, the Debtor is doubtful that a chapter 7 trustee could analyze and pursue
12 causes of action as successfully and economically as the Debtor, because the trustee would not have
13 the knowledge and information possessed by the Debtor and its successors and their respective
14 professionals.

15 It is also anticipated that a chapter 7 liquidation would result in a significant delay in the
16 payments to Creditors. Among other things, a chapter 7 case would trigger a new bar date for filing
17 Claims that would be more than ninety days following conversion of the Chapter 11 Cases to
18 chapter 7. Fed. R. Bankr. P. 3002(c). Hence, a chapter 7 liquidation would not only delay
19 distribution but also raise the prospect of additional claims that were not asserted in the Chapter 11
20 Case.

21 Finally, in the case of the Settling Creditors, such holders of General Unsecured Claims will
22 clearly receive more under the Plan than under a chapter 7 liquidation in that, under the Plan, SMC,
23 the holder of approximately \$152.3 million in Secured Claims secured by liens against substantially
24 all of the Debtor’s assets (as well as holding approximately \$9.4 million of General Unsecured
25 Claims), has agreed to voluntarily subordinate its Secured Claims to a certain extent vis-à-vis
26 Settling Creditors’ General Unsecured Claims in order to permit payment in full of such claims
27 (without interest). In a chapter 7 scenario, there would be no such voluntary claim subordination by
28 SMC benefitting such Creditors.

1 As a point of reference (subject to certain assumptions), putting aside the extended delays in
2 a chapter 7 liquidation and the significant fees of the chapter 7 trustee and its professionals, the
3 estimated proceeds from the sale or other disposition of the Estate's assets (including the Sale
4 Transaction, assuming arguendo that such sale were to go forward in the event of a chapter 7
5 conversion for purposes of this limited analysis only), after repayment of any debtor-in-possession
6 revolving loan balance, would be approximately \$98 million.²⁰ Without SMC's voluntary claim
7 subordination as under the Plan, SMC's \$152.3 million in Secured Claims would be paid before any
8 amounts could be paid on account of Allowed General Unsecured Claims. As a result, holders of
9 Allowed General Unsecured Claims would likely receive no recovery whatsoever.

10 The Debtor has prepared a hypothetical Plan Distribution Analysis attached hereto as
11 **Exhibit C**, to assist holders of impaired Claims to reach their determination as to whether to accept
12 or reject the Plan. Underlying the analyses set forth in **Exhibit C** are a number of estimates and
13 assumptions that, although developed and considered reasonable by management of the Debtor, are
14 inherently subject to economic and business uncertainties and contingencies beyond the control and
15 knowledge of the Debtor. Accordingly, there can be no assurance that the values assumed in the
16 Plan Distribution Analysis would be realized. In addition, any liquidation that would be undertaken
17 would necessarily take place in future circumstances which cannot currently be predicted. No
18 representation or warranty can be or is being made with respect to the actual proceeds that could be
19 received in a chapter 7 liquidation and/or under the Plan. Nothing contained in the analyses set forth
20 in **Exhibit C** is intended or may constitute a concession or admission of the Debtor for any other
21 purpose.

22 Based upon these reasons, the Debtor believes that the Plan provides an opportunity to bring
23 the highest return for holders of Allowed General Unsecured Claims.

24
25 *[Remainder of Page Intentionally Left Blank]*
26
27

28 ²⁰ See **Exhibit C** attached hereto (amount calculated as Gross Estimated Proceeds from Asset Disposition (\$115.7 million) less estimated DIP Revolver Advance (\$17.9 million)).

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VIII.

CONCLUSION

The Debtor believes that the Plan is in the best interests of Creditors and urges such parties to vote to accept the Plan.

Dated: November 6, 2012

AMERICAN SUZUKI MOTOR CORPORATION

By:



M. Freddie Reiss
Proposed Chief Restructuring Officer

Respectfully submitted by,

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ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Debtor’s Chapter 11 Plan of Reorganization
B	Debtor’s Historical Financial Information
C	Plan Distribution Analysis
D	Preliminary Discussion of Debtor’s Potential Claims and Defenses Against Suzuki Motor Corporation

EXHIBIT A

- Debtor's Chapter 11 Plan of Reorganization -

**Note: The Debtor's Plan was previously filed with the Bankruptcy Court (Docket No. 17).
A copy of the Plan may be downloaded from the Claim/Solicitation Agent's website,
www.omningt.com/asmc, or can be obtained from Debtor's counsel upon request.**

