

**In re Capmark Financial Group, Inc., et al.**  
**Official Committee of Unsecured Creditors**  
**Protocols for Compliance with 11 U.S.C. § 1102(b)(3)**

1. Access to Creditor Information. In satisfaction of the Committee's obligation to provide access to information to the general unsecured creditors and to solicit and receive comments therefrom in accordance with sections 1102(b)(3) of the Bankruptcy Code, the Committee may, in its reasonable discretion, until the earliest to occur of dissolution of the Committee, dismissal of these chapter 11 cases, or conversion of these chapter 11 cases, or upon further order of the Court, establish and maintain an Internet accessed website (the "Committee Website") for the benefit of general unsecured creditors, which may provide, without limitation:

- a. general information concerning the chapter 11 cases of the Debtors including, case dockets and docket filings, or access or links or the Internet address to the case dockets and docket filings, and general information concerning significant parties in the cases;
- b. highlights of significant and material events in the cases;
- c. deadlines for upcoming significant and material events or time and place for hearings in the cases;
- d. a general overview of the chapter 11 process, press releases (if any) issued by any of the Debtors or the Committee;
- e. a list of entities that have purchased claims in the Debtors' chapter 11 cases;
- f. a non-public registration form for creditors to request "real time" case updates via electronic mail;
- g. a non-public registration form to submit creditor questions, comments and requests for access to information;
- h. responses to creditor questions, comments and requests for access to information; provided, however, that the Committee may privately provide such responses in the exercise of its reasonable discretion, including in light of the nature of the information request and the creditor's agreements to appropriate confidentiality and trading of claims or interests constraints;
- i. answers to frequently asked questions;

- j. the names and contact information for the Debtors' counsel and the Committee's counsel;
- k. the internet address, access or links to the claims docket as and when established by the Debtors or any claim agent retained in the cases; and
- l. access or links or the internet address to other relevant websites and information;<sup>1</sup>

provided, that, nothing in this Protocol requires the Committee to provide access to information or solicit comments from any entity (all references to "entity" herein shall be as defined in section 101(15) of the Bankruptcy Code, "Entity") that has not demonstrated to the satisfaction of the Committee, in its sole discretion, or to the Court, that it holds claims of the kind described in section 1102(b)(3) of the Bankruptcy Code.

2. Privileged Information and Confidential Material. Absent entry of an order of this Court to the contrary, the Committee shall not be required or obligated to disseminate to any Entity:

- a. non-public information, documents, communications and matters of whatever nature and kind disclosed to the Committee or its representatives by or on behalf of Debtors, whether in writing or orally or in any other format, and whether or not designated or marked as confidential by the Debtors (collectively, with all summaries thereof or information derived therefrom, "Confidential Material"); provided, however, that Confidential Material shall not include information (i) that was in the possession of a member of the Official Committee of Unsecured Creditors of Capmark Financial Group, Inc. and its affiliated debtors and debtors in possession ("Member") on a non-confidential basis prior to the receipt of such information in its capacity as a Member, (ii) that is separately received on a non-confidential basis by a Member outside of that Member's capacity as a Member, (iii) that is or becomes available to the public;
- b. information or documents generated by the Committee, or by any of the Committee's professionals, or by any member or counsel to

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<sup>1</sup> No access or link will bypass the login and password requirements of the PACER or ECF websites.

any member for the use of the Committee (collectively, "Privileged Information"); and

- c. communications among Members in their capacity as such and communications among Committee professionals and the Committee, including information regarding specific positions taken by Members (collectively, "Committee Communications").

For the sake of clarity, it bears emphasis that nothing in the Protocol extends to information which any member of the Committee has received other than in its capacity as a Committee member; provided, however, that the Committee and its members and representatives will not disclose any Confidential Material other than as specifically permitted under section 6(a) of this Protocol.

3. Carve-Out for Information Subject to Discovery. Any information received by the Committee from any Entity in connection with an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure or in connection with any formal or informal discovery in any contested matter, adversary proceeding or other litigation in these chapter 11 cases or related to the Debtors shall not be governed by the terms of this Protocol but, rather, by any order governing such discovery or adversary proceeding, contested matter or other litigation; provided, however, that any information received by the Committee from the Debtors shall be governed by the terms of this Protocol, the confidentiality provisions of the Committee bylaws and any confidentiality agreement between the Committee and the Debtors concerning these chapter 11 cases. Notwithstanding anything to the contrary contained in this Protocol, this Protocol does not govern information which any member of the Committee has received other than in its capacity as a member of the Committee.

4. Creditor Information Requests. If a general unsecured creditor (the "Requesting Creditor") submits a written request (including by electronic mail) (the "Information Request") for the Committee to disclose or provide information, the Committee

