

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
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MPM Silicones, LLC, et al.,<sup>1</sup> : Case No. 14-22503 (RDD)  
: :  
Debtors. : (Jointly Administered)  
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**FINAL ORDER AUTHORIZING: (A) CONTINUED USE OF THE DEBTORS’ CASH MANAGEMENT SYSTEM AND PROCEDURES; (B) MAINTENANCE AND CONTINUED USE OF EXISTING BANK ACCOUNTS; (C) WAIVER OF CERTAIN OPERATING GUIDELINES RELATING TO BANK ACCOUNTS; AND (D) CONTINUATION OF INTERCOMPANY TRANSACTIONS AND ACCORDANCE OF ADMINISTRATIVE EXPENSE STATUS TO INTERCOMPANY CLAIMS**

Upon the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) for entry of a final order, pursuant to sections 105(a), 345, 363, 364 and 503 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing: (a) the continued use of the Debtors’ cash management system and procedures (the “**Cash Management System**”), (b) maintenance and continued use of their existing bank accounts, (c) a waiver of certain operating guidelines relating to bank accounts, and (d) the continuation of intercompany transactions among and between the Debtors and their non-Debtor subsidiaries in the ordinary course of business, consistent with their

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<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Juniper Bond Holdings I LLC (9631); (ii) Juniper Bond Holdings II LLC (9692); (iii) Juniper Bond Holdings III LLC (9765); (iv) Juniper Bond Holdings IV LLC (9836); (v) Momentive Performance Materials China SPV Inc. (8469); (vi) Momentive Performance Materials Holdings Inc. (8246); (vii) Momentive Performance Materials Inc. (8297); (viii) Momentive Performance Materials Quartz, Inc. (9929); (ix) Momentive Performance Materials South America Inc. (4895); (x) Momentive Performance Materials USA Inc. (8388); (xi) Momentive Performance Materials Worldwide Inc. (8357); and (xii) MPM Silicones, LLC (5481). The Debtors’ executive headquarters are located at 260 Hudson River Road, Waterford, NY 12188.



prepetition practices, and accordance of administrative expense status to claims for such transactions [Docket No. 11]; and the Court having entered the *Interim Order Authorizing: (A) Continued Use of the Debtors' Cash Management System and Procedures; (B) Maintenance and Continued Use of Existing Bank Accounts; (C) Waiver of Certain Operating Guidelines Relating to Bank Accounts; and (D) Continuation of Intercompany Transactions and Accordance of Administrative Expense Status to Intercompany Claims* [Docket No. 29] (the "**Interim Order**"); and upon the Declaration of William H. Carter, Chief Financial Officer of Momentive Performance Materials Inc., in Support of Chapter 11 Petitions and First Day Pleadings; and due and sufficient notice of the Motion and the Interim Order having been given; and the Debtors having complied with section 345(b) of the Bankruptcy Code with respect to the Bank Accounts; and it appearing that no other or further notice need be provided; and upon the record at the interim and final hearings before the Court on the Motion on April 14, 2014 and May 15, 2014; and there being no opposition to the relief granted herein; and it appearing that the relief requested by the Motion and granted herein is in the best interests of these estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, that:

1. The Motion is granted on a final basis to the extent set forth herein.
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.
3. The Debtors are authorized and empowered to continue to manage their cash pursuant to the Cash Management System they maintained prior to the Petition Date, and to collect and disburse cash in accordance with the Cash Management System.

4. The requirements of the U.S. Trustee Guidelines that the Debtors close all existing Bank Accounts and open new debtor-in-possession accounts are hereby waived. Further, the requirements of the U.S. Trustee Guidelines that the Debtors establish specific bank accounts for operating, payroll and tax payments are hereby waived.

5. The Debtors may disburse funds from the Bank Accounts by checks, drafts, wires, debits, ACH transfers or by any other means.