EXHIBIT B

- Debtor's Financial Information -

American Suzuki Motor Corporation (Debtor)
 As of 9/30/2012

	Book Value
Assets	
Current Assets	
Cash and cash equivalents	\$ 19,987,979
Accounts receivable (net)	41,582,080
Inventory	122,122,180
Prepaid expenses	2,194,713
Other assets	644,235
Total Current Assets	\$ 186,531,187
Property and Equipment (net)	
Buildings, structures and land	\$ 20,158,276
Machinery and equipment	350,940
Vehicles and delivery equipment	44,101
Tools, furniture and fixtures	617,333
Construction in progress	557,976
Total Property and Equipment	\$ 21,728,626
Other Assets	
Intangible fixed assets (net)	\$ 832,264
Investments in affiliated companies	24,000,000
Total Other Assets	\$ 24,832,264
Total Assets	\$ 233,092,076
Liabilities	
Current Liabilities	
Notes & Accounts payable including holdback	\$ 158,413,475
Short-term loans payable	25,000,000
Accrued expenses	84,042,751
Provision for product warranties	54,581,000
Other current liabilities	375,968
Total Current Liabilities	\$ 322,413,194
Fixed Liabilities	
Other fixed liabilities	\$ 23,863,945
Total Liabilities	\$ 346,277,139
Equity	
Capital stock	\$ 64,700,000
Retained earnings	(177,885,063)
Total Equity	\$ (113,185,063)
Total Liabilities and Equity	\$ 233,092,076

EXHIBIT C

Plan Distribution Analysis

Plan Distribution Analysis for American Suzuki Motor Corporation (Debtor)

(\$ in thousands)

Assumptions:

Plan effective as of March 31, 2013

All assets other than those listed below are monetized prior to the Effective Date.

Assets	Notes	Estimated Value	Estimated Recovery	Asset
				Disposition Proceeds
Cash	[1]	\$ 3,000	100.0%	\$ 3,000
Purchased Businesses	[2]	95,000	100.0%	95,000
Fixed Assets	[3]	18,631	95.0%	17,699
Total		116,631	99.2%	115,699
Gross Estimated Proceeds From Asset Disposition				115,699
Post-Effective Date Income/ Expenses:				
Miscellaneous Income	[4]			300
Pre-Effective Date Professional Fees	[5]			(6,283)
Post-Effective Date Professional Fees	[6]			(9,750)
Transitional Services Agreement (TSA)	[7]			(900)
US Trustee Fees				(120)
Net Post-Effective Date Expenses				(16,753)
Net Estimated Proceeds From Asset Disposition				\$ 98,946

Notes:

[1] Projected cash balance as of the Effective Date per DIP budget attached to the DIP Order.

[2] Purchased Businesses include property, rights, and interests comprising and/or relating to the Debtor's motorcycle, all-terrain vehicle (ATV), marine and other non-automotive business lines and the Debtor's automotive parts/service business line as described in the Disclosure Statement. Recovery value does not consider taxes, if any, that may be owed by the estate on account of the disposition of assets.

[3] Fixed Assets include certain of the Debtor's fixed assets that are not needed for the Purchased Businesses going forward, and therefore will not be purchased by the Purchaser and will be marketed and sold by the estate to third parties. These assets are primarily comprised of real property, which include the Debtor's warehouse and parking currently leased to third parties, excess land adjacent to the Debtor's Brea headquarters, offices in Wixom, Michigan, and two corporate houses in Yorba Linda and Orange, California. Disposition values for real property are based on brokers' opinions of value, and are net of assumed disposition fees and costs of 5%.

[4] Miscellaneous income is related to income generated from warehouse and parking spaces leased to third parties through September 2013 (the date that all remaining real property is assumed to be sold).

[5] Pre-Effective Date Professional Fees are related to estimated fees and costs (including holdback) incurred prior to the Effective Date and assumed to be paid after the Effective Date.

[6] Post-Effective Date Professional Fees are related to estimated professional fees and costs incurred after the Effective Date through December 2013.

[7] Transitional Services Agreement ("TSA") expenses are related to services expected to be provided by the Purchaser's employees to provide support and resources necessary to enable the Debtor to wind down the estate. The related costs are expected to begin in April 2013 and continue through December 2013.