shall as soon as practicable, but no more than thirty (30) days after receipt of the Information Request, provide a response to the Information Request (including, if relevant, on the Committee Website, as hereinafter defined) (the “Response”), including providing access to the information requested or the reasons the Information Request cannot be complied with. If the Response is to deny the Request because the Committee believes the Information Request implicates Confidential Material, Privileged Information, or Committee Communications that need not be or cannot be disclosed pursuant to the terms of this Protocol or otherwise under section 1102(b)(3)(A) of the Bankruptcy Code, or that the Information Request is unduly burdensome, the Requesting Creditor may, after a good faith effort to meet and confer with an authorized representative of the Committee regarding the Information Request and the Response, seek to compel such disclosure for cause pursuant to a motion. Such motion shall be served and the hearing on such motion shall be noticed and scheduled pursuant to the rules of the court. The Committee shall not object to any Requesting Creditor’s request to participate in any such hearing by telephone conference. Nothing herein shall be deemed to preclude the Requesting Creditor from requesting (or the Committee objecting to such request) that the Committee provide the Requesting Creditor a log or other index of any information specifically responsive to the Requesting Creditor’s request that the Committee deems to be Confidential Material, Privileged Information, or Committee Communications; provided, that, the log or index does not contain any Confidential Material. The Debtors shall have the right to object to any request for Confidential Material, and nothing herein shall limit the Debtors’ rights. In addition, nothing in this paragraph or order limits, affects, or otherwise prejudices the rights, if any, of individuals to seek relief from this Court under section 1102(b)(3) of the Bankruptcy.

5. Committee Response to Information Request Implicating Confidential

Material or Privileged Information. In its Response to an Information Request for access to Confidential Material or Privileged Information, the Committee shall consider whether:

- a. the Requesting Creditor is willing to agree to be bound by confidentiality restrictions approved by the Debtors (a "Confidentiality Agreement"), and trading restrictions with respect to such Confidential Material or Privileged Information and represents that such trading restrictions and any information-screening process complies with applicable securities laws, Bankruptcy Rules or contract laws; and
  - (i) Claims/Equity Security Traders: If the Requesting Creditor is involved in purchasing, selling or trading claims against or equity interest in the Debtors, the Requesting Creditor must file serve upon counsel to the Committee, the Debtors and the United States Trustee, a document with the Court confirming that it has established an information screening barrier that will be enforced, that no Confidential Material or Privileged Information will be revealed to purchasers, sellers or claims traders or any persons or entities involved in trading of claims and listing the name of the person that has been designated as monitor to ensure compliance with the provisions hereof; and
  - (ii) Market Competitors: If the Requesting Creditor is a competitor or prospective competitor of the Debtors and the information requested may impair the Debtors' business in any material way, no information will be disclosed unless the Court orders such disclosure after notice and a hearing. The determination that a Requesting Creditor is a competitor or prospective creditor is reviewable by the Court; and
- b. under the particular facts, such agreement and any information-screening process that it implements will reasonably protect the confidentiality of such information;

provided, however, that if the Committee elects to provide access to Confidential Material or Privileged Information on the basis of the entry into a Confidentiality Agreement and such trading restrictions, the Committee shall have no responsibility for the Requesting Creditor's compliance with, or liability for violation of, applicable securities or contract laws. Any disputes

with respect to this paragraph shall be resolved as provided in the preceding paragraph, and, to the extent applicable, the next paragraph.

6. Release of Confidential Material or Privileged Information of the Debtors to Third Parties. Notwithstanding anything herein to the contrary, if the Information Request implicates Confidential Material or Privileged Information of the Debtors (or any other Entity other than the Committee) and the Committee agrees that such request should be satisfied, or if the Committee on its own wishes to disclose such Confidential Material or Privileged Information to creditors, the Committee shall make a demand (the “Demand”) for the benefit of the Debtors’ creditors pursuant to the following procedures:

- a. Debtors’ Confidential Material. If the Confidential Material or Privileged Information contains information disclosed by or derived from information disclosed by the Debtors, the Committee shall submit a written request, each captioned as a “Committee Information Demand,” to counsel for the Debtors (“Debtors’ Counsel”), stating that such information will be disclosed in the manner described in the Committee Information Demand unless the Debtors object to such Committee Information Demand on or before fifteen (15) days after the service of such Committee Information Demand. If the Debtors lodge such an objection, the Debtors, the Committee and the Requesting Party shall work in good faith to resolve the Debtors’ objection to the Committee Information Demand. In the event that the Debtors’ objection is not resolved, the Debtors, the Committee or the Requesting Creditor may schedule a hearing with the Court seeking a ruling with respect to the Demand under section 704(a)(7) of the Bankruptcy Code.
- b. Third Party Confidential Material. If the Confidential Material or Privileged Information contains information of another Entity (other than the Committee), the Committee shall - in addition to the requirements of section 6(a) - submit a written request, each captioned as a “Committee Information Demand,” to such Entity and its counsel of record, with a copy to Debtors’ Counsel, stating that such information will be disclosed in the manner described in the Committee Information Demand unless such Entity or the Debtors object to such Committee Information Demand on or before fifteen (15) days after the service of such Committee Information Demand. If the Debtors or the Entity lodge such an

objection, the Debtors, the Committee, the Entity and Requesting Creditor shall work in good faith to resolve the Debtors' or the Entity's objection to the Committee Information Demand. In the event that the Debtors' or the Entity's' objection is not resolved, the Debtors, the Entity, the Committee or the Requesting Creditor may schedule a hearing with the Court seeking a ruling with respect to the Demand.

- c. The Committee may in its sole discretion disclose any Privileged Information pursuant to and consistent with the terms of this Protocol, so long as it only discloses Confidential Material in accordance with section 6(a) of this Protocol.

Nothing in this paragraph or this Order limits, affects, or otherwise prejudices the rights, if any, of individuals to seek relief from this Court under section 1102(b)(3) of the Bankruptcy Code.