

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

TOTAL FINANCE INVESTMENT INC., *et al.*,¹
Debtors.

Chapter 11

Case No. 19-03734 (CAD)

Jointly Administered

SOLICITATION AND VOTING PROCEDURES

PLEASE TAKE NOTICE THAT on April 25, 2019, the United States Bankruptcy Court for the Northern District of Illinois (the “Court”) entered an order [Docket No. 351] (the “Disclosure Statement Order”): (a) authorizing Total Finance Investment Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”), to solicit acceptances for the *First Amended Joint Chapter 11 Plan of Reorganization for Total Finance Investment Inc. and its Debtor Affiliates Creditors* [Docket No. 348] (as modified, amended, or supplemented from time to time, the “Plan”);² (b) approving the *Disclosure Statement for the First Amended Joint Plan of Reorganization of Total Finance Investment Inc. and Its Debtor Affiliates* [Docket No. 349] (the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Total Finance Investment Inc. (3753); Car Outlet Holding Inc. (8362); Car Outlet AC LLC (2282); Full Service Auto Repair AC LLC (6920); Todo Seguro AC LLC (7099); Todo Seguro Premium Finance AC LLC (3775); and Total Finance AC LLC (1965). The Debtors’ mailing address is 3400 N. Pulaski Rd, Chicago, IL 60641.

² Capitalized terms used but not otherwise defined herein will have the same meaning as set forth in the Plan, Disclosure Statement, or the *Debtors’ Motion for Entry of an Order (I) Approving (A) the Adequacy of the Disclosure Statement, (B) the Solicitation and Voting Procedures, and (C) Certain Dates with Respect to Plan Confirmation, and (II) Granting Related Relief* [D.I. 246] (the “Disclosure Statement Motion”), as applicable.



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included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

A. The Voting Record Date.

The Court has approved **May 2, 2019**, as the record date for purposes of determining which Holders of Claims in Class 1 (First Lien Credit Facility Claims), Class 2 (Second Lien Term Loan Claims), Class 3 (Third Lien Term Loan Claims), and Class 7 (General Unsecured Claims) and Holders of Interests in Class 9 (Interests in COHI and TFII) are entitled to vote on the Plan (the “Voting Record Date”).

B. The Voting Deadline.

The Court has approved **June 5, 2019, at 4:00 p.m.**, prevailing Central Time, as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors may extend the Voting Deadline, in their discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots (“Ballots”) must be properly executed, completed, and delivered to the Solicitation Agent as directed on the applicable Ballot.

C. Form, Content, and Manner of Notices.

1. The Solicitation Package.

The following materials will constitute the solicitation package (the “Solicitation Package”):

- (a) the Disclosure Statement, as approved by the Disclosure Statement Order (with all exhibits thereto, including the Plan and any exhibits to the Plan);
- (b) the Disclosure Statement Order;
- (c) a copy of these Solicitation and Voting Procedures;
- (d) an appropriate Ballot with voting instructions with respect thereto, together with a pre-addressed, postage prepaid return envelope;
- (e) a cover letter, in substantially the form attached as Exhibit E to the Disclosure Statement Motion, describing the contents of the Solicitation

Package and urging the Holders of Claims and Interests in each of the Voting Classes to vote to accept the Plan (the “Cover Letter”);

- (f) the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtors and Related Voting and Objection Deadlines*, substantially in the form attached as Exhibit D to the Disclosure Statement Motion (the “Confirmation Hearing Notice”); and
- (g) any supplemental documents the Debtors may file with the Bankruptcy Court or that the Bankruptcy Court orders to be made available.

