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on behalf of one or more affiliates and/or funds
or separate accounts managed by it and its affiliates*

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

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In re	: Chapter 11
	:
SAS AB, <i>et al.</i> ,	: Case No. 22-10925 (MEW)
	:
Debtors. ¹	: (Jointly Administered)
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**STATEMENT AND LIMITED OBJECTION
OF APOLLO MANAGEMENT HOLDINGS, L.P. TO
MOTION OF DEBTORS FOR ORDERS (I) AUTHORIZING
THE DEBTORS TO REFINANCE THEIR SENIOR SECURED
SUPERPRIORITY, POSTPETITION FINANCING OBLIGATIONS, (II) GRANTING
LIENS AND SUPERPRIORITY CLAIMS, AND (III) GRANTING RELATED RELIEF**

Apollo Management Holdings, L.P., on behalf of one or more affiliates and/or funds or
separate accounts managed by it and its affiliates ("Apollo"),² by and through its undersigned

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.

² Apollo is the sole lender (the "DIP Lender") under the Debtors' up to \$700 million postpetition financing facility (the "Original DIP Facility") and, as documented in that certain *Super-Priority Debtor-in-Possession Term Loan Agreement*, dated August 13, 2022, by and among SAS AB as Parent, Scandinavian Airlines System Denmark-Norway-Sweden as Borrower, the other Debtors in these chapter 11 cases, as Guarantors, Wilmington Savings Fund Society, FSB as Administrative Agent and Collateral Agent (the "Original DIP Agent") and the lenders thereunder, as amended, supplemented or otherwise modified from time to time, the "Original DIP Credit Agreement") approved by the Court on September 12, 2022. See *Order (I) Authorizing the Debtors to Obtain*

counsel, hereby submits this statement and limited objection (this “Statement and Limited Objection”) to the *Motion of the Debtors for Orders (I) Authorizing the Debtors to Refinance their Senior Secured Superpriority, Postpetition Financing Obligations, (II) Granting Liens and Superpriority Claims, and (III) Granting Related Relief* [Docket No. 1580] (the “Refinancing Motion”).³ In support of this Statement and Limited Objection, Apollo respectfully states as follows:

STATEMENT

1. By the Refinancing Motion, the Debtors seek authority to enter into a new senior secured, superpriority term loan facility in the principal amount of \$500 million. The proceeds of the Refinancing DIP Facility will be used to, among other things, repay in full the Original DIP Facility under which Apollo is the sole lender. The Refinancing Motion asserts that, absent approval of the Refinancing DIP Facility, the Debtors would “risk defaulting under the Original DIP Facility[.]” Refinancing Motion ¶ 42. As the Debtors disclosed by the Motion to Shorten, the Debtors, in fact, have already defaulted the Original DIP Facility, and an event of default has occurred and is continuing since November 5, 2023. Motion to Shorten ¶¶ 17-18. Apollo files this Statement and Limited Objection to provide the Court and other parties in interest further information regarding the existing event of default under the Original DIP Facility, to request

Senior Secured, Superpriority, Postpetition Financing, (II) Granting Liens and Superpriority Claims, and (III) Granting Related Relief [Docket No. 331] (the “Original DIP Order”). Apollo has advanced an aggregate principal amount of \$350 million under the Original DIP Facility to the Debtors. The Debtors did not satisfy the conditions necessary to draw the second \$350 million tranche under the Original DIP Facility.

³ Capitalized terms used but not defined herein have the meaning ascribed to them in the Refinancing Motion. On November 5, 2023, the Debtors filed the *Motion for Orders (A) Shortening Time with Respect to Motion of Debtors for Orders (I) Authorizing the Debtors to Refinance Their Senior Secured Superiority, Postpetition Financing Obligations, (II) Granting Liens and Superpriority Claims, and (III) Granting Related Relief and (B) Granting Interim Relief Related Thereto* [Docket No. 1585] (the “Motion to Shorten”), which sought shortened notice to hear the Refinancing Motion. On November 8, 2023, the Debtors filed the *Declaration of John E. Luth in Support of Motions of the Debtors for Orders (I) Authorizing the Debtors to Refinance their Senior Secured Superpriority, Postpetition Financing Obligations, (II) Granting Liens and Superpriority Claims, and (III) Granting Related Relief* [Docket No. 1592] (the “Luth Declaration”).

certain changes to the proposed interim order approving the Refinancing DIP Facility (the “Interim DIP Order”) and otherwise to reserve its rights prior to repayment in full of the Original DIP Facility.