Plan Distribution Analysis for American Suzuki Motor Corporation (Debtor)

(\$ in thousands)

Assumed % of Auto Dealers That Settle:		Claim Amount			Recovery to Creditors			Recovery to Creditors			
		0%	50%	100%	0%	50%	100%	0%	50%	100%	
		Low	Mid	High	Low	Mid	High	Low	Mid	High	
		\$	\$	\$	\$	\$	\$	%	%	%	
Class Administrative Claims (Unclassified)											
	DIP Revolver Advance	[1]	\$ 17,916	\$ 17,916	\$ 17,916	\$ 17,916	\$ 17,916	\$ 17,916	100.0%	100.0%	100.0%
	DIP Inventory Loan	[2]	-	-	-	-	-	-	N/A	N/A	N/A
	Administrative Claims	[3]	-	-	-	-	-	-	N/A	N/A	N/A
Priority Unsecured Claims											
1	Priority Non-Tax Claims	[4]	-	-	-	-	-	-	N/A	N/A	N/A
	Priority Tax Claims	[5]	-	-	-	-	-	-	N/A	N/A	N/A
Secured Claims											
2A-1	SMC Secured Revolver Claim	[6]	32,078	32,078	32,078	13,707	-	-	42.7%	0.0%	0.0%
2A-2	SMC Secured Inventory Loan Claim	[6]	120,676	120,676	120,676	48,952	37,659	12,659	40.6%	31.2%	10.5%
2B	Other Secured Claims	[7]	-	-	-	-	-	-	0.0%	0.0%	0.0%
Unsecured Claims											
3	Settling Auto Dealer Liquidated Claims	[8]	-	25,000	50,000	-	25,000	50,000	N/A	100.0%	100.0%
4	Other Settling Creditor Claims	[9]	18,371	18,371	18,371	18,371	18,371	18,371	100.0%	100.0%	100.0%
5	Non-Settling Creditor Claims		50,000	25,000	-	-	-	-	0.0%	0.0%	N/A
5	SMC Unsecured Pre-Petition Inventory Payables		9,430	9,430	9,430	-	-	-	0.0%	0.0%	0.0%
6	Warranty Claims	[10]	-	-	-	-	-	-	N/A	N/A	N/A
7	Equity Interest		N/A	N/A	N/A	-	-	-	0.0%	0.0%	0.0%

Notes:

[1] Reflects estimated DIP Revolver Advance balance as of the Effective Date.

[2] The DIP Inventory Loan is expected to be assumed by the Purchaser.

[3] Administrative claims are expected to be paid in the ordinary course of the Debtor's post-petition operations.

[4] The Debtor anticipates that Non-Priority Tax Claims will be paid current at time of filing or will be de minimis relative to other claims with no significant impact to projected recoveries.

[5] The Debtor anticipates that certain Priority Tax Claims will be paid in the ordinary course, subject to Court approval, and certain portions of such claims may be payable by the Purchaser, under and subject to the terms of the APA.

[6] Pursuant to Sections 4.2.2 and 4.3.2 of the Plan, payments on account of the Class 2A-1 Claim, and to the extent necessary, the Class 2A-2 Claim, will be reallocated to Class 3 and Class 4 Claims, and SMC is subrogated to the rights of those Claims. Although the foregoing would result in adjustments that would affect the actual percentage recoveries for SMC on account of its Secured Claims, for purposes of this analysis, such adjustments are not addressed.

[7] The Debtor currently estimates other secured claims will be paid current at time of filing or will be de minimis relative to other claims with no significant impact to projected recoveries.

[8] The analysis above assumes that each Auto Dealer that enters into an Auto Dealer Letter Agreement also enters into an SMC Participation Agreement with SMC. If such is not the case, not all of the Class 3 claims referenced above would be subject to the participation interests of SMC or its designee ("Participation Party"). Pursuant to the SMC Participation Agreements, SMC or its designee would pay certain Settling Auto Dealers an amount equal to approximately 50% of their liquidated claims prior to the Effective Date. For such Settling Auto Dealers, they will receive, in effect, the first 50% of the Settling Auto Dealer Liquidated Claim distribution, thereby satisfying such Settling Auto Dealers' interest in the Settling Auto Dealer Liquidated Claims. Thereafter, the Participation Party receives the remaining 50% of the Settling Auto Dealer Liquidated Claim distribution in accordance with the terms of the SMC Participation Agreement.

[9] This estimate assumes all or most holders of outstanding trade debt and other non-auto-dealer claims opt into Class 4. There is no assurance this will be the case. Further, depending on, for example, the potential claims arising from the rejection of non-auto dealer contracts, the aggregate amount of general unsecured claims may be substantially higher.

[10] All warranty claims are expected to be paid in the ordinary course or assumed by the Purchaser.

EXHIBIT D

**Preliminary Discussion of Debtor's
Potential Claims and Defenses Against SMC**

With respect to SMC, under the direction of a subcommittee of the Debtor's Board of Directors composed of independent Directors, the Debtor's counsel and its financial advisors are evaluating potential claims and defenses that might be asserted against SMC in an effort to reduce or offset SMC's claim or subordinate it to claims of unsecured creditors.

