



BOARD OF GOVERNORS  
OF THE  
**FEDERAL RESERVE SYSTEM**  
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

March 24, 2009

Joseph P. Vitale, Esq.  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022

Dear Mr. Vitale:

This is in response to your request for a determination that Stephen A. Feinberg and the entities he controls or advises (collectively, “Cerberus”), which own 51 percent of the equity interests of GMAC LLC (“GMAC”), Detroit, Michigan, would not control GMAC under the Bank Holding Company Act, as amended (“BHC Act”), if the transactions described below are consummated according to certain conditions described in this letter and related correspondence.

Cerberus previously was not subject to the BHC Act because GMAC’s subsidiary insured depository institution, GMAC Bank, Midvale, Utah, was an industrial loan company, and such companies are exempt from the definition of “bank” under the BHC Act.<sup>1</sup> The Board recently approved GMAC’s application to become a bank holding company on the conversion of GMAC Bank from an industrial loan company to a commercial bank.<sup>2</sup> The Board’s approval and the determination in this letter have been made in light of the unique circumstances surrounding the proposal by GMAC, one of the nation’s largest captive auto finance companies, to become a bank holding company and the actions that Cerberus has committed to the Board to implement in order to reduce its ownership stake and other relationships with GMAC.

In addition to Cerberus’s ownership of 51 percent of the outstanding voting interests of GMAC,<sup>3</sup> Cerberus has 5 representatives on GMAC’s board of directors. Moreover, various investment funds and other entities controlled directly or indirectly by Mr. Feinberg have substantial business relationships with GMAC and its subsidiaries.

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<sup>1</sup> See section 2(c)(2)(H) of the BHC Act. 12 U.S.C. § 1841(c)(2)(H).

<sup>2</sup> See GMAC LLC, 95 Federal Reserve Bulletin \_\_\_\_ (December 24, 2008) (“GMAC Order”).

<sup>3</sup> These equity interests are owned directly by three Cerberus-controlled investment companies, FIM Holdings LLC, Cerberus FIM Investors, LLC, and Cerberus FIM LLC (collectively, “Cerberus Companies”). The Cerberus Companies are owned by Cerberus-controlled investment funds (“Cerberus Funds”); Aozora Bank, Ltd. (“Aozora”), a Japanese bank that is an affiliate of Cerberus because Cerberus owns approximately 40 percent of the outstanding equity of the bank; and other co-investors not affiliated with Cerberus.

Mr. Feinberg has committed to the Board that he will take a number of steps to bring Cerberus's holdings in GMAC into compliance with the BHC Act and the Board's precedent on noncontrolling investments in banks and bank holding companies.<sup>4</sup> Mr. Feinberg has committed to cause the Cerberus Companies he controls to distribute the interest each holds in GMAC to their respective investors, including the Cerberus Funds and co-investors, by March 24, 2009.<sup>5</sup> As a result, the Cerberus Funds and 82 investors unaffiliated with Cerberus will own these equity interests in GMAC directly.<sup>6</sup> No single investor will own or control more than 5 percent of the voting interests or equity of GMAC, except the Cerberus Funds, which will own less than 25 percent of the voting equity.<sup>7</sup>

In addition, Cerberus has committed to reduce its direct and indirect involvement with GMAC. In particular, Cerberus will reduce its director representation from five directors to one director. Cerberus also has committed to eliminate any employee interlocks and terminate any advisory agreements between Cerberus and GMAC by March 24, 2009. Cerberus has further committed that any existing business relationships and transactions between GMAC and Cerberus-controlled entities (including other Cerberus portfolio companies) or affiliates of Mr. Feinberg or Cerberus will be limited to their existing scope and terms, and no new business relationships between GMAC and any Cerberus-controlled entity will be permitted.

Finally, Cerberus has provided other commitments that are similar to those the Board previously has relied on to ensure that an investor is not able to exercise a controlling influence over a bank or bank holding company.<sup>8</sup>

For purposes of the BHC Act, a company controls a bank holding company or bank if the company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank holding company or bank; (ii) controls in any manner the election of a majority of the directors of the bank holding company or bank; or (iii) directly or indirectly exercises a controlling influence

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<sup>4</sup> See "Policy statement on equity investments in banks and bank holding companies" ("Policy Statement"). 12 CFR 225.144, available at <http://www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm>.

<sup>5</sup> The Cerberus Funds and certain non-U.S. co-investors currently hold some interests in GMAC through a U.S. blocker corporation, which was established to facilitate the payment of U.S. taxes. As part of the restructuring, the Cerberus Funds would own a blocker corporation that is separate from any blocker corporation that holds a co-investor's interests in GMAC, and any co-investor blocker corporation would be independent of Cerberus and Mr. Feinberg. None of the co-investors' blocker corporations will hold more than 4.9 percent of GMAC voting interests.

<sup>6</sup> The Cerberus Funds that control Aozora would be deemed to indirectly control the GMAC shares that Aozora owns.

<sup>7</sup> Only the Cerberus Funds will own voting equity of GMAC.