6. All applicable Banks and other financial institutions are authorized to accept and hold or invest funds, at the Debtors' direction, in accordance with the Debtors' prepetition investment practices.

7. All Banks where the Debtors maintain Bank Accounts are hereby authorized to: (a) continue to service and administer the Bank Accounts in the manner maintained prior to the Petition Date, without interruption, in the usual and ordinary course; (b) continue to deduct, without further order of this Court, from the appropriate Bank Accounts the Banks' customary fees and expenses associated with the nature of the deposit or cash management or custodial services rendered to the Debtors; and (c) receive, process and honor and pay any and all checks, drafts, wires or ACH transfers drawn on the Bank Accounts by the holders or makers thereof, as the case may be, drawn or issued by the Debtors (i) after the Petition Date, or (ii) prior to the Petition Date, if such applicable Bank has been specifically authorized to honor such check by order of this Court.

8. Notwithstanding any other provision of this Final Order, no Bank that honors a prepetition check or other item drawn on any account that is the subject of this Final Order: (a) at the direction of the Debtors; (b) in a good faith belief that the Court has authorized such prepetition check or item; or (c) as the result of a good faith error made despite

implementation of reasonable item handling procedures, shall be deemed to be liable to the Debtors or their estates or otherwise in violation of this Final Order.

9. The Debtors shall record the consolidated balances of each of their Bank Accounts so that all postpetition transfers and transactions respecting such Bank Accounts shall be adequately and promptly documented in, and readily ascertainable from, their books and records, on an entity-by-entity basis, to the same extent maintained by the Debtors prior to the commencement of these chapter 11 cases.

10. Nothing contained herein shall prevent, subject to section 345 of the Bankruptcy Code and the U.S. Trustee Guidelines, the Debtors from opening any additional bank accounts, or closing any existing Bank Accounts, including opening additional accounts to maintain restricted cash to allow for the issuance of letters of credit, as they may deem necessary and appropriate; provided, however, that the opening or closing of any Bank Account shall be without prejudice to the liens, if any, granted to (a) any agents or trustees under the Debtors' prepetition secured debt facilities, (b) any administrative agent (collectively, the "**DIP Agent**") under the Debtors' postpetition financing loan and credit agreements (together with any related loan and security documents, the "**DIP Loan Agreements**"), or any applicable order authorizing cash collateral usage and the incurrence of postpetition financing (any such order, whether an interim or final order, the "**DIP Financing Order**"). The Banks are authorized to honor the Debtors' request to open or close, as applicable, such Bank Accounts or other bank accounts. The Debtors shall notify parties in interest and the U.S. Trustee of the opening of any new Bank Accounts or closing of any existing Bank Accounts by providing information regarding any such new or closed account in the Debtors' monthly operating reports.

11. Notwithstanding anything in the Motion to the contrary, for purposes of this Final Order, the term “**Intercompany Transactions**” includes only the following categories of transactions:

- (a) ordinary course settlement of sales and purchase transactions between the Debtors and their non-debtor subsidiaries and affiliates in connection with their respective business operations;
- (b) maintenance of the Debtors’ and their non-debtor subsidiaries cash pools and standalone cash holdings;
- (c) settlement of headquarter assessments;
- (d) performance under documented intercompany loans; and
- (e) continued servicing of and performance under the Receivables Transaction.

12. Subject to the terms and conditions of any DIP Loan Agreements or DIP Financing Order, the Debtors are authorized, but not required, in their business judgment, to continue performing under and honoring the Intercompany Transactions (other than capital contributions or dividends), regardless of when any such obligations are incurred, including, but not limited to, intercompany trade payables and funding to Debtor and non-Debtor subsidiaries; provided, however, that the Debtors shall (a) keep records of any postpetition intercompany transfers and services that occur during the chapter 11 cases, (b) put in place accounting procedures to identify and distinguish between prepetition and postpetition Intercompany Transactions and to track postpetition Intercompany Transactions on an entity-by-entity basis, and (c) provide reasonable access to such records and procedures to the DIP Agents, counsel to Apollo Global Management, LLC and certain affiliated funds, counsel to the Ad Hoc Committee of Second Lien Noteholders and counsel to the official committee of unsecured creditors (the

“**Committee**”), including information provided in connection with the Reporting Requirements listed in Section II of Exhibit A attached hereto.