The following section discusses such claims and defenses in the context of information gained from a review of the Debtor's books and records and information provided by the Debtor. This evaluation is ongoing, and in particular does not currently take into account any relevant facts that might be known exclusively by SMC. Under review are potential claims that: (1) SMC's claim against the Debtor might be recharacterized as equity contributions rather than debt, (2) SMC's claim against the Debtor might be subordinated to claims of other creditors, (3) SMC's assets and liabilities might be consolidated with those of the Debtor's estate, and (4) the Debtor's payments and obligations to SMC might be subject to avoidance and recovery under the Bankruptcy Code.

1. Equitable Recharacterization

The focus of equitable recharacterization is whether a claim should be treated as a disguised equity contribution rather than as a debt, *i.e.*, whether "a debt actually exists." *In re SubMicron Sys. Corp.*, 432 F.3d 448 (3d Cir. 2006). The intent of the parties to the transaction governs its characterization. "That intent may be inferred from what the parties say in their contracts, from what they do through their actions, and from the economic reality of the surrounding circumstances." *Daewoo Motor America, Inc. v. Daewoo Motor Co., Ltd. (In re Daewoo Motor America, Inc.)*, 2012 WL 1788164,*7 (C.D. Cal. 2012); *In re SubMicron Sys. Corp.* 432 F.3d at 455-56.

Courts commonly cite a list of factors articulated by the Sixth Circuit in *In re AutoStyle Plastics, Inc.*, 269 F.3d 726, 749–50 (6th Cir. 2001).

1. the names given to the instruments, if any, evidencing the indebtedness;
1. the presence or absence of a fixed maturity date and scheduled payments;
2. the presence or absence of a fixed rate of interest and interest payments;
3. the source of the repayment;
4. the adequacy or inadequacy of capitalization;
5. the identity of interest between the creditor and the stockholder;
6. the security, if any, for advances;
7. the corporation's ability to obtain financing from outside lending institutions;
8. the extent to which the advances were subordinated to the claims of outside creditors;
9. the extent to which the advances were used to acquire capital assets; and
10. the presence or absence of a sinking fund to provide repayments.

No one factor is decisive. The decision must be made on a case-by-case basis, based on the facts as they existed at the time of the transaction. *Id.*; *Daewoo* at *9.

Daewoo would likely be accorded weight both because it was decided in this judicial district and because it involved analogous facts. The parent ("DWMC") capitalized its subsidiary ("DMA") with \$50 million in equity funding in 1998. Purchase orders made by DMA under a distribution agreement had fixed payment terms, including interest. DMA suffered substantial operating losses in each of its five years of operation. DWMC routinely demanded payment of unpaid invoices. It granted certain extensions conditioned on payment of interest. DMA's financial statements

characterized the outstanding balance as an account payable and officers of both companies understood it to be debt and not equity. DWMC modified its payment terms by permitting a smaller percentage to be paid in advance and by permitting payments to be made entirely rather than partially from the credit line. In 2000, DMA's lender required DWMC to convert \$60 million of its claim into equity to maintain the line of credit. DMA made requests for additional debt conversions that were denied, and officers of both companies testified that debt was not converted unless DWMC so agreed. In sum, DWMC was paid 93.9% of its total invoices.

DMA's bankruptcy was commenced in 2002 and DWMC filed a claim for \$122.7 million for vehicles and parts, and \$36.2 million in interest. DMA objected on the basis of equitable recharacterization and asserted counterclaims for, among other things, equitable subordination and breach of fiduciary duty. The bankruptcy court upheld \$118 million of the claim and the district court affirmed. The district court applied the AutoStyle factors as follows:

a. DWMC's insider status as the parent and DMA's alleged undercapitalization were insufficient to support recharacterization. In addition, the identity of interest between creditor and stockholder was deemed irrelevant in a parent-subsidiary relationship; such a fact supported characterization as equity only in situations where there were multiple shareholders who contributed proportionate to their ownership percentage.

b. Most cases involve recharacterization of loans, not trade credit. The failure to collect interest on trade debt would be given less weight given "economic reality" and the fact that the parent could make money selling the cars without collecting interest.

c. The inventory purchases were documented as debt, not equity. There were fixed maturity dates, payment dates and interest. Forbearance from collecting such sums in the face of financial stress did not support recharacterization of debt as equity. "If such forbearance could retroactively convert a good loan to equity, that would indeed validate the saying that 'no good deed goes unpunished.'" *Daewoo* at *13 (citation omitted).

d. The demands for payment, requests for extensions, treatment as debt on financial statements and audit letters, the mutual understanding that the debt was a trade account and the fact that the debt conversion was done formally, all evidenced an intent that the extended trade credit be debt and not equity.

e. Repayment did not depend upon DMA's success, as DWMC was paid 93.9% of total invoices over the five year period, which was sufficient for it to make money. For the same reason, the absence of security or a sinking fund to assure payment were not deemed significant, nor was the alleged fact that no bona fide creditor would have lent to DMA.

f. Undercapitalization did not favor recharacterization because the parties believed in good faith that DMA was not undercapitalized. DMA's solvency certificates and its public statements to employees, dealers and the public were deemed relevant. The court found it difficult to accept the theory that DWMC would choose to make ongoing investments that it knew would not be repaid, rather than permitting DMA to buy on credit. The advances were not used to acquire capital assets, weighing against recharacterization.