2. Distribution of the Solicitation Package.

On or before the Solicitation Deadline of **May 6, 2019**, the Debtors will provide complete Solicitation Packages to the following parties: (a) the U.S. Trustee; (b) all parties on the 2002 List as of the Voting Record Date; (c) counsel to the Committee; (d) the United States Attorney’s Office for the Northern District of Illinois; (e) the Internal Revenue Service; (f) the office of the attorney generals for the states in which the Debtors operate; and (g) the taxing authorities for the states in which the Debtors operate. In addition, by no later than **May 6, 2019**, the Debtors will mail, or cause to be mailed, the Solicitation Package to all Holders of Claims in the Voting Classes, who are entitled to vote, as described in section D below. Such service will satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

To avoid duplication and reduce expenses, the Debtors will make every reasonable effort to ensure that any Holder of a Claim or Interest who has filed duplicative Claims against or Interests in a Debtor (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim or Interest and with respect to that Class as against that Debtor.

The Debtors have been authorized to provide copies of the Disclosure Statement Order, the Disclosure Statement, and the Plan on CD-ROM or flash drive. The Ballots, Cover Letter,

and Confirmation Hearing Notice, however, will be provided in paper form. Any party that receives the materials in electronic format but would prefer to receive materials in paper format, may contact the Solicitation Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

The Debtors are excused from mailing a copy of the Solicitation Package and/or other solicitation materials to those entities to which the Debtors mailed a notice regarding the Disclosure Statement Hearing and received a notice from the United States Postal Service or other carrier that such notice was undeliverable unless such entity provides the Debtors with an accurate address not less than ten (10) days prior to the Solicitation Deadline. Failure to distribute Solicitation Packages and/or other solicitation materials to such entities will not constitute inadequate notice of the Confirmation Hearing or the Voting Deadline, and is not a violation of Bankruptcy Rule 3017(d).

3. Resolution of Disputed Claims for Voting Purposes; Resolution Event.

Absent a further order of the Court, the Holder of a Claim in a Voting Class that is the subject of a pending objection on a "reduce and allow" basis (i.e., the objection seeks to allow the claim in a specified reduced amount, rather than seeking to disallow the claim in its entirety) will be entitled to vote such Claim in the reduced amount contained in such objection.

If a Claim in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court on or prior to fourteen (14) days before the Voting Deadline: (i) the Debtors will serve the applicable Holder with a Disputed Claim Notice substantially in the form annexed as Exhibit G to the Disclosure Statement Motion (which notice will be served together with such objection); and (ii) the applicable Holder will not be entitled to vote to accept or reject the Plan on account of such claim unless a Resolution Event (as defined herein) occurs as provided herein.

If a Claim in a Voting Class is subject to a “reduce and allow” objection that is filed with the Court less than fourteen (14) days prior to the Voting Deadline, the applicable Claim will be deemed temporarily allowed in the reduced amount for voting purposes only, without further action by the Holder of such Claim and without further order of the Court, unless the Court orders otherwise.

A “Resolution Event” means the occurrence of one or more of the following events no later than the seven (7) days prior to the Voting Deadline:

- (a) an order of the Court is entered, allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
- (b) an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
- (c) a stipulation or other agreement is executed between the Holder of such Claim and the Debtors resolving the objection and allowing such Claim in an agreed upon amount; or
- (d) the pending objection is voluntarily withdrawn by the objecting party.

For the avoidance of doubt, the Holder of a Disputed Claim or the Debtors may request a hearing for entry of any of the foregoing orders for a date other than an omnibus hearing date. No later than one (1) business day following the occurrence of a Resolution Event, the Debtors will cause the Solicitation Agent to distribute via email, first class mail, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant Holder to the extent such Holder has not already received a Solicitation Package containing a Ballot.

4. Non-Voting Status Notices for Unimpaired Classes.

Certain Holders of Claims that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise

presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the *Non-Voting Status Notice for Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form attached as Exhibit F to the Disclosure Statement Motion. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

5. Notices to Executory Contract and Unexpired Lease Counterparties.

Counterparties to Executory Contracts and Unexpired Leases that receive a notice of assumption or rejection of such Executory Contract or Unexpired Lease, substantially in the forms attached as Exhibit H and Exhibit I to the Disclosure Statement Motion, may file an objection to the Debtors' proposed assumption, rejection, and/or cure amount, as applicable. Such objections must be filed and actually received by the parties detailed in the applicable notice by fourteen (14) days after service of the applicable Assumption Notice or Rejection Notice, at the latest.