2. On July 26, 2023, the parties to the Original DIP Facility amended the Original DIP Credit Agreement to extend the milestone by which the Debtors were required to have filed a chapter 11 plan and obtained approval of the related disclosure statement from July 27, 2023 to November 4, 2023 (the “Disclosure Statement Milestone”). *See Motion of Debtors for Authority to Enter into Amendment to DIP Credit Agreement* [Docket No. 1329], ¶ 10 n.4; *see also* Section 6.19(d), Original DIP Credit Agreement. At the time of this amendment, Apollo did not seek a fee or any other concession from the Debtors in exchange for extending the milestone, though the Debtors already had exceeded the amount of time the Debtors had anticipated they would be in chapter 11 when Apollo underwrote the Original DIP Facility a year prior.⁴

3. Notwithstanding the over three months since the parties extended the Disclosure Statement Milestone, the Debtors did not request a further extension of the Disclosure Statement Milestone or waiver of the pending event of default for failure to satisfy it until the last possible day, November 4, 2023. Motion to Shorten ¶ 18 (“Following the filing of the Investment Agreement Motion and the DIP Refinancing Motion, the Debtors sought a waiver of the [Disclosure Statement Milestone]”). The Debtors were fully aware of the Disclosure Statement Milestone, their ability to satisfy it (or not) and the consequences of failure to do so (*i.e.*, that such failure would, among other things, result in an automatic event of default under the Original DIP Credit Agreement, the immediate accrual of default interest and exposure to potential business

⁴ *See, e.g.*, SAS AB, SAS Secures USD 700 Million in Debtor-In-Possession Financing (Aug. 14, 2022) (“SAS expects to complete its court-supervised process in the U.S. in 9-12 months from the initiation of the chapter 11 process in July 2022.”), *available at* <https://www.sasgroup.net/newsroom/press-releases/2022/sas-secures-usd-700-million-in-debtor-in-possession-financing/>.

risks). Given these circumstances, it is difficult to interpret the Debtors' eleventh-hour request for a waiver as anything other than negligence and/or a cavalier disregard for Apollo's contractual rights under the Original DIP Credit Agreement, apparently based on a hope that Apollo would agree at the last possible moment to a waiver unconditionally. But Apollo bargained for specific case milestones that formed the basis of its current investment in the Debtors. It has no duty to ensure that the Debtors comply with their contractual obligations, not least when this issue could have been resolved weeks or even months ago. As such, at Apollo's instruction, the Original DIP Agent served a notice of default and reservation of rights on the Debtors on November 5, 2023 in accordance with the Original DIP Credit Agreement.

4. At this time, the Original DIP Agent and Apollo have reserved their rights,⁵ and have not taken any further actions following the default, because, among other things, on the same day that the Debtors failed to satisfy the Disclosure Statement Milestone, the Refinancing Motion was filed. If the Refinancing Motion is promptly approved and the Refinancing DIP Facility closes shortly thereafter, Apollo will have assurance that the Debtors will be able to prepay the Original DIP Facility, which is within the Debtors' rights under the Original DIP Credit Agreement. But as it stands now, Apollo is owed no less than \$461 million under the defaulted Original DIP Facility, which Apollo financed under substantially different macroeconomic, geopolitical and industry conditions, and the success of the Refinancing Motion is neither guaranteed nor a risk that Apollo agreed to bear.

⁵ The actions that may be taken upon a default are set forth in Section 8.01 of the Original DIP Credit Agreement. Certain consequences of an event of default, however, are automatic, including the accrual of default interest under Section 2.08 of the Original DIP Credit Agreement and the requirement that SAS AB cause all non-Obligor Subsidiaries to repay any outstanding balances of the Intercompany Loans owed at such time by such non-Obligor Subsidiaries to any Obligors (each as defined under the Original DIP Credit Agreement) under Section 6.14 of the Original DIP Credit Agreement.