Based on the foregoing analysis, the district court affirmed the holding rejecting DMA's attempt to recharacterize DWMC's claim.

The Debtor's books and records reflect the following facts that, following the analysis in *Daewoo* and other cases, would likely be considered relevant to a claim for equitable recharacterization of the SMC claim. As noted, the evaluation of this and other claims is ongoing.

SMC is the sole shareholder of the Debtor. It asserts a prepetition secured claim of approximately \$153 million and an unsecured claim of approximately \$9 million. SMC's claim arises from (a) inventory purchases made by the Debtor pursuant to the terms of Exclusive Distributorship Agreements ("Distributorship Agreements"), dated as of May 1, 2012 and Sales Notes entered thereunder; and (b) amounts advanced to the Debtor by SMC under the Pre-Petition Loan and Security Agreement. Obligations under the Pre-Petition Loan and Security Agreement are secured by substantially all of the Debtor's assets. All are denominated as debt instruments. Payments are applied first to oldest outstanding invoices, and SMC's secured claim is based upon amounts accrued under the Pre-Petition Loan and Security Agreement.

The Distributorship Agreements and Sales Notes provide terms of payment that include due dates and interest. Amounts not paid when due are treated as additional advances under the Pre-Petition Loan and Security Agreement. The maturity date under the Pre-Petition Loan and Security Agreement is June 30, 2013 and the principal amount bears interest at LIBOR plus 0.2%, payable quarterly in arrears. The source of repayment is the Debtor's earnings, secured by the Debtor's assets. SMC's advances are not subordinated to the claims of outside creditors. The funds were not used to acquire capital assets. The Debtor maintains separate books and records and prepares separate financial statements, audited by PriceWaterhouseCoopers, which have at all relevant times reflected the obligations asserted by SMC as an account payable of the Debtor.

Prior to the Pre-Petition Loan and Security Agreement, the Debtor financed its operations with funds available under lines of credit and financial support from SMC. At the close of the 2011-12 fiscal year (March 31, 2012), no borrowings from outside lenders were outstanding and, net of offsets, approximately \$108 million was owed by the Debtor and SMAC to SMC. SMC did not hold security for repayment of such amounts. Prior to the Distributorship Agreements, payments were due 15 days from the last day of the shipment period covered by the invoice (twice monthly on the 15th and the last day of each month). The Debtor's books and records indicate that payments were consistently made on their due dates.

Purchases of inventory, reported on a consolidated basis for the Debtor and SMAC, were \$1.9 billion and \$2.04 billion for the years ended December 31, 2006 and 2007, respectively, \$1.6 billion for the 15 month period ending March 31, 2009, and \$496.7 million, \$551.4 million and \$665.5 million for the years ending March 31, 2010, 2011 and 2012, respectively. Payments to SMC for inventory purchases are offset against amounts due from SMC to the Debtor, principally for warranty reimbursements, promotional support and support services.

Commencing in May 2009, SMC issued "Support Letters" extending certain financial accommodations or assurances to the Debtor. A Memorandum of Understanding effective in May 2009 provided, among other things, for the deferral of up to \$250 million of accounts payable until June 30, 2010, with deferred amounts to bear interest at LIBOR plus 0.38%. An April 27, 2010 letter extended the May 2009 Support Letter through June 30, 2011, and confirmed that "SMC is

unconditionally committed to provide the financial support necessary including working capital financing ... and/or long term financing as necessary to maintain the Company in normal operations and as a going concern through at least June 30, 2011.” In April of 2011 and 2012, letters were issued extending this commitment through June 30, 2012 and 2013, respectively. By letter dated July 12, 2012, SMC advised the Debtor that it should assume that SMC financial support would terminate on June 30, 2013.

2. Equitable Subordination

There are three elements that the Ninth Circuit considers for equitable subordination:

- (i) the subordinated creditor must have engaged in some type of inequitable conduct;
- (ii) the misconduct must have resulted in injury to other creditors or conferred an unfair advantage on the creditor to be subordinated; and
- (iii) equitable subordination of the claim must not be inconsistent with the other provisions of the bankruptcy laws.