D. Voting and Tabulation Procedures.

1. Holders of Claims Entitled to Vote.

Only the following Holders of Claims in the Voting Classes will be entitled to vote with regard to such Claims:

- (a) Holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim that (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection, other than a "reduce and allow" objection, filed with the Court at least 14 days prior to the Voting Deadline, pending a Resolution Event as provided herein; provided that a Holder of a Claim that is the subject of a pending objection on a "reduce and allow" basis will receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Court;
- (b) Holders of Claims that are listed in the Schedules; provided that Claims that are scheduled as contingent, unliquidated, or disputed (excluding such

scheduled disputed, contingent, or unliquidated Claims that have been paid or superseded by a timely filed Proof of Claim) will be allowed to vote only in the amounts set forth in section D.2(c) of these Voting and Solicitation Procedures;

- (c) Holders whose Claims arise (i) pursuant to an agreement or settlement with the Debtors that has been approved by the Court, or (ii) in a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed;
- (d) Holders of any Disputed Claim that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018; and
- (e) the assignee of any Claim that was transferred on or before the Voting Record Date by any Entity described in subparagraphs (a) through (d) above; provided that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.

2. Establishing Claim Amounts for Voting Purposes.

Each Holder of a Claim in a Voting Class will be entitled to vote the amount of its Claim as of the Voting Record Date. The Claim amount established herein will control for voting purposes only and will not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through the Solicitation Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy will be used to determine the amount of the Claim associated with each claimant's vote:

- (a) the Claim amount (i) settled and/or agreed upon by the Debtors with the Court's approval, or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Court;
- (b) the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under section C.3(d) of these Solicitation and Voting Procedures;
- (c) the Claim amount contained in a Proof of Claim that has been timely filed by the applicable claims bar date (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; provided, however, that any Ballot cast by a Holder of a Claim who timely files a Proof of Claim in respect of (i) a contingent Claim or a Claim in a wholly-unliquidated or unknown

amount (based on a reasonable review by the Debtors and/or the Solicitation Agent) that is not the subject of an objection will count toward satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as a Ballot for a Claim in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and (ii) a partially liquidated and partially unliquidated Claim, such Claim will be Allowed for voting purposes only in the liquidated amount; provided, further, however, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court will supersede the Claim amount set forth on the respective Proof of Claim for voting purposes;

- (d) if a Claim is deemed Allowed under the Plan, such Claim is Allowed for voting purposes in the deemed Allowed amount set forth in the Plan;
- (e) the Claim amount listed in the Schedules (to the extent such Claim is not superseded by a timely filed Proof of Claim); provided that such Claim is not scheduled as contingent, disputed, or unliquidated and/or has not been paid; provided, further, however, that if the applicable claims bar date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated will vote at \$1.00, but if the applicable bar date has expired, a Claim listed in the Schedules as contingent, disputed, or unliquidated will not be entitled to vote;
- (f) notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased duplicate Claims within the same Class will be provided with only one Solicitation Package and one Ballot for voting a single Claim in such Class, regardless of whether the Debtors have objected to such duplicate Claims;
- (g) claims filed for \$0.00 are not entitled to vote; and
- (h) if a Proof of Claim has been amended by a later timely filed proof of claim, only the later filed amending Claim will be entitled to vote, regardless of whether the Debtors have objected to such earlier filed Claim.