5. As such, if the Refinancing Motion is denied or its approval delayed, Apollo intends to instruct the Original DIP Agent to declare all obligations arising under the Original DIP Facility, including all accrued interest and unpaid accrued fees and all other liabilities, due and payable, consistent with the rights set forth under Section 8.01(ii) of the Original DIP Credit Agreement. In such circumstance, Apollo further intends to seek relief from this Court to require repayment of the Original DIP Facility from the Debtors' cash on hand, which as the Debtors note in the Motion to Shorten, is sufficient to repay the Original DIP Facility in full. Motion to Shorten ¶ 21. The Debtors, however, have threatened the Original DIP Agent and Apollo with a lawsuit should they declare the obligations under the Original DIP Facility due and payable and have argued that to do so would violate the automatic stay under Bankruptcy Code section 362. Apollo has and will continue to comply with its contractual obligations and applicable law in good faith and, as such, requested that the Debtors explain how such actions would violate the automatic stay. To date, the Debtors have provided no authority for the proposition that a postpetition lender with express contractual rights to declare outstanding obligations due and payable upon the occurrence of an event of default is prohibited from doing so absent relief from the Court, nor is Apollo aware of any such authority. As per the terms of the Original DIP Order, Apollo would not seek to foreclose upon any collateral, including without limitation, the Debtors' cash, without seeking relief from this Court.

6. The Debtors' argument appears to be based on a misunderstanding of the Original DIP Credit Agreement and the Original DIP Order. Specifically, Section 8.01(v) of the Original DIP Credit Agreement, which provides the terms under which the Original DIP Agent may foreclose on collateral, requires that relief from the automatic stay be obtained prior to doing so. However, under the Original DIP Credit Agreement, the requirement to obtain stay relief applies

only to enforcement actions with respect to collateral; it does not apply to the other actions set forth in Section 8.01(i)-(iv), which include terminating the commitments under the Original DIP Facility, charging default interest and declaring all obligations due and payable. The Original DIP Order further reinforces this commonsense understanding, providing that stay relief is only necessary if the Original DIP Agent and Original DIP Lenders intend to “take any enforcement action **with respect to the Collateral**[.]” Original DIP Order ¶ 12(b) (emphasis added). If the intent of this language was to prohibit the Original DIP Agent and DIP Lenders from exercising **any** rights under the Original DIP Loan Agreement, it would have said as much. But it does not. And, as written, it applies only to “enforcement actions,” which, in each instance under the Original DIP Order and the Original DIP Loan Agreement, refers to enforcement actions with respect to the collateral securing the Original DIP Facility. See Original DIP Order ¶ 12(b); Original DIP Loan Agreement ¶ 8.01(v). Finally, this interpretation is consistent with the Court’s instructions at the hearing to approve the Original DIP Facility, in which the Court stated that it would not

approve automatic relief from the stay for the purpose of foreclosure. I have always approved the right of the debt lender to stop lending if there’s an event of default. But as to whether collateral is actually seized, sold, et cetera, that’s a decision as to the propriety of it that I can only make at the time based on the nature of the default, the circumstances, what risk the DIP lender faces. And I don’t grant that relief in advance.

Sept. 9, 2022, Hr’g Tr. 75:21-76:4. Simply put, declaring a loan due and payable per the terms of a court-approved debtor in possession financing facility manifestly is distinct from foreclosing on collateral, and this clearly is reflected in the Original DIP Credit Agreement, Original DIP Order and the Court’s prior rulings.⁶

⁶ The Debtors, without specificity, have suggested that there may be additional automatic consequences under foreign law and collateral documentation as a result of the existence of an event of default and the DIP loans

LIMITED OBJECTION

7. The Original DIP Agent and Apollo are in the process of reviewing the Interim DIP Order and other documents relating thereto. As of the date of this Statement and Limited Objection, counsel to the Original DIP Agent has informed Apollo that it may not be administratively feasible to complete all collateral release documentation within two business days after entry of the Interim DIP Order, due to the fact that the collateral is located in multiple foreign jurisdictions and includes aviation collateral, the release of both of which requires various formalities and could involve unexpected issues with foreign and aviation registries. Further, any collateral releases delivered by the Original DIP Agent should be effective only upon the repayment in full of the Original DIP Facility. Accordingly, the Original DIP Agent has requested the following revisions to paragraph 14 of the Interim DIP Order:

The Agent (in its capacity as Agent under the Original DIP Term Loan Agreement) and the Original DIP Lenders are directed to expeditiously, at the Debtors' expense and (i) by no later than two Business Days after entry of this Order, draft, and negotiate, ~~execute, deliver, and enter into and, as applicable, perform all actions under (i)~~ a customary payoff letter with respect to the Original DIP Term Loan Agreement in form reasonably acceptable to the Debtors, the Agent, the New DIP Lenders, and the Original DIP Lenders, as the same may be modified in a manner reasonably satisfactory to the Debtors, the Agent, ~~and~~ the New DIP Lenders and the Original DIP Lenders (the "Payoff Letter"), and (ii) use reasonable efforts to execute, deliver, and enter into, no later than one Business Day prior to the anticipated closing date of the Refinancing DIP Facility, the Payoff Letter and all ~~other~~ related documentation contemplated by the Payoff Letter and