Henry v. Lehman Commercial Paper, Inc. (In re First Alliance Mortgage Co.), 471 F.3d 977, 1006 (9th Cir. 2006). “Inequitable conduct” generally need not be unlawful. Traditionally, inequitable conduct has been found only in cases involving at least one of (i) fraud, illegality or breach of fiduciary or other legally recognized duties; (ii) undercapitalization of the debtor; or (iii) control or use of the debtor as a mere instrumentality or alter ego to benefit another.” *Official Committee of Unsecured Creditors v. Blomen (In re Hydrogen, LLC)*, 431 B.R. 337, 361 (Bankr. S.D.N.Y. 2010) (internal citations omitted).

As the corporate parent, SMC is a statutory insider. Insiders are subject to a stricter standard than third parties, whose claims may typically be subordinated only for egregious conduct. *Stoombus v Kilimark*, 988 F.2d 949, 959 (9th Cir. 1993). For insiders, a breach of fiduciary duty or engagement in conduct that is ‘somehow unfair’ on the part of the insider may constitute inequitable conduct.” *Hydrogen*, 431 B.R. at 361. Undercapitalization of the debtor alone generally does not justify equitable subordination. *In re Branding Iron Steak House*, 536 F.2d 299, 302 (9th Cir. 1976).

An important limitation is that the doctrine is remedial, not penal, and therefore is applied only to the extent necessary to offset the specific harm caused by the inequitable conduct. *See Stoombus v Kilimark*, 988 F.2d at 960. Thus a court can subordinate a claim “only to the claims of creditors whom the inequitable conduct has disadvantaged.” *In re Heartland Chems., Inc.*, 136 B.R. 503 (Bankr. C.D. Ill. 1992) (actual harm suffered by debtor’s trade creditors could only be measured by amount of inventory actually shipped by trade creditors in reliance on secured creditor’s purported misrepresentations). Accordingly, in order to realize a benefit to creditors from asserting a claim for equitable subordination, the Debtor will need to both identify conduct by SMC that would qualify as inequitable, and identify creditors that were harmed by such conduct. That factual investigation is ongoing.

3. Substantive Consolidation

Substantive consolidation is a remedy utilized by bankruptcy courts to combine the assets and liabilities of separate corporate or legal entities when the circumstances warrant treating such entities as if they were one and the same. Although substantive consolidation is typically applied in the context of consolidating two or more entities that are debtors in a pending bankruptcy case, the

Ninth Circuit has lent some limited support to substantive consolidation to non-debtor entities. *In re Bonham*, 229 F.3d 750, 769-70 (9th Cir. 2000).

In *Bonham*, the Ninth Circuit adopted the test articulated by the Second Circuit in *Union Savings Bank v. Augie/Restivo Baking Co., Ltd.* (*In re Augie/Restivo Baking Co., Ltd.*), 860 F.2d 515, 518 (2d Cir. 1988). *In re Bonham*, 229 F.3d at 766. Under this test, substantive consolidation is only appropriate when either:

- (1) creditors dealt with the debtor entities as a single economic unit and did not rely on their separate identities in extending credit (the “single entity” test); or
- (2) the affairs of the debtors are so entangled that consolidation will benefit all creditors (the “hopeless entanglement” test).

In applying these tests, courts look to five principles: (1) respect of “entity separateness absent compelling circumstances;” (2) whether it was the debtor who disregarded the entity separateness; (3) ease of administration is not part of the test; (4) substantive consolidation is a remedy of last resort only to be applied after “considering and rejecting other remedies;” and (5) substantive consolidation should only be used “defensively to remedy the identifiable harms caused by entangled affairs.” *In re Owens Corning*, 419 F.3d 195, 212 (3d Cir. 2005). As to corporate separateness, the key fact is whether creditors dealt with the debtor as a single entity or rather relied on the fact that subsidiaries had separate assets. *Id.* at 213. As to “hopeless entanglement,” facts such as the subsidiary not paying interest to the parent, the tax benefits of having subsidiaries or less than perfect accounting between the parent and subsidiaries do not alone warrant consolidation. *Id.* at 214-215. To prove that a company is so entangled as to warrant consolidation, the proponent must prove that the cost of untangling the web would be so significant that every creditor will benefit from consolidation. *Id.*

Among the facts relevant to the single entity and hopeless entanglement tests, as they are presently understood, are: (a) the Debtor and SMC do not have joint liabilities or assets, (b) the Debtor’s trade creditors do not contract with SMC, and they have at most a limited number of common creditors (other than consumers with respect to warranty claims), (c) SMC does not make direct payments to the Debtor’s creditors; (d) they maintain separate books and records; (e) they have separate auditors who prepare separate audited financial statements (the Debtor’s information is included in SMC’s consolidated financial statements); and (f) the Debtor performs certain support services for SMC, including governmental relations matters, for which the Debtor is reimbursed.