13. Notwithstanding anything to the contrary set forth herein, Momentive Performance Materials Holdings Inc. (“**MPM Holdings**”) shall not lend, contribute or dividend the cash held by MPM Holdings as of the Petition Date to a Debtor or non-Debtor affiliate.

14. The Debtors shall report to the Committee’s professionals certain financial information and provide advance notice of certain proposed transactions pursuant to the reporting and notice protocols (the “**Protocols**”) attached hereto as Exhibit A, which Protocols were negotiated and consented to by the Debtors and the Committee prior to the date of this Final Order. The terms and requirements of the Protocols are incorporated by reference as if fully set forth herein. For the avoidance of doubt, to the extent that the Protocols require the Debtors to provide the Committee with one (1) day’s advance notice of any proposed transaction, such required notice shall mean one (1) business day, and the Committee shall have the option to extend such notice period by up to an additional three (3) business days upon receipt of such notice.

15. In the event that a dispute arises in connection with any proposed transaction subject to the notice provisions hereof, the Debtors, the Committee, and all other parties in interest reserve all rights, claims, and defenses with respect to such proposed transaction.

16. Intercompany Claims arising from postpetition transactions (“**Intercompany Administrative Claims**”) are hereby granted administrative expense status pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, junior in all respects to the superpriority claims of the Debtors’ postpetition secured lenders and DIP Agents and the

Bankruptcy Code section 507(b) superpriority claims of the prepetition secured lenders and their agents as adequate protection for the use of such lenders' collateral, in each case, to the extent and as set forth in the final DIP Financing Order, and further subject to (a) the liens granted to the Debtors' prepetition secured lenders as adequate protection for the use of such lenders' cash collateral, (b) the liens granted to the Debtors' postpetition secured lenders or the DIP Agents, and (c) the carveout provided in the final DIP Financing Order; provided, however, that the foregoing generalized grant of administrative expense status shall be without prejudice to the right of the Committee to seek a determination from the Court that any given Intercompany Claim does not satisfy the standard set forth in section 503(b) of the Bankruptcy Code and thus is not entitled to administrative expense status; provided, further, that nothing in the foregoing or in this Order grants the Debtors' postpetition secured lenders, the DIP Agents, or the Debtors' prepetition secured lenders any lien (replacement or otherwise) or claim (superpriority or otherwise) on or against MPM Holdings or the assets of MPM Holdings, and the rights of all parties are expressly preserved with respect to the propriety of any such lien or claim, and, to the extent such issues are not resolved consensually prior to the final hearing on the DIP Motion, such issues shall be determined by the Court at the hearing on the Final DIP Financing Order. Intercompany Claims shall be subject to setoff against other claims amongst the same entities, regardless of whether such claim arose prior to or subsequent to the Petition Date; provided, however, that nothing herein shall prejudice the Committee's right, to the extent it has or obtains standing, to seek a determination from the Court that the setoff or recoupment of any given Intercompany Claim(s) is unwarranted under the circumstances. Notwithstanding the preceding sentence or any other provision hereof to the contrary, neither an Intercompany Claim nor the administrative expense status accorded thereto shall be waived, released, reduced, setoff or

subordinated prior to the effective date of a chapter 11 plan of reorganization without prior notice and hearing.

17. The Debtors are authorized, but not required, to defer the repayment of due and payable intercompany debt owed to the Debtors by their foreign non-Debtor subsidiaries, provided, however, that any such deferral shall be subject to the notice and reporting provisions of the Protocols.