being due and payable, with such automatic consequences potentially resulting in an automatic forfeiture. The Debtors have provided no support for this argument, and Apollo is not aware of any such consequences that would be triggered without affirmative action by the Original DIP Agent. *See, e.g., In re Heavey*, 709 Fed. App'x. 101, 102 (2d Cir. 2018) (explaining that "Section 362(a)(4) does not prohibit all acts which *coincidentally* set in motion the creation, perfection, or enforcement of a lien. Rather, the prohibited, and thus compensable, act must be an act to create, to perfect, or to enforce a lien.") (emphasis added). Furthermore, the Original DIP Order governs in the event of any inconsistency between it and any of the Original DIP Loan Documents, such that if any Original DIP Loan Document contained an automatic trigger, the Original DIP Order's requirements would govern. Original DIP Order ¶ 14(h). To be clear, however, Apollo is not aware of any such automatic trigger within any of the Original DIP Loan Documents.

reasonably requested by the Debtors to reflect the release of any and all Liens on the DIP Collateral, such releases to be effective upon the repayment in full in cash of the Original DIP Facility in accordance with the Payoff Letter.

8. As of the date hereof, the Debtors have not accepted this language.

9. In addition, as set forth in the Refinancing Motion, the Debtors seek to release the liens securing the Original DIP Facility **prior** to the payment of the Tag Right Termination Fee (as defined in the Original DIP Credit Agreement). Refinancing Motion ¶ 10(h); *see also* Interim DIP Order ¶ 13 (providing that “[t]he liens securing the obligations under the Original DIP Facility shall be automatically released and terminated without the need for any further action upon the repayment in full of all such obligations (which do not include contingent DIP Obligations (as defined therein) and other obligations not then payable ... including, for the avoidance of doubt, the ‘Tag Right Termination Fee’”). This provision of the Interim DIP Order not only is inconsistent with the Original DIP Credit Agreement but also unduly exposes Apollo to risk by purporting to release collateral that secures **all** “DIP Obligations,”⁷ including the Tag Right Termination Fee. Under no circumstances should the Tag Right Termination Fee be subordinated or junior to obligations under the Refinancing DIP Facility. Original DIP Credit Agreement, Section 7.03 (providing that “[n]o Obligor or any Subsidiary of an Obligor will, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind, including any local law liens, on any property or asset ..., except (i) Permitted Liens; and (ii) the Carve-Out, to the extent set forth in the DIP Order”).

10. The most efficient manner to resolve any concern on this point would be for the Debtors to pay the Tag Right Termination Fee at the same time as the other obligations under the

⁷ As defined in the Original DIP Credit Agreement, “DIP Obligations” includes, in addition to principal and interest, “all other monetary obligations including fees, premiums, costs, expenses and indemnities payable to the DIP Secured Parties under the DIP Loan Documents.” Original DIP Credit Agreement, Section 1.01.

DIP Facility.⁸ This option accords with the terms of the Original DIP Credit Agreement. Specifically, Section 2.10(i) of the Original DIP Credit Agreement sets forth the events that give rise to the Tag Right Termination Fee. Among other events, the Tag Right Termination Fee arises if “the DIP Lenders are not provided the opportunity to subscribe for their Proportionate Percentage of Offered Interests (as a result of Repayment in Full prior to the consummation of the Tag Right[]) ... [then] the Borrower shall pay to the Administrative Agent, within five (5) business days of a Tag Right Termination Event, for prompt payment to the ratable account of each DIP Lender, an additional fee in U.S. Dollars, equal to 3.0% of the DIP Commitments in effect upon entry of the DIP Order.” Original DIP Credit Agreement, Section 2.10(i)(A)(ii). The Original DIP Lenders have not been offered the opportunity to subscribe for their share of “Offered Interests”⁹ and the Debtors intend to repay the Original DIP Facility, thus requiring that the Tag Right Termination Fee be paid within five business days. Accordingly, the most efficient way and the most protective of the parties’ rights, is to pay the Tag Right Termination Fee concurrently with payment of all other obligations under the Original DIP Facility.