<sup>8</sup> See the appendix for a complete list of the commitments that Mr. Feinberg and Cerberus have made to the Board.

over the management or policies of the bank holding company or bank.<sup>9</sup> The Board's Regulation Y also sets forth several rebuttable presumptions of control.<sup>10</sup>

Under the proposal, Cerberus would not own, control, or hold with power to vote 25 percent or more of a class of voting securities of, or control the election of a majority of the directors of, any bank holding company or bank. Cerberus would be deemed to control a bank holding company or bank under the BHC Act only if the Board were to find that Cerberus exercises a controlling influence over the management or policies of a bank holding company or bank.

Cerberus seeks to establish that it does not exercise a controlling influence over a bank holding company or bank for purposes of the BHC Act. As indicated, Mr. Feinberg has committed to cause the Cerberus Companies he controls to distribute the interests each holds in GMAC to their respective investors (Cerberus Funds and co-investors) by March 24, 2009. As a result, with the exception of certain Cerberus Funds that own shares of Aozora, these investors will directly own the shares of GMAC.

As a result of that distribution, the investments of Cerberus and the co-investors in GMAC will be consistent with the thresholds in the Board's Policy Statement. Cerberus and Aozora in the aggregate would own or control exactly 22.02 percent of GMAC's voting equity.<sup>11</sup> In addition, no co-investor would own more than 5 percent of the voting equity and total equity of GMAC. The co-investors would each have the unencumbered right to vote and dispose of their respective shares without restriction. There would be no agreements among the shareholders regarding the ownership or voting of the GMAC shares or management of the companies. Moreover, neither Mr. Feinberg nor any Cerberus-controlled entity or Aozora would advise the co-investors regarding their shares or regarding the management of GMAC.

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<sup>9</sup> 12 U.S.C. § 1841(a)(2); 12 CFR 225.2(e).

<sup>10</sup> 12 CFR 225.31(d).

<sup>11</sup> Cerberus originally committed to the Board that it would not own, control, or hold with power to vote securities that (when aggregated with securities that the officers and directors of Cerberus own, control, or hold with power to vote) represent 15 percent or more of any class of voting securities of GMAC or any of its subsidiaries or 33 percent or more of the total equity of GMAC or any of its subsidiaries. The commitments were intended to ensure that Cerberus would not control GMAC for purposes of the BHC Act and that Cerberus's investment would be consistent with the Board's precedent on noncontrolling investments in banks and bank holding companies. As noted above, Cerberus will own or control 22.02 percent of the voting equity of GMAC, which is below the statutory definition of control in the BHC Act, and will not own any nonvoting securities. Thus, the Cerberus investment will also represent less than 25 percent of the total equity of GMAC. This revised proposal is consistent with the Board's Policy Statement. Cerberus has re-executed its commitments to the Board to reflect this percentage of GMAC's voting equity that it will own or control. See appendix. Because Cerberus's 22.02 percent interest meets the statutory requirements and other guidelines to be a noncontrolling investment under the Board's Policy Statement, Cerberus's equity interest in GMAC is consistent with Cerberus's commitments to the Board not to control GMAC.

In addition, to comply with the BHC Act and Board precedent, Cerberus will reduce its direct and indirect involvement with GMAC. Cerberus will reduce its director representation from five directors to one director. Consistent with the Board's Policy Statement, any director representative of Cerberus may not serve as the chairman of the board of GMAC or as the chairman of a committee of the board of GMAC. Moreover, Cerberus will eliminate any employee interlocks and terminate any advisory agreements with GMAC by March 24, 2009, will limit any existing business relationships and transactions between GMAC and Cerberus-controlled entities or affiliates of Mr. Feinberg or Cerberus to their existing scope and terms,<sup>12</sup> and will not undertake new business relationships between GMAC and any Cerberus-controlled entity.

In view of the commitments and representations made by Cerberus and the facts described in this letter, the Board has determined that Cerberus would not control a bank holding company or bank for purposes of the BHC Act based solely on the proposed restructuring of its ownership interest in GMAC. The Board's determination is specifically conditioned on compliance with all the commitments and conditions discussed in this letter and the GMAC Order. These commitments and conditions are deemed to be conditions imposed by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law. Any change in the facts presented, including the acquisition by Cerberus of any additional voting or nonvoting equity of GMAC, could result in a different conclusion and should be reported immediately. If you have any questions about this matter, please contact Andrea Tokheim, Counsel (202-452-2300), or Pat Robinson, Assistant General Counsel (202-452-3005), of the Board's Legal Division.

Sincerely yours,

*(signed)*

Robert deV. Frierson  
Deputy Secretary of the Board

Attachment

cc: Federal Reserve Bank of Chicago  
Federal Deposit Insurance Corporation

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<sup>12</sup> These relationships and transactions include the provision of loans and lines of credit by GMAC to Cerberus-controlled entities, the purchase of loans by GMAC from a Cerberus-controlled entity, services provided by a Cerberus-controlled entity to GMAC, and the participation by GMAC and a Cerberus-controlled entity in the same lending facilities for unrelated third parties.