3. Voting and Tabulation Procedures.

The following voting procedures and standard assumptions will be used in tabulating Ballots, subject to the Debtors' right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Rules:

- (a) the Solicitation Agent will date-stamp all Ballots when received. The Solicitation Agent will retain the original Ballots and an electronic copy of

the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court. The Solicitation Agent will tabulate Ballots on a Debtor-by-Debtor basis;

- (b) the Solicitation Agent will file with the Court a voting report (the “Voting Report”) no later than three (3) business days prior to the Confirmation Hearing. The Voting Report will, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile or damaged (“Irregular Ballots”). The Voting Report will indicate the Debtors’ intentions with regard to each Irregular Ballot. Any party-in-interest may file an objection to the Voting Report no later than one (1) business day after the Voting Report is filed;
- (c) the method of delivery of Ballots to be sent to the Solicitation Agent is at the election and risk of each Holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Solicitation Agent actually receives the executed Ballot;
- (d) delivery of a Ballot to the Solicitation Agent by facsimile or any electronic means will not be valid;
- (e) no Ballot should be sent to the Debtors, the Debtors’ agents (other than the Solicitation Agent), or to the Debtors’ financial or legal advisors, and if so sent will not be counted;
- (f) if multiple Ballots are received from the same Holder with respect to the same Claim or Interest prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter’s intent and will supersede and revoke any prior received Ballot;
- (g) Holders must vote all of their Claims or Interests within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims or Interests within the same Class, the applicable Debtor may, in its discretion, aggregate the Claims or Interests of any particular Holder within a Class for the purpose of counting votes;
- (h) for purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, separate Claims held by a single Creditor against a Debtor in the Voting Class will be aggregated as if such Creditor held a single Claim against the consolidated Debtors in the Voting Class, and the votes related to those Claims shall be treated as a single vote on the Plan, provided, however, that separate Claims held as of the Petition Date by

different but related or affiliated Entities shall not be deemed to be held by a single Creditor pursuant to this provision, and the votes related to such Claims shall be treated as separate votes on the Plan;

- (i) a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a Holder of Claims or Interests should indicate such capacity when signing and if requested by the Solicitation Agent, the Debtor or the Court, must submit proper evidence of its authority to act;
- (j) the Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;
- (k) neither the Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;
- (l) unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- (m) in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected;
- (n) subject to any order of the Court, the Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtors would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; provided that any such rejections will be documented in the Voting Report;
- (o) if a Claim has been estimated or otherwise Allowed only for voting purposes by order of the Court, such Claim will be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- (p) if an objection to a Claim is filed, such Claim will be treated in accordance with the procedures set forth herein;
- (q) the following Ballots will not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of such Claim or

Interest; (ii) any Ballot cast by any Entity that does not hold a Claim or Interest in a Voting Class; (iii) any Ballot sent to any party other than the Solicitation Agent (*e.g.*, the Debtors, the Committee, or the Court); (iv) any Ballot transmitted to the Solicitation Agent by facsimile or electronic means; (v) any unsigned Ballot or Ballot lacking an original signature; (vi) any Ballot that does not contain an amount of claim denominated in U.S. currency; (vii) any Ballot superseded by another timely valid Ballot; (viii) any Ballot cast on a form other than sent by the Solicitation Agent; (ix) any Ballot submitted by a voter who voted other Claims or Interests in the same Class differently; (x) any non-original Ballot; (xi) any Ballot (or group of Ballots from a single creditor) that partially rejects and partially accepts the Plan; (xii) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (xiii) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;

- (r) any Ballot submitted by a Holder of an Allowed Class 7 General Unsecured Claim that selects the Convenience Class Election will not be counted in determining the acceptance or rejection of the Plan as such Holder will be deemed to accept the Plan as a Holder of a Class 6 Convenience Claim;
- (s) after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Debtors;
- (t) the Debtors may enter into stipulations with Holders of any Claim agreeing to the amount of a Claim for voting purposes, subject to the Court's approval; and
- (u) where any portion of a single Claim has been transferred to a transferee, all Holders of any portion of such single Claim will be treated as a separate creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code and for the other voting and solicitation procedures set forth herein.

E. Amendments to the Disclosure Statement, Plan, and Solicitation and Voting Procedures.

The Debtors reserve the right to make non-substantive or immaterial changes to the Disclosure Statement, Plan, Ballots, Confirmation Hearing Notice, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, if any, and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package before their distribution.

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