4. Preference Claims

Section 547 of the Bankruptcy Code provides for the avoidance of certain prepetition transfers by a debtor as preferences. Such potential claims fall in two categories: (1) avoidance of the Debtor’s payments made on SMC unsecured invoices in the year prior to the bankruptcy filing, and (2) avoidance of the security interest obtained by SMC on July 27, 2012 to secure obligations under the Pre-Petition Loan and Security Agreement.

a. Avoidance of Payments on Unsecured Invoices

Bankruptcy Code § 547(b) provides that a debtor/trustee may avoid payments made by the debtor to a creditor on a preexisting debt during the 90 days prior to the petition date. If the

transferee is an insider of the debtor, then the avoidance period extends to one year prior to the petition date. As the Debtor's corporate parent, SMC would be considered an insider under Section 101(31) of the Bankruptcy Code.

(i) **Prime Facie Case**

The Debtor can allege a prima facie case under Section 547(b) of the Bankruptcy Code. The Debtor paid \$568,355,073 to SMC on outstanding unsecured invoices for inventory in the one year prior to the petition date (the "Unsecured Transfers"). Assuming that other requirements such as insolvency are met, then, Section 547(g), the burden will fall to SMC to prove any available defenses to avoidance of the Unsecured Transfers.

(ii) **Available Defenses**

Section 547(c) identifies various defenses by which otherwise avoidable preferential transfers may be excepted from avoidance. The most common defenses are that the transfers were made for "new value" or were made in the "ordinary course of business" (§§ 547(c)(4) and (2), respectively). The "new value" defense essentially provides the vendor transferee with credit for all value provided to the debtor on an unsecured basis subsequent to a preference payment. As SMC provided product to the Debtor on an unsecured basis following several of the Unsecured Transfers, it will be entitled to credit therefor. No new value analysis has been conducted.

The "ordinary course of business" defense potentially provides a complete defense to avoidance of otherwise preferential transfers. Section 547(c)(2) provides that the debtor/trustee may not avoid a transfer if the transfer was made (i) in payment of a debt incurred by the debtor in the ordinary course of business of the debtor and transferee, and (ii) consistent with the ordinary course of business or financial affairs of the debtor and transferee (the "subjective" test), or was made according to ordinary collection terms/practices in the transferee's industry (the "objective" test).

The subjective test requires a showing that, as between the parties, the transfer was made in the normal course of their dealings. *See, e.g., In re First Jersey Securities*, 180 F. 3d 504, 512 (3rd Cir. 1999). The "objective test" requires a showing that the transfer at issue somehow conforms to a broad range of practices within the parties' industry such that "only dealings so idiosyncratic as to fall outside that broad range should be deemed extraordinary and therefore outside the scope of [§547(c)(2)(C)]." *In re Molded Acoustical Products*, 18 F. 3d 217, 224 (3rd Cir. 1994).

The purpose of these requirements is to avoid protecting payments that are the result of unusual collection or payment activity during the debtor's slide into bankruptcy, such as might result from undue pressure by a creditor or favoritism by a debtor. *In re Grand Chevrolet, Inc.*, 25 F.3d 728, 732 (9th Cir. 1994).

The primary factors under the "subjective" test include: (1) the length of time the parties engaged in the type of dealing at issue; (2) whether the subject transfer was in an amount more than usually paid; (3) whether the payments were tendered in a manner different than previous payments; (4) whether there appears to be any unusual action by the creditor or the debtor to collect on or pay the debt; and (5) whether the creditor gained an advantage in light of the debtor's deteriorating financial condition. *Troisio v. E.B. Eddy First Products Ltd, (In re Global Tissue)*, 302 B.R. 808, 812 (D. Del. 2003), *affirmed*, 2004 U.S.App. LEXIS 14003 (3rd Cir. 2004).