## Appendix

### Commitments of Stephen A. Feinberg and Cerberus to the Board

#### *Transitional Commitments*

Cerberus<sup>1</sup> commits, in connection with the Board's determination of noncontrol, that within 90 days of the Board's approval of GMAC's application under section 3 of the BHC Act to become a bank holding company:

- i. Cerberus will complete the distribution of GMAC ownership interests to certain Cerberus investment funds and persons or entities who co-invested in GMAC with such funds ("Co-Investors"), consistent with Cerberus's written submissions to the Board describing such distribution, in which the interests in FIM Holdings LLC, Cerberus FIM Investors, LLC, and Cerberus FIM LLC will be distributed to the investors in these entities. After such distribution, Cerberus, including the Cerberus funds and any other Cerberus-controlled company ("Cerberus Entities"), shall not have any agreements with respect to GMAC with any Co-Investors, and there shall not be any agreements among the Co-Investors with respect to GMAC;
- ii. with respect to the investment of a Cerberus Entity or a Co-Investor through a blocker corporation, as described in Cerberus's written submissions to the Board, no Cerberus Entity shall utilize the same blocker corporation as any single Co-Investor or group of Co-Investors. The aggregate GMAC voting interests of any single Co-Investor or group of Co-Investors held through a blocker corporation shall not exceed 4.9 percent of GMAC's voting interests or 7.5 percent of GMAC's total equity;
- iii. all employees, consultants, and contractors of Cerberus or a Cerberus Entity will cease providing services to, or otherwise functioning as dual employees of, GMAC. All advisory relationships between GMAC and Cerberus or any Cerberus Entity shall also be terminated within this period; and
- iv. any existing business relationships and transactions between GMAC and Cerberus or a Cerberus Entity, including any portfolio companies, shall be limited to their existing scope and terms, and no new business relationships, including any advisory agreements, with GMAC will be permitted. Cerberus employees, consultants, and contractors would cease providing services to, or otherwise functioning as dual employees of, GMAC or its subsidiaries.

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<sup>1</sup> Pursuant to applicable Japanese law, Cerberus is not permitted to bind Aozora Bank Ltd. or its subsidiaries (collectively, "Aozora"). Therefore, with regard to Aozora, Cerberus commits hereby to take all legally permissible actions to attempt to influence Aozora to act consistently with this letter and to refrain from taking any actions to influence Aozora to act inconsistently.

*Passivity Commitments*

Stephen A. Feinberg and Cerberus Capital Management, L.P., and the entities affiliated with either of the foregoing (collectively, "Cerberus Entities") that directly or indirectly invested in equity interests of GMAC, including, but not limited to, Cerberus Institutional Real Estate Partners, L.P., Cerberus Institutional Partners, L.P., Cerberus Institutional Partners (America), L.P., Cerberus International, Ltd., Cerberus Partners, L.P., and Aozora or any affiliated entity (collectively, "Cerberus Group"), will not, without the prior approval of the Board or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of GMAC or any of its subsidiaries;
2. Have or seek to have more than one representative of the Cerberus Group serve on the board of directors of GMAC or any of its subsidiaries, except that in addition to the one representative the Cerberus Group may also have a nonvoting observer;
3. Permit any representative of the Cerberus Group who serves on the board of directors of GMAC or any of its subsidiaries to serve (i) as the chairman of the board of directors of GMAC or any of its subsidiaries, (ii) as the chairman of any committee of the board of directors of GMAC or any of its subsidiaries or, (iii) serve as a member of any committee of the board of directors of GMAC or any of its subsidiaries if the Cerberus Group representative occupies more than 25 percent of the seats on the committee;
4. Have or seek to have any employee or representative of the Cerberus Group serve as an officer, agent, or employee of GMAC or any of its subsidiaries;
5. Take any action that would cause GMAC or any of its subsidiaries to become a subsidiary of Cerberus;
6. Acquire any voting securities of GMAC or any of its subsidiaries in addition to the 22.02 percent of voting securities of GMAC that Cerberus owns or controls;
7. Own or control any nonvoting equity interests of GMAC or any of its subsidiaries;
8. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the board of directors of GMAC or any of its subsidiaries;
9. Enter into any agreement with GMAC or any of its subsidiaries that substantially limits the discretion of GMAC's management over major policies and decisions, including, but not limited to, policies or decisions about employing and compensating executive officers; engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;

10. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of GMAC or any of its subsidiaries;
11. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of GMAC or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by GMAC or any of its subsidiaries; or
12. Enter, either directly or through a company controlled by the Cerberus Group (“Portfolio Company”), into any new banking or nonbanking transactions with GMAC or any of its subsidiaries, or expand any existing banking or nonbanking relationship between GMAC and the Cerberus Group or a Portfolio Company. Notwithstanding the foregoing, within 90 days of the Board’s approval of the application by GMAC, all employees and contractors of Cerberus or a Cerberus Entity will cease providing services to, or otherwise functioning as dual employees of, GMAC. All advisory relationships between Cerberus and GMAC shall also be terminated within this period.

The terms used in these commitments have the same meanings as set forth in the BHC Act and the Board's Regulation Y.