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Proposed Counsel for the Official Committee of Unsecured Creditors

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

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In re	: Chapter 11
	:
SAS AB, et al.,	: Case No. 22-10925 (MEW)
	:
Debtors.¹	: (Jointly Administered)
	: [Re: Docket No. 226]
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**STATEMENT OF THE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS WITH RESPECT TO MOTION OF DEBTORS
FOR ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR
SECURED, SUPERPRIORITY, POSTPETITION FINANCING, (II) GRANTING
LIENS AND SUPERPRIORITY CLAIMS, AND (III) GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the “**Committee**”) of SAS AB and its debtor affiliates in the above-captioned cases (collectively, the “**Debtors**”), by and through its undersigned proposed counsel, respectfully submits this statement (this “**Statement**”) with respect to the *Motion of Debtors for Order (I) Authorizing the Debtors to Obtain Senior Secured, Superpriority, Postpetition Financing, (II) Granting Liens and Superpriority Claims, and (III)*

¹ The Debtors in these chapter 11 cases are SAS AB, SAS Danmark A/S, SAS Norge AS, SAS Sverige AB, Scandinavian Airlines System Denmark-Norway-Sweden, Scandinavian Airlines of North America Inc. (2393), Gorm Asset Management Ltd., Gorm Dark Blue Ltd., Gorm Deep Blue Ltd., Gorm Sky Blue Ltd., Gorm Warm Red Ltd., Gorm Light Blue Ltd., Gorm Ocean Blue Ltd., and Gorm Engine Management Ltd. The Debtors’ mailing address is AVD kod: STOUU-T, SE-195 87 Stockholm, Sweden.

Granting Related Relief [Docket No. 226] (the “**DIP Motion**”).²

1. The Committee appreciates the Debtors’ real and imminent need for post-petition financing. The relief sought in the DIP Motion would give the Debtors immediate access to a dual-draw \$700 million facility provided by Apollo Management Holdings, L.P. (respectively, “**Apollo**” and the “**Apollo DIP Facility**”). Since the August 18 hearing on the Debtors’ breakup fee motion (the “**August 18 Hearing**”), the Committee has been negotiating the Apollo DIP Facility in earnest with Apollo and the Debtors. These negotiations have proven fruitful and the Committee has extracted a number of substantial and beneficial concessions from Apollo, notwithstanding a lack of actionable alternative financing proposals. For the reasons detailed below, the Committee supports the DIP Motion and believes the relief sought therein is necessary, reasonable, and appropriate.

2. At the August 18 Hearing, the Court identified a number of issues regarding the Apollo DIP Facility and its two equity conversion features: the Call Option and the Tag Right.³ Specifically, the Court expressed concern about (a) the size of the termination fees for the Call Option and the Tag Right, (b) the lack of procedural safeguards around the Debtors’ decision to accept or reject Apollo’s exercise of the Call Option and the Tag Right, and (c) whether the Call Option and the Tag Right amount to an impermissible *sub rosa* plan. The Committee echoed those sentiments, noting “there’s plenty of wood to chop between now and the September 7 hearing on

² Capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to them in the DIP Motion.

³ A detailed description of the Call Option and the Tag Right is set forth in the *Declaration of John E. Luth in Support of Motion of Debtors for Order (I) Authorizing the Debtors to Obtain Senior Secured, Superpriority, Postpetition Financing, (II) Granting Liens and Superpriority Claims, and (III) Granting Related Relief* [Docket No. 227].

issues that the Committee has and Your Honor has...” Aug. 18, 2022 Hr’g. Tr., at 45:5–7, In re SAS AB, et al., No. 22-10925 (MEW) (Bankr. S.D.N.Y.).

3. Following the August 18 Hearing, the Committee adopted a parallel-track approach to the debtor-in-possession financing process. First, the Committee supported the Debtors’ efforts to develop an alternative DIP financing proposal. Initially, these efforts looked promising after the Debtors received a letter of intent from an alternative financing source during the week of August 22. Unfortunately, that proposal was unable to move forward in the necessary timeframe. At the same time, the Committee and its advisors sent a detailed list of issues to the Debtors and Apollo that requested a number of improvements to the Apollo DIP Facility. Hard-fought negotiations between Apollo, the Debtors, and the Committee took place over several days, continuing through August 31 (*i.e.*, the Committee’s objection deadline to the DIP Motion). As a result of those negotiations, the Committee has agreed to support the DIP Motion, subject to a number of concessions to the Apollo DIP Facility detailed below and as further set forth in the amended DIP Credit Agreement and DIP Order to be filed by the Debtors:

- Tag Right Termination Fee will be lowered from 4% to 3% of the Apollo DIP Facility commitments.
- The Call Option will not arise if (a) the Debtors fail to satisfy the conditions precedent to draw amounts in excess of the initial draw and (b) Apollo does not otherwise fund amounts in excess of the initial draw. The Call Option Termination Fee will also not be payable in this scenario.
- The Debtors’ decision to either reject or accept Apollo’s exercise of the Call Option or the Tag Right will be subject to Court and Committee oversight.
- Any amendments to the DIP Credit Agreement that relate to the Call Option and/or the Tag Right will be subject to Court approval and Committee oversight.
- Prior to seeking payment of any Apollo DIP Facility obligations from the proceeds of any avoidance actions, Apollo will first seek to satisfy such obligations from all other DIP Collateral.

- A number of key clarifications will be made to the DIP Credit Agreement, including clarifying that multiple Call Option Termination Fees cannot be paid.
- Committee professionals will now be entitled to review the calculation of the Call Option Termination Fee (if any).
- Certain “Events of Default” in the DIP Credit Agreement have been modified to provide the Debtors with more flexibility and to reduce the odds of defaulting under the Apollo DIP Facility.
- The Committee will have greater notice rights with respect to any co-investment transactions that Apollo might enter into, including selling of Apollo DIP Facility claims.

4. As with any negotiations, the list above hardly represents everything initially sought by the Committee. Nonetheless, the Committee is mindful of the risks associated with filing an objection to the DIP Motion and potentially jeopardizing the critical financing being provided by Apollo, especially given the lack of actionable alternative DIP financing proposals. Ultimately, the Committee believes that the concessions set forth above are meaningful improvements to the Apollo DIP Facility that will benefit unsecured creditors, the Debtors, and these chapter 11 cases generally.

Dated: September 2, 2022
New York, New York

By: /s/ Brett H. Miller

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