The time, amount, and manner in which the payment occurred must be considered. *First Jersey, supra*, at 512; *In re Color Tile, Inc. (Color Tile v. Mfrs. Consolidation)*, 2000 Bankr. LEXIS 1048, p.5 (Bankr. D. Del. 2000). Timeliness is not dispositive, however, the timing of a payment is the most often common measure of a departure from a historical “ordinary course”, and median time intervals between invoice date and payment are logical comparisons in a timing analysis. *In re Fred Hawes Org., Inc.*, 957 F.2d 239, 243-4 (6th Cir. 1992) (finding that even late payments made during the preference period, though presumptively “non-ordinary,” might be deemed in the ordinary course upon a showing that late payments were the norm in the parties’ dealings); *Gateway Pacific*, 153 F.3d at 917-918 (despite historical consistently late payments, a conspicuous and measurable increase in lateness during the preference period will keep payments outside of the ordinary course). Within a limited range, the timing of a contested payment may vary from the timing of previous payments without defeating the application of Section 547(c)(2)(B). *M.L. Assocs., Inc. v. T&R Demolition, Inc. (In re ML Assocs., Inc.)*, 301 B.R. 195 204 (Bankr. N.D. Tex. 2003) (stating in part that courts concentrate on the time within which the debtor ordinarily paid the creditor and whether the timing of the payments during the preference period demonstrated some consistency with that practice).

Here, the Debtor’s books reflect that the Debtor consistently paid SMC’s unsecured invoices on or near the due date (subject to the due date falling on a weekend or bank holiday). There is no outward indication of any unusual pressure on the Debtor to make the Unsecured Transfers, or any change in the Debtor’s pattern of timely payment of SMC invoices in order to gain some advantage for itself or for SMC. Thus it appears that SMC will likely assert a defense to avoidance of the Unsecured Transfers under the subjective test found in Section 547(c)(2)(A). Debtor’s evaluation is ongoing and no analysis has been made regarding the application of the “objective test” as of yet.

b. Avoidance of Security Interest Obtained by SMC in July, 2012

Like a payment, the provision and perfection of a security interest is a “transfer of an interest of the debtor in property” that is subject to avoidance as a preference under Section 547. The security interest granted by the Debtor to SMC on July 27, 2012 to secure obligations under the Pre-Petition Loan and Security Agreement is clearly a transfer, to a creditor, for the benefit of the creditor, made within the applicable time frame under Section 547(b)(4).

To make a prima facie case, the security interest must have been provided “for or on account of antecedent debt.” While there were several outstanding SMC invoices at the time, the July 12, 2012 letter from SMC to the Debtor, and the Pre-Petition Loan and Security Agreement indicate that the security interest was intended for “future financial support”, not for the purpose of securing payment of the existing, “antecedent” debt.

The Debtor believes that SMC would likely assert it has a defense under Section 547(c)(5) of the Bankruptcy Code with respect to the security interest in the Debtor’s inventory and receivables. Section 547(c)(5) was created to protect “floating liens” in inventory and receivables, and sets forth what is commonly known as the “improvement in position” test; it excludes from avoidance liens placed on a debtor’s inventory or accounts receivable, so long as the lien did not improve the creditor’s position during the statutory test period. *Lange v. Inova Capital Funding, LLC (In re Qualia Clinical Serv.)*, 652 F.3d 933, 937-938 (8th Cir. 2011).

Section 547(c)(5)(A) compares, in this scenario, the amount of SMC's claim and the value of the collateral securing the claim as of the first date that it provided a secured advance under the Pre-Petition Loan and Security Agreement, August 1, 2012, and as of the Petition Date. If during that time there has been a reduction of the amount by which the debt exceeded the value of the security, then the creditor's position has been improved. Preferential transfers that create perfected floating liens are voidable to the extent of such improvement. *Samson v. Alton Banking & Trust Co. (In re Ebbler Furniture & Appliances, Inc.)*, 804 F.2d 87, 89-90 (7th Cir. 1986); 5 Collier on Bankruptcy ¶ 547.04[5] (2011). If the indebtedness to the creditor never exceeds the value of the collateral during the entire time period, then there is no improvement in position that harms unsecured creditors, and the oversecured creditor's liens are not avoidable. *Batlan v. Transamerica Commer. Fin. Corp. (In re Smith's Home Furnishings, Inc.)*.

A balance sheet through the Petition Date is not yet available. It is anticipated that SMC will assert that it has not improved its position since it first provided new value subject to the security interest. The Debtor's evaluation is ongoing at this point. However, SMC can be expected to assert that its security interest in the Debtor's receivables and inventory will be excepted from avoidance under Section 547(c)(5).

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

10100 Santa Monica Blvd, 13th Floor, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **DISCLOSURE STATEMENT IN SUPPORT OF DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **November 6, 2012**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **November 6, 2012**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA PERSONAL DELIVERY

The Honorable Scott C. Clarkson
U.S. Bankruptcy Court
411 West Fourth Street, Courtroom 5C
Santa Ana, CA 92701-4593

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 6, 2012
Date

Megan Wertz
Printed Name

/s/ Megan Wertz
Signature

1. **SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**

- Martin R Barash mbarash@ktbslaw.com
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