18. As promptly as possible, but in no event later than five (5) business days after entry of this Final Order, the Debtors shall serve a copy of this Final Order on all Banks whose Bank Accounts are listed on Exhibit A to the Motion.

19. The relief, rights, and responsibilities provided for in this Final Order shall be deemed to apply to any and all Bank Accounts maintained in the Debtors' names, whether or not such Bank Accounts are listed on Exhibit A to the Motion.

20. Nothing in this Final Order or the Motion shall be deemed to constitute the postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.

21. For the avoidance of doubt, any provisions of this Final Order that specify particular rights as being reserved or preserved for the Committee shall not operate to limit or otherwise diminish the rights of any other parties in interest to the extent provided under the Bankruptcy Code or the Bankruptcy Rules.

22. Notwithstanding anything herein to the contrary, the Committee's right, to the extent it has or obtains standing, to seek avoidance of or otherwise challenge any prepetition Intercompany Transaction, or to seek relief concerning any future Intercompany Transaction, is



hereby preserved; and all rights of the Debtors and other parties in interest are similarly preserved.

23. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

24. Notwithstanding anything to the contrary contained herein, any payment to be made, and any authorization contained hereunder, shall be subject to the requirements imposed on the Debtors under the DIP Financing Order and the DIP Loan Agreements and nothing herein shall alter the rights of the secured parties under the DIP Financing Order or DIP Loan Agreements. To the extent of any conflict between the terms of this Final Order and the terms of the DIP Financing Order, the terms of the DIP Financing Order shall govern.

25. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Final Order.

Dated: May 16, 2014  
White Plains, New York

/s/Robert D. Drain  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE



**EXHIBIT A**  
**PROTOCOLS**



## **REPORTING AND NOTICE PROTOCOLS**

### **I. Notice Requirements**

The Debtors shall provide the Committee with advance notice of the following Intercompany Transactions as set forth below:

- (a) One (1) business day's notice, which the Committee may extend by three (3) business days at its discretion upon receipt of such notice, of any acceleration or deferral in intercompany trade settlement terms of greater than fifteen (15) days which results in a liquidity impact in excess of \$3,000,000;
- (b) One (1) business day's notice, which the Committee may extend by three (3) business days at its discretion upon receipt of such notice, of any acceleration or deferral on existing intercompany loan debt service not included in the governing DIP Budget in excess of \$3,000,000;
- (c) One (1) business day's notice, which the Committee may extend by three (3) business days at its discretion upon receipt of such notice, of any advances or repayments on new or existing intercompany loans not included in the governing DIP Budget in excess of \$3,000,000;
- (d) Fourteen (14) days' notice of any changes to the transfer pricing policy of the Debtors and their affiliates; and
- (e) Fourteen (14) days' notice of any "true-ups" as a result of the existing transfer pricing policy of the Debtors and their affiliates.

### **II. Reporting Requirements**

The Debtors are required to provide the following reports to the Committee:

- (a) A Quarterly Treasury Package shall be provided within twenty-five (25) business days following the last day of the quarter to which such Quarterly Treasury Package pertains;
- (b) A monthly intercompany trade settlement matrix shall be provided within the first fifteen (15) business days of each month;
- (c) A monthly intercompany loan balance report shall be provided within the first fifteen (15) business days of each month;
- (d) A quarterly report of any headquarter assessments and the basis for allocation thereof shall be provided within the first twenty-five (25) business following the last day of the quarter to which such report pertains;

- (e) In conjunction with each of the updated 13-week cash flow forecasts provided every four weeks, the Debtors shall provide a breakdown by region of the intercompany trade activity reflected in such 13-week cash flow forecast;
- (f) A weekly cash pool balance summary shall be provided by 5:00 p.m. (ET) on Thursday of each week; and
- (g) A weekly report on all collections, payments, and balances in connection with the Receivables Transaction shall be provided by 5:00 p.m. (ET) on Thursday of each week.