11. Alternatively, if the Tag Right Termination Fee is not paid concurrently with the other obligations under the Original DIP Facility and the Debtors seek to release the liens that would secure the Tag Right Termination Fee, the Interim DIP Order should be revised to authorize and direct the Debtors to wire to the Original DIP Agent cash in an amount equal to the Tag Right Termination Fee (\$21 million) to be held in escrow pending entry of a Court order (which may be

⁸ The Original DIP Order provided that the hearing on the Debtors’ business decision on the Tag Right Termination could be heard on an expedited basis. See Original DIP Order, Annex 1. As such, it is not clear why the Tag Right Termination cannot be heard in connection with the interim approval of the Refinancing Motion.

⁹ “Offered Interests” are defined as, among other things, “equity interests ... or other securities that are directly or indirectly convertible into, or exercisable or exchangeable for, equity interests of Parent or any of the Debtors” in connection with “any agreement with Parent or any of the Debtors”. Original DIP Credit Agreement, Section 6.16(a). The Debtors entered into the Investment Agreement on November 4, 2023, which provides for the subscription of both equity securities and convertible debt and specifically contemplates the termination of the Tag Right and payment by the Debtors of the Tag Right Termination Fee.

the Proposed Tag Right Order) approving the Debtors' business judgment in terminating the Tag Right. The Interim DIP Order should further provide that the Original DIP Agent has a first priority lien and security interest in such escrow account and that the Replacement DIP Agent shall not have any lien or security interest in such escrow account. As such, Apollo has proposed the following language, to be added to paragraph 14 of the Interim DIP Order.

Notwithstanding the foregoing or anything to the contrary herein, the DIP Loan Documents or the Original DIP Loan Documents, on or prior to the closing date of the Refinancing DIP Facility, the Debtors shall send by wire transfer to the Original DIP Agent in immediately available funds an amount equal to \$21,000,000 (the "Tag Right Termination Fee Amount"), and the Original DIP Agent shall deposit or cause to be deposited such Tag Right Termination Fee Amount into a non-interest bearing segregated account maintained by the Original DIP Agent for the benefit of the Original DIP Lenders (the "Tag Fee Account"). The Original DIP Agent shall release the Tag Right Termination Fee Amount from the Tag Fee Account: (1) to the Original DIP Lenders promptly upon (a) entry of an order of the Court approving the Debtors' decision to terminate the Tag Right (which may be the Proposed Tag Right Order) and (b) receipt of joint written instruction from the Debtors and the Original DIP Lenders (which such instruction may be provided by e-mail from counsel to the Debtors and counsel to the Original DIP Lenders) or (2) as otherwise instructed by a final, non-appealable order of this Court or other court of competent jurisdiction. For the avoidance of doubt, in connection with the foregoing, (x) the Original DIP Agent shall hold the Tag Right Termination Fee Amount in the Tag Fee Account and the funds therein in its capacity as the Original DIP Agent, and (y) the Original DIP Agent shall have a first priority and superpriority lien and security interest in the Tag Fee Account and all funds therein, for the benefit of the Original DIP Lenders, and the Agent in its capacity as the Agent under the Refinancing DIP Credit Agreement shall not have any lien or security interest in the Tag Fee Account or any funds therein in respect of the Refinancing DIP Facility. The Original DIP Agent shall continue to have the benefit of all rights, privileges, protections, immunities, indemnities, and exculpations under the Original DIP Credit Agreement and the "DIP Loan Documents" as defined therein

with respect to all matters relating to the Tag Fee Account and the funds therein.

12. Accordingly, Apollo objects to entry of the Interim DIP Order absent the inclusion of the above changes.

RESERVATION OF RIGHTS

13. This Statement and Limited Objection is submitted without prejudice to, and with a full reservation of, Apollo's rights to object to the Refinancing Motion on any basis, to supplement this Statement and Limited Objection in writing or at the hearing thereon including, without limitation, in the event the Debtors amend or otherwise modify the Refinancing DIP Motion, Refinancing DIP Facility, Refinancing DIP Credit Agreement and/or any other document relating to the foregoing or to exercise any rights under the Original DIP Order, Original DIP Credit Agreement or related documentation. In addition, if the Court denies the relief requested by the Refinancing Motion, Apollo reserves all rights to seek immediate relief from the automatic stay to, among other things, realize upon collateral to secure repayment of the Original DIP Facility.

CONCLUSION

WHEREFORE, Apollo respectfully requests that the Court take notice of this Statement and Limited Objection, modify the proposed Interim DIP Order as detailed herein and grant such other relief as the Court deems just, proper and equitable.

Dated: November 8, 2023
New York, New York

/s/ Ira S. Dizengoff

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or separate accounts managed by it and its
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